

No. 10-3595

United States Court of Appeals for the Seventh Circuit

AMBER PARKER, *ET AL.*,  
*Plaintiff-Appellant,*

vs.

INDIANA HIGH SCHOOL ATHLETIC ASSOCIATION, *ET AL.*,  
*Defendants-Appellees,*

ON APPEAL FROM U.S. DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF INDIANA, CIVIL ACTION  
NO. 09-CV-00885, HON. WILLIAM T. LAWRENCE

**BRIEF FOR *AMICUS CURIAE* EAGLE FORUM  
EDUCATION & LEGAL DEFENSE FUND IN  
SUPPORT OF APPELLEES AND AFFIRMANCE**

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Appellate Court No: 10-3595

Short Caption: Amber Parker et al. v. Indiana High School Athletic Ass'n et al.

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## **IDENTITY, INTEREST AND AUTHORITY TO FILE**

*Amicus curiae* Eagle Forum Education & Legal Defense Fund (“Eagle Forum”), a nonprofit Illinois corporation, files this *amicus* brief with the consent of all parties.<sup>1</sup> Founded in 1981, Eagle Forum has consistently defended federalism and supported autonomy in areas (like education) of predominantly local concern. Eagle Forum has a longstanding interest in applying Title IX consistent with its anti-discrimination intent, without distortion from unreasonable feminist demands to always treat boys and girls identically or to satisfy unjustified sex-based quotas. Eagle Forum has advocated that boys’ and girls’ best interests are advanced by acknowledging their differences and having the flexibility to adopt educational programs that reflect their different interests. For these reasons, Eagle Forum has a direct and vital interest in the issues before this Court.

## **STATEMENT OF THE CASE**

This section outlines the factual and legal background relevant to

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<sup>1</sup> Pursuant to FED. R. APP. P. 29(c)(5), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus*, its members, and its counsel – made a monetary contribution to the preparation or submission of this brief.

this litigation.

## **Factual Background**

In this litigation, the mothers of two members of a girls' high school basketball team (collectively, "Plaintiffs") sue not only their daughters' own school but also its competitors in the basketball season (collectively, "Schools") on the flawed premise that boys' and girls' basketball are similarly situated. In Plaintiffs' view, the Schools discriminatorily deny the Plaintiffs their due, relegating them to second-class status compared with the boys' basketball team.

*Amicus* Eagle Forum respectfully – and as delicately as possible – submits that Plaintiffs' entire premise is flawed. For example, with roughly equal numbers of teams and games, the National Collegiate Athletic Association ("NCAA") experienced attendance of 32,820,701 for men's basketball<sup>2</sup> and 11,134,738 for women's basketball.<sup>3</sup> As this three-to-one ratio suggests, the two sports are not similarly situated with

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<sup>2</sup> The NCAA men's attendance figure for 2010 are available at [http://fs.ncaa.org/Docs/stats/m\\_basketball\\_RB/Reports/attend/2010.pdf](http://fs.ncaa.org/Docs/stats/m_basketball_RB/Reports/attend/2010.pdf) (last visited April 6, 2011).

<sup>3</sup> The NCAA women's attendance figure for 2010 are available at [http://fs.ncaa.org/Docs/stats/w\\_basketball\\_RB/reports/Attend/10att.pdf](http://fs.ncaa.org/Docs/stats/w_basketball_RB/reports/Attend/10att.pdf) (last visited April 6, 2011).

respect to spectator interest. Nor are they similarly situated with respect to athletic prowess or ability, which drives attendance:

Sport is basically a strength, speed and reaction time activity involving propelling a mass through space or overcoming the resistance of a mass. Physiologically and anatomically you cannot compare highly skilled male and female athletes on these parameters because of the inherent biological differences between the sexes. Men are stronger, faster, have better reaction time and more muscle tissue per unit of body mass. That is why athletic teams and competition are sex separate.

*Association for Intercollegiate Athletics for Women v. National Collegiate Athletic Association*, 558 F.Supp. 487, 496 (D.D.C. 1983) (quoting Dr. Donna Lopiano), *aff'd* 735 F.2d 577 (D.C. Cir. 1984); *accord Cape v. Tennessee Secondary Sch. Athletic Ass'n*, 563 F.2d 793, 795 (6th Cir. 1977) (“It takes little imagination to realize that were play and competition not separated by sex, the great bulk of the females would quickly be eliminated from participation”). Indeed, Plaintiffs candidly admit that spectators regard their game as inferior to the boys’ game. Pls.’ Br. at 6 (*quoting* Plaintiffs’ affidavits).

Although Plaintiffs complain that this negatively affects their self esteem, two issues are noteworthy. First, not all girls’ basketball

players want to play in primetime. For example, the Batesville girls' basketball team voted unanimously to play on weeknights, in lieu of "primetime" weekend games. Schools Br. at 13. Second, and what is worse, joining boys' and girls' basketball into doubleheaders can also damage the girls' self esteem. Steve Vedder, "Title IX backlash: Girls basketball loses crowds when boys play first" GRAND RAPIDS PRESS (Jan. 23, 2011). As the Vedder article shows in word and pictures, crowds leave when the boys' game ends. "Instead of focusing on the game, we were looking at our fans. We're thinking, 'Oh, my gosh, they're all leaving.'" *Id.* (quoting the team captain of the Forest Hills Northern girls' team).

### **Constitutional Background**

Under Article III, appellate courts review jurisdictional issues *de novo*, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998), and "presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record." *Renne v. Geary*, 501 U.S. 312, 316 (1991). Parties cannot grant jurisdiction by consent or waiver, *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), "[a]nd if the record discloses that the lower court was without jurisdiction [an

appellate] court will notice the defect” and dismiss the action. *Id.*

The Fourteenth Amendment’s Equal-Protection Clause prohibits states’ “deny[ing] to any person within [their] jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV §1, cl. 4. The Fourteenth Amendment covers only intentional discrimination, with no “disparate-impact” component. *Pers. Adm’r v. Feeney*, 442 U.S. 256, 272 (1979). The Fourteenth Amendment provides Congress the “power to enforce, by appropriate legislation, the provisions” of that Amendment. U.S. Const. amend. XIV, §5.

### **Statutory Background**

Modeled on Title VI of the Civil Rights Act of 1964, Title IX prohibits sex-based discrimination in federally funded education. 20 U.S.C. §1681(a). Like Title VI, Title IX prohibits only intentional discrimination (*i.e.*, action taken *because* of sex, not merely *in spite of* sex), *Alexander v. Sandoval*, 532 U.S. 275, 282-83 & n.2 (2001), and authorizes all funding agencies to issue regulations to effectuate Title IX’s prohibition of intentional discrimination. 20 U.S.C. §1682. Congress enacted Title IX under only the Spending Clause, not under the Fourteenth Amendment. *Jackson v. Birmingham Bd. of Educ.*, 544

U.S. 167, 181 (2005).

In 1974, Senator Tower introduced an amendment to the Education Amendments of 1974 to exempt revenue-producing intercollegiate athletics from Title IX and to require the Commissioner of Education to publish proposed Title IX regulations within 30 days. 120 CONG. REC. 15,322-23 (1974). Although he believed that Title IX did not apply to sports, his amendment clarified that – *if a court found Title IX to apply to sports* – it would exempt revenue-producing sports. *Id.* The requirement to publish proposed rules was “not intended to confer on [the Department of Health, Education and Welfare (“HEW”)] any authority it does not already have under the act.” *Id.*

The Tower Amendment passed the Senate, but was amended in conference (becoming the “Javits Amendment”) to require HEW’s Secretary (instead of the Commissioner of Education) to publish proposed regulations and to replace the revenue-sport exemption with a requirement to “include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.” Compare H.R. 69, §536 (Tower Amendment), *reprinted in* 120 CONG. REG. 15,444, 15,477 (1974) *with* PUB. L. NO. 93-380, §844, 88 Stat. at

612. The committee otherwise left the Senate bill unchanged. S. CONF. REP. 93-1026, *reprinted in* 1974 U.S.C.C.A.N. 4206, 4271.

In splitting HEW into ED and HHS, the Department of Education Organization Act, PUB. L. NO. 96-88, 93 Stat. 668 (1979) (“DEOA”) transferred various “functions” from HEW and its officers to ED and its officers. 20 U.S.C. §3441(a)-(b). DEOA reserved to HHS all HEW functions not transferred to ED. 20 U.S.C. §3508(b).

### **Regulatory Background**

In 1975, HEW issued regulations, which included the following relevant provisions with respect to assessing equal athletic opportunity:

A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) *Scheduling of games and practice time;*
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;

- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

45 C.F.R. §86.41(c) (emphasis added); 34 C.F.R. §106.41(c) (same). This regulatory equal-opportunity mandate plainly differs from the statutory intentional-discrimination prohibition. *Horner v. Kentucky High Sch. Athletic Ass’n*, 206 F.3d 685, 694 (6<sup>th</sup> Cir. 2000) (distinguishing the regulations’ equal-opportunity provisions from intentional discrimination). As relevant here, a school could schedule events based on spectator interest, which might not only disparately impact one sex over the other but also violate the regulation, without intentionally discriminating *because of sex*.

Consistent with Title IX’s legislative history and its Title VI template, these Title IX regulations incorporate Title VI’s procedural provisions. 45 C.F.R. §86.71 (“[t]he procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and

incorporated herein by reference”); 34 C.F.R. §106.71 (same).<sup>4</sup> “If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or *by any other means authorized by law.*” 45 C.F.R. §80.8(a) (emphasis added); 34 C.F.R. §100.8(a) (same).

As relevant here, the regulations prohibit filing a regulation-based lawsuit – assuming *arguendo* that regulations-based lawsuits were “authorized by law” – until the agency determines that compliance cannot be achieved voluntarily and the funding recipient receives ten days’ written notice of its noncompliance and the plan to effect compliance:

*No action to effect compliance by any other means authorized by law shall be taken until* (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been

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<sup>4</sup> 118 CONG. REC. 5803 (1972) (Title IX has the same procedural protections afforded under Title VI) (Sen. Bayh); *id.* at 5808 (“These provisions parallel Title VI of the 1964 Civil Rights Act”) (Sen. Bayh).

notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

45 C.F.R. §80.8(d) (emphasis added); 34 C.F.R. §100.8(d) (same).

### **SUMMARY OF ARGUMENT**

Neither the United States nor third-party beneficiaries can enforce Title IX's regulations without the regulatory conditions precedent (*e.g.*, attempts at voluntary compliance and notice), which undermines Plaintiffs' standing and ability to state a claim for relief (Sections I.B, IV.A.1.a-IV.A.1.b). Although Title IX regulations that exceed the scope of the statutory prohibition of intentional discrimination are not privately enforceable as a merits question (Section IV.A.1.a), this Court also lacks jurisdiction to consider such claims because Plaintiffs lack standing to enforce non-vested rights of the United States and, in any event, are not third-party beneficiaries of the regulations because the regulations do not impose direct benefits on Plaintiffs (*i.e.*, the Schools could comply by elevating treatment of other girls' programs).

Agencies' Title IX regulations do not warrant deference because Congress did not delegate interpretive authority to any one agency, at least not for *interscholastic* athletics (Section II). Prior Circuit precedent on deference failed to consider various arguments, but in any event expressly relied on HEW's Javits Amendment authority to adopt requirements only for *intercollegiate* athletics. Even if it feels compelled by Circuit procedure to honor HEW's regulations with respect to intercollegiate athletics, this Court cannot presume that Congress intended to encroach onto local control of interscholastic education.

On the constitutional and statutory merits, federal courts and Congress must confine themselves to clear violations before encroaching in an area of traditional local concern (Section III.A.1), and equal-protection violations that do not disadvantage legally protected interests require proof of discriminatory intent, which Plaintiffs have not even attempted to show (Section III.A.2). In any event, although Plaintiffs cannot prevail under heightened scrutiny, the rational-basis test applies to educational decisions made with respect to single-sex teams (Sections III.A.3). Provided that they do not rise to the level of defeating substantial equality, allegations of "stereotyping" cannot

prevent the Schools' decisions (Section III.A.4).

## ARGUMENT

### **I. PLAINTIFFS LACK STANDING TO ENFORCE TITLE IX'S REGULATIONS**

Under the plain terms of the regulations that Plaintiffs seek to enforce, “[n]o action to effect compliance by any ... means authorized by law shall be taken” until certain regulatory preconditions have been met. Plaintiffs’ failure to meet those regulatory preconditions denies them either prudential standing or statutory standing. *See, e.g., Kohen v. Pacific Inv. Management Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009) (distinguishing statutory and constitutional standing); *Frey v. E.P.A.*, 270 F.3d 1129, 1136 (7th Cir. 2001) (“both Article III and statutory standing requirements must be satisfied”) (*citing Ragsdale v. Turnock*, 941 F.2d 501, 509 (7th Cir. 1991)); *cf. Davis v. Ball Memorial Hospital Ass’n*, 640 F.2d 30, 41-42 (7th Cir. 1980) (an “enforceable interest is ‘akin’ to the requirement of standing”).<sup>5</sup> Either way, the Plaintiffs

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<sup>5</sup> Although the failure to satisfy regulatory conditions precedent negates both Plaintiffs’ constitutional standing and their statutory standing, this Court may address statutory standing first. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 830-31 (1999); *Norfolk Southern Ry. Co. v. Guthrie*, 233 F.3d 532, 534 (7th Cir. 2000). Moreover, because this standing argument overlaps with the merits, Eagle Forum reprises this issue as a merits argument in Sections IV.A.1.b, *infra*.

cannot prevail.

**A. Federal Agencies Lack Vested Rights to Enforce Regulations with Unmet Conditions Precedent**

Courts analogize Spending-Clause programs to contracts struck between the government and recipients, with the public as third-party beneficiaries. *Barnes v. Gorman*, 536 U.S. 181, 186 (2002); *Indiana Protection & Advocacy Services v. Indiana Family & Social Services Admin.*, 603 F.3d 365, 386 (7th Cir. 2010); *Bossier Parish School Bd. v. Lemon*, 370 F.2d 847, 850 (5th Cir. 1967). To regulate recipients based on their accepting federal funds, Congress must express Spending-Clause conditions unambiguously. *Gorman*, 536 U.S. at 186. With the required notice, recipients face enforcement for violations of the *statute*. *Id.* at 187-89. As indicated in Section IV.A.1.a, *infra*, no similar provision even authorizes private enforcement of the regulations:

The distinction between an intention to benefit a third party and an intention that the third party should have the right to enforce that intention is emphasized where the promisee is a governmental entity.

*Astra USA, Inc. v. Santa Clara County, Cal.*, \_\_ U.S. \_\_, 2011 WL 1119021, 5 (2011) (quoting 9 J. Murray, Corbin on Contracts §45.6, p. 92 (rev. ed. 2007)). Federal agencies, of course, are bound by their own

regulations, which prevent enforcement before the agencies determine that compliance cannot be secured voluntarily, notify recipients of planned actions, and provide ten days' notice. 45 C.F.R. §80.8(d); 34 C.F.R. §100.8(d). None of that happened here. Instead, Plaintiffs propose to “spawn a multitude of dispersed and uncoordinated lawsuits by [beneficiaries],” *Astra*, \_\_ U.S. \_\_, 2011 WL 1119021, at 5. The Schools never agreed to that, and federal law does not sanction it.

Assuming *arguendo* that the relevant Title IX regulations create enforceable individualized rights, *but see* Sections IV.A.1.a, *infra*, Plaintiffs still cannot enforce the regulations without satisfying the regulatory conditions precedent. When a regulation under Spending-Clause legislation defines schools' obligations, the *entire* regulation constitutes schools' bargain that agencies (or third-party beneficiaries) can enforce. *Global Crossing Telecomm., Inc. v. Metrophones Telecomm., Inc.*, 550 U.S. 45, 59 (2007); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Accepting the regulations as implementing the statute dooms Plaintiffs' regulation-based Title IX claims.

Under “traditional principles of contract interpretation,” third-party beneficiaries like Plaintiffs cannot “cherry-pick” the specific

regulatory provisions that they wish to enforce. *In re United Airlines, Inc.*, 368 F.3d 720, 725 (7th Cir. 2004) (“[d]ebtors in bankruptcy can’t cherry-pick favorable features of a contract to be assumed”) *Thompson v. Goetzmann*, 337 F.3d 489, 501 (5th Cir. 2003) (“litigants cannot cherry-pick particular phrases out of statutory schemes simply to justify an exceptionally broad – and favorable – interpretation of a statute”). Moreover, third-party beneficiaries “generally have no greater rights in a contract than does the promise[e].” *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 375 (1990); *Holbrook v. Pitt*, 643 F.2d 1261, 1273 n.24 (7th Cir. 1981) (“tenants, as third-party beneficiaries, are bound by the terms and conditions of the Contracts”); *Avatar Exploration, Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 318 (5th Cir. 1991) (“[a]s third party beneficiaries, their rights under the contract could not exceed [the promisee’s] rights”). Here, no federal agency can enforce its regulations in court without meeting the regulatory prerequisites. *What agencies cannot do directly, Plaintiffs cannot do as third-party-beneficiaries.*

Under Title VII, such pre-litigation notice is a procedural prerequisite to filing suit. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 398 (1982). Under environmental statutes’ analogous notice

requirements for citizen suits, the “purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance ... and thus ... render [private enforcement] unnecessary.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*, 528 U.S. 167, 174-75 (2000) (interior quotations omitted). “Accordingly, ... citizens lack statutory standing ... to sue for violations that have ceased by the time the complaint is filed.” *Id.* at 175; see Section IV.A.1.b, *infra*. Regardless of “whether the notice provision is jurisdictional or procedural,” Plaintiffs’ regulatory claims are “barred” and “must be dismissed.” *Hallstrom v. Tillamook County*, 493 U.S. 20, 32-33 (1989).

### **B. Plaintiffs Lack Standing to Enforce Non-Vested, Group-Based “Rights”**

As explained in Section I.A *supra* and Section IV.A.1.b *infra*, lack of conditions precedent affects both standing under Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6). But even if lack of conditions precedent implicated only Rule 12(b)(6) *for federal agencies*, it nonetheless implicates jurisdiction for third-party beneficiaries because third-party beneficiaries lack standing to enforce non-vested claims. *OEC-Diasonics, Inc. v. Major*, 674 N.E.2d 1312, 1314-15 (Ind. 1996) (“intent of the contracting parties to bestow rights upon a third

party must affirmatively appear from the language of the instrument when properly interpreted and construed”) (internal quotations omitted); *Fowler v. Perry*, 830 N.E.2d 97, 105 (Ind. App. 2005) (rights do not vest until conditions precedent satisfied); *Wedel v. American Elec. Power Service Corp.*, 681 N.E.2d 1122, 1134 (Ind. App. 1997) (same); *Palma v. Verex Assur., Inc.*, 79 F.3d 1453, 1458 (5th Cir. 1996); *Karo v. San Diego Symphony Orchestra Ass’n*, 762 F.2d 819, 822-24 (9th Cir. 1985).<sup>6</sup> Without the conditions precedent to regulatory enforcement, Plaintiffs lack a legally protected interest in regulatory enforcement and thus lacks standing.

Similarly, in much the same way that the Supreme Court has held that group-based benefits do not provide privately enforceable rights, *Alexander v. Sandoval*, 532 U.S. 275, 285-90 (2001), Plaintiffs cannot even claim third-party beneficiary status to enforce the group-based regulations under Indiana law, which requires a “*direct* benefit” to

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<sup>6</sup> Whatever federal agencies may say, schools plainly never signed up for private regulatory enforcement, especially without the regulatory conditions precedent. If the schools did not agree to such enforcement, then that enforcement is not part of the agreement. *Holbrook*, 643 F.2d at 1271 (courts construe third-party beneficiaries’ rights by looking to intent of promisee and promisor); *Price v. Pierce*, 823 F.2d 1114, 1122 (7th Cir. 1987) (same).

Plaintiffs. *Luhnow v. Horn*, 760 N.E.2d 621, 628-29 (Ind. App. 2001) (emphasis added); accord *NN Investors Life Ins. Co. v. Crossely*, 580 N.E.2d 307, 309 (Ind. App. 1991). As Plaintiffs candidly admit, Pls.’ Br. at 12 & n.12, the Schools *could* meet their regulatory obligations by benefiting other girls’ teams. That admission is fatal to their status as third-party beneficiaries under Indiana law, which is fatal to their standing for regulation-based claims. *U.S. v. Andreas*, 216 F.3d 645, 664 (7th Cir. 2000) (those “not parties or third-party beneficiaries ... do not have standing to enforce the terms of [an] agreement”); *Pierce*, 823 F.2d at 1120 (third-party beneficiary status goes to standing).<sup>7</sup>

To the extent other courts have assumed jurisdiction without addressing this issue, “drive-by jurisdictional rulings” that reach merits issues without considering a particular jurisdictional issue “have no precedential effect” on that jurisdictional issue. *Steel Co.*, 523 U.S. at 94-95; *Waters v. Churchill*, 511 U.S. 661, 678 (1994) (“cases [cited by Plaintiffs] cannot be read as foreclosing an argument that they never

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<sup>7</sup> Plaintiffs claim that the Schools bear the burden of proof on this issue, Pls.’ Br. at 12 & n.12, but *plaintiffs* always bear the burden of proving jurisdiction, and this issue goes to their standing to enforce the regulations. *Summers v. Earth Island Inst.*, 129 S.Ct. 1142, 1150 (2009).

dealt with”). “Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 170 (2004) (interior quotations omitted). Courts that never *considered* a jurisdictional issue plainly never *decided* it.

In addition, the Title IX decisions that Plaintiffs would cite either pre-date or fail to address *Sandoval*. As such, they fail to distinguish between enforcing the regulations and enforcing the statute. Because those other courts never considered the additional impediments to enforcing Title IX’s regulations, as distinct from enforcing the statute, this Court cannot rely on their holdings to enforce the regulations.

## **II. THIS COURT OWES NO DEFERENCE TO FEDERAL AGENCIES’ INTERPRETATIONS IN THIS LITIGATION**

This Court previously has found HEW guidance entitled to deference. *Kelley v. Board of Trustees*, 35 F.3d 265, 270 (7th Cir. 1994); *Boulahanis v. Bd. of Regents*, 198 F.3d 633, 637 (7th Cir. 1999) (*citing Kelley*). *Kelley* cited the “Javits Amendment” as a delegation for HEW to adopt “reasonable provisions considering the nature of particular sports” for “intercollegiate athletics.” *Kelley*, 35 F.3d at 270. For several

reasons, this Court does not owe deference to the federal regulatory provisions cited by Plaintiffs and their *amici*.

At the outset, however, it does not matter what Congress and federal agencies believe about the Fourteenth Amendment: the “power to interpret the Constitution ... remains in the Judiciary.” *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997). Even statutes that allow or acquiesce to sex-based actions cannot make those actions constitutional:

The fact that [§901(a)(5)] applies to [the school] provides the State no solace: “[A] statute apparently governing a dispute cannot be applied by judges, consistently with their obligations under the Supremacy Clause, when such an application ... would conflict with the Constitution.

*Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 731-33 (1982). On constitutional issues, only prior holdings of this Court or the Supreme Court bind the panel here.

**A. The Javits Amendment Did Not Delegate Any Relevant Authority**

Because agencies axiomatically lack authority not expressly delegated to them, *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988), and judicial deference applies only to actions within agencies’ delegations, *Chevron*, 467 U.S. at 865, the Javits Amendment cannot

justify deference.

*First*, the Javits Amendment directed HEW's Secretary to issue *proposed* regulations, which command no deference. *Matter of Appletree Markets, Inc.*, 19 F.3d 969, 973 (5th Cir. 1994); *Public Citizen, Inc. v. Shalala*, 932 F.Supp. 13, 18 n.6 (D.D.C. 1996) (citing *Public Citizen Health Research Group v. Commissioner, F.D.A.*, 740 F.2d 21, 32-33 (D.C. Cir. 1984)); *Utah Wilderness Alliance v. Dabney*, 222 F.3d 819, 829 (10<sup>th</sup> Cir. 2000). By requiring only *proposed* regulations, the Amendment met the stated objective of "not ... confer[ring] on HEW any authority it does not already have." 120 CONG. REC. 15,323 (Senate version); S. CONF. REP. 93-1026, *reprinted in* 1974 U.S.C.C.A.N. 4271 (adopting Senate language).

*Second*, assuming *arguendo* that it confers *any* authority, the Javits Amendment confers only the one-time authority to issue proposed regulations within 30 days of the Education Amendments of 1974's enactment. As such, courts would defer only to HEW's 1974 proposal, not to HEW's 1975 final rule, much less to any agency's subsequent actions, proposed or final. Unlike *Chevron's* broad delegation, such temporary, special-circumstance delegations cannot

elevate the delegate to the delegator's stature. *U.S. v. Eaton*, 169 U.S. 331, 343 (1898).

*Third*, and most importantly, assuming *arguendo* that the Javits Amendment conferred special Title IX authority, the Javits Amendment's exclusive focus on *intercollegiate* athletics would leave HEW without deference for the *interscholastic* athletics at issue here. Given the *Kelley* court's reliance on the Javits Amendment in that *intercollegiate*-athletics case, it necessarily follows that this Court has recognized that HEW had (and ED has) no claim to authority with respect to *interscholastic* athletics. This congressional distinction – evident on the face of the Javits Amendment – coalesces with the long history of local control over education:

Where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result. This requirement stems from our prudential desire not to needlessly reach constitutional issues and our assumption that Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority. This concern is heightened where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.

*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 172-73 (2001) (citations omitted).

Finally, any conferred authority would not belong to ED because DEOA left any Javits Amendment delegation with HHS. *See* Section II.C, *infra*. Because Congress cannot have intended to crown HHS as the Title IX czar, this Court should read the Javits Amendment consistent with its history and language as not conferring any authority.

**B. Courts Owe No Deference to Federal Agencies' Interpretation under Statutes that Delegate Identical Authority to Multiple Agencies**

Title IX delegates the same authority to multiple agencies. 20 U.S.C. §1682. Senator Bayh's failed 1971 amendment explicitly delegated rulemaking authority only to HEW. 117 CONG. REC. 30,399, 30,404 (1971); *accord id.* 30,407 (Sen. Bayh). Senator Bayh's 1972 amendment (which, with the House bill, became Title IX) delegates rulemaking authority to *all* federal agencies. 118 Cong. Reg. 5803 (1972). "Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other

language.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) (citation omitted). Consequently, neither ED nor ED’s predecessor (HEW) “owns” Title IX in any way that triggers *Chevron* deference.

Under the circumstances, either no deference or the lesser “*Skidmore*” deference applies. Compare *Chevron, U.S.A., Inc. v. N.R.D.C.*, 467 U.S. 837, 843-44 (1984) with *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); see *Bragdon v. Abbott*, 524 U.S. 624, 642 (1998); *U.S. v. Mead Corp.*, 533 U.S. 218, 227-28 (2001); *Bowen v. Am. Hospital Ass’n*, 476 U.S. 610, 643 n.30 (1986) (plurality); *Wachtel v. O.T.S.*, 982 F.2d 581, 585 (D.C. Cir. 1993) (*Chevron* deference is “inappropriate” to affirmative-action statute administered by four agencies). Even if *Kelley* correctly deferred to HEW’s intercollegiate-athletics provisions within the Javits-Amendment delegation, the Javits Amendment does not apply here.

### **C. ED Lacks Unique Title IX Authority**

In splitting HEW into ED and HHS, Congress did not transfer HEW’s interpretive authority to ED.<sup>8</sup> Nothing in DEOA §301 (or

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<sup>8</sup> In a footnote, the Supreme Court stated that “HEW’s functions under Title IX were transferred to [ED].” *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 517 n.4 (1982). The footnote explains why ED

elsewhere) transfers Title IX rulemaking authority to ED. DEOA §301(a)(1)'s laundry list of transferred offices does not include HEW's Secretary, and DEOA §301(a)(2)'s laundry list of transferred statutes does not include Title IX or the Javits Amendment. 20 U.S.C. §3441(a)(1)-(2). Because it applies only to "functions transferred by this section," DEOA §301(a)(3) cannot include rulemaking authority under Title IX or the Javits Amendment, which "this section" (§301) did not transfer. 20 U.S.C. §3441(a)(3). Further, HEW's *rulemaking* authority was administered by the *HEW Secretary*, and thus was not "being administered by the Office of Civil Rights" ("OCR"), as required by §301(a)(3). Like all agencies, ED draws rulemaking authority from Title IX itself, 20 U.S.C. §1682, which authorizes *each* federal agency to issue Title IX regulations.<sup>9</sup>

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defended that litigation on *certiorari*, but nothing substantive hinged on which agency defended there. Procedurally, *North Haven* parties challenging Title IX's application to employment received ED funding, so they would have lacked standing against HHS. "[F]leeting footnotes" on which nothing turned are not precedents. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 512-13 & n.9 (2006) (disregarding remarks "[e]n passant" in "fleeting footnote[s]" when "our decision did not turn on that characterization, and the parties did not cross swords over it").

<sup>9</sup> Had DEOA transferred HEW's OCR to ED, as the Senate Bill proposed, Doe could make the strained argument that §301(a)(3)'s

Under §902, ED issued regulations upon its formation in 1980, 34 C.F.R. pt. 106, and HHS retains the original HEW regulations, 45 C.F.R. pt. 86. One of two situations applies: (1) as inheritor of all non-transferred HEW authority, HHS is the nation’s Title IX czar, 20 U.S.C. §3508(b), or (2) consistent with their plain language and legislative histories, neither Title IX nor the Javits Amendment delegated special authority to HEW, HHS, or ED.

**D. Deference Cannot Overturn Plain Regulatory or Statutory Text**

Courts owe no deference to regulatory interpretations inconsistent with the statute, *Chevron*, 467 U.S. at 842-43, which here prohibits only intentional discrimination. *See* Section IV.A.2, *infra*. Under similar circumstances, the Supreme Court easily found that regulations did not expand Title VI’s enforceable scope. *U.S. v. Fordice*, 505 U.S. 717, 732 n.7 (1992). Even if Title IX affords agencies deference, regulations beyond the statute deserve no deference in private-party litigation.

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“relates-to” clause includes any “function” related to any authority wielded by OCR. But the Senate receded to the House in conference, and the DEOA created a new OCR within ED instead of transferring HEW’s OCR. H.R. CONF REP. 96-459, 46-47, *reprinted in* 1979 U.S.C.C.A.N. 1612, 1626; 20 U.S.C. § 3413 (*creating* ED’s OCR). Thus, the strained argument is neither availing nor available.

### **III. THE PLAINTIFFS CANNOT SHOW A VIOLATION OF THE FOURTEENTH AMENDMENT OR TITLE IX**

Neither the Fourteenth Amendment nor Title IX prohibits the schools' actions here. At the outset, as the Schools explain in their brief, any schools that played Franklin in "primetime" obviously cannot be liable for the Plaintiffs' perceived slights about non-primetime slots. Schools Br. at 2-3. Similarly, for any schools where the basketball players prefer weeknight (*i.e.*, non-primetime) games, Plaintiffs cannot fault those schools for accommodating their own students. Schools Br. at 13. The question presented here is whether the differential rates of primetime versus non-primetime slots for boys' and girls' basketball violate either the Equal Protection Clause or Title IX. They do not.

#### **A. The Constitution Does Not Prohibit Differential Basketball Scheduling**

The parties divide sharply on discriminatory intent's role in equal-protection violations for what Plaintiffs characterize as sex-based distinctions in basketball scheduling. *Compare* Pls.' Br. at 38-40 *with* Schools Br. at 52-53. Because girls' basketball is not similar to boys' basketball, however, the Equal Protection Clause does not require equal treatment. In any event, opportunity is substantially equal (*i.e.*, any differences here do not approach "substantial *inequality*"). Finally, the

less-demanding rational-basis test applies to educational decisions *within single-sex teams*. Accordingly, the Schools are correct.

**1. Federal Oversight of Education – a Traditionally Local Concern – Requires Clear Fourteenth-Amendment Violations**

Pursuant to education’s First-Amendment protections, *Grutter v. Bollinger*, 539 U.S. 306, 328-29 (2003), and its traditional regulation by states and localities, *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968), courts require a clear constitutional violation before encroaching on schools’ prerogatives: “[e]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.” *Graff v. City of Chicago*, 9 F.3d 1309, 1325-26 (7th Cir. 1993) (quoting *FCC v. Beach Communications, Inc.*, 113 S.Ct. 2096, 2101 (1993)).

**2. Sex Discrimination Requires either Intent or Disadvantageous Sex-Based Preferences**

“[O]rdinary equal protection standards ... require ... show[ing] both that the [challenged action] had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Wayte v. U.S.*, 470 U.S. 598, 608 (1985). Although Plaintiffs would have this Court ignore intent, all of the cases that she and her *amici* cite involve discriminatory sex-based preferences that denied the plaintiff an

otherwise-applicable entitlement (e.g., denying admission to unique institutions, post-season competition, pensions or benefits, or opportunities for promotion).<sup>10</sup> The required “discriminatory purpose” means “more than intent as volition or intent as aware of consequences. It implies that the decisionmaker ... selected or reaffirmed a course of action at least in part ‘because of,’ not merely ‘in spite of’ its *adverse* effects upon an identifiable group.” *Feeney*, 442 U.S. at 279 (emphasis added); *Franklin v. City of Evanston*, 384 F.3d 838, 846 (7th Cir. 2004) (“equal protection violation ... may not rely on a disparate impact claim but must show that [government] acted with discriminatory intent”). For “cases of [that] genre,” heightened review “address[es] specifically and only an ... opportunity recognized ... as ‘unique.’” *Virginia*, 518 U.S. 515, 534-35 & n.7 (1996). In contrast, the Schools have not acted because of sex but because boys’ basketball draws bigger crowds than girls’ basketball.

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<sup>10</sup> See, e.g., *Feeney*, 442 U.S. at 274 (higher scrutiny covers “covert or overt” sex preferences); *Hogan*, 458 U.S. at 723 & n.8 (scrutiny applies to state actions that “discriminate” and “disadvantage” by sex); *Virginia*, 518 U.S. at 531-34 (scrutiny applies to state action “denying rights or opportunities,” “artificial[ly] constraint[ing] an individual’s opportunity,” or “creat[ing] or perpetuat[ing] the legal, social, and economic inferiority of women”).

To prevail, Plaintiffs must prove discriminatory purpose, which their opening brief fails to do. By failing to brief the issue, they waive it. *Long v. Teachers' Retirement System of Illinois*, 585 F.3d 344, 349 (7th Cir. 2009). Without discrimination, Plaintiffs cannot claim *any* relief.

### **3. Differential Basketball Scheduling Does Not Trigger Heightened Scrutiny**

In *U.S. v. Virginia*, the Supreme Court announced heightened scrutiny for unique post-secondary educational opportunities. *U.S. v. Virginia*, 518 U.S. at 533. At the outset, that regime is entirely inapposite to local elementary and secondary schools that offer substantially equal single-sex programs: heightened scrutiny should not apply to this local school issue. In cases where this heightened scrutiny applies, defendants will prevail if their sex-based classifications achieve “important governmental objectives,” and the classifications “substantially relate” to achieving those objectives. *Id.* Even under this standard, Plaintiffs cannot prevail because the Schools acted not on the basis of sex but on the basis of community interest and in scheduling sporting events – not just basketball, but all sports – within the available resources.

Certainly, managing resources is an important government

objective, and nothing suggests that the Schools' allocation fails to relate substantially to that objective. Thus, *if heightened scrutiny applied*, the Schools would readily meet it. But Plaintiffs' entire case lies in the flawed premise that girls' and boys' basketball have equal rights, notwithstanding any differences between the sports or in school and community interest. Here, "it is important to distinguish between what the Constitution permits and what it requires," *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 385 (1979), and to focus on the level of scrutiny that applies to actions taken within single-sex teams in multi-sport athletic departments.

Even assuming that they could show the necessary "adverse effect," Plaintiffs would also need to show that the schools acted *because of sex*, not those *in spite of sex*. *Feeney*, 442 U.S. at 279. Once the Schools permissibly segregate their athletic departments into single-sex teams, however, sex no longer necessarily factors into decisions about the conditions on those single-sex teams. Instead, coaches and athletic directors decide what works best for particular sports, within the context not only of a larger athletic department but also community interest. When the team in question consists entirely of one sex, the

rational-basis test applies:

It is well settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless “the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective.”

*Harris v. McRae*, 448 U.S. 297, 322 (1980) (rational-basis test applies to abortion-funding restrictions notwithstanding the exclusive effect on women). At least until the boys’ and girls’ overall athletic regimes become *substantially* unequal, individual teams can defend decisions based on sex-neutral criteria such as spectator interest.<sup>11</sup> Unlike elite institutions like the Virginia Military Institute that provide unique and selective opportunities, *Virginia*, 518 U.S. at 550, public elementary and secondary schools certainly can educate children in a non-discriminatory manner that takes into consideration all of the factors relevant to athletics (e.g., community interest, other demands of resources, etc.).

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<sup>11</sup> For the reasons set forth in this brief, *amicus* Eagle Forum submits that the Second and Sixth Circuits wrongly decided the sports-scheduling litigation on which Plaintiffs rely. In any event, the district court readily distinguished those extra-circuit authorities.

#### **4. Equal Protection Does Not Prohibit Differential Treatment of Groups that Fundamentally Differ**

At bottom, Plaintiffs and their *amici* argue that schools nationwide must treat boys' and girls' (and men's and women's) basketball the same because they all play basketball and only sex-based discrimination could explain any differential treatment. But “[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike.” *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Reed v. Reed*, 404 U.S. 71, 75 (1971) (Fourteenth Amendment allows “treat[ing] different classes of persons in different ways”). Indeed, even *Virginia* recognizes that males and females are different. *Virginia*, 518 U.S. at 533. Calling something a stereotype does not change reality. Equal Protection does not empower Plaintiffs to compel the Schools (and the communities they serve) to conform to unisex stereotypes. Like it or not, boys' basketball is more interesting to more spectators than girls' basketball. Spectator interest is an entirely permissible basis on which to schedule games.

#### **B. Title IX Does Not Prohibit Differential Basketball Scheduling**

The Plaintiffs' ability to challenge the Schools' basketball scheduling raises two distinct questions: (1) can they challenge

scheduling under the regulations, and (2) can they challenge scheduling under the statute? The regulations are unenforceable here, and the statute does not prohibit differential scheduling not “*because of sex.*”

### **1. Plaintiffs Cannot Enforce Title IX Regulations**

Title IX’s regulations (as distinct from Title IX) are unenforceable here for two reasons.

#### **a. Regulations that Exceed the Statute Are Unenforceable**

Under *Sandoval*, statutes like Title IX create an implied private right of action to enforce *statutory* bans of intentional discrimination, but do not create a private right of action to enforce *regulations* that address conduct that the statute does not prohibit. *Sandoval*, 532 U.S. at 288-89; *Gebser v. Lago Vista Independent School District*, 524 US 274, 292 (1998). Only regulations that define statutory discrimination are enforceable: “[l]anguage in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not.” *Sandoval*, 532 U.S. at 291. If the regulations prohibit more than statutory intentional discrimination, the regulations are unenforceable.

The regulations here are several steps removed from §901(a)’s

rights-creating language that guided *Cannon*: (1) §902 does not itself contain any rights-creating language; (2) the regulations' statutory source (§902) applies to enforcing agencies, not to regulated recipients much less to beneficiaries like Plaintiffs; (3) the regulations confer group-wide benefits, not individual rights, so that the athletic department as a whole conforms to the regulations' equal-opportunity regime (*i.e.*, the Schools could reach *overall* equality without benefiting girls' basketball); and (4) the regulations require more (equal opportunity) than the statute prohibits (intentional discrimination). *Sandoval*, 532 U.S. at 288-89. Thus, the regulations are not enforceable beyond statutory discrimination.

**b. Failure to Meet Regulatory Conditions Precedent Requires Dismissal**

As indicated in Section I.A, *supra*, Title IX's regulations impose several conditions precedent on regulatory enforcement – *e.g.*, agencies' attempting voluntary resolution, ten days' written notice – that remain unmet here. Under federal common law, failure to meet conditions precedent can render third-party beneficiaries unable to state a claim for relief. *See, e.g., Shaw Constructors v. ICF Kaiser Engineers, Inc.*, 395 F.3d 533, 540 & n.15 (5th Cir. 2004); *Kane Enterprises v. MacGregor*

(USA) Inc., 322 F.3d 371, 375 (5th Cir. 2003). Alternatively, Plaintiffs lack standing as third-party beneficiaries to the federal contracts because the regulations’ enforceability has not vested. *See* Section I.B, *supra*. Either way, Plaintiffs cannot prevail on their Title IX regulatory claims. Assuming *arguendo* that this defect – namely, the lack of a vested, enforceable regulatory interest – is *not* jurisdictional, it nonetheless precludes Plaintiffs’ stating a claim for regulatory relief.

## **2. Title IX Statutorily Prohibits Only Intentional Discrimination under Fourteenth Amendment**

Shorn of their regulatory claims, Plaintiffs can argue only their statutory claims under Title IX. No-one can dispute that §901(a) prohibits only intentional, sex-based discrimination. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. at 173-74. It would be “absurd” to contend otherwise. *Sandoval*, 532 U.S. at 282 & n.2. Because this Court owes no deference to competing agency interpretations (Section II, *supra*) and those agency interpretations are unenforceable without the regulatory conditions precedent (Section I.A, *supra*), the substantive Title IX question collapses to the constitutional question discussed in Section III.A, *supra*.

For the same reasons outlined in Section III.A, *supra*, that the

Schools have not violated the Fourteenth Amendment’s intentional-discrimination prohibitions, the Schools have not violated Title IX’s intentional-discrimination prohibitions. *Hildebrandt v. Illinois Dep’t of Natural Resources*, 347 F.3d 1014, 1036 (7th Cir. 2003) (because “[t]he same standards for proving intentional discrimination apply to Title VII and § 1983 equal protection claims,” the “§ 1983 claims ... can be dismissed on the same basis as the Title VII claims”); *Davis v. Monroe County Board of Education*, 526 U.S. 629, 640 (1999) (relying on Title VII to interpret Title IX).

### **CONCLUSION**

This Court should dismiss Plaintiffs’ Title IX claims for lack of standing and affirm the grant of summary judgment for the constitutional claims on the merits.

Dated: April 6, 2011

Respectfully submitted,

/s/ Lawrence J. Joseph

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**CIRCUIT RULE 31(e)(1) CERTIFICATION**

The undersigned hereby certifies that, pursuant to Circuit Rule 31(e), this brief has been filed electronically.

Dated: April 6, 2011

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## CERTIFICATE OF COMPLIANCE

1. The foregoing brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because the brief contains 7,000 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii) and Circuit Rule 32.2.

2. The foregoing 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 the brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Century Schoolbook 14-point font.

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No. 10-3595

United States Court of Appeals for the Seventh Circuit

AMBER PARKER, *ET AL.*,  
*Plaintiffs-Appellants,*

vs.

INDIANA HIGH SCHOOL ATHLETIC ASSOCIATION, *ET AL.*,  
*Defendants-Appellees,*

ON APPEAL FROM U.S. DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF INDIANA, CIVIL ACTION  
NO. 09-CV-00885, HON. WILLIAM T. LAWRENCE

**ADDENDUM TO  
BRIEF FOR *AMICUS CURIAE* EAGLE FORUM  
EDUCATION & LEGAL DEFENSE FUND IN  
SUPPORT OF APPELLEES AND AFFIRMANCE**

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## 2010 NATIONAL COLLEGE BASKETBALL ATTENDANCE

(For All NCAA Men's Varsity Teams)

|   | <b>Total<br/>Teams</b> | <b>Games or<br/>Sessions</b> | <b>2010<br/>Attendance</b> | <b>Average</b> | <b>Change<br/>In Total</b> | <b>Change<br/>In Avg.</b> |
|---|------------------------|------------------------------|----------------------------|----------------|----------------------------|---------------------------|
| Home Attendance, NCAA Division I                | *334                   | *4,995                       | 25,164,431                 | 5,038          | -213,804                   | -147                      |
| NCAA Championship Tournament                    |                        | 35                           | 706,246                    | 20,178         | -2,050                     | -59                       |
| Other Division I Neutral-Site Attendance        |                        | 221                          | 1,668,782                  | 7,551          | -11,798                    | 338                       |
| <hr/>   |                        |                              |                            |                |                            |                           |
| <b>NCAA DIVISION I TOTALS</b>                   | <b>*334</b>            | <b>*5,251</b>                | <b>27,539,459</b>          | <b>5,245</b>   | <b>-227,652</b>            | <b>-133</b>               |
| <hr/>   |                        |                              |                            |                |                            |                           |
| Home Attendance, NCAA Division II <sup>^</sup>  | *274                   | *3,737                       | 2,837,993                  | 759            | -89,526                    | -43                       |
| Home Attendance, NCAA Division III <sup>^</sup> | *409                   | *4,909                       | 2,008,222                  | 409            | -21,210                    | -25                       |
| Reclassifying Teams                             | 16                     | 201                          | 266,553                    | *1,326         | --                         | --                        |
| Neutral-Site Attendance for Divisions II & III  |                        | 134                          | 140,084                    | 1,045          | --                         | --                        |
| NCAA Division II Tournament Neutral Sites       |                        | 17                           | 21,555                     | 1,268          | --                         | --                        |
| NCAA Division III Tournament Neutral Sites      |                        | 6                            | 6,835                      | 1,139          | --                         | --                        |
| <hr/>   |                        |                              |                            |                |                            |                           |
| <b>NATIONAL TOTALS FOR 2010</b>                 | <b>*1,033</b>          | <b>*14,255</b>               | <b>32,820,701</b>          | <b>2,302</b>   | <b>-290,319</b>            | <b>-91</b>                |

\* Record high. NOTES: The Neutral-Site Attendance for Divisions II and III does not include the NCAA tournaments. The total attendance for the Division II Tournament was 62,553 for a 1,691 average over 37 sessions and the Division III Tournament was 49,286 for a 1,173 average over 42 sessions.

<sup>^</sup> Division II attendance figures do not include five NCAA Puerto Rican schools. Division III schools that did not report attendance were Maine-Presque Isle and Menlo.

### 2010 NCAA DIVISION I MEN'S BASKETBALL ATTENDANCE TEAM LEADERS

| <b>Rank</b> | <b>School</b>      | <b>G</b> | <b>Attendance</b> | <b>Average</b> | <b>Rank</b> | <b>School</b>  | <b>G</b> | <b>Attendance</b> | <b>Average</b> |
|-------------|--------------------|----------|-------------------|----------------|-------------|----------------|----------|-------------------|----------------|
| 1.          | Kentucky           | 18       | 433,989           | 24,111         | 29.         | Georgetown     | 16       | 192,638           | 12,040         |
| 2.          | Syracuse           | 19       | 420,890           | 22,152         | 30.         | South Carolina | 16       | 191,905           | 11,994         |
| 3.          | Louisville         | 19       | 368,537           | 19,397         | 31.         | Kansas St.     | 17       | 202,020           | 11,884         |
| 4.          | Tennessee          | 16       | 306,680           | 19,168         | 32.         | Wake Forest    | 15       | 177,498           | 11,833         |
| 5.          | North Carolina     | 19       | 337,934           | 17,786         | 33.         | Michigan       | 16       | 187,602           | 11,725         |
| 6.          | Wisconsin          | 17       | 292,910           | 17,230         | 34.         | Connecticut    | 19       | 222,024           | 11,685         |
| 7.          | Maryland           | 16       | 268,673           | 16,792         | 35.         | Oklahoma St.   | 16       | 185,362           | 11,585         |
| 8.          | Memphis            | 20       | 329,968           | 16,498         | 36.         | Florida        | 17       | 186,106           | 10,947         |
| 9.          | Kansas             | 19       | 312,230           | 16,433         | 37.         | Alabama        | 17       | 186,068           | 10,945         |
| 10.         | Marquette          | 17       | 265,484           | 15,617         | 38.         | Villanova      | 14       | 153,105           | 10,936         |
| 11.         | Indiana            | 17       | 260,028           | 15,296         | 39.         | Oklahoma       | 15       | 159,744           | 10,650         |
| 12.         | Illinois           | 18       | 267,658           | 14,870         | 40.         | Missouri       | 18       | 186,290           | 10,349         |
| 13.         | Michigan St.       | 17       | 250,903           | 14,759         | 41.         | Wichita St.    | 18       | 185,994           | 10,333         |
| 14.         | Texas              | 17       | 248,697           | 14,629         | 42.         | Pittsburgh     | 18       | 185,209           | 10,289         |
| 15.         | Creighton          | 17       | 246,419           | 14,495         | 43.         | Virginia       | 17       | 172,389           | 10,141         |
| 16.         | Ohio St.           | 18       | 255,265           | 14,181         | 44.         | Xavier         | 15       | 151,843           | 10,123         |
| 17.         | BYU                | 16       | 224,460           | 14,029         | 45.         | Nebraska       | 18       | 179,343           | 9,964          |
| 18.         | UNLV               | 19       | 264,422           | 13,917         | 46.         | Texas A&M      | 16       | 158,222           | 9,889          |
| 19.         | Arizona            | 16       | 221,047           | 13,815         | 47.         | Utah St.       | 18       | 176,260           | 9,792          |
| 20.         | Purdue             | 16       | 218,896           | 13,681         | 48.         | Iowa           | 18       | 171,902           | 9,550          |
| 21.         | Vanderbilt         | 16       | 217,965           | 13,623         | 49.         | Clemson        | 16       | 151,442           | 9,465          |
| 22.         | New Mexico         | 18       | 244,718           | 13,595         | 50.         | California     | 16       | 150,773           | 9,423          |
| 23.         | Minnesota          | 17       | 228,709           | 13,453         | 51.         | Washington     | 19       | 178,281           | 9,383          |
| 24.         | North Carolina St. | 17       | 224,131           | 13,184         | 52.         | Bradley        | 15       | 140,079           | 9,339          |
| 25.         | Arkansas           | 21       | 276,821           | 13,182         | 53.         | Duke           | 17       | 158,338           | 9,314          |
| 26.         | Iowa St.           | 18       | 224,846           | 12,491         | 54.         | Texas Tech     | 19       | 176,510           | 9,290          |
| 27.         | West Virginia      | 15       | 185,629           | 12,375         | 55.         | Virginia Tech  | 19       | 176,159           | 9,272          |
| 28.         | Dayton             | 18       | 220,657           | 12,259         | 56.         | Utah           | 17       | 156,429           | 9,202          |

| Rank | School          | G  | Attendance | Average | Rank | School          | G  | Attendance | Average |
|------|-----------------|----|------------|---------|------|-----------------|----|------------|---------|
| 57.  | LSU             | 18 | 160,836    | 8,935   | 79.  | Georgia         | 16 | 109,348    | 6,834   |
| 58.  | UTEP            | 17 | 147,854    | 8,697   | 80.  | Missouri St.    | 21 | 139,543    | 6,645   |
| 59.  | DePaul          | 15 | 126,760    | 8,451   | 81.  | Stanford        | 16 | 105,561    | 6,598   |
| 60.  | Notre Dame      | 20 | 168,033    | 8,402   | 82.  | Illinois St.    | 17 | 111,537    | 6,561   |
| 61.  | Providence      | 17 | 140,920    | 8,289   | 83.  | Temple          | 14 | 89,263     | 6,376   |
| 62.  | Penn St.        | 16 | 130,402    | 8,150   | 84.  | Auburn          | 17 | 106,867    | 6,286   |
| 63.  | UCLA            | 16 | 129,290    | 8,081   | 85.  | Mississippi     | 19 | 119,278    | 6,278   |
| 64.  | Cincinnati      | 18 | 145,360    | 8,076   | 86.  | Colorado        | 16 | 100,265    | 6,267   |
| 65.  | Georgia Tech    | 16 | 127,669    | 7,979   | 87.  | Charlotte       | 15 | 92,346     | 6,156   |
| 66.  | Siena           | 17 | 133,505    | 7,853   | 88.  | St. John's (NY) | 17 | 103,820    | 6,107   |
| 67.  | Fresno St.      | 17 | 132,045    | 7,767   | 89.  | Oregon St.      | 16 | 97,339     | 6,084   |
| 68.  | Arizona St.     | 20 | 150,510    | 7,526   | 90.  | Gonzaga         | 14 | 84,000     | 6,000   |
| 69.  | Baylor          | 16 | 119,305    | 7,457   | 91.  | VCU             | 19 | 113,993    | 6,000   |
| 70.  | Florida St.     | 16 | 117,381    | 7,336   | 92.  | UAB             | 18 | 107,460    | 5,970   |
| 71.  | Washington St.  | 15 | 109,850    | 7,323   | 93.  | Nevada          | 17 | 100,222    | 5,895   |
| 72.  | San Diego St.   | 15 | 108,412    | 7,227   | 94.  | George Mason    | 16 | 93,392     | 5,837   |
| 73.  | St. Louis       | 22 | 157,274    | 7,149   | 95.  | Hawaii          | 21 | 119,004    | 5,667   |
| 74.  | Oregon          | 19 | 135,322    | 7,122   | 96.  | New Mexico St.  | 15 | 84,878     | 5,659   |
| 75.  | Seton Hall      | 18 | 127,848    | 7,103   | 97.  | UNI             | 14 | 78,981     | 5,642   |
| 76.  | Old Dominion    | 15 | 104,930    | 6,995   | 98.  | Tulsa           | 18 | 98,846     | 5,491   |
| 77.  | Mississippi St. | 17 | 116,919    | 6,878   | 99.  | Marshall        | 19 | 104,143    | 5,481   |
| 78.  | Butler          | 15 | 102,786    | 6,852   | 100. | UCF             | 15 | 81,161     | 5,411   |

### LARGEST DIVISION I MEN'S BASKETBALL AVERAGE ATTENDANCE INCREASE FROM PREVIOUS YEAR

| Rank | School          | 2010 G | 2010 Avg. | 2009 Avg. | Change in Avg. | Rank | School         | 2010 G | 2010 Avg. | 2009 Avg. | Change in Avg. |
|------|-----------------|--------|-----------|-----------|----------------|------|----------------|--------|-----------|-----------|----------------|
| 1.   | Kansas St.      | 17     | 11,884    | 8,940     | 2,943          | 11.  | UNC Greensboro | 15     | 3,185     | 1,872     | 1,313          |
| 2.   | Ark.-Pine Bluff | 9      | 3,994     | 1,975     | 2,019          | 12.  | William & Mary | 13     | 3,144     | 1,879     | 1,266          |
| 3.   | Hampton         | 12     | 3,799     | 1,885     | 1,914          | 13.  | Western Caro.  | 16     | 2,427     | 1,204     | 1,223          |
| 4.   | Kentucky        | 18     | 24,111    | 22,239    | 1,871          | 14.  | Auburn         | 17     | 6,286     | 5,108     | 1,178          |
| 5.   | West Virginia   | 15     | 12,375    | 10,552    | 1,823          | 15.  | Michigan       | 16     | 11,725    | 10,568    | 1,157          |
| 6.   | Colorado        | 16     | 6,267     | 4,637     | 1,630          | 16.  | Syracuse       | 19     | 22,152    | 21,044    | 1,108          |
| 7.   | Oklahoma St.    | 16     | 11,585    | 10,031    | 1,554          | 17.  | UCF            | 15     | 5,411     | 4,390     | 1,020          |
| 8.   | Villanova       | 14     | 10,936    | 9,404     | 1,532          | 18.  | UAB            | 18     | 5,970     | 4,953     | 1,017          |
| 9.   | Prairie View    | 14     | 2,483     | 958       | 1,524          | 19.  | Texas          | 17     | 14,629    | 13,616    | 1,013          |
| 10.  | UNI             | 14     | 5,642     | 4,212     | 1,429          | 20.  | Utah St.       | 18     | 9,792     | 8,798     | 994            |

### DIVISION I ALL GAMES ATTENDANCE (HOME, ROAD, NEUTRAL)

| Rk. | School         | Attendance | Rk. | School             | Attendance | Rk. | School      | Attendance |
|-----|----------------|------------|-----|--------------------|------------|-----|-------------|------------|
| 1.  | Kentucky       | 724,145    | 11. | Illinois           | 485,557    | 21. | Memphis     | 429,140    |
| 2.  | Duke           | 679,274    | 12. | Purdue             | 481,839    | 22. | Connecticut | 425,102    |
| 3.  | Syracuse       | 653,366    | 13. | Texas              | 477,369    | 23. | BYU         | 422,556    |
| 4.  | North Carolina | 598,610    | 14. | Marquette          | 473,992    | 24. | Vanderbilt  | 416,564    |
| 5.  | Michigan St.   | 589,783    | 15. | Wisconsin          | 472,490    | 25. | Arkansas    | 411,342    |
| 6.  | Tennessee      | 588,824    | 16. | Kansas St.         | 450,159    | 26. | New Mexico  | 410,555    |
| 7.  | Louisville     | 569,740    | 17. | Maryland           | 445,431    | 27. | Indiana     | 409,990    |
| 8.  | Kansas         | 562,726    | 18. | Georgetown         | 441,789    | 28. | Baylor      | 403,393    |
| 9.  | Ohio St.       | 550,441    | 19. | Minnesota          | 437,499    | 29. | Butler      | 401,314    |
| 10. | West Virginia  | 531,732    | 20. | North Carolina St. | 431,739    | 30. | Florida     | 399,173    |

## 2010 NCAA DIVISION I MEN'S BASKETBALL CONFERENCE ATTENDANCE

|     |                  | Entire Season |          |            |         | Conference Tournament |            |         |        |
|-----|------------------|---------------|----------|------------|---------|-----------------------|------------|---------|--------|
|     |                  | Total         | Games or | 2010       | Change  | Total                 | Total      |         |        |
|     |                  | Teams         | Sessions | Attendance | In Avg. | Sessions              | Attendance | Average |        |
|     |                  |               |          | Average    |         |                       |            |         |        |
| 1.  | Big Ten          | 11            | 194      | 2,442,591  | 12,591  | 72                    | 5          | 81,625  | 16,325 |
| 2.  | Southeastern     | 12            | 214      | 2,518,749  | 11,770  | 145                   | 6          | 105,967 | 17,661 |
| 3.  | Big 12           | 12            | 211      | 2,366,232  | *11,214 | 819                   | 6          | 113,398 | 18,900 |
| 4.  | Big East         | 16            | 285      | 3,138,877  | 11,014  | 132                   | 8          | 155,000 | 19,375 |
| 5.  | Atlantic Coast   | 12            | 207      | 2,217,642  | 10,713  | -230                  | 6          | 140,223 | 23,371 |
| 6.  | Mountain West    | 9             | 154      | 1,259,160  | 8,176   | -104                  | 5          | 60,012  | 12,002 |
| 7.  | Pacific-10       | 10            | 174      | 1,420,503  | 8,164   | -377                  | 5          | 62,272  | 12,454 |
| 8.  | Missouri Valley  | 10            | 168      | 1,242,638  | 7,397   | -355                  | 5          | 51,613  | 10,323 |
| 9.  | Conference USA   | 12            | 206      | 1,174,441  | 5,701   | -98                   | 6          | 47,073  | 7,846  |
| 10. | Atlantic 10      | 14            | 219      | 1,226,238  | 5,599   | -41                   | 8          | 43,975  | 5,497  |
| 11. | Western Athletic | 9             | 148      | 750,375    | 5,070   | -305                  | 4          | 17,877  | 4,469  |
| 12. | Colonial         | 12            | 184      | 657,371    | 3,573   | -57                   | 6          | 44,372  | 7,395  |
| 13. | Horizon          | 10            | 149      | 509,056    | 3,416   | -67                   | 7          | 20,228  | 2,890  |
| 14. | Mid-American     | 12            | 184      | 514,870    | 2,798   | -151                  | 8          | 27,818  | 3,477  |
| 15. | West Coast       | 8             | 125      | *346,916   | 2,775   | -117                  | 4          | 31,125  | 7,781  |
| 16. | Southern         | 12            | 177      | 440,914    | 2,491   | 70                    | 6          | 27,935  | 4,656  |
| 17. | Sun Belt         | 13            | 191      | 468,152    | 2,451   | -87                   | 5          | 21,477  | 4,295  |
| 18. | Metro Atlantic   | 10            | 138      | 336,188    | 2,436   | -26                   | 5          | 36,956  | 7,391  |
| 19. | Big Sky          | 9             | 122      | 292,933    | 2,401   | 109                   | 4          | 16,625  | 4,156  |
| 20. | Ohio Valley      | 10            | 152      | 334,274    | 2,199   | -301                  | 6          | 16,745  | 2,791  |
| 21. | Summit           | 10            | 144      | 309,711    | 2,151   | -538                  | 4          | 14,294  | 3,574  |
| 22. | Atlantic Sun #   | 9             | 126      | 251,710    | 1,998   | 26                    | 4          | 9,543   | 2,386  |
| 23. | Ivy              | 8             | 105      | 207,223    | 1,974   | 182                   | -          | -       | -      |
| 24. | Big West         | 9             | 123      | 241,662    | 1,965   | 94                    | 4          | 9,923   | 2,481  |
| 25. | Southwestern     | 10            | 118      | 222,179    | 1,883   | 352                   | 4          | 8,143   | 2,036  |
| 26. | America East     | 9             | 118      | 220,293    | 1,867   | -169                  | 4          | 10,668  | 2,667  |
| 27. | Mid-Eastern      | 11            | 142      | 259,293    | 1,826   | -179                  | 7          | 33,865  | 4,838  |
| 28. | Patriot          | 8             | 114      | 183,236    | 1,607   | -86                   | 7          | 15,416  | 2,202  |
| 29. | Big South        | 9             | 135      | 200,832    | 1,488   | -297                  | 6          | 8,346   | 1,391  |
| 30. | Southland        | 11            | 159      | 231,587    | 1,457   | -201                  | 4          | 7,069   | 1,767  |
| 31. | Northeast        | 11            | 149      | 163,013    | 1,094   | -36                   | 7          | 14,105  | 2,015  |
|     | Independent #    | 6             | 73       | 72,273     | 990     | 37                    | -          | -       | -      |

\* Record high for that conference. # Different alignment from the previous year.

NOTE: Entire season total attendance includes the conference tournaments.

## 2010 DIVISION I MEN'S BASKETBALL CHAMPIONSHIP TOURNAMENT ATTENDANCE

| Round                              | Site         | Att.    | Site        | Att.   | Site           | Att.   | Site     | Att.   |
|------------------------------------|--------------|---------|-------------|--------|----------------|--------|----------|--------|
| Opening Round                      | Dayton       | 8,205   |             |        |                |        |          |        |
| First Round                        | Buffalo      | 18,653  | Milwaukee   | 17,580 | Oklahoma City  | 13,382 | San Jose | 12,712 |
|                                    | Buffalo      | 18,948  | Milwaukee   | 17,875 | Oklahoma City  | 13,484 | San Jose | 15,427 |
|                                    | Jacksonville | 10,657  | New Orleans | 10,484 | Providence     | 11,106 | Spokane  | 10,899 |
|                                    | Jacksonville | 12,251  | New Orleans | 10,984 | Providence     | 10,788 | Spokane  | 10,861 |
| Second Round                       | Buffalo      | 18,934  | Milwaukee   | 18,031 | Oklahoma City  | 15,668 | San Jose | 16,044 |
|                                    | Jacksonville | 12,547  | New Orleans | 11,966 | Providence     | 11,271 | Spokane  | 11,036 |
| Regional Semifinals                | Houston      | 45,505  | St. Louis   | 26,377 | Salt Lake City | 17,254 | Syracuse | 22,271 |
| Regional Finals                    | Houston      | 47,492  | St. Louis   | 25,242 | Salt Lake City | 17,587 | Syracuse | 22,497 |
| <b>Final Four</b>                  |              |         |             |        |                |        |          |        |
| National Semifinals                | Indianapolis | 71,298  |             |        |                |        |          |        |
| National Final                     | Indianapolis | 70,930  |             |        |                |        |          |        |
| Final Four Total                   |              | 142,228 |             |        |                |        |          |        |
| <b>Total Tournament Attendance</b> |              | 706,246 |             |        |                |        |          |        |
| <b>Average per Session</b>         |              | 20,178  |             |        |                |        |          |        |

## 2010 NCAA DIVISION II AND III MEN'S BASKETBALL ATTENDANCE TEAM LEADERS

| Rank | Division II        | G/S | Attendance | Avg.  | Rank | Division II         | G/S | Attendance | Avg.  |
|------|--------------------|-----|------------|-------|------|---------------------|-----|------------|-------|
| 1.   | Northern St.       | 15  | 51,207     | 3,414 | 16.  | Valdosta St.        | 15  | 28,353     | 1,890 |
| 2.   | Elizabeth City St. | 12  | 38,089     | 3,174 | 17.  | Mo. Western St.     | 13  | 24,254     | 1,866 |
| 3.   | St. Cloud St.      | 18  | 56,574     | 3,143 | 18.  | Southern Ind.       | 16  | 28,476     | 1,780 |
| 4.   | Central Mo.        | 14  | 40,638     | 2,903 | 19.  | Pittsburg St.       | 14  | 24,531     | 1,752 |
| 5.   | Fort Hays St.      | 15  | 43,511     | 2,901 | 20.  | Minn. St. Mankato   | 18  | 31,521     | 1,751 |
| 6.   | Morehouse          | 14  | 40,600     | 2,900 | 21.  | Alas. Anchorage     | 15  | 25,655     | 1,710 |
| 7.   | Benedict           | 14  | 34,668     | 2,476 | 22.  | Augusta St.         | 18  | 30,477     | 1,693 |
| 8.   | Midwestern St.     | 16  | 38,805     | 2,425 | 23.  | Fort Valley St.     | 15  | 24,923     | 1,662 |
| 9.   | Dixie St.          | 12  | 27,747     | 2,312 | 24.  | Southwest Minn. St. | 15  | 24,843     | 1,656 |
| 10.  | Virginia St.       | 11  | 25,129     | 2,284 | 25.  | Northern Ky.        | 14  | 22,591     | 1,614 |
| 11.  | Augustana (SD)     | 17  | 37,966     | 2,233 | 26.  | Colorado St.-Pueblo | 11  | 17,512     | 1,592 |
| 12.  | Ky. Wesleyan       | 19  | 41,700     | 2,195 | 27.  | West Ga.            | 14  | 21,954     | 1,568 |
| 13.  | Washburn           | 15  | 31,708     | 2,114 | 28.  | Central St. (OH)    | 12  | 18,402     | 1,534 |
| 14.  | S.C. Aiken         | 16  | 33,352     | 2,085 | 29.  | Tarleton St.        | 17  | 25,772     | 1,516 |
| 15.  | Emporia St.        | 14  | 27,341     | 1,953 | 30.  | Mary                | 13  | 18,945     | 1,457 |

| Rank | Division III       | G/S | Attendance | Avg.  | Rank | Division III         | G/S | Attendance | Avg. |
|------|--------------------|-----|------------|-------|------|----------------------|-----|------------|------|
| 1.   | Hope               | 16  | 45,381     | 2,836 | 16.  | Otterbein            | 11  | 9,983      | 908  |
| 2.   | Calvin             | 17  | 36,298     | 2,135 | 17.  | Wis.-Whitewater      | 13  | 11,675     | 898  |
| 3.   | Wis.-Stevens Point | 17  | 27,683     | 1,628 | 18.  | Mary Hardin-Baylor   | 18  | 16,100     | 894  |
| 4.   | Wooster            | 18  | 27,520     | 1,529 | 19.  | Washington-St. Louis | 15  | 13,412     | 894  |
| 5.   | Carthage           | 13  | 18,535     | 1,426 | 20.  | Gust. Adolphus       | 14  | 12,388     | 885  |
| 6.   | Whitworth          | 15  | 18,750     | 1,250 | 21.  | Albright             | 13  | 11,479     | 883  |
| 7.   | Frank. & Marsh.    | 17  | 19,674     | 1,157 | 22.  | York (PA)            | 15  | 13,193     | 880  |
| 8.   | Maryville (TN)     | 13  | 14,667     | 1,128 | 23.  | New York U.          | 16  | 13,661     | 854  |
| 9.   | Guilford           | 16  | 17,628     | 1,102 | 24.  | Wis.-Platteville     | 11  | 9,382      | 853  |
| 10.  | East. Mennonite    | 13  | 13,558     | 1,043 | 25.  | Augustana (IL)       | 12  | 10,122     | 844  |
| 11.  | Northwestern (MN)  | 13  | 13,482     | 1,037 | 26.  | Elmhurst             | 11  | 9,271      | 843  |
| 12.  | Wheaton (IL)       | 11  | 11,131     | 1,012 | 27.  | Willamette           | 10  | 8,372      | 837  |
| 13.  | Ill. Wesleyan      | 14  | 14,065     | 1,005 | 28.  | Defiance             | 13  | 10,871     | 836  |
| 14.  | Hampden-Sydney     | 13  | 11,842     | 911   | 29.  | Anderson (IN)        | 16  | 13,300     | 831  |
| 15.  | Mississippi Col.   | 11  | 10,011     | 910   | 30.  | Wabash               | 13  | 10,676     | 821  |

## 2010 NCAA DIVISION II AND III MEN'S BASKETBALL ATTENDANCE CONFERENCE LEADERS

| Rank | Division II        | Total Teams | Games or Sessions | 2010 Attendance | Average | Change In Avg. |
|------|--------------------|-------------|-------------------|-----------------|---------|----------------|
| 1.   | Mid-America        | 11          | 156               | 263,817         | 1,691   | -16            |
| 2.   | Northern Sun       | 14          | 203               | 290,945         | 1,433   | -267           |
| 3.   | CIAA               | 11          | 128               | 163,308         | 1,276   | -147           |
| 4.   | SIAC               | 13          | 172               | 214,990         | 1,250   | 89             |
| 5.   | Great Lakes Valley | 15          | 222               | 214,568         | 967     | -125           |
| 6.   | Gulf South         | 14          | 193               | 178,937         | 927     | 70             |
| 7.   | Peach Belt         | 13          | 194               | 173,184         | 893     | -46            |
| 8.   | Lone Star          | 14          | 195               | 172,160         | 883     | 17             |
| 9.   | Great Northwest    | 9           | 121               | 99,996          | 826     | -99            |
| 10.  | RMAC               | 14          | 170               | 137,391         | 808     | 42             |

| Rank | Division III         | Total Teams | Games or Sessions | 2010 Attendance | Average | Change In Avg. |
|------|----------------------|-------------|-------------------|-----------------|---------|----------------|
| 1.   | Michigan Intercol.   | 8           | 100               | 106,564         | 1,066   | 7              |
| 2.   | Illinois & Wisconsin | 8           | 98                | 76,189          | 777     | -195           |
| 3.   | Wisconsin AC         | 9           | 112               | 84,799          | 757     | -32            |
| 4.   | ODAC                 | 11          | 140               | 94,400          | 674     | 92             |
| 5.   | Northwest            | 9           | 101               | 65,863          | 652     | -18            |
| 6.   | Ohio AC              | 11          | 114               | 72,783          | 638     | -87            |
| 7.   | North Coast          | 10          | 118               | 73,845          | 626     | 21             |
| 8.   | Iowa Intercollegiate | 9           | 103               | 62,238          | 604     | -45            |
| 9.   | Great South          | 4           | 48                | 25,972          | 541     | 23             |
| 10.  | Heartland Athletic   | 9           | 113               | 58,887          | 521     | -9             |

## 2010 NCAA DIVISION I TEAM-BY-TEAM BASKETBALL ATTENDANCE

| Team               | G  | Attendance | Avg.   | Team                | G  | Attendance | Avg.   |
|--------------------|----|------------|--------|---------------------|----|------------|--------|
| A&M-Corpus Christi | 12 | 18,520     | 1,543  | Dartmouth           | 15 | 8,925      | 595    |
| Air Force          | 17 | 42,875     | 2,522  | Davidson            | 14 | 55,230     | 3,945  |
| Akron              | 18 | 50,830     | 2,824  | Dayton              | 18 | 220,657    | 12,259 |
| Alabama            | 17 | 186,068    | 10,945 | Delaware            | 15 | 37,186     | 2,479  |
| Alabama A&M        | 14 | 30,553     | 2,182  | Delaware St.        | 15 | 15,060     | 1,004  |
| Alabama St.        | 12 | 20,435     | 1,703  | Denver              | 16 | 31,671     | 1,979  |
| Albany (NY)        | 13 | 34,394     | 2,646  | DePaul              | 15 | 126,760    | 8,451  |
| Alcorn St.         | 10 | 10,925     | 1,093  | Detroit             | 16 | 40,577     | 2,536  |
| American           | 15 | 20,862     | 1,391  | Drake               | 16 | 72,156     | 4,510  |
| Appalachian St.    | 18 | 36,456     | 2,025  | Drexel              | 14 | 19,040     | 1,360  |
| Arizona            | 16 | 221,047    | 13,815 | Duke                | 17 | 158,338    | 9,314  |
| Arizona St.        | 20 | 150,510    | 7,526  | Duquesne            | 15 | 51,915     | 3,461  |
| Ark.-Pine Bluff    | 9  | 35,947     | 3,994  | East Carolina       | 15 | 57,912     | 3,861  |
| Arkansas           | 21 | 276,821    | 13,182 | East Tenn. St.      | 14 | 49,656     | 3,547  |
| Arkansas St.       | 15 | 49,887     | 3,326  | Eastern Ill.        | 16 | 19,826     | 1,239  |
| Army               | 14 | 15,064     | 1,076  | Eastern Ky.         | 18 | 41,400     | 2,300  |
| Auburn             | 17 | 106,867    | 6,286  | Eastern Mich.       | 15 | 15,104     | 1,007  |
| Austin Peay        | 15 | 41,835     | 2,789  | Eastern Wash.       | 13 | 20,331     | 1,564  |
| Ball St.           | 17 | 57,297     | 3,370  | Elon                | 11 | 12,240     | 1,113  |
| Baylor             | 16 | 119,305    | 7,457  | Evansville          | 16 | 77,314     | 4,832  |
| Belmont            | 13 | 19,322     | 1,486  | Fairfield           | 14 | 34,029     | 2,431  |
| Bethune-Cookman    | 14 | 9,872      | 705    | Fairleigh Dickinson | 14 | 7,335      | 524    |
| Binghamton         | 12 | 44,031     | 3,669  | FIU                 | 13 | 14,848     | 1,142  |
| Boise St.          | 16 | 48,980     | 3,061  | Fla. Atlantic       | 13 | 16,947     | 1,304  |
| Boston College     | 17 | 90,394     | 5,317  | Florida             | 17 | 186,106    | 10,947 |
| Boston U.          | 14 | 13,550     | 968    | Florida A&M         | 12 | 18,469     | 1,539  |
| Bowling Green      | 14 | 23,922     | 1,709  | Florida St.         | 16 | 117,381    | 7,336  |
| Bradley            | 15 | 140,079    | 9,339  | Fordham             | 13 | 33,980     | 2,614  |
| Brown              | 13 | 16,498     | 1,269  | Fresno St.          | 17 | 132,045    | 7,767  |
| Bucknell           | 13 | 32,686     | 2,514  | Furman              | 14 | 20,348     | 1,453  |
| Buffalo            | 13 | 25,707     | 1,977  | Ga. Southern        | 14 | 26,119     | 1,866  |
| Butler             | 15 | 102,786    | 6,852  | Gardner-Webb        | 15 | 20,825     | 1,388  |
| BYU                | 16 | 224,460    | 14,029 | George Mason        | 16 | 93,392     | 5,837  |
| Cal Poly           | 12 | 25,980     | 2,165  | George Washington   | 15 | 33,113     | 2,208  |
| Cal St. Fullerton  | 13 | 18,116     | 1,394  | Georgetown          | 16 | 192,638    | 12,040 |
| Cal St. Northridge | 13 | 14,620     | 1,125  | Georgia             | 16 | 109,348    | 6,834  |
| California         | 16 | 150,773    | 9,423  | Georgia St.         | 14 | 19,396     | 1,385  |
| Campbell           | 15 | 29,739     | 1,983  | Georgia Tech        | 16 | 127,669    | 7,979  |
| Canisius           | 12 | 16,833     | 1,403  | Gonzaga             | 14 | 84,000     | 6,000  |
| Centenary (LA)     | 14 | 12,329     | 881    | Grambling           | 11 | 14,245     | 1,295  |
| Central Conn. St.  | 12 | 18,357     | 1,530  | Green Bay           | 15 | 57,707     | 3,847  |
| Central Mich.      | 13 | 23,342     | 1,796  | Hampton             | 12 | 45,587     | 3,799  |
| Charleston So.     | 14 | 10,459     | 747    | Hartford            | 13 | 16,279     | 1,252  |
| Charlotte          | 15 | 92,346     | 6,156  | Harvard             | 13 | 20,450     | 1,573  |
| Chattanooga        | 16 | 55,866     | 3,492  | Hawaii              | 21 | 119,004    | 5,667  |
| Chicago St.        | 12 | 16,068     | 1,339  | High Point          | 13 | 17,449     | 1,342  |
| Cincinnati         | 18 | 145,360    | 8,076  | Hofstra             | 17 | 40,963     | 2,410  |
| Citadel            | 14 | 29,572     | 2,112  | Holy Cross          | 12 | 26,354     | 2,196  |
| Clemson            | 16 | 151,442    | 9,465  | Houston             | 15 | 48,033     | 3,202  |
| Cleveland St.      | 18 | 41,009     | 2,278  | Howard              | 9  | 8,918      | 991    |
| Coastal Caro.      | 19 | 19,872     | 1,046  | Idaho               | 14 | 22,965     | 1,640  |
| Col. of Charleston | 13 | 50,888     | 3,914  | Idaho St.           | 12 | 26,001     | 2,167  |
| Colgate            | 13 | 6,604      | 508    | Ill.-Chicago        | 14 | 50,803     | 3,629  |
| Colorado           | 16 | 100,265    | 6,267  | Illinois            | 18 | 267,658    | 14,870 |
| Colorado St.       | 15 | 50,878     | 3,392  | Illinois St.        | 17 | 111,537    | 6,561  |
| Columbia           | 13 | 16,184     | 1,245  | Indiana             | 17 | 260,028    | 15,296 |
| Connecticut        | 19 | 222,024    | 11,685 | Indiana St.         | 14 | 67,298     | 4,807  |
| Coppin St.         | 13 | 12,863     | 989    | Iona                | 14 | 28,959     | 2,069  |
| Cornell            | 12 | 43,897     | 3,658  | Iowa                | 18 | 171,902    | 9,550  |
| Creighton          | 17 | 246,419    | 14,495 | Iowa St.            | 18 | 224,846    | 12,491 |

| <b>Team</b>      | <b>G</b> | <b>Attendance</b> | <b>Avg.</b> | <b>Team</b>        | <b>G</b> | <b>Attendance</b> | <b>Avg.</b> |
|------------------|----------|-------------------|-------------|--------------------|----------|-------------------|-------------|
| IPFW             | 14       | 27,259            | 1,947       | New Hampshire      | 13       | 14,642            | 1,126       |
| IUPUI            | 14       | 18,422            | 1,316       | New Mexico         | 18       | 244,718           | 13,595      |
| Jackson St.      | 12       | 22,674            | 1,890       | New Mexico St.     | 15       | 84,878            | 5,659       |
| Jacksonville     | 11       | 33,417            | 3,038       | New Orleans        | 13       | 6,207             | 477         |
| Jacksonville St. | 17       | 28,082            | 1,652       | Niagara            | 12       | 25,484            | 2,124       |
| James Madison    | 14       | 52,251            | 3,732       | Nicholls St.       | 11       | 3,608             | 328         |
| Kansas           | 19       | 312,230           | 16,433      | NJIT               | 13       | 5,482             | 422         |
| Kansas St.       | 17       | 202,020           | 11,884      | Norfolk St.        | 10       | 16,668            | 1,667       |
| Kennesaw St.     | 14       | 16,160            | 1,154       | North Carolina     | 19       | 337,934           | 17,786      |
| Kent St.         | 16       | 54,501            | 3,406       | North Carolina St. | 17       | 224,131           | 13,184      |
| Kentucky         | 18       | 433,989           | 24,111      | North Dakota St.   | 14       | 39,085            | 2,792       |
| La Salle         | 13       | 28,222            | 2,171       | North Florida      | 12       | 17,585            | 1,465       |
| La.-Lafayette    | 14       | 38,672            | 2,762       | North Texas        | 14       | 38,022            | 2,716       |
| La.-Monroe       | 14       | 19,570            | 1,398       | Northeastern       | 13       | 26,902            | 2,069       |
| Lafayette        | 16       | 29,690            | 1,856       | Northern Ariz.     | 12       | 10,064            | 839         |
| Lamar            | 18       | 53,469            | 2,971       | Northern Colo.     | 15       | 34,383            | 2,292       |
| Lehigh           | 17       | 21,838            | 1,285       | Northern Ill.      | 14       | 22,502            | 1,607       |
| Liberty          | 14       | 37,441            | 2,674       | Northwestern       | 19       | 96,691            | 5,089       |
| Lipscomb         | 14       | 21,542            | 1,539       | Northwestern St.   | 14       | 17,752            | 1,268       |
| Long Beach St.   | 11       | 32,266            | 2,933       | Notre Dame         | 20       | 168,033           | 8,402       |
| Long Island      | 13       | 9,425             | 725         | Oakland            | 14       | 38,263            | 2,733       |
| Longwood         | 12       | 12,391            | 1,033       | Ohio               | 17       | 89,918            | 5,289       |
| Louisiana Tech   | 14       | 34,129            | 2,438       | Ohio St.           | 18       | 255,265           | 14,181      |
| Louisville       | 19       | 368,537           | 19,397      | Oklahoma           | 15       | 159,744           | 10,650      |
| Loyola (IL)      | 15       | 33,120            | 2,208       | Oklahoma St.       | 16       | 185,362           | 11,585      |
| Loyola (MD)      | 13       | 13,725            | 1,056       | Old Dominion       | 15       | 104,930           | 6,995       |
| Loyola Marymount | 15       | 33,886            | 2,259       | Oral Roberts       | 13       | 60,603            | 4,662       |
| LSU              | 18       | 160,836           | 8,935       | Oregon             | 19       | 135,322           | 7,122       |
| Maine            | 12       | 15,879            | 1,323       | Oregon St.         | 16       | 97,339            | 6,084       |
| Manhattan        | 14       | 18,088            | 1,292       | Pacific            | 15       | 52,097            | 3,473       |
| Marist           | 13       | 22,706            | 1,747       | Penn               | 13       | 51,558            | 3,966       |
| Marquette        | 17       | 265,484           | 15,617      | Penn St.           | 16       | 130,402           | 8,150       |
| Marshall         | 19       | 104,143           | 5,481       | Pepperdine         | 16       | 18,485            | 1,155       |
| Maryland         | 16       | 268,673           | 16,792      | Pittsburgh         | 18       | 185,209           | 10,289      |
| Massachusetts    | 14       | 55,823            | 3,987       | Portland           | 15       | 32,829            | 2,189       |
| McNeese St.      | 12       | 6,604             | 550         | Portland St.       | 12       | 12,109            | 1,009       |
| Md.-East. Shore  | 12       | 23,591            | 1,966       | Prairie View       | 14       | 34,755            | 2,483       |
| Memphis          | 20       | 329,968           | 16,498      | Princeton          | 14       | 32,360            | 2,311       |
| Mercer           | 16       | 35,765            | 2,235       | Providence         | 17       | 140,920           | 8,289       |
| Miami (FL)       | 16       | 75,411            | 4,713       | Purdue             | 16       | 218,896           | 13,681      |
| Miami (OH)       | 13       | 25,628            | 1,971       | Quinnipiac         | 15       | 26,380            | 1,759       |
| Michigan         | 16       | 187,602           | 11,725      | Radford            | 16       | 26,283            | 1,643       |
| Michigan St.     | 17       | 250,903           | 14,759      | Rhode Island       | 17       | 88,853            | 5,227       |
| Middle Tenn.     | 16       | 46,794            | 2,925       | Rice               | 17       | 33,924            | 1,996       |
| Milwaukee        | 14       | 40,364            | 2,883       | Richmond           | 15       | 69,429            | 4,629       |
| Minnesota        | 17       | 228,709           | 13,453      | Rider              | 13       | 20,926            | 1,610       |
| Mississippi      | 19       | 119,278           | 6,278       | Robert Morris      | 15       | 15,428            | 1,029       |
| Mississippi St.  | 17       | 116,919           | 6,878       | Rutgers            | 19       | 99,476            | 5,236       |
| Mississippi Val. | 9        | 23,472            | 2,608       | Sacramento St.     | 13       | 8,846             | 680         |
| Missouri         | 18       | 186,290           | 10,349      | Sacred Heart       | 13       | 10,421            | 802         |
| Missouri St.     | 21       | 139,543           | 6,645       | Sam Houston St.    | 14       | 20,081            | 1,434       |
| Monmouth         | 14       | 20,852            | 1,489       | Samford            | 14       | 16,608            | 1,186       |
| Montana          | 16       | 54,108            | 3,382       | San Diego          | 14       | 34,664            | 2,476       |
| Montana St.      | 14       | 47,443            | 3,389       | San Diego St.      | 15       | 108,412           | 7,227       |
| Morehead St.     | 17       | 47,724            | 2,807       | San Francisco      | 13       | 24,273            | 1,867       |
| Morgan St.       | 12       | 26,385            | 2,199       | San Jose St.       | 14       | 25,949            | 1,854       |
| Mt. St. Mary's   | 13       | 18,889            | 1,453       | Santa Clara        | 18       | 37,202            | 2,067       |
| Murray St.       | 15       | 55,230            | 3,682       | Savannah St.       | 11       | 12,739            | 1,158       |
| N.C. A&T         | 13       | 33,412            | 2,570       | Seton Hall         | 18       | 127,848           | 7,103       |
| Navy             | 14       | 30,138            | 2,153       | Siena              | 17       | 133,505           | 7,853       |
| Nebraska         | 18       | 179,343           | 9,964       | SMU                | 17       | 45,694            | 2,688       |
| Nevada           | 17       | 100,222           | 5,895       | South Ala.         | 15       | 40,586            | 2,706       |

| <b>Team</b>         | <b>G</b> | <b>Attendance</b> | <b>Avg.</b> |
|---------------------|----------|-------------------|-------------|
| South Carolina      | 16       | 191,905           | 11,994      |
| South Carolina St.  | 13       | 14,603            | 1,123       |
| South Dakota St.    | 14       | 30,851            | 2,204       |
| South Fla.          | 16       | 78,144            | 4,884       |
| Southeast Mo. St.   | 14       | 35,151            | 2,511       |
| Southeastern La.    | 15       | 11,197            | 746         |
| Southern California | 16       | 80,258            | 5,016       |
| Southern Ill.       | 15       | 71,704            | 4,780       |
| Southern Miss.      | 14       | 46,267            | 3,305       |
| Southern U.         | 12       | 6,049             | 504         |
| Southern Utah       | 14       | 29,366            | 2,098       |
| St. Bonaventure     | 15       | 62,596            | 4,173       |
| St. Francis (NY)    | 13       | 6,762             | 520         |
| St. Francis (PA)    | 14       | 14,766            | 1,055       |
| St. John's (NY)     | 17       | 103,820           | 6,107       |
| St. Joseph's        | 14       | 63,389            | 4,528       |
| St. Louis           | 22       | 157,274           | 7,149       |
| St. Mary's (CA)     | 16       | 50,452            | 3,153       |
| St. Peter's         | 14       | 12,820            | 916         |
| Stanford            | 16       | 105,561           | 6,598       |
| Stephen F. Austin   | 15       | 36,284            | 2,419       |
| Stetson             | 14       | 20,030            | 1,431       |
| Stony Brook         | 14       | 20,789            | 1,485       |
| Syracuse            | 19       | 420,890           | 22,152      |
| TCU                 | 17       | 62,656            | 3,686       |
| Temple              | 14       | 89,263            | 6,376       |
| Tennessee           | 16       | 306,680           | 19,168      |
| Tennessee St.       | 11       | 12,739            | 1,158       |
| Tennessee Tech      | 14       | 22,368            | 1,598       |
| Tex.-Pan American   | 10       | 5,133             | 513         |
| Texas               | 17       | 248,697           | 14,629      |
| Texas A&M           | 16       | 158,222           | 9,889       |
| Texas Southern      | 11       | 14,981            | 1,362       |
| Texas St.           | 14       | 23,158            | 1,654       |
| Texas Tech          | 19       | 176,510           | 9,290       |
| Texas-Arlington     | 16       | 12,099            | 756         |
| Toledo              | 15       | 59,298            | 3,953       |
| Towson              | 15       | 22,506            | 1,500       |
| Troy                | 12       | 21,688            | 1,807       |
| Tulane              | 15       | 26,106            | 1,740       |
| Tulsa               | 18       | 98,846            | 5,491       |
| UAB                 | 18       | 107,460           | 5,970       |
| UALR                | 15       | 50,407            | 3,360       |
| UC Davis            | 13       | 22,728            | 1,748       |
| UC Irvine           | 15       | 23,989            | 1,599       |
| UC Riverside        | 14       | 10,493            | 750         |
| UC Santa Barbara    | 13       | 31,450            | 2,419       |
| UCF                 | 15       | 81,161            | 5,411       |
| UCLA                | 16       | 129,290           | 8,081       |
| UMBC                | 13       | 21,599            | 1,661       |
| UMKC                | 14       | 24,489            | 1,749       |
| UNC Asheville       | 16       | 14,567            | 910         |
| UNC Greensboro      | 15       | 47,776            | 3,185       |
| UNC Wilmington      | 13       | 41,563            | 3,197       |
| UNI                 | 14       | 78,981            | 5,642       |
| UNLV                | 19       | 264,422           | 13,917      |
| UT Martin           | 13       | 23,510            | 1,808       |
| Utah                | 17       | 156,429           | 9,202       |
| Utah St.            | 18       | 176,260           | 9,792       |
| Utah Valley         | 15       | 20,460            | 1,364       |
| UTEP                | 17       | 147,854           | 8,697       |
| UTSA                | 14       | 21,746            | 1,553       |

| <b>Team</b>    | <b>G</b> | <b>Attendance</b> | <b>Avg.</b> |
|----------------|----------|-------------------|-------------|
| Valparaiso     | 13       | 35,606            | 2,739       |
| Vanderbilt     | 16       | 217,965           | 13,623      |
| VCU            | 19       | 113,993           | 6,000       |
| Vermont        | 12       | 34,530            | 2,878       |
| Villanova      | 14       | 153,105           | 10,936      |
| Virginia       | 17       | 172,389           | 10,141      |
| Virginia Tech  | 19       | 176,159           | 9,272       |
| VMI            | 14       | 22,149            | 1,582       |
| Wagner         | 13       | 14,398            | 1,108       |
| Wake Forest    | 15       | 177,498           | 11,833      |
| Washington     | 19       | 178,281           | 9,383       |
| Washington St. | 15       | 109,850           | 7,323       |
| Weber St.      | 15       | 79,648            | 5,310       |
| West Virginia  | 15       | 185,629           | 12,375      |
| Western Caro.  | 16       | 38,829            | 2,427       |
| Western Ill.   | 15       | 14,750            | 983         |
| Western Ky.    | 16       | 71,376            | 4,461       |
| Western Mich.  | 15       | 44,990            | 2,999       |
| Wichita St.    | 18       | 185,994           | 10,333      |
| William & Mary | 13       | 40,877            | 3,144       |
| Winthrop       | 14       | 31,787            | 2,271       |
| Wisconsin      | 17       | 292,910           | 17,230      |
| Wofford        | 12       | 23,047            | 1,921       |
| Wright St.     | 13       | 68,597            | 5,277       |
| Wyoming        | 18       | 87,931            | 4,885       |
| Xavier         | 15       | 151,843           | 10,123      |
| Yale           | 12       | 17,351            | 1,446       |
| Youngstown St. | 15       | 37,464            | 2,498       |

#### **Reclassifying Teams to Division I**

| <b>Team</b>         | <b>G</b> | <b>Attendance</b> | <b>Avg.</b> |
|---------------------|----------|-------------------|-------------|
| Bryant              | 11       | 6,628             | 603         |
| Cal St. Bakersfield | 11       | 22,050            | 2,005       |
| Central Ark.        | 14       | 15,872            | 1,134       |
| Fla. Gulf Coast     | 13       | 20,352            | 1,566       |
| N.C. Central        | 11       | 15,993            | 1,454       |
| North Dakota        | 14       | 26,869            | 1,919       |
| Presbyterian        | 10       | 6,198             | 620         |
| Seattle             | 13       | 46,122            | 3,548       |
| S.C. Upstate        | 12       | 10,881            | 907         |
| South Dakota        | 14       | 20,894            | 1,492       |
| SIU Edwardsville    | 11       | 17,518            | 1,593       |
| Winston-Salem       | 13       | 30,732            | 2,364       |

## 2010 NCAA Women's Basketball Attendance

|                                 | <u>Total<br/>Teams</u> | <u>Games or<br/>Sessions</u> | <u>2010<br/>Attendance</u> | <u>Avg.</u>  | <u>Change<br/>In Total</u> | <u>Change<br/>In Avg.</u> |
|---------------------------------|------------------------|------------------------------|----------------------------|--------------|----------------------------|---------------------------|
| Div. I Home Attendance          | *332                   | *4,747                       | 7,518,183                  | 1,584        | 16,352                     | -26                       |
| Div. I NCAA Tr. Neutral Sites   |                        | 25                           | 138,899                    | 5,556        | --                         | --                        |
| Div. I Neutral Sites            |                        | 146                          | 394,726                    | 2,704        | -17,698                    | -102                      |
| <b>NCAA DIVISION I TOTALS</b>   | <b>*332</b>            | <b>*4,918</b>                | <b>8,051,808</b>           | <b>1,637</b> | <b>9,768</b>               | <b>-27</b>                |
| Div. II Home Attendance         | 270                    | 3,570                        | 1,676,999                  | 470          | -78,910                    | -26                       |
| Div. II NCAA Tr. Neutral Sites  |                        | 22                           | 16,928                     | 769          | --                         | --                        |
| Div. II Other Neutral Sites     |                        | 78                           | 83,916                     | 1,076        | --                         | --                        |
| <b>NCAA DIVISION II TOTALS</b>  | <b>270</b>             | <b>3,670</b>                 | <b>1,777,843</b>           | <b>484</b>   | <b>-47,272</b>             | <b>-19</b>                |
| Div. III Home Attendance        | 419                    | 5,046                        | 1,143,052                  | 227          | -39,727                    | -12                       |
| Div. III NCAA Tr. Neutral Sites |                        | 5                            | 5,429                      | 1,086        | --                         | --                        |
| Div. III Other Neutral Sites    |                        | 70                           | 12,735                     | 182          | --                         | --                        |
| <b>NCAA DIVISION III TOTALS</b> | <b>419</b>             | <b>5,121</b>                 | <b>1,161,216</b>           | <b>227</b>   | <b>-41,946</b>             | <b>-12</b>                |
| Reclassifying Teams             | 16                     | 210                          | 143,871                    | 685          | --                         | --                        |
| <b>NAT'L TOTALS FOR 2010</b>    | <b>*1,037</b>          | <b>13,919</b>                | <b>11,134,738</b>          | <b>800</b>   | <b>-25,555</b>             | <b>-18</b>                |

\* Record high. NOTES: NCAA tournaments overall totals were 231,644 for DI, 56,430 for DII and 38,423 for DIII.

Note: Attendance figures do not include the five NCAA Puerto Rican schools in Division II.

## 2010 Women's Basketball Attendance Team Leaders

### DIVISION I

| Rk. | School       | G  | Attendance | Average |
|-----|--------------|----|------------|---------|
| 1.  | Tennessee    | 17 | 219,233    | 12,896  |
| 2.  | Connecticut  | 20 | 203,648    | 10,182  |
| 3.  | Iowa St.     | 19 | 177,002    | 9,316   |
| 4.  | Notre Dame   | 17 | 142,412    | 8,377   |
| 5.  | Purdue       | 18 | 146,868    | 8,159   |
| 6.  | Oklahoma     | 16 | 122,902    | 7,681   |
| 7.  | Nebraska     | 16 | 118,232    | 7,390   |
| 8.  | Baylor       | 17 | 122,550    | 7,209   |
| 9.  | New Mexico   | 18 | 127,623    | 7,090   |
| 10. | Texas Tech   | 19 | 129,896    | 6,837   |
| 11. | Louisville   | 14 | 89,571     | 6,398   |
| 12. | Michigan St. | 15 | 92,883     | 6,192   |
| 13. | Wisconsin    | 14 | 78,884     | 5,635   |
| 14. | Kentucky     | 17 | 95,615     | 5,624   |
| 15. | Texas A&M    | 14 | 72,165     | 5,155   |
| 16. | Maryland     | 21 | 104,562    | 4,979   |

| <b>Rk.</b> | <b>School</b>   | <b>G</b> | <b>Attendance</b> | <b>Average</b> |
|------------|-----------------|----------|-------------------|----------------|
| 17.        | Texas           | 16       | 78,539            | 4,909          |
| 18.        | Duke            | 17       | 80,134            | 4,714          |
| 19.        | Penn St.        | 15       | 66,476            | 4,432          |
| 20.        | Minnesota       | 16       | 69,557            | 4,347          |
| 21.        | Vanderbilt      | 16       | 69,521            | 4,345          |
| 22.        | Georgia         | 16       | 69,371            | 4,336          |
| 23.        | Stanford        | 17       | 72,767            | 4,280          |
| 24.        | Indiana St.     | 13       | 54,235            | 4,172          |
| 25.        | Kansas St.      | 15       | 60,137            | 4,009          |
| 26.        | Middle Tenn.    | 13       | 51,691            | 3,976          |
| 27.        | Virginia        | 17       | 65,506            | 3,853          |
| 28.        | Ohio St.        | 20       | 76,437            | 3,822          |
| 29.        | Kansas          | 18       | 67,892            | 3,772          |
| 30.        | Wyoming         | 16       | 57,539            | 3,596          |
| 31.        | Missouri St.    | 17       | 59,804            | 3,518          |
| 32.        | Iowa            | 16       | 55,813            | 3,488          |
| 33.        | South Carolina  | 12       | 41,300            | 3,442          |
| 34.        | Dayton          | 13       | 44,253            | 3,404          |
| 35.        | LSU             | 16       | 54,133            | 3,383          |
| 36.        | Murray St.      | 11       | 36,078            | 3,280          |
| 37.        | Rutgers         | 15       | 47,915            | 3,194          |
| 38.        | Montana         | 14       | 44,088            | 3,149          |
| 39.        | East Tenn. St.  | 11       | 33,092            | 3,008          |
| 40.        | Old Dominion    | 15       | 45,101            | 3,007          |
| 41.        | North Carolina  | 18       | 54,038            | 3,002          |
| 42.        | Gonzaga         | 16       | 46,894            | 2,931          |
| 43.        | Pittsburgh      | 17       | 48,605            | 2,859          |
| 44.        | Fresno St.      | 14       | 39,703            | 2,836          |
| 45.        | Arizona St.     | 16       | 44,730            | 2,796          |
| 46.        | Ark.-Pine Bluff | 9        | 25,133            | 2,793          |
| 47.        | Delaware        | 14       | 39,002            | 2,786          |
| 48.        | Toledo          | 14       | 38,081            | 2,720          |
| 49.        | Oklahoma St.    | 17       | 45,891            | 2,699          |
| 50.        | Florida St.     | 18       | 48,567            | 2,698          |

### **All Games (Home, Road, Neutral)**

| <b>Rk.</b> | <b>School</b> | <b>G</b> | <b>Attendance</b> |
|------------|---------------|----------|-------------------|
| 1.         | Connecticut   | 39       | 357,627           |
| 2.         | Tennessee     | 35       | 332,353           |
| 3.         | Baylor        | 37       | 248,283           |
| 4.         | Oklahoma      | 38       | 245,432           |
| 5.         | Iowa St.      | 33       | 233,645           |
| 6.         | Notre Dame    | 35       | 223,470           |
| 7.         | Purdue        | 32       | 197,305           |
| 8.         | Texas Tech    | 33       | 190,520           |
| 9.         | Stanford      | 38       | 190,463           |
| 10.        | Nebraska      | 34       | 189,431           |

## Largest Increase From Previous Year

| Rk. | School          | G  | 2010<br>Avg. | 2009<br>Avg. | Change<br>in Avg. |
|-----|-----------------|----|--------------|--------------|-------------------|
| 1.  | Nebraska        | 15 | 7,390        | 3,211        | 4,179             |
| 2.  | Dayton          | 13 | 3,404        | 878          | 2,526             |
| 3.  | Ark.-Pine Bluff | 11 | 2,793        | 720          | 2,073             |
| 4.  | Prairie View    | 11 | 2,120        | 361          | 1,759             |
| 5.  | Delaware        | 12 | 2,786        | 1,110        | 1,676             |
| 6.  | Temple          | 13 | 2,302        | 1,056        | 1,246             |
| 7.  | Notre Dame      | 14 | 8,377        | 7,168        | 1,209             |
| 8.  | Kentucky        | 17 | 5,624        | 4,423        | 1,201             |
| 9.  | Xavier          | 16 | 2,415        | 1,487        | 928               |
| 10. | Mississippi     | 17 | 1,866        | 955          | 911               |

## 2010 Women's Basketball Conference Attendance

(Figures include home attendance of each member plus conference tournament neutral site games or sessions)

### DIVISION I

| Rk. | School           | Teams | Games | Attendance  | Average |
|-----|------------------|-------|-------|-------------|---------|
| 1.  | Big 12           | 12    | 208   | **1,091,289 | 5,247   |
| 2.  | Southeastern     | 12    | 185   | 740,993     | 4,005   |
| 3.  | Big Ten          | 11    | 184   | 735,453     | 3,997   |
| 4.  | Big East         | 16    | 260   | 778,916     | 2,996   |
| 5.  | Atlantic Coast   | 12    | 209   | 568,184     | 2,719   |
| 6.  | Mountain West    | 9     | 142   | 320,676     | 2,258   |
| 7.  | Pacific-10       | 10    | 160   | 331,392     | 2,071   |
| 8.  | Missouri Valley  | 10    | 148   | 275,960     | 1,865   |
| 9.  | Western Athletic | 9     | 137   | 181,234     | 1,323   |
| 10. | Atlantic 10      | 14    | 204   | *253,367    | *1,242  |
| 11. | Colonial         | 12    | 177   | 217,964     | 1,231   |
| 12. | Southwestern     | 10    | 118   | *134,052    | 1,136   |
| 13. | Sun Belt         | 13    | 186   | 203,869     | 1,096   |
| 14. | Big Sky          | 9     | 124   | 130,436     | 1,052   |
| 15. | Mid-American     | 12    | 166   | 169,957     | 1,024   |
| 16. | Ohio Valley      | 10    | 139   | 142,110     | 1,022   |
| 17. | Mid-Eastern      | 11    | 135   | 131,335     | 973     |
| 18. | Conference USA   | 12    | 183   | 175,961     | 962     |
| 19. | Atlantic Sun #   | 9     | 124   | *116,398    | *939    |
| 20. | Summit           | 10    | 135   | 124,624     | 923     |
| 21. | America East     | 9     | 120   | 108,426     | 904     |
| 22. | West Coast       | 8     | 117   | 105,747     | 904     |
| 23. | Metro Atlantic   | 10    | 145   | 125,842     | 868     |
| 24. | Southland        | 11    | 152   | 117,516     | 773     |
| 25. | Patriot          | 8     | 108   | 78,975      | 731     |
| 26. | Horizon          | 10    | 144   | 102,289     | 710     |
| 27. | Ivy              | 8     | 105   | 63,018      | 600     |
| 28. | Big West         | 9     | 131   | 74,744      | 571     |
| 29. | Southern         | 11    | 152   | 86,354      | 568     |
| 30. | Big South        | 8     | 118   | 66,209      | 561     |
| 31. | Northeast        | 11    | 153   | 69,026      | 451     |
|     | Independents #   | 6     | 84    | 32,981      | 393     |

\*\* national record; \* conference record; # different conference lineup from previous year

## 2010 Women's Basketball Attendance Team Leaders

### DIVISION II

| Rk. | School             | G  | Att.   | Avg.  |
|-----|--------------------|----|--------|-------|
| 1.  | Northern St.       | 14 | 40,563 | 2,897 |
| 2.  | Fort Hays St.      | 14 | 30,995 | 2,214 |
| 3.  | Emporia St.        | 13 | 27,529 | 2,118 |
| 4.  | St. Cloud St.      | 13 | 27,044 | 2,080 |
| 5.  | Washburn           | 13 | 26,401 | 2,031 |
| 6.  | Pittsburg St.      | 12 | 23,111 | 1,926 |
| 7.  | Elizabeth City St. | 13 | 20,651 | 1,589 |
| 8.  | Augustana (SD)     | 18 | 28,068 | 1,559 |
| 9.  | Michigan Tech      | 19 | 29,230 | 1,538 |
| 10. | Tarleton St.       | 13 | 19,518 | 1,501 |

### DIVISION III

| Rk. | School           | G  | Att.   | Avg.  |
|-----|------------------|----|--------|-------|
| 1.  | Hope             | 20 | 22,764 | 1,138 |
| 2.  | Howard Payne     | 11 | 9,225  | 839   |
| 3.  | Wis.-Stout       | 12 | 9,318  | 777   |
| 4.  | Mississippi Col. | 11 | 8,498  | 773   |
| 5.  | George Fox       | 15 | 11,504 | 767   |
| 6.  | New York U.      | 14 | 10,615 | 758   |
| 7.  | Bowdoin          | 15 | 11,172 | 745   |
| 8.  | Dubuque          | 10 | 6,976  | 698   |
| 9.  | Ill. Wesleyan    | 18 | 12,468 | 693   |
| 10. | Buena Vista      | 11 | 7,495  | 681   |

## 2010 Women's Basketball Conference Attendance

### DIVISION II

| Rk. | School             | G  | Teams | Attendance | Average |
|-----|--------------------|----|-------|------------|---------|
| 1.  | Mid-America        | 11 | 149   | 195,831    | 1,314   |
| 2.  | CIAA               | 11 | 141   | 138,493    | 982     |
| 3.  | Northern Sun       | 14 | 192   | 182,171    | 949     |
| 4.  | Lone Star          | 15 | 195   | 138,738    | 711     |
| 5.  | Gulf South         | 14 | 191   | 117,102    | 613     |
| 6.  | SIAC               | 12 | 156   | 92,935     | 596     |
| 7.  | GLIAC              | 13 | 173   | 97,384     | 563     |
| 8.  | Rocky Mountain     | 14 | 177   | 97,870     | 553     |
| 9.  | Great Lakes Valley | 13 | 195   | 105,130    | 539     |
| 10. | Peach Belt         | 13 | 181   | 96,949     | 536     |

### DIVISION III

| Rk. | School               | G  | Teams | Attendance | Average |
|-----|----------------------|----|-------|------------|---------|
| 1.  | Iowa Intercol.       | 9  | 105   | 48,450     | 461     |
| 2.  | American Southwest   | 15 | 175   | 71,908     | 411     |
| 3.  | Michigan Intercol.   | 9  | 110   | 44,116     | 401     |
| 4.  | Wisconsin Intercol.  | 9  | 110   | 43,633     | 397     |
| 5.  | Ohio AC              | 10 | 118   | 45,856     | 389     |
| 6.  | University           | 8  | 104   | 36,316     | 349     |
| 7.  | NESCAC               | 10 | 120   | 41,650     | 347     |
| 8.  | Illinois & Wisconsin | 8  | 99    | 32,789     | 331     |
| 9.  | Northwest            | 9  | 105   | 34,548     | 329     |
| 10. | Commonwealth         | 8  | 101   | 28,894     | 286     |



## Title IX backlash: Girls basketball loses crowds when boys play first

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By **Steve Vedder** | The Grand Rapids Press

Becca Quinn knew her priority should be focusing on her basketball game with a cross-district rival. But it was impossible to ignore the hundreds of fans streaming past her toward the exits.

In fact, her Forest Hills Northern team's game against Forest Hills Central was delayed to allow for the sweeping exodus right after the 6 p.m. boys game.

"Instead of focusing on the game, we were looking at our fans. We're thinking, 'Oh, my gosh, they're all leaving,'" said Quinn, a senior and team captain.

The crowd of more than 1,600 would eventually dwindle to about 300 for the nightcap.

That type of scene has played out in Friday night doubleheaders across West Michigan this winter. This season is the first to see the effect of the OK Conference's decision to have the boys play first — crowds that drop off by 80 percent or more for the girls.

The scenario has left the girls and their coaches using words like "embarrassed" and "humiliated," but the conference's athletic directors, wary of legal pressure over a possible Title IX violation, say they have little choice to but to schedule the girls as the late game every other year.



Cory Morse | The Grand Rapids Press

Few fans stay for Wayland girls "marquee" game that followed boys game, below. Since a state panel triggered rotation of the play order, crowds for the girls have dropped as much as 80 percent across West Michigan.



Cory Morse | The Grand Rapids Press

That decision was affirmed last week as the OK scheduling committee opted to continue the rotation, meaning girls will play the second half of doubleheaders again in 2013.

Wayland High School fans watch the boys basketball team play the opening game of a Friday night doubleheader against Ottawa Hills.

**Few players, coaches and fans — male or female —are content.** An OK survey completed by the schools shows at least 90 percent of all participants prefer the girls playing first.

“Bottom line, this isn’t working,” said coach Colleen-Lamoreaux-Tate, whose Catholic Central girls are the defending Class B champions. “What we’re finding is that this just doesn’t make sense.”

There is a difference in interest, reflected last year when girls games were played first. Many of those contests featured large second-half crowds, which arrived early for boys’ games. This year, at best, many linger until halftime of the girls game.

“Everyone I’ve talked to thinks it’s a fiasco,” said coach Glenn Davis of Byron Center, whose girls are a top 10 team in Class A this season. “I haven’t talked to either a girls or boys coach who likes it.

“The mass exodus is insulting. It makes you feel like you’re an afterthought.”

### **Will it matter in a decade?**

Those opinions come as no surprise to OK Conference athletic directors, who point to the 2009 settlement of a civil-rights complaint by the Michigan Women’s Commission against the Michigan High School Athletic Association and Lansing-area schools over the order of play.

The commission, which operates under the state Department of Civil Rights, argued that as part of Title IX compliance, girls should have equal access to Friday’s second game — what it called the “marquee” game.

Tom Wilson, a commission member and women’s rights activist, attributed the fan departure after boys games to growing pains in a long-term effort to increase the profile of the girls game.

He predicted that if the starting times keep rotating, players and coaches will have forgotten their concerns within a decade.

“Friday is the key night and (the second game) highlights the girls,” he said. “By appearances, that is considered the big game and so it should be rotated. ...

“Girls will start building numbers in the second half when they play at six o’clock.”

Coaches and players, however, say the difference in crowd sizes proves the second game is not automatically the marquee event.

Girls basketball supporters said they realize the boys game is more popular, but the girls are still being denied the chance to showcase their talents if fans aren't watching. They say girls deserve a chance to play before more than just family and friends.

So far, though, not even success has made much of a difference. Lamoreaux-Tate said her state champs routinely play before smaller crowds than the boys, and at a recent matchup between Grand Haven and Rockford girls, both OK Red powers, the crowd grew considerably smaller once the boys game was done.

Many adults leaving didn't want to discuss the issue, but several students said the girls' game just didn't hold their interest.

"It's not as exciting," Rockford junior Zach Trudell. "There would be more people here, but the girls are just not as athletic. It's more fun to watch the boys."

That sentiment may sting, but some players are taking a businesslike approach.

#### **Crowd exodus following Rockford High School Boys game**

Time lapse video- Girls basketball loses crowds when boys play first

"Some of the players don't mind it so much," said West Catholic senior captain Rachel Sprenger. "We just try to focus on our game and not who is there. It's not that easy, but I think we've done that pretty well."

#### **Will it be settled in court?**

The future of Friday night starting times is up in the air, given that Lansing's Capital Area conference opted to settle the civil -rights complaint and that state athletic association decided not to fight it.

Without an official ruling, it is unclear if the OK Conference's decision to have girls play second on Fridays would comply with Title IX, said Harold Core, director of public affairs for the Michigan Department of Civil Rights.

"There is no way to know because the investigation was not completed," Core said. "Generally speaking, we advocate for equality in terms of both boys and girls."

Some OK athletic directors, wary following the 2007 ruling by the U.S. Supreme Court ruling against MHSAA that put the girls and boys basketball seasons together, said lack of finances may keep schools from pursuing a legal remedy.

But others, citing the widespread discontent among players and coaches, would behoove schools to go to court.

Jenison athletic director Leroy Hackley said when girls teams lose so many fans, schools need to find better options.

"It is bad and not only for the girls, but the boys, too. Girls have got to be a little devastated and a little embarrassed," Hackley said.

"When the seasons changed a few years ago, I said, 'Congratulations, you've just killed girls basketball.' In my mind since that change, girls basketball has become a second-tier sport. Girls can play in front of decent crowds, but now they aren't. People are taking off."

OK Conference president Jim Haskins said considering the Title IX question, athletic directors are still sorting through their best scheduling options and interpretation of the law.

"It is confusing and frustrating right now, but we have to abide by the law," Haskins said. "We know it hasn't been much fun and it's sad to see when large crowds for the boys go down to two or three hundred people. The girls are suffering."

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## CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2011, fifteen copies of the foregoing *amicus* brief, bound with its accompanying addendum, were dispatched to the Clerk of the Court, and two copies of the same brief were served on counsel for the parties via Federal Express and email, at the addresses indicated below:

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