No ‘cheers’ for latest Title IX decision

By Gregg Easterbrook
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Title IX, a section of a federal education law passed in 1972, has become an exemplar of the kind of government action that initially was justified but since has taken on a life of its own grounded in legal and bureaucratic nonsense. A new federal court ruling on “competitive cheer” versus women’s volleyball makes clear the descent of Title IX into absurdity.

Title IX of the 1972 law says, “No 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.”

At the time that this wording was enacted, discrimination against women was common in college, while girls in high school and women in college had few athletic opportunities. But a lot has changed since 1972, in part because Title IX was effective.

“Women dominate today’s colleges and professional schools,” Hanna Rosin reports in this important essay in The Atlantic. The essay cites statistics showing that women outnumber men about 55 percent to 45 percent in college; and as a group, women get higher grades and receive more academic awards. Girls’ and women’s sports have taken off all across the country, expanding fast even in politically conservative areas. Girls’ and women’s sports have become so popular among players and spectators alike that sports orthopedists report an epidemic of girls’ and women’s athletic injuries.

Yet, purpose long since fulfilled, Title IX slogs on, generating increasingly incongruous legal intrusions into minor matters as well as creating perverse results, such as forcing colleges to shut down men’s athletic teams. Even the U.S. Commission on Civil Rights, among the most politically correct organizations in the country, recently said Title IX has backfired by causing an “unnecessary reduction of men’s athletic opportunities.” (Go here, then scan for “Title IX” for a detailed report.) The unintended consequences of a 38-year-old rule, designed for circumstances that no longer exist, today mainly serve to make government look ridiculous.

Case in point: the federal judge’s 95-page ruling on whether competitive cheerleading counts as a sport for Title IX purposes. It does not, the judge found, and thereby ordered Quinnipiac University in Hamden, Conn., not to disband its women’s volleyball team. The school had planned to stop competing in women’s volleyball as part of a budget cut while adding competitive cheer to broaden its appeal to potential enrollees. Adding cheer at a time when there is rising public interest in cheer sounds like a simple marketing decision on the college’s part. To the judge, it was trampling an entitlement.

Courts did not intervene last year when Colorado College, Hofstra and Northeastern dropped football, owing to budget cuts. Male football players at these colleges simply were out of luck; they were told to transfer somewhere else. But the full weight of the federal judiciary has been brought to bear on the side of a few female students at Quinnipiac University -- it’s even a private school, not publicly funded -- who insist that the college fund them to spike volleyballs.

The issue here isn’t whether competitive cheer should count as athletics -- more on that in a moment. The issue is whether Title IX has run amok.

Girls’ and women’s sports are now successful, popular and in some cases even self-sustaining. You can find

the proof of that at almost any high school in the United States. My kids' high school fields 15 girls' or coed athletic teams, and if you value your life, don't tell the cheerleaders or the poms they are not athletes. Title IX strictures that were needed a generation ago simply aren't needed any longer. But because no government program is ever shut down, they slog on, causing asinine intrusions. They're also making girls' and women's sports seem like tokenism -- which isn't fair to all the self-sustaining girls' and women's sports.

Take a gander at that 95-page judicial ruling. There are excruciating details on whether the university sought enough guidance from the Department of Education's Office for Civil Rights before making a volleyball decision. Civil rights are serious, important national issues -- whether a college offers volleyball or cheer is not a civil rights issue! Imagine telling marchers on the Edmund Pettus Bridge in Selma, Ala., in 1965 that by 2010, "civil rights" would be privileged college kids complaining about sports schedules, while federal judges would say that a grandly named Office for Civil Rights should dictate which teams get to use a college gym.

There is no "civil right" to be on a volleyball team! If you hope to continue to play women's volleyball in college, it's up to you to transfer to a college that offers the sport rather than run to the courthouse demanding special favoritism. In turn, Quinnipiac University's athletic department budget-allocation decisions have no place in a federal court, particularly when the college already offers significantly more women's sports teams than men's. A 95-page court ruling on a college volleyball budget sounds like a Monty Python sketch -- because Title IX itself has become a Monty Python sketch.

Go further into the judge's decision and find that both plaintiffs and defendants fielded dueling "expert" witnesses testifying on who counts as a "participant" in women's track and field. The plaintiff's expert witness makes part of her living testifying in Title IX lawsuits. It's a sign of legalism run amok when lawyers and consultants get fees for arguing over whether college students should receive school-sponsored volleyball outfits. The decision includes a good 20 pages of hair-splitting arguments regarding exactly how many members the school's various teams have -- and in the case of field hockey, whether Title IX would be satisfied if there were 24, 22.2 or 22.7 women on the Quinnipiac team. If Quinnipiac, or any college, had hundreds of men in organized sports but hardly any women, that would be discrimination. This legal case, however, concerns such ultratrivia as whether Quinnipiac's "roster management system" should have listed 31 boys on the men's baseball team when the NCAA average is 33.3! Get this junk-science lawsuit out of the courts!

This mess is not the judge's fault -- he had no choice but to enforce the statute. Congress is the guilty party. The time has come for Congress to amend the 1972 law to get the Department of Education out of the nation's locker rooms. Title IX once was needed but has outlived its usefulness.

The anachronistic character of Title IX is shown by the Python-esque nature of asking a federal judge to determine whether cheerleading is a sport. Everyone agrees golf and bowling are activities; are they "sports"? That can be debated -- but the debate belongs in barrooms and on SportsNation, not in courts of law, especially because the question is impossible to answer!

Most of us never will attend a competitive cheer meet, but then most of us never will attend a dive meet, either. Competitive cheer is an awful lot like gymnastics, which is universally considered a sport. Cheer events are judged rather than decided by pitting teams against one another directly, as happens in most sports. But gymnastics, figure skating and other judged events in which participants don't "play" against one another nevertheless are seen as sports.

Many high schools now consider competitive cheer a sport -- Cactus Shadows High is the reigning state champion in Arizona, for instance. To avoid the semantic squabble regarding whether cheer is a sport, the University of Oregon calls its competitive cheerleading entrant a "stunts and gymnastics" team. It recruits and signs its participants just as the Ducks' football team does. (How long until there is a competitive-cheer

recruiting scandal?) Aren't schools that sponsor sporting events better judges of what constitutes a sport than lawyers in a windowless courtroom?

Those who think cheer isn't a sport may be thinking in terms of 1950s cheerleaders clapping hands and kicking legs. Think again. Check the renowned University of Kentucky cheerleaders' moves.

Today, some states won't allow high school cheerleaders to perform the "flip basket toss" or the pyramid double-flip dismount, because they are as dangerous as playing varsity football. In a 2009 case, a Wisconsin court ruled that cheer is "a recreational activity that includes physical contact between persons in a sport involving amateur teams." The legal significance here was that cheer can be as dangerous as a contact sport, which certainly makes cheer sound like athletics. The National Center for Catastrophic Sports Injury Research calls cheer a sport, and its most recent report says more severe injuries to girls and women result from cheer accidents than from girls' and women's soccer or basketball.

If high school girls and college women want to train for competitive-cheer events that involve scoring points with complex tosses and stunts, and people want to attend, where does a federal judge get off saying it is not athletics -- yet a volleyball bouncing back and forth across a net is? Let schools, states and spectators be the ones to argue out distinctions regarding what is and isn't sport. Courts have no business sticking their noses into such issues.

In addition to writing Tuesday Morning Quarterback for Page 2, Gregg Easterbrook is the author of the new book "Sonic Boom" and six other books. He is also a contributing editor for The New Republic, The Atlantic Monthly and The Washington Monthly.