WHO CAN COME OUT AND PLAY? RE-CONCEPTUALIZING TITLE IX TO ADDRESS THE INTERRELATED BARRIERS OF SEXISM, HOMOPHOBIA, AND RACISM IN WOMEN’S SPORTS

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Kristine Mina Palma
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The Undersigned Faculty Committee Approves the

Thesis of Kristine Mina Palma:

Who Can Come Out and Play? Re-conceptualizing Title IX to Address the
Interrelated Barriers of Sexism, Homophobia, and Racism in Women’s Sports

Susan Cayleff, Chair
Department of Women’s Studies

Sara Giordano
Department of Women’s Studies

Madhavi McCall
Department of Political Science

May 16, 2003
Approval Date
DEDICATION

This thesis is dedicated to my fellow “outsider’s outsiders.” Create your own history.
You are right where you should be / Now act like it
--Michelle Tea
The Beautiful: Collected Poems
ABSTRACT OF THE THESIS

Who Can Come Out and Play? Re-conceptualizing Title IX to Address the Interrelated Barriers of Sexism, Homophobia, and Racism in Women’s Sports

by

Kristine Mina Palma
Master of Arts in Women’s Studies
San Diego State University, 2013

The purpose of this thesis is to theorize changes to Title IX to address homophobia and racism in addition to sexism in women’s sports. Title IX of the Education Amendments of 1972 is a federal legislation that prohibits discrimination on the basis of sex in all federally-funded educational programs. This thesis, however, focuses particularly on women’s sports programs. Since its enactment, Title IX has undeniably facilitated women’s unprecedented access to federally-funded educational programs including sports, but in this thesis I argue that this policy can be strengthened by incorporating additional protections that address homophobia and racism. Both forms of discrimination have been cited by numerous sports scholars as barriers to equitable playing opportunities. Additionally, I provide suggestions for Title IX’s general enforcement, as well as concrete plans of action to enforce the suggestions I set forth in this thesis. As a disclaimer, my research focuses primarily on addressing homophobia in women’s sports. It was beyond the scope of this thesis to provide a comprehensive analysis on racism and sports, but nevertheless it would be irresponsible of me to not make these connections through dialogue; especially since I suggest a multidimensional framework to address these interlocking social barriers.

For this project, I examined the following Title IX documents: Title IX the policy (1972), Title IX Regulations (1975), and the Athletics Investigation Manual (1990). These particular documents detail the policy’s goals and enforcement. I used interpretative policy analysis, specifically category analysis, to examine which groups are explicitly protected by Title IX and what additional categories can be created to protect against sexual orientation and race-based discrimination.
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CHAPTER 1

INTRODUCTION

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 education program or activity receiving Federal financial assistance.  

-- 20 U.S.C. §§ 1681–1688

Since its enactment, Title IX of the Education Amendments of 1972 has undeniably facilitated women's unprecedented access to federally-funded educational programs including sports, but there are key issues concerning the policy that need to be addressed. This thesis explores theoretical changes to Title IX that address homophobia and racism\(^1\) in addition to sex discrimination. Furthermore, strengthening Title IX’s overall enforcement is imperative to its efficacy. Therefore, I also will provide suggestions for Title IX’s general enforcement as well as concrete plans of action on how to enforce the recommendations I put forth in this thesis.

The inspiration for this project came to me about a year ago. It was the first week of April 2012. The Women’s NCAA Basketball Championship game was a couple of weeks away. Like any other diligent graduate student, I decided to put off my methodology homework to look up team rankings and news coverage on my favorite player, Brittney Griner. Griner was the star player of Baylor University’s Women’s Basketball who led her team to an undefeated season in 2011-2012 (Altavilla, 2012). That same playing-year, the Lady Bears\(^2\) became the first basketball team, women’s or men’s, to finish a 40-0\(^3\) season. Ultimately, they won their second national championship (Altavilla, 2012).

\(^1\) Although the focus of this thesis addresses sexual orientation discrimination, I acknowledge throughout my research the relevance of racism in women’s sports. As a disclaimer, it is beyond the scope of this study to provide a comprehensive analysis of racism in women’s sports and Title IX, but it would be irresponsible to make not these connections through dialogue. In addition, it was beyond the scope of this study to analyze homophobia in men’s sports. That, too, would require its own separate study.

\(^2\) Mascot for Baylor University’s women’s athletic teams

\(^3\) An undefeated season
Griner has been on my radar since March 2010—her freshman year. It was not just her talent that caught my attention, but her presence both on and off the court as well. At 6’8” she towered over other players. She wore dread locks, baggy clothes, and was unapologetically masculine. She remained so throughout her career despite constant disparagement from sports fans sitting in the stands and criticism on social media platforms (Feinberg, 2012). During her freshman year, the star basketball players at the collegiate level were Tina Charles and Maya Moore of the University of Connecticut; they were both drafted by the WNBA after graduation. I knew Griner was all-star material, but a part of me feared that her path to success would not be as smooth as Moore’s and Charles’. My worst fears were validated when I went to look up her online news coverage. There were articles criticizing her alleged manliness. Updates on social media platforms were particularly vicious. People questioned whether or not she was actually a woman. They compared her to other star players like Skylar Diggins, a star forward for University of Notre Dame who was feminine and beautiful. Diggins was constructed as the Beauty and Griner the Beast. Why did Brittney Griner’s presence make people uncomfortable and in some cases hostile? Did her appearance negate her talent? Did she have a future in women’s sports after college?

What was supposed to be an escape from my methodology homework ended up shaping my research question for this thesis. I began to question what historical and contemporary constructs of femininity created this hostile environment for Brittney Griner and other non-gender conforming athletes. Through my own research I found that there was large body of scholarly work that studied how hegemonic constructs of femininity shaped women’s opportunities (or lack thereof) to participate in competitive sports (Carty, 2005; Fink & Kensicki, 2002; Knight & Giuliano, 2003). My research thereafter focused on how constructs of normative femininity are maintained in women’s athletics and how it can be assuaged. To address social barriers to women’s sports, I turned to Title IX—the nexus of radical feminist activism and traditional structures of governance.

Title IX, whose implementation in 1972 was largely influenced by feminist activism in the 1960s and early 1970s was a groundbreaking legislation that aimed to end sex

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4 Including but not limited to female athletes whose gender expression deviates from hegemonic constructs of femininity, lesbian and bisexual athletes, and transgender athletes.
discrimination in federally-funded educational programs. Title IX led to an increase in female sports participation, a transformation of the cultural paradigm that defines women’s and girl’s relationship with athleticism, and expanded legal protections for women and girls in education (Lopiano, 2000; Holland & Oglesby; 1979; Samuels & Galles, 2003). In 1972, the same year that Title IX was enacted, only one in twenty-seven girls played varsity sports; a quarter century later, in 1998, it was one in three girls (Lopiano, 2000). These young female athletes later matured to play sports at the collegiate level. In 1972, only 29,977 women participated in college sports teams. In 2001, the number of female collegiate athletes increased to 150,916 (Samuels & Galles, 2003). Title IX ensured funding for educational sports programs for girls and women at all levels—elementary, high school, and college. This led to the increase in the number of female participants in women’s sports. Today there are 3.2 million (42%) female high school athletes and 190,000 collegiate athletes (National Coalition for Women and Girls in Education [NCWGE], 2012).

Title IX has also impacted sports at a cultural level. Sports have been a traditionally male-dominated field. It was constructed as a site where young boys learned how to be men; they learned leadership, assertiveness, and competitiveness (Holland & Oglesby, 1979). Furthermore, women and girls were discouraged from participating in sports because middle class society feared that they would develop masculine qualities—stripping them of their femininity (Boutilier & SanGiovanni, 1983). The implementation of Title IX marked a shift in American social thought. The line dividing appropriate masculinity and femininity was blurred but not eliminated. Nevertheless, normative femininity and athleticism were no longer incompatible (Lopiano, 2000). For example, in 1981, Peggy Bonham, a cross country track star, won homecoming princess at her high school. In an interview with *Los Angeles Times*, Bonham asserted that athletes did not have to be jocks, they could be feminine too (*Los Angeles Times*, 1981). Title IX helped expand the definition of traditional femininity. Decades prior, a female athlete may not have had the opportunity to be elected onto a homecoming court.

By the late twentieth century, research demonstrated participation in sports had a positive impact on young girls. Sports were credited with building confidence, self-esteem, and achievement-setting behaviors in young girls (Lopiano, 2000) Title IX has also helped challenge medical mythology that constructed women as physiologically incapable of
rigorous physical activity and sports. For example, in the 1920s physicians critiqued women’s participation in running events in the Olympics, stating that women lacked the aerobic and circulatory capabilities to compete in these events (Lopiano, 2000). By the late twentieth century, medical professionals no longer defended the theory of women’s inherent physical inferiority; instead they began to question the deleterious impacts of inferior training opportunities on women’s bodies (Lopiano, 2000).

**A GUIDE TO TITLE IX**

The purpose of this section is to provide in-depth knowledge of the policy so the reader is able to understand the impact of the suggested revisions. I describe all parts of Title IX and detail which of its documents have force of law (Table 1).5 In addition, I clarify which department enforces it and which avenues of enforcement are authorized through Title IX.

Title IX is currently overseen by the Office for Civil Rights (OCR) of the U.S. Department of Education (Women's Sports Foundation, 2011a). Its oversight was transferred to the OCR in 1980; from 1972-1979 it was enforced by the Department of Health, Education, and Welfare (HEW). When HEW split into separate agencies, the Office of Civil Rights of the Department of Education assumed the responsibility of enforcing Title IX (Women's Sports Foundation, 2011a). Currently the OCR of the Department of Education maintains twelve enforcement offices throughout the nation and is headquartered in Washington, D.C. (Department of Education, 1998). Title IX covers approximately 16,000 school districts, 3,200 colleges and universities, and 5,000 for-profit schools, libraries, and museums (Department of Education, 1998).

There are currently three avenues of enforcement: OCR complaints, lawsuits (also referred to as a private remedy), and in-house complaints (Table 2). Those protected by Title IX are authorized to pursue multiple avenues of enforcement simultaneously (Carpenter & Acosta, 2005).

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5 Force of Law means that the courts are required to give the same legal weight to it as the actual law
<table>
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<tr>
<th>Avenue of Enforcement</th>
<th>Description</th>
<th>Benefits and Drawbacks</th>
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| OCR Complaint         | An OCR complaint is directed to a regional OCR office and its personnel are responsible for this claim’s investigation | Benefits: Does not require legal standing, which reduces the chances of experiencing retaliation  
Drawbacks: OCR is a non-advocate roll; complainant may feel unsupported; cannot sue for monetary damages |
| Lawsuit               | A lawsuit is a private remedy that seeks reparation for offences committed or the prevention of offenses without the assistance of a government agency. It was determined by Canon v. University of Chicago (1976) that Title IX authorizes private remedies | Benefits: Opportunity to sue for damages; feels supported by advocate role of attorney; can look to court to oversee enforcement of the remedy obtained  
Drawbacks: Expensive; requires plaintiff to be legal standing, which may result in retaliation from the defending party, takes longer than an OCR complaint to reach a resolution |
| In-house              | In-house refers to a complaint that is investigated internally within an institution. No third party (i.e. the OCR or lawyers) mediate the complaint. A complaint is investigated by the designated point person and relevant staff within the university | Benefits & Drawbacks similar to an OCR Complaint  
Additional comments: Notorious for being the least effective mode of enforcement |


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<th>Component</th>
<th>Description</th>
<th>Force of Law</th>
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<td>Refers to the 37 word policy that is the actual law. It was enacted on June 23, 1972</td>
<td>The Law</td>
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<tr>
<td>Regulations</td>
<td>Title IX Regulations outline its goals and how they should be enforced. It was enacted on July 21, 1975.</td>
<td>Force of law- this means that the courts are required to give the same legal weight to it as the actual law</td>
</tr>
<tr>
<td>Policy Interpretation</td>
<td>The Policy Interpretation is best described as a measuring stick that determines how well each school is meeting Title IX’s regulation. They were published December 11, 1979—exactly a year after the mandatory compliance date for all federally funded educational programs.</td>
<td>Worthy of Judicial Deference- this means that it does not have the same legal weight as the law, but it does hold some legal value in deciding legal issues in the court</td>
</tr>
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<td>Letters of Clarification</td>
<td>The OCR, the agency that enforces Title IX, issues Letters of Clarification to clarify major ambiguities. For example, The 1998 Letter of Clarification clearly defined what was meant by “substantially equal” as it was used in the financial aid section in the Regulations.</td>
<td>Deference of Law- this means that it does not have the same legal weight as the law, but it does hold some legal value in deciding legal issues in the court</td>
</tr>
<tr>
<td>Athletics Investigation Manual</td>
<td>A guide written to instruct investigators on how to properly investigate a complaint within the athletics department. It was published in 1990.</td>
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**LITERATURE REVIEW**

Title IX is a well-intentioned policy with real impacts on women’s rights, but it still has not lived up to its full potential. The following are components of Title IX that various legal scholars have asserted need improvement or creation: specificity of guidelines and regulations, general enforcement of the policy, and the ambit⁶ of what types of issues are covered by Title IX.

The ambiguity of all parts of Title IX: the policy (1972), the Regulations (1975), the Policy Interpretation (1979), and the Athletics Investigation Manual (1990), place severe limitations on its uniform enforcement and efficacy. Though the Office for Civil Rights has the power to clarify ambiguity by issuing official Letters of Clarification, such as the 1996

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⁶ Legal term that means the scope, extent, or bounds of something.
Letter of Clarification—Proportionality, the lack of specificity of Title IX’s regulations and policy interpretation ultimately places the responsibility on in-house administrators at individual institutions to determine what defines compliance and how to appropriately investigate complaints (Setty, 1999). Sudha Setty, a Professor of Law specializing in comparative law, asserted in “Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement” (1999) that the Office for Civil Rights (OCR) should revise the Athletics Investigator’s Manual to be more detailed and provide more instructions and guidance (Setty, 1999). Additionally, the OCR should adequately train compliance officers to assure they have a strong understanding of the Title IX policy, the Regulations, Policy Interpretation, and the Athletics Investigation Manual (Setty, 1999).

Another shortcoming of Title IX is that by civil rights standards, Title IX is an exceptionally and atypically lenient anti-discrimination law (Samuels & Galles, 2003). The OCR created the Three Prong Test to measure Title IX compliance in federally-funded school Athletic programs. An institution’s athletic program is deemed compliant if they satisfy at least one of the following prongs: (1) Participation opportunities for both sexes are substantially proportionate to enrollment (2) A demonstrated history and continuing practice of program expansion for the underrepresented and/or (3) The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex (Office for Civil Rights, Department of Education, 1996). They critiqued the second prong which stated that an institution will be deemed compliant if it has shown incremental progress towards equality, regardless if they passed the proportionality test or are adequately meeting the interest of women on campus. In no other Civil Rights law would incremental progress suffice in ameliorating discriminatory practices and result in compliance (Samuels & Galles, 2003). In short, they asserted that the three-prong test generously favors the institutions and ultimately fails to address gendered inequalities (Samuels & Galles, 2003).

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7 This is a document that introduced the three prong test. The three prong test was created to measure compliance in athletic programs.
8 Prong one
9 Prong two
One last issue I cover addresses Title IX’s lack of uniform and serious enforcement. Vivian Acosta and Linda Carpenter, professors emerita at Brooklyn College, asserted in *Title IX* (2005) that in-house complaints are the most ineffective because most students and employees are unaware of the complaint process or who the Title IX compliance authorities are on their campuses (Carpenter & Acosta, 2005). For complaints under investigation, few precise guidelines exist on enforcement, which leaves it to the discretion of the designated point people at individual institutions to determine which cases qualify for investigations and which complaints should be dismissed (Carpenter & Acosta, 2005).

Furthermore, lawsuits (another enforcement avenue) have also proven to be disadvantageous for students. They are usually costly, require a longer time period to reach a resolution, and require legal standing (Carpenter & Acosta, 2005). Legal standing requires that you are identifiable as a plaintiff, whereas in-house complaints can be made anonymously. Those who initiate lawsuits are also more likely to experience retaliation from the defending party (Carpenter & Acosta, 2005). In fact, retaliation claims have emerged to be a pressing contemporary Title IX Issue. In cases such as *Jackson v. Birmingham Board Of Education* (2005) and *Lowrey v. Texas A&M University*, (1997) complainants experienced retaliation after they filed a complaint through Title IX or advocated for gender equity by other means (*Jackson v. Birmingham Board Of Education*, 2002; *Lowrey v. Texas A&M University*, 1997).

The lack of monitoring of compliance plans is also problematic. The OCR has a history of deeming an institution compliant after it has received assurance that the institution has set out a plan for compliance even before any compliance efforts have been initiated (Setty, 1999). From 1988 to 1992, there was only a total of thirty-two compliance reviews conducted amongst all of the OCR regional offices (Setty, 1999). Furthermore, the length of time that the OCR takes to review a complaint and take action severely disadvantages

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10 See: Johnson-Klein v. California State University, Fresno, 1997; Frazier v. Fairhaven School Committee et al, 2000

11 These are plans that institutions found in violation of Title IX commit to in order to get on track towards compliance.

12 The OCR of the Department of Education maintains twelve enforcement offices throughout the nation and is headquartered in Washington, D.C.
students; they are often forced to wait several years for resolution and are long-graduated when their complaints have been resolved (Setty, 1999).

**METHODOLOGY**

Like the drafters and supporters of Title IX, I was teetering between radical\(^\text{13}\) and moderate feminism; I wanted to re-conceptualize the policy to address the interrelated barriers of sexism, racism, and homophobia. Each separate discrimination policy communicates to the public that discrimination motivated by a singular mode of discrimination is wrong, but what it does not reflect is the complex schemata of how discrimination is experienced. Racism, sexism, and homophobia can be experienced simultaneously. I understand that it is not policy alone that shapes the cultural paradigm in which we live, but I do vehemently contend that there is symbiotic relationship amongst them. I aim to re-theorize Title IX because I see the value in the symbolic and real impacts of validating multiply-burdened\(^\text{14}\) identities through federal policy.

As a lesbian of color I admittedly have apprehensions of utilizing the law (which at times been used as a population management tool) to enact radical changes to our cultural paradigm. I do, however, recognize that both the past legislative and judicial action has helped improve the material realities of minorities in the United States (Brown v. Board of Education, 1954; Loving v. Virginia, 1967; Lawrence v. Texas, 2003; Matthew Shepard and James Byrd, Jr. Act, 2009; Title VII of the Civil Rights Act of 1964). Hence, this thesis explores how the law can be used to increase protections for lesbian and bisexual student-athlete, including those who are also of color.

I used interpretative policy analysis, specifically category analysis to examine which groups are explicitly protected by Title IX and what additional categories can be created to protect against sexual orientation and race-based discrimination. The purpose of category analysis is to analyze the categories (i.e. sex, race, nationality, and etc.) that policies reify.

\(^{13}\) I qualify this term to mean a grassroots feminist activist who works outside of government structures.

\(^{14}\) This is the term Kimberlé Crenshaw, Professor of Law at UCLA and Columbia University, used to describe people who multiple forms of discrimination in her groundbreaking article "Demarginalizing the Intersection of Sex and Race: A Black feminist critique of anti-discrimination doctrine, feminist theory and antiracist Politics" (1989).
This method aims to analyze how policy-relevant actors\textsuperscript{15} respond and “read” these categories (Yanow, 2000, p.48).

I examined the following Title IX documents for this project: Title IX the policy (1972), the Athletics Investigation Manual (1990), and The Regulations (1975). These particular documents detail the policy’s goals and enforcement. My main inquiry explores how Title IX can be re-conceptualized to address homophobia and racism in addition to sex discrimination. Although the focus of this thesis addresses sexual orientation discrimination, I acknowledge throughout my research the relevance of racism in women’s sports. As a disclaimer, it is beyond the scope of this study to provide a comprehensive analysis of racism in women’s sports and Title IX, but it would be irresponsible to make not these connections through dialogue.

Lastly, I deliberately use the terms lesbian, bisexual, and gender non-forming\textsuperscript{16}. I use these terms, because they have legal precedent in the Courts and Congress. Furthermore, these were the terms used by the complainants, themselves.

\textsuperscript{15} Those who write, enforce, and are bound by the law.

\textsuperscript{16} Title IX protects against transgender discrimination, but it is beyond the scope of this thesis to examine if Title IX has been equitable for transgender athletes. I have suggested this inquiry as a future study in the conclusion.
CHAPTER TWO

ON THE PATH TO EQUITY: THE PRE-TITLE IX AND EARLY TITLE IX ERA

Prior to the implementation of Title IX (1972), all women were routinely denied equal access to federally-funded educational programs, including physical education and athletics programs. Discrimination towards female athletes was a product of interrelated barriers such as sexism, classism, racism, and homophobia (Cain, 2000; Lopiano, 2000; Osborne; 2007). These discriminatory social values were often normalized and upheld at the familial and institutional level which created a cultural paradigm that was hostile towards those who deviated from the norm (Connell, 1990; Hamilton, 1978; Walby, 1990). Athletic women were among those who were often stigmatized for breaching rigid gender roles.

Prior to Title IX, there was no federal statute that protected women and girls from sex discrimination in federally funded educational programs. More often than not, women and girls had very little means to resolve instances of discrimination. Since there was no federal law in place and only few state or local anti-sex discrimination laws existed at the time, girls and women who sued for access into educational programs were often dismissed (Blake, 2001; Holland & Oglesby, 1979). In 1971, for example, a Connecticut judge ruled against a girl who was suing for the right to participate in an all-boys sports team. The judge asserted that sports builds character, and girls don’t need that kind of character (Holland & Oglesby, 1979).

Women and girls who wanted to participate in athletic programs were often confronted with the legacies of gender and racial stereotypes under the guise of medical and psychiatric advice (Boutilier & San Giovanni, 1983; Gissendanner, 1994; Griffin, 2002). Doctors and scientists reinforced traditional gender roles through the medicalization of assumed biological differences. Historically doctors asserted that women were physiologically inferior to men and therefore could not participate in physical activities to the same degree as men (Boutilier & San Giovanni 1983) Psychologists became particularly concerned about the impact that competitive sports would have on a woman’s psychological
health. From 1965-1987, there were over seventy published articles in psychology that studied the relationship between athletic competition and the hyper-masculinization of women (Hall, 2004). Whether or not these psychologists endorsed traditional gender roles, their attention to femininity and athleticism reflected society’s anxieties towards female athleticism and the changes it would bring to the traditional social order.

For middle-to-upper class women of Euro-American descent, especially, there was a social stigma attached to participating in sports. In the nineteenth and early twentieth centuries, white, upper class women were discouraged from participating in sports because medical experts believed it would reduce their ability to reproduce (Griffin, 2002). Although by the 1920s and 1930s the link between infertility and athleticism was proven to be untrue, social stigma against female athleticism continued to regulate women’s athleticism and maintain traditional femininity (Carpenter and Acosta, 2005). Women and girls who wanted to participate in sports were often expected to exaggerate their femininity to avoid the stigma of being perceived as a tomboy or lesbian. Women and girls began to incorporate make up, ribbons, and jewelry into their uniforms to actively demonstrate their normalcy by performing femininity (Boutilier & San Giovanni, 1983). Although dichotomies between athleticism and femininity were attenuated, the regulation of traditional femininity was left unchallenged. Hence, women were pressured to adhered to traditional notions of middle class, Euro-American femininity (Boutilier & San Giovanni 1983); Women who deviated from these norms were often barred from participation (Osborne, 2007; Baird, 2002; Pickett, Dawkins, & Braddock, 2012).

The regulation of women’s sexualities was another tactic used to preserve traditional femininity within women’s sports. Homophobic sentiments as early as the 1920s and 1930s were promoted to dissuade women’s interest in competitive sports. The image of the predatory, mannish lesbian was propagandized to be a disorder tied to athleticism (Griffin, 2002). Athletic women, therefore, became suspect because of their interests in presumed male activities (Griffin, 2002). The distorted representations and stigma associated with lesbianism has endured within women’s sport. To this day, many women’s sports programs still internalize homophobic and heterosexist values and create volatile environments for discrimination in favor of heterosexual and against homosexual people

Despite social stigma and inequitable playing conditions middle-class (predominantly those who were of Euro-American descent) women who were enrolled in college were determined to find ways to participate in competitive sports teams\(^\text{18}\) (Cain 2000; Carpenter & Acosta, 2005). In the 1920s, 1930s, and 1940s women formed competitive archery and rifle sports teams and played against teams from other schools (Carpenter & Acosta, 2005). Women’s teams often did not receive financial support from their institutions and had a limited budget for travel. To work around their limited travel funds, teams usually did not compete alongside each other; they would record their scores and mail it to the school they were competing against (Carpenter & Acosta, 2005). Additionally, women’s sports teams did not receive sports-related medical treatment or athletic training, rarely had access to locker rooms and weight rooms, and had to train in substandard facilities (Carpenter & Acosta, 2005).

The stereotype of women’s physiological inferiority led to the creation of protectionist measures that limited women’s athletic development (Cain, 2000). Women-specific playing rules were promulgated to protect female athletes from exhaustion and injury; they were crafted to protect the alleged frailty of upper class, white women and preserve their reproductive capabilities (Cain, 2000). In 1899, Senda Berenson, Athletic Director of Smith College, who in cooperation with Spaulding sporting goods created the first women’s basketball rules. These rules limited physical contact with other players and restricted the distance that each player could travel on the court (Cain, 2000). Working class women and women of color, who have historically participated in the physically demanding labor in the work force, were particularly frustrated by these limiting play rules (Gissendanner, 1994).

Attitudes towards women’s physical abilities were marked by race and class (Cain, 2000; Gissendanner, 1994). These rules did not account for the social realities of working class women or women of color. In the case of Black women, specifically, histories of

\(^{18}\) There was a vibrant legacy of historically-Black women’s colleges that also offered competitive sports. These colleges were populated mostly by middle-class women (Birrell, 2003; Creedon, 1994)
slavery and segregation created a whole separate cultural context for Black female athletes. Black communities generally had a more physically active ideal of the female role (Cain, 2000). Black women who participated in the work force or in civil rights demonstrations were not read as deviant or unfeminine like their white counterparts (Gissendanner, 1994). On the contrary, histories of economic and social exclusion created a social context in which Black women who were physically active and in the workforce were regarded as honorable women in their families and communities (Gissendanner, 1994). Therefore, Black women’s athletic administrators had less incentive to regulate and maintain traditional ideals of white femininity (Gissendanner, 1994). Additionally, Black women’s sports organizations were usually created and ran in cooperation with Black men’s organizations because of limited funding sources. Although sexism did exist in Black communities, it was less transparent within athletic spaces competitions (Gissendanner, 1994). For example, women’s basketball teams in Black colleges and other organizations played by men’s rules; they did not adhere to the six-player women’s rules promulgated by white female athletic educators. As a result, Black women’s college basketball teams were excluded by most predominantly white collegiate competitions (Gissendanner, 1994).

In sum, in the decades leading up to Title IX’s passage, dichotomies between femininity and athleticism were attenuated and women and girls’ participation in physical education and athletics programs increased. The stigma against female athletes, however, was not disrupted. Instead of stigmatizing all female athletes, society began to target gender non-conforming athletes. Women’s sports became a site where normative gender and racial values were upheld and regulated.

**Feminist Activism and the Enactment of Title IX**

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 education program or activity receiving Federal financial assistance.

--20 U.S.C. Sections 1681-1688

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19 Six-player women’s rules were developed by Smith College Athletic Director Senda Berenson and Spaulding Sporting Goods in 1899. It consisted of six female players and three court divisions. Two players were assigned to each court division, and players were prohibited from leaving their designated area. The purpose of these rules was to prevent over exhaustion; white, middle-to-upper class women were perceived to be frail and incapable of strenuous exercise (Cain, 2000).
Title IX of the Education Amendments of 1972, 20 U.S.C. Sections 1681-1688 was signed into law by President Richard Nixon on June 23, 1972\(^2\) (The United States Department of Justice, 2013). This policy was enacted during a time period marked by social change in the United States. From the 1960s to the 1970s, the Civil Rights Movement and Women’s Liberation Movement challenged and transformed the predominantly racist and sexist American culture (Straurowsky, 2003). To address systemic racism and sexism at the national level, federal legislation such as the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 were implemented.

The Equal Rights Amendment was the first anti-sex discrimination policy to be introduced to congress in 1923 by Representative Daniel Anthony\(^1\) in the House of Representatives and by Senator Charles Curtis in the Senate (Equal Rights Amendment, 1923; Suggs, 2005). The bill was introduced a few years after the nineteenth amendment (women’s suffrage) was enacted (Equal Rights Amendment, 1923; Suggs, 2005). The crafting of this bill was largely inspired by First Wave feminism in the late eighteenth and early nineteenth centuries (Suggs, 2005). It quietly died in the Senate and the House of Representatives (Suggs, 2005). Shortly after, feminist activism, too, experienced what some scholars characterize as a period of abeyance (Sawyers and Meyer, 1999; Taylor, 1989).

In the 1960s and 1970s, feminist activism experienced a surge in re-politicization; this became known as the Women’s Liberation Movement (WLM) (Sawyers and Meyer, 1999; Taylor, 1989). The WLM was largely inspired by the Civil Right Movement (CRM), which many feminists participated in. They applied their experiences as anti-racist activists and radical visions into forming networks and grassroots movements to address women’s subordination in society (Hole and Levine, 1973; Evans, 1979). Although many WLM participants had similar goals of abolishing political, economic, and sexual violence against women, many of them had different visions on how these goals would be achieved. The Women’s Liberation Movement was composed of numerous factions of feminist organizations with a diverse range of political ideologies and methodologies for achieving women’s liberation.

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\(^2\) See: http://www.justice.gov/crt/about/cor/coord/titleix.php

\(^1\) Nephew of Susan B. Anthony, a leader of the women’s suffrage movement
As Judith Hole and Ellen Levine, suggested in *The Rebirth of Feminism* the women’s movement was divided in at least two major camps: the women’s rights movement and the women’s liberation movement (Hole and Levine, 1973). Although this is an oversimplified analysis of the composition of Second Wave feminist groups—as there were several factions created to reflect particular political ideologies (Marxist feminists, material feminists, womanists, etc.), it lends itself a very general idea of how the WLM was composed of smaller, politically diverse networks that were often formed independent of each other.

There were a number of women’s groups that focused more on legal and economic reforms and took more conservative standpoints on women’s issues (Freeman, 1973). This faction was typically referred to as the women’s rights movement and was considered to be the more conservative faction. Feminists who participated in women’s rights groups tended to be older, working professionals who were well established in political or educational positions (Freeman, 1973). Given that most of the participants’ had higher levels of educational and professional training, women’s rights groups tended to incorporate more traditional organizational structures and more conservative standpoints. For example, most women’s rights organization employed a top-down organization in which women were voted into positions and the members adhered to bylaws and democratic procedures (Freeman, 1973).

Women’s liberation groups were considered to be the more radical camp of the women’s movement. In contrast to the women’s rights movement, women’s liberation groups were not as structured or organized. In fact, the women’s liberation movement considered the idea of formal leadership as elitist and isolating (Freeman, 1973). Feminists in the women’s liberation groups tended to take on more radical issues such as sexuality, abolishing the traditional family, and abolishing all forms of oppression within our education, work, and cultural institutions (Freeman, 1973).

In sum, feminists who participated in various women’s rights and women’s liberation groups may have had the same broad goal of abolishing sexism, but oftentimes they had very different methods of achieving these goals. Many feminists groups also differed on what issues that they wanted to prioritize, how they would achieve equality, and had different political and epistemological beliefs. Nevertheless, their work contributed to the reshaping of women’s roles in society and the opportunities afforded to them.
GENDER EQUITY IN EDUCATION

Equitable access to educational opportunities was one priority of the WLM. Feminist activists put pressure on the Johnson Administration to include women in executive orders for equity. This approach resulted in moderate success (Suggs, 2005, p.38). In 1969, Dr. Bernice R. Sandler, who is considered by many to be the “godmother of Title IX,” began placing pressure on colleges to hire more women. She networked with influential government contacts that assisted her through this process (Suggs, 2005, p.38). Over the course of two years she was able to file two hundred and fifty sex discrimination complaints against colleges and universities. Feminist organizations such as the National Organization for Women (NOW) and Women’s Equity Action League (WEAL) also filed similar complaints (Suggs, 2005, p.39).

Sandler’s, NOW’s, and WEAL’s activism drew Representative Martha Griffith’s (MI-D) and Representative Edith Green’s (OR-D) attention. Sandler was later appointed to Green’s subcommittee on Higher Education in 1970 (Suggs, 2005, p.39). Green’s original plan was to amend Title VI of the Civil Rights Act of 1964. She was dissuaded from doing so because many feared it would influence conservative southern Congress members to tamper it with themselves (Suggs, 2005, p.40). The Civil Rights Acts of 1964 nevertheless remained influential in the drafting of Title IX; Green borrowed its framework and language to form Title IX (Suggs, 2005, p.40). Senator Birch Bayh (IN-D) and Representative Edith Green (OR-D) introduced Title IX to congress and in 1971 both the Senate and House approved versions of the law. On June 8, 1972, President Richard Nixon signed Title IX of the Education Amendments of 1972 into law (The United States Department of Justice, 2013).

In sum, Title IX’s enactment was largely made possible by feminist activism and lobbying in the years prior, much of which was made possible and heavily influence by the Civil Rights Movement (Carpenter and Acosta, 2005; Valentin, 1997). The Women’s Liberation Movement (WLM), which coalesced in the 1960s and 1970s, helped create a political landscape that was receptive to anti-sex discrimination legislation (Carpenter and Acosta, 2005; Valentin, 1997).

Feminist organizations also lobbied on behalf of Title IX. Two such organizations, National Organization for Women (1966) and Women’s Equity Action League (1968) played an instrumental role in improving equitable access for women in education. These
organizations helped organize against opposition to Title IX. Many members of NOW and WEAL testified on behalf of Title IX during congressional hearings (Suggs, 2005, p.40). Additionally, NOW wrote letters to Congress pressuring them to sign Title IX Regulations into law22 (Hughes, Pittman-Liebman, & Hilliard 1975).

**CONCLUDING REMARKS**

Title IX was crucial for girls and women to move towards equity in federally-funded educational program, but these protections were hard fought (Carpenter and Acosta, 2005; Suggs, 2005). The Judicial system played an integral role in protecting and expanding Title IX’s scope. (*Cohen v. Brown University, 1996; Neil v. Board of Trustees of California State Universities, 1999 Roberts v. Colorado State University, 1993*). The next chapter will detail the Judicial Branch’s role in creating additional protections through Title IX by setting legal precedent through landmark court cases.

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22 Although Title IX was enacted in 1972, its regulations were not signed into law until 1975. Title IX’s Policy Interpretation was signed into law until 1979. To sum up, documents that are pertinent to Title IX’s definition and enforcement came years after its enactment (Carpenter and Acosta, 2005).
CHAPTER THREE

THE EBB AND FLOW OF WOMEN’S EQUITY IN SPORTS

In this section, I describe opposition to Title IX’s jurisdiction over federally-funded educational sports programs. I, then, explicate how the courts played an integral role in defining Title IX’s scope and the impact relevant case law had on ensuring equity in federally-funded educational sports programs. Specifically, I detail United States Supreme Court Cases and two influential District Court cases that authorized private remedies, monetary damages, oversight of employment regulations, funding status, and cuts to men’s sports teams to achieve compliance through Title IX. I conclude this section by suggesting Congressional action to strengthen Title IX.

FROM PROGRESS TO CONSERVATIVE BACKLASH

Title IX’s goal did not explicitly aim to end sex discrimination in physical education and athletics, but controversy ensued shortly after it was used to justify equal opportunity in women’s sports programs. Within the first decade of its enactment, there were several lawsuits and amendments introduced to Congress that aimed to exclude sports from Title IX’s jurisdiction. In 1974, Senator John Tower (R-TX) made the first attempt to remove sports from Title IX’s jurisdiction. He introduced the Tower Amendment of 1974 which aimed to “[exempt] revenue producing sports from being tabulated when determining Title IX compliance” (Curtis & Grant, 2005). The amendment quickly failed in the Senate.

The National Collegiate Athletics Association (NCAA)23 was another strong opponent of Title IX. They endorsed the Tower Amendment and four years after it failed, the NCAA filed suit against the U.S. Department of Health, Education and Welfare24 in the Kansas District Court. They claimed that Title IX had overstepped its jurisdiction by trying

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23 College sports administration formed in 1906 that organizes collegiate sports programs in the United States and Canada. It was exclusively a men’s sports administration up until 1980.

24 This was the precursor to the Department of Education, which currently oversees Title IX.
to enforce compliance over athletic programs that do not directly receive federal aid (National Collegiate Athletic Ass’n v. Califano, 1978) On January 9, 1978 District Judge Sandra Day O’Connor dismissed the case on the grounds that the plaintiffs arguments were baseless and “[were] plainly not capable of proof at trial because they are premised upon a gross misreading of the relevant regulations” (National Collegiate Athletic Ass’n v. Califano, 1978).

Six years later Grove City College, a Christian liberal arts college in Pennsylvania, filed a similar suit in the Supreme Court of the United States that challenged Title IX’s jurisdiction over schools’ athletics programs (Grove City College v. Bell, 1984). GCC claimed that it should be exempt from Title IX compliance because as a private college its athletic programs did not directly receive federal funds. It only received those monies indirectly through students’ financial aid (Grove City College v. Bell, 1984). Given the program-specific language of Title IX that stipulated its regulation over education programs not entire institution, the Court upheld that Title IX had no jurisdiction over programs (i.e. Athletic Departments) that were not receiving federal funds. Consequently athletics departments were exempt from Title IX compliance.

Only when the Civil Rights Restoration Act of 1988, which required recipients of any federal funds to be compliant with all civil rights laws was enacted, did Title IX regain jurisdiction over all athletics departments (Carpenter & Acosta, 2005). Since then, any lawsuits that challenged Title IX’s applicability to federally-funded sports and physical education programs were dismissed (Carpenter & Acosta, 2005). Both the National Collegiate Athletics Association decision that favored Title IX (1978) and the enactment of the Civil Rights Restoration Act of 1988 were seminal moments in Title IX’s legal history that ensured women’s sports programs were protected this policy.

**Landmark Title IX Cases**

Prior to Cannon v. University of Chicago (1979), it was unclear if private remedies (lawsuits) were authorized through Title IX. In 1979, a female applicant rejected on the basis of sex filed suit in the Supreme Court of the United States against the University of Chicago
Medical School under Title IX. It was not yet established if it was permissible for Title IX complainants to take private action to seek resolutions for their grievances or if they were limited to enforcement avenues through the Department of Health, Education, and Welfare.

Ultimately, Justice Stevens reversed the Seventh Circuits decision and stated that private remedies are authorized through Title IX. Justice Stevens reasoned that although the statute did not explicitly authorize private right of action, it should be assumed that the drafters of the policy would be in favor of private remedies. Since Title IX was modeled after Title VI of the Civil Rights Act of 1964, he contended that the drafters of the policy intended to authorize the same enforcement mechanisms as Title VI. Chief Justice Burger, Justice Stewart, Justice Brennan, Justice Marshall, and Justice Rehnquist concurred. Justice White, Justice Blackmun, and Justice Powell dissented. They asserted that judicial interference with university admissions decisions would be unwise, burdensome on both the court systems, and treads on the independence of university admission’s committees. Additionally, they asserted that the legislative history of Title IX and the policy itself did not authorize the use of private remedies. They also warned that the creation of such remedies extends the powers of the federal courts well beyond what was considered constitutional; it should be up to the legislative branch, alone, to authorize the use of private remedies.

Cannon paved the way for other complainants to be able to pursue private remedies for resolutions. This authorized another enforcement mechanism for those covered by Title IX to pursue. Since this groundbreaking court case, there are now three avenues of enforcement complainants can pursue: in-house investigations within their institutions, investigations through the Department of Education, Office for Civil Rights, and private remedies through the courts. Private remedies can benefit complainants whose institutions refuse to investigate their cases. Many allegations of discrimination and non-compliance

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25 Title IX sought to end sex discrimination in all education programs, not just athletic programs.

**Employment Practices**

Determining whether or not employees were protected by Title IX was another key issue that was addressed by the Court. Petitioner North Haven Board of Education (North Haven) filed suit against the Department of Education, et al in the Supreme Court of the United States (North Haven Bd. Of Ed. v. Bell, 1982). North Haven alleged that the Department of Education had overstepped its boundaries by regulating employment practices through Title IX (North Haven Bd. Of Ed. v. Bell, 1982). The issue at hand was whether or not Title IX was authorized to protect employees (North Haven Bd. Of Ed. v. Bell, 1982).

Justice Blackmun delivered the opinion. The Court determined that Title IX did cover employees (North Haven Bd. Of Ed. v. Bell, 1982). The Court examined the legislative history of Title IX and concluded that the statute was indeed intended to apply to employment discrimination (North Haven Bd. Of Ed. v. Bell, 1982). In addition, the Court concluded that nowhere in the policy did it restrict its application to students or participants of the educational programs (North Haven Bd. Of Ed. v. Bell, 1982). The Court relied on the fact that Section 901(a) broadly states that “no person” may be discriminated against on the basis of gender to determine that Title IX was not restricted to students (North Haven Bd. Of Ed. v. Bell, 1982).

Justice Powell along with Chief Justice Burger and Justice Rehnquist dissented. Justice Powell asserted that “a natural reading of these words would limit the status’ scope to discrimination against those enrolled in or who are denied the benefits of programs…” (North Haven Bd. Of Ed. V. Bell, 1982).

In sum, North Haven (1982) expanded the scope of Title IX to include employees. I assert that the heart of this policy is to eliminate sex discrimination in education and North Haven was key in assuring the vitality of Title IX. In order to effectively reduce sex discrimination within educational institutions, it should cover not only students and participants of educational programs, but the employees and those running the programs themselves.
Monetary Damages

Determining whether or not Title IX supported claims for monetary damages was another key issue addressed in the courts. In 1992, petitioner Christine Franklin filed suit against respondent Gwinnett County Public Schools in the Supreme Court of the United States. The issue was whether or not Title IX authorized monetary damages (*Franklin v. Gwinnett County Public Schools*, 1992). Justice White delivered the opinion of the Court and reversed the judgment of the Court of Appeals. Justice Scalia, Chief Justice Rehnquist, and Justice Thomas concurred. Relying on Title IX’s legislative history, the court determined that no evidence supported the contention that Congress intended to exclude monetary damages as a remedy in a suit brought under Title IX (*Franklin v. Gwinnett County Public Schools*, 1992). Previously, the United State District Court of Northern District Georgia dismissed Franklins claim because they asserted Title IX did not support claims for monetary damages. *Franklin* (1992) determined that monetary damages were authorized through Title IX (*Franklin v. Gwinnett County Public Schools*, 1992).

The *Franklin* (1992) decision was a significant win for Title IX, because it allowed for complainants to sue for monetary damages. This case set the tone for what remedies plaintiffs could seek and expect as an outcome. In fact, most Title IX lawsuits that favor the complainant result in a large monetary award as reparation for their grievances (American Association of University Women (AAUW), 2013; *Flood v. Board of Trustees of the Florida Gulf Coast University*, 2008; *Lowrey v. Texas A&M University*, 1997).

Funding Sources

Determining if disparities between funding statuses were a form of sex discrimination was another issue resolved in the courts. Plaintiff Amy Cohen et al. filed a claim against respondent Brown University in the First Circuit (*Cohen v. Brown University*, 1996). This case examined if Brown University was in violation of Title IX for demoting the Women’s Gymnastics and Volleyball team from university-funded to donation funded. The First Circuit held the District Court’s finding that Brown University was in violation of Title IX and needed to reinstate university funds to the Women’s Gymnastics and Volleyball team. In addition, the First Circuit dismissed Brown University’s claims that the Three Prong Test was flawed and upheld its validity.
The *Cohen* (1996) decision was a significant Title IX court decision. Shortly after its passing, feminists praised *Cohen* (1996) for being a victory for feminists (Sidak, 1997). Without adequate and equitable funding sources, it would be near impossible to achieve fairness in athletic departments. This case reaffirmed that the university was obligated to allocate equal funding opportunities to women’s sports programs.

**Cuts to Men’s Sports Programs to Achieve Equity**

Lastly, determining if Title IX authorized cuts to men’s sports programs to achieve gender equity was another issue brought to the courts. The Plaintiff-Appellees Stephen Neal et al. filed suit against Defendant-Appellant the Board of Trustees of the California State Universities in the Ninth Circuit (*Neil v. Bd. of Trustees of the Cal. State Universities*, 1999). The issue was whether or not Title IX disallows cuts to men’s sports programs to achieve equity when male students makeup a disproportionately high percentage of Athletics rosters (*Neil v. Bd. of Trustees of the Cal. State Universities*, 1999). The Ninth Circuit ruled that institutions could bring itself to Title IX compliance by making cuts to men’s programs (*Neil v. Bd. of Trustees of the Cal. State Universities*, 1999).

*Neil* (1999) is a significant Title IX court case, because it provided a concrete way of achieving university compliance. Title IX’s guidelines and regulations are vague and this is one of the few confirmed avenues that universities can pursue to achieve compliance. Furthermore, this case demonstrates that proportionality can be achieved by addressing the overrepresentation of men in sports. Achieving equity should not rely solely on recruiting more women into sports or raising more funds for women’s athletics programs. Male athletes also have to forego their privileges so female athletes can have equitable access to resources. This idea of entrenching on men’s sports has caused anxiety amongst male athletes and supporters (Garova, 2002; Marburger and Hogshead-Maker, 2003; Shook, 1996 Starace, 2001). Cases like *Neil* have fueled the myth that Title IX aims to end men’s sports programs.

In sum, the courts have been one of the key sites where pertinent issues pertaining to Title IX’s scope and enforcement have been settled. When drafting Title IX, Congress failed to explicitly state what enforcement avenues were available to complainants. *Cannon* established that complainants had enforcement avenues beyond in-house and HEW (which became the OCR) investigations; they can pursue private remedies through the courts.
Congress also did not initially specify if the policy was intended to protect the students and participants of the program. The North Haven decision clarified the ambiguities of the statute and ruled that employees are indeed protected by Title IX. Twenty years after the Cannon decision that authorized private remedies under Title IX, there was still a lack of guidance on how to determine what remedies could be awarded to complainants. In 1992, the Franklin (1992) decision determined that monetary damages were available for an action brought to enforce Title IX (Franklin v. Gwinnett County Public Schools, 1992). Overall, the judicial branch of the United States government has played a significant role in clarifying the vague and ambiguous statute.

**Other Legal Challenges**

Retaliation within the workplace was one serious repercussion that ensued after Title IX’s enforcement. Institutions retaliated against complainants who alleged sex discrimination and filed suit under Title IX. Forms of retaliation included the following: refusal to renew employment contract, dismissal from team roster,26 and harassment. Jackson v. Birmingham (2005) was one such case that dealt with Title IX related retaliation claims. Roderick Jackson, former girls’ basketball head coach at the Ensley High School (EHS) in Birmingham, Alabama filed suit against the Birmingham Board of Education in the Supreme Court of the United States through Title IX (Jackson v. Birmingham, 2005). He alleged that he was wrongfully terminated for voicing gender equity issues within the athletics program at EHS (Jackson v. Birmingham, 2005). The Court ultimately ruled that retaliation against a person who files a complaint through Title IX is in violation of the policy in a 5-4 vote27 (Jackson v. Birmingham, 2005).

The Jackson (2005) decision was a significant turning point for Title IX’s enforcement. The courts sent a message to non-compliant institutions that retaliation against complainants who allege sex discrimination would not be tolerated. I assert that addressing this issue is key to Title IX’s enforcement; complainants should not be intimidated from filing a sex discrimination complaint. Retaliation cases have been an issue in the past. For

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26 Specific to student athletes

example, in 1994, Vicki Dugan, former Head Coach of the Oregon State University Softball team filed a suit under Title IX against Oregon State University28 (AAUW, 2013). She alleged that OSU terminated her as head coach and replaced her with a male coach after she filed a complaint against the university; she claimed that the resources were not being evenly divided between women’s and men’s teams (AAUW, 2013). In 1995, a jury verdict awarded her with 1.3 million dollars (AAUW, 2013). In other retaliation cases, the courts ruled in favor of the plaintiff and they were awarded with multi-million dollar settlements (Outsports, 2005; Buzuvis, 2010; Lowrey v. Texas A&M University, 1997). In sum, Jackson (2005) set the precedent at the federal level in prohibiting the intimidation of Title IX complainants and encouraging the enforcement of the policy.

**CONCLUDING REMARKS**

While I recognize that the judicial branch has shaped the scope and efficacy of the policy, I assert that relying on the judicial branch alone to assuage Title IX’s shortcomings is in itself a shortcoming. More pressure must be placed on Congress to expand the protections provided through Title IX, especially protections that address racism and homophobia. These two forms of discrimination, in particular, have been regularly cited as barriers to equitable access to federally funded educational sports programs (Abney and Richey, 1992; Baird, 2002; Osborne, 2007; Pickett et al., 2012; Yarbrough, 1996). Chapter Three will cover proposed legislation that addresses sexual orientation discrimination and recommendations for future steps towards equity for all women across various ethnicities and sexual orientations through Title IX.

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28 *Dugan v. Oregon State University* (1997) is an unpublished court case. I relied on secondary sources such as American Association of University Women (AAUW)’s case history. The AAUW has a Legal Advocacy Fund that offers support for women involved in lawsuits that allege sex discrimination. [http://www.aauw.org/resource/dugan-v-oregon-state-university/](http://www.aauw.org/resource/dugan-v-oregon-state-university/)
CHAPTER FOUR

GAY AND LESBIAN ISSUES, THE
SOCIOPOLITICAL CLIMATE, AND
LEGISLATIVE CHANGE

In this chapter, I briefly elucidate how LGBT history and the cultural attitudes towards gay rights have shaped lesbian and gays’ opportunities to be equally protected under the law. I explicate how shifts in cultural norms influence judicial and legislative action. I conclude this chapter by asserting LGBT stigma has gradually abated, particularly in recent years under the Obama administration. This shift in social norms is favorable to the recommendations I make to create protections for ethnic and sexual minorities through Title IX. As previously stated, a comprehensive analysis of the relationship between race and Title IX requires its own study; it is beyond the scope of this thesis to do so, but its inclusion here, however cursory, is vital.

In the post-World War II era (1940s-1950s), there was an emphasis on restoring the traditional social order. This was achieved by repressing political groups and individuals who deviated from established cultural norms (Smith, 1992). Lesbian and gay²⁹ people were among those ostracized by society (Smith, 1992) and targeted by the U.S. government for allegedly being a threat to national security (Los Angeles Times, 1949). In February 1950, John Peurifoy, Deputy Undersecretary of State, declared that sexual perverts had infiltrated the entire government (Johnson, 2004). Sexual perverts was a common vernacular of the era used to refer to homosexuals and other alleged sexual deviants who transgressed normative gender roles.

²⁹ Categories that define sexual orientation have changed throughout time. In the 1940s and 1950s, the terms “gay” and “lesbian” were used to define same-sex oriented men and women. During this time period, the term homosexuality was a disease category that described the medicalization of male same-sex orientation. Transgender and bisexual identities did not emerge until the 1960s-1970s, and even so they experienced hostility from lesbian and gay people. It was not until the 1980s-1990s that the term LGBT was regularly used as an umbrella term to describe non-heterosexual and non-gender conforming people, and it was not until the late 1990s that the term queer was regularly used.
Peurifoy asserted that sexual perverts were a security risk because their defective moralities and mental states would lead them into a life of espionage for communist and Nazi groups (Johnson, 2004; New York Times, 1950). As a result, two hundred and two U.S. Department of State employees were dismissed as security risks on the basis that they were “physically or mentally twisted in some way.” Of the two hundred and two that were dismissed, ninety-one were explicitly deemed as sexual perverts. (Johnson, 2004; New York Times, 1950). The 1950s witch hunt against gays and lesbians would later be referred to as the Lavender Scare (Friedman, 2005; Heatley, 2007; Johnson, 2004). State and local sexual psychopath laws were enacted across the nation.30 Additionally, publications that included homosexual material were labeled obscene and censored out of circulation. Homosexuals were also blacklisted from civil service employment, and the federal government surveilled and harassed homosexual organizations (Infanti, 2007).

In response to the repression many lesbian and gay people experienced during this time period, lesbian and gay activists and allies began to organize public demonstrations to protest state-sanctioned violence. In July 1969, a riot ensued after the police raided Stonewall Inn, a gay bar in Greenwich Village, New York. Patrons of Stonewall Inn (predominantly drag queens) and their allies protested the frequent police raids of gay establishments. They hurled beer cans, bricks, and garbage at the police (Klein, 1989). Additionally, about four hundred youth linked arms to keep police from further harassing and beating the people inside Stonewall Inn (New York Times, 1969). Stonewall has been accredited by the media and historians as being the catalyst for the gay rights movement in the United States (Klein, 1989; Ledwell, 1979; New York Times, 1979). Throughout the 1970s and 1980s gay liberation activists organized public demonstrations to mobilize against police violence, job discrimination, American Psychology Association’s pathologizing of homosexuality, and heterosexism at large (Ledwell, 1979).

In the late 1970s there was a resurgence of sociopolitical conservatism. The preservation of traditional values emerged as a political priority. A group of fundamentalist

30 State laws, such as the ones enacted in California mandated sexual psychopaths to be admitted to psychiatric hospitals and register as sex offenders (Los Angeles Times, 1963, p.B5). Superior Judge Thomas J. Cunningham recommended that Sexual Psychopathy Act be amended to disallow bail for persons under suspicion of sexual psychopathy (Los Angeles Times, 1951, p.14).
ministers launched a petition in Washington D.C. to oppose extending the Civil Rights Act to gays and lesbians; they were able to collect over seventy thousand signatures (San Diego Union Tribune, 1980). In addition, anti-gay ballot initiatives were introduced in several states such as California, New York, and Florida (Ayres, 1977; Lichtenstein, 1978). In Dade County, Florida, Anita Bryant, singer and anti-gay rights campaigner, led a campaign against the newly enacted anti-sexual orientation discrimination ordinance. It ultimately led to the repeal of these ordinances (Lichtenstein, 1978; O’Leary and Voeller, 1977).

Anti-gay activists also utilized the press to disseminate their traditionalist agenda (Buchanan, 1977; Smith 1978; Wicker, 1977). Conservative journalists such as, Patrick J. Buchanan of the *Austin American-Statesman* interpreted the repeal of the Dade County ordinances as a victory for the “silent majority.” The silent majority were the supposedly moral heterosexuals who he implied were silenced by gay activism. He suggested that the Gay Liberation Front should “cool it” and that a good society had a right to carry social sanctions against immoral people like flagrant homosexuals (Buchanan, 1977, p.A9).

Religious conservatives, such as Reverend Dana Prom Smith, published an opinion article that assaulted gay rights. She asserted in “Debating a Question of Faith and Morals” that a loving, healthy relationship between two same sex partners did not make it moral (Smith, 1978, p.C7). She built on this argument by stating that slaves and slave masters formed loving relationships, but the context of their relationship made it immoral. The wrongness of homosexuality, she argued, supersedes any loving bond between same-sex partners (Smith, 1978, C7).

Homosexuality has historically been tied to psychological disorders, pedophilia, sexual deviance, and corruption (Bowman and Engle, 1953; Friedlander and Banay, 1948; Moore, 1945). Although the American Psychiatric Association voted to remove homosexuality from the association’s official list of mental disorders in 1973 (American Psychologist, 1975), its association with sexual deviance and psychopathy was used to justify the discrimination and harassment of LGBT people in the late 1970s and the 1980s. In subsequent years, legislators, the Court, and society at large debated the morality of homosexuality and its impact on shaping LGBT rights and the traditional social order.
(Eskridge, 1993; Halley, 1993; Scheer, 1978). In 1978, California Senator John Briggs introduced Proposition 6 to ban homosexuals\(^{31}\) from teaching because he believed they were a threat to children. He asserted that homosexuals were inherently sexual predators that were attracted to children; he alleged that homosexual teachers would actively recruit children to participate in an immoral gay lifestyle (Scheer, 1978). Beliefs about homosexuality were also constructed by religious doctrines that claimed that it was an abomination and mortal sin (Smith, 1978).

The rise of conservatism was also reflected in court decisions and legislation enacted throughout the 1980s and 1990s. *Bowers v. Hardwick* (1986) has been cited by many legal scholars and historians as emblematic of social conservatism during the era and the abrogation of any progress made for gay rights (Goldstein, 1988; Hirsch, 1997). The *Bowers* (1986) decisions examined whether or not homosexuals had the fundamental right to engage in sodomy as conferred by the Federal Constitution. In March 1986, the Supreme Court ruled that laws prohibiting sodomy were constitutional. The Court justified their decision by citing anti-sodomy legislation written during Colonial America and emphasized that it was a criminal offense when the Bill of Rights was ratified (*Bowers v. Hardwick*, 1986). When delivering the opinion of the Court, Justice White asserted that there was no rational basis to offer legal protections to the respondents in this case, because homosexuality was by-and-large considered to be immoral (*Bowers v. Hardwick*, 1986). This court decision was indicative of resurging social conservatism and protectionism of traditional family values.

In time, however, Congress would eventually introduce pro-LGBT legislation and the Court would rule in favor of gay rights. One example of a pro-LGBT Court decision was *Romer v. Evans* (1996). In *Romer* (1996) the Court ruled that Amendment 2 of the Constitution of the state of Colorado was unconstitutional in a 6-3 vote\(^{32}\) (*Romer v. Evans*, 1996). The Colorado Constitutional Amendment prohibited “all legislative, executive, or judicial action at any level state or local government designed to protect gays and lesbians”

\(^{31}\) This is the term Briggs used in his actual rhetoric and was printed in the newspapers. While the formal definition of homosexuality stems from the medicalization male same-sex orientation, the term in this article is used to represent what modern sexuality scholars would refer to as “LGBT.”

\(^{32}\) Justice Kennedy delivered the opinion. Justice Stevens, Justice O’Connor, Justice Souter, and Justice Ginsberg concurred. Justice Scalia, Chief Justice Rehnquist, and Justice Thomas dissented.
(Romer v. Evans, 1996). The Court decided that a law of this nature excluded gays and lesbians from public protections, which violated the Equal Protection Clause (Romer v. Evans, 1996).

Another significant LGBT-related Supreme Court case was Oncale v. Sundowner Offshore Services, Inc. et al (1998). The Court examined if same-sex sexual harassment violated Title VII. Ultimately, the Court unanimously reversed a Fifth Circuit decision and ruled that there was no justification for excluding same-sex harassment claims from Title VII’s coverage (Oncale v. Sundowner Offshore Services, Inc. et al, 1998). Although this case did not directly involve lesbian and gay people, it is recognized as a landmark gay rights case because it extended protections to sexual minorities.

Lawrence v. Texas (2003) was another landmark Supreme Court case that dealt with LGBT-related issues. Lawrence is regarded by many as one of the most significant moments in gay rights history (Barnett, 2003; CNN, 2003; Franke, 2004; Tribe, 2004). The petitioner John Geddes Lawrence was apprehended within his home for committing a sexual act with another man (Lawrence v. Texas, 2003). Since both men were adults who consented to the sexual act in a private home, the Court concluded that this case “should be solved by determining whether the petitioners were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause…” (Lawrence v. Texas, 2003).

Justice Kennedy delivered the opinion of the Court33 (Lawrence v. Texas, 2003). The Court ruled that the petitioners had the right as conferred by the Due Process Clause to engage in consensual acts in the privacy of their homes and ultimately overturned the Bowers decision (Lawrence v. Texas, 2003). He reasoned that liberty protects the American people from unwarranted intrusions into their homes. More importantly, he emphasized that the government should not be a dominant presence in dictating people’s “thought[s], beliefs, expression, and certain intimate conduct” (Lawrence v. Texas, 2003).

In addition, Justice Kennedy challenged the idea set forth in Bowers that stated “Proscriptions against [sodomy] have ancient roots” (Lawrence v. Texas, 2003). On the

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contrary, he argued that there is no longstanding history of anti-sodomy laws that were directed at homosexuals (*Lawrence v. Texas*, 2003). Justice Stevens concurred with the opinion of the Court and stated that, “Bowers was not correct when it was decided, and it is not correct today” (*Lawrence v. Texas*, 2003). Additionally he asserted that the petitioners had the right to engage in their conduct in the privacy of their home without the intervention of the government (*Lawrence v. Texas*, 2003).

This court case was regarded by many LGBT activists as a significant gain for gay rights (Barnett, 2003; CNN, 2003; Franke, 2004). This case set forth that the government had no place in dictating how consenting adults conduct their sexual lives. Ruth Harlow, former Legal Director for Lambda Legal, asserted in an interview after *Lawrence* was decided that this decision communicated to adult LGBT people that they had the liberty “to choose how to express [their] love for one another in the privacy of [their] own bedroom” (CNN, 2003, n.p.). Additionally, Lambda Legal (2003) published on their website that *Lawrence* marked a significant shift in the landscape that shaped attitudes towards gay rights.

In sum, this landmark Supreme Court Case was perceived by many pro-LGBT rights supporters and legal scholars as the most significant gain for gay rights to date. Many even described *Lawrence* as the *Brown v. Board of Education* of its time (Franke, 2004, p.1399). The legacy of *Lawrence* has helped transform the sociopolitical attitudes towards gay rights. This has led to more progressive political stances toward LGBT issues in the years following the decision.

*Goodridge v. Department of Public Health* (2003) was a landmark Massachusetts state appellate case that examined if it was a violation of the Massachusetts Constitution and the Commonwealth to deny same-sex couples “protections, benefits, and obligations confirmed by civil marriage to the individuals of the same sex who wish to marry” (*Goodridge v. Department of Public Health*, 2003). This Appellate Court ultimately ruled in a 4-3 decision that the Commonwealth “failed to identify any constitutionally adequate reason for denying civil marriages to same-sex couples.” Therefore, prohibiting same-sex marriage was inconsistent with Massachusetts’s Constitution and the Commonwealth (*Goodridge v. Department of Public Health*, 2003).

In conclusion, the post-World War era and the decades following were by-and-large a tumultuous time for lesbians and gays. Eventually, however, their activism transformed the
sociopolitical climate—giving way for pro-LGBT court decisions and other pro-gay rights initiatives. In the next section, I will discuss political issues that became central to mainstream LGBT activists. Gay marriage and the lifting the ban on gays in the military emerged as the focus of gay rights activists.

**POPULAR GAY RIGHTS ISSUES**

In this section, I describe historical gay rights issues that were central to mainstream LGBT rights activists. Gay marriage and lifting the military ban on lesbians and gays were prioritized by LGBT activists since the early 1990s and continued to be central gay rights issues under the Obama Administration.

In the early 1990s, gay marriage emerged as one of the central LGBT rights issues. Although the first same-sex marriage case, *Baker v. Nelson* (1971), occurred in 1971 gay marriage did not emerge as a central gay rights issue until 1993. In *Baehr v. Lewin* (1993), three same-sex couples went to court to challenge the Hawaii Revised Statutes of 1985 that restricted marriage to be between a man and a woman (*Baehr v. Lewin*, 1993). In 1993, The Hawaii Supreme Court ruled that denying same-sex couples the right to marry was tantamount to sex discrimination and, therefore, was a violation of the Equal Protection Clause of the United States and Hawaii constitutions (*Baehr v. Lewin*, 1993). Disallowing same-sex couples to marry violated their right to privacy and denied these couples the benefits of marital rights (*Baehr v. Lewin*, 1993). The Court asserted that the state of Hawaii needed to prove compelling state interest supporting the ban and ultimately left it to the trial courts to prove this (*Baehr v. Lewin*, 1993). Hawaii became the first state to challenge the constitutionality of anti-same sex marriage statutes. Soon after, the *Baehr* decision triggered a conservative backlash against gay marriage (Culhane & Sobel, 2005; Sipchen, 1996). In the midst of the turbulent sociopolitical climate surrounding the definition of marriage, gay marriage emerged to become emblematic of equality.

The media expressed anxieties about the sociopolitical changes that gay marriage would generate (Pantograph, 1993; Salt Lake City Tribune, 1993). They were especially concerned about how gay marriage would impact heterosexual marriage and the traditional family structure. Staunch anti-gay activists such as Lou Sheldon, founder of the Traditional Values Coalition (1984) were more direct and vocal about their opposition to gay marriage.
Sheldon asserted that gay marriage, much like inner-city violence, drugs, and crime, would destroy the backbone of the nation—heterosexual marriage (Weintraub, 1994). Dieter Huckestein, chairman of Hawaii’s Visitors Bureau asserted that marriage should only be between a man and woman. He contended that the *Baehr* decision might negatively impact Hawaii’s fragile tourist-based economy (Tuller, 1994). Shortly after the *Baehr* (1993) decision, thirty-four states, including Hawaii in 1998, enacted anti-gay marriage laws (Koppelman, 2002).

The conservative backlash against gay marriage eventually culminated in the federal anti-gay marriage legislation, the Defense of Marriage Act (DOMA, 1996). DOMA was signed into law in September 1996 by President Clinton. The purpose of the policy was to define and protect the institution of heterosexual marriage (Defense of Marriage Act, 1996).

Gay marriage remained a contentious subject throughout the mid-2000s under the Bush Administration (Allen, 2003; Bumiller & Hulse, 2004; Reynolds & Hook, 2006). Anti-gay marriage sentiments reached a new high in 2004 when President George W. Bush introduced a constitutional amendment to place a federal ban on same-sex marriage, a decision that was likely in response to the gains lesbians and gays made from *Lawrence* (2003) and *Goodridge* (2003). In his speech, he stated that proposing an amendment to the federal constitution was “no light matter, but the preservation of marriage rises to this level of national importance” (Chen, 2004, p.A1). This move was criticized by both Republicans and Democrats as an attempt to distract the general population from the ongoing wars in Iraq and Afghanistan and the economic crisis. His selection of a gay marriage ban, however, indicates that the Bush Administration determined that it would be a popular issue supported by the majority of the general population.

More recently, under the Obama Administration, the Executive branch expressed its support for the legalization of gay marriage. In President Obama’s re-election campaign in November 2012, he declared his support for marriage ballots in Maine, Maryland and Washington that would take place on Election Day (Los Angeles Times, 2012). Those were among the first states to legalize gay marriage through a ballot initiative. Additionally, Minnesota voted down a constitutional amendment that would have banned same sex marriage (Huffington Post, 2012). The legalization of gay marriage through
ballot/referendum initiatives indicates that social attitudes towards gay marriage and rights have become more accepting.

Regina Werum and Bill Winders, Professors of Sociology, conducted a longitudinal study that tracked the tactical choices of gay rights proponents and opponents from 1979-1999. Their study revealed that anti-gay rights activists were more successful when they used ballot initiatives and state or federal courts to strike down gay rights initiatives (Werum & Winders, 2001). Historically, opponents of gay rights were most successful in achieving their goals through referenda/ballot initiatives, while proponents of gay rights fared better with central government channels such as legislatures and the courts (Werum & Winders, 2001). Since voter referendums and ballot initiatives engage the voters directly, the legalization of gay marriage through the fall 2012 ballot initiatives indicated that the voting population has become more receptive of same sex marriage in these four states. Furthermore, it reveals that gay rights activists can now more successfully achieve their goals through ballot/referenda initiatives.

Additionally, in June 2012, CNN and ORC International34 conducted phone interviews and asked 1009 Americans across the United States what their views on gay marriage and gay rights. A majority (54%) of those interviewed reported that marriage between gay and lesbian couples should be legally recognized (CNN and OCR International, 2012).

Lastly, In February 2011, the Department of Justice was ordered to no longer defend the Defense of Marriage Act 35 (The United States Department of Justice, 2011). The Supreme Court is currently reviewing the constitutionality of the Defense of Marriage Act (Savage & Lauter, 2013). In sum, gay marriage is slowly becoming more acceptable.

The other focus for gay activists seeking legislative change was lifting the ban on gays in the U.S. Armed Forces. In the early 1990s, it also became a bipartisan issue; generally democrats were more likely to advocate for the lift of the ban, while conservatives were more likely to support its continuance (Cong. Reg. 1993, pt.139:H4786; Cong. Reg. 1993, pt.139:E1624; Cong. Reg. 1993, pt.139:H4580). As previously discussed, in the 1950s

34 A research company based in the United Kingdom
it was protocol to actively identify and dismiss homosexual federal employees, which included military service members. This practice endured well into the 1980s. A yearly average of 1500 men and women were dishonorably discharged on the basis of sexual orientation (Booth, 1993).

In 1988, Ted Sarbin, social psychologist, co-authored a report “Nonconforming Sexual Orientation in the Military and Society” that stated gay service members did not pose any threat to the military and that data showed that they were productive employees (Sarbin & Karols, 1988). This data conflicted with the presumption held by most military officials that gay service people disrupted unity, were incapable of orders because their immorality, and were unfit for military service (Berlatsky, 2011; Herek, Jobe, & Carney, 1996). For these reasons, they were viewed as a threat to national security. After the Department of Defense released two reports that revealed that there was no reportable data to support the ban, its overturn emerged as a contentious political issue. The Pentagon, however, was quick to dismiss the report. Former Deputy Under Secretary of Defense Craig Almender Jr. questioned the reliability of the study and asserted that Sarbin and other researchers from the Defense Personnel Security Research and Education Center had overstepped their boundaries (Department of Defense, 2012).

Conservative Congress members such as Representative Cliff Stearns (FL-R) vehemently opposed lifting the ban on homosexuals, because he did not want to turn “the world’s finest military into a social experiment” (Cong. Reg. 1993, pt.97:H4580). On the other hand, liberal Congress members, such as Representative Henry Waxman (CA-D), opposed the ban and any compromise that did not fully recognize lesbian and gay service people in the military. He asserted that discrimination in the military would adversely affect comradery, which posed a threat to national security. (Cong. Reg. 1993, pt. 91:E1624).

Shortly after being elected in November 1993, former President Bill Clinton signed “Don’t Ask, Don’t Tell” (DADT) into law on December 21, 1993 (Don’t Ask, Don’t Tell, 1993). He saw this as an optimal compromise that served the best interests of both opposing parties. The military would no longer actively pursue gay and lesbian service members, which was protocol prior to the DADT policy. Yet this policy would not completely lift the ban; if credible evidence of someone’s homosexuality surfaced, they could be discharged. Additionally, previous publications on DADT asserted that it created a more hostile
environment for gays in the military, especially for women and people of color who tended to be targets for dismissal (Gates, 2010; Halley, 1999; Kempster, 1997; Anonymous, 2008).

After years of protests against DADT (Anonymous, 2010; Keen, 2010; Wockner, 2010), it was finally repealed in September 2011. In December 2010, President Obama signed legislation that repealed DADT. The legislation stated the following, “[This policy will] take effect sixty days after the President, Secretary, and Chairman certify to Congress that the Armed Forces are prepared to implement repeal in a manner that is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces” (Department of Defense, 2011, p.1). The certification took place on July 22, 2011 and the repeal of DADT went into effect on September 20, 2011 (Department of Defense, 2011, p.1).

**LGBT LEGISLATION**

Anti-sexual orientation bills are relatively a recent phenomenon; the first bill of its kind was introduced four decades ago. In 1974, Representative Bella Abzug (NY-D) introduced the Equality Act of 1974, which was the first anti-sexual orientation discrimination bill to be introduced Congress; it died in the House of Representatives (Equality Act of 1974, 1974). Congress did not extend legal protections to LGBT people until 2009 when they passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. President Obama publicly announced his support for the Matthew Shepard and James Byrd Act when it was re-introduced in the Senate in 2009.\(^36\) After the bill passed through congress, Obama signed it in law in October 2009. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expanded the 1969 United States federal hate crime law to include crimes motivated by a victim’s actual or perceived sexual orientation or gender identity (Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 2009). Additionally, this policy provides federal assistance to state, local, and Indian tribes\(^37\) to prosecute hate crimes motivated by race, color, religion, national origin, gender, sexual

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\(^{36}\) It was first introduced in 2001 and died quickly in the House of Representatives.

\(^{37}\) Which are outside the jurisdiction of United States law
orientation, gender identity, or disability (Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 2009).

The enactment of the Matthew Shepard Act was the first successful federal gay rights law. Supporters of the law asserted that it was a step in the right direction in ending hate crimes against LGBT people. Patrick Leahy (D-VT), sponsor of the Bill, stated in Congress when the law was enacted that it was a critical civil rights measure that was long overdue (Cong. Reg. 2009, pt. 157:10772). Additionally, Judy and Dennis Shepard, parents of Matthew Shepard, asserted that the law sends a “clear and unmistakable” message to perpetrators of hate crimes (U.S. Newswire, 2007, para. 2).

When Senator Leahy (D-VT) addressed Congress after the Matthew Shepard Act was signed into law, he praised Obama’s vital role in its passing. He stated that years ago, particularly during George W. Bush’s terms as president, this law would have been vetoed. He thanked President Obama for signing the act into law (Cong. Reg. 2009, pt. 157:10772). An analysis of the Obama Administration’s standpoint on LGBT-related bills indicates that the political climate, at least at the Executive level, is receptive to gay rights. Obama has also supported other gay rights-related bills such as the Employment Non-Discrimination Act (ENDA) and the Student Non-discrimination Act (2011).

More recently, circa 2010 and 2011, addressing homophobia in federally-funded schools has recently emerged as a new political priority for LGBT activists and allies. The Obama Administration has been strong supporter of the “It Gets Better Project.”38 This project aims to end anti-gay motivated bullying amongst school-aged youth. In 2011, The Obama Administration organized a White House Conference that focused on anti-bullying school policies. At this conference, policy makers and educators convened to brainstorm solutions on how to address homophobic bullying in schools (Obama Administration, 2012).

This conference influenced the drafting of anti-sexual orientation discrimination policies such as the Safe Schools Improvement Act of 2011 (SSIA) and the Student Non-Discrimination Act (Rudolph, 2011). Both bills are currently being reviewed by congress.

38 It Gets Better Project is a campaign that was created after several LGBT youth died by suicide after years of homophobic bullying and harassment. The project targets LGBT youth and promotes the idea that life gets better at an LGBT person after high school.
The Student Non Discrimination Act (2011), which is modeled after Title IX, aims to end sexual orientation discrimination against students in federally-funded educational programs (Student Nondiscrimination Act, 2011). The SSIA has a broader goal of prohibiting bullying and harassment of students; if enacted this proposed law would prohibit bullying and harassment motivated by homophobia (Safe Schools Improvement Act, 2011).

Another LGBT-related bill that is currently being reviewed by Congress is the Employment Non-Discrimination Act. Although it is not specific to education, it would provide protection for employees of educational institutions. There are two versions of the bill. The House of Representatives version aims to end sexual orientation and gender identity discrimination in the workplace (Employment Non-Discrimination Act, 2011b) and the Senate version has similar goals, but does not create explicit protections against gender identity discrimination (Employment Non-Discrimination Act, 2011a). All the aforementioned bills indicate that addressing sexual orientation discrimination in schools and the workplace are currently a political priority. This is favorable to the theoretical changes I suggest for Title IX.

TITLE IX AMENDMENT AS PART OF THIS POLITICAL LEGACY

I contend that amending an established legislation such as Title IX to address sexual orientation-based discrimination is a stronger approach to addressing homophobia in schools than standalone policies such as ENDA and the Student Nondiscrimination Act (2011). I support legislative changes like the SSIA that amend existing legislation to include protections against sexual orientation discrimination.

Both ENDA and the Student Nondiscrimination Act (2011) would be less effective approach to addressing LGBT discrimination than amending Title IX, because both offer incomplete protection to non-heterosexual and non-gender conforming employees and students. The student-specific language in the Student Nondiscrimination Act (2011) excludes employees and non-student participants of educational programs from its protection. Likewise, while I agree with SSIA’s approach to amending existing legislation,

39 The Safe Schools Improvement Act of 2011 would amend the Elementary and Secondary Education Act of 1965, and therefore does not fall into my critique of standalone policies.
there scope is also limited to only students. In addition, ENDA’s scope is limited to employees only, and its definition of “employee” is narrow.

As described in Section 3(a)3(b) of ENDA, unpaid employees and volunteers are outside of ENDA’s jurisdiction (Employment Nondiscrimination Act, 2011a). This is disproportionately problematic within women’s sports program and educational programs at large because they are more likely to rely on unpaid workers and volunteers to keep their programs running. The Student Nondiscrimination Act is equally problematic, because its student-specific language excludes coaches, sports administrators, and other staff members from its scope.

Amending Title IX to include gender identity and sexuality would be a more effective way of addressing gender and sexual orientation-based discrimination in women’s sports programs that receive federal funds. As determined by North Haven Board of Ed. v. Bell (1982), Title IX’s broad and nondescript language has already allowed for its applicability to both students and employees (North Haven Board of Ed. v. Bell, 1982). This would be a more effective approach for addressing homophobia in women’s sports programs, because both students and employees (paid or unpaid) fall under its jurisdiction.

Furthermore, I concur with legal scholars such as J. Banning Jasiunas (2000) and Jordan Woods (2008) who assert that stand alone policies for anti-sexual orientation and gender identity discrimination may not provide equitable protection for the constituents they aim to protect. Although standalone policies such as ENDA and the Student Nondiscrimination Act are modeled after existing legislation such as Title IX and Title VII, they may offer fewer protections than established policies such as Title VII and Title IX (Jasiunas, 2010).

For example, some standalone policies provide fewer protections and rights than the existing policies which after they are modeled. Unlike Title VII, Section 4(f) of ENDA disallows employees to claim disparate impact, which ignores how biases towards heterosexuality and gender norms may result in discrimination against non-heterosexual and non-gender conforming people during the hiring process, assignments of leadership.

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40 Title VII prohibits employment discrimination based on race, color, religion, sex and national origin (Title VII of the Civil Rights Act of 1964, 1964).
positions, and other work related situations (Employment Nondiscrimination Act, 2011b). Additionally, ENDA does not explicitly address harassment. Hence, it is possible that sexual orientation harassment will not be covered by the policy (Jasiunas, 2010).

**NECESSITATING FURTHER FEDERAL LEGISLATIVE CHANGES**

Landmark Supreme Court cases such as *Romer* (1996), *Lawrence* (2003), and *Goodridge* (2003) and federal legislation such as the Matthew Shepard Act (2009) set legal precedents to use federal law to protect against sexual orientation discrimination. The Equal Protection Clause and the Due Process of Law have been instrumental in securing LGBT rights within the last two decades (*Romer v. Evans*, 1996; *Lawrence v. Texas*, 2003; *Goodridge v. Department of Public Health*, 2003). Additionally, the Matthew Shepard Act amended the U.S. hate crimes law to protect sexual minorities. Nevertheless, more can be done in order to expand legal protection against sexual orientation discrimination through legislative reforms. Additional protections would be beneficial to the LGBT community especially since sexual minorities are not a suspect class. Sexual orientation only warrants rational basis review—the lowest level of scrutiny applied by the courts when considering cases that rely on the Equal Protection Clause (Smith, 2005 and Eskridge, 1993).

In terms of state-based legislative action, only twenty states and Washington D.C. have enacted laws that prohibit sexual orientation or gender identity discrimination; some laws are specific to employment (IREM Legislative Staff, 2007). Of those twenty states, only fifteen states prohibit both sexual orientation and gender identity discrimination, while the remaining five states do not cover gender identity (American Civil Liberties Union, 2011). This state by state approach to securing LGBT rights has helped reshape the national political landscape and provided a model for revisions I am suggesting for Title IX. This approach, however, would be strengthened by amending additional existing federal laws to protect against sexual orientation.

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I assert that amending additional federal legislation, such as Title IX, is a more effective way of addressing sexual orientation discrimination than waiting for each individual state to create their own or creating standalone policies. Many conservative Southern states have yet to enact any legislation that prohibits sexual orientation and gender identity discrimination (Lambda Legal, 2013). There are small exceptions in states such as Florida and Georgia that occasionally permit same-sex couples to adopt children. However, no state in the South offers any legal protection to LGBT employees in either the private or public sector, nor do they allow or recognize same-sex marriages, domestic partnerships, or civil unions from other jurisdictions (Lambda Legal, 2013). I suggest that the federal government should continue to expand established federal laws to provide more protections against sexual orientation discrimination.

This suggestion raises concerns about states’ rights and federalism, as did the Civil Rights Act of 1964 when it was enacted forty-nine years ago (Blumstein, 1994). To briefly address this issue, I concur with James F. Blumstein, Professor at the Vanderbilt School of Law, who asserted that federalism overall protects states and citizens by limiting the federal government’s power but at times “federalism can also endanger the civil rights of minority within localized community” (Blumstein, 1994, p.1271). There instances where federal legislation needs to be in place to protect minorities whose political voice is severely limited in their region; sexual minorities are one group that can benefit from additional federal protections. I defer to future scholars to thoroughly examine the relationship between federalism and federal legislation that prohibits sexual orientation discrimination.

In sum, local, state, and federal laws have played a significant role in reshaping cultural attitudes towards LGBT rights. These changes are favorable to the changes I propose for title IX. In the next chapter, I offer suggestions on how Title IX can be improved to address the interrelated barriers of sexism, homophobia, and racism.
CHAPTER FIVE

RE-VISIONING TITLE IX

Title IX as currently written only prohibits sex discrimination. I assert additional protections should be incorporated into the policy to better protect multiply-burdened women. This policy’s single-axis framework is not equipped to address the complex schemata of discrimination that shapes the lived realities of women who experience multiple forms of discrimination concurrently. In this section, I describe the impact these various forms of discrimination have on women of color and lesbian and bisexual athletes. I suggest concrete ways that Title IX can be reworked to address multiple forms of discrimination that are experienced simultaneously.

Racism is one barrier that curtails women of color’s opportunities in federally-funded education programs such as sports. Stephanie A. Tryce and Scott N. Brooks, scholars who specialize in sports culture, asserted that Title IX has failed to generate equal opportunity for Black women because the policy does not address racism (Tryce & Brooks, 2010). Tryce and Brooks attributed this deficient protection to gender and race essentialism. They contended that dominant social groups had more power to shape the mainstream legal voice. This marginalized and silenced women of color (Tryce & Brooks, 2010). Patricia A. Cain, Professor of Law, made parallel arguments and asserted that a flaw of Title IX is that it focuses solely on gender equity without taking into account which women are over-represented or deliberately denied protection (Cain, 2000). She built on this argument by stating that “understanding the different racial histories of women in sports is a first step toward enabling us to look at the problem from an intersectional perspective” (Cain, 2000, p.350). Additional protections through Title IX that address racism may abate this issue.

Homophobia is another barrier that impacts equitable access. Lesbian and bisexual (and those perceived to be) athletes have lost training and playing opportunities due to

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42 It is beyond the scope of this study to provide a comprehensive analysis of racism and Title IX. A separate study on race is needed. Nonetheless, the inclusion of race, however cursory, is vital to this thesis.
homophobic recruiting and training practices in women’s sports. Lesbian baiting in women’s sports are contemporary responses to homophobic stereotypes and the transgression of traditional femininity (Blinde & Taub, 1992; Kahn, 1993). The internalization of the distorted images of lesbians, and the allegiance to traditional femininity, have resulted in a volatile environment for lesbian and bisexual athletes (and those who are perceived to be) within their programs (Blinde & Taub, 1992; Griffin, 1998; Kahn, 1993).

Pat Griffin, longtime lesbian activist and scholar who pioneered researching homophobia in women’s sports, contended in “Changing the Game: Homophobia, Sexism, and Lesbians in Sports” (2002) that homophobia manifests itself in women’s sports in six ways: silence, denial, apology, promotion of a “heterosex” image, attacks on lesbians, and preference for male coaches (Griffin, 2002, p.195). These six phenomena reinforce heterosexism in sports culture. As a result, many female athletes, coaches, and sports administrators internalized and perpetuated sexist and homophobic values and beliefs (Griffin, 2002, p.198). Underlying cultural beliefs that one’s sexuality is personal (Griffin, 2002, p.200) helps perpetuate the specious belief that lesbian identities and relationships should remain a private matter. Within this cultural paradigm, proposed anti-homophobic and anti-heterosexism policies, activism, and discourses are constructed to be superfluous and inappropriate.

Additionally, there have been instances in which athletes, such as Jennifer Harris, a former basketball player at Pennsylvania State University, have lost their spot on team rosters because they were suspected of being lesbians (Harris v. Portland, 2005). Lesbian athletes (and those perceived to be) are often subjected to humiliation, isolation, and at times physical violence (Osborne, 2007, p.485). They may also have to endure cuts in their playing time and scholarships (Griffin, 2002, p. 93). When Harris filed suit against Portland, Cindy Davies, one of Rene Portland’s former players from the 1980s came forward and alleged that Portland had also harassed her because she was a lesbian. The harassment became so overwhelming that Davies ultimately decided to quit the team (Hohler, 2006, p. D1).

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43 Former women’s basketball player for Pennsylvania State University who was released from the team after Head Coach Rene Portland alleged her to be a lesbian.
Coaches and other employees in the athletics departments have also been negatively impacted by homophobia in women’s sports. In July 2008, Lorri Sulpizio, Head Coach of the Women’s Basketball team at San Diego Mesa College (SDMC) filed suit against SDMC alleging that she and her domestic partner, who was the former Director of Basketball Operations, were unrightfully terminated for speaking out against gender inequities in the Athletics Department and discriminated against on the basis of sexual orientation and gender (Sulpizio et al. v. San Diego Mesa College, 2003). She alleged that sports administrators and other coaches at SDMC began to interrogate her about her sexual orientation. Some coaches on campus advised her “cool it”—in other words conceal her sexual orientation. Prior to reaching a decision, the courts reviewed Sulpizio’s work history at SDMC and evaluated her performance. Throughout her tenure as head coach, the team entered championship play in thirty-three out of thirty-five tournaments. Her players also excelled in the classroom (Sulpizio et al. v. San Diego Mesa College, 2003). The Superior Court of California, San Diego, decided in favor of Sulpizio and awarded her $28,000, one-year’s salary. California’s Education Code Section 220-221.1, (2012) amended Title IX to include sexual orientation and gender expression; this was key in protecting Sulpizio from both sex and sexual orientation-based discrimination. Federal legal changes must occur to amend Title IX as California has done.

California State University, Fresno’s athletic department was another university that was notorious for discriminating against lesbian coaches (Anteola, 2007). When Stacy Johnson-Klein, former Women’s Basketball Head Coach at CSUF, filed suit against the institution for sexual harassment and sex discrimination she stated in court that the university had a history of discriminating against women coaches, specifically those who were lesbian (Outsports, 2005). Johnson-Klein reported that CSUF had an unofficial policy that disallowed the hiring of lesbian coaches.44 She stated that hiring staff referred to lesbian applicants as “the other team” and that potential hirers needed to be “on the home team and not the other team” (Outsports, 2005).

44 The Johnson-Klein v. California State University, Fresno case is unpublished. I had to rely on secondary sources such as CSU Fresno’s newspaper and sports news publications for my sources. The courts often opt to leave an opinion unpublished if they believe the case does lacks precedential value.
Lesbian and bisexual coaches and sports administrators may feel pressure to remain closeted throughout their careers because they fear losing their jobs (Iannotta & Kane, 2002; Griffin, 1998). There have been instances where coaches and sports administrators deliberately feign heterosexuality to maintain their job security (Griffin, 1998, p.136). In *Strong Women, Deep Closets* (1998), Pat Griffin interviewed a closeted lesbian Athletics Director at a small, conservative liberal arts college, “After two years I have never been open with anyone except a lesbian who happened to be leaving the institution… I am out there with absolutely no network. I hide just as much as I ever have…” (Griffin, 1998, p.136). This interview revealed the isolation and the degradation that lesbian and bisexual athletes and staff experienced in a largely homophobic sports culture. Some coaches have resorted to negative recruiting tactics to draw attention away from their own identities by promoting heterosexist and homophobic values (Griffin, 1998, p.82). Negative recruiting is a tactic used to taint the reputation of another school. In women’s sports especially, coaches allege that rival programs are rampant with lesbians, and heterosexual women are advised avoid those programs (Women’s Sports Foundation, 2011b). This is done oftentimes by a lesbian coach to discredit another lesbian coach.

Given the history of women’s sports and its relationship with traditional femininity, as well as the tensions between an allegedly homogeneous, white, middle-to-upper class LGBT community and heterosexual communities of color (Hutchinson, 2000, p.1368) the social context that women across all ethnicities are subsumed into is by and large homophobic. The Office for Civil Rights has shown little interest in offering legal protections to lesbian and bisexual female athletes. In fact, it has endorsed the opposite by stating that Title IX “does not apply to discrimination on the basis of sexual orientation” (Office for Civil Rights, Department of Education, 2001). This is problematic because it leaves lesbian and bisexual athletes, coaches, and sports administrators vulnerable to discrimination.

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45 Hutchinson asserts that many heterosexual anti-racist activists and heterosexual communities of color at large are resistant to participate in anti-homophobic work because they perceive it to be racist and irrelevant to their lived realities (Hutchinson, 2000, p.1368).

46 See Department of Education, Office for Civil Rights Sexual Harassment Guidance (2001) http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html
NECESSITATING MULTIDIMENSIONALITY

Scholars such as Pat Griffin (1998) and Julia Baird (2002) and non-profit organizations such as the National Center for Lesbian Rights and the Women’s Sports Foundation have produced groundbreaking work that has both named and addressed homophobia in women’s sports; however, future studies must attenuate the dichotomization of race and sexuality. A majority of the literature that covers homophobia in women’s sports underrepresents the experiences of lesbians of color. Although Pat Griffin interviewed ten women of color (out of forty-eight) for her book, *Strong Women, Deep Closets* (1998), there was lack of a meaningful discussion on how homophobia can be racialized. She failed to explore how Black lesbian players and coaches are often pressured to adhere to Euro-American, middle class feminine norms (Griffin, 1998, xvi). This is problematic because many women who allege sexual orientation discrimination also allege racism (*Harris v. Portland*, 2005; *Mosbacher & Yacker*, 2008; *Newhall & Buzuvis*, 2008). Racial issues covered in other relevant literature is often collapsed into a comparative didacticism that likens racial discrimination to sexual orientation discrimination, without analyzing how both can be experienced simultaneously. This constructs race and sexuality as mutually exclusive.

Feminist, anti-racist, and queer legal scholars have asserted identity categories have historically been treated as unrelated entities under the law (Hutchinson, 2002; Hutchinson, 1997; Hutchinson, 2000; Conaghan, 2009; Areheart, 2006, Crenshaw, 1989). Within our current judicial and legislative branches plaintiffs, at times, cannot file claims for multiple forms of discrimination that have been experienced simultaneously through a single anti-discrimination policy (Hutchinson, 2002; Hutchinson, 1997; Hutchinson, 2000; Conaghan, 2009; Areheart, 2006, Crenshaw, 1989). A notable legal scholar, Kimberlé Crenshaw, theorized how anti-discrimination laws need to better account for intersecting oppressions. She introduced the theory of intersectionality in, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-discrimination Doctrine, Feminist Theory, and Antiracist Politics” (1989). She asserted that anti-discrimination laws focused on the most privileged group members and misrepresented the experiences of the multiply-burdened

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47 An umbrella term for sexual and gender minorities who are not heterosexual, heteronormative, or fit into the gender-binary.
(Crenshaw, 1989, p.140). She contended that the omission of an intersectional analysis prevents the courts from recognizing that Black women have a distinct social location that differentiates their experiences of sexism from white women and racism from Black men. She suggested an intersectional approach to legal theory that recognizes the nuances of Black women’s experiences.

Kristine E. Newhall, a Women’s Studies doctoral candidate, and Erin E. Buzuvis, an attorney, (2008) problematized the Jennifer Harris case against Penn State University and Maureen Portland. They asserted that the media coverage and the court’s handling of the lawsuit glossed over charges of racism and reduced the legal dispute to a case specific to sexual orientation discrimination (Newhall & Buzuvis, 2008, p.359). They asserted that intersectional theory needs to be introduced and enforced in our current judicial system. Parallel to their arguments, I argue that multidimensional theory must be applied to our legislative branch to account for multi-layered identities.

Drawing from Kimberlé Crenshaw’s theory of intersectionality, Darren Lenard Hutchinson developed multidimensionality (Hutchinson, 2000, p.1368). He posited that intersectionality is limited because it focused on two discrete axes--race and gender. He developed the multidimensionality theory, an extension of intersectionality, to remedy the limitations of a discrete axis model. He presented multidimensionality as a concept that can be used more universally, because it examines the complexity of subordination. It moves beyond analyzing singular oppressions experienced by discrete social groups (Hutchinson, 2000, p.1363). He contended that theories such as multidimensionality are vital to developing de-essentialized equality jurisprudence (Hutchinson, 2000, p.1364). He asserted that acknowledging the complexity of subordination would legitimize complex discriminations such as racialized homophobia and sexualized racism (Hutchinson, 2000). A thorough understanding of the current legal trends and how anti-discrimination legal theories have

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48 She is currently “All But Dissertation” (ABD)

49 Although there have been many feminist scholars who have used intersectionality to account for multiple facets of identity.

50 See Darren Lenard Hutchinson’s “Race, Sexual Identity, and Equal Protection Discourse” (2000)
evolved over time can help us conceptualize how Title IX can be rewritten to protect those who are multiply-burdened.

My own critique of Title IX is its lack of applicability to multiply-burdened identities. In order to improve its scope and efficacy, the framework that informs Title IX needs to move past itemized identity categories (i.e. gender, race, sexual orientation), acknowledge multidimensional subordination and recognize how multilayered identities produce unique social contexts. This can be done by including protections against racism and homophobia. A transformation in the legal theory behind Title IX may result in greater inclusiveness and legal protections for marginalized groups such as lesbians of color. Within a paradigm of binaries and identity essentialism, they have more to lose because they are not wholly represented in any one category. In the next section, I suggest ways to improve Title IX to address racism and homophobia in addition to sexism.

**RE-CONCEPTUALIZING TITLE IX**

The following Title IX documents detail its goals and enforcement: Title IX the policy, the Athletic Investigation Manual (Office for Civil Rights, Department of Education, 1990), and the Title IX Regulations (1975). In this section, I describe each document and detail concrete suggestions on how they can be reworked to include a multidimensional framework. In addition, I provide suggestions to improve Title IX’s general enforcement as well as concrete plans of action on how to enforce the suggestion I put forth in the section.

To incorporate a multidimensional framework into Title IX’s purpose, I suggest including an amendment that addresses racism and sexual orientation discrimination (Appendix A). I propose introducing it as a diversity and inclusiveness act. I selected these terms because they are accessible to most people. It describes the goal of this amendment in terms familiar to the average person. Words like “multidimensionality” or “multiply-burdened” may be too esoteric for people outside academia. I chose to amend the Regulations because it details the goals of the policy and how it should be enforced. More importantly, it has force of law. All federally-funded education programs will be mandated

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51 It has the same legal weight as the law in court
by law to enforce this amendment. I suggest placing this amendment in Section §106.1. It would state the following:

Section § 106.1 (a)
No person who would otherwise be covered by Title IX will be denied the privileges and protections ensured by Title IX on the basis actual or perceived of race and/or actual or perceived sexual orientation.

SUGGESTION FOR TITLE IX REGULATIONS

An institution’s general population must be informed about Title IX’s goals for its enforcement to be effective and meaningful. Title IX’s Regulations mandate that students and employees covered by the policy should be notified about Title IX, but no guidelines are included on how to achieve this goal. Furthermore, the objective itself is vague; the only requirement is that Title IX coordinators inform students and employees that discrimination on the basis of sex is prohibited and that the following people are required by law to be informed about Title IX: applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral for applicants for admission and employment, and all unions or professional organization holding collective bargaining or professional agreements with the recipient of federal funds (Title IX Regulations, 1975, p.379). Though Section 106.9 suggests ways that Title IX information can be distributed, Title IX Regulations does not mandate a standard set of information or publications that institutions are required to disperse (Title IX Regulations, 1975, p.379).

The regulations should include more comprehensive guidelines on what exactly students and employees should be informed about and through which medium this information should be dispersed. There should be a standard information sheet written and endorsed by the OCR that moves beyond restating the purpose of Title IX. It should be mandatory for student legal aid offices, student counseling centers, the Title IX coordinator’s office, and Athletics departments to have hard copies of this information sheet at all times.

The following information should be mandated as a bare minimum: first, the information sheet should include a description of the three avenues of enforcement that are authorized by Title IX: an OCR complaint, an in-house complaint, and private remedies. In addition there should be clear instructions on how to pursue each avenue of enforcement. Second, the information sheet should clearly state that complaints should be filed within 180 days of the most recent Title IX violation unless a waiver is approved. Lastly, it should refer
students and employees to other Title IX documents such as the Title IX regulations, Title IX Policy Interpretations and the Athletics Investigation Manual for more information.

For athletic programs, specifically, there should be an information sheet that defines the three-prong test.\(^ {52} \) It should clearly define each prong and explicitly state that this tool is used to measure gender equity in sports programs and emphasize that an institution is mandated by federal law to comply with at least one of these prongs (not all three). In addition, the flier should urge students to report their program if they suspect that it does not meet any of the three prongs. Contact information for the Title IX coordinator and the regional OCR office should be included on the flier.

Furthermore, all institutions should be required to have at least one copy of all Title IX manuals and guidelines on campus that is accessible to all employees and students. This should include the Title IX Regulations, Title IX Policy Interpretations, OCR Case Resolution, the Athletics Investigation Manual, and the Grievance Procedures: A Introductory Manual. For Athletic Departments, specifically, they should be mandated to keep an on-site copy of the Athletics Investigation Manual and the 1996 Letter of Clarification, which describes the purpose of the three-prong test.

Lastly, general information about Title IX, information on how to file a complaint, and contact information for the Title IX point person should be made available on the web. The following programs should be mandated to include this information on their websites: the Athletics Department, student legal aid, college counseling centers, and other student resource websites. Also, Title IX (the 37-word policy) should be wall mounted in the Title IX point person’s office to assure that people are aware of Title IX’s goal. In my own experience of researching Title IX documents, I was discouraged to find that at San Diego State University the Title IX Grievance Procedures: A Introductory Manual was only available in microform and is for library use only. First, microform is difficult to read especially for those with limited visual capabilities. Second, it is difficult to get a good grasp on what the

\(^ {52} \) The three-prong test is a measure that is specific to athletic departments; it measures gender equity in sports programs. Institutions must satisfy one of the following prongs: (1) Provide athletic participation opportunities that are substantially proportionate to the student enrollment (2) Demonstrating a continual expansion of athletic programs for the underrepresented sex (3) Accommodating the interest and ability of underrepresented sex.
Designated Point Person

The OCR provided two main sources that detailed the purpose and responsibilities of the Designated Point Person: Title IX Regulations and “Questions and Answers Regarding Title IX Procedural Requirements”. The Title IX Regulations included two paragraphs that described the point person’s responsibilities. It stated that at least one person in the institution should coordinate the investigation of any complaint and it is their responsibility to adopt and publish grievance procedures (Department of Education, 1979). “Questions and Answers Regarding Title IX Procedure Requirement,” an online publication, attempted to address the vagueness of the Title IX regulations. It stated that the Title IX Coordinator is responsible for the development, implementation, and the monitoring of Title IX compliance (Department of Education, 2001). It also included suggestions on how to pick a Title IX coordinator. Both documents, however, provide inadequate information on how Title IX Coordinators can achieve the goals they are responsible for. The OCR needs to offer guidelines on how Title IX coordinators can develop compliance, how Title IX can be implemented into institutions, and how it can be monitored.

Although the Title IX Grievance Procedures Manual (1987) provides more details on what the coordinator is responsible for, it is imperative that at least four key responsibilities be included in the regulations. Title IX Regulations have force of law, which means that institutions that are subject to compliance are mandated by law to follow these regulations; supplemental Title IX documents like the Title IX Grievance Procedures Manual (1987) and published online resources like the “Questions and Answers Procedural Requirements” do not hold the same legal weight. The four responsibilities that I suggest the OCR should mandate are the following: first and foremost, the coordinator should be required to

53 The potential hire should be qualified to administer the following: provide consultations and information regarding Title IX requirements to potential complainants, distribution of grievance forms to potential complainants, schedule grievance procedures, train staff responsible for grievance procedures, and maintain all compliance and grievance records and files. Potential hires have the following skill set: in-depth knowledge of the Title IX regulation, general knowledge of other federal and state non-discrimination laws, knowledge of the recipient agency’s Title IX grievance procedures and knowledge of personnel policies and practices of the recipient agency/institution (Department of Education, 2001)
coordinate investigations of complaints. They should oversee all investigations from the time a complaint is received up until the case is resolved. The coordinator should be responsible for creating a positive environment for Title IX compliance efforts. To achieve this, coordinators should be required to host a minimum of one mandatory Title IX information workshop for all employees and staff. This would assure that employees and staff are aware of their rights and responsibilities under Title IX. They should also create an online Title IX workshop that all incoming freshman and transfer students are required to complete when they matriculate into a program. The coordinator should be aware of the campus climate in regards to sex, race, and sexual orientation-based discrimination. The Title IX point person should coordinate annual end-of-year surveys and employee exit surveys\textsuperscript{54} to measure the climate around gender, sexual orientation, and race/ethnicity issues.

**Preventative Measures and Accountability**

In this section, I suggest moving beyond responding to existing structures of inequality and issuing consequences for non-compliance. Title IX’s goal is to end sex discrimination and its enforcers have the responsibility of addressing the root causes of discrimination not just investigating and resolving complaints. In order to foster an inclusive environment, all institutions that are subject to Title IX compliance should be required to complete a cultural-competency training each year. Regional OCR offices should create a list of acceptable trainings and programs to suggest to these institutions. The OCR should coordinate with the human resources department to create a policy that mandates a tracking system to verify if all employees have documented proof that they have completed this training component.

Within Athletics departments, student-athletes should be given the opportunity to evaluate their coaches’ ethics and work performance. I suggest that a mandated anonymous end-of-the-season coach evaluation be administered to all student-athletes (Appendix B for the mock measure I created). The Gay Lesbian and Straight Education Network (GLSEN) has used a similar measure since 1999 to examine school campus climates in regards to

\textsuperscript{54} a subsequent section will detail these surveys and I have created mock measures which can be found in the appendix
LGBT inclusiveness (GLSEN, 2011a, p.3). Each year they administer a survey to middle and high school-aged students in school districts across the United States and the District of Columbia (GLSEN, 2011b, xiv). Using these results from these surveys, they were able to determine that LGBT students are often victimized because of their sexual orientation and lack the resources to mitigate these issues (GLSEN, 2011b, xiv). GLSEN’s findings in the past have influenced school districts and other policy actors to create mechanisms to address homophobia in educational institutions (GLSEN, 2011b, p.5). My intentions for end-of-the-season coach evaluation is to generate similar data, so sports programs can create protocols to address discrimination-related issues as needed.

These end-of-year evaluations can be used to gauge if coaches are creating a non-discriminatory work environment for student athletes. Furthermore, mandating an anonymous survey is one way to encourage student-athletes to report noncompliance without fearing retaliation from the department. Lastly surveys are accessible and can be regularly implemented. There may be barriers that impede student athletes from reporting Title IX violations. They can range from not knowing what a reportable incident is to not knowing who to send the complaint to or fearing retaliation from their coaches or other athletic staff. Anonymous paper surveys with no traceable personal information would be an effective way to gauge compliance and changes (whether positive or negative) to the social climate in these departments.

Furthermore, the OCR should not wait for a complaint to be filed against an institution before they inquire about the environment of the institutions they oversee. I suggest annual anonymous surveys be administered to measure the campus climate at each institution. I suggest an annual end-of-year survey for all employees to complete and an employee exit survey for those leaving their current position, department, or institution itself (Appendix C) for. The first survey should be administered anonymously and the second should offer the option of anonymity. These are precautions made to protect the participants of these surveys and to prevent retaliation. If an employee or student-athlete reports discrimination, the regional OCR office should investigate the complaint immediately.

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55 In 2011, they surveyed 8584 students from 3224 unique schools districts across the United States.
Community Involvement

The general enforcement of Title IX does not include the population that it aims to serve in the decision-making process. In addition to mandating a designated point person to oversee the implementation and enforcement of Title IX (Title IX Regulations, 1975), the OCR should mandate the creation of a community advisory team. Currently, the creation of a community advisory group is only offered as a suggestion in the regulations. It should be a mandatory component of Title IX’s enforcement. This would create a mechanism that would allow parents of underage students, students over the age of 18, student-athletes, coaches, school administrators, and other Title IX advocates to be involved in the decision-making process. They would have the opportunity to provide input and suggestions on how to improve the enforcement, efficacy, and scope of the law.

Since Title IX’s legislative history is rooted in feminist activism it has historically benefitted from some level of participation from the community. Feminist groups such as the National Organization for Women\(^{56}\) (NOW) and Women’s Equity Action League\(^{57}\) (WEAL) played integral roles in the policy’s enactment and enforcement. When Title IX was enacted in 1972 NOW, San Diego Chapter created a “Women in Sports” task force. The purpose of the task force was to educate school official about Title IX and oversee to its implementation and enforcement (Berkouf, 1975). It is, therefore, not a farfetched vision to suggest community accountability to improve Title IX’s enforcement.

Additionally, educational institutions are insular communities where ground-level social justice initiatives can be effective. Student-ran organizations, such as Athlete Ally, educate student-athletes and the student body at large on how to combat homophobia on the field and in the locker room (Athlete Ally, 2013a). Athlete Ally at the University of California, Los Angeles has made strides by hosting a campaign during UCLA’s Ally Week. The purpose of the event was to inform the student body about homophobia in college sports and the negative effects of being in the closet. The event hosted a student-athlete and coach

\(^{56}\) One of the oldest and largest feminist groups in the United States which was founded 1966. There are six core issues that they focus on: abortion rights/reproductive rights, violence against women, constitutional equality, promoting diversity/ending racism, lesbian rights, and economic justice

\(^{57}\) Founded in 1968, it was a more conservative women’s group that educational, economic, and employment issues. They avoided controversial issues such as abortion and reproductive rights
from Columbia University who spoke about how to be a straight ally. There was also a photo campaign in which allies could participate in a photo shoot and have their photo included on a public display on campus as a reminder to those who are closeted that they have support on campus and they are not entirely alone (Athlete Ally, 2013a).

**SUGGESTIONS FOR THE ATHLETICS INVESTIGATION MANUAL**

The OCR published the Athletics Investigator’s Manual (Office for Civil Rights, Department of Education, 1990) as a guide to investigate complaints within athletic departments. The purpose of this manual was to “assist investigators of the Office for Civil Rights (OCR) in the investigations of interscholastic and intercollegiate athletic programs offered by educational institutions required to comply with Title IX of the Education Amendments of 1972” (Office for Civil Rights, Department of Education, 1990). The manual includes guidelines to assist investigators from the time the complaint is received to the issuance of a letter of findings. It provides scripted interview questions that the investigator is encouraged to use when interviewing student-athletes, sports administrators, and coaches. It also details what data investigators should collect in order to assess whether or not a school is compliant. They may collect financial records, team rosters, regular season playing schedules, and other documents that detail the department’s whereabouts. The manual details thirteen program components that need to be investigated: athletic scholarships, accommodation of athletic interests and abilities, equipment and supplies, scheduling of games and practice time, travel and per diem allowance, opportunity to receive coaching and academic tutoring, assignment and compensation of coaches and tutors, locker rooms, practice and competitive facilities, medical and training facilities and services, housing and dining facilities and services, and publicity.

I propose changes to five section of the Athletics Investigation Manual (Office for Civil Rights, Department of Education, 1990): Accommodation of Interests and Abilities, Scheduling of Games and Practice Time, Locker Rooms, Practice, and Competitive Facilities, Publicity, and Recruitment of Student Athletes. I chose these sections because

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58 A document that the OCR issues to an institution that details the findings of an investigation
they are areas in which non-heterosexual, non-gender conforming, and women of color athletes found themselves to be the most vulnerable. One way to integrate a multidimensional approach to investigating complaints in athletic departments is to include investigation questions that assess whether or not students of color and lesbian and bisexual students have equitable playing opportunities compared to culturally-dominant groups of women. The purpose of these interview questions would be to gauge the inclusivity of the department, if they are capable of addressing discrimination complaints in-house, and ultimately if they are compliant with Title IX.

**Accommodations of Interests and Abilities**

When investigating the Accommodations of Interests and Abilities component, I suggest that the OCR investigators should ask student-athletes the following questions: (1) Do you think anyone on this team, including yourself, feels uncomfortable being themselves while interacting with other teammates or the coaching staff? (2) If so, do you think discrimination plays a role in the discomfort? (3) In your experience, is your department open to diverse groups? (4) Do you think there are players who are treated differently because of their perceived sexual orientation, skin color, or ethnicity? (5) How do you think your team (the players and the coaching staff) would respond to an openly lesbian, bisexual, gay, or queer player?

Questions specific to coaches: (1) What cultural-competency training opportunities has your department made available to you? (2) What protocols are in place, if any, to address racism, sexism, and/or homophobia on the playing field or in the locker room? (3) Do you have concerns about your department’s handling of diversity issues?

Questions specific to Administrators: What measures has your department taken to promote an inclusive environment for all students and employees (in terms of sex/gender, race/ethnicity, and sexual orientation)? What protocols, if any, has your department created to address discrimination motivated by racism, sexism, or homophobia? What efforts has your department made to ensure that students and employees are aware of the rights guaranteed to them under Title IX?
Playing Time and Practice Time

As previously stated, student-athletes have feared (or experienced) losing playing and practice time due to sexual orientation discrimination. This is one threat that homophobic coaching staff use as leverage to pressure non-gender conforming and lesbian/bisexual athletes to adhere to traditional, Euro-American femininity. I suggest the following question for student athletes: (1) Where there times you felt you had to dress or act a certain way in order be a part of this team? (2) Do you think your coach favors certain types of players over others? In what way? (3) Do you think these biases impact who gets more playing time? Do you think your coach would bench a player because of how they look, who they befriend, or who they date?

Locker Rooms, Practice and Competitive Facilities

Investigations should not focus solely on achieving equity between male and female athletic teams. They should be cognizant about which groups of women have disproportionately received more opportunities within women’s sports. Additionally investigators should assess if there are groups of women who are barred from participation. Suggested questions for student-athletes: (1) Have you ever felt unsafe entering the locker room or attending practice? Have you or any of your teammates felt pressure to be someone you are not in order attend practice or be a part of this team? Questions specific to coaching staff: (1) What educational and training opportunities are available to staff to prevent discrimination in the locker room and/or training/competitive facilities? (2) What are the protocols you use to make sure each player has a fair shot at training and competing? Inquiries for administrators: What protocols, if any, have you enforced to make sure that the locker room and training facilities are a non-discriminatory place for all student-athletes and employees?

Publicity

Publicity can be used to reinforce race, sex/gender, and sexual orientation-based privileges. It can be a way to keep marginalized groups invisible and silent. For example, Lorri Sulpizio, former Women’s Basketball Head Coach at San Diego Mesa College, was pressured by her department not to bring her same-sex spouse to work– related events; her employers and co-workers wanted to avoid their department’s association with lesbianism
(Sulpizio v. San Diego Mesa College, 2007). When investigating publicity issues, investigators should collect publicity documents that detail which coaches and teams received the most funding and opportunities for advertisements, commercials, and news coverage on the school website, newspaper, or any other school publication. Quantitative studies can determine if male teams or coaches are overrepresented in publications and if female or coaches and players, particularly those who are women of color or lesbian (or perceived to be) are underrepresented.

In addition, investigators should ask student-athletes and coaches the following questions: (1) Have you ever felt pressured to change your hairstyle or clothing in order to advance your career? Do you think this had to do with racial, ethnic, sexual orientation, or other cultural biases? (2) Do you think all teams and coaches have an equal chance of receiving publicity? Explain. (3) Any additional concerns about your department’s handling of publicity issues?

Recruitment of Student Athletes

When evaluating an institution’s recruitment policies for prospective athletes, the OCR should incorporate interview questions that evaluate whether negative recruiting or any other discriminatory recruiting tactics are being employed at the institution. Interviewers should ask student-athletes the following questions: (1) At any point during the recruitment process, were you made uncomfortable by the recruitment process? (2) Was it related to discrimination issues? (3) Are there any issues regarding the recruitment process that you would like to bring up? Interviewers should ask coaches and athletics administrators the following questions: (1) What protocols, if any, are enforced to ensure that each prospective athlete has an equal chance during the recruitment process? (2) Are you familiar with training programs that teach against negative recruiting?59 (3) Has your department participated in such a program?

Additionally, investigators should collect meeting minutes, spending reports, and other relevant documents to verify information collected during interviews when possible.

59 It Takes a Team, which is hosted by the Women’s Sports Foundation, is one program that teaches against negative recruiting.
For example, if an institution reports during an interview that they hosted an anti-negative recruiting workshop that year, an investigator can verify if there was evidence that the event was planned and hosted as reported. Receipts from purchases and room reservations may also be used to verify reported information.

**Centering Coaches, Administrators, and Athletic Department Staff**

Title IX has jurisdiction over employment practices, but the Athletic Investigation Manual only details how to investigate complaints filed by students and addresses only student-athlete equity issues within athletics. I suggest creating a new category “Employment Practices” that investigates whether or not hiring practices and the work environment are equitable for women of all ethnicities and sexual orientations. When investigating an open complaint investigators should ask the coaches the following: Do you perceive that the hiring committees have certain biases when recruiting new employees? Do you think gender, race, or sexual orientation factor in to the hiring committee’s decisions? Could you tell me about your work environment? Has it been a positive experience? Are there any concerns you would like to voice? Do you believe all staff members have equal opportunity in receiving promotions and pay increases?

As previously stated, employees should be given the opportunity to report their opinions on inclusiveness and diversity in the workplace through annual anonymous end-of-the-year surveys and employee exit surveys. In addition, the suggested Title IX coordinator should be mandated to facilitate annual Title IX information workshops. At these presentations, employees should be notified that they have the right to file a complaint as well. The workshop should remind employees and staff that Title IX is not specific to students and participants of an educational program; it protects employees and staff. Lastly, I suggest creating an information sheet that details employee rights guaranteed by Title IX. All new hires should receive this information during their employment orientation and/or job training materials.

**PROMULGATING CONSEQUENCES FOR NONCOMPLIANCE**

One way to encourage Title IX compliance is to promulgate additional consequences for noncompliance that can be realistically implemented. Currently there is only one
consequence that the OCR issues when a program is declared non-compliant after an OCR investigation: the suspension, termination, or refusal to grant or continue and defer Department of Education financial assistance to the recipient (Office for Civil Rights, Department of Education. 2005). So far this consequence has proven to be an empty threat. It had been forty years since Title IX was enacted and not once has the OCR defunded noncompliant institutions. In this section, I assert that complete ineligibility for federal funds should be used as a last resort. Additional consequences that can be more readily employed will be detailed shortly.

I suggest there should be different levels of noncompliance statuses that gauge the seriousness of the violation. Furthermore, there should be consequences that are appropriate for each level of severity. The first stage should include first-time offenders who are not found in serious violation of Title IX. A serious violation should be defined as the following: (a) cases that involve sexual harassment (b) cases that involve intimidation, verbal threats or physical assault motivated by racism, sexism, homophobia, or any other identity-based discrimination. Serious violations should be considered the highest level of violation. The second stage would include institutions that have had Title IX violations in the past or institutions who have failed to become compliant before the deadline set from their previous investigation.

For first time offenders that are not in serious violation of Title IX, I suggest the following: (1) disallowing eligibility for promotions, pay raises, or bonuses for all staff members employed by a department that has been declared non-compliant. This should remain in effect until compliance is determined. A complete disallowance of federal funds has proven to be impossible to implement. Freezing pay increases may be a more feasible alternative consequence. (2) Hiring freezes for departments found in violation of Title IX. This necessitates the OCR coordinating with the human resources department of an institution, and creating a policy that stipulates that no department found in violation of any civil rights law including, but not limited to, Title VI, VII, and Title XI is ineligible to apply for a new hire. New hires should not be limited to coaching staff or administration. Athletic Departments should be disallowed from hiring graduate assistants, maintenance crew, referees, sports medical staff, nutritionists, media support and so forth.
For repeat\textsuperscript{60} offenders I suggest more serious and burdensome consequences. One such is suspending travel funding. This would disallow reimbursement and funding for charter busses, airfare, train tickets, taxis, and so forth. For Athletic programs, in particular, this is a significant incentive to comply with Title IX; it would be near impossible to finish a season without traveling funds because half the playing season takes place outside of the home institution. Also frozen would be funding for equipment and supplies. This would include sports equipment, player and coach uniforms, coaching and player manuals, office supplies, and so forth. Funding should only be reinstated after compliance is met.

For cases in which serious violations are alleged and substantial evidence\textsuperscript{61} has become available, accused staff members are to be suspended without pay during the investigation. If allegations are proven to be true, parties directly involved in serious violations are responsible for the cost of the investigation. This should include the travel expenses of the OCR investigation team and all expenses that accrued while completing this investigation. Additionally all employees within the program found in serious violation should be required to complete a comprehensive cultural-competency training program and as a group become involved in a community-based service project that offers community solutions to racism, sexism, violence, and other relevant areas. The purpose of the service learning project is to gain insight into how to create effective and meaningful solutions to social inequalities. In doing so, programs found of serious violations will be able to create and implement anti-discrimination policies and foster a positive work environment for all people.

In sum, Title IX as currently written does not address racism and homophobia. Both forms of discrimination have been prevalent in federally-funded educational sports programs. In order to combat these issues, I suggest that changes need to be made to Title IX’s policy, Regulations, and Athletics Investigation Manual. This section detailed concrete ways those anti-racist and anti-homophobic components can be integrated into Title IX.

\textsuperscript{60} Repeat defined as more than one violation

\textsuperscript{61} This can include eye witnesses, documented proof of injuries, surveillance footage of incident, and etc.
CHAPTER SIX

CONCLUSION

Exactly a year ago, I was concerned whether or not there was a place for an unapologetically masculine player or an out lesbian (or bisexual) in the WNBA (or other women’s professional sports teams). Given the history of homophobia in women’s sports, this was not an unfounded concern. It is now April 2013. This past year has surprisingly been a progressive year for lesbian and bisexual athletes and their allies. On April 2, 2013, Kristi Tolliver, point guard for the Los Angeles Sparks, became the first female professional athlete to join Athlete Ally (Athlete Ally, 2013c). Tolliver has made a significant step forward for lesbian and bisexual athletes and their supporters by representing professional women’s sports as an ally to the LGBT community. Athlete Ally is a non-profit organization that works with the Human Rights Campaign and the NCAA to address homophobia in high school, collegiate and professional sports programs. Within the last year, professional male athletes such as the NFL’s Chris Kluwe and Brendon Ayanbadejo joined Athlete Ally to combat homophobia in sports62 (Athlete Ally, 2013b; Athlete Ally, 2013a).

Brittney Griner, whose presence and career helped shape my research question, has also made great strides for lesbian and bisexual athletes and their allies. Griner very recently came out as a lesbian after being drafted as the WNBA’s number one pick by the Phoenix Mercury in mid-April (ESPN, 2013). She was the first WNBA player to come out publically since Sheryl Swoopes63 in 2005. In her public statement she relayed a hopeful message to LGBT youth, “I’ve always been open about who I am and my sexuality. So, it wasn’t hard at all. If I can show that I’m out and I’m fine and everything’s okay, then hopefully the younger generation will definitely feel the same way” (ESPN, 2013).

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62 In late April, Jason Collins, a center for the NBA, came out as the first gay man in professional sports (Beck & Branch, 2012, p.A1).

63 Swoopes is a retired WNBA player. In 2011, she denied that she was ever a lesbian and is now in a heterosexual marriage (Rupert, 2011).
I share this note of optimism and assert that creating additional protections for lesbian and bisexual athletes (including those who are of color) through legislative changes effectively communicates to current and future athletes that it is okay be lesbian or bisexual and if your teammates, coach, or anyone else in your program tells you otherwise they are wrong. They are in violation of the law. In sum, I see the value in validating multiply-burdened identities through federal policies such as Title IX. This can be a significant way of transforming how we think of discrimination and more importantly how we address it.

As referenced throughout this paper, it was beyond the scope of this study to provide a comprehensive study on race and women’s sports. Future studies should examine if racism has curtailed recruitment and playing opportunities for women of color athletes. In addition, future studies should analyze if there are equitable playing opportunities for women of color in all sports; previous scholarship suggested that Black women are pressured into sports like basketball and track and field and excluded from sports like volleyball and water polo because of racial stereotypes (Cain, 2000; Yarbrough, 1996).

Additionally, future studies should examine what impact Title IX has had on various ethnic minority groups. A majority of the Title IX scholarship that studies race-based inequalities compare only Black and Euro-American women’s opportunity outcomes (Tryce & Brooks, 2010; Pickett, Dawkins, & Braddock, 2012; Suggs, 2001). Future studies should examine if there are race-based barriers are keeping Asian, Latina, Middle Eastern, and other ethnic women from achieving equitable access into sports programs in federally-funded educational institutions.

It was beyond the scope of this study to analyze how transgender athletes are impacted by anti-sex discrimination policies like Title IX. The state and federal courts determined that Title IX does protect transgender athletes. It covers discrimination on the basis of gender identity and expression (NCAA, 2011). Furthermore, in September 2011, the NCAA issued a policy that clarified transgender participation in sports programs with NCAA membership.64 Future Title IX scholarship should examine what mechanisms are in place to

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64 The policy states that a trans male (female to male) student-athlete who has received a medical exception for treatment with testosterone for gender transition may compete on a men’s team but is no longer eligible to compete on a women’s team without changing the team status to a mixed team. A mixed team is eligible only for men’s championships. A trans female (male to female) student-athlete being treated with
assure that educational programs are being held accountable; they should analyze if they are providing equitable opportunity outcomes for students of all gender identities and expressions.

Another future study could focus on student-led organizations, nonprofits, and grassroots organizations that address homophobia, racism, and/or sexism in sports. These studies would illuminate how their presence on college campuses impacts students’ perceptions of diversity. A related line of inquiry would examine if the presence of these organizations influences college administrators to promulgate university anti-discrimination policies.

Lastly, future studies should examine how social class impacts sports participation, particularly in collegiate sports. Often times, social class is mistakenly conflated with race and ethnicity. Future studies should examine how social class can be a possible barrier to participation in sports like golf and tennis.65 Furthermore, future scholarship should examine if social class-based issues curtail recruitment opportunities into collegiate sports.

testosterone suppression medication for gender transition may continue to compete on a men’s team but may not compete on a women’s team without changing it to a mixed team status until completing one calendar year of documented testosterone-suppression treatment. (NCAA, 2011)

65 These sports require equipment and training spaces that may not be accessible to working-class people.
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APPENDIX A

MOCK TITLE IX AMENDMENT
Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.


(a) No person who would otherwise be covered by Title IX will be denied the privileges and protections ensured by Title IX on the basis of actual or perceived race and/or actual or perceived sexual orientation.
APPENDIX B

TITLE IX END OF YEAR EVALUATION
Title IX End of Year Evaluation

On scale from 1 to 5, 5 being the highest please rate the following:

1. Overall, my team within this department embraces diversity and provides an inclusive and welcoming environment for all:
   1  2  4  4  5

2. I feel comfortable being myself when I’m with my team (teammates, coaches, etc.):
   1  2  4  4  5

3. Since I’ve been in this program I have witnessed or experienced threats or degrading remarks/actions motivated by racism:
   1  2  4  4  5

4. I have full confidence that my department will take the necessary steps to address allegations of discrimination (initiate legal processes, in-house investigations, and etc.):
   1  2  4  4  5

Please circle Yes or No for the following questions. Alternatively, you can decline to state

Demographic Information (Optional)
Ethnicity: ☐ African-American/Black ☐ Asian ☐ Hawaiian/Pacific Islander ☐ Hispanic/Latino ☐ Middle Eastern ☐ Native American/Alaskan ☐ Mixed ☐ Other ☐ Decline to State

Gender: ☐ Female ☐ Male ☐ Transgender (MTF) ☐ Transgender (FTM) ☐ Other ☐ Decline to State

Sexual Orientation: ☐ Lesbian ☐ Gay ☐ Bisexual ☐ Straight ☐ Queer ☐ Other ☐ Decline to State

Affiliation with Athletic Department (i.e. student-athlete, coach, intern, etc):
______________________________________________________________________________

If applicable which sport team are you affiliated with:
______________________________________________________________________________

Years with institution:______
5 If I have a concern about the department, I know who I can contact and what resources are available to me:

Yes                                             No

6 Since I’ve joined this department, I have witnessed or experienced degrading or threatening remarks or actions directed toward women:

Yes                                             No

7 Since I’ve joined this department, I have witnessed or experienced sexual harassment (unwanted sexual comments, touching, or coerced sexual acts):

Yes                                             No

8 Since I’ve joined this department, I have witnessed or experienced degrading or threatening remarks or actions directed towards gays and lesbians.

Yes                                             No

9 Since I’ve joined this department, I have witnessed or experienced degrading or threatening remarks/actions directed towards transgender people (transgender is someone whose gender identity or gender expression does not conform to social expectation of the biological sex they were assigned at birth):

Yes                                             No

*Provide Short answers for the Following*

1 Describe what efforts your department has made to teach cultural diversity and foster inclusive environment for all students and staff (in terms of race, class, sexual orientation, sex, gender identity, nationality, religion, and so forth). For example, describe any anti-discrimination policies you enforce or diversity training programs that you host or mandate.
2. How can your department improve in terms of fostering a diverse and inclusive environment for minorities (ethnic, religious, sexual orientation, gender identity and so forth)?

3. Any last comments?
APPENDIX C

TITLE IX EMPLOYEE EXIT SURVEY
Title IX Employee Exit Survey

Demographic Information (Optional)
Ethnicity: ☐ African-American/Black ☐ Asian ☐ Hawaiian/Pacific Islander ☐ Hispanic/Latino ☐ Middle Eastern ☐ Native American/Alaskan ☐ Mixed ☐ Other ☐ Decline to State

Gender: ☐ Female ☐ Male ☐ Transgender (MTF) ☐ Transgender (FTM) ☐ Other ☐ Decline to State

Sexual Orientation: ☐ Lesbian ☐ Gay ☐ Bisexual ☐ Straight ☐ Queer ☐ Other ☐ Decline to State

Affiliation with Athletic Department (i.e. student-athlete, coach, intern, etc):
_____________________________________________________________________________

If applicable which sport team are you affiliated with:
_____________________________________________________________________________

Years with institution:_______

1. Reasons for leaving your current position:

   On a scale from 1 to 5, five being the highest rate the following:

2. Overall, My experience working for this department has been positive:
   1  2  4  4  5

3. I never felt pressure to hide important parts of my identity to be a part of this department (in terms of race, class, gender, sexual orientation, nationality, religion, and etc.):
   1  2  4  4  5

4. My department made its best effort to teach and enforce Title IX:
   1  2  4  4  5

5. My department had Title IX literature and resources readily available:
6. My department exhausted has and/or would exhaust all efforts to investigate a Title IX complaint:
1          2           4           4           5

7. I have full confidence that my department would effectively address allegations of sexism:
1          2           4           4           5

8. I have full confidence that my department would effectively address allegations of racism:
1          2           4           4           5

9. I have full confidence that my department would effectively address allegations of homophobia:
1          2           4           4           5

10. I have full confidence that my department would effectively address allegations of transphobia:
1          2           4           4           5

Circles Yes or No for the Following Questions.

1. If I have a concern about the department, I know who I can contact and what resources are available to me:
   Yes                                            No

2. Since I’ve joined this department, I have witnessed or experienced sexist hate speech or actions:
   Yes                                            No

3. Since I’ve joined this department, I have witnessed or experienced sexual harassment:
   Yes                                            No

4. Since I’ve joined this department, I have witnessed or experienced racist hate speech or actions:
   Yes                                            No
5. Since I’ve joined this department, I have witnessed or experienced homophobic hate speech or actions:
   Yes                                            No

6. Since I’ve joined this department, I have witnessed or experienced transphobic hate speech or actions:
   Yes                                            No

7. I fear my department would retaliate against me if I ever filed a complaint through Title IX or any other anti-discrimination policy:
   Yes                                            No

Provide Short answers for the Following

8. Describe what efforts your department has made to teach and enforce cultural competency.

9. How can your department improve its enforcement of Title IX?

10. Any last comments?