

06-1184

UNITED STATE COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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LISA SIMPSON AND ANNE  
GIMORE,

Plaintiffs-Appellants,

– against –

UNIVERSITY OF COLORADO AT  
BOULDER,

Defendants-Appellees.

Case No.: 06-1184

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**MOTION FOR LEAVE TO APPEAR AS *AMICI CURIAE* IN SUPPORT OF  
APPELLANTS**

The American Civil Liberties Union, the American Civil Liberties Union of Colorado, the Asian American Legal Defense and Education Fund, the California Women's Law Center, the Connecticut Women's Education and Legal Fund, the Lawyers' Committee for Civil Rights Under Law, Legal Momentum, the Mexican American Legal Defense and Educational Fund, the National Asian Pacific American Women's Forum, the National Association for the Advancement of Colored People, the NAACP Legal Defense and Educational Fund, Inc., the National Partnership for Women and Families, the Northwest Women's Law Center, the Sargent Shriver National Center on Poverty Law, the Southwest Women's Law Center, and the Women's Law Project hereby move pursuant to Fed. R. App. P. Rule 29 for leave to file a brief as *amici curiae* in support of Appellants, submitted simultaneously with this motion. All parties have consented to the filing of this brief.

This case raises important questions as to the scope of the protections provided by Title IX, Title VI, and other analogous civil rights laws. *Amici* are women's rights and civil rights organizations with a strong interest in preventing discrimination in education on the basis of sex or race, whether such discrimination occurs at the hands of school officials or peers. The proposed brief addresses the implications of the lower court's decision for enforcement of Title IX and Title VI in the peer harassment context and sets out why the lower court's decision was in error. The individual statements of interest of *amici* follow.

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization of more than 600,000 members, dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Through its Women's Rights Project (founded in 1972 by Ruth Bader Ginsburg) and its Racial Justice Program, the ACLU has long sought to ensure that the law provides individuals with meaningful protection from harassment and other forms of discrimination on the basis of gender or race. In particular, the ACLU has battled the invidious effects of discrimination in education, including sexual harassment, given that the proper role of education is to provide opportunities to overcome disadvantage and stereotypes; discrimination that serves to undermine this vital role and close down opportunity is especially pernicious. The American Civil Liberties Union Foundation of Colorado ("ACLU of Colorado") is the Colorado state affiliate of the ACLU. The proper resolution of this case is a matter of substantial interest to the ACLU and its members.

The Asian American Legal Defense and Education Fund ("AALDEF"), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through the prosecution of lawsuits, legal advocacy and dissemination of

public information. A key focus of AALDEF's educational equity project is the growing problem of anti-Asian harassment in public schools and universities.

The California Women's Law Center ("CWLC") is a private, nonprofit public interest law center specializing in the civil rights of women and girls. The California Women's Law Center, established in 1989, works in the following priority areas: Sex Discrimination, Women's Health, Race and Gender, Women's Economic Security, Exploitation of Women, and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination and sexual harassment in schools. CWLC has authored numerous amicus briefs, articles, and legal education materials on this issue. The *Simpson v. University of Colorado* case raises questions within the expertise and concern of the California Women's Law Center. Therefore, the California Women's Law Center has the requisite interest and expertise to join in the amicus brief in the *Simpson* case.

The Connecticut Women's Education and Legal Fund ("CWEALF") is a non-profit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF defends the rights of individuals in the courts, educational institutions, workplaces and in their private lives. Since its founding in 1973, CWEALF has provided legal information and conducted public policy and advocacy to ensure the spirit of Title IX is implemented and enforced in educational and employment opportunities.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a non-profit, nonpartisan organization founded in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice for all

Americans. Its Board of Trustees includes several past Presidents of the American Bar Association, past Attorneys General of the United States, law school deans and professors, and many of the nation's leading lawyers. Through the Lawyers' Committee and its independent local affiliates, hundreds of attorneys have represented thousands of clients in discrimination cases across the country. The Lawyers' Committee has been continually involved in cases before the Supreme Court involving the proper scope and coverage afforded to federal civil rights laws prohibiting discrimination. Through the Leadership Conference for Civil Rights, the Lawyers' Committee recently filed an *amicus* brief in the Title IX case *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005). The Lawyers' Committee has also filed *amicus* briefs in recent sexual harassment cases including *Suders v. Pennsylvania State Police*, 542 U.S. 129 (2004) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. It is the nation's oldest legal advocacy organization devoted to women's rights. Legal Momentum, then known as NOW Legal Defense, pioneered the implementation of Title IX with PEER, its nationwide Project on Equal Education Rights, from 1974-1992. It was co-counsel in *Doe v. Petaluma City School District*, 949 F. Supp. 1415 (N.D. Cal. 1996), the first case to recognize that a school's failure to respond to peer sexual harassment may violate Title IX, and has appeared as *amicus curiae* in numerous cases concerning the right to be free from sexual harassment and sex discrimination in education, including *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), and *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

The Mexican American Legal Defense and Educational Fund (“MALDEF”), a national nonprofit Latino civil rights organization, has as its primary objective the protection and promotion of the civil rights of Latinos living in the United States. Founded in 1968, MALDEF seeks to empower the Latino community to participate fully in American society through impact litigation, advocacy, research, community outreach, leadership development, and education. MALDEF’s core program areas include education, immigrants’ rights, employment discrimination, and political access. MALDEF has litigated and appeared as *amicus curiae* in numerous cases involving the right to be free of discrimination, harassment, and a hostile environment.

Founded in 1996, the National Asian Pacific American Women’s Forum (“NAPAWF”) is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American women and girls. NAPAWF supports the plaintiffs in *Simpson v. University of Colorado*. Ending violence against women, including sexual assault and harassment, is one of the central issues that forms the basis of NAPAWF’s advocacy. Over the past few years, reports of sexual harassment, stalking, and assault against Asian Pacific Islander (“API”) women on college campuses have steadily increased. This increase stems primarily from race and sex discrimination against API women and the failure of university administrators to quickly and adequately respond to these situations. The Supreme Court has recognized that federally funded educational institutions deny women and minorities equal educational opportunity in violation of Title IX and Title VI not only when schools themselves discriminate, but also when they knowingly ignore discrimination by third parties. A narrow interpretation of the notice and deliberate indifference requirements required under law

would ultimately eviscerate the protections of Title IX and Title VI, leaving many API women without the ability to seek judicial redress.

The National Association for the Advancement of Colored People (“NAACP” or the “Association”), established in 1909, is the nation’s oldest civil rights organization. The principal objectives of the Association are to ensure the political, educational, social, and economic equality of rights and eliminate race prejudice among the citizens of the United States; to remove barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof, and to take other lawful action in furtherance of these objectives.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a non-profit corporation formed to assist African-Americans in securing their legal rights. It is the nation's oldest civil rights law firm, having been founded as an arm of the NAACP in 1939 by Charles Hamilton Houston and Thurgood Marshall. The LDF was chartered by the Appellate Division of the Supreme Court of New York in 1940 as a non-profit legal aid society "to render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and are unable to employ and engage legal aid and assistance on account of poverty." Since 1957, LDF has operated independently of the NAACP. LDF has been described by the Supreme Court of the United States as a "'firm' . . . which has a corporate reputation for expertness in presenting and arguing the difficult questions of law that frequently arise in civil rights litigation," *NAACP v. Button*, 371 U.S. 415, 422 (1963). LDF has long been concerned with effective enforcement of the nation's civil rights laws, including Title

VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d, *see, e.g., Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973) (*en banc*), *aff'g* 351 F. Supp. 636 (D.D.C. 1972), *case later dismissed on other grounds sub nom. WEAL v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990), and similar statutes patterned on Title VI, which are construed *in pari materia* with it, such as Title IX. LDF's interest in the matter at bar arises from its concern that the cramped interpretation of the evidence necessary to establish a sexually hostile environment adopted by the court below would be equally applicable to Title VI and other civil rights laws, and would virtually result in judicial nullification of the broad purposes of these laws as well as work flagrant injustices upon the victims of the stereotypical and discriminatory conduct to which they are subjected.

Founded in 1971, the National Partnership for Women and Families is a national advocacy organization that develops and promotes public policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. The National Partnership has a longstanding commitment to equal opportunity for women and to monitoring the enforcement of antidiscrimination laws. The National Partnership has devoted significant resources to combating sex and race discrimination in education and has filed numerous briefs *amicus curiae* in the federal circuit courts of appeal to advance women's opportunities in education.

The Northwest Women's Law Center (NWLC) is a regional non-profit public interest organization that works to advance the legal rights of all women through litigation, legislation, education, and the provision of legal information and referral services. Since its founding in 1978, NWLC has been involved in both litigation and legislation aimed at ending all forms of discrimination against women. As part of that effort, NWLC has been dedicated to protecting and ensuring women's rights to equality in education and athletics. Toward that end, NWLC

has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country. NWLC believes it is imperative that courts preserve the protections afforded to women and girls by Title IX.

The Sargent Shriver National Center on Poverty Law (“Shriver Center”) champions economic opportunity through fair laws and policies so that people can move out of poverty permanently. Our methods blend advocacy, communication, and strategic leadership on issues affecting people living in poverty. National in scope, the Shriver Center’s work extends from the Beltway to state capitols and into communities building strategic alliances. Through its Women’s Law and Policy Project, the Shriver Center works on issues related to education, including sexual harassment and other forms of violence against women and girls. Access to safe and quality education is the surest path out of poverty and toward economic well-being. The Shriver Center has a strong interest in the eradication of discrimination in education on the basis of sex or race, which denies women and minorities equal educational opportunities.

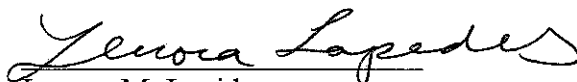
The Southwest Women’s Law Center is a nonprofit public interest organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by: (i) eliminating gender bias, discrimination and harassment; (ii) lifting women and their families out of poverty; and (iii) ensuring that women have full control over their reproductive lives through access to comprehensive reproductive health services and information.

The Women’s Law Project (“WLP”) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual

counseling. The WLP is committed to ending sexual abuse and harassment of women and children and to safeguarding the legal rights of women and children who experience sexual abuse. Toward that end, the WLP is interested in insuring that the law provides comprehensive remedies for students who are subject to sexual abuse and harassment.

Dated: August 24, 2006

Respectfully submitted,



Lenora M. Lapidus

Emily J. Martin

Dennis Parker

Catherine Kim

American Civil Liberties Union Foundation

125 Broad Street, 18<sup>th</sup> Floor

New York, NY 10004

(p) (212) 549-2615

(f) (212) 549-2580

Counsel for *Amici Curiae*

## CERTIFICATE OF SERVICE

I, Emily J. Martin, hereby certify that on August 24, 2006, a copy of the foregoing Motion for Leave To Appear as *Amici Curiae* in Support of Appellants was served by U.S. Mail and electronic mail to counsel of record as follows:

Baine P. Kerr  
Kimberly M. Hult  
Christopher W. Ford  
Hutchinson Black and Cook, LLC  
921 Walnut St., Ste. 200  
Boulder, CO 80302  
Hult@hbcboulder.com

Honorable Patricia M. Wald  
2101 Connecticut Ave., NW  
Washington, DC 20006

Pamela S. Karlan  
Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305-8610

Jocelyn Samuels  
Dina R. Lassow  
Neena K. Chaudhry  
Ellen Eardley  
National Women's Law Center  
11 Dupont Circle, NW, Ste. 800  
Washington, DC 20036  
nchaudhry@nwlc.org


Seth J. Benezra  
John A. Culver  
Benezra & Culver, LLC  
141 Union Blvd., Ste. 260  
Lakewood, CO 80228-1838  
sjbenezra@bc-law.com  
jaculver@bc-law.com

Peggy R. Jessel  
Peggy Jessel, LLC  
4150 Darley Ave., Ste. 7  
Boulder, CO 80305-6537  
peggy@pjawllc.com

Larry S. Pozner  
Daniel M. Reilly  
Reilly Pozner & Connelly, LLP  
511 16th St., Ste. 700  
Denver, CO 80202  
lpozner@litigationcolorado.com  
dreilly@litigationcolorado.com

Kay J. Rice  
Cooper & Clough PC  
1512 Larimer St., #600  
Denver, CO 80202  
krice@cooper-clough.com

Patrick O'Rourke  
David Temple  
University Counsel  
1380 Lawrence St., Ste. 1325  
Denver, CO 80204  
david.temple@cudenver.edu



Emily J. Martin

Dated: August 24, 2006