

Via e-mail: jhsullivan@stthomas.edu May 20, 2021

Julie H. Sullivan, Ph.D., President
University of St. Thomas
2115 Summit Avenue
St. Paul, Minnesota 55105

RE: Elimination of Women's Tennis Team in Violation of Title IX

Dear President Sullivan:

I and my co-counsel have been retained by members of the women's varsity tennis team to prevent their team's elimination and, if necessary, pursue a class action lawsuit against the University of St. Thomas ("St. Thomas") for depriving women athletes and potential athletes of equal participation opportunities and treatment in violation of Title IX of the Education Amendments of 1972. Please respond to this letter as soon as possible and, in any event, no later than Thursday, May 27, 2021.

On May 11, 2021, St. Thomas announced that it was eliminating the women's and men's varsity intercollegiate athletic tennis teams at the end of the 2020-21 academic year, which is tomorrow. The elimination of the women's tennis team blatantly violates Title IX, which, among other things, prohibits educational institutions receiving federal funds from eliminating 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). St. Thomas fails this test.

According to the most recent publicly available Equity in Athletics Disclosure Act data, which St. Thomas submitted and verified as accurate to the U.S. Department of Education, the school had an undergraduate population in 2018-19 of 2,883 women and 3,272 men. So, undergraduate enrollment was 46.83% women. The school's intercollegiate athletic teams that academic year had 545 men and 335 women, or 38.06% women—creating a 8.77% gap between the women's undergraduate enrollment rate and their intercollegiate athletic participation rate. Given the number of men on the varsity teams, this means St. Thomas needed to add 145 women to its athletic program to provide equitable participation opportunities for women.

Instead of adding women's teams, St. Thomas just announced it was eliminating the women's tennis team (along with the men's team). With the teams' elimination, the school's athletic participation numbers will drop to approximately 531 men and 420 women, or 37.6% women—which increases the gap to 9.24%. St. Thomas would need to add 148 participation opportunities for women to achieve gender equity.

Given these facts, St. Thomas's decision to eliminate the women's tennis team (and the men's tennis team) is especially surprising and ill-considered. The *Varsity Tennis Announcement FAQ* St. Thomas posted on its web site when it announced the teams' elimination says: "This was not a decision related to Title IX." Obviously. The decision flagrantly violated Title IX. It should not have been made—and needs to be reversed right away.

I would like to meet with you and/or the school's lawyers and discuss the relevant facts and the law, as well as the likely outcome if a lawsuit is filed. It is my hope that, considering these factors, St. Thomas will agree to reinstate the women's tennis team (and men's tennis team) and come into compliance with Title IX to avoid the need for a lawsuit.

Unless St. Thomas does so—or has plans for compliance with Title IX we do not know about—we will file a class action and seek a preliminary injunction immediately reinstating and preserving the women's tennis 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 Thursday, May 27, 2021.

Sincerely,



Arthur H. Bryant

AHB/sl