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Transgendered athletes: Law, sociology, and policy

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Background

In 2009-10, the ambiguous gender identity of South African runner Caster Semenya prompted considerable debate about gender testing related to elite-level sport participation of transgendered and intersexed athletes. For several years, sport sociologists have criticized gender identity testing for its potential to humiliate female athletes and for the assumptions upon which the need for testing rests, i.e., that female athletes are inherently less physically capable than male athletes (see, e.g., Birrell & Cole, 1990). Nevertheless, the issue of determining parameters for sport participation by such individuals has not received much widespread publicity since the *Renee Richards v. United States Tennis Association* (1977) case was litigated in the New York court system. Nevertheless, sex testing has been a persistent practice in elite amateur sport since it was initiated by the International Olympic Committee (IOC) soon after the 1964 Olympic Games. Although the International Association of Athletics Federations (IAAF) and the IOC abandoned sex testing in 1992 and 2000, respectively, some national governing bodies still practice it. Moreover, international sport governing bodies like the IOC reserve the right to conduct gender identity tests if a complaint is brought expressing concern about a particular competitor's "true" sex, as was the case with Semenya. Her situation, however, added a new dimension because, unlike Renee Richards, Caster Semenya did not undergo sex reassignment surgery, but is instead an intersexed individual who was likely born with ambiguous sex characteristics. Her ordeal sparked considerable debate because increasing numbers of transgendered athletes are seeking to compete in sport, but accommodating their interest is problematic because of the binary sex classification system used to govern participation.

Recent sociological and medical research has described the difficulties involved with relying on the traditional classification of sex based on observable physical characteristics when attempting to understand gender identity (e.g., Burdge, 2007; Gooren & Bunck, 2004). Addressing these difficulties poses problems for sport governing bodies that regulate eligibility to participate in sports events with respect to such issues as sex testing, assignment of transgendered athletes to appropriate sport events/teams (male or female), and assuring fairness in competition. Some sport organizations have developed policies addressing these issues, for example, the International Olympic Committee (2004), the Australian Football League (2009), the NCAA (2007), and two American state high school athletics associations – Washington (2008) and Colorado (2009)), but most have not yet done so.

Objectives

The purpose of this research was to examine legal and sociological inquiry in order to analyze current sport organization policies pertaining to participation of transgendered athletes, and to inform policy development relative to this issue. Case law that addresses some of these concerns provides some limited guidance for policy development, for example, *Richards v. United States Tennis Association* (1977) addressed participation following a surgical sex change. However, that issue is far from resolved in the eyes of critics who deny that such a change confers a competitive advantage greater than that of other naturally occurring physical differences which sport organizations do not attempt to equalize (McArdle, 2007). Furthermore, other gender identity issues, such as how sport organizations should treat participation by gender ambiguous athletes, remain in need of analysis (Pilgrim, Martin, & Binder, 2003).

Conclusions and Application

This research analyzed the potential application of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Equal Protection Clause of the 14th Amendment to the United States Constitution, and the United Kingdom's Gender Recognition Act of 2004 to efforts to regulate sport participation of transgendered athletes in different sport contexts. The legal analysis was then combined with a sociological critique of gender verification testing in order to analyze the soundness of a sample of existing policies regulating sport participation of transgendered athletes. Most existing policies were found to include gender identity testing as either a requirement or an option for governing authorities in determining eligibility to participate. Additionally, some failed to include provisions pertaining to other related aspects of sport participation, such as use of locker rooms and restroom facilities, lodging arrangements during sports events, and respectful treatment of transgendered athletes by coaches and fellow athletes. The paper concludes with suggestions for policy development aimed at protecting the rights of transgendered athletes while also challenging stereotypical assumptions about gender and sport participation.