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Representant Les Etats-Unis d'Amerique: Reforming the USOC Charter

By Christopher T. Murray*

Due to disorganization in amateur sports and poor performance by American athletes in the 1970s, Congress enacted the Amateur Sports Act of 1978 (ASA) to facilitate organization and get better results.¹ Under the ASA, the United States Olympic Committee (USOC) became a federal corporation responsible for the governance of both Olympic movement in the United States and all domestic amateur sports.²

Congress often creates quasi-governmental agencies by chartering federal corporations. Federal corporations fall into one of two categories: (1) the government corporation and (2)

the patriotic organization.³ Government corporations were at the forefront of deregulation during the Reagan administration and the "reinventing government" of the Clinton administration.⁴ Amtrak is the most common example of a government corporation.⁵ A government corporation acts like a business, while a patriotic organization does not. Under the ASA, Congress created the USOC as a patriotic organization akin to the Boy Scouts or the American Legion.⁶

The USOC enjoyed great success after its reformation in 1978.⁷ The United States hosted three profitable, well-run Olympic

Games over the past twenty-five years: Los Angeles in 1984, Atlanta in 1996,⁸ and Salt Lake City in 2002.⁹ The United States has also excelled in international athletic competition over the past quarter century, as evidenced by American athletes' accelerating medal collection at the Sydney Summer Games in 2000,¹⁰ the Salt Lake Winter Games in 2002,¹¹ and the Athens Summer Games in 2004.¹² Despite hosting profitable Olympic Games

“Despite hosting profitable Olympic Games and thriving in international athletic competition, the USOC experienced turmoil as a result of internal disorganization and corruption.”

and thriving in international athletic competition, the USOC experienced turmoil as a result of internal disorganization and corruption.

As the organization responsible for both the Olympic movement and amateur sports, the USOC has an enormous breadth of duties. During the past twenty-five years, two milestones occurred that significantly impacted the USOC. First, the Olympics emerged as a profit-driven business.¹³ Second, participation in amateur sports in the United States exploded. Recognizing that the Olympics are now a complex business involv-

ing millions of people, the USOC has expanded beyond its chartered status as a patriotic organization. The Olympic movement and amateur sports have changed so drastically in the past twenty-five years that the USOC must be re-examined.

Corruption plagues the USOC.¹⁴ Dishonesty infected the selection process for the host cities for the 1996 and 2002 Olympic Games and produced widely publicized troubles for the USOC.¹⁵ Favors and gifts led to the selection of Atlanta for the 1996 Summer Games.¹⁶ The Salt Lake Organizing Committee (SLOC) learned from a prior failed bid and from Atlanta's example that gifts and money would secure the 2002 Winter Games.¹⁷ The subsequent Salt Lake scandal marred the USOC's image and garnered media attention throughout the world.¹⁸

As a result of the exposure of disarray and corruption, the Senate and House of Representatives drafted bills to reform the USOC charter in 2003.¹⁹ The USOC responded to Washington's efforts at reform in October 2003 by proposing its own changes to its constitution.²⁰ The proposed USOC constitution primarily alters the composition of the USOC's board of directors.²¹ The current process of reforming the USOC does not adequately address the fundamental, systemic issue that looms over the organization: its classification as a patriotic organization that no longer operates as such. In late 2003, Congress decided to postpone its determination of the USOC's future.²² Until Congress acts, the USOC's internal reforms will proceed. For effective change to occur, Congress must review the entire USOC charter to address the systemic issue of where the USOC now fits as a federal corpora-

tion.

This Article proposes a reorganization of Olympic and amateur sports in the United States not yet entertained by Congress, the USOC, or the legal academy. Congress should revoke the USOC's charter as a patriotic organization. The USOC should be divided and reformed. The Olympic-related functions of the USOC should be recast into a government corporation. Thus, the financial, political, and legal functions of representing the United States in the Olympic movement would be administered like those of a corporation. The governance of amateur sports should be removed from the USOC's charter and privatized into an association of the individual sports.

Part I of this Article discusses the background of the Olympic movement in the United States; the various attempts at USOC reform in 2003; and the role of federal corporations as chartered by Congress. Part II analyzes where the source of trouble for the USOC; the changed context of the USOC over the past twenty-five years; the USOC's structure and its failure; division of the USOC's functions into two new organizations; and the future of the USOC.

I. Background

A. History of the USOC: 1950-2002

1. *The Olympic Movement in the United States*

Pierre de Coubertin began the modern Olympic movement with the intention of promoting peace by making "sport at the service of the harmonious development of man."²³ In

1894, "the Congress of Paris established the International Olympic Committee (IOC) for the purpose of organizing and supervising the 'Olympic movement' and resurrecting the O l y m p i c

"The proposed USOC constitution primarily alters the composition of the USOC's board of directors."

games.”²⁴ The IOC recognizes National Olympic Committees (NOC) to “develop and protect the Olympic movement in their respective countr[ies].”²⁵ In 1896, the USOC was established and recognized as the NOC for the United States.²⁶

As a result of Hitler’s domination of the 1936 Berlin Games and the beginning of the Cold War, the Olympics became more politically

symbolic. The USOC received its first federal charter in 1950,²⁷ when Congress gave the USOC “sole dominion over amateur athletics that pertained to the Olympic games.”²⁸ Federally chartering the USOC reflects the American politicization of the Olympics because the federal government shepherded the once-private organization into the government’s sphere. The USOC’s two principal functions emerged with the 1950 federal charter: (1) Congress solidified the USOC’s domain over everything related to the Olympics and (2) the USOC received control over a large portion of domestic amateur sports.²⁹ However, the 1950 federal charter neither established the USOC as a federal corporation nor gave it control over all domestic amateur sports. Amateur sports in the 1950s had relatively few athletes and sports. Thus, the USOC as chartered in the 1950s no longer functioned well by the 1970s.³⁰

2. The Amateur Sports Act of 1978

Disorganization beset American amateur sports in the 1970s.³¹ The performance of American athletes in international competitions floundered.³² “In the early to mid-1970s, bureaucracy, inefficiency, and incompetence plagued the organization and management of amateur sport in the United States.”³³ Congress passed the ASA after a recommendation by President Ford’s Commission on Olympic Sports (the Commission).³⁴

The 1972 Munich Games demonstrated the poor administration of Olympic and ama-

teur sport in the United States.³⁵ Several runners did not qualify for their events because their coaches gave them improper start times. A swimmer was stripped of a gold medal be-

“A swimmer was stripped of a gold medal because the team doctor prescribed a banned substance.”

cause the team doctor prescribed a banned substance. Finally, American officials did not use the proper channels to appeal erroneous decisions by referees that led to the legendary men’s basketball loss to the Soviet Union.³⁶ These problems at the 1972 Olympics indicated greater structural problems. The Commission examined the disorganization of amateur athletics on the local level and the poor performance of American athletes in international competition.³⁷ The Commission suggested that Congress pass legislation combining control of domestic amateur sports with Olympic governance under the USOC.³⁸

In heeding the Commissions’ recommendations and enacting the ASA, Congress intended to prevent the factional disputes common among the various amateur sports organizations.³⁹ Congress’ stated its objective in the ASA as follows:

[The USOC should bring] amateur sports organizations together and establishing lines of communication in order that the mutual goals and priorities can be realized and problems resolved. The USOC should encourage amateur sports organizations to settle differences, to overcome shared deficiencies, and to produce more integrated programs so that a meaningful assembly of sports organizations will exist to respond to the needs of this Nation’s amateur athletics.⁴⁰

The ASA established a vertical structure to govern American amateur sport with the USOC at the top.⁴¹ Below the USOC is the National Governing Bodies (NGB) of each amateur sport.⁴² For example, United States Swimming is the NGB for swimming in the United States.⁴³ Prior to the ASA, several governing bodies existed for each sport; under the ASA, Congress gave the USOC power to recognize only one NGB per sport.⁴⁴

The vertical USOC-NGB structure does not capture the complexity of the power given to the USOC by the ASA. The vertical structure addresses domestic amateur sports or-

ganization, but the USOC also governs representation of the United States in international, most notably Olympic, athletic competition.⁴⁵ The USOC possesses exclusive control over all matters relating to the Olympic movement in the United States, including participation in the Olympic Games.⁴⁶ Thus, the USOC has the dual role of organizing domestic amateur sports and representing the United States within the Olympic movement.

The USOC has additional, related functions conferred by the ASA.⁴⁷ The USOC has exclusive domain over the Olympic trademark and derives its financial viability from ensuring the value of the Olympic trademark.⁴⁸ The USOC also monitors doping by American athletes.⁴⁹ In 2000, the USOC created the United States Anti-Doping Agency (USADA) to improve and centralize the monitoring of doping.⁵⁰

Under the ASA, Congress gave the USOC broad, complex responsibilities.⁵¹ The two main functions of the USOC under the ASA are (1) domestic amateur sports organization and (2) Olympic governance. However, the Olympic role of the USOC is most often unrelated to its other function of governing domestic amateur sports.

3. Olympic Committees in Other Nations

The composition of NOCs in other nations helps to contextualize the USOC's role as NOC for the United States.⁵² However, to better comprehend NOCs, one must first understand the blueprint for the organization of international amateur sports. "The world of international [amateur] sports has historically

“Without rules to address directly the intense competition now present in host city selection, the selection process grew increasingly corrupt.”

been built around the Olympic Games with the IOC sitting atop a pyramid-like structure.”⁵³ Below the IOC on that pyramid are the International Federations (IF) that govern each individual sport.⁵⁴ Below the IFs on the Olympic pyramid are the NOCs, which organize Olympic sport within a nation; the USOC is the NOC for the United States.⁵⁵ At the bottom of the pyramid are the NGBs, which oversee particular amateur sports at the domestic and local level.⁵⁶ For example, Federation Internationale de Natation (FINA) is the IF for swimming, and United States Swimming (USS) is the NGB for swimming in the United States; thus, the organization of swimming from the top-down is: IOC-FINA-USOC-United States Swimming. In practice, however, the entities within international amateur sports organization operate fluidly, not in a strict vertical fashion.⁵⁷

The IOC permits leniency in the construction of NOC and amateur sports structures within each nation.⁵⁸ Australia has an umbrella NOC with state Olympic organizations that oversee amateur sport regionally.⁵⁹ France and Italy have complicated organizations: the NOC, amateur sports organizations, and regional Olympic organizations work together in a mesh-like structure.⁶⁰ Great Britain has a top-down NOC structure similar to the USOC-NGB

relationship under the ASA.⁶¹ Switzerland, home of the IOC, has a government-sanctioned NOC and a separate organization that governs amateur sports.⁶² The norm among nations is to charter the NOC by statute.⁶³ Thus, the IOC recognizes the NOC as representative of a nation, while traditionally leaving internal domestic structuring of Olympic and amateur sports functions to the nations themselves.

4. Profits, Success, and Corruption: 1978-2003

The period between 1978 and 2003 began with the enactment of the ASA and ended with the implosion of the USOC's leadership.⁶⁴ The period began positively as America reinvented the Olympics by making the 1984 Los Angeles Games a business enterprise.⁶⁵ Once American capitalism redefined the Olympics as a profit-generating venture, hosting the Olympic games became financially desirable.⁶⁶ Without rules to address directly the intense competition now present in host city selection, however, the selection process grew increasingly corrupt.⁶⁷ The Salt Lake Organizing Committee, previously unsuccessful in an honest bid for the Winter Games, engaged in fraudulent activities common to host city selection.⁶⁸

The Salt Lake scandal began when an IOC executive board member alleged vote-buying in the host city bidding process, including college scholarships and gifts.⁶⁹ As a result of the Salt Lake scandal, ten IOC members resigned for accepting gifts that totaled approximately \$1 million.⁷⁰ In 2000, many SLOC leaders were indicted on counts of fraud and conspiracy.⁷¹ USOC officials called the IOC "a culture of 'gift giving'" and urged a restructuring of the IOC; the IOC subsequently instituted a rigorous and detailed site selection process.⁷² However, many IOC members blamed the United States and USOC for tarnishing the Olympic image.⁷³

Accused of unlawfully giving \$4.6 million in business to his brother's company, USOC CEO Lloyd Ward resigned in late 2002.⁷⁴ Ward and his successor, Marty Mankamyer, testified before Congress on January 28, 2003.⁷⁵ Ward and Mankamyer described warring political factions at the USOC.⁷⁶ As the Senate investigation began probing the USOC, several USOC executives resigned and Congress be-

gan the reorganization process.⁷⁷ "Senator Ben Nighthorse Campbell of Colorado, a 1964 Olympian in judo, compared the USOC's lack of transparency and openness to Enron and demanded Congressional intervention."⁷⁸ During a speech at USOC headquarters in Colorado Springs, Senator Campbell revealed evidence of criminal fraud by USOC staff whistleblowers.⁷⁹ Later in 2003, the Equal Employment Opportunity Commission pursued allegations of gender discrimination and filed suits in federal courts.⁸⁰ The USOC imploded in 2003 due to corruption, political jockeying, and discrimination.

Jim Scherr, the USOC CEO following Mankamyer's removal, faced a revenue shortfall of \$10 million.⁸¹ The USOC chose Bill Martin, athletic director at the University of Michigan, as interim President to guide the organization through "the most turbulent era in USOC history."⁸² The new leaders pled for funds to ensure the financial backing necessary for American athletes to compete in the 2004 and 2006 Games; revenue swelled with new sponsors and private donors.⁸³ The financial management of Scherr and organizational management of Martin provided a short-term rescue of the USOC. Canadian IOC member Dick Pound remained skeptical of the USOC's future, however, stating that "[w]hat the USOC has done so far may just be whistling past the graveyard."⁸⁴

5. Trying to Reinvent the USOC in 2003

In late 2003, both the Senate and House of Representatives introduced bills to alter the USOC charter.⁸⁵ The Senate and House bills represent first attempts at reform, but both pieces of legislation are both small and short on detail.⁸⁶ Particularly vague in the House bill is the "standards and compliance" section, which creates an under-developed mechanism for responding "to allegations of illegal or improper activities and the enforcement of appropriate disciplinary action against" the USOC.⁸⁷ The House bill notably mandates review of the USOC every ten years by an independent commission that would report to Congress; periodic review would be new to the USOC charter.⁸⁸ However, Congress decided to delay reforming the USOC charter; Senator Campbell

"backed off" to allow the USOC to focus on preparations for the Athens Summer Games.⁸⁹ Congress thus began the process of considering reform of the USOC's federal charter, but must continue working towards an in-depth reformation of the USOC.

While Congress explored the failure of the USOC in 2003, Bill Martin made structural change the focus of his tenure as USOC president.⁹⁰ After a seven-month internal reform process, the USOC proposed a new constitution on October 3, 2003.⁹¹ The new constitution attempts to refocus the structure of the USOC by reducing the organization's board of directors from 124 to 11, while simultaneously eliminating the executive board.⁹² Paralympic, college, and high school sports leaders oppose the new constitution because they do not have a seat on the proposed board of directors.⁹³ In addition to the change in the board of directors, the new constitution creates an advisory board that consists of all member organizations.⁹⁴ The new constitution seeks to administer the USOC with a compact group while providing an outlet for voices of other interested parties.⁹⁵ The

USOC's internal reform thus focuses on the minutia of board position reallocation without considering the over-arching issue of the USOC's role as a federal corporation.

B. Federal Corporations

"[Federal corporations] act as agencies of the United States, but are regarded as separate and distinct from the government."⁹⁶ Congress charters two types of federal corporations.⁹⁷ First, government corporations are similar to private corporations since they both have a capital structure and a business purpose.⁹⁸ Second, patriotic organizations are member organizations that do not have a business purpose.⁹⁹ Federal corporations have been used extensively "as independent corporate

facilities for governmental ends."¹⁰⁰ Federal corporations are an essential component of the modern American political economy; more federal corporations exist in 2004 than ever before.¹⁰¹

1. Government Corporations

The first category of federal corporations chartered by Congress is the government corporation. Congress generally chooses to charter a government corporation because the underlying purpose is business-like, though a government corporation can be for-profit or non-profit.¹⁰² Government corporations can be either commercial or non-commercial.¹⁰³ They have varied functions that include the management of satellites, museums, railroads, and electricity.¹⁰⁴ When he urged Congress to create the Tennessee Valley Authority, President Franklin D. Roosevelt noted the unique character of the government corporation: "[it is] a

"Amtrak should not be heralded as an example of the efficiency of government corporations because of its many structural and capital flaws."

corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise."¹⁰⁵

Prominent examples of government corporations include Amtrak, the Tennessee Valley Authority, Fannie Mae, and Sallie Mae.¹⁰⁶ Amtrak is the most commonly used example of a government corporation.¹⁰⁷ However, Amtrak should not be heralded as an example of the efficiency of government corporations because of its many structural and capital flaws.¹⁰⁸

Government corporations should clothe a government agency with private sector structuring.¹⁰⁹ In chartering a government corporation, Congress assesses whether the organization in question would function best as a busi-

ness.¹¹⁰ While some government corporations have a primarily economic purpose, others have more public purposes.¹¹¹ The presence of government corporations in the federal scheme indicates that some organizations will not operate practically or efficiently as federal agencies. Congress has almost unlimited flexibility to confine and structure a government corporation in its charter.¹¹²

“...the USOC operates with a lack of transparency and a reputation for corruption.”

Government corporations should ideally “increase accountability to government discipline and market discipline, ensure private parties do not profit at public expense, and nonetheless limit taxpayer’s contingent liability if [it] becomes insolvent.”¹¹³ The liability of the federal government for the actions of government corporations is a complex issue based upon the legal relationship between the government corporation and the federal government.¹¹⁴ Courts must decide whether the government corporation, in light of its charter and function, acts more like a federal agency or a quasi-private organization when addressing government corporation liability. For example, some charters for government corporations define them as agencies and make them subject to portions of the Administrative Procedure Act, while other charters create a much more attenuated relationship with the federal government.¹¹⁵ Accountability, transparency, and liability depend on the government corporation’s chartering statute. The liability of the federal government for actions of government corporations illustrates the flexibility Congress has in chartering the government corporation.

2. Patriotic Organizations

The second category of federal corporations chartered by Congress is the patriotic or-

ganization.¹¹⁶ Congress created ninety-three patriotic organizations under Title 36.¹¹⁷ Patriotic organizations are not federal agencies.¹¹⁸ Examples of patriotic organizations include the Agriculture Hall of Fame, the American Symphony Orchestra League, Girl Scouts of the United States of America, Ladies of the Grand Army of the Republic, the National Society of the Daughters of the American Revolution, the

Pearl Harbor Survivors Association, and the Society of American Florists and Ornamental Horticulturists.¹¹⁹ Of the ninety-three patriotic organizations under Title 36, nearly half are

related to the military.¹²⁰ Congress thus chartered a diverse variety of groups as patriotic organizations. However, the most prominent patriotic organizations are the American Red Cross and the USOC.

Recently, Congress and the administrative law academy expressed concern that chartering a patriotic organization misleads the public into thinking that the federal government supervises that organization.¹²¹ In truth, the government exercises little federal supervision over patriotic organizations. The American Red Cross’ difficulties with transparency and fiscal discipline evidence the problems that are often characteristic of patriotic organizations.¹²²

While government corporations continue to be a foundation of the modern American political economy, Congress now disfavors patriotic organizations.¹²³ In 1992, Congress decided that it would no longer charter patriotic organizations because they “served no useful public purpose.”¹²⁴ Congress’ suspension of chartering patriotic organizations indicates the failure of at least some patriotic organizations. Furthermore, Congress’ low opinion of patriotic organizations demonstrates that important organizations like the American Red Cross and USOC demand special structural attention since patriotic organizations appear to have outlived their purpose in the federal

scheme. Of the static list of patriotic organizations in Title 36, the American Red Cross and USOC present notable examples of organizations that have become too large and too corporate.

3. *The USOC as a Federal Corporation*

Like the American Red Cross, Congress chartered the USOC as a patriotic organization under Title 36 of the United States Code.¹²⁵ Also like the American Red Cross, the USOC operates with a lack of transparency and a reputation for corruption.¹²⁶ Congress does little other than recognize the existence of the USOC. The Supreme Court upheld this distant relationship in *San Francisco Arts & Athletics*, stating, "[t]he government may subsidize private entities without assuming constitutional responsibility for their actions."¹²⁷ Although it controls the domestic Olympic movement, represents the United States in international athletic competition, and governs domestic amateur sports, the USOC does not have to answer or report to the federal government under its charter.¹²⁸ The USOC may act as it deems responsible.¹²⁹

Justice Brennan's dissent in *San Francisco Arts & Athletics*¹³⁰ examines the history of the USOC and explores its future. Justice Brennan observes that the USOC's congressional charter was the result of frustration over the disorganization of amateur sport and that "no actor in the private sector had ever performed this function..., and the USOC has been endowed by the Federal Government with the exclusive power to serve a unique national, administrative, adjudicative, and representational role."¹³¹ Justice Brennan stated his concern that Congress chartered the USOC to increase transparency and accountability in amateur sports; he interpreted the majority holding as too empowering the USOC without proper restraint.¹³² Justice Brennan's precise concerns would subsequently materialize with the USOC's ensuing disorganization and corruption.¹³³ By 2003, Congress reconsidered the USOC charter for the same reasons that led to its formation under the ASA: disorganization and lack of transparency.¹³⁴ Since the same issues have re-emerged, the USOC must be thoroughly examined and appropriately reformed.

II. Analysis

A. Where Did the Trouble Begin?

The ASA gave the USOC two primary and often different functions.¹³⁵ First, the ASA renewed the USOC as the NOC for the United States, meaning that the USOC governed all issues related to the Olympic movement.¹³⁶ As the NOC for the United States, the USOC confronts significant issues like protection of the Olympic trademark, doping, sponsorship, and promoting American cities as candidates to host the Games.¹³⁷ Second, the ASA gave the USOC control of all amateur sports in the United States.¹³⁸ For example, both ten-year-old children playing organized soccer in Omaha and sixty-year-old adults swimming in a Boston league fall under the USOC's umbrella of control. Thus, the ASA combined the financial and international functions of Olympic governance with the coordination of millions of amateur athletes under one federally chartered entity. As chartered in 1978 under the ASA, Congress granted the USOC huge and varied responsibilities.

Within the context of the Olympics and amateur sports in the 1970s, Congress appropriately categorized the USOC as a patriotic organization.¹³⁹ Although large for a patriotic organization, the USOC of the 1970s fits alongside other patriotic organizations like the Boys and Girls Clubs of America and the Girl Scouts.¹⁴⁰ However, the Olympic movement and amateur sports metamorphosed over the past twenty-five years as the Olympics became a business endeavor and participation in amateur sports exploded in the United States.

In the past twenty-five years, the USOC far outgrew the simple confines of a patriotic organization. The USOC is no longer a patriotic organization in practice, though it remains a patriotic organization until Congress alters its charter. Vast capital, in the range of billions of dollars, runs through the USOC in its Olympic-related functions. Tens of millions of Americans now participate in amateur sports on many levels. From humble roots, a mammoth has arisen.

B. The USOC Charter in Context: Changed Perspectives, Changed Needs

The USOC's 1978 charter reflected the shared desire of the White House and Congress to repair the disorganization of amateur sports and improve performance in international competition.¹⁴¹ All amateur sports and all Olympic functions merged under the USOC's umbrella. In the landscape of the 1970s, governing amateur sports and the Olympic movement appears to fit rationally into one patriotic organization.

Two primary events completely altered the context in which the USOC operates. First, Peter Ueberroth reinvigorated the Olympic movement by making the 1984 Los Angeles Summer Games a profit-seeking enterprise.¹⁴² Second, encouraging equality in sport through Title IX dramatically increased the breadth of domestic amateur sports.¹⁴³ A patently different world of amateur sports has emerged over the past twenty-five years. USOC's charter of 1978 cannot withstand the new pressures.

Montreal hosted the 1976 Olympic Summer Games and lost billions of dollars.¹⁴⁴ Los Angeles was the only city to bid for the 1984 Summer Games.¹⁴⁵ Ueberroth led the Los Angeles Olympic Organizing Committee; he forever changed the Olympics by adding corporate sponsorship and capitalism to the Olympics.¹⁴⁶ As a result of Ueberroth's influence, the 1984 Games produced \$225 million in revenue.¹⁴⁷ The Olympics became a business in 1984, and the American ingenuity of Ueberroth transformed the Olympics from a boondoggle to "a triumph of free enterprise."¹⁴⁸ American capital is the foundation of the Olympic enterprise, albeit through television broadcast rights or corporate sponsorship.¹⁴⁹ Much of the money that fuels the Olympic movement flows through the USOC. Though created as a patriotic organization, the USOC grew alongside the

Olympics into a corporate entity. In 2004, the USOC is a corporate enterprise, not merely a membership patriotic organization.

When the IOC selected Atlanta as the

“Now operating within a drastically different context, the USOC must be reinvented and reformed, not bandaged.”

host city for the 1996 Centennial Games, whispers of vote-trading and corruption sounded in the press.¹⁵⁰ With the conclusion of the 1996 Atlanta Games, the Olympic community buzzed about the commercialism of the Olympics.¹⁵¹ The Atlanta Games demonstrated the dominance of money in the Olympic movement. In twelve years, 1984's triumph of enterprise had become a criticized commercial venture with the USOC at the epicenter of the controversy. Congress did not charter the USOC as an organization that would, by the 1990s, have billions of dollars flowing through it. For example, the lack of a reporting requirement, present in the currently proposed House bill, demonstrates that Congress did not include precautions against corruption when it enacted the ASA. Corruption begins with money, and the ASA has no component that addresses the USOC's role as a giant funnel of money.

While the Olympic movement became a business, domestic amateur sports changed spectacularly. Due to Title IX's passage in 1971, amateur sports welcomed enormous numbers of women; participation boomed.¹⁵² In 1971, 290,000 girls participated in high school athletics; by 2002, participation jumped to 2.8 million girls.¹⁵³ During the same period, participation by women in collegiate athletic programs grew fivefold.¹⁵⁴ Title IX's effect on society has been far-reaching. For the USOC, Title IX created an explosion in participation of amateur athletes under its control. While corruption became the dominant issue in the Olympic

movement and at the USOC, little note was taken that the USOC charter had not been designed to govern amateur sports at the scope that presently exists. Congress must thus determine whether the USOC under the ASA has the capability to organize the number of girls, boys, men, and women currently participating in amateur sports in America.

The capitalistic rise of the Olympics and the women's sports revolution make the USOC's functional context significantly different in 2004 than it was in 1978. Now operating within a drastically different context, the USOC must be reinvented and reformed, not bandaged. Combined with the anti-American criticism following the Atlanta Games, the USOC implosion began in 1998 with the Salt Lake scandal.

C. The USOC's Structure Fails: 1998-2003

The USOC's structure failed, in large part, because its framework cannot support the massive strains placed upon it over the past twenty-five years. The USOC outgrew its status as a patriotic organization. Before proposing how the USOC should be deconstructed and reconstructed, the USOC's structural failure must be explored to avoid similar problems from arising in the future.

1. Other Sports Structures

Sports organization in the United States generally falls into three categories: (1) amateur sports with the USOC, (2) collegiate sports with the National Collegiate Athletic Association (NCAA), (3) and the professional sports leagues.¹⁵⁵ These categories overlap; for example, the NCAA, USOC, and professional leagues often have athletes who compete in more than one category.¹⁵⁶ The interaction among the categories is complicated. While each has learned from the others in maximizing profits from television rights, each regulates doping independently.¹⁵⁷ The USOC, NCAA, and professional leagues are each billion-dollar enterprises. The USOC uniquely oversees far more athletes and represents the United States in international competition.

Despite criticism, the NCAA and professional leagues have strong organizational structures.¹⁵⁸ As a consortium of its member universities, the

contentiousness that often occurs within the NCAA tends to maintain honesty and transparency. Further, the NCAA rigidly enforces its rules to promote compliance while efficiently changing its rules as needed.¹⁵⁹ Organization of professional leagues has remained high, which is likely a result of competing and conspicuous interests of owners, players, and fans. The glare of fan attention promotes organization in both the NCAA and professional leagues.¹⁶⁰ In addition, the professional leagues are businesses that fold when they are no longer profitable.¹⁶¹ The NCAA and professional leagues will continue to evolve through criticism and debate, but both generally possess transparent, stable organization.

2. Collapse in 2003

By 2003, the USOC had a 124-member board.¹⁶² As a Senate investigation began probing the USOC in early-2003, "more than a dozen USOC executives resigned" and Congress began reorganizing the USOC.¹⁶³ Currently, the USOC has a new constitution, which provides for an eleven-member board and a larger advisory board.¹⁶⁴ The advisory board appears to be a reallocation of power from the 124-member board. In determining membership for the new board, the USOC places a value on the participation of certain organizations over others.¹⁶⁵ For example, governing paralympic sport is a key role of the USOC under the ASA, but the new constitution does not provide a paralympic seat on the board.¹⁶⁶ The new board appears to concentrate power in the board, but it remains unclear how a reconcentration of power will directly increase transparency, improve organization, and reduce corruption.

A key problem in the new USOC constitution is that it hopes for good leadership but does not provide for the possibility of poor leadership.¹⁶⁷ In what appears to be an effort to solidify the new USOC constitution, the USOC appointed Peter Ueberroth as chairman of the USOC board in June 2004.¹⁶⁸ Though Mr. Ueberroth has been a seminal and positive force in the Olympic movement, the USOC has thus far avoided addressing its systemic structural problems. The procedures for removal, independence, term, and retention do not depart notably from the current procedures.¹⁶⁹ Little

in the new USOC constitution indicates that change will occur, transparency will increase, and corruption will be minimized. Reconcentrating power with the hope of good leadership does not address the USOC's systemic failure as a patriotic organization.

The new constitution does not recognize the various pressures on the USOC that have emerged since 1978. In the new constitution, the USOC did not address the question of whether the USOC should remain a patriotic organization. The USOC did not examine the practicality of governing both the Olympic movement and amateur sports. The reallocation of power of the USOC leadership is a bandage. The USOC should have analyzed its fundamental makeup, i.e., whether the USOC should be a patriotic organization and whether complete reorganization is possible and appropriate.

The USOC reform process has just begun. Given the vague language and small size of the Senate and House bills, they represent only the first step in USOC reform. Despite the new USOC constitution, Congress charters the USOC and will make the ultimate determination of its future.¹⁷⁰

D. Division of Purpose: Amateur Athletics & the Olympics

In recent years, Congress has reorganized the federal government. Examples include deregulation under President Reagan, President Clinton's "reinventing government," and the creation of the Department of Homeland Security under President Bush.¹⁷¹ Congress thus should continue the trend of reviewing and restructuring government as it determines the future of the USOC's charter.

1. Reforming the USOC Charter Without Reinventing Federal corporations

Both the American Red Cross and the USOC are federal corporations chartered as patriotic organizations that function like government corporations. Congress could choose to define the category in which the American Red Cross and USOC exist as a third type of federal corporation. However, changing the categories of federal corporations does not appear to be necessary or useful to effectuate change at the USOC. Creating a third type of federal corporation, essentially creating a cat-

“...changing the categories of federal corporations does not appear to be necessary or useful to effectuate change at the USOC.”

egory for the USOC and Red Cross, does not address the USOC's fundamental problem that it is an organization with too many functions. Instead, the USOC can be reformed by using the existing parameters of public and private structuring.

A traditional, uninspired approach would view public and private structuring along those lines: the choice for the USOC would be between a federal agency and a private corporation. Lack of transparency has plagued the USOC, and making it a full-fledged agency is a tempting first instinct. Given the trends of the past twenty years, though, government does not necessarily provide the best answer to organizational problems.¹⁷² The USOC's primary problem is that it has too many different functions; making it an agency would not solve that problem. Further, giving the federal government domain over all amateur sports appears to be too extreme a solution for Congress to accept. A purely private route is another option. Again, given the trends of the past twenty years, privatization would appear to be an adequate solution as a first in-

distinct. However, corruption has recently dominated corporate America. Senator Campbell likened the USOC to Enron, and releasing a corrupt and mismanaged organization into the private sector would not appear to be a plausible option for Congress. The USOC should not be made into a federal agency or a private entity because neither option addresses its complex functions and intricate problems. Thankfully, Congress has long entertained a nuanced view of the structuring of organizations as government corporations.¹⁷³

Just as Congress should not form a third type of federal corpora-

tion, it should not force the USOC into a category in which it does not belong. In 1992, Congress decided to halt the creation of patriotic organizations, making that category static.¹⁷⁴ Government corporations are a varied lot of organizations under constant scrutiny, making that category fluid. President Franklin D. Roosevelt's assertion that a government corporation is "a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise" reflects the fluidity of government corporations.¹⁷⁵ The Olympic games became a business in 1984; many of the Olympic-related concerns of the USOC, like liability and trademark protection, are business concerns. Part of the USOC's current function is business-like. The business functions of the USOC would fit well within the fluid category of government corporations, and those business functions would operate well as a government corporation. The USOC's other function, however, of governing amateur sports governance is not business-like; it does not have attributes that would fit well as a government corporation.

The USOC has two distinct functions: Olympic and amateur sports. The Olympic function has become business-like, and the money that flows through the USOC is the basis of the corruption that has developed. Congress

should re-categorize the Olympic function as a government corporation. With direct oversight from Congress, similar to the ten-year reporting requirement in the House bill, the USOC's Olympic function should exist in the sphere of Amtrak and the Tennessee Valley Authority. As the representative of the United States in international competition, the USOC will continue its important relationship to the government

"Being recognized as a funnel of money and a business-like enterprise is the first step in reducing corruption; ignoring the fiscal reality of the USOC had allowed the organization to handle funds without restraint."

by remaining a federal corporation. Government corporations provide precisely what the enterprise of Olympic governance requires: the freedom of business with government association. The USOC's Olympic function should become its sole focus. The amateur sports function of the USOC should be privatized.

Examples of good and bad sports organization abound. Despite criticism, the NCAA functions well as a consortium of its members. The NCAA has well-developed rules that are strictly followed, and college sports evolves through participation and rulemaking. The National Association of Intercollegiate Athletics (NAIA) and the now-defunct Extreme Football League (XFL) both demonstrate that the sports economy weeds out poor sports organization.¹⁷⁶

A new, private organization should be established as a consortium of the NGBs. As the NCAA is a consortium of colleges and universities, this new organization would be a consortium of amateur sports. A possible name for this new organization is the Amateur Sport Council (ASC).¹⁷⁷ The ASC would govern all domestic amateur sports. Freedom from the USOC would allow the NGBs to concentrate on the promotion and development of amateur sports at the local level. The business concerns of the USOC are inconsistent with the daily

administration of amateur sports. As opposed to those in the 1970s, modern Olympic athletes do not always come from amateur sports; the progression of athletes from amateur sports to the Olympics no longer exists as it did.¹⁷⁸ As Title IX infused amateur sports in the United States with millions of additional athletes, amateur sports developed a need for its own, separate organization. As focused solely on amateur sports, the ASC would likely produce better athletes for the NCAA, the professional leagues, and the USOC.

Given that the IOC has allowed nations to organize their NOCs in varied manners, the new USOC should be well received by the IOC.¹⁷⁹ In addition, the new USOC-ASA framework closely mimics the Swiss NOC-NGB model, which gives a template in the international athletic community that already exists in support of such systemic change. Though Senator Campbell has backed off in 2004, the USOC does not have the power to make such dramatic changes to its organization because it requires fundamental structural change.¹⁸⁰ No matter what changes the USOC attempts, the USOC charter would remain the same because Olympic governance and amateur sports will fall under the USOC as classified as a patriotic organization. The USOC can make changes to its constitution, but only Congress can cast the different functions of the USOC into a government corporation.

The USOC should remain in the government, but its purpose as a government corporation should be limited to the Olympics. Accountability would increase at the USOC because it would operate within the confines of a monitored government business. The organization of amateur sports should be privatized and governed by a consortium of NGBs. Amateur sports have been overshadowed and ignored by the Olympics at the USOC, and the federal government should not administer amateur sports. Two new sports organizations thus emerge from a systemic overhaul of the USOC: the new USOC and the ASC.

2. The New USOC

In its new charter, the USOC will no longer be a patriotic organization; instead, it will be a government corporation. The Olympic function of the USOC essentially acts as a

government corporation in its current form, though not chartered as such. Changing the USOC from patriotic organization to government corporation will require, at minimum, major revisions to the ASA.¹⁸¹

The new USOC will be able to concentrate on seven core functions: (1) sponsorship, (2) trademark infringement, (3) liability, (4) hosting, (5) doping, (6) media rights, and (7) participation. Though the seven core functions are not new duties for the USOC, making the USOC's core functions clear in the new USOC charter represents the first step in constraining the USOC's operation.

First, sponsors pay large amounts to be associated with the USOC, and the USOC excels at fundraising because it has trademark rights to the Olympics.¹⁸² Second, Congress gave the USOC exclusive control of the Olympic trademark, which the Supreme Court upheld in *San Francisco Arts & Athletics*.¹⁸³ A key provision of the new USOC's charter as a government corporation will be a renewal of the USOC's trademark rights. Third, the USOC's liabilities have been questioned in suits on several occasions since 1978; *DeFrantz v. United States Olympic Committee* was the seminal case that upheld the USOC's decision to boycott the 1980 Moscow Games against a legal challenge from the athletes.¹⁸⁴ Given the emerging role of arbitration in international sport and the creation of the Court of Arbitration for Sport in Switzerland, the new USOC charter should promote arbitration to make challenges uniform and shield the USOC from liability.¹⁸⁵ Fourth, hosting the Olympics is a sensitive international political issue with billions at stake for local American economies, and the USOC must aggressively promote American cities.¹⁸⁶ Fifth, monitoring doping has become an essential element of international athletics, and the USOC must remain steadfast in pursuing athletes using banned substances so that American athletes continue to have a positive reputation in the international community. With the creation of the USADA in October 2000, the USOC reinvented the tenuous and uncertain system of testing and pursuing athletes engaged in doping.¹⁸⁷ Sixth, television broadcast rights to the Olympic Games total billions of dollars, and the USOC is the broker between American broadcast companies and the IOC.¹⁸⁸ Sev-

enth, the U.S. Olympic team draws from the NGBs, the NCAA, and the professional leagues, and the USOC must coordinate among these organizations to maximize American performance in international competition.¹⁸⁹

The American public likely perceives the USOC's role as governing Olympic-related issues for the United States. These seven functions of the new USOC limit the USOC's power to the Olympic movement. Thus, the public's perception of the USOC's purpose would be consistent with its powers, which is a good starting point for a government corporation desirous of transparency and accountability. If the government, the public, and the USOC know what the USOC should be doing, transparency increases. As transparency increases, corruption should concurrently decrease. In addition, the new USOC charter as a government corporation must have specific and detailed financial reporting requirements.

The new USOC will continue performing the functions it already oversees; its seven core functions have not been reinvented as much as they have been restated. Being recognized as a funnel of money and a business-like enterprise is the first step in reducing corruption; ignoring the fiscal reality of the USOC had allowed the organization to handle funds without restraint. Transparency increases because the USOC will know what it must and can do; corruption decreases because safeguards will be created so that the new USOC operates as a responsible enterprise. The new USOC will undergo systemic change by being recast as a government corporation.

3. The Amateur Sports Council

The USOC ignored amateur sports, at least in part, because it focused on the crises of mismanagement and corruption. The attention on the USOC's scandals and its reformation has necessarily taken time and energy away from the daily organization of amateur sports. Amateur sports should not have the Olympic brand attached to it. Amateur sports serve many social functions unrelated to Olympic competition. Nations have been free to administer sports per the needs and stresses of the given society.¹⁹⁰ On the ground, amateur sports comprise an enormous endeavor in the United States with millions of participants. Amateur

sports can and should embody the ideals of our society, including equality, competition, and teamwork.

The ASC should be created as a new private organization.¹⁹¹ The ASC would be an association that consists of its member NGBs and would be similar to the corresponding organization in Switzerland. As a private consortium, the NCAA provides the natural model for the ASC.¹⁹² The NCAA will be most useful to the ASC in determining a rulemaking process, and the ASC should mimic the NCAA's rulemaking system so that it can begin to operate efficiently. The ASC should also follow the NCAA's liability model. Transparency and corruption have dominated the Olympic-related function of the current USOC. History thus indicates that amateur sports governance, for a variety of reasons, has not been dominated by corruption to the same extent as Olympic governance. The ASC will be focused on domestic amateur athletics without the distraction of Olympic issues; the result will be better organization and performance.

E. The USOC Beyond 2005

Reform in 2005 will be a delicate process because New York City currently has a positive and praised bid for the 2012 Olympic Summer Games.¹⁹³ New York City stands to gain the motivation and capital to rebuild and expand as the IOC selects its host city for the 2012 Games. The IOC makes its final selection in July 2005. As a signal to the international community of the United States' commitment to keep the Olympic games honest and well organized, the USOC charter should be altered to make it a government corporation and the ASC should be created. Thus, a positive, timely message will be sent to the IOC that will assist New York City's bid as the host city for the 2012 Games.¹⁹⁴

III. Conclusion

The USOC has outgrown the ASA, which established it as a patriotic organization in 1978. With the growth of the Olympic movement into a business enterprise and the immersion of women into sports, the USOC's structure under the ASA no longer can support the varied new pressures on the organization. The

Salt Lake scandal and the implosion of the USOC's leadership in 2003 demonstrate that the Olympic movement in the United States needs to be analyzed and reformed.

The USOC attempted its own reform in late-2003 by introducing a new constitution, and the Senate and House introduced bills that would alter the USOC's structure. Congress controls the USOC charter, and any reform of the charter requires congressional approval. Thus, Congress will decide the USOC's future in 2005. It should not accept the USOC's meager attempt at reform with its new constitution.

The USOC currently has two primary functions: (1) managing the Olympic movement and (2) administering all domestic amateur sports. Though currently chartered as a patriotic organization in name, the USOC has drastically outgrown that category in practice. As a government corporation, the USOC will be better suited to address the business of Olympic governance. The USOC's amateur sports function has taken a subservient role to the Olympic function due to the scandal and corruption that have plagued the organization. Effectively administering millions of amateur athletes in the United States is an important task that requires focused attention. Thus, the organization of the Olympic movement in the United States should be concentrated in a new United States Olympic Committee that is a government corporation. Amateur sports governance should be spun off into a private organization called the Amateur Sports Council that will operate akin to the NCAA as an association of the individual NGB sports.

The forces behind amateur sports and Olympic competition are no longer those that existed in 1978. Indeed, the dramatic changes in the sporting world in the past twenty-five years have made the current USOC charter entirely inadequate. Organizing the Olympic movement and managing amateur sports are two divergent endeavors that should be separated. Congress currently has the opportunity to alter the marred image of the USOC and solidify the United States as the world's leader in sport by reorganizing Olympic and amateur sports.

Appendix A

The following is a list of acronyms used in this Note:

International Olympic & Amateur Sports Organizations:

- IOC: International Olympic Committee
- IF: International Federation
- NOC: National Olympic Committee
- NGB: National Governing Body
- FINA: Federation Internationale de Natation (Swimming)

Olympic & Amateur Sports Organizations in the United States:

- USOC: United States Olympic Committee
- ASC: Amateur Sports Council (PROPOSED)
- USADA: United States Anti-Doping Agency
- SLOC: Salt Lake Organizing Committee
- LAOOC: Los Angeles Olympic Organizing Committee

Statute:

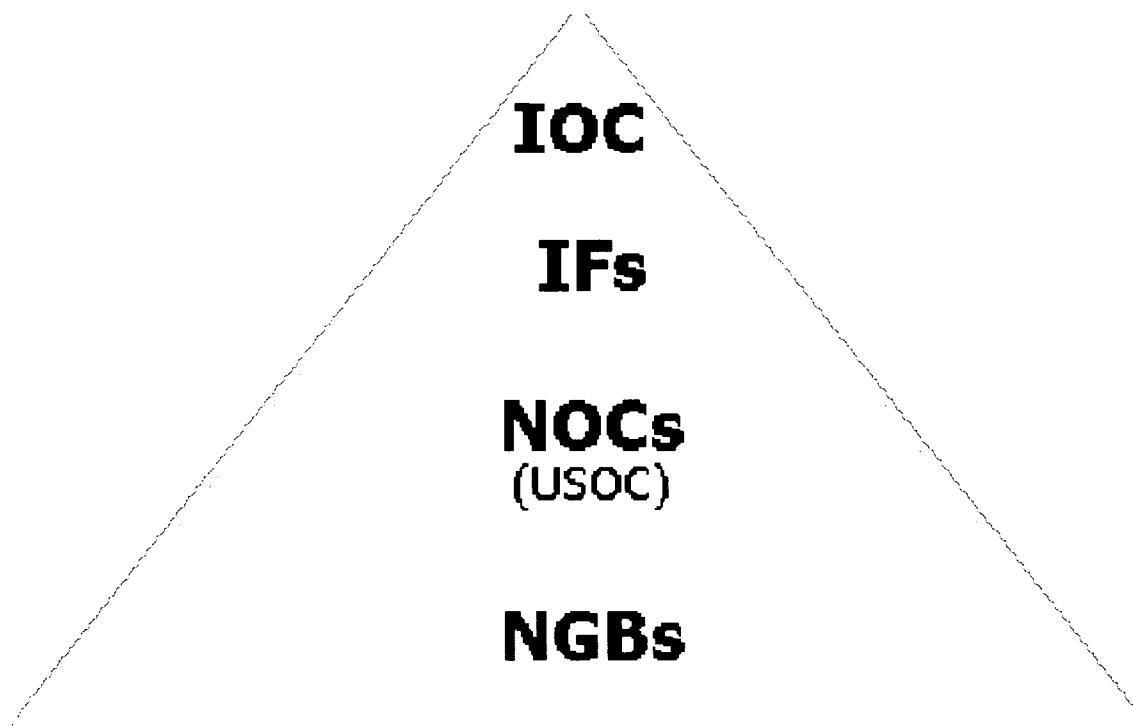
- ASA: The Ted Stevens Amateur Sports Act of 1978

Miscellaneous:

- NCAA: National Collegiate Athletic Association
- NAIA: National Association of Intercollegiate Athletics
- XFL: Extreme Football League

Appendix B

The following graphic demonstrates the pyramid-like structure of international amateur sport organization:



ENDNOTES

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¹ Ronald C. Moe, *Congressionally Chartered Corporate Organizations (Title 36 Corporations)*, 46 FED. LAW. 35 (1999), available at http://www.napawash.org/aa_e_o_management/moe_title_36.pdf.

² See also 36 U.S.C. §§ 220501-220503 (1998).

³ *Id.* See generally A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. ILL. L. REV. 543, 634 n.14 (1995); Moe, *supra* note 1, at 35.

⁴ Froomkin, *supra* note 3, at 543; see *infra* note 176 and accompanying text.

⁵ Froomkin, *supra* note 3, at 543; see *infra* Part I.B.1.

⁶ Moe, *supra* note 1, at 35; see *infra* app. A (a complete list of acronyms used in this Article).

⁷ 36 U.S.C. § 220501 (1998).

⁸ Jack Wilkinson, *Olympic Flashback*, THE ATLANTA JOURNAL-CONSTITUTION, July 27, 1996, at 03S. The 1980 Lake Placid Games were not included in this list because this Article highlights 1984 Los Angeles Games as the turning point for the Olympic movement as an enterprise. See *infra* Part II.B.

⁹ See Lisa Riley Roche & Brady Snyder, *Games Reap Big Profits for Salt Lake*, DESERET NEWS (Salt Lake City, UT) (May 3, 2002), available at <http://deseretnews.com/oly/view/0,3949,80000018,00.html>.

¹⁰ Medals Awarded, 2000 Summer Olympics, at http://www.fact-index.com/2/20/2000_summer_olympics.html#Medals%20awarded (last visited Mar. 11, 2005).

¹¹ Medals Awarded, 2002 Winter Olympics, at http://www.fact-index.com/2/20/2002_winter_olympics.html#Medals%20awarded (last visited Mar. 11, 2005).

www.athens2004.com/en/results/results (last visited Mar. 11, 2005).

¹³ See Wilkinson, *supra* note 8.

¹⁴ Jo-Ann Barnas, *Martin's Gift to the USOC Lasting*, ORLANDO SENTINEL, Oct. 20, 2003, at C4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Aram Roston, *Olympic Bribery Scandal Threatens to Shrink 2002 Olympic Games*, at <http://www.cnn.com/US/9901/13/olympic.sponsors/> (Jan. 13, 1999).

¹⁹ H.R. 3144, 108th Cong. (2003); S. 1404, 108th Cong. (2003). See *infra* Part I.A.4.

²⁰ Barnas, *supra* note 14.

²¹ *Id.*

²² *Id.*

²³ Konstantinos Yiannopoulos, *Save Amateur Sports: Protection from Liability Under the Amateur Sports Act in Eleven Line v. North Texas Soccer Ass'n*, 8 VILL. SPORTS & ENT. L.J. 387, 392–93 n.40 (2002); International Olympic Committee Charter, Fundamental Principles 2, available at http://multimedia.olympic.org/pdf/en_report_122.pdf (last visited Mar. 11, 2005).

²⁴ Yiannopoulos, *supra* note 23, at 392–93 n.40; David B. Mack, Reynolds v. International Amateur Athletic Federation: *The Need for an Independent Tribunal in International Athletic Disputes*, 10 COMM. J. INT'L L. 657 (1995).

²⁵ Yiannopoulos, *supra* note 23, at 392–93 n.40; IOC Charter, *supra* note 23.

²⁶ Yiannopoulos, *supra* note 23, at 392–93 n.40.

²⁷ *Id.*

²⁸ DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181, 1187 (D.D.C. 1980).

²⁹ See *infra* Part I.C.

³⁰ See *infra* Part II.B.

³¹ Yiannopoulos, *supra* note 23, at 387.

³² *Id.* at 387 n.3.

³³ *Id.* at 387–88.

³⁴ *Id.* at 387.

³⁵ *Id.* at 393 n. 40.

³⁶ *Id.* at 394 n.42.

³⁷ See *id.*

³⁸ *Id.*

³⁹ H.R. REP. NO. 95-1627, at 8 (1978).

⁴⁰ S. REP. NO. 95-770, at 4 (1978); Yiannopoulos, *supra* note 23, at 394 n.44.

⁴¹ Yiannopoulos, *supra* note 23, at 393–94; see *infra* app. A (a complete list of acronyms used in this Article).

⁴² *Id.*; see also FINA Constitution, available at <http://www.fina.org/const.html> (last visited Mar. 11, 2005). International Federations (IF) organize sports internationally. Federation Internationale de Natation (FINA) is the IF for swimming, located in Lausanne, Switzerland. Within each nation, National Governing Bodies (NGB) organize sports on the national and local level. United States Swimming is the United States NGB for swimming. For further clarification on how these organizations work together, see *infra* Part I.A.3. See *infra* app. B (a graphic demonstrating the organization of international amateur sport).

⁴³ Yiannopoulos, *supra* note 23, at 393–95.

⁴⁴ Michael S. Straubel, *Doping Due Process: A Critique of the Doping Control Process in International Sport*, 106 DICK. L. REV. 523, 531–35 (2002).

⁴⁵ See Yiannopoulos, *supra* note 23, at 393–95. This is the “primary” function of the USOC in name and practice. Since the enactment of the ASA, the

¹² Results, Athens 2004, at <http://USOC's main concern has been its Olympic function, not its role over domestic amateur sport>.

⁴⁶ 36 U.S.C. § 220503(3)(A) (1998).

⁴⁷ See *infra* Part II.E.2.a-g.

⁴⁸ Noelle K. Nish, *How Far Have We Come? A Look at the Olympic and Amateur Sports Act of 1998, The United States Olympic Committee, and the Winter Olympic Games of 2002*, 13 SETON HALL J. SPORTS L. 53, 56 (2003); 36 U.S.C. § 220506 (1998). The ASA gives the USOC exclusive rights to the use and distribution of Olympic symbols in the United States. See *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522 (1987).

⁴⁹ Straubel, *supra* note 44, at 559. In order to combat doping by American athletes, the USOC created the USADA.

⁵⁰ *Id.*

⁵¹ See *infra* Part II.E.2.a-g.

⁵² See app. A (a complete list of acronyms used in this Article).

⁵³ Straubel, *supra* note 44, at 532; see app. B (a graphic demonstrating international amateur sport organization).

⁵⁴ Straubel, *supra* note 44, at 532 ("Without the IOC's blessing, the IF's sport will not be a part of the Olympic Games. Each IF sets the rules of its sport, conducts competitions outside the Olympics, and determines the qualifications for the Olympics.").

⁵⁵ *Id.*

⁵⁶ *Id.* at 532-35.

⁵⁷ *Id.* Note that the perception exists that "NGBs have three masters: IFs, the IOC, and NOCs." *Id.*

⁵⁸ This is evidenced by the different structures across nations by each NOC's constitution. Ex-

ample NOCs were selected at random, though the examples mentioned are prominent in the IOC community.

⁵⁹ State Olympic Councils, Australian Olympic Committee (AOC), at <http://www.olympics.com.au/Default.asp?pg=home&spg=socs> (last visited Mar. 11, 2005).

⁶⁰ See Formation, Comité Nationale Olympique et Sportif Français, at <http://www.franceolympique.com> (last visited Mar. 11, 2005); see Territorio, Comitato Olimpico Nazionale Italiano, at <http://www.coni.it/> (last visited Mar. 11, 2005).

⁶¹ See This Is the BOA, British Olympic Association, at <http://www.olympics.org.uk/thisistheboa/thisistheboa.asp> (last visited Mar. 11, 2005).

⁶² Formation, Swiss Olympic Association, at <http://www.swissolympic.ch/f/ausbildung> (last visited Mar. 11, 2005). What is proposed in this Article closely resembles the existing Swiss Structure.

⁶³ Organisation of the NOCs, National Olympic Committees at http://www.olympic.org/uk/organisation/noc/index_uk.asp (last visited Mar. 11, 2005).

⁶⁴ See *infra* Part II.B.

⁶⁵ See *id.*

⁶⁶ See *id.*; see also Cathy Harasta, *Federal Judge Rules on Scandal*, DALLAS MORNING NEWS, Nov. 16, 2001, at 1B.

⁶⁷ Harasta, *supra* note 66.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* The indictments were dismissed just prior to the 2002 Winter Games.

The USOC had a 124-member board by 2003. *Remaking the USOC*, PLAIN DEALER, Oct. 25, 2003, at B10.

⁷⁵ Briggs, *supra* note 74.

⁷⁶ *Id.* Ward and Mankmyer were the heads of the USOC's two warring political factions.

⁷⁷ Straubel, *supra* note 44, at 523.

⁷⁸ Barnas, *supra* note 14.

⁷⁹ Briggs, *supra* note 74.

⁸⁰ *Id.*

⁸¹ *Id.* ("Scherr had three strategies: regain the public's confidence; fix the finances; and put the athletes first.").

⁸² Barnas, *supra* note 14.

⁸³ Briggs, *supra* note 74.

⁸⁴ *Id.*

⁸⁵ H.R. 3144, 108th Cong. (2003); S. 1404, 108th Cong. (2003).

⁸⁶ H.R. 3144, 108th Cong. (2003); S. 1404, 108th Cong. (2003). The Senate bill is smaller and less detailed than the House bill.

⁸⁷ H.R. 3144, 108th Cong. § 220505 (2003).

⁸⁸ *Id.*

⁸⁹ Briggs, *supra* note 74. Congress allowed the USOC's internal reform process to continue, but Congress ultimately controls reform as it determines the parameters of the USOC charter. *Id.*

⁹⁰ *Id.* Bill Martin was praised for his performance in leading the USOC. "Perhaps Martin's best moment came behind closed doors in Lausanne, Switzerland, when he confirmed for the International Olympic Committee the identity of a U.S. sprinter who had tested positive for a banned steroid a year before winning a gold medal at the 2000 Sydney Olympics. The action went a long way in dispelling suspicions of a cover-up." *Id.*

⁹¹ Barnas, *supra* note 14.

⁹² *Id.* "The composition of the board shall be as follows: four independent members ('independent directors') selected by the Nominating and Governance Committee, two members selected by the Nominating and Governance Committee from among individuals nominated by the National Governing Bodies Council ('NGB Council'), two members selected by the Nominating and Governance Committee nominated by the Athletes Advisory Council ('AAC'), and the United States members of the IOC who shall be *ex officio* directors on the board, i.e. they assume their positions as directors on the corporation's Board by virtue of, and for the same term as, their IOC membership." USOC CONST. § 3.2 (proposed Oct. 2003), available at <http://www.usoc.org/ASA2000.pdf> (last visited Mar. 11, 2005). Of particular importance is that the position held by Bill Martin would be eliminated under the new USOC constitution.

⁹³ USOC CONST. § 3.2 (proposed Oct. 2003), available at <http://www.usoc.org/ASA2000.pdf> (last visited Mar. 11, 2005).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Christina Maistrellis, *American Red Cross v. S.G. & A.E.: An Open Door to the Federal Courts for Federally Chartered Corporations*, 45 EMORY L.J. 771, 772 (1996).

⁹⁷ *Id.*

⁹⁸ *Id.* at 774.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 773.

¹⁰¹ Froomkin, *supra* note 3, at 547.

¹⁰² *Id.* at 543. The purpose of a government corporation may be business-like. However, though many government corporations are not profitable, their natural composition is that of a business-like entity. Again, Amtrak is an example of this type of government corporation.

⁷² *Id.* at 1B. The IOC approved all fifty reforms that a reform group had presented to the full membership in 1999.

⁷³ *Id.*

⁷⁴ *Id.*; Bill Briggs, *Keeping the Flame Alive After Watching the USOC Crumble*, DENVER POST, Jan. 11, 1004, at C22.

¹⁰³ *Id.* at 580.

¹⁰⁴ *Id.* at 549.

¹⁰⁵ *Id.* at 580 n.191.

¹⁰⁶ *Id.* at 543, 568.

¹⁰⁷ See Larry Laurelo, *Concentrating on Running Trains – A Necessary Solution - Railway Track and Structures*, available at http://www.findarticles.com/p/articles/mi_m0BFW/is_5_99/ai_102695366 (May 13, 2003).

¹⁰⁸ See Transportation Development Association of Wisconsin, *The Future of Amtrak: Options Pursued*, available at http://www.tdawisconsin.org/resources/member_pdfs/0401news.pdf (Apr. 2001).

¹⁰⁹ See *id.* Amtrak has failed at this because its financial losses essentially make the federal government responsible for paying for the continued operation of the passenger railroad in the United States.

¹¹⁰ Froomkin, *supra* note 3, at 548.

¹¹¹ *Id.*

¹¹² *Id.* at 612. “Different accountability mechanisms appear appropriate depending on whether an FGC is treated as public, private, or as a hybrid.” For example, private directors of government corporations are typically accountable to shareholders instead of the corporation President.

¹¹³ *Id.* at 549.

¹¹⁴ *Id.* at 554.

¹¹⁵ *Id.* at 554–55. The agency relationship of

government corporations, though essential to the new USOC, is beyond the scope of this Article.

¹¹⁶ Moe, *supra* note 1, at 35. Patriotic organizations are usually nonprofit membership organizations.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 39 (a complete list of federally chartered patriotic organizations).

¹²⁰ *Id.* In the list provided, forty-two of the organizations were affiliated with the military.

¹²¹ *Id.* at 35.

¹²² *Id.*; see *supra* Part I.A.3. Like the USOC, the Red Cross exemplifies a federally chartered patriotic organization with large amounts of capital flowing through it. Also, like the USOC, in recent years, the Red Cross has been heavily criticized for financial mismanagement and a lack of transparency which has led to corruption.

¹²³ See Moe, *supra* note 1, at 39.

¹²⁴ See *id.*

¹²⁵ Moe, *supra* note 1, at 35–39; Maistrellis, *supra* note 96, at 771. “Patriotic society” and “federally chartered patriotic organization” and “federal corporate organization” will be hereinafter referred to as “patriotic organizations.” Congress intended for such organizations to be “membership corporations” through which subsidiary groups can be created.

¹²⁶ Barnas, *supra* note 14, at C4.

¹²⁷ *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522, 544 [hereinafter *San Francisco Arts & Athletics*]. *San Francisco Arts & Athletics* is a seminal case in many areas of the law. Of primary concern to the USOC in *San Francisco Arts & Athletics* is the Supreme Court’s holding that the USOC is not a state actor and thus not required to ad-

¹³² See *id.*

¹³³ *Id.*

¹³⁴ See *infra* Part III.C.2.

¹³⁵ See *supra* Part I.A.2.

¹³⁶ See *id.*

¹³⁷ *Id.*; see *infra* Part II.E.2.a-g.

¹³⁸ *Id.*

¹³⁹ See Moe, *supra* note 1, at 39.

¹⁴⁰ *Id.*

¹⁴¹ See *supra* Part I.A.2.

¹⁴² Wilkinson, *supra* note 8.

¹⁴³ Joseph White, *Title IX Hearing Headed Toward Combative Finish*, *THE ADVOCATE* (Baton Rouge, LA), Jan. 30, 2003, at 3C.

¹⁴⁴ Wilkinson, *supra* note 8. Montreal continues to pay debts related to the 1976 Games.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*; see *supra* Part II.A.2 and Part II.A.4; see *infra* note 170 and accompanying text. Further, the desire to defeat communist rivals led President Ford to form the Commission. Amateur sport during the Cold War was a war of politics and image in the rink, field, pool, and track. The Commission believed that poor performance by American athletes in the 1970s reflected unfavorably on capitalism. Having one centralized Olympic unit that, at least in part, could help the fight against communism reflected the mindset of the 1970s. With the Cold War no longer in the background of the Olympic equation, the United States dominates international sport.

¹⁴⁷ *Id.* The 1984 Games netted the USOC \$100 million and \$225 million overall.

¹⁴⁸ Jack Nelson, *A Publicity Goldmine: Clinton Stands to Win at Olympics*, *BERGEN RECORD*, May 27, 1996, at A06.

¹⁴⁹ See Richard Sandomir, *NBC Left Its Competitors No Chance*, *N.Y. TIMES*, June 10, 2003, at D7. See also Robert Alan Garrett & Philip R. Hochberg, *Sports Broadcasting and the Law*, 59 *IND. L.J.* 155 (1984); Anne M. Wall, *Sports Marketing and the Law: Protecting Proprietary Interests in Sports Entertainment Events*, 7 *MARQ. SPORTS L.J.* 77 (1996).

¹⁵⁰ Wilkinson, *supra* note 8.

¹⁵¹ Briggs, *supra* note 74.

¹⁵² White, *supra* note 143; Nelson, *supra* note 148.

¹⁵³ White, *supra* note 143.

¹⁵⁴ *Id.* Though opportunities for women expanded at the Olympic Games in a number of sports, the work of organizing millions of additional amateur athletes at the local level is a significantly more complex task than merely adding sports to the Olympic program.

¹⁵⁵ RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 911-14 (5th ed. 2003). Congress charted the USOC under the ASA to govern all domestic amateur sport.

¹⁵⁶ Overlap usually occurs at the highest level of competition. NCAA athletes often compete for the United States at the Olympics. In recent years, professional athletes compete for the United States at the Olympics, depending on the rules of the individual professional sports league. The NCAA often feeds athletes into the professional leagues. In recent years, amateur sport has been feeding athletes to the professional leagues in increasing numbers.

¹⁵⁷ Straubel, *supra* note 44, at 523. Given the reorganization of the USOC's doping organization and the international role that organization is taking, in the future, the USOC may emerge as the leader in the United States on doping issues.

¹⁵⁸ See YASSER ET AL., *supra* note 155, at 53. Examples of criticism against the NCAA are the recruiting process and the results of the Bowl Championship Series. Examples of criticism against the professional leagues are player salaries and doping.

¹⁵⁹ See generally *id.* at 81. Though far from perfect, the NCAA tends to be an organization where

here to the Constitution. Thus, the Supreme Court determined that the USOC had exclusive domain over the use of the word "Olympic," which means that the USOC's property right, rooted in the ASA, does not violate the First Amendment. *Id.*

¹²⁸ *Id.* at 544–45.

¹²⁹ *Id.*

¹³⁰ *Id.* at 548–72 (Brennan, J. dissenting). Justice Brennan's dissent was the inspiration for this Article. The majority held that the USOC is not a state actor and, instead, is merely recognized by the government of the United States.

¹³¹ *Id.* at 553, 555.
change occurs frequently via rulemaking.

¹⁶⁰ For example, if the Yankees or Notre Dame were subject to needless rules or the respective umbrella organization diminished performance, change would be demanded by avid fans.

¹⁶¹ The pressures of business tend to promote solid organization; the XFL failed due to business pressure.

¹⁶² *Remaking the USOC*, *supra* note 74.

¹⁶³ *Id.*

¹⁶⁴ *See supra* Part I.A.5.

¹⁶⁵ USOC CONST. § 3 (proposed Oct. 2003). The new USOC constitution guarantees seats on the board for NGBs and Athlete's Advisory Council.

¹⁶⁶ *See supra* Part I.A.5, *see supra* note 93.

¹⁶⁷ *See supra* Part I.A.5 and accompanying notes. The USOC benefited significantly from the leadership of Bill Martin that infused a purpose and honesty missing in previous USOC leaders. Martin's forthrightness in his interaction with the IOC when questioned in Switzerland

represents the best kind of leadership. However, the new USOC constitution has the appearance of assuming that it will be lead by someone of Martin's repute when that is unlikely.

¹⁶⁸ Press Release, United States Olympic Committee, USOC: Peter Ueberroth, Chair of the USOC, says New York City has a "Winning Bid," (Nov. 15, 2004), *available at* <http://usocpressbox.org>.

¹⁶⁹ USOC CONST. § 3 (proposed Oct. 2003).

¹⁷⁰ Briggs, *supra* note 74.

¹⁷¹ Froomkin, *supra* note 3, at 543–51. President Clinton's "reinventing government," a program spear-headed by Vice President Gore during Clinton's two terms, was an attempt to promote efficiency in the operation of the federal government. Support for and creation of federal corporations was critical to the reinventing government program.

¹⁷² *See* Froomkin, *supra* note 3, at 543. The trend from Reagan to Clinton was to privatize and restructure.

¹⁷³ *See id.*; *see also* Moe, *supra* note 1, at 35.

¹⁷⁴ *See supra* Part I.B.2 and accompanying notes.

¹⁷⁵ Froomkin, *supra* note 3, at 580 n.191; *see supra* Part I.B.1.

¹⁷⁶ YASSER ET AL., *supra* note 155, at 7. The NAIA and NCAA used to both be governing forces in collegiate athletics. Strong rulemaking, in part, resulted in the ascent of the NCAA and the decline of the NAIA.

¹⁷⁷ This Article proposes the ASC in theory and name.

¹⁷⁸ *See supra* note 156.

¹⁷⁹ *See supra* Part I.A.3.

¹⁸⁰ *Id.*

¹⁸¹ Parts of the ASA are hopelessly outdated.

For example, the ASA refers to the Olympics and the Pan Am games, but the Pan Am games no longer play a significant role in international sports competition. However, whether the ASA should be entirely rewritten is a procedural question for Congress.

¹⁸² Briggs, *supra* note 74. In the past few months with the leadership of Jim Scherr, the USOC erased a \$10 million loss by signing six new sponsorship agreements and renewing almost all of its old ones.

¹⁸³ 36 U.S.C. § 220506 (1998); San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 546; Nish, *supra* note 48, at 57. The ASA gave the USOC exclusive control over the Olympic trademark, the Olympic rings, and the "faster, higher, stronger" Olympic theme. Indeed, the ASA and its 1998 revisions arm the USOC "with a powerful means of combating unauthorized use of their protected words and marks."

¹⁸⁴ DeFrantz v. United States Olympic Comm., 492 F. Supp 1181, 1181. Under President Carter, the United States boycotted the 1980 Moscow Games in protest of the Soviet Union's invasion of Afghanistan.

¹⁸⁵ Athletes dissatisfied with USOC decisions should be provided with something similar to a thirty-day appeal to the American Arbitration Association.

¹⁸⁶ Angela Saloufakos-Parsons, *Going for the 'Gold': An Application of the OECD Bribery Convention to the Olympic Games Scandal*, 31 CAL. W. INT'L L.J. 297, at 299 (2001); see Harasta, *supra* note 66; *supra* Part I.A.4. Hosting the Olympics must be a priority of the new USOC, and the new USOC must maintain its focus in abiding by the rules that the IOC has set in its selection process.

¹⁸⁷ Straubel, *supra* note 44, at 559, 570. The USADA has a defined and developed system for monitoring and policing doping that is "far superior to [any in] the international system."

¹⁸⁸ Robert Alan Garrett & Philip R. Hochberg, *Sports Broadcasting and the Law*, 59

IND. L.J. 155, at 159 (1984); Wall, *supra* note 149, at 77; Queenie Ng, *United States and Canadian Olympic Television Coverage: A Tale of Two Monopolists*, 8 SW. J. L. & TRADE AM. 251 (2002); see Sandomir, *supra* note 149. In 2003, NBC signed a record-breaking contract for the broadcast rights to the 2012 Summer Games worth \$2.2 billion. The majority of Western nations, like Canada, broadcast the Olympics on their public television network, and those television monopolies prevent the IOC from negotiating large contracts. In 2000, the IOC had a choice between a large and lucrative deal with Fox's Sky Networks for the Olympic rights in Europe and chose to go with the much less lucrative state cooperative monopolies. Thus, it appears that the IOC was clearly favoring European television over American television in this situation, in a context where the US is the backbone of the Olympic economy.

¹⁸⁹ YASSER ET AL., *supra* note 155, at 2. Amateurism has grown to become incredibly sport-specific: what may be an amateur in track may not be an amateur in tennis. Combined with the qualifications in the NCAA for amateurism, the line currently is blurrier than ever.

¹⁹⁰ See *supra* Part I.A.3.

¹⁹¹ Since the thrust of this article is to deconstruct and reinvent the USOC, the structure of the ASC is not discussed further. As a private organization, it would be left to the NGBs to decide the structure of the ASC. Thus, a defined structure for the USOC is important as a model for Congress in rewriting the charter, but a defined structure for the ASC is less important because Congress will not be writing its charter.

¹⁹² The organizational structure of the ASC will differ from the NCAA because there are far fewer NGBs than there are colleges and universities.

¹⁹³ See NYC2012 Home, available at http://www.nyc2012.com/index_flash.aspx (last visited Mar. 11, 2005) (web site laying out New York City's plan for its bid for the 2012 Olympic Games).

¹⁹⁴ Organizational issues may impact American performance at the 2006 Olympic Winter Games in Turin, Italy. However, the Olympic Winter Games is traditionally a significantly smaller endeavor at which American athletes do not dominate the way they do in the Olympic Summer Games. The period from 2005 to 2008 will be a good time-frame for the newly-organized USOC to work out the difficulties that occur in such a massive reorganization. By the 2008 Beijing Summer Games, organization should be strong, and, as a result, American athletes should succeed.

Film & TV

