

TITLE IX AND MEN'S "MINOR"¹ SPORTS: A FALSE CONFLICT

I. Title IX Should Not be a Scapegoat for Men's "Minor" Sports' Problems

A. Female Athletes Still Get the Short End of the Stick

Women's athletic programs continue to lag behind men's programs on every measurable criterion. For example, women in Division I colleges, while representing 53% of the student body, receive only 44% of the participation opportunities, 37% of the total money spent on athletics, 45% of the total athletic scholarship dollars, and 32% of recruiting dollars.² Disparities also persist at the high school level, where girls have only 41% of the school-sponsored opportunities to play varsity sports.³

B. The Problem is Not that Title IX Takes Resources Away from Men's Sports, but that Resources are Misallocated Among Men's Sports

Men's sports still get the lion's share of athletic resources:

- In 2004, in Division I, for every dollar being spent on women's sports, almost two dollars are being spent on men's sports.⁴

The resources male athletes receive are inequitably distributed among men's sports.

- Football and men's basketball consume 74% of the total men's athletic operating budget at Division I-A institutions, leaving other men's sports to compete for remaining funds.⁵
- Of the \$4.18 million average increase in expenditures for men's Division I-A sports programs from 2000-2003, 54% of this increase, or \$2,279,800, went to football. The football operating budget exceeded the entire operating budget for women's Division I-A sports in 2003 by over \$1.04 million.⁶

If men's sports are being cut, it is because a disproportionate share of athletic dollars continues to be spent on one or two teams—football and men's basketball—and is not being spent to add new teams for women or to support existing men's "minor" sports teams. Female athletes should not be scapegoats for cuts to men's teams, especially when women receive a little more than one-third of the total athletic expenditures.

The fact that football and men's basketball may bring in revenue does not justify their bloated expenditures, which take funds away from both men's "minor" sports and women's sports. First, it is simply a myth that these sports provide the bread and butter for women's sports and other men's teams.

- Almost half of NCAA football and men's basketball programs spend much more money than they bring in. In fact, 28% of Division I-A and 64% of Division I-AA

football programs don't generate enough revenue to pay for themselves, much less any other sports. In 2003, these programs reported **annual deficits** averaging \$1.08 million (I-A) and \$810,000 (I-AA).⁷

Second, at the vast majority of universities, and NCAA Division I institutions in particular, cost-cutting can be accomplished without hurting the competitiveness or revenue production of these programs.

- Universities could stop funding hotel rooms for football players on nights before home games, order new uniforms less frequently, and reduce the distance traveled for non-conference competition by selecting opponents closer to home, among other possibilities too numerous to list.
- Athletic conferences could adopt cost reductions to help schools save funds while ensuring a level playing field by limiting travel squad size and adding sports for women at the same time, to ensure geographic proximity of opponents.
- The NCAA could impose across-the-board cost reductions, such as capping the ridiculously high dollars spent to recruit new athletes or reducing the football scholarships to a more reasonable number. NFL teams have 45 roster players plus 7 on reserve while the average Division I-A team has 85 scholarship players and 32 walk-ons.⁸

C. Empirical Data Show that Efforts to Blame Title IX Are Misplaced⁹

Male wrestlers whose schools have chosen to cut their teams have been one of the most vocal groups to attack Title IX, claiming that the law forces schools to cut their teams. While the federal courts of appeals uniformly have rejected these athletes' legal challenges to Title IX—holding that Title IX in no way requires schools to cut men's teams, but that schools may choose to structure their athletics programs however they wish as long as they treat men and women equally—they continue to blame Title IX for their losses. Not only are the wrestlers' arguments wrong as a matter of law, but data on the decline of men's wrestling teams also demonstrate the fallacy of their arguments.

- The rate of decline of men's wrestling teams during the four years from 1984-1988—a time when Title IX was not being enforced in athletics due to the Supreme Court's decision in Grove City College v. Bell¹⁰—was almost 4 times as high as the rate of decline during the 18 years since 1988 (1988-2006), when Title IX's application to athletics programs was firmly reestablished through the Civil Rights Restoration Act of 1987, which reversed the Grove City holding.¹¹

Moreover, participation in boy's wrestling at the high school level has grown.

- There were 226,861 participants in 1971 and 251,534 participants in 2005-2006. Also, the number of schools that sponsor wrestling has increased from 7,587 in 1971 to 9,744 in 2006.¹²

Indeed, a number of women's sports have declined since Title IX was enacted. Yet it can hardly be said that Title IX, which has resulted in tremendous growth overall in women's athletics, is the cause of the decline of these women's teams.

- While almost 36% of NCAA member schools sponsored women's field hockey in 1982, only 24% of them sponsored the sport in 2006.
- The number of NCAA member schools sponsoring women's gymnastics has also dropped from 179 in 1982 to 86 in 2006—a decline of over 50%.

On the plus side of the ledger, many sports—both men's and women's—have grown significantly since Title IX's enactment. Among increases in women's sports:

- Women's crew, which had 43 teams at NCAA member schools in 1982, dropped to a record low of 12 teams in 1991, but skyrocketed to 142 teams in 2006.
- Softball and soccer have been big winners in the past 24 years, increasing from 416 softball teams in 1982 to 932 teams in 2006 and from only 80 soccer teams in 1982 to 930 in 2006.

While some men's sports may have declined in recent years, many others have increased.

- Baseball, which was sponsored by 642 NCAA member schools in 1982, was sponsored by 890 in 2006.
- Men's basketball, sponsored by 741 NCAA member schools in 1982, was sponsored by 1,013 in 2006.
- Since 1981-82, men's participation in NCAA sports has increased in men's baseball, crew, football, lacrosse, squash, track, cross-country, golf, soccer, and volleyball.

Rather than draw unfounded inferences based on any one sport's expansion or decline in recent years, and risk missing the forest for the trees, it is important to look at the overall picture for both women's and men's athletics.

- Men's overall intercollegiate athletic participation has risen since 1981, from 169,800 in 1981-82, to 228,106 in 2005-06, although it dropped some during the years that Title IX was not being enforced, declining from 201,063 in 1984-85 to 178,941 in 1987-88. Thus, it can hardly be said that men's athletic programs have suffered because of Title IX.
- Female participation has just now caught up to pre-Title IX male participation levels of over 30 years ago: there were 170,384 men competing in college sports in 1971-72, and there are 170,526 women competing in college sports in 2005-06. In fact, despite Title IX, women's sports have never caught up with men's

sports, much less taken more than their fair share of resources.

While it may make for good rhetoric to conclude that Title IX is responsible for cuts in any particular men's sport during the past twenty-five years, relying on these unfounded assumptions is simplistic and irresponsible. The factors that affect an institution's decision to add, retain, or drop a particular sport are much more complex, and include, among other considerations, changes in student interest, alumnae support, liability, risk of injury, and resources. Title IX simply ensures that it can no longer be only the women who suffer cuts, receive second-class treatment, and bear the brunt of limited resources.

II. Changes to Title IX Would Be Unwarranted and Unfair

Thanks to Title IX, about 170,526 college women¹³ and 3 million high school girls¹⁴ participate in school sports. Despite this progress, the playing fields for female and male athletes are far from level. At this critical juncture, efforts to turn back the tide of Title IX enforcement would deprive females of the opportunities that Title IX was enacted to secure.

While Title IX may seem an easy scapegoat for some men's sports advocates, it is not the cause of their complaints. Title IX provides institutions with flexibility to determine how to provide equity to their male and female athletes. The law requires schools to allocate athletic opportunities and resources equally, but it does not determine the size of the athletic "pie" to be divided or what sport programs to offer.

Institutions can comply with Title IX's requirements in the area of athletic participation opportunities in any one of three ways: (1) by providing opportunities substantially proportionate to each gender's enrollment; (2) by expanding opportunities for the underrepresented sex; **or** (3) by fully accommodating the existing athletic interests and abilities of the underrepresented sex. Meeting any one of these three tests will bring an institution into compliance in this area. Significantly, none of these three standards requires schools to cut teams for the overrepresented sex and the Office for Civil Rights (OCR) actively discourages resorting to this measure; each of these measures can be achieved by expanding opportunities for the underrepresented sex.

Indeed, parts two and three can be met only by expanding opportunities for the underrepresented sex, and not by cutting opportunities for the other sex. Most institutions choose to work toward Title IX compliance by adding opportunities for women.

- Of the 74 intercollegiate athletics participation complaints that OCR has investigated and resolved between 1994 and 1998, almost $\frac{3}{4}$, or 53 institutions, have agreed to come into compliance with either part two or three of the test.¹⁵
- No court has ever ordered a school to reach proportionality to comply with Title IX. Rather, they have merely required schools to add teams in which there is a demonstrated interest and ability for the underrepresented sex.

Although it is generally preferable to remedy discrimination in athletic participation opportunities by adding opportunities for the underrepresented sex, Title IX does not bar

institutions from cutting sports for the overrepresented sex.

III. Real Solutions to the Problems Faced by Some “Minor” Men’s Sports

Rather than cutting back on Title IX enforcement at a time when more, not less, enforcement is desperately needed, a number of responsible alternatives can be taken to preserve existing sport opportunities while increasing opportunities for women, including:

1. Reduce bloated athletic budgets by calling on the NCAA to play a leadership role in adopting cost-cutting measures, which reduces excesses without eliminating athletic opportunities for students. This is essential to ensure that universities do not suffer a competitive disadvantage from cost-cutting, and to help institutions that lack the political will to confront budgetary excesses.
2. Require the U.S. Olympic Commission (USOC) to submit an annual report to Congress, prepared in conjunction with the National Governing Body for every Olympic sport, that breaks down participation data by sport or provides a thorough analysis of participation levels, including youth sports, community sports, and interscholastic and intercollegiate sports.¹⁶ The report could then be used to guide the USOC to channel funds into endangered Olympic sports.
3. Promote expanded athletic opportunities for women to increase compliance with Title IX. For example, states could assist financially-strapped institutions to increase opportunities for women by providing tuition waivers for female athletes, thus enabling schools to free up scholarship dollars to fund new programs for women. The state of Washington has enacted such legislation, with great results.
4. Promote women’s opportunities in traditionally male sports. Intercollegiate wrestling, for example, is a sport played increasingly by women.¹⁷ Efforts to expand opportunities for women to participate in traditionally male sports, as part of a broader strategy to increase women’s athletic opportunities, can further compliance with Title IX while also strengthening the existing men’s program.

The National Women’s Law Center is a non-profit organization that has been working since 1972 to advance and protect women’s legal rights. The Center focuses on major areas of importance to women and their families, including education, employment, health and reproductive rights, and family support and income security, with special attention given to the needs of low-income women.

Notes

¹ Men's "minor" sports refers to the lower profile men's sports—i.e., those other than football and basketball.

² NCAA, 2003-04 Gender-Equity Report 12, 25 (Sept. 2006).

³ National Federation of State High School Associations (NFHS), 2006-07 High School Athletics Participation Survey 2 (2007).

⁴ NCAA, 2003-04 Gender-Equity Report 19 (Sept. 2006).

⁵ Id. at 33.

⁶ Id. at 38.

⁷ Daniel Fulks, 2002 – 2003 NCAA Revenues and Expenses of Division I and II Intercollegiate Athletics Programs Report 40, 60 (2005).

⁸ Andrew Zimbalist, Briefing Paper Four: Fiscal Responsibility, Not Weakening Civil Rights Law, is Key to Title IX Compliance and Detering Institutions from Discontinuing Some Men's Sports Teams (2002), available at <http://womenssportsfoundation.org>.

⁹ Except as otherwise noted, all of the data discussed in Section C are taken from NCAA, 1981-82—2005-06 Sports Sponsorship and Participation Rates Report 76-146 (May 2007).

¹⁰ 465 U.S. 555 (1984).

¹¹ Civil Rights Restoration Act of 1987, Pub. L. 100-259, 102 Stat. 28 (1988). From 1984 to 1988, the number of NCAA institutions sponsoring men's wrestling teams dropped by 53, from 342 to 289. During the years 1988 to 2006, the numbers dropped by 61, from 289 to 228.

¹² NFHS, 2005-06 High School Athletics Participation Survey 1 (2006).

¹³ NCAA, 1981-82—2005-06 Sports Sponsorship and Participation Rates Report 76 (May 2007).

¹⁴ NFHS, 2006-07 High School Athletics Participation Survey 2 (2007).

¹⁵ U.S. General Accounting Office, Gender Equity: Men's and Women's Participation in Higher Education (December 2000).

¹⁶ Although the Amateur Sports Act of 1978 currently requires the USOC to submit an annual report to Congress, the report does not break down participation data by sport or provide a thorough analysis of sport participation at all levels.

¹⁷ Opportunities for female athletes on high school wrestling teams also have increased markedly since the passage of Title IX. During the 2005-2006 school year, 4,975 girls participated on high school wrestling teams. NFHS, 2005-06 High School Athletics Participation Survey 1 (2006).