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## Nothing but a Fading Memory: Title IX in the Age of College Sports Betting

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# NOTHING BUT A FADING MEMORY: TITLE IX IN THE AGE OF COLLEGE SPORTS BETTING

*Ariana Gonzalez*

## I. INTRODUCTION

In a nation that is steadfast to the principles of equality, freedom, fairness, and justice, the growth and legalization of college sports betting has reinforced a gender divide that Title IX of the Education Amendments of 1972 sought to prohibit. In thirty-seven plain words, Richard Nixon, the former President of the United States, changed the future of women's sports:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.<sup>1</sup>

Title IX of the Education Amendments was signed into law on June 23, 1972, and shortly after that, the number of female athletes playing sports increased.<sup>2</sup> Title IX is best known for its requirement that college athletic programs provide equal opportunities to male and female student-athletes.<sup>3</sup> Since the passage of Title IX, both federal and state legislation have consistently aimed to ensure equality for student-athletes.

On June 30, 2021, the National Collegiate Athletic Association (“NCAA” or “Association”) adopted a uniform policy that allows all NCAA student-athletes to be compensated for the use of their name, image, and likeness (“NIL”).<sup>4</sup> Subsequently, several states signed similar

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<sup>1</sup> Education Amendments of 1972, Pub. L. No. 92-318, Title IX, 86 Stat. 373-75 (1972) (codified as amended at 20 U.S.C. § 1681-88 (1982)).

<sup>2</sup> See Karissa Niehoff, *Title IX Continues to Fuel Growth of Girls and Women's Sports, Olympic Dominance* NFHS (Sep. 22, 2021), <https://www.nfhs.org/articles/title-ix-continues-to-fuel-growth-of-girls-and-women-s-sports-olympic-dominance/#:~:text=After%20starting%20with%2017%2C95%20participants,2%20girls%20sport>.

<sup>3</sup> Jody Feder, Cong. Rsch. Serv., RL31709, Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview (2012).

<sup>4</sup> See *NCAA v. Alston*, 141 S. Ct. 2142 (2021).

NIL legislation into law, generally allowing student-athletes to profit from specific NIL-related activities, like social media endorsements.<sup>5</sup> These laws have promoted Title IX's overall goal and have assisted in narrowing the gender gap in opportunities centered around publicity among male and female student-athletes.<sup>6</sup> Even with this assistance, however, the gap between publicity opportunities for male and female student-athletes remains.<sup>7</sup>

In addition, while the NIL policy combined with Title IX promotes opportunities and equality for female student-athletes, college sports betting is buttressing a gender divide that Title IX was enacted to preclude. Since sports betting is available at all times on mobile devices, viewership of college sports is rising.<sup>8</sup> Gamblers are engaging with college sports more than before.<sup>9</sup> After the 2022 March Madness basketball tournament, the women's tournament's viewership and engagement grew, but not at the same rate as the men's.<sup>10</sup> The increase demonstrates that sports betting could be a resolution to the gender gap seen in publicity, but without holding the NCAA to the legal standard of Title IX, sports betting will have an inverse effect and cause men's college sports to be the main priority of sportsbooks and gamblers.

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<sup>5</sup> See Thomas De Biasio, *Most States Pass "Name, Image, and Likeness" Laws for Student Athletes*, MultiState (Sep. 21, 2021), <https://www.multistate.us/insider/2021/9/21/most-states-pass-name-image-and-likeness-laws-for-student-athletes>; see also Katlyn Andrews, *Addressing Equity in Collegiate Women's Sports with NIL*, Baker Tilly (Jun. 22, 2021), <https://www.bakertilly.com/insights/addressing-equity-in-collegiate-womens-sports-with-nil>.

<sup>6</sup> See Maria Carrasco, *Some College Athletes Cash In While Others Lose Out*, Insider Higher Ed (Oct. 12, 2021), <https://www.insidehighered.com/news/2021/10/12/while-some-ncaa-athletes-cash-nil-others-lose-out>.

<sup>7</sup> See also Maria Carrasco, *Some College Athletes Cash In While Others Lose Out*, Inside Higher Ed (Oct. 12, 2021), <https://www.insidehighered.com/news/2021/10/12/while-some-ncaa-athletes-cash-nil-others-lose-out> (article found that since July 1, college football players have signed 60.1 percent of all NIL deals, with women's volleyball in second place at 9.8 percent).

<sup>8</sup> See Michael Applebaum, *The U.S. Sports Betting Race Is On – and Many Marketers Want a Piece of the Action*, Ad Age (Jan. 14, 2021), <https://adage.com/article/marketing-news-strategy/us-sports-betting-race-and-many-marketers-want-piece-action/2305551>.

<sup>9</sup> See Kyle Kensing, *Gambling Access and Coverage Grow, Leaving College Sports in a Tenuous Spot*, Awful Announcing (Apr. 6, 2022), <https://awfulannouncing.com/ncaa/gambling-access-and-coverage-grow-leaving-college-sports-in-a-tenuous-spot.html>.

<sup>10</sup> See Emma Baccellieri, *March Madness Faced A Gender Reckoning. Now Everyone Gets a Pasta Station – but What Else?*, Sports Illustrated (Mar. 18, 2022), <https://www.si.com/college/2022/03/18/ncaa-womens-tournament-equity-2022-daily-cover> (The 2022 men's March Madness tournament averaged 9.12 million viewers through the second round. The women's tournament averaged 474,000 viewers through the second round).

This Comment analyzes how college sports betting is reinforcing a gender divide among college student-athletes that Title IX sought to prohibit and what steps need to be taken to ensure that the current NIL policies combined with sports betting do not undo years of progress. Part II of this Comment explores the history and background of Title IX, its purpose, outcomes, and vulnerabilities. This part also discusses the role and powers of the NCAA with regard to Title IX, NIL, and sports betting. Part III of this Comment addresses the impact of sports betting on publicity opportunities for women's sports and suggests four possible paths to reducing the publicity gender gap: (1) Increase the quality and quantity of women's sporting tournament coverage; (2) Ensure that the NCAA's broadcasting deals comply with Title IX; (3) Demand that sportsbooks open betting lines for female sporting events; and (4) Expand Title IX's reach to include the NCAA. Of these four solutions, holding the NCAA to the legal standard of Title IX is the most promising option. By holding the Association to the legal standard of Title IX, sports betting could efficiently narrow the gender gap revolving around publicity opportunities for male and female student-athletes.

## **II. A BRIEF OVERVIEW: TITLE IX, THE NCAA, NAME IMAGE AND LIKENESS, AND SPORTS BETTING**

### ***A. Title IX: A Law Passed to Ensure Gender Equality***

Considered one of the most influential, landmark gender equality laws in the United States, Title IX was passed as a part of the Education Amendments of 1972.<sup>11</sup> Title IX was designed to ensure that men and women have the same educational opportunities by banning gender discrimination in federally funded education programs, both public and private.<sup>12</sup> The chief sponsor of the legislation, Senator Birch Bayh of Indiana, called Title IX “an important first step

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<sup>11</sup> 20 U.S.C. § 1681(a).

<sup>12</sup> 34 C.F.R. § 106.41(c)

in the effort to provide for the women of America something that is rightfully theirs.”<sup>13</sup> Although the statute in its original language does not explicitly focus on sports, Title IX is considered to be a vital driver for female involvement and equality in sports programs, at the high school and collegiate level.<sup>14</sup> Senator Bayh stated that “while the impact of this amendment would be far-reaching...it is not a panacea.”<sup>15</sup> The year Title IX was enacted, two percent of college athletic budgets were allocated to women’s sports programs, fifteen percent of college women participated in sports, and universities offered two women’s sports teams.<sup>16</sup> By 1978, six times as many high school girls were participating in competitive high school sports than in 1970.<sup>17</sup> From 1971 to 2003, there was a nine hundred and ninety percent increase in the number of high school girls participating in sports.<sup>18</sup> While fewer than thirty thousand women participated in sports in 1981, over two hundred thousand did in 2017.<sup>19</sup> By 2004, colleges were offering an average of more than eight women’s sports teams.<sup>20</sup> From 2006 to 2016, the number of female collegiate student-athletes increased by twenty-five percent.<sup>21</sup>

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<sup>13</sup> Sarah Pruitt, *How Title IX Transformed Women’s Sports*, History (Jun. 11, 2021), <https://www.history.com/news/title-nine-womens-sports> (explaining that Senator Bayh stated that though the impact of the amendment would be far-reaching, it was not a perfect solution or clear remedy for the problem of gender discrimination. He stated that it was the first step in providing women with an equal chance to attend the schools of their choice, develop the skills that they want, and to apply the knowledge and skills that they will have to obtain a fair chance at securing the jobs of their choice with equal pay for equal work); *see also* Tom Davies, *Former Sen. Birch Bayh, champion of Title IX, dies at 91*, PBS (Mar. 14, 2019), <https://www.pbs.org/newshour/politics/former-sen-birch-bayh-champion-of-title-ix-dies-at-91..>

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Genevieve Carlton, Ph.D., *How Title IX Impacts Women’s Equality in College Athletics*, Best Colleges (Oct. 6, 2021), <https://www.bestcolleges.com/news/2021/08/24/how-title-ix-impacts-womens-equality-in-college-athletics/#:~:text=The%20year%20Title%20IX%20passed,dramatically%20in%20the%20following%20decades.>

<sup>17</sup> Lily Rothman, *How Title IX First Changed the World of Women’s Sports*, TIME (Jun. 23, 2017), <https://time.com/4822600/title-ix-womens-sports/>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Title IX's impact spread beyond the scope of high school and college sports programs. The number of female Olympians also increased.<sup>22</sup> In 1972, the United States fielded an Olympic team of 428 athletes, only 90 of which were women. In 2016, the United States sent a total of 555 athletes to the Olympic games, of which 292 were women.<sup>23</sup>

To achieve this seismic shift, Title IX required that educational institutions examine the following factors when determining whether they were providing equal athletic opportunities for girls and women:

- (1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) equipment and supplies;
- (3) scheduling of games and practice time;
- (4) travel and per diem allowances;
- (5) opportunity for coaching and academic tutoring;
- (6) assignment and compensation of coaches and tutors;
- (7) locker rooms and other facilities;
- (8) medical and training services;
- (9) housing and dining services; and
- (10) publicity.<sup>24</sup>

This paper focuses on the last of these factors: publicity. Publicity is not defined in the statute itself.<sup>25</sup> Historically, the publicity factor has not been the subject of Title IX litigation, but with the recent passage of NIL laws, women student athletes may have new recourse for Title IX violations.<sup>26</sup> NIL possesses the ability to reshape publicity equality between men and women's

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 34 C.F.R. § 106.41(c).

<sup>25</sup> Interestingly, neither does the NCAA's Division I Manual, despite using the term "publicity" fifteen separate times. See Nat'l Collegiate Athletic Ass'n, 2020-2021 NCAA Division I Manual § 13.10, at 120 (Aug. 2020), available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (emphasis added).

<sup>26</sup> Kristi Dosh, *Name, Image And Likeness Legislation May Cause Significant Title IX Turmoil*, Forbes (Jan. 21, 2020), <https://www.forbes.com/sites/kristidosh/2020/01/21/name-image-and-likeness-legislation-may-cause-significant-title-ix-turmoil/?sh=243424ba7625>.

collegiate athletics.<sup>27</sup> In 1979, the United States Department of Education released a Policy Interpretation (“Interpretation”) to clarify what equal opportunity actually means under Title IX.<sup>28</sup> The Interpretation does not clearly define “publicity” but notes that publicity compliance will be assessed by “examining, among other facts, the equivalence for men and women of: (1) Availability and quality of sports personnel; (2) Access to other publicity resources for men’s and women’s programs; and (3) Quantity and quality of publications and other promotional devices featuring men’s and women’s programs.”<sup>29</sup> A wide variety of promotions, including, but not limited to: social media, internal and external media coverage, announcements and press releases, website posts, displays, television advertisements and broadcasts, and the participation of support organizations such as cheerleaders, bands, and or dance teams at athletic contests have been considered “publicity” for purposes of Title IX.<sup>30</sup> Before NIL, publicity deals were inked by the member-institutions, which insulated student-athletes from inequitable publicity deals such as the difference in the quality of paper promotional materials were printed on or the size of a billboard

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<sup>27</sup> *Id.*

<sup>28</sup> Dep’t of Education, A Policy Interpretation: Title IX and Intercollegiate Athletics, Fed. Reg. Vol. 44, No. 239 (Dec. 11, 1979).

<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g. Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d 1093, 1112 (S.D. Cal. 2012) (considering yearbook coverage, internal school announcements, school signage, and band and cheerleader performance at athletic events); *see also* U.S. Dep’t of Ed., Office for Civil Rights, Nov. 14, 2017 Letter, Compl. No. 01-16-1298 (considering high school’s twitter feed, booster club Facebook page, school morning announcements, and game programs) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01161298-a.pdf>; US Dept’t of Ed., Office for Civil Rights, Oct. 18, 2016 letter, Docket # 07052020 (considering university and team social media accounts, radio and television broadcasts of men’s and women’s games, team posters, recruitment booklets, fliers, and postcards, media guides, and printed fundraising materials) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/07052020-a.pdf>; U.S. Dep’t of Ed., Office for Civil Rights, July 28, 2015 Letter, Case No. 02-08-6001 (considering availability and quality of sports information personnel, university intercollegiate website, team websites, social media accounts, events webpage, national and regional television broadcasting, radio broadcasts, web streaming, media guides, game-day programs, posters, billboard advertising, and the provision of band, dance team and cheerleaders), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02086001-a.pdf>.

along a highway between men's and women's athletics.<sup>31</sup> Now, however, with the passage of NIL laws which give athletes direct earning power, the publicity inequities between men and women's deals will be felt individually by women student-athletes.

Although Title IX had great success in increasing women's participation in sports overall, it has not resulted in perfect equity and has given rise to unintended negative consequences. For example, by requiring educational institutions to either create equal access among male and female students or lose federal funding, institutions that could not afford to fund new female teams cut existing men's athletic programs, scholarships, and educational programs to bring their programs into compliance.<sup>32</sup> In addition, although Title IX also requires equity in coaching opportunities, since its enactment, the percentage of female head coaches for female athletic teams has diminished from a high of ninety percent to a low of twenty percent.<sup>33</sup> This is because, in order to recruit student-athletes, more money is invested into programs thus increasing the wages that coaches are being paid.<sup>34</sup> This results in men becoming more interested in women's coaching jobs. In 1972, prior to the enactment of Title IX, women held ninety percent of the head coaching positions for women's teams. Today, women hold just over ten percent of Division I athletic director positions, only forty percent of all head coaching jobs, and no positions within men's basketball teams at any level.<sup>35</sup> Moreover, Title IX also puts a strain on taxpayers' funds.<sup>36</sup> If a victim of Title IX discrimination sues a school for unfair conduct and prevails, resulting in a large

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<sup>31</sup> Kristi Dosh, *Name, Image And Likeness Legislation May Cause Significant Title IX Turmoil*, Forbes (Jan. 21, 2020), <https://www.forbes.com/sites/kristidosh/2020/01/21/name-image-and-likeness-legislation-may-cause-significant-title-ix-turmoil/?sh=243424ba7625>.

<sup>32</sup> Louise Gaille, *16 Pros and Cons of Title IX*, Vittana (Dec. 1, 2017), <https://vittana.org/16-pros-and-cons-of-title-ix>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Kim Elsesser, *Here's Why Women's Teams Are Coached By Men*, Forbes (Mar. 1, 2019), <https://www.forbes.com/sites/kimelsesser/2019/03/01/heres-why-womens-teams-are-coached-by-men/?sh=5ceefc51b3f9>.

<sup>36</sup> Gaille, *supra* note 35.

judgment that exceeds insurance coverage, a taxpayer's money can be used to pay for the damages.<sup>37</sup>

In 2019, the U.S. Department of Education reported that eighty-seven percent of NCAA schools “offered disproportionately higher rates of athletic opportunity to male athletes compared to their enrollment.”<sup>38</sup> A study conducted by Pepperdine University found that female students make up fifty-three percent of the study body at NCAA Division I colleges, but the athletic departments devote only thirty-six percent of their budgets to women's sports.<sup>39</sup> Because of this budget difference, one hundred and thirty-three million dollars is added each year to men's sports as compared to women's.<sup>40</sup> Another notable drawback of Title IX is that it does not require the equal expenditure of funds on men's and women's athletes.<sup>41</sup> The only equal expenditure required is in athletic scholarships.<sup>42</sup> As noted in a report released by the firm hired by the NCAA to investigate equity issues, “spending per D-I and national championship participants, excluding basketball, was about \$1,700 less for women's participants than men's in ‘18-19...[and] [t]he NCAA spent \$4,285 per men's participant versus \$2,588 per women's participant.”<sup>43</sup>

These ongoing inequities are further exacerbated by the fact that Title IX only applies to institutions that receive federal funding.<sup>44</sup> Because the NCAA does not receive federal money, it exists outside of Title IX's reach, despite the NCAA's extensive control over intercollegiate

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<sup>37</sup> See 42 U.S.C. § 1983; See 20 U.S.C. § 1681(a).

<sup>38</sup> Maddy Pontz, *Nearly 50 Years After Title IX, Girls and Women in Sports are Still Chasing Equity*, Ms. (Feb. 5, 2020), <https://msmagazine.com/2020/02/05/nearly-50-years-after-title-ix-girls-and-women-in-sports-are-still-chasing-equity/>.

<sup>39</sup> Justin Touhey, *College Athletics Win and Lose Big*, Pepperdine University Graphic (Nov. 18, 2020), <http://pepperdine-graphic.com/college-athletics-win-and-lose-big/>.

<sup>40</sup> *Id.*

<sup>41</sup> *What is Title IX?*, Women's Sports Foundation (Sep. 10, 2019), <https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/>.

<sup>42</sup> *Id.*

<sup>43</sup> NCAA External Gender Equity Review 7-8 (Kaplan, Hecker, & Fink LLP 2021).

<sup>44</sup> 20 U.S.C. § 1681(a).

athletics.<sup>45</sup> The NCAA is a private, nonprofit association, responsible for supervising regional and national North American intercollegiate athletic contests.<sup>46</sup> The Association groups programs into three different divisions, each of which represents a different level of competition, compiles statistics on and about numerous educational institutional teams,<sup>47</sup> and formulates and enforces the rules of play for various sports and the eligibility criteria for athletes.<sup>48</sup> The NCAA is comprised of approximately one thousand ninety-eight members and one hundred and two athletic conferences.<sup>49</sup> It is said to be “the largest and most prestigious association of colleges and athletic conferences in the United States... [holding a] dominant position in intercollegiate athletics.”<sup>50</sup> But because it is not a state actor and does not receive federal funding, it does not have to abide by Title IX requirements.<sup>51</sup> This undermines Title IX’s ability to create true equity for women in collegiate athletics.<sup>52</sup>

### *B. Consistent Opposition: The History of the NCAA Alongside NIL and Sports Betting*

At the inception of Title IX, the NCAA had been transparent about its opposition to its enactment, opposing Title IX because it feared that it would diminish the revenue it received from its member institutions.<sup>53</sup> Even though the Association benefits economically from federally

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<sup>45</sup> See *NCAA v. Smith*, 525 U.S. 459 (1999) (holding that “Dues payments from recipients of federal funds...do not suffice to render the dues recipient subject to Title IX.”)

<sup>46</sup> *What is the NCAA?*, National Collegiate Athletic Association, <http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited Apr. 20, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> *National Collegiate Athletic Association*, Britannica (Apr. 11, 2022), <https://www.britannica.com/topic/National-Collegiate-Athletic-Association>.

<sup>49</sup> Nat’l Collegiate Athletic Ass’n., *supra* note 40.

<sup>50</sup> *Coll. Athletic Placement Serv., Inc. v. Nat’l Collegiate Athletic Ass’n*, No. 74-1144, 1974 WL 998, at \*2 (D.N.J. Aug. 22, 1974); *see also Banks v. Nat’l Collegiate Athletic Ass’n*, 746 F. Supp. 850, 852 (N.D. Ind. 1990), *aff’d*, 977 F.2d 1081 (7th Cir. 1992).

<sup>51</sup> *Smith*, 525 U.S. 459 (1999).

<sup>52</sup> *Smith*, 525 U.S. 459 (1999).

<sup>53</sup> Alvin Powell, *How Title IX transformed colleges, universities over the past 50 years*, The Harvard Gazette (Jun. 22, 2022), <https://news.harvard.edu/gazette/story/2022/06/how-title-ix-transformed-colleges-universities-over-past-50-years/>.

assisted member-institutions, it is not held to the legal standard of Title IX.<sup>54</sup> The United States Supreme Court held in *NCAA v. Smith* that “the Association's receipt of dues demonstrates that it indirectly benefits from the federal assistance afforded its members, [which without more] ...is insufficient to trigger Title IX coverage.”<sup>55</sup>

Until the 1980s, the NCAA did not govern women’s athletics.<sup>56</sup> Rather, the Association for Intercollegiate Athletics for Women (“AIAW”), founded in 1971, regulated American women’s collegiate sports.<sup>57</sup> The AIAW was created to ensure equal opportunities, resources, and exposure for women’s college sports.<sup>58</sup> By 1981, AIAW was comprised of over eight hundred charter institutions. The AIAW focused solely on “education, and not on athletic performance, and thus reject[ed] the ‘win or die’ attitude of the NCAA.”<sup>59</sup> With AIAW’s success, the NCAA observed the growth of women’s sports and recognized the possible increase in financial and political power that would be obtained by exerting control over women’s intercollegiate athletics.<sup>60</sup> In 1981, the NCAA approached AIAW with an offer to merge into the Association.<sup>61</sup> AIAW counteroffered and requested to become a joint union with a fifty percent stake. The NCAA refused and the AIAW declined the NCAA’s offer.<sup>62</sup>

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<sup>54</sup> *NCAA v. Smith*, 525 U.S. 459 (1999).

<sup>55</sup> *Id.* (While attending law school, Renee Smith attempted to play volleyball, but was barred by the NCAA’s postbaccalaureate rule that does not allow student-athletes to participate in athletics after undergraduate graduation unless they are participating at the school where they earned their undergraduate degree. Smith sued the NCAA and argued that the rule violated Title IX. The Supreme Court found that only those entities that directly or indirectly receive federal financial assistance are subject to Title IX. As a result, the NCAA was immune from being subject to Title IX).

<sup>56</sup> Pamela Grundy, *Shattering the Glass*, 190, (Univ. of N.C. Press, 2005).

<sup>57</sup> *See Association for Intercollegiate Athletics for Women v. National Collegiate Athletic Association*, 735 F.2d 577 (D.C. Cir. 1984).

<sup>58</sup> Laine Higgins, *Women’s College Sports Was Growing. Then the NCAA Took Over*, *The Wall Street Journal* (Apr. 3, 2021), <https://www.wsj.com/articles/women-college-sports-ncaa-aiaw-11617422325>.

<sup>59</sup> Murray A. Sperber, *College Sports, Inc: The Athletic Department Vs. the University* (1990); *see* Richard C. Bell, Ed.D., J.D., *A History of Women in Sport Prior to Title IX*, *The Sport Journal*, <https://thesportjournal.org/article/a-history-of-women-in-sport-prior-to-title-ix/> (last visited Apr. 26, 2022).

<sup>60</sup> Mary Jo Festle, *Playing Nice: Politics and Apologies in Women’s Sports* (1996).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

Shortly after the offer was made to the AIAW, the NCAA was able to obtain control of educational institutions through financial incentives, which promised increased sponsorship of women's sports programs.<sup>63</sup> This included travel costs, accommodation stipends for championship events, reduced membership fees, and greater television exposure.<sup>64</sup> Universities were concerned about the enforcement of Title IX, which motivated them to accept the NCAA's offer of membership and sponsorship, leaving behind the AIAW.<sup>65</sup> The institutions mentioned that it would be difficult to prove compliance with Title IX if men's and women's athletics operated under different structures.<sup>66</sup> The NCAA obtained three million dollars to support women's championships from the inducements.<sup>67</sup> The AIAW could not compete with the NCAA's inducements, resulting in a loss of income, membership, sponsorship, and media rights.<sup>68</sup> These losses forced AIAW to cease operations.<sup>69</sup>

With the NCAA obtaining control of a majority of educational institutions, it was able to create rules and regulations for student-athletes to abide by.<sup>70</sup> This includes rules like academic eligibility requirements, rules on what a student-athlete can post on social media, a ban on sports betting in its entirety, and even how many games an institution can play in a given year.<sup>71</sup> Historically, the Association has been opposed to sports betting and compensating student-athletes for use of their name, image, and likeness, arguing that sports betting and NIL deals would lead to

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> The AIAW sued the NCAA for allegedly violating the Sherman Anti-Trust Act but was unsuccessful in doing so. The court held that the market for women's athletics was open for competition and no anti-trust law had been violated. *Association for Intercollegiate Athletics for Women v. National Collegiate Athletic Association*, 735 F.2d 577 (D.C. Cir. 1984).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

athlete by “exploitation by professional and commercial enterprises.”<sup>72</sup> The Association was also concerned that sports wagering had the “potential to undermine the integrity of sports contests and jeopardize the welfare of student-athletes and the intercollegiate athletics community” and promoted campaigns like, “Don’t Bet On It,”<sup>73</sup> to “educate student-athletes and coaches on what is and is not permitted according to NCAA rules regarding sports wagering.”<sup>74</sup>

The NCAA initially had the support of federal legislation to help restrict and halt the legalization of sports wagering. In 1992, The Professional and Amateur Sports Protection Act (“PASPA”), was enacted to restrict all but a handful of states from legalizing sports gambling.<sup>75</sup> PASPA held student-athletes and coaches in violation of the NCAA bylaws and federal law if they participated in sports wagering.<sup>76</sup> In the years following the enactment of PASPA, the public’s view on gambling changed and became widely accepted.<sup>77</sup> According to the Washington Post, in 2017, fifty-five percent of Americans approved of legalizing sports wagering, a flip in numbers compared to the fifty-six percent who disapproved of legalization in 1993.<sup>78</sup> In 2018, the United States Supreme Court decision in *Murphy v. NCAA* found PASPA unconstitutional, permitting states to legalize sports wagering within their borders.<sup>79</sup> The *Murphy* decision did not alter the

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<sup>72</sup> See Jon Solomon, *The History Behind the Debate Over Paying NCAA Athletes*, Aspen Institute (Apr. 23, 2018), <https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes/> (As of 2021-2022, the official NCAA manuals for all three divisions still expressly ban member-institution’s athletic department staff, non-athletic staff with responsibilities relating to athletic activities, conference staff, and student-athletes from knowingly participating in sports wagering activities); see also Nat’l Collegiate Athletic Ass’n, 2020-2021 NCAA Division I Manual (Aug. 2020), available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

<sup>73</sup> *Sports Wagering*, NCAA, <http://www.ncaa.org/enforcement/sports-wagering> (last visited Apr. 24, 2022).

<sup>74</sup> Jolt, *Is "Don't Bet On It" Dead? How The NCAA Is Responding To Legalized Sports Wagering After PASPA Declared Unconstitutional By The Supreme Court*, Richmond Journal Of Law And Technology (Oct. 16, 2018), <https://jolt.richmond.edu/2018/10/16/is-dont-bet-on-it-dead-how-the-ncaa-is-responding-to-legalized-sports-wagering-after-paspa-declared-unconstitutional-by-the-supreme-court/>

<sup>75</sup> 28 U.S.C. §§ 3701-3704 (2006).

<sup>76</sup> *Id.*

<sup>77</sup> Rick Maese & Emily Guskin, *Poll: For First Time, Majority of Americans Approve of Legalizing Sports Betting*, The Washington Post (Sept. 26, 2017), [https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14\\_story.html?utm\\_term=.401e9951b790](https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14_story.html?utm_term=.401e9951b790).

<sup>78</sup> *Id.*

<sup>79</sup> *Murphy v. NCAA*, 138 U.S. 1461 (2018).

NCAA’s stance on sports wagering and NCAA bylaws strictly prohibit student-athletes and their coaches from engaging in legalized sports wagering. The bylaws do not, however, prohibit NCAA member-institutions from entering into partnerships with sportsbooks, even though the NCAA remains opposed to those partnerships, believing that they “threaten the integrity of college sports in many ways...”<sup>80</sup> Member-institutions like the University of Maryland have rejected the NCAA’s concerns, entering into lucrative partnerships with sportsbooks, arguing claiming that “[t]his is the business...if it’s legal and we think we can manage it in a responsible way, then . . . athletic programs are going to take advantage of that...”<sup>81</sup>

Similarly, the NCAA long opposed student-athletes profiting from their NIL rights.<sup>82</sup> The association justified its opposition to compensating student-athletes for their NIL by focusing on the concept of amateurism.<sup>83</sup> The NCAA stated that maintaining the principles of amateurism assists in encouraging the competitive nature of the game, promoting further education by integrating academics as well as athletic goals, incentivizing the Division I institutions to remain a part of the association and increasing consumer demands.<sup>84</sup> Many student-athletes opposed the NCAA’s position on NIL.<sup>85</sup> The NCAA’s Executive Director stated the NCAA has treated the

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<sup>80</sup> See Greta Anderson, *Profits Over Principles?*, Inside Higher Ed (Nov. 18, 2020), <https://www.insidehighered.com/news/2020/11/18/cu-boulder-sports-betting-deal-goes-against-long-held-ncaa-stance>; see also Matthew Waters, *Colleges Can Now Sign Sports Betting Deals? University of Colorado Partners With PointsBet*, Legal Sports Report (Sept. 8, 2020), <https://www.legalsportsreport.com/44057/sports-betting-deals-for-colleges-are-ok/>.

<sup>81</sup> David Purdum, *Maryland Becomes First Big Ten School to Partner with Sportsbook*, ESPN (Dec. 8, 2021), [https://www.espn.com/chalk/story/\\_/id/32820938/maryland-becomes-first-big-ten-school-partner-sportsbook](https://www.espn.com/chalk/story/_/id/32820938/maryland-becomes-first-big-ten-school-partner-sportsbook).

<sup>82</sup> See Nat’l Collegiate Athletic Ass’n, 2020-2021 NCAA Division I Manual §§ 12.4.2.3, 12.5.1.3, and 12.5.2.1, at 74, 75-76, 77 (Aug. 2020), available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

<sup>83</sup> See Michael McCann, *Name Image and Likeness: A Guide on College Athlete Compensation*, SPORTICO (Nov. 11, 2020), <https://www.sportico.com/feature/collegethletes-paid-name-image-likeness-deals-nils-1234616329/>.

<sup>84</sup> *Id.*

<sup>85</sup> Ross Dellenger, *Student-Athlete Committee Members Speak Out to Oppose NCAA’s Alternative NIL Proposal*, Sports Illustrated (June 24, 2021), <https://www.si.com/college/2021/06/24/ncaa-athletes-oppose-ncaa-alternative-nil-proposal>.

athletes like “disposable university property.”<sup>86</sup> The consideration of NIL was influenced by the Supreme Court’s decision in *NCAA v. Alston*, which struck down NCAA caps on student-athlete academic benefits on antitrust grounds.<sup>87</sup> In doing so, the Court ended the NCAA’s restriction on student-athletes earning compensation for their NIL.<sup>88</sup> After *NCAA v. Alston*, MaximBet sportsbook, in the spirit of narrowing the gender gap in sports, had offered statewide NIL deals to every NCAA female student-athlete in Colorado.<sup>89</sup> Due to the NIL policy’s success, sportsbooks have started creating relationships with institutions, which was not allowed prior to the change in the NCAA’s rules. For example, since the initiation of the NIL policy, Caesars had been named the official sportsbook of Louisiana State University (“LSU”) Athletics.<sup>90</sup> Additionally, LSU’s athletic department even sends emails to its students encouraging engagement in sports wagering through the Caesar’s sportsbook mobile application.<sup>91</sup> As of 2022, wagering on sports in the Power 5 conferences is an eleven billion-dollar-a-year industry.<sup>92</sup> NIL and sportsbook partnerships provide an opportunity for furthering gender equality in publicity in college sports. Even accounting for athlete NIL compensation and sports wagering deals, student-athletes still face

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<sup>86</sup> See *Paying College Athletes – Top 3 Pros and Cons*, ProCon (Jan. 21, 2022), <https://www.procon.org/headlines/paying-college-athletes-top-3-pros-and-cons/>.

<sup>87</sup> *Alston*, 141 S. Ct. 2142.

<sup>88</sup> *Id.*

<sup>89</sup> Kristi Dosh, *MaximBet Offers Statewide NIL Deal To Every NCAA Female Student Athlete In Colorado*, Forbes (Sept. 28, 2021), <https://www.forbes.com/sites/kristidosh/2021/09/28/maximbet-offers-statewide-nil-deal-to-every-ncaa-female-student-athlete-in-colorado/?sh=4a067ae3127d>.

<sup>90</sup> Press Release, *Caesars Sportsbook Named Official Sportsbook Partner of LSU Athletics*, (Sept. 17, 2021), <https://investor.caesars.com/news-releases/news-release-details/caesars-sportsbook-named-official-sportsbook-partner-lsu>.

<sup>91</sup> Neal Freyman, *Colleges and Sports Betting Companies Make A Likely Duo*, Morning Brew (Mar. 17, 2022), <https://www.morningbrew.com/daily/stories/2022/03/17/colleges-and-sports-betting-companies-make-a-likely-duo> (Emails contain the subject line: “\$300 in Free Bets Await”).

<sup>92</sup> Amanda Christovich, *Learfield, U.S. Integrity Form College Sports Betting Watchdog*, Front Office Sports (Jan. 11, 2022), <https://frontofficesports.com/learfield-u-s-integrity-form-college-sports-betting-watchdog/>.

gender inequality in publicity due to the NCAA's broadcasting deals that grant men's college sports tournaments more airtime than female sports.<sup>93</sup>

As stated above, because it is not a state actor, an educational institution, and because it does not receive federal funding, the NCAA is not legally bound by Title IX.<sup>94</sup> The NCAA only has the authority to act as a proponent and guarantor of Title IX protections.<sup>95</sup> Sports professionals have stated that women, at the college level, are discriminated against by the NCAA and that it is not doing its job at ensuring Title IX protection.<sup>96</sup> The NCAA is a necessary part of many institutions' athletic programs, which is one of the main reasons why it should be held to the legal standard of Title IX. It should be noted that the NCAA was exposed for its inequity in the opportunities provided to student-athletes during the 2021 March Madness tournament.<sup>97</sup> Both male and female players were assured, by the NCAA, that a workout facility would be allocated to them during the course of the tournament.<sup>98</sup> The men were provided with a state-of-the-art weight room while the women were given one lone set of dumbbells and a stack of yoga mats amid a large unused space inside the San Antonio convention center.<sup>99</sup> Players turned to social media to reveal the NCAA's gender equity issues revolving around the tournament.<sup>100</sup> The NCAA Commission that reviewed these issues responded in 2022 with a series of changes aimed at improving female student-athletes experience at the tournament.<sup>101</sup> In addition, the NCAA added

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<sup>93</sup> See *Gender Equity Review: NCAA's Focus On Revenue Drives Inequity*, The Athletic (Oct. 26, 2021), <https://theathletic.com/news/gender-equity-review-ncaa-s-focus-on-revenue-drives-inequity/0DrYIuXB8KWI/>.

<sup>94</sup> *NCAA v. Smith*, 525 U.S. 459 (1999).

<sup>95</sup> See *Id.*

<sup>96</sup> *Gender Equity Review*, *supra* note 105.

<sup>97</sup> Henry Bushnell, *Inside NCAA Basketball's Gender Inequities and How They Were Exposed in 2021*, Yahoo Sports (Mar. 14, 2021), <https://sports.yahoo.com/ncaa-basketball-gender-inequities-2021-exposed-march-madness-162712173.html>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *NCAA Staff Provides Updates on Gender Equity Reforms For Championships*, NCAA (Jan. 26, 2022), <https://www.ncaa.org/news/2022/1/26/media-center-ncaa-staff-provides-updates-on-gender-equity-reforms-for-championships.aspx>.

millions of dollars in new investments to the women's tournament by adding two more teams to the tournament, using the March Madness brand and logo for advertising the women's tournament, by creating gift packages and identical on-site lounge areas for male and female student-athletes, added more signage and promotional items for the women's event to the game sites, and increased cross-promotion between the men's and women's tournaments.<sup>102</sup>

Though the NCAA had made improvements to the 2022 March Madness tournament, the question of equality among all female college sports teams remains.<sup>103</sup> Many have stated that substantial and sustainable change will require a thorough examination of the finances and infrastructure of the sport.<sup>104</sup> A transparent report should be released on how the money is counted, maximized, and used to incentivize the new investments in the women's tournament compared to the men's.<sup>105</sup> After the 2022 March Madness tournament, most sit on the spectrum between "cautious optimism and caustic skepticism."<sup>106</sup> The question remains: Are the NCAA's efforts a public relations ruse or an honest systematic change?<sup>107</sup> If the NCAA is profiting off of college sports, it should be held to the legal standards that the member-institutions are bound to.

### **III. COLLEGE SPORTS BETTING IS FURTHERING THE GENDER DIVIDE IN PUBLICITY OF COLLEGE SPORTS TOURNAMENTS: THE RESOLUTION**

#### ***A. Lack of Publicity: Female College Sports Are Not a Sportsbook or Gambler's Priority***

From mobile sportsbooks apps, websites, and booths at sporting events, the sphere of sports betting is an industry that will continue to grow in participation and compensation. When sports

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<sup>102</sup> Brendan Menapace, *Men's and Women's Teams Get Equal NCAA Tournament Swag: Here's the Early-Round Gift Box*, Promo Marketing (Mar. 22, 2022), <https://magazine.promomarketing.com/article/a-look-at-the-promotional-gifts-for-men-and-womens-ncaa-tournaments/>.

<sup>103</sup> Dan Murphy, *Sedona Prince, March Madness and the Ongoing Quest For Gender Equity at NCAA Basketball Tournaments*, ESPN (Mar. 15, 2022) [https://www.espn.com/womens-college-basketball/story/\\_/id/33482596/sedona-prince-march-madness-ongoing-quest-gender-equity-ncaa-basketball-tournaments](https://www.espn.com/womens-college-basketball/story/_/id/33482596/sedona-prince-march-madness-ongoing-quest-gender-equity-ncaa-basketball-tournaments).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

betting was legalized in the United States, the percentage of viewership and engagement, involving college sports tournaments, increased.<sup>108</sup> Though sports betting is beneficial in increasing the publicity revolving around women's college sports, the incongruity of television coverage and lack of betting lines on women's tournaments is causing further inequality in publicity opportunities between male and female college student-athletes.<sup>109</sup> Though the NIL policy has improved the percentage difference of publicity opportunities, sports betting will further this divide without the NCAA creating equal opportunities and broadcasting deals. Without equal opportunities revolving around publicity, women's college sporting events are not made a gambler's or sportsbook's priority.

Women have been able to create opportunities for publicity now that they are allowed to seek out NIL deals.<sup>110</sup> Now that the NCCA allows athletes to pursue NIL contracts, gamblers may be more inclined to bet on their favorite athlete on social media. Additionally, these opportunities cause an athlete's worth to not only be determined by their screentime that ESPN decides to give them but also by their engagement with their audience.<sup>111</sup> Some of the most-followed collegiate athletes on social media platforms are women.<sup>112</sup> Athletic departments used to have a say over what student-athletes could post on social media platforms. Now, with NIL, student-athletes are free to talk more about their sport, statistics, and experiences through their platforms. While male athletes have more followers, the median of female and male athletes have similar engagement

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<sup>108</sup> Jacob Grubman, *NFL Ratings Rise With Expansion of Legal Sports Betting*, Forbes (Feb. 11, 2022), <https://www.forbes.com/sites/jacobgrubman/2022/02/11/nfl-ratings-rise-with-expansion-of-legal-sports-betting/?sh=335263235bc5>.

<sup>109</sup> See *Gender Equality in Sports Media*, UNESCO, <https://en.unesco.org/themes/gender-equality-sports-media> (last visited Apr. 20, 2022).

<sup>110</sup> Payton Titus, *How Female Athletes and Women's Sports Can Benefit from NIL*, Tampa Bay Times (July 6, 2021), <https://www.tampabay.com/sports/gators/2021/07/06/how-female-athletes-and-womens-sports-can-benefit-from-nil/>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

figures, resulting in equity over social media platforms compared to the percentage of equity that exists with television and other traditional media coverage.<sup>113</sup>

When it comes to NIL deals, most states preclude student-athletes from engaging in sportsbook marketing and advertising deals.<sup>114</sup> In contrast, the state of Colorado does not prohibit athletes from working with brands in the gambling category.<sup>115</sup> Being the first deal of its kind, MaximBet, a well-known sportsbook, offered NIL deals to every female athlete in Colorado over the age of twenty-one.<sup>116</sup> With this deal, female athletes receive compensation by highlighting the sportsbook company through their social media posts.<sup>117</sup> Though some states preclude student-athletes from engaging in NIL deals involved with gambling, NCAA member-institutions have created partnerships with sportsbooks.<sup>118</sup> Unlike the student-athletes, the member-institutions are not barred by the NCAA from making these deals.<sup>119</sup> For example, two of the Power 5 schools, Louisiana State University (“LSU”) and the University of Colorado (“Colorado”), have created partnerships with sportsbooks. LSU entered into a multi-year sponsorship agreement with Caesar’s Sportsbook.<sup>120</sup> As a part of the deal, Caesar Sportsbook received naming rights for the new club at the Tiger Stadium and the ability to place signage throughout Death Valley. Caesars has placed signage at the LSU basketball center, baseball stadium, and has gained a presence on LSU’s mobile sports app.<sup>121</sup> Colorado entered into a five-year, one-and-a-half-million-dollar partnership with

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<sup>113</sup> *Id.*

<sup>114</sup> See Torrey M. Feldman, *Bet You Didn't Know She Could Get Paid for That: Using Sports Betting and the Right of Publicity to Address the Gender Wage Gap in Professional Sports*, 27 *UCLA Women's L.J.* 249, 271 (2020).

<sup>115</sup> Dosh, *supra* note 102.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See Gerry Smith, *Sports Betting Apps Flood College Campuses, Fuel Addiction Fears*, *Bloomberg Quint* (Mar. 15, 2022), <https://www.bloombergquint.com/onweb/gambling-on-march-madness-concern-grows-as-apps-target-college-students>.

<sup>119</sup> *See Id.*

<sup>120</sup> *LSU Becomes First SEC School to Partner With Gambling Company, Agrees to Caesars Sportsbook Deal*, *ESPN* (Sep. 17, 2021), [https://www.espn.com/college-football/story/\\_/id/32225468/lsu-becomes-first-sec-school-partner-gambling-company-agrees-caesars-sportsbook-deal](https://www.espn.com/college-football/story/_/id/32225468/lsu-becomes-first-sec-school-partner-gambling-company-agrees-caesars-sportsbook-deal).

<sup>121</sup> *Id.*

PointsBet.<sup>122</sup> Lower-profile schools have also entered partnerships with wagering companies.<sup>123</sup> The University of Nevada entered into a deal with William Hill, a global online gaming company, in 2017.<sup>124</sup> The University of Denver has a deal with SuperBook Sports.<sup>125</sup> “Cheri Kempf, senior director of Athletes Unlimited, a new women’s professional sports league, argues that sports betting is one of the remedies needed to grow women’s sports engagement.<sup>126</sup> She also stated that “the more that people feel like they’re part of it, they understand it, they can discuss it with their friends and be involved with it from any aspect, the more likely they are to feel part of that group and to continue to engage with it.”<sup>127</sup> Due to the increased sportsbook engagement, there is a promising future in opportunities revolving around publicity for women’s college sports. Though it is promising, without the NCAA complying with Title IX when making broadcasting deals, women’s sports will continue to be less of a priority for gamblers and sportsbooks.

As stated above, sportsbooks and gamblers rely on broadcasted games to make reliable bets. Because Title IX does not apply to the NCAA, the Association is not required to provide student-athletes with equal percentages of publicity revolving around NCAA broadcasted tournaments and championships.<sup>128</sup> According to a UNESCO survey, women make up approximately forty percent of athletes but only obtain four percent of sports media coverage.<sup>129</sup> The survey argues that this is a direct result of the broadcasting deals made by the NCAA.<sup>130</sup> The absence of amplification, storytelling, visibility, and interaction results in fans lacking the ability

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Catie Cheshire, *Could Sports Gambling Be Boon For Women’s Sports? Bet On It, Some Say*, Cronkite News (Jun. 29, 2021), <https://cronkitenews.azpbs.org/2021/06/29/could-sports-gambling-be-boon-for-womens-sports-some-say-bet-on-it/>.

<sup>127</sup> *Id.*

<sup>128</sup> *See NCAA v. Smith*, 525 U.S. 459 (1999).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

to connect, discover, and bet on players.<sup>131</sup> Without consistent game coverage, viewers are left with limited information on the team's statistics, which most gamblers use when they are betting on sporting events. The existing broadcasting deals between the NCAA and various media outlets, to televise and stream college sports tournaments, contributes to the inequality in publicity between male and female student-athletes.<sup>132</sup> For example, the agreement between CBS and Turner to televise the NCAA Men's March Madness Basketball Tournament, on its own, provides the NCAA with its largest source of revenue.<sup>133</sup> According to the NCAA's published records, its overall income in 2019 across all sports was over one billion dollars.<sup>134</sup> The Men's March Madness tournament accounted for slightly more than eighty-two percent of the total earnings of the Association that year.<sup>135</sup> The NCAA sold the broadcasting rights to the men's tournament, separate from the women's, for seven hundred seventy-one million dollars annually.<sup>136</sup> The number is expected to eclipse one billion dollars in the next year.<sup>137</sup> In contrast, the women's tournament is sold as a part of a package deal of more than twenty NCAA male and female championships, equaling a fourteen-year, five hundred-million-dollar deal.<sup>138</sup> The men's tournament deal provides the men's tournament with constant, all-day coverage, while the women's tournament gets limited time and shares a channel with other sporting events besides March Madness.<sup>139</sup> The women's March Madness tournament is given fifteen percent of the ESPN contract.<sup>140</sup> According to William

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<sup>131</sup> *See Id.*

<sup>132</sup> Jaclyn Diaz, *The NCAA's Focus On Profits Means Far More Gets Spent on Men's Championships*, NPR (Oct. 27, 2021), <https://www.npr.org/2021/10/27/1049530975/ncaa-spends-more-on-mens-sports-report-reveals>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Crowe LLP, National Collegiate Athletic Association Consolidate Financial Statements (Aug. 2019-2020) available at [https://ncaaorg.s3.amazonaws.com/ncaa/finance/2019-20NCAAFIN\\_FinancialStatement.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/finance/2019-20NCAAFIN_FinancialStatement.pdf).

<sup>136</sup> Emily Caron & Eben Novy-Williams, *March Madness Daily: The NCAA's Undervalued Women's TV Rights*, Sportico (Apr. 4, 2021), <https://www.sportico.com/leagues/college-sports/2021/march-madness-womens-tournament-more-tv-money-1234626484/>.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *See id.*

<sup>140</sup> *Id.*

Mao, Vice President of Media Rights at Octagon, “if its allotment is around [fifteen percent], then it’s undervalued.”<sup>141</sup> Mao stated that in order to get an honest accounting of its profitability, the NCAA should sell the women’s tournament media rights separately as it does with the men’s tournament, which could triple the current contract value.<sup>142</sup>

Since the legalization of sports betting, viewership of televised sports has risen.<sup>143</sup> For example, the 2022 regular-season NFL games attracted an average of seventeen million viewers, marking a twenty percent increase from 2017, before the legalization of sports betting.<sup>144</sup> Today, as many as one-hundred and twelve million Americans can now legally bet from their mobile devices on different sporting events, including college sports.<sup>145</sup> Though sports betting could act as a resolution for the gender divide by filling in the gap amongst male and female sports, the lack of opportunities for publicity causes sports betting to have an inverted effect. For example, during the women’s March Madness tournament, only two sportsbooks, FanDuel and Tennessee Action 24/7, offered consistent regular-season women’s college basketball betting lines.<sup>146</sup> A betting line is “a form of wagering whereby the bookmaker or sportsbook set gambling odds and determines the favorite and underdog teams in a match.”<sup>147</sup> Well-known sportsbooks like BetMGM, Caesars, DraftKings, TwinSpires, and WynnBET did not offer consistent betting lines on the women’s March Madness tournament.<sup>148</sup> These sportsbooks stated that low handle and lack of statistics are

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Grubman, *supra* note 110.

<sup>144</sup> *NFL Regular-season Ratings Increase 10% Over Last Season*, ESPN (Jan. 12, 2022), [https://www.espn.com/nfl/story/\\_/id/33050695/nfl-regular-season-ratings-increase-10-percent-last-season](https://www.espn.com/nfl/story/_/id/33050695/nfl-regular-season-ratings-increase-10-percent-last-season).

<sup>145</sup> Rick Maese, *Sports betting will keep booming in 2022, but some see risks in growth*, The Washington Post (Jan. 14, 2022), <https://www.washingtonpost.com/sports/2022/01/14/legal-sports-betting-states-2022/>.

<sup>146</sup> Bennett Conlin, *When Will More Sportsbooks Start Offering Women’s College Basketball Odds?*, TN Bets (Feb. 4, 2022), <https://www.tnbets.com/women-college-basketball-betting-lines/>.

<sup>147</sup> *Betting Lines Explained*, Online Gambling, <https://www.onlinegambling.com/sports/betting-lines/#:~:text=A%20betting%20line%20is%20a,for%20wagering%20on%20the%20game> (last visited Apr. 25, 2022).

<sup>148</sup> *Id.*

the reasons for not offering regular women's college basketball spreads.<sup>149</sup> Sportsbooks are hesitant to offer women's college sports betting lines because "if there is not a current high volume of wagers on a sport, it could increase a sportsbook operator's chances of losing money due to a potentially high ratio of sharp bets."<sup>150</sup> Adam Pullen, Caesars Sportsbook's assistant director of trading stated, "[a]s far as handle, [the women's March Madness tournament] unfortunately hasn't drawn close enough to even compare to the men's game."<sup>151</sup> This could be, at least in part, because of the lack of advanced data and media coverage surrounding women's college basketball, which makes it difficult for sportsbooks to set accurate lines for women's contests without information due to the lack of coverage or shared statistics of the events.<sup>152</sup> Without the NCAA following Title IX's requirement for equal opportunities revolving around publicity, men's sporting tournaments will continue to be the main priority for gamblers and sportsbooks. In the absence of adequate and equal broadcasting rights, sports betting would do the opposite: further the gender divide in the category of publicity. If the NCAA is bound by Title IX and has to ensure equal publicity opportunities and broadcasting deals for male and female student-athletes, sports betting will then be the primary resolution of narrowing gender inequity problems revolving around engagement and viewership of college sports. With equal publicity opportunities leading to more information and statistics being shared, women's college sports will surely become a gambler's and sportsbook's priority. Without the NCAA complying with Title IX, college sports betting will have an inverse effect on the percentage of viewership, leaving men's college sports to be the main priority in sports betting.

### ***B. The Resolution: Fixing the Gender Inequity of Publicity in College Sports***

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<sup>149</sup> See Conlin, *supra* note 96.

<sup>150</sup> *Id.*

<sup>151</sup> Mike Seely, *Women Hoopsters Beating Boys at NIL Game*, USBets (Jan. 20, 2022), <https://www.usbets.com/women-hoopsters-beating-boys-nil-game/>.

<sup>152</sup> Conlin, *supra* note 96.

There are three reasons why female collegiate sports tournaments are not generating the same percentage of bets as compared to men: (1) lower quality and quantity of media coverage; (2) a lack of team and player statistics shared during the games and available online; and (3) a lack of engagement among viewers.<sup>153</sup> Women's sporting events are broadcasted at lower quality and quantity compared to men's, leading to a lack of information shared with viewers on the team and its players.<sup>154</sup> A solution to to lessen the gender divide in publicity would be to increase the quality and quantity of game coverage. By increasing the quality and quantity of media coverage, fans would be more informed on the statistics of the teams and their players.<sup>155</sup> Statistical information on teams and their rosters is used for sports gambling and creating fantasy leagues.<sup>156</sup> An increase in the quality and quantity of media coverage will lead to more viewer engagement and confidence in placing bets on the outcome of a game. Lack of media coverage is noted as one of the main reasons sportsbooks avoid offering female sporting event betting lines.<sup>157</sup> By providing higher quality and quantity of media coverage, more statistical evidence on each team and player's success could be gathered. Sportsbooks would then feel secure in offering betting lines on women's college tournaments and championships.

To narrow the gender gap in publicity, NCAA member-institutions need to ensure that the NCAA is negotiating broadcasting rights that align with the protections of Title IX. To provide female student-athletes with the same opportunities in publicity, they need to be given an equal

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<sup>153</sup> Alex Putterman, *As Women's Basketball's Popularity Grows, Online Statistics Remain Scarce*, Hartford Courant (Apr. 7, 2019), <https://www.courant.com/sports/hc-sp-womens-basketball-stats-uconn-espn-sports-reference-20190318-20190407-14mzcvqvwqvhpzcc2us57es4ba-story.html>.

<sup>154</sup> Christy McCarter, *Overlooking Her Shot: Women's Sports Need an Assist as Coverage Remains the Same as 30 Years Ago*, Purdue University News (Mar. 24, 2021), <https://www.purdue.edu/newsroom/releases/2021/Q1/overlooking-her-shot-womens-sports-need-an-assist-as-coverage-remains-the-same-as-30-years-a-go.html>.

<sup>155</sup> *See Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

amount of airtime for their championships and tournaments. As stated previously, female student-athletes only get five percent of airtime compared to the ninety-five percent given to male student-athletes.<sup>158</sup> The percentage of airtime is a clear violation of Title IX.<sup>159</sup> Since member-institutions provide the NCAA with its main source of revenue, they should push for compliance with the same law that they are bound to. Since member-institutions have taken advantage of creating partnerships with sportsbooks, they should compel the sportsbooks to open betting lines for all of their sporting events, including female college sports tournaments and championships. Without making that a priority in the deal, that could be considered a violation of Title IX in ensuring fair and equal opportunity. The most promising remedy to the gender inequity issue in publicity is holding the NCAA to the legal standard of Title IX.

The NCAA's one-billion-dollar contract with CBS and Turner for the men's March Madness Tournament is the main source of its revenue.<sup>160</sup> It placed the women's tournament into a package deal, along with twenty other sports championships, with ESPN.<sup>161</sup> Many recognized this inequality, including a handful of Congressmen in the House of Representatives. In a letter obtained by The Washington Post, thirty-six House Democrats introduced a bill into congress demanding further review into "all championship competitions to ensure that they adhere to the gender equity principles of Title IX" and hold the NCAA to the legal standard of Title IX<sup>162</sup> Ellen Staurowsky, a sports-media professor at Ithaca College, stated that there's no question that the NCAA discriminates women.<sup>163</sup> She added that it is evinced by the one-billion-dollar-a-year in

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<sup>158</sup> *Id.*

<sup>159</sup> See U.S.C. §§ 1681-88 (1982).

<sup>160</sup> William Allen, *How Much Does the NCAA Make From March Madness? Where Does the Money Go?*, AS (Mar. 17, 2022), [https://en.as.com/en/2022/03/17/other\\_sports/1647510236\\_306039.html](https://en.as.com/en/2022/03/17/other_sports/1647510236_306039.html).

<sup>161</sup> See *id.*

<sup>162</sup> Molly Hensley-Clancy, *Pressure Mounts On NCAA as House Democrats Demand Answers Over Tournament Disparities*, The Washington Post (Mar. 24, 2021), <https://www.washingtonpost.com/sports/2021/03/24/ncaa-tournament-house-democrats-megan-rapinoe/>.

<sup>163</sup> See *id.*

broadcast and advertising rights alone for the men's March Madness tournament.<sup>164</sup>

Congresswoman Mikie Sherrill (NJ-11), leader of the bill, stated:

The evidence is clear. Despite being subject to Title IX, the NCAA provided inequitable benefits and services to the women's team during the NCAA's Division One championship tournament. From inferior publicity and promotions to providing the women's teams inadequate equipment, food, facilities, travel accommodations, and health care protocols, the difference between the women's and men's tournaments was stark. The NCAA failed to live up to the spirit of Title IX and undermined the Act's gender equity principles to ensure that women athletes competing at the highest level are treated without discrimination. I'm proud to co-lead this resolution, which reaffirms that the NCAA is subject to Title IX and should make every effort to prevent sex discrimination in its programs and activities.<sup>165</sup>

The women's tournament brings in just thirty-five million dollars in broadcasting rights, only three percent of the men's tournament figures<sup>166</sup>. The NCAA has defended this percentage inequality on the budget difference for the tournaments.<sup>167</sup> It publicly stated that the women's tournament is not as profitable as the men's and has fewer fans. The NCAA Women's Tournament, in 2022, set attendance records and ESPN stated that submissions for its women's bracket contest had increased sixty-seven percent from last year.<sup>168</sup> Though the numbers do not compare to the men's tournaments, that could be denounced to NCAA's broadcasting deals and lack of quality and quantity of media coverage. The fans want to engage with the women's tournament.

If Title IX cannot apply to the NCAA because of a loophole, then Title IX is meaningless in ensuring equality in collegiate sports. The NCAA is an organization made up of over a thousand institutions and conferences, making it the leading athletic program in the United States. Because

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<sup>164</sup> *Id.*

<sup>165</sup> *Speier, Sherrill Introduce Resolution Affirming the NCAA is Subject to Title IX; Must Work to Prevent Sex Discrimination Against Women Athletes*, Congresswoman Jackie Speier (June 29, 2021) <https://speier.house.gov/press-releases?id=DC2A490F-42C0-4A1B-A3EE-F07F3C51DAF7>.

<sup>166</sup> Maggie Mertens, *The Title IX Loophole That Hurts NCAA Women's Teams*, *The Atlantic* (Apr. 1, 2021), <https://www.theatlantic.com/culture/archive/2021/04/march-madness-could-spark-title-ix-reckoning/618483/>.

<sup>167</sup> *Id.*

<sup>168</sup> Kareem Ansari, *Powers Remain and Threats Lurk as Women's Sweet 16 Is Set*, *The New York Times* (Mar. 22, 2022) <https://www.nytimes.com/2022/03/22/sports/ncaabasketball/ncaa-womens-tournament-sweet-16.html>.

of its dominance in the world of collegiate sports, and the importance of gender equality, it should be held to the legal standard of Title IX. Congresswoman Jackie Speier (CA-14), Chair of the Democratic Women’s Caucus, and Congresswoman Mikie Sherrill (NJ-11), along with thirteen co-sponsors have introduced a resolution to the House of Representatives in 2021 affirming that the NCAA should be subjected to Title IX.<sup>169</sup> By holding the NCAA subject to Title IX, media coverage and broadcasting deals will have to be equal among female and male student-athletes. With equal media coverage, college sports betting is likely to increase for female sports, increasing the availability of betting lines, engagement, viewership, and publicity. Without the NCAA being held to the standard of Title IX, college sports betting will have an inverse effect and further a gender divide in publicity that Title IX sought to prohibit.

## **VI. CONCLUSION**

Money yields opportunity and the influence of money within the world of sports betting has diminished the effectiveness of Title IX. The NCAA’s facile actions to ensure gender equality combined with the accessibility and mobility of sports wagering pose many risks to render Title IX ineffective. Due to the incongruities evinced in the NCAA broadcasting deals, there is less airtime available for women’s college sporting tournaments. With the legalization of sports betting, viewership of sporting events is rising and bringing in millions of dollars in tax revenue.<sup>170</sup> The NCAA’s NIL policy has assisted in generating equality in publicity for male and female student-athletes alike. Though NIL assists in narrowing the gender gap, it has proven to not be enough.<sup>171</sup> Women’s college sporting tournaments still present low viewership rates. Even with the NIL policy, the lower quality and quantity of airtime results in a gender gap in publicity.

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<sup>169</sup> Hensley-Clancy, *supra* note 189.

<sup>170</sup> Timothy L O'Brien, *The Sports Gambling Gold Rush Is Absolutely Off the Charts Bloomberg* (Dec. 16, 2021), <https://www.bloomberg.com/graphics/2021-opinion-online-sports-betting-future-of-american-gambling/>.

<sup>171</sup> *Id.*

There are four ways to narrow the gender gap in publicity amongst student-athletes: (1) Increase the quality and quantity of women's sporting tournament coverage; (2) Member-institutions of the NCAA need to ensure that the NCAA is complying with Title IX when it makes broadcasting deals; (3) Member-institutions partnering with sportsbooks should compel the sportsbooks to open betting lines for female sporting events; and (4) The NCAA needs to be held to the legal standard of Title IX. Though all four of these resolutions could assist in narrowing the gender gap, holding the NCAA to the legal standard of Title IX is the most promising option.

With the NCAA being held to Title IX, ensuring equal broadcasting deals, college sports betting could effectively narrow the gender gap between male and female sporting events by increasing fan engagement and viewership. If the NCAA is the main governing body that regulates the member-institutions that are bound by Title IX and obtains its main source of revenue from these very institutions, it should adhere to and be bound by Title IX. Congressmen in the House of Representatives recognize this issue and have introduced a bill lobbying for the NCAA to be held to the legal standard of Title IX. This legislation should be passed. In a time where engagement in college sports betting is increasing and gamblers are more involved with the tournaments and championships, there is a need for systematic change, NCAA compliance, and reform for Title IX to once again be the most influential, landmark gender equality law.