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***EMELDI v. UNIVERSITY OF OREGON* BRINGS THE STUDENT-PROFESSOR RELATIONSHIP INTO THE WORKPLACE**

MOLLY SCHRANZ*

Abstract: On June 9, 2012, in *Emeldi v. University of Oregon*, the U.S. Court of Appeals for the Ninth Circuit reversed a grant of summary judgment to the publicly-funded University of Oregon in a Title IX suit brought by a female Ph.D. student claiming retaliation following her complaints of gender discrimination. By applying the Title VII framework used for employment discrimination cases, the court analogized the graduate student's relationship to that of an employee and found that the student's allegations alone were sufficient to create a factual dispute. Because the Title VII framework frequently allows these types of allegations to survive summary judgment, a student's allegations are more likely to be found non-speculative under the Ninth Circuit's application of the Title VII framework to Title IX cases. This may result in more Title IX discrimination cases surpassing the summary judgment stage, thereby empowering students to speak out against discrimination.

INTRODUCTION

After effectively withdrawing from the University of Oregon's College of Education as a result of being unable to procure a replacement dissertation advisor, Monica Emeldi, a female Ph.D. student in the College of Education's Department of Special Education (Department), sued the institution.¹ She alleged that her male faculty dissertation committee chair engaged in gender discrimination before resigning from supervising her dissertation.² She also asserted that the University of Oregon (University) prevented her from completing her Ph.D. program in retaliation for having complained of gender-based institutional bias in her program.³

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¹ *Emeldi v. Univ. of Or. (Emeldi II)*, 673 F.3d 1218, 1221 (9th Cir.), *amended by* 698 F.3d 715 (9th Cir. 2012).

² *See id.* at 1221–22.

³ *Id.* at 1221.

Emeldi claimed that the University retaliated against her in violation of Title IX of the Education Amendments of 1972, which bars gender-based discrimination by federally funded institutions.⁴ Because no framework exists for deciding what a plaintiff must prove to prevail on a motion for summary judgment for a Title IX retaliation claim, circuit courts have applied the same framework used to decide retaliation claims under Title VII, which prevents gender discrimination in the workplace.⁵ In a Title VII claim, a plaintiff who is unable to produce direct evidence of retaliation must make “a prima facie case of retaliation by showing (a) that he or she was engaged in a protected activity, (b) that he or she suffered an adverse action, and (c) that there was a causal link between the two.”⁶ Following the plaintiff’s prima facie showing, the defendant has the burden of demonstrating a legitimate, non-retaliatory reason for the action.⁷ If the defendant is able to do so, the plaintiff must then demonstrate that the reason is pretextual by either showing that the discriminatory reason likely motivated the employer’s actions or that the employer’s non-retaliatory reason lacks credence.⁸

The U.S. District Court for the District of Oregon granted summary judgment for the University concluding that Emeldi’s complaints of gender discrimination and institutional bias were nothing more than speculation.⁹ Emeldi appealed the decision, arguing that she had provided sufficient allegations to establish that there was a genuine issue of fact.¹⁰ The U.S. Court of Appeals for the Ninth Circuit reversed the district court’s decision holding that Emeldi had provided sufficient evidence to create a factual issue as to whether there was a causal link be-

⁴ See Title IX Education Amendments of 1972, 20 U.S.C. § 1681(a) (2006) (stating that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”); *Emeldi II*, 673 F.3d at 1221.

⁵ *Emeldi II*, 673 F.3d at 1223 & n.2; see Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2006) (prohibiting discrimination in employment on the basis of sex, race, color, national origin, and religion); see, e.g., *Papelino v. Albany Coll. of Pharm. of Union Univ.*, 633 F.3d 81, 91–92 (2d Cir. 2011) (applying the Title VII framework to a Title IX retaliation claim); *Franzier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 67 (1st Cir. 2002) (same); *Clinger v. N.M. Highlands Univ., Bd. of Regents*, 215 F.3d 1162, 1168 (10th Cir. 2000) (same).

⁶ *Emeldi II*, 673 F.3d at 1223.

⁷ *Id.* at 1224.

⁸ *Id.*

⁹ See *Emeldi v. Univ. of Or. (Emeldi I)*, No. 08–6346–HO, 2010 WL 2330190, at *4 (D. Or. June 4, 2010), *rev’d*, 698 F.3d 715 (9th Cir. 2012), *amended by* 698 F.3d 715 (9th Cir. 2012).

¹⁰ See *Emeldi II*, 673 F.3d at 1223, 1229.

tween Emeldi's protected activity and adverse action.¹¹ The Ninth Circuit also held that there was sufficient evidence to create a factual issue as to whether the resignation of her supervisor and her inability to secure replacement was pretext for retaliation.¹²

In reaching its decision, the Ninth Circuit focused on Title VII standards, analogizing Emeldi's claims to those of employees making prima facie cases under Title VII claims, and relied heavily on circumstantial evidence.¹³ Because the degree of proof necessary to establish a prima facie case for Title VII claims on summary judgment is minimal, the court was able to find a causal link and factual issue of pretext based only on Emeldi's allegations of discrimination, including inconsistent comments from Emeldi herself.¹⁴ By comparing Emeldi's circumstantial evidence to that provided in Title VII cases, the court suggested that student-professor relations be considered analogous to that of an employee-employer relationship.¹⁵ As a result of this more lenient standard, students will not be deterred from advancing pleas of institutional bias or discrimination.¹⁶

I. EMELDI'S ALLEGATIONS OF DISCRIMINATION AND RETALIATION

When Emeldi's original dissertation chair went on sabbatical in 2005, she asked another professor, Robert Horner, to serve as her dissertation chair.¹⁷ During the period in which Horner served as her chair, Emeldi issued a series of complaints of sex discrimination against the Department.¹⁸ After numerous complaints made by Emeldi and other Ph.D. students, Emeldi wrote a memo to Mike Bullis, Dean of the

¹¹ *Id.* at 1229.

¹² *See id.*

¹³ *See id.* at 1225, 1227 (comparing Emeldi's withdrawal to that of constructive discharge, in which an employer makes working conditions so difficult that it overcomes the motivation of a competent employee).

¹⁴ *See id.* at 1223 (quoting *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008) (noting that because discrimination cases usually need significant amounts of evidence and the opportunity to evaluate the witnesses, it is important that courts protect the employee's right to a trial)).

¹⁵ *See id.* at 1224–25. The court in *Emeldi II* compared Emeldi's complaints to the protected activity in *Moyo v. Gomez*. *See id.*; *Moyo v. Gomez*, 40 F.3d 982, 984 (9th Cir. 1994). In *Moyo*, a prison guard filed a Title VII claim against his employer, a department of corrections, alleging that he was fired for protesting against discrimination against black inmates. *Moyo*, 40 F.3d at 984.

¹⁶ *See Emeldi II*, 673 F.3d at 1225 (stating that “[w]omen students should not be deterred from advancing pleas that they be treated as favorably as male students”).

¹⁷ *Emeldi v. Univ. of Or. (Emeldi II)*, 673 F.3d 1218, 1221 (9th Cir.), *amended by* 698 F.3d 715 (9th Cir. 2012).

¹⁸ *See id.*

College of Education, in May 2007 summarizing the students' concern about the lack of female role models and support for female Ph.D. candidates.¹⁹ Although the University contended that only Bullis knew of the memo, Emeldi claimed that she was told all faculty members had access to a copy and that her dissatisfaction was "common knowledge."²⁰

In July 2007, Emeldi submitted her research plans for her dissertation to Horner.²¹ Horner responded with feedback, commenting positively on her effort and describing the project as "tremendously interesting."²² He also noted, however, that he struggled to find "details that [could] be examined within a dissertation."²³

In October 2007, Emeldi met with two administrators at the University, one of whom was Marian Friestad, and voiced complaints that the Department held a bias in favor of male doctoral candidates and did not demonstrate similar support for female candidates.²⁴ Emeldi cited Horner as an example, describing him as being distant and inaccessible to her.²⁵ According to Emeldi, Friestad then notified Horner of Emeldi's allegations of discrimination.²⁶ Friestad, however, claimed that she only discussed Emeldi's dissertation with Horner and not the discrimination complaints.²⁷ A few weeks later, Horner resigned as Emeldi's dissertation chair and he then allegedly told other Department members that instead of being granted a Ph.D., she should be directed into an Ed.D., a less prestigious program.²⁸

After Horner's resignation, Emeldi asked fifteen other faculty members in the Department to serve as her dissertation chair, yet was unable to procure a replacement.²⁹ While Emeldi was pursuing a new

¹⁹ *See id.*

²⁰ *See id.* Emeldi and other students specifically complained to Bullis about the lack of adequate support for female Ph.D. candidates. *Id.* The memo included fifteen topics, including students' concern that there was a lack of female role models in tenured faculty positions at the University. *Id.*

²¹ *Id.* at 1222 n.1.

²² *Id.*

²³ *Emeldi II*, 673 F.3d at 1222 n.1.

²⁴ *Id.* at 1222.

²⁵ *Id.* Emeldi later alleged that Horner gave a male student more office space and technology than similar female students, that he ignored Emeldi and did not make eye contact with her, and that he gave more attention to male students in graduate student meetings. *See id.* at 1227.

²⁶ *See id.* at 1222.

²⁷ *See id.*

²⁸ *Id.* The University denied that Horner made these comments. *See id.*

²⁹ *See Emeldi II*, 673 F.3d at 1222. Some of the faculty members said they were too busy or unqualified to serve as her dissertation chair. *Id.*

chair, she filed a complaint under the University's internal grievance procedure, which she claims contributed to her inability to obtain a new chair.³⁰ The University countered that she neglected to ask two faculty members—including her former dissertation chair who had returned from his sabbatical—who might have been well suited to supervise her dissertation.³¹ Unable to find a dissertation chair and therefore unable to complete her Ph.D., Emeldi abandoned the program, effectively withdrawing from the University.³²

Emeldi filed suit against the University on October 29, 2008 in Oregon state court.³³ The University successfully removed to the U.S. District Court for the District of Oregon, which granted summary judgment for the University holding that Emeldi's memo expressing her dissatisfaction did not constitute protected activity.³⁴ The district court rejected Emeldi's allegations that there was a causal link between the University's adverse actions and reasoned that her complaints were speculative.³⁵

On appeal, the Ninth Circuit reviewed the grant of summary judgment *de novo*.³⁶ The Ninth Circuit reversed the district court's holding, finding that Emeldi had sufficient evidence to establish a *prima facie* case of retaliation under Title IX.³⁷ Specifically, by viewing Emeldi's complaints as speaking out against gender discrimination, the court found that the complaints were protected activity.³⁸ By analogizing her to a discharged employee, the court held that the resignation of Emeldi's male dissertation chair after she complained constituted adverse action because it rendered her unable to finish her degree.³⁹ Most significantly, the court held that there was enough circumstantial evidence to establish a causal link between Emeldi's complaint and Horner's resignation.⁴⁰ The circumstantial evidence included the proximity in time between Emeldi's complaints and Horner's resignation, Emeldi's theory of how Horner found out about her complaints, and

³⁰ *See id.*

³¹ *See id.*

³² *See id.*

³³ *Id.*

³⁴ *See id.*

³⁵ *See Emeldi II*, 673 F.3d at 1223; *Emeldi v. Univ. of Or. (Emeldi I)*, No. 08-6346-HO, 2010 WL 2330190, at *4 (D. Or. June 4, 2010), *rev'd*, 698 F.3d 715 (9th Cir. 2012), *amended by* 698 F.3d 715 (9th Cir. 2012).

³⁶ *See Emeldi II*, 673 F.3d at 1223.

³⁷ *See id.* at 1229.

³⁸ *See id.* at 1224.

³⁹ *See id.* at 1225.

⁴⁰ *See id.* at 1227.

evidence of Horner's gender-based animus in other contexts.⁴¹ Finding that Emeldi had established a prima facie case of retaliation, the court then used the same circumstantial evidence when reasoning that the University stated a legitimate, non-retaliatory reason for Horner's resignation and for Emeldi's inability to secure a replacement.⁴² The Ninth Circuit therefore stated that a factual issue existed as to whether Horner's resignation and Emeldi's inability to secure replacement were in fact, pretext for retaliation.⁴³

II. THE DISTRICT COURT AND THE NINTH CIRCUIT APPLY THE SAME TITLE VII FRAMEWORK TO REACH OPPOSING CONCLUSIONS

In order to analyze Emeldi's Title IX claim, both the district court and the Ninth Circuit applied the same three-part Title VII framework requiring a plaintiff lacking direct evidence of retaliation to make out a prima facie case of retaliation.⁴⁴ Both courts, in assessing her claim, required Emeldi to show that she was engaged in a protected activity, that she suffered an adverse action, and that there was a causal link between the two.⁴⁵ The two courts, however, reached opposing conclusions regarding the sufficiency of Emeldi's allegations to survive summary judgment.⁴⁶ Both courts reached their initial decision to apply the Title VII framework to a Title IX claim by looking at the Supreme Court's 2005 interpretation of Title IX's breadth in *Jackson v. Birmingham Board of Education*, as well as sister circuits' adoption of the Title VII framework, in order to present a prima facie case for retaliation under Title IX.⁴⁷

⁴¹ See *id.* at 1226–27.

⁴² See *Emeldi II*, 673 F.3d at 1228.

⁴³ See *id.* at 1224, 1228–29.

⁴⁴ See *Emeldi v. Univ. of Or. (Emeldi II)*, 673 F.3d 1218, 1223 (9th Cir.), *amended by* 698 F.3d 715 (9th Cir. 2012); *Emeldi v. Univ. of Or. (Emeldi I)*, No. 08–6346–HO, 2010 WL 2330190, at *2 (D. Or. June 4, 2010), *rev'd*, 698 F.3d 715 (9th Cir. 2012), *amended by* 698 F.3d 715 (9th Cir. 2012).

⁴⁵ See *Emeldi II*, 673 F.3d at 1223.

⁴⁶ See *Emeldi II*, 673 F.3d at 1228; *Emeldi I*, 2010 WL 2330190, at *4.

⁴⁷ See *Emeldi II*, 673 F.3d at 1228 (citing *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005)). In *Jackson*, the Supreme Court held that retaliation against a person who has complained of sex discrimination is a form of gender-based discrimination that is actionable under Title IX. See *Jackson*, 544 U.S. at 173. The *Jackson* case dealt with a high school basketball coach who alleged that he had suffered adverse actions after complaining of sex discrimination in the funding of his high school's athletic program. *Id.* at 171.

A. *The District Court Views Emeldi's Allegations as Speculation*

The district court granted summary judgment for the University, finding that Emeldi did not engage in protected activity and that even if it was found that she had, there was no causal link between that activity and the adverse action.⁴⁸ The district court reached this conclusion by holding that protected activity in this context involves complaints of discrimination and that the only record that supported Emeldi's complaints of discrimination were her own declarations.⁴⁹ The court concluded that Emeldi's memo to her supervisors did not raise allegations of gender discrimination.⁵⁰ Additionally, the district court concluded that Friestad and Horner's testimonies denying that Emeldi discussed her concerns about discrimination with them lowered Emeldi's allegations to mere speculation.⁵¹

Even accepting the possibility that her "alleged protected activity [was] borderline at best," the district court found it "difficult if not impossible" to find causation because Emeldi did not produce sufficient evidence that anyone on the dissertation committee knew that Emeldi had made complaints of discrimination.⁵² The district court did not go any further in analyzing the second prong of the Title IX test, noting that there was nothing beyond Emeldi's own speculation and perception that her failure to find a replacement chair was caused by her complaints of discrimination.⁵³

B. *The Ninth Circuit Finds Emeldi's Allegations Sufficient to Establish a Genuine Question of Fact*

On appeal, the Ninth Circuit took a different view of Emeldi's allegations.⁵⁴ Its approach emphasized not only the standard required in reviewing a summary judgment claim—that the evidence be viewed in a light favorable to the plaintiff—but also that "a plaintiff need only make a minimal threshold showing of retaliation" to establish a prima facie case.⁵⁵

⁴⁸ See *Emeldi I*, 2010 WL 2330190, at *3–4.

⁴⁹ See *id.*

⁵⁰ *Id.* at *3.

⁵¹ *Id.* at *3–4.

⁵² *Id.*

⁵³ See *id.* at *4.

⁵⁴ *Emeldi II*, 673 F.3d at 1230.

⁵⁵ *Id.* at 1223.

The Ninth Circuit agreed with the district court that in order to consider Emeldi's activity as protected, a complaint of discrimination was required.⁵⁶ The Ninth Circuit differed, however, in finding that Emeldi had alleged facts, that if found to be true, would demonstrate that she engaged in a Title IX protected activity.⁵⁷ The court reached this first holding by concluding that the protected status of her alleged statements was sufficient.⁵⁸ Unlike the district court that dismissed her allegations as speculation and borderline protected activity at best, the Ninth Circuit had "no doubt" that Title IX empowered Emeldi to complain.⁵⁹

The Ninth Circuit also used Title VII language to hold that Horner's resignation constituted an adverse action.⁶⁰ The court adopted the standard set forth in 2006 by the Supreme Court in *Burlington Northern & Santa Fe Railway Co. v. White*, that an adverse action is present in a Title VII claim when the challenged action might have encouraged a reasonable person not to pursue a charge of discrimination.⁶¹ The court concluded that a reasonable person, who had been abandoned by her supervisor and unable to find a replacement, could justifiably feel that these events were materially adverse, and therefore could have been dissuaded from complaining.⁶² The court analogized Emeldi's withdrawal from the University to that of constructive discharge, a situation in which a retaliating employer creates working conditions so difficult that an ordinary worker would lose motivation to remain on the job.⁶³

Having established that Emeldi's complaints were sufficient for a jury to find that they were protected activity and that Horner's resignation was an adverse action, the court examined whether there was a causal link between the two.⁶⁴ Both the district court and the Ninth Circuit agreed that causation may be established by circumstantial evi-

⁵⁶ See *id.* at 1224.

⁵⁷ See *id.* at 1225.

⁵⁸ See *id.* at 1224–25 (noting that "the protected status of her alleged statements holds whether or not she ultimately would be able to prove her contentions").

⁵⁹ See *Emeldi II*, 673 F.3d at 1224; *Emeldi I*, 2010 WL 2330190, at *3.

⁶⁰ See *Emeldi II*, 673 F.3d at 1225; *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008); *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 848 (9th Cir. 2004); *Yart-zoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987).

⁶¹ See *Emeldi II*, 673 F.3d at 1225 (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

⁶² *Id.*

⁶³ *Id.* (quoting *Poland v. Chertoff*, 494 F.3d 1174, 1184 (9th Cir. 2007)).

⁶⁴ See *id.* at 1226.

dence.⁶⁵ The Ninth Circuit, however, crucially distinguished that at the prima facie stage of a retaliation case, the causal link element is construed so broadly that the plaintiff only has to prove that the two elements are not completely unrelated.⁶⁶ By shifting this already very minimal burden of proof, the Ninth Circuit was able to accept Emeldi's allegations as sufficient rather than having to dismiss them as mere speculation.⁶⁷ Based on these allegations, the court found that there were several circumstances establishing retaliation.⁶⁸

The court found that the proximity in time between Emeldi's complaints to Friestad and Horner's resignation was indicative of retaliation.⁶⁹ Relying on Emeldi's recollection that she complained to Friestad about Horner favoring male Ph.D. candidates, the court found that Emeldi had established a theory regarding Horner's discovery of her discrimination complaints.⁷⁰ Additionally Emeldi offered her own contentions that Horner gave more attention and support to male students, that he ignored her, and that he did not make eye contact with her.⁷¹

Having found that Emeldi established a prima facie case of retaliation, the court acknowledged that the University had stated a legitimate non-retaliatory reason for the challenged action by suggesting that Horner resigned as a result of Emeldi refusing to follow his research advice.⁷² The court also noted that the faculty members Emeldi sought as replacements had legitimate reasons for not wanting to work with her, such as being unavailable or unqualified to supervise her dissertation.⁷³ The court additionally held that Emeldi presented evidence from which a reasonable jury could find that the University's reasons were in fact pretextual.⁷⁴ It based this holding on the same analysis used to find causation from circumstantial evidence in the prima facie case.⁷⁵

⁶⁵ See *id.*; *Emeldi I*, 2010 WL 2330190, at *3.

⁶⁶ *Emeldi II*, 673 F.3d at 1226 (quoting *Poland*, 494 F.3d at 1180 n.2).

⁶⁷ See *id.* at 1228.

⁶⁸ See *id.* at 1227.

⁶⁹ *Id.* at 1226.

⁷⁰ *Id.*

⁷¹ *Id.* at 1227.

⁷² *Emeldi II*, 673 F.3d at 1227–28.

⁷³ *Id.* at 1228–29.

⁷⁴ See *id.* at 1229.

⁷⁵ *Id.*

III. USING TITLE VII'S LOWER BURDEN OF PROOF TO ACHIEVE THE POLICY GOALS UNDERLYING TITLE IX

The Ninth Circuit distinguished its analysis from the district court by thoroughly adapting the Title VII framework for a Title IX retaliation claim.⁷⁶ Where the district court swiftly adopted that the Title IX retaliation claim should be analyzed under the Title VII framework, the Ninth Circuit took the time to articulate three reasons why it choose to follow sister circuits in adopting the Title VII framework.⁷⁷ The Ninth Circuit's attention to defining these reasons is indicative of its deeper analysis of the case.⁷⁸ By carefully examining the policy behind adopting a Title VII framework, the court espoused not only the framework, but also the minimal standard of proof necessary to establish a Title VII claim at the summary judgment stage.⁷⁹

The Ninth Circuit's first reason for adopting the Title VII framework for Title IX retaliation claims is that the legislative history of Title IX suggests that Congress meant for a similar standard to apply to Title IX.⁸⁰ The court cited the House Report as saying that Title IX was meant bring in education under the equal employment provision.⁸¹ Second, the court cited previous cases where it found the Title VII framework useful for assessing claims of discrimination and retaliation that do not fall within the Title VII or Title IX context.⁸² Most likely, the lower standard of proof required at the summary judgment level when applying the Title VII framework, levels the playing field for individuals litigating against large institutions with significant resources.⁸³ The court also pointed out that the Supreme Court has often looked to Title VII to shine light on Title IX cases of discrimination.⁸⁴

⁷⁶ See *Emeldi v. Univ. of Or. (Emeldi II)*, 673 F.3d 1218, 1223 (9th Cir.), *amended by* 698 F.3d 715 (9th Cir. 2012). Ultimately the dissent concurred with the majority's application of the Title VII framework but warned that extending the employment model to the graduate student-professor context is problematic because "[t]he academic process involves highly personal, idiosyncratic relationships" that are inherently unique and highly subjective. *See id.* at 1231 (Fisher, J., dissenting).

⁷⁷ See *Emeldi II*, 673 F.3d at 1223; *Emeldi v. Univ. of Or. (Emeldi I)*, No. 08-6346-HO, 2010 WL 2330190, at *2 (D. Or. June 4, 2010), *rev'd*, 698 F.3d 715 (9th Cir. 2012), *amended by* 698 F.3d 715 (9th Cir. 2012).

⁷⁸ See *Emeldi II*, 673 F.3d at 1224.

⁷⁹ *Id.* at 1223.

⁸⁰ *Id.* at 1224.

⁸¹ *Id.*

⁸² *Id.*; *see, e.g., Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (applying the Title VII framework to a claim under the Age Discrimination in Employment Act).

⁸³ See *Emeldi II*, 673 F.3d at 1224.

⁸⁴ See *id.*

In taking the effort to articulate its reasoning for adopting the Title VII framework, the Ninth Circuit demonstrates a more thorough approach to examining Emeldi's allegations.⁸⁵ Not only did the Ninth Circuit consciously choose to apply the Title VII framework to the Title IX retaliation claim, the court repeatedly emphasized that to establish a *prima facie* case for Title VII on summary judgment, the requisite degree of proof is minimal and does not need to rise to the level of a preponderance of evidence.⁸⁶ While acknowledging that the University might have a convincing case at trial, this lower standard enabled the court to hold that Emeldi's allegations are still sufficient to create a genuine dispute of factual issues that could only be resolved by a jury.⁸⁷

This lower burden of proof and broad reading, reinforces the purpose behind Title IX, which is that federally funded educational institutes cannot discriminate based on sex.⁸⁸ Practically, by concluding that Emeldi's allegations were non-speculative, the court suggested that student allegations of discrimination should be considered similar to that of constructively discharged employees.⁸⁹ Therefore, even if a federally funded educational institution can provide compelling evidence, a student's allegations are likely to be found non-speculative under the Ninth Circuit's interpretation of Title IX, limiting the number of cases decided under summary judgment.⁹⁰ Although this lower standard does pose the risk of both letting some unmeritorious claims go forward and lowering the bar for institutional liability, these concerns are outweighed by students' interest in discrimination-free graduate education in light of the unique dynamic between advisors and Ph.D. candidates.⁹¹ Students will now feel empowered that their complaints of both personal and institutional discrimination will be acknowledged, encouraging students to report incidents of discrimination in the university setting.⁹²

⁸⁵ See *id.* at 1224.

⁸⁶ See *id.* at 1223, 1226, 1228.

⁸⁷ See *id.* at 1229–30 (noting that it is not speculative for Emeldi to say that she asked fifteen faculty members who declined for various reasons to supervise her dissertation).

⁸⁸ See *id.* at 1224–25. The court notes that the intent of Title IX is to “empower[] a woman student to complain, without fear of retaliation, that the educational establishment treats women unequally.” *Id.* at 1225.

⁸⁹ See *Emeldi II*, 673 F.3d at 1225.

⁹⁰ See *id.* at 1230.

⁹¹ See *id.* at 1225.

⁹² See *id.* at 1228.

CONCLUSION

The Ninth Circuit reached the appropriate conclusion in reversing the district court's grant of summary judgment to the University. The district court hastily adopted the Title VII framework for establishing a prima facie case for Title IX retaliation claims, without imbuing its analysis with careful consideration and awareness of the policy aims behind Title IX's creation. By not only adopting, but also thoroughly examining Title VII's framework, however, the Ninth Circuit found that Title VII claims for summary judgment require a lower standard of proof and broader interpretation, rendering student allegations alone sufficient to establish questions of fact in retaliation claims under Title IX.