

No. 25-40370

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Jane Doe; Jane Doe 1,
Plaintiffs - Appellees/Cross-Appellants

v.

Beaumont Independent School District,
Defendant - Appellant/Cross-Appellee

Jane Doe; John Doe; Jane Doe 1,
Plaintiffs - Appellees/Cross-Appellants

v.

Beaumont Independent School District,
Defendant - Appellant/Cross-Appellee

On Appeal from the United States District Court
for the Eastern District of Texas
Case Nos. 1:21-cv-190, 1:21-cv-132
The Honorable Michael J. Truncale

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE
PUBLIC JUSTICE IN SUPPORT OF PLAINTIFFS-
APPELLEES/CROSS-APPELLANTS**

Public Justice respectfully requests leave to file a brief as amicus curiae in support of Plaintiffs-Appellees/Cross-Appellants. *See* Fed. R. App. P. 29(a)(2). Plaintiffs-Appellees/Cross-Appellants, through counsel, have consented to the filing; Defendant-Appellant/Cross-Appellee,

through counsel, declined to consent. A true and correct copy of the proposed brief accompanies this motion.

Public Justice is a national public interest legal advocacy organization. Through its Students' Civil Rights Project, Public Justice litigates and otherwise advocates to end discrimination based on sex and other protected characteristics in schools. Public Justice has particular expertise in cases concerning sex-based harassment under Title IX of the Education Amendments of 1972, including schools' responsibility to address harassment by employees. Public Justice has represented parties or amici in appeals concerning Title IX and sex-based harassment in the Second, Third, Fourth, Fifth, Sixth, Seventh (panel and en banc), Eighth, Ninth (panel and en banc), Tenth, and Eleventh Circuits, and before the U.S. Supreme Court.

Public Justice's brief address two legal questions at the heart of this appeal that may have significant effects on the student populations that Public Justice serves. First, this brief addresses the availability of official-policy pre-assault claims under Title IX. Public Justice has an interest in ensuring that this path to liability remains open to students who are abused by employees because of a school's own policies—facts

that may not neatly fit other kinds of Title IX claims. Public Justice has previously filed an amicus brief in this Court on the availability of Title IX official-policy claims. *See* Brief for Public Justice as Amicus Curiae, *Ayon v. Austin Indep. Sch. Dist.*, No. 24-50267, 2025 WL 560228 (5th Cir. Feb. 20, 2025).

Second, this proposed brief also addresses the damages student victims can recover under Title IX. Public Justice seeks to ensure that students who have experienced sex-based harassment can recover the full range of damages available under the statute, including damages for post-traumatic stress disorder. Public Justice served on the legal team responsible for one recent authority on this question, *Snyder-Hill v. Ohio State University*, No. 2:23-CV-2993, 2026 WL 1846975 (S.D. Ohio Apr. 28, 2026).

Given its interest and expertise in the issue area, Public Justice respectfully submits that the attached brief setting forth its views will be useful to the Court in its consideration of these important issues.

Dated: September 10, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLAINT

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 381 words. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27(d)(1)(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14-point Century Schoolbook font.

Dated: September 10, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this motion with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on September 10, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 10, 2026

/s/Sophie Lenihan

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The Honorable Michael J. Truncale

**BRIEF OF PUBLIC JUSTICE AS AMICUS CURIAE IN
SUPPORT OF PLAINTIFFS-APPELLEES/CROSS-APPELLANTS
AND IN FAVOR OF AFFIRMANCE IN PART AND REVERSAL IN
PART**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the number and style of the case is No. 25-40370, *Doe v. Beaumont Independent School District*.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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INTEREST OF THE AMICUS 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 at school and has expertise and interest in the types of pre-assault claims available under Title IX and the responsibility of schools to address employees' harassment. Moreover, Public Justice has an interest in ensuring that students who have experienced sex-based harassment can recover the full damages available under Title IX.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no person or entity, other than amicus curiae, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

INTRODUCTION

Every year, thousands of students experience sexual harassment by classmates and employees. This abuse has the potential to—and sometimes does—derail a survivor’s education. Federal law, however, provides students with essential protections and remedies: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, requires schools to address known harassment to stop its recurrence and protect students’ opportunities to learn. Further, Title IX permits survivors of sexual abuse, like Jane Doe 1 and Jane Doe 2 (“the Students”), to recover compensatory damages resulting from a school’s Title IX violations.¹

This case concerns a school district’s failure to live up to its obligations. Here, a jury found that Beaumont Independent School District (“the District”) maintained an official policy or custom that amounted to deliberate indifference because it created a known or obvious risk of sexual harassment. The District argues that Title IX does

¹ In both consolidated cases at issue here, the plaintiffs are a student victim and at least one parent. The parties refer collectively to the plaintiffs in those cases as “Jane Doe 1” (for case number 1:21-cv-132) and “Jane Doe 2” (for case number 1:21-cv-190). When discussing the students’ pre-litigation experiences, however, the parties use “Jane Doe 1” and “Jane Doe 2” to refer to the student victims individually. We follow that convention here.

not recognize such claims in the employee-on-student harassment context. But, to the contrary, general Title IX principles and precedential authority make clear that Title IX plaintiffs may bring an official-policy claim arising from harassment by an employee.

This case also addresses the damages that student sex-abuse survivors may recover under Title IX. Although the Supreme Court recently foreclosed recovery of emotional-distress damages under the statute, it confirmed the availability of other breach-of-contract damages, including medical expenses and general compensatory damages for physical injuries. The jury could have found, based on trial evidence, that Jane Doe 2's post-traumatic stress disorder and major depressive disorder were physical injuries requiring costly future medical treatment. The district court abused its discretion by ignoring those expenses and reducing the verdict to compensate Jane Doe 2 only for \$350 in costs related to a medical exam and treatment for a sexually transmitted infection. This Court should therefore reverse the district court's amendment of the judgment. In the alternative, the Court should grant the Students' request for a new trial on damages because the

district court plainly erred by providing a verdict form that limited Title IX damages for physical injuries solely to medical expenses.

ARGUMENT

I. Title IX permits pre-assault claims based on a school's official policy

1. Title IX “broadly prohibits a funding recipient from subjecting any person to ‘discrimination’ ‘on the basis of sex.’” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). Although Title IX does not hold schools vicariously liable for the acts of their employees, it implies a cause of action to hold schools accountable when their “own misconduct” violates the statute. *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640-43 (1999). Thus, a school district is “liable in damages” when its “own deliberate indifference effectively ‘cause[s]’ [sex] discrimination.” *Id.* at 642-43. A school’s “deliberate indifference to sexual harassment” is one form of “‘intentional discrimination’ ‘on the basis of sex’” cognizable under Title IX. *Jackson*, 544 U.S. at 174 (citing *Davis*, 526 U.S. at 643).

Title IX harassment claims come in three primary forms: (1) post-assault claims, (2) harasser-specific pre-assault claims, and (3) official-policy pre-assault claims.

With a post-assault claim, a plaintiff seeks to hold an educational institution liable for its deliberate indifference to her reports that she had already been sexually harassed. *See, e.g., Davis*, 526 U.S. at 650; *Hall v. Millersville Univ.*, 22 F.4th 397, 410-11 (3d Cir. 2022); *Doe v. Fairfax Cnty. Sch. Bd.*, 1 F.4th 257, 271-73 (4th Cir. 2021).²

By contrast, in pre-assault claims, a plaintiff contends that the institution’s deliberate indifference to past harassment of others, or to a “substantial risk” of future harassment, helped cause the harassment she then experienced. *See, e.g., Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 652-53 (5th Cir. 1997); *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1099, 1111-12 (9th Cir. 2020); *Doe v. Sch. Bd. of Broward Cnty.*, 604 F.3d 1248, 1257-59 (11th Cir. 2010); *Escue v. N. Okla. Coll.*, 450 F.3d 1146, 1154 (10th Cir. 2006); *Hernandez*, 274 F. Supp. 3d at 614-15 & n.4.

² In a post-assault claim, the institution is liable if its deliberate indifference to past harassment either causes the plaintiff to suffer further harassment or if it forces her to lose out on educational opportunities by leaving her vulnerable to further harassment. *See, e.g., Fairfax*, 1 F.4th at 274; *Farmer v. Kan. State Univ.*, 918 F.3d 1094, 1103-04 (10th Cir. 2019); *Hernandez v. Baylor Univ.*, 274 F. Supp. 3d 602, 613 (W.D. Tex. 2017).

In a harasser-specific pre-assault claim, a plaintiff challenges an institution’s deliberate indifference to the known risk that a specific student or employee with a history of harassment posed to the student body, alleging that its deliberate indifference allowed the same harasser to go on to abuse the plaintiff. *See, e.g., Rosa H.*, 106 F.3d at 659 (explaining “plaintiff could prevail . . . by establishing that the school district failed to act even though it knew that [a teacher] posed a substantial risk of harassing students.”); *Broward Cnty.*, 604 F.3d at 1257-59 (similar); *Brown v. Arizona*, 82 F.4th 863, 883 (9th Cir. 2023) (en banc) (similar, for student-on-student harassment).

In official-policy claims, a plaintiff may show that a school violated Title IX through an “official policy” amounting to “deliberate indifference to a known overall risk of sexual harassment.” *Karasek*, 956 F.3d at 1112 (citation omitted). That may include, for instance, “a policy of deliberate indifference to providing adequate training or guidance that is obviously necessary” to prevent violations. *Simpson v. Univ. of Colo. Boulder*, 500

F.3d 1170, 1178 (10th Cir. 2007) (Hartz, McKay & Gorsuch, JJ.) (quoting *Davis*, 526 U.S. at 644).³

The Sixth, Ninth, and Tenth Circuits have all recognized the availability of such official-policy claims under Title IX. *See Doe ex rel. Doe #2 v. Metro. Gov't of Nashville & Davidson Cnty.*, 35 F.4th 459, 465-66 (6th Cir. 2022); *Karasek*, 956 F.3d at 1112; *Simpson*, 500 F.3d at 1178. No circuit has adopted a different view.

And, as the district court recognized below, ROA.8309, this Court in *Roe v. Cypress-Fairbanks Independent School District* evaluated the student's pre-assault claim and expressly left open the possibility that a plaintiff *could* succeed under that theory. 53 F.4th 334, 342 (5th Cir. 2022). It rejected that student's claim only because she could not draw a

³ Of course, an "official policy need not be a 'formal institutional decision,' but can be a custom tantamount to an official policy that allegedly caused or created a heightened risk of sexual assault." *Harrower ex rel. J.H.1 v. Eastland Indep. Sch. Dist.*, 786 F. Supp. 3d 998, 1020 (N.D. Tex. 2025) (quoting *Doe 12 v. Baylor Univ.*, 336 F. Supp. 3d 763, 779-80 (W.D. Tex. 2018)); *see Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 694 (1978) ("[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.").

causal connection between the school's conduct and the harassment she suffered. *Id.*

District courts in the Fifth Circuit, too, have coalesced around recognizing and applying such claims. *See, e.g., Doe 1 v. Baylor Univ.*, 240 F. Supp. 3d 646, 661-62 (W.D. Tex. 2017); *Doe 12*, 336 F. Supp. 3d at 779-80; *Lozano v. Baylor Univ.*, 408 F. Supp. 3d 861, 879-82 (W.D. Tex. 2019); *Hernandez*, 274 F. Supp. 3d at 615 n.4; *P.S. ex rel. Stephenson v. Brownsboro Indep. Sch. Dist.*, No. 6:21-cv-427, 2022 WL 3697965, at *5 (E.D. Tex. Aug. 25, 2022), *report and recommendation adopted*, 2022 WL 14151208, at *1 (Oct. 24, 2022); *Doe I ex rel. Doe II v. Huntington Indep. Sch. Dist.*, No. 9:19-CV-133, 2020 WL 10317505, at *4-5 (E.D. Tex. Oct. 5, 2020).

2. As a doctrinal matter, the main difference between the two types of pre-assault cases is that only harasser-specific pre-assault claims not, not based on the defendant's official policy, must meet the elements identified by the Supreme Court in *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998) (for employee-on-student harassment), or *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999) (for student-on-student harassment). In harasser-

specific cases, the institution is only liable when an “appropriate person” has “actual notice of, and is deliberately indifferent to, the [harasser]’s misconduct.” *Broward Cnty.*, 604 F.3d at 1254 (quoting *Gebser*, 524 U.S. at 277); *see also Doe v. Bd. of Supervisors of Univ. of La. Sys.*, 650 F. Supp. 3d 452, 467 (M.D. La. 2023) (applying these elements). The Supreme Court has explained that those requirements are necessary to ensure that, in the absence of an official policy, an institution is held liable only for its own “decision . . . not to remedy the violation,” and not “for [the harasser’s] independent actions.” *Gebser*, 524 U.S. at 290-91.

But the Supreme Court, and other appeals courts, have explained that *Gebser*’s (and so, by the same logic, *Davis*’s) requirements are restricted to “cases . . . that do *not* involve official policy of the [school district].” *Simpson*, 500 F.3d at 1177-78 (emphasis added) (quoting *Gebser*, 524 U.S. at 290); *accord Karasek*, 956 F.3d at 1113-14. The “standards established . . . in *Gebser* and *Davis*” do not apply to official-policy claims. *Simpson*, 500 F.3d at 1177.

That makes sense because, in an official-policy claim, “the institution itself, rather than its employees (or students), [is] the wrongdoer.” *Id.* at 1177. After all, a school district’s “official policies” are,

by definition, “acts of the *municipality*” and not “acts of [its] *employees*.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986). So, the Supreme Court’s concern that an institution might wrongly be held liable for the actions of the harasser—which motivated *Gebser*’s and *Davis*’s requirements—evaporates “when [a Title IX] violation is caused by [the defendant’s] official policy.” *Simpson*, 500 F.3d at 1177-78.

3. As the Tenth Circuit has explained at length, principles from § 1983 case law support the availability of a Title IX official-policy claim that looks different than the claims in *Gebser* and *Davis*. *See Simpson*, 500 F.3d at 1177. In designing the liability standards for Title IX claims that do not involve an official policy, *Gebser* considered the § 1983 deliberate-indifference framework. *See id.* Section 1983 standards were informative because the Supreme Court had adopted them to address “[c]omparable considerations” posed in the Title IX context: the shared “requirement for both § 1983 municipal liability and Title IX funding-recipient liability that the institution itself . . . be the wrongdoer.” *Simpson*, 500 F.3d at 1177 (quoting *Gebser*, 524 U.S. at 291). Section 1983 cases reinforced that, “[i]n the context of *Gebser* or *Davis*”—which concerned Title IX claims not based on an official policy—“the school

district could not be said to have *intentionally* subjected students to harassment unless it knew of the harassment and deliberately decided not to take remedial action.” *Id.* at 1178; *see Gebser*, 524 U.S. at 290-91.

Yet the same § 1983 case law to which *Gebser* looked demonstrates that “the standard changes when the claim ‘involve[s] official policy.’” *Simpson*, 500 F.3d at 1178 (quoting *Gebser*, 524 U.S. at 290); *see Gebser*, 524 U.S. at 291 (citing *Bd. of Cnty. Comm’rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 407 (1997), and *City of Canton v. Harris*, 489 U.S. 378, 388-92 (1989)). Under § 1983, a plaintiff in such official-policy cases need not show that municipal policymakers knew of or were deliberately indifferent to the employee who harmed her; she need only show “that the municipal action was taken with ‘deliberate indifference’ as to its known or obvious consequences.” *Bryan Cnty.*, 520 U.S. at 407 (quoting *Canton*, 489 U.S. at 388).

Therefore, for example, a municipality is responsible for a failure to train police officers when the need for more training is “obvious” enough that “the failure to train amounts to deliberate indifference” to the risk that officers will hurt people without more training. *City of Canton*, 489 U.S. at 388. Indeed, even without *any* pattern of prior misconduct, the

municipality is liable if “the risk of constitutional violations was or should have been an ‘obvious’ or ‘highly predictable consequence’” of the inadequacy. *Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616, 624 (5th Cir. 2018) (quoting *Bryan Cnty.*, 520 U.S. at 407). Section 1983 law, then, only reinforces the availability of official-policy Title IX claims.

4. The District concedes that this Court, in *Roe*, “implicitly recognize[d] the [official-policy pre-assault claim] framework in the student-on-student context.” Br. Def.-Appellant/Cross-Appellee at 21, Dkt. No. 83-1. Yet it asserts that official-policy pre-assault claims are not also available in cases concerning harassment by employees.

There is just no reason—rooted in Title IX’s text, case law, or common sense—why official-policy claims would be available for claims concerning student-harassers but not employee-harassers. To the extent that courts have treated peer-harassment claims differently than employee-student harassment claims, they have interpreted the latter more *broadly*. See, e.g., *Wamer v. Univ. of Toledo*, 27 F.4th 461, 470 (6th Cir. 2022) (“We conclude that the *more stringent standard* for peer-harassment deliberate indifference claims . . . should not apply in the context of teacher-student harassment claims.” (emphasis added)). This

aligns with the Supreme Court’s observation in *Davis* that Title IX’s institutional liability standard is met “most easily and most obviously when the offender is an agent of the recipient.” 526 U.S. at 645.

Accordingly, as the district court in this case stated, if indifference to a “substantial risk” can establish liability for peer harassment, “commonsense dictates that that theory be available in the teacher-student context too.” ROA.8310. Other courts in the Fifth Circuit have held similarly. *See e.g., Owens v. La. State Univ.*, No. cv-21-242-WBV-SDJ, 2023 WL 9051267, at *6 (M.D. La. Dec. 31, 2023); *Guillory v. Beaumont Indep. Sch. Dist.*, No. 9:07-CV-163-TH, 2009 WL 10705653, at *12 (E.D. Tex. May 8, 2009), *aff’d and remanded sub nom. Thomas*, 355 F. App’x 837 (5th Cir. 2009); *N.B. v. San Antonio Indep. Sch. Dist.*, No. SA-05-CA-0239-XR, 2007 WL 4205726, at *4 (W.D. Tex. Nov. 27, 2007).

The closest the District comes to a cite for its argument (at 31) is *Poloceno v. Dallas Independent School District*, 826 F. App’x 359 (5th Cir. 2020). In that unpublished decision, this Court stated it had “never recognized or adopted a Title IX theory of liability based on a general ‘heightened risk’ of sex discrimination and declined to do so” there. *Id.* at 363. *Poloceno* does not help the District’s cause. First, *Poloceno* is non-

binding and has been treated as such by this Court: The Fifth Circuit has since signaled the availability of heightened-risk sexual-harassment claims by evaluating them without any reference to *Poloceno*. *See Roe*, 53 F.4th at 340-48. Even the District must acknowledge that this Court’s treatment of official-policy claims has “evolv[ed]” since *Poloceno*, and that it “more recently,” in *Roe*, evaluated such claims on the merits. Br. Def.-Appellant/Cross-Appellee at 21; *see also* ROA.8309 (district court explaining this history). Second, *Poloceno* does not support the District’s position that official-policy claims might be available for cases concerning peer harassment but not for staff harassment. *See Poloceno*, 826 F. App’x at 363. Indeed, the case did not concern harassment at all, so it could not have addressed that question. *See id.* at 361.

5. The District also objects that, in its view, the Title IX official-policy pre-assault claim “grafts” aspects of a § 1983 claim onto the Title IX claim. Br. Def.-Appellant/Cross-Appellee at 21-22. Doing so, according to the District, “improperly rewrites both statutes and distorts their distinct remedial schemes”—though the District does not identify how. *Id.* at 22. The District’s unexplained worries are misplaced.

Section 1983 claims and Title IX official-policy claims are not identical. *See, e.g., Huntington*, 2020 WL 10317505, at *4. They are similar, but that is unsurprising and unobjectionable. As described above (at 10-11), the Supreme Court has long recognized that the two statutes share some “[c]omparable considerations” and, in some circumstances, share some elements. *Gebser*, 524 U.S. at 291. The District offers no explanation as to why the existence of similarities poses a threat to the integrity of either statute. It offers no account for why official-policy Title IX claims would uniquely pose this threat when *Gebser* acknowledged similarities between § 1983 and Title IX nearly thirty years ago. Title IX and § 1983 claims can “overlap” while remaining “legally distinct.” *Alice L. v. Dusek*, 492 F.3d 563, 565 (5th Cir. 2007).

The District is right about one thing (at 21-22): An official-policy Title IX claim does not require the involvement of a “final policymaker,” such as a school board, as required in § 1983 cases. *Huntington*, 2020 WL 10317505, at *4-5; *see Posey v. Atlanta Pub. Schs.*, 722 F. Supp. 3d 1350, 1369 (N.D. Ga. 2024). The district court’s instructions erred in requiring the District’s official policy to come from its Board of Trustees. *See* ROA.8975. But the district court’s mistake only served to make the

plaintiffs' task at trial harder by narrowing the grounds for liability. The District does not, and could not, argue it was harmed by the error. *See United States v. Campbell*, 95 F.3d 52, at *7 (5th Cir. 1996) (noting that harmless error "does not require reversal").

* * *

In sum, contrary to the District's argument, basic Title IX principles and precedent make clear that Title IX permits official-policy pre-assault claims involving employee harassment of students. The district court thus appropriately submitted the Title IX claim to the jury.

II. A jury could find Jane Doe 2 was entitled to recover damages for the physical injuries, including post-traumatic stress disorder and major depressive disorder, that she suffered due to sexual abuse by her teacher

Title IX plaintiffs are entitled to damages traditionally compensable in contract law, including damages for physical injuries and related medical expenses. Whether post-traumatic stress disorder (PTSD) and major depressive disorder (MDD) result from structural and functional changes to the brain, and so are compensable physical injuries under Title IX, is a fact question for a jury.

Jane Doe 2, a minor, was diagnosed with PTSD and MDD after being repeatedly raped and otherwise sexually abused by her teacher,

Brandon Chillow. ROA.8297. At trial, Jane Doe 2 presented sufficient evidence, via detailed expert testimony, establishing that her PTSD and MDD are physical brain injuries that required costly future medical treatment. *See* ROA.12967-68, ROA.12985-87.

The district court nevertheless granted the District's Rule 59(e) motion and reduced Jane Doe 2's jury-awarded damages from \$2.7 million to \$350. ROA.37315-16. Jane Doe 2 is correct that this Court should reverse the district court's amendment of the judgment.

If the Court does not reverse the amendment of the judgment, it should grant the Students' alternative request for a new trial on damages because the district court plainly erred by prohibiting the jury from awarding Jane Doe 2 damages for physical injuries beyond medical expenses, contrary to contract law principles and the court's jury instructions.

A. Title IX plaintiffs are entitled to recover damages for physical injuries, including, but not limited to, medical expenses

In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Supreme Court held that compensatory damages for emotional distress are not recoverable under Spending Clause anti-discrimination statutes. 596 U.S. 212, 220-22 (2022). The Court explained that such statutes operate like a contract: In exchange for federal funds, the recipient consents to comply with conditions imposed by the federal government. *Id.* Because emotional-distress damages are not “normally available for contract actions,” they are unavailable under Spending Clause statutes, including Title IX. *Id.* at 221 (quoting *Barnes v. Gorman*, 536 U.S. 181, 187-88 (2002)).

Title IX plaintiffs can still recover, however, any category of damages traditionally available in contract law. As *Cummings* stated, courts “may presume that a funding recipient is aware that, for breaching its Spending Clause ‘contract’ with the Federal Government, it will be subject to the *usual* contract remedies in private suits.” *Id.*

Relevant here, plaintiffs may seek damages for physical injuries, which have long been available for breach of contract—as the contract-

law treatises cited in *Cummings* confirm. 11 Joseph Perillo, *Corbin on Contracts* § 59.1 (rev. ed. 2005) (noting that damages are available for personal injury in breach of contract actions); Restatement (Second) of Contracts § 347 cmt. c (A.L.I. 1981) (“Consequential losses include such items as injury to person or property resulting from defective performance.”); *see Cummings*, 596 U.S. at 224 (citing these same treatises as authorities on what damages are traditionally available in contract law).

Accordingly, courts post-*Cummings* have consistently held that plaintiffs may recover physical-injury damages. *See, e.g., McGowan v. S. Methodist Univ.*, 715 F. Supp. 3d 937, 955 (N.D. Tex. 2024) (collecting cases); *Doe ex rel. Doe v. City of Pawtucket*, 633 F. Supp. 3d 583, 590 (D.R.I. 2022) (holding that *Cummings* did not preclude damages for “physical harm that the minor Plaintiff might have sustained during her sexual assault”); *B.R. v. Fairfax Cnty. Sch. Bd.*, 718 F. Supp. 3d 504, 514 (E.D. Va. 2024) (*B.R. I*) (holding that “Title IX plaintiffs may recover for physical injuries” post-*Cummings*); *Doe v. Univ. of Va.*, No. 3:23-CV-18, 2024 WL 1346913, at *6 (W.D. Va. Mar. 29, 2024) (“Courts have found that a Title IX plaintiff may recover for . . . physical injuries . . .”).

Once plaintiffs prove physical injuries, they can also recover past and future medical expenses reasonably necessary to treat those injuries, among other damages. *See, e.g., B.R. v. Fairfax Cnty. Sch. Bd.*, 730 F. Supp. 3d 233, 243 (E.D. Va. 2024) (*B.R. II*); *B.R. I*, 718 F. Supp. 3d at 513; *McGowan*, 715 F. Supp. 3d at 955; *City of Pawtucket*, 633 F. Supp. 3d at 590; *Snyder-Hill v. Ohio State Univ.*, No. 2:23-CV-2993, 2026 WL 1846975, at *5 (S.D. Ohio Apr. 28, 2026); *see also infra* Part II.D.1 (explaining that medical expenses are not the only available damages for physical injuries). The verdict form in this case reflected that “[p]ast and future medical expenses and [related] healthcare” were compensable. ROA.8986. And the jury instructions recognized that damages for physical injuries should, more broadly, “make [the Students] whole.” ROA.8978.

B. Courts have held that juries may find that post-traumatic stress disorder is a compensable physical injury under Title IX

Other courts have concluded that whether PTSD is a compensable physical injury for Title IX purposes is an issue of fact. *See B.R. II*, 730 F. Supp. 3d at 243; *Snyder-Hill*, 2026 WL 1846975, at *5. In *B.R. v. Fairfax County School Board*, for example, the court concluded that a

jury could credit expert testimony that “a patient who suffers from PTSD, by definition, ha[s] physical injury in the form of physical changes to the structural and functional properties of her brain.” *B.R. II*, 730 F. Supp. 3d at 242. The expert witness—a clinical psychologist with specialized training and expertise on how PTSD alters the brain’s structure—explained that the “emotional symptoms of PTSD have a physical origin”: They are “caused by underlying changes in neurobehavioral or neurophysiological function.” Trial Tr. vol. 12 at 45, *B.R. v. Fairfax Cnty. Sch. Bd.*, No. 1:19-CV-917 (E.D. Va. Aug. 26, 2024), Dkt. No. 1052. The expert stated:

[PTSD] results from very specific changes in two brain systems. . . . [W]e have one brain system that is largely responsible for producing emotional responding like fear or anxiety, that brain system is increased. . . . We have a second brain system that’s responsible for regulating or controlling that emotional output. That brain system gets weakened.

Id. at 44.

Based on that testimony, the court concluded at summary judgment that a jury could find no material distinction between PTSD and other “brain injuries that . . . are compensable,” such as a traumatic brain injury. *B.R. I*, 718 F. Supp. 3d at 514; *see also B.R. II*, 730 F. Supp. 3d at

242-43 (concluding that trial evidence was sufficient for a reasonable jury to conclude that the plaintiff suffered a physical injury).

Other courts have adopted *B.R.*'s reasoning. *See Snyder-Hill*, 2026 WL 1846975, at *5 (holding that damages for PTSD “are not necessarily unavailable” under Title IX post-*Cummings* and agreeing with “the *B.R.* court that whether PTSD (or similar conditions) is a physical or emotional injury is a fact issue” (emphasis omitted)); *Rohrer v. City of Gastonia*, No. 3:23-CV-396, 2025 WL 2105291, at *7 (W.D.N.C. July 28, 2025) (citing *B.R. II* for the proposition that, under Spending Clause statutes, “[c]ategorizing damages [as emotional distress or physical injuries] requires factual determinations . . . , such as the nature and extent of the Plaintiff’s alleged injuries”).

Courts in other legal contexts have also categorized PTSD as a physical injury. For instance, under the Warsaw Convention, which provides that a “carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger,” multiple courts have held that PTSD was a compensable bodily injury. Convention for the Unification of Certain Rules Relating to International Transportation by Air, art. 17, Oct. 12,

1929, 49 Stat. 3000, 137 L.N.T.S. 11; *see Weaver v. Delta Airlines, Inc.*, 56 F. Supp. 2d 1190, 1191-92 (D. Mont. 1999) (relying on expert testimony that “PTSD has a physical basis” and causes “actual trauma to brain cell structures” and explaining that “the only reasonable conclusion is that it is, in fact, a bodily injury”), *vacated by stipulation of the parties*, 211 F. Supp. 2d 1252 (D. Mont. 2002); *Turturro v. Cont’l Airlines*, 128 F. Supp. 2d 170, 179 (S.D.N.Y. 2001) (finding that “a diagnosis of chronic PTSD may fall within the Convention’s definition of ‘bodily injury’” because “the brain’s physical architecture can transform during PTSD”).

Numerous state courts have likewise treated PTSD as a bodily injury in the personal injury context. *See, e.g., Daniel Constr. Co. v. Tolley*, 24 Va. App. 70, 76, 78 (1997) (finding that PTSD is a compensable “physical injury to [the] brain” in the form of “irreversible structural changes within the neurons”); *Trinh v. Allstate Ins. Co.*, 109 Wash. App. 927, 928, 936 (2002) (similar, noting “acute and chronic changes in the central nervous system” in patients with PTSD). As one court straightforwardly explained, “[t]he brain is a part of the human body, so ‘harm or damage done or sustained’ . . . to the brain”—as in cases of PTSD—is “within the common meaning of ‘bodily injury’” within the

applicable statute. *Allen v. Bloomfield Hills Sch. Dist.*, 281 Mich. App. 49, 57 (2008).

It is true that some courts in the Title IX context have, post-*Cummings*, summarily categorized PTSD-related damages as emotional distress damages. See *City of Pawtucket*, 633 F. Supp. 3d at 591; *Doe v. Sch. Bd. of Palm Beach Cnty.*, No. 21-81560-CIV, 2022 WL 17988203, at *5, *6 (S.D. Fla. Nov. 22, 2022). But the question of whether PTSD was a physical injury was never before those courts; the plaintiffs did not argue, for instance, that PTSD should be categorized as a physical injury nor present expert testimony showing that PTSD results from physical changes in the brain. See Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 6-7, *Doe v. City of Pawtucket*, 633 F. Supp. 3d 583, No. 1:17-CV-00365 (D.R.I. Aug. 22, 2022), Dkt. No. 119-1; Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 19, *Doe v. Sch. Bd. of Palm Beach Cnty.*, No. 21-81560-CIV, 2022 WL 17988203 (S.D. Fla. Aug. 4, 2022), Dkt. No. 56. By contrast, in cases where plaintiffs have offered such evidence to argue that PTSD could be a physical injury, courts have agreed. See *B.R. I*, 718 F. Supp. 3d at 513-14; *Snyder-Hill*, 2026 WL 1846975, at *5.

C. In reducing the jury award, the district court abused its discretion by disregarding all evidence establishing Jane Doe 2’s future medical expenses related to post-traumatic stress disorder and major depressive disorder

The jury found for the Students on their Title IX official-policy pre-assault claim and awarded Jane Doe 2 \$2.7 million for the violation. ROA.8983, ROA.8986. The District subsequently filed a Rule 59(e) motion to alter or amend the judgment, arguing that her award should be reduced to \$350—the amount she incurred in hospital expenses. ROA.9195-9205. The district court granted the District’s motion, reasoning that the “jury committed a manifest error of fact by awarding Jane Doe [2] \$2.7 million in damages” because her “sole evidence of medical expenses from physical injuries was a \$350 charge for [her] emergency-room visit, physical examination, and [sexually transmitted infection] treatment.” ROA.37313-14.

This Court reviews a district court’s decision on a Rule 59(e) motion to alter or amend a judgment for abuse of discretion. *Johnston & Johnston v. Consec Life Ins. Co.*, 732 F.3d 555, 562 (5th Cir. 2013). “A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005) (citation modified).

The district court made clear legal and evidentiary errors by disregarding all evidence establishing Jane Doe 2's future medical expenses related to PTSD and MDD. In doing so, the district court appears to have implicitly concluded that PTSD and MDD are not physical injuries, even though the jury could have found otherwise.

1. Jane Doe 2 presented sufficient evidence for the jury to find that her post-traumatic stress disorder and major depressive disorder are physical injuries

As an initial matter, the district court's categorical conclusion that PTSD and MDD can never constitute physical injuries—and that related medical expenses are therefore unrecoverable—was legal error. ROA.37315-16 (summarily categorizing PTSD as “psychological trauma”). Whether a PTSD diagnosis constitutes a physical injury is an issue of fact, as explained above (at Part II.B). The same goes for MDD.

Jane Doe 2 submitted sufficient evidence for a jury to find that her PTSD and MDD constituted physical injuries. The district court ignored it all. So, to the extent the district court determined that, as a factual matter, Jane Doe 2's PTSD and MDD did not amount to physical injuries, it abused its discretion by erroneously assessing the evidence and undermining the jury's fact-finding role. *See Robinson v. Watts Detective*

Agency, Inc., 685 F.2d 729, 742 (1st Cir. 1982) (explaining that a Rule 59(e) motion “may not be granted where to do so would undermine the jury’s fact-finding role”); *Abeshouse v. Ultragraphics, Inc.*, 754 F.2d 467, 473 (2d Cir. 1985) (same); *Fireman’s Fund Ins. Cos. v. Centennial Bank*, 37 F.3d 1505, 1994 WL 551368, at *3 (9th Cir. 1994) (same); *see also Aransas Project v. Shaw*, 775 F.3d 641, 655 (5th Cir. 2014) (finding district court abused its discretion in evidentiary ruling when “it improperly acted as a trier of fact”).

Specifically, the Students’ expert witness, Dr. Vincent—a forensic psychologist—testified that PTSD and MDD are caused by physical changes to the brain’s structural and functional properties. ROA.12967-68. He explained that PTSD and MDD “involve[] physical injury” because the disorders manifest as “clearcut, actual physical changes to the brain chemistry.” *Id.* Although PTSD and MDD have “psychological” components, Dr. Vincent emphasized that “there’s also a powerful biological component,” noting that “[n]euroanatomical changes in the brain are evident” in people with PTSD or MDD. *Id.* He thus concluded that, by reasonable inference, Jane Doe 2 suffered from these “anatomical organic changes.” ROA.13023. This testimony is analogous to the expert

testimony presented in *B.R.*, which the court held was sufficient for a reasonable jury to award damages for a physical injury to a plaintiff suffering from PTSD. *See B.R. II*, 730 F. Supp. 3d at 242-43.

The District, on the other hand, offered no expert testimony to dispute that PTSD or MDD is a physical injury. It instead argued that Dr. Vincent could not confirm physical changes to Jane Doe 2's brain because she had not undergone a brain MRI. ROA.12992-94. But Dr. Vincent need not have examined her brain directly for the jury to conclude that such physical changes occurred. As Dr. Vincent testified, "research tells us that people who are diagnosed with PTSD have those changes," so the jury could reasonably infer that Jane Doe 2—who has an official PTSD diagnosis—did as well. ROA.12992; *see B.R. II*, 730 F. Supp. 3d at 242-43 (holding that jury could find plaintiff with PTSD had suffered a physical injury even though expert witness "did not review any images of [the plaintiff's] brain" to confirm physical changes).

2. Jane Doe 2 presented evidence for future medical expenses to treat post-traumatic stress disorder and major depressive disorder

Because a jury could have found that Jane Doe 2's PTSD and MDD were physical injuries, she was entitled to recover medical expenses—

including future medical expenses—for their treatment. *See supra* p. 20. The district court’s reduction of Jane Doe 2’s award to \$350, in the face of evidence establishing significant future PTSD- and MDD-related medical expenses, was therefore an abuse of discretion.

Dr. Vincent testified that Jane Doe 2’s PTSD and MDD necessitated future treatment. ROA.12984-86. He advised that she undergo “at least two years of weekly therapy” using a “trauma-based approach,” and should be “evaluated for possible medication.” ROA.12986. Dr. Vincent testified that she would then need “maybe another year of [attending therapy] every other week,” followed by “another year of maybe once a month to make sure the treatment gains are maintained.” *Id.* In total, Dr. Vincent’s recommendation consisted of *at least* four years of trauma-focused treatment that included approximately 142 visits at \$300.00-\$350.00 per hour—not including medication or treatment from a psychiatrist. ROA.12986-87. And he predicted her need for treatment would not end there. ROA.12987-88. The District never objected to this testimony.

This evidence was sufficient for the jury to award Jane Doe 2 significant damages to treat her PTSD and MDD. So, the district court

should not have reduced the jury's damages award to Jane Doe 2's \$350 hospital bill alone. *See* ROA.37315-16.

Payan v. Los Angeles Community College District, 169 F.4th 971 (9th Cir. 2026), is instructive. In that case, the district court remitted jury-awarded damages under Spending Clause anti-discrimination statutes after summarily concluding that damages for lost educational opportunities were impermissible. *Id.* at 975. The Ninth Circuit reversed, concluding that the district court abused its discretion because such damages were legally available, and the award was consistent with the jury instructions and the plaintiffs' evidence. *Id.* at 978-79.

So too here: Because future medical expenses for PTSD and MDD were legally available and supported by evidence, the district court abused its discretion by "failing to consider whether the jury's award was based on [that] legally viable basis." *Id.* at 980.

D. The district court plainly erred by using a verdict form that limited Jane Doe 2's compensatory damages for physical injuries to medical expenses alone

The district court committed another error earlier at trial: The verdict form improperly restricted Jane Doe 2's compensatory damages for physical injuries solely to "medical expenses." ROA.8986. Jane Doe

2's attorney did not object to the verdict form at the time, but jury instructions, including verdict forms, not timely objected to are reviewed for "plain error." *United States v. Meyer*, 63 F.4th 1024, 1033 (5th Cir. 2023); see *United States v. Fairley*, 880 F.3d 198, 208 (5th Cir. 2018) (noting that "[v]erdict forms are considered part of the jury instruction").

Issuing an incorrect jury instruction constitutes plain error if there is "(1) error, (2) that is plain, and (3) that affects substantial rights." *Fairley*, 880 F.3d at 206; accord *Meyer*, 63 F.4th at 1033. This Court may overturn such an instruction if the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings," *Meyer*, 63 F.4th at 1033 (citation modified), or results in a "miscarriage of justice," *Branch-Hines v. Hebert*, 939 F.2d 1311, 1319 (5th Cir. 1991). "A new trial is the appropriate remedy for prejudicial errors in jury instructions." *Aero Int'l, Inc. v. U.S. Fire Ins. Co.*, 713 F.2d 1106, 1113 (5th Cir. 1983). Accordingly, this Court should grant the Students' alternative request for a new trial on damages if it does not reverse the district court's amendment of the judgment.

1. Under contract law, plaintiffs' compensatory damages for physical injuries are not limited to medical expenses

As explained above (in Part II.A), post-*Cummings*, Title IX plaintiffs may recover “the *usual* contract remedies,” which include compensatory damages for physical injuries. *Cummings*, 596 U.S. at 221. And, in cases concerning breaches of contract that result in physical injuries, courts have long permitted damages beyond medical expenses. *See Hawkins v. McGee*, 146 A. 641, 644 (N.H. 1929); *Murphy v. Implicito*, 920 A.2d 678, 690-92 (N.J. Super. Ct. App. Div. 2007); *Phillips v. Aetna Life Ins. Co.*, 473 F. Supp. 984, 990 (D. Vt. 1979); *Hymel v. HMO of La., Inc.*, 2006-0042 (La. App. 1 Cir. 11/15/06), 951 So. 2d 187, 205; *Wilkins v. Grays Harbor Cmty. Hosp.*, 427 P.2d 716, 722 (Wash. 1967).

That rule follows from traditional contract principles. The paradigmatic contract remedy is expectation damages, which are designed “to place the victim of the breach in the same position he would have occupied had the breach not occurred.” *Reynolds Metals Co. v. Westinghouse Elec. Corp.*, 758 F.2d 1073, 1079 (5th Cir. 1985). Accordingly, courts have recognized that expectation damages remain

available after *Cummings*. See, e.g., *Doe v. Univ. of Miss.*, No. 3:18-CV-138-DPJ-ASH, 2024 WL 3011133, at *3 (S.D. Miss. June 14, 2024) (permitting expectation damages under Title IX post-*Cummings*); *Chaitram v. Penn Medicine-Princeton Med. Ctr.*, No. 21-17583, 2022 WL 16821692, at *2 (D.N.J. Nov. 8, 2022) (explaining that “*Cummings* does not foreclose compensatory damages under an expectation-interest theory”); *Johnson v. EAC Network*, No. 24-CV-5645, 2025 WL 3084098, at *18 (E.D.N.Y. Nov. 4, 2025) (similar); see also 24 *Williston on Contracts* § 64:3 (4th ed. 2025) (explaining that expectation damages are “the most typical measure of recovery granted” in breach-of-contract cases).

Damages for physical injuries can be understood as traditional expectation damages. Consider the classic “hairy hand” case: After a botched surgery injured the plaintiff’s hand, the court held that the plaintiff could recover “the difference between the value to him of a perfect hand” and the impaired hand he received. *Hawkins*, 146 A. at 644.

And because expectation damages aim to “place [the plaintiff] in the same position he would have occupied had the breach not occurred,” courts are right not to confine damages for physical injuries to medical

expenses alone. *Reynolds*, 758 F.2d at 1079. This case illustrates that point. Having PTSD and MDD is worse than not having those disorders for reasons beyond the cost of medical care. So, even an award covering all of Jane Doe 2’s medical expenses would not restore her to the position she would be in had the District complied with Title IX and she were never physically injured.

The district court agreed on this point in its oral jury instructions. Those instructions, following well-established contract law principles, correctly stated that “[t]he purpose of compensatory damages is to make [p]laintiffs whole” and “compensate [p]laintiffs for the damage that [they] have suffered.” ROA.8978. The instructions specified that compensatory damages in this case “are *not* limited to expenses that [the Students] may have incurred because of [their] injuries.” *Id.* (emphasis added).

2. On this point, the verdict form contradicted both contract law and the court’s oral instructions

The district court plainly erred by providing a verdict form that limited the available damages for physical injury under Title IX solely to “[p]ast and future medical expenses.” ROA.8986. That instruction was inconsistent with both contract law and the court’s oral instructions—two independent grounds for a new trial.

The verdict form should have allowed the jury to award Jane Doe 2 general compensatory damages for her physical injuries beyond medical expenses because those damages are recoverable as expectation damages, as explained above (at 32-34). As the jury found, the District failed to comply with Title IX by maintaining a policy or custom that created a known or obvious risk of sexual harassment, ROA.8983, which manifested in Chillow's sexual abuse of Jane Doe 2. The court should therefore have permitted the jury to award her damages sufficient to put her in the position she would have occupied absent the debilitating physical injuries caused by Chillow's sexual abuse. These injuries include PTSD and MDD, ROA.12967, a sexually transmitted infection, ROA.15093, and the sexual assaults themselves, *see Doe v. St. Stephen's Episcopal Sch.*, 382 F. App'x 386, 389 (5th Cir. 2010) ("Sexual assault—an impermissible and intentional invasion of the victim's person—is in and of itself an injury 'actionable independently and separately from mental suffering or other injury.'" (quoting *Harned v. E-Z Fin. Co.*, 254 S.W.2d 81, 85 (Tex. 1953))).

The verdict form's misstatement of law constitutes plain error warranting a new trial. *Branch-Hines v. Hebert* is analogous. *See* 939

F.2d at 1318. There, the district court wrongly instructed the jury that emotional distress damages were unavailable under a state anti-discrimination statute, an error that “effectively precluded the jury from awarding general damages.” *Id.* This Court concluded that, because the plaintiff’s outcome could have been different had the jury received proper instructions, the district court committed plain error justifying reversal. *Id.* at 1318-19. The verdict form in this case—restricting Jane Doe 2’s available damages based on an incorrect statement of law—deserves the same treatment.

And there is a second, independent problem: This Court could determine that, with respect to the availability of damages beyond medical expenses, the verdict form conflicts with the court’s oral instructions. Conflicting jury instructions are a prime example of plain error because it is “fundamental . . . that instructions to the jury must be consistent with each other, and not misleading to the jurors.” *Perez v. United States*, 297 F.2d 12, 16 (5th Cir. 1961).

Accordingly, this Court has held that providing the jury with “two diametrically conflicting instructions” on damages warrants a new trial. *Nowell ex rel. Nowell v. Universal Elec. Co.*, 792 F.2d 1310, 1317 (5th Cir.

1986). In *Nowell*, a district court gave contradictory instructions regarding whether the jury should compensate plaintiffs for “*all* damages sustained” due to defendant’s negligence or award damages “*in proportion* to the extent to which [defendant’s] negligence contributed to the accident.” *Id.* at 1316 (second emphasis added). Because those instructions stated “opposite propositions of law,” this Court explained that it was “impossible to tell which theory of damages was adopted by the jury.” *Id.* This conflict was “so fundamental as to result in a miscarriage of justice,” and therefore constituted “plain error.” *Id.*

So too here. The Students have explained that courts should try to “harmonize[]” a verdict form and jury instructions when doing so will allow them to sustain a jury verdict—and have identified how this Court could do so here. Br. Pls.-Appellees/Cross-Appellants at 55-56, Dkt. No. 99. But, if the Court declines to reinstate the jury’s damages award, it has no obligation to adopt a harmonizing construction, and it could determine that the district court provided the jury conflicting instructions on damages. The oral instructions made clear that compensatory damages were “not limited to expenses that [p]laintiffs may have incurred because of [their] injuries”—and instead should

“make [p]laintiffs whole,” ROA.8978—but the verdict form said the opposite, ROA.8986. This “fundamental” conflict makes it impossible to identify what guidance the jury followed, resulting in “a miscarriage of justice.” *Nowell*, 792 F.2d at 1316. If this Court does not reinstate the jury award, it should grant a new trial on damages consistent with the instruction that, under Title IX, Jane Doe 2 may recover compensatory damages beyond medical expenses for her physical injuries.

CONCLUSION

The Court should affirm the jury’s liability verdict on the official-policy claim and then either reverse the district court’s amendment of Jane Doe 2’s judgment or, alternatively, grant a new trial on damages.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 7,555 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32.2, which is fewer than half the words permitted by Federal Rule of Appellate Procedure 28.1(e)(2)(B) to the party on whose behalf this brief is submitted. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32.1 and the typestyle 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.

Dated: September 10, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this brief with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on September 10, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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