Resolution Regarding Missouri Senate Bill #259
Introduced by Senator Steven Kish | April 23, 2019

WHEREAS, as of 2015, 47.6% of Washington University students reported having experienced sexual harassment at least once during their time as an undergraduate\(^1\), and

WHEREAS, 22.6% of female undergraduate students and 7.5% of male undergraduate students reported having “nonconsensual penetration or sexual touching involving physical force”\(^2\), and

WHEREAS, non-heterosexual students are approximately 2.5 times more likely to have reported having “nonconsensual penetration or sexual touching involving physical force” as their heterosexual peers, students with disabilities are approximately 2 times more likely to make such reports as students without disabilities, and Hispanic students are approximately 1.8 times more likely to make such reports as their non-Hispanic peers\(^3\), and

WHEREAS, undergraduate students collectively prioritized sexual violence over any other campus advocacy issue with 20.8% of responding students identifying sexual violence as a top critical concern at Washington University\(^4\), and

WHEREAS, the proposed legislation (MO SB #259) gives the respondent in a Title IX case unprecedented and unwarranted power to determine their adjudicator by allowing them to defer a case to the Administrative Hearing Commission at any point during the investigation or appeal process, and

WHEREAS, the proposed legislation allows for sexual history and mental health history to be submitted and used as evidence in Title IX cases, which is completely and totally unnecessary in determining whether an act of relationship and sexual violence occurred in a given investigation, and

WHEREAS, the further inclusion of sexual history and mental health history as part of live cross-examination is inappropriate and potentially re-traumatizing to survivors of relationship and sexual violence, and

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\(^1\) *Washington University Campus Climate Survey*, Association of American Universities (AAU), 2015
\(^2\) *Washington University Campus Climate Survey*, Association of American Universities (AAU), 2015
\(^3\) *Washington University Campus Climate Survey*, Association of American Universities (AAU), 2015
\(^4\) *Student Union Senate Improve WashU Campaign Report*, Washington University, 2018
WHEREAS, allowing for the live cross-examination of the complainant in a Title IX investigation, through an advisor or otherwise, threatens the physical and psychological safety of the survivor, and

WHEREAS, being “scared or unsure” of the Title IX process is the second-highest barrier to accessing resources related to instances of relationship and sexual violence for students at Washington University, and the potential for live cross-examination by an advisor or otherwise will surely deter students further from such resources or reporting instances of relationship and sexual violence when they occur, and

WHEREAS, the proposed legislation allows for the respondent to reject a witness due to bias or conflict of interest, which further disadvantages survivors of relationship and sexual violence and silences potentially critical testimony, and

WHEREAS, in many cases of relationship and sexual violence, physical evidence often does not exist and can otherwise be extraordinarily physically, mentally, and emotionally burdensome for survivors to maintain, and

WHEREAS, in only 55.6% of Title IX cases at Washington University over the past five years has the respondent been found responsible and only between 2% and 10% of cases consist of false reports nationally, and

WHEREAS, the “clear and convincing” standard of evidence would undoubtedly result in more survivors of relationship and sexual violence failed by their institutions and left without justice, and

WHEREAS, the prominent inclusion of attorneys in the Title IX process by the proposed legislation inherently benefits privileged students with means to pay expensive legal fees and disadvantages students of lower socioeconomic status, and

WHEREAS, the proposed legislation places more weight on legal expertise accessible to the most privileged while placing the lived experience of the survivor of relationship and sexual violence on the backburner in favor of the comfort of the respondent, and

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5 Student Navigation of Wellness Services Survey, Washington University, 2018
6 Title IX Office, Washington University, 2013-18
WHEREAS, the proposed legislation allows for interim measures to ensure the safety of survivors to be put on hold during an investigation by the Administrative Hearing Commission, and

WHEREAS, the proposed legislation allows for the respondent in a Title IX case to take retaliatory legal action against a complainant if the adjudicator determines the allegations are not supported by other evidence, and

WHEREAS, even if a respondent is found responsible in a Title IX case, the proposed allowance for informal resolution and mediation tactics are dangerous, potentially re-traumatizing, minimizing of the offenses which occurred, and a blatant denial of justice to survivors of relationship and sexual violence, therefore be it

RESOLVED, the State of Missouri ("the State") should continue to allow institutions of higher education to utilize the "preponderance of evidence" standard in Title IX investigations in order to preserve the albeit limited justice survivors of relationship and sexual violence can currently receive, and further

RESOLVED, the State should condemn any law or regulation which recommends or entertains the live cross-examination of the complainant, or any other regulation in which the complainant and respondent within a Title IX case come into direct contact with one another, in order to prioritize and ensure the safety of the survivor, and further

RESOLVED, the State should not allow sexual history, mental health history, or any other history irrelevant to the immediate allegations of a Title IX case to be in any way considered as part of the finding of responsibility for such allegations, and further

RESOLVED, the State should not institute measures which allow for the respondent in a Title IX case to unilaterally reject an adjudicator through deferral to the Administrative Hearing Commission or otherwise, and further

RESOLVED, the State should reject all law which perpetuates the inequity in the current legal system through which those of lower socioeconomic status are put at a disadvantage, and should especially reject any increased inclusion of privately-funded legal services in any part of the Title IX process, and further

RESOLVED, the State should condemn any law, regulation, or action which minimizes the experience of any survivor of relationship and sexual violence, carries the potential to
re-traumatize any survivor, or in any way, shape, or form, denies actionable justice to survivors, and further

RESOLVED, the State should consider above all else the safety—physical, mental, and emotional—of the survivors of relationship and sexual violence on college campuses.

Steven Kish
Senate Sponsor

Sophie Scott
Speaker of the Senate

Tyrin Truong
President