FACE.

Families Advocating for Campus Equality

May 2, 2020

Dear Joe Biden,

We are co-presidents of Families Advocating for Campus Equality (FACE), a national non-profit formed and run primarily by women, whose mission it is to ensure fairness and gender equality under Title IX.[1]

As women and mothers of both sons and daughters, we applaud your efforts to combat sexual offenses on our nation's campuses. As advocates for fairness and equality we ask you to consider how, in some hands, Title IX has become a political (and some say "feminist") tool used to destroy lives.[2]

The important lesson you conveyed in 2011, that "'It's never, never, never, never, never OK to touch her without her consent,"[3] has become a call to castigate, cast out, and "cancel" those accused of doing so, no matter the intention behind their alleged actions.[4]

We are hopeful your recent experience has made you realize that "sexual misconduct" is no longer just about sex. The "rules of engagement" for sexual misconduct are a moving target. Historically-acceptable hugs and genuine forms of non-sexual expressions of affection are no longer acceptable. Worse still, the consequences can be a swift end to education, career, and sometimes can even be life-ending. This affects not only those wrongfully disciplined, but also their mothers, fathers, siblings, grandparents, and spouses.

Children and young adults are not puppets to manipulate as props for the purpose of advancing political agendas. Yet that is today's reality. Just like you have been accused of touching women in ways that cause them to "feel uncomfortable," so too have many men, women, and LGBTQ students and professors been disciplined for the often subjective feelings of their accusers.[5] As a well-respected public figure, you are fortunate to have the opportunity to survive accusations of impropriety for your well-intended gestures, as

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[1] FACE provides support and advocacy to thousands of students and professors of all genders and gender identities, who were wrongfully suspended, expelled, or otherwise ejected from their college, university, or K-12 campuses under the well-intended goal of preventing sexual misconduct.

[2] Indeed, in a case where a male student claimed to have been sexually harassed buy a female professor, the latter's defenders were appalled that Title IX, "a feminist tool," was being used "to take down a feminist." Robby Soave, "Feminists Rally to Defense of Female Professor Accused of Sexual Harassment by Male Student; #MeToo madness: it's wrong to use Title IX, a feminist tool, 'to take down a feminist'," Aug. 14, 2018, *Reason*, https://reason.com/blog/2018/08/14/avital-ronnell-nyu-me-too-harassment

[3] Ashe Schow, "Biden Reaps the #MeToo Whirlwind," April 4, 2019, *Wall Street Journal*, https://www.wsj.com/articles/biden-reaps-the-metoo-whirlwind-11554419738

[4] "The act of canceling could entail boycotting an actor's movies or no longer reading or promoting a writer's works. The reason for cancellation can vary, but it usually is due to the person in question having expressed an objectionable opinion, or having conducted themselves in a way that is unacceptable ..." "What Does 'Canceling' Mean Today?," *Merriam Webster*, accessed April 25, 2020, https://www.merriam-webster.com/words-at-play/cancel-culture-words-were-watching

[5] Amanda Arnold and Claire Lampen, "All the Women Who Have Spoken Out Against Joe Biden," *The Cut*, April 12, 2020, https://www.thecut.com/2020/04/joe-biden-accuser-accusations-allegations.html; Ashe Schow, "Biden Reaps the #MeToo Whirlwind," April 4, 2019, Wall Street Journal, https://www.wsj.com/articles/biden-reaps-the-metoo-whirlwind-11554419738

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well as an audience willing to forgive. Unfortunately, young students and faculty members only experience draconian repercussions[6] for the same types of behaviors.[7]

A much publicized example is Marcus Knight, who was suspended from a California community college "for taking a 'selfie' with a female student and touching her shoulder."[8] Marcus is not alone: we have hundreds more stories just like Marcus', students and faculty members who have had their education and careers cut short for a hug, a kiss, a misunderstanding, or for having done absolutely nothing at all.

Imagine constructing your own defense at 18 or 19 years old. Innocent students, some as young as kindergarteners, trust they will be treated fairly, and are told *"just tell the truth and you'll be fine."* In reality, students have been blindsided by experienced campus attorneys and administrators who act as prosecutors, compiling evidence and testimony to establish their guilt, while denying them access to any equivalently experienced advocate, attorney, or even a parent. Even more troubling are the Constitutional implications of campus officials who now solicit criminal investigators to listen in on student interviews without the latter's knowledge or legal advice.[9] We've even had a student threatened with being placed on a sex offender registry for a reciprocated kiss.

Despite the fact that 30% of preponderance-based decisions are likely wrong,[10] the transcripts of students found "responsible" are permanently imprinted with a disciplinary notation. **For them there is no "ban the box,"** even though they've been found "responsible" for conduct that, *if it occurred*, most often was not criminal. It's a shockingly adversarial process unaccompanied by procedures normally used when deciding guilt on such a low standard, and pursuant to a disciplinary "process" conducted by administrators who euphemistically call the experience "educational."

The consequences of these *David v. Goliath* inquisitions are students with no opportunity to complete their education, loss of a promised career, and significant loans to pay for a diploma they will never receive. Many promising well-intentioned students have been tossed out like the trash, with a missed golden opportunity to educate; after all, isn't educating what schools do best?

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[6] In the past several years thousands of students and faculty have contacted FACE after experiencing result-driven Title IX disciplinary processes in which school officials have: refused to disclose details of the conduct of which they've been accused; denied them access to the very same evidence relied on to find them responsible; refused them the opportunity to question their accusers and witnesses; relied on hearsay and other evidence inadmissible in any other adjudicatory arena; ignored their lack of harmful intent or good faith beliefs, and dispensed with any presumption that the student may actually be innocent.

[7] Ashe Schow, "Biden Reaps the #MeToo Whirlwind," *Wall Street Journal*, April 4, 2019, https://www.wsj.com/articles/biden-reaps-the-metoo-whirlwind-11554419738

[8] *Id.*

[9] National District Attorneys Assn., Women's Prosecutors Section, White Paper; *National Sexual Assault Investigation and Prosecution Best Practices Guide*, January 3, 2018, https://www.ciclt.net/ul/ndaajustice/WhitepaperFinalDraft-SA.pdf

[10] John Villasenor, "A probabilistic framework for modelling false Title IX 'convictions' under the preponderance of the evidence standard," *Law, Probability and Risk*, Volume 15, Issue 4, December 2016, pp. 223–237, https://doi.org/10.1093/lpr/mgw006

Most American voters would be stunned to learn that such Kafkaesque "trials" are allowed to occur in America, land of fairness and freedom. Even Capitol Hill staffers have told us stories of friends, teammates, and others unfairly adjudicated under Title IX policies similar to those outlined above.

Perhaps even more tragically, the foundation on which the students have relied since childhood is destroyed: the promise of a better future and their belief in the American sense of justice. This devastating realization causes some to attempt suicide, a few successfully, lands many in the hospital, and all suffer significant lifelong trauma, PTSD and anxiety. Entire families are emotionally and sometimes financially destroyed;[11] lives irrevocably changed because of a process with a 30% likelihood of error.

Tragically, the students who pay the highest price are primarily underserved and minority populations whose families don't have resources to obtain legal advice. Is this what America stands for? **Justice only if you can afford it?** No wonder an African-American mother told us, "*to us it's just more of the same.*"

Senator Biden, please, take off your political hat for just a moment, and open your eyes to what's happening to innocent students and faculty who could be your sons, daughters, brothers or sisters – because, *as you must now know*, "doing the right thing" no longer protects you in this 'accusation = guilt' world.

At FACE we understand both perspectives: the #Me-Too and the #Men-Too advocates. We believe we can help negotiate the landscape between prevention and punishment, which are not mutually exclusive.

You *can* help make this stop. We need you to become America's hero, someone who persists with unwavering support for women and #Me-too, while also heroically ensuring #Men-too across America are treated fairly and equally.

Please call us to talk about this very important issue. We are willing to meet with you on your terms, in a town hall or meeting behind closed doors. Whatever it takes.

Sincerely,

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[11] For excerpts from FACE family accounts of their experiences with Title IX proceedings, please *see* "FACE SB493 Testimony in Opposition," June 2019, https://www.dropbox.com/s/3vdamiajmg7o7my/FACE%20SB493%20Testimony%20in%20Opposition%20June%202019.pdf?dl=0