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# A Historical Case Study of Title IX in Nevada: An Excellent Investment in Our Youth

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A HISTORICAL CASE STUDY OF TITLE IX IN NEVADA:  
AN EXCELLENT INVESTMENT IN OUR YOUTH

By

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Bachelor of Arts – Secondary Education  
University of Nevada, Las Vegas  
2005

A thesis submitted in partial fulfillment  
of the requirements for the

Masters of Arts - History

Department of History  
College of Liberal Arts  
The Graduate College

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## **Thesis Approval**

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A Historical Case Study of Title IX in Nevada: An Excellent Investment in Our Youth

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## **ABSTRACT**

A Historical Case Study of Title IX in Nevada: An Excellent Investment in Our Youth

By

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The purpose of this study was to examine and document the history of Title IX in the American West, specifically at the University of Nevada, Reno (UNR), and at Clark County School District (CCSD) in Las Vegas, Nevada. This thesis contends that since the late nineteenth-century, women have utilized sports as a method to shed discriminatory stereotypes, fight for inclusion, and promote gender equality. In addition, the progressive actions of educational administrators and community leaders regarding Title IX make both UNR and CCSD exceptional institutions for gender equality. This thesis contains six chapters including the introduction and conclusion. Chapter 1 documents the history of women and sports in the United States before the passage of Title IX. Chapter 2 documents the national response to Title IX. Chapter 3 examines the history and reaction to Title IX at UNR, and my final chapter illustrates the history, response, and execution of Title IX at CCSD. Using historical case study methods, this thesis intended to provide a historical account and analysis of Title IX in the American West. Data sources included: scholarship on the history of sports in the United States, the American West, and Title IX; court documents and legal cases; magazine and newspaper articles; CCSD documents; archived oral histories; and interviews. The questions that guided this thesis were: What role did sports play in the evolution of the Women's Movement of the 1960s and 1970s and beyond? Given the individual freedoms allowed to certain women, has the American West differed in its application and adherence to Title IX from other regions in the United States? How did UNR respond to the passage of Title IX? How did Clark County

School District respond to the passage of Title IX? How has Clark County School District complied with Title IX? This study answers these questions through my research and study of Title IX's history and impact on both UNR and southern Nevada's high schools. This study demonstrates that women successfully utilized sports as a catalyst to bring about awareness and change within America's social and cultural landscape, specifically regarding gender equality. Also, the American West's historical legacy of greater equality and opportunities for women did manifest itself during the nascent years of the women's sports programs at UNR and CCSD. Although Title IX initially encountered fierce resistance at UNR, the community of Reno, Nevada rallied behind the pioneering efforts of civic and university leaders to help make UNR a leader in gender equity. In addition, CCSD, although initially proactive and accommodating, was later compelled into compliance by a lawsuit and further potential litigation as the challenges of rapid growth (fifth largest school district in the nation) relegated gender equality to the periphery. Yet, once presented with the challenge of providing equal athletic opportunities to its female student body, CCSD acted quickly and deliberately to remedy its gender inequality. This study demonstrates how women utilized sports as a platform from which they made efforts to bring about social changes. Also, this thesis contests that while gender equity in Nevada can be partially attributed to mandated legal action, the history of Title IX at UNR and CCSD is exceptional to the national experience. The innovative and progressive methods used by the community leaders and educational administrators of Reno and Las Vegas to provide equal opportunities often went beyond the mandates of Title IX. Finally, while women have made significant educational and athletic advancements since the passage of Title IX, there remains an enormous gender disparity among head coaches and athletic administrators at the high school and college levels.

## ACKNOWLEDGEMENTS

There are many people who inspired me and contributed to this thesis. First, I would like to personally thank my thesis committee: Drs. William Bauer, Mark Padoongpatt, Maria Casas, and Kendra Gage. My interest in this topic stems from years of teaching and coaching in the Las Vegas community. Additionally, as a former high school athlete, I recognize the tremendous benefits of organized sports and interscholastic competition. Organized sports taught me critical lessons and helped me attain valuable attributes that I have helped me throughout my life. I learned through my experiences as an athlete that while I enjoyed the competition, I also appreciated the value of mentors and coaches, which inspired me to eventually become a teacher and coach. As a new coach, I looked up to colleagues for guidance and direction so that I could be successful in mentoring and helping the youth of Las Vegas achieve both athletic success and become upstanding citizens.

Prior to this study, my understanding of Title IX remained limited. In fact, as a male athlete and coach, I felt Title IX constricted my time and opportunities. It was not until 2010, when I was asked by my assistant principal to coach a girls' flag football team that I recognized how influential and valuable athletic opportunities could be for girls at the high school level. When Clark County School District announced the addition of girls' flag football as an official varsity sport, I immediately volunteered to be the head coach. My two years as head coach brought me incredible learning experiences and an appreciation for Title IX, as I worked with players, parents, and school administrators to make girls' flag football successful. I saw first-hand the benefits that my players enjoyed. They learned the value of teamwork, discipline, and dedication, as well as gained new friends and improved their physical fitness.

I would like to thank Jim Allen for providing me with my first coaching opportunity in Las Vegas. I also want to thank Jeff Horn for taking a chance on an inexperienced teacher and bringing me on at Green Valley High School. Thank you to my fellow coaches at GVHS for mentoring me and giving me the opportunity to coach, Luthor Bohanon, Brian Castro, Matt Gerber, Jason Rowland, David Torrez, Gordie Ruiz, and Ole Swendson. I would also like to thank my graduate school professors for consulting me and offering their continuous knowledge and support. Thank you, Dr. Maria Casas, for all of your

time and encouragement, I always enjoyed your knowledge of history and sports. Thank you, Dr. Richard White, of UNR for all your help and inspiration. Although I gained a new perspective and appreciation for Title IX, I was not able to choose it as a topic until I met with my professor and graduate coordinator Dr. William Bauer. Thank you again Dr. Bauer for guiding me through this entire process. You have definitively become my most influential faculty member here at UNLV. Thank you for helping me through my Master's program and this thesis, I could not have done it without you.

I want to express my gratitude towards all of you who took the time to meet with me and share with me your personal experiences and opinions to help with the development of this study. Thank you, Emma Johnson, for providing some very personal and important information and a significant piece of my study. Thank you, Coach Erin Hill, for your sharing your personal history, memories, and experiences with Title IX and CCSD, I really enjoyed our interview. Thank you Bonnie Flaagan for providing a look at girls' sports in Las Vegas before Title IX was passed. Thank you, Dr. Nancy Lough, for your time and assistance. Your familiarity with both of my case studies, as well as your professional insight, added significant value to this thesis. And thank you to Dr. Nancy Hogshead-Makar for providing your perspective and opinions on Title IX and how we can best provide more athletic opportunities for the young women of Las Vegas and the nation.

Finally, I want to thank my friends and family for their tireless support and encouragement. Thank you, guys, for allowing me to share with you my research and progress, it meant a lot. Thank you, mom and dad! You both made this possible! Thank you for keeping me focused and motivated throughout all the times I became discouraged. Thank you, Trevor, for always showing a sincere interest in my academic journey. Thank you, Randy Norton and family, for your constant support and willingness to help me with my academic endeavors. And finally, I want to express my appreciation to my mentor and my inspiration, my grandpa Jack Clark. I'll never forget my first day of graduate school, I called you because I felt so overwhelmed. You laughed at me and calmly said, "You're going to be just fine." Thank you for showing me the value of education and giving me a goal, a goal to be as funny, intelligent, respected, and as accomplished as you are. Thank you.

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## **CHAPTER 1: INTRODUCTION – THE TRANSCENDENCE OF SPORTS**

Very few institutions in American society have the power to transcend class, ethnicity, and gender like sports. Since the late nineteenth-century, sports have strengthened individuals, unified communities, and helped build our nation’s identity.<sup>1</sup> For nearly a century and a half, sports in America have provided opportunities for individual success, the means to temporarily escape life’s trials and hardships, as well as a platform to inspire and advocate for social change.<sup>2</sup> The history of American sports is filled with inspiring anecdotes of triumph, inclusion, and progress. Yet, this narrative also contains examples of discrimination because of ethnic, socio-economic, and cultural differences. Ironically, sports became a method for many to conquer discriminatory stereotypes and achieve inclusion within American society.

For example, towards the turn of the twentieth-century, thousands of European immigrants used baseball and boxing, either as participants or spectators, as a process to become “Americanized.”<sup>3</sup> Sharing a similar skin tone was not enough for the Irish, Jewish, or Italians to be considered American and merit inclusion into the cultural landscape. Conversely, American citizenship did not facilitate acceptance into the realm of professional sports for African Americans either. During the first decades of the twentieth-century, professional baseball team owners used Afro-Latinos to test Major League Baseball’s color line, claiming they were not black, but like the “purest bars of Castilian soap.”<sup>4</sup> During World War II, Japanese Americans along the West Coast played baseball to demonstrate their “Americanism,” in an effort to combat the intense backlash caused by the attack on Pearl Harbor.<sup>5</sup> In 1947, the arrival of Jackie Robinson upon the stage of professional baseball became a breakthrough in race relations that led to the dismantling of Jim Crow within twenty years. Robinson’s accomplishments

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<sup>1</sup> Delaney, Tim and Tim Madigan. *The Sociology of Sports*. Jefferson, NC: McFarland Publishing, 2015. 110.

<sup>2</sup> Grundy, Pamela. *Learning to Win: Sports, Education, and Social Change in Twentieth-Century North Carolina*. Chapel Hill: University of North Carolina Press, 2001. 73.

<sup>3</sup> Gorn, Elliott J. *The Manly Art: Bare-Knuckle Prize Fighting in America*. Ithaca, NY: Cornell University Press, 2010. 193.

<sup>4</sup> Burgos Jr., Adrian. *Playing America’s Game: Baseball, Latinos, and the Color Line*. University of California Press, 2007. 88.

<sup>5</sup> Regalado, Samuel O. *Nikkei Baseball: Japanese American Players from Immigration to Internment to the Major Leagues*. University of Illinois Press, 2013. 5.

later provided opportunities for other African Americans to pursue their athletic endeavors.<sup>6</sup> During the height of the Civil Rights Movement, Mohammed Ali challenged the notion that African American athletes represented racial progress. Ali argued that athletic accomplishments meant nothing if they failed to generate any meaningful economic, political, or social change.<sup>7</sup> Not since Jack Johnson had America witnessed an African American boxer that generated so much controversy. However, unlike Johnson, who the press labeled as self-serving, Ali revolutionized the persona of the black athlete, using his platform in an effort to help the African American community. Ali mocked the humility of Jesse Owens and Jackie Robinson, and instead believed that only free thinking, independent-minded athletes, who openly challenged traditional attitudes of race and class, merited the spotlight.<sup>8</sup>

The power to influence American culture and society did not reside exclusively with professional athletes. Decades before the National Football League (NFL) became the nation's most popular sport, young African American men like Paul Robeson and Jack Trice struggled for racial equality on college campuses and football fields. Their struggle represented a broader, national civil rights narrative where these young men played a crucial role in reshaping American attitudes and policies regarding race relations.<sup>9</sup> College coaches, like Don Haskins of Texas Western College, challenged the discriminatory norms of college basketball and sparked a civil rights controversy by starting five African American players in the 1966 NCAA men's basketball championship. Haskins victory over Adolph Rupp's all-white Kentucky team became known as the "emancipation proclamation" of southern college sports which caused the segregated schools of the mighty South-East Conference (SEC) to rethink their policies for recruiting African Americans.<sup>10</sup> Dean Smith, University of North Carolina men's basketball coach

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<sup>6</sup> Dorinson, Joseph, and Joram Warmund. *Jackie Robinson: Race, Sports, and the American Dream*. Routledge Publishing, 2006. 19.

<sup>7</sup> Salmons, Jeffrey T. *Beyond the Ring: The Role of Boxing in American Society*. University of Illinois Press, 1990. 199.

<sup>8</sup> Anderson, Sheldon. *The Politics and Culture of Modern Sports*. Lexington Books, 2015. 257.

<sup>9</sup> Demas, Lane. *Integrating the Gridiron: Black Civil Rights and American College Football*. Rutgers University Press, 2011. 4.

<sup>10</sup> Martin, Charles. *Benching Jim Crow: The Rise and Fall of the Color Line in Southern College Sports, 1890-1980*. University of Illinois Press, 2010. 116.

from 1961 to 1997, recruited the first African American (Charlie Scott) to play for the Tarheels and played a significant role in the dismantling of segregation in the state of North Carolina.<sup>11</sup>

From high school basketball courts in rural North Carolina, to professional baseball fields in the Brooklyn, to boxing rings in Nevada, sports have provided athletes, both amateur and professional, with the opportunity and platform to advocate for social inclusion and racial equality. But what about women? What role did sports play in women's history and their struggle for gender equality? More specifically, how were women's athletics received and how were women able to use sports to fight for equality? This study aims to examine and document the history of women and sports, both nationally and in Nevada, in order to analyze the impact of sports upon the women of Reno and Las Vegas, Nevada.

As one of Clark County School District's (CCSD) first head coaches for girls' flag football, I witnessed first-hand the incredible energy and enthusiasm with which female student athletes embraced the opportunity to compete in high school athletics. The very first flag football meeting at Green Valley High School had such a large turnout that I had to move the meeting from the student meeting room, which seats two hundred, into the auditorium, which holds two thousand. I counted more than three hundred young women and parents eager to participate in the district's newest sport. Despite the incredible turnout at Green Valley, CCSD had low expectations for participation in and popularity of the inaugural 2012-13 flag football season since the district did not charge admission to attend games. However, as our team continued to win, the players gained more respect and exposure from the student body. The team became a daily feature during the school's morning announcements. In turn, more students, faculty, and members of the community attended games and became interested in what we were creating and accomplishing. As our record reached 20 wins and 0 losses, we became the talk of the school district, and the flagship program for girls' flag football. We were featured on several TV stations and in multiple newspaper articles.<sup>12</sup> By the end of the season, we became a Nevada sports phenomenon.

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<sup>11</sup> Tomlinson, Tommy. "Precious Memories." *ESPN the Magazine*, March 5, 2014.

<sup>12</sup> Torrez, David. "This Is Not Powderpuff". Filmed [February 2013]. YouTube video, 01:47. Posted [February 2013]. <https://www.youtube.com/watch?v=UTGimv0hqAY>.

However, it was not my team alone that reaped the benefits of CCSD's newest sport. More than nine hundred female student-athletes received the opportunity to compete interscholastically for their school. For some, it was their first time playing a sport. For others, flag football became the sport of choice for the winter season, replacing basketball, bowling, and soccer, which CCSD and the Nevada Interscholastic Athletic Association (NIAA) moved to the fall. CCSD created flag football not just to replace girls' soccer as a winter sport, but to comply with the demands of the NWLC (National Women's Law Center), which filed a claim against CCSD in 2010 charging the district of providing its female student body with substantially fewer athletic opportunities, a violation of Title IX.<sup>13</sup>

In 1972, President Richard M. Nixon signed into law the Omnibus Education Amendments Act. Title IX of the Act reads, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."<sup>14</sup> Title IX legislation originated in the civil rights movement of the 1960's when discriminatory laws and sexist attitudes emanating from university administrations and state executives excluded minorities and women from collegiate academics and athletics. While the Civil Rights Act of 1964 made it unlawful for an employer to fail or refuse to hire or to discharge any individual with respect to race, color, religion, sex, or national origin, the law made no mention of mandating gender equity for secondary education opportunities. In 1960, women comprised just thirty eight percent of enrolled college students.<sup>15</sup> Title IX intended to close the gender equity gap at all educational institutions that receive federal funds. Furthermore, Title IX applies to every single feature of education, including financial assistance, student insurance and health benefits, physical education, and athletics. Since Title IX's inception, women have made significant gains in gender

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<sup>13</sup> National Women's Law Center. "Center Files Title IX Complaints against 12 School Districts." NWLC. November, 10, 2010. <https://nwlc.org/press-releases/center-files-title-ix-complaints-against-12-school-districts/>. (Accessed December 30, 2016).

<sup>14</sup> "Title IX and Sex Discrimination." US Department of Education. [www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). (Accessed December 30, 2016).

<sup>15</sup> "College Enrollment Rates of High School Graduates, by sex: 1960 to 1998." National Center for Educational Statistics. <https://nces.ed.gov/programs/digest/d99/d99t187.asp>. (Accessed December 30, 2016).

equality in the classroom and on the fields of athletic competition. Today women outpace men in college enrollment, making up 72.3 percent of college campuses, while the University of Connecticut and the University of Tennessee have produced successful and profitable women's basketball teams.<sup>16</sup> Moreover, women's participation in sports has risen 560% at the college level and 990% in high schools.<sup>17</sup> Despite the progress that Title IX has generated for women's equality in education and athletics, the playing field remains uneven, with the most egregious imbalances coming from within our high schools. High schools across the country fail to provide equal opportunities for girls to take part in sports. Bob Gardner, the chief officer of the National Federation of State High School Associations stated, "High school is where the Title IX action is."<sup>18</sup> Additionally, many high schools and colleges choose to cut athletic programs all together rather than comply with the mandates of Title IX.<sup>19</sup>

Nevada's Clark County School District (CCSD) is no stranger to controversy regarding Title IX. On April 1, 2008, assistant U.S. Attorney Eric Johnson filed an emergency action lawsuit against the Nevada Interscholastic Activities Association (NIAA). The NIAA had voted to move the Class 4A high school girls' soccer season from the winter to the fall, which would align with northern Nevada's school districts, allowing for a single state champion to be determined. Johnson's daughter, Emma, was a member of Green Valley High School's girls' volleyball team, also a fall sport, however, per NIAA regulations, a student-athlete may only compete in one sport per season. The new NIAA rules would force her to choose between soccer and volleyball. In *Johnson et al v. Nevada Interscholastic Activities Association* (2008), Johnson alleged the NIAA violated Title IX by limiting the number of athletic opportunities

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<sup>16</sup> "Recent High School Completers and Their Enrollment in 2-year and 4-year colleges, by sex: 1960 through 2014." National Center for Educational Statistics. [https://nces.ed.gov/programs/digest/d15/tables/dt15\\_302.10.asp](https://nces.ed.gov/programs/digest/d15/tables/dt15_302.10.asp). (Accessed December 30, 2016).

<sup>17</sup> "Title IX Myths and Facts." Women's Sports Foundation. (Accessed December 30, 2016).

<sup>18</sup> Pennington, Bill. "HIGH SCHOOL SPORTS; Title IX Trickles Down to Girls of Generation Z." *New York Times*, June 29, 2004. [www.nytimes.com/2004/06/29/sports/high-school-sports-title-ix-trickles-down-to-girls-of-generation-z.html?\\_r=0](http://www.nytimes.com/2004/06/29/sports/high-school-sports-title-ix-trickles-down-to-girls-of-generation-z.html?_r=0). (Accessed December 30, 2016).

<sup>19</sup> Kasic, Allison. "Title IX Enforcement Could Devastate High School Sports." *US News*, Feb. 16, 2011. [www.usnews.com/opinion/articles/2011/02/16/title-ix-enforcement-could-devastate-high-school-sportss/2011/02/16/title-ix-enforcement-could-devastate-high-school-sports2012-13](http://www.usnews.com/opinion/articles/2011/02/16/title-ix-enforcement-could-devastate-high-school-sportss/2011/02/16/title-ix-enforcement-could-devastate-high-school-sports2012-13). (Accessed December 30, 2016).

during the winter season, and that either the NIAA sanction Class 4A girls' soccer in southern Nevada or CCSD establish another field sport to be played in the winter starting in 2008-09.

On November 10, 2010, the National Women's Law Center (NWLC) filed administrative complaints against twelve school districts across the country, including CCSD, of which Green Valley High School is a member. The NWLC accused CCSD of failing to provide equal opportunities for female high school students under Title IX's three-part gender equity test, citing that in 2006, according to the Civil Rights Data Collection, sixteen of CCSD's thirty-one high schools reported significant female athletic participation discrepancies, violating a Title IX mandate that requires the percentage of female athletes to be within five percent of the total female student body. According to the NWLC, approximately four thousand female students within CCSD lacked the opportunity to participate in sports. Two years had passed since the *Johnson* case and CCSD still failed to provide an alternative winter sport for girls. CCSD was out of step with Title IX.<sup>20</sup>

In order to comply with the NWLC complaint and Title IX, CCSD promised to evaluate its female student body and the existence of any unmet athletic interests by September 2013. CCSD also assured the NWLC that it would immediately assess whether female students were cut from a team and discuss the possible creation of freshmen and junior varsity levels of an existing sport, or offering an additional sport.<sup>21</sup> In 2011, CCSD issued a survey to determine the interest of adding more athletic activities for women. Overwhelmingly, women voted to add competitive cheerleading, but that activity is not sanctioned under the terms of Title IX, and would not help the district comply with the NLWC's complaints.<sup>22</sup> Lacrosse received the second largest number of votes; however, the lack of equipment and knowledgeable coaches prompted the district chose to implement the students' third choice, flag football. The 2012-2013 school year marked the inaugural women's flag football season with thirty-five schools

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<sup>20</sup>*Administrative Class Complaint*. 2016. PDF. 1st ed. Washington D.C.: National Women's Law Center. [https://nwlc.org/wp-content/uploads/2015/08/clark\\_county\\_school\\_district\\_class\\_complaint.pdf](https://nwlc.org/wp-content/uploads/2015/08/clark_county_school_district_class_complaint.pdf). (Accessed December 30, 2016).

<sup>21</sup>*Nevada Clark County School District Resolution Agreement*. 2016. PDF. 1st ed. <http://www2.ed.gov/about/overview/mission/civil-rights/nv-clark-county.pdf>. (Accessed December 30, 2016).

<sup>22</sup>*Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009).

fielding a varsity team. Today, women's flag football is the fastest growing sport in Nevada, and in the country.<sup>23</sup> In December 2015, ESPN's *Sportscenter* featured Carolina Velasquez of Green Valley High School as part of their Top 10 highlights for her remarkable one-handed catch drawing comparisons to Odell Beckham, Jr. of the New York Giants.<sup>24</sup> All of CCSD's high schools have freshmen, junior varsity, and varsity teams. Moreover, the academic year of 2016-2017 marked the first year that the NIAA will sanction flag football as a state-sponsored sport, and declare official state champion. This decision by the NIAA is evidence of the growing popularity of the sport in southern Nevada as it provides hundreds of athletic opportunities to the young women of CCSD.<sup>25</sup> Yet, the decision to field women's flag football is not without its detractors. According to several CCSD female coaches, the district chose flag football as a quick, inexpensive solution to its failing athletic participation rates for females. Some argue while flag football provides opportunities for girls to participate in high school sports in southern Nevada, they are not the same opportunities because, unlike every boy's sport, there are no collegiate flag football teams.<sup>26</sup> Furthermore, the addition of flag football promulgated an already glaring discrepancy between the number of male and female coaches at CCSD. Only six of the thirty-four original teams fielded in 2012 had a female head coach.<sup>27</sup>

While scholars have studied the history of Title IX at the University of Nevada, Reno (UNR), the history and influence of Title IX on southern Nevada's high schools has yet to be examined. My thesis will illustrate how the Clark County School District navigated multiple financial and social challenges, which ultimately prepared the district for the implementation of Title IX. CCSD's experiences with Title

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<sup>23</sup> Spies-Gann, Juliet. "The Hottest Sport in America is Flag Football." *Huffington Post*, March 16, 2016. [www.huffingtonpost.com/entry/flag-football-participation-study\\_us\\_56e83d6ce4b065e2e3d76653](http://www.huffingtonpost.com/entry/flag-football-participation-study_us_56e83d6ce4b065e2e3d76653). (Accessed December 30, 2016).

<sup>24</sup> Brewer, Ray. "Green Valley Girl Gets Attention for One-Handed Catch." *Las Vegas Sun*, December 26, 2015. <http://lasvegassun.com/news/2015/dec/26/like-beckham-green-valley-girls-flag-football-get/>. (Accessed December 29, 2016).

<sup>25</sup> Davis, Bartt. "NIAA to Sanction Flag Football Beginning in 2016-17 Season." *Las Vegas Review Journal*. April 16, 2015. [www.reviewjournal.com/sports/niaa-sanction-flag-football-beginning-2016-17-season/](http://www.reviewjournal.com/sports/niaa-sanction-flag-football-beginning-2016-17-season/). (Accessed December 29, 2016).

<sup>26</sup> Villa, Walter. "A Touchdown for Girls' Sports?" *ESPN the Magazine*. June 21, 2012.

<sup>27</sup> According to the original document provided by CCSD to all flag football head coaches at the beginning of the 2012-13 season. This document provided team information as well as a breakdown of regions and divisions.



IX reveal an ongoing process to provide young female athletes with equal athletic opportunities in one of the fastest growing cities and school districts in the United States.<sup>28</sup> As the fifth largest school district in the country, CCSD's history with Title IX can serve as a benchmark for Title IX compliance for the rest of the nation's school districts. This study provides both a national and regional (the West) historical context of women and athletics in order to compare and contrast the response and effectiveness of Title IX throughout the country.

This study is conducted within the framework of "western exceptionalism." American historians view the West as an exceptional place. Frederick Jackson Turner argued that the American West served not only as a geographical location, but a process by which the formation of American democracy became possible.<sup>29</sup> Historian Patricia Limerick challenged Turner's thesis by contesting that the frontier was not simply a process by which Euromericans became American, but a "meeting ground of peoples," a place where different ethnicities and women competed with others (particularly white male settlers) for land and property, as well as cultural domination.<sup>30</sup> Limerick recognized not only the existence of women and other ethnicities in the American West, but their importance and participation in western American history. For generations, the West represented freedom and opportunity. Events such as the California Gold Rush, accompanied by the cultural ideology of Manifest Destiny, facilitated the mass migration of millions of inspired Americans into the West in search of economic opportunity with the help of the California, Oregon, Santa Fe, and Mormon trails. Lured by the "great female shortage," the American West also provided women with unprecedented freedoms and opportunities while they attempted to assist, civilize, and care for their male counterparts.<sup>31</sup> The West needed rural women to populate, domesticate, and pacify the territory. Many western states allowed single women the authority to own property and

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<sup>28</sup> Ritter, Ken. "State projects Nevada population topping 3 million in 2018." *Las Vegas Sun*, March 21, 2017.

<sup>29</sup> Turner, Frederick Jackson, and Wilbur R. Jacobs. *The Frontier in American History*. Tucson (Ariz.): The University of Arizona Press, 1986. 244.

<sup>30</sup> Limerick, Patricia Nelson. *The Legacy of Conquest: The Unbroken Past of the American West*. New York: W.W. Norton, 2006. 2.

<sup>31</sup> Brown, Dee. *The Gentle Tamers: Women of the Old Wild West*. Lincoln, NE: University of Nebraska Press, 1981. 8.

granted suffrage rights long before the passage of the Nineteenth Amendment.<sup>32</sup> In the West, women possessed opportunities for social mobility and gender equity during the nineteenth and twentieth centuries, unlike other parts of the country.<sup>33</sup> However, additional rights and social autonomy remained far from a universal experience shared by women in the West.

This multicultural, male-dominant region of the country forced women to navigate their lives through an imbalance of power, particularly women of color. Women developed a solid sense of identity as they both assimilated into and resisted western culture, throwing traditional concepts of sex, dating, and marriage into a state of flux. Citing examples of Anglo and Hispanic women in nineteenth-century New Mexico, women, viewed as passive victims, transformed themselves into active agents as they connected their experiences to larger patterns of struggle and abuse.<sup>34</sup> As nations and societies competed for resources, land, and cultural domination, women in the West needed to perform domestic and economic duties in the face imminent violence, while severely outnumbered, and from a position of social inferiority, often times emerging with a greater sense of self-worth, confidence, and an increase in social autonomy.<sup>35</sup> The West offered women opportunities for social mobility and gender equity during the nineteenth and twentieth century's unseen in other parts of the country, which begs the question: Given the extraordinary individual freedoms allowed to certain women, has the American West differed in its application and adherence to Title IX from other regions in the United States? While legal pressures from individuals and civil rights organizations helped to facilitate gender equality and Title IX compliance, his thesis contends that the progressive, egalitarian attitudes prominent in the American West did translate into several examples of advanced execution of Title IX in Nevada.

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<sup>32</sup> Benton-Cohen, Katherine. *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands*. Cambridge, MA: Harvard University Press, 2009. 24.

<sup>33</sup> *Ibid.* 28.

<sup>34</sup> Jameson, Elizabeth, and Susan H. Armitage. *Writing the Range: Race, Class, and Culture in the Women's West*. Norman, OK: Univ. of Oklahoma Press, 1997. 88.

<sup>35</sup> *Ibid.* 45.

Not all historians of the American West subscribe to idea that women enjoyed greater levels of gender equality and social autonomy in the late nineteenth-century, early twentieth-century western United States. Historians Albert Hurtado and Susan Armitage describe the “underside” of western history regarding the violence committed against women of the frontier. According to Hurtado, the shortage of females in the American West led to the hypersexualization of women; perpetuated by prostitution.<sup>36</sup> Armitage argues that women of the West experienced disproportionate amounts of violence, both publicly (rapes and killings) and privately (domestic violence) than other regions of the country.<sup>37</sup> Additionally, historians Quintard Taylor and Shirly Ann Wilson Moore contend that navigating the West proved especially difficult for women of color. Despite their legal status as free women, African American women relied upon an arbitrary justice system that depended upon the attitudes and temperaments of state governors and local magistrates. Moore argues that while Anglo and Latino women did experience varied social privileges, African American women constantly fought for simple rights like access to education, employment, and even public transportation.<sup>38</sup>

The issues of the Civil Rights and Feminist movements of the middle twentieth-century engulfed multiple facets of American society including employment, education, and politics. These very same concerns of inequality and discrimination dominated the American sporting landscape as well. However, this phenomenon cannot be solely applied on a grand, ambiguous scale. A case study of the West, particularly the state of Nevada and its public institutions, provides local examples regarding the evolution of gender rights, as specifically determined by

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<sup>36</sup> Hurtado, Albert L. *Intimate Frontiers: Sex, Gender, and Culture in Old California*. Albuquerque, NM: University of New Mexico Press, 2003. 42.

<sup>37</sup> Armitage, Susan. *The Gendered West: The American West*. New York, NY: Routledge Publishing, 2013. 388.

<sup>38</sup> Taylor, Quintard and Shirley Anne Wilson Moore. *African American Women Confront the West, 1600-2000*. Norman, OK: University of Oklahoma Press, 2008. 86.

Title IX, as well as additional cases of compliance and conflicts experienced because of broader social changes brought upon the larger American cultural landscape. As a state rich in western history and heritage, how did Nevada, specifically the University of Nevada, Reno (UNR) and Clark County School District (CCSD), (the nation's fifth largest) react to the passage and implementation of Title IX? Did the legacy of sports in the West mirror its reputation for freedom and opportunity? The Gender Equity Scorecard ranked the University of Nevada Reno best in the country for its commitment to providing women opportunities in sports in 2006 and 2007.<sup>39</sup> In 2012, there existed only six female athletic directors out of 347 Division 1 institutions governed by the NCAA.<sup>40</sup> The state of Nevada claimed two of them, UNR's Cary Groth and University of Nevada Las Vegas' Tina Kuntzer Murphy, with Desiree Reed-Francios taking over for Murphy in April, 2017.

Measured by today's standards for compliance, UNR is exemplary, however a closer study of the history of Title IX at UNR provided by the University of Nevada Oral History Program (UNOHP) and other interviews provided by Pack PAWS, the booster, fundraising, and supervisory body affiliated with UNR's women's intercollegiate athletic program, reveals how until the 1970s, university executives and athletic department officials minimized the importance of women's athletics at UNR, citing concerns about the durability of the female body, a lack of resources, and a preference for men's sports. These prevailing attitudes led to reduced budgets, fewer opportunities, less qualified coaches, and inferior facilities for female athletes. As Title IX became the law of the land, UNR officials and local politicians balked, citing UNR's existing progress in gender equity and financial difficulties. Despite the efforts of UNR executives to minimize the effect of Title IX at UNR, efforts to comply with the new anti-gender

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<sup>39</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011.

<sup>40</sup> International, Inc. Advanced Solutions. "The Number of Women Hired into AD Roles in 2017: INCREDIBLE!!" June 2017. [www.womenleadersincollegesports.org/WL/resources/leadership-content/blog/women-athletic-directors-2017.aspx](http://www.womenleadersincollegesports.org/WL/resources/leadership-content/blog/women-athletic-directors-2017.aspx). (Accessed November 26, 2017).

discrimination law began to play a more significant role in the actions of university administrators as social pressure, both locally and nationally, increased. Despite UNR's initial reluctance to implement Title IX in a timely manner, university officials and local politicians experienced a transition of opinion regarding gender equality in sports, from opposition to understanding, which resulted not only in compliance with Title IX, but the creation of one of the most exemplary college sports programs in the nation in terms of gender equity. This case study also includes the state of women's athletics at Clark County School District (CCSD) before Title IX and an illustration of the growing challenges facing the institutions as it dealt with rapid growth, multiculturalism, and the prevailing, dominant philosophies concerning sports for women. CCSD proved to be innovative and progressive in its approach to Title IX. In 1971, CCSD established a women's interscholastic athletic program, a year before Title IX legislation became the law of the land. CCSD's proactive attitude towards Title IX left the state of Nevada without a true state champion in girls' sports until 1977, when Washoe County School District in Reno finally created a sufficient girls athletic program. Despite CCSD's initial proactivity towards Title IX, decades of rapid growth, fiscal constraints, and labor shortages diverted energy and resources away from girls' athletics until a civil rights lawsuit redirected the districts attention towards gender equality within its athletic programs. As a result, CCSD has demonstrated a commitment to provide more athletic opportunities to its female student body by hiring a Title IX consultant, providing additional levels of existing sports, as well as the implementation of a new, fast growing sport, flag football. CCSD's experience with Title IX and its solutions to gender equity can serve as a benchmark for other school districts that are struggling to provide equal athletic opportunities.

Title IX has been the subject of recent scholarship by historians Karen Blumenthal and Susan Ware, who provide a historical background concerning the implementation, challenges to, and eventual acceptance of Title IX. Through the use of contrarian points of view by legislators, policy makers, and athletes, Ware encourages analytical thinking about gender equity both in athletics and in American society overall. Historians Andrew Zimbalist and Nancy Hogshead-

Makar focus on several case laws that have shaped Title IX's gender equity initiatives. Zimbalist and Hogshead-Makar illustrate how since its inception; Title IX has survived legal challenges ranging from organizations like the NCAA to individual student-athletes. Moreover, they argue that critics of gender equity and its negative effects on men's sports rest not with Title IX, but with the wasted expenditures and spiraling costs of football, in addition to poor administrative decisions and budget allocations.<sup>41</sup> Historians Pamela Grundy, Alicia Barber, and Susan Emmerich Ritter wrote regional accounts of Title IX and women's sports. Grundy illustrates the development of sport and education in North Carolina and its impact upon the social and cultural norms of the Tar Heel State. Through basketball, Grundy argues that women harnessed the momentum of the civil rights movement and shed negative stereotypes.<sup>42</sup> Likewise, Barber and Ritter document the historical context of the founding of the University of Nevada, Reno (UNR) and its importance to the development of women's sports particularly during the "Women's Movement" of the 1970's in the American West.<sup>43</sup> The history of Title IX at UNR provides a unique geographical interpretation and perspective unique to the western region of the United States. While scholars have studied the history of Title IX nationally and at specific institutions like UNR, the history and influence of Title IX on southern Nevada's high schools has yet to be investigated.

My thesis consists of four chapters. In my initial chapter, "A History of Women and Sports before Title IX," I will document the evolution of women's sports and athletics before the

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<sup>41</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2007.

<sup>42</sup> Grundy, Pamela. *Learning to Win: Sports, Education, and Social Change in Twentieth-Century North Carolina*. Chapel Hill: University of North Carolina Press, 2001.

<sup>43</sup> *Achieving Gender Equity in Collegiate Sports: University of Nevada, Reno Responds to Title IX, 1972–2002*. 2016. PDF. 1st ed. Reno: University of Nevada Press. 2002. <http://search.proquest.com.ezproxy.library.unlv.edu/docview/230858917/previewPDF/614694E9FD7D41FDPQ/1?accountid=3611>. (Accessed December 29, 2016).

passage of Title IX. Key points will include the emergence of the Victorian female athlete during the 1920's and how women began to shed cultural restraints and social stigmas of the fragility of the female body. While women from all classes have played and succeeded individually in athletics, this study focuses upon female athletics within an amateur, interscholastic framework. Finally, I will explain the formation of organizations dedicated to women's sports, free from the influence of men, such as the Association for Intercollegiate Athletic for Women (AIAW).

In my second chapter, "Implementing Title IX: Reaction and Response," I examine the initial reaction of the nation to the passage of Title IX, including specific legal challenges to prevent its implementation and other measures taken to provide universities and organizations with exemptions to the new law. In addition, I illustrate specifically the National Collegiate Athletic Association's (NCAA) objections and subsequent takeover of collegiate women's athletics, as well as the multiple attempts made by the Ronald Reagan presidential administration to weaken the size and scope of Title IX. Chapter three, "A State Response: Nevada" details the establishment and evolution of women's athletics at the University of Nevada, Reno (UNR) as well as the university's reaction to the passage of Title IX. Through the use of oral histories from former student-athletes, coaches, and administrators at UNR, I document the varying reactions and responses to Title IX by athletes, university officials, and state politicians.

In the closing chapter, "Clark County School District and Title IX," document the history of women's athletics and Title IX in Clark County School District (CCSD), including the documentation of two specific legal challenges to CCSD and its response to the following allegations of Title IX violations by the lawsuits of assistant U.S. Attorney Eric Johnson and the NLWC. CCSD has provided unique case studies concerning the implementation and compliance of Title IX in southern Nevada.

This case study is an examination of the implementation and execution of Title IX in a historical context, both nationally and locally, in order to determine if the experiences at UNR and CCSD make it exceptional as compared to the rest of the country. Through my research and study of Title IX's impact on UNR and southern Nevada's high schools, I determined that the challenges and solutions to gender equity in classrooms and on playing fields provided by UNR and CCSD are unique to Nevada and the nation.



## **CHAPTER 2: A HISTORY OF WOMEN AND SPORTS BEFORE TITLE IX**

The evolution of women's sports in the United States was a phenomenon that took place alongside social movements for civil rights. Throughout United States history, women have organized and fought against gender discrimination resulting in more opportunities and prominent roles in American society. The Women's Suffrage Movement, World War II, the Civil Rights Movement, the Black Power and Chicano Movements, and the Women's Rights Movement created multifaceted networks of individuals and organizations that jointly emphasized equality among all levels of society. However, similar to the experiences of women who campaigned against slavery during the Abolition Movement of the mid-nineteenth-century, women discovered that while they remained vigilant and committed to bringing equality to African Americans, Asian Americans, Native Americans, Hispanics and other minority groups, they often found themselves relegated to the periphery within these movements. As African-Americans raised awareness of their perceived second-class social status and renewed their demands for equality; they consequently emboldened women to reevaluate how they too remained marginalized. According to historian Katherine Hanson, the defining moment for the United States and soon-to-be-formed Women's Movement, was the struggle for civil rights. "Women began to demand a larger role in the civil right movement. Through this, black women leaders, white women leaders, and hundreds of other women forged a new political identity," Hanson said. From the fundamental principles of the Civil Rights Movement emerged a new feminist campaign, resulting in more equitable opportunities in employment, education, and athletics, culminating in the passage and implementation of Title IX of the Education Amendments Act of 1972.<sup>44</sup>

The history of Title IX spans nearly one hundred and seventy years of continuous social, cultural, and political resistance to the prevailing masculine notions and expectations of feminine sexuality and behavior. In the United States, athletic competition served as the forum in which boys and men proved their masculinity. In this capacity, sports have served as a method to achieve victory, legitimacy, and

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<sup>44</sup> "Title IX and Sex Discrimination." Home. October 15, 2015. [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). (Accessed February 24, 2017).

manhood. Conversely, women seeking to participate in sports have been historically discouraged and marginalized from athletic competition by sexist ideologies ranging from the fear of women infiltrating a masculine sphere, to questioning the durability and capabilities of the female physique.<sup>45</sup> It is during the negotiation of masculinity and femininity of the Victorian Era that the narrative of Title IX begins.

Towards the end of the nineteenth-century, as middle and upper-class women gained greater access to higher education, many became eager to explore newly discovered freedoms outside of the home and sought to become more involved in clubs, sports, and athletic competition similar to their male counterparts.<sup>46</sup> During this time, there emerged a growing philosophical movement that originated in England characterized by manliness, patriotic duty, the physical beauty of athleticism, and “the expulsion of all that is effeminate, unEnglish, and excessively intellectual.”<sup>47</sup> Known as “Muscular Christianity,” this conviction infiltrated America’s colleges and universities, contradicting the prevailing notions of limiting women’s physical activity.<sup>48</sup> During this time, three prominent social prejudices discouraged women from participating in sports and rigorous physical activities. First, upper and middle classes of the Victorian era required women to fulfill social expectations of femininity. Restrictive clothing such as corsets, in addition to petite figures and pale skin, were trademarks of a desired feminine identity, whereas tanned skin and muscled bodies represented women from racial groups and the working class. These social expectations did not apply to women of the lower and working classes, however, conventional attitudes relegated women from all classes to specific gender roles such as mother, wife, and homemaker. Social expectations such as these severely limited women’s abilities to navigate their own lives. Sports provided freedom of movement, promoted social interactions, and inspired notions of independence. Third, people argued that a woman’s highest social responsibility was that of child-bearer,

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<sup>45</sup> O'Reilly, Jean, and Susan K. Cahn. *Women and Sports in the United States a Documentary Reader*. Lebanon: Northeastern University Press, 2012. 9.

<sup>46</sup> Gerber, Ellen W. *The American Woman in Sport*. 1st ed. Boston: Addison-Wesley, 1974. 19.

<sup>47</sup> Newsome, David. *Godliness & Good Learning*. 1st ed. London: John Murray, 1961. 216.

<sup>48</sup> Fields, Sarah K. *Female Gladiators: Gender, Law, and Contact Sport in America*. University of Illinois Press, 2008. 2.

and participating in athletic activity might jeopardize a woman's ability to reproduce.<sup>49</sup> In 1874, Dr. Edward Clarke argued for the frailty of the female body in, *Sex in Education; or, A Fair Chance for Girls*. He attributed the deaths of several female students to mental and physical fatigue, referring specifically to Miss F----, "she lost her health simply because she undertook to do her work in a boy's way and not in a girl's way."<sup>50</sup> Women who engaged in sports risked being given such labels by their male counterparts as "tomboy," or "mannish," or thought to be homosexual.<sup>51</sup> Dudley Allen Sargent, one of the earliest instructors and advocates for physical education, perpetuated such attitudes. Dr. Sargent, while director of Harvard's Hemenway Gymnasium, promoted the connection between physical fitness and mental sharpness, as well as insisted that physical training be a part of the curriculum for every college and university. Sargent however, encouraged a separate training regimen for females as he believed most physical exercises made a woman less feminine, "athletics are making girls bold, masculine, and overassertive; they are destroying the beautiful lines and curves in her figure, and are robbing her of that charm and elusiveness that has so long characterized the female sex."<sup>52</sup>

Decades after the Civil War, rapid industrialization and urbanization changed the economic and social landscape of the nation. Men moved from the fields into factories where they found work on the shop floor and in the burgeoning white-collar sector. Earning a wage no longer required the masses to toil in labor-intensive agriculture but more sedentary, less physically demanding work provided by white-collar work.<sup>53</sup> As men distanced themselves from traditional labors and tasks that once proved ones "manliness," there grew a concern that man had become "over-civilized."<sup>54</sup> The values of physical education, made popular by the philosophy of Muscular Christianity, addressed these very concerns of

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<sup>49</sup> *Muller v. Oregon*, 208 U.S. 412 (1908).

<sup>50</sup> Clarke, Edward H. *Sex in Education: or, A Fair Chance for Girls*. New Delhi: Life Span Publishers and Distributors, 2015. 102.

<sup>51</sup> O'Reilly, Jean, and Susan K. K Cahn. *Women and Sports in the United States*. 1st ed. Boston: University Press of New England, 2012. 14.

<sup>52</sup> *Ibid.* 56.

<sup>53</sup> Gorn, Elliott J. *The Manly Art: Bare-Knuckle Prize Fighting in America*. Ithaca, NY: Cornell University Press, 2010. 193.

<sup>54</sup> Putney, Clifford. *Muscular Christianity: Manhood and Sports in Protestant America, 1880 - 1920*. Cambridge, Mass.: Harvard Univ. Press, 2003. 2.

masculinity and began to take hold as more colleges and universities developed physical education departments, resulting in the belief of sports as a necessary element in the development of manhood and proper health.<sup>55</sup> However, the philosophy of Muscular Christianity pertained only to middle and upper-class white males.<sup>56</sup>

The social restrictions upon women's physical activities lessened as athletics became more acceptable as part of a college education. American psychologist and educational reformer John Dewey asserted that a comprehensive education was best facilitated by doing and experimenting. Dewey's modifications to education echoed the importance of physical activity within an educational environment.<sup>57</sup> As higher education progressed, suitable women's athletic activities evolved to include moderate exercises such as bowling, bicycling, and walking. Even though women's participation in sports was becoming more acceptable, the traditional practice of separating the sexes remained. Senda Berenson, physical educator at Smith College and the "Mother of Women's Basketball" argued, "Rough and vicious play seems worse in women than in men. A certain amount of roughness is deemed necessary to bring out the manliness in our young men. Surely rough play can have no possible excuse in our young women."<sup>58</sup>

By the 1910's, popular periodicals and magazines started to recognize the emergence of a new, bold, spirited woman, shedding prior Victorian restraints, daring to enter social and political spheres previously reserved for the opposite sex. This transition from the "soggy matron" into the "hardy sun-tanned girl" coincided with a burgeoning interest in sports in America.<sup>59</sup> College football, professional baseball, and international competition in tennis, golf, and the Olympics, inspired a whole new generation

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<sup>55</sup> Putney, Clifford. *Muscular Christianity: Manhood and Sports in Protestant America, 1880 - 1920*. Cambridge, Mass.: Harvard Univ. Press, 2003. 20.

<sup>56</sup> Hall, Donald E. *Muscular Christianity: Embodying the Victorian Age*. Cambridge University Press, 2006. 75.

<sup>57</sup> Dewey, John, Jo Ann Boydston, and Larry A. Hickman. *The Collected Works of John Dewey, 1882-1953 (2Nd Release). Electronic Edition. The Early Works of John Dewey, 1882-1898. Volume 4*. 1st ed. Charlottesville, Va.: InteLex Corporation, 1996.

<sup>58</sup> Melnick, Ralph. *Senda Berenson: The Unlikely Founder of Women's Basketball*. Amherst, MA: Univ. of Massachusetts Press, 2007. 25.

<sup>59</sup> Cahn, Susan K. *Coming on Strong: Gender and Sexuality in Women's Sport*. Urbana: University of Illinois Press, 2015. 7.

of participants and spectators. While men recognized and accepted changing feminine ideals, as well as their athletic and professional achievements in fields previously accessible only to men, they remained dedicated to preserving their spheres of masculinity and were not ready to acquiesce entirely to feminine claims of equality and desires for egalitarianism.<sup>60</sup> In 1911, author A.G. Aflalo commented on the defeat of champion golfer Mr. H.H. Hilton by Miss Cecilia Leitch, “A new epoch in the athletic emancipation of the sex was inaugurated by the victory of a lady golfer over one of our foremost champions, and, with women fiercely navigating airships and aeroplanes, there seems, short of polo and the football field, no outdoor pastime closed to them.” Aflalo asserted that women remain physically inferior, “a woman’s place in sport is to be in moderation. It is fine to see her getting health and enjoyment out of outdoor exercise, but not to devote herself to it with the same passion as the opposite sex.”<sup>61</sup>

In the 1920s, female progress in the social and political realms, as well as the athletic achievements of Gertrude Ederle, Stella Walsh, and Babe Didrikson Zaharias, fueled individual sports for women.<sup>62</sup> Known to her family as Stanislawa Walasiewicz, Stella Walsh won the gold medal at the 1932 Olympic Games in Los Angeles, California as a twenty-one-year-old. For a quarter century, Walsh was the greatest all-around female athlete in the world. The Helms Athletic Foundation in Los Angeles named her the “greatest female athlete” of the first half of the twentieth-century.<sup>63</sup> On August 6, 1926, Gertrude Ederle, already an owner of three Olympic gold medals for swimming, became the first woman to swim the English Channel. Ederle’s accomplishment went far to disprove sexist notions of feminine athletic inferiority.<sup>64</sup>

Women’s intercollegiate sports remained strictly governed by academic institutions and continued to function primarily outside of the spotlight. By the 1930s, men remained heavily involved in

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<sup>60</sup> Fox-Genovese, Elizabeth. *Feminism without Illusions*. 1st ed. Chapel Hill: University of North Carolina Press, 2012. 12.

<sup>61</sup> Aflalo, A. G. “Woman in Sport.” *The Living Age* (Boston, MA), May 6, 1911. p380.

<sup>62</sup> Cayleff, Susan E. *The Life and Legend of Babe Didrikson Zaharias*. 1st ed. Urbana: University of Illinois Press, 1995. 255.

<sup>63</sup> Anderson, Sheldon. *The Forgotten Legacy of Stella Walsh: The Greatest Female Athlete of Her Time*. Lanham, MD: Roman & Littlefield Publishers, 2017. ix, x.

<sup>64</sup> Dahlberg, Tim. *America’s Girl: The Incredible Story of how Swimmer Gertrude Ederle Changed the Nation*. New York, NY: St. Martin’s Press, 2009.

intercollegiate competition whereas collegiate sports for women continued between students in intramural contests rather than between institutions. Women's collegiate athletics included intramural, club, and sorority matches, with limited intercollegiate contests during featured "Play Days," where colleges chose their best intramural teams and sent them to compete informally against other teams in their respective areas.<sup>65</sup> By 1936, "Play Days" became the preferred form of intercollegiate competition among seventy percent of colleges.<sup>66</sup> Unlike their male counterparts, whose fierce competitive nature thrived upon victory and school pride, women's sporting contests remained more social than competitive. Coaches of early women's sports were overwhelmingly female physical education teachers who purposefully developed and encouraged the "education model" of athletics that deemphasized winning in favor of a non-competitive environment in which education and the application of social values were the desired outcome. This philosophy represented both a conscious decision, in response to the commercialization and corruption of men's athletics, and a consequence of extremely limited resources. Female coaches and instructors, fully aware of the problems that infiltrated collegiate men's athletic competition, protected their teams from corruption and preserving the integrity of amateur sports. While men's games reached new levels of popularity, female physical educators believed the way men orchestrated intercollegiate sports was wrong, as they abandoned the values of sportsmanship and fair play, in favor of large crowds and the sensation of winning, signifying the evolution of amateurism into big business.<sup>67</sup>

Determined to maintain female athletics in an environment free from unrestrained competition, female coaches and physical educators created the National Amateur Athletic Foundation (NAAF) to organize intercollegiate competition for women. The NAAF created an opportunity for female physical educators, coaches, and administrators to maintain strict control over the philosophy, rules, and guidelines for women's intercollegiate competition. The goals for the NAAF included to "play for play's sake,"

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<sup>65</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press, 2005. 26.

<sup>66</sup> Costa, D. Margaret, and Sharon Ruth Guthrie. *Women and Sport: Interdisciplinary Perspectives*. Champaign, IL: Human Kinetics, 1994. 39.

<sup>67</sup> McDonagh, Eileen and Laura Pappano. *Playing with the Boys: Why Separate is Not Equal in Sports*. Oxford University Press, 2009. 177.

facilitate fair competition, limit travel and awards, discourage individualism, and place qualified women in positions of power and influence in order to maintain and preserve the social values of competition. The motto became, “Every girl in a sport and a sport for every girl.”<sup>68</sup>

By the 1930s, the social status of women evolved dramatically. The passage of the Nineteenth Amendment renewed women’s vigor to obtain more social, economic, educational, and political freedoms. Recognizing the achievements of middle and upper-class women, the press and public coined a new term for them, the “New Woman.”<sup>69</sup> The “New Woman” came to represent an active, college educated, progressive social reformer, dedicated to assisting other women in fields like nursing, education, social work, and politics.<sup>70</sup> Historian Ellen Wiley Todd also contends the new working-class woman crossed class, ethnic, and gender boundaries by re-shaping ideas of leisure and heterosexual interactions.<sup>71</sup> During the early 1900s, the efforts of these female reformers also resulted in modest advancements for women in sports and collegiate competition as competitive events for college women increased.<sup>72</sup>

The onset of the Great Depression stunted these gains. The Depression of the 1930s left millions of Americans unemployed and reemphasized the need for women to remain in the home as the need for women to resume their roles as mothers, wives, and homemakers superseded their desires to pursue athletic endeavors. The women’s movement and its associated achievements stagnated until the Second World War, when millions of women entered the military or joined the workforce to fill the void left by their male counterparts. The return to the workplace provided women with a renewed sense of accomplishment, confidence, and self-esteem. By demonstrating an ability to equally accomplish tasks previously performed by men, many women believed they could achieve similar success on the playing fields of athletic competition. With World War II in full swing, women experienced unprecedented

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<sup>68</sup> Gerber, Ellen W. *The American Woman in Sport*. Reading (Mass.): Addison-Wesley-Publ. Comp, 1974. 51.

<sup>69</sup> Dunbar, Dorothy Bromley. "Feminist- New Style." *Harpers Weekly*, October 1, 1927.

<sup>70</sup> *Ibid.*

<sup>71</sup> Todd, Ellen Wiley. *The New Woman Revised*. University of California Press, 1993. 25.

<sup>72</sup> Gerber, Ellen W. *The American Woman in Sport*. Reading (Mass.): Addison-Wesley-Publ. Comp, 1974. 52.

athletic opportunities in collegiate and professional sports, including the first college golf championship for female athletes in 1941, sanctioned by the National Section on Women's Athletics of the American Association for Health, Physical Education, and Recreation, or AAHPER, and the creation of the first woman's professional athletic team in 1943, the All-American Girls Baseball League.<sup>73</sup>

As interscholastic and professional competition for women spread across the country, so did the need for women to govern and take control of the fast-growing interest among women in competitive sports. From the beginning of women's collegiate athletics, female physical educators like Berenson discouraged competition and winning in favor of the physical and social benefits of sports. Women in charge of physical education departments witnessed how a lack of institutional control plagued the men's games resulting in a resolve not to allow such actions to infect their games. In the years following World War II, multiple controversies and scandals emerged from men's college sports, including debates over payments to athletes, recruiting violations within football programs, and the 1951 college basketball point-shaving scandal, involving players from the City College of New York, Long Island University, and the University of Kentucky, which earned the National Collegiate Athletic Association's (NCAA) first "death penalty" in 1952.<sup>74</sup> Determined not to allow such shameful acts into the women's games, administrators in charge of college sports programs maintained competitive sports within an educational construct, especially with growing accounts of male athletes avoiding schoolwork, receiving bribes from booster clubs, and participating in gambling operations. The creation of new organizations including the Division of Girls and Women's Sports (DGWS) and the Commission on Intercollegiate Athletics for Women (CIAW) signified a collective effort to both promote and protect the integrity of women's interscholastic competition.<sup>75</sup>

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<sup>73</sup> Gerber, Ellen W. *The American Woman in Sport*. Reading (Mass.): Addison-Wesley-Publ. Comp, 1974. 52.

<sup>74</sup> Byers, Walter, and Charles H. Hammer. *Unsportsmanlike Conduct: Exploiting College Athletes*. University of Michigan Press, 1997. 57.

<sup>75</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 48.



The progress of women in sports during the 1950's, and 1960s, is directly accredited to a new wave of feminism that emerged out of two revolutionary, cultural phenomena: the civil rights movement of the mid-twentieth century, and the publication of Betty Friedan's *The Feminine Mystique*. The Civil Rights Movement challenged existing racist and sexist ideologies that relegated women and people of color to the periphery of economic, educational, social, and political opportunities. For example, in 1960, thirty eight percent of women in the work force remained mired in traditional female occupations of nursing, education, and secretarial work.<sup>76</sup> Professional programs regularly avoided pregnant and married women. According to one medical school supervisor, "Hell yes we have a quota... We do keep women out when we can."<sup>77</sup> In 1960, women comprised only six percent of medical doctors and three percent of lawyers.<sup>78</sup> Additionally, the percentage of women attending a college or university in 1960 averaged just thirty seven point nine percent.<sup>79</sup> According to a 1964 Report of the Virginia Commission for the Study of Educational Facilities, the Virginia' higher education system denied admission to nearly twenty one thousand women, whereas not one male student was rejected.<sup>80</sup> Additionally, according to Kathrine Hanson, reluctant students, faculty, trustees, and administrators, fearing that more women would change their power structures, resisted efforts to admit women, to develop new programs for women, or to explore gender-neutral teaching strategies and curriculum.<sup>81</sup> Aptly named by Bernice Sandler as "the chilly climate," this atmosphere of intimidation and rejection went beyond the classroom as male students resented female competition, making life more uncomfortable for their female counterparts.<sup>82</sup> This gender-based hierarchy of employment and education received national media attention because of the

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<sup>76</sup> "100 Years of Consumer Spending: 1960-61." Bureau of Labor Statistics. 2006. PDF.

<sup>77</sup> Collins, Gail. *When Everything Changed: The Amazing Journey of American Women from 1960 to the Present*. New York: Little, Brown & Company, 2009. 38.

<sup>78</sup> "100 Years of Consumer Spending: 1960-61." Bureau of Labor Statistics. 2006. PDF.

<sup>79</sup> National Center for Educational Statistics. "College enrollment rates of high school graduates, by sex: 1960 to 1998." <https://nces.ed.gov/programs/digest/d99/d99t187.asp>.

<sup>80</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 50.

<sup>81</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. 82.

<sup>82</sup> *Ibid.*

efforts made by women's organizations, politicians, and prominent feminists, leading to a call for legislative solutions at the federal level.

As a result of this push for new civil rights, the social consciousness of America changed with the passage and enforcement of the Civil Rights Act of 1964. The passage of the Civil Rights Act culminated decades of passionate struggle and sacrifice of women in order to achieve gender equality in the work place. The enactment of this new law became perhaps the most remarkable and improbable congressional achievement in American history. After the House of Representatives approved the bill with a two hundred and ninety to one hundred and thirty votes, the pro-segregation "Dixiecrats" of the Senate provided unprecedented resistance in the form of a seventy-five-day filibuster. On June 19, 1964, the bill finally passed with seventy-three votes in favor to twenty-seven votes against.<sup>83</sup> This new legislation forced White Americans to recognize and repair nearly two hundred years of cultural discrepancies, as the new law allowed marginalized Americans to challenge discrimination and harassment.

In 1963, the publication of Betty Friedan's *The Feminine Mystique*, emboldened the women's movement for social justice and reform. Credited for launching the "second wave" of feminism, Friedan argued that in post-World War II American society, a woman's value depended upon the fulfillment of their respective gender roles, "that the highest value and only commitment for women is the fulfillment of their own femininity."<sup>84</sup> Friedan argued that women are more than mothers, child bearers, and housewives, and that the relegation of women into such roles led to unprecedented levels of unhappiness. Friedan's criticism of psychologists, educators, and media, which championed the "unsatisfying feminine ideals of home making," inspired women to seek personal fulfillment outside of the home by pursuing educational or employment opportunities, marking a turning point in women's attitudes and behavior concerning traditional gender norms and expectations.<sup>85</sup> New civil rights legislation, in combination with

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<sup>83</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 33.

<sup>84</sup> Friedan, Betty. *The Feminine Mystique*. New York, NY: W.W. Norton, 1963. 43.

<sup>85</sup> Coontz, Stephanie. *A Strange Stirring: The Feminine Mystique and American Women at the Dawn of the 1960s*. Basic Books, 2012. xv.

a new feminist movement, inspired the creation of new activist groups like the Women's Equity Action League (WEAL) and the National Organization for Women (NOW). The modern Women's Movement inspired profound cultural changes regarding the role of women in American society, leading to more women entering the workforce and universities. Ironically, as more women gained access to these institutions, they experienced an increased dissatisfaction concerning huge disparities in wages, advancement opportunities, sexual harassment, and gender-segregated jobs. It was not until 1973 that the Supreme Court banned the use of gender-based employment listings. The publicizing of these issues by various women's organizations and politicians contributed to a substantial awakening of America's social consciousness, resulting in more anti-discrimination legislation.<sup>86</sup>

This new wave of activism created an environment in which women demanded additional control over their economic, educational, and athletic opportunities.<sup>87</sup> By the 1960s, women's national athletic organizations became more assertive in their control over women's intercollegiate sports. In 1957, the DGWS announced that women's intercollegiate programs "may" exist, however in 1963, the organization declared that women's intercollegiate programs "should" exist.<sup>88</sup> In 1967, AAHPER consolidated all of the competing committees and associations of women's interscholastic sports into one organization, the Commission on Intercollegiate Athletics for Women (CIAW). Kathrine Ley, president of CIAW declared, "Children growing up need heroines as well as heroes. We suspect that the naming of national champions each year in the different sports will make sports activity seem more desirable and will motivate less talented girls all over the country to learn sports skills and to enjoy sports on their own."<sup>89</sup> In 1972, the CIAW became the Association for Intercollegiate Athletics for Women (AIAW) because of the need for a more formal structure to oversee and administer women's collegiate national

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<sup>86</sup> *Pittsburgh Press Co. v. Human Rel. Comm'n* 413 U.S. 376 (1973). Justia Law.

<https://supreme.justia.com/cases/federal/us/413/376/case.html>. (Accessed March 03, 2017).

<sup>87</sup> Ware, Susan. *Modern American Women: A Documentary History*. Boston: McGraw-Hill, 2002. 42.

<sup>88</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. 143.

<sup>89</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 16.

championships. The development of their own governing body, free from the corruption and influence of men, provided a sense of ownership and security. In 1974, AIAW president Carole Oglesby made the organizations' goals apparent in its Policy Statement, "We believe sport is an important aspect of our culture and a fertile field for learning. The sense of enjoyment, self-confidence, and physical well-being derived from demanding one's best performance in a sport situation is a meaningful experience for the athlete... Programs in an educational setting should have these benefits as primary goals."<sup>90</sup>

The successful administration of women's intercollegiate sports generated mixed responses from the men's collegiate administrative community. While the National Association of Intercollegiate Athletics (NAIA) vowed to assist to the burgeoning group, the NCAA investigated a potential takeover of all college championships. In 1972 Walter G. Byers, executive director of the NCAA, wrote to the AIAW, "The question of whether the NCAA is the organization to take this job [of governing women's sports] is a question yet to be determined."<sup>91</sup> Both the NCAA and AAU tried to lure women's sports organizations into their own camp as well as assert control over U.S. amateur sports. In 1963, Byers informed the DGWS leaders that "we are trying to shape up women's programs for both basketball and track and field." During the 1960s the NCAA, a men's organization, created separate federations in women's basketball, gymnastics, and track and field, which the DGWS and AAU perceived as a direct threat to their authority and control over women's sports.<sup>92</sup> The actions of Byers and the NCAA reveal that despite the significant gains made by women in the workforce, politics, and athletics, male administrators in collegiate sports believed women remained incapable of managing interscholastic championships.

Byers' letter concerning the ability of the AIAW to effectively govern women's intercollegiate athletics, marked the beginning of multiple actions that attempted to undermine the AIAW's authority,

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<sup>90</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 17.

<sup>91</sup> *Ibid.* 18.

<sup>92</sup> Wushanley, Ying. *Playing Nice and Losing: The Struggle for Control of Women's Intercollegiate Athletics, 1960-2000*. Syracuse, NY: Syracuse University Press, 2004. 30.

hoping to assert the NCAA as the sole organization to oversee all of college sports.<sup>93</sup> The NCAA's effort to annex the AIAW and initiate its own women's championships was in fact Plan B.<sup>94</sup> The NCAA initially tried to destroy all legislation that would provide government regulations for women's college sports, setting the stage for numerous legal battles that spanned several presidential administrations.<sup>95</sup> The 1960s provided significant social advancements for both women and minorities, including the Equal Pay Act of 1963, increased control over women's intercollegiate athletics, the Civil Rights Act of 1964, and the Voting Rights Act of 1965. Moreover, new laws and federal regulations modified educational policy, allowing access to education to those who had been formerly left out. However, previous legislation failed to protect women from discrimination in education. While Title VII of the Civil Rights Act of 1964 prohibited employment discrimination based upon gender, it failed to provide similar protection in education, as colleges and universities remained excluded from Title VII. Likewise, Title VI of the Civil Rights Act prevented race-based discrimination in education by institutions that receive federal funding, but initially mentioned nothing of women as a protected class.<sup>96</sup>

In 1969, Bernice Sandler, a part-time educator at the University of Maryland inquired as to why she was not even considered for full-time faculty position within her department. She was told that despite her fine qualifications, she "came on too strong for a woman."<sup>97</sup> This inspired Sandler to campaign to end gender discrimination in education with the support of the Women's Equity Action League (WEAL). Beginning in 1970, Representative Edith Green of Oregon held the first congressional hearings on equal opportunities in education and employment for women. While reading a report from the Commission on Civil Rights, Sandler discovered Executive Order 11246, which applied to federal contractors and the prohibition of discriminatory employment practices on the basis of sex. Universities

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<sup>93</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 30.

<sup>94</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press, 2005. 36.

<sup>95</sup> *Ibid.* 38

<sup>96</sup> "Education and Title VI." Home. October 15, 2015. <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>. (Accessed February 24, 2017).

<sup>97</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press, 2005. 38.

held federal contracts because they received federal funds, thus making them subject to the executive order. Sandler contacted the newly formed Federal Contract Compliance office within the Department of Labor and discussed with director Vincent G. Macaluso the possibilities of filing a formal complaint. In January 1970, with the assistance of the Labor Department's woman's bureau and WEAL, Sandler filed a class-action complaint against the University of Maryland, citing a pattern of discrimination against women in the admission quotas in the undergraduate and graduate programs, inadequate financial aid, and discriminatory hiring policies.<sup>98</sup> Over the next two years, Sandler filed two hundred and fifty complaints against other colleges and universities. Sandler's efforts garnered the attention of Representative Green and earned her a job as a consultant to Rep. Green's Subcommittee on Higher Education.<sup>99</sup> Beginning in 1970, Representative Edith Green of Oregon, a member of WEAL's advisory board, held the first congressional hearings on equal opportunities in education and employment for women.

In 1971, Sandler, with the assistance of Representative Green and Representative Martha Griffiths of Michigan, began to draft Title IX legislation to be introduced later that year. Green organized the hearings and began to arrange for the testimonies of women throughout higher education and the leaders of WEAL. Hoping to receive additional supportive testimony, Sandler invited the American Council on Education to Capitol Hill, yet they refused to send members to testify claiming, "There is no sex discrimination in higher education."<sup>100</sup> Rep. Green initially intended to amend Titles VI and VII of the Civil Rights Bill, strengthening women as a protected class however, African American leaders worried that any amendments to the previous legislation might weaken coverage for black students. Drawing on the language used in the Civil Rights Act, Sandler, Green, Griffiths, and Senator Birch Bayh of Indiana created the first piece of legislation specifically prohibiting discrimination in education on the basis of sex: "No person in the United States shall, on the basis of sex, be excluded from participation in,

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<sup>98</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 38.

<sup>99</sup> *Ibid.*

<sup>100</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. 16.

be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”<sup>101</sup> Representative Green, with the support of Representative Shirley Chisholm of New York, the first African American woman elected to Congress, Senator George McGovern of South Dakota, and Senator Bayh, introduced the bill to Congress in 1971 as a separate amendment, Title IX. The hearings lasted seven days and witnessed testimony from wide array of educational professionals both for and against the bill. Representative Green said, “All I want and all I ask is that if two individuals, a man and a woman, come to college or university and they have equal credentials and apply for admissions, that they be treated as equals.”<sup>102</sup> In addition, Chisholm argued that during her entire political career her gender had been “a far greater handicap than [her] skin pigmentation.”<sup>103</sup> Notwithstanding protests from the universities of Harvard, Yale, and Princeton, claiming they would “suffer” if they had to accept women on the same basis as men, and assertions from the *New York Times* that “motivated by the best intentions such legislation is educationally unsound” because men and women have different educational aspirations, Title IX received little negative attention.<sup>104</sup> With the assistance of educational associations and their congressional supporters, the bill passed in June 1972 and signed into law by President Richard M. Nixon on June 23, 1972.<sup>105</sup>

### **Conclusion**

The increased acceptance of women’s sports within American society coincided with socially conscious efforts to reduce race and gender discrimination. At the turn of the twentieth-century, more women gained access to education and explored new freedoms away from traditional domestic roles, including athletics and its accompanying opportunities for expanded social interactions. As women took on more mentally strenuous tasks, it became more acceptable to engage in physical activities that were

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<sup>101</sup> “Title IX and Sex Discrimination.” Home. October 15, 2015.

[https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html). (Accessed February 24, 2017).

<sup>102</sup> Blumenthal, Karen. *Let Me Play: The Story of Title IX, The Law that Changed the Future of Girls in America*. New York, NY: Atheneum Books, 2005. 38.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. 9.

once perceived as harmful to the body or unbecoming of a woman. American views towards women changed once again after the suffrage movement granted them new political freedom. As women proved themselves capable of making important societal decisions, they achieved the freedom to expand their influence in other areas of society including sports. World War II facilitated women with additional opportunities outside of their traditional domestic duties as industrial workers and leaders of the home, garnering a new respect and appreciation that women parlayed into more opportunities including athletics. From the end of the Second World War until the 1970s, a steady growth of women's participation in education and sports ensued, as well as increasing support for women's intercollegiate athletics, in part, because of the gains achieved through the Civil Rights and Feminist Movements. Title IX, an extension of Title VI and Title VII, provided the basic framework for combating gender discrimination in education and athletics, however in 1972, the year of its inception, Title IX remained far from a finished piece of legislation.



### **CHAPTER 3: THE NATION RESPONDS TO TITLE IX**

*“The facilities thing will get worse. Girls haven’t figured out yet how to use the urinals.”*

– John Roberts, Secretary of the Wisconsin Interscholastic Athletic Association<sup>106</sup>

*“It’s unfortunate. Title IX is rather simple: don’t discriminate on the basis of sex.”*

– Sen. Birch Bayh<sup>107</sup>

What began as an effort to fight sexist hiring and admission practices among America’s institutions of higher learning evolved into a government mandate requiring equal opportunities for women, in education, in employment and sports, as well as providing safe learning environments and protection from sexual harassment. Multiple legal challenges and judicial interpretations transformed Title IX from a bill about equal educational opportunities into a law that prevents gender discrimination. For example, as historian Welch Suggs argues, similar to the Civil Rights Act of 1964 where additional pages of rules and punishments clarified the new law, Title IX required a series of regulations and guidelines published by the executive branch of the federal government to explain how educational institutions should comply. Despite decades of legal interpretation and clarification, Title IX remains highly controversial to this day because of its impact upon both women and men’s athletic teams at the middle school, high school, and college levels. Through the examination of several instrumental case laws, including the “Tower Amendment,” the “Javits Amendment,” the Department of Health, Education, and Welfare’s (HEW) final regulations of 1975, HEW’s final policy interpretations of 1979, *Grove City v. Bell* (1984), *Franklin v. Gwinnett County Public Schools* (1992), *Cohen v. Brown University* (1996), and *Ollier et. al. v. Sweetwater Union School District* (2010), we can see how Title IX policy evolved. We

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<sup>106</sup> “Editorial: Title IX Opened Door to Athletics for Women”. *Spokesman.com*. August, 2012. [www.spokesman.com/stories/2012/aug/10/editorial-title-ix-opened-door-to-athletics-for/comments/](http://www.spokesman.com/stories/2012/aug/10/editorial-title-ix-opened-door-to-athletics-for/comments/) (Accessed March 31, 2017).

<sup>107</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 67.

may also evaluate Title IX's initial effect upon the nation, specifically how student-athletes, colleges, and organizations chose to either abide by the new law, challenge it, or attempt to exempt themselves from compliance.

By the time Title IX passed in 1972, women already made substantial advancements in both amateur and professional sports. Women's participation in high school sports was on the rise and the AIAW organized and oversaw intercollegiate national championships for multiple women's sports, as well as conducted efforts to acquire equal funding and recognition from their own campuses.<sup>108</sup> In 1973, professional female tennis player, Billie Jean King, five time Wimbledon singles champion and the first "Sportswoman of the Year" by *Sports Illustrated*, accepted a challenge from male tennis star Bobby Riggs to compete in a "Battle of the Sexes" exhibition tennis match.<sup>109</sup> The then fifty-five-year-old Riggs, a two-time U.S. Open and five-time Wimbledon champion, had been making a living by playing in exhibition matches for large side bets from his opponents. Riggs succeeded in enticing one of the world's top ranked female players, Margaret Court of Australia, and dispatched her in straight sets, setting up his challenge to King. Giving her no easy way out, King accepted Riggs' challenge and in front thirty-five thousand people, quickly defeated Riggs in three straight sets winning \$100,000.<sup>110</sup>

King's acceptance of Riggs' challenge occurred during an important time for women in the United States. Women actively engaged in social demonstrations, searching for and demanding equality.<sup>111</sup> The Battle of the Sexes symbolically represented those desires. Worried about a potential loss King said, "It would ruin the women's tour and affect all women's self-esteem." King did not simply view the contest as a fight for women's equality, King, already conscious of a new bill that sought to provide equal funding for girls and women's amateur sports saying after the match, said, "Title IX had just passed and I wanted to help change the hearts and minds of the people to match the legislation."<sup>112</sup>

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<sup>108</sup> Stevenson, Betsey. "Title IX and the Evolution of High School Sports." *Contemporary Economic Policy* 25, no. 4 (October 2007).

<sup>109</sup> "Sportswoman of the Year." *Sports Illustrated*. December 25, 1972.

<sup>110</sup> Kirkpatrick, Curry. "There She Is, Ms. America." *Sports Illustrated*. October 1, 1973.

<sup>111</sup> *Ibid.*

<sup>112</sup> "The Battle of the Sexes." *Newsweek*. 21 Sept. 1998, p. 90.

More important than personal victory, Sports Illustrated writer Curry Kirkpatrick believed King provided a greater sense of pride and strength to the women's movement in front of the entire nation, "Seldom has there been a more classic example of a skilled athlete performing at peak efficiency in the most important moment of her life."<sup>113</sup> Despite King's accomplishments, plenty of work remained in order to convince America that women deserved equal educational and athletic opportunities. As of 1972, women's opportunities to compete professionally remained quite limited. Women's college teams remained plagued by a lack of recognition and money, with most programs relying upon self-transportation, cheap lodging (often with opponents), and with brown bag lunches or fast food to eat.<sup>114</sup>

Legislation banning gender-based discrimination in education met relatively little resistance however, Title IX's impact on intercollegiate sports generated the fiercest opposition. According to Representative Edith Green of Oregon, a key contributor to Title IX legislation, Title IX advocates deliberately avoided women's sports as part of the debate, fearing that the inclusion of athletics into the bill would generate undesired controversy and detract from the broader intentions of the legislation.<sup>115</sup> Gender equity means more than simply an increase in opportunities for women, gender equity moved across the boundaries of society and prompted reform in the family and the workplace, in community organizations, and in local and national politics.<sup>116</sup> Although sports, sporting equipment, and facilities were among several issues raised at the hearings, Title IX's inclusion of sports initially received minimal criticism. During congressional hearings regarding Title IX legislation, Senator Peter H. Dominick from Colorado questioned bill sponsor Senator Birch Bayh saying, "In what way is the Senator thinking here? Is the Senator thinking in terms of dormitory facilities, is the Senator thinking in terms of athletic facilities or equipment? Or are we dealing with just educational requirements?" Bayh replied, "I do not

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<sup>113</sup> Kirkpatrick, Curry. "There She Is, Ms. America." *Sports Illustrated*. October 1, 1973.

<sup>114</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 43.

<sup>115</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 66.

<sup>116</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. Xvi.

read this as requiring integration of dormitories between the sexes, nor do I feel it mandates the desegregation of the football fields. What we are trying to do here is provide equal access for women and men students to the educational process and the extracurricular activities in a school.”<sup>117</sup>

Colleges and athletic associations realized Title IX’s potential. Unlike other social spheres such as education, employment, or politics, the preface of Title IX advocates for the partition of male and female athletes, requiring a “separate but equal” format.<sup>118</sup> Initially Title IX demanded that sex-separated sporting realms be “equitable.” In this case, equitable referred to participation opportunities, athletic scholarships, game and practice times, travel costs, coaching budgets, facilities, medical services, housing, dining, and media coverage.<sup>119</sup> The prospect of having to provide equal funding, facilities, teams and opportunities for women involved, or who desire to be involved, in college sports inspired the then-all-male NCAA to remove the application of Title IX to intercollegiate sports all together. The NCAA was Title IX’s most prolific opponent.<sup>120</sup>

Before to the passage of Title IX, the NCAA explored the possibilities of acquiring the administrative duties concerning intercollegiate women’s championships under the premise that the DGWS needed advice and proper governing procedures from the NCAA. In 1967, NCAA Council member Arthur W. Nebel of the University of Missouri, justified the creation of a study commission that considered the feasibility of establishing appropriate machinery for the control and supervision of women’s athletics, “It was recently brought to the Council’s attention that an increasing number of NCAA institutions are sponsoring intercollegiate athletic events for women. Some of these institutions have sought the advice of the Association... This should not be misconstrued as an effort on the part of the NCAA to establish women’s championships.”<sup>121</sup> Later that fall, NCAA director Walter F. Byers fired

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<sup>117</sup> *Congressional Record*, August 6, 1971, vol. 117, pt. 23: 30407.

<sup>118</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 23.

<sup>119</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 75.

<sup>120</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 106.

<sup>121</sup> Falla, Jack. *NCAA: The Voice of College Sports: A Diamond Anniversary History, 1906-1981*. Overland Park, KS. NCAA, 1981. 161.

a “shot across the bow of the AIAW,” when he presumed the NCAA would be the preferred organization to “supervise and control women’s intercollegiate sports.”<sup>122</sup> According to Donna A. Lopiano, president of the AIAW, the NCAA’s actions assumed that because the NCAA administered men’s intercollegiate sports exclusively, the Association could be liable for not permitting women to participate in its championships on the grounds of the equal protection clause of the Fourteenth Amendment.<sup>123</sup> The women’s leadership feared (correctly) an all-out takeover of women’s intercollegiate athletics.

In 1973, while big-time universities spent millions of dollars annually on athletic budgets for football and men’s basketball, the AIAW faced their first challenge to their philosophy of amateurism and “play for play’s sake.” Female tennis players at Marymount College and Broward Community College in Florida sued the AIAW over the ban on scholarships, contesting that no matter the reason for the ban, as long as men received athletic scholarships, the colleges needed to provide equitable benefits.<sup>124</sup> The AIAW settled out of court, agreeing to award athletic scholarships but at a cap of only eight per year.<sup>125</sup> According to historian Ying Wushanley, this decision dealt a major blow to the ethos of women’s intercollegiate athletics, whose principles included the idea of providing educational benefits and friendly competition free from the corruption and the win-at-all-cost mantra of the men’s programs.<sup>126</sup> The awarding of scholarships marked a watershed moment in women’s collegiate athletics that set-in motion a series of changes to women’s intercollegiate programs including a new emphasis on recruiting, coaching, and winning.<sup>127</sup> In 1976, the first bidding war over a coach erupted between the University of Kentucky and the University of Tennessee over the services of Pat Summitt.<sup>128</sup> It was during these fundamental

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<sup>122</sup> Affidavit of Donna A. Lopiano, president of the AIAW, in *Assoc. for Intercollegiate Athletics for Women v. Nat’l. Collegiate Athletic Assoc*, 588 F. Supp. 487 (D. D.C. 1983), *affirmed*, 735 F.2d 577 (D.C. Cir. 1984).

<sup>123</sup> *Ibid.*

<sup>124</sup> *Kellmeyer et. al. v. National Education Association* (1973).

<sup>125</sup> Wushanley, Ying. *Playing Nice and Losing: The Struggle for Control of Women's Intercollegiate Athletics, 1960-2000*. Syracuse, NY: Syracuse University Press, 2004. 63.

<sup>126</sup> *Ibid.* 64.

<sup>127</sup> *Ibid.*

<sup>128</sup> Rexrode, Joe. “Pat Summitt’s Hometown Remembers Legendary Lady Vols Coach.” *The Tennessean*. June 29, 2016.

changes to women's athletic programs that the NCAA made its move to exempt itself from all Title IX legislation.

### **The Tower Amendment**

The NCAA viewed Title IX as a threat to its financial livelihood by potentially cutting into its revenue producing sports and scholarships. Given that major universities spent millions of dollars annually on athletic budgets, the Association Council of the NCAA began formal lobbying efforts to block the reach of the new law. In 1974, as HEW (the designated executive force of Title IX) finalized its first draft concerning the regulations on college sports, Senator John Tower of Texas introduced an amendment to the Elementary and Secondary Education Act, which called for the exemption of "revenue-producing sports" from Title IX. "This section shall not apply to an intercollegiate activity to the extent that such activity does or may provide gross receipts or donations to the institution necessary to support that activity."<sup>129</sup> Later that year, while on the senate floor in defense of his proposed amendment, Senator Tower contested that colleges were not providing sufficient athletic opportunities for male or female students. Tower claimed that further demands put unfair strains upon future athletic budgets, "Impairment of the financial base of the revenue-producing activity threatens not only the viability of that activity, but the viability of the entire athletic program."<sup>130</sup> Sen. Tower further argued that Congress never intended sports to be a part of Title IX and therefore deserved separate legislation to guarantee equal opportunity for women.<sup>131</sup>

After two years of developing guidelines and regulations to better execute the complicated and contentious new law, HEW finally released its initial draft regulations of Title IX. The final draft ignored Senator Tower's "revenue-producing sports" exemption, but instead included a series of regulations and provisions for each educational institution to follow including: separate teams for members of both sexes

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<sup>129</sup> *Congressional Record* 1974, May 20, 1974, vol. 120, pt. 15: 322.

<sup>130</sup> *Ibid.*

<sup>131</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 49.

where selection of each member is based upon competitive skill; an annual determination of student interest, affirmation efforts to inform the student body of all athletic and training activities, and the provision of equal athletic opportunities.<sup>132</sup> While the updated HEW regulations required equal opportunities for women in sports, HEW steered clear of any Affirmative Action mandates that required schools to provide sex-separate athletics as well as equal aggregate expenditures. There was no requirement for the budget of the football team to resemble that of women's tennis or lacrosse. As the country digested the revised HEW regulations, Congress moved forward with the Elementary and Secondary Education Act, deleting the Towers Bill in favor of alternative legislation provided by Sen. Jacob Javits of New York.<sup>133</sup>

### **The Javits Amendment**

Despite the NCAA's objections, the Javits Amendment became part of the Education Amendments Act on July 1, 1974. Instead of exempting revenue-producing sports from Title IX, the Javits Amendment provided HEW with more authority to issue public regulations, similar to those already included in its initial draft. This new provision did not call for the equal distribution of funds among sports, nor did it consider additional expenditures on football rather than women's softball as discrimination, but instead, with respect to intercollegiate athletic activities, required that reasonable provisions considering the nature of particular sports, i.e. event management needs, be reflected. In other words, event and uniform expenditures on sports with large crowds or expensive equipment needs are not required to be matched with sports with less financial obligations.<sup>134</sup> NCAA director Byers immediately opposed the Javits Amendment and the new HEW draft regulations claiming both violated the law because sports programs did not receive federal funds. According to Byers, "[the regulations] were vague, ambiguous, and lacking in specific standards," and that "enforcement necessarily will be

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<sup>132</sup> Draft Regulations for Interscholastic and Intercollegiate Athletics, 39 Fed. Reg. 22236 (1974, June 20).

<sup>133</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 51.

<sup>134</sup> Senate Conference Report No. 1026, 93<sup>rd</sup> Congress, 2d sess., 1974, 139.

subjective and erratic.” Byers continues, “[the regulations] are arbitrary, exceed HEW’s statutory authority, and will seriously damage athletic programs for student-athletes of both sexes.”<sup>135</sup> The intensive resistance by lobbyists, the NCAA, and more than nine-thousand seven-hundred comments from the public, forced department secretary Casper W. Weinberger to revisit the final draft regulations with the legal objections of the NCAA in mind. In May of 1975, HEW publishes its final regulations, which to this day, is the only section of federal laws that represent gender equity in athletics.

### **1975 Title IX Regulations**

On June 4, 1975, President Gerald Ford, a former member the University Michigan football team, signed the renovated HEW regulations that contained a number of more specific provisions regarding gender equity and athletics. Whereas the initial draft regulations contained a vague definition of equal opportunity, the new version addressed issues brought forward by the NCAA, including the identification of specific areas such as practice times, coaching, and facilities for which schools needed to provide “equal athletic opportunity” for both sexes. Furthermore, compliance with Title IX requires more than merely the opportunity for women to try out for (and not make) men’s teams (excluding contact sports), which would have barred all but the most athletically-talented women from participating. These new regulations also provided a separate section that athletic scholarships should be rewarded upon the degree of interest and participation of male and female student-athletes, not proportionality. The resolution read, “Neither quotas nor fixed percentages of any type are required under the regulation.” Under its publicity provision, “Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”<sup>136</sup> The regulations set a timetable for compliance: One year for elementary schools and three years for high schools and colleges. After months of uncertainty and inaction,

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<sup>135</sup> Affidavit of Donna A. Lopiano, president of the AIAW, in *Assoc. for Intercollegiate Athletics for Women v. Nat’l. Collegiate Athletic Assoc*, 588 F. Supp. 487 (D. D.C. 1983), *affirmed*, 735 F.2d 577 (D.C. Cir. 1984).

<sup>136</sup> *Federal Register*, Volume 40, Number 108 (June 4, 1975), 24142-43.



administrators who desired to move forward with supplying equal athletic opportunity to women and girls “breathed a sigh of relief,” while those opposed to the new law, like the NCAA, needed to consider the changes that might be required.<sup>137</sup>

Despite the unveiling of a new set of regulations concerning gender equity within intercollegiate sports, the NCAA continued to exhaust its legal options in hopes of overturning the new law. In 1978, the NCAA filed suit against Joseph Califano, Secretary of HEW, maintaining its initial objection that intercollegiate athletics must be exempt from Title IX on the basis that they do not receive federal funding. While rendering the United States District Court’s decision, Justice Eugene O’Connor not only described the court proceedings as “the most over-briefed presentation in the court’s recent experience.” The court ruled in favor of HEW, declaring that the NCAA suffered no injuries and that it lacked standing because Title IX does not affect the NCAA.<sup>138</sup>

Although Title IX overcame significant public criticism and legal challenges, more obstructions remained, including an ineffective bureaucracy. On November 23, 1975, in a speech to the New York Women’s Political Congress, Senator Birch Bayh, an architect of Title IX, lamented his frustrations saying, “As bad as HEW has been in processing complaints and pursuing enforcement, the Equal Employment Opportunity Commission (EEOC) has been worse... The struggle for the equality of women in America is not a hobby or a fad, it lies in the heart of a vital principle.”<sup>139</sup> By July 1978, high school and college athletic departments filed ninety-two complaints. Despite the transitional grace period provided by the 1975 HEW regulations, questions remained concerning what constituted compliance. In 1978, in an attempt to clarify the definition of compliance, HEW offered a renewed “Policy Interpretation,” which stated that a school or college achieved compliance with the law if it “eliminated discrimination in financial support and other benefits and opportunities in its existing athletic program.” It continued, “an institutional policy that includes procedures and standards for developing an athletic

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<sup>137</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 50.

<sup>138</sup> *NCAA v. Califano*, 444 F. Supp. 425 (D. Kan. 1978).

<sup>139</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 57-58.

program that provided equal opportunities for men and women to accommodate their interest and abilities.”<sup>140</sup> Critics of the new policy interpretation argued that equality depended upon money spent on male and female athletics, on a per capita basis, and was roughly equal to the awarding of athletic scholarships, recruiting budgets, and the allocation of operating costs. Using “per capita” measures caused significant opposition because it closely represented a quota system as well as contradicted the Javits Amendment. HEW received more than seven-hundred complaints following the release of the new policy interpretation, inspiring several leading feminine organizations to get involved.<sup>141</sup>

Women’s organizations such as the Women’s Equity Action League (WEAL) and the National Organization for Women (NOW) became heavily invested in Title IX after having labored behind the scenes to secure the law’s passage.<sup>142</sup> Frustrated by the inability of HEW to clarify and administer the new law effectively, NOW’s Legal Defense and Education Fund established the Project of Equal Education Rights (PEER) to monitor progress in the enforcement of federal laws, specifically against gender discrimination in education. PEER began an analysis of every complaint regarding gender discrimination in both elementary and secondary schools and quantified the data to determine the nature of the complaint and time required for resolution. PEER released its assessment of HEW and its capacity to resolve Title IX issues in a report titled, “Stalled at the Start,” as indicated by the title, the report provided an evaluation of HEW’s enforcement record. PEER’s evaluation revealed numerous cases where HEW failed to investigate, and in some instances even respond to the claims of alleged victims of sexual harassment, “For half a decade, HEW’s action to enhance equal opportunity in the schools has been negligible. HEW failed to bring relief to our citizens who asked for help in gaining equal treatment in their schools.”<sup>143</sup> The report suggested several steps the government must take in order to better

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<sup>140</sup> *Federal Register* 43, no. 238 (December 11, 1978): 58070.

<sup>141</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 71.

<sup>142</sup> Sandler, Bernice. R, “Too Strong for a Woman’ – The Five Words That Created Title IX,” *National Association for Women in Education newsletter, About Women on Campus* (Spring 1997).

<sup>143</sup> Project on Equal Education Rights, “Stalled at the Start: Government Action on Sex Bias in the Schools” (Washington, D.C.: NOW Legal Defense and Education Fund, 1978), 7-8.

enforce Title IX including: publicizing and clarifying the law; holding staff members accountable; and providing adequate staff training and supervision.

Even after the three-year transition period, the qualifications of compliance remained problematic. In addition to *NCAA v. Califano (1980)*, the negative PEER review of HEW, and more than seven-hundred comments and complaints by the public, inspired HEW officials to bring college presidents and athletic officials to Washington for formal meetings on the most recent policy interpretation. During June and July of 1979, HEW visited eight university campuses, including Stanford University, to see how athletic programs functioned. On December 11, 1979, HEW published a final policy interpretation that varied substantially from the previous policies of 1975 and 1978. The final policy removed the “per capita” assessment method and a new focus was placed upon the daily challenges of operating a collegiate athletics program. The most significant adaptation of the policy was the clarification of the compliance process and a means to assess it through the establishment of the “three prong test.”<sup>144</sup>

#### **A Policy Interpretation: Title IX and Intercollegiate Athletics (1979)**

Standing in contrast to the previous HEW policy interpretations, the final Policy Interpretation of 1979 not only clarified the definition of “equal opportunity” in intercollegiate athletics, but provided factors and standards by which the Office of Civil Rights (OCR) may determine whether or not an institution is compliant in providing equal opportunities in education and athletics, or if any discrepancies which may exist between men’s and women’s athletic programs are justifiable and nondiscriminatory.<sup>145</sup> The Policy Interpretation of 1979 contains three sections: compliance in Financial Assistance (Scholarships) Based upon Athletic Ability, Compliance in Other Program Areas, and Compliance in Meeting the Interests and Abilities of Male and Female Students.<sup>146</sup>

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<sup>144</sup> *Federal Register*, Volume 44, Number 239 (December 11, 1979), 71417-18.

<sup>145</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 75.

<sup>146</sup> *Ibid.*

According to the scholarship section, colleges and universities must award athletic scholarships in a manner that reflects the gender makeup of athletes on varsity teams. For example, if an athletics program has fifty male athletes and fifty female athletes, the school must appropriate fifty percent of its athletic budget for scholarships towards each gender. The next section regarding other program areas specifically referred to separate arenas in which athletic departments must provide equal benefits to both sexes including: equipment and supplies; scheduling of games and practices; travel and per diem allowances; coaching budgets; additional academic resources; locker rooms and facilities; medical and training expenditures; housing and dining; and recruiting resources. According to the discretions of the Director of the OCR, this list remains subject to expansion. The final section stated that high schools and colleges must “determine the athletic interests and abilities of their students.”<sup>147</sup> Schools must provide an appropriate selection of sports and appropriate levels of competition, as well as survey the student body for participation and suggestions. The Policy Interpretation offers a rubric containing three choices that became known as the “three prong test,” and remains the OCR’s official method for determining Title IX compliance to this day. Colleges and universities must comply with at least one of the following options:

1. Have substantially the same proportion of female athletes on varsity teams as the proportion of female students in the undergraduate population.
2. Be able to prove a “history and continuing practice” of expanding programs for women.
3. Be able to show that the institution is fully and effectively accommodating the interests and abilities of women on campus.<sup>148</sup>

The Policy Interpretation established two ways in which the enforcement of Title IX is initiated: compliance reviews and complaints. Periodically, HEW will select a number of institutions to review for compliance and all complaints alleging gender-based discrimination filed to HEW must be investigated in a “timely” manner.<sup>149</sup> Criticism quickly ensued while the NCAA remained devoted to defeating Title IX

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<sup>147</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 75.

<sup>148</sup> *Federal Register* 44, no. 239 (December 11, 1979): 71413.

<sup>149</sup> *Ibid.*

however, the progress made through civil rights legislation of the 1960s and 1970s soon faced an unprecedented counterattack from a new conservative political force.

The year 1980 began with encouraging numbers concerning female participation in high school and intercollegiate sports. The number of female high school athletes increased thirty-three percent while thirty percent of all college athletes were women.<sup>150</sup> However, the nation experienced the emergence of a new political ideology at the time, one of a limited federal government. Named the “Initial Backlash,” the election of Ronald Reagan as President of the United States mirrored a growing frustration with recent civil rights laws, laws considered by many conservative congressmen and women, and their constituents to be an overreach of the government’s powers.<sup>151</sup> According to Terrell H. Bell, the second-ever secretary of education, Republican staffers at the White House openly made racist and sexist jokes, referring to Title IX as the “lesbians’ bill of rights.”<sup>152</sup> Minority and gender rights in employment, housing, education, and athletics became targets of the new administration in efforts to roll back the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.<sup>153</sup> One policy in particular, Title IX, fell into the new administration’s crosshairs. In an attempt to reduce the size of government, the Reagan administration targeted several government agencies for removal, including the Department of Education. The HEW divided into two separate agencies: The Department of Health and Human Services and the Department of Education. This meant that the responsibility of enforcing Title IX regulations fell upon the Office of Civil Rights (OCR), a division with the education department, resulting in the dropping of hundreds of alleged violations involving gender discrimination in athletics. In addition to reducing the size and budget of the OCR, the Reagan administration attempted to shrink the scope of the agency’s reach. Whereas the previous administrations interpreted the application of Title IX towards all institutions that receive federal funding in any capacity, Reagan bureaucrats revised the rules

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<sup>150</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 99.

<sup>151</sup> *Ibid.*

<sup>152</sup> Bell, Terrel H. *The Thirteenth Man: a Reagan Cabinet Memoir*. New York: Free Press, 1988. 71.

<sup>153</sup> Hanson, Katherine, Vivian Guilfooy, and Sarita Pillai. *More than Title IX: How Equity in Education Has Shaped the Nation*. Lanham, MD: Rowman & Littlefield, 2012. 3-6.

to include institutions that receive program-specific funding, penalizing only those departments receiving financial assistance from the government.<sup>154</sup> The decision to reduce the power and influence of Title IX resulted in several lawsuits that prompted Congress to intervene.<sup>155</sup>

In the spring of 1981, Dewey E. Dodds, Director of the OCR, received a complaint of sexual discrimination from several female athletes at the University of Richmond. Under the instruction of the Secretary of Education Terrell H. Bell, Dodds subsequently wrote Richmond's president to inform him that his institution had been selected for a "Title IX Compliance Review of their intercollegiate athletic department." The university responded by disputing the OCR's jurisdiction because the athletic department did not receive federal funding and thus was exempt from a Title IX compliance evaluation. In *Richmond v. Bell* (1982), the appellate court ruled in favor of the University of Richmond because its intercollegiate athletic program, which received separate funding than the library, received no federal funds, thus exempting itself from any Title IX violations.<sup>156</sup> The Reagan administration chose not to appeal, choosing to support the institution. This ruling compromised the purpose of Title IX as high schools and colleges could potentially discriminate within specific departments and programs that did not receive federal dollars such as housing, academics, and athletics. The Department of Education dropped almost every complaint, as did the courts, ending the rapid growth of women's sports across the country.<sup>157</sup>

#### **Grove City College v. Bell (1984)**

In a similar case introduced in 1977, Grove City College in Pennsylvania refused to sign a Title IX compliance form issued by the OCR that mandated that all of the school's activities become subject to federal regulations. Unlike the University of Richmond, Grove City College argued that only its students

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<sup>154</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 101.

<sup>155</sup> *Richmond v. Bell* (1982), and *Grove City College v. Bell* (1984) reduced the size and scope of Title IX by separating university programs and facilities on the basis of federal funding.

<sup>156</sup> *University of Richmond v. Bell*, 543 Supp. 321 (E.D. Va. 8 July 1982).

<sup>157</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 101.

receive financial aid in the forms of student loans and government grants, not specific programs. In the case *Grove City College v. Bell* (1984), the Supreme Court ruled in a six-to-three decision to uphold the government’s position that Title IX’s jurisdiction was limited to only those specific programs within an educational institution that receive federal funds. Justice Lewis F. Powell wrote the majority opinion, “It should be noted that there was not the slightest hint of any failure to comply with Title IX, save the refusal to submit an executed assurance of compliance with Title IX. This refusal was obviously a matter of conscience and belief.”<sup>158</sup> The results of *Richmond v. Bell* and *Grove City College v. Bell* set a damaging precedent for future gender discrimination cases within educational institutions. Whereas Title IX and the OCR’s jurisdiction once pertained to all schools that received federal funding, the OCR was now powerless over college programs that did not benefit from government financial assistance that could potentially include a university’s housing, transportation, academic, and athletic programs.<sup>159</sup> Following the Supreme Courts’ decision, the Department of Education, as well as the courts, began dropping nearly all of its complaints and cases of gender discrimination, signaling for the time being, a pause in the progress of civil rights reforms. The Supreme Court’s decision to limit the scope and effectiveness of Title IX also generated immediate criticism by members of Congress from both sides of the aisle including the Republican Senator from Kansas, Bob Dole.<sup>160</sup>

### **The Civil Rights Restoration Act (1987)**

Dole and other congressional representatives made it a goal to reverse the trend of reducing civil rights legislation by first targeting and overturning the *Grove City* case. Dole and his supporters sponsored a new bill, the “Civil Rights Act of 1984,” to solidify the position of Title IX, Title VI, Title VII, the Rehabilitation Act and the Age Discrimination Act, that all programs funded by the government remained obligated to comply with said laws. The bill passed in the House of Representatives by a count

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<sup>158</sup> *Grove City College v. Bell*, 465 U.S. 555, 579 (1984).

<sup>159</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 102.

<sup>160</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 90.

of 375 to 32; however, the Senate failed to muster enough support. Unlike the previous Title IX congressional hearings, the issue of gender discrimination in sports became the focal point for debate surrounding the new bill. Notwithstanding its initial defeat, Congress reintroduced the bill each year until in 1987, when, to the chagrin of President Reagan, it finally passed in both the House of Representatives and Senate. The new legislation soon faced its most significant challenge when Reagan promptly vetoed the bill. Reagan reasoned, “The truth is this legislation isn’t a civil rights bill. It’s a power grab by Washington, designed to take control away from states, localities, communities, parents, and the private sector and give it to the federal bureaucrats and judges. One dollar of federal aid, direct or indirect would bring entire organizations under federal control... I ask every senator and representative to rise above the pressures of an election year... by sustaining my veto of this dangerous bill.”<sup>161</sup> Despite President Reagan’s plea, Congress overwhelmingly overrode his veto, and the Civil Rights Restoration Act became law in March 1988. The new law reversed *Grove City*, restoring full coverage of Title IX provisions prohibiting gender discrimination in education by recipients of federal funds. The Civil Rights Restoration Act also restored the coverage of other statutes that prohibited discrimination on minority status, disability, and age; all premised on the receipt of federal funds.<sup>162</sup>

While the 1970s produced significant legislation for gender equality, made possible through the synergy of the civil rights movement and the feminist movement, the 1980s proved to be an impasse in the advancement of women’s athletics for two reasons. First was the emergence of a conservative presidential administration that attempted to decrease big government and limit progressive social ingenuities. Second was the elimination of the largest administrative body of women’s intercollegiate athletics, the AIAW. While *Grove City* proved to be the most damaging to the enforcement of Title IX, the NCAA’s appropriation of AIAW not only ended amateurism and the “play for play’s sake” education

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<sup>161</sup> 678 F. Supp. 517 (E.D. Pa. 1987), C.A. No. 80-1362 (E.D. Pa. Sept. 6, 1988).

<sup>162</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 102.



model, but it also led to a methodical dismissal of female leadership within college athletics, setting the stage for future, more serious complications.<sup>163</sup>

Before the passage of Title IX, the NCAA showed no interest in women's collegiate athletics or the AIAW as men's college programs continued to gain popularity, power, and prestige. However, the emergence of a government policy that prohibited gender discrimination in education and athletics raised concern for the future of men's interscholastic sports and the NCAA's autonomy. The NCAA spent much of the 1970's trying to destroy Title IX legislation through their power and influence within the judicial system. The NCAA not only lost their case against HEW in *NCAA v. Califano* (1978) and their endeavor to exempt "revenue-producing sports," but it also failed to strike down the HEW regulations of 1975 and the 1979 Policy Interpretation. After failing to strike down Title IX legislation, the NCAA determined that women's sports had "gained sufficient status," and decided annex women's intercollegiate sports.<sup>164</sup>

After its creation in 1972, the AIAW fought to become a successful organization. In just four years, the AIAW garnered corporate sponsorships and television coverage of their national championships while catapulting women's basketball in nationwide popularity. By 1982, the AIAW created 42 national championships and grew from a charter into an organization with 971 institutional members.<sup>165</sup> Because of new television and radio contracts, women's intercollegiate sports received more national exposure and became a profitable enterprise. In a preemptive strike to gain control over women's sports, many university athletic departments, which were gender segregated, merged the women's physical education program with men's athletic departments.<sup>166</sup> These actions resulted in a gender hierarchy of leadership, as men became official administrators while female teachers and coaches received assistant and secondary positions, usually under the supervision of a male athletic director. Men

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<sup>163</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press, 2005. 90.

<sup>164</sup> Hogshead-Makar, Nancy, and Andrew S. Zimbalist. *Equal Play: Title IX and Social Change*. Philadelphia, PA: Temple University Press, 2008. 106.

<sup>165</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 11.

<sup>166</sup> White Jr., Gordon S. "Are Women's College Sports Units in Peril?" *New York Times*, 1980: C16. Print.

controlled women's sports on campuses around the country, a responsibility and domain once held exclusively by women. Yet the question remained, who would ultimately govern women's sports? As the AIAW gained its own television market and Title IX provided government funding to women's athletic programs, NCAA officials began to aggressively eye women's sports, specifically how to administer their own national championships for female student-athletes. The NCAA made serious offers to the AIAW about merging, however the AIAW interpreted this action as a response to the emergence of Title IX and potential profits derived from television contracts, and refused the NCAA's offer.<sup>167</sup>

Byers did not give up on acquiring the burgeoning business of intercollegiate women's sports. In its annual Association Council meeting in 1975, the council concluded, "It is not feasible or desirable for the NCAA to confine future services and programs only to male student-athletes... Integrated or coordinated programs at the national level cannot be achieved if separate male and female national organizations are left to accomplish it through bilateral agreements."<sup>168</sup> The NCAA had declared its desire not only to conduct its own intercollegiate national championships for women, but to become the singular governing body over all of college sports as well. In 1980, Byers was one step closer to exclusive control over women's college sports. Divisions II and III within the NCAA voted to administer women's championships in basketball, volleyball, swimming, and tennis. The following year during its annual convention, the NCAA membership voted to expand its committees and assign women to leadership positions, and to establish a three-year conversion period for schools to acclimate to NCAA rules. The motion carried 383 to 168.<sup>169</sup> The association then elected to institute Division I championships for women in basketball, swimming, tennis, cross-country, and outdoor track and field. The vote narrowly passed 128 to 127, essentially rendering the AIAW obsolete.<sup>170</sup> During the 1981-82 academic year, the NCAA introduced twenty-nine women's championships in twelve sports. During the

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<sup>167</sup> Wushanley, Ying. *Playing Nice and Losing*. 1st ed. Syracuse, N.Y.: Syracuse University Press, 2004. 199-216.

<sup>168</sup> Falla, Jack. *NCAA: The Voice of College Sports: A Diamond Anniversary History, 1906-1981*. Overland Park, KS: NCAA, 1981. 164.

<sup>169</sup> *Ibid.* 167.

<sup>170</sup> *Ibid.* 168-174.

same season, the AIAW suffered a substantial decline in membership and contribution. AIAW's loss in membership dues totaled \$124,000, which represented nearly twenty-two percent of the dues collected the previous year.<sup>171</sup> Nearly half of those institutions leaving the AIAW chose to place their women's sports programs under the governance of the NCAA. Even among those schools that remained with the AIAW, a significant amount chose to participate in NCAA events in favor of the AIAW. In a last effort to preserve itself and the integrity of the women's game, the AIAW filed a lawsuit against the NCAA, alleging that the NCAA violated sections 1, 2, and 3 of the Sherman Antitrust Act. The AIAW claimed by utilizing its monopoly power in men's college sports, the NCAA facilitated its entry into women's college sports to eliminate the AIAW.<sup>172</sup> The district court found that the NCAA did not attain monopoly power in women's sports during the 1981-82 season, the only year the NCAA competed with AIAW. The court later considered whether the NCAA intended to monopolize women's sports by means of its dues and reimbursement guidelines. With the burden of proof squared upon the AIAW, the court determined that AIAW failed to prove the NCAA acted with the intent to monopolize women's intercollegiate athletics.<sup>173</sup>

The loss of the AIAW proved to be far more significant than simply losing an amateur, educational model for athletics. The appropriation of women's athletics by the NCAA changed the nature of the battle, but the fight for gender equality had just begun.<sup>174</sup> Women in leadership positions such as coaches, officials, medical trainers, marketers, and administrators now served in a duplicate capacity alongside their male counterparts, resulting in a systematic reduction in the number of female employees within the colleges and universities. The loss of a female presence within the administration, recruiting, and coaching fields in women's athletics posed another threat to the evolution of gender equity as sexism infiltrated schools and athletic programs. Women's athletic programs no longer had a majority voice or in the least an influential advocate for the preservation of certain sports within the athletic program. As

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<sup>171</sup> *Assoc. for Intercollegiate Athletics for Women v. Nat'l Collegiate Athletic Assoc.*, 735 F. 2d 577 (D.C. 1984).

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> Davies, Richard O. *Sports in American Life: A History*. Hoboken: Wiley Blackwell, 2017. 438.

athletic directors faced the burden of Title IX compliance, budgets, and the allocation of funds, many times the quickest solution was to dissolve costly and unpopular sports like gymnastics and wrestling. However, the elimination of specific programs in order to balance athletic budgets and comply with Title IX faced direct challenges by those college athletes whose sports no longer existed.<sup>175</sup>

### **Cohen et al. v. Brown University (1992)**

Throughout the late 1970s and 1980s, Title IX underwent extensive challenges and changes. However, as most disputes settled out of court, the new stipulations included in the 1979 Policy Interpretation and the three-part-test remained free from any significant litigation until 1992.<sup>176</sup> In order to manage a projected budget deficit, Brown University's president, Vartan Gregorian, asked new Athletic Director, Dave Roach to cut \$78,000 from the athletic department's \$5-million-dollar budget as part of the university's austerity program. Roach removed two men's programs (golf and water polo) and two women's programs (gymnastics and volleyball). By eliminating the four programs, the school saved more than \$78,000, with more than \$62,000 coming from the women's teams.<sup>177</sup> Roach then increased the athletic per diem from \$15 to \$22. Scheduling facility time became difficult while injuries went untreated. Athletes once interested in attending Brown soon chose to play for other schools. The resulting circumstances surrounding the women's gymnastics and volleyball teams inspired them to bypass the OCR and file a civil Title IX suit against Brown on the grounds of gender discrimination.<sup>178</sup>

The case began with the plaintiffs obtaining a preliminary injunction ordering Brown to reinstate the two women's teams to their former varsity status until the court reached a decision. District Court Judge Raymond J. Pettine paid special attention to the three-part-test in determining his decision. The substantial proportionality test revealed twelve percent discrepancy between female athletes in varsity

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<sup>175</sup> As of 2004, over 350 men's teams have been eliminated by universities since 1972. Three prominent cases involving lawsuits filed by college athletes include *Cohen et al v. Brown University* (1992), *Roberts v. Colorado State Board of Agriculture* (1993), and *Favia v. Indiana University of Pennsylvania* (1993).

<sup>176</sup> Ware, Susan. *Title IX: A Brief History with Documents*. Long Grove, IL: Waveland Press, Inc., 2014. 80.

<sup>177</sup> Zimbalist, Andrew S. *Unpaid Professionals: Commercialism and Conflict in Big-time College Sports: with a new postscript by the author*. Princeton, NJ: Princeton University Press, 2001. 57.

<sup>178</sup> *Ibid.*

sports and the total female student body, rendering Brown in violation of the first part of the test.<sup>179</sup> Brown could demonstrate compliance, program expansion and interest and abilities in two more solutions provided by the three-prong test. The court cited that the only addition to the women's athletic department in recent years was winter track in 1982, and that while the number of females within the student body steadily increased, the amount of athletic opportunities remained stagnant.<sup>180</sup> The court determined that Brown also failed to assess the level of interest and abilities of its female student body, thus failing all three parts of the compliance test. Insisting that his university, by data comparison, treated female athletes better than most institutions, Gregorian asked Cohen why she continued to be critical of her experience. Cohen replied, "If they were above average in preventing date rape yet date rape was still a problem on the campus, would that mean they were fine, that they do not need to make any changes and improvements because other schools have a larger date rape problem? I don't think so."<sup>181</sup> The court ordered Brown to reinstate the women's gymnastics and volleyball teams, provide equitable coaching staffs, uniforms, equipment, and publicity, provide additional recruiting efforts, and to prohibit the further elimination of current funding for any existing women's intercollegiate varsity team. Brown appealed the verdict however the Supreme Court declined to hear the case, accepting the District Court's decision. By July 1998, the end of the lawsuit, Gregorian spent more than three million dollars in legal fees and faced a similar expense to cover costs for the plaintiffs. Such funds, Cohen speculated, could have easily been spent in compliance rather than insubordination.<sup>182</sup> The *Brown* decision remains significant in the history of Title IX. Not only did it *Brown* endure five appeals, but for the first time Title IX and the entirety of its stipulations became sanctioned by the Supreme Court. The potential elimination of gender-specific sports was just one consequence of removing women from positions of leadership within athletic departments. The systematic replacement of women, in favor of men, among athletic programs and

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<sup>179</sup> Zimbalist, Andrew S. *Unpaid Professionals: Commercialism and Conflict in Big-time College Sports: with a new postscript by the author*. Princeton, NJ: Princeton University Press, 2001. 57.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

physical education departments increased the potential for sexual harassment and misconduct exponentially. In 1992, the Supreme Court ruled on such a case, effectively giving more teeth to Title IX in what many supporters call “a Watershed Moment” in gender equity legislation.<sup>183</sup>

### **Franklin v. Gwinnett County Public Schools (1992)**

In 1986, Christine Franklin, a sophomore at North Gwinnett High School located in the suburbs of Atlanta, complained about a teacher and coach at the school, Andrew Hill. According to Franklin, Hill began sexually harassing her, including asking her on dates and inquiring about her relationships with other students. Franklin reported Hill’s actions to the school, however neither the school administration nor the county school district decided to take any action because Hill resigned on the condition that the school drop all charges pending against him. By the time Franklin filed a complaint with the Office of Civil Rights in 1988, both Hill and the school’s principal were no longer employed by the district, thus the OCR determined Gwinnett County Public Schools to be in compliance with Title IX. Unsatisfied, Franklin appealed the case decision but lost because of another ruling that Title IX did not authorize courts to levy monetary damages. The Supreme Court however maintained a different interpretation. Justice Lewis Powell opined that just because there was no plan of how penalties should be rewarded under Title IX, one should not exist.<sup>184</sup> The courts were thereby free to decide how penalties were appropriated. In a previous decision, *Cannon v. University of Chicago* (1979), plaintiff Geraldine Cannon sued the University of Chicago alleging the school denied her admission based upon her sex. The Supreme Court ruled that individuals had the right to sue institutions for violations of Title IX and were therefore entitled to receive monetary damages.<sup>185</sup> The Court’s judgment in *Cannon* paved the way for the subsequent application of Title IX in the rewarding of monetary damages among similar cases, like *Franklin*, involving gender discrimination for students in the world of higher education.

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<sup>183</sup> Welch, Suggs. *A Place on the Team: The Triumph and Tragedy of Title IX*. Princeton, NJ: Princeton University Press. 2005. 105.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

Whereas NCAA officials previously viewed Title IX regulations as a hindrance to the success of their respective athletic programs, particularly men’s sports, *Franklin* immediately changed how colleges and universities viewed cases of gender discrimination. Before the *Franklin* decision, schools found to be in violation of Title IX were subject to injunctive relief only, meaning the school was only compelled to remedy a lack of opportunity or amenities such as building a new facility or provide additional travel expenses. After *Franklin*, not only was the institution now subject to the withdrawing of federal funds, but violations of Title IX, as determined by the OCR, could result in monetary damages being awarded to the plaintiff in addition to providing injunctive relief.<sup>186</sup> “In my opinion, and this is also the opinion of many other Title IX supporters, *Gwinnett* is when Title IX started to be taken seriously,” said Dr. Nancy Lough, Professor of Education and Title IX expert at the University of Nevada, Las Vegas (UNLV). “No longer could Athletic Directors ignore the rampant inequality of opportunities, facilities, and budgets because now they face punitive damages,” Dr. Lough continued.<sup>187</sup> The *Franklin* case also required that the school must have intentionally violated Title IX. This condition is generally not difficult to prove because of the “separate but equal” model of collegiate athletics that establishes gender-separated teams and budgets. Furthermore, *Franklin* empowered other victims of gender bias, providing plenty of incentives to pursue legal action against athletic departments in case of any misconduct.

**Ollier et al. v. Sweetwater Union School District (2010)**

Empowered by judicial rulings and legislative efforts during the 1990s, Title IX significantly increased opportunities for athletic participation among girls and women.<sup>188</sup> However, nearly the entirety of policy debate to this point focuses on big-time college sports, while the vast majority of people within the scope of Title IX are high school females. Although girls’ participation has grown consecutively for twenty-five years reaching 3.26 million in 2013-24, females consistently remain disproportionately

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<sup>186</sup> *Franklin v. Gwinnett County Public Schools*, 911 F. 2d 617 (11<sup>th</sup> Cir. 1990), reversed, 503 U.S. 60 (1992).

<sup>187</sup> Lough, Dr. Nancy. Interviewed by Jason L. Clark. Las Vegas, NV. September 17, 2017.

<sup>188</sup> 2001-02 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY. 1st ed. Indianapolis: National Federation of State High School Associations, 2002.

involved when measured against high school males.<sup>189</sup> Out of multiple court cases involving incidents of second-class treatment of female athletes by school districts, athletic conference rules and state activity associations, University of Baltimore Law Professor Dionne L. Koller chose *Ollier et al. v. Sweetwater Union School District* as the best example for her conclusion that gender discrimination is a major part of the reason for the continuous discrepancy in female participation in school-sponsored athletics, “[there is] little doubt that discrimination in the form of second-class treatment for female athletes is still a fact of life.”<sup>190</sup> The *Sweetwater* case, according to Koller, provides an example of a more systematic and insidious form of second-class discrimination.<sup>191</sup>

In March 2009, Veronica Ollier and several other female student-athletes, claimed that the Sweetwater School District in Chula Vista, California, unlawfully discriminated against female athletes regarding, coaches, travel, training, scheduling of games, practice, competitive facilities, practice times, and funding.<sup>192</sup> After reviewing the evidence, the court reached the following conclusions. Whereas each coach is responsible for their own recruiting within their student population, the athletic director of the high school regularly visited feeder middle schools to recruit boys and not girls. The baseball field stood well-manicured, contained a concession stand, protective dugouts and bullpen areas, and a regulation-sized backstop. The softball field remained hard, uneven, had no fixed bases, no protected warm-up areas, and all together less safe than the boy’s facility. The court also found ample evidence of advantageous practice scheduling for boys’ teams as practices occurred immediately after school. The school posted coaching positions around campus, then posted district-wide if nobody was hired. If a coach was not hired the sport was cancelled for that season. Moreover, the high school bulletin and announcements advertised twice as many events for the boys’ teams. Perhaps most egregious of all was the firing of 2006 girls’ softball coach Chris Martinez who claimed his dismissal was the result of his

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<sup>189</sup> 2013-14 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY. 1st ed. Indianapolis: National Federation of State High School Associations, 2014.

<sup>190</sup> Koller, Dionne L. "Not Just One of the Boys: A Post-Feminist Critique of Title IX’s Vision for Gender Equity in Sports." *SSRN Electronic Journal*, 2010, 401-56. doi:10.2139/ssrn.2064794.

<sup>191</sup> *Veronica Ollier, et al. v. Sweetwater Union School District*, No. 07-714 (S.D. Cal, 2012).

<sup>192</sup> *Ibid.*



complaining about multiple Title IX violations. While in a meeting with the athletic director, Martinez pointed out the severe discrepancies between the baseball and softball fields, and in the presence of a parent, the athletic director informed Martinez he could be dismissed at any time. Six weeks later Bonavista High School fired Martinez.<sup>193</sup> In 2004, the U.S. Supreme Court ruled that retribution against individuals for complaining about gender discrimination violated Title IX.<sup>194</sup>

Koller argues that the fundamental reason for Title IX is to ensure that school districts make sincere efforts to provide girls with the same opportunities and access to interscholastic competition. Participation in sports has several benefits for women and girls including: a more positive body image; better mental and physical health; and greater educational success.<sup>195</sup> Judge James Lorenz found overwhelming evidence of systematic neglect of girls' sports programs and stated so in his ruling, "The inequalities demonstrated at trail should have been rectified years ago by the District. Female students have been denied athletic opportunity equal to male students. This inequality is highlighted and most apparent between the boys' baseball and girls' softball team at CPHS. The girls' softball team has been treated as vastly inferior to the boys' baseball team."<sup>196</sup>

Judge Lorenz informed the Sweetwater Union School District it had forty-five days to come up with an improvement plan. Rather than comply with order, the district appealed the court's decision. While the *Sweetwater* case contains multiple examples of deliberate discrimination, Koller warns that many school districts discriminate in much more subtle ways and are more difficult to identify. In addition, *Sweetwater* is an example of the blatant discrimination that occurs to those most susceptible to gender discrimination in sports, female high school students. Because of the fiscal impact on elite sports universities, colleges have dominated the political debate regarding the application of Title IX and its

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<sup>193</sup> *Veronica Ollier, et al. v. Sweetwater Union School District*, No. 07-714 (S.D. Cal, 2012).

<sup>194</sup> *Roderick Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005).

<sup>195</sup> Koller, Dionne L. "Not Just One of the Boys: A Post-Feminist Critique of Title IX's Vision for Gender Equity in Sports." *SSRN Electronic Journal*, 2010, 401-56. doi:10.2139/ssrn.2064794.

<sup>196</sup> *Veronica Ollier, et al. v. Sweetwater Union School District*, No. 07-714 (S.D. Cal, 2012).

effect on intercollegiate sports. What is missing from the dialogue is the implications of Title IX for high school sports.

### Conclusion

A national examination of Title IX illustrates how a law intended to provide gender equality in upper academia evolved into a mandate for equal opportunities for women in high school and college athletics. The expansion of Title IX's scope of influence created intense political resistance, yet Title IX survived the ire of the NCAA, multiple legal challenges from various educational institutions, and a presidential administration dedicated to reducing the influence of government, specifically its civil rights directives. The cases cited exemplify the expansion of Title IX's effectiveness as a civil rights law for gender equality and the significant increase in its scope of influence in academics and athletics. By the 2000s, Title IX emerged not as an affirmative-action decree, but an anti-discrimination law, modeled after Title VI and Title VII of the Civil Rights Act of 1964. Through its legal battles, Title IX developed into an efficient and acceptable machine for combating gender bias, operating with the full support of the federal government's anti-discrimination policies. However, despite Title IX's evolving stipulations and multiple judicial vindications, gender discrimination in education and interscholastic athletics continues to plague the nation's colleges and high schools as evident by the multitude of ongoing investigations by the U.S. Department of Education.<sup>197</sup> The cases cited also document nationwide legal challenges to Title IX, from Rhode Island to California. However, all seven of the most substantial and significant Title IX court cases involving universities and gender discrimination occurred in Pennsylvania, Illinois, Ohio, and Rhode Island; not one case occurred in the West.<sup>198</sup> Additionally, multiple federal courts considered cases of second-class treatment of female athletes by school districts, with *Ollier v. Sweetwater Union School District* (2010) the only such case to appear outside of the east or Midwestern regions of the

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<sup>197</sup> Kingkade, Tyler. "How Colleges Are Able to Keep Title IX Investigations Hidden". *The Huffington Post*. N.p., 2017. Web. 29 Mar. 2017.

<sup>198</sup> Brake, Deborah L. *Getting in the Game: Title IX and the Women's Sports Revolution*. New York, NY: NYU Press. 2010.

country.<sup>199</sup> There are several potential factors for such a geographical discrepancy in Title IX litigation, the most probable being population. However, it is my intent to provide a regional overview of Title IX, specifically of the West, in order to verify any correlation between the West's historical reputation as a place where women came to create an alternative life, free from the oppressive Victorian ideals of female behavior, and the West's acceptance and support for Title IX legislation.

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<sup>199</sup> Surface, Jeanne L. "Not Second-Class: Title IX, Equity, and Girls' High School Sports." *Educational Leadership Faculty Publications*. Omaha, NE. 2014.

## **CHAPTER 4: A STATE RESPONSE TO TITLE IX: NEVADA**

*“All the athletes of the week for the whole year went to a dinner banquet, and I was the only girl there... I was really breaking down a barrier.”<sup>200</sup>*

– Charlene Bybee, UNR Volleyball 1972-1976

The passage of Title IX and its forty-five-year influence upon the cultural landscape of America continues to serve as a focal point for study at both the national and local levels. The size and scope of Title IX’s influence upon the women of this country cannot be adequately told through the lens of a national narrative alone. A case study on state is required in order to obtain a more accurate and detailed experience concerning the reception, application, and effectiveness of Title IX.

### **Western Exceptionalism**

*“The frontier is productive of individualism.”<sup>201</sup>*

– Frederick Jackson Turner, Historian

The overpopulation of men in the West provided certain women of preferred ethnic and familial ties the ability to make more socially and financially beneficial decisions. However, such an imbalanced gender ratio, also led to the hyper-sexualization of women, manifested by an increased demand for prostitutes and the emergence of a rape culture as a method of control. Spanish, Mexican, and Euromerican societies in eighteenth and nineteenth-century California, while all patriarchal, exercised male control over women and children differently according to the customs of their culture. Anglo traders and businessmen used marriage to establish kinship ties with Californios, who looked to establish identity and financial security in the ultra-competitive West. This heterogeneous composition of cultures provided women with certain civil rights, depending on race or ethnicity. For example, Spanish and

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<sup>200</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 31.

<sup>201</sup> Turner, Frederick J. *The Significance of the Frontier in American History*. Madison, WI: State Historical Society of Wisconsin, 1894.

Mexican civil law grants married women rights to property, wages and other legal privileges. However, Anglo women, although largely denied these rights, did not experience nearly as many arranged marriages, having more decision-making authority over their personal lives.<sup>202</sup> This multicultural, male-dominant region of the country forced women to navigate their lives through an imbalance of power, particularly women of color. Women developed a solid sense of identity as they both assimilated into and resisted western culture, throwing traditional concepts of sex, dating, and marriage into a state of flux. Citing examples of Anglo and Hispanic women in nineteenth-century New Mexico, women, viewed as passive victims, transformed themselves into active agents as they connected their experiences to larger patterns of struggle and abuse.<sup>203</sup> As nations and societies competed for resources, land, and cultural domination, women in the West needed to perform domestic and economic duties in the face imminent violence, while severely outnumbered, and from a position of social inferiority, often times emerging with a greater sense of self-worth, confidence, and an increase in social autonomy.<sup>204</sup>

As historians examine the American West and its reputation as an exceptional place for women's rights, the question remains; did the American West offer civil rights and freedoms to women that they may not have had in the East? Perhaps the best answer comes from historian Laura Woodworth-Ney who said, "It depends on which women, and where."<sup>205</sup> Chinese women who arrived in the West during the mid-nineteenth-century, came not out of their own will in search of opportunity, but as slaves, transported in cages, taken to mining camps, and sold into slave labor and prostitution.<sup>206</sup> Native American women in the West faced violence and conquest at the hands of rival tribes and the imperialist actions of Spain, Mexico, and the United States. Anglo men looking to gain allies, laborers, and kinship ties, married indigenous women. These marriages often removed native women from their matrilineal societies,

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<sup>202</sup> Turner, Frederick J. *The Significance of the Frontier in American History*. Madison, WI: State Historical Society of Wisconsin, 1894. xxiii.

<sup>203</sup> Jameson, Elizabeth, and Susan H. Armitage. *Writing the Range: Race, Class, and Culture in the Women's West*. Norman, OK: Univ. of Oklahoma Press, 1997. 88.

<sup>204</sup> *Ibid.* 45.

<sup>205</sup> Child, Brenda J. *Holding Our World Together: Ojibwe Women and the Survival of Community*. London. Penguin Books, 2013. 33.

<sup>206</sup> Zesch, Scott. *The Chinatown War*. 1st ed. Oxford: Oxford University Press, 2012. 29.

depriving them of many social privileges, rendering them as inferior legal appendages of their husbands. The appropriation of Native American women into Anglo society also expanded non-Indian settlements which spread disease and destroyed food sources and traditional lifeways of native peoples. However, many indigenous women remained resourceful, selectively adopting Anglo methods of farming and domestic duties to earn income in order to mitigate their new realities on the reservation; preserving what they could of their heritage.<sup>207</sup> In addition to race and ethnicity, geography also affected women's rights and social mobility. Anti-miscegenation laws, while elaborate and extensive in the West, varied tremendously in their interpretation and application, depending upon the state of origin. In nineteenth-century California, these laws were strictly applied to groups like the Chinese, Japanese, Filipinos, and blacks, whose men were considered most likely to marry white women. However, because of the heavy influence of Spanish and Mexican civil law, interracial marriages between Hispanics, indigenous women and Anglos received little scrutiny.<sup>208</sup> The enforcement of these laws happened more as a reaction to property ownership after death or divorce, rather than because of a white woman's affair with a non-white man. In other words, the anti-miscegenation laws of the West represented prevailing attitudes towards gender more than race or ethnicity. Unlike California's, at times, laissez-faire application of its anti-miscegenation laws, states like Oregon, Nevada, and Utah governed their commitments to homogenous racial marriages more strictly. Nevada's state legislature did not overturn its ban on interracial marriages until 1959; Utah not until 1963.<sup>209</sup>

On December 10, 1869, the state of Wyoming passed women's suffrage, which is perhaps the most famous contribution to women's equality offered by the American West. However, like anti-miscegenation laws and property rights, a woman's right to vote varied from state to state. Utah and Wyoming led the way keeping their pro-female suffrage provisions they enacted as territories. Idaho,

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<sup>207</sup> "Women and the Myth of the American West." *Zocalo Public Square*. January 11, 2015. [www.zocalopublicsquare.org/2015/01/09/women-and-the-myth-of-the-american-west/ideas/up-for-discussion/](http://www.zocalopublicsquare.org/2015/01/09/women-and-the-myth-of-the-american-west/ideas/up-for-discussion/) (Accessed March 31, 2017).

<sup>208</sup> Jameson, Elizabeth, and Susan H. Armitage. *Writing the Range: Race, Class, and Culture in the Women's West*. Norman, OK: Univ. of Oklahoma Press, 1997. 70.

<sup>209</sup> *Ibid.* 74.

Washington, California, and Oregon followed respectively with Colorado granting women's suffrage in 1900. By 1900, only Nevada, Montana, and New Mexico remained as the only states to prohibit the female vote.<sup>210</sup> In Nevada, the women's suffrage act passed the state legislature in 1895, yet that was not enough. According to a constitutional amendment, Nevada requires passage by two successive legislatures and a popular referendum.<sup>211</sup> In an attempt to secure a popular referendum, suffragists in Nevada campaigned using banners and posters placed upon bandwagons showing Nevada as a black spot on a map surrounded by states which passed women's suffrage.<sup>212</sup> In 1914, the referendum easily passed, 10,936 votes to 7,258. New Mexico did not recognize a woman's right to vote until June, 1920, nearly six months after the passage of the Nineteenth Amendment.<sup>213</sup> It is clear that the American West did provide some women with civil rights and opportunities for social mobility unseen in other regions of the country. However, such social advancements were predicated upon ever-evolving western social constructs of gender, race, ethnicity, and geography. Given these conditional social rights and privileges, did the West also prove itself exceptional by limiting or removing popular restrictions on women's physical activity that aimed to control behavior and protect the frail female physique?

### **The University of Nevada, Reno before Title IX**

Towards the end of the nineteenth-century, physicians warned female students wanting to participate in sports against straining the delicate female physique, additionally the prevailing social attitudes of the Victorian Era relegated women into physically restrictive spheres. There existed little chance that women could participate in exercises of "manliness" on campus grounds without criticism.

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<sup>210</sup> "Woman Suffrage: The Black Spot on the Map." Nevada Suffrage Centennial. November 1, 2014. <https://suffrage100nv.org/nevada-suffrage/woman-suffrage-the-black-spot-on-the-map/>. (Accessed June 21, 2017).

<sup>211</sup> "Women's Research Institute of Nevada (WRIN) — History of Woman Suffrage in Nevada." Women's Research Institute of Nevada (WRIN). March 3, 2012. <http://wrinunlv.org/a-century-of-progress-and-tradition-celebrating-the-centennial-of-woman-suffrage-in-nevada-1911-1914-2011-2014/history-of-woman-suffrage-in-nevada/>. (Accessed June 20, 2017).

<sup>212</sup> "Woman Suffrage: The Black Spot on the Map." Nevada Suffrage Centennial. November 1, 2014. <https://suffrage100nv.org/nevada-suffrage/woman-suffrage-the-black-spot-on-the-map/>. (Accessed June 21, 2017).

<sup>213</sup> "Women's Research Institute of Nevada (WRIN) — History of Woman Suffrage in Nevada." Women's Research Institute of Nevada (WRIN). March 3, 2012. <http://wrinunlv.org/a-century-of-progress-and-tradition-celebrating-the-centennial-of-woman-suffrage-in-nevada-1911-1914-2011-2014/history-of-woman-suffrage-in-nevada/>. (Accessed June 20, 2017).

However, the support for women's athletics on the campus of the University of Nevada, Reno (UNR) changed in the fall of 1894 with the arrival of Dr. Joseph Edward Stubbs. An enthusiastic supporter of "Muscular Christianity," Stubbs believed that a man could improve his physical fitness, Christian morality, and "manly" character through the participation in sport. From 1894 to 1902, a steady increase in student enrollment corresponded with a growth in student activities. In 1898, with the help of Dr. J. Warne Phillips, UNR organized the first Athletic Association, later renamed the Associated Students of the University of Nevada.<sup>214</sup> The following year the group adopted Blue and Silver as the official school colors, as well as a capital block N as the athletic symbol for the school. As a fan of the popular football program at the University of Chicago built by famed football coach Amos Alonzo Stagg, President Stubbs' vigorously supported intercollegiate competition, particularly football, which he believed could attract both local and national interest as it had done for the University of Chicago.<sup>215</sup> Stagg's regional influence and success through football garnered the University of Chicago national coverage and adulation.<sup>216</sup>

Although men's sports remained his priority, Stubbs contributed to the development of the first women's sports of basketball and tennis.<sup>217</sup> Although it lacked adequate facilities, UNR competed against other colleges in football, basketball, and tennis. In 1896, a football game against Belmont, California became the first intercollegiate athletic contest in school history; Nevada lost seventy to zero.<sup>218</sup> Despite having significantly fewer sports and participants than their male counterparts, Nevada's young women experienced the first intercollegiate victory for UNR, as the Sagehens (the women's basketball team) defeated Stanford in 1899.<sup>219</sup>

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<sup>214</sup> Hulse, James W. *The University of Nevada: A Centennial History*. Reno: University of Nevada Press, 1974. 144.

<sup>215</sup> Rader, Benjamin J. *American Sports, From the Age of Folk Games to the Age of Televised Sports*. Upper Saddle River, NJ: Prentice Hall, 1983. 24-25.

<sup>216</sup> Lester, Robin. *Stagg's University: The Rise, Decline, and Fall of Bigtime College Football at Chicago*. University of Illinois Press, 1999. 102.

<sup>217</sup> Trent, John. *Legacy: 100 Years of Athletics at the University of Nevada, 1898-1998, a Look at 100 Years of Nevada Tradition*. Reno, NV: University of Nevada, Dept. of Intercollegiate Athletics, 1988. 22.

<sup>218</sup> *Ibid.* 29.

<sup>219</sup> *Ibid.* 30.



Although women's athletics remained less popular than the men's program, the twentieth-century began with new progressive attitudes towards female athletes. At the turn of the century, American society began to accept the new "athletic girl."<sup>220</sup> This new woman of the twentieth-century insisted on her right to enjoy sports just as her contemporaries began to seek access to traditionally male-dominated professions. Similar to their colleagues around the nation, women at UNR initiated a basketball team and became quite successful in intercollegiate competition, defeating Stanford University and the University of California at Berkeley. To help create even more enthusiasm for the women's basketball team, Nevada hired former California coach Edith Brownsill.<sup>221</sup>

Notwithstanding the increase in opportunities for female students to participate in athletic activities, the "athletic girl" faced a national backlash for her commitment to athletics in place of fulfilling her social duties as a wife and mother. The nation was not ready to accept the idea of women in sport. The country's negative reaction to Eleanor Sears' athletic accomplishments in 1912 was a reflection of the continuing prejudice against female athletes and the desire to limit women's association with sports.<sup>222</sup> Meanwhile, women's sports at UNR continued to progress as Dr. Stubbs added a female administrator to the faculty. On January 1, 1913, UNR hired its first Director of Women's Physical education when Elsie Sameth agreed to organize and formalize women's athletics at the university. With degrees earned at Cornell and Columbia, Sameth began a thirty-five-year career at UNR with a mission statement of the women's physical education program in the *University Bulletin* of 1914-15, "The physical well-being of all young women of the University is under the supervision of a Director of Physical Education. The aim of the department is to develop a strong, symmetrical physique, with an easy and graceful poise of the

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<sup>220</sup> Rader, Benjamin J. *American Sports, From the Age of Folk Games to the Age of Televised Sports*. Upper Saddle River, NJ. Prentice Hall, 1983. 91.

<sup>221</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2012. 12.

<sup>222</sup> Rader, Benjamin J. *American Sports, From the Age of Folk Games to the Age of Televised Sports*. Upper Saddle River, NJ. Prentice Hall, 1983. 211.

body.”<sup>223</sup> Unlike those who opposed female participation in athletics, Sameth believed physical activity through sports promoted an increase in health, better posture, and self-confidence.<sup>224</sup>

Despite the existence of a national backlash towards women’s sports, the women’s athletic program at UNR grew significantly under the supervision of Director Sameth. UNR experienced an increase in female participation as more women explored their athletic interests, forcing UNR to accommodate both men and women by expanding the size of existing teams and creating more teams for intercollegiate competition.<sup>225</sup> Under the direction of Sameth, UNR added sports and activities such as hockey, the Swimming Club, the Rifle Club, and the equestrian Saddle and Spurs Club. She expanded the athletic opportunities available for women at UNR. In addition, UNR’s membership within the Committee on Women’s Athletics (CWA) and the National Women’s Basketball Committee (NWBC) ensured that women remained in control of rule making and the administration of women’s intercollegiate competition. In 1939, Director Sameth stepped down from her position and named Ruth I. Russell as her successor. In 1948, Dr. Russell became Director of Women’s Physical Education at UNR and expanded the women’s P.E. program until her retirement in 1969.<sup>226</sup> Following the popular configuration for women’s intramural competition, Dr. Russell instituted the National Amateur Athletic Federation’s (NAAF) “Play- Day philosophy.”<sup>227</sup> Nevada women met to compete for intramural champions from nearby California schools in a format that maintained the ethos of women’s intercollegiate competition: participation over competition. However, despite the predominate philosophy among female physical educations that considered competition to be negative and avoidable, competitive sports for women continued at UNR in the form of annual events and continued into World War II, particularly in Track

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<sup>223</sup> Hulse, James W. *The University of Nevada: A Centennial History*. Reno: University of Nevada Press, 1974. 124.

<sup>224</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2012. 17.

<sup>225</sup> *Ibid.* 131.

<sup>226</sup> *Ibid.* 19.

<sup>227</sup> Gerber, Ellen. “The Controlled Development of Collegiate Sports for Women: 1923-1936,” *Journal of Sport History* 2, (Spring 1975) 10-12.

and Field, which gained popularity in the 1920s and 1930s, because of standout international performances by Babe Didrikson and Stella Walsh.<sup>228</sup>

World War II also contributed to the increase in popularity of athletics at UNR. Facilitated by the university's conditioning and marching classes mandated by the physical education department, UNR expected men and women to participate in all drilling exercises in order to maintain physical fitness, "These drills assist Nevada co-eds in keeping fit for their many wartime activities."<sup>229</sup> Still concerned about maintaining feminine appearance and behavior, the women's athletic department regulated a strict dress code. In 1951, the code of conduct read: "Masculine hair-styling? Shoes? Coats? All T-shirts are banned at all times!"<sup>230</sup> Following the end of the Second World War, women once again focused on the home as veterans returned from combat, lessening the importance of sports. In addition, a new wave of post-war bigotry categorized female athletes as homosexuals, adding to a decline in the participation of women in organized athletics.<sup>231</sup>

### **Title IX at the University of Nevada, Reno**

The civil rights and feminist movements that emerged during the 1950s, 1960s, and into the 1970s for greater social equality eventually led towards significant changes on the UNR campus. In 1969, Dr. Russell stepped down as chair of women's physical education and requested that Dr. Luella (Lue) Lilly occupy her position.<sup>232</sup> During her eight years in charge of women's athletics at UNR, Dr. Lilly ushered in a changing of the guard, bringing a new energy for developing the women's program. Commenting on Dr. Lilly's influence at UNR, former multi-sport athlete Ramona Sharpnack said, "She was both very intelligent in terms of what she knew about different sports and strategy, and she seemed to really know the ins and outs of college administrations. She also knew about what was happening at

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<sup>228</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2002. 21.

<sup>229</sup> *Artemisia*. 1943. 28, 177

<sup>230</sup> Cahn, Susan K. *Coming on Strong: Gender and Sexuality in Twentieth Century Sport*. New York: Free Press, 1994. 151.

<sup>231</sup> *Ibid.* 309.

<sup>232</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 16.

other schools, particularly related to Title IX.”<sup>233</sup> Further changes to the women's athletic department paralleled the growing cultural consciousness surrounding issues of racial and gender equality within American society. On December 14, 1961, President John F. Kennedy issued an executive order establishing the Presidential Commission of the Status of Women.<sup>234</sup> Two years later the commission issued its report, entitled “American Women,” documenting the status of American women and making recommendations for further action. The report criticized inequalities facing women in a “free” society while acknowledging the importance of women’s traditional gender roles.<sup>235</sup> During the 1970s, advocates for women’s rights found their collective voice and launched a nationwide sexual revolution targeting the perception of acceptable female behavior. In addition to demands for equal employment and educational opportunities, the feminist movement also transformed the world of sports, attacking cultural restraints on physical freedoms. In 1966, physical education leaders formed the Commission for Intercollegiate Activities for Women (CIAW) to organize and administer a new, competitive format for collegiate women's sports, still separate from the men's programs.<sup>236</sup>

Upon her arrival to UNR in 1969, Dr. Lilly formed a women's athletic board, designed to improve size and scope of women’s athletics at UNR. In 1971, Dr. Lilly dropped the “Play-Day” model of women's athletics in favor of a more competitive environment, encouraging women to challenge existing notions that considered female athletes to be overly aggressive and unfeminine.<sup>237</sup> In the early 1970s, the men's and women's Physical Education Departments remained separated while the athletics department existed entirely on its own at UNR. Dr. Lilly maintained a high level of autonomy over women’s

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<sup>233</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 16.

<sup>234</sup> John F. Kennedy: "Executive Order 11126—Establishing a Committee and a Council Relating to the Status of Women," November 1, 1963. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=59065>.

<sup>235</sup> Kaplan, Frances Balgley ED. *Report of The President's Commission on The Status of Women: Background, Content, Significance*. 1st ed. Washington D. C.: N.p., 1963.

<sup>236</sup> Chudacoff, Howard P. *Changing the Playbook: How Power, Profit, and Politics Transformed College Sports*. Urbana: University of Illinois Press, 2015. 87.

<sup>237</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 29.

athletics until the P.E. departments merged in 1972, giving all control to Athletic Director, Dick Trachok. In 1974, Trachok appropriated the Physical Education Departments into the athletic program but left Dr. Lilly in charge of the women's program as the “senior woman administrator.”<sup>238</sup> According to Trachok, “The bad part of the program, of course, is that we didn’t have any money. When combined the men and women under one program, I said, ‘How about the budget?’ And they [administration] said, ‘Well, you’ll have to try to find it.’”<sup>239</sup> The athletic budget highlighted just one of many challenges and inequalities facing women’s sports at UNR. Before the advent of scholarships and formal recruiting policies mandated by Title IX, women found their way into women’s athletics in various ways. Some were introduced through the P.E. Department, others through intramural sports, ran by the WRA. According to student-athlete Pat Miltenberger, while the men’s program enjoyed the benefits of being officially recognized by the schools’ athletic department and the administrative efforts of the NCAA, women at UNR relied upon the WRA to organize games, tournaments, provide officials, and individual achievements, “Sports were coached by women’s PE teachers while the WRA constantly tried to provide resources and recognition women’s sports,” said former UNR athlete and Vice President of Student Services Pat Miltenberger.<sup>240</sup>

University statistics for the 1971 academic year reveal that UNR fell within the vast number of institutions where males dominated athletics, physical education programs, and faculty positions.<sup>241</sup> Because of the lack of resources available to the women’s athletic department, female coaches served in multiple capacities, including as trainers, academic councilors, and travel coordinators.<sup>242</sup> Of the ninety-six courses offered by the physical education department, sixty-seven of them remained available to women. Only two females occupied salaried positions within the P. E. department as compared to

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<sup>238</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 30.

<sup>239</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 21.

<sup>240</sup> *Ibid.* 26.

<sup>241</sup> University of Nevada, Reno, *University Course Catalog*. Reno, NV: 1970-71. 379.

<sup>242</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 52.

thirteen men.<sup>243</sup> In response to these glaring deficiencies, the 1971 edition of the *Artemisia* featured an editorial calling for gender equity within the university's academic and athletic departments, a year before the passage of Title IX.<sup>244</sup> The 1971-1972 women's athletic program at UNR featured four full-time coaches for five sports, each paid to work ten hours per week.<sup>245</sup> As the head coach for women's basketball and volleyball, and with an annual budget of only \$5,087, Dr. Lilly experienced extreme difficulty providing transportation, uniforms, and equipment for the female athletes at UNR. In 1971,

Women's athletics at UNR also struggled for recognition and visibility both on campus and among the community. The lack of exposure forced female athletes and coaches to become de-facto marketing agents, posting flyers around campus to announce any significant events. Even after the passage of Title IX, the women's athletic department suffered from a lack of media coverage. In 1979, UNR hosted and won the AIAW's national championships for women's swimming and diving, becoming UNR's first national champions. Swim coach Jerry Ballew remembered the event, "We didn't get anything. We never got additional scholarships, and we almost didn't even get an awards dinner." Ballew continued, "As long as I live I'll never get over this, we just won the national championships, the next day in the *Reno Gazette-Journal*, there was nothing! Not one single word about the national championship, I was livid."<sup>246</sup> Dr. Joe Crowley, president of the university at the time, said, "A year after I became president, our women's swimming and diving team won the national championship sponsored by the AIAW. The event was held on Nevada campus, I was present for parts of it. The morning after we became champions no story of our success appeared in the local newspaper. A national championship! No story! This was a wake-up call for me."<sup>247</sup>

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<sup>243</sup> University of Nevada System, *Master List of Authorized Professional Positions*. Reno, NV: 1970-71, University of Nevada, Reno Library, Archives, NUA 1/10/6:1.

<sup>244</sup> *Artemisia*. 1971. 248-249.

<sup>245</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2002. 29.

<sup>246</sup> *Ibid.* 79-80.

<sup>247</sup> *Ibid.*

Throughout the 1960s and 70s, the women's athletic program at UNR faced a lack of female faculty members, trivial budgets, inadequate travel arrangements, lodging, and meals, little to no exposure or publicity, and laughable facilities and uniforms. UNR directed its resources and energy towards its football team, as well as its men's basketball and baseball programs, while the women's athletic department remained largely neglected.

### **The University of Nevada, Reno after Title IX**

Advocates for gender equality celebrated the passage of Title IX both nationally and at the University of Nevada, Reno, yet the new legislation brought slower change than anticipated. The process to bring equal opportunity for women in education and athletics within federally funded institutions created a mixture of responses and expectations at UNR. According to Pat Hixson, "I don't want to say we were ahead of our times, but we were ahead of Title IX."<sup>248</sup> Dr. Lue Lilly maintained a different opinion saying, "I don't think Title IX made any difference at all while I was at the university [1968-1976]. A lot of administrators didn't like it. Nevada wasn't going to be pushed into doing anything until it *had* to; it had little or no effect at all."<sup>249</sup> William Wallace, faculty representative to the athletics department, shared Dr. Lilly's sentiment, "I think Title IX was gradually accepted on campus, but it was accepted with reluctance. That's probably why Lue Lilly had such a tough fight."<sup>250</sup> Although Title IX became law, advocates for gender equality at UNR chose not to wait for the government to enforce its new legislation and took action against the university.

In less than a month after President Nixon signed Title IX into law, Ruth H. Donovan, Chair for the Faculty Women's Caucus, issued a letter to UNR President N. Edd Miller highlighting the miserable state of the women's athletic department on the University of Nevada, Reno campus. In the letter, Donovan cited sections of the Affirmative Action Statement adopted by the Faculty Senate, reminding

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<sup>248</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011. 47.

<sup>249</sup> *Ibid.* 49.

<sup>250</sup> *Ibid.* 50.

President Miller of the university's commitment to gender equality, ".This institution has thus agreed to begin to make equal opportunities a reality."<sup>251</sup> According to the report, the women's volleyball team voted to carry sack lunches so they could afford to purchase regulation nets to meet league standards. Each player also had to buy or rent a uniform and provide her own shoes and socks while male track athletes received two game uniforms, a practice uniform, sweats, and "undergarments."<sup>252</sup>

Adding to the pressure placed upon the university, Lilly demonstrated her support for the Faculty Women's Caucus by writing to Donovan to recommend that the effort to achieve equal opportunities and funding for women's athletics must include the help of the campus, the community of Reno, and all of northern Nevada.<sup>253</sup> The following week, the school newspaper, *The Sagebrush*, criticized the inequalities that existed between the men's and women's athletic programs. Citing the difference in team offerings for men and women, salaries for coaches, budgets, and use of facilities the piece created an alarm among the administration.<sup>254</sup> The day after the article ran, President Miller responded to Donovan with a letter assuring her that many of the issues she expressed in her July 21 letter would be addressed as soon as funds became available.<sup>255</sup> Despite the passage of Title IX and President Miller's reassurance to Dr. Lilly, the woman's athletic department continued to suffer from budget cuts. For the 1972-1973 academic year, UNR trimmed down the woman's athletic department by employing only two part-time coaches and four varsity sports, and reducing the budget to \$4,913.<sup>256</sup> The program requested a budget of \$10,800 with an eventual goal of nine sports: volleyball, basketball, gymnastics, softball, swimming, skiing, tennis, track, and field hockey. UNR denied their request. Whereas the men's athletics program

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<sup>251</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2002. 49.

<sup>252</sup> *Ibid.*

<sup>253</sup> "Lilly, Luella and Mary Ellen Glass to Ruth H. Donovan." September 22, 1972. *Sagebrush*, 3. September 26, 1972.

<sup>254</sup> *Sagebrush*. September 26, 1972.

<sup>255</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2002. 53.

<sup>256</sup> *Ibid.* 52.



enjoyed \$67,200 from student fees and \$172,000 grants in aid, the women's athletics program received only, \$4,800 from student fees and nothing for grants in aid.<sup>257</sup>

Efforts to rectify the glaring inequities between the men's and women's athletic programs on the campus of UNR progress remained slow and minimal because of what many believed as a failure to implement and enforce an ambiguous law. President Joe Crowley recalled, "With the various interpretations, there was such fluctuation, and that was part of the problem. Title IX was a moving target, and it was different under [President] Reagan than it had been initially under Carter."<sup>258</sup> Title IX came under intense congressional and legal challenges for years following its passage, adding to the confusion of its stipulations for compliance. Among those U.S. Senators who introduced legislation intended to reduce the scope of Title IX was Nevada's own former governor, Paul Laxalt. "I can speak directly to the personal enrichment associated with intercollegiate athletics," said Laxalt on July 16, 1975 when he spoke on the U.S. Senate floor to introduce Senate Resolution 52. The legislation criticized of the application of Title IX to intercollegiate athletics. "My own days as an undergraduate participant and a subsequent period of close contact with programs in Nevada have been invaluable experiences for me," declared Laxalt. However, the Senator from Nevada argued that the athletic stipulations of Title IX "greatly exceed the intent of Congress."<sup>259</sup> Senator Laxalt's statements reflected the predominating attitude among university officials towards college athletics that existed in his home state. In 1975, the men's athletic department at UNR consisted of eleven employed males with a combined salary outlay of \$106,833. The women's athletics department, budgeted within the same "Intercollegiate Athletics" category, employed only four people with a total salary of \$24,171. Three years after Title IX passed, women's athletics received just eighteen percent of the intercollegiate athletics budget as compared to the

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<sup>257</sup> Perriera, Fred L. "An Institutional Study of the Men's Intercollegiate Athletic Program at the University of Nevada - Reno from 1972 – 1982." Ph.D. Diss. University of San Francisco. 1986. 9.

<sup>258</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 127.

<sup>259</sup> *Congressional Record*. July 16, 1975. 22940.

men's eighty-two percent.<sup>260</sup> In 1976, having finally tired of budgeting discrepancies, threats from administrators, and a general lack of support from the university, Dr. Luella Lilly stepped down from her position as director of woman's athletics and joined the University of California at Berkeley as its first female Athletic Director. The Athletics Department at UNR failed to hire another director of women's athletics until 1984.<sup>261</sup>

In January 1979, the Board of Regents at UNR named Joseph N. Crowley as President. His appointment came at a crucial moment when the issue of gender equity in intercollegiate athletics rose to the forefront of significance within American society. Caught up in a cross fire from conflicting political and social interests in Nevada, Dr. Crowley, along with Athletic Director Dick Trachok and Nevada Senator Paul Laxalt, criticized the new implementation guidelines of Title IX. On February 22, 1979, Dr. Crowley wrote an eight-page letter describing his observations concerning Title IX to the Director of the Office of Civil Rights. He expressed his dissatisfaction with the Interpretation Policy as well as defended the women's program at UNR explaining how the school had "moved quickly to expand opportunities for women in athletics," outlining accomplishments in expenditures and staffing for women's programs.<sup>262</sup> Dr. Crowley's efforts paralleled those of other university presidents across the country, specifically at mid-level universities whose immediate financial concerns dictated the type of response necessary to federal regulations.

Despite Dr. Crowley's and Senator Laxalt's attempt to minimize the effect of Title IX at UNR, efforts to comply with the new anti-gender discrimination law started to play a more significant role in the actions of university administrators. According to Dr. Crowley, "I think there was an evolution that went from opposition to transition; more understanding. The longer the discussion went on, the more interested I became, as a president, but also as a person, as a father, as a husband. My girls were growing

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<sup>260</sup> Perriera, Fred L. "An Institutional Study of the Men's Intercollegiate Athletic Program at the University of Nevada - Reno from 1972 - 1982." Ph.D. Diss. University of San Francisco. 1986. 11.

<sup>261</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 95.

<sup>262</sup> Ritter, Susan Emmerich. "Achieving gender equity in collegiate sports: University of Nevada, Reno responds to Title IX, 1972-2002." PhD diss., University of Nevada Reno, 2002. 67.

up with new opportunities to play sports. Title IX is responsible for that.”<sup>263</sup> By 1980, the number of women playing intercollegiate sports doubled while approximately two million girls played high school varsity sports, a six-hundred percent increase from 1970.<sup>264</sup> These high school athletes began to flood into universities around the nation. Albeit slowly and with much resistance, Title IX began to produce its desired effect; more educational and athletic opportunities for women. As university officials transitioned from a position of opposition to acceptance of Title IX, UNR began to rapidly achieve several goals. National organizations dedicated to advancing women’s college athletics became increasingly more influential. Perhaps most pertinent to the development of the women’s athletic program was the decision to join the Association of Intercollegiate Athletics for Women (AIAW), which provided UNR with the opportunity to host and participate in national championships. As a result, more scholarships for female athletes became available. In 1986, Nevada hired Chris Ault as Athletic Director, who used his experience as head coach of the football team to expand women’s sports. Ault successfully raised revenue from the football team to support other women’s programs by building a competitive team, expanding the size of Mackay Stadium to include a modern press box and private suites, building state of the art practice and training facilities, and by constructing Legacy Hall to accommodate additional coaches and athletes. These improvements to the football program helped to rank UNR among the best in the nation, attracting better recruits which resulted in more wins and revenue.<sup>265</sup> According to Ault, “We had to find a way to move things [gender equity] forward. I use football as an example. We were winning big then, so football was the catalyst carrying other sports at that time. Gender equity, we were moving forward. We were the most aggressive school in the country at the time. It wasn’t publicized until now, but it really happened.”<sup>266</sup>

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<sup>263</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 127-128.

<sup>264</sup> *1970-71 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY*. 1st ed. Indianapolis: National Federation of State High School Associations, 2016.

<sup>265</sup> Davies, Richard O. "Pack Athletics Reaches Maturity." *Nevada Silver and Blue*. July 2007.

<sup>266</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011, pp. 163.

In 1992, UNR moved from Division 1-AA to Division 1-A, placing the men's and women's programs within the same athletic conference for the first time. The Big West Athletic Conference required the university to fund more sports, provide additional scholarships, and improve facilities. In 1994, senior women's administrator Valerie Cooke, a U.S. Magistrate serving on the bench in Reno, established a new booster club specifically for the women's athletics program. Named Pack PAWS (Promoting and Advancing Women in Sports), this organization played a large role in generating public support, fundraising, and media exposure for women's sports at UNR. In 1997, Dr. Crowley, members of Pack PAWS, and representatives from both UNR and UNLV's athletic programs secured an unprecedented one million dollars from the state legislature to support Title IX compliance efforts and the expansion of women's collegiate athletics in the state of Nevada.<sup>267</sup> Finally, in an effort to demonstrate to Nevada legislators, and the public, the benefits of introducing young women to athletics, UNR athletic officials and Pack PAWS created an annual Girls and Women in Sports Day held at the Lawlor Events Center.<sup>268</sup>

### **Conclusion**

The saga of women's sports at UNR begins with opportunity, inclusion, and success. The decision to employ pioneers in women's sports like Elsie Sameth, Ruth Russell, and Luella Lily to lead their women's athletics department represents a shift away from the traditional attitudes surrounding women's sports. By hiring these women, UNR signaled its acceptance of the progressive, reformed female athlete, who no longer wanted to "play for play's sake," but who desired to compete and win at the highest possible level. These women navigated inferior facilities, negligible budgets and minimal press coverage, yet remained dedicated to supporting their student-athletes by providing competitive environments and by performing multiple duties as coach, trainer, and academic advisor. Although UNR initially responded to Title IX with speculation and contempt, athletic administrators, athletes, and

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<sup>267</sup> UCCSN Board of Regents' Meeting Minutes, 04/24/1997 - NSHE. April 24, 1997.

<sup>268</sup> Barber, Alicia, Mary Larson, and Allison Tracy. *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada*. Reno, NV: University of Nevada Oral History Program, 2011. 204.

community leaders mobilized to support gender equality. Luella Lilly, Ruth H. Donovan, Valerie Cooke, and others, refused to wait for government mandates to take effect. Instead, these men and women continued to raise awareness and apply pressure to those university officials and politicians who continued to resist Title IX legislation, culminating in the creation of the first women's booster club. In addition to hiring progressive female leaders, UNR hired Chris Ault as Athletic Director, who genuinely cared about gender equality. In 1994, university officials, former UNR athletes, Chris Ault (Athletic Director), and several female members of the Northern Nevada Lawyers Association (NNLA) all came together to form the organization called Pack P.A.W.S. (Promoting and Advancing Women in Sports). Pack PAWS serves the women's athletic program at UNR by providing publicity, fundraising, and also functions as a watchdog group. With the support of the Pack PAWS organization, one of the nation's only booster clubs for women's sports, and an athletic director dedicated to equal opportunities for women, UNR became one of the most exemplary college sports programs in the nation in terms of gender equity. Finally, UNR became one of the only universities to receive millions of dollars in state funds earmarked for gender equity compliance. According to Dr. Crowley, "States did not regular give money out to athletic programs. No states were doing this."<sup>269</sup> The process for gender equity at UNR, while slow and reluctant to begin, eventually achieved and surpassed stipulations for compliance as university officials and athletic department executives embraced the goals for fair opportunities in education and athletics.

Through the innovative and progressive actions of both university officials and community leaders, UNR's attitude and commitment to equal educational and athletic opportunities is both exceptional and unique to the nation. Reflecting upon UNR's experience with Title IX, Dr. Joe Crowley said, "Title IX has been a major issue because collegiate athletics is the most visible thing the university does."<sup>270</sup> In a mid-size city like Reno, a sports-oriented community where the local university is a main

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<sup>269</sup> Larson, Mary A. Transcript of an Oral History Conducted 2008, in *We Were All Athletes: Women's Athletics and Title IX at the University of Nevada, 1964 – 2008*, University of Nevada Oral History Program, UNR Library, University of Nevada, Reno, 2011. 1

<sup>270</sup> Crowley, Joseph N. Interviewed by Susan Emmerich Ritter. March 27, 2002. Reno, NV.

source of pride and entertainment, public values are usually what push legislation.<sup>271</sup> In the next chapter, I continue my regional examination of Title IX in the West, focusing on Clark County School District (CCSD) of Las Vegas, Nevada, the fifth largest school district in the nation. My examination of CCSD illustrates how the district navigated early challenges of rapid growth and the accommodation of an economically and ethnically diverse student body prior to the passage of Title IX. I also include oral histories from administrators and faculty members who guided the district through the application and enforcement of Title IX, as well as a documentation of two recent civil rights cases regarding CCSD and gender inequality.

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<sup>271</sup> “Reno ranked 165, just behind Santa Barbara, of 376 sports cities analyzed by *The Sporting News* in 2001.” *Reno Gazette-Journal*, August 19, 2001.

## **CHAPTER 5: CLARK COUNTY SCHOOL DISTRICT AND TITLE IX**

*“It was a wonderful thing for the district; a wonderful thing for the girls.”<sup>272</sup>*

– Norman Craft, Director of Athletics, CCSD

Between 1972 and 2011, the number of girls competing in high school sports nationwide skyrocketed from 250,000 to approximately 3.2 million.<sup>273</sup> While this increase in girls’ athletic participation reflects the success of Title IX legislation, high schools still provide 1.3 million fewer opportunities for females than their male counterparts.<sup>274</sup> As the fifth largest school district in the nation, CCSD provides several examples of the struggles associated with complying with the mandates of Title IX.<sup>275</sup> This chapter includes a comprehensive examination of the history of CCSD. Specifically, how it navigated the rapid growth of an ethnically and economically diverse student body, its exceptional acceptance and application of Title IX to its athletic program, and an illustration of two prominent gender inequity lawsuits involving a high school student-athlete and a complaint filed by the National Women’s Law Center that shaped the status of girls’ sports within the district. This chapter will also demonstrate how CCSD endured years of intensive expansion, fiscal hardships, and federal civil rights litigation, specifically *Kelly et. al v. CCSD* (1968) a lawsuit regarding racial segregation, all of which ultimately prepared the district for the implementation and execution of Title IX.

Established in 1956, the Clark County School District formed during a period of rapid population growth within the Las Vegas valley spurred by New Deal projects, military operations, and an expanding casino and nightlife industry.<sup>276</sup> Following World War II, the rapid influx of residents to Nevada’s

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<sup>272</sup> Craft, Norman. Interview with Claytee White and Frederick Watson. *Oral History of Norman Craft*. January 20, 2015. Henderson Libraries Digital Collections. Henderson, NV. 2015.

<sup>273</sup> *2015-16 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY*. 1st ed. Indianapolis: National Federation of State High School Associations, 2016.

<sup>274</sup> Carver, Ana Marie. “Press Release,” Women’s Sports Foundation, June 23, 2011. [www.womenssportsfoundation.org/media-center/press-releases/press-release-june-23-2011/](http://www.womenssportsfoundation.org/media-center/press-releases/press-release-june-23-2011/). (Accessed May 1, 2017)

<sup>275</sup> Richmond, Emily. “CCSD Expected to be Fifth-Largest U.S. District.” *Las Vegas Sun*, September 24, 2004.

<sup>276</sup> Moehring, Eugene P. *Resort City in the Sunbelt: Las Vegas, 1930-2000*. Reno, NV: Univ. of Nevada Press, 2001.

Sunbelt exposed a key deficiency in southern Nevada's education system that lacked the necessary facilities, funds, and staff to accommodate the diversity of children within Nevada's Clark County. The *Las Vegas Review-Journal* assessed the lack of educational facilities and funding by claiming schools of Clark County were not prepared to handle present enrollment and will be more deficient at the beginning of the next education year.<sup>277</sup> By 1961, the Hoover Dam project, Nellis Air Force Base, the Nevada Test Site, and Basic Magnesium Inc. of Henderson fueled the urbanization of Las Vegas and Henderson. Las Vegas' burgeoning workforce, along with tourism, facilitated the rapid growth of the Las Vegas Strip, creating a "Boomtown in the middle of the desert."<sup>278</sup> This rapid influx of people into Las Vegas caused the student population of the fledgling school district to increase from nineteen thousand in 1955 to more than thirty thousand by 1957, which exacerbated a lack of facilities, staff, and funding.<sup>279</sup> Dr. R. Guild Gray, the first Superintendent of CCSD, commented on the status of the young school district, describing the schools as "in a hell of a shape." Dr. Gray also worried about the lack of funding and the rapid growing population becoming a factor in the district's depleted budget.<sup>280</sup>

In order to govern the new school district more effectively, Nevada held elections to create a new School Board, featuring three seats from Las Vegas, one seat each for Boulder City and Henderson, and one position to represent Moapa and Virgin Valley.<sup>281</sup> The board quickly established Clark County's first educational operation budget of \$7.5 million to fund a growing student body of more than thirty-thousand students and thirteen-hundred teachers and support staff. Between 1956 and 1961, Dr. Gray navigated CCSD through multiple financial crises and an insufficient infrastructure during its formative years.

Between 1960 and 1961, student enrollments in the Clark County School District increased more than 13 percent.<sup>282</sup> When asked about managing the rapid growth of the Las Vegas valley, newly

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<sup>277</sup> McColl, Jeff. "Are \$10,600,000 Worth of Schools Needed in County?" *Las Vegas Review- Journal*, May 14, 1956, p.1.

<sup>278</sup> Hill, Gladwin. "Atomic Boomtown in the Desert." *New York Times Magazine*. February 11, 1951: 14.

<sup>279</sup> Carl, Kay, and Jami Carpenter. *Education in the Neon Shadow: The First Fifty Years of the Clark County School District*. Las Vegas, NV: Stephens Press, 2009. 37.

<sup>280</sup> "New School Head Arrives in Vegas Today," *Las Vegas Review-Journal*, 24 August 1953, p. 1.

<sup>281</sup> Guild Gray, Raymond. "The Organization of a County School District: A Case Study of a Process of District Consolidation and Administrative Reorganization" (Ph.D. diss., Stanford University, 1958), p. 60.

<sup>282</sup> "Clark School Enrollment Sets Record," *Las Vegas Review-Journal*, November 6, 1961, p.1A.



appointed superintendent Leland B. Newcomer answered, “Mushrooming growth and building program problems are facing nearly every school district in the nation. . .They are pressing, yes, but certainly not insurmountable.”<sup>283</sup> Superintendent Newcomer also faced the task of presiding over approximately eight thousand square miles and an economically diverse collection of communities. These populations included the blue-collar families of Henderson, the professional, technical workers of Boulder City, the military and government families at Nellis Air Force base and Indian Springs, and the mining and agrarian townships on the outskirts of Las Vegas. All of which stood in contrast to the service and casino industry of the twenty-four-hour, glitz and glamour lifestyle of Las Vegas’ entertainment community. Despite Newcomer’s efforts to secure funds, provide adequate staffing, and build more schools, the district’s greatest public relations challenge remained racial integration.

**Kelly et al. v. Clark County School District (1968)**

*“I’ll send my boy to Arizona before I’ll let him be bussed away from the neighborhood.”<sup>284</sup>*

- CCSD parent opposed to mandatory busing

On May 13, 1968, Herbert Kelly, a local teacher and parent of a daughter in a Westside elementary school worked with the League of Women Voters and the NCAAP to file a class action lawsuit in the U. S. District Court against Clark County School District and Superintendent James I. Mason. Known as *Kelly v. Clark County School District*, the plaintiffs accused CCSD of violating their rights under the Fifth and Fourteenth Amendments of the Constitution of the United States and discriminatory hiring and promotion practices.<sup>285</sup>

On May 27, 1968, CCSD requested more time to respond to the allegations. On June 17, 1968, the court granted additional time to the district saying, a school system established by the neighborhood

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<sup>283</sup> “School Headaches ‘Not Unique – Chief,” *Las Vegas Review-Journal*, December 3, 1961, p.3A.

<sup>284</sup> “Parents to try anything to stop busing children.” *Las Vegas Review Journal*, April 8, 1971. 1.

<sup>285</sup> Upon appeal, the cases were combined and renamed *Kelly v. Guinn* after Dr. Kenny Guinn who succeeded James I. Mason as superintendent in 1969. Guinn later became the 27th Governor of Nevada.

school plan, with no intention or purpose to segregate races, does not need to be destroyed because racial imbalance in public schools is not constitutionally mandated.”<sup>286</sup> On October 14, 1968, after reviewing data concerning the geographical area served, identity, location, and student-teacher assignments for every elementary school in the District, Judge Bruce Thompson ruled that separate educational facilities are socially wrong and incapacitating and that racial segregation in education is illegal. In light of Judge Thompson’s findings, the court ordered CCSD to prepare and submit a plan for integration by April 10, 1969.<sup>287</sup>

Between 1970 and 1990, CCSD’s population increased by more than 171 percent, however the number of residents of Las Vegas’ Westside decreased by approximately twenty percent.<sup>288</sup> Several factors influenced this trend, primarily the fact that African Americans had more options on where to live, with most choosing to live outside West Las Vegas. Despite reported academic improvements made by African American students under the district’s Sixth Grade Center Plan of Integration, community demographics and sentiments had not changed. In 1992, after nearly two decades of bearing the burden of desegregation, the black community once again expressed its frustration to CCSD by demanding additional reforms. In response, Superintendent Brian Cram established the Educational Opportunities Committee (EOC) to make recommendations to improve educational opportunities for students living in West Las Vegas.<sup>289</sup> CCSD, in cooperation with the EOC, created the Prime 6 Plan which pertained to nine elementary schools in West Las Vegas. The Prime 6 Plan emphasized the educational benefits of cultural and racial diversity to every student throughout the district, as well as increased parents’ options regarding the schools their children would attend. As of today, the Prime 6 Plan remains CCSD’s ultimate solution to desegregate its Westside schools.<sup>290</sup>

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<sup>286</sup> *Kelly v. Guinn*, 456 F.2d. 100, (1972), 126.

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.* 149.

<sup>289</sup> *Kelly v. Guinn*, 456 F.2d. 100, (1972). 150.

<sup>290</sup> *Ibid.* 151.

Discriminatory housing policies of Las Vegas' tourism and gaming industries forced African American residents to reside in a poor, neglected, and underdeveloped section of Las Vegas known as the Westside. This residential segregation facilitated the lack of racial diversity among the Westside's six elementary schools. Clark County School District reacted slowly and ineffectively to the community's demands to desegregate their schools, placing the bulk of the responsibility of integration upon the Westside community. Frustrated with the districts lack of progress, members of the Westside community turned to the courts for rectification. The courts found CCSD responsible for the desegregation of its schools and guilty of violating the constitutional rights of the Westside's elementary school children. The courts mandated that CCSD implement an integration plan, and the district complied, albeit after years of protests, riots, litigation, legal fees, and federal mandates. From its inception, CCSD experienced a myriad of challenges, including rapid expansion, budget crises, and civil rights litigation. However, the experience of *Kelly et. al v. Guinn* (1968) prepared CCSD for another federally mandated civil rights law; an anti-gender discrimination law later to be named Title IX. In 1970, as rumors of Title IX reached school districts around the country, already exhausted from years of civil unrest and federal compliance orders, Superintendent Guinn chose to get out in front of Title IX, instructing district leaders to begin preparations rather than wait for the legislation to pass.<sup>291</sup>

### **Title IX Comes to CCSD**

*"For the most part, I feel CCSD has done a great job with Title IX, I'm a product of Title IX."*<sup>292</sup>

– Erin Hill, Varsity Girls' Volleyball Coach,  
CCSD

From its creation until 1971, Clark County School District did not provide any organized sports or interscholastic competition for its middle school or high school female student athletes. Unlike the boys' programs, which maintained varsity and junior varsity sports, female student athletes in the Las

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<sup>291</sup> Carl, Kay, and Jami Carpenter. *Education in the Neon Shadow: The First Fifty Years of the Clark County School District*. Las Vegas, NV: Stephens Press, 2009. 78.

<sup>292</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

Vegas valley relied upon volunteer coaches, city recreation programs, and club organizations, such as the Girls Athletic Association (GAA) in order to play competitively. Bonnie Flaagan, former CCSD teacher and coach, explained the difficulties of providing girls' sports during her time at J.D. Smith Middle School describing how from 1965 until 1972, the girls were forced to go to city recreation programs to play sports without any support or organization from the district. Flaagan explained how difficult it was to provide competitive sports for girls with so few coaches, no uniforms, no organized transportation, and usually for no money.<sup>293</sup> The disparaging gap between girls' and boys' athletic participation at CCSD reflected a larger, national trend of high school sports. According to the 1970 National Federation of State High School Association participation statistics, 1,752,752 boys participated in baseball, basketball, volleyball, and track compared to just 222, 275 girls.<sup>294</sup> In Nevada, boys had an eighty-eight percent higher participation rate than girls, 3,816 to 457.<sup>295</sup> This reflected a larger, national trend that downplayed competitive interscholastic athletics for girls in favor of a more social, intramural atmosphere.

In 1970, Robert Lunt, head of student activities at CCSD, attended the American Health Association Conference held in Washington D.C., where he and other high school administrators discussed the need for equal organized athletic competition for female student-athletes.<sup>296</sup> When he returned from the conference, Lunt informed Superintendent Kenny Guinn to prepare for federally mandated changes in female sports programs for all high schools. Already mired in a federal lawsuit regarding segregation in multiple CCSD elementary schools, Dr. Guinn instructed Norman Craft and Judy Cameron, members of the district's student activities department, to begin developing a co-educational athletics program rather than wait for Title IX to pass.<sup>297</sup> At the time, only the Girls Athletic Association,

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<sup>293</sup> Flaagan, Bonnie. Interviewed by Jason L. Clark. Las Vegas, NV, July 3, 2017.

<sup>294</sup> 1970-71 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY. 1st ed. Indianapolis: National Federation of State High School Associations, 2014.

<sup>295</sup> *Ibid.*

<sup>296</sup> Carl, Kay, and Jami Carpenter. *Education in the Neon Shadow: The First Fifty Years of the Clark County School District*. Las Vegas, NV: Stephens Press, 2009. 78.

<sup>297</sup> *Ibid.* 79.

(GAA) a club organization that existed in some high schools, provided opportunities for female student-athletes to compete. In the spring of 1971, girls' softball became the first sport offered at CCSD, given the existing facilities and the number of faculty members willing to coach. Later that spring, with the assistance of Craft, Cameron, and Linda Close, former volleyball coach at Valley High School, CCSD organized the first interscholastic girls' softball tournament.<sup>298</sup> One of the tournament's standout performers, Renée Brown of Basic High School, garnered immediate attention as one of the district's superior female athletes. Mr. Craft remembered Brown's performance that day saying, "She was amazing! I told the coach, Judy Cameron, 'Judy, you have to do something with that young lady.' And they did, and boy, she just blossomed." Brown would go on to become perhaps the greatest success story of Title IX at CCSD. "Her success was made possible because of girl's athletics," said Craft.<sup>299</sup>

After graduating from Basic High School, Brown played basketball at the University of Nevada, Las Vegas (UNLV). After graduating in 1978 with a degree in education, Brown began her teaching and coaching career at her alma mater, Cannon Junior High School. Brown later took coaching positions at Bonanza, Clark, and Chaparral High Schools.<sup>300</sup> After a successful high school coaching career, Brown became an assistant coach at San Jose State University, University of Kansas, and Stanford University, where she helped the Cardinal win a national championship in 1992.<sup>301</sup> In 1996, Brown accepted the position as Vice President of USA Women's Basketball and chair of the committee that selected the U.S. National and Olympic Teams. Brown also served as an assistant coach for Team USA that took home the gold medal for women's basketball during the 1996 Olympic Games in Atlanta. Brown continued to work for USA Basketball, selecting the women's team members for the Olympic Games in Sydney 2000, Athens 2004, and Beijing 2008. Brown recalled feeling proud and overcome with emotion in Sydney as

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<sup>298</sup> Craft, Norman. Interview with Claytee White and Frederick Watson. *Oral History of Norman Craft*. January 20, 2015. Henderson Libraries Digital Collections. Henderson, NV. 2015.

<sup>299</sup> *Ibid.*

<sup>300</sup> Carp, Steve. "Former Basic, UNLV standout Renée Brown is WNBA's first player personal director." *Las Vegas Sun*, June 13, 1997.

<sup>301</sup> Voepel, Mechelle. "Renee Brown's exit adds to year of transition for WNBA leadership." *ESPN the Magazine*, October 4, 2016.

she watched her team during the medal ceremony, specifically recalling her personal journey and the athletic opportunities that young women have today, “The key, for me, is that today a ninth-grade girl at Basic can dream of going to the pros just like boys do. Girls didn’t have that dream 12 years ago.”<sup>302</sup> In September 1996, the recently formed Women’s National Basketball Association (WNBA) hired Brown as its Director of Player Personnel. Brown later became Chief of Basketball Operations and Player Relations for WNBA where she served until 2016 when she announced she would be stepping down.<sup>303</sup> As a pioneer in women’s professional basketball, Brown dedicated nearly twenty years to the WNBA administrating player-related policies and programs, overseeing all player scouting and acquisitions for the league, as well all on-court basketball rules and operations. As a middle school athlete from Henderson to a WNBA executive with a Fifth Avenue office just several doors down from National Basketball Association Commissioner Adam Silver, Brown represents what is possible when women are provided the same athletic opportunities.

Following the 1971 school year, the Student Activities Department of CCSD presented to the school board a plan to initiate a full co-educational sports program for all high schools in the Las Vegas valley. The activities department studied other athletic programs around the country and took into consideration CCSD’s student population and interests, climate, facilities, and budget. After considering the activities department’s plan, CCSD added golf, tennis, basketball, volleyball, and track to the girl’s athletic program the following year. Although initial Title IX legislation granted all state sponsored high schools and universities three years to comply with gender equality standards, CCSD, behind the leadership and initiative of Superintendent Kenny Guinn, established multi-sport athletic programs for its middle and high school female student-athletes years before the federal deadline. While CCSD proved to

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<sup>302</sup> Harmon, Jared. “Former UNLV player leads U.S. Olympic women’s basketball team to gold.” *Las Vegas Sun*, September 9, 2008.

<sup>303</sup> Voepel, Mechelle. “Renee Brown’s exit adds to year of transition for WNBA leadership.” *ESPN the Magazine*, October 4, 2016.

be ahead of its time regarding Title IX compliance, multiple challenges remained for the district including the organization and administration of female athletics, coaching, facilities, budgets, and transportation.<sup>304</sup>

In 1973, after coaching at Rancho High School for six years, Norman Craft joined Robert Lunt in the district's Athletic Office where he helped facilitate the implementation of Title IX. Craft described multiple challenges that came with forming a new girls' athletic program, especially regarding uniforms.<sup>305</sup> Aside from new uniform policies, Craft described other female-specific issues that the district needed to address including protocol for pregnant and married students."<sup>306</sup>

CCSD's commitment to Title IX also made a significant impact upon its middle schools. Erin Hill, volleyball coach at Green Valley High School, remembered having a multitude of athletic opportunities at William E. Orr Middle School. "I've said this many times, we had more of an opportunity, boys and girls, to play sports then, than we do today," said Hill. "There was everything. Track, Cheer, Dance, Volleyball, Softball, Basketball, I played three sports." Hill felt that in 1974, CCSD remained capable of financing middle and high school sports because the district had yet to experience the rapid growth of the late 1980s that depleted funding for extracurricular activities. Despite her many opportunities to play sports in middle school, Hill recalls how Title IX remained a controversial subject in her own household, "Title IX was a sensitive topic even in my own home," said Hill. "My father played football for USC with Kenny [Guinn], he hated Title IX. Like most male athletes at the time, he felt Title IX hurt men's programs. He was so old school that he refused to sign my letter of intent for me to play college volleyball!"<sup>307</sup> By 1974, all eight high schools in the Las Vegas valley offered girls' varsity sports in volleyball, basketball, golf, tennis, track, and softball. However, unlike the boys' athletic programs, the district could not yet afford to provide any girls junior varsity or freshmen teams. Perhaps the largest obstacle facing the early years of Title IX in CCSD was the decision to play girls' basketball in

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<sup>304</sup> Craft, Norman. Interview with Claytee White and Frederick Watson. *Oral History of Norman Craft*. January 20, 2015. Henderson Libraries Digital Collections. Henderson, NV. 2015.

<sup>305</sup> *Ibid.*

<sup>306</sup> *Ibid.*

<sup>307</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

the fall and girls' volleyball in the winter. Bonnie Flaagan recalls the difficulty scheduling practices and games around the boys' teams, "We started that way in 1973, switching basketball and volleyball seasons. It simply wasn't fair to the girls. Having to wait for the boys to finish in the gym during their basketball season, our volleyball season, it took a toll on the girls."<sup>308</sup> Erin Hill remembers the challenge of playing varsity volleyball in the winter for Valley High School, "We had to wait for the boys to finish basketball practice before we could even set up the nets. So, by the time we finished practice I had to ride my bike home in the dark, usually around 8 or 9 o'clock at night."<sup>309</sup> As governor of the high school coach's board, Bonnie Flaagan heard multiple complaints from players, coaches, and parents, demanding that girls' basketball and volleyball take place during the appropriate season. Following the girls' basketball season in 1975, Flaagan approached Robert Lunt of the district's athletic department and warned of a potential lawsuit to reorganize girls' volleyball and basketball.<sup>310</sup> The appropriate changes took place before the 1976 volleyball season.

Notwithstanding the organizational difficulties and budget constraints of launching a new girls' sports program, CCSD quickly became a pioneer in administering girls' sports by providing multiple athletic opportunities for its female student-athletes before the passage of any federal deadlines. Having a full interscholastic girls' athletic program in 1971 made CCSD an exceptional school district in terms of gender equality. In fact, the state of Nevada could not hold a true state championship in any girls' sport until 1977 because northern Nevada (Washoe County School District) failed to organize a satisfactory women's sports program.<sup>311</sup> CCSD's early commitment to Title IX paved the way for thousands of young women to compete in interscholastic sports and benefit from those opportunities in multiple ways. In some cases, student-athletes like Renee Brown and Erin Hill earned college scholarships, and then later returned to CCSD as mentors and coaches, but perhaps more importantly, as proof of what could be

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<sup>308</sup> Flaagan, Bonnie. Interviewed by Jason L. Clark. Las Vegas, NV, July 3, 2017.

<sup>309</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

<sup>310</sup> Flaagan, Bonnie. Interviewed by Jason L. Clark. Las Vegas, NV, July 3, 2017.

<sup>311</sup> *Ibid.*



accomplished through athletics. “I feel that CCSD has done a great job with Title IX; I’m a product of Title IX,” said Hill.<sup>312</sup>

By 2003, with a student enrollment of more than 270,000, 46 middle schools, and 34 high schools, CCSD had grown into the nation’s fifth largest school district. In order to accommodate the rapid growth of the student body, CCSD created junior varsity levels to the girls’ athletic program for all of its sanctioned sports, including freshmen levels for the more popular sports like basketball, softball, volleyball, and track and field. As CCSD’s fifty-year anniversary approached, the district demonstrated an ability to navigate through multiple challenges, including rapid growth, an ethnically and economically diverse population, teacher strikes, civil rights litigation, and budget constraints. However, because of these challenges, the girls’ athletic program remained neglected until 2008, when the parent of a female student-athlete filed a civil suit against the district and the Nevada Interscholastic Athletic Association (NIAA) for allegedly minimizing female athletic opportunities.<sup>313</sup>

**Johnson et al v. Nevada Interscholastic Activities Association (2008)**

*“I felt like I was having opportunities stripped from me.”<sup>314</sup>*

-Emma Johnson, student-athlete at  
Green Valley High School (2006-2010)

The Nevada Interscholastic Activities Association (NIAA) is the governing body for high school athletics in the state of Nevada.<sup>315</sup> In addition to resolving disputes and establishing eligibility requirements for student-athletes, the NIAA is responsible for the approval and sanctioning of all high school sports, establishing state championships, the recognition of individual accomplishments and awards, and the organization of competition levels as determined by population, popularity, performance,

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<sup>312</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

<sup>313</sup> *Johnson et al v. Nevada Interscholastic Athletic Association*. U.S. District Court. (L.V., NV. 2008).

<sup>314</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

<sup>315</sup> Coleville, Needles, North Tahoe, South Tahoe, and Truckee are also members as the schools are geographically isolated from other California schools.

and attendance.<sup>316</sup> Girls' soccer in northern Nevada takes place during the fall season whereas girls' soccer in Southern Nevada was considered a winter sport. As multiple high schools in both regions grew to Class 4A status, (the largest class) the NIAA decided to establish a unified season and an official state championship by moving Class 4A girls' soccer in southern Nevada to the fall, allowing for a statewide tournament and a unified state champion.<sup>317</sup> On March 5, 2005, the NIAA Board of Control voted 7 to 1 in support of the move, sanctioning Class 4A girls' soccer as a fall sport effective as of the 2008-2009 season.<sup>318</sup> At the time, Nevada remained the only state to award two state championships for schools in the same classification, not allowing the best from each region to play each other. However, the move would leave southern Nevada with basketball and bowling as the only winter sports available for girls compared to basketball, bowling, and wrestling for boys.

Shortly after the board's decision, Assistant U.S. Attorney Eric Johnson, father of Emma Johnson, then a sophomore at Green Valley High School, decided to block the move, claiming the decision negatively affected participation opportunities as determined by Title IX. "Part of Title IX and part of girls' sports is that they have recognition for their achievements similar to what is available for boys," said Johnson.<sup>319</sup> Emma Johnson, a member of the girls' soccer and volleyball teams, could not participate in both sports, as student-athletes may only play one sport per season according to NIAA regulations. As a multi-sport athlete at Green Valley High School, Emma Johnson grew accustomed to playing sports in all three seasons as a freshman and sophomore. Johnson viewed the NIAA's decision to move girls' soccer to the fall as unfair to her and other multi-sport female athletes in southern Nevada. "When the NIAA decided to move soccer to the fall, instead of keeping it in the winter, I felt like I was having opportunities stripped from me," said Johnson.<sup>320</sup> Johnson explained how she felt discriminated

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<sup>316</sup> "What is the NIAA?" Nevada Interscholastic Activities Association: June 14, 2017. [www.niaa.com/information/about](http://www.niaa.com/information/about). (Accessed June 24, 2017).

<sup>317</sup> Whisnand, Charles. "A Girls' Soccer Battle Continues." *Nevada Appeal*. September 24, 2008.

<sup>318</sup> "Nevada Interscholastic Activities Association Board of Control Meeting." Meeting Minutes. Atlantis Casino-Resort. Reno, NV. March 5, 2008.

<sup>319</sup> "Parents Sue Over NIAA Ruling." *Las Vegas Review-Journal*. August 9, 2008.

<sup>320</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

against and that she was grateful her father was able to help.”<sup>321</sup> Johnson continued, “My father was Chief of the Criminal Division for the US attorney's office. He dealt mostly with criminal cases. So, we both had to do our research to really have any chance of winning this case.”<sup>322</sup>

Johnson’s objection to the move prompted NIAA Control Board Member Ray Mathis to ask for a special session for the board to meet on March 26, 2008. In that meeting, NIAA executive director Eddie Bonine reviewed the history of the proposed Class 4A girls’ soccer change from winter to fall.<sup>323</sup> After reviewing the proposed change, Dr. Nancy Lough, UNLV Professor and Title IX Specialist, made a presentation to the board concerning Title IX and its legal mandates. Dr. Lough’s recommended that the NIAA establish a Gender Equity Committee to set goals and targets for the NIAA and CCSD. Dr. Lough also suggested the NIAA conduct a self-audit of all schools including those located within CCSD. In addition, Dr. Lough suggested an examination of school districts in Pennsylvania and Kentucky that conducted self-studies and compliance audits as examples. Following Dr. Lough’s presentation, NIAA executive director Eddie Bonine argued that the NIAA move forward with girls’ soccer in the fall and institute a unified Class 4A northern and southern Nevada state championship. The board voted 6 to 1 to proceed with the move.<sup>324</sup> On April 1, 2008, Johnson filed an emergency class action lawsuit against the NIAA and Clark County School District (CCSD) aiming to stop the move. Mr. Bonine countered Johnson’s claim saying, “It isn’t up to the NIAA to determine which sports schools chose to offer.” Bonine argued the Board of Control decided years ago to move girls’ soccer to the fall and CCSD had many opportunities to add a girl’s sport or make whatever moves it thought was necessary to remain in Title IX compliance. According to Bonine, “We wanted to give Clark County the opportunity to prepare

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<sup>321</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

<sup>322</sup> *Ibid.*

<sup>323</sup> “Nevada Interscholastic Activities Association Board of Control Meeting.” Meeting Minutes. Coronado High School. Las Vegas, NV. March 26, 2008.

<sup>324</sup> *Ibid.*

for the change. They've had three and a half years to do so and failed to do so.”<sup>325</sup> Bonine claimed that CCSD, not the NIAA, should be the target of Johnson’s complaint.<sup>326</sup>

According to the lawsuit, Johnson provided the NIAA with the option to continue sanctioning girls’ 4A soccer in southern Nevada with an official state championship and individual All-State and All-American awards, or the NIAA and CCSD must add another field sport in the winter for the south.<sup>327</sup> On June 16, 2008, the NIAA maintained their commitment to moving girls’ soccer to the fall when the Control Board discussed how class 4A girl soccer in southern Nevada would not be part of the state tournament or awards if it were played in the winter.<sup>328</sup> Johnson responded, disapproving of the NIAA’s decision telling the court, “I think sanctioning is recognition by the state body of the sport, the players, and their accomplishments. Clearly, the NIAA understood and intended to punish girls playing in the Clark County School District with this move.”<sup>329</sup> Mathis, who was also the executive director for athletics at CCSD, denied Johnson's accusation, “There is nobody on that board who would vote to hurt kids.”<sup>330</sup> The NIAA refused to sanction girls’ soccer in southern Nevada, shifting the responsibility of Title IX compliance to CCSD by pressuring the district to provide an additional sport for girls in the winter.<sup>331</sup> NIAA assistant director Donnie Nelson commented on the decision to move girls’ soccer saying the NIAA intended to make the change for several years. “It’s been an issue for multiple years,” Nelson said.<sup>332</sup> Nelson added, “There are two unofficial reasons for keeping girls’ soccer in the fall, with boys’ soccer played in the fall, many boys’ soccer coaches also coached girls’ soccer and didn't want to lose the opportunity to coach both.”<sup>333</sup>

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<sup>325</sup> “Parents Sue over NIAA Ruling.” *Las Vegas Review-Journal*. August 9, 2008.

<sup>326</sup> *Ibid.*

<sup>327</sup> *Johnson et al v. Nevada Interscholastic Athletic Association*. U.S. District Court. (L.V., NV. 2008).

<sup>328</sup> “Nevada Interscholastic Activities Association Board of Control Meeting.” Meeting Minutes. Grand Sierra Resort. Reno, NV. June 16, 2008.

<sup>329</sup> Aird, Tristan. “Judge Delays Decision on Class 4A Girls’ Soccer.” *Las Vegas Review-Journal*. August 12, 2008.

<sup>330</sup> *Ibid.*

<sup>331</sup> Whisnand, Charles. “A Girls’ Soccer Battle Continues.” *Nevada Appeal*. September 24, 2008.

<sup>332</sup> *Ibid.*

<sup>333</sup> *Ibid.*

According to Erin Hill, the varsity girls' volleyball coach at Green Valley High School, the district intended to establish girls' lacrosse as a winter sport in order to provide female student-athletes in southern Nevada with additional opportunities to compete. However, because of budget constraints, such a move was financially unrealistic.<sup>334</sup> Hill insisted that moving girls' soccer to the fall was less about establishing a unified state champion and more representative of a desire to align all high school sports seasons with college sports.<sup>335</sup> Mathis and fellow board member Bill Garris both desired a unified Class 4A girls' soccer state champion and insisted to CCSD Superintendent Walt Rulffes that the district move forward with the move despite the threat of potential litigation. Rulffes ignored their protests, keeping girls' soccer in the winter.<sup>336</sup>

Despite CCSD's failure to provide an additional sport for female student-athletes in the winter, Johnson decided to drop CCSD from the lawsuit citing how it decided to keep Class 4A girls' soccer in the winter, play an independent schedule, and hired a Title IX consultant.<sup>337</sup> By dropping CCSD from the lawsuit, Johnson signaled to the NIAA that it remained their responsibility to fall in line with the rest of the state. NIAA Assistant director Nelson commented on Johnson's lawsuit, speculating on its relevance to Title IX. "His argument isn't what Title IX is about," said Nelson. Referring to Johnson's claim that the move limited girl's opportunities in the winter, Nelson said, "I don't necessarily say that Mr. Johnson found a loophole, he found an avenue. It's a very interesting argument." Nelson continued, "It may be in some strange way related to a landmark case."<sup>338</sup>

Nelson was correct; there was a legal precedent for Johnson's lawsuit. In 1998, the Communities for Equity sued the Michigan High School Athletic Association (MHSAA) for scheduling six girls' sports, and no boys' sports during nontraditional seasons.<sup>339</sup> The Communities for Equality claimed the

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<sup>334</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

<sup>335</sup> *Ibid.*

<sup>336</sup> Eckles, Dan. "NIAA Will Only Recognize Fall Soccer." *Daily Sparks Tribune*. June 28, 2008.

<sup>337</sup> Aird, Tristan. "Judge Delays Decision on Class 4A Girls' Soccer." *Las Vegas Review-Journal*. August 12, 2008.

<sup>338</sup> Whisnand, Charles. "A Girls' Soccer Battle Continues." *Nevada Appeal*. September 24, 2008.

<sup>339</sup> *Communities for Equity v. Michigan High School Athletic Association*, 178 F. Supp. 2d 805, 807-846 (W.D. Mich. 2001).

move harmed girls in ways boys were not, including limiting opportunities for college recruiting, and to compete for athletic scholarships. Additionally, the lawsuit claimed girls lost opportunities to play club sports and for awards and recognition, such as All-American teams. In addition, because of MHSAA's actions, girls lost valuable skill building and recruiting opportunities at club tournaments.<sup>340</sup> After the case went to trial in 2001, the U.S. District Court ruled that by scheduling the six girls' sports outside of traditional seasons, MHSAA violated Title IX, the Constitution, and Michigan state law. The MHSAA appealed the ruling. In 2004, the Sixth Circuit Court of Appeals upheld the district court's decision, finding it redundant to consider the Title IX or state law violations.<sup>341</sup> The court's decision mandated that beginning in 2007, the MHSAA must implement a plan to establish both girl's and boys' sports during traditional seasons.<sup>342</sup>

As Emma Johnson prepared for the court proceedings, she understood that her father not only had to convince the court that her constitutional rights had been violated, but that he had to do so amidst harsh criticism by the media, the NIAA, parents, and even teammates from her own high school. "I would read news articles written about my father and I by the head of the NIAA, where he completely bashed us and insulted our completely harmless intentions. That was in the paper, and we had to deal with everyone reading it and making their own predictions about what was going down," said Johnson.<sup>343</sup> Emma Johnson described how girls from her own team called from blocked numbers to harass her, call her "stupid spoiled bitch" and other names that really brought her down. Parents and players from other schools write blogs about her, calling her and her family "awful people."<sup>344</sup> The *Las Vegas Review-Journal* had an online forum where parents and other female soccer players wrote hurtful and critical comments about Johnson and her father. "The harassment got so bad and personal, including threats,"

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<sup>340</sup> *Communities for Equity v. Michigan High School Athletic Association*, 178 F. Supp. 2d 805, 807-846 (W.D. Mich. 2001).

<sup>341</sup> *Communities for Equity v. Michigan High School Athletic Association*, 377 F. 3d 504 (6<sup>th</sup> Cir. 2004).

<sup>342</sup> "Supreme Court Refuses Appeal of MHSAA Title IX Case." NWLC. April 2, 2007. <https://nwlc.org/press-releases/supreme-court-refuses-appeal-mhsaa-title-ix-case/>. (Accessed June 24, 2017).

<sup>343</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

<sup>344</sup> *Ibid.*

said Hill, “that the R.J. (*Las Vegas Review-Journal*) was forced to shut down the blog.”<sup>345</sup>

Johnson explained how the Nevada media controlled the narrative regarding her lawsuit, describing the case as simply one parent’s selfish desire to change the landscape of Class 4A girls’ soccer for his daughter. “All the headlines and content that identified us as the only individuals responsible for blocking the unification of Class 4A girls’ soccer ignored the fact that so many other girls in the district were also negatively affected,” said Johnson. On August 9, 2009, the *Las Vegas Review-Journal* published an article entitled, “Parent Sues NIAA over Soccer Ruling.” The *Sparks Tribune* published an article quoting Reed High School girls’ soccer coach Jason Saville condemning Johnson, “I applaud his [Bonine’s] courage for moving forward in this debacle. I’m not frustrated with anybody except one individual [Johnson].” Saville added, “A state tournament would have four teams. One person [Johnson] can affect the lives of roughly 72 kids. Unfortunately, that’s America today.”<sup>346</sup> Mr. Bonine had similar comments in the same article, “It may not go without litigation, but I will not let one parent, one dad, one attorney hold us hostage.” Bonine continued, “I have not gotten one phone call (to complain about the season change). This is one parent using his status to try and muscle the NIAA and Clark County School District.”<sup>347</sup> The *Sparks Tribune* issued another article featuring Dan Phillips, principal of Palo Verde High School and fellow NIAA board member, who also implied the lawsuit reflected the desires of only one individual, “I haven’t heard one complaint from people in the South or North (about a unified fall season),” said Phillips. “My high school is at the forefront of girls’ soccer and I haven’t heard one complaint.”<sup>348</sup> The *Tahoe Daily Tribune* also singled out Johnson for his efforts to bring equal athletic opportunities to girls in CCSD saying, “The unification was originally supposed to go into effect prior to the 2008 season, but a Green Valley High School parent filed suit prior to the season.”<sup>349</sup> The *Pahrump*

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<sup>345</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.

<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

<sup>348</sup> Whisnand, Charles. “A Girls’ Soccer Battle Continues.” *Nevada Appeal*. September 24, 2008.

<sup>349</sup> Crandall, Joey. “NIAA Adds to Girls’ Soccer Postseason.” *Tahoe Daily Tribune*, October 22, 2009.

*Valley Times* claimed that more than 600 girls, their parents, families, and fans and the game of soccer in Southern Nevada were held hostage by “one misdirected parent in Henderson.”<sup>350</sup>

On August 16, 2016, Judge Brian Sandoval began hearing testimony. Ray Mathis and Eddie Bonine took the stand, where both argued against Johnson and defended the NIAA’s decision to move class 4A girls’ soccer to the fall.<sup>351</sup> Emma Johnson recalled feeling attacked as both witnesses continued utilizing the popular narrative of one parent’s crusade against the state, “They used words like ‘unnecessary’, ‘short-sighted’, ‘baseless’, and ‘selfish’ to describe me and my accusations.” Johnson continued, “It was hurtful, but I wanted to show that this case wasn’t just about me, but that many of my friends, teammates, and other girls would have opportunities taken away too.”<sup>352</sup> During the following session on August 23, 2008, Johnson accused the district of gender discrimination, citing how boys had more athletic opportunities and sports from which to choose. Then, in an effort to demonstrate to the court how the case was not just about one parent and his daughter, Johnson invited more than thirty female student-athletes of CCSD into the courtroom affected by moving girls’ soccer to the fall.<sup>353</sup> Johnson’s decision to include other female student-athletes generated mixed opinions. “I give Mr. Johnson credit for shedding light on the gender inequality within CCSD’s athletic program, clearly there was work to do,” said Dr. Nancy Lough. “However, I feel that he used his position and experience as the Assistant U.S. Attorney to twist the case. Believe me, if I felt he had a legitimate argument, I would fight for his side, I just felt that he was doing this more for his daughter and not for the benefit of all girls in CCSD.”<sup>354</sup> Erin Hill applauded Emma for her resourcefulness, “I love how she gathered other girls from her club soccer and club volleyball teams, she really showed a lot of guts taking on the NIAA and CCSD.”<sup>355</sup>

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<sup>350</sup> “What Happened to Making Choices?” *The Pahrump Times*. August 15, 2008.

<sup>351</sup> *Johnson et al v. Nevada Interscholastic Athletic Association*. U.S. District Court. (L.V., NV. 2008).

<sup>352</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

<sup>353</sup> *Johnson et al v. Nevada Interscholastic Athletic Association*. U.S. District Court. (L.V., NV. 2008).

<sup>354</sup> Lough, Nancy. Interviewed by Jason L. Clark. Las Vegas, NV. September 7, 2017.

<sup>355</sup> Hill, Erin. Interviewed by Jason L. Clark. Las Vegas, NV, June 8, 2017.



Following two sessions of courtroom testimony, the NIAA informed Mr. Johnson and Judge Sandoval that they wanted to seek a settlement. Citing mounting legal fees, Mr. Bonine admitted the NIAA decided not to pursue the case any further, however he insisted the situation remained fluid, “It’s gonna burn me. The bottom line is that until there is a true state champion in soccer, I’m not resting.”<sup>356</sup> The NIAA Board of Control called a special session at the NIAA Reno office on September 10, 2008. In that meeting, Ray Mathis called for a vote on the settlement of *Johnson et al v. NIAA*, agreeing to sanction Class 4A girls’ soccer as a winter sport for the 2008-09 season. In addition, the NIAA agreed to work with CCSD to create an additional winter sport in a “timely” manner. The board voted 7 to 1 in favor of the settlement.<sup>357</sup> Viewing the settlement as a victory, Mr. Johnson anticipated working with CCSD in the future, “The main thing is looking forward to working with the district to ensure greater equality of sports and opportunities for girls.”<sup>358</sup> When asked about the addition of another girls’ sport Mr. Johnson replied, “The association has agreed to assist the district in creating a new sport. That is what we always wanted to come out of this situation in the first place.”<sup>359</sup> When asked about her experience as the plaintiff in a case that generated intense debate and opposition, Emma Johnson replied, “Now that I reflect upon what happened, I was so young to have gone through all that scrutiny and criticism. I had no idea that my father and I would become media targets, I never imagined it would be so hard, but I learned a lot about the importance of standing up. I just hope that my experience might inspire other women to stand up as well.”<sup>360</sup>

On June 16, 2009, the NIAA Board of Control met again to determine whether to move Class 4A girls’ soccer to the fall.<sup>361</sup> Citing the district’s failure to add an additional winter sport, Ray Mathis suggested another lawsuit would follow should they vote to move girls’ soccer to the fall, and

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<sup>356</sup> Aird, Tristan. “NIAA Reaches Deal in Lawsuit.” *Las Vegas Review-Journal*. September 11, 2008.

<sup>357</sup> “Nevada Interscholastic Activities Association Board of Control Meeting.” Meeting Minutes. NIAA Office. Reno, NV. September 10, 2008.

<sup>358</sup> Aird, Tristan. “NIAA Reaches Deal in Lawsuit.” *Las Vegas Review-Journal*. September 11, 2008.

<sup>359</sup> Brewer, Ray. “NIAA Settles in Lawsuit over High School Soccer Season.” *Las Vegas Sun*. September 10, 2008.

<sup>360</sup> Johnson, Emma. Interviewed by Jason L. Clark. Las Vegas, NV, June 2, 2017.

<sup>361</sup> “Nevada Interscholastic Activities Association Board of Control Meeting.” Meeting Minutes. Reno Aces Ballpark. Reno, NV. June 16, 2008.

recommended that no action take place. "The only way (Eric Johnson, the Green Valley parent) would not file a complaint would be if we were to add a girls' sport in the winter season, which at this point we're unable to do," Mathis said. The board voted to keep the status quo for an additional year. Fearing another lawsuit and without a sport to add to the winter season, Class 4A girls' soccer remained a winter sport for two more years. On May 14, 2012, the *Reno Gazette-Journal* issued a story claiming that CCSD would be implementing girls' flag football that fall.<sup>362</sup> While Ray Mathis denied the report, he admitted the district would add a new sport that year.<sup>363</sup> On August 9, 2012, CCSD Superintendent Dwight Jones made the official announcement that the district would be offering girls' flag football as a varsity sport.<sup>364</sup> With the announcement of an additional winter sport for CCSD, the NIAA Board of Control voted once again to move Class 4A girls' soccer to the fall.<sup>365</sup>

The *Johnson* case brought attention to the existing gender inequality within the nation's fifth largest school district. Several CCSD executives insist that the NWLC became aware of the district's noncompliance status with Title IX because of the lawsuit. "I did not contact the NWLC," Dr. Nancy Lough said. "I was hired by CCSD to make sure they steered clear of any investigation, but it would not surprise that the *Johnson* case is responsible."<sup>366</sup> Aside from a personal victory for the Johnson's and bringing the issue of gender equality in high school athletics to the Las Vegas community, perhaps the greatest consequence of the *Johnson* case appeared two years later. On November 10, 2010, the National Women's Law Center (NWLC) filed a gender discrimination complaint against CCSD claiming the district offered fewer athletic opportunities for its female student body. With CCSD in the crosshairs of one of the largest gender rights groups in the county and the threat of another potential Title IX lawsuit looming, CCSD needed to quickly address the prevailing gender inequality within its athletic program.

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<sup>362</sup> "Flag Football Coming to CCSD." *Reno Gazette-Journal*. May 14, 2012.

<sup>363</sup> "Report of girls' flag football coming to CCSD premature." *Pahrump Valley Times*. May 18, 2012.

<sup>364</sup> "Athletic opportunity: Girls' flag football goes varsity in county." *Las Vegas Review-Journal*. August 15, 2012.

<sup>365</sup> "Nevada Interscholastic Activities Association Board of Control Meeting." Meeting Minutes. Orleans Hotel. Las Vegas, NV. June 23, 2012.

<sup>366</sup> Lough, Nancy. Interviewed by Jason L. Clark. Las Vegas, NV. September 7, 2017.

**The National Women’s Law Center and Clark County School District (2010)**

*“We simply were not keeping up with the growing interest in girls’ sports.”<sup>367</sup>*

-Ray Mathis – Executive Director of Student Activities for CCSD

On November 10, 2010, the National Women's Law Center (NWLC) filed administrative complaints against twelve school districts across the country, including Clark County School District (CCSD).<sup>368</sup> Using each schools’ own data collected by the U.S. Department of Education’s Office for Civil Rights (OCR) in 2006, the NWLC identified these twelve districts as failing to provide high school girls with equal opportunities to play sports; a violation of Title IX.<sup>369</sup> “These 12 school districts are the tip of the iceberg,” said NWLC Co-President Marcia Greenberger. Greenberger illustrated how nationwide, only 41 percent of all high school athletes are girls, even though they make up half the student population, and that schools are giving girls 1.3 million fewer opportunities than boys to play sports<sup>370</sup>

These complaints originated from the NWLC’s new campaign, *Rally for Girls’ Sports: She’ll Win More than a Game*, designed to educate schools, the public, and parents about the rampant inequality that female student-athletes face in high school sports programs in an effort to encourage parents to press for change. The NWLC specifically charged CCSD with failing to comply with the proportionality requirement for girls’ sports as established by the 1979 Policy Interpretation of Title IX. Title IX requires federally funded schools to provide opportunities for

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<sup>367</sup> Mathis, Ray. Interview with Luis Hernandez. *KNPR’s State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>368</sup> Chicago Public Schools (IL), Clark County School District (NV), Columbus City Schools (OH), Deer Valley Unified School District (AZ), Henry County Schools (GA), Houston Independent School District (TX), Irvine Unified School District (CA), New York City Department of Education (NY), Oldham County Schools (KY), Sioux Falls School District (SD), Wake County Public School System (NC), and Worcester Public Schools (MA).

<sup>369</sup> U.S. Department of Education Office for Civil Rights Seattle Office, *Administrative Class Complaint*, National Women’s Law Center. Washington D.C., November 10, 2010.

<sup>370</sup> National Women’s Law Center. “Center Files Title IX Complaints against 12 School Districts.” NWLC. November, 10, 2010. <https://nwlc.org/press-releases/center-files-title-ix-complaints-against-12-school-districts/>. (Accessed December 30, 2016).

girls to play sports in proportion to the percentage of girls enrolled. According to the OCR, the average participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of the high schools in CCSD was 10.1 percent, well beyond the acceptable limit of 3 percent.<sup>371</sup> More specifically, 16 of the CCSD's 31 high schools that reported athletes in 2006 had participation gaps of 10 or more percentage points. The NWLC estimated CCSD shorted its female students by 3,591 fewer opportunities to play competitive sports during the 2006-07 academic year.<sup>372</sup> Ray Mathis, Executive Director for Student Activities for CCSD, responded to the NWLC's complaint saying, "We have been proactive regarding Title IX. We are not under investigation, we are not in violation of Title IX as of yet."<sup>373</sup> Mathis continued, "We have implemented girls' intramural programs for non-sanctioned sports like badminton, lacrosse, and flag football."<sup>374</sup>

In response to the NWLC's claim, CCSD again employed UNLV professor and Title IX expert, Dr. Nancy Lough, for assistance. "Critical to meeting Title IX's proportionality requirement is the assessment of interest, if the interest is met, no change is needed," said Lough. Dr. Lough explained how another avenue for satisfying Title IX's three-prong compliance test is demonstrating a history of expanded athletic programs for girls. Unfortunately for CCSD, the last sport added was boys' volleyball in 1990.<sup>375</sup> Furthermore, as part of the settlement reached in *Johnson et. al v. NIAA* (2008), the U.S District Court ruled that CCSD needed to add another winter sport for girls and the district failed to do so.<sup>376</sup> Mathis cited the district's rapid growth as

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<sup>371</sup> National Women's Law Center. "Center Files Title IX Complaints against 12 School Districts." NWLC. November, 10, 2010. <https://nwlc.org/press-releases/center-files-title-ix-complaints-against-12-school-districts/>. (Accessed December 30, 2016).

<sup>372</sup> *Ibid.*

<sup>373</sup> Mathis, Ray. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>374</sup> *Ibid.*

<sup>375</sup> Lough, Nancy. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>376</sup> *Johnson ET. al. v. Nevada Interscholastic Athletic Association* (2008) (U.S. District Court, Las Vegas, NV.).

part of its inability to satisfy the increasing demands for girls athletic opportunities, “We simply were not keeping up with the growing interest in girls’ sports,” said Mathis.<sup>377</sup> Dr. Lough agreed with Mathis’ assessment, “The NWLC picked the largest, fastest growing school districts in all twelve regions named in the complaint.”<sup>378</sup> In 2011, CCSD issued a survey to its female students in order to determine which sport to add based upon the amount of interest. Competitive cheerleading garnered the most support, followed by lacrosse, then flag football.<sup>379</sup> Mr. Mathis and the CCSD student activities department, with the assistance of Dr. Lough, assessed the results of the survey to determine which sport could best satisfy participation requirements, fulfill interest levels, as well as be cost effective to a school district already plagued with budget limits. Following the assessment, CCSD chose to add flag football to its sports program.

The decision to add flag football rather than cheerleading and lacrosse quickly received criticism from parents, students, and faculty members of CCSD. Erin Hill, volleyball coach at Green Valley High School, questioned the district’s decision, “Flag football is great, it’s obviously become popular and the girls love it, but it’s a recreation sport, it doesn’t provide the girls with a chance to play in college like lacrosse does.” Hill continued, “The district simply chose the easiest, cheapest solution to comply with Title IX, but in reality, it goes against what Title IX stands for.”<sup>380</sup> Hill, like Dr. Nancy Hogshead Makar, believes that Title IX goes beyond managing participation numbers just for image sake, but that the essence of the law, especially at the high school level, is to provide equal athletic opportunities that can also result in equal college scholarships and eligibility benefits.<sup>381</sup> Dr. Lough defended the district's decision,

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<sup>377</sup> Mathis, Ray. Interview with Luis Hernandez. *KNPR’s State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>378</sup> Lough, Nancy. Interview with Luis Hernandez. *KNPR’s State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>379</sup> *Ibid.*

<sup>380</sup> Hill, Erin. Interview with Jason L. Clark. June 3, 2016, Las Vegas, NV.

<sup>381</sup> Thomas, Katie. “Not Tackling, but Girls’ Flag Football Takes Some Hits.” *New York Times*, May 15, 2010.

“Competitive cheerleading simply was not an option.” Citing the U.S. District Court ruling in *Biediger v. Quinnipiac* (2010), Dr. Lough explained, “The ruling said a Title IX sport must include competitions during a regular competing season and this competition must be the main goal of the sport. Cheerleading, as of yet, fails to meet the criteria that requires organized competition and a championship.”<sup>382</sup> When asked why CCSD overlooked lacrosse, Dr. Lough explained, “We took into consideration the fact that lacrosse is relatively new to Las Vegas, the district lacks both qualified coaches and the necessary equipment, which is quite costly.”

Additionally, critics of the decision argued that flag football fails to provide girls with scholarship opportunities since it is not a collegiate sport. Dr. Lough countered the claim explaining that college scholarships are not the focus the decision, participation is. “The majority of CCSD athletes who earn athletic scholarships choose to attend universities within the Mountain West Conference. As of now, Mountain West does not offer gymnastics, field hockey, or lacrosse.” Dr. Lough continued, “The decision to add flag football addresses a larger, cultural issue regarding the larger benefits of athletic participation over opportunities to play in college.”

Dr. Lough cited numerous studies that have documented the benefits of young women that play sports, including greater academic success, less drug use and teenage pregnancy, and higher self-esteem. Dr. Lough explained that young women who play sports are more likely to graduate from high school, achieve higher scores on standardized tests, and earn better grades than non-athletes.<sup>383</sup> Playing sports also decreases a young woman’s chance of developing osteoporosis, heart disease, obesity, and other health problems. NWLC Senior Counsel, Neena Chaudhry,

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<sup>382</sup> *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009).

<sup>383</sup> *Benefits – Why Sports Participation for Girls and Women*. 2017. Ebook. New York: Women's Sports Foundation. <https://www.womenssportsfoundation.org/advocate/foundation-positions/mental-physical-health/benefits-sports-participation-girls-women/>.

echoed Dr. Lough's comments, "When girls have the chance to play, they win more than a game. They lead healthier, happier and more successful lives."<sup>384</sup>

Mathis maintained support for the district's decision, citing an existing interest in the Las Vegas community for flag football, "Many communities already have flag football leagues, the interest was already there. Plus, we had the coaches in place; the officials are already in agreement, as well as transportation and uniforms."<sup>385</sup> Also, Las Vegas and Henderson already had very successful club flag football leagues available to elementary and middle school girls. Dr. Lough agreed, citing a growing national interest and its cost effectiveness for the district, "Flag Football is currently sanctioned in Alaska, Florida, D.C., and New York City. We are expecting at least 30 girls per team in CCSD to participate, and with 32 high schools offering flag football, that is 960 additional opportunities for girls. Also, here in Las Vegas we already have the facilities in place with minimal equipment costs."<sup>386</sup>

The criticisms surrounding CCSD's decision to add girls' flag football are reminiscent of a recent debate in the state of Florida. Beginning in the late 1990's in Palm Beach County, Florida became the first state to sanction girls' flag football because of its disparaging athletic participation numbers for its female students.<sup>387</sup> Nearly two decades later, more than five thousand girls participate in flag football state wide, yet controversy still surrounds the sport. In May 2010, Neena Chaudhry, the senior counsel at the National Women's Law Center, who also helped file the administrative complaint against CCSD, argued flag football does not provide the same opportunities for college scholarships that boys receive. "No one is saying flag football

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<sup>384</sup> National Women's Law Center (2010). *Center Files Title IX Complaints against 12 School Districts*. Washington D.C., November 10, 2010.

<sup>385</sup> Mathis, Ray. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>386</sup> Lough, Nancy. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>387</sup> Thomas, Katie. "Not Tackling, but Girls' Flag Football Takes Some Hits." *New York Times*, May 15, 2010.

isn't a great sport to play, but I do think it's relevant to ask questions about whether girls are getting the same kind of educational opportunities as boys, said Chaudhry."<sup>388</sup> Women's sports historian Nancy Hogshead-Makar, a three-time Olympic gold medalist in swimming and law professor, questioned the motive behind the decision to add flag football, implying it was all about raising participation numbers, "It did not come from a groundswell," said Hogshead-Makar. "It was done by school administrators, not by kids."<sup>389</sup> Coaches in Florida disagree with Hogshead-Makar, arguing that interest is so high, that despite offering varsity, junior varsity, and freshmen levels, cuts are still required.<sup>390</sup> In addition, coaches of other sports are upset because they are losing so many of their best athletes to flag football. Donna Lopiano, former Chief Executive Officer of the Woman's Sports Foundation, credits flag football for its inclusiveness, saying how girls of all body types can succeed in the sport. Now a Title IX consultant for multiple universities and school districts, Lopiano, when asked how to remedy a school facing scrutiny for gender inequity, said, "I would do this [add flag football] in two seconds."<sup>391</sup>

The 2012-2013 school year marked the inaugural girls' flag football season for CCSD with thirty-five schools fielding a varsity team. Each team played a minimum of twenty games, including the opportunity for playoff competition and a CCSD championship. Flag football quickly gained popularity and enthusiasm throughout the community, prompting the district to add a junior varsity level the following year. On April 13, 2013, CCSD issued a voluntary resolution agreement to the NWLC in which the district illustrated its progress regarding the provision of more athletic opportunities for girls and promised to continue the evaluation of its female student body and the existence of any unmet athletic interests. CCSD also assured the

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<sup>388</sup> Thomas, Katie. "Not Tackling, but Girls' Flag Football Takes Some Hits." *New York Times*, May 15, 2010.

<sup>389</sup> *Ibid.*

<sup>390</sup> *Ibid.*

<sup>391</sup> *Ibid.*



NWLC that it would immediately assess if girl's teams exercised cuts, the possible creation of freshmen and junior varsity levels of an existing sport, and the option to offer additional sports.<sup>392</sup> The 2013-14 flag football season saw an increase in participation and attendance, which encouraged CCSD to add a freshmen level. The district added a freshmen level for girls' soccer beginning in 2014. By the 2014-15 school year, the addition of three levels of girls' flag football along with freshmen girls' soccer provided an estimated 1,400 new opportunities to play sports for the young women of CCSD. "This debate has surrounded Title IX for over 40 years, interest versus opportunity," said Dr. Lough. Citing the 2012 Olympic Games in London where the U.S fielded more female athletes than males for the first time in history, "It has long been argued that women fail to participate in athletics because they simply lack the interest, however, we now see that when the opportunity is provided, women will participate."<sup>393</sup> On April 15, 2015, during the NIAA Board of Control Meeting, the board voted to sanction girls' flag football as an official state-sponsored sport that includes individual all-state awards and an official state championship.<sup>394</sup> "This has been a long four- or five-year process," said CCSD executive athletic director Ray Mathis, a member of the Board of Control. "We have increased girl's participation numbers. It's been a positive thing. It's been a good thing for girls in Clark County."<sup>395</sup> The NIAA's decision reflected the fast-growing participation numbers and support received by the community. "I've seen a lot of kids playing flag football that have not played

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<sup>392</sup> *Nevada Clark County School District Resolution Agreement*. 2016. PDF. 1st ed. Las Vegas. <http://www2.ed.gov/about/overview/mission/civil-rights/nv-clark-county.pdf>.

<sup>393</sup> Lough, Nancy. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

<sup>394</sup> Nevada Interscholastic Athletics Association. Board of Control Meeting. April 15, 2015

<sup>395</sup> Mathis, Ray. Interview with Luis Hernandez. *KNPR's State of Nevada*. KNPR. Las Vegas, NV. March 1, 2013.

any sport before,” said board member Erin Cranor. “It has been a good thing.”<sup>396</sup> Today, girls’ flag football is the fastest growing sport in Nevada, and in the country.<sup>397</sup>

### **Conclusion**

According to CCSD’s voluntary resolution agreement issued to the NWLC, by the end of the academic years of 2013, 2014, and 2015, the district agreed to submit to the OCR detailed information regarding the accommodation of athletic interests and abilities of its female high school students at each high school. CCSD also agreed to provide the OCR with a copy of the NIAA athletic rosters of the previous year for each team from each high school. Additionally, CCSD agreed to submit the breakdown of enrollment by gender for each high school and any information regarding the increase to the size of its teams, including the addition of new sports and levels of existing sports. Finally, CCSD promised to make available a forum on its website for interested parties to petition new sports or additional levels of existing sports at any district high school.<sup>398</sup>

While CCSD is not officially under investigation by the OCR or in violation of Title IX, the administrative complaint filed by the NWLC served as a notice that the female students of the district received significantly less opportunities to play interscholastic sports, and if not promptly remedied, the OCR would intervene, resulting in the potential loss of federal funding. CCSD responded to the complaint with student interest surveys, the creation of additional levels of existing sports, the formation of a new sport, and by hiring a Title IX consultant. Finally,

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<sup>396</sup> Davis, Bartt, “NIAA to sanction flag football beginning in 2016-17 season.” *Las Vegas Review-Journal*, April 16, 2015.

<sup>397</sup> Spies-Gann, Juliet. “The Hottest Sport in America is Flag Football.” *Huffington Post*, March 16, 2016. [www.huffingtonpost.com/entry/flag-football-participation-study\\_us\\_56e83d6ce4b065e2e3d76653](http://www.huffingtonpost.com/entry/flag-football-participation-study_us_56e83d6ce4b065e2e3d76653). (Accessed December 30, 2016).

<sup>398</sup> *Nevada Clark County School District Resolution Agreement*. 2016. PDF. 1st ed. Las Vegas. <http://www2.ed.gov/about/overview/mission/civil-rights/nv-clark-county.pdf>. (Accessed June 25, 2017).

CCSD understands that the OCR will continue to monitor the information provided by the district until the OCR determines that CCSD has fulfilled the terms of its resolution agreement and complies with the proportionality mandates of Title IX.<sup>399</sup> That decision has not yet been made.

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<sup>399</sup> *Nevada Clark County School District Resolution Agreement*. 2016. PDF. 1st ed. Las Vegas. <http://www2.ed.gov/about/overview/mission/civil-rights/nv-clark-county.pdf>. (Accessed June 25, 2017).

## **CHAPTER 6: CONCLUSION – MOVING FORWARD WITH TITLE IX**

*“People want Title IX.”*<sup>400</sup>

– Nancy Hogshead-Makar – Historian

Before the passage of Title IX, women in the United States demonstrated a desire to participate in athletics and competitive sports by challenging the existing cultural and social attitudes regarding gender roles and the frailty of the female physique. In addition to shedding restrictive stereotypes, women proactively formed their own teams, established their own rules and regulations, as well as created their own athletic associations where they could play and compete separately from the men. The creation of women’s sports leagues, women’s athletic associations, and the individual athletic accomplishments of women like “Babe” Didrikson, Wilma Rudolph, and Billy Jean King all contributed to the progress and evolution of women’s athletics, yet sexist policies and ideologies remained.

During the 1950s and 1960s, women across the country mobilized and organized themselves in order to resist gender discrimination that deprived them of economic, political, and educational opportunities, culminating in the passage of Title IX. Title IX generated immediate controversy and resistance as politicians, university officials, and male sports organizations attempted to exempt themselves as well as minimize the law’s influence. Despite intense obstruction efforts, Title IX survived the NCAA’s ire, multiple legal challenges, and a presidential administration dedicated to reducing the influence of government, specifically its civil rights mandates.

Critical to this study was my analysis of the acceptance and enforcement of Title IX in the American West, specifically at the University of Nevada, Reno and Clark County School District in Nevada. Given the West’s historical reputation for greater freedoms and opportunities for women, I desired to find out if Title IX was the beneficiary of any regional “exceptionalism.” My research revealed that the history of women’s athletics at the University of Nevada, Reno begins progressively with opportunity and success. UNR hired progressive, innovative female educators who resembled more of

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<sup>400</sup> Hogshead-Makar, Nancy. Interview with Jason L. Clark. October 23, 2017 Las Vegas, NV.

what society called, “The New Woman.” These coaches desired to bring gender equality to UNR as well as respectability to the women’s athletic program by rejecting the old ideology of “Play Days” and non-competitive intramural sports. Title IX at UNR encountered vast speculation and contempt as local politicians, university officials, and athletic executives attempted to exempt UNR from any government mandated gender equity legislation. Yet, intense community activism, both on and off campus, reshaped the prevailing sexist attitudes, creating an environment at UNR that later embraced gender equality. After committing to Title IX, UNR became of the most exemplary college sports programs in the nation for gender equality.

My analysis of the history and impact of Title IX at CCSD demonstrates that the answers to gender equality in athletics can be attributed to the proactive and progressive actions of the Superintendent Kenny Guinn, Robert Lunt, Norman Craft, Judy Cameron, Bonny Flaagan, and other district administrators and coaches who initially embraced Title IX. These men and women of CCSD also realized that the world of athletics belonged to girls too. Women of CCSD, like Erin Hill and Renee Brown, exemplify how many opportunities athletics can provide beyond high school. These women represent how given the opportunity, all girls can receive the benefits of participating in interscholastic competition, like physical fitness, improved self-confidence, and even college scholarships. The legal cases of Emma Johnson and the NWLC against CCSD revealed years of neglect and the inadequate amount of resources and opportunities given to the female student-athletes of southern Nevada. More importantly, these cases remind us that too often girls sports continue to be pushed to the periphery of importance for many of our nation’s school districts. According to historian Nancy Hogshead-Makar, the saga of Title IX at UNR and CCSD reflects a national trend, “No matter how you slice the data, by urban areas, rural towns, or suburbs, by region of the country, or by percentage of students on free or reduced lunch programs, girls receive about twenty to thirty percent less opportunities than whatever schools are offering boys.”<sup>401</sup>

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<sup>401</sup> Hogshead-Makar, Nancy. Interview with Jason L. Clark. October 23, 2017 Las Vegas, NV.

Once presented with the issue of gender equity in athletics, CCSD took ownership of the matter by hiring a Title IX consultant, surveying student interest, and ultimately chose to add a new sport to its athletic program. By adding girls' flag football, CCSD created over one thousand additional athletic opportunities for its female athletes, yet the decision came with controversy, "My issue with flag football is that, unlike the men's sport of football that provides boys with over a billion dollars in scholarships, flag football is a go-nowhere sport. No Olympic, no professional, no men's sports stop in high school. It's hard to make the case that flag football is giving girls educational opportunities," Hogshead-Makar said.<sup>402</sup> While there is still work to be done, CCSD's commitment to provide more athletic opportunities for its female student body has paid immediate dividends for southern Nevada, and is also potentially responsible for additional Title IX reforms in school districts around the country. On June 27, 2016, the parents of six Utah high school students filed a lawsuit in U.S. District Court against three school districts and the Utah High School Athletics Association (UHSAA) for failing to provide a girls' football team. The lawsuit claims that Jordan, Granite, and Canyon school districts are in violation of Title IX for failing to provide equal opportunities to play football. Among the plaintiffs are 14-year-old Sammie Gordon, who gained national attention, including an appearance on a Wheaties box, for her football talents and for starting a girls' tackle football league.<sup>403</sup> This lawsuit represents a growing national interest in football among female high school student-athletes and a desire for more athletic opportunities.

Similar to immigrants, African Americans, and other ethnic minority groups, women also harnessed to power of sports to promote gender equality and inclusion, as they advocated for more educational, political, and social opportunities. Female athletes, both amateur and professional, shattered discriminatory stereotypes about the female physique while they championed different causes ranging from suffrage to property rights, to equal employment and educationally opportunities, resulting in the

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<sup>402</sup> Hogshead-Makar, Nancy. Interview with Jason L. Clark. October 23, 2017 Las Vegas, NV.

<sup>403</sup> "Girl Football Star Sam Gordon, 9, Lands Wheaties Cereal Box Cover." ABC News. November 21, 2012. <http://abcnews.go.com/blogs/headlines/2012/11/girl-football-star-sam-gordon-9-lands-wheaties-cereal-box-cover/>. (Accessed October 25, 2017).

passage of Title IX.<sup>404</sup> Since Title IX, women have continued to utilize sports to breakdown gender stereotypes, develop leadership skills, and improve self-esteem. Today, more women are playing sports in high school and college than ever before, and its effect upon our society is palpable.<sup>405</sup> More scholarships are being offered to young women, professional sports leagues are expanding, women's amateur and professional sports are being broadcasted by more networks and for more money, and more companies like Nike and Under Armor are creating marketing campaigns for gender equality.<sup>406</sup>

Despite these gains, the educational and athletic opportunities for women, including financial resources, continue to lag behind the men. In 2014, According to the Women's Sports Foundation, high schools provided approximately 1.3 million fewer athletic opportunities for female students, and only forty two percent of athletic scholarship dollars went towards women.<sup>407</sup> Moving forward, CCSD has demonstrated a commitment to provide equal athletic opportunities for women, yet there remains a significant shortage of female coaches and athletic administrators. Unfortunately, this is a reflection of a national trend in high school and college athletics.<sup>408</sup> In 2012, CCSD fielded thirty-four varsity flag football teams, yet only six schools claimed a female head coach. Also, the majority of women's basketball coaches at CCSD are men, yet the most successful basketball head coach in the district, men's and women's, is Karen Weitz of Centennial High School.<sup>409</sup>

"People want Title IX," said Hogshead-Makar. "Republicans, Democrats, Independents, from all areas of the country. Whether they're married, with children or single. Regardless of age, people are

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<sup>404</sup> Gerber, Ellen W. *The American Woman in Sport*. Reading (Mass.): Addison-Wesley-Publ. Comp, 1974. 52.

<sup>405</sup> "Title IX Myths and Facts." Women's Sports Foundation. May 2017. [www.womenssportsfoundation.org/advocate/title-ix-issues/what-is-title-ix/title-ix-myths-facts/](http://www.womenssportsfoundation.org/advocate/title-ix-issues/what-is-title-ix/title-ix-myths-facts/). (Accessed November 24, 2017).

<sup>406</sup> Wallace, Kelly. "The Real March Madness: When will women's teams get equal buzz?" CNN. March 14, 2016. [www.cnn.com/2015/03/30/living/feat-march-madness-womens-sports-attention-money-men/index.html](http://www.cnn.com/2015/03/30/living/feat-march-madness-womens-sports-attention-money-men/index.html). (Accessed November 25, 2017).

<sup>407</sup> "Women's Sports Foundation Research." Women's Sports Foundation. August 2014. <https://www.womenssportsfoundation.org/research/>. (Accessed November 25, 2017).

<sup>408</sup> *Beyond X's and O's: Gender Bias and Coaches of Women's Sports*. 2016. PDF. New York: Women's Sports Foundation. <https://www.womenssportsfoundation.org/research/beyond-xs-and-os/beyond-xs-and-os-infographic/>.

<sup>409</sup> Karen Weitz built the women's basketball program from the ground up when Centennial High School opened in 1999. The program is regarded as one of the finest in the nation, having won 15 division titles, a dozen regional titles, and eight state championships.

in favor of the statute. The people enforcing it, Athletic Directors, think that girls should have opportunities, just not as many as the boys.”<sup>410</sup> When asked how best to address this discrepancy, Hogshead-Makar replied, “More sports! It’s an excellent investment in our youth!”<sup>411</sup>



*Photo 1: Green Valley High School Girls Flag Football Team 2014 Sunrise Region Champions.*

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<sup>410</sup> Hogshead-Makar, Nancy. Interview with Jason L. Clark. October 23, 2017 Las Vegas, NV.

<sup>411</sup> *Ibid.*



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