

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

DONNA BUETTNER-HARTSOE, et al. )  
Plaintiff, )  
vs. ) CIVIL ACTION NOS.  
BALTIMORE LUTHERAN HIGH SCHOOL ) 20-3132, 20-3214, 20-3229,  
ASSOCIATION, d/b/a CONCORDIA ) 20-3267, 21-691-RDB  
PREPARATORY SCHOOL, )  
Defendants. )

Baltimore, Maryland  
September 1, 2022  
1:57 p.m.

THE ABOVE-ENTITLED MATTER CAME ON FOR  
MOTIONS HEARING  
BEFORE THE HONORABLE RICHARD D. BENNETT

A P P E A R A N C E S

On Behalf of the Plaintiff:

BRIAN KETTERER, ESQUIRE  
CHRISTINA GRAZIANO, ESQUIRE  
JUSTIN A. BROWNE, ESQUIRE

On Behalf of the Defendant:

GREGG E. VIOLA, ESQUIRE  
BRIAN S. GOODMAN, ESQUIRE  
GEOFFREY H. GENTH, ESQUIRE  
EVAN T. SHEA, ESQUIRE  
WILLIAM KING, ESQUIRE

Also Present:

MEGAN MATTHEWS, ESQUIRE  
CONSTANCE BAKER, ESQUIRE  
CAROLINE BELESON, LAW CLERK

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR  
Federal Official Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201

1 (1:57 p.m.)

2           **THE COURT:** Good afternoon, everyone. This is calling  
3 the case of Buettner-Hartsoe, et al. v. Baltimore Lutheran High  
4 School, Civil Numbers 20-3132, 20-3214, 20-3229, 20-3267,  
5 21-691-RDB with consolidated cases. The lead case being  
6 Buettner-Hartsoe, if I'm pronouncing those names correctly, et  
7 al. v. Baltimore Lutheran High School Association, which is the  
8 predecessor of Concordia Prep School Academy. We are here on a  
9 Motion for Reconsideration as well as a Motion for  
10 Interlocutory Appeal.

11           I would note, first of all, that the standing orders of  
12 this Court provide that masks are to be worn in all public  
13 areas of the courthouse, with the exception of the courtroom if  
14 in the discretion of the presiding judge the participants have  
15 been adequately vaccinated.

16           I have been fully vaccinated and boosted and tested  
17 negative within the last two weeks, I guess, so I have my mask  
18 pulled down. So as we proceed, I'll first inquire of the  
19 vaccination status of the parties.

20           Counsel, it doesn't mean you have to pull your mask down,  
21 you're encouraged to do so because it's a little bit easier for  
22 Ms. Thomas, the court reporter, but I'll inquire as to that.

23           So on behalf of the Plaintiffs here, if counsel would  
24 identify themselves for the record.

25           **MS. GRAZIANO:** Good afternoon, Your Honor. Christina

1 Graziano for the Plaintiffs, and I am in fact vaccinated and  
2 boosted.

3 **THE COURT:** Ms. Graziano, nice to see you. Welcome.  
4 Nice to see you.

5 **MS. GRAZIANO:** Nice to see you.

6 **MR. KETTERER:** Good afternoon, Your Honor. Brian  
7 Ketterer on behalf of the Plaintiffs. I'm also vaccinated.

8 **THE COURT:** Yes, Mr. Ketterer, nice to see you.

9 **MR. KETTERER:** Nice to see you too.

10 **MR. BROWNE:** Good afternoon, Judge Bennett. I'm  
11 Justin Browne, and I'm vaccinated.

12 **THE COURT:** Yes, nice to see all three of you. You  
13 can pull your mask down while speaking, you don't have to.

14 Mr. Browne, you can certainly come and sit at the trial  
15 table if you'd like. You're a matter of counsel of record.

16 Nice to have you.

17 On behalf of the Defendants? First of all, the Defendants  
18 Baltimore Lutheran High School Association doing business as  
19 Concordia Preparatory School.

20 **MR. VIOLA:** Good afternoon, Your Honor. Gregg Viola  
21 on behalf of Baltimore Lutheran High school. I am vaccinated.

22 **MR. GOODMAN:** Good afternoon, Your Honor. Brian  
23 Goodman on behalf of Codefendant Lutheran Church-Missouri  
24 Synod, Southeastern District. I have been vaccinated and  
25 boosted.

1           **THE COURT:** Yes, Mr. Goodman. Nice to see you as  
2 well. It's been a long time.

3           **MR. GOODMAN:** It has been.

4           **THE COURT:** I'm going to take my mask fully off then.  
5 So with that, you all may be seated for a minute.

6           Let me just go over where we are on this. This dispute  
7 involves five consolidated cases brought by five different  
8 women, all former students of Concordia Preparatory School,  
9 once known as the Baltimore Lutheran High School.

10           And all five women have alleged that Concordia failed to  
11 take meaningful action to address a wealth of complaints of  
12 sexual assault and verbal sexual harassment.

13           Title XI of the Education Amendment Act of 1972 confers  
14 federal jurisdiction over institutions that are a recipient of  
15 federal funds. And the issue here is whether organizations  
16 with 501(c)(3) tax exempt status qualify as recipients of  
17 federal funds for purposes of Title XI.

18           On July 21st of this year, I issued an opinion denying the  
19 partial Motion for Summary Judgment as to Count 1 of the  
20 operative Amended Complaint in the lead case in this case, and  
21 essentially they're identical complaints in all of the cases.

22           I would first note that with respect to the Plaintiffs in  
23 this matter, there are three minor Plaintiffs. The minor  
24 Plaintiff by the initials H.C. through -- I'm sorry, N.H.,  
25 first of all, through her mother, Donna Buettner-Hartsoe. If

1 I'm pronouncing the name correctly. And then the minor  
2 Plaintiff H.C. through her mother Andrea Conrad. And then the  
3 minor Plaintiff A.G. through her mother Selena Barber.

4 And then we have two other Plaintiffs who are adults and  
5 do not choose to go through any other persons. They're adults  
6 and they've come forward. And that is Jennifer Pullen and  
7 Ariana Gomez. They are the other five Plaintiffs.

8 Are any of the Plaintiffs here in the courtroom today,  
9 Ms. Graziano?

10 **MS. GRAZIANO:** No, Your Honor. I would also point out  
11 as a factual verification, at the time that the  
12 Buettner-Hartsoe complaint was filed, N.H. -- or, yeah, excuse  
13 me, N.H. was a minor. She has now reached the age of majority.  
14 So I just point that out.

15 **THE COURT:** All right. She's still proceeding as N.H.  
16 through her mother, Donna Buettner-Hartsoe, though, correct?

17 **MS. GRAZIANO:** That's correct.

18 **THE COURT:** That's fine. She's entitled to do that,  
19 I'm just trying to clarify.

20 And there's an operative Amended Complaint, which is  
21 pretty much identical in all five of these cases. And this  
22 case is the lead case for purposes of filing. And essentially,  
23 there are four counts to the complaint.

24 There's a Count 1 alleging the violation of 20 U.S.C. §  
25 1681, that being Title XI of the Education Amendment Act of

1 1972.

2 And then Count 2 is negligent supervision and retention.

3 Count 3 alleges negligence.

4 Count 4 alleges intentional infliction of emotional  
5 distress.

6 I believe all of the complaints or the amended complaints  
7 all allege the same four counts if I'm not mistaken; is that  
8 correct?

9 **MS. GRAZIANO:** That is correct, Your Honor.

10 **THE COURT:** Correct from your point of view,  
11 Mr. Goodman as well and Mr. Viola?

12 **MR. VIOLA:** Yes, Your Honor.

13 **MR. GOODMAN:** Your Honor, yes. I note for the record  
14 my client is only named in Counts 2 and 3 and not in Counts 1  
15 and 4.

16 **THE COURT:** I was about to ask that, Mr. Goodman.  
17 Your client was not affected by -- well, I should not say was  
18 not affected by -- your client is Lutheran Church  
19 Missouri-Synod, Southeastern District, correct?

20 **MR. GOODMAN:** That is correct. We are not a named  
21 Defendant in Title XI. We were a named Defendant in Count 4  
22 but we were dismissed.

23 **THE COURT:** Let me make a note of that.

24 **MR. GOODMAN:** Thank you, Your Honor.

25 **THE COURT:** So with respect to the Motion for

1 Consideration, reconsideration of my ruling, your client had  
2 not moved in that fashion anyway under Count 1, correct?

3 **MR. GOODMAN:** No, I didn't think I had any standing to  
4 do so because we're not a named Defendant.

5 **THE COURT:** That's right. I'm just verifying that  
6 you're here and I'm going to be hearing from Mr. Viola on these  
7 arguments.

8 **MR. GOODMAN:** Thankfully I'm sure Your Honor will be  
9 glad to hear I have nothing to say about today's motion.

10 **THE COURT:** That's quite all right.

11 We had amicus briefs filed in this case. And just so the  
12 record is clear, amicus briefs that are in the lead case  
13 20-3132. An amicus brief was filed on behalf of the  
14 Association of Independent Maryland and D.C. schools, better  
15 know as AIMS, I believe, in the community. And that was filed  
16 by the law firm of Kramon & Graham, Geoffrey Genth and Steven  
17 Klepper are listed as counsel on that matter.

18 Are either Mr. Genth or Mr. Klepper here?

19 **MR. GENTH:** Yes, Your Honor.

20 **THE COURT:** You're certainly welcome, if you want to  
21 try to sit up here in the row up here. I'm going to grant the  
22 motion. I've permitted the amicus briefs to be filed. That's  
23 fine. Technically it's a pending motion and leave to file the  
24 amicus brief is being granted.

25 So Paper Number 134, I'll include in an order, is granted

1 for the reasons set forth in the record. And welcome to you.

2 If you would like to come up and sit in the front row in  
3 the back at least behind counsel table there are some empty  
4 chairs there. You are welcome to come up.

5 **MR. GENTH:** Thank you, Your Honor.

6 **THE COURT:** And Mr. Klepper is not here; is that  
7 correct?

8 **MR. GENTH:** That's correct.

9 **THE COURT:** Nice to see you. There's also an amicus  
10 brief filed, Paper Number 136 filed on August the 11th by the  
11 National Association of Independent Schools that Mr. Evan Shea  
12 of the law firm of Venable has been listed as counsel of  
13 record.

14 Is Mr. Shea here?

15 **MR. SHEA:** Yes, Your Honor.

16 **THE COURT:** Mr. Shea, nice to see you.

17 **MR. SHEA:** Nice to see you.

18 **THE COURT:** You're welcome to come forward and come up  
19 and sit in the back here. You're welcome to come.

20 **MR. SHEA:** Thank you, Your Honor. I'll point out that  
21 Mr. William King from Venable --

22 **THE COURT:** Yes, Mr. King, nice to see you. I  
23 recognize you from years past. The record will reflect that  
24 Mr. King is a former law clerk of mine, which means it only got  
25 easier for him after his career commenced.



1 (Laughter.)

2 MR. SHEA: And, Your Honor, Ms. Megan Matthews is the  
3 general counsel for the National Association.

4 THE COURT: Yes. I'm sorry?

5 MR. SHEA: She's not counsel of record.

6 THE COURT: All three of you may come up and sit  
7 behind the defense table. We'll be glad to have you. Come on  
8 up. Come on up.

9 MR. GENTH: Your Honor, general counsel for the  
10 Association of Independent Maryland Schools, Constance Baker,  
11 Esquire is also here. Would it be acceptable if she came up as  
12 well?

13 THE COURT: Well, if it is the Constance Baker,  
14 Esquire, then certainly she's welcome to come up.

15 Ms. Baker, nice to see you again. It's been a long time.  
16 Come on up. It's certainly nice to have you here.

17 I will inquire of any of you that want to speak. Have you  
18 all been fully vaccinated?

19 (All Counsel - "Yes, Your Honor.")

20 THE COURT: That's a uniform "yes." And, Ms. Baker,  
21 I'm sure she's been vaccinated, she's always been very  
22 cautious. Nice to see you, Ms. Baker. Just come on up.

23 Have I overlooked anyone here that is counsel of record or  
24 amicus filing? Well, thank you very much. You all may be  
25 seated here.

1 Let me just note, if I can, that the -- what I propose to  
2 do is we're first going to deal with a Motion for  
3 Reconsideration. And then after that we'll deal with the  
4 Motion for Interlocutory Appeal.

5 Any objection from the point of view of the Plaintiffs on  
6 that?

7 **MS. GRAZIANO:** No objection, Your Honor.

8 **THE COURT:** From the defense, any objection,  
9 Mr. Viola?

10 **MR. VIOLA:** No, Your Honor.

11 **THE COURT:** So we will proceed in that fashion. And  
12 I'll hear argument first on the Motion for Reconsideration and  
13 then I will indicate essentially what my ruling will be today  
14 on both of these. And then I'll follow up with a written  
15 opinion. Do my best to get it filed tomorrow on this matter.

16 Just starting off in terms of the matter of the Motion for  
17 Reconsideration. Essentially, that'll be guided by Rule 60(b)  
18 of the Federal Rules of Civil Procedure, in terms of the  
19 Court's analysis.

20 Just so the record is clear, as a matter of public record  
21 here, to establish a Title XI claim based on student sexual  
22 harassment, Plaintiff must show, one, that they were a student  
23 at an educational association, institution receiving federal  
24 funds. And that's the key phrase here as to that.

25 And then two, that they suffered sexual harassment that

1 were so severe, pervasive, and objectively offensive that it  
2 deprived them of equal access to the educational opportunities  
3 or benefits provided by their school.

4 Three, the school, through an official who has the  
5 authority to address the alleged harassment and to institute  
6 corrective measures, had actual notice or knowledge of the  
7 alleged harassment.

8 And four, the school acted with deliberate indifference to  
9 the alleged harassment. That's been summarized within the last  
10 year -- or actually last year by the Fourth Circuit, United  
11 States Court of Appeals for the Fourth Circuit in *Doe v.*  
12 *Fairfax County School Board* at 1 F.4th 257, an opinion in 2001  
13 and actually an opinion to which I made reference in my written  
14 opinion.

15 So the analysis here is in terms of a Motion for  
16 Reconsideration is, I think, the Court is guided -- essentially  
17 the Fourth Circuit, there's been some variance in some of the  
18 cases as to whether the Court turns to Rule 54(b) or Rule 60(b)  
19 of the Federal Rules of Civil Procedure. Rule 60(b), I think,  
20 guides this Court's analysis. The fourth Circuit, I think, has  
21 so indicated previously, and I have made reference to that,  
22 actually in an opinion last year in *Cincinnati Insurance*  
23 *Company v. Fish* where that is the rule that guides this Court's  
24 analysis as to a Motion for Reconsideration.

25 So with that, Mr. Viola -- am I pronouncing your name

1 correctly?

2 **MR. VIOLA:** Viola, that's correct.

3 **THE COURT:** I will be glad to hear from you. You can  
4 speak at the table or use the podium. Whatever you are more  
5 comfortable with.

6 **MR. VIOLA:** I'm happy to speak at the table.

7 **THE COURT:** That's fine.

8 **MR. VIOLA:** Your Honor, the reason respectfully that  
9 the Court was wrong in its original opinion was because Title  
10 XI is spending clause legislation and spending clause  
11 legislation is different than other legislation. In *Cummings*  
12 *v. Premiere Rehab*, the Supreme Court just spoke on this issue  
13 just about four months ago, and it went through the history and  
14 discussed why spending clause legislation is different than  
15 other legislation. They observe that other legislation imposes  
16 a duty on a class of people.

17 But spending clause legislation is in essence a contract.  
18 It's in essence a contract between the Government and recipient  
19 of federal funds in which the recipient of federal funds  
20 agrees, in exchange for accepting some benefit, that it  
21 undertakes certain duties, including being subject to statutes  
22 such as Title XI, so it's in essence a different animal.

23 And in *Cummings*, the Supreme Court said that in order for  
24 an entity that receives federal funds to be bound by Title XI  
25 it had to, quote, "knowingly accept," unquote, and clearly

1 understand the obligations, so in essence it acts as a  
2 contract.

3 A recipient has to know by accepting whatever constitutes  
4 federal funds they're undertaking these obligations. The  
5 Supreme Court described it as having notice, the recipient has  
6 to have notice that they're undertaking these obligations.

7 The way that the Supreme Court said that that is done  
8 would be if it is unambiguous in the statute that for our  
9 purposes tax exemptions constitute a receipt of federal funds.

10 One of the other things that I think is important for the  
11 Court to keep in mind is the *Cummings* court also said, it  
12 basically has to be plainly obvious from the statute that  
13 receipt of federal funds -- I'm sorry -- tax exemption  
14 constitutes receipt of federal funds.

15 One of the things it said, they're not requiring a dive  
16 through treatises, 50 state surveys, or speculative drawing of  
17 analogies. Basically what they're saying it has to be clear  
18 from the statute.

19 And respectfully, I think that's why the Court's original  
20 opinion was wrong in that it's hard to say that it's  
21 unambiguous on the face of statute, and the law that tax  
22 exemptions constitutes receipt of federal funds. And the first  
23 place to look are the regulations.

24 And the regulations, whether they're from the Department  
25 of Education or Department of the Treasury, are all basically

1 the same. And they have what has been described as a  
2 comprehensive list or a laundry list of things that constitute  
3 the receipt of federal funds. They all have two things in  
4 common: Number one, they all constitute affirmative receipt of  
5 benefits, affirmative receipt of money or property or  
6 services --

7 **THE COURT:** What was the date of the Supreme Court  
8 opinion in *Cummings*, by the way? I'm sorry.

9 **MR. VIOLA:** I want to say, Your Honor, it was  
10 April 28, 2022. I'm not positive. I know 2022, April of 2022.  
11 I want to say it's April 28, but I'm not positive of that. It  
12 is cited, I believe, in our -- at least in our reply.

13 **THE COURT:** I guess my point is it was definitely not  
14 cited in the paper you filed on August the 4th.

15 **MR. VIOLA:** Honestly, I don't believe it was, Your  
16 Honor.

17 **THE COURT:** I'm pretty sure it was not.

18 **MR. VIOLA:** That may be --

19 **THE COURT:** So if I missed something, if it was  
20 April 28th, you missed it on August 24th as well because you  
21 didn't cite that opinion in here.

22 **MR. VIOLA:** I believe you're correct, Your Honor.

23 **THE COURT:** Okay. All right.

24 **MR. VIOLA:** But *Cummings* is controlling law, and I  
25 think it's instructive in this case.

1           **THE COURT:** What page is it cited in your reply? I'm  
2 sorry.

3           **MR. VIOLA:** Court's indulgence, Your Honor.

4           **THE COURT:** I have it right here, I see it. I see it  
5 in the reply brief filed last week.

6           **MR. VIOLA:** That's correct, Your Honor.

7           **THE COURT:** Actually the reply brief filed last  
8 Friday.

9           **MR. VIOLA:** Correct. It starts on Page 5 and the  
10 discretion of *Cummings* continues through at least page--

11           **THE COURT:** So I'm clear, that case involves the  
12 Rehabilitation Act and it had to do with emotional distress  
13 damages. It's not a Title XI case, correct?

14           **MR. VIOLA:** No, it's not.

15           **THE COURT:** I'm just trying to make sure I'm clear on  
16 that because you seem pretty emphatic *Cummings* is controlling.

17           **MR. VIOLA:** Understood.

18           **THE COURT:** I'm looking at it. You filed it last  
19 Friday, this is Wednesday. And I don't see that it necessarily  
20 justifies your position that *Cummings* is clearly controlling.  
21 I understand your argument. But *Cummings* didn't say a word  
22 about Title XI.

23           **MR. VIOLA:** Agreed.

24           **THE COURT:** Okay.

25           **MR. VIOLA:** I'm not suggesting that it did --

1           **THE COURT:** I got the impression that it did, so I'm  
2 feeling a little bit better than I did a few minutes ago. I  
3 was, like, how did I miss that?

4           **MR. VIOLA:** So let me talk to Your Honor why I think  
5 it is controlling.

6           **THE COURT:** Okay.

7           **MR. VIOLA:** It's talks about spending clause  
8 legislation and Rehabilitation Act as well as Title XI, and  
9 there's no doubt that obviously Title XI is spending clause  
10 legislation.

11           So I think the analysis that the Supreme Court used in  
12 *Cummings* is applicable to other spending clause legislation  
13 cases like Title XI. And in essence, what they're saying is  
14 the recipient has to know and affirmatively in essence accept  
15 that -- in exchange for their receipt of federal funds, they  
16 are undertaking these duties.

17           And, like I said, I think that's the problem with the  
18 Court's opinion and why the Court's opinion is wrong because it  
19 doesn't recognize that spending clause legislation cases like  
20 Title XI, like this case, require that contract analogy that is  
21 discussed in *Cummings*.

22           And that's why I think *Cummings* is instructive in this.  
23 And *Cummings* doesn't state anything new. There's nothing new  
24 in *Cummings* of what I'm talking about. It starts with, I think  
25 it's *Pennhurst*, a case, like, maybe 1982 that starts this



1 analysis.

2 And that's why I'm saying I think the construct that  
3 spending clause legislation is different is controlling in this  
4 case and is the reason that, respectfully, I think the Court's  
5 original opinion was wrong. Because if you accept that then  
6 the -- for something to be --

7 **THE COURT:** Essentially, your argument is that  
8 spending clause legislation is akin to a contract?

9 **MR. VIOLA:** That's what it says in *Cummings*.

10 **THE COURT:** Okay. Right. And you're correct. I  
11 mean, I read the case that you cited earlier in terms of the  
12 paralyzed veterans case I think in 1986 and some others. I  
13 understand what your argument is.

14 **MR. VIOLA:** Right, right. I think that's controlling  
15 in this case because it's hard to say that the Title XI statute  
16 unambiguously says that tax exempt status is the receipt of  
17 federal funds. I think the opposite is true. If you look at  
18 the regulations, the regulations specifically do not include  
19 tax exemptions when they list what has been described as  
20 comprehensive or laundry list of things that constitute receipt  
21 of federal funds.

22 So any entity, like Concordia Prep, would not be on notice  
23 using the language of *Cummings* that they would be bound by  
24 Title XI. And I think that that's also borne out in the way  
25 that people or entities have treated tax exempt status.

1 And it's clear, at least from my review of the record,  
2 that 501(c)(3) status are under the impression that that  
3 constitutes receipt of federal funds for the application of  
4 Title XI. Even Plaintiff's expert in this case wrote an  
5 article after Your Honor issued an opinion, which said, this  
6 ruling -- I think the word used was sent "shockwaves" through  
7 the independent school community. And inherent in that is a  
8 recognition that previously no such schools believed that the  
9 tax exempt status constituted receipt of federal funds  
10 subjecting schools, like Concordia Prep, to Title XI.

11 Also, we cited in our papers in the frequently asked  
12 questions of the Paycheck Protection Program there was -- one  
13 of the questions that they -- the Small Business Administration  
14 anticipated getting was, well, I'm a tax exempt entity, if I  
15 accept PPP loans, does this now subject me to Title XI and  
16 spending clause legislation?

17 And again, inherent in that is the assumption that those  
18 entities that were tax exempt 501(c)(3) status entities were  
19 not subject to Title XI. We also cited the Title VI manual for  
20 the Department of Justice that said that it's not.

21 **THE COURT:** It's interesting by the way that you  
22 mentioned the Payment Protection Program in the face of the  
23 COVID because of one of the Plaintiffs here, H.C., the minor  
24 Plaintiff through her mother, Andrea Conrad, attended the  
25 school from the fall of 2019 to the spring of 2020. And

1 apparently the record reflects that from March to April of 2020  
2 that Payment Protection Plan funds were received from the Small  
3 Business Administration.

4 Is that not correct?

5 **MR. VIOLA:** I think your dates are inaccurate, Your  
6 Honor. You said March to April, I think you meant April --

7 **THE COURT:** I meant March/April of 2020.

8 **MR. VIOLA:** I'm sorry, received in March, I think it  
9 was April, but I'm not positive, yes. Generally you're  
10 correct.

11 **THE COURT:** So that is totally apart from your  
12 argument as to the matter of tax exempt status under 501(c)(3).  
13 But one of the five Plaintiffs here apparently attended a  
14 school during the period of time when there were funds directly  
15 received, correct?

16 **MR. VIOLA:** Well, to parse out the distinction, we've  
17 not moved for reconsideration on that particular issue. We've  
18 just moved for reconsideration on whether tax exempt status  
19 constitutes the receipt of federal funds. This is I think  
20 beyond the scope of the Motion for Reconsideration, but the  
21 allegations, our position is, what happened to H.C. all  
22 occurred in the fall of 2019.

23 **THE COURT:** You mean in terms of the alleged events?

24 **MR. VIOLA:** Exactly. Because the other thing, too, is  
25 that there was nothing -- no facts giving rise to any of the

1 claims, Title XI or otherwise, after March of 2020. Kind of  
2 makes sense because they were all at Concordia Prep. Like,  
3 other schools were remote at that time.

4 **THE COURT:** Does your Motion for Certification for  
5 Preliminary Injunctive Relief for the Interlocutory Appeal,  
6 does that also relate -- does that not include H.C. or not?

7 **MR. VIOLA:** It does include H.C., but it includes H.C.  
8 for the proposition as to whether tax exempt status constitutes  
9 federal financial assistance.

10 Because what we intend to do, there's no secret to anybody  
11 in this room, is to say that it's factually different. Even if  
12 the PPP loan program -- and I'm not conceding that that PPP  
13 loans do constitute receipt of federal funds. But even if they  
14 do, I think it's irrelevant in H.C.'s case because of the  
15 factual basis of it. But we don't have to -- we purposely  
16 didn't move on that to just not muddy up the analysis and make  
17 it a very clean issue of law that does tax exempt status  
18 constitute the receipt of federal funds. And that goes a  
19 little bit to the second issue of the potential interlocutory  
20 appeal. So it is a pure question of law and includes no  
21 question of fact.

22 So that's just -- just cleaning that up. Trying to  
23 clarify for you, if that makes sense, Your Honor.

24 So based on that, it's hard, under the state of the law,  
25 to reach a conclusion that unambiguously indicates that tax

1 exempt status is federal financial assistance.

2 In fact, the regulations would draw any reasonable entity  
3 to the opposite conclusion. And I think it's borne out by the  
4 fact that almost all entities that are established in the  
5 record, that are 501(c)(3) entities, reach the conclusion that  
6 they were not subject to spending clause legislation like Title  
7 XI.

8 So that reaches the inescapable conclusion that those  
9 entities weren't on notice of it. And there was no basis for  
10 them to be on notice of it because there's nothing in the law  
11 that would cause them to believe that.

12 And like I said before, the *Cummings* case says you don't  
13 have to do this exhaustive review of the law to figure that  
14 out. It has to be -- it has to be plain and obvious from the  
15 statute and the law that tax exempt status is federal financial  
16 assistance and that's simply not the case here.

17 And when you look at it through that construct, and you go  
18 back and you look at the cases that go either side, if you look  
19 at the *Johnny's Icehouse* case, they talk about spend spending  
20 clause legislation. And part of the --

21 **THE COURT:** That's the 2001 case in the Northern  
22 District of Illinois, correct?

23 **MR. VIOLA:** Right. And if you look at that opinion,  
24 Your Honor, the Court expressly says, in essence, the  
25 regulations that define what is federal financial assistance

1 don't include tax exemptions, and they all include affirmative  
2 benefits.

3 And then that also reached the step of saying it also is  
4 consistent with the foundation of spending clause legislation,  
5 what I'm talking about here. That it's the contract that Your  
6 Honor talked about. In essence, there's got to be some  
7 agreement that they're accepting -- the entity is accepting the  
8 money, the federal funds, in exchange for the agreement to be  
9 obligated to spending clause legislation, whether it's the  
10 Rehabilitation Act, whether it's Title VI, whether it's Title  
11 XI. Respectfully, I don't think it makes a difference. That's  
12 why *Johnny's Icehouse* is the correctly decided case. And it's  
13 also the reason why *McGlotten* is incorrectly decided.

14 I think *McGlotten* is a Title VI case. They kind of all  
15 run together at some point.

16 But *McGlotten*, basically they recognize --

17 **THE COURT:** You're referring to the case in District  
18 of Columbia 1972?

19 **MR. VIOLA:** Correct, Your Honor. They recognize that  
20 there's nothing in the statute to suggest a tax exempt status  
21 constitutes the receipt of federal funds. There's nothing in  
22 the legislative history. There's nothing in the regulations.

23 So under what I would think the *Cummings* court would  
24 analyze the issue, they would say, well, that makes it clear  
25 that it's not unambiguous that tax exempt status constitutes --

1           **THE COURT:** What was the basis, Mr. Viola, for example  
2 the Eleventh Circuit clearly doesn't go your way in the *M.H.D.*  
3 *v. Westminster School* cases.

4           **MR. VIOLA:** I respectfully disagree with Your Honor.  
5 That case -- they don't reach the issue. What they say is the  
6 argument is not frivolous.

7           **THE COURT:** The argument is not what?

8           **MR. VIOLA:** Is not frivolous. And it's in a footnote.  
9 And they say the argument is not frivolous. That's hardly a  
10 ringing endorsement. They did that in talking about the  
11 subject matter jurisdiction. But they didn't analyze the  
12 issue. They didn't get in-depth. They essentially said that  
13 if you make an argument like that it doesn't give rise to Rule  
14 11 sanctions.

15           I think that a fair reading of that case is not -- I  
16 respectfully think it does not stand for the proposition that  
17 tax exempt status constitutes a receipt of federal funds.

18           **THE COURT:** Are there any cases you think that agree  
19 with me?

20           **MR. VIOLA:** I would think that the *McGlotten* case is  
21 consistent with your opinion. It's a Title VI case, but I  
22 think it's incorrectly decided.

23           **THE COURT:** Well, I mean, I do note that there's  
24 authority. Just so the record is clear, you make it sound as  
25 if my case is unheard of, and you haven't acknowledged any case

1 that agrees with me. I guess I have to ask you if I missed  
2 something.

3 If it's your position that my opinion is a total outlier,  
4 then just explain to me how the Central District of California  
5 last month, as well as the Eastern District of North Carolina  
6 in June, essentially came to the same conclusions? But if you  
7 think that they're totally different than my case, please  
8 indicate to me why.

9 **MR. VIOLA:** In terms of the California case, Your  
10 Honor, that case involved the PPP loan and the court reached  
11 the conclusion that PPP loan did constitute receipt of federal  
12 financial assistance.

13 So it wasn't a pure analysis of whether tax exempt status  
14 is -- constitutes receipt of federal financial assistance. And  
15 the other, I forget the name of the case you're talking about  
16 in California.

17 There's no analysis beyond, it just relies on *McGlotten*.  
18 So it just parrots *McGlotten*. And I think that because it  
19 doesn't have any recognition of the contractual analogy, the  
20 contractual basis of spending --

21 **THE COURT:** Well, *McGlotten*, Mr. Viola, I notice there  
22 are two words you haven't mentioned here, and that's public  
23 policy.

24 **MR. VIOLA:** Right.

25 **THE COURT:** And *McGlotten* has spoke to public policy



1 in terms of rejecting an argument to narrow an analysis in  
2 terms of a spending clause in a manner that is inconsistent  
3 with its purpose, which the purpose being to eliminate  
4 discrimination in programs or activities.

5 What is the public policy of Title XI, Mr. Viola?

6 **MR. VIOLA:** Well, the public policy is to eliminate  
7 disparate treatment between the sexes.

8 **THE COURT:** Right.

9 **MR. VIOLA:** But that's part of the reason *McGlotten* is  
10 incorrectly decided. It ignores the fact that this is spending  
11 clause legislation. *McGlotten* is not heavily cited in a lot of  
12 cases. And a lot of cases decided after it, including *Johnny's*  
13 *Icehouse*, go the other way.

14 And *Johnny's Icehouse* is a better-decided decision. And  
15 frankly, *Johnny's Icehouse* is consistent with *Cummings v.*  
16 *Premier Rehab*, and *McGlotten* isn't. Because *McGlotten* doesn't  
17 recognize the contractual relationship between a recipient of  
18 funds and the Government. Again, *McGlotten* is decided one way  
19 but it's incorrectly decided.

20 **THE COURT:** I understand.

21 **MR. VIOLA:** Because that's why *Johnny's Icehouse* is a  
22 better-decided case. And there are other cases, *Stewart*,  
23 *Bachman*, those all recognize spending clause legislation. And  
24 those are decided consistent with how, I think, this Supreme  
25 Court would analyze the issue. And I think they would analyze

1 it consistent with the cases that are the majority of the  
2 cases. The majority holds that tax exempt status is not the  
3 receipt of federal financial assistance.

4 **THE COURT:** Again, just so we're clear, in terms of  
5 the spending clause legislation argument.

6 **MR. VIOLA:** Well, I think both in terms --

7 **THE COURT:** No, I'm trying to make sure, you're pretty  
8 emphatic about your argument, Mr. Viola, and I'm trying to make  
9 sure the record is clear. You're referring to a lot of cases  
10 with respect to the spending clause legislation, including  
11 *Cummings* which you just cited five days ago. But there's  
12 not -- there are not so many overwhelming cases on this Title  
13 XI question.

14 **MR. VIOLA:** I don't mean to suggest that there are.

15 **THE COURT:** I'm trying to make sure we're clear on  
16 that, okay. You're citing these various cases and it keeps  
17 coming back to spending clause legislation.

18 The record will reflect that the many cases you're citing  
19 have to do with the spending clause legislation. And I  
20 understand what your document is with respect to specific  
21 funding. I do not believe the record reflects, nor has your  
22 briefing reflected, that this is so abundantly clear when it  
23 comes to Title XI legislation.

24 **MR. VIOLA:** Well, *Johnny's Icehouse* is Title XI.

25 **THE COURT:** Clearly it does. And *Johnny's Icehouse*

1 was decided in 2001. I believe the case that you take issue  
2 with, the *McGlotten* case, was decided in 1972. I'm not  
3 saying -- it's abundantly clear to me that there's a variance  
4 of arguments on this. But this is not -- this, you know, to  
5 imply that spending clause legislation, all these cases are so  
6 abundantly clear that you just automatically factor them into  
7 Title XI, and that's why we're having the hearing because I'm  
8 trying to have you explain to me why it's so abundantly clear  
9 that I'm wrong?

10 **MR. VIOLA:** Well, to me, that's the common theme is --

11 **THE COURT:** I understand. I want you to address  
12 public policy then. I want you to address public policy.  
13 Because public policy has been interwoven in *Regan v. Taxation*  
14 *with Representation* by the Supreme Court in 1983. The *Bob*  
15 *Jones University* case in 1983 addressed the public policy  
16 matters as to discrimination. It did not speak to the mandates  
17 of Title XI, but it did speak as to a matter of public policy.

18 **MR. VIOLA:** But those weren't -- I don't mean to  
19 interrupt you and be disrespectful.

20 **THE COURT:** Then don't. Then don't.

21 **MR. VIOLA:** Sorry.

22 **THE COURT:** But in terms of public policy, I think you  
23 need to address the matter of public policy because the  
24 position that you're taking here is that the matter of the  
25 phrase "receiving federal funds" that was addressed by the

1 Fourth Circuit in *Doe v. Fairfax County school Board* last year,  
2 that the spending clause legislation cases make it abundantly  
3 clear that there has to be this specificity.

4 And Title XI is dealing with specifically, of the four  
5 criteria as noted by the Fourth Circuit, is specifically  
6 dealing with suffering sexual harassment that's so severe,  
7 pervasive, and objectively offensive that it deprived them of  
8 equal access to the educational opportunities or benefits  
9 provided by their school.

10 You would acknowledge I'm sure, Mr. Viola, or perhaps you  
11 would not, that the allegations in this case certainly allege  
12 fairly severe sexual harassment. That's what's in these cases,  
13 is it not?

14 **MR. VIOLA:** I agree that that's what's alleged.

15 **THE COURT:** All right. So the point is that your view  
16 is that any public policy considerations don't in any way  
17 support a broader analysis, that receiving federal funds is  
18 interpreted strictly within the spending clause legislation  
19 cases that you've cited?

20 **MR. VIOLA:** The cases that you cited, Your Honor, in  
21 terms of the public policy, *Bob Jones* and *Regan*, they're not  
22 spending clause legislation cases. Bob Jones is an IRS  
23 regulation which basically said, we don't think that entities  
24 that have a racially discriminatory admissions practice deserve  
25 501(c)(3) status.

1           So that's why I'm saying I don't think public policy  
2 analysis -- and respectfully I also think it's part of the  
3 reason that the Court was incorrect in its opinion in relying  
4 on the public policy analysis. Because the case that the Court  
5 relied upon is not a spending clause legislation case. It's  
6 something that's completely different, and so I think that  
7 that's not the proper analysis in this particular case.

8           **THE COURT:** Okay. I understand. I understand.  
9 Overwhelming, I understand your argument. And how is it  
10 different from your original argument? How is what we're  
11 arguing here different from your original submissions? It's  
12 pretty axiomatic that filing for Motions of Reconsideration is  
13 not just to regurgitate a prior argument.

14           So under factors under Rule 60(b) there is six predicate  
15 factors as to that: It's a mistake, inadvertence, surprise,  
16 inexcusable neglect, newly discovered evidence, fraud,  
17 misrepresentation, the judgment is void, the judgment has been  
18 satisfied, or any other reason justifying relief.

19           I guess except for the *Cummings* case that you're now  
20 citing that was decided in April, exactly what is the change in  
21 the landscape here from my ruling made a month ago?

22           **MR. VIOLA:** Well, the *Cummings* case is not one that  
23 was available during the original briefing.

24           **THE COURT:** I thought you said the *Cummings* case was  
25 decided in April?

1           **MR. VIOLA:** Well, I mean the original briefing, when  
2 we first briefed the original motions, I think it was in  
3 January.

4           **THE COURT:** All right. So your point on that is that  
5 that case is a change in the law essentially that would justify  
6 reconsideration?

7           **MR. VIOLA:** I don't think it changes the law.

8           **THE COURT:** Okay.

9           **MR. VIOLA:** I think it clarifies the law. But also  
10 one of the basis for Motion of Reconsideration that we cited in  
11 the papers was that the Court -- the phrase that's used is  
12 "dead wrong." We would take the position that the Court was  
13 dead wrong. Respectfully, of course.

14           **THE COURT:** Mr. Viola, I've said on more than one  
15 occasion, the best preparation for this job up here is I was  
16 the quarterback of a losing high school football team.

17           We're laughing here.

18           So I have a pretty thick hide. So I'm trying to  
19 understand what your argument is. I know you strongly disagree  
20 with it. I know you have great faith in the spending clause  
21 legislation. I know it doesn't apply automatically to Title  
22 XI, although you argue that it does.

23           But I'm trying to get a handle on what is the great change  
24 here that I would justify my just changing my opinion.

25           Obviously you disagreed with it. You don't just file Motions

1 for Reconsideration because you don't like opinions. You file  
2 it because there's a basis for it.

3 **MR. VIOLA:** Right. We take the position, Your Honor,  
4 that the original opinion was dead wrong.

5 **THE COURT:** I understand. That doesn't give rise to  
6 reconsideration. There's got to be some other basis.

7 **MR. VIOLA:** Well, my understanding of the law is that  
8 if it is dead wrong that it does give rise to Motion for  
9 Reconsideration.

10 **THE COURT:** In fairness to you, I don't see Rule 60(b)  
11 or Rule 54(b) says it's dead wrong. I gather the argument is  
12 is that it's a mistake, I guess, or inadvertence. Right?

13 **MR. VIOLA:** Correct, Your Honor. And also I'd like to  
14 point out, the *Cummings* case clarifies the issue and it speaks  
15 to what the current -- basically the -- almost the identical  
16 construct of the current Supreme Court views spending clause  
17 legislation cases.

18 **THE COURT:** To extent do the spending clause -- and  
19 I'm really asking you because I'm not sure. To what extent do  
20 the spending clause limitation cases deal with matters of  
21 important public policy?

22 **MR. VIOLA:** Again --

23 **THE COURT:** In the area of discrimination or whatever.  
24 Just tell me which ones.

25 **MR. VIOLA:** All the spending clause legislation is

1 important. But again, I get back to I don't think that the  
2 public policy is the analysis in this particular case as to  
3 whether tax exempt status constitutes federal financial  
4 assistance.

5 **THE COURT:** So I'm clear, with respect to the minor  
6 Plaintiff H.C., your argument, in addition to the matter of the  
7 501(c)(3) status not being federal funding, is also that with  
8 respect to the specific allegations that were raised, and the  
9 matter of the complaint itself -- one second here -- that as to  
10 that, H.C. was -- apparently the Payment Protection Plan  
11 funding under COVID was in March to April of 2020 -- or she  
12 was -- that's when the funding was received apparently. And  
13 your argument is that while H.C. was a student there, it was  
14 from the fall of 2019 to the spring of 2020, and the alleged  
15 specific actions that are specified all occurred in the fall of  
16 2019 and didn't occur in 2020. So that's a factual argument,  
17 is it not?

18 **MR. VIOLA:** Again, as I mentioned before, Your Honor,  
19 we didn't -- we didn't raise that issue. The only issue that  
20 we took reconsideration on is whether tax exempt status  
21 constitutes federal financial assistance.

22 **THE COURT:** Okay.

23 **MR. VIOLA:** We purposely did not take issue with  
24 anything with regard to Paycheck Protection Program.

25 **THE COURT:** Well then, so with respect to that, there



1 would not be, in your view, any reconsideration nor any  
2 interlocutory appeal then as to H.C.; Is that correct?

3 **MR. VIOLA:** I think that it would be with regard to  
4 whether the tax exempt status constitutes receipt of federal  
5 financial assistance. And then we can, you know, depending on  
6 how that is ruled upon, we can make a determination later as to  
7 whether there's a factual basis as to whether there's an  
8 additional reason that potentially H.C. --

9 **THE COURT:** You mean a factual dispute about when the  
10 acts occurred as to H.C.?

11 **MR. VIOLA:** I'm not sure.

12 **THE COURT:** You mean a factual dispute as to when the  
13 actions took place?

14 **MR. VIOLA:** Yes, yes.

15 **THE COURT:** How is that not in the province of the  
16 jury? How is that a matter of law?

17 **MR. VIOLA:** I'm not suggesting it is a matter of the  
18 law.

19 **THE COURT:** Then as to the minor Plaintiff H.C.,  
20 regardless of my ruling with respect to 501(c)(3) status  
21 constituting receipt of federal funds, with respect to the  
22 minor Plaintiff H.C. attending the school from the fall of 2019  
23 to spring of 2020, in light of the receipt of Payment Plan  
24 Protection funds from the school in the spring of 2020, it  
25 would be a factual question, would it not, as to whether or not

1 Count 1 could proceed before the jury?

2 **MR. VIOLA:** Yes, unless there's no factual basis that  
3 anything took place in the spring, which I think is what the  
4 record reflects. I'm not suggesting the record is before you  
5 now, but I think that's ultimately what's going to be borne  
6 out.

7 **THE COURT:** This could be important, you know, in  
8 terms of the matter of supplemental jurisdiction for this  
9 Court. And it also is a factor in terms of whether or not  
10 there should be an interlocutory appeal.

11 So I don't think it's a minor matter, Mr. Viola. If the  
12 allegations are what they are, and she was a student, if your  
13 theory is, well, the actual alleged violations had to occur in  
14 the spring of March 2020, around the time that the Payment Plan  
15 Protection money was received or there's not a receipt of  
16 federal funds. The nature of these allegations have to do with  
17 negligent supervision and retention in Count 2. Count 4,  
18 intentional infliction of emotional distress. Count 3,  
19 negligence, and the fact patterns that outlie all that.

20 And as to Count 1, a violation of Title XI in terms of it  
21 may be a factual question that would have to be submitted in  
22 terms of whether or not there was inactivity or malfeasance on  
23 the part of the school in the aftermath of complaints by the  
24 minor Plaintiff H.C.

25 So I'm giving you an opportunity to address that because

1 that may be important in terms of whether or not this Court --  
2 even if the Fourth Circuit were to disagree with me and reverse  
3 me on Title XI, whether or not there would be supplemental  
4 jurisdiction with respect to -- certainly as to the -- as to  
5 those causes of action as to H.C.

6 I'm asking how would that be handled?

7 **MR. VIOLA:** Well, I don't think -- unless I'm missing  
8 something, that is not relevant to -- it's only relevant to the  
9 determination of Title XI in --

10 **THE COURT:** Well, what I'm trying to ask you, I'm  
11 obviously not asking the question properly because I'm not  
12 getting an answer -- I apologize.

13 **MR. VIOLA:** I'm not trying to --

14 **THE COURT:** What I'm saying to you is you're also here  
15 seeking the matter of -- the granting of an interlocutory  
16 appeal on this.

17 **MR. VIOLA:** Right.

18 **THE COURT:** That is purely a matter of law. And I  
19 guess my question to you is how is it purely a matter of law as  
20 to 501(c)(3) status as to the minor Plaintiff H.C., when I've  
21 already noted in my opinion that -- with respect to my opinion  
22 of July 21st I specifically noted that as to the Plaintiff H.C.  
23 I denied your motion for partial summary judgment, apart from  
24 the matter of the 501(c)(3) analysis, because there's no  
25 dispute as to her enrollment period. And that the school

1 applied for and received a PPP loan through the Small Business  
2 Administration and that loan was forgiven, ultimately, as of  
3 November 20 -- I'm sorry, November 10 of 2020.

4 So my point to you is, how does the -- how does the claim  
5 of the minor Plaintiff H.C. not survive regardless of -- in  
6 terms of going to a jury regardless of the 501(c)(3) analysis?

7 **MR. VIOLA:** Well, I think I said before, what I was  
8 trying to say, maybe I didn't say it. It would in terms of the  
9 factual issue as to whether that overlapped for the --

10 **THE COURT:** Yeah.

11 **MR. VIOLA:** -- for Title XI.

12 **THE COURT:** So the Title XI case would stay alive as  
13 to her and would have to go to the jury.

14 **MR. VIOLA:** For the time being, I guess --

15 **THE COURT:** You say "for the time being," for what  
16 time being?

17 **MR. VIOLA:** We've got motion for summary judgment  
18 coming up.

19 **THE COURT:** I understand.

20 **MR. VIOLA:** I guess where I'm getting hung up is I  
21 think that the record is ultimately going to be borne out that  
22 there's nothing in the record to suggest that during the time  
23 that CPS had received the PPP loan, that there's any  
24 allegations giving rise to any of H.C.'s complaint, whether  
25 it's Title XI or otherwise.

1           **THE COURT:** I'm not going to go rule ahead of time on  
2 this, but how does it not, in terms of inactions or  
3 malfeasance, to take no steps, to not deal with a situation  
4 that's been presented? How does that not -- I'm having a hard  
5 time understanding, Mr. Viola, how you frame this strictly in  
6 the context of when the alleged sexual acts in the locker room,  
7 for example, took place. And unless the school was receiving  
8 federal funds on that day, that if the school received funds  
9 five or four months later that that doesn't constitute  
10 receiving federal funds -- when the nature of this complaint is  
11 not just a specific day, but the inaction of a school during a  
12 time period?

13           **MR. VIOLA:** Respectfully, Your Honor, I think where  
14 we're getting hung up is going to be ultimately on an  
15 examination of the factual record. H.C. was not -- there was  
16 nothing in the locker room with H.C., I think you're talking  
17 about the N.H. case. But that was an incident that happened  
18 off campus in the fall of 2019. And I think that the record is  
19 going to reflect that there wasn't a lack of inaction. That  
20 the school dealt with it and there was no issues that H.C. had  
21 beyond the fall of 2019. That's why we're getting hung up on  
22 this back and forth.

23           I'm not trying to be difficult. What I'm saying is I  
24 think we have a pure question of law on just the issue of  
25 whether tax exempt status constitutes federal financial

1 assistance. And I agree with you that the issue with H.C.,  
2 that has to be dealt with later and make a determination as to  
3 whether this is a factual dispute or not.

4 I don't think that's ultimately going to be borne out.  
5 You may disagree with me.

6 **THE COURT:** I understand. I'm asking the question for  
7 a reason. There's an issue that floats here in terms of  
8 supplemental jurisdiction.

9 **MR. VIOLA:** I understand.

10 **THE COURT:** Essentially, what you're seeking is to  
11 have these cases be dismissed and then issues with having --  
12 then these Plaintiffs have to refile in state court. This is  
13 not a removal and remand. They were not filed in state court  
14 to begin with. They were filed here.

15 The issue here is a matter of dismissing these cases or  
16 granting summary judgment on Title XI and then the issue of  
17 whether or not this Court would have any basis for supplemental  
18 jurisdiction, essentially.

19 **MR. VIOLA:** I understand.

20 **THE COURT:** Thank you, Mr. Viola. I apologize if I  
21 was a little bit aggressive on my questions. But I have these  
22 hearings -- I really was going to try to deal with this in a  
23 phone call on the record. The record will reflect that counsel  
24 were pretty serious they wanted a hearing, so that's why we've  
25 got a hearing.

1           **MR. VIOLA:** I would have preferred to do it in person  
2 anyway. I'm thick-skinned, Your Honor.

3           **THE COURT:** That's fine. I'm glad to have you all  
4 here. I ask questions. That's why we're here. Thank you very  
5 much. And I'll give you time to respond in a minute.

6           **MR. VIOLA:** All right.

7           **THE COURT:** With that, Ms. Graziano, Mr. Ketterer,  
8 whoever would like to address this you can stand at the table  
9 or the podium or whatever you would like.

10           **MS. GRAZIANO:** I'll stand at the table.

11           **THE COURT:** That's fine. Just pull the microphone a  
12 little closer to you. There you go. That's fine. Thank you.

13           **MS. GRAZIANO:** Sure, Your Honor. Thank you for  
14 allowing me to be heard. I'll attempt to be brief because I  
15 think Your Honor actually addressed a great deal of my argument  
16 and your comments to my brother counsel. But really, why we're  
17 here on this issue for a Motion for Reconsideration isn't to  
18 rehash the merits. Although I'm happy to do that to the extent  
19 that it pleases Your Honor.

20           But we're to determine, as you rightly pointed out under  
21 Rule 60, is this clear error or is there some new issue or new  
22 fact or new law to support overturning your previous order?  
23 And that's just not in play here.

24           And I think Your Honor very aptly noted that *Cummings* was  
25 decided on April 22nd, 2022. It was completely absent from my

1 brother's moving papers in moving to reconsidering. And so  
2 this idea that we're going to come time and time again before  
3 Your Honor out of dissatisfaction with the outcome of a Motion  
4 to Dismiss and Motion for Partial Summary Judgment, flies in  
5 the face of what the standard is for a motion to reconsider.

6 I would further say to Your Honor, you know, if we're  
7 talking about instead of bootstrapping new arguments, which I  
8 would claim that the Defendant is doing, if we want to look at  
9 cases that have been decided or orders that have been issued  
10 after Your Honor's order was entered in July, you hit the nail  
11 on the head. The *E.H. v. Valley Christian Academy* order which  
12 came down in the Central District of California July 25th, just  
13 four days after your order, I think, is really illustrative.

14 And I'll point out that my brother says that this  
15 particular Order did not deal with or consider tax exempt  
16 status, which is false. That case did not just concern a PPP  
17 loan, though it did. The Court in its holding -- and I have a  
18 copy of this Order should Your Honor wish to see it.

19 **THE COURT:** I've read it. They didn't cite my case  
20 slightly earlier, I note that, but they did rule the same way I  
21 did.

22 **MS. GRAZIANO:** It ruled the exact same way, Your  
23 Honor. In fact, the Court ended its treatment of the issue by  
24 saying "Accordingly, the Court holds that Valley Christian's  
25 tax exempt status confers a federal financial benefit that



1 obligates compliance with Title XI."

2       So I'm glad that Your Honor is familiar with it. So I  
3 just wanted to point out the clarification that this Order was  
4 issued, not just with respect to the PPP loan but also to that  
5 school status.

6       Again, Your Honor, you're quite right that the facts of  
7 that case are almost identical in terms of allegations, and  
8 almost identical in that order to the arguments that were  
9 raised by the Defendant in this courtroom today, and also the  
10 cases that were relied upon.

11       I'm sure Your Honor recalls reading in the E.H. Order that  
12 the *Johnny's Icehouse* case was cited left, right, up and down,  
13 just as it has been by my brother. And again, we're hearing  
14 the same cases over and over, the same arguments over and over  
15 and that's a merit-based argument.

16       And I think Your Honor was quite right earlier in saying  
17 dissatisfaction or upset or whatever you want to describe it as  
18 with a ruling doesn't give rise to the level of error that  
19 warrants a Motion for Reconsideration.

20       And I also just want to point out, since my brother did  
21 spend such a great deal of time speaking about the *Cummings*  
22 case, that case is about damages only, about how spending  
23 clause legislation is a contract, as my brother rightly noted.

24       But the Court was talking about what damages are available  
25 when there's a contract with the Government part and parcel to

1 that spending clause. And said that because it's contractual  
2 in nature, the only damages that are available then are  
3 contractual damages, so not emotional distress damages.

4 So it's a little bit of a stretch to say then that the  
5 *Cummings* case can be applied to this issue en masse, when it's  
6 really very, very narrow. And I don't think it all changes the  
7 thought process or the analysis that this Court underwent in  
8 reaching its order.

9 But I will also say this, Your Honor, and I think that you  
10 really hit this in the Order that you issued. We're not just  
11 talking about tax exception, right? We're talking about  
12 501(c)(3) status, which in and of itself is a contract with the  
13 Government.

14 You've got these nonprofit organizations coming forward  
15 and saying "Look, in exchange for the benefit that we confer,  
16 the good that we give to society, in exchange we want this  
17 panoply," or we're going to take advantage of this panoply of  
18 benefits, including tax exemption.

19 But it's far beyond that. It is clearly and truly a  
20 contract. I think we see that even when we look at some of the  
21 other Title VI cases that Your Honor cited. They might not be  
22 exactly factually on point talking about Title XI, although we  
23 know from Supreme Court precedent that Title XI is of course  
24 modeled after Title VI.

25 But we have the *Regan* case going back to the '80s telling

1 us that a grant is the same thing as -- and a subsidy is the  
2 same thing as a cash gift from the Government, right. So if we  
3 agree that the 501(c)(3) status is a contract with the  
4 Government, which is the equivalent of a grant, and we look  
5 at -- my brother made much discussion of the C.F.R.s and the  
6 regulations, 34 C.F.R. 106.2, the definitions for Title XI of  
7 what constitutes federal financial assistance, number one, is a  
8 grant or a loan. So all we have to do, again, is look to *Regan*  
9 which tells us that a grant is the same thing as a gift of cash  
10 from the Government.

11 So any way we slice it, Your Honor, a 501(c)(3) entity is  
12 keeping money that would otherwise belong to the government and  
13 in that fashion is a direct recipient of federal financial  
14 assistance.

15 So I really don't think it's so convoluted. I really  
16 don't think these bootstrapped arguments, some of which should  
17 have been and for whatever reason weren't part of my brother's  
18 original moving papers, they're extraneous. They're not  
19 persuasive. They're not authoritative.

20 When we look at the Supreme Court precedent on the issue  
21 of when an entity is a recipient of federal financial aid and  
22 then what constitutes federal financial aid, as I said borne  
23 out by the *Regan* case, also borne out by *Grove City* and *NCAA*,  
24 coupled with as you pointed out the authority from the Eleventh  
25 Circuit. Whether or not, you know, a footnote wasn't enough

1 for my brother counsel, it's certainly enough for the Court in  
2 its Order.

3 Then we look at some lower court decisions like the *Fulani*  
4 case, as well as the *McGlotten* case, which I disagree with my  
5 brother, I think that was soundly decided. We clearly see that  
6 assistance provided through the tax system is within the scope  
7 of Title VI. As we know from the Supreme Court, Title XI is a  
8 mirror of Title VI. It's unambiguous.

9 So this idea that schools like Concordia Prep, schools  
10 like the Defendant who do have that 501(c)(3) status, were just  
11 utterly in the dark, and it was so unambiguous, and they  
12 weren't on notice that they were going to be held to the  
13 mandates and requirements of Title XI is just unavailing.  
14 Because it's clear when you look at the precedent that they  
15 were given this grant. They were given this money, basically,  
16 from the Government and as such are on the hook for -- for  
17 Title XI.

18 And I would just point out again, I know I mentioned to  
19 Your Honor that we're talking about 501(c)(3) status as opposed  
20 to just tax exemption. This is not this broad-based policy. I  
21 didn't read Your Honor's opinion, and I certainly tried to make  
22 this point in our opposition to my brother's motion. We're  
23 not -- I don't think that the Court's Order does this and we're  
24 not certainly asking for some broad-based proclamation that  
25 every school that gets a tax exemption is subject to Title XI.

1 We're here today talking about one Defendant, their  
2 conduct, their status as a 501(c)(3) entity, and how they used  
3 that conduct and benefited financially from that status in a  
4 manner that places them under the auspices of Title XI.

5 So this idea, and my brother mentioned it, and I know it's  
6 in his papers and we've got, you know, fine counsel here today  
7 from various entities nationwide, this idea that this issue  
8 affects such a great many schools and it's going to be so  
9 onerous for schools to come into compliance with Title XI is,  
10 frankly, unavailing. And it's not a reason for this Court to  
11 reconsider a sound --

12 **THE COURT:** Let me make sure if I understand your  
13 argument in that regard, is that the specific criteria of Title  
14 XI, that's at issue here, is the matter of -- as was noted by  
15 the Fourth Circuit in the *Doe v. Fairfax County* case -- is the  
16 matter of the sexual harassment that being so severe, pervasive  
17 and objectively offensive. And so an official who has the  
18 authority to address the alleged harassment, and the school  
19 acting with deliberate indifference, all of those factors have  
20 been listed by the Fourth Circuit last year. And I'm trying to  
21 understand your point about the limit of noting that 501(c)(3)  
22 status may constitute receiving federal funds is in the context  
23 of this type of sexual harassment section.

24 Is that what your argument is?

25 In fairness to the Defendants, I'm trying to inquire in

1 terms of the breadth of it. I understand the reaction of --  
2 and I understand the amicus briefs that have been filed in  
3 terms of the breadth of it in that the 501(c)(3) status is not  
4 just merely important to private schools, some would say it's  
5 the very core of the existence of private schools. And there's  
6 more than a few private schools who would be severely  
7 jeopardized, their very existence would be jeopardized if they  
8 didn't have 501(c)(3) status.

9 I wouldn't want to be in charge of fundraising for a  
10 private school if 501(c)(3) status was taken away. And indeed,  
11 it's pretty clear that most people realize that all the  
12 fundraising, the financial status of schools is very dependent  
13 upon the donations of alumni and very dependent upon 501(c)(3)  
14 status. I certainly understand the amicus briefs that were  
15 filed by local and national independent school organizations.

16 **MS. GRAZIANO:** As do I, Your Honor.

17 **THE COURT:** I will note for the record I was fully  
18 aware of that when I issued the opinion.

19 **MS. GRAZIANO:** Of course, Your Honor. And I will say  
20 this, I'm going to ask the Court in the moment if I can include  
21 my brother counsel.

22 **THE COURT:** Sure.

23 **MS. GRAZIANO:** Very appreciative of that. If I can  
24 say before I turn to him, Your Honor, that's certainly not lost  
25 on me. I know Your Honor at one time was a board member of a

1 private school in Maryland. I'm a board member of a private  
2 college. So I completely understand the implications for  
3 institutions.

4 My point is merely there's a difference between 501(c)(3)  
5 status, which is something that's solicited, that's a position  
6 that's applied for and granted in exchange for -- there's a  
7 consideration there, like a contract, versus a mere tax  
8 exemption.

9 **THE COURT:** That's fine. I'll be glad to hear from  
10 Mr. Ketterer, that's fine. And anyone else who wants to  
11 respond. Mr. Viola will have a chance to respond or  
12 Mr. Goodman. And for that matter, any of the amicus counsel.  
13 I'm more than welcome to have any of them respond. I  
14 understand what the implications of this are.

15 **MR. KETTERER:** Your Honor, just briefly. I don't want  
16 to have two people arguing.

17 **THE COURT:** That's all right. I can waive that local  
18 rule if I want. This is important. I'm more than willing to  
19 have an input of anybody that wants to speak.

20 **MR. KETTERER:** Very good, Your Honor. I appreciate  
21 that. What I would say directly to you is this, 501(c)(3)  
22 status is not what's under the microscope or under implication.  
23 This idea there's a public policy concern, which Your Honor has  
24 consistently in both its original Order and here today has  
25 voiced concerns about the concerns that Title XI sort of

1 implicates and is trying to protect, that's really what the  
2 case is about. It's about protection of young women.

3 **THE COURT:** At private schools.

4 **MR. KETTERER:** In private schools. The question is is  
5 that how is it that Concordia Prep School used its 501(c)(3)  
6 status? Right. So we can say, well, tax exemption is one of  
7 the benefits of 501(c)(3) but that is not the only benefit of  
8 501(c)(3) status. There are other benefits, both financial and  
9 non-financial benefits that are implicit within that contract  
10 or that contractual relationship with the Government. So  
11 that's number one.

12 Number two, how did Concordia use it? If you go to the  
13 Concordia website today, what you see is a panoply of a whole  
14 section of fundraising efforts. And those fundraising efforts  
15 do this, they specifically target and utilize the contracted  
16 benefit they got from the government, 501(c)(3) status, in  
17 order to raise money, to use that money in a way that is  
18 specifically directed to the very things that Title XI  
19 specifies and enumerates are covered within that particular  
20 statute.

21 So the frame of this is always tax exemption, tax  
22 exemption, tax exemption. And, there are 501(c)(3) entities  
23 that use it, maybe as just a tax exempt status. They take the  
24 benefit. That's a question -- and I believe that there's more  
25 than adequate case law, the weight of the evidence more than



1 supports that being considered federal financial assistance.

2 But in this case, Your Honor, in Concordia Prep School's  
3 case, in the manner in which they use it, they use it in a way  
4 that is for further financial gain. They take that federal  
5 benefit and they explode it in another manner. And that is a  
6 benefit that directly benefits their pocketbook.

7 Money that would otherwise wind up in the Government's  
8 pocket for many individuals, many companies, many corporations,  
9 where does it land? It lands with CPS as an express grant of  
10 the relationship and the contractual nature. So even assuming  
11 defense counsel's argument, the contractual nature of that  
12 relationship specifically lines CPS's pockets. I don't know  
13 about any of the other associations. And I don't know about  
14 any other private schools. And I don't know exactly what they  
15 do or do not do. But what I do know is what Concordia Prep  
16 does in its public view and how it is they use that 501(c)(3)  
17 status.

18 Thank you, Your Honor.

19 **THE COURT:** Thank you very much. Thank you all very  
20 much.

21 **MS. GRAZIANO:** Thank you, Your Honor.

22 **THE COURT:** Thank you. Mr. Viola, I'll be glad to  
23 hear from you in response.

24 **MR. VIOLA:** Sure. The Court's ruling was pretty clear  
25 as to the tax exempt status constituted federal financial

1 assistance. I'm not sure how we're trying to parse this out  
2 now.

3 **THE COURT:** In the context of an educational  
4 institution.

5 **MR. VIOLA:** Right, but how it differs somehow if they  
6 use it for fundraising or not, as the Court aptly pointed out,  
7 I think you said you wouldn't want to be any fundraiser for any  
8 tax exempt institution -- or didn't want to be any sort of tax  
9 exempt institution that didn't use it for fundraising. I mean,  
10 they're trying to draw a distinction without a difference.  
11 Either the Court makes the ruling that tax exempt status  
12 constitutes federal financial assistance and we can do  
13 whatever, appeal or not.

14 I don't see how they're parsing out particular exceptions  
15 involving CPS. And I'm happy to ask amicus counsel if they  
16 disagree with that.

17 **THE COURT:** Sure.

18 **MR. VIOLA:** The only other thing I want to talk  
19 about --

20 **THE COURT:** In fairness to you, I think that's very  
21 apt. I certainly read the implications when I issued the  
22 opinion. That in the context of Title XI, in terms of an  
23 education institution, in context of Title XI and sexual  
24 harassment that in terms of those mandates that are very  
25 specific, that the 501(c)(3) status constitutes receiving

1 federal funds and not necessarily abiding by your argument with  
2 respect to the spending clause legislation because, so the  
3 record is clear, that there's broad public policy with respect  
4 to Title XI. And we're not just talking about Government  
5 contracts and spending clause legislations and apportionments  
6 from acts of Congress, we're talking about significant,  
7 significant changes in 1972 that were important to literally  
8 all women in the United States and all young women in schools.  
9 There's no doubt about that. In terms of the revolution and  
10 the development of women sports in college. Suddenly young  
11 women are getting recruited to colleges for sports, not just  
12 young men. And in terms of the implications as to all these  
13 mandates of Title XI, including sexual harassment.

14 So that I think that you're right in terms of -- you can't  
15 really parse this down and make it limited. I understand the  
16 breadth of it.

17 The breadth of it is is that a young woman in Towson High  
18 School doesn't have greater protection from sexual harassment  
19 than does a young woman at Concordia Prep for the specific  
20 reason, well, we get our money straight from the state or the  
21 feds and we don't. That's the point of it. Let's make sure  
22 it's abundantly clear on the record.

23 As far as I'm concerned they're trying to parse this into  
24 spending clause legislation and shoehorning it in, in terms of  
25 the narrowness of these doctrines, with no disrespect,

1 Mr. Viola, that's not what we're talking about here. There's  
2 no way you can limit Title XI in that fashion. That  
3 legislation was passed 50 years ago with earth-shaking results  
4 across society. Without question.

5 And I fully understand the import of my opinion in that  
6 regard. And I don't think you can parse that down. It's Title  
7 XI and young women and the protections and the benefits they  
8 receive. And what I want to ask you, I'm trying to understand  
9 why this is so onerous because you've avoided public policy.  
10 You cannot avoid public policy in this analysis, with all due  
11 respect. And there's very likelihood I'm going to let you all  
12 go down to Richmond. I want to make sure you understand so the  
13 record is clear, you just can't ignore public policy and say:  
14 Well, here we're going to shoehorn this in. This is spending  
15 clause limitation and here's this case on this law and this  
16 case on this law.

17 And that's why I emphasize that you have a very definite  
18 dearth of Title XI cases. There is not an overwhelming  
19 authority. There is many cases that go my way as go your way.

20 *Johnny's Icehouse* is a case you've cited a lot today in  
21 your opinion. You needed to because there aren't that many  
22 cases specifically on Title XI, despite your effort to try to  
23 shoehorn them in the spending clause limitation.

24 But I think in fairness to you, I need you to explain to  
25 me why is this so onerous? There's some suggestion in terms of

1 implementing regulations that, for example, I saw somewhere in  
2 the papers in terms of having a designated official that has to  
3 deal with these kinds of issues, apparently which is the case  
4 under Title XI.

5 Explain to me how that is so onerous for Concordia Prep to  
6 have the same kind of person assigned to these matters as  
7 Towson High School?

8 And anybody -- and I would be glad to hear from those who  
9 filed amicus briefs. I really want to be educated on this and  
10 it's good for the record.

11 Mr. Shea, nice to see you here.

12 **MR. SHEA:** Your Honor, it's a pleasure to see you, as  
13 always.

14 **THE COURT:** I mean, seriously, where is this so  
15 onerous to a private school? Where is this great burden that's  
16 placed upon a private school? And tell me where is this huge  
17 matter of just sort of pushing public policy aside and looking  
18 at the spending clause limitation figure?

19 **MR. SHEA:** Your Honor, that's precisely why we  
20 submitted our amicus brief is to show that the implications of  
21 both the onerousness and the other implications of this kind of  
22 compliance.

23 And to quibble, I would say this is, from our perspective,  
24 this is not about protecting women. This is about how women  
25 are protected in these schools. And the point is, Title XI is,

1 frankly, designed for large school systems and universities.  
2 And to answer your precise question about how onerous it is,  
3 Title XI's implementing regulations require not one designated  
4 Title XI coordinator, but they require three specific people.  
5 They require a Title XI coordinator. They require someone to  
6 investigate the --

7 **THE COURT:** The allegation.

8 **MR. SHEA:** -- the allegation, and someone to  
9 adjudicate it. And the three of them have to be different  
10 people. Not only do they have to be three different people,  
11 they have to be trained on very complicated concepts of law.  
12 Privilege, they have to apply privilege rules. These are all  
13 in the regulations, Your Honor, we cited them --

14 **THE COURT:** Yes, I saw it.

15 **MR. SHEA:** They have to apply privilege, they have to  
16 not consider privileged material. They have to consider  
17 relevance. They have to only consider what is legally  
18 relevant. They have to analyze what is sexual harassment claim  
19 under the legal definition of sexual harassment and dismiss any  
20 claim that's not -- that doesn't meet the claim of sexual  
21 harassment.

22 And they have to -- I can go through this ad nauseam, but  
23 it amounts to what is essentially a quasi-legal, quasi-  
24 judicial proceeding.

25 And our clients are institutions that in some cases have

1 80 students. We have one member that has 10 faculty members.  
2 For them to designate three different of those 10 faculty  
3 members to fill these positions and comply and be trained on  
4 them and implement these very complicated and specific  
5 procedures is just not something they're equipped to do.

6 And it's not that they're not capable and able to protect  
7 women from sexual harassment complaints. They do so every day,  
8 very, very effectively. But they have procedures and policies  
9 in place that are tailored to both their size and their  
10 mission.

11 So you have schools that, frankly, every day make the  
12 difficult decision not to accept federal funds, actually accept  
13 money, knowing that it could mean the difference between them  
14 failing or not. There are maybe schools that didn't take  
15 Payment Protection Plan money knowing that they could fail and  
16 they could have to close. But they knew -- not that they  
17 didn't want to protect women, but they knew that these very  
18 specific prescriptive requirements are just not something that  
19 they're ever going to be able to accomplish.

20 We cite in our brief Johns Hopkins University, which  
21 obviously is a totally different animal, but they have an  
22 entire division of their university. Fifteen employees, seven  
23 of whom are full time investigators, I might be getting the  
24 numbers wrong, and 11 of whom are lawyers. They have a whole  
25 division. And all they do, the whole division, all they do is

1 implement the procedures that are required by Title XI that are  
2 very specific and change all the time from administration to  
3 administration that if they don't comply with they're in  
4 violation of Title XI.

5 To go back to where I started, this is not about whether  
6 or not to extend more rigorous and greater protection to women.  
7 This is about how that should be implemented and what's the  
8 most appropriate way, given the institution that you're talking  
9 about. And for a small school with 80 students and 10 faculty  
10 member --

11 **THE COURT:** Mr. Shea, you and I both know that's the  
12 rare example.

13 **MR. SHEA:** Well, Your Honor, just to give some numbers  
14 to that --

15 **THE COURT:** I'm sorry, Mr. Viola, do you want to say  
16 something?

17 **MR. VIOLA:** Concordia Prep, I believe their enrollment  
18 was 104 students over seven grades.

19 **THE COURT:** Seven grades, yes. Okay.

20 **MR. SHEA:** Your Honor, the National Association of  
21 Independent Schools, which is one of the seven independent  
22 schools we represent, 12 percent of their members have under  
23 100 students. So it's not the rare case. It's a large number  
24 of --

25 **THE COURT:** Let me ask you this, I don't mean to



1 interrupt, because we can spend a lot of time on this, but I'm  
2 really interested. I'm familiar with those three people that  
3 are required. I'm very familiar with it.

4 **MR. SHEA:** Understood, Your Honor.

5 **THE COURT:** And you have one person that investigates  
6 the allegation. You have one person who sets the policy and  
7 tries to make sure everyone is aware of it. You have another  
8 person who investigates the claim. And you have a third person  
9 who acts essentially as the judge and determines if it's up or  
10 down, in terms of whether they find there was or was not, if  
11 there was some violation of school policy.

12 It's very similar to school honor boards and private  
13 schools have school honor boards, public schools have school  
14 honor boards.

15 And I must tell you, just so the record is clear for  
16 purposes of the Fourth Circuit record, I don't find how onerous  
17 that is for three faculty members to perform that role. I  
18 really don't. And I think -- I must tell you, in all candor,  
19 while I understand the reaction of the private schools  
20 associations, I also suggest, if this goes down to Richmond as  
21 quickly as perhaps I think I'll let it go, we need to reflect  
22 quickly upon the matter of public policy, the matter of  
23 implementation of public policy, the importance of public  
24 policy, and the implication that public high school students  
25 have certain mechanisms that they can undertake and are certain

1 sanctions. But the private schools, not so much. Just don't  
2 worry, they'll do the right thing --

3 I'll be there and finish in a minute, Ms. Graziano.

4 -- but they'll do the right thing. But they don't fall  
5 within the ambit of it.

6 You and I both know -- I have the benefit of knowing a lot  
7 of the lawyers in this room, some of whom have also been the  
8 benefit of the private school system, you and I both know that  
9 the pandemic was nothing to private schools compared to what it  
10 would be if they didn't have 501(c)(3) status. Ms. Graziano  
11 has aptly noted the emphasis on that that.

12 I mean, I can't imagine, when I served on the board of a  
13 private school in this area if you suddenly had 501(c)(3)  
14 status jeopardized, first of all you can't get the foundation  
15 money. Do you agree with that, Mr. Shea?

16 **MR. SHEA:** Yes, Your Honor.

17 **THE COURT:** You don't get a dime of foundation money.  
18 All these foundations, AS Abell Foundation, all these  
19 foundations, not a penny can go to a school that doesn't have a  
20 501(c)(3) status.

21 Alumni are asked to give money and they're told: Well,  
22 you may or may not be able to deduct it.

23 501(c)(3) status is at the very core of private schools.  
24 It is not just a minor matter.

25 And to understand -- I just absolutely, so the record is

1 abundantly clear in terms of Mr. Viola's very intense and very  
2 good argument, I do not see that Title XI can be shoehorned  
3 into the spending clause legislation like some of these cases  
4 because it's an enormously significant piece of legislation and  
5 had a major impact on American society.

6 And we all know that when that law was passed we had  
7 nowhere near the issue of lifting up the issue of sexual  
8 harassment. We all know that it's been shocking to all of us  
9 over the last 15 or 20 years in terms of these allegations  
10 coming forward now.

11 But that's part of what Title XI did in my view.

12 And the notion that it's so particularly onerous, and I  
13 have read your briefs, and I have no difficulty with you all  
14 participating in this litigation, and I think you should have,  
15 and I agree with it, but I'm not going to back off from how  
16 significant the opinion is.

17 I recognize how significant the opinion is. Ms. Graziano  
18 is not quite correct to say: Well, I'm going to narrow this  
19 here.

20 I'm not narrowing it at all.

21 As far as I'm concerned, 501(c)(3) status to any private  
22 school is receipt of federal funds in the context of Title XI  
23 legislation when it comes to Title XI claim based on  
24 student-on-student sexual harassment. That that falls within  
25 that, and they must abide by it.

1 And the notion that it's particularly onerous as to these  
2 three people that appointed -- you've correctly summarized the  
3 three people. I don't find that to be very onerous. It is not  
4 a Johns Hopkins University system with house counsel. And  
5 you're right, many of these major universities have extensive  
6 offices. That's, you know, it is what it is.

7 But I just think that we're sort of treading through new  
8 ground here. And in fairness to AIMS, the Association of  
9 Independent Maryland Schools, as well as to the national  
10 organizations, I didn't just jump on this opinion. If you  
11 note, these motions for these five cases were pending for a  
12 while. And I did reflect upon them and the opinion might have  
13 been short, but I think it was to the point.

14 Anything else you want to add on this, Mr. Shea?

15 **MR. SHEA:** No, Your Honor. Only just to reiterate  
16 that under no way, shape or form are my clients or their  
17 members in any way against all the great things that Title XI  
18 has accomplished or all the things of the goals it is designed  
19 to achieve. Again, what we are taking issue with is that it's  
20 designed for all entities everywhere. And not just --

21 **THE COURT:** All private school entities anywhere is  
22 your point.

23 **MR. SHEA:** Well, all schools everywhere, Your Honor.

24 **THE COURT:** Right. All private schools everywhere  
25 because it's clearly applicable to public schools. They all

1 get federal funding. Is there any dispute about that? Is  
2 there a public school in the United States that doesn't get  
3 some sort of federal funding?

4 **MR. SHEA:** No, Your Honor.

5 **THE COURT:** All right. That's it in a nutshell. That  
6 might be the most important thing we've established today.

7 Literally, there's not one public high school in the  
8 country that does not receive federal funding to place them  
9 under the same mandates as we're now dealing with here in this  
10 case, correct?

11 **MR. SHEA:** Correct, Your Honor. Although they are  
12 different sizes and complexity.

13 **THE COURT:** Different size, whatever, it could be a  
14 very small -- not just a huge, urban public high school. It  
15 could be a very small public high school in a rural area of the  
16 United States. If it's a public high school, they're going to  
17 get federal funding of some sort, correct?

18 **MR. SHEA:** True, Your Honor. Although the state  
19 machinery, even if it's in a small, rural area they have  
20 systems that are larger than 100-student private schools.

21 **THE COURT:** Well, in fairness to you, just to continue  
22 with that, the reality is -- again we're a little bit off on  
23 terms of any of us having expertise on this -- but I'm fairly  
24 certain that in rural areas of public high schools you may have  
25 certain administrators that cover more than one school.

1           **MR. SHEA:** Yes, Your Honor.

2           **THE COURT:** And I think that's probably the case so  
3 that you have in a rural area of the United States you have  
4 someone who is an investigator who may be an investigator for  
5 more than just one high school and probably also you agree with  
6 that.

7           **MR. SHEA:** Absolutely, Your Honor.

8           **THE COURT:** And the point is, there would be also  
9 another investigator, another person who would then preside and  
10 they may preside at more than one high school. So I'm not  
11 suggesting that there aren't ramifications for even smaller  
12 schools, and I hear you. But that's the way it is. That's my  
13 view of it.

14           **MR. SHEA:** Thank you, Your Honor.

15           **THE COURT:** Thank you very much, Mr. Shea. And thank  
16 you for the quality of your briefing. And thank you to your  
17 group that's here from Venable. Thank you very much.

18           And Mr. Genth, do you want to be heard on this?

19           **MR. GENTH:** Your Honor, very briefly.

20           **THE COURT:** Sure.

21           **MR. GENTH:** Geoffrey Genth for the Association of  
22 Maryland Independent Schools, Your Honor.

23           I represented AIMS only since Your Honor's July opinion.  
24 I have had the privilege and the pleasure to be outside general  
25 counsel for a number of independent Maryland schools starting

1 25 years ago, Your Honor.

2 Title XI was passed 50 years ago. Congress did not intend  
3 Title XI to cover independent schools. The Executive Branch  
4 for the education department has never understood Title XI to  
5 cover independent schools.

6 Independent schools, with the exception of the PPP blip  
7 that began two and a half years ago, never understood since  
8 1972 that they were subject to Title XI.

9 There's been a consensus, therefore, that Title XI doesn't  
10 apply to independent schools merely on account of tax exempt  
11 status. It could be that Congress didn't understand what its  
12 enactment meant in that the education department has been  
13 getting it wrong. That could be. And it could be that the  
14 independent schools have been getting it wrong by not  
15 understanding that they've been subject to Title XI since it  
16 was enacted in 1972.

17 I respectfully submit that there's another possibility,  
18 and that is that the congressional intent and the executive  
19 interpretation of that intent has at all times been correct in  
20 that independent schools are independent of a lot of government  
21 regulation, including Title XI. And there's a good reason for  
22 that, Your Honor, in terms of public policy.

23 It's okay for Congress to have these sort of contractual  
24 spending arrangements if they have highway funds for whatever,  
25 and say: Here's the *quid pro quo*, we'll give you the highway

1 money, you've got to the bring the speed limit down to 55.

2 It's a great public policy, I believe, in favor of lower  
3 speed limits.

4 But that doesn't mean there's a contract between every  
5 independent school and the federal government with regard to  
6 Title XI. It's never been understood to me that way.

7 **THE COURT:** Let me ask you something, how do you react  
8 to parallel definitions under Title VI and antidiscrimination  
9 public policy as contained under Title VI?

10 **MR. GENTH:** Well, Your Honor, my partner, Steve  
11 Klepper, drafted our brief, but I think that's the *Bob Jones*  
12 case, Your Honor.

13 **THE COURT:** Yes.

14 **MR. GENTH:** There would have been no reason to do that  
15 analysis if Title XI by itself --

16 **THE COURT:** My question to you, correct me if I'm  
17 wrong, certainly Title VI and the antidiscrimination public  
18 policy contained in Title VI has been incorporated to apply to  
19 private institutions, has it not?

20 **MR. GENTH:** Not on account of their tax exempt status,  
21 Your Honor. I don't believe so, no. That's -- I think that's  
22 the *Bob Jones* case. And I think Mr. Klepper got it right in  
23 the briefing and saying the very premise of all these cases --  
24 and you're right, Your Honor, there are not a ton of cases out  
25 there. There are some things that are just so understood.



1 It's hard to find cases that decide that a cat is not a  
2 canine because there's not a lot of people arguing about like.

3 What I'd like to report based on my experience, as outside  
4 general counsel for independent schools, is that this is  
5 changing the universe, if it changes this way. It's not for  
6 the better.

7 Mr. Shea, whose arguments I think are 100 percent on  
8 point, has got it right. This is hugely onerous. That school  
9 with 10 students -- excuse me, 10 faculty members -- they're a  
10 client of mine. Ten faculty members. Only 10. It's basically  
11 a one-room schoolhouse.

12 And it's not just about appointing three people. You've  
13 got to train them. And then, you know what, if you get the  
14 procedures wrong, you get sued for that. There are major  
15 universities throughout this country, Your Honor, they can't  
16 get it right.

17 And then every four years somebody else comes into the  
18 White House and you have a new Department of Education and they  
19 switch the Title XI regulations. And then you deal with that.

20 What we deal with now -- I was on the phone with a client  
21 very recently -- transgender. Huge battleground. And it goes  
22 back and forth like a ping-pong ball between the political  
23 parties. The independent schools are doing their jobs, they're  
24 protecting young women.

25 And what they don't need, this government overlay 50 years

1 after the enactment of the statute to come into play. There  
2 are causes of action here that exist and could be brought if  
3 they're valid under applicable state law. But respectfully --

4 **THE COURT:** Ah, that's the key point there, Mr. Genth.  
5 That's the key point. Under state law. No federal  
6 jurisdiction.

7 **MR. GENTH:** That's correct. That's the way it's been  
8 for 50 years. And respectfully, if Congress didn't intend  
9 Title XI to apply to independent schools, and I respectfully  
10 submit it didn't, certainly didn't understand it. Respectfully  
11 to the Court, the whole world outside the legal area in these  
12 cases going back and forth, no one understands or has thought  
13 that Title XI applies to independent schools. And it could be  
14 that they've all just got it wrong.

15 But I submit there's the other possibility, which is that  
16 the Department of Education, which is in charge of all this --  
17 I mean, through all the Democratic administrations, and I guess  
18 Republican administrations too, they have wanted to do good  
19 things and reform the world in this area. It never occurred to  
20 any of them that tax exempt status meant recipient to Title XI.

21 And I'll respectfully submit it wasn't because they  
22 weren't intelligent enough to realize that, it was because  
23 that's the law. This is spending legislation. And there is a  
24 very good public policy argument for not having quasi-judicial  
25 proceedings in a tiny school that may be K through 5, K through

1 6. These schools address these issues every way -- every day.  
2 And they should be allowed the flexibility as independent  
3 schools, independent of the government, to fulfill their  
4 missions.

5 Independent schools are filled with some of the most  
6 idealistic and good-doing people. And they should be allowed  
7 in the setting outside of the government to pursue their  
8 missions.

9 So that's, you know, and, Your Honor is absolutely  
10 correct. If you're in for a penny, you're in for a pound.  
11 Ms. Graziano cannot say: Oh, it's just this little -- it's the  
12 whole thing. It's all those officers. It's all the --

13 **THE COURT:** Well, the issue here is in terms of the  
14 sexual harassment prohibitions under Title XI. That's what's  
15 involved here in terms of specifically the section that deals  
16 with student-on-student sexual harassment. And the criteria as  
17 summarized by it Fourth Circuit recently of those four criteria  
18 that they were a student at an educational institution  
19 receiving federal funds. And the phrase that we're dealing  
20 with is "receiving federal funds." What does that phrase mean?  
21 Does it have to be a direct grant or do they receive federal  
22 funds from the point of view of tax deductibility contributions  
23 to the school. That's precisely what's before us.

24 **MR. GENTH:** Well, Your Honor, I don't understand the  
25 limiting principle. If you're tax exempt status, it means you

1 receive federal funds for purposes of Title XI. Maybe I'm  
2 misunderstanding the Court's question, but doesn't that mean  
3 that all Title XI apply?

4 **THE COURT:** Like many things, Mr. Genth, I can't  
5 project exactly how the litigation proceeds in terms of the  
6 interpretations of these phrases.

7 **MR. GENTH:** But, I mean, if Title XI applies to  
8 independent schools on the basis of tax exemption, it's not  
9 just some of Title XI, it's all of Title XI. And we have  
10 quasi-judicial proceedings because of something that happened  
11 on the playground with two eight year olds. And what I would  
12 say --

13 **THE COURT:** I guess you don't have much faith in  
14 courts throwing out those kind of cases.

15 **MR. GENTH:** Well, I --

16 **THE COURT:** Are you suggesting that we have three  
17 years of litigation over that? And I mean, in all candor,  
18 Mr. Genth, there's a remarkable lack of faith in a judicial  
19 system here. Do you really think a judge is going to have an  
20 eight year old can make a complaint and have a frivolous  
21 lawsuit be filed and not just bounce it out of court?

22 **MR. GENTH:** Your Honor, I have utter faith in the  
23 judicial system. And I had a great privilege of, as you know,  
24 serving with Judge Harvey. I forget if he was in this  
25 courtroom. I have a great faith in the judicial system.

1           What I have less faith in, as outside counsel for schools,  
2 is that every parent is sane, well-balanced, and always going  
3 to only advance responsible arguments. And it is a huge -- if  
4 the Court wants to know what the burden is, to deal with a  
5 quasi-judicial process and a parent saying, my eight year old  
6 was teased because of her pigtails -- and I know this sounds  
7 ridiculous -- but it is ridiculous -- it's not hard for me to  
8 conjure this up. In my representation of school I deal with  
9 these things.

10           **THE COURT:** There's no reason to conjecture. How  
11 often does that occur in public schools? Tell me the -- cite  
12 to me the litigation that has arisen in public schools across  
13 the United States. And there's an agreement, so the record is  
14 clear for the Fourth Circuit, every public school in the United  
15 States is exposed to the onerous task that you say is too  
16 onerous for private schools.

17           Please explain to me and tell me, and maybe I can have you  
18 document it. I want you to document how many frivolous  
19 lawsuits over pigtails and eight year olds in a lower school  
20 have been filed in the United States.

21           **MR. GENTH:** Your Honor, I have not done that research.

22           **THE COURT:** I'm sure you haven't. I'm sure you  
23 haven't.

24           **MR. GENTH:** I could, Your Honor.

25           **THE COURT:** No, with all do respect, Mr. Genth, I'm

1 not going to go have you waste time or your client waste time  
2 or money on it.

3 I respectfully suggest, I respectfully suggest that there  
4 has not been this wave of litigation over eight year olds  
5 throughout the United States based upon these provisions of  
6 Title XI. Clearly the record is perfectly clear here, we're  
7 talking about private schools and public schools. There is no  
8 question that every argument about how onerous it is, how  
9 difficult it is, that in terms of specific funding legislation  
10 all public schools are subjected to this.

11 And I must tell you, I know of no -- well, actually the  
12 proof in the pudding is this, you know what it is, we can watch  
13 television -- and I've entertained as you may know many  
14 international delegations. They are, like, shocked at what  
15 they see on the TV screens, the lawyers hawking their wares.  
16 Every one of them. Europe, Asia, they just stare in disbelief.  
17 And they watch lawyers hawking their wares. And I explain to  
18 them that lawyers are allowed to do this.

19 I will tell you, I have not seen a lot of ads for lawyers  
20 that talk about if you think your child is being mistreated at  
21 the school, and there's been a frivolous this or that, or your  
22 child is wearing pigtails, your child has been bullied, please  
23 call this telephone number. I haven't seen that on the TV  
24 screens. That's a pretty accurate measure of what does or does  
25 not happen because if there was a market for it, I guarantee we

1 would see a lawyer advertising on television.

2 **MR. GENTH:** I would submit to you that not every legal  
3 problem and legal headache makes its way into a lawsuit.

4 **THE COURT:** What I'm trying to say is you're posturing  
5 that there's this potential wave of litigation that this is so  
6 earth-shaking, my opinion and the opinion in California are so  
7 earth-shaking. And Mr. Viola wasn't particularly persuaded by  
8 the Eleventh Circuit's opinion back in 1989, which I think goes  
9 the way of my opinion.

10 There's no question there's a division of authority on  
11 this. And that's why it's important to build a record for the  
12 Fourth Circuit.

13 But my point is, the notion that this is catastrophic,  
14 catastrophic to private schools, I don't see where it's been so  
15 catastrophic to public schools. And I would challenge you  
16 all -- I'm sure you can find a case somewhere. But the notion  
17 that this has been so catastrophic and onerous and crippling,  
18 it doesn't seem to have been that catastrophic to the public  
19 schools in the area.

20 **MR. GENTH:** Well if Your Honor would like, with  
21 permission, I would ask my firm to present some legal authority  
22 or legal research we could. What I would submit, though, is  
23 this, that sort of fact-finding, that's what Congress does when  
24 it enacts things. That's what the Department of Education can  
25 do. But this imposition on the basis of tax exemption on

1 independent schools of Title XI compliance, it is -- it's  
2 effectively an amendment, I would suggest, respectfully, to  
3 Title XI 99, 50 years after it was passed.

4 Because Title XI was spending legislation and it talks  
5 about receiving government aid.

6 **THE COURT:** Right.

7 **MR. GENTH:** So that's the gist of the question.

8 **THE COURT:** Sure. We all understand what the legal  
9 issue is. Thank you, Mr. Genth. Thank you very much.

10 Certainly goes without saying, thank you for what you've done  
11 for the private schools which you represent. And I understand  
12 the seriousness of it.

13 The simple fact of the matter we've been regurgitating  
14 over issues that well represented, as I suggested to Mr. Viola  
15 earlier in his argument, there's really no new ground here.  
16 There's one case that has been said, a *Cummings* case, cited in  
17 a brief filed five days ago having to do with the spending,  
18 essentially the issue as to the spending clause legislation.  
19 Doesn't relate to Title XI at all. But that has been cited.

20 And the criteria here with respect to Motions for  
21 Reconsideration under an analysis, essentially, under Rule  
22 60(b), essentially the analysis is Rule 54(b) in terms of  
23 reconsidering any decision of the Court and may be revised at  
24 any time before the entry of final judgment. But motions for  
25 reconsideration of interlocutory orders are not subject to



1 those strict standards.

2 And the Fourth Circuit has suggested that rule 60(b)  
3 standard guides the District Court's analysis. And that goes  
4 back to the Fourth Circuit opinion in *Fayetteville Investors*  
5 936 F.3d. 1462, a Fourth Circuit opinion in 1991.

6 So as I've previously noted in some of my other opinions,  
7 the analysis here is under Rule 60(b) and 60(b) provides  
8 extraordinary relief and should only be invoked under  
9 exceptional circumstances, as this Court has often held going  
10 back to Judge Nickerson, an opinion in 2010: To support a  
11 motion under Rule 60(b), the moving party must demonstrate  
12 timeliness, a meritorious defense, a lack of unfair prejudice  
13 to the opposing party, and exceptional circumstances. And the  
14 threshold requirements are met if the moving party under 60(b)  
15 establishes one of the six predicates, any one of them, mistake  
16 or inadvertence.

17 I understand Mr. Viola has very strong and well-presented  
18 arguments that I'm dead wrong. I don't see the phrase "dead  
19 wrong" anywhere in the rule, but I understand what his argument  
20 is. I don't happen to think that I'm dead wrong. But that's  
21 my job to make decisions and then the Fourth Circuit will  
22 review what I've decided.

23 Newly discovered evidence. There's no newly discovered  
24 evidence here since my opinion.

25 Fraud or misrepresentation or other misconduct isn't an

1 issue here.

2 The judgment is void or there's a judgment that has been  
3 satisfied or any other reason justifying relief.

4 The simple fact of the matter is that Plaintiffs face a  
5 high bar to succeed on a Motion for Reconsideration. And a  
6 mere disagreement with the Court's ruling is not enough to  
7 justify a Motion for Reconsideration as this Court has  
8 previously held under the *Lynn v. Monarch Recovery*, 953 F.Supp.  
9 2d 612, an opinion of this Court in 2013.

10 And indeed one of my colleagues has noted that -- I  
11 forget -- I should note which one because it's lovely language,  
12 it's not mine, I'm fairly certain -- is that: The prior  
13 judgment cannot bid me, quote, "just maybe or probably wrong,"  
14 and Mr. Viola, it doesn't mention dead wrong there -- but we're  
15 laughing here. It says "maybe or probably wrong."

16 But then it says "It must strike the court as wrong with  
17 the force of a five-week-old unrefrigerated dead fish." And  
18 that is the language of one of my colleagues at 891 F.Supp. 2d  
19 739, an opinion in 2012.

20 I'm glad Mr. Viola is laughing with me here. We have to  
21 find out who wrote that because I have to tell him along with  
22 the dead fish it's being dead wrong I guess is the point.

23 Yes, Mr. Viola?

24 **MR. VIOLA:** I'm not trying to be disrespectful, Your  
25 Honor.

1           **THE COURT:** I know you're not. I'm teasing you. And  
2 laughing with you. No problem. There it didn't say they have  
3 to be dead wrong. It has to be so obvious that it smells like  
4 a dead fish.

5           **MR. VIOLA:** I think there is a case that says dead  
6 wrong too. Don't quote me.

7           (Laughter.)

8           **THE COURT:** I'm glad you're laughing with me on this.  
9           The point is that this bar, that bar, has not been met.  
10 I'll do a quick opinion on this. If I don't get it out  
11 tomorrow we'll get it out by Tuesday because it's a long Labor  
12 Day weekend. And Ms. Beleson is just now with me. It's her  
13 first week, and I'm not going to have her work through the  
14 first weekend that she works for me. You don't have to worry  
15 about that. We'll file it on Tuesday.

16           I think, if we've got time here, maybe we could take a --  
17 Ronda, how you doing? Do you want a quick break?

18           **THE COURT REPORTER:** I'm okay, Your Honor.

19           **THE COURT:** I'd like to go into the matter of the  
20 interlocutory appeal because the District Court's Order denying  
21 a Motion for Summary Judgment or denying a Motion to Dismiss is  
22 interlocutory and may be appealed only if the District Court  
23 certifies it under 28 U.S.C. § 1292(b). That the Order  
24 involves a controlling question of law as to there is  
25 substantial ground for difference of opinion, and that an

1 immediate appeal from the Order may materially advance the  
2 ultimate determination of the litigation. And two, the Court  
3 of Appeals permits such an appeal. They're really the  
4 standards here.

5 As to that, the Defendants have requested -- the motion is  
6 essentially one for reconsideration of my ruling or an  
7 interlocutory appeal in the alternative. I'm certainly willing  
8 to entertain that.

9 So with that, Mr. Viola, if you would like to address it  
10 I'll be glad to hear from you on this. Or Mr. Goodman.

11 **MR. GOODMAN:** Your Honor, on this point I would like  
12 to be heard.

13 **THE COURT:** I'll be glad to hear from you.

14 **MR. GOODMAN:** I'll be brief, but I'll let Mr. Viola go  
15 first.

16 **THE COURT:** All right. Go ahead.

17 **MR. VIOLA:** Your Honor, this is addressed  
18 significantly in our brief. I don't have too much else to add  
19 here.

20 Again, I think the controlling issue of law, we talked  
21 about why this is a controlling legal question, and you talked  
22 about it as well, does tax exempt status constitute federal  
23 financial assistance.

24 **THE COURT:** Pretty precise issue.

25 **MR. VIOLA:** Exactly. Pure question of law. And then

1 you also touched on which one is correct. But I think we can  
2 agree that there are cases that go both ways so it meets the  
3 second criteria. And then the third criteria --

4 **THE COURT:** We didn't agree on that earlier -- I'm  
5 laughing -- but we do agree on it now. There are cases that go  
6 both ways.

7 **MR. VIOLA:** We agree to disagree as to who is right.  
8 (Laughter.)

9 **THE COURT:** We're laughing. But that's the point,  
10 there's definitely the California case that says it goes my  
11 way. The Johnny's Ice whatever from 2001 doesn't. I think the  
12 Eleventh Circuit goes my way. There's no Fourth Circuit  
13 authority.

14 **MR. VIOLA:** I'll throw *Stewart* and *Bachman* in,  
15 whatever.

16 **THE COURT:** That's right.

17 **MR. VIOLA:** But I think we agree that there's a  
18 difference of opinion of the law, not of the facts. And then  
19 also that it would terminate the advance determination of  
20 litigation. And Your Honor spoke about this before in terms of  
21 potential jurisdictional issues if the appeal is ultimately  
22 granted, the Title XI is out of the case and the appeal is  
23 ultimately -- Your Honor is ultimately reversed.

24 So I think all of those things that the requirements for  
25 the certification for interlocutory appeal have been met. And

1 one of the other issues, too, is that we've talked at length  
2 about the independent schools that are here today being  
3 represented. It also has a profound impact on those schools as  
4 well.

5 **THE COURT:** Yes.

6 **MR. VIOLA:** Whether we agree the propriety of it or  
7 otherwise, I think there seems to be ample evidence in the  
8 record that they've been operating under the assumption that  
9 tax exempt status doesn't constitute federal financial  
10 assistance and Title XI doesn't apply. So they're entitled  
11 respectfully to guidance as soon possible on that, so they can  
12 make whatever decision is appropriate. Included with that is  
13 Concordia Prep.

14 So unless the Court has any questions on that?

15 **THE COURT:** No, thank you very much, Mr. Viola. With  
16 that, Ms. Graziano or Mr. Ketterer, I'd be glad to hear from  
17 you.

18 Oh, I'm sorry. Mr. Goodman, I overlooked you.

19 **MR. GOODMAN:** I will be very brief.

20 **THE COURT:** By the way, Mr. Goodman, I would be remiss  
21 if I didn't know note I'm really not sure if the -- is it the  
22 Victorian Theater at Gilman School is it called Good Vic?

23 **MR. GOODMAN:** It's the Young Victorian Theater.

24 **THE COURT:** The Young Victorian Theater. I'll take  
25 judicial notice of the fact that Mr. Goodman has been the

1 backbone of the Young Victorian Theater at the Gilman School  
2 here in Baltimore for decades. He started at a very young age.  
3 I'm not going to inquire about the contributions that have been  
4 made to the Young Victorian Theater. And I don't know that my  
5 ruling affects the Young Victorian Theater because it's an  
6 adjunct of the Gilman School. But if you think that it may  
7 then tell me if you're worried about that.

8 **MR. GOODMAN:** Since you brought it up, we were an  
9 adjunct at Gilman School for 17 years, and in 1988 we went  
10 independent, in 1989 we garnered 501(c)(3) status which we  
11 have.

12 **THE COURT:** Good.

13 **MR. GOODMAN:** And we do receive state funding. So all  
14 these issues are relevant for my little theater.

15 **THE COURT:** But you're not an educational institution  
16 and you're not subject to Title XI.

17 **MR. GOODMAN:** I guess not.

18 **THE COURT:** You may not be, I guess not.

19 **MR. GOODMAN:** I know we're 501(c)(3). But anyway,  
20 thank you for your nice words.

21 **THE COURT:** That's quite all right.

22 **MR. GOODMAN:** It's pretty amazing.

23 The only thing I wanted to say on this issue is -- and I  
24 don't want to speak inappropriately at this hearing about the  
25 substance -- but this lawsuit as -- we didn't have anything to

1 do -- we're not in the Title XI count, and we didn't brief  
2 that.

3 But if an interlocutory appeal is going to essentially put  
4 this case on hold for however long it takes for the Fourth  
5 Circuit to rule, this case has been hanging over my client's  
6 head like the Sword of Damocles since it was filed. Next week  
7 summary judgments are due. We're going to be filing summary  
8 judgments. I think all the parties are filing summary  
9 judgments. They feel very strongly that they should not be in  
10 this suit. I don't want to argue the merits at this point.

11 But if -- on behalf of the Synod we would not want to see  
12 this case, itself, delayed where it's just going to be sitting  
13 around while the other two parties go to the Fourth Circuit to  
14 argue this Title XI motion in a count we're not even involved  
15 in. So we would not want to see an interlocutory appeal  
16 granted.

17 **THE COURT:** I understand. I'm not sure how we would  
18 be able to do that, quite frankly. I understand.

19 **MR. GOODMAN:** I know that. But I just wanted to make  
20 my record.

21 **THE COURT:** I understand. There really won't be a  
22 whole lot. I mean, I understand it's like the Sword of  
23 Damocles. Count 2 negligent supervision and retention and  
24 Count 3 negligence as to your client, but there isn't going to  
25 be anything happening. I mean, the cases would essentially be



1 stayed pending an interlocutory appeal. And there's certainly  
2 nothing for you to do other than just wait. It's not like it's  
3 going to -- I'm not for a minute ignoring your issue in terms  
4 of it hanging over your client's head. But there's no cost to  
5 your client. There's nothing for your client to do but wait  
6 for the rulings.

7 **MR. GOODMAN:** Right. There's no legal cost, but,  
8 trust me, I'm dealing with a client -- there's a significant --  
9 even though it's the Synod, which is the equivalent of the  
10 archdiocese, there's a big emotional cost to them.

11 **THE COURT:** Sure.

12 **MR. GOODMAN:** They've spent a tremendous amount of  
13 time and money defending what they believe to be is something  
14 they shouldn't even be in. And if I have to tell them now:  
15 Well you know what, they're going to the Fourth Circuit on the  
16 Title XI issue and it's going to be stayed for a year and a  
17 half. They're going to be very upset.

18 And I gather there's not a way that you can keep our --

19 **THE COURT:** I don't think so. I don't think so. It  
20 doesn't occur to me that quickly.

21 With that Ms. Graziano or Mr. Ketterer, I'll be glad to  
22 hear from you.

23 **MS. GRAZIANO:** Thank you, Your Honor.

24 **THE COURT:** We've talked about the legal issue and  
25 that cuts a different way for your client when it comes to the

1 matter of interlocutory appeal, but I'll be glad to hear from  
2 you.

3 **MS. GRAZIANO:** Sure. I'll try to be brief, Your  
4 Honor, as well.

5 You know, I think, again when we talked about the Motion  
6 for Reconsideration, I started by saying "Why are we here,  
7 right?" Why are we here talking about a Motion for  
8 Interlocutory Appeal when we know quite well in the Fourth  
9 Circuit the tendency or the favor of the circuit is to appeal  
10 everything all at once. Especially when it's not an issue that  
11 will dismiss an entire litigation outright.

12 So while I'll be the first person to agree with Your Honor  
13 about the importance of this decision, which I believe you  
14 arrived at quite soundly, it's not one that rises to this level  
15 of immediacy that it needs to be sent up on interlocutory  
16 appeal now. It is absolutely an issue that can be appealed at  
17 the termination of this litigation post trial.

18 And I think one of the things that's really important  
19 about this, Your Honor, you brought up the *Butler* case, that  
20 case says in black and white: The questions are not  
21 controlling if litigation will proceed regardless of how that  
22 question is decided.

23 And while obviously this discussion has been very robust,  
24 and there's a very profound public policy interest in, quite  
25 frankly, your opinion being upheld, it is not the case that

1 these five cases rise and fall on the Title XI claim. As Your  
2 Honor aptly noted earlier, they will proceed on their other  
3 state law counts.

4 **THE COURT:** Well, they may or may not. I don't know  
5 that's a given, Ms. Graziano. If there is no Title XI claim  
6 then the matter of whether or not this Court exercises  
7 supplemental jurisdiction is within the discretion of the  
8 Court. And I would -- give me one second here.

9 The matter of supplemental jurisdiction, it certainly may  
10 be there with respect to H.C.'s claim, depending upon certain  
11 factual predicates. But in terms of four of these five  
12 Plaintiffs, in terms of being in federal court, if the Fourth  
13 Circuit reverses my opinion and finds that 501(c)(3) status  
14 does not amount to federal funding under the applicable sexual  
15 harassment section of Title XI, the matter of my continuing to  
16 exercise supplemental jurisdiction over those four cases,  
17 perhaps five, certainly those four cases, specifically the  
18 cases involving N.H., A.G. and Jennifer Pullen and Ariana Gomez  
19 may not proceed. It would be a summary judgment entered in  
20 terms of -- or dismissal of some sort.

21 I mean, just in terms of how it would play out. There's  
22 no jurisdiction of this Court. May not be.

23 **MS. GRAZIANO:** I'm sorry, Your Honor. You hit the  
24 nail on the head, it would be the Court's discretion if given  
25 how advanced these cases are, as my brother alluded we're on

1 the eve of summary judgment motions. It's not for me to say  
2 whether this Court would or wouldn't exercise supplemental  
3 jurisdiction.

4 I will just point out, as Your Honor mentioned, the H.C.  
5 case is a case that's a little bit different than the other  
6 four --

7 **THE COURT:** Yes.

8 **MS. GRAZIANO:** -- with the PPP issue. There's  
9 certainly a difference between the parties in terms of our  
10 understanding of the facts, in terms of the timeline and import  
11 of relevance incidents and kind of the prelude that led up to  
12 the assault of that Plaintiff that is relevant for the factual  
13 timeline.

14 So I would just submit to Your Honor that even if the  
15 Fourth Circuit is to reverse Your Honor on the issue of the  
16 501(c)(3) status, the Conrad case remains viable because of the  
17 receipt of the PPP loan.

18 So if there's a summary judgment motion or some other  
19 mechanism that would remove -- if it's a factual determination  
20 for a later date, that's not something that's going to be  
21 impacted by this interlocutory appeal.

22 So it's not the case that sending this issue up on  
23 interlocutory appeal and having the Fourth Circuit reverse Your  
24 Honor just automatically cleanly gets rid of all these cases.

25 One, there's one case that's exempt from that ruling. And

1 two, Your Honor could still elect to retain those cases. So  
2 that is an issue that muddies up that first criteria.

3 You know, we've discussed of course the differences of  
4 opinion. I would just say again to Your Honor, that the  
5 Supreme Court precedent is quite clear. And I think it's very  
6 articulately laid out in Your Honor's order, that the  
7 differences of opinions are inferential mostly in the *Johnny's*  
8 *Icehouse* case, which Your Honor already considered and  
9 rejected.

10 And then thirdly, and perhaps most importantly, deciding  
11 this issue now doesn't advance determination of this  
12 litigation. We would still need a trial. Again, totally  
13 understanding what Your Honor said about supplemental  
14 jurisdiction in four of the five cases or all five cases  
15 winding up in state court, but again that's not an automatic.  
16 There is a likelihood or at least a chance that one or all five  
17 of those cases could remain in federal court.

18 It doesn't eliminate complex issues in the sense, not to  
19 dismiss the importance of Title XI, but say we do proceed to  
20 trial before Your Honor in this court, we're presenting the  
21 same negligence evidence. We're presenting the same liability  
22 evidence. The question of damages is not altered by whether or  
23 not Title XI stays in this case. You know how I know that,  
24 Your Honor? *Cummings*. The case that my brother cited.

25 So it's not such that we can't have this case move

1 forward. We're so close to the end. We're at dispositive  
2 motion -- summary judgment motions. It doesn't impede the  
3 parties' ability to talk settlement. It doesn't impede the  
4 parties' ability to move forward with the cases. There's no  
5 good reason why this issue can't be decided on appeal later.  
6 There's just no reason for this immediate pause. As you said,  
7 it could be -- my brother, Mr. Goodman, said it could be  
8 months, if not years, that this is on hold. There's no reason  
9 that this has to happen now and can't happen later.

10 And frankly, the impact or the import of a waiting period  
11 on these other institutions is not for the Court's decision  
12 today. Yes, it's a factor, but it's not determinative on the  
13 factors enumerated by the Fourth Circuit on when an  
14 interlocutory appeal is appropriate.

15 And frankly, a delay prejudices the Plaintiffs and other  
16 similarly-situated individuals who are left without recourse in  
17 private schools when they suffer sexual assault and sexual  
18 discrimination. I think that limbo period is more of greater  
19 import than the impact on private schools that have ample  
20 resources and funding and monies to put towards bringing their  
21 policies and procedures within the purview of Title XI.

22 So with that, I thank Your Honor and I'm happy to answer  
23 any questions you have.

24 **THE COURT:** No, thank you very much, Ms. Graziano.  
25 Anybody want to be heard on that further? Mr. Shea?

1 I guess I do have a question for you, Ms. Graziano. What  
2 is a private school in Maryland to do with respect to the  
3 matter of awaiting a trial in this case and a verdict and  
4 waiting in terms of processes they must follow? What are the  
5 implications of that?

6 **MS. GRAZIANO:** Sure. I'm glad you asked this, Your  
7 Honor. I think this speaks to what my esteemed colleagues in  
8 their amicus briefs and in their comments today alluded to.  
9 Certainly it is a period of limbo, for lack of a better word.  
10 But I would submit to Your Honor -- and this is going to come  
11 out at trial --

12 **THE COURT:** It's not limbo *per se* in terms of if an  
13 interlocutory appeal is granted, I stay the case. It doesn't  
14 have any binding effect upon the private schools until the  
15 Fourth Circuit rules; isn't that correct?

16 **MS. GRAZIANO:** That is correct, Your Honor.

17 **THE COURT:** Does defense counsel agree with that?  
18 Ms. Baker is here. She's an expert in this area of the  
19 lawsuit. She's from the national association, I believe,  
20 Ms. Baker, for the National Association of Independent Schools;  
21 is that right?

22 **MS. BAKER:** Your Honor, I'm general counsel for the  
23 Association of Independent Maryland and DC School --

24 **THE COURT:** All right. That's fine. My point is  
25 this, if there's a stay and it's appealed to the Fourth

1 Circuit, there's no binding obligation on the part of any  
2 private schools. My view is to do anything [sic] until the  
3 Fourth Circuit rules, isn't that where we would be from your  
4 point of view?

5 **MS. GRAZIANO:** Yes and no, Your Honor.

6 **THE COURT:** Is that correct, Mr. Shea, from your point  
7 of view?

8 **MR. SHEA:** Your Honor, it also depends on what is  
9 controlling authority and what's persuasive. But more or less  
10 that's correct, Your Honor.

11 **THE COURT:** I know that it would make everyone  
12 nervous.

13 **MR. SHEA:** Right.

14 **THE COURT:** But --

15 **MR. SHEA:** -- the Fourth Circuit have been --

16 **THE COURT:** It reminds me of the old joke that federal  
17 judges tell themselves: What's the difference between God and  
18 a federal judge? God doesn't think he's a federal judge.

19 We're laughing here.

20 My point is that my ruling -- I understand the  
21 implications. I certainly understood the depth of Mr. Genth's  
22 concerns. My point is I have no difficulty, from the point of  
23 view of the importance of this of having a stay, there's other  
24 issues aside, and letting the Fourth Circuit determine it.  
25 Until then there's no earth-shaking event that takes place with



1 respect to any of the private schools. They're free to  
2 continue as they do so. It's an open issue waiting for court  
3 resolution. That's something that I think is important here.

4 This case has been going on for a while, Ms. Graziano. I  
5 don't know how quickly the Fourth Circuit would get to it. I  
6 believe they would get to it quite quickly down there.

7 **MS. GRAZIANO:** If I understand my brother correctly, I  
8 don't think he's representing that private schools or  
9 independent schools believe that they're bound to your ruling  
10 today.

11 **THE COURT:** Well, they may or may not.

12 (Laughter.)

13 **THE COURT:** I think they have a much higher comfort  
14 level, Mr. Graziano, if I enter a stay -- and they're all  
15 nodding in agreement with me -- if I enter a stay and grant the  
16 interlocutory appeal and then it goes down to the United States  
17 Court of Appeals for the Fourth Circuit in Richmond. And I can  
18 even note that one of my esteemed colleagues from my old law  
19 firm that is in this area of the law, she's back there nodding  
20 her head as well.

21 The point is, I don't for a minute ignore the importance  
22 of this decision. And I certainly can understand why everyone  
23 would like it to have -- as opposed to another pair of eyes,  
24 certainly three pairs of eyes with three judges and maybe even  
25 the *en banc* Fourth Circuit. I don't know. The point is I have

1 no difficulty with that.

2 Although I'm sensitive to Mr. Goodman's client and trying  
3 to get it resolved, and I'm sensitive to the situation of these  
4 five young women. You filed the lawsuit, you know, and came  
5 into this court under federal question jurisdiction.

6 **MS. GRAZIANO:** Yes, sir.

7 **THE COURT:** And under federal question jurisdiction  
8 under 1331 this is a federal question jurisdiction, that's why  
9 you're here is because of Title XI. You chose in this venue,  
10 which is fine. You have every right to do so, but it raised  
11 issues that we need to address.

12 **MS. GRAZIANO:** Of course, let me just say by way of  
13 conclusion one other thing, Your Honor, that bears on the  
14 discussion that you had with other of my brothers' counsel  
15 regarding the onerousness or why is this so important? Why is  
16 one of the considerations that Your Honor has, sending this up  
17 so that it can be decided for the sake of clarity for these  
18 schools. The standard for negligence or the standard for how  
19 schools, even ones who don't receive federal funding, should be  
20 conducting investigations into alleged sexual assaults,  
21 incidences of sexual harassment, bullying, no matter how  
22 trivial folks want to characterize the instances as being, that  
23 standard is informed by Title XI. Our expert is going to come  
24 to this trial and say that.

25 So this idea that schools are going to have to completely

1 revamp their policies and procedures. Yeah, they're going to  
2 have to designate some faculty members or some staff to perform  
3 those enumerated rules, but they should be almost in lockstep  
4 with Title XI anyway just by the standard of care.

5 I think Your Honor really hit the nail on the head with  
6 some of your earlier comments, which is that the onerousness to  
7 a school with 10 faculty members, that's not who we litigate  
8 for, right, we're not litigating for the exception. We're not  
9 litigating for the 10 percent school that's so small to have  
10 that be impactful. I would also just raise these are schools  
11 that charge tuition. These are schools that have multiple  
12 athletic directors and brand new turf fields and all of these  
13 fancy things. No disrespect of private schools. I'm a product  
14 of a private university. As I said I'm on the board of the  
15 university. My son goes to private school here in Baltimore.  
16 I have the utmost respect.

17 But the fact is they have the funds for those outputs.  
18 They have the funds to pay these fine lawyers to show up here  
19 today, but what's reprehensible to me, Your Honor, is to then  
20 come in this courtroom to say: Whoa, whoa, whoa, it's really  
21 going to be onerous for us to not know how to act for the next  
22 year and a half. They have money for all of the expenditures  
23 but they won't spend money on training their staff, and faculty  
24 and making sure that these kids are protected.

25 When the policies and procedures are left up to

1 interpretation, we end up with the situation that quite frankly  
2 brought us to this courtroom today, Your Honor. So I think  
3 again, let's keep our eyes on the public policy consideration  
4 which is protecting these children, regardless if they go to  
5 private school or public school.

6 And with that, I thank Your Honor.

7 **THE COURT:** Thank you, Ms. Graziano. I will tell you  
8 that I think that there was reference earlier by your side of  
9 my having been on the board of one of the private schools. I  
10 actually then made reference to it later in these proceedings.  
11 I think you might be surprised at the extent to which schools  
12 are all that flush with money. There's a lot of different  
13 issues that come up. I don't really think that's an issue.

14 I'm certainly going to grant the interlocutory appeal in  
15 this matter on this issue. It's an important issue. And we'll  
16 get this opinion out on Tuesday or Wednesday of next week.

17 The record will reflect that I will be issuing a stay  
18 order and permitting the filing of an interlocutory appeal on  
19 this precise issue to go down to the United States Court of  
20 Appeals for the Fourth Circuit. And I think that's the safest,  
21 fairest way to do it. And I recognize the implications of my  
22 decision, and I recognize the split in authority. I don't  
23 agree necessary that I'm out there alone on this. There are  
24 certainly cases, including the Eleventh Circuit, that go my  
25 way. But this is a very important issue, and I understand the

1 implications of it. And certainly the parties are free to go  
2 down to the Fourth Circuit to appeal this. And I think it  
3 should be fine.

4 With that, I want to thank you all for very thorough  
5 arguments and particularly, Mr. Viola, if I was tough on you to  
6 start I apologize. As Mr. King, my former law clerk, will tell  
7 you I enjoy these hearings. I enjoy the give and take but  
8 you're entitled to know what I'm thinking and usually most  
9 lawyers like that. So I let them know what I'm thinking in  
10 trying to flush it out. We put it all out here on the table  
11 and we really, I think, made a lot of progress.

12 Hopefully we built a good record for the Fourth Circuit  
13 here and the Fourth Circuit is going to have to address this.  
14 There is very serious policy considerations that are involved  
15 and that's where we are.

16 Unless there's anything further, thank you all very much.  
17 It was nice having you all here.

18 **MR. GOODMAN:** I have one last question. I assume that  
19 the summary judgment motions due next Friday is out?

20 **THE COURT:** They're done. Everything is just going to  
21 stop. Everything is going to stop. This case stopping. It's  
22 a stay. The case is stayed and then we'll stop. And this is  
23 an important matter in terms of -- there's a lot of things that  
24 have to be resolved here and to deal with this in a vacuum  
25 would be very difficult.

1 And quite frankly, I don't think it's in your client's  
2 interest, Ms. Graziano, long-term for that. I think it's  
3 probably better that we get this clarified.

4 So it's been nice having you all here. And I enjoyed it.

5 **MR. GOODMAN:** Thank you, Your Honor.

6 **THE COURT:** Mr. Goodman, I gather that the Young Vic  
7 theater is finished for the summer.

8 **MR. GOODMAN:** Thank God, yes. It's exhausting. I'm  
9 not as young as I used to be.

10 **THE COURT:** Some of the people here will tell you  
11 that's true for me, particularly in the last week.

12 With that, this Court stands adjourned for the day.

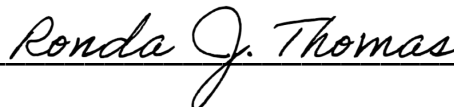
13 (All Counsel - "Thank you, Your Honor.")

14 (Hearing concluded at 4:10 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 10th day of September 2022.



Ronda J. Thomas, RMR, CRR  
Federal Official Reporter

<p><b>MR. BROWNE: [1]</b> 3/10  <b>MR. GENTH: [19]</b> 7/19              8/5 8/8 9/9 62/19 62/21              64/10 64/14 64/20 66/7              67/24 68/7 68/15 68/22              69/21 69/24 71/2 71/20              72/7  <b>MR. GOODMAN: [22]</b>              3/22 4/3 6/13 6/20 6/24              7/3 7/8 76/11 76/14              78/19 78/23 79/8 79/13              79/17 79/19 79/22 80/19              81/7 81/12 93/18 94/5              94/8  <b>MR. KETTERER: [5]</b>              3/6 3/9 47/15 47/20 48/4  <b>MR. SHEA: [24]</b> 8/15              8/17 8/20 9/2 9/5 53/12              53/19 54/8 54/15 56/13              56/20 57/4 58/16 60/15              60/23 61/4 61/11 61/18              62/1 62/7 62/14 88/8              88/13 88/15  <b>MR. 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GRAZIANO: [23]</b>              2/25 3/5 5/10 5/17 6/9              10/7 39/10 39/13 40/22              46/16 46/19 46/23 49/21              81/23 82/3 83/23 84/8              87/6 87/16 88/5 89/7              90/6 90/12  <b>THE COURT: [181]</b></p>	<p><b>10 percent [1]</b> 91/9  <b>100 [1]</b> 56/23  <b>100 percent [1]</b> 65/7  <b>100-student [1]</b> 61/20  <b>101 [1]</b> 1/24  <b>104 [1]</b> 56/18  <b>106.2 [1]</b> 43/6  <b>10th [1]</b> 95/12  <b>11 [2]</b> 23/14 55/24  <b>11th [1]</b> 8/10  <b>12 percent [1]</b> 56/22  <b>1292 [1]</b> 75/23  <b>1331 [1]</b> 90/8  <b>134 [1]</b> 7/25  <b>136 [1]</b> 8/10  <b>1462 [1]</b> 73/5  <b>15 [1]</b> 59/9  <b>1681 [1]</b> 5/25  <b>17 [1]</b> 79/9  <b>1972 [7]</b> 4/13 6/1 22/18              27/2 51/7 63/8 63/16  <b>1982 [1]</b> 16/25  <b>1983 [2]</b> 27/14 27/15  <b>1986 [1]</b> 17/12  <b>1988 [1]</b> 79/9  <b>1989 [2]</b> 71/8 79/10  <b>1991 [1]</b> 73/5  <b>1:57 [2]</b> 1/8 2/1</p> <p><b>2</b></p> <p><b>20 [3]</b> 5/24 36/3 59/9  <b>20-3132 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46/7 47/21 49/7 53/8 53/23 58/10 62/8 62/9 64/14 68/11 71/1 71/2 71/15 71/20 71/21 71/22 72/2 76/9 76/11 77/19 78/20 80/11 80/15 80/17 80/25 83/8 83/19 83/21 83/24 84/2 84/14 84/19 85/4</p>
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<p><b>W</b></p> <p><b>would... [9]</b> 85/12 87/10 88/3 88/11 89/5 89/6 89/23 91/10 93/25</p> <p><b>wouldn't [3]</b> 46/9 50/7 84/2</p> <p><b>written [2]</b> 10/14 11/13</p> <p><b>wrong [26]</b> 12/9 13/20 16/18 17/5 27/9 30/12 30/13 31/4 31/8 31/11 55/24 63/13 63/14 64/17 65/14 66/14 73/18 73/19 73/20 74/13 74/14 74/15 74/16 74/22 75/3 75/6</p> <p><b>wrote [2]</b> 18/4 74/21</p> <hr/> <p><b>X</b></p> <p><b>XI [109]</b> <b>XI's [1]</b> 54/3</p> <hr/> <p><b>Y</b></p> <p><b>yeah [3]</b> 5/12 36/10 91/1</p> <p><b>year [13]</b> 4/18 11/10 11/10 11/22 28/1 45/20 68/11 68/20 69/5 69/19 70/4 81/16 91/22</p> <p><b>years [13]</b> 8/23 52/3 59/9 63/1 63/2 63/7 65/17 65/25 66/8 68/17 72/3 79/9 86/8</p> <p><b>yes [27]</b> 3/8 3/12 4/1 6/12 6/13 7/19 8/15 8/22 9/4 9/19 9/20 19/9 33/14 33/14 34/2 54/14 56/19 58/16 62/1 64/13 74/23 78/5 84/7 86/12 88/5 90/6 94/8</p> <p><b>you [263]</b></p> <p><b>you'd [1]</b> 3/15</p> <p><b>you're [36]</b> 2/21 3/15 7/6 7/20 8/18 8/19 14/22 17/10 19/9 22/17 24/15 26/7 26/9 26/16 26/18 27/24 29/19 35/14 37/16 38/10 41/6 51/14 56/8 60/5 64/24 67/10 67/10 67/25 71/4 75/1 75/8 79/7 79/15 79/16 90/9 93/8</p> <p><b>you've [8]</b> 28/19 42/14 52/9 52/20 60/2 64/1 65/12 72/10</p> <p><b>young [17]</b> 48/2 51/8 51/10 51/12 51/17 51/19 52/7 65/24 78/23 78/24 79/1 79/2 79/4 79/5 90/4 94/6 94/9</p> <p><b>your [203]</b></p>				
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