

2022

An Unexpected Result of Gender Equality Initiatives in Sports - The Sexualization of Female Athletes

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DuBose, Renalia (2022) "An Unexpected Result of Gender Equality Initiatives in Sports - The Sexualization of Female Athletes," *Mitchell Hamline Law Review*: Vol. 48: Iss. 4, Article 9.

Available at: <https://open.mitchellhamline.edu/mhlr/vol48/iss4/9>

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**AN UNEXPECTED RESULT OF GENDER EQUALITY
INITIATIVES IN SPORTS - THE SEXUALIZATION OF FEMALE
ATHLETES**

Renalia DuBose¹

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I. INTRODUCTION

Female athletic uniforms have received notable attention and media coverage in recent years. However, there is a lengthy history underlying women’s involvement in sports and the hypersexualization of female athletes. This Article aims to address the long historical journey of female athletes who have been sexualized and begins by reviewing recent media coverage of female athletic uniforms, before discussing the history of

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women in sports. Title IX's impact on female participation in athletics is examined. The changes to female athletic attire are considered before this Article scrutinizes the lack of progress in our current state of affairs. Finally, this Article closes by proposing ways to address the hypersexualization of female athletes in an effort to promote positive change.

II. 2021 MEDIA COVERAGE OF FEMALE ATHLETIC UNIFORMS

Information regarding COVID-19 dominated world-wide news reporting during 2021 just as it had during 2020. As the summer months approached, the World Health Organization's July 20, 2021, COVID-19 Weekly Epidemiological Update painted a disturbing picture. The global number of new cases reported was over 3.4 million, a 12 percent increase over the previous week.² After a two-month steady decline, 57,000 new deaths were reported in the weekly update.³ The World Health Organization's dashboard published the weekly rate of deaths and new infections dating back to January 13, 2020.⁴ The world had a unique interest in the July 20, 2021, report because the 2020 Summer Olympic Games, cancelled due to COVID, were rescheduled for 2021 in Tokyo, Japan.⁵ According to the Washington Post, "[T]he 2020 Tokyo Olympics Will Be Like No Other."⁶ COVID precautions, lack of fans, threats of infection, and possible last-minute cancellation of the Olympics were sports-related topics dominating the worldwide media on July 20, 2021.⁷ There was, however, another July 20, 2021, sports-related topic that dominated the worldwide media that was totally unrelated to the Tokyo Olympics. Members of the Norwegian beach handball team wore shorts during the weekend European Beach Handball Championship against Spain in Varna, Bulgaria.⁸ The European Handball Federation ("EHF") imposed a fine of \$176 on each member of the Norwegian women's beach handball team who opted to wear shorts instead of the required bikini bottoms to the European

² WORLD HEALTH ORG., COVID-19 WEEKLY EPIDEMIOLOGICAL UPDATE 1 fig.1 (49th ed. 2021), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20210720-weekly-epi-update_49.pdf?sfvrsn=e036283e_4&download=true [https://perma.cc/8QKE-ATGZ].

³ *Id.*

⁴ *Id.*

⁵ Jon Herskovitz, *Why the 2020 Tokyo Olympics Will Be like No Other*, WASH. POST (July 20, 2021, 7:48 PM), https://www.washingtonpost.com/business/why-the-2020-tokyo-olympics-will-be-like-no-other/2021/07/20/8d0bb2e2-e937-11eb-a2ba-3be31d349258_story.html [https://perma.cc/N948-HXG5].

⁶ *Id.*

⁷ *Id.*

⁸ Jenny Gross, *Women's Handball Players Are Fined for Rejecting Bikini Uniforms*, N.Y. TIMES (Nov. 1, 2021), <https://www.nytimes.com/2021/07/20/sports/norway-beach-handball-team.html> [https://perma.cc/J9X7-JHN6] (indicating an original publication date of July 20, 2021).

championship game.⁹

Clothing standards for the Norwegian women's beach handball team are established by the International Handball Federation ("IHF").¹⁰ The IHF Rules of the Game regarding men's shorts and women's bikini bottoms style for beach handball are as follows:

Team members must wear identical shorts/bikini bottoms. Male athletes must wear shorts as per the enclosed graph. The players' shorts, if not too baggy, can be longer but must remain 10 centimetres above the kneecap. Female athletes must wear bikini bottoms that are in accordance with the enclosed graph, with a close fit and cut on an upward angle toward the top of the leg. The side width must be of a maximum of 10 centimetres.¹¹

The Norwegian Handball Federation ("NHF") repeatedly complained to the EHF and IHF about the bikini bottoms and the double standard for male and female athletes as early as 2006, with no results.¹² The NHF's complaints were documented in a 2006 letter to the IHF stating that the requirement for women to wear bikini bottoms was insensitive to cultural norms and could be embarrassing for those who did not want so much of their bodies exposed.¹³ The NHF complained that in handball, a sport that combines elements of soccer and basketball, goalkeepers should be allowed to wear less-revealing uniforms because they use all parts of their bodies to block shots.¹⁴

The NHF received support from other members of the EHF, including Sweden, Denmark, and France.¹⁵ A French official complained they lost players because of the uniform requirements, the "discomfort

⁹ Amy Woodyatt, *Women's Beach Handball Team Fined for Choosing Shorts Over Bikini Bottoms*, CNN (July 20, 2021, 12:07 PM), <https://www.cnn.com/2021/07/20/sport/norway-handball-shorts-fine-intl-scli-spt/index.html> [https://perma.cc/3EZZ-ASHA].

¹⁰ *The European Handball Federation*, EUR. HANDBALL FED'N, <https://www.eurohandball.com/en/who-we-are/the-ehf/> [https://perma.cc/BL22-VYTN]; EUR. HANDBALL FED'N, EHF BEACH HANDBALL EURO REGULATIONS 19 (2021), <https://ehfcl.eurohandball.com/media/e24bdge1/clean-bh-euro-regulations-update-june-2021-with-cover.pdf> [https://perma.cc/UL9B-SJF4].

¹¹ INT'L HANDBALL FED'N, IX. RULES OF THE GAME 92 (2014), https://www.ihf.info/sites/default/files/2019-05/0_09%20-%20Rules%20of%20the%20Game%20%28Beach%20Handball%29_GB.pdf [https://perma.cc/7H4K-7HHU].

¹² Gross, *supra* note 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Igor Kuznetsov, *Panties in a Twist: Norwegian Beach Handball Squad Furious After Being Pressured to Wear Bikini*, SPUTNIK NEWS (July 15, 2021, 06:34 AM), <https://sputniknews.com/europe/202107151083388727-panties-in-a-twist-norwegian-beach-handball-squad-furious-after-being-pressured-to-wear-bikini/> [https://perma.cc/DD2X-YAV9].

associated with menstruation,” and religions being ignored.¹⁶ The Norwegians’ head coach, Eskil Berg Andreassen, stated there are no female beach handball teams from Arabic countries, such as Oman, Kuwait, and Pakistan, in the IHF because of the uniform regulations.¹⁷ Ultimately, an official EHF media release addressed the matter, stating that the EHF discussed the bikini bottoms at an April 2021 meeting, as a result of the motion by the NHF.¹⁸ The matter was passed to a newly elected EHF Beach Handball Commission scheduled to meet in August 2021, and the Commission’s suggestions are to be presented to the IHF at a later date.¹⁹

There was yet another sports-related topic that dominated the worldwide media involving female athletic uniforms, and this story was directly related to the Tokyo Olympics. During the event, German gymnasts became the first female Olympians to wear unitards that extended to the elbow and the ankles while their opponents all wore bikini-cut uniforms.²⁰ The current standard outfit for female gymnasts in international competitions is a leotard with long, half-length, or sleeveless tops.²¹ International uniform rules allow females to wear leg coverings, but they were only used for religious purposes.²²

In April 2021, the German female gymnast team wore full-body suits during the European Artistic Gymnastics Championships to take a stand against sexualization of females in gymnastics.²³ German gymnast Sarah Voss stated,

We women all want to feel good in our skin. In the sport of gymnastics it gets harder and harder as you grow out of your child’s body. As a little girl I didn’t see the tight gym outfits as such a big deal. But when puberty began, when my period came, I began feeling increasingly uncomfortable.²⁴

¹⁶ *Id.*

¹⁷ Woodyatt, *supra* note 9.

¹⁸ *Official Statement on Beach Handball and Clothing Regulations*, EUR. HANDBALL FED’N (July 20, 2021), <https://www.eurohandball.com/en/news/en/official-statement-on-beach-handball-and-clothing-regulations/> [https://perma.cc/5NX9-4XHP].

¹⁹ *Id.*

²⁰ Jeremy Beaman, *German Gymnasts Wear Long Uniforms in Stand Against ‘Sexualization’*, WASH. EXAMINER (July 26, 2021), <https://www.msn.com/en-us/sports/olympics/german-gymnasts-wear-long-uniforms-in-stand-against-sexualization/ar-AAMzYwg> [https://perma.cc/862B-B9MS].

²¹ *Id.*

²² Gabrielle Tétrault-Farber, *Gymnastics-German Women Take a Stand in Full-Body Suits in Tokyo*, REUTERS (July 23, 2021, 12:24 AM), <https://www.reuters.com/lifestyle/sports/gymnastics-german-women-take-stand-full-body-suits-tokyo-2021-07-23/> [https://perma.cc/9LAB-V6UE].

²³ *German Gymnasts’ Outfits Take on Sexualisation in Sport*, BBC (Apr. 23, 2021), <https://www.bbc.com/news/world-europe-56858863> [https://perma.cc/4YXL-RT8H].

²⁴ *Id.*

The German Federation agreed with the position of the gymnasts stating, “sport and gymnastics should be fields where female athletes [feel] comfortable in their clothing at all times.”²⁵

III. HISTORY OF WOMEN IN SPORTS

A. *The Early Ancient Years of the Olympic Games*

In 776 B.C., the first recorded Olympic Games were held in Olympia, a sacred city in southern Greece near the western coast of the Peloponnesian peninsula, as a religious festival to honor the Greek god Zeus.²⁶ There was only one event, a 192-meter footrace, which was won by a cook named Coroebus.²⁷ Many historians believe, however, that the Olympic Games began at least 500 years before the first recorded event.²⁸ The Olympic Games came to be held every four years, between August 6 and September 19, and were so pervasive in Greek culture that ancient historians measured time in four-year increments.²⁹ Over the centuries, events such as long-distance races, long jump, discus and javelin throws, wrestling, chariot racing, and boxing were introduced to the Olympics.³⁰

Only freeborn men who were citizens of Greece were allowed to participate in the ancient Olympic Games.³¹ Nudity was common among the male participants.³² Women were prohibited from participating in the athletic events, and married women were not allowed to attend the events.³³ Ancient Greek women were treated as second-class citizens and had no political or economic power.³⁴ They were married as adolescents, bore many children, and died young.³⁵ Their lives had no place or time for participation in sports.³⁶

During the weakening of the Greek Empire and the rise of the Roman

²⁵ *Id.*

²⁶ *The Olympic Games*, HISTORY (July 21, 2021), https://history.com/topics/sports/olympic-games#section_1 [https://perma.cc/AE3A-EKPL].

²⁷ *Id.*

²⁸ *First Modern Olympic Games*, HISTORY (Apr. 5, 2021), <https://www.history.com/this-day-in-history/first-modern-olympic-games> [https://perma.cc/Z8KM-E4PK].

²⁹ *The Olympic Games*, *supra* note 26.

³⁰ *Id.*

³¹ *Id.*

³² *The Real Story of the Ancient Olympic Games*, PENN MUSEUM, <https://www.penn.museum/sites/olympics/olympicorigins.shtml> [https://perma.cc/S8J4-R8E3].

³³ *The Olympic Games*, *supra* note 26.

³⁴ *Id.*

³⁵ June Kennard & John Marshall Carter, *In the Beginning: The Ancient and Medieval Worlds*, in *WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES 20* (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

³⁶ *Id.*

Empire, participation in the Olympics declined.³⁷ Finally, in 393 A.D., Roman Emperor Theodosius I, abolished the Olympic Games because the worship of pagan gods, such as Zeus, was not acceptable to the Christian faith associated with the Roman Empire.³⁸

B. The Olympics Reborn

After 1,500 years, there was renewed interest in the Olympic Games by a young, well-connected French aristocrat named Pierre de Coubertin who was dismayed by the devastation of France during the Franco-Prussian War of 1820.³⁹ Born January 1, 1863, he was only seven years old when the Germans ravaged his homeland.⁴⁰ He came to believe that physical fitness, not military abilities, was key to France's future security.⁴¹ In 1890, he founded the Union of French Sports Societies that grew to over sixty-two sporting societies and 7,000 members.⁴² In 1892, he pitched the idea of restarting the Olympics to the members of the Union, and his suggested proposal failed.⁴³ He was undeterred, and two years later, he organized a meeting of seventy-nine delegates from nine countries and again pitched his idea of restarting the Olympic Games.⁴⁴ This group of delegates voted unanimously to restart the Olympic Games and directed Coubertin to organize an international committee for the project.⁴⁵ This committee came to be known as the present day International Olympic Committee ("IOC"), with Demetrius Vikelas as its president.⁴⁶

In 1896, the first modern Olympic Games were held in Athens, Greece.⁴⁷ The event was not well organized, and most countries did not send official participants.⁴⁸ Because professional athletes were not allowed to participate, amateur athletes, including those from the United States, were

³⁷ *The Olympic Games*, *supra* note 26.

³⁸ *First Modern Olympic Games*, *supra* note 28.

³⁹ *The Olympic Games*, *supra* note 26.

⁴⁰ Jennifer Rosenberg, *History of the Olympics*, THOUGHTCO (Jan. 29, 2020), <https://www.thoughtco.com/history-of-the-olympics-1779619> [https://perma.cc/UP4F-RLL9].

⁴¹ *Id.*

⁴² *Id.*

⁴³ George Hirthler, *Celebrating Pierre de Coubertin: The French Genius of Sport Who Founded the Modern Olympic Games*, INT'L OLYMPIC COMM. (Sept. 2, 2019), <https://olympics.com/ioc/news/celebrating-pierre-de-coubertin-the-french-genius-of-sport-who-founded-the-modern-olympic-games> [https://perma.cc/5P9J-4LJ6].

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Rosenberg, *supra* note 40.

⁴⁷ Evan Andrews, *10 Things You May Not Know About the First Modern Olympics*, HISTORY (Aug. 30, 2018), <https://www.history.com/news/10-things-you-may-not-know-about-the-first-olympics> [https://perma.cc/X9WC-M48K].

⁴⁸ *First Modern Olympic Games*, *supra* note 28.

self-selected and traveled to Athens at their own expense.⁴⁹ Many of the participating athletes were local Athenians and Greeks.⁵⁰ Some of the participants were spectators who traveled to see the Olympic Games and became competitors to fill vacant positions on the rosters.⁵¹ As the catalyst for the modern Olympic Games, Coubertin was vehemently opposed to female participation; therefore, women were not permitted to participate in the 1896 Olympic Games for a number of reasons.⁵² First and foremost, women were excluded from the ancient Olympics for the aforementioned reasons.⁵³ Second, Coubertin believed the purpose of athletic competition was to prepare young, upper-class white men for military service and for future leadership roles in government and business.⁵⁴ Third, he deemed female participation in athletic competition to be indecent.⁵⁵ His written purpose of the Olympic Games was for “the solemn and periodic exaltation of male athleticism, with internationalism as a base, loyalty as a means, art for its setting, and female applause as reward.”⁵⁶

Because the IOC lacked international organizational skills, as evidenced by the 1896 Olympics and lack of a clear path for the future Olympic Games, the organization of the 1900 and 1904 Olympic Games was left to organizing committees in Paris and St. Louis, respectively.⁵⁷ As a result, women’s golf and lawn tennis were added to the 1900 Paris Olympic Games, and women’s archery was added to the 1904 Olympic Games.⁵⁸ In Paris, women’s golf and tennis were the only games reserved exclusively for women.⁵⁹ Nevertheless, and in spite of resistance from Coubertin, a total of twenty-two women, out of the total 997 athletes, participated in five sports, including tennis, sailing, croquet, equestrian, and golf.⁶⁰

While the participation of women in the 1900 Olympic Games was progress for female athletes, their involvement was very different from that of male participants. First and foremost, however, the female participants mirrored their male counterparts in that participation was reserved for

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Andrews, *supra* note 47.

⁵² *Id.*

⁵³ Paula Welch & D. Margaret Costa, *A Century of Olympic Competition, in WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES* 123 (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

⁵⁴ *Id.* at 123–24.

⁵⁵ Andrews, *supra* note 47.

⁵⁶ *Id.*

⁵⁷ WELCH & COSTA, *supra* note 53, at 124.

⁵⁸ *Id.* at 123.

⁵⁹ *Id.*

⁶⁰ *Factsheet: Women in the Olympic Movement*, INT’L OLYMPIC COMM. 3 (Dec. 9, 2021), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Factsheets-Reference-Documents/Women-in-the-Olympic-Movement/Factsheet-Women-in-the-Olympic-Movement.pdf> [<https://perma.cc/U736-VZ92>].

wealthy, aristocratic women who were students of the arts, literature, music, and languages, and who understood their role was to represent the higher echelons of society.⁶¹ Unlike the male athletes, the purpose of female sports was for recreation, not competition, as women of privilege were not encouraged to exert themselves.⁶² Female traditionalism was a deterrent to advancement in sports for the upper-class women. The general belief was that women of the “Gilded Age” risked damaging their reproductive systems by depleting their limited energy through their monthly hormonal expenditure; therefore, the strain of competition was too much for them.⁶³ This same belief did not, however, extend to their servant or slave women.⁶⁴ As a result, there were few opportunities for poor women who had athletic talents or desires to participate in sports.⁶⁵

The 1900 Paris Olympics coincided with the 1900 Paris Exposition, which came to be known as the World’s Fair, and the female participants were wealthy women who were drawn to Paris by the Exposition.⁶⁶ Additionally, many of the American participants either lived in Europe or were in Europe on vacation.⁶⁷ Unlike the male athletes, the female participants had no uniforms, were not given team status, did not participate in the Olympic fanfare, and were not recognized by the American Olympic Committee (“AOC”).⁶⁸ Their participation was viewed as being an exhibition of the Paris “season” for wealthy women.⁶⁹ For female athletes, the 1904 Olympic Games were similar to the 1900 Games.⁷⁰ Both the Olympics and the Louisiana Purchase Exposition World’s Fair were held simultaneously in St. Louis, Missouri, and Coubertin was very involved.⁷¹ The AOC declared that the women’s events were for exhibition purposes.⁷²

C. Major Advancements in Female Sports Participation

Regardless of the factors that lead to her involvement, athletic training implicitly challenges patriarchal constraints on a woman’s

⁶¹ WELCH & COSTA, *supra* note 53, at 124.

⁶² Richard C. Bell, *A History of Women in Sport Prior to Title IX*, SPORTJ. (Mar. 14, 2008), <https://thesportjournal.org/article/a-history-of-women-in-sport-prior-to-title-ix/> [<https://perma.cc/F23V-VBJE>].

⁶³ Bonnie Morris, *Women’s Sports History: A Heritage of Mixed Messages*, NAT’L WOMEN’S HISTORY MUSEUM (Aug. 4, 2016), <https://www.womenshistory.org/articles/womens-sports-history> [<https://perma.cc/43VU-WMAL>].

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ WELCH & COSTA, *supra* note 53, at 124.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

behavior.... Sport alters the balance of power between the sexes. It changes lives. It empowers women, thereby inexorably changing everything.⁷³

Two innovations had a cataclysmic effect on female participation in sports and opened the door for women of common means to participate. First, the resulting effects of the invention of the affordable, lightweight bicycle in 1885 cannot be overstated.⁷⁴ The “safety bicycle” replaced the dangerous “high bicycle” with the large, awkward front tire.⁷⁵ American and English women embraced the new invention as a means to travel alone without the aid of a male companion or chaperone to steer their horse and buggy.⁷⁶ In the 1890s, approximately 30,000 American women owned and rode bicycles.⁷⁷ In 1885, Frankie Nelson won a six-day bicycle race in Madison Square Garden.⁷⁸ In 1899, a British novel, *Miss Cayley’s Adventures*, featured a woman who won a grueling transalpine bicycle race loaded with gear and food that included male competitors.⁷⁹ In 1895, international women’s suffragist Elizabeth Stanton wrote, “Many a woman is riding to the suffrage on a bicycle.”⁸⁰ Additionally, in 1895, the leader of the Women’s Christian Temperance Union wrote a book, *A Wheel Within a Wheel*, which featured the liberating effects of bicycles for women.⁸¹

Second, a major change in the design of women’s clothing changed how women around the world dressed and, ultimately, led to the creation of apparel for women that was suitable for athletic participation.⁸² Amelia Jenks was a social activist, teacher, writer, suffragist, and fashion designer from Homer, New York who married David Bloomer in 1840 and moved to Seneca Falls, New York.⁸³ In 1848, she went to the Seneca Falls Women’s Rights Convention, and in 1849, she began to write *The Lily*, a women’s newspaper.⁸⁴ Her husband became the postmaster of Seneca Falls, and he appointed Amelia to be his assistant.⁸⁵ Her office became the headquarters for the Seneca Falls Women’s Right’s Movement.⁸⁶ In 1849, she also

⁷³ MARIAH BURTON NELSON, *NIKE IS A GODDESS: THE HISTORY OF WOMEN IN SPORTS* xii (Lissa Smith ed., 1998).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Arlisha R. Norwood, *Amelia Bloomer: 1818-1894*, NAT’L WOMEN’S HISTORY MUSEUM (2017), <https://www.womenshistory.org/education-resources/biographies/amelia-bloomer> [<https://perma.cc/J5KD-C93C>].

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

invented the first bloomers; however, the design did not become popular until the redesigned bicycles became popular in the “gay nineties.”⁸⁷ During this era, women stopped wearing long, dangerous skirts and petticoats and began wearing comfortable, loose-fitting pants called bloomers.⁸⁸ Bloomer’s dress reform, ridiculed by conservative men and women, is her most enduring legacy for women, including female athletes.⁸⁹ As a result of the change in the bicycle and the change in women’s clothing, sports became more available for everyday women. Ironically, the first intercollegiate women’s basketball game occurred in 1896, the same year that Coubertin coordinated the first, modern, all-male Olympics in Athens.⁹⁰

D. Historical Events Reshape Female Sports

Four significant historical events from the mid-1800s to the mid-1900s drastically changed the social order in the United States, and those seeds of change ultimately affected female sports in the United States.⁹¹ First, the effects of the Civil War on the rights of women cannot be overstated. As the movement to end the African slave trade gained momentum, the abolitionist and the suffragist were on one accord. At the 1840 London World Anti-Slavery Convention, men and women delegates attended; however, female delegates were not permitted to sit on the convention floor and were relegated to seats in the balcony.⁹² At that convention, while sitting in the balcony, Elizabeth Stanton met Elizabeth Mott, and the seeds of the American suffragist movement were planted.⁹³

Eight years later, Stanton and Mott organized the Seneca Falls Convention.⁹⁴ This convention is viewed as a seminal stem in changing the American view that women were the property of their fathers and husbands with no individual rights, including the right to participate in competitive sports.⁹⁵ Abolitionist Frederick Douglass was a keynote speaker at the Seneca Falls Convention regarding women’s rights.⁹⁶ During his speech, he declared

⁸⁷ *Id.*

⁸⁸ NELSON, *supra* note 73, at xii.

⁸⁹ Norwood, *supra* note 82.

⁹⁰ NELSON, *supra* note 73, at xii.

⁹¹ Patricia Vertinsky, *Women, Sport and Exercise in the 19th Century*, in *WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES* 63 (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

⁹² *Seneca Falls Convention*, NEW WORLD ENCYC., https://www.newworldencyclopedia.org/entry/Seneca_Falls_Convention [<https://perma.cc/N378-KN5Z>].

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ KAREN BLUMENTHAL, *LET ME PLAY: THE STORY OF TITLE IX: THE LAW THAT CHANGED THE FUTURE OF GIRLS IN AMERICA* 9–10 (2005).

⁹⁶ Greg Timmons, *The Women Behind the 19th Amendment*, *BIOGRAPHY* (Feb. 25, 2020), <https://www.biography.com/news/19th-amendment-famous-suffragists> [<https://perma.cc/ZH3B-XG5V>].

that male domination of government around the world had failed, and there was no rational reason to deny women the right to participate in governmental activities.⁹⁷ Female African American contributions to the women's rights efforts were crucial for its long-lasting success. In 1851, former slave and abolitionist Sojourner Truth delivered her famous "Ain't I a Woman" speech at a national women's rights convention in Akron, Ohio.⁹⁸

After the Civil War ended, the joint efforts of the abolitionist and suffragist movements unraveled when radical Republicans in Congress realized that making a case for the "natural rights" of former slaves in the Fourteenth Amendment would include women.⁹⁹ As a result, the word "male" was added to section 2 of the Fourteenth Amendment to address the issue of counting citizens for the apportionment of members of the United States House of Representatives.¹⁰⁰ Prior to the post-Civil War Fourteenth Amendment, advocates on both sides of the suffragist movement argued that the Constitution was gender neutral because the Constitution had no gender-specific references.¹⁰¹ Subsequent to the Civil War, the Constitution explicitly disenfranchised women.¹⁰² The resulting effect was that the Civil War and the Fourteenth Amendment were decisive steps backward for women, but they were also decisive steps forward as women's suffragists were energized in their efforts to improve the status for women.¹⁰³

Second, the Women's Suffrage Movement significantly changed the social order in the United States, and those changes ultimately increased female participation in sports.¹⁰⁴ The Women's Suffrage Movement began in 1848 with the Seneca Falls Convention which more than 300 people attended.¹⁰⁵ As a result, section 2 of the Fourteenth Amendment, formalized organizations emerged, including the National Woman Suffrage Association organized by Elizabeth Stanton and Susan Anthony and the

⁹⁷ (1888) *Fredrick Douglass on Woman Suffrage*, BLACKPAST (Jan. 28, 2007), <https://www.blackpast.org/african-american-history/speeches-african-american-history/1888-frederick-douglass-woman-suffrage/> [https://perma.cc/6K42-4RW2].

⁹⁸ Sharon Harley, *African American Women and the Nineteenth Amendment*, NAT'L PARK SERV. (Apr. 10, 2019), <https://www.nps.gov/articles/african-american-women-and-the-nineteenth-amendment.htm> [https://perma.cc/YW8T-YZF9].

⁹⁹ *Voting Rights and the 14th Amendment*, TEACHINGHISTORY (Sept. 2, 2021), <https://teachinghistory.org/history-content/ask-a-historian/23652> [https://perma.cc/4RV8-7G24].

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Vertinsky, *supra* note 91.

¹⁰⁵ *19th Amendment*, HISTORY (Feb. 25, 2021), <https://history.com/topics/womens-history/19th-amendment-1> [https://perma.cc/CVG3-ZSAS].

American Woman Suffrage Association organized by Lucy Stone.¹⁰⁶ These organizations faced backlash, and the press mocked the suffragists for their beliefs that women should have the right to vote, individual autonomy, and opportunities for education and employment.¹⁰⁷

During the middle of the nineteenth century, a movement emerged in the United States known as the True Womanhood, which espoused beliefs that were opposed to those of the suffragists.¹⁰⁸ In this social system, middle- and upper-class women were assigned the role of homemakers with four virtues, including purity, piety, submissiveness, and domesticity.¹⁰⁹ Women were discouraged from pursuing outside interests, such as education and employment.¹¹⁰ However, during this same time from 1820 to 1860, known as the Antebellum Years, concern began to grow throughout the United States that lack of physical activity among these same delicate women was a serious health risk.¹¹¹ According to medical professionals of that time, women in rural and working-class environments were healthier due to their work demands that included physical activity.¹¹² During the Antebellum Years, health reformers and feminists pushed for physical education to be added to female education.¹¹³ It was in this environment of clashing ideals regarding womanhood and female participation in sports that suffragist Elizabeth Stanton wrote, “Many a woman is riding to the suffrage on a bicycle.”¹¹⁴ The suffragists pressed forward and gained the right to vote with the passage of the Nineteenth Amendment in 1920.¹¹⁵ By the 1920s, most female colleges and universities offered intercollegiate baseball, rowing, tennis, archery, and track.¹¹⁶ Thus, the Women’s Suffrage Movement radically changed the social order in the United States, and those changes led to increased female participation in sports.¹¹⁷

The expansion of women’s rights was not a linear process following the passage of the Nineteenth Amendment.¹¹⁸ Historical events such as

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Patti Wigington, *The Cult of Domesticity: Definition and History*, THOUGHTCO (Oct. 16, 2021), <https://www.thoughtco.com/cult-of-domesticity-4694493> [<https://perma.cc/3A87-SWKH>]. The True Womanhood movement was also known as the “Cult of Domesticity.” *Id.*

¹⁰⁹ Barbara Welter, *The Cult of True Womanhood: 1820-1860*, PINZLER (1966), <http://www.pinzler.com/ushistory/cultwo.html> [<https://perma.cc/DD28-2TUV>].

¹¹⁰ *Id.*

¹¹¹ See Vertinsky, *supra* note 91.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ NELSON, *supra* note 73, at xiii.

¹¹⁵ *19th Amendment*, *supra* note 105.

¹¹⁶ NELSON, *supra* note 73, at xiii.

¹¹⁷ See generally *id.*

¹¹⁸ See Bonnie Eisenberg & Mary Ruthsdotter, *History of the Women’s Rights Movement:*

World War I, the Great Depression, and World War II both increased and decreased women's rights because they expanded and retracted the labor market.¹¹⁹ Nevertheless, the unprecedented war effort associated with World War II proved to be beneficial in advancing women's rights, especially in the areas of employment opportunities and competitive sports.¹²⁰ The historic rate of women entering the labor force during World War II, especially the physically demanding industrial labor force, was fueled by the rate of male enlistment into the armed forces.¹²¹

Third, World War II significantly changed the social order in the United States, and those changes ultimately increased female participation in sports. The percentage of women in the workforce increased from twenty-seven percent to thirty-seven percent between 1940 and 1945.¹²² Many employment opportunities for civilian women and military women required females to be healthy and strong.¹²³ For the first time in history, the federal government sponsored competitive sports programs for women.¹²⁴ The War Department coordinated competitive athletic events for women and men, and physical educators developed highly competitive male and female student athletic programs to fill the need.¹²⁵ As a result of the revamped physical education programs in schools, female recruits entering the armed services arrived physically fit.¹²⁶ Because of women's roles in the World War II war effort, attitudes regarding women's abilities in general and participation in competitive sports in particular changed drastically during the decades after World War II.¹²⁷

Fourth, the Civil Rights Movement significantly changed the social order in the United States from the mid-1800s to the mid-1900s, as had the Civil War, the Women's Suffrage Movement, and World War II. These significant historical events became the catalyst for change that ultimately affected female sports in the United States.¹²⁸ As the United States prepared to fight fascism by entering World War II, white workers who were adversely affected by the Great Depression returned to the labor force by

Living the Legacy: The Women's Rights Movement (1848-1998), NAT'L WOMEN'S HISTORY ALLIANCE (1998), <https://nationalwomenshistoryalliance.org/history-of-the-womens-rights-movement/> [<https://perma.cc/6JSC-4EHC>].

¹¹⁹ BLUMENTHAL, *supra* note 95, at 11.

¹²⁰ Joan S. Hult, *The Story of Women's Athletics: Manipulating a Dream 1890-1985*, in *WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES* 93 (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

¹²¹ *Id.*

¹²² *Rosie the Riveter*, HISTORY (Oct. 12, 2021), <https://www.history.com/topics/world-war-ii/rosie-the-riveter> [<https://perma.cc/6CLP-L7C9>].

¹²³ Hult, *supra* note 120, at 93.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *See id.*

securing quality jobs in the industrial labor force.¹²⁹ In fact, the issue of whether World War II was the cure for the Great Depression has been debated by economists and historians for almost a century.¹³⁰ In 1940, the unemployment rate in the United States was 14.6 percent, but in 1944, it was 1.2 percent.¹³¹ As the job market expanded, African American labor leaders were vocal about employment racism, and President Franklin Roosevelt issued the June 25, 1941, Executive Order 8802 banning discrimination in the defense industries.¹³² The Committee on Fair Employment Practices was established to receive, investigate, and remedy race-based grievances.¹³³

During World War II, the contradictions between the United States' reputation as a nation willing to fight against fascism abroad and its unwillingness to end discrimination in America proved to be an international embarrassment as African Americans mobilized to address inequality in military and civilian life.¹³⁴ Soldiers who fought in World War II expected to return to an America that was willing to address racial discrimination even though the armed forces remained segregated despite Executive Order 8802.¹³⁵ The reality was that they faced greater violence and segregation upon their return as whites were concerned that Black veterans would upset the racial status quo that prevailed in the United States.¹³⁶ Many of the Black soldiers were even prevented from participating in the benefits associated with the G.I. Bill and were relegated to menial, low-wage jobs.¹³⁷ The treatment of returning soldiers and the racial inequality in the United States were watched by a worldwide audience.¹³⁸ Events such as the Montgomery bus boycott, Selma to Montgomery march to secure voting rights, Birmingham 16th Street Baptist Church bombing, and the March on Washington combined to create the greatest mass movement in modern American history: the Civil Rights Movement.¹³⁹ These highly publicized

¹²⁹ *The Civil Rights Act of 1964: A Long Struggle for Freedom*, LIBRARY OF CONG. (Sept. 8, 2021), <https://www.loc.gov/exhibits/civil-rights-act/world-war-ii-and-post-war.html> [https://perma.cc/FAW8-6UVY].

¹³⁰ *World War II and the Ending of the Depression*, ENCYC., <https://www.encyclopedia.com/economics/encyclopedias-almanacs-transcripts-and-maps/world-war-ii-and-ending-depression> [https://perma.cc/LP9G-9PD9].

¹³¹ *Id.*

¹³² LIBRARY OF CONG., *supra* note 129.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Alexis Clark, *Returning from War, Returning to Racism*, N.Y. TIMES MAG. (Sept. 8, 2020), <https://www.nytimes.com/2020/07/30/magazine/black-soldiers-wwii-racism.html> [https://perma.cc/ZL66-DCHW].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *The Modern Civil Rights Movement, 1954-1964*, NAT'L PARK SERV.,

efforts from the 1940s through the 1960s led to the passage of the Civil Rights Act of 1964, which is known as the most comprehensive civil rights legislation in American History.¹⁴⁰

During these same decades, another movement was rising in the United States as women came to realize that the Nineteenth Amendment gave them the right to vote but did not guarantee them equality with men.¹⁴¹ The focus on the Civil Rights Movement motivated women to speak out against unfair treatment in spheres such as education and employment.¹⁴² Issues such as equal pay, sexual harassment, gender discrimination, and reproductive rights were addressed by feminists on many fronts during the 1960s.¹⁴³ The renewed interest in women's rights became a part of the heated congressional debates when Representative Howard W. Smith of Virginia, a known segregationist, proposed adding the term "sex" to the proposed Title VII of the Civil Rights Act of 1964.¹⁴⁴ He figured that the northern members of the House had little interest in guaranteeing employment rights of women equal to those of men and hoped the majority of legislators would reject the entire bill.¹⁴⁵ As men in the house openly laughed at his proposal, Representative Martha Griffiths of Michigan, one of the few women in the House, rose and stated, "I presume that if there had been any necessity to point out that women were a second-class sex, the laughter would have proved it."¹⁴⁶ The men stopped laughing, and Representative Griffiths made passionate arguments regarding the necessity of including women in the landmark legislation.¹⁴⁷

Ultimately, the term "sex" was added to Title VII of the Civil Rights Act of 1964 in the House by a vote of 168-133.¹⁴⁸ The Senate passed the bill, and President Lyndon Johnson signed the Civil Rights Act into law on July 2, 1964.¹⁴⁹ The Civil Rights Act of 1964 contains the following eleven titles:

- Title I: Voting Rights
- Title II: Public Accommodations

<https://www.nps.gov/subjects/civilrights/modern-civil-rights-movement.htm>
[<https://perma.cc/8GJC-HLAW>].

¹⁴⁰ *Id.*

¹⁴¹ April Sanders, *Women's Rights Protests of the 1960s*, CLASSROOM, <https://classroom.synonym.com/womens-rights-protests-1960s-23503.html> [https://perma.cc/9WWU-CKE8].

¹⁴² BLUMENTHAL, *supra* note 95, at 1.

¹⁴³ Kelly S. Meier, *Feminism in the 1960s*, CLASSROOM, <https://classroom.synonym.com/feminism-1960s-10038.html> [https://perma.cc/P54X-KTNE].

¹⁴⁴ BLUMENTHAL, *supra* note 95, at 15.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 17.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

- Title III: Desegregation of Public Facilities
- Title IV: Desegregation of Public Education
- Title V: Civil Right Commission
- Title VI: Nondiscrimination in Federally Assisted Programs
- Title VII: Equal Employment Opportunity
- Title VIII: Registration and Voting Statistics
- Title IX: Intervention in Court Cases
- Title X: Community Relations Service
- Title XI: Court Proceedings and Legalities¹⁵⁰

Additional federal legislation during the 1960s and early 1970s supporting ideals such as equal pay and equal employment for women provided evidence that equality for women was progressing but was not yet realized.¹⁵¹ Nevertheless, the Civil War, the Women's Suffrage Movement, World War II, and the Civil Rights Movement changed the social order in the United States, and these significant historical events became the catalyst for change that ultimately affected female sports in the United States.¹⁵² No historical event, social movement, or previous federal legislation, however, changed female sports in the United States as drastically as a narrow, modest piece of federal legislation that had a thirty-seven word introduction and a bureaucratic-sounding name: Title IX.¹⁵³

IV. TITLE IX CHANGES FEMALE SPORTS

The year was 1960, and the percentage of female athletes participating in the Rome Olympics was 11.44 percent.¹⁵⁴ This was an improvement from the first modern Olympics held in Athens, where women were not permitted to participate, and the second modern Olympics held in Paris where the female participation rate was 2.2 percent.¹⁵⁵

During the 1960 Rome Olympics, the youngest member of the United States Olympic team was thirteen-year-old Donna de Varona.¹⁵⁶ At age fourteen, she was featured on the cover of *Sports Illustrated* with an article that proclaimed her to be “without question, the best all-around woman swimmer in the world.”¹⁵⁷ But De Varona's first love was not swimming – it

¹⁵⁰ *The Civil Rights Act of 1964: A Long Struggle for Freedom*, *supra* note 129.

¹⁵¹ Hult, *supra* note 120, at 94.

¹⁵² Vertinsky, *supra* note 91.

¹⁵³ See generally BLUMENTHAL, *supra* note 95, at 2.

¹⁵⁴ Amber Pariona, *Trends of Increased Female Participation in Summer Olympic Games*, WORLD ATLAS (Apr. 25, 2017), <https://www.worldatlas.com/articles/trends-of-increased-female-participation-in-summer-olympic-games.html> [https://perma.cc/N9HB-F44E].

¹⁵⁵ *Id.*

¹⁵⁶ BLUMENTHAL, *supra* note 95, at 5.

¹⁵⁷ *Id.*

was baseball.¹⁵⁸ However, she had to quit baseball when the boys with whom she played pickup games with began to play Little League and girls were not permitted to play.¹⁵⁹ The only role she was allowed with Little League was that of a bat girl.¹⁶⁰ When her brother injured his knee and used swimming as his rehabilitation, she also took up swimming.¹⁶¹ She quickly excelled and swam in her first swim competition at age ten.¹⁶² De Varona's parents were of modest means, but they sacrificed by moving the family of six to Santa Clara, California so she could train at a world-class swim club.¹⁶³ They sacrificed to pay for coaching and swim competitions in Japan, Europe, and South America.¹⁶⁴ At the 1964 Tokyo Olympics, she won a gold medal in the 400-meter individual medley and a gold medal in the 4 x 100-meter freestyle relay.¹⁶⁵

By the time De Varona was seventeen years old, she had shattered eighteen world records in swimming.¹⁶⁶ She returned home from the Olympics as a national hero and was named "Most Outstanding Female Athlete of the Year" by the Associated Press and the United Press International.¹⁶⁷ Nevertheless, her swimming career ended abruptly upon her return home.¹⁶⁸ According to De Varona, "there was no future—no scholarships, no programs, no way I could continue to swim . . . what I'd won seemed somehow cheaper. It was a devastating feeling."¹⁶⁹ This unfortunate experience was indicative of how female athletes were treated throughout the United States.¹⁷⁰

As passed by Congress and signed into law on June 23, 1972, the introduction to Title IX of the Education Amendments of 1972 states:

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 assistance¹⁷¹

¹⁵⁸ *Id.* at 6–7.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 6.

¹⁶¹ *Id.* at 7.

¹⁶² *Id.*

¹⁶³ *Id.* at 5–6.

¹⁶⁴ *Id.* at 6.

¹⁶⁵ *Donna de Varona: American Athlete and Sportscaster*, ENCYC. BRITANNICA (Aug. 30, 2021), <https://www.britannica.com/biography/Donna-de-Varona> [https://perma.cc/8CYQ-CCL8].

¹⁶⁶ *Id.*

¹⁶⁷ BLUMENTHAL, *supra* note 95, at 7.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 8.

¹⁷¹ Title IX, Education Amendments Act of 1972, 20 U.S.C. § 1681–1688.

These words in Title IX prohibit educational institutions that receive federal funds from discriminating against students and employees on the basis of sex. This prohibition applies to kindergarten through high school, higher education institutions, and all areas of educational institutions, including educational and athletic programs.¹⁷² President Richard Nixon signed Title IX, requiring mandatory compliance by 1978.¹⁷³ Before Title IX, females faced discrimination in many areas of education. Females were often excluded from specific courses and fields of study such as wood shop, advanced mathematics, law, and medicine.¹⁷⁴ Elite colleges and universities typically had admissions quotas for women but not for men.¹⁷⁵ Additionally, women were often required to have higher test scores and grades for admission.¹⁷⁶ Once admitted, women usually received fewer scholarships than men.¹⁷⁷ Regarding employment, women received tenure less often than male professors, faced discrimination if they became pregnant, and were required to take maternity leave during pregnancy.¹⁷⁸

While Title IX changed many discriminatory practices in academic settings, Title IX is most famous for changing female participation in sports.¹⁷⁹ Before Title IX, female participation in athletics was substantially restricted as evidenced by Donna de Varona's experience.¹⁸⁰ In 1906, the National Collegiate Athletic Association ("NCAA") was created to develop and enforce the rules for men's football and eventually became the governing body for college athletics.¹⁸¹ Before Title IX, the NCAA offered no scholarships or championship series for women.¹⁸² As a result, athletically talented women, including de Varona who later graduated from the University of California at Los Angeles with a degree in political science, did not receive athletic scholarships.¹⁸³ Title IX addresses equality of access and quality of access. Therefore, equal resources must be provided for "locker rooms, medical treatment, training, coaching, practice times, travel, per diem allowances, equipment, practice facilities, tutoring and recruitment."¹⁸⁴

¹⁷² Sarah Pruitt, *How Title IX Transformed Women's Sports*, HISTORY (June 11, 2021), <https://www.history.com/news/title-nine-womens-sports> [https://perma.cc/NE5S-V8ZA].

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ U.S. DEP'T OF JUST., EQUAL ACCESS TO EDUCATION: FORTY YEARS OF TITLE IX 2 (2012), <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf> [https://perma.cc/7AK6-BN5E].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Pruitt, *supra* note 172.

¹⁸⁰ BLUMENTHAL, *supra* note 95, at 5.

¹⁸¹ *Title IX Enacted*, HISTORY (June 22, 2021), <https://www.history.com/this-day-in-history/title-ix-enacted> [https://perma.cc/3RXX-KMWT].

¹⁸² *Id.*

¹⁸³ ENCYC. BRITANNICA, *supra* note 165.

¹⁸⁴ *Title IX Enacted*, *supra* note 181.

Title IX has faced numerous legal challenges since its enactment, including challenges by the NCAA.¹⁸⁵ One area of legal challenges involved restricting the reach of Title IX exclusively to academic programs, and in 1984, the U.S. Supreme Court agreed with this restriction, except for granting athletic scholarships.¹⁸⁶ However, Congress passed the Civil Rights Restoration Act in 1987, “over President Ronald Reagan’s veto,” reversing the Supreme Court’s decision and reinstating widespread coverage for academic and athletic programs.¹⁸⁷ During the fortieth anniversary of Title IX, numerous organizations examined Title IX’s impact and found that the data illustrates its profound impact on female participation in sports and education.¹⁸⁸

From 1971 to 2011, the participation rate for high school females participating in sports increased from 294,015 to 3,173,549, while the rate for males increased from 3,666,917 to 4,494,406.¹⁸⁹ The rate for college female athletes during the same period increased from 29,977 to 193,232, and the rate for males increased from 170,384 to 256,344.¹⁹⁰ In 1970, approximately fifty-nine percent of females had a high school education, but in 2009, approximately eighty-seven percent of women had a high school education.¹⁹¹ In 1970, eight percent of women had a college degree, but by 2009, approximately twenty-eight percent had a college degree.¹⁹² By 2012, women had a higher high school and college graduation rate than their male counterparts.¹⁹³ Nevertheless, Title IX continues to face legal challenges and the United States Department of Education’s Office of Civil Rights continues to provide guidance for educational institutions.¹⁹⁴ In 2021, up to eighty percent of higher education institutions are out of compliance.¹⁹⁵ Additionally, Title IX is presently the legal basis to address sexual harassment and assaults in educational institutions.¹⁹⁶

¹⁸⁵ Pruitt, *supra* note 172.

¹⁸⁶ *See* *Grove City Coll. v. Bell*, 465 U.S. 555 (1984).

¹⁸⁷ Pruitt, *supra* note 172.

¹⁸⁸ NAT’L COALITION FOR WOMEN AND GIRLS IN EDUC., TITLE IX AND ATHLETICS: PROVEN BENEFITS, UNFOUNDED OBJECTS 8, <https://www.ncwge.org/TitleIX40/Athletics.pdf> [<https://perma.cc/A6RR-GUG9>] (citing NAT’L FED’N STATE HIGH SCH. ASS’NS, 2010-11 HIGH SCH. ATHLETICS PARTICIPATION SURVEY, https://www.nfhs.org/media/1020198/2010-11_hs_participation_survey.pdf [<https://perma.cc/8NH6-MLPA>]).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ U.S. DEP’T OF JUST., *supra* note 175, at 2.

¹⁹² *Id.*

¹⁹³ *Id.* at 2-3.

¹⁹⁴ Pruitt, *supra* note 172.

¹⁹⁵ *Id.*

¹⁹⁶ Gwendolyn Mink, *Title IX and Sexual Violence in Schools*, AM. C. L. UNION, <https://www.aclu.org/title-ix-and-sexual-violence-schools> [<https://perma.cc/3U4R-K8P3>].

V. CHANGING FEMALE ATHLETIC ATTIRE

A. Modesty in Female Athletic Uniforms

Similar to changes in female sports participation, historical events influenced changes in female athletic attire in the United States.¹⁹⁷ During the 1800s, middle- and upper-class white women who participated in sports were expected to display modesty and to avoid competitive strenuous exertion in order to exhibit femininity and not affect their fertility.¹⁹⁸ These beliefs, known as Scientific Reason, date back to ancient Greece when medical authorities believed women's behavior should be controlled by their reproductive system due to limited energy flowing through their bodies during their monthly hormonal expenditure.¹⁹⁹ Women's limited energy was not to be wasted on unnecessary activities, such as intellectual study or competitive sports.²⁰⁰ As a result, women of the Gilded Age participated in country club leisure sports, like tennis, croquet, archery, and bathing-beauty swimming.²⁰¹

Athletic attire for these sports was designed to prevent females from showing skin and body contours as decency standards demanded that athletic attire not be sexually suggestive.²⁰² Amelia Bloomer designed bloomers, loose fitting pants, in 1849, and they became popular during the 1890s when women began to ride the redesigned bicycle with a small front wheel.²⁰³ In addition, women wore bloomers, also known as the divided skirt, for horseback riding, but they were loose and baggy to preserve modesty.²⁰⁴ Bathing-beauty swimming presented problems for women of the Gilded Age because the sport was not suited for loose, baggy attire.²⁰⁵ Once again, fashion designers had an answer for this sporting dilemma to preserve female modesty. In the early 1900s, the personal changing tent was designed and patented, and it allowed women emerging from the water to change into dry outerwear after swimming.²⁰⁶ The personal changing tent was designed to prevent onlookers from viewing women's contours underneath their wet

¹⁹⁷ Lynne Emery, *From Lowell Mills to the Halls of Fame: Industrial League Sport for Women*, in *WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES* 108 (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

¹⁹⁸ Morris, *supra* note 63.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Meredith Mendelsohn, *A 'Tool to Empower': The Evolution of Women's Sportswear*, CNN STYLE (July 2, 2021), <https://www.cnn.com/style/article/sporting-fashion-outdoor-girls-exhibition/index.html> [https://perma.cc/LEQ5-C73G].

²⁰³ NELSON, *supra* note 73, at xii.

²⁰⁴ Mendelsohn, *supra* note 202.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

bathing garments.²⁰⁷ Scientific Reason beliefs regarding physical stress and fertility did not apply to white women of limited means, rural homemakers, or minority women, as their physical activities typically involved acceptable strenuous domestic duties.²⁰⁸

The Industrial Revolution began in the middle of the seventeenth century and was an international revolution in England, Continental Europe, Eastern Europe, and Asia.²⁰⁹ The Industrial Revolution transformed the United States into a global economic superpower by the late nineteenth and early twentieth centuries.²¹⁰ A major result of industrialization in America was that workers had more free time and experienced an increasing distinction between labor and leisure.²¹¹ For the first time in American history, the great mass of working-class people began to fill their free time with exercise and sport activities.²¹² For females, this boom in women's sports was initially controlled by women, specifically female physical educators.²¹³ During the late nineteenth and early twentieth centuries, historical events such as the Women's Suffrage Movement and the Industrial Revolution provided more opportunities for women to attend college, and the number of women in college in the United States increased from 11,000 in 1870 to 85,000 in 1900.²¹⁴ Female physical educators in higher education challenged the belief that vigorous physical activity had a negative impact on women's reproductive systems.²¹⁵ These female physical educators defined and controlled female sports by training future physical educators for the nation, and the impact of early female physical educators greatly increased female participation in sports throughout the United States.²¹⁶

During this time, women also entered the workforce in record numbers, and a phenomenon known as industry sport developed.²¹⁷ These athletic teams were organized by industries and were mutually beneficial for the industry and the female employees.²¹⁸ Female employees who played on the industry teams were healthier, and healthier employees required fewer

²⁰⁷ *Id.*

²⁰⁸ Morris, *supra* note 63.

²⁰⁹ Rebecca Beatrice Brooks, *The Industrial Revolution in America*, HISTORY OF MASS. BLOG (Apr. 11, 2018), <https://historyofmassachusetts.org/industrial-revolution-america/> [<https://perma.cc/ZZ3C-T47A>].

²¹⁰ *Id.*

²¹¹ SUSAN K. CAHN, *COMING ON STRONG: GENDER AND SEXUALITY IN WOMEN'S SPORT* 9 (2d ed. 1994).

²¹² *Id.*

²¹³ *Id.* at 13-14.

²¹⁴ *Id.* at 13.

²¹⁵ *Id.*

²¹⁶ *Id.* at 13-14.

²¹⁷ Emery, *supra* note 197, at 108.

²¹⁸ *Id.*

sick days and were less likely to leave the company.²¹⁹ Additionally, industry teams were an advertising tool for the employers.²²⁰ In a 1921 nationwide survey assessing involvement in female industry sports, of the fifty-one companies that responded, only fifteen had no female industry-sponsored athletic team.²²¹ Bowling, basketball, tennis, and baseball were the female events most often sponsored by employers.²²² Female athletic wear for female college and industry teams was typically below the knee dresses and stockings.²²³ Some teams wore pants, but they were loose fitting and below the knee.²²⁴ A female athlete typically wore long socks or stockings with high-top athletic shoes.²²⁵ The athletic attire was “a practical but not a very becoming uniform.”²²⁶

B. Changes in Female Athletic Uniforms

During the late 1800s and the early 1900s, female sports began to undergo major changes, and those major changes led to changes in female athletic uniforms. First, commercial sports media popularized sports via sports sections in daily newspapers for both professional and amateur athletics.²²⁷ Innovations and inventions during the Industrial Revolution caused a rapid increase in the availability of print media.²²⁸ Inventions such as the linotype machine freed printers from setting type one character at a time and allowed printers to set an entire line of type at once.²²⁹ The laying of underwater telegraph cables allowed sports news from distant lands to be available to readers around the world in record time.²³⁰ These innovations caused the price of newspapers to be reduced from a few cents to a penny, providing working-class people access to print media.²³¹ With the rising popularity of athletics in the late 1800s and early 1900s, newspapers began to have sections devoted exclusively to sports, and the newspapers were widely circulated.²³²

In the early 1900s as sports pages and female participation in sports

²¹⁹ *Id.* at 107.

²²⁰ *Id.* at 109.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.* at 113.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ CAHN, *supra* note 211, at 10-11.

²²⁸ Robert McNamara, *History of Newspapers in America*, THOUGHTCO (Feb. 24, 2020), <https://www.thoughtco.com/history-of-newspapers-in-america-4097503> [<https://perma.cc/KTG5-47VY>].

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

grew, articles and pictures of women focused more on their sexuality than their athletic abilities.²³³ A 1925 edition of the *Baltimore Evening Sun* described female athletes at a city-wide track meet by stating, “It was a girly show if ever there was one.”²³⁴ The reporter went on to describe the range of body types of the female athletes and concluded, “It was a great gathering of budding and full-blooming beauty.”²³⁵ A *Pittsburg Courier* headline read, “Washington Pa. Lassies, Famed for Beauty and Ability, Have Been Termed the ‘Ziegfield Follies’ of the Basketball World by Admirers.”²³⁶ The article noted that “their beauty, charm, grace, social prestige and that air of friendliness which participation in athletics breeds, have given their hometown publicity of the kind which can hardly be reasoned with in terms of dollars and cents.”²³⁷ Thus, women’s athletics became a tool for viewing women’s sexuality and for increasing revenue for print media.²³⁸

Second, around the turn of the century, newspapers began to cover amateur athletics promoted by the newly formed Amateur Athletic Union (“AAU”).²³⁹ The growth of female sports, due primarily to industry sports, began to catch the eye of the AAU and other male-dominated athletic organizations.²⁴⁰ Founded on January 21, 1888, the AAU’s primary initial goal was to provide common standards for amateur athletics, and the AAU held its first National Men’s Basketball Championship on January 1, 1897.²⁴¹ With the rapid increase of women in higher education, physical educators had a large audience as the number of females attending college in the United States jumped from 85,000 in 1900 to 283,000 by 1920.²⁴² Nevertheless, female physical educators faced hardships in advocating for equal treatment in higher education and were concerned about male encroachment into female sports.²⁴³ Female physical educators pressed forward to become the national experts throughout the country regarding female athletics as they gained professional status in the academic world.²⁴⁴ Additionally, they trained physical education majors who taught physical education in kindergarten through twelfth grade throughout the country.²⁴⁵

Over time, female educators struggled to maintain control of female athletics as they “worried that male promoters would make a sexual

²³³ CAHN, *supra* note 211, at 77.

²³⁴ *Id.* at 77-78.

²³⁵ *Id.* at 78.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 11.

²⁴⁰ *Id.*

²⁴¹ *Amateur Athletic Union (AAU)*, AAU, <https://aausports.org/timeline.php> [<https://perma.cc/84TW-94RU>].

²⁴² CAHN, *supra* note 211, at 23.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 13-23.

spectacle of the female athlete, forcing her to reveal and overexert her body in the interest of commercial profit and male entertainment.²⁴⁶ Three national groups struggled for control of female athletics, including the National Association for Girls and Women in Sport (“NAGWS”), the Women’s Division of the National Amateur Athletic Federation (“WD”), and the AAU.²⁴⁷ Ultimately, on January 1, 1915, the male-dominated AAU announced it was recognizing women’s swimming as a sport, and on April 1, 1926, the AAU held its first Women’s Basketball Tournament.²⁴⁸

By 1930, the women’s uniforms at the AAU National Championship changed drastically.

For some reason the AAU did not hold the tournament in 1927 or 1928. . . . Looking at photographs of the teams, it is obvious that industry had discovered the publicity value of basketball and women’s bodies. Players’ uniforms had changed radically to brief shorts and tight shirts emblazoned with the sponsor’s name. Frequently the uniforms were made of stain and included a waist-defining belt. The knee-length stockings of 1926 had disappeared, leaving legs bare to the ankle. When the Dallas Cyclones wore their new short shorts on the court in the last 1920s, the controversy over the uniforms raised by local newspapers increased attendance from 150 to 5,000 people per game.²⁴⁹

At the 1930 AAU National Championship in Wichita, Kansas, beauty contests became a part of the event, and the female basketball players were the beauty contestants.²⁵⁰ The AAU tradition of having female basketball players participate in beauty contests at national championship games lasted for many years.²⁵¹ Thus, female athletic attire became a tool for displaying sexuality during organized athletic events, and female sexuality became the draw to increase the number of spectators at athletic events.²⁵²

Third, social mores began to change in the United States as the roaring 1920s gave birth to the flapper era in the United States.²⁵³ The flapper era is believed by many to be the first generation of independent women as young women exercised their political, economic, and sexual freedoms.²⁵⁴ Events such as women entering the workforce because of World War I, the passage

²⁴⁶ *Id.* at 25.

²⁴⁷ Emery, *supra* note 197, at 110.

²⁴⁸ AAU, *supra* note 241.

²⁴⁹ Emery, *supra* note 197, at 113-14.

²⁵⁰ *Id.* at 115.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Flappers*, HISTORY (Sept. 12, 2019), <https://history.com/topics/roaring-twenties/flappers> [<https://perma.cc/T8BZ-2UWT>].

²⁵⁴ *Id.*

of the Nineteenth Amendment giving women the right to vote, and Henry Ford's mass production of automobiles gave women more freedom to experience urban life than in the past.²⁵⁵ Additionally, passage of the Eighteenth Amendment ending legal alcohol sales caused an explosion of illegal jazz clubs, called speakeasies, where women danced and experienced nightlife activities.²⁵⁶ Flappers wore short flapper dresses with low necklines, high-heeled shoes, and bras instead of corsets, heavy makeup, and short bob hairstyles.²⁵⁷ During this era, even sportswear changed when John Patou invented knit swimwear.²⁵⁸ Knitwear caused sports attire and everyday clothes for women to become more relaxed and allowed for more freedom of movement.²⁵⁹

The flapper era caused a decisive break with sexual values of the past, and these attitudes changed the social mores of female athletes. Display of female sexuality during rigorous physical activities became more acceptable, and female athletes were praised for their physical beauty and youthful sex appeal. Changes in female sporting attire allowed for greater body exposure and freer movement as female sports became increasingly more physically demanding. Thus, females contributed to the sexualization associated with changes in female athletic attire.²⁶⁰

VI. THE CURRENT STATE OF AFFAIRS

A. *Male Domination of Athletics*

The issues surrounding sexuality of female athletes have been varied and numerous. First and foremost, until recently, the study of sport psychology involved only the study of men, and psychologists for generations believed that findings regarding male athletes were generalizable to female athletes.²⁶¹ For generations, psychologists largely ignored the differences between the well-being of female athletes and male athletes.²⁶² This attitude has permeated the practices of medical professionals for decades and has led to ineffective and detrimental treatment of females in the United States.²⁶³ As a result of this gender gap, female athletes have been

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ CAHN, *supra* note 211, at 35–36.

²⁶¹ Sharon R. Guthrie & Shirley Castelnovo, *The Significance of Body Image in Psychosocial Development and in Embodying Feminist Perspectives*, in *WOMEN AND SPORT: INTERDISCIPLINARY PERSPECTIVES* 307 (D. Margaret Costa & Sharon R. Guthrie eds., 1994).

²⁶² *Id.*

²⁶³ Yasmin Anwar, *Lack of Females in Drug Dose Trials Leads to Overmedicated Women*, *SCL DAILY* (Aug. 12, 2020), <https://www.sciencedaily.com/releases/2020/08/200812161318.htm> [<https://perma.cc/V3F6-QEUV>].

categorized as being either too “mannish” or too feminine without examining the basic differences between males and females.²⁶⁴

Differences in attitudes regarding body images have been ignored.²⁶⁵ Sports emphasizing contact and aggression, such as football and wrestling, have been deemed too muscular for females.²⁶⁶ Meanwhile, sports emphasizing aesthetic and erotic movement through athletic attire or body movements, such as gymnastics, swimming, and figure-skating, have been deemed appropriate for females.²⁶⁷

Second, female athletes operate in a patriarchal culture, and one of the primary methods of controlling women in a patriarchal environment has been through the control of their bodies. This control has historically been accomplished through cultural practices, such as male-defined standards of feminine beauty, domestic violence, rape, sexual assault, and sexual harassment.²⁶⁸ The history of the demise of female control of sports in the United States is well documented. The power struggle among the AAU, NAGWS, and WD eventually led to a struggle between the AAU and the NCAA.²⁶⁹ The relevance of female physical educators was greatly reduced with the passage of Title IX as female and male physical education departments at the high school and higher education levels were consolidated and became coeducational.²⁷⁰ Thousands of female administrators of athletic programs were demoted to secondary positions of leadership, and the administration of female sports became the providence of male-dominated governance structures.²⁷¹ Ultimately, the AAU came to control amateur athletics, and the NCAA came to control collegiate athletics.²⁷² Since 1951, the NCAA has been led by men except for when Judith Sweet led the organization from 1991 to 1993.²⁷³

The data regarding the gender of coaches in the NCAA has not been favorable for females since Title IX was enacted. Data collected by the NCAA for four decades indicates that in 1972, females served as head coaches of more than ninety percent of female collegiate teams.²⁷⁴ In 2017, females were head coaches of fewer than fifty percent of female collegiate

²⁶⁴ CAHN, *supra* note 211, at 208.

²⁶⁵ Guthrie & Castelnovo, *supra* note 261, at 309.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 345.

²⁶⁹ *Id.* at 91.

²⁷⁰ *Id.*

²⁷¹ *Id.* at 93.

²⁷² Hult, *supra* note 120 at 91–95.

²⁷³ *Timeline - 1990s*, NCAA, <https://www.ncaa.org/timeline-1990s> [<https://perma.cc/FP6T-QWH4>].

²⁷⁴ Rachel Stark, *Where Are the Women?*, NCAA CHAMPION MAG. (Winter 2017), <http://s3.amazonaws.com/static.ncaa.org/static/champion/where-are-the-women/index.html> [<https://perma.cc/9Z2K-D4DD>].

teams.²⁷⁵ Before Title IX, female physical educators typically coached female collegiate teams without compensation as that was the expectation.²⁷⁶ After Title IX, the male and female departments were consolidated under one athletic director, who was typically a male.²⁷⁷ Additionally, male coaches have two avenues for employment: coaching male and female teams.²⁷⁸ Women typically have only one avenue: coaching female teams.²⁷⁹ In 2017, only three percent of men's athletic teams had female head coaches.²⁸⁰

Post Title IX, female coaches lost their ability to make administrative decisions about female sports as only twenty percent of collegiate athletic directors were female in 2017.²⁸¹ Surveyed female coaches gave several reasons for the gender gap in a climate where the number of collegiate teams and participating athletes have increased, but the number of female coaches has decreased.²⁸² Issues such as systematic gender-based discrimination, male athletic directors' tendency to recruit male coaches over female coaches, females securing entry-level jobs but never being promoted, and lack of equitable tolerance for males and females who attempt to balance family and job responsibilities are just a few of the females' concerns.²⁸³ One researcher noted that females were able to balance work and families prior to Title IX when they coached more than ninety percent of female sports, but the balancing act became an issue after Title IX.²⁸⁴ The researcher attributes the gender disparity in NCAA coaching to the fact that "men are still doing most of the hiring," and "men are going after these jobs aggressively."²⁸⁵

Similar to the NCAA, the lack of female representation on the IOC, the governing body for the Olympics, is evident in that female representation from 2014 through 2016 remained static, below thirty percent.²⁸⁶ By 2021, the number of females on the IOC increased to only thirty-eight percent.²⁸⁷ In addition, data regarding the gender of accredited

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Dana Hunsinger Benbow, *Why Has Number of Women Coaches Fallen Since Title IX?*, USA TODAY (Feb. 23, 2015), <https://www.usatoday.com/story/sports/college/2015/02/23/women-college-coaches-title-9-ix/23917353/> [<https://perma.cc/T2LH-V9NV>].

²⁸⁵ *Id.*

²⁸⁶ Rosamond Hutt, *Sport Has a Huge Gender Pay Gap - and It's Not About to Close*, WORLD ECON. FORUM (Sept. 15, 2016), <https://www.weforum.org/agenda/2016/09/sport-has-a-huge-gender-pay-gap-and-it-s-not-about-to-close-soon/> [<https://perma.cc/4MJL-ZYD5>].

²⁸⁷ *IOC Statement on Gender Equality in the Olympic Movement*, INT'L OLYMPIC COMM.

coaches over the last decade is not favorable for female coaches at the Olympic Summer and Winter Games; women accounted for merely ten percent of the accredited coaches over the past decade.²⁸⁸ The IOC heralded the 2020 Summer Olympics in Tokyo as being the first gender-balanced Olympics in history as almost forty-nine percent of the participating athletes were female.²⁸⁹ For the 2021 Tokyo Summer Olympics, the number of female accredited coaches, however, was only thirteen percent.²⁹⁰ The number of female Olympic athletes from the United States has surpassed the number of male Olympic athletes since 2012.²⁹¹

For the United States, the Amateur Sports Act amended the corporate charter of the United States Olympic Committee (“USOC”) in 1979.²⁹² The Amateur Sports Act, now known as the Ted Stevens Olympic and Amateur Sports Act, is the governance structure for the USOC, which recognizes one National Governing Body (“NGB”) to govern each sport from the grassroots level through the Olympic level.²⁹³ The Ted Stevens Act requires each NGB and High Performance Management Organization (“HPMO”) to complete an annual Diversity and Inclusion Scorecard (“D&I Scorecard”) detailing its diversity efforts regarding people of color, women, people with disabilities, and military veterans as assessed by established benchmarks based on data from the U.S. Census, NCAA, and USOC.²⁹⁴ HPMO’s are organizations and experts that provide performance-impacting sports science and technology to United States’ top athletes and coaches and to both Olympic and non-Olympic athletes in areas such as nutrition, physiology, psychology, and strength and conditioning.²⁹⁵ The D&I Scorecard for each NGB is submitted to Congress annually.²⁹⁶

One area of data collected on the Olympic D&I Scorecards is National

(Feb. 9, 2021), <https://olympics.com/ioc/news/ioc-statement-on-gender-equality-in-the-olympic-movement> [https://perma.cc/6KS4-S5EC].

²⁸⁸ *A Positive Trend at Tokyo 2020 for Female Coaches and Officials*, INT’L OLYMPIC COMM. (Aug. 7, 2021), <https://olympics.com/ioc/news/a-positive-trend-at-tokyo-2020-for-female-coaches-and-officials> [https://perma.cc/YFL5-S4YD].

²⁸⁹ *Tokyo 2020 First Ever Gender-Balanced Olympic Games in History, Record Number of Female Competitors at Paralympic Games*, INT’L OLYMPIC COMM. (Mar. 8, 2021), <https://olympics.com/ioc/news/tokyo-2020-first-ever-gender-balanced-olympic-games-in-history-record-number-of-female-competitors-at-paralympic-games> [https://perma.cc/JX5S-XBC6].

²⁹⁰ *A Positive Trend at Tokyo 2020 for Female Coaches and Officials*, *supra* note 288.

²⁹¹ *Women in the Olympic and Paralympic Games: An Analysis of Participation, Leadership, and Media Coverage*, WOMEN’S SPORTS FOUND. 46 (June 2017), <https://www.womenssportsfoundation.org/wp-content/uploads/2017/11/wsf-2016-olympic-paralympic-report-final.pdf> [https://perma.cc/S9JK-AFKU].

²⁹² Amateur Sports Act of 1978, 36 U.S.C. §§ 220501–220511, §§ 220521–220529.

²⁹³ WOMEN’S SPORTS FOUND., *supra* note 291.

²⁹⁴ *Id.*

²⁹⁵ *High Performance Programs*, TEAMUSA, <https://www.teamusa.org/Team-USA-Athlete-Services/High-Performance/> [https://perma.cc/9FQN-9XUG].

²⁹⁶ WOMEN’S SPORTS FOUND., *supra* note 291.

Teams (Coaches and Other Non-Athletes), which includes the gender of coaches, trainers, logistics coordinators, medical personnel, and others.²⁹⁷ Of the forty-two 2020 D&I Scorecards for Women Coaches and Other Non-Athletes posted for the various Olympics teams, six have achieved over one-hundred to ninety percent of their benchmark; six have achieved eighty-nine to seventy percent of their benchmark; eleven have achieved sixty-nine to fifty percent of their benchmark; eight have achieved forty-nine to one percent of their benchmark; and eleven have achieved zero percent of their benchmark.²⁹⁸ Again, this data is presented to Congress on an annual basis.²⁹⁹

Recognizing the need to address the Olympic gender gaps, the IOC and the International Federations have held annual forums dedicated to closing the gender gap in all facets of the Olympics since 2015.³⁰⁰ The International Federations are non-governmental organizations that administer world-level sports and must receive recognition of the IOC and conform to the guidelines of the Olympic Charter.³⁰¹ Due to COVID, the September 2020 forum was presented online and included topics such as “Leadership: Developing the Pipeline of Female Governance Candidates” and “Leadership: Developing the Pool of Female Coaches.”³⁰²

B. High Profile Male to Female Sexual Abuses in Athletics

The absence of authentic female leadership and participation at all levels in the world of sports is undisputed, and that lack of authentic female leadership and participation has contributed to the sexualization of female athletes.³⁰³

The relationship between coach and athlete always entails an element of bodily control. In joining a team or working with a coach there is an implicit contract: the athlete turns her body over to a coach, whose job it is to improve her performance Coaches are also deeply involved in players’ personal lives, spending long hours together training and traveling to competitions For these reasons, the boundary between

²⁹⁷ *Id.*

²⁹⁸ *Diversity, Equity & Inclusion Scorecards*, TEAMUSA, <https://www.teamusa.org/diversityscorecards> [<https://perma.cc/8V96-W372>].

²⁹⁹ *Id.*

³⁰⁰ *IF Gender Equality Webinar Series Opens with Sessions on Governance and Electoral Processes*, INT’L OLYMPIC COMM. (Sept. 8, 2020), <https://olympics.com/ioc/news/if-gender-equality-webinar-series-opens-with-sessions-on-governance-and-electoral-processes> [<https://perma.cc/Q6C8-K547>].

³⁰¹ *International Sports Federations*, INT’L OLYMPIC COMM., <https://olympics.com/ioc/international-federations> [<https://perma.cc/E74D-NPP5>].

³⁰² *IF Gender Equality Webinar Series Opens with Sessions on Governance and Electoral Processes*, *supra* note 300.

³⁰³ Emery, *supra* note 197, at 113–15.

helpful and harmful control is often ambiguous.³⁰⁴

Based on interviews with athletes in elite sports throughout the United States, “some of the best male coaches in the country have seduced a succession of female athletes.”³⁰⁵ The national news media often reports on sexual exploitation of female athletes, and the lack of safeguards to protect the athletes is evidence of the sexualization of female athletes. In 2010, USA Swimming announced its Safe Sport program as a way to protect young female swimmers and touted it in congressional testimony as a mechanism to address abuses.³⁰⁶ Nevertheless, fewer than two percent of the three thousand USA swimming teams were certified Safe Sport teams.³⁰⁷ For example, in 2019, Nathan Weddle of Raleigh, North Carolina, was charged with sexual abuse and plead guilty.³⁰⁸ As a result, USA Swimming’s Safe Sport program provided no protection for swimmers in North Carolina, including from Nathan Weddle.³⁰⁹

In 2020, three former female students filed a federal class action claiming that the NCAA failed to prevent sexual harassment and sexual abuse by coaches.³¹⁰ They claimed the NCAA did not have policies in place to protect students by tracking abusive coaches who move from institution to institution.³¹¹ In the complaint, they described being groomed as minors at Olympic-recognized facilities and activities, engaging in sex with a specific coach while in college, making reports to universities about their experiences, and witnessing the coach move from university to university to coach other female students.³¹²

The case of John Geddert rocked USA Olympics. Geddert was a former Olympics gymnastics coach who managed a gym in Dimondale, Michigan, and was charged with human trafficking for making money from forced labor of young female athletes.³¹³ Geddert was also charged with sexual assault and running a criminal enterprise.³¹⁴ Geddert committed

³⁰⁴ CAHN, *supra* note 211, at 303.

³⁰⁵ *Id.*

³⁰⁶ Rhonda Schwartz & Brian Ross, *Exclusive: Outrage Over Teen Swimmers Sexually Abused by USA Swimming Coaches*, LAW & CRIME (May 10, 2019, 11:01 AM), <https://lawandcrime.com/high-profile/exclusive-outrage-over-teen-swimmers-sexually-abused-by-usa-swimming-coaches/> [https://perma.cc/QC7H-SWX7].

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Nicholas Iovino, *NCAA Accused of Letting Coaches Sexually Abuse Athletes*, COURTHOUSE NEWS SERV. (Mar. 11, 2020), <https://www.courthousenews.com/ncaa-accused-of-failing-to-protect-athletes-from-sexual-abuse-by-coaches/> [https://perma.cc/L785-YW4E].

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

suicide shortly after he was charged.³¹⁵ Geddert also had close ties to Larry Nassar, a doctor who was entrusted with the health care of gymnasts at Michigan State University and the Olympics.³¹⁶ Since early 2021, more than 250 victims have come forward to describe the abuse they endured at the hands of Nassar when they were his patients while training for Olympic and Michigan State University gymnastics.³¹⁷ Many of the abusers reported being abused by Nassar as very young children.³¹⁸ Nassar's actions created havoc for USA Gymnastics and Michigan State as he was sentenced to more than 360 years of incarceration, including sentencing for possession of child pornography.³¹⁹ Many of the female accusers sued Michigan State University, USA Gymnastics, and the USOC for their mishandling of the complaints regarding Nassar.³²⁰ During the processing of victims' speeches prior to sentencing, Simone Biles, multi-gold winning gymnast of the 2016 Olympics, came forward and disclosed that she was molested by Larry Nassar.³²¹ Rachel Denhollander, the first gymnast to come forward and accuse Nassar of sexual abuse, stated, "These were real little girls, some of them as young as six years old."³²² "These were real young women who are suffering devastating consequences now, and this could have been avoided."³²³

C. Current Backlash to Sexualized Athletic Attire

The 2021 rebellion by the Norwegian beach handball team and the German gymnasts at the European Artistic Gymnastics Championships were very public occasions of women questioning the utility of sexualized athletic attire.³²⁴ However, this was not the first time in recent history that the

³¹⁵ Anna Liz Nichols & Ed White, *Olympics Gymnastics Coach Kills Himself After Being Charged*, ABC NEWS (Feb. 26, 2021, 12:30 AM), <https://abcnews.go.com/Sports/wireStory/us-olympics-gymnastics-coach-ties-nassar-charged-76110398> [<https://perma.cc/3DB6-NBPP>].

³¹⁶ Mark Hodge, *What Did Larry Nassar Do?*, U.S. SUN (Feb. 25, 2021, 5:52 PM), <https://www.the-sun.com/news/2409214/what-did-larry-nassar-do-simone-biles-abuse/> [<https://perma.cc/2BCA-SHF9>].

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Tracy Connor, *Simone Biles Says She Was Molested by Gymnastics Doctor Larry Nassar*, NBC NEWS (Jan. 15, 2018, 3:46 PM), <https://www.nbcnews.com/news/us-news/simone-biles-says-she-was-molested-gymnastics-doctor-larry-nassar-n837806> [<https://perma.cc/4AH7-7TND>].

³²² *Id.*

³²³ *Id.*

³²⁴ Rachael Jefferson-Buchanan, *Uniform Discontent: How Women Athletes Are Taking Control of Their Sporting Outfits*, CONVERSATION (July 25, 2021, 3:56 PM), <https://theconversation.com/uniform-discontent-how-women-athletes-are-taking-control-of-their-sporting-outfits-164946> [<https://perma.cc/83DA-9RBW>].

world witnessed challenges to sexualized athletic attire.³²⁵ During the 2016 Rio Olympics, androgynous fashion model Rain Dove brought an interesting twist to the conversation. Dove illustrated the drastic difference in male and female athletic wear by donning both to exemplify the “sexploitation” associated with female athletic attire.³²⁶ According to Dove, “People want to watch women [athletes] not because of their skills but because of their bodies.”³²⁷ Dove wore male and female gymnastics, running, tennis, volleyball, and swimming uniforms while engaging in various athletic activities.³²⁸ Dove observed that the female uniforms were more tight fitting and showed more body contouring, while the male uniforms were more loose fitting.³²⁹ They noted that the female uniforms made them feel more self-conscious.³³⁰ Dove proposed that athletes, including many female athletes, accept “sexploitation” and utilize it as a means to increase their public exposure and secure advertising endorsements.³³¹ Donrad Duncan, Principal Designer of EFM Menswear, agrees with Dove that athletic wear should not exploit athletes for sensual reasons, but instead aid an athlete’s performance.³³²

Current athletic uniforms have turned women into sexual objects and have taken the emphasis away from their athletic performance. Long gone are the days of the nineteenth-century when upper- to middle-class women’s athletic attire was designed to be modest and hide their body contours.³³³ Female athletic attire has changed drastically, and female athletes are beginning to push back against hypersexualized athletic attire.³³⁴

D. Important Steps Forward

The sexualization of female athletes is at a critical juncture as female athletes are beginning to question motives regarding the choices made about their athletic wear. Widely distributed brief electronic articles on the history of female athletic wear are a positive step toward causing female athletes to question the need for sensual athletic wear.³³⁵ Brevity of information is necessary in an era where lengthy historical information regarding the present state of affairs must be age appropriate, especially for young athletes.

³²⁵ Julie Compton, *Photo Series Explores ‘Sexploitation’ in Athletic Uniforms*, NBC NEWS (Aug. 22, 2016, 8:45 AM), <https://www.nbcnews.com/feature/nbc-out/photo-series-explores-sexploitation-athletic-uniforms-n635781> [<https://perma.cc/XK7L-BWYV>].

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ Jefferson-Buchanan, *supra* note 324.

³³⁴ *Id.*

³³⁵ *Id.*

Nevertheless, recounting historical events that changed the social order in favor of increased women's rights and advancements has its place in the battle to address the sexualization of female athletes. The effects of historical events, such as the Civil War, Women's Suffrage Movement, World War II, and Civil Rights Movement, are worthy of in-depth study in order to grasp the profound results of women's demands for changes in the social order of the United States. Thus, a critical step forward in addressing the sexualization of female athletes involves an understanding of the history of women's rights in the United States. The "Me Too Movement" has recently redefined topics such as sexual harassment and sexual assaults.³³⁶ Similarly, the pushback on sexualization of female athletes must redefine female athletic attire.

Next, the elimination of females from authentic decision-making and involvement in athletics at all levels must be addressed. For certain, the status of females in the United States has been tenuous throughout American history. Unlike other countries such as Britain, Germany, and Australia, the United States has not had a female in its highest office: President of the United States.³³⁷ Around the world, women have led in nations that have relative gender equality, such as Norway; women have even led in more patriarchal nations, such as Pakistan.³³⁸ However, a female has not led the United States.³³⁹ In fact, it has taken almost two and a half centuries to elect a female as Vice President of the United States.³⁴⁰ This fact is especially startling when one considers that females in the United States have outnumbered males throughout most of the nation's modern history.³⁴¹ The story of how female athletics grew because of female physical educators and how control of female athletics was taken away from female leaders is another chapter in the United States' dismal history of marginalizing groups of American citizens.³⁴² The data on authentic female involvement and

³³⁶ *Me Too Movement*, ME TOO, <https://metoomvmt.org/> [<https://perma.cc/LQ5J-CTZH>]. The "Me Too" movement was founded by sexual violence survivor Tarana Burke in 2006 to bring awareness and support to victims of sexual violence. *History & Inception*, ME TOO, <https://metoomvmt.org/get-to-know-us/history-inception/> [<https://perma.cc/QPP4-7XXE>]. The movement went viral in 2017 with the #metoo hashtag, when millions of survivors from various backgrounds shared their experiences with sexual violence and demonstrated solidarity by posting "#metoo" across social media. *Id.*

³³⁷ Farida Jalalzai, *Why the US Still Hasn't Had a Woman President*, CONVERSATION (Mar. 9, 2020, 11:06 AM), <https://theconversation.com/why-the-us-still-hasnt-had-a-woman-president-131125> [<https://perma.cc/8B4X-2ZGA>].

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ Lauren Camera, *Kamala Harris Makes History as First Female Vice President*, U.S. NEWS (Jan. 20, 2021), <https://www.usnews.com/news/elections/articles/2021-01-20/kamala-harris-becomes-first-female-vice-president> [<https://perma.cc/34N3-4AHX>].

³⁴¹ *Number of US Households in 2021/2022: Demographics, Statistics, & Trends*, FIN. ONLINE, <https://financesonline.com/number-of-us-households/> [<https://perma.cc/ZL3F-PC4V>].

³⁴² Hult, *supra* note 120 at 96-100.

participation in athletics in the United States is a sad commentary on our state of affairs. It is especially sad considering the Ted Stevens Act requires an annual report to Congress regarding the state of female participation in sports at the highest level: the Olympics.³⁴³

The 2021 Olympics were advertised as the first gender-balanced Olympics in history.³⁴⁴ However, further examination of the data illustrates that positions of authority, such as membership on the IOC, were still primarily held by males.³⁴⁵ Males also dominate the coaching positions based on the Olympic D&I Scorecards prepared for and presented to Congress.³⁴⁶ Lydia Nsekera, Chair of the IOC Women in Sport Commission, opened one of the IOC's online sessions designed to address the lack of female leadership in the IOC by stating the following: "Having achieved parity for athletes in the venues, we absolutely must implement strategies to reach the same objective for coaches and officials."³⁴⁷ She went on to quote activist Marian Wright Edleman by stating, "You can't be what you can't see."³⁴⁸

Finally, the athletic community must develop reliable structures to protect all vulnerable athletes who are eager to participate in the beneficial world of athletics. This Article did not address the many remaining critical issues associated with sexualization of athletes including, but not limited to, lack of parental oversight for minors, female on male and same gender sexualization, transgender athletes' experiences, or female acquiescence and participation in sexualization.

This Article presents three critical steps in addressing the sexualization of female athletes. However, the author recognizes that understanding the history of women's rights in the United States, returning women to authentic decision-making roles and involvement in all levels of athletics, and developing reliable structures to protect all vulnerable athletes are initial steps on a long journey. Athletics are deeply woven into the fabric of modern society, and the sexualization of females is but one thread in this very complicated tapestry. Nevertheless, as modern society continues to redefine gender roles and address gender-related issues, the topic of the sexualization of female athletes must be an essential component as society moves forward. Society in general, and female athletes in particular, deserve better.

³⁴³ *Diversity, Equity & Inclusion Scorecards*, *supra* note 298.

³⁴⁴ *Tokyo 2020 First Ever Gender-Balanced Olympic Games in History, Record Number of Female Competitors at Paralympic Games*, *supra* note 289.

³⁴⁵ *IOC Statement on Gender Equality in the Olympic Movement*, *supra* note 287.

³⁴⁶ *Diversity, Equity & Inclusion Scorecards*, *supra* note 298.

³⁴⁷ *Sports Federations Leading the Way to Increase Percentage of Female Coaches and Technical Officials*, INT'L OLYMPIC COMM. (Sept. 16, 2020), <https://olympics.com/ioc/news/sports-federations-leading-the-way-to-increase-percentage-of-female-coaches-and-technical-officials> [<https://perma.cc/4MPZ-FWH7>].

³⁴⁸ *Id.*