

118TH CONGRESS  
1ST SESSION

# H. CON. RES. 54

Expressing the sense of Congress that title IX of the Education Amendments of 1972 applies to the National Collegiate Athletics Association (NCAA), and the National Collegiate Athletics Association (NCAA) should work to prevent discrimination on the basis of sex in its programs and activities.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2023

Ms. SHERRILL submitted the following concurrent resolution; which was referred to the Committee on Education and the Workforce

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## CONCURRENT RESOLUTION

Expressing the sense of Congress that title IX of the Education Amendments of 1972 applies to the National Collegiate Athletics Association (NCAA), and the National Collegiate Athletics Association (NCAA) should work to prevent discrimination on the basis of sex in its programs and activities.

Whereas title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) prohibits sex discrimination in all educational programs and activities that receive Federal assistance, including athletics programs;

Whereas title IX was intended to avoid the use of Federal resources to support discriminatory practices and to pro-

vide individuals effective protection against such practices;

Whereas title IX does not, on its face, confine the list of those liable under the statute to “recipients” of Federal funds, but simply prohibits discrimination “under any education program or activity receiving Federal financial assistance”;

Whereas, in the applicable implementing regulations for the Department of Education, the Department of Education requires educational programs to offer students of all sexes equal opportunities to play sports, to allocate athletic scholarships equitably, and to treat athletes of all sexes equally with respect to other benefits and services. (Benefits and services include equipment and supplies, scheduling of games and practice times, travel and daily allowance, locker rooms, practice and competitive facilities, medical and training facilities and services, housing and dining facilities and services, publicity and promotions, support services, and recruitment of student athletes.);

Whereas the section 908 of the Education Amendments of 1972 (20 U.S.C. 1687) broadly defines a “program or activity” that receives Federal funds to mean all of the operations of a list of entities, including colleges and universities, private organizations principally engaged in education, and any other entity established by 2 or more of the listed entities—or what Congress termed the “catch-all” provision;

Whereas, in interpreting title IX, Federal courts have correctly held that any entity that exercises controlling authority over a federally funded program is subject to title

IX, regardless of whether that entity is itself a recipient of Federal aid;

Whereas Federal courts have held that State athletic associations exercise controlling authority over interscholastic athletics programs and are therefore subject to title IX (Among other things, State athletic associations set sports seasons, sponsor State championship tournaments, and set eligibility requirements for student participation in sports. Their membership is comprised primarily of educational institutions that receive Federal funds and must comply with title IX. In order for State athletic associations to control and regulate athletics, member institutions must cede their own ability to control many aspects of their athletics programs to the athletic association.);

Whereas Federal courts have correctly reasoned that not subjecting athletic associations to title IX would encourage Federal recipients to empower someone else to promulgate discriminatory policies to avoid title IX liability. Such an interpretation would allow Federal funds to promote sex discrimination and would therefore run afoul of the plain language, meaning, and purpose of title IX;

Whereas, like State athletic associations, the NCAA exercises controlling authority over its federally funded member institutions' athletics programs;

Whereas the NCAA is subject to title IX because, pursuant to section 908 of such Act, it is an organization established by two or more colleges or universities that receive Federal funds;

Whereas the NCAA is subject to title IX because, pursuant to section 908 of such Act, it is an operation of its federally funded member schools;

Whereas, while the Supreme Court ruled in *NCAA v. Smith*, 525 US 459 (1999), that the NCAA is not subject to title IX by virtue of the dues it receives from its federally funded member schools, the Supreme Court left open the question of whether the NCAA is subject to title IX on alternative grounds, including based on its controlling authority over member schools' federally funded athletics programs or pursuant to the definition of "program or activity" in section 908 of such Act;

Whereas the NCAA is an unincorporated association of approximately 1,200 members, including virtually all public and private universities and 4-year colleges conducting major athletics programs in the United States. Members of the NCAA that receive Federal funds are subject to title IX;

Whereas member schools cede control to the NCAA by allowing it to host 90 intercollegiate championship tournaments in 24 sports across 3 divisions (During championship tournaments, the NCAA controls the medical, training, housing, dining, and competition facilities, and dictates the tournament schedule and the publicity and promotion of the teams.);

Whereas, because the NCAA is subject to title IX, it must address documented discrimination against women's teams in the benefits and services provided during championship tournaments so that student athletes who experience sex discrimination during the regular season who are able to seek remedies under title IX have the same remedies when they experience inequitable access to bene-

fits or services during intercollegiate championship tournaments and other barriers to exercising their rights;

Whereas, despite being subject to title IX, the NCAA provided inequitable benefits and services to women's basketball teams in its 2021 Division I Tournaments, including inferior publicity, promotions, equipment, supplies, food, facilities, travel accommodations, and health care protocols and resources;

Whereas these disparities are contrary to the letter and spirit of title IX, undermine efforts to ensure gender equity in sports and society writ large, and hold women and girls back from reaching their full potential;

Whereas, on March 25, 2021, the NCAA announced the commissioning of a comprehensive review of gender equity issues in NCAA sports that was completed by the independent law firm Kaplan Hecker & Fink (Kaplan), and the results of their independent review were released in two separate reports on August 2, 2021, and October 25, 2021, which found that gender inequities at the NCAA stem from the structure and systems of the NCAA itself and provided an extensive list of recommended actions the NCAA should take to address these inequities;

Whereas more than a year after the release of those reports, the NCAA has made progress on some of Kaplan's recommendations, but has either not yet begun consideration or declined to implement others, including restructuring NCAA leadership so that the Vice President of Women's Basketball reports directly to the President; and

Whereas the NCAA leadership should make it a top priority to expeditiously and thoroughly consider all recommenda-

tions from the Kaplan report to ensure meaningful change: Now, therefore, be it

1       *Resolved by the House of Representatives (the Senate*  
 2 *concurring)*, That it is the sense of Congress that the Na-  
 3 tional Collegiate Athletics Association (NCAA) is subject  
 4 to title IX of the Education Amendments of 1972 (20  
 5 U.S.C. 1681 et seq.) and should work to prevent discrimi-  
 6 nation on the basis of sex in its programs and activities.

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