

# Policy Focus

## Title IX's Mid-Life Crisis

RECIPES FOR RATIONAL GOVERNMENT FROM THE INDEPENDENT WOMEN'S FORUM

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### IN THIS ISSUE

What You Need to Know 1

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Why You Should Care 2

---

More Information

*Title IX's Creation  
and Enforcement* 2

*Title IX's Mixed Legacy* 3

*The Core Problem:  
Men and Women  
Aren't the Same* 3

*Reforming Title IX* 4

*Applying Title IX  
to Academics?* 5

---

What You Can Do 6



### WHAT YOU NEED TO KNOW

**F**orty years ago next month, Title IX was signed into law. The intention was to outlaw sex discrimination in academia, including in athletics, to ensure that women had equal opportunity to participate and excel.

Unfortunately, contrary to the express intention of policymakers championing the law, those charged with enforcing Title IX created a de-facto quota system, which has pressured colleges and universities to fixate on achieving statistical parity in the levels of participation in programs like athletics.

As a result, while Title IX succeeded in creating opportunities for women, it has also robbed men of similar opportunities. Since women now outnumber men on college campuses, accounting for nearly six in ten undergraduate students (and Title IX's oversight and quota regime does not apply to enrollment), colleges that wish to shield themselves from potential Title IX lawsuits must ensure that their pool of athletes mirrors the student body in terms of sex.

Title IX has contributed to the elimination of scores of men's athletic teams (commonly baseball, wrestling, gymnastics, track and field, swimming, and crew) and the near extinction of some sports (like gymnastics) for men at the college level.

Americans want both men and women to have the opportunity to pursue their dreams. Instead of just celebrating Title IX, policymakers should reform the law so that it fulfills its authors' original intentions of ensuring that both men and women have opportunity to participate in college programs.

## WHY YOU SHOULD CARE

**W**e want both men and women to be able to go to college and participate in life-enhancing extra-curricular activities. Unfortunately, Title IX's enforcement policies are impeding that goal:

- **Reducing Opportunities for Men:** Between 1981 to 2005, the number of male athletes per school fell six percent, and the number of men's teams dropped 17 percent. At the same time, the number of female athletes and sports teams increased by a third.
- **Misallocating Resources:** Title IX's number game wastes money and other resources. Government officials spend time and money hassling schools; schools waste time creating women's sports teams that can't recruit players.
- **Promoting Misguided Understanding of Equality:** We don't expect men and women to always act the same. We aren't concerned if women outnumber men in dance classes or art programs. We shouldn't be concerned if men outnumber women on the athletic field. Title IX's application to athletics, but not to female-dominated extracurricular programs suggests an anti-male agenda in enforcement policies. .

There are better ways to protect the interests of students than continuing this misguided method of enforcing Title IX.

## MORE INFORMATION

### Title IX's Creation and Enforcement

**W**hen Congress passed Title IX in 1972, the bill's champions insisted that it would not create quotas or preferential treatment for one sex. And the text of the law certainly suggests that this was the intent. Title IX reads:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.*

Unfortunately, as the Department of Education's Office of Civil Rights (OCR) moved to interpret and enforce the law, it adopted policies that conflict with those original intentions.

OCR created three paths for colleges to demonstrate compliance with the law: Showing that intercollegiate participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; showing a history and practice of expanding opportunities for the "underrepresented" sex; and, demonstrating that the interests of the "underrepresented" sex have been fully and effectively accommodated.

However, only one of these measures provides colleges with a “safe haven” from legal action: the first measure of “proportionality,” which is essentially a quota system. As a result, if six in ten students on campus are women, then six in ten student-athletes must also be women, or the college may be found to be out of compliance with Title IX.

### Title IX’s Mixed Legacy

Colleges attempting to make the numbers work have two options: They can try to increase the number of female athletes so that they mirror women’s proportion of total enrollment, or they can reduce the number of male athletes. Note that as the overall makeup of the study body has become increasingly unbalanced, with women dramatically outnumbering men on many campuses (and, ironically, Title IX does not apply to overall enrollment), reaching this quota has become a greater and greater challenge. Not surprisingly, as a result, both tactics of adding women athletes and cutting male athletes have been employed.

In 2007, the College Sports Council (CSC) conducted a comprehensive analysis of NCAA data over twenty-five years (1981-2005), which reveals Title IX’s impact. After controlling for the growth in the number of NCAA schools, CSC found that the number of female athletes per school increased by 34 percent and the number of women’s teams also increased by 34 percent. Yet during the same

period, the number of male athlete’s per school fell by six percent and the number of men’s teams declined by 17 percent.

Schools may not want to rob male students of athletic opportunities, but given the difficulty and expense of increasing the number of female athletes, sometimes such cuts are the only path to proportionality.

For example, when Brown University was sued in 1992 under Title IX, there were more than eighty empty slots on the rosters of female athletic teams. Before James Madison University cut their men’s track and field program entirely, the men’s team was allowed 80 athletes while women had 130 slots. The cost of adding another runner to the team is negligible, and the coach reported having to turn away “pretty good guys who just want to walk-on and have the experience of college athletics.” Those would-be male runners had to be turned away to avoid adding to the roster of male athletes.

### The Core Problem: Men and Women Aren’t the Same

This comes as a surprise only to radical gender-obsessed academics and perhaps those charged with enforcing Title IX, but men and women often exhibit different preferences for how to spend their time. Most Americans would say this is common sense and observable from daily life, but there is also data to back it up.

Men are more likely to play sports at all ages, and are more likely to play in informal sports leagues. Men watch sports in greater numbers, and express higher levels of interest in playing sports in surveys.

U.S. Department of Education data reveals that, among high school students, athletics is the only area in which male participation outpaces female participation. Girls are more likely to participate in academic clubs, cheerleading, music programs, vocational clubs, and other hobby clubs.

Oddly, Title IX enforcement has centered exclusively on athletics. If Title IX were applied to other endeavors, such as student newspaper, government and theater, then opportunities for women to participate would have to be slashed. Presumably, feminists celebrating Title IX would recognize that this would be unfair to women and would fail to benefit men. The same logic needs to be applied to athletics.

Everyone should be concerned about the state of men in academia. It is not good news for women when men's academic achievement suffers. After all, women want their husbands, brothers, fathers, sons, male friends and co-workers to be able to contribute to the economy and to society. Extracurricular activities—and for boys sports is the activity of choice—help keep students engaged in school and increase the probability they will graduate. Men and women alike should be concerned about the misapplication of Title IX,

which is reducing opportunities for men to take part in extracurricular activities and contributing to their diminished academic and life prospects.

## Reforming Title IX

Policymakers should return Title IX to the law's original intention so that it prevents discrimination, rather than creates discrimination by enforcing a draconian quota system.

The OCR attempted to move away from the quota system in 2005. The OCR offered guidance for how schools could use an interest survey to demonstrate that they were "effectively accommodating the interests and abilities of the underrepresented sex," and thereby create a real alternative to the "proportionality" test. This would have provided important information to schools, as well as Title IX officials, about the relative interest of male and female students in participating in competitive athletic programs, as well as in other activities.

Unfortunately, this development was lambasted by left-leaning women's groups as a threat to women, which undermined Title IX. Their complaints—that surveys would be an imperfect measure of student interests, that few students would take the time to fill out the survey, and that women may be reticent or fail to accurately express their true level of interest—seem contrived.

After all, while certainly administrators would face a challenge in achieving full participation in the

survey, there is no reason that that difficulty would skew the results (that they would have a more difficult time reaching would-be female athletes than would-be male athletes) and they could work to achieve a robust survey by making the questionnaire a part of the registration process. The critics, however, succeeded in tarring the interest survey mechanism as an attack on women, and therefore, the OCR's guidance was rescinded.

Policymakers should not allow this experience to allow the existing Title IX quota regime to persist. Instead, they should consider alternative ways to help colleges demonstrate Title IX compliance without eliminating opportunities for male athletes and insisting on proportionality.

In addition to revisiting the possibility of interest surveys, officials at OCR could clarify the third prong of the test so that schools are required not just to accommodate the interests of the "underrepresented" sex, but to accommodate the interests of both sexes equally. Under the current standard, so long as one sex is "under-represented" then schools are obliged to try to meet all unmet interest until achieving proportionality, even if this means more dramatically under-serving the greater interest of the other sex. Encouraging the interests of both sexes to be considered would help eliminate that bias.

More broadly, the public should demand that OCR and other government entities end this fixation on achieving equal outcomes among the sexes

(and only applying that standard when it benefits women). The federal government should not be in the business of micromanaging how many men or women are playing volleyball or writing for student newspapers. Colleges should make opportunities available for both sexes, but outcomes should be driven by the students themselves.

### **Applying Title IX to Academics?**

Some have called for expanding Title IX's enforcement to academic programs. Not surprisingly, champions of an expanded Title IX want to focus on science, technology, engineering and math (STEM) disciplines, which (like athletics) are currently disproportionately male.

Yet there is no reason to believe that women are being denied the opportunity to take STEM classes or that discrimination drives enrollment in majors. Innate differences in interest, temperament, and aptitudes likely are primarily responsible for this outcome. Government attempts to achieve a politically-correct gender balance in these classrooms would ignore students' true preferences, potentially leaving them worse off, and be an inappropriate government intrusion into academia.

There are better ways than adopting Title IX's quota regime to encourage women to pursue STEM. Numerous nonprofits focus on introducing young women to STEM and supporting their progress in these pursuits. Individual schools are also working to identify prospective female students and make STEM departments more hospitable to women. Such private efforts are better ways to alleviate any social pressures that may discourage women from STEM without government meddling in student course selection or unfairly punishing male students.

## WHAT YOU CAN DO

You can help encourage common-sense Title IX reform!

- **Get Informed:** Learn more about Title! Visit:
  - [Independent Women's Forum](#)
  - [American Sports Council](#)
  - [Pacific Legal Foundation](#)
- **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved
- **Become a Leader in the Community:**  
Get a group together each month to talk

about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

- **Remain Engaged:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

## ABOUT THE INDEPENDENT WOMEN'S FORUM

The Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website [www.iwf.org](http://www.iwf.org) to get more information and consider making a donation to IWF.

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