

Title IX Victories

Bailey Glasser has recently won major, ground-breaking settlements for female student-athletes at eight universities that announced they were eliminating women's varsity intercollegiate athletic teams: **Brown University, the College of William & Mary, the University of North Carolina at Pembroke, East Carolina University, Dartmouth College, the University of St. Thomas, La Salle University, and Dickinson College.**

Bailey Glasser also won a historic settlement—the first Title IX victory ever for male student-athletes—with **Clemson University** after the school became the first facing class actions suits by both its male and female student-athletes for violating Title IX by discriminating against them in different ways.

In all nine cases, Bailey Glasser and its co-counsel reached settlements enforcing Title IX – the federal law prohibiting gender discrimination by educational institutions receiving federal funds – and requiring the schools to reinstate teams.

Brown University

In June 2020, Brown University announced that it was eliminating five women's teams and three women's teams, including twice as many women as men, from its intercollegiate athletic program. Bailey Glasser's Arthur Bryant was co-counsel in a 1992 landmark Title IX case against Brown for discriminating against its women athletes and potential athletes. The long-standing 1998 settlement agreement in that case, *Cohen v Brown University*, provided that, if Brown eliminated any women's team, its male and female intercollegiate athletic participation rates would have to be within 2.25% of their undergraduate enrollment rates. The announced changes would have violated that provision.

In a motion filed in the federal district court of Rhode Island, Bailey Glasser and its co-counsel moved to enforce the settlement agreement and hold Brown accountable for violating the Title IX requirement that "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments."

After months of litigation – including the discovery and exposure of internal Brown emails calling the 1998 settlement "this pestilential thing" – Brown University agreed to reinstate its women's varsity equestrian and fencing teams. It further agreed to maintain full support for those teams and not to reduce their future support as compared to men's teams' support. Brown also agreed not to eliminate or reduce the status of any women's varsity team or add any men's team for at least the next four years, during which the University will be required to continue to comply with the

consent decree it first agreed to in 1998.

The proposed settlement was announced on September 23, 2020. A federal court gave final approval to the settlement agreement on December 15, 2020. While the Brown University litigation was taking place, Bailey Glasser also challenged the College of William & Mary's efforts to violate Title IX by eliminating women's teams.

College of William & Mary

On September 3, 2020, William & Mary announced that it was eliminating its women's varsity gymnastics, swimming, and volleyball teams – and its men's varsity gymnastics, swimming, and track and field teams –effective at the end of the 2020-21 academic year.

On September 23, 2020, Bailey Glasser's Bryant, lead counsel for the women student-athletes, wrote to William & Mary President Katherine Rowe, told her he represented women on the three teams, and informed her the elimination of those teams violated Title IX. His letter said that, if the school did not reinstate and continue the teams, he and his legal team would file a class action lawsuit in federal court to prevent their elimination and to hold William & Mary accountable for violating Title IX by depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment.

Bryant had previously threatened to sue William & Mary for violating Title IX in 1991, when it decided to eliminate its women's basketball and swimming teams, along with its men's swimming and wrestling teams. The school had quickly reinstated all four teams.

This time, a more far-reaching victory was reached. On October 19, 2020, to avoid being sued, William & Mary agreed to reinstate its women's gymnastics, swimming, and volleyball teams, develop a Gender Equity Plan, and bring its intercollegiate athletics program into compliance with all aspects of Title IX by the 2022-23 academic year. On November 5, 2020, the school announced it was reinstating the men's teams, too.

University of North Carolina at Pembroke

Following those two cases, Bailey Glasser threatened suit under Title IX against the University of North Carolina at Pembroke (UNCP), which had announced that it was "suspending" women's varsity golf for at least two years to save money. On November 24, 2020, Bryant wrote to UNCP's president on behalf of the team members and said the "suspension" violated Title IX. Bryant's letter said he and his co-counsel would file a class action lawsuit against UNCP for depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment unless the school agreed to reinstate the team and comply with Title IX.

On December 18, 2020, UNCP agreed to reinstate the women's golf team and develop a gender equity plan no later than December 31, 2021. As part of the agreement, the school agreed to solicit input for the plan from student-athletes for all teams and expressly invite participation by the women's golf team. The university also agreed it would post the plan on UNCP's athletics department's website and ensure that UNCP's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond.

East Carolina University

Similar results were achieved against East Carolina University (ECU), which announced in May 2020 that it was eliminating its women's and men's varsity swimming & diving and tennis teams. On November 16, 2020, Bryant wrote to ECU's interim chancellor on behalf of the women's team members and informed him that the teams' elimination violated Title IX. Bryant said he and his co-counsel would file a class action lawsuit in federal court against ECU for depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment unless the school agreed to reinstate the teams and comply with Title IX. The settlement agreement, reached on January 7, 2021, avoids the need for the class action.

As part of the settlement, ECU agreed to immediately reinstate its women's swimming, diving, and tennis teams and develop a gender equity plan no later than December 31, 2021. The school will solicit input for the plan from student-athletes for all teams and expressly invite participation by the female swimming, diving, and tennis team members. It will post the plan on ECU's athletics department's website and ensure that ECU's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond. The university will continue to monitor and manage the plan on an on-going basis (including prior to its official adoption) to maintain and improve ECU's Title IX compliance.

Dartmouth College

In December 2020, Bailey Glasser turned its attention to Dartmouth College. On July 9, 2020, Dartmouth announced it was eliminating its women's varsity intercollegiate golf and swimming & diving teams (along with its men's golf, lightweight rowing, and swimming & diving teams). It said that, as result of the teams' elimination, "the percentage of women among varsity athletes will be virtually identical to the percentage of women in the undergraduate student body, ensuring compliance with Title IX."

On December 18, 2020, Bryant wrote to Dartmouth's President on behalf of the women's team members and informed him that, according to the most recently available public numbers, that claim was false. Bryant's letter explained that the elimination of the women's teams violated Title IX and, as with the other schools, threatened to bring a class action in federal court against the school for depriving women of equal athletic participation opportunities, financial aid, and

treatment unless Dartmouth agreed to reinstate the women's teams and come into compliance with Title IX.

To avoid such a suit, on January 29, 2021, Dartmouth agreed to immediately reinstate its women's golf, swimming, and diving teams and develop a gender equity plan no later than March 15, 2022. It also announced it was reinstating the men's teams. The school will solicit input for the gender equity plan from the female golf and swimming & diving team members and alumni, as well as members and alumni of other teams. It will post the plan on the Dartmouth athletics department's website and ensure Dartmouth's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond.

Clemson University

Less than three months later, Bailey Glasser and its co-counsel made history when Clemson University agreed to landmark settlements with both its male and female student-athletes for violating Title IX by discriminating against them in different ways. It was the nation's first Title IX victory for male student-athletes and the first in which female and male student-athletes combined to hold a school accountable.

In November 2020, Clemson University announced it was eliminating its men's outdoor track, indoor track, and cross country teams, citing financial problems brought on by the pandemic among other reasons for needing to cut the teams. The threatened lawsuits followed.

On Friday, March 12, 2021, Bryant wrote to Clemson's President on behalf of the men's team members and noted that, if the university eliminated the teams, it would be in violation of Title IX which, among other things, prohibits educational institutions from eliminating men'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." Bryant threatened a class action on behalf of all male student-athletes and potential student-athletes at the school unless Clemson complied with Title IX and provided men with equal opportunities to participate.

The following Monday, March 15, 2021, Lori Bullock of Newkirk Zwagerman, P.L.C., in Des Moines, IA —now a BG partner—wrote to Clemson's President on behalf of women's rowing, cross country, and track & field team members and informed him that, according to U.S. Department of Education data, the female student-athletes were not receiving equal athletic financial aid, treatment, or benefits. She said the women supported the male athletes' claims and would file their own class action on behalf of all female student-athletes and potential student-athletes unless the school complied with Title IX.

On April 22, 2021, Clemson agreed to the history-making settlements with both the male and female student-athletes to avoid the threatened suits. The school will reinstate men's outdoor track & field under the agreements, continue men's indoor track & field and cross country, and add new women's varsity teams (gymnastics and lacrosse) to ensure gender equity and enhance opportunities for all. It will conduct a gender equity review of its intercollegiate athletics program to develop and adopt a Gender Equity Plan by July 1, 2022, and implement the plan so all aspects of Clemson's intercollegiate athletic program comply with Title IX in the 2023-24 academic year and future years. It will also take several very specific steps to provide its female student-athletes with equal athletic financial aid, treatment, and benefits while the Gender Equity Plan is being developed.

University of St. Thomas

Within a month, Bailey Glasser threatened suit against the University of St. Thomas in St. Paul, Minnesota, after the university announced on May 11, 2021, that it was eliminating the women's and men's varsity intercollegiate athletic tennis teams ten days later, at the end of the 2020-21 academic year. On May 20, 2021, Arthur Bryant wrote a letter to the St. Thomas President on behalf of the women's team members and informed her that the team's elimination violated Title IX. The law prohibits universities 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." St. Thomas failed 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 an 8.77% participation gap between the women's undergraduate enrollment rate and their intercollegiate athletic participation rate. Given the number of men on the varsity teams, 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 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 would drop to approximately 531 men and 420 women, or 37.6% women – increasing the gap to 9.24%. St. Thomas would need to add 148 participation opportunities for women to achieve gender equity.

The settlement agreement, reached on June 17, 2021, avoids the need for a class action lawsuit. As part of the settlement, agreed to reinstate its women's tennis team, develop a gender equity plan, and come into full compliance with Title IX to avoid a sex discrimination class action for depriving

female student-athletes of equal opportunities and treatment in its intercollegiate athletics program.

La Salle University

Also in May 2021, Bryant wrote to the President of La Salle University in Philadelphia after the school announced in September 2020 that it was eliminating women's tennis, volleyball, and softball, as well as men's baseball, swimming & diving, tennis, and water polo at the end of the 2020-21 academic year, but then, on May 3, 2021, reinstated its men's swimming & diving team and no women's teams. Bailey Glasser represented two female volleyball players and threatened to sue the university unless it came into full compliance with Title IX.

On June 29, 2021, a settlement agreement was reached. La Salle agreed to provide its female student-athletes with equal treatment, bring all aspects of its intercollegiate athletic program into compliance with Title IX, and add as many women's teams as necessary to do so.

Dickinson College

In August 2021, Dickinson College, a liberal arts college in Carlisle, Pennsylvania, announced plans to eliminate the women's (and men's) varsity intercollegiate athletic squash teams at the end of the 2021-22 season. On September 9, 2021, Bryant wrote a letter to Dickinson College Interim President John E. Jones, III, on behalf of the women's team members and informed him that the women's team's elimination violated Title IX. Bryant said he and his co-counsel would file a class action lawsuit in federal court against Dickinson for depriving women athletes and potential athletes of equal opportunities and treatment unless the school agreed to reinstate the team and comply with Title IX.

The settlement agreement, reached on October 6, 2021, avoided the need for a class action lawsuit. As part of the settlement, Dickinson agreed to reinstate its women's squash team and develop a gender equity plan no later than August 31, 2022. During the gender equity review, the school will solicit input from student-athletes and alumni and will expressly invite participation from the women's squash team members and other Dickinson women's varsity intercollegiate athletic team members. It will post the plan on Dickinson's athletics department's website and ensure that Dickinson's intercollegiate athletic program complies with Title IX during the 2022-2023 academic year and beyond. It will also take eight detailed steps to provide female student-athletes with improved and equal treatment and benefits in the interim.

More to Come?

These nine victories were all won since September 2020 and Bailey Glasser is far from done. Bryant and his co-counsel are committed to fighting sex discrimination and advancing gender equity nationwide. They have recently informed San Diego State University and California State University, Fresno that they need to stop discriminating against their female student-athletes and

comply with Title IX.

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