The Twelve-Year-Old Girl's Lawsuit That Changed America: The Continuing Impact of Now v. Little League Baseball, Inc. at 40

Douglas E. Abrams

University of Missouri School of Law, abramsD@missouri.edu

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THE TWELVE-YEAR-OLD GIRL'S LAWSUIT THAT CHANGED AMERICA: THE CONTINUING IMPACT OF NOW V. LITTLE LEAGUE BASEBALL, INC. AT 40

Douglas E. Abrams

ABSTRACT

In 1972, Little League's national office forced 12-year-old Maria Pepe off her Hoboken (N.J.) team because "[g]irls are not eligible." The New Jersey Division on Civil Rights sustained her gender discrimination claim in 1973, and the courts upheld the administrative decision a year later.

National reaction to Maria Pepe's courageous insistence on gender equity helped sustain the evolution in gender roles that had accelerated since the Women's Movement of the 1960s. Her landmark legal action also likely influenced the Supreme Court's gradual movement toward intermediate scrutiny of gender discrimination claims; the 1975 federal regulations that assured Title IX of the Education Amendments of 1972 a prominent role in elementary, secondary and higher education; and children's socialization concerning gender roles in our society.

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INTRODUCTION

Maria Pepe's entire Little League baseball career in Hoboken, New Jersey lasted only three games, but her personal courage helped shape
gender discrimination law and influence public attitudes about the roles of girls and women in American life. When twelve-year-old Maria donned her uniform and pitched briefly in 1972, Little League was played worldwide by about 2.25 million boys—and one girl.¹ Within two years, her victory in the New Jersey Supreme Court would recalibrate the balance and help advance the ongoing national dialog about gender equity in ways that still resonate today.

When irate parents complained about Maria’s brief appearance on the mound, Little League’s national office moved swiftly to dismiss her from the team. Determined to preserve Little League as an all-boys program, the national office immediately demanded that its Hoboken affiliate remove her from the roster and revoked the charter held by all ten Hoboken Little League teams.² By that time, charter revocation had become Little League’s standard reaction to isolated efforts by girls to overcome the ironclad gender barrier.³

With the Pepe family’s approval, the National Organization for Women (NOW) filed a gender discrimination claim on Maria’s behalf with the New Jersey Division on Civil Rights. NOW alleged that by excluding Maria because she was female, without regard for her abilities, Little League violated the state’s Law Against Discrimination.⁴

National media attention grew when the Division’s hearing officer ruled for Maria in 1973 and the full Division adopted the ruling.⁵ Little League’s national office sought review in the Appellate Division of the New Jersey Superior Court, which upheld the agency’s final decision in a full written opinion.⁶ The New Jersey Supreme Court summarily

² JAMES A. MICHENER, SPORTS IN AMERICA 131 (1976).
³ See, e.g., King v. Little League Baseball, Inc., 505 F.2d 264, 266 (6th Cir. 1974) (Little’s League’s national office threatened to immediately revoke the Ypsilanti, Michigan Little League program’s charter for placing a twelve-year-old girl on a team’s roster); 120 CONG. REC. 36263-64 (1974) (remarks of Rep. Martha Griffiths) (“Last spring, Little League officials benched thousands of boys to avoid letting a few girls play.”).
⁵ See infra notes 58–88 and accompanying text.
⁶ See infra notes 89–95 and accompanying text.
affirmed the lower court’s decision in 1974,7 and more than 30,000 girls nationwide played on Little League teams the next year.8 With full public support and encouragement from the White House ever since,9 about ten million girls have played in the Little League10 and millions of other young girls have played a variety of other sports with boys,11 particularly in the pre-teen years when “there are only negligible physiological differences between the two sexes.”12

Maria Pepe never broke any professional sports records and never won legions of fans for exploits on the field. Forty years after the hearing examiner’s ruling reached the headlines, however, the legacy of her legal victory endures because of its influence on American society. Her legal battle coincided with the Women’s Movement that energized the 1960s and with the early evolution of Title IX of the Education Amendments of

7 See infra note 96 and accompanying text.
10 Melissa Segura, Let’s Just Play Ball, SPORTS ILLUSTRATED, May 7, 2012, at 54.
12 GLENN M. WONG, ESSENTIALS OF SPORTS LAW 326 (3d ed. 2002).
Title IX would soon revolutionize gender roles in elementary, secondary, and higher education, but that outcome remained uncertain in 1972 because Congress left the mandate’s reach to administrative interpretation.

The Entertainment and Sports Programming Network (ESPN), the preeminent all-sports television network, ranks Maria Pepe’s legal victory as number five on its list of the top ten all-time “greatest U.S. women’s sports moments.” Ranking ahead of Maria in ESPN’s top ten are: Title IX’s enactment itself, tennis great Billie Jean King’s victory over former Wimbledon champion Bobby Riggs in the 1973 “Battle of the Sexes,” the U.S. Women’s soccer team’s 1999 World Cup title, and African-American runner Wilma Rudolph’s three-gold-medal performance in the 1960 Olympics in the early years of the Civil Rights Movement. Ranking below Maria on the list include legendary aviator Amelia Earhart (number 7) and Babe Didrikson Zaharias (number 9), who is perhaps the greatest all-around female athlete in the nation’s history. Other female sports legends who failed to reach the top ten for their contributions to women’s sports include two Olympic gold medalists: sprinter Florence Griffith Joyner and gymnast Mary Lou Retton.

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13 20 U.S.C. §§ 1681–88 (2003); id. § 1681(a) (“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 . . . .”).


19 See, e.g., DORCAS SUSAN BUTT, PSYCHOLOGY OF SPORT: THE BEHAVIOR, MOTIVATION, PERSONALITY, AND PERFORMANCE OF ATHLETES 76 (1976) (“[U]sually considered the outstanding female athlete of the [20th] century”); RUSSELL FREEDMAN, BABE DIDRIKSON ZAHARIAS: THE MAKING OF A CHAMPION 10 (1999) (“In the eyes of many, she was and is the greatest woman athlete of all time”); GENE SCHOOR, BABE DIDRIKSON: THE WORLD’S GREATEST WOMEN ATHLETE 1 (1978).

The impact of Maria Pepe’s legal victory, however, transcends sports and extends throughout the national culture. In early 2012, America Online (AOL) and the Public Broadcasting System (PBS) jointly launched MAKERS: Women Who Make America, a digital video and broadcast initiative that “tells the story of . . . exceptional women . . . whose pioneering contributions continue to shape the world in which we live.” Paula A. Kerger, President and CEO of PBS, explained that, “[b]y spotlighting some of the most inspirational women in our nation’s history, MAKERS will tell the comprehensive story of how women have advanced in America during the last half century.” The first women interviewed and profiled for “transform[ing] a culture” include Carol Burnett, Hillary Rodham Clinton, Geraldine Ferraro, Justice Sandra Day O’Connor, Condoleezza Rice, Phyllis Schlafly, Gloria Steinem, Barbara Walters—and Maria Pepe.

As the ESPN, AOL, and PBS recognitions acknowledge, Maria Pepe’s successful effort to vindicate her civil rights was not only about girls her age, not only about Little League, and indeed not only about sports. The victory helped shape social attitudes, both in the “patently chauvinistic” pre-Title IX sports world, and in other avenues of everyday American life.

Part II of this Article describes Maria’s efforts to play organized baseball with her childhood friends and the gender stereotypes that supported the institutional roadblocks that Little League’s national office placed in her way. Part III discusses the administrative and judicial proceedings that resulted in complete victory for Maria when the decision makers rejected traditional gender stereotypes. Part IV at-Little-League-World-Series-First-girl-ever-to-play-Little-League-gets-chance-at-closure-30-years-after-historic-decision (discussing Maria’s appearance on the Home Box Office (HBO) documentary, “Barrier Breakers in Women’s Sports”).

22 Id.
23 Id.
24 Id.
discusses the legal and social legacy fashioned by Maria’s insistence on gender equity, a legacy that has stood the test of time.

This legacy was not lost on Little League’s national office in 2004, when Maria accepted the office’s invitation to throw out the ceremonial first pitch at the Little League World Series in Williamsport, Pennsylvania. By that time, Little League had come full circle. The invitation, the national office explained, honored Maria “for helping to blaze the way for millions of girls—not only in Little League, but in other aspects of life for which girls and women were previously thought to be unsuitable.”26 “Many people take an entire lifetime to make an impact on the world, and Maria Pepe did that as a 12-year-old.”27

II. “MARIA PEPE KICKED OFF TEAM”

In the Supreme Court and the lower courts alike, landmark decisions frequently begin with one person’s resistance to a perceived inequity or injustice that might otherwise pass unremedied.28 In 1971, just months before Maria Pepe’s brief Little League appearance, one commentator cited the inequities and injustice stemming from “[s]tereotypes, prejudices, and misconceptions [that] have served to curtail the participation of females in vigorous, competitive physical activities for too many years.”29 The commentator concluded that “[f]or most females, the avoidance of all participation in physical activities becomes the easiest route to follow.”30

Maria and her family, however, turned away from the easiest route. Like the traveler who came upon diverging roads in Robert Frost’s celebrated poem, “The Road Not Taken,” Maria took the road “less traveled by / And that has made all the difference.”31

30 Id. at 311.
Maria’s challenge to Little League’s gender barrier began on the sandlots of Hoboken, New Jersey. It seems fitting that Hoboken, generally considered baseball’s birthplace, produced a legal precedent that assured young girls not only the opportunity to play the national pastime with boys, but also ultimately greater rights to participate more fully in national life.

Shortly before the Hoboken Little League’s spring tryouts in 1972, a group of twelve-year-old boys approached Jimmy Farina, coach of the team sponsored by the Young Democrats. Maria, they said, batted and fielded as well as many of them, and better than some. The boys had reason to know because she had played in their neighborhood sandlot choose-up games ever since they were five or six years old.

Maria beat out some boys in pre-season tryouts and earned a spot in the Young Democrats’ starting lineup. “Maria was exceptional,” Farina recalled more than thirty years later, “[i]n fact, she was better than most of the boys.” When she pitched in the season’s opening game, local families paid attention—indeed, perhaps too much attention because some parents reported her to the Little League’s national office in Williamsport, Pennsylvania. The media speculated that these adults may have feared that publicity about Maria would deflect attention from their sons. Worse yet, the adults may have feared that a female pitcher might strike out boys and help defeat them on the field.

The complaining parents found receptive ears in Little League’s national office. When a girl in Corning, New York had tried to play in 1950, Little League amended its national regulations to specify that “[g]irls are not eligible.” When the national office learned about Maria Pepe, the office revoked recognition of Hoboken’s entire ten-team

33 RIVERA, supra note 1, at 221; Pepe, supra note 8.
35 Maria Pepe Sees Fruits of Playing in 1971, supra note 8.
36 RIVERA, supra note 1, at 224.
Rather than sideline about two hundred local boys, Maria discussed the standoff with her parents, bowed to official demands, and turned in her uniform.

The press initially provided little sympathy to the excluded twelve-year-old. "I still remember the headlines—'Maria Pepe Kicked Off Team,'" Maria recalled years later, "[t]he hardest part was when they took my uniform away."

III. THE LEGAL PROCEEDINGS

A. THE FEDERAL LEGAL LANDSCAPE

Little League's national office believed, with much reason, that its boys-only regulation had federal law on its side. When he proclaimed National Little League Baseball Week in 1961, President John F. Kennedy expressed the prevailing national perception: "Little Leagues in communities throughout the Nation have made it possible for thousands of young boys to take an active part in our national game of baseball." In 1964, Congress confirmed this perception by unanimously granting Little League, Inc. a federal charter to "assist boys in developing qualities of citizenship, sportsmanship and manhood." No lawmaker raised any question or concern about the regulation that Little League's national office had strictly enforced for nearly a decade and a half.

Nor was relief available to Maria Pepe under Title IX of the Education Amendments of 1972, which President Richard Nixon signed into law on June 23, only a few weeks after Maria left her Little League team and well before she won final vindication in her legal challenge. The Title prohibits gender discrimination in "any education program or activity receiving Federal financial assistance" in elementary or secondary schools or higher education, but without specifying athletics or defining its operative terms. For one thing, Little League was not an

39 Michener, supra note 2, at 131; Mixon, supra note 37.
40 Rivera, supra note 1, at 228–29; Little League World Series Opening Ceremony to Mark 30th Anniversary of Decision Allowing Girls to Play, supra note 26; Mixon, supra note 37; Pepe, supra note 8.
"educational program or activity" and received no federal funds. For another, the former U.S. Department of Health, Education and Welfare (HEW)\textsuperscript{45} did not promulgate regulations confirming that Title IX’s broad mandate reached athletic programs at all until 1975.\textsuperscript{46}

As a private corporation, Little League also likely operated unconstrained by the Equal Protection Clause of the Fourteenth Amendment.\textsuperscript{47} Despite the organization’s federal charter, federal courts had dismissed at least two gender discrimination challenges to Little League’s boys-only regulation for lack of state action.\textsuperscript{48} By the early 1970s, the Warren Court had sometimes strained to find exceptions to the state action doctrine and open federal courthouse doors to racial discrimination claims.\textsuperscript{49} The Court, however, had not shown such inclination in cases raising gender discrimination claims, which received only rational basis scrutiny at that time.\textsuperscript{50}

Even if Maria Pepe could have surmounted the state action barrier, Little League’s boys-only policy appeared rational under perceptions of gender roles that the Supreme Court stated unanimously in\textit{Muller v. Oregon} in 1908, and had periodically reaffirmed without disavowal ever since.\textsuperscript{51} Based on “the inherent difference between the two sexes,”\textsuperscript{52}\textit{Muller}’s statement provided grounds for rejecting challenges by females who sought to play competitive athletics with males:

\textsuperscript{45} In 1979, Congress split HEW into the Department of Health and Human Services and the Department of Education. See \textit{Department of Education Organization Act of 1979}, 20 U.S.C. §§ 3401–3510 (2006) (“All educational functions were transferred to [the Department of Education], and thus . . . [it is] the administrative agency charged with administering Title IX.”); \textit{see also McCormick v. Sch. Dist. of Mamaroneck}, 370 F.3d 275, 287 (2d Cir. 2004).

\textsuperscript{46} \textit{See infra} note 128.


\textsuperscript{49} \textit{See, e.g.}, Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).

\textsuperscript{50} \textit{See, e.g.}, Hoyt v. Florida, 368 U.S. 57 (1961), discussed \textit{infra} note 54 and accompanying text.

\textsuperscript{51} \textit{See, e.g.}, \textit{West Coast Hotel Co. v. Parrish}, 300 U.S. 379, 394–95 (1937) (discussing “the employment of women in whose protection the State has a special interest”); \textit{Miller v. Wilson}, 236 U.S. 373, 380–81 (1915).

\textsuperscript{52} \textit{Muller v. Oregon}, 208 U.S. 412, 423 (1908) (upholding state statute that regulated maximum hours for women workers).
That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. As healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race. Woman has always been dependent upon man.

By the 1960s, the Supreme Court had inched away from Muller's approach and toward constitutionally-mandated gender equity, but only gingerly. In Hoyt v. Florida in 1961, for example, the convicted homicide defendant argued that she had been denied her Fourteenth Amendment right to trial by a jury of her peers because the state permitted women, but not men, to avoid jury duty by simply not registering for it. Justice John M. Harlan's majority opinion denied relief on the ground that the state had acted rationally in light of women's "special responsibilities": "Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life."

A few months before Maria Pepe left her Little League team, the Supreme Court had begun to redirect the constitutional course, but only tentatively. In Reed v. Reed in 1971, the Court held that to pass constitutional muster, gender-based classifications must be "reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." The standard seemed to have some teeth, but the Court did not apply intermediate scrutiny to constitutionally-grounded gender discrimination claims until 1976, two

53 Id. at 421; see also, e.g., Bradwell v. Illinois, 83 U.S. 130, 141 (1873) (Bradley, Swayne, and Field, JJ., concurring) (upholding state's denial of a law license to a woman) ("Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it for many of the occupations of civil life . . . . The paramount destiny and mission of woman are to fulfill [sic] the noble and benign offices of wife and mother. This is the law of the Creator.").
54 Hoyt, 368 U.S. at 58.
55 Id. at 61-62.
56 404 U.S. 71, 76 (1971) (citation omitted); see also Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (plurality opinion) ("[W]hat differentiates sex from such non-suspect statuses as intelligence or physical disability . . . is that the sex characteristic frequently bears no relation to ability to perform or contribute to society.").
years after Maria Pepe won her state-law victory in the New Jersey Supreme Court. 57

B. THE NEW JERSEY DIVISION ON CIVIL RIGHTS

With federal law seemingly unavailing, NOW, on behalf of Maria Pepe, filed a claim before the New Jersey Division on Civil Rights. NOW invoked the state’s Law Against Discrimination, which prohibited gender discrimination in public accommodations. 58 The gist of the claim was that the Law reached the Hoboken Little League because it used public parks and fields. 59

By the time Maria filed her claim, the Women’s Movement of the 1960s had sown the seeds of change by “creat[ing] new attitudes about and toward women” and their place in American society. 60 Old attitudes, however, sometimes die hard. As Little League’s arguments to the Division showed, the decision to consign Maria and legions of other girls to the sidelines smacked of gender stereotyping that, according to one sociologist at the time, had “clearly specified sports as a male province. The intrusion of women [was] seen as frivolous, distracting, or downright annoying . . . .” 61

At the extensive five-day hearing before the Division’s hearing examiner, Sylvia Pressler, Little League’s lead witness was Dr. Creighton Hale, a physiologist who served as the national organization’s executive vice president and director of research. 62 Hale and other Little League experts testified to several things. First, they testified that in “comparative bone strength, muscle strength and reaction time girls were inferior to boys and that therefore their potentiality for injury during a baseball game with boys was enhanced above the hazard of injury of boys.” 63 Next, they testified that “children of each sex need occasional ‘islands of privateness’ during which they can be alone with others of their own sex.” 64 They also suggested that enrolling girls might threaten their personal privacy because public baseball fields generally lacked

58 See supra note 4 and accompanying text.
59 TERRY ORLICK & CAL BOTTERILL, EVERY KID CAN WIN 120 (1975).
60 See, e.g., WOOLUM, supra note 25, at 18.
63 Id.
64 Id. at 36.
nearby girls' restrooms, and because male coaches might have to administer first aid to injured girls.\textsuperscript{65} Finally, the witnesses testified that focusing entirely on boys was a prudent use of limited Little League resources because many boys would continue playing baseball into their teen years while most girls would not.\textsuperscript{66}

On November 7, 1973, hearing officer Pressler entered "detailed findings of fact [that] were consistently in accord with the conclusions of the State's experts on all material points of disagreement on the issues of safety and skill."\textsuperscript{67} Calling Maria a "very, very courageous girl,"\textsuperscript{68} the hearing officer stated that "[t]he institution of Little League Baseball is as American as the hot dog and apple pie," and found "no reason why that part of Americana should be withheld from girls."\textsuperscript{69} The Director of the Division on Civil Rights adopted the hearing examiner's report, findings, and recommendations and ordered the state's Little League baseball programs to begin enrolling eight- to twelve-year-old boys and girls on an equal basis.\textsuperscript{70}

The agency decision created a firestorm fueled by anger and protest. Little League's national office roundly condemned Pressler's ruling as "conceived in vindictive and prejudicial fashion of the worst kind."\textsuperscript{71} National Little League officials admitted that the ruling "totally surprised" them because it was "always assumed [that] baseball was a boys' sport . . . and [that most people] accepted baseball as a male prerogative of some sort."\textsuperscript{72}

The \textit{New York Times} reported that the ruling immediately "traumatized" most local Little League programs in New Jersey.\textsuperscript{73} "Is this the American way?" cried Philip J. DeMarco, chair of the hastily-assembled Committee to Save Little League in New Jersey, who charged

\textsuperscript{65} \textit{Id.} at 38.
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.} at 36.
\textsuperscript{68} Grossfeld, \textit{supra} note 34 (quoting hearing examiner Pressler).
\textsuperscript{69} \textit{Id.}; Joan Cook, \textit{Jersey Bids Little League Let Girls Play on Teams}, \textit{N.Y. Times}, Nov. 8, 1973, at 51; see also \textit{Rainer Martens, Joy and Sadness in Children's Sports} 158 (1978) ("In essence I am satisfied that children between the ages of eight and twelve perform differently on an individual basis, not a sexual basis. Just as Little League protects weak boys, it can protect weak girls.") (quoting hearing examiner Pressler); Bruce Weber, \textit{Sylvia Pressler, 75: Opened Little League}, \textit{N.Y. Times}, Feb. 17, 2010, at B18.
\textsuperscript{70} 318 A.2d at 35.
\textsuperscript{73} \textit{Id.}
that "our rights have been eroded." Another New Jersey man complained that Little League was "going right down the sewer" by allowing girls to play alongside boys.

Most of New Jersey's two thousand Little League teams suspended play altogether rather than enroll girls, and a few local Little League organizations reportedly disbanded. Enraged citizens descended on the Governor's office, and about 800 demonstrators—carrying petitions with more than 50,000 signatures—marched on the State Capitol to lobby legislators to amend the state's Law Against Discrimination to permit exclusion of girls from the baseball field. After heated debate, the State Assembly defeated the exclusion bill, but only by three votes.

Maria Pepe also won considerable support as "[t]he media focused a bright spotlight on the debate and the controversy sparked an interest in Pepe by various organizations." The New York Yankees, for example, honored the Pepe family at Yankee Stadium and made Maria a "Yankee For a Day." She appeared on two popular television programs that reached national audiences, "Good Morning America" and the "To Tell the Truth" panel show.

As controversy grew, however, Maria and her family continued to endure local insults. Adults on the street near their ten-story apartment

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74 Id.
76 Treaster, supra note 72.
77 ORLICK & BOTTERILL, supra note 59, at 120.
78 RIVERA, supra note 1, at 236.
79 Id.
81 RIVERA, supra note 1, at 231–34; Read, Girl Who Broke Baseball's Gender Barrier Still a Gamer, supra note 41; FDU MAG, supra note 80.
82 Grossfeld, supra note 34; see also RIVERA, supra note 1, at 235–36.
building would taunt her as a “tomboy” who should have stayed home to play with dolls.83 Other neighbors said that she would have been better off learning how to sew and cook rather than play baseball.84 One man even yelled at her in the apartment’s elevator for “causing all this trouble in town.”

These were unsettling times for the Pepes, who likely had never set foot in a lawyer’s office or a courthouse. They were not public figures accustomed to the national attention generated by the maelstrom of high-profile legal proceedings, but rather a working class family whose daughter wanted only to continue playing baseball with her friends. Maria recalls that her parents “stuck with [her] when [she] wanted to play and through all the questioning when [she] challenged the ruling.”86 She remembers that her father, a longshoreman, said “[t]his is what she wants to do.”87 Her mother “told people, ‘[y]ou mind your own business and I’ll raise my child any way I want to.’”88

C. THE NEW JERSEY COURTS

Unwilling to yield to the final administrative determination, Little League’s national office sought review in the Appellate Division of New Jersey’s Superior Court. The organization’s lawyer argued that Little League teaches boys “physical strength and courage,” and that “we [don’t] ask for these in women.”89 Similar arguments had recently convinced at least one trial judge in Connecticut.90

In a decision announced on March 29, 1974, the Appellate Division found substantial evidence in the record to support the findings of the Division of Civil Rights, which the court affirmed in all respects.91 The

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83 Rivera, supra note 1, at 224; Grossfeld, supra note 34.
84 Rivera, supra note 1, at 225.
85 Read, Girl Who Broke Baseball’s Gender Barrier Still a Gamer, supra note 41.
86 Hague, supra note 20.
87 Grossfeld, supra note 34.
88 Id.
court reviewed the various arguments that Little League had raised in the administrative hearing and rejected them as having “no basis”;92 “border[ing] on the frivolous”;93 and grounded in “stereotyped conceptions . . . discordant with current rational views as to the needs, capabilities and aspirations of the female, child or woman.”94 Because “[t]he record evidences the fact that substantial numbers of young girls want to partake in [baseball] and are qualified to do so competitively with boys of the same age,” the court affirmed the administrative order that the state’s Little League teams pursue a gender-neutral enrollment policy.95

Little League’s national office appealed to the New Jersey Supreme Court, which summarily affirmed the lower court decision on October 15, 1974.96 The summary affirmance created a precedent by rejecting Little League’s arguments without discussion.97 Among the more than 30,000 girls nationwide who played on Little League teams the next year,98 one nine-year-old New Jersey girl summed up the national turmoil this way: “[I]t isn’t the boys who don’t want me to play and [Little League] is for kids. It’s only the grown-ups who made the mess. Well, when I grow up I won’t be like them because I know how it feels.”99

(N.J. 1974); see also id. at 38–41 (rejecting Little League’s legal contentions that: It was not a “place of public accommodation” within the meaning of the state Law Against Discrimination; that Little League fell within exclusions articulated in the law; and that application of the state law to Little League was inconsistent with the federal Constitution’s Supremacy Clause and was preempted by the organization’s federal charter, which restricted the organization to developing “qualities of citizenship, sportsmanship, and manhood” in “boys”).

92 Id. at 39.
93 Id. at 38.
94 Id. at 38–39.
95 Id. at 39.
98 Maria Pepe Sees Fruits of Playing in 1971, supra note 8.
99 ORLICK & BOTTERILL, supra note 59, at 121.
IV. THE NATIONAL LEGACY OF MARIA PEPE’S VICTORY

A. IMMEDIATE LEGAL CHANGE

The outcome of Maria Pepe’s lawsuit bound only Little League teams in New Jersey, but the implications for Little League teams nationwide were immediately apparent. Shortly before the New Jersey Supreme Court entered its summary affirmance, Little League’s national office announced that rather than defend gender discrimination lawsuits pending in more than a dozen other states, it would “defer to the changing social climate” and begin enrolling girls.

On December 26, 1974, barely two months after the New Jersey Supreme Court’s summary affirmance, Congress passed legislation amending the federal charter that the lawmakers had granted Little League a decade earlier. The amendment replaced recitation of “boys” and “manhood” with gender-neutral expressions that recite a national purpose to “help and voluntarily assist young people in developing qualities of citizenship and sportsmanship.” The amendment passed on voice votes without articulated opposition in either House, and with the support of Little League’s national office, which had fought “tooth and nail” to exclude Maria Pepe and other girls only months earlier. The brief House debate highlighted Maria’s successful lawsuit.

The Little League charter amendment bill was signed into law by President Gerald R. Ford, a former All-Big Ten football player at the University of Michigan who in 1935 turned down professional contract offers from the Green Bay Packers and the Detroit Lions and instead enrolled at Yale Law School. First Lady Betty Ford had voiced strong

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100 Nat’l Org. for Women, 318 A.2d at 41.
103 Id.; 36 U.S.C. § 130502(2) (2003); see also Amateur Sports Act of 1978, 36 U.S.C. § 220522(a)(8) (2003) (“An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . provides an equal opportunity . . . to participate in amateur athletic competition, without discrimination on the basis of . . . sex . . .”).
105 Id. at 36264 (remarks of Rep. Martha Griffiths).
public support for the ultimately unratified Equal Rights Amendment (ERA)\textsuperscript{108} and the President himself had signed a proclamation supporting the ERA.\textsuperscript{109} He likely understood the physical and emotional value of sports to boys and girls alike because in the White House he still believed that “there are few things more important to a country’s growth and well-being than competitive athletics.”\textsuperscript{110}

\section*{B. Lasting Legal Change}

In law as elsewhere, linking cause and effect can be an imprecise art. It is not fanciful to suggest, however, that the successful lawsuit of a twelve-year-old girl, who simply wanted a prominent national corporation to let her play with her friends, helped influence public attitudes that sustained the accelerating evolution in gender discrimination law. The Public Broadcasting System (PBS) and America Online (AOL) recognized this continuing influence in 2012, when they included Maria Pepe in the first group of women they profiled for “transform[ing] a culture.”\textsuperscript{111} \textit{NOW v. Little League Inc.} likely influenced not only the Supreme Court’s gradual movement toward intermediate scrutiny of gender discrimination claims a few years later, but also the 1975 HEW decision to adopt administrative regulations that assured Title IX a prominent role in elementary, secondary and higher education, both in the classroom and on the athletic field.

\subsection*{1. The Supreme Court}

Nearly a century ago, Professor Charles Warren observed that the Supreme Court

\begin{quote}

[I]s not an organism disassociated from the conditions and history of the times in which it exists. It does not formulate and deliver its opinions in a legal vacuum. Its Judges are not abstract and impersonal oracles, but are men whose views are . . . affected by inheritance, education and environment . . . .\textsuperscript{112}

\end{quote}

\textsuperscript{108} See, e.g., Enid Nemy, \textit{A First Lady Who Struggled and Inspired}, N.Y. TIMES, July 9, 2011, at 1. The proposed amendment stated, “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”

\textsuperscript{109} FORD, supra note 107, at 140.


\textsuperscript{111} See BUS. WIRE, supra note 21.

\textsuperscript{112} 1. CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 2 (1923).
More than four decades later, Professor Archibald Cox concurred:

"The constitutional litigation of any era reflects the aspirations and divisions of the contemporary society... [T]he roots of [the Court's] decisions must be already in the nation. The aspirations voiced by the Court must be those the community is willing not only to avow but in the end to live by."

More recently, Justice Stephen Breyer sounded the same theme: "[A]though judges are guaranteed life tenure in order to withstand the force of public opinion, they cannot help but be aware of the public mood."

Maria Pepe's well-publicized victory—with images of a twelve-year-old seeking equality in children's games—likely helped influence the contemporary conditions, aspirations, and moods about gender roles that professors Warren and Cox and Justice Breyer pinpointed as reliable indicators of the national pulse.

Little League spurned Maria at a time of social ferment about the roles of women in American society. After women had worked with distinction in war industries and other domestic employment while men fought overseas during World War II, the nation resumed traditional gender roles in the 1950s before the Women's Movement of the 1960s led the nation closer to gender equity.

After barely a decade, Congress's unanimous amendment of Little League's charter in 1974 reflected changing social attitudes about gender roles. So too did the New York Yankees' public embrace of Maria Pepe and her family a year earlier. One of the nation's most staid sports

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115 See, e.g., Emily Yellin, Our Mothers' War: American Women at Home and at the Front During World War II (2004); see also, e.g., Doris Kearns Goodwin, No Ordinary Time: Franklin and Eleanor Roosevelt: The Home Front in World War II 364–65, 368–70, 413–14, 622–24 (1994).


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franchises, historically protective of its corporate image,\(^\text{118}\) the Yankees undoubtedly measured the national mood before naming the twelve-year-old girl an honorary “Yankee for a Day” and honoring her at Yankee Stadium. The Yankees would almost certainly not have endorsed gender equity so publicly even a decade earlier, when they and other Major League Baseball teams still regularly conducted “Ladies Days”—venerable promotions that sought to boost attendance at designated games by admitting girls and women (but not boys and men) to the ballpark free or for a reduced price.\(^\text{119}\)

2. Title IX Regulations and Enforcement

The newly-enacted Title IX was not a direct factor in the administrative and judicial resolution of Maria Pepe’s gender discrimination claim because Little League was not an “educational program or activity,” but a private corporation that received no federal funding.\(^\text{120}\) While the media was chronicling the progress of twelve-year-old Maria Pepe’s lawsuit challenging gender discrimination in sports, however, Congress in 1974 instructed the Department of Health, Education and Welfare (HEW) to draft and propose administrative regulations that would implement the Title’s thirty-seven-word mandate to emphasize gender equity in the classroom and in sports alike.\(^\text{121}\)

The likely influence of Maria Pepe’s publicized legal action on the deliberative processes of Congress and the federal agency thus continues to hold profound import in areas of national life well beyond sports. In 2012, *Sports Illustrated* was right that “Title IX’s impact has reached well beyond the playing field, forever changing the role of women in


\(^{121}\) *See infra* note 128 and accompanying text.
society." Indeed, Title IX has become almost synonymous with gender equity generally in the past four decades. As a national symbol in the public mind, the federal mandate has achieved a social impact well beyond the four corners of its statutory language and implementing regulations, which applied only to academic programs in elementary, secondary, and higher education.

As Maria Pepe's legal action unfolded, Title IX's ultimate contours were by no means assured, or even fully anticipated by its enactors. Pulitzer Prize-winning writer James A. Michener reported that the terse 1972 legislation "went unnoticed at the time and caused no comment either in the press or the athletic establishment . . . ." On the one hand, "Congress enacted Title IX in response to its finding—after extensive hearings held in 1970 by the House Special Subcommittee on Education—of pervasive discrimination against women with respect to educational opportunities." But "[t]he legislative history on the application of Title IX to athletic programs is scanty," and offered only minimal direction for administrative implementation. No committee report accompanied the final bill that included Title IX, and Congress apparently discussed the legislation's potential application to athletic

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123 See, e.g., JESSICA GAVORA, TILTING THE PLAYING FIELD: SCHOOLS, SPORTS, SEX AND TITLE IX, at 3 (2002) ("Title IX . . . was the institutionalization of formal equality . . . ."); WELCH SUGGS, A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX, at 2 (2005) ("[T]itle IX's application to sports has been the most visible gender controversy of the past thirty years.").
124 MICHENER, supra note 2, at 132.
programs only in two brief statements during the congressional debates leading to its enactment.\footnote{127 See 118 CONG. REC. 5807 (1972) (statement of Sen. Birch Bayh) (reassuring that Title IX would maintain personal privacy in athletic facilities); 117 CONG. REC. 30,407 (1971) (statement of Sen. Birch Bayh) (explaining that Title IX would not mandate co-ed football teams or co-ed locker rooms); see also N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 526–27 (1982) (citations omitted) ("Senator Bayh’s remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute’s construction. And, because [Title IX] originated as a floor amendment, . . . Senator Bayh’s statements—which were made on the same day the amendment was passed . . . are the only authoritative indications of congressional intent regarding the scope of [Title IX].”).}

In 1974, Congress instructed HEW to draft proposed administrative regulations that would implement Title IX’s equal-opportunity mandate in education generally, including regulations that would reach “intercollegiate athletic activities.”\footnote{128 Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974); see, e.g., S. REP. No. 93-1026, at 208 (1974) (Conf. Rep.) (requesting HEW to promulgate rules containing “with respect to intercollegiate athletic activities reasonable provisions concerning the nature of particular sports”); see also, e.g., 120 CONG. REC. 15,322–23 (1974) (statement of Sen. John Tower), discussed in SUSAN K. CAHN, COMING ON STRONG: GENDER AND SEXUALITY IN TWENTIETH-CENTURY WOMEN’S SPORTS 254–55 (1994) (describing that the Senate but not the House passed an amendment that would have exempted revenue-producing intercollegiate sports from Title IX’s mandate).} HEW’s published regulations\footnote{129 Nondiscrimination on the Basis of Sex in Education Programs or Activities, 40 Fed. Reg. 24,128 (June 4, 1975) (codified at 45 C.F.R. § 86 (2012)).} were grounded in the core requirement that “[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes.”\footnote{130 34 C.F.R. § 106.41(c) (2012); see also id. § 106.41(a) (2012) (“No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.”).} The Education Amendments of 1972 conditioned effectiveness of final administrative regulations on Presidential approval.\footnote{131 20 U.S.C. § 1682 (2003).} President Ford provided his approval on May 27, 1975, and the final rules became effective later that year after Congress declined to disapprove them.\footnote{132 Nondiscrimination on the Basis of Sex in Education Programs or Activities, 40 Fed. Reg. at 24,137; see also, e.g., Parker v. Franklin Cnty. Cmty. Sch. Corp., 667 F.3d 910, 917 (7th Cir. 2012).}
To the extent that Maria Pepe's legal action helped influence HEW's implementation of gender equity in interscholastic and intercollegiate athletics, did the influence extend to national attitudes about gender equity generally? When a sport dismantles a discriminatory barrier, the change can hasten similar dismantling in other areas of American life. References to "sports" sometimes conjure images of mere fun and games, but writer James A. Michener was correct that "[s]ports have become a major force in American life,"133 with societal influence that extends well beyond the playing field.

The major force described by Michener recognizes that sports are "a microcosm of [American] society"134 with, as the U.S. Court of Appeals for the Fourth Circuit observes, "a special significance in our culture."135 Because sports remain "intricately linked to the rest of life"136 in the nation's "sports-dominated culture,"137 social change in sports may precede immediate or evolutionary change throughout the greater society. At the professional level, for example, Jackie Robinson demonstrated this potential when he shattered Major League Baseball's color barrier with personal dignity and helped pave the way for the Civil Rights Movement in the 1960s by "help[ing to] inspire the image that this nation was capable of racial amity instead of racial anguish . . . ."138

133 MICHERNER, supra note 2, at 9; see also, e.g., Brian Lampman, Conclusion: Sport, Society, and Social Justice, in LEARNING CULTURE THROUGH SPORTS, supra note 25, at 257 (calling sports "one of the most powerful social forces in our country").


135 United States v. Shortt, 485 F.3d 243, 250 (4th Cir. 2007).


The Civil Rights Movement left legal disputes and social controversies that continue today. Similar legal disputes and social controversies mark ongoing interpretation and application of gender discrimination law, including Title IX's "ever-mutating" administrative regulations and case law. Olympic gold medalist Donna de Varona, for example, describes "the war that has ensued between women and men in sport" concerning application of Title IX. Two leading sports sociologists explain:

"[P]rejudices are not altered by courts and legislation, and culturally conditioned responses to gender ideology are ubiquitous and resistant to sudden changes. Therefore, laws may force compliance in equality of opportunity for females in the world of sport, but inequities in sport continue, albeit in more subtle and insidious forms, as has been the case with racism."

The last chapter on Title IX's efficacy and application has yet to be written. Thanks in part to Maria Pepe's legal victory, however, it is no

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139 See, e.g., Austin Sarat, The Continuing Contest About Race in American Law and Culture, in RACE, LAW, & CULTURE: REFLECTIONS ON BROWN V. BOARD OF EDUCATION 3 (Austin Sarat ed., 1997) ("More than forty years after Brown v. Board of Education put an end to segregation of the races by law, the question of whether Americans can live with racial differences and how we can do so, is still a pressing one."). See generally MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004).

140 See, e.g., WONG, supra note 12, at 338–68 (citing and discussing decisions).

141 See also Duncan, supra note 25, at 61–63 ("Arguments For and Against Title IX"). Compare, e.g., George F. Will, Conservative Label Doesn't Fit Bush, SEATTLE POST-INTELLIGENCER, July 27, 2003, at F2 (criticizing "the irrational and unfair implementation standards of the Title IX ban on sex discrimination in college athletics"), with Julie Foudy, Foreword to 5 LESLIE HEYWOOD & SHARI DWORKIN, BUILT TO WIN: THE FEMALE ATHLETE AS CULTURAL ICON, in SPORTS AND CULTURE SERIES viii–ix (Toby Miller & M. Ann Hall eds., 2003) (discussing the authors' knowledge of "what sport can mean, the confidence that it can give, and the effect that huge numbers of women participating in sport can have on traditional gender roles. Clearly the world is not the same anymore.").

142 GAVORA, supra note 123, at 2.

143 Donna de Varona, Foreword to CYNTHIA A. LEE PEMBERTON, MORE THAN A GAME: ONE WOMAN'S FIGHT FOR GENDER EQUITY IN SPORT xvii (2002).

144 EITZEN & SAGE, supra note 25, at 310.

145 Compare, e.g., SUGGS, supra note 123, at 2–3 (stating that Title IX's promise "is finally being realized . . . . Americans have realized that women can and ought to be competitive athletes, just like men."), with Parker v. Franklin Cnty. Cmty. Sch. Corp., 667 F.3d 910, 916 (7th Cir. 2012) ("Although Title IX has gone a long way in increasing the status and respect for female athletes, discrimination endures. Title IX has not ended the long history of discrimination against females in sports programs . . . .").
longer acceptable law or social policy to consign girls and women to overtly second-class treatment in elementary, secondary, and higher education. Nor is it acceptable law or social policy to relegate young girls to the sidelines in sports, entitled only to cheer for the boys, to play a handful of sports such as field hockey or girls' basketball under often sub-standard conditions, and otherwise to sit in the stands or suffer ridicule for being tomboys.

Consistent with medical research, law and social policy today recognize instead that the physical and emotional benefits of a lifestyle rich in physical activity and competitive sports inure to all children and adults who wish to play, and not primarily or entirely to males. Away from the playing field, most parents expect greater opportunity for their daughters today, and as ESPN, AOL, and PBS recognize, Maria Pepe's determined stand helped recalibrate the scales in favor of assuring girls and women a greater place in the mainstream of American society.

C. CHILDHOOD SOCIALIZATION

Behavioralists and child psychologists continue to debate the relative capacities of biology and social environment to influence the development of children's attitudes about gender roles. But these professionals generally agree that, depending on the context, nature and nurture can each affect socialization because "certain roles are flexible and open to modification" during childhood and adolescence. Aside from its impact on Title IX, Maria Pepe's legal victory facilitated this development and modification by enabling pre-teen girls to play alongside boys in community youth sports programs from coast to coast.

Children learn by doing and watching. Behavioralists and child psychologists have long recognized that play and games can assume major roles in behavior modification, including gender role

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148 Id. at 1556.

socialization. 150 "With age, children come to understand that the sexes may have characteristics in common (e.g., some girls play football), even when behaviors may be more representative of one group (boys, in this case). They also come to recognize variability within a category (e.g., not all boys play football)." 151

"The need to decrease gender stereotypy in children has frequently been espoused as necessary to reduce gender inequities and to utilize individual potential more productively." 152 For these reasons, the President's Council on Physical Fitness, Sports & Nutrition recommends that "[g]irls and boys need to work and play together, starting at an early age." 153 The Council explains that "[t]he social construction of gender begins in early childhood perhaps as early as infancy, as children respon[d] to cues from parents, teachers and others." 154

Children first identify notions of gender by focusing on a few obvious physical or external cues such as hairstyle, dress and name. By age two, clear sex differences in interests appear. By age three, children know many of the implicit social rules that guide feminine and masculine behavior. They may also start to believe that it is wrong for people to engage in cross-sex activities. Younger children (i.e., preschool to first or second grade) tend to adopt more stereotypical attitudes about gender than older children. Such early experiences often shape later behavior, although children may revise their ideas of femininity or masculinity in light of new information and experiences. For example, a girl who believes only boys should play football and climb trees may revise her belief when she witnesses her favorite female cousin doing both. 155

Little League and other community youth sports programs—the immediate impetus for Maria Pepe's legal action—are typically conducted outside the schools by private associations or clubs, or by

150 Susan M. McHale et al., Family Context and Gender Role Socialization in Middle Childhood: Comparing Girls to Boys and Sisters to Brothers, 70 CHILD DEV. 990, 990 (1999).
151 Taylor, supra note 147, at 1556–57.
153 PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS, supra note 146, at xvi.
154 Margaret Carlisle Duncan, Sociological Dimensions, in PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS, supra note 146, at 37–38.
155 Id.
public parks and recreation departments. The capacity of these non-school athletic programs to influence early childhood socialization can be significant because "gender segregation—the separation of girls and boys in friendships and casual encounters—is central to daily life in elementary schools." Schools frequently send overt and covert cues that reinforce and extend gender stereotyping.

Nearly half of all American youth under eighteen (between 25 and 30 million) join at least one sports program each year. Nearly all children play in such a program at some time during their childhood and adolescence. Outside the home and schools, no other activity reaches so many children, and no other activity enables so many boys and girls to cooperate in the pursuit of common goals. In a nation that believes that athletic competition teaches children valuable lessons that transcend the playing field, community youth sports programs hold special

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158 EITZEN & SAGE, supra note 25, at 311 (noting that most elementary and secondary principals are men, while most teachers are women; also that some schools promote some electives as "female subjects" and some electives as "male subjects").
159 See, e.g., FRACTURED FOCUS: SPORTS AS A REFLECTION OF SOCIETY 177 (Richard E. Lapchick ed., 1986) (stating that 30 million school-age youngsters play sports in America); Glyn Roberts, Motivation in Sport: Understanding and Enhancing the Motivation of Children, in HANDBOOK OF RESEARCH ON SPORT PSYCHOLOGY 405, 411 (Robert N. Singer, Mildedge Murphey & L. Keith Tennant eds., 1993); MARTENS, supra note 69, at 10 (noting that 30.41 million boys and girls ages six through sixteen participate in nonschool sports); see also FED. INTERAGENCY FORUM ON CHILD AND FAMILY STATISTICS, AMERICA'S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING, 2011, at viii (2011) (explaining that in 2010, there were 74.2 million children under the age of sixteen in the United States, comprising twenty-four percent of the nation's population).
160 See, e.g., Barri Katz Stryer et al., A Developmental Overview of Child and Youth Sports in Society, 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 697, 697 (1998) ("[B]y early adolescence many children have already participated in intensive sports training and competition for several years."); Having Fun is a High Priority, USA TODAY, Sept. 10, 1990, at 14C (estimating that only one in twenty children has never played an organized sport).
161 See, e.g., D. STANLEY EITZEN, SPORT IN CONTEMPORARY SOCIETY: AN ANTHOLOGY 115 (1979) (discussing "the belief held by most adults that sports participation has positive consequences for youth"); Having Fun is a High Priority, supra note 160 (reporting that 74% of parents said youth sports helps children's self-confidence); Mike Tharp et al., Sports Crazy!, U.S. NEWS & WORLD REP., July 15, 1996, at 30 (reporting that 93% of Americans believe "children learn the value of teamwork from sports"); see also BMO Sports Poll:
potential to help shape children’s attitudes about gender roles. As the President’s Council intimates, the potential appears greatest at pre-teen levels, where most co-ed sports teams exist because physiological differences between boys and girls are less significant at that age.\(^{162}\)

Maria Pepe’s victory has enabled millions of boys and girls to play sports side by side in positions of equality at an early age. About ten million girls have played Little League since 1975,\(^{163}\) and millions of young girls have played a variety of other sports with boys.\(^{164}\) Elementary school boys and girls socialize, develop their skills, savor victory and react to defeat while cooperating with one another in voluntary activities outside the classroom. In the long run, “[c]hildren’s socialization is assumed to have consequences for their adult lives.”\(^{165}\)

CONCLUSION

Now that millions of girls have played in its program alongside their male friends and classmates since 1975,\(^{166}\) Little League’s earlier determination to fight “tooth and nail”\(^{167}\) to exclude Maria Pepe may appear petty and mean-spirited. “[I]t’s hard to imagine the extent to which Little League fought,” the state Division on Civil Rights hearing officer Sylvia Pressler said years later. “They pulled out all the stops. America was going to come to an end if we allowed girls to play.”\(^{168}\)

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\(^{162}\) See, e.g., MARTENS, supra note 69, at 166 (“No known physiological or medical reasons exist why prepubescent boys and girls cannot compete safely against each other in all sports”); Katherine Thomas Thomas et al., Motor Development and Skill Acquisition During Childhood and Adolescence, in HANDBOOK OF SPORT PSYCHOLOGY 20, 28 (Robert N. Singer et al. eds., 2d ed. 2001) (“[M]ost boys and most girls are similar in height and weight prior to puberty.”).

\(^{163}\) Segura, supra note 10, at 54.

\(^{164}\) See supra note 11 and accompanying text.

\(^{165}\) Janet Lever, Sex Differences in the Games Children Play, 23 SOC. PROBS. 478, 478 (1975).

\(^{166}\) See supra note 11 and accompanying text.


\(^{168}\) Grossfeld, supra note 34; see also FDU MAG., supra note 80 (quoting Maria Pepe as saying, “I couldn’t understand what was happening to me . . . . What upset me the most was how hard Williamsport fought to keep girls out.”).
In landmark litigation, the fruits of vindication sometimes elude plaintiffs who, win or lose, blaze a trail for others. The Little League baseball experience eluded Maria because she had turned fourteen by 1974, when her courtroom victory became final. By that time, she was too old for the Little League, which enrolled eight- to twelve-year-olds.

Maria recalled later, however, that "[a]fter the ruling came out . . . , my dad said, 'You have to think about all the girls that will follow.'" As she headed to Williamsport to throw out the ceremonial first pitch at the Little League World Series in 2004, she reflected that, "It's really nice to contribute to someone else's life. I'll always get to play every time I see a girl out there." "Thank God for her," said a grateful twelve-year-old Alexandra Bellini, who watched the ceremonial first pitch before she and her Ottawa, Michigan teammates took the field to play for the Little League World Series title.

By that time, Maria Pepe's cap and glove were displayed at the Little League Museum in South Williamsport, and her cap was displayed at the Baseball Hall of Fame in Cooperstown, New York. The displays demonstrate that the path toward equality often awaits someone with courage to stand alone, supported perhaps only by family and friends, when acceptance of inequality might seem easier. Usually, the "someone" is older than twelve.

Little League's national office has done a complete about-face since 1973, when it warned ominously that enrolling girls in response to Maria Pepe's legal action "would certainly cripple the program." "Every girl who aspires to play sports owes her a debt of gratitude," Stephen D. Keener, president and chief executive officer of Little League Baseball and Softball, said about Maria in a statement shortly before her arrival in Williamsport in 2004. Keener added, "our program is much stronger

169 See IRONS, supra note 28.
170 See Maria Pepe Sees Fruits of Playing in 1971, supra note 8.
171 Id.
172 Grossfeld, supra note 34 (quoting Pepe); see also Janine Rayford, Little League Dreams, PEOPLE MAG., Oct. 8, 2012, at 114 (quoting Pepe as saying, "I'm blessed to see girls playing and having fun. It's all I really wanted.").
174 LITTLE LEAGUE, supra note 26; Eileen Ogintz, Baseball's Birthplace a Solid Hit, SUN SENTINEL, Nov. 5, 2006, at 2.
because of the nearly half-million girls who are Little Leaguers today.”176

At the first-pitch ceremony, Maria met and shook hands with Little League’s former executive vice president, Dr. Creighton J. Hale, the physiologist who led the national organization’s dogged effort to exclude girls, and who testified as the lead witness against her in the hearing conducted thirty years earlier by the New Jersey Division on Civil Rights. Dr. Hale demonstrated just how much Maria Pepe had influenced gender equity in America. “I just want you to know,” he confided, “that my granddaughter plays.”177

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176 LITTLE LEAGUE, supra note 26.
177 Pepe, Breaking Barriers, supra note 8.