

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Nos. 99-1222; 99-1298

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TAI KWAN CURETON, LEATRICE SHAW,  
ANDREA GARDNER, and ALEXANDER WESBY,  
individually and on behalf of all others similarly situated,

Appellees/Cross-Appellants,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Appellant.

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
Civil Action No. 97-131

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**BRIEF OF *AMICI CURIAE***  
**NATIONAL WOMEN'S LAW CENTER *ET AL.***  
**IN SUPPORT OF APPELLEES/CROSS-APPELLANTS**  
**URGING AFFIRMANCE**  
(additional *amici* listed on the inside cover)

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are organizations concerned about equal educational opportunities and have a particular focus on eliminating discrimination against girls and young women in the nation's schools.<sup>2</sup> *Amici* submit this brief to address the important issue of whether the National Collegiate Athletic Association (the "NCAA") is subject to the requirements of Title VI of the Civil Rights Act of 1964, as well as Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. *See* 42 U.S.C. § 2000d *et seq.* (Title VI); 20 U.S.C. § 1681 *et seq.* (Title IX); 29 U.S.C. § 794 *et seq.* (Section 504); 42 U.S.C. § 6101 *et seq.* (Age Discrimination Act). These statutes all prohibit discrimination under programs or activities receiving federal financial assistance. Thus, if this Court finds that the NCAA is not subject to Title VI, the NCAA may not have responsibility for complying with a broad array of federal civil rights statutes prohibiting discrimination -- a result which could allow serious discrimination in intercollegiate athletics to go unaddressed.

While this brief focuses primarily on Title IX, which prohibits sex discrimination in federally funded education programs and activities, the arguments herein apply equally to claims against the NCAA arising under Title VI and analogous civil rights laws. *See National Collegiate Athletic Ass'n v. Smith*, 119 S. Ct. 924, 928 n.3 (1999) (stating that the scope of Title IX, Title VI, Section 504, and the Age Discrimination Act is defined in nearly identical terms). We urge the Court to affirm the district court's judgment that the NCAA is subject to the requirements of Title VI.

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<sup>1</sup> The parties' written consent to the filing of this brief are attached in Appendix A.

<sup>2</sup> Statements of interest of the *amici* are set forth in Appendix A.

## INTRODUCTION

In this case, the National Collegiate Athletic Association (“NCAA”) claims, *inter alia*, that it is not covered by the nondiscrimination requirements of Title VI and analogous civil rights statutes. The NCAA makes this claim despite the fact that it exists only as the creation of its member schools, the majority of which are federally funded and subject to Title VI, Title IX, and other civil rights statutes, and despite the fact that its central function is to govern one of these schools’ key educational programs, intercollegiate athletics.

Recently, in *National Collegiate Athletic Association v. Smith*, the Supreme Court ruled on the narrow question of whether the NCAA is subject to suit under Title IX simply because it receives dues from colleges and universities who are recipients of federal funds. The Court held that the NCAA was not subject to Title IX on the basis of its receipt of dues from its federally funded member schools. However, the Court left open the ultimate question of Title IX coverage over the NCAA. In leaving this question open, the Court referred specifically to two alternative theories for bringing the NCAA under the proscriptions of Title IX: (1) that the NCAA receives federal financial assistance through the National Youth Sports Program (“NYSP”); and (2) that the NCAA is covered under Title IX regardless of whether it is a recipient because its member colleges and universities, who are recipients of federal funds, have ceded controlling authority over a federally funded program--intercollegiate athletics--to the NCAA. *Smith*, 119 S. Ct. at 930.

The theories not considered by the Supreme Court in *Smith* provide a roadmap for why Title VI, Title IX and analogous civil rights statutes cover the NCAA in the instant case. First, there is ample evidence in the record in this case that the NCAA receives federal funds from the Department of Health and Human Services (“HHS”) for the operation of the National Youth

Sports Program. Second, it is clear that federally funded schools have ceded controlling authority to the NCAA to govern and exercise significant control over intercollegiate athletics. This ceding of control supports coverage of the NCAA under Title VI, Title IX and analogous civil rights statutes even if it is not held to be a recipient, and it also supports coverage of the NCAA as an assignee and hence a recipient under the regulations of these statutes.<sup>3</sup> Appellees address the arguments that the NCAA receives federal funds for the NYSP and that it is covered regardless of whether it is a recipient because it has been ceded controlling authority over the athletics programs of its member recipient schools. This brief focuses on the argument that the ceding of controlling authority to the NCAA renders it an assignee as defined by the regulations of the civil rights statutes, and that it is a program or activity receiving federal financial assistance within the meaning of the Civil Rights Restoration Act of 1987 (“CRRA”), Pub. L. No. 100-259, 102 Stat. 28 (1988).

### STATEMENT OF THE CASE

*Amici* adopt the Appellees’ Statement of the Case.

### SUMMARY OF ARGUMENT

1. The plain language of Title VI, Title IX, and analogous civil rights statutes, their implementing regulations, and amendments enacted by the CRRA support coverage of the NCAA. These statutes cover indirect as well as direct recipients of federal funds, and also cover

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<sup>3</sup> The Supreme Court in *Smith* noted that Smith’s brief to the Third Circuit alluded to these theories. *Smith*, 119 S. Ct. at 930 n.6. In her Third Circuit brief, Smith argued broadly that the NCAA has “a controlling and regulating authority” over its member schools’ intercollegiate athletics programs, and that the NCAA acts as an agent of its member schools, which have contracted out their authority to regulate their own programs and activities in exchange for being subject to the control of the NCAA. This argument is essentially the one advanced in this brief-- that the NCAA is an assignee of its member schools.

entities that themselves may not receive federal funds but are subunits, successors, assignees or transferees of a recipient and stand in the shoes of the recipient with like obligations and functions. The NCAA is a recipient within the meaning of these statutes because it receives a federal grant from HHS for the National Youth Sports Program. In addition, as an entity that has authority and control over intercollegiate athletics, the NCAA is covered as an assignee under the regulations of these civil rights statutes.

The CRRA confirms further that the NCAA is covered by these civil rights statutes. Under subsection (3), the NCAA is a private educational organization whose member schools receive federal financial assistance. In addition, the NCAA is an entity created by two or more covered entities (the member colleges and universities), and hence is covered under subsection (4) of the CRRA. It is also covered under subsection (2) as a part of the operations of the covered schools themselves. 20 U.S.C. § 1687 (2),(3),(4).

2. Congressional intent to eliminate discrimination in athletics is especially clearly articulated in Title IX's legislative history, which demonstrates that Congress repeatedly reaffirmed Title IX's coverage of intercollegiate athletics. Thus, the NCAA's dominant role in intercollegiate athletics supports its coverage under Title IX.

## **ARGUMENT**

### **I. THE PLAIN LANGUAGE OF TITLE VI, TITLE IX, AND ANALOGOUS CIVIL RIGHTS STATUTES, THEIR IMPLEMENTING REGULATIONS, AND AMENDMENTS ENACTED BY THE CRRA SUPPORT COVERAGE OF THE NCAA**

#### **A. Congress Intended These Statutes to Have a Broad Reach, and Their Implementing Regulations, Which Are Entitled to Deference, So Provide**

Congress enacted Title VI, Title IX, and analogous civil rights statutes to prohibit discrimination in federally funded programs and activities. By their own terms, these statutes'

reach is expansive, stating simply that no person in the United States shall, on the basis of race, color, national origin, sex, disability, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. *See* 42 U.S.C. § 2000d *et seq.* (Title VI); 20 U.S.C. § 1681 *et seq.* (Title IX); 29 U.S.C. § 794 *et seq.* (Section 504); 42 U.S.C. § 6101 *et seq.* (Age Discrimination Act). The Supreme Court has assumed the meaning of the language in these statutes to be the same. *See United States Dep't of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 600 n.4 (1986) (“Title VI is the congressional model for subsequently enacted statutes prohibiting discrimination in federally assisted programs or activities.”); *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 635-36 (1984); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 538 (1982).

The regulations under Title VI, Title IX, Section 504, and the Age Discrimination Act define “recipient” similarly. *See* 34 C.F.R. § 100.13(i) (Title VI); 34 C.F.R. § 106.2(h) (Title IX); 34 C.F.R. § 104.3(f) (Section 504); 45 C.F.R. § 90.4(c)(2) (Age Discrimination Act). This definition of “recipient” includes entities that receive federal funds directly or indirectly for a program or activity. It also includes subunits, successors, assignees and transferees of such recipients.

The regulation defining recipient has been approved by Congress and given deference by the Supreme Court in the context of Title IX. *See Grove City College v. Bell*, 465 U.S. 555, 567-68 (1984). At the time that the Title IX regulations were promulgated, the General Education Provisions Act<sup>4</sup> was in place, under which Congress was afforded an opportunity to disapprove

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<sup>4</sup> Pub. L. No. 93-380, § 509(a)(2), 88 Stat. 567, 20 U.S.C. § 1232(d)(1) (1970 & Supp. IV 1974).

any of the Department of Health, Education and Welfare's ("HEW") regulations<sup>5</sup> that it thought were inconsistent with Title IX. Congress reviewed the regulations, neither House passed a disapproval resolution, and the regulations went into effect. *See North Haven*, 456 U.S. at 533 n.24; 121 Cong. Rec. 23,846 (1975). Congress' failure to disapprove the regulations "strongly implies that the regulations accurately reflect congressional intent." *Grove City*, 465 U.S. at 568. Moreover, because "Title IX was patterned after Title VI," Congress was aware of how Title VI's regulations were being interpreted and could have changed Title IX if it had so desired. *See Cannon v. University of Chicago*, 441 U.S. 677, 694 (1979). Its failure to do so provides further evidence of its approval of the definition of recipient in the civil rights statutes. *See id.* at 696 ("The drafters of Title IX explicitly assumed that it would be interpreted and applied as Title VI had been during the preceding eight years.").

Relying in part on the legislative history and the broad wording of Title IX itself, the Supreme Court ruled that the indirect receipt of federal funds triggers Title IX coverage. *See Grove City*, 465 U.S. 555 (holding that indirect receipt of federal funds through federal assistance to students triggers Title IX coverage of the college). In response to Grove City College's argument that none of its programs directly received any federal assistance, the Court noted that the language of the statute does not indicate that Congress perceived any difference between direct and indirect federal assistance:

Nothing in § 901(a) suggests that Congress elevated form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance. There is no basis in the statute for the

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<sup>5</sup> The former HEW promulgated the regulations initially in 1975. HEW's functions under Title IX were transferred in 1979 to the Department of Education ("DOE"), which subsequently adopted the regulations without substantive changes. *See North Haven*, 456 U.S. at 515-17 & nn.4&5.

view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation.

*Id.* at 564. Citing its own precedent that Title IX should be “accord[ed] a sweep as broad as its language,” *North Haven*, 456 U.S. at 521, the *Grove City* Court refused to read into Title IX “a limitation not apparent on its face.” *Grove City*, 465 U.S. at 564; *see also Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 603 (D.S.C. 1974), *aff’d*, 529 F.2d 514 (4th Cir. 1975) (stating that narrow readings of Title VI coverage are inappropriate).

Congress later expressly endorsed the longstanding definition of “recipient” when it passed the CRRA. Congress stated clearly its intent that the CRRA does not “change in any way who is a recipient of federal financial assistance,” and stated that the “purpose of the Civil Rights Restoration Act of 1987 is to reaffirm the pre-*Grove City College* judicial and executive branch interpretations and enforcement practices which provided for broad coverage of the antidiscrimination provisions of [the] civil rights statutes.” S. Rep. No. 100-64, at 2 (1987), *reprinted in* 1988 U.S.C.C.A.N. 3.

In addition to the clear intention that the indirect receipt of federal funds trigger coverage, the meaning of the terms “subunit, successor, assignee, or transferee thereof” was debated in early versions of the CRRA. These terms were explained as “standard contract language applied to situations in which the successor, assignee, or transferee stands in the shoes of the recipient of the federal financial assistance, with like obligations and functions of the recipient.” *See, e.g.*, H.R. Rep. No. 98-829, pt. 2, at 32 (1984) [hereinafter House Comm. Rep.]. Thus, again in the 1980s, Congress demonstrated that it was aware and approved of the definition of recipient in the regulations of the civil rights statutes.

**B. The NCAA Is a Recipient for Purposes of Coverage Under Title VI, Title IX and Analogous Civil Rights Statutes**

The NCAA fits within the regulatory definition of “recipient” on two counts. First, it is a recipient of federal funds from HHS to operate the National Youth Sports Program. Second, because the recipient schools have given the NCAA controlling authority over their intercollegiate athletics programs, the NCAA fits within the subunit, successor, assignee or transferee part of the recipient definition.<sup>6</sup>

**1. The NCAA Receives Federal Funds to Operate the National Youth Sports Program**

The NCAA clearly operates a program or activity within the meaning of Title VI, Title IX, and analogous civil rights statutes. Further, despite the NCAA’s protestations to the contrary, the record developed by the plaintiffs in *Cureton* demonstrates that the NCAA has been receiving a federal grant from HHS since 1969 to operate an education program known as the NYSP. Thus, the NCAA is a recipient of federal funds by virtue of the NYSP grant from HHS; this argument is fully addressed in Appellees’ brief.

**2. The NCAA Has Been Ceded Controlling Authority Over the Intercollegiate Athletics Programs of Its Member Schools and Serves as a Subunit, Successor, Assignee or Transferee of those Member Schools**

As an entity that has been ceded authority and control over intercollegiate athletics, the NCAA serves as a subunit, successor, assignee or transferee of its federally funded member schools and hence is a recipient within the meaning of Title VI, Title IX, and analogous civil rights statutes. The NCAA fits this part of the regulatory definition of recipient because member

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<sup>6</sup> The argument that the NCAA is covered regardless of whether it is a recipient because it has been ceded controlling authority over its member schools’ athletic programs is addressed in Appellees’ brief.

schools, which are recipients themselves, delegate their functions with respect to intercollegiate athletics to the NCAA. This part of the regulation does not require any transfer of federal funds.<sup>7</sup>

The NCAA promotes itself as “the organization through which the nation’s colleges and universities speak and act on athletics matters at the national level.” *The NCAA: General Information* (visited Nov. 30, 1998) <<http://www.ncaa.org/about/>>. The member colleges and universities, now numbering about 1200, have formally assigned or transferred functions with respect to athletics to the NCAA and have agreed to be bound by the rules and regulations of the NCAA.<sup>8</sup> Sanctions for violating the rules range from prohibition from competition to termination of an institution’s membership in the association.<sup>9</sup> In addition to delegating to the NCAA the responsibility for managing intercollegiate athletics, member schools have assigned or transferred many rights to the NCAA, such as their rights to money from championship

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<sup>7</sup> When reviewing this part of the regulation defining recipient, the House Report used the particularly instructive example of a parking garage in a university-owned building financed with federal funds, which was leased by the university to a private operator. In that example, the university presumably did not give funds to the garage operator. In fact, the lease would have yielded funds from the operator to the university. Nonetheless, even without any transfer of federal funds, the garage operator was covered by Title IX as it was operating a part of the federally funded building for the recipient just as the NCAA is operating a part of its members’ federally funded educational programs. *See* House Comm. Rep. at 32.

<sup>8</sup> *1998-99 NCAA Division I Manual* at 1, Const., Art. 1, § 1.2(d)&(h), § 1.3.2 [hereinafter *NCAA Manual*].

<sup>9</sup> *Id.* at 54, Bylaw, Art. 10, § 10.4 (ineligibility of a student athlete for intercollegiate competition); *id.* at 330, Bylaw, Art. 19, § 19.6.2.2(j) (prohibition of a team from competition); *id.* at 332, Bylaw, Art. 19, § 19.6.3 (termination or suspension of an institution’s membership). The mere threat of sanctions is often enough to change an institution’s ways. *See, e.g., NCAA v. Tarkanian*, 488 U.S. 179, 187 (1988) (noting that when faced with possibility of sanctions, university chose to “[r]ecognize [its] delegation to the NCAA of the power to act as ultimate arbiter of [the issue]”); *NCAA v. Regents of the Univ. of Oklahoma*, 468 U.S. 85, 94-95 (1984) (describing how College Football Association (“CFA”) never consummated television agreement negotiated independently of NCAA because of threatened broad-based sanctions by NCAA against CFA members).

events, including money from ticket sales; program sales and advertising; radio, television and movie rights, and more. *See NCAA Manual* at 419-20, Art. 31, § 31.4.2. The individual schools are entitled to only a small allowance of the net receipts from these events. *See id.* at 420, § 31.4.4.1. All of this money would be retained by the NCAA's member schools if they did not delegate control over the governance of their athletic programs to the NCAA.

The vast authority assigned to the NCAA by its member schools is evidenced by NCAA legislation that affects virtually every aspect of a member institution's athletic program. From student eligibility requirements, to the maximum number of scholarships that may be awarded by sport and gender, to playing and practice seasons, member schools have transferred to the NCAA an enormous amount of control over their athletics programs.<sup>10</sup> It is beyond dispute that the NCAA is a dominant player in the operation of the educational program or activity of intercollegiate athletics in our nation's colleges and universities.<sup>11</sup>

As one court stated, in a case in which the NCAA itself claimed that it was an educational institution, based on its relationship with its member schools, and was thus entitled to a sales tax

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<sup>10</sup> *NCAA Manual* at 131-78, Bylaw, Art. 14 (eligibility); *id.* at 192-99, Bylaw, Art. 15 (scholarships); *id.* at 227-316, Bylaw, Art. 17 (playing and practice seasons).

<sup>11</sup> The NCAA's predominance in college athletics is widely acknowledged. *See* Michael P. Acain, Note & Comment, *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, 18 Loy. L.A. Ent. L.J. 307, 328 (1998) ("[T]he NCAA [has] unmitigated control over the market for college players."); Christopher L. Chin, Comment, *Illegal Procedures: The NCAA's Unlawful Restraint of the Student-Athlete*, 26 Loy. L.A. L. Rev. 1213, 1222 (1993) ("In terms of regulatory power, the NCAA is clearly the dominant organization in intercollegiate athletics."). While other athletic organizations exist, the NCAA is "the only entity with substantial power over intercollegiate athletics in the United States." *Id.* at 1222. The NCAA's prestige and the commercial opportunities it offers are powerful incentives for schools to obtain (and avoid losing) NCAA membership. *See* Darryl C. Wilson, *Title IX's Collegiate Sports Application Raises Serious Questions Regarding the Role of the NCAA*, 31 J. Marshall L. Rev. 1303, 1319 n.102 (1998) ("[T]he question [is] whether anyone can afford to not be a member of the NCAA.").

exemption:

The activities of the NCAA are of the type the member universities and colleges could accomplish by committee except for the number of schools involved and the complexity of the world of major intercollegiate sports. The work of the NCAA staff is that which the members have decreed it shall do for the mutual benefit of, and assistance to, the member institutions' educational programs. We must conclude that the NCAA is but an extension of the member universities and colleges . . . .

*NCAA v. Kansas Dep't of Revenue*, 781 P.2d 726, 730 (Kan. 1989). Likewise, the Supreme Court recognized in *Tarkanian* that NCAA rules and enforcement procedures "are an essential part of the intercollegiate athletic program of each member institution." *Tarkanian*, 488 U.S. at 195. The source of the NCAA's regulations is not any one member school, "but the collective membership speaking through [its] organization." *Id.* at 193.

Given this assignment of responsibilities of intercollegiate athletics to the NCAA by its member schools, the NCAA is an assignee and is subject to Title VI, Title IX and analogous civil rights statutes, their implementing regulations, and amendments enacted by the CRRA.

The NCAA's reliance on *United States Department of Transportation v. Paralyzed Veterans of America* to support exempting the NCAA from coverage of Title VI, Title IX, and analogous civil rights statutes, is misplaced. In *Paralyzed Veterans*, the Supreme Court held that commercial airlines were not subject to Section 504, which prohibits discrimination against disabled individuals in federally funded programs, because the airlines were not recipients despite their benefitting--in the form of runways, taxiways, and ramps--from federal funds extended to airport operators. 477 U.S. at 606-07. In *Smith*, the NCAA argued that, like the airlines in *Paralyzed Veterans*, it was not a recipient and hence not covered by Title IX under any theory. The Supreme Court, however, merely held that *Paralyzed Veterans'* definition of recipient does not encompass coverage of the NCAA based on the organization's receipt of dues

from its federally funded member institutions. The Supreme Court specifically mentioned, however, the distinctions this Court noted between *Paralyzed Veterans* and Smith's case--namely, that the NCAA is "created by and comprised of" federally funded schools, and that the NCAA governs its members "with respect to athletic rules." *Smith*, 119 S. Ct. at 929 (citing *Smith v. NCAA*, 139 F.3d 180, 188 (3rd Cir. 1998)). The Court took these distinctions as "evident," quoting this Court's observation that "the relationship between the [NCAA] and its members is qualitatively different from that of the relationship between the airlines and the airport operators" in *Paralyzed Veterans*. *Id.* at 930 (citing *Smith v. NCAA*, 139 F.3d 180, 189 (3rd Cir. 1998)).

It is the distinctions delineated by this Court, and accepted by the Supreme Court in *Smith*, that demonstrate the inapplicability of the *Paralyzed Veterans* decision to the NCAA in this case. In addition, the NCAA is a subunit, assignee, or transferee of its recipient member schools entrusted to govern key aspects of their athletic programs, while the airlines in *Paralyzed Veterans* did not govern any of the operations of the airport. While the airlines in *Paralyzed Veterans* merely used the federally funded facilities, the NCAA controls and regulates how the federal recipients' intercollegiate athletic programs will operate.

The assignment and transfer of obligations to the NCAA from colleges and universities receiving federal assistance are clearly for the purpose of providing a federally funded educational program or activity.<sup>12</sup> Therefore, the NCAA, as a subunit, successor, assignee, or

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<sup>12</sup> In fact, an enormous loophole would be created were an entity such as the NCAA not considered covered and the implications would be contrary to common sense and the fundamental purposes of Title IX and Title VI. For example, if several universities jointly managed an archaeological dig and appointed a joint governing body to administer the research and to control the number of students from each school who would be allowed access to the site and the maximum amount of student aid each researcher could receive, that joint governing body could no more discriminate based on sex or race than could any of the universities involved in

transferee providing the educational intercollegiate athletics program, is covered by Title VI, Title IX and analogous civil rights laws.<sup>13</sup>

**C. The Civil Rights Restoration Act Amendments Underscore Coverage of the NCAA**

For the reasons described above, the NCAA is a recipient within the meaning of Title VI and Title IX, and analogous civil rights statutes. Additionally, the NCAA fits within the new definition of “program or activity receiving federal financial assistance” articulated by the CRRA.

The language, structure and intent of Congress in passing the CRRA was to ensure that a broad range of entities with responsibility for federally funded programs were covered in their entirety.<sup>14</sup> The CRRA broadly defines a “program or activity” that receives federal funds to

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the research. This result would be the same regardless of whether the governing body received funds from the universities, charged the students directly, or received other sources of funds.

<sup>13</sup> Other courts have relied in part on athletic associations’ control over member schools’ interscholastic athletic programs to hold them subject to Title IX and analogous civil rights statutes. See *Horner v. Kentucky High Sch. Athletic Ass’n*, 43 F.3d 265 (6th Cir. 1994) (holding athletic association subject to Title IX); *Dennin v. Connecticut Interscholastic Athletic Conference*, 913 F. Supp. 663 (D. Conn. 1996), *appeal dismissed as moot*, 94 F.3d 96 (2d Cir. 1996) (holding athletic conference subject to Section 504); *Sandison v. Michigan High Sch. Athletic Ass’n*, 863 F. Supp. 483 (E.D. Mich. 1994), *rev’d in part on other grounds*, 64 F.3d 1026 (6th Cir. 1995) (holding athletic association subject to Section 504); *Pottgen v. Missouri State High Sch. Activities Ass’n*, 857 F. Supp. 654 (E.D. Mo. 1994), *rev’d on other grounds*, 40 F.3d 926 (8th Cir. 1994) (same).

<sup>14</sup> The CRRA provides in relevant part:

For the purposes of this chapter, the term “program or activity” and “program” mean all of the operations of—

.....

(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 section 8801 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

mean all of the operations of: private organizations principally engaged in education; any entity established by two or more of the listed entities--what Congress termed the “catch-all” provision; and colleges and universities.<sup>15</sup> The NCAA is subject to Title VI, Title IX and analogous civil rights statutes under all three of the aforementioned provisions of the CRRA.

**1. The NCAA is Covered Because It is a Private Educational Organization Whose Parts Receive Federal Financial Assistance**

Under subsection (3)(A)(ii) of the CRRA, organizations principally engaged in the business of providing education are subject to Title VI, Title IX, and analogous civil rights statutes if any part of the organization receives federal financial assistance. The NCAA falls squarely within this provision: it is a private educational organization whose member schools (parts) receive federal funds. Thus, the NCAA as a whole is covered.

The NCAA itself has claimed it is an “educational institution” to gain tax-exempt status in a number of circumstances, and courts have agreed. *See National Collegiate Realty Corp. v. Board of County Comm'rs*, 690 P.2d 1366 (Kan. 1984) (NCAA stated before the Kansas Board

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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 (1), (2), or (3);

any part of which is extended Federal financial assistance . . . .

20 U.S.C. § 1687.

<sup>15</sup> *See* S. Rep. No. 100-64, at 19.

of Tax Appeals that it is a § 501(c)(3) organization); 26 U.S.C. § 501(c)(3) (granting tax-exempt status to corporations organized and operated exclusively for educational purposes). Under the CRRA, when an organization like the NCAA “is principally engaged in the business of providing education,” all of its operations are covered *if any part of it* receives federal aid. This is precisely the NCAA’s status. The NCAA acknowledged as much when it testified before the Joint Hearings of the House Committee on Education and Labor and the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary in May 1984, when Congress first began considering the CRRA. In a prepared statement submitted for the record, the NCAA stated its belief that if Congress adopted a scheme whereby federal financial assistance to one university’s program extended Title IX coverage to the university’s other programs, by analogy, voluntary athletic associations such as the Big Eight Athletic Conference would be covered. *See Hearings Before the House Education and Labor Comm. and the Subcomm. on Civil and Constitutional Rights*, House Judiciary Comm., 98<sup>th</sup> Cong., 2d Sess. at 225 (May 21, 1984) [hereinafter *1984 Joint Hearings*]. Thus, the NCAA is subject to the anti-discrimination requirements of Title VI, Title IX, and analogous civil rights statutes because it is a private organization, principally engaged in the business of education, whose member parts receive federal financial assistance. *See* 20 U.S.C. §§ 1681, 1687.

## **2. The NCAA is Covered Because It Is an Organization Established by Two or More Colleges or Universities That Receive Federal Funds**

The “catch-all” provision, subsection (4) of the CRRA, provides that an entity created by two or more otherwise covered entities is itself subject to Title VI, Title IX and analogous civil rights statutes. The NCAA is such an entity, as it was established by colleges and universities that are explicitly listed in the CRRA as covered themselves. *See* 20 U.S.C. § 1687(2)(A).

Pursuant to this catch-all provision, lower courts have held the NCAA liable under Title VI and Section 504. The district court in this case held the NCAA to be a program or activity covered by Title VI under subsection 4. *Cureton v. NCAA*, 1997 U.S. Dist. LEXIS 15529 (E.D. Pa. Oct. 8, 1997). Furthermore, in *Bowers v. NCAA*, the court held that the NCAA is a program or activity subject to Section 504 because it “squarely fits within the statutory language of [subsection (4)]” as an entity established by two or more colleges and universities. 9 F. Supp. 2d 460, 491 (D.N.J. 1998).

The NCAA appears to claim that before an organization can be covered under subsection (4), the organization must itself receive federal financial assistance. Appellant’s Brief at 37 n.14. The NCAA’s interpretation of subsection (4) should be rejected because it would render subsection (4) mere surplusage. *See Kungys v. United States*, 485 U.S. 759, 778 (1988) (plurality opinion) (Scalia, J.) (It is a “cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant”). Subsections (3)(A) and (3)(B), when taken together, already apply Title VI, Title IX, and other civil rights statutes to *any* private organization if *any* part of that organization is extended federal financial assistance directly. For example, if two separate universities form a corporation, and the government extends federal financial assistance to the corporation directly, that corporation is covered under subsection (3)(A)(i) or (3)(B). The NCAA’s interpretation would render subsection (4) unnecessary because the organization would already be covered because of the federal assistance it receives directly. Finding that the NCAA is covered under subsection (4) is consistent with Congress’ goal of “meaningful coverage and effective enforcement” of these civil rights laws, *see* S. Rep. No. 100-64, at 6, and its explicit purpose that subsection (4) serve as a catch-all provision and apply to entities not reached by the other enumerated subsections.

### 3. The NCAA is Covered as an Operation of Its Federally Funded Member Schools

Subsection (2) of the CRRA extends coverage to all operations of covered colleges and universities. If the NCAA disputes that it is a separate creation of its covered member schools, and thereby covered under subsection (4), it would be hard pressed to argue that it was not an operation of the schools themselves, as its own testimony seemed to recognize.<sup>16</sup>

The fact that the NCAA's members choose to conduct some part of the operations of their covered educational program by arrangement with the NCAA rather than by themselves does not make the NCAA's role and responsibilities any less an operation of the schools. The NCAA's central role in the management of each member schools' athletic programs makes the NCAA a part of the operation of each member school within the meaning of the CRRA.

Courts have held analogous entities to be covered as operations of covered schools themselves, even when those entities were separate from the schools. *See Graham v. Tennessee Secondary Sch. Athletic Ass'n*, No. 1:95-CV-044, 1995 WL 115890 (E.D. Tenn. Feb 20, 1995), *appeal dismissed*, 107 F.3d 870 (6<sup>th</sup> Cir. 1997) (upholding Title VI claim against the athletic association because it is an operation of the state's schools); *Association of Mexican-American Educators v. California*, 836 F. Supp. 1534 (N.D. Cal. 1993) (upholding Title VI claim against California Commission on Teacher Credentialing, which did not directly receive federal funds, because it is as an operation of the state's school system, which receives federal funds).

It is the member schools whose athletics operations the NCAA relies on to generate revenues,

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<sup>16</sup> *See 1984 Joint Hearings* at 225, where it described voluntary athletics associations as operations of colleges and universities. See also the statement of the court in *NCAA v. Kansas Dep't of Revenue*, 781 P.2d at 730 ("We must conclude that the NCAA is but an extension of the member universities and colleges.").

and to provide facilities and participants for events. NCAA events are intercollegiate athletic competitions between federally funded student athletes at federally funded schools. But for the federally funded schools that build, maintain, and operate the facilities in which these contests occur and pay for the salaries of the coaches, assistants, and trainers who manage these teams, there would be no NCAA championships. But for the federally assisted student athletes who are extended federal financial assistance, there would be no teams to compete and no NCAA championship games to be broadcast. Thus, the NCAA is subject to the antidiscrimination requirements of Title VI, Title IX, and analogous civil rights statutes because it controls central aspects of the schools' federally funded educational operations.

In sum, the CRRA ensured that substance must prevail over form, and that if an entity is responsible for discrimination under a program or activity receiving federal funds – as the NCAA is alleged to be in its practices in this case – it must be held accountable under the appropriate civil rights laws.

## **II. CONGRESS' INTENTION TO ELIMINATE SEX DISCRIMINATION IN INTERCOLLEGIATE ATHLETICS THROUGH TITLE IX SUPPORTS NCAA COVERAGE**

The legislative history of Title IX is characterized by Congress' repeated rejection of attempts to weaken its application to intercollegiate athletics and by Congress' recognition of the need to remedy sex discrimination in intercollegiate athletic programs. Intercollegiate athletics has been a major focal point in congressional debates relating to Title IX. In 1974, for example, Congress not only rejected a proposal to exempt revenue-producing intercollegiate athletic programs, but actually directed the Secretary of HEW to prepare regulations implementing Title IX which included "with respect to intercollegiate athletics reasonable provisions considering the

nature of particular sports.”<sup>17</sup> Pub. L. No. 93-380, § 844, 88 Stat. 612 (1974); *see also Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor*, 94th Cong., 1st Sess., at 21 (1975) [hereinafter *Sex Discrimination Regulations*] (describing the relevant history).

Acting on this explicit delegation of rulemaking authority, HEW issued proposed regulations in June of 1974, including specific provisions addressing intercollegiate athletics. The proposed regulations were subjected to a public comment period that produced nearly 10,000 comments. *See Sex Discrimination Regulations* at 438 (testimony of Caspar Weinberger). The large number of comments addressing intercollegiate athletics prompted then-Secretary of HEW Caspar Weinberger to remark that “the most important issue in the United States today is intercollegiate athletics, because we have an enormous volume of comments about them.” *Id.*

HEW issued its final regulations in 1975, and Congress held extensive hearings on the regulations, focusing particular attention on the need to address the pervasive sex discrimination in intercollegiate athletics programs. The hearings produced a voluminous record documenting such discrimination.<sup>18</sup> *See Sex Discrimination Regulations, supra.*

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<sup>17</sup> Subsequent efforts to restrict Title IX’s coverage of intercollegiate athletics also failed. *See* H.R. 8394, 94th Cong., 121 Cong. Rec. 21,685 (1974) (bill amending Title IX to protect revenue produced by an athletic team from use by any other team unless the first team did not need the funds for itself); S. 2106, 94th Cong., 121 Cong. Rec. 22,778 (1975) (bill amending Title IX to exempt revenue-producing sports).

<sup>18</sup> Many members of Congress spoke to this issue. *See Sex Discrimination Regulations* at 175 (remarks of Sen. Bayh) (“I have heard of no one making the argument that athletics should not be covered by Title IX who does so on the premise that there is not discrimination.”); *see also id.* at 58 (remarks of Mr. Simon) (“I think we have to recognize that we have had some failures here in the past in not encouraging female sports.”); 121 Cong. Rec. 24,635 (1975) (remarks of Sen. Clark) (“A look at present spending figures reveals an unbelievable inequity -- of the \$300

Resolutions were introduced in both Houses disapproving the regulations insofar as they applied to athletics, *see* S. Cong. Res. 52, 121 Cong. Rec. 22,940 (1975); H. Cong. Res. 311, 121 Cong. Rec. 19,209 (1975), and in their entirety, *see* H. Cong. Res. 310, 121 Cong. Rec. 19,209 (1975); S. Cong. Res. 46, 121 Cong. Rec. 17,300 (1975). None of the resolutions passed, and the regulations went into effect on July 21, 1975. *See Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413 (1979) (summarizing relevant history)

Title IX's application to intercollegiate athletics has enhanced educational opportunities for young women in many respects. Title IX has led to the availability of athletic scholarships, and they in turn have sharply increased the ability of young women to pursue a college education and to choose from a wider range of schools. Athletic scholarships for women were almost nonexistent and many colleges had no women's sports programs at all. *See* U.S. Comm'n on Civil Rights, Pub. No. 63, *More Hurdles to Clear: Women and Girls in Competitive Athletics* (1980). Prior to the passage of Title IX, only 32,000 women per year played college sports. *See* 44 Fed. Reg. 71,413, 71,419 (1979). Currently over 110,540 women participate in college athletics. NCAA, *Participation Study* (1995).

Despite these increased opportunities, however, the full potential of Title IX in the area of intercollegiate athletics has not yet been realized. Recognizing the need for continued enforcement of Title IX, Congress continues to legislate in this area. For example, in 1998 the

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million spent annually on collegiate athletic programs, only 2% is spent on women's athletics."); 121 Cong. Rec. 20,714 (1975) (remarks of Sen. Javits) ("Sex discrimination in education takes many forms . . . . [A]thletic programs are restricted and financial aid distributed in a biased manner."); 120 Cong. Rec. 20,668 (1974) (remarks of Hon. Robert P. Hanrahan) ("Mr. Speaker, there has always been sex discrimination involved in athletics.").

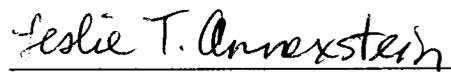
“Fair Play Act” was passed, requiring the public availability of data describing the degree of compliance with Title IX’s mandate of equal opportunity in intercollegiate athletics. Higher Education Amendments of 1998, Pub. L. No. 105-244 (1998). The data has shown that many problems remain, and in the area of scholarship inequities, for example, schools have pointed to NCAA scholarship rules as creating barriers to the removal of the inequities, *See, e.g.*, Jim Naughton, *Focus of Title IX Debate Shifts from Teams to Scholarships*, Chron. of Higher Educ., May 29, 1998, at A45.

Thus, subjecting the NCAA itself to Title IX is essential to achieving the statute’s purposes. Any decision to the contrary would frustrate Congress’ intent to eliminate sex discrimination in athletics.

#### CONCLUSION

For the foregoing reasons, *amici* urge this Court to affirm the district court’s judgment in this case.

Respectfully Submitted,



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Dated: June 8, 1999

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CERTIFICATE OF COMPLIANCE

This brief complies with the Federal Rule of Appellate Procedure 32(a)(7)(B). It contains 6,816 words.

Leslie T. Annexstein  
Leslie T. Annexstein

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 1999, two copies of the Brief for the National Women's Law Center *et al.* as Amicus Curiae in Support of Appellees/Cross-Appellants Urging Affirmance were served by first-class mail on the following counsel:

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## APPENDIX

**APPENDIX**  
**INTEREST OF THE AMICI**

*The National Women's Law Center ("Center")* is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's rights and the corresponding elimination of sex discrimination from all facets of American life. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of Title IX. In particular, the Center has consistently sought active enforcement of Title IX with respect to intercollegiate athletics and was counsel in the first Title IX challenge to discrimination in intercollegiate athletics, *Haffer v. Temple University*. The benefits and opportunities uniquely available to competitive athletes have been and continue to be disproportionately reserved for men. The Center has a deep and abiding interest in assuring equal athletic opportunity under Title IX, including the opportunity to participate in intercollegiate athletics.

For well over a century, the *American Association of University Women (AAUW)* an organization of 150,000 members, has been a catalyst for the advancement of women and their transformations of American society. In more than 1,500 communities across the country, AAUW members work to promote education and equity for all women and girls. AAUW plays a major role in activating advocates nationwide on AAUW's priority issues. Current priorities include gender equity in education, reproductive choice, and workplace and civil rights issues. AAUW believes that Title IX and other civil rights laws are essential for continuing the advancement of women and girls in education and in the workplace.

The *American Civil Liberties Union* is a nationwide, non-partisan organization of more than 300,000 members dedicated to preserving the Bill of Rights. The ACLU Women's Rights Project ("ACLU WRP"), founded in 1971 by Justice Ruth Bader Ginsburg, has been a leader in the efforts to eliminate the barriers to women's full equity in American society. Solidifying the important protections embodied in Title IX of the Education Amendments of 1972 ("Title IX"), as well as in other anti-discrimination legislation, is a priority for the ACLU WRP.

*Center for Women Policy Studies* is a national nonprofit, multiethnic and multicultural feminist policy research and advocacy institution. The Center believes Title IX is a critical tool for ensuring educational equity for women and girls in diverse settings; the law's strength and scope of application must not be diluted. For example, the issue of sex bias in the SAT (Scholastic Assessment Test) is a major focus of our work and the Court's ruling will impact on the ability

of advocates to address this bias.

*Clearinghouse on Women's Issues* was established some 25 years ago to provide a channel for dissemination of information on a variety of issues of special concern to women. Advancement of educational opportunities for women and girls and elimination of discrimination in all areas of society are major issues to which we have given sustained attention. The full implementation and enforcement of Title IX has long been of great concern to our members.

*The Connecticut Women's Education and Legal Fund, Inc. (CWEALF)* is a non-profit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF was founded in 1973 and has a membership of over 1,400 individuals and organizations. CWEALF has supported prior efforts to hold the NCAA subject to Title IX. CWEALF joins this brief as *amicus curiae* because we believe that the NCAA must be subject to other civil rights laws as well, such as Title VI and Section 504, in order to prohibit discrimination.

*Equal Rights Advocates ("ERA")* is a San Francisco-based public interest law center dedicated to the empowerment of women and girls through litigation, advocacy, and public education. Since its inception in 1974 ERA has specialized in litigating cases and pursuing public policy initiatives designed to assure women equal access to all of society's benefits including employment, education, and public accommodations. ERA has litigated cases involving Title IX, including *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560 (N.D. Cal 1993), *reconsid. granted*, 949 F. Supp. 1415 (N.D. Cal. 1996), as well as participating as *amicus curiae* in Title IX cases, such as *Gebser v. Lago Vista*, 118 S. Ct. 1989 (1998) and *Davis v. Monroe County*, 1999 U.S. Lexis 3452.

Since 1899, the *National Association for Girls & Women in Sport (NAGWS)* has championed equal funding, quality and respect for women's sports programs. NAGWS is an organization of over 5,000 professional educators whose mission is to promote and advocate for increased opportunities in participation and leadership for girls and women in sport. NAGWS is supporting the *amicus* brief on behalf of the plaintiffs in *Cureton v. NCAA*. It is the belief of NAGWS that the NCAA is subject to civil rights law such as Title IX and Title VI because the NCAA acts as an assignee of its member schools under Title IX's definition of "recipient," and because it is a program or activity receiving federal financial assistance as defined by the Civil Rights Restoration Act of 1987.

*The National Association of Social Workers (NASW)* is a professional membership organization comprised of more than 155,000 social workers with chapters in every state, the District of Columbia, New York City, Puerto Rico and the Virgin Islands, and an international chapter in Europe. Created in 1955 by the merger of seven predecessor social work organizations, the NASW has as its purpose to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. In furtherance of its purposes, the NASW promulgates professional standards and criteria including *Standards for the Practice of Clinical Social Work and Guidelines for Clinical Social Work Supervision*, conducts research, publishes studies of interest to the profession, provides continuing education and enforces the *NASW Code of Ethics*. The NASW also sponsors a voluntary credentialing program to enhance the professional standing of social workers including the NASW Diplomate in Clinical Social Work and the Qualified Clinical Social Worker credentials.

*National Education Association (NEA)* is a nationwide employee organization with approximately 2.4 million members, the vast majority of whom are teachers and others employed by public school districts, colleges and universities. NEA is strongly committed to ending racial discrimination by educational institutions and, to this end, firmly supports the vigorous enforcement of Title VI.

*National Partnership for Women & Families*, founded in 1971, formerly the Women's Legal Defense Fund, is a national advocacy organization that develops and promotes public policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. The National Partnership has a longstanding commitment to equal opportunity for women and to monitoring the enforcement of antidiscrimination laws. The National Partnership has devoted significant resources to combating sex and race discrimination in education and has filed numerous briefs *amicus curiae* in the United States Supreme Court to advance women's opportunities in education.

*NOW Legal Defense and Education Fund (NOW LDEF)* is a leading national nonprofit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. A major goal of NOW LDEF is the elimination of barriers that deny women and girls equal opportunity, including sex discrimination in intercollegiate athletic programs. For years, NOW LDEF has fought for educational equity for girls and the full enforcement of Title IX. NOW LDEF has appeared as *amicus* in numerous cases concerning girls' rights to be free from sex discrimination in education

programs under Title IX, and joins this case because of its importance to securing equal opportunity in education.

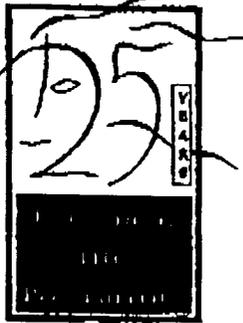
*Women Employed* is a national association of working women based in Chicago, with a membership of 2000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women and minorities to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education. Women Employed strongly believes that educational opportunity is one of the most fundamental guarantees to which women and minorities are entitled.

*Women's Law Project (WLP)* is a non-profit interest law firm located in Philadelphia, PA. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. The WLP has a strong interest in the application of civil rights laws to athletic associations like the NCAA which operate and control the athletic programs of federally funded school programs and throughout its history to eliminate sex discrimination in athletics and education under Title IX of the Education Amendments of 1972, a statute which was patterned after Title VI of the Civil Rights Act and is construed consistent therewith. The application of Title IX, Title VI, and Section 504 of the Rehabilitation Act to the NCAA and to other athletic associations is essential to the ultimate elimination of discriminatory practices in these programs.

*The Women's Sports Foundation* is a non-profit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and creating and educated public that supports gender equity in sports. The Foundation distributes over \$1 million per year in grants and scholarships to female athletes and girls' sports programs, answers over 100,000 inquiries a year concerning Title IX and other women's sports related questions, and administers award programs to increase public awareness about the achievements of women in sports. The Foundation is interested in this case because of its important implications for gender equity in sports.

*The YWCA of the USA* is the oldest women's membership organization in the nation. Founded in 1858, it currently serves over two million girls, women and their families through over 325 YWCAs in 4,000 locations across the country. Strengthened by diversity, the Association draws together members who strive to create opportunities for women's growth leadership and power

in order to attain a common vision: peace, justice, freedom and dignity for all people. The YWCA of the USA supports this brief because it strongly believes in the benefits sports offer young women, and because of its conviction that young women are equally deserving of opportunities to benefit from athletic activities.



# NATIONAL WOMEN'S LAW CENTER

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County and Municipal Employees

Marilyn Monahan

William H. Neuhom  
Senior Vice President  
Law & Corporate Affairs  
Micromark Corporation

Marna S. Tucker  
Feldstein, Tucker, Laffer,  
Fikell & Frank

\*Affiliations listed for identification  
purposes only.

May 19, 1999

Michael W. McTigue Jr., Esq.  
Drinker Biddle & Reath LLP  
1345 Chestnut Street, 11th Floor  
Philadelphia, PA 19107-3496

Re: Cureton v. National Collegiate Athletic Association, Nos. 99-1222;  
99-1298

Dear Mr. McTigue:

Pursuant to our telephone conversation, I am writing to secure your consent to the filing of an amicus curiae brief in the Third Circuit in support of the appellees in this case. The brief will be filed on behalf of the National Women's Law Center and a number of other organizations, having a similar interest in the issues presented.

Please sign and return this letter in the envelope provided to indicate your consent. Please call me at (202) 588-5180 if you have any questions. Thank you for your cooperation.

Sincerely,

*Leslie T. Annexstein*

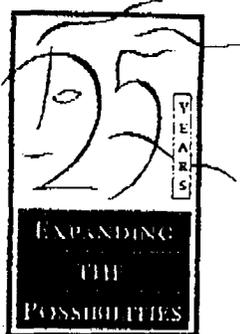
Leslie T. Annexstein  
Senior Counsel

Pursuant to Federal Rule of Appellate Procedure 29, I consent on behalf of  
Appellant National Collegiate Athletic Association:

*Michael W. McTigue Jr.*  
Michael W. McTigue Jr.

6/2/99  
Date

*With the law on your side, great things are possible*



# NATIONAL WOMEN'S LAW CENTER

May 19, 1999

**Nancy Duff Campbell**

**Marcia D. Greenberger**  
Co-Presidents  
National Women's Law Center

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NAACP Legal Defense &  
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**Marilyn Monahan**

**William H. Neukom**

Senior Vice President  
Law & Corporate Affairs  
Microsoft Corporation

**Marna S. Tucker**

Colleague, Tucker, Lettner,  
Fidell & Iatah

\*Affiliations listed for identification  
purposes only.

**Adele P. Kimmel, Esq.**  
Trial Lawyers For Public Justice  
1717 Massachusetts Avenue, NW  
Suite 800  
Washington, D.C. 20036

Re: Cureton v. National Collegiate Athletic Association, Nos. 99-1222;  
99-1298

Dear Adele:

In connection with the above-referenced case, I am writing to secure your consent to the filing of an amicus curiae brief in the Third Circuit in support of your clients. The brief will be filed on behalf of the National Women's Law Center and a number of other organizations, having a similar interest in the issues presented. Counsel for the National Collegiate Athletic Association has given consent.

Please sign and return this letter in the envelope provided to indicate your consent. Please call me at (202) 588-5180 if you have any questions. Thank you for your cooperation.

Sincerely,

*Leslie T. Annexstein*

Leslie T. Annexstein  
Senior Counsel

Pursuant to Federal Rule of Appellate Procedure 29, I consent on behalf of  
Appellees:

Adele P. Kimmel

Adele P. Kimmel

5/20/99

Date

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