DAILY COVER

Lawmakers Say Trans Athlete Bans Are About Protecting Women's Sports ...

So why are these three states targeting trans boys and men?

JULIE KLIEGMAN • JAN 25, 2022

Luc Esquivel wants to beat you at golf. "I want to beat everyone," he adds, laughing but clearly not joking.

"I just love it," he says. "I just want to get better."

Luc has played with his father, Mario, since sixth grade, and in middle school, while he still presented as a girl, he competed on the girls team. But Tennnessee state law does not allow the transgender 14-year-old freshman to try out to play with other boys at his high school in a Knoxville suburb. Now Luc and his parents, along with Lambda Legal and the ACLU, are suing Tennessee over its anti-trans sports law, which Governor Bill Lee, a Republican, signed last March.

"I'm not usually an angry person, but it made me really angry," Luc says of the law.

Tennessee is one of 10 states—nine of them in 2021—that have enacted bans on transgender students participating in publicly funded sports in the gender categories that align with their identities. Most of those states ban only transgender girls and women from playing sports on girls and women's teams.

The laws' backers have almost uniformly argued that this is a matter of competitive fairness and protecting Title IX—that transgender girls and women have advantages over their cisgender competition because of their anatomy and naturally occurring hormone levels (though the science on this claim remains unclear).

Tennessee, however, as well as Alabama and Texas, go further, also banning trans boys and men from playing on boys and men's teams. That raises a question: If these laws are really about preserving the sanctity of women's sports, why have these states banned trans boys and men from competing on boys and men's teams?

Barbara Ehardt, the Republican lawmaker in Idaho who in 2020 introduced her state's ban, titled the Fairness in Women's Sports Act, says it doesn't make much sense to her. "There's no danger at all for boys and men," she says.

Yet these laws are on the books, in states with some 40 million combined residents.

"The logic doesn't cohere," says Heath Fogg Davis, the director of Temple's gender, sexuality and women's studies program who specializes in transgender civil rights. "It's hard to come up with rationales or to engage in that debate, because there's no good policy justification for it, other than you want to exclude a whole group of, in this case, kids and the most vulnerable among us."

In 2020, Tennessee state Representative Scott Cepicky, a high school football coach and a former college athlete and minor league baseball player himself, introduced HB003, which would become the law banning trans athletes who wish to play sports aligned with their gender identity. He says he was concerned about competitive fairness, looking at examples like the two transgender girls in Connecticut, Terry Miller and Andraya Yearwood, who three years ago provided their cisgender peers steep competition on the track, finishing first and second in the state finals in the 100-meter dash. (Terry also took first in the 200-meter race.)

Cepicky, a Republican, says that just like with transgender girls and women, preventing transgender boys and men from playing sports with teams that align with their gender identity is about safety and fairness. Asked for examples, he doesn't point to any transmasculine athletes dominating sports or endangering their peers. Instead, he brings up Sarah Fuller, the cisgender women's soccer player who in 2020 briefly joined Vanderbilt's football team as a placekicker.

"There were instances that, in the games, male players would go out of their way to protect her if they thought she was being roughed up too much, and that put those male athletes in bad situations, possibly getting injured or creating disruptions to the game," he says. (Fuller was on the field for three kicks total over the course of two games: one kickoff and two extra points, during which no opposing player approached within striking distance of her.) Cepicky does say he is O.K. with girls playing on boys' teams, like in Little League, but only until they hit puberty.

Fuller, though she faced some sexist criticism, was widely celebrated for breaking barriers in perhaps the most masculine, aggressive U.S. sport. So why aren't trans athletes held up for breaking barriers of their own?

Chris Mosier, a duathlete and trans rights activist, argues that the trans sports bans aren't actually about sports, at their core.

"It's about banning trans people and limiting our access to our everyday activities," he says. "It's about erasing trans people from public view."

Some states' laws are not even clear as to who, exactly, is banned from which teams. In the Arkansas, Montana, Mississippi and Idaho laws, it's ambiguous as to whether the restrictions apply to trans boys and men. Though attention around the laws has focused on how they affect trans girls and women, their texts are unclear. Idaho's bill, for example, stipulates that the only categories of competition allowed are "male," "female" and "coed," and that participation

must be based on "biological sex." That would seem to ban all transgender athletes from teams that align with their gender identities.

But directly undereneath that passage, the text reads: "Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex." There is no equivalent clause about boys' and men's teams, raising the question of whether trans boys and men could in fact compete on them. The Arkansas, Montana and Mississippi laws have the same issue. (These laws were often built off the same model language provided by activists.) When *Sports Illustrated* contacted the governor's office in Arkansas, a spokesperson said the law in that state applies only to trans girls and women. But the governor's offices in Idaho, Montana, and Mississippi did not reply to SI's questions, leaving the status of how their laws would be enforced unclear.

For her part, Ehardt, the Idaho legislator, says she does not believe her bill bans trans boys and men from competition on boys and men's teams. She says she doesn't see the argument for that—only for banning trans girls and women, like Lindsay Hecox, a cross-country runner who sued Idaho alongside the ACLU last year.

"Title IX was all about creating opportunities and then protecting opportunities for girls and women, because it was very obvious in 1972 that there were physiological differences between girls and boys, men and women, and that we literally could not compete with them," Ehardt says. "We had to have our own separate sex-based sports if we wanted to have opportunities to play."

Montana state Representative John Fuller, who introduced a similar bill to Idaho's that passed last May, agrees with Ehardt that trans boys and men do not threaten the fairness of competition. He believes, though, that his own bill *does* ban them, in addition to trans girls and women.

"We all know that girls participating in boys sports are probably not going to happen in terms of practical reality," he says. "For a girl to compete in boys' sports as a regular basis, that's going to be few and far between…. But because of the physical realities, as is demonstrated by the University of Pennsylvania swimmer, it does make a difference if boys compete as girls," he adds, referring to Lia Thomas, a transgender woman swimmer who has plowed through much of her competition for the Quakers this season. Misgendering a trans person, as Fuller did by referring to Thomas as a boy, is considered highly offensive.

Fuller says that the reason he wanted his bill to apply to boys and men's sports, as well as girls and women's sports, is to not discriminate against one gender or another.

Meanwhile, for transmasculine athletes, whether or not they are banned in any given state, they face a different set of struggles than their transfeminine peers. They often fly under the radar entirely, for better and for worse: Mosier, for instance, is used to being mostly ignored as a trans man in sports, he says, underestimated and not viewed as a competitive athlete. So it is significant that Luc—a trans boy—is the face of Tennessee's lawsuit, shedding light on a small subset of trans people often overlooked in sports.

In golf, women and men hit off different tees: Men hit farther back in an attempt to level the playing field. In that sense, Luc is making the game harder for himself by choosing to hit from a boys tee. "I see it as fair," he says of playing with other boys. "If you're good, you're good, and if you're bad, you're bad."

The instances legislators cite of trans people competing and winning tend to focus not on boys like Luc, but on trans girls and women, specifically. The latest such controversy in scholastic sports surrounds Thomas, the Penn swimmer. Other reference points have been the Connecticut sprinters, who did not go on to compete at the college level, and Hecox. These cases, while high-profile, are not all that common.

Emet Marwell, the policy and programs manager at Athlete Ally, an LGBTQ+ sports advocacy group, is a trans man and athlete himself, and he's never encountered pushback about his hobby of cycling alongside fellow male competitors. (He hopes to soon compete in official races.) It's not that athletes like Mosier and Marwell want to be the subject of political scrutiny, but they would like to be more noticed and respected in sports. "Getting overlooked as transmasculine folks, in my mind, it comes down to this sexist assumption that anyone who is assigned female at birth will never be as good athletically as someone who was assigned male at birth," Marwell says. "Obviously, that's not true at all."

On average, cisgender boys and men may be larger and have higher testosterone levels than cisgender women and girls. But assuming all female athletes are fundamentally weaker than all male athletes is a philosophy that's "fundamentally rooted in sexism," says CJ Jones, a PRODiG postdoctoral fellow at SUNY Purchase specializing in gender studies.

"I honestly just think it's Texas, Alabama and Tennessee covering their bases in a way where they're not seen as unfair," they add. "So they're transparent about their discrimination, if you will."

At the end of the day, the laws are about who gets to participate in certain aspects of everyday life.

"I think the stereotypes that still come to mind for a lot of people—and, frankly, these legislators are relying on these stereotypes—are meant to present trans lives as still being strange and radically different," Davis says. "It's devoid of humanity. Because how else could you justify excluding this trans boy from playing golf? It doesn't make a lot of sense."

It is not as though Luc, like Cepicky says of the Vanderbilt kicker Fuller, is in any danger of getting hurt out on the links, Davis points out. Golf "cannot be any safer," he adds, laughing.

Chase Strangio, a lawyer for the ACLU working on Luc's case and similar ones across the nation, says that if supporting girls and women's sports were truly the goal of legislators, there are other ways to go about it.

"If the state interest is protecting women and girls in sports, then the state would mostly rationally respond by investing more resources in [women's] sports, which they're not doing," he says. "Ending sexual assault and sexual violence at the hands of their coaches and others, which is essentially endemic to sport right now in truly catastrophic ways. Investing in women's coaches and mentors and physical training protocols that support women and girls, none of which are happening."

As the court battle plays out in Tennessee, Luc mostly wants to let people know that there's more to him than just the lawsuit.

“My life is pretty boring,” he says, laughing. “I play *Minecraft* with my friends and learn as much as I can about finance and business.” In a certain sense, he’d like his life to be even more boring—free of a battle over a law that he feels attacks his humanity. He just wants to play golf.

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