



July 30, 2020

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: *Matthew Boermeester v. Carry*, No. S263180

To the Honorable Chief Justice and Associate Justices:

Amici curiae the California Women's Law Center ("CWLC") and Equal Rights Advocates ("ERA"), joined by Alliance for HOPE International, Atlanta Women for Equality, Child Abuse Forensic Institute, Community Legal Aid SoCal, Family Violence Appellate Project, Family Violence Law Center, Feminist Majority Foundation, Los Angeles Center for Law and Justice, National Women's Law Center, Rural Human Services/Harrington House, San Diego Volunteer Lawyer Program, Texas Association Against Sexual Assault, and Women Lawyers Association of Los Angeles,¹ write in support of the petition for review filed by the University of Southern California ("USC") in this case.²

¹ Gibson Dunn represents CWLC and ERA. Alliance for HOPE International, Atlanta Women for Equality, Child Abuse Forensic Institute, Community Legal Aid SoCal, Family Violence Appellate Project, Family Violence Law Center, Feminist Majority Foundation, Los Angeles Center for Law and Justice, National Women's Law Center, Rural Human Services/Harrington House, San Diego Volunteer Lawyer Program, Texas Association Against Sexual Assault, and Women Lawyers Association of Los Angeles have independently chosen to join this letter.

² No party or counsel for a party authored or funded this letter in whole or in part, and no one other than the *amici*, their members, and their counsel have contributed to the funding of this letter. (Cal. R. Ct. 8.520, subd. (f).)

As USC’s petition for review cogently explains, review is warranted in *Boermeester v. Carry* to determine (1) “[w]hether the common law right to fair procedure requires private universities to provide elaborate and burdensome procedures, including cross-examination of witnesses at a live hearing, when investigating allegations of intimate partner violence”; and (2) “[w]hether constitutional due process principles govern a private university’s disciplinary proceedings, which involve no state action.” (Petn. at p. 9.) *Amici* urge this Court to address these important issues affecting students and faculty across the state, and most extremely, student survivors of sexual assault and intimate partner violence.

As explained below, a recent string of decisions issued by the Court of Appeal has created a gender-biased procedural system: imposing onerous requirements in sexual assault and intimate partner violence proceedings not present in any other type of disciplinary proceeding even where there is a similarly severe sanction. This disparate treatment creates two separate tracks—one procedural system for gender-based violence cases and another for all other cases—that feeds into and lends credence to harmful and false narratives that victims of gender-based violence are inherently untrustworthy and perpetrators need additional procedures to protect them from these “false” allegations. Allowing the perpetrator to confront a victim so she can “be destroyed by a scathing cross-examination” will only further “deter reporting” (dis. opn. at p. 22), an already serious problem on school campuses where only around 20% of victims report gender-based violence. (See Am. Bar Assn., *Recommendations for Improving Campus Student Conduct Processes for Gender-Based Violence* (2019) at p. 1 <<https://www.americanbar.org/content/dam/aba/publications/domestic-violence/campus.pdf>> [ABA Recommendations].) The assumption that cross-examination and confrontation are necessary in a non-criminal disciplinary proceeding is refuted by academic research, this Court’s jurisprudence, and federal law, and reflects an unfounded and biased mistrust of the investigatory nature of Title IX proceedings.

A. Interest of *Amici*

CWLC is a nonprofit organization whose mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy, and education. CWLC works across several areas of gender justice, including gender discrimination, economic security, women’s health, and violence against women. One of our core priorities is to eliminate intimate partner violence in homes and on school campuses. CWLC closely monitors legislation and federal guidelines regarding colleges’ responses to gender-based violence on

campus. CWLC's website provides up-to-date information regarding state and federal legislation and contains educational resources concerning intimate partner violence. CWLC has submitted many amicus briefs related to Title IX and domestic violence in state and federal appellate courts. As a result, CWLC is well-versed in the federal laws and guidelines governing the investigation and resolution of intimate partner violence claims on college campuses.

ERA is a national non-profit civil rights organization dedicated to protecting and expanding educational access and opportunities for women and girls and people of marginalized gender identities. For the past 45 years, ERA has advocated for gender equity in education across the country through a unique combination of strategies including litigation, policy reform, direct services, and community engagement. We provide free legal information, advice, and assistance to individuals facing discrimination at school and at work through our Advice & Counseling Program. ERA represents victims of sexual harassment and assault in cases brought pursuant to Title IX at all stages, from campus disciplinary proceedings through and including the United States Supreme Court. We also collaborate with students, schools, and worker and community organizations to provide Know-Your-Rights workshops on issues related to gender discrimination and Title IX. We publish reports, fact sheets, and other materials about sexual harassment and gender-based violence in education. ERA recently launched an initiative to End Sexual Violence in Education ("ESVE") in order to narrow a rapidly expanding justice gap for survivors of sexual violence in schools. Through this initiative, ERA launched the nation's first pro bono network of attorneys dedicated to representing student victims of gender-based violence in higher education. Students are ERA's clients and our partners in this work; their experiences, input, and needs drive ERA's commitment of resources, our search for solutions, and our fight for justice.

Alliance for HOPE International ("Alliance") is a non-profit organization launched in 2003. The Alliance has five core programs: National Family Justice Center Alliance, Training Institute on Strangulation Prevention, Camp HOPE America, Justice Legal Network and VOICES Survivor Network. The Justice Legal Network is an innovative public interest law firm made up of approximately 15 solo attorneys who have pledged to work with the Alliance in providing civil legal services to domestic violence/sexual assault victims and their children, including protection orders, family law, immigration, personal injury, landlord issues, criminal law and victim rights.

Atlanta Women for Equality (“AWE”) is a 501(c)(3) non-profit legal aid organization dedicated to empowering women to assert their legal right to equal treatment in the educational environment and to shaping our education system according to true standards of gender equity. AWE accomplishes this mission by providing free legal advocacy for women and girls facing gender discrimination in the educational environment—in particular campus sexual violence—and by protecting and expanding their educational opportunities through policy advocacy.

Child Abuse Forensic Institute assists victims of crime involving sexual assault. Its consultants represent every aspect of a forensic case and assist in developing policy in response to abuse, litigation preparation, expert testimony, court presentation, and advocacy. Clients range in age from infancy to adulthood.

The mission of **Community Legal Aid SoCal** is to provide civil legal services to low-income individuals and to promote equal access to the justice system through advocacy, legal counseling, innovative self-help services, in-depth legal representation, economic development and community education.

Family Violence Appellate Project (“FVAP”) is the only statewide nonprofit in California dedicated to helping low- and moderate-income survivors of domestic violence challenge dangerous trial court orders that put them and their families at risk, for free. Since its founding in 2012, FVAP has represented appellants and respondents in almost 50 appeals and writs, and has filed amicus curiae briefs in almost 20 cases that raised significant issues of statewide concern for domestic abuse survivors.

Founded in 1978, **Family Violence Law Center** (“FVLC”) helps diverse communities in Alameda County heal from domestic violence and sexual assault, advocating for justice and healthy relationships. FVLC provides survivor-centered legal and crisis intervention services, offers prevention education for youth and other community members, and engages in policy work to create systemic change. FVLC represents survivors in Title IX proceedings.

Feminist Majority Foundation is a national non-profit organization dedicated to eliminating sex discrimination and to the promotion of women’s and girls’ equality and empowerment in the U.S. and globally. The Foundation’s programs focus on advancing the legal, social, economic, educational, and political equality of women and girls, countering the backlash to women’s advancement, and recruiting and training young feminists to encourage future leadership for the feminist movement.

To carry out these aims, the Foundation engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs. The Foundation’s Education Equality Program plays a leading role in compiling research and developing a national Title IX Action Network with Title IX gender equity Coordinators and others who support equality in education to fight the many threats to Title IX and maximize its beneficial impact on society.

The mission of **Los Angeles Center for Law and Justice** (“LACLJ”) is to secure justice for survivors of domestic violence and sexual assault and empower them to create their own futures. Located in East Los Angeles, LACLJ is a non-profit law firm providing free legal services, including representation and other extensive services, to survivors throughout Los Angeles County. LACLJ represents survivors in family and immigration court, files humanitarian and other forms of immigration relief, advocates for survivors in the criminal justice system, and takes appeals when appropriate. Through our integrated service model, LACLJ also provides supportive services such as education, safety planning, accompaniment, and linkages to other service providers as part of the legal team. In the past five years, LACLJ has filed 13 appeals, four of which have resulted in published decisions.

National Women’s Law Center (“NWLC”) is a non-profit legal advocacy organization dedicated to the advancement and protection of the legal rights and opportunities of women and girls since its founding in 1972. Because equal access to education in an environment free of sexual harassment and other forms of gender-based violence is essential to full equality, NWLC seeks to ensure that no individual is denied educational opportunities based on sex and that all individuals enjoy the full protection against sex discrimination promised by law.

Rural Human Services/Harrington House is a 28-bed emergency domestic violence shelter for domestic violence victims, their children, and their pets. Rural Human Services is located in rural Northern California. Rural Human Services is a non-profit organization providing for the health, safety, and economic well-being of its communities since 1981.

San Diego Volunteer Lawyer Program, Inc. (“SDVLP”) was established in 1983 as a private, not for profit, charitable law firm which provides pro bono legal assistance to indigent residents of San Diego County. One of SDVLP’s priority areas of service is legal assistance to victims of domestic violence.

Texas Association Against Sexual Assault (“TAASA”) is a non-profit organization committed to ending sexual violence in Texas. Its membership includes approximately 80 rape crisis centers, and victim-serving agencies on campuses throughout the state of Texas. Focused on education, prevention, and advocacy on behalf of sexual assault victims, TAASA strives to reduce sexual violence of all types, including harassment and intimate partner violence. Since 1982, TAASA has worked to bring hope, healing, and justice to victims of sexual assault. As part of that mission, TAASA strongly supports policies that ensure victims of sexual assault have access to the resources necessary for their mental, emotional, and physical well-being. TAASA’s interest in this case is in support of trauma-informed processes and responses to sexual violence occurring on college campuses.

Women Lawyers Association of Los Angeles (“WLALA”) is a non-profit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation in the legal profession of women lawyers and judges from diverse perspectives and racial and ethnic backgrounds, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women by supporting their exercise of equal rights, equal representation, and reproductive choice. WLALA has participated as an amicus curiae in cases involving the unequal treatment of women before the California Court of Appeal and Supreme Court, and the federal district courts, Courts of Appeals and U.S. Supreme Court. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal rights for women and girls through the full enforcement of laws.

B. Gender Bias Now Unnecessarily Pervades the Definition of Fairness in School Disciplinary Proceedings

As USC’s petition explains, the Court of Appeal has incrementally imposed additional onerous procedural requirements on university disciplinary proceedings arising out of sexual misconduct. In the last four years, the Court of Appeal has held that a “fair” adjudication of sexual misconduct allegations requires universities to: conduct live hearings with testimony from key witnesses (*Doe v. Westmont College* (2019) 34 Cal.App.5th 622, 637), permit the cross-examination of witnesses whose credibility is critical (*Doe v. Occidental College* (2019) 40 Cal.App.5th 208, 224; *Doe v. Allee* (2019) 30 Cal.App.5th 1036, 1069), and have a single adjudicator physically observe each and every witness whose credibility may be key (*Doe v. Univ. of Southern Cal.* (2018) 29 Cal.App.5th 1212, 1233). In *Boermeester*, the Court of

Appeal has now expanded this flawed reasoning to disciplinary proceedings involving intimate partner violence, requiring cross-examination even if credibility is not central to the school’s decision. (Petn. at pp. 32–34; see Opn. at p. 21.)

The common thread in all of these cases is gender. Indeed, the Court of Appeal has imposed these procedural hurdles only for disciplinary hearings involving gender-based violence, and not in any other university disciplinary proceedings involving misconduct, including those involving physical violence and with similarly severe consequences to a respondent:

- In *Doe v. University of Southern California* (2018) 28 Cal.App.5th 26, the Court of Appeal held a student was provided a fair hearing, and reversed the trial court that had concluded otherwise, where a student was suspended for one year for cheating on a test. (*Id.* at pp. 31, 39–40.) The court held fair procedure was satisfied by merely allowing the student to review a faculty report that explained the charge, the evidence supporting it, and the professors who initiated it. (*Id.* at pp. 39–40.)
- In *Patel v. Touro University* (Cal. Ct. App. 2015) 2015 WL 8827888, the Court of Appeal held fair procedure was satisfied where a student was expelled for stalking a professor even though “he was unable to confront” or cross-examine his accusers. (*Id.* at pp. *3, *6–8.)³
- In *Berman v. Regents of University of California* (2014) 229 Cal.App.4th 1265, the Court of Appeal held due process was satisfied where a graduate student was suspended for two quarters for striking another student while intoxicated even though the dean imposed a greater sanction than the board recommended without providing the student with an opportunity to be heard. (*Id.* at pp. 1273–1275.)
- In *Wells v. Biola University, Inc.* (Cal. Ct. App. 2006) 2006 WL 1633475, the Court of Appeal held fair procedure was satisfied where a graduate student was expelled for intoxication in violation of the student code, even though she

³ “When petitioning for review, it is considered appropriate to tell the Supreme Court about unpublished opinions demonstrating that there is a division in the lower courts about a question of law or that an issue is frequently recurring.” (Horvitz & Levy LLP, “Referencing” and “mentioning” unpublished opinions in petitions for review (2016) <<http://www.atthelectern.com/referencing-and-mentioning-unpublished-opinions-in-petitions-for-review/>>.)

claimed that the evidence relied upon consisted of hearsay and prejudiced testimony. (*Id.* at pp. *5–7.) No opportunity to cross-examination was provided and the student did not object to the proceedings on that basis.

- In *Viriyapanthu v. Regents of University of California* (Cal. Ct. App. 2003) 2003 WL 22120968, the Court of Appeal held due process was satisfied where a law student was suspended one semester for plagiarism even though cross-examination was *not* permitted. (*Id.* at pp. *6–8.)

The result of the Court of Appeal’s imposition of formal hearing and procedural requirements only in gender-based misconduct proceedings is that California law is now infested with gender bias. The overwhelming majority of survivors of sexual misconduct and intimate partner violence are female. (U.S. Dept. of Justice, *Nonfatal Domestic Violence, 2003–2012* (2014) at pp. 1, 11 <<https://www.bjs.gov/content/pub/pdf/ndv0312.pdf>>.) Thus, without this Court’s intervention, the law is now a two-track system—*separate and unequal*—which requires an opportunity to cross-examine parties and witnesses only in gender-based disciplinary proceedings, and continues to perpetuate the false adage that women who report their assault, abuse, or rape are lying.

This overt gender bias is pervasive. In the *first line* of the factual background in *Boermeester*, the majority introduced Mr. Boermeester by stating that he “kicked the game-winning field goal for USC at the 2017 Rose Bowl.” (Opn. at p. 1.) This is irrelevant to whether Mr. Boermeester abused Ms. Roe, and inclusion of this fact suggests that it was relevant to the court’s decision and that the law treats women as even less trustworthy when the respondent is a star athlete.

This Court has the opportunity to undo this gender bias in California law and *amici* strongly urge the Court to grant review to do so.

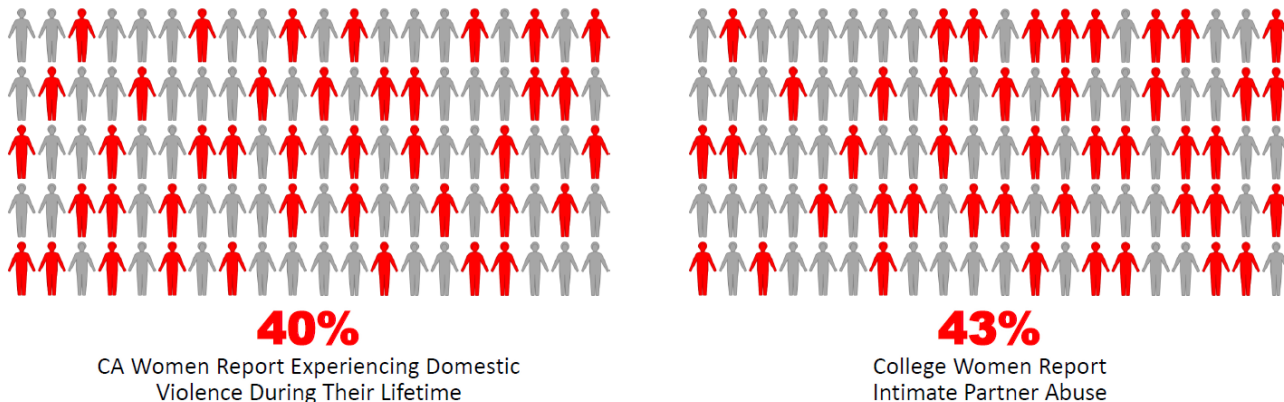
C. Turning Classrooms into Courtrooms Exacerbates the Problem of Intimate Partner Violence and Gender Discrimination in Schools

A goal of every institution of higher learning under California law is to provide a safe environment for its academic community. (See Educ. Code, §§ 200, 220.) Title IX also specifically requires educational institutions to prevent and address sexual harassment (including sexual assault and dating violence), and eliminate any hostile environment, and remedy its effects to ensure that students—in particular, women—have equal access to education. (See 20 U.S.C. § 1681; ABA

Recommendations, *supra*, at p. 6.) Intimate partner violence and other forms of gender-based discrimination are leading impediments to that goal and have lifelong impacts on the survivors and the campus community. Requiring cross-examination in a live hearing with the opportunity for the respondent to confront the survivor will exacerbate this already grave problem by making survivors less likely to report and will re-traumatize the survivors who do come forward.

Intimate partner violence is widespread in schools across the country, with some research showing “alarmingly high” rates—between “21 – 32% on college campuses.” (Anasuri, *Intimate Partner Violence on College Campuses: An Appraisal of Emerging Perspectives* (2016) 2016 J. Educ. & Human Dev. 74, 74 [“*Emerging Perspectives*”].) Other sources report that 43% of college women report experiencing intimate partner abuse. (National Coalition Against Domestic Violence, *Facts about Dating Abuse and Teen Violence* (2015) at p. 1 <https://assets.speakcdn.com/assets/2497/dating_abuse_and_teen_violence_ncadv.pdf> [National Coalition].) This type of conduct disproportionately impacts students of color and LGBTQ students. (Centers for Disease Control, *Youth Risk Behavior Survey* (2017) at 42, 78–80 <<https://www.cdc.gov/healthyyouth/data/yrbs/pdf/trendsreport.pdf>>; ABA Recommendations, *supra*, at p. 1.)

California is no exception. According to the Centers for Disease Control’s National Intimate Partner and Sexual Violence Survey, approximately 34.9% of women in California experience intimate partner violence at some point in their life. (Centers for Disease Control, *The National Intimate Partner and Sexual Violence Survey 2010-2012 State Report* (2017) at p. 128 <<https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>>.) Other surveys have found that over 40% of women in California experience intimate partner violence over their lifetime. (Weinbaum et al., *Women Experiencing Intimate Partner Violence, California, 1998–2002* (2006) at pp. 4–5 <https://fhop.ucsf.edu/sites/fhop.ucsf.edu/files/wysiwyg/whs_violence.pdf> [Weinbaum].) And the rate of intimate partner violence is more “prevalent among college couples as compared to any other population.” (*Emerging Perspectives, supra*, 5 J. Educ. & Human Dev. at p. 74.) Thus, this is far from a discrete problem.



(Weinbaum, *supra*, at pp. 4–5; National Coalition, *supra*, at p. 1.)

Worse, these numbers are just the tip of the iceberg. Intimate partner violence—like other forms of gender- and sex-based violence—is largely hidden and underreported. (U.S. Dept. of Justice, *Rape and Sexual Assault Victimization Among College-Age Females, 1995–2013* (2014) at p. 1 <<https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>> [only 20% of female student victims of rape and sexual assault report to police].) There are many barriers that limit the ability of intimate partner violence survivors (and survivors of other forms of gender-based violence) to seek help and report their abusers, including shame, financial dependence, worry that they will not be believed, and fear of retribution from their abuser.

By erecting additional procedural hurdles to accountability, the Court of Appeal is further chilling reporting. Cross-examination is particularly troublesome, as CWLC and ERA hear each day. ERA and CWLC’s clients often find navigating the hearing process at their schools even more traumatic and emotionally scarring than the underlying sexual assaults or abuse itself.

For example, one of ERA’s clients was the victim of a drug-facilitated gang rape, physical assault, and sexual exploitation. She dropped out of school entirely and was forced to enter into an agreement with her assailant rather than face him at a hearing and be subjected to cross-examination. In another case, an ERA client reported that she was more traumatized by even the thought of cross-examination than she was as a result of her boyfriend punching her repeatedly in the face during sexual intercourse. In scores of other cases, survivors of sexual and intimate partner violence have elected not to report the conduct precisely due to the fear of cross-examination that will force them to relive the horror of their experience.

As these examples illustrate, cross-examination undermines the mandate of Title IX and California law that schools eliminate hostile environments. By requiring cross-examination in school misconduct proceedings, survivors will be forced to either experience re-traumatization through cross-examination or be forced to co-exist with their assailant on campus.⁴ Neither option reduces a hostile environment, rather each perpetuates it. And because the normal rules of evidence do not apply, in many instances respondents can use a survivor’s prior sexual history or hearsay statements to further attack an already-traumatized survivor.

This can have a real, tangible impact on survivors’ ability to pursue an education. For example, survivors of intimate partner violence and sexual violence are much more likely to drop out of school. (Mengo & Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout* (2016) 18 J. of College Student Retention 1, 9.) College students who are able to remain in school report an average grade point average (GPA) drop of 0.35. (*Id.* at p. 10.) Thus, the students who have already been subjected to violence and forced into subsequent re-traumatization through cross-examination are far more likely to be the ones deprived of the ability to pursue their education, not the respondents. This is particularly true given that the rate of false allegations is believed to be under 10%—between 2% and 7%—which is comparable to other crimes. (See National Sexual Violence Resource Center, *False Reporting Overview* (2012) at p. 3 <https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf>; Kelly, *Routes to (In)justice: A Research Review on the Reporting, Investigation and Prosecution of Rape Cases* (2001) at p. 21 <<https://www.justiceinspectrates.gov.uk/cjji/wp-content/uploads/sites/2/2014/04/Rapelitrev.pdf>>.)

Even the first Court of Appeal decision that led to the now overt gender bias in California law explained that “[i]n administrative cases addressing sexual assault involving students who live, work, and study on a shared college campus, cross-

⁴ While the U.S. Department of Education has promulgated new regulations governing disciplinary proceedings that impose more onerous procedural requirements in disciplinary proceedings, several states and national non-profit civil rights organizations, including ERA, have challenged the Final Rules. (See, e.g., *Victim Rights Law Center v. DeVos* (D.Mass. 2020) Case Number 1:20-cv-11104; *Pennsylvania v. DeVos* (D.D.C. 2020) Case Number 1:20-cv-1468; *Know Your IX v. DeVos* (D.Md. 2020) Case Number 1:20-cv-1224; *New York v. U.S. Dept. of Educ.* (S.D.N.Y. 2020) 1:20-cv-4260.) And, as USC’s Petition notes, “the adverse practical consequences will persist even if the regulations take effect” because the regulations are limited to a certain “range of misconduct” and “do not apply to most instances of off-campus misconduct, like the kind at issue in this very case.” (Petn. at pp. 37–38.)

examination is especially fraught with potential drawbacks.” (*Doe v. Univ. of Southern Cal.* (2016) 246 Cal.App.4th 221, 245.) Four years later, the Court of Appeal appears to have all but forgotten this concern.

D. Review Is Warranted to Determine Whether University Disciplinary Proceedings Must Mirror the Procedures Required in Criminal Trials

The Court of Appeal’s decision, and the decisions upon which it relies, are also premised on an erroneous assumption that disciplinary hearings must be treated like criminal trials in America in order to be fair. This assumption is unfounded and deserves the Court’s attention.

The ABA’s Commission on Domestic and Sexual Violence’s Recommendations for Improving Campus Student Conduct Processes for Gender-based Violence examined in detail the different models for adjudicating gender-based misconduct at school and recommended *against* importing criminal-style proceedings into classrooms. (ABA Recommendations, *supra*.) This report was the culmination of numerous interviews with campus stakeholders across the United States and an extensive peer review process that involved law professors, criminal defense attorneys, prosecutors, private family law litigators, gender-based violence experts, school administrators, and many others. The end result was an unequivocal and unanimous recommendation for an *investigative* model without a hearing or an investigation paired with a panel review—*not* a traditional hearing model like those employed in criminal courts. The Commission found that the investigative models achieve the comprehensive prevention goal more effectively than other models by:

- Requiring any party or witness who has experienced trauma to undergo fewer potentially re-traumatizing events such as repeated recounting of the traumatic events; contact between complainant and respondent during proceedings; and direct divulgences of deeply private information to the larger number of people inherent in a traditional hearing process, potentially including people with whom the complainant has an ongoing relationship that will be inevitably affected by such disclosures.
- Promoting greater sustainability as long-term responses to violence by being more affordable long-term for [institutions of higher education].

- Facilitating post-proceeding psycho-social treatment [of] and education [for] accused students who are found responsible for committing gender-based violence by avoiding the adversarial structure of a traditional hearing.

(*Id.* at p. 63.)

California also has long recognized that the procedural requirements of criminal trials are not necessary in all cases, including other highly consequential *court* proceedings. For example, the Welfare and Institutions Code explicitly calls for an investigatory model in juvenile dependency proceedings, where the investigator’s report (including hearsay statements of witnesses attesting to abuse or neglect) is admitted into evidence without cross-examination of the witnesses, and the judge examines the parents and the child where needed. (Welf. & Inst. Code, § 319.) And the Court of Appeal has repeatedly recognized that even in such proceedings, where a parent can be stripped of their parental rights and which often involve criminal conduct, rules such as “the Fourth Amendment exclusionary rule” and the “right to confrontation” do *not* apply. (*In re Mary S.* (1986) 186 Cal.App.3d 414, 418–420.)

Federal law also considers the investigatory model to be “fair enough for *critical* administrative decisions.” (*Haidak v. Univ. of Mass.-Amherst* (1st Cir. 2019) 933 F.3d 56, 68–71, italics added.) For example, Social Security proceedings—which determine an individual’s eligibility for essential benefits—are investigatory rather than adversarial. (See *Sims v. Apfel* (2000) 530 U.S. 130, 110–111.)

European courts even approve of the investigatory process without cross-examination in *criminal* cases. (Goldstein & Marcus, *The Myth of Judicial Supervision in Three “Inquisitorial” Systems: France, Italy, and Germany* (1977) 87 Yale L.J. 240, 266.) It cannot be that a system considered sufficient for criminal proceedings in Europe is fundamentally unfair for a private university to employ in its disciplinary proceedings.

The Court should grant review and make clear that the procedures of a criminal trial, such as cross-examination of witnesses at a live hearing, are neither required nor favored to resolve disciplinary proceedings in a university setting.

E. Conclusion

This case provides the Court with the opportunity to determine whether educational institutions must turn their classrooms into courtrooms only in cases

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involving gender-based violence, or whether instead the Court of Appeal has strayed from this Court's guidance. This case is particularly worthy of the Court's review due to the gender bias that has been injected into California law. The Court should grant the petition for review.

Sincerely,

/s/ Theane Evangelis

Theane Evangelis

Jeremy S. Smith

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PROOF OF SERVICE

I, Andrew M. Kasabian, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, CA 90071. On July 30, 2020, I served the following document:

LETTER FROM AMICI CURIAE IN SUPPORT OF PETITION FOR REVIEW

on the parties stated below, by the following means of service:

BY ELECTRONIC SERVICE: I caused a copy of the attached document to be electronically served through TrueFiling.

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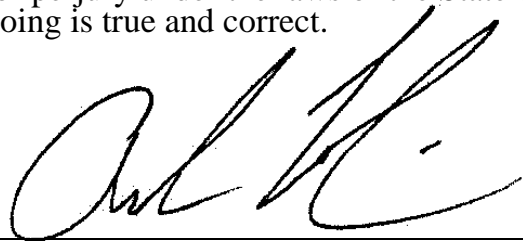
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CALIFORNIA COURT OF APPEAL

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(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2020.



Andrew M. Kasabian

Document received by the CA Supreme Court.