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done an excellent job of uncovering the disinformation and false statistics used by women's advocates to advance their agenda. But they are virtually alone. 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.

Nowhere is the reality gap wider than in women's sports. Congress did a seemingly simple and laudable thing when it passed Title IX of the Educational Amendments in 1972: "No person in the U.S. shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid." But as applied to organized sports, Title IX has been interpreted and twisted and bent outside the institutions of our electoral democracy, conforming at last to the shape of unintended consequences: A law designed to end discrimination against women is now causing discrimination against men.

And yet Title IX is remarkably entrenched. Before the new Bush administration even had the chance to appoint a secretary of education, the powerful Women's Sports Foundation fired a shot across the White House bow, vowing to fight "any change that weakens this law and results in unequal treatment of female athletes." And the WSF 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 new 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 IX is a federal law that prohibits high schools and colleges that receive federal funds from discriminating on the basis of gender. Title IX 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 IX as it is described here?

TIME'S UP FOR TITLE IX SPORTS

BY JESSICA GAVORA

In the spring of 2001 an ad sponsored by the Independent Women's Forum appeared in UCLA's *Daily Bruin*, offering to expose "the 10 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 ad's impact on the UCLA campus was immediate and explosive. Rallies were organized. The university women's

center demanded that the *Daily Bruin* "retract" the ad. When the paper's editor defended it 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

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

But the issue under Title IX isn't the fair and equal division of resources between men and women; it's an attempt 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.

CIVIL WRONGS

Q: Do you support eliminating men's opportunities to create a 50/50 gender balance in school sports programs?

This is not how the pollsters who conducted the survey for NBC News and *The Wall Street Journal* asked the question. 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.

The reality is that the federal government 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 scrutiny from the Justice Department's Office of Civil Rights and been forced to cut men's teams, add women's teams or do both to achieve "proportionality." But schools don't need to experience a federal investigation or a lawsuit to know that their athletic departments are not under their control. 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 Bak-ersfield cases. American education has received the message loud and clear.

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 micro-manages 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. 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. "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."

Title IX quotas have never been the subject of debate. They were created outside the electoral process by unelected 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.

Here's the reality. In June 1999 the OCR's Northeast regional office sent a letter to the athletic director and administrators of Central Connecticut State University, warning that they must add 20 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—the so-called "proportionality" principal.

Then there's the University of Wisconsin at Madison, which received a similar letter in the fall of 2000. 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 to schools struggling to stay on the right side of the federal authorities. OCR officials such as Clinton administration's 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 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.

GET SMART

The good news is that there are storm clouds gathering on Title IX's horizon.

The past decade of gender-based quota expansion in women's sports 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 were relatively easy.

A slowing economy combined with escalating expenses in athletic programs, however, threatens to change this. 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 "non-revenue" 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, women's teams and men's nonrevenue squads can cost up to half a million dollars apiece.

These exploding costs have already triggered a fresh round of budget cuts. And

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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 rising budget pressures may finally give schools a real incentive to go to court, to argue that women's programs should be fair game as well.

A school that invites a lawsuit by cutting a women's team or refusing 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, a Boston College senior who was denied entry on the basis of his sex to a class in feminist ethics taught by theology professor Mary Daly; Naquin 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 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 be 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. 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 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 *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—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 school in 1999, Shulman and Bowen found that 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.

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. And whereas female athletes were once at least as academically qualified as other female students, they now lag behind. Another benefit frequently cited to justify preferences for female athletes under Title IX is racial and ethnic diversity. But Shulman and Bowen found that Title IX produced gains mainly 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 ideologists. 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.

COUCH POTATO BLIGHT

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” in which girls and women 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 executive director 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.”

The evidence from women's professional athletics, however, is daunting. Five years after the launch of the Women's National Basketball Association and a year after the debut of the Women's United Soccer Association, gender equity may still be more politically profitable than financially rewarding. And it turns out that the social engineers are even more wrong in their contention that men and women are equally interested in watching sports. Many girls and women are 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 driving force. 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.

This gender gap in sportsmania shows up in support for coverage of women's sports in the print media as well. Whereas *Sports Illus-*

trated 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." 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.

LESS IS LESS

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 44 men's positions in order to reach male-female proportionality. 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, activists like 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.

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.

The equation of race preferences with Title IX sex preferences 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 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. 🐭