

TITLE IX & ATHLETICS

The problem with Title IX and Athletics

BACKGROUND

- Title IX was passed in 1972 as an education amendment and was written to prohibit sex discrimination in schools.
- Title IX applies to all educational programs but athletic programs have been impacted the most.
 - That's because, in 1996, the Office of Civil Rights (OCR) created a three-part test to assess compliance with the law as it pertains to college athletic programs. However, the proportionality requirement is the only compliance method with a quantitative test that can protect schools from litigation.
 - Title IX's proportionality requirement requires that male and female athletes be "substantially proportionate," meaning an institution's sports participation rates must mirror the gender breakdown of the student body. If a school has 65% women enrolled, 65% of its athletes must be female.

BAD FOR MEN AND WOMEN

- Unfortunately, to make the numbers work, colleges and universities have resorted to eliminating men's sports teams and focused on offering women's athletic team with larger rosters, not necessarily the opportunities that female students actually want most.
 - Schools are not required to add or expand programs for women in order to comply. Without adding a single women's team, many schools have simply cut existing men's teams to try to make the numbers add up to the desired quota.
 - For example, as of 2014, the number of men's wrestling teams had **declined by more than 450** since the passage of Title IX with only 328 teams remaining.

HARMFUL TO MINORITIES

- Historically black colleges and universities, which are predominantly female, have struggled to comply with Title IX's proportionality requirement.
 - An **American Sports Council study** of historically black colleges and universities found that "73% of the nation's 75 HBCUs that are co-educational and have athletic programs that were out of compliance with the strict proportionality standard."
- This has left HBCUs with no choice but to do away with men's sports teams.
 - For example, Clark Atlanta, where women make up 74% of enrollment, was **recently forced to cut men's Track & Field**.

A Better Title IX Regime

THE GOAL OF REFORM

We need to reform the guidance that has been given on Title IX so that the statute accomplishes its original goal: Ending sex-based discrimination and ensuring that both women and men have the opportunities to participate in sports and other educational programming.

OPTION #1: ELIMINATE 3-PART TEST

- With the stroke of a pen, the 3-part test could be eliminated altogether.
 - This would give the Department of Education the opportunity to provide a new set of ways for colleges and universities to ensure equal opportunities for men and women in college athletics.
 - Importantly, the new compliance measurements could be voted on by Congress which would help prevent Title IX as it pertains to college athletic programs from being interpreted and enforced in a way that conflicts with the law's original intentions.

OPTION #2: KEEP 3-PART TEST, EMBRACE SURVEY METHOD

- Instead of a de-facto gender quota, which fails to account for variations in athletic interest between men and women, the Department of Education could specify that schools can achieve Title IX compliance by administering surveys to incoming students to assess their interest in athletic participation and ensure that they are responding equally to both sexes' interest levels.
 - This means if the survey shows that more men than women want to play a varsity sport (while more women want to participate in other activities, such as campus newspaper, theater, government, music and other programming—activities that are all disproportionately female), then the school can respond to these preferences and still be in compliance with Title IX.
 - Not only is the survey method a measurable way to gauge the interest and athletic ability of female students, it would also empower the students themselves instead of bureaucrats, activist groups, and administrators.

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