

May 17, 2023

Assemblymember Chris Holden  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0041

RE: California AB 252

*Submitted via email*

Dear Assemblymember Holden,

I write to you today from the Women's Sports Foundation (WSF) with concerns and comments on AB 252. WSF is a national non-profit organization, which, since its founding in 1974 by Billie Jean King, has been the premier protector of Title IX and advocate for gender equity in sports. Through research, advocacy, community impact, and a wide variety of partnerships, we seek to strengthen, expand, and ensure that all girls and women have equal access to opportunities in sport.

We write today to implore you to reexamine AB 252 for the potential consequences, both intended and unintended as it relates to gender equity and broad-based sports offerings in this country. College sports are in need of reform, but we must create that change on a broad Federal level while keeping gender equity and existing federal laws top of mind.

Through our vast research, we know that sports provide women and girls with increased health benefits, leadership skills, and academic outcomes. Research from EY also shows that 94% of women in C-suite positions played sports, with more than 50% of them playing at the collegiate level. The majority of these women credit their success in business in part to the skills they gained through sport participation. Sports participation is a tremendous benefit to our society, and we must ensure that more students have access to sports, not fewer.

### **The Arms Race has Stunted Investment in Women's Sports**

Despite the milestone celebration of the 50<sup>th</sup> anniversary of Title IX last year, we know far too many schools and institutions are out of compliance with this law. Our country's current collegiate sports model needs reform. For too long, the system has allowed unchecked growth, creating an "arms race" among many schools and an inequitable investment in football and men's basketball programs, with women's sports and men's Olympic sports often serving as an afterthought. The current arms race has done nothing to expand broad-based sports offerings. In fact, between 1988-2016, NCAA schools saw a net gain in the number of teams offered, with 594 added in Division II and 751 added in Division III, however, at the Division I level where the arms race is pervasive, schools saw a net loss of 330 men's teams in Division I (Wilson, 2017).

While we are encouraged to see that annual reporting of Title IX compliance is a requirement of AB 252, we are concerned that it appears to place unnecessary hurdles for schools seeking to comply with both AB 252 *and* Title IX. Many schools already seem to openly expose their lack of compliance with Title IX, one needs to only look at EADA reporting to see inequities consistently exposed. For example, in WSF's report, [50 Years of Title IX: We're Not Done Yet](#), details that 58% of schools in the Division I Football Bowl Subdivision favor male athletes in the distribution of athletic financial aid. Additionally, EADA data show 86% of NCAA institutions across all divisions

offered higher rates of athletic opportunities to male athletes disproportionate to their enrollment. Given the pervasive lack of compliance with Title IX, it seems reasonable to assume that placing additional roadblocks to make Degree Completion Fund payments gender equitable is unlikely to result in improved compliance with the law. The structure of AB 252 is likely to do nothing more than further exacerbate existing inequities.

### **Elimination of Broad-Based Sports Offerings**

Additionally, although the bill seeks to deter schools from cutting sports and roster spots, the reality is that if schools do not have the budget to fund sports, they *will* cut sports. We cannot be so naïve to think that schools will not find ways around this provision. If this were the case, we know from history that women's sports and men's Olympic sports would be among the first to be cut. As mentioned above, WSF believes in the power of sports and the lifelong benefits they provide to all who participate, as such, we hope to see more athletes participate, not fewer. It is imperative for the future of our society as a whole as well as our current Olympic system that we continue to offer broad-based sports throughout our collegiate system.

Bills like AB 252 which discuss "fair market value" do not address the fact that the majority of athletes who have "market value" are likely men. Additionally, they only hold this perceived value given the long history of investment and prioritization which has allowed them the environment to flourish and grow. The NCAA has sponsored men's championships since 1906 and only began sponsoring women's championships in 1981. Men's sports has had a 75 year head start. More often than not, the over investment in men's sports that we regularly see is likely out of compliance with Title IX but there is such little proactive enforcement of the law, it is challenging to ensure schools are in compliance. For too long, women have been taught to be thankful for the crumbs.

Existing inequities would likely be further exacerbated if bills like AB 252 were passed into law, where the primary beneficiaries are projected to be male athletes in football and basketball. Simply put, AB 252, though presented as a "degree completion fund" seeks to share revenue between schools and student-athletes. If AB 252 were law, a best-case scenario of schools providing these payments equitably would likely result in an untenable financial situation which we believe could lead to schools dramatically cutting their sports offerings or eliminating athletics altogether.

Given that this bill provides two ways to compensate athletes, the alternative method of calculating payments provides little comfort. We are concerned that this current structure of AB 252 could disincentivize schools from investing in women's sports. One particularly concerning aspect of this bill is the ability for schools to calculate degree completion fund payments based solely on revenue in future years that are in excess of the 2021-22 academic year. The presumption that this proposed structure would allow women's and Olympic Sports to be spared is a red herring. The reality is that schools could very easily use this provision to act as a cap on the budgets of women's teams, thereby stifling the investment and growth that is so needed and long overdue in the women's game. Women have only had the ability to play NCAA sports for less than 50 years.

For far too long women have been underfunded, underpromoted and underrepresented. WSF's research highlighted that:

- Women's sport programs across all divisions and subdivisions received between 18% and 38% of budget expended. Women's programs in NCAA Division I-FBS receive the smallest percentage of budget expended at 18%.
- Of the more than \$241 million spent on recruiting athletes to play at the two-year, junior college, and four-year college levels in 2019-20, 31% was spent on recruiting female athlete talent (U.S. Department of Education, 2021).

- Among the 351 NCAA Division I institutions, total spending on recruiting amounted to \$196,472,185. Of that amount, 29% (\$57,871,962) was allocated to recruiting female athletes (U.S. Department of Education, 2021a).

### **Limiting Growth of Women's Sports**

One needs to look no further than the NCAA Gender Equity Review and the Media & Sponsorship Addendum to see that women's sports have too long been undervalued. As is currently structured, women's marquee championships are bundled as part of a package deal which has been woefully undervalued in media negotiations. Despite this, women's sports continue to see unprecedented growth, for example, the 2022 NCAA Women's Basketball Championship averaged 9.2 million viewers (12.6 million peak) and was the most watched college basketball game to date. We caution you that AB 252's structure could do very little to protect women's sports offerings and instead would stifle the growth potential of women's sports.

### **Unintended Consequences**

Finally, there are many aspects of AB 252 that simply do not appear to be thoroughly thought through. For instance, while the Legislative Counsel's Digest appears to refer to schools making more than \$10 million in media revenue for fair market value payments to begin, this figure appears nowhere in the bill text. If schools making very little in media revenue were required to share that back out, we would almost certainly see smaller schools and athletic programs cease to exist in their current form.

Additionally, section 67474 prohibits schools from regulating student-athletes' ability to receive "food, shelter, medical expenses, or medical disability insurance from any source," there are potential Title IX implications here. As Title IX has been consistently applied, as soon as a school allows a benefit to be passed along to its student-athletes, it is required to ensure that the benefits and treatment are equitable. If schools are unable to regulate this, it is very likely that men would continue to receive the vast majority of benefits.

Recently we saw the NCAA (prompted by individual state legislation) change its policies around Name, Image and Likeness (NIL) with very few guardrails or considerations for gender equity. This haphazard approach to policy making has resulted in some positive changes but also many concerning unintended consequences. The reality is that NIL has created many real, positive and profitable opportunities for men *and* women to monetize their NIL through *true* third-party NIL deals. However, it has also allowed for the proliferation of NIL collectives. These collectives often appear to serve as a loophole for Title IX compliance. Though data is limited because there is very little, if any, transparency required around NIL deals, the data we do have shows that collectives are benefitting men far more than they are women all while some schools appear to be involved in deals, crossing into a gray area of Title IX compliance and applicability. Though the availability of true third-party NIL deals have been positive for women overall, the lack of thoughtfulness in the policy change have resulted in further exacerbated inequities. It is critical that you do not allow AB 252 to create the same fate.

Though there are many points of view on the future of college sports, we can all agree that change and evolution is needed, however, a disjointed state by state solution is not the answer. College sports are in need of reform, but we must create that change on a broad Federal level while keeping gender equity and existing federal laws top of mind.

We encourage you to reach out should you wish to discuss the contents of this letter more thoroughly.

Sincerely,



Danette Leighton, CEO  
Women's Sports Foundation