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COMMENT

WHO KNOWS THE DIFFERENCE BETWEEN COMPETITIVE CHEERLEADING, SIDELINE CHEERLEADING, ACROBATICS AND TUMBLING? WHY THIS DISTINCTION IS SO IMPORTANT FOR TITLE IX

ALEXANDRA ZDUNEK*

INTRODUCTION

Someone who has not participated in competitive cheerleading can fall victim to the school of thought that it is an activity that cheers on other “real” sports, but this outlook refuses to acknowledge the major competitive component which draws many athletes to the sport. We have come a long way in recognizing the distinct differences in sideline and competitive cheerleading, but now that acrobatics and tumbling, STUNT and other sports containing aspects of cheerleading have emerged, more confusion has boiled to the surface. One of the newest sports, acrobatics and tumbling, has already been recognized by the NCAA as an emerging sport for women.¹ Netflix’s recently released documentary series, CHEER, has been instrumental in garnering respect for

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¹ Brian Burnsed, *DIII Management Council Recommends Two New Emerging Sports*, NCAA (July 25, 2019), <http://www.ncaa.org/about/resources/media-center/news/diii-management-council-recommends-two-new-emerging-sports>.

competitive cheerleaders everywhere.² Hopefully this invigoration of interest in cheerleading presses people previously unfamiliar with cheerleading to ask, why isn't this considered a sport?

A main purpose of this comment is to differentiate the many different forms of "cheerleading" which often get muddled. The push back with regards to considering cheerleading a sport is usually from those who believe all cheerleaders do is sideline cheer. When informed about what true competitive cheerleading looks like, people are more willing to accept cheerleading as a sport. It is important to note, however, that there is segment of cheerleading which is purely competitive and is done completely unaffiliated from school. This population will not be included in this discussion because of its private nature, it has no effect on Title IX.

In recent years cheerleading has been recognized by the International Olympic Committee ("IOC") and given provisional status.³ The IOC recognition is hugely important for cheerleading, but what relevance does it have to Title IX and the NCAA? Most cheerleaders participate on their school's competitive cheerleading teams. The NCAA has not yet recognized competitive cheerleading as a sport and therefore schools cannot use the participation to aid in Title IX compliance.⁴ This results in collegiate cheerleaders being deprived of resources that benefit all other student-athletes. Even provided provisional status by the IOC, cheerleading still has yet to be recognized as an emerging sport for women by the NCAA despite its high participation.⁵

This comment will address the Title IX issue by showing the ways in which competitive cheerleading satisfies the requirements to qualify as a sport and it will also highlight where the sport can improve to ensure unequivocal acceptance. The purpose of this comment is to demonstrate the differences between competitive cheerleading and all the offshoots but ultimately to persuade the reader that high school and intercollegiate competitive cheer needs to be considered a varsity sport.

This comment will begin by providing an overview of the historical development of cheerleading. It will then go on to discuss some of the most

² Hank Stuever, *Netflix's 'Cheer' Is the Documentary That Hard Working Cheerleaders Have Long Deserved*, WASH. POST (Jan. 8, 2020), https://www.washingtonpost.com/entertainment/tv/netflixs-cheer-is-the-documentary-that-hard-working-cheerleaders-have-long-deserved/2020/01/08/2f8ee890-2e59-11ea-bcb3-ac6482c4a92f_story.html.

³ Associated Press, *IOC Gives Cheerleading, Muay Thai Provisional Recognition*, ESPN (Dec. 6, 2016), <https://www.espn.com/olympics/story/id/18222546/cheerleading-muay-thai-get-provisional-ioc-recognition>.

⁴ Rachel E. Greenspan, *Cheer on Netflix: Why Isn't Cheerleading a Sport?*, TIME (Mar. 4, 2020), <https://time.com/5782136/cheer-netflix-cheerleading-dangers/>.

⁵ *See id.*; see also Richard Morgan, *Cheerleading Has Evolved into a Billion-Dollar Business*, N.Y. POST (Apr. 24, 2017), <https://nypost.com/2017/04/24/cheerleading-has-evolved-into-a-billion-dollar-business/#:~:text=US%20participation%20rose%2011.7%20percent,the%20Sports%20%26%20Fitness%20Industry%20Association>.

pertinent case law as it relates to cheerleading and Title IX, proposing that a different school making the claim would have had a greater likelihood of success. Next, it will go on to discuss the NCAA Emerging Sport For Women process with respect to naming a new sport as emerging and eventually a varsity sport. Within this discussion, the different offshoots of cheerleading will be differentiated. Finally, this comment will specifically address how the traditional view of cheerleading continues to hold back future development and contributes to some very real safety concerns. In sum, the most important intention of this comment is to persuade you that if Quinnipiac, the school, had sponsored traditional competitive cheerleading, then the court would have likely decided that cheerleading qualifies as a sport for Title IX purposes.

I. HISTORY & BACKGROUND

Cheerleading started as a way to promote community involvement and support for the school sports.⁶ While cheerleaders still hold those values today, cheerleading has developed into a widely popular sport for both boys and girls across the country. Cheerleading spawned from all-male pep-clubs whose origin coincided with the first intercollegiate football game between Princeton and Rutgers in 1969.⁷ Thomas Peebles, a graduate of Princeton, transplanted to the University of Minnesota and brought the Princeton cheers along with him.⁸ Jerry Campbell, a University of Minnesota medical student, is credited with the first organized cheer when he picked up a megaphone during a losing streak and rallied a group to reinvigorate the crowd.⁹ In the United States, women's involvement in cheerleading began as early as the 1920s and really took off in the 1940s.¹⁰ The 1940s also brought the creation of the National Cheerleaders Association ("NCA") by Lawrence Herkimer.¹¹ In the 1960s cheerleading was incorporated in schools across the country and growing rapidly.¹² The mid-1970s brought the creation of the Universal Cheerleaders Association ("UCA").¹³ Both the NCA and UCA are still the leaders in the sport today.¹⁴

Today, cheerleading is everywhere. You would be hard-pressed to find a high school that did not offer an opportunity to participate in cheerleading. High School Athletic Associations across the country have chosen to support

⁶ *Being a Cheerleader – History of Cheerleading*, VARSITY (Oct. 20, 2014), <https://www.varsity.com/news/cheerleader-history-cheerleading/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Being a Cheerleader*, *supra* note 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

cheerleading as a sport predominantly because of the high risk of injury.¹⁵ Sport classification comes along with additional school regulations which require special training for coaches and higher safety standards.¹⁶ High school and college cheerleading is a hybrid of both sideline and competitive cheer.¹⁷ Moreover, courts have recognized—without hesitation—the real dangers that cheerleading presents.¹⁸

II. COMPETITIVE CHEERLEADING AND TITLE IX

A. Title IX Briefly Explained

Title IX is an instrumental factor when it comes to addition and subtraction of sports from educational institutions. 20 U.S.C. Section 1681 states that any institution receiving federal funds cannot discriminate based on sex.¹⁹ The United States Code defines what constitutes an educational institution; the Code encompasses any institution both public and private, vocational, professional and higher education.²⁰ Title IX is detailed in the Code of Federal Regulations and does not describe what constitutes a sport, merely that both sexes must have equal opportunity to participate.²¹

The Code of Federal Regulations does define what equal opportunities look like in the context of sports and variation from these guidelines are the basis of violation of Title IX.²² Further, the Code provides ten factors to be considered in determining whether equal opportunities are available:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and

¹⁵ See generally Lee Green, *Impact of Competitive Cheer Laws, Regulations on Title IX Compliance*, NFHS (Apr. 16, 2019), <https://www.nfhs.org/articles/impact-of-competitive-cheer-laws-regulations-on-title-ix-compliance/>.

¹⁶ *Id.*

¹⁷ Greenspan, *supra* note 4.

¹⁸ See *Stevens v. Azusa Pac. U.*, 2019 WL 2281585 (Cal. Ct. App. 2d 2019); See also *Aaris v. Las Virgenes Unified Sch. Dist.*, 75 Cal. Rptr. 2d 801 (Cal. Ct. App. 1998).

¹⁹ 20 U.S.C. § 1681 (2019).

²⁰ § 1681(c).

²¹ 34 C.F.R. § 106.41 (2019).

²² § 106.41(c).

services; (9) Provision of housing and dining facilities and services; [and] (10) Publicity.²³

The 1979 Title IX policy interpretation has provided three ways in which a school can be in compliance and that the school need only satisfy one way.²⁴ This is commonly referred to as the “three-part test” or “three-prong test.”²⁵ The first way allows for athletic participation for each sex to be substantially proportionate to their respective enrollment.²⁶ The second way requires the institution to show a “history and continuing practicing of program expansion” relative to the underrepresented sex.²⁷ Finally, a school can be compliant when the interests and abilities of the underrepresented sex are “fully and effectively” accommodated.²⁸

In 2008, the Office of Civil Rights (“OCR”) released a *Dear Colleague Letter* which provided some instruction on how to determine if a sport would qualify as a sport for Title IX compliance purposes.²⁹ This letter reaffirmed the OCR’s purpose, to increase the opportunities for participation, not to limit them within these guidelines.³⁰ The letter goes further to describe that “[w]hen OCR conducts an investigation to determine whether an institution provides equal athletic opportunities as required by the *Title IX* regulations, OCR evaluates the opportunities provided by the institution’s intercollegiate or interscholastic ‘sports.’ OCR does not have a specific definition of the term ‘sport.’”³¹

The OCR will consider both the program’s structure, administration, team’s preparation, and competition to help determine if the activity should be counted as a sport.³² In breaking down the program’s structure and administration, it will look into whether the budget, support services, and coaching staff are all consistent with other varsity sports.³³ Additionally, in considering this factor, the recruitment efforts made by the institution staff and their ability to offer scholarships and athletic awards as they do with other varsity sports.³⁴

²³ *Id.*

²⁴ Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979) (to be codified at 45 C.F.R. pt. 86).

²⁵ Jacqueline R. Liguori, *Sticking The Landing: How The Second Circuit’s Decision in Biediger v. Quinnipiac Univ. Can Help Competitive Cheerleading Achieve “Sport” Status Under Title IX*, 21 JEFFERY S. MOORAD SPORTS L. J. 153, 159 (2014).

²⁶ Title IX and Intercollegiate Athletics, 44 Fed. Reg. at 71,418.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Stephanie Monroe, Acting Assistant Secretary for Civil Rights, *Dear Colleague Letter*, OFF. FOR CIV. RTS., U.S. DEP’T OF EDUC. (Sept. 17, 2008), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.html>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Monroe, *supra* note 29.

When considering the program's competition and preparation, the OCR will look into whether practice, regular season competition, and pre and post season competition opportunities are consistent with other established varsity sports and whether the team selection is based primarily on athletic ability.³⁵ Within this factor, they will consider the primary purpose of the activity and whether it "is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities."³⁶

The OCR urges that the above considerations are a fact-specific analysis and can vary depending on the circumstances which the determinations are made, the type of institution, and the type of activity.³⁷ The letter goes on to specifically state that these determinations are aimed at providing schools the opportunity to count sports which may not yet be recognized by governing bodies and/or are featured at the Olympic games.³⁸

B. *Quinnipiac*

Since the enactment of Title IX there has been a slew of situations where courts stopped schools from disassembling women's sports. *Cohen v. Brown University* demonstrated that schools cannot eliminate real opportunities in sport for women in exchange for illusory ones.³⁹ While Title IX case law is prevalent, cases involving competitive cheerleading are not. *Biediger v. Quinnipiac University* is the most notable case addressing the issue head on whether competitive cheerleading can be used for Title IX compliance.⁴⁰

Quinnipiac is the landmark case when it comes to competitive cheerleading and Title IX issues. The *Quinnipiac* court declined to recognize competitive cheerleading, which was labeled by the school as acrobatics and tumbling, as a sport for purposes of satisfying Title IX requirements.⁴¹ In an effort to reduce costs, Quinnipiac decided to eliminate women's volleyball and introduced competitive cheerleading as a new sport.⁴² The plaintiffs in *Quinnipiac* argued that the elimination of volleyball as a varsity sport violated Title IX by reducing women's athletic participation opportunities.⁴³ The *Quinnipiac* court described the transition from competitive cheer to acrobatics and tumbling, first detailing Quinnipiac's and seven other schools' plan to either continue or support a new competitive cheerleading team as a varsity sport.⁴⁴ These schools joined

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993).

⁴⁰ *Biediger v. Quinnipiac Univ.*, 928 F.Supp.2d 414 (D. Conn. 2013).

⁴¹ *Id.* at 458.

⁴² *Id.* at 418.

⁴³ *Id.*

⁴⁴ *Id.* at 421.

together to create the National Competitive Stunt and Tumbling Association (“NCSTA”), which was well on its way to providing the sport like parameters the NCAA desires, such as defining positions and competition rules; but the key distinction here, is that the NCSTA was creating a sport which encompassed six events, resulting in something more akin to gymnastics and is considered acrobatics and tumbling.⁴⁵ The *Quinnipiac* court considered the “structure, administration, team preparation, and competitive schedule of the cheer program” when making its determination on the issue; specifically discussing three areas where particular improvements need be made for consideration:

- (1) head coach’s inability to engage in off-campus recruiting;
- (2) the team’s erratic regular season, which was marred by inconsistency in terms of the rules of play and the quality of opponents, including events against club and even high-school teams; and
- (3) the team’s perfunctory post-season competition, which consisted of an open invitational tournament that did not rank, seed, or exclude teams on the basis of their regular season record, and imposed new rules of competition not followed during the regular season.⁴⁶

As a result, this new sport was certainly not the competitive cheerleading that all the athletes who compete in NCA nationals in Daytona or UCA nationals in Orlando are familiar with. Ultimately, the court held that at this time they were not going to consider Quinnipiac’s version of competitive cheer, acrobatics and tumbling, as a sport for Title IX compliance.⁴⁷

C. Wrong Time, Wrong School

Quinnipiac was the wrong school at the wrong time to make this statement which resulted in the court refusing the chance to allow competitive cheerleading teams to qualify as a sport for Title IX compliance purposes.⁴⁸ This is not to say that the ruling in *Quinnipiac* was a setback for competitive cheerleading, rather it simply provided the framework for future schools to work off. In large part, the issue was that they were analyzing a school sport which really did not represent the reality of intercollegiate competitive cheerleading. Schools that participate in NCA or UCA competitions would be much more likely to have the court’s support because of the consistent scoring and the

⁴⁵ *Id.*

⁴⁶ *Id.* at 422.

⁴⁷ *Id.* at 458.

⁴⁸ Green, *supra* note 15.

uniformity of the competitors,⁴⁹ whereas Quinnipiac competed against sideline, competitive and all-star teams.⁵⁰ Teams competing under the NCA or UCA competitions compete only against other teams similarly situated based on school size, squad member make-up, and skill level.⁵¹

Competitive cheer is far more established than acrobatics and tumbling were when *Quinnipiac* came before the court. USA Cheer, the national governing body for cheer in the United States, was established in 2007.⁵² Were a true competitive cheerleading team to come before the court now, they would be backed by a well-established national governing body, whose purpose is to promote safety, education, and participation in the United States.⁵³

D. Addressing *Quinnipiac's* Faults

1. Recruitment

In following the above analysis provided by the *Quinnipiac* court, it is apparent that any other school competing in one of these two competitions would have had a higher likelihood of success. There are many college cheerleaders who compete in Daytona or Orlando who possess the skill set to be recruited. Maybe there was no recruitment going on at the time of acrobatics and tumbling student-athletes but there certainly is recruiting of college cheerleaders.⁵⁴ USA Cheer hosts a combine, making it easier for coaches to evaluate athletes.⁵⁵ While it may not be as prevalent as in other sports, it is likely because cheerleading often does not have the same resources associated with it. For example, during my time at Northern Illinois University, we went from having a small budget to the school taking away even the budget for a coach. The coach we had, had to be a volunteer and recruiting is a time-intensive expensive process that just cannot take place without resources. Some schools do provide financial aid and book scholarships which makes them more appealing to student-athletes during the recruitment process.⁵⁶ All the way back in 2003, Maryland started providing their cheerleaders varsity status and offered

⁴⁹ *See id.*

⁵⁰ *Biediger v. Quinnipiac Univ.*, 928 F.Supp.2d 414 (D. Conn. 2013).

⁵¹ *See* NAT'L CHEERLEADERS ASS'N, NCA COMPETITION RULE BOOK FOR SCHOOL TEAMS 5–9 (2018), https://www.varsity.com/wp-content/uploads/2018/08/nca_school_rule_book.pdf.

⁵² *About*, USA CHEER, <https://www.usacheer.org/about> (last visited Mar. 13, 2020).

⁵³ *Id.*

⁵⁴ *See Cheer*, NAT'L SCOUTING REP., <https://www.nsr-inc.com/sport/cheer/> (last visited Mar. 13, 2020).

⁵⁵ *USA Cheer Combine*, USA CHEER, <https://www.usacheer.org/usa-cheer-college-combines-2020> (last visited Nov. 10, 2020).

⁵⁶ Mary Virginia Moore Johnson & Beth A. Easter, *Legal Liability for Cheerleading Injuries: Implications for Universities and Coaches*, 17 J. LEGAL ASPECTS SPORT 213, 216 (Summer 2007); *see also Play College Cheerleading*, ISPORTSRECRUITING, <https://isportsrecruiting.com/cheerleading> (last visited Mar. 13, 2020).

athletic scholarships; the OCR claimed they were the first with the aim to use those scholarships toward Title IX compliance.⁵⁷

2. Regular Season Competition and Inconsistencies

This is where competitive cheerleading would face issues regarding the analysis of the court. Although they have well-established competition rules and compete only against other universities or high schools, there is really only one competition per year and that is the national championship, in either Daytona or Orlando, depending on whether the school chooses to be under NCA or UCA. Although competitive cheer does not have much of a regular season, if they did, they would not face the criticism by the court on this factor because of the rules and regulations already in place. This is where I would suggest the sport create a regular season competition schedule. High school cheerleading has already established this format in many states, where schools compete in competitions all throughout the late winter through early spring and then compete in a sectional competition which, if placing in the top five teams, earns them a spot to compete at the State Championships.⁵⁸

3. Post Season Competition

Again, this is a place where college competitive cheer has room to improve. The only genuine competitive opportunity is in the postseason, that being the national championship and it does fall victim to some of the court's criticism. Nearly any team can compete in the postseason, but teams must receive a bid to do so.⁵⁹ This bid can be obtained by attending camps or submission of a video. While this process makes it possible that a team will not get a bid, I have yet to see this happen. That being said, specifically in Daytona, under NCA, you must place in the top percentile in order to compete the second day and they have consistent rules that are followed year-round throughout the competitions.⁶⁰

While there may only be one opportunity, that opportunity means everything to the athletes preparing for it. The Netflix documentary CHEER is a terrific example of the time, effort, and determination it takes to prepare for

⁵⁷ Johnson & Easter, *supra* note 56.

⁵⁸ See e.g. *5 Year Season Calendar*, ISHA, <https://www.ihsa.org/Sports-Activities/Competitive-Cheerleading/5Year-Season-Calendar> (last visited Mar. 13, 2020).

⁵⁹ See *NCA College Bid Distribution*, VARSITY, https://www.varsity.com/nca/wp-content/uploads/2019/07/NCA_College_Bid_Distribution.pdf (last visited Nov. 11, 2020); see also *2021 NCA & NDA College Nationals*, VARSITY, <https://www.varsity.com/nca/school/competitions/college-nationals/> (last visited Nov. 11, 2020).

⁶⁰ See *Rules & Scoring*, VARSITY, <https://www.varsity.com/nca/school/competitions/rules-scoring/> (last visited Nov. 11, 2020).

just one competition; if provided more opportunities to compete, I am confident cheerleading would be consistent with a traditional postseason.⁶¹

While the test is mildly outdated, the mindset of what cheerleading was and is now, is more seriously outdated. Competitive college cheerleading at schools across the country would come much closer to passing, if not outright pass, the tests provided by these courts if the public and even the intercollegiate athletics would give cheerleading the same respect it does other sports. This lack of respect stems from what people assume cheerleading is, in other words, they believe cheerleading's primary purpose is to entertain and rally the crowd. I argue that cheerleading's primary purpose is vastly different than what it used to be.

III. CHEERLEADING DEFINED

There are multiple offshoots of cheerleading, but it is easiest to begin with the oldest form, sideline cheer, before moving to a discussion of what modern competitive cheerleading looks like, and finally concluding with gymnastics-cheerleading hybrid acrobatics and tumbling and STUNT.

A. Sideline Cheerleading

I am not here to argue that sideline cheer should be considered a sport for Title IX and NCAA purposes. That being said, the hours devoted by a sideline cheerleader do deserve brief recognition. Sideline cheer is the oldest and most traditional type of cheerleading and comes with its own unique set of problems.⁶² Sideline cheer is where cheerleaders call repetitive cheers and perform the occasional stunts or tumbles during timeouts with the aim to rally the crowd around the home team.⁶³ Most often, sideline cheerleaders are present at football and basketball games, but the requirements for participation differ from every school even at the high school and college level. For example, as a high school sideline cheerleader we were required at the two major sports but in college, a presence was required to cheer at gymnastics meets, wrestling meets, and volleyball matches. This was in addition to all of the men's football and men's and women's basketball games that we were required to cheer for. All of these responsibilities were in addition to preparing and practicing for competitions.

⁶¹ See Lara Zarum, *TV Features Netflix Docuseries 'Cheer'*, ROLLING STONE (Jan. 27, 2020), <https://www.rollingstone.com/tv/tv-features/netflix-docuseries-cheer-944012/>.

⁶² See *Being a Cheerleader*, *supra* note 6.

⁶³ Samantha Snow, *Sideline vs. Competitive Cheerleaders Discuss The Difference*, THE REFLECTION (Jan. 23, 2012), <https://glhsreflection.org/2012/01/23/sideline-vs-competitive-cheerleaders-discuss-the-difference/>.

It is typical of high school and college cheerleaders to have to do sideline cheer in order to participate in the competitive season, herein lies a major source of confusion for those unfamiliar with the sport. Traditionally, cheerleading during high school requires participation in sideline cheerleading; this adds an additional element of complication for athletes because the seasons of competitive cheer regularly conflict with the sports where sideline cheering is required.⁶⁴ Therefore, not only do these athletes have a much larger time commitment but they are also victim to the public assumption that sideline cheerleading is all they do.

B. Competitive Cheerleading

Competitive cheerleading is the aspect of high school and college cheer where the athletes have the opportunity to participate in competition against other teams.⁶⁵ Typically, competition includes a performance of a two-and-a-half-minute routine consisting of stunting, tumbling, jumps, dances, and cheers.⁶⁶ Teams compete against others of the same size and gender make-up as their own.⁶⁷ To compete, a certain level of skill is generally expected. Tumbling skills, like a standing back tuck and or an array of running tumblers are instrumental to scoring well in competition. As for stunting, the athletes need to possess the ability to either base, back-spot or fly a stunt.⁶⁸ To base or back-spot, an individual needs to possess upper body strength as well as overall strength.⁶⁹ A flyer is typically a smaller person, who is flexible and has body control.⁷⁰

C. Acrobatics and Tumbling

Acrobatics and tumbling is a sport which includes elements of stunting and tumbling—similar in some respects to competitive cheer—which often leads to the two being frequently conflated.⁷¹ Acrobatics and tumbling is not a

⁶⁴ See *NCA & NDA Collegiate National Championship*, VARSITY, <https://www.varsity.com/nca/school/competitions/college-nationals/> (last visited Jan. 30, 2020); see also *UCA & UDA College Cheerleading & Dance Team National Championship*, VARSITY, <https://www.varsity.com/uca/school/competitions/college-nationals/> (last visited Jan. 30, 2020).

⁶⁵ *What Is Competitive Cheerleading*, VARSITY (Feb. 20, 2018), <https://www.varsity.com/news/what-is-competitive-cheerleading/> (noting that there is a facet of competitive cheerleading completely unaffiliated with schools but that is outside of the purview of this analysis because it has no effect on Title IX).

⁶⁶ *Id.*

⁶⁷ *2018-2019 College Cheer Team Rules and Regulations*, VARSITY, https://www.varsity.com/wp-content/uploads/2018/10/19_uca_championships_college_rules.pdf (last visited “date”).

⁶⁸ Valerie Ninemire, *Top Cheerleading Positions*, LIVE ABOUT DOT COM (Jan. 22, 2019), <https://www.liveabout.com/top-cheerleading-positions-4072799>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Meet Format*, NAT’L COLLEGIATE ACROBATICS & TUMBLING ASS’N, <https://thencata.org/sports/2019/8/26/information-Meet-Format.aspx> (last visited Jan. 30, 2020).

replacement or synonym for competitive cheerleading and does not fill the need for cheerleaders to have participation opportunities at a higher level. Although the sports both consist of similar activities like partner and pyramid stunts and tumbling, they are actually quite different.⁷² Acrobatics and tumbling is regulated by its own governing body, the National Collegiate Acrobatics & Tumbling Association (“NCATA”).⁷³ Acrobatics and tumbling meets are made up of six events, all of which are performed on a floor; those six events are compulsory, acrobatics, pyramid, toss, tumbling, and team.⁷⁴

D. Stunt

STUNT is competitive cheerleading’s effort to fit the definition required by the Office of Civil Rights to be considered a sport.⁷⁵ STUNT includes nearly all the elements described above in competitive cheer those being tumbling, stunting, and jumps.⁷⁶ It leaves out the element of rallying the crowd, and comes in a format that focuses solely on the athletic and technical skills. Teams perform short routines against each other at the same time.⁷⁷ At the conclusion of the round the judges determines a winner and they get a point and the chance to determine the level of skill for the next routine.⁷⁸ STUNT was created intentionally, by USA Cheer, to satisfy the requirements of being a sport for Title IX compliance.⁷⁹

These sports are so often conflated that it is hard to tell what people are talking about when they say “cheerleading.” Typically, when people scoff at the thought of cheerleading being considered a sport, they are referring to sideline cheerleading. Now that the basic differentiations have been made, I will outline the NCAA’s Emerging Sport for Women process and analyze why competitive cheerleading satisfies these requirements just as well as acrobatics and tumbling.

E. Cheerleading’s Primary Purpose

While there has been much confusion about what *cheerleading* really means, its purpose and importance has always been clear to those involved. A

⁷² See generally *NCAA Emerging Sports for Women Process Guide*, NCAA, <http://www.ncaa.org/about/resources/inclusion/ncaa-emerging-sports-women-process-guide> (last visited Jan. 13, 2020).

⁷³ NAT’L COLLEGIATE ACROBATICS & TUMBLING ASS’N, <https://thencata.org/> (last visited Mar. 13, 2020).

⁷⁴ *Meet Format*, *supra* note 71.

⁷⁵ *Position on Cheer Safety & Title IX*, USA CHEER, <https://www.usacheer.org/safety/positionpaper> (last visited Mar. 13, 2020).

⁷⁶ *STUNT the Sport*, USA CHEER, <https://www.usacheer.org/stunt/stunththesport> (last visited Mar. 13, 2020).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

factor of particular importance, that is discussed in the OCR's policy interpretation, is the idea that the court will look at the primary purpose of the sport.⁸⁰ The Women's Sports Foundation, founded by Billie Jean King, argues in a position paper that although cheerleading could be considered a sport in some circumstances, specifically where the primary purpose of the team is to compete against other teams, cheerleading's primary purpose is to entertain and rally audiences at athletic events.⁸¹ The paper goes further to say that although cheerleading "may periodically act like sports teams when they engage in state or regional championship competitions . . . [t]he existence of a competitive opportunity does not qualify the extracurricular activity as an athletic team or sport."⁸²

These statements beg the question: what high school or college cheerleaders they are asking that are saying the primary purpose of their participation in cheerleading is to entertain an audience? As a former high school and college cheerleader, my and most, if not all, of my teammates primary purpose was to engage in the competitions once sideline cheerleading was finally over. I challenge the OCR and the NCAA to take review the antiquated way we view the primary purpose test. Cheerleading may very well be the first of its kind to have evolved from a form of entertainment for the audience to a full-fledged, highly skilled, and dangerous sport. Just because it is the first of its kind, does not mean that it does not deserve recognition. Looking at the primary purpose test through anyone who has been touched by cheerleading in their lives would show that the primary purpose of these athletes' participation is to compete for conference championships, state titles, and national championships.

In sum, if Quinnipiac actually had an established competitive cheer team, that competed under the NCA or UCA in accordance with their guidelines, the court would have had a much more challenging time writing this opinion. Competitive cheer grows and becomes more time consuming, intense, and complex with each coming year. At the time this decision was handed down cheer was not as established or serious as it is now and that plays a large role in the decision.

I urge another school to push for their competitive cheer team to aid them in satisfying Title IX, perhaps a school like the University of Louisville who is consistently a major player at the NCA National Championships. There is no denying that the Louisville cheerleaders are some of the most admired and respected in all of college cheerleading, they would be a perfect team to push

⁸⁰ Monroe, *supra* note 29.

⁸¹ *Cheerleading, Drill Team, Danceline, and Band as Varsity Sports the Foundation Position*, WOMEN'S SPORTS FOUND., <https://www.womenssportsfoundation.org/wp-content/uploads/2016/08/cheerleading-cheerleading-drill-team-danceline-and-band-as-varsity-sports-the-foundation-position-1.pdf> (last visited Mar. 13, 2020).

⁸² *Id.*

the courts in the direction of finally considering competitive cheer a sport for Title IX purposes and recognizing the time and dedication that it takes to be a college cheerleader.

IV. NCAA EMERGING SPORT FOR WOMEN STATUS AND ITS RELATION TO TITLE IX

Recently, acrobatics and tumbling have been added to the short list of emerging sports for women by the NCAA.⁸³ Being considered an emerging sport is a massive step in becoming a varsity intercollegiate sport for Title IX purposes. These developments are primed to force a change and provide more opportunity for women's participation in sports, but still the acrobatics and tumbling need more member schools to be on board. Thirty-three universities, who are a part of the National Collegiate Acrobatics and Tumbling Association, offer participation opportunities in acrobatics and tumbling⁸⁴ and they need sponsorship by at least forty institutions to achieve varsity status.⁸⁵

A sport can remain as an emerging sport for ten years and if at any time the sport is sponsored at the varsity level by at least forty institutions, then it will no longer be an emerging sport.⁸⁶ If the ten years has expired and the applicant sport can demonstrate growth, the committee can choose to allow it to remain on the list as an emerging sport for women.⁸⁷ Naming acrobatics and tumbling as an emerging sport is a major development. Since the establishment of the Emerging Sports for Women program in 1994, five women's sports have received championship status.⁸⁸ Transitioning from an unsponsored sport to an emerging sport to a championship sport can be a long process but I believe competitive cheer can satisfy these requirements and be instrumental in pushing for equal participation opportunities in athletics.

Comparing the low number of support of acrobatics and tumbling from institutions with that of competitive cheer may leave you wondering why it has more support from the NCAA. Between the Universal Cheerleading Association ("UCA") and the National Cheerleading Association ("NCA"), the two leading intercollegiate competitive cheer organizations, hundreds of high school and

⁸³ Gail Dent, *Acrobatics and Tumbling, Women's Wrestling Get Backing to Join NCAA Emerging Sports*, NCAA (June 3, 2019), <http://www.ncaa.org/about/resources/media-center/news/acrobatics-and-tumbling-women-s-wrestling-get-backing-join-ncaa-emerging-sports>.

⁸⁴ See *Member Map*, NAT'L COLLEGIATE ACROBATICS & TUMBLING ASS'N, <https://thencata.org/sports/2019/10/25/Member%20Map.aspx> (last visited Nov. 11, 2020).

⁸⁵ *NCAA Emerging Sports for Women Process Guide*, *supra* note 72.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

college teams are represented at competition.⁸⁹ This is a stark contrast to the thirty-three institutions described above and it is time that competitive cheer be recognized in order to provide equal opportunities for these athletes. Naming competitive cheer as an emerging and then eventual varsity sport not only benefits the athletes, but provides another opportunity for schools to comply with Title IX. Most intercollegiate athletic programs would have to go out of their way to create new acrobatics and tumbling teams, whereas most institutions already have established competitive cheer teams and could much more easily transition those into a varsity sport.

A. Process for Becoming an Emerging Sport for Women

An emerging sport for women is defined as a “sport that: (1) meets the definition of a sport, (2) is accepted and recognized by the NCAA (as approved by its divisional governance processes) as an emerging sport for women, [and] (3) provides additional athletics opportunities to female student-athletes and demonstrates the NCAA’s commitment to gender equity among student-athletes.”⁹⁰ The NCAA provides definitions for both a club sport and a varsity intercollegiate sport:

A varsity intercollegiate sport is a sport that has been accorded that status by the institution’s president or chancellor or committee responsible for intercollegiate athletics policy and satisfies the following conditions:

1. It is a sport that is administered by the department of intercollegiate athletics.
2. It is a sport for which the eligibility of the student-athletes is reviewed and certified by a staff member designated by the institution’s president or chancellor or committee responsible for intercollegiate athletics policy.
3. It is a sport in which qualified participants receive the institution’s official varsity awards.

A club sport is a sport that has been accorded that status by an institution and satisfies the following conditions:

⁸⁹ See 2019 NCA & NDA Collegiate Cheer and Dance Championship, VARSITY TV, <https://tv.varsity.com/results/6401629-2019-nca-nda-collegiate-cheer-and-dance-championship/26131> (last visited Jan. 30, 2020).

⁹⁰ NCAA *Emerging Sports for Women Process Guide*, *supra* note 72.

1. It is a sport that has not been accorded varsity status.
2. It is a sport in which student-athletes compete in intercollegiate athletics.⁹¹

The process for becoming an emerging sport begins by filing an application with the NCAA Emerging Sports for Women program.⁹² The application requires a showing that the applicant sport meets the definition of a sport provided by the guide itself.⁹³ The guide provides that,

[a] sport shall: [1] Be defined as an institutional activity, sponsored at the varsity or club level, involving physical exertion for the purpose of competition against teams or individuals within an intercollegiate competition structure. [2] Operate under standardized rules with rating/scoring systems ratified by at least one official regulatory agency and/or governing body.⁹⁴

Next the application must demonstrate that at least twenty institutions sponsor the sport at the varsity or club level, at the time of filing.⁹⁵ The applicant must provide at least ten commitments from other NCAA institutions who are currently planning on sponsoring the sport at the club or varsity level.⁹⁶ Additionally, a list of suggested regulations to be made by the NCAA should be included, as well as any other evidence the applicant may have which will support the sports viability as a NCAA level intercollegiate program and provide robust opportunities for women in sport.⁹⁷

B. Application of Process to Competitive Cheerleading

Competitive cheer has the ability to satisfy the required elements to be an emerging sport for women. Competitive cheerleading fits the definition of sport as provided by the guide. Even competitive cheer powerhouses such as the University of Louisville, whose coed team has won eighteen NCA National Championships and all-girl team has won fourteen NCA National Championship, does not sponsor cheerleading at the varsity level.⁹⁸ Information

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ NCAA Emerging Sports for Women Process Guide, *supra* note 72.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See *Cheerleaders*, U. OF LOUISVILLE ATHLETICS, https://gocards.com/sports/2015/3/26/GEN_20140101181.aspx (last visited Mar. 13, 2020).

for cheerleading is found within their “spirit” section on the athletics website, completely separate from the varsity sports.⁹⁹ But, as per the guide, varsity status is not required.¹⁰⁰ It appears that most, if not all, institutions which have cheerleaders participating in NCA or UCA competitions would satisfy the requirement to be a club sport, allowing cheerleading to pass the first step.

The number of institutions required would easily be satisfied because nearly every state in the country has competitive cheer programs already in existence.¹⁰¹ Because of the high number of schools who have club cheerleading teams already, it would be likely that at least ten more would pledge to sponsor the sport at the very least the club level. The list of the regulations to be provided to the NCAA would consist of the comprehensive rule books that both the UCA and NCA already have.¹⁰² College cheerleading needs no further evidence than their existing, well-established governing bodies.¹⁰³ These current competitions require that the schools that participate in them are subject to their standardized rules and systems of scoring.

Since college cheerleading has not yet been recognized as an emerging sport for women, we have to wonder why. Other emerging sports include: equestrian, sand volleyball, triathlon, and women’s rugby.¹⁰⁴ When the analysis is as clear as it is in this case, what is holding the development back? Is it a lack of effort on the part of schools to apply for this status? Or perhaps that potentially those in the sport have come to the conclusion that nothing will be accomplished when attempting to elevate their status because of the stigma that surrounds cheerleading as a whole? While I do not have the answer to this question, I do challenge those who have a stagnant mindset of what they believe cheerleading is, to consider the sacrifices and effort these athletes make and still get no recognition from the NCAA or their institutions.

CONCLUSION

It is clear that schools and the unrepresented gender can benefit from more opportunities for Title IX compliance. The argument that women would be

⁹⁹ *Id.*

¹⁰⁰ *NCAA Emerging Sports for Women Process Guide*, *supra* note 72.

¹⁰¹ *US College Cheerleading Programs by State*, FIERCE BD., <https://www.fierceboard.com/wiki/us-college-cheerleading-programs-by-state/> (last visited Jan. 30, 2020).

¹⁰² *See Rules & Scoring*, *supra* note 60; *see also 2019-2020 College Cheer Team Rules and Regulations*, VARSITY, https://www.varsity.com/uca/wp-content/uploads/2019/11/20_uca_championships_college_rules.pdf (last visited Mar. 13, 2020).

¹⁰³ *See Rules & Scoring*, *supra* note 60; *see also 2019-2020 College Cheer Team Rules and Regulations*, VARSITY, https://www.varsity.com/uca/wp-content/uploads/2019/11/20_uca_championships_college_rules.pdf (last visited Mar. 13, 2020).

¹⁰⁴ *Resources & Partners: NCAA Emerging Sport Initiative*, U.S. WOMEN’S RUGBY FOUND., <https://www.uswrf.org/resources-ncaa-emerging-sport> (last visited Mar. 13, 2020).

disserved by competitive cheerleading satisfying Title IX is consistent with the outdated notion that cheerleading has no other purpose than to serve as entertainment for fans. Competitive cheerleaders who also have sideline cheer obligations are real athletes and most, if not all, find far more purpose in preparing and competing than they do cheering for other sports. There should be no hesitation to allow a sport, which has been around for as long as cheerleading has, to be left behind while sports in their infancy, such as acrobatics and tumbling, are being fast-tracked to varsity status.

In order to achieve sport recognition through case law, we need one of the many institutions who send their cheerleaders to NCA or UCA competitions each year to fight for Title IX recognition. These cheerleaders compete against teams of comparable gender make-up and size, they abide by their respective rulebooks and are solely there to compete for a national championship. As a cheerleader who had the opportunity to compete at NCA in Daytona Beach, Florida, we supported our home teams through sideline cheerleading and attendance at events in the community but make no mistake, we were all there for one purpose and our three-times weekly practices were dedicated to Daytona preparation.

While the Netflix documentary, *CHEER*, is timely and has sparked interest and garnered respect for collegiate cheerleaders across the country, these programs were not established overnight. For example, Navarro has been winning national championships for years. Programs like Navarro have spent years and even decades cultivating a system that attracts the best athletes around the country; these individuals deserve the respect of finally being considered a sport by the NCAA and schools should benefit by allowing these athletes to be used to help meet Title IX standards.