

# Contemplating a 21<sup>st</sup> Century View of Title IX's Application to College Sport

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*Abstract:* Title IX of the Education Amendments Act of 1972 is arguably one of the most consequential pieces of legislation to affect change within college sport. In retrospect, Title IX's influence on college sport programs and its governing bodies is a lesson in what legislation can achieve when promoting gender equity within an entrenched male hegemonic system and what its legal limitations are in a predominantly White system of college sport. Title IX's implementing regulations reflect a negotiated settlement between commercial, economic, and state interests invested in men's sports and women sport advocates who leveraged the optics and reality of outright gender discrimination (Hextrum & Sethi, 2022; Staurowsky, 2023). The result in the late 1970s was a series of "last stand" protections for men's sports, contained in such mechanisms as the "contact sports exception," designed to resist the incursion of women into those all-men's spaces. Connected to the idea that in the athletic arena, "separate" could be "equal," the framework of a gender binary was embedded in the regulations (Staurowsky et al., 2022). This paper examines the limits of Title IX's liberal feminist conception of equality through Title IX's impact on the college sport system and compliance; Title IX's embrace of "separate but equal" and fears regarding strong women; and the insulation of men's sports from women through the contact sports exemption. It further explores Title IX, race and intersectionality in college sport and the NCAA's pretense of leadership regarding gender equity and gender discrimination.

*Keywords:* College sport, Title IX, intersectionality, gender and race intersectionality, transgender, contact sports exception, gender binary, gender equity

## Title IX Athletics Regulations as a Negotiated Settlement

It can be argued that Title IX of the Education Amendments Act of 1972 has rightfully earned its reputation as one of the most consequential pieces of legislation to affect change within college sport. According to National Collegiate Athletic Association (NCAA) data, athletic participation opportunities for women athletes have grown from 29,977 in 1971-1972 to 229,620 in 2021-2022 (NCAA, 2022), representing an increase of 666 percent over its 51-year history. In retrospect, Title IX's influence on college sport programs and its governing bodies is a lesson in what legislation can achieve when promoting gender equity within an entrenched male hegemonic system and what its legal limitations are in a predominantly White system of college sport.

Title IX's regulations pertaining to athletics were a negotiated settlement between powerful commercial, economic, and state interests invested in men's sports and women sports advocates who were leveraging the optics and reality of outright gender discrimination (Hextrum & Sethi,

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2022; Staurowsky, 2018; 2023; Staurowsky et al., 2022). The result in the late 1970s was a series of “last stand” protections for men’s sports, contained in such mechanisms as the “contact sports exception” that was designed to resist the incursion of women into those all-men’s spaces of baseball, basketball, football, ice hockey, lacrosse, and wrestling. They further defined “contact” as a men’s preserve in the first generation of women’s sports under Title IX. Intimately connected to the idea that in the athletic arena, “separate” could be “equal,” a conception in other areas of civil rights law that has long been challenged, the framework for college athletic programs to operate according to a gender binary was embedded in the regulations (Hoffman, 2017; Staurowsky et al., 2022).

Thus, we arrive more than 50 years after the passage of Title IX to the moment when dozens of colleges and universities attempted to eliminate and/or successfully eliminated women’s athletic programs during the COVID pandemic of 2020 in open defiance of compliance regulations (Whitaker, 2020). This created a whole new generation of women athlete plaintiffs burdened with the task of challenging the very administrators who claimed to welcome those athletes to their respective, so-called institutional families (Bailey Glasser, 2021; Haurwitz, 2018).

In 2021, the second-class treatment women experienced at the NCAA Women’s Final Four National Championship was documented on social media by University of Oregon player, Sedona Prince and others. Photos of the fully equipped weight room available for the men’s tournament were posted side by side with the stack of weights the women were expected to use went viral. Contrasts were also shown between an abundant buffet of food available for the men and pre-packaged and limited food options for the women. Criticisms arose around the marketing of the men’s and women’s tournament, with recognition made to the fact that the men’s tournament was afforded exclusive rights to the term “March Madness”. The results of an independent report commissioned by the NCAA in the aftermath of that public embarrassment revealed that

The N.C.A.A.’s broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I men’s basketball over everything else in ways that create, normalize, and perpetuate gender inequities. At the same time, the N.C.A.A. does not have structures or systems in place to identify, prevent or address those inequities. (Kaplan et al., 2021, p. 2)

In the weeks and months following, NCAA leaders were forced to admit and concede that they had failed to provide equitable treatment to women athletes in multiple championships across all three divisions.

Law professor Kimberly Crenshaw introduced the concept of intersectionality, describing it as “a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other” (Steinmetz, 2020). The lens of intersectionality reveals additional barriers to success women athletics of color and sexual minorities face because of the compounding influences of racism, transphobia, heterosexism, and sexual prejudice (Staurowsky et al., 2022). This paper explores the limits of Title IX’s liberal feminist conception of equality through Title IX’s impact on the college sport system and compliance; Title IX’s embrace of “separate but equal” and fears regarding strong women; the insulation of men’s sports from women through the contact sports exemption; Title IX, race and intersectionality in college sport; the manipulation of

Title IX by the NCAA and the case of NCAA Division I Women's Basketball Tournament in 2021; and the NCAA's pretense of leadership regarding gender equity and gender discrimination (Staurowsky, 2023).

### **Title IX, Its Impact on the College Sport System, and Compliance**

Characterized by legal scholar Erin Buzuvis (2021) as the "little statute that could," Title IX of the Education Amendments Act of 1972 has been rightfully credited with affecting change within college sport. While there is no question that opportunities for women in the college sport system have expanded in the five decades since the passage of Title IX, the path generally taken in terms of Title IX athletics compliance within college and university athletic departments is typically circuitous at best and short of the mark at worst (Staurowsky, 2016; Staurowsky et al., 2020; Staurowsky et al., 2022; Staurowsky & Rhoades, 2020). In a survey of 1,155 college sport leaders conducted in 2019, only 44% indicated that their institutions had "strong" or "very strong" records of Title IX compliance (Staurowsky et al., 2020).

Studies conducted independently by the Women's Sports Foundation (Staurowsky et al., 2020; 2022), *Champion Women* (Hogshead-Makar & Poyer, 2020), the *Chronicle of Higher Education* (Jenkins, 2019), *USA Today* (Jacoby et al., 2022), and a law firm commissioned by the NCAA (Kaplan et al., 2021) support a conclusion that there is widespread lack of Title IX compliance in college and university athletic departments. For example, "in 2019-20, of the \$241,450,778 spent on recruiting athletic talent to compete at the college level (in both two-year and four-year institutions), 30% was spent on recruiting female athletes (\$75,290,142)" (Staurowsky et al., 2022, p. 11). Furthermore, in an analysis of athletic scholarship dollars allocated to men and women athletes, nearly half of 107 NCAA Division I institutions fell short of the Title IX standard (Jacoby et al., 2022).

Amid the COVID-19 pandemic in 2020, women and men athletes sued or threatened to sue their institutions for Title IX violations arising from administrative decisions to cut certain sports when schools were often not in compliance to begin with. From the outset of the pandemic in 2020 through 2021, administrators at Brown University, William and Mary, University of North Carolina at Pembroke, East Carolina University, Dartmouth University, Clemson University, University of St. Thomas, LaSalle University, and Dickinson College all had to roll back efforts to eliminate programs because those actions only amplified existing Title IX inequities (Bailey Glasser, 2021).

Although more than five decades have passed, gender equity within athletic departments is hardly secure. Because no school has had its federal funding removed as a result of non-compliance with Title IX in the area of athletics, institutionalized gender discrimination continues (Staurowsky et al., 2022). "In a regulatory environment where those being asked to comply see little downside in not complying, the approach is more about managing perceptions than actual compliance" (Staurowsky & Rhoades, 2020, p. 387). The fact that an athletic department may contract with a consulting firm to assess gender equity and Title IX compliance does not mean that there is a commitment to compliance. As one consultant observed, compliance was "just a little game you have to play for a while" if an athletic department is under scrutiny (Libit & Cyphers, 2020, para. 97).

Among the lingering concerns that remain more than 50 years after Title IX's passage is whether or not the embrace of the concept of "separate but equal" in the Title IX regulations as they pertain to athletics has structurally reinforced a system that perpetually devalues women, sets the interests of men in opposition to women within athletic departments, undermines women's power within athletic departments, and preserves gender stereotypes. Even as women athletes emerge in the 21<sup>st</sup> Century as powerful leaders, activists, and performers, their power is viewed alternatively as admirable and inspiring by some, mildly unsettling by others, and in need of regulation by some portion of the U.S. populace. As a consequence, we confront the reality that as progress under Title IX has been achieved, the full enfranchisement of women in the realm of college sport as authoritative voices and impactful actors continue to meet resistance that emanates from enduring preconceptions around womanhood, strength, and physicality.

And that reality is happening within a larger legal, social, and political context where the state interest in women's bodies is evidenced in the historic reversal of a woman's constitutional right to an abortion by the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization* issued just a day after the 50<sup>th</sup> anniversary of Title IX in 2022. It is further evidenced in the 23 states that have passed laws restricting transgender girls and women from competing on teams consistent with their gender identities (Barnes, 2023); the tracking of high school girls' menstruation histories (Darvin et al., 2023); the continuing use of sex testing regulations that harm all women athletes but have a greater impact on women athletes of color (Human Rights Watch, 2023); and the control, surveillance, and disciplining of women athletes of color (Foster, 2003). The next section explores these issues further.

### **Title IX's Embrace of Separate But Equal & Fears Regarding Strong Women**

"Too strong for a woman." That is what the godmother of Title IX, Bernice Sandler, was told when she applied for seven tenure-eligible faculty positions at the University of Maryland and was turned down for all of them, with two additional rejections following thereafter in 1969 (Sandler, 2000). Having been a member of the department as a doctoral candidate and a part-time instructor, she sought answers as to why she was summarily passed over. Reasons included a belief that women disrupted department politics, women were intellectually inferior and too emotional, and given that she was a mother, the demands of family life would interfere with her work. Ultimately, she was also told that the men in the department found her to be too outspoken in offering her opinions and views. She had, in the words of one of her colleagues, "come on too strong for a woman" (Sandler, 2000, p. 9).

Sandler's singular moment was connected to a larger pattern that she wrote about at a time when terms like *sexism* and *sexual harassment* had not yet entered the American lexicon (Ware, 2014). In her accounts of efforts to find relief for women facing sex discrimination in colleges and universities in the 1960s, the federal laws that did have a provision prohibiting sex discrimination did not cover women working in higher education. Dr. Sandler (2000) described finding Federal Order 11246 as a "eureka moment." That Order was issued by President Lyndon B. Johnson in 1965 as part of an effort to ensure equal employment opportunity. The order was issued two years after Martin Luther King Jr.'s "I Have A Dream" speech.

Dr. Sandler's work with the Women's Equity Action League (WEAL) led to a class action

lawsuit in January of 1970 against every college and university in the country that received federal financial assistance. That lawsuit alleged violations of Federal Order 11246 as amended by President Lyndon B. Johnson (Miller, 2020; Sandler, 2000). That was followed by more than 250 individual complaints to the federal government (Griggs, 2019; Miller, 2020; Sandler, 2000).

The groundwork done for that case became the foundation for seven days of hearings conducted in 1970 by the House Committee on Education and Labor called by the chair of the subcommittee on education, Edith Green (D-OR). Those hearings resulted in a 1,300-page report documenting the magnitude of unfair treatment women were being subjected to in U.S. colleges and universities. The enactment of Title IX happened two years later, championed by Green along with U.S. Senator Birch Bayh (D-IN) and Representative Patsy Mink (D-HA).

Once passed, resistance came not from those concerned about educational policy but from those representing powerful and monied men's college sport interests. NCAA and college conference leaders, athletic directors, football coaches, and college presidents created a long road ahead in terms of Title IX compliance (Staurowsky, 2003; 2023).

The NCAA in partnership with its member schools and the American Football Coaches Association (AFCA) lobbied members of Congress initially to exempt all athletic programs from Title IX. Failing that, efforts were made (unsuccessfully) to exempt the revenue-producing sports of football and men's basketball. Insight into the fervor with which Title IX was perceived to be a threat to football is captured in a statement made by Senator Roman Hruska (R-NE) in July of 1975 as part of a hearing record held to amend the legislation. Hruska mapped out a doomsday prediction: "Should substantial portions of football revenue in excess of profits be diverted to title IX compliance, a serious decline in the quality of the football program would result" (p. 28, para. 5). Hruska's position was consistent with a talking point that had found its way into the deliberations of the day that raised the question of whether Title IX was "going to kill the goose that lays the golden eggs in those colleges and universities with a major revenue producing sport?" (p. 12, para. 2). Notably, while Hruska advocated the adoption of protections for football consistent with the views of the Nebraska head football coach Tom Osborne, he dutifully included a letter from the women's athletic director at the University of Nebraska, Aleen Swofford, who made it clear that the women's athletic program was opposed to any effort to undermine Title IX protections. Publicly, however, he not only ignored the position of Swofford and the women's athletic department at Nebraska but actively worked against them (Hruska, 1975, p. 26).

Efforts to create the Title IX regulation intended to guide athletic departments in their assessment of compliance areas and evaluation of equal treatment three years after the statute was passed garnered so much attention that it caught government officials off guard. Casper Weinberger, then serving as secretary of the U.S. Department of Health, Education, and Welfare observed before a House education subcommittee hearing in June of 1975 called to address concerns about the regulation raised by the NCAA that, "I had not realized until the comment period that athletics is the single most important thing in the United States" (Associated Press, 1975). In response to NCAA concerns that complying with Title IX would destroy the economic foundation of intercollegiate athletics, Weinberger offered an assurance that the regulation did not require equal funding for women's sports, just that opportunities needed to be made available. He went on to assure the committee that Title IX did not require women to

participate on football teams. According to an Associated Press (1975) report, Weinberger added, “It does not mean the National Collegiate Athletic Association will be dissolved and will have to fire all of its highly vocal staff” (para. 12). The orchestrated narrative pitting the interests of women athletes in opposition to football and other men’s sports developed early, enduring for decades into the 21<sup>st</sup> Century.

### **Insulating Men’s Sports From Women Through the Contact Sports Exemption**

Through public hearings, private communications, and lobbying efforts leveraging relationships between state institutions and their legislators in Congress in the 1970s, the all-men’s NCAA strategically influenced negotiations around the meaning of equal treatment and how it would manifest in the Title IX regulations and interpretations issued by the U.S. Department of Health, Education, and Welfare (HEW). Not only was a gender binary embedded in the Title IX regulation, measures were taken as Weinberger noted to ensure that there would be no incursion of women into the sport of football (Associated Press, 1975).

The doctrine of separate but equal in athletics was justified primarily on two grounds: age and access. As the editors of the University of Pennsylvania Law Review explained in 1976,

...the acceptability under Title IX of fielding separate male and female teams in a particular sport should depend on the age level of the students involved. It might be argued that there are sufficient physiological differences between the sexes not only to justify but to mandate separate-but-equal in this context. Where boys are physically stronger and larger than girls, Lau and Griggs alert us to the danger of impermissible de facto exclusion of girls from teams selected on the basis of competitive skill. In such a situation, separate teams might be not merely acceptable, but mandatory to prevent unequal access to competitive athletic activities (University of Pennsylvania Law Review, 1976, pp. 837-838).

The express mechanisms to fulfill that guarantee are two exceptions: the competitive skill exception and the contact sport exception. Keying off of the assumptions about biological differences already certified in the permission given within the regulation to maintain separate-but-equal athletic teams, committing in effect to a college sport system locked into a gender binary arrangement, there was an additional layer that strong women would not permeate the boundary and find their way into the most valued and valuable men’s sports of football, basketball, ice hockey, baseball, wrestling, and boxing. Some vulnerabilities already existed on that front because there was a provision that allowed women to compete on men’s teams when they did not have a team of their own. Thus, in those transition years when men’s teams far outnumbered women’s teams, qualified women athletes started to compete on men’s teams in swimming, diving, tennis, and golf (Stein, 2012).

Given the political and social context in which the regulation was issued in the 1970s, concerns existed that female athletes would not be as skilled or strong enough to compete with male athletes (notably as the Penn Law review editors point out there was an awareness that this assumption should not be applied to younger athletes) and should co-ed teams exist, female athletes would be displaced by male athletes. As Reddy (2021) notes,

In many ways, sports are a performative proving ground for strength. Within this context, discriminatory and exclusionary efforts make sense, as they stem from efforts to preserve the symbol of strength that sports stand for by excluding those who are either perceived as ‘weak’ or as a ‘threat’ to the norms in sports. (para. 1)

That said, legal scholar Deborah Brake (2010), in her critique of Title IX’s acceptance of separate teams, observed that it does not come without a cost. She noted that the act of separating women from men in athletic competition perpetuates the existing gender hierarchy dominated by men’s sport interests, leaving it unchallenged. The separation itself sends a message that men athletes are better than women athletes with long-standing gender-based assumptions driving logic. Thus, efforts to avoid gender-blind selection “would leave female athletes with fewer opportunities because they cannot hold their own against male athletes” (Brake, 2010, p. 29).

The dialogues that shaped the regulations in the 1970s remained anchored in beliefs about male superiority and female inferiority even as the law was mandating that decisions based on those beliefs be eliminated. In calling for the rescission of the contact sport exemption on grounds that it violated the Equal Protection Clause, Katlynn Dee (2020) argued the following three claims:

- (1) the exception relies on generalized stereotypes about the physical abilities of women and does not account for their individualized qualifications;
- (2) the sex of the athlete does not inhibit his or her ability to play the sport because sex does not go to the essence of the contact sport; and
- (3) the asserted safety rationale is pretext for the legislature’s intent to protect revenue-producing sports like men’s football and basketball from female encroachment. (p. 1012)

In a hypermasculine enterprise like sport (Martin & McMillan, 2022; McGovern, 2021), such equivocation leaves room for avoidance, resistance, and manipulation to manifest in myriad ways (Brake, 2010; 2011). Strength, power, and control are all at stake in preserving what have traditionally been thought of as men’s spaces in sport and limiting access to women’s spaces. By insisting on an appearance of change with as little disturbance as possible to the underlying foundation of the enterprise, Title IX’s mandate of equal treatment faces constant headwinds on the path to systemic change.

The terms under which strength is paired with femininity, and the legitimacy of who lays claim to it, emerge in the surveillance of transgender women athletes. The indictment of being “too strong for a woman” is revealed in full force when gender discrimination under Title IX is recognized as applying to those whose gender identity differs from their biological sex at birth. The issue of transgender women competing on women’s teams has created divisions among Title IX and women’s sport advocates, some of whom had been allies in the fight for equal rights for women for 50 years (Tugend, 2022). Citing concerns that transgender women will take over women’s sports because of perceived biological advantages, especially for transgender women who have gone through male puberty, Olympian and founder of an organization called “Champion Women,” Nancy Hogshead-Makar has argued that “equality requires separation” and allowing trans women to compete on women’s teams predicts that “women will lose out” (Tugend, 2022, para. 23-25).

That logic, however, assumes a magnitude of trans women's presence in sport that is not reflected in their rate of participation and may (does) imply that even one trans woman is too many. According to *Outsports*, 32 trans athletes have competed openly at the college level in schools that are members of the NCAA, the National Association of Intercollegiate Athletics (NAIA), and community college leagues and associations (Zeigler & Webb, 2022). While this account does not include trans athletes who were not publicly out or had not come out to their teammates, the number is very small, estimated to be less than one percent. Taking the NCAA as a case example for the academic year 2020-2021, member schools sponsored 10,733 teams with 219,177 women competing on those teams across approximately 42 championships (National Collegiate Athletic Association, 2021a). It is not a given that a team that has a trans woman athlete on it will compete in one of those championships or the events offered in sports like swimming, track and field, and gymnastics. In Utah, where the legislature overrode a veto of a bill in 2022 barring transgender girls from playing high school sports, there were only four transgender high school athletes in the state (one being a girl) out of 750,000 athletes in total (Tugend, 2022).

To illustrate this, University of Pennsylvania swimmer Lia Thomas made history by becoming the first openly transgender woman to win an NCAA Division I swimming national title in the 500-yard freestyle in 2022 (Blinder, 2022). To put Thomas's victory in perspective, she was not the first transgender woman to win an NCAA title: Cece Telfer won an NCAA Division II title in the hurdles in 2019 (Zeigler & Webb, 2022). Furthermore, at the 2022 NCAA Division I Women's Swimming and Diving Championship, national champions were named in 18 swimming and 3 diving events (Sutherland, 2022). Of the 322 athletes competing, one was an out transgender woman.

Thomas's performance and subsequent victory in the 500 freestyle galvanized an already churning conversation regarding transgender athletes. That conversation was fueled further by claims from competitors like Riley Gaines, who alleged that transgender women athletes like Thomas were robbing women of coveted opportunities to win events despite the fact that Gaines herself shared a 5<sup>th</sup> place finish with Thomas in the 200-yard freestyle at the NCAA Division I Women's Swimming and Diving Championships in 2022 (Swimming World, 2022). When considered relative to 500-yard freestyle performances in previous championships between 2013 and 2022, "Thomas's breakthrough performance is only just average...Over the last 10 years, she would mostly have come only in 2<sup>nd</sup> position with her time. Notably, in the 2016-17 season, she would have come 12<sup>th</sup>" (Goswami, 2022, paras. 3-6).

As the National Women's Law Center (2022) explains, despite recent efforts to ban transgender – and in some cases, intersex – athletes from competing in school sports in 15 states between 2020 and 2022, those athletes have still been competing for years. The rights of transgender athletes to compete on teams consistent with their gender identity are protected under Title IX as well as laws passed in 17 states and the District of Columbia (National Women's Law Center, 2022). President Joseph Biden affirmed the rights of transgender students in an Executive Order dated January 25, 2021, that "All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation" (Biden, 2021) and the U.S. Department of Education issued a clarification that discrimination based on sexual orientation and gender identity constituted a violation under Title IX (Office for Civil Rights, 2021). In April of 2023, the U.S. Department of Education Office for Civil Rights issued a new proposed rule. The rule would



prevent schools from instituting outright bans on transgender athletes from competing on teams consistent with their gender identity (what many have called a “one size fits all” ban) but would allow for a consideration of grade level, level of competition, and reference to eligibility requirements already enacted by sport governing bodies like the NCAA. The onus would be on schools to explain how they balance the educational interests of transgender athletes while minimizing “harm to students who are limited or denied in their participation on a male or female team because of their gender identity” (Smith, 2023, para. 3).

In a letter issued on May 15, 2023, to U.S. Secretary of Education Miguel Cardona and Assistant Secretary for Civil Rights Catherine Lhamon sent from the Transgender Legal Defense Fund, Harvard Law School LGBTQ+ Advocacy Clinic, and Athlete Ally, the proposed rule was described as an important step in protecting the rights of transgender, nonbinary, and intersex athletes under Title IX. However, it also noted that

[T]he proposed rule fails to meaningfully engage with the racist history of gender-based policing in sports; does not sufficiently guard against the use of pernicious stereotypes about TNI [transgender, nonbinary, and intersex] people that have long been used to justify restricting the rights of marginalized groups; and lacks meaningful guidance on how the rule should be applied to nonbinary and intersex students. (p. 2, para. 1)

In some ways, it is no wonder that U.S. college sport systems have taken a leisurely path to compliance that has resulted in generally keeping women subordinated and sexual minorities either out of the arena entirely or regulated to the margins. The regulations themselves were designed to protect the gender binary, creating a more than 50-year investment in maintaining its boundaries. As a negotiated settlement, even as the number of women athletes and the number of women working in college and university athletic programs have expanded, they bargain over who gains access to sport opportunities, the magnitude of the benefit they realize from that access, and the compromises they have to make in order to remain in various sectors of college sport industry (i.e., college and university athletic departments; conferences; NCAA; media and marketing partners) continues.

### **Title IX, Race, and Intersectionality in College Sport**

Over the course of 50 years, Title IX has become a cultural symbol synonymous with gender equity in athletic programs, a shorthand reference that stirs in people’s sensibilities around fair treatment without a real understanding of what Title IX requires and what it does not require (Staurowsky & Weight, 2011). As important as Title IX as an education law has been in opening up opportunities for women in American society, it is what feminists and critical race theorists refer to as a “single axis” law (Staurowsky et al., 2022).

As such, a focus on Title IX compliance does not speak to how gender discrimination intersects with other forms of bias. The reason this is important is that “...women have not shared equally in many of the post-Title IX gains” that have been realized over the past five decades (Brake, 2010, p. 113). In a Women’s Sports Foundation report on Title IX and race in intercollegiate athletics, the authors noted that “Race and gender inequalities are intertwined by their very natures...Thus, women athletes of color are in double jeopardy, facing the effects of

gender and race discrimination” (Butler & Lopiano, 2003, p. 7).

As legal scholars Mathewson (2012) and Flowers (2015) point out, Title IX provides a remedy for gender discrimination while simultaneously ignoring racial discrimination against African American women athletes. Furthermore, Mathewson (2012) directs our attention to a false assumption operating within the Title IX frame of equal opportunity that more opportunity for women means that all women reap the benefits in an equal way. Leading us through the flaw in that assumption, he points out that Title IX’s mandate of equal access to athletic participation opportunities could be achieved by providing disproportionately more opportunities to White women athletes without consideration for women from other racial groups who get left behind.

In 2001, Dr. Doris Corbett, Professor Emerita and administrator at both Howard University and the University of Northern Iowa wrote, “Women of color experience a form of double jeopardy - racism and sexism. Because they are overlooked by society in general, their struggles in both sport and other aspects of life are compounded” (p. 307). Arguing for a more inclusive vision of college sport, one that recognized that women athletes of color were rendered invisible by the marginalizing forces of racism and sexism working in tandem, she observed:

Working relationships that could operate for the good of the whole social institution of sport and society will continue to be hampered unless ethnic and racial stereotyping are unpacked and discarded. As women we already share a form of oppression that is universally understood. Why do we find it so difficult to extend the parameters? (p. 307).

According to Cooper and Newton (2021),

Even after the passage of the Title IX of the Education Amendments of 1972, when athletic programs were expanding teams and scholarships for women, many of these opportunities were offered in sports where Black women were “historically” underrepresented due to various resources and gendered racist barriers (e.g., ice hockey, rowing, water polo, etc.). (p. 71)

A compounding factor that worked against Black women athletes in college sport was racialized stereotypical perspectives about which sports they could play (basketball and track versus swimming and volleyball). Even at Historically Black Colleges and Universities (HBCUs), women’s athletic teams were not supported with equitable funding and faced differential treatment compared to men’s teams. Fewer financial resources were devoted to Black women athletes at HBCUs in an array of operational areas including recruiting, travel, scholarships, team uniforms, media coverage, and coach salaries (Carter-Francique & Richardson, 2015).

Efforts made by the NCAA to foster the growth of women’s sports within college and university athletic programs through what they refer to as the Emerging Sports Program (a menu of sports specifically designated by the NCAA to encourage the growth of those sports for women) appear at times to have been developed with little consciousness of the racial dynamics at play in terms of the access that women athletes of color have to sport opportunities. As scholars Jacqueline McDowell and Akilah Carter-Francique (2017) pointed out, women athletes of color may be clustered in certain sports (basketball, track and field) because of societal expectations, family considerations, and economic factors. They also point out that “racial clustering and low

representation of women of color in nontraditional sports at the college level is also correlated to limited opportunities for girls of color to participate in these sports at the youth and high school levels” (p. 103). Notably, a sport like bowling, for example, has experienced greater growth among White women athletes over the past 20 years with a decline in Black women athletes.

In Table 1 below, the percent participation of women college athletes by sport and race reflects the emerging sports the NCAA has promoted over the years.

**Table 1**

*NCAA Percent Participation in Emerging Sports by Race – 2021-2022*

Sport	Black Female Athletes	White Female Athletes	Other Female Athletes
Beach volleyball	3%	73%	24%
Bowling	16%	66%	18%
Equestrian	1%	85%	12%
Rowing	2%	76%	22%
Rugby	12%	61%	28%
Triathlon	2%	71%	27%
Tumbling	9%	67%	24%
Water polo	1%	63%	36%
Wrestling	10%	51%	39%

Based on data from the Postsecondary National Policy Institute (PNPI, 2020), between 12-13% of the undergraduate populations at four-year public and private non-profit colleges and universities were Black. When considered in light of the representation of Black female athletes who participated in NCAA member schools, their access to athletic opportunities fell short of that mark (see Table 2).

**Table 2**

*Percent of NCAA Athletes by Race, Ethnicity, & Gender from 2012-2022*

	Male White		Male Black		Male Other		Female White		Female Black		Female Other		Total
	#	%	#	%	#	%	#	%	#	%	#	%	
2022	172,076	33%	58,783	11%	62,246	12%	153,941	29	24,522	5%	50,597	10%	522,165
2021	164,176	33%	54,691	11%	56,308	11%	148,036	30	23,495	5%	46,591	9%	493,297
2020	167,545	33%	56,969	11%	57,185	11%	151,650	30	24,452	5%	46,910	9%	504,711
2019	168,059	34%	56,641	11%	54,544	11%	150,206	30	24,456	5%	44,834	9%	498,740
2018	167,723	34%	56,336	11%	52,077	10%	149,980	30	24,422	5%	42,373	9%	492,841
2017	168,345	35%	54,839	11%	49,497	10%	150,181	31	23,930	5%	40,106	8%	486,898
2016	170,040	35%	53,806	11%	46,784	10%	149,099	31	23,487	5%	37,759	8%	480,975
2015	170,361	36%	52,642	11%	44,610	9%	148,606	31	23,226	5%	36,151	8%	475,596
2014	171,160	37%	50,129	11%	41,368	9%	147,600	32	22,407	5%	33,633	7%	466,297
2013	167,731	37%	48,740	11%	39,144	9%	144,953	32	21,917	5%	31,642	7%	454,127
2012	168,491	38%	47,944	11%	34,802	8%	142,916	32	21,588	5%	28,468	6%	444,209

Looking solely at the number and percentage of women athletes competing on teams sponsored by NCAA member institutions between 2012 and 2021, the majority were White. There is, however, a shift occurring as seen in a seven-point drop in the percentage of White female athletes from a high of 74% in 2012 to 67% in 2022 (see Table 3). There is an impression based on the way that race and ethnicity data were reported that the “Other” female athlete category is growing in terms of representation, with an increase from 15% in 2012 to 22% in 2022; with the representation of Black women athletes remaining constant over an 11-year period at 11%.

**Table 3**

*Breakdown of NCAA Female Athletes by Race, Ethnicity, & Non-Alien Status 2012- 2022*

	Female White		Female Black		Female Other		Total
	#	%	#	%	#	%	
2022	153,941	67%	24,522	11%	50,597	22%	229,060
2021	148,036	68%	23,495	11%	46,591	21%	218,122
2020	151,650	68%	24,452	11%	46,910	21%	223,012
2019	150,206	68%	24,456	11%	44,834	20%	219,496
2018	149,980	69%	24,422	11%	42,373	20%	216,775
2017	1590,181	70%	23,930	11%	40,106	19%	214,217
2016	149,099	70%	23,487	11%	37,759	18%	210,345
2015	148,606	71%	23,226	11%	36,151	18%	207,983
2014	147,600	72%	22,407	11%	33,633	17%	203,640
2013	144,963	73%	21,971	11%	31,642	16%	198,576
2012	142,916	74%	21,588	11%	28,468	15%	192,972

Although access to opportunity has increased, racial disparities continue to persist for women of color in college sports. As evidenced in the NCAA Gender and Racial Demographics data for 2021-2022, White women represent the largest population of women athletes in NCAA Division I, II, and III conferences combined at 67%. Black women represent 11%, followed by

Hispanic women at 6%, International women at 5%, women identifying with Two or More Races at 5%, and Asian women at 2% (NCAA, 2021). Often covered over or left out of analyses is information regarding American Indian/Alaska Native and Native Hawaiian/Pacific Islander women because, as shown in Table 4, their numbers are too small to register a full percent. When examining the data more carefully, they reveal that American Indian/Alaska Native and Native Hawaiian/Pacific Island racial/ethnic reporting categories account for 974 female athletes competing on teams under the umbrella of the NCAA (see Table 4.).

**Table 4**

*NCAA Women Athletes by Race/Ethnicity in 2021-2022*

	<b># Female Athletes</b>	<b>% Female Athletes</b>
American Indian/Alaska Native	974	0%
Asian	5,650	2%
Black	24,516	11%
Hispanic/Latina	14,514	6%
Native Hawaiian/Pacific Islander	687	0%
International	11,171	5%
Two or More Races	11,659	5%
Unknown	5,893	3%
White	153,789	67%
Total	228,853	100%

*Note.* The categories as outlined are those used by the NCAA in the collection of the data.

Of the 26 women's sports sponsored by NCAA member institutions across all divisions during the 2021-2022 academic year, the highest representation of women athletes of color (i.e., American Indian/Alaska Native, Asian, Black, Native Hawaiian/Pacific Islander, and individuals who identified with two or more races) were participating in these sports: women's indoor track and field (26%); women's outdoor track and field (27%); women's rugby (27%); women's basketball (37%); and women's fencing (38%). Only one of those sports, women's fencing, has fewer White female athletes (41%) than female athletes from other racial and ethnic groups and countries of origin other than the United States.

The six sports with the largest majorities of White female athletes and least racially diverse rosters included women's ice hockey (76%), rowing (76%), field hockey (82%), lacrosse (83%), rifle (84%), and equestrian (86%). In the sport of fencing, Asian women athletes comprised 26% of those competing in the sport. Hispanic/Latina athletes were represented more frequently in women's softball (10%), water polo (14%), and wrestling (21%).

### **The Limits of Title IX's Reach & Its Manipulation: The Case of NCAA Women's Basketball**

By considering Title IX's existing regulatory structure through the lens of race and intersectionality, the question of who benefits from the protections against gender discrimination

comes into sharper focus. As Dr. Lori Martin points out, policies and procedures that appear to be race-neutral can have a profoundly different impact on people depending on their race and gender (Chavez, 2021). There is the additional juxtaposition of the role of Black men athletes so heavily represented in the money-making sports of college football and basketball contrasted with the seeming locked-in status of Black women athletes in the college sport system at a reported five percent across all sports. In one of the findings that emerged from the external review of gender equity in the running of NCAA championships, it was revealed that the television deal for the NCAA Division I women's basketball tournament, an event that showcases a sport where 44% of the athletes are Black, is entwined with that of 24 other NCAA championships (Kaplan et al., 2021).

A media and marketing expert hired by the law firm conducted an external review to evaluate the potential value of the NCAA Division I women's tournament if it were handled as its own separate property, as is done for the men's tournament. This expert, Ed Desser, concluded that the value of the women's tournament was markedly suppressed (Kaplan et al., 2021). Teasing out the existing value of the women's tournament within the existing contract to be in the neighborhood of \$6 million, Desser estimated that the value should be in the range of \$80 million to \$120 million (Kaplan et al., 2021). From a value perspective, two issues stand out. First, just prior to the NCAA taking over women's championships in 1981, the Association for Women in Intercollegiate Athletics had a \$1 million television rights deal for its basketball tournament (Bechtel, 2022). Second, over the span of 30 years of serving as the steward for the premier women's college basketball event in the world realized an increase to \$6 million, the NCAA realized a growth rate of six times between 1982 and 2019 on its women's television contract (Caron & Novy-Williams, 2021).

In contrast, the NCAA's total gross revenue in August of 1981 when it was an all men's association (the year the NCAA voted to offer women's championships) was approximately \$23 million, a growth rate of 23 times over ten years. The bulk of the revenue came from the revenue generated from the television rights to the men's tournament and the NCAA's historic agreement with ABC and CBS for rights to college football (White, 1981). By 1991, revenues continued to rise and doubled every 10 years thereafter. In 2021, the NCAA reported total revenue of \$1.1 billion with over half a billion invested in marketable securities.

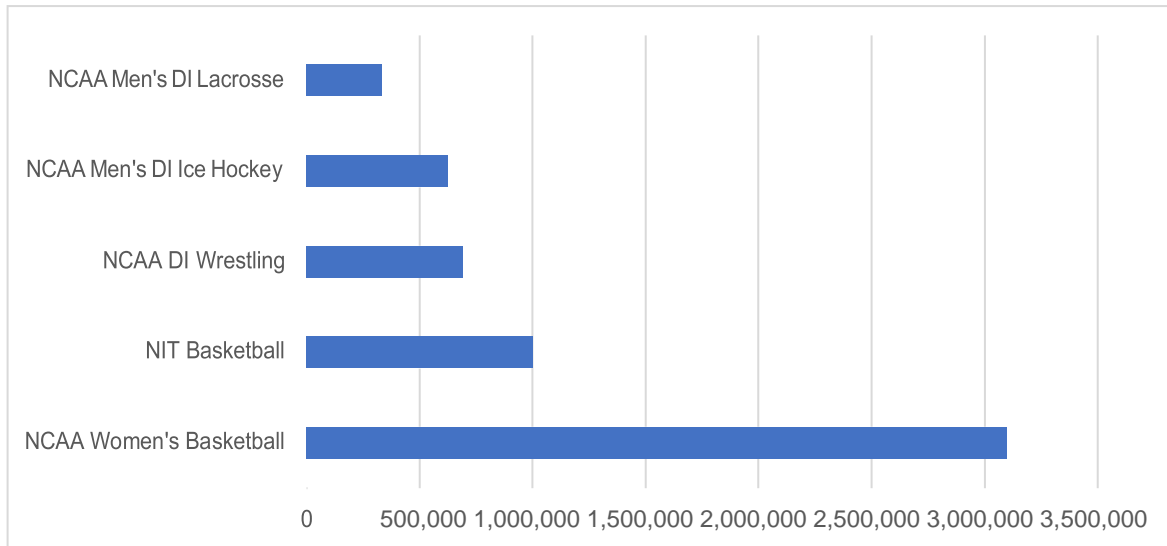
The NCAA women's tournament makes up just over 15.9% of the television rights deal the NCAA has with ESPN for sports other than Division I men's basketball:

That's just \$2 million (or about 50%) more than the NIT—the invitational for teams not good enough for the NCAA's 68-team March Madness field—despite the fact that the women's event in 2019 featured twice as many games and its final was viewed by nearly five times as many people. (Caron & Novy-Williams, 2021)

To illustrate this further, data from Nielsen showed the following (see Figure 1):

### **Figure 1**

*NCAA Championship Game Viewership on ESPN in 2021 (Caron & Novy-Williams, 2021)*



Responding to the institutional gender discrimination evidenced in the type of support women's basketball received during the 2021 NCAA Division I tournament, former commissioner of the America East Conference, Amy Hutchausen queried, "Clearly, the men's tournament is positioned to maximize revenue. Can we say the same about the women's?" She went on:

[The ESPN deal] provides a measure of financial certainty, but it does not provide women's basketball (or any of the other sports, for that matter) an incentive to grow. This creates a spiral, reducing the incentive for the NCAA to increase its investment since there would be little to zero ROI [return on investment]. (Hutchausen, 2021, para. 5)

When talking about what it would take for the NCAA to make substantive changes in recognizing women's basketball as a sport property, Stanford head women's basketball coach Tara VanDerVeer observed, "I think really the bottom line is it's a television package and it's a unit structure. When that happens, then we'll know it's serious." (Keeley, 2022, para. 12).

The unit structure is a reference to the performance-based incentives that have been built into the NCAA men's basketball tournament revenue distribution plan for decades where conferences with stronger men's basketball teams that play more games in the tournament are rewarded with higher revenue that are then redistributed to those teams. Additionally, University of South Carolina head women's basketball coach, Dawn Staley said,

I would like for women's basketball to stand alone in securing a TV package. We're in high demand; we're heavily watched. Our sport is at a place where it's going to take off; it is taking off. We have missed opportunities to capitalize on revenue (Clarke, 2022, para. 10).

The NCAA's television contract is constructed in such a way as to render one of its more racially diverse women's events a mere footnote in relationship to the men's tournament.

The \$6.1 million generated from the women's tournament barely creates a ripple compared to the revenue generated from the men's tournament, which in 2021 was estimated at more than \$801 million. As Caron and Novy-Williams (2021) pointed out, the structure of the contract helped to create a circumstance where "The men's college basketball championship game is roughly six times more popular than the women's game, but the men's media rights deal earns the NCAA nearly 100 times the revenue" (para. 8).

If the NCAA knows how to do anything, it knows how to make money off of the sport of basketball and how to incentivize its growth among member schools. And yet for 30 years, the NCAA suppressed the value of women's basketball, a sport that under the AIAW had a foundation to grow. From Title IX's single-axis lens, an interpretation that the women's game could be manipulated in service to preserving a male hegemonic system makes sense. However, if this systemic effort to suppress the value of what should have been the most celebrated event for women in the NCAA's menu of offerings is viewed through an intersectional lens considering "differences across race, sport, and notions of sexuality", a showcase for women's athleticism and Black women's athleticism would not have "fit into the traditional idea of athleticism and femininity that are stereotypically associated with race and gender" (Brooks, 2018, para. 17). This kind of systemic sexism and racism is not as obvious as Don Imus's references to the strong Black women who played on Rutgers' basketball team but every bit as insidious (Lemieux, 2020).

This dynamic in terms of gender and race echoes in the sport of women's basketball. In a study examining digital WNBA coverage over the course of the summer of 2020, researchers Risa Isard and Nicole Melton (2022) found that White WNBA players received far more coverage than did Black WNBA players in a league that is 80% Black. More specifically, the findings included the following:

- The 2020 season's MVP and WNBA finalist, A'ja Wilson, received half as much coverage as that generated around White player Sabrina Ionescu
- In the 550 articles reviewed, White players received more than twice the mentions of Black players (118 v. 52)
- Black players dominated the awards but White players were most written about
- WNBA Commissioner, Cathy Englebert, who is White received more coverage and more media mentions than Black players, with the exception of A'ja Wilson
- Gender presentation mattered much more for Black athletes. "Black WNBA players who present as more masculine received an average of just 44 media mentions. Meanwhile, white athletes who present more masculine received more than five times that amount (an average of 212)." (Isard & Melton, 2021, para. 13).

In 2021, University of Connecticut women's basketball player Paige Bueckers was recognized with the Best Female College Athlete Award at ESPN's annual awards ceremony, the ESPYs. In her acceptance speech Bueckers commented, "Sports media holds the key to storylines. Sports media and sponsors tell us who was valuable, and you have told the world that I mattered today, and everyone who voted, thank you...But I think we should use this power together to also celebrate Black women" (Creef, 2021). She went on to say,

So to Maria Taylor, Robin Roberts, Maya Moore, Odicci Alexander. To all the incredible Black women in my life and on my teams. To Breonna Taylor and all the lives lost, and to



those names who are not yet learned, but I hope to share, I stand behind you and I continue to follow you, follow your lead and fight for you guys so I just want to say thank you for everything.

While her allyship came through, the structural barriers that suppress the value of women's basketball remain unaddressed. The television contract for the men's basketball tournament includes a provision that CBS controls the sponsors for the men's basketball tournament and all of the other tournaments offered by the NCAA. Thus, what appears to be a matter of media preference is the production of a negotiation between the NCAA and its media partners to preserve the resources that are invested in the men's basketball tournament. This investment has ensured that at the end of March Madness, men players have exclusive access to the real and mythic One Shining Moment, the figurative and literal elevation of the champions to iconic hero status, buoyed by their economic value to the NCAA's Corporate Partners, many of which are Fortune 500 companies (Staurowsky, 2023). Even though men's athletic performance is favored within this construction, the One Shining Moment is not as lustrous as portrayed when considered in light of the NCAA's exploitative labor practices that suppress player value, resist fair compensation, put players at risk in terms of their health and safety, and fail to deliver on the educational bargain (Staurowsky, 2022; 2023).

### **The NCAA's Pretense of Leadership Regarding Gender Equity and Failed Obligations to It**

The NCAA has proven to be a center of confusion in terms of its obligations under Title IX and other federal laws barring gender discrimination. Its rhetoric includes references to gender equity, and the NCAA participates quite publicly in celebrations of Title IX's passage, such as the launch of a dedicated website to mark Title IX's 50<sup>th</sup> anniversary (Dent, 2022). However, the Association has relied on a U.S. Supreme Court decision in a case from 1999 written by then Associate Justice Ruth Bader Ginsburg that has created the impression that the NCAA is exempt from Title IX's reach. As a threshold matter, Title IX applies to institutions that receive federal funding.

In *National Collegiate Athletic Association v. Smith* (1999), a woman college athlete argued that the NCAA was bound by Title IX because they are an association whose members received federal funding and are thus an indirect recipient of those funds. The Court found that while the NCAA might be an indirect recipient, the question was more nuanced and required not only that an entity receive funds, but that it also benefit from those funds. Thus, it would be difficult to know if a member school drew upon those federal funds to pay for their membership in the NCAA, for example. Some have argued that the narrow ruling in *National Collegiate Athletic Association v. Smith* (1999) ought to be revisited in light of the NCAA's partnerships with government agencies such as the U.S. Department of Defense. Together, they formed the NCAA-DOD Care Consortium, part of a larger NCAA-DOD Grand Alliance, with an investment of \$105 million to conduct research on concussion and repetitive head impact (National Collegiate Athletic Association, 2021b). A more complete analysis of how federal funding runs through the NCAA as an organization might yield a different conclusion.

Notably, even as the NCAA was messaging that they were celebrating 50 years of Title IX,

its executives, officers, and members were in the process of revising the Constitution that serves as the basis for its authority to act. In the course of revising the NCAA's Constitution in Title IX's anniversary year (McGuire, 2022), its Principle of Gender Equity was changed to remove references to an expectation that member institutions comply with state and federal laws pertaining to gender equity (which would include Title IX and Title VII) along with an expectation that the NCAA would not pass rules that would impede schools from complying with those laws while passing rules that promoted compliance. The newly revised Principle of Gender Equity states,

Activities of the Association [NCAA], its divisions, conferences, and member institutions shall be conducted in a manner free of gender bias. Divisions, conferences and member institutions shall commit to preventing gender bias in athletics activities and events, hiring practices, professional and coaching relationships, leadership and advancement opportunities. (NCAA, 2022a, p. 2)

In the revision process, its Principle of Non-Discrimination was also removed. That principle reads as follows:

The Association shall promote an atmosphere of respect for and sensitivity to the dignity of every person. It is the policy of the Association to refrain from discrimination with respect to its governance policies, educational programs, activities and employment policies, including on the basis of age, color, disability, gender, national origin, race, religion, creed, or sexual orientation. It is the responsibility of each member institution to determine independently its own policy regarding nondiscrimination. (NCAA, 2020, p. 3)

Furthermore, members of the U.S. Congress took note that the NCAA was slow to respond to the blatant discrimination women basketball players had been subjected to during the 2021 tournament. In a six-page letter to the head of the NCAA (Mark Emmert), U.S. House Representatives Carolyn B. Maloney (D-N.Y.), Jackie Speier (D-Calif.), and Mikie Sherrill (D-N.J.) noted that the NCAA had not moved to change its leadership structure to ensure that those handling women's basketball within the organization had similar seniority to those representing men's basketball interests. They also sought answers to why "the NCAA has failed to create or commit to creating a chief business officer role to "oversee NCAA's media partner relationships with CBS/Turner and ESPN, the Corporate Partner Program, and branding and marketing for all championships" (Dellenger, 2022, para. 13).

Days before Title IX's 50th anniversary, U.S. Senator Roger Wicker (2022) wrote to NCAA president Mark Emmert asking for a detailed response to how the Association holds schools accountable for Title IX compliance and for monitoring whether schools are in compliance. Given the perception that the NCAA is exempt from complying with Title IX and its strategic move to distance itself from references to expectations that member schools comply with state and federal laws and a principle of non-discrimination, removing those references from the NCAA Constitution positioned the Association to claim that it need not hold itself accountable to comply with those laws or hold its member institutions accountable to them. Instead, under a veil of ratifying a revised constitution that empowered athletes and improved their prospects for better treatment, it retained vague language regarding gender bias, diversity, equity, and inclusion.

## Concluding Thoughts

In contemplating a 21<sup>st</sup> Century view of Title IX's application to college sport, the rationale for supporting separate-but-equal should be revisited and consideration should be given to eliminating the contact sport exemption, an exemption that was designed to protect and leave untouched a men's preserve within college sport. Although it is unlikely that the commitment to separate-but-equal will disappear, greater attention to and careful consideration of what it means to be treated equally in such a system needs more affirmative efforts. Such affirmative efforts call for the U.S. Congress to provide the U.S. Department of Education Office for Civil Rights (OCR) – the office charged with oversight of Title IX – with the resources to hold schools accountable for not complying with the law. As a matter of policy, the Women's Sports Foundation, the National Women's Law Center, and others have called for the U.S. Congress to pass the Patsy T. Mink and Louise M. Slaughter Gender Equity in Education Act of 2021, which recognizes the need for more training and education of school administrators to support Title IX compliance (Staurowsky et al., 2022).

There also needs to be a recognition that the era out of which the Title IX regulations emerged that preference men's sports was markedly different than the one in which college sport operates today. In 1972, the NCAA was an all men's athletic association that was actively resistant and openly hostile to the expansion of women's sports. The college football powers breaking with the NCAA in 1984 – challenging the NCAA's control over the television broadcast rights of major college football in *NCAA v. Board of Regents* – led to the growth of 24/7 sports television and the emergence of college football and men's basketball as sport properties that are part of a multi-billion-dollar global sport entertainment industry (Staurowsky, 2023). The characterization of this industry as an extracurricular activity grossly underestimates the impact of systemic sexism that persists (Hoffman, 2020; Staurowsky, 2023). This is evidenced in the fact that women athletes in 2019-2020 missed out on \$741,061,525 in athletic scholarship assistance because schools still are not providing athletic opportunities to them proportional to their enrollment. Schools dedicated on average 24% of their budgets to women's sports compared to 45% of their budgets to men's sports; and nearly 70% of athletic budgets were invested in scouting and recruiting athletic talent for men's teams compared to 30% of those dollars going to women's teams (Staurowsky et al., 2022).

The era in which Title IX was passed is important to consider because "...the statute was passed at a time when those faced with discrimination were finding the words to express the harms done and the barriers that needed to be overcome" (Staurowsky et al., 2022, p. 14). Just at the time when lively discussions were being conducted in the U.S. Congress, government agencies, and in American society about Title IX's application to education and athletics, feminist scholars like Rhoda Unger (1979) were conceptualizing the difference between the terms "sex" and "gender", with sex more narrowly referring to what she called "biological mechanisms" and gender acknowledging the sociocultural forces that contribute to it.

The social investment in separating men and women, and how it plays out in conversations about who has access to women's sport, has been the focus of controversy in terms of transgender athletes' rights under Title IX (Ghoryashi, 2022; Tugend, 2022). Notably, while those seeking to preserve women's sport for biological females only use the logic that women's sport should be for women, the door opens for suspicions about all women to surface. Such suspicions have circulated

as mechanisms of control in the lives of sporting women for well over 100 years. Strong, muscular, powerful, spectacular women who achieve in the athletic arena, as celebrated as they are at times, are never quite able to escape the indictment that their mannerisms, demeanor, tone of voice, physical presence and stature, determination, aggression, and success require surveillance to determine if they are somehow misplaced. That has been a central preoccupation with gender verification in women's sport, which yields the requirement that women have to be certified as women (Pieper, 2016).

A flickering glimpse of this penchant to regulate sporting women surfaces in its frequently veiled but truest form appeared in proposed legislation in the state of Ohio. Before being rushed to the House floor for a vote, and while another bill (H.B. 61 "Save Women's Sports Act") was pending and not on the schedule, a provision was added to H.B. 151 (the Ohio Teacher Residency Program) that banned transgender girls and women from high school and college teams. That bill also included a provision that any girl or woman athlete "accused" of being trans would be subjected to a genital inspection (Trau, 2022). According to the language of the bill, if an athlete's sex was challenged or disputed, a physician would need to verify her sex in "only" the following ways: "1. An examination of her internal and external reproductive anatomy; 2. Her normal 'endogenously produced levels of testosterone; 3. An analysis of her genetic makeup" (para. 5). Ohio Senate President Matt Huffman indicated that the provision would likely be removed before passage, and eventually it was (Migdon, 2022; Rees & Fahmy, 2022).

Such physical inspections harken back to exams women athletes endured in the 1930s and the "nude parades" and gynecological exams that "manly" women athletes were subjected to in the 1960s, followed by other forms of sex and gender testing that continue to the present day (Pieper, 2016). As Pieper (2016) explains "Sex is not a binary system established by a singular classification. Rather, most people in the medical profession recognize a collection of markers, including chromosomes, external genitalia, gonads, hormones, internal genitalia, and secondary sex characteristics" (p. 4).

From an intersectionality and racial perspective (Crenshaw, 1989; McDowell & Carter-Francique, 2017), examining the college sport system through the lenses of both gender and race reveals a White male hegemonic system that exploits Black male labor for profit while containing Black women on the margins. As Huma et al. (2020) reported,

After accounting for the value of college athletes' athletic scholarships between 2017-2020, approximately \$10 billion in generational wealth will have been transferred from college football and men's basketball players, the majority of whom are athletes of color, to coaches, athletics administrators, and college administrators who are predominantly White or to institutions and programs that serve majority White constituencies. (p. 3)

Finally, in NCAA Division I women's basketball where the largest majority of players are Black (44%), the NCAA has worked to consciously suppress the value of the tournament and the coverage of women's college basketball (Kaplan et al., 2021). The NCAA Division I women's basketball championship was aired on ABC and ESPN for the first time in 2023 (NCAA Staff, 2022). As Carter-Francique and Richardson (2016) explain, Black women have historically and contemporaneously been controlled by the media, resulting in Black sportswomen who "...have

faced the most (in)visible journey and are marred by their omission and/or image representation in media” (p. 7).

This dynamic was in full view during the 2023 NCAA Division I women’s college basketball tournament. Historic in dimension, the NCAA Women’s March Madness final between Louisiana State University (LSU) and the University of Iowa drew a record-breaking 9.9 million views on the ABC network with 12.6 million viewers across all Disney platforms that covered the game. The final set an all-time record for an audience watching a men’s or women’s college event on ESPN+ subscription stream service (Jones, 2023).

At the same time, the magnitude of the event was overshadowed by controversy sparked by the bold and confident behavior, what some might call “swagger,” of two of the star players, Iowa’s Caitlin Clark and LSU’s Angel Reese. Los Angeles Times critic and columnist Mary McNamara (2023) wrote about the quarter-final and final games that were played during the Women’s March Madness “Full of ferociously competitive and gorgeously orchestrated play, these edge-of-your-seat games put the lie to the notion that women’s sports are just not as exciting as men’s” (para. 5). Clark had taunted opponents from the University of South Carolina leading up to the final game. As it became evident that LSU would beat Iowa, Angel Reese flashed a hand gesture pointing to her ring finger, suggestive of wearing a championship ring, in Clark’s direction. In the hours and days after the game, Reese was referred to as “classless.” In interviews following the incident, Reese recounted the atmosphere in which she had played through the season where she felt her conduct was under scrutiny because she was “too hood” and “too ghetto” (Rosenblatt, 2023).

The issue of the racial lens through which players were viewed had been addressed just days before by the University of South Carolina head women’s basketball coach, Dawn Staley, when she responded to the University of Iowa head coach, Lisa Bluder’s, characterization of South Carolina’s team as “street fighters.” As Staley noted, “We’re not bar fighters. We’re not thugs. We’re not monkeys. We’re not street fighters. This team exemplifies how you need to approach basketball, on the court and off the court” (McNamara, 2023, para. 15).

Moving forward into the future, a consciousness about the possibilities as well as limitations of Title IX and the forces that marginalize all women, especially women of color and sexual minorities should be considered when developing strategies to achieve more inclusive environments where women can compete and work in college sport.

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