

March 12, 2021

Via e-mail: president@clemson.eduJames P. Clements, President
Clemson University
201 Sikes Hall
Clemson, SC 29634

RE: Elimination of Men's Track and Field and Cross Country Teams in Violation of Title IX

Dear President Clements:

I and my co-counsel have been retained by members of the men's track and field and cross country teams to prevent their teams' elimination and, if necessary, pursue a class action lawsuit against Clemson University ("Clemson") for depriving male athletes and potential athletes of equal participation opportunities in violation of Title IX of the Education Amendments of 1972. The fact that Clemson is violating Title IX to eliminate majority-Black teams is especially disturbing. Please respond to this letter as soon as possible and, in any event, no later than Tuesday, March 23, 2021.

On November 5, 2020, Clemson announced that it was eliminating the men's varsity intercollegiate track and field and cross country teams at the end of the 2020-21 academic year. The elimination of these teams plainly violates Title IX, which, among other things, prohibits educational institutions like Clemson from eliminating men's teams for which interest, ability, and competition are available unless "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." 44 Fed. Reg. 71418 (Jan. 16, 1996). According to the most recent publicly available information, Clemson fails this test. I would like to meet with you and/or the school's lawyers and discuss the relevant facts and the law, as well as the likely outcome if a lawsuit is filed. It is my hope that Clemson, considering these factors, will agree to reinstate the men's track and field and cross country teams and come into compliance with Title IX's equal participation requirements to avoid the need for a lawsuit.

There is one special point, however, I need to raise. When Clemson announced the elimination of these teams, it claimed, in an open letter from Director of Athletics Dan Radakovich, that their elimination was necessary to provide Clemson's Athletic Department with "the ability for long-term Title IX compliance." <https://bit.ly/38uN3s9> Please provide me with the basis for that claim. According to the most recent publicly available information, it appears to be false. And the elimination of the men's track and field and cross country teams puts Clemson in violation of Title IX in the short-term: now.

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According to the most recent publicly available data, which Clemson provided to the U.S. government and verified as accurate pursuant to the Equity in Athletics Disclosure Act (EADA), Clemson had an undergraduate population in 2019-2020 of 9,722 men and 9,719 women or 50.01% men. The school's intercollegiate varsity athletic teams that academic year had 312 men and 318 women, or 49.52% men—creating a 0.48% gap between the men's undergraduate enrollment rate and their intercollegiate athletic participation rate. If those numbers are accurate, Clemson was offering men six less opportunities to participate than required to achieve exact proportionality. This gap was not big enough to field any fully rostered men's team. So, Clemson was likely as close to compliance with Title IX's "substantial proportionality" requirement as a university can achieve, given the fluctuations of undergraduate enrollment each year.

These figures show that, with the elimination of the men's teams announced on November 5, 2020, the school's athletic participation numbers will drop to approximately 229 men and 318 women, or 41.86% men—creating an 8.14% participation gap. Therefore, with the announced eliminations of the men's track and field and cross country teams, Clemson now needs to add approximately 89 men to reach gender equity under Title IX. This is almost exactly the number of men's opportunities the university is eliminating. And, as Director of Athletics Radakovich has repeatedly stated, "Title IX was not designed to reduce opportunities for men." *See, e.g.,* <https://bit.ly/3qFUwe0>.

Based on these facts, unless Clemson agrees to preserve the men's track and field and cross country teams or has some plans for compliance with Title IX we do not yet know, we will seek a preliminary injunction preserving and continuing these teams. Courts throughout the country have consistently issued preliminary injunctions preserving varsity teams when the elimination of a team violates Title IX. *See, e.g., Mayerova v. E. Michigan Univ.*, 346 F. Supp. 3d 983, 997 (E.D. Mich. 2018), *appeal dismissed*, No. 18-2238, 2020 WL 1970535 (6th Cir. Apr. 20, 2020); *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 978 (D. Minn. 2016); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D. Conn. 2009); *Choike v. Slippery Rock Univ.*, 2006 WL 2060576 (W.D. Pa. July 21, 2006); *Barrett v. West Chester Univ. of Penn.*, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003); *Favia v. Indiana Univ. of Penn.*, 812 F. Supp. 578 (1993); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D. R.I. 1992), *aff'd* 991 F.2d 888 (1st Cir. 1993).

We hope that will not be necessary in this case. I look forward to hearing from you as soon as possible and, in any event, no later than March 23, 2021.

Sincerely,



Arthur H. Bryant

cc: Bill Nettles
AHB/ajm