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Disqualifying Conduct: How Failure to Regulate the United States Olympic Committee Enables Athlete Abuse

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Disqualifying Conduct: How Failure to Regulate the United States Olympic Committee Enables Athlete Abuse

By Allison Berquist*

ABSTRACT

In the aftermath of the USA Gymnastics Scandal, Congress passed the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 and Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020 to protect athletes from abuse. This comment examines how years of unregulated Olympic Sport controlled by the United States Olympic and Paralympic Committee (USOPC) created systems that make young athletes vulnerable to abuse. Part I provides a background of the Olympic Movement, specifically detailing events and legislation that prompted recent legislation. Part II describes the Safe Sport Authorization Act of 2017 and Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020 and addresses their limits amidst the current culture of Olympic Sports. Specifically, it provides a case study of Track and Field coach Alberto Salazar, who abused athletes despite the Center for Safe Sport. Part III suggests measures that would not completely undermining the Amateur Sports Act, the current law establishing the USOPC. Part IV details an alternative suggestion, regulating Olympic Sport safety and wellbeing through on office within a larger administrative agency, such as the Department of Labor or Department of Health and Human Services. Administrative control and regulation may be particularly pertinent as the United States hosts the 2028 Olympic Games.

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I. INTRODUCTION

Simone Biles, the most decorated gymnast in the world, withdrew from the 2021 Olympics due to mental health concerns.¹ At just twenty-four years old, not only was she faced with the pressures of “being the face of the Games for NBC” and managing sponsor obligations, she had the added stress from publicly addressing “her abuse at the hands of a former U.S.A. Gymnastics team doctor Lawrence G. Nassar.”² Her “withdrawal was a stunning turnabout” for America, after winning “team gold at every world championships and Olympics since 2010.”³ During the same Olympic games, Naomi Osaka withdrew.⁴ The culture of Olympic Sports both harmed athlete wellbeing and resulted in a lowered medal count for the United States.⁵

The Olympic Charter’s structure (“USOPC”) traditionally allowed heavily regulated areas, such as labor, children’s health and safety, and women’s health and safety, to go unregulated at the expense of vulnerable groups.⁶ Without regulation, the USOPC’s structure facilitated public

* J.D Candidate, Pepperdine University Caruso School of Law, Class of 2023. I would like to thank survivors and athletes including Mary Cain, Aly Raisman, and Simone Biles. This article, and current advocacy efforts, would have been impossible without their bravery.

¹ Juliet Macur, *Simone Biles Said She Wasn’t in Right Place Mentally During Olympic Final*, NY TIMES (Jul. 27, 2021), <https://www.nytimes.com/live/2021/07/27/sports/gymnastics-olympics-results>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Dionne L. Koller, *A Twenty-First-Century Olympic and Amateur Sports Act*, 20 VAND. J. OF ENT. & TECH. L. 1027, 1035 (2018).

scandals with large-scale implications, including the USA Gymnastics sex abuse scandal.⁷ Such scandals highlighted the need for government involvement in Olympic Sport. Olympic and amateur athlete success is an important government interest because not only is it crucial for public morale and for promoting sport and health, but athletic success generates revenue.⁸ This comment evaluates the current legislation aimed at targeting athlete safety within USOPC, addresses the systemic limitations due to the USOPC's private nature, and argues that the government should establish a new agency to increase oversight of the Olympic games.

Part One evaluates how the Amateur Sports Act enabled abuse such as the USA Gymnastics scandal⁹, which resulted in legislation such as the Safe Sport Act and the 2020 Sports Act.¹⁰ Part Two examines these recent rules, primarily addressing the shortcomings of the Act due to USOPC's autonomy and the current culture of amateur sports. Part Three suggests measures that would promote athlete safety without completely undermining the Amateur Sports Act's current structure. These solutions include appointing an Inspector General and allowing athletes to organize under the National Labor Relations Act ("NLRA"). Part Four suggests overhauling the Amateur Sports Act. Using the Canadian Ministry of Sport's model, this comment suggests a

⁷ "I believe Competitive Gymnastics and other Elite Sports Break Children." *A Case-Study of Systemic Abuse in Sports Perpetrated by Larry Nassar*, CHILD USA 1 (Jan. 2022), Game-Over-Commission-Report-FINAL-1.28.22.pdf [hereinafter "Child USA Report"].

⁸ See generally *Total Olympic Games Marketing Revenues from 1993 to 2016*, STATISTICA (Dec. 2021), <https://www.statista.com/statistics/274453/marketing-revenues-of-olympic-games-in-total-since-1993/>.

⁹ Child USA Report, *supra* note 7.

¹⁰ Senator Jerry Moran & Senator Richard Blumenthal, *The Courage of Survivors: A Call to Action*, SENATE OLYMPICS INVESTIGATION 1, 29 (July 30, 2019), https://www.moran.senate.gov/public/_cache/files/c/2/c232725e-b717-4ec8-913e-845ffe0837e6/FCC5DFDE2005A2EACF5A9A25FF76D538.2019.07.30-the-courage-of-survivors--a-call-to-action-olympics-investigation-report-final.pdf.

similar administrative agency falling under the Department of Labor or the Department of Health and Human Services.

II. REGULATING OLYMPIC SPORT

A. OVERVIEW OF OLYMPIC MOVEMENT

This section provides a brief background of relevant terminology surrounding Olympic Sport. Unlike other professional sports endeavors, all Olympic activity operates within the greater global Olympic Movement.¹¹ The Olympic Movement is defined as “the concerted, organised, universal and permanent action,” across the world, “of all individuals and entities who are inspired by the values of Olympism.”¹² All sport-governing bodies, athletes, and others acting within the Olympic Movement must be recognized by the International Olympic Committee (“IOC”) and comply with the Olympic Charter.¹³ The IOC, formed in 1894, is a non-governmental entity whose mission is “to promote Olympism throughout the world and to lead the Olympic Movement.”¹⁴ The three main Olympic Movement constituents are the International Olympic Committee (“IOC”), the International Sports Federations (“IFs”) and the National Olympic Committees (“NOCs”).¹⁵

¹¹ See generally Matt Mitten, *The Interplay Between Professional and Olympic Sports*, OPINIOJURIS (Dec. 2008), <http://opiniojuris.org/2008/08/12/the-interplay-between-professional-and-olympic-sports/>. For example, the National Basketball Association (“NBA”) regulates professional basketball, collegiate basketball by the National Collegiate Athletic Association (“NCAA”), but players participating in the Olympic Games operate exclusively within the Olympic Movement for such games. *Id.*

¹² Int’l Olympic Comm., *Olympic Charter* 11 (2020), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> [hereinafter “Olympic Charter”].

¹³ *Id.* See also Koller *supra*, note 6.

¹⁴ *Id.* IOC also creates the rules and regulations for Olympic Games, selects the host countries, and negotiates television rights. *Id.*

¹⁵ *Id.*

Any country participating in the Olympic Movement must create an NOC to “develop, promote, and protect the Olympic movement” within their country and select athletes to participate in the Olympic Games.¹⁶ For example, the United States Olympic and Paralympic Committee (“USOPC”) is the United States’ NOC.¹⁷ While each nation has its own NOC, each respective sport is also governed by IFs, nongovernmental organizations recognized by the IOC as the international governing body for an individual sport.¹⁸ Each country then operates these individual sports through national governing bodies: non-profit, non-governmental organizations that control key assets of each sport (such as national team brand) and support youth and elite-level national teams.¹⁹ NBGS is thus governed by both the respective sport’s IF and it’s nation’s NOC.²⁰ For example, the NBG USA Gymnastics is governed by the USOC and the International Gymnastics Federation.²¹ In the United States, Olympic sport governance reflects a “pyramid structure” with USOC at the top, followed by forty-seven Olympic NGBs for each sport, then coaches and clubs, and finally the athletes.²²

¹⁶ *Olympic Charter*, *supra* note 12.

¹⁷ *See About the U.S Olympic & Paralympic Committee*, TEAM USA, <https://www.teamusa.org/about-the-usopc>.

¹⁸ *See Olympic Charter*, *supra* note 12, at 55.

¹⁹ *See Employment Guide for the Sports Industry: National Governing Bodies of Sport*, UNIV. NEW HAVEN, <https://www.newhaven.edu/business/sports-industry-employment-guide/national-governing-bodies.php> (last visited Nov. 4, 2022).

²⁰ *Id.*

²¹ *Id.*

²² *See Koller*, *supra* note 6, at 1032.

B. HISTORY OF OLYMPIC SPORT REGULATION IN THE UNITED STATES

To begin, it is necessary to understand how the legislation and lack of regulation for elite athletes enabled an abusive culture within the Olympic Movement.²³ The Olympic Charter permits NOCs to cooperate with governmental bodies as long as they do not “associate themselves with any activity which would be in contradiction with the Olympic Charter,” and they must “preserve their autonomy and resist all pressures of any kind,” that could hinder compliance with the Olympic Charter.²⁴ However, unlike most countries participating in international sports, there is no specific United States sports policy, government coordination, or government agency dedicated to promoting and regulating amateur athletics.²⁵ Historically, the “federal government’s primary role has been to simply encourage physical fitness but not to otherwise develop opportunities or address barriers to participation.”²⁶

1. USOPC’S EARLY YEARS

The USOPC organization received its IOC charter in 1950 and became a recognized nonprofit.²⁷ At first, USOPC (formerly called USOC before incorporating Paralympic Sports) clashed with other athletic organizations such as the Amateur Athletic Union (“AAU”) and the National College Athletic Association (“NCAA”) when selecting Olympic athletes.²⁸ Consequentially, the USOPC lacked a structured method to select and develop Olympic Athletes.

²³ *See generally id.*

²⁴ *See Olympic Charter, supra*, note 12, at 60.

²⁵ *See Koller, supra* note 6, at 1035.

²⁶ *Id.*

²⁷ *See Team USA, supra* note 17.

²⁸ Koller, *supra* note 6, at 1045.

Initially, USPOC struggled with limited “corporate support” and “relatively disappointing results in international competition.” The United State’s mediocre Olympic achievements, was especially concerning amidst the Cold War, when Communist nations amidst the cold war as Communist nations such as the Soviet Union and East Germany won a large proportion of Olympic medals.²⁹ President Gerald Ford concluded that “amateur sport is in the public interest” and then formed the 1975 Commission of Olympic Sports.³⁰ The Commission recommended Congress pass legislation to create a “centralized sport organization that had the exclusive right to select athletes for Olympic Movement competition.”³¹

2. AMATEUR SPORTS ACT

The Amateur Sports Act (Sports Act) solidified the USOPC as the nation’s NOC, which granted the USOPC exclusive authority over U.S. Olympic Movement Athletics.³² The Sports Act listed the USOPC’s objects and purposes including: “establish[ing] national goals for amateur athletic activities,” “coordinat[ing] and develop[ing] amateur athletic activity . . . directly relat[ing] to international amateur athletic competition,” and obtaining “directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each event of the Olympic Games.”³³ The Sports Act also granted the USOPC exclusive jurisdiction to

²⁹ *Id.*

³⁰ *Id.* at 1047.

³¹ *Id.*

³² Mark Conrad, The COVID-10 Pandemic, the Empowering Olympic, Paralympic and Amateur Athletes Act, and the Dawn of a New Age of U.S. Olympic Reform, *Journal of Legal Aspects of Sport*, 2021, 31, 1–59 <https://doi.org/10.18060/24919>.

³³ 36 U.S.C. § 220503.

manage matters relating to United States participation in the Olympic games, including organizing Olympic games held in the United States.³⁴

The USOPC's duties under the this act are to: (1) select and develop Olympic athletes; (2) assist organizations such as NGB's, implement conflict resolution mechanisms for disputes involving athletes (3) protect athletes' ability to participate in amateur athletic competitions; (4) provide trainers, managers, administrators, or officials for amateur athletic competitions; (5) develop athletic facilities for amateur athletes; (6) make existing athletic facilities available for amateur athletes; and (7) encourage and support research, development, and dissemination of information in sports medicine and sports safety.³⁵

The Sports Act gave USOPC the power to recognize privately incorporated NGBs, who responsible for developing athletes who will form Team USA at the Olympics.³⁶ The Sports Act also "outline[d] the criteria for an amateur sport organization to be recognized as an NGB."³⁷ It is then NGBs' responsibility to determine specific eligibility criteria for athletes in their respective sport.³⁸ USOPC gives limited funding to the forty-seven NGBs, meaning NGBs must also rely on sponsorship agreements.³⁹

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Koller, *supra* note 6, at 1049.

³⁸ *Id.*

³⁹ Conrad, *supra* note 32, at 11.

3. IMPLICATIONS

While legislation established USOPC and granted it certain powers, the USOPC is not a government agency, nor does it have any government affiliation.⁴⁰ Rather, the USOPC is a federally-chartered, nonprofit, patriotic corporation.⁴¹ USOPC is subject to little congressional oversight, and must submit a quadrennial report.⁴² Further, as a private corporation, the USOPC is not regulated through statutory legal restrictions, constitutional limitations, the Administrative Procedure Act, nor the Freedom of Information Act.⁴³ As a federally chartered corporation, the USOPC exists in the “‘twilight zone’ between the public and private sectors” as a “Title 36 corporation.”⁴⁴ Title 36 corporations are recognized as not-for-profit organizations and are grouped in the United States Code among other “‘patriotic and national organizations’ such as the United Service Organizations and the Veterans of Foreign Wars of the United States.”⁴⁵

One could argue that the USOPC’s status as a Title 36 corporation is improper, considering “‘nearly half are military-related and most do not have the same public profile and wide-ranging responsibilities.’”⁴⁶ For example, in preparation for the 2021 Tokyo Olympics, the USOPC

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Dionne Koller, *Amateur Regulation and the Unmoored United States Olympic and Paralympic Committee*, 9 WAKE FOREST L. REV., <http://www.wakeforestlawreview.com/2019/11/amateur-regulation-and-the-unmoored-united-states-olympic-and-paralympic-committee>.

⁴⁴ *Id.*

⁴⁵ *Id.* “Congress has created about 100 Title 36 corporations, and ‘it is free to draft corporate charters to include whatever elements it deems appropriate.’” *Id.*

⁴⁶ *Id.*

distributed \$77 million for athlete programs such as training camps, coaching, and travel, as well as \$16.9 million in funds to athletes for monthly monetary stipends.⁴⁷ The USOPC also provided \$9.3 million in health insurance benefits to 1,341 athletes, and \$6.5 million in “science support” to coaching staff.⁴⁸ As part of its responsibilities under the Amateur Sports Act, the USOPC also oversees the physical safety of thousands of athletes.⁴⁹ Recently, when the COVID-19 pandemic hit as athletes were preparing for the 2020 Olympic games, many athletes relied on Olympic Training Centers for food and lodging.⁵⁰ Additionally, USOPC received over \$14 million between 2016 and 2022 in licensing and royalty revenues alone.⁵¹ Various companies entered into agreements with the USOPC, which allowed the companies to sell merchandise with the USOPC’s name and marks attached.⁵² Coordinating and developing amateur athletic activity for U.S. participation in the Olympic games is no longer merely a “patriotic” endeavor—it facilitates employment, scientific innovation, and commerce.⁵³

⁴⁷ *Keeping Athletes Safe, 2020 Impact Report* U.S. OLYMPIC & PARALYMPIC COMM. (2021), <https://2020impactreport.teamusa.org/keep-athletes-safe.html>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* On the other hand, the majority of “military oriented” Title 36 corporations, such as the United Service Organization “exist primarily to provide outreach resources and entertainment to members of the military and their families.” *See also Programs*, USO, <https://www.uso.org/programs> (Accessed Feb. 21, 2022). In comparison to the USOPC, these function more like “charities.” *Id.*

⁵¹ *See Financial Summary* U.S. OLYMPIC & PARALYMPIC COMM. (2022), <https://2021impactreport.teamusa.org/financials-reports-and-disclosures/financials.html#gsc.tab=0> (providing detailed mandatory financial disclosures).

⁵² *Id.*

⁵³ *See generally 2021 Impact Report*, U.S. OLYMPIC & PARALYMPIC COMM. (2022) <https://2021impactreport.teamusa.org/#gsc.tab=0>.

Further, the USOPC's role within the Olympic Movement games give it a unique public role distinguishing it from Title 36 corporations.⁵⁴ The IOC coordinates marketing, broadcasting, and licensing agreements and distributes that revenue to USOPC and the various NBGs.⁵⁵ During the COVID-19 pandemic, the USOPC developed an infectious disease management strategy by using its infrastructure and resources, as well as remained open in Colorado and New York while many other public and private facilities were closed.⁵⁶ Ultimately, "the federal charter is honorific, and it confers no substantive relationship with the federal government."⁵⁷ However, the USOPC benefits and interacts with other regulated entities.⁵⁸

USOPC, under the act, could best be described as a "[q]uirky quasi-private, quasi-public system of Olympic governance." While that system facilitated an organized system of developing athletes, it also lead to a "legacy of flawed leadership of the USOPC and many of the NGBs . . . resulting in a lack of full accountability to the athletes, the U.S government, and by extension, the American public."⁵⁹ The USOPC system under the initial act possessed "ineffective procedural

⁵⁴ *Olympic Marketing Fact File: 2022 Edition*, INT'L. OLYMPIC COMM. (June 2022), <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Marketing-And-Broadcasting/IOC-Marketing-Fact-File.pdf>.

⁵⁵ *Id.*

⁵⁶ *See generally 2021 Impact Report*, U.S. OLYMPIC & PARALYMPIC COMM. (2022) <https://2021impactreport.teamusa.org/#gsc.tab=0>.

⁵⁷ *Amateur Regulation and the Unmoored United States Olympic and Paralympic Committee*, *supra* note 40.

⁵⁸ *See generally Olympic Marketing Fact File: 2022 Edition*, INT'L. OLYMPIC COMM. (June 2022), <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Marketing-And-Broadcasting/IOC-Marketing-Fact-File.pdf>; Team USA, *Olympic Brand Usage Guidelines*, USOC, <https://www.teamusa.org/brand-usage-guidelines> (last accessed Nov. 4, 2022).

⁵⁹ *Id.*

safeguards to protect Olympic athletes, particularly with respect to underage females.”⁶⁰ These athletes were abused sexually, physically, and emotionally.⁶¹ Ultimately, a sexual abuse scandal that plagued USA Gymnastics exposed this abuse.

4. LARRY NASSAR AND USA GYMNASTICS

In 2017, over 160 female athletes, including notable Olympic gymnasts McKayla Maroney, Aly Reisman, Gabby Douglas, and Simone Biles, accused Larry Nassar, former USA Gymnastics doctor, of sexual abuse.⁶² “[U]nder the guise of medical treatment,” Nassar abused athletes for years without consequences.⁶³ When USA Gymnastics President Steve Penny notified the head of the USOPC, Scott Blackman, he recommended USA Gymnastics report Nassar to law enforcement.⁶⁴ However, the USOPC, although legally responsible for athletes’ safety, took no action to follow up with law enforcement or USA Gymnastics about the allegations.⁶⁵ Although Nassar left USA Gymnastics, an independent investigation revealed that the USOPC failed to report Nassar to law enforcement or take any steps to bar Nassar from the USOPC events or

⁶⁰ See Will Hobson & Steven Rich, *Every six weeks for more than 36 years: When will sex abuse in Olympic sports end?*, WASH. POST (Nov. 17, 2017), <https://perma.cc/8HY7-ACPL> (noting that the culture involving “lots of young women spending lots of time with older men” makes young women particularly susceptible to abuse, and “people at the higher levels who really, really want to win,” creates the risk that effective reporting mechanisms may not be enforced).

⁶¹ *At the Heart of Gold: Inside the USA Gymnastics Scandal* (HBO Apr. 26, 2019) [hereinafter *At the Heart of Gold*].

⁶² See Christine Hauser & Maggie Astor, *The Larry Nassar Case: What Happened and How the Fallout Is Spreading*, NY TIMES (Jan. 2018) <https://www.nytimes.com/2018/01/25/sports/larry-nassar-gymnastics-abuse.html>.

⁶³ *Id.*

⁶⁴ *At the Heart of Gold*, *supra* note 61.

⁶⁵ *Id.*

facilities.⁶⁶ Nassar’s crime was not an isolated incident—over 290 USOC-affiliated coaches and officials were publicly accused of sexual misconduct between 1982 and 2017.⁶⁷ For over two decades, NBGs repeatedly failed to adequately address sexual abuse.⁶⁸ The incident was regarded as “the latest in a series of well-publicized incidents in which Olympic sports organizations committed errors that left [female athletes and] children at risk.”⁶⁹ For years, USOPC avoided implementing procedures, such as mandated reporter requirements and background checks, that would protect young athletes from abuse.⁷⁰

5. SAFE SPORT ACT

In 2017, Congress addressed the pervasive Olympic Athlete abuse, with legislation attempting to fix “patchwork of state laws on reported suspected sex abuse” and enact a uniform national standard applying to amateur sports groups such as USA gymnastics.⁷¹ The resulting legislation, *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act*

⁶⁶ Conrad, *supra* note 32, at page 20. See also Joan McPhee & James P. Dowden, *Report of Independent Investigation: The Constellation of Factors Underlying Larry Nassar’s Abuse of Athletes*, ROPES & GRAY 1 (Dec. 10, 2018). The report added that the USOPC did not even discuss the allegations against Nassar with its own department that deals with sexual abuse cases. *Id.* at page 81.

⁶⁷ Will Hobson & Steven Rich, *Every six weeks for more than 36 years: When will sex abuse in Olympic sports end?*, WASH. POST (Nov. 17, 2017), <https://perma.cc/8HY7-ACPL>.

⁶⁸ Conrad, *supra* note 32. Abuses not only occurred in gymnastics but also in swimming and other sports over many decades. *Id.* at 21. For example, “The USOC and USA Swimming fail[ed] to take action against Olympian and USA Swimming-certified swim coach Mitch Ivey, even though he [was] fired from the University of Florida . . . USA Swimming waited 20 years to ban Mitch Ivey, allowing him to sexually harass and abuse other young swimmers.” *Id.*

⁶⁹ See Juliet Macur, *Congress Holds Hearings into Sexual Abuse in Olympic Sports*, N.Y. TIMES, (May 23, 2018) <https://www.nytimes.com/2018/05/23/sports/larry-nassar-house-hearing.html>. USA Swimming and USA Taekwondo are other sports with similar public sexual abuse scandals. *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

(“Safe Sport Act”),⁷² 7, amended the Victims of Child Abuse Act of 1990.⁷³ Senator Feinstein said a “patchwork of state laws on reported suspected sex abuse” made it necessary to

i. MANDATED REPORTER REQUIREMENTS

The Safe Sport Act requires adults associated with any NBG or amateur sports organization that participates in international or interstate competition and interacts with minors be a “mandated reporter” of child abuse.⁷⁴ A mandated reporter must immediately report any suspected child abuse incident to the appropriate agent as designated by the Attorney General.⁷⁵ In addition, the legislation extends statute of limitations for reporting and lists remedies for victims.⁷⁶

ii. CENTER FOR SAFE SPORT

⁷² Senator Jerry Moran & Senator Richard Blumenthal, *The Courage of Survivors: A Call to Action*, SENATE OLYMPICS INVESTIGATION 1, 29 (July 30, 2019), https://www.moran.senate.gov/public/_cache/files/c/2/c232725e-b717-4ec8-913e-845ffe0837e6/FCC5DFDE2005A2EACF5A9A25FF76D538.2019.07.30-the-courage-of-survivors--a-call-to-action-olympics-investigation-report-final.pdf.

⁷³ Matthew J.C Branaugh, *Mandatory Child-Abuse Reporting Laws and the #METOO Movement: Federal and Colorado Examples and Six Paths Forward*, 97 DENV. L. REV 19, 32; U.S Congress, *Title II: Victims of Child Abuse Act of 1990*, U.S. DEPT. OF JUSTICE, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/title-ii-victims-child-abuse-act-1990> (The Victims of Child Abuse act establishes “mandates designed to improve services for victims of child abuse as well as the prevention, reporting, investigation, and prosecution of such cases.”).

⁷⁴ 36 U.S.C. § 220541. The Safe Sport Amended the Victims of Child Abuse Act, identifying adults associated with any NBG or amateur sports organization that participates in international or interstate competition and interacts with children to be “covered individuals,” who are mandated reporters under the Victims of Child Abuse Act. *Id.*; 34 U.S.C. 20341 § 226.

⁷⁵ 34 U.S.C. 20341 § 226. *See generally* Child Welfare Information Gateway, *Mandatory Reporters of Child Abuse and Neglect*, CHILD. BUREAU 1, 2 (2019), <https://www.childwelfare.gov/pubpdfs/manda.pdf>. Typical mandated reporters are social workers, teachers, physicians, counselors, and law enforcement officials. *Id.* at 2.

⁷⁶ Protecting Young Victims from Abuse and Safe Sport Act Authorization of 2017, Pub. L No. 115-126 § 102, 132 Stat. 317, 320 (Codified as 36 U.S.C. § 220541).

The Safe Sport Act also created the Center for Safe Sport (“the Center”).⁷⁷ The Center serves as an independent organization that exercises jurisdiction over NGBs to protect amateur athletes from emotional, physical, and sexual abuse in sports.⁷⁸ The Safe Sport Act mandated the Center to “develop training, oversight practices, policies, and procedures” to prevent emotional, physical, and sexual abuse of amateur athletes.⁷⁹ The Center facilitates the NGBs as they “establish mechanisms that allow for the reporting, investigation, and resolution” of abuse allegations.⁸⁰

To prevent abuse, the Center must create reasonable procedures to limit one-on-one interactions between adults and children and ensure mandated reporters do not experience retaliation.⁸¹ Proper oversight procedures, such as regular audits by independent experts, are required to ensure proper implementation of such policies and procedures.⁸² There must also be audits in place to ensure all adult members who come into regular contact with children are properly trained to prevent and report abuse.⁸³

Through the Center, an NGB can

“share confidentially a report of suspected child abuse of an amateur athlete who is a minor by a member of a national governing body or an adult authorized by a national governing body or an amateur sports organization to interact with an amateur

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ 36 U.S.C. § 220541(a)(1)(C).

⁸⁰ *Id.* at § 220541(a)(1)(D).

⁸¹ 36 U.S.C § 220542.

⁸² 36 U.S.C § 220541(a)(1)(F).

⁸³ *Id.*

athlete who is a minor, with the Center, which in turn, may share with relevant national governing bodies and other entities”

and withhold authority to interact with an amateur athlete when an adult is subject to a child abuse allegation.⁸⁴

Following a thorough investigation, if the Center determines a perpetrator is guilty of sexual harassment, they can exact penalties such as warning, probation, suspension, or even permanent ineligibility.⁸⁵ Anyone who disagrees with the Center’s decision can request the American Arbitration Association to review the decision.⁸⁶ “Since its formation in 2017, the Center has already had a major impact on amateur athlete safety, having formally investigated more than 6,000 abuse complaints, and disciplining more than 600 perpetrators [between 2017 and 2020].⁸⁷

In 2020, Congress passed the Empowering Olympic, Paralympic, and Amateur Athletes Act (2020 Act) which amended portions of the 1978 Sports Act.⁸⁸ The act sought to “expand” the Center’s efficacy, “impose heightened oversight on the USOPC and NGBs, and empower athletes’ voices in governance of amateur athletics.”⁸⁹ USOPC, under the act, has a statutory duty to ensure NGB’s establish safe environments for athletes free from physical, emotional, and sexual abuse.⁹⁰

⁸⁴ 36 U.S.C. § 220542 (a)(2)(I).

⁸⁵ *Safesport Code for the U.S Olympic and Paralympic Movement*, U.S CTR. FOR SAFESPORT 1 (Apr. 2021) https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf

⁸⁶ Conrad, *supra* note 32, at 47.

⁸⁷ Andrew L. Lee & Gregory A. Marino, *The Empowering Athletes Act: A Welcome High-Water Mark in Amateur Sport Accountability*, SPORT BUS. (Dec. 16, 2020), <https://www.foley.com/en/insights/publications/2020/12/the-empowering-athletes-act>.

⁸⁸ *Id.*

⁸⁹ Lee & Marino, *supra* note 87.

⁹⁰ Sen. Jerry Moran & Sen. Richard Blumenthal, *The Empowering Olympic, Paralympic, and Amateur Athletes Act*, Sen. Olympics Investigation 2 (Oct. 2020),

Specifically, USPOC must immediately report child abuse allegations of amateur athletes to law enforcement, ensure NGB's have mandatory reporting policies and temporary measures and sanctions for perpetrators of abuse.⁹¹ The act also makes USOPC responsible for funding the Center, and must contribute \$20 million per year.⁹² It also strengthens USOPC's reporting and audit requirements to Congress and the President, including requiring annual reports instead of every four years.⁹³ Audit and reporting requirements include salaries and bonuses paid, along with how the organization prevents sexual abuse of athletes.⁹⁴ Congress may to dissolve the USOPC's board of directors upon discovery that the organization fails "to fulfill [its] duties purposes as described in the original Amateur Sports Act."⁹⁵ Additionally, the 2020 Act requires the Olympic bodies to report child abuse to law enforcement and publicly disclose individuals whose misconduct has barred from USOPC or an NGB.⁹⁶

https://www.moran.senate.gov/public/_cache/files/0/f/0fa29c58-cec0-4f73-a3b1-074db7457863/72DB1C0C3018104407B4F2967620FE2E.2020.7.22-section-by-section-olympic-summary.pdf.

⁹¹ *Id.*

⁹² Lee & Gregory, *supra* note 86.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* The duties include: "keep[ing] amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions; allow[ing] an amateur athlete to compete in any international competitions conducted by the particular body; and provid[ing] equitable support and encouragement for participation by women and . . . individuals with disabilities; and encourag[ing] and support[ing] research, development, and dissemination of information in the areas of sports medicine and sports safety." *Id.*

⁹⁶ *Id.* The Safe Sport Code was created in 2021 and also requires any adult participant who knows or suspects an child athlete make an immediate report to both the Center and applicable law enforcement under Victims of Child Abuse Act and applicable state law. *Safesport Code for the U.S Olympic and Paralympic Movement*, U.S CTR. FOR SAFESPORT 19 (Apr. 2021) https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf.

The 2020 Act also established the “Commission on the State of U.S. Olympics and Paralympics” (Commission).⁹⁷ This bipartisan Commission appointed by the Senate and House Commerce Committees, must investigate the Olympic governance system.⁹⁸ Qualifications for membership require experience in Olympic or professional sports.⁹⁹ 2020 Act provision requires the board of directors of the corporation to be composed of at least 33% amateur athletes, and at least 20% amateur athletes who are actively engaged in representing the U.S. in international amateur athletic competition, or have done so during the preceding ten-year period.¹⁰⁰

The 2020 Act also created the Commission on the State of U.S. Olympics and Paralympics (Commission).¹⁰¹ The Commission would “conduct a study on recent reforms undertaken by the United States Olympic and Paralympic Committee (USOPC) to improve the organization’s ability to fulfill its mission, among other things.”¹⁰² The Commission must to submit a report to Congress 270 days after the 2020 Act’s enactment date and conduct a review of recent USOPC reforms, assess participation, and evaluate licensing arrangements.¹⁰³ To date the commission has recommended no formal report to Congress.

⁹⁷ *Safesport Code for the U.S. Olympic and Paralympic Movement*, *supra* note 96.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, *Wicker and Moran Announce Members of the Commission on the State of U.S. Olympics and Paralympics*, (Jan. 27, 2021), <https://www.commerce.senate.gov/2021/1/wicker-and-moran-announce-members-of-the-commission-on-the-state-of-u-s-olympics-and-paralympics>.

¹⁰³ *Id.*

III. SHORTCOMINGS THAT PERSIST PRIMARILY BECAUSE OF THE AUTONOMY OF USOPC
AND THE CURRENT CULTURE OF AMATEUR SPORTS

So long as USOPC, and the Center for Safe Sport, maintain independence and avoid authentic government regulation, athletes still lack the adequate protections from abuse. One limitation to SafeSport's ability to protect athletes is the intense lack of trust between attorneys and SafeSport.¹⁰⁴ In fact, many victims' attorneys advise clients against reporting abuse due to concern that the mechanisms will not provide relief or even that USOPC may manipulate the report to "quash the allegations."¹⁰⁵ Some lawyers believe the Center is a "tool" of the USOPC and cite the Center's policy of notifying an Olympic NGB when a complaint is filed against one of its members.¹⁰⁶ Critics argue that such a process essentially provides NGBs with advance notice of complaints to prepare for defense.¹⁰⁷

A 22-month investigation, conducted by ESPN and ABC, partially substantiated these accusations.¹⁰⁸ According to investigative reports and arbitration decisions, there were several instances in which coaches lifetime bans from their respected sports were set aside by appeals to independent arbitrators, despite the center providing "detailed dossiers of alleged sexual

¹⁰⁴ Rachel Scharf, *Olympic Abuse Attys Don't Trust SafeSport. Can That Change?*, LAW 360 (Feb. 23, 2021) <https://www.law360.com/articles/1357724>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Dan Murphy & Pete Madden, *U.S. Center for SafeSport, Olympic Movement's Misconduct Watchdog, Struggles to Shed 'Paper Tiger' Reputation*, ESPN, (Feb. 23, 2022), https://www.espn.com/olympics/story/_/id/33348656/us-center-safesport-olympic-movement-misconduct-watchdog-struggles-shed-paper-tiger-reputation.

misconduct..¹⁰⁹ In fact “[n]early half (42%) of those who have completed an appeal of a SafeSport ruling have had their sanctions modified, reduced[,] or removed.”¹¹⁰ In some instances, “coaches initially found by the center to have sexually assaulted athletes on multiple occasions were allowed to return to their sports without any official public record of the claims made against them”¹¹¹

The structure of the Olympic system limits the Safe Sports Act because that system’s design “create[s] an environment where abuse and exploitation can thrive.”¹¹² In 2018, CHILD USA, an independent think tank that combats child abuse, formed the “Game Over” Commission to conduct an independent investigation regarding the USA Gymnastics scandal.¹¹³ The Commission included lawyers, social scientists, physicians, and athletes. Their findings and most scholarly work surrounding athlete abuse focus on the culture that caused the USA Gymnastics scandal.¹¹⁴ This section places such analysis in the context of more recent abuses within USA Track and Field (USATF) to demonstrate the root causes of athlete abuse.

A. CASE STUDY: NIKE OREGON PROJECT

Alberto Salazar, a former Olympic runner, founded the Oregon Project, an elite running club within the NBG USA Track and Field (USATF) in 2001. Sponsored by Nike and located at

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Game Over Commission, *I Believe Competitive Gymnastics and Other Elite Sports Break Children: A Case-Study of Systemic Abuse in Sports Perpetrated by Larry Nassar*, CHILD USA (Jan. 2022) Game-Over-Commission-Report-FINAL-1.28.22.pdf.

¹¹³ *Id.*

¹¹⁴ *Id.*

their headquarters in Beaverton, Oregon, the Salazar designed the program to improve American distance running achievement.¹¹⁵ ¹¹⁶ Salazar was initially temporarily banned from track and field for doping violations.¹¹⁷ During his suspension, distance runner Mary Cain, who first joined the Oregon project when she was seventeen years old, claimed that “Salazar abused his power, he manipulated [female] athletes, [and] he fostered a toxic culture”¹¹⁸ Specifically, Salazar focused on his female athletes’ weight, and employed severe practices to ensure they maintained low body weights, restricting food, giving unprescribed thyroid medications and laxatives, all while “threatening athletes’ livelihoods if they didn’t hit certain numbers on the scale”¹¹⁹

A SafeSport Investigation commenced shortly after the accusations.¹²⁰ Initially, it was believed that the SafeSport Investigation was prompted by the runners who publicly accused him of bullying and both verbal and emotional abuse.¹²¹ It was not until an arbitrator’s ruling in 2021 that publicly revealed sexual assault allegations by a runner actually prompted his permanent lifetime ban.¹²² The abuses at the Oregon Project reveal the various weaknesses that persist within

¹¹⁵ Zachary Zagger, *Nike Ends Running Program in Wake of Coach’s Doping Ban*, LAW360 (Oct 22, 2019), <https://www.law360.com/articles/1208870/nike-ends-running-program-in-wake-of-coach-s-doping-ban>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Erin Strout, *A Cast of All Men Contemplate if Alberto Salazar is a Victim or a Villain in a New Documentary. Surprise! They Get it Wrong*, WOMEN’S RUNNING (April 30, 2021), <https://www.womensrunning.com/culture/news/alberto-salazar-nikes-big-bet-review/>.

¹¹⁹ Zagger, *supra* note 115.

¹²⁰ Kevin Draper & Matthew Futterman, *Disgraced Running Coach Was Barred for Life for Alleged Sexual Assault*, NY TIMES, (Jan. 31, 2022) <https://www.nytimes.com/2022/01/31/sports/alberto-salazar-sexual-assault.html>.

¹²¹ *Id.*

¹²² *Id.*

the U.S. Olympic System. Primarily, various NGBs' training regiments have come at the cost of trauma to athletes, especially female athletes' bodies.¹²³ “[D]espite having all the Nike money and resources at his disposal, he chose to ignore real science-backed training strategies along with proper, credentialed mental health support.”¹²⁴ “ This training regimen was implemented without any licensed nutritionists or mental health professionals on-site.¹²⁵ Ultimately, women developed REDS, or “the female athlete triad,” which occurs when athletes do not consume enough calories while training.¹²⁶ The condition causes women to stop menstruating and lose vital bone density.¹²⁷

During the time when Nassar abused young athletes, USA gymnastics operated under a culture where young gymnasts were also “belittled by their coaches” and subject to verbal abuse which resulted in athletes’ “loss of self-esteem.”¹²⁸ The loss of self-esteem was compounded by the “all-encompassing” nature of the training program, where girls trained for over forty hours a week with very few days for rest.¹²⁹ Parents, who were forbidden from visiting the ranch, trusted the Ranch with their children’s safety and wellbeing. Unfortunately, athletes had little freedom,

¹²³ Mary Cain, *I was the Fastest Girl in America, Until I Joined Nike*, NY TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/opinion/nike-running-mary-cain.html>. See also Game Over Commission, *supra* note 112.

¹²⁴ Strout, *supra* note 118.

¹²⁵ *Id.*

¹²⁶ Bill Chappell, *Nike to Investigate Runner Mary Cain’s Claims of Abuse at its Oregon Project*, NPR (Nov. 8, 2019, 12:26 PM), <https://www.npr.org/2019/11/08/777542988/nike-to-investigate-mary-cains-claims-of-abuse-at-its-nike-oregon-project>.

¹²⁷ *Id.*

¹²⁸ Marc Edelman & Jennifer M. Pacella, *Vaulted Into Victims: Preventing Further Sexual Abuse in U.S. Olympic Sport Through Unionization and Improved Governance*, 61 ARIZ. L. REV. 464, 474–75 (2019).

¹²⁹ *Id.* at 475.

their had severely restricted caloric intake, which led many to develop eating disorders and delayed onset menstruation.¹³⁰¹³¹ “Ultimately, the example of Karolyi Ranch demonstrates how easily coaches and athletic staff can abuse their authoritative positions to make young female athletes more vulnerable to abuse. When they were not physically abused, the girls were overworked and underfed.¹³² Larry Nassar gained the athletes’ trust because he positioned himself as an “ally” to the gymnasts during their poor treatment, often giving them rest, food, and sneaking them cell phones.¹³³ The conditions made them not just subservient, but more vulnerable to abuse, making them less likely to report incidents.¹³⁴

Both accounts address the inherent flaws in “sports medicine.” Many female athletes suffer extreme trauma to their bodies, which is normalized during training and ultimately leads to a pattern of neglecting attention to their own pain and discomfort.¹³⁵ This can interfere with an athlete’s “ability to promote their own self care.”¹³⁶ Salazar and Nassar abused athletes similarly, both were accused also of penetrating female athletes, claiming it was an “athletic massage.”¹³⁷ Sports medicine’s unregulated nature led women at the Oregon Project to undergo trauma through

¹³⁰ *Id.*

¹³¹ Edelman & Pacella, *supra* note 128 at 475.

¹³² Holly Yan, *Karolyi Ranch Produced Champions and a Culture of Fear, Ex-gymnasts say*, CNN (Feb. 2, 2018), <https://www.cnn.com/2018/02/02/us/karolyi-ranch-gymnastics-abuse-allegations/index.html>.

¹³³ *At the Heart of Gold*, *supra* note 61.

¹³⁴ Game Over Commission, *supra* note 112, at 6.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Draper & Futterman, *supra* note 120.

extremely dangerous medical practices. Even in situations with less caloric restriction, competitive sport’s “emphasis on reducing body weight . . . to enhance sport performance can result in weight pressures on the [athlete] from coaches . . . that increase the risk of restrictive dieting, as well as the use of pathogenic weight loss methods and disordered eating.”¹³⁸ Athletes suffering from food restriction risk physical harm as well. Athletes face increased risk of muscle injury and stress fractures, dehydration, and hormonal disruption.¹³⁹ More serious health consequences can include electrolyte imbalances with possible irregular heartbeats and heart failure, premature osteoporosis, peptic ulcers, pancreatitis, and gastric ruptures.¹⁴⁰ Nike allowed unsafe conditions to continue at the Oregon Project—and when combined with emotional abuse and bullying, the SafeSport systems were unable to protect runners from Salazar.¹⁴¹ If USOPC has no expectation to specify “sports medicine,” services and expectations for athletes within their care, coaches and support staff can perpetuate abuse.¹⁴²

In addition, NGB’s financial power enables abuse despite SafeSport’s legislation.¹⁴³ In its report, the Game Over Commission argued that “[b]ecause the U.S. Olympic system is a monopoly (the sole seller of a good/service) and also a monopsony (the sole acquirer of labor in a market),

¹³⁸ Ron Thompson, *Mind, Body and Sport: Eating Disorders*, NCAA SPORTS SCIENCE INSTITUTE, <https://www.ncaa.org/sports/2014/11/4/mind-body-and-sport-eating-disorders.aspx>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Dionne Koller, *After Nassar: Protecting Athletes by Regulating Sports Medicine*, JURIST (Jan. 29, 2018), <https://www.jurist.org/commentary/2018/01/dionne-koller-nassar-sports-medicine/>.

¹⁴³ Game Over Commission, *supra* note 112, at 1.

athletes in every sport lack the power and freedom to guard their health, well-being, and safety.”¹⁴⁴ Because each sport has its own NGB, there is no competition for an athlete’s “labor,” and “athletes who want to compete in the Olympics have only one organization through which they can access the sporting marketplace.”¹⁴⁵

“The lack of monetary benefits that amateur athletes receive from sports organizations and the overwhelming cost of competition puts athletes at risk of abuse and exploitation.”¹⁴⁶ Larry Nassar’s abuses demonstrated how such a monopsony “will not self-regulate” since “it is not considered in the best economic interest of the system,” and the preservation of the system is prioritized over individual athletes’ well-being.¹⁴⁷ Negative publicity associated with, for example, a sexual harassment case, could lead to loss of membership, volunteers, and key personnel who are crucial to the organization’s competitive success (and consequently financial stability). Even if individuals are mandated to report instances of abuse, the potential for this conflict of interest could tempt NGB officials to continue to cover up such instances.¹⁴⁸

Thus, the system will go to extreme efforts—for example, when USAG covered up Nassar’s abuse and coerced law enforcement—to “maintain the status quo.”¹⁴⁹ The monopolistic system that prioritizes self-preservation over the well-being of athletes protects abusers.¹⁵⁰ The

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 2.

¹⁴⁶ *Id.* at 1.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *See* Thompson, *supra* note 138.

Oregon Project's formation reflected the relationship between an NGB, USATF, and a major corporation, Nike. In 2014, USATF and Nike negotiated a deal through 2040 worth an estimated \$475 million, giving USATF about \$19 million per year.¹⁵¹ Max Siegel, the USATF's CEO, was reportedly paid \$1.197 million and USATF reported revenues of \$33.7 million.¹⁵² According to a recent lawsuit by Mary Cain, Nike knew of Salazar's conduct and allowed him to “weight-shame women, objectify their bodies, and ignore their health and wellbeing as part of its culture.”¹⁵³

Because abusers typically go unpunished until a bystander or victim complains.¹⁵⁴ Therefore, “the onus for abuse prevention is often placed on the most vulnerable member of the sports system, the athlete.”¹⁵⁵ While employees of NGBs and brands profit off elite athletes, those elite athletes who are not minors depend on NGBs for their career but do not receive the same safe sport mandated reporter protections.¹⁵⁶ As the athlete progresses in the sport, the “upper-level

¹⁵¹ Sarah Lorge Butler, *Criminal Investigation Looks at the Financial Relationship Between USATF and Nike*, RUNNER'S WORLD (Nov. 30, 2021), <https://www.runnersworld.com/news/a38389276/usatf-nike-financial-relationship-criminal-investigation/>.

¹⁵² *Id.* In 2019, the CEO of USA Gymnastics made \$376,724 on revenues of \$26.4 million. *Id.* The same year, the CEO of USA Swimming made \$749,201 on revenues of \$39 million. *Id.*

¹⁵³ Tom Lutz, *Former runner Mary Cain Sues Nike and Salazar for \$20m over Alleged Abuse*, THE GUARDIAN (Oct. 12, 2021), <https://www.theguardian.com/sport/2021/oct/12/mary-cain-nike-alberto-salazar-lawsuit-alleged-abuse-runner>.

¹⁵⁴ Judith Komaki & Yetsa Tuakli-Wosornu, *Using Carrots Not Sticks to Cultivate a Culture of Safeguarding in Sport*, 3 FRONT SPORTS ACT LIVING (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7960644/>.

¹⁵⁵ *Id.*

¹⁵⁶ See Thompson *supra*, note 138. See also Steven Sexton, *The U.S Olympic Monopoly Needs Accountability*, WALL STREET JOURNAL (Mar. 29, 2018), https://www.wsj.com/articles/the-u-s-olympic-monopoly-needs-accountability-1522364127?mod=nwsrl_politics_ideas&cx_refModule=nwsrl, (highlighting the fact that “[t]he 16-member board and the boards of its sport governing bodies routinely award high six-figure salaries to administrators but consign most athletes to meager stipends as they train for Olympic competition”).

teams become fewer and more controlled.”¹⁵⁷ Because Olympic Success “translates into money for both the coach and organization,” coaches and organizations can “name their price” that athletes must pay to be on a team.¹⁵⁸ This means that if an athlete leaves an abusive and toxic situation, they would have limited resources to participate as a professional athlete and obtain the best possible training.¹⁵⁹

In each of the respective situations, Nike and USAG controlled access to the premiere quality of coaches, facilities, and equipment.¹⁶⁰ For example, professional runners belong to single-sponsored training groups that exist as NGOs.¹⁶¹ Brands like Hoka, New Balance, and Nike devote dollars to groups and athletes who train with them.¹⁶² Distance runners compete at large USATF-sanctioned events, such as the New York Marathon, and larger events, such as the Olympics.¹⁶³ A professional runner’s career requires training, coaches, and other resources to qualify for the Olympic games, which is only possible through training with such a team full-

¹⁵⁷ Game Over Commission, *supra* note 112, at 4.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* See also Sexton, *supra* note 156.

¹⁶⁰ Game Over Commission, *supra* note 112.

¹⁶¹ See USA Track & Field, *Elite Development Club*, USATF, <https://www.usatf.org/home/top-utility-nav-content/club-organization-membership/elite-development-club-edc> (last visited DATE). NGOs who receive an “Elite Development Club” commit resources and assistance to athletes, “making it easier for the athletes to continue high-level, competitive involvement” in track and field. *Id.*

¹⁶² Sarah Lorge Butler, *How Much do Pro Runners Make? For Some Veterans, it’s Less this Year*, RUNNER’S WORLD (May 13, 2021), <https://www.runnersworld.com/news/a36385189/how-much-do-pro-runners-make-sponsorships-contracts/>.

¹⁶³ *Id.*

time.¹⁶⁴ American gymnast competing for prize money (and, thus, to gain the needed attention for sponsorship opportunities) must be part of a gymnastics club that is eligible for USAG membership, in addition to USAG.¹⁶⁵ This monopolistic system (especially for sports that do not have large professional leagues) means that athletes are essentially at the mercy of the NGBs. For distance runners, training with Salazar not only covered the training, lodging, travel, and competition expenses, but was an avenue for the sponsorship agreements required for a professional runner to make an income.¹⁶⁶ Olympian and former runner at the Oregon Project, Kara Goucher, admitted, “I made my first real championship team and medal . . . [when] I started getting on the covers of magazines, [and] Alberto had everything to do with it.”¹⁶⁷

Despite Congress’ good intentions, mandated reporter laws and regulations limiting one-on-one contact with young athletes fail to address the systemic culture of amateur athletics that enabled Nassar’s abuse. Female athletes in individual sports are harmed by “internal power inequities and unbearable demands for perfection” by parents and coaches.¹⁶⁸ Since Nassar’s sentencing, much criticism circulated around how USAG’s training facility, the Karolyi Ranch, helped facilitate a culture of abuse.¹⁶⁹ When Bella and Marta Karolyi, took over the U.S. national team as team coordinators, they required that all national team gymnasts attend monthly camps at

¹⁶⁴ *Id.*

¹⁶⁵ Edelman & Pacella, *supra* note 128.

¹⁶⁶ *Nike’s Big Bet Alberto Salazar and the Fine Line of Sport*, (Peacock 2021).

¹⁶⁷ *Id.*

¹⁶⁸ Edelman & Pacella, *supra* note 128.

¹⁶⁹ *Id.*

their ranch in Texas.¹⁷⁰ At the Karolyi Ranch, a 12,000-acre compound within in a national forest, athletes experienced “complete detachment from the outside world, on top of careless and neglectful adults,” making it “the perfect environment for abusers and molesters to thrive.”¹⁷¹ At the ranch, staff prohibited phone or internet use, athletes could not even contact their parents or personal coaches.¹⁷² While the culture within USA Gymnastics appears severe, psychological isolation is a common tactic within elite sports and is directly related to abuse.¹⁷³ Because studies demonstrated that psychologically or physically isolating athletes from their social support network was frequently associated with sexual abuse, the NGBs must reevaluate their training and development facilities.¹⁷⁴

While the Center’s policies that limit the one-on-one interactions between young athletes and adults seem like a logical solution for child abuse prevention, these precautions would likely have been ineffective at protecting the USA Gymnastics victims. Often, the first time that Larry Nassar abused an athlete, her parents were in the room with them or other staff or adults.¹⁷⁵ Allowing adults in the room during the first instance of abuse created a permission structure to groom the young athletes to trust Nassar to continue to do the acts without questioning it.¹⁷⁶ This

¹⁷⁰ *At the Heart of Gold*, *supra* note 61.

¹⁷¹ Yan, *supra* note 132.

¹⁷² *At the Heart of Gold*, *supra* note 61.

¹⁷³ Victoria Roberts, *Organisational Factors and Non-Accidental Violence in Sport: a Systematic Review*, 23 SPORT MGMT. REV. 8, 12 (2020).

¹⁷⁴ *Id.*

¹⁷⁵ *At the Heart of Gold*, *supra* note 61.

¹⁷⁶ *Id.*

tragedy revealed a culture of psychological abuse, unsafe conditions, and withholding of food that many female elite athletes in various sports experience.¹⁷⁷ The abuses also demonstrate the ways in which the power imbalances could prevent athletes from even understanding that they are in potentially abusive working situations and prevent them from either speaking out or leaving the situations.¹⁷⁸

USAG and the Karolyi Ranch exemplify the dangers to child athletes. However, women over the age of eighteen are also vulnerable and do not receive the same level of societal protection. Notably, after an athlete turns eighteen, they are no longer protected by mandated-reporter laws. Female athletes, who are especially susceptible to abuse, are similarly not entitled to Title IX protections against sexual harassment whether training under an NGB like they would be through an NCAA sport.¹⁷⁹ The statute is aimed at protecting minors and those who train and compete in settings over which the USOPC and NGBs have jurisdiction—which does not include intercollegiate sports.¹⁸⁰ While USA Gymnastics has been the focus of the media attention around Dr. Nassar’s crimes, Michigan State’s role has thus far been less examined.¹⁸¹

¹⁷⁷Chris Chavez, *Inside the Toxic Culture of the Nike Oregon Project 'Cult,'* SPORTS ILLUSTRATED, (Nov. 13, 2019) <https://www.si.com/track-and-field/2019/11/13/mary-cain-nike-oregon-project-toxic-culture-alberto-salazar-abuse-investigation>.

¹⁷⁸ See generally Roberts, *supra*, note 173 (Defining “power imbalance” as “a disparity in the amount of resistance on the part of some social actor (e.g athlete, assistant, or mentee coach), which potentially can be overcome by another actor (e.g coach)”). Power imbalances “enable[] an instigator to use intimidating, coercive, and manipulative tactics to exert control with fewer consequences for the instigator and less resistance from the target, sometimes by pushing the target of abuse into a helpless and [defenseless] position.” *Id.*

¹⁷⁹ See Office for Civil Rights, *Title IX and Sex Discrimination*, U.S DEP’T. OF EDUC., https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (noting that Title IX protections from sexual harassment and abuse only apply to “education programs or activities that receive federal financial assistance.”)

¹⁸⁰ Koller, *supra* note 142.

IV. TWO POTENTIAL SOLUTIONS THAT DO NOT UNDERMINE THE AMATEUR SPORTS ACT

A. APPOINTMENT OF INSPECTOR GENERAL

Mark Conrad, professor of Sports Law at Fordham University, suggests that “the commission should consider the appointment an inspector general intended to be an independent, nonpartisan official whose aim is to prevent and detect waste, fraud, and abuse in the operations of the USOPC and the NGBs.”¹⁸² Inspector Generals, who gain authority via the Inspector General Act of 1978, are regulated by Congress and not administrative directive.¹⁸³ They work as “independent, nonpartisan officials” who “prevent and detect waste, fraud, and abuse in the federal government.”¹⁸⁴ To execute their missions, offices of inspector general (OIGs) “conduct various reviews of agency programs and operations.”¹⁸⁵ Such reviews include audits, inspections, and investigations, where the OIG reports their findings to the organization and strategies to improve their systems.¹⁸⁶ IGs can independently hire staff, access relevant agency records and information, and report findings and recommendations directly to Congress.¹⁸⁷ Further, “IGs’ dual reporting structure—to both agency heads and Congress—positions them to advise agencies on how to

¹⁸² Conrad, *supra* note 32, at 51.

¹⁸³ *Id.* See also (P.L. 100-504), The Inspector General Act Amendments of 1988 created a new category of IGs for “designated federal entities” (DFEs).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* Statutory IGs (“play a key role in government oversight, and Congress plays a key role in establishing the structures and authorities to enable that oversight.”) *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ BEN WILHELM, CONG. RSCH. SERV., R45450, STATUTORY INSPECTORS GENERAL IN THE FEDERAL GOVERNMENT: A PRIMER (2022), <https://sgp.fas.org/crs/misc/R45450.pdf>.

improve their programs and policies and to advise Congress on how to monitor and facilitate such improvement.”¹⁸⁸

A USOPC inspector general would function as an outside agent who reviews “[i]nternal documents dealing with the reporting (or non-reporting) of sexual or other abuse by coaches and other personnel.”¹⁸⁹ Thorough “performance audits, inspections, evaluations, and investigations, “would hold USOPC and NGBs accountable for their conduct and fiduciary responsibilities. compliance with .¹⁹⁰ The possibility of independent evaluator also provides a check on mandated reporters through an unconflicted assessment.. However, an inspector would only audit potential for SafeSport violations, as there has not significant efforts to regulate athlete conditions.¹⁹¹ This means that an auditor following SafeSport Code guidelines could still miss abusive conditions. For example, “hazing” is a SafeSport code violation, which includes “excessive training requirements demanded only of particular individuals . . . that serve no reasonable or productive training purpose; sleep deprivation; . . . withholding water or food.”¹⁹² However, there is no clear criteria between what constitutes hazing, and what is simply “professionally accepted coaching methods or skill engagement, physical conditioning, team building, appropriate discipline, or improved

¹⁸⁸ *Id.*

¹⁸⁹ Conrad, *supra* note 32, at 51.

¹⁹⁰ *Id.* at 51–52.

¹⁹¹ *See* Game Over Commission, *supra* note 112.

¹⁹² U.S Ctr for Safe Sport, *Safesport Code for the U.S Olympic and Paralympic Movement* 14 (Apr. 2021) https://uscenterforsafesport.org/wp-content/uploads/2021/04/SafeSportCode2021_040121_V3.pdf.

athlete performance.¹⁹³”In elite sport culture, where training is already physically demanding, it may be difficult to apply an objective standard to what amounts to “hazing.”¹⁹⁴”

B. OPTION FOR ATHLETES TO ORGANIZE UNDER THE NRLA

One proposed solution involves “a formal union body to represent and protect the interests of the young athletes who compete within each individual, amateur sport in this nation.”¹⁹⁵ Scholars argue that without union protections, professional athletes in sports like gymnasts’ are powerless because NGBs like USAG exclusively control who competes at the Olympics.¹⁹⁶ Unionization under the NLRA requires that the National Labor Relations Board (“NLRB”) assert jurisdiction, which is possible if athletes meet the statutory definition of “employees.”¹⁹⁷ Absent an explicit NRLA definition of “employee,” under common-law, it includes the common-law definition includes anyone conducting (1) contractual services for another (2)subject to another’s control, (3) in exchange for compensation.¹⁹⁸

Paid and sponsored USATF members who are also elite running programs members, such as the Oregon Project, would likely fit this definition.¹⁹⁹ However, athletes with the U.S. The Olympic Swimming team [or USA Gymnastics] would not fit this definition since: “(1) they were

¹⁹³ *Id.*

¹⁹⁴ Game Over Commission, *supra* note 112, at 6.

¹⁹⁵ Edelman & Pacella, *supra* note 128.

¹⁹⁶ *Id.* at 493.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 493–94.

¹⁹⁹ *See eg.*, Butler, *supra* note 175.

chosen to represent the US but not ‘hired’ to do so under an employment contract; and (2) they receive no salary, but only a bonus if any one or more of the team members medal.”²⁰⁰

Some scholars outlined a nuanced argument to conclude that USAG and other similarly structured NGOs fit within these definitions. Under the NLRB definition of “employee,” these athletes technically perform a service for another under a contract to compete for prize money.²⁰¹ “A gymnast must be part of a gymnastics club that is eligible for USAG membership, as well as personally apply and be granted membership to USAG” and could be understood as under “contract” since they participate under NGB guidelines and allow USAG to profit from their likeness.²⁰² Further, these athletes are under the control of USAG, as evidenced by their strict training requirements.²⁰³ Whereas an “employee” must perform services in exchange for payment, many athletes do not specifically receive payment from their NGO, only prize money and outside endorsement deals.²⁰⁴ While this compensation is comparable to the “direct salaries . . . [athletes] would receive on a free market,” only a select few athletes in some sports receive such compensation.²⁰⁵ Although many athletes would be eligible for prize money and endorsements, there are countless athletes who devote the same time and hours training and are subject to the same working conditions, who do not even appear in Olympic competitions.

²⁰⁰ Conrad, *supra* note 32, at 50.

²⁰¹ Edelman & Pacella, *supra* note 128, at 496.

²⁰² *Id.* at 497–98.

²⁰³ *Id.* at 498.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

Another concern is feasibility. In his article, *The COVID-19 Pandemic, the Empowering Olympic, Paralympic and Amateur Athletes Act, and the Dawn of a New Age of U.S. Olympic Reform*; Mark Conrad argues that “[i]t makes little sense to fight a challenge at the NLRB or in the courts, which will be costly and time-consuming.”²⁰⁶ Unlike other regulated labor industries, athletes spend relatively little time training and participating with an NGO.²⁰⁷

However, the NRLA could add a provision ensuring that such athletes can unionize and have representatives to negotiate collective bargaining agreements about working conditions and safeguards against abuse.²⁰⁸ Specifically, an agreement “could mandate penalties against the governing bodies and the USOPC and grant protection against retaliation if an athlete accuses a coach or other team managers of sexual or emotional abuse.”²⁰⁹ Athletes could also be allowed the right to strike.²¹⁰ Because NGBs and corporations generate substantial profit from athletic success, a group of athletes’ refusal to compete presents a bargaining tactic for safer working conditions, more regulated “sports medicine” practices, and input in hiring and managerial decisions.

Conrad admits that this solution “could lead to difficulties in team cohesion and false allegations that could upend the team in the preparation of the competition.”²¹¹ Also, it could

²⁰⁶Conrad, *supra* note 32 at 9.

²⁰⁷ Conrad, *supra* note 32 at 50; *See also* Nick Ziccardi, *Olympic Women’s Gymnastics Median Age in 20s for First Time in Decades*, NBC SPORTS (Jul. 2021), Olympic women's gymnastics median age in 20s for first time in decades (nbcsports.com). Due to the nature of competitive sports, many athletes retire by their twenties or thirties, which could result in little incentive for collective bargaining efforts for such a short amount of time. *Id.*

²⁰⁸Conrad, *supra* note 32 at 50.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

significantly change USOPC's leadership and the NGBs because unionization could lead to the termination of athletes' advisory committees currently in place.²¹² However, if athletes could organize it would remove the need for such advisory committees, or those committees could represent leaders within each players' union. Because this is just a small portion in the overall Amateur Sports Act, it is unlikely that athletes' ability to collectively bargain for better working conditions would remove major governance structures within USOPC. Ultimately, athletes undergo unsafe conditions, poor nutrition, and physical pain which caused abuse. While unionizing Olympic Sports could give athletes the possibility to advocate for better working conditions to avoid these situations, the responsibility must fall upon the NGOs and USOPC.

V. COMPLETE OVERHAUL OF USOPC AND REGULATION OF OLYMPIC SPORT

Ultimately, the evolution of Olympic Sport in America may require regulation beyond the Amateur Sports Act. When the Act was passed, placing the USOPC within other Title 36 corporations was fitting, and the United States wanted a centralized group to control Olympic participations for largely patriotic reasons.²¹³ However, in the past fifty years, the Olympics evolved as a significant source of revenue, employment, and diplomacy.²¹⁴ When Congress initially enacted the Amateur Sports Act, the statute was meant to address the United States' success (or relative lack thereof) in international sports.²¹⁵

²¹² *Id.*

²¹³ *See* Koller, *supra* note 43.

²¹⁴ *See* U.S. OLYMPIC & PARALYMPIC COMM., *supra* note 47.

²¹⁵ *See* Koller, *supra* note 6 at 1035; Conrad, *supra* note 32 at 10.

As explained above, structural issues within the amateur athletic community led to this underachievement, with the result being that the private sector was failing to work for the common national sporting good.²¹⁶ Now, improving labor conditions and regulating the industry for athletes is not only important to protect vulnerable people, but safe conditions are necessary to produce top-quality athletes. In addition, since the Amateur Sport Act's passage, the USOPC has been an integral player in the Olympic Games' major revenue power.²¹⁷ The USOPC interacts with other entities, such as NBC and major commercial brands that are themselves subject to a substantial amount of regulation.²¹⁸ However, such regulations provide no protections or benefits for the athletes who generate such revenue.²¹⁹

Canada's regulation of Olympic Sport may be a helpful guide for restructuring the American Olympic movement. The Canadian government is the single largest investor in Canada's amateur sports system.²²⁰ Canada's to receive federal funding for sport, organizations must have systems to handle incidents of harassment and abuse, upholding reporting mandates, and having a designated arm's length trained officers to investigate and prevent harassment.²²¹ To ensure compliance Canada's own Safe Sport organization recently created their own code of conduct to

²¹⁶ See Conrad, *supra* note 32 at 10.

²¹⁷ See U.S. OLYMPIC & PARALYMPIC COMM., *supra* note 47.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Sport in Canada*, CANADA GOV'T. (Apr. 4, 2021) <https://www.canada.ca/en/canadian-heritage/services/sport-canada.html>.

²²¹ Peter Donnelly & Gretchen Kerr, *Revising Canada's Policies on Harassment and Abuse in Sport: A Position Paper and Recommendations*, UNIVERSITY OF TORONTO (Aug. 2018), https://kpe.utoronto.ca/sites/default/files/harassment_and_abuse_in_sport_csps_position_paper_3.pdf.

ensure sports organizations remain compliant with the Physical Activity and Sports Act.²²² This code of conduct explicitly defines both common situations such as physical and emotional abuse, and more nuanced situations such as power imbalances.²²³ In Canada, the Minister of Sport is responsible for national competitive sport, reporting to the Minister of Canadian Heritage.²²⁴ Because there is no similar administrative position regulation within the USOPC, Administrative control could fall with the control of the Department of Labor or the Department of Health (HHS) and Human Services. Both agencies carry out their respective missions through various offices and agencies.²²⁵ For example, the Food and Drug Administration is an Operating division within HHS, that specifically handles the safety, efficacy, and security of food, medical products, drugs, and cosmetics.²²⁶ An agency could establish an office of Amateur Sport Safety, that could create standards for athlete wellbeing, regulating sport procedures, creating innovations and research into athlete wellbeing, and collaborate with other organizations.

Administrative control over the Olympic movement and Olympic Athletes is especially necessary and pertinent with the upcoming 2028 Summer Games in Los Angeles.²²⁷ Recently, during 2018, the USOPC entered into a joint venture with LA 2028 to form U.S. Olympic and

²²² *Universal Code of Conduct to Prevent and Address Maltreatment in Sport*, CANADIAN SAFE SPORT PRGRM., <https://sirc.ca/wp-content/uploads/2020/01/UCCMS-v5.1-FINAL-Eng.pdf>.

²²³ *Id.*

²²⁴ *Sport in Canada*, CANADA GOV'T. (Apr. 4, 2021) <https://www.canada.ca/en/canadian-heritage/services/sport-canada.html>.

²²⁵ *See Agencies and Programs*, U.S DEP'T OF LABOR, <https://www.dol.gov/general/dol-agencies>.

²²⁶ *What we Do*, FDA, <https://www.fda.gov/about-fda/what-we-do#mission>.

²²⁷ *Host City Contract Principles: Games of the XXXIV Olympiad in 2028*, INT'L OLYMPIC COMMITTEE (2017), https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIV-Olympiad-2028/Host-City-Contract-2028-Principles.pdf?_ga=2.144406705.507532950.1644719246-147568667.1644719246.

Paralympic Properties (USOPP).²²⁸ USOPP was established to facilitate joint marketing efforts between the USOPC and LA 2028 through the 2028 Games to be held in Los Angeles, California.²²⁹ The approaching Olympic Games risk expenditure of energy and resources to promotion of the games at the expense of the actual measures to protect athletes.²³⁰

When Los Angeles was selected as a Host City, the USOC was required to sign a contract with the IOC and City of Los Angeles to share responsibilities of organizing, financing, and staging the game in accordance with the Olympic Charter.²³¹ The Host City and USOC share joint and several liability for all “obligations, guarantees, representation, and other commitments” in respect of “all damages, costs and liabilities of any nature, direct or indirect.”²³² In addition, the IOC requires that the USOPC maintain “good standing” with the host country.²³³ During recent Olympic games in nations such as Russia, China, and Brazil, negative publicity targeting host nations’ mistreatment of citizens and athletes harmed the countries’ diplomatic relations..²³⁴ With the upcoming spotlight on the United States in 2028, avoiding scandal may require more government oversight.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ Brian Coravallano & Ted Anthony, *At Olympics and Beyond, Getting away with it is Russia’s Way*, AP (Feb. 11 2022), <https://apnews.com/article/winter-olympics-russia-getting-away-with-it-60f7e4f7c54ae3fe65d966ff5a159e9b>.

VI. CONCLUSION

In the aftermath of the USA Gymnastics sex abuse scandal, Congress determined that systems must be in place to protect vulnerable athletes.²³⁵ Although the Safe Sport Act created some methods which promote safety of athletes, so long as the structure of the Olympic Charter allows traditionally heavily-regulated areas such as labor, children’s health and safety, and women’s health and safety to go unregulated, vulnerable groups such as children and women remain at risk for abuse.²³⁶ When the Amateur Sports Act was initially passed, the federal government’s primary role in sport was to “simply encourage physical fitness,”²³⁷ but, the United States currently does not successfully encourage physical fitness when conditions for Olympic athletes so heavily foster abuse.²³⁸ The Olympic Charter permits NOCs to cooperate with governmental bodies so long as they do not “associate themselves with any activity which would be in Contradiction with the Olympic Charter,” and must “preserve their autonomy and resist all pressures of any kind,” that could hinder compliance with the Olympic Charter.²³⁹ Therefore, further regulation is possible and necessary. As evidenced by the Nike Oregon Project, abuses have continued, and will continue without any such accountability.²⁴⁰ If the government does not act before the 2028 Olympic Games in Los Angeles, the United States risks negative publicity on an international stage. When the Amateur Sports Act was first passed, the United States hoped to

²³⁵ See Game Over Commission, *supra* note 112.

²³⁶ Koller, *supra* note 6, at 1035.

²³⁷ *Id.*

²³⁸ See Game Over Commission, *supra* note 112.

²³⁹ Koller, *supra* note 6, at 1035.

²⁴⁰ Draper & Futterman, *supra* note 120.

send a message through athletic superiority to foreign nations such as the Soviet Union.²⁴¹ Today, it is equally important that the Olympics be a moment to showcase our values and morals.

²⁴¹ Koller, *supra* note 6.