No. 19-2203

United States Court of Appeals for the Fourth Circuit

JANE DOE,

Plaintiff-Appellant,

v.

FAIRFAX COUNTY SCHOOL BOARD,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Virginia, No. 1:18-cv-614-LO-MSN
Hon. Liam O'Grady

BRIEF OF *AMICI CURIAE* NATIONAL WOMEN'S LAW CENTER *ET AL.* IN SUPPORT OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Regulations

AMICI CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in education for women and girls through enforcement of Title IX of the Education Amendments of 1972 ("Title IX"), the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and other laws prohibiting sex discrimination. This work includes a deep commitment to eradicating sexual harassment as a barrier to educational success.

Amici are a collection of civil rights groups and public interest organizations committed to preventing, combating, and redressing sexual harassment in schools. NWLC and other *amici* therefore have an interest in helping this Court understand the necessity of protecting student-victims of sexual harassment through enforcement of Title IX. Descriptions of the other amici are included in the attached Appendix. [1]

[1] All parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part, no party or party's counsel

contributed money that was intended to fund preparing or submitting the brief, and no person other than NWLC, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION

Title IX provides that a school is liable in damages when an official with authority to take action has "actual knowledge" or "actual notice" of *alleged* sexual harassment and responds with deliberate indifference. Although the jury found that Plaintiff-Appellant Jane Doe, a high school student, was sexually harassed, and it was undisputed that responsible school officials were aware of her harassment allegations, the District Court denied her motion for a new trial even after it was clear that the jury applied an incorrect definition of "actual knowledge" to find Defendant-Appellee Fairfax County School Board ("School Board") not responsible under Title IX.

The District Court's deficient initial jury instructions, and confusing purported clarifications, gave jurors the misimpression that Title IX requires school officials to have knowledge that sexual harassment *actually occurred*, when in fact "actual notice" of *alleged* sexual harassment suffices. Title IX precedent and policy demand that this Court vacate the judgment below, reverse the District Court's denial of Ms. Doe's motion for a new trial, and remand for a new trial because the District Court (1) declined to adequately instruct the jury that "actual

knowledge" means "actual notice" of alleged sexual harassment; and (2) when addressing the jury's confusion over the definition of "actual knowledge," improperly instructed the jury to apply the "ordinary meaning" of "actual knowledge," rather than its entirely different legal meaning under Title IX. As a result, Ms. Doe was deprived of her rights under Title IX.

If permitted to stand, the District Court's decision would undermine the purpose of Title IX—eradicating sex discrimination in education—and would send a dangerous message that schools need not ensure that victims of sexual harassment receive equal access to education. Instead, it would allow schools to avoid Title IX liability when they receive reports of sexual harassment by burying their heads in the sand rather than investigating and taking appropriate action.

BACKGROUND AND SUMMARY OF ARGUMENT

Jane Doe, then a 16-year-old student at Oakton High School in Fairfax County, Virginia, was sexually assaulted on March 8, 2017, on a school bus by an older student, Jack Smith, during the first night of a five-day, out-of-state band trip. In a suit filed against the School Board for violation of Title IX, 20 U.S.C. § 1681(a), the jury found that Ms. Doe

established by a preponderance of the evidence that she was subjected to sexual harassment that was "so severe, pervasive, and offensive" as to "deprive[] [her] of equal access to the educational opportunities or benefits provided by the School Board." J.A. 3324. Ms. Doe also demonstrated that numerous school officials with authority to address the harassment had "actual notice" of it, yet failed to adequately respond. The relevant facts regarding the content and timing of Ms. Doe's reports of harassment to school officials were not disputed. *See* J.A. 848-50; J.A. 1185-89; J.A. 882-88.

Yet despite referring to the "actual notice" standard throughout the trial and promising the jury an instruction explaining what actual notice the School Board must receive "before it's legally on notice and must act," *see, e.g.*, J.A. 382-83, the District Court denied Ms. Doe's request for jury instructions that included the phrase "actual notice" to explain the legal standard for the School Board's liability. Nor did the District Court explain the connection between "actual notice" and "actual knowledge," and make clear that they are both satisfied by evidence of notice of an *allegation* of harassment. *Compare* J.A. 240 (Plaintiff Jane Doe's Proposed Jury Instructions) *with* J.A. 3315 (Jury Instructions). Instead,

the court asked jurors to determine, "yes" or "no," whether "the School Board had actual knowledge of the alleged sexual harassment by Jack Smith that occurred on March 8." J.A. 3325.

The District Court's use of the phrase "actual knowledge," without explanation that it is synonymous with the term "actual notice" and means notice of an allegation, confused the jury. Jurors first asked the court for "greater clarification regarding what 'actual knowledge' means?" J.A. 3294. The court responded by telling the jury to "give the words ['actual knowledge'] their ordinary meaning." J.A. 3299. The jury then asked whether the question could "be answered affirmatively without implying that the sexual harassment was 'known' by the School Board," pointing out that "Question 3 [of the verdict form] posits that 'sexual harassment' is *known*, even though Question 4 [of the verdict form] asks re: actual knowledge of '*alleged* sexual harassment.'" J.A. 3295 (emphasis added). The jury added: "We continue to have questions re actual knowledge. Is actual knowledge: A. A compilation of information about an event, or B. The conclusion decided based on information provided." *Id.* While the District Court responded that the verdict form's question could "be answered affirmatively if you find by a preponderance

of the evidence that the School Board had actual knowledge of an allegation or allegations that on the March 8, 2017 bus trip Jack Smith sexually harassed Jane Doe," it never answered the jury's final question on whether actual knowledge was a "compilation of information" or a "conclusion"). J.A. 3300.

The jury's confusion was evident by its finding—despite overwhelming and undisputed evidence that multiple school officials were notified of allegations that Ms. Doe was sexually assaulted—that the School Board did not have "actual knowledge" of the sexual harassment Ms. Doe experienced. J.A. 3325. Moreover, in a news article following a post-verdict conference with the judge where the meaning of actual knowledge was discussed, a juror said he knew he made a mistake and should have voted "yes" for actual knowledge. J.A. 3390-92. The same juror told another newspaper that "[w]hen the jury briefly met with the judge after rendering its verdict . . . [the judge] gave a broader interpretation of actual knowledge that suggested the school board only needed to be aware that a sexual harassment complaint had been made," which "left [the juror] 'a wreck' and had another juror 'sobbing.'" J.A. 3399.

The court's initial "actual knowledge" jury instruction and purported clarification were prejudicial error. The "actual notice/knowledge" standard elucidated by the Supreme Court and the Fourth Circuit provides that a recipient of federal funds needs only "actual knowledge" of "reports" or "complaints" of the harassment, which is also referred to as the "actual notice" standard. In other words, the requirement is awareness of *alleged* harassment, not knowledge that the harassment *actually* occurred. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998) (establishing the "actual notice" standard); *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 647-50 (1999) (applying "*Gebser*'s actual notice requirement" to peer sexual harassment cases and holding that the principal's receipt of petitioner's complaint and failure to investigate the harassment warranted reversal of dismissal); *Jennings v. Univ. of N. Carolina*, 482 F.3d 686, 700-01 (4th Cir. 2007) (concluding that student's complaint to university officials of sexual harassment was "sufficient to establish that [she] gave …[the university], actual notice of the hostile environment created by [the coach]."). By excluding the phrase "actual notice" or accurately explaining the liability standard in the initial instruction, and by instead instructing the jury to rely on the

"ordinary meaning" of a term that has an entirely different legal meaning, the District Court abused its discretion and deprived Ms. Doe of Title IX's protections.

The District Court's deficient jury instructions and resulting erroneous jury finding have dangerous policy consequences. The misapplication of the "actual notice/knowledge" standard allows schools to hide behind the circular and unlawful reasoning that they failed to investigate, and thus substantiate, an allegation of sexual harassment because the allegation was unsubstantiated. Further, the failure to explain that notice of alleged sexual harassment is sufficient to trigger Title IX protections disincentivizes schools from training their employees to recognize the signs of harassment and to investigate allegations promptly. Such a result is contrary to the Supreme Court's mandate to "accord [Title IX] a sweep as broad as its language," *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982), and contravenes the legal obligations schools owe their students under Title IX. *See* 34 C.F.R. § 106.8(b) (requiring schools to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints).

This Court should apply Supreme Court and Fourth Circuit precedent holding that Title IX's "actual knowledge" standard is synonymous with "actual notice" and that this standard requires only awareness of *alleged* harassment, not knowledge that the harassment *actually* occurred. Accordingly, this Court should vacate the District Court's judgment, reverse the District Court's denial of Appellant's motion for a new trial, and remand for a new trial to ensure a verdict can be entered based upon jury instructions that comport with Title IX law.

ARGUMENT

I. DECLINING TO INSTRUCT THE JURY THAT "ACTUAL KNOWLEDGE" MEANS "ACTUAL NOTICE" OF AN *ALLEGATION* OF SEXUAL HARASSMENT WAS PREJUDICIAL LEGAL ERROR.

A. Precedent Establishes that "Actual Knowledge" is Synonymous with "Actual Notice" of an Allegation of Sexual Harassment.

The phrase "actual notice," which the District Court used throughout the trial below, captures the notion that a report or complaint of sexual harassment triggers Title IX damages liability when a federal funding recipient acts with deliberate indifference to the allegation. Supreme Court precedent and case law adopted by this Circuit and federal courts nationwide make clear that "actual notice" and "actual

knowledge" are synonymous for purposes of Title IX liability, and that both mean notice of an allegation of harassment.

Title IX provides, in pertinent part, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Students are denied equal access to education in violation of Title IX if they establish that they are subject to sexual harassment that is "so severe, pervasive, and objectively offensive" as to "undermine[] and detract[] from [their] educational experience." *Davis*, 526 U.S. at 651. Accordingly, schools are required to establish "grievance procedures providing for prompt and equitable resolution" of Title IX claims. 34 C.F.R. § 106.8(b); U.S. DEP'T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (2001) at 4, 14, 19-21, https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf (hereinafter "REVISED SEXUAL HARASSMENT GUIDANCE").

In 1992, the Supreme Court recognized that a teacher's sexual harassment of a student is a form of sex discrimination prohibited by

Title IX for which damages are available in a private cause of action. *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75 (1992). In 1998, the Supreme Court defined the contours of such liability and established the "actual notice/knowledge" standard. *See Gebser*, 524 U.S. 274. *Gebser* began its analysis by noting that Title IX is intended to do for sex what Title VI does for race: "[T]o avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices." *Id.* at 286 (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979) (internal quotation marks omitted). "Both of these purposes were repeatedly identified in the debates on the two statutes." *Cannon*, 441 U.S. at 704. Relying on the contractual nature of Title IX, the Court reasoned that a federal funding recipient must have notice of the behavior that is alleged to violate Title IX before it can be liable for monetary damages. Thus, the Court rejected damages liability for schools based on principles of constructive notice or *respondeat superior* because in such cases the school could be "unaware of the discrimination." *Gebser*, 524 U.S. at 287.[2]

[2] *Gebser*'s interchangeable use of "actual notice" and "actual knowledge" to refer to an allegation of harassment stems from prior lower courts decisions on the standards for Title IX liability. Many courts had applied

In reaching this conclusion, the Supreme Court focused on how Title IX's administrative enforcement scheme requires notice and the opportunity for the funding recipient to rectify any violation before an administrative agency may take action to enforce the law:

> Title IX's express means of enforcement—by administrative agencies—operates on an assumption of actual notice to officials of the funding recipient. The statute entitles agencies who disburse education funding to enforce their rules . . . through proceedings to suspend or terminate funding or through "other means authorized by law." Significantly, however, an agency may not initiate enforcement proceedings until it "has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means."

Id. at 288 (quoting 20 U.S.C. § 1682) (internal citation omitted). Throughout *Gebser*, the Court refers to whether the school district had

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the agency principles of liability commonly used in Title VII employment cases. *See, e.g.*, *Kracunas v. Iona Coll.*, 119 F.3d 80, 88 (2d Cir. 1997). Others had applied a "constructive notice" standard, determining that school districts are liable if they "knew or should have known" of the harassment and failed to appropriately remedy it. *See, e.g.*, *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 899-900 (1st Cir. 1988). *Gebser* decided that Title IX damages liability could not attach to a school system based upon constructive notice. 524 U.S. at 282-83.

Ultimately, *Gebser* and its progeny emphasize the word "actual," using "notice" and "knowledge" interchangeably. *See id.* at 285. Thus, the key word that carries legal weight under Title IX is "actual" (versus "constructive")—not whether the defendant school system has "notice" or "knowledge" of the alleged harassment.

"actual notice" of alleged discriminatory conduct synonymously with the phrase "actual knowledge." *Compare id.* at 292-93 (holding that "we will not hold a school district liable in damages under Title IX for a teacher's sexual harassment of a student absent *actual notice* and deliberate indifference.") (emphasis added) with *id.* at 289 (holding that "a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the *alleged* discrimination and to institute corrective measures on the recipient's behalf has *actual knowledge* of discrimination in the recipient's programs and fails adequately to respond.") (emphasis added).

The Court's reasoning in *Gebser* made clear that the "actual notice" standard is satisfied by notice of a complaint of discrimination. Its analysis focused on what information was in the "complaint" and whether the allegations were sufficient to "alert" the school official to the possibility of sexual harassment:

> The only official alleged to have had information about Waldrop's misconduct is the high school principal. That information, however, consisted of a *complaint* from parents of other students charging only that Waldrop had made inappropriate comments during class, which was plainly insufficient to *alert* the principal to the

> possibility that Waldrop was involved in a sexual relationship with a student.

Id. at 291 (emphasis added).

In 1999, the Supreme Court extended *Gebser*'s ruling to cases involving student-on-student sexual harassment. *Davis*, 526 U.S. at 650. *Davis* held that schools are liable in damages when they are deliberately indifferent to sexual harassment "of which they have actual knowledge." *Id.* at 650. *Davis* similarly equates "actual knowledge" with "actual notice" of an allegation, referring to the standard set forth in *Gebser* as the "actual notice requirement." *Id.* at 647. And the Court's application of the "actual notice/knowledge" standard makes clear that awareness of complaints or reports of discrimination is sufficient, resulting in a reversal of the dismissal of petitioner's complaint:

> [P]etitioner may be able to show that the Board "subject[ed]" LaShonda to discrimination by failing to respond in any way over a period of five months to complaints of G.F.'s in-school misconduct from LaShonda and other female students. . . .
>
> . . .
>
> The complaint also suggests that petitioner may be able to show both actual knowledge and deliberate indifference on the part of the Board, which made no effort whatsoever either to investigate or to put an end to the harassment.

Id. at 649, 654.

Fourth Circuit precedent likewise equates "actual notice" with "actual knowledge" of an allegation or complaint of discrimination. *See Jennings*, 482 F.3d at 700-01 (holding that "actual knowledge" of plaintiff's reports to university officials that coach had created abusive environment in women's soccer program "are sufficient to establish that [the plaintiff] gave [the school official], and by extension UNC, actual notice of the hostile environment created by [the coach]"); *Baynard v. Malone*, 268 F.3d 228, 238 (4th Cir. 2001) (analyzing whether jury could conclude that appropriate school official "had actual notice that [a teacher] was abusing one of his students" based on allegations of which the teacher was aware).[3]

Other federal courts similarly have properly interpreted "actual notice/knowledge" to mean *awareness* of alleged harassment. *See, e.g.*, *Bostic v. Smyrna Sch. Dist.*, 418 F.3d 355, 360 (3d Cir. 2005) (upholding

[3] Contrary to appellee's argument at trial, *see* J.A. 281, *Baynard* did not reject the "*actual notice*" standard, but rather rejected applying "*respondeat superior* or constructive notice" or "a negligence standard." *See Baynard*, 268 F.3d. at 238 (quoting *Gebser*, 524 U.S. at 289; *Davis*, 526 at 642). *Baynard*, at no point, distinguishes between "actual knowledge" and "actual notice" as prescribed in *Gebser*.

a jury instruction that read: "An educational institution has 'actual notice,' sometimes called 'actual knowledge' of discrimination, if an appropriate person at the institution has knowledge of facts sufficiently indicating substantial danger to a student so that the institution can reasonably be said to be aware of the danger"); *Vance v. Spencer Cty. Pub. Sch. Dist.*, 231 F.3d 253, 259 (6th Cir. 2000) (holding that plaintiff "has satisfied the *Davis* notice requirement" where she and her mother made reports to the school district); *Kinman v. Omaha Pub. Sch. Dist.*, 171 F.3d 607, 610 (8th Cir. 1999) (concluding that "the actual knowledge . . . standard articulated in *Gebser*" was met when a district official was alerted to the possibility of an inappropriate sexual relationship).

Contrary to appellee's implicit arguments, schools cannot claim they did not have actual notice merely because they did not investigate or substantiate an allegation. *See* J.A. 3333. The Supreme Court has made clear that a school has "actual notice" or "actual knowledge" of sexual harassment if an appropriate authority receives an *allegation or a report* of the sexual harassment at issue. *See Davis*, 526 U.S. at 634 (discussing "reports" of sexual harassment), 635 (discussing "complaints" and "report[s]" of sexual harassment), and 649 (discussing "reports" and

"complaints" of sexual harassment). This Circuit has similarly applied the "actual notice/knowledge" standard to conclude that schools are liable for deliberate indifference to alleged sexual harassment of which they have been made aware, even when the allegations are unsubstantiated at the time of the report. *See Baynard*, 268 F.3d at 236 (discussing a "report," "complaints," and "risk" of sexual molestation); *Jennings*, 482 F.3d at 694 (discussing "complaints" by Jennings and her parents, including Jennings' report of "feelings of humiliation and discomfort.").

Other courts agree that a school need only have knowledge or notice of an allegation of harassment. *See Escue v. N. Okla. Coll.*, 450 F.3d 1146, 1154 (10th Cir. 2006) ("[T]he actual notice standard does not set the bar so high that a school district is not put on notice until it receives a clearly credible report of sexual abuse from the plaintiff-student.") (citation and internal quotation marks omitted). Allegations of sexual harassment trigger a school's duty to investigate, determine credibility through the process of investigating, and take remedial action. *See Doe v. Forest Hills Sch. Dist.*, No. 1:13-cv-428, 2015 WL 9906260, at *11 (W.D. Mich. Mar. 31, 2015) ("The Defendants' argument that it was not indifferent to 'known' acts of harassment because the allegations were never

substantiated is unavailing and circular."); *Doe v. Sch. Bd. of Miami-Dade Cty.*, 403 F. Supp. 3d 1241, 1258-59 (S.D. Fl. 2019) ("[T]he Complaint's allegations support a plausible inference that the Principal and Assistant Principals actually knew of—or at least were willfully blind to—Plaintiff's unwillingness to participate in the sexual conduct, but that they hoped to be relieved of the 'burden of having to conduct a full investigation of Jane's claims and take proper disciplinary and rehabilitative actions.'") (quoting Complaint).

A school need only have knowledge or notice of an *allegation* of harassment in order to have "actual notice" of it. Thus, the case law is unequivocal that "actual knowledge" equates to "actual notice" of alleged sexual harassment.

B. The District Court's Failure to Adequately Explain That Unsubstantiated Reports or Complaints of Sexual Harassment Satisfy the "Actual Notice/Knowledge" Standard Is Prejudicial Error.

The District Court erred in its "actual knowledge" jury instruction because it did not make clear that the standard is met by knowledge of *alleged* harassment or answer the jury's questions satisfactorily, leaving jurors to erroneously interpret the standard as requiring actual knowledge of *substantiated* harassment. This distinction is critical.

Title IX jury instructions must articulate the correct liability standard and offer adequate explanations of legal terms, when necessary, to apply that standard. *Price v. Glosson Motor Lines, Inc.*, 509 F.2d 1033, 1036 (4th Cir. 1975) ("the responsibility of the judge to the jury is particularly marked where the jury indicates its confusion on a specific subject."). The District Court's failure to make clear in its jury instructions that actual knowledge requires only notice of an allegation of harassment, especially after the jury explained its confusion and requested further guidance, was plain error. It led to the jury finding no actual notice despite clear evidence to the contrary. By declining to explain that only notice of an *allegation* of harassment is required, over Ms. Doe's numerous objections, the District Court increased the standard of proof beyond that prescribed by the Supreme Court, resulting in a miscarriage of justice. *See Wyatt v. Interstate & Ocean Transp. Co.*, 623 F.2d 888, 891–92 (4th Cir. 1980) ("Indeed, a trial judge has a duty to set aside a verdict and grant a new trial even though it is supported by substantial evidence, 'if he is of the opinion that the verdict is against the clear weight of the evidence, or is based upon evidence which is false or

will result in a miscarriage of justice . . . .'") (quoting *Williams v. Nichols*, 266 F.2d 389, 392 (4th Cir. 1959)).

The district court's response to the jury's notes asking for further clarification of the "actual knowledge" standard—that the jury rely on the "ordinary meaning" of "actual knowledge"—only created further confusion. "Knowledge" has a distinct ordinary meaning that suggests substantiation of an underlying "fact or truth." *Knowledge*, OXFORD ENGLISH DICTIONARY (3d ed. 2010) (defined as "the apprehension of fact or truth with the mind; clear and certain perception of fact or truth."). By contrast, the ordinary meaning of "notice" is merely that a person's "attention" has been obtained. *Notice*, OXFORD ENGLISH DICTIONARY (3d ed. 2010) (defined as "the cognizance, observation, or attention of the person or persons specified."). The jury's questions to the court concerning the meaning of "actual knowledge" indicated a familiarity with the ordinary, colloquial meaning of "knowledge" as a "conclusion," indicating that they mistakenly believed they had to find that the sexual harassment reported by Ms. Doe was substantiated. *See* J.A. 3295 ("Is actual knowledge: A. A compilation of information about an event, or B. The conclusion decided based on information provided."). The court's

erroneous instruction to apply the "ordinary meaning" of "actual knowledge"—rather than its entirely different legal meaning—invited the jury to apply a definition of "knowledge" that impermissibly increased the showing necessary for Ms. Doe to prevail. Local media outlets covering the trial reported on the jury confusion created by the District Court's instructions. *See* J.A. 3390-402.

The court would have avoided this plain error had it permitted the inclusion of the phrase "actual notice" in the jury instructions, as Ms. Doe had requested. Including "actual notice" language in jury instructions, or at least properly explaining the legal meaning of "knowledge" as notice of an *allegation*, promotes jury clarity and confines the "actual knowledge" requirement to its original purpose of ascribing liability. It also reduces the likelihood that federal funding will be used to support discrimination in educational programs. Without such instructions, the protections provided by Title IX are at risk of being lost in translation, as they were here.

II. PUBLIC POLICY CONSIDERATIONS REQUIRE TITLE IX JURY INSTRUCTIONS TO EXPLAIN THAT "ACTUAL

KNOWLEDGE" MEANS "ACTUAL NOTICE" OF AN *ALLEGATION*.

Including the "actual notice" language in jury instructions, or explaining that "actual knowledge" means "actual notice" of an *allegation* of sexual harassment, provides the protection envisioned by Congress and avoids the destructive policy consequences engendered by the verdict below. Specifically, it precludes the circular reasoning that a school's duty to investigate only arises when a claimant substantiates an allegation of sexual harassment, incentivizes schools to investigate a sexual harassment claim, and comports with the legal duty of schools to immediately report child abuse.

A. Inaccurately Defining the "Actual Notice/Knowledge" Standard Inappropriately Requires the Complainant to Prove That Harassment Occurred Before Triggering a School's Duty to Investigate Under Title IX.

The phrase "actual knowledge," without the inclusion of "notice" language or further explanation that an allegation of sexual harassment suffices to trigger a duty to respond, can mislead a jury into assuming that a funding recipient has actual knowledge only if it concludes that sexual harassment actually occurred. A complainant thus is inappropriately forced to prove that the harassment happened *prior to*

triggering Title IX's protections, which require a prompt and fair investigation. *See* 34 C.F.R. § 106.8(b) (requiring schools to establish "grievance procedures providing for prompt and equitable resolution."); *see also* REVISED SEXUAL HARASSMENT GUIDANCE at 12 ("[I]f, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.").

Under this erroneous standard applied by the jury, students suing under Title IX would be required to show not only that they notified their schools of alleged sexual harassment, but also that they proved to their schools that the sexual harassment in fact occurred, in order to hold their schools accountable for failing to investigate the harassment. Indeed, under this incorrect standard, when asking their schools to investigate an allegation of sexual harassment, students would be required to first prove that they were in fact actually sexually harassed.

Failing to explain to a jury that a report of sexual harassment is enough to satisfy the "actual notice/knowledge" requirement allows a funding recipient to escape Title IX liability through circular reasoning,

by choosing not to address an allegation of harassment that was deemed unsubstantiated because the recipient chose not to investigate and substantiate it—a position courts have found "unavailing and circular." *Forest Hills*, 2015 WL 9906260, at *11. This logic, espoused by the School Board before the District Court, *see* J.A. 279-84, allows a school to not investigate or "conduct a sub-par investigation and then claim that it did not know about harassment because its investigation did not turn up proof beyond peradventure to support the charges." *Forest Hills*, 2015 WL 9906260, at *11. Title IX requires more.

The consequences of such an erroneous instruction are especially concerning as applied to children, who cannot be expected to articulate the sexual abuse and harassment they suffer in the same words as adults. *See* U.S. DEP'T OF JUSTICE, JUVENILE JUSTICE BULLETIN, CHILD FORENSIC INTERVIEWING: BEST PRACTICES (2015), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf (discussing age-appropriate ways to interview children regarding abuse since "[m]any influences have an

impact on a child's experience of abuse and on his or her ability to encode and communicate information.").[4]

The correct "actual notice/knowledge" requirement is satisfied when children make formal or informal complaints using age-appropriate language. Here, the language that Ms. Doe and her high school classmates used to describe the assault gave the School Board actual notice that Ms. Doe was sexually assaulted. *See, e.g.*, J.A. 1207-08 ("I don't think it was consensual"); J.A. 849-50 ("And Dr. V's text says: Victoria Staub just told me that there was some funny business on the bus. Jack Smith put himself on Jane Doe or something like that. Jane was not into it."). An erroneous definition of the "actual knowledge/notice" standard could permit a school to dodge its responsibility by arguing that it did not know for a fact that what was reported was sexual harassment because certain words were not used to describe it.

[4] Title IX applies equally to students in pre-kindergarten programs through doctoral programs. Thus, the requirements for a Title IX complaint and the applicable jury instructions must be equal for all protected individuals, regardless of their age.

By contrast, including language in jury instructions to clarify that "actual notice" of an allegation is synonymous with "actual knowledge" provides the broad protection to individuals of all ages envisioned by Congress and appropriately maintains the burden on the funding recipient, not student-victims, to eliminate discrimination based on sex. *See* REVISED SEXUAL HARASSMENT GUIDANCE at 12 ("If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.") (citations omitted). Jury instructions must elucidate that a protected individual is not required to prove at the time of an initial report or allegation that the sexual harassment in fact occurred.

B. Inaccurately Defining the "Actual Notice/Knowledge" Standard Contravenes Congressional Intent by Creating a Disincentive to Investigate.

A deficient jury instruction that does not explain that "actual knowledge" is actual notice of an *allegation* of sexual harassment undermines Congress' goal of protecting students from sex

discrimination in education by eliminating the incentive for schools to investigate harassment and take appropriate action. Schools, required to act upon an allegation of sexual harassment, are encouraged to identify harassment at the earliest possible moment and eliminate it. *See* 34 C.F.R. § 106.8(b) (requiring schools to establish "grievance procedures providing for prompt and equitable resolution" of Title IX claims); REVISED SEXUAL HARASSMENT GUIDANCE at 13 ("For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a 'reasonably diligent inquiry.'") (citations omitted).

A more restrictive definition of the word "knowledge" may lead educational programs to intentionally fail to investigate reports of sexual harassment in order to avoid legal responsibility. In the Title IX context, if a school neglects to launch a prompt and fair investigation after receiving notice of an alleged but yet unsubstantiated report of sexual harassment, it may mistakenly believe it can avoid legal responsibility by claiming it never had the "clear and certain perception of fact or

truth," *Knowledge*, OXFORD ENGLISH DICTIONARY (3d ed. 2010), or, in other words, knowledge that the harassment actually occurred.

This could lead to perverse incentives whereby educational programs neglect to train employees on recognizing the indicators of sexual harassment in order to avoid acquiring actual notice/knowledge of substantiated sexual harassment. If actual notice of alleged sexual harassment were insufficient to trigger Title IX protections, schools would have little reason to create an environment in which employees are trained to recognize a sexual harassment report.

Similarly, a jury instruction on "actual knowledge," without a further explanation that "actual notice" of an allegation of sexual harassment suffices, deprives the jury of critical context. Inviting a jury to apply the ordinary meaning of "actual knowledge" allows it to interpret the Title IX liability standard in a way that incentivizes schools not only to fail to root out discrimination, but also to create environments where discrimination flourishes.

C. The "Actual Notice/Knowledge" Standard Aligns with School Employees' Separate Legal Duty to Respond Promptly to Notice of Suspected Child Abuse.

It is consistent with other laws requiring schools to protect children from abuse, including sexual abuse, for funding recipients to be held accountable under Title IX once they know about an allegation of sexual harassment. In particular, a school's response to notice of alleged sexual harassment in a Title IX damages lawsuit should be no different than the legal requirements when acting *in loco parentis* or mandatory-reporter laws.

Schools that educate minors operate *in loco parentis*, defined as "[o]f, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent." *In loco parentis,* BLACK'S LAW DICTIONARY (11th ed. 2019); *see Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 861 (4th Cir. 1998) ("[T]he teachers and administrators of a public school will act 'in loco parentis' while children are in their physical custody because parents 'delegate part of [their] authority' to the school by placing their children under its instruction.") (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995)). The *in loco parentis* doctrine is heightened when, as in the case of Jane Doe,

a sexual assault occurs on an overnight, school-sponsored band trip in which the school assumes an even greater guardian role than during the school day.

Acting *in loco parentis*, schools have a duty of care to respond to reports of sexual misconduct accordingly. For example, Supreme Court precedent applying the First Amendment in public schools "recognize[s] the obvious concern on the parts of parents, and school authorities acting *in loco parentis*, to protect children—especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986). This duty of care is reflected in Title IX's requirement that schools address known sexual harassment of students to ensure that they are able to learn in a safe environment. *See* REVISED SEXUAL HARASSMENT GUIDANCE at 9-13.

While children are in the care of schools, they are presumed to be cared for as a parent would. Likewise, under Title IX, when a child reports sexual harassment to a school, school officials should be expected to respond, as a parent would, with more than deliberate indifference upon notice. *See Gebser*, 524 U.S. at 290. Jury instructions that omit an adequate explanation that "actual knowledge" is "actual notice" of an

allegation, not a substantiated report, are not consistent with the *in loco parentis* doctrine.

State mandatory-reporter laws are also instructive on this point. Virginia law contemplates the importance of school employees responding immediately to notice of suspected child sexual abuse. It provides, "Any teacher or other person employed in a public or private school" who, "in their professional or official capacity, have *reason to suspect* that a child is an abused or neglected child, shall report the matter immediately" to the authorities. VA. CODE ANN. § 63.2-1509(A)(5) (2019) (emphasis added). If the information is received by a teacher in the course of professional services in a school, "such person may, in place of said report, immediately notify the person in charge of the institution . . . who shall make such report forthwith." *Id.* § 63.2-1509(A). Failure to comply with the reporting provisions within 24 hours of receiving notice of reportable offense of child abuse could result in a fine or other criminal penalties. *Id.* § 63.2-1509(D). Virginia is not alone in prioritizing an immediate report to authorities upon having "reason to suspect" that a child has been abused. Every state requires school personnel to make a swift report when they are notified that a child is a victim of suspected

abuse. *See* U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHILD WELFARE INFORMATION GATEWAY: MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT (2019), https://www.childwelfare.gov/pubPDFs/manda.pdf.

The unique relationship between minors and educational programs supports the principle that actual notice of alleged sexual harassment is all the law requires. Jury instructions using the words "actual knowledge" without further explanation that allegations do not need to be substantiated create a disparity between a school's legal duty under Title IX to address known harassment and its legal duties under the *in loco parentis* doctrine and mandatory reporter laws to respond to alleged harassment and report suspected child abuse. Such an inconsistency is not supported by the law and leads to dangerous policy outcomes.

CONCLUSION

For these reasons, this Court should vacate the judgment below, reverse the District Court's denial of Appellant Doe's motion for a new trial, and remand for a new trial. Reversal and remand will ensure that a jury reaches a verdict based on clear instructions and that Doe is not prejudiced by the School Board's spoliation of evidence. Alternatively, at

a minimum, this Court should remand for reconsideration of Doe's motion for a new trial under the correct legal standards.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 32(g)(1), I certify that:

This brief complies with Rule 29(a)(5)'s type-volume limitation because it contains 6,358 words, as determined by the Microsoft Word 2016 word-processing system used to prepare the brief, excluding the parts of the brief exempted by Rule 32(f).

This brief complies with Rule 32(a)(5)'s typeface requirements and Rule 32(a)(6)'s type-style requirements because it has been prepared in a proportionately spaced typeface using the 2016 version of Microsoft Word in 14-point Century Schoolbook font.

/s/ Emily P. Mallen
Emily P. Mallen

CERTIFICATE OF SERVICE

I certify that I caused this document to be electronically filed with the Clerk of the Court using the appellate CM/ECF system on February 14, 2020. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Emily P. Mallen
Emily P. Mallen

APPENDIX A: LIST OF AMICI

Chicago Alliance Against Sexual Exploitation
The Chicago Alliance Against Sexual Exploitation (CAASE) is an Illinois-based not-for-profit that opposes sexual harm by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in direct legal services, prevention education, community engagement, and policy reform. CAASE's legal department provides free legal services to survivors of sexual harm, including sexual assault and prostitution. On behalf of its individual clients and in support of its overall mission, CAASE is interested in seeing that federal and state laws and precedent related to sexual assault and prostitution are appropriately interpreted and applied so as to further—and not undermine—efforts to hold perpetrators of sexual assault and trafficking appropriately accountable for their actions.

Clearinghouse on Women's Issues
In furtherance of CWI's mission of providing nondiscriminatory educational opportunities that are free of gender bias consistent with statutory and regulatory requirements of Title IX, including anti- sexual harassment, CWI signs on to the amicus brief of the National Women's Law Center in the matter of *Doe v. Fairfax County School Board.*

Desiree Alliance
The Desiree Alliance is a national organization dedicated to the consensual sexual freedoms of every person without government interference. We fully advocate for all women who have experienced sexual violence, sexual misconduct, and sexual assault.

Feminist Majority Foundation
The Feminist Majority Foundation (FMF) is a non-profit organization with offices in Arlington, VA and Los Angeles, CA. FMF is dedicated to eliminating sex discrimination and to the promotion of gender equality and women's empowerment. The FMF programs focus on advancing the legal, social, economic, education, and political equality of women with men, countering the backlash to women's advancement, and recruiting and training young feminists to encourage future leadership for the

feminist movement. To carry out these aims, FMF engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs. The FMF conducts research on and supports the broad coverage and full implementation of Title IX to protect people from sex discrimination.

FORGE, Inc.
FORGE is a national transgender anti-violence organization. Transgender and non-binary students are far more likely than their non-trans peers to experience sexual assault. It is critical that our government-funded systems protect students from sexual assault and properly address it if and when it does happen.

Gender Justice
Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to advancing gender equity through the law. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as amicus curiae in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that students are protected from sexual harassment and hostile educational environments.

Girls Inc.
Girls Inc. is a nonprofit organization that inspires girls to be strong, smart, and bold through direct service and advocacy. Our 79 local Girls Inc. affiliates provide primarily after-school and summer programming to approximately 140,000 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 policies and practices to advance the rights and opportunities of girls and young women. Combatting sexual harassment and assault is a top priority for Girls Inc. because of its prevalence and harmful effect on students' ability to learn and thrive at all levels of education.

Human Rights Campaign
The Human Rights Campaign ("HRC") is the largest national lesbian, gay, bisexual, and transgender advocacy organization. HRC envisions an America where lesbian, gay, bisexual, and transgender people are ensured of their basic equal rights, and can be open, honest, and safe in the classroom, at home, at work, and in the community. As part of its "Welcoming Schools" initiative and other law and policy work, HRC has engaged in extensive advocacy about Title IX protections, model policies for school districts, and harassment of LGBTQ youth.

In Our Own Voice: National Black Women's Reproductive Justice Agenda
In Our Own Voice: National Black Women's Reproductive Justice Agenda was founded with the goal of lifting up the voices of Black women in the ongoing policy fight to secure Reproductive Justice for all women and girls. Utilizing three core strategies leadership development, policy change, and movement building—In Our Own Voice seeks to provide a platform for Black women to speak for themselves and to present a proactive strategy for advancing reproductive health, rights, and justice, including the right to safe and legal abortions, at the national and state levels. In Our Own Voice believes that Reproductive Justice is the human right to control women's bodies, sexuality, gender, work, and reproduction. That right can only be achieved when all women and girls have the complete economic, social, and political power and resources to make healthy decisions about their bodies, families, and communities. At the core of Reproductive Justice is the belief that all women have the right to have children, the right to not have children, and the right to nurture the children they have in a safe and healthy environment. As a Reproductive Justice organization, In Our Own Voice approaches these issues from a human rights perspective and incorporates the intersections of race, gender, class, sexual orientation, and gender identity with the situational impacts of economics, politics, and culture that make up the lived experiences of Black women in America.

KWH Law Center for Social Justice and Change
KWH Law Center for Social Justice and Change is a non-profit Law Center focused on advancing economic opportunities for women and girls in the South and Southwest. We strongly support the application,

implementation and protections provided by Title IX for women and girls at every level of education. Accordingly, we work to ensure that women and girls have equal access to the full range of protections offered by Title IX. The Law Center is uniquely qualified to comment on the decision to be rendered in *Doe v. Fairfax County School Board* particularly as it relates to the interpretation, application or implementation of Title IX.

Legal Aid at Work

Legal Aid at Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBTQ community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g.*, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. *See, e.g.*, *U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

National Asian Pacific American Women's Forum

The National Asian Pacific American Women's Forum (NAPAWF) is the leading, national, multi-issue community organizing and policy advocacy organization for Asian American and Pacific Islander (AAPI) women and girls in the U.S. NAPAWF's mission is to build collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. NAPAWF advocates and organizes with a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity – such as ethnicity, immigration status, education, sexual orientation, gender identity, and

access to health – are considered in tandem when addressing our social, economic, and health needs. Our work includes addressing sexual assault and violence against AAPI women and advocating for policies and laws that protect AAPI survivors of violence to ensure their dignity, agency, and health.

National Association of Social Workers (NASW) and its Virginia Chapter

The National Association of Social Workers ("NASW") is the largest association of professional social workers in the United States with 110,000 members in 55 chapters. Since 1955, NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education and enforces the NASW Code of Ethics.

NASW, and its Virginia Chapter, develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW supports advocacy for individual victims of crime to help them overcome obstacles, barriers, and loopholes that may impede or prevent them from obtaining needed services[1] and school environments in which all students and staff are respected, nurtured, safe and supported.[2] NASW also supports prevention and intervention efforts that address all forms of violence against women across the life span, including adequate health and mental health services, crime victim assistance, and other social services.[3]

National Crittenton

National Crittenton (NC) is a nonprofit national advocacy organization whose mission is to catalyze social and systems change for girls and young people across the gender spectrum impacted by chronic adversity,

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[1] NASW Policy Statement: Crime Victim Assistance, Social Work Speaks 61, 63 (11th ed. 2018).

[2] NASW Policy Statement: School Violence, Social Work Speaks 289, 290 (11th ed. 2018).

[3] NASW Policy Statement: Women's Issues, Social Work Speaks 353, 358 (11th ed. 2018).

violence, and injustice. Since it was founded in 1883, it has advanced the rights, needs and potential of all girls across systems and fields including educational institutions to live free and protected from sexual assault. Girls and young women in the United States all too often find themselves exposed to sexual violence even in settings where their well-being, rights and safety are protected by law. This is particularly true in schools where allegations of sexual assault must be addressed consistent with Title IX protections.

As such, National Crittenton is honored to join The National Women's Law Center and Sidley Austin LLC in this amicus brief in *Doe v. Fairfax County School Board*, which is being appealed to the 4th Circuit.

National Network to End Domestic Violence (NNEDV)

The National Network to End Domestic Violence (NNEDV) is a not-for profit organization incorporated in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence and 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, and their advocates. NNEDV was instrumental in promoting Congressional enactment and implementation of the Violence Against Women Act. NNEDV works with federal, state and local policy makers and domestic violence advocates throughout the nation to identify and promote policies and best practices to advance victim safety. NNEDV is deeply concerned about the ability of students to be safe from sexual harassment and sexual assault.

National Organization for Women Foundation

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 equal education opportunities for girls and women and to ending sexual discrimination, sexual harassment and sexual assault, among other objectives.

National Partnership for Women & Families
The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies that help achieve fairness in the workplace, reproductive health and rights, quality health care for all, and policies that protect and help women and men as they manage the demands of work and family. Since its founding in 1971, the National Partnership has worked to advance equal opportunities and fairness through several means, including by taking a leading role in the passage of Title IX of the Education Amendments of 1972, the Pregnancy Discrimination Act of 1978 and the Family and Medical Leave Act of 1993 and by challenging discriminatory practices in the courts.

National Women's Political Caucus
The National Women's Political Caucus (NWPC) is a bi-partisan nonprofit grassroots organization that is dedicated to the advancement and of women and girls and the rights of all people to be free from discrimination based on gender. Formed in 1971, the NWPC has worked to secure equal opportunity for women and girls through full enforcement of the Constitution, Title IX, and other laws prohibiting sex discrimination. This has been demonstrated through our work for an Equal Rights Amendment to enshrine the right for all individuals to be free from discrimination on the basis of sex and to have those rights protected by the U.S. Constitution.

Religious Coalition for Reproductive Choice
The Religious Coalition for Reproductive Choice is a national, multi-faith organization mobilizing moral voices to end structural barriers to reproductive and sexual health and bringing the perspective and needs of women and other marginalized communities to the center of the conversation. Inspired by our faiths, we are religious and spiritual people who advocate for reproductive freedom and dignity, including access to compassionate abortion services. We work to end all systems of oppression and discrimination, including those based on gender identity and expression.

Stop Sexual Assault in Schools (SSAIS.org)
SSAIS is a national nonprofit whose mission is to protect students' right to an equal education under Title IX.

The Women's Law Center of Maryland
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 gender discrimination and sexual harassment, whether in the employment realm or in public accommodations.

Transgender Law Center
Transgender Law Center ("TLC") was founded in 2002 and is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming ("TGNC") people alive, thriving, and fighting for liberation. TLC also pursues impact litigation and policy advocacy to defend and advance the rights of TGNC people, transform the legal system, minimize immediate threats and harms, and educate the public about issues impacting our communities.

Women Lawyers Association of Los Angeles
Women Lawyers Association of Los Angeles ("WLALA") is a nonprofit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation in the legal profession of women lawyers and judges from diverse perspectives and racial and ethnic backgrounds, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women by supporting their exercise of equal rights, equal representation, and reproductive choice. WLALA has participated as an amicus curia in cases involving discrimination and harassment before many federal district courts, Courts of Appeals, and

the Supreme Court. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and girls through the full enforcement of laws prohibiting discrimination and harassment.

Women Lawyers On Guard Inc.

Women Lawyers On Guard Inc. (WLG) is a national non-partisan, non-profit organization harnessing the power of lawyers and the law in coordination with other non-profit organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all. WLG has participated as amicus curiae in a range of cases before the United States Supreme Court and other federal courts to secure the equal treatment of women under the law and to challenge sex discrimination, sexual assault and harassment.

Women's Bar Association of the State of New York

The Women's Bar Association of the State of New York ("WBASNY") is the second largest statewide bar association in New York and one of the largest women's bar associations in the United States. Its earliest chapter was founded in 1918, a year before women's right to vote was ratified. WBASNY's more 4,200 members in its twenty chapters across New York State[4] include esteemed jurists, academics, and attorneys who

[4] WBASNY is incorporated in New York. Its affiliated organizations consist of twenty regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. WBASNY has no parent, and neither WBASNY nor any of its affiliates issue stock to the public. WBASNY's current affiliates are: Chapters – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association, Inc.; Central New York Women's Bar Association; Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid- York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County

practice in every area of the law, including appellate, litigation, education, commercial, labor and employment, ERISA, matrimonial, access to justice, ethics, health, reproductive rights, constitutional, criminal, international law, and civil rights. WBASNY is dedicated to the fair and equal administration of justice. WBASNY has participated as an amicus curia in state and federal cases at every level, including those involving civil rights, sex and gender discrimination, sexual assault and harassment, rights under federal and state constitutions, and the right to fair and equal treatment under the law. It stands as a vanguard for the equal rights of women, minorities, students, LGBT individuals, and all persons.

Women's Law Project

The Women's Law Project (WLP) is a Pennsylvania-based nonprofit public interest legal advocacy organization that seeks to advance the legal, social, and economic status of all people regardless of gender. To that end, WLP engages in impact litigation and policy advocacy, public education, and individual counseling to abolish gender discrimination in our laws and institutions, to eradicate harmful policies and practices, and to provide individuals with the knowledge by which they can empower themselves to address the problems in their lives. WLP's advocacy efforts include reproductive rights, health, education, athletics, employment, insurance, prisoner's rights, LGBTQ rights, sexual assault, and family law, including domestic violence, custody and support. WLP prioritizes

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Women's Bar Association; Thousand Islands Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc. (Note: No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY's vote to participate as amicus in this matter.)

program activities and litigation on behalf of people who are marginalized across multiple identities and disadvantaged by multiple systems of oppression that disadvantage people.