



## **Court Rules Schools Must Investigate Threats – Anonymous, Online or Otherwise**

Lauren Camera

December 20, 2018

University of Mary Washington officials could have done more to protect students from online harassment, a federal appeals court has ruled in a decision that is widely seen as broadening the responsibility of colleges to respond to cyberbullying.

The case, *Feminists Majority Foundation v. University of Mary Washington*, concerns a series of events that occurred at the public liberal arts school in 2015, when members of the student group *Feminists United* say they were subjected to cyberbullying, cyberstalking and threats of sexual assault after they spoke out against Greek life on campus and against a distasteful chant the rugby team was recorded singing.

At the time, they filed a complaint with the Department of Education's Office for Civil Rights. They later filed a federal lawsuit in which they argued that school officials, including then-President Richard Hurley, "condoned and ratified a sexually hostile environment at UMW by permitting ongoing gender-based cyber-harassment and sexual harassment."

The cyberbullying took place on the now-defunct social media messaging site *Yik Yak*, which allowed users within a certain geographic areas to post anonymous messages. University officials claim that it could not take any steps to protect students from anonymous online sexual harassment out of fear that it might violate the harassers' free speech rights.

But the 2-1 decision from the U.S. Court of Appeals for the 4th Circuit held that the University of Mary Washington should not have concluded that because the harassment took place online it meant the school was absolved of responsibility to act. In fact, the opinion reads, school officials are obligated to investigate threatening messages, whether they occur anonymously online or not.

"If UMW or a law enforcement agency had successfully identified the students who posted threatening messages, the offenders could have been disciplined or prosecuted without infringing on the First Amendment," the opinion, written by Judge Robert King, reads.

A federal district court in Virginia dismissed the lawsuit last year, ruling that the claim of Title IX discrimination is unfounded because the harassment took place on a platform that the University of Mary Washington had very little control over, *Yik Yak*, and that it involved anonymous postings. The district court agreed with plaintiffs that the school didn't take the

specific actions they requested, but it also underscored that Title IX does not require the school to meet specific demands of its students.

The National Women's Law Center and the American Federation of Teachers cheered the 4th Circuit's ruling Wednesday, saying the decision by the Richmond, Virginia-based appeals court means universities can no longer hide behind the First Amendment as an excuse for not taking action against online threats and harassment.

But individuals rights groups, including the Cato Institute, the Foundation for Individual Rights in Education and the National Coalition Against Censorship, blasted the ruling, arguing that it's a blow to free speech and "shockingly dismissive" of potential ramifications.

"The alarming upshot of the ruling is its suggestion that Title IX may sometimes require colleges to censor or block all students' access to certain internet sites or services based solely on anonymous statements made in an online forum that the university does not control, by people who may not be on campus, or even affiliated with the university at all," Samantha Harris, vice president for procedural advocacy at the Foundation for Individual Rights in Education, said in a statement.

It's almost certain the ruling will be challenged because of the wide-ranging implications it has for colleges and universities.

"Make no mistake, the majority's novel and unsupported decision will have a profound effect, particularly on institutions of higher education," wrote Judge G. Steven Agee in the dissenting opinion. "Institutions, like the University [of Mary Washington], will be compelled to venture into an ethereal world of non-university forums at great cost and significant liability, in order to avoid the Catch-22 Title IX liability the majority now proclaims. The University [of Mary Washington] should not hesitate to seek further review."