AN AFTERNOON WITH RACHAEL DENHOLLANDER

CLE Credit: 1.0
Friday, June 14, 2019
1:40 – 2:40 p.m.
Grand Ballroom
Galt House Hotel
Louisville, Kentucky
A NOTE CONCERNING THE PROGRAM MATERIALS

The materials included in this Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered. No representation or warranty is made concerning the application of the legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how any particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgement pf the individual legal practitioner. The faculty and staff of this Kentucky Bar Association CLE program disclaim liability therefore. Attorneys using these materials, or information otherwise conveyed during the program in dealing with a specific legal matter have a duty to research the original and current sources of authority.
TABLE OF CONTENTS

The Presenter ..................................................................................................................................................... i

Better Late Than Never: Why the USOC Took So Long to Fix a Failing System for Protecting Olympic Athletes from Abuse .................... 1

A Twenty-First-Century Olympic and Amateur Sports Act ................................................................. 39
For her work as an advocate and educator on sexual assault, Ms. Denhollander was named one of TIME Magazine’s 100 Most Influential People in the World in 2018. She is the recipient of numerous awards and recommendations, including the Integrity and Impact Award founded by Dow Jones Sports Intelligence, a joint recipient of the Arthur Ashe Courage Award, and HeartAmbassador’s Lifetime Achievement Award for Contributing to Social Justice. Ms. Denhollander has also been recognized and honored in both the Kentucky and Michigan legislatures for her advocacy. Ms. Denhollander has been active in spearheading legislative reform at the state level. She continues to educate on issues of abuse through supporting and speaking at organizations that advocate for victims of sexual and domestic abuse, lecturing at universities, and teaching at abuse prevention conferences. Additionally, she has been a panelist on a United Nations Peace Messenger Organization at the UN’s 62nd Commission on the Status of Women. Prior to beginning her work as an advocate and educator, she worked in public policy, performed research and writing for human rights organizations, and spoke in a variety of capacities, including testifying before state judiciary committees. She has also taught in legislative action days, and authored and taught a summer camp course on appellate advocacy and judicial philosophy to talented high school students. She has appeared on CNN, ABC, CBS, NBC, FOX News, BBC, NPR and in national and international print media, including Der Spiegel, The Washington Post, and the Associated Press, and is a New York Times op-ed contributor. Ms. Denhollander holds a Juris Doctorate from Oak Brook College of Law, possesses an honorary degree from the American University of Paris, and is a member of the California Bar Association.
I. INTRODUCTION

At the 2012 Summer Olympic Games in London, the United States sent 530 athletes to compete, a team comprised of 269 women and 261 men. This was the first time women outnumbered men on Team USA, and the United States was on the leading side of a worldwide trend of increasing female participation at the Olympic Games. The 2016 Summer Olympics in Rio set a record for female participants at forty-five percent and the United States broke its own record from 2012 with 292 female participants out of 555 athletes. However, this increase in female participation has not been without a significant number of sexual misconduct allegations made against adults connected to Olympic sport organizations.


2 See id. (discussing impressive feats achieved by women at 2012 Olympics and noting for United States in particular it was "Year of the Woman at the Olympics").


4 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://www.washingtonpost.com/sports/every-six-weeks-for-more-than-36-years-when-will-sex-abuse-in-olympic-sports-end/2017/11/17/286ae804-c88d-11e7-8321-481fd63f174d_story.html?utm_term=.f6bd60c16ef0 [https://perma.cc/8HY7-ACPL] (noting "[m]ore than 290 coaches and officials associated with the United States’ Olympic sports organizations have been publicly accused of sexual misconduct since 1982" which has spanned across "15 sports and amounts to an average of eight adults connected to an Olympic organization accused of sexual misconduct every year – or about one every six weeks – for more than 36 years"); see also Warner, supra note 3 (discussing growing number of women athletes participating in Olympics). This Comment refers to perpetrators as male and victims or complainants as female. While the author recognizes that there are certainly exceptions, this Comment primarily addresses how the legal voids within the Ted Stevens Olympic and Amateur Sports Act and a culture of resisting change affects female athletes.

a1 J.D. Candidate, May 2019, Villanova University Charles Widger School of Law; B.B.A. in Accounting, Business Law (minor) and Real Estate (minor), Villanova University, 2016. I would like to thank my parents, Michael and Karen, and my brother, Andrew, for being a constant source of encouragement throughout my academic pursuits.
The sexual assault allegations referred to herein taint the otherwise historic achievement and growing number of female sport opportunities at the Olympics. Since 1982, over 290 coaches and officials within the United States’ Olympic sport organizations have faced public accusations of sexual misconduct. The latest scandal, amongst a series of publicized incidents, involves the United States National Gymnastics Team (“USA Gymnastics”). In 2015, sexual abuse claims were filed against Larry Nassar, a former USA Gymnastics team doctor. In 2017, notable Olympic gymnasts and gold medalists McKayla Maroney, Aly Raisman, Gabby Douglas, and Simone Biles joined the 150-plus female athletes in publicly accusing Larry Nassar of sexual abuse. This case is not an isolated incident, but rather continues to highlight preventable errors committed by Olympic sport organizations that have put numerous children at risk.

Nassar has since pled guilty to sexually assaulting ten girls and has been sentenced to sixty years on federal child pornography charges and forty to 125 years for molesting young girls under the guise of medical treatment.

For years, sexual assault has occurred in numerous Olympic sport organizations as a result of a culture that prioritizes limited legal risk and gold medals over safeguarding children. The United States Olympic Committee (“USOC”) has resisted change and

---

5 See generally Hobson & Rich, supra note 4 (discussing growing problem of sexual abuse in Olympic sport organizations).

6 See id. (discussing statistics of sexual abuse spanning last three decades).

7 See id. (discussing sexual abuse claims against USA Gymnastics and former team doctor Larry Nassar).

8 See id. (discussing origination of claims, and continuation of claims arising after first report against Nassar).


10 See Hobson & Rich, supra note 4 (quoting Katherine Starr, former Olympic swimmer and abuse victim, stating, “[w]e’re hearing all about gymnastics, but the problems in gymnastics are equally as prevalent in every other sport”).


12 See id. (discussing resistance to change by USOC and highlighting reasons for why abuse cases continue to rise in Olympic sport organizations).
continues to exhibit flaws in its responses to suspicions of abuse. Historically, the USOC has employed ineffective procedural safeguards to protect Olympic athletes, particularly with respect to underage females.

This Comment explains the fundamental issues within the Olympic organization, exploring its history of turning a blind eye to sexual abuse allegations coupled with ineffective methods of removing abuse from sports. This Comment argues that the USOC is in the best position to combat the issue of sexual abuse. Further, this Comment argues that changing the culture of youth sport should begin with the USOC and trickle down to the National Governing Bodies (“NGBs”). Part II of this Comment discusses the previous and current governing law that the USOC must follow, including the Ted Stevens Olympic and Amateur Sports Act (“Ted Stevens Act”) and the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 (“SafeSport Act”). Part II also examines sexual abuse scandals within several NGBs. Part III analyzes the sexual abuse that has plagued the Olympic organizations for decades by looking at legal cases against the USOC, focusing particularly on the recent scandals within USA Swimming and USA Gymnastics. Part III also analyzes changes to federal law and discusses the nondisclosure agreement (“NDA”) process and legality of NDAs in this context. Finally, Part IV summarizes the arguments made in this Comment.

13 See id. (stating USOC has resisted change to federal law governing it, despite flawed responses officials have historically given to suspicions of abuse).

14 See Haley O. Morton, License to Abuse: Confronting Coach-Inflicted Sexual Assault in American Olympic Sports, 23 WM. & MARY J. WOMEN & L. 141, 143 (2016) (“Olympic athletes, mostly underage females, have almost no effective grievance procedure within their own National Governing Bodies (NGB), nor do they have statutory grounds for a civil suit, to combat sexual abuse from coaches.”).

15 For further discussion of the fundamental issues within the Olympic organization, see infra notes 24-29 and accompanying text.

16 For further discussion of the changes that should be made by the USOC to combat sexual abuse, see infra notes 168-197 and accompanying text.

17 For further discussion of the USOC’s ability to combat the abuse, see infra notes 167-197 and accompanying text.

18 For further discussion of the Ted Stevens Act, see infra notes 65-76 and accompanying text.

19 For further discussion of the sexual abuse within Olympic sport organizations, see infra notes 97-160 and accompanying text.

20 For further discussion of the scandals in USA gymnastics and USA Swimming, see infra notes 100-119, 120-145, 223-227, 268-288, and accompanying text.

21 For further discussion of the changes to federal law and the NDA process, see infra notes 228-289 and accompanying text.

22 For further discussion of the arguments made in this Comment, see infra notes 289-298 and accompanying text.
II. LEGAL BACKGROUND

Historically, Olympic athletes have had ineffective procedural safeguards and reporting systems within their NGB for combating sexual abuse by coaches and officials, leading to an ineffective recourse process for athletes after sexual abuse has occurred. The USOC has traditionally claimed that its hands are tied regarding the issue of combating sexual abuse situations, deferring to these ineffective NGBs to take action. The USOC has only started recognizing the growing issues and improving its own safety policies in the last three years. In 2017, the USOC implemented a new nonprofit agency, the U.S. Center for SafeSport (“SafeSport”), to deal with suspected abuse in Olympic sport organizations. SafeSport was supposed to begin operations in 2015; however, a lack of funding ultimately delayed its commencement until 2017. Recent trends are shining a light on sexual abuse in Olympic sport organizations and forcing the USOC and NGBs to start making the necessary changes alongside the SafeSport Act, a law aimed at preventing sexual abuse in amateur athletics. As the leader in the Olympic organizations, it should be the USOC’s primary purpose to protect its athletes.

23 For further discussion of the historical procedural safeguards and reporting systems, see infra notes 161-197 and accompanying text.

24 See Cecelia Townes, When USOC-Sanctioned Officials and Coaches are Accused of Assault - Who is Responsible?, ESPNW (Mar. 29, 2017), http://www.espn.com/espnw/voices/article/18988930/when-usoc-sanctioned-officials-coaches-accused-sexual-assault-responsible [https://perma.cc/4T9F-28WK] (“In instances of allegations of sexual assault, the USOC has argued that the NGBs and local clubs that employee coaches and officials are responsible for responding to claims of misconduct.”).

25 See id. (discussing creation of U.S. Center for Safe Sport, but qualifying it as very small step taken by USOC toward protection of athletes from sexual assault).

26 See id. (discussing creation of SafeSport).

27 See id. (discussing delayed commencement of SafeSport).

28 See Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act, Pub. L. No. 115-126, Title II, §§201-04, 132 Stat. 318, 320-25 (2018) (codified as amended in scattered sections of 18 U.S.C., 34 U.S.C. and 36 U.S.C.) (noting aim of new law is “to prevent the sexual abuse of minors and amateur athletes by requiring the prompt reporting of sexual abuse to law enforcement authorities”); see also Hobson & Rich, supra note 4 (quoting statement by USOC board member Susanne Lyons, who, according to her statement: “think[s] we all feel, in hindsight, how could we have let this take so long? ... All up and down that food chain, there were failures in the system that I think everyone regrets ... The best we can do now is just go forward aggressively”).

29 See Townes, supra note 24 (“While the USOC may have delegated certain duties to its NGBs, it is ultimately the USOC’s purpose to protect its athletes.”).
**A. Structure of Olympic Sport Governance**

Olympic sport governance in the United States is structured as a pyramid. The USOC sits at the top of the pyramid, and is headquartered in Colorado Springs. Under the USOC sits forty-seven Olympic and Pan American NGBs. There is one NGB for each sport, such as USA Gymnastics and USA Swimming. Finally, under the NGBs are the coaches and clubs sponsored by NGBs which work directly with athletes, many of whom are children.

1. **United States Olympic Committee**

The USOC, serving as both National Olympic Committee and National Paralympic Committee, is a multifunctional committee. Congress created the USOC in 1894 to oversee the NGBs, stating its mission as “support[ing] U.S. Olympic and Paralympic athletes in achieving sustained competitive excellence while demonstrating the values of the Olympic Movement, thereby inspiring all Americans.” The Committee is responsible for training, entering, and funding United States teams, primarily for the Olympic and Paralympic Games. But its responsibilities are not limited solely to the Games themselves and the Olympic Movement. The USOC is also responsible for aiding athletes through their NGBs, “providing financial support and jointly working to develop


31 See id. (discussing USOC as overarching body governing all United States Olympic organizations).

32 See id. (discussing NGBs, many of which are also headquartered in Colorado Springs).

33 See id. (discussing NGBs and tumultuous events surrounding USA Gymnastics in particular).

34 See id. (discussing fundraising mechanism of NGBs to allow coaches and clubs “across the country the opportunity to use the prestige of an association with the Olympics to attract top students”).


36 Id. (discussing history of USOC).

37 See id. (describing USOC as “responsible for the training, entering and funding of U.S. teams for the Olympic, Paralympic, Youth Olympic, Pan American and Parapan American Games, while serving as a steward of the Olympic Movement throughout the country”).

38 See id. (discussing additional roles of USOC that do not revolve around support during actual competition); see also Leading the Olympic Movement, OLYMPIC.ORG, https://www.olympic.org/the-ioc/leading-the-olympic-movement [https://perma.cc/U8GA-27L5] (last visited July 19, 2018) (“The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism ... The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised in accordance with Olympism and its values.”).
customized, creative and impactful athlete-support and coaching education programs.”

Most importantly, the USOC prides itself on supporting athletes “on and off the field of play” and providing Olympic Training Center facilities for athletes, which include sports medicine, strength and conditioning, and psychology.

2. National Governing Bodies

The forty-seven NGBs sit below the USOC in the governance structure of the Olympic organization and play a direct role with athletes. Each NGB is responsible for abiding by the rules and regulations of the Ted Stevens Act and its recent amendment, which together lay out several duties pertaining to sports development and coaching. NGBs are responsible for selecting and sending athletes to the Olympic Games and supporting the growth of the sport down to youth levels. Essentially, under the supervision of the USOC, the NGBs of each sport follow their own procedures of checks and balances and democratic processes.

3. U.S. Center for SafeSport

SafeSport opened in 2017, acting as the “first and only national organization of its kind.” SafeSport focuses on ending all forms of abuse in sports, which includes addressing claims of bullying and harassment in addition to physical and emotional sexual misconduct. SafeSport seeks to foster a national sport culture of respect, safety, and

---

39 About the USOC, supra note 35 (emphasis added).

40 See id. (noting USOC’s provision of performance services for athletes).

41 See generally Hobson & Rich, supra note 4 (discussing Olympic organization’s hierarchical structure).


43 See id. (noting one primary role of NGBs is to select athletes for Olympic Games).

44 See generally id. (discussing USOC supervision of NGBs and reports of how well functioning certain NGBs are based on evaluation done for democratic process, transparency, checks and balances, and solidarity).


46 See Cecelia Townes, Q&A With Shellie Pfohl, CEO of the U.S. Center for SafeSport, ESPNW (Apr. 6 2017), http://www.espn.com/espnw/voices/article/19082380/qa-shellie-pfohl-ceo-us-center-safesport [https://perma.cc/5TA5-J7WW] (“The U.S. Center for SafeSport is designed to make sure that athletes are safe, supported and strengthened through sports. To that end, we address bullying, harassment, hazing, as well as physical, emotional and sexual misconduct in sport.”).
support for athletes both on and off the playing field. In response to a lacking system in the Olympic Movement for handling sexual abuse, SafeSport investigates and resolves alleged policy violations of the SafeSport Code for the forty-seven NGBs within the U.S. Olympic and Paralympic organizations.

In 2010, prior to the SafeSport Act, the USOC formed a working group with an initiative to better protect athletes and develop recommendations regarding misconduct in sport. The group created SafeSport as a nonprofit to “respond to abuse claims and implement a unified set of policies for preventing, identifying and reporting misconduct among the 47 national governing bodies (NGBs) that oversee USOC sports.” SafeSport initially did not create any legal obligation, rather the USOC “required all NGB’s, as a condition of membership, to implement athlete safety policies.” However, in 2017, the SafeSport Act codified a legal obligation by placing a duty on any adults working with minor athletes to report any suspicion of sexual abuse. SafeSport is required to fully investigate any claims of sexual assault and report to law enforcement agencies within twenty-four hours. SafeSport is then “authorized to and will issue sanctions up to and including being [permanently] banned.”

47 See generally id. (stating SafeSport will prevent future harm and respond to already reported harm).

48 See id. (discussing SafeSport’s role in handling claims of sexual misconduct, while noting work extends far beyond Olympic family as resource for all youth sport organizations).

49 See Stephen Meyers, USOC CEO Provides Details on Initiative to Protect Athletes, USA TODAY (Sept. 22, 2016), https://www.usatoday.com/story/sports/olympics/2016/09/22/usoc-ceo-scott-blackmun-center-for-safe-sport/90868876/ (noting USOC CEO Scott Blackmun’s recognition that “sexual abuse is obviously a societal issue” and “as leaders in the world of sport, we have to do everything in our power to keep our athletes safe”).

50 Id.

51 Id.

52 See generally 34 U.S.C. §20341 (providing adults’ reporting obligations); see also SafeSport Code for the U.S. Olympic and Paralympic Movement, U.S. CTR. FOR SAFESPORT (effective Mar. 3, 2017), https://77media.blob.core.windows.net/uscss/1488581091937.2017-03-03-safesport-code-final.pdf (discussing how to foster “a sport community where all persons who participate in sport programs and activities can work and learn together in an atmosphere free of all forms of emotional, physical and sexual misconduct”).

53 See 34 U.S.C. §20341(c)(12) (noting reporting requirement “as soon as possible” means within 24-hours).

54 Townes, supra note 46; and see, e.g., Permanently Ineligible Members, USA Gymnastics, https://usagym.org/pages/aboutus/pages/permanently_ineligible_members.html (last visited July 19, 2018) (listing publicly all persons permanently banned from membership with USA Gymnastics with relevant rule or Bylaw that was violated listed next to his/her name).
The USOC had ethics policies which required NGBs to adopt minimum policy standards prior to SafeSport’s creation in 2015 and its official opening in 2017. The USOC had an ethics policy that read: “Coaches do not engage in sexual/romantic relationships with athletes or other participants over whom the coach has evaluative, direct, or indirect authority, because such relationships are likely to impair judgement or be exploitative.”

The minimum policy standards for NGBs, focusing on protecting athletes, did not become a requirement until 2012 and NGBs were not required to adopt the standards until December 2013. These policies target the existing problems in the Olympic regime and serve as a baseline for NGBs to follow as they attempt to improve their systems.

The policies included the following guidelines:

1. Prohibited conduct includes bullying; hazing; harassment (including sexual harassment); emotional misconduct; physical misconduct; and sexual misconduct (including child sexual abuse) between NGB employees, athletes, coaches and officials.

2. Each “NGB shall require criminal background checks for those individuals it formally authorizes, approves or appoints (a) to a position of authority over, or (b) to have frequent contact with athletes.”

3. “Beginning January 1, 2014, each NGB shall require education and training concerning the key elements of their safety program for those individuals it formally authorizes, approves or appoints (a) to a position of authority over, or (b) to have frequent contact with athletes.”


See Morton, supra note 14, at 153 (discussing requirement to adopt minimum standards placed by USOC on NGBs).

See id. at 154 (discussing minimum requirements and their progressiveness, but also their limited application).


Id.
authority over, or (b) to have frequent contact with athletes.”

(4) A requirement that “[e]ach NGB shall establish a procedure for reporting misconduct.”

(5) A grievance process, free from bias and conflicts of interest, to address misconduct allegations, and in cases where the Ted Stevens Act applies, strict compliance with the Act’s requirements.

B. Governing Olympic Sports

1. The Ted Stevens Olympic and Amateur Sports Act

The Ted Stevens Act is one of the current laws governing Olympic sport organizations and, prior to 2018, was the most applicable source of sports law for American Olympic sports. Congress passed the Ted Stevens Act in response to a lack of internal organization within Olympic governance. Although the USOC has governing powers over United States Olympic sports, both the USOC and NGBs must still comply with the Ted Stevens Act in protecting athletes’ ability to participate in competition. Under the Ted Stevens Act, the USOC must establish a procedure for “swift and equitable resolution of disputes relating to” Olympic athlete participation, guaranteeing all athletes, officials, and coaches “fair notice, due process and a hearing in the event of a dispute.”

61 Id.

62 Id.

63 Id.

64 See id. (referring to enforcement of policy and grievance process).

65 See Matthew Mitten, Legal Protection of Sports Participation Opportunities in the United States of America, FOR THE RECORD: THE OFFICIAL NEWSLETTER OF THE NAT’L SPORTS L. INST., 1, 2 (2008), https://law.marquette.edu/assets/sports-law/pdf/for-the-record/v19i4.pdf [https://perma.cc/D2BQ-MNNF] (discussing legal protection of Olympic sports athletic participation opportunities under Ted Stevens Act); see also Morton, supra note 14, at 150 (“While Title IX provides remedies for students and student-athletes experiencing sexual assault, the [Ted Stevens Act] only implicates athletes seeking solutions to issues affecting their ability to participate in competition.”).

66 See Morton, supra note 14, at 150 (discussing origination of Ted Stevens Act in response to “intra-organizational political ‘squabbles’”).


68 Id. at 3 (citing 23 U.S.C. §§220509(a)) (discussing “swift and equitable resolution”); see also Will Hobson, Senator Dianne Feinstein Calls for Changes to Olympic Sports Law to Protect Children from Abuse, WASH. POST (Feb. 22, 2017), https://www.washingtonpost.com/news/sports/wp/2017/02/22/senator-dianne-feinstein-calls-for-changes-to-olympic-sports-law-to-protect-children-from-abuse/?utm_term=.8495a9f39227 [https://perma.cc/WBR8-J59G] (discussing framework of Ted Stevens Act, and setting forth requirements in event of dispute); see also
Although athletes are ineligible to be USOC members, the Ted Stevens Act requires an election of an Athletes’ Advisory Council (“AAC”) to ensure open lines of communication with the USOC and adequate representation of athlete interests. The mission of the AAC is “to communicate the interests and protect the rights of athletes, in cooperative support of the USOC achieving its mission.” The Ted Stevens Act also requires athletes to hold a minimum of twenty percent of the membership and voting power held by its Board of Directors, committees, and each NGB. Finally, the Ted Stevens Act requires the NGBs provide all athletes with an equal opportunity to participate without “discrimination on the basis of race, color, religion, sex, age, or national origin.” If there is an issue regarding an athlete’s participation (e.g., challenges to standards for selecting athletes to participate in United States competitions or accusations of substance abuse), the USOC must enact a swift resolution on its own, while the NGB launches a concurrent internal investigation. Ultimately, an athlete that is dissatisfied with the outcome of an investigation may submit to a final and binding arbitration. This arbitration takes place


69 See Mitten, supra note 65, at 2 (noting certain requirements of Ted Stevens Act); see also *Athletes’ Advisory Council*, TEAM USA, https://www.teamusa.org/athlete-resources/athletes-advisory-council [https://perma.cc/7DX6-GHJ3] (last visited July 2, 2018) (“The [Athletes’ Advisory Council] consists of at least one athlete from each National Governing Body (NGB) which the United States is represented at the Olympic and Pan American Games, eight athletes representing the Paralympic Sport Organizations or NGBs designated to govern a Paralympic sport, and six athletes elected by the AAC to serve at-large, including a chair and two vice chairs.”).

70 *Athletes’ Advisory Council*, supra note 69.

71 See Mitten, supra note 65, at 2 (citing 36 U.S.C. §§220504(b)(2), 220522(a)(1), and 220522(a)(8)) (noting voting requirements for athletes under Ted Stevens Act).

72 Id. (citing 36 U.S.C. §220504(a)(8)).

73 See Mitten, supra note 65, at 2, 4 n.29 (discussing arbitration procedures for traditional challenges, such as athlete selection, follow “rational basis” test, while those involving doping disputes follow special arbitration process between arbitrator, U.S. Anti-Doping Agency, and athlete); see also *Olympic Athlete Eligibility, NGB Determination, and Doping Disputes: An Overview*, AM. ARB. ASS’N, https://www.adr.org/sites/default/files/document_rePOSITORY/Olympic+Athlete+Eligibility.pdf [https://perma.cc/J4VN-CT7N] (last visited July 2, 2018). The expedited arbitration process can be illustrated using the following example: “Three days prior to the opening of the Nagano Games in ’98, an Olympic skier filed an arbitration. The AAA acted quickly and had an arbitration hearing scheduled within 24 hours; the arbitrator decided the skier was eligible for the games.” Id.

between the athlete, the NGB, and a single arbitrator or a panel of arbitrators.\textsuperscript{75} The arbitrators decision in settling the dispute is based on a conclusion of law and factual determination of whether (1) the athlete had a fair opportunity to qualify for protected competitions, and (2) the NGB’s selection process was “fair, reasonable, and consistently applied to all athletes.”\textsuperscript{76} Because this process is binding, a court will only interfere if an arbitrator did not have sufficient authority, or exceeded the authority granted, to rule on the specific issue at hand.\textsuperscript{77} As discussed in \textit{Gault v. United States Bobsled & Skeleton Foundation},\textsuperscript{78} the standard of review of an arbitrator’s decision is only limited scrutiny.\textsuperscript{79} Despite the Ted Stevens Act providing some protection of athletes’ ability to participate in the Olympics, courts have continuously held that athletes have no constitutional right to participate in the Olympic Games.\textsuperscript{80} For example, in \textit{DeFrantz v. USOC}\textsuperscript{81} the Court determined the USOC is a private organization rather than a state actor.\textsuperscript{82} Thus, the USOC is not subject to the constraints of the United States Constitution, and further, even if its conduct was considered “state action,” athletes still do not have a constitutional right to participate in the Olympic Games.\textsuperscript{83} A Seventh Circuit judge noted, “there can be few less suitable bodies than the federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes to participate in the Olympic Games.”\textsuperscript{84}

\textsuperscript{75} See Mitten, \textit{supra} note 65, at 4 (discussing who is normally selected as arbitrator or member of panel).

\textsuperscript{76} \textit{Id.} at 2, 4 (citing \textit{In re Arbitration between Sean Wolf and U.S. Rowing Ass’n,} Case No. 30 190 00635 02 (American Arb. Ass’n, Aug. 9, 2002) and \textit{In re Arbitration between Rebecca Conzelman,} Case No. 30 190 404 04 (American Arb. Ass’n, April 6, 2004)) (discussing arbitration process and illustrative obligations of arbitration panel).

\textsuperscript{77} See Mitten, \textit{supra} note 65, at 4 (citing \textit{Lindland v. U.S. Wrestling Ass’n, Inc.}, 227 F.3d 1000, 1003 (7th Cir. 2000)) (discussing limited circumstances when courts will interfere with arbitration process).


\textsuperscript{79} See Mitten, \textit{supra} note 65, at 4 (quoting court in \textit{Gault}) (“[A]lthough we also may disagree with the arbitrator’s award and find most unfortunate the increasing frequency with which sporting events are resolved in the courtroom, we have no authority to upset it when the arbitrator did not exceed his authority.”); \textit{see also Lindland.} 227 F.3d at 1003 (noting courts will vacate or refuse to affirm arbitrators award if it is “result of ‘corruption,’ ‘fraud,’ ‘evident partiality,’ or any similar bar to confirmation”).

\textsuperscript{80} See Mitten, \textit{supra} note 65, at 94 (“A U.S. athlete has no federal constitutional right to participate in the Olympic Games.”).

\textsuperscript{81} 492 F. Supp. 1181 (D.D.C. 1980).

\textsuperscript{82} See Mitten, \textit{supra} note 65, at 2 (discussing lack of federal restraints on USOC).

\textsuperscript{83} See \textit{id.} (discussing lack of constitutional protection for athletes regarding participation in Olympics).

\textsuperscript{84} \textit{Id.} at 5 (quoting \textit{Michels v. USOC}, 741 F.2d 155, 159 (7th Cir. 1984) (Posner, C.J., concurring)).

The Ted Stevens Act was originally intended to resolve disputes centered on participation in the Olympics; it did not directly speak to sexual assault reporting.\textsuperscript{85} Recognizing the fragmented law and the need for amendment, California United States Senator Dianne Feinstein successfully lobbied Congress to amend the Ted Stevens Act to include concrete processes and remedial actions when sexual misconduct claims arise.\textsuperscript{86} In 2018, Congress passed the SafeSport Act, aimed at preventing amateur athletes from systematic sexual abuse.\textsuperscript{87} The law implements stronger abuse-prevention measures by requiring any adult working with amateur athletes, therefore everyone who works under Olympic organizations, to be \textit{mandatory} and prompt reporters of suspected abuse.\textsuperscript{88}

Although the USOC had already implemented SafeSport, the SafeSport Act designates SafeSport as a nationally recognized organization, serving as the “independent national safe sport organization ... for the United States.”\textsuperscript{89} The SafeSport Act, for the first time in history, imposed a legal duty upon Olympic officials at all levels to protect children from abuse.\textsuperscript{90} Under the SafeSport Act there are: (1) requirements that all adult members of NGBs, or adults authorized to work with amateur athletes, “report immediately any allegation” of sexual abuse; (2) mechanisms making this reporting duty easy, without obstacle, and fully confidential; (3) “procedures to limit one-on-one interactions between an amateur athlete” and adults when under a NGB’s jurisdiction; (4) procedures prohibiting retaliation against individual reporters of sexual abuse; (5) oversight procedures by independent auditors to ensure the law is properly followed; and (6) mechanisms for NGBs to prevent adults, who are the subject of such sexual abuse allegations, from working with minors.\textsuperscript{91} Additionally, the legislation “extends the statute of limitations for victims to sue

\textsuperscript{85} See generally Hobson, supra note 68 (discussing inadequacies of Ted Stevens Act for addressing sexual assault allegations and reporting).

\textsuperscript{86} See id. (discussing efforts made by individuals, rather than USOC, to change law and better protect children).


\textsuperscript{88} See generally id. (discussing requirements of legislation, noting all adults who interact with amateur athletes must report suspected child abuse, including sexual abuse, within twenty-four hours to local law enforcement).

\textsuperscript{89} 36 U.S.C. §220541(a)(1).

\textsuperscript{90} See generally Groppe, supra note 87 (noting SafeSport Act’s “aim [ ] to fix a patchwork of state reporting rules by requiring adults who interact with amateur athletes to report suspected child abuse, including sexual abuse, within 24 hours to local law enforcement”).

\textsuperscript{91} 36 U.S.C. §220542(a)(2)(C) (discussing legal duties implemented by SafeSport Act to prevent sexual abuse in sports); see also 36 U.S.C. §220530 (noting requirement that NGBs limit to one-on-one interactions between minors and adults to situations of emergencies).
alleged perpetrators, recognizing that children sometimes don’t realize they were abused until years later.” The statute of limitations does not begin until the victim reaches the age of twenty-eight, or up to ten years after the “reasonable discovery” of the abuse, whichever is later. Finally, the SafeSport Act creates a civil remedy for any minor who is a victim of sexual assault and suffered a personal injury, allowing a court to award punitive damages in addition to other equitable relief as appropriate. The USOC continuously announced its support for the bill, however, never lobbied Congress for changes as Senator Feinstein did. The legislation, if effective moving forward, should considerably improve young athletes’ safety.

C. Claims Within NGBs

Over the last decade, numerous allegations of sexual misconduct against various Olympic NGB’s have surfaced, some making national headlines. The Larry Nassar scandal brought USA Gymnastics into the news, highlighting this specific sport for its failure to protect its athletes from sexual abuse. Although USA Gymnastics has found itself at the center of media backlash, the problems of sexual misconduct are prevalent in other sports within the Olympic sport organizations.

1. USA Gymnastics

Larry Nassar began working in USA Gymnastics in 1986 and continued in the organization until 2015, serving for four Olympic Games and leaving just prior to the 2016 Summer


93 Id. (noting SafeSport Act recognizes need for statute of limitations to extend beyond when victim realizes she has been abused).

94 See 18 U.S.C. §2255(a) (noting such persons who were victims of sexual assault under SafeSport Act may sue in civil court and recover actual damages or liquidated damages of $150,000, and any associated costs, in addition to punitive damages when appropriate).

95 See Hobson & Rich, supra note 4 (discussing working group created by USOC focused on abuse prevention and never suggested changes to Ted Stevens Act because not “part of [their] strategy,” but option of pushing Congress for change to Ted Stevens Act was available to USOC to improve policies known to be inadequate).

96 See id. (discussing positive impact changing law should have on Olympic sport organizations).

97 See id. (noting problems exist across all sports, but public only hears about headlines).

98 See id. (noting “while the Nassar case has captured public attention because of the renown of a few of his accusers, it is far from an isolated instance”).

99 See id. (noting “[t]he problem of sexual abuse in Olympic sports organizations extends well beyond the confines of one sport, or one executive,” as more than 290 coaches and officials from more than fifteen sports within the United States Olympic organization have been accused of sexual misconduct since 1982).
Olympics in Rio. Throughout Nassar’s career as a team doctor for both USA Gymnastics and Michigan State University athletics, victims claim they reported numerous cases of Nassar’s abuse, dating back to 1997, but neither organization took action. Documented complaints show that in 2015, USA Gymnastics received a sexual abuse complaint about Nassar, but officials waited five weeks from the first complaint to inform law enforcement of the allegations. However, Michigan State University, where Nassar continued to work with young athletes, was not informed of the claims until August 2016. The alleged victims filed suit in September 2016, claiming USA Gymnastics “not only hid complaints about Nassar, it failed to adequately supervise his activities.”

In 2017, USA Gymnastics team member and Olympic gold medalist McKayla Maroney filed suit against the USOC and USA Gymnastics. Maroney alleged that officials attempted to keep her silent regarding the sexual abuse she suffered while being treated by former team doctor Larry Nassar. Maroney also alleged that the USOC knowingly concealed Nassar’s misconduct. The USOC has denied all knowledge of the payout by USA Gymnastics to Maroney as a part of the settlement. In addition to making claims that the USOC has overlooked sexual abuse of minors for decades, Maroney seeks to nullify an NDA she signed as a settlement deal with USA Gymnastics in December 2016.

---


101 See id. (discussing “detailed examples of accusers whose complaints about Nassar appeared to fall on deaf ears”).

102 See id. (discussing lack of USA Gymnastics urgency in addressing allegations).

103 See id. (discussing USA Gymnastics’ failure to alert Nassar’s current employer of allegations, arguably allowing him to continue abusing athletes).


106 See id. (discussing Maroney’s confidentiality agreement and monetary settlement with USA Gymnastics).

107 See id. (indicating USOC was also one defendant and claims it had “fundamentally flawed” system for preventing abuse and protecting children).

108 See id. (reporting USOC has continuously denied all allegations of knowledge and concealment of sexual abuse).
Maroney’s attorney argues that “requiring [Maroney] to sign an NDA was manipulative and unlawful,” and further noted that confidentiality agreements in child sex abuse cases are unlawful in California. California’s current law “treads a smart middle ground” regarding NDAs for sexual crimes, prohibiting them for the types of sexual crimes that could rise to the level of felonies or those perpetrated against children. Maroney has been outspoken about her abuse, breaking her NDA through a social media post in October 2017 to share her harrowing experience. Maroney also gave a victim impact statement at Nassar’s sentencing hearing, stating “[h]e abused my trust, he abused my body and he left scars on my psyche that may never go away ... he needs to be behind bars so he will never prey upon another child.”

Maroney’s complaint attacks the USOC’s failures over the last few decades. It claims that “the USOC continued to overlook sexual abuse of minors ... cit[ing] a 1999 letter from

---

109 See Alyssa Bailey, Chrissy Teigen Pledges to Pay $100K Fine for McKayla Maroney, ELLE (Jan. 16, 2018), http://www.elle.com/culture/career-politics/a15174640/mckayla-maroney-larry-nassar-nda-chrissy-teigen-response/ [https://perma.cc/PV82-F4F2] (detailing how NDA Maroney signed as part of settlement deal with USA Gymnastics would require Maroney to pay large fine if she speaks about alleged abuse or agreement).

110 See Alanna Vagianos, McKayla Maroney Signed Confidentiality Agreement with USA Gymnastics About Alleged Sexual Abuse, HUFFINGTON POST (Dec. 21, 2017, 3:21 PM), https://www.huffingtonpost.com/entry/mckayla-maroney-abuse-confidentiality_us_5a3aa78ee4b0b0e5a79f167a [https://perma.cc/NTN6-FKW7] (“Maroney’s lawyer says USA Gymnastics broke the law by asking her to agree to the settlement.”).

111 See Jessica Levinson, Non-Disclosure Agreements Can Enable Abusers. Should We Get Rid of NDAs for Sexual Harassment?, NBC THINK (Jan. 24, 2018), https://www.nbcnews.com/think/opinion/non-disclosure-agreements-can-enable-abusers-should-we-get-rid-ncna840371 [https://perma.cc/6GWZ-F9RB] (“Essentially in California, parties cannot enter into a confidential settlement agreement for the worst types of sexual crimes – those that rise of the level of felonies or are perpetrated against children. But the state does allow agreements in other cases. Ultimately, California may strike the balance about as well as any government can.”)

112 See Victor Mather, Olympic Gymnast McKayla Maroney Says She Too Was Molested by Team Doctor, N.Y. TIMES (Oct. 18, 2017), https://www.nytimes.com/2017/10/18/sports/olympics/gymnast-mckayla-maroney-team-doctor-sexual-abuse.html [https://perma.cc/94ZV-CXGQ]. In this since deleted Twitter post, Maroney stated the following:

For me, the scariest night of my life happened when I was 15 years old. I had flown all day and night with the team to get to Tokyo. [Nassar had] given me a sleeping pill for the flight, and the next thing I know, I was all alone with him in his hotel room getting a ‘treatment’. [sic] I thought I was going to die that night.

Id.


114 See Winton, supra note 105 (noting complaint points out actions USA Gymnastics and USOC could have taken decades earlier, when problems of sexual abuse first presented).
then-USA Gymnastics President Robert Colarossi to [the] USOC.”

The letter detailed the USOC’s and USA Gymnastics’ “fundamentally flawed” methods for preventing abuse and urged the USOC to take action. Additionally, Maroney’s complaint states the USOC showed “an apparent indifference to the welfare of young women,” evident by the eleven-year-gap between Colarossi’s letter and the USOC’s first discussions of a handbook aimed at preventing abuse.

In response to Maroney’s and other USA Gymnasts’ complaints, the USOC maintains that it was first made aware of the “possibility” of Nassar’s sexual abuse in 2015 and immediately contacted law enforcement. Throughout the proceedings, the USOC and USA Gymnastics have spoken publicly in support of victims, but have not reached out to any individual athletes to express sympathy.

2. USA Swimming

USA Swimming found itself entangled with a similar series of sexual abuse accusations almost a decade before details of Larry Nassar’s abusive actions came to light. A study of decades-long history of abuse in USA Swimming revealed more than 100 coaches with lifetime bans from the sport. In an exposé of USA Swimming, a journalist noted that

---

115 See id. (noting previous occasion where USOC could have taken action); see also Hobson & Rich, infra notes 177-179 and accompanying text.

116 See Winton, supra note 105 (noting claims of USOC’s “apparent indifference to the welfare of young children”).

117 See id. (noting Maroney’s suit claimed “the USOC took 11 years to create a program and handbook aimed at preventing access to minors by sexual abusers, and then ‘maintained its course and culture of ignoring abuse’”).

118 See id. (noting USOC continues to support Maroney as she speaks out about abuse; however, maintaining USOC only became aware in 2015 and took immediate action).

119 See Jeré Longman, Will Larry Nassar Take Down the U.S. Olympic Committee?, N.Y. TIMES (Jan. 25, 2018), https://www.nytimes.com/2018/01/25/sports/olympics/larry-nassar-usoc.html [https://perma.cc/GL5G-2JHY] (discussing comment at Larry Nassar’s sentencing by Aly Raisman’s that “[n]either U.S.A. Gymnastics nor the U.S.O.C. have reached out to express sympathy or even their support – not even to ask: ‘How did this happen? What do you think we can do to help?’”); see also Nancy Armour, USOC Needs to Answer for its Failing in Abuse Scandals, in Gymnastics and Other Sports, USA TODAY SPORTS (Feb. 9, 2018, 2:47 AM), https://www.usatoday.com/story/sports/winter-olympics/2018/02/08/armour-olympics-usoc-sexual-abuse-scandals-gymnastics/322431002/ [https://perma.cc/L82H-CUJU] (discussing comment prior to start of Pyeongchang Winter Olympics by Olympic chairman Larry Probst, saying “[t]o the women, both those who chose to testify and those who did not, who have demonstrated tremendous bravery, poise and strength in the most difficult circumstances imaginable, let me say this: The Olympic system failed you and we are so incredibly sorry”).


“[t]here’s a horror in the shadows of American competitive swimming: a continuing legacy of sexual abuse, usually involving male coaches who prey on young women – and a governing body that looks the other way.”

USA Swimming’s issues are illustrated by the story of Anna Strzempko – an accomplished swimmer with promise for athletic success. At thirteen-years-old, Anna led her club swim team to nationals in middle-distance free-style after it had gone through a five-year drought, marking a turning point in her career. After her race, her coach called her into her office, telling her she had the potential to compete in the 2012 Olympic Trials, which were then four years away. After her coach expressed this confidence in her athletic ability, he allegedly raped her. When Anna met her mother after the event, her mother wondered why Anna was so subdued and not more excited at the news. Anna said she was happy, just “shocked,” and proceeded to vomit the entire evening.

The abuse continued for the next two and a half years, with Anna recalling her coach “periodically rap[ing] her in the storage room just above her local YMCA pool.” To ensure Anna’s silence, her coach continuously emphasized that no one would ever believe her if she said anything about the abuse:

Frozen by a mix of awe and fear that’s common among young rape victims, Strzempko didn’t tell anybody about what was going on. Out of guilt for losing her virginity to her middle-aged coach, she never told her parents. Out of shame, she never told her friends. She kept swimming, but she tried to escape the sport in her own self-damaging ways.

[https://perma.cc/8C6J-JPPG] (discussing accusations within USA Swimming organization).


See id. (noting Anna Strzempko was only 9 years into amateur career when first raped by coach).

See id. (discussing Anna’s youth swimming success and Olympic dreams).

See id. (outlining Anna’s conversation with coach in which he first told her she could have chance to compete in Olympic trials, then proceeded to slap and rape her, leaving her lying on cement floor).

See id. (analyzing Anna’s recount of rape, after which the coach left her “lying face up on the room’s cement floor”).

See id. (discussing Anna’s conversation with her mother after receiving news from coach, as well as mother’s suspicions at her reaction).

See id. (referring to emotional and physical toll first rape had on Anna).

Id.

Id.
Almost three years after the abuse began, Anna told a friend, who immediately told Anna’s parents. Her mother reported the abuse to YMCA officials, who suspended the coach. This was the start of an ongoing legal and emotional battle for Anna, whose coach continues to deny any wrongdoing. The local police who interviewed Anna found that she “didn’t ‘act’ like an abuse victim,” and police stated that Anna did not have a viable case without DNA or an eyewitness.

The Massachusetts Department of Children and Families’ (“DCF”) investigation found Anna’s story credible, and hoped to remove the coach from the profession. Although the DCF initially ruled in Anna’s favor, the investigation ran aground when the coach attacked Anna’s credibility on appeal and challenged the DCF investigators’ procedure. In 2012, the YMCA fired the coach without citing a reason, however, if another organization decided to hire him, he could still work with underage females.

Anna’s family also brought the case to the attention of USA Swimming, the NGB of the YMCA swimming program. USA Swimming conducted its own investigation and interviews, but ceded its exploration of the case after the DCF overturned its initial ruling on appeal. Recently, Anna and her family have hired a lawyer to look into the possibility of pursuing legal action against USA Swimming alleging a lack of institutional oversight and against the YMCA for leaving a minor vulnerable to abuse. Many have criticized Anna and her family for bringing down a beloved and renowned coach in the USA.

131 See id. (discussing first time Anna spoke out about abuse).

132 See id. (detailing Anna’s mother’s reaction and swift reporting to YMCA officials, who suspended, but did not immediately fire, coach).

133 See id. (noting Anna is still pursuing legal action against coach, almost ten years since first abuse).

134 Id. (discussing police response to allegations but their inability to pursue criminal action because of lack of eye witnesses and no DNA evidence).

135 See id. (noting Anna’s family’s report to DCF, who pursued their own investigation and supported her report based on her statement to police).

136 See id. (providing challenge made by Anna’s coach to ruling against him, using tactics such as “bringing forth witnesses who spoke in support of his good character and claiming that the kinds of encounters she described could not have happened in a Y that was usually teeming with other people ... [and claiming he] never closed doors during meetings”).

137 See id. (noting YMCA fired coach in 2012 but did not make statement and refused to discuss publicly).

138 See id. (explaining clubs perform under NGB, and in this case USA Swimming was NGB responsible for YMCA swimming program).

139 See id. (discussing USA Swimming’s decision to end investigation, notifying Anna they would not explore case further).

140 See id. (discussing consideration by Anna and her family to pursue legal action, hiring lawyer Johnathan Little).
Swimming organization, with one teammate writing on social media, “no one believes you anyways you stupid whore =).”

In 2014, when USA Swimming’s executive director Chuck Wielgus was set to be inducted into the International Swimming Hall of Fame (“ISHOF”), Anna supported the Women’s Sport Foundation’s petition to protest his induction. The petition exposed USA Swimming’s unsettling history, as the myriad of coaches with lifetime bans demonstrates, and Wielgus’ enabling of a culture that looked the other way. The petition highlighted numerous cases in which USA Swimming worked against victims of abuse, rather than working with them. Ultimately, the ISHOF withdrew Wielgus’ name from consideration.

3. USA Taekwondo

The recent case Gatt v. USA Taekwondo, in which a coach sexually abused three female Olympic hopefuls, further exemplifies the issue of sexual abuse across the spectrum of all Olympic sport organizations. The lawsuit alleged the USOC and USA Taekwondo failed to protect the female athletes and “subjected the [female athletes] to cruel and unjust hardship in conscious disregard of the [female athletes’] rights and safety.” The female athletes were awarded sixty million dollars by a Los Angeles County Superior Court judge in a default judgment against Marc Gitelman. However,

141 See id. (noting many sided with coach, believing Anna was making claims to seek attention).

142 See id. (discussing Anna’s support for WSF’s petition, along with nineteen other women who have reported sexual abuse).

143 See id. (discussing Wielgus’ role in scandals as someone who responded to outside pressures instead of as leader in protecting victims).

144 See id. (“The petition went on to describe some of the botched cases, the ways in which USA Swimming had actively worked against victims of abuse, and an alleged culture of cover-up and scorched-earth litigation that bought silence.”).

145 See id. (noting ISHOF’s decision to no longer consider Chuck Wielgus’ induction).


149 See 3 Athletes Awarded $60M in Sex Case vs. Coach, supra note 147 (noting judgment awarded to female athletes after Gitelman failed to respond adequately to lawsuit and was found in default).
they are currently appealing a judge’s decision to dismiss the organizations as defendants.\footnote{See id. (discussing lawsuit by three female athletes, who were minors when abused, noting coach repeatedly abused them from 2007 to 2014 and alleging that unusual relationship was well-known).}

During a police investigation prior to the formal lawsuit, Yazmin Brown, one of the athletes, filed a formal complaint with the USA Taekwondo Ethics Committee ("the Ethics Committee") in September 2013.\footnote{See Morton, supra note 14, at 159 (noting complaint originally filed with Ethics Committee for USA Taekwondo, going to Malia Arrington, Director of Ethics and SafeSport for USOC).} The Ethics Committee is responsible for reinforcing the USOC's Code of Conduct, which expressly prohibits any form of sexual harassment.\footnote{See id. (quoting USOC's Code of Conduct, which prohibits “any act of sexual harassment including but not limited to requests for sexual favors, physical conduct of a sexual nature by and between persons participating in the affairs or activities of USAT directed towards any other member or person participating in such events/activities“).}

In addition to her formal complaint, Brown submitted previous Facebook conversations with Gitelman, her coach, which illustrated the “extensive sexual relationship he pursued with her while she was a minor.”\footnote{Id.} The two other girls who ultimately joined Brown in the 2015 lawsuit also provided detailed narratives to the Ethics Committee, bolstering the credibility of Brown’s complaint with their similar experiences with the coach.\footnote{See id. (discussing two additional female athletes, who had similar experiences, coming forward to Ethics Committee in support of Brown).} A disciplinary panel, after hearing the multiple credible reports from the victims, recommended an immediate lifetime ban for Gitelman.\footnote{See Hobson & Rich, supra note 4 (noting decision by disciplinary panel, recommending immediate ban for Gitelman after three women came forward accusing him of abuse).} However, this raised concerns that Gitelman might sue under the Ted Stevens Act, claiming the panel did not allow him a cross-examination and violated his due-process rights.\footnote{See id. (noting USA Taekwondo’s lawyer raised concerns of due process rights in disciplinary process which resulted in disciplinary panel not banning coach for fear of legal liability for USA Taekwondo).}

Despite substantial evidence of Gitelman’s wrongdoing, USA Taekwondo waited to ban Gitelman until his 2015 conviction.\footnote{See id. (noting despite credible reports, USA Taekwondo did not ban Marc Gitelman until criminally convicted in 2015).}

The complaint against Gitelman, which also named the USOC and USA Taekwondo as co-defendants, alleged that he “invited the young athletes to his hotel room to watch videos of their previous taekwondo matches before he sexually abused them.”\footnote{Leila Miller, Sexual-Abuse Victims Get $60-Million Judgment Against Former Taekwondo Instructor, L.A. TIMES (Aug. 3, 2017), http://www.latimes.com/local/la-now/la-me-ln-taekwondo-instructor-judgement-20170803-story.html [https://perma.cc/52TM-KMZC].}
Gitelman was convicted of multiple felony counts, “including oral copulation of a minor, unlawful sexual intercourse and lewd acts upon a child.” The judge sentenced Gitelman in October 2015 to more than four years in prison and required him to register as a lifetime sex offender.

III. LEGAL VOID LEADS TO A HISTORY OF ABUSE AND LACK OF USOC INTERVENTION

Why has the USOC sat back for so long amid all the publicity surrounding sexual abuse and the Olympic sport organizations? The USOC has continuously asserted that they are “responsible for athletes only in the short period from when they are named to the Olympic team through a Winter or Summer Games.” At all other events, the USOC places the burden of protecting and caring for athletes on NGBs. In addition to the USOC shifting the primary responsibilities for athletes to NGBs, the USOC also claims the Ted Stevens Act, which requires strict due-process for accused abusers, limits the USOC’s ability to discipline abusers. This attempt by the USOC to rationalize its decisions, “will seem like evasive legalese to many, an explanation few are likely to accept.” Further, with a legal void in the Ted Stevens Act and no independent agency to work with abuse allegations, the system continued to operate without checks and balances for decades.

A. USOC: “Our Hands are Tied”

The USOC capitalizes from its athletes’ success and is quick to celebrate their moments at the Olympic Games, but has looked away when called to change a failing system for protecting abuse in its organization. However, after years of claiming its hands are tied,}

159 Id.

160 See id. (noting Gitelman’s conviction by jury in Pomona Superior Court in Los Angeles County, California).

161 See generally Hobson & Rich, supra note 4 (questioning why child abuse in Olympic sport organizations continues to happen).

162 Longman, supra note 119.

163 See id. (noting USOC has continuously shifted burden of responsibility for caring for athletes to individual NGBs when events are not held at USOC facilities).

164 See Townes, supra note 24 (noting various ways USOC removes blame from its own inaction in handling sexual abuse cases).

165 Longman, supra note 119.

166 See Hobson & Rich, supra note 4 (noting Ted Stevens Act requires written allegations prior to restricting person’s ability to pursue participation in Olympics, therefore playing “recurring role in mishandled abuse cases”).

167 See Longman, supra note 119 (discussing Aly Raisman’s “scathing rebuke” of Olympic Committee).
the USOC is now under critical review for failing to adequately protect athletes.\textsuperscript{168} Placing responsibility on the USOC is not to say that it must act as both police and prosecutor.\textsuperscript{169} Rather, it is the obligation and duty of the organization to ensure a safe training environment for children and athletes that should be incumbent upon all constituents involved in Olympic sports, not shifted to a single entity.\textsuperscript{170} As the top governing body in the Olympic structure, the USOC has the power and resources to enact changes within and lobby for legislation that will prevent this abuse from continuing.\textsuperscript{171}

Year after year, the USOC and its NGBs sell the dream of Olympic glory to children and families across the country. They offer the allure of athletic accomplishment and national pride. What they don’t reveal is that their insufficient policies on sexual abuse could open the door for predators. But it must stop. The USOC owes it to the athletes to provide a safe environment for them to be the next generation of champions.\textsuperscript{172}

In 2012, the USOC first discussed making education programs focused on preventing sexual assault and background checks mandatory for all sports, but received major pushback from NGBs.\textsuperscript{173} Officials for USA Softball argued that mandatory background checks would affect “competitive market share” and disapproved of a “top-down” approach from the USOC.\textsuperscript{174} Many Olympic officials feared that victims would use a handbook as evidence that officials knew the athletes suffered abuse and did not do enough to stop it.\textsuperscript{175} However, the other approach to avoid legal liability would be to stop sexual misconduct from happening in the first place.\textsuperscript{176} It was not until 2014 that the USOC first

\textsuperscript{168} See generally id. (discussing USOC’s lack of action regarding sexual assault allegations).

\textsuperscript{169} See Townes, supra note 24 (noting “mere buck passing” nature of USOC’s claims that it is not responsible for sexual abuse cases).

\textsuperscript{170} See Maureen A. Weston, Tackling Abuse in Sport Through Dispute System Design, 13 U. ST. THOMAS L.J. 434, 457-58 (2017) (“Every athlete has the right to engage in sport free of physical and emotional harassment and abuse.”).

\textsuperscript{171} See id. (discussing how USOC could set example for protecting athletes).

\textsuperscript{172} Townes, supra note 24.

\textsuperscript{173} See Hobson & Rich, supra note 4 (examining USOC’s first attempts to set prevention policies in place).

\textsuperscript{174} See id. (discussing push back from several NGBs out of fear that abuse prevention handbook would increase risk of getting sued by victims).

\textsuperscript{175} See id. (noting several Olympic officials expressed concerns that “the handbook could get them sued by victims, who would use it as evidence that Olympic officials knew abuse was a problem but weren’t doing enough to stop it”); see also Diana Moskovitz, Report: Olympic Sports Dragged Feet On Protecting Athletes From Sexual Abuse, DEADSPIN (Nov. 17, 2017, 6:38 PM), https://deadspin.com/report-olympic-sports-dragged-feet-on-protecting-athlete-1820560734 [https://perma.cc/CLE7-R4NH] (discussing apprehensions NGBs had toward USOC mandate for preventing and handling sexual misconduct allegations).

\textsuperscript{176} See Moskovitz, supra note 175 (noting prevention of sexual misconduct cases is best way to avoid suit).
required all Olympic sport organizations to implement measures to prevent sexual misconduct and policies to handle allegations. As early as 1999, the USOC knew that it had a problem and child athletes were at risk, after USA Gymnastics CEO Bob Colarossi wrote a detailed letter to the USOC. Colarossi wrote “[t]he USOC can either position itself as a leader in the protection of young athletes or it can wait until it is forced to deal with the problem under much more difficult circumstances.” For fifteen years, the USOC chose not to position itself as a leader, and hundreds of children were victimized as a result. Notably, across various sports, officials almost always call the children “athletes.” While these talented athletes were to be considered both children and athletes, they should be seen as children first who need protection from abuse despite their elite athletic abilities.

Anna Strzempko’s story of abuse is only one of many amongst Olympic sport organizations. Anna’s story illustrated the need to improve policies in youth sports, because “the measures aimed at protecting young athletes in NGB-affiliated teams are too fragmented and attenuated to provide proper remedies for coaching abuse victims and [a]s a result, victims like Anna are bound to meet resistance when they report abuse to

---


178 See Hobson & Rich, supra note 177 (reporting lack of basic – and common – sex abuse prevention measures and USOC’s failure to combat issue once alerted).

179 Id.

180 See id. (noting USOC did not implement mandatory preventative measures until 2014, fifteen years after receiving notice of problem of sexual misconduct). For a discussion on the rising number of victims of sexual assault in Olympic sport organizations, see Hobson & Rich, supra notes 4-9 and accompanying text.

181 See Hobson & Rich, supra note 4 (pointing out that during interviews with adults throughout elite USA Swimming organization, Victor Vieth, former sex crimes prosecutor, noticed reluctance among coaches and parents to use word “children”).

182 See id. (emphasizing number of children participating in programs). Vieth was further quoted as saying the following: You’ve got 320,000 children in your organization, and you need to see them first as children before you see them as athletes. There really was the mentality of the possibility that this could be the next gold medal winner at the Olympics, and that mentality was not just among the coaches and the people running the groups; it was among the parents themselves.

Id.

183 See generally Morton, supra note 14 at 173 (discussing Anna Strzempko’s story and growing legal concern of coaches inflicting abuse in Olympic sport organizations).
their local club teams and respective NGBs." The approach of each NGB to combat sexual abuse without strict regulation proved insufficient, as evidenced by the creation of SafeSport to take over the primary responsibility once resting entirely on NGBs. Most importantly, allowing NGBs to create and direct their own reporting systems lacked the requisite independence and bias-free consideration. When a claim is brought to an NGB, there is "an incentive to protect the sport’s image and the winning coach, and to avoid liability and adverse publicity." Taking into consideration the financial costs of an internal investigation and the resources needed, private organizations such as NGBs struggle to properly handle every case that arises. This burden is highlighted in the way all three previously noted NGB’s handled sexual abuse allegations: USA Gymnastics, USA Swimming, and USA Taekwondo.

A culture of putting medals before athletes, avoiding legal liability, and maintaining reputation plagues the USOC and trickles down to NGBs. USA Taekwondo, which waited to fire its coach despite credible reports of sexual misconduct, is an example of an NGB putting the possibility of a lawsuit for wrongful termination above protecting children from future cases of abuse. This indicates NGBs "might [have been] protecting their coaches at the expense of athletes' safety." It is rational to believe that an NGB’s failure to remove a coach, reportedly shown to be an abuser, reasonably suggests the coach will

184 Id. at 156 (citation omitted)

185 See Weston, supra note 170, at 444-45 (suggesting importance of independence for successful reporting system).

186 See id. at 445. (noting "[r]eporting systems directed by powers governing the sport pose at least the appearance of lacking independence").

187 Id.

188 See id. (noting internal burden created when NGB’s deal with sexual abuse allegations).

189 See Townes, supra note 24 (reporting most prominent sexual abuse cases arising under USOC regime).

190 See Hobson & Rich, supra note 4 (discussing interviews and records that “highlight a culture in which limiting legal risk and preserving gold-medal chances have been given priority over safeguarding children”); see also Weston, supra note 170, at 439 (discussing Penn State football scandal as "an example of the dangers of institutional reverence given to coaches of winning athletic programs and of the potential for an institution or sport governing body to protect a coach over a victim to safeguard reputation and limit liability").


192 Morton, supra note 14, at 159-60.
repeat the abusive behavior. This inaction is conceivably condoning abusive behavior by the coach.

When it comes to protocol for handling sexual misconduct allegations, there is nothing that inhibits the USOC or NGBs from conducting an investigation and taking all steps to ensure the children’s safety. The failure to act seems to come from a desire of the Olympic sport organizations to avoid legal liability, to preserve reputation, and to put gold medals above the children’s welfare. The USOC and the NGBs have historically chosen to shift the burden, which arguably created a “culture and atmosphere that conceal[ed] known and suspected sexual abusers.”

B. USOC Recognized Its Failure When It Created the U.S. Center for SafeSport

Despite the USOC historically claiming that it is not directly responsible for preventing abuse in the organization, the creation of the U.S. Center for SafeSport may indicate otherwise. While the USOC continuously claimed protection of athletes is not the organization’s responsibility, creation of this independent agency suggests the USOC has recognized the challenges many NGBs face when investigating claims of misconduct. Evidently, the USOC recognizes NGBs may not be best-suited to create and sustain the safest environments for young athletes. Officials sought to open SafeSport in 2015, but because they had to postpone the opening until 2017, analysts have not had the

---

193 See id. at 172 (“Additionally, when a coach is shown to have been an abuser, an NGB’s failure to remove him from coaching or properly screen him before allowing him to coach elsewhere suggests the NGB should reasonably foresee repeat abusive behavior.”).

194 See id. (discussing example of repeat behavior by coach and arguing NGBs should be held accountable).

195 See Hobson, supra note 68 (discussing second hand abuse allegations not investigated, because of policy requiring written letter from parent before USA Gymnastics took action).

196 See Hobson & Rich, supra note 4 (noting Olympic sport organizations “highlight a culture in which limiting legal risk and preserving gold medal chances have been given priority over safeguarding children”).

197 Winton, supra note 105 (discussing allegations that Maroney has made detailing USOC and USA Gymnastics role in covering up known sexual abuse).

198 See Meyers, supra note 49 (“[SafeSport] will respond to abuse claims and implement a unified set of policies for preventing, identifying and reporting misconduct among the 47 national governing bodies (NGBs) that oversee USOC sports.”).

199 See Weston, supra note 170, at 454-55 (quoting Malia Arrington, USOC Senior Director of Ethics and SafeSport, who said: “[o]ne of the greatest challenges many NGBs face is limited resources and expertise to investigate claims of misconduct .... With this independent entity, we have the ability for the first time to provide that resource to them so we can create and sustain safe environments for young athletes.”).

200 See id. at 454 (“Justification for the Center is premised upon the need to provide a centralized and national source of expertise in this area, which individual NGBs handling these matters often lack.”).
opportunity to assess the center’s effectiveness thus far. Further, there are still questions as to whether the USOC, NGBs, or SafeSport are liable in the event of mishandling future cases.

As an oversight entity with complete independence and expertise in sexual misconduct, SafeSport certainly fills some of the gaps that have historically existed in NGBs own policies and enforcement of policies. The creation of SafeSport “to provide a forum to educate and train athletes, parents, coaches, and others in preventing, detecting, and reporting violations is an important step in ensuring athlete well-being and attainment of full potential.” This does not mean the USOC is absolved from dealing with sexual abuse. A significant limitation of SafeSport is that it can act only when it gets a report. Therefore, the “front lines of abuse prevention” will remain those who are directly working with athletes: “local clubs and coaches affiliated with Olympic organizations and the officials who oversee those sports communities.” Further, SafeSport has responsibilities similar to a college Title IX office but does not have the same resources. For example, as of 2017, University of Maryland had a student population of fifty thousand

---

201 See Hobson & Rich, supra note 177 (discussing years of delays prior to opening SafeSport).

202 See Townes, supra note 24 (discussing questions about who is responsible when sexual abuse cases arise, noting it is ultimately USOC’s purpose to protect its athletes).

203 See Weston, supra note 170, at 454. Explaining that: [SafeSport] is [d]esigned to be an independent entity which will oversee education programs for safe sport, and investigate and adjudicate claims of misconduct in sports that are managed by USOC-sanctioned NGBs. Justification for the Center is premised upon the need to provide a centralized and national source of expertise in this area, which individual NGBs handling these matters often lack.


204 Id. at 458.

205 See Townes, supra note 24 (discussing USOC’s ability to protect its athletes and insignificant efforts USOC has taken other than opening U.S. Center for SafeSport).

206 See Hobson & Rich, supra note 4 (examining limitations of SafeSport due to requirement that those reporting to SafeSport be accountable and act first).

207 Id. (discussing result of limitations to when SafeSport can act puts responsibility back on clubs, coaches, and Olympic organizations such as NGBs).

208 See id. (comparing SafeSport to University of Maryland’s Title IX office, which investigates on campus gender discrimination).
and a Title IX office with a full-time staff of seven. SafeSport had a full time staff of nine and four contract investigators to handle a population of thirteen million.

Alongside SafeSport’s implementation, leaders in youth sport must also take action to ensure its effectiveness. These actions begin with (1) changing the culture in sport from focusing on medals to protecting children, (2) educating and training parents, athletes, and coaches, and (3) eliminating one-on-one interactions, instruction, or training between athletes and coaches. In addition, there must be a collective and established awareness, which will give parents, coaches, and athletes an education and training to prevent abuse.

Further, Congress’ passing of the SafeSport Act “support[s] [a] steadfast commitment to ending these horrific crimes.” With this legislation, there are real criminal consequences for failure to protect and report abuse. Parents, volunteers, officials, coaches, and athletes are all mandatory reporters and have a duty to report suspected abuse. The SafeSport Act’s enactment gives the USOC the tools to create a better culture; however, there is still tremendous flexibility granted to the USOC and NGBs in the methods for protecting abuse.

---

209 See id. (noting most of University of Maryland’s students and faculty, who comprise population of fifty thousand, live on campus or nearby).

210 See id. (reporting SafeSport covers investigations involving athletes, coaches, and officials throughout United States).


212 See id. (arguing SafeSport’s need to remain independent to be effective, as well as necessary actions to take regarding sexual misconduct).

213 See id. (noting creation of issue awareness campaigns and training and educating not only coaches and officials, but also parents and community sport organizers, will help get “upstream” and prevent abuse).

214 Groppe, supra note 87.

215 See Associated Press, supra note 92 (noting criminal punishment of up to one year in prison could result from failure to report sexual abuse allegation).


The clubs are accountable to NGBs, NGBs are accountable to the USOC, and the USOC arguably has believed it is the top of the pyramid, unaccountable to any organization and immune to any oversight. However, the USOC is, or should be, accountable to Congress. By re-evaluating the Ted Stevens Act and establishing the SafeSport Act, a legal duty ensures the USOC is accountable to the law. Imposing a duty on the USOC and NGBs to thoroughly investigate sexual assault claims and prevent their occurrence, in addition to reporting them to SafeSport, makes the organizations liable in the event a case is mishandled. Increased liability ensures that although victims cannot erase the emotional and physical harm, they are properly compensated for the trauma they have suffered.

SafeSport’s biggest challenge will be making sure it has the means and fortitude to fully investigate and adjudicate in a fair manner. With backing from the codification of the SafeSport Act, SafeSport now has more credibility and autonomy than when it stood alone, but it must investigate claims even when they may be controversial. In the case of Anna Strzempko, a coach’s reputation impeded the investigation and made for a large amount of backlash. This is just one case demonstrating that acting on suspicion and, when necessary, using the full support of the law to suspend coaches from participating

---


219 See id. (noting USOC does not have organization to report to directly).

220 See id. (suggesting way to prevent USOC from mishandling cases involving sexual abuse is to hold them more accountable, as shown by Congress asking for investigation into how case involving USA Gymnastics could have happened under USOC).

221 See Morton, *supra* note 14, at 169 (“[A] duty for the USOC and the NGBs to properly oversee and maintain a safe sporting environment follows from that special relationship. Breaching that duty by failing to check the coach’s background or not thoroughly investigating sexual abuse claims would be akin to per se negligence and entitle a victim to damages in a private cause of action.”).

222 See Lindsay Gibbs, *Congress Passes Bill to Protect Amateur Athletes from Sex Abuse*, THINK PROGRESS (Jan. 30, 2018, 4:45 PM), [https://thinkprogress.org/congress-bill-abuse-victims-d50642f8723e/](https://thinkprogress.org/congress-bill-abuse-victims-d50642f8723e/) (discussing importance of damages, both statutory and punitive, for victims of sexual assault).

223 See Starr, *supra* note 216 (noting discussion in which former U.S. Swimmer, Nancy Hogshead-Makar stated: “[w]hether or not SafeSport has – is going to have the backbone to be able to get these molesters out just remains to be seen”).

224 See id. (noting SafeSport has immunity from being sued for libel while conducting investigations).

225 See Sturtz, *supra* note 122 (discussing email by parent with concerns of inappropriate behavior by Anna’s coach and later that accused coach mocked that email in front of athletes during practice, discouraging similar concerns from being raised again). For further discussion of the case involving Anna Strzempko, see *supra* notes 122-141 and accompanying text.
during an investigation, is dire for preventing sexual abuse in amateur sports. As a fully independent agency, unlike an NGB with an interest in preserving reputation, it is more likely SafeSport will be able to act in the athletes’ best interests.

C. An Amendment to the Ted Stevens Act: Is it Adequate?

Prior to the SafeSport Act, the Ted Stevens Act gave unnecessary deference to the USOC and NGBs and their processes for preventing abuse in the sport, failed to adequately provide remedies for victims, and lacked a provision for placing liability on the USOC and NGBs for knowingly retaining abusers. Strongly establishing the eligibility and participation framework for the Olympic organization, the Ted Stevens Act’s language did not speak verbatim to the issue of sexual misconduct. Rather, portions of the law intended to protect athletes’ rights to compete have often acted as a barrier to attempts by victims of sexual abuse to have coaches or officials quickly barred from working with children and other athletes. Additionally, there is no cause of action under the Ted Stevens Act affording victims appropriate damages after experiencing the trauma of sexual abuse.

The Ted Stevens Act established that “the USOC is responsible for overseeing Olympic sport in the U.S.,” acting as a regulatory body supporting NGBs. Therefore, in instances of sexual assault, when the USOC traditionally claimed NGBs are responsible for responding to these claims of misconduct, the gap led to the mishandling of many sexual

226 See Sturtz, supra note 122 (discussing suspension of coach during pending investigation by local police, his ability to continue working with young children, and severe backlash that arose from coach and parents who did not believe allegations); see also Jessicah Lahitou, How the Safe Sport Act Could Stop the Next Larry Nassar, BUSTLE (Feb. 9, 2018), https://www.bustle.com/p/how-the-safe-sport-act-could-stop-the-next-larry-nassar-8162315 [https://perma.cc/E5TJ-G9PK] (detailing new regime that SafeSport Act created, where Congress has created duty on USOC to report suspicions sexual abuse cases).

227 See 36 U.S.C. §220541(a)(1) (stating SafeSport will "serve as the independent national safe sport organization and be recognized worldwide as the independent national safe sport organization for the United States"); see also Gibbs, supra note 222 (quoting statement by survivor of Larry Nassar’s abuse as saying that "[t]here must be a thorough investigation. Time is not on our side. We must act now. Time’s up. Every minute that goes by with unanswered questions, more innocent children can be harmed"); see also Lahitou, supra note 226 (arguing there should be far less bias in investigations of sexual abuse due to SafeSport’s existence).

228 See Morton, supra note 14, at 157 (discussing failure of Ted Stevens Act to adequately address sexual assault).

229 See Townes, supra note 24 (examining language explicitly within Ted Stevens Act).

230 See Morton, supra note 14, at 152 (discussing fragmented Ted Stevens Act regarding handling of sexual misconduct claims).

231 See id. at 152-53 (discussing third issue sexual assault presents to NGBs).

232 Townes, supra note 24 (noting USOC traditionally does not involve itself in misconduct claims).
In addition to the USOC placing blame on NGBs, the USOC also claimed the Ted Stevens Act, requiring strict due-process for accused abusers, limited the USOC’s ability to discipline abusers.\textsuperscript{234} Prior to 2018, when an athlete in the Olympic organization had a complaint of sexual abuse, the Ted Stevens Act ultimately provided the arbitration process to allege the NGB infringed upon their participation eligibility.\textsuperscript{235} The arbitration process has been found effective in some disputes, such as athlete doping suspensions, however, arbitration as an appeals process is unsuitable for sexual assault allegations.\textsuperscript{236}

The SafeSport Act provides changes to almost all failing aspects of the Ted Stevens Act.\textsuperscript{237} Not only does it extend mandatory reporting to adults in NGBs, it also extends to a wide spectrum of amateur youth sport organizations through a “catch-all” category.\textsuperscript{238} Interpreted broadly, the SafeSport Act requires any adult working with minors or amateur athletes to report immediate suspicions of sexual abuse to SafeSport and law enforcement, regardless of whether the organization is NGB-sponsored.\textsuperscript{239} One of the most vital change[sic] in the SafeSport Act, however, is the requirement for “prevention training.”\textsuperscript{240} To be effective, the training must aim at stopping abuse before it happens, not reacting to it and providing a remedy.\textsuperscript{241} Despite having no “visual profile,” sexual abusers often exhibit recognizable behaviors that potential victims and their advocates can spot before the abuser acts.\textsuperscript{242} While both reporting and prevention are important,

\textsuperscript{233} See id. (noting USOC continuously has pushed issue of handling sexual misconduct claims to NGBs, claiming their hands are tied, leading to ineffective reporting and inability to combat abuse, as evidenced by USA Gymnastics scandal involving Larry Nassar).

\textsuperscript{234} See id. (discussing excuses continuously made by USOC for why it has not combatted issue of sexual abuse within its NGBs).

\textsuperscript{235} See id. at 157 (outlining Ted Stevens Act application to sexual assault allegations).

\textsuperscript{236} See Morton, supra note 14, at 152 (noting ineffectiveness of arbitration for sexual misconduct allegations despite its effectiveness in employment context).

\textsuperscript{237} See generally Love & Norris, supra note 217, at 1 (arguing SafeSport Act is extraordinary step in preventing child abuse in youth sports).

\textsuperscript{238} See id. at 2 (discussing who SafeSport Act covers, noting broad extension across youth sport organizations).

\textsuperscript{239} See id. at 3-4 (explaining requirement to report suspicions of abuse falls on individuals working under NGBs as well as “covered individuals,” which includes participating adults for amateur sport organizations not sanctioned by NGBs).

\textsuperscript{240} See id. at 4-5 (discussing prevention training as new part of SafeSport Act, noting language in SafeSport Act which states “[a]n applicable amateur sports organization shall ... offer and provide consistent training to all adult members who are in regular contact with amateur athletes who are minors, and subject to parental consent, to members who are minors, regarding prevention and reporting of child abuse”).

\textsuperscript{241} See id. (arguing effective prevention training must be proactive rather than reactive).

\textsuperscript{242} See id. (noting many sexual abusers exhibit certain behaviors prior to committing abuse, making prevention training key to spotting these behaviors).
“teaching millions of parents, coaches and league officials how to prevent sexual abuse is truly ambitious and groundbreaking.”

Despite the above stated improvements, the SafeSport Act provides little direct guidance on prevention training and how to establish policies and procedures that prevent abuse. Studies have found that one-on-one interactions between coaches and athletes are a common theme in sexual abuse cases, but understanding the “grooming process” of abusers in addition to limiting one-on-one interactions is as important in preventing abuse. The grooming process begins with an abuser gaining access through a program serving children, selecting a child and gaining trust of the child, her parents, and other coaches, beginning to engage in inappropriate behavior, and finally attempting to keep the victim quiet. The new law requires NGBs to create “reasonable procedures” to limit one-on-one interactions between minors and adults, but fails to provide specific direction beyond this limitation. The “reasonable procedures” should include a USOC universal policy, completely eliminating one-on-one time between an adult and a child, therefore requiring the relevant NGB to seek and be granted permission from a parent for anything contrary. A universal prevention training should provide specific training that is tailored to understanding the grooming process and spotting behaviors that may place a child at risk of abuse. Preventive training has the ability to dramatically change youth sports:

If 20 million American adults are trained to understand the offender’s grooming process through the training requirements of the Safe Sport Act, 20 million sets of eyes will be better equipped to recognize predatory behaviors before a child is victimized. As a result, children will be safer in youth sport programs.

243 Id. at 5.

244 See generally id. (discussing SafeSport Act and both direct and indirect ramifications of new law).

245 See Love & Norris, supra note 217, at 7 (discussing grooming process of molesters and procedures preventing this as playing key role in preventing sexual abuse); see also Evans, supra note 211 (analyzing study that revealed one-on-one interactions present in numerous sexual abuse cases).

246 See Love & Norris, supra note 217, at 7 (presenting four broad “grooming processes” abusers follow: gaining access, selecting child, introducing nudity and sexual touch, and keeping victim quiet).

247 See id. (noting intent of SafeSport Act to establish policies and procedures to prevent abuse, but also SafeSport Act’s failure to provide specific direction on how to do so successfully).

248 See Evans, supra note 211 (emphasis added) (discussing feasibility of blanket ban on one-on-one interactions, noting obligation would then fall on NGBs to justify any such interaction).

249 See Love & Norris, supra note 217, at 7 (noting benefits to alerting parents and coaches to grooming processes and several behaviors that place children more at risk).

250 Id. at 7.
This is a best practice and should be adopted by SafeSport on behalf of the USOC as a strictly monitored training program and prevention policy. The responsibility should be on the USOC and SafeSport to ensure these procedures are universal and strictly followed across NGBs. The USOC and SafeSport should also require proper training on the grooming process, rather than allowing each NGB to implement their own interpretation of "reasonable procedures." The SafeSport Act is a big step in calling for prevention policies, but without specific guidance on limiting one-on-one interactions, there could be obstacles to its effectiveness.

The final policy in the SafeSport Act that has a significant effect is the clause for damages in civil court. The Ted Stevens Act had an ineffective arbitration process after the grievance procedures for sexual assault cases, which presented a serious issue for victims and a lack of private remedy. To recover damages outside of the arbitration process under the Ted Stevens Act, tort law required finding a private cause of action, which in turn required finding that an internal dispute in the USOC's governance structure had infringed upon an athlete's participation. The lack of meeting both requirements in almost all cases negated a private cause of action for athletes who have been sexually assaulted by a coach, requiring the athlete to go through the unfavorable arbitration process. Additionally, the USOC and NGBs argued the allegations arose from participation in the sport, and therefore must submit to arbitration. That argument "[cut] against an underlying assumption that sexual assault should not be an inherent part of an athlete's right to protected competition under the Ted Stevens Act." During the entire process, including arbitration, there was unwarranted deference and positioning power.

251 See id. (arguing "an understanding of the grooming process is the key to establishing" procedures to protect young athletes).

252 See Evans, supra note 211 (noting NGBs will work with SafeSport to develop procedures).

253 See id. (explaining that NGBs will work with SafeSport to develop procedures).

254 See Love & Norris, supra note 217, at 7 (noting legislation on prevention policies for sexual abuse is currently "weak").

255 See 18 U.S.C. §2255(a) (stating damages may be sought in U.S. District Court for violation of SafeSport Act).

256 See Morton, supra note 14, at 162 (discussing private remedy under Ted Stevens Act, but also its serious limitations).

257 See id. (noting courts often defer to Ted Stevens Act because it favors resolution through internal mechanisms rather than judicial systems).

258 See id. at 164 (discussing obstacles in tort law which force arbitration placing athletes at disadvantage).

259 See id. at 162 (noting "the Act will only recognize an athlete's right to compete if an internal dispute in the USOC's governance structure infringes upon participation").

260 Id. at 161.
given to the USOC and NGB. This included a lack of opportunity for appealing arbitration, privacy given to the NGB, and increased settlement potential because of fear instilled in a victim, which is favorable to the NGB. As in McKayla Maroney’s case, a monetary settlement often also comes with an NDA. In private relationships where no legally cognizable duty is owed, tort law does not interfere; these obstacles for remedy are removed with the SafeSport Act. Congress designed the Ted Stevens Act and its arbitration process to settle disputes about Olympic participation or positive drug tests, but the policy does not contemplate protecting athletes and providing a remedy against sexually abusive coaches. The changes implemented in the SafeSport Act codified civil remedies for victims and eliminated the need to rely on the inadequacy of tort law. The SafeSport Act created a legal duty, therefore the USOC, and all covered persons, may no longer deflect liability with the argument that they are judgement proof because they owe no legal duty.

D. NDAs: Should They Always be Legal?

The effect of an NDA is to silence a victim, and in the wake of sexual assault allegations across industries, many argue they should not be permitted, especially when sexual abuse allegations involve a child. Despite the arguments against their legality, NDAs are common features of many settlements and can often be a useful tool that works in favor of a victim who wishes to move on without gaining attention.

---

261 See id. (noting similarity between advantages of NGBs and employers in arbitration process).

262 See id. (noting arbitration presents challenges for victims, including “greater privacy for the employer, enhanced settlement potential, and lack of opportunity for appeal”).

263 See Bailey, supra note 109 (noting that “because of a non-disclosure agreement contained in a settlement agreement Maroney signed with USA Gymnastics, Maroney could face a $100,000 penalty for speaking about her alleged abuse or the settlement”).

264 See Lahitou, supra note 226 (“But with the passage of the Safe Sport Act, Congress has now taken that option away, making everyone involved responsible for addressing sexual abuse that occurs on their watch.”).

265 See Morton, supra note 14, at 150 (noting Ted Stevens Act’s application to very “narrow” questions of eligibility).

266 See 18 U.S.C. §2255(a) (stating victims of sexual abuse are compensated with minimum of $150,000).

267 See Lahitou, supra note 226 (discussing USOCs reliance on “no duty” rules prior to SafeSport Act).


269 See id. (noting NDAs are common features in settlements where aggrieved party agrees to not pursue litigation or discuss terms of agreement with others in exchange for money).
particular, NDAs arguably have more to do with money and power than the law itself. Particularly, California’s balance, prohibiting NDAs for the worst types of sexual crimes, is a good model that should be followed by other state legislatures.

The SafeSport Act was enacted at a time of media outrage over the sexual abuse in USA Gymnastics that spanned decades, without claims to law enforcement and the USOC being taken seriously. This was partly due to NDAs keeping abused athletes quiet as part of their terms. In many sexual assault cases, NDAs do more harm than good because they allow perpetrators to escape solely because they have enough money to silence a victim. These settlements jeopardize the public by hiding sexual predators from law enforcement and allowing the same perpetrator to repeat illegal actions. To change a culture of secrecy for perpetrators of sexual abuse, several legislatures are proposing legislation that would, if enacted, prohibit the use of NDAs in the settlement of claims for sexual assault or harassment.

Despite the harm NDAs may cause, there are arguments to be weighed to the contrary on the issue of using NDAs in sexual abuse cases. While NDAs have the effect of silencing victims, often because the threat of financial penalty if a victim breaks the NDA is enough to keep her quiet, they sometimes prove to be beneficial. Many victims prefer to sign

270 See Levinson, supra note 111 (“[S]exual harassment and assault is not about sex, it is about power ... [and] [c]onfidential settlement agreements can give perpetrators even more power over their victims by silencing them.”).

271 See Fabio, supra note 268 (noting that California prohibits use of NDAs in felony sexual assault cases).

272 See id. ("[NDAs] prevent the public from knowing about predatory conduct that harms [the public] and stop government officials from being able to perform critical law enforcement duties that are designed to protect [the public].").

273 See id. (arguing NDAs allow perpetrators to retain continued power over victims by silencing them).

274 See Levinson, supra note 111 (”Confidential settlement agreements can give perpetrators even more power over their victims by silencing them.”).

275 See id. (discussing use of NDAs to prevent victims from speaking out, which allows perpetrators to act again).


277 See id. (noting people will be hurt if NDAs become unenforceable, but also if opposite decision is made).

278 See id. ("Clearly, [NDAs] can cause real harm. The monetary damages attached to violating a non-disclosure agreement make it impractical for most victims to ever consider breaking it."); see also Areva Martin, How NDAs Help Some Victims Come Forward Against Abuse, MOTTO (Nov. 28, 2017), http://motto.time.com/5039246/sexual-harassment-nda/ [https://perma.cc/UMC5-AZF9] (noting consequences of breaking NDA require calculated risk).
an NDA because an NDA protects victims from unwanted attention and public retaliation and gives financial restitution, a large monetary sum.\textsuperscript{279} This financial support allows many victims to continue living without a paycheck.\textsuperscript{280} Other harms that come from prohibiting NDAs may include: (1) clogging of court systems because without NDAs, parties may never settle claims; (2) a slippery slope in which NDAs become unenforceable in areas other than the context of sexual assault and harassment; and (3) increasing government intervention in agreements between private parties.\textsuperscript{281} These compelling reasons for allowing NDAs make it difficult to propose blanket illegality.\textsuperscript{282}

The looming question surrounding McKayla Maroney’s NDA with USA Gymnastics is whether it was legal.\textsuperscript{283} As a prevalent victim in the case, Maroney’s complaint against the NDA’s legality with USA Gymnastics received much notoriety.\textsuperscript{284} Because NDAs have the ability to silence vulnerable victims of sexual assault and empower molesters, the SafeSport Act should create a provision prohibiting their use when the SafeSport Act is violated.\textsuperscript{285} Part of the grooming process for sexual abusers is silencing the victim through threats, persuasion, and tools such as NDAs.\textsuperscript{286} Despite the outrage over these agreements and the harmful impact on victims, the SafeSport Act is silent to the issue.\textsuperscript{287}

To simply get rid of NDAs in sexual assault or harassment cases would create serious

\begin{flushleft}
\textsuperscript{279} See Martin, supra note 278 (discussing benefits of signing NDAs are sometimes high, particularly in cases where victims prefer to stay silent).

\textsuperscript{280} See id. (noting pros and cons of NDAs).

\textsuperscript{281} See Levinson, supra note 111 (discussing reasons weighing against prohibiting NDAs).

\textsuperscript{282} See Martin, supra note 278 (noting benefits to victims signing NDA in Harvey Weinstein scandal include protection from being retaliated against or ostracized by an employer).


\textsuperscript{284} See Levinson, supra note 111 (discussing $100,000 fine that would have resulted against Maroney had USA Gymnastics enforced her NDA); see also Vagianos, supra note 110 (noting NDAs are illegal in California for child sex abuse cases, and Maroney should be able to speak to whomever she wants about abuse).

\textsuperscript{285} See Levinson, supra note 111 (arguing that without some NDAs in sexual assault cases, some powerful men would likely have been stopped earlier, and further that harmful effect of NDAs is exemplified by looking to dozens of NDAs signed by accusers of abuse by Larry Nassar).

\textsuperscript{286} See Love & Norris, supra note 217 (noting “keeping the victim quiet” includes “subtle or direct threats, shame, embarrassment, and access to team”).

\textsuperscript{287} See Gibbs, supra note 222 (discussing provisions included in SafeSport Act, which do not currently include language as to legality of NDAs).
\end{flushleft}
concerns, but that should not mean they can continue to be used in cases similar to McKayla Maroney’s. 288

IV. CONCLUSION

The USOC traditionally did not intervene in coach-inflicted sexual abuse cases, claiming NGBs were responsible for combatting the issue and abiding by the Ted Stevens Act. 289 The scandal involving sexual abuse in USA Gymnastics, although just one of many, brought light to an issue plaguing amateur sports. 290 When over 150 women publicly accused Larry Nassar of sexual abuse spanning two decades, a glaring discrepancy in the Ted Stevens Act was exposed. 291 It did not provide proper policies and procedures for preventing sexual abuse in amateur sport and remedying victims. 292

The changes implemented in the SafeSport Act represent an “extraordinary step” by lawmakers to prevent child sexual abuse in youth sport. 293 By making it a crime to fail to report a suspicion of sexual abuse, punishable by up to one year in prison, a legal duty is placed on the USOC, SafeSport, NGBs, coaches, parents, and athletes across youth sports. 294 Although the SafeSport Act is indeed extraordinary, it does not erase decades of the USOC’s failure to prevent young women from sexual abuse and continues to lack efficacy in its direct preventative measures, including training persons in detecting grooming processes by potential abusers and prohibiting NDAs in cases of sexual assault. 295

288 See Levinson, supra note 111 (“By passing laws that ban all NDAs, we will marginalize rather than empower the people we’re aiming to protect. Many of my clients would never have come forward if they knew the only option was full public disclosure of their experiences.”).

289 See Townes, supra note 24 (discussing USOC’s previous claims “that it is doing all that it can to protect athletes’ safety”).

290 For further discussion of sexual abuse allegations in USA Gymnastics, see supra notes 100-119 and accompanying text.

291 For further discussion of the Ted Stevens Act and the amendment(s), see supra notes 228-267 and accompanying text.

292 For further discussion of the Ted Stevens Act and the amendment(s), see supra notes 228-267 and accompanying text.

293 See Love & Norris, supra note 217, at 1 (noting SafeSport Act and its aim to prevent sexual abuse in youth sports).

294 For further discussion of the legal duty under the SafeSport Act, see supra notes 90-91 and accompanying text.

295 See Love & Norris, supra note 217, at 7 (noting SafeSport Act “stops short of providing specific direction beyond limiting one-on-one interaction between adult and minor athlete”). For further discussion of NDAs in cases of sexual assault, see supra notes 268-288 and accompanying text.
Sexual abuse scandals in many NGBs, such as USA Swimming and USA Taekwondo, did not reach the same level of media scrutiny as USA Gymnastics. However, these scandals played a key role changing a failing Olympic system. The SafeSport Act is set to mark the end of an era of sexual abuse by changing the culture of youth sport organizations and the Olympics and putting athlete well-being ahead of medals.

\[\text{See generally Hobson & Rich, supra note 4 (discussing many coaches and officials within Olympic sport organizations that have been accused of sexual abuse since 1982).}\]

\[\text{See Gibbs, supra note 222 (discussing origin of SafeSport Act dated back to early 2017, however, it passed in Congress soon after survivors confronted Nassar in court about abuse).}\]

\[\text{See Starr, supra note 216 (noting focus of SafeSport Act is to promote culture where athletes’ well-beings come first).}\]
ABSTRACT

Recent scandals involving national governing bodies for sport and allegations of athlete abuse have captured media attention. The most recent, focusing on the actions of USA Gymnastics, prompted Congress to propose legislation to require better protections for Olympic Movement athletes. Signed into law on February 14, 2018, the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 designates the United States Center for SafeSport (SafeSport) as the independent organization charged with exercising jurisdiction over the United States Olympic Committee (USOC) and sport national governing bodies to safeguard amateur athletes against all forms of abuse. Congress’s instincts in this regard are admirable, and the empowerment of SafeSport is critically important. However, this Article asserts that the issue targeted by the recently enacted legislation must be viewed in the context of the overall regulation of Olympic and amateur sport in the United States. In doing so, Congress should consider more comprehensive reform that goes beyond the issue of athlete abuse. Instead, Congress should further amend the Ted Stevens Olympic and Amateur Sports Act, the statute establishing the USOC and regulating the US Olympic program, to address the new realities of Olympic and amateur sport in the United States.

Specifically, this Article asserts that the statute should be amended to require reforms in three areas: athlete health and well-being, whistleblowing, and gender equity in the US Olympic program. In addition, this Article argues that Congress should enact a true amateur sports act, with a primary feature being the creation of an entity charged with developing an agenda and reforms for youth and amateur (non-Olympic) sports.

TABLE OF CONTENTS

I. INTRODUCTION 1028
II. BACKGROUND: THE REGULATION OF OLYMPIC AND AMATEUR SPORT IN THE UNITED STATES 1032
   A. The Structure of Olympic and Amateur Sport in the United States 1033
   B. The Organization of Olympic Movement Sport 1040
      1. The International Olympic Committee 1041
      2. International Federations for Sport 1043
      3. National Olympic Committees 1043
III. MODERNIZING THE AMATEUR SPORTS ACT 1055
   A. Update Provisions Related to the Olympic Movement 1055
      1. Adopt Provisions to Promote Athlete Health and Well-being 1056
      2. Adopt Provisions to Protect Whistleblowers 1062

---

a1 Professor of Law and Director, Center for Sport and the Law, University of Baltimore School of Law. I would like to thank Genevieve Hornik for outstanding assistance with research.
I. INTRODUCTION

USA Gymnastics is a national governing body (NGB) for US sport that has enjoyed considerable Olympic success. Yet, while it was producing wins on the international stage, it was allegedly not doing enough to address numerous accusations that gymnasts were sexually abused by team doctor Larry Nassar. Dozens of gymnasts, including some from Michigan State University, where Nassar also served as a team physician, accused Nassar of assaulting them under the guise of providing medical treatment. Nassar pleaded guilty and was sentenced to sixty years in prison on federal child pornography charges. A Michigan court also sentenced Nassar to 40-175 years for criminal sexual conduct, and civil claims against Nassar are still pending.

Sadly, reports of child sexual abuse in the sport setting are not new. A few years ago, USA Swimming was under fire for not doing enough to protect young athletes from predatory

---


coaches. Other sport NGBs have also been accused of not taking adequate measures to protect their athletes. In response, the United States Olympic Committee (USOC) convened a working group that ultimately resulted in the creation of the United States Center for SafeSport (SafeSport), which seeks to address a range of harmful behaviors involving athletes—including bullying, hazing, emotional abuse, and sexual misconduct. As they do now, members of Congress demanded answers, and in 2015 the Government Accountability Office (GAO) produced a report outlining the patchwork of practices and policies that aim to prevent and adequately respond to sexual abuse of young athletes. Nevertheless, the problem persists.

The allegations involving USA Gymnastics spurred legislative change—at least in the context of Olympic Movement sport. Congress passed legislation that establishes new reporting requirements and expands the obligations of NGBs with respect to preventing and responding to sexual abuse of amateur athletes. The reforms amend the Ted Stevens Olympic and Amateur Sports Act (the “Amateur Sports Act”), the law that established the modern US Olympic Movement structure and the USOC’s obligations. Amending the Amateur Sports Act to require that NGBs like USA Gymnastics have stronger policies both to prevent athlete abuse and to ensure better handling of allegations of abuse is without question important. The original statute was (and continues to be) mostly aimed at empowering the USOC to field high-quality Olympic teams and ensuring that athletes and others are provided with procedures for the swift and appropriate resolution of disputes affecting an athlete’s ability to compete. There were also concerns

---


7 Hobson & Rich, supra note 2 (“Under the USOC’s watch, six Olympic sport governing bodies have been beset over the years by allegations of mishandled complaints of abuse ....”).


12 See 36 U.S.C. §220503 (2012). There is confusion over this provision that reportedly hindered NGBs in their ability to aggressively react to allegations of sexual abuse. See Hobson & Rich, supra note 2.
that the Amateur Sports Act actually worked to prevent the USOC and NGBs from effectively responding to athlete abuse.\footnote{Hobson & Rich, supra note 2 (explaining that interpretations of the Amateur Sports Act have “played a central role in the USOC’s historic inaction on child protection”).}

However, the issue involving USA Gymnastics serves as an important reminder of the way youth and amateur sport is structured in the United States, and how government reluctance to regulate amateur sport can create the types of gray areas that have resulted in a variety of harms to young athletes. The recently enacted legislation to address the issue of athlete abuse therefore presents an important opportunity to think even more broadly about the Amateur Sports Act and modernize it to reflect the changing nature of the issues facing US Olympic and youth sport.\footnote{See Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, 132 Stat. at 318. This Article will not examine the potential role for government regulation of intercollegiate sports. While sport in that context is deemed “amateur,” the issues are far different than those presented by the youth and Olympic Movement sport “pyramid” that is the subject of this writing.} Doing so would not only ensure better prevention and handling of athlete abuse but also could more clearly define the purpose of the US Olympic Movement within the overall landscape of amateur sport.

To that end, this Article makes several recommendations for updating the Amateur Sports Act to more closely align it with the realities of Olympic and amateur sports today. First, Congress should further amend the Amateur Sports Act to adopt provisions for the Olympic Movement that aim to enhance athlete health and well-being, not only to prevent athlete abuse but also in the area of concussion management, coaching, and sports medicine. Congress should also require the USOC and NGBs to provide clearer and wider protections for all types of whistleblowers. Finally, Congress should require the USOC and NGBs to have a stronger commitment to gender equity.

Congress should also modernize the Amateur Sports Act by reconceiving the “pyramid” structure underlying the Olympic pipeline. Specifically, Congress should statutorily acknowledge the differences between high-performance, elite, Olympic sport (to which most provisions of the Amateur Sports Act are aimed) and true youth, amateur sports — addressing each context separately. In 1978, when Congress first enacted the Amateur Sports Act, the most pressing issue in amateur sport was thought to be elite athletes’ access to the Olympic Games.\footnote{See, e.g., Amateur Sports Act of 1978, Pub. L. No. 95-606, §114, 92 Stat. 3045, 3049-50 (1978), amended by Ted Stevens Olympic and Amateur Sports Act, Pub. L. No. 105-225, §220505, 112 Stat. 1253, 1468 (1998) (codified as amended at 36 U.S.C. §220504 (2012)).} Today, the issue in amateur sport is simply access to grassroots recreational participation opportunities.\footnote{See PROJECT PLAY, ASPEN INST., SPORT FOR ALL PLAY FOR LIFE: A PLAYBOOK TO GET EVERY KID IN THE GAME 22 (2015), https://www.aspeninstitute.org/publications/sport-all-play-life-playbook-get-every-kid-game/ [https://perma.cc/S6UE-3SC5].} Congress could begin to address this issue by no longer statutorily allocating the role of developing youth sports opportunities to the USOC.\footnote{See 36 U.S.C. §220521 (authorizing the USOC to recognize one amateur sport organization per sport as an NGB).} Instead, Congress should create an entity to address the non-Olympic
amateur sport context and acknowledge the USOC’s primary focus on high-performance Olympic sport. As explained below, these changes would go a long way toward creating a transformative, twenty-first-century Olympic and amateur sport policy.

Part II of this Article provides background on the regulation of Olympic and amateur sport in the United States. That Part details the free market structure of US sport, which is regulated largely through private actors organized around different sport contexts with no overall public policy coordination: grassroots youth, interscholastic, intercollegiate, professional, and Olympic. Part II also explains how US Olympic Movement sport fits into the international sport structure and how US participation in elite, international sport is facilitated through the Amateur Sports Act.

Part III of this Article recommends that Congress should go beyond addressing athlete abuse and suggests additional updates to the Amateur Sports Act for Olympic Movement athletes, including promoting athlete health and well-being and adding greater protections for whistleblowers and stronger requirements for gender equity. Part III also makes the case that Congress should develop a true Amateur Sports Act and adopt reforms aimed at creating more grassroots sport opportunities.

II. BACKGROUND: THE REGULATION OF OLYMPIC AND AMATEUR SPORT IN THE UNITED STATES

To begin, it is important to understand the Amateur Sports Act within the greater US sport context. US sport, at all levels, exists in an environment characterized by limited government regulation but a strong political and popular desire to win in international competition. Congress conceived of the US Olympic Movement as a pyramid structure, with so-called “grassroots” youth sport opportunities at the base and elite, Olympic sport at the apex. Each level of the pyramid is accessed through the opportunities provided by the private sector and, in some cases, schools. In addition, a significant international regulatory scheme, as well as US values, influences the structure of the US Olympic program. As explained below, this structure shapes both the outcomes

---

18 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, FIRST REPORT TO THE PRESIDENT 4, 7 (1976) (stating that in international competition, “Winning is important .... How well we do is a reflection of our national spirit and purpose.”).


and challenges for the modern US Olympic Movement and the grassroots programs that feed it.

A. The Structure of Olympic and Amateur Sport in the United States

US amateur sport generally occurs in several contexts. Offerings at the grassroots level are through private clubs and leagues. Other opportunities are accessed through schools, frequently at the high school level. The United States also provides higher quality sport opportunities at the college and university level. Elite sport opportunities are provided through professional leagues and the US Olympic program.

These differing contexts for sport participation are not the product of an overall sport policy agenda but are largely a result of the free market. The general consensus among policymakers is that the government should stay out of sport. Certainly there is a significant amount of law that applies to sport. There is, however, relatively little direct regulation of sport – especially at the amateur, youth level. One notable exception is the Amateur Sports Act, which established the modern version of the USOC and set basic

22 See PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 17 (“The structure for amateur sports … in the United States is ill-defined.”).


24 See NAT’L FED’N OF STATE HIGH SCH. ASS’NS, 2016-17 HIGH SCHOOL ATHLETICS PARTICIPATION SURVEY (2017), http://www.nfhs.org/ParticipationStatistics/PDF/2016-17_Participation_Survey_Results.pdf [https://perma.cc/AHT8-T3CC]; see also PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 60 (“Few countries have utilized the primary and secondary school system as the backbone of sports programming and instruction for youth as it is done in this country.”).


26 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 5 (“[T]he free enterprise system has allowed a multitude of amateur sports organizations to flourish in this country ....”).

27 See Dionne L. Koller, Putting Public Law into “Private” Sport, 43 PEPP. L. REV. 681, 687-88 (2016); see also Hearing on the Amateur Sports Act, supra note 19, at 89 (statement of Tom McMillen, Co-Chair, President’s Council on Physical Fitness and Sports) (“I believe we need to look at the attitude, the idea that laissez-faire is really the right answer here. I am opposed to Government intervention in sports, but I do not think what we have right now is the right balance, either.”).


29 Koller, supra note 27, at 685. This Article does not include college and university sport in the discussion of amateur sport, as that context is currently regulated through the National Collegiate Athletic Association. See generally id.
standards for the operation of the US Olympic Movement. Along with the Amateur Sports Act is Congress’s recognition of and appropriations for the United States Anti-Doping Agency (USADA). These initiatives, however, are consistent with Congress’s instinct to stay out of sports, as the legislation reinforces the private status of the USOC and the USADA and enables them to flourish as independent corporations. It also allows the USOC to set priorities for amateur sport in the United States – such as winning Olympic medals over broad-based, grassroots sports participation – largely unhampered by other public policy goals. Moreover, in both cases, law was used to insulate as much as possible the USOC and the USADA from judicial intervention, at least with respect to managing athletes. For instance, courts have held that the USOC and USADA are not state actors. In addition, Congress has limited the ability of athletes to bring a claim against the USOC.

Even less government attention is directed to youth sport. Unlike most countries that participate in international sport, the United States does not have a “sports ministry,” national sport policy, or other similar government coordination or agency to promote and

---


34 See Hobson & Rich, supra note 2 (“The law gave the USOC wide-ranging responsibilities, such as promoting racial equality, gender equality, and ‘sports safety.’ USOC leadership historically has taken a focused view of its missions, though. ‘For us, it’s all about medals,’ CEO [Scott] Blackmun said in 2014.”).


36 36 U.S.C. §220505(b)(9) (2012) (providing that the USOC may be sued, but that any civil suit brought under the Amateur Sports Act “shall be removed” to federal court, and that “neither this paragraph nor any other provision of this chapter shall create a private right of action”).

regulate youth and amateur athletics.\textsuperscript{38} In this context, the federal government’s primary role has been to simply encourage physical fitness but not to otherwise develop opportunities or address barriers to participation. For instance, President Eisenhower created the President’s Council on Youth Fitness in 1956 in response to reports on the poor state of youth physical fitness in the United States.\textsuperscript{39} The goal was for the Council to be a “catalytic agent” focused on creating public awareness of the benefits of youth physical fitness.\textsuperscript{40} President Johnson subsequently changed the name to the President’s Council on Physical Fitness and Sports to encourage greater youth fitness through participation in sport.\textsuperscript{41} The Nixon administration established the Presidential Sports Award to motivate participation in physical activity.\textsuperscript{42} Subsequent administrations have continued to promote awareness and involvement in youth sport to enhance physical fitness;\textsuperscript{43} in 2002, President Bush issued an Executive Order directing the Department of Health and Human Services (HHS) to “develop and coordinate” a national program to stimulate sport participation and physical fitness.\textsuperscript{44} The goals of the President’s Council have been to promote awareness of and generate interest in sport participation.\textsuperscript{45} The Council does not seek to use law to create a sport structure that would promote greater participation or otherwise shape sport participation opportunities that are currently being provided.\textsuperscript{46} \\

\textsuperscript{38} Koller, \textit{supra} note 27, at 688-89; see B. DAVID RIDPATH, ALTERNATIVE MODELS OF SPORTS DEVELOPMENT IN AMERICA: SOLUTIONS TO A CRISIS IN EDUCATION AND PUBLIC HEALTH 69 (2018).


\textsuperscript{40} \textit{Id.}.

\textsuperscript{41} \textit{Id.}

\textsuperscript{42} \textit{Id.}

\textsuperscript{43} \textit{Id.}

\textsuperscript{44} Exec. Order No. 13,265, 67 Fed. Reg. 39,841 (June 6, 2002). The order states that the Secretary of HHS shall seek to (a) expand national interest in and awareness of the benefits of regular physical activity and active sports participation; (b) stimulate and enhance coordination of programs within and among the private and public sectors that promote participation in, and safe and easy access to, physical activity and sports; (c) expand availability of quality information and guidance regarding physical activity and sports participation; ... (e) target all Americans, with particular emphasis on children and adolescents, as well as populations or communities in which specific risks or disparities in participation in, access to, or knowledge about the benefits of physical activity have been identified. \textit{Id.} (1)(a)-(c), (e); see also Exec. Order No. 13,545, 2010 WL 2513361, at *1 (June 22, 2010) (President Obama), revoked by Exec. Order No. 13,824, 83 Fed. Reg. 8923, 8923 (Feb. 26, 2018) (President Trump).

\textsuperscript{45} \textit{See Hearing on the Amateur Sports Act, supra} note 19, at 90 (statement of Thomas McMillen, Co-Chair, President’s Council on Physical Fitness and Sports) (stating that the President’s Council is the “sole federal agency devoted to physical fitness and sports”); \textit{Our History, supra} note 39.

\textsuperscript{46} \textit{See} TOM FARREY, GAME ON: THE ALL-AMERICAN RACE TO MAKE CHAMPIONS OF OUR CHILDREN 81 (2008) (describing the President’s Council on Physical Fitness as a “barely funded,
Instead, youth and amateur sport participation is most often a function of individual means and choice and private sector goals. This fact makes it difficult to even determine how many children engage in competitive sport. As explained by the Aspen Institute’s 2016 State of Play report, “[n]o metric currently exists to measure how many children have consistent access to quality sport activity.” One survey estimated that about twenty-one million children participated in sport. Shellie Pfohl, director of SafeSport, recently testified before Congress that approximately forty-five million children engage in sport. Another estimate is that about sixty million participate in youth sport. The data on who is not participating in sports may be more troubling than the lack of firm data on who is participating. Studies show that only about 33 percent of children are physically active each day. The CDC estimates that only about 22 percent of six- to nineteen-year-olds get sixty or more minutes of moderate to vigorous physical activity at least five days per week. Less than half of children ages six to eleven satisfy the Surgeon General’s recommendation of sixty minutes of moderate physical activity per day most days of the week. Also troubling is the fact that family income makes a significant difference in whether a child or teen participates in sport, with children and teens from the wealthiest households enjoying the benefits of sport participation at a far greater rate than their less affluent peers. Statistics also show a persistent lag in participation between girls and boys.

---


48 PROJECT PLAY, supra note 47, at 2 (explaining that the lack of firm data is due to the “absence of comprehensive surveillance tools by public health agencies”).

49 Kelley & Carchia, supra note 47.


53 Id.

54 PROJECT PLAY, supra note 16, at 6.

55 PROJECT PLAY, supra note 47, at 3.
in high school sport, compared to about 3.3 million girls.\textsuperscript{56} And, despite some decline, childhood obesity remains a significant public health issue, with about 17 percent of children ages two to nineteen being classified as “obese.”\textsuperscript{57} About one child in three from this age range is either overweight or obese.\textsuperscript{58}

While sport participation, or lack thereof, is a significant public issue, there are also well-documented concerns with youth sport, such as the win-at-all-costs mentality, early specialization, overtraining,\textsuperscript{59} and troubling health issues – such as concussions – that have gotten the attention of policymakers.\textsuperscript{60} This has resulted in a piecemeal approach to regulating youth sport, with policymaking often being more symbolic than transformative. For example, calls for regulation in youth sport surfaced several years ago when media reports of the dangers of sport concussions drew considerable attention.\textsuperscript{61} Currently, all fifty states and the District of Columbia have statutes addressing concussions in youth sport,\textsuperscript{62} and over the last several years a handful of bills have been introduced in Congress to set uniform federal concussion management standards, support concussion research, and emphasize the role of schools in helping children with concussions “return


\textsuperscript{58} Overweight in Children, AM. HEART ASS’N, http://www.heart.org/HEARTORG/HealthyLiving/HealthyKids/ChildhoodObesity/Overweight-in-Children_UCM_304054_Article.jsp#WpcHEpM-dn4 [https://perma.cc/UGC4-Q8QA] (last updated July 5, 2016).

\textsuperscript{59} See Dionne L. Koller, Not Just One of the Boys: A Post-Feminist Critique of Title IX’s Vision for Gender Equity in Sports, 43 CONN. L. REV. 401, 430-32 (2010).


\textsuperscript{62} Lowrey, supra note 51, at 63.
to learn.”63 The limited nature of such laws, however, makes them of questionable effectiveness.64

Other measures have been aimed at specific health issues in youth sport, with some states legislating standards for pre-participation physicals, specifically to require screening for cardiac conditions.65 Other states have focused on immunity statutes for those who work in the amateur sport setting.66 For instance, some states provide malpractice immunity for physicians acting as volunteers in connection with school or other amateur sports organized for children.67 Other types of statutory immunity include provisions for physicians who supervise or direct athletic trainers.68

Although amateur sport is characterized by relatively little government regulation, it is not without governance. Nearly all levels of amateur sport have their own private regulatory bodies. In addition to the USOC, the National Collegiate Athletic Association (NCAA),69 National Federation of State High School Associations,70 and state high school athletic associations71 all have detailed rules for the way sport within their jurisdictions is


64 See Lowrey, supra note 51, at 64-66.

65 See, e.g., N.J. STAT. ANN. §26:2-192(a) (West 2015); N.J. STAT. ANN. §18A:40-41.7 (West 2013).


67 See, e.g., LA. STAT. ANN. §9:2798; MINN. STAT. ANN. §604A.11; OHIO REV. CODE ANN. §2305.231(B).

68 See, e.g., ARIZ. REV. STAT. ANN. §32-4103(E).


governed. In the meantime, athletes, coaches, and administrators may move freely among the various sport contexts. For example, an Olympic athlete may also be an intercollegiate athlete, subject to both USOC and NCAA regulation. Frequently, a private sector “club” or travel team youth athlete will often compete for his or her school team as well.\textsuperscript{72}

The free flow of athletes and others among athletic contexts has numerous benefits for both athletes and athletic regulators. For instance, many Olympic athletes are drawn from intercollegiate sports, and colleges and universities maintain facilities that are sometimes used in Olympic training.\textsuperscript{73} In addition, this context-specific way of operating has the benefit of ensuring that the needs of each level of sport are closely addressed through consultation with relevant stakeholders and not through one-size-fits-all policy. However, relatively unconnected athletic contexts, even where athletes may move freely between them, can raise troubling issues of lack of information sharing between regulators. For example, USA Gymnastics’ team physician, Dr. Nassar, also served as a provider for Michigan State University’s gymnasts. While Michigan State reportedly received complaints about Nassar, these were allegedly not shared (at least in a timely way) with USA Gymnastics.\textsuperscript{74} Similarly, while athletes can easily move between different sport environments, the patchwork of amateur sport settings also creates significant “voids”\textsuperscript{75} that leave numerous children on the sidelines. Such issues illustrate that Congress’s “hands off” approach to sport, with inconsistent, context-specific legislation (mostly at the state level), is ripe to be rethought. As explained below, such a view fails to recognize a purpose for amateur sport beyond anchoring the Olympic and professional pipeline. Instead, what is needed now is a balanced approach to sport policymaking that reflects a comprehensive, nuanced understanding of the challenges presented by the enormous growth at all levels of US sport and the needs of millions of children who could benefit from participation. That conversation should begin with a rethinking of the Amateur Sports Act.


\textsuperscript{75} PRESIDENT’S COMM’N ON OLYMPIC SPORTS, \textit{supra} note 18, at 13 (“[T]he overall system for amateur athletics in this country is characterized by the voids as much as by the positive programs ....” (emphasis omitted)).
B. The Organization of Olympic Movement Sport

Understanding the Amateur Sports Act also requires an understanding of the larger international sport context within which the US Olympic program operates. This is because the provisions of the Amateur Sports Act reflect not only US values with respect to sport, but also the structure of international sport, through what is known as the “Olympic Movement.” Indeed, before Congress enacted the Amateur Sports Act, the International Olympic Committee (IOC) and some international sport federations (IFs) called for reform of US Olympic Movement sport.  

Those reforms, however, were limited by Olympic Movement rules.

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.” To that end, the Olympic Movement is governed by the IOC, which serves as the “supreme authority,” as well as IFs, NGBs and National Olympic Committees (NOCs), and the local organizing committee for a particular four-year Olympiad. The Olympic Charter governs the “organisation, action and operation” of Olympic Movement sport as well as the Olympic Games. The Olympic Charter contains the “principles, rules, and by-laws adopted by the International Olympic Committee (‘IOC’) that govern the Olympic Movement.”

All sport governing bodies, athletes, and others acting within the Olympic Movement must be recognized by the IOC and comply with the Olympic Charter. To participate in Olympic Movement competition, an athlete must be “a national of the country of the NOC

---

76 See id. at xviii (stating that the General Assembly of International Federations, the IOC, and various IFs have “suggested that the U.S. organize its amateur sports system into a vertical structure and designate one organization to be in charge”); see also id. at 73 (“An IOC officer would like to see independent sports associations in the U.S.”).

77 See id. at xx (“An organization to serve as the highest authority in the U.S. would have to meet certain international requirements if the U.S. is to maintain acceptance and recognition by the IOC and the international federations.”).


79 Id. at 15.

80 Id. (“The three main constituents of the Olympic Movement are the International Olympic Committee (‘IOC’), the International Sports Federations (‘IFs’) and the National Olympic Committees (‘NOCs’) .... In addition to its three main constituents, the Olympic Movement also encompasses the Organising Committees for the Olympic Games (‘OCOGs’), the national associations, clubs and persons belonging to the IFs and NOCs ....”).

81 Id. at 9; see Matthew J. Mitten & Timothy Davis, Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities, 8 VA. SPORTS & ENT. L.J. 71, 76 (2008).

82 Mitten & Davis, supra note 81, at 76.

83 INT’L OLYMPIC COMM., supra note 78, at 12.
which is entering such competitor,” must be entered in the Olympic Games by his or her NOC, and must agree to abide by the Olympic Charter and his or her sport’s IF and NGB eligibility requirements, including the World Anti-Doping Code.

1. The International Olympic Committee

The mission of the IOC is “to promote Olympism throughout the world and to lead the Olympic Movement.” To do so, the IOC’s role is to encourage the organization and development of sport and of sport competitions, to “ensure the regular celebration of the Olympic Games,” to work with public and private organizations to “place sport at the service of humanity and thereby to promote peace,” to protect the cohesion and independence of the Olympic Movement, and to “preserve the autonomy of sport” and be a leader in “the fight against doping.”

The IOC owns the rights to the Olympic Games and is the ultimate authority on all issues relating to the Olympic Games and the Olympic Movement. The IOC’s responsibilities include creating and applying rules and regulations concerning the Olympic Games as well as recognizing and supporting NOCs and IFs, selecting sites for the Games, and negotiating television rights for the Games. The IOC is composed of individuals and not representatives of nations or other organizations. The IOC is a nongovernmental, not-for-profit organization that is based in Lausanne, Switzerland.

To “develop and promote” the Olympic Movement, the IOC recognizes IFs that administer sports at the international level and which, in turn, encompass NGBs that administer such sports at the national level. The IOC issues all invitations to take part in the Olympic Games. Only recognized NOCs may submit entries for athletes to compete in the

---

84 *Id.* at 78.

85 *Id.* at 77; see Mitten & Davis, *supra* note 81, at 77. The World Anti-Doping Code is described as the “core document that harmonizes anti-doping policies, rules and regulations within sport organizations and among public authorities around the world.” The Code, WORLD ANTI-DOPING AGENCY, [https://www.wada-ama.org/en/what-we-do/the-code](https://www.wada-ama.org/en/what-we-do/the-code) (last visited Mar. 25, 2018). The Code provides a unified approach to research, testing, and sanctions. *Id.*


87 *Id.*

88 *Id.* at 21-22.

89 *Id.* at 21-22, 52, 70.

90 *Id.* at 32.

91 *Id.* at 31.

92 *Id.* at 55.

93 *Id.* at 79.
Olympic Games, and all entries are subject to final acceptance by the IOC. The Olympic Charter makes clear that “[n]obody is entitled as of right to participate in the Olympic Games.”

To participate in the Olympic Games, athletes must agree to submit disputes to the Court of Arbitration for Sport (CAS). Moreover, athletes who participate in international competitions must agree through the governing IF to submit any issues to the CAS. Commentators have noted that the CAS “provides a unique example of a private international legal regime that has almost entirely displaced domestic adjudication” of Olympic Movement sport disputes. Like the IOC, the CAS’s seat is in Lausanne, Switzerland, and it is governed by Swiss law.

2. International Federations for Sport

IFs are nongovernmental organizations recognized by the IOC that serve as the governing body for a particular sport at the international level. For instance, the Fédération Internationale de Gymnastique governs gymnastics, and the Fédération Internationale de Football Association governs soccer. Subject to the limitations of the Olympic Charter and World Anti-Doping Code, each IF has the authority to administer its sport, including establishing eligibility criteria for participation in the Olympic Games. In addition, NGBs for a particular sport exercise regulatory authority over that sport in the

94 Id. at 80.

95 Id.


97 Weston, supra note 96, at 107-08.


100 Mitten & Davis, supra note 81, at 76 (giving the example of the International Amateur Athletic Federation as the governing body for track and field).


103 INT’L OLYMPIC COMM., supra note 78, at 55.

104 Id. at 77.
NGB’s country. IFs have broad control over the conduct of sport competition under their auspices. Each IF establishes and enforces eligibility criteria and organizational and technical rules which govern their sport, including all technical control and direction of all aspects of the sport’s competition at the Olympic Games. There are thirty-five IFs.

3. National Olympic Committees

As outlined in the Olympic Charter, the purpose of NOCs is to “develop, promote and protect the Olympic Movement in their respective countries.” As such, NOCs are granted by the Olympic Charter the “exclusive authority” to represent their countries at the Olympic Games and at other Olympic Movement competitions and the authority to select the city within their country that may bid to host the Olympic Games. Although NOCs are permitted to “cooperate” and “achieve harmonious relations” with governmental bodies in their respective countries, NOCs are required by the Olympic Charter to remain autonomous and resist political or other pressure that would prevent them from complying with the Olympic Charter. In addition, among other things, NOCs are charged with encouraging within their respective countries “the development of high performance sport as well as sport for all.” NOCs, like IFs, also must adopt and enforce the World Anti-Doping Code. There are 206 national Olympic committees worldwide.

The NOC for the United States is the USOC. The USOC is recognized by the IOC as the national Olympic committee authorized to represent the United States in all matters concerning US participation in the Olympic Movement. The USOC does not receive federal funding, and it states that it is “one of the only NOCs in the world that also manages

---

105 Mitten & Davis, supra note 81, at 76 (giving the example of USA Track & Field as a member of the International Amateur Athletic Federation and the NGB for track and field in the United States).

106 INT’L OLYMPIC COMM., supra note 78, at 86-88.

107 Id.


109 INT’L OLYMPIC COMM., supra note 78, at 59.

110 Id. at 60.

111 Id.

112 Id.

113 Id. at 59.

114 Id. at 60.


116 Mitten & Davis, supra note 81, at 91.
Paralympic activities." The USOC recognizes thirty-one Olympic summer sport NGBs and eight winter sport NGBs, as well as six Paralympic sport governing bodies.

**C. The Amateur Sports Act: Purpose and Provisions**

The Amateur Sports Act operates to position the USOC in the larger Olympic Movement and to create a distinctly American – and highly successful – Olympic program. The current version of the statute is generally the same as it was when originally enacted in 1978. Moreover, though Congress has held numerous hearings and focused on various issues, such as USOC governance, the structure of the US Olympic Movement has not changed. However, the operational reality of the USOC has consistently been narrowed to what it is today: producing winning Olympic teams. Congress has tacitly accepted that the USOC cannot both achieve Olympic success and effectively develop grassroots participation opportunities to promote other social goals. Thus, the need for a comprehensive amateur sport policy and grassroots sport development has fallen by the wayside in favor of elite, high-performance sport.

The original catalyst for the Amateur Sports Act was the “overall decline of American achievement” in Olympic Movement competition. The original version of the statute derived from the work of the President’s Commission on Olympic Sports, established by President Ford in 1975. The Commission recommended reforms to address the structural issues inherent in US amateur sport that contributed to relatively disappointing results in international competition. Prior to 1978, amateur sport in the United States truly was the product of the free market. At the time, there was no entity with exclusive

---


118 Id. at 7.


120 Hobson & Rich, supra note 2 (explaining that while the Amateur Sports Act “gave the USOC wide-ranging responsibilities,” the USOC “historically has taken a focused view of its mission”); see also id. (quoting Donna Lopiano as saying that “[t]he USOC doesn’t see itself as very broad in scope .... Rather than think broadly and act like a ministry of sport, the USOC has decided to narrow its scope, strategically, to elite athletes and winning gold medals.”).

121 Amateur Sports Act of 1978, S. REP. NO. 95-770, at 8-9S. REP. NO. 95-770, at 8-9 (1978) (“The overall decline of American achievement in Olympic and international competition was apparent. For a nation of almost 250 million people we were falling seriously below our potential to both field strong international teams and to guarantee greater athletic opportunities at the grassroots level.”); see H.R. REP. NO. 95-1627 as reprinted in 1978 U.S.C.C.A.N. 7478, 7482.


123 See PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 2 (“[T]he United States is in severe trouble in the conduct and performance of its amateur sports program .... [T]he current organizational system for amateur sports simply is not good enough to continue representing the United States as a major power in international amateur athletic competition.”).

124 Id. at 3-5 (“[T]he free enterprise system has allowed a multitude of amateur sports organizations
jurisdiction over Olympic Movement sport in the United States, so that organizations such as the NCAA and the Amateur Athletic Union struggled for control over various sports, and athletes competing for a rival organization were threatened with being declared ineligible.125 The disputes and disorganization resulted in a marked decline in US athletic achievement in international sport.126 The statute therefore sought to address the structure of amateur athletics that often prevented talented athletes from competing in international competition.127 The Commission noted at the outset that “[i]n international sport[,] ... American performances are deteriorating. Against athletes from nations for whom Olympic medals are as precious as moon rocks, U.S. competitors seem to have steadily diminishing chances of success.”128

The President’s Commission was charged with determining what factors prevented the United States from achieving greater international sporting success,129 and its report strongly reflected the Cold War mentality at the time. The report declared that “a nation’s success in international sports competition is not indicative of the merits of its ideology – despite some countries’ attempts to convince us otherwise.” 130 Nevertheless, the Commission still asserted that “America’s strengths are clearly reflected in her sport.”131 According to the Commission, however, the converse was not true, as its report stated that “the weaknesses of American sport are not indications of concomitant weaknesses in the nation.”132 The Commission ultimately set about to recommend a uniquely American style for Olympic Movement sport. The Commission explained “the United States must rely on its greatest strength, free enterprise, to help finance amateur sport.”133

to flourish in this country ....

125 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, THE FINAL REPORT OF THE PRESIDENT’S COMMISSION ON OLYMPIC SPORTS 1975-1977, at 2-3 (1977) (explaining that jurisdictional disputes between amateur sports regulators acted to “stymie” athletes’ careers). The Commission cited the example of high school and college students who “have lost their eligibility to compete in school sports because they have represented the nation in international competition .... Athletes have been prevented by the NGB from competing in their sport simply because it was sponsored by a rival organization.” id.

126 See id. at 1.

127 See Amateur Sports Act of 1978, S. REP. NO. 95-770, at 2-3S. REP. NO. 95-770, at 2-3 (“Because no real structure exists which serves to define the jurisdictional limits of various organizations, disputes have arisen. In their struggles for power and for control over a sport, organizations have frequently told their athletes that if they choose to compete in a rival organization’s program, they will be declared ineligible for future competition.”); PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 3.

128 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 125, at 1.

129 Id. at ix.

130 Id. at 1.

131 Id. at 11.

132 Id.

133 Id. at 79.
Despite its ultimate emphasis on an American style for amateur sport regulation, the Commission highlighted important deficiencies in the way amateur sport was structured. The Commission noted that there was "no truly effective system for amateur athletics in this country" and that the overall structure of amateur sport was "characterized by its voids as much as by its positive programs." The Commission also underscored throughout its report the importance of broad-based, grassroots sport opportunities, stating “few would challenge the goal of encouraging mass participation in sports.” The Commission stated that participation in amateur sport should be expanded not just for greater Olympic success but also “for its own sake,” as in the Commission’s view, amateur sport is in the public interest.

The Commission’s primary recommendation was to create a centralized sport organization that had the exclusive right to select athletes for Olympic Movement competition. The Commission recommended that Congress enact legislation to, among other things, establish the modern version of the USOC through adopting what is now known as the Amateur Sports Act. Despite the USOC’s name, which suggests it is a government agency or has government affiliation, the Commission “made it clear that it did not want the Federal Government running amateur athletics in this country.” Congress therefore created the USOC as a federally chartered, nonprofit patriotic corporation, and not a federal instrumentality. The Amateur Sports Act created what was called a “vertical” structure for amateur sport that gave the USOC the exclusive power to coordinate and govern Olympic Movement athletics in the United States. The USOC was given no authority to regulate interscholastic or intercollegiate athletic competition.

The legislative history of the Amateur Sports Act mentions a variety of issues that Congress hoped would be addressed through this new structure. First, the Act was intended to provide a mechanism for resolving disputes and establishing greater

---

134 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at xii (“Rather, there are numerous organizations that function independently in amateur sports.”).

135 Id. at xiii.

136 Id. at 41.

137 Id. at xii.

138 Id. at 38 (“[A]mateur sports are in the public domain and exist for the enjoyment of everyone ....”).

139 See id. at xix.


141 Id. at 3.

142 Id.

coordination that would “bring order” to the splintered amateur sport community. The Amateur Sports Act would do this by empowering the USOC, consistent with the Olympic Charter, to recognize an NGB for each Olympic Movement sport. The Amateur Sports Act also required dispute resolution procedures so that athletes and other affected parties would not be harmed by jurisdictional or other conflicts. Second, the legislative history emphasized the need to develop programs for women and disabled athletes. Third, consistent with the views of the President’s Commission, the legislative history evinced a vision for the USOC as the entity that would broadly expand grassroots sport opportunities. For instance, in a letter to the Senate Commerce Committee, the USOC made the case for funding to support its work, stating that

broad-scale amateur sports opportunities for a maximum number of individuals at all ages and all levels of ability not only serve as a deterrent to many of our current social problems, but also make a substantial contribution to the development of the individual and to our society. If the United States is to benefit from these opportunities, it is imperative that adequate funding be provided for the full spectrum of amateur sports programs designed for the beginner as well as the elite athlete.

In short, the original vision for the USOC was that it would serve to develop grassroots sport opportunities, with particular attention to creating opportunities for women and disabled athletes, and that it would ensure the best possible representation on the US Olympic teams.

In the resulting legislation, Congress listed fourteen different purposes for the USOC, five of which are directly tied to its relationship to the greater Olympic Movement, with the remainder – while relevant to the Olympic pipeline – directed more generally to US amateur sport. Thus, the statute directs the USOC to “coordinate and develop amateur athletic activity” as it relates to international competition; “exercise exclusive jurisdiction ... over all matters” relating to US participation in and organization of the Olympic and Paralympic Games; “obtain for the United States” the best athletic representation possible for the Olympic and Paralympic Games; “promote and support” athletic

146 Id. §220509(a).
148 Id. at 12-13.
151 Id. §220503(3).
152 Id. §220503(4).
activities involving the United States and other nations;\textsuperscript{153} provide “swift resolution” for conflicts involving athletes and NGBs; and “protect the opportunity” of athletes and others to participate in athletic competition.\textsuperscript{154} 

More generally, however, the USOC is also charged with establishing “national goals for amateur athletic activities” and encouraging the achievement of such goals; \textsuperscript{155} “promoting and encouraging physical fitness” and the public’s participation in athletics; \textsuperscript{156} assisting in developing amateur athletic programs; \textsuperscript{157} providing “technical information” relevant to training, coaching, and performance, as well as supporting sports medicine and sport safety research; \textsuperscript{158} and, finally, “encouraging and providing assistance to amateur athletic activities” for women, athletes with disabilities, and athletes “of racial and ethnic minorities.” \textsuperscript{159} To support all its activities, Congress granted the USOC the exclusive right to control the Olympic trademarks.\textsuperscript{160} The Senate Committee on Commerce, Science, and Transportation has taken a lead role in overseeing issues related to the US Olympic Movement and the USOC.\textsuperscript{161} 

To meet its charge, the Amateur Sports Act provided that the USOC had the power to recognize privately incorporated NGBs, such as USA Gymnastics, for each Olympic Movement sport.\textsuperscript{162} The NGBs are thus responsible for developing the athletes that ultimately form Team USA. The Amateur Sports Act outlines the criteria for an amateur sport organization to be recognized as an NGB.\textsuperscript{163} The NGBs, in turn, establish specific eligibility criteria for athletes in their respective sport.\textsuperscript{164} In addition, NGBs have the

\textsuperscript{153} Id. §220503(5).
\textsuperscript{154} Id. §220503(8).
\textsuperscript{155} Id. §220503(1).
\textsuperscript{156} Id. §220503(6).
\textsuperscript{157} Id. §220503(7).
\textsuperscript{158} Id. §220503(10)-(11).
\textsuperscript{159} Id. §220503(12)-(14).
\textsuperscript{161} Hearing on the State of the USOC, at 1 (statement of Sen. John McCain, Chairman, S. Comm. on Commerce, Sci. & Transp.).
\textsuperscript{162} 36 U.S.C. §220505(c)(4).
\textsuperscript{163} Id. §220522. The Act explains that an amateur sport organization is eligible to be recognized as an NGB only if, among other things, it is incorporated as a nonprofit corporation with the purpose of advancing amateur athletic competition and it “has the managerial and financial capability to plan and execute its obligations.” Id. §220522(a).
\textsuperscript{164} Id. §220523(a)(5).
authority to represent the United States in the applicable IF\textsuperscript{165} and to serve as the coordinating body for its sport throughout the United States, which includes setting national goals and sanctioning international competitions that occur within the United States,\textsuperscript{166} conducting national championships,\textsuperscript{167} and recommending to the USOC athletes and teams suitable to represent the United States in the Olympic Games, the Paralympic Games, the Pan-American Games, and other international competitions.\textsuperscript{168} The responsibility of NGBs over their respective sports is reportedly why the USOC responded that it did not have primary responsibility to address the allegations of sexual abuse that came under the watch of USA Gymnastics.\textsuperscript{169}

NGBs have additional duties related to grassroots sport. For instance, NGBs are required to “develop interest and participation” in their respective sport and must “be responsible to the persons and amateur sports organizations [they] represent[.]”\textsuperscript{170} NGBs must also “keep amateur athletes informed of policy matters” and incorporate the views of athletes in policy decisions.\textsuperscript{171} Like the USOC, NGBs have an obligation to encourage athletic participation by women and individuals with disabilities.\textsuperscript{172}

The Amateur Sports Act was amended in 1998,\textsuperscript{173} but the core provisions were not changed. The purpose of the amendment was to “update” the Amateur Sports Act to reflect changes in the Olympic Movement since Congress enacted the original version, including the alternate schedule for the summer and winter Olympics (with a Games occurring every two years), which significantly changed the USOC’s “workload,” and a change in IF policy allowing professional athletes to compete in some Olympic sports, such as basketball.\textsuperscript{174}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{165} Id. §220523(a)(1).
\item \textsuperscript{166} Id. §220523(a)(2)-(4).
\item \textsuperscript{167} Id. §220523(a)(5).
\item \textsuperscript{168} Id. §220523(a)(6)-(7).
\item \textsuperscript{169} Hobson, supra note 8; Hobson & Rich, supra note 2 (explaining that the Amateur Sports Act, and how it has been interpreted, “has played a central role in the USOC’s historic inaction on child protection”).
\item \textsuperscript{170} 36 U.S.C. §220524(1).
\item \textsuperscript{171} Id. §220524(3).
\item \textsuperscript{172} Although the USOC has an obligation to encourage athletic participation by women, minorities, and individuals with disabilities, Congress only requires NGBs to encourage participation by women and individuals with disabilities. See id. §220524(6)-(7).
\end{enumerate}
\end{footnotesize}
Congress also noted that the Paralympic Movement had grown “in size and prestige,” and the statute included language to provide for “complete recognition” of the US Paralympic Movement. The effect was that the USOC was tasked with the “same duties with respect to the Paralympic Games as it has with the Olympic Games,” in that the USOC would be responsible for selecting athletes for teams, representing the United States in the international Paralympic Movement, providing financial support for Paralympic teams, and providing the same dispute resolution rights to disabled athletes. Congress also changed the terminology of the statute to make clear that “disabled athletes are ‘amateur athletes’ under the statute.

The amendments also provided additional protections for athletes. Congress required the USOC to maintain an Athletes’ Advisory Council and required that amateur athletes comprise at least 20 percent of the USOC board and other committees. The USOC was required to hire an athlete “ombudsman” to advise athletes on their rights. The USOC was also given additional authority, including the ability to remove to federal court any suit brought in state court for violation of the Amateur Sports Act, and a provision was introduced preventing a court from entering injunctive relief against the USOC in any dispute over an athlete’s participation in the Olympic Games where the claim is brought within twenty-one days of the event. The purpose of these revisions was to allow the USOC to maintain its authority to determine who will represent the United States when a dispute over such issues arises too close to the commencement of the Games, and where the USOC’s own dispute resolution procedures cannot provide for a decision in time. The USOC was also given the authority to send an “incomplete team” if there are not enough qualified athletes. These amendments all provided important improvements to the quality of the Olympic program, particularly for athletes and the Paralympic Movement. None of the changes were aimed at expanding the USOC’s obligations with respect to developing grassroots sport opportunities.

---

175 S. REP. NO. 105-325, at 2.
176 Id. at 5.
177 Id.
178 Id.
179 Id. at 5-6.
180 Id. at 7.
181 36 U.S.C. §220505(b)(9) (2012) (“[A]ny civil action brought in a State court against the corporation ... shall be removed, at the request of the corporation, to the district court of the United States in the district in which the action was brought ....”); id. §220509(a) (“[A] court shall not grant injunctive relief against the corporation within 21 days before the beginning of such games ....”); S. REP. NO. 105-325, at 4-6.
182 S. REP. NO. 105-325, at 6-7.
183 Id. at 7.
Congress did, however, hold hearings about the issue. For instance, in 1995, Congress held hearings on a variety of issues related to the Amateur Sports Act, specifically considering whether the USOC was meeting the “‘grass-roots’ mandate.” At least one senator noted that the Amateur Sports Act articulated “ambitious goals” for the USOC with respect to developing amateur athletes. Senator John McCain, while questioning the USOC about whether it was doing enough to develop grassroots sport, pointed out that “Olympic leaders admit that the committee programs and emphasis are geared toward elite athletes and the pursuit of Olympic medals.” Similarly, the President of the Amateur Athletic Union testified that “NGB’s [sic] have focused only on the elite athletes” and not the “base of the pyramid.” Tom McMillen, Co-Chair of the President’s Council on Physical Fitness and Sports, testified that there was generous financial support for elite athletes in the United States, but very little for youth recreational athletics. McMillen recommended allocating more resources to grassroots sport and increased government attention to recreational sport. He also recommended that Congress “strengthen the grassroots provisions of the Amateur Sports Act so that it has teeth,” including specific benchmarks for programming and resource allocation.

The USOC responded by stating that, while it recognized the importance of grassroots sport, “we cannot be all things to all people with limits on our financial resources” and that “[n]o other of the almost 200 national Olympic committees in the world face the challenges we face” in having to both develop grassroots sport opportunities and elite athletes who will be successful in Olympic competition. In explaining the financial challenge of such a mandate, the USOC stated that “our focus has become so wide that we can endanger

\textsuperscript{184} Hearing on the Amateur Sports Act, supra note 19, at 2 (statement of Sen. Ted Stevens, S. Comm. on Commerce, Sci. & Transp.) (stating that one hearing panel would address the requirement that the USOC and NGBs promote grassroots sport and that Congress was interested in “whether these grass-roots requirements are being met, or ways to more effectively ensure that they are met”); \textit{id.} at 33 (statement of LeRoy T. Walker, President, United States Olympic Committee).

\textsuperscript{185} \textit{id.} at 5 (statement of Sen. Larry Pressler, Chairman, S. Comm. on Commerce, Sci. & Transp.).

\textsuperscript{186} \textit{id.} at 85 (stating that the effect is that “it is extremely tough for young people to get involved”).

\textsuperscript{187} \textit{id.} at 94-95 (statement of Bobby Dodd, President, Amateur Athletic Union).

\textsuperscript{188} \textit{id.} at 88 (statement of Tom McMillen, Co-Chair, President’s Council on Physical Fitness & Sports) (“[W]hat we have, I believe, is a situation where Government has created one situation, an elite sports structure, and on the other by benign neglect has created an America at the bottom where there are no resources, and I think it is an upside-down system.”).

\textsuperscript{189} \textit{id.} at 90 (“Our government policies have helped develop and maintain an elite sports structure of significant support for the Olympic Games, professional sports monopolies, tax breaks for mega-stadiums, and anti-trust exemptions for pro teams. In contrast, our government is doing next to nothing for the masses ....”).

\textsuperscript{190} \textit{id.} at 92.

\textsuperscript{191} \textit{id.} at 33 (statement of LeRoy T. Walker, President, United States Olympic Committee).
all of the USOC’s obligations. The USOC explained that the grassroots mandate was a “major issue” that the USOC “has never shirked,” but that without additional resources, it would be difficult to balance developing grassroots amateurs with its “commitment” to high-performance Olympic athletes. Ultimately, Congress did not provide additional resources, and the issue of grassroots sport development was recast as a shared responsibility with “every organization governing sport in America.”

Besides the 1998 and 2018 amendments, the only other substantial policy change for the USOC and the US Olympic Movement was the government’s action to address doping in sport. Although anti-doping efforts have become a central feature of Olympic Movement sport, anti-doping policies are not mentioned in the Amateur Sports Act. Instead, Congress worked with the USOC to create the USADA. The White House Office of National Drug Control Policy simultaneously worked to establish the World Anti-Doping Agency (WADA) and the World Anti-Doping Code. The federal government separately supports the USADA through annual grants. Pursuant to the USOC’s National Anti-Doping Policies, a condition of funding and recognition of an NGB is that the NGB’s rules are fully compliant with the World Anti-Doping Code.

The recently passed legislation addressing sexual abuse of athletes represents the next stage of US Olympic Movement policymaking – and is an important move toward reforms aimed at athlete well-being. Key features of the legislation include requiring SafeSport to develop procedures and training to prevent all forms of athlete abuse, and requiring

192 Id. at 34.

193 Id. at 37-39.

194 Id. at 44-46 (statement of Richard Schultz, Executive Director, United States Olympic Committee) (“[W]e cannot retreat on the support and resources we are mandated to offer the elite-level athlete....”).


196 See Koller, supra note 33, at 114.

197 Id. at 113-14.


201 See Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017,
NGBs to implement such procedures. The law also imposes reporting requirements for all adults who interact with amateur athletes at training facilities or competitions to report suspected cases of abuse to law enforcement and the entity designated as being responsible for investigating and resolving such investigations (i.e., SafeSport). SafeSport is further required to develop procedures to avoid one-on-one interactions between amateur athletes who are minors and nonguardian adults at sanctioned NGB facilities or events, along with independent oversight procedures. The legislation aims to make clear that the dispute resolution provisions of the Amateur Sports Act should not be an impediment to protecting athletes and addressing allegations of abuse.

In sum, nearly forty years after it was enacted, the Amateur Sports Act still contains the original vision of the USOC as the entity primarily responsible for both developing grassroots sport and assembling the very best Olympic teams. This mission generally makes sense because the success of the US Olympic program depends on stimulating children’s interest in sport. Viewed from this perspective, the USOC’s efforts to develop grassroots sport opportunities have been effective. The Olympic pipeline is robust, and the medal counts are high.

However, developing grassroots sport opportunities is important not simply to generate medals in Olympic Movement competition. Instead, it is important because recreational athletics serve other significant social needs, such as those tied to citizens’ health and well-being. From this perspective, the USOC cannot, and should not, be the primary entity in the United States to tackle the issue. Instead, now that it has taken steps to address athlete abuse, Congress should further amend the Amateur Sports Act to adopt provisions that will enhance the well-being of Olympic Movement athletes. Congress should also, however, take the opportunity to finish the work started by the President’s Commission to create a next generation, true amateur sports act.

III. MODERNIZING THE AMATEUR SPORTS ACT

The next wave of policymaking in the US Olympic Movement should focus on improving the health and well-being of both elite athletes and all US citizens. The recent amendments focusing on athlete abuse are an important step in the right direction, and additional reforms – outlined below – can contribute to even greater protections and benefits for Olympic Movement athletes. However, policymaking should also focus on meaningful ways to address problems with youth, amateur sport, including providing an

---

202 Id.

203 Id.

204 H.R. REP. NO. 115-136, at 5 (2017) (“Although USA Gymnastics received reports of abuse, some victims claimed USA Gymnastics allowed the abuse allegations to remain dormant .... USA Gymnastics has claimed that the Ted Stevens Olympic and Amateur Sports Act ... prevents it from disciplining coaches or other members when allegations are made against them. They claim the Act limits the actions they can take against coaches because it requires due process before a coach’s membership can be revoked.”).

205 QUAD REPORT, supra note 1, at 2.
adequate supply of accessible, grassroots participation opportunities. To do so, Congress should no longer conflate Olympic and amateur sport or view the function of grassroots sport solely as providing an Olympic pipeline. Instead, Congress should relieve the USOC of its statutory role as the entity responsible for developing amateur sport in the United States and move in a new direction that heeds the call from the President’s Commission, which stated that “[s]ome countries determine who are their best athletes, then support them to the fullest and pay little attention to the others except for those who have the potential to become ‘elite’ athletes one day. This is not the American way, nor should it be.”

Specific recommendations for amendments to the Amateur Sports Act are explained below.

A. Update Provisions Related to the Olympic Movement

Updates to the Amateur Sports Act should focus on improving conditions for athletes. 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. As explained above, its underachievement was thought to be the result of structural issues within the amateur athletic community, with the result being that the private sector was failing to work for the common national sporting good. The Amateur Sports Act addressed the issue with a new structure for US Olympic Movement sport that would serve the needs of athletes and the nation. The results of the Amateur Sports Act are undeniable – the United States is consistently at the top of the medal counts in both the summer and winter Olympic Games.

Now, ensuring that the best athletes have access to international competition is no longer the issue. Instead, it is time to focus on the way athletes are trained and brought along through the Olympic program – in order to look for ways to better balance the drive to win medals with protecting athletes. To do so, Congress should further update the Amateur Sports Act to include provisions that provide greater support to the health and well-being of athletes, beyond the new requirement to have standards for preventing abuse and managing abuse claims. Second, the statute should be amended to provide concrete protections for all types of whistleblowers, so that athletes and other support personnel are encouraged to report wrongdoing and are protected when they do so. Third, Congress should look to strengthen NGBs’ commitment to gender equity.

1. Adopt Provisions to Promote Athlete Health and Well-Being

Congress took an important first step toward promoting athletes’ health and well-being with the recent passage of requirements to prevent and adequately respond to reports of athlete abuse. Although the full extent of the problem is not known, as outlined by a GAO report and underscored during hearings on the legislation, sexual abuse of athletes

---

206 President’s Comm’n on Olympic Sports, supra note 18, at 6.

207 Id. at xii-xiii.

208 Quad report, supra note 1, at 3 (“Team USA topped the medal chart in every category ... leading all nations with 121 medals, including 46 golds.”).

209 U.S. Gov’t Accountability Off., supra note 9, at 1.
is a persistent problem within Olympic and amateur sport. The recent amendment requires SafeSport to develop policies and procedures, applicable to all NGBs, to prevent abuse of minor amateur athletes and properly manage allegations of abuse. The legislation also includes a provision limiting liability for the USOC, NGBs, and SafeSport. The USOC and NGBs will comply with these provisions by relying on the newly formed SafeSport program.

The USOC formed and funded SafeSport in much the same way that it established the USADA. Similarly, a SafeSport Code was developed that, like the USADA’s protocol for testing and results management, is applicable to all NGBs. The purpose of the SafeSport program is to “create and maintain a sport community where all persons who participate in sport programs and activities can work and learn together in an atmosphere free of all forms of emotional, physical and sexual misconduct.” The US Olympic and Paralympic Movement first established the SafeSport program in 2012. In 2017, SafeSport was opened in Denver, Colorado. The program serves all athletes at all competitive levels.

---


212 Id.

213 See Weston, supra note 210, at 438 (explaining the formation of the SafeSport program).

214 Pfohl Testimony, supra note 50; Weston, supra note 210, at 456.

215 Pfohl Testimony, supra note 50.


levels. The SafeSport Code is the required protocol for preventing and responding to reports of athlete abuse for the USOC and NGBs. SafeSport, meanwhile, serves as a resource for other amateur sport organizations.

SafeSport is comprised of two distinct offices. One is responsible for education and outreach (e.g., promoting a positive sport culture, seeking to prevent athlete abuse, and raising awareness of such issues). The other office is charged with investigating and resolving alleged violations of the SafeSport Code for the US Olympic and Paralympic Movements. The Code’s authority is derived from the USOC bylaws, which require all forty-seven NGBs to adhere to the SafeSport Code. Individuals covered by the SafeSport Code include members of NGBs and those who are authorized to assume a position of authority over, or have frequent contact with, athletes. Covered athletes are those who are members of an NGB. The SafeSport Code prohibits sexual misconduct, child sexual abuse, emotional or physical misconduct, and retaliation. The SafeSport Code also provides that the US Center for SafeSport’s Response and Resolution Office has the exclusive authority to investigate and resolve allegations of sexual misconduct and related prohibited behavior, so that neither the USOC nor the relevant NGB will conduct their own investigations in such cases. Thus, independent SafeSport investigators will examine complaints of abuse, and SafeSport will issue findings. The

SafeSport Press Release], [https://safesport.org/files/index/category/press-releases

Pfohl Testimony, supra note 50.

See id.


SAFESPORT CODE, supra note 216, at 1.

Id. at 8-9.

Id. at 9; see USOC BYLAWS, supra note 223, § 9.12 (“A decision concerning a safe sport rule violation adjudicated by the independent safe sport organization designated by the corporation to investigate and resolve safe sport violations shall not be reviewable through, or the subject of, these complaint procedures.”).
USOC requires all NGBs to enforce the appropriate sanction under the Code. This sanction must be respected throughout US Olympic Movement sport. The SafeSport Code does not displace or otherwise restrict an individual’s recourse under federal or state law.

The SafeSport program is an important step toward protecting Olympic Movement athletes in the United States. However, it is too early to determine whether the SafeSport initiative will be effective. Congressional testimony by SafeSport’s director and CEO Shellie Pfohl highlighted the fact that funding will be necessary to achieve the program’s full promise. SafeSport’s website reflects this uncertainty over funding, with a donation link prominently featured, and a statement that a “tax-deductible donation will help end ... abuse in sport.” If SafeSport’s leadership is forced to focus on fundraising to support its work, the initiative’s effectiveness could be jeopardized. Instead, Congress should provide SafeSport with grants, as it has with the USADA, to support its work. Congress should monitor SafeSport’s outcomes, and if the program establishes itself as a truly independent entity that secures measurable results, as the USADA has, Congress should continue to support it as a key feature of the US Olympic Movement.

A second change that would contribute to athletes’ health and well-being is amending the Amateur Sports Act to set uniform requirements on NGBs for preventing and managing concussions. Currently, concussion management is delegated to NGBs, which loosely

228 See SAFESPORT CODE, supra note 216, at 9; see also U.S. OLYMPIC COMM., NGB ATHLETE SAFETY POLICY (2018).

229 SAFESPORT CODE, supra note 216, at 9.

230 Id. at 1.

231 Pfohl Testimony, supra note 50. Indeed, it was lack of sufficient funding that delayed SafeSport’s opening. The Washington Post reported that while SafeSport was originally scheduled to be operational in 2015, fundraising difficulties delayed the launch until 2017. Hobson & Rich, supra note 2.


follow the guidance from their sport’s IFs. The IOC Medical and Scientific Commission also references a 2013 Consensus Statement on sport concussions.

While it is clear that NGBs are trying to promote awareness and better management of concussions, much more can be done to protect athletes. For instance, during the 2015 Women’s World Cup, viewers saw the terrifying collision between German player Alexandra Popp and US player Morgan Brian. Brian remained down on the field for several minutes and appeared “truly dazed” when she got up; nevertheless, she was back in the game shortly thereafter. While US teams must play by IF sporting rules in international competitions such as the World Cup, Congress should consider whether athlete health and safety can be better safeguarded by not simply deferring to IFs and NGBs.

Congress should therefore consider expanding current bills proposing federal standards for concussion management to include the Olympic Movement, or it should follow the lead of the fifty states that have adopted concussion management guidelines, and continue to adopt further reforms to protect athletes. In youth, amateur sport, legislation at the state level mandates a relatively uniform approach to concussions. All states require removal from play and a return only after proper medical clearance. While these laws might not go far enough in preventing the initial injury, they represent an important change in the approach to regulating sport and will help contribute to changing norms around management of sport-related concussions. Moreover, due to the coverage of state concussion management statutes, it is possible that some athletes who are members of NGBs and participating at the grassroots level will be covered by the state provisions.

---

235 See Paul McCrory et al., Consensus Statement on Concussion in Sport: The 4th International Conference on Concussion in Sport Held in Zurich, November 2012, 47 BRIT. J. SPORTS MED. 250, 255 (2013) (stating that sport federations were taking measures to respond to the issue of sport concussions).


239 Lowrey, supra note 51, at 63.

240 Id. at 64.

241 Id.

242 Id. at 64-65.
However, the statutes do not reach athletes beyond high school[243] and thus do not apply to many elite, Olympic athletes. In addition, whether or not an athlete is eighteen, providing clear standards for concussion management through NGBs – and not simply promoting “awareness” – has a better likelihood of protecting athletes. NGBs most closely communicate with their coaches and athletes, and NGBs directly control coaches’ and athletes’ access to participation in sanctioned competition. Establishing a uniform policy also has the benefit of communicating with greater clarity than a patchwork of approaches. Finally, a uniform policy would ensure greater fairness for athletes in the management of concussions. Athletes should not have more or less attention paid to sport concussions based on the sport they play and their NGB’s willingness to adopt and enforce appropriate concussion management policies.

Finally, to effectuate better concussion management and promote overall health and well-being of athletes, Congress should consider directing the USOC to set clear standards for coaches and sports medicine personnel. The Amateur Sports Act should therefore also be amended to require baseline standards for Olympic and amateur sport relating to sports medicine and coaching. While much has been written about the so-called “professionalization” of youth sport, 244 there has not been a corresponding professionalization of coaching in terms of required certifications or education both in the training of athletes specific to the particular sport and athlete health and well-being more generally.

Similarly, Congress should consider requiring the USOC and NGBs to maintain clearer standards for the medical professionals that care for Team USA. “Sports medicine” was part of the concept for the US Olympic program that was articulated in the original Amateur Sports Act. 245 The USOC Sports Medicine Division was instituted in part to be a central coordinating body for sports medicine knowledge and for the purpose of disseminating information that would benefit athletes and overall US athletic performance and society at large. 246 As conceived, the USOC Sports Medicine Division seeks to develop programs in basic science, exercise physiology, biomechanics, sports psychology, nutrition, medical care, and athlete training. 247 In this conception, “sports medicine” is an umbrella term referring to everything from athlete nutrition and mental preparedness to the provision of

243 See NETWORK FOR PUB. HEALTH LAW, SUMMARY MATRIX OF STATE LAWS ADDRESSING CONCUSSIONS IN YOUTH SPORTS (2017), https://www.networkforphl.org/_asset/7xwh09/StateLawsTableConcussionsFINAL.pdf?availat%20networkforphl.org [https://perma.cc/K8V5-SKGM].


245 See 124 Cong. Rec. S31,666 (daily ed. Sept. 26, 1978) (“The role of sports medicine has become increasingly important in the total development of well-conceived amateur sports programs.”).

246 Id.

247 Id.
actual clinical medical services. Health care providers ranging from chiropractors and family physicians to orthopedic surgeons claim to practice in this area.\textsuperscript{248}

Thus, while the concept of “sports medicine” certainly involves medical professionals, the variety of individuals who can claim to practice “sports medicine” – and the lack of clear definitions and standards for what sports medicine entails – leaves athletes vulnerable to unqualified and, in some cases, dangerous individuals providing purported treatment that is either not beneficial or actually harmful. Using the USA Gymnastics scandal as an example, Nassar has asserted that he did not sexually abuse his accusers but was instead providing legitimate sports medicine care.\textsuperscript{249} Amending the Amateur Sports Act can therefore ensure better treatment of athletes by requiring those who work closest with athletes to meet consistent standards.

2. Adopt Provisions to Protect Whistleblowers

A second important change to the Amateur Sports Act would be adding protections for whistleblowers.\textsuperscript{250} The importance of this issue came to light in the year preceding the 2016 Rio de Janeiro Olympic Games. At that time, WADA released a report on an independent investigation into allegations of widespread, state-sponsored doping in Russian sport. The report concluded “beyond a reasonable doubt” that the Russian government orchestrated an extensive program of athlete doping and positive-test cover-ups in at least thirty sports.\textsuperscript{251} Evidence provided by Yuliya Stepanova, a Russian track-and-field athlete; her husband and former Russian anti-doping official, Vitaly Stepanov; and Grigory Rodchenkov, a former director of Russia’s anti-doping lab,\textsuperscript{252} was critical to


\textsuperscript{249} Lauren Green, Could Lawrence Nassar Have Been Prevented from Assaulting Dozens of Athletes?, SPORTS ILLUSTRATED (Mar. 3, 2017), https://www.si.com/more-sports/2017/03/03/scorecard-protect-and-serve-lawrence-nassar-assault [https://perma.cc/7C6F-GQTS].

\textsuperscript{250} NANCY M. MODESITT, JANIE F. SCHULMAN & DANIEL P. WESTMAN, WHISTLEBLOWING: THE LAW OF RETALIATORY DISCHARGE 1-33 (3d ed. 2015).


the effort to uncover the scope of the Russian Olympic program’s cheating. As a result of their revelations, all three were forced to flee Russia, and Stepanova lost the ability to compete as a member of the Russian team.\(^{253}\)

In the report exposing the doping culture in Russian track and field, an independent commission noted that WADA did not have adequate protections in place to encourage and support whistleblowers.\(^{254}\) In addition, WADA recommended that the International Association of Athletics Federations (IAAF) and IOC recognize Stepanova and Stepanov’s unprecedented acts by offering them the necessary support to mitigate the harm to them as a result of their revelations.\(^{255}\) Although the IAAF cleared Stepanova to compete independently from the Russian team, the IOC refused to allow her to compete in the Games.\(^{256}\)

The lessons from the Russian doping scandal suggest an additional area for reform in the US Olympic program. In particular, the revelations of Russian doping and resulting damage to Stepanova’s track-and-field career demonstrate that it is often only through the efforts of a whistleblower that the integrity of sport can be preserved. Thus, even in the US Olympic program, wrongdoing has happened and will likely continue to happen, and in these cases, credible evidence is most likely to come from those athletes and officials who are on the inside. Without rules to incentivize and protect these crucial sources, it is unlikely that they will come forward since the personal costs can be great. Importantly, whistleblowing is not simply about doping. The allegations involving Nassar’s abuse of numerous gymnasts, including some who were at the elite level, show that the culture of abuse could exist in part because the gymnasts were afraid to report Nassar’s behavior.

---


for fear of losing their place on the team. Amending the Amateur Sports Act to provide explicit protections for whistleblowers would send a strong message and provide clear protections for those who come forward to protect the integrity of the US Olympic Movement.

This is not to say that the US Olympic Movement has turned a blind eye to the value of whistleblowers. The recent legislation adopting SafeSport reforms contains an anti-retaliation provision. The USADA operates a Play Clean Tip Center where anonymous sources may report potential anti-doping rule violations. The USOC has a code of conduct and an ethics committee that is responsible for managing ethics complaints. In addition, it is possible that whistleblowers in the US Olympic program could be protected by various laws aimed generally at whistleblowers. Moreover, dispute resolution procedures administered through the USOC and NGBs may also provide a measure of protection. However, relying on the potential applicability of piecemeal protections and administrative hearings will not serve the purpose of encouraging whistleblowers to come forward and may leave them exposed to retaliation if they do. A better approach is to require, through the Amateur Sports Act, that the USOC and NGBs provide meaningful protections for those who blow the whistle on wrongdoing, whether it involves doping, athlete abuse, or any other issue.

3. Incorporate Additional Gender Equity Standards

The past year also highlighted the need for the US Olympic Movement to fully commit to principles of gender equity, especially with regard to athlete pay. In 1978, when Congress enacted the Amateur Sports Act, Title IX of the Civil Rights Act had only been on the books for six years, and the regulations applying Title IX in the sports context had only been in effect for three. The Amateur Sports Act reflected this early move for gender equity in sport by stating that one of the purposes of the USOC is to “encourage and provide assistance to amateur athletic activities for women.” This charge continues to be

---


260 USOC BYLAWS, supra note 223, §§ 5.5, 5.5.3, at 22-23.

261 MODESITT, SCHULMAN & WESTMAN, supra note 250, at 1-34, 1-35.


relevant. While sport participation for women has increased dramatically since 1978, more still needs to be done to secure the benefits of sport for women and girls, especially in some communities. However, the increase in women’s participation in sport since 1978 has meant that the United States now has well-developed elite programs in a variety of sports, and Congress should require that these women athletes are treated equitably.

Title IX and its accompanying regulations define gender equity in athletics as both an obligation to create sport opportunities for women and girls and a requirement to provide equitable support to women and girls who participate. Title IX applies to educational programs that receive federal funding; it does not apply to the USOC or the US Olympic Movement. However, Title IX’s success is perhaps most visible in international athletics, as US women across a variety of sports have achieved enormous success. From this perspective, Title IX’s principles have provided an important payoff through the US Olympic Movement in that a greater number of female athletes and greater support for female athletics has meant, predictably, more and better elite women athletes. The USOC has harnessed this increase in women’s sport participation through greater participation opportunities for women in the US Olympic program. For instance, in the 2016 Rio de Janeiro Olympic Games, Team USA was comprised of 291 women and 263 men. It is clear, then, that from the perspective of participation opportunities, the US Olympic Movement is living up to the ideals expressed through Title IX.

However, for the women in elite Olympic Movement sport, participation is no longer the issue. Instead, it is in some cases equitable support and compensation. For instance, in

264 Carr, supra note 262, at 63.

265 See QUAD REPORT, supra note 1, at 3 (stating that US women won “more than half of Team USA’s medals at the Olympic and Paralympic Games”).

266 Koller, supra note 59, at 410-11.

267 20 U.S.C. §1681(a) (2012) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance .”).

268 Cohen v. Brown Univ., 101 F.3d 155, 188 (1st Cir. 1996) (“One need look no further than the impressive performances of our country’s women athletes in the 1996 Olympic Summer Games to see that Title IX has had a dramatic and positive impact on the capabilities of our women athletes, particularly in team sports. These Olympians represent the first full generation of women to grow up under the aegis of Title IX. The unprecedented success of these athletes is due, in no small measure, to Title IX’s beneficent effects on women’s sports .... What stimulated this remarkable change in the quality of women’s athletic competition was not a sudden, anomalous upsurge in women’s interest in sports, but the enforcement of Title IX[,]”); see Hearing on the Amateur Sports Act, supra note 19, at 12 (statement of Norma V. Cantú, Assistant Secretary for Civil Rights, United States Department of Education) (“Senator Hatch has perhaps best captured the essence of the meaning and promise of Title IX. In 1984, on the Senate floor, he observed that there were few, if any, Senators who did not want ‘Title IX implemented so as to continue to encourage women throughout America to develop into Olympic athletes ...’”); QUAD REPORT, supra note 1, at 3.

2016, five members of the women’s US national soccer team brought a claim against the US Soccer Federation, alleging that they were discriminated against on the basis of gender in violation of the Equal Pay Act and Title VII of the Civil Rights Act. In their complaint, the women detailed the ways in which their pay and benefits were less generous than that provided to their male peers. The players also asserted that the lower pay and unequal treatment occurred despite the fact that the women’s team has been far more successful than the men’s. Similarly, the women’s US national hockey team announced in 2017 that they would boycott the upcoming world championships if USA Hockey did not agree to increase their pay and benefits to be more in line with what the men enjoyed. USA Hockey came to an agreement with the team, pledging to provide increased compensation and benefits similar to the men’s program.

While both cases ultimately settled, the outcome of any legal resolution was far from clear. For instance, the US Soccer Federation may have argued successfully that it is not a covered employer under the Equal Pay Act or that the players are not covered employees. It may also have succeeded by asserting that the pay differential was due to “any other factor other than sex.” In addition, the analysis would have been complicated by the fact that unlike most jobs, elite athletics are deliberately sex segregated. Finally, questions around whether the women were operating under a collective bargaining agreement likely also would have had an impact on the case.

These issues could be sidestepped by Congress adding a provision to the Amateur Sports Act to require that NGBs make a stronger commitment to gender equity. Currently, the Amateur Sports Act requires the USOC to “encourage and provide assistance to” women’s amateur athletics. The statute also requires NGBs to “provide equitable support and

---


272 Id.


274 Id.


encouragement for participation by women where separate programs for male and female athletes are conducted on a national basis.” While this provision arguably covers matters such as athlete pay, it also appears aimed at supporting and encouraging “participation.” Indeed, the USOC seems to interpret its effectiveness in providing support to women with reference to the success of the women in the Olympic program. The USOC states in its Quad Report to Congress that “[e]quality was once again at the forefront, with American women winning more than half of Team USA’s medals at the Olympic and Paralympic Games.” While medal winning can be a measure of how robust the USOC and NGBs’ support of women’s athletics is, the examples of the women’s national soccer and hockey teams demonstrate that medal winning by women does not necessarily correlate with equitable treatment.

Thus, while sport participation for women and girls at the grassroots level is a persistent issue that must continue to be tackled, it is not a pressing issue in elite sport. Accordingly, this provision should be amended to clarify that the “support” Congress intends to be equitable is not just in the development of participation opportunities, but also in the actual pay and other benefits that Olympic Movement athletes enjoy.

B. Develop a True Amateur Sports Act

In addition to amending the Amateur Sports Act to promote elite athlete health and wellbeing, Congress should look to the work of the President’s Commission, and subsequent congressional testimony on the importance of grassroots sport, and seek to make an impact on how the United States provides these necessary opportunities. Building a twenty-first-century amateur sports act can therefore draw on the ideals of the past that were articulated but never fully realized.

To do this, Congress should move away from the general view that staying out of sport is the best approach. Just as Congress has made targeted, important reforms with respect to Olympic Movement sport, it can also contribute to solving the problems of grassroots amateur sport with measured, effective initiatives. Moreover, while

278 Id. §220524(6).

279 QUAD REPORT, supra note 1, at 3 (noting that the US women athletes also enjoyed “unprecedented success”).

280 See Hearing on the Amateur Sports Act, supra note 19, at 90 (statement of Thomas McMillen, Co-Chair, President’s Council on Physical Fitness and Sports).

281 It could be argued that Congress should not regulate in the area of grassroots youth sport and should instead simply focus on the Olympic Movement because the Olympic Movement has international implications and requires a centralized approach. While it is true that Congress essentially must provide at least some direction for the US Olympic Movement, providing centralized leadership in the area of youth sport is arguably as important. See id. at 91-92. First, Congress purported to do that when it originally enacted the Amateur Sports Act. See 36 U.S.C. §220503. The findings of the President’s Commission made a compelling case for a national policy agenda for amateur sport, and those findings are even more important today. See PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 27. In addition, much regulation of youth sport is done at the state level, through schools. See, e.g., PROJECT PLAY, ASPEN INST., STATE OF PLAY 2017: TRENDS AND DEVELOPMENTS 10 (2017), https://www.aspeninstitute.org/publications/state-of-play-2017-trends-and-developments/ [https://perma.cc/SW7M-BT8A]. While
Congress should aim to address grassroots sport, it should not do so simply to serve the US Olympic program.

Since Congress originally enacted the Amateur Sports Act, it has become apparent that developing Olympic talent and grassroots opportunities are two different (albeit connected) missions, and the USOC has made clear that to develop broad-based participation opportunities, it needs additional resources. The USOC certainly has not ignored grassroots sport. It has partnerships with the NCAA, community-based multisport organizations, and others. The USOC is also charged with developing grassroots sport opportunities for the Paralympic pipeline. Congress has not provided additional funding and support for such work and, as currently operated, the USOC has focused almost exclusively on using its resources to develop athletes with the best chance of winning Olympic medals. Its stated mission is “to support U.S. Olympic and Paralympic athletes in achieving sustained competitive excellence while demonstrating the values of the Olympic Movement, thereby inspiring all Americans.” It is only to the extent that “inspiring all Americans” can be interpreted as developing grassroots sport opportunities that the USOC’s mission is responsive to those provisions of the Amateur Sports Act that the education-based model with state regulation has resulted in opportunities for many children through their schools, many more children do not have access to meaningful opportunities to participate. See id. at 2. This, combined with the childhood obesity epidemic and the known public health benefits of sport participation, underscores the importance of a national approach. This Article assumes, therefore, that the original premise behind the Amateur Sports Act is even more valid today and accordingly argues that Congress should take the next step to realize the Act’s full promise.

\[282\] Hearing on the Amateur Sports Act, supra note 19, at 33 (statement of LeRoy T. Walker, President, United States Olympic Committee).


\[284\] QUAD REPORT, supra note 1, at 18.

\[285\] Id. (“Another significant focus of USOC support in 2013-16 was U.S. Paralympics. Despite government grants decreasing by nearly $18 million from the previous quad, overall funding increased by close to $1 million with the USOC directing almost $19 million in additional funds to Paralympic athletes and programming.”).

\[286\] Id. at 3, 18. The USOC’s mission is “[t]o support U.S. Olympic and Paralympic athletes in achieving sustained competitive excellence while demonstrating the values of the Olympic Movement, thereby inspiring all Americans.” USOC BYLAWS, supra note 223, §2.1, at 5 (“Mission Statement”); U.S. OLYMPIC COMM., supra note 108, at 2. The USOC has reiterated that its mission is “sustained competitive excellence.” U.S. OLYMPIC COMM., supra note 108, at 3. To achieve this, the USOC states that it operates “in a culture of service to America’s elite athletes” supported by, among other things, “strategic funding.” Id. at 11. The USOC also reports that 80 percent of its expenditures – over $700 million – went to athlete support and NGBs. QUAD REPORT, supra note 1, at 18. The USOC states that grants are “strategically allocated to give the greatest number of American athletes the opportunity to reach the podium using a results-driven resource-allocation process.” Id.

\[287\] QUAD REPORT, supra note 1, at 1.
require as much. Thus, Congress has deferred to the USOC and its sponsors to determine that the USOC’s focus will be on medal winning and commercial rewards.288

Congress could of course require the USOC to do more in this regard. This is not the best approach. Continuing to combine the concepts of Olympic and amateur sport, and making a statutory gesture toward grassroots sport, is not likely to effect the needed change. The USOC is achieving its Olympic mission with great success, and requiring it to dilute its resources and efforts in support of a broader goal would likely have a negative impact on the Olympic program. Moreover, continuing to conflate Olympic and amateur sport, even with additional statutory language requiring the USOC to make greater efforts toward grassroots youth sport, suffers from two significant limitations. First, it is likely that the USOC will continue on the same course, with a primary focus on elite sport. Second, making the USOC solely responsible for developing grassroots sport opportunities assumes that the value of nonelite, youth sport is as a feeder to the Olympic program instead of an end in itself. Congress should therefore move past the concept of the USOC having primary responsibility for amateur sport in the United States and simply acknowledge the USOC as the body responsible for elite, Olympic athletics and trim its statutory responsibilities to correspond to its true operation.

Just as Congress should not rely on the USOC to develop grassroots sport opportunities, it should not exclusively rely on schools and the private sector to provide them either.289 The 1976 report of the President’s Commission explained the many “voids” in the amateur sport landscape and remarked that reliance on schools to provide sport opportunities did not always produce the best results.290 This is even more accurate today. As explained above, statistics show the alarming rates of inactivity among children.291 Schools provide far less physical education than they used to, and childhood obesity is a significant public health concern. We also have a fuller understanding of the value of sport participation over both the short and long term.292 As a result, unlike in 1978, when the most pressing amateur sport issue was access to competition for developing elite athletes, the most pressing amateur sport problem facing the United States today is simply physical literacy and access to sport. Congress should account for this new reality by taking steps to adopt a true amateur sports act.

The blueprint for true amateur sports legislation can be found in the approach used to enact the current Amateur Sports Act. The statute grew out of the recommendations of the President’s Commission on Olympic Sports, which thoroughly studied the issue and

288 FARREY, supra note 46, at 188-91.

289 See Hearing on the Amateur Sports Act, supra note 19, at 91-92 (statement of Tom McMillen, Co-Chair, President’s Council on Physical Fitness and Sports). And it cannot rely on states. See id.; Kelley & Carchia, supra note 47 (explaining that where a child lives “makes all the difference,” as sport participation statistics for youth vary widely among states).

290 PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 27.

291 Facts & Statistics, supra note 52.

made concrete proposals for reform. SIMILARLY, NEXT-GENERATION AMATEUR SPORT LEGISLATION COULD BE DEVELOPED BY STAKEHOLDERS WORKING TOGETHER TO CREATE A BLUEPRINT FOR A NEW CONCEPTION OF AMATEUR SPORT IN THE UNITED STATES. Indeed, much of the work done by the President’s Commission and themes emphasized during congressional testimony in the 1990s are still relevant today. Nonprofit groups such as the Aspen Institute’s Project Play also have important data and innovative proposals for remaking our approach to youth sport. However, like the pre-1978 splintered approach to Olympic sport in the United States, an agenda and solutions would benefit from centralized leadership and greater coordination among the varying contexts in which sport opportunities may be accessed. It is in this way that Congress has a role to play by creating a public or private entity to tackle such work.

A new entity could be modeled off the creation of the USOC, the USADA, and now SafeSport. While all three are primarily intended to serve the US Olympic Movement, they illustrate that centralized coordination – with government support – can improve amateur sport. In working to create such an entity, Congress should consider reframing youth sport participation as a public health issue and should give serious consideration to the benefits of a national policy. In doing so, Congress could reallocate many of the general provisions found in the current version of the Amateur Sports Act requiring the USOC to develop grassroots sport opportunities to an entity created for just that purpose.

Beyond generally working to develop grassroots participation opportunities, a true amateur sports act could task an entity with focusing on the specific policy issues that work to depress participation. For instance, a true amateur sports act could put greater emphasis on adaptive and inclusive sport for individuals with disabilities. It could develop programs and partnerships to provide meaningful sport participation opportunities for individuals from economically disadvantaged backgrounds and in geographic areas with lagging sport participation. In addition, a new amateur sports act could charge an amateur sport entity with setting uniform standards in areas that are needed in amateur sport, such as standards for coaching and concussion management. Such an act could also charge the entity with gathering important data that can be used to make sport safer and more accessible. In short, a true amateur sports act would recognize that there is a public interest in amateur sport.


295 See PRESIDENT’S COMM’N ON OLYMPIC SPORTS, supra note 18, at 38 (“The management of amateur sports is accountable to the public[.]”).

296 See id. at 38, 57.

297 Id. at 76, 103.
IV. CONCLUSION

Congress demonstrated through the Amateur Sports Act and the structure of the US Olympic program that a largely private-sector, uniquely American style of Olympic sport could be a highly successful model for the world of elite, international sport. Medal counts have never been higher, and the Team USA brand is strong. However, now that it has amended the Amateur Sports Act to address abuse of athletes, Congress should once again seize the opportunity to make the United States a leader in Olympic and amateur sport. To do this, it should amend the Amateur Sports Act to enact additional provisions aimed at athlete health and wellness, including in the area of concussion management, coaching, and sports medicine. It should also seek to encourage and strengthen protections for whistleblowers who provide important information about wrongdoing in Olympic sport. And Congress should do more to strengthen the USOC and NGBs’ commitment to gender equity in sport.

Perhaps most importantly, Congress should also further its instinct to improve amateur sport by taking steps to enact a true amateur sports act. The goal of such legislation should be to develop an agenda and empower an entity to focus on creating opportunities and removing barriers to sport participation for the millions of children who would benefit from sport.