

Case No. 12-56348

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

VERONICA OLLIER, *et al.*
Plaintiffs and Appellees

v.

SWEETWATER UNION HIGH SCHOOL DISTRICT, *et al.*
Defendants and Appellants

On Appeal from the Judgment of the United States District Court
for the Southern District of California,
The Honorable M. James Lorenz
Civil Case No. 07cv714-L (WMC)

**AMICUS CURIAE BRIEF OF WOMEN'S SPORTS FOUNDATION et al. IN
SUPPORT OF PLAINTIFFS/APPELLEES, URGING AFFIRMANCE**

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CONSENT TO FILE AMICUS BRIEF

All parties have consented to the filing of this brief by amici curiae Women’s Sports Foundation, et al.¹ The Women’s Sports Foundation (WSF) is a nonprofit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and to creating an educated public that supports gender equity in sports. The WSF distributes over \$1 million per year in grants and scholarships to female athletes and girls’ sports programs, answers over 100,000

¹ Pursuant to Federal Rule of Appellate Procedure 29(c)(5), amici state that they and their counsel authored this brief in whole. No party or counsel for any party authored this brief in any respect. No party or their counsel made any monetary contribution for the preparation or submission of this brief.

inquires per year concerning Title IX and other women's sports related questions, and administers award programs to increase public awareness about the achievements of girls and women in sports.

INTERESTS OF AMICI

American Volleyball Coaches Association

AVCA is an organization with a mission to advance the sport of volleyball and its coaches. We have an interest in protecting coaches of all sports from retaliation when they speak out on behalf of their athletes. Further, the sport of volleyball is the second largest participation team sport for girls in the U.S. This makes us interested in protecting rights and opportunities for girls and women in sports.

Coaching Corps

Across California, girls living in low-income communities and communities of color are often denied the opportunity to participate in high-quality sports programs or to receive the life-changing benefits they provide. Coaching Corps gets girls into the game by recruiting, training and placing volunteer coaches in after-school programs to work with the most underserved and under-resourced youth. These coaches act as mentors and role models and in many cases are the only safe adults these young girls have access to during the after-school hours. The

Ollier v. Sweetwater Union High School District case is critical because equal sports participation is an important civil right for girls. Studies show that sports have the power to change a girl's life. Girls who participate in high-quality sports programs have better health, increased self-confidence, higher academic achievement and are less likely to participate in risky adolescent behaviors such as illegal drug use and unsafe sex. Our most vulnerable girls deserve the opportunity to play.

The Dad Man/Dads & Daughters

For more than 20 years, I've taught and coached fathers and stepfathers on how to strengthen their crucial relationships with their daughters. Tens of thousands of men have attended my sessions and/or read my book "Dads & Daughters®: How to Inspire, Understand, and Support Your Daughter. Across the board, these fathers describe how shared experience and enthusiasm for sport gives them common ground for communicating with and positively influencing their daughters and stepdaughters. Their experience makes clear that Title IX is one of the best things that ever happened to fathers of girls. Research consistently shows that positive father involvement keeps girls healthier and helps girls succeed as women. A vibrant enforcement of Title IX by schools, agencies, and the courts is a key link in the chains that binds fathers and daughters together in the United States. For this

reason, the men that my organization represents support the plaintiffs/appellees in *Ollier v. Sweetwater Union High School District*.

The Drake Group

The Drake Group's mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports. The Drake Group seeks to create an atmosphere on college campuses that encourages personal and intellectual growth for all students. We support rules to protect those who disclose unethical behavior related to collegiate athletic programs. We wholeheartedly support Title IX's implementation at all levels of education.

Feminist Majority Foundation

The Feminist Majority Foundation (FMF) is a non-profit organization dedicated to eliminating sex discrimination and to the promotion of gender equality and women's empowerment. FMF programs focus on advancing the legal, social, economic, education, and political equality of women with men; countering the backlash to women's advancement; and recruiting and training young feminists. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing efforts, and leadership training programs. The FMF Education Equity Program belongs to and works with the National Coalition for Women and Girls in Education, and is developing Title IX

Action Networks to work with the required Title IX Coordinators to end sex discrimination in education. This amicus brief is congruent with FMF's goals. It supports equal athletic opportunities and reinforces prohibitions against retaliation for complying with Title IX such as objecting to Sweetwater Union High School District's firing of its long-time girls' softball coach after the girls filed a Title IX complaint.

Girls Inc.

Girls Inc. is a national non profit that provides informal education to girls between the ages of 6-18. A key part of our holistic approach to girls' success is encouraging them to be active and healthy. We conduct many sports programs for girls of all age ranges. We believe strongly that athletic involvement is critical for physical health, emotional stability, self-confidence, and teamwork skills that will prepare our girls to succeed in their life endeavors. Equal treatment for female athletics under Title IX is crucial, both for girls to have equal access to athletic opportunities and for boys to understand the equal importance of women's sports. Girls Inc. strongly supports this brief and will continue to work tirelessly to ensure that Title IX is enforced.

Hadassah, The Women's Zionist Organization of America, Inc.

Hadassah, The Women's Zionist Organization of America, Inc., founded in 1912, has over 330,000 Members, Associates and supporters nationwide. While traditionally known for its role in funding health care and other initiatives in Israel, Hadassah also has longstanding commitments to the advancement of healthcare and the protection of civil rights in the United States, particularly the rights of women and the Jewish community. Hadassah is a staunch advocate for improved women's health and for removing barriers to women's participation in society. Title IX serves these goals by promoting equality for women and participation by women in sports.

National Organization for Women (NOW) Foundation

The National Organization for Women Foundation is a 501 (C) (3) education and litigation organization, founded in 1987, to promote the rights of women through education and litigation. It is affiliated with the National Organization for Women which is the nation's largest feminist activist organization, with chapters in every major city and in all 50 states and in Washington, D.C. Since its founding in 1966, NOW has been committed to the full enforcement of Title IX, and has engaged in litigation in furtherance of the law's enforcement.

Women's Law Center of Maryland, Inc.

The Women's Law Center of Maryland, Inc. is a nonprofit, membership organization with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, sexual harassment, employment law and family law. Through its direct services and advocacy, the Women's Law Center seeks to protect women and girls from discrimination and ensure that they have equal opportunity to participate in all academic, athletic and employment opportunities.

Women's Law Project

The Women's Law Project (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, PA. Founded in 1974, the WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, we engage in high-impact litigation, advocacy, and education. The WLP has a strong interest in the eradication of discrimination against women and girls in athletics and the availability of strong and effective remedies under Title IX of the Education Amendments of 1972. The WLP has worked throughout its history to eliminate sex discrimination in athletics and education, representing student athletes, coaches, and other players in the athletic arena in their efforts to achieve equal treatment and equal opportunity, and

pursuing public policy and educational initiatives aimed at realizing Title IX's goal of equality in athletics.

INTRODUCTION

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, et seq.) (“Title IX”) was enacted to remedy and prevent gender discrimination in all aspects of education, including sports. Opportunities to participate in sports are educational gateways to economic and professional opportunities in contemporary American society. Girls and women derive substantial physical, psychological, and cultural benefits from high school sports participation that continue throughout their lives. This case is ultimately about implementing Congress’s intent in enacting Title IX: to ensure that girls and women are treated equitably and are given the opportunity to fully realize the benefits that education, including the educational athletics, offers.

The nation has witnessed a revolution in women’s sports participation. *See Cohen v. Brown Univ.*, 101 F.3d 155, 188 (1st Cir. 1996) (“Title IX has changed the face of women’s sports as well as our society’s interest in and attitude toward women athletes and women’s sports.”), *cert denied*, 520 U.S. 1186 (1997). Enormous increases in sports participation have led to riveting Olympic victories, fierce collegiate rivalries, and professional career opportunities as athletes, coaches, and administrators. As this Court has noted, the “victorious athletes understood as well as anyone the connection between a 27-year-old statute and tangible progress in women’s athletics.” *Neal v. Bd. of*

Trs. of Cal. State Univ., 198 F.3d 763, 773 (9th Cir. 1999).

Despite these gains, the playing field is still far from level even 40 years after the passage of Title IX. At the national high school level, girls represent roughly 50% of the students but only about 42% of all student-athletes.

Approximately 1.277 million more boys than girls played high sports during the 2011-2012 school year.¹ The number of girls competing in high school sports still has not matched the number of boys competing in high school sports in 1972, when Title IX was enacted.²

Sadly, the participation trend between boys and girls is moving *away* from equality in high schools. The SHARP Center for Women and Girls at the University of Michigan recently issued a comprehensive report about the status of girls' participation in high school athletics over the past ten years.³ It found that schools have increased sports participation opportunities for boys at a faster pace than they have for girls over the past decade. In other words, the

¹ National Federation of State High School Associations, *2011-2012 High School Athletics Participation Survey* (2012) at 2, available at www.nfhs.org/content.aspx?id=3282 (“NFHS data”).

² NFHS data at 2.

³ Sabo, D. and Veliz, P. (2012). *The Decade of Decline: Gender Equity in High School Sports*. Ann Arbor, MI: SHARP Center for Women and Girls. (This research used data from the Department of Education, while the prior figures are voluntarily reported from schools to the National Federation of State High School Associations.) (Hereinafter “SHARP Report”)

equity gap is widening, rather than closing, as schools continue to favor providing sports opportunities for males over females. This growing gap exists for all regions of the country, all types of communities, and all schools with differing economic resources. *Id.*

In California, girls also lag behind boys in high school athletic participation, by a significant margin. In 2011 – 2012, California boys received 456,633 participation opportunities while girls received only 325,279.⁴ Compared with the entire student-body, 39% of California’s high school boys had the opportunity to participate in sports, while only 29% of its girls enjoyed the same opportunities and thus the same benefits.⁵ Put another way, California schools offered four sport opportunities to boys for every three they offered to girls.⁶

California’s equity gap is particularly stark when compared to that in other states. Thirty-seven states have smaller equity gaps than does California. Forty-three states offer a larger percentage of their girls the opportunity to participate in sports.⁷ Some states offer athletic opportunities to more than

⁴ NFHS data at 3.

⁵ SHARP Report at 34.

⁶ *Id.* at 34.

⁷ *Id.* at 34.

75% of their female students.⁸ It is unlikely that California's children have less interest or ability to participate in high school sports than those in other states. It is more likely that California schools have chosen to offer fewer opportunities. Their girls bear the brunt of those decisions.

In collegiate athletics, women's programs continue to lag behind men's programs by every measurable criterion, including participation opportunities, athletic scholarships, operating budgets and recruiting expenditures.⁹ These large gaps continue even though there are far more women who want to play sports than there are college opportunities (3 million high school girls are vying for fewer than 200,000 college opportunities)¹⁰ and even though

⁸ *Id.* at 34.

⁹ At Division I institutions, women represented 52.6 percent of the student bodies but just 46 percent of athletes. They received only 40 percent of the athletic operating budgets, 36 percent of the recruiting budgets, and just 48 percent of the athletic. At Division II, women represented 56.6% of the student body but received only 40.7% of athletic opportunities, 42.5% of athletic budgets, 40% of recruiting dollars, and 43.7% of athletic scholarships. At Division III, women represented 55.3% of enrollment, but received only 41.2% of athletic opportunities, 42.5% of athletic budgets, and 35.7% of recruiting dollars. There are no athletic scholarships in Division III. See *The 2004-10 NCAA Gender Equity Report* (2012) at 2, available at <http://www.ncaapublications.com/productdownloads/GEQS10.pdf>. In 2009-2010, male athletes received approximately \$131 million dollars more than female athletes in athletic scholarships at NCAA Division I member institutions. *Id.*

¹⁰ Compare NFHS at p. 3 (more than 3 million female high school athletes) with NCAA Sports Sponsorship and Participation Rates Report

colleges have the advantage of recruiting athletes from all over the country – often with athletic scholarships. As these statistics demonstrate, there is still much to be done before gender equity is achieved.

Title IX’s regulations place the burden for Title IX compliance and self-assessment on the schools themselves. 34 C.F.R. §106.3 (self-evaluation and affirmative action), §106.8 (appointment of Title IX coordinator, adoption of nondiscrimination policy, and implementation of grievance procedure), and §106.9 (dissemination of information). Indeed, schools must affirm their compliance with Title IX and pledge their future compliance as a condition precedent to receiving federal financial assistance by filing a Certificate of Assurance. 34 C.F.R. §106.4.

Title IX’s 1975 regulations mandated that all schools reach athletic compliance no later than July, 1978. 34 C.F.R. §106.41(d). Federal guidance from the Office for Civil Rights (“OCR”) alerted schools that the three-year adjustment period was not a waiting period. Schools must “begin now to take whatever steps are necessary to ensure full compliance as quickly as possible.” *See* Elimination of Sex Discrimination in Athletic Programs, Memorandum from the Director of the Office for Civil Rights to Chief State School Officers

1981-82 to 2011-12 at p. 71 (fewer than 200,000 female college athletes), available at www.ncaapublications.com/productdownloads/PR2013.pdf

(Sept. 1975).¹¹

Additional OCR guidance explained that if a school could not comply immediately then

it must be able to justify its use of the adjustment period by being able to demonstrate that there are real barriers or obstacles to achieving immediate parity for students of both sexes and that the institution is taking steps with specific timetables for their implementation to overcome these barriers.

OCR, Competitive Athletics in Search of Equal Opportunity (Sept. 1976).¹²

Despite the clear mandate and guidance, voluntary compliance is not working. As shown by the national and California statistics above and as found by the District Court, the problems at Sweetwater's Castle Park High School, are systemic. Most schools are failing their obligations to their female students. Vigorous enforcement, including the ability to complain about discrimination without fear of retaliation, is essential to achieving Title IX's goal of eliminating sex discrimination in education and expanding opportunities for girls. Thus, the undersigned *amici* urge this Court to affirm the decision and findings of the District Court in all respects.

¹¹ Available at www.ed.gov/about/offices/list/ocr/docs/holmes.html

¹² Available at www.eric.ed.gov/ERICWebPortal/recordDetail?accno=ED135789

ARGUMENT

I. TITLE IX COMPLIANCE AND ENFORCEMENT ARE CRITICAL TO ENSURE EQUAL ACCESS TO THE SUBSTANTIAL BENEFITS THAT ARISE FROM PARTICIPATION IN SPORTS

Title IX compliance and enforcement are necessary to ensure that female students receive equal access to the substantial benefits that arise from participation in educational athletics. Despite the clear and consistent directives from OCR, consistent case law, and facts that are often undisputed, the need for female athletes, like the plaintiffs here, to fight outmoded stereotypes and to file Title IX actions to assert their right to equality in education continues.¹³ *Amici* are concerned that, by ignoring their

¹³ See generally, *Biediger v. Quinnipiac Univ.*, 728 F. Supp. 2d 62, 64 (D. Conn. 2010), aff'd 691 F.3d 85 (2d Cir. 2012), (roster manipulation can violate Title IX; competitive cheer does not qualify as a sport; schools must offer females the same quality of competitive opportunities they provide males); *Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 916 (7th Cir. 2012), (requiring girls, but not boys, to compete primarily during the week violates Title IX because inequitable scheduling (1) deprives girls of the opportunity to play before a larger audience, (2) sends girls a message of inferiority, and (3) imposes disproportionate or unnecessary academic burdens on girls), *Mansourian v. Regents of Univ. of California*, 602 F.3d 957, 964-65 (9th Cir. 2010), (schools must continuously add opportunities and not wait until someone complains in order to rely on prong 2), *Cruz v. Alhambra Sch. Dist.*, 601 F. Supp. 2d 1183, 1187-1188 (C.D. Cal. 2009) (unequal fields, athletic facilities, practice and game times, funding, publicity, and coaching), *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930 (D.C. Cir. 2004) (failed challenge to implementation of Title IX relied on improper stereotype that women are less interested in sports); *Communities for Equity v. Mich. High Sch. Athletic Ass'n*, 178 F.Supp. 2d

legal obligations, schools are denying young girls opportunities that are critical to their health and success in life.

A. The Sports Experience Provides Girls and Women With Significant Benefits

Athletics play a vital role in society, especially for women. In 1973, 50 million viewers watched Billie Jean King defeat Bobby Riggs in the “Battle of the Sexes,” a victory that directly confronted previously entrenched gender stereotypes. The performances of female athletes who have benefited from Title IX (such as Mia Hamm, Tamika Catchings, Maya Moore, Abby Wambach, Jessica Mendoza, Misty May-Treanor, Jessica Long, and Angela Ruggiero) continue to inspire and encourage our nation’s girls to break down the barriers that limit their potential. Women athletes are heroes and mentors, leaders and role models. Each female athlete is a living affirmation of why it is important to ensure equal opportunity in sports.

The Supreme Court has recognized that education plays “a fundamental

805 (W.D. Mich. 2001), 377 F.3d 504 (6th Cir. 2004); *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275 (2d Cir. 2004) (inequitable scheduling of sports seasons deprived girls of opportunity to compete in regional and state championships); *Daniels v. Sch. Bd. of Brevard County, Fla.*, 995 F. Supp. 1394 (M.D. Fla. 1997)(by providing boys’ baseball team with numerous amenities not provided to girls’ softball team, “[the school] sends a clear message to players, fellow students, teachers and the community at large, that girls’ varsity softball is not as worthy as boys’ varsity baseball.”); *Ladow v. Sch. Bd. of Brevard County*, 132 F. Supp. 2d 958 (M.D. Fla. 2000) (inequitable treatment).

role in maintaining the fabric of our society,” *Plyler v. Doe*, 457 U.S. 202, 221 (1982). Athletics play a vital part in that role. Sports participation teaches young people critical lessons about how to set goals and work to achieve them, to win and lose gracefully, to postpone short term gratification for long term rewards, to perform under pressure, to function as part of a team, and to take criticism. Student-athletes develop self-confidence, perseverance, and a desire to succeed. Contrary to the “dumb jock” myth, interscholastic sports participation provides both boys and girls from diverse socioeconomic, racial, and ethnic backgrounds measurable, positive educational improvements in self-esteem, higher educational aspirations, improved school attendance, increased math and science enrollment, more time spent on homework, and higher enrollment in honors courses.¹⁴

1. **Sports Participation Improves Girls’ Educational Achievement**

The educational benefits that girls derive from sports participation are dramatic. Girls who play high school sports are 20% more likely to graduate

¹⁴ See H.W. Marsh, *The Effects of Participation in Sport During the Last Two Years of High School*, 10 Soc. Sport J. 18 (1993). See generally, The Tucker Center for Research on Girls & Women in Sport (2007). *The 2007 Tucker Center Research Report, Developing Physically Active Girls: An evidence-based multidisciplinary approach*. University of Minnesota, Minneapolis, MN, available at <http://cehd.umn.edu/TuckerCenter/projects/TCRR/2007-Tucker-Center-Research-Report.pdf>

from high school and 20% more likely to attend college. Sports participation appears to *cause* these academic benefits.¹⁵

Collegiate female student-athletes have higher grades and higher graduation rates than their non-athletic peers. Of the female student-athletes who entered NCAA Division I programs on scholarship in 1998, 71% graduated within six years of enrollment. This is 8% higher than the overall rate for female students (63%) and higher than all students.¹⁶ Indeed, female athletes consistently post the highest graduation rates of all students.¹⁷ Both

¹⁵ Stevenson, B., *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports*, Review of Economics and Statistics, May 2010, 92 (2): 284-301. (girls in other after-school activities did not see the same educational gains associated with sports participation) (Hereinafter “Stevenson”) See also; “As Girls Become Women, Sports Pay Dividends”, NY Times, <http://well.blogs.nytimes.com/2010/02/15/as-girls-become-women-sports-pay-dividends/> and *Economists Link Athletics to Success in School and the Job Markets*, Wall Street Journal <http://blogs.wsj.com/economics/2010/02/08/economists-link-athletics-to-success-in-school-job-markets/>

¹⁶ See *2005 Graduation-Rates Report for NCAA Division I Schools*, available at http://web1.ncaa.org/app_data/instAggr2005/1_0.pdf

¹⁷ See *NCAA Research Related to Graduation Rates of Division I Student-Athletes, 2007*. See also Richard E. Lapchick, *Keeping Score When it Counts: Graduation Rates for the NCAA Women’s Division I 2008 Basketball Tournament Teams*, University of Central Florida’s Institute for Diversity and Ethics in Sports (2008) (study showing that female athletes in the national basketball tournament had exceedingly high graduation rates), available at http://www.tidesport.org/Grad%20Rates/2008_Womens_Basketball_Tournament_PR.pdf

white female scholarship athletes (68%) and female scholarship athletes of color (55%) graduated at higher rates than their counterparts in the general student population (54% and 42%, respectively).¹⁸ These same educational gains are repeated in high school, where both white and black female student-athletes graduated at rates higher than their student-body counterparts.¹⁹

These educational benefits appear to translate into economic success. Increasing girls' sports participation has a direct effect on women's education and employment. The changes set in motion by Title IX explain about 20% of the increase in women's education and about 40% of the rise in employment for 25-to-34-year-old women, including a 12% spike in the number of women working in traditionally male-dominated occupations such as law, accounting, and veterinary medicine.²⁰ This research suggests that Title IX and sports participation have been very good for the American

¹⁸ See Butler, J. & Lopiano, D., *The Women's Sports Foundation Report: Title IX and Race in Intercollegiate Sport* (2003).

¹⁹ See Nat'l Fed'n of State High School Ass'ns, *The Case for High School Activities* (2008), available at http://www.nfhs.org/core/contentmanager/uploads/PDFs/-Publications/2008_Case_for_High_School_Activities.pdf.

²⁰ Stevenson at 284-301.

economy.

A study by the Oppenheimer Fund found that more than four out of five executive businesswomen (81%) played sports growing up – and the vast majority reported that the lessons they learned on the playing field contributed to their business success.²¹ A sports participation background is also the common gateway to the sports industry itself. The business of sports, including athletic administration, coaching, sports management, sports medicine, marketing and manufacturing, is a nearly \$200 billion per year industry.²²

2. **Girls Who Participate in High School Sports Experience Improved Health Over a Lifetime**

High school sports participation creates healthier adult women. A high school sports experience is the best public health program preventing adulthood obesity.²³ Sports participation begets more physical activity throughout a woman’s lifetime. A 20% increase in girls’ sport participation

²¹ See *New Nationwide Research Finds: Successful Women Business Executives Don’t Just Talk a Good Game . . . They Played One* (2002), available at <http://www.massmutual.com/-mmfg/pdf/boardroom.pdf>.

²² Street and Smith, 4 *Sports Bus. J.* 47 (March 2002), available at <http://www.sportsbusinessjournal.com/images/-random/SportsIndustry.pdf>.

²³ Kaestner, Robert and Xin Xu. 2010. “Title IX, Girls’ Sports Participation, and Adult Female Physical Activity and Weight.” *Evaluation Review* 34: 52-78

in high school between the 1970–71 and 1977–78 academic years was associated with a 24% increase in the probability of engaging in “much” physical activity during recreational activities, a four percent decline in body mass index and a lessened probability of being overweight or obese.²⁴ As a result of being physically active, girls are more likely to be at a normal weight into their twenties, which increases their life expectancy by as much as eight years.²⁵

Research also demonstrates that women who participate in regular physical exercise reduce their risk of breast cancer up to 60%.²⁶ Osteoporosis afflicts 10 million Americans, 80% of whom are women.²⁷ Physical activity and sports participation in the school-age years increases life-time bone

²⁴ *Id.*

²⁵ Fintaine, K.R., Redden, D.T., Wang, C., Westfall, A.O. & Allison, D.B. (2003). “Years of life lost due to obesity.” *Journal of the American Medical Association.*, available at <http://www.ncbi.nlm.nih.gov/pubmed/12517229>

²⁶ See Leslie Bernstein, et al., *Physical Exercise and Reduced Risk of Breast Cancer in Young Women*, 86 J. Nat’l Cancer Inst. 1403 (1994) (reporting that one to three hours of exercise per week over a woman’s reproductive lifetime may bring a 20-30% reduction in the risk of breast cancer, and four or more hours of exercise per week may reduce the same risk by almost 60%).

²⁷ See Nat’l Osteoporosis Found., *Fast Facts* (2003), available at www.nof.org/osteoporosis/-diseasefacts.htm.

density.²⁸ Alzheimer's disease disproportionately afflicts older women.²⁹ Higher levels of physical activity earlier in life may reduce the risk for Alzheimer's later in life.³⁰ These results suggest that implementation of regular physical exercise programs as a critical component of a healthy lifestyle should be a high priority for adolescent and adult women.

In addition to disease prevention, high school sports participation also changes lifestyle choices that affect health. For example, female athletes are also less likely to smoke or use illicit drugs than non-athletes.³¹ They are less

²⁸ See D. Teegarden, et al., *Previous Physical Activity Relates To Bone Mineral Measures In Young Women*, 28 *Med. & Sci. in Sports & Exercise* 105 (Jan. 1996).

²⁹ D.A. Evans et al., *Prevalence Of Alzheimer's Disease In A Community Population Higher Than Previously Reported*, 262 *J. Am. Med. Ass'n*, 2251 (1989).

³⁰ See Sandra K. Pope, et al., *Will a Healthy Lifestyle Help Prevent Alzheimer's Disease?*, 24 *Annual Review of Public Health*, 111 (2003).

³¹ See M.J. Melnick et al., *Tobacco Use Among High School Athletes And Nonathletes: Results Of The 1997 Youth Risk Behavior Survey*, 36 *Adolescence* 727 (2001); see also Wyoming High School Activities Ass'n, *Student Activities Survey* (1998) (finding that only 25% of high school athletes, compared to 40% of non-athletic high school students, smoke cigarettes); K.E. Miller et al., *The Women's Sports Foundation Report: Health Risks and the Teen Athlete*, 1, 8 (2000) available at www.womenssportsfoundation.org/binarydata/-WSF_Article/pdf_file/771.pdf. (national study finding that female athletes involved in school or community sports are significantly less likely to use marijuana, cocaine, or most other illicit drugs); R.R. Pate et al., *Sports Participation and Health-Related Behaviors Among U.S. Youth*, 154 *Archives of Pediatric &*

likely to become pregnant as teenagers,³² are more likely to report never having had sexual intercourse, and more likely to experience their first sexual intercourse later in adolescence than female non-athletes.³³

Athletic participation is also associated with heightened mental health benefits. Female high school athletes suffer lower rates of depression and show markedly lower incidences of considering or attempting suicide.³⁴ In

Adolescent Med. 904 (2000) (same); *The Case for High School Activities*, *supra* (concluding that 92% of high school athletes do not use drugs).

³² See T. Dodge and J. Jaccard, *Participation in Athletics and Female Sexual Risk Behavior: The Evaluation of Four Causal Structures*, 17 *Journal of Adolescent Research* 42 (2002); The President's Council on Physical Fitness and Sports Report, *Physical Activity & Sports in the Lives of Girls*, (Spring 1997), available at http://www.cehd.umn.edu/tuckercenter/projects/PresidentsCouncil/pcpfs_report.pdf (higher rates of athletic participation among adolescent girls are significantly associated with lower rates of both sexual activity and pregnancy).

³³ Sabo, D., Miller, K., Farrell, M., Barnes, G. Melnick, M. (1998). *The Women's Sports Foundation Report: Sport and Teen Pregnancy*. Women's Sport Foundation. Available at <http://www.womenssportsfoundation.org/en/home/research/articles-and-reports/mental-and-physical-health/sport-and-teen-pregnancy>

³⁴ See Don Sabo, et al., *High School Athletic Participation and Adolescent Suicide: A Nationwide Study*, *International Review for the Sociology of Sport*; G. Nicoloff, and T.S. Schwenk, *Using Exercise to Ward Off Depression*, 9 *Physician Sports Med.* 23, 44-58 (1995); R.M. Page & L.A. Tucker, *Psychosocial Discomfort and Exercise Frequency: An Epidemiological Study of Adolescents*, 29 *Adolescence*, 113, 183-91 (1994) (suggesting that physically active adolescents tend to feel less lonely, shy, and hopeless as compared to their less physically active peers). Indeed, this

short, research demonstrates that physical activity and sports participation provide potential long-term economic benefits and offer fundamental solutions for many of the serious health and social problems facing America's girls. *Amici's* greatest concern is preserving and advancing these benefits for girls and young women.

B. The Failure to Provide Equitable Coaching Violates Title IX.

As addressed in the respondent's brief, the trial court found that the Defendant failed to provide female athletes with the same number or quality of benefits that it provides male athletes, including most, if not all, of the benefits in Title IX's athletics regulation, including:

- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;

research suggests that the failure to provide girls with athletic and fitness opportunities endangers the public health. *See Her Life Depends On It, supra*, at 5.

(10) Publicity.

34 C.F.R. § 106.41(c).

The regulation includes two provisions relating specifically to the importance of coaching. These provisions require that schools provide girls with equal access to coaches with comparable education, qualifications, experience, and professional reputation. They must also assign females an equitable number of full and part time coaches and head and assistant coaches per athlete. OCR explained these requirements to schools decades ago in its 1979 Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979)³⁵ and 1990 OCR Investigators Manual.³⁶

The trial court found that the Defendant failed to meet each of the requirements of these provisions. For example, the softball team did not have equal access to coaches when the replacement coach was not available for winter training. Additionally, she was assigned as the head coach for two additional sports, and the softball program had no assistant coaches, and the parents were not allowed to provide additional coaching. In addition, the replacement coach did not have comparable education, qualifications,

³⁵ Available at www2.ed.gov/about/offices/list/ocr/docs/t9interp.html

³⁶ Valerie Bonnette and Daniel Lamar, *Title IX Athletics Investigator's Manual* 7 (1990) at 55. Available at: http://fs.ncaa.org/Docs/gender_equity/resource_materials/AuditMaterial/Investigator's_Manual.pdf

experience, and professional reputation as the former coach. (1-ER-27[WU1]).

These failures alone would have been enough to find that Defendant violated Title IX.³⁷ As the next section makes clear, these factors are important because they heavily influence the ultimate value that athletes obtain from their athletic experience.

II. ATHLETES WHO ARE PROVIDED ACCESS TO QUALIFIED, MORE EXPERIENCED COACHES IN STABLE ATHLETIC PROGRAMS RECEIVE GREATER EDUCATIONAL BENEFITS

Playing high school sports does not automatically produce the benefits listed in section I above. Much of the current literature suggests that coaches play an extremely important role in the athlete's sport experience.³⁸

A. Athletes With More Experienced, Stable Coaches Are

³⁷ Other courts have similarly held that a violation of a single factor in the list of treatment factors and benefits constitutes a violation of Title IX. *Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 916 (7th Cir. 2012), (finding that the failure to provide equal scheduling of games constituted a violation of Title IX.) *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275 (2d Cir. 2004) (finding that school's scheduling decisions regarding soccer seasons improperly deprived girls, but not boys, of opportunity to compete in regional and state championships).

³⁸ National Association for Sport and Physical Education (NASPE). (2006). *Quality coaches, quality sports: National standards for sport coaches* [2nd ed.]. Reston, VA; E. Smith, F.L. Smoll, and S.P. Cumming, *Effects of a Motivational Climate Intervention for Coaches on Young Athletes Performance Anxiety*, 29(1), 39-59, 2007.

More Likely to Continue Playing Their Sport

Sport dropout, or attrition, is a major problem in youth sports, with about 30% of all children quitting sports in any given year, many of them to get into less savory activities.³⁹ A skilled coach will impact whether a student stays in athletics to reap the considerable benefits from athletics, or whether they will drop out. The top two reasons for dropping out are the behavior of coaches and the behavior of parents.⁴⁰ Another study compared trained and untrained coaches over two seasons to assess the impact of training on athlete dropout. At the end of the first season, children in the experimental group evaluated their coaches, teammates, and the sport of baseball more positively than children who played for the control-group coaches. Player attrition was assessed at the beginning of the next season, with control-group youngsters withdrawing from all sport participation at a

³⁹ American Alliance for Health, Physical Education, Recreation and Dance. (2013). *Maximizing the Benefit of Youth Sport* [Position statement]. Reston, VA at 2. Available at: <http://www.aahperd.org/naspe/about/leaders/upload/Maximizing-Benefits-of-Youth-Sport-for-ADA-Approval.pdf>

⁴⁰ R. Martens, *Successful Coaching*, 2012; see also *National Coaching Report*, 2008.

significantly higher rate (26% that those in the experimental group (5% dropout rate).⁴¹

B. Quality Coaching is Crucial to the Participant’s Experience.

The coach creates much of the educational environment for athletics participation.⁴² Coaching skill is such a crucial element to athletics that the National Federation of State High School Association’s (“NFHS”) Board of Directors approved a Model Coach Education Position statement in April, 2013, that provides recommendations on the type of education coaches should have.⁴³ The American Alliance for Health, Physical Education, Recreation and Dance (“AAHPERD”) approved a similar statement the same month.⁴⁴ Coaching includes far more than stroke or throwing

⁴¹ Barnett, N. P., Smoll, F. L., & Smith, R. E. (1992). Effects of enhancing coach-athlete relationships on youth sport attrition. *The Sport Psychologist*, 6, 111-127. (There was no difference in their teams’ won-lost percentages between dropouts and returning players, which indicated that the attrition was not due to a lack of team success.)

⁴² David E. Conroy, Enhancing Motivation in Sport, American Psychological Association (Feb. 2006) at 1, available at www.apa.org/science/about/psa/2006/02/conroy.aspx ; see also R.E. Smith, F.L. Smoll, and S.P. Cumming, *Effects of a Motivational Climate Intervention for Coaches on Young Athletes Performance Anxiety*, 29(1), 39-59.

⁴³ National Federation of State and High School Associations, *Model Coach Education Position Statement*, (2013).

⁴⁴ American Alliance for Health, Physical Education, Recreation and

mechanics. It includes character development, the importance of identifying and discussing the lessons learned through sports experiences, and how those experiences may be useful in other areas of their lives.⁴⁵

A coach's influence extends beyond the skill set necessary for success of the court or field⁴⁶ to include the development of other attributes like attitude and effort.⁴⁷ Coaching influences whether a female athlete will smoke,⁴⁸ take illegal drugs, become pregnant,⁴⁹ and even graduate. “[t]he

Dance, *Recommended requisites for sport coaches* [Position Statement], Reston, VA, (2013)

⁴⁵ American Alliance for Health, Physical Education, Recreation and Dance (2013), *Maximizing the Benefit of Youth Sport* [Position Statement], Reston, VA at 2. Available at www.aahperd.org/naspe/about/leaders/upload/Maximizing-Benefits-of-Youth-Sport-for-ADA-Approval.pdf

⁴⁶ F.L. Smoll and R.E. Smith, *Coaching Behavior Research and Intervention in Youth Sport*, in *Children and youth in sport: A biopsychological perspective* (2nd edition) (2002).

⁴⁸ Horn, K., Maniar, S.D., Dino, G.A., Gao, X., and Meckstroth, R.L. (2000). *Coaches' attitudes toward smokeless tobacco and intentions to intervene with athletes*. *Journal of School Health*, 70(3):89-94. *See also*, (Escobedo et al, 1993). (“Lower athlete smoking rates may be related to several factors, including greater self-confidence; and counseling from coaches...”)

⁴⁹ Women's Sports Foundation, *Her Life Depends on It II: Sport, Physical Activity and the Health and Well-Being of American Girls and Women* 4, 41, 44, 45 (Dec. 2009) (“*Her Life Depends on It II*”), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/her-life-depends-on-it-ii>;

coach, particularly at the high school level, is ... responsible for providing an educational environment conducive to learning team unity and sportsmanship.” *Lowery v. Euverard*, 497 F.3d 584, 594 (6th Cir. 2007).

Coaches and their athletes develop unique bonds that provide young adolescents with mentors and surrogate parents. They often spend more time with their coach than with any other adult figure. Teenagers often are more willing to talk to their coaches than their teachers or parents about problems in their lives. Coaches matter athletically, educationally, and personally.

The loss of a stable, six-year team coach, who was experienced and skilled at his profession, who was able to devote the time necessary to his students and the coaching enterprise, is a true loss to the plaintiff’s educational experience. Defendant violated Title IX when it fired the girls’ softball coach and replaced him with another coach with fewer qualifications, less experience, and less time to coach athletes.

III. A SCHOOL’S RETALITORY CONDUCT VIOLATES TITLE IX AND THE SCHOOL MUST BE ACCOUNTABLE TO THE STUDENTS WHO SUFFERED THE CONSEQUENCES

A. Title IX’s Prohibition Against Retaliation Must be Applied Broadly to Achieve its Intended Purpose

The language of Title IX is sweeping. It 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 assistance.

20 U.S.C. §1681(a).

The statute does not list the specific types of sex discrimination it prohibits, because it covers *all* forms of discrimination, however that discrimination is manifested. *Cannon v. University of Chicago*, 441 U.S. 677 (1979)(discrimination in admissions); *North Haven Bd. of Ed. V. Bell*, 456 U.S. 512 (1982)(employment); *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998)(teacher-student sexual harassment); *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999)(student-student sexual harassment); *Neal v. Bd. of Trustees of California State University*, 198 F.3d 763 (9th Cir. 1999)(athletics); *Mansourian v. Regents of the University of California*, 594 F.3d 1095 (9th Cir. 2010)(athletics); *Jeldness v. Pearce*, 30 F.3d 1220 (9th Cir. 1994)(prison programs); *Yusuf v. Vassar College*, 35 F.3d 709 (2nd Cir. 1994)(discipline); *Doe v. Clark County School Dist.*, 2008 WL 4372872 (D. Nev. 2008)(transgender discrimination); *Bucklen v. Rensselaer Polytechnic Institute*, 166 F.Supp.2d 721 (N.D.N.Y. 2001) (testing); *Tingley-Kelley v. Trustees of the University of Pennsylvania*, 677 F.Supp.2d 764 (E.D.Penn. 2010)(sex stereotyping & family responsibilities); *Hogan v. Ogden*, 2008 WL 2954245 (E.D.Wash. 2008) & *Chipman v Grant*

County School Dist., 30 *F.Supp.2d* 975 (W.D.Ky. 1998) (pregnancy).

Retaliation is merely one form of covered discrimination. *Jackson v. Bd. of Education of Birmingham, Alabama*, 544 U.S. 167, 173-174 (2005). “Discrimination is a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute broad reach.” *Jackson*, 544 U.S. at 175, citing *North Haven*, 456 U.S. at 521. Thus, those harmed by it must also be protected and must also have remedies for its perpetration, no matter its form or manifestation.

The language of Title IX’s anti-retaliation regulation is as sweeping as the statute itself. It provides:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.....

34 C.F.R. §100.7(e), incorporated into Title IX by 34 C.F.R. §106.71.

The regulation notably covers *all* offenders and *all* victims. “*No person shall intimidate, threaten, coerce, or discriminate against any individual....*” The prohibition is not limited to offenders who are themselves recipients of federal funds. Nor are its protections limited to students or other intended beneficiaries of federal financial assistance. Its protections are not even limited to persons who actually make complaints or

engage in any other protected activity. It prohibits retaliation against any person “for the purpose of interfering with any right or privilege secured” by the statute *or* against any person who “has made a complaint, testified, assisted, or participated in an investigation” or proceeding under the statute. The language is disjunctive.

Title IX’s prohibition is even *broader* than that included in Title VII,⁵³ which states:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees.... because he has opposed any practice made an unlawful employment practice by this subchapter or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. §2000e-3. Even with this more restrictive language, Title VII’s anti-retaliation provision is broadly construed to cover those who do not themselves engage in protected activity because to hold otherwise would thwart the purpose of the statute, which is to prevent retaliation and to ensure nondiscrimination. *Thompson v. North American Stainless, LP*, ___ U.S. ___, 131 S.Ct. 863, 868 (2011) (employee terminated in retaliation for fiancée’s protected activity stated claim under Title VII’s anti-retaliation

⁵³ The *Jackson* court emphasized the breadth of Title IX’s coverage by noting that Title IX covers all forms of discrimination except those expressly excluded in the statute, while Title VII, “spells out in greater detail the conduct that constitutes discrimination in violation of that statute.” *Jackson*, 511 U.S. at 175.

provision even though he did not engage in any protected activity himself).⁵⁴

The purpose of the statute cannot be achieved without enforcement. Enforcement depends upon the willingness of people to file complaints or to serve as witnesses in administrative or judicial proceedings. Interpreting anti-retaliation provisions to provide broad protection from retaliation is important to “ensure the cooperation upon which accomplishment of the Act’s primary objective depends.” *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 67 (2006). See also *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997) (limited construction of the statute rejected because it would not deter retaliation and thus “would fail to fully achieve the anti-retaliation provision’s ‘primary purpose,’ namely, ‘maintaining unfettered access to statutory remedial mechanisms.’”).

To achieve its purpose, the anti-retaliation provision must be broadly construed to prohibit any adverse action that “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Thompson*, 131 S.Ct. at 868, citing *Burlington Northern & Santa Fe*

⁵⁴ In reaching its holding, the Thompson Court noted that Title VII’s anti-retaliation provision was even broader than that of its anti-discrimination provision and thus should be interpreted and applied more broadly. *Id.*, citing *Burlington*, 548 U.S. at 62-63. This same reasoning should apply to Title IX’s even broader anti-retaliation provision.

Railway Co. V. White, 548 U.S. 53, 68 (2006). “[I]t is obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired.” *Id.* Thus, the worker, the fiancé, and any other person within the “zone of interests” sought to be protected by the statute can sue to remedy his/her grievance. *Id.* at 870.

Whether other forms of retaliation will have similar dissuasive effects “will often depend upon the particular circumstances.” *Id.* at 868. Those circumstances must be examined from the perspective of a reasonable person standing in the victim’s shoes. “Context matters.” *Burlington*, 548 U.S. at 68-69, relying on *Oncale, v. Sundowner Offshores Servs., Inc.*, 523 U.S. 75, 81-82 (1998).⁵⁵ In cases of sex discrimination, the Ninth Circuit has stated that courts should examine the circumstances from the perspective of the victim, a reasonable woman in a similar situation. *Ellison v. Brady*, 924 F.2d 872, 878 (9th Cir. 1991). See also *McGinest v. GTE Services Corp.*, 360 F.3d 1103, 1115 (9th Cir. 2004) (racial harassment should be viewed from

⁵⁵ The Ninth Circuit has long adopted the EEOC’s deterrence standard, i.e., that an adverse action includes “any adverse treatment that is based on a retaliatory motive and is reasonably like to deter the charging party or others from engaging in protected activity. *Ray v. Henderson*, 217 F.3d 1234, 1243 (9th Cir. 2000), citing EEOC Compliance Manual Section 8, Retaliation at ¶8008.

the perspective of a person of the victim's race).⁵⁶

Like Title VII, Title IX's objectives "would be difficult, if not impossible, to achieve if persons who complain about sex discrimination did not have effective protection against retaliation." *Jackson*, 544 U.S. at 180. Reporting discrimination "is integral to Title IX enforcement" and if retaliation were not prohibited, "Title IX's enforcement scheme would unravel." *Id.* To achieve this purpose, courts must accord Title IX – and its anti-retaliation provision – "a sweep as broad as its language." *Id.* at 175, citing *North Haven*, 456 U.S. at 521. In this case, that means holding Sweetwater accountable for retaliating against the plaintiff softball players by terminating their coach.

B. Sweetwater Retaliated Against the Entire Class of Female Athletes in Violation of Title IX When It Fired the Softball Coach

Plaintiffs state a retaliation claim, because they can show (1) protected activity, (2) adverse action, and (3) a causal link between the two. *Emeldi v. University of Oregon*, 698 F.3d 715, 724 (9th Cir. 2012). Under *Jackson* and *Thompson*, Plaintiffs satisfy the protected activity component if they

⁵⁶ The Seventh Circuit extended this principle to teenagers. It held that employers who regularly employ teenagers must formulate their employment nondiscrimination policies and compliant procedures so that a reasonable teenager can understand them. *EEOC v. V&J Foods, Inc.* 507 F.3d 575, 575 (7th Cir. 2007).

engaged in protected activity themselves, if someone engaged in it on their behalf, or if they fall within the “zone of interests” of the person who engaged in the activity.

Here, Plaintiffs, their parents, and their softball coach all complained that Defendant discriminated against female athletes. All engaged in protected activity and all are entitled to the protections of the anti-retaliation provision not only for their own protected activities but also for the conduct of the others because they engaged in that activity together and pursuit of the same goal, equity, and they fall within the “zone of interests” as explained in *Thompson*.⁵⁷ This fact becomes even clearer when one reviews the situation from the perspective of a reasonable person in the victims’ shoes – female, teenage, high school student athletes.

Sweetwater’s adverse action was the termination of the softball coach. Plaintiffs showed at trial that Defendant fired the coach to punish the students for their complaints, establishing causation. Firing an experienced, successful coach who is beloved by his team would undoubtedly dissuade the athletes and their parents from complaining about discrimination, particularly given the unique role in the development of their athletes as

people, as described in section II. Firing the coach therefore harms not just the coach but the athletes he or she coaches.

Sweetwater could not fire the students or their parents, so it fired the one person it could: the coach. By firing the coach, Sweetwater eliminated the person with the most knowledge about the discrimination and who was in the best position to protect the female athletes. *Jackson, 544 U.S. at 181* (“coaches such as Jackson are often in the best position to vindicate the rights of their students because they are better able to identify discrimination and to bring it to the attention of administrators.”). The action sent the message to the softball team, to all female athletes and their parents that if anyone complains, Sweetwater will retaliate. It was intended to intimidate and discriminate against Plaintiffs because of their complaints (and the complaints of their parents and the coach) and thus violated Title IX.

The existence of Title IX means nothing if schools do not voluntarily comply or if students, coaches, and other persons are not willing and able to complain without the fear of retaliation, so that courts can enforce the law. Here, Sweetwater clearly chose not to comply for nearly 40 years. Its discrimination continued until the softball coach, players, and parents complained. When Defendant failed to address their complaints and instead took retaliatory action against them, Plaintiffs were forced to enforce their

rights through legal action. Without the broad protections of Title IX's anti-retaliation provision, this could not happen. "Title IX's enforcement scheme would unravel." *Jackson, 544 U.S. at 180.*

Sweetwater must be held accountable for its discriminatory and retaliatory actions. To hold otherwise would send the message to other schools that they can continue to avoid Title IX compliance if they silence the complainers or otherwise threaten retaliation against athletes, coaches, or others.

Title IX is a promise not yet fulfilled. Forty years after the passage of Title IX, it is time to foster compliance and enforcement.

CONCLUSION

The strength of many civil rights laws hinges upon whether educational institutions accept responsibility for their own intentional, planned behavior. Because sports participation provides significant physical, economic, and professional opportunities in contemporary American society, institutions must remain liable for their own intentional violations. The District Court found that Sweetwater violated nearly every area of Title IX athletics law. This case is ultimately about effectuating Congress' intent that girls and women be treated equitably by educational institutions. Girls and their families must be able to complain about inequitable treatment without fear. Because

efforts by female student athletes alone are incapable of effectively protecting individuals from prohibited discrimination in federally funded programs, this Court should uphold the District Court's holdings that Sweetwater is liable.

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Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 2013, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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