

September 23, 2020

Sent via US mail and email: president@wm.edu

Dr. Katherine Rowe
William & Mary
Office of the President
The Brafferton
P.O. Box 8795
Williamsburg, VA 23187-8795

RE: Elimination of Women's Varsity Teams at William & Mary in Violation of Title IX

Dear President Rowe:

I and my co-counsel have been retained by members of the women's varsity gymnastics, volleyball, and swimming teams to prevent their teams' elimination and, if necessary, pursue a class action lawsuit against William & Mary College for depriving women athletes and potential athletes of equal opportunities, athletic financial aid, 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 next Wednesday, September 30, 2020.

Before turning to the details, let me provide a little background.

In 1991, William & Mary College announced that it was eliminating its varsity women's basketball team. According to the information that was publicly available, the elimination of the team was a blatant violation of 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).

I was retained by members of the women's basketball team then to seek the team's reinstatement and, if the school did not agree to reinstate the team, file a motion for a preliminary injunction and class action in federal court seeking both the team's immediate reinstatement 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. I wrote to then-President Dr. Paul R. Paul Verkuil and met with the school's lawyers. We discussed the relevant facts and the law, as well as the likely outcome of a lawsuit if it was filed. The school, in its wisdom, decided to reinstate the women's basketball team and avoid being sued.

Unfortunately, William & Mary is violating Title IX by eliminating women's varsity teams again. On September 3, 2020, in an Open Letter to the William & Mary Community and to All Who Support William & Mary Athletics ("Open Letter"), you, Provost Peggy Agoris, and Director of Athletics Samantha K. Huge announced that William & Mary was eliminating its varsity women's gymnastics, swimming, and volleyball teams (and its men's gymnastics, swimming, and track & field teams). According to the information that is publicly available, the elimination of the women's teams is another blatant violation of the same provision of Title IX.

I and my co-counsel have been retained by members of the women's gymnastics, swimming, and volleyball teams to prevent the teams' elimination and, if the school does not agree to preserve the teams, file a motion for a preliminary injunction and class action in federal court seeking both to prevent the teams' 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. That is why I am sending you this letter. I would like 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 William & Mary, in its wisdom, will decide to preserve the women's gymnastics, swimming, and volleyball teams and avoid being sued.

There is one special fact, however, that I need to raise. Your Open Letter says the elimination of the women's and men's teams "and other associated actions assures Title IX compliance." Please provide me with the basis for that statement. If it is true, we, of course, have no basis to file suit. But, according to all the information we have seen, including information William & Mary has submitted to the U.S. government, it is not true.

According to the most recent publicly available Equity in Athletics Disclosure Act data that William & Mary submitted and verified to the U.S. Department of Education, in the 2018-2019 academic year, William & Mary had an undergraduate population of 3,635 women and 2,662 men. So undergraduate enrollment was 57.7% women. The school's intercollegiate athletic teams that academic year had 344 men and 296 women, or 46.3% women—creating a 11.4% 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 that William & Mary would have needed to add 174 women to its athletic program to be providing equitable participation opportunities for women. With the elimination of the teams that were announced on September 3, 2020, the school's athletic participation numbers drop to approximately 220 men

and 235 women, which is still only 51.6% women. Therefore, even with the announced team eliminations, William & Mary would still need to add approximately 65 women to reach gender equity under Title IX. This is approximately the number of women on the teams the school is eliminating.

Based on these facts, unless William & Mary agrees not to eliminate the women's teams or has some plans for compliance with Title IX we do not yet know, we will seek a preliminary injunction immediately preserving the teams. 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 next Wednesday, September 30, 2020.

Sincerely,



Arthur H. Bryant

AHB/am

cc: Lori Bullock
Tillman Breckenridge