

A STRATEGY FOR STRENGTHENING INTERSCHOLASTIC GIRLS' FOOTBALL AND STARTING INTERCOLLEGIATE WOMEN'S FOOTBALL: A SPORT WHOSE TIME HAS COME*

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I. INTRODUCTION

In 1997, Professor Rodney K. Smith, one of the co-authors of this article, made a presentation at the South Texas College of Law arguing that starting women's football at the high school and collegiate level could promote gender equity on multiple levels and solve what he referred to as the "Title IX conundrum."¹ The initial response to the presentation was generally, "You're kidding, right?"

Smith was serious, and girl's football at the high school level soon began a pattern of dramatic growth, beginning in Florida, where it was first recognized as a high school sport.² In the 1990s, under a legislative mandate, Florida began publishing high school athletic program participation figures by gender.³ Not surprisingly,

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1. Rodney K. Smith, *Solving the Title IX Conundrum with Women's Football*, 38 S. TEX. L. REV. 1057, 1061 (1997).

2. *Girls Flag Football*, USA FOOTBALL, <http://usafootball.com/programs/girls-football> (last visited Nov. 20, 2014).

3. See Katie Thomas, *No Tackling, but a Girls' Sport Takes Some Hits*, N.Y. TIMES (May 15, 2010),

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given the popularity in Florida of high school boys' football—a sport that requires a large number of participants—Florida's athletic participation by boys far exceeded participation by girls.⁴ In the 1996-97 school year, the year before Florida started girls' football, 97,621 boys and 61,216 girls participated in high school athletics.⁵ In an effort to provide more participation opportunities for girls, Florida did a survey of interest in possible sports on the part of girls (a legitimate practice under Title IX)⁶ and discovered that football was preferred over other options.⁷

By 2002, there were enough football teams for girls in Florida for the state to host its first statewide championship in girls' football.⁸ Girls' football quickly became one of the fastest growing sports in Florida girls' athletics.⁹ A decade later, in 2013-14, 210 Florida schools fielded competitive girls' football teams at the interscholastic level, with 6,287 participants.¹⁰ Additionally, in the 2013-14 school year, 37 girls also participated by playing boys' interscholastic football in Florida.¹¹ The number of girls participating in girls' flag

<http://www.nytimes.com/2010/05/16/sports/16flag.html?pagewanted=all>.

4. *See id.*

5. 1996-97 *Sports Participation Survey*, FHSAA.ORG, http://www.fhsaa.org/sites/default/files/orig_uploads/participation_survey/1996_97.htm (last visited Nov. 10, 2014)..

6. Nat'l Ctr. for Educ. Statistics, *User's Guide to Developing Student Interest Surveys Under Title IX*, NCES at 15-22 (Mar. 2005), available at <http://nces.ed.gov/pubs2005/2005173.PDF>.

7. Thomas, *supra* note 3.

8. *Id.*

9. *See id.*

10. 2013-14 *Sports Participation Survey*, FHSAA.ORG, <http://www.fhsaa.org/node/16729> (last visited Oct. 31, 2014).

11. *Id.*; see also *Florida Girl Plays QB in Boys' Game*, <http://msn.foxsports.com/collegefootball/story/florida-high-school-girl-plays-qb-boys-varsity-game-erin-dimeglio-083112>, FOX SPORTS (last

football per team was also the highest of any girls' sport, with an average of 27.65 girls per team.¹² The next closest girls' sport, in terms of participation, was lacrosse.¹³ Softball, in turn, a very popular sport at the interscholastic and intercollegiate levels, has fewer than 20 girls per team in Florida.¹⁴

Professor Smith argued that starting women's intercollegiate and girls' interscholastic football could increase participation by girls and women and help solve the Title IX and gender equity problem faced by interscholastic and intercollegiate institutions alike. The Florida figures certainly evidence how girls' football has increased participation for girls and helped schools in their efforts to comply with Title IX, by providing more opportunities for girls. Similar programs have been sanctioned and have enjoyed success in Alaska,¹⁵ New York City, Washington, D.C.,¹⁶ San Francisco,¹⁷ New

updated June 6, 2014) (discussing Erin DiMeglio making Florida high school sports history in 2014 as the first girl to play quarterback in a Florida high school regular season game); *see also* Eric Adelson, *Six Mile: Prep Football Player Monique Howard May be Detroit's Comeback Story of the Year*, THEPOSTGAME (October 25, 2011, 5:06 PM), <http://www.thepostgame.com/blog/phenom/201110/six-mile-prep-football-player-monique-howard-may-be-detroits-comeback-story-year>.

12. *See 2012-13 Sports Participation Survey*, FLORIDA HIGH SCH. ATHLETIC ASS'N, <http://www.fhsaa.org/node/12628> (last visited Nov. 23, 2014).

13. *See id.*

14. *See id.*

15. Michelle Smith, *Flag Football Takes Hold in Anchorage*, ESPNW (Oct. 11, 2012), <http://espn.go.com/espnw/news-commentary/article/8485837/espnw-flag-football-takes-hold-anchorage>.

16. Walter Villa, *A Touchdown for Girls' Sports?*, ESPN HIGH SCH. SPORTS (June 21, 2012, 1:30 PM), http://espn.go.com/high-school/girl/story/_/id/8080354/flag-football-growing-high-school-sport-girls.

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Orleans,¹⁸ Atlanta, Chicago, Charlotte, California, Indiana, Pennsylvania, Massachusetts, Tennessee,¹⁹ Texas,²⁰ and Clark County in Nevada.²¹ The recent experience in Clark County, Nevada, illustrates how effective and successful starting girls' football can be. The Clark County school district, which includes Las Vegas, is the largest school district in Nevada and is the fifth largest school district in the United States.²² Clark County started girls' flag football in 2012, in response to an official complaint that it was providing too few opportunities for girls under Title IX.²³ The School Board commissioned a survey and discovered that girls wanted to play football.²⁴ The Board also discovered that the cost of providing opportunities in

17. Jeremy Balan, *San Francisco Section Starts up Girls' Flag Football League*, SFEXAMINER (Apr. 11, 2013), <http://www.sfexaminer.com/sanfrancisco/san-francisco-section-starts-up-girls-flag-football-league/Content?oid=2336497>.

18. Joe Frollo, *New Orleans High Schools Offering Flag Football to Girls for First Time*, USA FOOTBALL (Oct. 6, 2010, 5:56 AM), <http://usafootball.com/news/players/new-orleans-high-schools-offering-flag-football-girls-first-time>.

¹⁹. USA FOOTBALL, *supra* note 2.

²⁰. *Girls Flag Football*, GIRLS FLAG FOOTBALL, <http://www.girlsflagfootball.org> (last visited Nov. 10, 2014).

21. Ray Brewer, *New Sport Allows Girls to Thrive on Gridiron, Try Hand at Something Different*, LAS VEGAS SUN (Nov. 28, 2012, 2:05 AM), <http://www.lasvegassun.com/news/2012/nov/28/girls-flag-football-makes-its-debut/>.

22. See Paul Takahashi, *Record Number of Students Packing Clark County Schools*, LAS VEGAS SUN (Sept. 24, 2013, 12:23 PM), <http://www.lasvegassun.com/news/2013/sep/24/record-number-students-packing-clark-county-school/>.

23. Trevon Milliard, *School District to Offer Flag Football for Girls to Comply with Title IX Complaint*, LAS VEGAS REVIEW-JOURNAL (Aug. 9, 2012, 8:20 PM), <http://www.reviewjournal.com/news/education/school-district-offer-flag-football-girls-comply-title-ix-complaint>.

24. *Id.*

football was less than opportunities in other sports, both in terms of capital (schools already have football fields and facilities) and cost (uniforms, travel, etc.).²⁵ The cost was limited and the interest on the part of girls was overwhelming, with one school reporting 125 girls competing for 15 spots on the team.²⁶ Thirty-seven schools (representing all the schools in the district that have athletic programs) adopted girls' football,²⁷ quickly providing opportunities for more than 500 girls in the district.²⁸ The first recognized championship in girls' football in Clark County was held in the winter of 2013.²⁹ The Clark County effort is in its infancy, but it seems to be growing at a rate that parallels the experience in Florida, which evidences a commitment on the part of the School Board to deal with gender equity issues and provide girls with the benefits of more opportunities to participate in athletics.

Sadly, far more girls and women are being deprived of the opportunity to participate in football, a sport that is very popular with girls and women at all levels.³⁰

25. See John Ryan, *High School Varsity Flag Football: Why not Team Handball?*, TEAMHANDBALLNEWS.COM (Feb. 18, 2013 6:58 PM), <http://teamhandballnews.com/wordpress/2013/02/high-school-varsity-flag-football-why-not-team-handball/>.

26. Erin Buzuvis, *Nevada School District Starts Girls' Flag Football*, TITLE IX BLOG (Nov. 28, 2012, 9:17 AM) <http://title-ix.blogspot.com/2012/11/nevada-school-district-starts-girls.html>.

²⁷. Milliard, *supra* note 23.

28. Ray Brewer, *New Sport Allows Girls to Thrive on Gridiron, Try Hand at Something Different*, LAS VEGAS SUN (Nov. 28, 2012, 2:05 AM), <http://www.lasvegassun.com/news/2012/nov/28/girls-flag-football-makes-its-debut/>.

29. Ray Brewer, *Palo Verde girls Experience the Joys of Winning a Championship After Downing Silverado for Flag Football Title*, LAS VEGAS SUN (Feb. 13, 2013, 10:00 PM), <http://www.lasvegassun.com/news/2013/feb/13/palo-verde-captures-first-girls-flag-football-cham/>.

30. See Cassandra Negley, *She Can—and Will—Play Football (Whether You Watch or Not)*, SPORTING NEWS,

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Currently, there are no school-sponsored girls' tackle football teams at any level,³¹ although a slowly increasing number of girls are participating in boys' or men's tackle football.³² As noted above, girls' high school noncontact, flag football is growing, with an increasing number of states recognizing it as a sanctioned sport, and with a growing number of club and intramural programs.³³

Youth flag football for girls is also on the rise, providing more girls with the opportunity to play football at an early age and increasing the demand for interscholastic and intercollegiate opportunities.³⁴ This growth in youth football is being fueled by cooperation between USA Football and the National Football League (NFL).³⁵ Driven as it is by economic concerns, the NFL fully recognizes that girls and women provide an opportunity for market growth for their product: competitive football.³⁶ The NFL is responding to the very demographic that the National Collegiate Athletic Association ("NCAA") and its members are ignoring—girls and women who enjoy football, as spectators and players.

<http://www.sportingnews.com/nfl/story/2014-05-14/womens-football-leagues-iwfl-legends-football-league-wnba-girls-usa-football-world-championships-jennifer-welter-low-viewership> (last updated May 14, 2014, 3:05 PM).

31. *See id.*

32. Harold Gutmann, *Girls Tackling Football Across the Country*, ESPN (Oct. 18, 2011, 8:31 AM), http://espn.go.com/blog/high-school/girl/post/_id/462/girls-tackling-football-across-the-country (noting girls playing boys' high school tackle football in Washington, New York, Michigan, and Pennsylvania).

33. Villa, *supra* note 16.

34. *Id.*

35. USA FOOTBALL, *supra* note 2.

36. Ira Boudway, *How the NFL Woos Female Fans*, BLOOMBERG BUSINESSWEEK (Sept. 5, 2013), <http://www.businessweek.com/articles/2013-09-05/how-the-nfl-woos-female-fans>.

While some girls are receiving the opportunity to play competitive football for their schools, women who want to play football are not having their interests met. This is clearly true at the intercollegiate level, where women have been given *no* opportunities to participate in competitive, intercollegiate women's football.³⁷ In a few instances, high schools³⁸ and colleges³⁹ permit girls and women to participate on men's teams, but women often must litigate for the opportunity to play on a men's team.⁴⁰ Women's participation has not come easy at the interscholastic level and is virtually nonexistent at the intercollegiate level.⁴¹ This is unfortunate for the girls and women who long to participate in football and for schools and universities that continue to deal with serious gender equity and Title IX issues, due to the fact that far fewer girls and women participate in interscholastic and intercollegiate athletics than boys and men.⁴²

37. See Negley, *supra* note 30.

38. See, e.g., Eric Adelson, *Six Mile: Prep Football Player Monique Howard May Be Detroit's Comeback Story of the Year*, THEPOSTGAME (Oct. 25, 2011, 5:06 PM),

<http://www.thepostgame.com/blog/phenom/201110/six-mile-prep-football-player-monique-howard-may-be-detroits-comeback-story-year> (Monique Howard was allowed to participate on her school's football team, presumably because she did not have to litigate to participate).

39. See *Mercer v. Duke Univ.*, 401 F.3d 199 (4th Cir. 2005); see also Marisa Kabas, *College Football's First Female Defensive Back Says: 'Never Play Scared'*, TODAYNEWS (June 11, 2014, 12:31 PM), <http://www.today.com/news/college-footballs-first-female-defensive-back-says-never-play-scared-2D79789891>.

40. See, e.g., *Lantz v. Ambach*, 620 F. Supp. 663 (S.D.N.Y. 1985) (holding that a female student-athlete should be able to participate on the high school's men's football team, on Equal Protection Clause grounds).

41. Villa, *supra* note 16.

42. See *Title IX and Athletics: Proven Benefits, Unfounded Objections*, NAT'L COALITION FOR WOMEN & GIRLS IN EDUC., at 7-9, <http://www.newge.org/TitleIX40/Athletics.pdf> (last visited Nov. 10, 2014).

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Not only will the sanctioning of women's football benefit girls and women, but it may also increase men's opportunities in athletics. Currently, men's non-revenue-producing sports are being cut at the collegiate and high school levels to make room for women's sports to achieve Title IX compliance, which demands more participation opportunities for women.⁴³ Adding women's football to an institution's athletic program can lessen the pressure on an institution to eliminate men's programs.⁴⁴

Recognizing intercollegiate women's football will open up athletic opportunities for *all* women.⁴⁵ Unlike the NCAA's identified emerging sports, which include equestrian, sand volleyball and rugby,⁴⁶ football provides opportunities to all women, regardless of economic status or class. High schools and colleges generally have athletic fields that might be used for girls' or women's football, particularly if seasons of play can be adjusted. Virtually all girls and women in the United States have been exposed to football and will provide a stronger fan-base than other suggested emerging sports. Too many emerging sports only benefit the upper and middle classes, which have access to things like horses and swimming pools and a culture that supports sports like lacrosse and field hockey. Lower economic classes often have access limited to fields and athletic facilities; thus, they are at a disadvantage in many emerging sports. Football, and the fields upon which it is played, is more accessible to a larger and more representative group of girls and women than other suggested emerging sports. It also has the benefit of being

43. Smith, *supra* note 1, at 1058-59.

44. *Id.* at 1059.

45. *Id.* at 1073-74.

46. *Emerging Sports for Women*, NCAA,
<http://www.ncaa.org/about/resources/inclusion/emerging-sports-women>
(last visited Nov. 9, 2014).

less expensive, as Clark County discovered in evaluating the costs and benefits of various sports it was considering, in its effort to expand athletic participation for girls.⁴⁷

This article calls for the expanded recognition of girls' interscholastic football, but its emphasis is on starting women's intercollegiate football. In fact, perhaps the greatest impediment to starting girls' interscholastic competitive football is that the sport is not played, and there are no scholarships offered, at the intercollegiate level.⁴⁸ Nevertheless, there is increasing recognition of girl's football at the interscholastic level and it is thriving in cities, counties, and states courageous enough to start it, even though there are no scholarship and participation opportunities at the next level.⁴⁹ Such accomplishments will add impetus to the effort to have women's football recognized at the intercollegiate level.

Second, it is time for the NCAA, the National Association of Intercollegiate Athletics ("NAIA"), and the National Junior College Athletic Association ("NJCAA") and their leaders to cease to be reactionary, mere crisis managers, and to do what is right in terms of gender equity by meeting the interests of their women students in participating in intercollegiate athletics in a fair and equitable manner. As the number of women attending colleges and universities continues to grow, and the number of men decreases, the gender gap in terms of participation

47. Ryan, *supra* note 25.

48. See Villa, *supra* note 16, (quoting Neena Chaudrey, senior counsel at the National Women's Law Center: "No one is saying flag football isn't a great sport to play . . . [b]ut if you're going to add a varsity sport, it is relevant if that sport is going to provide the same opportunities as the boys have. In Washington, D.C., all the varsity sports for boys do offer scholarships at the college level. So, to then add flag football as opposed to a sport, like volleyball or soccer, that does allow girls to get college scholarships is not equitable.").

⁴⁹ *Id.*

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in intercollegiate athletics is likely to grow with it.⁵⁰ NCAA Division I schools have made some progress in terms of participation in intercollegiate athletics by women, but a Title IX or gender equity problem remains, through a significant gap in terms of participation, and meeting the interest of potential women student-athletes will continue to be a growing concern.⁵¹

It remains our hope that, working in tandem, interscholastic and intercollegiate athletic associations will take steps to increase athletic participation opportunities for girls and women, by recognizing competitive women's football. The gender equity mandate included in Title IX is in its fifth decade,⁵² and problems persist—problems that could easily be solved by taking steps like the one recommended in this article: adding girls' and women's football as participation options. However, if interscholastic and intercollegiate athletic institutions continue to refuse to remedy their failure to provide gender equity in athletics, thereby meeting the needs of girls and women, then Congress, the state legislatures, and the executive branch

⁵⁰. The Pew Foundation recently reported a growing gender gap between women and men with more women attending college than men in all major demographic areas. Mark Lopez & Ana Gonzalez-Barrera, *Women's College Enrollment Gains Leave Men Behind*, PEW RESEARCH CENTER (Mar. 6, 2014), <http://www.pewresearch.org/fact-tank/2014/03/06/womens-college-enrollment-gains-leave-men-behind>.

⁵¹. *The Battle for Gender Equity in Athletics in Colleges and Universities*, NAT'L WOMEN'S L. CENTER, 1 (June 2012), http://www.nwlc.org/sites/default/files/pdfs/battle_for_gender_equity_in_college_athletics.pdf (last visited Nov. 10, 2014).

⁵². Congress passed Title IX in 1972. It has been very successful in increasing participation by girls and women in intercollegiate and interscholastic athletics; however, in its fifth decade, inequity persists and challenges remain. *Id.*

should intervene and consider mandating girls' and women's football as a possible solution.⁵³

In Part I, this article begins with a background discussion of how institutions currently may achieve Title IX compliance. Part II next discusses the benefits that football participation provides female student-athletes and the societal, associational, and institutional benefits that will accrue if girls' and women's football is implemented. In Part III, this article discusses the various ways that entities can develop women's football and strategies for implementing girls' and women's football, including recognition by the NCAA or the NAIA. Finally, Part IV notes the various obstacles to implementing women's flag football and how they can be overcome.

II. BACKGROUND

Title IX, a federal educational law meant to create equal educational opportunities between men and women, has left its mark on women's athletics. The following is a discussion of Title IX and where America is at now in terms of female interest in women's flag football.

A. Title IX

Title IX was enacted in 1972 to provide equal opportunities for men and women in education, but it did not address extracurricular activities in an educational setting.⁵⁴ Title IX was eventually expanded to cover athletics, and the Office of Civil Rights ("OCR") implemented Title IX regulations.⁵⁵ The OCR, the body in the United States Department of Education that oversees gender equity under Title IX, provided three ways that an

53. Even recommending a study would provide impetus to the recognition effort.

54. Deborah Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 34 U. MICH. J.L. REFORM 13, 46 (2000).

55. *Id.*

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institution could achieve Title IX compliance in athletics.⁵⁶ Under the test, an institution can achieve compliance if it establishes *any* of the three prongs.⁵⁷

1. Substantial Proportionality

The first prong is the “substantial proportionality prong.”⁵⁸ This prong provides that an institution is compliant if it proves participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.⁵⁹ For example, if male enrollment at an institution is 43 percent and female enrollment is 57 percent, then 43 percent of athlete participation must be male and 57 percent must be female. If not, the school does not achieve compliance under this prong. This prong is often very difficult for universities to achieve, because the courts decline to accept any disparity among participation rates.⁶⁰ Very frequently, institutions have a higher male participation rate than male enrollment rate due to offering men’s football programs that sometimes have upwards of 90 roster spots.⁶¹ Thus, disparate participation rates between men and women result. Schools with higher men’s participation rates often will add various women’s emerging sports or eliminate various men’s non-revenue-producing sports to offset these disparate participation rates.⁶²

56. Smith, *supra* note 1, at 1061.

57. *Id.*

58. *Id.*

59. *Id.* at 1061-62.

60. *Id.* at 1062.

61. See Jonathan Zimmerman, *Blame Football, Not Title IX*, L.A. TIMES (Jan. 9, 2014), <http://articles.latimes.com/2014/jan/09/opinion/la-oe-zimmerman-football-title-ix-ncaa-20140109>.

62. Smith, *supra* note 1, at 1059.

2. History and Continuing Practice of Program Expansion

The second prong used to establish compliance requires the institution show a history and continuing practice of program expansion.⁶³ Where the members of one sex have been and are underrepresented among athletes, the institution must show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of the underrepresented sex.⁶⁴ Because women are typically the underrepresented sex, an institution may establish compliance if it is able to show a history and continuing practice of expanding athletic opportunities for women.⁶⁵ There are a number of things that the OCR will look at to determine whether a school has a history and continuing practice of program expansion for women: an institution's record of adding female intercollegiate teams, its record of increasing female participation, and its affirmative responses to requests of students to add or elevate a female sports team.⁶⁶

3. Interests and Abilities of the Underrepresented Sex

The third prong used to establish compliance is determining whether an institution can demonstrate that the interests and abilities of the underrepresented sex have been addressed.⁶⁷ The third prong provides that if an institution cannot establish compliance through prongs one or two, it may establish compliance under prong three if the institution can show that the interests and abilities of the members of the underrepresented sex have been fully and

63. *Id.* at 1061.

64. *Id.*

65. *Id.*

66. *Id.* at 1065.

67. *Id.* at 1061.

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effectively accommodated by the present program.⁶⁸ Under the third prong, the OCR will look to see if the institution has sufficiently met its female students' interests.⁶⁹ The OCR will determine female interest through requests by students to add a sport, requests to elevate a sport from club to varsity status, participation in a particular intramural or club sport, and interviews and surveys of students.⁷⁰

B. Current State of Women's Football

As stated in the introduction, women's football—particularly women's flag football—has become increasingly popular in the United States. The following sections will discuss women's football's popularity at the high school, collegiate, and professional levels.

1. Interscholastic Level

At the interscholastic level, high school girls are regularly playing in “powder puff” games, where a group of girls get together once a year to play football against each other.⁷¹ These games carry with them great enthusiasm for the sport, which bolsters high fan attendance.⁷² In some circumstances, participants sign up months in advance to play in a game and fans must wait hours in line to purchase tickets.⁷³

In addition to “powder puff” games, there are also hundreds of high school girls across the country playing tackle football on men's teams because their schools do not

68. *Id.*

69. *Id.* at 1065-66.

70. *Id.*

71. *Id.* at 1057.

72. *Id.* at 1056-57.

73. *Id.* at 1057-58.

offer women's football.⁷⁴ In the 2009-10 season, 1,249 girls played on their high school men's teams.⁷⁵ Indeed, there is enough female interest evident by women playing on men's teams to warrant playing an all-star game made up of the top 80 girls across the country.⁷⁶ Additionally, there are also football clinics specifically designed for female football players.⁷⁷

As noted previously, there has been prolific interest in women's flag football in high schools throughout the nation.⁷⁸ In 1998, the Florida High School Athletic Association ("FHSAA") began offering girls' flag football as a varsity sport.⁷⁹ In its first year, there were only 17 schools with 860 girls participating.⁸⁰ When flag football became state-sanctioned in 2003, FHSAA began offering a state tournament playoff at the end of the year.⁸¹ Today, approximately 6,300 girls are participating,⁸² a more than 700-percent increase in about 15 years. Interest is so high that some schools are able to field freshman, junior varsity, and varsity teams—and still must make cuts.⁸³ Other states have followed Florida's lead. In 2005, the Anchorage

74. Jane McManus, *For Women, Tackling NFL is a Long Shot*, ESPN W (May 11, 2011), <http://espn.go.com/espnw/news/article/6516042/women-pros-women-tackling-nfl-long-shot>.

75. *Id.*

76. Kate Fitzgerald, *Silver Bullets Team Has Baseball Fans Rooting: Football is Next*, ADVERTISING AGE (Sept. 4, 1995), <http://adage.com/article/news/events-promotions-women-diamonds-silver-bullets-team-baseball-fans-rooting-football/85908>.

77. Smith, *supra* note 1, at 1070.

78. *Supra* at 1.

79. *Girls Flag Football*, NFL FLAG, www.nflflag.com/about/girls_flag (last visited Nov. 24, 2014).

80. *Id.*

81. Thomas, *supra* note 3.

82. *2013-14 Sports Participation Survey*, FHSAA.ORG, <http://www.fhsaa.org/node/16729> (last visited Oct. 31, 2014).

83. *Id.*

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Alaska School District introduced flag football after positive responses from student surveys.⁸⁴ In spring 2012, the Public Schools Athletic League ("PSAL") in New York City began offering girls' flag football as a varsity sport.⁸⁵ Clark County in Nevada also started girls' football that was so successful it was able to hold a championship game in the first year, with some schools reporting more than 100 girls were interested in participating.⁸⁶ In other states that have not begun offering flag football as a girls' varsity high school sport, one can find a growing number of girls' flag football club teams, from junior high through high school.⁸⁷ USA football and the NFL have partnered to provide flag football programs as an outlet for girls who do not have high school teams to participate on, and more than 25,000 girls in 19 cities are currently participating in these programs.⁸⁸

2. Intercollegiate Level

At the intercollegiate level, there are no university-sponsored varsity women's football teams.⁸⁹ While women such as Heather Mercer and Katie Hnida have made rather infamous, scandal-driven headlines on men's football teams,⁹⁰ many women who play at the college level are in

84. NFL FLAG, *supra* note 79.

85. Carl Campanile, *Gridder Team's Hits and Misses*, N.Y. POST (July 8, 2011, 4:00 AM), <http://nypost.com/2011/07/08/gridder-teams-hits-and-misses>.

86. Brewer, *supra* note 29.

87. NFL FLAG, *supra* note 79.

88. *Id.*

89. *See Division I Championships*, NCAA, <http://www.ncaa.org/championships?division=d1> (last visited Nov. 24, 2014).

90. Both women excelled on the football field but faced mistreatment while participating on their university's football teams, leading to scandals that overshadowed their successes. Heather Mercer was a place kicker at Duke University who was eventually

the headlines for their great successes.⁹¹ In 1997, Liz Heaston was the first to score in a Division I college football game.⁹² At Framingham State College, Ashley Baker was well known for her ability to kick multiple field goals.⁹³ In 2001, Amanda Miller went 9-for-10 on extra point kicks in three games as starting kicker.⁹⁴

While not many women are playing on their men's football teams, many schools offer women's flag football as an intramural or club sport that bolsters high levels of participation.⁹⁵ There are national flag football tournaments every year, sponsored by the National Intramural-Recreational Sports Association, that are very competitive.⁹⁶

discriminated against and kicked off the team. She won in court when she sued for discrimination. *See* *Mercer v. Duke Univ.*, 401 F.3d 199, 212 (4th Cir. 2005). Katie Hnida alleged that she was raped by a trusted male teammate. Tully Corcoran, *Kate Hnida 'Horrificed and not Surprised' by Jameis Winston Report*, FOX SPORTS (Apr. 17, 2014, 4:50 AM), <http://www.foxsports.com/college-football/story/katie-hnida-former-kicker-colorado-scandal-not-surprised-jameis-winston-investigation-041714>.

91. *See, e.g., Female Football Player Makes History*, ABC NEWS (Dec. 28, 2002), <http://abcnews.go.com/GMA/story?id=125488&page=1#.TscWjZyvMdM>.

92. *Id.*

93. John Hilliard, *College's First Woman Football Player Loves the Game*, METROWEST DAILY NEWS (Nov. 2, 2007, 2:01 AM) <http://www.metrowestdailynews.com/article/20071102/News/311029841>.

94. *A History of Girls Playing Tackle Football*, <http://www.angelfire.com/sports/womenfootball/princesses/timeline.html> (last updated Jan. 10, 2004).

95. *NIRSA Championship Series*, NIRSA, https://www.nirsa.org/wcm/Play/Series/wcm/_Play/Series/Series.aspx?hkey=97f607da-2a73-479c-bfeb-866444fbec0f (last visited Nov. 28, 2014).

96. *Id.*

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3. Professional Level

At the professional level, women's interest also continues to grow.⁹⁷ Not only is football increasing in popularity in the female viewing market,⁹⁸ women are playing professional tackle football.⁹⁹ There are more than five women's professional tackle football leagues that play nationwide with multiple conferences and the field is currently expanding to include others.¹⁰⁰ More than 1,300 women participate in the Women's Independent Football League alone,¹⁰¹ and the league recently partnered with Team Rebel Direct as its official uniform sponsor.¹⁰²

While the NFL does not sponsor a women's professional football league like the National Basketball Association does with the Women's National Basketball Association, the NFL is aware of its growing female fan

97. Alicia Jessup, *How New Marketing Approaches Helped the NFL Achieve Triple-Digit Growth in Women's Apparel Sales*, FORBES (Nov. 26, 2012, 3:335 PM),

<http://www.forbes.com/sites/aliciajessop/2012/11/26/how-new-marketing-approaches-helped-the-nfl-achieve-triple-digit-growth-in-womens-apparel-sales/>.

98. C. Keith Harrison, *Female Spectators and Influencers: Volume 2*, NFL PLAYER ENGAGEMENT, 7,

https://www.nflplayerengagement.com/media/466069/diversity_inclusion_female_spect_infl_vol2_v7.pdf (last visited Nov. 10, 2014).

99. *See, e.g.*, Women's Football Alliance, WFA, <http://wfafootball.net/> (last visited Nov. 10, 2014).

100. RAUZULU'S STREET, <http://www.rauzulusstreet.com/football/womens/womensfootball.htm> (last visited Nov. 10, 2014).

101. *Roster*, IWFL, <http://www.iwflsports.com/teams/roster/> (last visited Nov. 1, 2014).

102. *WFF Partners with Team Rebel Direct as Official Uniform Supplier*, IWFL, http://www.iwflsports.com/pressroom/news/?article_id=135 (last visited Nov. 1, 2014).

base.¹⁰³ The women's viewing market is the fastest growing domestic viewing market for the NFL.¹⁰⁴ In 2014, "[a]ccording to Nielsen demographic data, 46 [percent] of the Super Bowl viewing audience is female, and more women watch the game than the Oscars, Grammys, and Emmys combined."¹⁰⁵ It may be a financial incentive for the NFL to implement a Women's National Football League or offer financial support in implementing women's football across the country, at the interscholastic and intercollegiate levels, as it has done with youth girls' flag football, because of the high level of interest and money women are investing in professional football.

While there is certainly a high interest in women's flag football at the high school level, there are no school-sponsored varsity college teams, nor professional non-tackle women's football teams. This article is a call for intercollegiate women's flag football.

III. ADDING WOMEN'S FLAG FOOTBALL

There are many benefits to implementing women's flag football at the collegiate level. While many are benefits to the individual student-athlete, there are also substantial benefits for the institution and society as a whole.

103. *NFL's Appeal to Women Gaining Steam; Merch Sales Still Trail MLB, College Gear*, SPORTSBUSINESS DAILY (Feb. 26, 2012), <http://www.sportsbusinessdaily.com/Daily/Issues/2012/02/06/Marketing-and-Sponsorship/NFL-Women.aspx>.

104. Dawn Macelli, *The Female Fan: The NFL's Biggest Domestic Growth Market*, SB NATION (Feb. 25, 2014, 11:36 AM), <http://www.bloggingtheboys.com/2014/2/25/5445906/the-female-fan-the-nfls-biggest-domestic-growth-market>.

¹⁰⁵. Donna Brazile, *Gladiator Sport or a Family Thing: Why are Women so into the Super Bowl?*, CNN OPINION (Feb. 2, 2014, 1:15 PM), <http://www.cnn.com/2014/02/02/opinion/brazile-super-bowl-women/>

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A. To Benefit the Student-Athlete

There are social benefits as well as practical justifications for adding women's football. Participation in athletics, particularly team sports, has a beneficial impact on athletics and on the female athlete.

1. Greater Opportunities for Women in
the Future

Women who participate in athletics on average earn higher salaries than female nonathletes during their first 10 years in the workforce.¹⁰⁶ Studies have also shown that 80 percent of the women designated as key leaders in Fortune 500 companies have a background in sports.¹⁰⁷ Adding women's football to an athletic program would not only provide more athletic opportunities for women, but may also provide more opportunities for a woman's future.¹⁰⁸

Women's football also offers the same benefits that all sports offer women. Participating in women's football builds participants' self-esteem.¹⁰⁹ Football, which is enjoyed by women of all backgrounds, helps women develop their teamwork and communication skills with other women of diverse backgrounds, a diversity reflective of the world of the 21st century.¹¹⁰ As a coach of Edna Karr High School girls varsity flag football in South Florida

106. Stephen Sauer et al., *Beyond the Playing Field: The Role of Athletic Participation in Early Career Services*, 42 PERSONNEL REV. 644, 655-56 (2013).

107. See Norma V. Cantu, U.S. Dep't of Educ. Assistant Sec'y for Civil Rights, Remarks at NCAA Title IX seminar: Athletics Experience Vital to Both Sexes (April 20, 1995), in THE NCAA NEWS (Apr. 26, 1995), at 4.

108. See *id.*

109. Todd A. Migliaccio & Ellen C. Berg, *Women's Participation in Tackle Football: An Exploration of Benefits and Constraints*, 42 INT'L REV. FOR THE SOC. OF SPORT 271, 284 (2007).

110. *Id.* at 276.

notably put it, “These girls have teamwork; they have one another’s backs and they have a close bond. . . . When you hear them talk it’s always about ‘us’ and it’s never about ‘me.’”¹¹¹ Communication and the ability to work as a team are life skills necessary for future careers and relationships.¹¹²

2. Greater Access to Women’s Flag Football Than Other Emerging Sports

Women’s football offers more female athletic opportunities and more access to these opportunities than any of the emerging sports.¹¹³ Sports like synchronized swimming, equestrian, and sand volleyball are typically only accessible for a small segment of women, largely of wealthy socio-economic backgrounds, due to the high cost of participation these sports demand.¹¹⁴ The result is that girls from economically disadvantaged backgrounds, particularly minority females, do not have access to these emerging sports at a young age and are less likely to participate at the intercollegiate level.¹¹⁵ Because they do not have access to training facilities or to the higher league costs at a young age, they are not likely to develop the skills to participate at the collegiate level. Adding the NCAA’s emerging sports to the athletic mix at an intercollegiate institution is unlikely to benefit women from

111. Shelita Dalton, *Edna Karr High School’s Girls Flag Football Team Headed to the Superdome*, THE TIMES-PICAYUNE (Nov. 20, 2011, 6:40 AM), http://blog.nola.com/westbank/2011/11/edna_karr_high_schools_girls_f.html.

112. ANTHONY P. CARNEVALE ET AL., *WORKPLACE BASICS: THE ESSENTIAL SKILLS EMPLOYERS WANT 2* (1st ed. 1990).

113. See Smith, *supra* note 1, at 1073-74.

114. See *id.* (analyzing synchronized swimming, crew, gymnastics, golf, and tennis).

115. See generally *id.*

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disadvantaged socio-economic backgrounds.¹¹⁶ With football enjoyed by all socio-economic backgrounds, races, and ages, adding women's football would create athletic opportunities for *all* women.

3. More Athleticism and Strategy
Involved in Women's Flag Football

Flag football requires a high level of athleticism, but it also involves strategic thinking. Players use a sophisticated playbook, running routes and reading the other team's offense and defense.¹¹⁷ Receivers make diving catches and running backs must avoid their defenders as they spring towards the goal line. Football allows for much more athleticism and strategy than some of the NCAA's emerging sports.

Women's football has legal justifications for its implementation, but it also offers an important set of benefits to a larger number of diverse female student-athletes. Individual, institutional, and societal benefits will not only have an effect on women's initial participation in women's football, but may also benefit them in their future successes as women of leadership in the community.

B. To Benefit the Institution

Not only would women's flag football benefit the student-athlete, it would also benefit the institution. There are a number of benefits—legal, financial, and otherwise—that would justify implementing women's flag football at the intercollegiate level.

116. *Id.* at 1074.

117. Dalton, *supra* note 111.

1. Adding Women's Flag Football to Achieve Title IX Compliance

- a. *Adding Women's Flag Football Achieves Substantial Proportionality*

There is a legal benefit for a collegiate institution to add women's flag football to its athletic program. Implementing women's flag football could achieve Title IX compliance by any of the three prongs: achieving substantial proportionality, showing a history and continuing practice of program expansion, and addressing the interests of the underrepresented sex.

- a. *Adding Women's Flag Football Achieves Substantial Proportionality*

The first prong to achieve compliance under Title IX is the "substantial proportionality prong."¹¹⁸ As stated previously, this prong provides that an institution is compliant if it proves participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.¹¹⁹ Often, institutions find it difficult to achieve compliance under this prong because courts tend to decline to accept any disparity among participation rates caused by men's football.¹²⁰ Thus, disparate participation rates between men and women result. Schools with higher men's participation rates often will add various women's emerging sports or eliminate various men's non-revenue-producing sports to offset these disparate participation rates.¹²¹ However, if women's football were offered, institutions might be able to establish

118. Smith, *supra* note 1.

119. *Id.* at 1061-62.

120. *Id.* at 1062.

121. *See id.* at 1059.

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compliance under the substantial proportionality prong without having to eliminate men's sports or add multiple women's teams.

Women's football could offer as many as 40 roster spots on the high school level and 60 or more at the college level.¹²² These 40 to 60 additional women's participation opportunities would buoy or counter-balance the opportunities that men's football offers. Compared to the various emerging sports institutions are currently adding to their athletic programs, such as women's synchronized swimming, equestrian, and sand volleyball, women's football provides more athletic opportunities for women. An institution's equestrian program would only provide a handful of additional women's athletic opportunities, at significant cost, while women's football would provide 40 to 60, with the major expense being travel.

Women's football is more likely to achieve Title IX compliance under the substantial proportionality prong than if schools were to add other emerging sports. Even if an institution is not able to establish full compliance by adding women's football under the substantial proportionality prong, by doing so it would strengthen its case under the second and third prongs,¹²³ either of which could satisfy Title IX.

*b. Adding Women's Flag Football
Shows a History and Continuing
Practice of Program Expansion*

The second prong used to establish compliance requires the institution show a history and continuing practice of program expansion.¹²⁴ As stated previously,

122. *See id.* at 1064.

123. *Id.*

124. *Id.* at 1061.

because women are typically the underrepresented sex, an institution may establish compliance if it is able to show a history and continuing practice of expanding athletic opportunities for women.¹²⁵ By implementing women's football, institutions would be adding an additional female team, evidence of program expansion for the underrepresented sex. Adding women's football would also create more athletic opportunities for women, showing a continued practice of program expansion for the underrepresented sex.

If a survey of student interest is completed and the interest level of women's football is determined to be high at a particular institution, then an institution that implements women's football would be affirmatively addressing the interest levels of the underrepresented sex. Thus, an institution adding women's football would be able to show compliance under the second prong.¹²⁶

*c. Adding Women's Flag Football
Demonstrates that the Interests
and Abilities of Women are
Being Addressed*

The third prong used to establish compliance is whether an institution can demonstrate that the interests and abilities of the underrepresented sex have been addressed.¹²⁷ Currently, women's football is not a regularly offered club or intramural sport at most universities and no varsity teams exist at the intercollegiate level.¹²⁸ There are universities, however, including Florida State University,

125. *Id.*

126. *Id.*

127. *Id.* at 1061.

128. *College Search*, THE COLLEGE BOARD, <https://bigfuture.collegeboard.org/college-search> (under "Select Filters," follow "Sports & Activities" and select "Women's" for gender and "Football" for sport) (last visited Dec. 13, 2014).

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that are beginning to encourage participation in women's flag football as an intramural sport.¹²⁹ Such efforts will likely increase, given that the interest level for women's football is arguably high—or, at least, high enough to warrant conducting an investigation of that interest as a means of satisfying the interest of women and Title IX.

Given this high and increasing level of apparent interest on the part of females in football, institutions need to assess their students' interest levels to determine whether implementing women's football is feasible.¹³⁰ It is arguable that there is enough interest at the intercollegiate level to conduct, at a minimum, a survey to assess student interest.¹³¹ Institutions that fail to assess the level of interest are doing a great disservice to gender equity.

Where an institution receives positive responses from its investigations or surveying of student interest level, that institution would be wise to implement a women's football program.¹³² By implementing a women's football program, institutions increase their likelihood of achieving compliance with Title IX, because adding women's football addresses the interests and abilities of their female students.¹³³

Implementing women's football may provide evidence that an institution is compliant under each of the three prongs.¹³⁴ Thus, Title IX compliance is, if nothing

¹²⁹. *Flag Football*, FSU CAMPUS RECREATION, <http://campusrec.fsu.edu/sports/im/flag-football> (last visited Nov. 22, 2014).

¹³⁰. Smith, *supra* note 1, at 1066.

¹³¹. *Id.*

¹³². *Id.* at 1076.

¹³³. *Id.* at 1066.

¹³⁴. *Id.*

else, a legal justification for implementing women's football.¹³⁵

2. Adding Women's Flag Football Creates Excitement for the Institution

Like the educational benefits that female athletes reap at the individual level, institutions will also benefit from women's athletic achievements. Adding women's football to an institution's athletic program can create a wave of anticipation and enthusiasm from students and the community. People enjoy watching sports and football, in particular.¹³⁶ In many respects, football is America's sport,¹³⁷ which makes it a travesty to not permit women to play the game competitively. It is likely that the interest level of football in the community will continue to carry over to the women's side. As the skill level of women increases, that very skill will attract a willing fan base. Based on attendance at "powder puff," interscholastic,¹³⁸ and professional women's football games,¹³⁹ it is likely that a women's football team would generate excitement for the institution.¹⁴⁰

135. *Id.* at 1067.

136. Joseph Carroll, *American Public Opinion About Sports*, GALLUP (Mar. 29, 2005), <http://www.gallup.com/poll/15421/sports.aspx#2>.

137. See Daren Rovell, *NFL Most Popular for 30th Year in Row*, ESPN, http://espn.go.com/nfl/story/_/id/10354114/harris-poll-nfl-most-popular-mlb-2nd (last updated Jan. 26, 2014, 9:27 AM).

138. High schools in Florida have held "Powder Puff" games with more than 1,000 paying fans in attendance. See Smith, *supra* note 1, at 1057.

139. In the early 1970s, prior to the current expanded female interest in football, a professional women's tackle football league drew between 500 and 2,000 fans per game. See *id.* at 1069. Based

140. See generally *id.* at 1057.

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3. Adding Women's Flag Football is
Economically Efficient

Not only does women's football have legal benefits and create excitement, it also is more economically efficient to implement than any of the emerging sports, particularly on a per-participant basis.¹⁴¹

In order to counter-balance the large number of men participating in football at the collegiate level, an institution has to add a handful of emerging sports to provide equal participation opportunities for women. Football offers more opportunities for women student-athletes than are offered by current emerging sports.¹⁴² Furthermore, these emerging sports teams often require building additional facilities, hiring multiple coaching staffs, and purchasing additional equipment for each sport added.¹⁴³ Implementing women's football would not require building additional facilities, because teams could practice and play games on existing football fields.¹⁴⁴ Additionally, implementing women's football would only require a school to hire one additional coaching staff and purchase equipment for just one team, not multiple teams, as the emerging sports would require to reach the same number of participants.¹⁴⁵

Contributing to economic efficiency, an institution may also receive additional revenue from possible media

141. *See id.* at 1075.

142. Other sports that the NCAA has recognized as emerging sports may contribute to the common stereotypes of female athletes, whereas women's football could help break some of these stereotypes. Women's football would also provide women athletes with the opportunity to participate in a popular sport that is more likely than other current NCAA emerging sports to draw spectators. *See id.* at 1059-60.

143. *Id.* at 1075.

144. *Id.*

145. *Id.*

attention for implementing women's football. Especially if an institution were at the forefront of implementing women's football, an institution could receive accolades for creating athletic opportunities for women and acknowledgment for its efforts in gender equality. Reporters are also familiar with the game, as is the viewing public, so it is more likely to be covered in the media.

Women's football also has the potential for generating substantial revenue from ticket and merchandise sales.¹⁴⁶ There is arguably a high level of interest in women's football that would carry with it a high probability of fan appeal.¹⁴⁷ Further, given the popularity of football, it is likely it would have more appeal as a spectator sport than other emerging sports (which include equestrian, rugby, and sand volleyball¹⁴⁸). Spectators pay admission and purchase concessions. Football stadiums are already designed to fit a large number of spectators, precisely because football is a popular game in our culture. A synchronized swimming or equestrian facility does not likely have the capacity or interest level to provide for such fan attendance.

Further, adding women's football would do more to achieve compliance than adding the current emerging sports.¹⁴⁹ With more participation opportunities available and a higher interest level with women's football, institutions would have a better chance at achieving compliance.¹⁵⁰ Achieving compliance saves institutions money in not litigating Title IX violations.¹⁵¹ Because

146. *Id.* at 1076.

147. *See id.*

148. NCAA, *supra* note 46.

149. Smith, *supra* note 1, at 1074-75 (all women may not benefit equally from current emerging sports because they are generally played by women from wealthier backgrounds).

150. *Id.*

151. *Id.* at 1079.

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women's football makes it easier to achieve compliance, the need to cut men's non-revenue-producing sports would be minimized.¹⁵²

4. Adding Women's Flag Football Takes
the Pressure off of Men's Programs

The high revenue women's football may potentially generate would alleviate some of the pressure on men's revenue-producing sports to support entire athletic programs.¹⁵³ Even if women's football does not generate substantial revenue, women's football has the potential to support most of its costs and potentially become self-sustaining, which is not the case with many of the emerging sports, which require high costs of operation and generate little revenue.¹⁵⁴

The emerging sports that many institutions are implementing and that have the imprimatur of the NCAA do not provide the same benefits that women's football would provide. The enthusiasm and fan appeal of women's football may generate substantial revenue, and women's football avoids the high start-up costs required of the implementation of emerging sports. Even if women's football does not operate in the black, women's football offers intangible benefits to an institution, such as gender equity and re-energized enthusiasm for the athletic community.

C. To Benefit Society

Generally, athletics provide significant value to our society. Not only do people enjoy watching and participating in athletics, making sports a major

152. *Id.*

153. *Id.* at 1076.

154. *Id.*

entertainment force in our culture, but women have used athletics as a platform in achieving gender equity.¹⁵⁵

1. Promotes Gender Equity

The sports industry is a major employer and plays a major role in our economy.¹⁵⁶ Providing women with another avenue to participate in our sports culture sets an example for the world that women merit equal athletic opportunities. Implementing women's football is an important step closer in the effort to achieve gender equality in society. If adding women's football enables an institution to provide equal opportunities in athletics for men and women, then it evidences a willingness to provide truly equal opportunities for men and women in society.

2. Women's Improved Satisfaction in Life

If there is substantial interest in women's football—and there is much evidence that there is—institutions are currently not meeting the needs of their female students and are disregarding the need for gender equity. When a student's interests and abilities are not met, individual and societal harm results.

Athletes generally perform at higher academic levels than their nonathletic counterparts.¹⁵⁷ Not addressing

155. See *Women and Sport: Inspiring Change and Advocating Gender Equality Through Sport*, INT'L. OLYMPIC COMM. (Mar. 18, 2014), <http://www.olympic.org/news/inspiring-change-and-advocating-gender-equality-through-sport/227373> (excerpts from speech given by Olympian Angela Ruggiero to the International Olympic Committee in March 2014).

156. See Gwen Burrow, *Not Just a Game: The Impact of Sports on U.S. Economy*, ECONOMIC MODELING SPECIALISTS INT'L. (July 9, 2013), <http://www.economicmodeling.com/2013/07/09/not-just-a-game-the-impact-of-sports-on-u-s-economy/>.

157. See Tami M. Videon, *Who Plays and Who Benefits: Gender, Interscholastic Athletes, and Academic Outcomes*, 45 SOC. PERSP. 415, 434 (2002) (statistical analysis shows positive relationship between

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student needs can lead to academic malaise and an overall dissatisfaction of life in students. If students' needs are not satisfied, this dissatisfaction may have a ripple effect on society.

Further, extracurricular activities provide students a focus and outlet outside of academics and offer physical fitness and leadership opportunities. When students are unable to participate in athletics because of a lack of opportunities that address their interests, they may turn their focus to unhealthy extracurricular activities.¹⁵⁸ If women's football is implemented, many women's fitness, social, and leadership needs will be satisfied.

3. Tackling the Myth That Football is a
Man's Sport

Even though women today enjoy opportunities in athletics they were never afforded prior to the adoption of Title IX, the societal myth persists that women are inferior athletes.¹⁵⁹ Adding emerging sports such as equestrian may continue to imply that women are neither able nor desirous enough to play competitive and "manly" contact sports, such as football.¹⁶⁰ However, if women's football is implemented, women will have a platform to dispel such myths.

Having women participate in football will help dispel the myth that football is a sport designed for men.

participation in sport and academic achievement among adolescents); see also *Graduation Success Rate*, NCAA (Apr. 3, 2014, 6:41 PM), <http://www.ncaa.org/about/resources/research/graduation-success-rate> (NCAA reports that student-athletes on average have higher graduation rates than the general student body).

158. See Jacquelynne S. Eccles, *Extracurricular Activities and Adolescent Development*, 59 J. OF SOC. ISSUES 865, 870 (2003).

159. Smith, *supra* note 1, at 1073.

160. *Id.*

Proving women can successfully play football—passing and running with the best of them—will do much to quiet many skeptics who argue women cannot or should not encroach upon “men’s sports.”¹⁶¹ One athlete, who participates on her high school’s varsity flag football team, said she never considered herself an athlete until she started playing football.¹⁶² She stated, “[A]ll the guys say [‘]girls can’t play our sport.[’] . . . [E]ven though it’s not tackle . . . [flag football is] still pretty close.”¹⁶³ As women excel in the sport, they will be tackling myths and will feel pride for the strides they make in gender equality. They will also enjoy participating in a sport that is popular with the broader public.

It is true that adding women’s football would encourage societal discussion of the role women play in sports. Especially at the interscholastic level, a dialogue regarding women’s athletic participation in athletics would help students understand that the goal of gender equity is still beyond our grasp.

4. All Races, Socioeconomic Classes, and Body Types have More Access to Women’s Flag Football than Emerging Sports

As stated above, all women in society have access to women’s football despite their backgrounds, unlike many participants in emerging sports, such as sand

161. *Texas Woman Tackles Boundaries on Pro Football Team*, NBC NEWS (Feb. 25, 2014), <http://www.nbcnews.com/news/photo/texas-woman-tackles-boundaries-pro-football-team-n37671> (Indoor Football League coach, although skeptical at first, selected female athlete Jennifer Welter for the team, composed otherwise of all men, because of her athleticism and her character).

162. Thomas, *supra* note 3.

163. *Id.*

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volleyball and equestrian.¹⁶⁴ Furthermore, women's flag football would benefit all socio-economic classes and races.¹⁶⁵ Women's flag football is a sport that involves all body types.¹⁶⁶ While certain emerging sports favor a certain body type, women of all shapes and sizes can excel in women's football because of the variety of skills needed to perform well as a team in football.¹⁶⁷

Implementing women's football offers many intangible benefits to society. Title IX has done much in the way of increasing female participation in athletics.¹⁶⁸ Despite the increase in female participation, there is still a gender inequity in sports.¹⁶⁹ Implementing women's football would be one step closer to gender equity in athletics and, as athletics are enjoyed by much of the human race, one step closer to gender equity in society.

**IV. IMPLEMENTING WOMEN'S FLAG
FOOTBALL**

This next section discusses the best practices model in developing women's football, drawing on successes at the interscholastic level, and offers suggestions on implementing women's football on a widespread level, with a particular emphasis on adding it as an intercollegiate sport. It can be offered as an organized sport at the varsity level, by a conference or groups of conferences, permitting it to grow rapidly and gain sufficient attention to warrant its recognition as an intercollegiate sport with a national championship. Alternatively, a slower approach might be taken, with it being offered as a club or intramural sport to

164. Smith, *supra* note 1, at 1073-74.

165. *Id.*

166. Thomas, *supra* note 3.

167. Smith, *supra* note 1, at 1074-75.

168. *Id.* at 1067-68.

169. *Id.*

determine interest level and to build interest within an area.¹⁷⁰ If interest is maintained at the intramural or club level, women's football should be elevated to a varsity sport.¹⁷¹ We turn next to a discussion of some of the ways that women's football can be implemented in the near future.

A. Best Practices Model: How To Implement

Flag football is one of the fastest growing women's sports for youth through adulthood in Florida.¹⁷² Florida¹⁷³ Alaska¹⁷⁴, New York City¹⁷⁵, and Clark County, Nevada¹⁷⁶ are prime examples of the potential success women's football programs can have throughout the country. These successful interscholastic programs offer a set of best practices, modeling how to tailor a successful program. The following section suggests how women's flag football can be implemented by the individual institutions, by the student-athlete, and by collegiate organizations, such as the NCAA and NAIA.

1. Institutional Implementation

Institutions should first distribute student surveys to determine the interest level in women's football.¹⁷⁷ As Florida has demonstrated, if the interest level is determined to be high, as it generally is, then the institution should implement women's football at the intramural or club

170. *Id.* at 1067-68.

171. *Id.*

172. Thomas, *supra* note 3.

¹⁷³ *id.*

¹⁷⁴ Smith, *supra* note 15.

¹⁷⁵ Villa, *supra* note 16.

176. John W. Scafettalas, *Flag Football Catches on with Clark County Athletes*, Las Vegas Rev.-J. (Dec. 13, 2012, 12:44 AM), <http://www.reviewjournal.com/sports/flag-football-catches-clark-county-athletes>.

177. Smith, *supra* note 1, at 1076.

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level.¹⁷⁸ If that interest level is maintained, or continues to grow, as has been the case at the interscholastic level, women's football should be elevated to a varsity sport.¹⁷⁹ Elevation to a varsity sport would not only address students' needs, but would also show that schools are expanding the women's program—two routes to achieve compliance under Title IX.¹⁸⁰ It would also open up the possibility of scholarships for women participants and of conference and national championships that would fuel interest in the sport at all levels, including the international level.

a. Evaluating Student Interest

The first step in developing a women's football program is sincerely evaluating interest on the part of girls and women to play competitive football. Some, including the NCAA, have discouraged interest surveys on the ground that the surveys are used to limit participation by women, but others argue that the surveys can be used to give women a voice in deciding which emerging sports they like to play.¹⁸¹

In Florida, state-mandated reporting of participation rates by girls and boys evidenced significant gender inequity, ultimately providing the impetus to start women's football.¹⁸² Needing to boost female athletic participation rates, the FHSAA conducted student surveys to determine

178. *Id.*

179. *Id.*

180. *Id.* at 1064-65.

181. Erik Brady, *Rescinding of Title IX Model Survey Draws Praise from Critics*, USA TODAY (Apr. 20, 2010, 11:53 AM), http://usatoday30.usatoday.com/sports/college/2010-04-19-title-ix-reaction_N.htm.

182. Thomas, *supra* note 3.

which sports carried greater interest.¹⁸³ Students favored flag football over field hockey, lacrosse, water polo, and badminton.¹⁸⁴ After conducting further studies regarding the amount of interest at each school, it was determined there would be sufficient female participation to form 60 teams throughout multiple counties.¹⁸⁵ Those estimates were quickly exceeded.¹⁸⁶ In Clark County, Nevada, complaints regarding gender inequity in interscholastic athletics recently led to an interest survey and a successful interscholastic girls' football program.¹⁸⁷ Similarly, in 2005, the Anchorage (Alaska) School District surveyed its female students and almost one-third of them expressed an interest in flag football.¹⁸⁸ This amounted to 1,600 girls selecting flag football over other sports.¹⁸⁹ In their first year, there were 343 participants from eight different schools.¹⁹⁰ In 2012, PSAL in New York City received favorable responses after conducting research regarding interest in girls' flag football.¹⁹¹ PSAL held a clinic for prospective coaches and players to determine which

183. *Id.*

184. *Id.*

185. *A Brief History of Girls' Flag Football in Florida*, EAST BAY HIGH SCH. GIRLS FLAG FOOTBALL, http://www.ebhsgirlsflagfootball.com/florida_flag_and_ebhs_history (last visited Nov. 25, 2014).

186. *Id.*

187. Milliard, *supra* note 23.

188. *Girls on the Gridiron*, MOMENTUM MEDIA (Oct./Nov. 2005), <http://www.momentummedia.com188/articles/am/am1706/wugridiron.htm>.

189. *Id.*

190. NFL FLAG, *supra* note 79.

191. See Cameron Smith, *PSAL Close to Adding Girls Flag Football in NYC*, YAHOO! SPORTS (July 20, 2011), http://sports.yahoo.com/highschool/blog/prep_rally/post/psal-close-to-adding-girls-flag-football-in-nyc;_ylt=AwrSbgzQ_plUsTIAR.BXNyoA;_ylu=X3oDMTEzZnM3ZmJ2BHNIYwNzcgRwb3MDOQRjb2xvA2dxMQR2dGlkA1ZJUDU1OV8x?urn=highschool,wp3801.

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schools expressed the greatest interest.¹⁹² Each school posted a sign-up sheet for the clinic.¹⁹³ One school even had to put additional sheets out because the initial sheets were already full.¹⁹⁴ The clinic was successful and PSAL launched girls' varsity flag football in the spring of 2012 with an initial projection of 15 to 20 teams.¹⁹⁵ Even more recently, in Clark County, Nevada, complaints regarding gender inequity in interscholastic athletics led to an interest survey, which revealed a high level of interest in football and led to a successful interscholastic girls' football program¹⁹⁶ All schools should conduct student interest studies.

In developing their club programs, USA football and the NFL identified 10 cities with high levels of interest in starting girl's competitive football.¹⁹⁷ In 2008, they started their program with 10 different teams, one in each of these cities.¹⁹⁸ They continue to assess interest levels and now have more than 25,000 girls participating in 19 cities.¹⁹⁹ The number of girls and cities participating grew dramatically in five years.²⁰⁰

Conducting student interest surveys were valuable tools for these organizations and led to the implementation of women's football. Surveys are relatively low-cost and

192. *Id.*

193. Ramona Emerson, *Girls' Flag Football to Hopefully Destroy Any Notions of 'Powderpuff'*, JEZEBEL (July 18, 2011, 2:20 PM), jezebel.com/5822263/girls-flag-football-to-hopefully-destroy-any-notions-of-powderpuff.

194. *Id.*

195. *Id.*

196. See Milliard, *supra* note 23.

197. See NFL FLAG, *supra* note 79.

198. *Id.*

199. *Id.*

200. *Id.*

provide valuable information for schools in how they can better provide for their female students. Schools would be wise to analyze the level of girls' interest in football and other sports that provide significant opportunities for increased participation. State and national athletic associations and individual conferences and institutions should conduct and act on such surveys before they are found to be in violation of Title IX compliance.

b. Implement as Intramural or Club Sport First

Once student surveys are distributed and analyzed, and the interest level in women's flag football is determined to be high, then the institution should implement women's football at the intramural or club level. If that interest level is maintained, or continues to grow, as has been the case at the interscholastic level, women's football should be elevated to a varsity sport.

2. Student Implementation

If the surveys return unclear responses or are not distributed, students should petition their institutions or, on a widespread level, petition the NCAA.

a. Petitioning the Institution

If the surveys return unclear responses or are not distributed, students should petition the institution to start a women's football program at the intramural, club, or varsity level. If the students initiate such efforts and an institution does not comply with the students' requests, the institution's failure to act will constitute possible evidence of a Title IX violation for failing to address the interests and abilities of student-athletes.²⁰¹

201. Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg.

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b. Petitioning the NCAA

To date, the NCAA has not classified women's football as an emerging sport.²⁰² Students interested in women's flag football should petition the NCAA to add women's flag football to its list of emerging sports. If women's football were classified as an emerging sport, it would bring women's football to the attention of institutions and conferences that are considering adding another women's sports team to their existing athletic program. The NCAA needs to be formally petitioned by students.

Determining the interest level in women's football and developing rules and regulations for the sport itself is only part of the equation. The final step in being recognized as a legitimate sport by the NCAA is to actually petition the NCAA through a formal request.

The minimum requirement for any sport that hopes to gain NCAA recognition is to have 28 schools with varsity teams, sponsored by the university.²⁰³ Once the sport meets the 28-team requirement, it qualifies for "championship status."²⁰⁴ The NCAA will consider the sport for inclusion and, if it is approved, draft rules and regulations and host a championship event.²⁰⁵

71413 at 71418 (1979) (codified with some language changes at 45 C.F.R. § 86 (1975)).

202. NCAA, *supra* note 46.

203 Charlie Eisenhood, *How Ultimate Could Become an NCAA Sanctioned Sport*, ULTIWORLD (Dec. 12, 2012), <http://www.ultiworld.com/2012/12/12/how-ultimate-could-become-an-ncaa-sanctioned-sport/>.

204. *Id.*

205. *Id.*

i. Become an Emerging Sport

Women's sports have an advantage that men's sports do not have. Women's sports can achieve NCAA sport status by becoming emerging sports.²⁰⁶ This type of status requires a sport have at least 2- varsity teams (or competitive club teams).²⁰⁷ Institutions can then submit a proposal to the NCAA that shows other support for the sport (things like intramural sponsorship, high school sponsorship, etc.) and suggested rules, regulations, and budgeting.²⁰⁸ In addition, 10 NCAA member colleges must also send in commitment letters saying they will sponsor women's football as a varsity sport.²⁰⁹

Once women's football meets these requirements, it will be considered an emerging sport and be formally sanctioned by the NCAA. Although the NCAA will not host a championship event at this point, women's football will have 10 years to work up to the 28 varsity teams requirement to advance to championship status.²¹⁰

Low expenses, combined with a big club following, are the keys to being adopted by the NCAA.²¹¹ Flag football is relatively inexpensive. Women's football can use the same field for practice and competition as the men's team and has the potential to generate revenue. As mentioned previously,²¹² club teams already exist and have a significant following with the assistance of the NFL and USA football. Considering the factors, women's football has a clear path to becoming recognized an NCAA sport—it just needs to be petitioned.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. Smith, *supra* note 1, at 1075.

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3. Intercollegiate Efforts

Steps to implement women's football must also be made at the intercollegiate level.²¹³ Implementing women's flag football can also be done by a top-down approach, with the NCAA or NAIA adding women's flag football as an emerging sport—thereby promoting women's flag football to the umbrella institutions.

a. NCAA

The NCAA has a recognized process for starting a new women's sport. Although a variety of ways are available to implement women's football, this section offers the best strategy to use in making women's football a reality within the NCAA. The NCAA is the largest national association made up of institutions offering intercollegiate athletic programs. Obtaining NCAA approval, therefore, clearly is a strategy that must be considered in the effort to start women's intercollegiate football. The NCAA can provide a nationally recognized governing body for women's football. It can also provide support, structure, and regulation. Achieving NCAA recognition can also improve the public opinion regarding women's football's place at all levels. The NCAA should immediately begin conducting interest studies to determine the level of interest at its member schools in women's flag football. The NCAA should then conduct feasibility studies to determine the areas or institutions where implementation is feasible. Furthermore, the NCAA has the necessary revenue to implement women's flag football as a varsity sport.

i. Assessing Student Interest

In fulfilling their purported commitment to gender equity in athletics, the NCAA and its respective

213. *Id.* at 1078-79.

conferences²¹⁴ should also require institutions to conduct an interest survey.²¹⁵ If such surveys are not conducted, institutions or conferences should have to face NCAA sanctions, while also being subject to penalties under Title IX. There is a greater chance that institutions will develop women's football if the NCAA demands that schools assess interest levels and it either classifies women's football as an emerging sport or takes other steps to move toward recognition of women's flag football. Colleges and universities should be required to continuously assess their students' interest levels as part of a commitment to providing equity for their women students and to avoid future Title IX concerns and NCAA sanctions.

If requiring that institutions conduct interest surveys is not feasible, intercollegiate athletic associations should conduct a nationwide survey to determine the level of interest in women's football. Such a survey of women's interest could also be broken down by state and region, providing evidence as to where the sport is most likely to thrive.

Further, the NCAA's certification process can be used as a bargaining chip. The NCAA's certification process is essentially the way institutions receive accreditation.²¹⁶ If the NCAA places great emphasis on gender equity in the certification process, institutions may be more committed to surveying their students and increasingly willing to implement additional women's programs.²¹⁷ If surveys reveal the interest, as it is anticipated that they will, implementation of women's

214. *Gender Equity*, NCAA, <http://www.ncaa.org/about/resources/inclusion/gender-equity> (last visited Nov. 23, 2014).

215. Smith, *supra* note 1, at 1076.

216. *Id.* at 1078.

217. *Id.*

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football will be likely at all levels, resulting in meeting pent-up demand and increasing opportunities to participate in competitive athletics for females.

Women are already attempting to compete on their men's football teams.²¹⁸ An increasing number of states, school districts, and cities are currently operating women's flag football as one of their varsity sports.²¹⁹ The interest and implementation level already achieved has also overflowed into the professional arena. A number of professional women's tackle football leagues also exist with competition between multiple conferences and some highly touted sponsorships.²²⁰ With success and interest high and increasing at the professional and interscholastic levels, the next logical step is to determine the interest level in women's football on a nationwide basis to demonstrate to the NCAA and others offering intercollegiate athletics that this is a realistic and beneficial sport to recognize.

Once the surveys are completed and the NCAA determines that interest in women's flag football is high, the NCAA can conduct feasibility studies to determine how feasible implementation would be at a widespread level.

ii. Feasibility Studies

After the level of interest is determined, the NCAA could conduct a feasibility study to determine in what form women's football should be implemented.²²¹ Because women's football may produce some revenue, intercollegiate athletic associations may be willing to fund implementation of women's football, including the funding

218. *See supra* notes 90-94 and accompanying text.

219. *See supra* notes 27-29 and accompanying text.

220. *See supra* notes 99-102 and accompanying text.

221. Smith, *supra* note 1, at 1077.

for the feasibility studies.²²² Even if the financial contribution is not substantial and the cost is not high on a per-participant basis, institutions, conferences, and athletic associations can provide the financial resources necessary to conduct studies regarding the feasibility and interest level in implementing women's football.²²³

The four-team national intercollegiate men's football championship in 2014-15 is anticipated to bring in hundreds of millions of dollars in revenue, much of which will be new dollars.²²⁴ It makes sense for a small portion of those newly generated funds to be allocated to assessing interest in the women's counterpart to men's football and to conduct the feasibility studies if the interest level is high.²²⁵ Similarly, those involved in earning and distributing the new dollars attributable to a "national championship" in intercollegiate football at its highest level would be wise to use some of those dollars to increase opportunities for women to participate in intercollegiate flag football. In such a case, gender equity and revenue production could be allies, not enemies.

iii. Funding

Major football conferences within the NCAA will soon enjoy increasing revenues generated from their newly formed national championship in football and have funds that they can wisely invest in the effort of initiating, or at

222. *Id.* at 1078.

223. *Id.*

224. Brett McMurphy, *Power Conferences Likely to Receive Most of Playoff Revenue*, CBS SPORTS (June 18, 2012, 7:57 PM), <http://www.cbssports.com/collegefootball/story/19378895/power-conferences-likely-to-receive-most-of-playoff-revenue>; see also Steve Berkowitz, *SEC Revenue Set to Jump 50% With Playoff, New TV Deals*, USA TODAY (Jan. 16, 2013, 9:23 PM), <http://www.usatoday.com/story/sports/college/2013/01/16/sec-conference-money-increases/1836389/>.

225. Smith, *supra* note 1, at 1078.

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least surveying interest in, women's football.²²⁶ Such a clear commitment to gender equity should be of great appeal to university presidents, who have much to gain by demonstrating that their respective conferences and member institutions are committed to finding new and exciting ways of increasing opportunities for women in athletics. The media attention garnered by the conference that leads in this effort to implement women's football is likely to be quite significant.²²⁷

b. NAIA

Alternatively, the NAIA, and the presidents of the hundreds of colleges and universities that are members of the NAIA, can benefit greatly if they use the advantages of their smaller size to take the lead in starting women's football. The NAIA is smaller and potentially more nimble than the larger and better-known NCAA and therefore has the capacity to move quickly to start women's football at the intercollegiate level. It also has a history of being a leader in sponsoring intercollegiate athletics.²²⁸ The NAIA and its member institutions are capable of acting quickly, performing surveys, if desired, and then quickly implementing a national championship. Such a move would do much to strengthen the role of the NAIA in the intercollegiate athletics market.

In short, the NAIA is ideally suited to be a disruptive innovator in this area. Disruptive innovation is

226. *Id.*

227. *See id.* at 1078-79.

228. The NAIA has been a leader in initiating national championships in a variety of sports. As such, it has paved the way for other athletic associations to also hold similar championships. *See National Championships*, NAIA, http://www.naia.org/ViewArticle.dbml?DB_OEM_ID=27900&ATCLID=205323012 (last visited Nov. 23, 2014).

“a term of art coined by [Harvard Business Professor] Clayton Christensen, [which] describes a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.”²²⁹ Larger entities, like the NCAA, are often bureaucratic and reactive, overly conscious of maintaining their market share, and as a consequence often prove to be weak innovators. They also create cultures that emphasize the status quo and stymie innovation. The NCAA’s requirements for starting a new intercollegiate sport²³⁰ are just such an example—the NCAA has created a set of hoops, a bureaucracy, and possibly even a Catch 22 (to be recognized by the NCAA, you have to obtain recognition from others) that must be negotiated for a sport to be recognized. According to Professor Christensen, smaller entities, like the NAIA, are less bureaucratic and are bound by a culture that is reactive and more likely to be innovative. They have the capacity to act quickly and innovatively, thereby gaining increased market share.

Being the leader in starting women’s football could increase the market share of the NAIA and increase revenues for its members. Clearly, starting women’s football would draw nationwide media attention to the NAIA, particularly if they launched their efforts with a strong marketing plan. If it were well orchestrated, such media attention would be quite positive—evidencing a commitment to gender equity and increasing opportunities for women students and thereby also enhancing the academic reputation of member institutions. Member institutions of the NAIA, like the D-II and D-III members of the NCAA, do not have highly commercialized

229. *Disruptive Innovation*, CLAYTON CHRISTENSEN, <http://www.claytonchristensen.com/key-concepts/> (last visited Nov. 21, 2014).

230. See discussion *supra* notes 176-80.

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intercollegiate athletics programs. Rather, their athletic programs evidence their commitment to their students. If the NAIA leads in this area, it will demonstrate a real commitment to gender equity, appealing to all who believe deeply in increasing opportunities for women. That appeal, coupled with increased participation opportunities, will in turn have a positive role in terms of enhancing reputation and, in a related sense, enrollment. Enrollment is the critical ingredient of economic viability for those institutions, as many are tuition-dependent.

Many NCAA D-III members, the largest number of institutions at any level within the NCAA,²³¹ might also reconsider membership in the NAIA, because that membership could increase enrollment, focused media attention, and the opportunity to innovate with like-minded institutions, as opposed to always being in the shadows of larger, commercially driven, athletic programs. They might also discover that their interests in running student-centered athletics programs could be better served by joining with the NAIA, which will have demonstrated its capacity to engage in disruptive innovation by starting women's football, which would also bring attention to other less well known programs initiated by the NAIA, such as its noteworthy Champions of Character program.²³²

231. NCAA divisions I-A, II-AA, II, and III have approximately 126, 126, 168, and 244 football teams, respectively. *College Football Teams*, ESPN, <http://espn.go.com/college-football/teams> (last visited Nov. 23, 2014); see also *D2Football.com Conferences*, D2FOOTBALL, <http://www.d2football.com/teams/> (last visited Nov. 23, 2014); see also *Division III Team Pages*, D3FOOTBALL, <http://www.d3football.com/teams/index> (last visited Nov. 23, 2014).

232. "The vision of National Association of Intercollegiate Athletics (NAIA) *Champions of Character* program is to change the culture of sport. Its mission is to provide training to instill the values that build character so students, coaches and parents know, do and

What is clear is that the NAIA has much to gain by starting women's intercollegiate football, permitting it to reassert a leadership role in intercollegiate athletics at the national level. Its presidents and chancellors should act quickly to take advantage of their capacity to engage in disruptive (and productive) innovation, and in the process the NAIA could become the leader in providing athletics opportunities for women.

4. Interscholastic Efforts

High schools can also indirectly assist in supporting efforts to implement women's intercollegiate football at the national level. Interscholastic athletic associations offering girls' flag football, such as the FHSAA, could put pressure on other athletic associations to survey interest and ultimately implement the sport. Additionally, high schools offering a "powder puff" game could expand the annual event by holding these games multiple times a year. If the interest level is maintained throughout the year, a school should consider implementing a women's football program. Similar to intercollegiate institutions, high schools could also conduct surveys to determine the interest level among their female students. The high school or athletic association that initially offers women's football might receive much notoriety and accolades in gender equity.²³³ As more high schools offer girls' football, the demand for intercollegiate football would also become more evident and would increase the likelihood that actions will be taken to recognize women's football.

5. Government Efforts

value the right thing on and off the field." *About Champions of Character*, NAIA CHAMPIONS OF CHARACTER, http://www.championsofcharacter.org/ViewArticle.dbml?DB_OEM_ID=27910&ATCLID=205367781 (last visited Nov. 21, 2014).

233. Smith, *supra* note 1, at 1079.

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At the national level, Congress and the Executive Branch, through the Office of Civil Rights, should take steps to increase opportunities for girls and women to participate in athletics, by requiring that schools and universities survey the athletic interests of their women students. This would be a significant step toward achieving the elusive goal of gender equity in the fifth decade of Title IX. The survey should include a query regarding girls' or women's football. Congress might also hold hearings to examine interest levels in girls' and women's football and to determine ways in which government might intervene to deal with persistent nationwide gender inequity in participation in athletics.²³⁴ A national survey, followed by action, will do much to fulfill the dream of gender equity in athletics.

If the national government fails to act, state legislatures and executive branches should get involved. While a nationwide solution would be preferable, it is clear that efforts to support gender equity for girls and women have often had their roots at the state level, as was the case in Florida, and local level, as is the case in Clark County, Washington, D.C., and New York City. Historically, holding legislative hearings, at any level—local, state, or national—has helped focus policymaking and media attention on major problems,²³⁵ and has provided the prodding necessary to get private associations, like the NCAA, to act.²³⁶

234. See Betsey Stevenson, *Title IX and the Evolution of High School Sports*, THE WHARTON SCHOOL: UNIV. OF PENN., 1, <http://whartonsportsbiz.org/documents/research/TitleIXandtheEvolutionofHighSchoolSports-11-07.pdf> (last visited Nov. 20, 2014).

235. Rodney Smith, *Head Injuries, Student Welfare, and Saving College Football: A Game Plan for the NCAA*, 41 PEPPERDINE L. REV. 267, 282 (2014).

236. *Id.*

6. Private Support and the NFL

The high interest level in women's football may be a financial incentive for private entities to donate money to the effort to develop a women's football program.²³⁷ Private businesses might receive great value, in a reputational and economical sense, if they were involved in funding women's football. Women are a critical component of any market and enhancing a business's reputation with that demographic (and with others who are sensitive to issues of gender equity) can only strengthen a business's presence in the marketplace. Various sponsorships of women's professional football are a prime example. Under Armour and Bolt Athletics,²³⁸ two athletic companies sponsoring women's professional football, could join with others, including possibly the NFL, in the efforts at both the intercollegiate and interscholastic levels.

Clearly, Phil Knight and Nike have benefitted from their efforts to help make the University of Oregon into a national power in the highly commercialized world of intercollegiate athletics.²³⁹ Helping to start women's football, an act that would appeal to a very large national market, could do much to boost a corporation or individual's reputation at the national level. Doing what is right—helping to achieve gender equity in athletics—could make substantial economic sense.

Recently, the NFL joined in the efforts to develop women's football. In 2008, it partnered with the USA

²³⁷ Smith, *supra* note 1, at 1080.

²³⁸ *Sponsors*, INDEP. WOMEN'S FOOTBALL LEAGUE, <http://www.iwflsports.com/sponsors/> (last visited Nov. 25, 2014).

²³⁹ See Rachel Bachman, *Oregon Athletic Department Quietly Extends Nike Contract Through 2018*, OREGONLIVE (Mar. 27, 2010, 2:04PM), http://blog.oregonlive.com/behindducksbeat/2010/03/oregon_athletic_department_qui.html (Nike has extended its outfitting and endorsement contract with University of Oregon until 2018).

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Football organization in creating flag football club programs for girls who lack the opportunity to play at their high school.²⁴⁰ They currently have thousands of female participants spread over numerous cities nationwide.²⁴¹

The Miami Dolphins have been particularly active in promoting girls' flag football and offer an annual clinic for more than 400 female athletes.²⁴² Dolphin's receiver Brian Hartline took part in the clinic and was able to play catch with some of the girls. He said of the clinic, "It blew my mind . . . we had powder puff in high school but nothing near a league [O]ne girl I was throwing the ball around with was gunning it I'd never seen this. . . . [T]hese women are here for real."²⁴³ Twan Russell, the Director of Youth and Community Program, who ran the clinic, offered the NFL support: "Football is no longer a man's sport. . . . Young women across South Florida are competing on the gridiron, scoring touchdowns and learning life skills that only just thirteen year[s] ago was exclusive to boys. The Dolphins are proud to continue to host this exciting clinic for youth development."²⁴⁴

The NFL club program also has developed an "ambassador system" as part of its mission.²⁴⁵ The NFL requires a certain number of girls on each team act as ambassadors to advocate flag football in their school districts.²⁴⁶ With NFL support, young girls learn to

²⁴⁰ USA FOOTBALL, *supra* note 2.

²⁴¹ Tim Reynolds, *Girls Flag Football Catching on in Florida*, NFL FLAG (May 14, 2010), <http://www.nflflag.com/articles/view/35>.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Miami Dolphins Girls High School Flag Skills Clinic*, GENERATION NEXXT (Mar. 3, 2011, 1:15 PM), <http://mygennexxt.com/profiles/blogs/miami-dolphins-girls-high>.

²⁴⁵ NFL FLAG, *supra* note 79.

²⁴⁶ *Id.*

advocate for a cause and are taking part in flag football's widespread implementation.

The NFL might expand its effort, by donating money to or sponsoring institutions, conferences, and state and national athletic intercollegiate associations that are committed to increasing gender equity by implementing women's football. It should, at a minimum, fund a broad-based national survey that would reveal interest levels among women in participating in and watching football. Sponsoring that survey would benefit its reputation and the resultant data will be useful in developing market strategies to penetrate the market of women interested in football.

The New York Jets donated \$150,000 to PSAL (New York City's athletic association) to, among other causes, start a girls' varsity flag football program.²⁴⁷ The money donated provides equipment and also funds a middle school league.²⁴⁸ The money also provides two female flag football players \$5,000 in college scholarships.²⁴⁹ Without flag football scholarships offered at the college level, these scholarships are an incentive for women to participate in the sport. The Jets also arrange for girls to meet with a women's professional football player.²⁵⁰ This mentorship program is intended to provide the athletes with insight into women's football at a higher level.²⁵¹ Other NFL teams may want to similarly provide young women with scholarships and mentorship programs

247. Charlie Frankel, *Jets Present Donations for NYC Football Programs*, NEW YORK JETS (Oct. 2, 2013), <http://www.newyorkjets.com/news/article-5/Jets-Present-Donations-for-NYC-Football-Programs/afbc0ece-ebcb-4ba5-bca4-ee16ea6fcded>.

248. *Id.*

249. Matt Ehalt, *Jets help PSAL Girls Flag Football Team*, ESPN (Oct. 11, 2011, 5:22 PM), http://espn.go.com/blog/new-york/high-school/post/_/id/3320/jets-help-psal-girls-flag-football-team.

250. *Id.*

251. *Id.*

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and otherwise assist in the efforts of developing widespread interest.

The NFL should also be involved in supporting the actual effort to start women's intercollegiate football. Such support will evidence a commitment to gender equity, which will strengthen the NFL's reputation in a multitude of ways, and will help expand its market share in the women's viewing market in a manner that makes it clear that women's intercollegiate football has the potential to bring the NFL substantial revenue.²⁵² It might even lead, one day, to a professional league.

There are a number of ways to commence developing women's football and any one of them could bring about the creation of the game. However, implementation may call for a synergistic approach requiring a variety of efforts sponsored by a variety of entities. At a minimum, there needs to be a concerted effort to determine the female students' interest level in women's football. If interest is high, implementation will be seen as a necessity. If institutions persist in failing to affirmatively address their students' needs, individual, institutional, and societal harm will result and those institutions will have been part of the problem rather than serving as part of the solution.

Both the NFL and USA football have assisted in creating club teams for women's football. In implementing these club teams, they assessed the interest levels of women around the country, and they continue to monitor these interest levels. Without even requesting the NCAA's assistance in determining interest levels, the NFL, USA Football, Reebok, and Under Armour could easily assist in the development of surveys for youth leagues, club teams,

252. See discussion *supra* notes 103-105.

and institutions alike, helping to make the case for starting women's intercollegiate football.²⁵³ Once interest levels are judged as high, making it clear that strong interest in women's football exists at the collegiate level, institutions and conferences can begin to petition the NCAA for varsity status. This will start the process of becoming a legitimate NCAA sport.

B. Developing the Rules and Regulations

Athletic associations and institutions that want to implement women's football should follow the lead of Florida, Alaska, New York, and Nevada, because of their success in developing women's flag football.²⁵⁴ In fact, women's flag football has flourished wherever it has been implemented, revealing a demand that exceeded expectations.

One problem that must be faced is the issue of what rules should apply. The FHSAA was the first athletic organization to implement interscholastic girls' flag football.²⁵⁵ In the first few years of its existence, it used a park and recreation handbook as the basis for its rules.²⁵⁶ As interest expanded and carried over to other states, FHSAA adopted the National Intramural Recreation Association Rules and took a step toward encouraging uniform rules throughout the country.²⁵⁷ The rulebook is extensive, with detailed requirements addressing elements

253. *See supra* notes 238-40 and accompanying text for a discussion of the possible role and interest of private entities that might be used to help make the case that there is a strong interest in women's football with the NCAA.

254. *See supra* notes 9-12, 15-22 and accompanying text.

255. *See* EAST BAY HIGH SCH. GIRLS FLAG FOOTBALL, *supra* note 185.

256. *Board Approves Football Classification Proposal*, FLA. HIGH SCH. ATHLETIC ASS'N. (Nov. 25, 2002), <http://www.fhsaa.org/news/2002/1125>.

257. *Id.*

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of the game ranging from the number of referees to a laundry list of penalties.²⁵⁸

For example, Florida flag football is non-contact with seven members of each team playing against each other on an 80-yard field.²⁵⁹ Teams must advance the ball 20 yards within four downs to receive another set of downs.²⁶⁰ Instead of tackling, the defensive players pull flags on the ball carriers waist.²⁶¹ There is no blocking other than the kind of screening that one would expect to see on a basketball court.²⁶² Flag football is an inexpensive sport compared to men's tackle football, which requires full pads and helmets.²⁶³

Flag football in Florida is offered as a spring sport in part to provide broad access to fields, coaches, and facilities, and to avoid competing for field time with the men's fall football program.²⁶⁴ There are so many flag football teams in each district that if a school wants to develop a squad, it must start at the club level.²⁶⁵ If it maintains successful interest rates, it can move up in rank to become recognized as a varsity sport.²⁶⁶ Once it becomes

258. Bruce McKay, *Girls Flag Football Flourishes in Alaska*, NAT'L FED'N OF STATE HIGH SCH. ASS'NS (July 16, 2014), <https://www.nfhs.org/articles/girls-flag-football-flourishes-in-alaska>.

259. Thomas, *supra* note 3.

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. Jim Halley, *Girls Flag Football Grabs Attention as Growing Sport*, USA TODAY (May 15, 2012, 1:15 PM), <http://usatoday30.usatoday.com/sports/preps/football/story/2012-05-01/flag-football-for-girls-grabbing-attention/54855278/1>.

265. See MOMENTUM MEDIA, *supra* note 188.

266. *Id.*

a varsity sport, it is state-sanctioned and may participate in the annual FHSA flag football playoff.²⁶⁷

Girls' flag football in Florida is much more polished than it was 15 years ago.²⁶⁸ While some of the scores are lopsided, the development of a playoff system has resulted in better competition and has increased the level of play.²⁶⁹ Many of the flag football coaches also coach the men's football teams.²⁷⁰ Having experienced coaches allows for a more sophisticated game, with exciting plays and competition.²⁷¹ Teams are so competitive that they often scout opponents and devise complicated plays to foil them.²⁷² The playoff system is crucial for girls playing the sport. Because colleges do not offer flag football scholarships and the game is seldom played at the next level, winning the state playoff is the ultimate goal girls competing in Florida flag football have to look forward to.²⁷³

If an institution, conference, or association is interested in developing women's football, it may want to develop rules based on the National Intramural Recreation Association rules to ensure uniform play, and it can look to Florida as a successful model for expanding opportunities to participate in the sport. Ultimately, a playoff system should be an early goal, as was the case in Clark County, Nevada, because having a playoff is a huge motivating factor in encouraging girls to hone and improve their skills.

1. Importance of Organization

267. *Id.*

268. Thomas, *supra* note 3.

269. *Id.*

270. *Id.*

271. *See id.*

272. *Id.*

273. *Id.*

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Women's flag football is not the only sport that has dreams of becoming an NCAA sanctioned sport. Currently, cheerleading is attempting to become an NCAA emerging sport and ultimately an NCAA varsity sport. Women's football can learn from cheerleading's attempt to obtain NCAA recognition. Competitive cheerleading has faced several obstacles just as women's football will; however, women's football is in a better position to overcome these obstacles in a timely manner.

Ultimately, the NCAA stresses the importance of structure and competition for an activity to be considered a sport.²⁷⁴ The main problem cheerleading confronted was its disorganization and lack of structure. Unlike women's football, cheerleading does not have a male counterpart to model its rules and regulations after. The *Biediger v. Quinnipiac University* case stated that competitive cheer was not a sport for Title IX purposes.²⁷⁵ Judge Underhill concluded that cheer was too disorganized and underdeveloped to constitute a genuine opportunity for varsity athletic participation.²⁷⁶ This is a blow for any sport seeking NCAA recognition, because without organization and development, there is little chance of becoming a varsity sport, and it is difficult to have organization and development without recognition.

Judge Underhill may have been correct about the cheerleading team at Quinnipiac University. However, an argument can be made that other teams and other sports are not precluded from fulfilling these structure and format

274. April Hennefer et al., *Dance and Cheerleading as Competitive Sports: Making a Case for OCR Sport Recognition & NCAA Emerging Sport Designation*, 4, 6 (Aug. 2003) (unpublished manuscript) (available at ERIC Document Reproduction Service, No. ED479762).

275. *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d. 277, 298 (D. Conn. 2009).

276. *Id.* at 297-98.

requirements simply because one university was unable to. Because the NCAA is influenced by the Office of Civil Rights's thoughts on sports for Title IX purposes, it is important to mention that the most notable concern from the Office of Civil Rights regarding Title IX purposes is that a sport provides opportunities comparable to other varsity opportunities.²⁷⁷

The team under any sport needs to be treated like other varsity teams and opportunities for women need to be genuine. Women's teams need to have the same access to practice facilities and locker rooms, similar practice schedules, and equal access to equipment and apparel as men's teams do. In addition, scholarships need to be equitable. Women's football will be subject to the same types of rules and regulations other varsity sports are, such as recruiting and practice time limitations.

Fortunately, flag football and club teams are already in place in various areas, and as previously noted, the Florida and other interscholastic girls' flag football programs offer a model on which to build intercollegiate women's football.²⁷⁸ Men's football is also a well-established NCAA sanctioned sport on which women's football could refine existing interscholastic rules and regulations. Institutions interested in implementing women's intercollegiate football can develop rules based on the National Intramural Recreation Association rules, to ensure uniform play throughout the country. Also, a playoff system can be established to promote competition and an ultimate champion, as has been done at the interscholastic level. Once women's football becomes an NCAA sanctioned sport, it will be subject to the NCAA bylaws,

277. Erin E. Buzuvis, *The Feminist Case for the NCAA's Recognition of Competitive Cheer as an Emerging Sport for Women*, 52 B.C. L. REV. 439, 442-43 (2011).

278. See *supra* notes 9-12, 15-22 and accompanying text.

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which will provide even more structure and regulation including recruiting, practice, and financial regulations. It will also provide scholarships for female athletes who desire to participate in women's football, a major barrier to its implementation and success.

**V. BARRIERS TO STARTING COMPETITIVE
WOMEN'S FOOTBALL**

Implementing women's flag football at a nationwide level is not void of any obstacles. The lack of NCAA commitment to implementing women's flag football at the intercollegiate level operates as a trickle-down obstacle, affecting girls' participation in high school flag football because of the lack of athletic scholarships in the sport at the college level. Further, inaccurate societal attitudes that women should not encroach upon men's football also hurt the chances of women's flag football becoming a recognized NCAA varsity sport.

A. Lack of NCAA Commitment

For women's football to thrive nationally, the game needs commitment from an intercollegiate athletic association, such as the NCAA or NAIA. The NCAA has not added women's football to its list of emerging sports, possibly indicating a lack of formal requests that it do so.²⁷⁹ In fact, in January of 2014, the triathlon, a sport that offers few opportunities for female participation, was added to the list of emerging sports but flag football was not,²⁸⁰ even though there had been calls for adding flag football to the list.²⁸¹ Recognition at the intercollegiate level is critical in

279. See NCAA, *supra* note 46.

280. *Triathlon is NCAA's Newest Emerging Sport for Women*, TITLE IX BLOG (Jan. 17, 2014, 1:46 PM), <http://title-ix.blogspot.com/2014/01/triathlon-is-ncaas-newest-emerging.html>.

281. Professor Hogshead-Makar notes that women's flag football is gaining momentum. She thinks "flag football could become very

developing the game, because institutions often use the NCAA's list of emerging sports for ways to expand their program.²⁸² Without the NCAA, NAIA, or another intercollegiate athletic association backing women's football as a legitimate sport, colleges and universities may not be persuaded to offer it.

B. Societal Attitudes

American sports culture is often driven by the interests of males.²⁸³ Football is the most watched sport in America and has been male dominated for some time.²⁸⁴ People opposed to women playing football often argue that it is too rough of a game for women.²⁸⁵ However, flag football is a sport with no more contact than girls' field hockey, lacrosse, soccer, and basketball. Sadly, another reason people may be opposed to starting women's football

popular very quickly. What's great about it is that everybody already knows the rules, you have the facilities, and it's played in the spring. But right now it is clearly at the intramural stage of development, which means it doesn't qualify as a sport under Title IX. If enough districts and then states sponsor it, then it could count." Dennis Read, *Title IX at 40 What's Next?* ATHLETIC MGMT., http://www.athleticmanagement.com/2012/10/18/title_ix_at_40_whats_next/index.php (last visited Nov. 22, 2014).

282. See Lauren Reynolds, *Badminton Gaining Popularity*, ESPN (July 24, 2009, 3:49 PM), http://espn.go.com/high-school/story/_/id/4352726/badminton-gaining-popularity/.

283. See generally Vivian Diller, *Can Females Influence the Culture of Sports?*, PSYCHOLOGY TODAY (Aug. 1, 2013), <http://www.psychologytoday.com/blog/face-it/201308/can-females-influence-the-culture-sports>.

284. Jeffrey M. Jones, *Football Remains Runaway Leader as Favorite Sport*, GALLUP (Dec. 29, 2008), <http://www.gallup.com/poll/113503/Football-Remains-Runaway-Leader-Favorite-Sport.aspx>.

285. Elizabeth Weber, *Women's Rugby Team Not Afraid to Play Rough*, DAILY ILLINI (Oct. 26, 2012), http://www.dailyillini.com/features/article_4d5aadf9-3129-5e50-83b7-d9167659055f.html?mode=jqm.

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is that they don't want women encroaching upon male sports.²⁸⁶ Dr. Donna Lopiano, a long-time leader in the effort to bring gender equity to athletics, believes that our sports "culture doesn't want to open this door . . . [to the] sacred ground for guy's . . . [but] there is no physical reason why women shouldn't be participating."²⁸⁷ It appears evident that there is a need to put an end to thinking that women are encroaching upon male-dominated sports like football. Indeed, starting women's football will do much to explode the myths that women cannot run, pass, punt, and play football at a very competitive level.²⁸⁸

C. Lack of Available Scholarships

There are currently no institution-sponsored varsity women's football teams.²⁸⁹ The only opportunities that women have at the collegiate level are playing on intramural and club teams.²⁹⁰ These intramural and club teams, while often competitive, generally each have only one practice and one game each week.²⁹¹ Furthermore, participation on intramural and club teams do not result in athletic scholarships.²⁹² Women at the collegiate level also have often had minimal exposure to competitive flag

286. Jacqueline McDowell & Spencer Schaffner, *Football, It's a Man's Game: Insult and Gendered Discourse in the Gender Bowl*, 22 DISCOURSE & SOC'Y 547, 561 (2011).

287. Lenny Bernstein, *Flag Football: It's the Girls' Turn to Play*, WASHINGTON POST (Nov. 15, 2011), http://www.washingtonpost.com/lifestyle/wellness/flag-football-its-the-girls-turn-to-play/2011/11/10/gIQAfpzSON_story.html.

288 See Smith, *supra* note 1, at 1080.

289 See NCAA, *supra* note 89.

290. Villa, *supra* note 16.

291. *Id.*

292. *Playing Sports in College: Your Options*, THE COLLEGE BOARD, <https://bigfuture.collegeboard.org/find-colleges/campus-life/playing-sports-in-college-your-options> (last visited Nov. 22, 2014).

football, because it still is still a young and growing sport at the interscholastic level.

Many arguments against offering women's football at the high school level are on the basis that it is not offered at the college level.²⁹³ Consequently, flag football has been labeled a "dead-end" sport, because after high school competitive participation ends.²⁹⁴ While football boosts female participation rates for high schools, some high schools prefer adding teams that would result in higher participation rates and athletic scholarships at the college level.²⁹⁵ Without athletic scholarships at the collegiate level, it will be more difficult to gain a following at the youth level, although youth football for girls certainly seems to be growing.²⁹⁶ Athletic females will understandably be urged to play sports that will reward them with college scholarships. With no such reward at the end, female athletes may be steered away from football and toward sports that can lead to a scholarship and opportunities to compete at the intercollegiate level.

The lack of intercollegiate women's football also affects youth participation, because young girls are without role models in the sport. Rich Dujon, head coach of Lake Worth High School's girls' varsity flag football team in South Florida said, "I tell people the hardest thing about flag football for girls is there are no college games to watch I'd love to see the sport start in several different states and eventually find a place at the women's collegiate level."²⁹⁷ While Alaska, Nevada, Washington, D.C., and New York have followed Florida's example in adding interscholastic girl's football, it will be difficult to have

293. See Villa, *supra* note 16.

294. *Id.*

295. *Id.*

296. *Id.*

297. See MOMENTUM MEDIA, *supra* note 188.

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widespread success in girls' football at the youth and high school level without support from the NCAA or NAIA.

VI. CONCLUSION

This article is, in part, a call for a study of the interest level in implementing girls' and women's football at all levels, although it focuses in some measure on intercollegiate athletics—the one area where girls' or women's football has yet to be recognized. It has been recognized at the youth, interscholastic, and even professional levels, but it has not been formally recognized at the intercollegiate level. The authors largely assume that the interest will be high, as demonstrated by the successes that have attended every effort to initiate girls' football, and therefore go on to lay out a more detailed strategy for starting girls' and women's football.

Gender inequity persists in terms of participating in interscholastic and intercollegiate athletics. Girls' and women's football can help solve Title IX problems that have persisted since Title IX was adopted more than four decades ago. Women's football, in any capacity, will benefit the female student-athlete by providing females more opportunities in athletics, together with a variety of academic and life skills, while dispelling myths that women are not capable of playing a men's sport like football. It would fill needs more effectively than any other suggested emerging sport for females.

At the institutional level, women's football would assist in achieving Title IX compliance, minimizing the need to continue to eliminate men's athletic opportunities. Implementation might also generate revenue because football is broadly understood and supported by fans in the United States. Girls' and women's football is also more economically efficient, on a per-athlete basis, than many of the other emerging sports. Starting girls' and women's

football would benefit society because it advances gender equity in athletics and encourages the discussion of the female role in sports. Clearly, there is a compelling argument for starting football for females at all levels.

There are models for starting football for girls at the interscholastic level. Those and other models can be used to start women's football. With a number of options to choose from, action needs to be taken at the intercollegiate level, through recognition either by the NCAA or by the NAIA acting as a disruptive innovator, whereby it would increase its prominence in intercollegiate athletics. The NCAA or the NAIA can provide the governing body and the support women's football needs to be successful, while helping member institutions comply with Title IX requirements.

If interscholastic and intercollegiate institutions, conferences, and associations continue to be reluctant to act to start girls' and women's football, then Congress, the Office of Civil Rights, together with state and local governmental bodies, must enter the fray and draw attention to the need to make football, America's sport,²⁹⁸ available to all of its citizens, female and male alike. The athletic participation interests and abilities of too many girls and women are not being met. Football can be the cure.

298. Darren Rovell, *NFL Most Popular for 30th Year in a Row*, ESPN (Jan. 26, 2014, 9:27 AM), http://espn.go.com/nfl/story/_/id/10354114/harris-poll-nfl-most-popular-mlb-2nd.