

Ghost Athletes: A Subversion of Gender Equity and Violation of Title IX

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*Submitted to the Philosophy, Politics and Economics Program at the University of Pennsylvania
in partial fulfillment of the requirements for Honors.*

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Date of Submission: June 26, 2019

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ACKNOWLEDGMENTS

I want to extend a sincere thank you for the help and support I received from the following people while working on this project: Professor Nancy Hirschmann whose genuine care about the inequality I witnessed validated my decision to devote my senior thesis to investigating them and whose guidance was incredibly valuable throughout the entire process. Dr. Doug Paletta whose advice and encouragement transformed my experience as a PPE major and made my success in this endeavor possible. My teammates, female and male, who stood by the fight against ‘ghost athletes’ and supported me when I faced backlash for speaking out. My mentors, professional and athletic, who offered me continued support and guidance in pursuing this issue when I encountered setbacks and obstacles. My friends who were my rocks throughout this entire experience, offering me a lending ear in times of frustration and encouraging me to take action when my words were ignored. And finally, my family who taught me the importance of fighting for what is right and who inspire me to be brave especially when it isn’t easy.

ABSTRACT

Title IX of the Education Amendments to the 1964 Civil Rights Act established a three-prong test to determine whether or not educational institutions are providing female and male students with equal opportunities for athletic participation. Under the proportionality prong of the test, schools must demonstrate that their overall percentages of female and male athletes are substantially proportionate to their respective enrollment percentages. However, to circumvent the financial costs needed to increase female participation, many schools use roster manipulation to artificially inflate their proportionality numbers. This thesis investigates the practice of using ‘ghost athletes’ on women’s team rosters to artificially achieve Title IX compliant gender proportionality statistics. It analyzes the practice against scholarly research, legal arguments, and relevant Title IX court precedent to argue that it violates Title IX. Relying on expert literature, an autoethnography of my own experience with ‘ghost athletes’ on the University of Pennsylvania varsity women’s fencing team during the 2017-2018 season, and Title IX jurisprudence, this thesis demonstrates that ‘ghost athletes’ do not constitute genuine athletic participation opportunities and cause significant (and legally-relevant) harm to female athletes. The research presented supports the finding that using ‘ghost athletes’ to inflate female participation numbers subverts the intentions of equality underlining Title IX and violates the federal statute.

INTRODUCTION

In 1972, Congress passed Title IX of the Education Amendments to the 1964 Civil Rights Act and ignited a political and cultural debate over the role of women in athletics that continues to divide America to this day. The law facilitated tremendous growth in women's sports, but the unrelenting opposition it faced had lasting impacts on its effectiveness as an anti-discrimination instrument. Still, despite legislative attempts to strike down the statute, legal attempts to invalidate the statute, and executive attempts to limit the scope of the statute, Title IX endured. Most directly, Title IX's survival stemmed from the consistent support it received from the United States Judiciary. The law and its three-prong schema of evaluating gender equity have been the subject of immense litigation and have been reliably upheld through judicial outcomes. Every single federal appeals court has considered Title IX's compliance test, and every single one has affirmed it.¹ While efforts fighting against Title IX's implementation persist, the courts doggedly uphold the scope and legitimacy of Title IX by holding institutions accountable for violating it. In striking contrast to the actions of Office for Civil Rights of the U.S. Department of Education, the body charged with enforcing Title IX which has *never* imposed sanctions on an institution in violation of the law, the judiciary stands alone as the only body both willing and able to give Title IX its teeth and enforce its non-discrimination mandate within athletic programs.²

Due to the inaction of the Office for Civil Rights and the success of Title IX claims in court, private litigation emerged as the only realistic avenue for individuals facing discriminatory

¹ Donna de Varona and Julie Foudy, "Minority Views on the Report of the Commission on Opportunity in Athletics: Executive Summary and Report," in *Title IX Thirty Years Later: Sporting Equality* (New Brunswick: 2009), 47.

² Katie Thomas, "Long Fights for Sports Equity, Even With a Law," *The New York Times*, <https://www.nytimes.com/2011/07/29/sports/review-shows-title-ix-is-not-significantly-enforced.html>, (July 28, 2011).

treatment to seek justice. In the United States, case law regulates how statutes are to be interpreted, and the doctrine of stare decisis obligates courts to follow the precedent of previous case rulings.³ The consistency of judicial outcomes, therefore, legitimized the legal foundation of Title IX's interpretation and breadth. Judicial decisions secured the right of parties to bring suit for alleged violations and claim punitive damages when institutions avoid Title IX requirements, and the breadth of litigation over the statute affirmed Title IX's method of testing compliance as well-settled law.⁴ Today, judicial precedent acts as a check on educational institutions mandated to comply with Title IX's gender equity requirements. When evaluating the legally-ambiguous actions of institutions, it is the record of prior court decisions that clearly defines the boundaries of permissibility. Through such litigation, an array of discriminatory practices denying female athletes equal athletic opportunities have been ruled in violation of the federal statute. This includes practices such as making women's sports compete during non-traditional seasons, holding women's competitions at non-primetimes, and using disingenuous female athletic participation opportunities to claim gender equity within athletic programs.⁵

Against this judicial backdrop, this thesis evaluates the permissibility of a practice used by educational institutions to feign gender equity and comply with Title IX: adding 'ghost athletes' on women's rosters to inflate the school's overall percentage of female athletes. Roster management, the strategic manipulation of team rosters to achieve gender proportionality, is a common practice educational institutions employ to appear compliant with Title IX's non-

³ "Stare Decisis," Legal Dictionary, <http://www.easybib.com/guides/citation-guides/chicago-turabian/footnotes/>.

⁴ See *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979); *Franklin v. Gwinnett County Pub. Sch.*, 911 F.2d 617 (11th Cir. 1990); *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993).

⁵ See *Communities for Equity v. Michigan High Sch.*, 178 F. Supp. 2d 805 (W.D. Mich. 2001); *Parker v. Franklin County Cmty Sch. Corp.*, 667 F.3d 910 (7th Cir. 2012); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 298 (D. Conn. 2009).

discrimination requirement. Various forms of roster management, such as double or triple counting female athletes on different team rosters, are well-documented and criticized in Title IX literature.⁶ However, there is a relative dearth of information regarding the specific use of non-participating ‘ghost athletes’ to increase the size of female team rosters and inflate athletic gender proportionality numbers overall. To investigate the issue, this paper is informed by two sources of information. Most heavily, it relies on research conducted on the background of Title IX, the significance of equal female participation in athletics, the crucial effects of Title IX’s gender proportionality prong, and the precedent of Title IX judicial reasoning. This provides a critical foundation for understanding the statutory demands of Title IX and the consequences of noncompliance.

In addition, this paper draws insights from an autoethnography of my own experience as a female athlete on the University of Pennsylvania varsity women’s fencing team during the 2017-2018 season in which ‘ghost athletes’ were used to achieve Title IX compliant gender equity numbers. Autoethnography is a form of qualitative research that utilizes personal accounts to examine and critique cultural experiences. Broken down, the term refers to “a research method that uses personal experience (‘auto’) to describe and interpret (‘graphy’)

⁶ See Lisa Yonka Stevens, “The Sport of Numbers: Manipulating Title IX to Rationalize Discrimination against Women,” *Brigham Young University Education and Law Journal*, no. 1 (March 1, 2004); “The Next Generation of Title IX: Athletics,” National Women’s Law Center, https://www.nwlc.org/wp-content/uploads/2015/08/nwlcathletics_titleixfactsheet.pdf, (June 2012); “Title IX: Correcting the Count,” Athletic Management, http://athleticmanagement.com/2012/01/02/title_ix_correcting_the_count/index.php, (January 29, 2015); Katie Thomas, “Long Fights for Sports Equity, Even With a Law,” *The New York Times*, <https://www.nytimes.com/2011/07/29/sports/review-shows-title-ix-is-not-significantly-enforced.html>, (July 28, 2011); Katie Thomas, “College Teams, Relying on Deception, Undermine Gender Equity,” *The New York Times*, <https://www.nytimes.com/2011/04/26/sports/26titleix.html>, (April 25, 2011).

cultural texts, experiences, beliefs, and practices ('ethno')."⁷ Like ethnography, autoethnography examines social phenomena, but it is unique in its emphasis of "personal experience as an important source of knowledge in and of itself, as well as a source of insight into cultural experience."⁸ This focus on personal experience allows autoethnographic research to capture nuances of cultural experiences that are often unaccounted for through more traditional research methods. Through an autoethnography of my experience as the head captain of a varsity women's sports team with 'ghost athletes' on the roster, my insider account is uniquely able to describe the realities of this practice and articulate the experience of being a female athlete on a team with this discriminatory practice.

Together, these two sources of information provide a template against which the permissibility of using 'ghost athletes' on female athletic rosters can be evaluated. To do so, this thesis is broken down into three major sections. Section 1 examines current literature detailing the significance of sports, the benefits of sports participation, and the detrimental consequences of disproportionate treatment towards female athletes at educational institutions. These points provide a foundation for understanding the social necessity of Title IX's demand for equality between female and male athletes and its use of gender proportionality within overall school athletic programs as a metric for equal treatment. Section 2 then analyzes an autoethnography of my experience as a member the University of Pennsylvania varsity women's fencing team to examine the cultural realities of using 'ghost athletes' on female teams. It then situates my findings within scholarly discussions around gender proportionality and the effects of unfair treatment. Finally, Section 3 outlines relevant court decisions and Title IX interpretations, and it

⁷ Tony E. Adams, Carolyn Ellis, Stacy Holman Jones, "Autoethnography," *The International Encyclopedia of Communication Research Methods* (August 2017): 1-11.

⁸ *The Oxford Handbook of Qualitative Research* (Oxford University Press, 2015), 254.

applies the practice of using ‘ghost athletes’ to court precedent in order to evaluate its legality. This section develops a complex understanding of Title IX jurisprudence to argue that the use of ‘ghost athletes’ on women’s teams violates the federal statute.

Ultimately, this research shows that the use of ‘ghost athletes’ on women’s team rosters deprives female students of the genuine athletic participation opportunities guaranteed to them by Title IX of the Education Amendments to the 1964 Civil Rights Act. Like a collection of roster management practices that have already been ruled impermissible by the United States Judiciary, the use of ‘ghost athletes’ does nothing more than *feign* gender proportionality. In reality, the practice discriminates against female students and represents the systemic failure of educational institutions to provide female and male students with truly equal athletic opportunities. I purport that, if taken to court, institutions such as the University of Pennsylvania that use ‘ghost athletes’ to inflate female roster numbers would be ruled in violation of Title IX.

As stated by legal scholar Dionne L. Koller, “there can be little doubt that discrimination in the form of second-class treatment for female athletes is still a fact of life.”⁹ The practice of using ‘ghost athletes’ on women’s team rosters directly contributes the reality of this second-class status. However, by publishing this research and offering an account of my experience participating on a team containing ‘ghost athletes,’ this thesis seeks to fill in gaps in existing research on discriminatory roster management strategies used to produce nothing but the façade of gender equity. By contributing to this scholarly conversation, I hope to strengthen efforts combating the ongoing discrimination against female athletes, and ultimately, strive for a reality where women and men are truly treated equally by their educational institutions.

⁹ Dionne L. Koller, “Not Just One of the Boys: A Post-Feminist Critique of Title IX’s Vision for Gender Equity in Sports,” *Connecticut Law Review* 43, no. 2 (December 2010): 405.

BACKGROUND

While Title IX is most commonly known for facilitating the rise in women's sport participation across the nation, the original issue at the heart of the law was women's equal access to education. Title IX states that: "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 education program or activity receiving Federal financial assistance."¹⁰ The statute's goal was to gain for women the educational access that was secured for African American men through Title IV of the Civil Rights Act of 1964 eight years earlier. Title IV prohibited discrimination by educational institutions on account of race, color, religion, or national origin but "did nothing to challenge sex discrimination in education," and "it was that glaring absence that the Education Amendments, including Title IX, sought to correct in 1972."¹¹ Title IX came at a time when discriminatory sex stereotyping in educational admission policies, scholarship grants, and academic opportunities was overt and commonplace. Former United States Senator Birch Bayh, one of the drafters of Title IX, reflected on the statute and stated: "What we were really looking for was... equal opportunity for young women and for girls in the education system of the United States of America. Equality of opportunity. Equality. That shouldn't really be a controversial subject in a nation [that] now for 200 years had prided itself in equal justice."¹²

Nonetheless, the push for women's equal access to federally supported educational opportunities was met with vehement opposition. As noted by Congressional Representative

¹⁰ 20 U.S. Code § 1681 - Sex

¹¹ Eileen McDonough, Laura Pappano, *Playing with the Boys: Why Separate is Not Equal in Sports* (New York: Oxford University Press, 2008), 101.

¹² As quoted in Nancy Hogshead-Makar and Andrew Zimbalist, *Equal Play: Title IX and Social Change* (Philadelphia: Temple University Press, 2007), 1.

Bella Abzug in 1971, hostility towards the bill stemmed from the fact that “unbiased admissions policies would threaten the male power structures which presently control these institutions,” and thus, claims like that of Harvard University “asserting that the institution not only had the right but the duty to discriminate on the basis of sex” were to be expected.¹³ As a product of this resistance, Title IX emerged as an inherently weak piece of legislation. Unlike Title IV, which prohibited racial discrimination unilaterally, Title IX was accompanied by regulations offering a number of exemptions to its non-discrimination mandate, such as schools controlled by religious organizations or schools that trained individuals for military service.¹⁴ While the law had an enormous impact facilitating the economic and social advancement of women by increasing access to education, this lenient structure made Title IX less impactful than other pieces of civil rights legislation.

The structural issues inherent to Title IX became increasingly apparent during its application to athletics. From the start, strong forces including lobbyists, members of Congress, and the male-dominated National Collegiate Athletic Association (NCAA) worked vigorously to oppose Title IX’s application to collegiate athletics programs.¹⁵ Due to this steadfast resistance, the law emerged with provisions that postponed its date of enforcement for six years after its passage and encouraged Congressional review and revision of its regulations.¹⁶ The long waiting period and lack of clarity regarding the finality of Title IX’s regulations “invited debate about the wording of regulations... fueled political maneuvering by male athletic directors... [and

¹³ McDonaugh and Pappano, *Playing with the Boys*, 101-102.

¹⁴ See 34 C.F.R. Part 106: Title IX regulations.

¹⁵ Notable efforts to limit Title IX’s application to athletics included the rejected 1974 Tower Amendment (which attempted to exempt revenue-producing sports from Title IX compliance) and the successful Javits Amendment (which required HEW regulations to include reasonable provisions considering the nature of particular sports).

¹⁶ President Ford wrote to Senate and House committee leaders in July 1975 actively welcoming hearings on the law. See McDonaugh and Pappano, *Playing with the Boys*, 139.

prompted] foot dragging by schools.”¹⁷ These factors stunted the urgency, enforceability, and effectiveness of Title IX’s non-discrimination mandate.

In 1975 the Department of Health, Education and Welfare (HEW) eventually issued final Title IX regulations. After issuance, Congress attempted again to disapprove the regulations and the NCAA brought a legal challenge to invalidate them.¹⁸ While these efforts failed, criticism over the regulations’ vagueness regarding the meaning of ‘equal opportunity’ pushed HEW to take additional action. To address the ambiguity, HEW issued ‘A Policy Interpretation: Title IX and Intercollegiate Athletics’ in 1979 providing further clarity on the Title IX’s equal opportunity mandate. The Policy Interpretation did not require identical treatment for female and male athletes, citing “factors that are inherent to the basic operation of specific sports” as justification.¹⁹ Instead, it established a three-prong test to assess compliance and “determine whether or not a school was providing equal opportunities for athletic participation to both sexes.”²⁰ The test offers three independent ways for schools to demonstrate that they are providing equal opportunities. Schools must show one of the following:

1. The overall percentages of female and male athletes are substantially proportionate to the enrollment percentages of women and men at the school.
2. The school has a history and continuing practice of program expansion for the underrepresented gender which is responsive to the developing interests and abilities of the members of that sex.
3. The school is fully and effectively accommodating the interests and abilities of the underrepresented sex.

¹⁷ McDonaugh and Pappano, *Playing with the Boys*, 182.

¹⁸ See National Collegiate Athletic Ass'n v. Califano, 444 F. Supp. 425 (D. Kan. 1978).

¹⁹ 44 Fed. Reg. 71413 et seq. (1979).

²⁰ Nancy Hogshead-Makar and Andrew Zimbalist, *Equal Play: Title IX and Social Change* (Philadelphia: Temple University Press, 2007), 54.

While schools can show any one of the three prongs to effectively comply with Title IX, the first prong is generally regarded as a ‘safe harbor’ for demonstrating compliance, as articulated in 1993 by the United States Court of Appeals for the First Circuit in *Cohen v. Brown University*. A ‘safe harbor’ designation “means simply that schools that can meet the terms of the first prong can evaluate their compliance with no additional injury.”²¹ While schools are allowed to meet any of the three prongs to demonstrate their compliance, meeting the proportionality prong is the only surefire (and quantifiable) way for institutions to guarantee their compliance with Title IX’s equal opportunity mandate. It is a form of protection for institutions; it is a ‘safe way’ to guarantee their compliant status. The gender proportionality required to pass the test refers to the *overall* gender proportionality of an educational institution’s athletic program. In other words, different teams can have different gender participation proportions as long as the total count of all athletic teams is substantially proportionate to overall enrollment.

The three-prong test went on to be affirmed by eight out of eight circuit courts and is now considered well-settled law. Additionally, the parameters of the test have been explained more thoroughly since its establishment in 1979. Each prong of the test was explained in detail when the Office for Civil Rights issued a ‘Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test’ in 1996. The Clarification “provides specific factors to guide an analysis of each prong, as well as multiple examples to demonstrate, in concrete terms, how each of these factors is applied.”²² Among other issues, it also provides significant detail on how to define an athlete when evaluating proportionality. Together, the test’s unwavering validity in the courts and the detailed explanations of it in the 1979 Interpretation and 1996 Clarification have

²¹ de Varona and Foudy, “Minority Views on the Report of the Commission on Opportunity in Athletics: Executive Summary and Report,” 46.

²² *Ibid*, 45.

established the three-prong test as the foundation for understanding and assessing Title IX compliance.

With the three-prong test as the hurdle between educational institutions and federal compliance, some schools employ strategies that contribute to the *appearance* of Title IX compliance in order to pass the test without actually providing equal opportunities to female athletes. Because the proportionality prong is the ‘safe way’ to prove compliance, manipulating team rosters to produce a substantially proportionate gender-ratio is becoming a popular method to do this. One form of roster management is inflating women’s team rosters in order to boost the percentage of female athletes at the educational institution until it is in line with overall enrollment. Often, because schools have varsity football teams with large (exclusively male) rosters, the rosters of numerous female teams are padded to make up for the disparity. This option is easier and cheaper than establishing an entirely new women’s sports team. Various news outlets have reported on this practice occurring at educational institutions including, but not limited to, the University of South Florida, Marshall University, the University of Missouri, Baylor University, Maryland University, the University of Oregon, the University of Iowa, and the University of Washington.²³ Consistent with the historical resistance to Title IX’s application to sports and its regulations that were “more outwardly concerned with protecting male programs than ensuring real access or equality for female athletes,” the actions of these institutions prioritize sustaining the size of their male programs over providing truly equal

²³ See Kevin Trahan, “‘Nobody’s Watching’: Are Major College Sports Programs Treating Title IX Like A Suggestion?” *Vice*, https://sports.vice.com/en_us/article/8qygwz/nobodys-watching-are-major-college-sports-programs-treating-title-ix-like-a-suggestion, (June 15, 2016); Katie Thomas, “College Teams, Relying on Deception, Undermine Gender Equity,” *The New York Times*, <https://www.nytimes.com/2011/04/26/sports/26titleix.html>, (April 25, 2011); Christine Willmsen, “UW Women’s Rowing-Team Numbers Inflated, Avoiding Title IX Scrutiny,” *The Seattle Times*, <https://www.seattletimes.com/seattle-news/times-watchdog/uw-womens-rowing-team-numbers-inflated-avoiding-title-ix-scrutiny/>, (March 5, 2017).

athletic opportunities for their female students.²⁴ By taking steps to achieve only the *appearance* of proportionality, the true objective of Title IX is subverted and inequality between women and men at educational institutions persists.

²⁴ McDonaugh and Pappano, *Playing with the Boys*, 139.

SECTION 1: WHY TITLE IX MATTERS

The Significance of Sports in America

When the Philadelphia Eagles won Super Bowl LII in 2018, the championship game garnered more than double the viewership of the President's State of the Union address that took place four days earlier.²⁵ The game ranks tenth on the list of most-watched American television programs of all time, topped only by eight other Super Bowls and the series finale of *M*A*S*H*.²⁶ The American fascination with sports is undeniable, and the influence of athletics on American life is wide-ranging. As a result, sporting activities are one of the largest and most important stages in American society, wielding monumental political, economic, and social power. This influence gives gender inequality in sports an all-encompassing breadth, and in turn, it undermines women in areas far beyond just the athletic realm.²⁷

On a macro-level, the exclusion of women from sports robs them of the ability to achieve equal footing to men in critical spheres of American culture. Politically, economically, and socially, it subordinates women in contemporary America. On an individual level, sports also provide immense benefits to participants' health, social behavior, interpersonal skills, and professional success. These benefits stem from both the physical and the non-physical aspects of sport participation, meaning that forms of solo exercise are not adequate substitutes for competitive athletic participation. Due to gender inequality in sports, these benefits are routinely

²⁵ "Number of Viewers of the State of the Union Addresses from 1993 to 2018 (in millions)," Statista, <https://www.statista.com/statistics/252425/state-of-the-union-address-viewer-numbers/>, (2018).

²⁶ Joe Otterson, "TV Ratings: Super Bowl LII Slips 7% From 2017 to 103.4 Million Viewers," Variety, <https://variety.com/2018/tv/news/super-bowl-111-ratings-1202687239/>, (February 5, 2018).

²⁷ McDonough and Pappano, *Playing with the Boys*, 235.

withheld from women and have long been enjoyed almost exclusively by men.²⁸ Thus, the significance of sports on both a cultural and individual level reveals how detrimental exclusion from athletics can be, and it founds the sense of urgency with which proponents of Title IX approach the mission of achieving gender equity in athletic programs.

Sports have a direct connection to political capital in the United States. When San Francisco 49ers quarterback Colin Kaepernick knelt during the national anthem at National Football League (NFL) games to protest police brutality in 2016, it catapulted the issue into the political spotlight and defined partisan debates across the country. The influence of Kaepernick's platform as an athlete was evidenced by the national reactions to his political statement. Prompted by Kaepernick's protest, President Trump tweeted about the NFL or the importance of standing during the national anthem over 40 separate times.²⁹ At the same time, liberal institutions praised his actions. Kaepernick received GQ's Citizen of the Year Award, the Sports Illustrated Muhammad Ali Legacy Award, and the Amnesty International Ambassador of Conscience Award for his activism on the high-profile stage afforded to him because of his athletic career.³⁰ Blending the athletic arena into the political one, the controversy exemplified the dynamic influence that sports and athletes hold in American society.

The economic clout of American athletics is similarly impressive, and scholars have demonstrated its significance through the enormous amount of money wagered on sports in the

²⁸ Koller, "Not Just One of the Boys," 406.

²⁹ When this article was published in September 2018, Trump had tweeted about the topic 38 times. As of writing this in November 2018, he has tweeted about it 41 times. *See* Tom Schadt, "Donald Trump to NFL Players: 'Be happy, be cool,' and Stand for National Anthem," USA Today, <https://www.usatoday.com/story/sports/nfl/2018/08/10/donald-trump-tweets-nfl-players-happy-cool-protests-national-anthem/955024002/>, (August 10, 2018).

³⁰ Amir Vera, "How National Anthem Protests took Colin Kaepernick from Star QB to Unemployment to a Bold Nike Ad," CNN, <https://www.cnn.com/2018/09/04/us/colin-kaepernick-controversy-q-and-a/index.html>, (September 4, 2018).

United States every day. “If the American sports gambling scene were considered a corporation, it would rank as one of the larger in the world,” and it has the potential to grow tremendously in the coming years.³¹ A 2018 Supreme Court ruling recently allowed states to legalize sports betting, and *Forbes* estimated that the change “may result in a market worth of \$6.03 billion in annual revenue” by 2023.³² Meanwhile, the sports industry itself brings in a staggering \$14.3 billion in earnings a year.³³ Between the direct jobs it provides and the ripple effect of indirect economic activity it generates, it is an essential portion of our national economy. Both politically and economically, American athletics holds a unique influence that extends beyond entertainment or recreation. The exclusion of women from these essential athletic stages and the resources and access that they provide, therefore, chips away at their influence as political and economic citizens in American society.

Socially, the immense impact of athletics stems from its pervasiveness in society and its interconnectedness with American cultural values. In 1954, historian Jacques Barzun claimed that “whoever wants to know the heart and mind of America had better learn baseball,” and the concept rings true today.³⁴ The omnipresent social influence of sports is exhibited in American media, consumer markets, and the American culture’s general lexicon. Evidence of this is everywhere, from the infant-sized T-ball set that holds a place on Amazon’s list of ‘Most Wished For Toddler Toys’ to fact that the term ‘soccer mom’ is an established part of American cultural

³¹ Danielle Sarver Coombs, Bob Batchelor, *American History through American Sports*, (Santa Barbara: Praeger, 2013), xii.

³² Darren Heitner, “How Legalized Sports Betting Could Bring In \$6.03 Billion Annually By 2023,” *Forbes*, <https://www.forbes.com/sites/darrenheitner/2017/09/27/how-legalized-sports-betting-could-bring-in-6-03-billion-annually-by-2023/#1588670a79ec>, (September 27, 2018).

³³ Gwen Burrow, “Not Just a Game: The Impact of Sports on U.S. Economy,” *Labor Market Analytics*, <https://www.economicmodeling.com/2013/07/09/not-just-a-game-the-impact-of-sports-on-u-s-economy/>, (July 9, 2013).

³⁴ As quoted in David G. McComb, *Sports in World History*, (New York: Taylor & Francis, 2004), 4.

vocabulary.³⁵ This ubiquitous influence makes sports, and knowledge about them, a social necessity, and it creates social consequences for lacking such knowledge.³⁶ Especially in the professional world, athletic knowledge and experience is a valuable form of cultural capital, a term coined by French sociologist Pierre Bourdieu (1984) referring to cultural understandings “that are valued by society, and confer prestige and honor on those associated with them.”³⁷ For many, this capital is convertible to economic rewards. Sociologist Lauren Rivera (2015) exhibited this through an analysis of the hiring practices of “high-paying investment banks, law firms, and management consulting agencies” which “screen their applicants not only on the basis of their work experience, intellect, and academic achievement but also on their ‘cultural fit’ with the organization.”³⁸ When demonstrating this ‘cultural fit,’ applicants were “often expected to have competed in high-status athletic sports such as football, lacrosse, or field hockey in high school or college.”³⁹ Once hired, the impact of athletic experience and knowledge continues within the work place. Research shows that the legacy of discrimination against women in sports contributes to “exclusion from informal networks” in the workplace, which 46 percent of women cite as “the biggest impediment to reaching their career goals.”⁴⁰ Thus, the exclusion of women from athletics translates to the exclusion of women from vital dynamics of American life that restrict their social advancement.

³⁵ Jana Mathews, “Soccer Moms and Football Dads: Sports and the Daily Life of American Youth,” in *American History through American Sports*, 195-207.

³⁶ Robert Bellamy Jr., “Sports Media: A Modern Institution,” in Arthur Raney and Jennings Bryant, *Handbook of Sports and Media*, (Mahwah: Lawrence Erlbaum, Associates, 2006), 70.

³⁷ David Grazian, *Mix It Up: Popular Culture, Mass Media, and Society*, (London: W.W. Norton & Company, 2017), 151.

³⁸ Grazian, *Mix It Up*, 152.

³⁹ Ibid.

⁴⁰ Leslie Andrews, “Nice Girls Who Play Golf Do Get The Corner Office,” *Forbes*, <https://www.forbes.com/sites/85broads/2012/05/04/nice-girls-who-play-golf-do-get-the-corner-office/#447028d87879>, (May 2, 2012).

Sports also hold a unique social influence because they reflect and reinforce our nation's cultural values. The phenomenon of sport emphasizes narratives closely tied with American life such as "heroism, good versus evil, pride, community, and patriotism," all of which coalesce to form the cultural backdrop of the United States.⁴¹ In fact, the concept of the 'American dream,' the process of achieving greatness in this country through hard work and determination, acts as a perfect mirror to athletic success. As a result, our society deeply values athletic characteristics. Accomplished athletes are viewed as heroes and held up as representatives of their communities and cultures. Thus, the exclusion of women from this athletic path excludes them from a quintessential facet of Americanism. Because sports are male-dominated, women are seen, by definition, as unable to fully exemplify the athletic characteristics that American society holds up as illustrative of our nation. Socially, the impact of gender inequality in sports is two-fold. The pervasiveness of sports makes exclusion from athletics inherently detrimental to women as social agents; and yet, paradoxically, the intertwining of cultural values and athletics makes women less capable of fully embodying these American characteristics.

The Individual Benefits of Sport Participation

It is a political, economic, and social fact that sport (and inclusion into the universe of sports) matters. However, as noted by the authors of *Playing with the Boys: Why Separate is Not Equal in Sports*, even "if sports were unconnected to social, business, and political capital in the United States, gender inequality in sports would still be a problem," because of the profound effect that athletics has on the individual development of athletes.⁴² The understanding that sport participation is integral to individual development dates back to historical records of the ancient Greeks. In the foundational text of Plato's *Republic*, Socrates emphasizes the important role of

⁴¹ Coombs and Batchelor, *American History through Sports*, xiii.

⁴² McDonough and Pappano, *Playing with the Boys*, 235.

gymnastics in one's education. In Book V, he discusses the role of women in the ideal State and the importance of their athletic education:

“Socrates: And can there be anything better for the interests of the State than that the men and women of a state should be as good as possible?”

Glaucon: There can be nothing better.

Socrates: And this is what the arts of music and gymnastic, when present in such manner as we have described, will accomplish?

Glaucon: Certainly.”⁴³

When contemplating society's reaction to female athletes and “the sight of women naked in the palaestra, exercising with the men,” Socrates concludes: “And as for the man who laughs at naked women exercising their bodies from the best of motives, in his laughter he is plucking fruit of unripe wisdom, and he himself is ignorant of what he is laughing at, or what he is about.”⁴⁴

Plato's *Republic* argues clearly that, for men and women, “sport serves the educational objectives of personal virtue, intellectual achievement, and political harmony.”⁴⁵ The maxim was later popularized by Roman poet Juvenal as *mens sana in corpore sano*, or “a healthy mind in a healthy body,” and was carried through to the modern era by philosophers like John Locke and Jean-Jacques Rousseau.⁴⁶

Today, these philosophic beliefs are largely confirmed through empirical studies. Modern research demonstrates the physical/mental health benefits, social behavior benefits, interpersonal skill benefits, and long-term educational/professional benefits that athletic participation provides. These findings are crucial in light of the “troubling picture of females’

⁴³ Plato, *Republic*, trans. Benjamin Jowett (City: Anchor, 1960), 456e-457a.

⁴⁴ Plato, *Republic*, 457b.

⁴⁵ Heather L. Reid, “Sport and Moral Education in Plato's *Republic*,” *Journal of the Philosophy of Sport* 34, no. 2 (2007): 160-175.

⁴⁶ Danièle Tosato-Rigo, “In the Shadow of *Emile*: Pedagogues, Pediatricians, Physical Education, 1686-1762,” *Studies in Philosophy and Education* 31, Issue 5 (July 2012): 449-463.

participation in sport” that social science research paints.⁴⁷ In large numbers, females either do not participate in sports or participate as children and then quit as teenagers.⁴⁸ This drop-off has direct consequences and creates a gender divide in the recipients of athletic benefits. As long as gender inequality in sports persists, women and girls will disproportionately lack the vast, lifelong benefits that sports provide. So, the equal athletic opportunities that Title IX demands are crucial for ensuring that women receive equal access to the transformative benefits that sports provide.

There is a mass of empirical research that demonstrates the substantial benefits athletic participation provides to the health, psychological wellbeing, and social behavior of developing individuals. Stemming from both the physical and the non-physical components of sport involvement, the shown relationship between athletics and the needs of women is impossible to ignore, and due to the deficiency of female participation in sports, it “warrants the serious attention of public health officials, educators and sport leaders.”⁴⁹ Physically, sport participation lowers the risk of chronic diseases for women such as “heart disease, certain cancers, obesity, osteoporosis and Alzheimer’s disease,” which are among the leading cases of death for women in America.⁵⁰ Participation in sport is also linked to ‘health-promotive behaviors’ such as having a nutritious diet and getting adequate sleep.⁵¹ The consequences of these physical benefits are life altering and positively impact women well into adulthood.

⁴⁷ Koller, “Not Just One of the Boys,” 415.

⁴⁸ Ibid.

⁴⁹ Donald F. Sabo et al., *Her Life Depends On It: Sport, Physical Activity and the Health and Well-Being of American Girls* (East Meadow: Women’s Sport Foundation, 2004), 3.

⁵⁰ Ibid, 8.

⁵¹ Nicole Zarrett and Don Sabo, *Teen Sport In America: Why Participation Matters* (East Meadow: Women’s Sport Foundation, 2018), 19.

Moreover, research shows that “physical activity can prevent the emergence of certain mental illnesses,” and better the psychological wellbeing of women.⁵² It has positive impacts on body image, acts as a preventative measure and successful treatment for body image disorders, and enhances self-esteem, which female adolescents are disproportionately likely to experience a decrease in during their teenage years.⁵³ Particularly for women, who are two times more likely to suffer from depression than men and are significantly more likely to have seriously considered attempting suicide than men, the mental health benefits of sport are enormous.⁵⁴

Finally, there are aspects of sport participation that benefit women’s health but extend beyond just the physical benefits of exercise. Sports are shown to promote responsible social behaviors that are acutely important for young women. Participation in competitive sports lowers the likelihood that women will smoke cigarettes or use drugs.⁵⁵ Furthermore, “organized sports represent a largely untapped resource for protecting adolescent girls against the risk of an unintended pregnancy,” by reducing sexual activity overall, increasing contraceptive use, and lessening the susceptibility to pressures to have unwanted or unprotected sex.⁵⁶ Especially during adolescence, when sociological research tells us that girls are very likely to quit sports, athletics is an incredibly important influence on the health and wellbeing of women. Continuing athletics past that point has an impact on women’s health that extends throughout the athletes’ lives.⁵⁷

⁵² Sabo et al., *Her Life Depends On It*, 22.

⁵³ *Ibid*, 25-26.

⁵⁴ *Ibid*, 22.

⁵⁵ “The Battle for Gender Equity in Athletics in Elementary and Secondary Schools,” National Women’s Law Center, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/Battle-for-GE-in-Elementary-and-Secondary-Schools.pdf>, (June 2017).

⁵⁶ Sabo et al., *Her Life Depends On It*, 21.

⁵⁷ *Ibid*.

In addition to the physical, psychological, and behavioral effects of sport that benefit women's health, athletic participation has a tremendous impact on the individual social development of women. These social benefits manifest as important interpersonal skills, increased academic achievement, and professional success that advantages women later in life. A substantial body of research documents the interpersonal skills that sports teach individuals "such as discipline, teamwork, time management, and leadership," which foster "long-term personal growth, independence and wellbeing."⁵⁸ These factors cofound to enhance individual achievement in realms outside of athletics including academics and employment.

Consistent across racial and economic lines, girls who play sports also have higher grades, score higher on standardized tests, are more likely to graduate high school, and are more likely to attend college than non-athletes.⁵⁹ Alongside their high academic achievement, female athletes receive fewer disciplinary referrals in school, have lower rates of absenteeism, and are less likely to dropout.⁶⁰ Additionally, there is a unique connection between sport participation and female performance in the male-dominated fields of science and mathematics. "For decades in American education, gender stereotypes... pushed [women] out of calculus, physics, and chemistry classes in American high schools," and stunted their ability to pursue technical and scientific careers after graduation.⁶¹ High school girls who play sports, however, are more likely to do well in math and science classes than their non-athletic counterparts. Just as female athletes rupture the gendered and male-dominated conception of sports, female athletes also tend to break into the gendered and male-dominated academic fields of math and science. They report "greater access to and more positive attitudes toward science and math" in the classroom

⁵⁸ Koller, "Not Just One of the Boys," 413.

⁵⁹ "Battle for Gender Equity," National Women's Law Center.

⁶⁰ Sabo et al., *Her Life Depends On It*, 30.

⁶¹ *Ibid*, 31.

than girls who do not participate in sports.⁶² For young people and especially for young women, athletic participation is a driving factor for academic success.

This academic success blends into a second arena of achievement driven by sport participation: employment. Betsey Stevenson, an economist at the Wharton School at the University of Pennsylvania, found that increasing girls' sport participation explained a 40 percent increase in the employment of 25-to-34-year-old women.⁶³ Sport participation also aids female success within the workplace. For women, being an athlete is associated with 14 percent higher wages, and it contributes to increased upward professional mobility.⁶⁴ In a survey of 400 executive businesswomen, 94 percent reported participating in organized sports and 74 percent "agree that a background in sport can help accelerate a woman's leadership and career potential."⁶⁵ These staggering statistics demonstrate the powerful influence of athletics. For long-term personal development and academic/professional achievement, the benefits of sport participation are immense. As Dr. Stevenson noted, "it's not just that the people who are going to do well in life play sports, but that sports help people do better in life."⁶⁶ Research overwhelmingly shows that the lifelong benefits of athletic participation are invaluable to developing individuals.

On a cultural level and on an individual level, and in regards to health, development, and achievement, the impact of sports is wide-ranging. More than just a form of exercise or a pastime, athletic participation has tangible effects that ripple throughout every aspect of

⁶² Ibid, 31.

⁶³ Tara Parker-Pope, "As Girls Become Women, Sports Pay Dividends," *The New York Times*, <https://well.blogs.nytimes.com/2010/02/15/as-girls-become-women-sports-pay-dividends/>, (February 15, 2010).

⁶⁴ "Battle for Gender Equity," National Women's Law Center.

⁶⁵ Ibid.

⁶⁶ Parker-Pope, "Sports Pay Dividends," *The New York Times*.

American life. This wide-ranging influence is the reason why the issue of gender inequality in sports demands attention. When Title IX was first applied to athletic programs, the action was underscored by the understanding that sports participation has the capacity to change lives. For this reason, the statute requires educational institutions to provide equal athletic opportunities for women and men to ensure that all students, regardless of gender, have the opportunity to access to these life-changing benefits. With this in mind, it is vital to shed light on the negative consequences of continued gender inequality in collegiate athletic programs, the area of focus for this thesis.

The Importance of Gender Proportionality

By expanding access to varsity athletic positions, Title IX opened the door for millions of women to receive the cultural advantages and individual benefits of athletic inclusion from which they had historically been excluded. However, Title IX's goal of providing women and men with the equal opportunity to participate in athletics matters for a reason distinct from the expansion of these benefits. It matters due to "the fact that 'equality' as a value is an important end in itself."⁶⁷ More than just providing women with the opportunity to access this wealth of benefits, Title IX also sent an important message to female students: they were equal to their male counterparts. When it comes to social policies, a growing number of scholars argue that "institutions and public policies matter not merely for the instrumental benefits they bestow, but for the symbolic meaning benefits have to recipients and nonrecipients."⁶⁸ The Nineteenth Amendment is a well cited example of a U.S. social policy that extended legal benefits to certain groups, and as a result, changed the meaning of their citizenship. By signaling political inclusion, "the Nineteenth Amendment changed the *meaning* of being female" in the eyes of the

⁶⁷ Koller, "Not Just One of the Boys," 412.

⁶⁸ McDonough and Pappano, *Playing with the Boys*, 115.

nation, and Title IX's promise of equality within educational institutions did the same for female students.⁶⁹ Thus, Title IX's symbolic message, that female athletes and male athletes are equal in the eyes of the nation and their educational institutions, is an important aspect of the law itself.

However, the process of ensuring the equality that Title IX promises as a part of its non-discrimination mandate is complicated due to the fact that athletic resources cannot be easily distributed like some tangible good. Athletic opportunities require a developed interest in the recipient to receive its benefits, and "both courts and legal commentators" have recognized that "athletic departments determine the relative interests of men and women when it chooses its sports offerings and decides the sums spent on recruiting."⁷⁰ This is why Title IX relies on the three-prong test to determine whether or not educational institutions are providing equal participation opportunities to women and men. Overwhelmingly, this comes down to educational institutions' ability to fulfill the test's proportionality prong.⁷¹ Under the proportionality prong, institutions can demonstrate their compliance with Title IX's demands by showing that the number of female and male athletes in their athletic program is substantially proportionate to their respective rates of enrollment of full-time undergraduate students at their institution. While this metric for evaluating equality has critics, the Department of Education and the Judiciary have consistently maintained that it is a sufficient method of meeting Title IX's non-discrimination mandate.

Among others, legal scholar and Title IX expert Kimberly A. Yuracko has gone further than that and published powerful arguments supporting the claim that proportionality is the *best*

⁶⁹ Ibid.

⁷⁰ This evidence refutes "relative interests" arguments against Title IX as articulated by Jessica Gavora in the book *Tilting the Playing Field: Schools, Sports, Sex and Title IX*. See Hogshead-Makar and Zimbalist, *Equal Play*, 218-232.

⁷¹ The common reliance on the proportionality prong is explained in the Background Section on page 14.

embodiment of Title IX's anti-discrimination mandate. The remainder of this section will examine Yuracko's arguments supporting this claim in 'Title IX and the Problem of Gender Equality in Athletics,' published as a part of the edited collection *Title IX Thirty Years Later: Sporting Equality* by Rita J. Simon. With a developed understanding of what 'equal opportunity' means in the context of education and with an analysis of the effects that a proportional distribution of resources has in so far as it contributes to the spirit of gender equality underlying Title IX, Yuracko demonstrates the particular importance of Title IX's gender proportionality requirement. Her research holds additional weight when analyzed in light of the roster management strategy explored in this thesis. Through the use of 'ghost athletes,' educational institutions claim gender proportionality without actually achieving it. Thus, when considering the consequential impact of proportionality put forward by Yuracko, this subversion of Title IX's mandate for gender proportionality through the use of 'ghost athletes' is all the more harmful to girls and women.

To assess the effectiveness of the proportionality requirement, one first has to understand what Title IX's non-discrimination mandate means in the context of distributing educational resources fairly to women and men. Yuracko emphasizes a "focus on the effects that a particular distribution model has on younger girls and boys," as opposed to the relative entitlements students have to educational resources.⁷² This framework emphasizes the obligations Title IX imposes on educational institutions to distribute these athletic positions as opposed to the entitlement claims of students to those resources. With this focus, Yuracko "presents the antidiscrimination model that is most prevalent in the context of education and is used to

⁷² Kimberly A. Yuracko, "Title IX and the Problem of Gender Equality in Athletics," in *Title IX Thirty Years Later: Sporting Equality* (New Brunswick: 2009), 83.

consider what it means for society to distribute valuable resources fairly to children.” the ‘tool-giving’ model of opportunity.⁷³

To explain the ‘tool-giving’ model, Yuracko compares what non-discrimination means in the contexts of employment and education. In both contexts, the prohibition on discrimination translates to a mandate for equal opportunity, but the implications of each mandate vary. In the workplace, a mandate for equal opportunity is understood such that “all individuals must be given the chance to compete for jobs on the same terms,” with jobs rewarded based on relative merit.⁷⁴ However, in an educational context, discussions of equal opportunity do not imply that children should be given the chance to compete for school resources in this same manner as employers would for a job. Instead, a mandate for equal opportunity in education “requires that all children receive an adequate or fair chance to develop the essential skills they will need to compete successfully later in life,” implying the need for schools to ‘level the playing field’ in certain cases “in order to allow disadvantaged children to compete more effectively.”⁷⁵ Under this conception, equality of opportunity means educational institutions must ensure that all students are given the tools to develop these essential skills as a part of their education.

Under this ‘tool-giving’ model of equality of opportunity, Yuracko argues that the proportionality prong is justified because the proportional distribution of varsity-level athletic spots contributes to the development of an essential skill that girls and women need throughout the course of their lives: an adequate degree of self-respect. Yuracko offers three ways to corroborate this connection between a proportional distribution model and the development of self-respect which I found particularly relevant to my investigation.

⁷³ Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 83.

⁷⁴ *Ibid*, 90.

⁷⁵ *Ibid*.

Her first justification relies on empirical research supporting the claim that “girls’ and women’s self-respect is affected by how fairly they feel authority figures treat them,” and given that proportionality is currently perceived to be fair, she argues that anything less than proportionality will be perceived as unfair and damage their self-respect.⁷⁶ Yuracko presents evidence from multiple studies suggesting that individual self-esteem is mediated by perceptions of fair treatment by group authorities. The most relevant findings, by Tom Tyler et al. (1996), demonstrate that “fair and respectful treatment by authorities who represent important groups communicates feelings of respect and pride,” which are related to self-esteem, while “unfair treatment indicates marginality and disrespect.”⁷⁷ In the study, three relational aspects of the actions of authority figures are noted: neutrality, trustworthiness, and status recognition. When considering the effects of authority figure action, these three judgments impact the resulting levels of self-respect of individuals. In my analysis of authority figures’ continued use of ‘ghost athletes’ on women’s teams at the University of Pennsylvania, these three judgments of procedural fairness will be returned to and evaluated.

Yuracko’s second justification relies on the normative argument that a non-proportional distribution of athletic spots “stigmatizes and degrades girls in a way that necessarily undermines their self respect.”⁷⁸ This argument suggests that giving fewer athletic positions to women than men harms the self-esteem of women “because of the message such treatment sends.”⁷⁹ Yuracko explains that this argument is parallel to one some scholars believe underlies the landmark Supreme Court decision *Brown v. Board of Education* which concluded that separate educational

⁷⁶ Ibid, 92.

⁷⁷ Tom Tyler et al., “Understanding Why the Justice of Group Procedures Matter: A Test of the Psychological Dynamics of the Group-Value Model,” *Journal of Personality and Social Psychology* 70, no. 5 (1996): 914-927.

⁷⁸ Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 92.

⁷⁹ Ibid.

facilities are inherently unequal. While the Court “did cite social science evidence to support its conclusion... [some scholars] argue that the basis for the decision was instead the simple fact that ‘everyone knew’ that racial segregation was stigmatic for African Americans.”⁸⁰ While not directly supported by empirical research, these scholars believe that the general understanding of the symbolic message segregation sent contributed the “feeling of inferiority as to [African American] status in the community” cited in the decision.⁸¹ A critical weakness of this comparison pointed out by Yuracko is “that there does not seem to be nearly the same level of social consensus regarding the social meaning and psychological effect of a lack of athletic proportionality on girls that there was regarding the meaning the effect of school segregation on African American children at the time of *Brown*.”⁸² Still, when analyzing the impact of a continued lack of athletic proportionality despite the legal acknowledgement that it is justified and necessary, the argument that it stigmatizes female athletes and degrades their self respect remains relevant.

These empirical and normative arguments relating to women’s development of self-respect justify Title IX’s proportional distribution scheme, but to argue that proportional distribution is the *best* interpretation of non-discrimination in the context of college athletics, Yuracko makes a broader claim that proportionality plays a key part in a larger process of cultural transformation encouraging changes in the social meanings attached to femaleness. In ‘One For You And One For Me: Is Title IX’s Sex-Based Proportionality Requirement For College Varsity Athletic Positions Defensible,’ Yuracko draws on a cultural transformation argument made by Andrew Koppelman in discussions of race-based anti-discrimination law.

⁸⁰ Ibid.

⁸¹ See *Brown v. Board of Education*, 347 U.S. 483 (1954).

⁸² Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 92-93.

Koppelman argues that “racism is the product of deeply entrenched social meanings attached to race itself and to social privileged and nonprivileged positions,” which, through intergenerational transmission, become “deeply entrenched in the cultural consciousness.”⁸³ To combat this, antidiscrimination law must “reconstruct the social reality and social meanings that define particular social groups as inferior” by encouraging African Americans to hold valued and privileged positions that people historically ‘tag’ as ‘white.’⁸⁴ Changing the tag attached to these positions from an exclusively white tag, in effect, changes the social meanings attached to being black.

Yuracko uses this same logic to argue that proportionality contributes to the process of “changing the cultural tags associated, not only with competitive athletics, but also with physical agency more generally.”⁸⁵ With a proportional distribution of athletic spots, competitive physical activity can be tagged as female, as opposed to exclusively male. This facilitates the change of social meanings attached to femaleness “from passive beauty or sex object to strong physical agent,” which has wide ranging effects on the ways girls conceive of themselves and the way society views them.⁸⁶ A sense of physical agency can be transformative to women; Simone de Beauvoir wrote in *The Second Sex* that “to climb higher than a playmate, to force an arm to yield and bend, is to assert one’s sovereignty over the world in general.”⁸⁷ By changing the tag attached to athletic positions, proportionality aids the changing of social meanings attached to femaleness to ones that include this sense of physical power and agency. So, when examining

⁸³ Kimberly A. Yuracko, “One For You And One For Me: Is Title IX’s Sex-Based Proportionality Requirement For College Varsity Athletic Positions Defensible,” *Northwestern University Law Review* 97, (Winter 2003): 796.

⁸⁴ Yuracko, “One For You And One For Me,” 796.

⁸⁵ *Ibid.*

⁸⁶ Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 94-95.

⁸⁷ As quoted in Mariah Burton Nelson, “Chapter 3,” in *The Stronger Women Get, the More Men Like Football: Sexism and the Culture of Sport* (Dare Press, 2005).

how proportionality is subverted with the use of ‘ghost athletes,’ it is important to look at how the action impacts the cultural tags attached to femaleness and athletic positions.

Ultimately, Title IX’s promise of equality hinges on its use of proportionality to confirm that female and male students are given equal opportunities to access the tools for their development provided by their educational institutions. Extensive literature demonstrates the cultural and individual benefits of sport participation, and Title IX’s model of proportionality has been recognized (by the courts and by experts) as the most effective way to ensure that the distribution of these benefits is done in an equal and non-discriminatory way. With this understanding, the practice of using ‘ghost athletes’ to feign gender proportionality is even more detrimental to the goals of Title IX. With ‘ghost athletes’ on women’s athletic team rosters, proportionality—the crucial dynamic of Title IX’s non-discrimination mandate that forms the basis for evaluating gender equity at educational institutions—is directly subverted. As a result, the principles of fairness and equal treatment that proportionality guarantees are lost. In the following section, the practice of using ‘ghost athletes’ to achieve compliant gender proportionality numbers will be detailed through my account as a member of the University of Pennsylvania varsity women’s fencing team during the 2017-2018 season and the findings will be evaluated against this research.

SECTION 2: AN AUTOETHNOGRAPHIC ANALYSIS

The Autoethnographic Approach

During the 2017-2018 school year, I was the head captain of the University of Pennsylvania varsity women's fencing team during which time there were five female athletes on my team roster who did not regularly practice or compete with the rest of our team (referred to as 'ghost athletes'). In this section, I will provide an autoethnographic account of my experience as a member of the Division I team in order to describe the use of 'ghost athletes' on a varsity team, examine the role of coaches and athletic department personnel in justifying and mandating the use of 'ghost athletes,' and articulate the cultural experience of being a female athlete on a team with 'ghost athletes' on its official roster.

The autoethnography format serves a few purposes. Primarily, it allows me to "articulate insider knowledge" to inform readers about aspects of cultural experience that other research methods may not capture.⁸⁸ Through personal accounts, autoethnographies are able to "break silence by addressing understudied, hidden, and/or sensitive topics" like discriminatory cultural norms not publicly discussed.⁸⁹ By documenting personal experiences, the realities of these topics become available for consideration and analyses of them are made accessible.

Additionally, "autoethnographic texts demonstrate knowledge of past research on a topic and

⁸⁸ Adams, Ellis, Jones, "Autoethnography," 1-11.

⁸⁹ The importance of this insider knowledge is prominent for topics that are secretive and that's existence may be denied entirely by certain parties. This was demonstrated by the January 31, 2018 University response to my statement on the issue of illegitimate athletes as discussed on page 52. Stacy Holman Jones, Tony Adams, Carolyn Ellis, *Handbook of Autoethnography*, (New York: Left Coast Press, Inc., 2013): 35.

seek to contribute to this research.”⁹⁰ Thus, with this format, I am able to situate my experience within scholarly discussions and research surrounding the topic of Title IX and gender discrimination. After detailing a chronology of my experience and my continued efforts to change the norm of using ‘ghost athletes’ on the women’s fencing team and within Penn Athletics at large, I will examine my experience in light of the research presented in Section 1 with a particular focus on the justifications of Title IX’s proportional distribution of athletic positions put forward by Kimberly A. Yuracko.

Being on a Women’s Sports Team with ‘Ghost Athletes’

Under the NCAA format, women’s and men’s fencing teams compete separately during all intercollegiate competitions except the NCAA Fencing Championships where the scores of both teams are tallied together to determine a single national champion. Despite competing independently throughout the athletic season apart from the national championships, the University of Pennsylvania women’s and men’s varsity fencing teams train together as one team. We warm up as one team, condition and weight train as one team, practice with each other as one team, travel to competitions as one team, and even recite a pre-competition cheer together as one team. As a result, the male athletes on the men’s fencing team often feel as much like my teammates as the female athletes on the women’s team, regardless of the fact that we compete independently. This closeness is one of the reasons why addressing the issue of ‘ghost athletes’ on the women’s roster was so difficult. The burden fell on myself and other undergraduate athletes to bring up the issue, justify to the coaches and athletic administration why it was unfair, and come up with solutions to remedy the problem. Because of this, the women’s and men’s fencing captains during the 2017-2018 season had to balance our care for the other gender’s team

⁹⁰ Jones, Adams, Adams, *Handbook of Autoethnography*, 23.

with what we perceived to be our own team's rights and needs. As will be demonstrated, the effort to address the problem of 'ghost athletes' on the women's roster came from students, as opposed to coming from the coaching staff or administration, and this was an insidious dynamic that hindered success in our fight against the unfair practice.⁹¹

By putting the burden on student leaders to spearhead the issue, any consequence that removing 'ghost athletes' from the women's team had on the men's team was framed as being the fault of the women's captains who pushed the issue, not the coaching staff and athletic administration who chose to use 'ghost athletes' to comply with Title IX proportionality standards in the first place. After years of tacking 'ghost athletes' onto the female roster to create adequate gender proportionality numbers, the Penn fencing coaches explained to the other captains and me that it was the rigid structure of Title IX requirements that left them in this precarious situation. Thus, when my co-captains and I urged the coaches to stop using 'ghost athletes' and to keep those athletic participation opportunities open for women who would genuinely participate on our team, we were blamed for the consequences. However, this viewpoint faults Title IX's structure and overlooks the history of administrative action that led to the cultural norm of 'ghost athletes' being used on our team. Author and expert on Title IX issues Professor Ellen Staurowsky explained this when defending Title IX's fairness in the face of similar complaints at James Madison University. "If James Madison [University] had been incrementally responding to women's sports opportunities over the years, they wouldn't be in the situation they found themselves in," Staurowsky said. "It is decades of inertia by decision makers

⁹¹ After I presented the issue in front of the University Council and drew attention from the Athletic Department, the coaches stated that they had been working on solving the issue for a while but had not discussed it with the team. While this may be true, the issue of 'ghost athletes' and any effort to get rid of them was never acknowledged to me by a member of the coaching staff until I brought it up to them directly along with the other captains of my team.

that leads to Title IX compliance problems. So now this generation has to deal with massive cuts.”⁹² Thus, it was the choice by our coaches and administrative staff to use ‘ghost athletes’ in lieu of expanding women’s genuine participation opportunities that left the fencing team in this position during my years as an athlete at Penn.

When I started my athletic career at the University of Pennsylvania my freshman year, I was made aware of ‘ghost athletes’ on the women’s fencing team in an informal way. I became friends early on with my incoming freshman class of women’s and men’s team fencers, made up of recruited athletes like myself and walk-on athletes who were not recruited but joined the team after being admitted to Penn. We went to practice together 5 days a week and often ate together after practice. Like the experience of many other student-athletes, my teammates became some of my closest friends at college. Being on a varsity team together, training alongside each other every day, and pushing ourselves as hard as we could to improve and succeed for the sake of our school gave me a sense of pride and purpose. Our practice schedule tallied up to 14.5 hours per week which translated to a substantial amount of commitment, both in time and in physical and emotional exertion. As a result, the bond I felt with my freshman class of fencers was strong. My closeness to my teammates was why I was so surprised when a classmate asked me if I knew her friend who was also on the fencing team, but I did not recognize the name she gave me. That was my first introduction to the fact that there were people who were listed as members of our women’s team but did not actually participate in our training, team events, or competitions.

Throughout my freshman and sophomore year I did not get an official explanation as to why there were names listed on the women’s team roster who did not participate in practice or

⁹² As quoted in Bill Pennington, “At James Madison, Title IX Is Satisfied, but the Students Are Not,” *The New York Times*, <https://www.nytimes.com/2006/10/07/sports/othersports/07madison.html>, (October 7, 2006).

competitions like everyone else. When I asked my older teammates about it, the consensus was that “it had something to do with Title IX,” but it was never addressed directly by the coaches. As an underclassman, I felt that I had no choice but to accept the fact that this was the norm on our women’s team even though there were no parallel ‘ghost athletes’ on the men’s team. I remember the discomfort I felt when someone would ask me about one of the ‘ghost athletes’ on our team. When I was asked if one of these people were on the team or if I knew them, I had to answer in a “yes-and-no” kind of way. When I acknowledged that yes, that person was technically on my team, but no, I did not know them or practice with them, it produced feelings of dissonance within me and my female teammates. We had to struggle with the conflicting facts that (A) women’s fencing is a competitive varsity team just like men’s fencing, and, as members of the women’s fencing team, we practice and compete like all other legitimate athletes; and (B) there are people holding varsity spots on the women’s fencing team (but not the men’s team or other male varsity sports) who do not practice or compete at all even though they are considered athletes just like us.⁹³ Because of these competing understandings, the presence of ‘ghost athletes’ produced feelings of uncertainty regarding the legitimacy of women’s fencing as a varsity sport. Especially because we practiced and competed alongside the men’s team, it was a conspicuous fact that *only women* had to deal with this dissonance even though our team rhetoric implied that we should be considered two equal parts of one whole.

I remember conversations with other female athletes on my team about the discomfort and frustration we felt when we saw a woman who didn't participate in any team events or practices walking through campus wearing ‘Penn Fencing’ apparel. This was a mundane and

⁹³ As we found out later, the issue of ‘ghost athletes’ wasn’t isolated to the women’s fencing team, and instead, was present on a number of female sports teams that had to balance their roster numbers with their male counterparts.

physical reminder of the effect ‘ghost athletes’ had on the self-conceptions of female athletes on our team. The pride that came with being a member of a varsity sports team, the social meaning attached to that identity, and the ability and skill it implied all felt less significant given the fact that ‘ghost athletes’ could claim that same membership without having to do anything to earn or make use of their place on our team. These same feelings were conjured when I googled the name of one of these ‘ghost athletes’ and found her LinkedIn page which prominently listed “Varsity Athlete, Women’s fencing team, University of Pennsylvania” despite the fact that I, as the head captain of the team, had never met her. Because these ‘ghost athletes’ did not participate on our team but were still identified by society as a member of it, they affected what it meant to be a female athlete and lessened the social implications attached to being a member of a varsity women’s sports team. By comparison, the men’s fencing team didn’t have any ‘ghost athletes’ on it, and as a result, they didn’t have to grapple with doubts regarding their team’s legitimacy or their status as male student-athletes.

Additionally, the presence of ‘ghost athletes’ meant the women’s fencing team had a collection of varsity spots on its roster every year that were technically filled but, in reality, went unused. With fewer spots available to fill with regular, practicing athletes, a message was sent to the female athletes on our team that there was less of an effort made to invest in building the strength of the women’s team compared to the men’s team. As is common in the sport of fencing, a large portion of the men’s and women’s teams’ practice revolved around fencing against our teammates. Throughout the season the women and men would fence against each other, but as we got further into our competitive season, our coaches often divided us by gender so the women fence against women and the men fence against men in preparation for single-gender competitions. The more athletes we had on our respective teams, the more practice

partners we could spar against. Thus, a space on the women's roster that should have been filled with participating athletes was instead filled with 'ghost athletes' who did not attend practices or participate, hindering the individual growth of the female athletes on our team and our women's team's strength overall.

It should be noted that on the fencing team there is an understanding that, skill-level aside, additional sparring partners help fencers practice and improve. This is why our varsity team welcomes the addition of walk-on athletes even if they are less experienced and less likely to compete in a large number of intercollegiate meets than recruited fencers. It might be tempting to draw an equivalency between walk-ons and 'ghost athletes' as far as team contribution goes, but in my experience, drawing this comparison would be incorrect. During my athletic experience at Penn, I knew walk-ons whose fierce commitment to the team absolutely made us stronger. From a team perspective, these athletes were often some of the most committed individuals to bettering our team even if they weren't the 'starter' athletes during meets. In fact, throughout my four years on the team, walk-on athletes have received awards commending their dedication to the program during our annual Fencing Banquet at the end of the season. From an individual perspective, I also observed the development of these walk-on athletes as a result of their own experience on the team. I saw my walk-on teammates transform in athletic ability throughout their career as student-athletes because they were active participants on our team just like the recruited athletes on our team. The non-athletic developmental benefits of being a student-athlete were enjoyed by recruited athletes and walk-on athletes alike. Contrastingly, 'ghost athletes' did not practice or participate like walk-ons. This distinction is why, unlike walk-ons, the presence of 'ghost athletes' neither strengthened our team nor aided their own individual development as athletes.

Moreover, both the women's and men's fencing teams had walk-ons on them. As a result, the presence of walk-on athletes did not create a gap between the conceptions of what it meant to be a member of a women's or a men's athletic team. Whether or not they contributed to the strength of a program, the presence of both female and male walk-ons meant that they did not influence the social tag attached to being an athlete of a particular gender. On the other hand, 'ghost athletes' exclusively took up varsity positions on our women's team. Thus, there was a gendered gap in the perceived investment in the women's and men's fencing teams. By using a cluster of female varsity positions for 'ghost athletes' instead of working to fill them with recruited athletes or committed walk-ons, our coaches sent a message that they were not motivated to put the entirety of their resources into bettering our women's team. Instead, participation opportunities intended for women were being filled artificially so that the coaches could maintain the strength and size of the men's team.

Fighting the Use of 'Ghost Athletes'

The damaging effects of 'ghost athletes' were clear to me during my first two years at Penn. Then, at the end of my sophomore year of college, I was named as one of the three captains of the women's team for the 2017-2018 school year.⁹⁴ Before our training began the following year, the women's and men's captains got together to discuss what changes we wanted to see in the program and one of our first priorities was fixing the issue of 'ghost athletes' our women's team.⁹⁵ During our first meeting with the coaches, the 'ghost athlete' issue was championed by captains from both the women's and men's teams. It was agreed upon by our captains that there were athletes on the women's roster who did not participate on our team, and

⁹⁴ At the start of our official competition season, I was named as the head captain of the women's varsity fencing team.

⁹⁵ During these early conversations, the term 'ghost athletes' wasn't used to describe these athletes. Over email, the term "roster number issue" was used to reference the issue.

we made it clear that we believed the practice to be unfair to our female athletes and unproductive to our team as a whole. Randall LeMaster, the Director of Fencing Operations, explained that the ‘ghost athletes’ were on the women’s roster to increase our women’s participation numbers so that no members of our men’s team had to be cut to comply with Title IX requirements. He used the analogy of being stuck between a rock and a hard place and described the need to use ‘ghost athletes’ as an unfortunate reality. I distinctly recall him acknowledging that he didn’t realize how much the action affected the girls on our women’s team, and he apologized for any harm it caused. LeMaster told us he would speak to the University of Pennsylvania staff in charge of NCAA Compliance, to “see how we can move forward with this” issue.⁹⁶ Four days later, Mr. LeMaster sent us the following email:

“Captains,

I met with Rachel in Compliance about the roster numbers issue.

As far as Compliance is concerned, the way we have been meeting our requirements is fine. They understand the needs of the program and the Dept. to ensure we are compliant. We are actually doing it better than other teams.

It is being discussed amongst the Dept. to bring our team numbers to parity, but that most likely won't happen till next year.

They were impressed with the Women's Team willingness to fight for the Men's Team roster.

As of now the goal is a roster of 22 Women and 18 Men. If we can improve those numbers we will try.

So if you know of anyone that can dedicate some time to the Women's team let me and Coach Ma know.

Respectfully,

Randall LeMaster
Director of Fencing Operations

⁹⁶ Figure 1 (September 1, 2017 email).

University of Pennsylvania”⁹⁷

The email demonstrates three key understandings. First, the statement that “[a]s far as Compliance is concerned, the way we have been meeting our requirements is fine,” reflected and reinforced the Athletic Department’s understanding that using ‘ghost athletes’ on women’s teams to inflate gender proportionality numbers and preserve the strength of male athletic programs was an acceptable course of action. From the perspective of the university office tasked with ensuring Penn’s compliance with such regulations, the use of ‘ghost athletes’ was permissible regardless of the harm experienced by female students as a result. Second, the statement that “[w]e are actually doing it better than other teams,” signaled that manipulating female participation numbers to comply with Title IX was not a problem that was limited to just women’s fencing. Finally, the request to let Mr. LeMaster and Head Coach Andy Ma know “if you know of anyone that can dedicate some time to the Women’s team” demonstrated the Penn fencing coaches’ decision to take action that exacerbated the problem of ‘ghost athletes’ even after agreeing during our meeting that the practice was harmful to the female athletes on our team.⁹⁸

From the wording of Mr. LeMaster’s September 5th email, it is possible to interpret his request for athletes “that can dedicate some time” as a request for new walk-ons, not new ‘ghost athletes.’ However, a follow-up email sent on September 18th makes the meaning of what Mr. LeMaster was asking for less ambiguous. The email stated:

“Captains,

As we have discussed we need to add more female athletes to our roster to offset the number of male athletes we want to keep.

⁹⁷ Figure 2 (September 5, 2017 email).

⁹⁸ Ibid.

If you know of any female athlete that has quit another team and is registered with the NCAA, please send their contact information to me, or ask if they would mind being placed on our roster.

We NEED 1 more female, but would like to add 3 or more.

Respectfully,

Randall LeMaster
Director of Fencing Operations
University of Pennsylvania⁹⁹

From the wording of the September 18th email, the intentions of the coaches were obvious. Mr. LeMaster stated “we need to add more female athletes to our roster to offset the number of male athletes we want to keep,” demonstrating the overt priority of preserving male athletic opportunities over offering female athletic opportunities to students who will genuinely use them. Additionally, the email made no reference to participation requirements that these new athletes should be aware of; it just asked “if they would mind being placed on our roster.” The final statement that “[w]e NEED 1 more female, but would like to add 3 or more” was particularly bold after the captains had directly voiced the fact that the presence of ‘ghost athletes’ made the female members of our team feel less legitimate than the male members. This message from our coaches enhanced the sense that our coaching staff was subordinating the interest of our female athletes to the relative interests of our male athletes.

Throughout the rest of the 2017 fall semester, there were multiple in-person meetings and email exchanges between the fencing captains and coaches regarding the ‘ghost athletes’ on our women’s team roster. Efforts were made to sustain the men’s team’s size, but no solution was agreed to in which the ‘ghost athletes’ were entirely removed from our women’s roster. In

⁹⁹ Figure 3 (September 18, 2017 email).

November, seeing that substantial progress wasn't being made on my team, I broadened my attention and looked into whether or not female athletes on other teams were having similar experiences. Prompted by Mr. LeMaster's September 5th email assuring us that according to Compliance "the way we have been meeting our requirements is fine" and "we are actually doing it better than other teams," I began to ask around about the existence of 'ghost athletes' on other teams. There were no publicly accessible statistics on the issue, so I relied on the accounts of female athletes from other varsity sports teams to understand the breadth of the issue.

I reached out to female athletes on every women's varsity sport team at Penn and found that of the nine NCAA sponsored programs with both women's and men's teams at the University of Pennsylvania, six programs had accounts of 'ghost athletes' in some form on their women's rosters.¹⁰⁰ Not every team's 'ghost athletes' looked exactly like mine. For example, I was informed by a member of the track team that female athletes on the track team (who would otherwise only compete in sprint-focused track events) were made to participate in a cross-country race in order to be double-counted as female athletes. By jogging one race, these athletes were counted as cross-country participants in addition to track participants.¹⁰¹ Reports of this kind of roster manipulation are common; a 2011 New York Times article stated:

"Double- and triple-counting women has allowed four dozen Division I universities to mask the fact that they have fewer female athletes. At those institutions, overall participation rates appeared to show that women were gaining ground. But when the duplications were not counted, records show the percentage of women who played for those universities fell."¹⁰²

¹⁰⁰ The University of Pennsylvania's nine NCAA sponsored programs with both men's and women's teams are Basketball, Cross Country, Fencing, Golf, Lacrosse, Soccer, Swim & Dive, Tennis and Track & Field. Penn also has teams that are not official NCAA sports, such as Sprint Football which is governed by the Collegiate Sprint Football League, but I only looked into NCAA sports during my investigation.

¹⁰¹ The Penn athlete I spoke to about this issue pointed to the individual results of a Women's 4K race to verify her claim stating, "it's pretty clear who jogged it. And they're sprinters."

¹⁰² Thomas, "College Teams, Relying on Deception, Undermine Gender Equity."

Additionally, athletes from the swim and dive team informed me that (like the captains of the fencing team) they met with their coaches to try and fix the issue of the ‘ghost athletes’ on their roster to no avail. They met with staff from the Athletic Department to discuss ways to end the practice but did not see immediate action. With confirmation that this issue extended past my own team’s experience, I was determined to shed light on the female athletic participation opportunities filled by persons who did not legitimately participate on women’s sports teams.

Open Forum and its Effects

In an effort to confirm the accounts I heard from other female athletes, I inquired to the Compliance staff member my coaching staff spoke with about records regarding the use of roster fillers on women’s teams across the University. That staff member forwarded my message to Associate Athletic Director Jake Silverman, and he responded to my question stating, “All student-athletes on a roster are legitimate. While contribution levels may vary, all student-athletes are treated as full members of their respective rosters, not as ‘fillers’ as you have referenced.”¹⁰³ Given the difference between what the administration characterized as ‘legitimate’ and what female athletes experienced on their actual teams, I decided to present the issue during an Open Forum held by the University Council on December 6th, 2017.¹⁰⁴ I submitted my topic ahead of time, and a staff member from the Office of the Secretary responded to my statement proposal informing me that prior to the Open Forum there was going to be a report on ‘Athletics and Extracurricular Activities’ led by Athletic Director Dr. Grace Calhoun. The Office of the Secretary staff member explained, “The Athletics presentation and

¹⁰³ Figure 4 (November 29, 2017 email).

¹⁰⁴ University Council holds an Open Forum annually to which all members of the University community are invited and during which any member of the University community can direct questions to the Council. *See* <https://secretary.upenn.edu/univ-council/open-forum>.

Open Forum are separate but I did let them know that you submitted your topic and encouraged them to hang around and listen to your statement...”¹⁰⁵ After the Athletics presentation finished, though, Dr. Calhoun and the rest of the administration left the meeting before I delivered my statement during the first speaking slot. I presented the following statement and proposal:

“I’m Simone Unwalla. I’m a junior in the College and captain of Penn’s Varsity Women’s Fencing Team. I see our Athletic Administration just left, but I’m here to talk about an issue of Roster Management in Penn Athletics. For those who don’t know, Title IX requires universities to demonstrate that their female athlete count is proportional to overall female enrollment at their university. However, what I’ve found through my experience as an athlete, an experience shared by many female athletes at Penn, is that the administration is consistently utilizing loopholes to artificially inflate the number of athletes on female teams. Of the nine NCAA-sponsored programs with both men’s and women’s teams, six have documented and verified inflation in their female rosters. That is 2/3 of these programs. Whether it’s done by adding placeholders to our rosters or by double counting legitimate athletes onto multiple teams, these techniques directly undermine the spirit of the Title IX and insulate the gender inequity within Penn Athletics.

This results in the following:

First, it weakens our performance. The goal of athletics, as mentioned in the athletics presentation a few minutes ago, is to win. With fewer legitimate athletes on our women’s teams we actively obstruct that goal and compromise the competitiveness of female programs.

Second, roster management creates tension between our athletes and our administration. After speaking with fellow athletes from each NCAA team affected by this practice, the sentiments were unanimous. The administration knowingly values maintaining the strength of men’s teams over building up the strength of women’s teams. Instead of cutting male programs or putting more effort into building women’s programs, Penn Athletics systematically adds filler athletes who don’t compete or practice to create the appearance of parity.

Moreover, while the administration permits this practice to coaching staffs, they refuse to acknowledge it directly to students.

After raising my concerns about the non-practicing athletes on my roster with the Director of Compliance Rachel Hiller and Assistant Athletic Director Jake Silverman, I was assured that I was wrong. Mr. Silverman responded to my email stating, and I quote, “All student athletes are legitimate. While contribution levels

¹⁰⁵ Figure 5 (November 28, 2017 email).

may vary, all are full members of their rosters and not ‘fillers’ as you have referenced.” As the captain of Women’s Fencing, there are five athletes on my roster that I have not seen once this semester. Three athletes I have never met. It is a gross exaggeration to call that level of contribution legitimate.

Finally, these practices are unethical. By continuing to tolerate discriminatory roster management, our Athletic Administration directly undercuts the opportunities of female athletes. We need to be better. Penn Athletics should consist of only legitimate athletes that practice and compete at the same level as the rest of their team, and roster-fillers and double-counted athletes should not be tacked onto female rosters to reach the quotas necessary to comply.

I’m calling for a two-fold solution: 1) An immediate analysis of all NCAA-sponsored female rosters to determine which athletes are legitimate and which are not. And 2) Written guidelines on what level of contribution should be necessary to constitute a varsity athlete for each sport. Additionally, committing to keep that standard consistent across all student-athletes regardless of gender. I, as well as many other athletes at Penn, would be more than willing to sit down and help outline a plan going forward.

I expect more from an administration that is lead by a former female athlete, that promises fair opportunity to all student-athletes regardless of what gender you are, and that prides itself time and time again on its principle of integrity. It is shocking and disheartening that Penn still allows this overtly unequal practice to remain on our campus.

I urge you to hold the University of Pennsylvania to a higher standard and put in the long overdue effort to change these practices.

Thank you.”¹⁰⁶

Following the Open Forum, Senior Associate Athletic Director Sherryta Freeman set up a meeting with me, agreeing that the issue was legitimate and needed attention. The steps I called for in my statement were not taken, but she asked for the list of teams I compiled and told me she would look into them.¹⁰⁷ After winter break, I was also asked to meet with the Penn fencing

¹⁰⁶ Video 1 (December 6, 2017 Open Forum Statement). *See* <https://app.box.com/s/xsujxp7sa0adsmwa2qhrjfhnf9gz1ayf>

¹⁰⁷ When we met, Director Freeman informed me that she would soon be leaving her position at Penn to become the Director of Athletics at Lafayette College. After her departure, I had follow-

coaching staff to discuss my Open Forum statement. At the meeting, I was criticized for making a public statement on the issue rather than keeping it contained as a private matter. Mr. LeMaster stated that he had given some of the ‘ghost athletes’ individual lessons outside of regular practice hours, even though during all of our discussions and meetings on the subject throughout the fall semester this fact was never brought up. When Mr. LeMaster urged us to find out if any former athletes “would mind being placed on our roster,” my teammates and I understood that the request came without the corollary of private lessons.¹⁰⁸ Additionally, while fencers can choose to sign up for individual lessons, as the head captain of the women’s team, I had never heard of a team member *only* taking lessons and not coming to group practice at all. Regardless, I emphasized during the meeting that, due to the accounts I heard from female athletes on other sports teams, I believed the issue still deserved University attention.

Up until this point, as noted in my Open Forum statement, I had not seen any of the five ‘ghost athletes’ at a fencing practice (during regular hours or hours outside of practice) during the 2017-2018 school year. I did know who two of the women were; they had been participants on our team in past years, but they had not attended a single practice or team event during the 2017-2018 school year despite the fact that they remained on our roster.¹⁰⁹ The status of these ‘ghost athletes’ did not change throughout the year; I never saw them at a team practice. The other three women taking up participation opportunities were women I had *never* seen or met in any capacity. Following my January 12th, 2018 meeting with my coaches, however, this briefly changed. Following my meeting with the fencing coaches, the three ‘ghost athletes’ with no previous contact with our team came to our 3:30pm-6:00pm group practice that day. With no

up meetings with other athletic administration personnel, but I was never informed of any action taken to investigate the issue on other sports teams.

¹⁰⁸ Figure 3.

¹⁰⁹ Neither of the two women were listed as injured or unable to practice/compete.

introduction, the girls joined our team warm-up, jogging around the fencing room with everyone else. During the warm-up, multiple underclassmen asked who the girls were and what was going on. One of the ‘ghost athletes’ had to continually stop jogging to walk and sit down on the benches to catch her breath.¹¹⁰ Without an introduction by the coaches or an explanation for why these unknown women were abruptly at our team practice, the room was tense, confused, and awkward. About twenty minutes into practice, I asked to speak to my coach outside the training room and urged her to have one of the coaches address the presence of these new women or, at the very least, introduce them to the rest of the women’s team. She agreed and, when we came back into the room, she listed off their names and announced that they were new members of our team, instructing us to welcome them.

We then started the footwork portion of our practice during which the whole team lines up along one side of the room and follows verbal instructions for footwork patterns. I remember Coach Adi Nott demonstrating to one of the ‘ghost athletes’ how to correctly do the most basic footwork movements. During the footwork session, she positioned herself on one side of the girl to show her what to do and asked me to come position myself on her other side as well. Later on, we split up by weapon groups to do drills and bout against each other.¹¹¹ Neither of the ‘ghost athletes’ came to the foil section, so I did not personally experience fencing them. However, that weekend one of my co-captains met with the coaches to discuss her squad’s experience fencing with the ‘ghost athletes’ during that practice. She explained that the girls were so inexperienced that it was distracting for the women’s epee squad to suddenly have to fence them, especially during the height of our competitive season as we prepared for the Ivy

¹¹⁰ This was in the competitive peak of our season, right before our Ivy League Championships.

¹¹¹ For reference, there are three weapons in fencing: foil, epee, and sabre. Each weapon has its own rules and strategies, and a fencer only competes against a fencer of the same weapon. At practice, we split into weapon groups to practice against each other.

League Championships. Following that week in January, the ‘ghost athletes’ never came to another team practice for the remainder of the school year despite remaining on the roster. On January 22nd, 2018, I asked for further clarification from the coaches regarding these athletes’ status on the team. The following is an excerpt of my email to them:

“As we look to the future (to increase transparency and understanding on both of our sides), there are a few details I believe we should outline.

1. The names/weapons of each of the fencers who are (for now) on our team but do not adhere to our standard practice schedule
2. The dates/times we should expect to see these fencers during practice hours participating in the exercises that the rest of our fencers participate in
3. If applicable, the practice schedule of these fencers if it falls outside of regular team practice hours

Finally, I think it would be extremely beneficial if this situation could be officially explained to the rest of our women’s team. Whether it be in a meeting or via email, I believe a statement from the coaches to the women’s team explaining who these girls are, why they have been unexpectedly at practice, and when we should expect to see them in the future would absolutely make some of our athletes feel more secure and more respected as a part of the Penn Fencing Program. If this isn’t possible, please let me know and I can unofficially let the women on our team know the details of this situation. However, I think it would mean a lot more coming from you.”¹¹²

In response to my request, Mr. LeMaster sent an email to the team naming the three athletes and stating directly that they “joined our roster to be compliant with our Title [IX] requirement on the first week of November,” and began taking lessons with him after Thanksgiving.¹¹³ He also explained their schedule moving forward:

“Unfortunately the disparity in the level of fencing became a distraction more than a help and it was decided these 3 girls would need more development when it came to bouts. So the 3 of them have a set time on Fridays to work with me in their bouts on strip in hopes of being able to integrate them after Ivies. The

¹¹² Figure 6 (January 22, 2018 email).

¹¹³ Figure 7 (January 23, 2018 email).

intent is, as their schedules permit, they will join warm up, conditioning and activities but not participate in team bouts at this time.¹¹⁴

Despite the claim that the ‘ghost athletes’ “will join warm up, conditioning and activities,” I never saw any of them at practice again, to warm up, condition, fence, or otherwise.¹¹⁵ In addition, without any notification of changes on other women’s teams, the University Council issued the following statement in response to my Open Forum statement the month before:

“On behalf of Vice President and University Secretary Leslie Kruhly, who was unable to attend, the Provost related disposition of the Open Forum topics brought forward on December 6, 2017, the following topics as brought forward were addressed as referenced below and no additional action by Council is required... On issues of gender equality in Penn Athletics, it was found that the status of new student athletes was miscommunicated. These athletes are now certified for full practice activities.”¹¹⁶

Despite the University’s claim that “the status of new student athletes was miscommunicated,” the exchanges throughout the 2017-2018 school year demonstrate the following: on the fencing team, the coaching staff admitted explicitly that at least three athletes “joined our roster to be compliant with our Title [IX] requirement,” demonstrating that these women’s contribution to the school’s gender proportionality numbers was the primary purpose of their addition to the team roster.¹¹⁷ Also, these additions were justified overtly as a means to “offset the number of male athletes we want to keep,” reflecting the prioritization of preserving male athletic participation opportunities over offering genuine female athletic participation opportunities.¹¹⁸ Finally, the fact that the coaching staff kept ‘ghost athletes’ on the team roster

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Figure 9 (January 31, 2018 University Response). See Meeting Materials for January 31, 2018 at <https://secretary.upenn.edu/univ-council/meeting-materials>.

¹¹⁷ Figure 7.

¹¹⁸ Figure 3.

despite the fact that the athletes never “join[ed] warm up, conditioning and activities,” demonstrated an unwillingness to remain transparent and honest with the genuine members of our women’s team.¹¹⁹

Then, in May of 2018 during the annual Penn Fencing Family Banquet and without warning or explanation I was the only captain on the women’s or men’s teams to be removed from my position. Afterwards, many female and male members of my team reached out to me and told me that they believed the action was unwarranted and unfair. At least one of my male co-captains even expressed his opinion that the action was unfair directly to the coaches, but nothing changed. I remained on the team for my senior year as an athlete and not a team captain. During that year, the 2018-2019 season, two of the ‘ghost athletes’ remained on our official team roster. Throughout the entire season, I did not see either of them participate in a single team event, training session, or competition. Despite the persistent use of ‘ghost athletes,’ the issue was not addressed publicly again by captains or coaches of the University of Pennsylvania fencing team to my knowledge. In addition, no public noise was made by the members of other sports teams regarding the issue. Given my statement and my resulting loss of captaincy, this was not surprising to me. When I first investigated the issue and spoke to other athletes, the fear of getting in trouble was mentioned repeatedly as a reason for apprehension. Since the burden fell on students to bring up the issue and argue on behalf of its change, the problem of ‘ghost athletes’ was easily ignored by the athletic administration as there was a lack of manpower available to fight for its change.

Ultimately, the continued use of ‘ghost athletes’ on women’s rosters is a symptom of the failure by decision makers to expand genuine participation opportunities for women at the

¹¹⁹ Figure 7.

University of Pennsylvania to an equitable status. This persistent inaction is demonstrated in part by gender discrepancies in reported expenses for athletic teams. As published through Equity in Athletics Disclosure Act (EADA), during 2018, men's teams at the University of Pennsylvania spent \$550,517 on recruiting while women's teams spent \$212,923.¹²⁰ Moreover, on the men's and women's fencing teams, reported operating expenses for the men's fencing team reached \$69,531 while operating expenses for the women's fencing team reached only \$66,074.¹²¹ This discrepancy is hard to characterize as equal particularly because these expenses were generated when there were 21 participants listed on the women's team but only 17 participants listed on the men's team.¹²² With 'ghost athletes' taking up athletic positions on women's rosters, coaches don't have to adjust their spending to foster the expansion of athletic participation opportunities for females. Thus, 'ghost athletes' offer a Band-Aid solution. They allow schools to claim gender equity and establish Title IX compliant gender proportionality numbers while evading the effort, time, and dollars necessary to create truly equal athletic opportunities.

Situating Findings Within Scholarly Discussion

In light of the research presented in Section 1, my autoethnographic account as a member of the University of Pennsylvania women's fencing team fits within the flow of expert discussion in three major ways: it highlights how authority figures' justification of 'ghost athletes' damages female athletes' self-respect, it highlights how the presence of 'ghost athletes' on women's teams causes psychological harm to female athletes, and it highlights how the use of 'ghost athletes' reverses the cultural transformation process facilitated by Title IX's proportionality requirement.

¹²⁰ Figure 8 (EADA Data). See <https://ope.ed.gov/athletics/#/institution/details>.

¹²¹ Ibid.

¹²² Ibid.

These insights show that the use of ‘ghost athletes’ subverts the principle of equal opportunity guaranteed through Title IX’s proportionality model.

My autoethnographic account demonstrates instances in which the actions of authority figures, using and defending the use of ‘ghost athletes,’ undermined the self-respect of female athletes on the women’s fencing team. In Section 1, empirical evidence put forward by Yuracko supports the claim that “individual self-esteem is indeed mediated by perceptions of how fairly one is treated by group authorities.”¹²³ Yuracko argues that if proportionality is perceived to be fair, anything less than proportionality will be perceived as unfair and will damage the self-esteem and respect of female athletes.

In my experience, proportionality was perceived to be fair on the University of Pennsylvania fencing team for two reasons. First, it was overtly justified by federal law and court decisions. From a national perspective, Title IX’s mandate for proportionality was generally understood as the threshold for fairness in the eyes of the legislature and judiciary. Second, from an institutional perspective, proportionality was put forward as proof of the University of Pennsylvania’s commitment to gender equity. Like many educational institutions, the Penn athletic administration was open about the fact that they demonstrated their Title IX compliance through the proportionality prong of the three-prong test. This was expressed directly to me when my coaching staff explained why ‘ghost athletes’ existed on our women’s roster in the first place: there were overall Title IX proportionality numbers that Penn had to hit in order to be compliant with the law, and the ‘ghost athletes’ helped Penn hit those numbers. With official sanctioning by our educational institution, proportionality was accepted as the

¹²³ Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 92.

lawful and fair way to distribute athletic participation opportunities by myself and other athletes on my team.

With the understanding that proportionality was accepted as fair, the subversion of proportionality through the use of ‘ghost athletes’ was perceived as intrinsically unfair. With ‘ghost athletes,’ the inflation of female participation numbers circumvented gender proportionality. As shown by the fencing team’s critiques of the practice and the women’s and men’s captains’ efforts to end the use of ‘ghost athletes’ during the fall of 2017, the use of ‘ghost athletes’ on its own was enough to provoke the feeling that members of our women’s team were being treated unfairly. Following the evidence put forth by Yuracko, this understanding damaged the self-respect of female athletes. In addition, the coaching staff and the athletic administration’s attempt to justify the use of ‘ghost athletes’ was also perceived as unfair, further damaging the self-esteem of female athletes. In the Tyler et al. study cited by Yuracko, fairness is communicated through “two symbolic messages about group membership: (a) whether individuals are respected members of a group and (b) whether they should feel pride in the group as a whole.”¹²⁴ These messages are conveyed through characteristics of authoritative action indicating neutrality (whether decision-making procedures are unbiased and honest), trustworthiness (whether the motives of authorities demonstrate concern for the needs of group members), and status recognition (whether every group member is treated with dignity and their rights and entitlements are respected).¹²⁵ Through these relational aspects of the actions of authorities, the messages regarding the fairness of treatment are communicated with consequential effects on the self-respect level of group members.

¹²⁴ Tyler et al., “Understanding Why the Justice of Group Procedures Matter,” 913.

¹²⁵ Ibid, 914.

In my experience, authority figure actions defending the use of ‘ghost athletes’ cut against all three of these relational aspects, damaging the self-respect of female athletes on my team. When assessing neutrality, the fencing coaches’ defense of using ‘ghost athletes’ as a means to sustain the size of the men’s fencing program (regardless of the harmful effect on the women’s team) reflected a bias prioritizing the men’s program over the women’s program. Also, the coaches’ false characterization of how the ‘ghost athletes’ would participate more actively on the team moving forward, as communicated to our team via email, reflected dishonesty in decision-making procedures.¹²⁶ When assessing trustworthiness, the failure of the coaches to address the issue of ‘ghost athletes’ until pushed by students, the adamant claim by athletic department personnel to students that no athletes were roster fillers, and the University’s response to my Open Forum statement claiming that the status of ‘ghost athletes’ was miscommunicated all demonstrated a lack of concern for the equality female athletes in the motives of authority figures. Finally, when assessing status recognition, the fencing coaches’ requests for more ‘ghost athletes’ following conversations regarding how the presence of them harmed the women’s team reflected a failure to treat female athletes with dignity. The continued treatment of the men’s team as the coaches’ primary concern and the women’s team as a secondary concern ignored the rights and entitlements guaranteed to female athletes by Title IX’s model of proportionality. Together, these examples demonstrate how the actions of authority communicated messages to the fencing team that were perceived as unfair, and following the empirical results of the 4 studies put forward by Tyler et al., negatively influenced the individual self-esteem of female team members. By employing ‘ghost athletes’ and defending their use, authority figure actions lowered levels of self-esteem held by female athletes.

¹²⁶ Figure 7.

My autoethnographic account also demonstrates instances in which the presence of ‘ghost athletes’ caused psychological harm to female athletes. While not applicable to empirical studies, the psychological harm caused by ‘ghost athletes’ is shown qualitatively through my experience as a member of the team. Yuracko put forward a normative argument that “nonproportionality of varsity athletic spots stigmatizes and degrades girls in a way that necessarily undermines their self-respect.”¹²⁷ Because of the message non-proportionality sends, the argument asserts that the allocation of fewer athletic positions to females would harm women’s self-esteem and generate feelings of inferiority. In my experience, the persistent lack of genuine proportionality caused by the use of ‘ghost athletes’ sent these messages to female and male student athletes at the University of Pennsylvania. In addition, the message sent by the fencing coaching staff that athletes had no choice but to accept the norm of ‘ghost athletes’ on the women’s fencing team caused further harm. Female athletes had to grapple with the presence of ‘ghost athletes’ on the women’s team with the knowledge that the men’s team had no such athletes. This exclusively female experience reinforced the collective understanding that the men’s team was prioritized over the women’s team and was considered more legitimate than the women’s team. This kind of psychological harm and feeling of inferiority resulting from differential treatment between women’s and men’s sports teams is cited in various Title IX court decisions, as will be discussed in Section 3.

Finally, my autoethnographic account demonstrates how the use of ‘ghost athletes’ hindered the cultural transformation process facilitated by Title IX’s proportionality requirement. Yuracko’s argument reasons that proportionality encourages changes in the social meanings attached to competitive athletics, physical agency, and femaleness. With a proportional

¹²⁷ Yuracko, “Title IX and the Problem of Gender Equality in Athletics,” 92.

distribution of athletic participation opportunities, the cultural tags attached to these spots will be tagged as female instead of being tagged as solely male, altering the cultural understanding of them. However, my account highlights how the use of ‘ghost athletes’ undermined this process. By adding non-participating athletes to women’s team rosters, the social meanings tied to being a female athlete diverged from those tied to being a male athlete. In my account, the presence of ‘ghost athletes’ on our women’s team affected what it meant to be a varsity female athlete. Instead of holding concrete implications like it did for men’s teams, being a varsity female athlete could come with legitimacy, or not. The historically valued implications of being a member of a varsity athletic team became less legitimate for female team members as the use of ‘ghost athletes’ tagged women’s athletic positions as expendable and, in some cases, there for the primary purpose of bolstering the size of men’s athletic teams. Thus, the transformation of cultural tags associated with competitive athletics and genuine physical agency remained male-dominated and the privileges that came with female athletic participation were tainted, entrenching harmful cultural conceptions of femaleness.

Viewed in light of Yuracko’s arguments regarding the importance of Title IX’s use of gender proportionality, my autoethnographic account details a cultural practice that subverts the principle of equality guaranteed by Title IX. The practice of using ‘ghost athletes’ to inflate women’s sports rosters damages female athletes’ self-respect/esteem, causes psychological harm to female team members, and undermines the cultural transformation process at the heart of Title IX. By situating my account within expert discussions on Title IX’s non-discrimination mandate and the ability of gender proportionality to ensure equal athletic participation opportunities to women and men at educational institutions, the detrimental impact of ‘ghost athletes’ is clear. In the final section, these insights will be analyzed alongside foundational Title IX court precedent

that define the characteristics of genuine athletic participation opportunities and constrain the permissibility of school action to ensure the equal treatment of female and male athletes.

SECTION 3: APPLYING JUDICIAL REASONING

Evaluating the Use of ‘Ghost Athletes’ Against Title IX Jurisprudence

Title IX and the equal treatment of female and male athletes at educational institutions has been subject to immense litigation since the federal law was passed in 1972. When applied to the use of ‘ghost athletes’ on female athletic teams, Title IX’s history of legal precedent provides a valuable template for analyzing two contentious dynamics of the practice: the meaning of a genuine athletic participation opportunity and the implications of generalized harm caused by the differential (and unequal) treatment of female and male students. In addition to the Office for Civil Rights’ 1979 ‘A Policy Interpretation: Title IX and Intercollegiate Athletics’ and 1996 ‘Clarification of Intercollegiate Athletics Policy Guidance: The Tree-Part Test’ discussed in the Background Section, which have been given consistent judicial deference by the courts, three legal cases provide relevant insights for evaluating the use of ‘ghost athletes’ on female rosters: *Biediger v. Quinnipiac University* (decided in a series of decisions between 2010 and 2013 by the U.S. District Court for the District of Connecticut and the U.S. Court of Appeals for the Second Circuit); *Communities for Equity v. Michigan High School* (decided in 2001 by the U.S. District Court for the Western District of Michigan and affirmed in 2006 by the U.S. Court of Appeals for the Sixth Circuit); and *Parker v. Franklin County Community School Corporation* (decided in 2012 by the U.S. Court of Appeals for the Seventh Circuit, vacating a 2009 summary judgment in favor of the defendants by the U.S. District Court for the Southern District of Indiana).

Together, the Office for Civil Rights’ guiding documents and the judicial reasoning of these court decisions provide legal authority for the argument that using ‘ghost athletes’ to inflate

female athletic participation levels violates Title IX's non-discrimination mandate. Using the evidence put forward in my autoethnographic account, it is apparent that (as they were used on the University of Pennsylvania women's fencing team) 'ghost athletes' do not represent genuine athletic participation opportunities and cause particular harm to female students. The 1979 Policy Interpretation, 1996 Clarification, and *Biediger v. Quinnipiac University* establish a developed understanding of what 'athletic participation opportunity' means in the eyes of the law. Drawing from the account put forward in Section 2, 'ghost athletes' do not meet this definition. Additionally, the *Communities for Equity v. Michigan High School* and *Parker v. Franklin County Community School Corporation* decisions cite harm inflicted on female student-athletes due to differential and inequitable treatment of female and male athletes. This evidence of harm prompted both courts to find the schools' treatment of female athletes impermissible under Title IX. With this precedent, the harm caused by 'ghost athletes' detailed in Section 2 holds significant weight when determining whether or not schools that use 'ghost athletes' on women's teams are providing equal treatment to their female and male students. Based on these insights, I argue that the use of 'ghost athletes' violates Title IX.

Defining Athletic Participation Opportunities

Under the proportionality prong of the three-prong test, Title IX's equal opportunity mandate hinges on the distribution of athletic participation opportunities. Thus, the determination of what does and does not constitute an athletic participant is crucial for evaluating whether or not educational institutions are providing equal and nondiscriminatory participation opportunities for women and men. The foundation for understanding athletic participation stems from two guiding documents published by the Office for Civil Rights: the 1979 'A Policy Interpretation: Title IX and Intercollegiate Athletics,' and the 1996 'Clarification of

Intercollegiate Athletics Policy Guidance: The Three-Part Test.’ These Title IX regulations have been established by the courts as authoritative sources of guidance regarding athletics requirements, with the 1979 Policy Interpretation “entitled to substantial deference [as] every federal appellate court to consider the Policy Interpretation has agreed,” and the 1996 Clarification “entitled to controlling deference, according to the United States Court of Appeals for the Eighth Circuit.”¹²⁸

Together, the 1979 Policy Interpretation and the 1996 Clarification define what athletic participation is and explain how participation opportunities are counted for the purposes of the three-prong test to determine Title IX compliance. The 1979 Policy interpretation defines ‘athletes’ as students:

- “a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and
- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season: and
- c. Who are listed on the eligibility or squad lists maintained for each sport, or
- d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.”¹²⁹

This definition explicitly outlines the characteristics of athletic participants. When evaluating ‘ghost athletes,’ the definition’s second point is most significant to analyze. The Policy Interpretation considers athletes to be students “who are participating in organized practice sessions and other team meetings on a regular basis during a sport’s season.”¹³⁰ As exhibited in

¹²⁸ “Selected Title IX Practice Issues: Breaking Down Barriers,” National Women’s Law Center, https://nwlc.org/wp-content/uploads/2015/08/BDB07_Ch6.pdf, (August 2015).

¹²⁹ See 1979 Policy Interpretation, 44 *Fed. Reg.* 71,418 (Dec. 11, 1979).

¹³⁰ 1979 Policy Interpretation.

Section 2, ‘ghost athletes’ on the University of Pennsylvania women’s fencing team did not meet these criteria. Apart from the practice sessions following my Open Forum statement when the ‘ghost athletes’ joined the team unannounced and then failed to return again after that week, these women did not participate in organized team practices/meetings throughout the season. The brief and sporadic presence of *some* of the ‘ghost athletes’ at team practices contrasts the Policy Interpretation’s definition of athletes as those “participating... on a regular basis during a sport’s season.”¹³¹ From my autoethnographic account, the participation level of ‘ghost athletes’ during the 2017-2018 season cannot be characterized as regular. Moreover, throughout my experience as head captain of the team and my discussions with the coaching staff regarding the inclusion of these women, it was never suggested that there were any injury-related reasons why the ‘ghost athletes’ could not participate in group practice sessions. So, the second requirement of the Policy Interpretation’s definition of an athlete went unmet.

The 1996 Clarification supplements the 1979 Policy Interpretation, incorporating “suggestions that the [Office for Civil Rights] received regarding how to make the document more useful and clearer.”¹³² Building on the definition put forward by the 1979 Policy Interpretation, the Clarification provides additional details in an effort to reduce vagueness regarding the determination of athletic participation opportunities. When evaluating whether or not ‘ghost athletes’ count as participation opportunities, two major insights from the Clarification stand out: the refusal to count unfilled participation opportunities and the expanded description of athletic participation.¹³³

¹³¹ Ibid.

¹³² Letter from the U.S. Department of Education, Office for Civil Rights, ‘Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,’ (Jan. 16, 1996).

¹³³ 1996 Clarification of Intercollegiate Athletics Policy Guidance.

The Clarification directly rejects the suggestion that “in determining the number of participation opportunities offered by an institution, [the Office for Civil Rights] count unfilled slots, i.e., those positions on a team that an institution claims the team can support but which are not filled by actual athletes.” The proposal to count unfilled athletic slots is struck down on the logic that Title IX’s equality mandate for equal athletic opportunity revolves around the “other benefits and opportunities offered to male and female athletes” as a result of their participation.¹³⁴ If unfilled slots are counted, no benefits are provided to students. The Clarification emphasizes that “participation opportunities must be real, not illusory,” and the Office for Civil Rights “must consider actual benefits provided to real students” when determining athletic participation.¹³⁵ Experts agree that counting such athletes would substantially reduce the number of participation opportunities that educational institutions are obliged to provide to women under Title IX; the argument follows that “[t]o allow a school to count slots which provide *no* actual benefits to *any* real student would make a mockery of any claim that the school was providing equal opportunity.”¹³⁶ From my experience, the athletic slots filled by ‘ghost athletes’ similarly failed to produce the effects intended by Title IX. While the ‘ghost athletes’ listed on the women’s fencing roster were real students, they lacked the benefits that come with athletic participation because they did not participate on the team. Like counting unfilled slots as genuine participation numbers, the use of ‘ghost athletes’ counts participation opportunities as genuine even though they “are not filled by actual athletes” when it

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ de Varona and Foudy, “Minority Views on the Report of the Commission on Opportunity in Athletics: Executive Summary and Report,” 54.

comes to on-the-ground team participation.¹³⁷ With no participation in team practice sessions or events, the slots filled by ‘ghost athletes’ cannot be characterized as real.

The Clarification also adds additional detail regarding the bounds of athletic participation under the Policy Interpretation’s definition of an athlete. It lists “those athletes who do not receive scholarships (e.g., walk-ons), those athletes who compete on teams sponsored by the institution even though the team may be required to raise some or all of its operating funds, and those athletes who practice but may not compete” as athletes to be included when determining participation opportunities.¹³⁸ This is justified based on the “numerous benefits and services, such as training and practice time, coaching, tutoring services, locker room facilities, and equipment, as well as important non-tangible benefits derived from being a member of an intercollegiate athletic team” which each of these particular kind of athletes enjoys.¹³⁹ Due to the benefits of their athletic participation, athletes at various skill and contribution levels are included in the count of participation opportunities provided by educational institutions. This understanding was reinforced in Section 2’s description of walk-ons on the women’s and men’s fencing teams and their legitimate contributions and resulting benefits. However, ‘ghost athletes,’ as exhibited in my autoethnographic account, do not fall under this category of athlete that represents genuine athletic participation. While listed on the team roster, their lack of participation does not generate the benefits derived from membership on an intercollegiate athletic team. Unlike walk-ons or athletes who practice but never compete, ‘ghost athletes’ do not derive the benefits (physical, social, academic, professional, etc.) from their participation because they do not actually participate. Thus, the rewards of athletic participation evidenced in

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

the literature put forward in Section 1 are not enjoyed by students whose participation is confined to just a name on a team roster.

Genuine Participation

The precedent set in *Biediger v. Quinnipiac University* adds to the scope of the definition of athletic participation set by the Office for Civil Rights' Interpretation and Clarification, reinforcing the importance of ensuring that women's athletic participation opportunities are genuine. The series of *Biediger* decisions revolve around the issue of what constitutes a 'sport' for the purposes of Title IX with a particular focus on Quinnipiac University's competitive cheerleading and women's rugby teams in order to determine whether or not Quinnipiac was providing equal athletic participation opportunities. The case is significant for providing guidance on previously untouched dynamics of Title IX.¹⁴⁰ However, it also provides insights relevant to the use of 'ghost athletes' and other roster management practices that may produce disingenuous athletic participation opportunities for female students.

In addition to counting female athletes from teams that did not qualify as legitimate sports, Quinnipiac's requirement that cross-country runners remain on the indoor and outdoor track teams in order to meet roster target numbers raised the problem of "counting female athletes who, in effect, are not partaking in genuine athletic participation opportunities but whose principal role is to provide a gender statistic."¹⁴¹ The *Biediger* court held that the factors shown, "by themselves, are not enough to justify discounting all the cross-country runners' participation

¹⁴⁰ Relatively untouched aspects of Title IX detailed in *Biediger* include the Office for Civil Rights' test for whether a sponsored athletic activity can be treated as a sport and Title IX's seldom used levels-of-competitions test. See James J. Hefferan, Jr., "A Sporting Chance: *Biediger v. Quinnipiac University* and What Constitutes a Sport for Purposes of Title IX," in *Marquette Sports Law Review* 26 no. 2 (2016): 662.

¹⁴¹ See *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 298 (D. Conn. 2009) (internal quotations omitted).

on the indoor and outdoor track teams... but they do further militate in favor of discounting some of the cross-country runners' participation."¹⁴² When determining female participation numbers to calculate whether or not Quinnipiac provided proportional athletic participation opportunities, the court made a point to emphasize that the practice created a likelihood that a number of the indoor and outdoor track participation opportunities born from this requirement were not genuine. When removing 41 women from the female count before performing proportionality calculations, the decision noted:

“I say that ‘at least’ 41 women must be subtracted because that number likely should be greater in light of Quinnipiac’s practice of requiring its female cross-country runners to run indoor and outdoor track. Had that practice not been in place, it is probable that one or more other cross-country runners would have sat out the winter and/or spring track seasons. Because the plaintiffs have not proven who those other runners are, however, I only eliminate 41 female athletes in applying the OCR test. Nevertheless, it is important to note that 41 is likely a conservative estimate of the female athletes who should not be counted.”¹⁴³

While the plaintiffs failed to prove that all the athletic participation opportunities resulting from this practice needed to be eliminated, the court’s acknowledgement that some of these positions were likely disingenuous is important when evaluating the legitimacy of ‘ghost athletes’ as participation opportunities. The judicial reasoning lays the groundwork for the argument, that under certain roster management strategies, female students “are not being provided genuine athletic participation opportunities but are counted as team members in order to prop up [school] statistics for Title IX purposes.”¹⁴⁴ Additionally, the court held that even though Quinnipiac’s policy of imposing roster targets does not, by itself, violate Title IX, it does suggest that “the University roster targets were carefully chosen and managed, and any shortfall in the number of

¹⁴² Ibid, 83.

¹⁴³ Ibid, 89.

¹⁴⁴ Ibid, 87.

Quinnipiac's female athletes is attributable to University decision-making and not other external factors."¹⁴⁵ As a consequence of this deliberate roster manipulation, the shown disparity between female athletic participation and undergraduate enrollment indicated that Quinnipiac violated Title IX and discriminated on the basis of sex by failing to provide equal athletic participation opportunities for women.

The major consequence of the *Biediger* decisions, the determination that Quinnipiac's competitive cheerleading and rugby teams deprive female participations of genuine varsity experiences, also has implications for the use of 'ghost athletes' on female rosters. The case originally began when Quinnipiac cut its women's volleyball team and two men's teams (while adding a new women's competitive cheerleading team) in order to alleviate debt created by the school's transition from NCAA Division II to NCAA Division I.¹⁴⁶ The decision narrowed the definition of varsity sport, disqualifying Quinnipiac's administration of both teams and invalidating the economic shortcut that Quinnipiac employed in an attempt to satisfy the proportionality prong. Thus, "the validity of the *Biediger* decisions is most readily observed in the context of the economic realities currently facing most intercollegiate athletic departments," demonstrated by separate NCAA studies showing that "only twenty athletics programs at the Football Bowl Subdivision level (the highest level of competition within NCAA Division I) turned a profit in 2013" and that revenues of Division II and III schools "failed to exceed expenses for every athletic department on those levels."¹⁴⁷ Facing such economic challenges, schools are prone to cutting teams rather than adding them, and as a result, must rely on the proportionality prong to ensure an adequate defense against claims of Title IX violation. This

¹⁴⁵ *Ibid*, 88.

¹⁴⁶ *See* Hefferan, Jr., "A Sporting Chance," 663.

¹⁴⁷ *Ibid* (internal quotations omitted).

leads to the temptation “to count women’s opportunities that are marginally athletic in order to provide the appearance of proportionality,” which the *Biediger* court noted and responded to, limiting Quinnipiac’s permissible actions.¹⁴⁸ While the facts of *Biediger* differ from the use of ‘ghost athletes’ detailed in Section 2, the case protects against the use of disingenuous athletic participation opportunities in lieu of legitimate female athletic spots, a practice common to both cases. The decisions established “an important bulwark against the temptation of universities to take financial shortcuts toward Title IX compliance,” that fail to provide female athletes with the genuine athletic participation opportunities they are obliged to provide under current standards.

Differential Treatment and Harm

The second dynamic of the use of ‘ghost athletes’ that is applicable to Title IX court precedent is the psychological and generalized harms that the practice causes to female athletes, as shown in *Communities for Equity v. Michigan High School* and *Parker v. Franklin County Community School Corporation*. Both cases evaluate equal treatment claims of female athletes to determine whether or not educational institutions violated Title IX, and both feature evidence of psychological harm parallel to that presented in the preceding sections.¹⁴⁹ Equal treatment claims are distinct from ‘accommodation’ claims in which plaintiffs assert that schools failed to establish adequate athletic programs for the underrepresented sex.¹⁵⁰ In addition to requiring schools to establish athletic programs for women, Title IX “prohibits schools from discriminating against females participating in those programs by denying equivalence in

¹⁴⁸ *Ibid.*

¹⁴⁹ In both court cases, additional claims were made under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Because this thesis pertains exclusively to Title IX, Section 3 only analyzes the arguments made regarding the cases’ Title IX claims.

¹⁵⁰ *See Pederson v. La. State Univ.*, 213 F.3d at 865 n. 4 (distinguishing between claim for lack of effective accommodation and claim for the denial of equivalence in other athletic benefits).

benefits,” and it is this aspect of Title IX that equal treatment claims investigate.¹⁵¹ The U.S. Court of Appeals for the Seventh Circuit affirms the rationale of such claims in *Communities for Equity* stating, “This only makes sense; if schools could meet Title IX's requirements by creating a sufficient number of female athletic programs that are substantially inferior to their male counterparts' programs, Title XI's enforcement scheme would ring hollow.”¹⁵² *Communities for Equity* and *Parker* each analyze claims of equal treatment and, relying on evidence of harm suffered by female athletes due to discriminatory treatment, find Title IX violations in both cases.

Communities for Equity deals with alleged discrimination against female athletes by the Michigan High School Athletic Association (MHSAA) due to the scheduling of athletic seasons and tournaments for six girls’ sports “during less advantageous times of the academic year” than boys’ seasons and tournaments.¹⁵³ Most of these girls’ sports were scheduled in non-traditional seasons, meaning seasons of the year that are different from those during which the sport is traditionally played. Based on evidence put forward demonstrating the harm that MHSAA’s scheduling system inflicts on Michigan girls, the court found that female volleyball players “suffer disadvantages that they would not otherwise suffer if they were male and participated in a boys-only sport that was scheduled in its traditional season,” concluding that MHSAA violated Title IX.¹⁵⁴ The evidence details how the unfair scheduling of girls’ sports but not boys’ sports spreads messages of the inferiority of female sports, spreads messages of the ‘second-class’ status of female athletes, and has damaging psychological effects resulting from differential and unequal treatment.

¹⁵¹ *Parker v. Franklin County Cmty Sch. Corp.*, 667 F.3d 916 (7th Cir. 2012).

¹⁵² *Ibid.*

¹⁵³ *Communities for Equity v. Michigan High Sch.*, 178 F. Supp. 2d 807 (W.D. Mich. 2001).

¹⁵⁴ *Ibid.*, 857.

While the facts of *Communities for Equity* differ from the account of ‘ghost athletes’ put forward in Section 2, the damaging consequences of the differential and unequal treatment of female athletes are strikingly similar. In the same way that the use of ‘ghost athletes’ on the women’s fencing team but not the men’s fencing team evoked the feeling that the coaches and athletic administration favored the men’s team over the women’s team, the court found that “the practice of scheduling only girls’ sports, but not boys’ sports, in disadvantageous and/or non-traditional seasons sends the clear message that female athletes are subordinate to their male counterparts, and that girls’ sports take a backseat to boys’ sports in Michigan.”¹⁵⁵ In both cases, the treatment demonstrates that the schools overtly prioritize male programs over female ones. Additionally, in *Communities for Equity*, the “scheduling practices also have a negative effect on the gender role socialization of Michigan’s girls” because the differential and inequitable treatment “can contribute to or cause girls and boys to have dramatically different perceptions of self-worth.”¹⁵⁶ This finding directly relates to Yuracko’s argument regarding the damaging effects of gender non-proportionality in Section 1. In the case of ‘ghost athletes,’ the practice’s subversion of proportionality and its message that female athletic slots are less important than male athletic slots has the same impact on perceptions of self-worth. This creates a general understanding of the second-class status of girls, articulated in *Communities for Equity* as girls’ understanding “that their athletic role is of less value than that of boys.”¹⁵⁷ The court noted that “this message stays with girls throughout adulthood and can extend to careers and interpersonal relationships.”¹⁵⁸ Finally, the case highlights that psychological damage resulting from the

¹⁵⁵ Ibid, 836.

¹⁵⁶ Ibid, 837.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

differential and unequal treatment of girls and boys is evident in the experience of students of both sexes. For girls, the *Communities for Equity* decision explained the following:

“[G]irls may develop unhealthy coping mechanisms to rationalize away the unfair treatment. One of these mechanisms might be to establish lower expectations. That is, a girl will recognize she is being discriminated against but expect that this will continue for the rest of her life and assume she must adjust to the discrimination rather than seek to change it. For example, Kristi Madsen, a former high school athlete, testified that she felt that it ‘hurts’ girls’ self-esteem ‘[w]hen you look to your counterparts, the males, and they are playing in the right seasons, they get all the benefits that come along playing in the right season, and then you look at where you are, I think it hurts [self-esteem].’”¹⁵⁹

In the same way that Kristi Madsen internalized the contrasting athletic experiences between herself and her male counterparts, the differential and unequitable treatment of the women’s and men’s fencing teams was impossible to ignore. Seeing that the men’s team did not have to suffer the disadvantages of having ‘ghost athletes’ on their roster made it all the more psychologically harmful for the women’s team. For boys, this also has consequences. The *Communities for Equity* decision affirmed that “boys receive the message that girls are inferior and are harmed by that message,” relying on testimony from parents noting that their sons and daughters “know that they are treated differently.”¹⁶⁰ Particularly on teams as close-knit as the University of Pennsylvania women’s and men’s fencing teams, the message communicated by unfair treatment is understood by both sexes. Like the accounts of sports teams in the *Communities for Equity* decision demonstrating that MHSAA violated Title IX, the account of University of Pennsylvania fencing team put forward in Section 2 presents evidences of harm demonstrating that the use of ‘ghost athletes’ denies equivalence in athletic benefits to women and men, contradicting the federal statute.

¹⁵⁹ Ibid, 837-838 (internal citations omitted).

¹⁶⁰ Ibid, 383.

The *Parker v. Franklin County Community School Corporation* decision relies on evidence of harm caused by differential and unequal treatment in many of the same ways that *Communities for Equity* does. *Parker* revolves around the scheduling of girls' basketball games on non-primetime nights (Monday through Thursday) to give preference to boys' basketball games on primetime nights (Friday and Saturday). Citing the damage caused by discrimination against female athletes, the U.S. Court of Appeals for the Seventh Circuit vacated a lower court decision denying the plaintiff's Title IX claims. The *Parker* court emphasized that "discriminating against female athletes and creating feelings of inferiority with their male counterparts can have long-lasting negative effects," stressing persisting sex discrimination in sports and the reality that "many educational institutions continue to place male sport programs in a position of superiority" over female programs.¹⁶¹ Like *Communities for Equity*, the *Parker* decision cited psychological harm suffered by girls as a result of the school's unfair treatment, relying on an amicus brief filed by the Women's Sports Foundation and others demonstrating the damage caused by the scheduling structure.¹⁶²

Again, the feeling of inferiority and messages of second-class status cited in the case evidence are echoed in the autoethnographic account of the use of 'ghost athletes' presented in Section 2. Moreover, the Seventh Circuit states in *Parker* that "these harms are not insignificant and may have the effect of discouraging girls from participating in sports in contravention of the purposes of Title IX."¹⁶³ The court reasons that girls might be less interested to join athletics teams as a consequence of the differential treatment motivating the perceptions that girls teams are inferior and less deserving than boys' teams. In the account presented in Section 2, the

¹⁶¹ *Parker v. Franklin County Cmty Sch. Corp.*, 667 F.3d 916 (7th Cir. 2012).

¹⁶² *Ibid*, 923.

¹⁶³ *Ibid*.

presence of ‘ghost athletes’ on the women’s fencing team drove similar perceptions that women’s athletic slots are more expendable and less valuable than men’s athletic spots. It is similarly reasonable that such perceptions, and the resulting degraded social tags associated with women’s varsity athletics, may have the effect of discouraging women’s desire to participate altogether.

Together, *Communities for Equity v. Michigan High School* and *Parker v. Franklin County Community School Corporation* set a legal precedent for understanding the harm caused by differential and unequal treatment of female and male athletes. Likewise, the Office for Civil Rights’ 1979 Policy Interpretation and 1996 Clarification and *Biediger v. Quinnipiac University* provide a roadmap for evaluating genuine athletic participation opportunities. Ultimately, these two understandings provide valuable insights for evaluating the legality of the use of ‘ghost athletes’ on women’s rosters. It is clear that ‘ghost athletes,’ as detailed in Section 2, do not meet the definition of athletes and do not provide *actual* benefits to students in the way they are employed. Also, the harm caused by the use of ‘ghost athletes,’ as explained in my autoethnographic account, is comparable to that held up by federal courts as sufficient to validate equal treatment claims against educational institutions. By failing to meet the definition of ‘athletes’ and by causing significant harm to female athletes which they would not suffer had they been male members of male teams, ‘ghost athletes’ subvert the intentions of Title IX and the use of them to feign substantial proportionality numbers violates the federal statute.

CONCLUSION

All three sections of this thesis combine to develop an understanding of the necessities of Title IX's non-discrimination mandate, the use of proportionality to determine equality in athletics, the experience of being a female athlete on a team with 'ghost athletes' filling up female athletic spots, and the legal precedent that disqualifies 'ghost athletes' as genuine athletic participation opportunities and renders them a denial of equal treatment to female athletes. In *Parker v. Franklin County Community School Corporation*, the U.S. Court of Appeals for the Seventh Circuit reaffirmed that "Congress enacted Title IX in 1972 with two principal objectives in mind: to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices."¹⁶⁴ By placing 'ghost athletes' on female sports teams to achieve compliant gender proportionality, educational institutions subvert both objectives of federal statute they are claiming to appease. Through the employment of 'ghost athletes,' women do not receive the full extent of the benefits of athletic participation that Title IX guarantees to them. Additionally, the legitimacy of female sports teams is degraded, the social perception of female athletes is compressed to a second-class status, and women experience psychological harm that is documented and validated by the United States Judiciary. From my autoethnographic experience and the understanding of Title IX laid out in this thesis, I argue that using 'ghost athletes' in this way violates Title IX of the Education Amendments to the 1964 Civil Rights Act.

While the issue is relatively less reported on than other forms of roster management, scholarly critiques of the use of 'ghost athletes' on women's sports rosters are increasing. The

¹⁶⁴ *Parker v. Franklin County Cmty. Sch. Corp.*, 667 F.3d 917 (7th Cir. 2012) (internal quotations omitted.)

Women’s Law Project, a Pennsylvania organization dedicated to advancing the rights of women, specifically identifies “the abuse of roster management and the inclusion of ‘ghost athletes,’” on their website as strategies schools use to circumvent Title IX requirements.¹⁶⁵ Current research sheds light on the reality that experts have identified ‘ghost athletes’ as an impermissible tool schools use to feign compliance with the federal law. Still, during the 2017-2018 school year, my efforts to address the issue were met with the consistent (and disavowing) response from my coaches, compliance officials, athletic department personnel, and university representatives that I was wrong and that the status of ‘ghost athletes’ at the University of Pennsylvania was acceptable. I was told that “as far as Compliance is concerned, the way we have been meeting our requirements is fine” by my coaches.¹⁶⁶ I was corrected that “all student-athletes on a roster are legitimate... not as ‘fillers’ as you have referenced,” by athletic department personnel.¹⁶⁷ And, after presenting the issue at Open Forum, my statement was met with the official response that “on issues of gender equality in Penn Athletics, it was found that the status of new student athletes was miscommunicated,” as published on behalf of the University Council.¹⁶⁸ Despite these adamant replies, ‘ghost athletes’ remained on the varsity women’s fencing roster after I was removed from my position as team captain, staying on the roster for the entirety of my senior season on the team.

I hope that the research presented in this thesis contributes to the scholarly discussions regarding persistent sex discrimination in college athletics and the failure of educational institutions to fully and transparently comply with Title IX requirements. By providing my

¹⁶⁵ “We’re leading the fight for gender equality for Pennsylvania athletes,” Women’s Law Project, <https://www.womenslawproject.org/sex-gender-discrimination/discrimination-in-school-athletics/>.

¹⁶⁶ Figure 2.

¹⁶⁷ Figure 4.

¹⁶⁸ Figure 9.

personal experiences as a member on a varsity team I spent all four years of my college career devoted to, I provide a unique insider perspective that is inherently difficult for me as an author. This is why, as a genre, “autoethnographic works present an intentionally vulnerable subject.”¹⁶⁹ Nonetheless, through my research I realized that the issue of ‘ghost athletes’ is larger than the fencing team or the Athletic Department at the University of Pennsylvania. It is a problem spanning many sports and many schools. With this publication, I put forward my experience as a contribution to the efforts pushing against this continued discrimination and striving for true equality between women and men at educational institutions.

¹⁶⁹ Jones, Adams, Adams, *Handbook of Autoethnography*, 24.

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APPENDIX

Figure 1- September 1, 2017 email (student email addresses redacted).

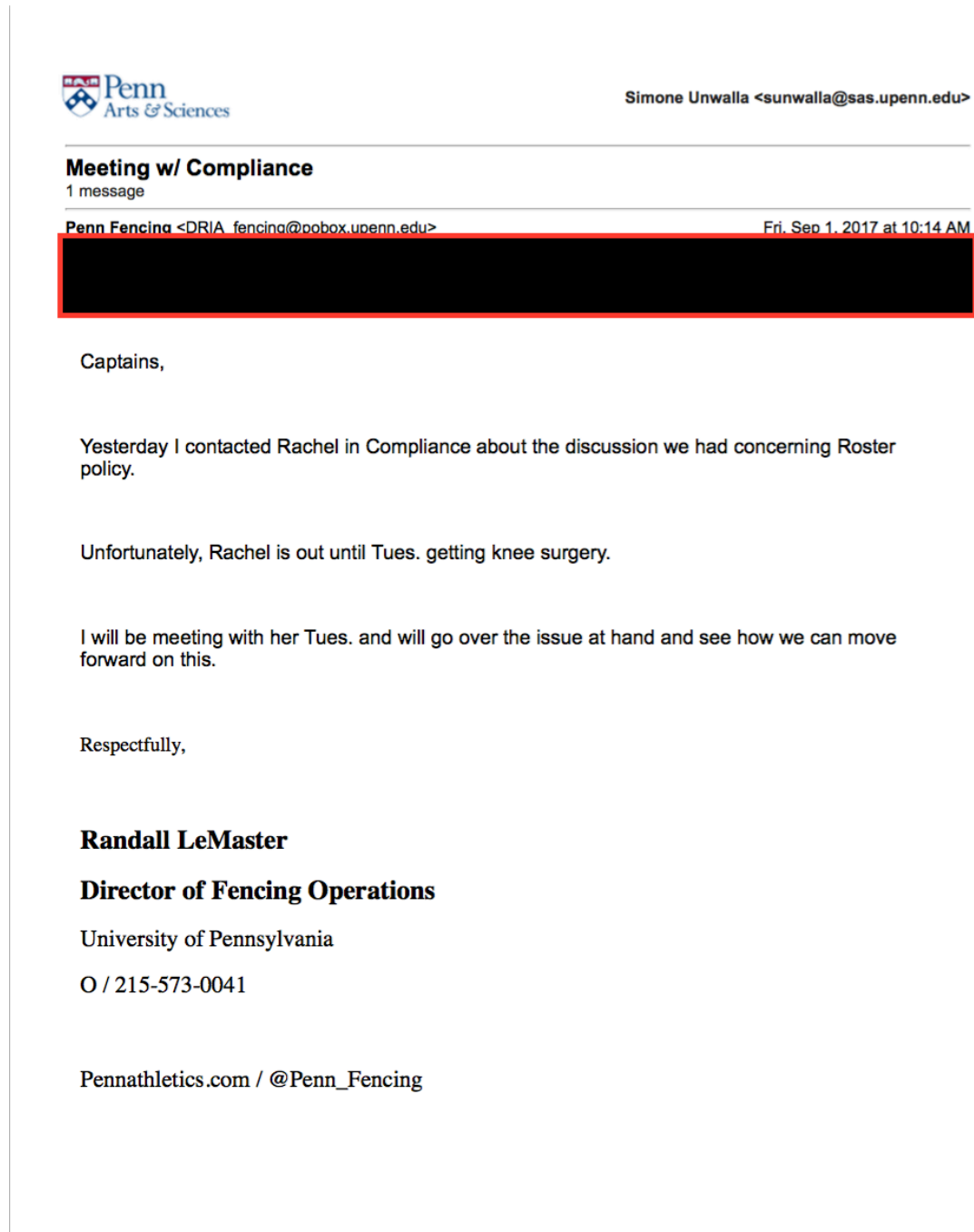


Figure 2- September 5, 2017 email (student email addresses redacted).



Simone Unwalla <sunwalla@sas.upenn.edu>

Roster #'s

1 message

Penn Fencing <DRIA_fencing@pobox.upenn.edu>

Tue, Sep 5, 2017 at 2:54 PM



Captains,

I met with Rachel in Compliance about the roster numbers issue.

As far as Compliance is concerned, the way we have been meeting our requirements is fine. They understand the needs of the program and the Dept. to ensure we are compliant. We are actually doing it better than other teams.

It is being discussed amongst the Dept. to bring our team numbers to parity, but that most likely won't happen till next year.

They were impressed with the Women's Team willingness to fight for the Men's Team roster.

As of now the goal is a roster of 22 Women and 18 Men. If we can improve those numbers we will try.

So if you know of anyone that can dedicate some time to the Women's team let me and Coach Ma know.

Respectfully,

Randall LeMaster

Director of Fencing Operations

University of Pennsylvania



Figure 3- September 18, 2017 email (student email addresses redacted).



Simone Unwalla <sunwalla@sas.upenn.edu>

Roster Numbers

1 message

Penn Fencing <DRIA_fencing@pobox.upenn.edu>

Mon, Sep 18, 2017 at 2:53 PM



Captains,

As we have discussed we need to add more female athletes to our roster to offset the number of male athletes we want to keep.

If you know of any female athlete that has quit another team and is registered with the NCAA, please send their contact information to me, or ask if they would mind being placed on our roster.

We NEED 1 more female, but would like to add 3 or more.

Respectfully,

Randall LeMaster

Director of Fencing Operations

University of Pennsylvania

O / 215-573-0041

Pennathletics.com / @Penn_Fencing

Figure 4- November 29, 2017 email.



Simone Unwalla <sunwalla@sas.upenn.edu>

Compliance question

Silverman, Jake <jacobsil@upenn.edu>
To: "Unwalla, Simone" <sunwalla@sas.upenn.edu>
Cc: "Hiller, Rachel E" <rhiller@upenn.edu>

Wed, Nov 29, 2017 at 3:31 PM

Hi Simone,

All student-athletes on a roster are legitimate. While contribution levels may vary, all student-athletes are treated as full members of their respective rosters, not as "fillers" as you have referenced. I would be happy to meet with you to discuss any further concerns you may have. Please let me know a convenient time as I am sure you are busy with classes and competition.

Best wishes as you prepare for Vassar on Sunday!

Jake

Jake Silverman

ASSISTANT ATHLETIC DIRECTOR, ADMISSIONS & FINANCIAL AID

University of Pennsylvania

O/ (215) 746-7004

F/ (215) 573-2238



[Quoted text hidden]



Figure 5- November 28, 2017 email.

From: University Council ucouncil@pobox.upenn.edu
Subject: RE: Open Forum Proposal
Date: November 28, 2017 at 2:02 PM
To: Simone Unwalla simoneunwalla@gmail.com



Hello,

The usual format is that speakers make a 3 minute statement, then there is time for questions/comments from the members of Council. There are not always questions, but the option is open for Council members.

The Athletics presentation and Open Forum are separate but I did let them know that you submitted your topic and encouraged them to hang around and listen to your statement. I haven't heard back yet, but I hope that we will be able to make it work. If there is a schedule issue and they need to leave immediately, I will try to arrange a follow-up conversation for you with Athletics.

Thank you,

Joe

Figure 6- January 22, 2018 email.



Simone Unwalla <sunwalla@sas.upenn.edu>

Follow up to meeting on 1/12

3 messages

Simone Unwalla <sunwalla@sas.upenn.edu>

Mon, Jan 22, 2018 at 9:03 PM

To: "Ma, Andy Y" <andyma@upenn.edu>

Cc: "Nott, Adrienne M" <anott@upenn.edu>, Penn Fencing <DRIA_fencing@pobox.upenn.edu>

Dear Coaches,

Now that we have a slight break in our busy competition schedule, I wanted to reach out as a follow up to the meeting we had on 1/12.

Firstly, I'd like to say that I heard your criticisms and I will absolutely work harder to communicate more effectively with you three moving forward. While I believe that what I said at Open Forum remains an important and legitimate concern for student athletes, I understand that working together and making compromises is necessary to create change. In the same vein, I also want to apologize for any inconveniences that my actions may have caused you. I sincerely trust and value each of you and want to reiterate that I never intended for my critique of Penn Athletics to be taken personally, but instead saw it as an issue in need of attention in a context larger than just our fencing team. Moreover, I feel lucky to have a coaching staff that is able to have these hard conversations with me in a respectful and civil way. I believe this has been a learning experience for all of us.

As we look to the future (to increase transparency and understanding on both of our sides), there are a few details I believe we should outline.

1. The names/weapons of each of the fencers who are (for now) on our team but do not adhere to our standard practice schedule
2. The dates/times we should expect to see these fencers during practice hours participating in the exercises that the rest of our fencers participate in
3. If applicable, the practice schedule of these fencers if it falls outside of regular team practice hours

Finally, I think it would be extremely beneficial if this situation could be officially explained to the rest of our women's team. Whether it be in a meeting or via email, I believe a statement from the coaches to the women's team explaining who these girls are, why they have been unexpectedly at practice, and when we should expect to see them in the future would absolutely make some of our athletes feel more secure and more respected as a part of the Penn Fencing Program. If this isn't possible, please let me know and I can unofficially let the women on our team know the details of this situation. However, I think it would mean a lot more coming from you.

Thank you again for your patience and understanding.

Best,
Simone

Simone Unwalla
University of Pennsylvania, 2019
sunwalla@sas.upenn.edu

Figure 7- January 23, 2018 email (student email addresses redacted).



Simone Unwalla <sunwalla@sas.upenn.edu>

Newest members of our Team

1 message

Penn Fencing <DRIA_fencing@pobox.upenn.edu>

Tue, Jan 23, 2018 at 3:54 PM

Fencers,

Apparently, there are questions concerning the new team members that have joined our program in November.

Sonia Sarda, Jordyn Young, and Heather Tang joined our roster to be compliant with our Title IV requirement on the first week of November. Since that time all 3 went through the JumpForward/Penn EAi requirements, physicals, and Sickle Cell Trait tests. All were cleared before or on Thanksgiving and began taking lessons in Foil, then Epee with me. 2 of the girls were taking 2 lessons week, and the other taking 4 lessons a week, all the way to Dec. 20th.

After Winter Break they resumed their lesson schedule this semester and attended their first practice Jan. 12. Unfortunately the disparity in the level of fencing became a distraction more than a help and it was decided these 3 girls would need more development when it came to bouting. So the 3 of them have a set time on Fridays to work with me in their bouting on strip in hopes of being able to integrate them after Ivies. The intent is, as their schedules permit, they will join warm up, conditioning and activities but not participate in team bouting at this time.

Unfortunately, Heather Tang resigned her position with the team this afternoon due to time demands.

So, if you see a new face at our team activities, welcome them, and encourage them to continue to grow in our sport which we all love.

I hope this answer your concerns, and alleviates any questions you may have had.

Respectfully,

Randall LeMaster

Director of Fencing Operations

Figure 8- EADA Data. See <https://ope.ed.gov/athletics/#/institution/details>**Recruiting Expenses**

	Men's Teams	Women's Teams	Total
Total	\$550,517	\$212,923	\$763,440

Operating (Game-Day) Expenses by Team

<u>Varsity Teams</u>	<u>Men's Teams</u>			<u>Women's Teams</u>			<u>Total Operating Expenses</u>
	Participants	Operating Expenses per Participant	By Team	Participants	Operating Expenses per Participant	By Team	
Basketball	21	\$27,040	\$567,838	17	\$12,237	\$208,031	\$775,869
Football	101	\$6,108	\$616,942	N/A	N/A	N/A	\$616,942
Baseball	32	\$5,284	\$169,072	N/A	N/A	N/A	\$169,072
All Track Combined	139	\$1,431	\$198,867	139	\$1,140	\$158,481	\$357,348
Fencing	17	\$4,090	\$69,531	21	\$3,146	\$66,074	\$135,605

Figure 9- January 31, 2018 University Response. *See Meeting Materials for January 31, 2018 at <https://secretary.upenn.edu/univ-council/meeting-materials>*

DISPOSITION OF OPEN FORUM TOPICS FROM MEETING OF DECEMBER 6, 2017

On behalf of Vice President and University Secretary Leslie Kruhly, who was unable to attend, the Provost related disposition of the Open Forum topics brought forward on December 6, 2017, the following topics as brought forward were addressed as referenced below and no additional action by Council is required:

With reference to health insurance coverage for in vitro fertilization for same-sex male couples, this topic is on the Personnel Benefits Committee's agenda for FY2019. On issues of gender equality in Penn Athletics, it was found that the status of new student athletes was miscommunicated. These athletes are now certified for full practice activities. On University

policy on credits to college-level courses taken before enrollment, the student met with Rob Nelson, Executive Director for Education and Academic Planning of the Provost's Office, for more information on how decisions are made on academic credit. On student representation in the Board of Trustees, Leslie Kruhly met with Fossil Free Penn representative Zachary Rissman, advising him that the Trustees do not plan to revisit their decision on divesting from fossil fuel stocks.

The Moderator noted that there would be an Open Forum session at Council's February 21, 2018 meeting. Those who wish to speak should register with the Office of the Secretary.

Video 1- December 6, 2017 Open Forum Statement. *See <https://app.box.com/s/xsujxp7sa0adsmwa2qhrjfhnf9gz1ayf>*