

3-1-1983

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### Recommended Citation

James A. R. Nafziger, *The Amateur Sports Act of 1978*, 1983 BYU L. Rev. 47 (1983).  
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# The Amateur Sports Act of 1978

*James A. R. Nafziger\**

The Amateur Sports Act of 1978<sup>1</sup> culminated a tenacious and often tense effort to create a modern and competent Olympic program in the United States. Its impetus was a coincidence of administrative faux pas that beset the United States team in the 1972 Munich Olympics. For example, a team doctor failed to note that a swimmer's drug list contained a stimulant which was on the International Olympic Committee's (IOC) prohibited list; as a result, the swimmer lost his gold medal. Two sprinters failed to qualify because their coach gave them the wrong time for their trials. Two medal winners were disqualified from all future competitions because they refused to face the American flag during the awards ceremony. The final blow was the unprecedented defeat of a United States men's basketball team by the Soviets amid controversial calls by the referees, which were unsuccessfully and, some maintained, incompetently appealed by United States officials.<sup>2</sup> In contrast, the Soviet Union seemed to compete with competence and class.<sup>3</sup> Sports-writers pondered why this country was unable to field teams with the apparent depth and polish of the Soviets and the East Germans.<sup>4</sup> These developments stirred public opinion and con-

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1. 36 U.S.C. §§ 371-396 (Supp. IV 1980).

2. The tales of the swimmer, the two sprinters, and the basketball defeat were repeated in Congress and elsewhere as evidence of the need for reform. *See, e.g.*, 120 CONG. REC. 15,896 (1974) (remarks of Sen. Pearson). On some unruly implications of the Olympic Rules in Munich, see Nafziger, *On the Rules of the Games*, OLYMPIC REV., No. 70-71, at 449 (1973).

3. The West Germans described the American delegation as the most arrogant and the worst led of all the delegations. The West German officials contrasted the Americans' behavior with the "gentility" of the Russians and East Germans. For example, the Russians treated the West German officials to a cocktail party complete with caviar and also presented the officials with gifts. N.Y. Times, Sept. 2, 1972, at 10, col. 1.

4. Further prowess of Soviet and East German teams in the 1976 Olympics deepened concern about the status of amateur athletic performance by U.S. teams. *See, e.g.*, N.Y. Times, July 11, 1976, § 5, at 15, cols. 1, 2, 4, 6; N.Y. Times, July 30, 1976 at A16,

vinced authorities that the United States Olympic movement was buried in confusion and incompetence.

There were other problems too. Critics charged that the United States Olympic Committee (USOC)<sup>5</sup> was an administrative "Tower of Babel" with a bloated committee structure, inadequate lines of authority, a great reluctance to change, and insufficient experience.<sup>6</sup> Only thirty percent of the team managers at Munich had any previous Olympic experience.<sup>7</sup> Committee members were selected by internal politics and not on their merits.<sup>8</sup> USOC officials in general were said to be "hopelessly remote" from their respective sports and were "too casual and prestige-minded to be bothered with the legitimate concerns of athletes."<sup>9</sup>

On top of all this criticism, the National Collegiate Athletic Association (NCAA) withdrew from the USOC, vowing not to return until Congress had reformed the USOC's organizational structure.<sup>10</sup> The NCAA decision came amid a turbulent campaign for the presidency of the USOC.<sup>11</sup> These internal problems alongside the unfortunate developments in Munich demonstrated that the USOC was in trouble.

Despite general agreement that something had to be done, there was disagreement on what changes should be made. Con-

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col. 7; *How Russia Wins Olympics—Why U.S. Falls Behind*, U.S. NEWS & WORLD RPT., June 28, 1976, at 56-57.

5. The USOC, a nongovernmental, national organ of the International Olympic Committee, was chartered by Congress in 1950 with the responsibility for U.S. participation in the Olympic and Pan-American Games. 36 U.S.C. § 373(3) (1950). It is governed by its members through a House of Delegates. For a discussion of how the USOC's members are now represented in the House of Delegates, see *infra* text accompanying notes 58-65. Members of the House of Delegates elect the majority of the Executive Board. The Board is charged with carrying out the "business, affairs and activities" of the USOC. USOC CONST. art. XIV, §§ 1-2 (1981). The Administrative Committee oversees the day-to-day management of the USOC pursuant to the policy guidelines established by the Executive Board. USOC CONST. art. XV, § 1 (1981).

6. N.Y. Times, Nov. 5, 1972, § 5, at 4, col. 3.

7. *Id.*

8. N.Y. Times, Nov. 6, 1972, at 40, col. 1.

9. *Id.*

10. N.Y. Times, Oct. 27, 1972, at 47, col. 4. See N.Y. Times, Oct. 28, 1972, at 24, col. 2.

11. Cornell University Official Robert J. Kane opposed Phillip O. Krumm, a retired Wisconsin businessman. Krumm put together a coalition of independent national governing bodies to oppose candidates supported by the Amateur Athletic Union (AAU) and the NCAA. Kane was backed by the NCAA. Krumm won the election. N.Y. Times, Dec. 6, 1972, at 57, col. 2; N.Y. Times, Nov. 7, 1972, at 41, col. 4.

gress repeatedly failed to pass legislation on the subject.<sup>12</sup> In 1975 President Ford appointed a study-group, the President's Commission on Olympic Sports (PCOS), to examine the United States Olympic program, identify the problems, and recommend solutions.<sup>13</sup> During its deliberations, the relative performance of United States athletes in the 1976 Games in Montreal underscored the perceived problems. The PCOS, not surprisingly, found the nation's amateur sports effort to be fragmented and uncoordinated.<sup>14</sup> Amateur sports organizations wasted valuable time, effort, and facilities by indulging in jurisdictional squabbles and by refusing to cooperate. These feuds harmed the athletes themselves. For example, athletes were torn between the desire to compete internationally and the threat that doing so might jeopardize their eligibility for interscholastic athletics when they returned.<sup>15</sup> The feuds encouraged cynicism among athletes caught in the middle,<sup>16</sup> and caution among potential corporate donors, who had difficulty determining which organization effectively represented a particular sport.<sup>17</sup>

The PCOS recommended, among other things, that Congress recharter the USOC, giving it a vertical structure of representative organizations and athletes, and the following five powers:

[1] A means to settle organizational disputes over the right to

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12. The Amateur Athletic Act of 1974, S. 3500, 93d Cong., 2d Sess. (1974), which failed in the Congress, provided for an independent federal agency, The Amateur Sports Board, which would have implemented several legislative objectives designed to rectify the problems that were becoming acute during the 1970's. *See generally* Comment, *Administration of Amateur Athletics: The Time for an Amateur Athlete's Bill of Rights Has Arrived*, 48 FORDHAM L. REV. 53, 66-67 (1979).

13. N.Y. Times, June 20, 1975, at 15, col. 1. President Ford instructed the PCOS to find a way out of the "quagmire" of American amateur sports. *Id.*

14. 1 President's Commission on Olympic Sports, THE FINAL REPORT 1 (1977) [hereinafter cited as PCOS REPORT].

15. The PCOS noted a variety of instances where athletes were hurt as a result of jurisdictional squabbles. 1 *id.* at 59-60.

16. For examples of the attitudes of some athletes, see N.Y. Times, Nov. 18, 1972, at 46, col. 5; N.Y. Times, Aug. 11, 1974, § 5 at 1, col. 4. The PCOS Report noted the kind of incident which undermined the confidence of U.S. amateur athletes in their administrators. In 1973, the U.S. cycling team was stranded in Barcelona, Spain, for four days while airplane tickets for the trip home were being arranged. When help finally arrived, there was money for the airplane tickets but not for the hotel bill. The team was advised to "leave inconspicuously." 2 PCOS REPORT, *supra* note 14, at 41. A similar fate befell a U.S. biathlon team member stranded in Minsk, Russia. *Id.* at 17.

17. The PCOS concluded that many businessmen who might want to contribute were unwilling because of jurisdictional disputes and perceived managerial incompetence. 1 PCOS Report, *supra* note 14, at 3-4.

be the recognized national governing body (NGB) in a sport,  
 [2] a means to induce all organizations with significant national programs in a sport to belong to the NGB so that their activities can be coordinated,  
 [3] a means to guarantee an athlete's right to compete,  
 [4] a means to finance amateur sports more effectively, and  
 [5] a central policy-making forum to identify U.S. sports problems and effect solutions.<sup>18</sup>

In response to the PCOS's recommendations and the USOC's long series of failures to achieve a voluntary solution, Congress passed the 1978 Act.<sup>19</sup> It contains something old, something new, something borrowed, and—of course—something red, white, and blue.

### I. STRUCTURE OF THE ACT

The Act is essentially divided into six parts. The first provides definitions,<sup>20</sup> the second outlines the objects and purposes of the USOC,<sup>21</sup> and the third delineates the USOC's general corporate powers and obligations.<sup>22</sup> The fourth and fifth parts con-

18. 1 *id.* at 2.

19. Pub. L. No. 95-606, 92 Stat. 3045 (codified at 36 U.S.C. §§ 371-96 (Supp. IV 1979)).

20. 36 U.S.C. § 373.

21. *Id.* at § 374.

22. *Id.* at §§ 375-79. Although not specifically addressed in this study, the USOC has the power to

- (6) sue and be sued;
- (7) make contracts;
- (8) acquire, hold, and dispose of real and personal property as may be necessary for its corporate purposes;
- (9) accept gifts, legacies, and devises in furtherance of its corporate purposes;
- (10) borrow money to carry out its corporate purposes, issue notes, bonds, or other evidence of indebtedness therefor, and secure the same by mortgage, subject in each case to the laws of the United States or of any State;
- (11) provide financial assistance to any organization or association, other than a corporation organized for profit, in furtherance of the purposes of the Corporation;
- (12) approve and revoke membership in the Corporation;
- (13) adopt and alter a corporate seal;
- (14) establish and maintain offices for the conduct of the affairs of the Corporation;
- (15) publish a newspaper, magazine, or other publication consistent with its corporate purposes; and
- (16) do any and all acts and things necessary and proper to carry out the purposes of the Corporation.

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The Corporation shall have no power to issue capital stock or to engage in

cern the establishment of a national governing body (NGB) in each Olympic or Pan-American sport. Specifically, the fourth part stipulates the requirements for an amateur sports organization to become an NGB and the responsibilities and authorities of the NGB's.<sup>23</sup> The fifth part is particularly important to lawyers. It provides mechanisms for the resolution of complaints and the selection of a recognized NGB from among several competing organizations.<sup>24</sup> The sixth part, the final paragraph of the Act, gives amateur sports organizations exclusive jurisdiction over "restricted competition," that is, competition limited to a specific class of amateur athletes. If the sports organization otherwise involved in restricted competition wishes to be involved in international competition, it must obtain a sanction.<sup>25</sup>

## II. DEFINITIONS

In order to understand the Act, one must have some grasp of who the players are and what positions they play. The USOC is given the authority to establish one NGB for each Olympic or Pan-American sport.<sup>26</sup> An *NGB* is an organization recognized by the USOC according to detailed qualifications<sup>27</sup> and authorized to grant a certificate of approval or sanction.<sup>28</sup> A *sanction* must be obtained by any amateur sports organization or individual amateur athlete wishing to sponsor or participate in an international amateur athletic competition.<sup>29</sup> An *amateur sports organ-*

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business for pecuniary profit or gain. . . .

The Corporation may acquire any or all of the assets of the existing unincorporated association, known as "The United States Olympic Association," upon discharging or satisfactorily providing for the payment and discharge of all the liabilities of such unincorporated association.

*Id.*, §§ 375(a)(6)-(16), 378, 379. Section 381 provides for registration of corporate agents for service of process. The Act also grants the USOC an exclusive right to the Olympic insignia, motto, and the words *Olympic*, *Olympiad*, and *Citius Altius Fortius*. *Id.* § 380. Anyone who uses these trademarks or related symbol, emblem, and words without permission of the USOC is subject to civil liability under the Trademark Act of 1946. Prior to the Act, a criminal penalty was levied for unauthorized use of these trademarks. This penalty was unworkable because it required proof of criminal intent. H.R. REP. NO. 1627, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S. CODE CONG. & AD. NEWS 7478, 7488.

23. *Id.* §§ 391-93. The Act also spells out the requirements and procedures for formation of the USOC membership structure. *Id.* § 376.

24. *Id.* §§ 394-95.

25. *Id.* § 396.

26. *Id.* § 391(a).

27. *Id.* §§ 373(6), 391.

28. *Id.* § 373(7).

29. *Id.* § 393(4).

ization is a not-for-profit organization that sponsors or arranges *amateur athletic competition*,<sup>30</sup> that is, an event in which amateur athletes compete.<sup>31</sup> *Amateur athletes*, a term of art under the statute, are individuals who meet the eligibility standard established by the NGB for a particular sport.<sup>32</sup> *International amateur athletic competition* is any competition between athletes "representing the United States" and those from a foreign country.<sup>33</sup>

The definitions are broad, often necessarily so. For example, in an Act to encourage and unfetter United States participation in international competition, it would be counter-productive to create a detailed definition of *amateur* that might be unacceptable to either the international sports federations which govern each Olympic or Pan-American sport, or to the International Olympic Committee (IOC) and the Pan-American Sports Organization.<sup>34</sup>

However, other terms should have been drafted more narrowly. The definition of *international amateur athletic competition* is open-textured to a fault, as will be discussed later.

Generally, this definitional framework clarifies the scope of the Act. It underscores the two sets of relationships which the Act is primarily intended to govern: (1) relations between athletes eligible for international competition and the USOC, its NGB's, and amateur sports organizations, and (2) relations between those organizations.

### III. OBJECTS AND PURPOSES

The Act assigns fourteen "objects and purposes" to the USOC. This study considers each of these goals in light of the specific provisions in the Act to determine whether these purposes are likely to be met. By examining (1) Congress' intent in establishing each objective, (2) the effectiveness of the Act in achieving the objectives, and (3) the USOC's interpretation of the Act, it may be possible to isolate problems remaining under the Act, and identify potential consequences for amateur athletics in the 1980's.

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30. *Id.* § 373(3).

31. *Id.* § 373(2).

32. *Id.* § 373(1).

33. *Id.* § 373(5).

34. The USOC, each NGB, each international sports federation, and the IOC itself all have a hand in defining the phrase "amateur athlete."

### A. National Goals

The United States Olympic Committee shall "establish national goals for amateur athletic activities and encourage the attainment of those goals."<sup>35</sup>

The innocuous language and apparent simplicity of this first objective belie the several significant questions implicitly raised by its terms. What is meant by "amateur athletic activities"? How will the USOC "encourage the attainment" of the "national goals" it sets? For whom are these national goals to be established? Answers to these questions are important in order to understand not only this particular requirement but the Act as a whole.

Both the legislative history of the Act and ordinary canons of statutory construction suggest that it was designed to operate primarily by giving responsibility to the USOC for coordinating those sports which currently appear on the program of the Olympic or Pan-American Games, and that only these sports are "amateur athletic activities."<sup>36</sup> There is other evidence to support this position. An *amateur athletic competition* is an event in which amateur athletes compete.<sup>37</sup> The Act defines *amateur athlete* as an athlete who meets the eligibility requirements established by an NGB.<sup>38</sup> The USOC is only authorized to appoint an NGB to govern each sport included on the program of the Olympic or Pan-American Games.<sup>39</sup> Inferentially, then, "amateur athletic activities" must refer only to Olympic or Pan-American sports because the USOC may only appoint NGB's in those sports and because the Act's definition of "amateur athlete" is tied to the existence of eligibility requirements established by the NGB.<sup>40</sup> It follows that marbles is not an amateur athletic activity: A competitor in marbles is not an "amateur athlete" under the Act because the USOC cannot establish an NGB in the non-Olympic/Pan-American sport of marbles, and there is thus no NGB recognized by the USOC to establish eligibility requirements for competition in marbles. Without an amateur athletic competitor there can obviously be no amateur ath-

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35. 36 U.S.C. § 374(1).

36. H.R. REP. NO. 1627, 95th Cong., 2d Sess. 8-9, 12, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 7478, 7482, 7486.

37. 36 U.S.C. § 373(2).

38. *Id.* § 373(1).

39. *Id.* § 391(a).

40. *Id.* [§ 373](a), 391(a).



letic competition.

An opposing argument can be made that "national goals" for "amateur athletic activity" are not limited to Olympic or Pan-American sports. After all, to the lay person, the word "amateur athlete" has a plain, easily understood meaning: an athlete who does not earn his living from competition. More fundamentally, if the Act seeks to develop Olympic-class athletes, it should follow that, at the very least, authority to encourage early training ought to extend to youngsters in non-Olympic/Pan-American sports. Moreover, other objects and purposes in the Act suggest that the USOC must make a broad commitment to provide opportunities in amateur athletics to the handicapped and others whose access to amateur sports is limited.<sup>41</sup> Those provisions strengthen a broad reading of the Act to encompass non-Olympic/Pan-American sports as well.

The USOC has, however, taken the position that it must work principally through its NGB's.<sup>42</sup> It is unlikely to set national goals outside the arena of Olympic and Pan-American sports because it is not designed to work independently of its NGB's. It is, after all, a small administrative body,<sup>43</sup> an organization of organizations. The NGB's do the actual grassroots work of organizing teams, instructing coaches and officials, preparing schedules, and developing young athletes. A major reason for this reliance on the NGB's can be found in the USOC's membership. The majority of the votes in the House of Delegates of the USOC is held by NGB's.<sup>44</sup> Since these NGB's have their own responsibilities and problems, it is understandable that the USOC should be primarily concerned with Olympic/

41. The Act suggests a broad scope in a number of sections. *E.g.*, at § 374(6) (encouragement of physical fitness and public participation in amateur sport); § 374(7) (development of amateur athletic programs); § 374(10) (provision of technical information on training and equipment); § 374(11) (encouragement of research in sports medicine); § 374(12) (encouragement of amateur athletics for women); § 374(13) (assistance in creating athletic programs for the handicapped); and § 374(14) (assistance to racial and ethnic minorities who are underrepresented in certain amateur sports).

42. Telephone interview between Conrad Hutterli and Ronald T. Rowan, In-House Counsel for the USOC (June 15, 1981) [hereinafter cited as Rowan interview].

43. The USOC has approximately 74 salaried employees. Twenty-one of these work to direct and maintain the Olympic Training Center. For the 1976-1980 Olympiad the USOC had a \$25.6 million annual budget. United States Olympic Committee, Report to the President of the United States/to the President of the Senate/to the Speaker of the House/for the Calendar Year 1980, at 2, 3 (June 1, 1981) [hereinafter cited as 1980 USOC Report].

44. USOC CONST. art. IV, § 4(2) (1981). This provision in the USOC Constitution is required by the International Olympic Committee. Olympic Charter Rule 24(D) (1980).

Pan-American sports.<sup>45</sup>

Nevertheless, the USOC membership structure has a place for national amateur sports organizations in sports not regularly included on the program of the Olympic or Pan-American games but which are widely practiced in other countries.<sup>46</sup> For an organization which is engaged in a non-Olympic/Pan-American sport to be accepted into this membership class, the sport must be eligible for inclusion in future Olympic or Pan-American games.<sup>47</sup> The USOC is therefore more interested in having an organization ready to prepare an Olympic or Pan-American team than in actively organizing and controlling non-Olympic/Pan-American sports.

Despite the wide variety of popular sports which are currently not in the Olympic or Pan-American Games, there is only one sport represented in this membership classification: the Tae Kwon Do division of the Amateur Athletic Union (TKD-AAU).<sup>48</sup> It is unclear why so many amateur sports organizations engaged in non-Olympic/Pan-American sports have failed to become participants in the USOC. The factors motivating the Tae Kwon Do division of the AAU to join the USOC are all too evident. The AAU, a long-time member of the USOC, gained another vote in the USOC's House of Delegates.<sup>49</sup>

Besides apparently limiting by definition the sports with which the USOC is to be primarily concerned, the Act adds another restriction. Section 206 states that "amateur sports organizations" have exclusive jurisdiction over competition which is "restricted" to a specific class of amateur athletes competing within the United States, such as college students, Marines, or members of the downtown YWCA.<sup>50</sup> By contrast, international amateur athletic competition is considered "open" because it is not restricted to one class of athletes within a single country. The USOC and its NGB's have authority over open competition

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45. *But see infra* text accompanying notes 146-48, regarding the USOC's relationship with non-Olympic/Pan-American sports competition where it affects principal functions and responsibilities of the USOC.

46. USOC CONST. art. IV, § 6(a) (1981).

47. *Id.*

48. *Id.* at appendix (1981).

49. Such Group C members are allotted one vote. USOC CONST. art. IV, § 6(b) (1981). The AAU is one of the oldest members of the USOC and one of the strongest; prior to the Act it was the NGB in a large number of sports. *See* II PCOS REPORT, *supra* note 14, at 27.

50. 36 U.S.C. § 396.

and competition leading up to the Olympics or Pan-American Games but not over restricted competition within the United States.<sup>51</sup> Thus, for example, the conflict between the College Football Association (CFA) and the National Collegiate Athletic Association (NCAA) is, for the USOC, *ultra vires* because American style football is not an Olympic or Pan-American sport, and the members of the two organizations represent institutions engaged in restricted competition among a single class of athletes, college students.

*B. Productive Working Relationships Among Sports Organizations*

The United States Olympic Committee shall "coordinate and develop amateur athletic activity in the United States directly relating to international amateur athletic competition, so as to foster productive working relationships among sport-related organizations."<sup>52</sup>

Leaving aside the somewhat ambiguous term "amateur athletic activity," the intent of this objective is centered around the mandate to "coordinate and develop." To understand this phrase it is important to know what language was not included. The original phrase was "coordinate, develop, and direct." The Senate Commerce Committee removed the word "direct" at the insistence of the NCAA.<sup>53</sup> This change suggests that Congress did not want the USOC to have the authority to dictate to an amateur sports organization how to conduct its activity. The Act thus focuses on a less authoritative role for the USOC. The word "coordinate" implies communication and cooperation among independent groups, and "develop," simply promotion of growth. Implicit in the call to "coordinate and develop," but not "direct," is the conclusion that the USOC must be able to encourage amateur sports organizations to join the USOC and its member NGB's if it expects to develop or coordinate anything. In aid of this goal, the Act has implemented key structural reforms in the USOC which have helped encourage more meaningful participation by the USOC's members, and stimulated re-

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51. See, S. REP. NO. 380, 93d Cong., 1st Sess. 2 (1973).

52. 36 U.S.C. § 374(2).

53. Amateur Sports Act of 1978: *Hearings on S. 2727 before the Senate Committee on Commerce, Science and Transportation*; 95th Cong., 1st Sess. 178-79 (1977) (statements of Philip Brown and Sen. Stevens) [hereinafter cited as *Hearings*].

sponsive representation of amateur sports organizations by NGB's.

An important element in the USOC's working relationship with amateur sports organizations is a simple membership structure. Prior to the Act's passage, the USOC had a curious and complicated nine-level membership structure.<sup>54</sup> Group A members were the NGB's. Group B members were national organizations which convened national championships and had a substantial number of their athletes on Olympic or Pan-American teams, such as the NCAA. National organizations which sponsored sports recognized only in the Pan-American Games were assigned to Group C. Group D consisted of representatives from the USOC fund-raising groups in each state. Group E included organizations carrying on regional competition, such as the Big Ten Conference. The last four groups, F through I, were made up of various patriotic organizations, past presidents and officers of the USOC, representatives from the International Olympic Committee and the Pan-American Sports Organization, and the current officers and directors. Conspicuously absent was any provision for a group directly representing currently competing athletes. This absence of athlete representation was especially noticeable in an athletic organization which managed to find a place for thirty organizations of a "patriotic, educational, cultural, civic, or benevolent character."<sup>55</sup>

Despite the long list of membership categories, the appearance of a broadly based organization was a facade. Group A members, the NGB's, held two-thirds of the votes and could automatically receive extra votes if the number of NGB votes at a meeting slipped below two-thirds of the total. Within Group A, aquatics and track and field enjoyed twice the representation of all other sports combined, because of the success, popularity, and relative importance in the Olympics of these programs.<sup>56</sup> On the lower membership rungs, the system took some peculiar twists. All members in Group E had the same number of votes, so that large national sports groups were encouraged to pile their subgroups into Group E.<sup>57</sup> Consequently, the Alaskan AAU and the Pacific Eight Conference, for example, were Group E

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54. 2 PCOS REPORT, *supra* note 14, at 404-06.

55. *Id.* at 406. For example, a group like the Daughters of the American Revolution could have been a Group F member of the USOC.

56. *Id.* at 407.

57. *Id.* at 406-07.

members of equal standing. The same problem existed in Group B. The Catholic Youth Organization (CYO) had the same number of votes as the National Federation of State High School Associations (NFSHSA), despite the immense difference in size and scope between the high school programs and the CYO. This voting structure, which failed to balance properly the participation of amateur sports organizations and favored a relatively small group of NGB's, was one of the chief problems confronting the drafters of the Act.

In its comparative simplicity, only one section of the Act directly addresses the membership structure of the USOC.<sup>58</sup> Fortunately, a lot is packed into that section. It requires the USOC to establish provisions in its constitution and by-laws for the "reasonable representation" of (1) NGB's, (2) amateur athletes who are actively competing or have competed within the last ten years, and (3) individuals not affiliated with any sports group who represent the interest of the American public. The Act does not provide any guidance on the meaning of "reasonable representation."

Despite this ambiguity, the USOC has amended its constitution to reform its membership structure. The overall voting power of the NGB's has been reduced to a simple majority.<sup>59</sup> At least twenty percent of the delegates from each NGB must be current athletes or have represented the United States in international amateur athletic competition within the last ten years.<sup>60</sup> The total number of membership groups has been reduced to the following five:<sup>61</sup>

Group A: The NGB's.

Group B: Amateur sports organizations that conduct a national program or a regular national competition in two or more Olympic/Pan-American sports.

Group C: National amateur sports organizations that serve as NGB's in non-Olympic/Pan-American sports.

Group D: Representatives of the Olympic fund-raising committees in each state.

58. 36 U.S.C. § 376.

59. USOC CONST. art. IV § 4(a) (1981). The NGB's are allowed two-thirds of the vote in the House of Delegates when constitutional amendments are being considered. *Id.* at § 4(d).

60. *Id.*

61. *Id.* §§ 4(a), 5(a), 6(a), 7(a), 8(a).

Group E: Amateur sports organizations that conduct a national competition in two or more Olympic/Pan-American sports for athletes possessing physical or mental limitations that preclude participation in unrestricted competition.

Each of the members of Group A is allocated five delegates and fifty votes except for aquatics and track and field, which each get ten delegates and 100 votes.<sup>62</sup> Group B members are each allotted five delegates and fifty votes.<sup>63</sup> Group C and E members are each allotted one delegate and one vote.<sup>64</sup> Group D members are allotted delegates based on the number of Congressional Districts in their respective states, and have one vote per delegate.<sup>65</sup>

The formal changes in the USOC voting structure have reduced the voting superiority of the NGB's, required athlete participation, and reduced the number of membership classes. Some of the unequally weighted voting structure has been carried over, since Group B members, such as the CYO, NCAA and AAU, are each allotted the same number of votes, regardless of the size and scope of their programs.<sup>66</sup> However, this apparent inequity is mitigated by other provisions of the Act. The Act now directs an NGB to provide a place on its board of directors for each amateur sports organization which has a national program of competition in the NGB's sport.<sup>67</sup> A large Group B member will, therefore, have a strong voice in each sport in which it competes, in addition to its own votes. Through representation on multiple NGB's, an amateur sports organization can expand its influence on the USOC without being directly assigned more votes. This should encourage national amateur sports organizations to join the USOC and its member NGB's.

Major amateur sports organizations have not always had such influence in their NGB's because of the latter's symbiotic relationship with the international sports federations which had granted them membership.<sup>68</sup> Before the Act's passage, the sys-

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62. *Id.* § 4(d).

63. *Id.* § 5(b).

64. *Id.* §§ 6(b), 8(b).

65. *Id.* § 7(c).

66. USOC CONST., appendix (1981).

67. 36 U.S.C. § 391(b)(9).

68. Address by Michael Scott, counsel to NCAA, Syracuse University (Sept. 19, 1980) [hereinafter cited as Scott address]:

As private bodies, NGBs have historically been responsible to their respective parent international sport federations. Efforts over the years in this country to subject their often arbitrary conduct to judicial scrutiny have been singularly

tem had no principled procedure for selecting an NGB from competing organizations or for removing an NGB which no longer did the job.<sup>69</sup> As an umbrella organization, the USOC was understandably reluctant to become involved in selecting and evaluating NGB's. Each NGB effectively possessed an autonomous sphere of influence over decisions by the USOC concerning the NGB's sport. Thus, outside its sphere of influence, an NGB in hockey was likely to be indifferent about the selection of an NGB in basketball: it was simply someone else's sport and problem.

Dissatisfaction with the representation provided by established NGB's led to acrimonious competition and proposals for reform. A primary target of that criticism was the AAU, an NGB in eight different sports. Anxious to protect its accumulated jurisdiction, the AAU repeatedly told Congress that the AAU's position as an NGB in a particular sport was non-negotiable.<sup>70</sup> The AAU argued that Congress and the USOC should not even consider the question of selecting an appropriate NGB, since under the Olympic charter only an international sports federation could designate an NGB.<sup>71</sup> Understandably, the other unrecognized organizations saw the problem in a different light. The NCAA, in particular, would not accept the idea that an organization could have a very weak competitive program and still be an NGB.<sup>72</sup> The consequences of this inconsistency were most apparent in basketball, where AAU-member basketball teams have been of relatively minor importance. In response, the NCAA joined other organizations to encourage the formation of new federations in basketball, track, and wrestling to displace the

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unsuccessful. Challenges to NGB conduct on a "due process" or "equal protection" theory have been unavailing . . . [and] attempts to apply the anti-trust laws have normally also foundered . . . . So, in effect, these NGBs have been permitted to operate over the years in this country as unregulated mini-monopolies, free to use their enormous power over athletes and others in their domain without any regard for substantive or procedural fairness.

69. 1 PCOS REPORT, *supra* note 14, at 47.

70. See, e.g., S. REP. No. 753, 89th Cong., 1st Sess. 7 (1965).

71. Olympic Charter By-Laws § V(5) (1980).

72. The crux of the NCAA's argument can be demonstrated by comparing the financial commitment being made by the Wrestling Division of the AAU (WD-AAU) with that of NCAA members. The PCOS reported that the WD-AAU spent about \$62,696 annually for "competition." 2 PCOS REPORT, *supra* note 14, at 293. In 1975, the NCAA-member host of the NCAA wrestling championships spent \$93,054 on that event alone. *Id.* at 347. Given the large financial commitments they have made in many Olympic and Pan-American sports, the NCAA's position is that its members deserve highly placed representation in the NGB's that oversee these sports.

AAU.<sup>73</sup> Much of the pain and confusion which led to the passage of the Act resulted from the struggles between the NCAA-sponsored federations and the AAU to control a particular sport.<sup>74</sup>

The Act responds to this jurisdictional imbroglio by giving the USOC the authority to select NGB's based on detailed procedures and criteria. These criteria require the NGB to be responsive to the actual participants in its sport, and only in its sport. The NGB must belong to only one international sports federation; be free from restraint and control by any larger parent organization; be open to membership by any individual or amateur sports organization active in the sport; and protect the opportunity of athletes, coaches, trainers, managers, or officials to participate. The NGB selected by the USOC must also include active athletes on the board of directors and grant them at least twenty percent of the board's votes; provide for direct representation on its board of directors for any amateur sports organization which conducts a national program of competition from which world-class athletes might be selected; and ensure that each organization's representation on the board reflects the "nature, scope, quality and strength" of that organization's program.<sup>75</sup>

The PCOS argued that the best way to make the NGB's a viable and credible part of the amateur sports structure would be to ensure that each NGB is a creature of a single sport.<sup>76</sup> In

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73. 1 *id.* at 47-48. One of the organizations, the United States Track and Field Federation, opposed AAU leadership because, "[t]he AAU has no track facilities of its own, few meets of its own, few athletes who are not already recruited and trained through the school system, and almost no coaches except those involved with educational institutions. 'The AAU has just a piece of paper—its international franchise.'" 2 *id.* at 227.

74. *Id.* at 400, 401. The Olympic House coalition agreement, the MacArthur arbitration decision, and the Kheel Commission were all unsuccessful attempts in the 1960's to reconcile the AAU and the NCAA and to keep jurisdictional struggles from preventing U.S. athletes from competing. See generally Moore, *The Campaign for Athletes' Rights*, 445 ANNALS 59 (Sept. 1979).

75. 36 U.S.C. § 391(b).

76. 1 PCOS REPORT, *supra* note 14, at 2. The PCOS also recommended that an organization could have more than 20% of an NGB's votes in only one NGB. *Id.* at 135. This proposal, removed from the Act by the Senate Commerce Committee, was designed to prevent large multi-sport organizations from taking over a number of NGB's. *Hearings, supra* note 53, at 165 (statement of Sen. Stone). If Congress had included the provision, it would have enhanced the "single sport" concept by making it more difficult for one organization to corral effective control over a group of NGB's. The failure to approve this provision is not crucial to the success of the Act because there are many organizations which sponsor competition in more than one sport. For example, there are twelve Group B members of the USOC that by definition must conduct competition in more than one Olympic or Pan-American sport. It is therefore unlikely that one organization



other words, wrestlers should decide what is best for wrestlers, and gymnasts for gymnasts. Congress accepted this recommendation, stipulating that an NGB must have both the capacity to represent a sport abroad and the backing of the sport's participants at home.

Congress provided a grace period through 1980 for those organizations subject to displacement which were NGB's when the Act was passed.<sup>77</sup> During this grace period the USOC could not enforce the new NGB criteria; afterward, the USOC could suspend or revoke recognition of any NGB that had failed to bring itself into compliance.<sup>78</sup> The USOC could also choose to grant a one-year extension if there were "clear and convincing" evidence that the NGB was unable to comply through no fault of its own.<sup>79</sup> If, at the end of this extension, the NGB still had not met the criteria, the USOC would have to revoke recognition of the NGB.

Since the grace period ended there have been changes in the affiliations and organizational structure of the NGB's, primarily in sports governed by committees of the AAU. The NGB in track and field, for example, had been the Athletics Division of the AAU. In September 1979 that entity was reorganized to become independent of the AAU, at first maintaining its offices within the AAU building but later establishing separate offices.

The membership of the new track and field NGB, the Athletics Congress of the U.S.A. (TAC), is a good illustration of the positive results achieved under the Act.<sup>80</sup> The members of the NCAA and NFSHSA organize the vast majority of the track and field teams in this country.<sup>81</sup> Neither of these groups belonged to the AAU-sponsored NGB because, in their opinion, AAU membership did not provide sufficient representation.<sup>82</sup> Thanks to the Act, TAC's board of directors is broadly based.<sup>83</sup> Thus, in-

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could dominate a large number of NGB's.

77. 36 U.S.C. § 391(c)(1).

78. *Id.* § 391(c)(1), (A) and (B).

79. *Id.* § 391(c)(1), (C).

80. See also text accompanying notes 58-67 *supra* for a discussion of the new USOC structure in the House of Delegates.

81. In 1974, approximately 967,189 high school athletes participated in track and field activities sponsored by the NFSHSA. In 1973, only 20,579 college athletes participated in its members' track and field programs. 2 PCOS REPORT, *supra* note 14, at 230.

82. Both the NCAA and the NFSHSA belonged to the U.S. Track and Field Federation, which was organized to unseat the Athletics Division of the AAU as the track and field NGB. *Id.* at 225-27.

83. The Athletes Congress of the U.S.A., 1981 Directory, at 6, 21-23.

dispensable groups which conduct track and field competition at the high school, college, and postcollegiate level are represented, as they had not been before, in the decision-making structure of the new track and field NGB.

So far, with one major exception,<sup>84</sup> the structural reforms in sports previously administered by the AAU have gone smoothly.<sup>85</sup> The new NGB's have been formed out of the old AAU committee structure with remarkably little fuss. The Act's restructuring of USOC membership and NGB representation seems to be working well in accomplishing the objective of productive working relationships among amateur athletic organizations in the United States.

### *C. Areas of Exclusive Jurisdiction: Olympic and Pan-American Games*

The United States Olympic Committee shall "exercise exclusive jurisdiction, either directly or through its constituent members or committees, over all matters pertaining to the participation of the United States in the Olympic Games and in the Pan-American Games, including the representation of the United States in such Games, and over the organization of the Olympic Games and the Pan-American Games when held in the United States."<sup>86</sup>

How "exclusive" is the USOC's authority to control the participation of American athletes in Olympic and Pan-American Games? Although the Act does not explicitly define exclusive jurisdiction, the range of specific tasks reserved for the USOC as Congress' chosen instrument does suggest the intended scope of the term. The USOC serves as the coordinating body for amateur athletic activity in the United States directly relating to international amateur athletic competition; represents the United States in its relations with the International Olympic Committee and the Pan-American Sports Organization; and organizes, finances, and controls the United States teams in the Games.<sup>87</sup>

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84. The exception is the case of the disputed position of the wrestling NGB. See *infra* text accompanying notes 215-27.

85. This is particularly noteworthy with respect to track and field and aquatics, traditionally the AAU's strongest sports. This harmony may be ruptured if the NCAA and other organizations become dissatisfied with the openness of the reorganized NGB's. The NCAA expects a "thoroughgoing and enlightened reevaluation of the composition of several NGB Boards." Scott address, *supra* note 68.

86. 36 U.S.C. § 374(3).

87. *Id.* § 375(a)(1)-(5).

It also recognizes eligible NGB's, and facilitates the resolution of conflicts arising in trials, the Games, or competitions preliminary to the Games.<sup>88</sup>

Within the USOC framework, the NGB's are authorized to sanction international competition in their sport between United States and foreign athletes, whether in or outside the Olympic or Pan-American Games.<sup>89</sup> Each NGB is authorized to be the official representative of its sport in its international sports federation.<sup>90</sup> The NGB's also have the authority to recommend athletes to the USOC for participation in the Olympic and Pan-American Games and to select national teams for other competition.<sup>91</sup>

While the Act gives the USOC and its NGB's the statutory authority to select Olympic and Pan-American teams, others may effectively decide whether an athlete actually competes. Hence, a first chink appears in the armor of the USOC's exclusive jurisdiction. For example, many state high school associations are reluctant to allow student athletes to compete in non-school competition.<sup>92</sup> The effective jurisdiction of the USOC is arguably not exclusive if a gifted athlete's fear of being barred from high school competition after the games could dissuade the athlete from entering even the Olympic trials.

Given this and similar potential threats to individual athletes, and the possibility of friction between amateur sports organizations and the USOC, cooperation, rather than insistence by the USOC on its exclusive prerogatives, may offer a *modus vivendi*. A good example is a model eligibility rule recommended by the NFSHSA for adoption by state high school athletic associations.<sup>93</sup> The model rule prohibits participation in organized non-school sports competition while a student is a member of a high school team. The rule does, however, make exception for participation in an NGB-selected national team or in a USOC-sponsored "Olympic Development Program." Thus, although its

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88. *Id.*

89. *Id.* § 392(a)(4).

90. *Id.* § 393(1).

91. *Id.* § 393(6), (7).

92. Eleven states substantially restrict non-school participation during the school year and would probably not permit an athlete to participate in a USOC-sponsored development program. Telephone interview with Warren Brown, Assistant Director of NFSHSA (June 11, 1981).

93. NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, 1980-81 HANDBOOK, at 48-49.

model rules are discretionary, one national amateur sports organization has chosen to cooperate with the USOC in order to protect athletes and to prevent conflict. The more the USOC is able to inspire and retain the confidence of important non-NGB amateur sports organizations such as the NFSHSA, the NCAA, and the Association for Intercollegiate Athletics for Women, the more exclusive the USOC's jurisdiction will in fact become.

Retaining the confidence of non-NGB amateur sports organizations will not by itself ensure exclusive jurisdiction for the USOC over the participation of United States nationals in the Games. When the United States hosts the Olympic or Pan-American Games, the Act grants the USOC exclusive jurisdiction over the organization of the Games.<sup>94</sup> In fact, the USOC's jurisdiction in this area is far from exclusive. As a practical matter, the host city and state governments help organize and supervise the Games.<sup>95</sup> The International Olympic Committee (IOC) rules may also require the USOC to share authority with the host city's Olympic organizing committee.<sup>96</sup>

The federal government also challenges the exclusiveness of USOC jurisdiction over amateur athletics. As it turns out, the federal government, already mother to the USOC by virtue of the Act's passage, may also be its godfather. This role should not be surprising since the federal government has been substantially involved in amateur sports for a long time.<sup>97</sup> Indeed, the necessity and rationale for such involvement are clear.<sup>98</sup> Executive execution of legislation designed to enhance the development of amateur athletics is commendable. The Act explicitly

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94. 36 U.S.C. § 374(3).

95. For a discussion of the various actors involved in hosting the Olympic Games, see Galante, *The Olympic Games: Legal Hurdles and Lawsuits*, 4 L.A. LAW. 19 (June 1981).

96. Olympic Charter Rule 47 (1980). The USOC has greater authority over the upcoming Los Angeles Olympics than it has had in the past. At the Lake Placid Olympics, the USOC served a "liaison and coordination" role but was never part of the "day-to-day planning and supervision of the operations." The USOC has five representatives on the Los Angeles Olympic Organizing Committee (LAOOC) and 25% of the LAOOC Board of Directors. The USOC therefore has effective veto power over the organization of the Los Angeles games. 1980 USOC Report, *supra* note 43, at 6-7.

97. See Nafziger, *Legal Aspects of a United States Foreign Sports Policy*, 8 VAND. J. TRANSNAT'L L. 837, 841-45 (1975).

98. *Id.* at 845-55; Nafziger, *The Regulation of Transnational Sports Competition: Down from Mount Olympus*, 5 VAND. J. TRANSNAT'L L. 180, 199-206 (1971), reprinted in B. LOWE, D. KANIN, & A. STRENK, *SPORT AND INTERNATIONAL RELATIONS* 160 (1978); Nafziger & Strenk, *The Political Uses and Abuses of Sports*, 10 CONN. L. REV. 259 (1978).

stipulates that the USOC must report annually to Congress and the President<sup>99</sup> and reserves to Congress, somewhat perfunctorily but also potently, "[t]he right to alter, amend or repeal this Act at any time."<sup>100</sup> The Act chartered the USOC to implement a broad range of sports policy. Many facets of this policy have significant political implications even though the Act declares that "[t]he corporation shall be nonpolitical."<sup>101</sup> When the athletic interests of the USOC collide with the perceived national political interests, Congress and the President are likely to intervene.

Congress and the President poignantly demonstrated their own effective jurisdiction over amateur athletics by compelling the USOC to boycott the 1980 Olympic Games in Moscow.<sup>102</sup> President Carter's campaign to convince the USOC to boycott the 1980 Moscow Olympics is an example of how the USOC's exclusive authority may be compromised. In order to implement this policy, the Carter Administration apparently realized that, under the Act, it needed to obtain the support of the USOC. The Administration, including the President himself, therefore

99. 36 U.S.C. § 382(a).

100. *Id.* § 382.

101. *Id.* at § 377. Some language in this section inferentially supports an argument that the drafters did not intend to insulate the USOC from political pressure, but only intended to create the USOC as a nonpartisan organization in American party politics. "[T]he USOC as an organization . . . shall not support any candidates for office . . . ." *Id.* Nevertheless, "nonpolitical" carries much broader connotations; section 377 should be interpreted consistently with the Olympic Charter's strict doctrine that National Olympic Committees remain free from political pressure by their host governments.

102. See Nafziger, *Diplomatic Fun and the Games: A Commentary on the United States Boycott of the 1980 Summer Olympics*, 17 WILLAMETTE L. REV. 67 (1980) [hereinafter cited as *Diplomatic Fun*]. The courts have at times been more reluctant to exercise their jurisdiction in these political disputes. In 1980, a member of a team selected by the Taiwanese National Olympic Committee brought a civil action to compel the local Organizing Committee of the 1980 Winter Olympic Games in Lake Placid to use the flag, emblem, name, and anthem of the Republic of China and, in effect, to allow the Taiwanese to participate in the Games. The opinion of the Court of Appeals in New York, affirming the decision of a lower court to refrain from exercising jurisdiction to resolve the dispute, reads as follows:

In view of the statement of interest submitted by the Attorney General of the United States on behalf of the Department of State pursuant to section 517 of title 28 of the U.S. Code, we are persuaded that the courts of our State must refrain from the exercise of jurisdiction to resolve a dispute which has at its core the international "Two Chinas" problem.

Accordingly, the order of the Appellate Division should be affirmed, without costs.

*Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 49 N.Y.2d 771, 403 N.E.2d 178 (1980) (per curiam).

began publicly to pressure the USOC to boycott the Games. The President backed up his campaign by threatening withdrawal of tax exempt status and other penalties<sup>103</sup> against the USOC and any individual athletes who participated in the Moscow Games.<sup>104</sup> Subsequent statements by the President indicated that he was prepared to take independent legal action, if necessary, to prohibit participation in the Games by United States nationals. Congress responded to the President's campaign and public opinion by overwhelmingly supporting a resolution urging the USOC to boycott the Games.<sup>105</sup>

The pressure from Washington tore at the fabric of the USOC, forcing it to choose between the two potentially inconsistent roles assigned to it. As a creature, or at least an integral part, of the Olympic movement, it is subject to the Olympic Charter, rules, and decisions. The USOC has first and foremost an international character. While the USOC may cooperate with national government, Rule 24C of the Olympic Charter proscribes any association with an undertaking which would conflict with the principles of the Olympic movement. Among these principles, Rule 24C specifically cites the obligation of a National Olympic Committee to be autonomous and to resist all political, religious, and economic pressure.<sup>106</sup> Similarly, the pres-

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103. For example, "the President apparently contemplated . . . invoking the sanctions of the International Emergency Economic Powers Act . . . ." *DeFrantz v. United States Olympic Committee*, 492 F. Supp. 1181, 1184 (D.D.C. 1980). For a brief discussion of this and another questionable legal technique for inducing compliance, the Export Administration Act of 1979, see *Diplomatic Fun*, *supra* note 102, at 79.

104. See *DeFrantz v. United States Olympic Committee*, 492 F. Supp. 1181, 1184-85 (1980). For a bizarre interpretation of international law to justify the President's action, see Address by Lloyd N. Cutler, 74 PROC. OF THE AM. SOC. INT'L L. 43 (1980) (a host-state for the Games is under a duty not to invade another nation). *Contra*, Remarks of Alfred Rubin, *id.* at 274. See also, *Diplomatic Fun*, *supra* note 102, at 79.

105. H.R. Con. Res. 249, 96th Cong., 2d Sess. (1980). The resolution was not codified as an amendment to the Act or signed by the President, and thus did not eliminate the previously conferred exclusive jurisdiction and obligation to remain nonpolitical. Arguably Congress' failure to consider the neutral status of the USOC indicates that Congress did not interpret the Act to confer upon the USOC a jurisdiction insulated from Congressional political pressure. However, the explicit language of the Act should prevail over the subsequent unexpressed and indefinite intent of Congress. In addition, the interpretation of prior legislation by a later Congress is not always binding on the courts. See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 171 (1968). See generally *supra* note 101.

106. NOCs [National Olympic Committees] must be autonomous and must resist all pressure of any kind whatsoever, whether of a political, religious or economic nature. In pursuing their objectives, NOCs may cooperate with private or government organizations. However, they must never associate them-

sure from Washington raised serious legal questions by compromising the Act's own requirement that the USOC be nonpolitical.<sup>107</sup>

The USOC also has a national character. It is chartered by the Congress as a patriotic society.<sup>108</sup> The success or failure of the USOC's amateur athletes is typically greeted with flag waving or national soul searching. It would be hard for an organization so deeply anchored in the national psyche to ignore the lobbying efforts of the President and the Congress. The USOC was clearly in a very awkward, if not impossible, position.

The USOC agreed to the boycott by a two-to-one margin. Several athletes and one member of the executive board of the USOC promptly filed a civil action to enjoin it from barring the athletes' opportunity to compete in the Games. In *De Frantz v. United States Olympic Committee*,<sup>109</sup> the D.C. Circuit held that under the Rules of the IOC and the 1978 Act, the USOC not only had the authority to refuse to send a team but could do so for political reasons unrelated directly to sports considerations. In reaching its decision, the court ruled that the Act did not provide individual athletes with a bill of rights including the right to compete.<sup>110</sup>

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selves with any undertaking which would be in conflict with the principles of the Olympic movement and with the Rules of the IOC.

Olympic Charter Rule 24C (1980).

107. See 36 U.S.C. § 377.

108. The USOC is chartered in Title 36 of the United States Code, which deals with "Patriotic Societies" recognized and incorporated by Congress. See *supra* note 5.

109. 492 F. Supp. 1181 (D.D.C. 1980). The plaintiffs stated three causes of action in their complaint: that the USOC violated the 1978 Act, that it engaged in unconstitutional state action, and that it violated its own constitution, by-laws, and governing statute. With respect to the statutory claim that the defendant violated the 1978 Act, the plaintiffs claimed that:

- a. Defendant exercised power it does not have—to decide that no United States amateur athletes shall participate in the 1980 Games.
- b. Defendant breached a duty to organize, finance, and control participation in the events and competitions of the Olympic Games by United States athletes.
- c. Defendant denied to United States amateur athletes the opportunity to compete in these Games on a basis other than their want of athletic merit, or for a sports related reason.
- d. Defendant yielded its exclusive jurisdiction over Olympic matters to the political leaders of the nation.
- e. Defendant acted in a political manner.
- f. Defendant yielded its autonomy and has succumbed to political and economic pressure.

*Id.* at 1185.

110. *Id.* at 1190-91. See generally Comment, *supra* note 12.

A pivotal and very controversial legal issue before the court was whether the federal government's involvement in promoting the boycott was state action which could give rise to an actionable claim for infringement of the plaintiff's constitutional rights under the first, fifth, and ninth amendments. The court held that it was not.

In reaching this result the court considered two guidelines. The first concerned whether the state "has so far insinuated itself into a position of interdependence with [a private entity] that it must be recognized as a joint participant in the challenged activity."<sup>111</sup> Citing *Burton v. Wilmington Parking Authority*,<sup>112</sup> the court emphasized that the USOC received no federal funding, which has turned out to be incorrect. The court also characterized the USOC as existing and operating independently of the federal government. This conclusion is also incorrect in view of the substantial intermingling between the USOC and the government stipulated in the Act, even though technically the two entities may not be involved in a "symbiotic relationship" or "joint participation"<sup>113</sup> in the governance of amateur athletics.

The second guideline relied on to define state action was whether "there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself."<sup>114</sup> The plaintiffs argued "a novel theory," in the court's words,

that the campaign of governmental persuasion, personally led by President Carter, crossed the line from "governmental recommendation," which plaintiffs find acceptable and presumably necessary to the operation of our form of government, into the area of "affirmative pressure that effectively places the government's prestige behind the challenged action," and thus, results in state action.<sup>115</sup>

Citing two opinions,<sup>116</sup> the court disagreed. It seemed to rely

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111. *Id.* at 1193 (quoting *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961)).

112. 365 U.S. 715, 725 (1961).

113. 492 F. Supp. 1181, 1193 (1980).

114. *Id.* (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1984)).

115. *DeFrantz*, 492 F. Supp. at 1193.

116. *Spark v. Catholic University of America*, 510 F.2d 1277 (D.C. Cir. 1975); *Parish v. National Collegiate Athletic Association*, 506 F.2d 1028 (5th Cir. 1975).



particularly on language in one of the cases which would require plaintiffs "to show that the Government exercises some form of control over the actions of the private party."<sup>117</sup> The court concluded that the government exercised neither *de jure* nor *de facto* control over the USOC. In regard to factual compulsion, the court characterized the involvement of the federal government in the boycott decision as one of *persuasion*. As a matter of policy the court wrote that it could not

equate this with control. To do so in cases of this type would be to open the door and usher the courts into what we believe is largely a nonjusticiable realm, where they would find themselves in the untenable position of determining whether a certain level, intensity, or type of "Presidential" or "Administration" or "political" pressure amounts to sufficient control over a private entity so as to invoke federal jurisdiction.<sup>118</sup>

The court then concluded that even if the requisite state action had been shown, the plaintiffs had alleged no violation of a constitutionally protected right, such as liberty, self-expression, travel, or pursuit of their chosen occupation.<sup>119</sup> The court held that the plaintiffs' argument would unreasonably expand the concept of due process and the right to travel merely to cure one of life's disappointments. A final paragraph offered sympathy to the plaintiffs, but, in a dubious analogy to military service by government fiat, characterized the plaintiffs' plight as one of the simple, harsh, and "immutable" facts of life.<sup>120</sup>

While life's vicissitudes may be inevitable, the result reached by the court was not. First, the analogy between non-

117. *DeFrantz*, 492 F. Supp. at 1194 (quoting *Spark v. Catholic University of America*, 510 F.2d 1277, 1282 (D.C. Cir. 1975)).

118. *DeFrantz*, 492 F. Supp. at 1194.

119. Although the court's preliminary conclusion on state action seems incorrect, its determination that the plaintiffs had no constitutionally protected right to compete seems more reasonable. While the USOC's boycott of the Moscow Olympics was a bitter pill for the participants, it did not preclude the athletes from engaging in other competition. In other words, even if the court had found a constitutionally protected "liberty" or "property" interest in competition, it is unlikely that the boycott alone would create an actionable violation of due process or equal protection. See *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, the Court held that "[i]t stretches the concept too far to suggest that a person is deprived of 'liberty' when he simply is not rehired in one job but remains free as before to seek another." *Id.* at 575. If the United States Supreme Court, the ultimate arbitrator, was unwilling to recognize a protected liberty in *Roth* where the interest involved the pursuit of a livelihood, it is unlikely that it would hold that the USOC could not bar U.S. athletes from attending one competition, even if that competition were the Olympics.

120. *DeFrantz*, 492 F. Supp. 1195.

participation in the Olympics and military service is strained. More importantly, the President's threat of legal action for non-compliance with his boycott campaign goes well beyond "persuasion" to *de facto* control. Finally, the President's actions, backed up by the resolution of Congress, and congressional power to repeal the USOC Charter, arguably insinuated the government into a position of interdependence with the USOC so far as to become a joint participant in the boycott.<sup>121</sup>

*De Frantz* ignored a second issue of state action. Aside from direct governmental intervention, it is arguable that the USOC necessarily acted on behalf of, or in concert with, the state, through the public institutions that comprise the membership of such USOC constituent organizations as the NCAA and the NFSHSA. Courts have repeatedly found that the conduct of these organizations constitutes state action.<sup>122</sup>

The *De Frantz* opinion provides little useful guidance in determining the extent to which political intervention by the federal government would violate the USOC's exclusive jurisdiction and defeat the USOC's obligation to remain politically neutral under the Act and the IOC Charter.<sup>123</sup> The decision did not adequately explore either issue, and improperly relied on a statement of the IOC Executive Board:

[O]n April 23, 1980, the IOC Executive Board reviewed the actions of the USOC and concluded that they were not in violation of IOC Rule 24(C), which requires that NOC's "must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious, or economic nature." To

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121. See *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961).

122. See, e.g., *Howard Univ. v. NCAA*, 510 F.2d 213 (D.C. Cir. 1975); *Wright v. Arkansas Activities Assoc.*, 501 F.2d 25 (8th Cir. 1974); *Associated Students, Inc. v. NCAA*, 493 F.2d 1251 (9th Cir. 1974); *Mitchell v. Louisiana High School Assoc.*, 430 F.2d 1155 (5th Cir. 1970). It is important to note that not all of these cases involved racial discrimination. The *DeFrantz* court consequently erred in declaring that state action had been found in NCAA activities only in cases of alleged racial discrimination. *Williams v. Hamilton*, 497 F. Supp. 641, 644 (D.N.H. 1980), stated the following reasons why state action had been found in NCAA activities: Fifty percent of the NCAA's members are state or federally supported, the vast majority of the NCAA's capital is provided by public schools, the public schools dominate policymaking, and the NCAA extensively regulates and supervises its member schools. It is arguable that some NGB's include and may be dominated by public organizations like the NCAA, the military, or state high school associations. These organizations provide the NGB's with membership and sanctioning fees. The NGB's in turn scrutinize and control the international amateur sports activities of these members. Consequently, the NGB's, like the NCAA, could be seen as state actors.

123. *DeFrantz*, 492 F. Supp. 1187-89, 1192.

the extent that plaintiffs are alleging that defendant has violated any provision of its Constitution and Bylaws requiring it to be autonomous, *we adopt the conclusion of the IOC and find that this resolves any such allegations in favor of the defendant.*<sup>124</sup>

In fact, the IOC publicly came to no such conclusion. Despite this statement, the IOC remained concerned about the possibility of a rule infraction; it decided on April 23, 1980 that "[t]he position of all National Olympic Committees which have declined the invitation to the Games of the XXIIInd Olympiad will be reviewed after 24th May 1980."<sup>125</sup> The court decided *De Frantz* on May 16, 1980, at least eight days before the IOC was ready to consider a final review of the matter.<sup>126</sup>

The 1980 Moscow boycott is a distressing but typical example of the inevitable tensions arising from the coexistent national and international roles assigned to the USOC. Not surprisingly, state authority prevailed over the more neutral directives in the Act and the IOC Charter: the national athletes stayed home on the incorrect assumption that the boycott would enhance national security by challenging Soviet aggressions and perhaps by compelling a withdrawal of Soviet troops in Afghanistan. Aside from whatever minimal effect the boycott may have had as a symbolic gesture, it failed to achieve either of these results. The Soviets remained mired in Afghanistan. Once again, amateur athletes were helpless pawns of power politics. After the boycott, conflicts between the policial authority which chartered the USOC and the apolitical Olympic movement will only be more likely to occur.

Experience since the Act's passage has put a cloud over the Act's clear reservation to the USOC of "exclusive jurisdiction" over amateur athletics.<sup>127</sup> When challenged by other sports organizations, the USOC is more likely to acquire effective authority by cultivating the confidence and good will of its mem-

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124. *Id.* at 1192, n.23 (emphasis added).

125. USOC, *In Conjunction with the Olympic Meetings*, OLYMPIC REV., No. 151, at 228 (1980). May 24, 1980 was the deadline for the USOC to accept the invitation of the Moscow Olympic Organizing Committee to participate in the summer games. *DeFrantz*, 492 F. Supp. at 1183.

126. *DeFrantz*, 492 F. Supp. 1181. Although the court may have been anxious to announce its decision before the deadline for accepting the invitation to participate in the Olympic Games, its reliance on the IOC's Statement was premature and unjustified. No final review was ever scheduled by the IOC.

127. 36 U.S.C. § 374(3).

bers rather than by relying on the "exclusive jurisdiction" conferred by the Act. The cooperative, nonlegalistic stance of the USOC toward the NFSHSA is a good example of a productive working relationship. In the face of governmental intervention, the USOC's jurisdiction appears to be less than exclusive. After *De Frantz*, few assertions by the USOC of independent jurisdictions will be successful. Moreover, it will be difficult to find state action to test the constitutionality of governmental restraints on the actual freedom of the USOC.

#### *D. Competent Representation*

The United States Olympic Committee shall "obtain for the United States, either directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each competition and event of the Olympic Games and of the Pan-American Games."<sup>128</sup>

As a crucial note in the Act's clarion call to greater amateur athletic success, the phrase "most competent amateur representation possible" seems modest and anticlimactic. The Act does not require the USOC to become *competitive* in all Olympic and Pan-American sports but merely *competent*—and only as competent as possible. While the phrase may not be inspiring, its deliberate understatement suggests the quiet but determined desire of Congress to improve the United States' position in international amateur athletics.<sup>129</sup> Congress assumed that if it cleared away the organizational problems, United States amateur athletics could achieve success without further governmental involvement or expense. Thus, Congress refused to appropriate money to support the operating budget of the USOC,<sup>130</sup> and chose not to make the USOC an agency of the federal government.

Time will tell whether these assumptions are justified. By

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128. *Id.* at § 374(4).

129. The comments of Senator Long and Congressman Kemp in support of the proposed Amateur Athletic Act reflect the concern and wounded pride of many Americans. Senator Long was "sick and tired" of seeing "America beaten" and declared that such humiliation should not be visited on the "richest nation on earth." 120 CONG. REC. 22,459 (1974). Congressman Kemp argued that while people in this country may understand the reasons behind its amateur athletic shortcomings compared to the Soviets, these were unclear to our "Indonesian, Kenyan, or Venezuelan friends." 120 CONG. REC. 15,753 (1974).

130. H.R. REP. NO. 1627, 95th Cong., 2d Sess. 10-13, 18, 40-41, 44-48 (1978), *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 7478, 7483-86, 7491, 7498-99, 7501-04.

now, however, it is clear that many positive steps have occurred which should improve the competitive position of American amateur sports. For example, as will be discussed later, the NGB's are becoming more open and responsive to participants in their sports, training facilities have been constructed, fund raising has improved, sports medicine programs have been initiated, and more money is being spent on developing young athletes and minor sports.

### *E. Promotion of International Amateur Athletic Competition*

The United States Olympic Committee shall "promote and support amateur athletic activities involving the United States and foreign nations."<sup>131</sup>

The Act seeks to implement this goal by reforming the sanctioning process to eliminate arbitrary decisions, by establishing a means for reducing conflicts between organizations, and by minimally correlating the amateur status requirements of each NGB with those of its international federation. The USOC has responded to the Act's directive by establishing programs to assist noncollegiate and postcollegiate amateur athletes to continue their involvement in sport.

#### *1. Sanctioning process*

Amateur athletes may compete only in those international competitions sanctioned by an NGB. Before the Act, NGB's used their sanctioning power as a weapon to keep amateur athletes and sports organizations in line.<sup>132</sup> If an amateur athlete failed to secure a sanction from an NGB before participating in a competition, the NGB might rule the athlete ineligible for further competition. The NGB exercised complete, unreviewable discretion in denying, approving, or ignoring requests for sanctions.<sup>133</sup>

The Act seeks to prevent arbitrariness by specifying a procedure for requesting and issuing sanctions.<sup>134</sup> An amateur sports organization planning to hold an international competition in this country must demonstrate to the appropriate NGB that the competition will comply with the requirements of sec-

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131. 36 U.S.C. § 374(5).

132. 1 PCOS REPORT, *supra* note 14, at 59-61.

133. 2 *id.* at 443.

134. 36 U.S.C. § 392(b).

tion 202(b)1. These requirements include payment to the NGB of any "reasonable and nondiscriminatory" sanctioning fee as may be required, preparation of a financial report of similar events conducted by amateur sports organizations, and a showing that "appropriate measures" have been taken to protect the competitor's amateur status. The sponsor must also promise to validate records of the competition, comply with any specific amateur athletic requirements of the competition, employ qualified officials, and provide medical supervision to protect the safety of athletes and spectators. An amateur sports organization wishing to participate in competition outside of the United States must meet the section 202(b)1 requirements, but must provide the NGB with a report of its most recent foreign trip involving the sponsorship of amateur athletes, instead of the financial report of similar events.

While the Act requires the amateur sports organization to submit information showing compliance with section 202(b), an NGB is free to consider additional information in deciding whether to grant a sanction. Unless "clear and convincing evidence" suggests that the proposed event would be detrimental to the best interest of the sport, the sanction must be granted.<sup>135</sup> The "best interests" standard is a flexible one; citing human rights violations, NGB's have relied on this standard in refusing to sanction competition between United States and South African athletes.<sup>136</sup>

After the Act, an NGB is now unlikely to abuse its sanctioning authority. First, an organization denied a sanction may appeal the decision to the USOC and, if still dissatisfied, to an ar-

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135. The operative phrase is "if [an NGB] does *not determine* by clear and convincing evidence that holding or sponsoring an international amateur athletic competition would be detrimental to the best interest of the sport, the [NGB] shall promptly grant . . . a sanction." *Id.* (emphasis added).

136. For example, the Wrestling Division of the AAU (WD-AAU) recently refused to allow Oregon State University wrestlers to compete against South African wrestlers. *Statesman-Journal* (Salem, Or.), July 21, 1981, § D, at 1, col. 5. The current circumstances of athletic apartheid have been summarized as follows:

Sport, in the forefront of change due to foreign pressures, continues to be a sensitive subject. The government has lifted all the legal restrictions against multiracial sport, and the blacks are now playing on some South African international teams. But at the club level integration remains discretionary and a huge row broke out recently when a white Pretoria high school fielded two black boys on its rugby team.

de St. Jorre, *South Africa: Is Change Coming?*, 60 *FOREIGN AFF.* 106, 108 (1981); cf. Tyler, *South Africans Told to Ignore Race Laws on the Playing Field*, *Christian Sci. Monitor*, Oct. 16, 1981, at 13, col. 3.

bitration board.<sup>137</sup> The burden of proof is on the NGB to justify its denial of a sanction by "clear and convincing" evidence that granting the sanction would be detrimental to the sport.<sup>138</sup> The NGB knows, therefore, that an unreasonable denial of a request for a sanction is likely to be reviewed and reversed. Second, the NGB is comprised of amateur sports organizations who will want sanctions for their own events. Thus, for political reasons, a member of an NGB is not likely to vote arbitrarily to deny a sanction to another member when it needs to secure a sanction for its own future competition. Finally, an NGB which arbitrarily refuses to grant sanctions may be replaced by another group: the Act explicitly provides for the replacement of NGB's which do not meet their duties, one of which is to review sanction requests with fairness.<sup>139</sup> For these three reasons, an NGB is likely to be evenhanded in its sanctioning process.

A basic question remains under the Act: Who precisely needs a sanction? An NGB has the authority to sanction "international amateur athletic competition" both inside and outside the country.<sup>140</sup> The Act defines "international amateur athletic competition" as "any amateur athletic competition between any athlete or athletes representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country."<sup>141</sup> Given the private character of the USOC and NGB's, what does it mean to "represent the United States?" The legislative history suggests that the phrase is "not intended to be limited to athletes or teams known as 'national' teams of the United States."<sup>142</sup>

If the sanction requirement is not limited to designated national teams, how broad is its scope? Must a bush league team representing a tavern in Detroit secure a sanction in order to challenge a team across the border in Windsor to a basketball game? The legislative history discloses that the sanctioning requirement is not intended for normal high school and college competition with Mexican and Canadian teams.<sup>143</sup> There is, however, no similar exemption for other cross-border competi-

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137. 36 U.S.C. § 395(a)(1), (c).

138. *Id.* § 392(b).

139. *Id.* § 395(b).

140. *Id.* § 393(4).

141. *Id.* § 373(5).

142. H.R. REP. NO. 1627, 95th Cong., 2d Sess. 13, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 7478, 7487.

143. *Id.*

tion. Common sense, one hopes, would prevail. The American Basketball Association of the U.S.A. has already indicated that it would be foolish for it to punish athletes who engage without formal sanction in a basketball game with Mexican or Canadian teams.<sup>144</sup>

The Act seems to rely primarily upon the NGB's for this and other interpretations of the breadth of the sanction requirements. The USOC does not have the authority to grant sanctions although it does have the authority to review an NGB's sanction decision.<sup>145</sup>

Because the USOC may appoint NGB's only in Olympic and Pan-American sports, the Act contains no provisions regulating the sanctioning process for non-Olympic/Pan-American sports. Thus, neither the USOC or its NGB's have authority to review sanction decisions by groups governing non-Olympic/Pan-American sports.<sup>146</sup> The incapacity of the USOC and its NGB's to review sanction decisions by these groups poses a serious threat to the USOC and the Olympic movement when other members of the movement threaten to retaliate against the USOC for its failure to govern such groups. A good example was the threat of many foreign national Olympic committees either to withdraw from the 1984 Los Angeles Games or to seek their relocations abroad, in retaliation against competition in the United States between American athletes and South African rugby teams.<sup>147</sup> These threats posed a problem for the USOC; as the national organizing Olympic committee it was required to coordinate and prepare for the games. It also had a statutory responsibility to protect the implicitly threatened eligibility of American athletes to participate in future international competition.<sup>148</sup>

Despite this problem and others, the sanctioning process re-

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144. Telephone interview between Conrad Hutterli and Tom McGrath, Asst. Dir., ABAUSA (July 2, 1981).

145. 36 U.S.C. §§ 394, 395(a)(1).

146. See *id.* § 391(a).

147. Kilborn, *Storm brewing over South African rugby team's U.S. tour*, Christian Sci. Monitor, Aug. 10, 1981, at 13, col. 1; *Soviets to use rugby tour as ammo against LA Games*, Statesman-Journal (Salem, Or.), Sept. 12, 1981, at 2D, col. 2. On the importance to U.S. amateurs of staging the games in Los Angeles, see Eldridge, *An Olympian peers at 1984 games and perceived 'winners' everywhere*, Christian Sci. Monitor, Aug. 10, 1981, at 16, col. 1.

148. Although this threat is not currently being pursued, this and other dormant controversies remain potentially explosive.



quired by the Act is working. By transforming the authority to grant a sanction from a weapon to defend an NGB's territory into a tool to protect amateur athletes, the Act has rendered a great service.

## 2. *Promoting participation*

Prior to the Act, NGB's sometimes authorized major competitions at awkward times. For example, while the AAU was the NGB in track and field, it scheduled a meet in China at the same time the NCAA planned to hold its conference championships.<sup>149</sup> This forced top college athletes to choose between competing for their schools and passing up a rare opportunity in China, or competing there and probably losing their scholarships.<sup>150</sup> The Act attempts to avoid this situation through a scheduling provision that requires the NGB to "minimize" scheduling conflicts "through coordination with other amateur sports organizations."<sup>151</sup> Arguably, an NGB's authority under this provision extends beyond tendering its good offices to actually resolving scheduling conflicts whenever possible. At the very least, the language of the provision, couched in terms of duty, seems capable of dissuading amateur sports organizations from noncompliance if they expect to elicit the future cooperation of an NGB.

The Act also enhances participation by preventing an NGB from establishing amateur status requirements that are more restrictive than those of the sport's international federation.<sup>152</sup> This provision is a response to the AAU's policy of establishing uniform eligibility requirements for all the many sports it governed.<sup>153</sup> The PCOS discovered that in many cases the AAU's standard was stricter than that of the international federations.<sup>154</sup> By requiring that amateur status rules be no more restrictive than the international rules, the Act encourages participation by excluding fewer athletes and preserving morale. American athletes now know they may take advantage of any liberal eligibility provision of the international federations, just as foreign athletes may.

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149. *Hearings*, *supra* note 53, at 179 (statement of Mr. Neinas).

150. *Id.* at 179-82.

151. 36 U.S.C. § 392(a)(2).

152. *Id.* § 391(b)(12).

153. 1 PCOS REPORT, *supra* note 14, at 85, 88-89.

154. *Id.*

The USOC has gone beyond the specific provisions in the Act to initiate other programs enhancing opportunities for amateur athletes to engage in international competition. The PCOS discovered that many postcollegiate and noncollegiate athletes were forced to give up their sport because they could not find permanent work which would allow them to train and participate in international competition.<sup>155</sup> Many athletes were retiring from amateur sports before they reached their physical peak.<sup>156</sup> In response, the USOC has adopted several programs designed to encourage a mature amateur athlete to continue participation in international competition, without violating international definitions of amateur status.<sup>157</sup>

The USOC Olympic Job Opportunities Program seeks to match athletes with employers who are sympathetic to the athletes' training schedule and will allow the athlete to take time off with pay to train and compete.<sup>158</sup> An athlete may also obtain a career position which will continue even after the athlete retires from sport.<sup>159</sup> Similarly, the USOC encourages state governments to let their employees have time off with pay while the employees are engaged in international competition.<sup>160</sup> Thirteen state governments have agreed to this program.<sup>161</sup> When the USOC is unable to persuade an employer to allow an athlete time off with pay to train and compete, the "broken time payment" program may assist the athlete. Under IOC rules, the USOC may compensate an athlete not only for expenses directly related to competition, but may provide the athlete with money to cover lost wages as well.<sup>162</sup>

Although this financial assistance encourages greater participation, and is consistent with the Act and Olympic Rules, the growing use of increasingly substantial assistance is inconsistent with traditional amateur athletics. Tennis organizations, edging

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155. *Id.* at 69-70.

156. *Id.*, vol. I, at 69-70. For example, fencers generally do not reach their peak until well after the normal 18-22 collegiate age bracket, but there are very few postcollegiate fencing programs in the United States. Hockey players frequently have to give up their sport at age 18-19 due to the lack of any organized program. Nearly 85% of the 11,000 teams registered with the hockey NGB are for boys under 15. *Id.*, vol. II, at 67, 109-10.

157. *Id.*

158. N.Y. Times, Feb. 24, 1978, § A, at 22, col. 4.

159. *Id.*

160. 1980 USOC Report, *supra* note 43, at 1-2.

161. *Id.* at 2.

162. Olympic Charter By-Laws § VII(A)2b (1980).

toward open competition for professionals and amateurs alike, have become increasingly lenient toward remuneration of expenses incurred by amateur athletes, well beyond the USOC and Olympic limits.<sup>163</sup> If unchecked, the results of this trend could ultimately prove detrimental to amateur athletics.

Whatever the emerging problems affecting amateurism, financial aid programs have served to extend athletic careers and improve athlete morale.<sup>164</sup> Combined with sanctioning reforms and the provisions requiring scheduling coordination, the USOC, through the Act, has significantly resolved many difficulties that had hindered international competition.

### *F. Physical Fitness and Public Participation*

The United States Olympic Committee shall "promote and encourage physical fitness and public participation in amateur athletic activities."<sup>165</sup>

The Act establishes the USOC to promote not only international amateur athletic competition but, to a degree, purely domestic competition as well. Even if the phrase "amateur athletic activities" is interpreted to include only those in the Olympic/Pan-American programs,<sup>166</sup> "physical fitness" clearly contemplates a much broader range of activity.

The USOC has begun promoting physical fitness and public participation by staging a National Sports Festival.<sup>167</sup> However, its primary tools to achieve these goals are the NGB's.<sup>168</sup> Members of an NGB may represent many levels of a sport. In swimming, for example, NGB members represent amateur swim clubs, high schools, colleges, YMCA/YWCA organizations, and city recreation programs.<sup>169</sup> Taken together, these programs provide a wide range of opportunities for participation related only

163. Yerkey, *Amateur athletes and the forbidden fruit—money*, Christian Sci. Monitor, Sept. 3, 1981, at 2, col. 2.

164. Athletes involved in these programs seem to be enthusiastic about them. N.Y. Times, Feb. 24, 1978, at 22, col. 4. There are critics who favor a nonelitist approach to athletics and would oppose cradle-to-grave nurturing of world class athletes. See, e.g., Lipsyte, *Varsity Syndrome: The Unkindest Cut*, 445 ANNALS 15 (Sept. 1979).

165. 36 U.S.C. § 374(6).

166. See *supra* notes 36-41 and accompanying text.

167. See 1980 USOC Report, *supra* note 43, at 4. See *infra* text accompanying notes 192-93.

168. Rowan interview, *supra* note 42.

169. UNITED STATES SWIMMING, THE BEST THE WORLD HAS TO OFFER (n.d.) (brochure explaining the organizations and nature of the new aquatics NGB).

indirectly to major international competition.

Of course, many of these programs are so competitive that they exclude less skilled or noncompetitive participants. If, because of the Act, competitive programs in Olympic/Pan-American sports come to claim a much greater share of available facilities, these participants may end up with less than they had before the Act.<sup>170</sup> It is therefore imperative that the USOC concern itself with general physical fitness, with the public's need to participate in amateur sports, and with the concomitant turf problems of access to adequate facilities. The USOC and NGB's must understand that the encouragement of top competitors is not necessarily synonymous with the encouragement of public participation mandated by the Act.

### *G. Development of Amateur Athletic Programs*

The United States Olympic Committee shall "assist organizations and persons concerned with sports in the development of amateur athletic programs for amateur athletes."<sup>171</sup>

As already noted, the term "amateur athlete" is generally interpreted to refer to a person who meets the eligibility standards set by a USOC-recognized NGB.<sup>172</sup> This means that the USOC's development responsibilities are limited to sports that appear on the program of the Olympic and Pan-American Games.

Regardless of whether "amateur athlete" is defined in this way or more broadly, the key word in any development program is *money*. How should the USOC raise and spend it?

The Act does not provide an ongoing commitment by the federal government to finance USOC activities. Instead, the Act adopts the viewpoint of the PCOS that private corporations would be willing to help if the USOC could be reworked into an organization which could achieve its goals, inspire confidence, and become a more aggressive fund raiser.<sup>173</sup> The PCOS did,

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170. For example, if more pool time is devoted to training and competition, there obviously is less time for noncompetitive swimmers to use a pool for improving their physical fitness. For a view of a national program which is very successful in developing elite athletes but is delinquent in providing athletic facilities for the general public, see N.Y. Times, July 11, 1976, § 5, at 15, col. 2; Willis, *Moscow amasses medals but sport's not for masses*, Christian Sci. Monitor, Aug. 12, 1980, at 3, col. 1.

171. 36 U.S.C. § 374(7).

172. See *supra* text accompanying notes 36-41.

173. 1 PCOS REPORT, *supra* note 14, at 3-4.

however, recommend that Congress authorize a "one time" appropriation of \$215 million for developing amateur sports and an annual appropriation of \$83 million for general operating expenses.<sup>174</sup> These sums would have constituted an astounding increase in the USOC's financial resources.<sup>175</sup> Congress however, chiseled the recommended amount down to \$16 million.<sup>176</sup> Even this money was not appropriated as expected; instead, the USOC received \$4 million directly and \$6 million as matching funds.<sup>177</sup> Public expenditures thus far have been restricted in amount and application; those few monies reaching the USOC have been earmarked primarily to offset the costs of hosting Olympic competition in the United States.<sup>178</sup>

Despite this lack of public funding, the USOC's fund-raising efforts have been successful. From \$12.6 million for the 1976

174. *Id.*

175. The USOC's projected revenue for the four years of the 1976 Olympiad was \$12.6 million. 2 *id.* at 422.

176. The Act itself does not provide for any funding. A separate provision authorizing \$16 million for the USOC was passed as part of a larger appropriation package. Pub. L. No. 95-492, 92 Stat. 1605 (codified at 36 U.S.C. § 384 (Supp. IV 1980)).

177. The original \$16 million appropriation was to be released to the USOC in fiscal year 1980. In 1980 Congress did not include the \$16 million in the budget. Congress was persuaded to spend \$4 million immediately and \$6 million in matching funds to be disbursed by the Secretary of Commerce. Act of July 8, 1980, Pub. L. No. 96-304, § 203, 94 Stat. 898. According to the USOC, \$4 million "was regarded as 'disaster funds,' " to cover loans the USOC had taken out to finance U.S. preparation for the Moscow Olympics. See 1980 USOC Report, *supra* note 43, at 3, 4.

178. The government finds it easier to justify reimbursing the USOC and related organizations for hosting international competition in this country than to provide federal funds for the broader development of amateur athletics. For example, the Department of Commerce was able to incorporate the Olympic Winter Games Authorization Act, which made federal money available for the Lake Placid Olympics, into a program administered by the Economic Development Administration, because Lake Placid is located in a depressed area. The Department of Commerce was uncomfortable, however, with an appropriation to "finance the development and operation of programs to assist in the restructuring of amateur sports because it has no similar program to which the appropriation could be tied." Letter from C.L. Haslam, Gen. Counsel of U.S. Dept. of Commerce to Hon. Peter W. Rodino, Chairman of the House Comm. on the Judiciary (June 20, 1978), reprinted in 1978 U.S. CODE CONG. & AD. NEWS 7478, 7497-98. After the tremendous expense associated with the Munich, Montreal and Lake Placid Olympics, city governments are reluctant to sponsor the Olympic Games. Galante, *The Olympic Games: Legal Hurdles and Lawsuits*, 4 L.A. LAW. 19, 20, 28 (June 1981). A vocal minority of Congress has also become less willing to supply the money necessary to hold Olympic Games. See, e.g., N.Y. Times, Sept. 16, 1972, at 14, col. 3. See also N.Y. Times, April 4, 1976, § 5, at 2, col. 1. After Denver withdrew its bid to host the 1976 Winter Olympics, the USOC changed its procedures for determining potential U.S. Olympic sites. The new procedures require the potential host city to demonstrate that substantial funding and facilities already exist, and that surveys show public support in the city. N.Y. Times, July 15, 1973, § 5, at 1, col. 5.

Olympiad,<sup>179</sup> the USOC raised over \$49 million for the 1980 Olympiad.<sup>180</sup> The USOC's yearly revenue has grown to \$17.1 million in 1981.<sup>181</sup> To be sure, this impressive fund-raising effort cannot be attributed solely to the Act: in 1977 alone, before the Act was passed, the USOC raised more money from corporations than it had over the entire four-year Olympiad of 1976.<sup>182</sup>

The USOC and its membership have been courting corporate sponsorship for some time. For example, in 1974, the AAU swim committee persuaded Phillips Petroleum Co. to sponsor the senior swimming program for the 1976 Olympiad.<sup>183</sup> As the 1980 Olympics approached, fifty corporations had exchanged gifts or cash for the right to declare their product was used or approved by the U.S. Olympic team, leading to the wry observation that "[i]n 776 B.C. Greek victors in the first Olympic games wore only a crown of laurel leaves. In 1980, when U.S. athletes march in Moscow, they'll be wearing Levi Strauss clothing, Timex watches, and Coppertone tans."<sup>184</sup>

Outside the Act itself, both Congress and the USOC have been helpful. Congress has encouraged the growth of amateur athletics through the Internal Revenue Code, which provides tax exempt status to any entity which is organized to "foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)."<sup>185</sup> As further support, a bill before Congress

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179. 2 PCOS REPORT, *supra* note 14, at 422.

180. USOC, Financial Statements and Supplemental Schedules for the Year and For Year Period Ended December 31, 1980 and Auditors' Opinion (June 1, 1981) [hereinafter cited as 1980 Audit].

181. USOC, Financial Statements and Supplemental Schedules for the Year Ended December 31, 1981 and Auditors' Opinion 3 (June 1, 1982) [hereinafter cited as 1981 Audit].

182. N.Y. Times, Aug. 14, 1977, § 5, at 4, col. 1.

183. N.Y. Times, Aug. 11, 1974, § 5, at 5, col. 2.

184. Wall St. J., April 13, 1979, at 1, col. 1.

185. I.R.C. § 501(c)(3) (CCH 1982). "The denial of relief to organizations which provide athletic facilities or equipment is intended to exclude organizations which, like social clubs, provide facilities for their members. This provision is not intended to adversely affect the qualifications for charitable tax exempt status or tax deductible contributions of any organization which would qualify under the standards of the existing law." [1981] 5 STAND. FED. TAX REP. (CCH) ¶ 3001. The Tax Court has held that an amateur baseball league can be granted tax-exempt status. *Hutchinson Baseball Enterprises, Inc. v. Comm'r*, 73 T.C. 144 (1979). For other pertinent decisions, see Rev. Rul. 365, 1977-2 C.B. 192 (tax exempt status granted to a non-profit organization which held clinics, workshops, lessons, and seminars on popular amateur sports); Rev. Rul. 2, 1965-1 C.B. 227; Rev. Rul. 215, 1980-32 I.R.S. 9 (tax exempt status granted to an organization designed to develop, promote, and regulate an amateur sports league for children).

would enable taxpayers to donate one dollar to the USOC by means of a checkoff on their federal income tax returns.<sup>186</sup>

The USOC has also improved its use of money for sports development programs. It is faced with the difficulty of incorporating into its development plans many other factors involved in athletic development. For example, academic institutions in the United States play a critical role in training young athletes;<sup>187</sup> this is at once an advantage and a potential problem. On one hand, almost every child is exposed to sports through gym classes and interscholastic competitions. On the other hand, schools often have interests that diverge from those of the USOC. To an academic sports director, many Olympic sports are often regarded as minor or nonrevenue sports.<sup>188</sup> When times are tough, these are typically the first to be cut from the school's athletic program.<sup>189</sup> To be effective in developing broadly based amateur athletic programs, the USOC must recognize and work with these interests.

The USOC's assistance for the development of world class athletes had a checkered past prior to the Act. Instead of emphasizing underdeveloped programs, the USOC allocated development money on the basis of what amounted to a spoils system. The more successful and popular the sport, the more development money it received.<sup>190</sup> This left minor sports, which

186. 1981 Audit, *supra* note 181. See S. 1595, 97th Cong., 1st Sess., 127 CONG. REC. 59,239 (daily ed. Aug. 3, 1981).

187. In 1971-72, the NCAA's 663 members had over 5,300 full-time coaches, \$1.5 billion in facilities, and a total annual operating budget of \$535 million, of which \$154 million went for athletic scholarships. II PCOS REPORT, *supra* note 14, at 331. The scope of the NFSHSA is even more impressive. Over 20,000 high schools are members of the NFSHSA, and their programs involve over three million athletes. *Id.* at 359.

188. The NCAA maintains that there is not a single college track and field program in the country which does not lose money. *Hearings, supra* note 53, at 160-1 (remarks of Mr. Byers). Football and ice hockey are the only sports which make money; basketball breaks even. *Id.*

189. See generally I PCOS REPORT, *supra* note 14, at 70.

190. Six criteria were used to determine how much development money an NGB should receive. The criteria were medal production, world rank, participation (number of athletes engaged in the sport), NGB activities (number of activities such as training clinics held by the NGB), team size (number of athletes on an Olympic team), and public interest (popularity of the sport in the U.S.). These criteria were weighted as follows:

Medal Production	15%
World Rank	27%
Participation	20%
NGB Activities	13%
Team Size	10%
Public Interest	15%

most needed the development programs, in the flats below Mount Olympus. Even well developed sports did not receive huge amounts. For the 1976 Olympiad, men's track and field received the most development money, \$216,500; at the bottom of the appropriations list, synchronized swimming received only \$17,060.<sup>191</sup>

In recent years the USOC has greatly improved its sports development program. The USOC Development Committee now conducts a survey every four years to rank the development of each event on the Olympic or Pan-American program.<sup>192</sup> The events are classified as "developed," "emerging," or "underdeveloped," based on the pool of world class athletes capable of representing the United States in the event. The Development Committee approves annual grants to each NGB in order to enable it to overcome weaknesses in its developmental program. Each NGB must then submit an annual narrative and financial report of its activities.<sup>193</sup> Finally, as the mechanism for distributing developmental funding has improved, the amount of money available for development has increased. In the 1980 Olympiad, the USOC spent \$10.4 million on sports development,<sup>194</sup> — almost four times the amount spent on development during the 1976 Olympiad.<sup>195</sup>

Another improvement in the USOC's sports development program has been the introduction of a National Sports Festival. The festival is designed to draw young athletes in non-Olympic/Pan-American sports to a contest which gives them an opportunity to show off their talent under a national spotlight.<sup>196</sup> The USOC hopes that the festival will help develop amateur athletic talent by encouraging actual participation in less popular Olympic/Pan-American sports, by exposing more spectators to these sports, and by broadening the numerical and geographic base of the sports. The festival can be seen as an athletic recital. Its regionally organized structure encourages an NGB in an underdeveloped sport to recruit athletes from many parts of the

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*Id.*, Vol. II, at 423.

191. *Id.* at 425.

192. USOC Const. By-Laws, ch. XVI, § 7 (1980).

193. 1981 Audit, *supra* note 181 (statement of the Executive Board).

194. 1980 Audit, *supra* note 180.

195. 2 PCOS REPORT, *supra* note 14, vol. II, at 422.

196. United States Olympic Committee, *THE OLYMPIC GAMES*, at 9 (1979); Atkin, *U.S. festival emerges as showcase for Olympic hopefuls*, *Christian Sci. Monitor*, July 31, 1981, at 14, col. 1.



country and not merely from areas where the sport is prominent. Speed skating, ice hockey, archery, and men's field hockey are examples of sports which are prominent in very specific regions of the country which could benefit from broader geographical exposure.<sup>197</sup>

In sum, despite the reluctance of the federal government to fund sports development, it now appears that the USOC has established an impressive fund-raising apparatus, an effective method of funneling money to underdeveloped sports, and at least a few substantive sports development programs.

#### *H. Conflict Resolution and Athlete's Rights*

The United States Olympic Committee shall "provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition."<sup>198</sup>

The Act requires that the USOC constitution and by-laws establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Pan-American Games, world championship competition, or other such protected competition as defined in such constitution and bylaws.<sup>199</sup>

The Act also specifies procedures for settling two common types of conflicts: (1) those which arise when an amateur sports organization or eligible person attempts to compel an NGB to comply with the organizational and sanctioning criteria in the Act, and (2) those generated when an amateur sports organization seeks to replace an incumbent NGB.

#### *1. Compliance mechanism: Enforcing compliance with the organizational criteria*

The Act establishes certain criteria which an applicant must meet in order to become an NGB.<sup>200</sup> If an existing NGB fails to

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197. 2 PCOS REPORT, *supra* note 14, at 5, 76, 109, 201.

198. 36 U.S.C. § 374(8).

199. *Id.* § 382(b).

200. *Id.* § 391(b).

continue to satisfy the criteria, any person eligible to belong to the NGB or an amateur sports organization may enforce compliance with the Act's criteria by filing with the USOC a complaint against the NGB.<sup>201</sup> A complainant may take this action only after exhausting "all available remedies" within the NGB.<sup>202</sup> However, the USOC must waive this requirement if the complainant can show by "clear and convincing" evidence that complying with it would result in "unnecessary delay."<sup>203</sup> Within thirty days after the filing date the USOC must rule whether the complainant's remedies within the NGB have been exhausted or, if they have not been exhausted, whether unnecessary delay would result by insisting on exhaustion of remedies.<sup>204</sup> If the USOC rules that the complainant is entitled to bring the complaint before the USOC, it must schedule a hearing within ninety days of the filing date.<sup>205</sup> After the hearing the USOC may either dismiss the complaint, place the NGB on probation for up to 180 days, or revoke its recognition of the NGB.<sup>206</sup> If the NGB is placed on probation and fails to bring itself into compliance with the Act in the required time, the USOC must revoke recognition of the NGB unless the latter can show by clear and convincing evidence that it needs more time through no fault of its own.<sup>207</sup> Either party may appeal the USOC decision to a regional office of the American Arbitration Association.<sup>208</sup> The demand for arbitration must be filed within thirty days of the USOC's decision.

These procedures have the positive effect of curtailing formal complaints within the USOC. The USOC is satisfied with the procedures, proudly noting that all of the very few complaints have been resolved "amicably" without arbitration.<sup>209</sup>

## 2. NGB challenge mechanism: Replacing an incompetent NGB

The challenge mechanism used to replace an existing NGB

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201. *Id.* § 395(a).

202. *Id.* § 395(a)(1).

203. *Id.*

204. *Id.* § 395(a)(2).

205. *Id.* § 395(a)(3)(A).

206. *Id.* § 395(a)(3)(C).

207. *Id.* § 395(a)(3)(D).

208. *Id.* § 205(c).

209. Rowan interview, *supra* note 42.

is similar to the complaint procedure, except of course, that an individual cannot file a complaint, and the relief sought by the complainant is generally the displacement of the existing NGB in favor of the complainant.<sup>210</sup> To succeed in its challenge,<sup>211</sup> an amateur sports organization must first appear in a hearing to show by a preponderance of the evidence that it meets the criteria for recognition as an NGB. The challenger must also show either (1) that the current NGB does not meet those criteria or (2) that the challenger will do a better job of meeting the criteria and provides, or is capable of providing, a more effective national program of competition than the current NGB. Within thirty days after the hearing the USOC must decide whether to retain the existing NGB; place the existing NGB on probation; revoke recognition of the existing NGB and declare a vacancy, recognizing neither party to a challenge; or replace the existing NGB with the challenger.<sup>212</sup> The USOC has sixty-one days to recommend and support a new NGB to the appropriate international sports federation.<sup>213</sup> Any party aggrieved by a USOC decision on a challenge has a right to review by any regional office of the American Arbitration Association if it files a demand within thirty days of the decision.<sup>214</sup> The arbitral decision is binding and enforceable against nationals of states that are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>215</sup>

While the complaint mechanism is working quite smoothly, this challenge mechanism has been seriously strained by an ongoing dispute between the United States Wrestling Federation (USWF) and the Wrestling Division of the AAU, Inc. (WD-AAU). Shortly before the Act was passed, the USWF challenged the WD-AAU under the prior USOC Constitution and challenge procedures. The Executive Board of the USOC, after a hearing, denied the USWF's application. The USWF immediately filed a Demand for Arbitration with the American Arbitration Association. On September 7, 1978, the three arbitrators unanimously found that the USWF had successfully established its claim for

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210. 36 U.S.C. § 395(b).

211. The USOC does not have to wait for a complaint or challenge before it takes action. On its own initiative, the USOC may review the performance of an NGB. *Id.* § 394. If the USOC is not satisfied, it may take whatever action it deems appropriate.

212. *Id.* § 395(b)(4).

213. *Id.* § 395(b)(5).

214. *Id.* § 395(c)(1).

215. June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3.

recognition as the wrestling NGB and was therefore entitled to replace the WD-AAU as a Group A member of the USOC.<sup>216</sup> On September 23, 1978, the USOC legal counselor advised the committee that while the arbitral award purported to establish the USWF as the NGB, the international wrestling federation (FILA) still had to recognize the USWF before it could be seated as a Group A member of the USOC. This was, and continues to be, a required step because the Olympic Charter specifies that national committees can recognize only members of appropriate international federations.<sup>217</sup> Therefore, the USOC President promptly wrote to FILA recommending "as strongly as we can" that FILA recognize the USWF as the NGB "as soon as possible."<sup>218</sup> On October 17, 1978, FILA replied that any application by the USWF for membership in FILA could only be determined by its Congress, which would not meet until 1980. The USOC President repeated his request that FILA take action before then.

Encouraged by this support from the USOC President, the USWF filed an application with FILA on December 5, 1978, which included an affidavit from the USWF as the United States wrestling NGB. Four days after the USWF filed its application with FILA, however, the Executive Board of the USOC repudiated its decision of September 23 by restoring its recognition of the WD-AAU.<sup>219</sup>

In response to the USOC's decision to let the matter rest until 1980, the USWF, which had already fought off a court challenge to the arbitration award,<sup>220</sup> brought an action against the USOC. The USWF sought an order compelling the USOC to recognize it as a Group A member. On April 9, 1979, the court held that the USWF had acquired the status of an NGB contingent upon its recognition by the FILA.<sup>221</sup> Thus, until then, the WD-AAU was required to give its "full recommendation and support" to the USWF efforts to be recognized by FILA.

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216. See *United States Wrestling Fed'n v. United States Olympic Comm.*, No. 13460-78, slip op. at 6 (Super. Ct. D.C. April 19, 1979).

217. Olympic Charter By-Laws, § V(5) (1980).

218. See *United States Wrestling Fed'n v. United States Olympic Comm.*, No. 13460-78, slip op. at 6 (Super. Ct. D.C. April 19, 1979).

219. *Id.* at 7.

220. For a reference to this decision, upholding it on other issues, see *United States Wrestling Fed'n v. Wrestling Div. of the AAU, Inc.*, 605 F.2d 313, 314-15 (7th Cir. 1979).

221. *United States Wrestling Fed'n v. United States Olympic Comm.*, No. 13460-78, slip op. at 8-9 (Super. Ct. D.C. April 19, 1979).

At its 1980 Congress, the FILA rejected the USWF's application for recognition. The USWF was not allowed to present its case before FILA. Instead, the USOC presented the USWF's application to the FILA Congress, with a recommendation that, some time after the 1980 Games, the USWF should replace the WD-AAU.<sup>222</sup> A recent amendment to the FILA Constitution facilitated its rejection of the USWF by eliminating a prior presumption in favor of any candidate supported by a national Olympic Committee.<sup>223</sup>

At this point, the United States Congress, in order to prevent the Act from being undermined, responded by passing the Bellmon rider to a bill appropriating assistance to the USOC.<sup>224</sup> This provision forbids the USOC from allocating any of the appropriation to an NGB when another amateur sports organization has been designated the NGB by binding arbitration and prohibits any NGB so displaced from exercising its powers under section 203 of the Act.

In 1980 the USWF brought an action in federal court against the WD-AAU and the USOC, as co-defendants, seeking a declaratory judgment that the Act, newly armed with the Bellmon rider, prohibited the WD-AAU from acting as the NGB.<sup>225</sup> In an opinion and order in favor of the plaintiff USWF, the court went well beyond the requested remedy. It permanently enjoined the defendant WD-AAU from exercising any of the powers of a national governing body, and required it to resign its membership in, and sever all relationships with, FILA.<sup>226</sup> The court further ordered the defendant USOC to terminate its recognition of defendant WD-AAU as a Group A member and the national governing body for amateur wrestling in the United States. The WD-AAU's right to represent the United States in FILA and its right to exercise any other national governing body powers set forth in the Act were also terminated.<sup>227</sup>

Although the wrestling controversy was triggered by a challenge under the USOC Constitution and not under the Act, its

222. See 1980 USOC Report, *supra* note 43, at 8-9.

223. United States Wrestling Foundation, Statement of Position, at § VI (undated release explaining the USWF's position in the USWF/WD-AAU conflict). FILA did not respond to the author's request for information concerning its decision.

224. Act of July 8, 1980, Pub. L. No. 96-304, § 203, 94 Stat. 898.

225. United States Wrestling Fed'n v. Wrestling Div. of the Amateur Athletic Union, Inc., No. C80-1322 (N.D. Ohio Aug. 20, 1982, *as amended* Oct. 1, 1982) (slip op.).

226. *Id.* at 15-16.

227. *Id.*

bitter and tortured proceedings have unfortunate implications for the Act's challenge procedures. First, by flagrantly ignoring an arbitral award, FILA set an unfortunate precedent for other international federations. If this precedent becomes the general practice, an amateur sports organization challenging an NGB under the Act would no longer be able to rely upon the Act to seek review before a disinterested arbitral body free from sports politics and less protective of the status quo than the USOC Executive Board is likely to be. Second, on the apparent assumption that the international federations would recognize any organization that the USOC recommended, the Act provides only that the USOC must do so within sixty-one days after the new NGB has been selected. Prior to passage of the Bellmon rider, Congress failed to provide for enforcement of either the USOC determination or an arbitral award in the face of a contradictory decision by an international federation.

Even without the Bellmon rider, the wrestling dispute put a hammerlock on the USOC. On the one hand, it is bound by the Act and its own constitution to honor the results of an arbitration by seating the prevailing party as a Class A member. On the other hand, it is obliged to follow IOC rules which prohibit the USOC from recognizing an NGB that is not a member of an international federation.<sup>228</sup> In such a situation, the USOC must depend upon the good will of the international federations to defer to the reasonable provisions of the Act, the supremacy of national means for resolving such jurisdiction disputes, and the finality of arbitral and judicial awards.

The wrestling dispute brings one last problem to light: the sheer expense of the elaborate legal procedures for dispute settlement stipulated in the Act. The delays and expense of litigation, or even arbitration, may discourage an amateur sports organization from seeking to complain against or challenge an NGB. It may also encourage an incumbent NGB to delay a challenge process in order to drain the resources of a challenger. To preserve the intent of the Act, the USOC should consider ways to prevent the NGB challenge mechanism from becoming a test of financial strength instead of merit.

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228. Olympic Charter By-Laws, § V(5) (1980).

### 3. *Protecting the opportunity of an athlete to compete: A structural approach*

The PCOS recommended that Congress enact an "athlete's bill of rights" to include a right to compete internationally.<sup>229</sup> Yielding to NCAA opposition, Congress chose not to enact those rights but provided instead for an "opportunity . . . to participate in amateur athletic competition."<sup>230</sup> In contrast to the detailed provisions for resolving conflicts, an athlete's "opportunity" is poorly defined. Congress apparently believed that an athlete's opportunity to compete would be best secured by creating an accountable and responsible NGB structure with a well-oiled process for conflict resolution rather than by establishing a statutory bill of rights for athletes. Congress was correct. The statutory enactment of an athlete's bill of rights without including other reforms in the Act would not have readily resolved annoying denials of athletic opportunity to compete internationally. A bill of rights alone would have provided only a list of entitlements, perhaps enforceable in court, but without a framework for developing a set of relationships which would promote harmony within the arena of United States amateur athletics. The Act's resolution of problems concerning membership in the USOC and the NGB's, establishment of responsible and accountable NGB's, and provision of a detailed mechanism for conflict resolution should promote an atmosphere in which an athlete is less likely to be the victim of a jurisdictional feud, and in which a bill of rights will be unnecessary.

A loophole deliberately left in the Act by Congress could potentially vitiate the Act's protection of access to competition: under section 206, restricted competition is beyond USOC competence. Despite their otherwise exclusive jurisdiction, the NGB's and the USOC have no statutory authority to prevent amateur sports organizations that are not NGB's, such as the NFSA and the NCAA, from denying an athlete the right to compete in restricted competition after participation in unrestricted international competition.<sup>231</sup> The NCAA argued in

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229. 1 PCOS REPORT, *supra* note 14, at 139-40. See generally Comment, *supra* note 12.

230. 36 U.S.C. §§ 374(8), 391(b)(6), 392(a)(5). On the legislative history, see *Hearings*, *supra* note 53, at 159-61 (statement of Mr. Byers).

231. High school and college associations have exclusive jurisdiction over their restricted competition. 36 U.S.C. § 396. See *supra* text accompanying notes 50-51. By its broad language in § 206, Congress ignored the PCOS recommendations that would have

favor of this power on the ground that the expense and scope of its athletic programs justified the NCAA's authority to command the priority involvement of its athletes.<sup>232</sup> For a variety of reasons, amateur sports organizations might choose to encourage participation in their restricted competitions to the exclusion of international competition. An academic institution may be legitimately concerned that too much classwork would be lost if an athlete should choose to participate in both interscholastic and international competition. High school competitors may be minors who need special supervision. Finally, academic institutions want to protect young athletes from being exploited by unscrupulous promoters.<sup>233</sup> For these reasons some state high school associations have found it easier simply to proscribe participation of students in any nonschool athletic programs during the school year.

Despite this loophole, it appears that Congress has wittingly or unwittingly avoided creating a situation in which amateur sports organizations are likely to use their jurisdiction over restricted competition as a tool to thwart athlete's opportunities to compete. By encouraging responsible and broadbased NGB's, the Act creates an atmosphere where the fears and concerns of the academic institutions are more likely to be heard and dealt with in a mutually satisfactory manner. An NGB that seeks to encourage college and high school participants will be disinclined to schedule major competitions during final exams, or interscholastic seasons that would conflict with academically oriented sports organizations;<sup>234</sup> an NGB simply cannot ignore the special status of student athletes.<sup>235</sup>

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explicitly limited the ability of an amateur sports organization to prevent an athlete from reentering its restricted competition after participating in unrestricted competition. 1 PCOS REPORT, *supra* note 14, at 139-40.

232. See generally *Hearings*, *supra* note 53, at 182-86 (statement of Mr. Byers); *supra* text accompanying note 72.

233. These fears are expressed in the NFSHSA's explanation of its model rules for nonschool participation. NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, 1980-81 Handbook 39-45 (1980).

234. See, e.g., *supra* text accompanying notes 149-50. *Hearings*, *supra* note 53, at 179 (statement of Mr. Neinas).

235. Three years before the Act, Houston McTear, then a promising high school student unable to travel without a chaperone, was unable to compete in the 1975 AAU National Championships because the AAU failed to send enough money for McTear's coach to accompany him. Neither McTear nor his high school could fund travel to the championships for McTear's coach. The travel expense policy of the Athletics Division of the AAU failed to anticipate that a 100-yard dash star might be a minor requiring a chaperone. N.Y. Times, June 20, 1975, at 16, col. 6.



The USOC has satisfied its obligation to protect the opportunity to compete by implementing an athlete's bill of rights in its constitution.<sup>236</sup> This bill of rights is enforceable against all USOC members, including the NGB's. One provision of the constitution forbids a member from denying an amateur athlete the opportunity to compete in "protected" competition.<sup>237</sup> That term refers to international amateur athletic competition between foreign and American athletes who have been officially designated by the sport's NGB to "represent" the United States.<sup>238</sup> This provision in the USOC constitution may conflict with section 206 of the Act, which grants an amateur sports organization "exclusive jurisdiction" over restricted competition. Although section 206 could arguably be interpreted to prevent the USOC from taking any action which interferes with an amateur sports organization's authority over restricted competition, this section should not be construed to grant powers which would curtail the USOC's ability to achieve its statutory "objects and purposes." One of these "objects and purposes" grants to the USOC exclusive jurisdiction over United States participation in Olympic and Pan-American competitions.<sup>239</sup> Another directs the USOC to "obtain for the United States . . . the most competent amateur representations in these games."<sup>240</sup> A construction of section 206 allowing an amateur sports organization to prevent an athlete from returning to restricted competition after participating in Olympic or Pan-American Games could impinge upon the USOC's capacity to exercise its own exclusive jurisdiction to obtain the best representation possible at the games. Thus, the USOC should have the power to enforce the opportunity to compete whenever an athlete is participating in competition within the larger Olympic or Pan-American framework. Specific conflicts will have to be resolved on a case-by-case basis.

### *I. Development of Athletic Facilities*

The United States Olympic Committee shall "foster the development of amateur athletic facilities for use by amateur athletes and assist in making existing amateur athletic facilities

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236. See USOC CONST. art. IX (1981).

237. *Id.* § 1.

238. 36 U.S.C. § 373(5).

239. *Id.* § 374(3).

240. *Id.* § 374(4).

available for use by amateur athletes.”<sup>241</sup>

Access to training facilities is spread unevenly throughout society, particularly between students and nonstudents. The best facilities frequently belong to educational institutions. Thus, an athlete who is attending school usually has greater access to equipment. A nonstudent unable to join an athletic club oriented to major competition may be left with either no training facilities or inadequate ones. Section 104(9) directs the USOC to ameliorate this problem.

The USOC has developed a successful national training center at Colorado Springs for athletes designated by NGB's. While at the center, athletes are financially supported by the USOC. The USOC has, however, had difficulty in establishing regional centers.<sup>242</sup>

Since the USOC may not be able to fund new facilities for postcollegiate athletes, it must “foster development,” presumably by persuading its members who do have facilities, such as colleges and universities, to accommodate serious athletes. Even if the USOC had the money to build training facilities for postcollegiate athletes throughout the United States, such effort might be wasteful, given existing facilities built with public funds which are idle for long stretches of time. By utilizing a data processing system currently contemplated for the NGB's,<sup>243</sup> the USOC could foster development by collecting information on the availability of training facilities in particular regions of the country. In this way, an amateur athlete might be able to secure necessary information concerning access to facilities located nearby.

### *J. Research and Distribution of Information*

The United States Olympic Committee shall “provide and coordinate technical information on physical training, equipment design, coaching, and performance analysis” and “encourage and support research, development, and dissemination of information in the areas of sports medicine and sports safety.”<sup>244</sup>

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241. *Id.* § 374(9).

242. *Id.* at 5; Eldridge, *Olympic training site gives big boost to US athletes*, Christian Sci. Monitor, Sept. 17, 1981, at 10, col. 1. The USOC established one regional center at Squaw Valley but had to close it during the fall of 1980 because of high operating costs.

243. 1980 USOC Report, *supra* note 43, at 2.

244. 36 U.S.C. § 374(10)-(11).

Prompted by the PCOS recommendation that a sports medicine program be established,<sup>245</sup> the USOC created the Sports Medicine Council to serve as a central depository for information on sports medicine and provide continuing education on sports medicine to persons involved in amateur athletic training.<sup>246</sup> The USOC also owns a Mobile Fitness Van, which is equipped for cardiovascular testing of athletes at their own training facilities. In the first year of the USOC's sports medicine program over 700 athletes from seventeen different sports were tested by members of the Sports Medicine Council.<sup>247</sup>

The Council has also developed a highly sophisticated sports medicine program at its Sports Medicine Clinic and Research Center in Colorado Springs.<sup>248</sup> Its name belies its active involvement in testing and training young athletes.<sup>249</sup> As a USOC official explained, "For the first time, the USOC has decided to rely on scientific evaluation in training rather than simply talent."<sup>250</sup> An example of the kind of work done by the center is the help American kayakers received. Even though American Kayakers seem to be bigger and stronger than their European rivals, Americans continued to have limited success in the sport. Computer analysis of European and American teams revealed that the Americans were emphasizing their strokes in the wrong place and as a consequence were working harder and achieving less than their European counterparts.<sup>251</sup> Although sections 104(10) and 104(11) had their origins before the Act, these measures nevertheless serve as a continuing impetus.

### *K. Encouragement of Women, the Handicapped, and Minorities*

The United States Olympic Committee shall "encourage and provide assistance to amateur athletic activities for women, encourage and provide assistance to amateur athletic programs and competition for handicapped individuals, including, where

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245. 1 PCOS REPORT, *supra* note 14, at 123-25.

246. The Sports Medicine Council is authorized in the USOC By-Laws. USOC CONST. By-Laws, ch. XXVII, §§ 1, 2 (1981).

247. The program is designed to "maximize the individual skills, techniques, health, and physiological parameters of our athletes." *Id.*

248. N.Y. Times, Oct. 4, 1977, at 45, col. 1.

249. 1980 USOC Report, *supra* note 43, at 5.

250. N.Y. Times, Oct. 4, 1977, at 45, col. 1.

251. *Id.*

feasible, the expansion of opportunities for meaningful participation by handicapped individuals in programs of athletic competition for able-bodied individuals, [and] encourage and provide assistance to amateur athletes of racial and ethnic minorities for the purpose of eliciting the participation of such minorities in amateur athletic activities in which they are underrepresented.”<sup>252</sup>

The commitment to women athletes reflects the heightened global awareness of women as participants in all social processes. Since women in different sports face different specific problems, each individual NGB is required to initiate and execute its own program. The USOC admits to very little supervision or review of these programs.<sup>253</sup>

With regard to the handicapped, in 1978 the USOC organized the Handicapped In Sports Committee, which serves to represent the USOC in five nationally recognized organizations that conduct athletic competition for the handicapped. The USOC helps to underwrite travel and other costs for handicapped athletes who wish to participate in competitions like the Special Olympics. In 1981, the USOC further evidenced the seriousness of its commitment to the handicapped by creating a special membership group for organizations which directly conduct a national program or a regular national competition for “individuals possessing physical or mental limitations which preclude participation in unrestricted athletic competition.”<sup>254</sup>

As to minorities, some sports where they are underrepresented, such as figure skating and gymnastics, require expenditures at the world class level beyond the capacity of most potential minority participants. The USOC delegates to the NGB’s its responsibility for developing programs to help promising young minority athletes meet the expense of competing in those sports where they are underrepresented.<sup>255</sup>

### CONCLUSION

The Amateur Sports Act of 1978 defines a simple governing

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252. 36 U.S.C. § 374(12)-(14).

253. Letter from Ronald T. Rowan, In-House Counsel for the USOC (July 20, 1981).

254. USOC CONST. art. V, § 8 (1981). The five current group E members are the American Athletic Association of the Deaf, the National Association of Sports for Cerebral Palsy, National Wheelchair Athletic Association, Special Olympics, Inc., and the U.S. Association for Blind Athletes. *Id.* at appendix.

255. Letter from Ronald T. Rowan, In-House Counsel for the USOC (July 20, 1981).

structure for the robust new USOC, relying upon one national governing body for each sport in the Olympic and Pan-American Games. Other organizations and individuals supplement this decision-making structure. Detailed provisions in the Act address a range of troublesome issues, from eligibility of individual athletes for international competition, to organizational review, and procedures for complaints, challenges and arbitration. Although the exigencies of major international competition and its roster of sports are paramount, the Act, directly or indirectly, has the capacity to nurture the growth of all organized amateur athletic activity in the United States.

Despite this favorable climate, a few clouds do appear on the horizon of the 1980's. First, USOC governance of participation by United States nationals in the Olympic and Pan-American Games, ostensibly within its exclusive jurisdiction, is uncertain. As the questionable boycott of the 1980 Olympic Games in Moscow confirmed, the breadth of that term exposes a latent ambiguity that ironically both allows and compels the USOC to base decisions on considerations unrelated to sports. Even apart from blatant governmental intrusion into the exclusive jurisdiction of the USOC, many serious social issues may generate tensions within the USOC framework between the private and public, as well as national and international, roles assigned to it. Most acutely, the extent to which amateur athletics ought to assist in implementing global human rights at the expense of non-participation by United States nationals is an issue that looms large. As the rugby crises evidence, the USOC may become deeply entangled even when Olympic sports are not involved.

Second, because the NGB's are creatures of both the USOC and international federations and because the USOC is a creature of both the Olympic Movement and the 1978 Act, varying standards of organizational recognition, not entirely reconciled by the Act, are dissonant. Thus, for example, one effort to unseat an NGB became a tug of war between two wrestling organizations, pitting one of the amateur sport organizations, the USOC, the federal courts, and an arbitral tribunal against the other amateur sports organization and the international wrestling federation.

Two other clouds, although somewhat wispy, cast shadows over the road to Mount Olympus. These concern the sources and proper allocation of funding for amateur athletics. The USOC must consider (1) the ramifications of financial support of ama-

teur athletics by private sources and by the government, and (2) the proper distribution of USOC funds between elite and mass development. Although the tension between elitist and nonelitist objectives of the Act is minimal today, it may intensify if school programs atrophy and thereby prompt budding sandlot athletes to seek more support from organizations within the USOC framework. Limited financial support may well promote both elite and mass development, but substantially greater support of individual athletes from private sources outside the USOC framework poses a possible threat to the integrity, equality, and appeal of amateurism. Despite traditional reliance on the private sector, the question of public revenue for amateur athletics arises as appeals are made for remuneration of host site expenses and for other specific projects. Fortunately, the Act seems to have invigorated private support as a fairly dependable alternative for amateur sports organizations.

Although amateur athletes, sports organizations, the federal government, and lawyers may view the Amateur Sports Act of 1978 differently, it has met most of its supporters' expectations. It has provided a comprehensive structure for promoting and coordinating amateur athletic activity in the United States and for enhancing participation by United States amateurs in international competition. It has effectively encouraged the cohesiveness and integrity of amateur athletics by eliminating most of the jurisdictional feuds among amateur sports organizations that had seriously handicapped the performance of United States teams in the international arena. Whether the Act's framework will prove to be resilient and flexible enough to solve the problems confronting amateur athletics in the next decade remains to be seen. The 1984 Games in Los Angeles will, in a sense, put both athletes and the Act to the test. One hopes that both will emerge with an expanded complement of gold medals and accolades.

