

Problem Statement

The phone rings. You pick up. Your old pal and former boss, Senator Shmober "Shmeto" O'Shmourke, the junior senator and independent from the state of North Shmexas, is on the line. He's calling you because, as his former legislative aide back in his local government days, he wants to pick your brain about something that's been bothering him.

Under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688, discrimination on the basis of sex in higher education is prohibited. Sen. O'Shmourke knows that schools that receive federal financial assistance not only have a duty to have fair admissions practices, but (under Supreme Court precedent) to prevent sexual harassment and violence on their campuses. But the Senator has been troubled to hear, from constituents and interest groups, that the law is not living up to its full potential in preventing harassment and violence. He's read both the 2013 "Dear Colleague" letter and the text and analyses of the rule proposed by Secretary of Education DeVos (he texted you [a link to this N.Y. Times column](#)), and gets that there's an important regulatory dimension to this issue, but he's troubled that the underlying law doesn't more clearly tell schools how to comply. The Senator is also worried that a regulatory solution to the problem will just get gummed up in endless litigation, or be overturned in the next administration.

Sen. O'Shmourke also mentions an article [he read the other week](#). It seems that states (and some members of Congress) are considering transcript notation laws as a way to prevent schools from "passing the buck" to another institution when students are found to have committed sexual harassment or violence on campus. But, as a proud sponsor of "Ban the Box" legislation (a bill you helped him draft) back when Senator O'Shmourke was simply City Councilmember O'Shmourke, the Senator is deeply concerned about how permanent stigma can entrench inequality and amplify harm – especially if the stigma is attached without an adequate process.

"So," the Senator asks – "What should we do? Amend Title IX? Drum up a new federal law entirely? Intervene in the regulatory process with the Congressional Review Act? Get model legislation to my colleagues back in the North Shmexas House of Delegates and have them act at the state level? **How can we fairly fight sex- and gender-based violence on college campuses through innovative legislative response?**"