

University of South Dakota

USD RED

Honors Thesis

Theses, Dissertations, and Student Projects

Spring 2020

The NCAA's Breaking Point for Equal Opportunity: A Title IX Perspective on Name, Image, and Likeness Sponsorship Legislation

Joshua C. Sorbe

Follow this and additional works at: <https://red.library.usd.edu/honors-thesis>



Part of the [Econometrics Commons](#), [Economic Theory Commons](#), [Education Law Commons](#), [Entertainment, Arts, and Sports Law Commons](#), [Law and Economics Commons](#), [Law and Gender Commons](#), and the [Social Statistics Commons](#)

Recommended Citation

Sorbe, Joshua C., "The NCAA's Breaking Point for Equal Opportunity: A Title IX Perspective on Name, Image, and Likeness Sponsorship Legislation" (2020). *Honors Thesis*. 73.
<https://red.library.usd.edu/honors-thesis/73>

This Honors Thesis is brought to you for free and open access by the Theses, Dissertations, and Student Projects at USD RED. It has been accepted for inclusion in Honors Thesis by an authorized administrator of USD RED. For more information, please contact dloftus@usd.edu.

The NCAA's Breaking Point for Equal Opportunity: A Title IX Perspective on Name,
Image, and Likeness Sponsorship Legislation

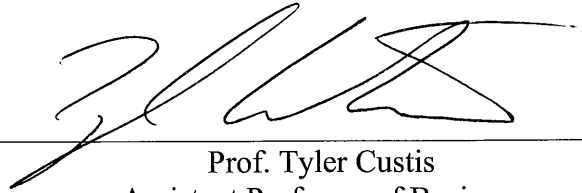
by

Josh Sorbe

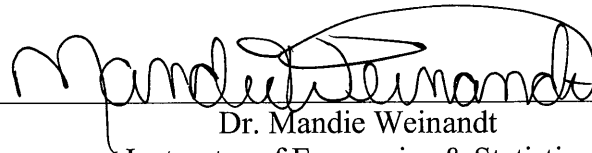
A Thesis Submitted in Partial Fulfillment
Of the Requirements for the
University Honors Program

Departments of Economics & Political Science, Criminal Justice, International Studies
The University of South Dakota
May 2020

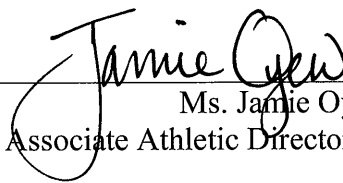
The members of the Honors Thesis Committee appointed
to examine the thesis of Josh Sorbe
find it satisfactory and recommend that it be accepted.



Prof. Tyler Custis
Assistant Professor of Business
Director of the Committee



Dr. Mandie Weinandt
Instructor of Economics & Statistics



Ms. Jamie Oyen
Associate Athletic Director for Compliance



Dr. Mike Allgrunn
Professor of Economics

ABSTRACT

The NCAA's Breaking Point for Equal Opportunity: A Title IX Perspective on Name, Image, and Likeness Sponsorship Legislation

Josh Sorbe

Director: Prof. Tyler Custis, J.D., M.B.A.

This paper analyzes the efficacy of Title IX when considering national name, image, and likeness (NIL) legislation and NCAA Division I athletic department expenditure behavior. To answer this question, I analyzed Title IX's legislative history, current compliance rules, recent litigation, and academic literature. Using publicly-available data reported to the US Department of Education, I performed regression analysis on institutional characteristics and expenditure behaviors to assess the impact that spending behavior has on gender equity. My results show that revenue-generating sports had a large impact on spending equity, and disparities in expenditures are more distinct than participation. Ultimately, the market-based exceptions that allow for inequitable gender expenditures have diluted the underlying intent of the rule: equality in sports. Given the narrow population NIL legislation likely would benefit, this study emphasizes the need to take into account the values safeguarded by Title IX when revising policies impacting amateurism, athlete benefits, and gender equity.

KEYWORDS: Title IX, Gender, Athletics, Sports Law, NCAA

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION	1
CHAPTER 2: LEGISLATIVE HISTORY OF TITLE IX.....	3
CHAPTER 3: STATUS QUO COMPLIANCE RULES	5
CHAPTER 4: COURT LITIGATION	10
CHAPTER 5: LITERATURE REVIEW	13
CHAPTER 6: METHODOLOGY	17
CHAPTER 7: RESULTS	20
CHAPTER 8: DISCUSSION.....	24
CHAPTER 9: CONCLUSION	26
REFERENCES	27

LIST OF FIGURES

TABLE 1: REPORTED INFORMATION	17
TABLE 2: KEY TERMS DEFINED	18
TABLE 3: GENERATED VARIABLES	19
TABLE 4: DESCRIPTIVE STATISTICS	19
TABLE 5: PARTICIPATION REGRESSIONS	22
TABLE 6: EXPENSES REGRESSIONS	23
FIGURE 1: PARTICIPATION DISTRIBUTION	24
FIGURE 2: PARTICIPATION DISTRIBUTION	25
FIGURE 3: EXPENDITURE DISTRIBUTION	25

CHAPTER ONE

Introduction

On September 30, 2019, California Governor Gavin Newsom signed California Senate Bill 206 “The Fair Pay to Play Act”, permitting college student-athletes to earn compensation for the use of their name, image, or likeness (NIL) and allowing student athletes to obtain professional legal representation (Newsom, 2019). Governor Newsom’s signature triggered a national conversation, with at least ten states committing to drafting similar legislation in the upcoming legislative sessions (Berkowitz & Woken, 2019). The movement pressured the NCAA to address the conflict of NIL with its core value: amateurism, articulated as a core value in the NCAA Constitution:

Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises. (NCAA Division I Manual, 2019)

After internal policy review and debate, the NCAA Board of Directors voted unanimously at their October 2019 meeting to permit student athletes to sign sponsors to promote their name, image, and likeness – directing each of the three NCAA divisions to form working groups to update their bylaws. The decision made headlines and was largely praised by industry professionals, business, and big-time sports fans. Reflecting on the decision, NCAA President Mark Emmert said in a statement: “The board’s action today creates a path to enhance opportunities for student-athletes while ensuring they compete against students and not professionals” (National Collegiate Athletics Association, 2019).

However, a core stakeholder expressed reservation and doubt –student athletes. Following the official announcement, the Division I Student Athlete Advisory Committee

(SAAC), the official governing body representing the 170,000+ Division I student athletes, expressed serious hesitation to the change:

We do not discount the outsized impact and contributions of the top athletes in sports like men's basketball and football – only about 2% of all Division I athletes – which help keep college athletics alive and bring hundreds of thousands of people together over a common love of sports. While these student-athletes are a vital part of this conversation, they cannot be the only part; after all, we represent all 100% of Division I student-athletes. (Division I SAAC, 2019)

Specifically, the group highlighted the inequities NIL legislation would reinforce:

No one is talking about how proposals for name, image and likeness reform – both state and federal – will affect sports other than football and men's basketball or a handful of elite student-athletes in other sports. No one is talking about what the proposals will do for limited resource institutions, historically black colleges and universities, or international student-athletes. (Division I SAAC, 2019)

The apparent conflict between amateurism and NIL legislation jeopardizes the intent of Title IX. Greater market-justified expenditures already afford revenue-generating (primarily male) sports rewards like media days, additional marketing, larger spectator accommodation, and greater opportunity for self-promotion. Given the limited population likely to receive sponsors – revenue-generating men's sports stars, the current debate serves as a breaking point for Title IX: is the law still meaningful? Have exceptions to Title IX undercut the rule? Is Title IX working as its champions intended?

To determine Title IX efficacy within the context of name, image, and likeness debate, I analyzed Title IX's legislative history, current compliance rules, recent litigation, and academic literature. Using publicly reported data to the US Department of Education, I performed regression analysis on institutional characteristics and expenditure behaviors to see the impact spending behaviors have on gender equity. Lastly, I pose the current NIL discussions to be a litmus test on the future of Title IX and its efficacy.

CHAPTER TWO

Legislative History of Title IX

Former United States Representative Patsy Mink of Hawaii, the champion for Title IX, called upon her life experiences and policy work to draft what would become the most influential gender anti-discrimination education law in history. Throughout her life, Mink broke barriers for disenfranchised communities in education, law, and politics. She attended the University of Nebraska-Lincoln, where she was the victim of long-standing racial segregation policies forcing students of color to live in separate dorms from white students (Cruz & Yamamoto, 2003, p. 579). She eventually became the first Japanese woman to practice law in the state of Hawaii, served in the Hawaii State Senate, and became the first woman of color elected to the United States House of Representatives.

Rep. Mink's experience as an underserved student through the public-school system motivated her Congressional priorities as a member of the House Education and Labor Committee. She used her coalition-building skills and drew on her life experiences, drafting versions of and building support for what would become Title IX of the Education Amendments of 1972. Signed into law on June 23, 1972, the law reads:

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

Explaining the intended outcome of the policy, Mink said, “So long as any part of our society adheres to a sexist notion that men should do certain things and women should do certain things and then begin to inculcate our babies with these certain notions through curriculum development and so forth, then we'll never be rid of the basic causes of sex discrimination” (Bright, 2019). Her foundational beliefs serve as a litmus test for the

law's impact: education systems should not treat men and women differently, nor should our society have differing expectations of men's and women's actions.

Title IX applies to all aspects of federally funded education programs and activities, including intercollegiate athletics. However, the specific mechanism to which Title IX measures equality – and how best to measure equality – continues to elicit contention. Responding to confusion after its passage, Senator John Tower of Texas and Senator Jacob Javits of New York proposed amendments to Title IX funding criteria for intercollegiate athletics in 1974. Tower sought to exempt revenue-producing sports from Title IX compliance, appeasing critics claiming Title IX compliance would lead to the “possible doom of intercollegiate sports” using the words of former NCAA Director Walter Byers (Springer, 1988). Contrarily, Javits wanted to regulate sports regardless of profitability but recognize differing market-based demands on the activities. The Senate still believed in the civil rights mission of the 1972 law and passed Javits' amendment, reading “the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports" (Hayes, 2011). The qualifiers for “the nature of particular sports” allowed market-based demands necessitating differing expenditure levels between sports and still maintain compliance.

CHAPTER THREE

Status Quo Compliance Rules

In 1979, the Department of Education issued its first policy interpretation following extended debate and discussion since the law's enactment (44 Fed. Reg. 239, 1979). The DOE interpreted Title IX to allow for expenditure discrepancies provided they are related to: rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/ upkeep requirements of those facilities. Additionally, costs managing athletic events increase with crowd size, which disproportionately benefit men's programs. In general, DOE's guidelines provided if sport-specific needs are met equivalently, differences in particular program components are justifiable. Throughout the policy's history, this provision has as justification for marketplace caveats for compliance, rather than allowing the policy to influence the market.

Part 1: Participation & The Three Prong Test.

To provide guidance to institutions, the DOE issued what is now known as the "Three Prong Test" (44 Fed. Reg. 71413, 1979). Athletic departments must meet just one of the following three tests in order to comply.

Prong One: Substantial Proportionality.

The first prong addresses participation proportions between men and women in an athletic department, specifically asking if an institution's participation opportunities are "substantially proportionate to their respective rates of enrollment as full-time

undergraduate students” (US Legal, Inc., n.d.). For the purposes of prong one, a “participant” is an athlete:

- a. Receiving the institutionally sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and
- b. Participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
- c. On the eligibility or squad lists maintained for each sport, or
- d. Because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

While determinations are made on a case by case basis (Cantu, 1996), professionals have recommended institutions choosing to comply with test one to not allow a difference of more than 2-5 percentage points between enrollment and participation rates (Bonnette & Sanders von Euler, 2004, p. 44). In general, larger programs are held to a smaller differential than smaller athletics programs. Specifically, compliance is generally awarded once the number of women needed to achieve exact proportionality is equal to the average size of a women’s team. Many critique Title IX on the assumption that proportionality is the only way to comply, forcing a “quota system”. This is false. If proportionality is not met, there are two further methods to comply.

Prong Two: History and Continuing Practice.

The second prong evaluates program expansion for the underrepresented sex, examining an institution’s expansion of athletic opportunities through its response to

developing interests of the underrepresented sex at that institution. The underrepresented sex is the one which participation rates are less than their enrollment rate. Given that it is nearly always women who are underrepresented in athletics programs, women have inherited the stigma of being the “underrepresented sex”.

“Program expansion” means an increase in the number of opportunities for women, which can occur by adding a women’s team or opportunities on an existing team (Bonnette & Sanders von Euler, 2004, p. 46). Subject matter experts recommend that an institution increase the number of participation opportunities by at least 25% in five years to comply with test two (Good Sports, Inc., 2019). After Title IX’s inception in 1972, most institutions met this test given the extensive public discourse about expanding women’s athletics opportunities. Today, only six percent of collegiate programs are meeting test two (Good Sports, Inc., 2019).

Prong Three: Fully & Effectively Accommodating Interests and Abilities.

The final prong examines an institution’s program offerings. To meet test three, an institution must offer every program for which there is sufficient interest, ability, and competition to form a team for the underrepresented sex. All three of these criteria must exist before an institution is obligated to offer a team to meet test three.

- Interest. To gauge interest in a new team, Title IX reviews on-campus programs, off-campus programs, and a school’s normal recruitment area. On-campus reviews look at club sports, intramural sports, recreational programs, elective physical education courses, and surveys as gauges for interest. Off-campus reviews look primarily to recruiting. To meet this test, institutions must prove that their sports

offerings are similar to the offerings at high schools within their normal recruitment area.

- Ability. Potential ability is measured by the success of club teams or intramural participation, without explicit regard to competitive records and current inability to compete intercollegiately. Rather, programs look to the potential of a sport once given the benefits of intercollegiate status (i.e. athletic scholarships, recruitment dollars).
- Competition. If interest and ability are both established, an institution's normal competitive region must be conducive to sufficient competition. Professionals recommend schools compute one-way travel mileage for all regular-season events for all teams and evaluate competition availability within 85% of the school's normal competitive region (Good Sports, Inc., 2019).

Overall, the focus of test three is to ensure all viable sports at the intercollegiate level are available for the underrepresented sex. Studies show this test is most often utilized at the collegiate level (Good Sports, Inc., 2019).

Part 2: Scholarship

Using unduplicated participation numbers, scholarship dollars must be allocated proportional to male and female participation with a one-percent deviation allowance. For example: if an institution's athletic department is comprised of 55% female and 45% male student athletes, scholarship dollars expenditures must be 54-56% on female athletes and 44-46% on male athletes.

Part 3: Equal treatment.

Lastly, Title IX requires equal treatment of male and female participations in 11 areas (Bonnette & Sanders von Euler, 2004, p. 2). These are measured by various interviews, questionnaires, and data analysis:

- Equipment and supplies;
- Scheduling of games and practice times;
- Travel and daily allowance/per diem;
- Access to tutoring;
- Coaching;
- Locker rooms, practice and competitive facilities;
- Medical and training facilities and services;
- Housing and dining facilities and services;
- Publicity and promotions; and
- Support services.

CHAPTER FOUR

Court Litigation

While the DOE policy interpretations lend credence to the extensiveness of Title IX, the law and its enforcement have been the subject of much litigation in the courts and informally in public discourse. Throughout the 1980s, animosity towards Title IX materialized into attempts to weaken – and even entirely remove – the law’s applicability to intercollegiate athletics.

Grove City College v. Bell (1984)

Grove City College is a private institution in northwestern Pennsylvania and refused to file a Title IX compliance assurance, stating that since the institution did not receive federal financial assistance it did not need to submit. As a result, the Department of Education – led by Secretary Terrel Bell – terminated the students’ Basic Educational Opportunity Grants. The Supreme Court held that when students receive federal grants, Title IX requirements only apply to the specific program of activity benefitted by the grants. *Grove City* significantly limited the scope of Title IX in relation to athletics, as “little to no federal money ever goes directly to athletic programs, certainly not at the college and university level” (Leone, 2019).

Civil Rights Restoration Act of 1987

Referred to colloquially as the Grove City Bill, Congress overrode a presidential veto by President Reagan to specify that recipients of federal funds must comply with civil rights legislation – including Title IX – in all areas, not just the program receiving the

funds. Effectively, this law overrode *Grove City* and had the effect of expanding federal power and saving Title IX application to university athletics.

Following the *Grove City* and Civil Rights Restoration Act debates, litigation and discourse continued but primarily focused on specifying compliance rules rather than calls for abolishing the legislation.

Cohen v. Brown University (1993)

This precedent-setting case was the first Title IX athletics case involving the three-part test to be tried at the Circuit level. In 1991, Brown University announced that it was going to eliminate four sports: women's volleyball, women's gymnastics, men's golf, and men's water polo. Brown University said the teams could still compete as club sports, but it was not going to provide university funding due to financial constraints. At that time, Brown's student body was comprised of 52 percent male and 48 percent female students, though 63 percent of its student-athletes were male. Amy Cohen, a member of the gymnastics team, sued Brown, and the district court held that Brown failed all three tests under Title IX. This ruling was later affirmed by the 1st Circuit Court of Appeals. An appeal was filed with the United States Supreme Court, which declined to hear the case.

Roberts v. Colorado State Board of Agriculture (1993)

Similar to *Cohen v. Brown*, *Roberts v. Colorado State Board of Agriculture* concurred with a district court ruling that Colorado State University had failed to comply with Title IX. In this case, CSU terminated the women's softball team and men's baseball team, and former softball players sued the institution. After establishing a 10.5 percentage

point differential in the proportionality test and failure to prove continuing expansion of women's athletics, Circuit Judge James Logan wrote in his opinion "If there is sufficient interest and ability among members of the statistically underrepresented gender, not slaked by existing programs, an institution necessarily fails this prong of the test." By terminating a team that proved interest, ability, and competition, CSU violated Title IX.

CHAPTER FIVE

Literature Review

In the absolute, participation opportunities have been examined and generally concluded to be improving for female collegiate athletes. Acosta and Carpenter (2014) found in their annual longitudinal study that prior to Title IX's enactment in 1972, schools averaged 2.5 women's teams. In 2014, they found that schools averaged a record-high 8.83 women's teams, a +.51 and +1.61 improvement in 10 and 20 years respectively. Before Title IX there were just 16,000 female athletes; today, they total over 200,000 athletes (p. 1).

Title IX has expanded women's participation in intercollegiate athletics. However, the NCAA's 45-year special report on Title IX showed a faster rate of growth in men's opportunities than women's opportunities (45 Years, n.d.). Compared to the undergraduate enrollment rates across divisions, the women's overall athletics participation rate is 10.5% lower than the female rate of enrollment. Expenditures highlight an even greater differential between men's and women's athletics programs. Controlling for unallocated and coed expenditures, men's sports enjoy double the department financial support of women's sports, with Division I contributing most to the differential (p. 29).

Significant research has been published seeking to explain the continued inequity between rates of enrollment and participation, as well as expenditure discrepancies. Mainly, studies have cited two issues: lack of uniform enforcement and cost escalation.

- Lack of uniform enforcement: Kennedy (2003) found in his examination of Title IX policies that lacking enforcement of the laws and regulations has plagued Title IX. In 2002, the U.S. Department of Education convened a Commission on Opportunity

in Athletics in 2002 to consider changes to policies and regulations; despite the Commission recommending 23 policy changes, the Bush administration declined to make any changes. Still today, the Office for Civil Rights has never initiated proceedings to remove federal funding eligibility since Title IX's inception in 1972. Individuals seeking justice must bring a lawsuit to challenge inequity through the judicial process, a time-insensitive and costly maneuver that deters many disenfranchised individuals in society from challenging laws.

- Cost escalation: Wuerdeman (2017) expressed school incentivization to compete in an arms race as a primary cause of inequity. Simply, large universities are attracting revenue for the “big time feel of college sports” in seeming contradiction of the original notions of student amateurism in athletics. To do so, universities are incentivized to win games to attract sponsors, private contracts, and commercial popularity by growing athletics budgets substantially; however, these funds have primarily been funneled to revenue-generating sports for a return on investment. Many believe if the spending and prioritizing of revenue-producing sports at the expense of women's sports and men's non-revenue generating sports does not slow, little will slow the rate of degradation in gender equity.

Economic game theory further explains Wuerdeman's cost escalation literature. Figure 1 depicts a first-mover payoff table. Team A and Team B compete against one another, and their success is dependent on their expenditure levels. The “success” outcome can apply to numerous scenarios like wins, recruiting, and retention, where $A \text{ success} < B \text{ success} < C \text{ success}$. The cooperative outcome is BB, where lower expenditure levels yield equal outcome. However, incentives encourage the teams to spend more money to gain a

competitive advantage on the other, resulting in more success (C) at the expense of the other team's success (A). As a consequence, the Nash equilibrium becomes BB again but at a higher expenditure level. This starts a new cooperative outcome for a repeated game with even higher expenditure levels.

Figure 1. Cost Escalation Payoff Table

		Team B	
		\$	\$\$
Team A	\$	B,B	A,C
	\$\$	C,A	B,B

These challenges have not muted critics of the prevailing challenged facing Title IX. For participants, Druckman, Rothschild, and Sharrow's 2018 break-through survey of Division 1 athletes found strong support for the spirit of Title IX, perceptions of resource maldistribution in the status quo, and belief redistribution is needed. In the legal community, Reynolds (2016) found mobilization of Title IX in response to athletics gender issues has seen a massive spike since 2012, comprising 78% of total filings in 2013 of which 66% raise part 3 of the 3-part test. Paule-Koba's 2013 qualitative study found a majority of athletics' stakeholders viewing Title IX as a loss of opportunity for non-revenue generating men's sports and a creation of disingenuous opportunity for women's sports.

The recent events in the California legislature and at NCAA headquarters have posed the question: how does expenditure levels influence opportunity in NCAA Division 1 athletics, and will NIL legislation exacerbate the inequity? Throughout the quantitative section of this study, I ask that you remind yourself of two hypothetical athletes experiencing opposite ends of the expenditure gradient. Athlete A reflects what the

Division I SAAC statements describes as “the 2%” – participating in the men’s football program at a large FBS institution, traveling nationally and competing in nationally-televised bowl games. Athlete B reflects “the 98%” – participating for the women’s tennis team, traveling and competing regionally, and not benefitting from the revenue-driven fan base. Approaching a potential breaking point posed by NIL, is this the inevitable demise of Title IX?

CHAPTER SIX

Methodology

This study used a secondary data set from the Office of Postsecondary Education of the U.S. Department of Education. Following the *Grove City* decision and Civil Rights Restoration Act, legislators codified mandatory reporting initiatives in public law by passing the Equity in Athletics Disclosure Act of 1993. The EADA requires the information in Table 1 be reported to the Secretary of Education by institutions annually, with key terms defined in Table 2:

Table 1: Reported Information	
For each men's, women's, and coed team:	A statement of the following:
<ul style="list-style-type: none">• Total number of participants and their gender*• Total scholarship expenditures• Scholarship expenditures per participant• Total number of contests• Total operating, recruiting, personnel expenses• Number of head, assistant, graduate assistant, and volunteer assistant coaches and their gender*• Full-/part-time status of head and assistant coaches• Full compensation of head and assistant coaches• Ratio of participants to coaches	<ul style="list-style-type: none">• Ratio of male participants to female participants in the entire athletic program*• Ratio of male scholarship expenses to female scholarship expenses in the entire athletic program
* Note: The gender data is provided from the institutions, collected under their policies and procedures. Many assume a gender binary. Inclusivity is an important value and I recognize the work of advocates equality for LGBTQ+ community, especially the non-binary, genderqueer, or gender non-conforming. Unfortunately, the secondary nature of this dataset requires the use of gender binary data.	

Table 2: Key Terms Defined	
Expenses	All expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities
Operating (Game Day) Expenses	All expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as game-day expenses), for (A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and (B) Officials.
Recruiting Expenses	All expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, and other expenses for official and unofficial visits, and all other expenses related to recruiting.
Revenues	All revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, contributions from alumni and others, institutional royalties, signage and other sponsorships, sport camps, state or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.
Source: https://ope.ed.gov/athletics/#/	

The original dataset is a publicly available panel dataset of 348 NCAA Division I institutions from reporting years 2003-2017. The institutions include FBS, FCS, no football schools, and schools in transition from Division II to Division I. Cleaning the data, I generated 11 variables to answer the core questions I was asking (Table 3). Additionally, I renamed the division affiliation data through 2006, as the NCAA renamed Division I-A, I-AA, and I-AAA to NCAA Division I FBS, FCS, and No Football, respectively (About the Data, 2019). Descriptive statistics for the variables are provided in Table 4. Finally, the data was then analyzed using regression analysis in Stata.

Table 3: Generated Variables	
Variable	Equation
Proportion Women Participation	$\text{prop_w_part} = \frac{\text{total women's participation}}{\text{total men's} + \text{women's participation}}$
Proportion Women Operating Expenditures	$\text{prop_w_opexp} = \frac{\text{total women opexp} + \text{total coed opexp} * \text{prop w coed part}}{\text{total women's} + \text{men's} + \text{coed}}$
Proportion Women Team Expenses	$\text{prop_w_teamexp} = \frac{\text{total women teamexp} + \text{total coed teamexp} * \text{prop w coed part}}{\text{total women's} + \text{men's} + \text{coed teamexp}}$
Proportion Women Undergrad Enrollment	$\text{propfemUG} = \frac{\text{female undergraduate enrollment}}{\text{male} + \text{female undergraduate enrollment}}$
Time Trend	time trend (t) = Year – 2003
ReptChgYears	if($t_{12-14} > 1$), 1
High-Revenue Sport Dummy Variables (5)	if($\text{part}_{\text{mbb}} > 1$), MBB = 1 if($\text{part}_{\text{wbb}} > 1$), WBB = 1 if($\text{part}_{\text{mfb}} > 1$), MFB = 1 if($\text{part}_{\text{mhock}} > 1$), MHOCK = 1 if($\text{part}_{\text{whock}} > 1$), WHOCK = 1

Table 4: Descriptive Statistics					
Variable	Mean	Std. Deviation	Min	Max	Count
prop w teamexp	0.3846	0.0894	0.0954	0.6377	5055
propfemUG	0.5417	0.0698	0.0572	0.7869	5054*
prop w part	0.4651	0.0691	0.0783	0.7019	5055
prop w opexp	0.4215	0.1178	0.0595	0.8608	5055
FBS	0.3634	0.4810	0	1	5055
FCS	0.3567	0.4791	0	1	5055
no FB	0.2799	0.4490	0	1	5055
Time Trend	7.1013	4.3149	0	14	5055
Rept. Chg Years	0.2057	0.4043	0	1	5055
2015	0.0684	0.2525	0	1	5055
2016	0.0684	0.2525	0	1	5055
2017	0.0688	0.2532	0	1	5055
TotUG	11242.5362	8116.0040	942	50394	5054*
Coed team	0.0611	0.2396	0	1	5055
MBB	0.8542	0.3529	0	1	5055
WBB	0.9941	0.0768	0	1	5055
MFB	0.7118	0.4530	0	1	5055
MHOCK	0.1009	0.3012	0	1	5055
WHOCK	0.0712	0.2572	0	1	5055

* The dataset did not include enrollment data from Tulane University in 2005.

CHAPTER SEVEN

Results

I expect the proportions of women's team expenditures and participation rates to depend partly on the size of the football program (division), continued growth of athletics (time), and institution size (undergraduate enrollment). Additionally, I expect the offerings of men's basketball, women's basketball, men's football, men's hockey, and women's hockey to have a significant impact on gender equity in expenditures and participation, as I found these sports to account for the most expenditures. To test these hypotheses, I performed various regressions on the dependent variables *prop_w_part* and *prop_w_teamexp*.

Participation Proportionality

To test our hypothesis regarding the impact of division, time, undergraduate enrollment, and select sports of gender equity in participation, I regressed each of the aforementioned variables on *prop_w_part* to see basic correlation and trends between the variables. The results are displayed in Table 5.

Overall, simple regression results aligned with the narrative of my literature review and hypotheses. When analyzing division, FCS schools were associated with lower female participation rates (Coef. $-.08287$) than FBS schools (Coef. $-.05032$). However, the non-football conference affiliated schools showed net positive female participation rates compared to men, although this can still be out of compliance with Prong 1 as the baseline is the rate of enrollment and not 50%. Additionally, the positive coefficient for time trend ($.00259$) does not insinuate compliance with Prong 2, as industry professionals have

recommended a 25% increase in participation opportunities in the previous five years. FBS schools generally have larger student populations than FCS schools, supporting the positive coefficient for *TotUG* ($1.20e-06$). While such a small coefficient can seem insignificant, the practical significance of the coefficient representing only one additional student is worth noting. For every 1000 additional students, proportionality increases .0012. For 10000 students, .012. For the select sports, women's basketball was a significant equalizer (Coef. .22815).

As I add variables to multiple regressions, I found the FBS-FCS-unaffiliated trends reinforced. When controlling for institution size (5), FBS affiliation's impact on participation was stronger than its simple regression. Additionally, the time trend variable was strengthened. For every 1000 additional students, proportionality increases .0016. For 10000 students, .016. When the time trend and select sports are controlled for as well (6), the division impact is less drastic – most likely because it now equalizes the impact of merely having a football team (MFB) and concentrates only on its division affiliation. The trend remains similar to previous regressions: women's basketball is an equalizer, football is associated with inequity, and participation rates are lower at FCS schools than FBS and non-affiliated schools, respectively.

Table 5. Participation Regressions						
Independent Variable	(1)	(2)	(3)	(4)	(5)	(6)
FBS	-0.05032*** (0.00215)				-0.06865*** (0.00244)	-0.00704 (0.00890)
FCS	-0.08287*** (0.00216)				-0.08191*** (0.00211)	-0.03860*** (0.00891)
Time Trend		0.00259*** (0.00031)				0.00253*** (0.00026)
Rept. Chg Years		-0.00187 (0.00331)				-0.00130 (0.00274)
TotUG			1.20E-06*** (0.45160)		1.90E-06*** (0.00000)	
Coed team				-0.00105 (0.00350)		-0.00246 (0.00335)
MBB				-0.00919*** (0.00237)		-0.01055*** (0.00228)
WBB				0.22815*** (0.01082)		0.21773*** (0.01038)
MFB				-0.06481*** (.00184)		-0.04293*** (0.00878)
MHOCK				0.02709*** (0.00543)		0.02028*** (0.00443)
WHOCK				-0.00102 (0.00543)		0.01010* (0.00524)
Constant	0.51295*** (0.00162)	0.44710*** (0.00204)	0.45160*** (0.00164)	0.28969*** (0.01117)	0.49793*** (0.00188)	0.28428*** (0.01082)
Adj. R-Sq	0.2262	0.0235	0.0198	0.2714	0.2586	0.3321
Count (n)	5055	5055	5054	5055	5054	5055
***, **, and * represent significance at the 1, 5, and 10% levels, respectively.						

Expenditures Proportionality

To test my hypothesis regarding the impact of division, time, undergraduate enrollment, and select sports of gender equity in expenditures, I regressed each of the aforementioned variables on *prop_w_teamexp* to see basic correlation and trends between the variables. The results are displayed in Table 6.

I found division spending differences (1) extremely significant: FBS affiliation is associated with an 18 percentage-point decrease in spending proportionality – averaging a 30.3% women’s team expenditure proportion. – and FCS affiliation is associated with a 9 percentage-point decrease. Given the characteristics of FBS and FCS schools, I use

division as a proxy variable for the threshold of the football program – the larger the program, the worse the proportionality.

Additionally, institution size (3) has a similar impact, although less drastic. A larger institution is associated with worse proportionality: for every 1000 students, proportionality decreases .5 percentage points. Interestingly, time (2) did not register as a significant variable, potentially because other independent variables are more highly correlated. Similar to participation proportionality, women’s basketball is a significant equalizer (4).

As I combined the variables into a multi regression (excluding time due to insignificance), the results were relatively similar to the simple regressions. However, the significance of women’s basketball as an equalizer grew by three percentage points.

Table 6. Expenses Regressions					
Independent Variable	(1)	(2)	(3)	(4)	(5)
FBS	-0.18142*** (0.00186)				-0.04425*** (0.00764)
FCS	-0.09630*** (0.00187)				0.04157*** (0.00765)
Time Trend		-0.00021 (0.00041)			
Rept. Chg Years		-0.00405 (0.00433)			
TotUG			-4.59E-06*** (0.00000)		
Coed team				-0.00303 (0.00358)	-0.00055 (0.00288)
MBB				-0.02056*** (0.00243)	-0.01542*** (0.00196)
WBB				0.16699*** (0.01108)	0.19464*** (0.00891)
MFB				-0.13963*** (0.00189)	-0.13755*** (0.00753)
MHOCK				-0.01639*** (0.00472)	0.00311 (0.00381)
WHOCK				0.04086*** (0.00556)	0.01024** (0.00450)
constant	0.48484*** (0.00140)	0.38690*** (0.00267)	0.43620*** (0.00195)	0.33444*** (0.01143)	0.30239*** (0.00920)
Adj. R-Sq	0.6522	0.0003	0.1735	0.5440	0.7060
Count (n)	5055	5055	5054	5055	5055

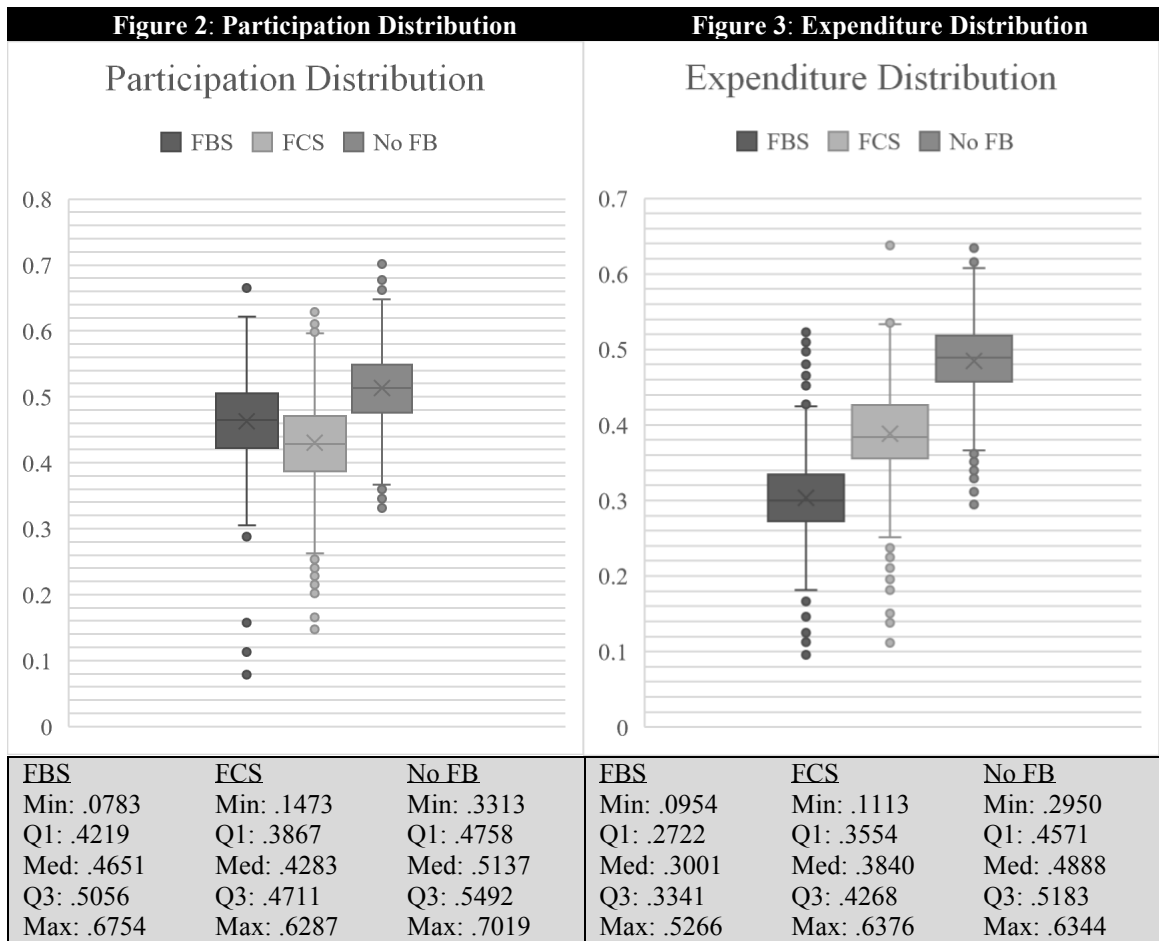
***, **, and * represent significance at the 1, 5, and 10% levels, respectively.

CHAPTER EIGHT

Discussion

Overall, I found two prevailing themes from the data:

- First, revenue-generating sports had a large impact on spending equity. Given the large statistical impact of men's basketball, men's football, and women's basketball, these revenue-generating sports are perpetually benefitted by the market-based nature of compliance policies. Under Title IX, expenditure requirements are contingent on spectator appeal, event management, and other circumstance-determined criteria. Spectator appeal generally aligns with men's sports (with the notable exception of women's basketball), which can be largely attributable to gender inequity. Since these sports have a justified market-based reason to absorb larger expenditures, the inequity is continuously engrained as marketing and event management needs are heavily promoted for these sports.
- Second, disparities in expenditures are more distinct than participation (see Figures 1 and 2). For example, an FBS football program is associated with a -5 percentage point swing in participation – but a -18 point swing in expenditures. A women's basketball program is associated with a +22 percentage point swing in participation – but only a +19 percentage point swing in expenditures. Football, the highest revenue-generating sport, potentially accounts for a larger portion of expenditures to generate a larger return, in order to support non-revenue generating female sports and reducing its impact on participation. Additionally, the Title IX compliance prongs are more directed to participation than expenditures, potentially providing a structural incentive reinforcing an emphasis on participation and not expenditures.



Ultimately, having the opportunity to participate in collegiate athletics is an equalizer; however, men’s sports (particularly football and basketball) which account for greater proportions of expenditures leads me to conclude the men participating in intercollegiate athletics are receiving greater advantages than women. It affords revenue-generating (primarily male) sports rewards like media days, additional marketing, and larger spectator accommodation, allowing greater opportunity for self-promotion that – given the current legislative initiatives in states like California – could materialize into even greater financial reward for high profile athletes.

CHAPTER NINE

Conclusion

Money yields opportunity, and the influence of money in NCAA athletics department expenditures has diminished the efficacy of Title IX. Not only have exceptions dilutes the purpose of the law, but recent NIL-related legislation pose risk to rendering it ineffective. Using data publicly available by the US Department of Education, I performed regression analyses on expenditure behavior with various institution characteristics. While my data set had issues with multicollinearity and functional form misspecification, I derived two main conclusions: revenue-generating sports had a large impact on spending equity, and disparities in expenditures are more distinct than participation. Because expenditure levels are largely contingent on market and spectator appeal, current Title IX compliance policy reinforces existing gender inequities by funneling more resources to revenue-generating men's sports to support the others.

Literature shows athletes, legal scholars, and gender equity advocates are receptive to stronger distribution of resources, paired with tougher enforcement and minimizing the resource arms race. We are at an inflection point in Title IX policymaking amid the name, image, and likeness debate: will policymakers value amateurism or will commercialization and athletics arms races continue to swallow the rule of gender equity in athletics? If decisionmakers choose the latter, collegiate athletics will continue to professionalize and yield further inequities we see in professional sports (i.e. the US national women's soccer team protests). In the future, research should continue to analyze the impact of other larger sports (i.e. track and field), as well as extend to Division II and III.

References

- 45 Years of Title IX: The Status of Women in Intercollegiate Athletics. (n.d.) National Collegiate Athletics Association. Retrieved from http://www.ncaa.org/sites/default/files/TitleIX45-295-FINAL_WEB.pdf
- A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 239 (December 11, 1979). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>
- About the Data*. (2019). Retrieved December 04, 2019, from <http://cafidatabase.knightcommission.org/about-the-data>
- Acosta, R. V., & Carpenter, L. J. (2014). *Women in Intercollegiate Sport: A Longitudinal, National Study Thirty-Seven Year Update*(Publication No. 37). Retrieved December 8, 2019, from Smith College's Project on Women and Social Change and Brooklyn College of the City University of New York website: <http://www.acostacarpenter.org/2014%20Status%20of%20Women%20in%20Intercollegiate%20Sport%20-37%20Year%20Update%20-%201977-2014%20.pdf>
- Berkowitz, S., & Wolken, D. (2019, October 29). NCAA Board of Governors opens door to athletes benefiting from name, image and likeness. *USA Today*. Retrieved December 4, 2019, from <https://www.usatoday.com/story/sports/college/2019/10/29/ncaa-board-opens-door-athletes-use-name-image-and-likeness/2492383001/>
- Bonnette, V., & Sanders von Euler, M. (2004). *Title IX and Intercollegiate Athletics: How It All Works - In Plain English*. San Diego, CA: Good Sports.
- Bright, C. (Director). (2019, March 4). *N|150 Patsy Takemoto Mink*[Video file]. Retrieved December 05, 2019, from <https://mediahub.unl.edu/media/10727>
- Cantu, N. (1996, January 16). Dear colleague letter. Washington, DC: U.S. Department of Education, Office for Civil Rights. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>
- Civil Rights Restoration Act of 1987, Pub. L. 100-259, 102 Stat. 28.
- Cohen v. Brown University, 991 F.2d 888 (1st Cir. 1993).
- Cruz, T., & Yamamoto, E. K. (summer 2003). A Tribute to Patsy Takemoto Mink. *ASIAN-PACIFIC LAW & POLICY JOURNAL*, 4(2), 569-597.
- Division I Student Athlete Advisory Committee. (2019, October 29). *We are the 100%*[Press release]. Retrieved December 4, 2019, from <https://twitter.com/Div1SAAC/status/1189181584223674368?s=20>

- Druckman, J. N., Rothschild, J. E., & Sharrow, E. A. (2018). Gender Policy Feedback: Perceptions of Sex Equity, Title IX, and Political Mobilization among College Athletes. *Political Research Quarterly*, 71(3), 642-653. doi:10.1177/1065912917753078
- Equity in Athletics Disclosure Act. (2017, January 24). Retrieved December 08, 2019, from <https://www2.ed.gov/finaid/prof/resources/athletics/eada.html>
- Grove City College v. Bell, 465 U.S. 555 (104 S. Ct. 1984).
- Hayes, A. (2011, February 26). Title IX Sexual Parity: Why Stop at Sports? Retrieved December 05, 2019, from <https://pacificlegal.org/title-ix-sexual-parity-in-sports-and-other-nonsense/>
- Kennedy, C. L. (2010). A New Frontier For Women’s Sports (Beyond Title IX). *Gender Issues*, 27(1-2), 78-90. doi:10.1007/s12147-010-9091-y
- Leone, T. (2019, January 5). Grove City College left a landmark on Title IX. *Penn Live*. Retrieved December 05, 2019, from https://www.pennlive.com/patriotnewssports/2012/06/grove_city_college_left_a_1_and.html
- National Collegiate Athletics Association. (2019, October 29). *Board of Governors starts process to enhance name, image and likeness opportunities* [Press release]. Retrieved December 4, 2019, from <https://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities>
- NCAA Division I Manual. (2019, August 1). Retrieved from <https://web3.ncaa.org/lsdbi/reports/getReport/90008>.
- Newsom, G. (2019, September 30). SB 206 Signing Message 2019 [Letter written September 30, 2019 to Members of the California State Senate]. Retrieved December 4, 2019, from <https://www.gov.ca.gov/wp-content/uploads/2019/09/SB-206-Signing-Message-2019.pdf>
- Paule-Koba, A. L., Harris, O., & Freysinger, V. J. (2013). “What Do I Think About Title IX?” Voices From a University Community. *Research Quarterly for Exercise and Sport*, 84(1), 115-125. doi:10.1080/02701367.2013.762323
- Reynolds, C. (2018). The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014. *Social Problems*, 66(2), 245-273. doi:10.1093/socpro/spy005
- Roberts v. Colorado State Board of Agriculture, (998 F.2d 824, 10th Cir. 1993).
- S. 659, 92nd Cong. (enacted).

Springer, S. (1988, October 30). After 16 Years, Title IX's Goals Remain Unfulfilled. Retrieved December 4, 2019, from <https://www.latimes.com/archives/la-xpm-1988-10-30-sp-1037-story.html>

US Legal, Inc. (n.d.). Title IX and Other Women's Issues. Retrieved December 09, 2019, from <https://sportslaw.uslegal.com/title-ix-and-other-womens-issues/>

Wuerdeman, L. (2017). Sidelining Big Business in Intercollegiate Athletics. *North Carolina Central Law Review*, 39(2), 85-108. doi:10.2139/ssrn.2909969