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The United States Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures Under the Amateur Sports Act of 1978

EDWARD E. HOLLIS III*

"The most important thing in the Olympic Games is not to win but to take part"¹

Pierre De Coubertin

Founder of the modern Olympics

INTRODUCTION

Since the inception of the modern Olympic games in 1896, America's Olympic athletes have captured the imagination and attention of our people with their triumphs and defeats on the fields and courts of athletic endeavor. Recently, however, much attention has been focused on their battles in courts of another kind: courts of law. American athletes faced with suspension from Olympic competition are increasingly prone to challenge those decisions, as the recent high profile cases of Butch Reynolds and Tonya Harding demonstrate.

There was a time when such challenges were impossible for an athlete to bring. In 1936, for example, U.S. swimmer Eleanor Holm was suspended from the Berlin Olympics for drinking with sportswriters until 6 a.m. one night while crossing the Atlantic by ship. Her only avenue of appeal was to the U.S. Olympic czar Avery Brundage, and he refused to let her compete.²

Times have changed, however, and so has the motive for challenging suspension decisions. No longer limited by ironclad rules forbidding monetary compensation of all kinds, Olympic athletes, especially gold medalists, stand to make a fortune on lucrative endorsement contracts. "[A]s sponsors, advertisers and broadcasters assume greater leverage over athletes, the force of eligibility rules in their lives cannot be exaggerated."³ Procedures for challenging suspensions have also become more standardized and unified by the chartering of the United States Olympic Association in 1950,⁴ and its reorganization with expanded powers as the United States Olympic Committee ("USOC") under the Amateur Sports Act of 1978.⁵

Nevertheless, U.S. athletes suspended for drug use, violations of codes of conduct, violence, or other infractions, face an uphill battle. Assuming *arguendo* that the athlete

* J.D. Candidate, 1996, Indiana University School of Law-Bloomington; B.A., 1993, Taylor University. I would like to thank Jack Swarbrick of Baker & Daniels for the opportunity to apply the research that went into this Note. Thanks also to Paul for the reminder that there is only one event for which eligibility is truly important. 1 *Corinthians* 9:24-27.

1. *Oversight of Activities of the Olympic Committee: Hearings Before the Consumer Subcomm. of the Senate Comm. on Commerce, Science and Transportation*, 105th Cong., 2d Sess. 26 (1994) (statement of Anita L. DeFrantz, President, Amateur Athletic Foundation of Los Angeles) (quoting statement attributable to Pierre De Coubertin).

2. Christine Brennan, *The Certainty of Doubt: Harding's Olympic Fate Can Take Many Turns*, WASH. POST, Jan. 25, 1994, at E1, E2. The tyrannical Brundage went on to become president of the International Olympic Committee ("IOC"), ruling that organization with the same iron fist he had first exercised over U.S. Olympians. Johnette Howard, *Ethically, Harding Has Little Clue*, WASH. POST, Feb. 11, 1994, at C7.

3. James A.R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 502 (1992).

4. Olympic Charter Act, Pub. L. No. 81-805, 64 Stat. 899 (1950).

5. 36 U.S.C. §§ 371-396 (1988).

is able to convince U.S. Olympic authorities that he is innocent of the charges, the athlete may still not be able to compete if the International Federation ("IF") governing his sport rules differently. The potential for U.S. Olympic authorities to face contradictory directives from an IF and the U.S. courts is a disturbing possibility, and one that has been realized.⁶

Part I of this Note seeks to examine the confusing and often overlapping authority of various organizations to determine an individual athlete's eligibility for Olympic competition. Part II examines the current procedures U.S. athletes must follow under the Amateur Sports Act of 1978 in filing grievances to regain eligibility status once they are banned from competition. Part III then analyzes two recent cases in which the current system broke down and failed to achieve an equitable result. Part IV concludes that congressional action to reform the Amateur Sports Act of 1978 is necessary, and Part V urges that the recent agreement of International Federations to form the International Council of Arbitration for Sport presents a promising opportunity for reform.

I. THE OLYMPIC MOVEMENT

Much of the confusion about the suspension of U.S. athletes arises from the overlapping claims of authority made by constituent organizations within the Olympic Movement. "The Olympic Movement includes the IOC, International Federations (IFs), National Olympic Committees (NOCs), the organizing committee for a particular four-year Olympiad, and the Olympic Congress."⁷ Further complicating the issue, the IOC is a nongovernmental organization and cannot compel the obedience of individual national governments.⁸ Thus, the "whole Olympic system . . . operates on the fringe of public international law,"⁹ relying on national cooperation and making "international custom and general principles of international law play an especially important role at this stage in the development of international sports law."¹⁰ While "states normally adhere to the rules and practices of the Olympic framework and related authority, as a matter of respect and reciprocal obligation,"¹¹ when a country is faced with the suspension of one of its potential Olympic heroes, nationalism may endanger its willingness to go along with a disqualification decision rendered from high atop Mount Olympus.

Nevertheless, the system has successfully functioned for nearly one hundred years. Whether the centennial celebration of the Olympics in Atlanta in 1996 will solidify the system and secure it for the future, or lead to its fragmentation and downfall, is a question of critical importance. Recent developments have seen "the transformation of the international sports regime from a decentralized framework relying on unilateral, ad hoc enforcement, into a vast international administrative authority that relies on routine regulation."¹² The needs for continued growth of cooperation among the organizations of the Olympic Movement and for the standardization of procedures for suspending athletes are perhaps the critical problems confronting the Olympic system as 1996 approaches.

6. See discussion *infra* part III.A.; see also *Nehemiah v. Athletics Congress*, 765 F.2d 42, 43 (3d Cir. 1985).

7. JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 25-26 (1988).

8. *Id.* at 34.

9. D.H.N. Johnson, Book Review, 60 *BRIT. Y.B. INT'L L.* 450, 451 (1989) (reviewing NAFZIGER, *supra* note 7).

10. NAFZIGER, *supra* note 7, at 32.

11. *Id.* at 34.

12. Nafziger, *supra* note 3, at 502.

A. The International Olympic Committee ("IOC")

The IOC was established by the 1894 Congress of Paris which began the modern Olympic Games.¹³ Sitting at the top of the Olympic system, the IOC mandates that "every person or organisation that plays any part whatsoever in the Olympic Movement shall accept the supreme authority of the IOC and shall be bound by its Rules and submit to its jurisdiction."¹⁴ Further, the IOC claims paramount authority in decisions regarding the suspension, expulsion, or disqualification of all athletes, while also reserving the right to delegate such decisions to the IF's governing individual sports.¹⁵ While these claims of "supreme authority" are broad and sweeping, they are not self-evidently true, and without any mechanism for forcing compliance, the IOC must rely on National Olympic Committees and governments to enforce its decisions.

B. The International Federation ("IF")

The IOC delegates to individual IFs the technical control of all aspects of the sport they supervise, as well as authority for suspending or disciplining individual athletes who violate the IF's rules or code of conduct.¹⁶ Thus, the IFs are powerful bodies with tremendous control over all aspects of their sport, subject only to the constraints of the Olympic Charter.¹⁷

Difficulties with this system may emerge where an IF's procedures "conflict with the legislation or constitutions of individual nations."¹⁸ A further fairness issue arises due to the substantial variation in procedural mechanisms and severity of sanctions imposed upon athletes "competing in different sports or for athletes in the same sport living in different countries" when eligibility disputes occur.¹⁹ The resulting confusion may lead to drastically different penalties in cases with nearly identical facts, leaving athletes competing under a more strict regime the difficult choice of falling behind in the competitive arena, or risking suspension to keep up with athletes governed by more relaxed standards.

More often than not, it is the IFs that make a decision declaring an athlete ineligible, and not the IOC. This can bring the IFs into direct confrontation with the judicial systems of individual countries. A typical example of an IF is the International Amateur Athletic

13. NAFZIGER, *supra* note 7, at 26.

14. COMITÉ INTERNATIONAL OLYMPIQUE, OLYMPIC CHARTER 1984 Rule 4 [hereinafter OLYMPIC CHARTER].

15. *Id.* Rule 23. The text of this rule reads in full:

The IOC is the final authority on all questions concerning the Olympic Games and the Olympic Movement. On all matters, including matters of discipline affecting all concerned, and for permanent and temporary penalties of all kinds, the heaviest of which are: suspension, expulsion, disqualification, exclusion, the powers of the IOC are paramount. It delegates to the IFs, however, the technical control of the sports which they govern. The delegation of judicial power is set out in a bye-law [sic].

Id.

16. See NAFZIGER, *supra* note 7, at 27-28.

17. *Id.* at 28.

18. Marcia B. Nelson, Note, *Stuck Between Interlocking Rings: Efforts to Resolve the Conflicting Demands Placed on Olympic National Governing Bodies*, 26 VAND. J. TRANSNAT'L L. 895, 903 (1993); see also TAC Director Cassell Defends His Efforts in *l'Affaire Reynolds*, L.A. TIMES, June 13, 1992, at C3 (statement of Ollan Cassell) ("[T]he IAAF [International Amateur Athletic Federation] does indeed understand the U.S. system, but [the] IAAF leadership has chosen to ignore it.").

19. Nelson, *supra* note 18, at 903.

Federation ("IAAF"), responsible for track and field events.²⁰ During the Butch Reynolds case, the IAAF refused to appear in court at all, claiming that "the IAAF is not subject to the jurisdiction of any court anywhere in the world."²¹ The district court judge disagreed, and the ensuing litigation took nearly four years to complete.²²

C. *The National Olympic Committees ("NOCs")*

In each country wishing to participate in the Olympic Games, the IOC recognizes a NOC for the purpose of being the "sole authorities responsible for the representation of their respective countries at the Olympic Games as well as at other events held under the patronage of the IOC."²³ For the United States, that NOC is the USOC, which was originally chartered by Congress as an independent corporation on September 21, 1950.²⁴

Among the objects and purposes of the USOC is the duty to "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."²⁵ Further, the USOC is charged with "provid[ing] for the swift resolution of conflicts and disputes involving amateur athletes, National Governing Bodies, and amateur sports organizations, and protect[ing] the opportunity of any amateur athlete . . . to participate in amateur athletic competition."²⁶ Congress expanded the powers of the USOC upon its rechartering under the Amateur Sports Act of 1978 ("the Act"),²⁷ which includes sections dealing with grievance procedures for individual athletes wishing to contest suspensions.²⁸

The USOC faces a dilemma in that it owes allegiance to two bodies, the IOC and the United States, both of whose rules it is bound to follow. The IOC fundamentally views NOCs as its vassals, bound to follow its rules and dictates independently of national governmental control.²⁹ United States courts have recognized this duty in light of the fundamentally international nature of the Olympic Games.³⁰ Yet the U.S. government controls the very existence of the USOC, specifically stating in the Act that "[t]he right to alter, amend, or repeal this chapter at any time is hereby expressly reserved."³¹ While Congress' power to completely eliminate the USOC seems somewhat ominous, the ability to amend the Act may play a vital role in harmonizing current conflict between the

20. NAFZIGER, *supra* note 7, at 27.

21. Reynolds v. International Amateur Athletic Fed'n, 841 F. Supp. 1444, 1452 (S.D. Ohio 1992).

22. See discussion *infra* part III.A.

23. OLYMPIC CHARTER, *supra* note 14, Rule 24(B).

24. *Olympic Charter Act*, 64 Stat. 899.

25. UNITED STATES OLYMPIC COMM., CONSTITUTION art. II(C) (1995) [hereinafter CONSTITUTION].

26. *Id.* art. II(H).

27. 36 U.S.C. §§ 371-396.

28. *Id.* § 395.

29. OLYMPIC CHARTER, *supra* note 14, Rule 24(C) provides:

NOCs must be autonomous and must resist all pressures 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 themselves with any undertaking which would be in conflict with the principles of the Olympic Movement and with the Rules of the IOC.

Of course, one of those rules is that the IOC has supreme authority over the Olympics, subordinating the national government of the NOC's home country to the IOC's authority.

30. DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181, 1188 (D.D.C.), *aff'd*, 701 F.2d 221 (1980). The court stated: "[A] National Olympic Committee is a creation and a creature of the International Olympic Committee, to whose rules and regulations it must conform. The NOC gets its power and its authority from the IOC, the sole proprietor and owner of the Olympic Games." *Id.*

31. 36 U.S.C. § 382.

Olympic Movement and U.S. courts regarding the suspension of athletes from competition.³²

Of particular interest to athletes suing the USOC to regain eligibility is the legal nature of the organization. In seeking protection from suspension procedures, many athletes have attempted to obtain shelter in the due process provision of the Fifth Amendment to the U.S. Constitution. This heightened protection is only available if the body depriving one of due process is a "governmental actor." In considering this question, the U.S. Supreme Court determined that "the USOC is not a governmental actor."³³ This means that athletes seeking to reverse suspensions through litigation must rely on theories other than due process. Further complicating matters, the courts have determined that there is no private cause of action under the Act.³⁴ Thus, athletes must rely on other causes of action when suing the USOC to regain eligibility. One that has met with some success of late has been a claim for breach of contract, alleging that the USOC (or a constituent National Governing Body) violated its duty to use certain procedures in determining eligibility, procedures present in the Act or the organization's bylaws. This end-run allows athletes to gain the protection of the Act by default, but at the same time places the USOC in a position of potential conflict with the determinations of IFs that are not subject to the Act.³⁵

D. The National Governing Bodies ("NGBs")

Within the Olympic system of the United States, the USOC recognizes organizations responsible for the administration of individual sports. Each of these organizations is called a National Governing Body, and authority for their creation is found in the Act.³⁶ Just as the IFs insulate the IOC from direct contact with athletes in most eligibility disputes, the NGBs insulate the USOC from direct contact with U.S. athletes, at least at the first level of suspension proceedings. The authority of the NGBs includes recommending individual athletes to the USOC for participation in the Olympic or Pan-American Games, as well as establishing internal procedures for determining eligibility standards.³⁷ Thus, in an eligibility dispute, the first decision to suspend a U.S. athlete is most likely to come from an NGB, although an IF may declare the athlete ineligible without action by an NGB.

This points out a further difficulty in the system. Just as the USOC is responsible both to U.S. courts and to the IOC, the NGBs are responsible both to the USOC (and U.S. courts) and to the IF for their sport.³⁸ Thus, an NGB may suspend an athlete, subsequently reverse itself upon internal review or be reversed by the USOC, yet find itself ordered to uphold the suspension by an IF. The gridlock produced by such a situation can lead to time-consuming litigation and expense, as will be seen.³⁹

32. See *infra* part V.B. for a discussion of suggestions for amending the Act to place the newly formed International Council of Arbitration for Sport as the final step in arbitration.

33. *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522, 547 (1987).

34. *Michels v. United States Olympic Comm.*, 741 F.2d 155, 156 (7th Cir. 1984).

35. See discussion *infra* part III.A.-B.

36. 36 U.S.C. § 391.

37. *Id.* § 393(5), (6).

38. *Id.* § 393(1). An NGB must "represent the United States in the appropriate international sports federation." *Id.*

39. See discussion *infra* part III.A.

E. Summary of the Olympic System

Thus, the Olympic Movement consists of several bodies, each claiming authority over individual athletes and their eligibility. It is not a strict hierarchy, but a crisscrossing web of control with various organizations responsible to as many as three or four others. In such a system, conflicts are bound to occur, particularly when dealing with the critical issue of individual athletic eligibility. With the 1996 Olympics being held in Atlanta, it is of paramount importance to modify the current system with its uncertainties, or face a potential flood of litigation from U.S. and foreign athletes attempting to regain eligibility.⁴⁰

II. CURRENT PROCEDURES FOR APPEALING INELIGIBILITY RULINGS

Although the Amateur Sports Act includes provisions for dealing with individual athletic eligibility, "[t]he principal purpose of the Act was to provide a means of settling disputes between organizations seeking to be recognized as the NGB for a particular sport and to shield amateur athletes from being harmed by these struggles."⁴¹ The legislative history reveals that the Act focused primarily on resolving disputes between sports organizations, not between an organization and an athlete.⁴² Thus, the eligibility status of athletes was relegated to secondary importance from the start.⁴³

Nevertheless, it is the provisions of the Act (also enacted as part of the USOC Constitution) which currently establish procedures for review of an individual athlete's suspension by an NGB. To understand how the system is supposed to work, it is instructive to create a hypothetical situation involving the suspension of a U.S. athlete by an NGB. This hypothetical situation in which the system works ideally then can be compared to two recent cases in which the system failed to perform.

In this hypothetical, a U.S. swimmer seeking to qualify for the Pan-American Games has allegedly failed a drug test administered randomly by U.S. Swimming, Inc. ("USS"), the NGB which regulates swimming competition.⁴⁴ The swimmer denies taking any illegal drugs, and wishes to challenge the suspension issued by USS.

First, the swimmer must exhaust "all available remedies within such national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence

40. LeRoy Walker, President of the USOC, commented:

If we're going to have 16 days of glory instead of two months of it [because of legal delays in Atlanta], we've got to have some common thread to get the athletes to the table. . . . It's got to be a fair process, and the athlete has to believe it's fair. And it's got to have closure. It can't go on and on and on. The way it is now, with the federations appointing a hearing panel, that's like being judge and jury. We'll get better at this. We have to. Otherwise, Atlanta may go on from July to December.

Christine Brennan, *In Wake of Harding, USOC to Take a Look at the Law*, WASH. POST, Apr. 13, 1994, at B1 (alteration in original) (omission by author).

41. *Michels v. United States Olympic Comm.*, 741 F.2d 155, 157 (7th Cir. 1984).

42. See H.R. REP. NO. 1627, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S.C.C.A.N. 7478, 7481; S. REP. NO. 770, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S.C.C.A.N. 7478, 7481; 14 WEEKLY COMP. PRES. DOC. 1976 (Nov. 8, 1978).

43. Congress considered, but rejected, including an "athlete's bill of rights" in the Act which would guarantee heightened protection for the right to compete. NAFZIGER, *supra* note 7, at 206. Nevertheless, the USOC enacted in its constitution a broadly worded guarantee of opportunity to participate in Olympic and other competition. CONSTITUTION, *supra* note 25, § 1.

44. CONSTITUTION, *supra* note 25, app. (List of Members).

that those remedies would have resulted in unnecessary delay."⁴⁵ These internal review procedures are not directly regulated by the USOC, and they may vary considerably in quality and procedure among the various NGBs. Assuming that the USS reviewed and upheld the suspension, the athlete may now appeal to the USOC.

The swimmer now files a written complaint with the USOC, and the USOC has thirty days to determine whether or not all internal remedies within the NGB have been exhausted.⁴⁶ If all remedies have not yet been exhausted, the USOC may direct that such remedies be pursued before further considering the issue.⁴⁷ Here the swimmer has exhausted all internal remedies, so the USOC must hold a hearing within ninety days of the filing of the complaint to determine if the NGB has complied with all constitutional requirements of the USOC in suspending the athlete.⁴⁸ At this hearing, "all parties shall be given a reasonable opportunity to present oral or written evidence, to cross-examine witnesses, and to present such factual or legal claims as desired."⁴⁹ The burden of proof is upon the athlete, who must also present evidence first.⁵⁰ The NGB may then move to dismiss for failure to sustain the burden of proof. If this motion is denied, the NGB must present evidence in opposition to the complaint.⁵¹

Assuming that the USOC determines at the hearing that the results of the drug test were correct and sustains the suspension, the athlete then has thirty days to demand a review of the USOC finding by a panel of not less than three arbitrators from the American Arbitration Association.⁵² Here, the arbitration panel considers the evidence, and determines that the results of the drug test should be thrown out due to procedural

45. 36 U.S.C. § 395(a)(1). The text of § 395(a)(1) reads in full:

Any amateur sports organization or person which belongs to or is eligible to belong to a national governing body may seek to compel such national governing body to comply with the requirements of sections 391(b) and 392 of this title by filing a written complaint with the Corporation. Such organization or person may take such action only after having exhausted all available remedies within such national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay. The Corporation shall establish procedures for the filing and disposition of complaints received under this subsection. A copy of the complaint shall also be served on the applicable national governing body.

See also CONSTITUTION, *supra* note 25, art. VIII, § 1(A).

46. 36 U.S.C. § 395(a)(2). The text of § 395(a)(2) reads in full:

Within 30 days after the filing of the complaint, the Corporation shall determine whether the organization has exhausted its remedies within the applicable national governing body, as provided in paragraph (1) of this subsection. If the Corporation determines that any such remedies have not been exhausted, it may direct that such remedies be pursued before the Corporation will further consider the complaint.

See also CONSTITUTION, *supra* note 25, art. VIII, § 1(B).

47. 36 U.S.C. § 395(a)(2).

48. 36 U.S.C. § 395(a)(3)(A). The text of § 395(a)(3)(A) reads in full:

Within 90 days after the filing of a complaint under paragraph (1) of this subsection, if the Corporation determines that all such remedies have been exhausted, it shall hold a hearing to receive testimony for the purpose of determining if such national governing body is in compliance with the requirements of sections 391(b) and 392 of this title.

See also CONSTITUTION, *supra* note 25, art. VIII, § 1(C).

49. UNITED STATES OLYMPIC COMM., BYLAWS ch. VI, § 1 [hereinafter BYLAWS].

50. *Id.* § 2.

51. *Id.*

52. 36 U.S.C. § 395(c)(1). The relevant text of § 395(c)(1) reads:

The right to review by any party aggrieved by a determination of the Corporation under the requirements of this section or section 391(c) of this title shall be to any regional office of the American Arbitration Association. Such demand for arbitration shall be submitted within 30 days of the determination of the Corporation. Upon receipt of such a demand for arbitration, the Association shall serve notice on the parties to the arbitration and on the Corporation, and shall immediately proceed with arbitration according to the commercial rules of the Association in effect at the time of the filing of the demand

See also CONSTITUTION, *supra* note 25, art. VIII, § 4(A).

irregularities in the test's administration. This decision becomes final, and the swimmer is reinstated free of all suspensions by USS or the USOC.⁵³

Thus, in this hypothetical the athlete was entitled to three levels of review: internal review by the NGB, a hearing by the USOC, and finally arbitration before the American Arbitration Association. The system worked with plenty of time to spare before the Pan-American Games. But in this hypothetical none of the complicating factors that often plague real life suspensions were present. Federation Internationale de Natation Amateur, the IF for swimming, did not become involved or suspend the swimmer. The swimmer followed the system for exhausting all internal remedies with the NGB before seeking review by the USOC. Lastly, the games in which she sought to compete were still far off, leaving ample time to complete all review.⁵⁴ How does the system perform when complications are present?

III. TWO CASES WHERE THE CURRENT SYSTEM BROKE DOWN

Two of the most recent high-profile cases regarding the suspension or potential suspension of U.S. athletes from Olympic competition involved track star Butch Reynolds and figure skater Tonya Harding. The Reynolds controversy is perhaps the most frequently cited example of the system failing to render a timely and fair result, while the Harding case involved the suspension that did not happen, but should have. In addition to being high-profile cases, both incidents highlight problems that make reform of the current procedures for eligibility determination a necessity.

A. *The Butch Reynolds Controversy*

Harry "Butch" Reynolds is a world-class sprinter,⁵⁵ but judging from the length of his legal battles over a 1990 suspension, one would think he is a marathon runner. After running in a track meet in Monte Carlo on August 12, 1990, Reynolds was randomly tested for drug use by the IAAF, the IF responsible for track and field events.⁵⁶ The IAAF later announced that Reynolds had tested positive for the banned anabolic steroid nandrolone and immediately suspended him for two years, automatically disqualifying him from the 1992 Olympics in Barcelona, Spain.⁵⁷

53. 36 U.S.C. § 395(c)(5). The text of § 395(c)(5) reads in full: "Final decision of the arbitrators shall be binding upon the involved parties, if such award is not inconsistent with the constitution and bylaws of the Corporation." See also CONSTITUTION, *supra* note 25, art. VIII, § 4(E).

54. Special emergency procedures for implementing arbitration when competition is imminent are found in article IX, § 2 of the USOC Constitution which provides:

[The American Arbitration Association] is authorized, upon forty-eight (48) hours' notice to the parties concerned, and to the USOC, to hear and decide the matter under such procedures as the Association deems appropriate, if the Association determines that it is necessary to expedite such arbitration in order to resolve a matter relating to a competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties.

CONSTITUTION, *supra* note 25, art. IX, § 2.

55. "Reynolds currently holds the individual world record in the 400 meters, is a member of the world-record-holding 4x400 relay team, and is a gold and silver medalist from the 1988 Olympics." Reynolds v. International Amateur Athletic Fed'n, 23 F.3d 1110, 1112 (6th Cir.), *cert. denied*, 115 S. Ct. 423 (1994).

56. *A Long History of Hearings, Rulings*, USA TODAY, May 18, 1994, at C12.

57. *Id.*

Reynolds contested the suspension, claiming that he did not take steroids or other illegal drugs. Pursuant to IAAF Rule 59, Reynolds was granted a review of the test results by The Athletics Congress ("TAC"), the NGB for track in the United States, and a temporary stay of his suspension.⁵⁸ The hearing was set for January 4, 1991, but on January 2, 1991, Reynolds brought suit against TAC in the U.S. District Court for the Southern District of Ohio, alleging that "the defendants had failed to produce certain information vital for him to properly prepare for the hearing and that the decision with respect to eligibility had been predetermined and thus the hearing was a sham."⁵⁹ Judge Kinneary found that Reynolds had failed to exhaust his internal remedies with TAC before filing the suit, and placed a stay on discovery and further proceedings until Reynolds followed the procedures established by the Amateur Sports Act.⁶⁰ The court also dismissed Reynolds' due process claim under the Fifth Amendment, finding that TAC and the USOC were not state actors.⁶¹ Reynolds appealed, but the United States Court of Appeals for the Sixth Circuit ruled that "[b]ecause the appellant failed to exhaust his available administrative remedies . . . prior to initiating this action, the district court was without subject matter jurisdiction. . . . Accordingly, the judgment of the district court is vacated and the case is remanded with instructions that the case be dismissed . . ."⁶² Reynolds was back where he started with nothing to show for it except more than five months of wasted time and legal expense.

Reynolds then filed for and won arbitration before the American Arbitration Association which allowed him to compete at the U.S. Championships in June 1991.⁶³ However, TAC, the USOC, and the IAAF all rejected the results of this arbitration, claiming it was inconsistent with IAAF rules.⁶⁴ TAC then scheduled a postsuspension hearing for September 13, 1991, and after two weeks of deliberation, announced an opinion exonerating Reynolds.⁶⁵ The review panel found that the results of the drug test had been "impeached by clear and convincing evidence."⁶⁶ Now that Reynolds had been completely cleared by U.S. Olympic authorities, it appeared he was once again eligible for all competition. The IAAF, however, refused to accept TAC's findings and scheduled an arbitration hearing of its own for May 10 and 11, 1992.⁶⁷ After two hours of deliberation, the IAAF panel issued a seven-page decision finding there to be no doubt of Reynolds' guilt.⁶⁸ Reynolds had now exhausted all possible administrative remedies.

Reynolds returned to court in the Southern District of Ohio and filed essentially the same suit as before, this time naming the IAAF as the sole defendant and alleging breach of contract, defamation, tortious interference with a business relationship, and denial of contractual due process.⁶⁹ The IAAF felt that the court did not have jurisdiction over it,

58. Reynolds v. Athletics Congress of the U.S.A., Inc., No. C-2-91-0003, 1991 WL 179760, at *1 (S.D. Ohio Mar. 19, 1991), vacated, 935 F.2d 270 (6th Cir. 1991). "[IAAF] Rule 59 provides 'every athlete shall have the right to a hearing before the relevant tribunal of his national federation before any decision on eligibility is reached.'" *Id.*

59. *Id.*

60. *Id.* at *7.

61. *Id.* at *11.

62. Reynolds v. Athletics Congress of the USA, Inc., 935 F.2d 270 (6th Cir. 1991).

63. *A Long History of Hearings, Rulings*, supra note 56, at C12.

64. Vernon A. Nelson, Jr., Comment, *Butch Reynolds and the American Judicial System v. The International Amateur Athletic Federation—A Comment on the Need for Judicial Restraint*, 3 SETON HALL J. SPORT L. 173, 173 n.3 (1993).

65. Reynolds v. International Amateur Athletic Fed'n, 841 F. Supp. 1444, 1448 (S.D. Ohio 1992).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

and decided not to appear or retain counsel to represent it in the matter.⁷⁰ The court was not pleased with the IAAF's position, quoting the IAAF's Vice President as saying "[c]ivil courts create a lot of problems for our anti-doping work, but we have said we don't care in the least what they say. We have our rules, and they are supreme"⁷¹ The court then vehemently rejected the justification for such a position, saying:

[I]t is simply an unacceptable position that the courts of this country cannot protect the individual rights of United States citizens where those rights are threatened by an association which has significant contacts with this country, which exercises significant control over both athletes and athletic events in this country, which acts through an agent organization in this country, and which gains significant revenue from its contracts with United States companies.⁷²

The court then held that the IAAF had waived its right to contest the exercise of jurisdiction by its failure to appear, noting alternately that the court could also exercise personal jurisdiction over the IAAF based upon its member organizations' contacts within the forum.⁷³ Finally, the court issued a preliminary injunction which barred the IAAF and TAC from "interfering, impeding, threatening to impede or interfere, in any way [with] the Plaintiff's ability to compete in all international and national amateur track and field competitions."⁷⁴ The court specified this order would "continue in effect until the trial on the merits of the Plaintiff's claims."⁷⁵

This order began a flurry of legal activity, and TAC moved for an emergency stay of the preliminary injunction later that same day, pending an appeal to the Sixth Circuit, while the IAAF remained aloof. The U.S. Olympic Trials were to begin the next day and time was of the essence, particularly as the IAAF had threatened to "contaminate" any runners who participated in competition with Reynolds, thus making them ineligible for the Olympics.⁷⁶ The Sixth Circuit then granted a stay of the injunction and once again Reynolds was out of the competition.⁷⁷

The next morning, Reynolds appealed to Justice John Paul Stevens in his capacity as Circuit Justice for a stay of the order of the Court of Appeals. Stevens held that:

[T]he IAAF's threatened harm to third parties cannot dictate the proper disposition of applicant's claim. . . . I recognize that this ruling may not establish applicant's right to compete in the Olympics at Barcelona, but that opportunity will presumably be foreclosed if he is not allowed to participate in the Olympic Trials. On the other hand, the harm, if any, to the IAAF can be fully cured by a fair and objective determination of the merits of the controversy.⁷⁸

TAC filed a motion with the Supreme Court to vacate the stay entered by Justice Stevens, and was rebuffed with a unanimous one-sentence opinion: "The motion of The Athletics Congress of the U.S.A., Inc. to vacate the stay entered by Justice Stevens is denied."⁷⁹ Reynolds was back in the running.

70. *Id.* at 1449.

71. *Id.* at 1452.

72. *Id.*

73. *Id.* at 1453.

74. *Id.* at 1456.

75. *Id.* at 1457.

76. *Id.* at 1454.

77. *Reynolds v. International Amateur Athletic Fed'n*, 968 F.2d 1216 (1992) (Table), No. 92-3596, 1992 WL 157545, at *1 (6th Cir. June 19, 1992).

78. *Reynolds v. International Amateur Athletic Fed'n*, 505 U.S. 1301, 1301-1302 (1992).

79. *Reynolds v. International Amateur Athletic Fed'n*, No. A-954, 1992 U.S. LEXIS 3865, at *864 (June 20, 1992), *cert. denied*, 115 S. Ct. 423 (1994).

After several delays of Reynolds' competition at the Olympic Trials, he was finally permitted to run when TAC officials made it clear to the IAAF that they had no choice but to follow the Supreme Court's ruling; furthermore, the IAAF relented on the threatened "contamination" of other runners.⁸⁰ Reynolds made the U.S. Olympic team as an alternate for the 400-meter relay, but the IAAF refused to let him compete in the 1992 Olympics, and forced TAC to remove him from the U.S. Olympic team roster.⁸¹ Thus ended Reynolds' Olympic dream for 1992, but the legal battles continued.

On August 10, 1992, the day before Reynolds' two-year ban by the IAAF was to expire, the IAAF extended the suspension until January 1, 1993, as punishment for his participation at the U.S. Olympic Trials.⁸² Reynolds then filed a supplemental complaint in the action still pending in the Southern District of Ohio, and on December 3, 1992, the court awarded Reynolds \$27.4 million in compensatory and treble punitive damages, finding the IAAF "acted with ill will and a spirit of revenge towards Mr. Reynolds."⁸³ When Reynolds began garnishment proceedings against the IAAF's U.S. corporate sponsors in February 1993, the IAAF finally decided to appear.⁸⁴ It moved to quash garnishment proceedings, to vacate the default judgment, and to recuse the district court judge for impartiality, all of which were denied on July 13, 1993.⁸⁵

This led to an appeal to the Sixth Circuit, which reversed the \$27.4 million judgment on May 17, 1994, citing lack of personal jurisdiction: "In short, the IAAF is based in England, owns no property and transacts no business in Ohio, and does not supervise U.S. athletes in Ohio or elsewhere. Its contacts with Reynolds in Ohio are superficial, and are insufficient to create the requisite minimum contacts for personal jurisdiction."⁸⁶ Reynolds subsequently applied to the Sixth Circuit for a rehearing on the matter, which was denied.⁸⁷ Likewise, the U.S. Supreme Court denied Reynolds' petition for certiorari.⁸⁸ Four years after the case began with the drug test, it ended with no relief for Reynolds and countless hours and dollars spent on legal representation in U.S. courts.

The parties may not agree on much, but they would certainly all agree that the system is not supposed to work this way. An outcome radically different from that of the hypothetical U.S. swimmer, much of the Reynolds case took place in U.S. courts, something not mentioned or desired by the Amateur Sports Act. The jurisdictional questions presented remain unanswered. Although the Supreme Court denied certiorari, and thus decided by default, that U.S. courts generally should not have jurisdiction over IFs operating out of foreign countries, what will happen when the Olympic Games take place in Atlanta, where all the IFs will have substantial contact with a U.S. forum? Clearly, the current system is inadequate to deal with the potential litigation which could

80. Reynolds v. International Amateur Athletic Fed'n, 23 F.3d 1110, 1112 (6th Cir.), cert. denied, 115 S. Ct. 423 (1994).

81. *Id.*

82. *A Long History of Hearings, Rulings, supra* note 56, at C12.

83. Reynolds, 23 F.3d at 1114.

84. *Id.*

85. *Id.*

86. *Id.* at 1119.

87. Robert Facht, *Fanfare—Furthermore*, WASH. POST, July 8, 1994, at D2.

88. Reynolds v. International Amateur Athletic Fed'n, 115 S. Ct. 423 (1994).

ensue at the 1996 Olympics.⁸⁹ Most would like to see a system where it is unnecessary for U.S. courts to become involved at all.

Of further concern is the reaction of the IAAF to the Reynolds decision, or more accurately, lack of decision. The IAAF greeted the denial of certiorari with arrogant glee, proclaiming that the decision amounted to an admission that civil courts should never have jurisdiction over IFs or the Olympic Movement at all.⁹⁰ Less than a month after the decision, the IAAF acted to suspend athletes immediately after a positive drug test, before a "B" sample (a second sample) is even tested, and to require athletes to sign a waiver forfeiting the right to pursue civil court actions prior to jumping through all the procedural hoops the IAAF may impose.⁹¹ Rather than resolving the conflict, this latest power grab will cause further deterioration, and may even lead to the formation of unions by Olympic athletes bent on taking back control from the IFs and NGBs.⁹²

B. The Tonya Harding Controversy

If the Reynolds case involved an athlete who should most likely have been allowed to participate in Olympic competition but was not able, the Tonya Harding case represents the antithesis. Harding, an Olympic figure skater, successfully used legal maneuvering to deep freeze the entire U.S. system for Olympic eligibility determination long enough to guarantee a spot on the 1994 U.S. Olympic figure skating team in Lillehammer, Norway. Yet she admitted that she knew of the plot to attack rival Nancy Kerrigan right after it occurred but failed to report it to police.⁹³

In perhaps the most bizarre circumstances ever surrounding a would-be suspension proceeding against a U.S. Olympian, Harding found herself perilously close to removal from the U.S. Olympic team when evidence began to indicate that either she was involved in the attack on Kerrigan, or at the very least she knew that her ex-husband, Jeff Gillooly, had masterminded the plot soon after the January 6, 1994, assault.⁹⁴ When Harding admitted to authorities that she had learned of her ex-husband's involvement shortly after the attack, Gillooly and alleged co-conspirator Shawn Eckardt implicated Harding in directly planning the attack.⁹⁵ U.S. Olympic authorities with the U.S. Figure Skating Association ("USFSA") and the USOC faced a legal dilemma in deciding whether to

89. The Reynolds controversy led Swiss journalist Rod Ackerman to comment somewhat cynically: "I envision a new Olympic event: Process server crisscross. You'd see process servers running around the field, waving big envelopes, injunctions, restraining orders, summonses . . . and in the stands would be only lawyers." Julie Cart, *Hardly an Olympian Year for Cassell*, L.A. TIMES, June 5, 1992, at C12.

90. Robert Facht, *Supreme Court Rejects Reynolds' Claim*, WASH. POST, Nov. 1, 1994, at E2. IAAF President Priem Nebiolo claimed that "[t]he U.S. judicial authorities have rightly recognized the jurisdictional rights of the IAAF in the world arena. Their decision sets an important precedent for the authority of international sports governing bodies with regard to the involvement of civil courts in the Olympic movement and in sports-related matters." *Id.*

91. Joe Drape, *Track War Likely Leading to Union*, ATLANTA CONST., Dec. 4, 1994, at H5.

92. The sense of hostility felt by many U.S. athletes toward the Olympic bureaucracy found voice in Mike Conley, an Olympic athlete and gold medal triple jumper:

We really don't care how USA Track and Field and [its president] operate. They have become irrelevant. . . . [Federations] guarantee sponsors that athletes will show up at meets. But sometimes they get us, sometimes they don't. If we as an organization go to a sponsor and say we'll promise you these top guys will compete, I believe they'd be glad to get rid of the middle man.

Id. (second alteration in original).

93. Sandra Torry, *USOC Can Boot Harding, Lawyers Say Skater Need Not Be Criminally Charged*, WASH. POST, Feb. 9, 1994, at F1.

94. Elliott Almond & Randy Harvey, *Harding Strategy On Track*, L.A. TIMES, Feb. 11, 1994, at C1, C6.

95. *Id.*

remove Harding from the team and risk a multimillion dollar lawsuit, or back down and let the dubious Harding compete.⁹⁶

The USFSA took a middle-of-the-road approach, forming a five-member panel to review the evidence, which determined that Harding had violated the USFSA's rules of ethics and sportsmanship, but reserved judgment on any suspension until a disciplinary hearing it scheduled after the Olympics on March 10, 1994.⁹⁷ Fearful of massive liability akin to the Butch Reynolds case (which had not yet been reversed), the USOC nevertheless decided to attempt more serious measures. With the Olympics rapidly approaching, the USOC scheduled a Games Administrative Board hearing to take place in Oslo, Norway on February 15.⁹⁸ Harding took the offensive, however, and filed a suit in Oregon state court on February 10 seeking a temporary restraining order and preliminary injunction against the hearing along with \$25 million in compensatory and punitive damages if she was banned from the games.⁹⁹ On February 13, lawyers for both sides met in mediation with Judge Patrick D. Gilroy for seven and one-half hours before striking a deal: Harding would drop her suit and the USOC would let her compete in the Olympics.¹⁰⁰ Harding competed in the women's figure skating events in Lillehammer on February 23 and 25, ironically giving poor performances and finishing a disappointing eighth.¹⁰¹

But Harding's legal maneuvers were not yet over. The USFSA planned to hold the disciplinary hearing, scheduled for March 10, 1994, in plenty of time to suspend Harding before the World Championships later that month.¹⁰² Harding countered with yet another suit, alleging in a breach of contract claim that the USFSA had violated its own rules entitling members to thirty days response time when charges are brought and "a place and date for a hearing that is reasonably convenient for all parties."¹⁰³ Judge Owen Panner granted an injunction preventing the USFSA from holding a disciplinary hearing prior to June 27, finding that the USFSA had violated its own rule

by unilaterally setting a time and date for the hearing that was just three days after the reply was due. Defendant acted contrary to its bylaws by setting the date before it received the reply. Furthermore, in view of the complexity of the charges, March 10 was not a date "reasonably convenient for all the parties."¹⁰⁴

It appeared that Harding had achieved another victory, insuring herself a spot at the World Championships and further embarrassing U.S. Olympic authorities by skating legal figure-eights around them.

96. Brian McGrory, *Legal Roadblocks Seen if Olympic Ban Is Tried*, BOSTON GLOBE, Jan. 18, 1994, at 49, 54.

97. Christine Spolar, *Judge Guides Skating's Compromising Resolution, Mediation Skills Bring Harding, USOC to Agree*, WASH. POST, Feb. 14, 1994, at C7.

98. Howard, *supra* note 2, at C7. The Administrative Board is authorized under the Bylaws of the USOC as follows:

There shall be an Administrative Board of the USOC which shall have final authority with respect to all matters regarding the United States official delegation at the site of the Games including, but not limited to, policy, protocol, discipline, and similar matters. It shall also function as an appeal board on matters involving team selection that are not finally resolved prior to the departure of the team for the site of the Games.

BYLAWS, *supra* note 49, ch. XXXV, § 3.

99. Almond & Harvey, *supra* note 94, at C1.

100. Spolar, *supra* note 97, at C7.

101. *USOC May Act Against Harding*, CHI. TRIB., June 19, 1994, available in LEXIS, Sports Library, ALLNWS File.

102. *Harding Attorneys Seek to Block Hearing*, UPI, March 7, 1994, available in LEXIS, Sports Library, UPI File.

103. *Harding v. United States Figure Skating Ass'n*, 851 F. Supp. 1476, 1478 (D. Or. 1994).

104. *Id.*

Ultimately, however, Harding could not escape law enforcement authorities, and pled guilty to criminal conspiracy charges and resigned from the USFSA.¹⁰⁵ This cleared the way for Judge Panner to vacate the injunction, and the suit was dismissed.¹⁰⁶ Subsequently, the USFSA panel met on June 29 and retracted Harding's 1994 national championship title, then banned her from the sport for life, stating that Harding "intentionally undermined the concept of sportsmanship and fair play embodied in the USFSA bylaws and rules and amateur sportsmanship in general."¹⁰⁷ The system finally put her on ice, but not before Harding successfully held off an attempt to suspend her from the Olympics and nearly did the same for the World Championships. Many feel that in the Harding case, justice delayed was truly justice denied.

IV. THE NEED FOR REFORMING GRIEVANCE PROCEDURES UNDER THE ACT

These two recent cases make it clear that the need for Olympic eligibility law has outgrown the current system. Commenting on the U.S. Olympic code of conduct, one tool used in the effort to oust Tonya Harding, a USOC official said "[w]e're set up to handle some drunk hockey players [who] go out and tear up a bar. . . . We're certainly not set up to cope with this."¹⁰⁸ The problem seems to be that what "this" is has changed while the system has remained static. The great eligibility disputes of the past primarily focused on what it meant to be an "amateur" athlete and when an athlete had crossed the line into professional status.¹⁰⁹ The commercialization of the games added a monetary incentive to compete and win that brought with it increased problems.¹¹⁰ As individual athletes increasingly challenge the authority of their supervisory organizations, these organizations often react defensively, becoming the enemy of the athlete instead of the advocate they are supposed to be.¹¹¹ If these trends are to be reversed, action will need to be taken, either by Congress or by the courts.

The courts seem unsure of just what sort of role they should play in U.S. Olympic sports law, however. Some judges see the role of the courts as active, protecting U.S. athletes from behemoth Olympic bureaucracy of both domestic and international variety.¹¹² Others take the extreme opposite view, finding little if any role for the courts in regulating the conduct of Olympic competition and eligibility.¹¹³ Still others see the

105. *Id.* at 1481.

106. *Id.*

107. *Urgent*, Agence France Presse, June 30, 1994, available in LEXIS, Sports Library, AFP File.

108. Elliot Almond, *USOC Had Little Choice in Harding Case*, L.A. TIMES, Feb. 14, 1994, at C8.

109. NAFZIGER, *supra* note 7, at 139.

110. See *supra* text accompanying note 3.

111. Commenting on his suspension and the ensuing legal battle, Butch Reynolds stated: "This whole thing started as a false-positive [drug test]. Now that's no longer the issue. That disturbs me." Dick Patrick, *Reynolds Not Done Fighting Yet*, USA TODAY, May 18, 1994, at C12.

112. See *supra* text accompanying note 72.

113. Judge Posner of the 7th Circuit commented: "[T]here can be few less suitable bodies than the federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes to participate in the Olympic Games." *Michels v. United States Olympic Comm.*, 741 F.2d 155, 159 (7th Cir. 1984) (Posner, J., concurring).

The 9th Circuit has also expressed such a view, commenting:

[W]e find persuasive the argument that a court should be wary of applying a state statute to alter the content of the Olympic Games. The Olympic Games are organized and conducted under the terms of an international agreement—the Olympic Charter. We are extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement.

Martin v. International Olympic Comm., 740 F.2d 670, 677 (9th Cir. 1984).

courts as refuges of last resort, to be appealed to only when Olympic organizations violate their own rules, and to have limited jurisdiction only to determine procedural violations rather than dealing with the merits of the underlying issues.¹¹⁴ With the Supreme Court denying certiorari in the Reynolds case, the question of U.S. judicial jurisdiction over International Federations leading up to the 1996 Atlanta Games remains in the air.

Whatever the view taken by the Supreme Court or other courts, there is a strong argument that decisions regarding this area of law should not be left to the judiciary at all. The Amateur Sports Act makes no mention of the U.S. court system, clearly pointing to internal review and binding arbitration as the preferred route for resolving eligibility disputes.¹¹⁵ Because disputes over Olympic and pre-Olympic eligibility have tremendous implications for the U.S. athletes involved, often turning on quick determinations of eligibility before imminent competition, there is a necessity for expedited decisionmaking balanced by expertise in the subject area that is simply not available in U.S. courts. Hasty decisions granting or staying injunctions regarding athletic eligibility issued by U.S. courts threaten to do more harm than good despite the best of intentions.

Congressional action makes much more sense in dealing with the problems at hand. In enacting the Amateur Sports Act, Congress created the eligibility determination framework, and thus should have the authority to alter it. In fact, as previously mentioned, Congress expressly reserved such a right.¹¹⁶ The final Part of this Note recommends action that Congress should take to harmonize U.S. Olympic eligibility determination procedures with those of the international Olympic Movement, while insuring adequate protection of athletes' rights.¹¹⁷

V. REFORMING THE AMATEUR SPORTS ACT: TOWARD A WORKABLE SYSTEM

Within a network of organizations as diverse as those included in the Olympic Movement, procedures and rules cannot help but conflict with the laws of at least some nations sending representatives to participate in international athletic competition. Continued success for the Olympics demands minimizing these conflicts through cooperation with the nations involved. "International law typically depends on such national implementation. Whatever form the implementation takes, the integration of international with domestic sports law is essential to the emergence of a strong regime

114. In disposing of the *Harding* case, Judge Owen Panner commented:

The courts should rightly hesitate before intervening in disciplinary hearings held by private associations, including the defendant United States Figure Skating Association. Intervention is appropriate only in the most extraordinary circumstances, where the association has clearly breached its own rules, that breach will imminently result in *serious* and irreparable harm to the plaintiff, and the plaintiff has exhausted all internal remedies. Even then, injunctive relief is limited to correcting the breach of the rules. The court should not intervene in the merits of the underlying dispute.

Harding v. United States Figure Skating Ass'n, 851 F. Supp. 1476, 1479 (D. Or. 1994) (emphasis in original).

115. 36 U.S.C. § 395. In fact, Congress considered and rejected giving U.S. District Courts jurisdiction over injunction and enforcement proceedings. H.R. REP. NO. 1627, *supra* note 42, at 7, 9, reprinted in 1978 U.S.C.C.A.N. at 7481.

116. 36 U.S.C. § 382. The text of Section 382 reads in full: "The right to alter, amend, or repeal this Act at any time is hereby expressly reserved."

117. There is currently interest in Congress for taking steps to reexamine the Amateur Sports Act. Senator Ted Stevens (R-Alaska) has indicated that the Tonya Harding case highlighted the need for such reconsideration: "I'll talk to the leadership of the Senate and shoot for oversight hearings to hear from the USOC, National Governing Bodies, coaches and athletes." David Nakamura, *Senator Urges Changes in Amateur Sports Act*, WASH. POST, May 15, 1994, at D14.

of law."¹¹⁸ While complete harmonization of the world's diverse national legal systems may be unachievable, "what seems clear . . . is the need to bring together the scattered data, norms, rules, principles and procedures of law that do exist; to analyze these; to identify strengths, weaknesses, and gaps in the legal framework; and to offer some guidance to assist in progressively developing the law."¹¹⁹ International arbitration of U.S. athletes' eligibility disputes offers a particularly inviting alternative to flooding the U.S. courts with these matters.

A. An Early Attempt at the Development of Olympic Arbitration

As early as 1983, the IOC "demonstrated its authority to provide for the settlement of disputes by establishing a Court of Arbitration for Sport" ("CAS").¹²⁰ Under the original CAS statute, the Court consisted of forty jurists (increased to sixty in 1986) specially selected for their knowledge of sport; the jurists were selected by the President of the IOC, the IOC, the NOCs, and the IFs, with the IOC president as honorary president of the CAS.¹²¹ In addition, the IOC paid the operating costs of the CAS.¹²² This, however, led to understandable concerns that the CAS was little more than an "executive panel in disguise."¹²³ Athletes seeking "to take the IOC or one of the associations recognized by the IOC (e.g., an IF or NOC) to the CAS, would be staring into the eyes of the President of the IOC."¹²⁴ Even when the CAS statute was amended in 1990, it still provided that the "President of the CAS shall be a member of the IOC."¹²⁵

Further problems kept the CAS from being a truly effective tool in resolving U.S. athletes' eligibility disputes. First, parties must mutually agree in writing to submit to jurisdiction of the CAS.¹²⁶ An IF that declines to recognize jurisdiction of a U.S. court has no reason to voluntarily submit to being sued elsewhere, and a U.S. athlete likewise has no reason to voluntarily submit to a body that looks suspiciously like his accuser. Second, the parties must agree on choice of law from "any appropriate body of municipal law, general principles of law, the *lex mercatoria*, other rules of arbitration, or international sports law," or by default allow Swiss law to apply based on the location of the CAS headquarters in Lausanne.¹²⁷ A U.S. athlete seeking protection of U.S. law is unlikely to find international Olympic authorities willing to submit to the heightened protection it gives to individual rights. This points out a final difficulty with the CAS, namely that "[a]lthough the CAS was intended to have a global scope, it is essentially a European institution"¹²⁸ and its "influence . . . has been limited by its European

118. NAFZIGER, *supra* note 7, at 9.

119. *Id.* at 8.

120. *Id.* at 35.

121. *Id.* at 36.

122. *Id.*

123. Nafziger, *supra* note 3, at 506.

124. David J. Ettinger, Comment, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT'L L. 97, 112 (1992).

125. *Id.* at 113.

126. Nafziger, *supra* note 3, at 507.

127. *Id.*

128. *Id.* at 507.

orientation."¹²⁹ For all of these reasons, the CAS has proved an interesting first step in international sports arbitration, but one too closely tied to the IOC to be viewed as independent enough for establishment by Congress as the final authority in U.S. athletes' suspensions.

B. The International Council of Arbitration for Sport

LeRoy Walker, President of the USOC, recognized that international arbitration of sports eligibility is of critical importance, and, if possible, should be solidly implemented prior to the 1996 Atlanta Games.¹³⁰ Fortunately for him, and U.S. athletes as well, a recent development may make that goal achievable. On June 22, 1994, all thirty-one IFs signed an agreement to establish the International Council of Arbitration for Sport.¹³¹ This newly formed council is composed of twenty jurists independent of connection with the IFs or the IOC, and is designed specifically to eliminate prolonged legal battles of the Butch Reynolds variety.¹³² These twenty jurists will appoint one hundred arbitrators to hear individual cases, which will be heard in Lausanne, Switzerland before a newly independent CAS under the Council's supervision. The IOC plans to require all athletes wishing to participate in the 1996 Olympics to sign a legal waiver requiring them to resolve eligibility disputes through the new organization. Commenting on the establishment of the Council, one USOC Committee member said, "I'd hope this is a step in the right direction. Everybody wants the same thing—a fair, equitable, yet independent way of evaluating grievances."¹³³ The ultimate hope is that, "the fledgling organisation which purports to be sport's first global independent court, and which talks of becoming the ultimate arbiter in disputes, [will become] a body whose decisions will prove final, binding and enforceable and will help to keep sport out of the civil courts."¹³⁴ The establishment of the Council offers an excellent opportunity for Congress to amend the Amateur Sports Act to take it into account.

C. Proposal for Amending the Amateur Sports Act

As previously discussed, one major problem with the current version of the Act is that it leaves U.S. Olympic authorities subject to conflicting orders from IFs and U.S. courts. Also, on occasion the USOC, an NGB, and an IF all have refused to follow a binding determination of the American Arbitration Association rendered pursuant to the Act on

129. *Id.* at 508. Frustration with the administrative difficulties of the CAS led one writer to label it as "a place where old sports bureaucrats/hacks/cronies go when they have nothing to do." Chris Young, *Laumann Drug Episode Tarnishes Solid Showing by Pan Am Games Team*, TORONTO STAR, Mar. 27, 1995, at E1, available in LEXIS, Nexis Library, CURNWS File.

130. As one reporter described:

Walker . . . is busy trying to put together a high-powered symposium at Duke University's law school that will delve into the touchy subject of how international arbitration meshes with U.S. law, with an eye toward the Atlanta Games. How sensitive and complicated is this issue? The panel discussions have already had to be delayed a year, from August 1994 to August '95. "It'll take a year to make it right," Walker said with a shrug.

Brennan, *supra* note 40, at B1.

131. Steve Woodward, *Arbitration Council Set to Handle Grievances*, USA TODAY, June 24, 1994, at C3.

132. *Id.*

133. *Id.*

134. Ian Chadband, *A Field Fit for Lawyers*, THE SUNDAY TIMES (London), Apr. 9, 1995, § 2, at 14.

the grounds that it contradicted international Olympic rules.¹³⁵ Now, with the establishment of an independent international body for arbitration that can evaluate how the U.S. national laws and international Olympic rules mesh, Congress is presented with an opportunity to remove the problem from U.S. courts entirely, yet insure fair and neutral treatment of the issues. Therefore, Congress should, in consultation with the USOC, amend the Amateur Sports Act of 1978 to provide for full, fair, and expedited eligibility determination.

First, Congress should amend 36 U.S.C. § 395(c)(1) to read as follows:

The right to review by any party aggrieved by a determination of the Corporation [USOC] under the requirements of this section shall be to the International Council of Arbitration for Sport. Such demand for arbitration shall be submitted within 30 days of the determination of the Corporation. Upon receipt of such a demand for arbitration, the Council shall proceed with arbitration according to the rules of the Council in effect at the time of the filing of the demand.

Second, Congress should add a new provision at 36 U.S.C. § 395(c)(7) to read as follows:

United States courts shall only have jurisdiction over controversies under this section after the International Council of Arbitration for Sport has rendered a decision, and jurisdiction shall be limited to the issue of whether the Council, the IOC, IFs, the USOC, and NGBs complied with their rules for determining eligibility. The court shall not evaluate the merits of the underlying dispute, but shall confine its review to an evaluation of procedural due process.

CONCLUSION

Such an amendment, along with replacement of all references to the American Arbitration Association in the Act and USOC Constitution with the International Council of Arbitration for Sport, greatly reduces the potential for conflicting orders to U.S. Olympic authorities from an IF and a U.S. court. This amendment requires controversies to pass through a body much more competent to decide sports law issues than U.S. courts, and encourages further development of international cooperation between organizations of the Olympic Movement. Finally, the potential for review of procedural fairness by U.S. courts is retained as a last resort.

This amendment provides U.S. athletes with three levels of review for suspension decisions: internal review within the NGB, review by the USOC, and finally review by the International Council of Arbitration for Sport. U.S. athletes are not deprived of any level of review currently established under the Act, but the final decision will be rendered by an international body with jurisdiction over the IFs, unlike the American Arbitration Association. Therefore, Congress should enact this proposed legislation prior to the 1996 U.S. Olympic Trials to insure that all disputes regarding the eligibility of U.S. athletes for Olympic competition in Atlanta will be covered under its provisions.

135. See *supra* text accompanying note 64.