

Australian Football Transgender Ban Is Discriminatory

By **Ronald Katz**

On Oct. 16, 2017, transgender female Hannah Mouncey was blocked from playing in the women's Australian Football League. Initially the reason given by the AFL adjudicating panel was so vague — “the stage of maturity of the AFLW competition, its current player cohort and Mouncey's individual circumstances” — that there was a later clarification: The basis of the decision was Mouncey's body size and bulk, 6 feet 2 inches tall and 220 pounds. Because this decision was not evidence-based, it is discriminatory against transgender athletes and based on sexual stereotyping. This is a serious civil rights problem, not only in Australia but in the U.S. and in international sporting competitions.



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First, size is only one factor among many determining athletic performance. Many 7-footers do not have the athletic ability to play in the NBA or WNBA and, conversely, smaller athletes like 5-foot-6-inch Jose Altuve of Major League Baseball's Houston Astros or 205-pound Christian McCaffrey of the National Football League's Charlotte Panthers compete very well against larger players. Judging an athlete by his or her size and bulk alone is, plainly and simply, stereotyping.

It may be unfair for smaller basketball players, for example, to compete against 7-foot-1-inch, 325-pound Shaquille O'Neal, but the idea of banning O'Neal from competition because of his size is absurd. Finally, it is simply not true that male-bodied athletes are always superior to female-bodied athletes: Most males would not be able to defeat Serena Williams or Chris Evert in tennis. There are simply too many body types in the world to make athletic rules (in sports where there are not weight divisions) dependent on them.

In terms of body types, there is not and can never be a truly level playing field, which is why sports allow players of all body types to freely compete in sports where there are not weight divisions. Whether or not an athlete is transgender should make no difference in this approach. To act otherwise is simply to stereotype.

For one thing, being transgender is not a choice. Transgender females like Hannah Mouncey do not choose to become females; they are females. This has been recognized in the U.S. by the National Collegiate Athletic Association, which has deemed the subject sufficiently important to write a handbook on it.[1] That handbook emphasizes that athletic performance is multifaceted and not dependent on whether one is male-bodied or female-bodied: “[What] counts as a competitive advantage may shift dramatically depending on the sport ... factors such as height, weight, reaction time, and proportion of fast twitch muscle fibers all affect competitive advantage ... A female volleyball player may be very tall, and yet few people would consider that to be an unfair competitive advantage in her sport.”

Most importantly the NCAA handbook states that: “Gender identity is a core aspect of a person's identity, and it is just as deep seated, authentic and real for a transgender person as for others. Male-to-female transgender women fully identify and live their lives as women, and female-to-male transgender men fully identify and live their lives as men”

Hannah Mouncey exemplifies the above quote. She has been living as a woman for eight years, and she started hormone therapy in November, 2015. This therapy has reduced her testosterone levels well below the levels allowed by the International Olympic Committee for female competitions. Whether that fact was relevant to the AFL adjudicating panel is not known, because the AFL's standards, if any, for allowing transgender competition are unknown. The banning was based on the so-called Equal Opportunity Act of the Australian state of Victoria, which permits discrimination based on sex or gender "if strength, stamina or physique is relevant." Unfortunately that makes this statute meaningless for sport, in which strength, stamina and/or physique are relevant to every athletic competition.

Even if Mouncey's testosterone were above normal female levels, that would not be a reason for the ban. Like size and bulk, testosterone is but one factor in the many that contribute to athletic performance. The Court of Arbitration for Sport has ruled as much in its 161-page decision in the case involving Indian runner, Dutee Chand,[2] who was banned from competition because her testosterone levels were higher than allowed for females. Reversing that ban, the CAS held that it was unable to conclude that androgen-sensitive hyperandrogenic female athletes, i.e., those with higher-than-average testosterone levels, "enjoy a substantial performance advantage over non-hyperandrogenic female athletes" or "that excluding them from competing at all unless they take medication or undergo treatment is a necessary and proportionate means of preserving fairness in athletics competition and/or policing the binary male/female classification"

Aside from the stereotyping and bad science behind the AFL decision, there are the undeniably negative social effects of the decision and the manner in which it was made. As with many transgender athletes before her, the most intimate aspects of Hannah Mouncey's life were turned into a public spectacle, accompanied by what has become the all-too-usual abusiveness on social media. This state of affairs not only has the potential to affect Mouncey negatively, but inevitably it will discourage other transgender athletes from subjecting themselves to this non-evidence-based discrimination.

A comparable situation arose in the U.S. last winter because of a statute in Texas that limits an athlete from competing against anyone but those who have the same sex indicated on their birth certificate. A female-to-male transgender wrestler named Mack Beggs was therefore forced to compete against females even though he wanted to compete against males. This resulted in numerous complaints by competitors, litigation and a very public uncomfortable situation for Mack Beggs (who won the state championship) and his family.

The solution is simple: Base decisions regarding transgender athletes on facts, not stereotyping. The AFL has stated that it would consider allowing Mouncey to compete in the future, but, unless future evaluations are evidence-based, the result will inevitably be the same.

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[1] https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

[2] http://www.tas-cas.org/fileadmin/user_upload/award_internet.pdf.

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