No. 20-654

In The

Supreme Court of the United States

ANTHONY JOHN RIPA,

Petitioner,

v.

STONY BROOK UNIVERSITY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner

QUESTIONS PRESENTED

1. Whether discrimination for a student because of sex constitutes a "denied . . . benefit" to the other sex within the meaning of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681-1688, or at all.

2. Whether a gender advocacy department for one sex constitutes a "denied . . . benefit" to the other sex within the meaning of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681-1688, or at all.

LIST OF PARTIES

Pursuant to Rule 14.1(b), Petitioner states that the parties include:

1. Anthony John Ripa, Plaintiff and Petitioner;
2. Stony Brook University, Defendant and Respondent.

LIST OF ALL PROCEEDINGS

United States District Court for the Eastern District of New York
Civil Action No. 2:17
cv 04941 RRM JO
Anthony John Ripa v. Stony Brook University
Date of Entry of Judgment: April 4, 2019

United States Court of Appeals for the Second Circuit
Docket No. 19-1293
Anthony John Ripa v. Stony Brook University
Date of Opinion: June 9, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Anthony John Ripa respectfully petitions for a writ of certiorari to review the judgment and opinions of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was issued on June 9, 2020. The Second Circuit affirmed the decision of the United States District Court for the Eastern District of New York issued on April 4, 2019. Both are included in the Appendix.

JURISDICTION

The decisions of the court of appeals were entered on June 9, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Free Speech Clause of The First Amendment to the United States Constitution.

The Due Process Clause of the Fifth & Fourteenth Amendments to the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that a state shall not "deny to any person within its jurisdiction the equal protection of the laws."

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) EMPLOYER PRACTICES It shall be an unlawful employment practice for an employer –

> (1) . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of . . . sex
>
> (2) to limit, segregate, or classify his employees or applicants . . . in any way which would tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of . . . sex

Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681. Sex (a) Prohibition against discrimination

> No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance

The Civil Rights Act of 1871, 42 U.S.C. §1983 Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights,

> privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

STATEMENT OF THE CASE

A. Factual Background

Stony Brook operates a one-sided gender advocacy department leading to direct and indirect violations of the First Amendment, the Fourteenth Amendment, Title VII, Title IX, and state and local code, leading to direct and indirect injuries and damages. Stony Brook knowingly engages in gender preferential treatment, at innumerable levels of the university, and is upfront about its mission to serve the interests of one gender in particular. One stark example of its success in discriminating is 10 years of statistics on graduation rates by gender for Stony Brook University show that the graduation rates for women exceed graduation rates for men, every year on record, and by no small margin.

Although Stony Brook University's Department of Women's Studies is theoretically open to any student, the program was designed to ensure that the only beneficiaries of the department will be female. The University enacted the program in response to historical inequities. The "well-documented gender bias" "histories of feminist thought and social movements"

self-declared focus effectively eliminates all non-female discrimination considerations.

The Department outreaches by design. I observed a member of the Women's Studies Department discuss outreach specifically to Department Chairs of the various Majors at Stony Brook.

In this environment, it should come as no surprise that Stony Brook is littered with various campaigns designed to benefit females: Stony Brook President's HeForShe movement, Free Healthcare for Females, Free Medical Supplies for Females, Research Support for Females, & Preferred hiring.

Beyond this the University is openly hostile to males. Caricatures of so-called "angry white males" (unsurprisingly on Women's Studies Professor's Office door). Posters detailing the heteropatriarchy and stigmatizing through double entendres the biological characteristic of semen. A "STEM showcase" with excluded participation where "we are limiting the presentations to females." A course where the Instructor engages in demographic based stigmatization of their students, successfully encourages their students to engage in demographic based stigmatization of their other students, praises them for doing so, and to anyone who dissents, falsely label the work as "Incomplete/missing or irrelevant" so as to give the lowest possible score the rubric allows which is zero, thus violating the First Amendment.

Another student summed up the environment "If you dont want his ideas imposed on you and mashed

into your brain do not take this class. He tries to brain wash you and make you feel bad for being a straight white male."

In class, the syllabus says students may not make ad-hominem attacks on classmates. If you're female then not only are you allowed, but your work is held up and specifically recounted by the instructor as an example of good work. I'm not getting equal protection of the Fourteenth Amendment. A university having a one-sided gender-advocacy department guarantees I will not get equal protection by design, and in practice I do not. They violate the clear wording of Title IX "No person on the basis of sex . . . shall be denied the benefits of". A one-sided gender advocacy department is a benefit denied to one sex. The environment meets the definition of hostile. Title IX forbids excluded participation, which Stony Brook flouts with female only events. Stony Brook is an employer. Title VII is also violated.

Stony Brook engages in discriminatory hiring. Discriminatory hiring promotes further discrimination.

Stony Brook refused the Due Process requirement of investigating my Title IX complaint ("the school must promptly investigate" U.S.D.O.E. O.C.R. 2001), and replied with a curt message saying that my complaint did not rise to the level of Title IX.

B. Proceedings Below

Plaintiff filed a complaint, on August 22, 2017, in the United States District Court of the Eastern District of New York. New York State served as Defendant. The State filed a Rule 12(b)(6) motion to dismiss.

In the court's Order Adopting the Report & Recommendation to dismiss, the court applied Dube v. State Univ. of New York, 900 F.2d 587 (2d Cir. 1990) "no relief is available against the University pursuant to 42 U.S.C. §1983 as it is considered an integral part of the State of New York for Eleventh Amendment purposes" to find that "Section 1983 claim is barred by the Eleventh Amendment".

The court applied Morales v. New York, 22 F. Supp. 3d 256 (S.D.N.Y. 2014) "Plaintiff fails to state a claim [. . .] because he is a student, not an employee, and is not protected by Title VII." to find that "Ripa fails to allege the existence of an employment relationship between himself and the University."

The court applied Leeds v. Meltz, 85 F.3d 51 (2d Cir. 1996) finding "[b]ald assertions and conclusions of law will not suffice." finding "Plaintiff's Title IX claims fail as a matter of law for failure to plausibly allege intentional discrimination."

Plaintiff filed an amended complaint.

In the court's Order of Dismissal with Prejudice, Judge Roslynn Mauskopf applied Farnan v. Davis, 371 U.S. 178, 182 (1962) "Leave to amend may properly be denied if the amendment would be 'futil[e].'"

Plaintiff timely appealed.

On June 9, 2020, the Second Circuit issued a Summary Order affirming the district court.

The Second Circuit erroneously applied Eleventh Amendment immunity, for §1983. The Second Circuit found no Article III standing, for Stony Brook's Women's Studies Department (a de facto one-sided gender advocacy department) without a corresponding Department for Men, claiming the harms were not concrete. Then applied Hayut's "sufficiently hostile" standard, to ignore all concrete harms it found. The Second Circuit found no "adverse employment action", for Title VII. The Second Circuit ignored the Fourteenth Amendment.

On June 23, 2020, Plaintiff filed a Motion to Reconsider. On July 15, 2020, the Clerk issued a Notice of Defective Filing, falsely asserting that the motion was submitted on July 10, 2020, making it late, and asserting that Orders that are final are reheard, not reconsidered.

On July 23, 2020, Plaintiff filed a Motion to file Petition for Rehearing out of time, arguing that Rule 40(a)(1)(b) set the time limit at 45 days if one of the parties is a United States agency, as defendant argued it was (which is overkill since I was within 14 days), and argued that the reconsider/rehearing distinction is falsely assumed to be making an impossible temporal distinction, when it's not, which other courts routinely interpret in the only legal manner.

On July 23, 2020, Plaintiff also filed a Motion for Rehearing & Motion to Recall Mandate, arguing that the Second Circuit ignored key facts, clearly established precedent, and didn't apply the law consistently.

On August 27, 2020, the Second Circuit denied these motions.

REASONS FOR GRANTING THE PETITION

I. The Circuits are Split both on Due Process & Legal Test, U.S. Sup. Ct. R. 10(a)-(b)

A. The Circuits are Split on Due Process

Doe v. Baum (6th Cir. 2018) "if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser"

Haidak v. University of Massachusetts-Amherst, No. 18-1248 (1st Cir. 2019) "we have no reason to believe that questioning of a complaining witness by a neutral party is so fundamentally flawed as to create a categorically unacceptable risk of erroneous deprivation [of appropriate process]."

Doe v. University of the Sciences (3d Cir. 2020) "determined that fairness includes the chance to cross-examine witnesses and the ability to participate in a live, adversarial hearing,"

Ripa v. Stony Brook (2d Cir. 2020): "a public university has to choose between competing narratives to

resolve a case" but I was denied "the ability to participate in a live, adversarial hearing".

B. The Circuits are Split on Davis (1999) liability for Deliberate Indifference, with three circuits holding vulnerability is sufficient, and three not

Supreme Court

Davis v. Monroe County Board, 526 U.S. 629 (1999) held liability for deliberate indifference when it "makes students liable or vulnerable".

Three circuits got the message

holding a school liable under Davis if Deliberate Indifference causes vulnerability to harassment:

Fitzgerald v. Barnstable, 504 F.3d 165 (1st Cir. 2007)

Williams v. Board, 477 F.3d (11th Cir. 2007)

Farmer v. Kansas State Univ., 918 F.3d (10th Cir. 2019)

Three circuits did not

ignoring vulnerability:

K.T. v. Culver-Stockton, 865 F.3d 1054 (8th Cir. 2017)

Kollaritsch v. MSU, No. 18-1715 (6th Cir. 2019)

Ripa v. Stony Brook University (2d Cir. 2020)

Comparison

Three circuits apply Davis. Three circuits ignore passages. I documented my repeated institutionally sanctioned harassment (including in class by student & instructor) with Stony Brook's Title IX office. The complaint was dismissed. Stony Brook continued its campaign of doing everything it can to help one sex in particular (including free healthcare and a gender-advocacy department for just one sex). This is Deliberate Indifference to the other sex.

C. The Circuits are Split with the Second Circuit preserving the Harris (1993) "sufficiently severe", with the rest updating to the Oncale (1998) "disadvantageous terms"

i. Background

Supreme Court

In Harris v. Forklift, 510 U.S. 17 (1993), the majority cited Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) "sufficiently severe" with Ginsburg concurring "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

In 1998, Oncale v. Sundowner, 523 U.S. 75, the Court adopted "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

The Second Circuit did not get the message

Hayut v. SUNY, 352 F.3d 733 "sufficiently severe"

Papelino v. Albany, 633 F.3d 81 "sufficiently severe"

Adams v. Festival, 560 F. "objectively severe"

Ripa v. Stony Brook "sufficiently hostile"

The other circuits got the message

In 2008, Reeves v. C.H. Robinson Worldwide, 594 F.3d 798, the Eleventh Circuit, holds:

> The Supreme Court has declared . . . "'[t]he critical issue . . . is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.'" Oncale v. Sundowner . . . quoting Harris v. Forklift . . . (Ginsburg, J., concurring)). Thus, to satisfy the "based on" element, a plaintiff must essentially show "'that similarly situated persons not of [her] sex were treated differently and better.'"

In 2020, Doe v. University of the Sciences (3d Cir.), held that even violating fairness is prohibited: "Doe was treated fairly. We disagree."

Comparison

The Second Circuit is consistently applying the old "sufficiently severe" standard. Everyone else updated.

ii. The "disadvantageous terms" standard is consistent with the Fourteenth Amendment, Title VII, and Title IX

The Fourteenth Amendment states "No State shall . . . deny to any person . . . the equal protection of the laws". Title VII states "It shall be an unlawful employment practice . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of . . . sex." Title IX states "No person . . . on the basis of sex . . . be denied the benefits of". These wordings repeatedly establish a policy. The "disadvantageous terms" standard upholds an honest reading: "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

iii. The "sufficiently hostile" standard is inconsistent with the Fourteenth Amendment, Title VII, and Title IX

The "disadvantageous terms" standard which effectively summarizes the Fourteenth Amendment, Title VII, and Title IX. The "sufficiently hostile" standard effectively evades them.

The "sufficiently hostile" standard becomes the nothing-to-see-here standard. Something people say when there is something to see. The word sufficiently dismisses actual hostility. The Fourteenth Amendment, Title VII, and Title IX, make no such allowance. It's a form of the "No true Scotsman" fallacy. Hostility is prohibited, but they weren't "truly hostile", under whatever definition of truly is needed to derive the desired conclusion.

Another longer form of the "sufficiently hostile" standard is "sufficiently severe or pervasive to alter the conditions of his educational environment". Everything will "alter the conditions". The problem gets pushed back again. Will it "truly alter" working conditions?

The alternate form "sufficiently hostile as to deprive her of 'access to the educational opportunities or benefits' " is a sufficiency test (because Title IX etc. prohibits many forms of discrimination) but it was (and often is) used as a necessity test.

A "denied benefit" would trigger Title IX, Title VII, and the Fourteenth Amendment. However, the phrase

"sufficiently hostile" invites subjectivity and divorce from its objective "sufficiently hostile as to deprive . . . ".

The "sufficiently . . . " standards circumvent the plain meaning of Title IX, Title VII, and the Fourteenth Amendment. The "disadvantageous terms" standard upholds them.

iv. The court did not correctly apply the "sufficiently hostile" standard

The court cited "sufficiently hostile as to deprive her of 'access to the educational opportunities or benefits . . . '", but failed to conclude that excluded participation triggers this standard. As does free products, services, participation, workshops, healthcare, scholarships, jobs, and a gender-advocacy department, for just one sex. These deprive one sex of "access to the educational opportunities or benefits" reserved for the other sex.

Furthermore, Meritor v. Vinson's "sufficiently severe" standard considered "the totality of circumstances" not one-by-one dismissal.

D. The Circuits are Split with the Seventh Circuit relying on a plain reading of the text and others relying on tests

Doe v. Purdue University, No. 17-3565 (7th Cir. 2019) held "We see no need to superimpose doctrinal tests on the statute. All of these categories simply

describe ways in which a plaintiff might show that sex was a motivating factor . . . We prefer to ask the question more directly: do the alleged facts, if true, raise a plausible inference that the university discriminated . . . "on the basis of sex"?"

The Seventh Circuit's approach is principled, and is the one that should be upheld. It is consistent with Bostock v. Clayton County, 590 U.S. ___ (2020): "The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."

II. The Second Circuit is eviscerating clearly established law

A. "Disadvantageous Terms" & Sex Stereotype Discrimination

Disadvantageous Terms

Hayut v. SUNY (2003) "sufficiently severe"

Papelino v. Albany (2011) "sufficiently severe"

Adams v. Festival (2014) "objectively severe"

Ripa v. SBU (2020) "sufficiently hostile"

Sex Stereotype

Teaching students to stigmatize their classmates of certain demographics by calling them privileged is

stereotype discrimination. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) established that gender stereotyping is actionable as sex discrimination.

B. The Second Circuit erroneously ignored precedent like Oncale v. Sundowner Offshore Services and Price Waterhouse v. Hopkins

The recently decided Bostock v. Clayton County, 590 U.S. ___ (2020) strengthened Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) & Oncale v. Sundowner Offshore Srvcs., Inc., 523 U.S. 75 (1998).

Price Waterhouse:

> Once a Title VII plaintiff proves that gender played a motivating part in an employment decision, the defendant can only avoid a finding of liability by proving by a preponderance of the evidence that it would have made the same decision regardless of the plaintiff's gender.

Oncale:

> "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of

> employment to which members of the other sex are not exposed."
>
> We have held that this not only covers "terms" and "conditions" in the narrow contractual sense, but "evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment."

Stony Brook specifically advertises certain benefits (including goods and services) to certain sexes, but not to others. Therefore gender plays a motivating part. This violates Price Waterhouse.

If motivation were in doubt (it is not), apply Doe v. University of the Sciences (3d Cir. 2020) "Three of our sister circuits have found that alleged university overreaction to DoEd or other public pressure is relevant to alleging a plausible Title IX discrimination claim."

Stony Brook's environment of special preferences is well within the "entire spectrum of disparate treatment". It is "disadvantageous terms or conditions" violating Oncale.

C. The Second Circuit and District Court made numerous errors

i. The court erroneously concluded that "privileged" is not a demographic slur

Context matters. In a Women's Studies class, and in the greater context of all Women's Studies classes,

the word "privileged" is repeatedly used, to refer only to some demographics, and not others, there's no plausible deniability that that word used against me, both by my instructor, and classmate who was then praised by my instructor, merely coincidentally overlapped my demographics. I cite Patent and Trademark Office v. Booking.com, 591 U.S. ___ (2020). The term "privileged" is no less a trademark for consumers of Women's Studies than Booking.com is for consumers of Booking Holdings Inc. When you stake out a concept, promote it, & curtail alternate uses of it, you cannot later claim it means what it meant before we made it both the centerpiece of what we're selling, and essentially our main campaign slogan.

ii. The court erroneously dismissed my claims concluding my injury from Stony Brook's Women's Studies Department was hypothetical

I was targeted with "demographically based slander". My records were falsified to lower my grade. The class practiced the same discrimination it preached. Stony Brook fosters discrimination, with a department for Women but not Men. Assuming Women's Studies departments have a gender-neutral impact is unfounded and presumptively false.

Women who never played a sport have a hypothetical injury. Title IX recognizes this. Men miss out on Men's studies in the same way. Either both sexes deserve this benefit or neither does. Men may be allowed

to join a women's studies class. Enrollment demonstrates they'd rather not. Currently, only one sex can take classes that study their own sex. This is a benefit denied to the other sex.

Neutral study of only one sex is a denied benefit to the other sex. This alone is inculpatory. However, the problem exceeds this.

Women's Studies classes teach feminism (concern for women's issues, struggles and how to benefit women). Either both sexes deserve this benefit of gender-specific advocacy classes or neither does.

The Women's Studies program is not like ornithology. Ornithologists don't claim birds are great and non-birds are bad. You just learn facts about birds. Stony Brook's Women's Studies published mission: "The . . . department prepares students to become future professionals, scholars, activists . . . Our departmental mission is 1) to familiarize students with the histories of feminist thought and social movements, 2) to teach them how to apply feminist, queer, and transgender theories." Feminism is a movement for women. This department's self-stated mission is to create activists.

They follow their mission. I've observed a meeting including a member of the Women's Studies Department. The member stressed the importance of outreach, specifically to Department Chairs of the various Majors at Stony Brook. The Women's Studies Department outreaches its advocacy everywhere it can.

Outreach works. Stony Brook supports HeForShe, advocating this on its main website. The For is right there in the word; it is For She. Stony Brook's discriminatory intent is clear. Use all resources (including federal funds) to support one demographic over another.

Were there a lack of injury (there is not), this would not be dispositive. Stony Brook is forbidden from denying benefits on the basis of sex. They do.

The Women's Studies Department injured me concretely, in multiple ways including harassment, and grade falsification. The Women's Studies Department denied me the benefit of gender-specific advocacy. Stony Brook by not setting up a corresponding Department for Men, denies on the basis of sex, gender-specific advocacy, for me and half their students.

Stony Brook has both added harms & denied benefits to me, on the basis of sex.

iii. The court erroneously dismissed my Title VII claims by narrowing my work environment from the campus to my office

The work environment boundary is not the cubicle. It includes the work email, which Stony Brook uses to send its employees offers of free goods and services, which are falsely encouraging until the fine-print and you realize you've been excluded on the basis of sex, which for half of Stony Brook employees is worse than spam, and actually a cruel joke. The work environment

includes the walks to the restroom, passing posters setup by Stony Brook detailing the heteropatriarchy and stigmatizing through double entendres the biological characteristic of semen. The work environment is the environment created by the employer. If you work in a school, the school is your work environment.

Title VII prohibits certain behaviors from employers to employees. This prohibition continues while engaging in work-study, taking on-the-job training, attending free classes, or paying for them. The duty the employer has does not diminish if a further relationship is established; it is only enhanced.

iv. The court erroneously concluded Eleventh Amendment Immunity precluded suit

The District Court and Second Circuit both cited local cases concluding Stony Brook is immune from suit because it's an arm of the state. These courts are insufficiently removed, and should be reviewed.

Their position is that Stony Brook is immune even from prospective relief, and that relief would require suit of a natural person. Not so.

Codified Law

The Dictionary Act of 1871 codified at 1 U.S.C. §1 states "In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words "person" and "whoever" include corporations".

"There is hereby created . . . a corporation to be known as the state university of New York". NY Educ L § 352 (2019)

"The State University is a corporation" [system.suny.edu/academic-affairs/suny-governance]

The Civil Rights Act of 1871 codified at 42 U.S.C. §1983 states "Every person who . . . shall be liable to the party injured".

Unless the context indicates otherwise (the Civil Rights Act of 1871 did not) Stony Brook University is a person, for the purposes of 42 U.S.C. §1983.

Case Law

Simple suit is consistent with Brown v. Board, 347 U.S. 483 (1954). Jurisdiction was plainly available under §1331,1343,&1983. If the landmark case is not a standard, but instead narrowed, justice will not be robust but haphazard at best, especially for cases seeking a reprieve from discrimination, like this one.

Indirect suit is contrived. I sue Stony Brook University for establishing, maintaining, and funding a Women's Studies Department (gender advocacy department for just one gender) without a complementary department. This rightly targets the defendant. However, I'm required to target the corresponding sueable entity. This wrongfully invalidates claims which would otherwise be valid. That alone should justify dispensing with this contrivance.

If this absurd targeting standard is to persist, then at least when Stony Brook University is sued, it should not be interpreted as an impossible act. The state should not rise and says that's me & it's impossible. It should be interpreted as the suit of the sueable entity which represents Stony Brook University (the Stony Brook University Board).

While having the sueable entity that represents Stony Brook University rise as defendant, would be a better rule than the catch-22 rule that we are currently operating under, there is an even better fix: Stony Brook University is directly sueable.

Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971) "[t]he Town of Shaw, indeed any town, is not immune to the mandates of the Constitution." Stony Brook University like a town has a zipcode, and many students have lived there, including me.

Crosley v. Davis, 426 F. Supp. 389 (E.D. Pa. 1977) "damages remedy against a municipal entity based on the Fourteenth Amendment and § 1331 jurisdiction do not arise in suits for injunctive or declaratory relief, regardless of the exclusions in § 1983. . . . We do not believe, for instance, that an injunction of the sort issued in Brown v. Board of Education can be undermined."

Monell v. Department of Social Services, 436 U.S. 658 (1978): "Local governing bodies (and local officials sued in their official capacities) can, therefore, be sued directly under § 1983 for monetary, declaratory, and injunctive relief" "the government, as an entity, is responsible under § 1983."

Department of Revenue v. Kuhnlein, 646 So.2d 717, 721 (Florida Supreme Court 1994) "Sovereign immunity does not exempt the State from a challenge based on a violation of the federal or state constitutions, because any other rule self-evidently would make constitutional law subservient to State's will."

Northern Insurance v. Chatham County, 547 U.S. 189 (2006) ruled unanimously that the county had no basis for claiming immunity because it was not acting as an "arm of the state." Stony Brook setup a business, and must now play by the rules of that business. Stony Brook University setup the Stony Brook Foundation, a corporation (a person) chartered to be its main economic instrument. Damages may come from coffers filed by tuition, allowing the complicit state to get away scot-free (not that it should).

Timbs v. Indiana, 586 U.S. ___ (2019) is a Supreme Court Approval of directly suing a state.

I suggest a new rule, a one letter modification of Ex parte Young "The State has no power to impart to its officer immunity from responsibility to the supreme authority of the United States." to "The State has no power to impart to its office immunity from responsibility to the supreme authority of the United States." It can't grant immunity to an officer, or an office.

Alternatively, a one-word modification of Mt. Healthy v. Doyle, 429 U.S. 274 (1977) "school board such as petitioner is more like a county or a city than it is like an arm of the State." to "school such as petitioner is more like a county or a city than it is like an

arm of the State." A School Board is more like a city than a state. So is a School.

42 U.S.C. §1983 vs. Eleventh Amendment immunity may be irrelevant. Cannon v. University of Chicago (1979), held "Title IX explicitly assumed that it would be interpreted and enforced in the same manner as Title VI" recognizing an implied private right of action under Title IX for individuals alleging discrimination, just like Title VI. 42 U.S.C. §2000d-7(a)(1) states "A State shall not be immune under the Eleventh Amendment . . . from suit in Federal court for a violation of . . . title IX . . . or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." Bostock (2020) held "when Congress chooses not to include any exceptions to a broad rule, this Court applies the broad rule." Title VII & Title IX's wording is broad enough to cover most of the Fourteenth Amendment, giving a private right of action for most Fourteenth Amendment violations, including this case. These facts abrogate Eleventh Amendment immunity, if it applied, in this case.

Perhaps more importantly, the fact that 42 U.S.C. §1983 adds civil liability, says nothing about any preexisting liability. States are routinely taken to court under the Fourteenth Amendment.

Further evincing equitable relief for a denied benefit, prohibited by an amendment (I, XIV) to the U.S. Constitution, as in this case, is Espinoza v. Montana Department of Revenue, 591 U.S. ___ (2020), wherein the Court prohibits:

"disqualifying otherwise eligible recipients from a public benefit 'solely because of . . . '"

citing Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. ___ (2017). This is practically word for word identical to what Stony Brook has done to me by denying benefits to me because of sex.

Second Circuit

Injunctive relief for violations of the Fourteenth Amendment is pre-existing. The Second Circuit's order ignores this by not mentioning the Fourteenth Amendment. Injunctive relief to prevent ongoing and future disparate treatment is in order, and I demand it.

The Second Circuit's intentional silence on this Constitutional question is not dispositional but deferential, to Supreme Court's role as arbiter of Constitutional questions. This makes granting this petition for a writ of certiorari all the more necessary, as the Second Circuit refused to take it up. The question is now before the Supreme Court. Ex parte Young: "While this court will not take jurisdiction if it should not, it must take jurisdiction if it should. It cannot, as the legislature may, avoid meeting a measure because it desires so to do."

Minimally, allow leave to amend, so the case may be Ripa v. Stony Brook University Board. Not a person, but as legal as Brown v. Board. Better yet, repair the unworkable framework the lower courts are operating under.

Whether Eleventh Amendment Immunity "constitutes a true issue of subject matter jurisdiction or is more appropriately viewed as an affirmative defense" matters. If an issue of subject matter jurisdiction, 28 U.S.C. §1367 supplemental jurisdiction could overcome it.

The amount of wrongs committed by Stony Brook is quite large. Jurisdiction will likely be well-established for some claims. For all not perfectly well-established claims, supplemental jurisdiction is both in order, and I demand it.

Comparison

Case law has diverged from statutes (Dictionary & Civil Rights Act). Rectify.

v. The court ignored that Stony Brook ignored due process

Stony Brook violated the due process requirement of investigating my Title IX complaint. Kantor v. Schmidt, 73 A.D.2d 670 (1979) "Petitioner is entitled to relief solely on the ground that the appellant failed to comply with a regulation of the Commissioner of Education." Doe v. Columbia University, 831 F.3d 46 (2d Cir. 2016) "the investigator and the panel failed to act in accordance with University procedures".

Stony Brook knew that I was harmed because I reported my harm to the Title IX Office. The Title IX Office knew that my grades were falsified. The Title IX Office knew that I was targeted with demographically based slander by Instructor Cserni. The Title IX Office knew that Instructor Cserni encouraged other students to demographically based slander me by holding up their work as models, even though the syllabus prohibits ad hominem attacks on other students. Instead of carrying out the due process requirement of investigation for my complaint I got a curt message saying that my complaint did not rise to the level of Title IX, which they could not actually know without doing their required Title IX investigation.

The District Court and the Second Circuit both chose to ignore this fact by not commenting on it in their opinion.

vi. The court erred one-sidedly

The court repeatedly copied established falsehoods from Defendant's briefs into its opinion, forgave only Defendant's mistimings, then denied recusal.

D. Plaintiff has standing to state a claim for relief

i. Standard of Review

The Second Circuit must review de novo a district court's decision granting a motion to dismiss under Rule 12(b)(6), "construing the complaint liberally,

accepting all factual allegations as true, and drawing all reasonable inferences in the plaintiff's favor." Nicosia v. Amazon.com, Inc., 834 F.3d 220, 230 (2d Cir. 2016).

In deciding a motion to dismiss, "a court must accept as true all material factual allegations in the complaint and refrain from drawing inferences in favor of the party contesting jurisdiction." Phipps v. Comprehensive Cmty. Dev. Corp., 152 F. Supp. 2d 443 (S.D.N.Y. 2001).

Erickson v. Pardus, 551 U.S. 89 (2007), in a pro se context "The case cannot, however, be dismissed on the ground that petitioner's allegations of harm were too conclusory to put these matters in issue."

Boykin v. State of New York HUD, No. 05-2158 (2d Cir. 2008) "even after Twombly, dismissal of a pro se claim as insufficiently pleaded is appropriate only in the most unsustainable of cases."

Rosen v. N. Shore Tower, 565 U.S. 1083 (2010), for pro se, the Court must "interpret the complaint liberally to raise the strongest claims that the allegations suggest."

In 2014, the Court of Appeals of New York in Webb-Weber v. Community Action for Human Services held "for pleading purposes, the complaint need not specify the actual law, rule or regulation violated".

ii. Stony Brook harmed me & denied benefits to me

Grade Falsification

In order to assign a grade of zero, the rubric specified it must be "Incomplete/missing or irrelevant". So, Student Instructor Cserni falsely labeled it "Incomplete/missing or irrelevant".

Slander

My instructor slandered my reputation by false grade, and my demographic by calling me privileged.

Aiding and abetting Slander

My instructor aided, & abetted others to engage in demographic based slander. Stony Brook stokes hatred against me.

Mocking

Stony Brook Professor Michael Kimmel (previous class professor and our textbook's author) has on his office door a caricature with the words "angry white male."

Insulting

In class, the professor said "Men are pigs".

Denying Due Process

Title IX requires investigating all Title IX complaints. I filed a complaint with the Title IX office. Instead of investigating, I got a quick response telling me that my complaint did not rise to the level of a Title IX violation.

Gender Advocacy Department

Stony Brook operates a Women Studies Department. This is a de-facto one-sided gender advocacy department.

Gender Advocacy for one particular gender

Stony Brook's gender advocacy consists of advocating for one gender by characterizing that gender as the end. The list is enormous. "HeForShe" jobs, STEM, products, services, workshops, internships, healthcare, advocacy departments, ad nausem, all for just one sex.

Gender Advocacy against one particular gender

Stony Brook's gender advocacy includes advocating against one gender by characterizing that gender as the problem. The list is enormous. "angry white male" "Sometimes he hits me, but it's ok because he loves me" "Privileged" "Toxic Masculinity"

Gender Advocacy against Gender Advocacy for a particular gender

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Denied Benefits

Title IX precludes denied benefits. Giving out benefits for one gender is denied benefits.

Free tampons is a denied benefit to any gender that can't use them, and is a wealth transfer of roughly ten dollars per month.

Free Salary Negotiation Workshops for female students is another denied benefit.

Free Mental Healthcare for females is a denied benefit.

Free Physical Healthcare (including Cancer Screening) for only one gender is a denied benefit.

Free Scholarships for only one gender is a denied benefit.

We are limiting the presentations to females is a denied benefit.

Internships for only one gender is a denied benefit.

A gender-advocacy department for just one gender is a denied benefit.

Risk

My risk has been increased with free healthcare, for only one gender, including both physical healthcare (including cancer screening), and mental healthcare (sadly for the sex less likely to commit suicide). Illegitimate risk triggers Title VII "would tend to deprive" and Erickson v. Pardus, 551 U.S. 89 (2007).

Breach of Contract

I paid tuition for services that I didn't get: that my work be graded instead of declared missing, every service that I should have gotten but did not get on the basis of sex, etc..

Unjust Enrichment

I paid tens of thousands of dollars to Stony Brook University in Tuition, Fees, & Rent. They kept the full amount of money, but then withheld the full range of services.

Excluded Participation

"We are limiting the presentations to females"

Precluded by Title IX.

Hostile Environment

The totality of harms satisfy "sufficiently severe" and the updated "disadvantageous terms".

Stony Brook discriminates against me on the basis of sex

I experienced numerous harms. That I experienced harms caused by defendant is the first harm. That I experienced these harms because of my demographic is a second (possibly even greater) harm.

Psychological Damage

All these harms have created psychological injury to me including pain, suffering, mental anguish, humiliation, mental harm, and trauma. I have experienced moral injury because my instructor transgressed moral boundaries without repercussion. I experienced this repeatedly everytime I went up the chain-of-command, with similar dismissals. I experienced concurrent injury from each part of Stony Brook that openly favors some demographics at the expense of others.

My grades declined. Davis v. Monroe "The drop-off in LaShonda's grades provides necessary evidence of a potential link between her education and G.F.'s misconduct".

Stony Brook treats females better than males. Title IX says they can't. By some loophole they can anyway. This creates a moral injury to me. My moral beliefs and expectations of equal treatment have been deeply transgressed. Moral injury creates (among other things) anxiety, because what rules will be broken next? This creates an environment where I know

Stony Brook will not have my back if there's a problem for me (because of my gender, and also general breach of trust). I can't count on them to simply follow the rules (including rules that protect me). Furthermore, this psychological stress imparted to me is not merely a localized injury, but it foreshadowed that I couldn't count on Stony Brook to hold my instructor accountable when he claimed my work was "Incomplete/missing or irrelevant" though I demonstrated every evidence to the contrary, nor could I count on them to even follow the due-process requirement of investigating my Title IX claim. Instead Stony Brook just replied with a curt message saying that my complaint did not rise to the level of Title IX. In conclusion, the tie is complete because the Title IX breach directly causes an injury to me.

Equal Protection

In sum, Stony Brook imposes "grave disparities in both the level and kinds of services offered" Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971).

Unconscionable

If any (or bizarrely all) of this were somehow legal (it is not) it would still not survive conscionability.

Relief

I demand any and all relief in law and equity, as is customary (or novel), including but not limited to:

retrospective & prospective relief, compensatory & punitive damages, injunctive & specific performance, etc..

III. Open Hostility for one sex and free everything for the other is unjust, and inconsistent with the Fourteenth Amendment, Title VII, & Title IX, both in general and specifically in light of Bostock v. Clayton County

A. Stony Brook University is discriminating by design

Stony Brook University set up programs, institutions, and campaigns, discriminatingly designed to benefit one sex. HeForShe is a plain example, as are the plethora of free giveways for one sex, with excluded participation for the other sex.

Stony Brook has fallen so far backward, that "separate but equal" would be preferable.

B. Defendant argued that C.F.R. gave it the right to discriminate, and the Second Circuit did not disagree

I documented an excluded participation:

> "On February 15, 2019, Stony Brook emailed me a "Call for abstracts" for a "Women's Research in STEM showcase". The email says "we are limiting the presentations to females"."

Defendant argued:

> the alleged research showcase does not violate Title IX. The regulations implementing Title IX expressly authorize covered institutions to "take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex." 34 C.F.R. § 106.3(b). . . . covered institutions may offer "single-sex programs such as an educational science program targeted at young women and designed to encourage their interest in a profession in which they are underrepresented." Nondiscrimination on the Basis of Sex . . . 65 Fed. Reg. 52,858, 52,861 (Aug. 30, 2000) (to be codified at 49 C.F.R. pt. 25).

This is wrong both facially, and as applied, and it is a misquote.

1) It is a misquote. 65 Fed. Reg. does not say "covered institutions may offer 'single-sex . . . '". It says

"**Comments Regarding Single-sex Programs** Several comments inquired about . . . single-sex programs . . . targeted at young women . . . Such courses may, under appropriate circumstances, be permissible as part of a remedial or affirmative action program as provided for by section __.110 of these Title IX regulations."

The qualifying "appropriate circumstances" prohibits excluded participation. The codification at 49 C.F.R. pt. 25.110 says

"(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex . . . a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex."

Replacing "under appropriate circumstances" with "consistent with law" demonstrates no exceptions to existing law (excluded participation) are created.

The full quote of 34 C.F.R. § 106.3(b) is:

"(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex . . . a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246."

Here "consistent with law" becomes "Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246."

Executive Order 11246 mentions "affirmative action" once:

"The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to . . . sex"

It ensures that employees are treated without regard to sex.

The full quote weakens defendant's position.

2) Despite Defendant's insistence, this C.F.R. cannot be in direct contradiction with its own enabling legislation Title IX, which expressly forbids discrimination based on sex.

Bostock:

> Likewise, the Court dismissed as irrelevant the employer's insistence that its actions were motivated by a wish to achieve classwide equality between the sexes
>
> As Manhart teaches, an employer is liable for intentionally requiring an individual female employee to pay more into a pension plan than a male counterpart even if the scheme promotes equality at the group level.
>
> it was no defense that the employer sought to equalize

3) It's being applied wrong.

Even if discrimination against an individual for the purposes of group equalization justified discrimination (it does not) Stony Brook only equalizes for one sex. Even if such an exception existed (it does not) Stony Brook is using that weak exception mandate not to honestly equalize, but to specifically benefit only one sex.

Free jobs, STEM, products, services, workshops, internships, healthcare, advocacy departments, ad nausem, all for just one sex.

One stark example of its success in discriminating is 10 years of statistics on graduation rates by gender for Stony Brook show the graduation rates for women exceed graduation rates for men, every year on record, by no small margin. There's no campaign to correct this.

If discrimination is needed to correct "limited participation" Stony Brook should apply this equally to both genders. The Women's Studies Program satisfies the same "limited participation" criterion. Stony Brook should take effort to repair that "limited participation", with a complementary program. Stony Brook refuses to do this. Stony Brook is not interested in repairing "limited participation". Stony Brook is interested in helping women.

Disparate impact cannot justify disparate treatment. Half our students receive the double wrong of disparate impact, and disparate treatment.

In sum, there's no defense for discrimination. If such a fictitious defense existed, it must be applied equally to both sexes, which Stony Brook does not do by design because its claim to equality is pretextual.

C. The Second Circuit did not consider Bostock (2020)

Bostock (2020) applies the broad rule.

when Congress chooses not to include any exceptions to a broad rule, this Court applies the broad rule.

when a new application is both unexpected and important, even if it is clearly commanded by existing law, the Court should . . . decline to enforce the law's plain terms . . . This Court has long rejected that sort of reasoning.

Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.

limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.

The term "discriminate" meant "[t]o make a difference in treatment or favor (of one as compared with others)."

an employer who intentionally treats a person worse because of sex . . . discriminates against that person in violation of Title VII.

if changing the employee's sex would have yielded a different choice by the employer – a statutory violation has occurred.

An individual employee's sex is "not relevant to the selection, evaluation, or compensation of employees." Price Waterhouse v. Hopkins

to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex.

intentional discrimination based on sex violates Title VII, even if it is intended only as a means to achieving the employer's ultimate goal

There is simply no escaping the role intent plays here: Just as sex is necessarily a but-for cause when an employer discriminates . . . inescapably intends to rely on sex in its decision making.

If the policy works as the employer intends, the answer depends entirely on whether the model employee is a man or a woman. To be sure, that employer's ultimate goal might be . . . But to achieve that purpose the employer must, along the way, intentionally treat an employee worse based in part on that individual's sex.

the employer must intentionally discriminate against individual men

the Court dismissed as irrelevant the employer's insistence that its actions were motivated by a wish to achieve classwide equality between the sexes

Because the plaintiff alleged that the harassment would not have taken place but for his

sex – that is, the plaintiff would not have suffered similar treatment if he were female – a triable Title VII claim existed.

As Manhart teaches, an employer is liable for intentionally requiring an individual female employee to pay more into a pension plan than a male counterpart even if the scheme promotes equality at the group level.

none of these contentions about what the employers think the law was meant to do, or should do, allow us to ignore the law as it is.

an employer who discriminates . . . necessarily and intentionally applies sex-based rules.

As enacted, Title VII prohibits all forms of discrimination because of sex

it was no defense that the employer sought to equalize

sex plays an essential but-for role.

Simple test.

people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.

When a new application emerges that is both unexpected and important, they would seemingly have us . . . decline to enforce the plain terms of the law . . . That is exactly the sort of reasoning this Court has long rejected.

> One could also reasonably fear that objections about unexpected applications will not be deployed neutrally. Often lurking just behind such objections resides a cynicism that Congress could not possibly have meant to protect a disfavored group.
>
> to refuse enforcement . . . would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms.
>
> Title VII's prohibition of sex discrimination in employment . . . is written in starkly broad terms. It has repeatedly produced unexpected applications . . . Congress's key drafting choices . . . virtually guaranteed that unexpected applications would emerge over time.
>
> Gone here is any pretense of statutory interpretation; all that's left is a suggestion we should proceed without the law's guidance to do as we think best. But that's an invitation no court should ever take up.
>
> Judges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations.

Bostock is clear. The court will not turn a blind-eye to discrimination. It makes no difference whether a "new application is both unexpected and important". What matters is "if it is clearly commanded by existing law" because "it's no contest. Only the written word is the law, and all persons are entitled to its benefit."

Title IX says "No person . . . shall, on the basis of sex . . . be denied the benefits of". I documented numerous denied benefits. The Fourteenth Amendment guarantees my equal protection. I documented denied equal protection. Title VII prohibits discriminatory "terms, conditions, or privileges". I documented denied favorable terms, conditions, & privileges.

You must uphold the clear principles, that Stony Brook refuses to follow.

The scope of discrimination at Stony Brook is so extensive, it's tempting to give in, allowing the discrimination via some sort of legal fiction, or just by not touching it. Neither will make the discrimination go away. Both will green light Stony Brook to increase their discrimination efforts.

I ask for the same form of plain justice, that you rightly gave Bostock.

D. There are no non-discriminatory grounds for accepting Defendant's Argument

If you are inclined to accept Defendant's Argument that sex discrimination should be justified to achieve parity in this case, then ask yourself this. If the Free jobs, STEM, products, services, workshops, internships, healthcare, advocacy departments, ad nauseam, all for just one sex, had all been for a different sex instead of the one Stony Brook chose, would your opinion as a judge change? If changing the sex (and nothing else) would change your opinion, then you would fail

your own simple but-for cause test, held by the majority in Bostock, and written about at length in its majority opinion.

E. Any Moratorium on Justice should be Time-Limited

After Bostock, you may fear that you were too quick to give justice, where ignoring the plain text would lead to preferred outcomes. If such is the case now, and justice is to be set aside, then do so in the sense of Grutter v. Bollinger, 539 U.S. 306 (2003). In Grutter, justice was set aside for mercy (though mercy for only one side). However, the Court declared "race-conscious admissions policies must be limited in time," and the "Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." If today you are again swayed less by justice, more by mercy (for only one side) then at the very least agree to abandon this injustice after a quarter-century. 2045 is a long time to wait for justice, though many will appreciate it when it finally comes. Perhaps expiring in 2028 (as Grutter does) would be more fitting. It could even be today.

When should the time-horizon be? 10 years of statistics on graduation rates by gender for Stony Brook University show that the graduation rates for women exceed graduation rates for men, every year on record, and by no small margin. Suggesting that the time-horizon should be in the past, and in fact no later than 2010.

If we use STEM participation we may get a different time-horizon. Which is to say that sex is a mixed bag. Any justification, for the existence of a Women's Studies Department (which is a de facto Gender Advocacy Department for just one sex), cannot be justified without a corresponding Department for the other sex (to study their particular issues, like graduation rates).

F. Harmonizing Policy Considerations and Constitutional Considerations

The policy considerations are not necessarily at odds with justice, as long as a corresponding department is allowed to exist, to benefit the other sex. If equality is too much of a burden for Stony Brook, they can always opt out of federal funding.

Otherwise, the policy considerations are at odds with justice. In that case, as in Bostock, "to refuse enforcement . . . would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms."

CONCLUSION

For the foregoing reasons, this Court should grant this petition and issue a writ of certiorari to review the judgment and opinion of the Second Circuit Court of Appeals.

Respectfully submitted,

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