

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 19-3275

**JOHN J. HALL; JEANETTE A. HALL, as administrators and
personal representatives of the Estate of Karlie A. Hall,
and in their own right as decedent's heirs-at-law,**

Plaintiffs–Appellants,

v.

MILLERSVILLE UNIVERSITY, et al.,

Defendants–Appellees.

Appeal from the September 5, 2019 Order of the United States District Court for
the Eastern District of Pennsylvania in Civil Action No. 5:17-cv-00220-EGS

**BRIEF OF *AMICI CURIAE* 31 ORGANIZATIONS DEDICATED
TO IMPROVING EDUCATIONAL INSTITUTIONS'
RESPONSES TO DATING VIOLENCE,
IN SUPPORT OF APPELLANTS AND REVERSAL**

Margaret H. Zhang
Sophia P. Elliot
Terry L. Fromson
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 300
Philadelphia, PA 19107
(215) 928-9801

Alexandra Z. Brodsky
Adele P. Kimmel
PUBLIC JUSTICE
1620 L Street, NW, Suite 630
Washington, DC 20036
(202) 797-8600

Adrienne Spiegel
PUBLIC JUSTICE
475 14th Street, Suite 610
Oakland, CA 94612
(510) 622-8207

Counsel for Amici Curiae

LIST OF AMICI CURIAE

American Association of University Women
Bucks County Women’s Advocacy Coalition
California Women’s Law Center
Champion Women
Education Law Center—Pennsylvania
Equal Rights Advocates
Feminist Majority Foundation
Gender Equality Law Center, Inc.
Gender Justice
Girls for Gender Equity
Girls Inc.
Legal Voice
National Council of Jewish Women, Pittsburgh Section
National Crime Victim Law Institute
National Crittenton
National Network to End Domestic Violence
National Organization for Women Foundation
National Women’s Law Center
Pennsylvania Chapter of the National Organization for Women
Pennsylvania Coalition Against Domestic Violence
Pennsylvania Coalition Against Rape
Public Justice
Sexual Violence Law Center
Southwest Women’s Law Center
Stop Sexual Assault in Schools
WOAR—Philadelphia Center Against Sexual Violence
Women Against Abuse
The Women and Girls Foundation of Southwest Pennsylvania
Women Lawyers On Guard Inc.
The Women’s Law Center of Maryland, Inc.
Women’s Law Project

CORPORATE DISCLOSURE STATEMENT

As required under Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), undersigned counsel for *amici curiae* 31 Organizations Dedicated to Improving Educational Institutions' Responses to Dating Violence, states that *amici* are public-interest organizations, none of which has a parent corporation, and none of which issues public stock.

Dated: March 4, 2021

/s/ Margaret Zhang

Margaret Zhang, Pa. I.D. No. 325398
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 300
Philadelphia, PA 19107
(215) 928-9801

Counsel for Amici Curiae

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Amici curiae are 31 public-interest organizations dedicated to ensuring that all students are educated in safe and supportive learning environments that are free from harassment and other forms of discrimination. Due to the prevalence of sex-based harassment, which includes dating violence, and given its devastating effect on victims, *amici* seek to ensure that educational institutions promptly and effectively respond to sex-based harassment, including dating violence.

Amici have significant expertise on these issues. Some provide direct services to victims of sex-based harassment, including victims of dating violence. These services include crisis intervention and counseling, assistance navigating judicial and quasi-judicial systems, and representing survivors in those systems. Many *amici* engage in policy advocacy to improve institutional responses to sex-based harassment by advocating for law reform, by designing and implementing programs to improve societal understanding of the prevalence and seriousness of sex-based harassment, and by advocating for best practices to remedy sex-based harassment. *Amici* share their expertise in this brief in support of a determination that Title IX of the Education Amendments of 1972 requires covered educational programs to take corrective action whenever they have actual notice of, and can take action in response to, sex-based harassment, including dating violence.

The identities of the *amici curiae* are as follows: American Association of University Women; Bucks County Women’s Advocacy Coalition; California Women’s Law Center; Champion Women; Education Law Center—Pennsylvania; Equal Rights Advocates; Feminist Majority Foundation; Gender Equality Law Center, Inc.; Gender Justice; Girls for Gender Equity; Girls Inc.; Legal Voice; National Council of Jewish Women, Pittsburgh Section; National Crime Victim Law Institute; National Crittenton; National Network to End Domestic Violence; National Organization for Women Foundation; National Women’s Law Center; Pennsylvania Chapter of the National Organization for Women; Pennsylvania Coalition Against Domestic Violence; Pennsylvania Coalition Against Rape; Public Justice; Sexual Violence Law Center; Southwest Women’s Law Center; Stop Sexual Assault in Schools; WOAR—Philadelphia Center Against Sexual Violence; Women Against Abuse; the Women and Girls Foundation of Southwest Pennsylvania; Women Lawyers On Guard Inc.; the Women’s Law Center of Maryland, Inc.; and Women’s Law Project.

Individual statements of interest for each *amicus* are included as an addendum to this brief. Once the Court grants *amici* leave to file this brief, *amici* are authorized to file this brief under Federal Rule of Appellate Procedure 29(a)(2).

No counsel for a party authored this brief in whole or in part, and no one other than *amici* and their counsel made any monetary contribution toward this brief's preparation or submission.

SUMMARY OF ARGUMENT

Dating violence, a form of sex-based harassment, often places a victim in a cycle of escalating danger. What begins as subtle disrespect and isolation rooted in sex-based stereotypes escalates to physical injuries or sexual abuse. When a victim tries to leave a dating relationship, the abuser often becomes more violent, and the victim may choose to stay in the relationship for her own safety. As the cycle of abuse continues, the potential danger to the victim intensifies. Too often, it becomes lethal.

Young women and girls are particularly vulnerable to dating violence. And because many are students at the time the abuse occurs, they experience not just the emotional and physical abuse and danger, but also detrimental educational consequences. For that reason, Title IX requires schools to take corrective action in response to reported dating violence.

Here, Millersville University failed to meet its Title IX obligations. The University had actual knowledge of the dating violence at issue; the University had substantial control over both the context of the reported dating violence and the abuser; the dating violence was sex-based, severe, pervasive, and objectively offensive; and the University took no action to respond. Because Millersville University was deliberately indifferent to the reported dating violence—ultimately

costing one of its students her life, the most profound educational deprivation imaginable—the University violated Title IX.

For these reasons, as well as those set forth in Appellant’s Brief, the District Court’s order should be reversed.

ARGUMENT

This case is about the murder of a Millersville University student that the University should have taken action to prevent. Gregorio (Greg) Orrostieta killed Karlie Hall in her Millersville University dorm room, after the University had actual knowledge that Karlie was a victim of dating violence, and after the University took no steps to prevent further harm to Karlie.

Dating violence is a dangerous and sometimes lethal form of sex-based violence. Under Title IX, when a university has notice of the dating violence and control over the perpetrator and the context of the violence, it must take steps to prevent further harm. Millersville University failed to do so in violation of Title IX.

I. Dating Violence Is a Dangerous, Sometimes Lethal, Form of Sex-Based Harassment that Frequently Targets Young Women and Girls and Results in Adverse Emotional, Physical, and Educational Consequences.

Dating violence is a form of sex-based harassment that often places the victim in a cycle of escalating danger. Unfortunately, students—especially young women and girls—are frequent victims. Consequences for these vulnerable individuals include not just the emotional and physical abuse and danger, but also detrimental educational consequences.

A. Dating violence is characterized by escalating cycles of abuse.

Dating violence is violence committed by a person “who is or has been in a social relationship of a romantic or intimate nature with the victim.” 34 U.S.C. § 12291(a)(10). A variant of intimate partner violence, dating violence includes repeated and ongoing instances of physical, psychological, and sexual aggression perpetrated by a romantic partner.¹ It may begin with subtle forms of control and negative behaviors (e.g., targeted disrespect, humiliation, and isolation), and then escalate to more serious forms of abuse (e.g., stalking and electronic or cyber abuse, including unilaterally sharing sexual photos with others).² The abuse can then

¹ See generally Peter Jaffe et al., *Youth Dating Violence and Homicide, in Adolescent Dating Violence: Theory, Research and Prevention* 191 (David A. Wolfe & Jeff R. Temple eds., 2018), available at <https://www.sciencedirect.com/science/article/pii/B9780128117972000086>.

² *Id.* at 191; Bonnie Leadbeater et al., *Changing Your Status in a Changing World: It Is Complicated!, in Adolescent Dating Violence: Theory, Research and Prevention* 3, 5-6 (David A. Wolfe & Jeff R. Temple eds., 2018), available at <https://www.sciencedirect.com/science/article/pii/B9780128117972000013>; Priscilla Offenbauer & Alice Buchalter, Libr. of Cong., *Teen Dating Violence: A Literature Review and Annotated Bibliography* 7-9 (2011) <https://www.ojp.gov/pdffiles1/nij/grants/235368.pdf>; Lauren A. Reed, *Gender Matters: Experiences and Consequences of Digital Dating Abuse Victimization in Adolescent Dating Relationships*, 59 *J. Adolescence* 79, 80 (2017).

escalate further, with dangerous consequences for the victim such as physical injuries, sexual abuse, forced isolation, and even murder.³

Victims are often most at risk when they attempt to leave the abusive relationship. Often the violent partner reacts to separation by escalating violence, thereby punishing and controlling the partner trying to escape.⁴ In fact, “at the moment of separation or attempted separation—for many women, the first encounter with the authority of law—the batterer’s quest for control often becomes most acutely violent and potentially lethal.”⁵ The data bear this out: one study found that the most common risk factor for a male dating partner killing his female dating partner was her desire to end the relationship (or her having recently ended the relationship).⁶ For this and other reasons, young women often remain in a dating

³ Jaffe et al., *supra* note 1, at 191; Offenhauer & Buchalter, *supra* note 2, at 3-4.

⁴ See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 5-6 (1991).

⁵ *Id.*

⁶ Tamera Coyne-Beasley et al., *Adolescent Femicide: A Population-Based Study*, 157 Archives Pediatrics & Adolescent Med. 355, 355-56 (2003), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/481305>.

relationship after their dating partner acts violently,⁷ sometimes as a survival strategy.⁸

Because of the dangers involved in intimate partner violence and leaving a violent relationship, community resources are vitally important for this population, who may be unable or unwilling to ask for assistance from their families, especially when dating relationships become violent.⁹ This is particularly true for students living on university campuses, who are more likely to be isolated (physically or otherwise) from their families.¹⁰

⁷ See Teresa M. Bethke & David M. DeJoy, *An Experimental Study of Factors Influencing the Acceptability of Dating Violence*, 8 J. Interpersonal Violence 36, 37 (1993) (citing extensive research finding that only about 50 percent of victims terminate their relationships following violence).

⁸ Dee L.R. Graham et al., *A Scale for Identifying “Stockholm Syndrome” Reactions in Young Dating Women: Factor Structure, Reliability, and Validity*, 10 Violence & Victims 3, 3-6, 17-18 (1995).

⁹ Roger J.R. Levesque, *Dating Violence, Adolescents, and the Law*, 4 Va. J. Soc. Pol’y & L. 339, 348 (1997).

¹⁰ See Patricia Noller & Victor Callan, *The Adolescent in the Family* 5-6 (1st ed. 1991).

B. Dating violence is all too common, and too often ends in murder, especially among school-aged women and girls.

Sadly, dating violence is exceedingly common. Even the most conservative numbers indicate that, each year, intimate partners victimize millions of women.¹¹ In 2007 alone, an estimated 1,640 women were murdered by their intimate partners,¹² accounting for more than 40 percent of all women killed that year.¹³ Globally, approximately 47 percent of all female homicide victims were killed by

¹¹ Sharon G. Smith et al., Ctrs. for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey* 8 (2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

Although victims of intimate partner violence disproportionately identify as female, see Shannon Catalano, U.S. Dep't of Just., NCJ 239203, *Intimate Partner Violence, 1993–2010*, at 3 (2012, rev. 2015), <https://www.bjs.gov/content/pub/pdf/ipv9310.pdf>, amici note that male and gender nonconforming people also are victimized, see generally *id.*; Div. of Violence Prevention, Ctrs. for Disease Control & Prevention, *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation* (2010), https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf.

¹² Shannon Catalano et al., U.S. Dep't of Just., NCJ 228356, *Female Victims of Violence* 2 (2009), <https://www.bjs.gov/content/pub/pdf/fvv.pdf>.

¹³ See Joseph E. Logan et al., *Homicides—United States, 2007 and 2009*, 62 Ctrs. for Disease Control & Prevention Morbidity & Mortality Wkly. Rep. Supp. 164, 165 tbl.1 (2013), <https://www.cdc.gov/mmwr/pdf/other/su6203.pdf> (reporting 3,823 female deaths by homicide in 2007).

their intimate partner or family member in 2012.¹⁴ Public health experts consider dating violence, specifically, to be a “significant public health problem with substantial, long-term consequences.”¹⁵

Young women and girls between the ages of fifteen and twenty-four, in particular, are at the highest risk of homicide by a dating partner.¹⁶ This same demographic experiences the highest risk of nonlethal dating violence.¹⁷ In one recent survey of undergraduates at various institutions of higher education, between 9 and 16 percent at each institution reported experiencing intimate partner violence.¹⁸ At the K–12 level, the numbers are even more daunting: in one study,

¹⁴ United Nations Off. on Drugs & Crime, *Global Study on Homicide 10* (2018), https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

¹⁵ Phyllis Holditch Niolon et al., *An RCT of Dating Matters: Effects on Teen Dating Violence and Relationship Behaviors*, 57 *Am. J. Preventive Med.* 13, 14 (2019).

¹⁶ Jaffe et al., *supra* note 1, at 192.

¹⁷ *Id.* at 191; *see also* Bethke & DeJoy, *supra* note 7, at 37; Devon M. Largio, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 *Vand. L. Rev.* 939, 946 (2007); Christina Policastro & Mary A. Finn, *Coercive Control in Intimate Relationships: Differences Across Age and Sex*, 36 *J. Interpersonal Violence* 1520, 1524 (2021).

¹⁸ David Cantor et al., Westat, *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* xviii & fig.E-7 (rev. 2017),

35 percent of tenth grade students nationally reported experiencing dating violence within the last year.¹⁹ That means more than 1.3 million tenth graders will experience dating violence at some point during this school year.²⁰

Multiple social factors contribute to the alarming rate of youth dating violence. For one, research suggests that dating violence is associated with relationship patterns in which women and men assume stereotypically submissive and dominant roles, respectively.²¹ These expectations intensify throughout adolescence, as social influences lead teens and young adults increasingly to

<https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>.

¹⁹ See Denise Haynie et al., *Dating Violence Perpetration and Victimization Among U.S. Adolescents: Prevalence, Patterns, and Associations with Health Complaints and Substance Use*, 53 J. Adolescent Health 194, 196 (2013).

²⁰ Cf. Thomas D. Snyder et al., U.S. Dep't of Educ., NCES 2020-009, *Digest of Education Statistics 2018*, at 73 tbl.203.10 (2019), <https://nces.ed.gov/pubs2020/2020009.pdf> (projecting around 3.988 million tenth graders in the United States in 2021).

²¹ Levesque, *supra* note 9, at 347 (citing Peter J. Burke et al., *Gender Identity, Self-Esteem, and Physical and Sexual Abuse in Dating Relationships*, in *Violence in Dating Relationships: Emerging Social Issues* 72, 85 (Maureen. A. Pirog-Good & Jan E. Stets eds., 1989)); *see also generally* Jan E. Stets & Maureen A. Pirog-Good, *Violence in Dating Relationships*, 50 Soc. Psych. Q. 237 (1987).

conform to extreme gender stereotypic roles.²² Those rigid gender roles result in relationships in which girls and young women are pressured to be unconditionally supportive and responsible for the success or failure of their relationships.²³

Adolescent dating partners may also feel dependent on each other for social acceptance and self-esteem.²⁴ And social demands on teens and young adults, especially the pressure to conform, may increase the risk of dating violence.²⁵ The stereotype of women as gatekeepers and men as initiators of sexual activity may also contribute to increased risk of violence, reinforcing beliefs that men are justified in their use of force to obtain sex in dating situations.²⁶ Given these intensified roles

²² See generally Ann C. Crouter et al., *The Family Context of Gender Intensification in Early Adolescence*, 66 *Child Dev.* 317, 317 (1995); Nancy L. Galambos et al., *Masculinity, Femininity, and Sex Role Attitudes in Early Adolescence: Exploring Gender Intensification*, 61 *Child Dev.* 1905, 1905 (1990).

²³ Levesque, *supra* note 9, at 347-48.

²⁴ *Id.* at 348.

²⁵ See Lenore E.A. Walker, *Psychology and Violence Against Women*, 44 *Am. Psych.* 695, 697-98 (1989).

²⁶ See Beverly Miller, *Date Rape: Time for a New Look at Prevention*, 29 *J. Coll. Student Dev.* 553, 554 (1988).

and pressures placed on young women and girls, it is no surprise that relationships among school-aged young people are particularly prone to dating violence.²⁷

Unfortunately, young people in violent dating relationships are also likely to internalize dating patterns and repeat them later in life.²⁸ When the violent pattern repeats, including in later relationships, it is likely to escalate and result in more severe violence and harm.²⁹

C. Dating violence profoundly undermines students' educations and lives.

The high incidence of young people experiencing dating violence is especially concerning because, particularly for teenagers, sex-based violence can have long-term adverse consequences for their educations and wellbeing.³⁰

Put simply, sex-based violence makes it much harder for victims to learn and thrive in school. One study found that 68 percent of victims had difficulty focusing in class and that 30 percent of victims were absent from school because they felt

²⁷ Levesque, *supra* note 9, at 348.

²⁸ See Jaffe et al., *supra* note 1, at 193.

²⁹ See *id.*

³⁰ See generally Niolon et al., *supra* note 15, at 14.

they would be unsafe going to or attending school.³¹ Students who have experienced sex-based abuse become reclusive, skip class, and have higher rates of withdrawal from school; indeed, 34 percent drop out of college.³²

Victims who do remain in school experience “greater disengagement from the academic environment, which in turn relates to performance decline (i.e. lower grades).”³³ For example, one study found that women who experienced sexual victimization before college “were over 3 times more likely than nonvictims to have a GPA below 2.5 at the end of their first semester and almost twice as likely to have that low GPA at the end of their second semesters.”³⁴ The impact extends beyond grades to overall engagement with the academic environment: survivors who are

³¹ Kayla Patrick & Neena Chaudhry, Nat’l Women’s Law Ctr., *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 8 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence.pdf.

³² Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18 J. Coll. Student Retention: Rsch. Theory & Prac. 234, 242-46 (2016).

³³ Marisela Huerta et al., *Sex and Power in the Academy: Modeling Sexual Harassment in the Lives of College Women*, 32 Personality & Soc. Psychol. Bull. 616, 624 (2006); see also Carol E. Jordan et al., *An Exploration of Sexual Victimization and Academic Performance Among College Women*, 15 Trauma, Violence & Abuse 191, 193 (2014).

³⁴ Jordan et al., *supra* note 33, at 196-97.

sexually assaulted on campus can develop “negative perceptions of the academic environment” that in turn “may limit [their] participation in [the] informal informational channels and relationships” that can be essential to secure both educational and professional opportunities.³⁵

In addition to the adverse educational consequences, victims are likely to experience depression, anxiety, substance abuse, suicide ideations, eating disorders, serious injuries, and other adverse effects.³⁶ Sex-based violence is also associated with higher rates of post-traumatic stress disorder and self-mutilation.³⁷

II. Title IX Requires Education Programs to Take Corrective Action When They Have Actual Notice of, and Can Take Action in Response to, Sex-Based Harassment, including Dating Violence.

Title IX requires schools to take measures to support student victims of dating violence. A school may be held liable for damages under Title IX if there is sex-based harassment “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit”; the school has “actual knowledge” of the harassment; and the school is “deliberately

³⁵ See Huerta et al., *supra* note 33, at 618.

³⁶ Jaffe et al., *supra* note 1, at 192.

³⁷ See Christine Levesque et al., *The Influence of Romantic Attachment and Intimate Partner Violence on Non-Suicidal Self-Injury in Young Adults*, 39 J. Youth & Adolescence 474, 478-79 (2010); Mengo & Black, *supra* note 32, at 235.

indifferent” to the harassment. *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633, 642, 650-52 (1999). (Within the meaning of civil rights laws like Title IX, the term “harassment” encompasses physical violence. *See, e.g., id.* at 653.) Because dating violence is a form of sex-based harassment, federally funded education programs must take remedial action whenever they have actual knowledge of dating violence.

A. Dating violence is a form of sex-based harassment.

Dating violence is sex-based. Recently published federal regulations promulgated under Title IX expressly include “dating violence” and “domestic violence” within the definition of sex-based harassment that schools must, by law, address. 34 C.F.R. § 106.30(a)(3) (2020). Here, Millersville University’s own policies acknowledge as much: its 2014 Title IX policy defined sexual misconduct to include “intimate partner/dating violence,” and its Title IX Coordinator admitted that such misconduct would violate Title IX and trigger the University’s Title IX obligations. Swantek Dep. 37-39, 81-82, Pls.’ Resp. Opp’n Mot. Summ. J. Ex. O, ECF No. 148-20, *Hall v. Millersville Univ.*, No. 17-0220 (E.D. Pa. Oct. 17, 2018).

In cases brought under Title IX, Title VII of the Civil Rights Act of 1964,³⁸ and the now-defunct civil rights remedy of the Violence Against Women Act (VAWA),³⁹ courts look at the totality of the circumstances to determine whether the conduct is sex-based and infer discriminatory motivation from evidence such as gender-specific epithets, acts that perpetuate stereotypes of women, and patterns of abusive conduct including physical and sexual assaults. For example, one court held that a reasonable jury could conclude that an aggressor’s conduct was based in part on the victim’s gender, where the aggressor called the female victim a “dumb bitch” and later shoved her to the ground. *Crisonino v. New York City Hous. Auth.*, 985 F. Supp. 385, 391 (S.D.N.Y. 1997). Another court held, in the context of a marital relationship, that gender-motivated violence could be inferred from misogynistic

³⁸ In evaluating Title IX education discrimination claims, courts often import aspects of Title VII’s framework for analyzing employment discrimination claims. *See, e.g., Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 564 (3d Cir. 2017); *Wolfe v. Fayetteville Sch. Dist.*, 648 F.3d 860, 865 n.4 (8th Cir. 2011); *see also Tingley-Kelley v. Trs. of the Univ. of Pa.*, 677 F. Supp. 2d 764, 775 (E.D. Pa. 2010) (citing cases).

³⁹ In *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court struck down the VAWA civil rights remedy, 42 U.S.C. § 13981 (1994). However, cases decided under that statute—which had allowed victims of violent crimes “motivated by gender” to recover damages, *see, e.g., Anisimov v. Lake*, 982 F. Supp. 531, 533, 540-41 (N.D. Ill. 1997)—nevertheless illustrate how courts assessed whether domestic violence claims reflected a discriminatory gender-motivation.

epithets, acts that perpetuated stereotypes of a submissive role for the wife, severe physical attacks, violence occurring when the wife asserted her independence, and an incident of rape. *Ziegler v. Ziegler*, 28 F. Supp. 2d 601, 606-07 (E.D. Wash. 1998). Indeed, most courts to consider claims under VAWA's civil rights remedy recognized that intimate partner violence, like sexual assault, was gender-motivated, as was necessary to make a claim under that statute.⁴⁰

That dating violence is perpetrated by an intimate partner does not make it any less sex-based. *See, e.g., Roohbakhsh v. Bd. of Trs. of Neb. State Colls.*, 409 F. Supp. 3d 719, 735 (D. Neb. 2019) (holding that the jury could conclude that dating violence was sex-based, and noting that, in a Title IX context, physical abuse in a romantic relationship cannot be assumed to be merely an interpersonal conflict); *see also Forrest v. Brinker Int'l Payroll Co.*, 511 F.3d 225, 230 (1st Cir. 2007) (holding that harassment was sex-based for purposes of Title VII, even when a prior romantic relationship existed between the harasser and the victim); *Ziegler*, 28 F. Supp. 2d at 607 (holding that the complaint adequately alleged that domestic violence perpetrated by a husband was motivated by sex). Even when personal animosity or jealousy is a motivating factor in the harasser's conduct, the harassment can also be

⁴⁰ Julie Goldscheid & Risa E. Kaufman, *Seeking Redress for Gender-Based Bias Crimes—Charting New Ground in Familiar Legal Territory*, 6 Mich. J. Race & L. 265, 271-83 (2001) (surveying cases).

motivated by the victim's sex; these two motives are not mutually exclusive. *See, e.g., Sclafani v. PC Richard & Son*, 668 F. Supp. 2d 423, 433 (E.D.N.Y. 2009) (holding that a jury could find that an ex-boyfriend's harassment was motivated both by "personal animosity or jealousy" and sex); *see also Doe v. Univ. of Scis.*, 961 F.3d 203, 209 (3d Cir. 2020) (noting Title IX prohibits conduct for which sex is "a motivating factor" (emphasis added)); *Doe v. Purdue Univ.*, 928 F.3d 652, 667 (7th Cir. 2019) (Barrett, J.) (same).

In fact, animosity and jealousy may arise out of misogynistic stereotypes about women. Dating violence, as "an expression of an attempt to control" a partner's body, property, family, or sexuality, often arises from sex-based assumptions about how the victim should act in a relationship.⁴¹ For example, many believe "good women" are deferential to their male partners' wishes, so a girlfriend who is independent—who refuses to abide by his "rules," who talks to other men, who refuses sex—may be punished for transgressing sex stereotypes.⁴² But even if

⁴¹ Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2120 (1993); *see also* Goldscheid & Kaufman, *supra* note 40, at 275-76.

⁴² *See, e.g.,* Diane J. Burgess & Eugene Borgida, *Who Women Are, Who Women Should Be: Descriptive and Prescriptive Gender Stereotyping in Sex Discrimination*, 5 Psych. Pub. Pol'y & L. 665, 676-77 (1999); H. Juz McNaughton Reyes et al., *Gender Role Attitudes and Male Adolescent Dating Violence Perpetration: Normative Beliefs as Moderators*, 45 J. Youth Adolescence 350, 358

jealousy and sex were wholly separate motivations, it would create a “false dichotomy” to assume harassment cannot be motivated by sex when it is also motivated by “a romantic relationship gone sour.” *Forrest*, 511 F.3d at 229. In short, whether there is sex-based bias depends on the nature of the conduct, not the nature of the relationship between a victim and her harasser. *See id.* at 229-30; *Sclafani*, 668 F. Supp. 2d at 433.

B. When education programs receive reports of dating violence, they have actual notice of substantial dangers to the victim.

When a federally funded education program receives “actual notice” of sex-based harassment within its education programming, that notice triggers the education program’s Title IX responsibilities. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288-90 (1998). The “actual notice” standard is met if a university “knows the underlying facts, indicating sufficiently substantial danger to students, and was therefore aware of the danger.” *Bostic v. Smyrna Sch. Dist.*, 418 F.3d 355, 360-61 (3d Cir. 2005) (quoting 3C Fed. Jury Prac. & Instructions § 177.36 (5th ed. 2001)).

(2016); *see also* Jennifer A. Jewell & Christia Spears Brown, *Sexting, Catcalls, and Butt Slaps: How Gender Stereotypes and Perceived Group Norms Predict Sexualized Behavior*, 69 *Sex Roles* 594, 596 (2013); M. Christina Santana, et al., *Masculine Gender Roles Associated with Increased Sexual Risk and Intimate Partner Violence Perpetration among Young Adult Men*, 83 *J. Urb. Health* 575, 579-582 (2006); *cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989).

Applying those principles to dating violence, when a university has actual notice of dating violence, it will have knowledge of facts “indicating substantial danger” to students. *Id.* at 360. Given the escalating nature of dating violence, *see generally supra* Section I.A, the ongoing risk to the victim is inherent. A reported act of dating violence provides a university with knowledge not only of the incident at issue, but also that the student’s future safety is in jeopardy.

C. An education program is deliberately indifferent whenever it has the ability to take corrective action and fails to do so.

When a federally funded education program has actual knowledge of sex-based harassment, and it has authority to take corrective action, the school is liable for damages if it fails to act. *Davis*, 526 U.S. at 633, 642, 650-52. Thus, whenever a federally funded university’s “deliberate indifference” either causes a student to experience more dating violence or makes her vulnerable to further violence, the university is liable for damages. *Id.* at 644-45; *see Gebser*, 524 U.S. at 290-91.

The failure to take any remedial action in response to actual knowledge of dating violence is “clearly unreasonable” and amounts to “deliberate indifference.” *Davis*, 526 U.S. at 648. A school need not “fully appreciate[] the harmful consequences of that discrimination” for its response to be deliberately indifferent. *Vance v. Spencer Cty. Pub. Sch. Dist.*, 231 F.3d 253, 259-60 (6th Cir. 2000) (quoting *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 141 (2d Cir. 1999)). A jury could reasonably find that a school was deliberately indifferent to reports of sex-based

harassment, such as dating violence, when the school fails to address those reports. *See Davis*, 526 U.S. at 654.

In particular, given the nature of dating violence, it is clearly unreasonable for a university to fail to provide victim support after a known occurrence of dating violence perpetrated on its campus. Given escalation patterns common to dating violence, *see generally supra* Section I.A, the failure to take action subjects the student to a high risk of future violence and the prospect of tightening control by the student's abuser.⁴³ And most universities, including Millersville University, have some control over people on their campuses, and thus the opportunity to take corrective measures in response to dating violence. *See, e.g.*, J.A. 65 n.37 (discussing the University's dormitory guest policy). A university's failure to take any investigatory or remedial action in response to dating violence on campus amounts to deliberate indifference in violation of Title IX.

III. Millersville University Is Liable under Title IX for its Deliberate Indifference to a Substantial Risk of Sex-Based Harassment.

In this case, Title IX required Millersville University to “adequately . . . respond” whenever it had “actual knowledge” of sex-based abuses. *Gebser*, 524 U.S. at 288-90. The University failed to do so for Karlie.

⁴³ *Cf. Mahoney, supra* note 4, at 5-6.

A. The University had actual knowledge that Karlie experienced dating violence on campus, which triggered the University's Title IX responsibilities.

Universities have “actual knowledge” of sex-based harassment if anyone reports the discrimination to an “appropriate person.” *Gebser*, 524 U.S. at 290; *Doe v. Galster*, 768 F.3d 611, 614 (7th Cir. 2014).

Here, record evidence indicates that multiple high-level officials received reports that Karlie’s boyfriend was abusing her. Karlie’s resident assistant witnessed the dating violence Karlie had experienced in October 2014. Her report reached the University’s Assistant Director of Judicial Affairs and Deputy Title IX Coordinator. Swantek Dep. 131; Wiafe Dep. 59-72, Pls.’ Resp. Opp’n Mot. Summ. J. Ex. G, ECF No. 148-12, *Hall*, No. 17-0220 (E.D. Pa. Oct. 17, 2018). Karlie’s roommate’s mother also reported Karlie’s abuse to University Police. J.A. 14, 60, 155, 162.

The University officials who received these reports were “appropriate” recipients of the reports under Title IX because they had “authority to address the alleged discrimination and to institute corrective measures on the recipient’s behalf.” *Gebser*, 524 U.S. at 290. Specifically, the Assistant Director of Judicial Affairs, who was also Deputy Title IX Coordinator, could have provided “resources,” “follow-up[,] or evaluation.” Swantek Dep. 137, 150, 155; Wiafe Dep. 25-26. And University Police could have issued a “No Trespass Order” to Karlie’s boyfriend Greg. Swantek Dep. 115.

Whether a university official “has the responsibility and authority to qualify as an appropriate person is a question of fact.” *M.S. ex rel. Hall v. Susquehanna Twp. Sch. Dist.*, 969 F.3d 120, 126 n.6 (3d Cir. 2020). The District Court held, on this issue, that “the evidence creates, at the very least, a disputed issue of material fact.” J.A. 58. This Court should do the same.

B. The University had substantial control over both the context and the perpetrator of the reported dating violence.

The Court should likewise affirm the District Court’s holding that “there is a genuine dispute of fact,” J.A. 65, over whether the University could “exercise substantial control over both [the perpetrator of the dating violence] and the context in which the known [dating violence] occurs,” *Davis*, 526 U.S. at 645. The University plainly had sufficient control to remove Greg from campus, as demonstrated by police removing him from University property in October 2014. J.A. 13, 153-54, 160-61. Likewise, as the University’s Title IX Coordinator admitted, the University had the authority to issue “No Trespass Orders” and could have used those orders to address the dating violence perpetrated by Greg on campus. Swantek Dep. 111-16.

C. The sex-based dating violence was severe, pervasive, objectively offensive, and effectively deprived Karlie of access to educational opportunities.

A university is liable for damages under Title IX if it “subjects” a student, or makes a student “vulnerable to,” harassment that is “so severe, pervasive, and

objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." *Davis*, 526 U.S. at 633.

Here, even before her death, the dating violence Karlie experienced was severe, pervasive, and objectively offensive. In the months preceding Karlie's death, Greg acted in a controlling and increasingly violent manner. Greg hated when Karlie would pay attention to anyone else, even her friends: He wanted her all to himself Flexer Dep. 102-03, 157-58, Mot. Summ. J. Ex., ECF No. 147-8, *Hall*, No. 17-0220 (E.D. Pa. Sept. 17, 2018). He reacted explosively when displeased with Karlie, screaming at her about matters as trivial as her text messages, J.A. 11, 151, 158, and destroying her possessions—breaking her iPod, tearing up her stuffed animal—out of anger, Flexer Dep. 26-28, 72-73; Flexer Interview 1-2, Pls.' Resp. Opp'n Mot. Summ. J. Ex. F, ECF No. 148-11, *Hall*, No. 17-0220 (E.D. Pa. Oct. 17, 2018). Greg's violent possessiveness was not hidden behind closed doors. At one party, Greg tried to control Karlie's alcohol intake, grabbed and shook Karlie's roommate to try to elicit information about Karlie's location, screamed "Where's Karlie?" repeatedly, and grabbed Karlie by the shoulders in a violent manner. Flexer Dep. at 29-45, 139-42; Flexer Interview 2-3.

This abusive conduct escalated into the violent incident that Karlie's resident assistant reported in October 2014, during which Karlie suffered a facial injury as a result of Greg's abuse, *see supra* Section III.A; *accord* Flexer Dep. 42-62, 123-24,

146, 156. And, a few months after that, the abuse finally escalated to murder, likely coupled with a sexual assault. J.A. 16, 157, 163-64. It cannot be disputed that these frequent—and ultimately fatal—“verbal and physical attacks” were severe and pervasive. *Vance*, 231 F.3d at 259 (6th Cir. 2000); *see also Gabrielle M. v. Park Forest–Chicago Heights Sch. Dist. 163*, 315 F.3d 817, 821-23 (7th Cir. 2003); *Murrell v. Sch. Dist. No. 1*, 186 F.3d 1238, 1248 (10th Cir. 1999); *cf. Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535-37 (3d Cir. 2018).

The abuse profoundly interfered with Karlie’s education. After the October assault, Karlie struggled to leave her room and missed class. J.A. 14, 162; Flexer Interview 3. Karlie’s death alone had the “systemic effect of denying [her] equal access to an educational program or activity.” *Davis*, 526 U.S. at 652-53. Indeed, Karlie lost access to all education whatsoever.

A jury could also find that the abuse was sex-based. Greg sought to control Karlie and reacted violently when she asserted her independence. For example, the attack reported to University officials began when Karlie rejected Greg’s sexual advances, refusing to allow him into her bed. J.A. 12-13, 153, 160. That defiance was the final straw for Greg: In the hours leading up to that assault, he had been furious that Karlie had refused to stay by his side the whole night and had not followed his orders about how much alcohol to drink. Flexer Dep. 39-43.

That evening, sadly, was no aberration. For months before Karlie’s murder, Greg tried to monitor and control Karlie’s interactions with other men, enraged that Karlie might talk or spend time with male classmates, breaking his “rules” for how she was supposed to behave. *Id.* at 74-77, 91-95, 157-58. His desire to control Karlie was all-consuming. Karlie was “always saying that [Greg] was accusing her” of being out with other guys. *Id.* at 76-77. After she suffered a fractured orbital bone in January, for instance, Greg was preoccupied not with her health but whether she might have been with another man the night of the injury. *Id.* at 91-95. In short, a jury could find Greg abused, and ultimately murdered, Karlie because she failed to behave like a “good,” deferential woman. *See generally supra* Section I.B.

D. By declining to take action to respond to the known dating violence that Karlie experienced, the University was deliberately indifferent.

A school is deliberately indifferent when its “response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” *Davis*, 526 U.S. at 648. The paradigmatic case of deliberate indifference is when a school refuses to take action in response to a report. *See, e.g., id.* at 648-54; *Vance*, 231 F.3d at 259-60; *Murrell*, 186 F.3d at 1247.

Here, after receiving reports that Karlie was a victim of dating violence in October 2014, the University took no corrective action at all. *Wiafe* Dep. 81-82; *cf.* *Swantek* Dep. 155-56. It did not issue a “No Trespass” order. *Wiafe* Dep. 81-82; *cf.* *Swantek* Dep. 112-16. It did not provide counseling or “resources” to Karlie. *Wiafe*

Dep. 81-82. Indeed, University Title IX officials did not even contact Karlie after the October 2014 dating violence incident. *Id.* at 81-82, 92-94. In short, the University “made no effort whatsoever either to investigate or to put an end to” the dating violence. *Davis*, 526 U.S. at 654.

A few months later, Karlie was dead. J.A. 16, 157, 163. There is no doubt that a jury could find that the University’s “complete refusal to investigate” the reports of ongoing dating violence amounted to deliberate indifference. *Murrell*, 186 F.3d at 1248; *see also Davis*, 526 U.S. at 654. And because dating violence is sex-based violence that triggers a university’s Title IX responsibilities, the University unlawfully failed to meet its Title IX obligations.

CONCLUSION

For these reasons, as well as those set forth in Appellant's Brief, *amici* respectfully urge the Court to reverse the order below.

Respectfully submitted,

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Margaret H. Zhang, Pa. ID No. 325398
Sophia P. Elliot, Pa. ID No. 329301
Terry L. Fromson, Pa. ID No. 27795
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 300
Philadelphia, PA 19107
(215) 928-9801

Alexandra Z. Brodsky, D.C. ID
No. 1048530
Adele P. Kimmel, D.C. ID No. 412612
PUBLIC JUSTICE
1620 L Street, NW, Suite 630
Washington, DC 20036
(202) 797-8600

Adrienne Spiegel, Cal. ID No. 330482
PUBLIC JUSTICE
475 14th Street, Suite 610
Oakland, CA 94612
(510) 622-8207

Counsel for Amici Curiae

CERTIFICATES

Margaret H. Zhang, counsel for *amici*, hereby certifies that:

1. As required by Third Circuit Local Appellate Rule 28.3(d), I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.
2. This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) and the addendum of individual statements of *amici curiae*, this document contains 6,043 words.
3. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5), (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.
4. On this date, the foregoing brief was filed electronically and served on all counsel of record through the Court's Electronic Case Filing system.
5. As required by Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic version of this brief transmitted to the Court on this date is identical to the text of the paper copies to be delivered to the Clerk.

6. Before transmitting this brief to the Court electronically, a virus check was performed on the electronic PDF version of this brief using Norton LifeLock 22.20.5.39, and no virus was found.

Dated: March 4, 2021

/s/ Margaret Zhang

Margaret Zhang, Pa. I.D. No. 325398
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 300
Philadelphia, PA 19107
(215) 928-9801

Counsel for Amici Curiae

ADDENDUM OF INDIVIDUAL STATEMENTS OF *AMICI CURIAE*

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

American Association of University Women (AAUW) was founded in 1881 by like-minded women who had challenged society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports equitable educational climates free of harassment, bullying, and sexual assault, and vigorous enforcement of Title IX and all other civil rights laws pertaining to education.

BUCKS COUNTY WOMEN'S ADVOCACY COALITION

The Bucks County Women's Advocacy Coalition's mission is to promote systemic change to achieve gender equity and economic security for all. Safety for women and girls in the home and on educational campuses is a key principle to achieve the full potential of individuals. Therefore it is important that educational programs respond appropriately to dating violence of students and all associated with an institution of learning.

CALIFORNIA WOMEN’S LAW CENTER

The California Women's Law Center (CWLC) is a statewide non-profit law and policy center whose mission is to create a more just and equitable society by breaking down barriers and advancing the potential of for women and girls through transformative litigation, policy advocacy and education. CWLC seeks to eliminate gender violence in all forms, including dating violence, in schools, homes, workplaces and other environments so that all women and girls can access their full potential.

CHAMPION WOMEN

Champion Women, Inc. is a non-profit legal advocacy organization for girls and women in sports, harnessing the power of sport for social justice. Sports and sexual violence issues frequently collide in a number of ways; we provide the focused advocacy that amplifies the voices of girls and women. Champion Women is committed to using sport to improve the lives of girls and women.

EDUCATION LAW CENTER—PENNSYLVANIA

The Education Law Center—Pennsylvania (ELC-PA) is a nonprofit legal advocacy organization dedicated to ensuring that all Pennsylvania’s children have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC-PA works to eliminate systemic

inequalities that lead to disparate educational outcomes based on race, gender, sexual orientation, gender identity, gender expression and disability status. Our priority areas include ensuring all students have equal access to safe and supportive schools and the full range of services and programs they need to succeed. We seek to participate as amicus to explain the importance of schools appropriately responding and intervening to prevent sex-based harassment and dating violence.

EQUAL RIGHTS ADVOCATES

Equal Rights Advocates (ERA) is a national civil rights advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women, girls, and gender expansive individuals. In service of its mission, ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education. ERA has a long history of pursuing equality and justice for women and girls under Title IX through advocacy, legislative efforts, and litigation. ERA has served as counsel in numerous class and individual cases involving the interpretation of Title IX in sexual and dating violence contexts. ERA also provides advice and counseling to hundreds of individuals each year through our national Advice & Counseling program, and has participated as *amicus curiae* in scores of state and federal cases involving the interpretation and application of procedural and substantive laws affecting the ability of students to obtain and enforce their equal rights under Title IX.

FEMINIST MAJORITY FOUNDATION

The Feminist Majority Foundation is dedicated to equality and non-violence. We are concerned on the enforcement of Title IX through both our Education Equity Project and our College Campus Program. Both are dedicated to eliminating sexual assault and violence throughout the United States.

GENDER EQUALITY LAW CENTER, INC.

The Gender Equality Law Center is a not-for-profit law and advocacy organization based in New York City. Our mission is to combat gender-based discrimination, including on behalf of workers and students who experience discrimination on the basis of gender, sexual orientation, sexual identity and gender expression. One of our four major concentrations is sexual harassment and assault prevention. In this area, we litigate cutting edge cases, work alone and with coalition partners to advance more protective laws and policies, and conduct know-your-rights trainings on sexual harassment and assault prevention.

GENDER JUSTICE

Gender Justice is a nonprofit legal advocacy organization based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its impact litigation program, Gender Justice acts as counsel in cases involving gender equality and provides legal advocacy as amicus

curiae in on issues of gender discrimination. Gender Justice has an interest in ensuring that Title IX protections are available to all students, and that they are protected from sexual harassment and hostile educational environments.

GIRLS FOR GENDER EQUITY

Girls for Gender Equity has worked since its founding to ensure that girls and non-binary youth of color are able to experience safety and healing, and to end gender-based violence in schools, homes, and communities. School-based sexual violence is a significant driver of school-based pushout that causes girls of color to leave their education. Schools must make every effort to create cultures of consent and support students in building healthy relationships, and take every measure to prevent harm to students.

GIRLS INC.

Girls Inc. is a national nonprofit organization that inspires girls to be strong, smart, and bold through direct service and advocacy. Our seventy-eight local affiliates serve girls ages 5–18, primarily in afterschool and summer programs at more than 1,500 sites across the United States and Canada. Girls Inc. creates a pro-girl environment and utilizes evidence-based programming to equip girls with the tools they need to navigate gender, economic, and social barriers, and grow up healthy, educated, and independent. Informed by girls and their families, we also

advocate for policies and practices to advance the rights and opportunities of girls and young women. Combatting sexual harassment and violence, including dating violence, is a top priority for Girls Inc. because of its prevalence and harmful effect on students' ability to learn and thrive at all levels of education.

LEGAL VOICE

Legal Voice is a regional non-profit public interest organization that works to advance the legal rights of all women, girls, and LGBTQ people in the Pacific Northwest. Since its founding in 1978 (as the Northwest Women's Law Center), Legal Voice has engaged in impact litigation, legislative advocacy, and education about legal rights. Legal Voice's work includes advancing gender equity in education, including addressing campus sexual violence, bullying, and discrimination in athletics. In addition, Legal Voice has long advocated on behalf of sexual assault survivors before courts and state legislatures. As a regional expert on gender discrimination and gender-based violence, Legal Voice has participated as counsel and as amicus curiae in numerous cases involving gender equity in education throughout the Northwest and the country.

NATIONAL COUNCIL OF JEWISH WOMEN, PITTSBURGH SECTION

The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. For 127 years,

NCJW Pittsburgh Section has championed the needs of women, children, and families as the only Jewish women's organization in Pittsburgh dedicated to grassroots advocacy and community service. From the Violence Against Women Act that NCJW helped draft and get passed, to Higher Ground: NCJW's Domestic Violence Campaign, which aims to increase survivors' autonomy by improving their economic status, NCJW has been and continues to strive to help develop and pass effective public policy to address intimate partner violence, dating violence, sexual assault, and stalking to ensure increased emphasis on prevention, accountability for perpetrators, and resources and justice for survivors especially in schools.

NATIONAL CRIME VICTIM LAW INSTITUTE

The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education and resource sharing. NCVLI accomplishes its mission through training and education; providing legal technical assistance on cases nationwide; researching and analyzing developments in crime victim law; promoting the National Alliance of Victims' Rights Attorneys & Advocates; and participating as amicus curiae in select state, federal and military cases that present victims' rights issues of broad importance.

NATIONAL CRITTENTON

National Crittenton is a nonprofit national advocacy organization whose mission is to advance social, economic and political justice for girls, young women and gender expansive young people impacted by chronic adversity, violence, and injustice. Since it was founded in 1883, it has advanced the rights of all “girls and gender expansive young people” to live free from all forms of violence including dating violence in any setting. There is no question that dating violence is a form of sex-based violence that is often severe, pervasive, and escalating—and sometimes lethal. Furthermore, when such a crime occurs at an education institution, Title IX must apply. As such, National Crittenton is honored to sign on to this amicus brief.

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

The National Network to End Domestic Violence (NNEDV) is a not-for profit organization incorporated in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence, and their advocates. NNEDV was instrumental in promoting Congressional enactment and implementation of the Violence Against Women Act. NNEDV works with federal, state and local policy makers and domestic violence advocates throughout the nation to identify and

promote policies and best practices to advance victim safety. NNEDV is deeply concerned about the safety of survivors of dating violence and sexual violence at their education institutions. We believe that universities should take their legal obligation and responsibility to respond to dating violence and sexual violence seriously and that Title IX should provide protections and justice to survivors of abuse.

NATIONAL ORGANIZATION FOR WOMEN FOUNDATION

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal education opportunities under Title IX for girls and women and ending sex discrimination, sexual harassment, sexual assault, and dating violence. Protecting survivors of violence is a critical element in assuring equal education.

NATIONAL WOMEN'S LAW CENTER

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 those who face multiple and intersecting forms of discrimination. The Center also specifically works to address and prevent sex-based discrimination—including sexual harassment, sexual assault, and dating violence—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, including LGBTQ individuals, enjoy the full protection against sex discrimination as promised by our laws.

PENNSYLVANIA CHAPTER OF THE NATIONAL ORGANIZATION FOR WOMEN

The Pennsylvania Chapter of the National Organization for Women is committed to fighting against the rape culture that our society is encumbered in, and this commitment includes ensuring that educational institutions prevent and stop sex-based harassment, including dating violence, rather than dismissing claims that are brought forward. Sex-based harassment at school is unacceptable, causing personal pain and embarrassment and creating a negative learning environment for children and young people in their formative years. Students need to feel safe in

classrooms and on campus—places where sex-based harassment and dating violence may occur and that the educational institution is responsible for. Administrators, educators, students, and parents must nurture an inclusive, supportive, and respectful environment in their efforts to decrease and eliminate sex-based harassment, including dating violence, and the responsibility of each educational institution does not stop at simply handing out a sex-based harassment policy that is never proactively addressed or improved upon. Millersville University’s failure to stop the dating violence in this case is more than troubling.

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

Pennsylvania Coalition Against Domestic Violence (PCADV) is a private nonprofit organization working at the state and national levels to eliminate domestic violence, secure justice for victims, enhance safety for families and communities, and create lasting systems and social change. PCADV was established in 1976 as the nation's first domestic violence coalition and is now comprised of 60 funded community-based domestic violence programs across Pennsylvania, providing a range of life-saving services, including shelters, hotlines, counseling programs, safe home networks, medical advocacy projects, transitional housing and civil legal services for victims of abuse and their children. Current PCADV initiatives provide training and support to further advocacy on behalf of victims of domestic violence and their children.

PENNSYLVANIA COALITION AGAINST RAPE

The Pennsylvania Coalition Against Rape (PCAR) is a private nonprofit organization. Founded in 1975, PCAR is the oldest anti–sexual violence coalition in the country and is widely respected at both the state and national levels for its leadership to prevent sexual assault, abuse and harassment. PCAR has successfully worked as an agent of change—educating society about the severe and long-lasting impact of sexual assault, sexual abuse and sexual harassment, confronting victim-blaming attitudes, challenging injustice, and advocating for policies for victims of sexual abuse, sexual assault and sexual harassment to provide them with the justice, compassion, privacy and dignity they deserve. PCAR is committed to ending all forms of sexual abuse, sexual assault and sexual harassment. We firmly believe that prevention is possible, and that violence against women is intolerable. It is the responsibility of the community at large to work towards the prevention of sexual abuse, sexual assault, sexual harassment and dating violence. What we say and do matters, therefore PCAR joins as an amicus in this case.

PUBLIC JUSTICE

Public Justice is a national legal advocacy organization dedicated to protecting civil, consumer, and workers’ rights, as well as environmental sustainability and access to the courts. 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 works to secure educational equity and safe campuses for students through lawsuits designed to enforce Title IX. For example, Public Justice often represents students denied equal educational opportunities because of sex-based harassment suffered at school. In Public Justice's experience, holding schools accountable under Title IX is critically important to protecting students against discriminatory practices and to ensuring that students can obtain their education in a safe environment, free from sex-based harassment.

SEXUAL VIOLENCE LAW CENTER

The Sexual Violence Law Center (SVLC) is a non-profit legal services organization that protects the privacy, safety, and civil rights of survivors of sexual violence through trauma-informed, holistic, survivor-centered legal advocacy. SVLC responds to the legal needs of sexual assault victims, both adults and youth, of Washington State who do not qualify for DV (intimate partner violence) services. SVLC attorneys provide legal representation and assistance on a full range of legal issues as a result of a sexual assault, including protection orders, housing, employment, public benefits, immigration, victims rights and Title IX proceedings. SVLC is deeply interested as amicus curiae as a direct service provider to survivors of sexual violence, dating violence and sex-based harassment.

SOUTHWEST WOMEN’S LAW CENTER

The Southwest Women's Law Center (SWLC) works to raise New Mexico's women and girls out of poverty, to secure equality and economic justice, to address all manner of violence directed at women and girls, and to ensure that New Mexico’s women and girls have access to reliable information about, and unfettered access to, safe and legal reproductive healthcare. The SWLC is committed to the ideals represented by Title IX and the protections within Title IX and supports aggressive and fair enforcement of Title IX and the life changing opportunities and protections that come with it for women and girls. The Southwest Women’s Law Center is committed to the elimination of all forms of violence against women and girls, including dating violence.

STOP SEXUAL ASSAULT IN SCHOOLS

Stop Sexual Assault in Schools is an organization that proactively addresses the epidemic of traumatic sexual harassment impacting our nation’s students. Stop Sexual Assault in Schools provides students, K–12 schools, and organizations resources so that the right to an equal education is not compromised by sexual harassment, sexual assault, and gender discrimination. Just as in postsecondary institutions, dating violence is also a widespread problem for students in middle and high school. Nearly 1.5 million high school students nationwide experience physical abuse from a dating partner in a single year, and these are only the cases that are

reported. 1 in 3 girls in the United States is a victim of physical, emotional, or verbal abuse from a dating partner, a figure that far exceeds rates of other types of youth violence. It is imperative that we address the impact of dating violence in both K–12 and postsecondary institutions. Karlie Hall’s tragic case must serve as a lesson for all education settings.

WOAR—PHILADELPHIA CENTER AGAINST SEXUAL VIOLENCE

WOAR’s mission is to end sexual violence in Philadelphia; to accomplish this mission, we fight all forms of oppression including racism and gender-based violence. The incidence of sexual violence peaks in late adolescence and early adulthood—right at the time some young people are attending college. Perpetrators can be peers, professors, or older partners, but what they all have in common is that the harm and trauma they cause can derail a student’s future. Victims commonly drop out of school following an assault because they don’t get the supports they need. Schools should be held accountable for maintaining safe environments in which all students, regardless of their gender, can thrive.

WOMEN AGAINST ABUSE

Women Against Abuse is a nonprofit agency based in Philadelphia that specializes in advocating for and providing services to victims of domestic violence. The organization operates safe haven shelters and transitional housing for domestic

violence victims who are trying to get away from their abusers. Women Against Abuse also operates a legal center that is among the first in the nation dedicated to serving victims of domestic violence. Attorneys and advocates work in the civil and criminal justice systems on behalf of survivors of domestic violence. Research and our experiences show that dating violence and intimate partner violence are forms of sex-based violence that are often severe, pervasive, and escalating—and sometimes lethal. Research and our experiences also show that because of pervasive institutional gender bias, dating violence and intimate partner violence are often minimized by the very systems designed to help victims, often with tragic consequences.

THE WOMEN AND GIRLS FOUNDATION OF SOUTHWEST PENNSYLVANIA

The Women and Girls Foundation of Southwest Pennsylvania works to break down barriers, so that every girl can rise and every woman can soar. To this end, the Women and Girls Foundation strongly supports this amicus brief in support of the plaintiffs in the case *Hall v. Millersville University*. Dating violence affects millions of young adults in the United States each year: 1 in 3 college women will be victims of sexual dating violence, an average of 28% of high school and college students experience dating violence at some point in their academic careers, and nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.

The Women and Girls Foundation is in strong agreement with positions taken in this amicus brief.

WOMEN LAWYERS ON GUARD INC.

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

THE WOMEN’S LAW CENTER OF MARYLAND, INC.

The Women’s Law Center of Maryland, Inc. is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women’s Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education and implementation of innovative legal-services programs to pave the way for systematic change. The Women’s Law Center is participating as an amicus in *Hall v. Millersville University* because in particular, the Women’s Law Center seeks to ensure the physical safety,

economic security, and autonomy of women, and that cannot be achieved unless all parties take responsibility in ending sexual violence against women, particularly in the educational system.

WOMEN'S LAW PROJECT

Founded in 1974, Women's Law Project is a nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. We use an intersectional analysis to prioritize work on behalf of people facing multiple forms of oppression based on sex, gender, race, ethnicity, class, disability, incarceration, pregnancy, and immigration status. We leverage impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender. We seek equitable opportunity in many arenas including healthcare, education, athletics, employment, public benefits, insurance, and family law, and seek justice for victims of gender-based violence.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-3275

**John J. Hall; Jeanette A. Hall, as administrators and
personal representatives of the Estate of Karlie A. Hall,
and in their own right as decedent's heirs-at-law,**
Plaintiffs–Appellants,

v.

Millersville University, et al.,
Defendants–Appellees.

**ADDENDUM:
AMENDED LIST OF *AMICI CURIAE***

Full list of parties represented:

American Association of University Women
American Civil Liberties Union
American Civil Liberties Union of Pennsylvania
Bucks County Women's Advocacy Coalition
California Women's Law Center
Champion Women
Education Law Center—Pennsylvania
Equal Rights Advocates
Feminist Majority Foundation
Gender Equality Law Center, Inc.
Gender Justice
Girls for Gender Equity
Girls Inc.
Legal Voice
National Council of Jewish Women, Pittsburgh Section
National Crime Victim Law Institute
National Crittenton
National Network to End Domestic Violence
National Organization for Women Foundation
National Women's Law Center

Pennsylvania Chapter of the National Organization for Women
Pennsylvania Coalition Against Domestic Violence
Pennsylvania Coalition Against Rape
Public Justice
Sexual Violence Law Center
Southwest Women’s Law Center
Stop Sexual Assault in Schools
WOAR—Philadelphia Center Against Sexual Violence
Women Against Abuse
The Women and Girls Foundation of Southwest Pennsylvania
Women Lawyers On Guard Inc.
The Women’s Law Center of Maryland, Inc.
Women’s Law Project

**ADDITION TO
ADDENDUM OF INDIVIDUAL STATEMENTS OF *AMICI CURIAE***

**AMERICAN CIVIL LIBERTIES UNION
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA**

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of over four million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women’s Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, has been a leader in efforts to eliminate barriers to women’s full equality in American society. These efforts include holding educational institutions accountable when they perpetuate or fail to prevent gender-based violence and discriminate against survivors of intimate partner violence and sexual assault. The ACLU of Pennsylvania is the state affiliate of the ACLU. This case is significant concern to both the ACLU and the ACLU of Pennsylvania because it

seeks to vindicate the rights of students to equal opportunity in education, free from gender-based violence and harassment.