IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CARROLL INDEPENDENT SCHOOL DISTRICT, *Plaintiff*, v. **UNITED STATES DEPARTMENT OF EDUCATION**; **DENISE CARTER**, in her official capacity as Acting Secretary of the United States Department of Education; **ASSISTANT SECRETARY FOR CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF EDUCATION**, in her official capacity; **UNITED STATES DEPARTMENT OF JUSTICE**; **PAM BONDI**, in her official capacity as Attorney General of the United States; and **ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE**, in her official capacity, *Defendants*.	**Case No.: 4:24-cv-00461-O**

DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION TO INTERVENE BY VICTIM RIGHTS LAW CENTER AND JANE DOE

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INTRODUCTION

Before the Court is a motion to intervene by Victim Rights Law Center (VRLC), a nonprofit advocacy organization that provides legal assistance to victims of sex-based harassment, and Jane Doe, a former student and alleged victim of sex-based harassment. VRLC and Doe seek to intervene "to appeal the vacatur of the 2024 Rule's provisions that pertain to sex-based harassment" and "to defend numerous protections for survivors in the 2024 Rule that Plaintiffs and Intervenor-Plaintiffs did not specifically challenge," based on their impression that the government "will not appeal the Court's decision and so will not represent their legal interests." ECF No. 100 at 4, 5. Neither VRLC nor Doe may appeal in Defendants' stead because they lack Article III standing. Accordingly, the Court should deny the motion to intervene.

BACKGROUND

As set forth more fully in Defendants' prior briefing, this case concerns a 2024 rule (the "Rule") that makes numerous changes to the Department of Education's Title IX regulations. *See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024). The Rule contains numerous provisions, ranging from revising recordkeeping requirements to guaranteeing access to lactation spaces for breastfeeding students. *See generally id.* Plaintiff challenged several portions of the Rule, including § 106.10, § 106.31(a)(2), and the definition of sex-based hostile environment harassment in § 106.2—focusing particularly on those provisions' application to gender identity discrimination—as well as two provisions related to grievance procedures. *See generally* ECF No. 1. Plaintiff did not raise any claim that the Rule's provisions regarding protections for pregnant and postpartum students were unlawful. On February 19, 2025, the Court granted Plaintiff's motion for summary judgment, denied Defendants' motion for summary judgment, and vacated

the Rule on a nationwide basis. ECF Nos. 86, 87. The Court declined to sever the challenged portions of the Rule from the Rule's other provisions, including the provisions addressing protections for pregnant and postpartum students; instead, the Court vacated the Rule "in its entirety." ECF No. 86 at 7.

On March 31, 2025, VRLC and Doe filed the instant motion, requesting to intervene "to appeal vacatur of the 2024 Title IX Rule's provisions that pertain to sex-based harassment," including the Rule's definition of hostile-environment sex-based harassment, and "to defend numerous protections for survivors in the 2024 Title IX Rule that Plaintiff did not specifically challenge." ECF No. 99 at 1-2.

LEGAL STANDARDS

To intervene of right under Rule 24(a)(2), VRLC and Doe must demonstrate: (1) that their request is timely, (2) that they have "an interest relating to the property or transaction which is the subject of the action," (3) that a decision in the case may harm their ability to protect that interest, and (4) that their interest in inadequately represented by parties to the suit. *New Orleans Pub. Serv., Inc. v. United Gas Pipeline Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (citing Fed. R. Civ. P. 24(a)(2)).

Rule 24(b)(1) provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). It must be the kind of claim or defense "that can be raised in courts of law as part of an actual or impending law suit," *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 n.18 (1997) (citation omitted), and for which there are "independent jurisdictional grounds," *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 675 (5th Cir. 1985) (citations omitted).

"Article III does not require intervenors to independently possess standing where the intervention is into a *subsisting and continuing* Article III case or controversy and the ultimate

relief sought by the intervenors is also being sought by at least one subsisting party with standing to do so." *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006) (citation omitted). However, "to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing." *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019) (citing *Wittman v. Personhuballah*, 578 U.S. 539 (2016); *Diamond v. Charles*, 476 U.S. 54 (1986)); *see Franciscan All., Inc. v. Azar*, 414 F. Supp. 3d 928, 938 (N.D. Tex. 2019) (O'Connor, J.) ("[S]hould Putative Intervenors seek to appeal, they will need to show more than just a sufficiently pleaded legally protectable interest in the case; they will need to prove they have Article III standing.").

ARGUMENT

The motion to intervene should be denied because neither proposed intervenor has established Article III standing. To demonstrate Article III standing, a party must show "(1) that [it] suffered an injury in fact, which is a concrete and particularized invasion of a legally protected interest; (2) that the injury is traceable to the challenged action of the defendant; and (3) it is likely, rather than merely speculative, the injury will be redressed by a particular decision." *Parr v. Cougle*, 127 F.4th 967, 972 (5th Cir. 2025) (citation omitted).

Neither VRLC nor Doe has established standing to support their intervention to appeal provisions of the Rule pertaining to sex-based harassment, as set out in their intervention motion. ECF No. 100 at 4 n.3. Accordingly, neither may pursue an appeal in the absence of Defendants.

1. VRLC has failed to establish standing to appeal any aspect of the district court's vacatur order. "[O]rganizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." *FDA v. All. for Hippocratic Med.* ("*Alliance*"), 602 U.S. 367, 393-94 (2024). "Like an individual, an organization may not establish standing simply based on the intensity of the litigant's interest or because of strong opposition to the . . . conduct" at issue.

Id. at 394 (quotation marks omitted). Likewise, an organizational plaintiff "cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action," *id*.; otherwise "all the organizations in America would have standing to challenge almost every federal policy that they dislike," *id*. at 395.

VRLC lacks standing to bring an independent appeal because it fails to allege that it faces any concrete and particularized, actual or imminent injury due to the Rule's vacatur. VRLC's asserted standing to pursue an appeal here rests on a theory that reversion to the 2020 Rule's regulatory scheme will harm its organizational interests. *See* ECF No. 100 at 4. VRLC claims that the reinstatement of the 2020 Rule will "impair[] VRLC's ability to provide legal assistance to student survivors," and will cause it to "expend significantly more time and resources to provide legal assistance to its clients," *id.* at 8, 11, which it otherwise would use to more broadly pursue its mission, *id.* at 12. VRLC argues that these anticipated impacts are sufficient to establish an Article III injury under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and its progeny. ECF No. 100 at 7-12.

VRLC errs in likening this case to *Havens*. In *Havens*, the plaintiff was a housing counseling service that sued the defendant under the Fair Housing Act on the ground that the defendant provided its employees false information about apartment availability. 455 U.S. at 368. As the Supreme Court has emphasized, the counseling service in *Havens* established Article III standing because "when [defendant] gave [its] employees false information about apartment availability," it "perceptibly impaired [the service's] ability to provide counseling and referral services for low- and moderate-income homeseekers." *Alliance*, 602 U.S. at 395 (quoting *Havens*, 455 U.S. at 379). The Court has explained that "*Havens* was an unusual case," *id.* at 396, likening it to "a retailer who sues a manufacturer for selling defective goods to the retailer," *id*. at 395.

The Supreme Court "has been careful not to extend the *Havens* holding beyond its context," including most recently in *FDA v. Alliance for Hippocratic Medicine*. 602 U.S. at 396. There, the Court held that medical advocacy organizations lacked standing to challenge a decision of the FDA to relax regulatory requirements for the prescription of a certain drug. *Id.* The Court rejected the organizations' theory that the FDA's regulatory decision "impaired their ability to provide services and achieve their organizational missions," including by "mak[ing] it more difficult for them to inform the public about safety risks." *Id*. at 394, 395 (quotation marks omitted). The Court held that the "argument does not work to demonstrate standing" because "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Id*. at 394. The Court also dismissed the organization's reliance on *Havens*, explaining that the FDA's "actions relaxing regulation of [the drug] have not imposed any similar impediment to the medical associations' advocacy businesses." *Id*. at 395.

The Supreme Court's reasoning in *Alliance* controls here. Like the organizational plaintiffs in *Alliance*, VRLC cannot establish standing on the ground that vacatur of the 2024 Rule "impair[s] [its] ability to provide legal assistance to student survivors" and "frustrate[s its] mission of representing student survivors in school Title IX proceedings." ECF No. 100 at 8-9. As explained, the only "impairment" VRLC identifies is that vacatur has resulted in the reinstatement of the regulatory regime set out in the 2020 Rule, including the procedural protections owed to complainants and respondents. But nothing in the reinstated scheme prevents VRLC from continuing to provide legal assistance and representation to "student survivors" or any other complainants. VRLC does not claim that it is now receiving "false information" or the equivalent of "defective goods," as was the case in *Havens*. *Alliance*, 602 U.S. at 395.

Instead, VRLC predicts that the 2020 Rule's regulatory regime will make potential clients "less willing to file or continue with a pending Title IX complaint." ECF No. 100 at 9. But VRLC's only support for that prediction consists of VRLC's experience when the 2020 Rule was first promulgated, and a made-for-this-litigation comparison between the requests it received for legal assistance in the six-week period after the 2024 Rule's promulgation and the six-week period after this Court's vacatur order. *See* ECF No. 100 at 8-9. Such speculative prediction is insufficient to establish that VRLC's alleged injury is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted). More fundamentally, a potential diminishment in the demand for VRLC's services because of the independent actions of Title IX complainants is different in kind from the "perceptibl[e] impair[ment]" at issue in *Havens*. *Alliance*, 602 U.S. at 395 (quoting *Havens*, 455 U.S. at 379). Just as the plaintiffs in *Alliance* could not establish organizational standing based on the downstream effects of the FDA's relaxation of regulations for the prescription of a given drug, VRLC cannot establish standing based on the (potential) downstream effects that the reversion to the 2020 Rule's regulatory scheme will have on potential complainants' willingness to pursue Title IX complaints.

Equally unavailing is VRLC's claim that vacatur of the 2024 Rule will drain its resources because the reinstatement of the 2020 Rule's regulatory regime will require "significantly more time and resources to provide legal assistance." ECF No. 100 at 11. VRLC contends that the need to "divert[] its resources toward its legal assistance program to meet its clients' increased needs . . . will in turn reduce VRLC's ability to operate other programs." *Id.* at 12. But this, too, is speculative, and in any case again fails to demonstrate that vacatur of the 2024 Rule is "directly affect[ing] and interfer[ing]" with VRLC's "core business activities." *Alliance*, 602 U.S. at 395. As the Supreme Court explained in *Alliance*, such direct interference is crucial for an organization

to demonstrate standing based on a *Havens* diversion-of-resources theory. *See id.*

Apart from a passing parenthetical reference, *see* ECF No. 100 at 6-7, VRLC does not engage with the Supreme Court's reasoning in *Alliance*. Instead, VRLC relies on out-of-circuit district court cases that held VRLC had standing to challenge aspects of the 2020 Rule based on a broad reading of *Havens*. *See id.* at 8 (citing *Victim Rts. L. Ctr. v. Cardona*, 552 F. Supp. 3d 104, 126 (D. Mass. 2021), *order clarified*, No. 20-11104-WGY, 2021 WL 3516475 (D. Mass. Aug. 10, 2021); *SurvJustice Inc. v. DeVos*, No. 18-cv-00535-JSC, 2018 WL 4770741, at *6 (N.D. Cal. Oct. 1, 2018), *order amended*, 2019 WL 1434144 (N.D. Cal. Mar. 29, 2019)). Those cases, however, predate *Alliance*, which made clear that "*Havens* was an unusual case," and that courts should be "careful not to extend the *Havens* holding beyond its context." 602 U.S. at 396.

For much the same reason, VRLC errs in its reliance on the Fifth Circuit's decision in *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017). *See* ECF No. 100 at 7, 12. Not only did the Fifth Circuit decide *OCA-Greater Houston* without the benefit of the Supreme Court's *Alliance* analysis, but that case is distinguishable on its facts, as it involved claimed voting rights violations that interfered with the organizational plaintiff's' efforts to support and encourage voting. Specifically, the challenged state law restricted the interpretation assistance available to English-limited voters, and thereby directly hindered the plaintiff's "getting out the vote" efforts by deterring a substantial portion of its membership from voting. 867 F.3d at 606, 610. The two district court voting-rights cases cited by VRLC are distinguishable for much the same reasons. *See La Union Del Pueblo Entero v. Abbott*, No. 5:21-CV-0844-XR, 2024 WL 4488082, at *36 (W.D. Tex. Oct. 11, 2024) (organizations that provide voting assistance challenged state laws that criminalized providing certain forms of voting assistance); *Voice of the Experienced v. Ardoin*, No. 23-cv-331-JWD-SDJ, 2024 WL 2142991, at *24 (M.D. La. May 13, 2024) (pre-*Alliance* case

in which court found organizational standing based on state voting restrictions' interference with organization's "core mission to assist voters with registering to vote after suspension").

Because VRLC has not shown that it is suffering any concrete and particularized, actual or imminent injury due to the Court's vacatur of the 2024 Rule, it lacks standing to pursue an independent appeal. *See Va. House of Delegates*, 587 U.S. at 663; *Franciscan All.*, 414 F. Supp. 3d at 938. Accordingly, the Court should deny VRLC's motion to intervene.

2. Doe's claim that the reinstatement of the 2020 Rule causes her a cognizable Article III injury fares no better. Doe's theory of standing is narrow and fact specific. ECF No. 100 at 13-14. She claims that she was sexually assaulted while a student at a Massachusetts-based university and that she filed a Title IX complaint based on the incident in October 2024. ECF No. 101, App.22, ¶¶ 1-4. Doe's alleged injury focuses on the manner in which the university will conduct a hearing as part of the Title IX investigation. Specifically, Doe alleges that consistent with provisions of the 2024 Rule, the university was initially deciding between two options for conducting a hearing: (1) "shuttle questioning" in which the decisionmaker would pose questions and follow-up questions in one-on-one meetings with Doe and the respondent, or (2) a live hearing where the decisionmaker would pose questions and Doe and the respondent could participate virtually, from separate locations. *Id.*, App. 24, ¶¶ 14-15; *see* 34 C.F.R. §§ 106.46(f), 106.46(g) (2024) (governing live hearings). Doe claims, however, that after the vacatur of the 2024 Rule, the university informed her that she "will have to submit to cross-examination in a live hearing," with the cross-examination conducted by the respondent's advisor. ECF No. 101, App. 24, ¶ 17.

In her declaration, dated March 27, 2025, Doe claims that she is "considering choosing not to participate in [her] upcoming Title IX hearing to avoid being cross-examined." ECF No. 101, App. 25, ¶ 20. Doe worries, however, that failing to appear may make her "less credible to the

Title IX decision-maker." *Id.* Doe therefore seeks to intervene and appeal the vacatur of the 2024 Rule so, as she frames it, she "do[es] not have to choose between being subjected to a distressing cross-examination or not being cross-examined and therefore reducing my chances of holding [the accused] accountable under the 2020 Rule." *Id.* ¶ 21. However, Doe states that the possible dates for the hearing are April 3, 4, and 11, 2025. *Id.*, App. 24, ¶ 16. Therefore, it appears that any claim Doe might have based on vacatur of the Rule and its potential effect on her hearing is moot or will soon be moot. *Honig v. Doe*, 484 U.S. 305, 318 (1988) (explaining that a case in which the plaintiff seeks injunctive relief is moot, and not justiciable, unless there is "a reasonable likelihood that [the plaintiff] will again suffer" from the action that gave rise to the suit).

Regardless, the only injury Doe identifies is the possibility of being subject to an adverse inference by the Title IX decisionmaker for failing to attend a live hearing, or attending and potentially facing cross-examination by the respondent's advisor.[1] Doe's theory of standing misunderstands the requirements of the 2020 Rule, and rests on supposition about inferences the decisionmaker might draw in adjudicating her case. The relevant provision of the 2020 Rule was codified at 34 C.F.R. § 106.45(b)(6)(i) (2020). It provides that "[f]or postsecondary institutions," a school's "grievance process must provide for a live hearing" and "must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility." *Id.*; *see also id.* (providing that "[a]t the request of either party," the school "must provide for the live hearing to occur with the parties located in separate

[1] To the extent that Doe suggests that under the 2020 Rule, she will no longer be able to "participate virtually from [a] separate physical location[]" from the accused, ECF No. 101, App.24, ¶ 15, that is incorrect. The 2020 Rule provides: "At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions." 34 C.F.R. § 106.45(b)(6)(i) (2020). In addition, the 2020 Rule specifically prevents a complainant from undergoing questioning by, or having to confront, the respondent. *Id.*

rooms"). Critically, while schools are required to provide a live hearing and the opportunity for cross-examination, the 2020 Rule makes clear that "[i]f a party . . . does not submit to cross-examination at the live hearing, . . . the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's . . . absence from the live hearing or refusal to answer cross-examination or other questions."[2] *Id.*

The harm Doe fears from application of the 2020 Rule's live hearing provision is entirely speculative. Her fear that cross-examination at a live hearing would be "distressing," ECF No. 101, App.25, ¶ 21, is based on speculation about how she might be questioned by an advisor to the respondent, *id.* ¶ 18. And while Doe believes she will "look less credible" if she fails to appear at the hearing based on that fear, *id.* ¶ 20, nothing in the Rule requires the decisionmaker to draw a negative inference regarding Doe's credibility if she declines to participate in a live hearing. *See* 34 C.F.R. § 106.45(b)(6)(i) (2020). To the contrary, she may avoid the hearing or refuse to answer cross-examination questions knowing that the decisionmaker cannot "draw an inference about the determination regarding responsibility based solely" on her decision. *Id.* Doe's theory of injury thus assumes that university personnel will act in a manner in tension—if not direct conflict—with the express provisions of the 2020 Rule itself. Such speculation is insufficient to establish an injury in fact that is fairly traceable to vacatur of the 2024 Rule. *See Alliance*, 602 U.S. at 383 ("The causation requirement precludes speculative links—that is, where it is not sufficiently predictable

[2] A separate aspect of § 106.45(b)(6)(i) originally provided that a party's failure to submit to cross-examination at the live hearing precluded a decision maker from "rely[ing] on any statement of that party or witness in reaching a determination regarding responsibility." But as VRLC is surely aware, that specific provision was vacated by a district court and is not in force, such that it cannot be the grounds for standing here anyway. *See Victim Rts. L. Ctr.*, 552 F. Supp. 3d at 132; Office for Civil Rights, U.S. Dep't of Educ., Ltr. to Students, Educators, and other Stakeholders *re Victim Rights Law Center et al. v. Cardona* (Aug. 24, 2021), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf. And Doe nowhere suggests that this aspect of the 2020 Rule somehow still applies or could injure her here.

how third parties would react to government action or cause downstream injury to plaintiffs."); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013) (declining "to abandon [the Court's] usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors"). Accordingly, Doe has not shown that she has Article III standing and consequently fails to establish that she may intervene to appeal here.[3]

CONCLUSION

For the foregoing reasons, the Court should deny the motion to intervene.

[3] To the extent Doe might be found to have established Article III standing to support an appeal, it extends no further than a challenge to the Court's vacatur of the specific provisions of the 2024 Rule governing the conduct of live hearings—namely, § 106.46(f) and § 106.46(g).

Dated: April 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, I electronically filed this document with the Court by using the CM/ECF system, and that this document was distributed via the Court's CM/ECF system.

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