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"Entitled": Why Victims of Sex Discrimination Should Be Entitled to Seek Relief Under Title VII and Title IX

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COMMENTS

"ENTITLED": WHY VICTIMS OF SEX DISCRIMINATION SHOULD BE ENTITLED TO SEEK RELIEF UNDER TITLE VII AND TITLE IX

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I. INTRODUCTION

Imagine that you are a medical resident at a federally funded teaching hospital. Unfortunately, your supervisor has been making unwanted sexual advances, which is significantly affecting your ability to learn. After several failed attempts to reconcile the situation on your own, you finally decide to complain to the Human Resources department about your supervisor. When your supervisor gets wind of your complaint, he retaliates against you by intentionally sabotaging your fellowship opportunities in an effort to teach you a lesson. Your supervisor advocates for your dismissal and eventually, you are let go from the residency program all together. You decide to file a claim under Title IX to redress the harm you suffered from your supervisor's

sexual harassment and discrimination. However, the lower court dismisses your case simply because you failed to file under Title VII.[1] Recently, this precise issue was presented before the Third Circuit in *Doe v. Mercy Catholic Medical Center*.[2]

Should the fact that you are simultaneously an employee and a student of the hospital bar you from seeking recovery under Title IX? Should you be exclusively limited to relief under Title VII, which is riddled with administrative hurdles? Should the courts shut their doors and sever your claim merely because you qualify for relief under both Title VII and Title IX,[3] but you choose the easier route? Should it matter that Congress left the door open for this type of dual relief?

Congress drafted Title VII to combat employment discrimination and to provide victims with administrative remedies.[4] Title IX was enacted several years after Title VII and sought to address discrimination in federally funded educational institutions.[5] Medical residency programs raise unique obstacles for sex discrimination claims because a medical resident functions as both an employee of the teaching hospital, and a student of the affiliated medical university. Consequently, the question is whether a medical resident's concurrent status as an employee and a student hinders his or her ability to seek relief under Title IX, leaving Title VII as the sole remedial outlet.

For nearly twenty years, the issue of whether Title VII should function as an exclusive remedy laid dormant. A circuit court split first emerged regarding Title VII's exclusivity in the mid 1990's.[6] However, it was not until 2017 that this issue was revisited. In early 2017, the

1. Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545 (3d Cir. 2017) (the fact pattern described above is based on this case).

2. *See generally id.*

3. *See* Douglas P. Ruth, *Title VII & Title IX =?: Is Title IX the Exclusive Remedy for Employment Discrimination in the Educational Sector?*, 5 CORNELL J. L. & PUB. POL'Y 185, 220 (1996) (claiming when there is a Title VII and a Title IX claim, the Title VII claim "supplants" the Title IX claim to prevent the claimant from getting around Title VII's procedural requirements).

4. *See infra* Part II Section A.

5. Kim Turner, *The Rights of School Employee-Coaches Under Title VII and Title IX in Educational Athletic Programs*, 32 A.B.A. J. LAB. & EMP. L. 229, 231 (2017); *see also infra* Part II Section B.

6. *See infra* Part IV Section A.

Third Circuit added to the starkly divided circuit court precedent with its decision in *Doe*.[7]

In *Doe*, the Third Circuit bluntly disposed of the Fifth and Seventh Circuits' prior holdings, concluding that Title VII does not prevent Title IX's applicability to employee sex discrimination cases.[8] The court's conclusion was well supported by case law, which urged for a broad and diverse interpretation of Title IX.[9] The court further supported this characterization of Title IX by referencing recent Supreme Court precedent advocating for a robust reading of the statute.[10]

The issues presented in *Doe* are not limited to medical residency programs, or even the medical field. Rather, *Doe* serves to highlight the broader issue of sexual harassment and discrimination that is prevalent in virtually all employment[11] and educational[12] fields. Workplace sexual harassment and discrimination are a pervasive problem that affects as many as 25 percent of women in the workforce.[13] Likewise, instances of sex discrimination in the educational field are equally as staggering.[14]

Recently, sexual harassment and discrimination have taken center stage in the media. Individuals are raising awareness about this evolving societal issue with the help of social media campaigns. For instance, the "Me Too" campaign seeks to provide victims with a

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7. *See generally* Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545 (3d Cir. 2017).

8. *Id.* at 563.

9. *Id.*

10. *See generally* Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005).

11. Press Release, ABC News, One in Four U.S. Women Reports Workplace Harassment (Nov. 16, 2011) [hereinafter Press Release], http://www.langerresearch.com/wp-content/uploads/1130a2WorkplaceHarassment.pdf.

12. *See generally* Heather B. Gonzalez & Jody Feder, *Sexual Violence at Institutions of Higher Education*, CONG. RES. SERV. (Apr. 2016), https://fas.org/sgp/crs/misc/R43764.pdf.

13. Press Release, *supra* note 11.

14. Michael E. Buchwald, Comment, *Sexual Harassment in Education and Student Athletics: A Case for Why Title IX Sexual Harassment Jurisprudence Should Develop Independently of Title VII*, 67 MD. L. REV. 672, 672 (2008) (observing that almost two-thirds of students in college have experienced a form of sexual harassment, according to a study conducted by the American Association of University Women).

platform to voice their grievances.[15] A majority of this media sensation is attributed to the allegations against movie producer Harvey Weinstein.[16] Weinstein has been accused of committing countless sexual assault and harassment violations stemming from his position of power in the film industry.[17] However, even with these concerns in mind, the Third Circuit's holding in *Doe* has stirred up controversy surrounding the practical implications of applying Title IX to hospitals with residency programs.[18] Although there may be some validity to the concerns about Title IX's practicality, the issue of sexual discrimination cannot be combatted if victims lack access to all outlets of relief. Given the serious implications sex discrimination and harassment pose in the educational and employment sectors, victims should be entitled to the most expansive protections available. Consequently, Title VII should not function as an exclusive remedy for employment sex discrimination cases. This note will assess the Third Circuit's holding in *Doe*, while attempting to reconcile some of the practical implications the court failed to address.

Part II will provide a background and an overview of Title VII and Title IX, while addressing the legislative interconnection between them. Part III will provide a statement of the *Doe* case. Specifically, this section will include a procedural and substantive overview of *Doe* and flush out the Third Circuit's holding. Part IV will begin by detailing the circuit court split about whether Title VII is an exclusive remedy. It will proceed by analyzing the broader implications of *Doe* on medical residency programs and confront the societal issue of sex discrimination. Part IV will also provide an analysis on whether the court in *Doe* was justified in its holding, while addressing the practical

15. Lisa Respers France, *#MeToo: Social Media Flooded with Personal Stories of Assault*, CNN (Oct. 16, 2017), http://www.cnn.com/2017/10/15/ entertainment/me-too-twitter-alyssa-milano/index. html.

16. *Id.*

17. Lila Thulin, *A Complete List of Sexual Assault and Harassment Allegations Against Harvey Weinstein*, SLATE (Oct. 31, 2017), http://www.slate.com/blogs/the_slatest/2017/10/10/a_list_of_sexual_assault_and_harassment_ allegations_against_harvey_weinstein.html.

18. Amanda Wingfield Goldman & Vinson Knight, *Hospitals Best Practices after Title IX Decision*, LAW 360 (May 9, 2017, 12:37 PM), https://www.law360.com/articles/921293/hospital-best-practices-after-3rd-circ-title-ix-decision (noting that in the wake of *Doe*, hospitals should ensure their programs adequately comply with Title IX standards and are prepared for potential lawsuits).

impact *Doe* will have on residency programs. Finally, Part V will weigh the policy considerations in favor of Title VII and Title IX's concurrent applicability. Part V will also suggest a remedy to combat the societal implications of sex discrimination in the employment and educational field. Part VI will provide a brief conclusion explaining why Title VII should not function as an exclusive remedy.

II. THE STATUTORY LANDSCAPE

Congress has created two mechanisms to ensure victims of sexual discrimination can seek proper, well-deserved relief.[19] Title VII aims to protect employees from sex discrimination in the workplace,[20] while Title IX shields against sex discrimination in federally funded educational institutions.[21] Although distinct statutes, Title VII and Title IX both safeguard victims from sex discrimination.[22]

A. Title VII

Congress passed Title VII of the Civil Rights Act of 1964 in an effort to redress the harms resulting from employment discrimination.[23] Broadly, Title VII seeks to protect individuals from employment discrimination on the basis of religion, national origin, race, color, and sex[24] by prohibiting employers from making discriminatory employment decisions.[25] To ensure that employers abide by this law and that victims are protected, Title VII creates "statutory rights" against discriminatory conduct and "establish[es] a comprehensive scheme for the vindication of those rights."[26]

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19. *See* Ruth, *supra* note 3, at 187–90.
20. *Id.* at 187.
21. *Id.* at 190.
22. *Id.* at 187–90.
23. *Id.* at 185.
24. *See generally Title VII of the Civil Rights Act of 1964*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, https://www.eeoc.gov/laws/statutes/titlevii.cfm (last visited Jan. 23, 2018) [hereinafter *Title VII of Civil Rights*].
25. 42 U.S.C. § 2000e-2(a)(1) (2012).
26. Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 457–58 (1975).

When originally enacted, Title VII authorized a private cause of action for victims of discrimination.[27] However, it was not until 1986 that the Supreme Court held workplace sexual harassment may qualify as sex discrimination under Title VII.[28] Not all sexual misconduct in the workplace is covered by Title VII.[29] To fall under Title VII's purview, the "unwelcomed sexual conduct" must be either a requisite for employment—meaning the "submission or rejection of [sexual conduct] is used for employment decisions"—or the conduct must hinder work performance.[30] The Supreme Court has also held that hostile work environment and *quid pro quo* claims are governed by Title VII.[31]

After Title VII's enactment, Congress created the Equal Employment Opportunity Commission ("EEOC") as an enforcement mechanism to ensure that the goals of Title VII were being upheld.[32] One significant provision of Title VII requires that a victim first exhaust all administrative remedies[33] before suing his or her employer in court.[34] In other words, a victim must utilize the administrative requirements set forth by Congress under Title VII, prior to bringing any lawsuit.[35] Moreover, Congress also included "very specific administrative requirements and time limitations" for Title VII claims to ensure state autonomy and to advocate for reconciliation among claimants.[36]

Despite the creation of the EEOC, some states rely on their own state-created entity to enforce "fair employment laws," while other

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27. Lisa P. Masteralexis & Anita Moorman, *An Examination of the Legal Framework between Title VII and Title IX Sexual Harassment Claims in Athletics and Sport Settings: Emerging Challenges for Athletics Personnel and Sport Managers*, 18 J. OF LEGAL ASPECTS OF SPORTS 1, 11 (2008).

28. Buchwald, *supra* note 14, at 676.

29. Masteralexis & Moorman, *supra* note 27, at 8.

30. *Id.*

31. *Id.* at 2 (citing Meritor Savings Bank, FSB v. Vinson, 447 U.S. 57 (1986)).

32. Ruth, *supra* note 3, at 188.

33. *See* 42 U.S.C. §§ 2000e-5(b), (f)(1) (2012); s*ee also Title VII of Civil Rights*, *supra* note 24.

34. *Title VII of Civil Rights*, *supra* note 24.

35. *Id.*

36. Ruth, *supra* note 3, at 188.

states are without an independent enforcement body.[37] If the Title VII claim is being asserted in a state without its own enforcement entity, the plaintiff must file with the EEOC within 180 days "after the alleged unlawful employment practice occurred."[38] If the plaintiff is filing a Title VII claim in a state with its own enforcement body, the plaintiff is required to first file with the local agency according to the time limit set by that state.[39] If the plaintiff meets this initial filing time, "the claim is handled exclusively by the local agency for sixty days."[40] If the claim is not resolved within sixty days, the plaintiff may file with the EEOC.[41] Lastly, the Supreme Court has noted that although Title VII provides a robust statutory scheme for combatting employment discrimination, "the aggrieved individual is clearly not deprived of other remedies . . . and is not limited to Title VII" for relief.[42]

B. Title IX

Title IX seeks to prevent students from being subjected to discrimination on the basis of sex "under any educational program or activity receiving Federal financial assistance . . . ."[43] Therefore, "any education or training program operated by a recipient of federal financial assistance" falls under Title IX's scope.[44] Indiana Senator Birch Bayh was a huge proponent of the enactment of Title IX.[45] Senator Bayh framed the legislation as a vehicle to "equalize opportunities for women in education and access to employment."[46]

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37. *Id.*

38. Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 104–05 (2002) (quoting 42 U.S.C. § 2000e-5(e)(1)).

39. Ruth, *supra* note 3, at 189.

40. *Id.*

41. *Id.*

42. Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 459 (1975).

43. *See* 20 U.S.C. § 1681(a) (2012).

44. *Title IX Legal Manual*, U.S. DEP'T. OF JUST., https://www.justice.gov/crt/title-ix#I (last updated Aug. 6, 2015) [hereinafter *Title IX Legal Manual*] (overview of Title IX: Interplay with Title VI, Section 504, Title VII, and the Fourteenth Amendment).

45. *Id.*

46. Laura Foster, *A Modified Approach to Claims of Sexual Harassment Under Title IX: Finding Protection Against Peer Sexual Harassment*, 67 U. CIN. L. REV. 1229, 1241 (1999).

After demonstrating the prominent link between discrimination against women in the educational sphere and their economic disadvantage in society,[47] legislators seemed heavily swayed by Senator Bayh's proposal.

Finally, in 1972, eight years after Title VII was first enacted, Congress passed Title IX of the Education Amendments to protect students from sex discrimination in educational programs and activities.[48] Congress intended Title IX to protect "federal resources from being used to further sex-based discriminatory practices."[49] Unlike Title VII, Title IX does not require the claimant jump through any administrative hoops prior to filing a law suit in court.[50] Title IX only requires the designation of a Title IX coordinator to make sure the institution receiving federal funds is free from sex discrimination.[51] The Title IX coordinator also ensures there is an alternative outlet for victims to seek relief outside the judiciary.[52]

In addition to the statutory history, there are several Supreme Court cases that warrant discussion to adequately frame the applicability of Title IX—the question evaluated in *Doe*. The first noteworthy case is *Cannon v. University of Chicago*, decided in 1979.[53] Unlike Title VII, Title IX was enacted without an express right of private action for victims of sex discrimination.[54] *Cannon*, therefore, established the implied private right of action under Title IX.[55] The Court held that despite the lack of explicit permission under Title IX, private litigants could still file suit under Title IX.[56] The second notable Supreme Court

47. *Title IX Legal Manual*, *supra* note 44, under *Synopsis of Purpose of Title IX, Legislative History, and Regulations*.

48. *See* Masterlexis & Moorman, *supra* note 27, at 1; *see also* Buchwald, *supra* note 14, at 676.

49. Buchwald, *supra* note 14, at 676–77.

50. *See* Ruth, *supra* note 3, at 197–98.

51. TITLE IX RESOURCE GUIDE, U.S. DEP'T. OF EDUC. 4 (2015), https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf.

52. *See id.*

53. *See generally* Cannon v. Univ. of Chi., 441 U.S. 677, 686 (1979).

54. Masterlexis & Moorman, *supra* note 27, at 11.

55. *Cannon*, 441 U.S. at 717.

56. *See id.*

case is *North Haven Board of Education v. Bell*.[57] In *Bell*, the Supreme Court decided whether employment discrimination cases fell within Title IX.[58] Ultimately, the court held employees could seek relief from employer discrimination under Title IX.[59] After holding Title IX encompassed employment discrimination claims, the Supreme Court in *Franklin v. Gwinnett County Public School* established damages as an available Title IX remedy.[60]

Most recently, the Supreme Court issued a key opinion used to support the concurrent applicability of Title VII and Title IX. In *Jackson v. Birmingham Board of Education*, the Court confronted the issue of whether the implied right of private action (established by *Cannon*) extended to include retaliation claims.[61] Noting the importance of interpreting Title IX broadly, the Court held Title IX's implied private right of action extends to retaliation claims.[62]

C. The Relationship Between Title VII and Title IX

Title IX's drafting was inspired by Title VI of the Civil Rights Act of 1964; Title VI prevents federally funded programs from discriminating based on race, color, or national origin.[63] However, Title VII has been used by courts as a guide for understanding sexual harassment claims filed under Title IX.[64] Because Title VII was enacted almost a decade before Title IX, the "judicial interpretation of sexual harassment has developed primarily within the workplace" rather than in the educational sphere.[65] Therefore, Title VII has been used as a framework for analysis in sex discrimination cases arising from education and employment fields. For example, Title VII provided some influence for the Supreme Court to determine whether Title IX

57. N. Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982).
58. *Id.* at 514.
59. *Id.* at 530.
60. Franklin v. Gwinnett City Pub. Sch., 503 U.S. 60, 78 (1992).
61. Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 171, 173 (2005).
62. *Id.* at 171–75 (acknowledging that retaliation against an individual who has complained of sex discrimination is a "form of intentional sex discrimination encompassed by Title IX's private cause of action").
63. *Title IX Legal Manual*, *supra* note 44.
64. Buchwald, *supra* note 14, at 677.
65. Foster, *supra* note 46, at 1234.

permitted a "private right of action for damages," in which the Court concluded in the affirmative.[66] Furthermore, courts have consistently used Title VII precedent to properly apply Title IX.[67] For instance, courts have looked to Title VII principles to analyze "hostile environment sexual harassment" claims brought by student-athletes against their coaches under Title IX.[68] Courts have also relied on Title VII to determine if an individual's conduct qualifies as sexual harassment and thus falls under Title IX.[69]

III. *DOE V. MERCY CATHOLIC MEDICAL CENTER*

The Third Circuit was faced with the issue of whether a medical resident employed at a private teaching hospital was restricted to Title VII relief for sex discrimination.[70] The case centers around a medical resident who was victimized at Mercy Catholic Medical Center ("Mercy").[71] Mercy is a hospital affiliated with Drexel University's College of Medicine.[72] Mercy provides medical residents with numerous accredited training opportunities.[73] Generally, a resident who completes one of these accredited programs is eligible for a board certification.[74] Medical Residency hospitals can receive financial support for costs associated with running these educational programs through Medicare reimbursements.[75] Congress has noted that this financial support is warranted given the important roles "'educational activities' like medical residency programs play in enhancing a

66. Buchwald, *supra* note 14, at 677–78.

67. Foster, *supra* note 46, at 1255.

68. *See* Buchwald, *supra* note 14, at 692.

69. Masterlexis & Moorman, *supra* note 27, at 2.

70. Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545, 549 (3d Cir. 2017); s*ee also* Goldman & Knight, *supra* note 18.

71. *Doe*, 850 F.3d at 550.

72. *Id.*

73. *Id.*

74. *Id.*

75. Brief for The United States as Amici Curiae Supporting Plaintiff-Appellants at 5, Doe v. Mercy Catholic Med. Ctr. 850 F.3d 545 (3d Cir. 2017) (No. 16-1247) WL3227568 [hereinafter U.S. Brief for Appellants].

hospital's quality of care."[76] Mercy receives Medicare payments to assist with the costs of its residency educational programs.[77]

Doe began her residency at Mercy in 2011.[78] While attending Mercy, Doe received practical experience and training in radiology.[79] Allegedly, Doe was sexually harassed by Dr. James Roe, the director of Mercy's residency program.[80] Despite Doe's objections, Dr. Roe relentlessly voiced his interest in pursuing a sexual relationship with Doe and made numerous advancements.[81] Doe's educational training suffered because of Dr. Roe's persistent sexual attention.[82] For example, Dr. Roe's friends amongst the faculty began restricting the amount of assistance they provided Doe.[83] After Doe complained about Dr. Roe's inappropriate behavior, Dr. Roe retaliated against her.[84] Dr. Roe and another faculty member wrote Doe substandard letters of recommendation for a post-residency fellowship.[85] Additionally, Dr. Roe told the director of the fellowship program that Doe was not a suitable candidate.[86] Dr. Roe's explanation for these actions was that he wanted to "teach [Doe] a lesson."[87] Dr. Roe's retaliatory actions eventually led to Doe's dismissal from the program.[88]

On April 20, 2015, two years after Doe's dismissal, Doe brought a lawsuit against Mercy in the United States District Court of the Eastern District of Pennsylvania.[89] Doe filed a total of six claims against Mercy,

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76. *Id.* at 5–6 (quoting H.R. Rep. No. 213, 89th Cong., 1st Sess. 32 (1965); S. Rep. No. 404, 89th Cong., 1st Sess. 36 (1965)).

77. *Id.* at 6–7.

78. *Doe*, 850 F.3d at 550.

79. *Id.*

80. *Id.*

81. *Id.* at 550–52.

82. *Id.* at 551.

83. *Id.*

84. Doe v. Mercy Catholic Med. Ctr., 158 F. Supp. 3d 256, 258 (E.D. Pa. 2016) (discussing how Dr. Roe fired Doe and advocated for her dismissal at her termination hearing), *aff'd in part, rev'd in part*, 850 F.3d 545 (3d Cir. 2017); s*ee also Doe*, 850 F.3d at 550.

85. *Doe*, 158 F. Supp. 3d at 258.

86. *Doe*, 850 F.3d at 551.

87. *Id.*

88. *Doe*, 158 F. Supp. 3d at 258.

89. *Doe*, 850 F.3d at 552.

three under Title IX and three under Pennsylvania state law.[90] The Title IX claims were for (1) hostile environmental sexual harassment, (2) retaliation, and (3) *quid pro quo* harassment.[91] Doe did not file any claims under Title VII.[92]

Mercy, arguing that its residency program did not qualify as educational, and therefore fell outside the scope of Title IX, moved to dismiss the claim.[93] The district court agreed with Mercy and granted the dismissal.[94] Concluding that Title IX was not applicable to medical residents, the district court dismissed Doe's three Title IX claims with prejudice.[95] The district court found that a residency program does not qualify as an "educational program or activity" within the meaning of Title IX.[96] Furthermore, the district court also held that in the event Title IX did apply, "Title VII should be the exclusive avenue for relief."[97] According to the district court, this holding was necessary to prevent Title IX from being used to bypass the additional administrative hurdles required by Title VII.[98] After the district court dispensed of all Doe's Title IX claims, the court declined supplemental jurisdiction over the remaining Pennsylvania state law claims.[99]

Doe appealed the district court's decision and her case went on to the Third Circuit.[100] The Third Circuit began its opinion by noting, "[m]edical residency programs are a vital component of American medical education."[101] However, the court noted that even these prestigious programs are not free from allegations of sex

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90. *Doe*, 158 F. Supp. 3d at 257.

91. *Id.* (noting Doe's state law claims were for the following: (1) contract-based geder discrimination, (2) wrongful termination, and (3) a breach of covenant of good faith and fair dealing).

92. *Doe*, 850 F.3d at 552.

93. U.S. Brief for Appellants, *supra* note 75, at 8.

94. *Id.*

95. *Doe*, 158 F. Supp. 3d at 257 (observing the district court's similar dismissal of hostile environment claim with prejudice for being untimely).

96. *Id.* at 259.

97. *Id.* at 261.

98. *Id.*

99. *Id.* at 265.

100. Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545, 552 (3d Cir. 2017).

101. *Id.* at 549 (citing McKeesport Hosp. v. ACGME, 24 F.3d 519, 525 (3d Cir. 1994)).

discrimination.[102] The court adopted a broader reading of Title IX's language, interpreting the "education or activity" provision to encompass more than just entities that primarily provide education.[103] The court supported this argument by citing two Supreme Court decisions, *North Haven* and *Jackson*.[104] According to the Third Circuit, these cases collectively advocate for a broader reading of Title IX, which is required to uphold the originally intended breadth.[105]

The circuit court went on to note the district court's conclusion that Doe's qualification as an "employee" restricted her to relief under Title VII.[106] The district court's argument is predicated on the point that Title VII contains "elaborate administrative requirements an employee must satisfy before seeking relief," whereas in contrast "Title IX is . . . bare."[107] The district court suggested that Title IX was not intended to evade Title VII's administrative barriers. Consequently, according to the district court, these administrative hoops prove that Title VII functions as a "sole avenue of private relief" for employees alleging sex discrimination at federally funded institutions.[108] The Third Circuit accepted the district court's argument that Doe's status as a medical resident qualified her as an employee.[109] Accordingly, Doe could have successfully filed a Title VII claim.[110] However, the Third Circuit decided to apply a broader reading of Title IX and held that "Title VII's concurrent applicability does not bar Doe's private causes of action for retaliation and *quid pro quo* harassment under Title IX."[111]

The Third Circuit went on to present four reasons supporting its conclusion that Title IX is a viable remedy for employment sex

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102. *Doe*, 850 F.3d at 549.

103. *Id.* at 554–55.

104. *Id.* at 555; *see also supra* Part II Section B.

105. *Doe*, 850 F.3d at 555.

106. *Id.* at 559 (noting the district court's argument that medical residents are employees and Title VII governs all employee sex discrimination).

107. *Id.*

108. *Id.*

109. *Id.* (using factors from Nationwide Mut. Ins. v. Daren, 503 U.S. 318, 323–34 (1992), to establish that Doe meets the qualifications to be considered an employee under Title VII).

110. *Id.*

111. *Id.* at 560.

discrimination.[112] First, Title VII is not the only form of relief for private-sector employees.[113] Second, it is a constitutional "policy" issue for Congress to decide whether it wants to allow "an alternative avenue of relief" for employee sex discrimination that would result in "circumvention of Title VII's administrative requirements."[114] Third, Supreme Court precedent holds that Title IX implies a private cause of action for not only students, but employees as well.[115] Lastly, the court reasoned that Title IX's implied private cause of action extends to employees who work at "federally-funded education programs" and are asserting claims of sex-related retaliation.[116]

Based on the above four assertions, the Third Circuit articulated a clear holding that, "private retaliation claim[s] exist[] for employees of federally-funded education programs under Title IX notwithstanding Title VII's concurrent applicability."[117] The court further noted that the same rationale applies to *quid pro quo* claims, which allows employees to redress their harms under Title IX, Title VII, or any other federal statute that is applicable.[118]

The Third Circuit further acknowledged decisions by the Fifth and Seventh Circuits on the same issue. Both sister circuits held Title VII as the exclusive remedy for employees of sex discrimination.[119] However, the Third Circuit declined to follow this categorical ban.[120] The Third Circuit highlighted the fact that the Fifth and Seventh Circuits adjudicated this issue nearly ten years before *Jackson*, which

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112. *Id.* at 562.

113. *Id.* (quoting Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 459 (1975)).

114. *Id.*

115. *Id.* (noting that *Cannon* characterizes Title IX as applying to "persons" who are victims of sex discrimination).

116. *Id.* at 563 (pointing to *Jackson* to support the assertion that sex motivated retaliation claims, actionable under Title IX, include all persons—encompassing employees).

117. *Id.*

118. *Id.* at 564–65 (explaining *quid pro quo* harassment occurs when "tangible adverse action results from an underling's refusal to submit to a higher-up's sexual demands.").

119. *Doe*, 850 F.3d at 563.

120. *Id.* at 563.

extended Title IX's private cause of action to retaliation claims.[121] Therefore, these pre-*Jackson* decisions may not reflect the current state of the law.[122] Absent any explicit bar from Congress, the Third Circuit refused to give any preferential treatment to qualifying employees seeking relief solely under Title VII.[123] The court, finding the retaliation and *quid pro quo* claims viable under Title IX, reversed and remanded the district court's decision.[124]

IV. IS TITLE VII REALLY THE ONLY OPTION?

Title VII has been characterized by some courts as an exclusive remedy. In these jurisdictions, a victim who qualifies under Title VII and Title IX can only assert a claim under Title VII.[125] Other courts have held that Title VII is not an exclusive remedy.[126] In these jurisdictions, victims who qualify for both Title VII and Title IX can choose which avenue of relief to pursue.

A. Overview of the Circuit Court Split

Although the Third Circuit's holding in *Doe* is well-supported given the current state of the law, some circuit courts have come to the opposite conclusion.[127] To fully assess the Third Circuit's reasoning, it is important to also analyze the rationale of opposing circuit courts. Much of the debate concerning the applicability of Title IX to employee sex discrimination cases occurred in the early 1990's when the

121. *See* Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 171 (2005); *see also Doe*, 850 F.3d at 563.

122. *Doe*, 850 F.3d at 563.

123. *Id.* at 564.

124. *Id.* at 565.

125. *See generally* Ruth, *supra* note 3, at 220.

126. *See generally Doe*, 850 F.3d at 563–64.

127. *See supra* Part I.

Fourth,[128] Fifth,[129] Sixth,[130] and Seventh[131] Circuits' split first emerged.

The general controversy surrounding employee sex discrimination is whether Title VII functions as an exclusive remedy for employees of sex discrimination, or whether qualifying victims can also seek relief under alternative remedies, such as Title IX.[132] The broad interpretation, followed by the Fourth and Sixth Circuits, permits Title VII and Title IX to be used as concurrent remedies.[133] The Fifth and Seventh Circuits, on the other hand, adopted a more narrow reading of Title IX, concluding that employees must seek relief exclusively under Title VII.[134] For example, the Fifth Circuit held that a doctor seeking relief for employment sex discrimination, occurring at a federally funded medical educational institution, is only able to sue under Title VII because it is the "exclusive means of relief."[135] Unlike the Third Circuit, the Fifth Circuit was "not persuaded that Congress intended that Title IX offer a bypass of the remedial process of Title VII."[136] Therefore, according to the Fifth Circuit, Title VII is the sole avenue for relief whenever an employee is alleging discrimination, even if it occurs at a federally funded institution.[137]

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128. *See generally* Preston v. Va. *ex rel.* New River Cmty. Coll., 31 F.3d 203, 206 (4th Cir. 1994) (permitting a Title IX claim for an employee sex discrimination case and recognizing a private cause of action under Title IX).

129. Lakoski v. James, 66 F.3d 751, 752 (5th Cir. 1995) (holding a doctor seeking relief for employment sex discrimination at a federally funded medical educational institution is only permitted to sue under Title VII because it is an "exclusive means of relief").

130. *See* Ivan v. Kent State Univ., No. 94-4090, 1996 U.S. App. LEXIS 22269, at *7 n.10 (6th Cir. July 26, 1996) (allowing a claimant to file concurrent Title IX and Title VII claims for employee sex discrimination at a university).

131. Waid v. Merrill Area Pub. Sch., 91 F.3d 857, 861 (7th Cir. 1996) (concluding that Title VII is an exclusive remedy for employee sex discrimination).

132. *See generally* John Barry & Edna Guerrasio, *A Circuit Split at Intersection of Title VII and Title IX*, LAW 360 (May 9, 2017), https://www.law360.com/articles/913845?scroll=1.

133. *See id.*; *see also Preston*, 31 F.3d at 203.

134. *Lakoski*, 66 F.3d at 752; s*ee also Waid*, 91 F.3d at 861.

135. *Lakoski*, 66 F.3d at 752.

136. *Id.* at 753.

137. *Id.*

Additionally, the Fifth Circuit narrowly construed Supreme Court precedent regarding Title IX, noting that "neither *Cannon* nor *Bell* nor *Franklin* required the Court to address the relationship between Title VII and Title IX."[138] The court further distinguished this body of case law by asserting that "[prior precedent] presented legal questions in which Title VII hovered on the distant horizon, if it was implicated at all. Here, Title VII occupies center stage."[139] The Fifth Circuit emphasized Title VII's remedial measures as proof of Congress' intention to have Title VII preempt Title IX.[140] The court supported this by observing that revocation of federal funds is often the only remedy available for Title IX violations.[141] However, as previously mentioned, the Fifth Circuit weighed in on this issue almost ten years before the Supreme Court holding in *Jackson*, which urged courts to read Title IX broadly on account of its sweeping language.[142] This raises the question of whether the Fifth Circuit would have reached the same conclusion, in light of the holding in *Jackson*. It is possible that the Fifth Circuit, lacking appropriate guidance from the Supreme Court, overlooked the breadth of Title IX intended by Congress.

B. Did the Third Circuit Get It Right?

The Third Circuit's reasoning in *Doe* was largely predicated on four principles derived from Supreme Court precedent. The court used these four principles to support its conclusion that Title VII is not an exclusive remedy.[143] The Third Circuit's first principle asserted that employees are not confined to Title VII when seeking relief for employment discrimination.[144] This first argument is based on the Third Circuit's understanding of *Johnson v. Railway Express*.[145] The Supreme Court in *Johnson* noted that employees are not "limited to Title VII."[146] The issue presented in *Johnson* was the timeliness of a

138. *Id*. at 754.
139. *Id.*
140. *Id.*
141. *Id.*
142. Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 175 (2005).
143. Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545, 562–65 (3d Cir. 2017).
144. *Id.* at 562.
145. Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 455 (1975).
146. *Doe*, 850 F.3d at 562 (quoting *Johnson*, 421 U.S. at 459).

Title VII claim with the EEOC.[147] The Court laid out the administrative scheme embedded within Title VII as a mechanism to combat employee discrimination.[148] However, the Court was also quick to point out that although Title VII contains these administrative remedies, victims are not limited to Title VII as their only form of relief.[149] The Third Circuit's articulation of *Johnson* seems to support the proposition that the Supreme Court did not explicitly characterize Title VII as an exclusive remedy. Therefore, the Third Circuit's first principle set out in *Doe* appears to be valid.

The second principle addressed in *Doe* is that Congress—and not the courts—should decide whether Title VII preempts Title IX.[150] Congress has not expressly indicated that Title IX cannot be used by victims who also qualify under Title VII.[151] Furthermore, other courts have articulated similar points; because Title IX was drafted several years after Title VII, Congress would have likely included language providing for Title VII preemption if that were the intended rule of law. This point coupled with the Supreme Court's assertion in *Johnson*, presents a strong case in favor of Title IX and Title VII's concurrent applicability.

The Third Circuit's third principle relied on the Supreme Court's reasoning in *Cannon*.[152] In *Cannon*, the Supreme Court implied a private cause of action under Title IX, which has been understood to encompass both employees and students.[153] To bolster this argument, the Court emphasized the use of the word "person" in the statutory language of Title IX.[154] The text of Title IX states that "[n]o person . . ." should be discriminated against by a federally funded institution.[155] Because Title IX was drafted to combat discrimination by institutions who receive federal funds, it is plausible Title IX was not intended to

147. *Johnson*, 421 U.S. at 455.

148. *Id*. at 457–58.

149. *Id*. at 459 (asserting that the legislator's intent was to allow victims of employee discrimination to adjudicate their rights under Title VII and any other state or federal laws).

150. *Doe*, 850 F.3d at 562.

151. Fox v. Pittsburg State Univ., 257 F. Supp. 3d 1112, 1123 (D. Kan. 2017).

152. *Doe*, 850 F.3d at 562.

153. *Id.*

154. *Id.*

155. 20 U.S.C. § 1681(a) (2012).

be limited to students. Furthermore, the Supreme Court in *Bell* opined that facially, Title IX's language includes "employees as well as students."[156] Therefore, it follows that if Title IX applies to students and employees, some people inevitably qualify under both Title IX and Title VII. The Third Circuit's reasoning presents this logical deduction: if Title IX applies to students and employees and Congress has not stated that Title VII preempts Title IX, then Title VII and Title IX can apply concurrently to the same individual.[157]

The Third Circuit's final principle asserted that the implied cause of action in Title IX "extends explicitly to employees of federally-funded education programs who allege sex-based retaliation claims under Title IX."[158] This conclusion rests on the most recent Supreme Court decision, *Jackson*. This principle is arguably the most significant of the principles because *Jackson* (2005) was not decided until after the circuit court split emerged in the 1990's. At numerous points in its opinion, the *Jackson* court characterizes Title IX as "broadly"[159] applying to individuals and being applicable to a "wide range"[160] of discriminatory situations. The *Jackson* court's articulation of Title IX serves to explicitly support the Third Circuit's conclusion that Title IX is to be applied liberally.

Overall, the Third Circuit articulates a clear and convincing argument that Title VII and Title IX function as co-existing remedies. Neither the Supreme Court nor Congress has indicated otherwise. However, the Third Circuit failed to note the practical consequences of subjecting hospitals to Title IX. The court also failed to address what other institutions would be affected by this decision. Nonetheless, the Third Circuit's primary holding that Title VII and Title IX exist concurrently for victims of sex discrimination and harassment is a monumental step towards combatting this societal issue.

As previously mentioned, the Third, Fourth, and Sixth Circuits permit medical residents at teaching hospitals to redress harms from sex discrimination under Title IX.[161] Conversely, the Fifth and Seventh

156. N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 520 (1982).
157. *Doe*, 850 F.3d at 562.
158. *Id.*
159. *See* Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 171–75.
160. *Id.* at 175.
161. *See supra* Part IV Section A.

Circuits still consider Title VII to be the exclusive remedy.[162] Opponents of the concurrent applicability of Title IX and Title VII voice concerns about subjecting hospitals to Title IX. After the Third Circuit's decision in *Doe*, the primary concern amongst opponents is that Title IX's applicability to hospitals will create a burden. For instance, some fear that hospitals will need to arm themselves against potential lawsuits now that medical residents have a more direct avenue to litigation through Title IX.[163]

These concerns do have some merit. Extending Title IX to hospitals that house medical residency programs and receive federal funding would require these institutions to comply with Title IX.[164] Therefore, qualifying hospitals would be required to have a Title IX coordinator and follow the applicable administrative guidelines.[165] However, this is a minute price to pay to properly redress the harms experienced by victims of sexual discrimination. Ultimately, the pervasive issue of sexual harassment and discrimination needs to be dealt with head-on and with great vigor. Therefore, preventing qualifying victims from seeking relief under Title IX only serves to undermine victims' ability to confront this insidious national issue.

C. Where the Circuit Court Spilt is Headed

With the addition of the Third Circuit, the split among circuit courts appears to be stacked in favor of Title VII as a non-exclusive remedy, thus allowing victims to also seek relief for sex discrimination under Title IX.[166] It is possible other circuit courts will follow this trend. For example, the District Court of Kansas, within the Tenth Circuit, has recently followed the Third Circuit, concluding that Title VII is not an exclusive remedy.[167]

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162. *See id.*

163. *See* Goldman & Knight, *supra* note 18.

164. *See id.*

165. *See supra* Part II Section B.

166. *See generally supra* Part IV Section A (the Third, Fourth, and Sixth Circuits held Title VII is not an exclusive remedy, while only the Fifth and Seventh Circuits support the opposite conclusion).

167. Fox v. Pittsburg State Univ., 257 F. Supp. 3d 1112, 1119–20 (D. Kan. 2017).

The District Court of Kansas cited to the Third Circuit's holding in *Doe*, agreeing that Title VII and Title IX "ha[ve] concurrent applicability and that Title VII does not displace Title IX employment discrimination claims."[168] The district court also asserted that the Tenth Circuit would take a similar stance if confronted with the issue.[169] The court went on to support this conclusion by noting that the Tenth Circuit in "*Hiatt v. Colorado Seminary* applied Title VII standards to hybrid Title IX retaliation claims by a university faculty member."[170] This demonstrates the inherent interconnection between goals of Title VII and Title IX.[171]

The district court's decision was influenced by the Third Circuit, coupled with finding Title IX and Title VII permit a private right of action "for employees of educational institutions receiving federal funding."[172] Similar to the arguments raised by the Third Circuit in *Doe*, the district court also discussed Title IX's enactment after Title VII.[173] Thus, if Congress wanted Title VII to function as an exclusive remedy, "displac[ing] employment discrimination claims under Title IX," Congress would have included this intention in the statute's language.[174] Most notably, the district court cited to various other district courts that have echoed this holding.[175] Although this issue is ripe for the Supreme Court to resolve, there has been no indication as to whether the Court will revisit this issue.[176] Given the recent attention sexual discrimination has received,[177] it is increasingly more likely that policy considerations will play a substantial role in the Court's decision if this issue were to reach the Supreme Court.

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168. *Id.* at 1121.

169. *Id.* at 1123 (noting the Tenth Circuit already uses Title VII principles in Title IX employee discrimination cases).

170. *Id.* (citing Hiatt v. Colo. Seminary, 858 F.3d 1307, 1313 n.8 (10th Cir. 2017)).

171. *See* Ruth, *supra* note 3, at 187–90 (acknowledging that both Title VII and Title IX seek to prevent discrimination based on sex).

172. *Id.*

173. Fox v. Pittsburg State Univ., 257 F. Supp. 3d 1112, 1123 (D. Kan. 2017).

174. *Id.*

175. *See id.* at 1123 n.35.

176. *See generally* Barry & Guerrasio, *supra* note 132.

177. *See supra* Part I (noting the emerging media outcry against sexual discrimination).

V. POLICY CONSIDERATIONS IN FAVOR OF TITLE VII AND TITLE IX'S CONCURRENT APPLICABILITY

Sex discrimination and harassment plague both the educational[178] and employment[179] sectors. Title VII and Title IX were each passed to combat sex discrimination and to provide victims with protection by ensuring an avenue for relief. The expansive evolution of Title VII and Title IX suggests that sex discrimination is an important area of concern for Congress,[180] the Supreme Court, and society.

Instances of sex discrimination are not limited to medical residency programs. Sexual discrimination is a pervasive societal issue. For instance, the media has recently exposed workplace sexual misconduct in the film industry.[181] Workplace sex discrimination is an issue that bleeds into all segments of employment.[182] However, given the interplay between education and employment, sex discrimination in medical residency programs should be of special concern.

First, medical residency programs serve as the backbone for ensuring the production of quality physicians who have adequate practical experience and training. Teaching hospitals furthers this goal by creating a bridge for students between medical school and real practice.[183] According to the Association of American Medical Colleges, the primary goal of medical residency programs is to provide education through hands-on training.[184] Hospital faculty members are the crucial facilitators in ensuring medical residents are properly prepared and master "the art of medical practice."[185] Moreover, medical

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178. Foster, *supra* note 46, at 1229.

179. *See* Press Release, *supra* note 11.

180. *See* Foster, *supra* note 46, at 1241–42 (noting the legislative history reveals that Congress passed Title IX in response to the need for a solution to "prevent persistent discrimination that serves to perpetuate women's second-class citizenship.").

181. *See* Thulin, *supra* note 17.

182. Press Release, *supra* note 11 (reporting that one in four women experience harassment in the workplace).

183. *See* Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545, 549 (3d Cir. 2017).

184. Ass'n of Am. Med. Colls., DEFINING THE KEY ELEMENTS OF OPTIMAL RESIDENCY PROGRAM 2 (2001), https://www.aamc.org/download/84544/data/definekeyelements.pdf.

185. *Id.* at 4.

residency programs function as not only a learning environment for students, but more importantly these programs set the tone for students' future workplace atmosphere. Sex discrimination in medical residency programs inevitably serves to undermine these goals.[186] Victims of sex discrimination may under-perform, strongly hindering their ability to learn.[187] Additionally, continued sex discrimination within medical institutions deters future residents from entering the field.[188]

Female victims are particularly vulnerable to the adverse effects of sex discrimination.[189] Recent research indicates women experience discrimination specifically in the field of science,[190] which undoubtedly includes medical students. Moreover, women make-up almost half of all medical students.[191] Because this is such a pernicious issue, victims should be entitled to the most expansive remedies available. Consequently, barring victims at medical residency programs from redressability under Title IX creates significant barriers to relief.

The goals of both Title VII and Title IX are undermined when medical residents are prevented from seeking relief under Title IX for sex discrimination.[192] A student in a medical residency program is no less a student than an individual attending college. Therefore, medical residents should be able to redress their harms in the same manner as any other student would. Furthermore, medical residents work under

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186. *See* Foster, *supra* note 46, at 123–32 (observing that sexual harassment was first deemed to be a "form of gender discrimination" due to the barriers it creates for women in both employment and educational arenas).

187. *See Effects of Sexual Harassment*, Stan. U., https://harass.stanford.edu/ be-informed/effects-sexual-harassment (last visited Mar. 30, 2018) (listing adverse effects students experience as a result of sexual harassment).

188. *See* Terry D. Stratton et al., *Does Students' Exposure to Gender Discrimination and Sexual Harassment in Medical School Affect Specialty Choice and Program Selection?*, 80 ACAD. MED. 400, 400, 406 (2005) (concluding that experiencing sex discrimination while obtaining a medical degree may have an impact on choice of specialty and residency program).

189. *See* Press Release, *supra* note 11.

190. Daniel J. Emam, *Manufacturing Equality: Title IX, Proportionality, & Natural Demand*, 105 GEO. L.J. 1107, 1139 (2015) (citing John Tierney, *A New Frontier of Title IX: Science*, N.Y. TIMES (July 15, 2008)).

191. Ass'n of Am. Med. Colls., MEDICAL STUDENTS SELECTED YEARS (2016), https://www.aamc.org/download/481178/data/2015table1.pdf.

192. *See* Ruth, *supra* note 3, at 188–90 (noting the goals of Title VII and Title IX include protecting against sex-based discrimination).

supervising doctors who are responsible for teaching and evaluating their residents.[193] This gives rise to the same power dynamics present in teacher-student relationships. Also, one of the goals of Title IX was to prevent federal funds from being used for discriminatory purposes, including sexual harassment and discrimination.[194] Teaching hospitals, such as the Mercy Hospital, that receive federal funding should be held to the same standards as any other institution that receives the same type of funds.

Moreover, Title IX is usually the preferred avenue for relief because it does not present as many administrative roadblocks as those seen in Title VII.[195] Both Title IX and Title VII aim to protect individuals from sex discrimination. Title IX protects the interests of students, while Title VII protects the interests of employees. Medical residents fall into both categories; they are students and employees of teaching hospitals. It therefore follows that medical residents should enjoy the protections of both Title VII and Title IX.

Additionally, if Title VII and Title IX function as concurrent remedies, victims can choose which avenue for relief best suits their needs and goals. For example, Title VII's exhaustion of administrative requirements forces the victim to resolve the dispute internally, before they can file a claim in court.[196] However, Title IX has no such administrative requirements and a victim can forego internal dispute adjudication by immediately filing suit in court.

Allowing access to both Title IX and Title VII can be especially helpful for victims who are hesitant about reporting their abuse. Sexual harassment and discrimination causes severe psychological and emotional damage.[197] Oftentimes victims are apprehensive about reporting sex discrimination or harassment internally.[198] Requiring a victim to notify his or her employer of sexual harassment places a

193. *See* Doe v. Mercy Catholic Med. Ctr., 850 F.3d 545, 550–52 (3d Cir. 2017).

194. *Title IX Legal Manual*, supra note 44.

195. *See supra* Part II Section B.

196. *See supra* Part II Section A.

197. Jennifer L. Vinciguerra, *The Present State of Sexual Harassment Law: Perpetuating Post Traumatic Stress Disorder in Sexually Harassed Women*, 42 CLEV. ST. L. REV. 301, 315–17 (1994) (noting that many victims experience numerous psychological disorders such as depression, Post-Traumatic Stress Disorder, and severe trauma).

198. *Id.* at 328.

"burden of reporting the incident on the victim," as opposed to placing the "burden of prevention on the employer."[199] Consequently, allowing victims to seek relief under Title IX provides victims with the option to handle this matter externally through the judicial system. On the other hand, some victims may feel more comfortable disclosing these issues internally, and Title VII's administrative requirements would not pose as an issue. Therefore, when dealing with such a delicate issue like sex discrimination, it is important to preserve the ability of a victim to choose which avenue to pursue for relief.

VI. CONCLUSION

Sex discrimination and harassment continue to be widespread problems for students and employees. This issue permeates into all fields, including both the educational and employment spheres. Victims of this type of discrimination should be given wide latitude to redress their harms. Therefore, it is imperative that victims are able to pursue action under both Title VII and Title IX.

The Third Circuit's decision in *Doe* has revived an issue that remained unaddressed for several years. The court's decision allows for the concurrent application of Title VII and Title IX, which fits squarely within Supreme Court precedent.[200] The Third Circuit's broad statutory interpretation of Title IX properly ensures victims have adequate options for seeking relief from these damaging violations. Also, the Third Circuit's reasoning properly upholds the original intent of Congress by affording adequate opportunities for victims who qualify under both Title IX and Title VII to properly seek relief. After revisiting the important issue of Title VII as a concurrent remedy, it is likely that other circuit courts will follow in the Third Circuit's footsteps. This would result in the possibility of more medical residents falling under Title IX's protection.

There are valid practical concerns that may arise when subjecting certain institutions, such as hospitals, to Title IX's requirements. However, these moderate administrative burdens pale in comparison to the benefits that victims will receive from this concurrent protection. Unfortunately, the societal issue of sexual discrimination in the

199. *Id.*

200. *See supra* Part IV Section B.

workplace and educational system is so deeply rooted that it will continue to occur unless it is fought with vigor: giving full access to the protections of both Title VII and IX. Victims should be able to seek relief under Title VII and Title IX because it provides victims with remedial options and adequately holds institutions accountable for the safety of their employees and students.

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