

December 3, 2020

Via e-mail: josephcastro@csufresno.edu

Joseph I. Castro, President
California State University, Fresno
Office of the President
5200 N. Barton Avenue., M/S ML 48
Fresno, CA 93740

RE: Elimination of Women's Lacrosse at Fresno State in Violation of Title IX

Dear President Castro:

Given the long, disturbing history of California State University, Fresno ("Fresno State") discriminating against women in violation of Title IX before you became its President and your 2016 public commitment to have the school "be a national leader" in "compliance with Title IX," I am very surprised to have to write this letter. As you know, on October 16, 2020, Fresno State announced that it was eliminating its women's varsity lacrosse team (and its men's wrestling and tennis teams) following the 2020-21 academic year. The elimination of the women's lacrosse team is a blatant violation of Title IX.

I and my co-counsel have been retained by members of the women's lacrosse team to prevent the team's elimination and, if necessary, pursue a class action lawsuit against Fresno State for depriving women athletes and potential athletes of equal participation opportunities, athletic financial aid, and treatment in violation of Title IX of the Education Amendments of 1972. I would like to meet with you and/or the school's lawyers immediately and discuss the relevant facts and the law, as well as the likely outcome if a lawsuit is filed. It is my hope that Fresno State will agree to reinstate the women's lacrosse team and come into compliance with Title IX to avoid the need for a lawsuit.

Please respond to this letter as soon as possible and, in any event, no later than Monday, December 7, 2020.

Fresno State's elimination of the women's lacrosse team is especially alarming both because of the school's long-term, nationally-prominent reputation and record for violating Title IX and because of your highly-publicized February 2016 announcement that the school would "be a national leader" in compliance with Title IX. *The Fresno Bee's* article of February 12, 2016, "Fresno State No Longer Under Federal Eye for Title IX Gender Equity," tells the story.

As the article reports, Fresno State had been under investigation by the U.S. Department of Education's Office for Civil Rights ("OCR") for violating Title IX since 1992, when Associate

Athletic Director Diane Multinovich “blew the whistle on inequalities between men’s and women’s sports.” That launched a two-year investigation that resulted in Fresno State being found in violation of 11 of 13 areas of treatment. The school “had to meet 45 conditions” and ended up being “under the nearly 25-year eye of federal Title IX investigators.”

During that time, gender discrimination in Fresno State’s athletics department was such a serious problem that a stunning number of women in the department had to file lawsuits against the school, which garnered major publicity and enormous verdicts and settlements. Women’s volleyball coach Linda Vivas charged the school with retaliating against her for advocating gender equity and won a \$5.85 million jury verdict in July 2007, later reduced to \$4.52 million. Women’s basketball coach Stacy Johnson-Klein made a similar claim and won a \$19.1 million jury verdict in December 2007, later reduced to \$6.6 million. Associate Athletic Director Multinovich also alleged she was retaliated against for advancing gender equity and won a \$3.5 million settlement. Fresno State paid significant sums to settle claims brought by other women, too, including softball coach Margie Wright and track coach Ramona Pagel.

That’s why your announcement on February 10, 2016, that Fresno State was no longer subject to OCR scrutiny, would “remain steadfast in maintaining compliance with Title IX,” and “was going to be a national leader in this area” was so refreshing and made national news. And that’s why Fresno State’s elimination of the women’s lacrosse team—in flagrant violation of Title IX—is so distressing and disappointing.

Under Title IX, educational institutions receiving federal funds cannot eliminate women’s teams for which interest, ability, and competition are available unless “intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.” 44 Fed. Reg. 71418 (Jan. 16, 1996). Fresno State fails that test.

According to the most recent publicly available Equity in Athletics Disclosure Act data that Fresno State submitted and verified to the U.S. Department of Education, in the 2018-2019 academic year, the school had an undergraduate population of 11,518 women and 7,828 men. So undergraduate enrollment was 59.54% women. The school’s intercollegiate athletic teams that academic year had 256 men and 323 women, or 55.79% women—creating a 3.75% gap between the women’s undergraduate enrollment rate and their intercollegiate athletic participation rate. Given the number of men on the varsity teams, Fresno State would have needed to add 54 women to its athletic program to be providing equitable participation opportunities for women. But Fresno State is eliminating opportunities for women, not adding them.

With the elimination of the teams announced on October 16, 2020, the school’s athletic participation numbers drop to approximately 221 men and 295 women, or 57.17% women—which still leaves a 2.37% gap. Therefore, even with the announced team eliminations, Fresno State would still need to add approximately 30 women to reach gender equity under Title IX. This is almost exactly the number of women on the lacrosse team that the school is eliminating.

Based on these facts, unless Fresno State agrees to reinstate the women's lacrosse team or has some plans for compliance with Title IX we do not yet know, we will seek a preliminary injunction immediately reinstating and preserving the team. Courts throughout the country have consistently issued preliminary injunctions preserving women's varsity teams when the elimination of a women's team violates Title IX. *See, e.g., Mayerova v. E. Michigan Univ.*, 346 F. Supp. 3d 983, 997 (E.D. Mich. 2018), *appeal dismissed*, No. 18-2238, 2020 WL 1970535 (6th Cir. Apr. 20, 2020) (granting preliminary injunction to reinstate the women's varsity softball and tennis teams); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 978 (D. Minn. 2016) (granting preliminary injunction to reinstate the women's varsity tennis team); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009) (granting preliminary injunction to reinstate the women's varsity volleyball team); *Choike v. Slippery Rock Univ.*, 2006 WL 2060576 (W.D. Pa. July 21, 2006) (granting preliminary injunction to reinstate the women's varsity water polo and swimming teams); *Barrett v. West Chester Univ. of Penn.*, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003) (granting preliminary injunction to reinstate the women's varsity gymnastics team); *Favia v. Indiana Univ. of Penn.*, 812 F. Supp. 578 (1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and field hockey teams); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D. R.I. 1992), *aff'd* 991 F.2d 888 (1st Cir. 1993) (granting preliminary injunction to reinstate the women's varsity gymnastics and volleyball teams).

We hope that will not be necessary in this case. I look forward to hearing from you as soon as possible and, in any event, no later than Monday, December 7, 2020.

Sincerely,



Arthur H. Bryant

AHB/am

cc: Mike Caddell
Cynthia Chapman