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Two Decades After Landmark Title IX Case, Brown University Abandons Gender Equity in Athletics Program *Legal Team Behind Original Agreement Sues to Enforce It, Preserve Equality and Women's Teams*

Providence, RI – More than twenty years after a precedent-setting court victory finding that Brown University violated federal Title IX law by engaging in gender-based discrimination in the school's athletics program, legal representatives who secured an agreement requiring gender equity for those programs have returned to court, alleging the school is breaking that agreement.

In [a motion filed](#) with the federal district court of Rhode Island, the original legal representatives for Amy Cohen and the other women athletes who brought the original suit against Brown in 1992, say the University violated the terms of their agreement when it announced the elimination of five women's varsity athletic teams, resulting in non-compliance with the court-ordered requirement that "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." The cuts announced by Brown, today's filing says, "will eliminate participation opportunities for twice as many women as for men." The filing also observes that, "Throughout the last 22 years of operation of the Joint Agreement, not once have women athletes at Brown ever reached their proportion within the undergraduate enrollment and at all times have remained the 'underrepresented' gender."

Brown claims it will comply with the original agreement, in part, by adding co-ed and women's varsity sailing teams to next year's lineup. But, in today's filing, cooperating attorneys from Public Justice and the American Civil Liberties Union of Rhode Island noted that, under the agreement, Brown cannot achieve reliance based on teams that do not exist – and for which participation rates are not yet known.

"We are truly disappointed in the callous manner in which Brown University has treated its varsity athletes, both women and men, in abruptly, and without warning, informing them that their opportunity to continue their athletic career at the highest collegiate level is over," said Lynette Labinger, lead class counsel in the original lawsuit and cooperating counsel for the ACLU of Rhode Island. "For the women athletes, Brown has once again displayed a lack of commitment—as opposed to lip service—to gender equity and to its obligations, not only to its students, but to the Court."

Under Brown's proposal, the University would eliminate women's varsity fencing, golf, squash, skiing and equestrian teams, while cutting three men's teams, resulting in a disproportionate impact on women's representation in the Brown athletics that runs afoul of the maximum gender disparity allowed under the original agreement from 1998. The cuts would also, today's filing alleges, result in "immediate and irreparable harm," including "loss of coaching staff," "cessation of recruiting activities," and removal of the impacted teams "from intercollegiate conference and post-season schedules."

"More than two decades after first being called out for blatant discrimination against its women athletes, Brown University is once again using fuzzy math, and counting non-existent athletes, in order to avoid equality and accountability in its athletics programs," said Leslie Brueckner, Senior Attorney for Public Justice, an organization that was counsel in the original lawsuit. "Time has not diminished the intent of the law and, if anything, has only underscored both the importance and impact of ensuring gender equality in

college athletics. Brown must take concrete steps, and count real rather than ‘potential’ athletic participants, to immediately live up to its end of our agreement. Anything short of that is public posturing and empty conjecture that accomplishes nothing for real students and athletes.”

Under the existing agreement, Brown is obligated to comply with Title IX’s “Three-Part Test” for measuring whether a school’s elimination of a women’s sports teams constitutes gender discrimination in violation of federal law. That test prohibits the elimination of any viable woman’s team unless “participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments,” a measure the legal team says cannot be met with Brown’s current proposal and its plan to count potential, rather than actual, female student athletes. Under the agreement, Brown is only allowed to count athletes “whose name appears on the roster for that sport,” which is impossible when those rosters do not currently exist. “We cannot afford to wait to see,” today’s filing notes, “if Brown’s projections are accurate enough without devastating consequences to real individuals who are being denied their chance to compete.”

“Long ago, Brown University made a commitment to future generations of students that it would provide an equal playing field for all student-athletes,” said Anna Susini, Captain of the Women’s Fencing Team at Brown. “That commitment, and the school’s outstanding Fencing program, were key reasons I chose to attend Brown. Now, its betrayal of that promise has left countless women athletes, including me, without the opportunities we believed we could count on finding here. As it did more than twenty years ago, the University once again has a chance to fix this imbalance. I hope the stand my fellow athletes and I are taking will convince it to do so.”

“Brown University already admitted it’s violating the agreement,” said co-counsel Arthur H. Bryant of Bailey & Glasser, LLP, who originally prosecuted the case as then-Executive Director of Public Justice. “On May 28, 2020, the school announced it was cutting 6 men’s teams and 5 women’s teams, eliminating more men’s opportunities than women’s to comply with the agreement and Title IX. On June 6, Brown President Christina Paxson wrote the entire Brown Community that she couldn’t reinstate three men’s teams – track, field, and cross-country – because, if she did so, ‘Brown would not be in compliance with our obligations under the settlement agreement.’ On June 10, Brown reinstated those men’s teams anyway. But President Paxson already told everyone the truth.”

Jill Zwagerman of Newkirk Zwagerman from Des Moines, Iowa who also serves as co-counsel in the suit along with Lori Bullock, added that, “It is really disturbing how after more than 20 years Brown continues to disregard its female athletes and dispose of them without a second thought. You would think that they would have learned their lesson by now, but their arrogance continues by denying women opportunities in sports that it so freely provides to males.”

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