

I. WOMEN'S SPORTS AND AMERICAN LAW

A. Title IX

Almost 50 years ago, Congress enacted Title IX, the landmark sex equality law, as part of the Education Amendments of 1972. Title IX bans sex discrimination in all federally-funded education programs. It states:

*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.*²

Congress enacted Title IX to end unjust discrimination in education³ and to expand educational opportunities for women and girls.⁴ Although the statute originally made no mention of athletics, in 1974, Congress passed an amendment proposed by Senator Jacob Javits of New York that directed the Department of Health, Education, and Welfare to issue regulations “which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”⁵

Title IX's athletic regulations, promulgated pursuant to the Javits Amendment, state that schools “may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill.”⁶ For non-contact sports, the regulations allow schools to offer **sex-specific athletic teams**, so long as the sport is offered to both sexes.⁷ For contact sports, sex-based exclusions are permitted even where the school does not offer a team for the excluded sex.⁸ Educational institutions are, therefore, permitted to operate single-sex athletics teams,⁹ so long as they provide “**equal athletic opportunity for members of both sexes.**”¹⁰ Schools must comply with Title IX irrespective of various local rules and irrespective of the policies of individual athletic associations.¹¹

The federal government has taken steps to require (not just allow) schools to let male-bodied athletes play on female teams and against female athletes.

B. Women's Progress in Sports

Title IX's binary conception of sex, under which schools may operate separate teams for male and female athletes helped to usher in a period of unprecedented athletic opportunity and achievement for women and girls.

Prior to the passage of Title IX, only one in 27 high school girls participated in organized sports. By 2016, two in five participated.¹² Only 31,852 women played college sports during the 1971-1972 school year.¹³ **During the 2019-20 school year, the number of female college athletes reached 221,212.**¹⁴

Since the passage of Title IX, there has also been a steady increase in female participation in the **Olympic games**. In 1972, there were 84 women and 316 men in the U.S delegation to the Summer Olympics in Munich, Germany.¹⁵ At the 2016 Rio games, there were 291 women and 263 men in the U.S. delegation.¹⁶ At the 2020 Summer Olympics, held in Tokyo in 2021, there were 329 women and 294 men in the U.S. delegation.¹⁷

The significant increase in the number of female athletes since the 1970s was made possible by a binary approach that created separate teams for females.



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The female share of athletic scholarships has increased dramatically as well. In 1972, almost no such scholarships existed. By 2004, women received 45% of athletic scholarship dollars.¹⁸ During the 2019-2020 school year, there were **84,901 athletic scholarships available to female athletes.**¹⁹

None of this progress in women's sports would have been possible without a binary approach to athletics that takes into account the average differences in the athletic performance of males and females.



“We’re all about equality for women in sport but right now that equality is being taken away from us. . . . Unfortunately, there’s nothing we can do because every time we voice it we get told to be quiet.”

TRACEY LAMBRECHS
Former Women’s Olympic Weightlifter (2016 Rio), New Zealand

Held several New Zealand national records that were broken by Laurel Hubbard, who formerly competed as a male.



***NCAA Division II runner CeCe
(formerly Craig) Telfer of
Franklin Pierce University
wins the 400 meter
hurdles on May 25, 2019.***