

# Winston Amicus Brief for the ACLU Leads to Favorable Title IX Decision

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A Winston team submitted an amicus brief on behalf of the ACLU, the California Women’s Law Center, and several other non-profit organizations representing a member of the University of Connecticut (UConn) women’s soccer team who lost her scholarship after she raised her middle finger in an exuberant, celebratory gesture when the team won a tournament championship. In sharp contrast, male athletes at UConn have engaged in far worse behavior—including criminal conduct—with virtually no disciplinary consequences.

The athlete filed suit claiming UConn’s punishment was discriminatory and violated Title IX. The district court found that there was not a genuine issue of fact as to whether UConn’s treatment of the athlete constituted sex discrimination under Title IX and it applied qualified immunity to her First Amendment claim, finding that speech restrictions appropriate for children in a K-12 setting could also apply to an adult in a university environment. Winston and the amici argued these were both clear legal errors that threaten the Title IX and First Amendment rights of college athletes across the country.

The Second Circuit Court agreed with our arguments on the Title IX front, concluding that variations in who makes a disciplinary decision against men and women, in the college setting, would not preclude a jury from finding that a male is similarly situated to a female (or vice versa), for purposes of proving discrimination under Title IX. This decision is particularly relevant for college athletes, who face discipline from different coaches (i.e., decisionmakers) and would otherwise rarely be able to meet the “same decisionmaker” requirement in a Title IX discrimination case.

The Winston team on this matter included **Jeffrey Kessler**, **Diana Leiden**, **Jeanifer Parsigian**, and **Drew Washington**.

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