

No. 22-80137

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TAYLOR ANDERS, HENNESSEY EVANS, ABBIGAYLE ROBERTS,
MEGAN WALAITIS, TARA WEIR, and COURTNEY WALBURGER,
Individually and on behalf of all those similarly situated,
Plaintiffs-Petitioners,

v.

CALIFORNIA STATE UNIVERSITY, FRESNO, and
BOARD OF TRUSTEES OF CALIFORNIA STATE UNIVERSITY,
Defendants-Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF CALIFORNIA
FRESNO DIVISION
1:21-CV-00179-AWI-BAM
Honorable Judge Anthony W. Ishii

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* EQUAL RIGHTS
ADVOCATES; AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND; ATLANTA
WOMEN FOR EQUALITY; FAMILY VIOLENCE APPELLATE PROJECT; FAMILY
VIOLENCE LAW CENTER; GIRLS INC.; HARVARD LAW SCHOOL GENDER VIOLENCE
PROGRAM; IMPACT FUND; KNOW YOUR IX; LEGAL AID AT WORK; NATIONAL
WOMEN'S LAW CENTER; PUBLIC COUNSEL; SOUTHWEST WOMEN'S LAW CENTER;
TUCKER CENTER FOR RESEARCH ON GIRLS & WOMEN IN SPORT; VOICEINSPO
RT; VOICEINSPO RT FOUNDATION; WOMEN'S LAW PROJECT; WOMEN'S SPORTS
FOUNDATION IN SUPPORT OF PLAINTIFFS-PETITIONERS' PETITION TO APPEAL
PURSUANT TO FED. R. CIV. P. 23(f)

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, Equal Rights Advocates; American Civil Liberties Union Of Rhode Island; Atlanta Women For Equality; Family Violence Appellate Project; Family Violence Law Center; Girls Inc.; Harvard Law School Gender Violence Program; Impact Fund; Know Your IX; Legal Aid At Work; National Women's Law Center; Public Counsel; Southwest Women's Law Center; Tucker Center For Research On Girls & Women In Sport; Voiceinsport; Voiceinsport Foundation; Women's Law Project; & Women's Sports Foundation (collectively, “*Amici*”) submit this motion for leave to file the *amici curiae* brief attached hereto as Exhibit A in support of the Petition For Permission to Appeal in *Anders, et al. v. California State University, Fresno, et al.*, Case No. 22-80137, filed on December 6, 2022 by Plaintiffs-Petitioners Anders, et al. Counsel of record for all parties have consented to this filing.

This Court may grant leave to proposed *amici* to file an *amicus curiae* brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 29(b). Under Rule 29, proposed *amici* are directed to state: (1) their “interest;” and (2) “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” *Id.* at 29(a)(3)(B). In support of this motion, counsel for Amici state as follows:

INTEREST OF PROPOSED AMICI

As set forth in their Statements of Interest, *amici* are organizations from across the United States with special expertise and interest regarding Title IX of the Education Amendments of 1972 (Title IX), gender equity in athletics and other educational programs, and civil rights more broadly. *Amici* therefore are well-positioned to assist the Court in the question of law at issue regarding the proper requirements for class certification when student-athletes pursue program-wide declaratory or injunctive relief under Title IX. *Amici* have an interest in ensuring that this Court rectify the manifest error of the district court's denial of class certification in a manner consistent with case law in this circuit, and protect the class action vehicle for women student-athletes seeking to eliminate program-wide gender discrimination at their schools, fulfilling the central promise and purpose of Title IX.

DESIRABILITY AND RELEVANCE OF AMICUS BRIEF

Amici's proposed brief provides the Court with additional information and a supplementary analysis on the question of law presented: whether, under Title IX, women student-athletes can represent women on other school teams in a class action challenging the inequitable distribution of scholastic sport opportunities, benefits, and treatment among men and women at a particular institution. The proposed brief further demonstrates why class actions are critical tools for

combatting gender discrimination in school athletics programs and how the district court's decision would effectively make it impossible to enforce Title IX at a program-wide level as intended by Congress.

As set forth in the proposed brief, the U.S. District Court for the Eastern District of California erroneously denied Plaintiffs-Petitioners' motion for class certification on the grounds that women student-athletes cannot represent women on other teams or all women student-athletes at the institution. In reaching this conclusion, the district court manifestly erred in finding that constitutional due process requires *sport-specific* representation at all stages of litigation, in conflict with case law in this circuit and ignoring how Title IX has functioned for decades and the existing due process protections of the class action vehicle.

In so holding, the district court imposed an additional constitutional requirement on class actions that would eviscerate their use by student athletes, thus undermining the ability of affected students to challenge a school's inequitable practices and seek program-wide relief necessary to remedy widespread Title IX violations. The proposed brief will aid the Court by analyzing relevant case law in this circuit, the legislative history and Congressional Intent concerning Title IX, and the federal rules related to the question of adequacy of representation and constitutional due process in class action Title IX athletics cases.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant the Motion of Amici Curiae Equal Rights Advocates et al. for Leave to File Amici Curiae Brief In Support Of the Petition for Appeal and deem the accompanying amicus brief, attached as Exhibit A, filed.

Dated: December 15, 2022

Respectfully submitted,

/s/ Maha Ibrahim

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c), the undersigned counsel certifies that this motion:

- (i) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2010 and is set in Times New Roman font in a size equivalent to 14 points or larger, and
- (ii) complies with the length requirement of Rule 27(d)(2) because it is 708 words.

Dated: December 15, 2022

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CERTIFICATE OF SERVICE

I certify that on December 13, 2022, the foregoing motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

Dated: December 15, 2022

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EXHIBIT A

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29, the undersigned counsel of record certifies that none of the amici curiae is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10% or more of its stock.

Dated: December 13, 2022.

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INTERESTS OF *AMICI CURIAE*

Amici civil rights organizations share a commitment to Title IX of the Education Amendments of 1972 (Title IX) and ensuring equality for all in athletics and other educational programs. Each organization is further described in Appendix A.¹

ARGUMENT

Plaintiffs’ Rule 23(f) petition should be granted to remedy manifest error by the district court dismantling the ability of student-athletes to seek program-wide relief under Title IX. *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 959 (9th Cir. 2005). Upending decades of precedent, the district court denied class certification on the grounds that Petitioners cannot represent women on any other team, much less all women student-athletes. The court erred in its view that due process demands class-representative advocacy specific to their sports. Without reversal, the district court’s order is a death-knell to Title IX class actions challenging an inequitable distribution between men and women of scholastic sports opportunities, benefits, and treatment, because no single class representative can play all sports. The order also eviscerates the ability of any single plaintiff (or team) to seek program-wide declaratory or injunctive relief, which are necessary to

¹ No party or party’s counsel authored this brief in whole or in part, and no entity or person made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

achieve the primary purpose of Title IX: eliminating program-wide gender discrimination. Given the manifest error here, interlocutory review is warranted.

I. THE PETITION SHOULD BE GRANTED BECAUSE TITLE IX CLASS ACTIONS ARE CRITICAL TOOLS TO ACHIEVE EQUAL ATHLETIC OPPORTUNITIES, TREATMENT, AND BENEFITS.

Congress enacted Title IX of the Education Amendments of 1972, codified at 20 U.S.C. § 1681 *et seq.*, to prevent sex discrimination in educational institutions that receive federal funding and to create a broad remedy for the same. *See, e.g.*, 20 U.S.C. § 1681(a); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 704–708 (1979) (holding that a private cause of action is consistent with, “and in some cases even necessary to[,]” the purpose of Title IX and its enforcement). As Title IX’s sponsor, Senator Birch Bayh confirmed Congress’s intent that Title IX was meant to serve as “a strong and comprehensive measure [to] provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women.” 118 Cong. Rec. 5804 (1972).

The Regulations promulgated under Title IX prohibit discrimination on the basis of sex in school athletic programs, including the allocation of any sports opportunities, benefits, and treatment. 34 C.F.R. § 106.41(a). Since its passage, Title IX has empowered millions of women (nearly 3.5 million annually as of

2018-2019), to compete in high school athletics,² and more than six times more women compete in collegiate athletics since its passage.³ The abundant benefits of participation in sports are well-documented. Empirical studies have affirmed that advantages to physical health, mental acumen, and general well-being result from athletic participation.⁴ Women also experience significant employment and wage benefits from sports participation.⁵

Despite these benefits, many educational institutions still remain out of compliance with Title IX's clear mandates concerning equitable sports opportunities. *See* Brian L. Porto, *Unfinished Business: The Continuing Struggle for Equal Opportunity in College Sports on the Eve of Title IX's Fiftieth Anniversary*, 32 MARQ. SPORTS L. REV. 259, 288–291 (2021) (reviewing continued institutional failures to enforce substantial proportionality standard and

² In 1972 there were 300,000 women high school athletes, representing 7% of the total high school athletes nationwide. By 2010-2011, the number increased ten times, to 3.2 million, representing 41% of high school student athletes. Andrew J. Haile, *An Even Playing Field: The Goal of Gender Equity in World Cup Soccer*, 98 OR. L. REV. 427, 438 (2020).

³ Kelsey Henderson et al., *Annual Review of Gender and Sexuality Law: Athletics & Title IX of the 1972 Education Amendments*, 23 GEO. J. GENDER & L. 135, 136 (2022) (citations omitted).

⁴ *See id.* (citing, *inter alia*, WOMEN'S SPORTS FOUND., WOMEN'S SPORTS & FITNESS FACTS & STATISTICS 2–6 (2009), <https://www.womenssportsfoundation.org/wp-content/uploads/2016/08/wsf-facts-march-2009.pdf> (compiling such studies)).

⁵ Betsey Stevenson, *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports*, (Nat'l Bureau of Econ. Res., Working Paper No. 15728, 2010), <http://www.nber.org/papers/w15728>.

corresponding lawsuits, and noting that “gender equity remains the exception, not the rule, in college sports.”) (citation omitted).

Title IX athletics claims are particularly amenable to class certification because compliance with Title IX must be assessed at the program-wide—comparing men and women (and therefore on the class-wide)—level.⁶ Systemic athletic inequities similarly require class-wide remedial relief. *Ollier v. Sweetwater Union High School Dist.*, 251 F.R.D. 564, 566 (S.D. Cal. 2008) (“[A] certified class action is the proper method for class-wide injunctive relief.”) (citing *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 728 n.1 (9th Cir. 1983)). Title IX enforcement actions, including class suits brought by students from specific sports seeking program-wide relief, are critical to address widespread noncompliance and longstanding inequities within individual educational institutions. As Petitioners detail, examples abound of class certifications where specific sport representatives seek program-wide relief. *See* Plaintiffs’ Petition at 9–10.

And similar to the facts at issue here, many Title IX cases arise from a school’s decision to eliminate women’s sports teams. Such discrimination experienced so starkly by one team often reveals non-compliance throughout the

⁶ Compliance with Title IX’s requirement for equal participation, as well as equal treatment and benefits, is not assessed sport-by-sport, but instead is “based on an overall comparison of the men’s and women’s athletic programs.” *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d 1093, 1110 (S.D. Cal. 2012) (citing 34 C.F.R. 106.41 (c)), *aff’d*, 768 F.3d 843, 854 (9th Cir. 2014).

school's athletic programs and, like here, may prompt those students to come forward to fight for all women athletes. *See, e.g., Brust v. Regents of the Univ. of California*, No. 2:07-cv-01488, 2008 WL 111512299, at *2, 7 (E.D. Cal. Oct. 24, 2008) (certifying a class of “current, prospective, and future women students . . . who seek to participate in and/or who are deterred from participating in intercollegiate athletics,” with representatives from women’s field hockey); *Lazor v. Univ. of Conn.*, 560 F. Supp. 3d 674 (D. Conn. 2021) (obtaining temporary restraining order preventing elimination of the women’s rowing team); *Balow v. Mich. State Univ.*, 24 F.4th 1051 (6th Cir. 2022) (arising from elimination of women’s swimming and diving team); *Berndsen v. N.D. Univ. Sys.*, 7 F.4th 782 (8th Cir. 2021) (arising from elimination of women’s ice hockey team); *Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085 (S.D. Iowa 2020) (obtaining preliminary injunction against elimination of women’s swimming and diving team); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 978 (D. Minn. 2016) (obtaining preliminary injunction against a university that wished to eliminate the women’s tennis team); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009) (arising from elimination of women’s volleyball team); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D.R.I. 1992) (“Cohen I”) (granting preliminary injunction restoring women’s varsity gymnastics and volleyball teams), *aff’d*, 991 F.2d 888 (1st Cir. 1993) (“Cohen II”).

The district court's decision would preclude the ability of students to seek program-wide class relief under Title IX if only their specific team faces elimination. Under the district court's reasoning, an institution can now argue that conflicts were created by the mere fact that putative class representatives were only on a single team, or were more immediately harmed⁷ as a result of a team termination action. This would improperly eliminate a critical tool for combating program-wide discrimination. It takes a brave few to bring a class action on behalf of other affected individuals, which is the power of the class action vehicle, particularly for young adults. *See Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 863 (9th Cir. 2016) ("Class actions are used to 'vindicate[e][sic]. . . the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'" (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997))).

Title IX was enacted to protect a class of individuals: women. *See Neal v. Bd. of Trustees*, 198 F.3d 763, 768-69 (9th Cir. 1999) (reviewing purpose of Title

⁷ The district court's ruling also has a potential puzzling result for standing: all women are harmed by Title IX's discrimination, but, in the short-term, such as the filing of a preliminary injunction motion, the effective accommodation/equal participation prong is often at issue. The exact same "vigorous representation" of all teams or potential teams that the district court wishes to impose, below, is not even possible at this preliminary injunction phase. However, related discriminatory conduct, not involving team cuts, may be present and may only be discovered in the course of the lawsuit. The vigorous representation of this cut team will be a critical part of obtaining relief for the entire class as the case progresses.

IX to “remedy discrimination that results from stereotyped notions of women’s interests and abilities.”). The law most readily lends itself to the class action vehicle. *See* OCR, 1979 Policy Interpretation, 44 Fed. Reg. 71413, 71421 cmt. (Dec. 11, 1979) (“If women athletes, as a class, are receiving opportunities and benefits equal to those of male athletes, individuals within the class should be protected thereby.”). The manifestly erroneous standard adopted by the district court has the perverse effect of pitting women against other women, and teams against one another, which is anathema to Title IX’s core purpose. Gender discrimination is “class discrimination.” *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 148 (1982) (“[R]acial discrimination is by definition class discrimination”). The burden is on the educational institution not to discriminate, and to treat men and women equitably as a whole, as part of the entire athletic program. Title IX does not create a burden on specific teams to prove why one or the other should be saved from termination; it protects teams from termination if such termination would place the institution out of compliance with Title IX. In finding conflicts among student athletes on different school teams, the district court’s manifestly erroneous decision would effectively make it impossible to enforce Title IX via class action litigation.

II. THE PETITION SHOULD BE GRANTED BECAUSE THE DISTRICT COURT’S ORDER IMPOSING A NEW DUE PROCESS REQUIREMENT FOR TITLE IX AND CLASS ACTIONS IS MANIFEST ERROR

First, the district court manifestly erred in finding that a due process right to *sport-specific* representation exists at all. Second, the district court manifestly erred in determining that “due process rights to vigorous sport-specific representation apply at all stages of this litigation.” Order at 18. As Plaintiffs described, this position ignores how Title IX has functioned for decades, as established in the case law. *See* Plaintiffs’ Petition at 1–2, 9–16. In addition, the district court’s ruling also ignores the balance already struck for due process with the class action vehicle, and imposes an additional constitutional requirement on class actions that would eviscerate their use by injured student athletes. The due process protections required in class actions are already included in the applicable Federal Rules of Civil Procedure, including the adequacy of representation. Fed. R. Civ. P. 23(a)(4), (c)(2), (d)(1)(B); *see also* 7AA Wright et al., *Federal Practice & Procedure* § 1775 (3d ed.) (reviewing Federal Rule of Civil Procedure 23(b)(2) as “primarily to facilitate the bringing of class actions in the civil-rights area”).

For instance, different class actions have different notice requirements. *Compare* Rule 23(c)(2)(A) *with* 23(c)(2)(B); *see also* *Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994) (“Depending on the type of class action suit, due process may require other safeguards in order for absent members to be bound by the judgment.”). Where the claim is for equitable relief pursuant to Rule 23(b)(2), “due process rights of absent class members generally are satisfied by adequate

representation alone.” *Id.* Plaintiffs sought, in the alternative, certification as to liability alone, which would not require any settlement or remedy considerations for the class. *See* Plaintiffs’ Petition at 1, 6. Such a reasonable request is buttressed by the fact that adequate representation is particularly important prior to a settlement that will bind the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (“To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them.”).

The district court’s reasoning, established outside the applicable Rules, places Plaintiffs in a catch-22: they were either not neutral in their advocacy and therefore had a conflict, or they were not advocating vigorously enough for each of the sports and therefore not adequate class representatives. Adequate representation regarding plaintiffs in class action litigation requires both that they will “prosecute the action vigorously on behalf of the entire class[,]” and that they do not have an “insurmountable conflict of interest with other class members.” *Hesse v. Sprint Corp.*, 598 F.3d 581, 588-89 (9th Cir. 2010). Plaintiffs are vigorously prosecuting this action on behalf of all women athletes at the institution. At this stage, particularly with respect to finding liability for Title IX violations, there is no insurmountable conflict. The district court seems to require putative class representatives to meet two conflicting standards, leading to a result wherein

Plaintiffs cannot possibly meet either one. In finding a due process right to vigorous representation at all stages of litigation, while at the same time finding that a conflict exists where Plaintiffs swear that they will neutrally advocate for all women, it is impossible to comply with either one of those standards. But the type of facts underlying this litigation—a claim that a team has been wrongfully terminated—are very often the basis for Title IX litigation, and there is no insurmountable conflict when members of a terminated team seek to force a university to comply with Title IX. *See* Plaintiffs’ Petition at 2, 9–10, 12, 14.

Indeed, if the district court were concerned with specific aspects of adequate representation, it has the power to “impose conditions on the representative parties[.]” Fed. R. Civ. P. 23(d)(1)(C). For instance, prior to approving any settlement, which is another due process protection, the district court could require that any relief also include a review of all Title IX’s protections for all women athletes. That is exactly what the settlement demand letters reviewed by the district court proposed. Order at 14, 15. These demands are entirely consistent with—and more than adequate in—representing women at this institution.

Presumably, based on the district court’s standard, single-sport diligent representation would require different counsel to represent each team as well. This again ignores the unique vehicle of class actions for plaintiffs, class members, and counsel. In recognizing the special nature of class actions requiring adequacy of

counsel and class representatives, even where actual conflicts have arisen related to counsel, California does not apply an automatic disqualification rule for counsel. *See Radcliffe v. Hernandez*, 818 F.3d 537, 547 (9th Cir. 2016) (“California law does not require automatic disqualification for simultaneous conflicts of interest in class actions.”). If attorneys are not automatically disqualified where actual conflicts exist in class actions, young women who seek to represent and protect other women’s rights, as they seek to vindicate their own, should not be disqualified based on speculative conflicts. The district court’s manifest error in holding otherwise will eviscerate Title IX and class action law. Accordingly, Plaintiffs’ Petition should be granted.

CONCLUSION

Amici respectfully request that this Court grant Plaintiffs’ petition to file an interlocutory appeal on this issue.

Dated: December 13, 2022.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 5(c)(1) and Circuit R. 32-3(2) because this brief contains 2,599 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). Pursuant to Circuit R. 32-3, the word count divided by 280 does not exceed the designated limit of 20 pages.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type.

Dated: December 13, 2022

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APPENDIX A

STATEMENTS OF INTEREST OF *AMICI*

Equal Rights Advocates

Equal Rights Advocates (ERA) is a national civil rights organization dedicated to protecting and expanding economic and educational access and opportunities for women, girls, and people of all marginalized gender identities. In service of its mission, ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education. Landmark cases include *Brust v. Regents of the University of California*, No. 2:07-cv-01488, 2008 WL 11512299 (E.D. Cal. Oct. 24, 2008), a case certifying a class of current, prospective, and future women students . . . who seek to participate in and/or who are deterred from participating in intercollegiate athletics,” with representatives from women’s field hockey, *Mansourian, et al. v. Regents of the University of California, et al.*, 2011 U.S. Dist. LEXIS 46606 (E.D. CA), a case involving female wrestlers; *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560 (N.D. Cal. 1993), recon. granted, 949 F. Supp. 1415 (N.D. Cal. 1996), a case involving sexual harassment of a student wherein the Court applied a Title VII framework to Title IX; and *Dukes v. Wal-Mart*, 474 F.3d 1214 (9th Cir. 2007), a landmark class action employment case. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to defend and enforce students’ civil rights in state and federal

courts, including before the United States Supreme Court, in addition to the legal services provided to hundreds of students throughout the country through its free Advice and Counseling program.

American Civil Liberties Union of Rhode Island

The American Civil Liberties Union of Rhode Island (“ACLU-RI”), with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union, a nationwide, non-profit, nonpartisan organization. ACLU-RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the U.S. Constitution, including the rights of women to secure the equal protection of the laws, as established in such landmark cases as *Reed v. Reed*, 404 U.S. 71 (1971), and *Frontiero v. Richardson*, 411 U.S. 677 (1973). In addition, ACLU-RI cooperating attorneys have, over the past 45 years, appeared as direct counsel or as amicus curiae in support of enforcement of the rights of women to equal opportunity. In 2020, ACLU-RI joined as sponsor of the landmark Title IX class action suit, *Cohen v. Brown University*, to enforce compliance with a longstanding consent agreement achieved decades earlier by the certified class of women athletes to ensure that Brown provides equal athletic opportunities to its women intercollegiate athletes. As a result of that lawsuit, women athletes who had

competed on two teams eliminated in 1992 were able to achieve restoration of not only the two eliminated teams but the creation or elevation to varsity status, over time, of an additional six teams for women. See, e.g., *Cohen v. Brown University*, 991 F.2d 888 (1st Cir. 1993); 101 F.3d 155 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997); *Cohen v. Brown*, 16 F.4th 935 (1st Cir. 2021), cert. denied sub nom *Walsh v. Cohen*, 142 S.Ct. 2667 (2022).

Atlanta Women for Equality

Atlanta Women for Equality is a 501(c)(3) nonprofit legal aid organization dedicated to helping women students assert their legal rights to equitable treatment and equal opportunities and to shaping our education system according to true standards of gender equity.

Family Violence Appellate Project

Family Violence Appellate Project (FVAP) is a California and Washington state non-profit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for

survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts.

Family Violence Law Center

Family Violence Law Center is a 501(c)(3) nonprofit organization that works to end intimate partner and family violence in Alameda County by providing crisis support and legal services for survivors of domestic violence, sexual assault and stalking, including representation and advocacy in Title IX matters.

Girls Inc.

Girls Inc. is committed to a world where girls and all youth have what they need to grow and flourish, in school and beyond. To that end, Girls Inc. advocates for policies that combat systemic racism, sexism, and other social and economic barriers to girls' success.

Harvard Law School Gender Violence Program

We stand with survivors and students accessing their rights to equal access to educational opportunities under Title IX.

Impact Fund

The Impact Fund is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as counsel in a number of major civil rights cases brought under federal, state, and local laws, including cases challenging employment discrimination; unequal treatment of women and girls, people of color, people with disabilities, and LGBTQ people; and limitations on access to justice. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

Know Your IX

Founded in 2013, Know Your IX is a survivor- and youth-led project of Advocates for Youth that aims to empower students to end sexual and dating violence in their schools. We envision a world in which all students can pursue their civil right to an

education free from violence and harassment. We believe that the vehicle of class actions is crucial to assert the promise and purpose of Title IX.

Legal Aid At Work

Legal Aid At Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBTQ community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972, including *Ollier v. Sweetwater*, 768 F.3d 843, 854 (9th Cir. 2014) and *A. B. v. Hawaii State Dep't of Educ.*, 30 F.4th 828 (9th Cir. 2022). LAAW's interest in preserving the protections afforded to students by this country's antidiscrimination laws is longstanding.

National Women's Law Center

The National Women's Law Center ("NWLC") is a non-profit legal advocacy organization dedicated to the advancement and protection of the rights of all people to be free from sex discrimination. Since its founding in 1972, NLWC has worked to advance educational opportunities, income security, workplace justice,

and health and reproductive rights for women and girls and has participated as counsel or Amicus Curiae in a range of cases before the Supreme Court, federal courts of appeals, federal district courts, and state courts to secure protections against sex discrimination. NWLC's work of advocating for gender justice in education includes working to end sex discrimination in school athletics through the full and fair enforcement of Title IX of the Education Amendments of 1972 ("Title IX").

Public Counsel

For over fifty years, Public Counsel has worked with communities and clients to create a more just society through legal services, advocacy, and civil rights litigation. Advancing equality for women and investing in their futures strengthens the well-being of entire communities. The Audrey Irmes Project for Women and Girls' Rights was founded in 2017 to build on Public Counsel's longstanding efforts to secure equal justice and opportunity for women, girls, and gender non-conforming persons. Public Counsel represents individual clients in Title IX and employment discrimination matters and engages in policy advocacy and impact litigation to secure equal opportunity for women and girls. Because Public Counsel works to advance gender equity in education, it has a continued interest in the development of jurisprudence that protects against gender discrimination and

provides adequate mechanisms to enforce civil and constitutional rights, including Title IX's prohibition on gender discrimination in education.

Southwest Women's Law Center

The Court's holding that all student-athletes have a "due process right to vigorous and single-minded advocacy specific to their respective sport" conflicts with how Courts are to assess compliance under Title IX and conflicts with existing precedent.

Tucker Center for Research on Girls & Women in Sport

The Tucker Center for Research on Girls and Women in Sport at the University of Minnesota was founded in 1993. We are the first research center of its kind in the world to solely focus on the academic study of girls and women in sport. Our mission is to accelerate systems change for girls and women in sport, their families, and their communities through research, education and outreach. One of our primary areas of research is Title IX and its impact on women's participation in athletics and leadership in sports.

VOICEINSPO

VOICEINSPO is on a mission to bring more visibility to women and elevate their voice. We provide access to professional athlete mentorship, experts in sport psychology, nutrition, and women's health and educational content to keep girls in sport.

VOICEINSPO Foundation

VOICEINSPO FOUNDATION is on a mission to advocate for girls and women in sport through accelerating sport science research on women athletes, stronger education for girls in sport and advocacy through the VIS Advocate Program.

Women's Law Project

The Women's Law Project ("WLP") is a Pennsylvania-based public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. We leverage impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender. WLP's advocacy efforts include equity in education, including athletics. Throughout its history, the WLP has played a leading role in efforts to eliminate sex discrimination in athletics and

education, representing student athletes in their efforts to achieve equal treatment and equal opportunity and pursuing public policy and educational initiatives aimed at realizing Title IX's goal of equality in athletics.

Women's Sports Foundation

The Women's Sports Foundation (WSF) is a nonprofit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and to creating an educated public that supports gender equity in sports. The WSF distributes grants and scholarships to female athletes and girls' sports programs, answers hundreds of inquiries per year concerning Title IX and other women's sports related questions, and administers award programs to increase public awareness about the achievements of girls and women in sports.

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