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ADMINISTRATIVE CLASS COMPLAINT

COMPLAINANT

Champion Women
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RECIPIENT

Vanderbilt University
Daniel Diermeier, Chancellor
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I. PRELIMINARY STATEMENT

1. This complaint is filed by *Champion Women*, pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”) and the regulations and policies promulgated thereunder. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.

2. *Champion Women* is a 501(c)(3) that provides legal advocacy for girls and women in sports.

3. As detailed in the Factual and Legal Allegations below, data submitted by Vanderbilt University (“Vanderbilt”) to the Office of Postsecondary Education of the U.S. Department of Education pursuant to the Equity in Athletics Disclosure Act (“EADA”), 20 U.S.C. § 1092, as well as information collected from Vanderbilt’s website indicates that Vanderbilt is discriminating on the basis of sex. Vanderbilt is providing women with unequal athletic opportunities, unequal athletic scholarship dollars, and unequal treatment and benefits, including athletic recruitment funding.

4. In order to address these disparities, *Champion Women* requests that the Office for Civil Rights (“OCR”) investigate Vanderbilt to determine whether it is providing women equal opportunities to participate in varsity sports, equal scholarship dollars, and equal treatment and benefits, including equivalent recruitment funding as required by Title IX and, if not, to remedy any unlawful conduct.

II. JURISDICTION

5. The OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines. 34 C.F.R. §§ 106.71, 100.7.

6. *Champion Women* has not filed this complaint with any other agency or institution.

7. As Vanderbilt currently violates Title IX’s athletic equity requirements, this complaint is timely.

III. FACTUAL ALLEGATIONS

8. Vanderbilt receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex pursuant to Title IX.

9. Data submitted by Vanderbilt to the U.S. Department of Education pursuant to the EADA that is publicly available on the Office of Postsecondary Education website for academic

years 2003-04 through 2021-2022 indicates that Vanderbilt is discriminating against women students. Vanderbilt is not currently and has not in the past been providing female athletes equal athletic scholarship opportunities to participate in athletics under Title IX.

10. Vanderbilt student body is comprised of 3435 men and 3607 women, which is 48.78% male and 51.22% female.

11. *Champion Women* has edited the EADA data on our website <https://titleixschools.com/> in just one instance: to remove male practice players who are counted up in the tally as “women”. These male practice players are not female athletes and have therefore been subtracted from the totals in the EADA.¹ Vanderbilt is one of these schools. It writes in its EADA report:

“Women’s basketball participation count includes 14 female varsity student-athletes and 9 male practice players. Women’s soccer participation count includes 31 female varsity student-athletes and 5 male practice players. Women’s tennis participation count includes 9 female varsity student-athletes and 1 male practice player.”

Therefore, *Champion Women* has deducted 15 men who are being counted as women athletes from the EADA’s total.

12. According to the EADA report, Vanderbilt double/ triple counts 56 women and Zero men. This is a counting trick that schools intentionally use to make it appear they are allocating opportunities equally when they are not. Vanderbilt only has 176 women in its athletic department. It will not, however, lessen their requirement to provide equal athletic scholarship opportunities.

13. Vanderbilt sponsors 6 men’s varsity sports (Baseball, Basketball, Football, Golf, Tennis, Track & Field) for 195 men and 9 women’s varsity sports (Basketball, Bowling, Golf, Lacrosse, Soccer, Swimming & Diving, Tennis, Track & Field and Volleyball) for 176 women.

14. According to Roster Numbers on Vanderbilt’s website, counting male and female Rosters, Vanderbilt provides opportunities for 198 men and 181 women. Assuming the same enrollment ratios - 48.78% male and 51.22% female – women should have 27 more opportunities, easily a new women’s team.

15. According to the EADA data showing that Vanderbilt is not providing women with equal opportunities to participate in varsity sports, based on the unduplicated count, (just counting athletes) minus the Male Practice Players, Vanderbilt would need to add 29 women athletes, or about one new team, depending on the roster size.

¹ See *Champion Women* website for every college and university receiving federal funds: <https://titleixschools.com/2023/05/20/eada-data/> High school data for these schools receiving federal funds is available here: <https://titleixschools.com/2023/06/06/check-your-high-school/>

16. According to the EADA data, assuming that the OCR determines that Vanderbilt is providing women with equal opportunities, based on the duplicated count, minus the Male Practice Players, Vanderbilt does not need to add new women athletes.

17. Vanderbilt is a member of the Southeastern Conference (SEC). The SEC includes member institutions located in Texas, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, and Tennessee. Vanderbilt will be able to pick from almost any sport in this huge competitive geographic region.

18. The SEC sponsors Equestrian, Softball, and Gymnastics as Championship sports. Vanderbilt does not sponsor any of these three sports. These championship teams demonstrate women's interest and athletic abilities in these sports, and that competition exists in Vanderbilt's competitive geographic area.

19. Other members of the SEC sponsor women's Beach Volleyball, Rifle, and Rowing. Vanderbilt does not sponsor any of these three teams. These women's teams demonstrate women's interest in these sports, their athletic abilities, and that competition exists in the SEC and in Vanderbilt's competitive geographic area.

20. Vanderbilt recruits nationally and internationally for its student body and its athletes. High school-age girls in the competitive geographic region compete in both school and club sports. These sports include Wrestling, Badminton, Table Tennis, Team Handball, Sailing, Field Hockey, Fencing, Swimming & Diving, Skateboarding, Water Polo, Archery, Field Hockey, Rifle, Triathlon, Ice Hockey, Sport Climbing, Artistic Swimming, Skiing, Snowboarding, Gymnastics, Rowing, Wrestling, Rugby, and all sorts of combat sports, like Judo, Karate, and Taekwondo, to name a few. Vanderbilt does not sponsor any of these sports, despite these girls expressing interest and ability in these sports.

According to the NCAA,² in 2020, only 1.3% of high school girls basketball players were provided the opportunity to play in Division I. Just 2.9% of high school Field Hockey players, 2.8% of Golfers, 8.9% of Ice Hockey players, 3.7% of Lacrosse players, 2.4% of Soccer players, 1.8% of Softball players, 3.3% of Swimmers, 1.5% of Tennis players, 2.8% of Track & Field athletes, 1.2% of Volleyball players in high school are provided opportunities to play their sport in Division I.

These metrics demonstrate that women have expressed enormous demand to compete in sports that is unmet. Girls and women have the interest and athletic ability to play additional sports. It cannot be said that there are not women interested and athletically able to compete in many additional sports at Vanderbilt University.

21. If Vanderbilt provided its male and female students with proportional opportunities to receive athletic scholarships, Vanderbilt would need to add **\$3,981,029** additional athletic scholarship dollars, annually, to balance out the amount Vanderbilt provides to its male students.

² NCAA: Estimated Probability of Competing in College Athletics:
<https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx>

22. If, for some reason, the OCR determines that Vanderbilt is, in fact, not discriminating against women in providing opportunities in sport, then Vanderbilt would still need to provide its women students participating in sports with **\$3,178,240** more in athletic scholarship aid, based on the unduplicated count, to match the amount Vanderbilt provides its male athletes.

23. Vanderbilt's EADA data further indicates that the university provides inadequate and unequal funding for recruitment of female athletes. In 2021-2022, Vanderbilt spent \$2,404,562.00 on men's recruitment and only \$646,947.00 on women's recruitment; women were allocated only 21.20 percent of the recruiting budget even though they account for 51.22 percent of the full-time undergraduate population. If Vanderbilt provided its women's teams – and women's coaches – with equal recruiting budgets, Vanderbilt would add an *additional* **\$1,878,018** in recruiting funds to its female teams. This failure to provide equal recruiting dollars is most assuredly harming the coaches of women's teams, who cannot recruit to win the way that Vanderbilt enables men's coaches to recruit.

24. If, for some reason, the OCR determines that Vanderbilt is, in fact, not discriminating against women in providing opportunities in sport, Vanderbilt would still need to provide its women's sports teams – and its women's coaches – with **\$862,996** more recruiting dollars in order to be consistent with the school's investment in men's sports.

IV. LEGAL ALLEGATIONS

25. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. §1681(a).

26. Title IX regulations prohibit athletic programs from discriminating on the basis of sex in interscholastic, intercollegiate, club or intramural athletics offered by the institution. 34 C.F.R. §106.41(a) (2000).

27. Title IX regulations require institutions that offer athletics programs to provide equal athletic opportunities to members of both sexes to participate in athletics. 34 C.F.R. §106.41(c)(1). United States Department of Health, Education, and Welfare, Office for Civil Rights, *Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413 (Dec. 11, 1979) [hereinafter *Policy Interpretation*].

28. Title IX regulations require institutions that offer athletics programs to provide equal athletic opportunities to members of both sexes to participate in athletics. 34 C.F.R. §106.41(c)(1).

29. Pursuant to the 1979 Title IX Policy Interpretation, compliance with Title IX's equal athletic participation requirement is measured by determining whether the educational institution meets one part of the following three-part test:

1. Prong 1: Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Prong 2: Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Prong 3: Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

United States Department of Health, Education, and Welfare, Office for Civil Rights, *Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413 (Dec. 11, 1979) [hereinafter *Policy Interpretation*].

30. In determining substantial proportionality under part one of the three-part test, OCR considers the number of opportunities that would have to be added to achieve proportionality and whether it would be sufficient to support another team. If there are a significant number of unaccommodated women, it is likely that a viable sport could be added and therefore the institution has not satisfied part one of the three-part test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: the Three-Part Test* (Jan. 16, 1996) [hereinafter *1996 Clarification*].

31. In 1975, schools were given three years to be in compliance with the equal participation mandate under Title IX. Schools had only one year to end sex-discrimination in all other areas of Title IX's non-discrimination mandate. Only athletics gave schools three years to add athletic opportunities and to stop discriminating against women – or until 1978. That deadline passed 45 years ago. 34 C.F.R. §106.41(d).³

³ 34 C.F.R. §106.41(d) “*Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.”

It is worth noting how odd Prong 2 is as a legal test, in comparison to any other non-discrimination civil right. For a school to be able to argue that it is still playing catch-up with non-discrimination – exists nowhere else in law. This is especially true 51 years after the passage of Title IX, and 48 years after the passage of the regulations OCR depends on, regulations that were passed by Congress. When a school uses Prong 2, it is admitting it is not providing women with equal educational opportunities, but that their discrimination is acceptable, because the school is “improving”. Title IX’s Prong 2 allows schools to provide girls and women with less.

32. Therefore, it is understandable that Prong 2 is a strict legal test In determining whether an institution has a history and continuing practice of expansion under Prong 2 of the three-part test, OCR reviews the entire history of the athletic program and evaluates whether the institution has expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, considering a number of factors, including:

- an institution’s record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- an institution’s record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex;
- an institution’s affirmative responses to requests by students or others for addition or elevation of sports; and
- whether the institution has effective ongoing procedures for collecting, maintaining and analyzing information on the interest and abilities of students of the underrepresented sex, including monitoring athletic participation, and assessing interest and ability on a periodic basis.

United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test- Part Three* (Apr. 20, 2010) [hereinafter *2010 Clarification*]; *1996 Clarification*.

33. If an institution recruits potential student-athletes for its men’s teams, OCR will examine whether the institution is providing women’s teams with substantially equal opportunities to recruit potential student-athletes. United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test- Part Three* (Apr. 20, 2010).

34. Title IX requires schools to provide equal scholarship dollars, in proportion to the number of students of each sex participating in athletics. 34 C.F.R. §106.37(c) (2000).

35. NCAA or conference limits on scholarships per team are not legal defenses; schools cannot blame a third party for sex discrimination; recipients are responsible for equality. Schools choose which sports to sponsor, and some schools have chosen scholarship-dense sports for men, such as football and basketball, and scholarship-light sports for women, such as track.

36. Title IX also requires equal opportunity in the recruitment of student-athletes where equal athletic opportunities are not present for male and female students. Compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes and evaluating whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program. *1979 Policy Interpretation*.

37. Title IX requires schools to provide women with equal treatment, including equipment and supplies; game and practice times; travel and per diem allowances; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, practice, and competitive facilities; medical and training facilities and services; housing and dining facilities and services; and publicity. 34 C.F.R. §106.41(a) (2000), *Policy Interpretation*.

38. Lack of money is not a legal defense to sex discrimination. *See, e.g., Roberts Colorado State Univ.*, 814 F. Supp. 1507, 1518 (D. Colo. 1993) (“[A] financial crisis cannot justify gender discrimination.”); *Favia v Indiana University of Pennsylvania*, 812 F. Supp. 578, 585 (W.D. Pa. 1993) (finding that financial concerns alone cannot justify gender discrimination); *Cook v. Colgate University*, 802 F. Supp. 737, 750 (1992) (“[I]f schools could use financial concerns as a sole reason for disparity of treatment, Title IX would become meaningless.”); *Haffer v. Temple*, 678 F. Supp. 517, 520 (1987) (finding that financial concerns alone cannot justify gender discrimination).

39. Monies and in-kind benefits from third-party sources, such as donors, sponsorships, television rights, ticket sales, and student fees, are not a defense to a sex discrimination charge, whether those resources were used to build facilities, provide equipment and uniforms, or any other benefit of sports participation. None of those sources of money creates a legal defense against sex discrimination. Schools must ensure that their students are not receiving second-class educational opportunities because they are female. *See* 20 U.S.C. § 1687 (2005); *See* Office for Civil Rights, *Department of Education, Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (June 11, 2003), *Cohen v. Brown Univ.*, 809 F. Supp. 978, 996 (D.R.I. 1992) (concluding that “all monies spent by Brown’s Athletic Department, whether originating from university coffers or from the Sports Foundation [booster club] must be evaluated as a whole under § 106.41(c)”)

40. It is *Champion Women’s* experience that most athletes and former athletes are acutely aware of all the ways they are treated as second-class within their athletics department, because they are women. As NIL monies become more available, equal promotion and publicity will be important for female athletes. *Champion Women* asked current collegiate athletes what equality would look like under this list. Here’s what the athletes came up with:

- i. Men’s and Women’s sports would be equally featured, with equal prominence, on school and Athletic Department websites and social media.

- ii. Schools would invest equally in cameras and production equipment for Women's and Men's sports.
- iii. Schools would optimize Google searches for their Men's and Women's teams to receive equal search results.
- iv. Women's and Men's sports would employ an equal caliber of talent in their sports information and marketing departments, and they would be paid and promoted equally.
- v. Women's and Men's sports jerseys, apparel, and memorabilia would be equally and easily accessible.
- vi. The needs of Women's teams would not revolve around Men's football and men's basketball teams.
- vii. The Women's and Men's teams would have equal access to dining halls, nutrition, etc. at times equally convenient to both teams.
- viii. Men's and Women's teams would have equal access to optimal practice times when they share facilities.
- ix. Men's and Women's sports marketing efforts would focus on performance; Broadcasters and schools would not focus on a woman athlete's appearance or sexuality.
- x. Women's and Men's medical care and athletic training access would be equal; Neither male nor female athletes would have priority accessing these resources.
- xi. Schools would hire competition officials of the same quality, with equal compensation, for the Women's and Men's teams.
- xii. Men's and Women's sports performance staff would be equal and would be paid and promoted comparably.
- xiii. Schools would intentionally use language that equally prioritizes Men's and Women's sports.
 - 1. Teams would be referred to as "Women's Basketball" and "Men's Basketball."
 - 2. "Basketball" would not be used to refer to Men's Basketball.
 - 3. Schools would have Social Media handles that referred to men's and women's teams; "Oregon Soccer" would be changed to "Oregon Men's Soccer."

41. Vanderbilt's own data, as outlined in the Factual Allegations above, demonstrates that it is not providing equal opportunities athletic opportunities, equal scholarships, and equal treatment and benefits, including but not limited to equal recruitment requirements.

V. RELIEF REQUESTED

42. *Champion Women* expects OCR investigators will find additional violations of the civil rights law guaranteeing women equal educational opportunities in athletics. *Champion Women* requests that OCR:

- a. Investigate Vanderbilt University to determine if it is discriminating against women; whether it is providing women with equal opportunities to participate, equal athletic scholarship dollars, and whether women and women's teams are receiving equal treatment and benefits, including but not limited to, recruiting budgets.
- b. Take all necessary steps to remedy any unlawful conduct that it identifies in its investigation, as required by Title IX and its implementing regulations. Secure assurances of compliance with Title IX from Vanderbilt that include full remedies for all the violations found.
- c. Among other steps to achieve compliance with Title IX, require Vanderbilt to provide women athletes the full range of benefits accorded to men's varsity teams and athletes, increase athletic scholarship opportunities, and recruiting budgets, and adopt and implement a plan to achieve compliance with Title IX.
- d. Monitor any resulting agreement with Vanderbilt University to ensure that the school achieves full compliance with Title IX throughout its Athletic Department, now and in the future.

I give the OCR my consent to disclose my name and *Champion Women's* name contained in this letter to others for OCR's investigation of, and enforcement activities related to, the Sex Discrimination Complaint.



A handwritten signature in blue ink that reads "Nancy Hogshead". The signature is fluid and cursive.

Nancy Hogshead, J.D., OLY
September 18, 2023