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How E.R.A. Will Affect Athletics

The difference between rational behavior under existing law, and the irrational nonsense which will be required if the Equal Rights Amendment is ever ratified, is made crystal clear by two rulings about athletics made in March 1975.

Pennsylvania Football/Wrestling Case

Pennsylvania is one of the handful of states that have enacted a **state** Equal Rights Amendment, so E.R.A. is already operative there. On March 19, 1975, the Commonwealth Court of Pennsylvania decided that girls must be permitted to **practice and compete with boys in all high school athletics, including football and wrestling.** In a 5-to-1 decision, the Court ruled that a Pennsylvania Interscholastic Athletic Association bylaw prohibiting coeducational competition violates the Equal Rights Amendment to the Pennsylvania Constitution.

The lawyers who brought this case did **not** request that the Court order girls admitted to football and wrestling, but only asked an end to sex discrimination in **other** high school sports. The Court, however, saw no difference between football/wrestling and other sports, holding that the mandate of E.R.A. is absolute and must apply to **all** sports.

The Pennsylvania Court decision is the logical result of the strict ban on sex differences required by the language of the Equal Rights Amendment. This case is a good example of the nonsense that results when we are constitutionally required to treat men and women exactly equally in absolutely everything that is touched by Federal or state law, administrative regulation, or public funding.

If the Federal Equal Rights Amendment is ratified by 38 states, we will be required to extend this sort of mischief to every school and college in the country, without exceptions, qualifications, or reasonable differences that reasonable men and women want.

New HEW Regulations on Sports

On March 29, 1975, newspapers published the new, revised regulations issued by the Department of Health, Education and Welfare to implement Title IX of the Education Amendments of 1972. The 1972 law is a strict ban on sex discrimination in all schools and colleges that receive any Federal aid or assistance whatsoever, and the original HEW regulations issued in June 1974 stirred up a storm of protest because they went too far in requiring everything to be coed, sex-neutral, and gender-free. The revised 1975 regulations have now been submitted to President Ford for his approval before they go into effect.

While adhering to the general rule against sex discrimination in school and college athletics, the revised HEW regulations make the following specific exemptions:

1. **In contact sports,** women may **not** try out for men's teams even if no women's team in that sport is available. Contact sports are defined as boxing, wrestling, football, basketball, ice hockey, and rugby.
2. **In non-contact sports,** women may try out for men's teams if no women's team is available.
3. Physical education classes must be sex-integrated, but they **may** be sex-segregated for contact sports or when sex education is given.

The National Collegiate Athletic Association and others have contended that athletics should be exempted from Federal sex-discrimination rules because sports programs receive little or no direct Federal aid. The new HEW regulations, however, take the position that, if the school or college receives Federal aid for **any** program or activity, it is irrelevant whether the athletic program itself receives Federal aid. The HEW regulations state that athletics "constitute an integral part of the educational process of schools and colleges and, as such, are fully subject to the requirements."

Reasonable people may differ on the precise details of these regulations. If they are found to be unworkable, they can be changed by subsequent HEW regulations. If HEW proves to be obstinate, the regulations can then be changed by a Congressional amendment to the Education Amendments of 1972, which is the legislative authority for the HEW regulations.

The Nonsense of E.R.A.

Thus, under the new HEW regulations, high schools and colleges may maintain separate teams for men and women -- and women may join men's sports only in non-contact sports and only if no women's team is available. However, under E.R.A., it becomes unconstitutional to have separate men's or women's athletic squads in any sport, and all athletic practice must be sex-integrated, even in football and wrestling. E.R.A. will revolutionize school and college athletics.

The text of the Pennsylvania court case is printed on pages 2 and 3 of this *Report*.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA BY ISRAEL PACKEL, ATTORNEY GENERAL,
Plaintiff

v.

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION,
Defendant
NO. 1526 C. D. 1973

BEFORE:
HONORABLE JAMES S. BOWMAN, President Judge
HONORABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE HARRY A. KRAMER, Judge
HONORABLE ROY WILKINSON, JR., Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge

ARGUED: DECEMBER 2, 1974
OPINION BY JUDGE BLATT FILED: MARCH 19, 1975

On November 13, 1973 the Commonwealth of Pennsylvania, acting through its Attorney General initiated suit against the Pennsylvania Interscholastic Athletic Association (PIAA) by filing a complaint in equity in this Court. The PIAA is a voluntary unincorporated association whose members include every public senior high school in this Commonwealth, except for those in Philadelphia. It also includes some public junior high schools as well as some private schools. The PIAA regulates interscholastic competition among its members in the following sports: football, cross-country, basketball, wrestling, soccer, baseball, field hockey, lacrosse, gymnastics, swimming, volleyball, golf, tennis, track, softball, archery and badminton.

The complaint here specifically challenges the constitutionality of Article XIX, Section 3B of the PIAA By-Laws which states: "Girls shall not compete or practice against boys in any athletic contest." The Commonwealth asserts that this provision violates both the equal protection clause of the Fourteenth Amendment to the United States Constitution and also Article I, Section 28 of the Pennsylvania Constitution, the so-called Equal Rights Amendment (ERA), in that it denies to female student athletes the same opportunities which are available to males to practice for and compete in interscholastic sports.

The PIAA filed an answer and subsequently an amended answer, accompanied by new matter, to which the Commonwealth filed a responsive pleading. On May 28, 1974 the Commonwealth filed a motion for summary judgment under Rule 1035 of the Pennsylvania Rules of Civil Procedure, the motion being accompanied by exhibits and affidavits, and it alleged that there are no material issues of fact in dispute between the parties and that the Commonwealth is entitled to judgment as a matter of law without the necessity of a trial. The motion was argued before six members of this Court on December 2, 1974.

It is well established that summary judgment should not be entered unless the case is clear and free from doubt. The record must be viewed in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Davis v. Pennzoil Company*, 438 Pa. 194, 264 A.2d 597 (1970). But where there is no genuine issue as to a material fact, there is no logical reason for forcing the parties to go to trial. *Rose v. Food Fair Stores, Inc.*, 437 Pa. 117, 262 A.2d 851 (1970). After studying the pleadings and other material on the record in this case, we have concluded that it would be futile to conduct a trial. Article XIX, Section 3B of the PIAA By-Laws is unconstitutional on its face under the ERA and none of the justifications for it offered by the PIAA, even if proved, could sustain its legality. We need not, therefore, consider whether or not the By-Law also violates the Fourteenth Amendment to the United States Constitution.

Article I, Section 28 of the Pennsylvania Constitution provides:

"Prohibition against denial or abridgement of equality of rights because of sex

"Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual."

Since the adoption of the ERA in the Commonwealth of Pennsylvania, the courts of this state have unfailingly rejected statutory provisions as well as case law principles which discriminate against one sex or the other. In *Conway v. Dana*, 456 Pa. 536, 318 A.2d 324 (1974) the court cast aside the presumption which had previously existed to the effect that the father, because of his sex, must accept the principal burden of financial support of minor children. The court there indicated that support is the equal responsibility of both parents and that, in light of the ERA, the courts must now consider the property, income, and earning capacity of both in order to determine their respective obligations.

In *Hopkins v. Blanco*, 457 Pa. 90, 320 A.2d 139 (1974) the court extended to the wife the right to recover damages for loss of consortium, a right previously available only to the husband. The court there stated: "The obvious purpose of the Amendment was to put a stop to the invalid discrimination which was based on the sex of the person. The Amendment gave legal recognition to what society had long recognized, that men and women must have equal status in today's world." *Hopkins, supra*, at 93, 320 A.2d at 140.

Most recently in *Henderson v. Henderson*, ____ Pa. ____ 327 A.2d 60 (1974) the section of the Divorce Law which permitted only the wife to receive

alimony pendente lite, counsel fees and expenses was ruled unconstitutional. The court in broad terms proclaimed:

> "The thrust of the Equal Rights Amendment is to insure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman." *Henderson, supra,*_____Pa. at_____, 327 A.2d at 62.

*Commonwealth v. Butler,*_____Pa._____328 A.2d 851 (1974), filed on the same day as *Henderson,* held unconstitutional the provision on the Muncy Act which prevented trial courts from imposing a minimum sentence on women convicted of a crime. Only male criminals were subject to the minimum sentence provision.

The PIAA first attempts to distinguish those cases from this one in that they all involved some statutory right or at least some preexisting judicially recognized right which had been available to only one sex. It is asserted that there is no "legally cognizable right" to engage in interscholastic sports so that the PIAA By-Law does not fall within the purview of the ERA. We cannot accept this argument. The concept of "equality of rights *under the law*" (emphasis added) is at least broad enough in scope to prohibit discrimination which is practiced under the auspices of what has been termed "state action" within the meaning of the Fourteenth Amendment to the United States Constitution. In *Harrisburg School District v. Pennsylvania Interscholastic Athletic Association,* 453 Pa. 495, 309 A.2d 353 (1973) the activities of the PIAA were found to be state action in the constitutional sense because sense because its membership consists primarily of public schools and because it is funded by the payment of membership fees from public school moneys, and so ultimately by the Commonwealth's taxpayers, and from the gate receipts of athletic events between public high schools, involving the use of state-owned and state-supplied facilities. We believe, therefore, that the PIAA By-Laws are subject to the scrutiny imposed by the ERA. There is no fundamental right to engage in interscholastic sports, but once the state decides to permit such participation, it must do so on a basis which does not discriminate in violation of the constitution.

The PIAA seeks to justify the challenged By-Law on the basis that men generally possess a higher degree of athletic ability in the traditional sports offered by most schools and that because of this, girls are given greater opportunities for participation if they compete exclusively with members of their own sex. This attempted justification can obviously have no validity with respect to those sports for which only one team exists in a school and that team's membership is limited exclusively to boys.

Presently a girl who wants to compete interscholastically in that sport is given absolutely no opportunity to do so under the challenged By-Law. Although she might be sufficiently skilled to earn a position on the team, she is presently denied that position solely because of her sex. Moreover, even where separate teams are offered for boys and girls in the same sport, the most talented girls still may be denied the right to play at that level of competition which their ability might otherwise permit them. For a girl in that position, who has been relegated to the "girls' team", solely because of her sex, "equality under the law" has been denied.

The notion that girls as a whole are weaker and thus more injury-prone, if they compete with boys, especially in contact sports, cannot justify the By-Law in light of the ERA. Nor can we consider the argument that boys are generally more skilled. The existence of certain characteristics to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic. *Wiegand v. Wiegand,* 226 Pa. Superior Ct. 278, 310 A.2d 426 (1973). If any individual girl is too weak, injury-prone, or unskilled, she may, of course, be excluded from competition on that basis but she cannot be excluded solely because of her sex without regard to her relevant qualifications. We believe that this is what our Supreme Court meant when it said in *Butler, supra,* that "sex may no longer be accepted as an exclusive classifying tool."_____Pa. at_____, 328 A.2d at 855.

In its motion for summary judgment, the Commonwealth seeks various forms of broad equitable relief to enjoin other potentially discriminatory practices of the PIAA, which we cannot grant. The complaint, specifically addresses itself only to Article XIX, Section 3B of the By-Laws. Moreover, we believe that the other discriminatory practices, if any, probably derive directly from this particular By-Law.

Although the Commonwealth in its complaint seeks no relief from discrimination against female athletes who may wish to participate in football and wrestling, it is apparent that there can be no valid reason for excepting those two sports from our order in this case.

For the foregoing reasons, therefore, we issue the following

ORDER

NOW, the 19th day of March, 1975, the motion of the Commonwealth for summary judgment is granted to the extent that Article XIX, Section 3B of the Pennsylvania Interscholastic Athletic Association is hereby declared unconstitutional, and the Pennsylvania Interscholastic Athletic Association is hereby ordered to permit girls to practice and compete with boys in interscholastic athletics, this order to be effective for the school year beginning in the fall of 1975 and thereafter.

Genevieve Blatt, Judge

Women Lose Under Enforced Equality

If there is *anyone* who should oppose the Equal Rights Amendment, it is women athletes. If the Constitution requires and the courts rule that women must be admitted to men's sports, then it must follow as the night the day that men must be admitted to women's sports. E.R.A. is a two-edged sword. In fact, a spokesman for the Pennsylvania Justice Department admitted this in commenting on the court decision published on pages 2 and 3 of this *Report*, saying: Boys would have to be permitted to try out for girl's teams and vice versa.

What this means is that, at the high school and college levels, the boys who get cut from the varsity teams can switch over and compete on the girls' teams. In many sports, this will take away the facilities and the funding that are starting to open up for women in school and college athletics.

If the same nonsensical sex equality is enforced in professional sports, this would mean that men can enter the women's tournaments and win most of the money. The large money prizes in these tournaments will enable publicity-seeking men to hire lawyers to litigate under E.R.A. Bobby Riggs has already publicly stated: "I think that men 55 years and over should be allowed to play women's tournaments -- like the Virginia Slims. Everybody ought to know there's no sex after 55 anyway."

Whether or not the courts would extend the nonsense of E.R.A. to professional sports, E.R.A. absolutely **must** apply to all high school and college athletics. A good example of what will become the national rule in all schools and colleges, if E.R.A. is ratified, is shown by the case of the Illinois high school bowling tournament.

Bowling Tournament in Illinois

An Illinois circuit court last year decreed that, when a school or college provides no participation for one sex in any non-contact, non-collision sport, members of that sex have the right to compete with the other sex.

In the Dixon (Illinois) High School, bowling is a non-contact sport provided for girls, but not for boys. So the boys decided they would take advantage of the new Illinois circuit court ruling, and compete for places on the girls' bowling team. Boys won four out of the five places on the Dixon High School team.

At the I.H.S.A.'s girls' state championship bowling tournament held in Peoria, Illinois, in February 1975, in front of the icy glares of female rivals, their coaches and parents, the Dixon boys walked off with the title. Dixon's score of 9,749 for the two days of competition was 229 pins ahead of the runner-up team, whose coach said sadly afterwards: "We were getting tired in the finals. It's hard to bowl six games that fast under this kind of pressure -- bowling against boys."

Everyone was angry about the farce. The sympathy of the crowd was certainly not with the winners. Here is a sampling of press comments: "Boys have taken over and virtually destroyed a girls' tournament." "What an evil joke it was to pit two fine Chicago girls' bowling teams against the boys." "What happened in Peoria set sports in Illinois high schools back 10 years."

Physicians' Advice

The American Medical Association Committee on the Medical Aspects of Sports came out strongly in June 1974 against the growing demand of the women's liberation movement to participate in sports with boys. Here are some excerpts from the statement:

"It is in the long-range interest of both male and female athletes that they have their own programs. During pre-adolescence there is no essential difference between the work capacity of boys and girls. . . .

"However, following puberty, most boys uniformly surpass girls in all athletic performance characteristics except flexibility, mainly because of a higher ratio of lean-body weight to adipose tissue.

"If girls demand equal rights to compete on boys' teams, boys are likely to request the same rights in return. . . . Boys will win a majority of the positions on girls' teams, which would result in virtual elimination of girls' programs."

The Physical Difference

It is a cardinal dogma of the women's liberation movement that men and women differ *only* in sex organs, and that all other differences, even physical differences are due only to cultural training and societal restraints. Anyone who has fallen for this particular bit of mythology should look at the difference between men and women in the Olympic Games competitions.

Men have a tremendous advantage in all sports demanding muscle-power, speed, or endurance. In track and field, for example, individual male records surpass women's by about 10 to 18 percent. The differential in field events is about 20 percent. Variations in swimming run about 10 percent and even higher in events such as back stroke, breast stroke, and butterfly, which place a premium on muscular output.

There are, of course, some women athletes who can out-perform the average man; but few, if any, can compete with men of similar talent and experience. In sports that do not favor muscularity and size, such as shooting and equestrian sports, women compete against men in the Olympic events. In some sports that depend on beauty and grace, such as figure skating, the women are superior and can command more money than the men.

None of this, however, in any way disputes the tremendous physical gulf in athletics that exists between women and men in most sports. Even in a completely non-contact sport, such as golf, the women are washed out of the game if they are not given the special advantage of playing from the shorter ladies' tees.

Whether you are concerned about women's athletics, or men's athletics, or simply the rationality of our educational system and its athletic program, you should act immediately to defeat the Equal Rights Amendment while there is still time to do so. Write or call your State Senators and Representatives and ask them to vote NO on E.R.A.

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