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The Law of the Game: How Title IX and the Constitution Affected the Rules and the Culture of Female Basketball

Historically in the United States, women have been discouraged from playing sports. Early attempts to keep women out of masculine games frequently stemmed from medical arguments that physical activity for girls and women (especially white, non-working class women) was actually dangerous both to their own well-being and to the well-being of future Americans. Sport, these doomsayers warned, could damage the reproductive organs, could sap the body of vital energy necessary for raising children and running a household, and would ruin the family.

In the 1960s women began questioning the assumption that they were limited citizens and only capable of raising a family. Women clamored for equal rights and equal opportunities. One of those opportunities demanded and obtained was the right to educational opportunities for their daughters that equaled those for their sons. The result was the enactment of Title IX of the Education Amendments of 1972, which prohibited gender discrimination in educational programs and activities.

Although hailed as liberal feminism's answer to gender inequality, in fact Title IX, as interpreted by the Department of Health, Education and Welfare (HEW), in some respects perpetuated those old medical adages by implying that certain sports were just too dangerous for women. HEW's regulations for enforcing the law specified that schools were not obligated to allow females to tryout for male teams even if there was no comparable female team, so long as the sport was a contact one. The definition of contact consisted of listing of sports: boxing, wrestling, rugby, ice hockey, football, and basketball. The underlying assumption appeared to be that regardless of age or size, females would always be at risk when playing contact sports with males. The door to games like five-on-five basketball remained barricaded.

This paper explores the legal options that females, especially those not yet involved in collegiate sport, had in forcing their home state athletic associations to allow them to play full-court basketball. Despite the fact that nothing in Title IX required associations to drop the six-on-six half-court girls' game, young women began to demand the opportunity to play the same game that their brothers did. And although Title IX did not directly create a legal recourse, it raised the idea that girls' sport was as important as that of boys. As a result, groups of girls still playing six-on-six high school basketball began to sue their state athletic associations demanding access. The bulk of successful petitioners sued under Constitutional auspices, although some young women, such as a group in Iowa in 1983, filed suit under Title IX.

The Equal Protection clause of the Fourteenth Amendment guarantees that similarly situated people will be treated similarly. This amendment was adopted after the Civil War, but until Title IX was enacted, it never seemed to have occurred to anyone to use it to force gender equity in sport. The successful petitioners argued that because college women played full-court basketball, those states that sponsored only six-on-six teams were limiting the girls' access to college scholarships.

This paper evaluates the court cases (ranging from 1972 to 1985) that involved girls' access to basketball. It compares the legal rhetoric employed by the judges in their decisions and attempts to explain the sometimes conflicting conversations in a profession that prides itself on continuity and consistency in decisions. Relying on primary legal sources and contemporary media accounts of the cases, it explains how the judges rationalized their decisions and argues that the courts, long seen as the most socially conservative branch of government, were actually the instigators in this instance of social change. What Title IX did not protect, the courts found protection for in the Constitution