No. 82-792

IN THE

Supreme Court of the United States

October Term 1983

GROVE CITY COLLEGE,

Petitioner,

vs.

T.H. BELL, Secretary of the United States Department of Education,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF THE COUNCIL OF COLLEGIATE WOMEN ATHLETIC ADMINISTRATORS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT.

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With consent of the parties, the Council of Collegiate Women Athletic Administrators ("CCWAA") respectfully submits this brief as amicus curiae in support of the Department of Education.

A. Amicus Curiae Is an Organization of Collegiate Athletic Administrators Who, Because of Their Professional Responsibilities, Are Vitally Concerned About the Applicability of Title IX to the Educational Programs of Colleges and Universities, and Especially Title IX's Applicability to Intercollegiate Athletics.

The Council of Collegiate Women Athletic Administrators is a nonprofit professional organization, organized to provide opportunities for women in athletic administration

to enhance their professional relationships with colleagues and to provide a forum for discussion of issues affecting collegiate athletic programs. CCWAA members are employed by universities and colleges in administrative positions in intercollegiate athletics, and represent approximately 100,000 female athletes. Members are located in all 50 states.

Because of their professional responsibilities, CCWAA members are vitally concerned that Title IX remains available as a tool for eliminating sex discrimination and for enhancing women's opportunities in intercollegiate athletics. For the reasons explained below, CCWAA members are concerned that the opinion of the Court in this case may have an unanticipated impact on the viability of Title IX in cases dealing with sex discrimination in intercollegiate athletics.

B. Although This Case Does Not Directly Involve Intercollegiate Athletics, the Legal Arguments Made by Grove City College Are Identical to Legal Arguments That Have Been Made in Other Title IX Cases Which Have Involved Athletics. As a Result, the Court's Decision in This Case Could Have a Direct — Even if Unintended — Effect on Intercollegiate Athletics.

In three recent cases, Federal District Courts have held that intercollegiate athletics are not covered by Title IX; and all three have used the same reasoning that Grove City College has argued in this case: that the Title IX regulations are invalid where the Department of Education[1] seeks to

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[1]To avoid confusion, the Department of Health, Education and Welfare, whose Title IX functions were transferred to the Department of Education in 1979, and the Department of Education both will be referred to in this brief as the "Department."

prohibit discrimination by indirect beneficiaries of federal financial aid or in specific programs that do not receive direct federal financial assistance.

In *Othen v. Ann Arbor School Bd.*, 507 F.Supp. 1376 (E.D. Mich. 1981), the court held that Title IX extends only to programs which receive direct financial assistance; and thus, Department regulations bringing athletics within the scope of Title IX are invalid when applied to athletic programs which do not receive direct federal financial assistance.

In *Bennett v. West Texas State University*, 525 F.Supp. 77 (N.D. Texas 1981), the court held that Title IX applies only to specific programs or activities which receive direct federal financial assistance; and thus, indirect aid received by state university athletic programs does not bring them within the ambit of Title IX.

And in *University of Richmond v. Bell*, 543 F.Supp. 321 (E.D. Va. 1982), the court held that the Department has no authority to investigate and regulate athletic programs which have not received direct federal financial assistance.

Although the case now before this Court involves federal financial aid to students — and not intercollegiate athletics — if the Court accepts Grove City College's argument and renders a broadly-worded decision, more than a decade of painstaking progress in eliminating sex discrimination in intercollegiate athletics could be severely if not fatally undermined. This is so because a broadly-worded decision favoring Grove City College would encourage more lower courts to rule that all indirect beneficiaries of federal financial aid, including intercollegiate athletic programs, are outside the scope of Title IX. For the following reasons, such rulings would be in error insofar as intercollegiate athletics are concerned.

ARGUMENT.

I.

AMICUS CURIAE ENDORSES THE POSITION OF THE DEPARTMENT OF EDUCATION, AND URGES THE COURT TO AFFIRM THE DECISION OF THE THIRD CIRCUIT COURT OF APPEALS IN THIS CASE ON THE GROUNDS STATED BY THAT COURT.

Amicus Curiae files this brief only in what may turn out to be an excess of concern. The CCWAA endorses the position of the Department of Education and urges this Court to affirm the decision of the Third Circuit Court of Appeals.

Indeed, if this Court does affirm the Third Circuit, and does so on the grounds stated by that court, it appears that the concerns of the CCWAA will have been satisfied. This is so, because in *Haffner v. Temple University*, 688 F.2d 14 (3d Cir. 1982), a separate panel of the Third Circuit relied on the ruling below in *Grove City* in holding that Title IX *does* apply to the intercollegiate athletic program at Temple University, even though that program does not receive direct, earmarked federal funds.

The specific result in *Haffner v. Temple University* is the one desired by the CCWAA, and is one which the CCWAA wants to assure is not impliedly overturned by the Court's decision in this case.

II.

IF THE COURT CONCLUDES THAT IT MUST REVERSE THE DEPARTMENT'S VICTORY IN THE THIRD CIRCUIT, AMICUS CURIAE URGES THIS COURT TO NOTE THAT THE STATUS OF INTERCOLLEGIATE ATHLETICS UNDER TITLE IX DIFFERS FROM THAT OF THE STUDENT FINANCIAL AID PROGRAM AT ISSUE IN THIS CASE; AND THUS AMICUS CURIAE URGES THE COURT TO RULE EXPRESSLY THAT ITS DECISION HERE SHOULD NOT BE INTERPRETED TO MEAN THAT TITLE IX IS INAPPLICABLE TO COLLEGIATE ATHLETIC PROGRAMS.

A. The Legislative History of Title IX Clearly Indicates That Congress Intended Title IX to Apply to Intercollegiate Athletics, Even Though Collegiate Athletic Programs Themselves Do Not Receive Direct Federal Financial Assistance.

As the court below noted, Title IX was specifically designed to fill the gap left by Title VI, which did not prohibit discrimination based on sex. *Grove City College v. Bell*, 687 F.2d 684, 691 (3d Cir. 1982). The overriding objective of Congress clearly was to withhold public funds from institutions which engage in sex discrimination. This Court itself recognized in *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979), that Title IX, like Title VI, was designed "to avoid the use of federal resources to support discriminatory practices. . . ." The reach of Title IX was intended to extend as far as all recipients of federal aid who practice sex discrimination.

Not long after Title IX was enacted, it became apparent to Congress that the Department interpreted Title IX to apply to *institutions* that receive federal financial assistance, not merely to particular programs within those institutions. The Department's interpretation was the basis on which it issued proposed regulations dealing with athletics in particular, even though collegiate athletic programs do not receive direct federal financial assistance.

The Department's interpretation of Title IX displeased some members of Congress, especially Senator John Tower of Texas. As a result, Senator Tower introduced a proposed amendment, Amend. 1343 to S. 1539, 120 Cong. Rec. 15322 (1974), to Title IX which would have exempted "revenue producing" sports from Title IX's coverage. Senator Tower's proposed amendment was killed in Conference. In

its place, the Conference Committee substituted an amendment directing the Department to prepare regulations implementing the provisions of Title IX which were to include ". . . with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports." Section 844 of the Education Amendments of 1974, Pub.L.No. 93-380, §844, 88 Stat. 612 ("Javits Amendment").

At the same time Congress expressly directed the Department to draft Title IX regulations for athletics, Congress amended Title IX to specifically exclude social fraternities and sororities, Boy Scouts, Girl Scouts, Camp Fire Girls, Young Men's and Women's Christian Associations and other voluntary youth service organizations traditionally open to members of one sex from Title IX coverage. (20 U.S.C. §1681(a)(6)) Furthermore, in 1976 Congress specifically excluded American Legion activities, Boys and Girls State and Nation programs, father-son and mother-daughter activities and beauty pageant scholarships from Title IX coverage. (20 U.S.C. §1681(a)(7)-(9))

These legislative initiatives show a direct and intense involvement by Congress in planning the scope of Title IX. And such specific inclusions and exclusions by Congress demonstrate that Congress clearly intended Title IX to encompass intercollegiate athletic programs.

B. In Response to the Statutory Mandate of Congress, the Department of Education Promulgated Detailed Regulations Prohibiting Sex Discrimination in Intercollegiate Athletics.

As required by Title IX generally, the Department drafted a comprehensive set of regulations governing the conduct of federally-assisted schools in a number of areas. (45 C.F.R. §§86.1-71) One section was drafted in response to the Javits

Amendment in particular, and it pertains specifically and exclusively to athletics. (45 C.F.R. §86.41)

The athletics regulations provide generally that all intercollegiate athletes, regardless of sex, shall be treated equally. (§86.41(a))

Insofar as the organization of teams is concerned, the regulations provide that separate teams may be set up for each sex but only where sex-separation occurs as a result of competitive skill differences or where the sport is a bodily "contact" sport. (However, where there is no team for the excluded sex in a particular sport, members of that sex must be allowed to try-out for the team, unless the sport is a contact sport.) (§86.41(b))

Most importantly, the regulations list ten "factors" that are to be used in evaluating whether equal opportunity for both sexes does in fact exist:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services; and

(x) Publicity.

(§86.41(c)) This section also provides that unequal aggregate expenditures alone will not constitute noncompliance, although failure to provide funds for teams for one sex may be considered.

Finally, the regulations gave colleges an adjustment period of three years to bring themselves into compliance with the regulations.

C. After President Ford Approved the Title IX Regulations, Congress Reviewed the Intercollegiate Athletics Sections in Particular and Indicated Its Own Approval of Their Specifics by Failing to Veto Them as Congress Then Could Have Done.

After the Department submitted its final regulations to Congress in 1975, Congress held six days of hearings to review and veto them if it so chose. This was done pursuant to §431(a)(1) of the General Education Provisions Act, Pub.L. 93-380, 88 Stat. 567, as amended, 20 U.S.C. §1232(d)(1), which gave Congress an opportunity to examine the Department's regulations for consistency with Title IX and to disapprove them by concurrent resolution. If no such resolution were passed by Congress, the Act provided that the regulations automatically would go into effect 45 days after submission to Congress. (Although Congress has since amended 20 U.S.C. §1232(d)(1) so that Congressional inaction is no longer a presumption of approval by Congress or the consistency of the regulations with the Act, this amendment was not passed until five months after the Department submitted the final 1975 regulations to Congress. Pub.L.No. 94-142, §§7(a), (b), 89 Stat. 796 (1975), codified at 20 U.S.C. §1232(d)(1).)

The testimony of 30 witnesses, plus 132 additional statements, comprising 664 pages were before the House Subcommittee on Postsecondary Education. The majority of

witnesses focused on the issue pertinent here: the meaning of "receiving Federal financial assistance" in the context of intercollegiate athletics. Hearings on Title IX Before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor, 94th Cong., 1st Sess. 97 (1975). Yet, after lengthy debate, Congress did *not* reject the regulations.

Congress' failure to reject the athletics portion of the regulations is further proof that Congress intended Title IX to apply to athletics. This is so, because, as this Court said in *North Haven Board of Education v. Bell*, 456 U.S. 512, 535 (1982):

> Although postenactment developments cannot be accorded "the weight of contemporary legislative history, we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of Title IX. . . ." Where "an agency's statutory construction has been fully brought to the attention of the public and the Congress," and the latter has not sought to alter the interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.

The Department's regulations concerning intercollegiate athletics meet the *North Haven* test.

D. The Student Financial Aid Programs Which Are Directly at Issue in This Case Did Not Receive the Unique and Intense Scrutiny Which Congress Gave to Intercollegiate Athletics; and Thus, if Necessary, It Would Be Perfectly Consistent for This Court to Indicate That Title IX Does Apply to Collegiate Athletic Programs Even if the Court Must Rule That Title IX Does Not Apply to Student Financial Aid Programs.

The indirect receipt of federal financial student aid which is at issue in this case has its own history under Title IX and the Department's regulations, separate and distinct from that of intercollegiate athletics.

Admittedly, there is similarity between the legislative histories behind the Department's treatment of the indirect student aid at issue in this case and its treatment of intercollegiate athletics. There is, for example, legislative history supporting the Department's view that indirect aid to a school's students brings that school within the scope of Title IX. This legislative history was detailed by the Court of Appeals in its decision in this case. (687 F.2d at 691-695) And some of that history parallels the legislative history of the athletics regulations set forth above in this brief.

The CCWAA believes that this legislative history establishes that the decision below in this case is correct. If however, this Court concludes otherwise, it must be emphasized that Congress went further with respect to intercollegiate athletics than it did with respect to student aid.

As noted above, where athletics were concerned, Congress did more than reject attempts — such as the Tower Amendment — to limit Title IX's applicability to athletics. Congress affirmatively adopted the Javits Amendment, and in so doing, statutorily directed the Department to adopt Title IX regulations dealing with athletics. Thus, there can be no question that Title IX is applicable to athletics, whatever this Court's conclusion about its applicability to indirect student aid.

III.

TITLE IX HAS BEEN INSTRUMENTAL IN THE PROGRESS THAT HAS BEEN MADE IN REDUCING SEX DISCRIMINATION IN COLLEGIATE ATHLETICS; AND ANY RULING BY THIS COURT THAT IS INTERPRETED TO EXEMPT ATHLETICS FROM TITLE IX WILL IMMEDIATELY REVERSE MUCH IF NOT ALL OF THAT PROGRESS.

A. Prior to the Enactment of Title IX in 1972, Participation by Women in Intercollegiate Athletics Was Only a Fraction of What It Is Today.

Title IX was enacted in response to the growing awareness of sex discrimination in the nation's educational institutions.

By 1972, many people had begun to recognize the significant role athletics play in perpetuating inequality based on sex. Sports have reflected and perpetuated sexual stereotypes; and sports have been a primary form of socialization that perpetuate a male-dominated society. For a very long time, women's most socially acceptable role in sports has been in cheerleader-types of activities, which train women to stand decoratively on the sidelines, cheering on the men. Athletics develop aggressiveness, leadership, self-confidence and other traits long believed inappropriate for women. Comment, *Sex Discrimination — Title IX of the Education Amendments of 1972 Prohibits All-Female Teams in Sports not Previously Dominated by Males*, 14 Suffolk University Law Review 1471, 1474 n. 18 (1980).

The enactment of Title IX in 1972 did much to change these outmoded attitudes. Among other things, it significantly enhanced the opportunity for women to participate in intercollegiate athletics. As a result, there has been a dramatic increase in the number of college women who do participate in sports. Comment, *The Evolution of Title IX: Prospects for Equality in Intercollegiate Athletics*, 11 Golden Gate University Law Review 759, 761-762 (1981).

B. Title IX Prodded Colleges and Universities Into Responding to the Interests and Desires of Women Athletes, and the Progress That Has Been Made in Reducing Sex Discrimination in Athletics Is Traceable Directly to the Adoption of Title IX.

Never in the history of intercollegiate athletics has such rapid progress been made for women than in the 1972-1982 decade following the enactment of Title IX.

According to unpublished estimates prepared by the National Collegiate Athletic Association ("NCAA") and distributed to its members, NCAA member universities spent an average of $1.2 million on their men's athletic programs

and an average of $27,000 on their women's athletic programs in 1973-74. By 1981-82, the average expenditure for the men's programs was an estimated $1.7 million and for women's programs, an estimated $400,000.

NCAA member institutions spent more than $770 million on all of their athletic programs in 1980-81, an increase of 75% since a similar study was conducted in 1976. According to the NCAA, the expansion of *women's* programs was cited by the universities as the most significant factor in increased expenses.

Additionally, according to figures compiled by the NCAA, in 1971-72, there were fewer than 32,000 female student athletes participating in all NCAA schools; but by 1981-82, this number had jumped to more than 72,000.

In addition to the explosive growth of female participation in sports, 786 new coaching positions opened up for women's teams at 335 schools between 1974 and 1979. The number of collegiate female athletic trainers increased from 1 in 1974 to 14 in 1979. And there has been a dramatic expansion in athletic administration programs that train students for careers in sports, including sports communications, sports education, sports management and sports medicine.

Much of this progress, as well as prospects for future growth, is dependant upon an effective Title IX that will be consistently enforced to assure full equality to women. This Court itself recognized this need in *Cannon v. University of Chicago*, 441 U.S. 677 (1979), when it determined that Title IX created a private cause of action for victims of sex discrimination in educational programs.

C. The Title IX Regulations Provide Invaluable, Specific Guidance Concerning the Particular Actions Colleges and Universities Must Take to Reduce Sex Discrimination in Athletics.

As noted above, the Department's regulations pertaining to intercollegiate athletics specify ten factors that should be considered in determining whether equal opportunities have

been made available to male and female student athletes. These ten factors are the most important equal opportunity issues facing women's intercollegiate athletics today. Thus, the regulations provide especially important guidance for colleges and universities and for the courts as well.

In *Haffer v. Temple University*, 688 F.2d 14 (3d Cir. 1982), for example, the plaintiffs (who were women student athletes) charged that Temple University's intercollegiate athletic program violated all ten of the regulations' anti-discrimination factors (45 C.F.R. §86.41(c)). The Third Circuit upheld the District Court's ruling that Title IX applies to athletics, and it remanded the case for trial where the regulations were available to guide the District Court. If the ten anti-discrimination factors had not been specified in the regulations, the plaintiffs and the court in *Haffer* would have had to litigate a definition of "equal opportunity" in the context of athletics, as well as decide whether it had been denied. This obviously would have been a far more time-consuming and difficult task to perform than simply determining whether — as a matter of fact — Temple University failed to comply with the requirements of the regulations' ten factors.

D. If the Ruling of the Court in This Case Is Interpreted to Mean That Title IX Does Not Apply to Athletics, the Discrimination Claims of Women Athletes Will Have to be Litigated Under the Broad Mandate of the Equal Protection Clause, Thus Making Every Such Discrimination Claim a Cumbersome Constitutional Law Case Instead of a More Manageable Exercise in the Interpretation of Specific Regulations.

The practical utility of the regulations cannot be overstated, and can be illustrated with but a single observation. Before this Court decided *Cannon v. University of Chicago*,

and thus made clear that injured parties may bring their own private causes of action under Title IX, more than a dozen sex discrimination in athletics lawsuits were filed under the Equal Protection Clause of the 14th Amendment or state equal rights amendments where they existed. Virtually all of those cases litigated but a single issue: when, if ever, may a woman play on the same team with, or against, a man, and vice versa.[2]

To be sure, every facet of this intriguing question was explored, under every conceivable set of circumstances. The cases considered this single issue when contact sports were involved and when non-contact sports were involved.[3] The

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[2]*See, e.g.: Hoover v. Meiklejohn*, 430 F.Supp. 164, 170 (D. Colo. 1977) (providing interscholastic soccer for boys while excluding girls violates equal protection); *Gilpin v. Kansas State High School Activities Ass'n, Inc.*, 377 F.Supp. 1233, 1238 (D. Kan. 1973) (state may not prohibit girls from participating on only interscholastic cross-country team available); *Reed v. Nebraska School Activities Ass'n*, 341 F.Supp. 258, 261 (D. Neb. 1972) (offering teams for boys while excluding girls violates equal protection). *But see: Ritacco v. Norwin School Dist.*, 361 F.Supp. 930, 932 (W.D. Pa. 1973) (girls denied access to boys' tennis team); *Bucha v. Illinois High School Ass'n*, 351 F.Supp. 69, 75 (N.D. Ill 1972) (girl denied access to boys' swim team); *Hollander v. Connecticut Interscholastic Athletic Conference, Inc.*, Civil No. 12-49-27 (Conn. Super. Cit., New Haven County, Mar. 29, 1971) (girl denied access to boys' track team), appeal dismissed mem., 164 Conn. 658, 295 A.2d 671 (1972).

[3]*See, e.g.: Morris v. Michigan State Bd. of Educ.*, 472 F.2d 1207, 1209 (6th Cir. 1973) (court modified lower court injunction permitting female athletes to participate on male teams by limiting it to noncontact sports); *Gilpin v. Kansas High School Activities Ass'n, Inc.*, 377 F.Supp. 1233, 1236 (D. Kan. 1973) (girls permitted to compete on all-male cross-country running team but not in contact sports). Courts have distinguished between contact and non-contact sports, fearing that female athletes competing with males in athletic contests involving frequent and often violent physical contact face a serious risk of injury. *See: Fortin v. Darlington Little League, Inc.*, 514 F.2d 344, 350-51 (1st Cir. 1975) (court rejected contact sport rationale as applied to 8-12 year-olds but reserved question of applicability to teenagers, where risk of injury greater); *Magill v. Avonworth Baseball Conference*, 364 F.Supp. 1212, 1216 (W.D. Pa. 1973) (exclusion of girls from contact sport of youth baseball permissible because girls endangered by competing against boys), *aff'd*, 516 F.2d 1328 (3rd Cir. 1975) (basis for

significance of an existing women's team was weighed and compared with the absence of a team for women.[4] And in some cases, the higher level of scrutiny demanded by state equal rights amendments was measured against the scrutiny level demanded by the 14th Amendment alone.[5]

While the significance of Equal Protection litigation to women's athletics has been valuable and undeniable, the issue of women's right to access to previously all-male teams is now fairly well settled. Moreover, as a practical matter, the more subtle issues addressed by the Title IX regulations' ten anti-discrimination factors are far more important to women athletes today than whether or under what circumstances they may play on men's teams. Yet none of the Equal Protection cases referred to above dealt with those more subtle issues.

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excluding girls from boys' football team is probability of injury to girls). A number of cases, however, have refused to recognize this distinction as adequate grounds for denying female athletes the chance to participate in sports offered to males. *See, e.g.: Leffel v. Wisconsin Interscholastic Athletic Ass'n*, 444 F.Supp. 1117, 1122 (E.D. Wis. 1978) (risk of injury does not justify exclusion of girls from activities offered to boys); *Carnes v. Tennessee Secondary School Athletic Ass'n*, 415 F.Sup. 569, 571 (E.D. Tenn. 1976) (safety argument insufficient to exclude girls from contact sport because frail boys not excluded); *Darrin v. Gould*, 85 Wash.2d 859, 876, 540 P.2d 882, 892 (1975) (exclusion of girls from football for safety reasons impermissible because boys also face risk of injury).

[4]*See, e.g.: Brenden v. Independent School Dist.*, 477 F.2d 1292, 1295 (8th Cir. 1973) (court reserved question of separate-but-equal teams and noted case involved absence of separate team); *Leffel v. Wisconsin Interscholastic Athletic Ass'n*, 444 F.Supp. 1117, 1122 (E.D. Wis. 1978) (schools may not completely deny girls opportunity to participate in sport offered to boys); *Hoover v. Meiklejohn*, 430 F.Supp. 164, 169-70 (D. Colo. 1977) (complete denial to girls of opportunity to compete in sports offered to boys violates equal protection), *Carnes v. Tennessee Secondary School Athletic Ass'n*, 415 F.Supp. 569, 571 (E.D. Tenn. 1976) (no justification exists for denying girls any opportunity to participate in sports open to boys).

[5]*See, e.g.: Darrin v. Gould*, 85 Wash.2d 859, 540 P.2d 882 (1975) (Washington Equal Rights Amendment requires that girls be permitted to try out for football).

If the decision of this Court is interpreted to mean that Title IX does not apply to athletics, the regulations will have no force as law at all. As a result, the ten issues addressed by the regulations will have to be litigated under the 14th Amendment — a prospect which raises the specter of years of Constitutional litigation and literally dozens of cases. For this reason, the efficiency of the Title IX regulations is clear; and the CCWAA urges this Court not to do anything that may call into question the validity of those regulations.

CONCLUSION.

For all of the foregoing reasons, CCWAA as amicus curiae respectfully urges the Court to affirm the decision of the Third Circuit Court of Appeals.

If, however, the Court is unable to affirm, then the CCWAA respectfully urges the Court to expressly indicate that its decision in this case should *not* be interpreted to mean that Title IX is inapplicable to intercollegiate athletics.

Respectfully submitted,

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*The substantial assistance of Marilyn Spivey, a third-year student at Loyola Law School, in the preparation of this brief is gratefully acknowledged.