

Sports Litigation Alert

Reprinted from Sports Litigation Alert, Vol. 19, Iss. 10, May 20, 2022 Copyright © 2022 Hackney Publications.

Beyond the Binary: The Non-Binary Athlete

By Holt Hackney

What follows is an interview conducted by Carla Varriale-Barker (she/her/hers), the chair of Segal McCambridge's sports practice group, of Lauren Lubin April (they, them), a non-binary athlete and activist who has been on the forefront of non-binary and transgender advancements in sports and health, academia, film and media, public policy and more for over a decade.

In 2016, Lauren became the first-ever openly non-binary runner to compete in the New York City Marathon, and repeated history in 2019 at the Boston Marathon.

Lauren is the Executive Producer of *We Exist: Beyond the Binary*, an award-winning documentary that has been part of the curriculum of over 50,000 students in more than 70 countries and is the first full-length feature to explore the life of individuals who exist outside of the gender binary.

Most recently, Lauren founded April Haus, Inc., a consulting company that specializes in building innovative, integrative, and sustainable sport systems beyond the gender binary.

Question: How did you become an athlete/activist advocating on behalf of inclusion of non-binary persons in sports?

Answer: At the beginning and many years ago, my activism spawned from being a frustrated athlete who no longer was willing to wait for the world to "let me in." I started to make small changes locally and in 2015 founded New York City's first non-binary running group, dedicated to meeting the specific needs of non-binary athletes and providing a space for us to participate. The group garnered over 100 participants in the first year alone. Shortly thereafter, I started the "WE RUN" campaign, which advocated for equal space and recognition for non-binary athletes in sports and gained national headlines. This was the turning point of people really taking notice.

Today, my initial frustrations have turned into inspiration as I see the sports world shifting in powerful ways, and concurrently my advocacy goals have transformed from the local level to the global stage. I now work with industry leaders



Lauren Lubin

across various verticals on building more expansive, integrative, and sustainable sports models and systems for athletes of all gender identities.

Q: What are some of the unique challenges to inclusion for non-binary people in sports?

A: The most obvious challenge non-binary people face is the current binary sports model and subsequent sport systems. By default, this model is designed to exclude non-binary athletes entirely from the get go, making it the core issue we face in sports and society at large. As a result, the current sports model perpetuates a myriad of other unique challenges for non-binary folks who are trying to participate in and navigate an industry not designed for us in the first place; or retrofitted to fit us as an afterthought. Challenges can range from fundamental barriers, such as the lack of entry and/or access to sports in accordance to our gender identity, to more nuanced exclusions such as the lack of proper policies, facilities, and/or safety measures in place to support full participation.

To give a specific example, I will share an experience that is uniquely guaranteed to all non-binary athletes trying to engage with a binary industry and world. Before participation even begins, non-binary athletes are faced with the very

real, personal, and vulnerable ultimatum of how and/or if participation will occur. The how — enroll as one of two gender options you are not, thus forcing problematic and unnatural conformity as a requirement for admission — or do not participate, which is the if. Both options are difficult to maneuver, potentially detrimental in either direction, and categorically alienating; especially when asked upon a child which, statically, is when most people enter sports. It is important to recognize that when non-binary people do enter sports, they are often doing so as the most vulnerable group yet discernibly the most courageous.

Q: What are some examples stakeholders can implement to foster a truly inclusive environment for non-binary people?

A: Invest in education - I talk more about this later, but education is the most important step, and should be the first step, in fostering a truly inclusive environment.

Mentality before motion - Sustainable inclusion is a mindset above anything else, and starts with developing integrative thinking before implementing action. One key to shifting the mentality is to embed inclusivity as a core value of “who we are,” which automatically centralizes inclusivity as “how we operate.” Again, approaching inclusivity from beginning rather than retrofitting.

Community Engagement - Actively seek and/or strengthen your relationships with the gender diverse community, and the community at large. Many clients are surprised to learn of thriving gender diverse clubs, groups, teams, etc. already existing within their community waiting to be tapped. Reach out to these groups to let them know your inclusivity efforts, invite them to participate in your events, and connect with them to learn about best practices and how to better serve.

Diversify your stakeholders - Have non-binary representation in your leadership, especially when it comes to critical decision-making that will impact the non-binary community. Diversity not only showcases that your environment truly is inclusive from the top down, but also counteracts any propensities to Affinity Bias and Confirmation Bias.

Provide gender neutral facilities and/or spaces - This enables and assures people of all gender identities with the ability to occupy spaces equally, and subsequently fosters an overall sense of safety and belonging for people of all gender identities.

Develop nondiscrimination policies and guidelines - This can range from implementing more inclusive HR and hiring practices, to incorporating protective measures around

proper pronoun usage and gender identity, to developing more inclusive communication (both internal and external facing), to having clear guidelines on safety and confidentiality.

Q: Why does this sort of attention to creating an inclusive environment for non-binary athletes matter in the sports industry?

A: It matters because we matter. Put simply, we exist and exclusion is no longer the solution. Everyone deserves a right to play but non-binary athletes cannot play as themselves in an industry that has not changed for generations. The binary sports model is outdated and does not support modern times nor the next generation of gender diverse athletes who will be occupying sports and ultimately become key stakeholders. If unwilling to change, then at best the industry falls behind, and at worst perpetuates a dangerous environment for anyone who challenges the status quo.

It honestly boils down to if you do or do not believe that we exist; that we deserve our rights. It is that simple. And given the current socio-political climate, the time for individual and collective action has never been greater.

Q: Why now? Is there a “zeitgeist” moment whereby, legally and culturally, LGTBQIA+ athletes seem to have become such a focus?

A: As we know, LGTBQIA+ athletes have been advocating for equal rights, representation, and inclusion for decades. I, myself, have been advocating specifically for non-binary inclusion for over a decade — the majority of those years have fallen on deaf ears. It is only in the past few years that our culture and society have taken extra interest and stock in what LGTBQIA+ athletes have been fighting for all this time. On both sides of the coin may I add.

At this moment, we have absolutely reached a legal and political zeitgeist. The intense political and legal focus on LGTBQIA+ athletes is a direct mirror of the recent rise of LGTBQIA+ people and activism into mainstream culture and society, as well as the collective power of our community and allies. It is no mystery. As a result of LGTBQIA+ progress, we are seeing transgender and non-binary rights being used as political wedge juxtaposed to progressive societal and cultural shifts beyond the binary.

No matter which way you slice it, we have surpassed the point of “if” we exist to now “how” do we exist; the most significant question in my opinion.

Q: Can you highlight some inclusion success stories with organizations and stakeholders you have worked with?

A: Working alongside stakeholders, there are now over 1,500 running races nationwide that offer non-binary registration and participation; with more and more races extending their efforts to build out equal prize money, top finisher awards, and other integrative offerings. This is a truly remarkable success considering that just a few years ago there were zero races offering non-binary participation. There is a massive groundswell and appetite for inclusion in the running world specifically.

I am particularly proud of my partnership with New York Road Runners (NYRR), and the organization's commitment to full-scale non-binary inclusion. For the past year, we have been working together on the implementation of a non-binary gender identification division for all NYRR races, including the New York City Marathon—making it the first major marathon to enact a non-binary division all the way up to the elite level. This work is not only leaving an imprint on the sports landscape but is also setting the gold standard for others to follow.

Q: How are non-binary athletes impacted by the wave of anti-trans legislation we have seen proliferating in the U.S.?

A: Sports are a microcosm of a much larger societal paradigm that is happening and, to be clear, the wave of anti-trans bills in youth sports is not just about sports; for instance, the numerous proposed and/or passed laws banning transgender youth from access to life-saving healthcare. Sports are the Trojan horse for certain lawmakers' attempt to systemically disenfranchise and/or criminalize all non-cisgender people (and in some cases families, doctors, and allies too) through unconstitutional legislation far beyond the playing field. As non-binary athletes who fall into the non-cisgender umbrella, we are deeply and directly impacted by the implications of these bills on and off the field.

Q: How important a role does education play—can you suggest some resources?

A: Education is the first and most important step to driving integrative and sustainable inclusion. I would go so far as saying that without a foundation of basic education, well-intended inclusivity efforts will collapse at some point. Invest in education because it will empower you, inform the work, and illuminate long term solutions.

Education can take many forms. You can bring on an expert like myself and/or participate in topic-based training sessions. Here are a few good resources to explore:

Athlete Ally
transathlete.com
Lambda Legal
Human Rights Campaign
About Carla

Carla Varriale-Barker (she/her) is the Chairperson of Segal McCambridge's Sports Recreation & Entertainment Practice Group. She is also an adjunct professor at Columbia University's Sports Management Program, where she teaches Sports Law and Ethics. Carla's litigation practice includes the representation of athletes and the defense of sexual abuse and sexual misconduct matters. She is also a member of the firm's Diversity Equity and Inclusion Committee and also serves on the Strategic Planning Committee. She can be reached at cvarriale@smsm.com



Sports Litigation Alert (SLA) is a narrowly focused newsletter that monitors case law and legal developments in the sports law industry. Every two weeks, SLA provides summaries of court opinions, analysis of legal issues, and relevant articles. The newsletter is published 24 times a year.

To subscribe, please visit our website at <http://www.sportslitigationalert.com>