

# “A Sporting Chance”

## Commemorating Fifty Years of Title IX

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*Those that are participating in athletics, in soccer, basketball, whatever, probably assume this is the way it always was and that opportunities for girls and women were always assured under our democracy.<sup>1</sup>*

In June 2022, the nation celebrated the fiftieth anniversary of Title IX. This landmark legislation, part of the Education Amendments of 1972,<sup>2</sup> continues to have a huge impact, especially on colleges and universities, across efforts to counter harassment and discrimination based on sex. A persistently controversial aspect of Title IX is its application to intercollegiate athletics. Prior to Title IX, women had participated in athletics, whether through intramural sports or through dancing and cheerleading, which, despite being longstanding opportunities for women to express their athleticism and skill, were not always recognized as sports. Title IX, however, began a new era of equal opportunity for young women across higher education.

This article, celebrating the semicentennial of Title IX, will focus on the legislators who brought the legislation through Congress: Representative Patsy Takemoto Mink of Hawai‘i, Representative Edith Starrett Green of Oregon, and Senator Birch Evans Bayh of Indiana. Additionally, hearings from the Tower Amendment, which sought to limit Title IX protections in “revenue-producing” sports will be examined. Though the amendment failed, the witnesses’ testimony shows the effects of Title IX for college students—as well as how far athletic programs had to go to achieve equal opportunity. Lastly, two government reports evaluating the success of Title IX will be discussed.

### The Minds Behind the IX

It took many people to bring Title IX into existence, but this article focuses on three congressional representatives who played special roles in the legislation. First, Patsy Takemoto Mink, the representative whom Title IX was renamed after in 2002,<sup>3</sup> was

the champion of the legislation. Born in 1927 in Hawai‘i prior to its statehood, Mink was no stranger to discrimination: she was denied entry to medical schools due to her gender, so she studied law on the mainland instead. She returned to Honolulu with her husband (John Francis Mink) and daughter (Gwendolyn Mink, who recently co-authored a book about her mother titled *Fierce and Fearless*),<sup>4</sup> where she was involved in the territorial government. After Hawai‘i became a state in 1959, Patsy T. Mink campaigned for a spot in the House of Representatives, winning the election in 1964 and becoming the first woman of color and first Asian-American woman in Congress. Her first stint in Congress lasted from 1965 to 1977, and she returned in 1989 until her death in September 2002 at age 74.<sup>5</sup> Mink was instrumental not only in the creation of Title IX but also in protecting the legislation. In one instance, recounted by Gwendolyn Mink in an oral history,<sup>6</sup> Title IX’s jurisdiction over athletics was put to a vote in 1975. Representative Mink had to leave before casting her vote because Gwendolyn had been in a major car accident in Ithaca, New York, and was in intensive care. Without Mink, the vote to uphold Title IX lost by a single vote; however, House leaders called for a revote, due to the extraordinary circumstances leading to her absence. Several members changed their stance, “[saying] things like, ‘Oh, she’s such a nice daughter,’ as their explanation for changing their vote,”<sup>7</sup> and Title IX was allowed to continue in its full effect. Patsy T. Mink’s papers are held at the Library of Congress (LOC), and selected digitized items are available on the LOC’s resource guide, “First Woman of Color in Congress: A Resource Guide for the Patsy T. Mink Papers” (<https://tinyurl.com/yn8fxaj2>).

Another major proponent of Title IX was Edith Starrett Green (1910–1987), the second woman elected to the House of Representatives from Oregon. She served in the House of Representatives from 1955 to the end of 1974, when she resigned to retire from her congressional career. The daughter

of schoolteachers, Green got her start in politics within educational advocacy, and in Congress, she served on the Committee on Education and Labor for eighteen years. She was nicknamed “Mrs. Education” and “Mother of Higher Education” for her work in this area,<sup>8</sup> including the Education Amendments of 1972. Representative Green oversaw the 1970 hearings leading up to Title IX, which invited testimony about the sexism women faced both in education and the workplace. The hearings, which are digitized on HathiTrust, do not mention athletics specifically but rather encompass a broad range of sex-based discrimination.<sup>9</sup> Green’s leadership role in these hearings helped pave the way for Title IX.

Senator Birch Bayh, of Indiana, drafted the language of Title IX.<sup>10</sup> Born in 1928, he was elected to the Senate in 1962 and served until 1981. He died in 2019. Interestingly, Title IX is not mentioned in his entry of the Biographical Directory of the United States,<sup>11</sup> though his contributions include not only the thirty-seven words of Title IX (found in 20 U.S.C. §1681a, <https://tinyurl.com/2s3pcjrp>) but also his testimony in the Tower Amendment hearings,<sup>12</sup> which threatened to limit the legislation’s reach. His contributions helped bring Title IX into law and sustain its legacy for the next fifty years.

## On Defense: Tower Amendment Hearings

Though Title IX was made law of the land, it left unanswered questions about how to enforce and measure compliance. These questions took three years to answer, after first fending off multiple attempts to exempt athletics from Title IX protections altogether. The Tower Amendment, proposed in 1975 by Senator John Tower of Texas, was one such attempt that focused on intercollegiate athletics and the allocation of revenue from “gross receipts or donations,” in particular ticket or gate sales.<sup>13</sup> The hearings invited testimony from those who worked in college and university athletics departments, representatives from the National Collegiate Athletic Association (NCAA) and the Association of Intercollegiate Athletics for Women (AIAW), and selected college students.

The testimony suggests that the application of Title IX to athletics came as a shock and was an immediate cause for concern: then-AIAW president-elect Peggy Burke recalls, “Since November 1973, when a representative of the National Collegiate Athletic Association attended the first AIAW Delegate Assembly, and learned that title IX covered athletics, I have read and heard countless statements as to how offering women an equal opportunity in athletics was going to destroy men’s athletic programs.”<sup>14</sup> This anxiety that men’s athletic programs would suffer was felt among the witnesses at the hearing. One director of athletics at a small Ohio college expressed fear that,

unless football and basketball gate revenue was exempt from Title IX, “I daresay that there will be no more football and basketball programs [at the college].”<sup>15</sup> A quick Google search will reassure the reader that the institution in question still has its football and basketball teams today and seems to have had them throughout the 1970s.

Another concern was Title IX’s effect on enrollment if scholarships had to be reconfigured. In her testimony, Margy DuVal, then-president of the Intercollegiate Association of Women Students, addressed this concern, saying, “Title IX will not be the red pencil which eliminates athletic scholarships for minority male athletes from the college budget. Indeed, title IX should provide some incentive for institutions to start to provide minority females with the same types of athletic scholarship opportunities . . . because minority women are too often overlooked in attempts to provide benefits or opportunities to minorities in general.”<sup>16</sup> DuVal also pointed to the fact that Title IX had only been made law for three years without taking full effect yet. “HEW had already taken 3 years to promulgate the title IX regulation. To begin immediately to narrow the coverage of title IX is to tell women students—your daughters—that they don’t deserve a sporting chance.”<sup>17</sup> Here, DuVal refers to the three years between Title IX’s passing in 1972 and the publication of regulations by the Department of Health, Education, and Welfare (HEW) “to effectuate” the law starting July 21, 1975.<sup>18</sup> Another witness, Clarissa Gilbert, made a similar point that women’s teams “have not had equal opportunity to develop the ability to generate revenue” at the same level as men’s teams.<sup>19</sup> This time factor may have prompted Gilbert to state, “We cannot believe that the unamended title IX regulations will make the colleges or universities move too fast in opening up opportunities for women in athletics.”<sup>20</sup>

What the HEW regulations required—or specifically, what they did *not* require—was another theme throughout the hearing. Multiple statements and documents adamantly assert that Title IX did *not* require equal aggregate expenditures for women’s and men’s athletics. In fact, a briefing report included in the hearing, titled “Title IX: Moving Toward Implementation,” said that an initial draft proposing equal expenditures between women’s and men’s teams “caused a panic,”<sup>21</sup> and Dr. Donna A. Lopiano quipped in her testimony, “My operating expenses budget for women’s athletics is not even equal to the yearly telephone bill of [the university’s] men’s athletic program.”<sup>22</sup> Dr. Joseph Oxendine, speaking of his institution’s budget for women’s athletics, said it “was developed on the assumption that women indeed know how to sew so they could make their own tunics” and fundraise with “cake sales and apples and other sorts of things that are inappropriate or

which men are unable to do."<sup>23</sup> Though athletics budgets are no longer based on such assumptions, the disparity between funding for men's and women's athletics remains fifty years later.<sup>24</sup>

The Tower Amendment hearing helps contextualize the state of women's athletics immediately after the implementation of Title IX, but most of all, the testimony sheds light on the experiences of women athletes at this time. A letter to the committee from a student who attended the same university as one of the pro-amendment witnesses described her university's training conditions: women swimmers were not granted pool time to practice, injured players could only see the athletic trainer at 8 a.m. (when the male athletes would not need them), and tennis players could only practice on the "slick and hazardous" intramural courts.<sup>25</sup> None of the hearing witnesses denied the existence of prejudice against women or opposed the idea of equal opportunity behind Title IX in their testimony, but these conditions show how women athletes at the time were hardly given, in the words of Margy DuVal, a "sporting chance."

Ultimately, the Tower Amendment did not pass because of the ambiguity of its language, the difficulty of defining "revenue-producing sports," and the difficulties of enforcing it across varied higher education institutions. Instead, the Javits Amendment, named for another legislator, Jacob Javits of New York, required HEW to make regulations based on the nature of different sports. These are explained in a report published by the US Commission on Civil Rights in July 1980, titled *More Hurdles to Clear*.<sup>26</sup>

## Playing the Long Game: Assessing the Success of Title IX

The report *More Hurdles to Clear*, in addition to summarizing athletics-related requirements for Title IX, also presents data from the NCAA and AIAW about the number of male and female athletes over time, the size of athletics budgets, and the number of sports offered. Some statistics are bleak, like the per capita expenses for men's and women's sports, where over \$12,000 is allotted to men's basketball alone and just over \$2,000 is allotted to all women's sports.<sup>27</sup> Similarly, the stark contrast between the number of female athletes compared to male athletes—about 170,000 men compared to about 64,000 women—may seem grim, but the same figures also show the rapid rise of female athletes, consistently doubling over five-year periods.<sup>28</sup> The data collected shows growth over a relatively short period of time, made possible by federal legislation, and it signals a new generation where young women and girls had the opportunity to compete all four years of high school and at the collegiate level.

A GAO Report from 2007, after the thirtieth anniversary of Title IX, reflects drastic changes since the *More Hurdles* report in 1980. During the intervening decades, women's college enrollment surpassed men's.<sup>29</sup> Additionally, in the 1990s, the number of women's teams actually exceeded the number of men's teams.<sup>30</sup> Women's teams grew more than men's teams, which saw "mixed or small changes in the number of teams."<sup>31</sup> Still, this raised "public interest" about "whether men's opportunities have decreased as a result of the increase in opportunities for women."<sup>32</sup> Nonetheless, GAO reported gains across both sexes in cross country, golf, hockey (both ice and field), lacrosse, and track (indoor and outdoor).<sup>33</sup> Only men's wrestling saw a loss greater than 5%,<sup>34</sup> which had spurred a lawsuit, *National Wrestling Coaches Association v. U.S. Department of Education*, which was dismissed by the courts. Fear not, wrestling fans—a Title IX lawsuit led to the establishment of the University of Iowa's women's wrestling team in 2021.<sup>35</sup> Title IX poses no disadvantage to athletes; it only depends on who one is willing to root for.

## The Finish Line

Title IX has evolved over its fifty years of existence, as regulations were added or modified and shaped by various lawsuits attempting to overturn the athletics component. The legislation survived and has had tangible benefits, not only for the female athletes of the past fifty years and today, but also for our nation as a whole. Our country has benefitted from the achievements of women athletes representing the US on a global level: in four World Cup wins by the US Women's National Soccer team and in all the medals won by women Olympians, from the Williams sisters to Simone Biles to Suni Lee. We no longer must argue whether women are able competitors, whether women can draw the same crowd or hold an audience's interest, or whether women should have a place on the team at all. Though women athletes may have to argue for equal pay or media coverage,<sup>36</sup> and there are, as the HEW report title says, "more hurdles to clear," the fiftieth anniversary of Title IX gives us a chance to celebrate how far we as a nation have come.

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## Notes

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2. 86 Stat. 235, <https://tinyurl.com/3fjrfvzb>.
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4. “Finally, a Biography about Maui-born, Trailblazing Legislator and Title IX Champion Patsy T. Mink,” MauiNow, updated April 25, 2022, <https://tinyurl.com/3t4j8ba3>.
5. “MINK, Patsy Takemoto,” History, Art, and Archives, US House of Representatives, accessed November 28, 2022, <https://tinyurl.com/4kz3n2ec>.
6. “Gwendolyn Mink,” History, Art, and Archives, US House of Representatives, accessed November 28, 2022, <https://tinyurl.com/2p87eydu>.
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9. *Discrimination Against Women: Hearings before the Special Subcommittee on Education of the Committee on Education and Labor*, 91st Cong. (1970), <https://tinyurl.com/bdd2chm6>.
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13. S.2106-94th Congress (1975–1976), <https://tinyurl.com/4errswpe>.
14. *Prohibition of Sex Discrimination* (statement of Peggy Burke, president-elect of AIAW, University of Iowa), 95.
15. *Prohibition of Sex Discrimination* (statement of Ed Sherman, director of athletics, Muskingum College), 34.
16. *Prohibition of Sex Discrimination* (statement of Margy DuVal, president, Intercollegiate Association of Women Students), 54.
17. *Prohibition of Sex Discrimination* (statement of Margy DuVal), 53.
18. 40 Fed. Reg. 24137 §86.1 (June 4, 1975), <https://tinyurl.com/2p8at23r>.
19. *Prohibition of Sex Discrimination* (statement of Clarissa Gilbert, president, National Student Association), 51.
20. *Prohibition of Sex Discrimination* (statement of Clarissa Gilbert), 50.
21. *Prohibition of Sex Discrimination* (appendix), 220.
22. *Prohibition of Sex Discrimination* (statement of Donna A. Lopiano, women’s athletic director, University of Texas at Austin), 110.
23. *Prohibition of Sex Discrimination* (statement of Joseph B. Oxendine, dean of the College of Health, Physical Education, Recreation, and Dance, Temple University), 103.
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25. *Prohibition of Sex Discrimination* (statement of Dr. Willis Tate, chancellor, Southern Methodist University, Texas) 43.
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