Forty Years “on the basis of sex”: Title IX, the “Female Athlete”, and the Political Construction of Sex and Gender

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This project bears the subtle (and not-so-subtle) imprints of many relationships developed and forged during my tenure at the University of Minnesota. These relationships have inflected my work in a variety of dimensions and I have long anticipated acknowledging them here.

The University of Minnesota was my home for fifteen years. First, I experienced it as an undergraduate, a period during which I discovered the sport of rowing. The Minnesota Athletic Department announced in the spring of my freshman year that women's rowing—a sport I joined at the club level after arriving on campus—would become a varsity team in the fall of 2000. This decision was driven by efforts to comply with Title IX, and it would forever alter the course of my life. I wrote my *summa* thesis on the policy, and have Wendy Rahn, Jamie Druckman, and Barbara Welke to thank for cultivating my interest in policy and politics through their roles as advisors of my undergraduate research.

My career in rowing, at first a means to make friends and community on a sprawling Big Ten campus, became increasingly central to my life as an undergraduate and I would go on to coach at Minnesota for five years after completing my B.A. My passion and interest for the human-face of policy implementation was largely inspired by the athletes and fellow coaches I worked among on the University of Minnesota Women's Rowing team. I found friends there who did not take our work too seriously, even while training on the partially frozen Mississippi River in February. I fondly remember Minnesota rowers standing at the boat launch of the 2007 NCAA

Championships chanting: “Lutefisk! Lefse! Yah Sure You Betcha! We’re Minne-SO-ta and we’re gonna get-cha!” Although political science took me away from rowing, the Minnesota rowers drove me to write this project.

During the latter years of my coaching career, I also worked to finish a Masters in Public Policy at the Humphrey School of Public Affairs. There I met Sally Kenney, who facilitated my interest in graduate-level work in political science, and who must be thanked for mobilizing my applications for doctoral programs after I decided to apply in the eleventh hour. Memories of her frank observations buoyed me through many gloomy hours during Ph.D. coursework when I would recall her observation that I “could outlast just about anyone with [my] stubbornness and hard work”.

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Beyond political science, the broader graduate student community at Minnesota helped me develop and cultivate my interdisciplinary interests. Through the graduate minor program in Feminist and Critical Sexuality Studies in the Department of Gender, Women, and Sexuality Studies (GWSS), I became acquainted with colleagues who would become friends and pillars of strength during moments of intellectual uncertainty. The Graduate Interdisciplinary Group in Sexuality Studies (GIGSS) connected me to Karisa Butler-Wall, Angela Carter, Jesus Estrada-Perez, Lars Mackenzie, Katy Mohrman, Raechel Tiffe, Eli Vitulli, and Elizabeth Williams (as well as Logan Casey, from afar), with whom Queer World was established. I found in them fierce allies and political comrades, as well as an encouraging domain to "[R]esist [E]very [L]imit".

My relationship with GWSS lead to the founding of the Gender, Sexuality, Power, and Politics (GSPP) Colloquium, allowing me to work more closely with Bud Duvall, Regina Kunzel, and Katie Bashore. Organizing our speaker series also gave me opportunity to meet Margot Canaday, who offered encouragement and support during my job search, as well as critical advising on archival research and FOIA requests. I also owe thanks to Doug Hartmann and Kyle Green, in the U of MN Department of Sociology, who cultivated a graduate student work group in sports studies.

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During the years I called Minneapolis home, I also found friendship and care from Betsy Hawes and Kaja Martinson, Megan Dunn, Emily Larson, Becca Carlton, Meg Tabaka, and Sally Olson, all of whom kept me in better spirits than I would have been on my own. The YWCA of Minneapolis deserves special recognition for providing me space to strengthen my body during years when I wondered how my mind would sustain the effort of a Ph.D. Likewise, the Minneapolis Board of Parks and Recreation should be commended for maintaining miles of trails around the lakes and the city more generally which gave me space to remain active, regardless of the heat index or the wind chill.

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But thanks especially to my advisor, Dara, without whom this project would have been immeasurably less rich, satisfyingly complex, and ultimately fulfilling. Her approach to the discipline of political science has enabled my creativity and allowed me to develop a project that draws upon multiple intellectual traditions. She impressed upon me that the practices of research and writing are mutually constitutive, and this orientation to scholarly pursuits allowed me to resist a purely linear approach to producing this work. Above all, Dara has allowed me and her other students to pursue our intellectual passions. The confidence that I have gained through her belief in my

work has cascaded across my intellectual relationships, enabling me to offer others the generosity of spirit and scholarly curiosity that she has offered me.

I was amazingly lucky to pursue this degree so close to home, and my family was there at every step of the way. It was fitting that they were able to attend my dissertation defense since they were the ones who told me from the start that my education would be the most important thing I could ever commit myself to. They brought me to campus recruitment weekends at Minnesota and promised me that I would find a place in this massive university. They attended rowing events and practice job talks, and more than that, they opened themselves to my relentless conversations about sports, inequality, and politics, even when we quite dramatically disagreed. No matter how far apart we may scatter, my heart will always be in Minnesota with my parents, Jim and Sue, my sister Diana, and my brother Charlie.

Finally, to my partner, Emma. In addition to keeping me in good spirits and with groceries around the home, she was the one who found our wayward pup on the streets of Minneapolis. She named him "Sam Seaborn", and wisely ignored me when I wondered if taking in a pet might distract us from the serious business of living our lives. She has endured—even seemed to enjoy!—conversations about this project despite a genuine ambivalence towards sports. She has witnessed the good and the bad, the absurd and the sad, and has—every day—found ways to encourage me to press forward and be brave.

DEDICATION

For my parents.

ABSTRACT

This project employs a policy feedback framework to analyze how American political institutions grapple with inequities in educational settings, and how policy design and implementation matter for social change. Using archival data and quantitative data, I explore how political battles over the implementation of Title IX of the Educational Amendments of 1972 have shifted social and political understandings of sex and gender. I argue that battles over the implementation and meanings of the law's application to athletics have recursively altered political meanings of sexed bodies and political repertoires of gender. Further, debates over the meaning of policy have constituted the "female athlete" as a political figure germane to Title IX's policy domain, as well as broader social change over the past forty years.

This dissertation historicizes the politics of Title IX, focusing mainly on the implicit definition and application of its central clause, "on the basis of sex", to the domain of athletics (and sports vis-à-vis classrooms). Throughout, the work is guided by my main research question: How have battles over the implementation of Title IX altered political and social understandings of sex and gender? Each chapter analyzes a different decade in order to illustrate the difficulties in settling cultural change (especially to gender roles) through political intervention and rights-based legislation. Attention to the politics of sex inherent to sports in Title IX illustrates how policy has cemented certain embodied understandings of what sex (and sex at the intersections of race, class, sexuality, and ability) means. In sports, "sex" is defined as a category of the body, and this meaning has been re-naturalized through political battles of the past forty years.

Athletics were not mentioned in the original congressional legislation, but institutions of American government charged with implementing the law quickly became embroiled in debates over how to address severe disparities in college athletic opportunities between women and men. Throughout the 1970s, sports emerged as the most politically contentious realm of Title IX's implementation.

Over the past forty years, the application of the law to sports has fueled more persistent political clashes regarding the meaning of equality than has its application to educational settings. I argue that a tension between "sex-blind" enforcement in education and "sex-conscious" guidelines for sport continues to fuel political battles over the law. Consequently, this policy designed to end discrimination "on the basis of sex" came to naturalize sex as a characteristic of bodies. Title IX's policy design did so in the realm of sports, but *not* in classrooms. Classrooms were by and large sex-integrated, educating girls and boys in the same spaces "regardless of their sex". Sports, were sex-segregated, first dividing girls from boys into different spaces, "by virtue of their sex". This on-going mechanism of policy design constitutes what I refer to as the "Paradox of Title IX", and this work demonstrates how it has developed and been reified through political battles over the policy.

The history of sports as a U.S. policy domain demonstrates how policy development and political battles can come to generate unexpected and uneven outcomes and tensions, even within purportedly "successful" policy interventions. Although Title IX has had many positive outcomes, applying an intersectional lens helps to understand some of the law's on-going limitations.

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Chapter I: Forty Years on: The "Triumph" of Title IX?

Title IX's "Majestic legacy": Puzzling over Policy as Title IX turns 40

As the 2012 Summer Olympics began in London, nearly every major American newspaper reported the fact that the U.S. Olympic contingent would, for the first time ever, include more women athletes than men (Haven 2012). Ostensibly, this fact had no direct link to the implementation of Title IX of the Educational Amendments of 1972. "Title IX"—as it is commonly known—applies to American institutions of education, outlawing discrimination therein "on the basis of sex". Although the law has been implemented in ways that have dramatically re-shaped athletic programs, its direct consequences have no intentional bearing on the formulation of the U.S. Olympic Team. Nevertheless, the lack of causal evidence linking Title IX to the 2012 Olympic Team did not stop pundits, journalists, and activists from claiming that the "strides made by American female athletes stem directly from Title IX" (Haven 2012), or that the London Olympic athletes were "Title IX's majestic legacy" (J. Sullivan 2012).

If these pundits and public commentators were to be believed, the U.S. Olympic Team was nothing short of the physical evidence of the success of the American civil rights project. The 2012 London Olympics coincided with the fortieth anniversary of Title IX's passage and the law was designed to address concerns about sex discrimination in educational institutions, passed as the "ninth title" in a set of Educational Amendments to the Civil Rights Act of 1964. The June 23rd anniversary resonated across a variety of public forums including print news (for example, Barbato 2012; C. Brown 2012; Buzuvis 2012a; Dusenbery and Lee 2012; Hallman 2012; Ryan 2012; Sondheimer 2012), radio

(for example, Deford 2012; Goldman 2012; Sanchez 2012), interviews with President Barak Obama (Simmons 2012), interest group reports (for example, NCWGE 2012; NWLC 2012; Sabo and Snyder 2013; A. Wilson 2012), a report from the Office for Civil Rights (DOE 2012), a report from the President's Council on Fitness, Sports, and Nutrition (Kane and Ladda 2012), an event hosted by the White House Council on Women and Girls (Jarrett 2012)[1], and the floor of the U.S. Congress (U.S. Congress 2012).[2] The Obama White House also marked the occasion by announcing a new set of policy enforcement guidelines (WhiteHouse 2012), "because President Obama is determined to make the next forty years a time when girls dream bigger and reach higher. And we will keep up our fight for progress for women and girls and make sure that our schools continue to provide a fair shot at success for everyone" (Jarrett 2012). Although the anniversary brought out commentary from perennial critics of the law, such as the Independent Women's Forum (Lukas 2012), the preponderance of public discourse was salutary.

As public officials and activists marked the fortieth anniversary of Title IX, other community events cohered around the celebrations of the anniversary. These included a series of women's running races known as "Title 9ks" which were staged by the athletic clothing maker which branded the law into their store name: "Title Nine". ESPN-W, the cable network devoted to women's sports, broadcast special programming to

[1] Video of the full forum is available at the White House YouTube channel: http://www.youtube.com/watch?v=VNcSf51_KPw (accessed: 6/7/2013).

[2] Video of Senate Congressional hearing commemorating the 40th Anniversary available thru C-SPAN: http://www.c-spanvideo.org/event/204509 (accessed: 6/7/2013).

acknowledge the anniversary and projected an art installation of women's sporting images on the exterior wall of the Newseum in Washington, DC (Romero and Yarrison 2012). The installation compiled thousands of photos of female athletes, ranging from professional icons like Mia Hamm, to "Good Morning America" anchor Robin Roberts, and Tennessee basketball coach Pat Summit (ESPN-W 2012). These iconic women sports figures were combined in a massive collage of viewer-submitted images of girls and women in sport which was also archived in a searchable, online mosaic titled "Power of IX".[3] Viewers (who, it seemed, were all assumed to be women) were instructed to ponder: "Can you imagine your life without sports?" ESPN2 also debuted a documentary entitled "Sporting Chance" which was billed by the NCAA as telling "the emotional story of the landmark passage of Title IX" (NCAA 2012b). The Women's National Basketball Association (WNBA), whose season stretches across the summer months, created special jerseys for players emblazoned with an "IX" across the chest, to wear during competition in the summer of 2012 (WNBA 2012). Each team in the league acknowledged the anniversary in distinctly public ways, incorporating local women's teams into the celebrations during which the WNBA president declared that "the WNBA is a proof point of the impact of Title IX" (WNBA 2012). "Proof" of Title IX was purportedly everywhere, and for several months, Title IX seemed to be ubiquitous—inscribed on buildings, websites, and bodies of athletes competing in sporting venues.[4]

[3] The mosaic remains online at the ESPN-W website: http://espn.go.com/espnw/title-ix/mosaic (Accessed: June 4, 2013).

[4] Events observing the anniversary ranged from large and public to quaint and private. Against the backdrop of these national celebrations, a committed group of queer graduate students and

These festivities around Title IX's political "birth date" seemed to prime the American public for the London Games. When the London Games opened in late July, the American media accelerated the momentum established in June, claiming the women of the U.S. team as evidence of Title IX. In the coincidence of these two events, several tensions became visible. Most notably, in the public space devoted to Title IX, politics were simultaneously everywhere and nowhere. On the one hand, any discussion of Title IX was inherently an acknowledgement of a political legacy. Title IX is a political project of the U.S. federal government, created by state actors in response to feminist activists' demands that sexist practices of educational institutions had to end. Although the political history of the policy, detailed throughout this project, is punctuated by asymmetries arising from political attempts to mediate cultural battles over definitions of and rights attached to sex and gender in state institutions, Title IX was always a *political* development in an on-going cultural debate over the rights afforded to American women. In this sense, celebrating Title IX as a policy with an "anniversary" implicitly marked the instance when institutions of the U.S. state took political action to change a set of

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sports enthusiasts gathered in a Minneapolis city park to observe the anniversary on Saturday, June 23rd. The celebration coincided with Minneapolis Pride weekend and was dubbed by participants: "The Other Dyke March: Title IX at Forty, A Celebration of Queer Feats of Strength". Participants dressed as their favorite athlete, thus "attendees" included recreational rugby players, a high school cheerleader, a junior high tennis player, a member of the 1976 Yale Women's Rowing team, several youth physical education teachers, a college volleyball player, a champion hula hooper, several women's softball players, a youth soccer phenom, and a member of the 1981 Montreal West Softball Championship team.

discriminatory societal conditions and practices. As such, any discussion of Title IX is inherently a discussion of politics.

On the other hand, the decisions to "celebrate" Title IX's fortieth anniversary made it seem as if in the outcomes brought about by policy formulation may have been an historical inevitability. In this sense, the formulations of these celebrations implied that the course of events that followed the law's passage were progressively pre-ordained, thereby rendering the forty year political history as a teleology. As such, to suggest that Title IX's application to sports should be celebrated on a June 23, 1972 "birth date" is to celebrate historical fiction. Although many discussions of the fortieth anniversary coalesced around the law's application to sports-settings, the text of the law passed in 1972 made no mention of sports.[5] It was not until 1975 that sports programs were officially regulated through Title IX. Political battles over policy design and interpretation were rendered invisible during progressive celebrations of purportedly linear implementation success, making it seem that politics sat aside from the inevitable realization of positive rights for female athletes. When Title IX is cast was a policy that has "already succeeded", the impulse towards understanding or reimagining its politics is implicitly suppressed.

These tensions implicit in the urge to "celebrate" a public policy anniversary are puzzling. Why is Title IX the policy that we celebrate in events like a "Title 9k" running race for women? We do not, for example, mark the "Personal Responsibility and Work

[5] See Appendix C for the full text of Title IX as passed by the U.S. Congress in 1972.

Opportunity Act Half-marathon" to celebrate welfare reform of 1996.[6] Other policies that explicitly rely on sports to solve social problems (as was the case when "Midnight basketball" became central to the 1994 federal Crime Bill debates (Hartmann and Wheelock 2002; Hartmann 2001, 2012; Wheelock and Hartmann 2007)) are not uncritically celebrated through depoliticized, cultural events, such as running races. How and why has Title IX come to be ensconced in such positive affect within American society and political culture even as battles over its political meanings persist?[7] What is

[6] Naturally, the turn to celebration through physical activity is linked to the law's application to sporting venues. Road races are often used to raise money for political causes like breast cancer and the Komen Foundation (S. King 2006; S. E. H. Moore 2008; Strach 2013). But these "Title 9ks" were not raising money for any philanthropic or political cause. They were making profit for the clothing company that bore the law's name, exploiting the anniversary of the public policy in ways that commodified positive public affect towards the legislation.

[7] Debate over the meanings of the law continue in at least four dimensions through 2013: 1) sports, 2) gender discrimination in high schools, 3) sexual harassment and sexual violence policy on college campuses, 4) access to sports for the otherly-abled, and 5) debates over single-sex education. In sports, battles over the proper implementation and enforcement of the law continue to draw attention in both collegiate and high school settings. Recent activism from feminist interest groups continue to push for better implementation in high schools (NWLC 2013), as well as more thorough enforcement from the federal government (AP 2011). As I explore briefly in the conclusion, Title IX has recently been successfully used as a means for protection against *gender* discrimination in secondary schools for trans* students (NCLR 2013b). Multiple cases challenging sexual harassment and sexual violence policies in American colleges and universities have been pursued by women across the country throughout 2012 and 2013 (for example, Perez-Pena and Lovett 2013; Perez-Pena 2013). The DOE issued multiple policy implementation guidelines on interpretation issues between 2001 and 2011 (DOE 2001, 2003c, 2006, 2007a, 2007b, 2007c, 2008a, 2008b, 2008c, 2010a, 2010b, 2011a, 2011b, 2011c). In response to a 2010 GAO report (GAO 2010), the Obama administration published a "Dear Colleague" letter regarding the application of Title IX to policies ensuring access to sports for otherly-abled

it about the political legacy of Title IX that has constituted a public image of policy supported by ideologues as conservative as Sarah Palin, and as progressive as Ralph Nader (Brennan 2008; Nader 2003)?[8] How have political events and battles over the design of public policy shaped our shared understandings of what Title IX means? The overwhelmingly affirming public discourse regarding Title IX's policy successes in expanding athletic opportunity to women, illustrated through the framing of the London Games as a policy outcome of Title IX, suggest these questions, and others.

The answers, I will argue, come through understanding the contemporary political history of policy aimed at sex and gender in the U.S. context, since the 1970s. Specifically, this project focuses on the application of civil rights policy to the domain of sports (and sports vis-à-vis classrooms). Although closer attention to the politics of sex inherent to sports in Title IX illustrates how policy has cemented certain embodied

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students in January 2013 (Duncan 2013; Pilon 2013). As I describe later in this chapter, the American Civil Liberties Union continues to pursue cases to cases challenging sex-segregated, single-sex classrooms (ACLU 2012a, 2012c, for example, 2013; Katz 2013; "Pittsburgh Public School to End Single-Sex Classes" 2011).

[8] Palin's public commentary regarding Title IX included the following: "I had a great upbringing under Title IX. I can't imagine where I'd be without the opportunities provided to me in sports. Sports taught me that gender isn't an issue; in fact, when people talk about me being the first female governor, I'm a little absent from that discussion, because I've never thought of gender as an issue. In sports, you learn self-discipline, healthy competition, to be gracious in victory and defeat, and the importance of being part of a team and understanding what part you play on that team. You all work together to reach a goal, and I think all of those factors come into play in my role as governor (Palin 2007). Nader's opinion piece encouraged readers to "Join the Fight for Title IX" (Nader 2003).

understandings of what sex means, the politics of Title IX illuminate the changing nature of gender, brought about in part by policy, over the last forty years. We can see how Title IX's implementation has come to alter the relationship between sex and gender (and both at the intersections of race, ability, class, and sexuality) in social and cultural settings by looking at its application to both classrooms *and* sports. Studying the history of the law illustrates the difficulties in settling cultural change (to women's roles, in particular) through political intervention and rights-based legislation. The history of sports as a policy domain demonstrates how policy development and political battles can come to generate the aforementioned unexpected and uneven outcomes and tensions.

I will focus primarily on one of the most unexpected elements of the law: its application to athletics. As I explore below and in Chapter 2, because sports are central to constructing social understandings of gender, scholars of gender and public policy have much to learn by focusing the lens on sports and Title IX. Athletics were not mentioned in the original congressional legislation, but institutions of American government charged with implementing the law quickly became embroiled in debates over how to address severe disparities in college athletic opportunities between women and men. Throughout the 1970s, sports emerged as the most politically contentious realm of Title IX's implementation (Edwards 2010). Debates during the 1970s over the meanings of Title IX inflected the ongoing cultural politics surrounding the modern women's movement, positioning social conflicts over changing gender roles directly within American political institutions, including the U.S. Congress, the Executive bureaucracy, and the federal courts. The subsequent forty years of Title IX's policy

history have been marked by multiple periods of recurrent, intense political conflict, much of it over the role of Title IX in ensuring sex equity in sports. The political decisions emerging from these conflicts have, over time, persuaded colleges to implement Title IX such that women's opportunities to play sports in college have risen nearly twelve-fold (Acosta and L. Carpenter 2012). Increased opportunities for women's sports participation have not been limited solely to colleges and universities. The ratio of girls to boys in high school athletics has risen from 1:12 to 1:1.4 (Acosta and L. Carpenter 2012). Dominant accounts posit these increased participation opportunities as evidence of Title IX's effects and as the progressive outcome of state intervention on conditions of sex discrimination. This project endeavors to explain why and how this understanding of Title IX as a progressive policy accomplishment came to exist, and how a closer attention to policy history can demonstrate the flaws in a neatly progressive story.

In the contemporary moment, Title IX's framing as a positive intervention seems almost over-determined. To be clear, many ideologically liberal interest groups within the policy domain of sports continue to press for more thorough enforcement of the law, suggesting in their advocacy strategies that Title IX's implementation continues to be incomplete (see, for example,Rosenthal, L. Morris, and Martinez 2004). However, as I will demonstrate in the chapters that follow, there has come to be broad agreement amongst supporters of the policy that the rights-based model of expanding opportunity for women in educational and sporting institutions will, if fully implemented, fulfill the dream of legal equality between women and men as political groups. I will argue that

this widespread agreement is itself a product of politics, and that the ideological unanimity expressed amongst many feminist advocacy groups, activists, and members of the public, has come to diminish the number and type of potentially creative solutions to the problems of discrimination that continue to face women (as both a group, and as individuals with intersecting racial identities, economic circumstances, physical abilities, and sexual orientations).

The expansion of sporting opportunities for women (as a group) has been a positive thing for large numbers of individual women. As I explore in the text that follows, the growth in women's athletics is a widely accepted implementation effect of the policy, and one that should not be diminished.[9] Yet Title IX was also a policy broadly directed at educational venues, with multiple, complex, and sometimes contradictory outcomes in its implementation. Although scholars rarely foreground its historical under-pinnings, it was a piece of civil rights legislation indebted to the conflicts

[9] "Women's athletics" is both an institution onto itself and a socio-cultural phenomenon. "Women's athletics" takes institutional forms in a variety of locations including: college athletics programs (which host "men's" and "women's" teams), the National Collegiate Athletic Association (which hosts "men's" and "women's" championships), high school sports teams (which, unlike in physical education classes, host separate competitive opportunities for "boy" and "girl" students), and elite-level athletic training teams (which come to constitute the "men's" and "women's" U.S. Olympic Teams). However "women's athletics" is also a socio-cultural phenomenon, experienced by spectators and casual observers through sports media and reporting, as well as advertising and promotion for sports-related merchandise and ticket sales. Women participating in sports experience "women's athletics" in both its institutional and socio-cultural forms. Political institutions have directed Title IX towards "women's athletics" in its institutional forms, but as I will demonstrate throughout this project, the socio-cultural form of "women's athletics" has also been altered by the implementation of policy, over time.

around racial discrimination and was only applied to athletics, the realm with which it is most often associated, through a prolonged political battle stretching across the decade of the 1970s. Although public discussions of the policy tend to gloss over the specifics of history, political contests over the law's meaning and mechanisms for policy implementation have emerged repeatedly since the 1970s. This project historicizes the politics of this public policy, focusing mainly on the application of its central clause to domain of athletics.[10]

[10] The full text of Title IX is included in Appendix C. The main clause read: "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 USC Section 1681). The law also included a variety of exceptions to this mandate, including exemptions for application to: 1) private school undergraduate admissions (Title IX only applied to graduate schools, vocational and professional education, and public undergraduate universities); 2) recently sex-integrated educational institutions; 3) educational institutions controlled by a religious organization; 4) educational institutions training students for military service; 5) public undergraduate educational institutions that have "traditionally and continually from its establishment" admitted only one sex; 6) tax-exempt fraternities and sororities; 7) the YWCA, YMCA, Boy Scouts, Girl Scouts, Camp Fire Girls, and other youth service organizations made for participants under 19 years of age and that have been traditionally sex-segregated; 8) Boys State (and Boys Nation) and Girls State programming of the American Legion; 9) father-son or mother-daughter activities at an educational institution, so long as activities provided for one sex are mirrored for the other sex as well; 10) educational scholarship awards given to an individual for "beauty" pageants ("in which the attainment of such award is based on the combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only") (Title 20 USC Section 1681a). It defined "educational institutions" to include: "any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education" (Title 20 USC Section 1681c).

This central clause—"on the basis of sex"—was aimed to address and ameliorate discrimination against women in higher education. Over the past forty years, every other element of the text of the law has come under some form of legal or bureaucratic scrutiny. The courts have made rulings and the executive bureaucracy has issued interpretations of the meanings of "participation", what counts as "discrimination" or a "benefit" received from an educational program and whether or not the athletics department counts as an "educational program or activity receiving Federal financial assistance".[11] Yet the meaning of the chief clause, "on the basis of sex", received no such overt scrutiny.

[11] A robust literature explores the legal interpretation of Title IX on issues of equal protection (Cohen 2003), the "contact exception" (Fields 2004), the application of Title IX to trans* issues (Buzuvis 2011, 2012b; Kraschel 2012; Sinisi 2012; Zaccone 2010), sexual orientation discrimination (J. Baird 2002; Newhall and Buzuvis 2008; Osborne 2007), cases involving retaliation against whistle-blowers (Buzuvis 2010b; Melear 2007), the "three-pronged test" of compliance (Brake 2004, 2010; Buzuvis and Newhall 2012; Goplerud 2004; Samuels and Galles 2004; Snow and Thro 1996), legal challenges to sex integrated teams (Brake 2013; Love and K. Kelly 2011), interpreting what counts as sufficient compliance with the "interest and abilities" prong of the 1996 policy guidelines (Koller 2010), the uses of surveys to determine interest (Buzuvis 2006), the "expressive" power of law (Koller 2012), the legal consequences of the 2002 Commission on Opportunity in Athletics (Leland and Peters 2004; Marburger and Hogshead-Makar 2004; C. L. Pemberton 2004; E. Staurowsky 2003b; de Varona and Foudy 2004), gender equity in light of the commercialization of sports (Weistart 1996), the role of football in the culture of Title IX (Buzuvis 2007; R. K. Smith 1997), the legal construction of gender (Franke 1996; Reaves 2001), "gender verification tests" in sports (Cooper 2010; Dreger 2010; Karkazis et al. 2012; Larson 2011; Peterson 2010; Zaccone 2010), the cutting of men's teams to gain compliance with the law (Dudley and Rutherglen 1999; Shelton 2001), and general history of the law and legal activism (P. Anderson and Osborne 2008; Bingman 2003; Brake and Catlin 1996; Burk and Plumly 2004; Clark 2001; Frost 2005; Heckman 1992, 1994; Lamber 2001; Miguel

The lack of judicial and bureaucratic attention to this central clause suggests that policymakers believed there to be a shared, implicit, and unwavering understanding of what "sex" was and continues to be. The chapters that follow will trace how and why this understanding of the meaning of "sex" came to be. Indeed the last forty years of history demonstrate that when it comes to sports in particular, this presumption has proven to be anything but straightforward in practice. The domain of sports has become a site through which politics have defined the meanings of sex, gender, bodies, and sexuality. The political history of this law intersects in important ways with race, class, and ability. By examining the ways in which politics shaped policy (and vice versa), this work illuminates how the realm of sports, which we may think of as outside the state, has come to be imbricated in it.

Research Question and the Concepts of Sex and Gender

This dissertation historicizes the politics of this public policy, focusing mainly on the implicit definition and application of its central clause to domain of athletics. Throughout, the work is guided by my main research question: How have battles over the implementation of Title IX altered political and social understandings of sex and gender?

Inherent in this question is a distinction between sex and gender that figures centrally in my analysis of the history of this policy and which I explore conceptually and theoretically in Chapter 2. I draw on a body of feminist thought which distinguishes between "sex" on the one hand and "gender" on the other hand. Much of the foundational scholarship in this tradition argued that "sex" is the category used to define

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1994a; W. Olson 1991; Orleans 1996; Osborne 2003; E. Staurowsky 2004; Wilde 1993, 1994; YaleLawJournal 1979).

biological characteristics of bodies as either male or female while "gender" is category through which sex takes on social and cultural meanings. Although this contrast between sex versus gender was a foundational contribution of feminist studies, it is also a contested distinction (Judith Butler 1990, 1993a; Lorber 1994; Rubin 2011; J. W. Scott 1986). Feminist biologists have demonstrated the ways in which "sex" has become attached to biological and physiological traits, arguing that sex itself is fundamentally socially constructed (Fausto-Sterling, Coll, and Lamarre 2012; Fausto-Sterling 1992, 2000, 2012; Jordan-Young and Rumiati 2012; Jordan-Young 2010; Kuria 2012).

Despite scientific evidence to the contrary, sporting institutions within and beyond Title IX continue to operate as if "sex" is a physically knowable and immutable characteristic (Karkazis et al. 2012). The political history of Title IX demonstrates the ways in which policy constitutes biologically-based understandings of sex through policy design and implementation. Thus I draw on the conceptual distinction between sex and gender because policy has given the two concepts distinct meanings.

In the case of Title IX, I will argue that "sex" is defined as a knowable, binary characteristic of bodies in sports but not in classrooms. In classrooms, it has become politically retrograde to discuss the reliance on "sex difference" in classroom (ACLU 2012c). Sex-segregated classroom spaces are often maligned as a rote practice in public schools, except during rituals of sex education or in historically, women-only colleges (Irvine 2002; McDonagh and Pappano 2007). In this sense, "sex difference" (or the understanding of "sex" as a marker of biological difference) is downplayed in Title IX's application to classrooms even as it is elevated as a fundamental practice in the policy

application to sports. This tension between these divergent interpretations plays out in policy design and makes for a complicated history of Title IX as one of the on-going problematics inherent to the law. I will explicate its roots and explore its implications at length.

The reliance on binary sex has consequence for other dimensions of identity and discrimination. Research across disciplinary approaches demonstrate how both sex and gender are always also defined vis-à-vis and at the intersections of race, sexuality, economic class, and physical ability (e.g. Bedolla 2007; Cho, Crenshaw, and Mccall 2013; Collins 2000; Crenshaw 1989, 1991; Hancock 2007; Hull, P. B. Scott, and B. Smith 1982; Moraga and Anzaldúa 1983; Spade 2013; Strolovitch 2007). As I analyze the central category of "sex" has been construed through Title IX, I will also draw our attention to what feminist scholars often refer to as the "intersectional politics" of this policy (Crenshaw 1989).

As an example, the NCAA Student-Athlete Reports on Race and Ethnicity present a sobering picture of the inconsistent effects of policy implementation. In 2011, seventy-seven percent of college athletic opportunities presented to women were filled by white-identified athletes (NCAA 2011). The population of undergraduate women was seventy percent white-identified, compared with sixty-four percent in the general U.S. population (DOE 2011; U.S. Census 2010). These very crude statistics illustrate the limitations of sex non-discrimination policy for racial minority subgroups. I explore the, complications of policy implementation along intersecting and overlapping dimensions of sexuality, ability, class, and race more deeply in Chapter 2 and throughout the manuscript.

Complications of Policy Implementation

Some other complications now inherent in Title IX's policy domain are apparent in the London Olympics. These Olympics, and the attendant journalistic reporting on issues of sex and gender, help to illustrate the state of affairs in what is commonly understood as a "post-Title IX" period. In the wake of fortieth anniversary celebrations, reporters on the Games were quick to articulate the master narrative of Title IX's successes. Directly, American women now make up 57% of college admitted students (up for 43% forty years ago), and enjoy twelve times as many sporting opportunities as were available in 1972 on those same college campuses (Acosta and L. Carpenter 2012). Title IX's direct effects are thought to feed in to larger social processes, to the benefit of women both in sports and beyond.[12]

[12] Increased opportunity for education and sports is certainly not the sole success attributed to Title IX. Scholars suggests that the involvement of women and girls in the sporting opportunities—which are often attributed to the implementation of Title IX—increases the likelihood of many other positive outcomes in women's lives, including: decreased likelihood of teenage pregnancy; decreased alcohol, tobacco and illicit drug abuse; increased prevention of chronic diseases in adulthood; decreased probability of depression; decreased body mass index (BMI) over the life course; lower rates of obesity; and perhaps most unexpectedly, increased educational attainment (beyond high school), and female participation in historically male-dominated professions (Kaestner and Xin Xu 2010; E. Staurowsky et al. 2009; Stevenson 2010; TCRGW 2007; Zimmerman and Reavill 1998). Unfortunately, many studies attributing these positive health outcomes to sports participation suffer from a lack of methodological precision towards ruling out potential spurious heterogeneity, truncation, or selection bias in the samples. Most samples are drawn from the population of young girls or women who have already chosen to pursue sports, rather than sampling the full population of women to rule out the possible correlation between propensity to play sports and other positive health/life choices. Some more recent scholarship corrects for these methodological deficiencies, thereby reaching the most

As the discourse around the London Games suggests, we have come to understand Title IX as a sports policy of great consequence for *female* athletes in particular. Data from multiple sources trace the convincing growth in athletic opportunities for women (Acosta and L. Carpenter 2012; DOE 2012; NCAA 2012a). Although observers have detailed that these opportunities vary widely across contexts including community colleges (Castañeda 2004; K. Thomas 2011) and high school settings (Knifsend and Graham 2012; Sabo and Veliz 2011; K. Thomas 2009), there is general agreement that things have improved for women as athletes across the board.

This growth in sporting opportunity has had significant consequences beyond the specific context of sports. Economists have demonstrated that Title IX's implementation in athletics has had tangible effects in labor-force participation. Economist Betsey Stevenson's study of the long-term effects of high school sports participation concludes: "Since Title IX lead to a 30 percentage point rise in female sport participation, a roughly 0.12 year rise in educational attainment and a 4.5 percentage point rise in labor force participation can be attributed to the increased opportunities to participate in sports" (Stevenson 2010, 24). This same study demonstrated that women who played sports in high school were more likely than other women to be employed in historically male-dominated fields. Other researchers have found that adult women given sporting opportunities at a young age had lower rates of obesity in adulthood and reported having

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convincing conclusions that participation in sports (vs. non-participation) has a significantly positive effect on women's success in the labor force and in higher education (Kaestner and Xin Xu 2010; Stevenson 2010).

higher rates of physical activity than women who did not play sports (Kaestner and Xin Xu 2010).

While these implementation outcomes are not inconsequential, the ways in which Title IX has been implemented in sporting domains have also come to alter the intersections of sex, gender, and sexuality. Queer theorist Judith Butler writes:

> Indeed, women's sports have the power to rearticulate gender ideals such that those very athletic women's bodies that, at one time, are considered outside the norm (too much, too masculine, even monstrous), can come, over time, to constitute a new ideal of accomplishment and grace, a standard for women's achievement. In this sense, ideals are not static, but constitute norms or standards that are surpassable and revisable. And women's sports offer a site in which this transformation of our ordinary sense of what constitutes a gendered body is itself dramatically contested and transformed (Judith Butler 1998, online).

Butler goes on to note that:

> Gender is a field in which a variety of standards, expectations, relations, and ideals compete with one another, and for women, this fractious state of the playing field of gender works to our advantage… it allows the category of "women" to become a limit to be surpassed, and establishes sports as a distinctively public way in which to enact and witness that dramatic transformation (Butler 1998, online).

Sport provides one unique domain through which gender (and sex) can be mutually "queered". As we shall see, Title IX has been a part of bringing about such change. I will

argue throughout this manuscript that athletics have provided a site through which socio-cultural performances of gender, for women especially, have been rearticulated and reorganized.

However, I will also demonstrate how, despite significant expansion of the ways to embody the category of athletic "female", traditional feminine expectations continue to constrain how women are able to break-free from gender-normative physical presentations (Ezzell 2009; Hargreaves 2000; Kane 1996; Shakib and Dunbar 2002). The "revolution" is incomplete, such that "female athletes" continue to be enmeshed in contradictory expectations that continually mark them as "less than" their male counterparts.[13] Ironically, these complications and limitations placed on women's ability to wholly revolutionize the meaning of "women" are part and parcel to the implementation of Title IX. I will detail that the irony embedded in our understanding of Title IX is such that it is typically conceived of as a policy that is responsible for precisely the type of gender revolution that its specific policy design would never enable. Because Title IX relied upon biological understandings of "sex" in the domain of sports (and created policy design around the institution of segregation based on sex), it could never be the basis of the gender revolution that liberated women by detaching sex from

[13] Butler hints at these contradictions, but I will delineate others. Women athletes battle for media coverage comparable to men despite engaging in similarly noteworthy activities (Cooky, Messner, and Hextrum 2013; Kane, LaVoi, and Fink 2013; Weber and Carini 2012), fight legal battles to obtain equal treatment despite being entitled to under Title IX (see, for example Brake 2010; C. Pemberton 2002), and frequently face assumptions about their sexual orientation by virtue of their sports participation (see, for example Griffin 1992; Krane 1996; Soffian 2012; Veri 1999).

gender. I will argue that the means through which politics intervened on the liminal cultural battles over changing gender roles came to cement biological sex as a fundamental truth, rather than a contested distinction. In short, although we often imagine that sports has been the domain through which women have negotiated the physical meanings of femininity, the political means of structuring sports brought about by policy have ensured that these gendered renegotiations have always assumed a natural "truth" of biological sex as the fundamental principle of political liberation. This element of policy design, rooted in the 1970s, meant that the political potential of Title IX has always been somewhat limited in ways that are often obscured by the progressive narrative of policy implementation.

The Political Figure of the "female athlete"

Both the progressive and complicated stories of Title IX are primarily stories about women, deeply contextualized in the U.S. sports landscape that is deeply masculinized. Historically, sports have been a domain largely reserved for men and the cultural production of masculinity (Messner 1992).[14] To this day, men continue to enjoy more opportunities to participate in sports at all levels (Acosta and L. Carpenter 2012; NCAA 2012a; Schulte, E. Brown, and Stubbs 2013). Men continue to occupy the preponderance of leadership positions in college athletics, from administration to coaching(Acosta and L. Carpenter 2012; Lapchick 2013). Thus Title IX has come to represent a means for women to challenge this power imbalance in the domain of sports.

[14] This burden, while consequential for women in a variety of specific ways, is also troublesome for gender non-normative and homosexual men (E. Anderson 2002; Dusenbery 2013; T. Miller 2001).

The ways that women have mobilized the law have constituted a uniquely gendered political identity to combat these inequalities. Each chapter of this thesis examines a different period in political history in which I examine the political figure that I call the "female athlete". Women have participated in sports and physical activity for many years, of course, and female athletes did not emerge with Title IX (R. C. Bell 2007; Browne 1993; Cahn 1993, 1995; Festle 1996; Guttmann 1991; Leen 2010; Peavy and U. Smith 2008; Verbrugge 1988, 2012; P. C. Warner 2006). I distinguish between female athletes as a generic group, and the politically-constructed "female athlete". Women's participation in sports pre-dated the policy intervention of Title IX, and continued in increasingly routinized ways in its aftermath. However, the conditions under which women were emboldened to secure sporting opportunities as "female athletes" experienced an historical rupture with the passage of law.

In the wake of Title IX, and after a period of policy debate, participation opportunities for women in sports were legally required of schools that offered opportunities for men. In this period, the politically-constructed "female athlete" was born. Still, although we have a sense of her role in cultural politics (Heinecken 2013; Helstein 2005; Heywood and S. Dworkin 2003; Kane 1996; Krane et al. 2004; Messner 1988), very little has been written about how policy constituted her place in American politics.[15] This work will fill that gap and examines how policy and politics have, over

[15] Michelle Helstein's work on the Canadian female athlete analyzes "how…the various social, economic, and political institutions that govern popular sporting culture produce particular understandings of Canadian sporting females" (Helstein 2010, 242). This work, like other work analyzing the U.S. context (i.e. Heywood and S. Dworkin 2003; Messner 1988), focuses on the

time, established the "female athlete" as an historically contingent, political figure. As I explore throughout the manuscript, the political maneuvers required of women in sports demarcate an uneven history of both progress and "change" alongside a contemporary moment fraught with continued complications for women inhabiting masculine spaces.

Context of Sports in the United States and the Marking of Gender

Title IX's "female athlete" exists in a broader landscape of sports in the United States. In the contemporary moment, sports infuse multiple sectors of American society. Organized sporting programs take many forms, and Americans participate in sport through many organizations and agencies. Sports programs are part of the educational apparatus of junior high schools, high schools, and colleges, and private clubs commonly provide recreational opportunities and sporting teams for a fee. Tax revenues and nominal participation fees fund many local, community sports programs (Bowers, Chalip, and Green 2011). From schools, to gyms, to community leagues, there are multiple venues for sports participation in the United States.

Further, sports are a massive economic industry. The sporting industry includes professional franchises (driven largely by teams in men's professional baseball, basketball, hockey, and football), ticket and sporting goods sales, collectibles, athlete endorsement income, advertisements, equipment and merchandise sales, stadium naming fees, and facilities income. Scholars estimate that the size of the American sports industry is between $168 and $208 billion dollars per year (Milano and Chelladurai 2011).

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intersections between Canadian sporting culture and the production of the Canadian female athlete.

College athletics also compose a significant industry. The largest college sports programs (those NCAA Division I programs with varsity men's football programs) brought in nearly $55 billion in revenue in 2012 (NCAA 2013, 17). These programs drive a significant proportion of the market, but an additional $25 billion dollars in revenue were secured by the other NCAA Division I programs as well. These monies are generated from ticket sales, as well as the broader sports industrial complex of television revenues from broadcasting contracts, merchandise sales, sports camps for youth, concessions, and endowment incomes. Sports expenditures keep pace with, and in many cases exceed the revenue streams (NCAA 2013). Economic income to colleges and universities fund athlete scholarships, coaching salaries and benefits, stadium staff and maintenance, gear and sporting equipment, facilities maintenance and expansion, and promotion of the college athletic brands.[16] Much of the spending in college sports, as an example, is devoted to men's teams (Fulks 2012). Although Title IX's policy prescriptions have attempted to alter this disparity, much of the sports industry, in college and professional settings, continues to be dominated by men's teams and interests. The larger sports industry involves far greater percentages of the population than merely those who participate in college sports. Spectators and casual fans devote significant leisure

[16] The spending practices of college sports have been long critiqued by scholars and activists (Branch 2011; A. L. Sack and E. J. Staurowsky 1998; A. Sack 2009; Sperber 2011; Zimbalist 2001). Of particular concern, of late, has been the long-standing practice of "amateurism" in college sports. The NCAA regulations do not allow for profit-sharing amongst the athletes who play in the highly anticipated and promoted college athletic competitions, leading to increasing conflict between the commercial interests of (often public) universities, and the alleged exploitation of college athletes.

time to the consumption of sports (Markovits and Albertson 2012; Wann et al. 2001; Washington and Karen 2001). Indeed, in a number of dimensions, sports as an element of contemporary society and social practice have been steadily growing in size and scope over the past half-century.

The U.S. state has come to be involved in institutions of physical activity in a variety of ways. The President's Council on Physical Fitness and Sports, established in 1956 during the Eisenhower administration, operates under Executive Order to promote physical activity and sports, particularly among American youth (Bowers, Chalip, and Green 2011). The Center for Disease Control also runs a health-promotion program called "Physical Activity for Everyone" that creates guidelines on prescribed physical activity levels for adults, children, the aged, and pregnant women (Bowers, Chalip, and Green 2011). These programs are not legislatively budgeted and rely on annual funding streams from their home agencies. The federal government has been equally reticent to fund elite-level sporting teams. Despite the close attachments between sporting projects, the Olympic Games, and projects of U.S. nationalism, the U.S. state has been comparatively less likely to fund elite athlete development (Chalip 1988). For most Americans, sporting opportunities are not funded by the state.

Such that the U.S. state has been involved in funding sporting programs, it has been more apt to fund sporting projects that align with other policy objectives both domestic and abroad. Scholars have detailed the involvement of the U.S. State Department in diplomacy missions using elite athletes to promote positive affect for U.S. race relations during the Cold War (D. Thomas 2012), as well as in promoting elite

athletic achievement during the same period (T. M. Hunt 2007a; D. Thomas 2007). Although the federal government provides very little support to U.S. Olympic athletes, U.S. presidents are quick to pose with the successful, medal-clad athletes after the games.

Sports are central to political culture in other ways as well. Sports metaphors are favored during election cycles, when campaigns are referred to as "horse races", where the "front-runner" is often said to "run down the clock" while "racing" towards the "finish line" on Election Day. Ever-increasing campaign seasons are said to resemble a "marathon" in their duration. Close election contests are said to keep candidates and voters in suspense until the "bottom on the ninth", awaiting one candidate to deliver the "knock-out punch" on the other. Successful performances while "at bat" in campaign appearances may lead to speculation that a candidate has "swung for the fences" in order to "hit it out of the park" with voters. Once in office, legislators attempting to build legislative coalitions may be said to throw a "Hail Mary pass" in a last-ditch attempt to avoid a "losing season" in their legislative agenda.

Politicians often invoke these metaphors in campaign speeches. In a 2012 speech, Mitt Romney suggested that it was "time for America to see a winning season again" and that they ought to seek a "new coach" in the White House (K. Hunt 2012). Obama's retort suggested that Romney was operating from a faulty economic "playbook". From the formulation of the U.S. state, presidents and congressional candidates have not only invoked sports metaphors to increase perception of their political prowess, most have actively promoted a public image of physical fitness and athleticism (Canon 1990; McDonald and S. King 2012; Watterson 2006). Women candidates also increasingly

invoke their sporting backgrounds as a means to buttress their viability as candidates (Doherty 2011). Thus, although the U.S. government has been reticent to become directly involved in funding sports, U.S. political culture is infused with the essence of sports in many ways.[17]

However, in no place is the relationship between the state and sports as clear as it is within the policy domain of Title IX. It was during the period of political debate after the law's passage that the U.S. state took explicit measures to become involved in sporting contexts by way of Title IX. This happened for a variety of unexpected reasons, and with many unanticipated results. As I began to explore in the above, these reasons are attached quite closely to social battles over the modern women's movement increasingly urgent attempts to alter long-standing gender roles. These cultural battles have, over the past forty years in particular, come to play out in political domains. In fact, it was because the object of policy addressed through Title IX was *not* sports, but was instead sex (and sex discrimination) that the U.S. state became involved in sports in this case, which I explore more fully in Chapter 3. As I continue to develop in the next section, sports provide an especially fruitful domain to explore the attendant tensions associated with these historical developments to the venue of U.S. sports.

The aforementioned trends in U.S. sports have always taken on gendered dimensions. For reasons that I explore throughout this manuscripts, sports have become

[17] There are many specific examples of means through which politics have constructed artificial boundaries between political domains and sporting spaces. They include Major League Baseball's anti-trust exemption, the lack of anti-trust exemption extended to the NCAA, and the fight by professional athletes to gain collective bargaining rights (Zirin 2013).

a fulcrum for discourses on gender in the U.S. The historical, male-domination of sports spaces meant that the ways that sports operated to construct masculinity were largely unmarked. The application of Title IX to sports, and the policy requirement for schools to offer sports teams to women as well as men, altered the status quo. In light of public policy, the arena of U.S. sports was altered dramatically.

The biggest material changes in the realm of sports came for women athletes. As competitive opportunities at all levels have expanded, women's participation in competitive athletics has altered the meanings of gender attached to physical activity and the body. Sport sociologists and journalists have detailed these shifts in ways that I will detail below and in Chapter 2. Although most authors acknowledge Title IX as a defining feature of American sports in the past forty years, they typically do so as a matter of context, rather than a structuring condition for sports, sex/gender, and sex/gender in sports. My work re-centers policy as a structural element of sex and gender in the U.S. sporting context. In doing so, I demonstrate that understanding the history of public policy can show scholars of culture and society how politics structure social performances of gender. Further, I argue that thinking through the social implications and manifestations of policy implementation can show scholars of public policy that culture and politics are often mutually constitutive.

Gender trouble in the London Games

Several events from the London Games illustrate how these processes are operating. The circumstances around women athletes in the most recent Olympic Games exemplify the complicated gender dynamics continue to plague the space for women in

sports even in light of the purportedly successful Title IX. In an op-ed published as the Games opened, Professional boxer and Women's Sports Foundation President Laila Ali claimed that: "Fully 40 years after the passage of Title IX of our nation's Civil Rights Act, female athletes have come into their own" (L. Ali and K. Olson 2012). As evidence of progress, she argued that female athletes in the Games demonstrated that "strong is the new pretty" (L. Ali and K. Olson 2012). Among the many outcomes claimed for Title IX, this was one of the most telling. We might wonder, given the extent to which the Olympic team was declared to be "Title IX's majestic legacy", to what extent have norms around gender actually shifted if expectations for feminine "beauty" remain part of the athletic paradigm?

Traditional gender expectations haunted Olympic female athletes throughout coverage of the Games. When Misty May-Treanor and Kerry Walsh Jennings successfully repeated their bid for a second gold medal in women's beach volleyball, the *Washington Post* story detailing their victory was titled "Olympic Moms Demonstrate How Women Can Have it All: Gold Medal, Cute Kids, Killer Abs" (Dvorak 2012). A few months after the U.S. Rowing Women's 8+ rowed to win a gold medal in the premier rowing event of the Games, the U.S. Olympic Team website highlighted a story about 2012 Olympians who were married shortly after returning home from London. The story featured a photo of the rowing team surrounding their coxswain, Mary Whipple, on her wedding day. The story was titled "From London, to In Love" and celebrated happy, heterosexual couples who found each other through elite athletics (Bowker 2013). If Title IX is said to have up-ended gender relations and helped squelch heteronormative

double-standards, why then is the procreative achievement of gold medal winners a relevant fact for an Olympic headline?

Female athletes of color faced disturbing responses to their athletic achievements that also call into question the London "progress" narrative. Gymnast Gabby Douglas became the first African-American gold medalist in the All-Around competition in a sport notorious for featuring primarily white girls. Yet alongside her success in the gym came a barrage of media focused less on her athletic performance and more on her racial identity (Holmes 2012). The Twitter universe criticized her hair for being "unkempt" and "kinky" (Chang 2012; Drummnond 2012; McEwen 2012). These racialized critiques of the African-American gymnast's hair distracted from her physical achievement and positioned Douglas in the long history of whiteness as a standard for hair and gender-normativity (Rooks 1996).[18] The outrageous expectation that Douglas should have spent time cultivating a hair style instead of her physical skill served to further highlight her racial identity in a sport that is over-whelmingly populated by white girls.

Douglas's hair was not the only marker of her race that drew public attention. To heap insult on to Twitter-injury, minutes after her victory aired on U.S. television, NBC Commentator Bob Costas opined:

> You know, it's a happy measure of how far we've come that it doesn't seem all that remarkable, but still it's noteworthy, Gabby Douglas is, as it happens, the first African-American to win the women's all-around in gymnastics. The barriers have

[18] To her credit, 17 year-old Douglas responded with vigor several days later, stating: "I just simply gelled it back, put some clips in it and put it in a bun. Are you kidding me? I just made history. And you're focusing on my hair?" (McEwen 2012).

> long since been down, but sometimes there can be an imaginary barrier, based on how one might see oneself (Holmes 2012).

Costas recapitulated a time-worn narrative, suggesting that Douglas's Olympic success was indicative of the end, not only of sex discrimination, but also of racial discrimination and oppression more broadly. In this instance, Douglas was positioned as a particular kind of Olympic success above and beyond the more general effects of Title IX. Costas's comments, the final words uttered during the American primetime broadcast, seemed to foreclose potential for discussion of the more general sources of racial exclusion from gender-normative sports like gymnastics and figure skating, at the same time as it opined the end of racial discrimination in sports more broadly.[19]

These events highlight the troubling conditions facing women athletes supposedly representing the "majestic legacy" of Title IX. The space of the Olympics reserved for "female" athletes remains mired in expectations of heterosexuality, racial whiteness, gender-normative beauty as indicators of success, and procreation as an important element of "having it all". Cultural critics and historians have long acknowledged that the discourses surrounding the female athlete are marked by these contradictory

[19] In light of these comments, there was more than a touch of irony when, as NBC cut to commercial, they broadcast a promotional video for a forthcoming sitcom featuring a chimpanzee performing gymnastics (DailyMail 2012). In the days that followed, NBC was forced to apologize for what they claimed was an inadvertently racist-appearing advertisement. Intentional or not, the video was surely insensitive, and revealed the superficial understanding of racialized imagery in American history that guided NBC's broadcast decisions. As if to echo this, the apology made no mention of Costas' on-air comments implying that racial discrimination, in sports and elsewhere, no longer bear material consequence on the conditions of Douglas' victory.

expectations (Cahn 1995; C. L. Cole 1993; P. Davis and Weaving 2009; Festle 1996). While Title IX seems to over-determine the domain of women's sports in the U.S. context and beyond, we understand very little about how and why these on-going gendered complications owe their history to the policy itself.

Politicians, like Barack Obama commonly imply that the policy space of Title IX is relevant for present day gender politics. In an interview around the occasion of Title IX's anniversary, Obama stated:

> …they're healthier for it. They learn competition. They learn how to bounce back from adversity. It's just—it's a terrific thing to see. And they've got so many role models now because there are so many unbelievable female athletes out there, and they can see there is no contradiction between them being strong and tough and beautiful and confident. Yes, it's a wonderful thing to see (Simmons 2012).

President Obama suggests a utopic version of gendered progress freighted with unacknowledged racial and sexual politics. For many women in sports, especially those who cannot or will not embody whiteness or gender-normativity, the political constraints of Title IX do not aide their escape from contradiction. Although Title IX has expanded the spaces available for women to compete, Obama rightly acknowledges that the relationship of women's bodies to sport is still over-determined by the category of sex.

Through aggressive play, unrelenting power and speed, unapologetic perspiration, and competitive zeal, female athletes inherently flaunt, exceed, and collapse long-standing definitions of femininity. The ways in which purportedly "female" bodies commandingly embraced masculine traits of muscled strength, inherently challenged the

sex-based distinction upon which Title IX was built. Giving women access to sports "on the basis of sex" did not alter gender expectations of society more broadly. Thus in order to understand the complications of adjudicating opportunity "on the basis of sex" we require the analytic category of gender in order to understand the cultural politics of the post-Title IX female athlete. Even as Title IX is said to have empowered women, sex-segregated means of policy implementation continue to force supposedly liberated "female athletes" into institutional structures that reify traditional understandings of gender. In this sense, it is women and "female" bodies that must renegotiate gender relations and contend with resistance to the former status quo. The "female athlete" represents not merely a figure of progress, but also a figure imbued with deep tensions.

Many sociologists have demonstrated that gender policing of female athletes remains rampant in subtle ways on sports teams across the country, and in media portrayals of women in sports (Cooky and LaVoi 2012; S. Dworkin and Messner 1999; Fink 1998; Heywood and S. Dworkin 2003; Kane 1996). Women athletes must now, politically and culturally, continue to perform a certain brand of biological-sex-based femininity (in juxtaposition to male bodies) while they compete in sports. Even the politics of hair-length police how women are allowed to embody the category of athlete, and many athletes report feeling some pressure to wear their hair long and in a ponytail in order to appear sufficiently feminine (N. Adams, Schmitke, and Franklin 2005; S. Dworkin and Messner 2002; Ross and Shinew 2007). Since the 1970s, women's ability to re-articulate the meanings of femininity through physical pursuits has been fraught with normative expectations attached to sex and operationalized through public policy.

Failure to conform to feminine expectations—or, even more perversely, extreme success in women's sporting venues even while embodying femininity in gender-normative ways—often leads to the social denigration of such performances as excessively masculine, and inappropriately feminine (possibly lesbian) for women's bodies (Cahn 1993, 1995; Sartore and Cunningham 2009).

These perplexing politics of gender suggest that President Obama's understanding of how Title IX has changed sports for women is one-sided and problematic. Even more troubling, Obama's comment captures the centrality of the "forgetting" of history that defines the contemporary politics of this policy. Title IX was never a policy that was designed to help recipient populations to "bounce back" from adversarial conditions, as Obama suggests. In fact, it was part of sea-change to codified civil rights, through which the U.S. Congress acknowledged that there are structural forms of discrimination from which politically marginalized populations cannot "bounce back". The implementation of this law has come only through great political battles. Activists have battled to gain legal protections against sex discrimination in ways that are obscured when we only narrate Title IX as a story of linear progress.

How can it be, if Title IX was so successful, that these pressures and contradictory expectations continue to haunt women athletes in its wake? Public narratives in American media described the London Games as proof that Title IX was, despite a more narrow application to American educational institutions, nevertheless a policy that came to constitute the political figure of the "female athlete", vis-à-vis an international context. To be sure, in light of the American state's reticence to engage in

the development of elite level athletes using federal funds, the attribution of the U.S. Olympic Team's "female" components to the implementation of Title IX is rather imprecise.[20]

The London Games provide a revealing location to unpack an ongoing problematic at work within Title IX and the politics of the female athlete. Instead of revealing an uncomplicated celebration of triumph for female athletes, the London

[20] As I've discussed above, American political institutions came to be involved in regulating sports very begrudgingly (Bowers, Chalip, and Green 2011; Chalip 1988). Unlike other countries where the project of funding and developing elite-level athletes for international competition is often based in and funded by the national government, the U.S. state went to great lengths to establish the U.S. Olympic Committee as an independent and privately-funded enterprise. Thus to suggest that the London Olympic team is a marker of Title IX's success is to obscure the private funding that has actually promoted the U.S. Olympic team's achievement. Sports became a project of governance in the US only because it was framed under the umbrella of civil rights. Yet the "female athletes" who received athletic training opportunities in large number as a result of Title IX's implementation are promoted as a category of the nation during each Olympiad. Their physical pursuits symbolically embody the ideology of women's "freedom", vis-à-vis other bodies from purportedly "less free" or even regressive nations (Longman 2012). On the one hand, the U.S. state did lead the way in providing widespread competitive opportunities for women athletes which has also meant that many female athletes competing for a variety of nations in the Olympic Games trained at U.S colleges and universities under scholarships and opportunities provided by Title IX. On the other hand, the international success of female athletes both home and abroad rests primarily on corrective, rights-based legislative projects designed to incorporate previously marginalized groups and implicitly critique the fundamental exclusions on which the American state was constituted. Comparatively Title IX is promoted as the vehicle through which the American state empowers its women to compete and win convincing athletic and ideological battles on the international stage even as it silently promotes the broader trends of privatizing "public goods", disproportionately benefitting already privileged bodies, and interpolating them into a strictly policed, sex-segregated competitive structure.

Games foreground the tensions that remain central and unresolved in the gendered politics of Title IX. In some sense, these Games demonstrate that by offering athletic opportunity to women at all levels of education, the quality and quantity of elite athletes might also expand and improve (Haven 2012; Long 2012; J. Sullivan 2012). However, the suggestion that merely by expanding opportunity for women as group, political institutions might fundamentally alter the gender order has proven to be unrealistic. If Title IX had succeeded in fundamentally changing society as many analysts suggest (Brake 2010; Hahn and Klein 2007; Hogshead-Makar and Zimbalist 2007), why do we continue to see articles published about female athletes casting them as mothers (e.g. Dvorak 2012; Elliot 2012; Terry 2012), wives (Bowker 2013), and daughters (J. J. Sullivan 2012; Vega 2012)—all gender-normative feminine roles guarding against the threat of overly masculinized women?[21] More to the point, is Title IX truly exceptional in its implementation such that it has upended social roles (in sports, and beyond)? Or might the tensions revealed in the summer of 2012 demonstrate how it should more accurately be classified as another domain limited by the liberal pursuit of rights as something that women "cannot not want" (Spivak 1993, 44)?[22]

[21] Put differently, is there not some kernel of truth to the satirical story published in *The Onion* which declared in its headline: "Female Athletes Making Great Strides in Attractiveness" (TheOnion.com 2004)? The trivialization of women's actual sporting accomplishments was leveraged for satire in this article, even as it resonates with some important truths. Similarly, an article entitled: "Inspirational Nike Ad Gives Women Courage to Reach Full Spending Potential" struck a similar chord, suggesting the ironies inherent to the collision of capitalistic advertising and women's increased involvement in physical pursuits (TheOnion.com 1999).

[22] Also: (W. Brown and Halley 2002; W. Brown 1995, 2000)

The narrative of ascendance that surrounded American female athletes in the London Games not only obscured the shadow story of Title IX, in which the law has disproportionately benefited white, able-bodied women of financial means, it knits Title IX neatly into the narrative of American exceptionalism (Lipset 1996; R. M. Smith 1988). American "female athletes" in the London games were not only meant to represent a symbol of the end of discrimination in sports. It was suggested that they epitomized the fundamental success of the American project. In comparative policy perspective, no other nation-state has gone about the creation of athletic opportunities for women in quite the same way as the U.S. state did with Title IX. This leads to the inevitable question of why, and if gender equity pursued through different means could circumvent the political processes I outline in this manuscript.

Title IX as policy exception?: Sex in a Civil Rights Era

These questions, through which my thinking engages with Title IX, inherently turn to history. Although a historicized approach to the study of public policy is not always required, I argue that questions about how Title IX has recursively shaped and been shaped by the meanings of politics and political identities, demands historical thinking. As I argue in this section and empirically detail in Chapter 3, a focus on the historical lineage of Title IX helps to unpack the gendered complications of the contemporary era. Further, attention to policy history demonstrates how, although Title IX's implementation has certainly resulted in exceptional changes to the institutions of college sports, it is important to situate it in its corollary cases.

Title IX has come to mean many things, politically, culturally, and socially, but it is fundamentally one of many policies under the umbrella of "civil rights" (Skrentny 2002). Understanding the law in the context of other state-based attempts at inclusion grounds my case logic. Title IX is, among other things, a case of civil rights legislation, targeting historical discriminatory practices within a social institution, operating with the goals of "equality" in some domains and "equity" in others, as mandate for non-discrimination solution. It addresses discrimination based on only one legal category: sex. Thus regardless of the fact that at the moment of Title IX's inception there were deeply racialized and classed inequities shaping the quality of educational opportunity for sub-groups of American women, the non-discrimination mandate adopted under Title IX could not account for these complexities. The U.S. Congress constituted sex as a category of distinction in education, marking all women as distinct from all men, and all forms of sex discrimination as similar in type for all women in education.

Although sex was always central to Title IX, sports was initially peripheral. Despite the over-whelming association of Title IX with sports in the minds of most Americans, when the U.S. Congress considered the Educational Amendments of 1972, it spent the least amount of time debating the portion of the law that would later emerge as the most controversial. The Amendments, which were designed to modify the Civil Rights Act of 1964 (CRA), included only one segment designed to end sex discrimination in education: Title IX. The law was premised on the notion that women were men's equals, and therefore the lack of women with advanced degrees was the result of biased practices in educational institutions that favored men. The primary purpose of the ninth

Title of the law was to avoid the use of federal funds to support discriminatory practices on the basis of sex in educational institutions. Thus the text of the law explicitly united compliance with non-discrimination to federal fund allocation. This choice in policy design was most central to the full implementation of the law over time, even as it spurred a major period of policy conflict, explored in Chapter 4.

Divergent understandings of Equality: The Paradox of Title IX

Title IX passed without controversy, and made no mention of athletics, the realm with which it is now synonymous. Over the course of the next forty years, political conflicts rarely emerged over the means of enforcement designed to give women access to *intellectual pursuits* on par with men. Women's greater access to education fueled a variety of other revolutions in the gendered organization of work, wages, and the home. Yet neither policy makers nor activists contested the premise that women should be *intellectual* equals to men. Instead, the controversies that have swirled around Title IX have focused mainly on its efforts to promote gender equity in *physical pursuits*. Debates over how, why, or if the U.S. state should regulate athletics in its pursuit of sex equity have constituted an unlikely policy arena, distinct from other equity-driven educational policies.

Over the past forty years, the application of the law to sports has fueled more persistent political clashes regarding the meaning of equality than has its application to educational settings. I argue that a tension between "sex-blind" enforcement in education and "sex-conscious" guidelines for sport continues to fuel political battles over the law. I demonstrate that within Title IX there is a distinction that is "hidden in plain sight". The

chapters that follow demonstrate how a policy designed to end discrimination "on the basis of sex" came to naturalize sex as a characteristic of bodies. Title IX's policy design did so in the realm of sports, but *not* in classrooms. Classrooms were by and large sex-integrated, educating girls and boys in the same spaces "regardless of their sex". Sports, were sex-segregated, first dividing girls from boys into different spaces, "by virtue of their sex". This co-existent, paradoxical, historical, yet on-going mechanism of policy design constitutes what I refer to as the "Paradox of Title IX".

I contend that in order to understand why equality in sports is simultaneously widely supported and repeatedly challenged, we must acknowledge and understand the paradox embedded in the law. In educational settings, policymakers accepted Title IX's central premise: intellectually, women were men's equals. Americans consistently support policies designed to ensure that this ethos of equality is not explicitly hindered. Through Title IX, the baseless exclusionary practices of institutions of higher education were outlawed using sex-blind implementation guidelines for the intellectual spaces of college campuses. In the realm of sports, the opposite solution applied. Policymakers instituted sex-segregated spaces for women and men engaging in physical pursuits. This sex-conscious enforcement mechanism rejects the premise of physical equality between the sexes and supplants it with assumptions of "natural" sex-difference that have organized political conflicts around Title IX. The policy uses of Title IX and the political conflicts that have surrounded them have thus been rooted in a problematic tension between its ethos of *intellectual* equality (integrationist equal treatment regardless of sex) and its ethos of *physical* equality (separate but equal treatment by virtue of sex).

Paradoxically, it means that in the realm of sports, the law designed to ensure women equal treatment in educational venues *regardless* of their sex, now controls women's participation in physical sports *by virtue* of their sex.

This paradox inherent to the law makes the story of Title IX much more difficult. It sits in uncomfortable tension with the dominant policy story and indeed challenges the conventional wisdom that Title IX has been an overwhelming success. This distinction made by policy design is often over-looked and the reliance on sex-segregation in sports in almost every high school and college varsity sporting context is the most puzzling, but under-analyzed element of the policy.

Youth sports are commonly integrated with boys and girls playing together until around age 8, at which point in almost every context, sex-segregated teams are the de facto practice. At the college level, many intermural and club sports (such as ultimate Frisbee) which are beyond the purview of the policy are routinely integrated. Since 1979 at the level of policy design, for sports sponsored by the varsity athletic programs, Title IX's guidelines have instructed schools to demonstrate compliance by counting the opportunities, scholarships, and institutional support available to men and women in athletics as distinct and separate groups.

Thus in stark and uneasy contrast to classroom settings sits the realm of sports. Women were not allowed access to men's athletic teams, but instead schools were instructed to create separate teams for women. In almost every sporting context of college athletics, men and women do not race in the same races, row in the same boats, or play on the same competitive teams. And sex-segregated sports, where women achieve

access to athletics "by virtue of their sex", are not merely the norm, they are encouraged and indeed codified by the specific mechanisms of policy design inherent to Title IX. Title IX elevates the custom of segregation in many adolescent sports to a codified, incentivized, or what Eileen McDonagh and Laura Pappano call a "coercive" practice across American high schools and colleges (McDonagh and Pappano 2007). Sex integration has typically occurred in varsity level sports, only on case-by-case bases, and often under legal threat from a single woman seeking access to a men's team (Fields 2004; Hnida 2010). Further, as the public nature of compliance data intensified in the wake of the 1994 federal "Equity in Athletics Disclosure Act" (EADA), sex-segregated teams have made for more tidy accounting of sex equality data for schools looking to demonstrate compliance with Title IX. I explore this shift in Chapter 5.

This paradoxical interpretation of policy suggests that difference has been naturalized through understandings of sex as a characteristic of bodies. Gendered ideas about intelligence have become largely taboo, even as gendered understandings of men's inherent physical superiority persist. However, the naturalized understanding of "difference" continues to persist in some *de facto* ways in classroom spaces. Although women are no longer excluded from math and science programs, science, technology, engineering and mathematics (STEM) fields continue to be male-dominated. *De jure* integration is the law in STEM fields, even as *de facto* segregation persists. Attaching these conditions to "nature" (and suggesting that girls and women are not interested in or commonly skilled at STEM fields) is less popular than it once was, but we continue to puzzle over the reasons and meanings of women's exclusion from these fields. A 2004

GAO report was tasked with investigating these disparities (GAO 2004). The findings suggested that government agencies needed to continue to foster women's inclusion into STEM fields, but the implicit backdrop of the report invoked women's successful integration into other intellectual domains, puzzling over why opportunity is sufficient in some fields, but not others.

Institutions of the U.S. government are loathe to openly suggest that women may be "naturally" disinclined to dislike math and science, and the GAO report actively sought to identify persistent barriers preventing women from pursuing education and work in STEM fields. Still, such that Title IX has not fundamentally re-shaped the terms of inclusion into *all* intellectual spaces of educational institutions, it remains less offensive to suggest that women may be disinclined to excel at math and sciences than in other fields that have historically incorporated women (such as the humanities, teaching, nursing, and other domains that have been gendered as "more feminine" than science).

From the perspective of Title IX, it was not merely that women were considered just as smart as men, leading to the integration of classrooms "on the basis of sex". The "paradox of Title IX" demonstrates, and is limited by, the tensions and boundaries of what we collective imagine to be part of a "natural order". The last forty years in sports and "masculinized" STEM fields demonstrate that we might be willing to put up with certain types of inequalities under the auspices that they are merely reflecting a "natural order" that even politics struggle to ameliorate and rectify. Through the policy lens of Title IX, we have been more willing to accept sex-segregated fields when it seemed that there were self-evident, physical differences between men and women's strength, speed,

or physical capacities. Likewise, even in *de jure* integrated classrooms, we have been willing in many cases to accept *de facto* sex-segregation in fields where gender stereotypes persist. In this sense, the sex-segregation of sports maintains the possibility of natural sex difference such that *de facto* segregation in masculinized fields seems less loathsome that outright discrimination against women. So long as we hold on to practices of sex-segregation in any dimension, there is the possibility that arguments about "natural" sex difference will remain salient in both physical and intellectual domains.

Still, the paradox weighs heavily on Title IX's application to sports, repeatedly instigating political conflict around the implementation of sex equality between those who favor the historical supremacy of men's sports at the exclusion of women's and those who reject men's "natural" right to physical activity. Debates about sports invoke a provocative, normative question regarding whether or not the state should be in the business of fighting against "natural" sex differences in bodies. This project demonstrates how and why this political friction defies resolution and explains how its instantiation in policy has shaped the trajectory of Title IX, political definitions of sex, and gendered political conflicts over time.

Sex-segregation in other domains

Certainly sports have historically not been the only sex-segregated American institution (Mayeri 2006; Reskin 1984, 1988). The U.S. military is a paradigmatic example of an institution that has relied on logics of sex-segregation to build and maintain its institutional practices and arrangements (D'Amico and Weinstein 1999;

Francke 1997; Holm 1992; Strum 2004). Similarly firefighting (Chetkovich 1997) and policing (Corsianos 2009; Schulz 2004) were formerly sex-segregated domains. Firefighting and policing became integrated more quickly than the U.S. military. But even the armed forces, where sex-selective practices have been instituted as governing elements from Selective Service to combat, have begrudgingly evolved. In January of 2013, Defense Secretary Leon Panetta announced the Pentagon's intention to lift the ban on women serving in combat, ending the long-standing practice of women's exclusion from serving on the frontline (Bumiller and Shanker 2013).[23] Many other occupations remain de facto sex-segregated (Moccio 2010; Petersen and L. A. Morgan 1995) —still most of the formerly segregated domains have evolved and changed over time such that strict sex-segregation is not only against the norm, it is also against the law (S. E. Martin 1991).[24]

In classrooms, the ACLU Women's Right Projects has been actively pursuing cases to ensure that spaces of intellectual education do not become *de facto* sex-segregated. The activist group prepared a position paper for submission to the Department of Education in August of 2012 describing the sex-segregated education

[23] The end to the combat exception came closely on the heels of an ACLU lawsuit filed in November 2012 by women service matters (Henderson 2012).

[24] These legal rulings largely cohere around interpretations of Title VII of the CRA which banned employment discrimination "on the basis of sex" (Pedriana and R. Stryker 2004; V. Schultz 1990; Turk 2011). Other research suggests that the implementation of Title VII had an especially powerful effect on desegregating workplaces based on sex-since 1980 (Tomaskovic-Devey et al. 2006).

programs on going in fifteen U.S. states (ACLU 2012b).[25] Throughout 2012, they have pursued complaints with the Office for Civil Rights to ensure that sex-segregated classrooms do not proliferate as the normative structure of sex-conscious educational structure, recently winning victories in Alabama, and with cases ongoing in Wisconsin and Idaho (Katz 2013). As a result of the complaint in Alabama, Birmingham public schools signed an agreement with OCR to abandon the use of sex-segregated classrooms, and "to comply with Title IX regulations forbidding different treatment of students based on sex" further instantiating the means of policy implementation that denies segregation in classrooms even as it allows it in sports (Katz 2013). Court cases in West Virginia (AP 2012), Washington (Cafazzo 2011), and Pennsylvania ("Pittsburgh Public School to End Single-Sex Classes" 2011) came to similar conclusions. As of June 2013, the complaints in Wisconsin and Idaho remained unresolved (ACLU 2012a, 2013).

In sports, the opposite is true. Title IX's implementation and legal apparatus have insured that segregation have often been strictly maintained despite legal challenges from women, men, and trans* identified people (Buzuvis 2011; Fields 2004; Love and K. Kelly 2011; Ring 2012). Few examples of similar practice currently with the exception of widespread, continued practices of sex-segregated public restrooms (Gershenson and Penner 2009; Molotch and Norén 2010) and prisons/rehabilitation programs (Britton

[25] The reason for pursuing cases to end sex-segregation in classroom settings is rooted in academic research demonstrating that students who learn in sex-segregated settings are more likely to engage in sex-stereotyping (Fabesa et al. 2013). No studies have researched similar questions in the domain of sports to discern the extent to which sex-segregated sporting domains lead to opinions regarding women's physical capacities and limits vis-à-vis men.

2003; Kunzel 2008; Rafter 1990; Spade 2008).[26] So why has sex-segregation been outmoded in areas like the military, and firefighting, but not in sports?

The answer that I develop is that through Title IX, "sex" is understood as a political category of the body. Sport concretizes bodies in particular ways that are made more durable through both policy and practice. In this sense, a bodily-based understanding of sex-as-biology is the same element that sports shares with domains like restrooms and the prison. Public restroom spaces are constituted around the premise that there two distinct and fundamentally different types of bodies: male and female. They are organized around the presumption that all bodies are either/or, and require distinct spaces in the public domain. Public restrooms are commonly segregated under the auspices of protecting privacy, and alleged safety—women's safety in particular—during occasions of vulnerability. Still, this segregation of restrooms is contested, even if enduring. Trans* bodies and trans* activists trouble the notion of easily categorized sex-based bodies, and those whose gender does not conform to the binary categories of sex face scrutiny in these spaces (Spade 2008).

[26] Other domains of sex-segregation exist in some educational venues like women's colleges and some military schools. In the past thirty years, legal challenges have led to the integration of most military school venues like the Citadel, the Virginia Military Institute, and the U.S. military academies at West Point, Annapolis, and Colorado Springs (Brodie 2010; Disher 1998; Manegold 2009; Strum 2004). Other public places like shared hospital rooms, some health clubs, fraternities and sororities, and beauty pageants more commonly sex-segregate, as do youth organizations like the Girl Scouts and Boy Scouts. Some of these arenas—to the extent that they overlap with the purview of Title IX—have been specifically excluded from its policy domain.

Likewise in sports, binary categories create considerable problems for bodies that defy categorization in a sex-segregated system (Buzuvis 2011, 2012b; Griffin 2012; H. Sykes 2006). Trans* athletes and queer bodies unsettle an organizational system that denies their existence merely by demanding space beyond binary sex. The same is true in prisons, where trans* inmates are almost always removed from and incarcerated in solitary confinement away from the general prison population (Spade 2009, 2011). The logic of segregation in prisons is distinct from bathrooms, rooted instead in a desire to discipline and control bodies, making them docile in routinized ways that allegedly ease the delivery of punishment. Sex-segregated prisons arose from a desire to prevent heterosexual, reproductive sex among inmates. However this purported solution generated its own externalities as prison guards and administrators sought additional modes for segregating gender-nonconforming and genderqueer prisoners from the general, or "normal" prison population (Kunzel 2002, 2008). Even in spaces where "biological sex" is alleged to be most stable and secure, the overlapping conditions of gender and sexuality trouble and unsettle the systems of classification.

In the production of every category there is some remainder and when we read the organizational categories deployed in sports against their cognates in prisons and restrooms, the inevitable fissures in a system that relies on binary sex becomes visible. In the cases of prisons, public restrooms, the military, and sports, the categorical "remainder" is made visible in bodies that defy binary classification. As I will explore in Chapter 2, medical science can confirm that at the intersections of chromosomes, secondary sex characteristics, and hormones, there is no fundamental "binary" category

of biological sex. Still, social institutions treat all bodies as if this scientific fiction were "real", policing the bodies deemed most resistant to the governing logic of binary sex in especially harsh ways. In these institutions that rely on sex-segregation as a governing logic, bodies that are discerned to exceed the binary categories become impossible subjects. The "remainders" of binary categories inevitably demarcate the flaws in the organizational system. In the military, trans* bodies are excluded from service.[27] In prisons, trans* inmates are held outside of the general prison population (Spade 2011). In public restrooms, trans* individuals must risk physical or epistemic violence when confronting the choice of which restroom to enter. In sports, trans* bodies are fundamentally unclassifiable, leaving trans* individuals especially susceptible to exclusions from college and high school athletic teams (Griffin 2012; Lovett 2013).

The point here (or at least the point of departure), is that the production of categories through policy has material consequence for real bodies that defy the system of classification. The exclusion of trans* bodies demonstrates the strict reliance on

[27] Trans* identified military personnel and veterans experience the most obvious exclusions at the moment of enlisting. Although military policy does not allow transitioning individuals to enlist for military service, there is evidence that military service members are not exempt from trans* concerns—one study estimated that twenty percent of trans* identified people have a record of military service (Harrison-Quintana and Herman 2013). The high profile transition of former Navy SEAL and member of the team sent to execute Osama Bin Laden, Kristin Beck, is a key example (Beck and Speckhard 2013). Research demonstrates that trans* soldiers and veterans experiences significant barriers to full participation in military life, struggling to obtain military identification documents, health care, and often fall victim to discrimination within the service(Harrison-Quintana and Herman 2013). The reliance on binary sex, and segregation based on sex as a primary organizational component of military life, means that trans* bodies are categorical "remainders" in military institutions.

categorical sex which buttresses sex-segregated systems. What's more, this strict system does not only harm trans* identified people. Sports systems only define the exclusions of trans* bodies by suggesting that sex is knowable and immutably attached to biology. Thus gender-transgressive bodies that may or may not identify as transgender, but nevertheless perform gender in non-normative ways, become inherently suspect in a sex-segregated system. One task that I take up in this manuscript is to disentangle the over-lapping assumptions of sex, gender, and sexuality that are bound up in sex-segregated sports. In doing so, I suggest that we can begin to problematize a seemingly progressive policy once the logics of bodily organization are made vulnerable by resistant, trans*, or gender non-conforming bodies. By recognizing that a policy aimed at "sex" has been, over time, fused to biological understandings of bodies, we can understand the extent to which Title IX both resembles and stands aside from other policy projects of the U.S. state.

Women as policy object

In the chapters that follow, I delineate the mechanisms through which the U.S. state constituted the understanding of sex as a bodily trait in its implementation of Title IX in sports. In doing so, I demonstrate the ways in which Title IX's application to athletic programs functions to construe the policy as an outlier to many other policies directed at changing the political and social conditions for American women. Although the means of defining the category of "women" occur differently in Title IX than many other policies, Title IX exists in a universe of public policies directed at women as a

group. It is helpful to consider its place among other cases in the population of policies of its type.

Generally, policies aimed specifically at American women take on two major types: social welfare policies, and anti-discrimination policies. Policies in the social welfare domain include: reproductive rights policies, women's health policies, Family Medical Leave, child care policies, and Social Security and retirement income policies. Anti-discrimination policies include: Equal Employment Opportunity policies (Title VII of the CRA), equal pay policies, sexual harassment policy, housing policy, credit and lending policies, and education and sports policy. Other policy domains constituted under the Violence Against Women Act, and policies aimed at marriage and divorce law also disproportionately affect or target women as beneficiaries or recipients. Chapter 2 includes a more thorough review of the scholarly literatures in each of these domains, demonstrating the ways in which policy has construed the meanings and benefits of citizenship, belonging, and exclusion for American women.

As I explore in Chapter 3, Title IX was a policy born in the period when the second-wave feminist movement was directing its attention toward political institutions. It was designed to bring an end to explicitly sex discrimination in graduate school admissions, funding, hiring decisions, and treatment of women in higher education. Feminists were not thinking concertedly about the role of sports in maintaining systems of inequality when they designed the legislation, nor were activists prepared to immediately lobby the government with notions of how to end sex bias in sporting spaces. In time, however, sports became central to the meaning of the law.

Sports are centrally important to the meaning of Title IX, but not merely because the application of the law to sports continues to spur significant political conflict. Sports matter to Title IX because they highlight a question that Title IX was purportedly designed to settle: can marking sex as a distinction of difference between bodies be accomplished in ways that are not simultaneously discriminatory? I focus my project primarily on sports not only because it has been the most contentious political arena of Title IX implementation, but also because within it emerged a central political friction over the premise of equity, which, I argue, continues to fuel political battles over a law that is widely seen as a staggering success.

Political battles over other policies aimed at women continue to persist, re-opening previous understandings of which policies have been "settled". Feminists continue to fight political battles against regressive policies aimed at limiting access to birth control and abortion, despite significant legal victories in decades past.[28] The battles over various policy domains regarding women's reproduction, maternity leaves, and Family Medical Leave were prolonged, and often no more successful in the U.S. than

[28] The Guttmacher Institute tracks state-level legislation aimed at women's reproductive rights, publishing monthly reports at http://www.guttmacher.org/statecenter/ (accessed: July 24, 2013). As of July 2013, they report: "In the first six months of 2013, states enacted 106 provisions related to reproductive health and rights; issues related to abortion, family planning funding and sex education were significant flashpoints in several legislatures. Although initial momentum behind banning abortion early in pregnancy appears to have waned, states nonetheless adopted 43 restrictions on access to abortion, the second-highest number ever at the midyear mark and is as many as were enacted in all of 2012" (GuttmacherInstitute 2013). These numbers are down from the most recent high in 2011, but the first half of 2013 continues to out-pace 2012 in the number of restrictive policies aimed at women's reproductive rights.

in other developed countries (i.e. Htun and Weldon 2010, 2012; Kenney 1992; K. J. Morgan 2006; Skocpol 2001). In Chapter 2, I develop my theoretical approach to the literatures in political science and policy studies that situates Title IX vis-à-vis these other policy domains and develops my case logic.

As I demonstrate in Chapter 2, my work historicizes both the foundational political debates over the categorical meanings of sex in civil rights policy, and also identifies the political processes through which these policy meanings recursively shape social and political practices over time. Consequently, my questions require me to engage both historians and political scientists. I seek to augment projects in American Political Development and history that examine how political institutions shape the meanings of sex and gender. I draw on work from gender studies and sociology, which demonstrate how sports are central to producing understandings of gender, even as it they often cast as "beyond the realm of the political".

Chapter organization

In each chapter, I address how a law so consistently threatened has managed to survive. Adopting what scholars have come to call a "policy feedback" framework, I draw on archival evidence to analyze the causes and consequences of cyclical political conflict over the gendered meaning and enforcement of Title IX. I reveal how, for example, the codification of sex-segregated teams for men and women took an amorphous group and shaped it into a new and defined constituency, *female athletes,* whose activism on behalf of Title IX has helped to ensure the policy's survival. Female athletes, granted sporting opportunities in increasingly large numbers through Title IX's

implementation, have lobbied the government during spells of subsequent political conflict. Policy feedback helps reveal how policy implementation creates and encourages populations of female athletes to articulate the benefits they received from equal sporting opportunity and, in turn, lobby for Title IX's durability within a sex-conscious frame. This approach unseats the notion that exponential growth in sporting opportunities for women was the natural outgrowth of Title IX's implementation. Instead, it exemplifies that the law is, and always was, a contingently effective policy whose political salience has, at multiple junctures, relied on persistent (sometimes problematic) political activism of the women who it benefitted in order to ensure its continued, diffuse enforcement.

Each chapter focuses on a distinct period of policy deliberations over athletics, demonstrating the political consequences of the unresolved tensions over what equality should mean in the realm of sports. The complexities of implementing Title IX in sports have generated many new forms of politics indicative of the changing role of sex and gender in U.S. politics. For example, in Chapter 3, I analyze the prevailing integrationist approach to addressing race- and gender-based educational inequities as a backdrop to clarify policy maker's decision to implement Title IX in sporting venues through sex-segregated spheres. My analysis explains how this alternative approach developed over time as a policy "solution" to political conflicts over the perceived perils of allowing women access to "men's" games. The political figure of the female athlete organizes the analysis in each chapter, focusing my empirical work on how political understandings and problematics of gender change over time. Shifting understandings of women's physical competence, which are typically imagined as elements of cultural "progress,"

are reframed and clarified through this analysis as contingent outcomes of contested political interventions by institutions of the U.S. state.

By placing sex and gender at the center of analysis, my work also counters the misconception that the feedback effects of Title IX have been restricted to women. In Chapter 6, for example, I analyze how Title IX gave rise to a new political constituency that emerged as a potent group of advocates at the 2002 public forums organized by the Bush administration: *fathers* of female athletes. In earlier moments of debate about Title IX (addressed in Chapter 3 and 4), women figured as the primary beneficiaries of Title IX and advocates for expanded opportunities. Thirty years after Title IX's passage, I show how the emergence of fathers as an "indirect" policy constituency reflected and revealed changing conceptions of gender - evolving notions of masculinity as well as femininity - and changes in the perceived value of sex equality across the political spectrum.

Chapter 3 details the emergence of the political figure I call the "female athlete". In it, I argue that "she" was born of political debate over policy implementation, and as a product of sex-segregated solutions to the problem of discrimination in sports. Chapter 4 analyzes battles over the implementation of Title IX during Reagan's presidency. During this period, debates over gender and sexuality converged in legislative activity to pass the Civil Rights Restoration Act of 1987. I argue that only through the suppression of Title IX's application to prevent discrimination pertaining to sexual orientation were members of the U.S. Congress able to overturn the Supreme Court's decision in *Grove City College v. Bell* and reinstate the implementation of Title IX. Chapter 5 explores the passage of the 1994 Equity in Athletics Disclosure Act and demonstrates how the

problem of discrimination in sports became articulated as a public problem which could be solved through the production of quantitative data on the role of sex in college athletics. Chapter 6 demonstrates one of the most unlikely "feedback effects" of policy implementation, occurring when fathers of daughters in athletics emerged as one of Title IX's most active interest groups. Finally, the epilogue addresses recent developments in Title IX's application to discrimination against trans* students "based on sex".

A linear history with non-linear consequences

The dominant story about Title IX is a linear one: the law was passed, implementation mechanisms were formed, and policy was implemented, challenged, and repurposed in light of political threats. This work excavates this story to examine its roots. In doing so, what we see in Title IX is an example of how recursive processes of meaning-making solidify political categories, with complicated effects for political and social identity. Although sports are not the only venue in which politics of sex and gender have been acutely renegotiated, it proves to be a very durable institution. In part because it locates the politics of sex in the body, we have not seen the changes to sex-segregation in sports that we have witnessed in other venues. Part of this is unexpected, even if implicit in policy design and entrenchment. There is a "closed world" of sports that makes it distinct from that of the military or firefighting. Sports in the U.S. is both largely determined by Title IX, even as its governing logics stretch to much more global institutions like the International Olympic Committee and include such invasive practices of sex testing as a means for policing bodies (explored in Chapter 2). In this world of sports, the "female athlete" is naturalized.

That said, this analysis of Title IX certainly has implications for understanding how politics shape political categories far beyond the domain of sports. I will focus on the intersectional politics of sex and gender inherent to this particular policy domain suggesting that by locating sex in the body, Title IX construes sex in very distinct ways from how it has been construed in other civil rights policies applied to work, pay, or sexual harassment. In those domains, policy has more readily shaped and re-defined understandings of discriminatory *treatment* of women, instead of defining the very category of what women "are". This work points to the importance of understanding how sex and gender jointly operate in policy to shape the meaning and means of implementation. Indeed we see these processes operating elsewhere, and in other historical eras, when policies have been aimed at creating meanings for race, able-bodiness, and sexuality, by locating those meanings in the behaviors or natural essence of physical bodies (Canaday 2009; Gómez 2010; Irvine 1990; O'Brien 2001; Pascoe 2009; Pollock 2008).

My project also speaks to work in the disciplines of both history and political science regarding how gender is understood as an analytic concept at the intersections of race, class, ability, and sexuality. Further, it runs parallel to scholars who look to policy as they analyze the histories of race, sexuality, gender in both American and comparative perspectives. A deeper understanding of the categories which both contain and construct the American political landscape allow for more complex theoretical and empirical understandings of the successes and failures of American liberalism.

By studying the histories of policy aimed at ending conditions of discrimination and political exclusion, we can learn something about the long-term processes that shape how politics create meaning, and how policy confers different access to power across diverse political groups. Thinking well beyond Title IX, we can see that the long-term and on-going projects of implementing policy in multiple domains like housing, education, immigration, and employment continue to shape the contours of democratic citizenship and the means of political participation for often previously marginalized groups. Policies in these arenas, like in Title IX, confer meaning to identity, privilege, and political power. They raise questions about how politics shape social practice. And by studying them, we are able to understand more about what constructs and constrains the political potentials for change.

Chapter II: "We're using this method to express our urgency": Politics and Rights for Female Athletes

Yale, rowing, and Title IX

On the afternoon of March 3, 1976, nineteen members of the Yale University women's rowing team entered the office of the athletic director. It was seven years after Yale began admitting women, and one year since the first set of Title IX regulations governing college sports had been circulated by the Department of Health, Education, and Welfare (HEW 1975). While the school had to fulfill their Title IX compliance requirements by adding a women's rowing team to complement the men's heavy- and lightweight programs, the women rowing for Yale in the winter of 1976 were far from satisfied with the conditions of their incorporation.[1] Training facilities for the teams were located off-campus, requiring a long bus ride for all the athletes who trained on the Housatonic. Unlike the men, who enjoyed first-class treatment and facilities as some of Yale's most prestigious athletes, the conditions for women rowers at Yale were comparatively subpar. Lacking a place to shower or change clothes after the end of

[1] Historically, rowing has been a sport defined by weight class. At the elite level, many events are raced in both a "heavy" or "open-weight" class as well as a "lightweight" class. In 1976 Yale hosted varsity rowing for both heavy and lightweight men but only an open-weight team for women. For the purposes of complying with Title IX, both heavy- and lightweight programs can be "counted" in annual federal government compliance reports. The 1975 guidelines did not require that Yale add a women's rowing team merely because they hosted a men's program, but the guidelines did instruct schools to balance opportunities for men and women across the athletic program.

practice, the women spent a disproportionately longer time on the team bus waiting for the men to finish showering before the return trip to campus.

The then-head coach of Yale Women's Crew recalled: "One basic problem was that Princeton and Harvard had fully funded women's varsity teams. Yale tended to treat women's sports like intermural programs" (Wulf 2012). Further, although several of the Yale women had recently earned medals at the 1975 World Rowing Championships, the women were consistently harassed by the male rowers. "Chris [Ernst] and I would be lifting in the weight room while the men stood over us, hooting and calling us names" remembered Anne Warner, a then-junior on the team (Wulf 2012). Cold, irritated, and increasingly physically ill from enduring the conditions, the women used the time spent waiting on the bus to plan a meeting with the athletic director. Although policy compliance metrics were still being developed by HEW during the period of the mid-1970s, the Yale rowers took it upon themselves to mobilize the rights secured by Title IX.

On March 3rd, nineteen athletes gathered outside the office of Joni Barnett, the director of women's athletics and physical education, removed their sweatshirts, and walked towards her desk. Warner recalls: "she took one look at our faces—she was sitting at her desk—and she stood up. That's all she did" (Mazzio 1999). The rowers were stripped naked to the waist with a message painted in thick, Yale-blue ink across their chests and backs. The text emblazed across their bodies simply read: Title IX. With

her teammates surrounding her, varsity captain Chris Ernst read aloud a statement of their purpose. It began: "These are the bodies Yale is exploiting…" (Ernst 1976).[2]

In political protest, the women symbolically embodied public policy as a means to force change to the training disparities between their facilities and those provided for the men. Ernst went on to describe the conditions under which the women's team had been training. While the men's team had access to a locker room for showers and dry clothing after long, damp, on-the-water practices, the women's team waited for them on the cold bus back to campus. Their statement continued:

[2] The statement, located in the Yale archives and published in the documentary film *A Hero for Daisy* and in excerpt in the *New York Times* on March 4, 1976, read in full: "These are the bodies Yale is exploiting. We have come here today to make clear how unprotected we are, to show graphically what we are being exposed to. These are normal human bodies. On a day like today the rain freezes on our skin. Then we sit on a bus for half an hour as the ice melts into our sweats to meet the sweat that has soaked our clothes underneath. We sit for half an hour chilled...half a dozen of us are sick now, and in two days we will begin training twice a day, subjecting ourselves to this twice every day. No effective action has been taken and no matter what we hear, it doesn't make these bodies warmer, or dryer or less prone to sickness. We can't accept any excuses, nor can we trust to normal channels of complaint, since the need for lockers for the Women's Crew has existed since last spring. We are using you and your office because you are the symbol of Women's Athletics at Yale; we're using this method to express our urgency. We have taken this action absolutely without our coach's knowledge. He has done all he can to get us some relief, and none has come. He ordered the trailer when the plans for real facilities fell through, and he informed you four times of the need to get a variance to make it useable, but none was obtained. We fear retribution against him, but we are, as you can see, desperate. We are not just healthy young things in blue and white uniforms who perform feats of strength for Yale in the nice spring weather; we are not just statistics on your win column. We're human and being treated as less than such. There has been a lack of concern and competence on your part. Your only answer to us is the immediate provision of use of the trailer, however inadequate that maybe. -- Yale Women's Crew 3/3/1976" (Mazzio 1999).

> We have come here today to make clear how unprotected we are, to show graphically what we are being exposed to. These are normal human bodies. On a day like today the rain freezes on our skin. Then we sit on a bus for half an hour as the ice melts into our sweats to meet the sweat that has soaked our clothes underneath. We sit for half an hour chilled...half a dozen of us are sick now, and in two days we will begin training twice a day, subjecting ourselves to this twice every day. No effective action has been taken and no matter what we hear, it doesn't make these bodies warmer, or dryer or less prone to sickness. We can't accept any excuses, nor can we trust to normal channels of complaint, since the need for lockers for the Women's Crew has existed since last spring. We are using you and your office because you are the symbol of Women's Athletics at Yale; we're using this method to express our urgency (Ernst 1976).

The next day, the *New York Times* ran a story about their protest. Warner, was quoted in the article: "For months Barnett [the director] has ignored our request for the zoning variance necessary to get electricity and hot water into the trailer" [erected for the women's team, but never made serviceable] "and we'll probably get it when Peter Pan comes back to life" ("Yale Women Strip To Protest a Lack Of Crew's Showers" 1976).

The women on the Yale rowing team were like many athletes across the country in 1976—beholden to *de jure* claims for treatment equal to their male counterparts thanks to Title IX, but *de facto* discrimination. As the federal government continued to negotiate the means of implementing Title IX, many institutions continued to drag their heels at the prospect of changing age-old sexist practice. By 1976, the public and governmental

institutional debate had concluded that athletic programs must be included in its purview but Yale University had not taken action to see its full implementation.

On the one hand, the university was following the letter of the law. They hosted a *women's* rowing team for *women* athletes at Yale, thus fulfilling the law's most basic requirements. Indeed many colleges and universities were beginning *de jure* compliance to the letter of the law. Between 1966-67 and 1976-77, the number of women participating in college athletics went from 16,000 to 64,375 (U.S.C.O.C.R. 1980b). At the same time, educational institutions were slow take action to comply with the law and to dispel *de facto* discriminatory practices. Women like those on the Yale rowing team were part of politicizing these disparities. At the close of their statement to the athletic director, Ernst stated: "We are not just healthy young things in blue and white uniforms who perform feats of strength for Yale in the nice spring weather; we are not just statistics on your win column. We're human and being treated as less than such".

In this demonstration, the rowers had claimed their bodies for Title IX, implicitly threatening some form of legal action to demand the law's enforcement. This act of political protest is one of the most widely known demonstrations in college athletics of the 1970s. Ernst had alerted the same *Yale Daily News* staffer who also provided stories and photos to the *New York Times*. He would file a story of the demonstration at the *Times*, enabling news of the protest to circulate across the country. After news spread of the protest and alumni letters and donations began to flood onto campus, the University quickly hooked up water to make-shift showers and built a permanent women's locker room the next year. In short, the women had effectively mobilized for the right to fair

treatment using the law that had only recently attached a set of rights to sports-settings. The mobilization of Title IX to claim rights for female athletes had only just begun.

This protest illustrates several things about the politics of Title IX. Although Yale's response to the protest came without state intervention, its response to the demands of the women rowers occurred in light of still-emerging federal policy guidelines. In March of 1976, the process of disseminating information about the means of policy enforcement were still on-going and would eventually require the federal government to issue another sport-specific policy interpretation memo in 1979 to settle unanswered questions regarding the nature and boundaries of compliance with policy (HEW 1979). In 1976, four years after the passage of law, the *threat* of Title IX continued to loom larger than any specific examples of federal government action to directly enforce the law.

The rowers at Yale invoked this threat by painting the text of the law on their bodies. In the subsequent thirty years, many other women would act in similar ways, *threatening* to take bureaucratic or legal action against their educational institutions. To this day, the *threat* of action through Title IX remains a more powerful tool than actually mobilizing the Office for Civil Rights (OCR) to address claims of discrimination. As I explore throughout this manuscript, female athletes have struggled to force the federal government into an offensive posture when it comes to enforcing Title IX. Women athletes who have suffered discrimination "on the basis of sex" in athletic programs have secured more robust compliance outcomes through the courts, or through the *threat* of

pursuing legal cases through the courts, than they have been able to secure by filing claims of discrimination with the OCR.

Thus the Yale example illustrates what would emerge as a frequent means for policy implementation on college campuses. Female athletes, suffering perceived conditions of discrimination by their athletic programs, were more likely to expedite quick responses from their colleges and universities if they found ways to creatively mobilize their Title IX rights. As became clear throughout the 1990s, legal proceedings and multiple appeals could stretch on for years, outlasting the competitive collegiate career of the athlete(s) who brought the case. The Office for Civil Rights was quickly developing a reputation of slow response to Title IX claims as well. Thus the symbolic invocation of Title IX, exemplified through the Yale protest, may have seemed, in 1976, to be as good a means of leveraging institutional response as any that engaged with the federal government.

The Yale women also embodied what would become a more common symbolic act within the policy domain of Title IX. The attachment of Title IX to the physical body, implicitly articulating the notion that "these bodies" were themselves kinesthetic manifestations of federal policy, enabled girls and women to claim: "I am Title IX". Although these types of protests occurred throughout the forty year history of policy implementation, it is worth noting that even in its relative infancy, the symbolic life of Title IX was distinct from other policies of its type. Women athletes were able to proudly claim Title IX as means for political mobilization, written on their bodies, and this example illustrates one way in which Title IX was quickly emerging as an

exceptional civil rights policy. Throughout the 1970s, feminists were also mobilizing to secure rights in the workplace (Mayeri 2011; Turk 2010, 2011). Yet the historical record does not proudly reveal stories of women and racial minorities occupying space in their potential employer's office, claiming "I am affirmative action" in such embodied ways. Even in during its infancy, Title IX's alleged race-neutrality, and ethos of fair "opportunity", enabled these effective initial protest politics for the female athlete.

Still, for those who know the culture and mentality of the sport, a demonstration of this type seems an unsurprising event amongst a group of rowers. Although looking back on the Yale protest enables us to project a broader trajectory of politics, in the moment, a protest of such audacity required unique solidarity amongst the group, and almost unfettered confidence. Elaine Mathies, a then-freshman on the team, recollected: "One of the greatest thrills of rowing occurs when the entire boat moves together, and you feel like you have the power of the boat at the end of your oar" (Wulf 2012).[3] In a sport where teamwork is fundamental, athletes are often driven to engage behaviors most people would consider extreme. Jennie Kiesling, another member of the Yale crew who now coaches the novice men's team at West Point, summarizes: "Someone once described rowing as having a vacuum cleaner hose stuck down your throat, sucking out

[3] My own athletic opportunities are tied quite directly to the law's implementation at the University of Minnesota, my undergraduate institution. Rowing was added as a varsity sport during my freshman year of college and I had a front row seat to policy implementation as the University of Minnesota added women's rowing as a part of its Title IX compliance initiative. I rowed in college and then went on to coach with the team for five years. Not only was I a policy beneficiary as an athlete, I also benefited from a well-funded program in my career as an assistant coach.

your lungs, while having sulfuric acid splashed on your legs. That's the pain. But there's also the power you feel from pushing yourself through the pain, and the harmony you feel when everyone is pushing each other. That's rowing: pain, power, and teamwork" (Wulf 2012).

Few sports force this kind of singular solidarity, and it likely played a role in the organization of the 1976 demonstration. Still, the Yale protest signified something larger. The literal embodiment of public policy in political protest crystallized a political identity. Once the rowers at Yale created a template for mobilizing the identity of the "female athlete" others were quick to follow.[4] Rarely did Title IX rights-claiming garner national news coverage in the sensational form chosen by the Yale women, but over the past forty years women have mobilized on college campuses, in courtrooms, in the halls of the U.S. Congress, and at political rallies across the country to infuse meaning in this political identity.

Theorizing sex and gender in the literature on political history

This chapter takes this political mobilization as a point of entry for a discussion of the scholarly literatures that help me address the research questions, posed in Chapter 1. I choose this protest as a point of departure for several reasons. First, it highlights the importance of turning to an historical approach to studying politics in order to make sense of Title IX. The Yale demonstration suggests that significant social practices were colliding with age-old institutional structures in ways that were made freshly political with the passage of policy. Scholars have studied other domains where these tensions

[4] Similar protests happened at Stanford University, where women's basketball players occupied the athletic director's office demanding uniforms and the use of courts for practice (Wertz 2012).

have unfurled and thus I begin with a review of work on the history of politics as it pertains to other gendered policy domains. Through reviewing approaches to the study of gender in political science, I demonstrate why a turn to history is required in order to address my research question.

Second, the Yale protest suggests that the rowers were mobilizing for protest around a political identity emerging out of policy. I use this story to illustrate one example of a political process that has become one central outcome of Title IX: political design and implementation have created the conditions under which politics have constituted the political identity of the "female athlete". The events at Yale in March of 1976 exemplify this. This thesis will trace the processes through which institutions of the U.S. created the conditions for this identity to emerge. In doing so, I demonstrate how politics create identities based in and productive of political categories. Thus I review literatures in this chapter that demonstrate other venues and mechanisms through which the U.S. state has constituted political categories, focusing particularly on the domains in which "women" have been constructed to give meaning to the categories of "sex" and "gender". This theoretic contribution is central to my project.

Finally, although the story of rowers at Yale is generally thought of in salutary ways, I also invoke it to demonstrate the complication inherent to expanding opportunities to sport for women through educational institutions. The women who engaged in the Yale protest were already beneficiaries of extraordinary privilege.[5]

[5] The mere admittance and enrollment at Yale University positions students in extraordinarily privileged spaces. After finishing their degrees, the women of the 1976 Yale Crew have gone on to occupations and public positions of significant prominence. Their accomplishments, detailed

Although their social and class privileges should not diminish the contribution they made to advancing the aims of women athletes across the U.S., the ways in which their privilege was unmarked helps to reveal how race, class, and ability have come to inform the implementation of Title IX and its overwhelming popularity amongst most Americans.[6] Thus I review the literature on gender, race, and class-based approaches to the study of sport in order to articulate why politics presents a compelling venue through which to re-think the social meaning of sports.

As I review these literatures on sport, politics, and social change I will build a case for understanding the developments of politics around Title IX as non-linear, uneven in their consequences, and productive of a "closed world" of recursive understandings of sex, gender, and political possibilities. Scholars across intellectual traditions can help us understand the politics of policy implementation as historically-bound human practices. By unpacking the role of how particular understandings of "rights", justice, and progress become endogenous to a specific policy domain I aim to also demonstrate the means through which these insufficient political solutions might be denaturalized and possibly remade.

The Cycles of Politics: Thinking through "feedback"

Scholars of the U.S. state increasingly engage historical lenses and sources in order to investigate questions central to the discipline of political science. Social

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in an *ESPN Magazine* article, range from sporting-related (several went on to become Olympians; one, a world champion in Tae Kwon Do; and another, the owner of an WNBA team), to professional (there are lawyers, doctors, professors, teachers, and plumbers) (Wulf 2012).

[6] Public opinion towards Title IX has been strikingly positive in multiple, nationally representative polls from 1974 to 2011.

scientists, particularly those policy scholars interested in understanding how policy implementation effects cycle or "feed back" into subsequent political processes have asked both: 1) How political battles over the meaning of law shape policy design and implementation?, and 2) How, then, does policy design and implementation shape social and political categories and identity? Like other scholars of "policy feedback", I think of these questions as inter-related, and illustrative of how policy in one period can create implications for politics in a subsequent moment (A. L. Campbell 2012; Mettler and Soss 2004; Pierson 1993).

These questions, through which my thinking engages with Title IX, inherently turn to history. Although a historicized approach to the study of public policy is not always required, I argue that questions about how Title IX has recursively shaped the meanings of politics and political identities, demands historical thinking. Scholars of American Political Development (APD) have long argued that historical approaches to the study of politics can help reveal the mechanisms for change and stasis over time in political regimes, ideologies, and alliances (Brandwein 2011; D. S. King and R. M. Smith 2005; Orren and Skowronek 2004; Pierson and Skocpol 2002; Pierson 2004; Zelizer 2010). Increasingly, scholars of public policy have incorporated historical approaches to understanding policy as a means for social change, (i.e. Boris 2009b, 2012; Hacker 2009; Pierson 2009; Zelizer 2009).[7]

[7] This scholarship is broadly cross- and interdisciplinary. Recent review articles trace distinct but parallel traditions ranging from the law and society tradition in sociology (Edelman, Leachman, and McAdam 2010; Gómez 2010; Seron and Munger 1996), public law in political science (Brandwein 2011), and policy history (O'Connor 2000; Zelizer 2010).

Elements of this subfield address concern over political marginality, theorizing the roles of institutions, mobilization, and time in bringing about social change. Increasingly, scholars of the history of policy have paid heed to the role of emerging feminist and critical paradigms, incorporating gender at the center of analysis (Boris 2009a, 2009b). Although a growing number of scholars study policy history through the lens of gender (and gender at the intersections of class, race, sexuality, and ability), the work on policy history is conceptually distinct from other political science approaches.

The Study of Gender in Political Science

The discipline of political science approaches the study of gender from a variety of subfields ranging from: mass politics, voting behaviors, campaigns and elections, political history, social movements, interest group politics, and formal political institutions (Wolbrecht, Beckwith, and Baldez 2008). "Gender" as a concept in political science is frequently deployed to study women as political actors: women as candidates (e.g. S. Carroll 1994; Huddy and Terkildsen 2009; Lawless and Pearson 2008; McDermott 1997), women as political representatives (e.g. Dodson 2006; Gerrity, Osborn, and Mendez 2007; McDonagh 2010; Pearson and Dancey 2012; Reingold 2000; Swers 2002), women in political parties (e.g. Sanbonmatsu 2002, 2006; Wolbrecht 2010), women as voters (e.g. Kaufmann and Petrocik 1999), and women as political role models (D. Campbell and Wolbrecht 2008).[8] "Gender" in this usage refers to a set of political experiences and outcomes experienced by American women, distinguishing them those experienced by American men. To this end, scholarship in political science which uses

[8] These concerns were considered more thoroughly in several "Critical Perspectives" in *Politics & Gender* (Beckwith et al. 2005; Burns 2007; Junn 2007).

the experiences of women as its primary data source or unit of analysis is performing a type of "gender analysis" which fundamentally relies on the distinctions of "sex" and sex difference between women and men. Although scholars often invoke the term "gender" to describe the analytic unit of interest through which sex and sexual difference take on social and cultural meanings, much of the research in American politics uses women, sex and gender interchangeably.[9]

All of these concepts are at play in the realm of what we might think of as "gender politics." By *gender politics*, I mean: the set of issues and processes debated in political arenas (including traditional political institutions, but also the venues of mass and cultural politics) that constitute debates over the meanings of biological sex, manhood and womanhood, femininity and masculinity, women and men, and the continuum of gender in American politics. Gender politics, like—and in conjunction with—race, class, or sexual orientation politics, are produced and contested through complicated arrangements of institutional regimes and protest politics, unfolding over time in ragged and uneven ways. Gender and *gender politics* are constituted by political actors and institutions in empirically identifiable ways. By studying the case of Title IX, I suggest that we can identify the way in which policy implementation and it's cyclical political "feedback effects" have played a role in constituting and changing gender politics in the U.S. context over the past forty years.

[9] For many scholars, particularly during the 1980s, this focus on women was intended to rectify the perceived excess in studies of men in a political landscape historically dominated by male politicians and masculinized political agendas (Flammang 1997).

Sex non-discrimination policy in the realm of education is one arena in which gender politics are produced, although it is surely not the only area in which the U.S. state is implicated in shifting understandings of what sex and gender mean in social and political contexts. In addition to these understandings of what "*gender*" means in politics, we may think about how *gender* operates as a structuring conditions for political relationships. If we consider *gender* as something that exists and is constructed in and through political institutions, we can see how "…gender is a constitutive element of social relationships based on perceived differences between the sexes, and gender is a primary way of signifying relationships of power" (Scott 1986, 1067), rather than merely a concept through which political science studies sex.

Scholars of policy and political history approach gender and sex in a few distinct ways. Some are interested in exploring the role of the state in constructing understandings of sex and gender through policy (Gordon 1995; Luibhéid 2002; Mettler 1998; Ritter 2006; Skocpol 1992). Others have discerned how sex, gender, and gender politics have constituted the institution of the state itself (Edwards 2010; Skocpol et al. 1993; Strach and K. S. Sullivan 2011; Strach 2007). The advent of major legal traditions have lead scholars to analyze the roles of the Equal Rights Amendment (Critchlow and Stachecki 2009; Mathews and Hart 1990), New Deal policies (Kessler-Harris 2001; Mettler 1998; Novkov 2001), marriage (Cott 2000; Kerber 1998), and abortion rights (Luker 1985; Wheeler 2012) in shaping social and political repertoires of gender.

To a greater or lesser extent, this work considers gender at the intersection of other dimensions of political marginality. Responding to the "intersectional" turn in critical

legal studies (Crenshaw 1989, 1991) and feminist studies (Cho, Crenshaw, and Mccall 2013; McCall 2001, 2005; Nash 2008), political scientists have only recently expressly incorporated theoretic orientations to multiple dimensions of power, privilege, and oppression simultaneously (N. Brown and Junn 2008; Hancock 2007; Junn 2007; Ortbals and Rincker 2009; Strolovitch 2006, 2007, 2013; Weldon 2006).[10] Much work in women's policy history has paid careful attention to the overlapping conditions of race, class, sexuality, and gender (Canaday 2009; Kessler-Harris 2001; Mumford 2012; O'Connor 2002; Quadagno 1996; Roberts 1997, 2002).

Beginning in the 1970s and 1980s, women's historians were among the vanguard in developing scholarship. Scholars like Linda Kerber (1998), Jane DeHart (Mathews and Hart 1990), Alice Kessler-Harris (Kessler-Harris 1982, 1990, 2001), Nancy Cott (Cott 1987, 1989, 1998, 2000), Linda Gordon (Fraser and Gordon 1994; Gordon 1988, 1990, 1995, 2002) and Joan Scott (J. W. Scott 1986, 1999) endeavored to build a field where in the histories and subjectivities of women would be taken seriously. Their work informed a generation of scholars of social history, women's legal history, and feminist theorists (for example, Judith Butler and Weed 2011; Canaday 2009; Kunzel 1995; Welke 2001) The first teaching compendium on U.S. women's history is now in its seventh edition (Kerber, Hart, and Dayton 2011). Collectively, these works demonstrated the critical importance of structural forces of labor markets, social welfare policies, marriage rights constituted the conditions of women's lives (see also: Cobble 1991, 2005; May 2010; L. J. Reagan 1996).

[10] Many scholars outside of political science engage in intersectional approaches as well (i.e. McCall 2001, 2005).

Contemporary histories of the second-wave women's movement supplement these histories, detailing the political means through which women have organized to demand progressive legal rights and recognition over the past forty years (Evans 1979, 2010; Rosen 2000). These histories give context to the decade preceding the emergence of Title IX, detailing how lobbying for legislation to address sex discrimination in education was one element of many through which feminist activists policies addressing workplace discrimination (Mayeri 2011; Turk 2010, 2011), reproductive rights (May 2010; L. J. Reagan 1996; Staggenborg 1988), pay equity (McCann 1994), and family policy (Albiston 2010; E. Kelly and Dobbin 1999).

Historical approaches are necessitated when the research question considers change over time, yet these more contemporary policy histories are less central to scholarship in political science. Historians have detailed complex interactions between the operations of institutions in constructing the meanings of sex, gender, masculinity, and femininity, all of which require careful attention to context. Scholars of political science could learn about the context and dynamic relationships driving change in understandings of gender over time through the turn to history. The conditions defining the social and political meanings of sex and gender have evolved dramatically over the past forty years. Scholars of gender in political science should be interested in understanding how these changes have informed the major questions of the field (like, why women continue to be under-represented in formal political institutions), particularly in light of the mutual understanding amongst scholars that gendered inequalities continue to evolve and take new form (Beckwith et al. 2005; Burns 2007; Wolbrecht, Beckwith, and Baldez 2008).

The fundamental categories of the study of gender in political science derive inter-subjective meaning from social spaces. As I will explore next, these categories are also derived from the actions of political institutions; thus to extent that scholars of politics are making meaning of their categories of analysis from within the domain of politics, close attention to how these categories come to be constituted should be part of the disciplinary project of political science. The turn to history, and means through which historical analyses foreground the importance of time and "longitudinal dynamism", allow for the problematizing of progressive narratives that may otherwise flatten intersectional marginalization (Strolovitch 2012).

Political theorists like Iris Marion Young have cautioned against flatly assuming that women as a political group are internally homogenous across time and space (Young 1994). We ought to be equally skeptical of the means through which politics construe functional meaning to the legal categories of sex and gender through which women have found political inclusion. Thus my work contributes to both the contemporary history of women, sex, and gender in the U.S., as well as the political definitions of the categories that analyses thereof rely on. By focusing on the dynamic and recursive ways that sex and gender have taken on meanings in the policy domain of Title IX my work demonstrates how cycles of politics make meaning of social and cultural conditions over time (and vice versa).

Political construction of categories

Scholars have identified the ways in which policy shapes the meanings of political categories in a variety of dimensions. This intellectual tradition stretches back at least as

far as Louis Althusser, who argued that law "hails" people into being (Althusser 1977). In the domain of policy research, Anne Schneider and Helen Ingram's 1993 article "Social Construction of Target Populations: Implications for Politics and Policy", which theorizes how social constructions of policy target populations shape the policy agenda, was especially generative for scholars interested in identifying the processes through which policy and identity categories are mutually constitutive (Schneider and Ingram 1993). There are many corollary examples of political processes, identified by other scholars of history of law and public policy that empirically trace these processes.

Many scholars demonstrate how the U.S. Census has created, in different ways over time, the very meaning of race and racial categories (Goldberg 1997; Mezey 2003; Nobles 2000; Rodríguez 2000). Likewise recent work from historian Margot Canaday traces the processes through which the U.S. state came to "know", and therefore imbue certain meanings into the category of the "homosexual", in immigration policy, welfare policy, and the practices of the U.S. military (Canaday 2003a, 2003b, 2009; Luibhéid 2002).

Political scientist Andrea Campbell demonstrates how social security policy constituted its own policy constituents. Not only did the creation of Social Security bring economic stability to aged Americans and their adult children, its naming of a certain age through which citizens might choose to retire gave meaning to the life-stage of being elderly, and, under certain conditions, free from the requirement to work. Social Security has both created a political constituency of "retired Americans" and has fundamentally demarcated specific political meanings to the category of "age" (A. L. Campbell 2003).

In similar ways, the creation of policies to address discrimination against the physically disabled through the American with Disabilities Act has, in some sense, created meanings around what it means to be able-bodied, and under what conditions the otherly-abled might have standing to demand accommodation in order to access material, public space, as well as respect across physical difference (Switzer and Vaughn 2003).

Finally, a long line of work on the history of social policy suggests that policies makes meaning in the most basic political categories and processes of citizenship, belonging, deservingness, and inclusion (Fraser and Gordon 1994; Gordon 1995; Kessler-Harris 2001; Skocpol 1992; Soss 2000). The shared understandings of social and political categories shape the very meanings of identity and the practices of mobilization across policy domains, and in varying ways throughout American history. I argue that, over time, Title IX's design and implementation have shaped the meaning of the category of sex in similar ways.

The meaning of "sex" construed through Title IX's application to sports attaches a legal category to the body in unique ways, most similar to the construction of physical ability as a characteristic of dis/ability law. But in sports, the meanings of sex are forged with physical bodies in very strict and conservative ways. Although Title IX only employs the strict male/female binary understanding of sex to sporting bodies as a means of policy design, its implementation in the realm of sports—the domain in which bodies are presumed to be "most natural"—re-naturalizes and extends the biological understanding of sex to broader social categories as well.

Sex-testing and the policing of binary definitions of sex

These social categories are brought to bear on sporting venues in very particular ways, codified in the policies of the International Olympic Committee (IOC). In this section, I detail the history of policy directed at determining biological sex in sporting domains. Although the means of determining sex for policy implementation in American college and high school sports has not included the extreme measures of testing for sex that are dictated by the IOC and the International Amateur Athletics Federation (IAAF), it is critical to situate the decision to invoke biological sex in Title IX's implementation guidelines in the broader context of sports institutions' approaches to "testing" sex. This helps to understand the means through which biology became naturalized as a marker of sex in U.S. sports in the 1970s, as well as underscoring the routinized practices of violence that comprise sex testing in sports.

Since 1968, the IOC has consistently, through shifting metrics, required athletes wishing to compete in women's events to submit to sex verification testing (I. Ritchie 2003). This practice, known as "sex testing", "gender verification", or "femininity controls" had been used exclusively on female athletes until a change in policy during the 2000 Sydney Summer Games (I. Ritchie 1996a, 2003). [11] Female athletes, but not their male counterparts, were required to submit to these tests in order to compete in the Olympic Games and current policy remain focused on policing gender non-normative bodies of women. The IOC historical records do not delineate a specific reason for beginning sex testing of female athletes, but their consequences for understandings of sex

[11] Required sex testing was eliminated in the 2000 Sydney Summer Olympics, but the IOC has reserved the right to selectively test bodies deemed ambiguously gendered (C. L. Cole 2000).

and gender have been quite complex.[12] Scholars speculate that the policy was inaugurated to guard against men posing as women athletes in an attempt to achieve an "unfair advantage" in the women's event (I. Ritchie 2003; Wiederkehr 2009). The introduction of physically invasive procedures for female athletes pursuant to an ethic of "fair play" continued for years, even though medical doctors have long lobbied for the end of this practice (Simpson et al. 2000; C. F. Sullivan 2011).

In practice, sex testing has taken multiple forms. Ad hoc sex testing began at least as early as the 1936 Berlin Games, but it was first officially required in 1948 (Heggie 2010). In 1946, the International Amateur Athletics Federation (IAAF) had introduced a rule requiring female competitors to produce a medical certificate confirming their sex, a rule then adopted by the 1948 Olympic committee. However it was not until 1968 that the IOC standardized procedures for sex testing. The tests were purportedly "scientific", but the dubious descriptions recalled by athletes who endured them suggest otherwise. American shot putter Maron Sidler said of her experiences in the 1967 Pan-American Winnipeg Games:

> They lines us up outside a room where there were three doctors sitting in a row behind desks. You had to go in and pull up your shirt and push down your pants. Then they just looked while you waited for them to confer and decide if you were OK. While I was in line I remember one of the sprinters, a tiny, skinny girl, came

[12] Not only did the use of sex testing have consequences for shared understandings of sex and gender, but it was also interrelated with concerns leading to drug testing (T. M. Hunt 2007b, 2011). For more on this, see: (Beamish and I. Ritchie 2005; C. L. Cole 2000; L. R. Davis and Delano 1992).

> out shaking her head back and forth saying: 'Well, I failed, I didn't have enough up on top. They say I can't run and I have to go home because I am not 'big' enough (Larned 1976, 8).

The first athlete disqualified by virtue of sex testing was a competitor in 1968 Winter Olympics, four years before the passage of Title IX (Heggie 2010). At the time, the test used by the IOC was the Barr Body test, which involved swabbing the cheek to test for cell's chromosomal make-up. However since 1968, the IOC has relied on various combinations of the (at least) six markers of sex (Karkazis et al. 2012). Feminist biologists and medical practitioners have detailed the diversity of methods used to "test" for biological sex, including: chromosomes, gonads, hormones, external and internal genitalia, and secondary sex characteristics (Fausto-Sterling 2000; Karkazis et al. 2012; E. L. Kelly 2010; Sánchez, Martínez-Patiño, and Vilain 2013; Simpson et al. 2000; Stephenson 1996).

As will become apparent in the chapters that follow, the U.S. state has relied on biological sex to implement Title IX in sports despite significant disagreement about the location or determination of biological sex. Over the past fifty years leading up to the passage of Title IX and during its implementation, the IOC has selected various markers for "testing" sex in various Olympiads. In the 1960s, female athletes had to submit to compulsory "nude parades" wherein physicians visually inspected their genitals (R. Ritchie, Reynard, and Lewis 2008; Simpson et al. 2000). Chromosomal tests were used from the late 1960s until the mid-1980s when an athlete disqualified on the basis of the test challenged the basis of the ruling with evidence that her chromosomal make up gave

her no unfair advantage of other "female" athletes (Cheryl L. Cole 2000; Karkazis et al. 2012). Subsequently the IAAF abandoned the chromosomal test, returning to visual inspections until the 1992 Games.

During this same period, Title IX's implementation guidelines remained silent on these shifting policies, allowing schools to determine sex in whatever means necessary. To my knowledge, female athletes in American high schools and colleges have not been forced to submit to similar "tests" of their sex. Still, the lack of debate within political institutions on the meanings of sex in sports suggest the extent to which sex was naturalized, even during a period when the IOC was attempting to stabilize its slippery, discursive and biological ambiguities.

In the mid-1990s, the IOC turned to testing genetic markers of sex (the "SRY" gene) under the belief that the presence of such markers was "the source of male athletic advantage" (Karkazis et al. 2012, 7). These also proved inconclusive, leading the IOC to abandon universal sex testing in the 2000 Sydney Olympics, instead creating policy that allowed for ad-hoc examination of bodies that had been called into question using a barrage of clinical tests (Simpson et al. 2000).

Despite the best efforts of the IOC to constitute a stable category of binary, biological sex, historical practices and medical science have demonstrated the futility of this project. There is therefore some irony that in these same moments of rather dramatic debate over the meaning of sex, the implementation of Title IX "on the basis of sex" proceeded with so little discussion of the sex testing events that were making

international news.[13]Over time, the tests were more likely to identify athletes with intersex traits than to reveal athletes masquerading a women (Cooky and S. Dworkin 2013; J. Schultz 2011; Simpson et al. 2000).[14] Further, the policies since 2000 have resulted in the hyper-surveillance of gender non-normative bodies that defy feminine expectations of beauty.

Nowhere was this more clearly illustrated than in the case of South African runner Caster Semenya. Semenya's victory in the 800m 2009 Berlin World Championships in Track and Field was challenged by her competitors. Although their concern was ostensibly rooted in her unusually quick ascendance to the top of the elite 800m pack, questions about her sex played out in indictments of her gender presentation (Buzuvis 2010a; Cahn 2011; Cooky and S. Dworkin 2013; S. L. Dworkin, Swarr, and Cooky 2013; Vannini and Fornssler 2011). She was subjected to a barrage of invasive tests (as well as an intrusive media spectacle) to determine her biological sex and was only allowed to

[13] Scholars who write about sex testing in the IOC demonstrate that news of sex tests—particularly those which "found" allegedly non-female, female athletes—traveled in news reports worldwide (Cheryl L. Cole 2000; I. Ritchie 1996b, 2003; Wiederkehr 2009). Thus it was less a case of U.S. political actors ignorance to the practice of sex testing, and more a case of policymakers collectively ignoring the internal inconsistencies that science revealed were central to the practice itself.

[14] During this same time period, few transsexual athletes had spoken publically about their trans* status. Elite examples included Renee Richards famous 1977 challenge to the US Tennis Association requirement that athletes must possess two X chromosomes in order to complete in the women's competition (Birrell and Cheryl L. Cole 2000; Buzuvis 2013).

participate in the 2012 London Olympics after submitting to testosterone lowering hormonal regimens (Ellison 2012; Karkazis et al. 2012).[15]

Semenya's case was particularly illustrative of both the means through which sporting practices have constructed the category of sex as a binary, but also of the means through which this category is racialized. Semenya's detractors were primarily Eastern European, white athletes, whose public comments were the main impetus triggering Semenya's gender surveillance. "Just look at her", instructed the fifth place finisher from Russia (A. Levy 2009). "These kind of people should not run with us…For me she is not a woman. She is a man", accused the sixth place competitor from Italy (A. Levy 2009). Semenya's non-normative gender performance was policed at the intersection of her racial identity. Black athletes are often hyper-policed by racist understandings of innate, yet excessive, physical ability (Carrington 2010). Black female athletes exist in a fragile space of exception where the requirements of femininity are always already defined by whiteness in ways made inaccessible to women of color.[16] Thus Semenya's body was subjected to discourses of race and racism, nationalism, and sexuality that her competitors suggested could exclude her as a legitimate female competitor based merely on "looking at her". She was said to be too Black, and therefore masculinized, to be female; too masculine, and therefore unfeminine, to be white.

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[15] These interventions, for Semenya and other athletes, are not without potential consequence. They may be more likely to develop breast cancer, ovarian cancer, strokes, and heart attacks as a result of the unnecessary medication (Ellison 2012).

[16] For further discussions about the simultaneous role of race in constructing sex and gender in sport, see: (Birrell and McDonald 2000; Hancock 2008; Hargreaves 2000; Newhall and Buzuvis 2008).

Semenya had little recourse to contest the IAAF's choice to physically examine her body to make a determination of her sex. She was only eighteen years old and was previously sex tested after a junior-level in at the African championships. Her title was temporarily stripped and it was implied she had to "prove" her true sex by submitting to bodily examinations requiring her to place her legs in stirrups for two hours while doctors photographed her genitals (Karkazis et al. 2012; A. Levy 2009). Worse still, during the processes of sex testing, Semenya was under the impression that she was undergoing standard drug tests triggered as a result of her win (Karkazis et al. 2012).

This scenario illustrates the lengths to which the IOC has gone to police binary understandings of the category of gender. To this day, the International Olympic Committee enacts sex testing of female athletes, but not men, in order to strictly police and exclude bodies that defy the scientifically imprecise measures of biological sex. These measures define the meaning of sex, and binary categorization of bodies for competition for sports in most contexts.[17] The Olympics are the foremost international athletic competition and while the Olympic rules do not apply in all amateur settings, because the Olympic Games represent the ultimate competitive venue, they are the vanguard in how sports operate in sub-Olympic venues.

Governing bodies aiming to follow the IOC's lead on sex testing would struggle to find a single method. The IOC has relied on six distinct measures of sex, employing

[17] Some sports, like mixed martial arts and mountain biking, have accommodated trans* identified athletes (Duthie 2005; Zeigler 2013). However, in most sporting spaces, including U.S. college athletics governed by the NCAA, inclusive policies for trans* athletes are few and far between (Griffin and H. Carroll 2010; Lovett 2013).

different measures in different Olympic cycles, to legitimate bodies as sufficiently "female". Yet these measures are themselves internally inconsistent, leading, in some cases, the same athlete, in different Olympic Games, to pass, then fail, the allegedly scientific sex test. The logic that they rely on promotes an ideology of biologically dimorphic sex, knowable by scientific practices and measures even though, in practice, these same logics breakdown. What matters in the context of Title IX is that sex testing persists in international sporting competition *despite* the internal inconsistencies of the metrics to measure sex. I focus on sex testing to demonstrates how deeply naturalized sex difference has become—particularly in the past forty years—such that the premise of binary sex remains salient even when medical science has proven the faults of the premise itself. The history of sex testing and the IOC demonstrate how need to legitimate sex-segregated organization of sports allow the tail to wag the proverbial dog. Sports exist as a closed world, seemingly impervious to the challenges even from science and medicine. A means of verifying sex becomes required for the maintenance of a sex-segregated system, and a sex-segregated system derives its legitimacy from policing bodies that defy categorization into compliance with the system.

Further, the practices in elite sports drive the norms for lower-level competitions. Although Title IX does not directly engage in the practices promoted by the IOC and the IAAF, political solutions promoting sex-segregation as the means of policy implementation operate using the same logics. In this sense, politics operate above and beyond science to constitute sex as "real" for the purposes of policy implementation.

Title IX does not require such testing, but it is employed within a system of sports that relies upon a strict understanding of binary sex that even science admits is only imagined.

The "female athlete", and the rights supposedly secured for her through Title IX, thus exists at the exclusion of queer bodies by many definitions. Increasingly, and ironically, in classrooms, Title IX is being used to protect against this form of discrimination on the basis of gender-identity in cases pursued by the Obama administration's Department of Justice. Yet the same law, implemented in this paradoxical fashion when it comes to sports, cannot protect gender non-normative bodies against discrimination in the space of athletics teams.

Instead, various sporting contexts promote sex as a category of distinction in myriad ways. Sex testing is the most invasive, but sex-specific rules for the same sport in different contexts also illustrate this. In many sporting contexts like ice hockey and lacrosse, the equipment, rules, and playing spaces operate with different rules for women than for men. Physical contact between players in lacrosse and hockey is penalized in the women's game, even as it is the defining feature, encouraged when men play the same sport (Theberge 1997). Tennis matches are determined in a best-of-five sets for men, but only three for women (Ware 2011). Softball was a sport expanded for girls and women after a series of court cases in the 1970s allowed Little League baseball to exclude girls from their teams (Ring 2009, 2012). For years, girls basketball was played as a half-court game with 6 players per team instead of the five allowed when the game was played by men (Mcdonald 2002; Shakib and Dunbar 2002). Some of these sex-based rules have waned as women's bodies have proven that sex-specific rules are unnecessary for their

physical safety (Dowling 2000; McDonagh and Pappano 2007). But in many places the same games played under different rules for women vs. men are enabled by sex segregated spheres. So long as women are excluded from the men's game, it remains more difficult for women to prove that they can play with the same rules and skills as men. Thus sex-specific rules for women's games enable the persistence of sexist understandings of why sex matters for sports.

Sex, Gender, and Sports: Interdisciplinary literatures

As I've noted, research about Title IX has yet to explore the ways in which American politics constituted meanings of sex in sports in light of international practices. Title IX and the arena of policy directed at sex discrimination in women's sporting venues is an especially rich and unexplored terrain upon which political understandings of women, sex, and gender are constituted by institutional and cultural practices. Sociologists understand sports as a fundamental non-familial institution wherein the meanings of masculinity, manhood, and maleness are socialized and coalesce with understandings of gender (Birrell and C. Cole 1994; Birrell and McDonald 2000; Hargreaves 1994; Heywood and S. Dworkin 2003; O'Reilly and Cahn 2007). Historically, these sporting practices, competitive teams, and experiences were available primarily for American men. Thus, the political act of establishing state-mandated teams for women in college athletics had important consequences for gender in policy implementation. Although Title IX was a policy designed to change conditions of *sex* discrimination which precluded women from equal participation in athletics, its implementation has fundamentally altered the venues and institutions through which

sports constitute *gender* in femininity and masculinity, maleness and femaleness, women and men(Cahn 1995; Festle 1996).

Scholars have been more apt to study the outcomes of sex inequities in sport, focusing on the problems preventing equal opportunity (Griffin 2012; Pickett, Dawkins, and Braddock 2012), implementation (Stafford 2004; J. Taylor 2005), homophobia (E. Anderson 2011; Griffin 1998; Veri 1999; Weidman 2010), under-representation in the media (Fink 1998; Kane 1996; Lynn, Hardin, and Walsdorf 2004; Wright and Clarke 1999), and the use of female athletes in advertising campaigns (Grow 2008; Heinecken 2013; Helstein 2003a, 2003b; Heywood and S. Dworkin 2003; Lynn, Hardin, and Walsdorf 2004). These works convincingly demonstrate structural inequalities facing women in sports at all levels of participation. The scholarship implicitly theorizes the linked fate of women as a group, concluding that although conditions are not equally bad for all women, conditions are generally worse for all women than for most men.

My work draws upon the gender and sport scholarship and endeavors to demonstrate the political decisions and structures that buttress the American sports system which defines the inequities manifesting in schools, media, advertising, and coaching. The historical chapters demonstrate the centrality of American political institutions in constituting and reifying the category of binary sex through public policy aimed at sports. In doing so, I will demonstrate how political systems have made the system of sex-integration increasingly unthinkable in practice making clear how sex-based inequities are unintentionally remade by public policy.

Further, my work will demonstrate the means through which sex has become an interlocking variable in the construction of sexuality and homophobia in sports. Although this is not merely a contemporary phenomenon (Cahn 1993, 1995), its stubborn persistence even in the wake of the purportedly progressive policy intervention of Title IX suggests that there is a deeper cause. I will argue that the institutional practices of sex-segregation construe the "female athlete" in a discourse of heterosexuality, even as they promote homosocial spaces and inherently "non-feminine" activities for women's embodiment. A figure I call the "looming lesbian" (described below) is inherent to the policy guidelines of Title IX in ways made visible when we look to political history.

The long-standing belief that sport and femininity do not mesh has produced a pronounced history of homophobia, fear of lesbianism and the lesbian stereotype of "female athletes" in women's sports (Cahn 1993; Griffin 1992, 1998). I explore one of the more recent sources of continued homophobia, owing itself to political battles over the Title IX's application to sports in the late 1980s, in Chapter 4. However, throughout I make references to a figure I call the "looming lesbian". This figure is in some ways synonymous with the "female athlete" since performance of athleticism by women inherently defies conventional femininity in ways that are often described as suspiciously masculine and potentially lesbian.[18] Homosocial spaces of sex-segregated sports promote

[18] Historian Susan Cahn captures this dynamic: "Women's sport sparked public interest, dismay, and controversy because it blurred the sexual and gender categories that governed everyday life. Yet it was precisely this ambiguity that also created space for women to explore unconventional gender and sexual identities. Athletically inclined lesbians, in particular, found that the world of women's sport offered possibilities for self-expression and social life despite the homosexual stigma that beset women's athletics. While the contemptible stereotype of the 'mannish lesbian

the sense that women athletes are potentially queer, but lesbianism "looms" in women's sports for more complicated reasons. Sex-segregated sports systems presume an underlying system of heterosexuality, thus the presence of sexual minorities undermines the basic tenet of the system. Lesbians in women sports therefore represent an insurgency to the underlying principle of sex-segregated sports, and so long as traditional gender roles linger in the expectations for femininity, all women in sports are potential lesbian.

Policy attaching to "sex"

The interpretation of Title IX in sports makes it distinct from many policies of the U.S. federal government. Although policies aimed at pregnancy and maternal leave, workplace sex discrimination, women's health and reproduction all attach meanings to the categories of "women" and therefore to "sex" as well, few do so while constituting "separate but equal" spaces for men. Policies attached to pregnancy and reproduction constitute women as distinct and special from the male counterparts. Workplace discrimination policies create the means for inclusion of women into historically men's spaces. But Title IX, in sports, generates special spaces for men and women in ways only mirrored in public restrooms and prisons. I turn next to the empirical chapters describing how, why, and with what consequences in four historical periods.

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athlete' publically condemned the female athlete's gender and sexual transgressions, the existence of this caricatured figure did not prevent gay women from generating an alternative set of affirmative meanings and experiences from within the culture of sport" (Cahn 1995, 185).

CHAPTER III: Constituting the "Female Athlete" as Political Figure: Revisiting the Political Origins of Title IX "on the basis of sex", 1972-1979

"They don't do nothing for girls in Hoboken": Contesting segregation in Little League baseball

In March of 1974, the New Jersey Supreme Court ruled in favor of Maria Pepe, a fourteen year old girl who sought inclusion on the Hoboken, New Jersey "Young Democrats" Little League team. The ruling marked the conclusion of a two year long court battle and coincided with debates over the rights for girls in sport across the institutions of American government. That same year, the U.S. Department of Health, Welfare, and Education revealed the first draft of enforcement guidelines on Title IX, two years after the legislation was originally signed into law.

In 1972, at the age of 12, Maria Pepe was recruited to her local Little League team. Media reports indicate she played three games as the starting pitcher in the summer of 1972, before being dropped from the team—Little League rules prohibited girls from playing baseball, and her local community was opposed to seeing a girl pitcher striking out boy batters (Washington Post 1974). The Little League rulebook technically outlawed sex integrated teams, but the local New Jersey organization had initially enlisted Pepe for her pitching ability. It was only after Pepe had played in two games that her presence became known to national Little League organization and she was instructed to quit the team (Ring 2009).

At the time, Maria remarked: "They don't do nothing for girls in Hoboken, only boys" (Congressional Record 5/22/1974). Historical statistics indicate that Maria's

twelve year old inclination reflected the reality shared by young athletes across the country. Although statistics on youth athletic participation are sparse, in 1971 only 294,015 high school girls participated in high school athletics, compared to nearly 3.7 million boys (NFSHS 2013).[1] In the swell of the modern women's movement, formal political interest groups sought redress for girls like Maria Pepe. The National Organization for Women (NOW) took up Maria's legal case, shepherding it through to the state court. The case was tied up in legal proceedings for two years—long enough for Maria to age out of Little League, ending her career in baseball.

As legal historian Sarah Fields notes: "Generally, rules against women's participation in the game were unwritten—until women tried to play. At that point the rules intended to ensure that the American pastime remained masculine were written. As a sportswriter observed in 1974: 'Baseball is a serious business. It's also clearly understood to be a man's business'" (Fields 2004, 19). In other legal cases, the courts echoed these sentiments, overtly masculinizing sports where girls and women sought inclusion. In the ruling of a 1971 case considering the rights of a Connecticut high school girl to participate on a boy's cross-country team where no similar girls' team existed concluded:

> The present generation of our younger male population has not become so decadent that boys will experience a thrill by defeating girls in running contests …With boys vying with girls in cross-country running and indoor track, the

[1] Recent data suggests that youth sports have grown enormously since the early 1970s, with possibly as many as 21.5 million kids between the ages of 6 and 17currently playing sports in the U.S. (Kelley and Carchia 2013).

> challenge to win, and the glory of achievement, at least for many boys, would lose incentive and become nullified. Athletic competition builds character in our boys. We do not need that kind of character in our girls, the women of tomorrow (Fields 2004, 15).

Logics like these served to exclude women from sports in a few ways. First, they presumed that competition in athletics would serve to foster in women something fundamentally against their nature. The "character" of "achievement" and competitive drive was assumed to be the domain of men, socialized through the masculinizing experiences of boyhood. Girls did not "need" this form of "character", as it was thought to taint their socialization into proper womanhood. Men, it was suggested, would become the aggrieved party in a sex-integrated athletic system, losing the desire to strive for achievement when the achievement was merely that of beating a girl.

In the early 1970s, court decisions on the integration of sports teams "on the basis of sex" were varied and contradictory. Before Title IX, the Fourteenth Amendment made it technically illegal to exclude girls from boys teams, but there were no lawsuits to enforce it (Ring 2009). After Pepe's case, when New Jersey Little League was forced to allow girls to try-out, a parent of one of the boy players remarked: "What I resent most is the courts always telling us what we've got to do. 'You can't go to this school; you've got to go to that school. You've got to be bussed'" (Treaster 1974). The *New York Times* article on the topic of Little League sex integration went on to quote the League president, wondering of the try-out requirement: "They talk about civil rights. Haven't men got civil rights?" (Treaster 1974).

Maria Pepe's story themeatizes several key elements of Title IX's history in the 1970s. Debates over Title IX emerged in the context of the on-going project of desegregation based on race. Political deliberations over the meaning of Title IX, unfolding across the decade, intervened on long-standing gender norms. And changes to the sexed face of sporting venues were immediately implicated and centered on a discussion regarding "rights" for men (to be spared the humiliation of competing with women), and "rights" for women (to gain access to domains for which they had *de jure* privileges for inclusion).

Second, these legal examples from the pre-Title IX era demonstrate how returning to history should denaturalize what we think we know about Title IX. Specifically, we tend to think that the fights over girls gaining access to (boy's) sports is a thing of the past. We have tended to remember the ethos of the NJ State Court ruling in Maria Pepe's favor, and the notion that things were once "less good" for women and girl athletes predominates.[2] But when we return to the origins story of Title IX, it is clear that the notion of progress for women in sports is predicated on the same practice of segregation that Maria Pepe and NOW were fighting against forty years ago.

This chapter will explore these themes and detail how the practice of segregation came to be discretely codified into public policy. By implication, I will argue that the period of the 1970s came to codify the political figure of the "female athlete" in ways that have shaped the contours of politics for the subsequent forty years.

The forgetting of history: Mischaracterizations of Title IX's Origins Story

[2] As explored in Chapters 1 and 2.

As I characterized in Chapter 1, forty years after passage of Title IX of the Educational Amendments of 1972, celebrations of the law proliferated in newspaper articles, op-eds, sport-specific television programming, and political interest group policy reports. Throughout the summer of 2012 commentators praised the seismic shift in the demographics of higher education, and sports specifically, brought about by Title IX's implementation.[3] Many rightly observed the twelve-fold increase in women's sports participation opportunities at the college level, achieved through the implementation of Title IX at colleges and universities across the United States.[4] Although these reports

[3] As I explored in Chapter 1, articles and op-ed pieces appeared in every major newspaper: *The New York Times* (Barra 2012), *The Washington Post* (Greenwell 2012), *The Los Angeles Times* (Sondheimer 2012), *The Chicago Tribune* (Ryan 2012), in addition to multiple smaller news outlets. *ESPNw*, the cable network devoted to coverage of women's sports devoted multiple stories and significant web space to coverage of the anniversary (http://espn.go.com/espnw/title-ix/) as well as a full day's programming on the June 23 anniversary. *Sports Illustrated* published a full issue devoted to the anniversary on May 7, 2012, and *ESPN: The Magazine* debuted a "Women in Sports" Issue to highlight the 40th anniversary on June 5, 2012. The SHARP Center at the University of Michigan hosted a multi-day conference on the legislation entitled "Title IX at Forty: Promise and Progress—Equity for All" from May 9-11, 2012, featuring the work of scholars and activists around Title IX. The National Coalition for Women and Girls in Education published a policy report entitled "Title IX at 40: Working to Ensure Gender Equity in Education".

[4] In 1970, two years before Congress passed Title IX, approximately 16,000 women played college sports, compared to nearly 175,000 men (Acosta and L. Carpenter 2012). By 2011, the number of women competing in college sports grew to over 191,000, while men's participation also increased to nearly 253,000 athletes (NCAA 2012a). In high school athletics, the expansion of opportunity is even more dramatic. In 1971, there was only one girl participating in high school athletics for every twelve boys (Acosta and Carpenter 2012). That year 294,015 girls participated in high school sports to 3,666,917 boys. By 2011, the number of girls athletes had

noted distressing trends in decreased women's coaches for women's teams (i.e. Zirin 2012), persistently higher sports drop-out rates for young girls than young boys (i.e. WSJ 2012), and the continued participation and funding gaps between women and men in colleges and high school (i.e. NCWGE 2012), most sentiments expressed about the law's impact were salutary.

On the one hand, American politics figured centrally in these discussions. As an example, a prominent op-ed in the *New York Times* suggested (without irony) that female athletes should "thank President Nixon" for their increased sporting opportunities. It was, the author argued, Nixon's hand that signed the bill into law (Barra 2012). Elsewhere Dave Zirin, preeminent sports commentator for *The Nation*, suggested (without evidence) that public opinion, circa 1972, had been stacked against allowing women access to sports (Zirin 2012). He argued that data from 2012, showing an 80% public approval of the law, indicates progress in America public opinion towards women's rights.

On the other hand, these discussions were devoid of what is truly political about the story of Title IX. Richard Nixon signed the law, yet when he did so it made no mention of sports. The executive branch did not address implementation guidelines for Title IX until after Gerald Ford was sworn in as Nixon's successor. Zirin's "darkness to

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risen to 3,173,549, compared to 4,494,406 boys, leaving a new ratio of one girl for every 1.4 boys (Acosta and Carpenter 2012). As C.J. Cregg, the presidential press secretary character on the long-running television show *The West Wing* said in the 2002 episode featuring a subplot about the policy: "Since Title IX, women's participation in sport has increased *800%*. That's not a typo—it *worked*." (From the episode titled "College Kids", from *The West Wing* season four, episode three. Original broadcast date: October 2, 2002. Teleplay written by Aaron Sorkin; story by Debora Cahn and Mark Goffman.)

light" story about public opinion is wrong too. In fact the American public supported significantly more strident definitions of equality in sports than would ever appear in policy guidelines (Gallup 1974). Nationally-representative public opinion data from 1974 show that 93% of Americans wanted "girls [to have] equal financial support for their athletic activities as boys", and 63% wanted "girls [to] be permitted to participate in non-contact sports…on the same team as boys" (Gallup 1974). The support for changes to women's sporting opportunity was not lacking or even merely lukewarm. Instead Americans overwhelming supported equal financial support and participation opportunities for girls and boys long before the final policy enforcement guidelines addressed these issues in 1979.

All of this is to suggest that there is a complicated, even paradoxical political history embedded in the widely acknowledged social change instigated by Title IX. Forty years after the law was passed, media discourse is mischaracterizing our political past. Thus, we might wonder: how could the *New York Times* and *The Nation* publish such inaccuracies? After only forty years, how can we entertain this collective amnesia over the conditions and meanings of Title IX's passage? What can rectifying these inaccurate renditions of Title IX's "origins story" teach us about gender and sports in American politics? And why, ultimately, is what we think we know about Title IX so incorrect?

While most recent journalistic analyses of the fortieth anniversary epoch acknowledge that there was significant controversy around the application of Title IX to sports, journalists and pundits seem to have forgotten why and how this controversy emerged. Many articulations of Title IX's success reference statistics on the increased

opportunities for female-bodied athletes, but few question why the law designed to end the focus on sex continues to frame sex as the salient marker of distinction amongst policy beneficiaries. Although celebrations of Title IX's fortieth year often characterize the "female athlete" as the law's relevant constituent, little has been written about her politics or political construction.

This chapter returns to Title IX's "origins story" to historicize the fortieth anniversary in the political battles which forged the policy's meanings. I focus on 1972 through 1979, analyzing archival evidence from the Gerald Ford Presidential Library, the National Archives and Records Administration, the Congresswoman Patsy T. Mink Files at the Library of Congress, the Congressional Record (both floor testimony and committee hearings), and the Roper Center Public Opinion Archive.[5] Using these data, I exhume Title IX's formative political battles and argue that policy implementation decisions made in the 1970s were the catalyst for the newly politicized identity of the "female athlete". I explore how, when policy makers codified enforcement guidelines using *sex-segregation* as the means through which Title IX would be implemented in sports, they also created mandates for athletic opportunities for *female* (apart from *male)* athletes. In doing so, the Department of Health, Education and Welfare (HEW)—the executive bureaucracy charged with implementing Title IX—broke from integrationist, "equality" solutions to discriminatory problems, and determined that segregation of men from women would be the pathway to equal treatment in sports.[6] This decision set in

[5] See Appendix C for data description.

[6] Legal activists were only just beginning to construct jurisprudential arguments to address myriad unequal and discriminatory practices facing American women in education, in the

motion what Eileen McDonagh and Laura Pappano (2007) refer to as "coerced sex-segregation" inherent in Title IX's implementation mandate, thereby establishing the distinctive figure of a "female athlete" as Title IX's primary beneficiary.

The events of the 1970s complicate the conventional wisdom surrounding Title IX. Recent media articulations of Title IX's political successes obscure both the bitter battle to initially implement the law, as well as ongoing disputes at the highest levels about the law's meaning and how it should be put into practice. The point is not merely that Title IX is "too celebrated"—indeed its implementation has brought about significant expansion in women's opportunities in sports and higher education. Instead, the point is that Title IX's most basic tenets—the meanings and mechanisms for establishing sex equality and non-discrimination—cannot be analyzed, much less problematized, if we forget what was at stake in implementing the law during debates in its formative years. "Forgetting" how institutions of American politics were involved in shaping the contours of the law, and how they were called upon to solve the cultural conflicts over women's proper "place", naturalizes the implementation outcomes and the conditions of political possibility for Title IX's future. Thus activists and scholars interested in improving the conditions for American women in sport and education through the implementation of non-discrimination law ought to attend to this political history.

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workplace, and at home. The early tactics analogized unequal treatment of women to unequal treatment of racial minorities, seeking equal treatment through incorporation and assimilation into "men's worlds" (Mayeri 2011). The realm of sports represents a sharp break from this integrationist approach to equality (Brake 2010).

When policymakers and members of the U.S. Congress (MCs) debated how to implement Title IX, sports became a lightning rod for political controversy. Political discussions over how to apply the law in sports quickly coalesced around defining appropriate spaces for "female" bodies. These debates over policy implementation forced the U.S. state to negotiate the centrality of sex in institutions of higher education on and through real bodies. It was the political construction of this shift—from bodies deserving education *regardless* of their "sex", to bodies engaging in sports (in education) first and foremost *by virtue* of their sex—that the paradox of Title IX emerged. It is through this paradox, that I trace the emergence of a political figure known as the "female athlete." As I argue here, she emerges both as the solution to political and cultural anxieties about changing notions of gender, as well as the signifier of the problematic relationship mediating state involvement in "solving" concerns of sex-based discrimination. Over the past forty years, the construction of "appropriate spaces" for always already, dimorphically sexed bodies in sport has shaped political understandings of sex and gender (and the contingent intersections for both with race, sexuality, class, and ability) within and beyond the Title IX policy arena.

We needn't look far to see the consequence of this political decision. Over the past forty years, the female athlete has become a ubiquitous American cultural and political figure. Although notably more absent from mainstream media coverage of competitive athletics than her male counterpart, she is nevertheless an increasingly fundamental component of the tapestry of American sports. She competes in similar, yet separate, sporting venues from her male counterpart, and has risen to an iconic cultural

status over the past forty years. Significant normative shifts have occurred in the past four decades, alongside the proliferation of opportunities for women in sports, towards an increased acceptance of women as physically active in recreational sports. But it is not only the trends toward greater participation in sports in college, high school, and recreational running races that should command our attention as researchers and political/cultural observers. Instead, what remains puzzling in the shift towards greater cultural acceptance of women as athletes is not *that* it happened—a fairly straightforward narrative of Title IX's successful implementation goes a long way towards explaining even the unexpected acceptance of women as athletes—but how, in what ways and with what consequence.

Questions and political stakes

Despite this ubiquitous presence of the "female athlete" in both physical spaces of college campuses and within spaces of American politics, political scientists have paid little heed to the development of Title IX's politics.[7] This chapter is the point of departure for my historical timeline. I am interested in two questions evoked by policy debates in the 1970s: 1) Why, under conditions of intense and prolonged debate over the meanings and methods for implementation and equity, did Title IX survive rather than fall victim to "institutional strangulation?" and 2) How, in constituting debates over sex equity in higher education, did Title IX hail into being the political identity of a "female athlete"? The former borrows a term from Dan Carpenter (2010) and asks how Title IX avoided being suffocated by the weight of its opposing political constituencies. The latter

[7] Excepting: (Costain 1979; Edwards 2010; McDonagh and Pappano 2007; Sigelman and Wahlbeck 1999; Sigelman and Wilcox 2001).

takes as its point of departure the unlikely emergence of a political identity formulated through the debates of the law's meaning, rather than its central legislative aim. This observation—that Title IX has come to be ubiquitously associated to the changes in women's access to athletics, often in ways that overshadow its implications for women's access to higher education—highlights the fact that when Congress passed Title IX, it made no mention of its application to college sports. The central legislative aim in 1972 was to end discrimination on the basis of sex in institutions of higher education. The notion that this also required implementation in the realm of athletics came by implication during implementation debates occurring in the executive bureaucracy, and as an afterthought to legislative ambiguity. As I explore here, the ambiguity of Congressional intent regarding nondiscrimination in athletics made possible a particularly explosive form of politics around the law which reveal a great deal about the political understandings of sex and gender at play during debates over implementation.

Seeking answers to the questions I pose requires that we denaturalize our understandings of Title IX as a policy that was destined, when passed, for survival. In doing so, I suggest that we can also denaturalize the codification of sex-segregated sports as the expected and only "solution" to issues of discrimination on the basis of sex. This move to dislodge sex-based implementation guidelines as an unproblematic solution to concerns over sex-based discrimination implicitly positions the state as a non-neutral actor within the politics of sex and gender.[8] Although many other scholars detail the federal government's involvement in documenting and defining the meanings of sex and

[8] To be clear, Title IX is not the only, nor is it the "first" example of policy in which the state is heavily invested and involved in gender politics, as reviewed in previous chapters.

gender (detailed more fully in Chapter 2), there is surprisingly little work on Title IX that does so.

My move to denaturalize Title IX's implementation also helps to understand the historical path of its implementation as a political "solution" with its own normative and political freight. Although sex-segregated sports were codified as a means to satisfy the different constituencies that were working to define the meanings of Title IX in sports, it was not the only possible—or natural—path through which Title IX might have been implemented. When we focus on the ways in which debates over Title IX contested how the U.S. state understands bodies as always already sexed, it becomes clear that debates over policy implementation also produce and contest normative and political understandings of gender, setting in motion the conditions of possibility for future political moments. Through problematizing the state's involvement in the project of sexing bodies I also aim to broaden the definition of "politics" at work within discourses surrounding Title IX.

The shift in political debate over the methods and venues for implementation of Title IX from those primarily concerned with sex discrimination in higher education writ large to their specific consequences in the realm of athletics was an unlikely outcome of implementation discussions. I detail the contours of this shift while paying attention to the reasons for, and contents of, political debates over *how* implementation guidelines consolidated understandings of sex as the foremost characteristic of bodies in sport. By delineating the ways in which alternative renderings of, for example, sex-integrated sporting teams were constructed as unnatural, problematic, and deleterious to the problem

of sex discrimination, I simultaneously demonstrate that sex itself was, and continues to be, the under-stated, yet deeply troubling political feature of Title IX's implementation mechanisms.

The debates leading to the codification of Title IX through implementation guidelines allowed for the survival of the policy *even though* the sex-segregated logic of its codification is frequently contested by gendered bodies in sport.[9] Despite--and I argue directly in response to--overwhelming anxieties about the potential intervention of *women*, and specifically *women's bodies* into the realm of college athletics, policymakers developed a thorough implementation apparatus which ensured, in future eras, that Title IX would endure instead of wither in the face of political protest. It is precisely the manner in which these political debates over the meanings of sports for *men*, the meanings of equality for *women*, and the presumed *sexual dimorphism between male and female bodies* emerging as the operating logic for sex testing in sports at the international level (and upon which sex-segregated Title IX enforcement guidelines were eventually developed) that settled, albeit problematically, the gendered anxieties inherent in Title IX in politically feasible ways.

Contextualizing Title IX in the 1970s

Forty years ago, Title IX emerged from important historical exigencies: the women's movement was seeking institutionalization in the early 1970s, the Equal Rights Amendment (ERA) had been passed by Congress but not ratified in 1972, and the androcentric control of various social institutions was under simultaneous threat by both

[9] Debates over sex testing athletes in international competition were emerging in the late 1960s, which I explored in Chapter 2.

of these political contingencies. Institutions of education became central to debating and solving cultural anxieties over the meanings of sex and gender. In America, anxieties over race, sex, class, nation, sexuality, and dis/ability have long been played out within institutions of learning (i.e. Hochschild 1984; Irvine 2002; H. J. Sykes 2011). Socio-political contests often play out within educational venues, and educational institutions were already embroiled in ongoing political projects of racial (in)justice throughout the 50s, 60s, and 70s as schools became one venue through which American racial politics were acutely renegotiated through logics of desegregation in the wake of *Brown v. Board of Education* (D. Bell 2004; Hochschild 1984; Klarman 2004; Skrentny 2002). Thus when feminist activists began to call attention to the disproportionate problems faced by women in gaining admission to college and graduate programs they did so in a moment when integration (of races and sexes) in classroom settings was the emerging, dominant logic.

During the early 1970s, within other policy arenas and outside of formal political institutions, intense cultural debates over gendered distinctions of public versus private domains (and their association with "proper spaces" for men versus women) dominated political discourse. As feminist efforts to pass an ERA intensified, political institutions became directly implicated in the cultural conflicts over the politics of women's place—in society, in the workplace, in the home, and in politics (Costain 1994; Mansbridge 1986). Social movement politics such as the "second-wave" or "modern feminist" movement had long labored over the task of politically constructing a plethora of gender politics with their claims attached to women's bodies.

By the early 1970s, feminist demands to make the "personal" a concern of the "political" converged on American political institutions. Many of these political claims suggested that the main cause of women's subordination to men—at home, at work, and at school—had to do with women's uneven access to power over their own bodies and choices. Liberal feminist activists sought access to more institutionalized forms of political lobbying in the early 1970s in order to codify *de jure* equality across institutions of education, wage labor, and reproductive health. In this context, the early 1970s began to represent a new kind of threat to men of privilege and social standing. Feminist activism was often organized around intersecting dimensions of class, race, and sexuality, and the histories of coalitional politics amongst feminist are fraught with power imbalances. But from the perspective of men in power, feminist organizing represented a legitimate threat to the dominant order and the late 1960s and early 1970s became a period of besieged masculinity.[10]

[10]Unified characterizations of the "second-wave" movement have endured significant contestation from women of color feminists, working class women, and those broadly defined in the intersectional tradition of scholarship. These critiques grew out of frustrations with the privileging of straight, white women's experiences in second-wave politics—politics that, critics suggested, collapsed and essentialized the concerns of white women of privilege onto those of all women in ways that further silenced concerns of secondarily marginalized women (of color, of low-income status, who rejected heterosexual partnerships, and adopted non-normative gender performance). My characterization of feminist politics in the 1970s should be understood to acknowledge these critiques, while also recognizing that institutional voice in feminist politics was largely granted to white, middle-to-upper class feminists. The question of how these exclusions shaped the meanings of equity is an important one. The work of Benita Roth (2004), Alice Echols (1989), Dorothy Cobble (Cobble 1991, 2005), Marcia Gallo (2007), and Lillian Faderman (2000), among others as introductions to considering this question in dimensions

Long-standing domains of male privilege were being called into question in the years leading up to the passage of Title IX. The role of the U.S. state in extending or denying rights to populations within its own borders shifted as both discourses and practices of the social movements for African-Americans, women, and lesbians and gays in the 1960s made the U.S. state vulnerable to critique. As such, the stakes of and for nation-building were high. The Cold War was on-going, leading to an omnipresent uncertainty of America's future position in world politics. The stakes were high for economic politics, oil uncertainty, and American empire; the stakes were high for American race politics as on-going projects of desegregation continued to unfurl; they were high for gender politics, when women had the strength of an on-going social movement to embolden their claims for a reorganized gender order. It was in this context that the U.S. state simultaneously looked both outward and internally to define the nation (Dudziak 2002).

Thus the state response to conditions of growing political instability through education policy can in part be understood as one of the many political projects of nation-building.[11] When political institutions engaged in defining the meanings of sex discrimination and the mechanisms for ending it, the project was not merely an inevitable extension of other civil rights policy. The generation of political conditions for sex equality required the work of many activists, within and beyond the state, for many years.

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beyond the politics of Title IX.

[11] The U.S. state was active in nation-building through sport throughout the 1960s using African-American elite athletes as cultural ambassadors promoting the premise of racial progress in America across the locations on the African continent (D. Thomas 2012).

Sex as a civil right: 1960s-1972

It was nine years after President Kennedy established the "President's Commission on the Status of Women" when, in 1970, Congress first held hearings on sex discrimination in education. Discrimination on the basis of sex was defined by a series of actions by political institutions across the federal government. Foremost among these were the legislative actions: the Equal Pay Act of 1963 (which first established the claim to "equal pay for equal work" for women laborers) and Title VII of the 1964 Civil Rights Act (CRA) (which included sex as a characteristic of discrimination included in employment). President Johnson's 1965 Executive Order 11246 required the elimination of discrimination by federal contractors under affirmative action statutes. It also established the basis from which the Women's Equity Action League (WEAL) would generate the sex nondiscrimination provisions in education. President Nixon's 1969 "Task Force on Women's Rights and Responsibilities" generated an account of major sex-based inequities in America. Thus, by 1970, when Senator Edith Green first introduced a bill to amend and expand the Title VII of the CRA to include provisions against sex discrimination in education, policymakers within institutions of American government were primed to consider action.

Feminist lobbyists detailed significant disparities in graduate school admissions and sex-bias in at all levels of the curriculum during the 1970 Congressional hearings. In the early 1970s, American women were awarded forty-four percent of undergraduate degrees, but only sixteen percent of graduate diplomas (NCGWE 2002). In addition, only fifteen percent of college athletic opportunities were available to women (NCAA

2012a), a statistic that went largely unrecognized by members of Congress in 1970. These statistics, as well as others presented to Congress framed "women" as the category of citizens most harmed by institutionalized forms of discrimination.[12] Legislators and policymakers were acutely aware of the disparities in college admissions and educational attainment for women versus men.

In the same era, feminist political actors also targeted the courts. The ACLU Women's Rights Project achieved a major victory in the U.S. Supreme Court in 1971 when the court ruled for the first time that the Equal Protection Clause of the 14th Amendment applied to differential treatment based on sex in *Reed v. Reed* (404 U.S. 71). By 1972, it still seemed possible—if not more likely than piecemeal efforts—that the culmination of equality demands brought to bear on the U.S. Congress would come with the passage of the Equal Rights Amendment (ERA). In March of that year, the ERA had moved to the states for ratification. Thus, the sex nondiscrimination provision included in the Educational Amendments of 1972 may have seemed politically less volatile to opponents of the women's movement than the looming ERA. No one could predict how the ERA politics would unfold, and if sex non-discrimination provisions in specific domains would be required by the end of the decade.

[12] As noted, the debates over the conditioning role of sex in educational opportunities ran parallel to the still unfolding project of racial desegregation in American schools. Little overlap in the causes or consequences for inequalities along lines of sex and race (or at their intersections) took place in the halls of Congress (Mayeri 2011; Skrentny 2002). Although politics of education policy for socially disenfranchised or marginalized communities had long been on the mind of American policymakers, debates leading to the passage of Title IX made explicit and distinct "women's" claims to the right to higher education.

From Congress to the Executive Bureaucracy, 1972-1979

Feminist claims for women's legal inclusion were still potentially divisive, and Members of Congress invested in passing legislation for women's rights anticipated the need to keep congressional activity on the topics out of the spotlight. Ultimately, there was significantly less debate about Title IX *before* its passage than there came to be after passage. Senator Edith Green (D-OR) explicitly instructed advocates from feminist organizations to remain silent during debates over the content of the Educational Amendments (Costain 1979; Edwards 2010; Fishel and Pottker 1977; Gelb and Palley 1982). Despite significant and dispersed foment caused by the women's movement around the press for equal rights, Title IX became law largely without public comment from either feminist activists or potential conservative foes.

Political controversy over the passage of the law before the vote was limited, but not absent. Ivy League institutions found voice in conservative Republican members of Congress who clashed with Representatives Patsy Mink (D-HI) and Shirley Chisholm (D-NY) over Title IX's application to college admissions (Fishel and Pottker 1977). Initially, Title IX included a variety of exemptions that pertained to specific types of institutions of higher education—Congress had not indicated specific intent for the application of Title IX to athletic programs.[13]

[13] The law also included exemptions for application to: 1) private school undergraduate admissions (Title IX only applied to graduate schools, vocational and professional education, and public undergraduate universities); 2) recently sex-integrated educational institutions; 3) educational institutions controlled by a religious organization; 4) educational institutions training students for military service; 5) public undergraduate educational institutions that have "traditionally and continually from its establishment" admitted only one sex; 6) tax-exempt

When the Senate and House versions of the Education Amendments were passed on May 22 and June 8, 1972, the sex discrimination provision of the law—the ninth Title—was included without dispute in the final legislative language. Other titles within the bill included mandates for school busing and financial aid for college. The deep ambivalence within the Nixon administration about the busing provisions "ran interference for Title IX, attracting attention to itself while lowering Title IX's visibility" (Skrentny 2002, 248). Despite his ambivalence, Nixon signed the law on June 23, 1972.

Athletics were mentioned only one time in official, recorded discussions about how to address sex discrimination in education before Title IX became law. In the winter of 1972, Senator Birch Bayh (D-IN) stated:

> These regulations would allow enforcing agencies to permit differential treatment by sex only—very unusual cases where such treatment is absolutely necessary to the success of the program—such as in classes for pregnant girls or emotionally disturbed students, in sports facilities or other instances where privacy must be

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fraternities and sororities; 7) the YWCA, YMCA, Boy Scouts, Girl Scouts, Camp Fire Girls, and other youth service organizations made for participants under 19 years of age and that have been traditionally sex-segregated; 8) Boys State (and Boys Nation) and Girls State programming of the American Legion; 9) father-son or mother-daughter activities at an educational institution, so long as activities provided for one sex are mirrored for the other sex as well; 10) educational scholarship awards given to an individual for "beauty" pageants ("in which the attainment of such award is based on the combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only") (Title 20 USC Section 1681a). It defined "educational institutions" to include: "any public or private preschool, elementary, or secondary school, or any institution of vocational , professional, or higher education" (Title 20 USC Section 1681c).

preserved (118 *Congressional Record*, 2/28/1972).

Through this lens of sex-difference, and its attendant assumptions regarding educational and political officials' ability to "know" sex and sexual dimorphism in the bodies of students and athletes, policymakers commenced their debates over the meanings and mechanisms of bringing out equality in education. As belied in Bayh's comments, the sports context was considered by policymakers to be especially suspect as an exceptional terrain for the promotion of sex-differentiated policy proscriptions.

Senator Bayh assumed that sports—like pregnancy—invoked the gendered body, and importantly the *female body* in special ways. The coupling of concerns over sports with concerns over pregnancy is a particularly telling discursive move: Bayh implies, and assures fellow lawmakers, that the prevailing logic embedded in the realm of athletics is that of sex "difference". Women are, he implies, different than men at a fundamental, *natural* level. The naturalization of difference coaxed into light through his coupling of females in sports with pregnant female bodies suggests the belief that women's bodies are not only different than men's bodies, they are also capable of fundamentally different things. Bayh made these statements in a time when discrimination on the basis of pregnancy was still legal (Rowland 2004). Thus when he invokes pregnancy as parallel to sports as a realm of potential exclusion from the prevailing logics of integration, he reveals how far afield sports seemed from broader educational venues leading up to the passage of Title IX. Though the "female athlete" existed before Title IX, it was clear that state actors vested in passing the law did not see her as politically relevant to issues of implementing sex mom-discrimination in education. She was, as Bayh suggests, a

problem to be sequestered.

Bayh's rhetoric suggested to members of Congress that sports was well-positioned to emerge as a venue — comparable to scholastic spaces designed to control and contain the suspect bodies of pregnant, presumably unmarried "girls," and the "emotionally disturbed," therefore potentially vulnerable or even contagious bodies, that threaten the production of safe, normative educational arenas—where the normal rules of integration need not apply. His use of a "privacy" frame through which to articulate the need for "separate but equal spaces" in sports is problematic. The suggested parallels between women's athletic bodies and those of the potentially socially contagious and undesirable pregnant girls—that are akin to, if not also, "emotionally disturbed" students—connote that bodies of these types demand protection. However, as with pregnant teens and "emotionally disturbed" students, the need for protection through isolation and extraction from otherwise integrated spaces is always politically constructed (Luker 1996).

Bayh's statements were meant to assure lawmakers that sports would remain a domain of exception in the push to integrate women into men's worlds. He also implies that the legislation which would go on to pass as Title IX was not designed to upend gender relations. Instead, it was designed to incorporate women into domains where exclusion was unwarranted, and preserve separate spheres in domains where female difference was deemed natural. What may appear to be an off-hand remark about the role of sports in Title IX (and the educational institutions which it regulated) was in fact the point of departure for political discussion of the role of the U.S. state in regulating

athletics.[14]

Although Bayh's comments were the only discussion of the role of sports in Title IX's policy prescription before it passed through Congress, sports were already a major project of educational institutions. Members of Congress and activists frequently cited evidence in Congressional hearing testimony in the period after Title IX's passage and during debates over implementation guidelines showing how sports was involved in projects of socializing manhood and American civic responsibility. The veracity of these claims is not nearly as important as the belief, prevalent in comments by educators, coaches, and MCs, that sports were a key site of building good (male) citizens. Educational institutions were already critical to this practice insofar as they play a central role in socializing cultural values and norms for younger generations. If education was an arena designed to indoctrinate young American men in the logics, histories, and practices of citizenship, then sports was one element of traditional male socialization. Pro-equality activists adamantly argued that women too should be given access to sporting domains, arguing in part for the notion that in accessing these domains, women would be granted more meaningful identities *as* citizens. The fact that they would do so in separate venues from men was considered wholly unproblematic.

Sports as a battleground: Denaturalizing a policy outcome

In the fall of 1972 when policymakers first considered the meanings and

[14] As I detailed in Chapter 1, the U.S. state was incredibly reticent to intervene on sports projects of any kind, within educational systems, within professional athletics, or within Olympic training support (Chalip 1988). What came to be an extraordinary intervention in the realm of sex equality and athletics through Title IX represented a huge shift in state policy in the realm of sports.

enforcement parameters for Title IX, policymakers had no Congressional guidance about its application to sports. As the sports-specific constituencies emerged to carve out their opinions regarding how Title IX should to be implemented, it remained unclear what the relationships ought to be between the federal government and institutions of higher education, between institutions of education and their attendant departments of athletics, or between the rights of women as athletes and the still un-ratified ERA.[15] When feminist discourses demanding "access" to higher education concatenated with systemic pressures codifying the end of domains guarding male privilege through mechanisms of discrimination against women, political conflict erupted.

As research from other policy contexts shows, the limited congressional direction for Title IX's application to athletics may have enabled the emergence stronger forms of politics during debates over policy implementation (Cates 1983; Derthick 1979). Immediately after Congress passed Title IX, very little in the way of implementation transpired. Neither the executive bureaucracy, nor the U.S. Congress took significant action on the topic of sex discrimination in higher education until the summer of 1973. There were a series of meetings held by the Secretary of HEW with the NCAA, the Association of Intercollegiate Athletics for Women (AIAW), women's group lobbyists, and representatives from universities. However, these meetings produced no consensus about how to go about implementing Title IX as originally described by Congress. As the Nixon administration became increasingly focused on the Watergate scandal, HEW

[15] Political actors in 1972 could not anticipate that ERA ratification efforts would continue through 1982, when, only three states short of the required thirty-eight, the amendment efforts would ultimately fail (Mansbridge 1986).

continued to struggle with defining Title IX's enactment. During the period immediately after passage, Title IX seemed to be headed the way of so many policies that go unfunded, or without enforcement guidelines. Without funding or enforcement guidelines, policies have no meaning and often go unenforced (Patashnik 2008). Thus the period after Congressional passage, when the executive bureaucracy was charged with interpreting and codifying meaning to Congressional vote, became a time of great importance for policy implementation.

Beginning in 1973, three key institutional actions converged to re-enliven focus on Title IX, and shift the main policy debates to the realm of sports. First, during the summer and fall of 1973, Congress held hearings on proposed legislation to explicitly combat the pervasiveness of sex-role stereotyping in primary and secondary education. The legislation under consideration was called the Women's Educational Equity Act (WEEA). In the course of these congressional hearings, activists centered sports as a concern for lawmakers interested in ending discrimination in education. These feminist activists (including representatives from the Women's Equity Action League, the National Women's Political Caucus, the Association of American Colleges, and NOW) traced inequities between men and women in access to, funding for, and ability to participate in education and sports. The testimonies also include subdued frustrations from feminist activists, who frequently pondered not how Title IX will be enforced, but if.[16]

[16]See for example, testimony by Arvonne Fraser (President of WEAL) on July 25, 1973 (U.S. Congress 1973b, 34). She notes that if Title IX were enforced, the WEEA legislation would no longer be required.

Second, in July of 1974, members of Congress clarified their intent that sports should be included under Title IX, and created an explicit mandate for the creation of enforcement guidelines. Without this Congressional action to force bureaucratic attention on the draft guidelines, the sport-specific regulations may never have come into being. As a result of Congressional activity, the Department of Health, Education, and Welfare (HEW) began to shape draft policy guidelines over the summer of 1974 as the Nixon administration was increasingly embroiled in the Watergate scandal.[17] Over time, the bureaucratic response clarified congressional intent and lead to the third form of institutional action: the publication of draft guidelines in the Federal Registry in June 1974 which included an interpretation of the application of Title IX to sports. The mechanisms of sports implementation emerged as a serious issue over the course of the meetings between interest groups and HEW (Skrentny 2002).

Congressional Intent: Senator Tower and "revenue-producing sports"

This bureaucratic wrangling came after a period in which Congress clarified its intent for Title IX and athletics. In May of 1974, Senator John Tower (R-TX) proposed an amendment suggesting that Congress had never intended for Title IX to apply to college sports. His amendment, primarily applicable to football and basketball programs, made clear his opinion that Title IX should not extend to intercollegiate athletics. He framed the issue as primarily a financial one, stating:

Grave concern has been expressed that the HEW rules will undercut revenue-

[17] The Nixon administration left office in August of 1974 as these implementation debates were still unfolding. The archivist at the Nixon Presidential Library claims to hold only one memo on Title IX in the entire Nixon Library collection. The most thorough record of the events from the summer of 1974 have been archived in the Ford Presidential Library.

raising sports programs and damage the overall sports program of the institution. Were HEW, in its laudable zeal to guarantee equal athletic opportunities to women, to promulgate rules which damaged the financial base of intercollegiate sports, it will have thrown out the baby with the bath water (Congressional Record 5/20/1974).

However important Tower perceived the funding issues in college sports to be, his comments clarify several things about the ways politically conservative interests were thinking about sports as a policy arena. First, it is implied by his statements (and those of other MCs, discussed below) that the incorporation of women onto men's teams—"revenue-raising" or not—was beyond the realm of possibility. Second, he suggests that the "right" to sports ought to be predicated on the ability of sports teams to produce revenue from ticket sales. Third, Tower's statements suggest the paternalistic sensibility that women, regardless of skill or desire, would never be capable of commanding a spectator/revenue base on par with the following enjoyed by men's sports. Consequently, the lack of interest and ability to fund their own athletic endeavors placed women beyond the boundaries of a legitimate right-to-sports claim.[18]

Fundamental to Tower's assessment was a presumption of male entitlement –and a claim to state protection of that privilege—in the realm of athletics. Tower's comments

[18] The argument that women's sports draw fewer spectators and bring in less revenue continues to denigrate the worth of women's sports. The conversations which paired financial independence with a more legitimate "right" to sports for men continues to dominate many cultural discussions of whether or not women have earned (financially) the sporting opportunities they have been extended over the past forty years. A more thorough conversation of the implications of these discussions is addressed in subsequent chapters.

cast the separate spaces to be afforded to the "female athlete" as deserving of less financial support than those afforded to men.[19] In this sense, even the framing of this unsuccessful amendment, which the U.S. Congress eventually voted down, is implicated in our understandings of gender and the "female athlete". From the moment of her political conception, conservative interests aligned to distance her deservingness from her male counterpart, and diminish her potential financial needs.

Tower simultaneously argued that it was in women's best interest to consider his amendment because their financial futures in sports have "as great a stake in a strong financial base for their individual schools programs as do the men" (Congressional Record 5/20/1974). This coupling of sex-essentialized discourses with market logics functioned to preclude and exclude the claims that female-bodies could or should ever engage in college sports as defined by men's teams. Tower eventually backed away from this hardline of exclusion for women athletes, stating: "I have a daughter who is a potential varsity tennis player, and I would like to see that she gets the opportunity". But by proposing that Title IX should not protect women athletes from discrimination in sports, his amendment would have functioned to allow exclusionary practices against women to endure. The Tower amendment passed the Senate by voice vote, but the House did not support a similar amendment.

[19] This notion, that "equal opportunity" in the U.S. does not equal financial/funding opportunity is certainly not limited to the sporting realm. Nevertheless, in sports, the ways in which "opportunity" has been divorced from equal "funding" of sports for men versus women is itself another part of the long-run history of Title IX. It becomes more important elsewhere in my project, but for the purposes of this chapter, it should be noted as an important framing of the limits of "rights" constructed for the "female athlete".

This instance in Title IX's history is important for a few reasons. It was the first public debate over Title IX's application to sports in a formal political institution. Further, although it was unsuccessful as an amendment in 1974, it continues to prevail as a potential policy solution to the perceived "funding problems" in college athletics in the contemporary moment. Finally, it reveals the heavy investment by politicians (and others) in institutional practices that segregate on the basis of presumed dimorphic bodies. It wasn't merely that the men should play sports separately from the women, but also that perhaps women weren't deserving of "equal treatment" until they could find the means to pay for their own "equal" athletic opportunities. These discussions further developed the complex and contradictory terrain on which the notion of a rights-bearing "female athlete" might belong.

In this moment, the discourse of rights for female athletes took on the contours of "opportunity" that would set in motion the qualities of opportunities available to women versus men athletes for years to come. Although the Tower Amendment ultimately failed, it established discussion around the "opportunity" paradigm which created a relatively low-bar for incorporation of women into sporting spaces. There was never a discussion of designing Title IX in ways that would instruct schools to create the same quality of opportunities for all women, compared to all men. Although the law would come to suggest in vague ways that gross inequities in spending on men's teams without some commensurate investment in women's teams should be avoided, Title IX was not (and has never been) interpreted to mean that the same amount of money must be spent on male and female athletes. This set in motion the conditions for the continued

economic growth (and spending on coaches, stadiums, and athletic benefits) of male-dominated sports that were already popular amongst spectators and sports observers. The explicit notion that "revenue-producing sports" should be exempt from Title IX was rejected by policymakers, but the implicit recognition that some sports (like football) should be allowed to invest a disproportionate amount of money in the maintenance and promotion of the team was instantiated into policy. The reality, over the past forty years, is that the (male) sports that were flourishing before the passage of Title IX have been allowed to continue to grow and reinvest a disproportionate amount of money into men's sports without a policy requirement to achieve "equal treatment" through equal spending on women's teams (NCAA 2013).

Throughout the mid-1970s, policymakers established the meanings of "equal opportunity" in ways that would instruct schools to provide women access to sports in similar numbers to men. They did not, however, instruct schools on the means to create the same quality of opportunity for all women athletes, regardless of sport, skill, ability, race, or economic class. Title IX was always limited by its categorical imperative to "see sex" as a unified identity category. In this sense, policymakers remained silence on the ways in which different subgroups of women might come to have the option to qualify for their "equal opportunity". However, there was an implicit replication of the ethos of meritocracy embedded in Title IX's policy design that would serve to ensure that only certain types of women were positioned to claim their "opportunity".

The concerns over funding and revenue production out of which the opportunity paradigm never considered means to rectify the broader conditions of exclusion that lead

to women's unpreparedness to participate in, much less fund their own college athletic opportunities. Economic concerns about "funding" sports for women did not emerge for women at the moment of starting college. As with men's sports, women's teams needed to be occupied by athletes prepared for competition and with enough spare time to devote to the relatively leisurely pursuit of college sports. Youth sporting opportunities were rare for girls in the 1960s, as illustrated in Maria Pepe's case. Thus many women given "opportunity" to sport in college were either learning a new sport as an adult competitor, or were the rare beneficiaries of training on youth teams.

Unsurprisingly, the "opportunity" paradigm would stand to benefit women from families with money to fund either their training as a young athlete, or their tuition and fees while in college. Competitive athletics required time for training that women without financial means may have spent working in order to cover educational expenses. An "opportunity" to participate would only help already privileged women. The same silences meant that otherly-abled female athletes would also struggle to find competitive space through "equal opportunity". Athletics for women and men constitutes able bodies as those deserving of "opportunity", and debates over Title IX's policy design did nothing to combat this. Finally the discussions of "opportunity" in light of the ability of athletes to produce revenues to fund their sport also served to suggest that certain sports might be more deserving of "equal opportunities", than others. Women's basketball was one of the more developed college sports at the beginning of the 1970s and was therefore better positioned to draw a spectator base (Guttmann 1991; Jay 2006; Peavy and U. Smith 2008). In time, women's sports with devoted spectator base (like basketball, but

increasingly soccer and volleyball too) have been better supported financially by colleges and universities. Equal "opportunity" between women and men, and among women as a group, has always been freighted with internal inequities.

Javits Amendment, public opinion and public response

These explicit discussions about the role of "revenue" in the production of opportunity were short-lived. During the same month that the Tower amendment was under consideration by the Senate, the Gallup Organization polled Americans regarding whether or not they supported equal financial support of girls and boys in their athletic activities. Eighty-eight percent of respondents supported equal funding, suggesting that Tower's plan unreasonably flattened the discourse around economies of scale in athletics. Indeed for many Americans, and one critical member of Congress, the issue of "revenue-producing" teams needed to be decoupled from concerns regarding sex equality. The same poll indicated that 63% of respondents wanted girls to have the opportunity to participate on the same teams as boys (Gallup 1974).[20] These public opinion data make clear that the financial debates over funding for women's sports were a state project and not merely a reflection of the American public's will. Tower was representing a minority opinion.

Indeed this sharp contrast between what the American public was ready to support, and what law-makers were willing to entertain in the process of policy making would unfold in the following months with complex implications for the politics of

[20]The contact/non-contact sports distinction is an important legal distinction that has shifted in definition over the past forty years, explored fully in a book by legal sports historian Sarah Fields (2004).

gender. In July of 1974, Senator Jacob Javits (R-NY) proposed an amendment that toned down Tower's rhetoric at the urging of lobbyists for women's groups. The successful "Javits Amendment" dictated that HEW would have thirty days to publish regulations pertaining to sports, and passed in the Education Amendments of 1974. Congress would then have forty-five days to disapprove of HEW's regulations proposal. With public opinion at odds with conservative interests in Congress, this period of public comment allowed HEW to solicit responses from interest groups, coaches, citizens, and athletic governing bodies about how to implement sex-equality in sports. As I explore below, the public response to the regulations reveals a complicated portrait of the 1970s. The divergence between mass opinion (in support of integration) and elite actions (to codify segregation) clarify that policy outcomes in the domain of sports were an elite-driven enterprise.

After Congress clarified its intent about Title IX's application to sports, HEW was charged with the task of developing enforcement guidelines. The publication of draft guidelines in the Federal Registry occurred in the summer of 1974 and included an interpretation of the application of Title IX to sports. Public response to the guidelines came in the form of letters streaming in to the federal bureaucracy and the office of President Ford. HEW was forced to extend the typical 30 day comment period to last for four months, during which they received over 9,700 public comments on every aspect of the proposed implementation (Fishel 1976).[21] As Fishel (a HEW employee at the time)

[21] The full collection of letters is available neither at the National Archives, nor at the Ford Library. The content of these letters are most fully detailed in the Fishel (1976) piece, written by an employee at HEW in the period after the regulations were circulated. Here, I analyze the

reports, the overwhelming majority of these letters were submitted by individuals, not interest groups, many of whom were still organizing and formulating agendas around issues of gender and sports as athletic access had not been a main goal of second-wave feminism (Ware 2011).[22]

The letters detail both support and dissent for the regulations as proposed in the fall of 1974. Within them, certain themes emerge. The most prevalent of these is exemplified in an important letter written by Bo Schembechler, the head coach of the University of Michigan's football team, to President Gerald Ford in the summer of 1975. His message concluded with a simple, if not contrite, request. "I earnestly hope and believe, Mr. President, that with your assistance a way can be found…to assure that strong intercollegiate athletic programs for both men and women will be permitted to survive and prosper" (Schembechler 1975). Schembechler, along with scores of other men's football coaches, wrote to the President—a Michigan football All-American long before his career in the U.S. Congress and unlikely ascension to the presidency—asking for his support in institutionalizing *their* version of implementation regulations pertaining to sports and Title IX. The response of the American public, particularly those with vested interest in sports, was so unlikely that it prompted the head of the Department of

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collection of the letters that were also sent to President Ford and HEW on the topic of sports and Title IX regulations.

[22] Throughout the late 1970s and 1980s, scholars began incorporating arguments about women's physicality and incorporation into sport into academic work on feminism, particularly in sport sociology (Boutilier and SanGiovanni 1983; Gerber 1974; M. Ann Hall and Margaret Ann Hall 1996; Holland and C. Oglesby 1979; Knoppers and McDonald 2010; C. A. Oglesby 1978; Theberge 1981, 1985, 1987).

Health, Education, and Welfare (HEW) to acerbically comment that athletics must be "the most important subject in the United States today" (Skrentny 2002, 253).

Letters like these fill many folders at the Ford Library. Many are written from college football coaches, reflecting a shared fear that this most cherished domain of male hegemony—sports, and football in particular—was under attack by perceived female invaders. Many letters begin similarly to Coach Schembechler's, asking the President not to "destroy" men's football through the enforcement of Title IX. The perceived cultural "right" to sports for American men is clearly implied in the letters written by its male guardians.

It was not only football coaches writing President Ford seeking women's exclusion from men's spaces. Women's physical educators also wrote letters requesting that the President respect and maintain special spaces for women's sports. While men's coaches already enjoyed the benefits of full (and often unchallenged) support from athletic departments in terms of opportunities, funding, coaching, facilities, and transportation to competitions, women's physical educators could not offer such benefits to their women students. These messages also advocated for similarly minimal changes to the structure of sports, although they firmly requested that equity provisions be enforced in athletics. The motivations behind these letters are expressly different from the motivations of football coaches. Yet when reading them, one cannot help but ask: what else might have motivated women (and physical educators in particular) to seek—and win—special spaces for women? Susan Cahn's work reminds us of the special enclave provided to lesbian women as physical education instructors (1995). Is it not possible that

these letters written to President Ford were not merely claims for special spaces for women, but also implied requests for special spaces for lesbian women to maintain secure and relatively high-paying employment where their sexual identity was often unspoken, but not unknowable? The letters make no such explicit requests, nor would we expect them to do so during a time period where being "out" at work was impossible for most gay men and lesbians. But suggested within them is the looming threat of lesbianism in homosocial sports that would continue to haunt the "female athlete" as colleges and universities implemented Title IX. Sports were considered both a natural home for suspected lesbians, and the space where they could not, not exist (Griffin 1998). As with female athletes in general, within women's athletic leadership, lesbians always seemed to "loom". As Susan Cahn notes: "Mid-century lesbian athletes found that athletic life facilitated the individual process of coming to terms with homosexual desires as well as the collective process of forging ties among gay women" (Cahn 1995, 185). Thus although it is difficult to know the extent to which the letter-writers yearned for "safe spaces" for lesbian coaches, they argued forcefully for the continuation of homosocial enclaves for women athletes. These letters made the potential for sex integration all the more unlikely, as women leaders—regardless of sexual orientation—articulated reasons to maintain the practice of segregation.

Sex-segregation as policy solution: Constituting the "female athlete" as political figure

Rapidly, sex-segregation as a means of policy implementation was cemented into policy design. From the start of debate over the design and implementation of Title IX,

institutions of the U.S. state struggled to adjudicate the clash between political solutions to cultural problems. The explicit claims expressed in both sets of letters were rights-based: for women, the claims were for legal rights to participation (or non-discrimination on the basis of sex that Title IX seemed to promise); for men, the claims were for cultural rights to hegemonic control over sporting venues, teams, and discourses of proper masculinity. These rights claims, derived from the passage of sex non-discrimination legislation during a period of besieged masculinity, forced policymakers to solve simultaneously legal and cultural concerns over the role of sports for men, and the role of sports for women. Women sought access to domains that had previously, unjustifiably excluded them. The answers that they sought from the state followed the mold created decades earlier by the civil rights movement, taking the form of formal, legal inclusion. Men did not fight the premise that women deserved equal treatment, in the abstract, but they challenged the legitimacy of the state "forcing" them to include women in a domain that was perceived to be "unfeminine". The political solution created in the 1970s to these cultural debates about what women should naturally desire would haunt Title IX's implementation for decades. Although male coaches and athletes were told to begin making space for women in athletic programs at the end of the decade, the cultural shift towards female athletes as deserving, rights-bearing figures would take time.

At the same time, the rights based solution to cultural problems of gendered exclusion was freighted with its own complication. The discourse of rights—prevalent in various social movement politics throughout the 1960s and 1970s—constituted the quest for *de jure* non-discrimination enforcement mechanisms as, to paraphrase Wendy Brown

paraphrasing Gayatri Spivak, something that women could not not want (W. Brown and Halley 2002; Spivak 1993). In the mid-1970s (and consequently throughout the course of Title IX's implementation) sex-segregation was so naturalized as the means through which to give bodies "equal opportunity" in sport that it made integration seemingly unthinkable as a viable policy solution. It was not just that men wanted to ensure that women did not infringe upon their sporting spaces (although the excessive to desire to keep women off of football, baseball, and basketball teams, expressed in letters to the President should not be diminished), there also emerged a notion that women, too, desired—and benefited from—more minimal changes to the status-quo of non-integration in sporting venues.

Debates over the meaning of Title IX, most intense in the period between 1974 and 1975, continued until 1979 when Congress approved the final set of regulations. Although the final guidelines were eventually enacted, arming women with policy needed to claim space on athletic teams across the country, the consequence of their content is more complicated. Sex-segregation was the rule, and accordingly, the "female athlete" was codified as a rights-bearing political figure separate from her male counterpart. By settling debates over Title IX's implementation through the institution of sex-segregated spheres—and sports teams segregated by assumed understandings of bodies as biologically dimorphic—policymakers foreclosed alternative understandings of bodies, sports, and bodies-in-sports in the very moment that the potential for radical re-

inscriptions of sexed or gendered bodies emerged.[23] Significant historical forces and governing practices of sex-based sports participation made a radical change less likely. But the reality that Title IX's policy prescription in sports was actually a fairly conservative modification to the status quo is all but lost in the contemporary moment.

Modern commentators overlook that the key to understanding Title IX's founding moment is that when Title IX forced educational institutions to offer sporting opportunities to students without discriminating against them based on sex, it simultaneously constituted sex as the characteristic of bodies through which these opportunities were codified. Both the nature of the political debates over the meanings of sex in nondiscrimination policy, as well as the haste with which state actors collapsed sexed bodies within the logic of segregation, shows that the U.S. state was heavily invested in political projects of gender as it addressed methods of redress for discrimination based on sex.

The debates leading to the codification of Title IX through implementation guidelines allowed for the survival of the policy even though the sex-segregated logic of its codification is frequently contested by gendered bodies in sport.[24] It is precisely the manner in which these political debates over the meanings of sports for men, the

[23] Many other examples in policy formulation and reformulation in welfare reform (Schram et al. 2009; D. Stone 2007), health care policy (Hacker 2004, 2010), and the push towards marriage in gay politics (Duggan 2003; Spade 2011; M. Warner 1999) demonstrate the conservatizing trend in recent American political reforms.

[24]See, Chapter 2 for debates over "sex testing" in sports that continue to plague international competitions (Karkazis et al. 2012). Caster Semenya, a South African runner, is the most recent and high profile case of the failure of biological sex to withstand dimorphic distinctions.

meanings of equality for women, and the presumed sexual dimorphism between male and female bodies upon which sex-segregated Title IX enforcement guidelines were eventually developed that settled (albeit problematically) the gendered anxieties inherent in Title IX in politically feasible ways. The "solution" of sex-segregation ensured that male privilege in sports was not unduly threatened insofar as segregation made it difficult for women to contend for spots on men's teams. Although segregation was not the hardline implementation mechanism in all cases, it was, as McDonagh and Pappano (2007) suggest "coerced".

Title IX did not collapse under the weight of competing constituencies, as Eric Patashnik's work demonstrates often occurs during periods of policy implementation (Patashnik 2008). Nor, over the 1970s, did it fall victim to "institutional strangulation", a process of bureaucratic forces through which policies perish slowly, or go unenforced, identified by political scientist Dan Carpenter (D. Carpenter 2010). Sex-segregated teams—a fundamental component of Title IX's implementation plan by the end of the 1970s—proved to be the persistently uncontested feature of Title IX's legal and bureaucratic history over the next forty years.[25] In this sense, sex-segregation as a policy solution satisfied both sides of the competing constituencies with a stake in change to college athletics. Coaches of men's teams were assured that women competitors would not denigrate the special status buttressing masculinity enjoyed by college football and other men's sports. Women coaches and physical educators found a means to legitimate

[25] Many women pursued legal cases to gain entrance on to men's teams (Fields 2004), but the structural component of sex-segregation as implementation mechanism was incredibly durable.

claims for additional resources and opportunities for women's teams without (at least in the 1970s) adopting the "men's/competitive model" for sports.[26]

This outcome, although persistently unchallenged because of its purportedly "natural" basis, requires closer examination as a schema for political categorization. As I explored in Chapter 2, the medical struggles to isolate a consistent marker of sex indicate that sex itself is not a stable category of biology. In light of this, and because in the absence of biology, social understandings have come to shape the gendered meanings of sex itself, policymakers have cause to acknowledge and evaluate the validity of using sex itself as a means for civil rights. The chapters that follow demonstrate that public officials have rarely done so. Instead, in the years that followed, sex-segregation as sports organization has been reified in both policy and practice. The subsequent chapters on the 1980s and 1990s will demonstrate how policy has projected meaning on to the category of sex, even as the category of gender has blurred historical assumptions about the masculinity/femininity dichotomy. In demonstrating these processes, I argue that sex-segregation has become a project of the U.S. state. Once we understand sex segregation as engaging with a state project and not a project of nature, we can see why and how this logic emerged as the most politically advantageous solution during periods of conflict, as well as how and when it has instigated repeated political battles over the purpose of sex equality law over the past forty years.

[26] The distinct "models" for sports organization (including "participatory" vs. "competitive" models) continue to enjoy a limited discussion in the field of sport sociology (Buchanan 2011; Coakley 2001). Participatory models dominated in many women's physical spaces before Title IX, and before the NCAA take-over of women's sports (Wushanley 2004).

In time, female athletes have shifted from anomalous oddities to ubiquitous American cultural and political figures. In the fortieth anniversary reports, the figure of the "female athlete" is commonly referenced as Title IX's most visible beneficiary. Although notably more absent from mainstream media coverage of competitive athletics than her male counterpart, she is nevertheless an increasingly fundamental component of the tapestry of American sports. In some sense, because she competes in similar, yet separate, sporting venues from her male counterpart, she has assumed a distinctly iconic cultural status over the past forty years. Because she has not been incorporated fully into men's sporting spaces, her marker of difference as "not male" makes visible the dramatic shifts in participation and athletic success of American woman. Put differently, the overtly masculinized space of men's sports makes the presence of women in men's games noteworthy; but because women participate in their distinct domains, with distinct coaches, venues, and fan bases, the growth in "new" sporting spaces reserved for women-only makes the dramatic shift to sports spaces even more visible. The "female athlete" is a relatively new phenomenon, and each new accomplishment for women's sports teams (in the Olympics) and franchises (like the WNBA) continues to instigate an excited frenzy from women's sports fans. Things have changed—even progressed—for women in sports, and the public desire to celebrate this is strong.

Yet these markers of "progress" should not be over-stated. The female athlete is no longer, as she once was, a figure transgressing norms. Paradoxically, she has become a figure that conforms to (and reconfirms) norms of gender, norms of heterosexuality and heterosexual desire, norms of consumption, and norms of able-bodied femininity. Today,

the female athlete is a fulcrum for discourse on the meanings of sex, gender, sexuality, race, and physical ability. She is, in many contexts, a physical body with embodied rights secured through Title IX, based on her innate and presumed "femaleness." Through the lens of Title IX, this presumed "femaleness" stands inherently and "naturally" in juxtaposition to her male athletic counterpart. As such, the defining feature of many "female athletes" is not her athleticism, but instead her presumed identity as *female*. She is often discursively (and politically) cast not as an athlete who happens to be female, but as a female who happens to be, in some sense, athletic. By implication, she is not as "good" as a male athlete, who—as an unmarked category synonymous with "athlete"—requires no qualifier in either political or cultural domains.

Researchers note that women athletes are often portrayed in hyper-sexualized or hyper-feminine ways, often out of their sporting attire (or lacking clothing altogether) in images publicized by mass media, even in sport-specific publications like Sports Illustrated (Heywood and S. Dworkin 2003; Messner 1988). While these findings are troubling in and of themselves, reflecting the on-going problematic for women seeking accurate and legitimate portrayals of their accomplishments without contingent misogynist framings, they also highlight my point. The "female athlete", despite her manifest and striking physical competence and accomplishments is still subjected to the same de-legitimating discourses facing many successful women in business, politics, and public life who, when at the top of their game, are often considered "too strong", "too accomplished" or "too aggressive" (Jamieson 1995). Likewise in sports, women who appear "too strong"—meaning, competitive with their male counterparts—are the same

bodies that are hyper-policed by the IOC sex testing policies as well as by cultural practices of lesbian-baiting and sexist denigration of the same behavior that is favored among men (Sartore and Cunningham 2009). Ironically, the one piece of legislation designed to ensure "equal" treatment and non-discrimination for women in sports has been unable to circumvent these gendered problems.

Intersectional limitations: The Privileges of the "female athlete"

Although women identify as athletes were not born out of the codification of Title IX, their social development as figures in media, education, and consumer capitalism is tightly tethered to her political emergence. Congress created the legislative conditions, in passing Title IX, under which the bureaucracy then required schools to give opportunities in sports to women. Although reversing patterns of sex discrimination against women was foremost on the minds of policy makers, they entertained possible solutions to sex discrimination to the exclusion of contingent forms of racial and economic inequality. Title IX's implementation centered a realm of exception on the sexed body from the ongoing political troubles of racial integration, treating all women as if they were white. Correspondingly, the implementation path that policymakers chose for Title IX served as a way to ensure further inequality along intersecting lines of race and class by denying the heterogeneous concerns among distinct sub-groups of women. In this sense, Title IX's application to athletics advantaged some (mostly white and middle to upper class) women in ways that defy the general understanding that Title IX has been universally good for all women in similar ways. Title IX, through focusing only on sex, has fallen short where it came to addressing inequities in sports facing other sub-groups of women, who are secondarily disadvantaged by an academic system struggling to fully incorporate

women of color, low-income women, women living with disabilities, and those at the intersections of marginality. The means of policy design ensured that Title IX has most benefited those women who have already found incorporation into educational and sporting institutions.

In short, by choosing to enforce Title IX in only sex-based and sex-segregated ways, actors within the U.S. state constructed a certain type of "female athlete". She was, through the lens of Title IX, able-bodied, and capable of being admitted into colleges and universities in order to claim her "right" to sport. As such, she was largely unmarked and racialized as a white, middle-to-upper class woman. By codifying "rights" to sports through educational institutions, the state dictated that Title IX would replicate, but not ameliorate the other raced and classed inequalities haunting institutions of American education writ large. The "female athlete" would represent a figure of equality only insofar as she was able (through the help of Title IX's implementation in college admissions) to gain access to institutions of college education in general, or within the context of racially segregated and unequally-resourced schools (see, for example, Knifsend and Graham 2012; Pickett, Dawkins, and Braddock 2012; K. Thomas 2009).

Vexingly, statistics on race and athletic participation opportunities capture the ongoing disparities, favoring sporting opportunities for white women over women of color. Seventy-seven percent of women college athletes are white, even though approximately seventy percent of women college students are white (NCAA 2011). Compare this to the 2010 U.S. Census data, which suggests that sixty-four percent of the U.S. Population identifies as white or Caucasian. In short, the implementation

mechanisms that Title IX has followed have not rectified other racial inequalities facing women of color when it comes to obtaining access to higher education. Even at the high school level, Title IX merely stipulates that within a specific school, opportunities must be substantially equitable between girls and boys within that school. As the *New York Times* has reported, this leads to significant disparities across schools and across districts, many of which—despite the intentions of school desegregation policies—often lead to more opportunities on the whole for students from affluent schools and districts in suburban settings (K. Thomas 2009). In full, the emergence of inequities between urban schools and suburban schools in athletic spending and opportunities are inequities with significant raced and classed characteristics and implications for young, urban girls. The *Times* has also reported systematic, though under-reported and rarely enforced, disparities in opportunity and spending in two-year communities colleges (K. Thomas 2011). This under-enforcement of Title IX in community college contexts detail significant classed and racialized implications since many students attend two-year colleges for financial reasons, and community colleges serve higher populations of women (60% of students are women) and women of color. In short, the empirical reality of "progress" for some women's opportunities under Title IX is co-constituted by gendered, raced, and classed stagnation for others.

Yet primarily, and most insidiously, the female athlete was explicitly "sexed" by the implementation of the very law that aimed to end the use of sex as a legal marker of access to education and sports. By establishing sex as the means through which bodies would be sorted into "equal opportunities" for sports, the U.S. state defined and

distinguished sex as a knowable characteristic of bodies in sporting venues. It also foreclosed alternative formulations of sex or gender for bodies and embodied practices that did not conform to biological dimorphism.. The "female athlete" was explicitly and unavoidably "female". Bodies that defied such classification were unknowable to the state, or to the colleges charged with ensuring space for them to compete in sports. In this sense, the "female athlete" was also immediately implicated in discourses of heterosexuality, even as she remained haunted by the specter of lesbianism. This specter, invoked historically and contemporarily to demean the true "womanness" of female bodies in sport represents a fundamental perverse outcome of sex-segregated spheres.

Women athletes must now, politically and culturally, continue to perform a certain brand of "femininity" (attached to female, biological sex and in implied juxtaposition to male bodies) even as they compete in sports. Failure to do so—or, even more perversely, extreme success in women's sporting venues even while performing "femininity" in gender-normative ways—often leads to the social denigration of such performances as excessively masculine, and inappropriately feminine (possibly lesbian) for women's bodies. Consequently, the "looming lesbian" in women's sports represents, in sex-segregated spheres, a threat to the legitimacy of the most basic tenet of Title IX. Since Title IX presumes bodies to be biologically dimorphic, it constitutes the "female athlete" as a natural, and therefore heterosexual counterpart to her male analog. Bodies, identities, or practices that defy this categorization suggest that perhaps the "naturalness" of this policy distinction is itself problematic and untenable. And indeed, over time, this

policy distinction of biologically dimorphic bodies has proven to be just that.[27]

Still, even as the debates in the 1970s set into motion these often retrogressive trends, it was also the catalyst for a new form of political mobilization around the political identity of the "female athlete" in the policy domain of the law. By the end of the decade, women had the potential to mobilize around an identity that had been heretofore defined as beyond the realm of the political. Title IX's application to the domain of sports generated a discursive space for female-identifying-women to seek access to sports through federal law. Although those rights would be contested in the subsequent decade, a new era for women's embodied politics was dawning.

Conclusions

In these ways described above, the political construction of the "female athlete" folds cultural battles over gender into policy provisions aimed at sex and sports. Through re-thinking the role of American politics in constructing understanding of gender, and denaturalizing the state's role in implementing sex non-discrimination policy in sports, I aim to reveal the political in the purportedly natural. That biological dimorphism is so pervasively implied in Title IX's politics should remind us that conflict over gender and the meaning of sex has been renegotiated quite centrally in political institutions. Further, that the gendered conflicts apparent from the germinal interventions of state intervention on sex non-discrimination policy generated a political identity central to political and cultural understandings of women's bodies suggests that these political conflicts over the

[27] See here the on-going problematics with creating space for queer and trans* bodies in sport which I explore more fully in the conclusion (Buzuvis 2011, 2012b, 2013; Cavanagh and H. Sykes 2006; Griffin 2012; Heggie 2010; Nyong'o 2010; Sinisi 2012).

meaning of gender and Title IX were not solved once and for all in the 1970s. Instead, by codifying the means through which women would come to identify as "athletes", the U.S. state set in motion politics within public policy that continue to unfold.

Forty years after the passage of the law, and thirty-three years after the final enforcement rules were promulgated by HEW, the implications of these political battles go largely under-analyzed. Journalists were quick to note that the 2012 U.S. Olympic team was populated by more women than men, and those women competitors brought home more Olympic medals than their male counterparts (i.e. Haven 2012), even referring to the London Olympics as the "Title IX Olympics" (Mellinger 2012). These accounts, which came closely on the heels of the June 23rd fortieth anniversary celebrations, promote and re-naturalize sex-segregation based on sex-difference as an unproblematic characteristic of sports competition. Further, they omit the contentious story of political battles embedded in this characteristic of policy implementation. In order to understand sports, we must understand the politics of sex-segregation. And in order to understand the politics of sex-segregation, we must revisit the histories embedded in American political institutions. To simply "thank Nixon" or appeal to "progress" in public opinion is both short-sighted and inaccurate.

Finally, this chapter should demonstrate that although we no longer see the types of framing advanced by the Connecticut court in 1971, we have nevertheless instantiated the premise behind the comments—that men and women do not belong in the same spaces during athletic pursuits—into law and policy. Progress, such that it is, has come at a cost. The political category of sex has been overtly attached to biology in ways that

limit the radical potential for re-defining gender.

CHAPTER IV: The "Lesbian Bill of Rights"?: Sexuality, Normativity and Trickle-down Rights for Female Athletes, 1980-1989

Vaulting in to the 1980s: Mary Lou Retton as "female athlete"

In the summer of 1984, and shortly after the U.S. Supreme Court had ruled that Title IX did not apply to sporting settings, Mary Lou Retton became America's "golden girl". During the Olympic Games, held in Los Angeles, California, Retton won five medals in women's gymnastics, including the first-ever "All-Around" gold medal for an American gymnast. The *New York Times* dubbed her "a diminutive dynamo of such explosive power and finesse" who was also a "typical American teen-ager—a study in girlish giggles who snuggles a dogged-eared stuffed lamb, dotes on rock music, and has a crush on a movie star" (R. Thomas 1984). She became an athletic icon for the decade, epitomizing the alleged achievement of American female athletes—achievement in sporting domains in the wake of Title IX, achievement over athletes from communist states during the on-going Cold War, and achievement of an tenuous fusion between athleticism and femininity.

As I explain below, Retton became popular during a critical moment in Title IX's history and her success helped to detract from the (temporary) end of Title IX's implementation. The Reagan administration had announced in 1981 that it would stop enforcing the law. The Supreme Court had ruled in February of 1984, that athletics programs did not count as an "education program or activity receiving Federal financial assistance" (*Grove City College v. Bell*). More broadly, the decision in *Grove City* limited Title IX's applicability so narrowly, the head of the Congressional Subcommittee

on Higher Education remarked "after the *Grove City* case, there is no longer any federal law which comprehensively prohibits sex discrimination in education" (U.S. Congress 1984a, 12). In response, the U.S. Congress began committee hearings on the topic of restoring civil rights protections stripped away by the Court ruling by May of that year. Yet despite the concerted effort by the Reagan administration to end protections for female athletes "on the basis of sex", President Ronald Reagan was among Retton's biggest fans.

In the decade since the law was passed, interpreting Title IX had brought into political conversations the cultural debates over changing gender norms. Although gender equity in education was not the only domain in which this occurred, it was one of several policy domains, including reproductive rights and the workplace, where the policy gains of the 1970s were under attack from conservative cultural forces. At stake in the politics of Title IX throughout the 1980s was "cultural" debate masked in a political struggle. To the New Right, women's inclusion in male-dominated domains represented a threat to the "natural" order of heterosexual society.[1] The election of conservative icon President Ronald Reagan allowed for these retrogressive cultural lobbies to gain access to

[1] The "New Right" refers to the conservative political coalition active beginning in the mid-1960s in pursuit of a "family values" agenda (Critchlow 2005; Self 2012). Their electoral approach helped to elect Ronald Reagan to the presidency in 1980 and was organized through groups like the American Enterprise Institute, the Heritage Foundation, and the Eagle Forum. The coalition of anti-feminists organized around Phyllis Schlafly as the figurehead and pursued a variety of policy agendas to combat liberal feminist organizing in the 1970s and 1980s (i.e. Schreiber 2002). Title IX was, and continues to be, one of the targeted policies of the Eagle Forum (Critchlow 2005; Schreiber 2002, 2008).

political institutions. The agenda to disempower governmental structures tasked with implementing civil rights law, and Title IX in particular found institutional traction shortly after Reagan took office. President Reagan's administration slowed enforcement of the law to a standstill until the *Grove City* case migrated to the Supreme Court. In the wake of the Court's decision, Title IX was virtually devoid of an enforcement provision and female athletes had no recourse to demand legal access to sports.

This was truer in sports than in classrooms. The paradoxical interpretation of Title IX's central clause took root in the 1980s. In many ways, its implementation reflected the themes of a decade. Where Title IX was applied in a sex-blind manner, women made significant gains in classrooms "regardless of their sex". Yet in its sex-conscious forms, when women were to be given athletic opportunity "by virtue of their sex", political conflict erupted. In policy arenas that came to define the conservative revolution in American politics (such as reproductive policies, affirmative action, and welfare), conservative elites acted to draw-back civil rights gains from the previous decade which acknowledged and sought to ameliorate discrimination on the basis of difference.

The actions of conservative policymakers revealed the homophobic disposition of the Reagan administration. Secretary of Education Terrel Bell reported in his memoirs that mid-level Reagan staffers in the DOE referred to Title IX as the "lesbian bill of rights", illuminating the disdain with which the administration viewed sex equity policy

in sports, as well as the distaste for female athletes (T. H. Bell 1988).[2] Sexuality figured centrally in the politics of the decade. Not only did the DOE knowingly cease enforcement of sex discrimination policy it believed was designed for "lesbians" but in discussions over civil rights legislation regarding sex, lawmakers were quick to distance sex protections from those protecting against discrimination based on sexual orientation. As I explore in this chapter, one way that lawmakers were able to reinstate protections for female athletes under Title IX was to assure conservative members of Congress that the law would never be used to protect "homosexuals".

Throughout the decade, federal officials across all three branches of government battled over what Title IX would come to mean, and how meaning would be inscribed into sex. The 1980s brought new meaning to the symbolic nature of women in sports and provided the political venue through which women's rights to and in sports would be challenged and reinstated. This chapter traces the political history of Title IX through these moments demonstrating how the paradox initially spelled doom for female athletes, and why this policy domain eventually resisted the trends that created uneven progress in other arenas.

Nationalism and the 1984 Olympic Games

In light of the extreme retrenchment of rights for female athletes, Mary Lou Retton emerged as a curious national figure. At the end of the Los Angeles Summer Olympic Games, Mary Lou Retton was an incredibly popular, symbolic figure of U.S.

[2] Bell also reported widespread racism amongst Reagan staffers, who referred to Dr. Martin Luther King as "Martin Lucifer Coon", referred to Arab-Americans as "sand niggers", and made frequent homophobic jokes regarding women in sports (T. H. Bell 1988)

cultural and international politics. Retton's popularity was aided by her triumph in a sport that forges a tenuous union between physical power and femininity. She stood only four feet, nine inches—an essential physical size in order to accomplish the high-flying feats required in the sport—and the press lavished attention on her effervescent personality. Sports Illustrated called her "America's pixie hot rod", commenting that she was "grinning like an elf from behind her…medal" (Ottum 1984). In physique and personality, she conformed to an emerging rendition of femininity. She called herself "tough" in interviews, but did so with an "irrepressible grin" that Sports Illustrated qualified as "bubbly beyond belief" (Ottum 1984). She wore her hair in a short "pixie cut", but at only sixteen years old, embodied a childlike adolescence that enabled such gender performance to hint at her youth, instead of non-conformity. Her coach, Romanian-expatriate Bela Karolyi, was quoted by American media paternalistically calling her a "liddle biddy boddy", even as she received two perfect scores for athletic feats at the top of her sport under an international gaze. The press proclaimed: "…along came Retton to win the championship of everything in sight and now—at last!—the average sized people of America have a heroine they can look down to" (Ottum 1984).

As these comments imply, her female athletic victory was not merely athletic. During competition in Los Angeles, she wore a white leotard emblazoned on the lower-half with the stars and stripes of American flag, aligning her physical feats with the American national identity. Projects of nationalism were central to the 1984 Games as well as to Reagan's on-going big for re-election. In response to the 1980 boycott of the Moscow Summer Olympics by the U.S. Olympic team--fourteen Eastern Bloc countries,

including the Soviet Union and East Germany–boycotted the Los Angeles Games. The only nation resisting the boycott was Romania. In the finals of the all-around competition for women's gymnastics (during which competitors compete in all four events, accumulating scores from floor exercise, balance beam, vault, and uneven parallel bars to vie for the title), Retton's closest competitor was Romanian gymnast Ecaterina Szabo. Although Szabo was the most successful athlete of the Games in Los Angeles, winning four gold medals in the team competition, vault, balance beam, and floor exercise, she finished the all-around competition 0.05 points behind Retton. Domestically, the victory catapulted Retton to national prominence, landing her endorsement contracts with Wheaties, Vidal Sassoon, Pony athletic sneakers, and Energizer batteries, as well as the titles of "Associated Press Female Athlete of the Year" and "Sports Illustrated Sportsman of the Year". Not since Dorothy Hamil's Olympic gold in the 1976 women's figure skating competition had Americans been so smitten with a female athletic figure.

In the aftermath of the Games, Retton also became a political figure. She was an ardent supporter of the Reagan administration, appearing in re-election campaign videos, and eventually going on to serve on the President's Council on Physical Fitness and Sports during the G.W. Bush administration in 2004.[3] Even so, she remained notably silent on issues of sex equity and Title IX. In this sense, her silence filled the void left by the Reagan administration's abdication of policy enforcement responsibilities. So long as

[3] Reagan campaign advertisement featuring Mary Lou Retton: http://www.youtube.com/watch?feature=player_embedded&v=wpJ2j2OcqeY (accessed March 15, 2013).

Reagan supported Mary Lou, he could downplay the actions of his administration to cease enforcement of the law that determined the conditions of participation for the average American female athlete. Further, the success of Mary Lou buttressed the broader conservative agenda, which promoted private investment in public goods. In the context of the Cold War, Mary Lou Retton elevated the private success of American female athletes to an international stage.

Yet even as President Reagan willingly engaged with Retton as the pre-eminent American female athlete, his political maneuvers throughout the decade aligned with the movement to strip Title IX of its enforcement provisions, ensuring that it could not be used as a means for securing women athletic opportunities. Reagan's politics epitomized the tensions embedded in sports throughout the 1980s. Sports were an arena through which the politics of nationalism and nation-building continued to unfold within the context of the on-going Cold War, even as the battle over the meanings and means of equality within the sporting domain characterized the politics of civil rights as a fundamental critique of the American project. Sports were the arena through which bodies like Retton's were labeled "ultimately American", even as debates over the rights of female bodies to occupy the category of athlete was undermined by Supreme Court rulings and presidential politics. Sex was the category of note, articulated through the bodies of athletes, and operating as a point for condensation of the embodied fears around sexuality newly fresh in light of the AIDS epidemic.

Nearly ten years after the political debate regarding Title IX's implementation guidelines, the American "female athlete" was rapidly emerging as an archetype—and

Retton was its vanguard. The early 1980s had seen increased visibility for professional tennis stars like Chris Evert and Martina Navratilova, distance runner Joan Benoit, and track star Mary Decker. As the decade wore on, sports fans became acquainted with track stars Florence Griffith-Joyner and Jackie Joyner-Kersee, swimmer Janet Evans, and speed skater Bonnie Blair. Yet against the backdrop of the increased status for these female athletes as cultural icons, a contentious political battle was unfolding. Throughout the 1980s, political actors and policy makers in the Supreme Court and the U.S. Congress engaged in a protracted political discussion about the political rights afforded to women in sports.

Central to these political discussions was a political referendum on the application of Title IX to give women access to sports *by virtue* of their sex. The debates over sex-segregation had been largely settled by the end of the 1970s, but the practice of *de facto* sex-segregation on college sports teams was just beginning. By 1982, ten years after Title IX was passed, and three years after the final guidelines went into effect, college sports participation for women was nearly two and a half times higher than it had been in 1972 (NCAA 2012a). Even still, women continued to have less than half as many sporting opportunities compared to men, whose opportunities had also grown over the course of the 1970s. Title IX's implementation in sports was simultaneously striking and slow.

In educational settings, a different story unfolded. By 1981, women were completing just shy of half of bachelor's degrees and Master's degrees in the United States (DOE 2011). Only twenty-nine percent of doctorates were conferred to women,

although those numbers had increased eight percent since 1977 (DOE 2011).[4] Title IX's implementation in other realms of education was effective, and quick. Opening classroom spaces for women proved an easier task than building new and separate teams, programs, and locker rooms. But despite the ease with which women had begun to infiltrate the halls of higher education, the most intense resistance to Title IX's implementation came in the realm of sports.

During the decade following an enormous expansion of ascriptive civil rights for previously marginalized political groups, the conservative politics of "backlash" and retrenchment made it increasingly challenging for groups to claim them. The 1980s were fraught with contradiction. It was the decade of AIDS, where the glorified bodies of healthy athletes were part of enabling the governmental denial of the AIDS crisis. It was the decade of disinvestment in social welfare policies and the emergence of a neoliberal state, where the politics of austerity redirected public goods to Cold War military proliferation. It was a decade of "backlash" against policies aimed to redistribute wealth and opportunities to marginalized populations, even though the decade ended with a critical legislative victory for proponents of Title IX in the Civil Rights Restoration Act. In a moment of profound uncertainty about the rights of bodies to sport "on the basis of sex", a female athlete emerged as the national hero.

[4] Degrees conferred are an imperfect measure of Title IX's implementation because the policy was aimed and ensuring access to education, not completion of degrees. That said, the Department of Education historical statistics track degrees conferred and even this imperfect measure demonstrates that Title IX's implementation in educational settings was having beneficial effects for women.

Mary Lou was herself emblematic of a jumping, vaulting, twirling contradiction: she lived in the suspended adolescence of collective memory even as the years following her victory saw the persistent undermining of rights for women seeking to replicate her achievement. I argue that her resplendent ascendance to national icon represented the impossibilities of the decade: she was heralded not as the embodied success of civil rights policy, but instead as an example of the virtues of individual hard work and determined effort (R. Thomas 1984). She owed her victory, not to policy or politics, but to competitive zeal, positive attitude, and gender-normative compliance in an era when the hetero-patriarchy was reasserting control. She trained not on college or high school sports teams, but in a private gym supported through private funds (Retton, Karolyi, and Powers 1986).

When President Reagan spoke to the nation in his weekly radio address following the Games, he said:

> Something very bright and happy and hopeful has been happening across our country in recent days. We've watched a grateful nation shower its affection on those who showered us with glory -- our Olympic athletes. Theirs was a triumph of faith and hope. In honoring them, ours has been a celebration of the new patriotism...And when our famous gymnast, Mary Lou Retton, stood on her toes to give me a hug, I couldn't help thinking, "How can anyone not believe in the dream of America?" Now, I've been accused of being an optimist, and it's true. All my life I've seen that when people like Mary Lou have a dream, when they have the courage and opportunity to work hard, when they believe in the power of

> faith and hope, they not only perform great feats, they help pull all of us forward as well (R. Reagan 1984).

The irony was thick. Reagan suggested the "opportunity" was to be credited for the success of American athletes even as his administration's policies intentionally stopped enforcing that ethos of opportunity for women in sports. Even as Reagan yearned for the presence of more heroes who would "shower [the nation] with glory", his policy stance made the development of these athletes through college sports less likely.

In this sense, Reagan required Retton to obscure the actions of his administration. He required a youthful athlete who rose to the elite levels of her sport without the support of educational institutions. Retton trained at private gyms and was home schooled throughout her years as an elite athlete. In a distinctly gendered sport, where women and men compete in distinct and different apparatus, Retton's success depended very little on policies aimed to ensure her opportunity "on the basis [of her] sex".

Lucky for Reagan, Retton was able to represent even more. As I describe below, the challenges against enforcing Title IX in sports were attached to claims regarding religious freedom. Not only did Retton embody "the triumph of faith and hope", she was a devout Baptist (Ditchfield 2000). For Reagan, this coincidence could not have been better timed. Although he did not exploit her religious beliefs during public appearances, they were part of what made Mary Lou an unwittingly conservative icon of the moment. The work of feminist activists and policy makers over the course of the 1970s was meeting its first internally motivated bureaucratic challenge in the Reagan administration.

From Carter to Reagan: 1979-1984

By 1979, colleges and universities had a clear sense of the means through which the federal government wished for Title IX to be implemented after the Carter administration published the policy interpretation memo (HEW 1979). In December of that year, the final policy interpretation memo on Title IX's application to intercollegiate athletics was promulgated by HEW to colleges and universities across the country.[5] The memo detailed "a means to assess an institution's compliance with the equal opportunity requirements of the regulation"[6] in terms of athletic financial assistance, equivalent opportunities for "both sexes", and "effective accommodation of student interests and abilities" (HEW 1979).[7] Implicit in these directives was the codification of sex-segregation as the means to prove compliance, discussed in Chapter 3.

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[5] *Federal Register* 44, no. 239 (Tuesday, December 11, 1979) www.ed.gov/about/offices/list/ocr/docs/t9interp.html

[6] Signed by President Ford on May 27, 1975, and effective on July 21, 1975. Schools had been allowed a three-year period in which to comply with the equal athletics opportunities requirements, yet by July of 1978 the Department of Health, Education, and Welfare had received 100 complaints regarding discrimination in athletics in institutions across the country. The 1979 guidelines were issued as a means to provide educational institutions further guidance on compliance in the realm of sports.

[7] The "three-prong test" of compliance in the domain of athletics was developed in the late 1970s by the Carter administration as the dominant means of Title IX compliance review (Miguel 1994b). The three "prongs" upon which schools were told they would be judged by the Office for Civil Rights on their Title IX compliance included: 1) substantial proportionality: opportunities for participating in intercollegiate athletics must be substantially proportional along lines of sex to the undergraduate enrollment, 2) continued expansion: demonstration of a "history and continuing practice" of expanding athletic opportunities to the underrepresented sex, or 3) full accommodation: a school must present proof that it has "fully and effectively accommodated" athletics interests of the underrepresented sex.

In the latter part of the 1970s, schools had begun to haltingly change the offerings of sports for women, but these gains were incomplete. Between 1967 and 1977, women's college athletic participation opportunities had grown four-fold, from just over 15,000 to nearly 63,000 (NCAA 2012a). As the Ford administration left office, women's issues were firmly on the agenda, although the gains were still incomplete. The ERA had passed both the House and the Senate, and thirty-four states had approved the amendment. As Ford left office, his administration circulated a memo to members of Congress listing Title IX as a key piece of legislation of concern for women (J. M. Martin 2009, 201). The Carter administration appointed a large number of women to bureaucratic posts and was the first administration to have a woman head the Equal Opportunity Employment Commission (J. M. Martin 2009). By 1977, Carter circulated a memo among heads of the executive departments suggesting his desire to model sex non-discrimination in the enforcement of federal law (J.M. Martin 2009, 214).

The 1979 Title IX memo made clear that the Carter administration was unsatisfied with the limited progress in the law's implementation. The more thorough guidelines were designed to give schools more precise metrics through which to pursue growth in their athletic department's programs for women athletes. In the subsequent three years, another 11,500 opportunities were added to athletic rosters at the college level, such that by 1982, just over 72,000 women were participating in sports (NCAA 2012a). Schools were expanding the size of sports programs for women and men, and Men's opportunities were similarly growing. Between 1977 and 1982, schools added approximately 1700 new opportunities for men, leaving a significant gap between the 74,000 spots for

women, and the 170,000 offered to men (NCAA 2012a). Still, President Carter did not make definitive statements about the enforcement of Title IX, and groups like the Women's Sports Foundation mobilized a coalition of activists to put pressure on the administration to force HEW to author the new memo (Ware 2011).

Carter's attention to sports was more visible during the U.S. Olympic Team boycott of the 1980 Moscow games. The boycott, led by the Carter administration in response to the Soviet invasion of Afghanistan, was a moment in diplomatic, political, and sporting history. The U.S. Olympic team did not attend the Moscow Summer Games, and political historians mark this decision as an accelerant for Cold War tensions between the U.S. and the U.S.S.R (Sarantakes 2010).[8] Thus four years later, during the 1984 Los Angeles Summer Games, when the Eastern Bloc countries responded with their own boycott, sports again emerged as a fulcrum for nationalist expression. As an international figure of national pride and power, the "female athlete" came to represent a category of resilience and strength in the face of adversity. But at home, the conditions for "female athletes" in U.S. colleges and universities were emblematic of something quite different.

By the early 1980s, the Reagan administration was facing an emerging set of legal conditions for women in sports. Nineteen eighty-four was an important year in the history of Title IX because in February of that year, the Supreme Court handed down a decision *Grove City College v. Bell*. The decision in this case was the third of three

[8] Scholars in political science also note the role of the Olympic Games in constituting political arrangements across time (Johnson and A. Ali 2004) and political conflicts (Boykoff 2011a, 2011b, 2013).

important Supreme Court decisions shaping the meanings and means of sex discrimination and Title IX. In 1982, the Court decided *North Haven Board of Education vs. Bell*, and *Franklin v. Gwinnett County Public Schools*. The decision in *North Haven* ensured that Title IX's provisions regarding sex discrimination in employment at educational institutions applied to both students and employees (Graf 1983). However, the Court also left open a debate over Congressional intent of the final clause of Title IX, in which it stated that discriminatory practices were not allowed in "programs or activities receiving Federal financial assistance". The Court did not offer a specific definition of a "program" in the *North Haven* decision, suggesting instead that future interpretations of the meaning of the clause would require an examination of legislative history.

The ruling in *Franklin* pertained to the rights of plaintiffs. The case was brought by a high school student who had experienced persistent sexual harassment by an employee of the school who was both a teacher and a coach. The plaintiff's complaints were not only ignored by the school, she was discouraged from pressing formal charges, and the teacher was forced to resign. At issue in the appeal was the plaintiff's right to seek monetary damages under Title IX. The Supreme Court's decision indicated that damages were available in a judicial action pursued under Title IX unless Congress specifically indicated otherwise. Thus the ruling incentivized Title IX's enforcement through private legal suits brought by aggrieved student-athletes if their schools did not respond to their concerns. By 1982, the questions of policy design and implementation

that were salient in the 1970s were transforming into concerns over legal rights for female athletes.

The Equal Rights Amendment, "backlash", and policy uncertainty

Simultaneously in 1982, the members of U.S. Congress and feminist activists alike saw the Equal Rights Amendment go down to defeat during the ratification process. What had once been the promise of sweeping, institutionalized, second-wave feminist movement success was slowly eroded as conservative political actors undermined the movement (Critchlow and Stachecki 2009; Mansbridge 1986; Mathews and Hart 1990; Schreiber 2002, 2008). The defeat of the ERA symbolized the broader trend of conservatization of American politics that was beginning to find traction in portions of the electorate and institutions of U.S. government (Critchlow 2005; Ellis and Stimson 2012; Rohde 1991; Self 2012). The defeat of the ERA was therefore a significant setback to feminist politics in a number of dimensions, necessitating piecemeal policy and legal interventions to ensure equal treatment for women in the workplace (Bingham and Gansler 2002; Dobbin 2009; E. Kelly and Dobbin 1999; Turk 2011), in education (Hanson, Guilfoy, and Pillai 2009; McCarthy 1991), in wages (McCann 1994), and through family and pregnancy policy (Albiston 2010; Strach 2007). As the political party platforms diverged on women's issues (Sanbonmatsu 2002; Wolbrecht 2010), the ascendance of the Reagan administration's conservative policies constituted what Susan Faludi famously termed: "backlash" (Faludi 1991).

The particular politics of Title IX reflected the broader trends and conservative discourses that were ongoing in other policy domains. The Reagan administration had

announced its intention to cease the investigation of Title IX discrimination claims, and the discussion from members of the administration characterized civil rights interventions in the domain of sports as prime examples of government "over-reach" (U.S. Congress 1982, 259). Incongruously, members of Congress and Reagan administration policy experts would often simultaneously support the ethos of Title IX, but maligned the means of its enforcement. A great deal of lip service was put to the notion of equal opportunity even as there emerged disagreement over how to go about enforcement. During a 1982 Congressional Hearing in the House Committee on Education and Labor, Representative Don Edwards (D-CA) remarked:

> As you know, I have served on the Civil Rights Subcommittee of the Judiciary Committee for 20 years, and I can remember only one other time when there has been a concerted effort by the executive branch to undermine civil rights enforcement. That was in the early seventies when the issue was school desegregation, the strategists were HEW and the Department of Justice. Today, the issue is still desegregation, desegregation on the basis of race, national origin, gender, and handicap, desegregation in education, employment, and housing. The strategists are still in the Department of Education and the Department of Justice, and published reports suggest that other lead agencies, at first reluctant to make drastic changes, will soon be on board as well. It is my belief that if not checked, the legacy of this administration will be a more divided American society, divisions based on race, national origin, gender, handicap, and class. As a nation, we want to believe that discrimination is a part of our past, not our present and

> future. And we have come a long way from the old days of Jim Crow. But the task is nowhere near complete. Yet this administration for whatever reason, chooses to ignore this reality. For them, discrimination is manifested in isolated incidents in a society which is race and gender blind (U.S. Congress 1982, 3).

Rep. Edwards's comments display ambivalence towards the legacy of racial discrimination at the same time as they indicate the extent to which sex-segregation in sports had been naturalized as a suitable solution to the problem of discrimination even as it ran anathema to the policy implementation means in other domains. Desegregation on the basis of "gender" was not a policy mandate in athletics.

The memories of battles over racial desegregation haunted many of the discussions throughout the decade. Lawmakers were deadlocked over precisely the concerns articulated by Representative Edwards. Democrats were outraged by the Reagan administration's decisions to stop enforcing civil rights policy in a number of domains. Conservative Republicans, long awaiting the election of a President sympathetic to privatized, free-market mechanisms for dealing with social ills, began to mobilize around the contradictory claim that colorblind policies were both sufficient to solve the problems of discrimination, even as those policies represented the harms of a government "over-reaching".

Hearings in 1982 through 1984 were filled with examples, articulated by conservative lawmakers, of religious institutions that were forced to implement "unnecessary" civil rights policies (see: U.S. Congress 1984a; U.S. Congress 1982). At issue was the interpretation of the enforcement clause central to civil rights law, dictating

which institutions were not allowed to discriminate. Members of Congress expressed concern over the direction of executive enforcement, but the real conflict initially arose at the intersection of the executive, and the courts in a 1984 Supreme Court decision in *Grove City College v. Bell.*

Grove City and the end of enforcement

In *Grove City College v. Bell*, the Court re-considered the meaning and scope of Title IX's implementation. At issue was the intended meaning of the final clause regarding "programs or activities receiving Federal financial assistance". This clause, inherent to the congressionally expressed meaning of where Title IX should be applied (and central to creating its application to athletics in the mid-1970s), was of primary concern. The case was originally brought by the privately funded Grove City College. The school had been declining federal assistance for educational programing as well as abstaining from participation in the Regular Disbursement System (RDS) of the Department of Education (DOE) where in educational institutions were advanced sums of federal educational grant monies through which colleges and universities selected students to whom to distribute grants. However, Grove City College also enrolled students who receive grant money directly through Basic Educational Opportunity Grants (BEOG's) administered through the DOE's Alternative Disbursement System (ADS). Thereafter, the DOE ruled that Grove City was therefore a "recipient" of "Federal financial assistance", initiating administrative proceedings against the college when it did not file its Assurance of Compliance. The College and four of its students filed suit in Federal District Court.

Grove City had been prominent in discussions on the implementation and enforcement of Title IX since January of 1981 and the Reagan administration saw this legal action as a test case for the rights of schools—and religious schools in particular—to privately discriminate. In Congressional hearing testimony during the spring of 1982, actors in the U.S. Commission on Civil Rights and the Department of Education itself confirmed that that the Reagan administration had intentionally ceased enforcement of a range of civil rights policies—including Title IX and Title VI of the Civil Rights Act (CRA)—shortly after taking office (U.S. Congress 1982). These laws had previously grounded their enforcement provisions in the clause originally penned through Title VI of the CRA, which outlawed discrimination in "any program or activity receiving Federal financial assistance".[9] Title IX of the Educational Amendments of 1972 was modeled using the same language, and owed its specific enforcement mechanism to the language in the Higher Education Act of 1965 (HEA). In the HEA, the federal government authorized and funded "guaranteed student loans" (or GSLs). The ruling in *Grove City College* considered the lower court's conclusion that monies allocated through BEOG and GSL's constituted aid to the entire institution (thereby triggering Title IX) was rejected by the Supreme Court. The Court reviewed Congressional legislative history and decided that there was an insufficient evidence to suggest that Congress had intended to trigger institution-wide coverage through loan and grant money. Barring this

[9] Title VI read: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Pub. L. 88-352, title VI, Sec. 601, July 2, 1964, 78 Stat. 252).

legislative history, the Court ruled in *Grove City College* that only the school's financial aid office was technically beholden to comply with Title IX. None of the other domains, including athletics were covered under Title IX in the wake of *Grove City*.

OCR Enforcement of Title IX

In the years leading up to the *Grove* City case, female athletes across the country had sought other means for policy enforcement. Across the country, women pursued alternatives to force their schools to change sporting options for women. Female athletes denied participatory opportunities in intercollegiate athletics had three options: 1) they could file a legal suit, charging their educational institution with discrimination (a topic that I explore more thoroughly in Chapter 5), 2) they could file a complaint with the Office for Civil Rights, requesting an investigation from the regional Civil Rights office, or 3) they could try to persuade their institution to follow the intent of the law without seeking legal or bureaucratic redress. Prior to October of 1980, their best bets were legal suits or friendly persuasion. During Congressional hearing testimony in May of 1983, the Assistant Secretary for Civil Rights, Harry Singleton, presented the second annual OCR Report. In it, he revealed that OCR had accrued a significant backlog of complaints in the area of intercollegiate athletics over the course of the 1970s (U.S. Congress 1983 , 173-192). Although the first set of regulations governing the implementation and enforcement of Title IX went into effect in July of 1975, the OCR under Cater delaying pursuing the investigations of any sports-related claims. The 1983 Annual Report revealed that OCR had taken no action on long-standing sex discrimination claims in college athletics until April of 1981 (U.S. Congress 1983).

This report came four years after the initial revelation by the 1979 Director of OCR that:

> The failure of the federal government to mount an effective Title IX compliance campaign did a grave disservice to the victims of discrimination who filed complaints, and it left a legacy of public ignorance about the law and about the severity of unequal treatment…in 1977, the Department's Office for Civil Rights inherited that legacy (USCOCR 1980a, 5).

The years spent debating the means of policy enforcement, explored in Chapter 3, had come at a cost. By 1983, Assistant Secretary Singleton equivocated on this legacy of neglect, asserting that the December 1979 policy implementation memo pertaining to sports was OCRs first "policy guidance on investigating these types of cases" U.S. Congress 1983, 229).[10] Thus, according to the Assistant Secretary, there was some element of inevitability to the nearly ten-year delay in direct enforcement of policy in the realm of sports. It was not until April 21, 1981 that the OCR issued its first "Letter of Finding" (LOF) regarding discrimination against women at the University of Akron within the athletic department.

Other OCR reports had indicated that this backlog of complaints had been long-acknowledged by the Office. Their 1980 report on "Enforcing Title IX" indicated that when the 1979 policy memo was finalized, OCR was holding 119 civil rights complaints

[10] In reality, a long history of interest group activity had been researching and politicizing the inactivity of the federal government, and HEW specifically, on enforcing Title IX. The Project on Equal Education Rights (also known as PEER, one element of NOW's Legal Defense and Education Fund) published a study in 1976, concluding that HEW's enforcement activities had been "negligible" (PEER 1978).

regarding athletic programs from seventy-seven different institutions (USCOCR 1980a, 23). The backlog continued to grow throughout 1980 before the Office began officially pursuing investigations in October of that year. Each of these reports represented an instance when women felt they were been mistreated, under-served, or otherwise discriminated against "on the basis of sex". But many of the complaints would never be investigated or resolved. The OCR under Carter had stalled in following through on Title IX complaints, and under Reagan, they announced no intention of enforcing the civil rights provisions, anticipating the decision of the case out of Grove City, Pennsylvania.

Grove City College v. Bell

Grove City College was a small, Christian, liberal arts college whose legal challenge to Title IX would dramatically (albeit temporarily) change the scope of civil rights law in the 1980s. They had long denied federal and state loan and grant funds and thus asserted that they were exempt from the enforcement clause of Title IX and should therefore be excluded from the requirements of implementing civil rights law. They argued in their petitioner's brief when the case came before the U.S. Supreme Court:

> If a college accepts state or federal funds, it can anticipate government regulation. If it refuses to participate in federal programs, then it can expect to be free from unwarranted regulatory intrusion. Grove City's challenge raises fundamental questions of governmental limitations, Congressional intent, and educational policy (*Grove City College v. Bell*).

This position aligned with other arguments to religious exemption that would come to define the contours of reproductive health care policy for religiously affiliated

educational institutions (DiMauro and Joffe 2007; Irvine 2002). But they also made a striking distinction: lawyers for Grove City College argued that their refusal of federal monies (for religious reasons or otherwise) made them exempt from the requirements of non-discrimination. This case forced the courts to review congressional intent towards enforcing Title IX, and the meaning of "any program or activity receiving Federal financial assistance".

In the months leading up to oral arguments at the Supreme Court in *Grove City*, members of Congress took action to clarify congressional intent on the meanings of the enforcement provisions in Title IX. The letter of the law passed in 1972 indicated that sex discrimination was illegal in "any program or activity receiving Federal financial assistance" (20 USCA 1681). Central to the debate over OCR's enforcement of policy complaints in the early 1980s was Congressional intent about the meaning of this clause. Anticipating a major dispute over the lower court's interpretation in *Grove City*, and reliance by the Supreme Court on the specifics of legislative history, members of Congress attempted to clarify and re-articulate their intent.

On May 10th of that year, Representative Claudine Schneider (R-RI), introduced House Resolution 190. The resolution reaffirmed the intention of the House of Representatives that Title IX should provide comprehensive protection against sex discrimination in education, and was passed by a vote of 414 to 8 on November 16, 1983. The measure received a great deal of support across both political parties, and in both chambers of Congress. Representative Schneider also authored an amicus brief in the *Grove City* case, and reported in Congressional Hearing testimony that she received

support from seventy-five Senators and Representatives for the opinions articulated in the brief (U.S. Congress 1984a , 28).

Members of Congress, however, disagreed about the breadth of enforcement. Senator Orin Hatch (R-UT) had introduced a bill during the 97th Congress (S. 1361) to limit the scope of the bill. In the majority opinion in the case, Justice White agreed with the more conservative elements. The Court rejected Grove City's claim that it was not a "recipient" of federal funds, because of technicalities with student aide dispersement.[11] Although Grove City College had declined participation in federal student assistance programs, the college enrolled many students who received Basic Educational Opportunity Grants (BEOGs). By enrolling these students, the Court ruled that Grove City College was beholding to the nondiscrimination requirements of Title IX. However, the details of the ruling were more complicated for female students seeking redress under Title IX. The Court also held that the application of Title IX within a particular college was program specific. In effect, this meant that Title IX was enforceable only when the specific program received federal funding. For the purposes of Grove City College, this meant that Title IX only applied to financial aid programs, and not to specific departments like the department of athletics.

The program-specific ruling meant that in the wake of the *Grove City* decision, colleges no longer had to create new athletic opportunities for women in order to be compliant with Title IX. The Court's conclusion that Congress had not intended for Title IX to apply to programs not receiving direct federal monies meant that athletics programs

[11] More thorough discussions on the legal reasoning in *Grove City College v. Bell* can be found in (Brake and Catlin 1996; Brake 2010; J. McCarthy 1991).

no longer required scrutiny under the law. To this end, the classroom provisions of Title IX were, throughout the mid-1980s, far more important to the application of the law than the central provision "on the basis of sex". But while the effects of the case would seem at first to have undermined Title IX's force regarding athletics, I will show that "female athletes" and lawmakers had begun to establish relationships that would come to weigh heavily on Congresses reaction to the Grove City decision.

A "Blueprint for Women's Sports"

During the months leading up to the *Grove City* oral arguments, a group of activists for female athletes converged on Washington, D.C. The Women's Sports Foundation and the United States Olympic Committee organized a convention called "The New Agenda: A Blueprint for the Future of Women's Sports" from November 3-6th in 1983. The feminist magazine o*ff our backs* covered the conference, reporting:

> Invitations to attend the conference went out to professional athletes, health and physical education professors, high school and college women athletic directors, sports sociologists, various health professionals, officers of sports governing bodies, and others. The mix was never found before, because most conferences about women in sport had been put on by and for academics (Krebs 1984, 1).

The conference proceedings were published in a six volume set, recording the manuscripts presented at the conference, transcriptions of recorded presentations, and notes taken by attendees (WSF 1983).

The list of attendees was striking, ranging from sports celebrities like Billie Jean King and Peggy Fleming, to U.S. Senators like Bill Bradley and Ted Stevens, to Vice

President George Bush, to eventual Health and Human Services Secretary Donna Shalala, to astronaut Sally Ride. The conference organizers solicited presentations about six main issue areas: 1) psychological concerns of women in sport, 2) promotion and public acceptance of women in sport, 3) resources for women in sport and fitness, 4) athleticism and sex role, 5) socialization of women in sport, and 6) organization and regulation of sports for women. Over one hundred "resolutions" were received, and divided among the issue areas, and conference attendees signed up for workshops of their choice when they registered for the conference. Over 600 delegates attended the conference, and all were given voting privileges to weigh-in on the resolutions. The procedures were a bit arcane, as delegates were sent home with cards to mail back to the WSF if they wished to vote no on one of the 120 resolutions discussed at the conference. Carole Oglesby, a professor of physical education at Temple University, testified in a 1984 committee that: "the delegates represented parent groups and high school sport federations, media groups, business groups, physical educators, and coaches, national governing body representatives from the USOC, the aging, disabled, youth sport groups, and virtually every group having a vested interest in girls 'and women's sport" (U.S. Congress 1984b).

The title of the gathering belies the newness of its purpose. It was the first major gathering of its type and was intentionally set on building a space to cultivate relationships amongst lawmakers, sports activists, and academics who studied women in sport. More than that, it was designed to be political, and Members of Congress took note. Addressing the floor several weeks after the conference, Representative Larry Winn, Jr. (R-KS) described his experience in attending the conference:

> Donna DeVarona, a former Olympic swimming champion and president of the Women's Sports Foundation, admitted that the purpose of the conference was in large part political, to allow the athletes, coaches, and educators the chance to establish contacts on Capitol Hill and a presence that legislators much reckon with the visibility of women's problems in sports (U.S. Congressional Record 11/18/1983, 34022).

The conference provided a space for a key shift in the visibility of the Women's Sports Foundation. The organization was founded in 1974 by professional tennis player Billie Jean King and quickly became a central leader in the advocacy community for female athletes in large part thought the organization of the conference.[12]

[12] The work of the WSF is much broader than advocacy. In 1975, they published the first "College Athletic Scholarship Guide" for women. They began publishing a weekly newsletter in 1977, and began awarding scholarships to promote girls and women's sports participation at all levels. In 1979, Donna DeVarona was named the first Foundation president and the website narrates: "Under her leadership the foundation initiated the Hall of Fame Dinner (now the Annual Salute to Women in Sports Awards Dinner), Travel & Training grants, research projects, media awards and a toll-free telephone number. Donna has worked to insure there are annual visits to educate Congress about Title IX and the importance of providing sport and physical activity opportunities on an equitable basis. Still involved with the Foundation, de Varona is now the Chair of the Founder's Circle" (WSF 2011). The Foundation hosted its first annual awards dinner in 1980, and opened their toll-free information line. By 1982 they were hosting internships and beginning preparations for the "Blueprint" conference. The Foundation has gone on to publish many research reports on women's sports participation (Cheslock 2007, 2008; E. Staurowsky et al. 2009), race and sports (Jennifer Butler and Lopiano 2003; Sabo, Melnick, and Vanfossen 1989), Paralympic sports (M. Smith and Wrynn 2013), families and sports (WSF 1988), youth sports (Sabo and Veliz 2008), high school sports (Sabo and Veliz 2011),fitness in the lives of

The proceedings depict a celebratory event with complicated underpinnings. DeVarona's opening remarks encouraged the attendees to "create a stronger network of those committed to the development and promotion of women's sports" and to "let the leadership of this country know that we are a strong coalition and totally committed and we're not going to go away" (WSF 1983a, 5). The purpose of the conference was to draw attention to the circumstances facing women in sport, and DeVarona suggested that a new day for women's sports had already dawned. "Gone are the days when muscles were unfeminine…Gone are the days when corporations would not support women's sports. Gone are the days when women were afraid to stand together to fight for their own future" (WSF 1983, 6). Indeed the conference itself was co-sponsored by multiple corporations: AT&T, American Express, Virginia Slims, Anheuser-Busch, Adidas USA, Milky Way, Nautilus, and Coca Cola USA (WSF 1983a, 5), and the organizers publically thanked these supporters both verbally and in signage around the site. The conference leaders did not acknowledge the tensions inherent in sponsoring a conference with goals to promoting women's health using candy makers, cigarette companies, alcoholic beverage distributors, and soft drink monies. The goal seemed to be visibility—and the conference received a great deal of media attention—regardless of the costs (Leavy 1983a, 1983b; Molotsky 1983a, 1983b; Noble 1983).

Organizers articulated goals that included changing policy. They believed they had "an enormous task ahead of us, a task in which we find ourselves continually trying to negotiate our way into the already established male-dominated sports system which for

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working women (Sabo and Snyder 1993), trans* inclusion (Griffin and H. Carroll 2010), and Title IX (A. Wilson 2012).

years has catered to priorities set by males and attitudes nourished by males" (WSF 1983a, 6). Their language indicates the extent to which these activists had internalized the logics of sex already central to Title IX's implementation mechanisms in sport. The discussions revolved are "male" actors and athletes. The activists they sought inclusion for "female" athletes into sporting systems, although not necessarily in to the same spaces as men. Sex-integration haunted the proceedings, but was rarely discussed directly.

The discussions on the nature of sex-segregation in sport were few and contradictory. In Billie Jean King's opening address, she explicitly named sex-segregation as a key problem holding women back. King's famous "battle of the sexes" victory against Bobby Riggs made her especially aware of the power imbued to women who were able to conquer men in level competition. King argued:

> In every aspect of sports, women would achieve much higher levels of performance if they entered the crucible of competition with men on a regular open basis from the beginning and throughout the educational process. This understanding of where we must go to free the young women of tomorrow is most difficult for athletes of my generation. If I had competed against men in open competition—I always practiced with them—I don't know how good I could have been…Since we didn't compete, our generation and those like us will find the transition to truly open competition, not separate but equal, too difficult to survive. But for the seven or eight-year-old who is playing touch football with the boys today, her future is unlimited, if we fight for it now. She will not have to

> realize that she cannot be a baseball player because of her gender. She will not have to settle for lesser goals, hopes or aspirations (WSF 1983a, 8).

Drawing on lessons learned from *Brown v. Board*, King noted that "separate but equal means women will always be second class citizens in sports" (WSF 1983, 8). But this opinion was not popular among the other delegates (and was rarely publically articulated by King in advocacy spaces, or in her multiple appearances in front of the U.S. Congress and in presidential press conferences in later years).

During a panel in the "Physiological Concerns of Women in Sport" subtitled "What are the pros and cons of women competing with and against men?" the discussions of sex-integrated sports focused on equestrian, yachting, and shooting (WSF 1983b, 16-20). Both presenters (one, an elite-level biathlon coach, and the other the director of physical education at the U.S. Military Academy at West Point) testified on the topic of sex differences between women and men and the degree to which these perceived "differences" were reason to warrant continued segregation. Of all the testimony in this ostensibly progressive even, the comments regarding the necessity of sex-segregation were the most contradictory in their portrayal of women athletes.

James Patterson of West Point was began his remarks, stating:

> You have to deal with the fact that there are certain physical attributes that do impact physical performance. With regard to physical performance and my specific topic, I will be discussing speed, strength, and power. I've been asked not to recite or rehash the litany of statistics regarding physiological differences; just suffice it to say that there are in fact more than a hundred such identifiable

> differences, and many of them impact on physical performance. Something specific to my topic: Men, because of greater muscle mass and less fat per unit volume than women, have a general advantage on the physical tasks requiring strength, speed, and power (WSF 1983b, 21).

Patterson based his opinions on the "facts" of physical difference on personal observation of female cadets in the five years since the military academy had been integrated, and despite his opening comments (quote above), the bulk of his testimony argued that what distinguished women's capacity from men's was the type of training they had experienced before arriving at West Point. His comments concluded by indicating: "The bottom line is: Women can in fact do anything. I firmly believe it and I hope that that is one of our resolutions today" (WSF 1983b, 23). His proposition, based on watching women integrate the spaces of the military, was that sex difference in competition could be addressed by better science. If women were primarily inhibited by poor training, than better understanding of their unique physiology could help to rectify their innate weaknesses.

His co-presenter concluded similarly. Her remarks also foregrounded biology as a distinct marker of difference, and one that policy could help address. She focused on the gains that could be made in sports where the operation of equipment (boats and rifles) or competitive apparatus (the horse, in equestrian) could render sex difference unimportant. In those cases, sex-integrated sports could be safe and fair. However, in contexts beyond yachting, shooting, and equestrian, she posed provocative questions: "What is the value in open competition? Is it damaging to the male ego? Does it require

women to become too ‘aggressive’ to fit socially acceptable attitudes of femininity?” (WSF 1983b, 17). Her conclusions, based on citing a half-dozen medical studies, suggested that policy had the potential to save women from physical harm in sex-integrated competition, and save men from the emotional harm of losing to a girl.

The recommendations from the panel did not directly reference Title IX, although they did indicate that “policy” was the main target. This conference was focused on mobilizing rights claims for women in sport, and on networking activists with scholars. This legacy of using scholarly work to construct political claims has come to define activism in the policy domain of Title IX. The assembled speakers were the vanguards of women’s sports activism, yet they too seemed to have internalized the logics of sex-segregation. The implicit fear of losing the access Title IX had helped them achieve to sporting spaces tempered the type of resolutions suggested during the meetings.

For example, Marie Alkire (former Olympia and U.S. Biathlon team coach testifying on sex-integrated competition) suggested that “competition in those sports requiring strength and power be separate-sex from puberty” as well as that “sports that have been traditionally open [meaning: sex-integrated] conduct research to determine physical and psychological effects on both men and women participants” (WSF 1983b, 20). This type of implicit fear of both the potential physical short-comings of women in competition with men, as well as the unfounded fears of “psychological” effects from sex-integrated competition helped to construct integrated spaces as taboo. Both the fear of dystopic outcome of integrating women with men and the internalized phobia of the trauma women’s physical victories over men might visit upon society served to limit the

type of mobilization that came out of the Blueprint meetings. Still, this forum served to forge a political conversation between activists and political elites that would endure in the coming decades. Shortly after the conference, *Grove City* was handed down by the court, and it would become especially critical for activists interested in Title IX's enforcement to find sympathetic ears among members of Congress.

Passing the Civil Rights Restoration Act

By 1985, Congress was trying to determine its response to the decision in *Grove City College*. Between 1985 and 1988, Congress held hearings across the country (in Philadelphia, Washington DC, Atlanta, Chicago, Los Angeles, and Santa Fe) regarding the status of civil rights legislation in the U.S and the impact of *Grove City* (U.S. Congress 1985a, 1985b, 1986, 1987a, 1987b). These hearings, and much debate on the House and Senate floors, culminated in the creation of the Civil Rights Restoration Act of 1987.

As lawmakers returned to debating Title IX, public opinion towards the policy domain governing equity in sports remained high. By 1985, a Lieberman Research poll indicated seventy-two percent approval of equitable funding for men's and women's sports in schools and colleges (Lieberman Research 1985).[13] Of course "funding" was never directly implicated in Title IX's enforcement, but the underlying premise of equity certainly was. The 1985 survey demonstrated a slight increase in support for gender equitable funding when compared to the survey from 1979. In that year, Gallup asked a

[13] The poll was a nationally sample of 2,043 adults, administered via mail, for *Sports Illustrated*. The question posed was: "Do you think that schools and colleges should give equal funds to men's and women's sports?" Nineteen percent said no, nine percent offered "no opinion".

similar question, and only sixty-two percent of respondents expressed agreement.[14] As measures of change over time, or even latent support for Title IX, per se, these metrics are limited. However they provide some historical context to public opinion during the era. Like all public opinion polls in the historical archive, these data are limited in utility for researchers who were not able to dictate the questions or the sampling method. Still they indicate (as do all polls related to Title IX in the archive) that the majority of Americans supported the ethos of equity sports.

Thus in the context of public support for equity in sports, lawmakers recognized that the consequences of the *Grove City* decision had been almost immediate. The Executive Director of the NAACP testified that one week after the decision, the DOE began dropping discrimination claims in intercollegiate athletics (U.S. Congress 1987a, 18). The NAACP was keen to see the continued enforcement of all civil rights laws and not merely sports and concerns remained across policy domains that the Reagan administration was not fully enforcing a range of civil rights policy. Reports of very broad interpretations of *Grove City* came flooding into testimony. For example, the NAACP Director also reported that some discrimination claims were dropped because the discriminatory event took place in a building build and remodeled with funds not acquired from the federal government. The National Women's Law Center (NWLC) introduced twenty-nine pages of testimony documenting seventy instances of cases

[14] The Gallup Organization poll sampled 1,511 adults nationwide regarding "Public Attitudes Towards Education". The question posed was: "The federal government may require all high school sports to spend the same amount of money on women's sports as on men's sports. Do you approve or disapprove of this plan?"

pertaining to Title IX, Title VI, and the Age Discrimination Act that were dropped by federal investigators because of narrow civil rights law interpretation after *Grove City* (U.S. Congress 1987a, 258-287).[15]

Sports were not the only domain of concern for lawmakers, and when the Civil Rights Restoration Act of 1987 was finally passed, it addressed the reinstated enforcement mechanisms for Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. The bill was sponsored by Senator Edward Kennedy and had fifty-eight co-sponsors in the U.S. Senate (U.S. Congress Senate Report 1987). This version of the bill was the third attempt by lawmakers to alter the enforcement provisions.[16] The law passed the Senate on January 28, 1988 and the House on March 2nd. Reagan vetoed the law two weeks later, on March 16th. On March 22nd, both chambers of Congress voted to override the veto, making the CRRA law.

The CRRA restored the broad, institution-wide application of Title IX (and the other laws), including its application to sporting domains. If federal aid was extended to any element of the institution, the CRRA triggered institution-wide coverage in colleges,

[15] Marcia Greenberger, attorney for the NWLC noted that these cases each pertained to "many, many, many individuals" and "these people have nowhere else to turn" (U.S. Congress 1987a, 257).

[16] The Civil Rights Restoration Act of 1984 would have deleted the words "program or activity" and replaced them with "recipient", but was never reported out of the Labor and Human Resources Committee but it was attached to a continuing resolution bill and filibustered until the end of the 98th Congress. An identical bill passed the U.S. House on June 26, 1984 by a vote of 375 to 32. The 99th Congress saw the creation of the Civil Rights Restoration Act of 1985, which was also not reported out of the Labor and Human Rights Committee.

universities, secondary and primary schools. In practice, this meant that if any student accepted federal student loan money, all parts of the institution were barred from discrimination "on the basis of sex".

The law made additional stipulations on the application of Title IX sports Segregation "on the basis of sex" was still the encouraged practice, particularly in "contact sports" (which included boxing, wrestling, rugby, ice hockey, football, basketball, and "other sports the purpose or major activity of which involved bodily contact" (Fields 2004, 21)). Further, policymakers did not specifically address the issues facing subgroups of women/female athletes. Racialized subgroups were considered irrelevant to the larger problem of restoring rights for all "females", and lawmakers missed an opportunity to create affirmative action mechanisms in sporting contexts. Although the CRRA made clear that discrimination "on the basis of sex" would not be tolerated at any level of educational institutions, it made no provisions to that ensure opportunities were similarly available across contexts.

For example, two high schools in the same school district could implement the law in vastly different ways, but as long as the sex-based imbalance within a program was not violated, both would be considered compliant with the law. Put differently, the CRRA represented a step forward for securing legal rights for individual women, but its enforcement mechanisms obscured the structural problems that differentiate opportunity across women as a class. This feature of Title IX under the CRRA is linked to the continued race-based (Pickett, Dawkins, and Braddock 2012; Rhoden 2012) and class-

based (Knifsend and Graham 2012; K. Thomas 2009) inequities in policy implementation that continue to diminish the law's effectiveness for women of color.

Gender and homophobia: Distancing "sex" from "homosexuality"

Further, the legislative coalition to pass the CRRA over the threat of presidential veto created a troubling fissure along the cross-cutting issue of sexuality. Gendered fears about the meaning of extending sports to women converged on concerns over sexuality in unexpected ways throughout discussions in Congress across the 1980s. Through concerns over sexuality in women's sports, the full implications and complications of the 1980s become visible. Many sources report that White House staffers in the Reagan administration openly referred to Title IX as the "lesbian's bill of rights" (Brake 2010; Suggs 2005). Homophobia and sexism combined in particularly potent ways in the domain of sports that fueled the general predisposition of the Reagan administration to be disinterested in enforcing Title IX.

The Reagan administration's open homophobia made it the target of activist mobilization throughout the 1980s (Duggan 1995; Gamson 1989; Gould 2009b). The AIDS Coalition to Unleash Power (ACT UP), organized multiple public demonstrations, protests, "die-ins", and marches to draw attention to the AIDS pandemic, much of which occurred in the latter years of the decade.[17] Reagan refused to publically acknowledge the deaths of many gay men whose lives were cut short by HIV and AIDS during a decade when the federal government was slow to develop drugs to combat HIV, and

[17] ACT UP was founded in March of 1987.

slower still to release those drugs to a population that was publically demeaned as undeserving.[18]

Through the context of AIDS and Reagan administration's pernicious homophobia, it is easier to understand the kind of bodily politics that contextualized his administrations reluctance to enforce the equity principle for women in sports. Reagan's personal physical health established him as both vanguard and gatekeeper for patriarchal masculinity. Bodies that failed to perform to the same standards of health, physical strength, and masculine essence were largely written out of the domain of the deserving in social policy.[19] The response of the New Right was more malevolent than mere

[18] There is some debate over the extent to which the homophobic policies of the administration reflected Reagan's personal beliefs, or the beliefs of the conservative movement (Brier 2009) While governor of the state of California, Reagan opposed the 1978 Briggs Initiative which would have banned gays and lesbians from working in public schools and leading some to believe that his personal inactivity around issues of sexuality and AIDS represented the internal pressures from within the Republican party (A. L. Stone 2012). Publically, ACT UP targeted Reagan as the figurehead of an administration that refused to acknowledge the AIDS pandemic, famously using Reagan's image on protest propaganda that calling the administrations inactivity "AISDGATE" and suggesting "Silence = Death" for those seeking medical attention (Gould 2009a). AIDS-related deaths were particularly common among gay men, and the stigma attached to homosexuality throughout the 1980s contributed to the silence around the health crisis affecting disproportionate numbers of gay men.

[19] Tony Kushner famously articulates this ethos in his Pulitzer Prize winning play *Angels in America: A Gay Fantasia on National Themes*. The character, Roy Cohn, a dramatized version of the real-life Reagan advisor (and famous chief legal counsel to Senator Joseph McCarthy during the McCarthy hearings to exposed alleged communists in the 1950s), is dying of AIDS. Shortly before his death, he reflects on the relationships between health, wellness, and Reagan: "The worst thing about being sick in America…is you are booted out of the parade. Americans have no use for sick. Look at Reagan: He's so healthy he's hardly human, he's a hundred if he's a

neglect and in discussions over the CRRA, lawmakers discussed sexuality, "homosexuals", and sexual orientation in over 150 instances.[20] Indeed the Congressional debates to re-instate the application of Title IX to program-specific coverage took up conservative discourse on sexuality and bodies as on means through which lawmakers worked to build a coalition that would re-fortify Title IX in sports.

In the discussions of "homosexuals", conservative lawmakers and activists were concerned with the definition of "sex" construed through Title IX. During the course of discussions over how best to re-establish civil rights protections, a small coalition of Christian conservatives formed around protecting religious organizations against having to accept non-normative sexuality in order to comply with sex nondiscrimination provisions. In floor debate over the presidential veto override, many members rose go on record articulating that the CRRA should not be construed as to extend "additional rights" to "homosexuals" (Congressional Record March 22, 1988). Indeed the Evangelical Lutheran Church of America (ELCA) and the American Baptist Churches had mounted a campaign around the CRRA to guard against court decisions in the wake of the CRRA that might extend workplace protections to "homosexuals". Much of these testimony consisted of firm reminders that federal courts had established significant interpretive records guarding Title IX against being used for establishing legal protections for sexual minorities.

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day, he takes a slug in his chest and two days later he's out west riding ponies in his PJ's. I mean who does that? That's America. It's just no country for the infirm (Kushner 1993, 62)."

[20] These references occurred in hearing testimony and floor speeches across the 1980s, many of them around March 1988 during the debate over overriding Reagan's veto.

Statements from members of Congress debates over passing the CRRA demonstrated that MCs were especially concerned about ensuring that protections guaranteed women "on the basis of sex" through Title IX would not be extended to "homosexuals". The tenor of statements was focused on addressing the suggestion by opponents of the CRRA (including various right-leaning Christian interest groups) that re-establishing protections through Title IX would also protect "homosexuals" from discrimination. In March of 1988, during discussions of the congressional veto override vote, Senator Jeffords commented:

> There have been a great deal of outrageous hypotheticals floating around concerning what this bill would and would not require. We've all gotten the calls, I'm sure, from callers claiming this bill would require you to hire drug-addicted, alcoholic transvestites with AIDS -- that the bill is really a gay rights bill, not a civil rights bill. Those kind of claims are absolutely ridiculous. "Sex discrimination" in this bill, for the purposes of title IX, refers to gender, not sexual orientation. Neither this bill nor the four statutes it amends even mention the terms "homosexual" or "sexual orientation." And no Federal statute prohibits discrimination on the basis of homosexuality. If such a prohibition existed, there would be no need for the gay rights bills that have been introduced over the past several years (Congressional Record March 22, 1988).

Articulating the distinction between "gay rights" and ending discrimination "on the basis of sex" allowed lawmakers to forge a coalition across a policy domain dominated by

historically "liberal" interests. However, when read against the simultaneous homophobia inherent to the governmental response to the increasing visibility of "homosexual activism" regarding AIDS and the more general anti-gay sentiments of conservatives in the moment, the administration's insistence on not enforcing Title IX (a policy benefiting many gender transgressive women) appears increasingly less benign. In fact it was through the assurances that Title IX would never be used to protect "homosexuals" against discrimination that the CRRA managed to pass with such widespread support.

In this sense, the "looming lesbian" qua the "female athlete" in sports was central to the late 1980s Title IX success. The discussions around the CRRA and sexuality unfolded in such ways that indicated lawmakers contemplated the rights of women vs. "homosexuals" as if the constituencies of which they were composed were not partially mutually constitutive. In this sense the same homophobia that defined the state neglect of gay men's health eventually enabled the expansion of rights to sports and homosocial spaces for lesbians. Although the Reagan administration's dismissive jokes that Title IX was nothing more than a "lesbian bill of rights" in part likely drove the desire to see Title IX go asunder, it was the comparative invisibility of lesbians as a group (relative to gay men) that allowed lawmakers to treat lesbians as a negligible subgroup of "females". The presence of Mary Lou Retton as sporting icon of the decade further suppressed the actual presence of lesbians as policy beneficiaries. Consequentially, in the same period when Mary Lou arose as the quintessential symbolic female athlete, material rights for female athletes were secured only through the homophobic repression of sexual

minorities. Ironically, the quest to strike a bargain with conservative elements that feared AIDS and gay men lead to the unintentional expansion of homosocial spaces in sports for many lesbians, even as it denied lesbians legal protection.

But while Title IX might have expanded opportunity for women, its breadth was not universally beneficial for lesbians. The legal limitations of defining sex outside of sexuality left lesbians especially vulnerable. There were no legal protections against sex discrimination (nor discrimination based on sexual orientation) based on homophobic or gendered bias for lesbians with employment in coaching. There were not protections against social shaming for any move to announce one's sexual orientation, nor against any number of unrecorded or unofficial policies promulgated by homophobic coaches or athletic directors.[21]

[21] A clear-cut example of this discrimination came to light in 2007 when Jennifer Harris, a Penn State University basketball player, was dismissed from the team by coach Rene Portland (Mosbacher and Yacker 2010; Newhall and Buzuvis 2008). Harris filed a discrimination lawsuit against Portland, contending that Harris had been discriminated against on the basis of her perceived sexual orientation and race. Portland's notorious "No drinking, no drugs, no lesbians" policy for team comportment had been an open-secret in women's basketball for decades. Portland homophobic policy lead to the premature dismissal of multiple female athletes from her Penn State team, although none pursued a legal case until Harris (Mosbacher and Yacker 2010). A documentary about the history of women's basketball at Penn State revealed many former athletes had been harassed by Portland and denied scholarship money and playing opportunity as a result of pursuing same-sex relationships or for appearing to be gender non-normative (Mosbacher and Yacker 2010). Harris's case ended in Portland's retirement after a confidential settlement in the suit. Penn State never publically acknowledged Portland's policy, nor took responsibility for the harms enacted against lesbian and perceived-lesbians for years under Portland's reign.

The "looming lesbian" of the 1980s in athletic domains was both ubiquitous and invisible in discussions of Title IX. Famous athletes like Billie Jean King and Martina Navratilova, who "came out" as lesbians in 1981, were infrequent moments of publically declared sexuality amongst years of "silence so loud it screams" (Ware 2011, 180). Few athletes, coaches, or athletic directors publically acknowledged their sexual orientation (Griffin 1992; Krane 1996). King's "outing" was not a personal choice: it came when her former lover and secretary sued her for financial support that King had withdrawn as the affair soured (Ware 2011, 180–206). Indeed "locker-room closets" have notoriously been the most difficult to "come out" of (Griffin 1998).

These conditions for lesbian coaches and athletes raise the question of how Title IX has affected conditions for lesbians that are simultaneously good and bad. Yet the role of policy provisions in constituting homophobia in sports has been strangely under-theorized. On this point, returning to thinking about the "paradox" embedded in the law is instructive. The premise of sex-segregated sports presumes a male/female binary relationship between bodies and sex. Centrally buttressing this binary distinction is the presumption of heterosexual relationships, and the more general heterosexual arrangement of bodies and social structure (Judith Butler 1990; Rich 1986).[22] Thus, by

[22] Judith Butler has famously theorized the "heterosexual matrix": "The category of sex belongs to a system of compulsory heterosexuality that clearly operates through a system of compulsory sexual reproduction" (Judith Butler 1990, 141). She also notes: ""...gender is a kind of imitation for which there is no original; in fact, it is a kind of imitation that produces the very notion of the original as an effect and consequence of the imitation itself...what they imitate is a phantasmic ideal of heterosexual identity...gay identities work neither to copy nor emulate heterosexuality, but rather, to expose heterosexuality as an incessant and panicked imitation of its own naturalized

engaging in the practice of segregation based on presumed binary sex, the "female athlete" is implicated in the broader discourse of heterosexuality. Once bodies are presumed to be sexed by a discrete marker of identity based in the purportedly dimorphic sexual, male/female organs, the system of segregation based on those characteristics can be imbued with some legitimate basis (Fausto-Sterling 2000, 2012; Luibheid 1998; Luibhéid 2002).[23] In this sense, Title IX's policy implementation mechanisms are a classic example explored by queer theorist Eve Kosofsky Sedgwick (Sedgwick 1990) of how sexual categorization becomes "freight[ed]…with epistemological and power relations" (quoted in Luibheid 1998, 479). Heterosexuality operates as its own "legal regime" (Canaday 2008), conferring "public stigma and esteem according to sexual orientation" (Valelly 2012, 317). Likewise, bodies participating in the sporting system created through Title IX are identified as part of the male/female binary system through which heterosexuality derives its meanings. Thus bodies in sports are already interpolated into the same system of meaning that gives legitimation to heterosexual pairings and partnerships. This is what it means to say, as I articulate in Chapter 3, that the "female athlete" is inherently interpolated through heterosexuality, so long as she is constituted as "female" in a sex-segregated system.

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idealization. That heterosexuality is always in the act of elaborating itself is evidence that it is perpetually at risk, that it, that it 'knows' it's own possibility of becoming undone" (Judith Butler 1993b).

[23] Scholars detail other examples of these processes and ways in which sexuality vis-à-vis biological sex has been used to constitute systems of exclusion and categorization at locations such as national borders (Canaday 2009; Luibheid 1998; Luibhéid 2002) or prisons (Kunzel 2002, 2008).

Simultaneously, homosocial desire also constitutes some threat to the legitimacy of the dominant system. If bodies are sexed male or female, and those sex-based identities are rooted in "natural" reproductive sexual arrangements, then desires and practices that subvert the dominant order may threaten to throw the governing logics of the system into question. The presence of lesbians in sports inherently subverts hegemonic understandings of the purpose of sexed bodies, and decouple sex from sexuality. Ironically, the very conservative coalition that aimed to ensure legal protections aimed at sex would not also apply to sexuality, helped to ensure the policy constitution of practices that created space for lesbians.

But what constitutes a "lesbian" in sports? The outing of King, Navratilova, or more recently Britney Griner certainly give meaning to the category through same-sex-sexual desire and practice are embodied (Fagan 2013; Griner 2013; W. Morris 2013). "Lesbians" in sports derive meaning from the same social definitions that define lesbians elsewhere. But the "looming lesbian" in women's sports, as construed through sex-segregated spheres, come to encompass something even more sweeping. The *Washington Post* called it "An 'Unfeminine' Stigma" in a 1974 headline for a story regarding women's sports (Scannell and Barnes 1974), referring the complex web of meaning and practice embedded in Title IX's implementation that would haunt both women and men.

The article notes "If they [female athletes] persist in developing their athletic abilities they commonly are stigmatized as 'unfeminine' and 'overly aggressive'. In a word, mannish" (Scannell and Barnes 1974). Yet a "female" choosing to pursue training

in any sports cannot avoid this characterization so long as she is inherently transgressing the masculine/feminine distinction. Indeed the implementation of Title IX, and the development of teams for "female athletes" makes the development of "mannish traits" inherent to the enterprise of being athletic. The distribution across female athletes of purportedly masculine traits of strength, power, speed, aggression, and physical prowess inherently attributes gradations of "mannishness" to various figures inhabiting the category of "female athlete" through the sex-segregated guidelines of Title IX.[24] Some women, in the post-Title IX world of sports, will always be considered in excess of purportedly masculine traits when interpolated through a strictly binary system that aligns maleness with masculinity and femaleness with femininity. This "excess" of masculinity in female bodies is often interpreted as evidence of homosexuality for women in sports, even as its principle is necessary for commanding physical space required by athletes (Cahn 1993). In many cases, the performance of masculinity by female bodies is not by accident, and the requirements of athletic prowess, in fact, require a rejection of feminine aesthetic (Halberstam 1998). As Judith Halberstam argues:

> An obviously athletic female body, because it makes visible a willful rejection of feminine inactivity, seems immediately to be associated with lesbianism. Although it is true that unathletic men also fall victim to homophobic suspicion, notice that the demands of proper heterosexual femininity coincide with the renouncing of a healthy body. For this reason, many women, not only inverts and

[24] Conversely, some men on men's only teams will insufficiently embody masculinity, such that their athletic prowess in sex-segregated teams is scripted, through the constraints of heterosexuality, as insufficiently male.

> lesbians, over time may have cultivated masculine body aesthetics in order to work, play, compete, or simply survive. The masculine heterosexual woman need not be viewed as a lesbian in denial; she may merely be a women who rejects the strictures of femininity (Halberstam 1998, 58–59).

However, the "strictures of femininity" do not apply evenly across perceived racial difference. Sociologist Patricia Hill Collins explains:

> The danger for Black women athletes does not lie in being deemed less feminine than White women because, historically, Black women as a group have been stigmatized in this fashion. Rather, for all female athletes and for Black women athletes in particular, the danger lies in being identified as lesbians. The stereotypes of women athletes as "manly" and as being lesbians and for Black women as being more "masculine" than White women converge to provide a very different interpretive context for Black female athletes. In essence, the same qualities that are uncritically celebrated for Black male athletes can become stumbling blocks for their Black female counterparts (Collins 2004, 135–36)

In the context of Title IX, these processes of gendering and racialization have become inherent the categorical distinction made by policy. Over the course of the 1980s, debates over policy re-inscribed sex as a unified category in sports despite clear, intersecting conditions of race and sexuality. Instead of evaluating the quality of policy mechanisms to end discrimination, lawmakers were mired in debates over how not to gut the policy of its enforcement clause. In addition, in order to ensure passage of the CRRA, liberal lawmakers had to suppress the interlocking spaces of sex and sexuality in

order to build a voting coalition. Thus the types of conditions exemplified by Collins and Halberstam are the cultural remainders to the insufficiencies of political solutions.

For some women in sports, assuming a "lesbian" identity is central to the purpose of participation. Yet the allegedly menacing possibility of lesbians, real or perceived, is itself a threat to the most basic tenet of Title IX. The "looming lesbian" queers gender and sexuality in such ways that sex-segregation is untenable as an embodied practice. If gendered practices make females more masculine through the performance of sports, then sex-based distinctions begin to breakdown. Further, as female athletes demonstrate the ability to compete at the same level as "males", the biological tenet buttressed through policy becomes increasingly less germane to the execution of equity law.

The "looming lesbian" in sports suggests that the sex-based distinction of bodies through which policy gave equity in sports meaning is itself unsound. Bodies and practices that exceed femininity in pursuit of athletic prowess implicitly challenge the strict meaning of biological sex. What we might understand as the "gendering" of sex, wherein the meanings of masculinity and femininity are attached to purportedly dimorphic bodies, cannot exist in a sex-segregated system outside of the presumption of heterosexuality. Thus within the presence of bodies and practices through which "female athletes" embody their right to sport by embracing masculine traits of power and strength (and this includes, to a large extent, all female athletes regardless of their gender normativity), there is never *not* a moment when the threat of lesbianism does not "loom". Despite the years of careful critique of feminist scholars to disentangle sex, gender, and

sexuality, the "female athlete" in Title IX cannot escape the contradictions that make disentangling almost impossible.

Yet nothing secured the by virtue of/regardless of sex paradox as the rule of law in Title IX more than the political battles of the 1980s. Through years of embattled protest, lawmakers were forced to give the policy new meaning. During those years of political uncertainty, the female athlete became a more legitimate identity around which to mobilize seeking rights. By the close of the decade, politics has created a figure that was explicitly meant to not extend rights based on sexual orientation, even as it legitimated the spaces of homosociality.

Conclusions

Through it all, by decade's end, the policy arena of Title IX had managed to quietly grow beyond the material and symbolic domain of Mary Lou Retton. The tensions highlighted through the figure of Mary Lou remained. In light of discussions and practices of homophobia (in sports and beyond), her symbolic presence vis-à-vis the "looming lesbians" in sports made clear that some bodies were valued in U.S. sports, while others were invalid. Even in light of the failed ERA, the battle over Title IX vis-à-vis other civil rights policies established a complicated context for changing meanings of gender. As much as the Reagan administration wished to cultivate the youthful, nimble, "ultimately American" hero of the 1984 Games as the most deserving figure in sports for women, the politics of the period out maneuvered the Mary Lou moment. She was, after all, a public figure. Despite the ways in which she represented a conservative icon, the public values of expansive civil rights reinforced policy provisions in public policy.

The obsession with the use of student aid as the key factor in the enforcement clause meant that in time, Title IX has come to have stronger enforcement provisions than other policies aimed at creating sex equity. Unlike the fight to secure fair pay, Title IX's enforcement provisions have, through the interpretation of student aid, been more tractable bureaucratically and legally. Other gendered policy domains that were aimed at ostensibly "private" spheres (like work, family, and health care) have not been so easily settled. This victory over conservative claims about the rights of private, religious schools, occurred in part because Title IX is ultimately swept up in the larger civil rights policy apparatus. The success of implementation in later decades and explored in Chapters 5 and 6, in part owes its history to the mutual imbrication of Title IX with other legal domains.

Still, this progressive moment for Title IX's policy success was complicated again by the logics of sex-segregation. Lesbians became the pivot point in the passage of the CRRA, demonstrating the fragility of the purported "revolution" in women's sports. Activists were afraid to embrace more radical demands for sex-integration, internalizing fears that women were not strong enough or powerful in equal measure to men. At the same time, homophobic fears forced liberal lawmakers into a defensive posture, ensuring that the meaning of sex was distanced from the practices of sexuality and gender non-normativity.

Further, progress in implementing the law was stalled by the long period of political tumult. By 1989, opportunities for women had only grown by about nineteen percent. The statistical conditions for women in sports had improved only slightly, and

activists would draw attention to these statistics in the coming years. Still, given the potential unraveling of rights for women in sports that had manifested earlier in the decade, female athletes (as a group) were better off at decade's end. Political conflict had forged rights for women, however complicated, that weathered significant challenge.

CHAPTER V: "A number not an athlete": The Equity in Athletics Disclosure Act and the Construction of Public Facts, 1990-1995

"My struggle was not just about gymnastics": Cohen v. Brown University

In the fall of 1988, Amy Cohen arrived on campus at Brown University to begin her career and as a college gymnast. Although Brown hosted fifteen athletic teams for women and sixteen for men at the time, women comprised thirty-seven percent of the athletes. At the close of their 1991 season, Cohen and her teammates were called into a meeting with the athletic director and informed that their team, alongside women's volleyball, men's water polo, and men's golf were being eliminated. After the team struggled to raise money to cover their operating expenses in the following year, having been instructed that doing so would allow them to continue to operate as a club varsity team, they decided to file suit in court in April 1992. Cohen testified during a June 1993 hearing:

> We were told if we could raise enough money, we could continue as a club varsity team with everything as it had been. So I devoted my summer to the cause, but when I returned in the fall I found things were substantially different. We had no recruiting privileges or access to the training room. We were told to leave our locker room, to schedule home games around all other sports, the list goes on and on. We were coldly turned away from all attempts to speak with any administrators. Once again, I felt totally betrayed. It was at this point that I learned about Title IX. I realized my struggle was not just about the gymnastics

team but that Brown was violating a Federal statute and getting away with it (U.S. Congress 1993b, 10).

Cohen went on to testify that "neither the athletic director, Brown's Title IX advisor, or any of the people the athletic director consulted in his decision-making process, had ever read Title IX" (U.S. Congress 1993b, 11).

Cohen's case was filed as a class action suit, in which the class was all Brown University women students, present, future, or potential, who participate, seek to participate, or are deterred from participating in intercollegiate sports funded by Brown. The class reflected the means through which Title IX "sees" sex as a categorical identity, shared in similar ways by all women as a group. The case slowly crept through the appeals process and was not settled until the U.S. Supreme Court denied certiorari on April 21, 1997. Central to the decision was the extent to which Brown had complied with the "three-prong test" of the 1979 Title IX policy interpretation. In evaluating the practices of Brown University, the court ruled that it had not adequately provided participation opportunities "substantially proportionate" to undergraduate student enrollment, nor had it shown a practice of "program expansion or full and effective accommodation of the interests and abilities of its woman students", both of which violated the test of compliance with Title IX (*Cohen v. Brown University*).

Brown volleyball player, Megan Hull, also testified in the 1993 congressional hearings. She noted that of primary concern in the case was the extent to which data on the state of affairs in Brown athletics was publically inaccessible. The school newspaper had misrepresented the facts of the case, and the climate against the plaintiffs in the case

turned publically hostile. Although the outcome of the legal case was still unknown, *Cohen v. Brown University* was part of a watershed moment in the meanings of Title IX. Throughout the early 1990s the problem of discrimination against female athletes became an increasingly quantified phenomenon. By the time *Cohen v. Brown* reached the Supreme Court, a new administrative regime had been established to govern public information and facts of discrimination in college athletics. This chapter explains how and why.

Sex discrimination in sports as public problem

Data gathering opportunities in college athletics have become increasingly central to public discourse around the meanings of gender equity in sports. The dominant narrative of Title IX—that opportunities for women athletes were once less plentiful and "less good" than they are now—draws directly on quantitative data. As a result of federal lawmaking in the mid-1990s, the notion that conditions for women in sports were once "less good" than they are now is not merely a qualitative assessment—government statistics can "prove it".[1] This political development altered the meaning of sports for women by making the quality and quantity of opportunity into something measureable. But we did not understand Title IX as primarily a "numbers game" in the 1970s or the 1980s. Thus I question how this shift occurred, and what this turn to quantitative data mean for our political understandings of equity and discrimination. Further if political battles have created the conditions under which political progress for previously

[1] These statistics have become the basis for both public accounts of gender equity statistics, and academic studies evaluating the implementation of Title IX (i.e. Castañeda 2004; J. Cheslock 2007; Stafford 2004).

marginalized groups can be "measured", how did this affect shared social and cultural understandings of what counts as sex discrimination in an era of purportedly rigorous policy implementation?

This chapter focuses on the passage of the 1994 Equity in Athletics Disclosure Act (EADA), detailing the political calcification of quantitative compliance data in the policy domain of sports. The EADA amended Section 485 of the Higher Education Act of 1965, requiring coeducational, higher educational institutions with athletics departments to make public annual statistics on athletic opportunities, scholarships, coaching salaries, recruiting, and revenues, "on the basis of sex".[2] It was passed as part of the Improving America's Schools Act of 1994 and followed several years of discussion in Congress acknowledging the persistent problems of discrimination against women in athletics twenty-years after Title IX's passage, and debating how to better enforce the law.[3]

In this chapter I argue that by basing policy implementation data on opportunities for "male" versus "female" athletes, the federal government defined the problem of

[2] Section 485 pertains to "Institutional and Financial Assistance Information for Students" which requires the public reporting of certain data for enrolled and prospective students, including: financial assistance programs, the cost of attending the institution, the academic program of the institution (including degree programs, physical classroom and laboratory spaces, and faculty), facilities and services available to disabled students, accreditation information, standards for students to maintain enrollment in a degree program, completion or graduation rates of students at the institution, campus crime reports, athletic financial awards, and athletic data (modified by the EADA) (20 U.S.C. 1092).

[3] Congress held three sets of hearings on intercollegiate athletics in April of 1992, February and July of 1993. See Appendix B for full data description.

discrimination in sports by constructing an administrative apparatus that quantified on-going practices of athletic departments "on the basis of sex". Policy enforcement mechanisms for Title IX drew upon pre-existing understandings of bodies in sports and created meaning in the category of embodied sex by relying upon it as a quantifiable metric. Quantifying bodies "on the basis of sex" further instantiated the category of sex in the body when applied to sporting contexts. Within the broader history of Title IX, this moment stands as a critical shift through which policy interpretation and enforcement became a mechanism of categorical definition. This instance of debate over how to enforcement policy in the domain of Title IX gave old norms of sex-segregation in sports, a new form.

I the early years of the decade, lawmakers, activists, female athletes, and the unwitting NCAA defined and constituted a new "problem" in women's sports. No longer was the concern merely that women's opportunities lagged behind men's (although it was increasingly clear that in the aftermath of *Grove City* and the CRRA, schools were still not yet providing equitable opportunities to women). Instead, the problem was defined as a *lack of information* about the quantity and quality of sporting opportunities vis-à-vis participant sex. As such, the "problem" was, in part, that neither athletes, nor coaches, nor public officials could identify the extent to which there was a problem of under-representation for women in sports. Information—and easily accessible *public* information—was difficult to come by because colleges and universities were under no obligation to make public their practices. In time, officials discerned that the disclosure problem was the concern in need of fixing. By implication, lawmakers presumed that

practice would change under the threat of institutional embarrassment or lawsuits resulting from the public disclosure of illegal practices.

The "numbers" of women in sports were not previously understood to represent the contours of the "problem" of discrimination. Indeed, as I've demonstrated in previous chapters, there was much more evidence that the "problem" of discrimination was constituted at the intersection of preferential funding practices that favored men's "revenue producing sports" and sexist bias against women's presumed abilities. This period in Title IX's history illuminates how politics can problematize a set of social conditions, creating shared understandings of the problem itself. As sociologist Joseph Gusfield writes: "Human problems do not sprint up, full-blown and announced, into the consciousness of bystanders. Even to recognize a situation as painful requires a system for categorization and defining events" (Gusfield 1981, 3). In the case of Title IX, the system for categorization had been in the making for several decades. Physical sex and the practice of sex-segregation had given meaning to the means for sorting bodies in sport since the end of the 1970s in the policy domain of Title IX. That system of meaning became central to the quantification of sporting opportunity in the 1970s.

By the early 1990s, a series of positive feedback loops were emerging the policy domain of sports. The rules of sex-segregation created the practice of offering opportunities in sports "on the basis of sex" since the late 1970s. Sex was then used as a means for athletic department institutional decisions regarding conferring or denying opportunities to "female athletes". But, as I describe in this chapter, the nature of these institutional decisions remained private. Thus female athletes and coaches were unable

to evaluate (or litigate) potential Title IX discrimination claims. In the early 1990s, the institutional practices of relying on sex to determine athletic opportunities were made public through lobbying over the passage of the EADA. Since 1994, the requirements of the EADA (in which opportunities and other metrics are counted annually "on the basis of sex") came to "feed back" into understandings of what policy should mean. By consequence the quantifiable "problem" of under-representation of female athletes became foundational to the definition of discrimination as a public problem as well as the creation of solutions.

Alternative definitions of "sex" as something based in anything but biology based became increasingly unthinkable in Title IX's policy domain with the passage of the EADA. This moment of codifying strict understandings of sex in binary data coincided with a shift in the discourse of equity from "sex equity" to "gender equity" in the sporting domain of Title IX, thereby obscuring the continued reliance on biological sex in the rhetoric of gender equity. By instructing schools to count opportunities for men and women, this decade cemented the figure of a "female athlete" (in contrast to her unmarked "male" counterpart) into a knowable, countable, and rights-bearing figure.

Sports in the 1990s

The implications of this particular moment in Title IX's history inflected the sporting politics in which the law is embedded. Even as the NCAA became a more central player in the domain of women's college sports, the U.S. state superseded the involvement of the organization in securing the conditions of gender equity. Even as the conditions and meanings of women's athleticism were expanding and shifting to

encompass more fluid understandings of gender, the passage of the EADA cemented categorical metrics of data that became critical to defining the restrictive meaning of a "female athlete" in American higher education. These data, in turn, meant that Title IX would, in the mid- to late-1990s, become embroiled in the on-going debates over so-called "quotas" for female athletic participation that had long haunted affirmative action policy in college admissions and the American workforce. Over time, as a result of both pre-existing and subsequently unfolding understandings of what Title IX means, the passage of the EADA foreclosed understandings of "sex" in Title IX as anything other than a characteristic of biology. This chapter will thus discuss how alternative definitions of "sex" became increasingly unthinkable in Title IX's policy domain, and with what implication.

The 1990s were one moment in policy development in the realm of sports in which the U.S. Congress established the means of data collection to measure elements of implementation and policy enforcement. I argue that the debates over enforcing equity and the eventual passage of the EADA incentivized and cemented the practice of sex-segregation in athletics by requiring schools to report annual athletic statistics "on the basis of sex". Although sex-integration of sports teams is not strictly forbidden via Title IX, the public accountability factors set in motion through the EADA made for tidier accounting of sex equity data in sex-segregated programs for schools looking to demonstrate compliance with Title IX. In practice, by completing the annual reports produced for compliance with the EADA, schools are asked to count the male and female bodies in both general undergraduate enrollment and in athletic opportunities. In this

sense, sex is operationalized through policy as a knowable characteristic of the body and becomes the most salient element of Title IX compliance, both as reviewed by the federal government, and as a feature of public data.

Other alternatives for assessing the conditions for sex discrimination were considered, but ultimately dismissed by lawmakers. In one example which I explore below, Congress was initially slow to act, hoping that the NCAA would follow through on promises to assess "gender equity" as one of the many metrics required by the NCAA for schools to remain eligible for NCAA athletic competition. This non-governmental solution would have relied upon the long-standing relationships between the NCAA and the NCAA Compliance offices already housed in individual athletic departments and effectively circumvented the growth in government bureaucracy that the Reagan and George H.W. Bush administrations detested. Although lawmakers did not consider possible solutions that would have circumvented the male/female understanding for counting opportunities based on sex, they considered possible non-governmental alternatives to the bureaucratically invasive EADA.

Debate over this legislation also demonstrates how the political category of "sex" became a central logic of data collection and policy enforcement. By implication, the "female athlete" became a "knowable" element in policy implementation, quantifiable in annual reports, with both normatively positive and negative effects. Women in the 1990s were increasingly able to identify through this political identity of the "female athlete", mobilizing for political rights on behalf of this identity, and they did so during Congressional hearings and in class-action lawsuits. This mobilization was both cause

and consequence of the EADA. Yet while the use of data collection as a mechanism of policy implementation helped to accelerate the process through which schools added opportunities for women athletes, it also created the conditions for backlash claims of "reverse discrimination" against male athletes that demarcated the politics of the law in the subsequent period.

Although public data on the implementation of policy are increasingly available as a result of the EADA, very little scholarship considers its role as an intermediary factor in constituting public understandings of the problems developing in policy enforcement. This chapter's focus on the role of the U.S. Congress in changing public accountability mechanisms and the creation of public data contributes to this discussion.

From Issue to Problem: Literature on Defining public problems

Scholarly understandings of the political cause and consequences of the EADA are cursory even though EADA reports provide the data for a significant number of academic studies on Title IX (for example, D. J. Anderson, Cheslock, and Ehrenberg 2006; D. J. Anderson and Cheslock 2012; Castañeda 2004; J. Orszag and P. Orszag 2005; Osborne 2003; Sigelman and Wahlbeck 1999; Stafford and William 2004; C. Sullivan 2010). Interest groups have come to rely on the data for evaluating the conditions of Title IX compliance at individual institutions as well as in national and regional level trends (i.e. Cheslock 2007; Sabo and Snyder 2013; E. Staurowsky et al. 2009). Journalistic publications tracking trends in college athletics can easily access the data in

the on-line database (i.e. K. Thomas 2010, 2011).[4] These data have become normalized indicators of the conditions of discrimination against women in sports across scholarly and non-academic domains. Still, rather than being objective indicators of conditions for women, they too are a product of politics aimed at pursuing the political project of identifying and eradicating discrimination "on the basis of sex".

The projects of identifying and ending discrimination are not straightforward. Several instructive examples from the literature on policy and race help to elucidate this point. Scholars have detailed the processes of racialization that have marked New Deal, "affirmative action" policies as targeted racial interventions (Fraser and Gordon 1994; Katznelson 2005; Quadagno 1996). More recently, scholars have traced the means through which solutions to problems of discrimination in the workplace on the basis of race have been constituted largely in practice. Frank Dobbin and his co-authors detail the ways in which the actions of corporate personnel experts have largely constructed the means of enforcing workplace non-discrimination policy, practices-turned-policy when Congress and the courts have endorsed the practices of human resources personnel rather than creating specific guidelines in legislative institutions (Dobbin and Sutton 1998; Dobbin 2009; E. Kelly and Dobbin 1999).

Mica Pollack's work illuminates a similar example of the gray area inhabited by those charged with defining the means of policy enforcement. She details the internal discussions at the DOE's OCR regarding the means for addressing conditions of racial inequalities in American schools, demonstrating that bureaucrats continue to actively

[4] The online database can be located at the Equity in Athletics Data Analysis Cutting Tool: http://ope.ed.gov/athletics/

debate the means of policy implementation (Pollock 2008). Pollack demonstrates that the means for implementing civil rights policy "on the basis of race" continue to be debated within the institution charged with enforcing policy nearly a half-century after the legislative provisions were first passed. Identifying and altering long-standing racial inequalities through law and public policy continue to be an unfolding project for state and social institutions (Gómez 2010; O'Connor 2000; Seron and Munger 1996; Soss, Hacker, and Mettler 2007).

Racial discrimination has long been understood as a "public problem" to be solved with public policy. But other researchers detail the processes through which phenomena like automobile driving after drinking (Gusfield 1981, 1996) or teenage motherhood (Luker 1996) become constituted as public problems in need of political solutions. As Deborah Stone writes: "…difficult conditions become problems only when people come to see them as amenable to human action. Until then, difficulties remain embedded in the realm of nature, accident, and fate -a realm where there is no choice about what happens to us" (D. Stone 1989, 281). "Focusing events", like earthquakes and natural disasters can open windows on the policy agenda causing citizens and lawmakers to press for policy (Birkland 1997). There is a robust literature in political science on the processes of agenda setting and policy windows, as well as how problems come to be a part of the policy agenda (Baumgartner and B. D. Jones 1993; Kingdon 1984; D. A. Stone 1988).

A problem, once defined, can give meaning to the population targeted by policy (Schneider and Ingram 1993). It is widely recognized that law and policy can confer

meaning to identities within the political sphere, or "hail into being" identities for political mobilization (Althusser 1977). Indeed the construction of a problem as "public" can often co-constitute a policy target population (A. L. Campbell 2003, 2012; Mettler and Soss 2004; Schneider and Ingram 1993). As I explored in Chapter 2, scholars have demonstrated a variety of domains in which the creation of policy has constituted political identities, including Social Security policy (A. L. Campbell 2003), the military (Mettler 2005), and immigration (i.e. Canaday 2003b, 2009; Luibhéid 2002). Policy has conferred embodied rights to groups like the disabled, structuring the conditions of their political mobilization through the American with Disabilities Act (Switzer and Vaughn 2003).

The meaning of "sex" construed through Title IX's application to sports attaches a legal category to the body in unique ways, most similar to the construction of physical ability as a characteristic of dis/ability law. But in sports, the meanings of sex are forged with physical bodies in very strict and conservative ways. Although Title IX only employs the strict male/female binary understanding of sex to sporting bodies as a means of policy design, its implementation in the realm of sports—the domain in which bodies are presumed to be "most natural"—re-naturalizes and extends the biological understanding of sex to broader social categories as well.

Although the conditions for understanding sex discrimination as a "public problem" were inherent to debates over the law in the 1970s, during the 1990s there was a shift towards understanding the problem of discrimination as a quantitative phenomenon. "Discrimination" shifted from a nebulous condition experienced by

individual women in sports, to a collective possibility that could be diminished if it was only quantified and tracked. This shift, driven by activists and members of Congress, would come to distinguish the conditions of college athletics for men vs. women by reducing their experiences to countable data and comparing the distinct opportunities in search of difference.

The Conditions of the 1990s

At the dawn of the decade, participation opportunities for women athletes continued to lag behind men's opportunities. Men had nearly double the opportunities in college and high school sports, and the George H.W. Bush administration had done little to accelerate the enforcement in light of the CRRA (NCAA 2012a; NFSHS 2013). Activists interested in women's sporting advancement were unsatisfied with the conditions facing female athletes. In April of 1992, when the U.S. House held hearings on "Intercollegiate Athletics", testimony from members of Congress, the NCAA, and feminist activists demonstrated that women athletes continued to be under represented in college athletics. Despite a significant battle over the application of Title IX of the Educational Amendments of 1972 to the realm of sports over the course of the 1980s, both the Reagan and George H.W. Bush administrations had been lax in enforcing the law. In the judicial branch of government, legal activity in lower-level courts had focused on developing more robust understandings of the "equal opportunity" standard of Title IX (Heckman 1994). Extra-governmentally, data collected by the National Collegiate Athletic Association (NCAA) in the first two years of the decade indicated that women only occupied one-third of all college athletic opportunities, and received

merely twenty-five percent of college athletic scholarship. Representative Cardiss Collins (D-IL), who convened this first of four hearings held throughout the decade on the topic of "gender equity" in sports, concluded in her opening statements of the hearings: "The GAO report today, as does the NCAA's recent survey on gender equity, shows schools still do not carry out either the letter or the spirit of title IX which calls for equal opportunity for men and women in athletics" (U.S. Congress 1992, 1). This skepticism towards the lackluster efforts of both bureaucratic institutions and non-governmental governing bodies of college athletics in ensuring the full implementation of an ethos of gender equity had attracted congressional attention.

The hearing sustained a brand of congressional oversight that began in the 1980s, in which a small majority of members of Congress expressed the intent to rigorously evaluate the bureaucratic practices in implementing Title IX. As I explored in the previous chapter, battles over the law's meaning and enforcement parameters, stretched across the 1980s. The Reagan administration stopped pursuing civil rights, discrimination claims under Title IX in 1981 and a Supreme Court ruling in *Grove City College v. Bell* temporarily gutted the enforcement clause of the law, the practical implication being that between 1984 and 1988, Title IX did not legally apply to the realm of college sports. In 1987, Congress passed the Civil Rights Restoration Act, reclaiming legislative intent to apply the law to sports, over-riding President Reagan's veto of the law in March of 1988.

Simultaneously, Congress began to symbolically recognize the accomplishments of the "female athletes" given rights to sports under Title IX. The first "National Women

in Sports Day" was observed by the U.S. Congress in of 1987. It was marked annually, and amended to be called "National Women and Girls in Sports Day", emblematically acknowledging the changing face and function of sports in American culture. Further, NCAA Championship teams in sports like women's basketball and soccer were increasingly recognized in congressional floor statements, and with invitations to the White House acknowledging their athletic accomplishments.

Yet the practical application of the law designed to secure the rights of women to sport was quite limited. The Bush administration had done very little to accelerate enforcement in the wake of the Civil Rights Restoration Act of 1987, even as Congress held hearings on the topics of graduation rates of college athletes, the fairness of the NCAA policies, and the roles of the federal government and the NCAA in promoting "gender equity". By the early 1990s, the role of the NCAA in governing college sports was growing increasingly complicated.[5] Lawmakers were especially keen to learning more about the role of the NCAA in regulating the conditions of college sports during the late 1980s and early 1990s, since the NCAA was peculiarly positioned to produce quantitative data on the conditions for women athletes at its member institutions. In the absence of data collected by institutions of the state, the NCAA's limited efforts to quantify women's sports were the most complete record of the face of college sports, two decades after Title IX. Through the hearings in 1992 and 1993, NCAA data on the significant disparity in opportunities for women athletes to participate on varsity teams,

[5] The NCAA only came to control many collegiate women's athletics programs starting 1982, and after a fraught battle with the AIAW for control over women's sports (Cahn 1995; Festle 1996; Wushanley 2004).

obtain athletic scholarships, and gain employment as coaches were the main forms of evidence documenting persistent discrimination.

The 1992 hearings commenced with Representative Collins, Chair of the Subcommittee on Commerce, Consumer Protection, and Competitiveness, quoting the NCAA statistics. She noted: "Women represent about one-third of college athletes, but…women get, at most, one-quarter of athletic scholarships. Women's share of total athletic expenditures is less" (U.S. Congress 1992, 1). No other government agency was tracking these data central to Title IX's enforcement clause, thus the NCAA statistics loomed especially large.[6] Representative Collins had requested a General Accounting Office (GAO) report in May of 1991, the findings of which were presented in the April 1992 hearings, still even these data required the NCAA as a gateway towards collection.

> When Collins filed the request for a GAO report, she asked the GAO to:
>
> (1) review financial data of the National Collegiate Athletic Association and its member schools' athletic departments; (2) develop department gender and race/ethnicity profile data; (3) develop department compensation data by profile; and, (4) analyze profile and compensation data comparing information for

[6] The "three-prong test" of compliance in the domain of athletics was developed in the late 1970s as the dominant means of Title IX compliance review (Miguel 1994b). The three "prongs" upon which schools were told they would be judged by the Office for Civil Rights on their Title IX compliance included: 1) substantial proportionality: opportunities for participating in intercollegiate athletics must be substantially proportional along lines of sex to the undergraduate enrollment, 2) continued expansion: demonstration of a "history and continuing practice" of expanding athletic opportunities to the underrepresented sex, or 3) full accommodation: a school must present proof that it has "fully and effectively accommodated" athletics interests of the underrepresented sex.

> historically black schools to similar information for other NCAA Division I schools (U.S. Congress 1992, 7).

These data focused primarily on the activities of NCAA Division I-A schools, the most financially flush athletic departments, defined by their ability to support large football programs. The GAO Report extended for fifteen pages of hearing testimony, and focused primarily on the conditions facing college coaches. It documented significant salary disparities for coaches at Historically Black Colleges and Universities (HBCUs) and for women coaching women's teams. Although it did not measure participation or scholarship data, it was the initial template for the federal government's attempts to quantify equity concerns into athletics data.[7]

From the start of congressional hearings in 1992, the NCAA was centrally involved in governmental efforts to track conditions in athletics for women. Since taking over as the governing body of many women's athletics programs, the NCAA had unique access to information from its member institutions. The first, unpublished, gender equity study, generated in 1990-91 by request from the National Association of Collegiate Women Athletic Administrators, demonstrated that the overwhelming majority of athletic opportunities were available only to men. This trend seemed stubbornly entrenched, even if slowly changing, twenty years after Title IX's passage.

The NCAA's tepid engagement with equity concerns made it an easy target for lawmakers initially reticent to develop federal mechanisms for tracking compliance. During the 1992 hearings, the Executive Director of the NCAA, Richard Schultz testified

[7] A 1989 Congressional Hearing on the "Role of Athletics in College Life" paid closer heed to the disparities between HBCUs and athletic programs at other schools.

that he intended to have gender equity legislation on the agenda of the January 1993 NCAA convention. However, by February of 1993, the NCAA had taken no action. Representative Collins remarked:

> I find it curious that the NCAA is quick to write rules to regulate student behavior but considers it impossible to write rules to end discrimination against women even though women's sports have been part of the NCAA for 10 whole years. Why is it that whenever a group asks for equal rights the dominant group's first reaction is defensive; the second reaction is to interpret equal rights for one group as diminished rights for another; and, finally, to stall and stall and stall? (U.S. Congress 1993a, 2)

Although NCAA representatives were on record acknowledging that equity was a "moral" mandate, without strict enforcement from the OCR under Reagan or Bush, stalling on implementing the policy intent of Title IX was a more common posture by colleges and university (U.S. Congress 1992, 23).

The federal bureaucracy had readily acknowledged that athletics was a problematic domain for civil rights enforcement under Bush. The 1990 Department of Education Office for Civil Rights Report on a "National Enforcement Strategy for Civil Rights" had named "discrimination on the basis of sex in athletics programs" one of seven "priority issues" for FY1991 (U.S. Congress 1992, 74). The OCR memo focused primarily on how to train OCR investigators to respond to civil rights violation complaints, equivocating on any sort of outcomes-driven strategy, stating: "The goal will

not be defined in terms of numbers of compliance review investigations, but in terms of the most effective use of staff resources" (1992, 78). In the domain of civil rights the federal government under the Bush administration adopted a responsive posture similar to that of the Reagan administration. Complaints needed to be filed by the aggrieved athletes, coaches, or athletic administrators in order for violations to be addressed by the DOE.

Alternatively, female athletes could pursue legal action against schools which were out of compliance with the law. Indeed throughout the 1980s and early 1990s, cases challenging the conditions facing women athletes were winding their way through the legal system, many of them as class action suits.[8] Legal activists from the National Women's Law Center (NWLC) testified about the success of their litigation in cases like *Haffer v. Temple University*.[9] The testimony of Ellen Vargyas, Senior Counsel for Education and Employment at the NWLC, problematized the limited data available through the NCAA stating that: "While dramatic, the NCAA figures are void of detail" (U.S. Congress 1992, 92). Lawyers at the NWLC helped plaintiffs construct legal claims of discrimination, sketching the list of harms visited upon female athletes with limited opportunities. Vargyas testified to the struggles faced by plaintiffs in obtaining hard data from their colleges on the nature of spending and participation opportunities in sports.

[8] In this sense, Title IX's legal history has parallel features with CRA Title VII provisions directed at sex and employment discrimination, as well as sexual harassment law (Bingham and Gansler 2002; Turk 2010, 2011).

[9] The case against Temple University was a class action claim filed in 1980 on behalf of all female athletes at Temple University. The named plaintiff, Rollin Haffer, testified in the second set of 1993 Congressional hearings.

Athletic departments had a high incentive to be withholding and slow in reporting their data, exacerbating the harms visited upon athletes with a very narrow, four-year NCAA-eligible-for-competition window.[10] Thus, Vargyas demonstrated the complicated utility of pursuing compliance through courts. A long list of factors made it difficult for women to bring legal cases charging discrimination in athletic departments, including fear of personal retaliation, and the open-ended timeline of judicial proceedings which increased the likelihood that a ruling might not occur before the end of the plaintiff's college career.

Obstruction during the process of evidence collection and unknown timeline of legal proceedings were some of the problems feminist activists identified. In the same hearings, feminist athletic administrators noted that even if the data collection efforts of the NCAA were expanded and fully realized, this only helped a limited portion of all women in college sports. Thousands of women, whose schools' athletic programs were affiliated with other athletic associations like the National Association of Intercollegiate Athletics (NAIA) and the National Junior College Athletic Association (NJCAA), would still be left without clear metrics by which to evaluate the degree of compliance with

[10] NCAA eligibility rules are a key feature of the NCAA bureaucracy. The NCAA has become increasingly bureaucratized in its approach, now running an "Eligibility Clearinghouse" for high school athletes, as well as annually updated rules and regulations governing eligibility standards for current college athletes. These standards touch a number of dimensions of college sport, including academic standards, amateur status, and recruitment rules. One fundamental element of the NCAA rules is the four-year eligibility "clock" for college athletes. In any given sport, athletes are allowed to compete for a college team for four total years. There are reasons for exemption in some circumstances, where the NCAA might grant athletes a fifth year of competitive eligibility, but these exemptions are rare. Thus time is of the essence, because the eligibility "clock" can quickly expire for athletes denied competitive teams.

Title IX. Activists from feminist organizations and athletic administration testifying before Congress on behalf of women were firm: without numbers to back up the activities of all athletic departments, female athletes would struggle to quantify and qualify discriminatory claims.

Some, like Indiana University of Pennsylvania's Associate Athletic Director Vivian Fuller, reiterated that the solution could rest within the NCAA. The Association could change its eligibility requirements, requiring schools to demonstrate that they met gender equity standards were met in order to be certified for competition (U.S. Congress 1992, 109). Athletics directors problematized the slow activity of the NCAA, as well as the virtual inactivity of OCR.

Still, it took several years for the U.S. Congress to center the federal government as the actor best positioned to warehouse data on the mandates of Title IX. Gone was the outright ambivalence expressed by the Reagan administration in the 1980s that data collection by the federal bureaucracy would amount to government "over-reach"— a phrase popular among conservative lawmakers in Congressional hearings during the early 1980s on Title IX issues, and elsewhere. Data now represented a means to track the problem using blunt, but otherwise unavailable means. Still it took Congress several years to sort out how to best use data to come to "know" the problem of discrimination in sports.

Passing the Equity in Athletics Disclosure Act

The federal government solution to these problems of the "knowability" of discrimination in college athletics was crafted through the Equity in Athletics Disclosure

Act passed on October 20, 1994 as a portion of the Improving America's Schools Act of 1994. The text of the law situates the EADA in a series of Congressional "findings", including that: "participation in athletic pursuits plays an important role in teaching Americans how to work on teams, handle challenges, and overcome obstacles" and in "keeping the minds and bodies of young Americans healthy and physically fit" (U.S. Congress 1994, 437). The law also explicitly detailed the discoveries of the 1993 "Final Report of the NCAA Gender-Equity Task Force", including marked disparities in operating budgets (only twenty percent of NCAA DI-A athletic department budgets were spent on women), recruiting budgets (only fifteen percent of NCAA DI-A recruiting expenditures were used to recruit women athletes), and scholarships (male athletes received over $179,000,000 more per year in athletic scholarships) between women and men athletes across the country.

These disparities were increasingly well documented by an NCAA leadership team that remained ambivalent about the role of the NCAA in changing the outcomes. Although the Association had appointed its first (and to date, only) women president in Judy Sweet, the commitment to long-term policies regarding gender equity concerns remained unclear. Rhetorically, representatives from the organization claimed that they hoped gender equity would be a "primary issue" in the future. Some members of Congress, like Representative Collins, were unimpressed by the NCAA's reluctance to institute gender equity rules. Others, like Representative Edolphus Towns (D-NY), were more forgiving, saying:

> I join my colleagues in saying that I think Dick Schultz's heart is in the right place, I think his head is in the right place, but there are some places that he just has not been able to move, and I think it is our obligation and responsibility as Members of Congress to assist him in helping to make this move. What is going on is wrong, and we need to try and make it right" (U.S. Congress 1992, 6).

Although no testimony directly challenged the premise of equity defined through Title IX, members of Congress were increasingly convinced that the continued evidence of discrimination against women in sports would not be directly addressed by the NCAA. If the NCAA would not offer coaches or athletes additional mechanisms to pursue recourse for sex discrimination, the federal government would have to change its policy enforcement plans.

Congress settled on defining a particular version of "discrimination" that amounted to a countable lost opportunity for participation, or an under-funded athletic scholarship. Thus, the problem was defined as lack of knowledge around a potential lack of opportunity for women athletes. Increasingly, lawmakers implied that if colleges, athletes, and policy makers simply knew more about the structural inequalities persistently facing women, they could take action to change them. Thus the solution that began to develop was a type of "sunshine reform"—the U.S. Congress would craft a series of measures to shed light on the conditions affecting women and men in athletic departments, making this information available to the public to promote compliance.

In February of 1993, Rep. Collins introduced a House bill designed to amend the Higher Education Act of 1965 to create federal mechanisms of surveillance over athletic

programs. Hearings on this bill took place over the summer of 1993. During the 1993 hearings, a panel of former collegiate female athletes was mobilized to testify. Each of the women was a plaintiff in class-action lawsuits pursuing discrimination claims under Title IX, and each detailed the harms they experienced leading up to their decision to sue their college or university. The narratives openly embraced the sex-based distinctions that policy had defined was central their experiences with discrimination. The women detailed their experiences at Brown University, Temple University, and Auburn University demonstrating how their home institutions regularly denied women access to sports and underfunded the women's teams. They also described the lack of knowledge about the law from their athletic directors, who not only neglected to implement policy, misinterpreting the required ratio of male/female athletes, but also made arbitrary enforcement decisions "on the basis of sex" when funding cuts were required.[11] The women had little recourse to demand better compliance with the law from their home institutions and when they filed discrimination claims with the OCR, they also received little or no response from the government agency.

The athletes described harms, incurred both as a result of being denied opportunities, but also in response to filing lawsuits after OCR claims went unaddressed. Susan Bradbury Kiechel, the lead plaintiff in a class action suit against Auburn University, described being "verbally attacked for standing up for [her] rights", and struggling to get the "true budgetary numbers out of a university concerning its athletics program" (U.S. Congress 1993b, 22). She noted that she "risked [her] financial, and

[11] Discussed at length in the June/August 1993 hearings, and detailed more thoroughly below (U.S. Congress 1993b).

some people had feared [her] physical, security to fight for what [she] believed in in the deep South" (U.S. Congress 1993b, 22).[12]

Rollin Haffer, the lead plaintiff in a case against Temple University, filed in 1980 testified that:

> As the named plaintiff in this case, I learned all too quickly how initiating change brought with it its own agony. I was harassed because I believed in a cause and was willing to fight for gender equality. I was outwardly labeled an "enemy" and "trouble maker" by professors and other faculty members. I was the brunt of rude and demeaning comments, and was scorned by some individuals I had come to respect. I was the target of a new rule the university wanted to implement forbidding in-season athletes to student teach, as well as the victim of a sick joke by the football team as they completely surrounded me one day as I ran in the arena. These are just a few examples of the inequities and repercussions I dealt with during our case, but I welcome the opportunity to tell you about others (U.S. Congress 1993b, 4).

Testimony like these left an indelible imprint on the historical record of both illegal violations of federal civil rights policy and personal pain. The pain of opportunity lost or suddenly retracted was emphasized by the female athletes, but so too was the pain endured for standing as the whistle-blower against athletic departments knowingly violating federal law.

[12] This observation and personal experience rightly implied the empirical fact that conditions of non-implementation were worse in Southern states than elsewhere (Sharrow 2002).

Such testimony also underscored to lawmakers the importance of prompt reaction from the federal government in adjudicating just responses. Both athletes and activists detailed the striking nature of harms against college athletes with only four years of limited competition opportunity exacted by institutions. Time, according to both athletes and feminist activists, was of the essence. Central to the problem of timely response, was the ability of colleges and universities to delay providing information on the statistics of spending, scholarships, coaching, and participation opportunities.

Although the women described problems stemming from a lack of leadership within their home institutions, there were few discussions of the potential means to inform athletic directors of the implementation rules, or to inform student-athletes of their rights under Title IX. Ignorance (or negligence) on the part of administrators to the rules of policy implementation lead some to admit that although they were tasked with ensuring policy compliance with Title IX, they had never once read the text of the law. Activists pushed for solutions to the problems of ignorance and mis-information that exceeded the merely educating athletic directors on the tenets of the law. Female athletes and their lawyers sought control over information on the conditions structuring sex and college athletics so that they could make their own assessments on the quality of policy enforcement.

Thus the solutions to the problems of lacking enforcement again coalesced around the need for better data. And quickly, as legislative language was developed by Representative Collins and Senator Mosley-Braun, the inactivity of the OCR and NCAA gave way to a new regime where the federal government took on a more active role.

Instead of a legacy of cooperative enforcement of gender equity between the federal government and the non-governmental NCAA, the state chose to bureaucratize the collection of information regarding sports. Although the NCAA made (and continues to make) determinative rulings on the individual academic eligibility of high school prospective athletes and college athletes, and on member institution's eligibility to participate in seasonal and championship competitions, its reluctance to legislate similar rules for gender equity concerns required by Title IX ultimately forced Congress to intervene.

Representative Collins original bill was re-packaged in an appropriations bill to fund the Elementary and Secondary Education Act of 1965. The EADA was part of Title III of the bill, and passed relatively non-contentiously. Public opinion towards expanding opportunities to women in sports had been high for many years. Gallup polls in the 1970s displayed majoritarian support for equal spending on women and men's sports, and opinion remained strongly in favor of equal spending in a 1985 Lieberman Research poll.[13] A 1990 Harris & Associates poll showed eight-five percent approval for the statement "Women should be given the same number of opportunities to compete on

[13] The 1974 Gallup poll showed eighty-eight percent approval for the question "Should girls have equal financial support for their athletic activities as boys?" The 1979 Gallup poll asked a slightly different question, "The federal government may require all high schools to spend the same amount of money on women's sports as on men's sports. Do you approve or disapprove of that plan?" garnering sixty-two percent support. And the 1985 Lieberman Research poll indicated that seventy-two percent of respondents thought "that schools and universities should give equal funds to men's sports and women's sports". Citations for the polling data are included in Appendix B.

intercollegiate athletic teams as men". The premise of the EADA was already well-supported by the general public when it was passed my members of Congress.[14] Also, the language of survey methodologists included the shift towards thinking of opportunities as "numbers" instead of something qualitatively determined. The logics of "counting" opportunities allowed for lawyers and college athletic observers to quickly assess the status of compliance with Title IX. In the process of designating the means for counting, Congress invoked the sex-based policy distinction central to Title IX's design: male vs. female athletes.

Quantification and calcification: Counting through Segregation

The EADA solidified the basic distinction made by Title IX "on the basis of sex". The regulations specifically detailed a distinction between "male" and "female" athletes and coaches, and "men's" and "women's" teams. All of the additional data required to be annually reported to the public were also to be reported on the basis of sex differences between rates for men and women, including: participation numbers, scholarship expenditures, the ratio of scholarships to participants, costs (and per capita costs) for recruiting, team and operating expenses, coaching status at all levels, ratio of participants to coaches, and revenues for each team. Not only did the U.S. Congress take as given that most sports were already operating under conditions of sex-segregation (and that

[14] The poll was administered over the telephone to 1,255 adults nationwide. It was sponsored by the Knight Commission and titled "Reforming Intercollegiate Athletics". The specific question asked was: "Do you agree or disagree with the following statements about women's athletics?...Women should be given the same number of opportunities to compete on intercollegiate athletics teams as men." Fourteen percent of respondents disagreed and one percent was 'not sure".

they would continue to do so), the ways in which the new disclosure guidelines were written encouraged and re-naturalized segregation as the normative way to organize sports.

This system of organization had been de facto practice, and de jure law in certain circumstances.[15] Still the EADA codified the practice of counting bodies in segregated spaces in increasingly thorough ways. The EADA further entrenched the distinction between how the implementation of Title IX would be managed in sports vs. classrooms, and it instructed schools to internalize this logic in the production of annual EADA reports.

By implication, and in contrast to sports, in almost all educational institutions including classrooms, graduate school admissions, and policies pertaining to the employment of university faculty, policy makers and activists had accepted the basic premise of equality between men and women in its classic "separate cannot be equal" form and, thus, created sex-blind implementation guidelines. In short, when it came to classrooms, policymakers accepted Title IX's central premise: intellectually, women were men's equal. Starting in the 1970s and continuing through the 1990s, the baseless exclusionary practices of institutions of higher education were outlawed using sex-blind

[15] In chapters 1, 3 and 4 I note how historical context is imperative to understanding why this logic of sex-segregation in sports was such a reversal in the realm of education. Remember, the segregation/integration question loomed large in racial politics of education at the dawn of the 1970s when discussions of sex discrimination in education came into national politics (Mayeri 2011). Schools were already the venue through which American racial politics were being renegotiated through logics of de-segregation in the wake of *Brown v. Board*.

implementation guidelines for the intellectual spaces of college campuses, following the same means of integration, on-going in American racial politics.

Yet in the realm of athletics the opposite, "sex-conscious" solution was developed. The policy uses of Title IX and the political conflicts that have surrounded them have thus been rooted in a problematic tension between its ethos of *intellectual* equality and its ethos of *physical* equality. Indeed the enforcement mechanisms developed for sports—including the passage of the EADA—have, over time, entrenched a notion and practice of segregated equality which rejects the premise of physical equality between the sexes and supplants it with assumptions of "natural" sex-difference. This element of policy design thus assumes a male/female binary as the operative definition of "sex", locating "sex" within the body, disavowing alternative definitions of bodies while constituting sex as a means for policy enforcement.

Consequently, the U.S. state instituted a widespread and—through the EADA—increasingly entrenched practice of "separate but equal", in the decades after rejecting such ideology and practice for concerns over race and racial discrimination. As a consequence, sex-segregation came to naturalize women's purportedly inferior physical abilities compared to men, and over time, Title IX's implementation in the realm of sports has re-naturalized the same sex-based distinction that men and women are somehow naturally "different" that Title IX was intended to abolish.

Further, through the passage of the EADA, bodily "sex" became the central location of political rights secured through Title IX. "Female" athletes could claim discrimination in sports only by first drawing an implicit distinction between them and

their male counterparts. A "right" to sports was thus literally located in the body, further naturalizing the interpretation of "sex" made by segregation as policy design back in the 1970s.

By generating policy implementation mechanisms that relied on sex-segregation, institutions of American politics re-affirmed the "political identity" of the female athlete. As evidenced in Congressional hearings throughout the 1990s, the political identity was newly salient in activist politics and legal cases. "Female athletes", under Title IX, had political and legal standing to claim a new set of civil rights, rooted in the physical body, in institutions of higher education.

Through the categorical distinction of sex as a characteristic of bodies, policy distinguished this identity, and gave it heft through the annual reporting of data that reified its relevance. When writing annual EADA reports, schools were implicitly instructed only to be concerned about the "difference" present due to sex or gender in so far as they could create equitable spaces for female sexed bodies. Nothing in the data collection methods questioned other major forces shaping college sports: expanding football rosters, ballooning coaching salaries for football and basketball coaches, or increasing involvement of media outlets in shaping the nature of revenue streams into college sports. The state had effectively instructed to schools to keep special spaces for the bodies that were not male, and to then do their best to adjudicate equitable conditions of opportunity and scholarships for those two groups.

The Limits of the EADA and Countable Rights for the "female athlete"

Even as policy created the conditions under which the "female athlete" could be bureaucratized and mobilized in order to claim "countable" political rights, its implementation constructed a certain type of "female athlete" marked by the same elements of privilege imbued through policy in earlier eras. Rarely problematized throughout the early 1990s were the problems facing sub-groups of women athletes. The severe under-representation of racial minorities was only noted twice in the Congressional Record, and virtually no attention was paid to the particular inequities facing women enrolled in community colleges. Brief discussion in the 1992 hearings detailed the limitation of relying on NCAA studies to track gender equity in the long run since so many athletes were part of schools whose programs were overseen by the NAIA or the NJCCA, but lawmakers did not speculate about the specific concerns facing community colleges in pursuing equity. Concerns about funding gender equity implementation were littered across hearings in the 1990s, primarily articulated by activists concerned with the potential costs of adding teams for women, or funding women's athletic scholarships. Whatever the particular problems facing funding at community colleges, the details went unacknowledged.[16] Thus the solution to the problem of discrimination in the 1990s evolved with a severe racialized and classed bias.

Although the EADA requires the reporting of statistics at communities colleges in the same manner as four-year colleges and universities, the disparities in opportunity and spending in two-year, community colleges continue to be significantly larger (K. Thomas

[16]Little has been written about the conditions facing athletes at community colleges, and it continues to be a domain in which the law is largely unenforced (Castañeda 2004; K. Thomas 2011).

2011). These cross-cutting inequities illustrate critical issues of social and economic class that continue to haunt Title IX. Students at two-year colleges often come from lower-income backgrounds, thus the under-implementation of equity in community college settings means that the progressive narrative of Title IX's success is enjoyed primarily by women of economic privilege who are already able to gain access to elite higher educational institutions in order to claim their right to sport. Further, it means that Title IX exacerbates the dramatic inequities across high school and youth athletics programs which act as the "feeder systems" to college sports (Messner 2009; Sabo and Veliz 2011; K. Thomas 2009). The most elite athletic opportunities—for women in particular—are reserved for those athletes with a well-funded athletic apparatus (Stevenson 2007, 2010). These policy arrangements send powerful meanings about the "expressive meaning" of law, and who has legitimate call to claim a right to sports participation (Koller 2012).

Additionally, concerns regarding high school sports fell outside the domain of legislative action, since the EADA was designed to modify the Higher Education Act of 1965. Despite severe inequalities across the funding of primary and secondary education programs in general, and their subsidiary varsity athletic programs specifically, the federal government neglected to create a data gathering apparatus to touch on all dimensions of Title IX's application to sports.[17] The inequalities left unaddressed by this particular definition of an "equitable solution" to the problem of discrimination has left a

[17] The concerns of high schools were briefly addressed in the second set of 1993 hearings, but the EADA was crafted to generated annual data reports on higher education.

legacy of under-funded athletic programs for the poorest schools in the country (Sabo and Veliz 2011; K. Thomas 2009).[18]

Title IX, gender and "affirmative action"

The context of race and racialized civil rights policies were central to the debates in the 1990s in other important ways. Although lawmakers had been careful not to design Title IX as a "quota" based policy, negative accusations that the EADA was instituting a *de facto* quota quickly emerged in the wake of the law's passage. By 1995, during Congressional hearings specific to Title IX, a small minority of lawmakers led by former college wrestling coach Representative Dennis Hastert were publicly crying foul. The meaning of the EADA was abruptly rearticulated by forces opposed to Title IX's full implementation, namely the National Wrestling Coaches Association. Although these political battles would continue to unfold over the subsequent decade the invocation of American racial policies in discussions of policy aimed at sex demonstrates both the politics of whiteness central to Title IX, as well how Title IX's politics mutually constituted a politics of race and sex.

By the early 1990s, affirmative action was a deeply racialized non-discrimination policy, and invoking it during discussions of Title IX served to implicitly racialize

[18] The National Women's Law Center, the National Coalition for Women and Girls in Education, and the Women's Sports Foundation have been leading a lobbying effort to extend the EADA to high school settings as well, advocating for the "High School Athletics Transparency Act". This bill, proposed in 2011, would require high schools to disclose information about the numbers of "male and female athletes" as well as the expenditures made for each sport. The WSF report from the fall of 2011 document disparities across high schools that are difficult to observe in light of varied public reporting of compliance data (Sabo and Veliz 2011).

concerns of equity in educational policy that were otherwise perceived to be race-neutral. Affirmative action policies had come under harsh scrutiny during the Reagan administration, and the process of racializing purportedly "color blind" policies was well entrenched by 1992 (T. Anderson 2004; Katznelson 2005; D. S. King and R. M. Smith 2011; Skrentny 1996). Dara Strolovitch analyzes public opinion data from the era and demonstrates that anti-discrimination programs for women have long enjoyed ten to twenty percent more public support than similar programs for people of color (Strolovitch 1998). Thus, the attempts by activists from women's sporting communities to distance Title IX from affirmative action policies during the mid-1990s hearing was a method of whitening Title IX vis-à-vis other civil rights laws, particularly those affecting higher education. As *Newsweek* magazine noted: "to talk quotas [in the 1992 election] will be the polite way to talk race and class" (T. Anderson 2004, 207), and intentionally or not, lawmakers and advocates had gone to great lengths to leave the intersecting conditions of race and class out of discussions regarding Title IX.

This absence was particularly striking, given the context of race in other policy domains. During debates over 1996 welfare reform, and as a result of unfurling, historical processes, the racialization of class and gender were central dynamics to the discussion of policy (Hancock 2004; Hawkesworth 2003; Lieberman 2001; Quadagno 1996; Roberts 1997, 2002; Soss, Fording, and Schram 2011; Soss and Schram 2007). The intersectional politics of political processes central to law-making in other domains have been well documented by scholars of American politics (Hancock 2004; Strolovitch 2006, 2007). Processes of racialization may appear "visible" in policy domains because

of the ways that lawmakers and the media framed the implications of policy for people of color. But the politics of race were no less present in the mid-1990s in discussions of Title IX, they were merely oriented around conditions for mainly white athletes.

The term "affirmative action" was first invoked in the 1992 hearings during discussions of the role of football in Title IX. The director of athletics at California State University indicated: "I don't like the words 'affirmative action', but I think we have to have specificity with regard to how resources are going to be allocated for women's sports" (U.S. Congress 1992, 120). The phrase "affirmative action" was used liberally in an Illinois High School Association report included in the congressional record and discussed at length in hearing testimony. In this case, the phrase was meant literally, and the report was part of a pro-active initiative by the state of Illinois to bring about gender equity in high school sports quite intentionally. But the repeatedly use of a term that had been racialized in other contexts would later haunt advocates of women's sports and Title IX.

The "affirmative action" language was also rooted in a 1995 a district level court ruling.[19] *Cohen v. Brown University* (859 F. Supp. 185 (1995)), in which the court considered the decision by Brown University to demote four sports (women's gymnastics and volleyball, men's golf and water polo) from varsity status in 1991. A class-action lawsuit was filed by the Trial Lawyers for Public Justice with Amy Cohen as the lead plaintiff, claiming that this decision violated the requirement of the 1979 policy implementation guidelines. The "equal participation" requirement instructed schools to

[19] The First Circuit court would go on to rule in Cohen's favor in November of 1996.

provide participation opportunities for male and female athletes proportional to their percentages in the general population of undergraduate students (Brake and Catlin 1996; Brake 2001, 2010; Buzuvis and Newhall 2012).[20] Legal scholars agree that this case, despite being denied certiorari by the U.S. Supreme Court, was a game changer for the implementation of Title IX (Brake 2010). Brown University pursued the case to validate its right to cut costly sports, but at each level of appeal, the courts ruled that schools must be blocked from cutting women's sports in order to comply with the three-part test. Other lawsuits of similar design were pursued concurrently to the *Cohen* case, and when the Supreme Court denied cert, it left standing many cases with similar rulings across the country (Brake 2010).

In light of *Cohen v. Brown University*, the dominant logic propelling the size of athletic programs continued to trend toward growth. In 1995, women's opportunities continued to lag far behind men's, amounting to only thirty-seven percent of all athletic participation opportunities (NCAA 2012a). Thus in the aftermath of *Brown*, and in light of the newly implemented EADA, schools were facing increasingly tight constraints upon their formerly private choices. Neither set of rules governing the three-pronged compliance test or the public reporting of data instructed schools on how to go about achieving equity. At least one main driver affecting women's opportunities in the aftermath of the *Cohen* decision was the continued growth in men's football. Between 1990 and 1996, participation opportunities for male football players grew roughly ten percent at NCAA member schools (NCAA 2012a). Football rosters amounted to twenty-

[20] This was another reference to the "three-prong test" of Title IX compliance, and a significant moment in the policies legal interpretation.

seven percent of all men's athletic opportunities, and sixteen percent of all athletic opportunities (NCAA 2012a). As long as schools expanded the number and size of their football rosters, however, the EADA made newly visible the repercussions of their concurrent methods for seeking (or, as was more often case, not seeking) proportional equity between women and men.

By 1995, only a few months after the EADA had specified the means through which Title IX's implementation would be quantified, groups opposed to the method of implementation upheld under *Brown* began to frame Title IX as a "quota" based policy. Representative Hastert emerged as one of Title IX's harshest critics in the 1995 Congressional Hearings, allying himself with a growing interest group in Title IX's policy domain: the National Wrestling Coaches Association. Hastert's background as a high school wrestling and football coach of sixteen years were reflected in his comments on sports and equity, as well as his opinion that "the oldest sport known to man"—by which he meant, wrestling—"is disappearing faster than any other" (U.S. Congress 1995, 10). He framed the decrease in men's college wrestling programs as an "unintended consequence" of Title IX, and an example of the fundamental failure of "quota" systems. Hastert's comments focused on the decisions of several schools to comply with the "accommodation of interests and abilities" element of Title IX's implementation regulations by leveling down, cutting men's athletic opportunities rather than adding women's. Ironically, Hastert's evaluation of the problems associated with relying on quantitative evaluations of discrimination cut across some of the same concerns articulated by feminist activists lobbying on behalf of the EADA. He mused:

> This de facto reliance on proportionality alone leads me to these questions. Are we as a Nation saying that numbers alone indicate discrimination? Has this, in fact, become a quota system that we have imposed on athletic systems in this country? More importantly, have we created a quota system that does not help the underrepresented sex as much as it should because universities can simply cut the overrepresented sex as a means of meeting the test? It does not help create opportunities for women when a school simply cuts a sport such as soccer, swimming, wrestling, or baseball to comply. And we should not support such tactics. This only hurts young women and men across the nation who are denied the opportunities that should be afforded to them. The benefits of sports in general--the values of fair play and teamwork, of stretching yourself to the fullest and pushing your mind and body to its utmost performance-will be lost on these women and men who will not get the opportunity they should have. They are caught in the "unintended consequences" of Title IX. They are caught in a quota system which makes them a number, not an athlete (U.S. Congress 1995, 11-12).

His comments advocated for additional implementation mechanisms encouraging fellow lawmakers to amend the EADA and instruct schools to level up, and add opportunities for women instead of subtracting opportunities for men.

Feminist activists did not disagree that this might be an appropriate amendment to the means of fulfilling compliance with the intent of the law, although they did not do so for the same reasons. Additional testimony from T.J. Kerr, on behalf of the National Wrestling Coaches Association, indicated that the NWCA believed something much

more gendered was at stake. In the conclusion to thirty pages of submitted testimony, the NWCA stated:

> Young male athletes arrive on campus every fall in the good-faith belief that they have an agreement with the university that they will be able to compete in their sports and their parents hope they will mature into men. The trauma visited upon there athletes when they are informed that they (or their sports programs) have been dropped is impossible to explain. The administrators' rationale that it is the government's gender quota which has destroyed their opportunity to participate creates extraordinary disillusionment, anger and frustration. Is it any wonder why our kids and our citizenry distrust and dislike our government bureaucracies? (U.S. Congress 1995, 161).

This notion that sports are a particular domain to which men alone are authentically entitled cuts to the core of the masculinized concerns over quotas. Kerr hints at the familial social structures that had long encouraged (for better, or for worse) men to "mature into men" through sporting practices. The denial of these ascendant, masculine entitlements brought about, from the NWCA's perspective, by the implementation of Title IX rose to the level of "trauma" in this patriarchal imaginary. Further, this notion implied that so-called "quotas" were denying men access to their "natural" rights, and that the inevitable and appropriate reaction would trend from disillusionment, to lack of trust in government itself. The wrestlers of the NWCA expressed a deep cultural woundedness as a result of their lost sporting opportunities. Implicit in their comments was the notion that political battles solving cultural inequities in male-dominated

domains should be deemed successful only if the attachments of men to masculine spaces were unaltered. Their "wounds" were the result of falling outside the valued elements of hegemonic masculinity and being scripted into an expendable role where their male privilege was devalued in order to achieve equitable outcomes.

Yet as the NWCA worked to frame the implementation mechanisms of Title IX as the problem in need of solution, their rhetoric never turned against other men's sports. Despite the divergent national-level trend—wherein men's football participation opportunities continued to expand as men's wrestling participation opportunities shrunk—the gendered coalitional politics more deeply entrenched the notion that "men" and "men's interest" in sports were unified and most different from "women" and "women's interests" in a post-Title IX world. Because teams rarely integrated men and women, there was limited political potential for coalition building between, say, male college wrestlers and female athletes who instead fought for the spoils leftover after men's football teams gobbled up larger and larger percentages of athletic budgets.[21]

In this climate, the political maneuver by Title IX's opponents, to frame Title IX as an "affirmative action" policy resulting in "reverse discrimination" against subgroups of men, was an unlikely fusion of age-old race and gender politics. Coupling understandings of Title IX with those of "quota systems" as a means of policy enforcement was an attempt by leaders in the college wrestling community to implicitly attach Title IX to the increasingly unpopular mechanisms for rectifying discrimination on

[21] Footnote the trends in men's football teams spending the money they brought in throughout the 1990s, leaving very little money allocated from their so-called "earnings" for other teams.

the basis of race.[22] The male wrestling community, fueled by the belief that the male entitlements to sport was being denied to sub-populations of men, laid political claim to the same "battle of the sexes" that gripped the politics of Title IX in the 1970s. During the 1970s, it was football coaches who were most active in lobbying the government to ensure that Title IX did not unseat college football as the driving force within college athletics. In the 1990s, leaders in the football community remained notably silent on the means and mechanisms for implementing sex equity policy in college sports, leading wrestling advocates to suppress the glaring tensions between groups of male athletes, redirecting their hostilities towards the group made relevant by sex-segregated spheres: female athletes.

Advocates for women in sport exacerbated this problem by distancing themselves from claims that Title IX was an "affirmative action" policy. Trial Lawyers for Public Justice (TLPJ) and the Women's Sports Foundation were primary drivers of this maneuver. In a brief dated May 15, 1995, titled "Separating Myth from Reality", and entered into the Congressional Record, TLPJ argues that the *Brown* decision did not require "affirmative action" on behalf of colleges and universities because it allowed broad interpretation of compliance using any of the three "prongs" and not merely substantial proportionality. These discussions did not directly implicate affirmative action's racial contexts, and by denying the structuring role of race in discussions of

[22] The country was only a few years removed from the Clarence Thomas Supreme Court nomination hearings, when both equity politics in employment and Anita Hill's testimony regarding workplace sexual harassment gripped the attention of the nation. In that moment, the intersections of race and sex—and the corollary policies designed to address discrimination on the basis of both—became freshly salient (Morrison 1992).

quotas and affirmative action, activists suggested that Title IX and discussions of sex were somehow outside the domain of race. In practice, the discussion of the role of race in sex discrimination was diminished, and the practical application of Title IX to the lives of women of color was largely erased. To the extent that Title IX expanded opportunities for women in the 1990s, it did so primarily for white women, and policy was never re-designed to actively combat this process of racialization of the female athlete.

From "sex equity" to "gender equity"

These on-going processes of racialization and class privilege continue to shape the political identity of the "female athlete". Because the EADA does not collect data on the race of athletes, nor does it ask schools to attend to the needs of the physically disabled in their athletic programs, the "female athlete" is marked by elements of race, class, and able-bodied privilege. Strikingly, lawmakers authoring the EADA relied on this categorical distinction without once questioning the definition of logic of bodily definitions of sex. Rhetorically, members of congress, activists, and the NCAA had subtly obscured the continued reliance on biological sex by shifting the discussions from "sex equity" to "gender equity" over the course of the 1990s. Throughout the 1980s, and into the early 1990s, the terms were used interchangeable. Even legal activists like the NWLC's Ellen Vargyas deployed them interchangeably as late as 1992 (U.S. Congress 1992, 91). Yet, as the NCAA increasingly used the term "gender equity" to describe their efforts in monitoring the role of sex-based inequalities in sports—including the most public effort in naming their task force the "Gender-Equity Taskforce", and referring to all subsequent reports of sex-based data as "gender-equity reports"—the term "sex

equity" was quickly replaced. In the 1995 Congressional hearings on the specific topic of Title IX, "sex equity" was not mentioned once. By consequence, the sex-based distinctions made salient by the EADA were increasingly hidden in plain sight under a discourse of "gender", even as gender-based protections against discrimination in the realm of athletics were completely absent from the policy agenda.

Conclusions: Endogeneity, EADA data, and the Paradox of Title IX

Ironically, the data produced through the execution of the EADA have also become endogenous to academic projects pertaining to Title IX. Many scholars rely on EADA data for analyses of the implementation of Title IX, often ranking the "success" of implementation using the metrics of the state (D. J. Anderson, Cheslock, and Ehrenberg 2006; D. J. Anderson and Cheslock 2012; Castañeda 2004; J. Orszag and P. Orszag 2005; Stafford 2004; E. Staurowsky et al. 2009; C. Sullivan 2010).

In some sense, these data represent an overwhelming policy success. Despite reports which indicate that women's athletic opportunities continues to lag behind men's that hiring practices continue to replace women coaches of women's teams with male coaching staffs, and that athletic departments continue to be dominated by men in leadership positions, women's athletic participation in college sports is at its highest levels ever (Acosta and L. Carpenter 2012). These data present the possibility that the choices of the most compliant athletic departments can be empirically modeled by others. They shine light onto the quantifiable conditions facing women as athletes making it possible to shorten the lag-time previously available to schools unwilling to respond to student-athlete requests for reports on gender-equity measures in college athletics.

The data can also easily demonstrate how lacking compliance to Title IX continues to be. By simply downloading data from the internet anyone can calculate that in 2011, 92% of schools remain out of compliance on the proportionality standard of Title IX. They allow prospective student-athletes to track, with the click of a mouse, the recent history of resource allocation in athletics for any institution in the country, thereby making more informed decisions on where to pursue collegiate athletic careers.

However, the reliance on these data by student-athletes and their families also promote a false sense of security that discrimination "on the basis of sex" might be "over". No school has ever been held ultimately accountable for not implementing the law. Many successful lawsuits have shaped the ability of female athletes and their coaches to sue high schools and colleges for damages, but the OCR has never enforced the ultimate penalty of the law, by revoking federal funding to institutions found to be out of compliance. Instead, the EADA requires reports of athletic department activity on many metrics, and this naturally shapes public understandings of what equity does and should mean. By requiring the annual report of data of what schools have done to work towards compliance, and allowing them to simultaneously construct a narrative for how and why alternative arrangements for the under-represented sex (which is, in virtually all cases: women) are either impossible to achieve, or may someday happen in the indeterminate future, EADA data contribute to the continued gray area of what "counts" as sufficient implementation of Title IX.[23]

[23] One particular example of how the EADA more deeply naturalizes the current arrangements of college sports in male-centric terms is explored in the scholarship of Dionne Koller (Koller 2010, 2012).

This period of policy development details the ways that Title IX's application to sports has come to constitute and "count" bodies in particular ways that are made more durable through the data produced from compliance practices. As I've discussed in this chapter, when the public nature of compliance data intensified in the wake of the 1994 federal Equity in Athletics Disclosure Act, sex-segregated teams made for more "tidy" accounting of sex equality data for schools looking to demonstrate compliance with Title IX. However, this formulation of problem definition served to reify the strict definition of "sex" attached to logics of biology and entrench the paradoxical understanding of the law applied to sports. In time, this paradox also contributed to the nature of political battles that would plague the policy domain of Title IX more broadly.

CHAPTER VI: “A bridge to their daughters”: Fathers and the 2002 Secretary of Education’s Commission on Opportunity in Athletics

Fathers, feedback, and an unlikely constituency

At a San Diego, California town hall meeting of the U.S. Secretary of Education’s Commission on Opportunities in Athletics, Joe Kelly addressed the crowd:

> I am Joe Kelly, Duluth, Minnesota. I have twin daughters, college seniors, and I'm Executive Director of Dads and Daughters, a national education advocacy nonprofit that works on strengthening father/daughter relationships, and I'm here to tell you that Title IX is one of the best things that ever happened to fathers. <Applause> Why? Because Title IX has begun to make it unremarkable for girls to play sports, unlike in generations past. Because most men grow up seeped in sports and, as sports fans, thanks to Title IX, fathers and daughters now have a whole new playing field on which to connect. A father/daughter relationship can thrive on playing catch or on a jump shot or cheering on a team... since we grew up as boys, getting close to our daughters is often problematic, even though statistics show that girls who are close to their dads do better in school, they delay sexual activity and substance abuse, and they're very likely to get involved in sports if they're close to their dads. I think that's in part because sports is a natural comfort zone for men, and Title IX makes it a bridge to their daughters (DOE 2002g, 233-35).

Kelly was one of many fathers who rose to speak on behalf of Title IX during a series of twelve meetings convened across the country during 2002 and 2003. These men

articulated similar stories: they claimed ownership over the meanings and positive benefits of Title IX in light of their relationships with their daughters, and they mobilized to ensure that the law remained unchanged.

The emergence of fathers of Title IX beneficiaries from an amorphous assemblage to a policy interest group was a surprising outcome of commission hearings designed to investigate whether or not Title IX's implementation required revisions, although as I demonstrate in this chapter, it had been a long-developing trend. As I detail here, political elites active in Title IX's politics had long referenced their relationships with their daughters as motivation for implementing the law. Thirty years after passage, the implementation effects of the law had extended far beyond the target constituency of students in classrooms and sports in unexpected ways. This chapter details how this happened, what the occurrence of "fathers" as a policy constituency can tell us about the feedback effects of policy implementation, and why this particular constituency demonstrates changes to the broader gender order,.

Joe Kelly's comments exemplify how Title IX's implementation re-figured gender roles. Testimonies at the public meetings revealed an unexpected expansion in the demographics of Title IX's proponents to include fathers of young women granted sporting opportunity through Title IX. Although sports had long been a domain through which masculine traits were socialized among men, the practices of parenting were changing. Thirty years after the passage of Title IX, and in the wake of increasingly effective implementation under the EADA, athletic opportunities for women were expanding rapidly in American colleges and high schools. Although this shift bore

directly on the lives of many American girls and women, it indirectly altered the experiences of American men and not only the ways they had feared. As more and more young women grew up engaged in youth and adolescent sports, more and more parents assumed coaching roles for their children's teams (Messner 2009). Whether parents participated as coaches or spectators, the space and time historically reserved for family socialization around athletics was increasingly no longer only reserved and structured for boys. Girls began to assume gendered relationships with father-figures that had been traditionally reserved for boys, and this "implementation effect" of policy had effects for the broader gender order.

The Commission on Opportunities in Athletics was formed by the George W. Bush administration in June 2002, "aimed at ensuring fairness for both sexes" (V. Strauss and Allen 2002). Education Secretary Roderick R. Paige (a former college football coach) named Ted Leland, director of athletics at Stanford University, and Cynthia Cooper-Dyke former WNBA head coach and basketball player, as the co-chairs.[1] The rest of the fifteen-member Commission consisted of athletic directors, coaches, lawyers, and well-known elite athletes, Donna DeVarona and Julie Foudy. Its charter stated:

> The purpose of the Commission is to collect information, analyze issues, and obtain broad public input directed at improving the application of current Federal standards for measuring equal opportunity for men and women and boys and girls

[1] Academics have paid some attention to the role of the Commission in deliberative process (Kihl and Soroka 2012; Rosenthal 2008), developing wrestlers as an oppositional constituency (Messner and N. Solomon 2007; T. A. Walton 2003; T. Walton and Helstein 2008), and as a potential turning point in the trajectory of policy implementation (Samuels and Galles 2004; E. Staurowsky 2003a, 2003b) .

> to participate in athletics under Title IX. To this end, the Commission will conduct at least three town-hall meetings in different parts of the country to obtain a public discussion of the issues. The Commission will recommend to the Secretary, in a written report, whether those standards should be revised, and if so, how the standards should be revised. The Commission will also recommend other steps that might be taken to improve the effectiveness of Title IX and to maintain and build upon the extraordinary progress that has resulted from its passage 30 years ago (DOE 2002h).[2]

The Commission convened six sets of public meetings throughout 2002 and 2003. The public meetings were held in locations around the country, including Denver, San Diego, Philadelphia, Atlanta, Chicago, and Washington, D.C. Some meetings were reserved for invited testimony, others for deliberation amongst the commission, and others for testimony from the public. On the days of invited testimony, the Commission hosted approximately fifty witnesses per day, and crowds gathered to participate in and observe the proceedings.

The purpose of the Commission was less about sorting through the intent of Title IX, and more about the way that it had been applied. As *The Washington Post* sardonically observed, the purpose of the Commission was revealed in the description: "It's not hard to sort through that language. After all, the word 'revised' is used twice in the same sentence. Sounds like the commission's job is to revise" (Jenkins 2002). It was

[2] In a strange instantiation of public-private partnership, the Commission was sponsored by Phillips Petroleum and the Target Corporation, both of whom were publically acknowledged in introductory remarks.

widely reported that the Bush administration, responsive to football players, college wrestlers, and conservatives dedicated to reframing Title IX as a "quota" system, intended to revise the means of policy implementation during the first term in office (Priest 2003).

As discussed in Chapter 5, conservative activists had been mobilizing since the mid-1990s, claiming "reverse discrimination" against men through Title IX's implementation. Many pro-Title IX supporters were concerned that the Commission spelled doom for the rules of implementation established through the Equity in Athletics Disclosure Act and the 1979 and 1996 policy interpretation memos. Jocelyn Samuels, vice president and director of educational opportunities at the National Women's Law Center diplomatically said: "Our hope would be that if the commission does a good-faith and full investigation, it will conclude that the policies should continue to be in place and vigorously enforced, and that the Bush administration will accept that recommendation" (Copeland 2002). Still, many feminists worried that the Commission's goal of "listening" to citizens and activists about the perils and positives of Title IX was a front for the Bush administration's desire to significantly modify the law.

Nevertheless, when the final report of the Commission was published in February of 2003, the Commission recommended fewer changes to the law's enforcement than proponents of Title IX had feared. Their decision was not unanimous, and DeVarona and Foudy published a minority report which the Department of Education does not display on their website (De Varona and Foudy 2004). Still, in time, the major changes to law that proponents had feared did not transpire. Despite the leanings toward reform from

members of the Commission and the Bush administration, and with the help of major lobbying from Members of Congress, Title IX's main tenets remained untouched.

The 2002 Commission hearings raise a series of questions relevant for scholars of American politics. Broadly, how does policy implementation create political constituencies, and with what effects? Further, what effects of past political struggles cultivated fathers as a policy constituency? How is the emergence of fathers as a policy constituency for Title IX symptomatic of changing gender systems both within and beyond the policy arena of Title IX? This chapter asserts that the "feedback effects" of Title IX have not been restricted to women, detailing an unlikely feedback effect. In earlier moments of debate about Title IX, women figured as the primary beneficiaries of Title IX and as advocates for expanded opportunities. Thirty years after Title IX's passage, I show how the emergence of fathers as an "indirect" policy constituency reflected and revealed changing conceptions of gender - evolving notions of masculinity as well as femininity - and changes in the perceived value of sex equality across the political spectrum.

The American family and American politics

Familial relationships have historically figured centrally in a range of policy domains. Although in many ways Title IX's effects on father-daughter relationships are unique, the mediating relationship between policy and family are observed in other arenas. Some domains, like reproductive policies, focus squarely on regulating the procreative relationships in ways that shape political understandings of parenthood (Luker 1985). "Motherhood" as both an identity and a social condition has been shaped

by a long history of social welfare policies resulting in the attachment of political meanings to familial-based gender roles (Gordon 1995; Roberts 1997; Skocpol 1992; Skocpol et al. 1993).

"Family" matters across distinct domains of American politics (Burns, Schlozman, and Verba 2001; Strach 2007). The political construction of "motherhood" has bearing in electoral domains where women's maternal status may play a role in their success as candidates for office (Stalsburg 2010). Labels attached to heteronormative parenting roles are common in U.S. politics. From "soccer moms" (S. Carroll 1999), and "hockey moms" (Elder and Greene 2012; Greenlee 2010), to "NASCAR dads" and "security moms" (Elder and College 2007), the coupling of parenting roles with political identities are common in political discourse.

According to psychologists and sociologists, the priming of parental identities may be more than just a rhetorical maneuver. Research across the behavioral sciences indicate that becoming a parent alters a variety of life-experiences (see Greenlee 2010, 409–410), and may in some cases instigate particular forms of political participation, including voting and public opinion (Burns, Schlozman, and Verba 2001; Elder and Greene 2006, 2011, 2012; Greenlee 2010; N. Wolfinger and R. Wolfinger 2008). Political scientists have long acknowledged that familial contexts shape political socialization and participation throughout the life course (Burns, Schlozman, and Verba 1997, 2001; Jennings and Niemi 1968). Although much of the literature focuses on how parental activities influence their children's political socialization, some scholars have

suggested that children can affect their parent's mobilization and participation as well (McDevitt and Chaffee 2002).

Mothers have famously mobilized around their identity as such to create interest groups like Mothers Against Drunk Driving (Bateson 2012; Dorius and J. D. McCarthy 2011; Jennings 1999; D. Stone 1989), or make statements about crime and violence through venues like the Million Mom March (Goss 2003, 2006). In some cases, it has been women's identities as mothers that have enabled the passage of policies protecting them from partner violence (Gordon 1988). The special class of adults who are parents are targeted by a host of policies, like Family Medical Leave and "welfare" (Abramovitz 1996; Albiston 2010; Gordon 1995; Mettler 1998; Mink 1996), as well as policies conferring legal rights to marriage and divorce (Cott 2000; Jacob 1988). These policy and legal regimes do not target men and women equally, perhaps because of historical practices of patriarchal control over marriage relationships and property, including children (Kerber 1998). Examples of the gendered mobilization of parental identities for policy change have been largely reserved for women.

The androcentric nature of most U.S. state policies has resulted in an unequal distribution of policy resources, more often ensuring control over resources remains with men, and men as fathers, rather than women. However in recent years, with the liberalization of divorce and the development of child support and custody policies, feminists have battled to secure additional rights for women as mothers (Costain 1994; Crowley 2003). Fathers, as individuals and members of a group, have less frequently organized in response to policy conditions (Crowley 2008). "Fathers' rights" groups are

fewer in number, and often organized in responsive postures within domains defining child custody and child support policies (Crowley, Watson, and Waller 2008; Crowley 2003, 2006, 2008, 2009, 2010). As Jocelyn Crowley notes, their aims grow out of more general, yet sweeping changes to the "cultural imaginary" of what it means to be a contemporary father (Crowley 2010). She writes: "…not only does he work full time, but he also is present at his children's birth, goes to school conferences, does their laundry, and prepares their meals. He is fully connected and essential to his children's well-being. This "new father" is, in fact, just like any other modern mother" (Crowley 2010, 223).

Fathers have mobilized around different issues along both ends of the political spectrum. Conservative groups, like the evangelical "Promise Keepers", explicitly foreground the need for fathers to remain engaged in family life through religious organizations and a relationship with God (Bartkowski 2004; Donovan 1998; Heath 2003). More generally, fatherhood is thought to be central to the production of meanings of masculinity and the boundaries of "real" manhood (Connell 1995). Yet "fathers" as a mobilized group remain a small fraction of the full landscape of political mobilization around parental roles and rights.

In this light, the emergence of fathers as one of Title IX's most active interest group is surprising. It is one example, where few exist, of fathers explicitly mobilizing as such to advocate for political rights. Further it is striking that the political target of their claims is one step removed from an arena where they have a specific, personal stake. In the domain of Title IX, fathers emerged as (literally) paternalistic advocates for their daughters rights. This phenomenon raises a host of questions about the relationship

among families, civil rights policies, and the shifting gender order. These relationships require a non-linear approach to the study of policy, one which can account for the passage of time and the means through which political outcomes in one moment recursively shape the political possibilities of the subsequent era.

Policy feedback and change over time

Scholars of American politics have theorized these relationships using a framework known as "policy feedback". Broadly, this term is applied by work that considers the ways in which the consequences of a policy cyclically "feedback" into the political environment. This approach to studying the relationships between mass publics and public policies stretches back as far as E.E. Schattschneider (1935), Theodore Lowi (1964), and James Q. Wilson (1974), who argued that policy, in its implementation, shapes politics in future moments. As Andrea Campbell (2012) notes, this first generation of feedback scholarship focused primarily on feedback effects of political elites and at the level of state institutions, identifying mechanisms of path dependence and self-sustaining processes (Hacker 2002; Pierson 1994; Skocpol 1992).[3] But the focus on institutions and political elites eventually was eventually broadened to include the relationships between mass publics/political behavior and public policy (Mettler and Soss 2004).

This work has evaluated a range of policy domains in the U.S. Much of the work on the political effects of policy have focused on social policies including Social Security policy (A. L. Campbell 2003); the G.I. Bill (Mettler 2005); Medicare (K. J. Morgan and

[3] Campbell's piece provides a review of the feedback literature, as do Thelen (1999), and Pierson and Skocpol (Pierson and Skocpol 2002).

A. L. Campbell 2011); higher education (Mettler 2009) student aid policies (Mettler 2011a, 2014); welfare reform (Soss and Schram 2007); Social Security Disability Insurance, welfare (AFDC), and Head Start (Soss 1999, 2000); and TANF, food stamps, Head Start, and public housing assistance (Bruch, Ferree, and Soss 2010). Other policy domains including carceral policies (Weaver and Lerman 2010) as well as women's movement politics (Goss 2012) have also been studied in the U.S. case.[4]

As Soss and Schram (2007) note, scholarship has identified a range of unintended consequences of policy implementation. They note that:

> Policies can set political agendas and shape identities and interests. They can influence beliefs about what is possible, desirable, and normal. They can alter conceptions of citizenship and status. They can channel or constrain agency, define incentives, and redistribute resources. They can convey cues that define, arouse, or pacify constituencies (Soss and Schram 2007, 113)

These unintended effects may include things like increased political involvement (Mettler and Welch 2004; Mettler 2005), or public support for women as political leaders (McDonagh 2009). The foundational texts of the field suggested that these unintended consequences were nevertheless attributable to elements of policy design. Schneider and Ingram (1993) argued that policy design can generate the "social construction of target populations" through which the social identities of those people at whom the policy is directed come to be constituted. This approach considers the endogeneity of public

[4] Policy feedback studies in comparative perspective have also explored policy feedback questions, although this project focuses on the U.S. case (i.e. C. J. Anderson 2009; Andreas 2012; Kumlin 2004; Lynch 2006; Orloff 1993).

policy and the social meanings attached to target populations. The literature demonstrates the ways that policy confers meaning and identity to intended target populations, like the elderly in Social Security policy (A. L. Campbell 2003), but includes fewer examples of policies that have generated non-target population lobbying groups.

As I've argued in earlier chapters, Title IX's implementation and design have constructed the identity of the "female athlete" in the more straight forward way. Title IX defined sex as the salient category of implementation, thereby constituting male and female athletes as the policy populations. Female athletes, the lesser advantaged of the two groups, were conferred the most "new" rights, and have mobilized around the identity to claim them. Although scholars like Anne Norton have anecdotally noted that Title IX has "encouraged, and in some cases created, populations of female athletes and have given more salience to that identity", this manuscript is the first to detail the specific mechanisms of how and why actors in political institutions battled for this result (Norton 2004, 58). Because Title IX was directed at educational institutions, there is good reason to suspect that its implementation altered what Pierson (1993) described as "resource effects" available to policy beneficiaries. Not only does access to higher education in general lead to better socio-economic outcomes, but scholars have demonstrated that the specific opportunities made available to women in sports through Title IX have resulted in increased labor force participation and ability to remain active in sports beyond youth and high school teams (Stevenson 2007, 2010). Yet as Norton hints, there are deeper, more subtle "interpretive effects" (Pierson 1993) of Title IX's implementation as well.

Policy feedback helps us analyze how policies constitute the opportunity for both likely and unlikely political identities. Andrea Campbell demonstrated how Social Security policy organized its own constituency of "retired Americans" who have mobilized repeatedly to demand economic security in their elder years (A. L. Campbell 2003). In this sense, policy distinguished political meaning to the life-stage of growing older.[5] Although this exemplifies a more likely outcome of policy feedback over time, other outcomes were less expected. For example, Mettler notes that student loan policies, while extending opportunities to pay for higher education to millions of Americans, unintentionally "empowered banks and other lenders, which in turn prompted political leaders to curry favor with them to attract campaign contributions" (Mettler 2011a, 106).[6] Feedback scholars attribute this cyclical effect of attribution, in some cases, to the extent to which policy benefits are discernibly traced to state action. Although Social Security's

[5] Other scholars of policy have identified the ways in which state authority has given meaning to race (D. S. King and R. M. Smith 2005, 2011; Quadagno 1996; Soss, Fording, and Schram 2011), sexuality (Canaday 2003a, 2009; Luibhéid 2002), and gender (Mayeri 2011; Mettler 1998; Novkov 2001) as categories for politics.

[6] In a distinct context, Dara Strolovitch demonstrates and unintended consequence of interest group proliferation on issues affecting politically marginalized and disadvantaged groups (Strolovitch 2006, 2007). Although the growth of American interest groups around issues of race, class, gender, and sexuality throughout the 1980s may have seemed to be a pluralist dream come true, Strolovitch demonstrates how unequal access to power by secondarily marginalized groups "feeds back" and constructs the very groups they claim to represent by reproducing the silencing of disadvantaged sub-groups within interest group politics over time. In this sense, and if the concept of "feedback" is broadly construed, it operates as a means for theorizing the operations and instantiations of power that dynamically silence lesser advantaged groups in American politics.

benefits can be traced directly to state actions and actors, benefits received from tax breaks are often overlooked by beneficiaries (Mettler 2011b).

In the case of Title IX, however, a different kind of "unintended consequence" became apparent in the early 2000s. Despite the direct targeting of policy on the definitions and distinctions of "sex", an unexpected, non-beneficiary community emerged as one of Title IX's most active advocates. That fathers became ardent supporters of Title IX during a period of policy threat indicates that there is more to be learned about how gender has itself fed back into the policy domain of Title IX. Policy feedback scholars, often focuses on the direct linkages between policy and identity can learn from the emergence of "dads for daughters", that when a policy alters the broader social order in which it intervenes, unlikely policy effects may be set in motion. The testimonies of fathers in the 2002 Commission hearings help to demonstrate what perceived changes in gender roles were brought about by Title IX's implementation. Further, this demonstrates how conceiving of the means through which policy affects larger social structures can help to inform the policy feedback approach to new forms of unintended policy consequences.

Fathers and Daughters: Contributions from Sport Sociology

Fathers as advocates for their daughter-athletes may have been an unintended implementation effect of Title IX specifically, but fathers have long been devoted to parenting through sports. Although less is written about the role of "fathers" (compared to "mothers") in American politics, sport sociologists have explored the social roles constituting the relationships between fathers and daughters as mediated through sports

(Messner 1992, 2009). Historically, sports have often served as a venue for father-son bonding and the socialization of masculinity (Burstyn 1999; Greendorfer and Lewko 1978). Even in youth sports, where the stakes may be low and the purpose primarily recreational, the prevalence of male leadership means that many children experience formative sporting experiences as initial socialization venues in masculine behaviors.[7]

One study of both male and female sports spectators noted that fathers were the "single greatest influence" of interest in sports (Wann et al. 2001). Men have long served as a disproportionately large percentage of youth sports coaches, many of them coaches serving as the leader of their child's sports team (Messner 2009).[8] The disproportionately large percentage of men coaching girls and boys teams is not inconsequential. Messner also reports that a 2008 national survey found that two-thirds of American children participate in youth sports, a number that has only increased in the wake of Title IX (Messner 2009, 12). Thus even without knowing the specific number or percentage of fathers serving as youth sports coaches, we can infer from these trends that the relationships between fatherhood and sports has been evolving in the past decades.

[7] Sociological research has found that children pick up on these gender appropriate behavioral cues, even at a young age. Youth sports may even be a venue through which children experiment with hyper-gendered role performance, where girls teams adopt names like "Barbie Girls", and boys claim team identities like "Sea Monsters" (Messner 2000).

[8] Messner notes that this trend has come at the expense of women coaches, whereby women are more often sought out to be the "team Mom", providing off-field support to youth teams and reproducing gendered hierarchies of leadership roles (for men) and care roles (for women) (Messner 2009). Since the passage of Title IX, there are more youth sports teams for girls, but most of them remain coached by men.

Researchers in the late 1980s and 1990s detailed precisely how these relationships were evolving. No longer were fathers primarily engaging through sports with their sons as girls too became more involved in youth sports. A report from Wilson Sporting Goods Co. and the Women's Sports Foundation found that eighty-seven percent of parents believed sports were equally important to boys and girls, and by the late 1980s nearly all respondents expressed support for the notion that "sports provided important benefits to girls who participate" (WSF 1988). Parental involvement, particularly with girls, qualitatively changed the nature of gendered expectations within youth sports and researchers found that parental involvement in youth sports decreased the sense of conflict that young female athletes felt between their performance in sports and societal gender expectations (J. L. Miller and G. D. Levy 1996). Familial relationships through sports, influenced by a variety of societal shifts in gender roles, evolved in light of Title IX, and fathers in particular took on new roles as mentors, coaches, and sideline spectators (Coakley 2006; Willms 2009).

More recently, a series of memoirs chronicling father-daughter relationships in sports have charted the cultural politics. *USA Today* sports columnist Christine Brennan's book *Best Seat in the House: A Father, A Daughter, A Journey Through Sports* details Brennan's development as an athlete and sports enthusiast throughout her childhood in the 1970s (Brennan 2006). Likewise, memoirs with titles like *Daddy's Little Goalie* (R. Strauss 2011) are now sold alongside edited volumes from ESPN filled with stories of famous athletes' relationships with their dads (ESPN 2010). All of these memoirs were published after the 2002 Commission hearings, the moment when fathers

emerged as a concerted policy interest group. But these memoirs, including one published by Joe Kelly (the father who is quoted at the beginning of this chapter), specifically foreground the context of Title IX in their parent-child relationships (J. Kelly 2003). Anecdotally, there is an emerging cultural understanding that policy implementation has shaped father-daughter relationships at the margins. Title IX has changed sport, and father involved in sport, have had reason to reflect on Title IX. However, 2002 was not the first moment when the identity of fatherhood was mobilized in the policy domain of Title IX.

Fathers in Congress and congressional testimony

Long before the 2002 Commission meetings, fatherhood was being mobilized by political elites as an identity relevant to the politics of Title IX. In the initial debates over the meaning of sports in Title IX, even the policy's staunchest critics mobilized around finding a way to extend sporting rights to girls and women. As noted in Chapter 3, when Senator Tower introduced legislation to modify the implementation mechanisms for Title IX in 1974, he noted that his reasons for doing so were rooted in his relationship with his daughter:

> I want to emphasize that one of the prime reasons for my wanting to reserve the revenue base of intercollegiate activities is that it will provide the resources for expanding women's activities in intercollegiate sports. I have a vested interest because I have a daughter who is a potential varsity tennis player, and I would like to see that she gets the opportunity (Congressional Record 5/20/1974, 15323).

Fatherhood was primed in materials reprinted in the Congressional record using the same rhetoric (U.S. Congress 1975b, 382-383). Men with daughters frequently suggested that it was this primary relationship that gave them some attachment to the implementation of civil rights law.

The same held true in the 1980s. During the post-*Grove City College* debates, many MCs made reference to their daughters during testimony regarding the debates over the CRRA. Representative Paul Simon (D-IL), one of the original sponsors of the CRRA's 1984 bill, noted in testimony on the day he introduced the legislation:

> Let me add one personal note before we begin these hearings. Nothing is more vital to the future of this Nation than that we provide opportunity and justice and see that it is done for those citizens who have not always had either the opportunity or justice. My daughter is one of those who benefitted directly from Title IX. She was the AIAW, Division III High Jump Champion in 1982 (U.S. Congress 1984a , 13).

Likewise, Senator Robert Stafford (D-VT), Chairman of the Subcommittee on Education, Arts, and Humanities that hosted the May 1984 hearings in the Senate Committee on Labor and Human Resources, noted in his opening statements: "As a taxpayer and the father of four daughters, there is no one in the country who is more delighted with these developments than am I" (U.S. Congress 1984b).[9]

Activists mobilized the paternal relationships as well. In 1984 testimony from a representative of People for the American Way, Chairman John Buchanan argued: "We

[9] In some sense, even these articulations were attempts to construct female athletes as a "deserving" policy community (Schneider and Ingram 1993).

will be turning back the clock on intercollegiate athletic opportunities for our daughters if we fail to enact this legislation (U.S. Congress 1984a , 97). These politically progressive activists implicitly called for an equally progressive understanding of father's roles in policy implementation. The enlightened fathers would support liberal policy implementation in an era of policy threat. Increasingly fathers were being knit into the fabric of policy implementation in a policy directed at their daughters.

Not all references were quite as salutary. For example, a representative from the American Association of Catholic Schools, engaged concerns around gender in service to protecting girls and women against homosexuality. He said:

> I have a daughter. I have a wife. I want the best for them, but it is a perversion and a corruption of our system to redefine these moral issues into terms of civil rights in such a corrupted and perverted way that we stand accused of violation of civil rights. We would like this bill amended so that this kind of sociological fascism could not be inflicted on our people (U.S. Congress 1984b, 349).

His references to "perversion" implied a fear that the phrase "on the basis of sex" could be construed to include protections for "homosexuals" in civil rights policies. As I discussed in Chapter 4, the fear of lesbianism in sporting context had been mobilized to construct the "female athlete" deserving of benefits from Title IX as a heterosexual archetype. In the intervening years, women's embodiment of non-normative gender identities had more thoroughly re-written the strictures of femininity in ways that aroused

greater fear of "homosexuality" among conservative political actors.[10] The notion that men could "protect" women from potential lesbians represented a distinct form of paternalism, which appeared historically around statements of regarding the role of fathers in securing rights for daughters. A *Washington Star* opinion piece, republished in the Congressional Record, argued:

> Well, another kind of war is going on right here in America-the War of Women's Liberation-and it, too, Is being won on playing fields. Of course, the more cynical think it is being won through lesbian lifestyles. A great many think it is being won at the abortionist's abattoir. Still more believe it is to be won by adopting the manners and morals of men (sad examples that we are). The truth is this: The war is being won by young girls in sweatsuits and Adidas. How comes this inspiration? By way of my five athletically inclined daughters, that's how-daughters who are quicker than I am, better coordinated than I am, and (worst of all) who can beat me one-on-one in basketball! Childless people don't really know what's going on. Why, without my daughters I wouldn't be into Women's Lib (U.S. Congress 1975b, 382).[11]

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[10] The famous athletes of the 1990s represented a much more dramatic cross-section of diversity in terms of race, class, and sexuality than had been publically visible in the 1980s. From Jackie Joyner-Kersee, to Florence Griffith-Joyner, Tonya Harding, Nancy Kerrigan, Sheryl Swoops, Kristi Yamaguchi, and Mia Hamm, the cultural figure of the female athlete was pushing historically conservative definitions of femininity. Even traditionally gendered sports like women's figure skating was evolving and changing to incorporate more gender non-normative performances (Baughman 2013).

[11] This from an opinion piece published on July 12, 1975 in the *Washington Star*. The article was included in a large piece of submitted testimony from Bernice Sandler, Director of the Project of

Fathers, it seemed, filled a kind of appropriately masculine role in the lives of young girls participating in sports that could conceivably redirect inappropriate desires to inhabit masculinity. Although these comments were peripheral, they hint at the normative role for fatherhood in sporting spaces where athletics had the potential to "masculinize" women. Further, this sense, fathers began to emerge against the archetype of the masculine lesbian (or gym teacher) as an appropriate role-model for girls entering into sports. Throughout the 1970s and 1980s, when homophobia against lesbians was particularly acute, fathers began to emerge as the political protectors for girls' rights to sport.

In the 1990s, fathers again appeared as central players in the politics of Title IX. The politics of sex-segregated sports inspired Senator Harry Reid to announce that it was a "great thrill for me to watch my young boy play on three national NCAA championship teams on three separate occasions. He played soccer at the University of Virginia, where they were national champions. Girls should have the same opportunity that my son had to play Division I and Division II college athletics" (Congressional Record 4/28/1997, S3742). Lawmakers continued to express personal connections to the politics of women's sports vis-à-vis their familial ties.

Megan Hull, a named plaintiff in the *Cohen v. Brown University* case and a Congressional committee witness, testified that it was her father who alerted her to her

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the Status and Education of Women, Association of American Colleges. In it, the author was responding to comments by James Kehoe, Director of Athletics at the University of Maryland, who refused to change the salaries of the head women's basketball coach to come within range of the salary earned by the men's coach.

rights to sue under Title IX (U.S. Congress 1993b, 18). The Women's Sports Foundation also knew the power of parents in knowing the means of legal protection available for their children, and having the means to file complaints. In Congressional testimony, Donna Lopiano, then Director of Intercollegiate Athletics for Women at the University of Texas, but soon to be activist with the WSF, noted: "If Title IX complaints are going to be filed, they are not going to be filed by the powerless women in athletics. Rather, objections with inequities will be raised by the parents of daughters suffering inferior treatment compared to their male counterparts" (U.S. Congress 1989, 90).

Lopiano was right. The lawsuits and legal threats central to defining the public problem of data and Title IX throughout the 1990s were dependent on parental monetary involvement. Thus it wasn't merely that fathers (and mothers) of young female athletes were changing the qualitative experience of being socialized into sport, they were also providing the means through which female athletes were able to force the policy's enforcement. Thus the involvement of parents, and fathers in particular, in the policy domain of Title IX in sports had been developing throughout the first thirty years after Title IX's passage. Still, things changed dramatically in light of the 2002 Commission.

Sporting Fathers at the turn of the century

As the Bush administration took office and contemplated the means of enforcing Title IX, the cultural politics around families in sports continued to unfold. The early 2000s were also the decade of big achievement for the daughters of famous male athletes. Tamika Catchings, daughter of NBA star Harvey Catchings, famously lead the Tennessee Lady Volunteer's women's basketball team to an undefeated season and a national title in

the 1997-98 season. She was later drafted into the WNBA to play for the Indiana Fever. Candice Wiggins, daughter of the late Alan Riggins, a former major league baseball player, became the Stanford University and Pac-10 Conference all-time leading scorer, before being drafted by the WNBA Minnesota Lynx in 2008. John Elway's daughter was an NCAA Division I recruited basketball player, now on the team at Stanford. Elway was a highly visible NFL quarterback with the Denver Bronco football team. Laila Ali, daughter of Muhammad Ali, became a high-profile professional boxer in the early years of the decade. Although Ali was reportedly ambivalent about his daughter's choice to enter boxing, these other famous fathers openly supported the daughter's athletic careers, even speaking out on the role of Title IX in their daughter's development (Araton 2003).

In light of this trajectory, the Commission on Opportunity in Athletics began its inquiry into the state of affairs in college sports. In his opening comments, Director Leland detailed the task of the Commission, which was primarily to "listen", and named "parents" as a group of particular interest to the Commission.[12] His opening remarks included a personal story about his daughter.

[12] Director Leland noted that the seven tasks of the Commission included: 1) evaluating whether Title IX's standards for addressing equal opportunity were working equally well for men and women, 2) evaluating the extent to which adequate guidance existed for colleges and school districts looking to comply with the law, 3) evaluating whether there was need for further guidance on compliance at the junior and high school levels in order to ensure that students were adequately prepared for college participation opportunities, 4) evaluating how activities such as cheerleading and bowling out to figure into compliance standards, 5) evaluating how revenue producing sports and large roster teams affect equal opportunity in athletics, 6) evaluating how sporting opportunities beyond schools in venues like the Olympics, professional leagues, and community recreational programs affect Title IX and interact with the obligations of colleges and

> …my wife called up my daughter, who was away at college, and said, gee, Mandy, you should be proud of your father, he's just been nominated as Chairman of this commission and they are going to study Title IX, and my daughter's response was, well, tell dad that's great, but my friends and I are watching him. So I understand that our deliberations are important and that there are lots and lots of people who have been affected positively by Title IX, and we're just excited about the challenge (DOE 2002a, 18).

Presumably, Leland's daughter was referencing more recent public attacks on the law that were fresh on the minds of the Commission members.

Senator Birch Bayh was called to testify first, and he clarified the public mood around the law. He referenced the debate that had been ongoing in Congress since the mid-1990s regarding whether or not the 1996 policy implementation memo constituted Title IX as a policy requiring "quotas". From the opening moments of the August 2002 Commission hearings, the role of numbers and counting of athletic opportunity was central. As many witnesses noted, the decisions by many schools to cut some men's athletic teams instead of adding opportunities for women was of central concern to the Commission (Messner and N. Solomon 2007; Rosenthal 2008; Simon 2005; T. A. Walton 2003; T. Walton and Helstein 2008).

In other forums, opponents to the means through which Title IX had been implemented interpreted these choices by colleges and universities as evidence that it was women's lack of interest in sports that artificially created a "ceiling" for the expansion of

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schools, and 7) evaluating the possible other ways of enforcing Title IX, such as through public/private partnerships (DOE 2002a, 16-17).

opportunity. Throughout the late 1990s, Congressional hearing testimony from groups like the National Wrestling Coaches Association (NWCA) promoted this idea. As early as 1997, the *CQ Researcher* posed the provocative question on the cover of a special issue devoted to gender equity concerns in sports: "Does federal law help female athletes by hurting men?" (Worsnop 1997). The year before, a GAO Report had concluded that women's opportunities continued to lag far behind men, even in wake of a significant push for compliance around the EADA (GAO 1996). The GAO reached a similar conclusion in a second report in December of 2000 although they noted that women's opportunities had grown while men's had decreased slightly (GAO 2000). Men continued to have access to the disproportionately large percentage of athletic opportunities, and despite the loss of some men's wrestling and gymnastics teams, the report demonstrated that in the years between 1981 and 1999, the overall number of men's teams had grown slightly instead of decreasing.

The NWCA was nevertheless mobilizing a besieged masculinity that framed Title IX as a problem for men. The court case that the group pursued in January of 2002 legally tested this claim (*National Wrestling Coaches Association v. U.S. Department of Education*). The NWCA argued that the DOE's enforcement mechanisms had a discriminatory impact on male athletes. Their claim focused on the elimination of men's wrestling and gymnastics teams in particular, events which they characterized as a discriminatory trend brought about by the DOE limiting the number of opportunities available to men by requiring equitable opportunities between the sexes.

The case was unfolding as the public hearings occurred, although the DOE filed a motion to dismiss in May of 2002, citing the grounds that the plaintiffs could not trace the harms directly to Title IX.[13] This narrative of Title IX's threat to men's sports was salient during the hearings, and many advocates from men's wrestlers urged the Commission to re-evaluate the enforcement provisions, regardless of the outcome of the legal suit.

The advocates for reform articulated their concerns with the current enforcement of policy in gender-coded language. In the opening remarks, Bill Hansen, the Deputy Secretary for Education (and father of six children), proclaimed that the Bush administration was "adamant in [their] support for Title IX" (DOE 2002a, 3). Even those affiliated with teams that had recently been cut from college rosters were loath to express distaste for the premise of Title IX. Instead, even those interested in reform were inclined to suggest that the problem with the policy was not the intent, but was instead the means of enforcement.

[13] Ultimately, the U.S. District Court for the District of Columbia granted the DOE's motion to dismiss the claims of the plaintiff's entirely in June 2003. The NWCA appealed the decision to the U.S. Court of Appeals, which upheld the lower court's decision in May 2004. An amicus brief filed by the National Women's Law Center, on behalf of the American Association of University Women, American Volleyball Coaches Association, National Women's Lacrosse Coaches Association, National Fastpitch Softball Coaches Association, Women's Basketball Coaches Association, and Women's Sports Foundation provided much of the evidence that the court drew upon to reject the suit.

The Bush administration was wise to express public support for the policy. Public opinion towards Title IX remained high throughout the Clinton administration.[14] A 1995 poll from the Feminist Majority Foundation (FMF) found that seventy percent of respondents were against weakening the application of Title IX.[15] As recently as June 2000, a Hart-Teeter public opinion poll had found public support for Title IX remained very high. Seventy-nine percent of respondents in the nationally representative survey expressed support for the law (Hart-Teeter 2000).[16] Title IX was as popular as ever, and those who wanted to see it changed needed to find political traction that did not over-correct for a politically popular policy. Yet the wrestlers, wrestling coaches, and wrestling proponents who testified about the harms they experienced from having their

[14] Clinton's administration was largely supportive of Title IX's compliance in the years after the passage of the EADA. At the time of publication of this manuscript, the files regarding Title IX require FOIA requests. Thus a more thorough analysis of Title IX under Clinton will be required in future iterations of this project once the FOIA requests are processed.

[15] The poll was fielded by the Peter Harris Research Group on behalf of the FMF. It was administered via telephone to 1,364 adults nationwide. The specific question was: "Now let me ask you some questions about some changes in federal government policy which have been under consideration in Washington these days, as a result of the Republicans taking over control of Congress . . . Do you tend to agree or disagree with weakening laws protecting girls' and women's equal education and athletic opportunities?" Twenty-four percent of respondents agreed and six percent were "not sure".

[16] The question posed was: "Title IX is a federal law that prohibits high schools and colleges that receive federal funds from discriminating on the basis of gender. Title Nine is most commonly invoked to ensure equal opportunities for girls and women in high school and college athletics. Do you approve or disapprove of Title Nine as it is described here?" NBC News and Wall Street Journal Poll. June 14-18, 2000, telephone survey of 2,010 adults nationwide.

teams cut were the most adamant that the current regulations were disproportionately harming male athletes. Those invested in wrestling programs forcefully argued for the importance of wrestling as an Olympic sport and a domain for non-revenue producing men's athletics.

The concern, from the perspective of civil rights policy, was that Title IX's implementation was unduly preventing the continuation of men's wrestling programs. Fathers on both "sides" of these concerns emerged as proponents of policy. Many witnesses opened their remarks with reference to their parental status (both mothers and fathers) and leaned heavily on their relationships with their children in the formulation of their political beliefs surrounding Title IX. Fathers of basketball players, baseball players, softball players, wrestlers, and tennis players, many of them coaches of their children's teams, emerged to testify during the public forums. Indeed witnesses were more likely to foreground their parental status than their occupation or personal experiences in sports.

Many of their statements included statements akin to that of Ti Timney. During the Atlanta forum, he stated:

> Good afternoon. My name is Ti Timney, and I'm addressing the council as both a parent and an advocate of the sport of baseball both at the high school and collegiate levels…Now, as a parent of one boy and one girl who equally participate in athletics, I'm a very strong advocate of Title IX. However, the way in which the law is being enforced not only impacted my personal life, but also the sport which I've grown to love (DOE 2002a, 186-87).

Fathers on both "sides" of concerns over whether to revise Title IX's proportionality requirement expressed strong desire to see that the law would not be diminished in its ability to provide opportunity for women. There was shared agreement in the importance of providing opportunities for girls—the concerns were the extent to which the rules of Title IX encouraged colleges and universities to achieve equity at the expense of some men's opportunities.

Fathers of daughters in youth sports, high school sports, and college sports fiercely articulated their beliefs that girls were equally deserving of sporting spaces as their boy counterparts. Indeed more men testified in ways that primed their parental status than did women. Something dramatic seemed to have transpired when the Commission opened the possibility that opportunities for girls may be retracted if enforcement guidelines were altered.

Indeed as testimony unfolded it became clear that many parents attributed a great deal of power to the bureaucratic apparatus of Title IX. Some fathers had observed the sexist beliefs that pervaded sports in some domains and looked to Title IX as a panacea against still evolving social barriers that discouraged girls from playing sports of their choosing. Keith Keller, a father and coach to his three girls stated:

> I just want to talk about -- I'm an advocate of Title IX, and I want to talk about why it's important to me and more importantly, why it's important to my three girls, although quite frankly, the two younger ones may not realize it yet, but they will because you can see some of the attributes that they are already starting to express… My youngest is the sports animal of the family. She's a good little

> basketball player and soccer, but also plays baseball and tennis. So she's and all-sports person… we were playing basketball and her coach said, Dad, this is really more of a boy's sport. And comments like that certainly frustrate me as a father because I think she heard it from someone at her school. And I told her, I said, you have a good opportunity. You have talent, and you should have the same opportunity as the boys to excel at sport and be successful in your career no matter what you do. If it's sports, that's great. If it's something else, that's great too (DOE 2002a 193-95).

The exasperation and rage of fathers like Keller was palpable in the testimony. For many men, fathering daughters whose abilities challenged antiquated beliefs about "female" physical potential had altered their beliefs about the type of opportunities that women deserved.

Although fathers who rose to testify in support of athletic opportunity for their daughters generalized from personal experience, the political power of familial ties were clear. The focus of most testimony—whether from fathers of daughters who explicitly claimed the identity of "Title IX advocate", or from fathers of sons who wanted to ensure their son's opportunities were not lost in pursuit of equity—situated the personal in the political. Megan Hull's father, Blair Hull, returned to the Chicago, IL hearings to foreground this framing:

> My name is Blair Hull. My daughter, Megan, was a plaintiff in the lawsuit against Brown University in 1992. So it's in a very personal context that I'm here today. After 30 years of advocacy and controversy, it's important to remember that Title

> IX is not just a women's issue. It's an issue of basic fairness and equality…And so supporting our daughters and our -- supporting our daughters and our sons is one of the most important things we can do as parents and encouraging them to stand up for their rights, whether it's on the field or off the field, is one of the most important things we can do. On every possible level, it is as important for our daughters to participate in sports as it is for our sons. So I urge this Commission to do everything you can to ensure that these opportunities continue to exist (DOE 2002c, 206-7).

Quotes such as these imply that a central concern for parents was the proportionality element of implementation, and the definition of "opportunity". There was a deeper conflict between proponents of male wrestlers who thought that Title IX was denying "opportunity" to men, and those who believed in the fundamental need to secure opportunity for women using the means articulated in hard won battles of decades past.

These more divisive politics, at the intersection of opportunity and sex, were themselves "effects" of policy design from an earlier moment. By creating the "opportunity" paradigm as an element of policy design, men's fates were intrinsically tied to women's fates in sports. Athletic departments unwilling to spend additional money on men's teams had the option to cut men's sports rather than adding women's. Because Title IX did not dictate a particular amount of baseline sport for men or women (merely that the opportunities for the two be equitable) there was neither a floor nor a ceiling on the number of opportunities that could be added or subtracted for men's programs. However, because nearly all athletic departments across the country had

disproportionately high numbers of men's athletes and teams on their standing rosters, the equity game, in some cases, meant that men's existing opportunities were cut in order to obtain compliance numbers.

The missing coalition: Feedback and the political impossibility of sex

These gender politics served to pit men "against" women at the turn of the century. Because sex-segregated enforcement mechanisms constitute male vs. female athletes as distinct groups, the reliance on sex-segregation as policy solution disabled the more salient political coalitions that ought to have formed between activists and parents. The policy implementation mechanism set into practice during the 1970s over-determined how coalitions could form in the early 2000s. Men's wrestling and men's gymnastics were easy targets for schools looking for simple compliance measures in a system that pitted the sexes against each other.

However, what the system of sex-segregation disabled advocates for college wrestling to form cross-sex coalitions, or to note that their fates were more closely aligned with the growth in men's football, than with the implementation of equity policy. The NCAA data demonstrates that in the same years that men's wrestling and gymnastics teams were being cut from college rosters, men's football programs were ballooning in size. Many new football teams and participation opportunities on football teams were added during the same period that wrestling and gymnastics were being cut (NCAA 2012a). All of this occurred in a context in which men's overall opportunities to participate in sports continued to grow at roughly the same pace as women's. Symbolically, the perception that women's opportunities were being "traded" for men's

opportunities served to produce evidence of the fears articulated by football coaches as early as the 1970s. Feminist activists were being blamed for having lessened the quality of men's experiences in pursuit of equitable outcomes. Of course, this perception was unfounded even as it circulated in discourse throughout the period of the Commission hearings. In 2002, as in 1972, as in 2013, men have dramatically more athletic opportunities, as a group, than do women. Thus the perception that women were somehow "stealing" opportunities from men as a result of Title IX was misplaced and inaccurate.

Instead, the political coalition that was obscured during the Commission hearings was a cross-cutting, and potentially more radical alliance. Wrestlers and wrestling proponents could have articulated an alliance that bound the fates of male athletes whose positions were under threat, to female athletes still seeking entry to the domain of college sports. Instead, male and female athletes whose fates were linked found it difficult to see commonality across the over-determined sex difference instantiated in policy. Sex-segregated spheres allowed football to drive the quality of male athlete experience, rather than allowing for more radical re-arrangements of college sports or Title IX's implementation.

This is not to suggest that radical re-arrangements were not posited to the Commission. Some witnesses suggested that football should be set aside from compliance concerns and defined as a domain beyond the purview of policy. In this arrangement, the head-counting dictated by the EADA would have occurred merely between the male and female athletes who did not play college football. Although this

alternative policy solution was quite popular in published media sources in circulation at the time, lawmakers refused to consider it.

Political coalitions that cohered around sex, rather than around the material realities of linked fate are one critical feedback effect of the Title IX's policy arrangements. Sex-segregation had become more than normative—it was the wedge that defined difference in ways that even those injured by the practice could not see beyond the institution to create politically advantageous alliances. The policy guidelines, hard fought in the 1970s and 1980s, and cemented into quantitatively measured practice by the 1994 EADA, constituted the means of organizing and advocating for political change in the early 2000s.

Age-old sex-based politics were the means for political organizing throughout the early 2000s. "Females" aligned with other "females" to fight for the rights afforded to them "by virtue of sex". And "male" athletes in less privileged positions, seemingly unable to see the forest for the trees, focused on re-drawing the privileges afforded by sex, rather than the artificial allegiances drawn around it. In this sense, the feedback effects of sex were material. Some men were losing competitive opportunities by virtue of a naturalized identity category that constrained even their political advocacy in ways that diminished their perceived ability to build coalitions across alleged difference.

But feedback effects also affected the cognitive processes of beneficiaries, providing evidence of what Paul Pierson calls "interpretive" feedback effects. Male athletes—and wrestlers in particular—expressed very little of what Suzanne Mettler has called "reciprocity" in their relationships with female athletes. Mettler discusses the role

of "reciprocity" between military veterans and the federal government through which veterans conferred benefits through the G.I. Bill felt obliged to give back to the society that had conferred them benefits (Mettler 2005). However, wrestlers—whose sporting opportunities were allowed to expand, in part, because of university choices to expand women's sporting teams and invest in programs beyond football—denied the cross-cutting benefits they received as a result of the larger growth in college athletics which occurred in the wake of Title IX. The sort of policy learning that Title IX fostered over time promoted the notion of sex difference as a material reality, such that male athletes—frequently empowered by virtue of their sex—felt no particular obligation to forge political coalition with women when their sporting opportunities were being diminished. Policy interpretation, in each moment explored throughout this project, instructed men and women to deny their linked fates in the domain of sports, and to align their interests with only those who shared their sex-based identity.

Title IX's interpretation and implementation thus cemented sports as a closed world for both women and men, and the events of the early 2000s make this clear. Many other female athletes advocated on their own behalf, claiming the label of a "product of Title IX" during the Commission hearings. This too represents a critical feedback effect of policy design. Yet at the exclusion of other intersectional dimensions of inequality, including race, sexuality, class, and ability, policy design had "taught" beneficiaries that sex was the most salient characteristic in the domain of sports. Female athletes, given rights to sports through Title IX, felt the most commonality with other "females", regardless of the cross-cutting dimensions that ensured the benefits of implementation

would wrest primarily among white women. Thus in the same moment when male athletes could not see the commonalities across sex, female athletes could not see the unfolding inequalities within the category of "female". During a moment when the Commission was ostensibly asked to re-open the most basic elements of policy design, no changes were made to the conditions of policy enforcement that served to exacerbate the problems of intersectional marginality.

Conclusions: Fathers, Daughters, and Gendered change

Most startling and unexpected, however, was the politicization of fathers as a result of Title IX. Their testimonies revealed the more dramatic feedback effects of Title IX on understandings of gender across several dimensions. Not only did girls and women come to embody "femaleness" and "femininity" in new ways, fathers came to embody the role of parenting in emerging dimensions. Through coaching, spectator support, and training their young daughters, the experience of parenting in a fundamentally masculine domain had been altered by policy implementation. For fathers, the socialization and bonding arenas previously available only with male off-spring had, in light of Title IX, reorganized the dynamics of parenting. Further, with the increasing visibility of Title IX and the Bush administration's elevation of its application to sports through the Commission, fathers mobilized around these emerging trends.

The ways in which this unfolded were primarily organized around heteronormative familial relations, fundamentally exposing girls to sports in ways that preserved male authority over sporting domains. Fathers, in this light, came to supplant potentially lesbian coaches, gym teachers, and athletic role models as the gender-

appropriate keepers of socializing girls and women into sport. In the long term, the presence of fathers as political activist group has supplanted the voices of advocates that used to be dominated by women sports leaders. The Women's Sports Foundation and the National Women's Law Center continue to provide expert testimony and authoritative voice to the conditions of women in sports, but women's sports domains are no longer merely lead by women's voices.

Still, the outcome of such unexpected advocacy was generally positive for women in sports. As the Commission concluded its report in February of 2003, it promoted fairly minimal changes to policy guidelines. They made twenty-three recommendations, fifteen of which were approved unanimously by the Commission. The final report, "'Open to All': Title IX at Thirty" referenced the importance of addressing concerns of parents six different times (DOE 2003b). It included quotes from parental testimony, and listed parents as among the most important stakeholders in Title IX's future.

The gendered feedback effects revealed in the Commission hearings came to shape the contours of policy. Not only did Title IX endure the 2002 hearings, its implementation in the years after the Commission hearings was increasingly robust (NCAA 2012). The gendered, familial relationships had been altered in ways that permanently shifted the meanings of equity across the gender spectrum. Discussions over "quotas" and the "death" of men's wrestling also became less pronounced. The alterations in political constituencies had shifted the policy discourse in ways that made parents central players in the sporting futures of their adult children. In the policy

domain of Title IX, this meant that the most dire consequences feared by feminist activists were avoided.

EPILOGUE: "The Next Civil Rights Frontier": Title IX since 2003

Trans* rights and discrimination "based on sex"

In October 2011, the Department of Justice, Civil Rights Division and the Department of Education, Office for Civil Rights received complaints of discrimination "based on sex" from the parents of a middle school student enrolled in Arcadia Unified School District in Arcadia, California (NCLR 2013a). The letter alleged that that the district was discriminating against the student because he was "transgender", denying him equal access to the educational programs including "facilities consistent with his male gender identity, including restrooms and locker rooms at school".[1] The claim was jointly filed under Title IX and Title IV of the Civil Rights Act of 1964.[2] In July 2013, the DOJ and the DOE determined that Title IX protects "transgender" students "who do not conform to sex stereotypes" from discrimination, ruling that "a school district may not treat individuals differently *on the basis of sex* with regard to any aspect of services, benefits, or opportunities it provides" (NCLR 2013a, 1). The agreement between the Arcadia District and the CRD/OCR indicated that the district must "treat the Student the same as other male students in all respects in the education programs and activities offered by the District", the practical application of which means that a student's trans*

[1] The letter defined the trans* people in the following way: "A transgender person has a gender identity (one's internal sense of gender) that is different from the individual's assigned sex (i.e., the gender designation listed on one's original birth certificate)" (NCLR 2013).

[2] Title IV of the CRA prohibits discrimination "by public schools against students based on race, color, national origin, sex, and religion" (42 U.S.C. 2000c).

status must not be revealed by the practices of the District and the student must be treated "the same" as other "male" students.

The case is a ground-breaking application of Title IX's non-discrimination provisions and was heralded by LGBT advocacy groups as a significant legal innovation in the application of Title IX (NCLR 2013b; NCTE 2013; NGLTF 2013).[3] In a July 31, 2013 editorial, the *New York Times* called this interpretation of Title IX "the new civil rights frontier" (NYT 2013). It followed several years of work by the Obama administration DOJ to establish standards for anti-bullying and sexual harassment policies in schools which were also attached to the continued implementation of Title IX (DOE 2010b, 2011a, 2011b, 2011c, 2013). To be sure, the application of Title IX to protect the privacy and safety of trans* students in primary and secondary schools represents a significant, positive step for trans* rights.[4] Trans* populations are almost always made vulnerable to discrimination and violence (both epistemic and physical) in cultural, social, and political institutions (Spade 2008, 2009, 2011, 2013). School districts have now been instructed to protect the privacy of trans* student's "gender

[3] Legal scholars have only recently contemplated the relationship between trans* bodies and sport under the regime of Title IX (Buzuvis 2011, 2012b; Sinisi 2012). The NCAA has recently published new guidelines, in light of the emergence of trans* identified athletes, although their policies on eligibility for men's/women's teams for trans* players continues to shift (Griffin and H. Carroll 2010; Griffin 2012; H. Sykes 2006)

[4] Establishing legal protections for trans* people has been a notoriously challenging and impartial project (Buzuvis 2011; Currah, Juang, and Minter 2006; Currah 2008; Spade 2008; H. Sykes 2006; Vitulli 2010).

identities" as a means to decrease the likelihood of harassment and the threat of physical violence.[5]

What seems particularly progressive in the ruling is the decision by governmental officials to foreground student self-determination, allowing trans* students to decide which locker room and/or restroom they wish to use without an invasion of privacy from school officials in making the determination for the student, or requiring that the student be sequestered to a separate physical space.[6] The operational definition of "sex" at work in this domain of Title IX's application is clearly evolving.

However, the recent rulings of the CRD/OCR remain indebted to the political history of Title IX—particularly its paradoxical application to sporting domains—in ways that trouble the salutary reactions to the recent ruling. The specific language attached to "transgender" status remains devoted to "sex", relying on the concept of natal sex ("the gender designation listed on one's original birth certificate") as one element of trans* student status. Thus the policy meaning of "sex", even in cases where the basis of discrimination against students exists at the nexus of sex and gender-identity/gender-presentation, continues to inhere in bodies. With this in mind, the policy solutions to

[5] The Arcadia case focused on the coerced segregation of the trans* student in school restrooms and locker rooms, as well as during a school overnight fieldtrip when the student was forced to sleep in a room by himself. Other students on the trip roomed with other students on the basis of sex and the trans* students exclusion raised a number of questions amongst the students and teachers which served to reveal his status against his will.

[6] It remains to be seen the extent to which self-determination proves to ensure that trans* students are not subjected to physical or emotional violence or harassment as a result of transgressing sex-segregated spaces of restrooms and locker rooms. These spaces are some of many locations, including prisons, where trans* people are often subjected to violence (Spade 2009).

gender-based discrimination continue to be limited in ways that are easier to recognize and understand in light of the political history presented in this manuscript.

In the contemporary period, trans* individuals continue to confound systems of social and political meaning that constitute the connotations of sex and gender. Despite the breadth of gender-identifications included in the umbrella term "transgender", the CRD/OCR decision to attach trans* status to "sex" reveals the persistent power of the categorical understanding of embodied sex within Title IX.[7] For example, one article from *The Washington Times* reported on the CRD/OCR decision with the title:

[7] Trans* activist and legal scholar, Dean Spade discusses the legal uses of the term: "'Transgender' emerged to serve as an umbrella term, broadly describing people facing gender identity and expression discrimination. This term has come to be the preferred term of the moment, although other terms are still commonly used and misused in media and by individuals. The terms "transgender" and "gender identity discrimination" have both become increasingly significant in the last two decades as this population has become more visible. This increased visibility is reflected in popular culture representations of transgender themes and characters, as well as in an emergence of new legal protections prohibiting gender identity discrimination in various states and cities across the United States…These changes have been significant and rapid, yet transgender identity is still popularly misunderstood and transgender activism is relatively minimal and under resourced. A common comparison suggests that the transgender rights movement is about thirty or forty years behind the lesbian and gay rights movement with regard to visibility, resources, and political power. Discrimination is still pervasive and severe. Much of this discrimination is directly connected to the ability or inability of transgender people to achieve recognition by the government in their new gender identity" (Spade 2008, 733-34). The use of "Trans*" is the signifier of a wide range of gender identities, including: transgender, transsexual, transvestite, genderqueer, queer, gender non-conforming, FTM, MTF, intersex, and others (NCTE 2009). See also (Valentine 2007), and several recent anthologies on trans* issues (Enke 2012; S. Stryker and L. J. Moore 2008; S. Stryker and Whittle 2006) and trans* rights (Currah, Juang, and Minter 2006).

"Transgender girl wins legal right to use boys' restroom at school" (WashingtonTimes 2013). The content of the article discusses the details of the case, stating: "A Los Angeles girl who wants to be a boy—but isn't—now has the legal right to use the boys' restroom and locker room at school, thanks to a settlement between school authorities and the Department of Education". In the aforementioned *New York Times* editorial described the events: "The case involved a child who was anatomically female but began to identify as a boy at an early age, assuming a male first name and wearing boys' clothes" (NYT 2013). The language of these articles asserts and imposes particularly presumptuous definitions of the role of sex in both the body of the student and within the legal case. However bold the reporting may seem, given the historical attachment of Title IX to definitions of "sex" which themselves impose an immutable male/female binary definition of sex on bodies in sport (and locker rooms), such reactions are not altogether out of keeping with Title IX's history.

As I have demonstrated throughout the previous chapters Title IX has constituted strict definitions of embodied sex in its application to domains of sports and physical activity. These understandings of creating rights "on the basis of sex" constituted the political identity of the "female athlete" through the reliance on sex-segregated sports. Paradoxically, in classroom settings, rights to education were conferred to students "regardless of sex", and sex-integrated spaces have become the norm and *de jure* practice. School district-level policies instituting sex-segregated classrooms continue to be disbanded under judicial review (ACLU 2012a, 2012c, 2013; AP 2012; Katz 2013; "Pittsburgh Public School to End Single-Sex Classes" 2011), while policy

implementation in sports continues primarily through sex-segregated means. Under-girding this paradox is the premise of sex-as-biology—and this same premise continues to concern the conditions of inclusion for trans* students in the physical spaces of educational institutions. This most recent development in the application and interpretation of Title IX suggests the extent to which historically rooted understandings of sex persist as a feature of American politics even as cultural battles continue to press for additional policy evolution. This brief epilogue analyzes what the history of Title IX suggests for the contemporary understandings of sex and gender in contemporary policy, in light of these recent developments.

Troubling the system: The Radical potential of Title IX politics?

The understandings of the role of trans* bodies in schools, sports, and society revealed through the Arcadia case posit trans* individuals as the "problem" to be solved, protected, sequestered, or incorporated into social and political structures. As I have explored elsewhere in this manuscript, the policy strictures of sex non-discrimination in sports have always treated trans* bodies (and people) in this way. While this dream of "incorporation" into educational settings (for women, girls and trans* people) carries with it the possibility of lessened violence against trans* people, the Arcadia case reveals the extent to which the forty year history of Title IX has not resulted in the full liberation of formerly excluded bodies (of women, girls, and trans* people). Instead, the means through which cultural battles, solved through political institutions, over the meanings of "sex" continue to produce persistent, grinding processes of partial political assimilation "on the basis of sex" but only on the terms of the dominant system.

One clear implication of Title IX's forty year history is that, despite optimistic news reports to the contrary, evolution in the shared understandings of the meaning of sex in non-discrimination policy has been distressingly minimal. Although we have seen the transformation of gender roles available to women (particularly as athletes) and men (in the case of fathers), fundamental understandings of what women and men "are" have remained stubbornly entrenched. This is true to a greater extent in sports than in classrooms. Although the dominant discourse in previous historical moments limited women's educational options based on the premise that women were not as intellectually skilled as their male counterparts, these sexist notions have largely fallen into disfavor (B. M. Solomon 1985). This is less true in some domains, like the hard sciences and mathematics, where the puzzling absence of women in the Science, Technology, Engineering, and Mathematics (STEM) fields continue to allow for speculation that women may be "less interested" than (or possibly "naturally" disinclined towards) these fields (Kuria 2012; Walters and Mcneely 2010). However, nowhere is the reliance on "nature" as a structuring factor for women's ability more over-determined than in sports.

As I have demonstrated, this reliance on "nature" and "natural ability" has structured the conditions for women's inclusion into sporting settings under the policy domain of Title IX.[8] In doing so, the forty year history of Title IX's political development has reflected the challenges and perils of solving cultural debates over the role of sex, through political institutions. Politically, women have gained formal

[8] The examples regarding sex-testing in sports (explored in Chapter 2) at the international level further illustrate the extent to which "nature" is thought to determine biology, which then defines fair playing spaces of "women" competitors.

inclusion into the *same* classroom settings as men, enabling the intellectual accomplishments of many women, in many fields, to dismantle the sexist assumptions of women's intellectual inferiority. In the current moment, it remains unpopular and mostly unacceptable to argue that women are less than men intellectually. In sports, women's formal inclusion took the form of creating *separate* spaces for women on women's teams. This left the male-sports structure fully intact. Women's incorporation into sports came only through showcasing women's abilities to perform physically vis-à-vis other women. In the absence of widespread physical competition between the sexes, naturalized understandings of women's physical inferiority have gone largely unchallenged. There are, of course, many examples of sporting contexts when women's abilities are so undeniable that even sexist slander cannot diminish their accomplishments. Brittney Griner can slam dunk basketballs "just like a man" (Fagan 2013). Danica Patrick regularly competes with men in NASCAR racing, and occasionally wins (Reitman 2012). Billie Jean King defeated Bobby Riggs in the tennis "Battle of the Sexes" (Ware 2011). However, in most cases, particularly in college and high school sports the dominant means of implementing Title IX means that even if women are as fast, strong, powerful, or skilled as men in the same sport, they are rarely able to "prove it" in competitive venues. Thus in the domain of sports, the retrogressive definition of "sex", produced through policy, means that far less has changed in the political meanings of sex in sports than has changed in classrooms.

There is some irony, then, to the cultural power we ascribe to Title IX. As journalists and interest groups herald the successful implementation of Title IX as the

great American civil rights success story, this narrative is produced only by denying the stubborn practice of naturalizing sex as an immutable characteristic of biology. Title IX is often said to have demonstrated that there are "no limits" to women's physical potential.[9] Even as Title IX has created the conditions under which women can find new physical terrains its most basic element limits the potential domains of embodiment to conditions of their biology. This tension between policy design and the stories American culture tells itself about Title IX is visible everywhere and nowhere, but its implications matter a great deal for the ways policy has altered political understandings of gender.

Since bodies as the structuring element of sex through Title IX in sports, the ways that gender has evolved have been rooted in feedback effects ritualized through sex-based practices of femininity. If Title IX's design suggested that sex-is-biology, then the embodied expressions of sports ensured that gender-is-performance. As strictly regulated as the category of "sex" through Title IX's application to sports has come to be, the diverse, physical practice of sports themselves have ensured that gender-performance has become the more fluid domain of political change. Female athletes have dramatically expanded the potential meanings of "the feminine" to include expressions of masculinity through female bodies. By virtue of the embodied practices of sports, what was once considered strictly "masculine" (and normatively suitable only for male bodies) has come to inhere in the "unfeminine" female athlete. The consequences of this have been complicated and uneven across race and sexual difference.

[9] Indeed "No Limits" is the name of one of the ESPN-W "Nine for IX" documentaries, aired in the summer of 2013, regarding women's accomplishments in sports (Ellwood 2013).

Even as gender, as a component of Title IX's consequences, has been able to manifest through more fluid expressions that blur the distinctions between masculine/feminine (Kane 1995), we have not seen a complete revolution to the gendered system of social organization, particularly at the intersections of race, sexuality, and ability. Title IX has failed to equally alter the opportunities in sports for racial minorities and otherly-abled athletes. While the Obama administration has taken steps to providing policy recommendations for creating sports opportunities for the disabled (Duncan 2013; DOE 2010), the administration (like those before it) has done very little to address in-group inequities that result in fewer opportunities for girls and women-of-color (Rhoden 2012). Economic disadvantage, itself a correlate with racial status in many cities in the U.S., intersects with these long-standing silences on race-conscious policy implementation in ways that ensure low-income girls (many of color) have not benefited nearly as much from policy implementation (K. Thomas 2009). Finally, as evidenced by the policy arrangements at the close of the 1980s, Title IX's application for lesbians has been decidedly mixed. Although the policy, through sex-segregated design, has vastly increased the homosocial spaces it has yet to provide legal protections against discrimination on the basis of sexual orientation for female coaches, nor has it fully re-inscribed the breadth of gender performance such that women who defy traditional gender presentation are not immediately suspected for being lesbians. Gender, gender roles, and normative gender presentations have evolved over time, but the attachment of sex to bodies in the policy domain of sports continues to limit the possibility for a complete gender revolution.

This is evident in the Arcadia Unified School District case. Despite the progressive understanding of discrimination "based on sex" that the CRD/OCR regulations proscribe, the relationships amongst bodies, sex, and gender remained largely intact. Policy interpretation attaches trans* identity to an incomplete shift in natal sex, wherein the protection offered by Title IX extends to "all students who do not conform to sex-stereotypes" (NCLR 2013). Thus in the ruling, political institutions again articulated that there is always a sexed body under-girding gender performance. If there is one fully realized outcome of Title IX it is that the categorical distinction of "sex" produced by politics is always reduced to the body. Cases like that in Arcadia Unified School District implicitly conclude not that the sex-based system is responsible for gendered discrimination against trans* students, but that trans* students ought to be afforded incorporation into the domains of the "opposite" sex in order to be free from discrimination.

Re-making Sex, Gender and Policy

This example from the summer of 2013 stands to remind us of two things: 1) the political story of Title IX is unfinished and still evolving, often in unexpected ways, and 2) the political history of Title IX offers a framework for interpreting current developments in ways that suggest future possibilities. As recently as five years ago, when the executive branch was under control of the G.W. Bush administration, trans* politics were not a part of the Title IX agenda. Future research projects can investigate the political causes of this shift.

More importantly, however, this detailed history of policy development should remind readers that each stage and process of political change has resulted from a series of concrete, human practices. Such that my analysis points to the short-comings of policy design and implementation in the re-making of political approaches to "sex", it should also suggest that any process once made through collective, political decisions can also be re-made and re-imagined. For the women excluded from Title IX's progressive narrative, a different future is possible once we understand more fully the consequences of the past. I offer this observation without meaning to be glib. At least one important lesson from this work is that long-standing structures and practices of sex and gender have proven to be incredibly durable. Still, any critical endeavor owes to those who have been disproportionately disempowered by political processes the reminder that circumstances once made can be re-made again. It is my hope that this project, and the others throughout my academic career, allow me to continue to pursue work that enables these ends.

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APPENDICIES

Appendix A: Data Description, The Archive of Title IX

The data for this project were collected from seven key sources/archives:

1) The Gerald Ford Presidential Library in Ann Arbor, MI

I read all files relevant to "sex discrimination" generally, and Title IX specifically. The list of files can be found in the catalogue of primary sources. The Ford Library collection officially covers the time period from August 9, 1974 until January 20, 1977, when Gerald Ford served as president of the United States. These files include a variety of data types: letters to and from the President (and his staff) to constituents, records of meetings and other goings-on within the White House, letters and memos between the President and members of Congress, lists of interest groups active on topic of sex discrimination in education, interest group lobbying papers and memos on the topic, news articles pertinent to White House activity on Title IX, Congressional Quarterly reports, drafts of enforcement and implementation mechanisms, publications from the Department of Health, Education and Welfare and press conference transcripts featuring departmental leadership, memos and letters from specific institutions seeking exemption from compliance standards, and communications discussing the perceived consequences of various draft regulations. Despite the obvious implication of the Nixon administration in this policy domain through August of 1974, the Nixon archivists report that only one memo in the entire Nixon Library pertains to Title IX debates.

2) The National Archives and Records Administration in College Park, MD

NARA files include the legislative history of Title IX (confirmed with the help of Congressional Record searches) and files from the Office for Civil Rights (tasked with

enforcing Title IX) and the Department of Justice. The list of files consulted can be found in the catalogue of primary sources.

3) The Representative Patsy Mink Files at the Library of Congress in Washington, DC

The Patsy Mink Files include the congresswoman's active history on sex discrimination in education legislation during the 1970s, 1990s, and early 2000s. The histories of congressional correspondences—both between Mink and her constituents, and amongst members of Congress—supplement the congressional record of institutional actions. Interest group activities, especially from those groups aligned with Mink's pro-Title IX stance, are also well recorded.

4) The U.S. Congressional Record

These data include congressional hearings, floor testimony and bill introductions, GAO reports, congressional committee reports, and Congressional Research Service reports. The congressional hearings, obtained by searching ProQuest/Lexis-Nexis Congressional files using search terms "sex discrimination AND higher education". I also cross-referenced these hearings with searches for "Sports and athletics" (a ProQuest identified term), "sports and athletics AND women's rights", and "sports and athletics AND Title IX". I search in "all fields including full text", in order to control for possible hearings that discussed Title IX-related arenas that were not catalogued as such by ProQuest. I did not include hearings pertaining to appropriation decisions. I used a similar search mechanism for references to Title IX-related topics in the Congressional Records Index (CRI). The search terms are largely proscribed by the CRI, forcing me to read broadly before settling on specific terms to capture Title IX-specific references. The

broadest term, starting in 1970, specific to Title IX debates was "Women", cross referenced with "education" and "sports"—a topic that first had any entries pertaining to "women" in 1974. Through these searches, I was able to obtain floor speeches and debates by MCs.

5) Department of Education Files

These files are archived online at the Office for Civil Rights website: http://www2.ed.gov/about/offices/list/ocr/index.html (accessed August 25, 2013). The OCR Reading Room is available at: http://www2.ed.gov/about/offices/list/ocr/publications.html (accessed August 25, 2013). All files pertaining to the Secretary's Commission on Opportunity in Athletics are available online at: http://www2.ed.gov/about/bdscomm/list/athletics/index.html (accessed August 25, 2013).

6) Supreme Court Records

These files were obtained online through the WestLaw database.

7) The Roper Center for Public Opinion Research at the University of Connecticut.

These data provide unique insight into mass reception of and opinion toward the ongoing political debates over implementation. Scholars have yet to contextualize these data in an institutional context.[1] The data are archived at the Roper Center, available online, searchable through their POLL system (accessed secured through the subscription of the University of Minnesota at: http://www.ropercenter.uconn.edu/). I searched for polls regarding "sport" or "athletics" and then narrowed down the polls that pertain to

[1]Sigelman and Wilcox (2001) have published a research note on these data but without explicitly tethering them to political institutions.

gender issues within athletics. I also cross-referenced these data with those reported on in the Sigelman and Wilcox (2001) piece. The content of the archive of public opinion are detailed in Appendix B.

Analyzing archival data

Archival research and analysis is an inherently qualitative process. Since I am reading these data in part, for evidence of the history of institutional and in part to excavate the discourses of gender in which they are implicated and productive of, my analytic process is bimodal. While in the archives, I took extensive notes on the content of the data—which actors were involved, with whom they were corresponding, what within-institution and cross-institutional activity do the archives reveal, what sequence of events occurred that chart the course of lawmaking. Next, I organized and analyze the non-quantitative data with the help of qualitative software which allows for in-text coding of content. Some of these codes are useful in helping me develop deeper understandings of relationships between actors within institutions, and others are useful in tracing the emergence of discourses of sex and gender.

Appendix B: Public Opinion Data

Year	Source	Main Title IX Question
1974	Gallup Organization. "Public Attitudes Towards Education", for the Charles F. Kettering Foundation. Personal survey of 1,543 adults nationwide	Should girls have equal financial support for their athletic activities as boys?
1979	Gallup Organization. "Public Attitudes Towards Education", for the Charles F. Kettering Foundation. Personal survey of 1,511 adults nationwide.	The federal government may require all high schools to spend the same amount of money on women's sports as on men's sports. Do you approve or disapprove of

		this plan?
1985	Lieberman Research. "Sports Poll 1986", for *Sports Illustrated*. Mail survey of 2,043 adults nationwide.	Do you think that schools and colleges should give equal funds to men's sports and women's sports?
1990	Louis Harris and Associates. "Reforming Intercollegiate Athletics", for the Knight Commission. Telephone survey of 1,255 adults nationwide.	Do you agree or disagree with the following statements about women's athletics? Women should be given the same number of opportunities to compete on intercollegiate teams as men.
1995	Peter Y. Harris Research Group. "Women's Equality Poll 1995", for the Feminist Majority Foundation. Telephone survey of 1,364 adults nationwide.	Now let me ask you some questions about some changes in federal government policy which have been under consideration in Washington these days, as a result of the Republicans taking over control of Congress…Do you tend to agree or disagree with weakening laws protecting girls' and women's equal education and athletic opportunities?
1997	CBS News. CBS News Poll. August 1997, telephone survey of 1,307 adults nationwide.	Do you think college funding for men's and women's sports should be equal or not?
2000	NBC News and Wall Street Journal Poll. June 14-18, 2000, telephone survey of 2.010 adults nationwide.	Title IX is a federal law that prohibits high schools and colleges that receive federal funds from discriminating on the basis of gender. Title Nine is most commonly invoked to ensure equal opportunities for girls and women in high school and college athletics. Do you approve or disapprove of Title Nine as it is described here?
2003	Hart-Teeter Research Companies. NBC News and The Wall Street Journal Poll. January 19-21, 2003, telephone survey of adults nationwide.	Title IX is a federal law that prohibits high schools and colleges that receive federal funds from discriminating on the basis of gender. Title Nine is most commonly invoked to ensure equal opportunities for girls and women

		in high school and college athletics. Do you approve or disapprove of Title Nine as it is described here?
2011	New York Times/CBS News Poll, March 2-7, 2001. Telephone interviews with 1,266 adults nationwide	

Appendix C: Text of Title IX of the Educational Amendments of 1972

Title 20 U.S.C. Sections 1681-1688
Section 1681. Sex
(a) Prohibition against discrimination; exceptions. 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, except that:
(1) Classes of educational institutions subject to prohibition
in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions
in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets
this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine
this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy
in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations
this section shall not apply to membership practices --

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences
this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions
this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institutions of higher education scholarship awards in "beauty" pageants
this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.
Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, that this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) Educational institution defined.
For the purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college or department.

Section 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (l) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Section 1683. Judicial Review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

Section 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity; but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Section 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Section 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Section 1687. Interpretation of "program or activity"
For the purposes of this title, the term "program or activity" and "program" mean all of the operations of --

(l)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributed such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section2854(a)(10) of this title, system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (l), (2) or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 if this title to such operation would not be consistent with the religious tenets of such organization.

Section 1688. Neutrality with respect to abortion
Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

Appendix D: Text of the Equity in Athletics Disclosure Act

From: U.S. Congress. House. 1994. *Improving America's Schools Act: Conference Report*. 103rd Cong., 2nd sess., H. Report 103-761. Pp. 473-475.

SEC. 360B. DISCLOSURE OF ATHLETIC PROGRAM PARTICIPATION RATES AND FINANCIAL SUPPORT DATA.
(a) SHORT TITLE.-This section may be cited as the "Equity in Athletics Disclosure Act"
(b) FINDiNG.-The Congress finds that-

(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;
(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;
(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;
(4) a recent study by the National Collegiate Athletic Association found that in Division I-A institutions, only 20 percent of the average athletic department operations budget of 1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;
(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;
(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;
(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and
(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students.

(c) DISCLOSURE OF ATHLETIC PROGRAM.-Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended by adding at the end the following new subsection:

"(g) DATA REQUIRED.-

"(1) IN GENERAL.-Each coeducational institution of higher education that participates in any program under this title, and has an intercollegiate athletic program, shall annually, for the immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

"(A) The number of male and female full-time undergraduates that attended the institution.

"(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:

"(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

"(ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.

"(iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be considered to be head coaches for the purposes of this clause.

"(iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned

to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

"(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

"(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

"(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

"(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

"(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

"(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

"(2) SPECIAL RULE.-For the purposes of subparagraph (G), if a coach has responsibilities for more than one team and the institution does not allocate such coach's salary by team, the institution should divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

"(3) DISCLOSURE OF INFORMATION TO STUDENTS AND PUBLIC.-An institution of higher education described in paragraph shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

"(4) DEFINITION.-For the purposes of this subsection, the term 'operating expenses' means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

"(5) REGULATIONS AND EFFECTIVE DATE.-The Secretary shall issue final regulations to implement the requirements of this subsection not later than 180 days following the enactment of this subsection. Each institution described in paragraph (1) shall make available its first report pursuant to this section not later than October 1, 1996."