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Newly Uncovered Documents Reveal

Brown University Plan to Dismantle Title IX Agreement

Providence, RI – A series of internal emails and documents made public today reveal an intentional plan by Brown University officials to undermine and ultimately destroy a long-standing consent decree to comply with federal Title IX laws that ensure equal opportunity for female athletes at the university. In the documents, filed as part of a court brief in ongoing litigation following Brown’s decision this year to cut five women’s varsity teams but only three men’s teams at the school, the officials express a desire to “kill this pestilential thing,” referring to the consent agreement. The documents also make clear that Brown’s officials preferred to force a dispute over the decades-old settlement of the litigation guaranteeing equality in athletics programs at Brown rather than comply with its terms.

Brown University President Christina Paxson, according to the documents, was focused on doing so in a way that would avoid riling up “the [Amy] Cohens of the world,” a reference to the lead plaintiff in the original 1992 lawsuit against Brown that resulted in landmark rulings against Brown. The lawsuit settled in 1998, when the school agreed to guarantee gender equality in athletics opportunities. The materials referenced in the court filing today were obtained through a discovery request by the ACLU of Rhode Island and Public Justice, the organization that brought the original suit on behalf of Cohen and Brown’s female athletes.

“When we filed the motion to enforce the Court’s order in June, we expressed concern that Brown’s commitment to gender equity and its women athletes was insincere and simply window-dressing. Through discovery, we learned the unfortunate truth: Brown does not care. Brown would rather dismantle the entire process that it claims prompted the downsizing than provide its women athletes—its own students--the program required by law and by the Court’s order.” said Lynette Labinger, cooperating counsel for the ACLU of RI and the lead attorney in the original suit.

Under the existing decree, if Brown eliminates any women’s varsity team, it must offer women and men student-athletes opportunities to participate in intercollegiate athletics within 2.25% points of women’s and men’s undergraduate enrollment rates. That measure cannot be met with Brown’s proposal to eliminate women’s varsity fencing, golf, squash, skiing and equestrian teams, while cutting only three men’s teams. Such cuts would result in a disproportionate impact on women’s representation in the Brown athletics program that runs afoul of the maximum gender disparity allowed under the original agreement.

Email communications quoted in today’s filing show that, after considering multiple proposals to cut athletic teams in a way that would comply with the agreement, Brown University Chancellor Samuel Mencoff ultimately suggested knowingly violating it as a way of challenging the decree in court, asking, “Could we use this moment, where anger and frustration, especially from track and squash, are intense and building to go after the Consent Decree once and for all? Could we channel all this emotion away from anger at Brown to anger at the court and kill this pestilential thing?”

Mencoff went on to explain that, “The argument would be that the Consent Decree is forcing us to eliminate these sports, and the court would then be bombarded with e-mails and calls as we are now.” The University’s ultimate goal, the emails make clear, was to pit support for the originally-canceled men’s track, field, and cross-country teams, which include large numbers of Black athletes, against female athletes and the Court overseeing the litigation regarding compliance with the agreement.

“Brown University should be ashamed of itself,” said Arthur Bryant of Bailey & Glasser, LLP, the women’s co-counsel and counsel in the original suit along with Leslie Brueckner of Public Justice. “Trying to turn anger over the mistreatment of Black athletes against women athletes, Title IX, and the Court? Outrageous. That is not how a responsible – or respectable – institution acts. Brown should be keeping its agreement to follow Title IX and provide gender equity, not trying to, as Brown put it, ‘kill this pestilential thing.’”

“I am disappointed in how Brown has decided to approach this case. It seems to have little interest in doing what is right and is treating these young women as if they are nothing more than numbers on a page that can be manipulated in any way the University wants. I’m also very concerned by the fact that Brown wants to end the consent decree so it can operate its athletic department in a way that will almost certainly violate Title IX again and provide less opportunities for female athletes. Brown tried to avoid admitting anything about its plan by fighting discovery attempts that would shed any light on it,” said Lori Bullock of Newkirk Zwagerman, co-counsel in the suit, along with the firm’s Jill Zwagerman. “It took not one, not two, but three different discovery requests before Brown complied with any level of appropriate transparency. Its repeated attempts to hide the truth only underscores how damning it knew the truth to be.”

“This Court should not tolerate Brown’s decision to use its women athletes as pawns in its bid to avoid compliance with the Joint Agreement,” the legal team says in yesterday’s filing. “These students are not ‘participation opportunities’; they are human beings. Defendants’ efforts to avoid responsibility for Brown’s illegal gender discrimination this year should be no more successful than they were when this suit was filed nearly 30 years ago.”

“Brown University’s clear disdain for promoting gender equity in its athletic program is deeply disappointing,” added Steven Brown, Executive Director of the ACLU of Rhode Island. “I am hopeful that the judicial system will hold the university accountable and vindicate the important goals underlying Title IX.”

“We proved Brown was violating Title IX over 25 years ago when it cut two thriving women’s teams for crass budgetary reasons,” concluded Leslie Brueckner, Senior Attorney with Public Justice. “This time around Brown doesn’t even have that excuse. We are going to keep fighting for these female athletes for as long as it takes.”

A copy of [today’s brief](#), as well as other supplemental filings ([here](#), [here](#) and [here](#)) containing excerpts from other documents and email conversations in addition to those quoted here, are available on the Public Justice website.

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