



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** [Judy Pino](#), 202-869-5218

## **NCLA Supports Cert. Petition Seeking Procedural Protections for Accused in Collegiate Title IX Cases**

*Jane Doe v. Timothy White, et al.*

**Washington, DC (February 18, 2022)** - As part of its efforts to enforce Title IX, the U.S. Department of Education has routinely pressured schools to deny due process to the accused in sexual-misconduct investigations. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil liberties group, filed an [amicus brief](#) today in support of Jane Doe’s petition for a *writ of certiorari* before the U.S. Supreme Court in her case against the California State University system and various Title IX administrators. The petition asks the Court to clarify that colleges must provide a hearing *before* suspending or expelling a student.

Petitioner Doe was suspended for 14 months from enrollment in Sonoma State University based on charges eventually determined to be groundless. The university suspended her while it conducted an investigation, despite never having concluded that she engaged in sexual misconduct and despite a provision in its Title IX policy requiring investigations to be completed within 60 working days. In other words, an administrative body imposed punitive sanctions on an individual for over a year without affording her even the most basic of procedural protections afforded under the U.S. Constitution. No hearing—not even a “[kangaroo court](#)” proceeding—was granted.

The lower courts dismissed the case, ruling Defendants were entitled to “qualified immunity” because, at the time of the incident, it was not “clearly established” that those facing suspension or expulsion from state universities had any procedural rights under the Due Process Clause. The Ninth Circuit harshly held that “[d]amage to Doe’s academic reputation is ‘mere reputational injury,’ which does not itself create a liberty interest.” But the Ninth Circuit’s flawed decision should not deter the Supreme Court from addressing whether the Due Process Clause entitles students at public universities to procedural protections when they face suspension or expulsion. The Supreme Court’s decision in *Goss v. Lopez* held that students enrolled in public high schools and middle schools are entitled to some degree of due process protections when threatened with suspension or expulsion. Nothing in *Goss* suggests that the same protections should not also apply in the university context, but the Supreme Court should make that explicit.

Doe’s predicament is hardly unique. Given the frequency with which procedural due process claims of this sort have arisen in the past decade, there is a pressing need to establish a Supreme Court precedent regarding the Due Process Clause’s applicability to college disciplinary proceedings. NCLA is also concerned that too many lower federal courts evade a decision on important constitutional issues by skipping immediately to the qualified immunity defense without adjudging the constitutional right asserted by the plaintiff.

### **NCLA released the following statement:**

“Under pressure from the U.S. Department of Education, more and more colleges have been depriving students accused of sexual misconduct of even the most basic of due process rights, like the right to a hearing. It is time

for the Supreme Court to step forward and tell public colleges and universities that they must abide by the Constitution.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###