

108TH CONGRESS  
1ST SESSION

# S. RES. 153

Expressing the sense of the Senate that changes to athletics policies issued under title IX of the Education Amendments of 1972 would contradict the spirit of athletic equality and the intent to prohibit sex discrimination in education programs or activities receiving Federal financial assistance.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mrs. MURRAY (for herself, Ms. SNOWE, Mr. DASCHLE, and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions

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## RESOLUTION

Expressing the sense of the Senate that changes to athletics policies issued under title IX of the Education Amendments of 1972 would contradict the spirit of athletic equality and the intent to prohibit sex discrimination in education programs or activities receiving Federal financial assistance.

Whereas title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), also known as the “Patsy Takemoto Mink Equal Opportunity in Education Act” (referred to in this resolution as “title IX”), prohibits education programs or activities, including athletic programs or activities, that receive Federal financial assistance from discriminating on the basis of sex;

Whereas prior to 1972 and the enactment of title IX, virtually no college offered athletic scholarships to women, fewer than 32,000 women participated in collegiate sports, and women's sports received only 2 percent of college athletic dollars;

Whereas the regulation implementing title IX was submitted to Congress, multiple hearings were held, and the regulation became effective July 21, 1975, with specific provisions governing athletic programs and the awarding of athletic scholarships;

Whereas according to the Department of Education's 1979 Policy Interpretation, which interprets the application of title IX and its implementing regulations to athletics, an educational institution may demonstrate compliance with title IX's requirement that it allocate athletic participation opportunities on a nondiscriminatory basis to male and female athletes by meeting 1 of the criteria in a 3-part test, by demonstrating—

(1) that intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments at the institution;

(2) a history and continuing practice of program expansion responsive to the developing interests and abilities of members of the underrepresented athletes' sex; or

(3) that the interests and abilities of the members of the underrepresented athletes' sex have been fully and effectively accommodated by the present program;

Whereas the 1979 Policy Interpretation and its 3-part test have been in place for over 2 decades and have been supported by both Republican and Democratic administrations;

Whereas 2 out of 3 educational institutions comply with the second or third criterion of the 3-part test;

Whereas the Office for Civil Rights of the Department of Education issued a Clarification of Intercollegiate Athletics Policy Guidance in 1996 regarding the 3-part test—

(1) confirming that educational institutions can comply with title IX's requirement of nondiscriminatory allocation of athletic participation opportunities by meeting any single part of the 3-part test;

(2) setting out specific examples for compliance to guide the institutions; and

(3) confirming that there are no strict numerical formulas for determining title IX compliance;

Whereas the 1979 Policy Interpretation and the 1996 clarification provide educational institutions with ample and fair guidance on compliance with title IX and provide flexibility to the institutions so that they may determine for themselves how best to comply with the law;

Whereas the enforcement mechanism of title IX, the 3-part test, has been upheld as legal and valid by each of the 8 United States Courts of Appeals to consider it;

Whereas since the beginning of title IX implementation, men's participation in intercollegiate sports has increased from 220,178 to 231,866, and women's participation in those sports has increased from 31,852 to 162,783, an increase of more than 400 percent;

Whereas the number of girls participating in athletics at the high school varsity level has increased from 294,015 in 1972 to 2,784,154 in 2001, an 847 percent increase;

Whereas sex discrimination in athletics persists, despite the strides made under title IX, with, for example, female athletes receiving only 42 percent of the college athletic participation opportunities nationwide, even though female students make up 56 percent of the college population, and female athletes receiving \$133,000,000 fewer athletic scholarship dollars per year than their male counterparts;

Whereas nothing in title IX or its policies requires educational institutions to reduce men's athletic participation opportunities to come into compliance with participation requirements and 72 percent of colleges and universities that have added women's teams have done so without cutting any teams for men;

Whereas recommendations made by the Commission on Opportunity in Athletics for changes to the athletics policies issued under title IX would seriously weaken title IX's protections and result in significant losses in athletic participation opportunities and scholarships to which women and girls are entitled under current law; and

Whereas those recommended changes to the title IX athletics policies would allow an educational institution that fails to equally accommodate its male and female students to be in compliance with title IX without having to fully demonstrate that discrimination does not exist in the institution's athletic programs: Now, therefore, be it

- 1       *Resolved*, That it is the sense of the Senate that—
- 2               (1) changes to athletics policies issued under
- 3       title IX would contradict the spirit and intent of title
- 4       IX's mandate to provide equal opportunities in ath-
- 5       letics;

1           (2) the current title IX athletics policies, name-  
2       ly, the 1975 regulations issued under title IX, and  
3       the 1979 Policy Interpretation, as clarified in the  
4       1996 Clarification of Intercollegiate Athletics Policy  
5       Guidance, should remain unchanged and be enforced  
6       vigorously to eliminate the continuing discrimination  
7       against women and girls in athletics; and

8           (3) if the Department of Education changes the  
9       current title IX athletics policies, Congress will re-  
10      spond with legislation to restore the policies and pre-  
11      serve the right to equal opportunities in athletics, as  
12      mandated by title IX.

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