

PARTICIPATION OF INTERSEX ATHLETES IN WOMEN'S SPORTS

INTRODUCTION

As the recent controversy surrounding Caster Semenya's eligibility for women's track makes painfully clear, intersex athletes are vulnerable to exclusion from women's sports, as well as ridicule and invasion of privacy. The Women's Sports Foundation believes that women with intersex conditions have the same rights to participation in athletics as all women. It is also our position that eligibility standards for women's sports that require an athlete to demonstrate particular hormone levels promote the policing of gender by medical means, leading to the unwarranted invasions of privacy not only for intersex athletes, but any athlete whose femininity is questioned. Moreover, any policy that singles out women's sports for eligibility based on hormone levels is discriminatory and sends the harmful message that female athletes are uniquely vulnerable and in need of special protection from the normal, natural variation in size, skill, and athletic ability that exists among members of either sex.

I. WHAT IS INTERSEX?

"Intersex," also known as Disorders of Sex Development, is an umbrella term to describe a variety of congenital conditions in which individuals are born with sex characteristics that are not typical for either the male or female sex category. Intersex conditions may affect sex chromosomes and cause them to appear in configurations other than the typical XX (female) or XY (male). They may affect how sex-related hormones function in the body, such as when an individual with XY chromosomes cannot absorb or utilize testosterone. Intersex conditions may also affect internal or external sex characteristics, such as cases when an individual's genitalia at birth defies easy classification as male or female.

Due to this wide variety of intersex conditions, it is neither possible nor appropriate to make generalizations about how individuals with an intersex condition experience their conditions, the physical effects of an intersex condition, or how and

whether such a condition affects their gender identities. For someone whose intersex condition is invisible, either because it could only be detected by medical testing or because of surgical intervention at birth, they might have a gender identity that is unaffected by their condition. For example, several female athletes in history, Semenya being the latest example, learned of their intersex condition when they were forced to undergo gender testing as a condition for participating in the Olympics or other world-class athletic events. Prior to that time, they never questioned their female-ness, because in every physical and psychological way that mattered, those athletes were female.

II. DO INTERSEX ATHLETES HAVE A COMPETITIVE ADVANTAGE WHEN THEY COMPETE IN WOMEN'S SPORTS?

Intersex conditions, as we've said, are varied and defy generalization. Many intersex conditions are benign when it comes to an individual's physical characteristics that are relevant to sport. Other intersex conditions may cause female athletes to have atypical quantities or responses to testosterone and therefore may generate concern about competitive advantage. Sometimes, however, these concerns are misplaced or overblown. For example, an individual with Androgen Insensitivity Syndrome (AIS) has XY chromosomes, and as a result, a body that produces testosterone. But AIS also limits—either completely or partially—the body's ability to respond to testosterone. This inability to respond to testosterone means that individuals with complete AIS will have female bodies (except for the presence of undescended testes) because it is testosterone produced in utero that, when received by the body's unimpaired receptors, will trigger the development of male genitalia as well as other male secondary characteristics. An athlete with complete or near complete AIS will have little or no usable testosterone in her body, and therefore should not raise any concern about the competitive advantage over other women. In fact, since women's bodies typically do use testosterone (though in quantities generally less than men), women with AIS would actually have less musculature and other physical characteristics that are perceived to relate to athletic ability than do women without AIS.

Other intersex conditions, however, may result in female-bodied, female-identified individuals that have more usable testosterone in their bodies than women without the condition. Congenital Adrenal Hyperplasia, for example, is a disorder of the adrenal gland that impairs the production of two hormones, cortisol and aldosterone. Without these hormones, the body overproduces another hormone, testosterone. A female (XX) individual with this disorder may have physical features affected

by testosterone, such as a lower voice and extra hair, though she may choose to take cortisol in order to help the body regulate the production of testosterone.

Given the effects on testosterone on the body's ability to produce and maintain muscles, it is reasonable to suppose that a woman who produces more testosterone might be better equipped than women with lower testosterone for some athletic tasks. Yet testosterone levels and responsiveness vary widely among women, as well as among men, for reasons that include but are not limited to intersex conditions. Moreover, testosterone levels are just one aspect of the human body that operates to produce variation and diversity among women. Women come naturally in all shapes and sizes, tall, short, large, small, strong, or weak. Some of this variation might be caused by women's diverse levels of testosterone, while some of it is caused by other influences, both genetic and environmental.

It is therefore inappropriate to single out testosterone levels that may be elevated due to an intersex condition as a source of competitive advantage that should be measured and controlled. Competitive advantages are everywhere in sport. An athlete might have a competitive advantage because tallness is a family trait, or because she was raised at high altitude, or because she had access to elite coaching from an early age. A truly equal playing field, one that controls for all variations that produces competitive advantages, would never work in sport, because it would produce no winners and no losers. Instead, sport embraces the variety of competitive advantages, insisting only that those advantages derive from natural circumstances, such as birth traits and training, and excluding only those competitive advantages that are gained unnaturally from performance-enhancing substances.

Finally, intersex women should be able to participate in women's sports because they are affected by the same social barriers to athletic success that all women face, including fewer opportunities, less encouragement, scrutiny of their bodies, and questioning of their femininity. Moreover, they may be subject to additional scrutiny and stigma related to their intersex conditions, making particularly relevant the social and psychological benefits of sports, including developing self-esteem, positive body image, and bonds with loyal teammates.

III. SHOULD INTERSEX ATHLETES BE PERMITTED TO COMPETE?

Intersex athletes should have the same access to athletic opportunities as other athletes. An athlete who is female-bodied, or who identifies as female, ought to be allowed to participate in women's athletics as long as she is not "cheating" such as by taking steroids (including testosterone not naturally produced by the body) or otherwise trying to defraud teammates and competitors.

While it is medically possible to test female athletes to make sure their testosterone levels are "average" or "typical" for women, such a policy would be problematic and ill-advised, especially in athletics at the youth, high school, college, and other amateur non-elite levels where barriers to participation ought to receive more scrutiny than competitive equity. First, such a standard singles out testosterone as the only naturally occurring variation from which an athlete can be excluded from women's sports. We don't exclude women who are "as tall as men" or "as strong as men," etc. Second, for testing to be consistently applied, sport organizations would have to require every athlete to submit to testing as a condition for participation, increasing the cost and effort of running or trying out for sports programs. An alternative, testing only those athletes who "appear" masculine, would have the effect of singling out women who do not conform to stereotypes about femininity, stereotypes that are already challenging for female athletes to negotiate in light of the historic and cultural association of athleticism with masculinity. Finally, a policy that singles out women's sports for a hormone-based eligibility standard evokes a double standard, since widely-varying levels of testosterone among male athletes do not raise fairness concerns but are instead considered part of the normal variations among the field of competitors.

IV. IN WHAT OTHER WAYS SHOULD INTERSEX ATHLETES BE ACCOMMODATED?

When it comes to physical facilities, including bathrooms, locker rooms, and showers, schools and other sports organizations should support intersex athletes seeking to use whichever facilities they are most comfortable with, and which are most consistent with their gender identity. Some intersex athletes may request separate facilities due to privacy concerns. In such cases, the school or sports organization should make every reasonable effort to accommodate such a request. If an organization accommodates other athletes' bona fide requests for privacy (such as those due to religious reasons) but does not accommodate a student's request based on an intersex condition, that organization may be liable for discrimination.

V. CONCLUSION

Sport is divided into two categories, male and female, that are distinctly different and easily understood. Nature, however, is not. Policies determining athletes' eligibility for men's and women's sports should not pretend that every athlete's sex fits neatly into one of two boxes or that sexual variation is the sole determinant of competitive advantage. Instead, we must acknowledge the variability between and among the sexes, deescalate overblown concerns about sex and competitive equity in sport, and include as many athletes as possible in the sex category most meaningful to them.

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