UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

"JANE DOE" on behalf of herself and similarly situated others Petitioner, v. UNITED STATES DEPARTMENT of HEALTH and HUMAN SERVICES and KATHLEEN SEBELIUS in her official capacity as Secretary of the United States United States Department of Health and Human Services Respondent.	Civil Action No._____ **PETITION FOR WRIT OF MANDAMUS AND FOR EQUITABLE RELIEF** (Filed Electronically)

I. INTRODUCTION

1. This petition seeks mandamus and equitable relief pursuant to the All Writs Act, 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C.S. § 706(1), compelling the Respondent United States Department of Health and Human Services (DHHS) and KATHLEEN SEBELIUS in her official capacity to provide a prompt investigation and resolution of her complaint now pending before the Respondent agency, and to render a decision before March 7, 2014 when a new federal law takes effect that will substantially undermine Petitioner's rights. Alternatively, this petition seeks an order from this Court requiring Respondent to apply the law in effect at the time Petitioner filed her complaint with the Respondent agency even if Respondent resolves Petitioner's complaint after March 7,

2014. Petitioner also seeks equitable relief on behalf of herself and similarly situated class-members.

2. Petitioner filed a complaint with the Office for Civil Rights at the Department of Health and Human Services (DHHS) on June 29, 2012—more than eighteen months ago— (Complaint No. 03-12-145773), pursuant to Title IX of the Education Amendments of 1972 and Title IV of the Civil Rights Act of 1964. That complaint alleges that the University of Virginia (UVA) failed to provide prompt and equitable redress in connection with its investigation and resolution of a matter arising out of severe sexual harassment and misconduct perpetrated against Petitioner in December 2011. Petitioner's complaint is attached hereto and incorporated herein by reference. (Exhibit 1).
3. Petitioner filed a similar complaint days earlier arising out of the same underlying offense with the Office for Civil Rights at the Department of Education (DOE). That investigation also is still pending after more than eighteen months, and Petitioner has concomitant with this Petition filed a separate action in this Court seeking similar relief.
4. The Respondents have failed to comply with their obligation under 34 C.F.R. § 106 to provide a prompt investigation and resolution because no action has been taken on Petitioner's Complaint. The substantial delay in the investigation and resolution of Petitioner's complaint has frustrated the non-discrimination and agency review objectives of Title IX, causing harm to the Petitioner and similarly situated others.
5. Specific allegations against UVA in the underlying complaint include, but are not limited to, the following: UVA failed to promptly and equitably investigate and resolve Petitioner's complaint; UVA destroyed and/or withheld from consideration by its Sexual Misconduct Board (SMB) critical photographic evidence depicting Jane Doe's vaginal injuries; UVA

failed to gather and provide to the SMB relevant evidence establishing that Jane Doe was substantially incapacitated by rape drugs at the time of the incident in question, and; UVA unlawfully applied a burden of proof far stricter than the mandatory preponderance of the evidence standard.

6. Respondents were obligated to complete their investigation and resolve Petitioner's complaint promptly. The underlying incident occurred more than two years ago, in December 2011. UVA determined the underlying sexual harassment/misconduct matter in favor of the offender and against the interests and rights of Petitioner in June 2012. Petitioner immediately filed a complaint with the Respondent agency in June 2012 and has repeatedly since then expressed her concern to the Respondent that her complaint was not investigated or resolved promptly.
7. While Respondents are not subject to a specific mandatory timeframe within which such complaints must be resolved, Respondents adhere to a policy and practice of resolving Title IX complaints within 180 days and, according to Respondents' public statements, 95% of complaints are resolved within 180 days. See, http://articles.latimes.com/2007/jun/20/sports/sp-titleix20; http://www.washingtonpost.com/blogs/she-the-people/wp/2014/01/25/activists-applaud-white-house-effort-to-fight-campus-rapes/?tid=hpModule_f8335a3c-868c-11e2-9d71-f0feafdd1394
8. Nothing appears to justify the extensive delay in this matter (or in a similar class-based policy complaint still pending after three years against Harvard Law School). Indeed, a complaint against Yale involving more than a dozen different victims was filed in March 2011, long after the much simpler policy complaint was filed against Harvard Law School in

the fall of 2010, but the Yale matter was resolved by OCR at the DOE more than eighteen months ago, in June 2012.

9. As set forth at length below, a new federal law known popularly as the "Campus SaVE Act" (SaVE) will take effect on March 7, 2014. SaVE will substantially undermine Petitioner's rights and subject the redress of her claims now pending before the Respondent agency to less protective legal standards compared to the standards in effect at the time she filed her complaint.

10. Petitioner specifically asked Respondents to resolve her complaint prior to March 7 because of the impending change in federal law. She also requested that SaVE's standards not be applied to her case irrespective of when her complaint is resolved. Petitioner asked the Respondents to confirm in writing whether a decision in her case would be issued before March 7, but the Respondents declined to reply. Petitioner also asked Respondents to confirm in writing that SaVE's standards will not be applied to her complaint irrespective of when her complaint is resolved, but again, Respondents declined to reply. Petitioner then sent correspondence to Respondents stating that she would infer from Respondent's silence that SaVE's standards will in fact be applied to her complaint, and that if she did not hear otherwise by February 7, 2014, she would take all appropriate steps to obtain a legal remedy to protect her rights and to prevent Respondents from applying SaVE's standards to the redress of her complaint. Respondents again did not reply by February 7 or thereafter.

11. Although Respondents failed to respond to Petitioner's inquiries about SaVE, when asked the same questions about SaVE in reference to a similar Title IX investigation now pending with the DOE against Princeton University, the DOE's New York regional office replied that they could not confirm one way or the other whether SaVE's new standards will be applied if that

complaint is resolved after March 7, 2014. The complaint against Princeton was filed and opened for investigation by the DOE in the fall of 2010 and remains unresolved after more than three years.

12. A related investigation by the DOE is pending against Harvard Law School. That investigation, like the one against Princeton, was also opened in the fall of 2010 and, like the case against Princeton, remains unresolved after more than three years. The investigation of Harvard Law School was opened as a policy complaint, without an actual case or controversy, on behalf of the class of people intended to be protected by Title IX. The DOE agreed to determine whether certain of Harvard Law School's policies regarding the redress of violence against women were facially invalid. Those policies include: Application of a standard of proof during redress proceedings more onerous than the federal law mandate of "preponderance of the evidence;" failure to provide "clear timeframes" and; failure to comply with title IX's promptness mandate by delaying grievance procedures, in some cases for more than a year, while external law enforcement matters are pending. Because the DOE's investigation of Harvard Law School is not related to an actual case or controversy, Petitioner includes allegations about that investigation here because that investigation was opened on behalf of the class of individuals represented by Petitioner, and Petitioner is seeking relief on behalf of herself and other class members.

II. FACTS REGARDING THE RELATIONSHIP OF PETITIONER'S RIGHTS TO THE CLASS OF INDIVIDUALS AFFECTED

13. One in four to one in five women is victimized by rape or attempted rape during college.[1] Given that approximately 916,000 women graduated from post-secondary schools in 2009,[2]

[1] https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf, pp. xii-xiii and 2-1 (2007); U.S. Department of Justice Office of Community Oriented Policing Services, Acquaintance Rape of College Students, March

this means about 60,000 women are victimized by rape or attempted rape during college. By comparison, about 26,000 sexual assaults occur in the military each year,[3] a number which includes not only rape and attempted rape, but also relatively minor sexual touching not rising to the level of attempted rape.[4] Approximately 30% of sexual assault victims in the general population file reports.[5] A similar number of military victims file reports.[6] The number is much lower for college victims where only 5-12% of victims file reports.[7]

14. Female students in the United States have endured pervasive unequal treatment, harassment and violence on the basis of sex throughout all levels of education.[8] Women, including female postsecondary students, suffer disproportionately high rates of domestic and dating violence,[9] sexual assault,[10] and stalking.[11] In fact, a student is more likely to be victimized by sexual assault if she attends college than if she does not.[12]

28, 2002, http://www.cops.usdoj.gov/pdf/e03021472.pdf; https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf.

[2] http://www.census.gov/prod/2012pubs/p20-566.pdf.

[3] An estimated 26,000 sexual assaults occurred in all branches of the military in 2012, http://www.sapr.mil/public/docs/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-VOLUME_ONE.pdf

[4] *Id.*

[5] http://www.rainn.org/get-information/statistics/reporting-rates

[6] http://www.usccr.gov/pubs/09242013_Statutory_Enforcement_Report_Sexual_Assault_in_the_Military.pdf, p.8.

[7] http://www.nij.gov/publications/pages/publication-detail.aspx?ncjnumber=182369 (2001) (5%); https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf, 5-22 (2007) (12.9%).

[8] Sadker, & Zittleman, *Still Failing at Fairness, How Gender Bias Cheats Girls and Boys in School and What We Can Do About It*, Scribner Press 2009; www.hks.harvard.edu/centers/carr/research-publications/carr-center-working-papers-series/caplan-and-ford-%22the-voices-of-diversity-%22.

[9] Women are less likely than men to be victims of violent crimes overall, but women are 5 to 8 times more likely than men to be victimized by an intimate partner. *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, U.S. Department of Justice, March, 1998; violence by an intimate partner accounts for about 21% of violent crime experienced by women and about 2% of the violence experienced by men. *Id*. 92% of all domestic violence incidents are committed by men against women. *Violence Against Women, Bureau of Justice Statistics*, U.S. Department of Justice, January, 1994; 84% of raped women know their assailants and 57% of rapes occur on a date. Koss, M.P. (1988). *Hidden Rape: Incidence, Prevalence and descriptive Characteristics of Sexual Aggression and Victimization in a National Sample of College Students*. In Burgess, A.W. (ed.) Sexual Assault. Vol. II. New York: Garland Pub.

15. Petitioner is among the small number of college victims who did file a report with her university. She seeks relief on her own behalf and on behalf of all female postsecondary students, to ensure that her claims, now pending before the Respondent agency, are reviewed under legal standards in effect at the time she filed her claims, and standards that comport with the Constitution. Applicable standards will substantially be affected by certain provisions of SaVE which take effect on March 7, 2014.13

16. Certain provisions of SaVE have the purpose and effect of subjecting the redress of violence against women at post-secondary schools to inherently unfair legal standards and standards more burdensome and less protective than those applied to the redress of violence on the basis of other protected class categories such as race, color and national origin. In so doing, SaVE violates equal protection and due process, and rights protected under Title IX of the Education Amendments of 1972 and its implementing regulation, 34 C.F.R. Part 106, (Title IX) and Title IV of the Civil Rights Act of 1964 (Title IV).14

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[10] Nine out of ten rape victims are female, U.S. Department of Justice, *2003 National Crime Victimization Survey. 2003*; Women aged 16-24 are four times more likely to be raped than any other population group. Koss, M.P., *id*.

[11] 8% of women and 2% of men in the United States have been stalked at some time in their life. 78% of stalking victims identified in a survey were women, and 22 percent were men. Thus, four out of five stalking victims are women. By comparison, 94 percent of the stalkers identified by female victims and 60 percent of the stalkers identified by male victims were male. Overall, 87 percent of the stalkers identified by the victims were male. National Institute of Justice 1998. *Stalking in America: Findings from the National Violence Against Women Survey*).

[12] One in four students in the United States is victimized by rape or attempted rape during college, *see* n.1, while one in six American women is the victim of an attempted or completed rape in her lifetime. National Institute of Justice & Centers for Disease Control & Prevention. *Prevalence, Incidence and Consequences of Violence Against Women Survey.* 1998.

[13] 20 U.S.C. 1092 (2013), (modifying Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)), and § 304 of the Violence Against Women Reauthorization Act of 2013 (hereafter "VAWA"), effective March 7, 2014. A copy of SaVE is attached hereto as Exhibit 2.

[14] Title IV prohibits discrimination in identified public entities, including schools and other "federally assisted programs," on the basis of "*race, color, sex, religion or national origin.*" 42 U.S.C. §§ 2000c through 2000c-9; Equal Educational Opportunities Act of 1974, Title II, 20 U.S.C. §§ 1701-1758.

17. Long misunderstood to be primarily a sports equity rule for female athletes, Title IX expressly prohibits discrimination on the basis of sex in public schools and virtually all private schools. Discrimination on the basis of sex includes gender-motivated harassment and violence.15 Modeled after Title VI of the Civil Rights Act of 1964 which provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance," 42 U.S.C. §§ 2000d–2000d-7, Title IX uses exactly the same enabling language in forbidding discrimination "on the basis of sex" in education. Title IX specifically provides that "No person in the United States 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…" 20 U.S.C. § 1681(a).

18. While SaVE does not explicitly state that it applies only to "violence on the basis of sex," it is, by its terms, expressly limited to such harm because it covers only "domestic violence, dating violence, sexual assault, and stalking," which offenses are committed most often against females.[16]

19. Certain provisions of SaVE are facially unconstitutional[17] and/or unconstitutional as applied. As such, they violate Petitioner's equal protection and due process rights. Although

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[15] *Education & Title IX*, NATIONAL WOMEN'S LAW CENTER (last visited Jan. 29, 2014), http://www.nwlc.org/our-issues/education-%2526-title-ix.

[16] *See* notes 11-13. *See also Research and Policy Analysis*, DIVISION OF THE MASSACHUSETTS EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY, http://www.mass.gov/eopss/agencies/ogr/research-and-policy-analysis.html.

[17] Query whether Congress even has authority to regulate violence against women. See *U.S. v. Morrison*, 529 U.S. 598 (2000); (Congress has no authority to regulate violence against women under civil rights laws or the Commerce Clause); *N'tl Federation of Independent Business v. Sebelius*, 567 U.S. ___ (2012) (Congress exceeds its authority under the Spending Clause if it imposes too heavy a burden on the states as a quid pro quo for receiving federal funds.)

constitutional claims alleging gender discrimination in larger society are subjected to somewhat less strict scrutiny ("exacting scrutiny") compared to constitutional claims alleging violations based on other protected class categories such as race, color and national origin, ("strict scrutiny"), there is no similar disparity in the standard of scrutiny when courts are examining the lawfulness of a school's administrative grievance procedures to ensure the equal treatment of females in the special environment of education.[18]

20. Whether subjected to "strict scrutiny" or "exacting scrutiny," certain provisions of SaVE violate and threaten Petitioner's rights under Title IX, Title IV, the First and Fourteenth Amendments to the United States Constitution.

III. THE SAVE STATUTE

21. SaVE was introduced to Congress in April 2011 only days after the DOE publicly released a "Dear Colleague Letter" (DCL) announcing new interpretive guidance articulating established standards under which postsecondary schools are obligated by federal law to

[18] *See Title IX Legal Manual*, THE UNITED STATES DEPARTMENT OF JUSTICE (last visited Jan. 30, 2014), http://www.justice.gov/crt/about/cor/coord/ixlegal.php (noting that "Congress consciously modeled Title IX on Title VI" and citing *Alexander v. Choate*, 469 U.S. 287, 294 (1985) (for the proposition that because Title IX and Title VI contain parallel language, the same analytic framework should apply in the context of administrative redress proceedings because both statutes were enacted to prevent unlawful discrimination and to provide remedies for the effects of past discrimination); *Justice Department Announces Investigations of the Handling of Sexual Assault Allegations by the University of Montana, the Missoula, Mont., Police Department and the Missoula County Attorney's Office*, DEPARTMENT OF JUSTICE (May 1, 2012), http://www.justice.gov/opa/pr/2012/May/12-crt-561.html (announcing Title IX compliance review and Title IV investigation of the University of Montana and noting, "Title IX of the Education Amendments of 1972 and Title IV of the Civil Rights Act of 1964 each prohibit sex discrimination, including sexual assault and sexual harassment in education programs"); *Resolution Agreement*, http://www.justice.gov/crt/about/edu/documents/montanaagree.pdf (announcing resolution agreement with the University of Montana and noting that Title IV and Title IX are subject to the same regulations to ensure enforcement of rights regarding discrimination, harassment, and violence in education "on the basis of sex." 28 C.F.R. Part 54 and 34 C.F.R. Part 106). *See also* the Civil Rights Restoration Act of 1987, which made clear that substantive standards from Title VI apply with equal force to Title IX, 20 U.S.C. § 1687; 29 U.S.C. § 794, 42 U.S.C. § 2000d-4a, and 42 U.S.C. § 6101; *1977 Report*, RAND OBJECTIVE ANALYSIS. EFFECTIVE SOLUTIONS, http://www.rand.org/content/dam/rand/pubs/reports/ 2008/R2136.pdf (1977 report examining disparities in programs and activities aimed at enforcing Title IX compared to programs and activities aimed at enforcing Title IV and noting that both statutes are equally designed to promote "sex desegregation" and "race desegregation").

respond to and redress violence on the basis of sex.[19] The DCL was the DOE's interpretation of then existing relevant civil rights laws applicable to campus-based violence against women, particularly Title IX. SaVE by its terms modifies the "Clery Act," 20 USC 1092 (f); 34 CFR 668.46(b)(11)(vi), however Congress has broad authority to amend Title IX by amending a related federal law, such as the Clery Act. Because SaVE covers all forms of violence against women it clearly amends Title IX because Title IX covers the same violence. SaVE thus threatens Petitioner's rights because the underlying incident suffered by Petitioner was a severe sexual attack that fits the definition of "sexual assault" under SaVE as well as the definition of "sexual harassment" under Title IX. To the extent provisions in SaVE applicable to the redress of Petitioner's claims, and the claims of similarly situated others, conflict with Title IX, the later enacted provisions of SaVE will prevail.

22. Before SaVE takes effect on March 7, postsecondary schools are obligated to provide for the "equitable" redress of student complaints alleging violence on the basis of sex.[20] "Equitable" redress is also mandatory under Title IV[21] and Title VI.[22] An early iteration of SaVE

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[19] U.S. DEPT. OF EDUCATION OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER (Apr. 4, 2011), *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html.

[20] 34 C.F.R. § 106.8 (b); *Sexual Harassment Guidance,* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

[21] *Among the University of Montana - Missoula, the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section and the U.S. Department of Education, Office for Civil Rights,* RESOLUTION AGREEMENT, *available at* http://www.justice.gov/crt/about/edu/documents/montanaagree.pdf (announcing resolution agreement with the University of Montana and noting that Title IV and Title IX both require "equity" and are subject to the same regulations and standards of enforcement regarding discrimination, harassment and violence in education).

[22] *Title VI Enforcement Highlights Office for Civil Rights,* U.S. DEPARTMENT OF EDUCATION (last visited Jan. 30, 2014) http://www2.ed.gov/documents/press-releases/title-vi-enforcement.pdf (repeatedly noting that Title VI requires schools to apply standard of "equity"); *Title IX Legal Manual,* THE UNITED STATES DEPARTMENT OF JUSTICE (last visited Jan. 30, 2014); http://www.justice.gov/crt/about/cor/coord/ixlegal.php (noting that "Congress consciously modeled Title IX on Title VI" and citing *Alexander v. Choate,* 469 U.S. 287, 294 (1985) (for the proposition that because Title IX and Title VI contain parallel language, thus the same analytic framework should apply because both statutes were enacted to prevent unlawful discrimination and to provide remedies for the

expressly required schools to provide "equitable" redress,[23] but that language was removed before the bill was signed into law.[24] By removing the requirement of "equity," Congress allows and/or requires schools to provide inequitable redress[25] by applying less protective legal standards compared to the redress of violence on the basis of other protected class categories such as race, color and national origin.

23. Similar to the way in which the word "equitable" was initially included and then removed, SaVE's original language mandated application of a "preponderance of the evidence" standard in redress proceedings related to violence on the basis of sex,[26] but that mandate was later removed.[27] Before SaVE takes effect, the "preponderance of the evidence" standard is mandatory for the redress of violence on the basis of sex.[28] But under SaVE, schools may apply a standard of proof more rigorous than "preponderance of the evidence."

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effects of past discrimination).

[23] *See, e.g.*, H.R. 2016 – Campus SaVE Act, § 3,(6)-(8)(B)(v)(I)(aa),GOVTRACK.US, *available at* https://www.govtrack.us/congress/bills/112/hr2016/text (last visited Jan. 30, 2014).

[24] *See id* at 8(B)(iv)(1)(aa) ("[D]isciplinary" procedures "shall provide a prompt, fair and impartial investigation and resolution.")

[25] *See supra* U.S. DEPARTMENT OF EDUCATION, note 21. (repeatedly noting that Title VI requires schools to apply standard of "equity" in redress proceedings). *See also* 42 U.S.C. § 2000d-7 (requiring equal treatment on behalf of all protected class categories). In a section labeled "Civil rights remedies equalization," the statute provides that "(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of § 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." This "Civil rights remedies equalization" mandate further states that "(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation ***to the same extent*** as such remedies are available for such a violation in the suit against any public or private entity other than a State." (emphasis added).

[26] H.R. 2016 – Campus SaVE Act, § 3,(6)-(8)(B)(v)(I)(aa),GOVTRACK.US, *available at* https://www.govtrack.us/congress/bills/112/hr2016/text (last visited Jan. 30, 2014).

[27] After eliminating the specific language requiring proof by a "preponderance of the evidence," the statute was rewritten to require only that "each institution shall develop and distribute a policy regarding the procedures to be followed in the redress of violence on the basis of sex," and that such a policy shall include "a statement of the standard of evidence that will be used during any institutional conduct proceeding" related to the redress of violence on the basis of sex. § 8(A)(ii).

[28] U.S. DEPT. OF EDUCATION, OCR, Dear Colleague Letter, dated April 4, 2011, 34 CFR § 106.71.

Congressional intent on this point is confirmed by testimony noting that the "preponderance of the evidence" language was expressly removed from SaVE so as to allow schools to apply a more burdensome standard of proof in the redress of violence on the basis of sex.[29]

24. Because "equitable" redress and application of the "preponderance of the evidence" standard will remain mandatory in the redress of violence on the basis of other protected class categories such as race, color and national origin, SaVE is facially unconstitutional because it authorizes the discriminatory treatment of violence on the basis of sex. In practice, this means that if a male student is physically beaten on the basis of his national origin, officials would be obligated to resolve the matter in an "equitable" manner including application of a "preponderance of the evidence" standard. However, if exactly the same violence is perpetrated against a female student on the basis of her sex, (for example, a victim is badly beaten by an abusive boyfriend), the matter need not be resolved "equitably," and school officials would be permitted to assess the evidence under the rigorous criminal law standard of proof "beyond a reasonable doubt." Application of any standard more strict than mere preponderance would subject violence on the basis of sex to additional burdens and make such civil rights harms more difficult to prove compared to violence on the basis of other protected class categories such as race, color and national origin. Even more strangely, it would subject the redress of certain claims to absurd dual assessments. For example, if a black woman is sexually assaulted on the basis of her race and her sex at a school that opts to

[29] One Congressman was strikingly candid about the reason the word "equitable" was stricken: "The majority bill said that college campuses must provide for 'prompt and equitable investigation and resolution' of charges of violence or stalking. This would have codified a proposed rule of the Department of Education that would have required imposition of a civil standard or preponderance of the evidence for what is essentially a criminal charge, one that, if proved, rightly should harm reputation. But if established on a barely "more probable than not" standard, reputations can be ruined unfairly and very quickly. The substitute eliminates this provision." (Testimony of Senator Grassley, Iowa, 158 Cong Rec. S 2761, Congressional Record, Sen., 112th Congress, 2nd Session Senate, April 26, 2012; Violence Against Women Reauthorization Act of 2011, Reference: Vol. 158, No. 61).

apply a "beyond a reasonable doubt" standard under SaVE, the redress of that incident would be subjected to a "preponderance of the evidence standard" only as to those aspects of the attack that occurred on the basis of her race. Aspects of that very same attack that occurred "on the basis of sex" would be assessed under a "beyond a reasonable doubt" standard.

25. SaVE further subjects violence on the basis of sex to inequitable redress by authorizing schools to provide a non-prompt "final determination." Specifically, SaVE provides that schools must conduct a "prompt investigation and resolution"[30] of a matter involving violence on the basis of sex, but schools need not be prompt when rendering a "final determination." The obligation regarding "final determinations" is addressed separately in SaVE, apart from provisions related to "investigations and resolutions," and expressly provides that schools must develop policies that describe "possible sanctions" that "may" be imposed "following the final determination" of a grievance proceeding involving violence on the basis of sex, including "rape and acquaintance rape."[31] In practice, this means the "final determination" of a student's complaint alleging violence on the basis of her sex can remain open for years. Indeed, because SaVE imposes no time limit whatsoever on "final determinations," a complaint need not be "finally determined" until the day of graduation, if at all. This lack of promptness in "final determinations" is inherently unfair and inhibits victimized students' access to oversight agencies such as the Respondent Department of Education. Without "promptness" in the investigation, resolution and final determination, a student cannot be protected from discrimination during her education. Thus, SAVE unconstitutionally subjects violence on the basis of sex to inherently unfair standards, and

[30] Violence against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 89 (2013).
[31] Section B(II)(ii) (Each institution shall develop and disseminate a policy to address "…possible sanctions…that such institution may impose following the final determination regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault and stalking.")

standards less protective than those applicable to the redress of violence on the basis of other protected class categories such as race, color and national origin.

26. SaVE requires schools to delay notifying victims of violence on the basis of sex that there has been a change to the initial decision regarding the responsibility and/or punishment of an accused student,[32] which could be as late as the day of graduation. This means the victim is unable to defend and protect her personal and civil rights in proceedings that follow the initial decision. For example, if a student offender is found responsible after the first disciplinary hearing, but then he files an appeal or a request for rehearing, the victim will only be notified of the results of that appeal or rehearing after the change is made to the original finding. This is inherently unfair as it means that if the results become final on the day of graduation, the victim could be informed of the fact her assailant was ultimately not held responsible, and the fact that the decision is final and unreviewable, as she is literally walking across the stage to receive her diploma. This subjects violence on the basis of sex to inherently unfair standards, and less protective standards compared to the redress of violence on the basis of other protected class categories such as race, color and national origin.

27. Lack of advance notice that a change could be made to a finding of responsibility or a determination of punishment interferes with a victim's rights, including her right to be heard. For example, the scope and impact of a victim's rights under Title IX is commonly in dispute during redress proceedings, and during appeals and re-hearings. Under SaVE, a victim need not be informed that her rights are being construed or even violated in appeals and re-

[32] SaVE states that such notice of the *fact* that a change has occurred is to be provided to the victim only at some unspecified time "*prior* to the time the results become final," (§ III (cc)) and that notice that the change is in fact "final" need not be provided until *after* the change "becomes final." (§ III (dd)) (emphasis added).

hearings, even if the initial decision is subsequently overturned or amended because of a wrongful application of her personal or civil rights.

28. SaVE provides that the Secretary of Education "shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services…" when "preventing and responding to" violence on the basis of sex.[33] By mandating that such "advice and counsel" be sought when "responding" to institutions of higher education about matters involving violence on the basis of sex, SaVE imposes unfair and needless burdens on students seeking to enforce their rights through the assistance of the DOE as the primary responsible federal oversight agency. This unconstitutionally subjects violence on the basis of sex to additional burdens, including needless delays, thus subjects such violence to less protective standards compared to violence on the basis of other protected class categories because such "advice and counsel" from the DOJ and DHHS is not required when the DOE is "responding" to institutions of higher education about matters involving violence on the basis of other protected class categories such as race, color and national origin.

29. SaVE authorizes schools not to comply with annual statistical reporting or respond at all to violence on the basis of sex unless such violence is actually reported to school officials or law enforcement officials.[34] While actual notice has long been required to establish a school's liability in civil proceedings, actual or constructive notice was sufficient for institutional and regulatory enforcement of civil rights laws prior to the enactment of SaVE. Constructive notice includes, for example, anonymous or third-party reports such as a

[33] Section 16(B) ("The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of [violence on the basis of sex]").

[34] Section 8(A)(ii) (Each institution shall develop and distribute a policy regarding the "procedures each institution will follow once an incident of [violence on the basis of sex has] been reported…)

newspaper story of a fraternity party describing incidents of sexual assault.[35] By limiting schools' responsibility to matters that were actually reported, SaVE authorizes schools to subject the redress of violence on the basis of sex to less protective legal standards compared to violence on the basis of other protected class categories such as race, color and national origin, to which schools must respond and which must be measured for statistical purposes under actual and constructive notice standards. In practice this means school officials can ignore with impunity violence on the basis of sex when not reported, even if the violence is sufficiently obvious that officials "should know" or actually do know about it. However, if violence occurs on the basis of any other protected class category, such as race, color or national origin, officials must respond and measure for statistical purposes even if the incident is not reported so long as they knew or should have known that the incident occurred.[36] This will disproportionately undermine schools' response to and reporting of violence on the basis of sex because, as noted above, such violence is rarely officially reported.

30. SaVE authorizes schools not to provide statistical reporting on matters involving violence on the basis of sex unless such violence causes bodily injury.[37] While bodily injury is also

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[35] *Dear Colleague Letter*, DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, http://www.whitehouse.gov/sites/default/files/dear_colleague_sexualviolence.pdf.

[36] In its Dear Colleague Letter of April 4, 2011, the Department of Education noted that ***constructive knowledge*** "is the standard for administrative enforcement" of civil rights laws, such as Title IX, and in court cases where Petitioners are seeking injunctive relief. *See 2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is ***actual knowledge*** and deliberate indifference. *See Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999)."

[37] Section f(1)(F)(IX)(ii)(Statistical reporting is required for "the crimes described in subclauses (I) through (VIII) of clause (i) of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and ***of other crimes involving bodily injury*** to any person…in which the victim is intentionally selected because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice; and of ***domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies***.") (emphasis added).

required as a prerequisite to statistical reporting on matters involving violence on the basis of other protected class categories such as race, color and national origin, this provision will disproportionately inhibit the accurate reporting of statistics involving sexual assault, which is the most common form of violence that occurs on the basis of a protected class category and it rarely causes injury.

31. SaVE authorizes schools not to provide victims with individualized and personal notice of their rights under civil rights laws unless there is an actual "report" of an incident. In practice, this means that if an official is aware that a particular student was raped at a party, but there has been no actual report of the incident, he or she would have no obligation to inform the victim of her rights. While such rights are more passively available in student handbooks, victims are more likely to report and/or assert their rights with individualized notice at a time when such rights can be understood in a personal context. Without individualized notice of rights, violence on the basis of sex is subjected to inherently unfair standards because victims are less likely to achieve effective redress on campus, or enforcement of rights via civil legal proceedings and federal and state oversight agencies.
32. Certain provisions of SaVE are facially unconstitutional to the extent they emanate from the Commerce Clause because Congress has no general authority under the Commerce Clause to regulate violence against women that occurs between private persons.[38]
33. To the extent Congress has authority to regulate violence against women under the Spending Clause, it cannot do so in a manner that intrudes unconstitutionally into the authority of the states.
34. To the extent Congress has authority to regulate violence against women, it cannot do so in an unconstitutional manner by authorizing the redress of such violence under less protective

[38] *See* n.19.

standards compared to the redress of violence that occurs on the basis of other protected class categories, such as race, color and national origin.

35. The DOE has defined violence on the basis of sex to include "rape," "sexual assault", "sexual battery", and "sexual coercion."[39] SaVE defines "sexual assault" in two distinct ways. For the purpose of annual statistical reporting of campus crimes, "sexual assault" is defined as "a forcible or nonforcible sexual offense" under the Uniform Crime Reporting System of the Federal Bureau of Investigation.[40] For the purpose of providing administrative redress proceedings on campus, "sexual assault" is defined as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.[41] With regard to such redress proceedings, SaVE requires schools to incorporate and apply state criminal law standards to a determination of whether violence on the basis of sex, including sexual assault, occurred.[42] While not every violation of every state's incorporated criminal code will constitute a civil rights violation, every incorporated state criminal code necessarily includes conduct that can constitute a civil rights violation.

36. SaVE threatens Petitioner's rights because it allows her complaint to be redressed under Virginia's less protective state criminal law standards,[43] rather than federal law's more generous civil rights standards.

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[39] *See* n.21.

[40] *Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program*, FEDERAL BUREAU OF INVESTIGATIONS (last visited Jan. 30, 2014), http://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/reporting-rape-in-2013. http://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/reporting-rape-in-2013.

[41] Violence Against Women, 113 Pub. L. No. 4, 127 Stat. 54; 29 U.S.C.S. § 3925 (23); 109 Pub. L. No. 162, 119 Stat. 2960.

[42] 20 U.S.C.§ 1092 (f)(8)(B)(I)(bb) (Each institution shall develop and distribute a policy which "shall include"…"the definition of domestic violence, dating violence, sexual assault, and stalking ***in the applicable jurisdiction****.")* (emphasis added).

[43] *See* Virginia Criminal Code § 18.2-61

37. SaVE violates core principles of federalism and threatens the Petitioner's and all women's equal protection and due process rights by subjecting the redress of their federal claims to disparate legal standards based on which state the offense occurred in. For example, Virginia criminal law requires proof of "force,"[44] while a victim attending college in another state suffering the exact same harm would have her claims effectively redressed irrespective of proof of force.[45]

38. SaVE further threatens the Petitioner's and all women's equal protection and due process rights by authorizing the redress of federal civil rights violations under state criminal law standards because, for example, the state criminal code definition of non-consent in Virginia, as in many states, is a more rigorous standard than the federal civil rights standard of unwelcomeness."[46] SaVE does not require violence that occurs on the basis of other

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[44] *Id.*

[45] See compilation of statutes compiled by American Prosecutors Research Institute, available at http://www.arte-sana.com/articles/rape_statutes.pdf (noting wide disparity among the states as to whether proof of force is required.)

[46] *Id.*, (noting that some states, but not all, recognize a woman saying "no" as sufficient to establish non-consent). By contrast, under federal civil rights laws, conduct is uniformly assessed under a single standard to determine whether it was "unwelcome." "Unwelcome" is defined as conduct the student "did not request or invite it and considered the conduct to be undesirable or offensive. The age of the student, the nature of the conduct, and other relevant factors affect whether a student was capable of welcoming the sexual conduct. A student's submission to the conduct or failure to complain does not always mean that the conduct was welcome." http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.html. In its April, 2011 Dear Colleague Letter, the Department of Education noted that a single rape will suffice to constitute severe harassment. The Department also cited the following federal cases in support of its view that a single sexually offensive event not rising to the level of rape can be sufficient to constitute a civil rights harm: *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*,595 F.3d 679, 686 (7th Cir. 2010) (noting that "'[o]ne instance of conduct that is sufficiently severe may be enough,'" which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*,474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "'the deliberate and unwanted touching of [a Petitioner's] intimate body parts can constitute severe sexual harassment'" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

protected class categories, such as race, color and national origin, to be assessed under state criminal law standards.

39. Assessing federal civil rights injuries under state criminal law standards subjects violence on the basis of sex to as many as fifty different state standards such that students in some states will be better protected from civil rights injuries than students in other states depending on how an offender's actions are defined by a particular state's criminal code. In practice, this means a victim who is raped on campus in a state where the criminal law definition of rape is very strict will have her redress proceedings subjected to more burdensome/less protective legal standards compared to redress proceedings on behalf of a victim in a different state who experiences exactly the same harm, only a few miles away, in a state where the criminal law definition of non-consent is less onerous. This disparate treatment of two victims who suffered exactly the same violence is unconstitutional and offends core principles of federalism by allowing state law definitions to dictate whether a federal civil rights offense occurred.[47]

40. Because SaVE covers only violence on the basis of sex, a student who endures non-violent verbal harassment will have her civil rights redressed under less burdensome/more protective standards, such as application of the "unwelcomeness" standard, compared to a student who endures a violent sexual assault, which will be redressed under more burdensome/less protective standards, such as application of the state criminal law definition of "non-consent." This means violent sex offenders are less likely to be held responsible for discrimination on the basis of sex compared to non-violent verbal harassers. Notably, while

[47] *See* John Decker & Peter Baroni, *"No" Still Means "Yes": The Failure of the Non-Consent Reform Movement in American Rape and Sexual Assault Law*, 101 NW. J. CRIM. L. & CRIMINOLOGY 1081 (2012) (noting the wide variety of definitions of non-consent among the states such that in some states lack of affirmative consent is enough, while in others, the lack of affirmative consent is not sufficient in the absence of force).

SaVE requires training on state criminal law standards, it requires no training whatsoever on the civil rights standard of "unwelcomeness."

41. Because SaVE covers only violence on the basis of sex, violence on the basis of other protected class categories, such as race, color and national origin, will be assessed under more protective civil rights standards.

42. SaVE nowhere requires that procedures for redressing violence on the basis of sex afford victims the same procedural and substantive protections as those that apply to violence on the basis of other protected class categories such as race, color and national origin.

43. Alongside less protective standards, SaVE is silent on the need for schools to comply with civil rights laws at all. Indeed, SaVE lacks the kind of language, typically included and necessary in new statutes that might encroach on important rights, that would protect against unintended diminution.48 SaVE nowhere states, for example, that nothing in the statute "shall be construed to limit or inhibit existing legal protections under Title IX, Title IV and Title VI and related regulatory schemes, guidelines, case law and interpretive guidance from the Department of Education and Department of Justice." The absence of such language ensures SaVE's discriminatory application in the redress of violence on the basis of sex such that conflicts between Title IX and SaVE will be resolved in favor of SaVE even if such resolution interferes with the primary purpose of Title IX by preventing equitable redress.

[48] For example, in 1994, Congress amended the General Education Provisions Act (GEPA) to state that nothing in GEPA "shall be construed to affect the applicability of Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, Title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department of Education has interpreted that provision to mean that the federal educational records privacy act (FERPA), which was enacted as part of GEPA, applies in the context of Title IX enforcement proceedings on campus, but if there is a conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

44. SaVE's requirements and enabling provisions, individually and collectively, violate various rights guaranteed to the Petitioner and similarly situated others, including rights under Title IX, Title IV and the First and Fourteenth Amendments to the United States Constitution. Relief is necessary to protect the rights of the Petitioner and all female students.

IV. JURISDICTION AND VENUE

45. Petitioner's claims arise under Title IX of the Education Amendments of 1972, Title IV of the Civil Rights Act of 1964 the equal protection and due process clauses of the United States Constitution. Jurisdiction is conferred by 28 U.S.C. §§ 1983, 1331 and 1343(a)(3) and the Adminstrative Procedures Act, 5 U.S.C.S. § 706(1).

46. Petitioner's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

47. Venue is appropriate under 28 U.S.C. §§ 1391(b)(1), 1391(e).

V. PARTIES

48. At all times relevant to this complaint, Jane Doe was an undergraduate student at UVA. She is currently a resident of the District of Columbia.

49. Respondent Kathleen Sebelius is the United States Secretary of Health and Human Services. Her regular place of business is 200 Independence Avenue, S.W., Washington, D.C. 20201. She is sued in her official capacity and is responsible for the implementation and enforcement of Title IX and SaVE.

VI. JURISDICTION

50. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 20 U.S.C. §1681 and 5 U.S.C. §706 (1).

VII. CLAIMS FOR RELIEF

COUNT I
MANDAMUS

51. Petitioner incorporates herein the allegations of paragraphs 1 through 50.

52. Title IX of the Education Amendments of 1972 provides that 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.

53. Respondent enforces numerous anti-discrimination laws that apply to "programs, services and activities receiving H.H.S. federal financial assistance," as well as "nondiscrimination provisions of other laws as they apply to programs and activities receiving H.H.S. federal financial assistance." http://www.hhs.gov/ocr/civilrights/resources/laws/index.html.

54. Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116) provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under, among other laws, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. under any health program or activity, any part of which is receiving federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments.

55. Title IX rules provide that a recipient of federal funds "…shall not, on the basis of sex (1) treat one person differently from another in determining whether such person satisfies requirement or condition for the provision of such aid, benefit or service; (2) provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (3) deny any person any such aid, benefit, or service; (4) subject any person to separate or

different rules of behavior, sanctions, or other treatment;…(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees; (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity." Title 34 Part 106. Rule 106.31.

56. 34 C.F.R. § 106.39 applies to health benefits and services and states that "[i]n providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex . . ."

57. According to its "Case Resolution Manual for Civil Rights Investigations," Respondent is "required to undertake the prompt investigation of complaints of unlawful discrimination that are accepted for investigation. Case investigations should be timely, legally sufficient and dispositive of the allegations accepted for investigation. OCR must enforce the Federal civil rights laws mindful of our goals of obtaining speedy relief for individual harms and rectifying systemic harms where discrimination has occurred." http://www.hhs.gov/ocr/civilrights/complaints/crm2009.pdf, at p. 20.

58. Respondents have jurisdiction over UVA and UVA Health System, where Petitioner received forensic and health care services in the aftermath of the incident that formed the basis for the complaint now pending before the Respondent agency. UVA and UVA Health System are public entities and receive federal funds. As such, they must comply with the provisions of Title IX of the Education Amendments of 1972 and other civil rights laws.

59. Respondents have failed to carry out their duty of promptness and by such failure has caused and threatens to cause harm to Petitioner's rights and the rights of similarly situated others. Delay until after March 7, 2014 will further subject Petitioner and others to harm because on

March 7 the redress of Petitioner's claims, and similar claims of others, will be subjected to less legal protection and more legal burdens in violation of civil and constitutional rights.

60. Petitioner has no plain, speedy, and adequate remedy at law other than the remedies requested by this action.

61. Respondents' failure to promptly investigate and resolve Petitioner's complaint has caused and threatens to cause harm to Petitioner's rights and the rights of others, and is unlawful, unreasonable, and exceptional. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain, injury and risk of injury to rights.

COUNT II
ADMINISTRATIVE PROCEDURES ACT

62. Petitioner incorporates herein the allegations of paragraphs 1 through 61.

63. Respondents' failure to promptly investigate and resolve Petitioner's complaint for more than eighteen months constitutes "unreasonabl[e] delay" within the meaning of 5 U.S.C. § 706(2).

64. While this Court generally lacks jurisdiction to interfere with the exercise of discretion by an agency, certain exceptional circumstances warrant judicial review. Such circumstances are present here and the Respondent agency has unreasonably delayed its investigation and resolution of Petitioner's complaint.

COUNT III
EQUAL PROTECTION

65. Petitioner re-alleges paragraphs 1 through 64 and incorporates the same by reference in this count.

66. Respondents have a duty to enforce laws consistent with the dictates of the Fourteenth Amendments to the United States Constitution, which guarantees Petitioner and others equal protection of the law. Public and private institutions are subject to constitutional restrictions because the Equal Protection clause has been held coextensive with civil rights laws.

67. Petitioner's equal protection rights are threatened and violated by Respondents' actions because Respondents' failure to resolve her complaint promptly will result in Respondents resolving her complaint after March 7, 2014 when SaVE's new standards take effect. SaVE's standards allow and/or mandate the redress of Petitioner's claims and all other matters involving violence on the basis of sex under inequitable and less protective standards than standards in effect prior to March 7, 2014, and less protective than those that apply now and will continue to apply after March 7, 2104 to the redress of violence on the basis of other protected class categories such as race, color and national origin.

68. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain, injury and risk of injury to such rights.

COUNT IV
SUBSTANTIVE DUE PROCESS

69. Petitioner re-alleges paragraphs 1 through 68 and incorporates the same by reference in this count.

70. Respondents have a duty to enforce laws consistent with the dictates of the Fourteenth Amendment to the United States Constitution, which guarantees Petitioner substantive Due Process of law.

71. Respondents' failure to provide a prompt investigation and resolution exposes Petitioner's complaint, and the complaints of others, to redress under inadequate, inequitable and unconstitutional legal burdens.

72. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain, injury and risk of injury to such rights.

COUNT V
PROCEDURAL DUE PROCESS

73. Petitioner re-alleges paragraphs 1 through 72 and incorporates the same by reference in this count.

74. Respondents have a duty to enforce laws consistent with the dictates of the Fourteenth Amendment to the United States Constitution, which guarantees Petitioner procedural due process.

75. Petitioner's Procedural Due Process rights are threatened because she has been denied a meaningful hearing under applicable and constitutional legal standards by Respondents' delayed redress of her complaint.

76. After March 7, 2014, the due process rights of Petitioner and others will be subjected to less protective procedural standards in violation of procedural due process because SaVE substantially changes the law to allow for the application of less protective standards to Petitioner's complaint and the complaints of others.

77. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain, injury and risk of injury to such rights.

COUNT VI
FIRST AMENDMENT

78. Petitioner re-alleges paragraphs 1 through 77 and incorporates the same by reference in this count.

79. Respondents have a duty to enforce laws consistent with the dictates of the First Amendment to the United States Constitution, which guarantees Petitioner and similarly situated others rights of speech and petition.

80. Petitioner's First Amendment rights are chilled and denied by Respondents' delayed redress of her complaint and will be further chilled after March 7, 2014 because SaVE's less

protective and more burdensome standards will inhibit the reporting of matters involving violence against women.

81. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain, injury and risk of injury to such rights.

COUNT VII
TITLE IX

82. Petitioner re-alleges paragraphs 1 through 81 and incorporates the same by reference in this count.

83. Respondents have a duty to enforce laws consistent with the dictates of Title IX of the Education Amendments of 1972, which forbids discrimination on the basis of sex, guarantees Petitioner equal access to education and mandates that postsecondary schools adopt "prompt and equitable" policies and procedures to redress discrimination on the basis of sex, including violence on the basis of sex.

84. Respondents' delayed redress of Petitioner's complaint threatens and violates Petitioner's rights and the rights of similarly situated others by subjecting the redress of her complaint and the complaints of others to less protective legal standards under SaVE.

85. SaVE will have a disparate impact on students on the basis of sex.

86. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain injury and risk of injury to such rights.

COUNT VIII
TITLE IV

87. Petitioner re-alleges paragraphs 1 through 86 and incorporates the same by reference in this count.

88. Respondents have a duty to enforce laws consistent with Title IV of the Civil Rights Act of 1964, which forbids discrimination in public institutions on the basis of sex.

89. Respondents' delayed redress of Petitioner's complaint threatens and violates Petitioner's rights and the rights of others by subjecting violence on the basis of sex to less protective legal standards in violation of Title IV.

90. SaVE will have a disparate impact on students on the basis of sex.

91. As a result, Petitioner and similarly situated others have sustained, and will continue to sustain injury and risk of injury to such rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that the Court:

1. Issue a writ of mandamus ordering Respondents to investigate and resolve her Complaint and issue a decision thereon before March 7, 2014;
2. Order that if Petitioner's complaint is not resolved until after March 7, 2014, Respondents shall not apply substantive provisions from SaVE to the resolution of Petitioner's complaint;
3. Declare identified aspects of SaVE unconstitutional and enjoin their future enforcement on behalf of Petitioner and similarly situated others.

Dated: February 18, 2014