

Courtroom Win May Provide Michigan State University Women Student-Athletes a Chance to Compete Again

02.04.2022

Female student athletes at Michigan State University (MSU) may get another chance to compete in the school's swim and dive program, as the Sixth Circuit Court of Appeals faulted a lower court's interpretation of Title IX.

Title IX of the Education Amendments of 1972 is the federal civil rights law that prohibits sex discrimination at all educational institution receiving federal funds. Bailey Glasser partner Lori Bullock argued the matter before the federal appellate court. Bullock is part of the larger legal team representing the female student athletes, which includes Jill Zwagerman and Danya Keller of Newkirk Zwagerman, P.L.C. in Des Moines, Iowa, and Brian Koncius of Bogas & Koncius, PC in Bingham Farms, Michigan.

"The Sixth Circuit correctly interpreted Title IX's requirements," said Bullock. "We look forward to going back to the district court and having it review the evidence under the correct standards and getting the MSU women's swimming and diving team reinstated. The majority of the women who were interested in joining swimming and diving are still on campus. The space is there, the facilities are there, the women are there, the coaches are there, and our clients are ready to compete," she said.

"What a great day for the MSU women's swim and dive team and for female student athletes around the country," said Zwagerman. "This holding by the Sixth Circuit makes clear that universities are not able to reinvent the rules when it comes to Title IX. MSU has to follow the law when it comes to Title IX, just like every other school in this country.

In January 2021, 11 members of the women's swim and dive team asked a federal district court to stop MSU from eliminating their sport at the end of the 2020-2021 academic year. The district court denied their request, finding that the percentage difference gap between male and female sports participation was not in violation of Title IX. The Sixth Circuit ruled that the district court erred in

COURTROOM WIN MAY PROVIDE MICHIGAN STATE UNIVERSITY WOMEN STUDENT-ATHLETES A CHANCE TO COMPETE AGAIN

its interpretation of how to measure compliance with Title IX's equitable participation requirement. Specifically, the Sixth Court held that compliance is measured by the **actual number** of students impacted, not the percentage.

The Circuit Court also dispelled the argument many schools make—that an institution is in compliance with Title IX's participation requirements if the female participation gap is less than the average size of the women's teams at the institution. This is a huge win for female student athletes all over the country because, as both the MSU members of the women's swim and dive team and the Department of Justice argued that this standard does little more than incentivize schools to carry very large rosters for its women's teams in order to increase the average size of the women's teams. The Circuit Court made it clear that the test for determining if a participation gap is too large is to look at whether the university could field a viable team with sufficient interest and ability. The women's swim and dive team is that viable team in this case.

The female-student athletes are committed to continuing to fight for gender equity at MSU and look forward to the next phase of this case. "I am extremely excited by the appellate court's decision and remain hopeful for the future of our case and women's sports at MSU" said Plaintiff Sophia Balow.

Bullock is part of a Bailey Glasser Title IX team that has recently won groundbreaking settlements for female student-athletes at eight universities that announced they were eliminating women's varsity intercollegiate athletic teams, including 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.

About Bailey & Glasser, LLP

Bailey Glasser was founded in 1999 by Ben Bailey and Brian Glasser in Charleston, West Virginia. Now a national firm with 17 offices including in Alabama, California, Delaware, Florida, Massachusetts, Idaho, Iowa, Illinois, Missouri, New York, New Jersey, Pennsylvania, Texas, West Virginia, and Washington, DC, Bailey Glasser handles our clients' most challenging and consequential legal issues, in litigation and in corporate matters.

We bring a trial-focused approach to litigation for plaintiffs and defendants that vigorously protects the interests of our clients – businesses in many industries and of all sizes (from Fortune 500 companies to family offices), individuals, governmental entities and government servants, and even law firms that call upon us to help them in matters because of our unique blend of resources and trial experience. Some of our areas of particular litigation focus include complex commercial

COURTROOM WIN MAY PROVIDE MICHIGAN STATE UNIVERSITY WOMEN STUDENT-ATHLETES A CHANCE TO COMPETE AGAIN

litigation, in finance and energy; class action and mass tort cases; multi-district litigation involving medical devices, pharmaceuticals and automobiles; bankruptcy and insolvency proceedings; and individual negligence cases.

Bailey Glasser's sophisticated corporate practice provides strategic guidance, counseling, and innovative solutions in virtually every type of corporate, real estate, and financial transactions. Those projects include business formations, public and private securities offerings, corporate finance transactions, mergers and acquisitions, spinoffs, real estate development, leasing, personal property transactions, executive hiring and compensation, ownership disputes, and commercial lending. For more information, please visit www.BaileyGlasser.com.

Attorneys

Lori A. Bullock

Practice Areas

Appellate and Supreme Court Practice

Title IX