

WOMEN IN COMPETITIVE SPORTS: BALANCING THE RIGHTS OF THE BIOLOGICAL AND TRANSGENDER WOMAN

by

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ABSTRACT

Women, like their male counterparts, enjoy basic fundamental rights. The course of human interactions has led, in some instances, to the need to introduce and enforce additional protection for women and persons that would otherwise be disadvantaged if such additional protections were not given. Sports have been part of human activities undertaken as recreation or a career. Although the competitive sport was, at some point in human history, an exclusive male preserve, the umbrella of exclusivity has long been torn, and women have been welcomed, embraced and encouraged to participate in their own rights, and compete against their fellow women in separate and distinct categories from that of the male. The categorisation was done taking into cognisance the biological makeup of the male and female beings in the bid to ensure fairness to all participants. A transgender woman has the right to participate and compete in sporting activities. This article examined the fairness or otherwise of allowing the transgender woman to compete in the same category as the biological woman in sporting activities. Apart from interrogating and exploring the topic, we have made recommendations that would hopefully help resolve the many controversies generated by allowing the transgender woman to compete in the same category as the biological woman. The approach of research used is the doctrinal method.

Keywords: Women's rights, transgender woman, biological woman, sports category.

INTRODUCTION

Human rights are naturally and automatically conferred on humans because they are human persons. These basic rights are immediately ensured when a person is born. Some of these rights are the right to life, freedom of expression, freedom from discrimination, right to health, right to live in habitable healthy environments, right to be recognised by gender^[1] and especially the right to be part of whatever collective groups they identify with.^[2] Recognising and protecting these rights on an individual and societal level is essential for a civilised and productive co-existence amongst members of the immediate environment and the entire human race.^[3] They are fundamental and needed for a meaningful living, so much so that they are recognised and protected by national and international laws, treaties and conventions.

Biology, the study of life,^[4] has helped us to understand the foundation of the formation of the human being. Biology has made us understand that the human race comprises the male (men) and female (women) sex. Because of the peculiarity in their makeup, each of these sexes enjoys some additional protection aside from those common to all humans. The female sex,^[5] which over time has been regarded as the weaker sex,^[6] has especially been protected from gender or sex-based discrimination or oppression.

Science has proven, time and again, that the foundational chromosome of the male sex and body is different than that of the female sex and body. The need to acknowledge and celebrate these differences can be seen in the clear categorisation of sporting activities into male and female, in line with the general classification or grouping of the human race. This categorisation is humbly believed because of scientific findings that the biological male's physiology, endurance level, stamina, strength, etc., is not only different but higher than that of the biological female.^[7] It has therefore been a time-honoured and settled fact that if a sportsperson has the sexual parts attributable to a biological male, such person will play or

contest in the male category. The converse applies to the female. Male athletes therefore play in the male category with fellow members of their sex, while the females play in the female category with fellow members of their sex. This grouping or categorisation is done and maintained even in the remotest village, where sporting activities are carried out, even for fun. International sport is not left out in implementing this style of sex-based categorisation. Over the years, the International Olympic Committee (IOC) has maintained this position and maintained its mandate and mantra of promoting fairness and equality in sports. It has even categorically stated that any new sport seeking to be part of the Olympic games should have the women's category.^[8]

Like their male counterparts, women have been actively involved in sports either as a form of recreation or professionally as a career. It is instructive to state here that for some women, their only business or career is the sporting activity they engage in. In weightlifting, for example, we have Saikom Mirabai Chanu, Emily Campbell, Hidilyn Diaz, Nurcan Taylan, Chen Yanqing, and Liu Chunhong, who are making great strides as professional weightlifters. In football (soccer), which hitherto had been considered the exclusive preserve of men, Wendie Renard, Samantha Mewis, Ada Hegerberg, and Alex Morgan^[9] (all women) are successful professional soccer players.^[10] In tennis, there is Iga Swiatek,^[11] Anett Kontaveit, Serena and Venus Williams. Swimming has Katie Ledecky, Kaylee McKeown, and Ariarne Titmus.^[12] Katie Taylor, Clara Lescurat, Angelica Lopez, Mary Kom, and Femke Hermans are professional boxers;^[13] Tai Tzu-Ying, Akane Yamaguchi, Nozomi Okuhara, Pusarla Venkata Sindhu are professional badminton players;^[14] Mikaela Shiffrin, Petra Vlhová, Viktoria Rebensburg, Lindsey Vonn, are Alpine skiers,^[15] and Simone Biles is an Olympic gymnast.^[15] Competitive sports are these wonderful women's main career and means of sustenance in the different activities illustrated above.

One cannot belabour the biological fact that humans, like all other living things, save in exceptional circumstances, are born as either male or

female. Be that as it is, one can also not close their eyes to the agitation for recognition, respect and protection of transgender people, that is, persons that believe they were assigned the wrong sex at birth.^[17] These persons often transitioned into the sex they believed they were originally meant to be. A transgender male can, in a simplistic way, be described as a person born a biological female but has transitioned and is now male. The converse is the general description of a transgender female. This paper looks at the implication and effect of the participation of transgender women in the female group alongside biological females and its impact on women's sports and women in sports.

THE BIOLOGICAL MAKEUP OF THE HUMAN BEING

A woman, in this paper, to all intents and purposes, is a human being of the female sex, while a man is a human being of the male sex. Although the human male and female mirror each other physically, their chromosomal makeup, the foundation for sex categorisation, is different. Chromosomes play a very vital role in the determination of the sex of an individual.^[18] The male human is characterised as having the heterogametic sex X and Y, while females have the XX homogametic.^[19] At conception, a person gets a chromosome from each parent. Where the embryo gets 'X' from each of the parents, meaning they have the 'XX' chromosome, the child will be female, but where the embryo gets an 'X' from the mother and a 'Y' from the father, meaning they have the 'XY' chromosome, the child will be born male.^[20] A person's sex, therefore humbly submitted, is already determined at conception as it is determined by their chromosomal makeup, which neither they nor anyone at that have a hand in deciding. A person's sex is however ultimately manifested for all to see at birth. Some organs unique to the male are the scrotum, testes, epididymis, vas deferens, seminal vesicles, prostate gland, urethra and penis,^[21] while those unique to the female are the mons pubis, vulva, labia majora, labia minora, clitoris, clitoral hood, urethral opening, vagina, cervix, ovaries, fallopian tube, and hymen.^[22] A biological female has ovaries and produces eggs, while a biological male has testes and produces sperm.

Another key area (especially concerning sports) where the differences in the sexes are obvious is in the expected growth reference height. The growth reference average height of a man is 176.5 cm (5 feet 9.5 inches), while that of a woman is 163 cm (5 feet 4.3 inches).^[23] There is also the difference in average male and female muscle mass. The adult male generally has more overall muscle mass and less body fat than the female. For example, male athletes have an average of between 4% to 12% body fat compared to 12% to 23% of female athletes. It is instructive to add here that these differences are not limited to professional athletes. For example, a study conducted on college students has found that female students' arms, upper body, chest, shoulder, leg, and abdominal muscles are significantly weaker than their male counterparts. The females were found to have 37–68% muscle strength compared to males in general.^[24] This inherent biological makeup gives the male sportsman, through no fault or effort of his, an automatic performance advantage over their female counterparts.^[25]

TRANSGENDERISM

Transgender is an umbrella term for people whose internal sense of gender conflicts with their sex at birth.^[26] Transgenderism, from a scientific vantage point, is said to be the result of a mismatch between biological gender disposition and a person's culturally assigned gender behaviour category.^[27] A transgender person identifies as a sex that does not correspond with their biological or birth sex.^[28] It is also said to represent people who feel incongruence between the gender they were assigned at birth and their gender identity.^[29] Transgender persons usually have strong and persistent feelings of discomfort with their biological sex, which can be the desire to possess, be regarded and be recognised by others as a member of the opposite sex.^[30] They may therefore decide, by lifestyle, clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, to present themselves differently than the sex in which they were born.

Like human sex classification, transgender is either male or female. A transgender male is a person born female but whose gender identity is now male or within the masculine gender identity spectrum. In contrast, a transgender female is a person who was biologically male at birth but whose gender identity is now female or within a feminine identity spectrum.^[31] Identifying as a transgender person has not always been popular or part of mainstream discussion. In the not-too-distant past, it was even considered or referred to as ‘Gender Identity Disorder’, a psychiatric disorder.^[32] The fight for a right to sex identification has recently gained global traction and is now an integral part of discussions not just in families and schools but on world stages.^[33]

Gender Transitioning

A person desiring recognition and acceptance as a member of a sex other than their biological sex is usually required to transition from the sex they were at birth to the one they now prefer, choose or feel more comfortable in.^[34] Therefore, they are required or expected to undergo some medical procedure such as surgery or hormonal treatment that would, as much as possible, give them the major or distinct biological components of their desired sex.^[35] This is aimed at making them fit in and look like members of their desired sex because, as we have seen above, the physiological and chromosomal attributes of the male and female sex are different. Persons transitioning are also often required to undertake some counselling sessions to help them through the entire process, and such sessions may continue even after they have completed the transition. Countries like Japan and Hungary insist on some medical procedure that will alter the person’s physical and especially their private parts to that of their preferred sex before they can be said to have changed their sex.^[36] At the same time, Switzerland, South Australia, Portugal, Tasmania and the Northern Territory of Australia allow people to change their sex by a simple declaration^[37] without the need for any surgical procedure.

BIOLOGY IN SPORTS

Sporting activities, especially competition, have always been rooted in the ideology of fair play, that is, according to every player, a level field in which they play or compete with their peers. Factors such as age, weight and sex are major determinants in groupings or classification in sporting activities. This is why boxers or wrestlers, apart from competing only against persons of their sex, are further categorised by their body weight or size.^[38] The categorisation, as has been severally stated here, ensures that all competitors get the opportunity to compete against their peers in every sense of the word. A person whose weight or other physical attributes does not fall within the requirements for a particular category or group is usually not allowed to compete in that category or group.

It is important to state here that the average requirement for females in sports entails exertion of strength, speed or endurance to be lower than that of males.^[39] An example can be seen in weightlifting. At the Tokyo Olympics 2021,^[40] for instance, the lowest weight in kilograms accepted for a man to compete in the snatch and clean jerk category was 61 kg while that of the women was 49 kg.^[41]

Women and Sports

Women's participation in competitive sports is replete with stories of discrimination and denial.^[42] In ancient times, females were not allowed to compete or even engage in any sports activities because they were seen not only as incapable but also thought that their participation would, at best, make them masculine and thus unattractive to men^[43] and at worst, harm their reproductive organs^[44] causing weak offspring.^[45] These misconceived beliefs were encouraged and held by many, including no less a personality than Baron Pierre de Coubertin, the founder of the International Olympic Committee (IOC). Baron Coubertin stated that having sportswomen in the Olympics would be impractical and indecent because games were created for the solemn and periodic exaltation of the male aesthetic. The job of any female in the sporting arena is to applaud

men for their victory.^[46] This view was so prevalent that even after the creation of the Olympic games, women were not allowed to compete^[47] as the frames were considered an exclusive preserve of men.^[48]

Agitation by women for the right to participate in international competitive sporting started in the early 1900s by Alice Milliat.^[49] Alice Milliat began to organise international competitions for women after her unsuccessful campaigns to the International Olympic Committee to allow women's participation in athletics at the Olympic Games. The rigorous advocacy by Alice Milliat and other like-minded persons that women be accorded equal rights and opportunities in sport as their male counterparts led to the establishment of the *Fédération Sportive Féminine Internationale* (FSFI), that is, International Women's Sports Federation. This organisation's first competition was the Women's Olympiad in Monte-Carlo^[50] in 1922.^[51] Women were allowed to compete in the Olympics for the first time in 1900.^[52] They were allowed to participate in five sporting activities.^[53] The struggle to promote and protect the integrity of girls' and women's sports continued until as recently as 1999, when a new and significant rule was made that any new sport seeking to join the Olympics must have a women's category or group.^[54]

Transgenderism and Female Sports

It is important, at this point, to reiterate that it is not the intent of this paper to castigate or stop the participation of transgender women in sporting activities. Our focus is to shine a light on certain issues surrounding their participation and competing in the same grouping or category as biological women and how that is eroding the principles and concept of 'fairness', the bedrock of every sporting activity.

Our narrative went down memory lane to show how women fought for and gained the opportunity to participate in competitive sports. This hard-fought right, it is humbly submitted, is now threatened and systematically being eroded by what we will unreservedly call an invasion of the biological female sports space by the transgender woman. The first

recorded participation in the female biological category by a transgender woman was by Renée Richards.^[55] Renée Richards (formerly Richard Raskind) was a professional male tennis player from 1953 to 1972^[56] who won several awards^[57] as a male player and was even ranked 6th out of the top 20 males nationally in the USTA men's 35-and-over division.^[58] Richard Raskind underwent a sex reassignment surgery in 1975. After her application to compete as a woman in the U.S. Open in 1976 was denied, Renee Richard sued the United States Tennis Association for discrimination. The court ruled in her favour.^[59] She won her first match as a woman in 47 minutes.^[60] A more recent and notable example of transwomen competing against biological females after a successful career as a biological male is Laurel Hubbard, a professional weightlifter. Before transitioning, Laurel Hubbard (born Gavin Hubbard) of New Zealand had competed for over 18 years as a man in the M105+ division in lifts (snatch 135 kg, clean and jerk 170 kg) as well as total (300 kg) and won severally.^[61] Hubbard was captain of the boys' team while at school and was a national record holder in domestic competitions.^[62] She transitioned in 2012 and started competing as a woman in various competitions.^[63] She is currently ranked 7 in the International Weightlifting Federation (IWF) women category.^[64] An MMA fight that made waves and generated much controversy was that between Fallon Fox, a transgender woman and Tamika Brents, a genetic woman. Fallon Fox, a born male, named Boyd Burton, lived as a man for 37 years,^[65] wrestled as a boy in high school and even joined the U.S. Navy.^[66] Fallon Fox transitioned, underwent surgery in 2006^[67] and competed in the Women's Featherweight Division.^[68] Almost all of her matches ended in the first round as her opponents, who were biological females, were easily subdued. She won all but one of her matches.^[69] One of her matches lasted for just two minutes as she broke her opponent's skull, so the referee was forced to stop the match.^[70] We need to mention here that a round in a typical MMA fight usually lasts between 15 to 25 minutes and has three or five rounds.^[71] Another transgender MMA fighter who followed Fallon Fox's footsteps is Alana McLaughlin. The fighter, born a male^[72] lived as such for 33 years. He

served as a soldier with the U.S. Special Forces and even trained in Mixed martial arts (MMA) for 10 years.^[73] Alana McLaughlin started transitioning after leaving the U.S. Army in 2010^[74] and began competing as a woman after that. Her fight against Celine Provost, a biological woman, was over in 3 minutes 32 seconds into the second round of the fight,^[75] with McLaughlin soaring to victory.

Effect on Biological Sportswomen

Scientific findings and practical examples enumerated above have shown that the transgender sports woman enjoys some physical and physiological advantages over her female biological counterpart because of her foundational chromosomal makeup. These advantages have made transgender women win and even dominate any sporting activities in which they are paired with biological women. This, it is categorically submitted, is not only unfair and unjust but goes against the spirit of sportsmanship and the universal mantra of fairness for all participants. It is important to state here that it is not just the competitors affected by this practice. Parents who had invested time and other resources in the training of their wards, and companies that have awarded sponsorships or support, are also affected. There have been calls to address this unfair treatment by sports and non-sport persons (male and female) alike.^[76] Many of these complaints have been met with either ridicule, bullying, being labelled a sore loser at best, or transphobic at the very worst. It will be frustrating to watch one's daughter, after putting in her all and going through rigorous training, lose her chance to someone who had an advantage even before the gun was shot. Many mothers recounted how their daughters had put in up to 15 years of hard work, sometimes spending four hours in a pool six days a week from the age of 5 in hopes of reaching elite athlete status,^[77] only to be beaten by a transgender woman that had trained as a man and is now competing against them. It is disheartening that a lot of the parents are forced to register their protest and displeasure anonymously because of the fear of harassment and are specially classified as being transphobic.^[78]

One cannot overemphasise how sports has not just been an avenue for expressing one's gifts and talent but has also served as a gateway to getting an academic scholarship that will help build a good future. Some female sportswomen like Alicia Sacramone,^[79] George Parros,^[80] Grace Calhoun,^[81] Ryan Fitzpatrick,^[82] Mollie Marcoux Samaan^[83] enjoyed sports scholarships that helped them in their studies in Ivy League institutions. Many of these young female sportswomen compete not just for the laurels or glory but for the chance to get a scholarship to further their education, thus ensuring a better future. Competing against persons clearly not their 'peers' puts them at a great disadvantage and somewhat jeopardises their future. An example of such an unfortunate occurrence happened during the New England Regional championships when outstanding high school female runners like Selina Soule, Chelsea Mitchell and Alanna Smith lost because two biological males, identifying as females, competed in that event and won. One of the runners, Selina Soule, said that allowing transgender girls to compete against biological females has shattered their dreams because it robbed them of top finishes and possibly college scholarships.^[84] A concerned parent had also said that allowing transgender girls to compete in girls' sports would not only shatter their dreams and aspirations but also deny their daughters equal opportunities.^[85] One can only imagine the mental and psychological trauma the female biological athletes go through before, during and after such competitions and especially when they lose to a transgender woman who, from all physical and scientific evidence, should not be with them in the first place. It was reported that Lia Thomas's teammates were in tears after they lost to her, with one of them saying they felt so discouraged because no matter how much work they put in, they still lost.^[86] One of the contestants in that competition, Riley Gaines, said all the other contestants felt cheated^[87] and she felt that the NCAA favoured Lia Thomas.^[88] A mother to one of the contestants described the encounter as "... a miserable experience all around",^[89] and that it was an example of "literally bending over for male privilege".^[90] Some other parents, while raising concern about equality in the competition to the New York Post, complained that

their daughters made a lot of sacrifices to get their place in the competition only to get there and be upstaged by Lia Thomas, not because she was better at the sport but because she, from the get-go, had an unfair biological advantage.^[91] Another incident that would have been comical if not for the seriousness of the issue being raised here was when Ricci Tres, born as Richard Batres, a navy veteran who lived as a male for 27 years, transitioned and at age 29 competed in the women's division of the Board Open street skateboarding competition. His fellow competitors were girls within the age bracket of 13–17 years.^[92] The competition was won by Ricci Tres, who got the prize of USD500.

Before now, many people have been reluctant to voice their opinions on the unfairness of transgender women competing against biological women. It is however heartwarming to see some transgender women not just acknowledging the advantage but going further to add their voice to the fight against such practices. One such prominent voice is Caitlyn Jenner, a transgender woman formerly known as Bruce Jenner, a biological male and great athlete. Jenner was one of the athletes that won a gold medal for the USA in the men's decathlon at the 1976 Summer Olympics in Montreal. According to her, allowing a biological boy to compete with a biological girl is unfair,^[93] categorically stating that even though she has transitioned and is now female, she could still compete against biological females and win because of the inherent advantage occasioned by her biological makeup.^[94] Another notable public figure that sided with Caitlyn Jenner and other like-minded people is Piers Morgan, a former host of 'Good Morning Britain' show, who stated that transgender female athletes like Lia Thomas are destroying women's sports and are enjoying advantages in ways that are as unfair as doping cheats.^[95]

There is no better way of stating our position than saying that women's sports categories were created to give girls a fair chance at not just competing but standing the chance of winning in whatever sport they engage in. The incursion of the transwoman into the female category has turned biological women into mere participants with no possibility of

winning any medal or even making any mark. One would not be wrong to conclude that the biological woman is now a prop in the women category of sporting events. Maybe she is being used to fulfilling the requirement that there must be more than one gender to make the event qualify as a competition. The biological female goes in to compete, knowing that she will not win. All the rigorous training and investment of time, finance, sweat and blood are all in vain.

Regulatory Efforts

Scientific research has shown that the testosterone level in a regular male is between 300 to 1,000 nanograms per decilitre (ng/dL) or 10–35 nanomoles per litre (nmol/L), while a regular female has between 15 to 70 ng/dL or 0.5 to 2.4 nmol/L.^[96] In a bid to give the impression that it is still maintaining its mandate of fairness while making a case for the participation of transgender women in the female category, the International Olympics Committee (IOC) in 2015 stipulated that a transwoman will be allowed to compete against a biological female if she has been on medications that have reduced her testosterone level to 10 nanomoles for 12 months preceding an event.^[97] The guidelines provided here are not uniform since some sporting bodies have provided their own guidelines for their particular sport. The *Union Cycliste Internationale* (UCI) (International Cycling Union) guideline, effective from 1 July 2022, provides that for a transgender woman to compete in the same category as a biological woman, her maximum plasma testosterone level, currently required to be at 5 nanomoles per litre (nmol/L), will now be 2.5 nmol/L^[98] for 2 years preceding the event.^[99] Longitudinal studies focused on examining the effects of testosterone suppression on muscle mass and strength in transgender women showed a modest 5% loss of lean body mass, muscle area and strength after 12 months of therapy^[100] and this reduced level is still higher than that in biological females even after 3 years of treatment.^[101] It is therefore preposterous that, in the bid to be inclusive, policymakers are willing to accept that hormone therapy can appreciably reduce or even totally remove whatever advantage, in strength,

stamina, endurance, etc., that a transgender woman has over a female biological counterpart and thus allowed to compete in the same category. A study conducted by Harper^[102] found that even though hormone therapy rapidly reduces haemoglobin and body mass and muscular strength in transgender women, the reduced levels will still be higher than in biological females after 3 years of treatment, and transgender women athletes still have a 9% faster mean run speed and a 12% advantage over biological women even after the recommended one-year period of testosterone suppression.^[103]

All these clearly show that testosterone suppression does not take away all the advantages enjoyed by transgender women^[104] and thereby putting them on the same level as the biological woman. Little wonder the outstanding performances recorded by transgender women competing in the same category as biological females.

Some notable instances where transgender women made impressive progress in their performance and thereby got a higher ranking within a short time of transitioning include the case of American sprinter CeCe Telfer, born a male named Craig Telfer.^[105] CeCe Telfer was ranked 390th in the 400m hurdles male division of the National Collegiate Athletic Association (NCAA).^[106] In the 2016/2017 season, Craig was not even in the top 200 male athletes in his event.^[107] She (CeCe) began hormone therapy in 2017, left the men's team in 2018, and competed and ran in the 100m hurdles in 13.56 seconds, finishing 5th in 2019. In the 400m, she won 1st place with a finishing time of 57.53 seconds.^[108] Another sportsman who saw tremendous improvement in her craft after transitioning is Lia Thomas, born male as Will Thomas. She competed as a member of the University of Pennsylvania men's swim team for three seasons.^[109] In the 2018/2019 season, he was ranked 554th in the 200 freestyle, 65th in the 500 freestyle and 32nd in the 1650 freestyle.^[110] After transitioning and joining the women's team, Lia has been enjoying an impressive winning streak.^[111] Her ranking has also moved to 5th in the 200 freestyles, 1st in the 500

freestyle and 8th in the 1650 freestyle category.^[112] Between 2021 and 2022, Lia Thomas has, so far, smashed two U.S. women's records.^[113]

It is needful to point out here that many of these transgender sportswomen had their initial foundational training in sports as men, so their bodies, apart from having the biological advantages, have been trained and developed in line with the requirement of their respective male categories. Earlier, we pointed out that the male and female categories do not have the same requirements per height or weight^[114] in any sports. In weightlifting, for example, the weight lifted in the male category or any class/group is usually higher than that of the females in the same class/group.^[115] A male weightlifter trained in a particular class cannot now claim that that training has been eroded by therapy or medication. Training, which is often dependent on the sex of the person, it must be pointed out here, has never been discountenanced in sports till now. An attempt to show that it had no effect on the overall performance of sportspersons was proved wrong in September 2021, when the Queensland under-18 netball competition saw an all-boys team beat an all-girls team by 42-12 points.^[116] The Gremio men's under-16 team beat Brazil women's national team made up of women between the ages of 24 and 41 years old^[117] who have trained and been together for some time, at 6-0 in an intergender match.^[118] A similar feat happened and was duplicated in the match between the FC Dallas under-15 boys squad and the U.S. women's national team. The boys won over the national women's team by 5-2 goals.^[119] In 2016, the Australian women's soccer team, then ranked 5th in the world, lost 7-0 to a team of 15-year-old boys.^[120] One cannot forget in a hurry when, in 2018, the Manchester United women's team got a beating of 9-0 goals from Salford's Academy Boys Football Club in a pre-season game.^[121] Interestingly, even sportspersons, who hitherto had no inkling or disregarded the impact training based on biological sex had on performance, had rude awakenings. An example was when in 1998, tennis superstars Serena and Venus Williams, who had serve speeds of 125 mph^[122] and were ranked 5 and 20, respectively, famously claimed that no male outside the Association of

Tennis Professionals (ATP) Top 200 could beat them. In a set challenge, ATP 203rd-ranked Karsten Braasch challenged each player. He beat Serena 6-1 and Venus 6-2.^[124] Practical situations like this have made some elite transgender sportswomen like Renée Richards admit that having lived for the past 30 years as a man provided her advantages over her female competitors. She further said, “I know if I’d had surgery at the age of 22 and then at 24 went on tour, no genetic woman in the world would have been able to come close to me”.^[125]

RECOMMENDATION

The creation of a female category in sporting activities has encouraged women to go into competitive sporting activities, winning laurels and making history for themselves and also serving as reference points and sources of encouragement to younger women. We have seen how participation in sporting activities has been not just an avenue for women to win laurels but also to make a living, thus contributing their quota to the economy of their communities. Allowing transgender women to participate in the same category as biological women, as we have shown here, has deprived biological women of not just an opportunity of competing with their peers on a fair level ground but also of the chance to win laurels that will help their career progression and, overall, their finances and economic power. Continuing this practice will not augur well for sports but also for society at large.

It is the view of this paper that women must compete in the same category as their peers in order to maintain fairness, and transgender women must also have the opportunity to compete fairly. Without the fear of being labelled as cheats or one that got an easy win, it is recommended that a separate category be created for transgender women where they can compete against other individuals who have transitioned just as they are. This category should, just like it applies to the biological male and female sportspersons, be strictly for those that have transitioned into the same sex. Furthermore, the placement of transgender persons into any of the classes

or groups in this category should consider parameters such as weight, height, etc., that are used for placing biological males and females in their respective sports. This, it is humbly submitted, will help ensure that sportsmanship does not regress to a time when women were not permitted to compete at all. This is because forcing them to compete in situations where their chances of winning are extremely slim is tantamount to denying them participation.

CONCLUSION

Sporting laws and rules are aimed at ensuring that all participants' rights are protected. The current practice of allowing transgender women to compete against biological women does not portray that. The biological woman, based on scientific research and findings, is not made to compete against athletes that are stronger, faster, and, most importantly, have a different body structure and composition than theirs. That, it is categorically stated here, is not fair. It would be fair for people of the same sex identification to compete in the same category as people of the same sex.

The reality of transitioning from one sex to another is here to stay, so all sports bodies and regulating authorities must accept and move with the times. It is therefore the contention of this paper that to maintain a level playing field for all sportspersons, transgender women should not be allowed to feature, and most certainly, not compete in the same category as a biological female in any sporting activity. There should therefore be a separate and distinct category/grouping for transgender women. This will protect the female biological athlete from all the foundational biological advantages enjoyed by biological men that are now transgender women, especially as it relates to speed, endurance, stamina and strength. This paper, which has been mentioned here severally, is not advocating the total exclusion of transgender women from sporting competitions. Our position is that transgender women should compete against fellow transgender women. According to scientific research and findings, transgender women,

especially those who transitioned after puberty (as we saw in the circumstances illustrated above), have already developed and trained their muscles like men. Thus they would automatically have an advantage over their biologically female opponents in any sport requiring strength, stamina, speed and endurance.^[126] This negates and goes contrary to any liberal interpretation of the concept of fairness that anyone may have. Allowing such unfair practice to continue is tantamount to officially allowing the game to be ‘rigged’ by the people that have been shouting ‘fairness’, the same people that are appointed, meant to supervise and ensure that fairness, in every sense of the word, is observed at all times.

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