

# Two Equal Wrongs Don't Equal an Equal Right

By Reg P. Wydeven  
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As a lad growing up in Kimberly, our high school girls' basketball teams had one a few state titles, while the boys' program came close a few time but never brought home the gold ball. By the time I got to high school, the results of the girls' success were blatantly obvious – they always seemed to have brand new game and practice uniforms, but we were stuck with hand-me-downs from the 1970s. My game shorts my freshman year were so small even Britney Spears wouldn't have worn them.

Well, my good friends on the 1988 boys' team got beat in a heartbreaker in the Sectional final. Thanks to their success, some additional Athletic Department dollars were thrown into the boys' basketball budget. The varsity got new uni's, and as JVs, we got their old ones. When I tucked my jersey into my new shorts, it didn't even peek out of the leg hole!

Because we received the short end of the stick, I completely understand the need for the federal Title IX statute. Congress passed the law in 1972 law, making it illegal for any academic institutions that receive federal funds to discriminate based on gender. Title IX is best known, however, for promoting women's athletics.

That's why Alabama high school girls basket ball coach Roderick Jackson sued the Birmingham school district for wrongful termination when he was fired from his coaching job after repeatedly requesting for his girls' program to have the same amenities as the boys' squad. Jackson had asked school officials on numerous occasions to be provided with a regulation-sized gym with rims that weren't bent – just like the boys' team.

The unusual aspect of Jackson's Title IX lawsuit is that he isn't claiming that he was discriminated against based on his sex – he is alleging that his firing was the school's retaliation against him for raising the sex discrimination claims. Title IX, though, does not directly state whether whistleblowers such as Jackson have the same rights under the statute as victims of discrimination.

Last week, however, the United States Supreme Court decided that whistleblowers do have the same rights under Title IX as victims of discrimination. In the Court's 5-4 decision, Justice Sandra Day O'Connor explained that, "Without protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied."

Equal rights advocates across the country agreed. Jackson's lawsuit was supported by a coalition of 180 civil rights groups including the NAACP, the American Civil Liberties Union and the American Federation of Teachers, as well as dozens of women's advocacy groups.

Those justices not in favor of the decision claimed that if Congress had intended to grant whistleblowers protection, it would have done so when drafting Title IX, as it did when drafting numerous other civil rights laws. Now, schools now may be forced to pay compensatory and punitive damages for retaliation claims, something that was never contemplated when they chose to accept federal funding.

My senior year we made it to state but lost on a last-second prayer. While we didn't bring home a gold ball, the Kimberly boys did go on to win back-to-back state championships in 1994 and 1995. And we like to think that the nice, new uniforms they wore while winning them were because of our earlier success.

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