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LEVELING THE PLAYING FIELD

Title IX is not about percentages and numbers. Title IX is about halting practices of discrimination. It's not a quota bill.

—Norma Cantu

THE ELECTION OF GEORGE W. BUSH in November 2000 has led to speculation by friends and foes alike of Title IX quotas that the “gains” of the 1990s might be reversed in the new millennium. Thanks to a group of wrestlers and ex-wrestlers called Iowans Against Quotas, who ingeniously used the popularity of their sport in Iowa to approach presidential candidates in 1999 and 2000 before the all-important Iowa caucuses to solicit their views on Title IX quotas, George W. Bush was on the record on Title IX before he was his party’s nominee.* His statement was supportive, but qualified—perhaps as definitive as could be hoped for from a candidate whose party is plagued by a persistent gender gap at the polls.

“I support Title IX,” read the Bush statement. “Title IX has opened up opportunities for young women in both academics and sports, and I think that’s terrific. I do not support a system of quotas or strict

*Presidential aspirant and former New York Knick Bill Bradley was approached on the campaign trail in Iowa in 1999 by a member of Iowans Against Quotas, ninth-grade wrestler Clarke Davidson. When Davidson asked Bradley at a campaign stop in Des Moines if he supported proportionality, Bradley played dumb. “What’s proportionality?” he shot back. But Bradley knows very well what proportionality is. In 1993 he served as a consultant to an NCAA Gender Equity Task Force charged with developing guidelines for schools struggling to comply with Title IX. In its final report, the task force declared that the “ultimate goal” of NCAA member institutions should be that “the numbers of male and female athletes are substantially proportionate to their numbers in the institution’s undergraduate student population.”

proportionality that pits one group against another. We should support a reasonable approach to Title IX that seeks to expand opportunities for women rather than destroy existing men's teams."

On paper, the prospects for reform of Title IX appear to be excellent. Contrary to the law's more excitable defenders, ending quotas would not entail repealing Title IX or even amending it. The proportionality test is not law; it's not even regulation subject to congressional approval. It is simply a bureaucratic decree, a policy interpretation issued pursuant to a regulation that was issued pursuant to a statute. If the Bush administration's Office for Civil Rights wants to change the Title IX athletics policy to exclude the proportionality test—or change any other Cantu-era policy interpretations, reinterpretations, guidance or what-have-you—they can simply issue new policy.

But then again, it's not that simple. Before the new Bush administration even had the chance to appoint a secretary of education, the Women's Sports Foundation fired a Title IX warning shot across its bow. "Under the provisions of the federal Administrative Procedures Act, if the Office for Civil Rights...wishes to change the regulations or current policy interpretations, OCR would be required to issue a 'Notice of Proposed Rule Making,' " the WSF reminded its supporters in the spring of 2001. "OCR would then be required to designate a reasonable period of time for public comment, usually 30 to 60 days, before it could issue changes in regulations." The WSF, then, "would have the option of submitting comments. The Foundation would not favor any change that weakens this law and results in unequal treatment of female athletes."

A veiled threat? To be sure. And the Women's Sports Foundation is just the vanguard of an army of seasoned veterans of the gender wars who stand ready and eager to defend the territory they've gained under Title IX. To make sure that a risk-averse Republican president doesn't make the mistake of thinking he can take on the Title IX lobby with impunity, these gender warriors point to the results of a 2000 NBC News/*Wall Street Journal* poll that seems to show widespread public support for Title IX quotas:

Q: Title Nine is a federal law that prohibits high schools and colleges that receive federal funds from discriminating on the basis of gender. Title Nine is most commonly invoked to ensure equal opportunities for girls and women in high school and college athletics. Do you approve or disapprove of Title Nine as it is described here?

Yes, approve of Title IX: 79%
 No, do not approve of Title IX: 14%
 Do not know enough about it: 4%
 Not sure: 3%

Q: To comply with Title Nine, many schools and universities have had to cut back on resources for men's athletic programs and invest more in women's athletic programs to make the programs more equal. Do you approve or disapprove of cutting back on men's athletics to ensure equivalent athletic opportunities for women?

Yes, approve of cuts: 76%
 No, do not approve of cuts: 19%
 Not sure: 5%

It is interesting, to say the least, that feminists now take refuge in a poll showing widespread public support for cuts to men's programs that they insist are not occurring as a result of Title IX. Still, is there credence to their claim that the American public supports elimination of men's opportunities under the law? Only if we assume that the NBC/*Wall Street Journal* poll is an accurate portrayal of how the law is enforced today. The survey asked the public if it would support cutting back on resources for men's athletic programs and investing more in women's to make the programs "more equal." Who but the most hardhearted misogynist wouldn't support those two words?

But as we've seen, at issue under Title IX isn't the fair and equal division of resources between men and women, but an attempt by the federal government to dictate how men and women should behave. Female athletes have more teams to choose from in colleges and universities today than male athletes. They receive more athletic scholarship aid per capita than male athletes. The battle for "gender equity" is not a battle for resources; if it were, women's groups would have declared victory some time ago. The struggle is about power and ideals.

In their attempt to prove that all differences between the sexes are socially created, feminists have been willing to sacrifice the interests of males for the manufactured illusion of an androgynous ideal. Imagine, for a moment, what the public's reaction would be to a survey question that accurately portrayed the way the law is enforced:

Q: To comply with Title IX, many schools and universities have had to eliminate men's opportunities to participate in sports—including unfunded opportunities—in order to ensure that no more men than

women are athletes on college campuses. Do you support eliminating men's opportunities to create a 50/50 gender balance in school sports programs while positions on women's teams go unfilled?

This is not how the pollsters who conducted the survey for NBC News and the *Wall Street Journal* asked the question because it is likely that this is not how they understand the law to be implemented. Journalists—even ink-stained veterans—routinely describe compliance with Title IX in terms of the equal sharing of resources between men and women in athletics. The result is that it is rare for a citizen who picks up a newspaper or turns on the television to see coverage of the law that is not glowingly positive. And it is a rare politician or government official who will tell the truth about the law's enforcement today. The first step toward re-leveling the playing field between the sexes in our schools, then, is simply beginning to tell the truth about Title IX.

IN THE SPRING OF 2001 an ad sponsored by the Independent Women's Forum appeared in the *Daily Bruin*, UCLA's student newspaper, purporting to expose "the ten most common feminist myths." Myth number nine, "gender is a social construction," was answered thus:

While environment and socialization do play a significant role in human life, a growing body of research in neuroscience, endocrinology, and psychology over the past 40 years suggests there is a biological basis for many sex differences in aptitudes and preferences. Of course, this doesn't mean that women should be prevented from pursuing their goals in any field they choose; what it does suggest is that we should not expect parity in all fields.

The impact of this ad on the UCLA campus was immediate and explosive. Rallies were organized. The women's center demanded that the *Daily Bruin* "retract" the ad, apologize for it and promise never to commit such apostasy again. When the newspaper's editor defended the running of the ad as an exercise in free speech, Christie Scott, head of the campus feminist "Clothesline Project," dismissed this rationale as "somewhat cowardly."

"Somewhat cowardly" is the wrong term to apply to the editors of the *Daily Bruin*, but the right term for most participants in the discussion of women's role in American life today. Few topics involve more disinformation and shaving of the truth on the one side and political cowardice on the other. Christina Hoff Sommers (the author of the UCLA ad), Judith Kleinfeld, author and psychiatrist Sally Satel and others have done an excellent job of uncovering the disinform-

mation and false statistics used by women's advocates to advance their agenda. But they are virtually alone in this thankless task. For far too long, a wittingly or unwittingly gullible media has treated even the most outrageous claims of feminists as fact. The effect has been to give artificial life support to the myth that girls and women are an oppressed minority, clinging weakly to their rights only with the assistance of the full weight and authority of government.

This effect is magnified where the arcana of Title IX enforcement are involved. Under President Clinton, pro-quota bureaucrats followed their administration's well-practiced strategy of deny, deny, deny when confronted with accusations that the law was resulting in losses for men. Consider this statement by Norma Cantu, which appeared in *Insight* magazine in 1998: "Nothing in Title IX or OCR's enforcement policy requires or encourages schools to cut men's sports. A school can choose to drop a men's team in order to provide substantially proportionate athletic opportunities for men and women students. But, neither Title IX nor OCR require or encourage this as a way to reach that goal."

This, from the civil rights enforcer who in 1996 declared proportionality the "safe harbor" for schools struggling to stay on the right side of the federal law. This, from a high-ranking official in an administration that supported the creation of a "remedial purpose" for Title IX in *Cohen v. Brown*. This, from the civil rights activist who declared that tests on which different racial groups and sexes fail to score equally are a violation of federal law.

The federal government, in fact, has enforced a quota standard in Title IX athletics for much of the past decade. This enforcement has been opportunistic; not every school has fallen under OCR scrutiny and been forced to cut men's teams, add women's teams or do both to achieve proportionality. And this fact is yet another layer of deception in OCR's insistence that the federal government does not force Title IX compliance through a gender quota. Schools don't need to experience a federal investigation or a lawsuit to know that there is no "safe harbor" short of proportionality, and that their athletic departments are not under their control unless and until they reflect the gender breakdown of their student bodies. They've read the "policy interpretations"; they've seen how OCR has treated schools like the University of Wisconsin and Boston University; and they've seen how the courts have ruled on the Brown and Cal State Bakersfield cases. American education has received the message loud and clear.

Why isn't there more acknowledgment of the reality of Title IX enforcement among education officials and in the education press? Quota critics point to an atmosphere of extreme intolerance to dissent from Title IX orthodoxy on campus. Time and again, coaches I spoke with refused to allow their names to be used for fear of losing their jobs. Even coaches who had already lost their jobs in Title IX cuts refused to go on the record for fear of not finding new jobs on other campuses. It is a measure of the power of liberal women's rights activists in academia today that universities are unable—or unwilling—to complain as the federal government micromanages more and more of their affairs in the name of "gender equity." When so-called "women's issues" are on the line, defenders of institutional autonomy like Brown's Vartan Gregorian are distressingly rare. When Gregorian stood up against excessive federal intrusion on his university in the Cohen case, none of his fellow Ivy Leaguers stood with him. Perhaps that's only because he didn't succeed in his challenge. "These people are extremely sensitive to social criticism," says Brown counsel Beverly Ledbetter about the claustal world of academia. "They will hide behind whatever good result happens—they won't open their mouths to get any good result, but they will hide behind any good result."

Even among students whose lives are most affected by Title IX quotas, there is little questioning of the need or the rationale for federally mandated gender equity. Students have an admirable commitment to fairness and opportunity for women, but they are numbed by the bureaucracy that enforces the current definition of equity. "Nobody questions the underlying assumptions of Title IX, that male and female students will be equally interested in organized sports and that a lack of proportional numbers must indicate something is 'wrong,' " says Robert Geary, professor of English at James Madison University. "Universities are supposed to be places of inquiry, but some subjects appear closed to scrutiny—too sensitive. Students seem caught in a vise of bureaucratic rules which are combating ills that may well not exist at all."

Title IX quotas have never been the subject of debate. They were created outside the electoral process by unelected government officials working hand in hand with special interest groups. The first step toward ending gender quotas, then, is to demand the truth from those who insist they don't exist.

- *Demand that government officials acknowledge that they "encourage"*

Title IX compliance through quotas: In June 1999 the Northeast regional office of the OCR sent a letter to the athletic director and administrators of Central Connecticut State University warning that they must add twenty female athletes to their sports roster to comply with the federal law. CCSU had already brought the percentage of its athletes who are female from 29 to 49 by dropping men's wrestling and adding women's lacrosse. But females made up 51 percent of the students at CCSU, so OCR insisted that twenty more female athletes were needed. In the fall of 2000, the University of Wisconsin at Madison received a similar letter. Having labored for a decade to attract women to programs, UWM had achieved near-perfect parity in the spring of that year: 429 athletes on campus were men and 425 were women. Not good enough, said Algis Tamosiunas, director of OCR compliance in Chicago. Because females now constituted a majority of students on the Madison campus (53.1 percent), the school would have to add another 25 women.

Letters like these are routinely sent from the OCR to schools struggling to stay on the right side of the federal authorities. OCR officials such as Norma Cantu are being dishonest when they insist that because the regulations don't "require" sex quotas, those who administer the regulations don't work relentlessly to make quotas happen. Proportionality is the threshold test for Title IX compliance in federal regulation. It is the standard consistently supported by the Clinton administration in the courts, the standard adopted by the courts and the only guarantee that a school will not be exposed to a federal investigation or a lawsuit. It is *the* standard for compliance with Title IX today. To say otherwise is to lie, plain and simple.

- *Demand that "neutral" organizations like the NCAA represent all athletes, not just the lucrative and the politically correct:* In the deeply cynical belief that Title IX quotas will never threaten big-time football and men's basketball programs, the NCAA has left men's nonrevenue sports like wrestling and swimming to fend for themselves against Title IX quota cuts. It has not only looked the other way when men's programs are eliminated to meet Title IX gender quotas, it has acted to encourage these cuts.

Since the early 1990s, the NCAA has required that the "ultimate goal" of NCAA member institutions be that "the numbers of male and female athletes are substantially proportionate to

their numbers in the institution's undergraduate student population." The NCAA's five-year-plan certification process is a reiteration of the OCR's three-part test, with an unmistakable emphasis on proportionality. In addition, its biennial "Gender Equity Study" of member institutions provides a benchmark against which the NCAA measures progress toward fulfillment of the sex quota. Commenting on the data in the 1999 report, NCAA president Cedric Dempsey ignored cuts to men's programs and instead lamented insufficient statistical progress on the women's side: "As we move closer to proportionality, we recognize improvements will not be as dramatic. We've made some progress, but must continue to press for compliance."

Cheryl Levick, chairwoman of the NCAA Committee on Women's Athletics, echoed his thought: "The rate of growth in participation numbers and dollars spent is much too slow. In the new millennium, every university, conference and the NCAA must have a primary goal of equalizing these numbers."¹

Like the OCR, the NCAA takes refuge in the defense that it doesn't "require" cuts to men's programs to achieve gender equity. But the NCAA, again like the OCR, doesn't need to "require" cuts officially in order to be complicit in losses to men's programs. As long as revenue-making men's sports like football and basketball are immune from cuts geared toward gender equity (and for the time being at least it appears they are) the NCAA has been content to allow all of the pressure that Title IX quotas place on athletic programs to be absorbed by men's nonrevenue sports. But if it purports to represent all intercollegiate athletics—and to place limits on their scholarships, recruiting and play—the NCAA has a moral obligation to speak up for men's teams that are being hurt by its craven acquiescence in gender quotas.

- *Call a preference a preference:* Honorable people can disagree over whether or not government should institute preferences to help previously disadvantaged groups—yet Title IX quota advocates refuse to allow this debate. Perhaps they understand that where there has been open debate on the utility and fairness of preferences, such as in California with Proposition 209 in 1996, citizens have generally chosen to keep government out of the business of counting by race and gender.

Deborah Brake of the National Women's Law Center is

typical of those who refuse to call a preference a preference. "A lot of the opponents of Title IX like to talk about proportionality and to say that the test of compliance is only one of proportionality," she said. "And the reason they do that I think is a cynical one. They try to tap into some of the anti-quota and anti-affirmative action sentiment that's out there and try to talk about Title IX as if it were a quota."²

If the proposition were put to them directly, many Americans might well agree that affirmative action for girls and women is justified and appropriate. But this has not occurred with preferences under Title IX. For political reasons, straight talk has been avoided and those who describe Title IX as a quota regime have been vilified as attempting to erase the hard-won gains of girls and women.

There is no honor in subverting the democratic process so as to force a policy on the public that government officials don't have the courage to call by its proper name. It's time to let some sun shine on the topic of sex quotas in education, and let the people decide.

EVEN THOUGH THE PUBLIC DOES not yet have an accurate understanding of how Title IX is being implemented today, there are storm clouds on the horizon for use of this law in schemes involving gender equity.

The period of Title IX quota expansion during the past decade has also been a time of relative prosperity for colleges and universities. In some cases, this has meant that schools struggling to meet the gender quota in athletics could do so in relatively painless ways, by adding women's sports and/or limiting men's participation by cutting walk-ons. As long as the funds were there, providing the scholarships and building or upgrading facilities for new women's teams was relatively easy.

A slowing economy combined with escalating expenses in athletic programs, however, threatens to change this. Financial reports filed by schools under the federal Equity in Athletics Disclosure Act show that athletic department budgets in NCAA Division I schools in 1999-2000 were up more than \$1 million from two years earlier, reaching an average of \$11.2 million. For the schools that field the most competitive football teams, budgets were up more than \$2 million, to an average of \$28.7 million.

Growing budget pressures come from a variety of directions, of

course. One significant financial pressure point is the cost of expanded women's programs. Budgets for women's sports are rising faster than those for men's sports, as is spending on scholarships for women. Another financial strain is accommodating the growing desire among athletic directors and fans alike that teams be competitive on the national level. Less and less are sports treated as another part of a well-rounded educational experience; increasingly, teams must justify their existence by winning. This compulsion is helping to fuel an "arms race" in spending, not just on big-time football and basketball programs, but on women's teams and men's nonrevenue sports as well. According to the *Chronicle of Higher Education*, nonrevenue teams in NCAA Division I cost roughly \$220,000 on average in 1999-2000. And at big-time football schools, where more money is available to fuel the spending arms race, women's teams and men's nonrevenue squads cost up to half a million dollars apiece.³

These exploding costs have already triggered a fresh round of budget cuts. And because women's sports can't be touched, the sacrifice is borne by men's teams. Iowa State University, the University of Kansas and the University of Nebraska have all recently begun major cuts to their men's athletic programs. The bad news for Title IX quota advocates is that these rising budget pressures give schools a new incentive to go to court to argue that women's programs should be fair game for budget cuts as well.

A school that invites a lawsuit by cutting a women's team or failing to create a new team to meet the gender quota might very well decide to fight back in court rather than be forced to incur costs it can't afford. Alternately, male athletes whose positions are eliminated might decide to take a cue from Duane Naquin, the Boston College senior who was denied entry to Mary Daly's class on the basis of his sex and who sued to win his right to coeducation. As that case showed, if there is one thing university administrators fear more than accusations of gender insensitivity, it's lawsuits. In the Mary Daly case and others to come, public interest law firms like the Center for Individual Rights have been effective in reversing the course of sex discrimination in our schools.

Although Title IX preferences have yet to be struck down in a federal district court (and thus made a prime target for Supreme Court review), creative legal challenges in the right circuits could yield results for fairness and gender-blind policies. "I have no doubt that the Supreme Court will take the case if and when there is a split in

the circuit courts," says Maureen Mahoney, who argued Brown University's case to the Supreme Court. "And I also have no doubt that there will be a split in the circuit if schools litigate this issue in circuits where it's undecided." Women's advocates have been careful so far to push for Title IX quotas in liberal district courts that are likely to agree with their version of equity. But according to Mahoney and others, bringing the right challenge to Title IX quotas in the more conservative Fourth Circuit which covers Maryland, South Carolina, North Carolina, Virginia and West Virginia, or the Fifth Circuit, including Texas, Louisiana and Mississippi, could bring a judgment that restores the original intent of the law.

The rising cost of fielding intercollegiate athletic teams is also contributing to a reexamination of how sports fit within the mission of the university. All recruited athletes, male or female, receive a preference from college admissions committees. But preferences for female athletes—and arguments for female quotas within athletic programs—are often justified on grounds above and beyond the contribution these women make to sports teams. Make women athletes, we are told, and you make better women. With some justification, women's groups argue that girls who play sports are associated with such positive traits as higher graduation rates, less drug use, higher self-esteem and lower levels of teenage pregnancy.

In a much-anticipated book, *The Game of Life: College Sports and Educational Values*, James Shulman of the Andrew W. Mellon Foundation and former Princeton University president William Bowen examine what kind of students are currently being admitted to schools under athletic preferences. Using the same database that provided the intellectual fodder for Bowen's earlier defense of race-based affirmative action in education—data on 90,000 students who attended 30 selective colleges and universities in the 1950s, 1970s and 1990s—the authors claim that of all the recipients of affirmative action in colleges and universities today, female athletes are the most preferred. At a "representative" nonscholarship school in 1999, Shulman and Bowen found, a female who is a member of a minority had a 20 percent admissions advantage, the daughter of an alumnus had a 24 percent advantage, a male athlete had a 48 percent advantage and a female athlete had a 53 percent advantage. That is, *a female athlete had a 53 percent better chance of being admitted than a nonathlete with the same SAT score.*⁴

And what are schools gaining from this admissions preference? *The Game of Life* sets out purposefully to shoot down the various

"myths" of intercollegiate athletics, chief among them, in Shulman and Bowen's view, that athletics builds character. Shulman and Bowen argue that athletes today are less academically prepared, less concerned with scholarship and more financially directed than their fellow students. But what is most interesting about their analysis is their finding that these traits are increasing among female athletes as well as male.

Whereas female athletes were once at least as academically qualified as other female students, Shulman and Bowen found that they now lag behind other female students. Even using twelve-year-old data, which reflect trends that certainly have only deepened with the increased scope and competitiveness of women's sports, the authors saw a distinct pattern of decline, particularly among athletes in the highest-profile women's sport: basketball. They looked at the SAT scores of female athletes and women in the student population at large between 1976 and 1989 and found a gap disfavoring female athletes that widened appreciably in the thirteen-year period. Among female basketball players, athletes had SAT scores 177 points lower than other students at public universities and 240 points lower at private schools.⁵

Female athletes are also developing a grade-point-average gap with female students—following, with a lag, that between male athletes and other male students—a gap that cannot be explained by socioeconomic status, SAT scores or field of study. Whereas in 1976 female athletes were less likely than other female students to rank in the bottom third of their class on graduation day, by 1989, 39 percent of female athletes finished in the bottom third of their class as opposed to 29 percent of other female students. This poorer showing by female athletes, moreover, was especially pronounced among athletes who were heavily recruited. In NCAA Division I-A private schools, almost half of female athletes—49 percent—landed in the bottom third of their class, compared with 29 percent of other women. (At NCAA Division III schools, which don't offer athletic scholarships, female athletes fared much better.)⁶

Another benefit frequently cited to justify preferences for female athletes under Title IX is the racial and ethnic diversity they bring. But Shulman and Bowen found that, "contrary to some popular impressions, more aggressive recruitment of women athletes is not bringing disproportionately large numbers of African American women to campuses (as it is in the case of the male athletes in the high profile sports)." In NCAA Division I-A, the number of minor-

ity women on campus has increased as a result of more female athletes on campus. But "in every other set of schools, the share of African American women playing intercollegiate sports is much lower—even half the corresponding percentage of African American women in the student-at-large category." What's more, these numbers declined between 1976 and 1989,⁷ more evidence that Title IX has produced gains for white girls, not minorities.

The trend in women's athletics, particularly in the most competitive, high-profile sports, is away from the ideal often claimed by Title IX quota ideologues. Instead of representing the female ideal at the start of the twenty-first century—tough, smart, confident and empowered—female athletes are beginning to resemble the dimwitted, half-civilized male athletes of the feminist stereotype. And in such a situation, the rationale that women's preferences under Title IX are justified because they create better students and better citizens becomes hard to sustain.

ANOTHER CLOUD DARKENING THE future of gender quotas under Title IX is the failure so far of women's sports to attract the fan base and revenue potential that many men's sports enjoy.

The success of Women's World Cup soccer awakened in many women's groups a deep yearning to take women's athletics to the next level by making it financially viable. The Women's Sports Foundation recently declared a "Brave New World" for girls and women in sports in which they don't just get a place on the playing field, they get big bucks for playing. "Initially the primary function was opening doors of opportunity," said Donna Lopiano at the WSF's fourteenth annual conference in 2000. "Now, it's exploiting the participation of women in sports in the economic sense, gaining access to assets, program expansion and addressing the continuing problem of girls being discouraged from sports."⁸

The evidence from women's professional athletics, however, is that the Women's Sports Foundation faces a daunting challenge. Today, five years after the launch of the Women's National Basketball Association (WNBA) and less than a year after the debut of the Women's United Soccer Association, gender equity may still be more politically profitable than financially rewarding. The WNBA has yet to turn a profit, and average attendance at games is down from its peak three years ago, as are television ratings.

It turns out that the social engineers are even more wrong in their contention that men and women are equally interested in watching

sports than they are in their assertion that men and women are equally interested in playing sports. Many girls and women are dedicated and enthusiastic participants in sports, but when it comes to being a fan—buying a ticket for a game or watching one on TV—men are still the economic force driving the sporting industry. According to Lawrence Wenner of Loyola Marymount University in Los Angeles, about 20 percent of men but only 4 to 5 percent of women can be described as “strong, committed” sports fans. Men outnumber women among viewers of major sports telecasts by 2 to 1. They even watch women’s sports more than women do.⁹

This gender gap in sportsmania shows up in support for coverage of women’s sports in the print media as well. Whereas *Sports Illustrated* goes out each week to about 3.5 million subscribers, *Sports Illustrated for Women* comes out only once every two months, with a circulation of 400,000. Conde Nast gave up on *Women’s Sports and Fitness* in 2000 after spending two years and a reported \$45 million trying to find an audience.

Lopiano and others rationalize the small crowds at women’s sporting events with the argument that the women’s sports market needs time to mature, that the female sports fan is an “emerging” fan. In many respects this is true, but the for-profit world of women’s professional athletics is very different from the subsidized world in which the “gender equity” battle has so far been fought. Financial investors, unlike college administrators, can’t be coerced into providing the resources necessary for women’s leagues to survive. According to Stefan Fatsis, sportswriter for the *Wall Street Journal*, several owners of NBA franchises—who also own the local WNBA teams—would rather not have to continue the women’s teams, but they have been ordered by NBA commissioner David Stern to “stick with it.” Over half of the women’s teams are even turning to marketing directly to lesbians through events like “gay pride night” to expand their fan bases in some cities. This kind of marketing, however, carries a risk of alienating some fans. Last year, the WNBA put out a list of married and engaged players, a move seemingly designed to appeal to its fan base of families with children.¹⁰

AS I WRITE THIS, THE University of Kansas has eliminated its men’s swimming and tennis teams, citing financial pressures and federal gender equity requirements. Bucknell University has announced it will drop wrestling and men’s crew as varsity sports, eliminating forty-four men’s positions in order to reach statistical proportional-

ity in its athletics program. Seton Hall, Capital University in Columbus, Ohio, and the University of St. Thomas have all dropped their wrestling teams. Iowa State has eliminated baseball and men's swimming. The University of Nebraska has also axed men's swimming and diving, leaving only four of the schools in the Big 12 conference still participating in the sport. The Big 12 is now questioning whether it will continue to stage a men's swimming and diving championship or do away with it altogether, a move that will almost certainly result in the remaining schools eliminating their men's programs.

This denial of opportunity for men is occurring because a group of people with a narrow agenda has worked hard and successfully behind the scenes to make it happen. Driven by the desire to overcome real discrimination against girls and women that was once widespread, activists like Bernice Sandler, Donna Lopiano and Norma Cantu and groups like the Women's Sports Foundation, the National Women's Law Center and the American Association of University Women set out to create preferences for girls and women. They sought out and co-opted friendly government officials. They initiated a shrewd legal strategy when friendly government officials were unavailable. Partly through government fiat, partly through a shared ideology, they built a phalanx of promoters and defenders of "gender equity" on college campuses and in high schools and grade schools across the country. They wooed their allies and cowed their enemies in Congress and insisted that both parrot their message. They conducted a highly effective and sophisticated media campaign. They helped draft regulations and interpretations of regulations and interpretations of interpretations of regulations. At each stage in the legal and bureaucratic evolution of Title IX, they out-thought, out-worked and out-cared the people whose opportunities were being destroyed. The edifice of discrimination these activists built is a testament to their commitment.

Now there is a movement aborning to challenge the arrogance of that power. Individuals bringing lawsuits challenging discrimination against boys and men under Title IX may or may not bring relief, but a new candor in our discussion of Title IX can help create the political predicate for reform.

In the end, of course, it is up to those charged with enforcing our laws to apply Title IX honestly and forthrightly. This is not, needless to say, a politically painless proposition. After some significant

rollback of race-based preferences in the 1990s, elected officials and even conservative activists seem to have lost their appetite for battling identity politics. To stand on principle, many seem to believe, is to risk appearing "mean-spirited" in an age when compassion is the opiate of the electorate.

Writing about the "conundrum of quotas" in the *Wall Street Journal* in the opening months of the Bush administration, Shelby Steele noted that conservatives have a hard time not appearing mean when they stand on principle on the issue of race because they lack moral authority. "Were conservatives of the last generation fastidious about principles when segregation prevailed as a breach of every known democratic principle, including merit?" wrote Steele. "Can conservatives now, when it so conspicuously suits their convenience, look the former victims of racism in the eyes and say, 'Now we're ready to enforce a discipline of principles for everyone?'"

The equation of race preferences with sex preferences under Title IX is not perfect. As we have seen, there are real, innate differences between the sexes of the kind that cannot be shown to exist between people of different races. Even so, Steele's point can easily be applied to conservatives on the issue of sex today. Conservatives of the last generation certainly did not lead the charge for women's rights—properly understood to be the same rights before the law that men historically have enjoyed. It was liberals, of course, who took the battle for women's rights forward. Eventually they corrupted it into a separatist movement in which women's interests are portrayed to be at odds with those of men. Nonetheless, before feminism took that destructive turn, conservatives did not champion the cause of equality for women, and more often than not they resisted it.

Can we now credibly argue that the principle of gender-blindness be upheld in the laws meant to guarantee it? Liberalism has been suborned on the issue of sex quotas. Can a conservative administration challenge quotas for girls and women without appearing "mean" and losing the thin margin of centrist voters who put it in office—voters who would most likely oppose gender preferences if they knew they existed but who nonetheless distrust conservatives on issues involving women? This is a hard political equation, a "conundrum" of sex quotas every bit as difficult as Shelby Steele's conundrum of race quotas.

The way out of this conundrum is the same as it was in the 1920s when women struggled for the right to vote, and the same as it

was in the 1950s when blacks encountered segregationists at the schoolhouse door. The way out is to defend the principle of nondiscrimination, even when it is hard. *Especially* when it is hard.

And liberal feminist groups will make it hard to stand on this principle; they will challenge the moral authority of those who seek to restore the original intent of the law. But the principle of nondiscrimination that is embodied in the original intent of Title IX has stood the test of time. It has allowed girls and women to rise from uncomfortable interlopers to become the dominant force in American education. Conservatives can gain new moral authority by insisting on standing by this principle and resisting a distortion of the law that discriminates against a new group of victims and demeans the very achievements of the girls and women it purports to protect.

Re-leveling the playing field in American education will not be easy. But those who go into this battle have at their side two often underrated assets: First, it's the law. And second, it's the right thing to do.

- 18 Andrew Sullivan, "The He Hormone," *New York Times Magazine*, 2 April 2000.
- 19 James McBride Dabbs (with Mary Godwin Dabbs), *Heroes, Rogues and Lovers: Testosterone and Behavior* (New York: McGraw-Hill, 2000), p. 60.
- 20 *Ibid.*, p. 91.
- 21 Geary, *Male, Female*, p. 228.
- 22 *Ibid.*
- 23 Kate Zernike, "Girls a Distant 2nd in Geography Gap among U.S. Pupils," *New York Times*, 31 May 2000.
- 24 Geary, *Male, Female*, pp. 186-87.
- 25 Michael Lynch, "Title IX's Pyrrhic Victory," *Reason*, 1 April 2001.

Chapter 7

- 1 National Collegiate Athletic Association press release, "NCAA Gender-Equity Study Shows Small Gains for Women's Sports," 25 October 1999.
- 2 "Title IX and Women in Sports: What's Wrong with This Picture?" *National Desk*, PBS, 1999.
- 3 Welch Suggs, "Female Athletes Thrive, but Budget Pressures Loom," *Chronicle of Higher Education*, 18 May 2001.
- 4 James L. Shulman and William G. Bowen, *The Game of Life: College Sports and Educational Values* (Princeton: Princeton University Press, 2001), p. 131.
- 5 *Ibid.*, p. 133.
- 6 *Ibid.*, p. 145.
- 7 *Ibid.*, p. 136.
- 8 Lena Williams, "Women's Sports Foundation Expands Mission Beyond Opening Doors," *New York Times*, 7 May 2000.
- 9 Paul Farhi, "They Got Game but Few Fans," *Washington Post*, 7 June 2001.
- 10 *All Things Considered*, National Public Radio, 27 July 2001.