09-1910-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Roy Den Hollander and William A. Nosal, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

--against--

Institute for Research on Women & Gender at Columbia University; School of Continuing Education at Columbia University; Trustees of Columbia University in the City of New York; U.S. Department of Education; Margaret Spellings, U.S. Secretary of Education in her official capacity; Board of Regents of the University of the State of New York, in his or her official and individual capacity; Chancellor of the Board of Regents, Robert M. Bennett, in his official and individual capacity; New York State Commissioner of the Department of Education, Richard P. Mills, in his official and individual capacity; and President of the New York State Higher Education Services Corp., James C. Ross, in his official and individual capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

Southern District Court Judge Lewis A. Kaplan rendered the decision appealed from in which he accepted Magistrate Kevin Nathaniel Fox's Report and Recommendation to dismiss the action for lack of a standing injury. The Report and Recommendation is reported at 2009 WL 1025960 (S.D.N.Y.) and 2009 U.S. Dist. Lexis 34942. The Judge's Order is in the Joint Appendix at App. 48.

SUBJECT MATTER JURISDICTION

The Southern District Court had jurisdiction under 28 U.S.C. § 1331, and the Second Circuit has jurisdiction under 28 U.S.C. § 1291.

The lower court's final Order ("Order"), App. 48, which accepted the magistrate's Report and Recommendation ("Report"), App. 50, dismissed the First Amended Complaint ("Amended Complaint"), App. 12, for lack of a standing injury under Fed. R. Civ. P. 12(b)(1). The Order was entered on April 30, 2009, App. 60, the Notice of Appeal was filed on May 1, 2009, App. 61, and the Pre-Argument Statement was filed on May 1, 2009.

Roy Den Hollander and William A. Nosal were the Class Representatives for the lower court proceedings, but since the filling of this appeal, Mr. Nosal has withdrawn as a class representative due to unspecified pressures.

Class Representative Den Hollander **requests oral argument**.

ISSUES FOR REVIEW

1. Does the appellant Class Representative, Mr. Den Hollander, have standing as a taxpayer and for non-economic injury to challenge New York State and the U.S. Department of Education's violations of the Establishment Clause of the First Amendment for aiding the modern-day religion Feminism at Columbia University?

2. Is Columbia University and New York State's sex-discrimination against the male Class Representative an injury under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq*.) and its implementing regulations?

3. Under Title IX and its implementing regulations, is the continuing absence of the opportunity for an equivalent educational experience for male students and alumni in the form of men's gender studies at Columbia University an injury to the Class Representative?

4. Is Columbia University's failure to provide the Class Representative adequate educational opportunities in the field of men's gender studies an injury to the Class Representative under New York Civil Rights Law § 40-c?

5. Do the activities of Columbia University, New York State, and the U.S. Department of Education that advance misandry-feminism through the Columbia Women's Studies Program have a discriminatory impact on male students and alumni, such as the Class Representative, and erect barriers to them receiving

comparable benefits oriented toward males as female students and alumni receive benefits oriented toward their sex?

6. On a motion to dismiss under Fed. R. Civ. P. 12(b)(1), did the lower court violate the standard of taking all facts alleged in the complaint as true and drawing all reasonable inferences in favor of the plaintiffs' allegations when it decide to dismiss for lack of a standing injury?

The standard of review on a Rule 12(b)(1) motion to dismiss is *de novo*.

CASE STATEMENT

This putative class action was brought for nominal damages and injunctive and declaratory relief for the violation of the putative class and the Class Representative's rights under

1. the Establishment Clause of the First Amendment,
2. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq*.),
3. New York Civil Rights Law § 40-c, and
4. the Equal Protection clause of the 14th Amendment (enforced by 42 U.S.C. § 1983) and equal protection under the Due Process Clause of the 5th Amendment to the U.S. Constitution.

The Southern District Court Judge referred the case to a magistrate. The appellees-defendants moved for dismissal for lack of standing and failure to state a

claim under Fed. R. Civ. P. 12(b)(1) & (6). The Magistrate recommended dismissal for failure to allege a standing injury-in-fact, and the District Judge upheld that recommendation.

The Magistrate recommended dismissal for lack of injury-in-fact because

1. the plaintiffs "do not allege they enrolled in a Women's Studies course(s) at Columbia that caused them to suffer a direct injury occasioned by firsthand exposure to the content of the Women's Studies course(s), or that they were discriminated against, by being denied the opportunity to participate in Columbia's Women's Studies program. *See, e.g.*, Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 167, 92 S.Ct. 1965, 1968 (1972)." Report p. 8-9;

2. "[a]t most, the 'injury' suffered by the plaintiffs, attributed by them to the existence of Columbia's Women's Studies program, is no more than a 'subjective chill,' and not an 'objective harm.' Such an 'injury' is not an 'injury in fact.' Laird v. Tatum, 408 U.S. 1, 13-14, 92 S.Ct. 2318, 2325-26, (1973)." Report p. 9; and

3. "[t]o the extent the plaintiffs allege injury based upon the absence of a Men's Studies program at Columbia, their injury is not 'concrete and particularized'; rather, it is 'conjectural or hypothetical.' *See* Gully v. National Credit Union Admin. Bd., 341 F.3d 155, 160 (2d Cir. 2003)." Report p. 9.

The Judge accepted the Magistrate's recommendations and added

1. "although the Magistrate ... did not reach the merits, it bears noting that

plaintiffs' central claim is that feminism is a religion and that alleged federal and state approval of or aid to Columbia's Institute for Research on Women & Gender therefore constitute a violation of the Establishment Clause of the First Amendment. **Feminism is no more a religion than physics, and at least the core of the complaint therefore is frivolous.**" Order p. 2 (emphasis added); and

2. "[t]he Establishment Clause claims are dismissed also on the alternative ground that they are **absurd and utterly without merit**." Order p. 2 (emphasis added).

The lower court did not rule on class certification for the appellant-plaintiff class, so this case remains a putative class action. "[A] suit brought as a class action should be treated as such for purposes of dismissal or compromise, until there is a full determination the class is not proper." *See e.g.* Kahan v. Rosentiel, 424 F.2d 161, 169 (3rd Cir. 1970); Gaddis v. Wyman, 304 F. Supp. 713, 715 (S.D.N.Y. 1969).

STATEMENT OF FACTS

Parties

The putative class and the Class Representative are represented in this appeal by counsel, Mr. Den Hollander, who is admitted to this court.

The appellees-defendants are

1. the Institute for Research on Women and Gender at Columbia University ("IRWG"), the School of Continuing Education at Columbia University ("SCE"), the Trustees of Columbia University in the City of New York ("Trustees")—all are collectively referred to as "Columbia";

2. the United States Department of Education and its Secretary ("USDOE"); and

3. the Board of Regents of the University of the State of New York and its Chancellor ("Regents"), the Department of Education of New York State and its Commissioner ("N.Y. Education"), the New York State Higher Education Services Corporation and its President ("HESC")—all of the New York State appellees-defendants are collectively referred to as "State."

Causes of Action

The Amended Complaint alleges injuries to the class and Class Representative from

1. Columbia's violations of Title IX, N.Y. Civil Rights Law § 40-c, and the Equal Protection Clause of the 14th Amendment;

2. the State's violations of Title IX, the Equal Protection Clause of the 14th Amendment, and the Establishment Clause of the First Amendment; and

3. USDOE's violation of the Due Process Clause of the 5th Amendment as it applies to equal protection and the Establishment Clause of the First Amendment.

Relevant Facts

The Class Representative, as an alumnus of Columbia University, is in a position of unique opportunity to advance his knowledge, career, and networking contacts by auditing courses through SCE without meeting the qualifications required of the general public. He may also prepare for graduate work through Columbia's Post Baccalaureate Studies, participate in various education programs, or pursue different undergraduate programs through the School of General Studies.

Class Representative Den Hollander, a graduate of the Columbia Business School, contacted SCE in 2007 with the intent to participate in a Men's Studies Program, audit courses, expand networking contacts, and further his career as a litigator for men's rights. (Amend. Compl. ¶¶ 216-23, App. 39). On reviewing SCE's catalogue, he found no Men's Studies Program or courses. He also examined the offerings in Post Baccalaureate Studies and General Studies but found none concerning men's studies. In fact, there is no gender studies program from the masculine perspective at Columbia. An entire institute, however, is devoted to women gender studies, IRWG, with 71 faculty members of which only four are male. (Amend. Compl. ¶ 84, App. 23).

According to IRWG's Guide, it "focus[es] on women, gender, and/or feminist ... perspectives." Fall 2007 Women's and Gender Course Guide, p. 4. IRWG "is the locus of interdisciplinary feminist scholarship and teaching at

Columbia University, and through IRWG, Columbia offers "an undergraduate degree program in Women's and Gender Studies, and graduate certification in Feminist Scholarship ...." Id. at p.1.

IRWG functions as Columbia's headquarters for foisting the belief-system of misandry-feminism through the University's Women's Studies Program—the core of Columbia's feminist apple—that reaches into SCE, Post Baccalaureate Studies, and virtually all activities of the University. (Amend. Compl. ¶¶ 6, 11-12, 70, 71, 93, App. 14-15, 22, 24). The Women's Studies Program is much "broader than what happens in the classroom," and works "to transform [college] curriculum, the campus environment, and society at large." National Women's Studies Association, www.nwsa.org/center/index.php (Columbia is an institutional member).

The Class Representative, as both graduate student and alumnus, repeatedly experienced, inside and outside the classroom, the hostile educational environment toward males that exists throughout the Columbia community as a result of the misandry-feminism advanced by the Women's Studies Program. (Amend. Compl. ¶ 94, App. 24).

As an alumnus, the Class Representative continues to come into contact with Columbia's misandry-feminism and intends to participate in a Men's Studies

Program if one is provided at Columbia in order to further his education and career. (Amend. Compl. ¶ 224, App. 39).

The Regents, who exercise legislative functions over the higher educational system in New York State, N.Y. Educ. Law § 207, and their administrative arm, N.Y. Education, N.Y. Educ. Law § 101, require the establishment and advancement of women's studies programs that advocate and spread male-discriminatory or misandry-feminist doctrine ("Feminism") in New York colleges and universities ("colleges") with the objective of remaking New York State's education, government, business, and culture in the image of Feminist tenets. (Amend. Compl. ¶¶ 24-45, 147-48, App. 16-19, 30).

N.Y. Education monitors, and evaluates for approval curriculum content, planning objectives, testing, faculty, library, academic advising, administrative oversight, financial resources, physical facilities, and whether women's studies programs, such as Columbia's, follow the Regents policies and requirements. 8 N.Y.C.R.R. §§ 52.1, 52.2.

N.Y. Education has repeatedly reviewed and approved Columbia's Women's Studies Program. Approval allows Columbia to offer credit in its Women's Studies; receive direct financial aid from the State for each degree awarded in the Program, N.Y. Educ. Law § 6401; and be eligible for student financial aid from HESC and USDOE for students who enroll in the Program. The

student aid funds are either paid directly to Columbia or first to the students and then to Columbia. 34 C.F.R. 668.164 (disbursing Federal direct loans); N.Y. Educ. Law § 665(3)(c)(i)(payment of HESC student aid).

The Women's Studies Program at Columbia adheres to the requirements set down by the Regents that include providing females—not males—access to a broad spectrum of career opportunities by promoting female friendly strategies for recruitment, selection, and advancement; giving females—not males—extra assistance to obtain jobs in certain fields; replicating practices that advantage females—not males—with support, recruitment, promotion, instruction, training, advocacy, and socialization while all other practices are eliminated with reports as to compliance provided to N.Y. Education's Affirmative Action Officers; focusing the support networks of colleges and creating others to promote the hiring and placement of females—not males; developing, supporting, and promoting research on current issues facing females—not males; and regularly monitoring and reinforcing the teaching of women's studies tenets. Equity for Women in the 1990s, Regents Policy and Action Plan at pp. 4, 7, 8-10 (1993); http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/1d/35.pdf; (Amend. Compl. ¶ 40, App. 18-19).

The State and USDOE are therefore involved not simply with some activity at Columbia University, but with the very activity that violates the rights of the Class Representative.

The Amended Complaint requests nominal damages for past injuries, injunctive and declaratory relief for ongoing injuries that continue to occur at this very moment and will repeat into the foreseeable future.

ARGUMENT SUMMARY

This case is about the propagation of modern-day religious orthodoxy and the unequal treatment of men brought about by those in government and higher education who can only countenance one brand of thinking, one brand of belief, and one brand of speech—their own. The winds of a cult-like conformity blow through the halls of academia when government and centers of learning believe they have discovered the one and only truth.

Columbia, the State, and USDOE have created and continually contribute to a climate of intolerance toward Columbia male students and alumni that effectively imposes the religious dogma of Feminism and bans educational programs, concepts, and facts not considered Feminist. Females in the Columbia community benefit and reap societal rewards while males are impeded and denied equivalent opportunities for advancement.

Columbia's enthusiastic and exclusive propagation of Feminism through its Women's Studies Program; the State's promulgation, approval, and partial financing of the Program; and USDOE's funding prevent countervailing masculine perspectives in gender studies from entering Columbia's ivy tower to challenge the Feminist orthodoxy and benefit males, such as the Class Representative.

The State and USDOE's aid of Feminism at Columbia violates the Taxing and Spending Clause, U.S. Const. Art. I, § 8, for which the Class Representative has standing to challenge as a taxpayer and for noneconomic injuries.

Title IX is violated not only by Columbia and the State's wholesale promotion of Feminism with its discriminatory intent and impact but by providing a wide range of benefits to one group based on sex but not the other. The female oriented Women's Studies Program grants benefits and opportunities to Columbia female students and alumni while a Men's Studies Program is banished from the University to the detriment of the Class Representative. These practices also amount to violation and injury under N.Y. Civil Rights Law § 40-c in the case of Columbia.

Columbia, the State, and USDOE's advancing of Feminism through the Women's Studies Program have a discriminatory impact on the Class Representative and set up barriers to him effectively competing with female

students and alumni, which violates equal protection under the 5th and 14th Amendments.

"Fairness in individual competition for opportunities … is a widely cherished American ethic. Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual," which includes males. Regents of University of California v. Bakke, 438 U.S. 265, 319 n. 53, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). The Class Representative, as other males at Columbia, is denied such fairness.

ARGUMENTS

Establishment Clause Standing

1. The Class Representative has standing as a taxpayer and for non-economic injuries to challenge the State and USDOE's violation of the Establishment Clause of the First Amendment for aiding the modern-day religion Feminism at Columbia.

The lower court inappropriately made a material finding of fact on a motion to dismiss that Feminism is not a religion.

The District Court Judge made a finding of fact by holding that "Feminism is no more a religion than physics...." Order p. 2. Based on that fact-finding, the Judge dismissed the Class Representative's "central claim," "the core of the complaint," "that alleged federal and state approval of or aid" for IRWG's promoting of Feminism at Columbia through the Women's Studies Program violated the Establishment Clause. Order p. 2.

On a motion to dismiss for lack of standing, the allegations in the Amended Complaint are supposed to be accepted as true. Raila v. U.S., 355 F.3d 118, 119 (2d Cir. 2004)(citation omitted). The Amended Complaint alleges that Feminism is a religion, Amend. Compl. ¶¶ 4-15, App. 13-15, but the Judge found this allegation false.

Article III courts are not permitted to proclaim what is true and what is not without going through the procedure of taking and weighting evidence or adhering to the requirements of judicial notice. Since no evidence was submitted, the Judge apparently took judicial notice that Feminism is a non-religion.

To establish an adjudicative fact by judicial notice requires a "high degree of indisputability …." Advisory Committee Note, Fed. R. Evid. 201, subdivision (a). That "high degree" does not exist in this case, especially where both sides are in dispute over a core issue of whether Feminism is a religion.

Because of the Judge's inappropriate fact-finding that Feminism is not a religion, the lower court failed to consider allegations of Establishment Clause violations and the injuries alleged from such violations.[1]

Religion includes non-traditional forms of belief.

Religion for Establishment Clause purposes is neither as narrow, nor as simple a concept as the Judge's statement indicates.

[1] The Judge called such allegations "absurd and utterly without merit." Order p. 2

The Supreme Court has rejected the view that religion is defined solely in terms of a Supreme Being by noting that "Buddhism, Taoism, Ethical Culture, Secular Humanism," and other non-theistic belief-systems are religions. Torasco v. Watkins, 367 U.S. 488, 495 n. 11, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961). In two conscientious objector cases, the Supreme Court found that secular beliefs of a purely ethical or moral source and content which impose a duty of conscience can function as a religion. Welsh v. U.S., 398 U.S. 333, 340, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970); U.S. v. Seeger, 380 U.S. 163, 184-85, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965). Further, intense personal convictions that may appear incomprehensible or incorrect come within the meaning of religious belief. Welsh v. U.S., 398 U.S. at 339.

The Equal Employment Opportunity Commission in Title VII employment cases considers as religion moral or ethical beliefs sincerely held with the strength of traditional religions. 29 C.F.R. §1605.1; LaViolette v. Daley, E.E.O.C. No. 01A01748 (Sept. 13, 2002). In addition, the Equal Employment Opportunity Act, 42 U.S.C. § 2000e(j), defines the term "religion" as including "all aspects of religious observance and practice, as well as belief."

The Southern District in Altman v. Bedford Cent. School Dist., 45 F.Supp.2d 368, 378, (S.D.N.Y. 1999), *rev'd on other grounds*, 245 F.3d 49 (2d Cir. 2001), determined whether a belief-system was religion for Establishment Clause

proposes by using the analysis from Malnak v. Yogi, 592 F.2d 197, 208-210 (3d Cir. 1979)(Adams, J. concurring). Judge Adams's guidelines have been adopted by the Third, Eighth, Ninth and Tenth Circuit Courts of Appeals.

The Malnak test looks at three indicia: whether the belief-system (1) addresses fundamental and ultimate questions having to do with deep and imponderable matters, (2) is comprehensive in nature, (3) has formal and external signs such as structure, organization, efforts at propagation, and observance of holidays. Not all of the indicia need be satisfied for a belief-system to be a religion, but in the case of Feminism practiced at Columbia, all three are. (Amend. Compl. ¶¶ 4-15, App. 13-15).

The Feminism promoted by the Women's Studies Program provides followers with a faith-based certainty that they are the sole possessors of the highest form of truth to the answers of life's persistent questions. The belief-system shapes the entirety of its followers' lives with thought patterns that make possible the description of realities, the formulation of beliefs, and the experiencing of inner attitudes, feelings, and sentiments. It provides a conscious push toward an ultimacy and transcendence that provide norms and power throughout life.

The Feminism propagated at Columbia asserts that sex roles are a result of upbringing: "[t]he [Women's Studies] program is intended to introduce students to

the long arc of feminist discourse about the cultural and historical representation of nature, power, and the social construction of difference." IRWG's Fall 2007 Course Guide at p. 1. Such differences, the adherents of Feminism intensely believe, result from social conditioning, but science, including physics, disagrees, which makes that belief incomprehensible and incorrect—a characteristic of religion. Welsh v. U.S., 398 U.S. at 339.

Feminist indoctrination, propagandizing, and punishment for non-adherence are common practices at Columbia. Since the spreading of Feminism depends largely on teachers, Columbia vets it teachers in accordance with Feminist requirements. (Amend. Compl. ¶ 90(b), App. 24). Feminism is even enforced through State affirmative action officers who investigate complaints of Feminist heresy. Equity for Women in the 1990s, Regents Policy and Action Plan, pp. 8-9. They serve a similar purpose as the Inquisition did for the Catholic Church. Courses also undergo major changes to comply with Feminist tenets. The aim is to create future generations who unflinchingly believe in the orthodoxy of Feminism because there in lies power of the kind exercised by major religions throughout history.

The State and USDOE aid the Feminist religion at Columbia.

The "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." Lee v. Weisman, 505

U.S. 577, 589, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992). The government, whether state or Federal, "may not favor one religion over another, or religion over irreligion ...," McCreary County v. ACLU, 545 U.S. 844, 875, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005), and may not promote or affiliate itself with any religious doctrine or organization, County of Allegheny v. ACLU, 492 U.S. 573, 590, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989).

The ban on aiding a religion includes financing religious instruction and blending secular and sectarian education in secular institutions to foist one or some religion on some person. Zorach v. Clauson, 343 U.S. 306, 314, 72 S.Ct. 679, 96 L.Ed. 954 (1952).

The Founding Fathers intended not only to protect the integrity of individual conscience in religious matters, Wallace v. Jaffree, 472 U.S. 38, 52-54 & n. 38, 86 L.Ed.2d 29, 105 S.Ct. 2479 (1985), but "to guard against the civic divisiveness that follows when the government weighs in on one side of religious debate...," McCreary, 545 U.S. at 876. By allying itself with one particular form of religion, the inevitable result is that government incurs "the hatred, disrespect and even contempt of those who hold contrary beliefs." Engel v. Vitale, 370 U.S. 421, 430-31, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962).[2]

[2] Such hatred, disrespect and contempt satisfy the purpose of standing to assure adverseness. Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962).

"At a time when [Americans] see around the world the violent consequences of the assumption of religious authority by government," McCreary, 545 U.S. at 882 (O'Connor, J. concurring), the Establishment Clause, if enforced, offers protection from similar travails. Unfortunately, in modern-day America, neutrality has been replaced with a preference in government for Feminist doctrine. The teachings of history are ignored "that powerful sects or groups might bring about a fusion of governmental and religious functions ... to the end that official support of the State or Federal Government" are placed behind the tenets of one. Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 222, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

Beginning in 1972, the State started to remake higher education in accordance with Feminist doctrine by promulgating the Feminist belief-system through Regent Statewide Plans and Policy Statements that implemented Feminist orthodoxy through women's studies programs. (Amend. Compl. ¶¶ 31-41, App. 17-19). The State promoted, endorsed, approved, and registered women's studies programs, Amend. Compl. ¶¶ 42-48, App. 19, including the one at Columbia.

Columbia's Women's Studies propagates the modern-day Feminist religion through lectures, seminars, consciousness indoctrination sessions, publications, career preparations, counseling, historical revisionism, propagandizing, inculcating unanimity of thought called "politically correct," promoting a pantheon of idols

such as Mary Wollstonecraft, cultivating *de facto* apostles and disciples, and three public lecture series. (Amend. Compl. ¶ 11, App. 15).

The State and USDOE partially finance Feminism at Columbia, either directly or indirectly. (Amend. Compl. ¶¶ 49-52, 55-68, App. 20-21). It does not matter for Establishment Clause purposes whether the means of attaining the prohibited end of aiding religion is described with "the words 'direct' [or] 'indirect.'" [3] Bd. of Ed. v. Allen, 20 N.Y.2d 109, 116, 281 N.Y.S.2d 799, 228 N.E.2d 791 (1967), *aff'd* 392 U.S. 236 (1968).

While the type of government benefits provided for the instruction of Feminist doctrine are similar to those given Physics, or other programs, the benefits granted Women's Studies at Columbia end up indoctrinating a religion promulgated and partly funded by the State and financed by USDOE. Government benefits—approval, registering, and financing, even through neutral means, cannot further a government end to advance and endorse a religion.

Taxpayer standing allows the Class Representative to challenge the State and USDOE's funding of the religion Feminism.

Individuals do not generally have standing to challenge government taxing and spending solely because they are taxpayers. Hein v. Freedom From Religion

[3] N.Y. Bundy dollars under Educ. Law § 6401 and some USDOE funds go directly into the coffers of Columbia. (Amend. Compl. ¶¶ 21, 56, 62, App. 16, 20, 21). Such funds free-up other money in Columbia's treasury for spending on advancing Feminism through Women's Studies.

Found., Inc., 551 U.S. 587, 593,127 S.Ct. 2553, 168 L.Ed.2d 424 (2007) (plurality opinion). This rule applies to taxpayer suits challenging an allegedly unconstitutional state action as well as federal action. *See* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 346, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006); Arakaki v. Lingle, 477 F.3d 1048, 1062-63 (9th Cir. 2007).

The Supreme Court, however, recognizes "a narrow exception to the general constitutional prohibition against taxpayer standing" when plaintiffs allege that the use of taxpayer funds by state or Federal government violates the Establishment Clause. Hein, 551 U.S. at 602; *see* Flast v. Cohen, 392 U.S. 83, 102-03, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). Because "the Establishment Clause … specifically limits the taxing and spending power conferred by Art. I, § 8," of the Constitution "a taxpayer will have standing consistent with Article III" when he alleges that legislative action under the taxing and spending clause is in derogation of the Establishment Clause. DaimlerChrysler Corp., 547 U.S. 332, 346 (quoting Flast, 392 U.S. at 105-06).

The exception derives from "the history of the Establishment Clause" and is designed to prevent "'the specific evils feared by [its drafters] that the taxing and spending power would be used to favor one religion over another or to support religion in general.'" DaimlerChrysler Corp., 547 U.S. at 348 (quoting Flast, 392 U.S. at 103). The exception recognizes that the "injury" alleged in Establishment

Clause challenges to governmental taxing and spending results not from the effect of the challenged program on the plaintiff's own tax burdens, but from "the very 'extract[ion] and spend[ing]' of 'tax money' in aid of religion." DaimlerChrysler Corp., 547 U.S. at 348 (quoting Flast, 392 U.S. at 106). It is sufficient that the government programs challenged involve a "nexus between the taxpayers' standing as taxpayers and the . . . [government] exercise of [its] taxing and spending power." Bowen v. Kendrick, 487 U.S. 589, 620, 108 S.Ct. 2562, 101 L.Ed.2d 520 (1988).

This taxpayer standing exception only applies to challenges to specific legislative appropriations and disbursements that are undertaken pursuant to express legislative mandates; that is, the legislature restricts what can be done with the funds appropriated. Hein, 551 U.S. at 603-04, 608 n. 7. When the legislature directs how appropriations will be spent, and that taxing and spending aids a religion, then that specific legislative act constitutes a law respecting the establishment of religion. Id. at 603-04. It does not matter that the funding authorized by the legislative branch flows through and is administered by an executive agency, so long that the funds are a program of specific disbursement by the legislature using its taxing and spending power. Bowen, 487 U.S. 589, 619-20.

The New York State Legislature passed the following statutes that authorize specific appropriations and disbursements of taxpayer dollars to higher education, which includes Columbia:

> N.Y. Education Law § 6401, State appropriates aid paid directly to Columbia for each degree awarded, including degrees in Women's Studies;
>
> N.Y. Education Law § 667, State appropriates funds for tuition assistance awards to students;
>
> N.Y. Education Law § 667-c, State appropriates funds for tuition awards for part-time students; and
>
> N.Y. Education Law § 669-a, State appropriates funds for tuition awards to veterans.

With State knowledge and approval, the funds are used, in part, to support both directly and indirectly the accredited Women's Studies Program at Columbia, which propagates the religion of Feminism. (Amend. Compl. ¶¶ 11, 12, 16-18, 47-52, 63-68, App. 15, 19-21).

The Congress passed the following statutes that authorize specific appropriations of taxpayer dollars to higher education in America, which includes Columbia:

> 20 U.S.C. § 1070a(b)(8) & (g), Congress appropriates funds for Federal Pell Grants;
>
> 20 U.S.C. § 1070b(b), Congress appropriates funds for the Federal Supplemental Educational Opportunity Grants;
>
> 20 U.S.C. § 1071(b), Congress appropriates funds for the Stafford Student Loan Program;

20 U.S.C. § 1072(a),(b) & (c), Congress appropriates funds for the Federal Family Education Loan Program;

20 U.S.C. § 1087a(a), Congress appropriates funds for the Federal Ford Federal Direct Loan Program;

20 U.S.C. § 1087aa(b) & (c), Congress appropriates funds for the Federal Perkins Loan Program; and

42 U.S.C. § 2751(b), Congress appropriates funds for Federal Work-Study Programs.

The funds are used, in part, to support both directly and indirectly the accredited Women's Studies Program at Columbia, which propagates the religion of Feminism. (Amend. Compl. ¶¶ 11, 12, 16-18, 47, 55-62, App. 15, 19-21).

The Class Representative, a New York and Federal taxpayer, alleges that the State and Federal legislative branches have used their taxing and spending powers to advance religion in violation of the Establishment Clause at an entity outside both governments by expressly appropriating and authorizing the disbursement of funds that aid the propagation of Feminism at Columbia. (Amend. Compl. ¶¶ 21, 43, 47, 49-52, 55-68, App. 16, 19-21). The Class Representative, therefore, has taxpayer standing to challenge the expenditure of such funds in aid of Feminism pursuant to various State and Federal programs. Bowen, 487 U.S. 589, 619-20.

Non-economic injury standing allows the Class Representative to challenge the State and USDOE's aiding of the religion Feminism at Columbia.

An actual injury from government's aiding of religion may rest on the plaintiff's exposure to the challenged activity, Altman v. Bedford Cent. Sch. Dist., 245 F.3d 49, 72 (2d Cir. 2001), and such an injury may be non-economic, U.S. v. SCRAP, 412 U.S. 669, 686-88, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973).

The majority of circuits have held that spiritual harm resulting from a person's "direct contact with an offensive religious (or antireligious) [communication] is sufficient to confer Article III standing." Green v. ACLU, 568 F.3d 784, 793 (10th Cir. 2009)(quoting Vasquez v. L.A. County, 487 F.3d 1246, 1252 (9th Cir. 2007). Such direct contact with an unwelcome religious exercise works a personal injury distinct from and in addition to each citizen's general grievance against unconstitutional government conduct. Suhre v. Haywood County, 131 F.3d 1083, 1086 (4th Cir. 1997).

When government authority encourages a sectarian religious view, it is a sufficient injury if directed toward the plaintiff, Washegesic v. Bloomingdale Public Sch., 33 F.3d 679, 682 (6th Cir. 1994), because it sends the message "to nonadherents that they are outsiders, not full members of the political community ...." McCreary, 545 U.S. 844, 860 (quoting Lynch v. Donnelly, 465 U.S. 668, 688, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984)(O'Connor, J. concurring)). The flip side of this injury is when government prohibits theories that are deemed antagonistic

to a particular dogma. Epperson v. State of Ark., 393 U.S. 97, 106-07, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

The State and USDOE have done both. In aiding only women's studies, the State and USDOE use social pressure to enforce orthodoxy, which is just as impermissible as more direct means, Lee, 505 U.S. 577, 594. By failing to set policies and provide aid for men's studies, the State and USDOE effectively prohibit the minority views of Columbia's male students and alumni. *See* Santa Fe Ind. Sch. Dist. V. Doe, 530 U.S. 290, 304, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000).

The Class Representative has standing based on his direct contacts with Columbia's practice of propagating Feminism through its Women's Studies Program, which is approved or partially financed by the State and USDOE. As a student, the Class Representative encountered and was confronted by the unwelcome and offensive Feminist orthodoxy foisted by the University's administration, professors, counselors, materials, activities, and IRWG students and activities.

As alumnus, the Class Representative is frequently brought into direct contact and unwelcome observation of the Feminist religion; thereby, incurring a spiritual affront from such religious orthodoxy. Direct contact and observance of offensive religious activities is sufficient to establish the personal and

individualized injury necessary for standing. Pelphrey v. Cobb County, 547 F.3d 1263, 1280 (11th 2008).

It does not matter for injunction purposes that the Class Representative is no longer a student because he still attends events, activities, and uses Columbia facilities that bring him into contact with the ubiquitous Feminism at Columbia. Washegesic, 33 F.3d 679, 683 (former student had standing because while visiting school he would come into direct contact with a religious display). In addition, the Class Representative receives University communications by Internet and U.S. Post, such as the magazine Columbia, that disseminate the orthodoxy of Feminism. In Saladin v. City of Milledgeville, 812 F.2d 687, 692-93 (11th Cir. 1987), the receipt of mail bearing offensive religious communication was a sufficient injury for standing.

Nor does it matter that the Class Representative continues to utilize Columbia because that use is still compromised by repeated contact with religious views to which he is unable to subscribe. "An identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." SCRAP, 412 U.S. at 689 n.14 (quoting Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613 (1968)). Like the SCRAP plaintiffs, the Class Representative is a user of Columbia facilities, and his full use and enjoyment has been curtailed because of the State and USDOE's

aid for the Feminist orthodoxy foisted at Columbia. This curtailment to the full use and enjoyment of his alma mater is an injury-in-fact. *See* Gonzales v. N. Township Lake County, 4 F.3d 1412, 1417 (7th Cir. 1993).

The Class Representative need not enroll in the church, Columbia's Women's Studies Program, nor join the congregation in order to suffer injury from coming into direct and unwelcome contact with the Feminist religion at Columbia. *See* County of Allegheny, 492 U.S. 573, 580 n. 5; Books v. City of Elkhart, 235 F.3d 292, 300 (7th Cir. 2000). Feminism fills the eyes and ears at Columbia with misandry that goes far toward imposing a unitary religion of Feminist orthodoxy for controlling the thoughts, speech, and conduct of members of the University community with a concomitant negative impact on males, such as the Class Representative. (Amend. Compl. ¶ 71, App. 22).

While the Class Representative's injury may be mitigated by absenting himself from the Columbia community, that is no defense to a claim of unconstitutionality under the Establishment Clause. *See* Engel, 370 U.S. 421, 430. It is also no defense to argue that the religious practices here may be relatively minor encroachments on the First Amendment. "The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.'" Schempp, 374 U.S. 203, 225 (citing Memorial and Remonstrance Against

Religious Assessments, quoted in Everson v. Bd. of Educ., 330 U.S. 1, 65, 67 S.Ct. 504, 91 L.Ed. 711 (1947)).

"This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like." Stone v. Graham, 449 U.S. 39, 42, 101 S.Ct. 192, 66 L.Ed.2d 199 (1980)(citation omitted). The purpose of the Women's Studies Program is to induce others to read, meditate upon, venerate, and obey its tenets. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause. What if the State's policies and requirements to remake higher education in accordance with Feminist tenets, along with State and USDOE funding, were replaced with aiding Islam of the kind preached at a Madras. That brand of Islam considers people of different faiths infidels, which is how Feminism views men.

Since the Class Representative has continuing direct contact with the object at issue—the religion of Feminism disseminated by Columbia and aided by the State and USDOE, he continues to suffer actual injury.

Standing under Title IX, N.Y. State Civil Rights Law, and Equal Protection

Injury-in-fact for standing purposes means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, but not

conjectural or hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(citations omitted).

"Particularized" injury means one that affects the plaintiff in a personal and individual way. McCormick ex rel. McCormick v. School Dist. of Mamaroneck, 370 F.3d 275, 284 (2d Cir. 2004)(citation omitted).

"Actual" means something received, or in existence or taking place at the present time. Webster's Third New International Dictionary, ed. 1993.

"Imminent" means a person "is realistically threatened by a repetition of [the violation]," L.A. v. Lyons, 461 U.S. 95, 109, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983), for which past wrongs are evidence, O'Shea v. Littleton, 414 U.S. 488, 496, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). "The plaintiff need only establish that there is a reasonable expectation that his conduct will recur, triggering the alleged harm; he need not show that such recurrence is probable." Jones v. City of L.A., 444 F.3d 1118, 1127 (9th Cir. 2006), *opinion vacated as moot,* 505 F.3d 1006 (9th Cir. 2007).

The Class Representative has been subjected to Columbia University's discrimination against males advanced by its Women's Studies Program. He has been barred from and denied the opportunity to participate in a Men's Studies Program that would provide them with the knowledge, training, contacts, and support for competing with females for the benefits of society and litigating for

men's rights. The Class Representative intends to participate in a Men's Studies Program but the lack of one is an impairment that is continually present. Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1242-43 (11th Cir. 2003). The Class Representative alleges impairment that is continually present in the Amended Complaint at ¶¶ 95- 96, 98-99, 101, 112-13, 171-72, 181-182, 190, 210-211, 216-19, 224, 227, 231, 238-253, 257, 259, 261, 269, 273, App. 24-25, 26-27, 33-34, 36, 38-45.

If this Court considers those injuries as not "actual" but existing in the future, then the "imminent" standard is also satisfied. When the Class Representative filed the complaint in August 2008, there was an immediate threat of repeated injury. Columbia University did not have, and still does not have, a gender studies program with a male perspective. Conduct by Columbia and the State prevent the Class Representative from participating in a Men's Studies Program in the immediate future as he intends to do. (Amend. Compl. ¶ 224, App. 39).

The risk of repeat injury is not conjectural or hypothetical. The Class Representative wants to participate in a Men's Studies Program so as to effectively compete with females in education and careers, but Columbia does not offer and the State does not mandate men's studies, c*f.* McCormick, 370 F.3d 275, 285, because of their written policy requirements for male-discriminatory women's

studies programs. "Where the harm alleged is directly traceable to a written policy there is an implicit likelihood of its repetition in the immediate future." Fortyune v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1081 (9th Cir. 2004).

The law requires an injury-in-fact so that "a personal stake in the outcome of the controversy … assure[s] that concrete adverseness … sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. This is the gist of the question of standing." Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L. Ed. 2d 663 (1962). The Magistrate's selective recounting of the Amended Complaint's allegations makes perfectly clear the Class Representative's "adverseness" to Columbia, the State, and USDOE's failure to support men's studies. Report pp. 3-6.

The Magistrate held that the Class Representative did not allege injury-in-fact "to a distinct group of which [he was] a part," but injury "'shared in substantially equal measure by all or a large class of citizens.'" Report p. 8 (citing Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979), which quoted Warth v. Seldin, 422 U.S. 490, 499, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

The size of a group does not determine injury-in-fact as the Magistrate asserts. The determining factor is whether plaintiff alleges a "generalized grievance," which the Magistrate deleted from his quoting of Warth. The full

quote is "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." Warth 422 U.S. at 499. "General grievance" is found when all citizens have a common interest in government doing what is required by law, but they lack injury to their personal rights. Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 216-17, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974); Ex parte Levitt, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493 (1937)(citations omitted).

As the Amended Complaint makes clear and the Magistrate ignored, this action is not on behalf of the public at large, but a distinct class of males who attended, are attending, or will attend Columbia University and would participate, either as students or alumni, in a Men's Study Program were one offered. (Amend. Compl. ¶ 196, App. 36).

The Magistrate also held that "exercising judicial authority over this case would 'convert the judicial process into no more than a vehicle for the vindication of the value interests of concerned bystanders,' and would ignore 'a due regard for the autonomy of those persons likely to be most directly affected by a judicial order.'" Report p. 9 (quoting Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 473, 102 S.Ct. 752 (1982)).

Again the Magistrate failed to convey the full meaning of his cited quotes. The "convert the judicial process into … bystanders" quote actually comes from a case that found standing for students challenging the Department of Commerce's increase in transportation rates. SCRAP, 412 U.S. 669, 688.

The students had standing because there prospective use and enjoyment of parks would be harmed by the recycling industry reducing the availability of recyclable goods due to a decrease in profits caused by the higher freight rates. As a result, the public would buy less recyclable goods but more of the cheaper non-recyclable goods, which are discarded as refuse in national parks. Also, manufacturers would use more natural resources to meet the demand for the non-recyclable goods. The Supreme Court found injury to the students' use and enjoyment of nature. Id. 412 U.S. at 686-88.

The students in SCRAP are closer to being "bystanders" than the Class Representative in this case who belongs to the Columbia community. Since the SCRAP students had standing, so too does the Class Representative.

The Magistrate's use of the quote that to allow standing would not reflect "a due regard for the autonomy of those persons likely to be most directly affected by a judicial order," Valley at 473, makes no sense. If anything, standing would allow those most directly affected by the discriminatory harm of the Feminism pushed by the Women's Studies Program to fight for equal treatment. True, any success

toward equal treatment would reduce the benefit that such discrimination provides Columbia female students and female alumni, but that is no justification for disparate treatment. "The existence of a permissible purpose [assuming there is one] cannot sustain an action that has an impermissible effect." Wright v. Council City of Emporia, 407 U.S. 451, 462, 92 S.Ct. 2196, 33 L.Ed.2d 51 (1972).

The Magistrate's Report at pp. 8, 9 also relies on a quote from Laird v. Tatum, that "[a]llegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm...," but leaves out the remainder of the quote that gives the reason, which is that Article III courts do not "render advisory opinions." Laird v. Tatum, 408 U.S. 1, 13-14, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972). The reason they don't give advisory opinions was addressed in footnote 7 in Laird that appears right before the partial quote used by the Magistrate. The Magistrate apparently ignored footnote 7, which states, "if [plaintiffs] themselves are not chilled, but seek only to represent those 'millions' whom they believe are so chilled, [plaintiffs] clearly lack that 'personal stake in the outcome of the controversy' essential to standing." The internal quote is from Baker v. Carr, 369 U.S. 186, 204. The full internal quote is whether a party has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This

is the gist of the question of standing." So the Magistrate's reliance on "subjective chill" to find no injury really boils down to whether there is sufficient adverseness.

Besides manipulating various Supreme Court quotes, the Magistrate wrongly held that the Class Representative had to suffer a "direct" injury by enrolling in a Women's Studies course or being denied admission to the Program. Report p. 8, 9. The Supreme Court, however, holds differently. For standing purposes "[t]he injury may be indirect …." Vil. Arlington Hts. v. Metro. Hous. Dev. Corp, 429 U.S. 252, 261, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977)(citation omitted).

The Magistrate also engaged in a mechanical exercise in finding no injury by not comparing the Amended Complaint to similar complaints as the Supreme Court and Second Circuit require. Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984); Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1091-92 (2d Cir. 1995). The Magistrate wrongly compared this case to one in which a person was not injured because he had no legal interest in his clients' claims. W. R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche LLP, 549 F.3d 100, 106-07 (2d Cir. 2008). Here, the legally protected interests of rights under the Establishment Clause, Title IX, and Equal Protection are those of the Class Representative, not some third party.

Title IX and Its Implementing Regulations

Under Title IX, "[n]o person in the United States shall, on the basis of sex, 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. "[T]he term 'program or activity' and 'program' mean all of the operations of … a college, university, or other postsecondary institution …," 20 U.S.C. § 1687(2)(A), which includes any academic, … research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance," 45 C.F.R. § 86.31 and 34 C.F.R. § 106.31. Title IX also applies to "a department, agency, … or other instrumentality of a State or the entity of such State … that distributes [Federal] assistance and each such department or agency ... to which the assistance is extended…." 20 U.S.C. § 1687(1).

Financial assistance to colleges encompasses all forms of Federal aid to education without any distinction between direct institutional assistance and indirect, such as aid received by a school through its students. Grove City Col. V. Bell, 465 U.S. 555, 563-70, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984)(superseded by statute on different issue). Columbia receives both direct and indirect financial assistance from USDOE.

The Regents, N.Y. Education, and HESC are all agencies of the State of New York State. New York's education agencies receive USDOE funds as do all

the education agencies of the 50 states. USDOE website, www.ed.gov/about/offices/list/ocr/docs/tix_dis.html. N.Y. Education and HESC also distribute USDOE assistance. (Amend. Compl. ¶¶ 50, 63-64, App. 20-21).

Title IX applies to Columbia, the Regents, N.Y. Education, and HESC.

Discrimination Injury

2. Columbia and the State injure male students and alumni, which includes the Class Representative, by discriminating against them in violation of Title IX.

"Congress enacted Title IX in 1972 ... '[t]o avoid the use of federal resources to support discriminatory practices' and 'to provide individual citizens effective protection against those practices.'" Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998)(quoting Cannon v. University of Chicago, 441 U.S. 677, 704, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979)). Treating persons differently based on sex is prohibited in all programs of educational institutions. Cohen v. Brown University, 991 F.2d 888, 894 (1st Cir. 1993), *aff'd in part,* 101 F.3d 155 (1st Cir. 1996), *cert. denied,* 520 U.S. 1186 (1997). The statute does not tell a college what to teach or a state what curriculum to register, just that their educational operations cannot treat one sex different from the other based on outmoded stereotypical characterizations of the sexes.

Title IX focuses on prohibiting discrimination against the potential beneficiaries of educational programs. Cook & Sobieski, Civ. Rts. Actions, ¶ 17.29. The Supreme Court construes "discrimination" under Title IX broadly to

include conduct which the statute does not expressly mention, and the Court has consistently interpreted Title IX's private cause of action broadly to encompass diverse forms sex discrimination. Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 174, 183, 125 S.Ct. 1497, 161 L.Ed.2d 361 (2005).

The question is unsettled, however, as to whether Title IX, which prohibits intentional discrimination, also applies to conduct lacking in a discriminatory motive but has a disproportional disparate impact on one group. The Supreme Court has employed a standard less stringent than intentional discrimination for statutes similar to Title IX. De La Cruz v. Tormey, 582 F.2d 45, 61 (9th Cir. 1978)(citation omitted), *cert denied*, 441 U.S. 965 (1979).

Title IX and the reach of its implementing regulations as prohibiting disparate impact is supported by Roberts v. Colorado State Bd. of Agric., 998 F.2d 824, 832 (10th Cir.) *cert. denied* 510 U.S. 1004 (1993)(Title IX implementing regulations do not require discriminatory intent); Lipsett v. University of Puerto Rico, 864 F.2d 881, 897 (1st Cir. 1988)(Title VII disparate impact standard applies to Title IX); and Sharif v. New York State Educ. Dep't, 709 F. Supp. 345, 361 (S.D.N.Y. 1989)(Title IX regulations do not explicitly impose an intent requirement).

The lower court ignored allegations of injury to the Class Representative from both the intentional discrimination and discriminatory impact of Feminism at

Columbia by wrongly claiming injury under Title IX could only result from exclusion from the Women's Studies Program or being treated differently once admitted to the program. Report pp. 8, 9.[4] The Women's Studies Program is only the core of Feminist discrimination at the University. It is from that seed that intentional discrimination and the disparate treatment of males germinate throughout the Columbia community. (Amend. Compl. ¶¶ 3, 12, 70-86, 89, 91, 93, 102-116, 123-24, 213-14, App. 13, 15, 22-28, 38).

Intentional discrimination only requires a motivating factor that can be one among others, and that factor can be inferred from the mere differences in treatment. Vil. Arlington Hts., 429 U.S. 252, 265-66. The Amended Complaint alleges that one motivation on the part of Columbia and the State is ill-will toward male students and alumni, such as the Class Representative, which is reasonably inferred from numerous acts by Columbia and the State. (Amend. Compl. ¶¶ 76-116, App. 22-27).

Intentional sex-discrimination also may be shown by sex-based stereotyping, which in turn evinces a discriminatory intent. Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 119-120 (2d Cir. 2004). "Discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the

[4] The Magistrate cited to Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 167, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972), as authority that a discriminatory injury requires the plaintiff be prohibited or affirmatively barred from admission. That is not what Moose Lodge held. The Supreme Court found there was no state action under 42 U.S.C. 1983, and without state action, the plaintiff could not bring a discrimination charge under the 14th Amendment.

disfavored group as 'innately inferior' and therefore as less worthy participants in the political community, … can cause serious **noneconomic injuries** to those persons who are personally denied equal treatment…." Heckler v. Mathews, 465 U.S. 728, 739-740, 104 S.Ct. 1387, 79 L.Ed.2d 646 (1984)(emphasis added).

The Feminism propagated by the Women's Studies Program at Columbia, which bleeds throughout the University community, stigmatizes and stereotypes male students and alumni, including the Class Representative. It stifles their development and growth by falsely tarnishing them with acts they never committed, intentions they never had, and attributes that require the wholesale sacrificing of their unalienable rights. (Amend. Compl. ¶¶ 70, 74, 75, 77-81, App. 22-23).

As for the State, part of its motivation in requiring colleges to follow Feminist tenets is partiality toward females and enmity toward males. Evidence of the State's enmity towards men is that for nearly thirty years, the Regents have never advocated men's studies programs—only women's studies programs that propagate the misandry of Feminism. The State claims it is only requiring equity in higher education for females, but its measurement of such equity is a quota system that has shown since the 1980s that more females attend and graduate

college in New York than males.[5] Equity for Women in the 1990s, p. 3; 2004 Statewide Plan at p. 70; Amend. Compl. ¶¶ 40, 103-05, App. 18, 25-26.

The only reasonable inference to draw from the State treating females preferentially, in light of its own measurements that show males are the disadvantaged group, is a motivation of ill-will toward males—intentional discrimination, which is an injury. *See* Vil. Arlington Hts., 429 U.S. 252, 265-67 (factors taken into account in determining whether discriminatory purpose was a motivating factor).

Putting aside the allegations of Columbia and the State's discriminatory intent and negative stereotyping, both treat male students and alumni, the minority, less favorably than the majority females, which is a discriminatory impact—also an injury. De La Cruz, 582 F.2d 45, 50.

Columbia treats student and alumni males, such as the Class Representative, differently than females in providing benefits and services and limits males, as compared to females, in the enjoyment of advantages. (Amend. Compl. ¶¶ 169-177, 180-81, 186, App. 32-34). The State injures the Class Representative by rendering assistance to Columbia, an organization that discriminates on the basis of

[5] By 2016, it is estimated that the current discriminatory educational programs in higher education, including New York's, will result in females receiving 64% of the Associate's Degrees, 60% of the Bachelor's Degrees, 62% of the Master's Degrees, 53% of the Professional Degrees, and 66% of the Doctor's Degrees. National Center for Educational Statistics, Digest of Educational Statistics, Table 258.

sex, and by the State implementing polices that foster and validate discrimination against Columbia student and alumni males. (Amend. Compl. ¶¶ 36-40, 116, App. 17-18, 27). Standing is valid when public benefits are extended in a way that discriminates. Ridgefield Women's Pol. Caucus v. Fossi, 458 F.Supp. 117, 120 n. 3 (D.Conn. 1978).

The unmet needs of the disadvantaged sex, here males, further indicates the injury of a discriminatory impact. Brown University, 991 F.2d at 895. A male can enroll in Women's Studies just as the boy in Gomes v. R.I. Interscholastic League, 469 F. Supp. 659, 665 (D. R.I. 1979)(vacated as moot), made the girls volleyball team—but was not allowed to play. Males in Columbia's Program are demeaned as members of a Fritz Lang underclass and effectively cut out of the benefits and opportunities provided females. (Amend. Compl. ¶¶ 87, 88, App. 23-24).

No program at Columbia provides males the opportunities to nurture their talents as females have in Women's Studies because there is no Men's Studies Program. Columbia and the State simply treat males, the minority, whether in the Women's Studies Program or not, less favorably than the majority females, which has a discriminatory impact, *see* Int'l Broth. of Teamsters v. U.S., 431 U.S. 324, 335 n. 15, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977), and, therefore, is an injury.

Fifty years ago when a black man wanted to take a bus from one location to another, he could only do so by sitting in the back. Evers v. Dwyer, 358 U.S. 202,

79 S.Ct. 178, 3 L.Ed.2d 222 (1958). Today, when any man wants to take his education to another level in the area of gender studies, he's relegated to the back of the bus of women's studies—the only transportation available to an education in gender studies and the attendant benefits. As in Evers, the Class Representative is not required to ride that bus "in order to demonstrate the existence of an 'actual controversy'…." Id. at 204.

Lack of Opportunity Injury

3. Columbia and the State cause a Title IX injury by failing to provide equivalent educational opportunities for male students and alumni, including the Class Representative, in the form of men's gender studies.[6]

The lower court held that a person must actually be denied admission to a college program or activity in order to have standing under Title IX. Report p. 9. The withholding by Columbia, however, in accordance with State policies, of opportunities for the furtherance of scholarship and research in men's gender studies carries a similar degree of offensiveness as the arbitrary exclusion from a particular program. *See* Weise v. Syracuse Univ., 522 F.2d 397, 405-06 (2d Cir.

[6] Men's gender studies or men's studies is an interdisciplinary program that uses facts rather than propaganda to describe the truth about the differences and similarities of the sexes and their relationships to society. It provides males the opportunities and lessons that are invaluable in attaining career and life success in a culture biased against men. It advocates a meritocracy in which the person most qualified receives the position as opposed to women's studies quota-imposed unisex-society that ignores the facts of life, voluntary choice, human nature, common sense, or documented merit. Examples of what men's studies include are in the Amended Complaint at ¶¶ 229-52, App. 40-42.

1975). The Title IX injury in this case is the continuing absence of the opportunity for an equivalent educational experience, which is a benefit denied the Class Representative. *See* Ridgefield Women's Pol. Caucus, 458 F.Supp. 117, 120 n. 3.

In educational programs, colleges are prohibited from limiting any person on the basis of sex from the enjoyment of any privilege, advantage, or opportunity afforded the other sex. 34 C.F.R. § 106.31(b)(7). Columbia fails to provide the benefits of a counter-balance to the Women's Studies Program just as many colleges once failed to provide similar benefits in the area of athletics to females. When a college only has a male rugby team, the injury to females who want to play rugby is that there is no female team.

"[A]n institution may violate Title IX simply by failing to accommodate effectively the interests and abilities of student athletes of both sexes." Roberts, 998 F.2d 824, 828; *see also* Brown University, 991 F.2d 888, 897-98; Boulahanis v. Board of Regents, 198 F.3d 633, 635 (7th Cir. 1999). As alleged in the Amended Complaint, Columbia's Women Studies accommodates females—not males—because the State and Columbia created and operate the Program for the benefit of female students and alumni.

The Women's Studies Program caters to female students and female alumni by providing them with a golf-like handicap in education and career opportunities. Because the Program furthers misandry-feminism, it does not foster cooperation

between the sexes but rather competition and conflict. It is not neutral, but one oriented to giving females advantages over males while disadvantaging males. A male, therefore, would not benefit from the Program, just as a female would not benefit from being on a men's rugby team. The moment she stepped on the field she would be slaughtered, just as a male would be psychologically slaughtered in the anti-male Women's Studies Program from efforts to diminish and control him in accordance with Feminist dictates.

The Program, with State funding and approval, benefits females over males through (1) feminine oriented instruction, training, and preparation that leads to undergraduate degrees and graduate certifications in women's studies; (2) a post-baccalaureate program in women's studies; (3) alumni auditing of courses geared to female concerns; (4) a female recruitment and networking center, in violation of 34 C.F.R. § 106.38, that gives females an inside track to jobs in academia, government, media, business, and nonprofit groups through females and sufficiently fearful males already in positions in those fields; (5) affirmative action requirements that gin-up the number of females in education and the work place well beyond their proportion in the population; (6) preferential treatment for females in part-time employment at IRWG facilities in violation of 34 C.F.R. § 106.51; (6) emotional support from a feminine perspective; and (7) training on how to exploit discrimination and unfair competition against men in order to obtain and

use tax dollars from government agencies that subsidize disparate treatment of males, to lobby politicians into supporting legislation that benefits females at the cost of the rights of males, such as the Violence Against Women Act, and to use tax exempt organizations for disseminating Feminist tenets that excuse the most reprehensible deeds of females by blaming men.[7] (Amend. Compl. ¶¶ 8, 38, 40, 73, 83, 97-98, 101-05, 116, 164, 170-71, 173, 181-82, 186, 188, 256-57, 268-71, App. 14, 17-18, 22-23, 25-27, 32-35, 43-44).

No such opportunities and backing are focused on males as they are on Columbia female students and alumni. As a result, female students and alumni of Columbia receive a public benefit promulgated and supported by the Regents and, in part, financed, directly and indirectly, by N.Y. Education and HESC while no comparable and effective benefits are provided to male students and alumni, such as the Class Representative. Standing exists where public benefits are extended in a way that benefits one sex over the other. Ridgefield Women's Pol. Caucus v. Fossi, 458 F.Supp. 117, 120 n. 3 (D.Conn. 1978).

[7] It does not matter whether the Court believes this litany or not because the Amended Complaint alleges such, and at this stage, the Amended Complaint is what matters—not the personal belief systems of the majority of Americans or the appellees. *See* Raila, 355 F.3d 118, 119. For every renowned expert the appellees can produce who says the Women's Studies Program provides equivalent benefits and opportunities to males as it does females, I can produce one that says it is a male-hating operation bent on profiting females at the expense of males.

By failing to field a Men's Studies Program[8] that effectively accommodates the interests and abilities of males in the University community, Columbia, aided by the State, creates a barrier for male students and alumni, such as the Class Representative. A Title IX injury results from the barrier, which is the absence of men's gender studies that would allow males to benefit to an equivalent degree as females benefit from the feminine oriented Women's Studies Program. *See* Pederson v. Louisiana State Univ., 213 F.3d 858, 871 (5th Cir. 2000); *cf.* Northeastern Fla. Assoc. Gen. Contractors Am. v. Jacksonville, 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993).

Unlike their female counterparts, male students and alumni, including the Class Representative, face significant barriers to benefiting from an education in gender studies from the masculine perspective. For example, the Class Representative has

1. no opportunity to earn an undergraduate degree or a graduate certification in men's studies, which would "testif[y] to mastery of a body of cross-disciplinary literature and enhance employability, especially in" academia;

[8] Any argument that the harm from the lack of a Men's Studies Program merely reflects a different level of concern among males than females is nothing more than 40 year-old stereotypical notions. *See* Brown U., 101 F.3d 155, 178-79. Over the past 40 years, the systemic unfair treatment of the minority—males, as compared to the majority—females, Amend. Compl. ¶ 188, App. 35, has created a need for men's gender studies to balance the scales. Even in Columbia programs not grounded in "gender issues," the Feminist perspective dominates and censors male oriented viewpoints. (Amend. Compl. ¶ 176, App. 33).

2. no opportunity to gain knowledge in a field of men's studies by taking continuing education courses or post-baccalaureate studies to prepare for graduate school;
3. no opportunity to participate in or inter-react with "a vibrant interdisciplinary community of scholars, researchers and students" in the field of men's studies; [9]
4. no advantages from a "thoroughly interdisciplinary framework, methodological training and substantive guidance in specialized areas of research" into men's issues;
5. no opportunity for "an education that is both comprehensive and tailored to [the] individual needs" of males;
6. no opportunity to "undertake original research and produce advanced scholarship" in men's studies;
7. no opportunity to prepare "for future scholarly work" in men's studies or "for careers and future training in law, public policy, social work, community organizing, journalism, medicine, and all those professions in which there is a need for critical and creative interdisciplinary thought" from the male perspective;

[9] All the quotations in these numbered paragraphs are taken from the website of Columbia's IRWG, which uses the quotes to tout the benefits of Columbia's Women's Studies for females.

8. no opportunity for those enrolled in doctoral programs and professional schools to take graduate courses in contra “feminist theory, inquiry, and method”;
9. no opportunity in violation of 34 C.F.R. § 106.36 to receive counseling and guidance that focuses on the masculine sex;
10. no opportunity to acquire knowledge and arguments to counter the dissembling Feminist dogma prevalent in the governmental, social, business, political, media, and domestic spheres of modern-day life in America;
11. no opportunity to access an extensive network for career benefits dedicated to men; and
12. no opportunity to train for effectively protesting male inequalities—whether in college, the work force, or before government bodies.

The Class Representative, as do other Columbia male alumni and students, deserve the opportunity to compete on a level playing field with females in the furtherance of their education at Columbia and the benefits it can provide in the Columbia community and the workplace. If Columbia female students and alumni can compete with the coaching and support of a female oriented gender studies program, then male students and alumni should also be able to with the backing of a masculine gender studies program. Denial of comparable opportunities and benefits is a Title IX injury. *See* McCormick, 370 F.3d 275, 284-85 (standing for

injunction when girls who intended to play soccer in the fall were denied the opportunity because school did not field a girls' soccer team in the fall).

As with separate but equal sports teams, separate but equal gender studies are necessary for giving one sex benefits denied the other. Separate sports teams for females permit them to develop cooperation, competitiveness, commitment, and other valuable traits. In gender studies, a program from the male point-of-view will enable males to develop their abilities and skills for battling effectively in the ever-present "gender wars" raging in this society.

The Class Representative tried to participate in a Men's Studies Program at the University, but there was none—that's an injury for which nominal damages should be awarded. A claim for monetary damages looks back in time and is intended to redress a past injury. Adler v. Duval County Sch. Bd., 112 F.3d 1475, 1477 (11th Cir. 1997). The Class Representative is also ready and able to participate in a men's studies program, which establishes standing for injunctive relief under a Title IX. Pederson, 213 F.3d 858, 871.

New York State Civil Rights Law § 40-c

4. Under New York Civil Rights Law § 40-c, Columbia injures the Class Representative by failing to provide him opportunities equal with female students and alumni as a result of Columbia's inadequate educational opportunities in the field of men's gender studies.

New York State prohibits discrimination against persons based on sex by any institution that fails to provide equal opportunity, whether because of

prejudice, discrimination, or inadequate educational opportunities. N.Y. Civ. Rights. § 40-c, Historical & Statutory Notes, L.2002, c.2, § 1.

The term "institution" includes colleges supported in whole or in part by contributions solicited from the general public. N.Y. Civ. Rights § 40. Columbia launched a major fundraising campaign in 2006 that solicits contributions from the general public. (Amend. Compl. ¶ 203, App. 37).

The lower court completely ignored allegations of injury from Columbia failing to provide equal educational opportunities to males. (Amend. Compl. ¶¶ 169-175, 180-182, 186-87, 201-02, 210, App. 32-34, 37-38). The lack of a men's studies program leaves the Class Representative with inadequate educational opportunities as compared to female alumni and students. *Supra* at "Title IX, Lack of Opportunity Injury."

Equal Protection under the 5th and 14th Amendments

5. The practices of Columbia, the State, and USDOE in advancing misandry-feminism through the Women's Studies Program at Columbia have a discriminatory impact on male students and alumni, such as the Class Representative, and erect barriers to them receiving comparable benefits oriented toward males as female students and alumni receive benefits oriented toward their sex.

State Action

A private entity acts under the color of state law for 14th Amendment purposes when the state (1) authorizes or encourages the invidiously discriminatory activities, Reitman v. Mulkey, 387 U.S. 369, 375, 87 S.Ct. 1627, 18

L.Ed.2d 830 (1967); or (2) is involved with the activity that discriminates, Powe v. Miles, 407 F.2d 73, 81 (2d Cir. 1968)(Friendly, J.); or (3) affirmatively approves discrimination through its regulatory powers, Public Utilities Comm. v. Pollak, 343 U.S. 451, 462 & n. 8, 72 S.Ct. 813, 96 L.Ed. 1068 (1953), by in effect placing a state's imprimatur on the prohibited activities, Jackson v. Metro. Edison Co., 419 U.S. 345, 357, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974). In determining state action in sex discrimination cases, the standard is a less onerous one than normally used. Weise, 522 F.2d at 405-06.

Here the State is involved with the very activities that discriminate at Columbia. The Regents and N.Y. Education require preferential treatment of females, instill misandry-feminist tenets into higher education, create Feminist agents called "affirmative action officers" to enforce and punish those for not dutifully adhering to Feminist polices, and exercise functions that are more than ministerial. (Amend. Compl. ¶¶ 25-41, 146, App. 16-19, 30).

In addition, by reviewing, approving, re-reviewing, and re-approving every aspect of the Women's Studies Program at Columbia, N.Y. Education stamps the State's imprimatur on a program alleged to practice and promote invidious discrimination. (Amend. Compl. ¶¶ 44-48, App. 19).

Without the State's authorization, encouragement, involvement, and stamp of approval on the Feminist misandry activities at Columbia, the University would

not grant credit or degrees in Women's Studies, or receive financing, either directly or indirectly, for the continuation of the Women's Studies Program. Columbia, therefore, is a state actor for purposes of 42 U.S.C. 1983.

The Regents, N.Y. Education, and HESC are all state agencies, so their practices are state actions under the 14th Amendment while USDOE is part of the Federal Government, so its conduct falls under the Due Process clause of the 5th Amendment.

Discriminatory Impact Injury

The alleged impact injury is not keeping males out of the Women's Studies Program's courses and activities or treating them differently within the Program, but the harmful impact that the Feminism, furthered by the Program, has on males in the Columbia community. It is how Feminism is used at Columbia that results in the violation of the rights of males.

Discriminatory or disparate impact occurs when the effect of a policy falls overwhelmingly on one group. De La Cruz, 582 F.2d at 53. "The lack of pure gender-specificity is no bar [to a court action]." Id. at 57. The essence of the disparate impact legal attack is imbalance and disproportionality. Id. at 57. One of the greatest powers over human beings is the power of belief, and Columbia's fostering of one-sided, misandry-feminism has a disproportionately adverse impact

on male students and alumni, such as the Class Representative. (Amend. Compl. ¶¶ 71-75, 172, App. 22, 33).

The Amended Complaint alleges that the harmful results of Columbia's Program, the State's policies promoting Feminism, and USDOE's funding fall mainly on Columbia male students and alumni, including the Class Representative. (Amend. Compl. ¶¶ 70-75, 91, 95, 100-105, 112, 114-16, 123-25, App. 22, 24-28). Educational opportunities, benefits, and services are not made available or are made available on an unequal basis or are of less value to the Class Representative when compared to what females receive from the Women's Studies Program. (Amend. Compl. ¶¶ 96-98, 168-76, 261, 268-69, App. 25, 32-33, 43-44).

State and USDOE aid support the Feminism propagated by the Women's Studies Program by supporting the Program. Both, therefore, contribute indirectly to the discriminatory impact the Program has on males at Columbia. In addition, since State and USDOE aid benefits females without any comparable benefits to males by way of a Men's Studies Program, both directly cause a discriminatory impact on Columbia males. Ridgefield, 458 F.Supp. at 122.

Barriers to Benefits Injury

An injury-in-fact that supports standing under the Equal Protection Clause can be the existence of a "barrier that makes it more difficult for members of one

group to obtain a benefit than it is for members of another group." Northeastern, 508 U.S. 656, 666.

The barriers in this action are the dominance of Feminism achieved by the Women's Studies Program at Columbia and the lack of the countervailing viewpoint of men's studies.

The dominance of Feminism at Columbia is not only stigmatizing and offensive to males but obstructs equal treatment of the Class Representative in accessing education, knowledge, career opportunities, and training. (Amend. Compl. ¶¶ 70-75, 98-99, 100, 113, 260-61, App. 22, 25, 27, 43). Females, however, do not encounter such barriers due to the inculcation of Feminism by the Women's Studies Program. As a result, the Program has created a barrier to equal treatment at Columbia, which is an injury. *See* Northeastern, 508 U.S. at 666-67.

The lack of a Men's Studies Program, in turn, prevents the Class Representative from competing on an equal footing with females in education and society as a whole, which is also an injury. In re U.S. Catholic Conference**,** 885 F.2d 1020, 1025, 1028-31 (2d Cir. 1989)(concerning competitive advocate standing)(citations omitted). Columbia's lack of a Men's Studies Program erects barriers to opportunities for the Class Representative. *See* Bryant v. Yellen, 447 U.S. 352, 366-67, 100 S. Ct. 2232, 65 L.Ed.2d 184 (1980)(farm workers had

standing because favorable decision would give them the opportunity to buy farm land).

When barriers are based on impermissible criteria, immediacy of the harm is the disadvantaged group alleging they intend to compete with those receiving the benefits. Adarand Constructors v. Pena, 515 U.S. 200, 211, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995). Here, it is the Class Representative intending to enroll in a Men's Studies Program at Columbia. (Amend. Compl. ¶ 224, App. 39).

Causality exists because the Class Representative is able and ready to pursue men's studies which Columbia, the State, and USDOE prevent by not supporting and not providing one. Gratz v. Bollinger, 539 U.S. 244, 262, 123 S.Ct. 2411, 156 L.Ed.2d 257 (2003). The remedy is restoring equality, which can occur by withdrawing the female oriented benefits and opportunities provided by the Feminist Women's Studies Program, or extending similar opportunities and benefits with a masculine focus through a Men's Studies Program. Either will profit the Class Representative in some personal way.

Breach of the Fed. R. Civ. P. 12(b)(1) Standard for Dismissal

6. The lower court failed to follow the standard for determining a Fed. R. Civ. P. 12(b)(1) motion to dismiss.

In determining a motion to dismiss for lack of standing under Fed. R. Civ. 12(b)(1), a "court must take all facts alleged in the complaint as true and draw all

reasonable inferences in favor of [the] plaintiff." Raila, 355 F.3d 118, 119. The Magistrate and District Judge did neither.

The lower court failed to take all facts alleged in the complaint as true.

The Magistrate inappropriately tried to narrow the allegations of discriminatory impact from the Feminism propagated by the Women's Studies Program at Columbia to only those males who enroll, or attempt to enroll, in the Program's courses.[10] Report pp. 4, 8-9.

The Amended Complaint, however, alleges "Columbia's Women's Studies Program not only creates a hostile learning environment for males, but has engendered such a hostile environment throughout the University." (Amend. Compl. ¶¶ 94-96, 112, 168, 176, App. 24-25, 26-27, 32-33). The Amended Complaint also alleges non-enrollment injures at ¶¶ 30, 40 (r)(u)(v)(x), 70, 115-16, 207, 210-231, 260-61, 266-67, App. 17-19, 22, 27, 38-40, 43-44, and other specific injuries that the Magistrate failed to address at ¶¶ 172-175, 186, 253, 257-259, 268-271, App. 33, 34, 42-44. The Magistrate did refer to some injuries, Report pp. 3-5, but failed to give the specific cites, which are ¶¶ 210, 211, 219, 224, 225, 229, 231, 233, 235, 237, 242, App. 38-41.

[10] Women's Studies programs are much "broader than what happens in the classroom," and work "to transform [college] curriculum, the campus environment, and society at large," according to the National Women's Studies Association, www.nwsa.org/center/index.php, of which Columbia is an institutional member.

The Magistrate also erred in requiring the Class Representative to show "by a preponderance of the evidence, that subject matter jurisdiction [standing] exists." Report p. 6. The Magistrate cites to Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000), where this Court used evidence outside the pleadings to determine whether sovereign immunity protected the U.S. from suit. In this case, however, there is no evidence outside the pleadings. So rather than relying on the allegations in the Amended Complaint as true, the Magistrate relied on some unknown evidence to find a lack of standing.

The lower court failed to draw all reasonable inferences in favor of the Class Representatives.

Contrary to the Magistrate and the District Judge's beliefs, the benefit given a *pro se* plaintiff is not that the courts construe a complaint liberally, they already have to do that under Rule 12(b)(1), but that the courts take the time to research the law to make sure a non-lawyer has not missed a case that provides support for an argument he omitted. Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007). Here the Magistrate and the District Judge actually gave the Amended Complaint a narrow, restricted interpretation in order to dismiss while trying to appear magnanimous in claiming to apply a more lenient standard than that required by Rule 12(b)(1).

The Magistrate also failed to consider general allegations as embracing specific facts in his Report at pp. 3-6, 7. Since this case is at the pleading stage, general factual allegations of injury resulting from the appellees' conduct may

suffice, for on a motion to dismiss, the Court presumes that general allegations embrace those specific facts that are necessary to support the claim. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(quoting Lujan v. National Wildlife Federation, 497 U.S. 871, 889, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)).

The Magistrate's failure to draw reasonable inferences apparently resulted from a lack of attention to the Class Representative's Amended Complaint and motion papers. He found that the Class Representative's Memorandum of Law in Opposition merely "reiterate[s] the assertions made in the amended complaint," Report p. 3, when the memorandum did what it was supposed to do—set forth the points of law and authorities relied on in opposing the motions to dismiss, S.D.N.Y. Local Civ. R. 7.1. His legal analysis failed to distinguish Title IX injury from Equal Protection injury and ignored injuries alleged from violation of the Establishment Clause and N.Y. Civil Rights Law § 40-c. (Amend. Compl. ¶¶ 23, 70-90, 93, 96-99, 201, 207-09, App. 16, 22-25, 37-38). The Magistrate even stated that not all the appellees-defendants moved to dismiss for lack of standing, Report p. 7, when they did.

When allegations are ignored and phantom evidence relied on by the courts, it raises the specter of intentional or reckless disregard for the rights of a disfavored minority.

CONCLUSION

This men's rights case is apparently irrelevant in the eyes of the courts, which is true with most, if not all, cases advocating that men are human beings endowed with rights even when in conflict with the preferential treatment given the opposite sex. Although the importance and protection of individual constitutional rights is a central part of the role assigned to the judiciary under the separation of powers, constitutional and statutory rights apparently no longer apply to men.

The courts are supposed "to protect unpopular individuals … and their ideas from suppression—at the hand of an intolerant society,' McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 357, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), but today in America, they follow the dictates of the Feminist Establishment by writing the rights of men out of the laws of the land under the rubric of judicial activism. If there is any doubt about this, then imagine an action before this Court in which a college has a Men's Studies Program but no Women's Studies Program. Would female students and alumni be granted standing to challenge such an inequity—yes!

Dated: August 15, 2009
New York, N.Y.

/S/

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) by containing 13,789 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) by using Microsoft Word Times New Roman in font size 14.

ADDENDUM

ADDENDUM OF CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

U.S. Constitution

Article I, Section 8

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States….

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof….

Fifth Amendment

No person shall be … deprived of life, liberty, or property, without due process of law….

Fourteenth Amendment

No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Statutes

20 U.S.C. §1070a. Federal Pell Grants: amount and determinations; applications

(b) Purpose and amount of grants

(1) The purpose of this subpart is to provide a Federal Pell Grant that in combination with reasonable family and student contribution and supplemented by the programs authorized under subparts 3 and 4 of this part, will meet at least 75 percent of a student's cost of attendance …, unless the institution determines that a greater amount of assistance would better serve the purposes of section 1070 of this title.

(8) Additional funds.—
(A) In general.— There are authorized to be appropriated, and there are appropriated, to carry out subparagraph (B) of this paragraph (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—
(i) $2,030,000,000 for fiscal year 2008;
(ii) $2,090,000,000 for fiscal year 2009;
(iii) $3,030,000,000 for fiscal year 2010;
(iv) $3,090,000,000 for fiscal year 2011;
(v) $5,050,000,000 for fiscal year 2012;
(vi) $105,000,000 for fiscal year 2013;
(vii) $4,305,000,000 for fiscal year 2014;
(viii) $4,400,000,000 for fiscal year 2015;
(ix) $4,600,000,000 for fiscal year 2016; and
(x) $4,900,000,000 for fiscal year 2017.

(g) Insufficient appropriations
If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (b) of this section (but at the maximum grant level specified in such appropriation), the Secretary shall promptly transmit a notice of such insufficiency to each House of the Congress, and identify in such notice the additional amount that would be required to be appropriated to satisfy fully all entitlements (as so calculated at such maximum grant level).

20 U.S.C. § 1070b. Federal Supplemental Educational Opportunity Grants, purpose; appropriations authorized,

(b) Authorization of appropriations

(1) For the purpose of enabling the Secretary to make payments to institutions of higher education which have made agreements with the Secretary in accordance with section 1070b-2(a) of this title, for use by such institutions for payments to undergraduate students of supplemental grants awarded to them under this subpart, there are authorized to be appropriated $675,000,000 for fiscal year 1999 and such sums as may be necessary for the 4 succeeding fiscal years.

(2) Sums appropriated pursuant to this subsection for any fiscal year shall be available for payments to institutions until the end of the second fiscal year succeeding the fiscal year for which such sums were appropriated.

20 U.S.C. § 1071. Stafford Student Loan Program, statement of purpose; nondiscrimination; and appropriations authorized,

(b) Authorization of appropriations

For the purpose of carrying out this part—
(1) there are authorized to be appropriated to the student loan insurance fund (established by section 1081 of this title)
(A) the sum of $1,000,000, and
(B) such further sums, if any, as may become necessary for the adequacy of the student loan insurance fund,
(2) there are authorized to be appropriated, for payments under section 1078 of this title with respect to interest on student loans and for payments under section 1087 of this title, such sums for the fiscal year ending June 30, 1966, and succeeding fiscal years, as may be required therefor,
(3) there is authorized to be appropriated the sum of $17,500,000 for making advances pursuant to section 1072 of this title for the reserve funds of State and nonprofit private student loan insurance programs,
(4) there are authorized to be appropriated
(A) the sum of $12,500,000 for making advances after June 30, 1968, pursuant to sections 1072(a) and (b) of this title, and
(B) such sums as may be necessary for making advances pursuant to section 1072(c) of this title, for the reserve funds of State and nonprofit private student loan insurance programs, and
(5) there are authorized to be appropriated such sums as may be necessary for the purpose of paying a loan processing and issuance fee in accordance with section 1078(f) of this title to guaranty agencies.
Sums appropriated under paragraphs (1), (2), (4), and (5) of this subsection shall remain available until expended. No additional sums are authorized to be appropriated under paragraph (3) or (4) of this subsection by reason of the reenactment of such paragraphs by the Higher Education Amendments of 1986.

20 U.S.C. § 1072. Family Education Loan Program, Advances for reserve funds of State and nonprofit private loan insurance programs,

(a) Purpose of and authority for advances to reserve funds

(1) Purpose; eligible recipients

From sums appropriated pursuant to paragraphs (3) and (4)(A) of section 1071(b) of this title, the Secretary is authorized to make advances to any State with which the Secretary has made an agreement pursuant to section 1078(b) of this title for the purpose of helping to establish or strengthen the reserve fund of the student loan insurance program covered by that agreement. If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section1078(b) of this title, and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances for such year for the same purpose to one or more nonprofit private institutions or organizations with which the Secretary has made an agreement pursuant to section 1078(b) of this title in order to enable students in the State to participate in a program of student loan insurance covered by such an agreement. The Secretary may make advances under this subsection both to a State program (with which he has such an agreement) and to one or more nonprofit private institutions or organizations (with which he has such an agreement) in that State if he determines that such advances are necessary in order that students in each eligible institution have access through such institution to a student loan insurance program which meets the requirements of section 1078(b)(1) of this title.

(b) Limitations on total advances

(1) In general
The total of the advances from the sums appropriated pursuant to paragraph (4)(A) of section 1071(b) of this title to nonprofit private institutions and organizations for the benefit of students in any State and to such State may not exceed an amount which bears the same ratio to such sums as the population of such State aged 18 to 22, inclusive, bears to the population of all the States aged 18 to 22 inclusive, but such advances may otherwise be in such amounts as the Secretary determines will best achieve the purposes for which they are made. The amount available for advances to any State shall not be less than $25,000 and any additional funds needed to meet this requirement shall be derived by proportionately reducing (but not below $25,000) the amount available for advances to each of the remaining States.

(c) Advances for insurance obligations

(1) Use for payment of insurance obligations

From sums appropriated pursuant to section 1071(b)(4)(B) of this title, the Secretary shall advance to each State which has an agreement with the Secretary under section 1078(c) of this title with respect to a student loan insurance program, an amount determined in accordance with paragraph (2) of this subsection to be used for the purpose of making payments under the State's insurance obligations under such program.

20 U.S.C. § 1087a. Ford Federal Direct Loan, program authority

(a) In general
There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994. Such loans shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

20 U.S.C. § 1087aa. Federal Perkins Loans, appropriations authorized

(b) Authorization of appropriations

(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $250,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.
(2) In addition to the funds authorized under paragraph (1), there are hereby authorized to be appropriated such sums for fiscal year 2003 and each of the 5 succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 2003, to continue or complete courses of study.

(c) Use of appropriations

Any sums appropriated pursuant to subsection (b) of this section for any fiscal year shall be available for apportionment pursuant to section 1087bb of this title and for payments of Federal capital contributions therefrom to institutions of higher education which have agreements with the Secretary under section 1087cc of this

title. Such Federal capital contributions and all contributions from such institutions shall be used for the establishment, expansion, and maintenance of student loan funds.

20 U.S.C.§ 1681. Title IX, sex

(a) Prohibition against discrimination; exceptions

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, except that:
(1) Classes of educational institutions subject to prohibition
in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education….

20 U.S.C. § 1687. Title IX interpretation of "program or activity,"

For the purposes of this chapter, the term "program or activity" and "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education;….

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 2751. Work-Study Programs purpose; appropriations authorized,

(b) Authorization of appropriations
There are authorized to be appropriated to carry out this part, $1,000,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.

N.Y. Statutes

N.Y. Civil Rights Law § 40. Equal rights in places of public accommodation, resort or amusement…. A place of public accommodation, resort or amusement within the meaning of this article, shall be deemed to include … educational facility, supported in whole or in part by public funds or by contributions solicited from the general public….

N.Y. Civil Rights Law § 40-c. Discrimination.

(2) No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

N.Y. Educ. Law § 101. Education department; regents of the university.

There shall continue to be in the state government an education department. The department is charged with the general management and supervision of all … educational work of the state, including the operations of The University of the State of New York and the exercise of all the functions of the education department, of The University of the State of New York, of the regents of the university and of the commissioner of education and the performance of all their powers and duties….

N.Y. Educ. Law § 207. Legislative power.

Subject and in conformity to the constitution and laws of the state, the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and, except, as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to education….

N.Y. Educ. Law § 665. Payment.

(3)(c)(i) Payments under this article shall be made by the comptroller upon the certificate of the president to or for the benefit of the recipient of each award. Such certificate shall be given upon vouchers or other evidence provided by the student and by the institution of attendance showing that the person named therein is entitled to receive the sum specified, either directly or for his benefit. Payments may be made directly to the school attended by the person named in such certificate, on behalf of and for the benefit of such person. The president may establish such methods of payment, including prepayment, of awards to students or to schools on behalf of students as may effect the orderly administration of the program as he may deem appropriate. Selection of the method of payment shall be at the option of the institution, provided, however, that the president may limit participation in such alternative methods of payment to schools fulfilling criteria established by the president to assure the appropriate receipt and handling of funds.

N.Y. Educ. Law § 667. Tuition assistance program awards.

(3) Tuition assistance program awards.

(a) Amount. The president shall make awards to students enrolled in degree-granting institutions or registered not-for-profit business schools qualified for tax exemption under § 501(c)(3) of the internal revenue code for federal income tax purposes in the [various] amounts ….

N.Y. Educ. Law § 667-c. Part-time tuition assistance program awards.

(1) Notwithstanding any law, rule or regulation to the contrary, the president of the higher education services corporation is authorized to make tuition assistance program awards to part-time students enrolled at the state university, a community college, the city university of New York, and a non-profit college or university

incorporated by the regents or by the legislature who meet all requirements for tuition assistance program awards except for the students' part-time attendance.

N.Y. Educ. Law § 669-a. Tuition awards for Vietnam, Persian Gulf and Afghanistan veterans enrolled in approved undergraduate or graduate programs at degree granting institutions and approved vocational training programs.

N.Y. Educ. Law§ 6401. State aid for certain independent institutions of higher learning.

(3) Degree awards. The amount of such annual apportionment to each institution meeting the requirements of … this section shall be computed by multiplying by not to exceed six hundred dollars the number of earned associate degrees, by not to exceed one thousand five hundred dollars the number of earned bachelor's degrees, by not to exceed nine hundred fifty dollars the number of earned master's degrees, and by not to exceed four thousand five hundred fifty dollars the number of earned doctorate degrees, conferred by such institution during the twelve-month period next preceding the annual period for which such apportionment is made….

U.S. Regulations

29 C.F.R. § 1605.1. "Religious" nature of a practice or belief.

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States* v. *Seeger,* 380 U.S. 163 (1965) and *Welsh* v. *United States,* 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions.[1] The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in section 701(j), 42 U.S.C. 2000e(j).

34 C.F.R. § 106.31. Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

34 C.F.R. § 106.36. Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students….

34 C.F.R. § 106.38. Employment assistance to students.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which [discriminates on the basis of sex].

34 C.F.R. § 106.51. Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

34 C.F.R. § 668.164. Disbursing funds.

(a) *Disbursement.* (1) … an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays a student or parent directly with—

(i) Funds received from the Secretary;

(ii) Funds received from a lender under the FFEL Programs; or

(iii) Institutional funds used in advance of receiving title IV, HEA program funds.

45 C.F.R. § 86.31. Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

N.Y. Regulations

8 N.Y.C.R.R. § 52.1

a) Registration is required for:

(1) every curriculum creditable toward a degree offered by institutions of higher education
(b) To be registered, each curriculum shall:

(1) be submitted to the commissioner, together with such information as the commissioner may require, in a form acceptable to the commissioner;

(2) conform to all applicable provisions of this Part; and

(3) show evidence of careful planning. Institutional goals and the objectives of each curriculum and of all courses shall be clearly defined in writing, and a reviewing system shall be devised to estimate the success of students and faculty in achieving such goals and objectives. The content and duration of curricula shall be designed to implement their purposes.

(c) In addition to the requirements of subdivision (b) of this section, to be registered every new curriculum shall be consistent with the Regents Statewide Plan for the Development of Postsecondary Education, 1980 (University of the State of New York, State Education Department, Albany, NY 12230: October 1980, available at Bureau of Postsecondary Planning, Room 5B44, Cultural Education Center, Albany, NY 12230).

(d) Registration shall be granted only to individual curricula.
(f) Each course offered for credit by an institution, shall be part of a registered curriculum offered by that institution, as a general education course, a major requirement, or an elective.

(g) Each curriculum for which registration is required shall be registered before the institution may publicize its availability or recruit or enroll students in the curriculum.

(h) New registration shall be required for any existing curriculum in which major changes are made that affect its title, focus, design, requirements for completion, or mode of delivery.

(i) The length of the term of registration of each curriculum shall be determined by the commissioner.

(l) Registration or reregistration of a curriculum may be denied if the commissioner finds that curriculum, or any part thereof, not to be in compliance with statute or this Title.

8 N.Y.C.R.R. § 52.2

Standards for the registration of undergraduate and graduate curricula.

(a) Resources. The institution shall:

(1) possess the financial resources necessary to accomplish its mission and the purposes of each registered curriculum;

(2) provide classrooms, faculty offices, auditoria, laboratories, libraries, audiovisual and computer facilities, clinical facilities, studios, practice rooms, and other instructional resources sufficient in number, design, condition, and accessibility to support the curricular objectives dependent on their use;

(3) provide equipment sufficient in quantity and quality to support instruction, research, and student performance; and

(4) provide libraries that possess and maintain collections sufficient in depth and breadth to support the mission of the institution and each registered curriculum. Libraries shall be administered by professionally trained staff supported by sufficient personnel. Library services and resources shall be available for student and faculty use with sufficient regularity and at appropriate hours to support the mission of the institution and the curricula it

offers.

(b) Faculty.

(1) All members of the faculty shall have demonstrated by training, earned degrees, scholarship, experience, and by classroom performance or other evidence of teaching potential, their competence to offer the courses and discharge the other academic responsibilities which are assigned to them.

(2) To foster and maintain continuity and stability in academic programs and policies, there shall be in the institution a sufficient number of faculty members who serve full-time at the institution.

(3) For each curriculum the institution shall designate a body of faculty who, with the academic officers of the institution, shall be responsible for setting curricular objectives, for determining the means by which achievement of objectives in measured, for evaluating the achievement of curricular objectives and for providing academic advice to students. The faculty shall be sufficient in number to assure breadth and depth of instruction and the proper discharge of all other faculty responsibilities. The ratio of faculty to students in each course shall be sufficient to assure effective instruction.

(5) All faculty members who teach within a curriculum leading to a graduate degree shall possess earned doctorates or other terminal degrees in the field in which they are teaching or shall have demonstrated, in other widely recognized ways, their special competence in the field in which they direct graduate students.

(6) The teaching and research of each faculty member, in accordance with faculty member's responsibilities, shall be evaluated periodically by the institution. The teaching of each inexperienced faculty member shall receive special supervision during the initial period of appointment.

(7) Each member of the faculty shall be allowed adequate time, in accordance with the faculty member's responsibilities, to broaden professional knowledge, prepare course materials, advise students, direct independent study and research, supervise teaching, participate in institutional governance and carry out other academic responsibilities appropriate to his or her position, in

addition to performing assigned teaching and administrative duties.

(c) Curricula and awards.

(1) In addition … the objectives of each curriculum and its courses shall be well defined in writing. Course descriptions shall clearly state the subject matter and requirements of each course.

(f) Other requirements. The institution shall assure:

(1) that all educational activities offered as part of a registered curriculum meet the requirements established by statute, the rules of the Regents or this Part; and

(2) that whenever and wherever the institution offers courses as part of a registered curriculum it shall provide adequate academic support services.