

THE RISING CALL OF GENDER FLUIDITY IN THE LAW AND SPORT

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INTRODUCTION

William Bruce Jenner was born on October 28th, 1949, in Mount Kiso, New York.¹ While in high school, Jenner won the Eastern States water ski championship three separate times and placed well in the Connecticut State High School Track & Field meet. Yet, Jenner gave no indication that he would one day become the world's greatest athlete. Jenner attended Graceland College in Lamoni, Iowa on a football scholarship, but shortly, he took up the decathlon and only one year later qualified for the 1972 Olympic team. After placing 10th in the 1972 Olympic decathlon, Jenner won the 1974 AAU title. In 1975, Jenner was the PanAm champion, setting a world record of 8,524 points in the triangular meet with the USSR and Poland; but even these monumental accomplishments did not make it clear that Jenner would be crowned as the World Champion at the next Olympics.

Two years later, in 1976, Jenner won a second AAU title and crowned a brilliant career by taking the Olympic gold medal with a new world record of 8,618 points. The charismatic Jenner became a television and movie personality as soon as the competitive days were over. After a long and successful career in the entertainment industry, not to mention becoming a household name for younger generations watching the Kardashian family, in April 2015, Jenner announced that she identified as a woman. Two months later, Jenner revealed that she wanted to be referred to as Caitlyn Jenner.²

With the rise of transgenderism and gender fluidity in America, many organizations, including those that are publicly-funded, are facing the issue of how to discern the separation of

¹ The Editors of Encyclopedia Britannica, Caitlin Jenner, Britannica, <https://www.britannica.com/biography/Caitlyn-Jenner> (last updated Oct. 24, 2020).

² *Id.*

sports on the basis of sex. Participating in sports can be wildly beneficial to all people (namely youth) on many levels. For some, sports serve as a means to go to college, and for others – such as the most gifted of athletes - can be a source of income. Young people often gain a sense of identity and belonging from participating in sports, during which they can curate and develop skills that will enable them to succeed later in life. Such skills include but are not limited to those ideals relating to teamwork: hard work, determination, goal setting, etc.

Recently, the Connecticut Interscholastic Athletic Conference (CIAC) elected to allow students to compete in sports as a member of whichever gender they identify. As a result, three high school students feel that female athletes born with a genotype of XX are being discriminated against by losing valuable podium positions, their deserved status as champions, and countless opportunities for more selective competition. In light of their feelings of discrimination, these Connecticut high school students alleged that their civil rights are violated, under both Title IX and 20 U.S.C. Section 1681, and as such filed a complaint in Federal Court requesting an injunction against the CIAC and its member schools which would prohibit those born with a genotype of XY from competing in female sports.

This paper will be set out in three parts. In Part One: The Background, the alleged complaint and request for injunctive relief brought by the Connecticut athletes will be broken down and analyzed. In Part Two: The Problem, the natural physiological differences between males and females as they relate to sport will be considered for discussion. Finally, in Part Three: The Solution, this paper will explore potential solutions for inclusion and how they can be implemented.

I. BACKGROUND

In the aforementioned Connecticut complaint,³ three female high school athletes set out to receive injunctive relief against the CIAC for its policy, which allows those born with XY genotypes who identify as women to compete in female athletic events. The

³ Soule et al v. Connecticut Association of Schools, Inc. et al, 3:20CV00201 (matter is ongoing).

CIAC Policy determines—and requires member schools to determine—eligibility to compete in sex-specific athletic competitions solely based on “the gender identification of that student in current school records and daily life activities in the school.”⁴ In response to the policy, the CIAC and its member schools have permitted male students to switch from competing in boys’ events to competing - and winning - against the girls between one season and the next. Interestingly, the CIAC policy acknowledges that a male who competes in girls’ events gains an “unfair advantage in competitive athletics.” (CIAC By-Laws Article IX, Section B.)⁵

The complaint alleges that because of the CIAC policy, two biologically male students, Terry Miller and Andraya Yearwood, were permitted to compete in girls’ athletic competitions, beginning in 2017. Between them, Terry and Andraya have taken 15 girl’s state championship titles (which were held in 2016 by nine different Connecticut female athletes) and have taken more than 85 opportunities to participate in higher level competitions from female track athletes in the 2017, 2018, and 2019 seasons alone. Because Terry and Andraya are permitted to compete in girls’ competitions, it is not merely the second or third place girls that detrimentally are affected, but also the girls who would have finished third or fourth and qualified for higher profile competitions. By limiting the ability to qualify for future competitions, many would-be competitors fail to gain the exposure necessary to increase their future opportunities in the sport, damaging their potential for future success. The girls, who based on their times would have earned a spot on the podium, now approach the starting line knowing that they cannot win. This inability to win is not because of lack of training or skill, but purely on the basis and physiological effects of sex. As such, the complaint alleges that the CIAC policy has resulted in unequal opportunities for girls in track and field competitions in Connecticut, a violation of Title IX, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to

⁴ Id.

⁵ Id.

discrimination under any education program or activity receiving Federal financial assistance.”⁶

The crux of the plaintiffs’ argument is that in allowing Terry and Andraya to compete, the girls are denied the many benefits that sport has to offer. These benefits include the adulation of being a champion, the reward of holding records, the satisfaction of advancing to larger high school competitions, and the exposure to future opportunities, such as college scholarships or spots in the Olympic trials. Terry and Andraya, while not parties to this suit, could certainly argue that the same statutory language works to protect their right to compete as the sex and gender that they identify as. According to *Transathlete*, a website which displays states’ differing policies regarding transgender athlete participation, Connecticut is but one of many states allowing transgender high school athletes to compete without restrictions. Seventeen allow competition without restriction, seven states have restrictions on transgender athletes, and five have no clear policy.⁷

On March 27th, 2020, Idaho became the first state in the United States to bar transgender girls from participating in girls’ and women’s sports, and the first to legalize the practice of asking girls and women to undergo sex testing in order to compete.⁸ The Idaho bill, known as the *Fairness in Women’s Sports Act*, was accompanied by a bill that prohibits transgender people from changing their birth certificates in order to match the gender with which they now identify. The *Fairness in Women’s Sports Act* includes a provision that allows for anyone to file a claim questioning an athlete’s sex. Adjudication under the new law, stemming from these sex identification claims, could lead to sex testing that would allow genital exams, genetic testing, and hormone testing.⁹ Prior to this new legislation, the Idaho High School Activities Association had a policy in place on the inclusion

⁶ 20 U.S.C. § 1681.

⁷ Christine Stuart, *Girls sue to block transgender athletes from competing in CT high school sports*, ctpost.com (Feb. 12, 2020), <https://www.ctpost.com/local/article/Girls-sue-to-block-transgender-athletes-from-15051468.php>.

⁸ Talya Minsberg, *‘Boys Are Boys and Girls Are Girls’: Idaho is First State to Bar Some Transgender Athletes*, The New York Times (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/sports/transgender-idaho-ban-sports.html>.

⁹ *Id.*

of transgender athletes that was similar to the policies of the N.C.A.A. and the International Olympic Committee (IOC).

The N.C.A.A.'s current policy requires transgender athletes to complete hormone treatment for at least a year before competing as a female. The IOC policy, in contrast, requires that athletes demonstrate less than ten nanomoles of testosterone per liter, for one year, before competing internationally as a female. It is interesting to point out that the two pieces of Idaho legislation which severely limit the rights of transgender citizens were signed into law the day before the International Transgender Day of Visibility.¹⁰

Several organizations, including Planned Parenthood and the ACLU, wrote a letter in June in support of the two transgender athletes who are mentioned in the lawsuit. "We are in solidarity with Andraya Yearwood, Terry Miller, and all other transgender student-athletes in the Constitution State," the organizations wrote. "As organizations that care deeply about ending discrimination against women and girls, we support laws and policies that protect transgender people from discrimination, including in participation in sports."¹¹ The ACLU further added, "just like other female athletes, transgender student-athletes have made important contributions to their teams, towns, and our state. In cases when they have achieved athletic success, they should be able to celebrate their hard-earned victories, just like every other student-athlete." While offering consolation for trans women athletes, where does this leave trans men (biologically female) athletes?

Neither Terry Miller nor Andraya Yearwood are mentioned as parties to the original complaint, though both have requested to be included as defendants. They insist that it is specifically their rights, as both individual citizens and athletes, that will be violated if an injunction is granted barring them from competing in girls' athletics. In the event that Miller and Yearwood are added as Defendants, it becomes plausible that this dispute could be taken all the way to the Supreme Court. This leaves us wondering whether the issue is about Title IX in sports, or rather,

¹⁰ Id.

¹¹ Id.

is the question really: how transgender citizens should be defined and protected under pre-existing law?

II. THE PROBLEM

A physiological context is required in order to analyze and understand why we, as a society, separated sports by sex to begin with. Earl Dudley and George Rutherglen write that “[i]n athletics, there is no “sex-blind” counterpart to “colorblind” justice. The physical differences between women and men that seemingly require sex-segregated teams raise fundamental questions about the role of physical differences in justifying different gender roles.”¹² In legal terms, these questions come to rest uneasily on the prohibition of discrimination in Title IX of the Education Amendments of 1972. In scientific terms, these questions rest merely on the anatomical implications of an individual’s genetic makeup.

It is generally accepted in both the fields of science and medicine that post-pubescent males are anatomically more suited for certain sports than their female counterparts. Dr. Bernice Sandler wrote that “victory over comparably talented and trained male athletes is impossible for girls and women in the vast majority of athletic competitions, because of inherent and biologically dictated differences between the sexes.”¹³ While boys and girls have comparable athletic capabilities before boys hit puberty, male puberty quickly increases the levels of circulating testosterone in healthy teen and adult males to levels ten to twenty times higher than the levels that occur in healthy adult females. This natural flood of testosterone drives a wide range of physiological changes that gives males a powerful physiological athletic advantage over females.¹⁴

The Connecticut complaint sets out to lay the distinction between the physiologies of males and females, which are

¹² Earl Dudley and George Rutherglen, *Ironies, Inconsistencies, and Intercollegiate Athletics: Title IX, Title VII, and Statistical Evidence of Discrimination*, Virginia Journal of Sports and Law (1999), available at <https://poseidon01.ssrn.com/delivery.php?ID=984094084082029114103009122123085068070080021061010049073004102105073030000124111122115095123067111040012048106114004084112021069078112126113070119119124113083065004029108102112104081064&EXT=pdf>.

¹³ *Soule et al*, supra note 3.

¹⁴ *Id.*

summarized as follows. Physiological athletic advantages enjoyed over girls and women by similarly fit males after puberty include:

- Larger lungs and denser alveoli in the lungs, enabling faster oxygen uptake;
- Larger hearts and per-stroke pumping volume, and more hemoglobin per unit of blood, all enabling higher short-term and sustained levels of oxygen transport to the muscles;
- An increased number of muscle fibers and increased muscle mass (for example, men have 75%-100% greater cross-sectional area of upper arm muscle than do comparably fit women, while women have 60-70% less trunk and lower body strength than comparably fit men);
- Higher myoglobin concentration within muscle fibers, enabling faster transfer and “cellular respiration” of oxygen within the muscle to unleash power;
- Larger bones, enabling the attachment of greater volumes of muscle fiber;
- Longer bones, enabling greater mechanical leverage thus enabling males to unleash more power, e.g., in vertical jumps;
- Increased mineral density in bones resulting in stronger bones, providing superior protection against both stress fractures and fractures from collisions;
- U.S. adult males are on average five (5) inches taller than U.S. adult women.

Meanwhile, female puberty brings distinctive changes to girls and women that inherently impede athletic performance. These changes include increased body fat levels which—while healthy and essential to female fertility—produces an increase in weight without providing strength along with wider hips and varied hip joint orientation that results in decreased hip rotation and running efficacy. These are inescapable anatomical considerations of the human species, not stereotypes, “social constructs,” or relics of past discrimination.

As a result of the many inherent physiological differences between men and women resulting from puberty, male athletes

consistently achieve records 10-20% higher than comparably fit and trained women across almost all athletic events. These physiological differences further indicate consistent disparities in long-term endurance events and contests requiring sheer strength such as weight-lifting.¹⁵

At the close of the complaint's discussion about the distinction between male and female anatomy, and its result on competition, is the Allyson Felix anecdote. Team USA sprinter Allyson Felix has won the most World Championship medals in history, male or female, and is tied with Usain Bolt for the most World Championship gold medals. Her lifetime best in the 400 meters is 49.26 seconds. In 2018 alone, 275 high school boys ran faster on 783 occasions!¹⁶

Through these innate physiological differences, Terry and Andraya have taken 15 girls state championship titles (titles held in 2016 by nine different Connecticut female athletes). They have also taken more than 85 opportunities to participate in higher level competitions from female track athletes in the 2017, 2018, and 2019 seasons. Terry was named "All-Courant girls indoor track and field athlete of the year" by the Hartford Courant newspaper.

Historically, it has been argued that the unfair impact of males competing in girls' and women's categories would be trivial, because few males would wish to do so. However, the Connecticut complaint alleges that over the last few years, the issue of boys and men competing in female sports has increased rapidly. As an increasing number of males are in fact competing in girls' and women's events each year, girls are losing. The males competing in these events are seizing one "girls'" or "women's" championship and record after another. Where are the transgender females who identify as males dominating in the "boy's" divisions? The decision to allow athletes to compete based on the sex that they identify as leaves trans men at a clear disadvantage. They will never face an equal opportunity for success competing against males who are reaping the rewards of the anatomical and physiological advantages of XY chromosomes in sports.

¹⁵ Id.

¹⁶ Id.

The complaint alleges that the percentage of children identifying as transgender has multiplied within the last few years. As a larger wave of males who identify as transgender reach high school and college, the number of girls losing out on varsity positions, playing time, medals, advancement to regional meets, championship titles and records, and recognition on the victory podium, will also increase. The complaint states: “this wave of lost opportunities and lost equality for girls is all the more inevitable when males are not merely permitted to take girls’ slots and girls’ titles but are praised by schools and media as ‘courageous’ and hailed as ‘female athlete of the year’ when they do so.” The Connecticut petitioners go on to say, “Perhaps worse, if the law permits males to compete as girls in high school, then there is no principled basis on which colleges can refrain from recruiting these ‘top performing girls’ (in reality males) for their ‘women’s teams’ and offering them the ‘women’s’ athletic scholarships.”¹⁷

In sum, the Connecticut complaint lays out that because schools are permitting males to compete as girls and women, girls and women are losing competitive opportunities, the experience of fair competition, the opportunities for victory, and the satisfaction that accompanies it, along with public recognition, and scholarship opportunities. In short, an increasing number of girls and young women are losing their chance to fulfill their dreams. To American girls—those born with XX chromosomes—the message is, “Give up. You can’t win.”¹⁸

Nevertheless, it is likely that this dispute will be appealed. If the three Connecticut athletes, Selina Soule, Chelsea Mitchell, and Alanna Smith receive their injunction, there will be an initial feeling of victory. The three girls likely take the top three spots on the podium and advance to the New England Open. This would also give other girls, who previously would never have had an opportunity to advance, the chance to compete as well. Terry and Andraya will appeal the ruling. The victories achieved by Miller and Yearwood, and all their prospective chances for success, will be inevitably placed on hold. Their records will continue to have an Asterix beside their names, and they will likely be barred from

¹⁷ Id.

¹⁸ Id.

competition until after they have graduated high school, awaiting their final appeal to the United States Supreme Court.

The benefits of a potential injunction are outweighed by the heavy burdens it will place on the two transgender athletes who are currently competing fairly and legally under the CIAC rules, as prescribed. The CIAC is the relevant ruling body for Connecticut high-school athletics. Following research, discussion, and open discourse, the CIAC elected to protect the rights of its transgender athletes. The injunction should be denied, and athletes in Connecticut will continue to compete as the gender with which they identify, at least until this nascent question of law, sport, and gender identity is decided in the highest court.

III. THE SOLUTION

While it would be wonderful for all people to have the ability to compete under the auspice of whichever gender they identify as, the innate differences in male and female anatomies risks the integrity of female sport. The question remains as to what extent must citizens and athletes, bend a historical and scientific reality to accommodate transgendered athletes?

If the allegations of the three student-athlete petitioners are accepted, that there is no integrity left in female sports, then the most obvious solution is to combine all sports teams, regardless of gender. The result would be a single soccer team, a single tennis team, a single football team, and the entirety of athletics would be unisex. Athletes would compete for roster positions all together, with the best and most meriting of the competitors making the varsity teams. This solution would lend itself to the most basic idea of equality – that every athlete regardless of gender had an equal opportunity to compete. The result, however, would have discriminatory effects, with male athletes consistently winning the majority of roster placements and gaining far more opportunities for competition and advancement. While this proposed unisex system is firmly based on the principle of equality, the resulting impact would likely be disparate, affecting women adversely.

According to Dr. Bernice Sandler, however, ignoring the physical differences between the sexes and implementing coed/unisex teams would in many sports make it impossible to

“accommodate the ... abilities” of girls and women, and would fail to provide athletic opportunities of equal quality to girls and women. The entire basis of sex specific sporting events is to ensure that the obvious biological advantages in men do not hinder women from succeeding in sport. Dr. Sandler in 1975—told the House Subcommittee on Postsecondary Education, while testifying in support of regulations implementing Title IX, that to operate an entirely coed athletic program, ignoring differences in male and female physiology, would for many sports “effectively eliminate opportunities for women to participate in organized competitive athletics. For these reasons, such an arrangement would not appear to be in line with the principle of equal opportunity.”¹⁹

So, if a unisex system of athletics is discriminatory in effect, then what is a better solution? The past forty years of history and previous litigation regarding Title IX and sports, mostly amounts to: separate, but equal. Men and women compete separately, but as long as there is equal opportunity between the two, i.e., the same number of teams for men and women, or similar number of scholarships offered etc., then that institution is not discriminating on the basis of sex, and thus not violating Title IX. Inevitably, institutions will continue to encounter transgender athletes. How can institutions keep their athletic teams separate but equal, and all the while not discriminating on the basis of sex? As seen in the Connecticut complaint, allowing students to compete with whichever gender they identify as, is not working for everyone: especially for athletes that affiliate with the gender associated with their genotype.

Reinforcing a system of separate but equal, institutions would require competitors to compete as whichever genotype they were born with. If you are born a male with an XY sex chromosomal genotype, then regardless of how you personally identify, for the context of sport, you must compete with athletes of similar genetic makeup. If this were the rule in the CIAC, Terry and Andraya would be required to compete against the other males. While this would be seemingly unfair as they identify as

¹⁹ Statement of Dr. Bernice Sandler, Director, Project on the Status & Education of Women, Ass'n of American Colleges (June 25, 1975), Hearings on Sex Discrimination Regulations at 343.

women, the physiological differences associated with genotype, cannot be overcome with hormone therapy.

After all, legislators make it explicitly clear that under Title IX, some sports should be separated by gender: "Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a [school] may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport..."²⁰ Therefore, under existing law, members of the excluded sex must be allowed to try-out for any team offered, unless the sport involved is a contact sport.

The federal legislators who drafted 34 C.F.R. Part 106, point out that in competitive skill and rough physical contact, men on average possess a natural advantage over women, and as such some sports are separated by gender in their nature, i.e., football, boxing, basketball, wrestling etc. The Plaintiffs in Connecticut argue that track and field is no different than football or basketball. Thus, men should not be allowed to compete against women, regardless of their personal gender identification. The genotypic solution to the problem is harsh, and certainly will cause individuals to feel as though they are being discriminated against on the basis of sex. But for many, the playing field will be leveled. This solution shall be called the genotype model, in which athletes are required to compete against the gender that they were genetically born as.

Not only is it harsh, but the genotype model is far from perfect. There are numerous conditions where children are born having an irregular makeup in regard to their sexual chromosomes. One common example is Klinefelter's Syndrome, in which males are born with an XXY chromosomal makeup. The result of the extra X chromosome causes men to exhibit reduced muscle mass, little facial hair, broad hips, increased body fat, and enlarged breasts. Other genetic disorders include DSD and hermaphroditism, in which individuals may possess both ovarian and testicular tissue, the tissues which form human sex organs. If we pursued a genotypic model, there would be problematic results from the start because not all individuals are singularly male or

²⁰ 34 C.F.R. § 106.41 (1980).

female in their biology. Studies suggest that 1.7% of the population possesses intersex traits.²¹

It is possible that equality could be achieved through a hormonal model, in which sports would be separated based on levels of testosterone. Once a benchmark level of testosterone is set, athletes would have their blood tested, and compete accordingly. Instead of a single benchmark level, multiple levels could be established, forming what would appear to be different weight classes across different sports, all based on hormonal levels. Inevitably, the males and females with the most testosterone have the greatest advantage in competition, and they would compete accordingly.

Caster Semenya, a world champion distance runner, for example, has been diagnosed with hyperandrogenism, a condition in which she possesses naturally elevated levels of testosterone. She has broken the two-minute mark in the Women's 800-meter race multiple times but does not come close to the times run by men. After a lengthy process of appeals, Semenya was subsequently disqualified for "doping" by the IAAF, only because she refused to take testosterone suppressing therapy.²² Other female athletes who have similar genetic conditions, but are legally females, have refused hormonal therapy.

Many transgender athletes do in fact undergo hormone therapy, but historically this has not proven effective to level the playing field. It is important to note, both Terry and Andraya have undergone hormone therapy to suppress their naturally higher levels of testosterone. Regardless of the hormone suppression therapy, Terry and Andraya will always have stronger bones, more muscle mass, stronger hearts and lungs, and hip placement adapted to sprint faster than the girls they compete against. Because of these factors, the impartiality and integrity of female sport is compromised when they are allowed to compete against genetically and anatomically defined girls.

It is clear that both the hormone and genotypic models of separating sports are not perfect or ideal solutions to the problem

²¹ Talya Minsberg, *supra* note 8.

²² Jaime Schultz, Caster Semenya, Testosterone, and the History of Gender Segregation in Sports, *livescience.com* (May 6, 2019), <https://www.livescience.com/65412-caster-semenya-testosterone-gender-segregation.html>.

of gender fluidity in sports. What then, in track and field specifically, if instead of dividing races based on gender identification, each race was staggered in a multitude of heats based solely on times, not gender. For instance, any runner, male or female, that sprints 100 meters in less than ten seconds, would earn a placement in the first heat. The remaining heats could be split every half second or whichever metric of time makes the most sense.

As the races and their participants are separated based on time, it is only natural and expected that the most competitive heats would be predominantly male, as males on average are faster than their female cohort. However, once you got to about the third or fourth heat, it would be equally representative of the fastest males and females that were able to run within that range or category of times. That way, whichever athlete runs his or her best race, would win.

With a system like this, athletes would qualify for competition, and be placed in their heats accordingly. They would then show up to the race and need only focus on their individual capacity. No longer would athletes worry about the inequalities of gender and the law, but instead, limit their mind to visions of running their very best race. Yes, some problems certainly can be imagined. Athletes could intentionally post slower times while qualifying in order to be placed in a slower heat, only to show up and easily take the gold. In the interest of sport, however, it would be nice to assume that individuals compete in order to garner the most success, attention, and accolades possible. The competitive nature of athletes and champions, hopefully, would drive competitors to run in the most prestigious heats relative to their ability, and not, merely to hustle other runners on the track.

This method not only provides ample opportunity for female athletes and trans women athletes, but also for another group that is often marginalized in respect to this issue: female-to-male transgender athletes. There is a lack of participation by trans men athletes across all age groups. Often, trans men are forced to compete in divisions where they experience a clear disadvantage when competing with biological males. Or, in some unfortunate situations, trans men choose to shy away from sports all together. These athletes face a similar disadvantage as girls and women do

when competing against trans women. By implementing a system of heats where everyone is competing against an athlete with the same physical ability and level of expertise (regardless of gender identity), a platform is created in which all athletes can succeed and receive the immense psychophysical benefits from participating in sports.

Imagine the interior field of a track saturated with podiums, with each podium (albeit not the fastest heat) consisting of an equal makeup of men and women receiving first, second, and third place prizes. Imagine boys and girls pushing each other for greater results in practice, each pairing with individuals that possess a similar athletic capacity, so that the greatest champions are those that put in the most work, not necessarily the ones born with the most testosterone.

CONCLUSION

In conclusion, Title IX has been strikingly successful towards its intended goals. For example, between 1972 and 2011, girls' participation in high school athletics increased "from approximately 250,000 to 3.25 million students."²³ Today, gender norms are evolving rapidly. People have begun to recognize that fewer norms exist and seem to find that gender is a nebulous construct. It is up to the legislature and everyone to engage in this tough discussion, so that Title IX can be amended to protect all athletes, provide real equality, and eliminate all discrimination on the basis of sex.

The obstacle of gender fluidity in sports shall be overcome, and sports will be greater for it. In the words of truly one of America's greatest athletes: "Remember, success is not measured by the heights attained but obstacles overcome. We're going to pass through many obstacles in our lives: good days, bad days. But the successful person will overcome those obstacles and constantly move forward" - Bruce Jenner.

²³ U.S. Dept. of Educ., Office for Civil Rights, Protecting Civil Rights, Advancing Equity: Report to the President and Secretary of Education (2015), <https://bit.ly/2VF516Q>.