

TITLE IX — SEXUAL ASSAULT — FIFTH CIRCUIT
ADVANCES NOVEL THEORY OF LIABILITY FOR ANTI-MALE
DISCRIMINATION. — *Doe v. William Marsh Rice University*, 67 F.4th
702 (5th Cir. 2023).

With the rise of the #MeToo movement¹ and high-profile sexual assault cases on college campuses,² there is increased scrutiny on Title IX procedures.³ Concurrently, more men have started complaining that their conception of masculinity is under attack.⁴ These arguments of anti-male bias have been made in Title IX cases challenging university procedures where men are the alleged aggressors.⁵ Recently, in *Doe v. William Marsh Rice University*,⁶ the Fifth Circuit found genuine issues of material fact in a male student's claims of Title IX gender discrimination,⁷ overturning the district court's grant of summary judgment for Rice University (the University). By allowing this case to move forward, particularly under the newer "archaic assumptions" framework, the court has helped men weaponize laws that are designed to protect women.

In 2017, Doe began his freshman year at the University on a football scholarship and soon began dating Jane Roe, a junior there.⁸ Doe had a history of herpes (HSV-1) and chlamydia, which he claimed to have discussed with Roe during their brief relationship, which consisted of

¹ See generally Amy Brittain, *Me Too Movement*, BRITANNICA (Mar. 8, 2024), <https://www.britannica.com/topic/Me-Too-movement> [<https://perma.cc/J99E-FFP3>].

² See, e.g., CHANEL MILLER, *KNOW MY NAME: A MEMOIR* (2019) (depicting Chanel Miller's experience when Brock Turner raped her on Stanford's campus and subsequent proceedings).

³ Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688.

⁴ See Kirsten Weir, *The Men America Left Behind*, AM. PSYCH. ASS'N (Feb. 2017), <https://www.apa.org/monitor/2017/02/men-left-behind> [<https://perma.cc/NV85-RBVS>] ("Many men feel their masculinity ideology is under attack." (quoting Ronald F. Levant, professor of psychology at the University of Akron, focused on the psychology of men and masculinity)); Rebecca Ruiz, *The Masculinity Revolution Is a Quiet One. Don't Trust Its Loudest Critics.*, MASHABLE (Jan. 26, 2019), <https://mashable.com/article/gillette-ad-masculinity> [<https://perma.cc/HU22-8TUX>] (explaining the movement for a more inclusive envisaging of manhood, which critics see "as an assault waged by feminists and liberals"); Rachel Treisman, *Sen. Josh Hawley Claims Masculinity Is Under Attack. This Historian Disagrees*, NPR (Nov. 11, 2021, 12:39 PM), <https://www.npr.org/2021/11/11/1054615028/is-masculinity-under-attack-sen-hawley-wants-to-defend-the-men-of-america> [<https://perma.cc/UYQ6-TKJP>] (describing Senator Josh Hawley's focus on defending "traditional masculinity" from the "political left").

⁵ See, e.g., *Yusuf v. Vassar Coll.*, 35 F.3d 709, 711 (2d Cir. 1994); *Doe v. Baum*, 903 F.3d 575, 580 (6th Cir. 2018); *Doe v. Purdue Univ.*, 928 F.3d 652, 656 (7th Cir. 2019); see also Zoë Seaman-Grant, Comment, *Title IX and the Alleged Victimization of Men: Applying Twombly to Federal Title IX Lawsuits Brought by Men Accused of Sexual Assault*, 28 MICH. J. GENDER & L. 281, 298–300 (2022) (describing the rise in anti-male bias Title IX cases in recent years).

⁶ 67 F.4th 702 (5th Cir. 2023).

⁷ This case appears to be a classic example of the DARVO ("Deny, Attack, and Reverse Victim and Offender") approach that abusers use when confronted with sexual assault allegations. Jennifer J. Freyd, *Violations of Power, Adaptive Blindness and Betrayal Trauma Theory*, 7 FEMINISM & PSYCH. 22, 29 (1997).

⁸ *William Marsh Rice Univ.*, 67 F.4th at 705.

multiple consensual, unprotected sexual encounters.⁹ Soon after the end of the relationship, Roe texted Doe that she believed she contracted herpes from him.¹⁰ Roe contacted the University Title IX office about the situation.¹¹ In April, after investigating, the University found Doe had “failed to adequately notify [Roe] of the fact that she was at risk of contracting HSV-1 from [him].”¹² Doe subsequently lost his football scholarship, was denied an internal University appeal of the decision, and withdrew from the University.¹³

In September of 2019, Doe sued the University and its officials for “violat[ing] Title IX by investigating and adjudicating a punishment in a way that was biased against him as a male.”¹⁴ He also sued for breach of contract, alleging that the University failed to conduct a fair disciplinary process.¹⁵ The district court granted summary judgment to the University on both the Title IX and breach of contract claims.¹⁶

Title IX provides a private right of action to plaintiffs who allege “intentional sex discrimination.”¹⁷ Circuit courts employ various doctrinal theories to evaluate Title IX claims.¹⁸ Doe alleged his Title IX claims under three such theories: erroneous outcome, selective enforcement, and archaic assumptions.¹⁹ Still, “[t]he operative question of summary judgment is whether a reasonable jury — presented with the facts alleged — could find that sex was a motivating factor in the University’s

⁹ *Id.* There are conflicting accounts about whether Doe informed Roe of his herpes status — he repeatedly claimed he told her, *see id.*, but there were also texts between Doe and Roe from December 2017, in which he confirmed that he knew he had herpes and did not tell Roe, *Doe v. William Marsh Rice Univ.*, No. 20-cv-2985, 2021 WL 4215501, at *1 (S.D. Tex. Sept. 16, 2021).

¹⁰ *William Marsh Rice Univ.*, 67 F.4th at 705.

¹¹ *Id.* Roe also filed a police report alleging that Doe had not informed her of his herpes diagnosis prior to their sexual relations, but the police declined to file criminal charges. *Id.*

¹² *Id.* at 706 (alterations in original). The University found that while this did not violate the Sexual Misconduct Policy for dating violence, it did violate the University’s Code of Student Conduct. *Id.*; *William Marsh Rice Univ.*, 2021 WL 4215501, at *3.

¹³ *William Marsh Rice Univ.*, 67 F.4th at 706–07.

¹⁴ *Id.* at 707. Title IX provides: “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).

¹⁵ *William Marsh Rice Univ.*, 2021 WL 4215501, at *1.

¹⁶ *Id.* at *12, *14.

¹⁷ *William Marsh Rice Univ.*, 67 F.4th at 708 (quoting *Klocke v. Univ. of Tex. at Arlington*, 938 F.3d 204, 210 (5th Cir. 2019)).

¹⁸ *See id.* at 709; *see also, e.g.*, *Doe v. Purdue Univ.*, 928 F.3d 652, 667 (7th Cir. 2019); *Doe v. Univ. of the Scis.*, 961 F.3d 203, 209 (3d Cir. 2020). These theories are not required to make a Title IX claim but rather describe ways plaintiffs can show the requisite “intentional sex discrimination” standard was met. *See* Dana Bolger, Alexandra Brodsky & Sejal Singh, *A Tale of Two Title IXs: Title IX Reverse Discrimination Law and Its Trans-substantive Implications for Civil Rights*, 55 U.C. DAVIS L. REV. 743, 756–57 (2021).

¹⁹ *William Marsh Rice Univ.*, 2021 WL 4215501, at *6. The plaintiff did not assert a claim under the deliberate indifference theory, which is another way to show gender discrimination under Title IX. *Id.*

disciplinary decision.”²⁰ The district court found that none of these theories presented sufficient factual issues,²¹ largely because Doe failed to cite to the record to support his assertions.²² The court additionally dismissed the breach of contract claim under Texas state law.²³

The Fifth Circuit’s three-judge panel affirmed in part and reversed in part.²⁴ Writing for the panel, Judge Stewart²⁵ found that while the lower court correctly dismissed the breach of contract claim,²⁶ there were material issues of fact under each of Doe’s three Title IX theories.²⁷ Regarding the erroneous outcome claim, the court held that there were triable issues of fact under its two-prong test — “(1) an erroneous outcome and (2) that ‘gender bias was the motivating force behind’ it.”²⁸ The court found whether Roe knew about Doe’s history with herpes before they had sex was disputed — and this was one of Roe’s many “repeated misrepresentations” that the University never held against her.²⁹ The circuit court further held that the district court consistently discounted Doe’s argument of sex discrimination and did not “view the record in the light most favorable to the nonmovant.”³⁰

The Fifth Circuit also found there were material questions of fact under the selective enforcement claim. Selective enforcement requires that, regardless of guilt, “the severity of the penalty and/or the decision to initiate the proceeding was affected by the student’s gender.”³¹ The court noted that despite Doe’s counterallegations, the University did not investigate Roe for the same conduct as Doe — failing to disclose the risk of sexually transmitted diseases to sexual partners.³² The court found a genuine issue of fact as to whether gender bias

²⁰ *William Marsh Rice Univ.*, 67 F.4th at 709 (alterations omitted) (quoting *Doe v. Univ. of Denver*, 1 F.4th 822, 830 (10th Cir. 2021)); see also *Purdue Univ.*, 928 F.3d at 667.

²¹ *William Marsh Rice Univ.*, 2021 WL 4215501, at *10–12.

²² See *id.* at *6 (“The Court notes that Plaintiff made a number of allegations under his Title IX claim’s analysis, but failed to cite to the record for his assertions.”).

²³ *Id.* at *13–14. Doe unsuccessfully argued that he had a contract with the University that was formed when he accepted admission and paid tuition. *Id.* at *12–13. Additionally, even if such a contract had existed, the court concluded that the University conducting a disciplinary investigation would not have constituted a breach of contract. *Id.* at *13.

²⁴ *William Marsh Rice Univ.*, 67 F.4th at 705.

²⁵ Judge Elrod joined the opinion. See *id.*

²⁶ *Id.* at 714. The court found that there was no breach of contract under an implied contract between the University and Doe. *Id.* at 713–14.

²⁷ *Id.* at 710, 712–13. The court was also generally concerned about the University’s due process procedures, which could be considered “one-sided” due to “anti-male bias.” *Id.* at 708.

²⁸ *Id.* at 709 (quoting *Klocke v. Univ. of Tex. at Arlington*, 938 F.3d 204, 210 (5th Cir. 2019)).

²⁹ *Id.* at 709–10. Additionally, the court noted that the University did not adequately look into whether Roe had caught herpes from someone else. *Id.* The Fifth Circuit also pointed out that it was unclear how Doe’s actions constituted a violation of the University’s student code of conduct, which includes “expectations of civility and respect.” *Id.* at 711.

³⁰ *Id.* at 711.

³¹ *Id.* (quoting *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir. 1994)).

³² *Id.* at 712. Doe did not allege that Roe failed to disclose this risk in *their* relations but rather that she was failing to inform her other sexual partners at the University about the risk. *Id.*

motivated the enforcement proceedings, which would constitute selective enforcement.³³

The court also allowed the appellant’s archaic assumptions theory to move forward, as it believed the University’s actions could have been “based on overly broad and archaic assumptions about one sex or the other,” as the theory requires.³⁴ Doe claimed that, due to gender stereotypes, the University did not believe Roe should be accountable for her actions — it assumed instead that “an adult female college junior is incapable of understanding the risks of sexual intercourse without the male educating her.”³⁵ Thus, the court found that a rational jury could believe the University’s approach was based on “outdated” and “outmoded”³⁶ ideas about “unwitting female[s],” despite the possibility that Roe was actually more informed about sexually transmitted diseases.³⁷

Judge Graves dissented,³⁸ positing that there was no evidence of gender discrimination by the University under any of Doe’s Title IX theories.³⁹ He disagreed with the majority opinion’s account of the facts,⁴⁰ noting that while “Doe is free to characterize his claims however he chooses, . . . the ultimate question is always whether there is evidence that the University ‘discriminated against [Doe] on the basis of sex.’”⁴¹ He then argued the erroneous outcome,⁴² selective enforcement,⁴³ and archaic assumptions theories⁴⁴ each lacked material issues of fact.

Doe v. William Marsh Rice University expanded men’s ability to weaponize Title IX — a federal statute intended to secure gender

³³ *Id.* (citing *Yusuf*, 35 F.3d at 715).

³⁴ *Id.* (citing *Pederson v. La. State Univ.*, 213 F.3d 858, 881 (5th Cir. 2000)).

³⁵ *Id.* at 712–13. The Court further noted that “[a] rational juror could conclude that to absolve Roe of responsibility for her own risk-assessments — and to place that burden on her male partner — is to act on archaic assumptions in violation of Title IX.” *Id.* at 713.

³⁶ *Id.* at 713 (citing *Pederson*, 213 F.3d at 881).

³⁷ *Id.*

³⁸ *Id.* at 714 (Graves, J., dissenting).

³⁹ *Id.* at 714, 724.

⁴⁰ Compare *id.* at 705–07 (majority opinion), with *id.* at 714–17 (Graves, J., dissenting).

⁴¹ *Id.* at 717 (Graves, J., dissenting) (alteration in original) (quoting *Overdam v. Tex. A&M Univ.*, 43 F.4th 522, 527 (5th Cir. 2022)). He also noted that while the majority believed there were procedural concerns, Doe’s claims were about Title IX, not due process. *Id.* at 725.

⁴² Judge Graves stated that while “Roe was not entirely consistent” in her account of events, this did not matter because the University made its findings based on “Doe’s own statements and Roe’s statements *that were most favorable to Doe.*” *Id.* at 718.

⁴³ Here, the dissent pointed out that there was no evidence of “similarly situated comparators who were treated more favorably” to support this theory, since Doe did not point to any evidence of women not being investigated or punished in the same way as him. *Id.* at 720.

⁴⁴ Judge Graves employed a narrower construction of the theory. See *id.* at 722–23 (“[T]here is no evidence of archaic assumptions regarding men and women and their respective abilities to understand sexually transmitted diseases and the risks of unprotected sex.”). He also pointed out that unlike *Pederson v. Louisiana State University*, 213 F.3d 858 (5th Cir. 2000), there was no record of discriminatory comments or other evidence that would demonstrate archaic assumptions about women. *William Marsh Rice Univ.*, 67 F.4th at 723 (Graves, J., dissenting). Instead, he emphasized that if the University did place any burden on Doe, it was because of his status as the carrier of the sexually transmitted disease, not his gender. *Id.*

equality in educational environments⁴⁵ — against women by expanding the archaic assumptions theory, which has been used only once before in this context, to the Fifth Circuit. This expansion is part of a growing trend of courts becoming dangerously sympathetic to men accused of sexual assault, claiming they are the victims of gender discrimination.⁴⁶ These cases mischaracterize policies aimed at helping survivors as being unfairly biased against men. College campuses are rife with sexual assault, reporting is unlikely, and culture is biased toward men already. Giving male perpetrators judicial avenues to disincentivize universities from holding them accountable risks increasing the incidence of sexual assault and reinforcing existing male dominance by enhancing impunity. In holding that the case could move forward under a theory that the University acted under archaic assumptions about women, the Fifth Circuit has helped men expand their tools to hamper Title IX investigations, inverting the original gender equity origins of Title IX.

The archaic assumptions theory has only recently been expanded to cases involving alleged anti-male bias in sexual harassment and assault proceedings.⁴⁷ Before, the theory was applied in the context of student athletes,⁴⁸ which is still the only other situation in which it has been applied to Title IX claims.⁴⁹ These prior cases are not particularly helpful in understanding how to apply the theory, as they focus on assumptions about men's and women's sports, rather than broader gender dynamics.⁵⁰ However, in *Doe v. Miami University*,⁵¹ the Sixth Circuit became the first court to recognize the archaic assumptions theory as an avenue to challenge university sexual harassment proceedings.⁵²

⁴⁵ See Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688; see also Nancy Chi Cantalupo, *Title IX & the Civil Rights Approach to Sexual Harassment in Education*, 25 ROGER WILLIAMS U. L. REV. 225, 227 (2020) (describing Title IX's purpose as “protect[ing] civil rights and ensur[ing] gender equality in our schools”).

⁴⁶ See Bolger, Brodsky & Singh, *supra* note 18, at 794 (arguing that allowing reverse discrimination cases to move forward “protect[s] dominant groups — in some cases, the exact groups responsible for the discrimination the [government] sought to stop”).

⁴⁷ Not all circuit courts use doctrinal tests for Title IX cases, and even among the circuits that apply formal tests, not all tests are available to plaintiffs. See, e.g., *Doe v. Purdue Univ.*, 928 F.3d 652, 667 (7th Cir. 2019); *Doe v. Univ. of the Scis.*, 961 F.3d 203, 209 (3d Cir. 2020).

⁴⁸ See *Mallory v. Ohio Univ.*, 76 F. App'x 634, 638–39 (6th Cir. 2003) (referencing that the archaic assumptions theory “has been applied where plaintiffs seek equal athletic opportunities”); see also *Pederson*, 213 F.3d at 881 (creating the archaic assumptions theory by relying on “[w]ell-established Supreme Court precedent demonstrat[ing] that archaic assumptions such as those firmly held by LSU constitute intentional gender discrimination” (citing *United States v. Virginia*, 518 U.S. 515, 533 (1996); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984))).

⁴⁹ See *Doe v. Baum*, 903 F.3d 575, 588 (6th Cir. 2018) (“This court has never applied the [archaic assumptions] theory outside of the athletic context . . .”).

⁵⁰ See, e.g., *id.* at 587–88; *Z.J. v. Vanderbilt Univ.*, 355 F. Supp. 3d 646, 676–77 (M.D. Tenn. 2018).

⁵¹ 882 F.3d 579 (6th Cir. 2018).

⁵² See *id.* at 589 (recognizing “theories of liability that a student who is ‘attacking a university disciplinary proceeding on grounds of gender bias’ can potentially assert under Title IX,” including archaic assumptions (quoting *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir. 1994))); *Seaman-Grant*, *supra* note 5, at 302–03. But even this adoption of the theory has involved “mixed messages about the viability of the . . . theory.” Bolger, Brodsky & Singh, *supra* note 18, at 756 n.55.

It appears that in *Rice University*, the Fifth Circuit has become the second circuit to expand archaic assumptions to this context — and is the first to conduct such a lengthy analysis.⁵³ As a result, the Fifth Circuit’s discussion of archaic assumptions could make it influential to other circuits considering the theory.

Moreover, the expansion of the archaic assumptions theory contributes to a problematic trend of men alleging Title IX sex-based discrimination in response to sexual assault allegations.⁵⁴ In *Yusuf v. Vassar College*,⁵⁵ the Second Circuit created a legal framework for these lawsuits through the selective enforcement and erroneous outcome theories.⁵⁶ Since then, a large number of male students have sued schools for unfairness and insufficient processes when evaluating sexual violence cases.⁵⁷ However, Title IX suits brought by both men and women should be about sex discrimination, not nondiscriminatory process issues.⁵⁸ If men are granted more avenues to plead these cases as the case law develops, it may become even harder for survivors to obtain relief for sexual harassment or assault on university campuses.

Given how frequently sexual assault claims on university campuses involve men assaulting women,⁵⁹ it may be hard to distinguish gender-based biases from survivor-based biases if the theory is expanded in this

⁵³ Compare *William Marsh Rice Univ.*, 67 F.4th at 712–13 (analyzing the archaic assumptions theory based on the facts at issue), with *Miami Univ.*, 882 F.3d at 589 (leveraging the archaic assumptions theory but conducting no analysis because the plaintiff did not allege liability under the theory). It is additionally novel that the court accepted a plaintiff’s account of the archaic assumption even when the plaintiff framed the assumption as negative toward the opposite gender, rather than his own. Compare *Pederson*, 213 F.3d at 881 (describing the patronizing language university officials used to describe women and the denigration of soccer as a feminine sport due to how women look while playing), with *William Marsh Rice Univ.*, 67 F.4th at 712–13 (discussing Doe’s contention that the University treated Roe as “incapable of understanding the risks of sexual intercourse”). Comparing these two cases also shows how much stronger the evidentiary record was in *Pederson* as compared to in *Rice University*. Compare *Pederson*, 213 F.3d at 881 (finding the university’s “outdated attitudes . . . amply demonstrated [their] intention to discriminate”), with *William Marsh Rice Univ.*, 67 F.4th at 713.

⁵⁴ Bolger, Brodsky & Singh, *supra* note 18, at 745 (describing the “startling success” of these Title IX reverse discrimination lawsuits in federal courts).

⁵⁵ 35 F.3d 709.

⁵⁶ *Id.* at 715; see Weiru Fang, Note, *Gender Parity: The Increasing Success and Subsequent Effect of “Anti-male Bias” Claims in Campus Sexual Assault Proceedings*, 104 CORNELL L. REV. 467, 474 (2019); Bolger, Brodsky & Singh, *supra* note 18, at 756.

⁵⁷ See Bethany A. Corbin, *Riding the Wave or Drowning?: An Analysis of Gender Bias and Twombly/Iqbal in Title IX Accused Student Lawsuits*, 85 FORDHAM L. REV. 2665, 2685 (2017) (“More than 100 male students accused of sexual violence have filed lawsuits against their universities challenging the sufficiency and legality of the educational investigatory and adjudicatory functions.”).

⁵⁸ See Nancy Chi Cantalupo, *For the Title IX Civil Rights Movement: Congratulations and Cautions*, 125 YALE L.J.F. 281, 284 (2016) (suggesting that extending criminal justice procedures to Title IX proceedings would “fundamentally undermine[] Title IX’s central purpose”).

⁵⁹ SOFI SINOZICH & LYNN LANGTON, OFF. OF JUST. PROGRAMS, U.S. DEP’T OF JUST., RAPE AND SEXUAL ASSAULT VICTIMIZATION AMONG COLLEGE-AGE FEMALES, 1995–2013, at 8 (2014), <https://bjs.ojp.gov/content/pub/pdf/rsavcaf9513.pdf> [<https://perma.cc/2R7P-ZMKM>] (noting that the “vast majority” of offenders of sexual assault are male, and for students who reported being raped or sexually assaulted between 1995 and 2013, 97% of offenders were males).

way.⁶⁰ The conflation of respondent with man, and complainant with woman, means that any man held responsible under a university's Title IX proceeding will be able to appeal his case in court on these discrimination grounds,⁶¹ despite the fact that Title IX's protections extend only to gender discrimination, not to incorrect results or process issues.⁶² This may create difficulties for courts trying to distinguish between a process that is biased toward a survivor who happens to be a woman from one that is biased toward a survivor because she is a woman.

However, it is important to acknowledge the reason why these sexual harassment and assault claims do arise more frequently in situations of men assaulting women — men often wield more power than women in sexual relationships, especially in university settings.⁶³ Roughly one in four women on college campuses are sexually assaulted.⁶⁴ College campuses likely perpetuate rape culture,⁶⁵ especially when one considers *how* male students report obtaining sex — through verbal harassment, drugs and alcohol, and force or threatened force.⁶⁶ And the legal system facilitates these issues by blaming women and expressing sympathy toward male perpetrators.⁶⁷ Considering how unlikely it is that

⁶⁰ See *Doe v. Univ. of Cincinnati*, 173 F. Supp. 3d 586, 606–07 (S.D. Ohio 2016) (“Rather, at worst UC’s actions were biased in favor of alleged victims of sexual assault and against students accused of sexual assault.”).

⁶¹ See Bolger, Brodsky & Singh, *supra* note 18, at 759 (“[A] growing number of appeals courts have accepted that alleged bias against male students accused of sexual misconduct is, inherently, bias against men — even though not all accused students are men, and victims of harassment include both men and women.”).

⁶² See Cantalupo, *supra* note 58, at 284 (discussing the main goals of Title IX as ending gender-based harassment and violence and their discriminatory effects); Bolger, Brodsky & Singh, *supra* note 18, at 760 (questioning how procedural deficiencies against respondents reflect gender biases).

⁶³ It is important to also note that many LGBTQ+ students are survivors of sexual assault and rape on college campuses. See JOSEPH G. KOSCIW ET AL., GLSEN, *THE 2021 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LGBTQ+ YOUTH IN OUR NATION’S SCHOOLS* 22 (2022) (“[A] majority of LGBTQ+ students (53.7%) had been sexually harassed at school . . .”). However, there is limited research on this topic. See Heather Tillewein et al., *Silencing the Rainbow: Prevalence of LGBTQ+ Students Who Do Not Report Sexual Violence*, INT’L J. ENV’T RSCH. & PUB. HEALTH, Jan. 2023, at 1, 1–2. Therefore, this comment predominantly focuses on heterosexual assault dynamics.

⁶⁴ DAVID CANTOR ET AL., ASS’N OF AM. UNIVS., *REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND MISCONDUCT* 14 (2020), [https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_\(01-16-2020_FINAL\).pdf](https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf) [<https://perma.cc/2KEA-EZLC>] (estimating that 25.9% of women undergraduates are survivors of nonconsensual sexual contact). These numbers are also very likely an undercount. See Catharine A. MacKinnon, *In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education*, 125 YALE L.J. 2038, 2046 (2016).

⁶⁵ See MacKinnon, *supra* note 64, at 2055–61 (discussing how “sexual violation is essentially socially permitted,” *id.* at 2055, and how “some college campuses support” sexual assault, *id.* at 2056).

⁶⁶ See *id.* at 2057.

⁶⁷ See Seaman-Grant, *supra* note 5, at 324.

a perpetrator is held accountable⁶⁸ and that legal systems do not take into account severe trauma, which may affect survivors' memories of events,⁶⁹ it is clear that society and campuses favor men, rather than the converse.⁷⁰ Universities should be able to prioritize protecting survivors⁷¹ by removing perpetrators from campuses, showing sympathy for story inconsistencies that may be the result of trauma, and taking other measures that account for these power dynamics.⁷² To do so should not be seen as a decision based on archaic assumptions but rather one based on current facts.

Allowing cases like *Rice University* to move forward will only exacerbate the gender inequity that Title IX was designed to address. Antidiscrimination statutes like Title IX should not be used to "protect dominant groups," but instead should be grounded in the experiences of the groups they were designed to protect.⁷³ Advocates for gender-based reform on college campuses and those who are concerned with how colleges deal with rape allegations should see *Rice University* as part of a worrying trend in which men have expanded avenues to retaliate against universities. Ultimately, men hold significant power on university campuses. Courts should not ignore this dynamic when considering how universities proceed with Title IX adjudication.⁷⁴ As courts continue to allow men to fight these processes, they must ensure that, in the battle against sexual harassment and assault, they do not leave women further behind.

⁶⁸ Of the approximately one-third of sexual assaults that are reported, only 5% lead to arrest and only 2.5% lead to incarceration. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [<https://perma.cc/X5RH-73S8>]; see also Bolger, Brodsky & Singh, *supra* note 18, at 749 (discussing the "judicially-created hurdles" for plaintiffs in Title IX sexual harassment cases).

⁶⁹ See Jillian Miller Purdue & Frederick E. Vars, *Time to Heal: Trauma's Impact on Rape & Sexual Assault Statutes of Limitations*, 11 TEX. A&M L. REV. 125, 126–28, 137–38 (2023) (discussing the high levels of PTSD among survivors of rape or sexual assault, and how many aspects of the criminal legal process do not accommodate for these concerns); MacKinnon, *supra* note 64, at 2057; see also Nancy Chi Cantalupo, *The Title IX Movement Against Campus Sexual Harassment: How a Civil Rights Law and a Feminist Movement Inspired Each Other*, in THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES 240, 243 (Deborah Brake et al. eds., 2021) (discussing the needs of sexual harassment survivors as they relate to mental health, in particular for survivors who are students).

⁷⁰ See MacKinnon, *supra* note 64, at 2055.

⁷¹ See Cantalupo, *supra* note 45, at 227–28 (distinguishing Title IX from criminal law since Title IX is about equal educational environments).

⁷² Cf. Bolger, Brodsky & Singh, *supra* note 18, at 787 (referencing how the courts accept anti-respondent bias but ignore the clear antisurvivor bias in schools); MacKinnon, *supra* note 64, at 2059 (discussing how reporting processes, rather than the rape itself, are the "major trauma" for some students).

⁷³ Bolger, Brodsky & Singh, *supra* note 18, at 794.

⁷⁴ See MacKinnon, *supra* note 64, at 2040 (discussing how Title IX standards applied to women experiencing sexual harassment are "applie[d] after assaults are reported with no attention to the unequal context, hierarchical relations, or documented climate of abuse that produces them").