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 an 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.
# Table of Contents

I. **Introduction** ................................................................................................................................. 192

II. **Regulating Olympic Sport** ............................................................................................................ 194
   A. **Overview of Olympic Movement** ............................................................................................... 194
   B. **History of Olympic Sport Regulation in the United States** ....................................................... 196
      1. **USOPC’s Early Years** .................................................................................................................. 196
      2. **Amateur Sports Act** ................................................................................................................. 197
      3. **Implications** ............................................................................................................................... 199
      4. **Larry Nassar and USA Gymnastics** ......................................................................................... 202
      5. **Safe Sport Act** ......................................................................................................................... 203

III. **Shortcomings that Persist Primarily Because of the Autonomy of USOPC and the Current Culture of Amateur Sports** ........................................................................................................ 209
   A. **Case Study: Nike Oregon Project** ............................................................................................... 210

IV. **Two Potential Solutions that do not Undermine the Amateur Sports Act** ................................ 221
   A. **Appointment of Inspector General** ............................................................................................. 221
   B. **Option for Athletes to Organize under the NRLA** ..................................................................... 223

V. **Complete Overhaul of USOPC and Regulation of Olympic Sport** .................................................. 226

VI. **Conclusion** ..................................................................................................................................... 230
I. INTRODUCTION

Simone Biles, the most decorated gymnast in the world, withdrew from the 2021 Olympics due to mental health concerns. 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.” Her “withdrawal was a stunning turnabout” for America, after winning “team gold at every world championships and Olympics since 2010.” During the same Olympic games, Naomi Osaka withdrew. The culture of Olympic Sports both harmed athlete wellbeing and resulted in a lowered medal count for the United States.

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. Without regulation, the USOPC’s structure facilitated public

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2 Id.

3 Id.

4 Id.

5 Id.

scandals with large-scale implications, including the USA Gymnastics sex abuse scandal. 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. 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 scandal, which resulted in legislation such as the Safe Sport Act and the 2020 Sports Act. 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

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9 Child USA Report, supra note 7.

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. 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.” 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. 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.” The three main Olympic Movement constituents are the International Olympic Committee (“IOC”), the International Sports Federations (“IFs”) and the National Olympic Committees (“NOCs”).

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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.


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.\(^\text{16}\) For example, the United States Olympic and Paralympic Committee (“USOPC”) is the United States’ NOC.\(^\text{17}\) 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.\(^\text{18}\) 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.\(^\text{19}\) NBGS is thus governed by both the respective sport’s IF and it’s nation’s NOC.\(^\text{20}\) For example, the NBG USA Gymnastics is governed by the USOC and the International Gymnastics Federation.\(^\text{21}\) 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.\(^\text{22}\)

\(^{16}\) 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.  
\(^{20}\) 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{26}

1. USOPC’S EARLY YEARS

The USOPC organization received its IOC charter in 1950 and became a recognized nonprofit.\textsuperscript{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.\textsuperscript{28} Consequently, the USOPC lacked a structured method to select and develop Olympic Athletes.

\textsuperscript{23} See generally id.

\textsuperscript{24} See Olympic Charter, supra, note 12, at 60.

\textsuperscript{25} See Koller, supra note 6, at 1035.

\textsuperscript{26} Id.

\textsuperscript{27} See Team USA, supra note 17.

\textsuperscript{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. President Gerald Ford concluded that “amateur sport is in the public interest” and then formed the 1975 Commission of Olympic Sports. The Commission recommended Congress pass legislation to create a “centralized sport organization that had the exclusive right to select athletes for Olympic Movement competition.”

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. 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.” The Sports Act also granted the USOPC exclusive jurisdiction to

29 Id.

30 Id. at 1047.

31 Id.


manage matters relating to United States participation in the Olympic games, including organizing Olympic games held in the United States.\textsuperscript{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.\textsuperscript{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.\textsuperscript{36} The Sports Act also “outline[d] the criteria for an amateur sport organization to be recognized as an NGB.”\textsuperscript{37} It is then NGBs’ responsibility to determine specific eligibility criteria for athletes in their respective sport.\textsuperscript{38} USOPC gives limited funding to the forty-seven NGBs, meaning NBGs must also rely on sponsorship agreements.\textsuperscript{39}

\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
\textsuperscript{37} Koller, supra note 6, at 1049.
\textsuperscript{38} Id.
\textsuperscript{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.\textsuperscript{40} Rather, the USOPC is a federally-chartered, nonprofit, patriotic corporation.\textsuperscript{41} USOPC is subject to little congressional oversight, and must submit a quadrennial report.\textsuperscript{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.\textsuperscript{43} As a federally chartered corporation, the USOPC exists in the “‘twilight zone’ between the public and private sectors” as a “Title 36 corporation.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{46} For example, in preparation for the 2021 Tokyo Olympics, the USOPC

\textsuperscript{40} \textit{Id.}

\textsuperscript{41} \textit{Id.}

\textsuperscript{42} \textit{Id.}


\textsuperscript{44} \textit{Id.}

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

\textsuperscript{46} \textit{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.\textsuperscript{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.\textsuperscript{48} As part of its responsibilities under the Amateur Sports Act, the USOPC also oversees the physical safety of thousands of athletes.\textsuperscript{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.\textsuperscript{50} Additionally, USOPC received over $14 million between 2016 and 2022 in licensing and royalty revenues alone.\textsuperscript{51} Various companies entered into agreements with the USOPC, which allowed the companies to sell merchandise with the USOPC’s name and marks attached.\textsuperscript{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.\textsuperscript{53}


\textsuperscript{48} Id.

\textsuperscript{49} Id.

\textsuperscript{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.


\textsuperscript{52} Id.

Further, the USOPC’s role within the Olympic Movement games give it a unique public role distinguishing it from Title 36 corporations. The IOC coordinates marketing, broadcasting, and licensing agreements and distributes that revenue to USOPC and the various NBGs. 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. Ultimately, “the federal charter is honorific, and it confers no substantive relationship with the federal government.” However, the USOPC benefits and interacts with other regulated entities.

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.” The USOPC system under the initial act possessed “ineffective procedural

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55 Id.


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


59 Id.
safeguards to protect Olympic athletes, particularly with respect to underage females.” These athletes were abused sexually, physically, and emotionally. 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. “[U]nder the guise of medical treatment,” Nassar abused athletes for years without consequences. When USA Gymnastics President Steve Penny notified the head of the USOPC, Scott Blackman, he recommended USA Gymnastics report Nassar to law enforcement. However, the USOPC, although legally responsible for athletes’ safety, took no action to follow up with law enforcement or USA Gymnastics about the allegations. 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

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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*].


63 Id.

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

65 Id.
facilities. 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. For over two decades, NBGs repeatedly failed to adequately address sexual abuse. 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.” For years, USOPC avoided implementing procedures, such as mandated reporter requirements and background checks, that would protect young athletes from abuse.

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. 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.


70 Id.

71 Id.
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

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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.


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.
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 NBG’s establish safe environments for athletes free from physical, emotional, and sexual abuse.90


86 Conrad, supra note 32, at 47.


88 Id.

89 Lee & Marino, supra note 87.

Specifically, USPOC must immediately report child abuse allegations of amateur athletes to law enforcement, ensure NBG’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


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.

The 2020 Act also established the “Commission on the State of U.S. Olympics and Paralympics” (Commission).\textsuperscript{97} This bipartisan Commission appointed by the Senate and House Commerce Committees, must investigate the Olympic governance system.\textsuperscript{98} Qualifications for membership require experience in Olympic or professional sports.\textsuperscript{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.\textsuperscript{100}

The 2020 Act also created the Commission on the State of U.S. Olympics and Paralympics (Commission).\textsuperscript{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.”\textsuperscript{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.\textsuperscript{103} To date the commission has recommended no formal report to Congress.

\textsuperscript{97} Safesport Code for the U.S. Olympic and Paralympic Movement, supra note 96.

\textsuperscript{98} Id.

\textsuperscript{99} Id.

\textsuperscript{100} Id.

\textsuperscript{101} Id.


\textsuperscript{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. 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.” 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. Critics argue that such a process essentially provides NGBs with advance notice of complaints to prepare for defense.

A 22-month investigation, conducted by ESPN and ABC, partially substantiated these accusations. 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

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105 Id.

106 Id.

107 Id.

misconduct.\textsuperscript{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.”\textsuperscript{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 . . . .”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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. \textsc{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

\textsuperscript{109} Id.

\textsuperscript{110} Id.

\textsuperscript{111} Id.


\textsuperscript{113} Id.

\textsuperscript{114} Id.
their headquarters in Beaverton, Oregon, the Salazar designed the program to improve American
distance running achievement.\textsuperscript{115} \textsuperscript{116} Salazar was initially temporarily banned from track and field
for doping violations.\textsuperscript{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 . . . .”\textsuperscript{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 . . . .”\textsuperscript{119}

A SafeSport Investigation commenced shortly after the accusations.\textsuperscript{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.\textsuperscript{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.\textsuperscript{122} The abuses at the Oregon Project reveal the various weaknesses that persist within

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id.
\item 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/.
\item Zagger, supra note 115.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
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.


127 Id.


129 Id. at 475.
their had severely restricted caloric intake, which led many to develop eating disorders and delayed onset menstruation. “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. 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. The conditions made them not just subservient, but more vulnerable to abuse, making them less likely to report incidents.

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. This can interfere with an athlete’s “ability to promote their own self care.” Salazar and Nassar abused athletes similarly, both were accused also of penetrating female athletes, claiming it was an “athletic massage.”

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.
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),


139 Id.

140 Id.

141 Id.


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.”

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.”

“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.” 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. 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.

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.” The monopolistic system that prioritizes self-preservation over the well-being of athletes protects abusers.

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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.\textsuperscript{151} Max Siegel, the USATF’s CEO, was reportedly paid $1.197 million and USATF reported revenues of $33.7 million.\textsuperscript{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.”\textsuperscript{153}

Because abusers typically go unpunished until a bystander or victim complains.\textsuperscript{154} Therefore, “the onus for abuse prevention is often placed on the most vulnerable member of the sports system, the athlete.”\textsuperscript{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.\textsuperscript{156} As the athlete progresses in the sport, the “upper-level

\begin{footnotesize}
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\item Id. In 2019, the CEO of USA Gymnastics made $376,724 on revenues of $26.4 million. \textit{Id.} The same year, the CEO of USA Swimming made $749,201 on revenues of $39 million. \textit{Id.}
\item Id.
\item See Thompson supra, note 138. See also Steven Sexton, \textit{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=nwslr_politics_ideas&cx_refModule=nwslr, (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”).
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teams become fewer and more controlled.” 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. 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.

In each of the respective situations, Nike and USAG controlled access to the premiere quality of coaches, facilities, and equipment. For example, professional runners belong to single-sponsored training groups that exist as NGOs. Brands like Hoka, New Balance, and Nike devote dollars to groups and athletes who train with them. Distance runners compete at large USATF-sanctioned events, such as the New York Marathon, and larger events, such as the Olympics. 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-
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. 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. 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.”

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. Since Nassar’s sentencing, much criticism circulated around how USAG’s training facility, the Karolyi Ranch, helped facilitate a culture of abuse. 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

\[^{164}\text{Id.}\]
\[^{165}\text{Edelman & Pacella, supra note 128.}\]
\[^{166}\text{Nike’s Big Bet Alberto Salazar and the Fine Line of Sport, (Peacock 2021).}\]
\[^{167}\text{Id.}\]
\[^{168}\text{Edelman & Pacella, supra note 128.}\]
\[^{169}\text{Id.}\]
their ranch in Texas.\footnote{At the Heart of Gold, supra note 61.} At the Karolyi Ranch, a 2,000-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.”\footnote{Yan, supra note 132.} At the ranch, staff prohibited phone or internet use, athletes could not even contact their parents or personal coaches.\footnote{At the Heart of Gold, supra note 61.} While the culture within USA Gymnastics appears severe, psychological isolation is a common tactic within elite sports and is directly related to abuse.\footnote{Victoria Roberts, Organisational Factors and Non-Accidental Violence in Sport: a Systematic Review, 23 SPORT MGMT. REV. 8, 12 (2020).} 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.\footnote{Id.}

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.\footnote{At the Heart of Gold, supra note 61.} 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.\footnote{Id.} This

\footnote{At the Heart of Gold, supra note 61.}

\footnote{Yan, supra note 132.}

\footnote{At the Heart of Gold, supra note 61.}

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

\footnote{Id.}

\footnote{At the Heart of Gold, supra note 61.}

\footnote{Id.}
tragedy revealed a culture of psychological abuse, unsafe conditions, and withholding of food that many female elite athletes in various sports experience. 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.

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. 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. 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.

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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.” Inspector Generals, who gain authority via the Inspector General Act of 1978, are regulated by Congress and not administrative directive. They work as “independent, nonpartisan officials” who “prevent and detect waste, fraud, and abuse in the federal government.” To execute their missions, offices of inspector general (OIGs) “conduct various reviews of agency programs and operations.” Such reviews include audits, inspections, and investigations, where the OIG reports their findings to the organization and strategies to improve their systems. IGs can independently hire staff, access relevant agency records and information, and report findings and recommendations directly to Congress. 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.

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

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.” Thorough “performance audits, inspections, evaluations, and investigations, “would hold USOPC and NGBs accountable for their conduct and fiduciary responsibilities. compliance with . 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. 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.” 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.

athlete performance.\textsuperscript{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.”\textsuperscript{194}

**B. Option for Athletes to Organize under the NLRA**

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.”\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{198}

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

\textsuperscript{193} Id.

\textsuperscript{194} Game Over Commission, supra note 112, at 6.

\textsuperscript{195} Edelman & Pacella, supra note 128.

\textsuperscript{196} Id. at 493.

\textsuperscript{197} Id.

\textsuperscript{198} Id. at 493–94.

\textsuperscript{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.”

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 12, 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.”

Unlike other regulated labor industries, athletes spend relatively little time training and participating with an NGO.

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. 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.”

Athletes could also be allowed the right to strike. 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.” Also, it could

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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.*

208 Conrad, *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.


ensure sports organizations remain compliant with the Physical Activity and Sports Act. This code of conduct explicitly defines both common situations such as physical and emotional abuse, and more nuanced situations such as power imbalances. In Canada, the Minister of Sport is responsible for national competitive sport, reporting to the Minister of Canadian Heritage. 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. 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. 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. Recently, during 2018, the USOPC entered into a joint venture with LA 2028 to form U.S. Olympic and

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223 Id.


Paralympic Properties (USOPP).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{232} In addition, the IOC requires that the USOPC maintain “good standing” with the host country.\textsuperscript{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.\textsuperscript{234} With the upcoming spotlight on the United States in 2028, avoiding scandal may require more government oversight.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{228} Id.
\item \textsuperscript{229} Id.
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\item \textsuperscript{231} Id.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Id.
\item \textsuperscript{234} Brian Coravallano & Ted Anthony, \textit{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.
\end{enumerate}
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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

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\(^{235}\) 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.