

RUNNING AGAINST THE WIND: SEX DISCRIMINATION IN HIGH SCHOOL GIRLS CROSS COUNTRY

Jonathan Little*

I. INTRODUCTION

As little as thirty-five years ago, the longest distance women were allowed to run in the Olympic Games was 800 meters.¹ Olympic officials were protecting women's reproductive futures, since it was accepted as scientific fact that if women trained too hard or even competed in sports in general they would be jeopardizing their childbearing capacity.² Although the Munich games of 1972 were the first to include the 1,500 meters and 3,000 meters for women, those games still did not include the steeplechase, 5,000 meters and 10,000 meters, events in which male distance runners had been competing for years. Indeed, the Olympic schedule would not include the 5,000 or 10,000 meter distances for women until Barcelona in 1992; women were not allowed to compete in the Olympic Marathon until 1984 in Los Angeles.

With the addition of the women's steeplechase to the schedule at the 2005 World Championships in Helsinki, Finland, women now compete in all of the same events as men in international track and field. American Olympic 5,000 meter runner Shalane Flanagan remarked that the belief that women could not compete over the same distances as men was part of the general "dinosaur attitude" that had suppressed women's athletics for so long.³

* J.D., University of Missouri-Kansas City, 2007; qualifier for U.S. Olympic Trials (2008) in the marathon (placed 97th out of 168 qualifiers in the Trials). I would like to thank my parents who are my most persistent supporters in both running and life. I would also like to thank the Geary family for showing me, among other things, that athletic success does not have to come at the exclusion of a legal career. Thanks to Bill Squires and Lisa Drummond for their encouragement in running and life. I would be remiss if I did not thank all of the runners I have coached at the high school, college and professional levels: you have reinforced how important it is to not treat unequals equally. Thanks to the staff at the Coconino County Attorneys Office for being so accommodating of my training schedule. Thanks to the UMKC Law Review, in particular, Ankur Tameja, for help editing this article.

¹ Women did not compete in distances over 800 meters (a half-mile) in the Olympics until 1972 in Munich when the 1,500 meter event was added. The 800 meters was first staged in 1928, which was also the first year of women's track in the Olympics. Lena Radke of Germany set the then world record in those games; however, many of her under-prepared competitors collapsed in exhaustion. The International Olympic Committee (IOC) deemed the 800 too strenuous for women and removed the 800 from the Olympic schedule. The women's 800 reappeared in the 1960 Rome Olympics. In 1984, the women's marathon was added to the Olympic schedule. The 2008 Olympics in Beijing will be the first Olympics to include the women's steeplechase. Charlie Lovett, *Olympic Marathon*, Greenwood Publ'g Group (1997), available at <http://www.marathonguide.com/history/olympicmarathons/chapter25.cfm>.

² Status of Women Canada, *Adult Fact Sheet: Women and Sports in Canada – An Historical Overview*, http://www.swc-cfc.gc.ca/dates/whm/2002/history_e.html (last visited Feb. 25, 2008).

³ Interview with Shalane Flanagan, Olympian, Rocky Mountain Distance Summit, in Co. Springs, Co. (Feb. 19, 2005). Flanagan is two-time NCAA Division I national cross country champion and competed in the 5,000 meters at the 2004 Athens Olympics. Flanagan is the current American record holder at 5,000 meters with a mark of 14:44.8.

If credence is to be given to Ms. Flanagan, then eleven High School Activities Associations (“HSAA’s”) are some of the few remaining dinosaur governing bodies of track and field left. Eleven states prohibit girls from competing over the same distances as their male peers in cross country.⁴ Kansas was unique, until 2006, in allowing women from classes 1A to 5A to run 3,200 meters⁵ on the track in the spring and in cross country in the fall, while allowing girls from the largest high schools class 6A to run 4,000 meters (roughly 2.5 miles).⁶ This distinction in distance was based on school size, and founded on the KHSAA’s member schools belief that females at rural high schools would be less likely to come out for cross country if the distance was 5k instead of two miles or 4k.⁷ A recent polling of head high school girls coaches in Texas echoed those thoughts.⁸ When asked in a September 2005 survey if they supported changing the girls competitive distance from 3 to 5k the coaches of the largest schools in Texas voted overwhelmingly to move to 5k, while the coaches of the smallest schools voted just as strongly to keep the competitive distance at 3k.⁹

While women have made great strides toward achieving equality in scholastic athletics, sexism still exists in high school sports. Recent cases have exposed the ways in which female high school athletes are placed at a disadvantage. For example, state athletic associations’ untraditional scheduling of women’s sports in seasons different than their traditional national season has negatively affected college recruiting of female athletes.¹⁰ At the university level, women have also experienced this sexism, including the cutting of successful teams¹¹ and the superior university financial and facility/equipment support afforded to their male counterparts.¹² Courts in these cases ruled in favor of the female athletes bringing the suit. In the case of girls’ high school cross

⁴ Eleven states have girls run different distances in cross country than boys: South Dakota, Kansas, North Dakota, Nebraska, Minnesota, Wisconsin, Iowa and Connecticut all have girls run 4,000 meters (4k). Starting in the fall of 2007 girls in Indiana will run 5,000 meters; until this fall Indiana had girls run 4,000 meters in cross country. In Oklahoma, Texas and Mississippi girls run two miles (3218 meters). Texas allows girls to compete at the 5,000 meter (5k) at some meets during the season, but the state meets for all classes are contested at the 2 mile distance. In Illinois, Montana, Louisiana, Maryland, and Tennessee both boys and girls run three miles. In Hawaii boys and girls run 4,800 meters which is 27 meters short of three miles. See Dyestat Home Page, www.dyestat.com (Dyestat provides links to the high school athletic associations of all fifty states.

⁵ 3200 meters is 18 meters short of two miles.)

⁶ Compiled data by tabulating the results of every state meet in 2005 and 2006, all of which can be found at <http://www.dyestat.com/?pg=states>. (on file with author).

⁷ Telephone interview with Gary Segal, Riley County High School, Former President, Kansas High School Track and Field/Cross Country Coaches Association (Jan. 26, 2005).

⁸ Texas Girls Cross Country Coaches Ass’n, Sept. 2005 Cross Country Survey Results (2005), http://www.austingca.com/pdf%20files/2005_CC_Survey_Results.pdf.

⁹ *Id.*

¹⁰ *Cmtys. for Equity v. Mich. High Sch. Athletic Ass’n*, 178 F. Supp. 2d 805, 806-07 (W.D. Mich. 2001).

¹¹ *Cohen v. Brown Univ.*, 101 F.3d 155, 161 (1st Cir.1996).

¹² *Cook v. Colgate Univ.*, 802 F. Supp. 737, 744 (N.D.N.Y.1992).

country, no valid compelling state interest is served by forbidding high school girls to compete at the same distance as high school boys.

Section II of this article reviews current constitutional standards for sex-based classifications. Section III examines the current application of Title IX and assesses sex-based classifications in women's athletics. The final section of this article addresses the validity of the current competitive reality in a handful of states limiting female high school runners to 2 miles or 4,000 meters (2.5 miles). These various high school athletic associations are still operating under scientifically out-dated, sexist notions of the capabilities of female runners. The restrictions put on female runners in cross country fail to meet legitimate state goals and are in violation of the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution, as well as the state constitutions, which contain an equal rights clause similar to that of the U.S. Constitution. For example, the first provision of the Bill of Rights of the State of Kansas provides for the equal rights of the citizens of Kansas: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."¹³ If state activities associations are serious about reducing the risk of injury to female runners (as well as to male runners), they need to take the time to properly train high school coaches regarding what causes stress fractures, reduce the number of races athletes compete in each fall from the current two races per week, and allow coaches to work with their athletes year-round to properly supervise training and avoid injury.

II. THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION AND PUBLIC EDUCATION

The Fourteenth Amendment to the U.S. Constitution guarantees all citizens of the United States equal protection under the law. However, the Equal Protection Clause does permit discrimination in the daily lives of Americans based on the classifications of race, national origin, and sex under some circumstances. For example, the state can treat the sexes differently and still not be in violation of the Equal Protection Clause if that discrimination is in furtherance of a state interest deemed important to the state¹⁴ and is based on an "exceedingly persuasive justification."¹⁵

The Supreme Court has upheld gender-based classifications favoring women over men to correct historic discrimination in the economic and professional lives of women.¹⁶ The Court, though, rejects arguments that promote stereotypic views of either gender. In *Mississippi University for Women v. Hogan*,¹⁷ the state refused to admit men to the all-female nursing college, the

¹³ KAN. CONST. amend. I.

¹⁴ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 731 (1982).

¹⁵ *United States v. Virginia*, 518 U.S. 515, 531 (1996).

¹⁶ See generally *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Kahn v. Shevin*, 416 U.S. 351 (1974).

¹⁷ 458 U.S. 718 (1982).

Court found that the exclusion of men reinforced the stereotype of nursing as a female profession.¹⁸ In *Brenden v. Independent School District*,¹⁹ the Court of Appeals for the Eighth Circuit ruled against a Minnesota High School Athletic League that barred men and women from competing on the same team in non-contact sports.²⁰ The court found that the rule barring co-ed participation had no rational basis and was in violation of the Equal Protection Clause because it reinforced stereotypes about female athletic abilities.²¹

In *Craig v. Boren*,²² the Supreme Court ruled that an Oklahoma law banning the sale of 3.2% beer to males under the age of 21 while allowing 18-year-old females to purchase 3.2% beer to be discrimination against 18-21 year old males. Oklahoma unsuccessfully argued that 18- to 21-year-old males were more likely to drink and drive and thus the law banning 3.2% beer sales to males in that age group was warranted to protect the health and safety of Oklahoma's citizens. Oklahoma pointed to statistical evidence showing that 18- to 21-year-old males had been arrested more than their female peers for alcohol-related violations. However, as the Court noted, males of all age groups were arrested at a far greater rate for alcohol violations than their female peers. Although 78% of drivers aged 20 and under were male, only 2% of male drivers aged 18 to 21 years had been arrested for drunk driving offenses.²³ Since 98% of 18- to 21-year-old males did not have any drunk driving offenses, the Court concluded that 18- to 21-year-old "maleness . . . as a proxy for drinking and driving, a correlation of 2% must be an unduly tenuous 'fit.'"²⁴ *Craig* established a clear test for state-sanctioned gender classification: To survive a constitutional challenge, government classifications by gender "must serve important governmental objectives and must be substantially related to achievement of those objectives."²⁵ In scholastic athletics women are still fighting generalities, stereotypes and loose fitting statistical information for equal participation opportunities as their male peers.²⁶

III. TITLE IX AND EQUAL PARTICIPATION OPPORTUNITIES

Title IX, enacted in 1972, mandates that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the

¹⁸ *Id.* at 729.

¹⁹ 477 F.2d 1292 (8th Cir. 1973).

²⁰ *Id.* at 1300.

²¹ *Id.*

²² 429 U.S. 190, 204 (1976).

²³ *Id.* at 200.

²⁴ *Id.*

²⁵ *Id.* at 197.

²⁶ See generally *Cohen*, 101 F.3d at 155.

benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”²⁷ Since the passage of Title IX, women have made tremendous strides towards equality in interscholastic sports at the college and high school levels:

Title IX has significantly moved the ball forward. Before the act took effect, women represented only 2 percent of college athletes. By 2001, women accounted for 43 percent of college athletes. In absolute terms, the number of female athletes jumped from 32,000 to 150,000, an increase of nearly 500 percent. At the high school level, the story is similarly impressive. Girls represented just 7 percent of high school athletes before Title IX. By 2001 that percentage had risen to nearly 42 percent. In absolute terms, the number of girls playing high school sports rocketed from 300,000 to nearly 2.8 million, an increase of more than 800 percent. The athletic participation of men and boys during this period also increased, although by modest amounts.²⁸

Title IX requires that high school and college sports programs receiving federal funding provide the same benefits – ranging from participation opportunities and access to facilities to having the band perform at games – for females as they do for males.²⁹ Schools receiving federal funding can comply with Title IX in three ways: 1) by providing opportunities to males and females in numbers proportional to their total enrollment (often referred to as “the proportionality test”), 2) by demonstrating a history of expanding female participation opportunities in response to student demand, or 3) by showing that the current programs in place adequately accommodate the female student body’s interests and abilities.³⁰ Due to the vague nature of the latter two tests, the proportionality test is the benchmark by which athletic departments’ progress toward compliance with Title IX is measured³¹

Critics of full female participation have used a wide range of arguments to thwart the intentions of Title IX. These arguments range from the tradition of separation of the sexes for particular sports;³² increased injury risk to females;³³

²⁷ Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, 373 (codified at 20 U.S.C. §§ 1681-1688 (1994)).

²⁸ NANCY LEVIT & ROBERT R.M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 109 (NYU Press 2006).

²⁹ Tracy J. Johnson, *Throwing Like a Girl: Constitutional Implications of Title IX Regarding Gender Discrimination in High School Athletic Programs*, 18 N. ILL. U. L. REV. 575, 575-76 (1998).

³⁰ *Id.* at 581.

³¹ Erik Brady, *Time Fails to Lessen Title IX Furor*, USA TODAY, June 17, 2002, at C1.

³² Johnson, *supra* note 29, at 583 (citing *Junior Football Ass’n v. Gaudet*, 546 S.W.2d 70, 71 (Tex. Ct. App. 1976)).

to the argument that sports participation is a privilege rather than a right.³⁴ The issue in complying with Title IX is not whether girls have the “right” to play interscholastic sports, but, under Title IX, whether female students can be denied equivalent participation opportunities in activities funded by federal dollars and administered by the states simply for being female.³⁵ Educational opportunities made available by some to the state must be made available to all by the state on an equal basis and interscholastic athletics has been deemed by the courts to be an “integral facet in the education process.”³⁶

Relying on traditional separation of the sexes for particular support for denying Title IX application to female athletes is discrimination based on stereotypes of female athletic ability and presents no compelling state interest to deny female athletes access to interscholastic sports.³⁷ Running a 3,200 or 4,000 meter race is not the same as running a 5,000 meter race. Girls in states that prescribe unequal distances for girls and boys are simply not given the same competitive opportunities in high school cross country as their male counterparts. While the argument of increased risk of injury to females may have merit in contact sports, such as football or rugby, this is not the case in non-contact sports, such as distance running, where there are no major differences in the risk of injury between male and female runners.³⁸

Brown University unsuccessfully attempted to satisfy the third Title IX test when it defended its decision to demote women’s volleyball and gymnastics from varsity status to donor-funded status.³⁹ As varsity sports, both teams received university funding and had access to university facilities (academic tutoring, use of athletic training and medical facilities, elite-level coaching, etc.); as donor-funded sports, each of these teams would bear the responsibility to raise the money for their entire budget. Additionally, varsity teams from other universities cancelled matches with Brown’s now donor-funded gymnastics and volleyball teams⁴⁰ due to the perceived low level of competition offered by donor-funded sports to other NCAA Division I varsity programs.

The university argued that even though there was more than a 13 percent difference in female participation in athletics and overall female student enrollment at Brown, the current Brown athletic program met the “relative interests” of both sexes.⁴¹ Brown asserted that its full compliance with prong

³³ *Id.* (citing *Bucha v. Ill. High Sch. Ass’n*, 351 F. Supp. 69, 73 (N.D. Ill. 1972)).

³⁴ *Brenden v. Indep. Sch. Dist.*, 477 F.2d 1292, 1297 (8th Cir. 1973).

³⁵ *Reed v. Neb. Sch. Activities Ass’n*, 341 F. Supp. 258, 261 (D. Neb. 1972).

³⁶ *Brenden*, 477 F.2d at 1298.

³⁷ *Id.* at 1300.

³⁸ See Kim Bennel & Peter Bruncker, *Epidemiology and Site Specificity of Stress Fractures*, 16 CLINICS IN SPORTS MED. 179 (1997); see also J E Taunton, et al., *A Retrospective Case-control Analysis of 2002 Running Injuries*, 36 BRITISH J. SPORTS MED. 95,101 (2002).

³⁹ *Cohen*, 101 F.3d at 162.

⁴⁰ *Id.*

⁴¹ *Id.* at 174.

three of Title IX in accommodating the interests of all female students with regards to athletic offerings forces universities to cap or eliminate men's athletic programs and "impose athletic quotas in excess of the relative interest and abilities" of females on campus.⁴² The court was unmoved by this argument because Brown already fully funded competitive varsity volleyball and gymnastic teams. There was no question whether the interest and ability to support volleyball and gymnastics teams existed at Brown.⁴³

The court was also critical of Brown's attempt to meet the relative interest test with anything short of complete accommodation of female athletic interests. The university's approach undermined the intent of the law, instead "freezing" the disparity in participation opportunities at their current levels. As the court correctly points out, if Congress wanted to entrench the "historical emphasis on men's participation opportunities to the detriment of women's opportunities," it should not have bothered enacting Title IX.⁴⁴

Brown argued that women are less interested in participating in intercollegiate athletics than men and thus their athletic program should only be required to accommodate the interests and abilities of females to the extent that it does so for its male students. The court viewed this argument as one based on generalizations and stereotypes that have been resoundingly condemned.⁴⁵ Loose-fitting stereotypes and generalities about sex do not constitute an exceedingly persuasive justification for discrimination in governmentally-sponsored programs.⁴⁶

IV. INEQUITABLE RULES

A. Girls High School Cross Country

By not allowing females to run the full 5,000 meter distance, state athletic associations, particularly the KHSAA, believe they are protecting female distance runners from the increased likelihood of injury and illness that would result if young women were allowed to run that distance.⁴⁷ Kansas was unique in that it is the only state that varied the competitive racing distance based on school enrollment. The KHSAA has also cited the difficulty in making rule changes in the current culture of Kansas high school athletics as well as the widely-held belief that girls from rural schools simply will not be interested in participating in cross country if the distance was changed from two miles (since most rural

⁴² *Id.*

⁴³ *Id.* at 178.

⁴⁴ *Id.* at 180.

⁴⁵ *See id.* at 179; *Hogan*, 458 U.S. at 725; *Craig v. Boren*, 429 U.S. 190, 208-09 (1976).

⁴⁶ *Craig*, 429 U.S. at 202.

⁴⁷ *See* Telephone interview with Gary Segal, *supra* note 7. ("It's hard on girls to run 5k, 6k, that's why college girls don't race every weekend. In Kansas high school cross country we race every weekend. It would be too hard on the girls.")

schools are not 6A and thus compete in cross country races at the 3,200 meter distance).⁴⁸ The arguments put forth by the KHSAA and the Kansas High School Track and Field/Cross Country Coaches Association are thinly-disguised generalizations about the female body and females' interest in athletics. They represent not only empirical ignorance about female abilities, but also a resistance to change that would give female athletes the same opportunities as their male peers to compete equally in state sponsored high school sports.

The lack of participation from girls at rural schools is a curious one. If boys from rural schools in Kansas come out and participate in 5,000 meter cross country, why does the KHSAA believe that girls at these same high schools would be unwilling to do the same? Additionally, neighboring states, like Missouri and Colorado, have small rural schools that offer 5,000 meter cross country races with no participation problems on the girls' side. Does the KHSAA feel that the girls at its rural schools are not up to the same challenges as the boys at these same schools? Arguments advanced by rural coaches in Texas give some insight into possible explanations. A lot of rural athletes play multiple sports in the same season and thus the longer amount of time necessary to train for a 5k verse a 3k would inhibit girls participating in both sports.⁴⁹ The simple response to the two sport argument is that boys already participate in two sports at small schools and run 5,000 meters; why do these coaches assume that the girls would not do the same?

The health and safety of the states' population, particularly its children, is an important goal for state government and, as a state actor, a high school athletic association is charged with protecting the physical health of high school athletes in the state during interscholastic sports competition. Unfortunately, the belief that healthy female distance runners are more at risk for injury running 5,000 meters than healthy, similarly-trained male runners of the same age is based on outdated notions of female athletic ability.⁵⁰ While youth and inexperience in training has been cited as a risk factor for injuries, including stress fractures in young athletes of both sexes, young males are at a greater risk for Illiotibial Band Friction Syndrome than their female peers, and in the area of tibial stress fractures, the only positive risk factor identified with younger female runners is

⁴⁸ Telephone interview with Rick Bowden, Kansas High School Athletic Association, phone interview (Jan. 26, 2005) (stating "A lot of small school coaches think that asking girls to run that far (5K) will keep girls from coming out for cross country.") Mr. Bowden's comments were echoed in more recent interview with the new director of Cross Country for the KHSAA Francie Martin. Ms. Martin said, "A major concern among coaches is that they will lose participants with the increased distance."

⁴⁹ *Cross Country Coaches Ass'n of Tex.*, <http://cccat.org/Comments.htm> (last visited Feb. 25, 2008).

⁵⁰ Interview with Jeff Johnson, Founder of Nike Farm Team in Colorado Springs, Colo. (Feb. 19, 2005) (Jeff Johnson is a pioneer in coaching women in the 1960s in Boston.). "First, [women] could not run more than 800 meters, then 1,500, and so on. Girls in high school are totally physically and mentally capable of running 5,000 meters."

with those who have a body mass index of less than 21.⁵¹ A body mass index of less than 21 is often indicative of other problems unrelated to running, namely eating disorders which are far more common generally in western culture in females than in males.⁵²

As early as 1969, New York State recommended equal co-ed participation in interscholastic track and field.⁵³ New York subsequently made the logical extension to cross country, allowing both boys and girls to compete in the 5,000 meter distance. All states run the same track schedule in the spring for distance races with the 800, 1600 and the 3200 (or the corresponding metric equivalents). However, eleven states have yet to make equal competition opportunities available to young women in cross country.⁵⁴

Former Kansas High School Cross Country and Track Coaches Association President Gary Segal, of Riley High School, voiced his support for moving all classes in Kansas to the 4,000 meter distance, but not going to 5,000 meters at any level.⁵⁵ Correctly citing the big difference in physical maturity between a 14-year-old freshman girl and an 18-year-old female senior, Segal believes that racing every weekend at 5,000 meters would be too physically demanding on high school girls.⁵⁶ This raises the obvious question: Does Segal and the KHSAA believe that racing 5ks multiple times a week is not too demanding for high school boys but is for high school girls? He points out that, at the NCAA level, the women's cross country distance is 5,000 or 6,000 meters, and that most of the top programs do not race every weekend. In high school cross country nationally, most programs do race at least once a week, with the great majority of both male and female teams competing twice a week.⁵⁷ The issue of discrimination on the part of the NCAA is beyond the scope of this paper, and additionally the NCAA is not a state actor like the KHSAA.⁵⁸

It is unlikely that over-racing is a justification for gender discrimination in high school athletics, particularly when both sexes are subject to the usual twice a week race schedule during high school cross country. For a court to uphold a sex classification the state must provide an "exceedingly persuasive justification" for it and the rule enacted must be "substantially related to the achievement of those objectives."⁵⁹ The difference in physical maturity between a 14-year-old boy and an 18-year-old man may be just as big if not bigger than the difference between a 14-year-old girl and an 18-year-old woman. Over-racing is a problem

⁵¹ Taunton, *supra* note 37, at 99.

⁵² Enza Gucciardi, et al., *Report: Eating Disorders*, BMC WOMEN'S HEALTH 2004, at S21, available at <http://www.biomedcentral.com/content/pdf/1472-6874-4-S1-S21.pdf>.

⁵³ *Brenden*, 477 F.2d at 1300 n. 8.

⁵⁴ See *supra* note 4.

⁵⁵ See Telephone interview with Gary Segal, *supra* note 7.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Nat'l Coll. Athletic Ass'n v. Tarkanian, 488 U.S. 179, 180 (1988).

⁵⁹ *United States v. Virginia*, 518 U.S. 515, 524 (1996).

for both sexes in high school cross country and not geographically limited to states that have girls competing in shorter races than boys.⁶⁰ Neither of the arguments presented by Segal are compelling enough to offer an exceedingly persuasive government justification for the lesser distances. In fact, no government interest is served by not allowing high school girls to run the same distance in cross country as their male peers.

B. Opportunity Costs

In considering the constitutionality of high school sports rules, courts need to examine the effects of those rules on the disaffected class. One tangible injury to girls in states racing shorter than 5,000 meters is a loss of college running opportunities. By not allowing high school girls to run the 5,000 meter distance, these states are promoting the stereotype that women are not as athletically capable as their male counterparts. More importantly, female cross country runners from 4k or shorter states are negatively affected in the eyes of college coaches across the country. Jay Johnson, assistant coach and recruiter at the University of Colorado, the 2004 NCAA men's and women's cross country national champions, is wary when recruiting young women from 4k or 3200 meter states. Colorado, like a great number of NCAA programs, is a combined men's and women's program with both teams practicing together and sharing the same coaching staff. "At Colorado, we have the same expectations of the women as we do of the men. If young women are told in high school they don't have to meet the same expectations as men in high school competition, I am concerned that may carry over into college. It's the first step in assuming they don't have to work at the same level as men."⁶¹

Unlike female runners from other states, particularly Missouri and Colorado, girls from Kansas, unless they have raced outside of Kansas (a practice discouraged by the KHSAA for both sexes),⁶² will be at a disadvantage in college recruiting and competition because they have no experience running the 5,000 meter distance.

The protection of youth from physical injury is certainly a compelling state interest and the safety of Kansas High School athletes is a primary concern of the KHSAA. However, the increased risk of injury to high school girls as opposed to

⁶⁰ See Interview with Shalane Flanagan, *supra* note 3. "The biggest problem high school runners, not just girls, face today and back when I ran (she graduated from high school in Marblehead, MA in 1999) is running too many races."

⁶¹ Telephone interview with Jay Johnson, University of Colorado assistant cross country coach (Feb. 22, 2005) (Jay Johnson was a former runner at the University of Colorado and before returning to CU in his current capacity was head coach at Pratt Community College in Pratt, Kansas.).

⁶² KANSAS HIGH SCHOOL ATHLETIC ASSOCIATION HANDBOOK Art. XIV § 4 (2007-08 ed.), available at <http://www.khsaa.org/School/PDF/Handbook.pdf>. The KHSAA limits travel to 500 miles from the state borders.

high school boys by racing the 5,000 meter distance in high school cross country, instead of 3,200 or 4,000 meters, is not designed to protect young women from injury. Instead, it is rooted in the deep-seated sexism that has historically plagued women in athletics. No compelling state interest exists for this thinly-veiled sexism in the world of science, coaching experience, or reality.

In addition to losing scholarship and collegiate participation opportunities, high school girls in 3,200 and 4,000 meter states are reminded that their athletic experiences are not equally valued to those of boys. The perpetuation of the athletic inferiority and sexism is reinforced every time they race. As Coach Johnson warned, “girls in Kansas don’t have the same expectations placed on them in high school competitions as boys do, [so] the notion of inferiority is reinforced.”⁶³ Female runners in a handful of states are stigmatized with doubts regarding their competitive abilities in cross country as well as being further stigmatized in the eyes of college coaches as untested over 5,000 meters. A two-mile or 4,000 meter race can never be deemed “equal” to a 5,000 meter race. A female cross country runner in a state competing in a distance short of the distance of the boys race does not have the same high school athletic experience as her male counterpart or, perhaps more importantly, as her more highly-recruited female counterparts across the nation. Short distance states are depriving women who are, to quote the Supreme Court in *United States v. Virginia*, “ready, willing, and able” to benefit from the complete educational opportunities and benefits of 5,000 meter scholastic cross country.⁶⁴

C. Empirical Evidence Regarding the Risks of Injury

A multitude of injuries can affect athletes in track and field, the most debilitating of which is the stress fracture. High school girls, however, are at no greater risk for stress fractures than boys. Indeed, one study found that high school girls had a *lower* risk of stress fractures than their male counterparts.⁶⁵ In a study of running injuries published in the *British Journal of Sports Medicine*, youth was found to increase the risk of injuries, however only young boys were found to be at an increased risk of tibial stress fractures.⁶⁶ The major risk factor for increased vulnerability to stress fractures in girls was a body mass index of less than 21 kg/m².⁶⁷ Since boys and girls have similar rates of running-related injuries, limiting the distance that high school girls run in cross country is not an effective means of lowering their injury rate.

⁶³ See Telephone interview with Jay Johnson, *supra* note 61.

⁶⁴ 518 U.S. 515, 547 (1996).

⁶⁵ Taunton, et al., *supra* note 37, at 95 (emphasis added).

⁶⁶ *Id.* at 99.

⁶⁷ *Id.*

Besides a body mass index of less than 21 kg/m^2 , youth and a prior history of injuries, both of which are independent of sex, are the two biggest factors in the rate of injuries. A study at the University of British Columbia of over 2,000 injured runners found that with “each year of increase in age from 17 to 26, the risk of stress fractures at all sites decreased by 28%.⁶⁸ Additionally, 60% of the athletes who had a stress fracture “had a previous history of stress fractures.”⁶⁹ A properly trained and informed coach is the best medicine for helping young runners, both male and female, avoid the mistakes of inexperience and the eagerness that often lead to injuries like stress fractures.

Claiming that injuries to young women will be increased if they compete over an extra 1,000 meters is contrary to scientific evidence as well as elite-level coaching experience. According to Dr. Jason Karp, Ph.D., former coach of the elite female Impala Racing Team in California, even though women have been competing in the Olympic Marathon for the last twenty years, some people incorrectly believe that women are at a greater risk of injury from running long distances than their male counterparts.⁷⁰ According to Dr. Karp, “Female distance runners do not have a greater risk of stress fractures than do males. The injury risk to female athletes only increases in the presence of characteristics of the female athlete triad – amenorrhea, disordered eating, and osteoporosis, or with a body mass index of less than 21 kg/m^2 .”⁷¹

The chief cause of the female athlete triad, according to Karp, is disordered eating, which is far more likely to affect women than men. For example, in Ontario, Canada in 1995, over 90% of reported hospitalized cases of anorexia and bulimia were women.⁷² In addition, a report published in *BioMed Central Women's Health*, citing the findings of the 1996-1997 National Population Health Survey, stated that more women than men wished to weigh less than their actual weight.⁷³ As the Court's analysis regarding 18 to 21-year-old male drinking and driving statistics in *Craig* demonstrates, it is not justifiable to place distance limits on all female high school runners in eleven states when every other state allows girls to compete over the same distance as boys.⁷⁴

⁶⁸ Bennell & Brunker, *supra* note 37, at 185.

⁶⁹ *Id.*

⁷⁰ Telephone interview with Jason Karp, former coach of Impala Racing Team (Mar. 15, 2005).

⁷¹ *Id.*

⁷² Gucciardi et al., *supra* note 52, at S21.

⁷³ *Id.*

⁷⁴ See generally Dyestate Website, <http://www.dyestat.com>. (Dyestat.com, is database of high school cross country and track and field results from all fifty states. State meet results as well as other state, regional and national meets are archived and the site's chat area connects the nation's high school runners and coaches. Additionally Dyestat.com is a co-sponsor with Nike of a team national championship in high school cross country held annually in Portland, Oregon.)

The distance limit is not substantially related to the promotion of teenage girls' health, since the primary cause of athletic injuries to that population is a disease that affects a handful of female cross country runners (which is not a direct or even indirect result of participating in the sport of cross country). If the KHSAA's reasoning regarding the propriety of limits on girls' distances in cross country were to hold, since some high school boys are more likely to use steroids to improve athletic performance in sports like football, the KHSAA would be warranted to require touch instead of tackle football to discourage steroid use.

Karp's sentiments are echoed by many elite coaches, including Brad Hudson, who coaches Olympic distance runners Shayne and Alan Culpepper and Dathan Ritzenhein. He believes that women can actually train with a higher volume than men and trains his distance runners accordingly.⁷⁵ The belief that female distance runners can train and race at the same distance and handle the same intensity in workouts as males is not just limited to elite women or to elite-level coaches. Greg Weich, cross country coach of the nationally-ranked boys and girls teams at Smoky Hill High School in Colorado, believes that "girls can run just as much volume as any boy with similar training" and trains his teams in a combined program.⁷⁶

Youth and a past history of injuries are not sex- or geographically-specific problems in high school cross country in Kansas or any other state. However, a few states have chosen to limit the competition distance in girls cross country to avoid injury. Limiting the competition distance of female athletes serves no purpose in reducing their exposure to injury. To combat injuries to both male and female runners, the KHSAA needs to properly train its coaches to recognize the training mistakes that can lead to injuries in all runners, not just females. Additionally, coaches need to ensure that their athletes are running on soft surfaces and, most importantly, limit the number of competitions in which their athletes compete.

Knowing the athletes' prior injury history is basic to being a coach. Currently in Kansas, however, coaches are allowed only limited access to their male and female athletes in the off-seasons (winter and summer).⁷⁷ It is difficult to gain a true understanding of the athletes' injury histories when the coaches are out of contact with their runners for half of the year. These restrictions on meeting with athletes apply evenly to both boys and girls in KHSAA cross country. Certainly boys and girls are both keenly affected by rules limiting off-season coaching contact, but boys do not have to deal with the in-season twice weekly reinforcement that their high school racing experience is inferior. Boys in Kansas have a long proud history of school boy success in distance running,

⁷⁵ Interview with Brad Hudson, Olympic Running Coach, in Colorado Springs, Co. (Feb. 19, 2005).

⁷⁶ Interview with Greg Weich, Cross Country Coach, Smoky Hill High School, in Colorado Springs, Co. (Feb. 19, 2005).

⁷⁷ KHSAA Handbook, Article 14 Page 20.

with such legends as Jim Ryun and Wes Santee hailing from Kansas; girls have no such history to draw on for out-of-season motivation and the simple fact of having a coach to provide motivation and someone to meet with would be a great lift to girls in Kansas as they work towards making an equally proud tradition of their own, one run at a time.⁷⁸

The legal validity of sex-based restrictions on girls running 5,000 instead of 4,000 meters is contingent on tying the state's interest—protection from health dangers—to training for and running the extra 1,000 meters. The evidence of a health risk to young women competing in 5,000 meters simply does not exist.

D. Administrative Justifications Are Not Compelling

The argument that girls from rural schools will be less likely to participate in high school cross country if the racing distance was increased to 5,000 instead of 4,000/3,200 meters fails on two accounts.

First, not allowing girls to compete in 5,000 meters fails to “effectively accommodate the interests and abilities” of high school runners in eleven states as required by Title IX.⁷⁹ The physical ability of high school girls to run 5,000 meters is not only demonstrated every fall by high school girls across the country, it is also demonstrated by girls from all states when they compete in 5,000-meter events against girls from neighboring states and drive hours to compete in one of the four Footlocker Regional Championships.⁸⁰ The competitive disadvantage to girls from Kansas and other states in which they run 4,000 meters is alarming and very evident when those girls compete against girls from states in which 5,000 meters is the norm. Most of the population of Kansas lives along the Missouri border in metropolitan Kansas City, where the Kansas City Metropolitan Championships are attended by teams from both states, with girls from Kansas competing in 5,000 meters, often for the first and only time of the season. The girls from Kansas high schools are routinely losing to their better-prepared Missouri peers⁸¹ who are accustomed to racing the 5,000 meter distance at every cross country meet.

⁷⁸ Don Norcross, *Miracle Mile*, THE SAN DIEGO UNION-TRIB., May 9, 2004, at C4.

⁷⁹ *Cohen*, 101 F. 3d at 165.

⁸⁰ One example of this boarder-crossing competition is The Kansas City Metropolitan Championships, held every fall in Kansas City, Missouri, where girls and boys from the Kansas and Missouri sides of Kansas City compete over 5,000 meters. Thousands of boys and girls make the annual trip to one of the four Footlocker Regional Cross Country Championships hoping to earn a berth in the Footlocker National Championships held annually in San Diego, California. Boys and girls compete over 5,000 meters at all four regional races and in the National Race. See Foot Locker Cross Country Championships, <http://www.footlockercc.com> (last visited Feb. 25, 2008).

⁸¹ The 2006 and 2007 meets were both one-two finishes for Missouri High Schools.

Just as in *Cohen*,⁸² the lack of interest argument claimed by the KHSAA and rural cross country coaches is baseless. The KHSAA does not have to search for proof that its female cross country runners are interested in 5,000 meter races. A simple check of the results of the Footlocker Regional Cross Country Championships would show that the top girls from all eleven 4,000/3,200 meter states drive more hours to compete in one of the four 5,000 meter races at the Footlocker Regional Championships, hoping to earn a trip to the Footlocker National Championships in San Diego two weeks later,⁸³ had have done so every November for the last twenty-five years. At the Midwest Regional race,⁸⁴ no Kansas girl has qualified for the national championship meet since 1999.⁸⁵ Of the sixty-eight national qualifiers from the Kenosha Regional since 1999, only twenty-two have been from states in which they run 4,000 meters and of those twenty-two states, seven qualifiers have been from Indiana, where top runners routinely compete in 5,000 meters in Ohio, Michigan, and Illinois.⁸⁶ In 2007 the Indiana girl's state cross country meet will be 5,000 meters. All state athletic associations have a duty of "full and effective accommodation" under prong three of Title IX to meet the athletic interests and abilities of high school runners in their states, regardless of sex.⁸⁷

IV. CONCLUSION

Kansas remains one of the last states to limit girls' scholastic cross country competition to a distance short of 5,000 meters. When pressed as to why the KHSAA does not mandate the 5,000 meter racing distance for women, it says it is just serving the needs of the member schools and the member schools of Kansas simply have not asked to move up in distance.⁸⁸ This is the same lack of interest argument, that was defeated in *Cohen*.⁸⁹ Although the KHSAA chooses to be ignorant about the level of interest in running 5,000 meters among its female runners, such ignorance does not justify their violation of the equal protection clauses of both the Kansas and Federal Constitutions.

⁸² *Cohen*, 101 F.3d at 178.

⁸³ See *supra* note 80 accompanying text.

⁸⁴ The Footlocker National Championships held each December in San Diego pits the 40 best high school male and female runners (ten from four regional qualifying meets) against each other in a 5,000 meter race for both sexes. See Foot Locker Cross Country Championships, *supra* note 80.

⁸⁵ Amanda Pape, Olathe East High School, Olathe, KS, was the last qualifier in 1999. www.dystat.com

⁸⁶ 26th Foot Locker Cross Country Championships Midwest Region, [dystat.com, http://www.dyestat.com/3us/4xc/footlocker/midwest/index.htm](http://www.dyestat.com/3us/4xc/footlocker/midwest/index.htm) (last visited Feb. 25, 2008).

⁸⁷ *Cohen*, 991 F.2d at 898.

⁸⁸ Telephone interview with Francie Martin, KHSAA Cross Country Liaison, (Sept. 22, 2005). Citing the recent move to 4k for all classes Ms. Martin reiterated that the KHSAA responds to desires of its member schools, who in 2006 opted to move all classes to the 4k distance.

⁸⁹ *Cohen*, 101 F. 3d at 172.

The argument that girls at rural schools would cease to come out for cross country if the distance was increased is just a thinly veiled attack on the running abilities of young women. Coaches just do not think girls will want to do the extra work necessary to prepare for a 5,000 meter race. Girls at rural schools across the country run 5,000 meters and play two sports in the same season and boys in all states do as well. To assume that girls in eleven states are not up to the challenge is clear indication of what these high school athletic associations and the high school cross country coaches in those states think of the running and athletic abilities of females.

All high school athletic associations have a legitimate state interest in protecting the health and safety of all of its runners regardless of sex, but all have a duty to practice the least restrictive method of implementing those goals. There is no scientific foundation to the theory that girls will be hurt more often competing over 5,000 meters than in a two mile or 4,000 meter race. Eleven high school athletic associations are causing real and tangible injuries, in terms of lost college scholarships and competition opportunities to the young women competing in cross country by not allowing to them to race the standard 5k distance. Additionally, a female runner in a 4,000/3,200 meter state is at an obvious competitive disadvantage in terms of competitive experience when she lines up for her first collegiate 5,000 meter cross country race against other freshmen who have competed at 5k throughout their high school careers.