

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KAPPA ALPHA THETA FRATERNITY,  
INC.; KAPPA KAPPA GAMMA  
FRATERNITY; SIGMA CHI; SIGMA  
ALPHA EPSILON; SIGMA ALPHA  
EPSILON--MASSACHUSETTS GAMMA;  
JOHN DOE 1; JOHN DOE 2; JOHN DOE 3,

Plaintiffs,

v.

HARVARD UNIVERSITY; PRESIDENT  
AND FELLOWS OF HARVARD COLLEGE  
(HARVARD CORPORATION),

Defendants.

Civil Action No. 18-cv-12485-NMG

**Oral Argument Requested**

**DEFENDANT PRESIDENT AND FELLOWS OF HARVARD COLLEGE’S  
MOTION TO DISMISS THE COMPLAINT**

Defendant President and Fellows of Harvard College (“Harvard”<sup>1</sup>), through its undersigned counsel, hereby moves to dismiss with prejudice the Complaint For Declaratory And Injunctive Relief (“Complaint”) of Plaintiffs Kappa Alpha Theta Fraternity, Inc.; Kappa Kappa Gamma Fraternity; Sigma Chi; Sigma Alpha Epsilon; Sigma Alpha Epsilon—Massachusetts Gamma (collectively, the “organizational Plaintiffs”); John Doe 1; John Doe 2; and John Doe 3 (together with the organizational Plaintiffs, “Plaintiffs”). Harvard moves to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6). In support of this Motion, Harvard relies on the accompanying Memorandum. As discussed in the Memorandum, many of the claims should be dismissed for lack of standing, and all of the claims

---

<sup>1</sup> The Complaint identifies the defendants as “Harvard University” and “President and Fellows of Harvard College (Harvard Corporation),” but President and Fellows of Harvard College is the sole legal entity comprising the University.

should be dismissed for failure to state a claim.

First, neither the organizational Plaintiffs nor John Doe 3 has standing, and therefore their claims should be dismissed under Rule 12(b)(1). The organizational Plaintiffs bring suit on behalf of their members, not themselves, but the Complaint fails to allege sufficient facts to establish third-party or associational standing. The Complaint also fails to allege that John Doe 3 suffered any cognizable injury himself.

Plaintiffs' four Title IX claims also should be dismissed under Rule 12(b)(6). Plaintiffs' per se discrimination claim fails because the challenged policy treats men and women equally. Plaintiffs' claims of associational discrimination, sex-stereotyping, and anti-male bias likewise should be dismissed, because the Complaint fails to plausibly allege that Harvard based its policy on any bias against men, or against women, or against associations between people of the same sex. Finally, the Court should dismiss the claim under the Massachusetts Civil Rights Act ("MCRA"). As a matter of law, Harvard's policy neither constitutes a "threat, intimidation, or coercion" under the MCRA, nor interferes with Plaintiffs' right to equal protection.

For these reasons, and as stated more fully in the accompanying Memorandum, Harvard respectfully requests that the Court dismiss Plaintiffs' Complaint with prejudice.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Harvard respectfully requests a hearing on this Motion.

Dated: February 8, 2019

Respectfully submitted,

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE

By its attorneys,

/s/ Roberto M. Braceras

Roberto M. Braceras (BBO# 566816)

Joshua J. Bone (BBO# 687722)

Edwina B. Clarke (BBO# 699702)

GOODWIN PROCTER LLP

100 Northern Avenue

Boston, Massachusetts 02210

Tel.: +1 617 570 1000

Fax.: +1 617 523 1231

Email: rbraceras@goodwinlaw.com

jbone@goodwinlaw.com

eclarke@goodwinlaw.com

William M. Jay (*pro hac vice*)

GOODWIN PROCTER LLP

901 New York Avenue NW

Washington, DC 20001

Tel.: +1 202 346 4000

Fax.: +1 202 346 4444

E-mail: wjay@goodwinlaw.com

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I hereby certify that, on February 7, 2019, counsel for Harvard and counsel for Plaintiffs conferred in a good-faith effort to narrow or resolve the issues presented herein, but were unable to do so.

/s/ Roberto M. Braceras

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to all the registered participants as identified on the Notice of Electronic Filing, and paper copies shall be served by first class mail postage prepaid on all counsel of record who are not served through the CM/ECF system on February 8, 2019.

/s/ Roberto M. Braceras