COME NOW Jane Doe 1 and Jane Doe 2 (the "victim-survivors"), non-parties in this action, and through their counsel, file their Amicus Brief stating as follows:

INTRODUCTION

What may have begun as a well-intentioned journalistic search for information has now devolved into a public dispute that ignores the interests of the parties at the center of this controversy: the seemingly forgotten victim-survivors of the sexual assaults at issue. Over the last two months, the victim-survivors at issue in this case have read dozens of published articles opining on the worst moments of their lives, forcing them to re-live the vile details, as journalists attempt to chase "the next Baylor" without regard to the already-public facts of the underlying sexual assault case. The callous media coverage re-traumatizes the victim-survivors almost every week: the Kernel has published at least 28 articles mentioning their case since April 6, 2016, including 16 articles since September 14, 2016 when the victim-survivors expressly asked the Kernel to stop publishing articles about their case. They are terrified of the real, personal impact on their lives if the Kernel, and by extension any future open-records requestor, are permitted to
receive the requested records that describe the most intimate and personal details about their sexual assaults.

Following a sexual assault and the inherent lack of control possessed by a victim-survivor in that situation, one of the few areas of control remaining is how and with whom a victim-survivor may choose to share their story. The Kernel is strenuously seeking to take that choice away from the victim-survivors in this case -- to the point of seeking to silence them by opposing the filing of this amicus brief.

The victim-survivors file this brief to bring attention to their rights and their demands for confidentiality over their records and information, to which they are clearly entitled under applicable law.

**FACTS**

In the summer of 2015, two University students filed sexual assault complaints against Professor James Harwood. The Office of Institutional Equity and Equal Opportunity subsequently launched an investigation as required under Title IX. At the time the victim-survivors lodged their complaints, UK assured them that the entire Title IX investigation and the accompanying records would be confidential per federal law. This confidentiality was critical in the victim-survivors’ decisions to come forward with such sensitive, personal, and stigmatizing information. As previously acknowledged in this case, the victim-survivors' Title IX investigatory files contain sexually explicit details, which supported the University’s decision that Harwood sexually assaulted and harassed the victim-survivors. After presenting Harwood with its findings, Harwood chose to leave the University prior to final adjudication of the matter.

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1 In order to better illustrate the harm being caused to the victim-survivors by the Kernel's continuous coverage of its open records request, and the further harm that will be caused if the request is granted, each of the victim-survivors has drafted a Declaration that is being submitted contemporaneously with this brief.
The harm perpetrated upon the victim-survivors by Harwood is undeniable, and the victim-survivors remain traumatized in the wake of the events that transpired. (See Decl. Nos. 1, 2.)

Upon learning that Harwood was free to deny the allegations and seek new academic jobs, the victim-survivors were initially interested in drawing attention to the flaw in academia that permitted such behavior. The Kernel was an early ally in making Harwood's transgressions known. In April of 2016, the Kernel began running articles that initially sought to expose that Harwood's resignation allowed him to move to another job without disclosure of the sexual assault complaints and resulting investigation.

However, the continued media attention since April of 2016 has become crushing on the victim-survivors: the Kernel has run twenty-eight stories since then that mention Harwood and relate to the victim-survivors' Title IX investigation, as the Kernel pursues its narrative that UK systemically failed to address, prosecute, and prevent sexual assault on its campus. While the Kernel's open records request began as a simple request for information, and possibly justice, it has evolved such that the victim-survivors have become trapped in unrelenting and obsessive media cycles centered around and drawing unwanted attention to them and their assaults. Unfortunately, the predictable consequence of the Kernel's unbridled journalistic pursuits has been to repeatedly re-traumatize the victim-survivors in ways the Kernel has refused to acknowledge. (See id.)

While the victim-survivors cannot slow the existing media coverage, they do have the right under Kentucky and federal law to prevent UK from providing their education records, which contain the most personal and private details of their assaults, to the Kernel and others. The victim-survivors can thus prevent exacerbating the situation and enabling the Kernel and others to do further harm to them -- and, by extension, to other student victims of sexual assault.
(See Decl. No. 2.) If the Court does not uphold that right, the Kernel and future open records requestors will be free to obtain the personal records of known, private individuals that contain explicit details of the darkest moments of their lives, inflicting maximum damage upon individuals whom they can identify but do not sympathize: the victim-survivors who will be left reeling without the protection of confidentiality.

While the Kernel professes an interest in protecting the names of the victim-survivors contained in any requested records, that ignores that this litigation will be precedential. A ruling for the Kernel would allow any future requestors to obtain any future information regarding any future victim-survivors except their names, which would be moot when a requestor already knows the identity of a victim-survivor. The impact of this decision on current and future sexual assault victim-survivors cannot be ignored.

Furthermore, while the Kernel notes some sexual assault victims may feel empowered to speak about their sexual assaults due to media reporting (Resp. p. 15, n.8), all sexual assault victims have the ability to waive confidentiality and make their story public. Protecting victim-survivor records does not prevent those who want to make their story public from doing so. However, a decision in this case to make highly-personal student records public upon merely an open records request will undoubtedly dissuade traumatized victims from reporting acts of sexual assault, seeking counselling and seeking protection, for fear of potentially becoming a public spectacle. (See Decl. Nos. 1, 2.)

LEGAL AUTHORITY AND IMPLICATIONS

The law is clear in this case: FRPA, VAWA, the Kentucky Open Records Act, and Kentucky law prevent disclosure of all documents maintained by UK that directly relate to the victim-survivors. Allowing the Kernel to prevail on its open records request would be contrary
to these laws -- and would violate the trust of sexual misconduct victims who may forego counselling and support in fear that the Kernel or other requestor may be able to view and callously publicize their darkest moments. Redacting names does nothing to cure this harm. The Kernel cannot be permitted to disrupt such important legal and social structures.

A. **Family Educational Rights and Privacy Act ("FERPA")**

The Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1234g) gives students the rights to control their educational records. All of FERPA's requirements revolve around the central term "education records," which is defined in the implementing regulations to be extraordinarily broad. "Education records" are defined to be "records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution . . .;" 34 C.F.R. § 99.3 (citing to 20 U.S.C. § 1232g at (a)(4)(A)). Pursuant to FERPA, an educational institution like UK cannot disclose "personally identifiable information from [any] student's education records" without "signed and dated written consent" or a specific statutory exception. 34 C.F.R. § 99.30. Importantly, "personally identifiable information," or "P.I.I.," is not limited to only commonly-understood information, like a student’s name, address and place of birth.2

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2 An "educational institution" is "any public or private . . . institution" that receives funds "under any program administered by the Secretary of Education." 34 C.F.R. §§ 99.1 and 99.3.

3 "Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche." 34 C.F.R. § 99.3.

4 The Kernel's argument that compliance with FERPA is legally irrelevant, allegedly because it is a funding statute, is illogical. (Resp. at 9.) The fact that a school can potentially lose all federal funding for FERPA violations does not make it any less compulsory than other laws.

5 The Kernel's supposed offer to agree to "the redaction of the name of the student (and student witnesses), along with any personally identifying information about the student" (Resp. at 1) is disingenuous, as the Kernel knows there were multiple student victims in this case and the Kernel’s offer would not even exclude common P.I.I. beyond the name of a single student. Moreover, it ignores the precedential effect of this Court's ruling, as any "agreement of the parties [to] shield any particular details] from disclosure" (id. at 6) would not be binding on a future requestor if the Kernel's open records request were granted.

Similarly, the Attorney General's Order that nominally permitted the redaction of P.I.I. in this case ("the AG's Order" at 3 n.4 and at 5) presumably does not encompass FERPA's definition of P.I.I. Thus, it presumably would allow the details of the victim-survivors' records to be discoverable and later (or immediately) linked to them personally. The AG's Order does not provide sufficient or legally-adequate protection to the victim-survivors.
Rather, P.I.I. expressly includes *any* information about a student that is "requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates." 34 C.F.R. § 99.3. Additionally, an educational institution is prohibited from providing "information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." *Id.*

In this case, the Kernel knows one victim-survivor's identity and likely knows the other one's identity. (Decl. Nos. 1 and 2.) Further, given the limited number of participants in the victim-survivors' field of study, it is unfortunately easy for "skillful 'Googlers,' sifting the information" to "put two and two together, 'out' the [victim-survivors], and thereby expose them to threats, humiliation, and obloquy." *Nw. Mem'l Hosp. v. Ashcroft*, 362 F.3d 923, 929 (7th Cir. 2004). Because the victim-survivors' identities are known or would be deducible with reasonable certainty with the release of additional information about their case, FERPA prohibits UK from disclosing any information that, alone or in combination, is linked or linkable to them, including all details of their sexual assaults and any other UK records directly related to either of them.\footnote{The Kernel argues that records that relate to both the victim-survivors and James Harwood are somehow exempt from FERPA, should be treated as solely employment records, and should be subject to disclosure. (Resp. at 11-14.) This argument is not credible. A simple review of FERPA's definition of "education records" reveals that records related to an employee are only excluded from FERPA's grasp if they "[r]elate exclusively to the individual in that individual's capacity as an employee." 34 C.F.R. § 99.3 (emphasis added). Accordingly, any records that relate to both the victim-survivors and Michael Harwood must remain confidential unless the victim-survivors expressly consent to their disclosure. The Kernel's citations to cases dealing exclusively with employee records and/or employment cases involving terminated employees' discovery efforts are inapposite. (Resp. at 11-14.) The Kernel had no such direct, personal involvement in the content of victim-survivors' records. Based on footnote 6 of the AG's Order, it appears that the Attorney General also was confused about FERPA's requirements. To the extent the AG's Order was premised on such a misunderstanding of federal law, the victim-survivors respectfully submit that it must be reversed by this Court.}
B. Violence Against Women Act ("VAWA")

While FERPA makes clear that UK cannot provide the victim-survivors' records to the Kernel pursuant to the Open Records Act, the federal Violence Against Women Act ("VAWA") provides additional legal and ethical support for that proposition.

The 2013 VAWA amendments empower sexual assault victims to control the dissemination of their narrative. Section 304 specifically states that school programs must educate students that a victim has the right to choose whether to report sexual misconduct to campus authorities, the police, anyone else, or no one at all. See Pub. L. No. 113-4, 127 Stat. 54. Through this section, Congress sought to empower victims of sexual violence by expressly granting exclusive control to victims over the dissemination of their information except in cases of emergency. This sentiment is mirrored in the codified portions of the Clery Act, which inform educational institutions that they are only able to report sexual misconduct, even to the police, "when the victim of a crime elects to, or is unable to, make such a report." 34 C.F.R. § 668.46(b)(4)(iii). And this sentiment is further supported by the Department of Education’s Office for Civil Rights ("OCR"). For example, OCR stated in 2014 that it "strongly supports a student’s interest in confidentiality in cases involving sexual violence." (Questions and Answers on Title IX and Sexual Violence, April 29, 2014, http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.)

Further, OCR has explained the rationale behind this legal doctrine; "disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence." Id. Since at least 2011, OCR has consistently maintained that "a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school’s response," noting specifically that
student trust would be compromised by any failure to comply with strict confidentiality regulations. Id.

Here, the Kernel seeks to upset that statutory balance even though it lacks the express written consent of the victim-survivors. The Court should not permit the Kernel to upset federal law and OCR’s best practices, undermining student trust in UK’s system despite the victim-survivors’ assurances that UK’s victims’ advocacy and counselling services were helpful and functioned well for them (see letters attached to Declarations), just so the Kernel can chase a story.

C. Kentucky Law

Additionally, Kentucky law supports that the victim-survivors’ confidential FERPA-protected records cannot be produced. Indeed, the Open Records Act expressly excludes from disclosure any records whose disclosure is prohibited by federal law. KRS 61.878(1)(k) ("The following public records are excluded from the application of [Kentucky’s Open Records Act] ... (k) All public records or information the disclosure of which is prohibited by federal law or regulation"). (See also UK’s Brief on Appeal at 14-15 (citing to KRS 61.878(1)(k) and Medley v. Bd. of Educ., 168 S.W.3d 398, 403-404 (Ky. App. 2004) (recognizing the application of FERPA via KRS 61.878(1)(k) to education records sought under the Open Records Act).

The Kentucky Attorney General has recognized the importance of protecting the confidentiality of sexual assault victims’ records in the past, notwithstanding a newspaper’s open records request for them, stating, "This privacy interest is postulated on the [sexual assault] victims’ need to avoid public exposure as they cope with the singularly traumatic physical and psychological consequences of the crimes perpetrated against them, crimes that have been characterized as the 'ultimate violation of self.'" In re: The Courier-Journal/ Crime Victims
Compensation Bd., 03-ORD-153, 2003 WL 21518708 at 2-3 (2003) (citations omitted). In other words, the Kentucky Attorney General has recognized that it is not sufficient to merely redact names from sexual assault records, as it is the public disclosure of these intimate records themselves that re-traumatizes the victims. And where, as here, there is a substantial likelihood that the requestor knows both victim-survivors’ identities and can link those intimate records to them, and future requestors could likely determine their identities from disclosed records and ascertain that direct link, the victims’ interests in maintaining their privacy is paramount. The Kernel cannot be permitted to upend Kentucky law and its underlying, compassionate rationale just to satisfy a journalistic theory.

Likewise, Kentucky courts have made clear that the Open Records Act "is not meant to turn the state’s agencies into clearing houses of personal information about private citizens readily available to anyone upon request." New Era v. City of Hopkinsville, 415 S.W.3d 76 (Ky. 2013). Here, without question, the substance of the records at issue mandates their exemption from disclosure under the open records act. The records are plainly protected by FERPA and further contain personal information of the most sensitive nature regarding the victims-survivors’ – information concerning their sexual assaults. Such records are therefore also exempt from disclosure under KRS § 61.878(1(a), (k). See also Edmondson v. Alig, 926 S.W.2d 856 (Ky. App. 1996).

Because UK has already briefed matters of Kentucky law, the victim-survivors will not elaborate further on those points herein.

CONCLUSION

The victim-survivors respectfully urge the Court to consider the direct impact its ruling will have on real people, including current and future victims of sexual assault. UK did not fail
in its duties towards the victim-survivors in this case. (See Declarations and their attachments.) By allowing the Kernel to perpetuate an unsubstantiated theory that UK might be "the next Baylor" (Resp. p. 15, n.8), the Kernel is ruining the trust that victims should have to seek help and counselling from UK’s victims services offices. (See UK’s Brief on Appeal, Exh. B.)

The Kernel has done real harm to sexual assault victims through its quixotic pursuit of the victim-survivors’ personal and sensitive records. Their case has already been mentioned in 28 Kernel articles, many after the victim-survivors made clear that UK had not mistreated them and asked the Kernel to stop invoking their story. The Court should put an end to the Kernel’s selfish pursuit and affirm that both federal law and KRS 61.878(1)(k) compel the denial of the Kernel’s open records request for any student education records.

Respectfully submitted,

Dana R. Howard
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3000
dana.howard@skofirm.com

and

Daniel A. Cohen
Madeleine Kvalheim
BAKER DONELSON
Monarch Plaza, Suite 1600
3414 Peachtree Road N.E.
Atlanta, Georgia 30326
(404) 577-6000
dehohen@bakerdonelson.com
Counsel for Victims
Pro Hac Vice Pending
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following, via email, on this the 17th day of November 2016:

Thomas W. Miller
Elizabeth C. Woodford
Miller, Griffin & Marks, P.S.C.
271 W. Short Street, Suite 600
Lexington, KY 40507
twm@kentuckylaw.com
ewoodford@kentuckylaw.com

Stephen L. Barker
Bryan H. Beauman
Joshua M. Salsbury
Sturgill, Turner, Barker & Moloney, PLLC
333 W. Vine Street, Suite 1500
Lexington, KY 40507
sbarker@sturgillturner.com
bbeauman@sturgillturner.com
jsalsbury@sturgillturner.com

William E. Thro
General Counsel
University of Kentucky
Office of Legal Counsel
301 Main Building
Lexington, KY 40506
william.thro@uky.edu

LaTasha Buckner
Samuel Flynn
S. Travis Mayo
Commonwealth of Kentucky
Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, KY 40601
latasha.buckner@ky.gov
samuel.flynn@ky.gov
travis.mayo@ky.gov
COURTESY COPY BY HAND DELIVERY TO:

Hon. Thomas L. Clark, Chief Judge
511 Robert F. Stephens Courthouse
120 North Limestone Street
Lexington, KY 40507

[Signature]

Counsel for the Victims
COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL BRANCH
DIVISION 8
CIVIL ACTION NO. 16-CI-3229

UNIVERSITY OF KENTUCKY

v.

THE KERNEL PRESS, INC., d/b/a
THE KENTUCKY KERNEL

JANE DOE #1'S DECLARATION IN SUPPORT OF AMICUS BRIEF

For her Declaration In Support of her Amicus Brief, Jane Doe #1 affirms, under penalty of perjury, that the following facts set forth herein are true and accurate to the best of her knowledge:

1. I am Jane Doe #1. I am a student at the University of Kentucky. I currently reside in Lexington, Kentucky. I am submitting this Declaration under a pseudonym to protect my identity in relation to my sexual assault records that the Kentucky Kernel newspaper is seeking to receive through an open records request to the University of Kentucky (UK).

2. The statements set forth herein accurately reflect my personal experiences and beliefs.

3. Last year, a fellow student and I presented allegations to UK of sexual assault and sexual harassment against Dr. Harwood, a professor at UK. The University later informed me that it found that there was enough evidence for a reasonable person to find that Dr. Harwood violated the University’s sexual misconduct policy by assaulting me.
4. At some point in 2016, I became aware that an open records request was made seeking my personal records and that the University of Kentucky refused to disclose such records.

5. Unfortunately, I believe the refusal of an open records request related to our case has eclipsed the bigger issue of sexual misconduct in academia.

6. I have been distressed that the Kernel's quest for information ignores that the request involves my deeply personal student records, which the Kernel would use in a public and self-serving platform. I am disappointed that a case that was handled so thoughtfully by Martha Alexander and the University of Kentucky is now being presented so negatively. I already explained that publicly, albeit anonymously, in a letter the Kernel received on September 8, 2016 (see Exhibit A). Nonetheless, the Kernel has continued to publish its preferred narrative about my case against my wishes, publishing at least 16 articles mentioning my case since September 8.

7. As the Kernel continues its open records pursuit of my sexual assault records, I must explain what the Kernel refuses to accept: The records at issue are not public records; they are highly-personal records about a sexual assault that happened to me. The public release of those records, redacted or not, will have a material subsequent impact on my health, well-being, and career.

8. I am still a student at the University of Kentucky. While the Kernel would have this Court believe that redacting my name from the records will protect my identity, I assure you it will not. Someone who becomes versed in the facts of this case through review of redacted documents and who is willing to engage in a few minutes of research would be able to determine my identity - and then link me to some of the darkest moments of my life that are described in
detail in documents the Kernel is seeking, and that other open records requesters would be free to seek. Additionally, I believe that people at the Kernel already know my identity and could immediately tie those records to me.

9. I do not want my classmates, colleagues, professors, or other students to have access to information about intimate details of my life. Dr. Harwood's behavior crossed a very personal line, and the Kernel's pursuit of and publication of his actions would cross another very personal line against my will. If those details become known or can be re-requested through future open records requests, I do not want to feel the need to discuss the case or have my privacy invaded by other individuals who have no right to know my personal and private information.

10. I fear that I will become known at the University, as well as within my discipline, for my association with this case, rather than the work that I am doing. I have no desire defend myself against comments and inquiries regarding my suspected involvement in this case, and whether my grades, positions, and accomplishments were earned or given to me due to my status as a perceived 'victim'. I do not wish to be treated differently than other students, whether deferentially, based on my status as a 'sexual assault victim' (which is the opposite of how I'd like to be treated within my department, profession, and academia), or as a pariah within the community for coming forward with this information. I sincerely fear that knowledge of my identity and further details of this case will prevent me from obtaining employment in the future.

11. I believe that release of the requested records will do no more than serve as a constant reminder of a time in my life I am striving to move past. By my count, the Kernel has now published 28 articles about Harwood and my case, and each one is re-traumatizing, forcing me to re-live a dark time in my life.
12. Additionally, the Kernel's coverage has skewed the facts of my case, and I fear that will do severe damage to other students who unfortunately experience sexual assault. In a private meeting that I had with Dr. Capilouto, it became clear to me that he had student interests at heart, as well as the safety of our campus. That being said, this case is very unique, and much bigger than one open records request. Those “with enough reasonable evidence to be convicted of” sexual harassment or assault should no longer be professors, and other universities should have access to this information in order to prevent those convicted of wrongdoing from repeating their behavior elsewhere. However, there are ways to be transparent about the results of these cases that do not risk the safety and well-being of those who have come forward. We should be working on a way to develop and improve that system, rather than being blinded by the dramatics of this case. There is a line between transparency and an invasion of privacy which the Court should recognize and protect for victims of sexual assault.

Respectfully submitted

/s/ Jane Doe 1

Jane Doe 1
To Whom It May Concern:

I am writing this letter to offer my support of President Capilouto and the University of Kentucky, specifically the Office of Institutional Equity and Equal Opportunity (IEEO) and the Violence Intervention and Prevention (VIP) Center.

As a victim of sexual harassment and assault at the hands of my Ph.D. advisor, I was faced with the difficult decision of coming forward, mainly due to the potential impact it could have on my future career. When I ultimately decided to tell my story in July 2015, I was met with compassion and kindness from UK's Counseling Center, the VIP center; and IEEO Office. Throughout the entirety of a months-long investigation, I always felt safe and believed. Martha Alexander, the Deputy Title IX Coordinator, conducted an extensive investigation, of which I was routinely kept informed. I always felt that the university and the IEEO Office took my complaint seriously and that they had my best interests at heart.

I was in a very unique position; I had just [REDACTED] but was not allowed any contact with my major advisor to finish and complete my degree. The policies UK had in place ensured that I was able to get the help I needed to graduate on time while still having a safe place to work. The university took swift actions that prioritized my safety, education, and the safety of others in [REDACTED]. While this was a difficult and arduous process, I never questioned my decision to come forward, thanks to the university's response.

I have found the recent reports in the media troubling because they have not accurately depicted the University of Kentucky that I grew to know over the course of [REDACTED]. There are other issues at play here regarding university professors who are allowed to resign without future employers finding out about sexual misconduct, or tenure revocation taking the better part of two years, in addition to the time it takes for multiple appeals.

President Capilouto was generous enough to have a lengthy meeting with me regarding my concerns over this investigation, and these larger issues. What I took from that meeting was that first and foremost he was genuinely concerned about my well-being. He was willing to listen to my ideas on how we can make UK's campus safer for students, specifically those affected by sexual harassment or assault. These are complex problems that will not be solved overnight, but having a university president who will fight for students, including those that may not be able to fight for themselves, is a step in the right direction.

Respectfully,

Jane Doe #1

EXHIBIT A
COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
CIVIL BRANCH  
DIVISION 8  
CIVIL ACTION NO. 16-CI-3229

UNIVERSITY OF KENTUCKY                   PLAINIFF/APPELLANT
v.

THE KERNEL PRESS, INC., d/b/a       DEFENDANT/APPELLEE
THE KENTUCKY KERNEL

JANE DOE # 2'S DECLARATION IN SUPPORT OF AMICUS BRIEF

For her Declaration In Support of her Amicus Brief, Jane Doe # 2 affirms, under penalty of perjury, that the following facts set forth herein are true and accurate to the best of her knowledge:

1. I am Jane Doe #2. I was a student at the University of Kentucky. I am submitting this Declaration under a pseudonym to protect my identity in relation to my sexual assault records that the Kentucky Kernel newspaper is seeking to receive through an open records request to the University of Kentucky (UK). The records at issue in this matter concern personal and sensitive information about my allegations against former UK professor James Harwood for sexually assaulting and harassing me.

2. The statements set forth herein accurately reflect my personal experiences and beliefs.

3. On or about September 8, 2016, I provided the letter attached hereto as Exhibit A to the University of Kentucky about my sexual assault case. The statements set forth in Exhibit A accurately reflect my personal experiences and beliefs.
4. Over the past few months, I have read dozens of articles about my life and what I have seemingly endured as a sexual assault "victim". Journalists have taken it upon themselves to write about what is in my best interest, what I am feeling, and what I have experienced. It has become an endless game of "telephone" with facts repeatedly skewed to the point where no single story represents the entire truth. What few have considered throughout this entire process is how these articles are a constant reminder of a terrible time in my life that I am forced every day to attempt to move past.

5. The University of Kentucky and the Kentucky Kernel are fighting over the release of records about my life and my graduate career. The constant coverage and blame game is downright disgusting. Placing blame on anyone other than James Harwood is a waste of time and doing irreparable harm to those involved in this case. That former UK faculty member is the sole reason I have to spend the rest of my life being referred to as a "victim", and why I struggle to claim back any sense of normalcy in my life. To place blame or seek apologies from anyone else for the current situation is incorrect and frankly, insulting.

6. Those coming to the defense of the Kernel have been particularly hurtful as they continue to write things that aren't true. To my knowledge, there was no cover-up here, no conspiracy to place the interests of the University over sexual assault victims. The second I said anything about Harwood's sexual assault, the University of Kentucky stepped in and made sure I was safe. There was no "irresponsible disposition of sexual assault complaints against a former professor." To make that claim in a published letter reflects a callous disregard for the truth, especially after we made that clear before UK's September 2016 board meeting (see Exhibit A). It is especially shameful coming from a journalist society that hypocritically preaches reporting the truth and fact-checking, and this irresponsible "reporting" by the Kernel and its backers is
one reason why I no longer trust them (or any other member of the public) to not exploit my very personal sexual assault records if they are revealed as a result of this litigation.

7. In my experience, the University of Kentucky is not on a grotesquely long list of schools that dismisses student sexual assault complaints. I understand that, at other schools, some female survivors of sexual assault have had to make multiple no-contact orders against their assailant; I had one and it's been strictly enforced by the University of Kentucky.

8. Furthermore, to my knowledge, Harwood was not “afforded a deal” as publicized by the Kernel. I understand that any professor has the right to resign at any time. Unfortunately, I believe this is a loophole in the system. There is no reporting system for professors accused of/found responsible for sexual misconduct. As a result, my assailant was able to become a finalist for a department chair position at a renowned university shortly after being found responsible for two counts of sexual assault and two counts of sexual harassment. This is where the problem lies.

9. As a victim of sexual harassment and assault at the hands of my professor, I was faced with the difficult decision of coming forward, mainly due to the potential impact it could have on my future career. When I ultimately decided to tell my story in July 2015, I was met with compassion and kindness from UK’s Counseling Center, the VIP center, and IEEO Office. Throughout the entirety of a months-long investigation, I always felt safe and believed. Martha Alexander, the Deputy Title IX Coordinator, conducted an extensive investigation, of which I was routinely kept informed. I always felt that the university and the IEEO Office took my complaint seriously and that they had my best interests at heart.

10. While I was on campus, the University of Kentucky did everything in their power to keep me and other members of my department safe while still able to pursue our degrees. For
anyone who has completed a graduate degree, this is extremely difficult. The University took swift actions that prioritized my safety, education, and the safety of others in my department.

11. I read one report stating that “the Kernel’s reporting...caused UK to make the changes...ought to be thanking the Kernel.” To make such an arrogant, incorrect statement is insulting to what I have endured over the last few years but even more so to what we have accomplished. To say that President Capilouto has not done anything to protect students of sexual assault on campus is a sweeping generalization that is both incorrect and damaging to students. The circumstances that prompted UK to make the most recent changes protecting student safety, particularly graduate student safety, are a direct cause of Jane Doe # 1 and I coming forward against Harwood and working with Dr. Capilouto. I have had to have some extremely uncomfortable and upsetting conversations over the past year and a half, but I believe that ultimately we are making science a safer place for women and college a safer place for students. For the Kernel to take that credit, while callously ignoring my requests to cease publishing details of my case, is disheartening at the least.

12. Unfortunately, instead of affirmatively moving forward, I am constantly plagued by media reports of the latest news in the University’s lawsuit and what the writers at the Kernel think is happening. I constantly worry about what this case and the Kernel’s non-stop publicity have done to other survivors of sexual assault and how it may prevent them from coming forward. I constantly worry about women who fear that this lawsuit may end badly, so the intimate details of the worst moments of their lives could also be written in a newspaper. Because I have those fears too - I know that people at the Kernel know my identity. Coming forward against an assailant shouldn’t mean that my entire life is defined by one horrible experience.
13. The more details that are revealed, and the more stories that are written, about my case risk defining me as “student victim of sexual assault” for the rest of my career. I will always question whether I earned my academic accomplishments and degree, or whether they were bestowed upon me by someone with ulterior motives. If the Kernel succeeds in having more of my records opened up for public consumption, I will be forced to question whether every job I am denied or hired for evaluated “the victim” or me.

14. I believe that granting the Kernel’s request and giving open access to my most personal records will not have the Kernel’s desired effect - the documents will reflect that the University of Kentucky is not part of a national narrative of sexual assault in the manner the Kernel wants them to be. My records will merely be put on public display, dissected, re-analyzed, and spun in a variety of ways for selfish reasons, every one of which is harmful to me, and by extension, to other victims of sexual assault.

Respectfully submitted

/is/ Jane Doe 2

Jane Doe 2
To Whom It May Concern:

My name is [REDACTED] and I am [REDACTED] in the Department of [REDACTED] at the University of Kentucky. Last year, a fellow graduate student and I presented allegations of sexual harassment and sexual assault against Dr. James Harwood, a faculty member in our department. The resolution of this case was that, ultimately, there was enough evidence for a reasonable person to find Dr. Harwood guilty for two counts of sexual harassment, and two counts of sexual assault.

Unfortunately, these types of incidents are far too common in academia—against men and women alike. Extrapolating upon the suggestions as to “why?” would take more time and more space than I am available in this short letter. Unfortunately, the refusal of an open records request of our case has eclipsed the bigger issue of misconduct in the sciences (and academia) as well as what we can do to prevent it from happening in the future. I am disappointed that a case that was handled so thoughtfully by Martha Alexander and the University of Kentucky is now being presented so negatively.

[REDACTED] and I recently had a meeting with Dr. Capilouto where it became clear that he had student interests at heart, as well as the safety of our campus. That being said, this case is very unique, and much bigger than one open records request. We absolutely should be focused on transparency in these incidents, in the sense that those convicted of, or those “with enough reasonable evidence to be convicted of” sexual harassment or assault should no longer be professors. Other universities should have access to this information in order to prevent those convicted of wrongdoing from repeating their behavior elsewhere. I applaud the Kernel for drawing attention to that fact. However, I support Dr. Capilouto’s stance regarding open records requests. The sensitive details of individual sexual harassment/assault cases should be private to protect those that have come forward with a difficult story. There is a fine line between transparency and an invasion of privacy and I think it is important that we walk on the correct side of that line. For budding graduate students, these details could impact their entire career.

There are ways to be transparent about the procedural side of these cases that do not risk the safety of those that have come forward when it was difficult. We should be working on a way to develop and improve that system, rather than being blinded by the dramatics of only one case of many across the United States. For that to work, media and university administration should be on the same side of the aisle. I hope that we can find a swift resolution here that prompts positive change and movement forward, maybe even with the development of novel more relevant laws regarding transparency? Regardless, what’s occurring now has shifted the conversation from what [REDACTED] and I intended, and I hope we can right the ship.

Respectfully,

[REDACTED] 

Jane Doe #2