

Case No. 17-2220

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FEMINIST MAJORITY FOUNDATION, *et al.*,

Plaintiffs-Appellants,

v.

UNIVERSITY OF MARY WASHINGTON, *et al.*,

Defendants-Appellees.

BRIEF OF *AMICI CURIAE*
NATIONAL WOMEN'S LAW CENTER, *ET AL.*,
IN SUPPORT OF PLAINTIFFS-APPELLANTS

Neena Chaudhry, *Counsel of Record*
Emily Martin
Sunu Chandy
Alexandra Brodsky
NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle, NW, Suite 800
Washington, DC 20036
(202) 588-5180

Cathy A. Harris
Daniel Clark
KATOR, PARKS, WEISER &
HARRIS, P.L.L.C.
1200 18th Street, NW, Suite 1000
Washington, DC 20036
(202) 898-4800

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, 29, and Local Rule 26.1, the undersigned counsel of record certifies that none of the *amici curiae* is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10 percent or more of its stock. This representation is made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated: December 19, 2017

/s/ Neena Chaudhry
Counsel of Record for Amici Curiae

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INTERESTS OF *AMICI CURIAE*

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights. Since 1972, NWLC has worked to secure equal opportunities for women and girls in education, which includes the right to an educational environment free from all forms of discrimination. NWLC has played a leading role in the passage and enforcement of federal civil rights laws and has filed numerous *amicus* briefs in matters involving sex and race discrimination in education before the United States Supreme Court, federal courts of appeals, and state courts. *Amici* are a coalition of civil rights groups and public interest organizations committed to preventing, combating, and redressing sexual, racial, and other harassment in schools. Descriptions of the other *amici* are included in an appendix.

NWLC files this brief with the consent of all parties.

BACKGROUND AND SUMMARY

For an entire school year, Plaintiffs—female students, who were also members of the organization Feminists United¹—endured severe cyber harassment after speaking out about sexual violence against women at the University of Mary Washington (“UMW” or “University”). These female students’ advocacy made them targets of severe and pervasive peer sexual harassment, both in person and online.

This harassment was perpetrated primarily through the geographically-based social media app Yik Yak, which allows users to share anonymous messages (“Yaks”) with any user within a 1.5 mile radius. The female students were harassed over 700 hundred times, individually and as an organization, through posts calling them “femicunts,” “feminazis,” “cunts,” “bitches,” “hoes,” and “dikes.” The cyber harassment also included rape threats and death threats such as: “Gonna tie these feminists to the radiator and [g]rape² them in the mouth”; “Dandy’s about to kill a bitch . . . or two”; and “Can we euthanize whoever caused

¹ Feminists United is affiliated with Feminist Majority Foundation, an organization “dedicated to women’s equality, reproductive health, and nonviolence.”

² *Graped*, Urban Dictionary (*last visited* Dec. 19, 2017) available at: <https://www.urbandictionary.com/tags.php?tag=g%27raped> (“#g’raped: To be gang raped. Penetrative sex by more than one person against the recipient’s wishes.”) (Urban Dictionary is a crowdsourced online dictionary of slang words and phrases).

this bullshit?” This harassment also identified certain female students by name and posted the contemporaneous whereabouts of one female student with encouragement for harassers to confront her in person.

The female students reported the harassment to the University several times, explaining how unsafe they felt on campus and how the harassment was interfering with their education. The University, however, refused to investigate the harassment and the Yik Yak attacks only escalated. Despite the growing severity of the cyber harassment, the University took no action to address it. A UMW professor organized two “sharing circles” to educate the administration about the extent and impact of cyber harassment, but it led to no action by UMW officials. In addition, a campus police officer escorted one female student—upon her request—to a meeting where she spoke, after Yik Yak posts suggested students harass her there.

Harassment through electronic media is an increasingly common way to target people, particularly women and girls, people of color, members of the LGBTQ (lesbian, gay, bi-sexual, transgender, and queer) community, individuals with disabilities, and religious minorities. When cyber harassment happens in school, it seriously harms students and denies them equal access to educational opportunities.

Schools can and must address cyber harassment to ensure discrimination does not interfere with students' access to education. Other schools have taken steps to deal with cyber harassment (including threats of gun and bomb violence) perpetrated through Yik Yak, making UMW's statements that it could do nothing to prevent or stop the harassment here ring hollow.

Schools must be held liable for deliberate indifference to online harassment, just as for offline harassment. If a student left an anonymous note in a locker threatening to rape and kill a female student, surely the school would have a legal obligation to investigate and take corrective action. The school's obligation is no different when such harassment is perpetrated electronically. Relieving schools of their responsibility to address a hostile educational environment simply because of the electronic and/or anonymous nature of the harassment is inconsistent with the requirements of Title IX of the Education Amendments of 1972.³

Plaintiffs alleged ample facts to support a claim that the University's failure to investigate or take any corrective action in response to their numerous complaints of sexual harassment was deliberately indifferent and therefore violated

³ 20 U.S.C. §1681 *et seq.*

Title IX.⁴ Instead of investigating the harassment, taking action to remediate the online threats and slurs, providing support services to the female students, or engaging the student body in one of myriad available ways, the University simply threw up its hands and stood by indifferent to the brutal harassment of its female students.

This Court must reverse the District Court's decision to ensure students are protected from all forms of harassment that interfere with their ability to learn. Upholding the District Court opinion here would send a dangerous message to cyber harassers and to schools across this country, allowing this pervasive and damaging form of harassment to go unchecked. Schools must confront the serious reality that in this day and age, harassment is often perpetrated electronically, and they must take action to address the hostile educational environment it creates.

⁴*See Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 641–47 (1999) (defining deliberate indifference as “clearly unreasonable in light of the known circumstances”).

ARGUMENT

I. Cyber Harassment Is a Pervasive Problem Disproportionately Affecting Women, People of Color, LGBTQ People, Individuals with Disabilities, and Religious Minorities, which Interferes with Students' Access to Equal Educational Opportunities.

Women and girls, people of color, members of the LGBTQ community, individuals with disabilities, and religious minorities are all disproportionately affected by cyber harassment.⁵ This harassment causes serious harm to its victims, particularly in the education context where it interferes with students' ability to access their education and learn in a safe environment.

Cyber harassment takes many forms. For example, users of Yik Yak subjected the female students in this case to name-calling, humiliation, intimidation, and embarrassment. One female student was also a victim of doxing—revealing personally identifiable information such as a home address, or in this case contemporaneous reports of whereabouts, to encourage others to harass that individual—thereby threatening her physical safety. In particular, anonymous harassment is an increasingly common problem. A 2017 nationally representative

⁵ While this case involves Title IX, similar legal standards apply to harassment under analogous civil rights laws such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (prohibiting discrimination on the basis of race, color, or national origin, as well as religious discrimination if based on shared ancestry, ethnic characteristics, or belonging to a country with a dominant religion); and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 (prohibiting discrimination on the basis of disability).

Pew Research Center study found that more than half of those harassed online (54 percent) said their most recent incident involved a stranger and/or someone whose identity they did not know.⁶ Studies show individuals are more likely to act injuriously when they believe they are acting anonymously⁷ and unlikely to be held accountable.⁸ “When people have the opportunity to separate their actions online from their in-person lifestyle and identity they feel less vulnerable about . . . acting out.”⁹ This effect is compounded when groups form “cyber mobs” to harass.¹⁰ The collective impact of the harassment and abuse is profound and harmful.¹¹ Allowing cyber harassment to continue in schools without intervention by school administrations would embolden this form of particularly dangerous behavior.

⁶ Maeve Duggan, *Online Harassment 2017*, Pew Research Center (July 11, 2017), at 11, http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/07/10151519/PI_2017.07.11_Online-Harassment_FINAL.pdf.

⁷ Danielle Keats Citron, *Hate Crimes in Cyberspace*, 58–60 (2014).

⁸ *Id.* at 58.

⁹ John Suler, *The Online Disinhibition Effect*, 7 *CyberPsychology & Behavior* 322 (2004), http://www.academia.edu/3658367/The_online_disinhibition_effect.

¹⁰ Citron, *supra* note 7, at 5.

¹¹ Journalist Amanda Hess, who has been targeted with cyber-abuse and is a victim of cyber-stalking, explains: “Today, a legion of anonymous harassers are free to play their ‘games’ and ‘pranks’ under pseudonymous screen names, but for the women they target, the attacks only compound the real fear, discomfort, and stress we experience in our daily lives.” *Why Women Aren’t Welcome on the Internet*, *Pacific Standard* (Jan. 6, 2014), <http://www.psmag.com/health-and-behavior/women-arent-welcome-internet-72170>.

Women, especially young women, are more likely to suffer online harassment than men. The Pew study found that two-thirds of young adults ages 18 to 29 have been subject to some type of online harassment, with 41 percent having experienced severe harassment.¹² Among people ages 18 to 24, women are more than three times as likely (20 percent) to be sexually harassed online than men (6 percent).¹³ Among survey respondents who reported experiencing severe harassment, 32 percent say they were targeted because of their sex, and 23 percent were targeted due to race or ethnicity.¹⁴ In one study on cyberbullying and college students, 27 percent of female students reported experiencing cyberbullying and 17.4 percent met the criteria for depression.¹⁵

People of color are also particularly likely to be targets of cyber harassment. Around 59 percent of Black and 54 percent of Hispanic internet users reported experiencing online harassment, compared to 34 percent of white internet users.¹⁶

A national online study by a research scientist at Wellesley found that Asian

¹² Duggan, *supra* note 6, at 21.

¹³ *Id.* at 15.

¹⁴ *Id.* at 21.

¹⁵ Ellen M. Selkie, Rajitha Kota, Ya-Fen Chan & Megan Moreno, *Cyberbullying, Depression, and Problem Alcohol Use in Female College Students: A Multisite Study*, 18(2) *Cyberpsychol. Behav. Soc. Netw.* 79 (2015), <https://doi.org/10.1089/cyber.2014.0371>.

¹⁶ Duggan, *supra* note 6 at 15; Maeve Duggan, Aaron Smith & Tom Caiazza, *Online Harassment*, Pew Research Center (October 2014), at 39, <http://www.pewinternet.org/2014/10/22/online-harassment/>.

Americans in college experienced more cyber harassment than even Black, Hispanic and biracial students.¹⁷

LGBTQ youth report finding positive communities online but also greater exposure to harassment.¹⁸ Research conducted by Campus Pride indicates that LGBTQ college students are more likely to experience harassment than their heterosexual peers.¹⁹ A 2015 report by the Gay, Lesbian & Straight Education Network found that 48.6 percent of LGBT high school students experienced cyberbullying in the prior year.²⁰ Fifteen percent of these students reported experiencing cyberbullying often or frequently.²¹

Students are also at increased risk for cyber harassment on the basis of disability or religion. At both the K-12 and college levels, students with

¹⁷ Linda Charmaraman, *Commentary: Virtual Harassment & Bullying in the College Years*, Wellesley Centers for Women (Spring/Summer 2015), <https://www.wcwonline.org/2015/commentary-by-linda-charmaraman-ph-d>.

¹⁸ Ryan Thoreson, “*Like Walking Through a Hailstorm*” *Discrimination Against LGBT Youth in US Schools*, Human Rights Watch (Dec. 9, 2016), <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools>.

¹⁹ *2010 State of Higher Education for LGBT People*, Campus Pride, 10 (2010), <http://www.campuspride.org/research/projects-publications/>.

²⁰ *The 2015 National School Climate Survey*, Gay, Lesbian & Straight Education Network 25 (2015), https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf.

²¹ *Id.*

disabilities are more likely to face cyber harassment than those without disabilities.²² In addition, members of religious minorities, in particular, are more likely to be harassed. For example, a 2016-17 survey of California Muslim students ages 11-18 showed that 26 percent were bullied online, up from 19 percent in 2014.²³ According to a 2014 study, over half of Jewish college students have experienced anti-Semitism on campus, including cyber harassment.²⁴ For example, in September 2016, students in Colorado set up a “Fourth Reich’s Official Chat Group” on Facebook and threatened a Jewish student with anti-Semitic messages.²⁵

²² Robin M. Kowalski, Chad A. Morgan, Kelan Drake-Lavelle & Brooke Allison, *Cyberbullying among college students with disabilities*, 57 *Computers in Human Behavior* 416, 424 (April 2016), <http://daneshyari.com/article/preview/350250.pdf>; Barringer-Brown, *Cyber bullying among students with serious emotional and specific learning disabilities*, 4 *Journal of Education and Human Development* 50 (June 2015), http://jehdnet.com/journals/jehd/Vol_4_No_2_1_June_2015/4.pdf.

²³ *Unshakable: The Bullying of Muslim Students and the Unwavering Movement to Eradicate It*, Council on American Islamic Relations, at 7, 14 (2017), https://ca.cair.com/losangeles/wp-content/uploads/2017/10/Bullying_Report_2017_Web_final.pdf.

²⁴ Barry A. Kosmin & Ariela Keysar, *National Demographic Survey of American Jewish College Students 2014: ANTI-SEMITISM REPORT*, 3–4 (Feb. 2015), <http://www.trincoll.edu/NewsEvents/NewsArticles/Documents/Anti-Semitism%20Report%20Final.pdf>.

²⁵ *ADL Audit: U.S. Anti-Semitic Incidents Surged in 2016-17*, Anti-Defamation League, at 6, https://www.adl.org/sites/default/files/documents/Anti-Semitic%20Audit%20Print_vf2.pdf.

Cyber harassment is a sad reality in schools across the country, interfering with students' rights to feel safe and learn. For example, anonymous online posters declared that student activists who spoke out against sexual assault, racism, and homophobia at Dartmouth College would be raped, lynched, and shot.²⁶ At Kenyon College in Ohio, a Yik Yak user on campus threatened violence and sexual assault against women who lived and worked at the campus women's center.²⁷ At American University in Washington, DC, Yik Yak posts included successive invidious comments targeting African-Americans, such as "Their entire culture just isn't conducive to a life of success. It just isn't. The outfits. The attitudes. The behavior," and "Slavery was the worst thing to happen to this country, bringing them over here . . . ugh."²⁸ At Syracuse University, Yakkers ridiculed African-American students participating in a step show, calling them

²⁶ Tyler Kingkade, *Dartmouth May Punish Protesters Subjected to Rape, Death Threats*, Huffington Post (Apr. 29, 2013), http://www.huffingtonpost.com/2013/04/29/dartmouth-rape-death-threats_n_3157298.html.

²⁷ Ryan Chapin March, *Why Your College Should Ban Yik Yak*, Huffington Post (Oct. 3, 2014), http://www.huffingtonpost.com/ryan-chapin-mach/why-your-college-campus-should-ban-yik-yak_b_5924352.html.

²⁸ Stephen Tschida, *Racist Comments on Mobile App Disturb American U. Students*, WJLA.com (Mar. 19, 2015), <http://www.wjla.com/articles/2015/03/racist-comments-on-mobile-app-disturb-american-u-students-112437.html>.

“monkeys.”²⁹ Yik Yak commenters targeted African-American students, as well as other marginalized groups, at Clemson University in South Carolina. One wrote, “I would be completely ok with Clemson being an all white school. Except for football.”³⁰ Another commented, “The only thing niggers are good for is making Clemson better at football.”³¹ Still another, “Jesus I hate black people.”³² Hateful Yaks at Clemson also targeted Indian students and East Asians, referred to as “chinks,” in addition to LGBTQ students, Mormons, and women.³³

Not surprisingly, cyber harassment inflicts intense harm on student victims and impedes their equal access to educational opportunities. Among 18- to 29-year-olds, almost one quarter (24 percent) experienced mental or emotional stress caused by online harassment, and 11 percent reported resulting problems at school.³⁴ Victims of online harassment suffer from anxiety, post-traumatic stress disorder, depression, and other forms of emotional distress, in addition to financial

²⁹ Meghan Mistry, *Racist Yik Yak Posts Considered “Hate Speech” by Syracuse*, USA Today (May 6, 2015), <http://college.usatoday.com/2015/05/06/racist-yik-yak-posts-considered-hate-speech-by-syracuse/>.

³⁰ *Clemson Yik Yaks!* (last visited Dec. 19, 2017), <http://clemsonyikyak.tumblr.com/> (collection of Yik Yak posts from Clemson University including discriminatory content based on sex, race, national origin, ethnicity).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Duggan, *supra* note 6 at 20.

and other costs attributable to the harassment.³⁵ Students targeted by anonymous cyber harassment—especially through platforms such as Yik Yak, where, because of the 1.5 mile geo-location feature of the application, the perpetrators are within the campus community—reported that the harassment interfered with their academic studies, required seeking therapy, led to changing extra-curricular activities, and motivated taking extra personal security precautions.³⁶ As one of the Plaintiffs in this case explained:

People gave out the locations of our members, and threatened to rape and kill us. I was terrified. I did not know if the person sitting next to me in class had just threatened to hurt me anonymously, and I had no way to gauge the seriousness of these threats. I began strategically carrying my key and [rape] whistle when I walked the thirty feet between my apartment and my car, and I began to seek help for the psychological and emotional damage I was feeling.³⁷

³⁵ See generally Citron, *supra* note 7, at 6-11. Victims of online abuse who experience trauma may develop disabilities as a result of the abuse and are entitled by law to receive long-term care, support and services.

³⁶ *Id.* at 39-45 (recounting law student's experience with sex-based online harassment and cyber-stalking); Lindley Estes, *UMW Feminists United File Title IX Complaint Against University*, *Fredericksburg Free Lance-Star* (May 8, 2015), http://www.fredericksburg.com/news/education/umw-feminists-united-file-title-ix-complaint-against-university/article_68f62dce-a46a-5be8-8eec-df8ecddba50b.html.

³⁷ Julia Michels, *We're Being Threatened on Yik Yak – And Our University Isn't Protecting Us*, *Feminist Campus Blog* (May 14, 2014), <http://feministcampus.org/were-being-threatened-on-yik-yak-and-our-university-isnt-protecting-us/>.

II. Educational Institutions Can and Must Confront Cyber Harassment to Ensure Equal Access to Educational Opportunities.

The District Court erred in its reasoning that “[b]ecause UMW has limited, if any, control over Yik Yak, the plaintiffs’ Title IX discrimination claim fails.”³⁸

The University did not need control over the medium of the harassment in order to address the harassment and its effects, as required by law,³⁹ and it could have done so by actions that would not have encroached on any constitutional or legal right of students. The District Court’s dismissal of Plaintiffs’ Title IX discrimination claim because of the University’s claimed lack of control over Yik Yak was factually and legally incorrect.

The Supreme Court has long confirmed that Title IX requires schools to respond to sexual harassment with steps reasonably calculated to address the harm.⁴⁰ Likewise, other civil rights laws require similar interventions in cases of race- or disability-based harassment.⁴¹ The United States Department of Education’s Office for Civil Rights (“OCR”), the primary federal agency charged with enforcing Title IX, issued a 2010 Guidance document confirming that Title IX

³⁸ JA 51.

³⁹ *Davis*, 526 U.S. at 647.

⁴⁰ *Id.*

⁴¹ *See, e.g., Whitfield v. Notre Dame Middle Sch.*, 412 F. App’x 517, 521 (3d Cir. 2011) (race); *S.B. ex rel. A.L. v. Bd. of Educ. of Harford Cty.*, 819 F.3d 69, 75 (4th Cir. 2016) (disability).

and analogous civil rights laws require schools to address cyber harassment.⁴² The examples included in the guidance make clear that schools have a responsibility to address electronic and anonymous harassment by, *inter alia*, investigating it, providing services and accommodations to the victims, monitoring places where harassment occurs, training members of the school community on relevant harassment policies and reporting procedures, and taking other steps to communicate clearly that harassment will not be tolerated.⁴³

Many schools have taken such steps in response to the precise type of harassment at issue in this case. For example, institutions have assigned staff members to monitor apps for threats or harassing conduct and have distributed

⁴² U.S. DEP'T OF EDUCATION, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER ON BULLYING AND HARASSMENT 1 (Oct. 26, 2010) (available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>) (hereinafter "BULLYING AND HARASSMENT GUIDANCE").

⁴³ *Id.* at 4, 6–8 (indicating school had obligation to address anonymous offensive racial notes put in lockers of African-American students, sexual harassment of female student that included threatening texts and emails, and harassment of gay student on social networking sites).

campus-wide emails denouncing cyber harassment.⁴⁴ Several universities have even banned Yik Yak from their wireless networks.⁴⁵

The University here, however, refused to take even the first step of initiating an investigation into the harassment and threatened violence that Plaintiffs repeatedly reported. University officials did not interview students or faculty, or take other steps to determine the identities of the harassers. University administrators also did not, as they could have, seek information from Yik Yak under the terms of its privacy policy through a subpoena, court order, or search warrant. Other schools have done just that in response to threats of violence

⁴⁴ See AJ Dellinger, *All The Threats, Petitions, and Bans against Yik Yak*, Daily Dot (Dec. 10, 2014), <http://www.dailydot.com/technology/yik-yak-bans/>.

⁴⁵ Jonathan Mahler, *Who Spewed That Abuse? Anonymous Yik Yak App Isn't Telling*, N.Y. Times (Mar. 8, 2015), <http://www.nytimes.com/2015/03/09/technology/popular-yik-yak-app-confers-anonymity-and-delivers-abuse.html> (reporting that John Brown University in Arkansas banned the app “after its Yik Yak feed was overrun with racist commentary”); Julia Rose, *Popular App Banned at Utica College After Reports of Cyber Bullying*, CNY Homepage (WUTR) (Nov. 13, 2014), <http://archive.is/qj8jc>; Anna Webb, *Yik Yak: Online Bullying or Free Speech? College of Idaho Tries to Ban Controversial App*, Idaho Statesman (May 14, 2014), <http://www.idahostatesman.com/news/local/education/article40858806.html> (reporting request by College for Yik Yak to “geo-fence” its campus). Many high-schools have also “geo-fenced” Yik Yak, making it unavailable on their campuses. Dellinger, *supra* note 44.

targeting students.⁴⁶ If a Yak posted from within 1.5 miles of the UMW campus included a shooting or bomb threat, as has happened on other campuses, the University certainly would not have lamented its inability to control Yik Yak. Instead, administrators would have investigated immediately and taken action. The female students threatened here with rape and death threats deserved no less.

Nor did the University act to support the female students as outlined in OCR's 2010 guidance.⁴⁷ The need for supportive services like counseling⁴⁸ is especially important if, as is the case here, the school initially delayed responding or responded inappropriately or inadequately to information about the harassment.⁴⁹ Yet UMW was indifferent and failed to take these required steps.

UMW also failed to act in a myriad of other ways—some of which Plaintiffs took the initiative to propose—to respond to the cyber harassment. These include: (1) issuing a statement to the student body condemning harassing and threatening

⁴⁶ Valeriya Safronova, “The Rise and Fall of Yik Yak, the Anonymous Messaging App” N.Y. Times (May 27, 2017), <https://www.nytimes.com/2017/05/27/style/yik-yak-bullying-mary-washington.html> (describing investigation and apprehension of Virginia Tech student who threatened shooting similar to 2007 campus shooting and University of Missouri student who threatened violence against Black students).

⁴⁷ BULLYING AND HARASSMENT GUIDANCE.

⁴⁸ *See, e.g., Patterson v. Hudson Area Sch.*, 551 F.3d 438, 459 (6th Cir. 2009) (defendant not deliberately indifferent where “school took action whenever there was a reported incident, including counseling the victim . . .”).

⁴⁹ BULLYING AND HARASSMENT GUIDANCE.

conduct, whether in person or online; (2) providing counseling and accommodations for targets of online harassment; (3) conducting mandatory training or intervention programs for students, faculty, and staff on the use of social media applications to engage in harassment; (4) establishing a full-time Sexual Assault Prevention Specialist position; (5) providing campus-wide in-person sexual assault training during required student seminars; and (6) promulgating a formal anti-cyberbullying policy modeled after the Attorney General of Virginia's Model Policy. UMW did none of these things. While Title IX does not require compliance with particular remedial demands, it does require more than deliberate indifference.

A common theme among all of these potential actions is that each can be exercised using the disciplinary authority schools have over students (or within the terms of employment for administrators, faculty, and staff). Thus the District Court erred in focusing only on the University's control over Yik Yak as its basis for holding that UMW was not deliberately indifferent here. While it is true that the University did not control Yik Yak, that does not mean it could not have acted to address the harassment inflicted on the female students.

Additionally, none of the approaches described above curtail or otherwise impinge free speech rights. The First Amendment does not protect harassing or

threatening speech,⁵⁰ or “true threats.”⁵¹ Even where conduct involves both “speech” and “nonspeech” elements, “a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.”⁵² As courts have emphasized, there is a compelling government interest in preventing discrimination and harassment.⁵³ In fact, this Court has held that schools may discipline students for off-campus cyber speech

⁵⁰ Title IX prohibitions on harassment are consistent with Supreme Court precedent on speech protected by the First Amendment. In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513–14 (1969), the Supreme Court held student speech is protected by the First Amendment unless “conduct by the student, in class or out of it . . . materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” The speech does not actually need to create a substantial disruption for the school to intervene; the question is whether the facts “might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.”

⁵¹ See generally *Watts v. United States*, 394 U.S. 705 (1969); see also *Keefe v. Adams*, 840 F.3d 523, 531–33 (8th Cir. 2016) (holding college did not violate First Amendment by disciplining student who threatened violence implicating other students on his Facebook page); *Koepfel v. Romano*, 252 F. Supp. 3d 1310, 1324 (M.D. Fla. 2017) (“intimidating, hostile, offensive and threatening” speech, on-campus or off-campus “is simply outside the protections of the First Amendment because it disrupts another student’s ability to pursue her education in a safe environment”).

⁵² *Texas v. Johnson*, 491 U.S. 397, 407 (1989).

⁵³ See *DeJohn v. Temple Univ.*, 537 F.3d 301, 319–20 (3d Cir. 2008) (“school has a compelling interest in preventing harassment”); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 209 (3d Cir. 2001) (“Certainly, preventing discrimination . . . in the schools . . . is not only a legitimate, but a compelling, government interest.”); see also *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1178 (9th Cir. 2006) (removing student from classroom for wearing T-shirt was acceptable under *Tinker* because “wearing of his T-shirt collides with the rights of other students in the most fundamental way”).

consistent with the First Amendment if it was reasonably foreseeable the speech would create a substantial disruption in the school environment.⁵⁴ Thus, UMW's claim that it could not address the harassment at issue here because it would infringe on free speech rights was wrong, as was the District Court's acceptance of that argument.

UMW did not need to resort to speech codes or impinging on protected speech to address the cyber harassment at issue here. But Title IX did require the University to do *something*. Instead, UMW failed to fulfill its legal obligation to provide an educational environment free from discrimination for the female Plaintiffs. Even worse, the University's statement to the student body on March

⁵⁴ *Kowalski v. Berkeley Cmty. Schs.*, 652 F.3d 565, 572–74 (4th Cir. 2011) (upholding discipline of student who created website off-campus ridiculing classmate because it was foreseeable speech would reach school and website created substantial disruption), *cert. denied*, 565 U.S. 1173 (2012); *see also J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 926 (3d Cir. 2011) (*en banc*) (assuming without deciding that school may discipline student consistent with First Amendment for cyber-speech created off-campus that caused substantial disruption, or could reasonably lead school officials to fear substantial disruption), *cert. denied*, 565 U.S. 1156 (2012); *Doninger v. Niehoff*, 527 F.3d 41, 50–53 (2d Cir. 2008) (holding plaintiff did not demonstrate clear likelihood of success on merits of First Amendment claim based on school's sanctions for off-campus blog post regarding school event, which created foreseeable risk of substantial disruption), *cert. denied*, 565 U.S. 976 (2011); *D.J.M. v. Hannibal Pub. Sch. Dist. #60*, 647 F.3d 754, 765–66 (8th Cir. 2011) (holding school did not violate First Amendment in disciplining student for instant messages sent from home discussing getting gun to shoot fellow students and himself; reasonably foreseeable threat to cause substantial disruption and constituted true threat).

27, 2015 took the opposite approach, announcing UMW's decided inaction in response to any cyber harassment and potentially emboldening the harassers.⁵⁵

III. The University Acted With Deliberate Indifference to Plaintiffs' Complaints of Sexual Harassment.

Despite evidence that Plaintiffs were subjected to severe, pervasive and objectively offensive sexual harassment over the course of a year, including over 700 instances of cyber harassment including both rape and death threats, UMW did nothing to address the hostile educational environment. The University had no excuse for not investigating the harassment, providing services to the female students, or taking one or more of a number of actions other schools have taken in similar circumstances. Such inaction was clearly unreasonable under the circumstances and thus violated Title IX.

⁵⁵ On March 27, 2015, UMW's Title IX coordinator Dr. Cox sent an email to the student body and posted a statement on the "Diversity and Inclusion" webpage regarding "cyber bullying." Referring to questions from students regarding how to handle abusive or threatening comments on social media, she stated:

"While the university has no recourse for such cyber bullying, Yik Yak and other social media sites do have control over the content and rules around the propriety of posts. Should you find yourself the subject of an abusive or threatening comment on social media, please immediately file a report so that the site can take administrative action."

Under Title IX, a school is liable for monetary damages if it is deliberately indifferent to hostile environment harassment of which it had actual knowledge.⁵⁶ A school is deliberately indifferent when its “response . . . or lack thereof is clearly unreasonable in light of the known circumstances.”⁵⁷ Schools must address harassment occurring in whole or in part beyond school grounds or outside of school activities if there is a nexus between the misconduct and the educational setting, including if the off-campus behavior creates a hostile educational environment.⁵⁸ “Although no particular response is required . . . *the school district must respond.*”⁵⁹

Contrary to Defendants’ claim, meeting with the affected students, without actually investigating the harassment, is insufficient to defeat Plaintiffs’ deliberate

⁵⁶ See *Davis*, 526 U.S. at 648.

⁵⁷ *Id.*

⁵⁸ E.g., *Rost v. Steamboat Springs RE-2 Sch. Dist.*, 511 F.3d 1114, 1121 n.1 (10th Cir. 2008) (citing *Davis*, 526 U.S. at 645). Control element of Title IX deliberate indifference claim can be met either through “proof that the misconduct occurred ‘during school hours and on school grounds’ or when the ‘harasser is under the school’s disciplinary authority.’” *Roe ex rel. Callahan v. Gustine Unified Sch. Dist.*, 678 F. Supp. 2d 1008, 1025 (E.D. Cal. 2009) (quoting *Davis*, 526 U.S. at 646); see also *Crandell v. N.Y. Coll. of Osteopathic Med.*, 87 F. Supp. 2d 304, 316 n.130 (S.D.N.Y. 2000) (“*Davis* did not limit the circumstances in which institutional liability will lie to harassment occurring during school hours and on school grounds, but found merely that such conditions give rise to an inference of control by and therefore liability of the institution.”).

⁵⁹ *Vance v. Spencer County Public School Dist.*, 231 F.3d 253, 260–61 (6th Cir. 2000) (emphasis added).

indifference claim and thus does not justify dismissal, particularly at the pleading stage.⁶⁰ It is especially galling that the University did not even attempt to investigate the threats to its female students' safety.⁶¹

⁶⁰ See *T.B. v. New Kensington-Arnold Sch. Dist.*, No. 15-606, 2016 U.S. Dist. LEXIS 161425, at *20 (W.D. Pa. 2016) (holding administrator's response that he would monitor the situation without evidence of corresponding action insufficient to merit summary judgment).

⁶¹ See, e.g., *Jennings v. University of North Carolina*, 482 F.3d 686, 700–701 (4th Cir. 2007) (holding administrator's decision to dismiss harassment report without investigation would allow rational jury to find deliberate indifference to ongoing discrimination); *Papelino v. Albany College of Pharmacy of Union University*, 633 F.3d 81 (2d. Cir. 2011) (holding jury might find school deliberately indifferent because administrator did nothing to investigate complaint); *J.M. v. Hilldale Independent School Dist. No. 1-29*, 397 Fed. App'x 445, 454 (10th Cir. 2010) (stating jury could find school's failure to investigate reported harassment clearly unreasonable); *Doe 1 v. Baylor University*, 240 F.Supp.3d 646, 660–661 (W.D. Tex. 2017) (holding school could be found deliberately indifferent because it failed to adequately investigate and “did nothing (or almost nothing) in response to the reports of sexual assault”); *Bruning ex rel. Bruning v. Carroll Community School Dist.*, 486 F.Supp.2d 892 916 (N.D. Iowa 2007) (holding school's failure to conduct any investigation into alleged harassment could be found so inadequate as to be clearly unreasonable); *Donovan v. Poway Unified Sch. Dist.*, 167 Cal.App.4th 567, 605 (2008) (holding that principal's failure to conduct independent investigation into allegations of sexual orientation harassment was unreasonable). An investigation is a critical starting point, but not necessarily sufficient; even when a university did conduct an informal investigation of a sexual assault claim, its decision to not do more was evidence of deliberate indifference. *Ross v. Corporation of Mercer University*, 506 F. Supp. 2d 1325, 1356–57 (M.D. Ga. 2007) (holding jury could find school's response unreasonable when university conducted informal inquiry into alleged rape, failed to initiate formal judicial proceedings or take other action against alleged rapist, and delayed two weeks before moving plaintiff to another dorm).

Nor can the two sharing circles absolve the University of liability because even if they are credited as an official response, they did not address or lead to any action to address the harassment in question. Indeed, the harassment continued after these sharing circles.⁶² So too was the one-time police escort for a single student insufficient to ensure that the female students felt safe from the ongoing vicious harassment and threats.⁶³ If a school does not take additional corrective action after its first efforts are shown to be unsuccessful, liability may be

⁶² To the extent UMW tries to argue that the March 2015 forum was responsive, the same argument applies.

⁶³ See *Doe ex rel. Doe v. Hamden Bd. Of Educ.*, Case No. 3:06-cv-1680, 2008 U.S. Dist. LEXIS 40269, *21–22 (D. Conn. 2008) (“ . . . Board points to the police response to Mary’s complaints of student harassment, the escort provided for Mary to feel safe going to class, and the cessation of any direct verbal assaults after the police spoke to the offending students and their parents However, the record suggests that Mary continued to feel intimidated and fearful at school after that date, and . . . that the Board allowed Garcia to continue to attend school through graduation without facing any disciplinary action, despite his having been arrested for sexual assault, may be considered by a reasonable jury to have been an unreasonable response to the situation.”).

established.⁶⁴ Thus, UMW cannot avoid liability based on the sharing circles or one police escort.

⁶⁴ See *Doe v. School Bd. of Broward County*, Fla., 604 F.3d 1248, 1262–1263 (11th Cir. 2011) (“[T]he Title IX inquiry is contextual: it does not require school districts to simply do *something* in response to sexual harassment; rather, they must respond in a manner that is not ‘clearly unreasonable in light of the known circumstances.’”); *Patterson v. Hudson Area Schools*, 551 F.3d 438, 448–449 (6th Cir. 2009) (holding because school knew its methods were ineffective, but did not change those methods, “a reasonable jury certainly could conclude that at some point during the . . . period of harassment[,] the school district’s standard and ineffective response to the known harassment became clearly unreasonable”); *Vance*, 231 F.3d at 264 (School officials spoke with offenders, but did not change actions despite proof that actions were ineffective; evidence showed that school district had “willingness to repeat ineffective measures time and time again.”); *Doe v. Forest Hills Sch. Dist.*, No. 1:13-cv-428, 2015 U.S. Dist. LEXIS 175321, at *31 (W.D. Mich. 2015) (“[A] jury could find that the school was deliberately indifferent because MM and other students harassed Doe for the remainder of the school year, and administrators merely ‘talked to’ MM repeatedly; when this proved ineffective, the school should have done something different”); *Canty v. Old Rochester Regional School Dist*, 66 F.Supp. 2d 14, 117 (D.Mass. 1999) (summary judgment denied when measures taken by school district to end harassment of student by teacher were ineffective).

Ultimately, the District Court’s decision was erroneous⁶⁵ because simply taking *any* action is not dispositive in a deliberate indifference analysis.⁶⁶ Rather, the University was required to investigate the harassment and remedy the effects on its victims to ensure their ongoing access to education. UMW had many avenues for addressing the harassment that did not raise free speech concerns, yet chose to pursue none of them. The University’s response, or lack thereof, was clearly unreasonable under the circumstances.

IV. Conclusion

For the foregoing reasons, the District Court’s decision should be reversed.

⁶⁵ The District Court credited the University with actions including “holding sharing circles to discuss the issue of cyberbullying.” JA 57. But individual members of the University faculty initiated the sharing circles—they were not directed by the University administration. The sharing circle discussions did not result in any further response from the University to confront the cyber harassment.

⁶⁶ *See Doe v. School Bd. of Broward County, Fla.*, 604 F.3d at 1262–1263; *see also Vance*, 231 F.3d at 264 (School officials spoke with offenders, but did not change actions despite proof that the actions were ineffective; evidence showed that school district had “willingness to repeat ineffective measures time and time again.”).

Respectfully submitted,

/s/ Neena Chaudhry

Neena Chaudhry

Emily Martin

Sunu Chandy

Alexandra Brodsky

NATIONAL WOMEN'S LAW CENTER

11 Dupont Circle, N.W., Suite 800

Washington, DC 20036

(202) 588-5180

/s/ Cathy A. Harris

Cathy A. Harris

Daniel Clark

KATOR, PARKS, WEISER & HARRIS, P.L.L.C.

1200 18th Street, N.W., Suite 1000

Washington, D.C. 20036

(202) 898-4800

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on December 19, 2017, I filed a copy of the Brief of *Amici Curiae* National Women's Law Center, *et al.*, Supporting Plaintiffs-Appellants' Appeal Seeking Reversal, *via* the Court's ECM/ECF filing system, which will send an electronic notification of the same to the following counsel:

John G. Butler, III
Rita P. Davis
Nicholas F. Simopoulos
Office of the Attorney General of the
Commonwealth of Virginia
202 North Ninth Street
Richmond, VA 23219
804-786-6549
Counsel for Defendants-Appellees

Erwin Chemerinsky
Univ. of California, Berkeley School of Law
215 Boalt Hall
Berkeley, CA 94720
510-642-6483

Debra S. Katz
Lisa J. Banks
Carolyn L. Wheeler
Katz, Marshall & Banks, LLP
1718 Connecticut Ave, N.W.
Sixth Floor
Washington, D.C. 20009
202-299-1140

Tim Schulte
SHELLEY CUPP SCHULTE, P.C.
2020 Monument Avenue, First Floor
Richmond, Virginia 23220
804-644-9700

Counsel for Plaintiffs-Appellants

/s/ Daniel Clark.
Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify the following in accordance with Fed. R. App. P. 32(g)(1):

1. This brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f), this brief contains 5,995 words according to the word processing software Microsoft Word 2010.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type style.

Dated: December 19, 2017

/s/ Neena Chaudhry
Counsel of Record for Amici Curiae

APPENDIX: INTERESTS OF *AMICI CURIAE*

9to5, National Association of Working Women is a national membership-based organization of women in low-wage jobs dedicated to achieving economic justice and ending discrimination. Its members and constituents are directly affected by workplace discrimination and poverty, among other issues. 9to5 is committed to protecting and advancing women's access to affordable health care and achieving workplace equality.

Advocates for Youth is a national reproductive and sexual health/rights organization that centers the needs and voices of young people, while empowering youth to be advocates on the issues that affect their lives. Know Your IX is a survivor- and youth-led project of Advocates for Youth that aims to empower students to end sexual and dating violence in their schools. Know Your IX envisions a world in which all students have equal access to education, which cannot be accomplished while students are facing severe and pervasive cyber harassment that has made them feel unsafe on campus.

The **American Federation of Teachers (AFT)**, an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members who are employed across the nation. Many of AFT's members work in educational institutions subject to Title IX. The AFT has a longstanding history of fighting for gender equity and justice and against discrimination and harassment.

AFT believes robust Title IX enforcement is necessary to create safe campuses for staff and students, and to provide a path for survivors of sexual assault and harassment to seek redress. AFT thus has a strong interest in maintaining the integrity of Title IX processes to address and prevent harassment and to ensure that educational institutions do not respond to harassment with deliberate indifference.

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to women and girls facing sex discrimination in the workplace or school and to helping our community build employment and educational environments according to true standards of equal treatment. Its central goal is to use the law to overcome the oppressive power differentials that socially predetermined gender roles impose.

Break the Cycle is an innovative national nonprofit organization whose mission is to engage, educate, and empower youth to build lives and communities free from domestic and dating violence. Founded in 1996, Break the Cycle is the nation's first organization to provide law-based domestic violence services exclusively to young people, ages 12 to 24. Our domestic violence prevention and early intervention services include education, outreach, peer leadership opportunities, and comprehensive, free legal services for young victims of abuse. Break the Cycle works on both a national and local level to provide youth with resources they need to end dating abuse and to educate teachers, parents, social

service providers, and other caring adults about dating abuse, domestic violence, healthy relationships and the legal options of young victims. Break the Cycle also provides technical assistance and training to criminal justice professionals on the use and misuse of cyber abuse in dating violence cases and to domestic violence service providers around dating abuse generally. Break the Cycle is an active participant in the national and local community of advocates working to shape public policies around dating abuse, domestic violence, sexual assault and stalking.

The **California Women's Law Center (CWLC)** breaks down barriers and advances the potential of women and girls through transformative litigation, policy advocacy, and education. CWLC places particular focus on campus sexual assault, violence against women, gender discrimination, and women's health. CWLC is a leader in the fight to end sexual assault, harassment and bullying on school campuses and provides resources to students and their advocates to prevent violence and harassment on campus and secure justice for victims.

Champion Women provides legal advocacy for girls and women in sports, including equal opportunities to play, equal scholarships and treatment, and an end to employment, LGBTQ, and pregnancy discrimination. In addition, Champion Women addresses sexual harassment, abuse and violence at schools, as well as in club and Olympic sports. Champion Women is committed to the full enforcement of Title IX.

The **Clearinghouse on Women's Issues (CWI)** is a non-profit membership organization established in 1974 to provide a channel for dissemination of information on national and international issues of interest to women. The mission of the Clearinghouse on Women's Issues is to address economic, health, educational, social, political and legal issues facing women and girls. CWI public forums are Washington, DC, networking events to raise awareness and to act as a catalyst to move women and girls towards greater equity. CWI addresses concerns of diverse women at the local, national and international levels. Many current and former CWI leaders such as Dr. Bernice Sandler, "Godmother of Title IX" have extensive expertise in issues related to Title IX and other civil rights laws. Therefore, CWI is especially qualified and interested in supporting this amicus brief on preventing, combatting, and redressing sexual, racial and other harassment in schools.

End Rape On Campus (EROC) is a national nonprofit organization committed to ending campus sexual violence through directly supporting survivors and their communities, preventing violence through education, and reforming policies on the campus, local, state, and federal levels. EROC is survivorcentered and survivor-led, and regularly assists sexual assault survivors in filing federal Title IX complaints with the U.S. Department Education's Office for Civil Rights when their rights are violated.

Founded in 1974, **Equal Rights Advocates (ERA)** is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education and has participated as amicus curiae in scores of cases involving the interpretation and application of laws affecting women's employment rights and access to justice.

Deborah Epstein is a professor at Georgetown University Law Center, where she directs the Domestic Violence Clinic. She co-chaired the DC Superior Court's effort to design and implement its Domestic Violence Unit, an early, model effort to integrate civil and criminal cases involving intimate abuse. She has spent more than 30 years advocating for the rights of survivors of domestic violence, has represented hundreds of women in civil protection order cases, and for five years she served as Co-Director of the court's Domestic Violence Intake Center. She is co-author of *Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health and Justice* (2009); *Litigating Protection Order Cases: A Practice Manual* (the central litigation resource for attorneys representing domestic violence victims in D.C. Superior Court); the D.C. Bar Practice Manual's Domestic Violence chapter; and numerous other articles on the subject of domestic violence and the courts. She currently serves on the NFL

Players' Association Commission on Domestic Violence, and has served as Chair of the DC Domestic Violence Fatality Review Board, Director of the Emergency Domestic Relations Project, and as a member of the DC Mayor's Commission on Violence Against Women, the DC Superior Court Domestic Violence Coordinating Council, the DC Coalition Against Domestic Violence Board of Directors, and the Board of Directors of the House of Ruth.

Gender Justice is a non-profit legal advocacy organization based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its mission, Gender Justice helps courts, employers, schools, and the public better understand the root causes of gender discrimination and to eliminate its harmful effects to ensure equality of opportunity for all. The organization has an interest in protecting and enforcing women and LGBTQ people's legal rights in schools, especially by preventing, combating, and redressing gender, racial, and other harassment in schools. As part of its impact litigation program, Gender Justice acts as counsel in cases enforcing Title IX in the Midwest region, representing students facing discrimination and participating as amicus curiae in cases that have an impact in the region.

Girls Inc. is a nonprofit, nonpartisan organization that inspires girls to be strong, smart, and bold, through direct service and advocacy. Over 80 local Girls Inc. affiliates provide primarily after-school and summer programming to

approximately 150,000 girls ages 5-18 in the U.S. and Canada. Our comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers and grow up healthy, educated, and independent. Informed by girls and their families, we also advocate for legislation, policies, and practices to advance the rights and opportunities of girls and young women. Combatting sexual harassment, including cyber harassment, is a top policy priority for Girls Inc. because of its prevalence and its harmful effect on students' ability to learn and thrive at all levels of education. No student should have to face a discriminatory, hostile environment in school.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates, and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah believes each individual has the right to study and work in an environment that promotes equal opportunities and prohibits discriminatory practices, including harassment.

The **Harvard Law School Gender Violence Program** is deeply concerned about cyber-harassment and threats that affect student's lives. We are committed to animating Title IX's guarantee of equal access to educational opportunities.

This is an important case regarding a school's obligation to protect its students from threat and harassment rather than enabling them to hide behind the First Amendment to justify their inaction.

Hope's Door says enough is enough. All institutions of higher learning must do all they can to expose threats of sexual and physical violence and to afford all students the opportunity to learn in a climate devoid of fear. Hiding behind the First Amendment does nothing to protect women and persons of color from the very real danger they face every day.

The **Human Rights at Home Clinic** and its Director, Prof. Margaret Drew, are devoted to eliminating all forms of gender violence and discrimination. The Clinic under the direction of Prof. Drew represents those who have experienced gender violence, including those who experience sexual harassment on campus, as part of their ongoing efforts to end gender based discrimination. Prof. Drew has written on this topic, with her most recent article discussing the influence of criminal law on the Title IX campus process.

In the Public Interest is a comprehensive research and policy center committed to promoting the values, vision, and agenda for the common good and democratic control of public goods and services. We are committed to equipping citizens, public officials, advocacy groups, and researchers with information, ideas, and resources on best practices in government contracting and other types of

public-private agreements. We help others better understand the impacts of privatization of public services and assets on democratic decision-making, public budgets, and quality public services. Our goal is to ensure that government contracts and agreements and related public policies increase transparency, accountability, efficiency, and shared prosperity and opportunity through the provision of quality public goods, services, and assets. If all people are not able to freely express their opinions without encountering cyber bullying then we will not be able to have the types of debates and actions that lead to better quality public services.

The International Action Network for Gender Equity and Law (“IANGEL”) is a non-profit organization dedicated to advancing gender equity and protecting the human and civil rights of women and girls, through peaceful legal means. IANGEL advances its mission by connecting the lawyers and legal associations willing to donate their skills and energy to organizations working to promote the cause of gender equality locally, nationally, and globally. IANGEL advocates for laws, policies, and practices that prevent all forms of gender discrimination, whether such discrimination directly or indirectly impacts the rights of women.

Jewish Women International is a not-for-profit organization founded in 1897. JWI is the leading Jewish organization empowering women through healthy

relationship training, financial literacy education, and the proliferation of female leadership.

The **Judge David L. Bazelon Center for Mental Health Law** is a national non-profit legal advocacy organization founded in 1972 to advance the rights of individuals with mental disabilities. The Bazelon Center uses litigation, public policy advocacy, education, and training to advocate for laws and policies that ensure people with mental illness and other disabilities equal opportunities in all aspects of their lives. A primary focus of the Center's work involves fighting discrimination against students with disabilities, including students in colleges and universities.

Having taught law for 20 years, **Judith E. Koons** is keenly aware of the prevalence of sexual harassment of young women in education, and the terrible consequences it has for them (and for the schools as well as society as a whole). She believes that our best weapon against sexual misconduct in education is Title IX. It is important to affirm its reach to cover cases such as this.

Founded in 1973, **Lambda Legal Defense and Education Fund, Inc.** ("Lambda Legal") is the nation's oldest and largest legal organization whose mission is to achieve full recognition of the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") people and those living with HIV through impact litigation, education, and public policy. Lambda Legal has extensive experience

litigating cases, either as party counsel or as amicus curiae, concerning the free expression rights of students, teachers and administrators under the First Amendment, in addition to cases involving the obligation of educational institutions to protect students from discrimination, harassment, violence and censorship at school on the basis of sexual orientation and gender identity. *See, e.g., Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996); *Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-cv-0411, 2011 U.S. Dist. LEXIS 32596 (N.D.N.Y. Mar. 29, 2011); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000); *E. High Sch. PRISM Club v. Seidel*, 95 F. Supp. 2d 1239 (D. Utah 2000); *E. High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women, www.legalmomentum.org (last visited December 14, 2017). Legal Momentum advances the rights of all women and girls by using the power of the law and by creating innovative public policy and educational resources. Legal Momentum has long advocated for educational equity for girls and women and against gender-based violence. We have advocated for sports equity in schools, opposed sex segregation, sexual harassment, bullying, and sexual violence in schools. We also provide resources, referrals, and representation to survivors of sexual violence at

school. Additionally, we have advanced creative legislation across the nation and brought cutting edge litigation to address the growing problem of cyber-facilitated gender-based violence.

Legal Voice is a progressive feminist legal organization that uses the law to dismantle sexism and oppression. We work on eradicating gender-based discrimination and violence through an array of litigation and legislation efforts.

Michelle A. Travis is a law professor at the University of San Francisco School of Law. She researches and writes about sex discrimination law and gender equality.

Muslim Advocates is a national legal advocacy and educational organization that works on the front lines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates advances these objectives through litigation and other legal advocacy, policy engagement, and civic education. Muslim Advocates also serves as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The issues at stake in this case directly relate to Muslim Advocates' work fighting for civil-rights protections for American Muslim communities and combating harassment and bullying of Muslim youth in schools and educational institutions.

Nancy Chi Cantalupo is a researcher and author of a dozen law review articles, essays, and book chapters, most recently in the *Yale Law Journal Forum*, regarding Title IX and sexual harassment in education. She was also a higher education administrator for nearly 15 years and has served as an expert consultant in a Title IX case involving cyber-harassment. Therefore, she has personal and professional experience with the many options available to higher education administrators to address harassment, including cyber-harassment, at their schools, many of which could have been easily utilized, but were not, by the University of Mary Washington in this case.

The **National Alliance to End Sexual Violence (NAESV)** is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. The rape crisis centers in NAESV's network see every day the widespread and devastating impacts of sexual assault upon survivors.

The **National Center for Lesbian Rights ("NCLR")** is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights.

NCLR has a particular interest in promoting equal educational opportunity for LGBT youth through legislation, policy, and litigation to enforce Title IX.

The **National Coalition Against Domestic Violence (NCADV)** is the oldest national domestic violence organization in the country; as leaders, activists and advocates, we have been working to end domestic violence for forty years. Our organization is unique in that we are the only national organization directly representing domestic violence direct service providers. NCADV is the voice of victims and survivors. We are the catalyst for changing society to have zero tolerance for domestic violence. We do this by effecting public policy, increasing understanding of the impact of domestic violence, and providing programs and education that drive that change. Our vision is to create a culture where domestic violence is not tolerated; and where society empowers victims and survivors, and holds abusers accountable.

The **National Network to End Domestic Violence (NNEDV)** is a not-for-profit organization incorporated in the District of Columbia in 1994 (www.nnedv.org) to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence sexual assault Coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence. NNEDV was instrumental in promoting Congressional enactment and eventual

implementation of the Violence Against Women Acts of 1994, 2000, 2005 and 2013 and, working with federal, state and local policy makers and domestic violence advocates throughout the nation, NNEDV helps identify and promote policies and best practices to advance victim safety. NNEDV's overall work on domestic violence informs our position on the criminal use of technology as a means of perpetrating domestic violence. NNEDV's "Safety Net Project" focuses on the intersection of technology and intimate partner abuse and works to address how it impacts the safety, privacy, accessibility and civil rights of victims. Through this project, NNEDV educates and trains advocates, prosecutors, law enforcement officers, victims and others, and works with government agencies and technology companies, on how to combat technology facilitated domestic violence and to harness technology to increase and maintain victim safety and privacy. The Project also advocates for stronger local, state, national and international policies to ensure the safety, privacy and civil rights of all domestic violence victims and survivors.

NNEDV is deeply concerned about the ability of all individuals, and domestic violence victims in particular, to live free of the life crippling fear and intimidation caused by online stalking, threats, and cyber harassment. NNEDV knows all too well the backlash that can occur when advocating against domestic violence and sexual violence, and we support the important work of the students

and their right to a safe educational space free of harassment and threats. Title IX is frequently the last line of defense against harassment and threats and it is imperative that the essential role of Title IX is upheld to protect survivors of gender-based violence and those who take a stand against violence.

NNEDV has filed amicus briefs in support of its mission in past cases and strongly urges the Court to rule in favor of the Appellant.

The **National Organization for Women (NOW) Foundation** is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing women's rights and works to assure that women are treated fairly and equally under the law. For more than three decades, the Foundation has advocated for girls' and women's right to equal education opportunity under Title IX of the Education Amendments of 1972. An important part of that advocacy is seeking an end to sex-based discrimination, harassment and violence at educational institutions.

The **National Partnership for Women & Families** (formerly the Women's Legal Defense Fund) is a national advocacy organization that promotes fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of their jobs and

families. Since its founding in 1971, the National Partnership has worked to advance women's equal employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades to combat sex discrimination and to ensure that all people are afforded protections against discrimination under federal law.

Since 1993, the **National Resource Center on Domestic Violence** (“**NRCDV**”) has provided comprehensive and individualized technical assistance, training, and resource development related to domestic violence intervention and prevention, community education and organizing, and public policy and systems advocacy. NRCDV is a trusted national leader renowned for innovation, multi-disciplinary approaches, and a commitment to ensuring that policy, practice and research is grounded in and guided by the voices and experiences of diverse domestic violence survivors and advocates. We work with a wide range of partners to advance gender, racial, economic and social justice.

The **National Women's History Project (NWHP)** is an educational nonprofit organization, founded in 1980 and located in Santa Rosa, California. NWHP's mission is to recognize and celebrate the diverse and historic accomplishments of women by providing information and educational materials and programs. Since our inception, we have supported full employment

opportunities for women and the elimination of discriminatory barriers that hamper women's advancement in the workplace. A broad and effective interpretation of Title VII of the Civil Rights Act of 1964 is essential to protect women's employment opportunities.

The **Service Employees International Union (SEIU)** represents 2 million women and men working in health care, property services, and public services, including schools and universities. The majority of the people SEIU represents are women. SEIU is deeply committed to protecting the rights of all people to be free from sexual and racial harassment. This commitment is reflected in SEIU's Constitution, which affirms that it is an essential part of the union's mission to act as an "advocacy organization for working people" and to oppose "discrimination based on gender, race, ethnicity, religion, age, physical ability, sexual orientation or immigration status."

The **Southwest Women's Law Center** is a non-profit policy and advocacy Law Center dedicated to protecting access to contraceptives and reproductive services for girls and women in New Mexico. The Law Center was founded in 2009 and works tirelessly to protect women's economic security and equality. It recognizes that access to reproductive justice is an economic issue and engages with women and girls in communities around the State of New Mexico to ensure that economic security remains a protected priority.

Stop Sexual Assault in Schools (SSAIS) is a nonpartisan, nonprofit organization dedicated to proactively addressing the issue of sexual harassment and discrimination that impacts K-12 students and schools. SSAIS provides students, schools, and other organizations with resources so that the right to an equal education is not compromised by sexual harassment, sexual assault, and gender discrimination. SSAIS has provided legal assistance to students and their families, assistance to students and their families handling media inquiry, and has developed educational tools such as instructional videos to educate students and their families about their Title IX rights. Cyber sexual harassment represents a serious threat to students at all educational levels.

SurvJustice, Inc. (“SurvJustice”) is a national not-for-profit organization that increases the prospect of justice for survivors by holding both perpetrators and enablers of sexual violence accountable. SurvJustice does this by providing effective legal assistance to survivors that enforces their rights in campus, criminal, and civil systems of justice. SurvJustice also provides policy advocacy and institutional training to change makers working within their communities to better prevent and address sexual violence. By working on these fronts, SurvJustice aims to decrease the prevalence of sexual violence throughout the country.

The **Dyson Law Firm PLLC** affirms that gender and sexual harassment is still harassment regardless of whether done through cyberbullying or in person.

There is simply no First Amendment right to harass or acquiesce to it by silence and inaction. Such inaction not only sends the wrong message but it is an utter abdication of a solemn duty to provide a safe, equal educational program to all.

The **Women's Law Center of Maryland, Inc.** is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education, and implementation of innovative legal-services programs to pave the way for systematic change. Through its various initiatives, the Women's Law Center pays particular attention to issues related to reproductive rights, gender discrimination, sexual harassment, employment law, and family law.

Touro Law Center is committed as a law school to diversity and building an inclusive environment.

United 4 Equality, LLC (U4E) advances women's equity through our legislative initiative SJR5/HJR53 to eliminate Congress's time limit for states' ratification of the Equal Rights Amendment. Title IX exists to establish and enforce gender equality standards in educational institutions, and cyber harassment and threats targeting female students are no exception. U4E urges the Court to reaffirm the protections guaranteed under the First Amendment and Title IX to

ensure that students, faculty and staff at any educational institutional are free to voice their opinions and advocate for gender policy improvements in a lawful manner without repercussion.

The **Women's Law Project (WLP)** is a nonprofit public interest legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. WLP is committed to safeguarding the legal rights of women and girls who experience sexual harassment, including within our schools and universities. To this end, WLP engages in public policy advocacy work to improve the response of educational institutions to sexual harassment, and serves as counsel to students who have been subjected to sexual harassment on our campuses and in our schools. It is essential that schools respond appropriately to sexual harassment and that courts hold them accountable under the applicable law.

YWCA USA is dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 17-2220 as

Retained Court-appointed(CJA) Court-assigned(non-CJA) Federal Defender Pro Bono Government

COUNSEL FOR: National Women's Law Center et al.

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

Neena Chaudhry (signature)

Neena Chaudhry Name (printed or typed)

202-588-7607 Voice Phone

National Women's Law Center Firm Name (if applicable)

202-588-5185 Fax Number

11 Dupont Circle, Suite 800

Washington DC 20036 Address

NChaudhry@nwlc.org E-mail address (print or type)

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Retained Court-appointed(CJA) Court-assigned(non-CJA) Federal Defender Pro Bono Government

COUNSEL FOR: NATIONAL WOMEN'S LAW CENTER, ET AL.

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

Cathy A. Harris (signature)

Cathy A. Harris Name (printed or typed)

(202) 898-4800 Voice Phone

Kator, Parks, Weiser & Harris, PLLC Firm Name (if applicable)

(202) 289-1389 Fax Number

1200 18th Street, NW, Suite 1000

Washington, DC 20036 Address

charris@katorparks.com E-mail address (print or type)

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COUNSEL FOR: NATIONAL WOMEN'S LAW CENTER, ET AL.

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

(signature)

Daniel Clark
Name (printed or typed)

(202) 898-4800
Voice Phone

Kator, Parks, Weiser & Harris, PLLC
Firm Name (if applicable)

(202) 289-1389
Fax Number

1200 18th Street, NW, Suite 1000

Washington, DC 20036
Address

dclark@katorparks.com
E-mail address (print or type)

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