No. 23-509

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

ROLLINS COLLEGE,

Respondent.

On petition for a writ of certiorari to the
United States Court of Appeals for the Eleventh Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENT

MARK G. ALEXANDER
KELLY DEGANCE
SAMANTHA GIUDICI BERDECIA
Alexander DeGance Barnett, P.A.
1500 Riverside Avenue
Jacksonville, FL 32204

BRYAN S. GOWDY
Counsel of Record
DIMITRIOS A. PETEVES
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075
bgowdy@appellate-firm.com

Counsel for Respondent

February 2024

CORPORATE DISCLOSURE STATEMENT

Respondent is Rollins College. There are no parent corporations or any publicly held companies owning 10% or more of Rollins's stock.

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Respondent submits this supplemental brief under Rule 15.8 to address *Roe v. St. John's University*, 91 F.4th 643 (2d Cir. 2024). *St. Johns* was cited in the reply brief but not in the petition or the brief in opposition. It was published only two days before the brief in opposition was sent for printing.

* * *

St. Johns proves that the conflict claimed by Petitioner does not exist. Indeed, Petitioner claims that circuit courts are conflicted on whether to apply the "erroneous outcome" and "selective enforcement" theories discussed in *Yusuf v. Vassar College*, 35 F.3d 709 (2d Cir. 1994), or the approach discussed in *Doe v. Purdue University*, 928 F.3d 652 (7th Cir. 2019). Pet. 15–17. As recognized by Judge Menashi, the dissenting judge in *St. Johns*, "[the] opinion in *Yusuf* does not hold that the 'erroneous outcome' and 'selective enforcement' tests are the exclusive ways for a Title IX plaintiff to state a claim. The opinion says only that plaintiffs challenging university disciplinary proceedings 'can be expected to fall *generally* within [the] two categories' it describes." *St. John's*, 91 F.4th at 665 (Menashi, J., dissenting). The majority in *St. John's* likewise recognized that "the erroneous outcome and selective enforcement theories described in *Yusuf* are not necessarily the only ways in which a plaintiff may show that a university's disciplinary proceedings exhibited sex-based bias." *Id.* at 653 n.9.

To be sure, Judge Menashi criticized the *St. John's* majority for "revert[ing] to *Yusuf* in requiring . . . a plaintiff to plead facts that track the erroneous outcome and selective enforcement tests." *Id.* at 675 (Menashi, J., dissenting). But the majority did no such

thing. To the contrary—and like in *Purdue*—the majority held that a complaint "sufficiently alleges that the university acted with the discriminatory intent required for a successful Title IX claim when . . . it pleads specific facts that support a minimal plausible inference of such discrimination." *Id.* at 652 (citation omitted). The court stressed that "[t]his minimal-plausible-inference-of-discrimination standard is 'low.'" *Id.* (citation omitted).

In any event, the disagreement between the majority and the dissent in *St. John's* has no bearing on this case. Judge Menashi identified "two errors" with the majority decision: (1) it "departs from the straightforward pleading standard," and (2) it "imposes a new heightened pleading requirement." *Id.* at 675 (Menashi, J., dissenting). Unlike *St. John's*, this case was decided at summary judgment, so pleading requirements are irrelevant.

Finally, even if Judge Menashi correctly characterized the *St. John's* majority opinion, that does not change the fact that the Eleventh Circuit here did not require Petitioner to plead the *Yusuf* theories. Rather, Petitioner invoked those theories by specifically pleading them in his complaint. (Doc. 14 at 27–37.)[1] He also invoked the *Yusuf* theories and did not mention *Purdue* in response to Rollins's motion for summary judgment—even though the motion cited and discussed *Purdue*. (Doc. 74; *see also* Doc. 60 at 7.) And he again invoked the *Yusuf* theories in his principal brief in the Eleventh Circuit. *See Original Brief of Plaintiff-Appellant John Doe*, 2021 WL 4171022, at *17–19.

[1] "Doc." refers to filings in the district court's docket.

What's more, Petitioner has not explained how granting certiorari would change the outcome of his case. The Eleventh Circuit has twice approved then-Judge Barrett's decision in *Purdue*. *Doe v. Samford Univ.*, 29 F.4th 675, 686–87 (11th Cir. 2022); *Doe v. Rollins Coll.*, 77 F.4th 1340, 1351 (11th Cir. 2023). To the extent the Second Circuit in *St. John's* did not follow *Purdue*, then a petition for a writ of certiorari in *St. John's* will provide a better vehicle for this Court to consider the questions presented.

Respectfully submitted,

BRYAN S. GOWDY
Counsel of Record
DIMITRIOS A. PETEVES
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075
bgowdy@appellate-firm.com

Counsel for Respondent

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