

March 6, 2003

To: Editorial Page Editors, Writers and Columnists
From: Marcia D. Greenberger, Co-President, National Women's Law Center
Jacqueline Woods, Executive Director, American Association of University Women
Dawn Riley, President, Women's Sports Foundation
Re: Threats to Title IX and Sports Opportunities for Women and Girls

Title IX athletics policies are under attack and we are writing to encourage you to opine in favor of keeping these policies in place, not changing them, and enforcing them more strongly. Title IX is the landmark federal law that prohibits sex discrimination in education, but is best known for opening the doors of opportunity to sports participation and scholarships for millions of young women and girls.

While fewer than 32,000 women participated in college sports prior to the enactment of Title IX in 1972, today that number has expanded nearly five-fold -- or more than 400% -- to approximately 163,000 women. At the same time, men's participation opportunities, teams and budgets have also increased, according to a March 2001 GAO report and other authoritative studies. The current Title IX policies issued in 1979 have been in place through both Democratic and Republican Administrations and have been upheld by every federal appellate court -- eight of eight -- to review them. A law as successful as this one should be applauded and enforced more vigorously, not weakened or attacked.

As you may be aware, the "Commission on Opportunity in Athletics," which the Bush Administration charged with reviewing Title IX policies, just delivered its final report to Secretary of Education Rod Paige. The report contains recommendations that would devastate the current Title IX policies and drastically reduce the athletic opportunities and scholarship dollars to which women and girls are legally entitled today.

Some Commissioners have claimed that the Commission's recommendations are minor or moderate adjustments that will strengthen Title IX. Nothing could be further from the truth. In fact, the recommendations -- including those that are supposedly unanimous -- could weaken and reverse the policies that are still urgently needed to address persistent discrimination against women and girls. Although women in Division I colleges are now 53% of the student body, they receive only 41% of the opportunities to play sports, 36% of overall athletic operating budgets, and 32% of the dollars spent to recruit new athletes. At the high school level, the inequitable treatment, budgets and equipment girls receive can be far worse.

Two Commission Members (Donna de Varona, an Olympic Champion, and Julie Foudy, Captain of the U.S. National Women's Soccer Team) dissented from the Commission's final report and issued a Minority Report that objects to certain recommendations, takes issue with the ambiguous wording of others, and addresses the continuing discrimination against female athletes as well as the need for strong enforcement of current Title IX policies and the serious deficiencies in the Commission's process and report. For example, Commissioners de Varona and Foudy voted for two recommendations during a hurried and confused Commission meeting, but once seeing them in the final report notified the Commission immediately that they objected to them because they would create damaging results that were inconsistent with Title IX. The dissenting Commissioners also made clear that they did not consent to any interpretation of other recommendations that would undermine existing protections for women and girls. (View the

Minority Report at <http://www.savetitleix.com/minorityreport.pdf>) Secretary Paige refused to include the Minority Report in the record and while he issued a statement that he will move forward only with the so-called “unanimous” recommendations in the final report, he refused to consider specific objections of Foudy and de Varona to recommendations he termed unanimous.

The so-called “unanimous” recommendations still leave Title IX policies open to reversal and changes harmful to women and girls. One of these recommendations (Recommendation 14 in the final report) encourages the Secretary to allow for a “reasonable variance” from the current Title IX standards for equality. Because the language is open-ended, it is impossible to put a limit on the losses the Secretary could inflict on women and girls would if he adopted this recommendation. Under this proposal, schools could be deemed to be in compliance with Title IX by the Department of Education even when they fall far short of equal opportunity for women and girls – subject only to the Secretary’s subjective judgment about what is “reasonable.” The second recommendation (Recommendation 23) urges the Secretary to explore “additional ways of demonstrating equity” and compliance with Title IX, even if these ideas are not described in the report and were not even considered by the Commission. The Secretary can take this recommendation as a blank check to make any changes to Title IX policies, no matter how devastating, and claim they were pursuant to the Commission mandate and “consensus.”

The Commission’s recommendations emerged from a flawed and biased process, which is detailed in the Minority Report. For example, the Commission lacked representation of important constituencies, including Division II and Division III colleges and high school athletics programs. Witnesses selected by the Department of Education testified two-to-one against current policies, and other expert testimony -- such as on the authoritative GAO numbers showing that men’s teams and opportunities have increased, not decreased – that was requested by Commissioners was not provided.

Bi-partisan leaders in Congress are standing up for this landmark law, including Senators Olympia Snowe (R-ME), Arlen Specter (R-PA), Senate Minority Leader Tom Daschle (D-SD), Senators Harry Reid (D-NV), Ted Kennedy (D-MA), Patrick Leahy (D-VT), Patty Murray (D-WA), Hillary Clinton (D-NY) and Representative Nancy Johnson (R-CT), House Minority Leader Nancy Pelosi (D-CA), Representatives Louise Slaughter (D-NY), Lynn Woolsey (D-CA), Carolyn McCarthy (D-NY), Dale Kildee (D-MI), and Major Owens (D-NY). While this support from Congress is important, it is essential for the public to understand that Secretary Paige and President Bush could roll back Title IX athletics policies -- **without approval from Congress or the courts.**

That is why celebrities like Geena Davis and Holly Hunter, and national women’s and education organizations like ours, are rallying behind a national public education campaign to “Save Title IX” and urging citizens to tell the President to reject any changes to Title IX athletics policies through www.SaveTitleIX.com. As Commissioner Foudy said last week when presenting the Minority Report, “equality is not negotiable.”

We hope you will add your voice to the many others who support current Title IX policies and editorialize that they must not be dismantled. If you have questions or need further information, please call Margot Friedman at 202-588-5180 or Nadia Khatchadourian at 202-478-6187.