

WOMEN'S FOOTBALL DOWN THE FIELD: STRATEGIES AND MODELS FOR INTERCOLLEGIATE IMPLEMENTATION

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Numbers never lie. In 1970, females participating in intercollegiate sports numbered around 16,000¹. By 2012, that figure had grown to about 200,000.² In 1972, females participating in interscholastic high school sports numbered fewer than 300,000.³ By 2009, that figure had soared to more than 3 million.⁴ These numbers show that 42 years after President Nixon signed Title IX into law, one thing is unmistakably clear: The simple but sweeping 37 words codified at 20 U.S.C. § 1681 have been a tangible success in advancing female participation in athletics at all levels. However, one question persists: Is Title IX being effected in the best possible way it can?

Policy interpretations show that schools can achieve Title IX compliance by satisfying one of three methods: (1) the proportionality test, (2) the expansion test, or (3) the interests test.⁵ Simply stated, the gold standard for Title IX is that athletic participation by males and females in an institution should proportionately reflect their respective enrollment numbers, and, if not, schools should be doing whatever they see fit to move in that direction until the interests of the underrepresented student group (generally

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1. R. Vivian Acosta & Linda Jean Carpenter, *Women in Intercollegiate Sport: A Longitudinal, National Study Thirty-Five Year Update 1977-2012*, 1 (2012), available at <http://acostacarpenter.org/AcostaCarpenter2012.pdf>.

2. *Id.*

3. *Id.*

4. *Id.*

5. JODY FEDER, CONG. RESEARCH SERV., RL31709, TITLE IX, SEX DISCRIMINATION, AND INTERCOLLEGIATE ATHLETICS: A LEGAL OVERVIEW 6 (2012).

women) is met. In their article “A Strategy for Strengthening Interscholastic Girl’s Football and Starting Intercollegiate Women’s Football: A Sport Whose Time has Come,” Smith, Demery, and Torrez allude to the “Title IX conundrum,” stating that, despite so much progress in the last 42 years, interscholastic and intercollegiate sports still face a serious gender equity issue. In fact, this issue clearly manifests itself in the seemingly optimistic numbers mentioned above. While 200,000 females participating in intercollegiate athletic programs sounds like a grand achievement, this number represents only 43 percent of females in undergraduate programs. Considering that 57 percent of all undergraduates in the nation are women, this number falls woefully short of “gold standard” compliance.⁶ Numbers never lie.

Smith, Demery, and Torrez also discuss that, in an effort to satisfy the proportionality test, institutions eliminate non-revenue-producing men’s sports rather than introduce new athletic programs for women. The primary factor behind these decisions is invariably budgetary concerns, and, in a less than stellar economic landscape, schools would rather slash their athletic budget to meet compliance than spend more. Not only are these actions in conflict with the anti-discriminatory spirit of Title IX but they also foster an undesirable and hostile view of Title IX, one that seeks to revoke long-standing men’s programs instead of promoting new women’s programs. These issues demonstrate that, although Title IX has been extremely successful thus far, there are still some glaring side effects that call for serious action. It is partly because of these issues that Smith, Demery, and Torrez advance the need for collegiate recognition of women’s football.

6. Arthur Bryant, *Title IX at 40: Most Schools Still Aren’t in Compliance*, THE CHRISTIAN SCIENCE MONITOR (June 27, 2012), <http://www.csmonitor.com/Commentary/Opinion/2012/0627/Title-IX-at-40-Most-schools-still-aren-t-in-compliance>.

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But why women's football? The authors contend that, in light of noncompliant and "cut-compliant" schools, implementing women's football programs provides a uniquely economically viable option to satisfy all three tests under Title IX while placing the least amount of pressure on men's programs. For instance, many other women's sports being introduced to satisfy Title IX like golf and lacrosse provide minimal roster spots at a disproportionately high cost.⁷ This causes budget-conscious institutions to cut long-standing non-revenue-producing men's sports.⁸ Football, however, has the potential to offer more than 50 roster spots with minimal overhead, because the women's team could theoretically use all of the men's facilities. Additionally, because NCAA football is currently the second most popular sport in the nation (only behind the NFL), women's college football has the distinct advantage of possibly piggybacking its counterpart's success, not only becoming economically self-sustaining but surpassing even the most popular women's college sport in the nation: NCAA basketball.⁹

However, the success of women's intercollegiate football may only have a chance of reaching such lofty heights with careful and studied implementation strategies. Taking into consideration the authors' numerous merited suggestions for implementing women's intercollegiate football, there are a few strategies discussed in their article

7. Erin Irick, NCAA Sports Sponsorship and Participation Rates Report, NCAA 10-73 (2012), *available at* <http://www.ncaapublications.com/productdownloads/PR1314.pdf>.

8. Alison Kasic, *Title IX Enforcement Could Devastate High School Sports*, U.S. NEWS & WORLD REPORT (Feb. 16, 2011, 1:50 PM), <http://www.usnews.com/opinion/articles/2011/02/16/title-ix-enforcement-could-devastate-high-school-sports>.

9. Taylor Tepper, *How College Football Sacked the NBA and MLB*, TIME (Aug. 28, 2014), <http://time.com/money/3198130/college-football-popularity/>.

that deserve further, more detailed support: namely, becoming an emerging sport in the NAIA and NCAA, as well as utilizing private support from an established league like the NFL. These arguments are merited not only because of their sound reasoning and positive social, cultural, and economic impact on intercollegiate athletics, but most importantly because such efforts have already succeeded in the past with women's basketball. Using the emerging sports model of NAIA and NCAA women's basketball, along with the private support model of the NBA, the WNBA, NBA Global, and iHoops.com (not to mention the X factor that is college and professional football's enormous popularity), the success of implementing women's college football should be more of a guaranteed touchdown than a long-shot Hail Mary.

With the growing success of girl's interscholastic flag and tackle football, the next logical step is to implement women's tackle football on the collegiate level. However, with many institutions concerned about funding and budget constraints, the concept must be sold as a low-risk, high reward solution to the Title IX conundrum. Because all schools should err on the side of equality when it comes to Title IX, all schools would be incentivized to take a hard look at whether women's football could help solve any lingering sex-discrimination issues in their athletics departments. The NAIA would most likely be the best starting point for such action, because of its historically progressive track record.

In 1951, the NAIA became the first collegiate association to admit an African-American member institution, and two years later it was the first to accept an African-American college into a national intercollegiate

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championship tournament.¹⁰ By the end of the decade, black colleges were winning national championships, and in order to stay competitive the NCAA had no choice but to follow suit and break the color barrier within its association, as well.¹¹ In 1980, just eight years after Title IX was signed into law, the NAIA broke new ground by being the first collegiate association to showcase female athletic championship tournaments for 10 sports, including basketball.¹² Again, this preceded the NCAA's introduction of a women's basketball championship by one year.

The NAIA's willingness to blaze progressive trails in collegiate athletics is the main reason student interest surveys, feasibility studies, and implementation should begin with that association. Furthermore, the NAIA's broad base of 23 conferences, more than 260 colleges and universities (89 of which have men's football programs) and 60,000 student-athletes makes it well suited to provide plentiful opportunities for girls in the many current interscholastic high school football programs to make the transition into intercollegiate competition at the college/university and conference of their choice.¹³ It is the path of least resistance to widespread recognition. Most important, however, history has taught us that even though the NAIA is far smaller and attracts a much dimmer spotlight than its bigger, flashier rival, the NCAA, the NAIA is an indispensable vehicle for creating awareness, pushing the NCAA toward change when the NCAA fails to

10. Charles Martin, *Black Colleges and the NCAA Basketball Tournament*, UNIV. OF ILL. PRESS (Mar. 16, 2011), <http://www.press.uillinois.edu/wordpress/?p=7548>.

11. *Id.*

12. *About the NAIA*, NAIA, http://www.naia.org/ViewArticle.dbml?DB_OEM_ID=27900&ATCLID=205323019 (last visited Nov. 27, 2014).

13. *Id.*

push itself. Similar to the manner in which the NAIA's acceptance of black colleges and institution of women's championship sports acted as a precursor to the NCAA's analogous actions, so too may the NAIA once again prove to be a catalyst for the NCAA to acknowledge a monumental shift in the landscape of intercollegiate athletics: now, that the time of women's football has arrived.

The introduction and promotion of women's football at the intercollegiate level could also benefit from a private support model that has been successfully practiced by the NBA over the past few decades. By supporting the growth of youth, international, and women's basketball, former commissioner of the NBA David Stern has not only grown the once stale and stifled organization into a multi-billion-dollar global brand but also successfully facilitated the creation of the WNBA, the nation's most popular and successful women's sports league.¹⁴ For intercollegiate women's football to get off the ground and potentially spawn a high-profile, economically sustainable professional league, there is no question that the high-revenue-producing NCAA football programs—and the NBA's far more successful football counterpart, the NFL—need to be integral pieces of the puzzle.

With a solid interscholastic base under its belt, by 1997 female basketball had been enjoying steady growth in the intercollegiate arena for about 16 years since the inception of the first NAIA women's basketball championship tournament. Fledgling independent women's professional basketball leagues like the ABL existed, but they had no big financial machine behind them to help

14. William C. Rhoden, *Amid Successes, W.N.B.A. Is Still Facing Challenges*, N.Y. TIMES (Oct. 7, 2012), http://www.nytimes.com/2012/10/08/sports/basketball/amid-successes-wnba-is-still-facing-challenges.html?pagewanted=all&_r=0.

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incentivize participation. That was when David Stern seized the opportunity to green-light the project he and current commissioner Adam Silver had been planning for years: the WNBA.¹⁵ Stern and Silver believed that, as the torchbearers of basketball popularity, they had the moral obligation to expand opportunities for women in the sport, but they also realized that the financial rewards could be significant.¹⁶ As part of its financial model, the WNBA launched its inaugural season in the summer of 1997 with all eight teams owned and operated entirely by NBA franchises (the league has since expanded to allow non-NBA members to own and operate franchises outside of NBA cities).¹⁷ The WNBA currently fields 144 players on 12 teams and wrapped its 18th season in the summer of 2014, solidifying its place as the most successful women's sports league in the nation's history.

The NBA's financial model of creating the WNBA could easily be replicated by schools with successful NCAA football programs. For example, in the 2012-2013 season, the top 10 revenue-producing college sports programs (all men's football) combined to total roughly \$1.2 billion.¹⁸ This figure is roughly equal to 25 percent of the revenue earned by the entire NBA (30 teams) during the 2012-2013 season (\$4.5 billion).¹⁹ If the NBA can

15. Mechelle Voepel, *Stern was 'Mastermind' Behind WNBA*, ESPN (Jan. 31, 2014), http://espn.go.com/wnba/story/_/id/10382007/wnba-nba-commissioner-david-stern-changed-women-basketball.

16. *Id.*

17. *Id.*

18. Nitin Bhandari, *Top 10 High-Revenue College Sports Programs*, THERICHEST (Dec. 20, 2013), <http://www.therichest.com/sports/top-10-high-revenue-college-sports-programs/>.

19. *National Basketball Association Total League Revenue from 2001/02 to 2012/13 (in Billion U.S. Dollars)*, STATISTA,

financially justify the establishment of an eight-team women's league like the WNBA to its 30 private owners groups, there is no reason colleges and universities with similar revenues should not be able to come together and financially justify women's intercollegiate football. Strong leadership and a bold vision is what birthed the WNBA in 1997, and the NBA's continued support is a key ingredient in what has made that league the national success it is today. The NCAA and the NFL should follow suit by first evaluating the growing interest in women's football today and then taking it upon themselves to promote the sport.

The moral rewards and economic opportunities Stern and Silver cite as their motivation for taking a chance on the WNBA are the same factors that they considered when launching other initiatives like NBA Global and iHoops.com to help expand accessibility of basketball to groups of people that previously had no such access. While NBA Global began with its eye on broadcasting games to other countries in an effort to increase the presence of basketball around the world, it has since grown into its own multibillion-dollar worldwide basketball player factory. With large-scale promotional and developmental programs in China, India, and a dozen other countries, the NBA's global efforts have produced international superstars, contributing to the inclusion of 92 players from 39 countries and territories to NBA team rosters in the 2013-2014 season.²⁰ Additionally, in 2009, the NBA fostered a partnership with the NCAA, Nike, and Adidas to introduce iHoops.com, an online platform dedicated to developing

<http://www.statista.com/statistics/193467/total-league-revenue-of-the-nba-since-2005/> (last visited Nov. 27, 2014).

20. *NBA Global Map*, NBA, <http://www.nba.com/global/map/> (last visited Nov. 27, 2014).

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programs to improve the quality of youth basketball.²¹ These initiatives have generated real and tangible benefits to the individuals who participate as well as to the NBA, and that is exactly what high-revenue NCAA football schools should consider when lobbied to promote women's football in the future. The moral reward of promoting basketball abroad as well as providing developmental opportunities for women and children domestically is the archetype that advocates of women's football should adopt with regard to the NCAA and the NFL. Moral considerations provided the backbone for the NBA-NCAA iHoops.com relationship and the NFL should take a page from the NBA's moral and financial blueprint to bring new fans and new participants to the sport of football.

Today tens of thousands of young girls are participating in interscholastic football leagues across the nation; however, when they graduate from high school they will most likely have to take their helmets off and walk off the field, never to play competitively again. While Title IX compliance continues to be ignored by colleges and universities, and complaints about budgetary concerns cause men's programs to be cut rather than women's programs added, the implementation of intercollegiate women's football provides a moral and financially sound answer to these long-standing legal and social issues. Following the example of the NAIA's progressive push for racially-integrated and female intercollegiate basketball, as well as the NBA's moral and financial blueprint in forming the WNBA and developing youth and international basketball, the NAIA, NCAA, and NFL should all shoulder some responsibility to provide opportunities for women's

21. *NCAA, NBA Join Forces to Form iHoops, a Youth Initiative*, NBA (June 9, 2009, 8:49 PM), <http://www.nba.com/2009/news/06/09/ihoopsrelease/>.

football in college. The lines are drawn, the lights are burning, the plays have been called. All that's left is for the players to take the field.