No. 22-1814

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES,
Defendant-Appellant,

v.

JANE DOE,
Plaintiff-Appellee.

On Appeal from the United States District Court
for the District of Nebraska
Case No. 8:17-cv-00265
The Honorable Joseph F. Bataillon

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* CIVIL RIGHTS AND SURVIVOR ADVOCACY ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLEE JANE DOE

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Proposed *amici curiae* move for leave to file a brief in support of Plaintiff-Appellee Jane Doe. Plaintiff-Appellee, through counsel, has consented to *amici*'s request to file their proposed brief. Counsel for *amici* contacted counsel for Defendant-Appellant, seeking consent to file the proposed brief, but Defendant-Appellant declined to consent to the filing. A true and correct copy of the proposed brief accompanies this Motion.

Proposed *amici* are nineteen civil rights and survivor advocacy organizations, each of which is deeply committed to ensuring schools respond to sexual harassment, including sexual assault, promptly and effectively. *Amici* routinely engage in litigation and advocacy around Title IX, sexual violence, and related issues. Further information about *amici* and their interests in this case is available in the Appendix attached to the proposed brief.[1]

[1] Proposed *amici* are Public Justice, the American Civil Liberties Union, the ACLU of Nebraska, Atlanta Women for Equality, the Clearinghouse on Women's Issues, Equal Rights Advocates, Know Your IX, Legal Aid at Work, the Maryland Coalition Against Sexual Assault, the Minnesota Coalition Against Sexual Assault, the National Alliance to End Sexual Violence, the National Center for Victims of Crime, the National Women's Law Center, Rocky Mountain Victim Law Center, the Sikh Coalition, Survivors Rising, the Victim Rights Law Center, Violence Free Minnesota, and the Women's Fund of Omaha.

The disposition of this appeal may have significant effects on the student populations that *amici* serve and for whom they advocate. In particular, *amici* have a significant interest in opposing the Appellant's argument that a Title IX sexual harassment plaintiff must always demonstrate further harassment post-notice. Some *amici*—including Public Justice, whose attorneys have authored the proposed amicus brief—have briefed this same question before on behalf of parties, *amici*, or both. Given their interest and expertise in this issue area, *amici* respectfully submit that the attached brief setting forth their views will be useful to the Court in its consideration of these important issues.

Dated: August 10, 2022

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**Admitted in New York. Practice in the District of Columbia supervised by D.C. bar members pursuant to D.C. App. R. 49(c)(8).*

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 320 words. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14-point Century Schoolbook font.

Dated: August 10, 2022

/s/ Alexandra Z. Brodsky
Alexandra Z. Brodsky
Counsel for Amici Curiae

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 10, 2022

/s/ Alexandra Z. Brodsky
Alexandra Z. Brodsky
Counsel for Amici Curiae

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae state that no amicus has a parent corporation and that no publicly held company owns 10% or more of the stock of any amicus.

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INTERESTS OF *AMICI CURIAE*

Amici are civil rights and survivor advocacy organizations that work to promote sex equality and safety in education. Some litigate Title IX cases on behalf of survivors of sex-based violence; others advocate for policies that benefit student-victims. From their significant experience, *amici* recognize that judicial enforcement of Title IX that is consistent with the statute's full breadth and promise is crucial to ensuring student survivors of sexual assault receive the support they need to learn in the wake of violence. *Amici* have a particular interest in the "further harassment" question in this case, which has significant ramifications for the rights of student survivors of sexual violence. Further information about *amici* and their interests in this case is available in the Appendix.

Consistent with Federal Rule of Appellate Procedure 29(a)(4)(E), *amici*'s counsel authored this brief, no party's counsel authored the brief in whole or in part, and no party beyond *amici* contributed any money towards the brief.

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STATEMENT REGARDING ORAL ARGUMENT

Amici curiae respectfully seek leave to participate in oral argument because their participation may be helpful to the Court in addressing the important issues presented by this appeal, especially the "further harassment" question. *See* Fed. R. App. P. 29(a)(8).

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INTRODUCTION

Sexual violence makes it hard to learn. It is hard to focus in a math class you share with your rapist. It is hard to go to class when you fear seeing your harasser. It is hard to attend office hours with the professor who propositioned you. For this reason, many student survivors of sexual violence drop classes, transfer schools, or give up on college altogether. The threat of future violence is too much to bear.

None of this is inevitable. As advocates for student survivors of sexual harassment, *amici* have seen how schools can help students learn in the wake of violence by taking reasonable steps to ensure their safety on campus. And we have been heartened to observe how effective Title IX of the Education Amendments of 1972 has been at spurring schools to improve their responses to sexual harassment.

The Board of Trustees of the Nebraska State College System ("NSCS"), however, proposes to limit Title IX's protections. Below, a jury found that NSCS violated Title IX when it was deliberately indifferent to severe, pervasive, and objectively offensive sexual harassment that its former student, Jane Doe, suffered at the hands of a classmate. App. 610, R. Doc. 247 at 18; App. 1463, R. Doc. 252 at 1. Unhappy with its loss,

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NSCS urges this Court to adopt a rule under which a school cannot be liable for its own deliberate indifference to sexual harassment of a student if that student is not sexually harassed *again* as a result—even if the school's deliberate indifference forces the student to leave school, or otherwise limits her education. As the U.S. Department of Justice has said, that position is "absurd" and "cannot be squared with Title IX's text and goal." U.S. Statement of Interest at 12 n.5, *Thomas v. Bd. of Regents of the Univ. of Neb.*, No. 4:20-cv-03081 (D. Neb. June 11, 2021), https://www.justice.gov/crt/case-document/file/1405241/download [hereinafter "U.S. Statement of Interest (Nebraska)"]. NSCS also insists that Title IX requires so little of schools that, as long as they do more than literally nothing, they are off the hook. On this, too, NSCS is flatly wrong as a matter of law.

ARGUMENT

I. Title IX Does Not Require Post-Notice Harassment.

The district court was right that a plaintiff may state a claim under Title IX if her school's deliberate indifference to sexual harassment deprives her of educational opportunities, even if she does not experience post-notice harassment. The overwhelming majority of federal appellate

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courts agree. *See Doe v. Fairfax Cnty. Sch. Bd.*, 1 F.4th 257, 274 (4th Cir. 2021), *petition for cert. filed*, No. 21-968 (Dec. 30, 2021); *Farmer v. Kan. State Univ.*, 918 F.3d 1094, 1103, 1106 (10th Cir. 2019); *Fitzgerald v. Barnstable Sch. Comm.*, 504 F.3d 165, 171 (1st Cir. 2007), *rev'd and remanded on other grounds*, 555 U.S. 246 (2009); *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1296 (11th Cir. 2007); *see also Doe ex rel. Doe #2 v. Metro. Gov't of Nashville & Davidson Cnty.*, 35 F.4th 459, 467-68 (6th Cir. 2022) (adopting same rule for cases brought by high school students); *Wamer v. Univ. of Toledo*, 27 F.4th 461, 463 (6th Cir. 2022) (adopting majority view for teacher-on-student harassment). The alternative rule is at war with Title IX's text and purpose and Supreme Court precedent.

A. Title IX's Plain Language Precludes a Post-Notice Harassment Requirement.

1. Title IX forbids sex discrimination in education. 20 U.S.C. § 1681(a). As with any statute, courts' analysis begins with the text. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020). The Supreme Court has repeatedly instructed that Title IX must be "accord[ed] … a sweep as broad as its language." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982) (citation omitted); *see also Jackson v. Birmingham Bd. of*

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Educ., 544 U.S. 167, 175 (2005) ("[B]y using such a broad term [as 'discrimination'], Congress gave the statute a broad reach.").

The statute's plain text identifies three categories of violations that may give rise to a claim: "No person in the United States shall, on the basis of sex, [1] be excluded from participation in, [2] be denied the benefits of, or [3] be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). "The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender." *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

In *Davis*, the Supreme Court considered whether a school could be liable under Title IX where its failure to address peer sexual harassment causes such exclusion, denial of benefits, or other discrimination. *Id.* at 643, 650. The Court held that it can, but emphasized that "a recipient of federal funds may be liable in damages under Title IX *only for its own misconduct*." *Id.* at 640 (emphasis added). A plaintiff, then, states a claim against a school for the defendant's "*own* decision to remain idle in the face of known student-on-student harassment," rather than based on the

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harasser's underlying misconduct. *Id.* at 641.[1]

Accordingly, *Davis* explained, a school can be liable for its own deliberate indifference that "cause[s] students to undergo harassment or make[s] them liable or vulnerable to it." *Id.* at 645 (citation and alterations omitted). In using the disjunctive, "*Davis* … clearly indicates that Plaintiffs can state a viable Title IX claim by alleging alternatively *either* that [the defendant]'s deliberate indifference to their reports of rape caused Plaintiffs 'to undergo' [additional] harassment *or* 'made them liable or vulnerable' to it." *Farmer*, 918 F.3d at 1103 (cleaned up) (quoting *Davis*, 526 U.S. at 645). Vulnerability requires only a potential for harm, not actual harm. *See, e.g.*, *Vulnerable*, Webster's Third New International Dictionary 2566-67 (1993) (defining "vulnerable" to mean "*capable* of being wounded" or "*open* to attack or damage" (emphases added)). A school may be liable, then, when its deliberate indifference "make[s]" the plaintiff "vulnerable" to abuse, regardless of whether further harassment actually occurs. *See Farmer*, 918 F.3d at 1103-04.

2. This rule makes sense because continuing harassment is not

[1] Sexual assault is a form of sexual harassment for purposes of Title IX. *See Davis*, 526 U.S. at 649-50.

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necessary for a school's deliberate indifference to "exclude[]" victims, "den[y]" them the recipient's "benefits," or otherwise "subject[them] to discrimination." 20 U.S.C. § 1681(a); *see also Hall v. Millersville Univ.*, 22 F.4th 397, 409 n.4 (3d Cir. 2022) ("The question is … whether [the university's] deliberate indifference to her harassment resulted in her being excluded from participation in, denied the benefits of, or subjected to discrimination under [its] education program."). That is especially clear in cases like this one, where a student left unprotected by her school's deliberate indifference must sacrifice her own educational opportunities to avoid further harassment. *See, e.g.*, *Wamer*, 27 F.4th at 471 (noting terrible choice posed to student-survivors absent appropriate school response); *Hernandez v. Baylor Univ.,* 274 F. Supp. 3d 602, 613 (W.D. Tex. 2017) (same).

For example, in *Williams*, a student-victim reasonably decided not to return to the University of Georgia after she was gang raped because the school "failed to take any precautions that would prevent future attacks." 477 F.3d at 1297. Because she dropped out, she protected herself from further harassment, but the school's inaction nonetheless "excluded [her] from" and "denied [her] the benefits of" the University. 20

U.S.C. § 1681(a). In *Farmer*, the plaintiffs alleged that, because of their school's inaction after their rapes, they reasonably feared seeing their assailants on campus. *Farmer*, 918 F.3d at 1104-05. That fear "forced them to take very specific actions that deprived them of educational opportunities," such as missing classes, withdrawing from school activities, and staying home rather than enjoying campus facilities. *Id.* at 1099-1101, 1105. In *Fairfax*, a student removed herself from the band class she shared with her assailant because the school offered no other solution. *Fairfax*, 1 F.4th at 276. And in *Metropolitan Government of Nashville*—the case in which the Sixth Circuit rejected a "further harassment" requirement for high schools—a victim withdrew from school after administrators made clear they would not take any action to protect her from her classmates' vicious harassment. 35 F.4th at 461-62.[2]

Similarly, in this case, NSCS's deficient response left Ms. Doe so vulnerable to further harassment that she had to withdraw from campus

[2] A more detailed accounting of the facts of this case is available in the district court opinions arising out of the same case. *E.g.*, *T.C. ex rel. S.C. v. Metro. Gov't of Nashville & Davidson Cnty.*, 378 F. Supp. 3d 651, 659 (M.D. Tenn. 2019), *appeal granted, order vacated sub nom. In re Metro. Gov't of Nashville & Davidson Cnty.*, No. 19-0508, 2020 WL 13283436 (6th Cir. Jan. 24, 2020).

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life and sacrifice her education. Response Br. at 50 (explaining how NCSC "ma[d]e [Ms. Doe] 'vulnerable to abuse'"). The campus Ms. Doe shared with her assailant, Anthony Ige, was so "small" that it would be "hard to avoid" him. App. 2987, R. Doc. 285 at 218:20-24.[3] So she stopped spending time at "the school's gym, library, student center, [and] any other public place on campus" where she would risk "running into" Mr. Ige. App. 684; *see also* App. 2943-44, R. Doc. 285 at 174:22-175:9; App. 2947-48, R. Doc. 285 at 178:15-179-7. She dropped out of a school club, for which she had served as vice president, because it met on campus. App. 2957, R. Doc. 285 at 188:3-6. She missed classes. App. 2943, R. Doc. 285 at 174:18-19. Ms. Doe also had no choice but to leave her plum campus job for a worse, isolated assignment where she had a better chance of avoiding Mr. Ige. Response Br. at 28; App. 2938-41, R. Doc. 285 at 169:9-172:12. As she testified at trial, "I just had to take my own safety in my own hands[] … because [NCSC] showed that it didn't mean anything to them." App. 2940, R. Doc. 285 at 171:21-23.

[3] The whole campus is about 281 acres, App. 2394, R. Doc. 283 at 801:19-22, or 0.44 square miles. In 2017, the freshman class consisted of 423 students. *Enrollment counts up from 2016*, The Eagle (Aug. 24, 2017), http://csceagle.com/2017/08/24/enrollment-counts-up-from-2016/.

Then, when Ms. Doe explained she felt unsafe at school, NSCS transferred her out of three in-person courses into clearly inferior remote analogs. App. 726; App. 1198; App. 2456-61, R. Doc. 283 at 160:5-165:6. And it did so *without her consent*. App. 59, R. Doc. 135 at 5; App. 717; App. 991. The jury was therefore reasonable to find that NSCS's deliberate indifference "excluded [Ms. Doe] from participation in" school, "denied [her its] benefits," or "subjected [her] to discrimination." 20 U.S.C. § 1681(a). NSCS was liable for "its own misconduct," *Davis*, 526 U.S. at 640, not, as it wrongly contends, Mr. Ige's assaults.

Even the Sixth Circuit—the one appellate court to adopt NSCS's view, and then only for a narrow subset of Title IX cases, *see Kollaritsch v. Michigan State University Board of Trustees*, 944 F.3d 613, 623-24 (6th Cir. 2019)—has acknowledged that, in some circumstances, a school may be liable where a student must sacrifice her educational opportunities to avoid her harasser. *See Metro. Gov't*, 35 F.4th at 467-68 (holding *Kollaritsch* does not apply to cases against K-12 schools); *Wamer*, 27 F.4th at 470 (holding *Kollaritsch* does not apply to cases concerning staff-on-student harassment). When that court recently declined to apply *Kollaritsch* to employee-on-student harassment cases, it explained that,

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even absent further harassment, a school's deliberate indifference may imperil a victim's education "because the student is put in the position of choosing to [forgo] an educational opportunity in order to avoid contact with the harasser, or to continue attempting to receive the educational experience tainted with the fear of further harassment or abuse." *Wamer*, 27 F.4th at 471. As this case and others demonstrate, the same may be true when a student is harassed by a classmate.[4]

B. NSCS's Counterarguments Are Unavailing.

1. According to NSCS, even though "a recipient's deliberate indifference to sexual harassment of a student … constitutes 'discrimination' 'on the basis of sex,'" *Jackson*, 544 U.S. at 174 (quoting *Davis*, 526 U.S. at 643), and even though NSCS's deliberate indifference injured Ms. Doe in ways expressly forbidden by Title IX's text, she cannot

[4] *Wamer*'s text-based grounds for embracing *Farmer* and *Williams* are equally applicable to peer harassment cases. *Kollaritsch*'s reasoning does not turn on the identity of the harasser. *See* 944 F.3d at 624-25. And *Davis* imported its liability standard directly from *Gebser*, which concerned teacher-on-student harassment and rejected *respondeat superior* liability. *Davis*, 526 U.S. at 642-43. Even if *Wamer* is right that "it can more easily be presumed" that harassment by a teacher will disrupt a student's education, 27 F.4th at 471, that would not mean peer harassment could never, under any circumstances, have a comparable effect.

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make out a claim because she was not sexually assaulted post-notice. NSCS, it appears, would rewrite Title IX as a sexual assault tort under which the only cognizable violation is further sexual harassment. But "only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock*, 140 S. Ct. at 1738.

NSCS complains that a further harassment requirement is necessary because "it is unfair to hold a school culpable where it has had no notice, or opportunity to respond to, sex harassment." Opening Br. at 49. But NSCS *did* know about Ms. Doe's assaults, and it *did* have the chance to respond. Its liability here does not derive from the rapes Ms. Doe suffered before the school received actual notice, but from how it responded after the rapes were reported; as the Supreme Court has emphasized in its Title IX harassment cases, NSCS is liable "only for its *own* misconduct," *Davis*, 526 U.S. at 640 (emphasis added); *see also Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290-91 (1998) (holding liability is premised on "an official decision by the recipient not to remedy the violation" rather than "its [harassing] employees' independent actions"). Indeed, NSCS's proposed rule would turn *Davis* on its head by premising a school's liability on the later misconduct of a

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separate actor: the harasser. *See Farmer*, 918 F.3d at 1104.[5]

2. In its brief, NSCS conflates the question here with a separate, analytically distinct one that has no bearing on this case: whether a single instance of sexual assault may be actionable. *See* Opening Br. at 48.

Davis requires that a Title IX plaintiff demonstrate that the harassment she experienced was severe, pervasive, and objectively offensive. *Davis*, 526 U.S. at 633. If the harassment is less serious, a school will not be liable in money damages, even if it is deliberately indifferent, and regardless of whether its deliberate indifference causes further harassment. *See id*; *see also Doe v. Dardanelle Sch. Dist.,* 928 F.3d 722, 727 (8th Cir. 2019) (affirming grant of summary judgment for school district on Title IX claim, without reaching deliberate indifference, because the harassment was not severe and pervasive); *R.S. v. Bd. of Educ. of Hastings-On-Hudson Union Free Sch. Dist.,* 371 F. App'x 231,

[5] In sexual harassment cases pressing a different kind of Title IX liability, often referred to as "pre-assault" or "before" claims, a plaintiff must demonstrate her school had actual notice of a substantial risk before she was assaulted. But here Ms. Doe presses a "post-assault" claim. *See* U.S. Statement of Interest (Nebraska) at 4, 7-8 (explaining the differences between pre- and post-assault claims).

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233-34 (2d Cir. 2010) (same). Whether a single rape meets this threshold, then, goes to an entirely different element than does the question on appeal here: whether a Title IX plaintiff must establish that her school's post-assault deliberate indifference to her reports of sexual harassment caused her to suffer further sexual harassment, Opening Br. at 47; Appellant's Statement of Issues on Appeal at 1. If such post-notice harassment were required, that rule would apply no matter how many times a plaintiff had been raped before she reported.[6]

If this Court someday has the opportunity to address whether a single incident of sexual assault may be severe and pervasive, it should

[6] To be fair to NSCS, the "further harassment" question has often arisen in cases in which the plaintiff experienced a single pre-notice sexual assault, so courts have sometimes addressed the two issues together. *See, e.g.*, *Fairfax*, 1 F.4th at 261-62, 274 (addressing the "further harassment" issue in case stemming from single sexual assault); *Fitzgerald*, 504 F.3d at 172 (same). In doing so, some courts have dubbed NSCS's proposed "further harassment" requirement a "one free rape" rule, an accurate description of its ramification for cases predicated on a single sexual assault. *See, e.g.*, *Spencer v. Univ. of N.M. Bd. of Regents*, No. 15-CV-141, 2016 WL 10592223, at *6 (D.N.M. Jan. 11, 2016) (explaining that, "[i]n the context of Title IX, there is no 'one free rape'" (cleaned up)); *see also Doe v. Fairfax Cnty. Sch. Bd.*, 10 F.4th 406, 412 (4th Cir. 2021) (Wynn, J., concurring in denial of rehearing en banc) (explaining "schools do not get 'one free rape'" (quoting U.S. Statement of Interest (Nebraska) at 12 n.5)). What NSCS asks for here is even worse: a *two* free rapes rule.

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answer affirmatively. *See* U.S. Statement of Interest (Nebraska) at 12-15 (explaining why a single sexual assault may be actionable). But, even if NSCS had properly raised the issue, this case would not pose that question because Mr. Ige raped Ms. Doe twice. *E.g.*, Opening Br. at 6-8, 47. *None* of NSCS's cases say a student must be raped *three times* before her school has an obligation to address her reports.[7]

3. NSCS also confuses liability and damages. It asserts that post-notice harassment is necessary in light of *Cummings v. Premier Rehab Keller, P.L.L.C.*, in which the Supreme Court held emotional distress damages are not available under two Spending Clause statutes not at issue here. 142 S. Ct. 1562, 1576 (2022). This Court has not yet held whether *Cummings* applies to Title IX, which is based not only on Congress's Spending Clause authority but also section 5 of the Fourteenth Amendment. *Crawford v. Davis,* 109 F.3d 1281, 1283 (8th Cir. 1997). But the Court need not resolve that question here because, even if *Cummings* foreclosed emotional distress damages in Title IX cases, that would not affect *Davis*'s liability standard. *Cummings* does

[7] In addition to the rapes, Mr. Ige also taunted Ms. Doe about the violence and directed his friends to contact her. App. 2904-05, R. Doc. 285 at 1311:07-1312:03.

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not mean defendants' illegal acts become legal if they cause significant emotional distress; it simply limits what injuries are compensable in money damages.

Besides, Title IX plaintiffs who do not experience post-notice harassment will be entitled to declaratory judgment and nominal damages if they can prove their case. *See, e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 603-04 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (acknowledging availability of declaratory relief and nominal damages in Title IX suit), *cert. denied*, 141 S. Ct. 2878 (2021); *Ollier v. Sweetwater Union High Sch. Dist.,* 768 F.3d 843, 851 (9th Cir. 2014) (affirming district court award of injunctive and declaratory relief in Title IX case); *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck,* 370 F.3d 275, 283, 302 (2d Cir. 2004) (same); *Mercer v. Duke Univ.,* 401 F.3d 199, 200 (4th Cir. 2005) (affirming successful Title IX plaintiff was entitled to nominal damages). Many will also be able to demonstrate compensatory damages in the form of medical bills, lost tuition, lost educational opportunities, and lost wages. *See, e.g., Kauhako v. Haw. Bd. of Educ. Dep't of Educ.,* 744 F. App'x 344, 346-47 (9th Cir. 2018) (upholding jury award of damages for future medical expenses in Title IX

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case); *Varlesi v. Wayne State Univ.*, 643 F. App'x 507, 513, 520 (6th Cir. 2016) (affirming jury verdict that included past and future economic damages in Title IX case). And, here, NSCS has not challenged the amount of the jury's damages award. *E.g.*, Appellant's Statement of Issues on Appeal at 1; *see also generally* Opening Br.

C. Nearly All Appellate Courts Agree with the District Court.

1. The clear majority of appellate courts have endorsed the district court's view. The First, Fourth, Tenth and Eleventh Circuits have all categorically held that a plaintiff may state a claim under Title IX if her school's deliberate indifference to her reported sexual harassment excludes her from, or denies her the benefits of, educational opportunities—regardless of whether she experiences post-notice harassment. *See Fairfax*, 1 F.4th at 274 (4th Cir. 2021); *Farmer*, 918 F.3d at 1106 (10th Cir. 2019); *Fitzgerald*, 504 F.3d at 171 (1st Cir. 2007); *Williams*, 477 F.3d at 1296 (11th Cir. 2007). And, as explained above, the Sixth Circuit—the only federal appellate court to have ever taken NSCS's position—has since limited that rule to only cases concerning student-on-student harassment in colleges and universities. *See Metro. Gov't*, 35 F.4th at 468 ("*Kollaritsch* … does not apply to students in high schools");

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Wamer, 27 F.4th at 463 (declining to extend *Kollaritsch* to teacher-on-student harassment cases). The court's repeated efforts to cabin *Kollaritsch* suggest that opinion may be overruled in a future en banc proceeding.

2. Seeking support for its cause, NSCS says this Court has already taken a position on the split. *E.g.*, Opening Br. at 50. Not so. The Eighth Circuit has never addressed the question posed here of whether post-notice harassment is always necessary, and has never considered other courts' answers.

As the Department of Justice explained in a recent Statement of Interest urging the majority view, the cases NSCS cites do not confront the question posed here because, in both, the plaintiffs' claims failed regardless of whether further harassment was required. U.S. Statement of Interest (Nebraska) at 9-12. One victim was not vulnerable to further harassment because she did not attend the defendant-college at which she was sexually assaulted. *K.T.* v. *Culver-Stockton Coll.*, 865 F.3d 1054, 1056 (8th Cir. 2017); *see also Farmer*, 918 F.3d at 1108 (distinguishing *K.T.*). Another asserted only that her school caused her post-notice "emotional trauma," not vulnerability to further harassment or an

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exclusion from educational opportunities. *Shank v. Carleton Coll.*, 993 F.3d 567, 576 (8th Cir. 2021); *see also Doe v. Bd. of Trs. of Neb. State Colls.*, No. 8:17CV265, 2021 WL 2383176, at *4 (D. Neb. June 10, 2021) (explaining "*Shank* does not address" the further harassment question). Neither plaintiff, then, could make out a claim regardless of the answer to the question before this Court now.

NSCS puts much weight on *Shank*'s observation that a plaintiff must "demonstrate a 'causal nexus' between the college's conduct and the student's experience of sexual harassment or assault." 933 F.3d at 573. But, in context, *Shank* is clear that a "causal nexus" arises if "the institution's deliberate indifference … 'cause[s] students to undergo harassment' *or* [if it] 'make[s] them liable or vulnerable to it." *Id.* (quoting *Davis*, 526 U.S. at 645) (emphasis added) (internal brackets removed); *see also id.* at 576 (noting Shank's claim must fail because her evidence did not "suggest that [the school's] actions … *exposed* Shank to additional sexual harassment") (emphasis added). Once again, deliberate indifference that causes *vulnerability* to harassment may give rise to liability. After all, if a school's clearly unreasonable response to reported harassment forces a student to hide in her dorm to avoid further

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victimization, surely there is a "causal nexus" between "the college's conduct" and "the student's experience of sexual harassment." *Id.* at 573. Indeed, NSCS's own briefing acknowledges that the "causal nexus" requirement and "further harassment" question are distinct; it separates them into two distinct questions. Opening Br. at 43-51.[8]

3. NSCS also baldly misrepresents the views of other circuits. It claims the First and Eleventh Circuits have endorsed its favored rule, but both have explicitly and unambiguously adopted the alternative, majority view. *Fitzgerald*, 504 F.3d at 171; *Williams*, 477 F.3d at 1296. Neither of the cases NSCS cites from these circuits confronted the "further harassment" question, because both plaintiffs experienced post-notice sexual harassment. *See Doe v. Pawtucket Sch. Dep't*, 969 F.3d 1, 5-6 (1st Cir. 2020); *Hill v. Cundiff*, 797 F.3d 948, 961-63 (11th Cir. 2015).

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[8] NSCS notes that the Fourth Circuit mistakenly suggested that the Eighth Circuit had adopted a "one free rape rule." Opening Br. at 48 n.13. But the panel in that case addressed the "further harassment" question without the parties raising it. *See* Br. in Opp., *Fairfax Cnty. Sch. Bd. v. Doe*, No. 21-968, at 6-7, 9, 11 (Apr. 8, 2022), https://www.supremecourt.gov/DocketPDF/21/21-968/220590/20220408121412533_Doe%20v.%20FCSB%20Brief%20in%20Opposition.pdf (explaining that court *sua sponte* considered "further harassment" issue without briefing). The court, then, did not benefit from briefing on the circuit split; indeed, it missed *Farmer* and *Kollaritsch*. *Id.* at 16 n.4.

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The same goes for the Third Circuit opinion NSCS claims for its side. In *Hall*, the Third Circuit did not confront the question at issue here, since the victim in that case experienced post-notice gender violence. *Hall*, 22 F.4th at 405-06. And to the extent one might try to read the tea leaves to discern how the Third Circuit might rule in the future, *Hall* suggests it would adopt the majority view. *Id.* at 409 n.4 ("The question is … whether [the university's] deliberate indifference to her harassment resulted in her being excluded from participation in, denied the benefits of, or subjected to discrimination under [its] education program."). And the unpublished Fifth Circuit case NSCS cites says nothing at all about the issue here. *I. L. v. Houston Indep. Sch. Dist.*, 776 F. App'x 839, 843 (5th Cir. 2019).[9]

Finally, NSCS is also wrong that the Ninth Circuit has adopted a view on the question here. In 2020, the Ninth Circuit declined to "express [an] opinion on the circuit split." *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1106 n.2 (9th Cir. 2020). The earlier Ninth Circuit opinion

[9] To the extent *Hill*, *I. L.*, or any of NSCS's other cases cast doubt on whether a single incident of sexual harassment can be actionable in a case for money damages, that issue is distinct from the one at hand and irrelevant to this case, for the reasons explained above. *See supra* Part I.B.2.

NSCS cites concerned harassment about which a high school learned after the end of the plaintiffs' senior year. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000). Because the students were done with school by the time of their report, they neither experienced further harassment nor were they vulnerable to it. *Id.* at 740. As a result, the court did not need to resolve the question at issue here. *See Farmer*, 918 F.3d at 1008 (distinguishing *Reese*).

D. NSCS's Position Would Devastate Students' Civil Rights.

NSCS's proposed rule is irreconcilable with Congress's goals in passing Title IX: "to avoid the use of federal resources to support discrimination practices [and] … to provide individual[s] … effective protection against those practices." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979). Far from protecting students from discrimination, NSCS's interpretation would allow—and even encourage—schools to force victims of sexual harassment to sacrifice their educations and even drop out. After all, a student forced to leave campus because her school refuses to protect her will not experience further harassment.

As Judge Trauger of the Middle District of Tennessee evocatively explained (before the Sixth Circuit clarified *Kollaritsch* applies only to

colleges and universities), NSCS's rule would mean "a parent whose child was … raped by another student and who recognizes that a school is not responding appropriately to her child's predicament has no cause of action, under Title IX, until the school's improper response leads to at least one additional instance of actionable harassment." *T.C. ex rel. S.C. v. Metro. Gov. of Nashville & Davidson Cnty.*, No. 3:17-CV-01098, 2020 WL 5797978, at *17 (M.D. Tenn. Sept. 25, 2020), *rev'd in part, vacated in part sub nom. Doe ex rel. Doe #2 v. Metro. Gov't of Nashville & Davidson Cnty.*, 35 F.4th 459 (6th Cir. 2022). No matter "if the parent is reasonable or even obviously correct that the school is failing to take the danger posed to her child seriously." *Id.* That is, "if … the school district and state do nothing to prevent [a child's] rapist from attacking her again, the parent's options are (1) withdrawing the child from school or (2) waiting for her to be sexually harassed again." *Id.*

A student-victim expelled or forcibly transferred to an inferior educational program would find her *Davis* claim barred, precisely because her school disrupted her education. *See, e.g.*, Tyler Kingkade, *Schools Keep Punishing Girls — Especially Students of Color — Who Report Sexual Assaults, and the Trump Administration's Title IX*

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Reforms Won't Stop It, The 74 (Aug. 6, 2019), https://www.the74million.org/article/schools-keep-punishing-girls-especially-students-of-color-who-report-sexual-assaults-and-the-trump-administrations-title-ix-reforms-wont-stop-it; Christina Cauterucci, *BYU's Honor Code Sometimes Punishes Survivors Who Report Their Rapes*, Slate (Apr. 15, 2016), https://slate.com/human-interest/2016/04/byu-s-honor-code-sometimes-punishes-survivors-who-report-their-rapes.html. NSCS's proposed rule would thus foreclose liability in the worst of the worst cases, where the school's response is so unreasonable that a student is literally or functionally forced out of school.

NSCS's rule would also "penalize" students who take self-protective measures. *Takla v. Regents of the Univ. of Cal.*, No. 2:15-cv-04418, 2015 WL 6755190, at *5 (C.D. Cal. Nov. 2, 2015). If NSCS were correct, a "sexual harassment victim who takes [successful] steps to avoid … encounter[ing] the harasser" would be unable to state a claim. *Id.* "[T]his interpretation of Title IX would require students to actually subject themselves to additional harassment and discrimination to assert their statutory rights." Lauren E. Groth et al., *Giving Davis Its Due: Why the Tenth Circuit Has the Winning Approach in Title IX's Deliberate*

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Indifference Controversy, 98 Denv. L. Rev. 307, 334 (2021). That is hardly the conduct a sex discrimination law should encourage. *Id.*; *cf. Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993) (permitting Title VII claim by harassment victim who quit work "before the harassing conduct [led] to a nervous breakdown").

Such a rule would affect thousands of students' right to education because sexual harassment is pervasive in schools for all age levels. In grades seven through twelve, 56% of girls and 40% of boys are sexually harassed in any given school year. Catherine Hill & Holly Kearl, AAUW, *Crossing the Line: Sexual Harassment at School* 11 (2011). Over thirty percent of female undergraduates are sexually assaulted while enrolled. David Cantor et al., Association of American Universities, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct* A7-56 (2020).

Because it makes sense as a matter of law and policy, the federal government has consistently endorsed the majority view of *Davis*. The Department of Justice has repeatedly urged courts to adopt the majority view, rejecting the alternative as atextual and "absurd." U.S. Statement of Interest (Nebraska) at 8-12, 12 n.5; U.S. Statement of Interest at 23-

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24, *T.F. v. Kan. State Univ.*, No. 2:16-cv-02256 (D. Kan. July 1, 2016), https://www.justice.gov/crt/case-document/file/906097/download [hereinafter "U.S. Statement of Interest (Kansas)"]. And the Department of Education's Title IX regulations concerning sexual harassment, which adopt *Gebser* and *Davis*'s "deliberate indifference" standard, do not require further harassment to establish non-compliance. *See* 34 C.F.R. § 106.44.

Plus, contrary to NSCS's handwringing, its preferred rule is not necessary to cabin schools' liability appropriately. The Supreme Court has already done so by adopting a "high bar" for damages. *Fairfax*, 1 F.4th at 268; *see also, e.g.*, Groth, *supra*, at 332 (explaining that, because of the Court's "high standards," a further harassment rule is not required "to ensure that educational institutions escape overly burdensome liability standards"); *cf. Dardanelle*, 928 F.3d at 725 (noting "[d]eliberate indifference is a stringent standard of fault"); *Shank v. Carleton Coll.*, 232 F. Supp. 3d 1100, 1109 (D. Minn. 2017) (noting *Davis*'s "deliberate-indifference standard sets a very high bar for plaintiffs"). A school may be liable only if it has actual knowledge and if its response is deliberately indifferent, among other conditions. *Davis*, 526 U.S. at 643-52.

Accordingly, even though courts have adjudicated *Davis* claims absent a "further harassment" requirement for decades now, plaintiffs find it exceedingly difficult to succeed. *See, e.g.*, Emily Suski, *Subverting Title IX*, 105 Minn. L. Rev. 2259, 2266-78 (2021).

II. Even if Title IX Required Post-Notice Harassment, NSCS Would Not Be Entitled to Judgment as a Matter of Law.

NSCS would not be entitled to judgment as a matter of law even if the Court adopted a post-notice harassment requirement. That's because, after NSCS learned about her sexual assault, Ms. Doe continued to experience a post-notice hostile environment that satisfies such a rule.

Courts routinely hold that a harasser's continued presence in the victim's workplace may create an objectively hostile environment. *E.g.*, *Lapka v. Chertoff*, 517 F.3d 974, 984 (7th Cir. 2008); *Ferris v. Delta Air Lines, Inc.*, 277 F.3d 128, 137 (2d Cir. 2001); *Ellison v. Brady*, 924 F.2d 872, 883 (9th Cir. 1991). "So too, if not more so, in a school." *McGinnis v. Muncie Comm. Sch. Corp.*, No. 1:11-cv-1125, 2013 WL 2456067, at *12 (S.D. Ind. June 5, 2013).

For that reason, some courts have recognized that, where a student is forced to see or spend time at school with the person who sexually assaulted her, the presence of the harasser not only makes the survivor

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vulnerable to further abuse but may itself constitute hostile environment harassment. *E.g.*, *Kinsman v. Fla. State Univ. Bd. of Trs.*, No. 4:15CV235, 2015 WL 11110848, at *4 (N.D. Fla. Aug. 12, 2015); *Doe ex rel. Doe v. Coventry Bd. of Educ.*, 630 F. Supp. 2d 226, 233 (D. Conn. 2009); *see also Stinson ex rel. K.R. v. Maye*, 824 F. App'x 849, 858 (11th Cir. 2020) ("Indeed, what gang-rape victim would not have a problem with continuing to sit in class with the three boys who gang raped her with impunity?"); U.S. Statement of Interest (Kansas) at 11-14 (explaining how presence of the harasser may cause a hostile environment, and collecting cases).

Here, because of NSCS's clearly unreasonable response to the rapes, Ms. Doe had to fear seeing her rapist whenever she came to campus. *See supra* pp. 9-10. Once, when she ran into Mr. Ige on the way to work, she had a panic attack and had to miss her shift. App. 2938-39, R. Doc. 285 at 169:11-170:8. Another time Ms. Doe had a panic attack when she encountered Mr. Ige on the way to an exam; she was unable to take the test. App. 219, R. Doc. 167-3 at 22. A jury could certainly find, then, that Ms. Doe experienced a post-notice hostile environment on campus.

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III. "Doing Something" Is Not Enough to Avoid Deliberate Indifference.

Separate and apart from the "further harassment" question, NSCS suggests that it cannot be liable because it took some minimal steps in response to the sexual assaults Ms. Doe suffered. It insists "[t]he College's administrators … did not 'turn a blind eye and do nothing.'" *See, e.g.*, Opening Br. at 32 (citation omitted). But appellate courts have repeatedly recognized that a school may not avoid a finding of deliberate indifference simply because "it did not just do 'nothing.'" *Hall*, 22 F.4th at 411; *see also, e.g.*, *S.B. v. Bd. of Educ. of Harford Cnty.*, 819 F.3d 69, 77 (4th Cir. 2016) (acknowledging that a "half-hearted investigation or remedial action will [not] suffice to shield a school from liability"); *Fairfax*, 1 F.4th at 271-73 & 273 n.11 (holding a jury could find a school was deliberately indifferent even though it investigated allegations and provided the victim some accommodations). That is, a school district may be liable even if it "took *some* action in response to [the] sexual harassment allegations." *Doe v. Sch. Bd. of Broward Cnty., Fla.*, 604 F.3d 1248, 1259-60 (11th Cir. 2010).

In particular, a school may be deliberately indifferent when it fails to change course after its initial response proves ineffective. *See, e.g.*, *Doe*

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v. Sch. Dist. No. 1, Denver, Colo., 970 F.3d 1300, 1314 (10th Cir. 2020) (holding plaintiff pleaded deliberate indifference where "authorities knew that what they had been doing (if anything) had not sufficed" because "[f]ailure of authorities to try something new can show deliberate indifference"); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 671 (2d Cir. 2012) (holding school could be deliberately indifferent where "a jury reasonably could have found that the District ignored the many signals that greater, more directed action was needed"); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 262 (6th Cir. 2000) (upholding jury verdict against school where it had "continued to use the same ineffective methods" to stop the abuse of the plaintiff).

In this case, NSCS failed to take actions reasonably calculated to protect Ms. Doe from Mr. Ige and ensure she could continue to learn in the wake of the rapes. Instead, the school placed the burden on Ms. Doe to avoid Mr. Ige, who remained on campus without supervision and with next to no restrictions after admitting to raping Ms. Doe. App. 683; App. 1897, R. Doc. 281 at 77:2-25; App. 2685-86, R. Doc. 284 at 166:3-167:9. When that approach proved ineffective, NSCS refused to rethink its response so Ms. Doe could safely attend class and participate in campus

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life without fear of running into Mr. Ige. App. 2667-68, R. Doc. 284 at 148:6-149:3. And, as the district court noted, "administrators could be viewed as willfully blind" to Mr. Ige's continued contacts with Ms. Doe in violation of the "no contact" order imposed by NSCS. App. 64, R. Doc. 135 at 10. The jury was certainly reasonable in concluding, then, that NSCS responded in a clearly unreasonable fashion to the repeated and substantiated rapes Ms. Doe suffered.

CONCLUSION

For the reasons explained above and in Doe's brief, the Court should affirm the judgment below.

August 10, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and 29(a)(5) because it contains 6,481 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14-point Century Schoolbook font. This brief complies with Eighth Circuit Rule 28A(h)(2) because it has been scanned for viruses and is virus-free.

Dated: August 10, 2022

/s/ Alexandra Z. Brodsky
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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 10, 2022

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APPENDIX

LIST OF AMICI CURIAE

Public Justice is a national public interest advocacy organization that fights against abusive corporate power and predatory practices, the assault on civil rights and liberties, and the destruction of the earth's sustainability. In its Students' Civil Rights Project, Public Justice focuses on ensuring that educational institutions comply with the Constitution and anti-discrimination laws, including Title IX. Public Justice often represents students denied equal educational opportunities because of sex-based harassment suffered at school. Public Justice has particular expertise on the "further harassment" question at issue in this case. It has briefed the issue multiple times before on behalf of parties or *amici*. Currently, Public Justice is counsel in *Fairfax County School Board v. Doe*, Supreme Court No. 21-968, a case pending before the Supreme Court on a petition for certiorari and arising out of a Fourth Circuit decision rejecting a post-notice harassment requirement.

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly 2 million members and supporters dedicated to the principles of liberty and equality embodied in

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the Constitution and our nation's civil rights laws. Through its Women's Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, the ACLU has taken a leading role in recent years advocating for the rights of survivors of gender-based violence and harassment. The **ACLU of Nebraska** is the state affiliate of the national ACLU. The ACLU has sought to strengthen governments' and schools' responses to gender-based violence and the remedies available to survivors through litigation and policy advocacy.

Atlanta Women for Equality (AWE) is a nonprofit legal aid organization dedicated to helping women students assert their legal rights to equal educational opportunities and to shaping our education system according to true standards of gender equity. AWE accomplishes this mission by providing free legal representation for women facing gender discrimination in the educational environment—in particular campus sexual violence—and by protecting and expanding their legal protections and educational opportunities through public policy advocacy.

The mission of the **Clearinghouse on Women's Issues** (CWI) is to provide information on issues relating to women, including

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discrimination on the basis of gender, age, ethnicity, marital status or sexual orientation, with particular emphasis on public policies that affect the economic, educational, health and legal status of women; cooperate and exchange information with organizations working to improve the status of women; and take action and positions compatible with its mission. For this reason, CWI supports Title IX sexual harassment protections for students in education programs and activities.

Equal Rights Advocates (ERA) is a national civil rights advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for people of all marginalized gender identities. Since its founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to defend and enforce gender equity civil rights in state and federal courts, including before the United States

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Supreme Court. ERA strongly asserts that requiring student survivors to experience additional harassment after reporting to their schools and before filing a Title IX claim undermines the intent and purpose of Title IX and the responsibilities of educational institutions under civil rights law.

Founded in 2013, **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 can pursue their civil right to an education free from violence and harassment. Know Your IX recognizes that gender violence is both a cause of inequity and a consequence of it, and believes that women, transgender, and gender non-conforming students will not have equality in education or opportunity until the violence ends. Know Your IX draws upon the civil rights law Title IX as an alternative to the criminal legal system—one that is more just and responsive to the educational, emotional, financial, and stigmatic harms of violence.

Founded in 1916, **Legal Aid at Work** (formerly the Legal Aid Society – Employment Law Center) (LAAW) is a public interest legal organization that advances justice and economic opportunity for low-

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income people and their families at work, in school, and in the community. For many years, LAAW has represented female student athletes seeking equal access to sports under Title IX. LAAW spurs schools and park and recreation departments to treat girls equally on and off the field, through litigation, technical assistance, training, and legislative advocacy. Focusing particularly on girls of color and girls who live in low-income communities, this work promotes the health, educational achievement, and future employment opportunities of girls. As a result of this work, LAAW is deeply invested in the enforcement of Title IX.

The **Maryland Coalition Against Sexual Assault** (MCASA) is the statewide collective voice advocating for accessible, compassionate care for survivors of sexual assault and abuse, and accountability for all offenders. Established in 1982 as a private, not-for-profit 501(c)(3) organization, MCASA works closely with local, state, and national organizations to address issues of sexual violence in Maryland. It is a membership organization that includes the state's seventeen rape crisis centers, a college consortium, health care personnel, attorneys, law enforcement, other allied professionals, concerned individuals, survivors

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of sexual violence and their loved ones. MCASA includes the Sexual Assault Legal Institute (SALI), which provides legal services for sexual assault and abuse survivors. MCASA and SALI provide support to survivors on college campuses through on campus office hours, training, and direct representation.

Minnesota Coalition Against Sexual Assault (MNCASA) is a coalition of Minnesota's rape crisis centers and dual domestic/sexual violence victim advocacy programs statewide. Its member programs and allies also include health care agencies, community groups, victims/survivors, attorneys, and law enforcement agencies whose employees and volunteers support victims of sexual assault. MNCASA represents the interests of these stakeholders in matters of public policy, media outreach, prevention awareness, systems change, and community organizing around issues of sexual violence.

The **National Alliance to End Sexual Violence** (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1500 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

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survivors. NAESV works to ensure all survivors of sexual violence have access to justice, support, and healing services.

The **National Center for Victims of Crime** ("National Center"), a non-profit organization headquartered in Washington, DC, is one of the nation's leading resource and advocacy organizations for all victims of crime. The National Center's mission is to forge a national commitment to help victims of crime rebuild their lives. The National Center is dedicated to serving individuals, families and communities harmed by crime. Among other things, the National Center advocates laws and policies that create resources and secure rights and protections for crime victims. The National Center has a particular interest in this brief due to its work and dedication to the interests of victims of sexual assault.

The **National Women's Law Center** is a nonprofit legal organization dedicated to the advancement and protection of the legal rights of women and girls, and the right of all persons to be free from sex discrimination. Since its founding in 1972, the Center has focused on issues of key importance to women and their families, including education, reproductive rights and health, economic security, and workplace justice, with particular attention to the needs of low-income

women and girls and those who face multiple and intersecting forms of discrimination. The Center also specifically works to address and prevent sexual harassment, including sexual assault, in K–12 schools and colleges and universities, and to ensure that no individual is denied educational opportunities based on sex. The Center has participated as counsel or amicus curiae in a range of cases before the Supreme Court, federal Courts of Appeals, federal district courts and state courts to ensure that all individuals enjoy the full protection against sex discrimination as promised by our laws.

Rocky Mountain Victim Law Center (RMvlc) is a Colorado non-profit organization that provides free legal services to victims of crime. RMvlc's mission is to elevate victims' voices, champion their rights, and transform the systems impacting them. RMvlc meets its mission through the provision of three programs; Victim Rights Legal Services, the Legal Information Network of Colorado (LINC), and Title IX Legal Services. RMvlc seeks to participate as an *amicus* to share the importance of the role schools play in appropriately intervening and preventing sex-based harassment and violence in order to create safe learning environments.

The **Sikh Coalition** is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. The Sikh Coalition defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

Survivors Rising is a nonprofit organization based in Omaha, Nebraska. Survivors Rising uplifts and amplifies the voices of post-crisis survivors and is a catalyst for individual and systems change through inclusive survivor and community engagement. Survivors Rising is survivor-centric, trauma-informed, and culturally relevant. It uses advocacy and action as well as authentic community engagement and community-building as strategies to prevent interpersonal and sexual

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violence and abuse. Survivors Rising reimagines safety and justice from the survivor point of view. It fosters prevention and intervention policies and practices that promote healing for survivors. And, Survivors Rising demands change and accountability of the systems and individuals that perpetuate the unequal power that results in subordination, exploitation, oppression, and abuse.

The **Victim Rights Law Center ("VRLC")** is a nonprofit organization dedicated to serving the legal needs of sexual assault victims, particularly adolescents and young adults. VRLC represents over 1,000 sexual assault survivors each year in the areas of education, immigration, privacy, employment, housing and helping victims of sexual assault obtain protection orders to stabilize their lives and create a safe and healthy environment in which to live, study and work. Following a sexual assault, many of our student-clients face challenges accessing their education. This is attributed to a multitude of reasons, among them an inadequate and often harmful response from the institution or school district. The VRLC understands the importance of helping young survivors find their own justice, while at the same time ensuring their own dignity, privacy and safety.

Violence Free Minnesota (VFMN), the coalition to end relationship abuse, is a private, nonprofit membership organization which serves as a statewide coalition of over 90-member programs who provide advocacy and services to domestic and sexual violence victim/survivors in all of Minnesota's 87 counties. VFMN provides training and technical assistance to member programs and system stakeholders, networking and support for domestic abuse advocates, and education to the general public.

The **Women's Fund of Omaha** works on the most critical challenges facing anyone who experiences gender-based oppression by identifying issues through research, funding solutions by investing grant money in local nonprofits, and leading dynamic change by advocating for effective policy solutions. The Women's Fund's Freedom from Violence initiative focuses on centering survivors' voices and leadership while also funding and partnering with organizations committed to reducing gender-based violence and oppression. For that reason, the Women's Fund has an interest in supporting protections for survivors of intimate partner violence and sexual assault.

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