



Eagle Forum Education and Legal Defense Fund (“EFELDF”) is a nonprofit organization founded in 1981. EFELDF has long been an advocate for enhancing opportunities for men and women without ignoring important differences between the genders. EFELDF has filed *amicus curiae* briefs on the issue of Title IX before the United States Supreme Court and the Courts of Appeals for the D.C. Circuit. EFELDF also participates in educating and training students of all ages.

We respectfully submit these comments about Title IX for consideration by the U.S. Commission on Civil Rights, in connection with its recent hearing on the student survey.

The gender quota goals embodied in the “proportionality test” are hurtful to women as well as men. The proportionality test is prong one of a departmental interpretation of Title IX, a “guidance” that was never approved pursuant to formal rulemaking. Simply put, this guidance requires that colleges:

1. have a similar proportion of women in intercollegiate sports as enrolled in the school,
2. are expanding the opportunities for women in sports, or
3. are satisfying the entire interest of women to participate in sports.

See <http://www.ed.gov/about/offices/list/ocr/docs/t9interp.html> .

But when budgetary constraints cause a college to eliminate merely one woman’s spot from a team, then the second and third prongs of the proportionality test cannot be satisfied. **The school can only satisfy the above test by roughly equating the ratio of women on intercollegiate sports teams to women enrolled in the school.** Schools have then eliminated men’s teams and replaced small-squad women’s teams like gymnastics and fencing with big-squad women’s teams like crew (rowing) and equestrian. **This is harmful to the women athletes in the small-squad sports, and extremely harmful to the men.**

For example, James Madison University recently eliminated women’s gymnastics, women’s archery and women’s fencing in an attempt to satisfy the quota requirement of the proportionality test.

<http://www.jmu.edu/jmuweb/general/news/general7490.shtml> The quota requirement has forced the reduction in women’s gymnastics from 190 teams to only 90 in the 1980s and ‘90s. See United States General Accounting Office (GAO), “Intercollegiate Athletics, Four-Year Colleges’ Experiences Adding and Discontinuing Teams,” GAO-01-297, at 12 (Mar. 2001). As a predictably harmful result, in the 2000 Olympics the United States failed to win a single women’s gymnastics medal despite having won many medals at prior Olympics, and in 2004 the only American women’s gymnastics medals were won by private club, non-Title IX athletes.

Serious women athletes, such as women gymnasts who have trained a decade prior to college, are thereby displaced in favor of attempts to recruit women into sports in which women are less interested, such as crew and other large-squad teams. Women's rowing first became an NCAA sport in 1997, but 85 colleges quickly added it to their programs within a few years. Is this because of an outpouring of interest by women athletes? Not at all. In fact, many college scholarships are given to women who had never rowed before, simply to increase the numbers. Juliet Macur, "Never Rowed? Take a Free Ride," *N.Y. Times*, D1 (May 28, 2004). The result is that the most serious women athletes are being shortchanged by the quota in favor of students looking for a "free ride," in the words of the *New York Times* article.

Meanwhile, the disastrous effect of the quota on male athletes hardly needs repeating. In the 1980s and '90s colleges eliminated 171 wrestling teams, despite being a low-cost sport. At Howard University, for example, male enrollment has dropped to less than 40% of its student body, as the quota requires elimination of men's teams. In 2002, Howard University simultaneously eliminated both its varsity wrestling and baseball teams, leaving in the lurch many athletes in those sports. Its wrestling coach Wade Hughes observed, "Howard University would like to look at this as a non-Title IX issue, but from my perspective, it is a Title IX issue in gender equality." Mark Asher, "Howard Drops Baseball, Wrestling," *Washington Post*, D1 (May 23, 2002). Athletic Director Sondra Norrell-Thomas said this was due to a lack of facilities, but the wrestling coach pointed out that all the sport needs is a simple wrestling room, which they obviously had. *Id.*

There are many similar tragedies. "Enrollment at [the University of Honolulu]-Manoa is 42 percent male and 58 percent female; thus, UH-Manoa has no men's soccer team or water polo team, but UH provides soccer and water polo teams for women; thus, many local boys who would have relied on those positions to attend college join thousands of minority men nationwide who are not able to go to college because of Title IX." Gerald Nakata, "Title IX is a Disservice to Males," *The Honolulu Advertiser*, 7A (Mar. 8, 2005).

The elimination of the men's teams has become a vicious cycle, further discouraging men from applying to and attending college. That is not good for men, or women.

Sports Illustrated reported on the obvious, that men are far more interested in sports than women are:

Over a 15-year period between 1980 and '94, the National Center for Educational Statistics polled high school seniors and found that 20 percent of males were more interested in participating in sports than females, and more than twice as many exercised vigorously on a daily basis.

In collegiate intramural sports, whose numbers are largely determined on the basis of interest, 78 percent of participants are male, 22 percent female. Put another way, most guys have a more difficult time adapting to life without sports than most girls do.

Yet there are some 580 more women's teams at NCAA schools today than men's teams, a disparity that is likely to continue to grow. Faced with budgetary cuts last summer, the board at Rutgers University elected to eliminate six teams, five of which were men's: lightweight and heavyweight crew, tennis, swimming and diving, and fencing.

E.M. Swift, "Title IX was Necessary Then, But Now It's Just Unfair," (posted Oct. 10, 2006) http://sportsillustrated.cnn.com/2006/writers/em_swift/10/10/title.ix/index.html

The audience for watching sports, even women's sports, is also overwhelmingly male, providing further confirmation of the wide difference in interest. "The audience for this year's championship game in women's college basketball was 57 percent male, according to Nielsen Media Research. Annika Sorenstam's appearance in the Colonial golf tournament last month may have been a giant leap for women, but 65 percent of the witnesses were men." John Tierney, "Why Don't Women Watch Women's Sports?," *Week in Review, N.Y. Times* (June 15, 2003).

It is long overdue to replace the quota in the proportionality test with an interest-based test that encourages colleges to provide sports teams based on interest. The test should only penalize schools for unjustified interference with opportunities based on real interest by men and women. Institution of the survey is a great start and the committee should also consider recommending an end to the proportionality test entirely.

Thank you for considering these comments.

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