

**MISSING THE MARK:
THE CASE FOR REMOVING CANNABIS FROM THE WORLD
ANTI-DOPING AGENCY'S PROHIBITED LIST**

BEN SHEPPARD*

ABSTRACT

In 2021, American track and field phenom, Sha'Carri Richardson, seemed poised for Olympic Gold. However, her dreams were quashed after she tested positive for cannabis during the Olympic competition period—effectively disqualifying her from the 2021 Tokyo Olympic Games. The World Anti-Doping Agency and the International Olympic Committee outlawed the in-competition use of cannabis by Olympic athletes. These organizations justified the exclusion of cannabis on the dubious grounds that cannabis is performance-enhancing, presents an adverse health risk, and violates the spirit of sport. This Article analyzes these organizations' codes and argues the articulated rationales are debatable and rely on faulty assumptions. Therefore, this Article suggests certain cannabis use should be permitted during the competition period of the Olympics or less restrictive sanctions should be imposed in keeping with several American sporting leagues' cannabis policies.

* Mr. Sheppard is a Judicial law clerk for the Honorable Stephen G. Baratta, Northampton County Court of Common Pleas. Mr. Sheppard earned his J.D. in 2021 at George Washington University School of Law. He holds a B.A. from University of Pittsburgh. The views expressed in this Article are those of the author and do not necessarily reflect the views of his employer. I would like to thank Josh Guckert for his editorial assistance and the *California Western International Law Journal's* invitation for me to contribute to their 2022 symposium. This Article is dedicated to Robbie Schmauk. The author may be contacted at bsheppard@law.gwu.edu.

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INTRODUCTION

Imagine losing an opportunity to compete in the Olympics because you used a state-legal substance which does not enhance athletic performance, has minimal negative health effects, and is increasingly widely accepted. This is the exact situation American track and field sprinter, Sha’Carri Richardson, found herself in during her road to the 2021 Tokyo Olympics.

According to commentators, Richardson was set for a star performance at the 2021 Tokyo Olympics.¹ However, her dreams came

1. E.g., Kevin Draper & Juliet Macur, *Sha’Carri Richardson, a Track Sensation, Tests Positive for Marijuana*, N.Y. TIMES (July 6, 2021), <https://www.nytimes.com/2021/07/01/sports/olympics/shacarri-richardson-suspended-marijuana.html>.

to a crashing halt on June 28, 2021, when the U.S. Anti-Doping Agency (USADA) ² announced she had been suspended for one month.³ The one-month suspension prevented Richardson from competing in her signature event, the Women's 100-meter dash.⁴ The USADA suspended Richardson after she tested positive for cannabis,⁵ a substance legal in Oregon where her drug test occurred.⁶ Eventually, Richardson spoke out regarding her suspension. The runner explained she used cannabis to cope with her mother's death during Olympics trials—a crisis which sent her into an emotional spiral.⁷

2. The U.S. Anti-Doping Agency is an “independent, non-governmental anti-doping agency” tasked with administering the World Anti-Doping Agency's Code in the United States. Stuart C. Gillespie, *When the Clock Starts for Pursuing Past Doping Violations*, 15 TEX. REV. ENT. & SPORTS L. 123, 125-26 (2014).

3. See Dan Mangan, *Track Star Sha'Carri Richardson Suspended from U.S. Olympic Team after Failing Marijuana Test*, CNBC (July 2, 2021), <https://www.cnbc.com/2021/07/02/shacarri-richardson-suspended-from-us-olympic-team-for-marijuana.html>.

4. See Erin Strout, *Sha'Carri Richardson Will Not Compete at Tokyo Games*, WOMEN'S RUNNING (July 6, 2021), <https://www.womensrunning.com/culture/news/shacarri-richardson-suspended-one-month-for-marijuana-use/>.

5. In this Article, I use the term “cannabis” as much as possible because of the racist origins of “marijuana” in prohibition campaigns and because “cannabis” has a more positive connotation compared to “marijuana.” Alex Halperin, *Marijuana: Is It Time to Stop Using a Word with Racist Roots?*, THE GUARDIAN (Jan. 29, 2018), <https://www.theguardian.com/society/2018/jan/29/marijuana-name-cannabis-racism>; Daniel G. Orenstein & Stanton A. Glantz, *Cannabis Legalization in State Legislatures: Public Health Opportunity and Risk*, 103 MARQ. L. REV. 1313, 1315 n.1 (2020); Sean M. O'Connor & Erika Leitzan, *The Surprising Reach of FDA Regulation of Cannabis, Even after Descheduling*, 68 AM. U. L. REV. 823, 834 (2019). Where context requires, I use the term “marijuana” which should be considered synonymous with “cannabis.” See, e.g. Joëlle Anne Moreno, *Half-Baked: The Science and Politics of Legal Pot*, 123 PA. STATE. L. REV. 401, 417-18 (2019).

6. German Lopez, *The Olympics are Stuck in the 1980s on Marijuana*, VOX (July 7, 2021, 7:30 AM EDT), <https://www.vox.com/22565419/shacarri-richardson-olympics-marijuana-ban-war-on-drugs>.

7. Mia Mercado, *Sha'Carri Richardson Has Been Suspended from U.S. Olympic Team*, THE CUT (July 6, 2021), <https://www.thecut.com/2021/07/shacarri-richardson-has-been-suspended-from-us-olympic-team.html>.

Richardson's suspension perplexed many Americans: an athlete could be kicked out of the Olympics for cannabis use alone?⁸ Even President Joe Biden responded to the news, stating he was "proud" of Richardson, but was ambivalent regarding her suspension, affirming, "rules are rules."⁹ President Biden referenced the World Anti-Doping Agency's ("WADA") rules, which govern the International Olympic Committee's drug testing policies.¹⁰ WADA strictly prohibits cannabis for three stated reasons: it can enhance (or potentially enhance) performance, it presents an actual or potential health risk, and it violates the "spirit of the sport."¹¹

Although "rules are rules," that does not mean that they *should* be the rules. It is true, the U.S. played an instrumental role in implementing cannabis as a drug prohibited from athlete consumption in the Olympics.¹² Yet, American sports leagues are now changing the way they regulate Cannabis. This article argue WADA should follow suit.¹³ As WADA re-examines its cannabis ban,¹⁴ the organization should

8. Victor Mather, *Why Marijuana Can Disqualify a Runner from the Olympics*, N.Y. TIMES (July 6, 2021), <https://www.nytimes.com/2021/07/02/sports/olympics/marijuana-olympics-shacarri-richardson.html>.

9. Chris Bumbaca, *Joe Biden 'proud' of Way Sha'Carri Richardson Handled Positive Marijuana Test, but 'rules are rules'*, USA TODAY (July 4, 2021, 9:59 AM), <https://www.usatoday.com/story/sports/olympics/2021/07/04/joe-biden-shacarri-richardson-marijuana/7858036002/>.

10. Roberta F. Wolf, *Conflicting Anti-Doping Laws in Professional Sports: Collective Bargaining Agreements v. State Law*, 34 SEATTLE U. L. REV. 1605, 1619 n.118 (2011).

11. WORLD ANTI-DOPING AGENCY, [WADA] Code, art. 4.3 [hereinafter WADA CODE].

12. Lex Pryor, *Sha'Carri Richardson Can Outrun Everything Except a Broken System*, THE RINGER (July 9, 2021, 9:28 AM EDT), <https://www.theringer.com/2021/7/9/22569132/shacarri-richardson-olympic-wada-drug-policy-ruling>.

13. See Oriana Gonzalez, *AOC Urges U.S. Anti-Doping Agency to End Sha'Carri Richardson's Suspension*, AXIOS (July 3, 2021), <https://www.axios.com/aoc-shacarri-richardson-suspension-raskin-be3ce901-94dc-432a-ba4a-5f568cb0d1de.html>.

14. Bill Chappell, *Anti-Doping Group Will Review Cannabis Ban after Sha'Carri Richardson's Suspension*, NPR (Sept. 15, 2021, 8:12 AM), <https://www.npr.org/2021/09/15/1037286650/wada-world-anti-doping-review-ban-cannabis-shacarri-richardson> ("The World Anti-Doping Agency will review its ban on cannabis, in what the agency says is a response to 'requests from a number of stakeholders' in international athletics.").

remove cannabis from its list of prohibited substances. Part I details the origins of WADA's creation and cannabis's label as a prohibited substance. Part II describes the regulation of cannabis under WADA's code. Part III offers a comparative approach of WADA's cannabis policies with those of American major sporting leagues. Finally, Part IV argues cannabis *does not* meet any of WADA's three criteria for prohibiting a substance. As a result of failing to meet *any* of WADA's three prohibiting criteria, this article concludes that cannabis should be permitted for use by athletes

I. THE HISTORY OF THE WORLD ANTI-DOPING AGENCY'S CANNABIS POLICIES

Initially, drug testing in the Olympics sought to root out a limited range of stimulants¹⁵ and anabolic steroids.¹⁶ In early to mid-twentieth century professional sports, anabolic steroids were generally accepted.¹⁷ Athletes began using anabolic steroids in Eastern Europe and the Soviet Union during the 1950s.¹⁸ For example, the 1952 Soviet weightlifting team, likely due to steroids, won three out of seven gold medals despite a twelve-year hiatus from the Olympics.¹⁹

The spread of anabolic steroid use in the U.S. was attributed to the stunning feats of Soviet athletes.²⁰ Dr. John Ziegler introduced American athletes to their own form of anabolic steroids called

15. Benjamin B. Hanson, Comment, *Defend the Williams Wall, Leave Professional Sports Drug Testing Policies in Shambles: The Decision and Consequences of Williams v. NFL*, 33 HAMLINE L. REV. 327, 332 (2010).

16. See Daniel Gandert & Fabian Ronisky, *American Professional Sports Is a Doper's Paradise: It's Time We Make a Change*, 86 N.D. L. REV. 813, 817-18 (2010) (chronicling examples of steroid abuse at the Olympics).

17. See Hector Del Cid, *Winning at All Costs: Can Major League Baseball's New Drug Policy Deter Kids from Steroids and Maintain the Integrity of the Game?*, 14 SPORTS LAW. J. 169, 172-73 (2007).

18. Michael S. Beck, Recent Development, *Fair or Foul? Major League Baseball's Use of a Tortious Interference Lawsuit as a Means of Investigation*, 32 CARDOZO ARTS & ENT. L.J. 927, 930 (2014).

19. Del Cid, *supra* note 17, at 173; Edward H. Jurith & Mark W. Beddoes, *The United States' and International Response to the Problem of Doping in Sports*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 461, 466 (2002) ("The [1952] Soviet Olympic weightlifting team used steroids.").

20. See Del Cid, *supra* note 17, at 172-73.

Dianbol.²¹ Dianbol provided muscle-building benefits with reduced side effects.²² Dr. Ziegler first administered Dianbol to multiple American bodybuilders at the York Barbell Club.²³

Initially, Ziegler instructed athletes to take steroids like Dianbol at therapeutic levels.²⁴ However, athletes soon began to disregard his advice and administer steroids at higher doses, believing a greater dose increased performance.²⁵ This heightened use led to medical pathologies in early steroid-using athletes.²⁶ Disturbed by this trend, Dr. Ziegler stopped instructing athletes to use steroids.²⁷ Despite health risks, during the 1960s and 1970s steroids spread to other sports such as track and field, swimming, and, most notably, the National Football League (NFL).²⁸ Finally, in 1974,²⁹ the International Olympic Committee (IOC) banned the use of anabolic steroids over concerns regarding athlete health and the potential for an unfair advantage.³⁰

21. *Id.* at 173.

22. Justin Peters, *The Man Behind the Juice*, SLATE (Feb. 18, 2005, 6:14 PM), <https://slate.com/culture/2005/02/the-doctor-who-brought-steroids-to-america.html>.

23. *Id.*

24. See Robert Dvorchak, *Never Enough / Steroids in Sports: Experiment Turns Epidemic*, PITTSBURGH POST-GAZETTE (Oct. 2, 2005, 12:00 AM), <https://www.post-gazette.com/news/health/2005/10/02/Never-Enough-Steroids-in-Sports-Experiment-turns-epidemic/stories/200510020264> (“Ziegler had strict instructions: no more than 15 milligrams of Dianbol per day (an adult male produces about seven milligrams per day), six weeks of use followed by five weeks of abstinence, and regular medical checkups that included a liver test every four months.”).

25. *Id.*; Peters, *supra* note 22.

26. Del Cid, *supra* note 17, at 173.

27. Dvorchak, *supra* note 24.

28. Shayna M. Sigman, *Are We All Dopes? A Behavioral Law and Economics Approach to Legal Regulation of Doping in Sports*, 19 MARQ. SPORTS L. REV. 125, 140 (2008).

29. See Kevin Mahoney, Note, *Learning from the Mistakes of Others: Changing Major League Baseball’s Substance Abuse Arbitration Procedure*, 24 OHIO STATE J. ON DISP. RESOL. 613, 617 n.15 (2009) (crediting development of steroid detection technology as spurring the steroid prohibition); Anita L. DeFrantz, *Which Rules?: International Sport and Doping in the 21st Century*, 31 HOUS. J. INT’L. L. 1, 14 (2008) (“It would not be until the 1976 Montreal Olympic Games that Olympic athletes were tested for anabolic steroids.”).

30. John Burge, *Legalize and Regulate: A Prescription for Reforming Anabolic Steroid Legislation*, 15 LOY. L.A. ENT. L. REV. 33, 48 (1994).

Steroid abuse first gained public concern after Canadian track star, Ben Johnson, broke the 100-meter dash record and won a gold medal at the 1988 Seoul Olympics.³¹ Johnson accomplished this feat with the aid of Stanozol, an anabolic steroid.³² This revelation led the IOC to strip Johnson of his gold medal and revealed a serious worldwide problem concerning athlete steroid use.³³

Following the Johnson incident, two drug scandals rocked the sporting world in the late 1990s that forged WADA's current drug regulation policies. The first occurred during the 1998 Tour De France.³⁴ Festina, a French cycling team, withdrew from the competition after French officials uncovered over 400 doping products and paraphernalia in their team car.³⁵ Moreover, their team doctor, Bruno Roussel, and other team managers admitted that Roussel encouraged and oversaw the team's steroid use.³⁶

In the same year, a second drug scandal stunned the Olympic world. Snowboarding became a new Olympic sport and had its debut during the 1998 Nagano Olympics.³⁷ Canadian snowboarder, Ross Rebagliati, won the Gold Medal in the Men's Giant Slalom.³⁸ However, Rebagliati had a short-lived victory. In February 1998, the IOC stripped him of his

31. See David Swiedler, Note, *Is It Time to Pay Attention? Critiquing the Cognitive Enhancement Drug Policies and Appeals Process in United States Collegiate Sports*, 18 CARDOZO J. CONFLICT RESOL. 489, 492 (2017) ("Johnson's positive test confirmed not only what many suspected of Eastern European athletes, but revealed a persistent problem of world-class athletes "using chemicals to enhance their performances.").

32. Alford Jerome Dees, *Bring Back the Crowd—How Governing Bodies for Sports Should Provide Victims of Athlete Doping a Better Remedy*, 9 FLA. COASTAL L. REV. 179, 180 n.3 (2008).

33. Sarah R. Heisler, *Steroid Regulation in Professional Sports: Sarbanes-Oxley as a Guide*, 27 CARDOZO ARTS & ENT. L.J. 199, 206 (2009).

34. Christopher S. Groleau, *Weird Science: A Look at the World Anti-Doping Agency's Questionable Testing Methods and the Need for Change to Protect International Athletes*, 13 QUINNIPIAC HEALTH L.J. 85, 87 (2009).

35. *Id.*

36. Tom Laser, *Doping in Cycling: Incentivizing the Reporting of UCI Anti-Doping Rules Violations Through Organizational Oversight and Accountability*, 49 J. MARSHALL L. REV. 625, 637 (2015).

37. Urvasi Naidoo & Neil Sarin, *Dispute Resolution at Games Time*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 489, 513 (2002).

38. *Id.*

gold medal after he tested positive for cannabis.³⁹ The Court of Arbitration of Sport later returned Rebagliati's medal because the IOC did not have an agreement with the International Ski Federation to prohibit cannabis use.⁴⁰

The return of Rebagliati's medals did not sit well with some, including Barry McCaffrey, the U.S. drug czar at the time.⁴¹ McCaffrey served as President Bill Clinton's head of the White House Office of National Drug Control Policy (ONDCP) and he attacked recreational cannabis use by Olympic athletes following the Rebagliati incident.⁴² In a memo, the ONDCP wrote, "[The return of Rebagliati's medal] seemed to directly undercut our messages to young people that drug use undermines a child's opportunities for success."⁴³ Subsequently, McCaffrey and the ONDCP began a wave of efforts to ban cannabis use by Olympic athletes.⁴⁴ Then Vice President of the IOC, Richard Pound, recalled the U.S. being the prominent pusher of an Olympic cannabis ban, stating, "[T]hat was certainly the [sic] view of the United States. Whether it was a ditch that he was prepared to die in or not, I don't know. But it certainly was a U.S. position."⁴⁵ Moreover, the U.S. government refused to help fund WADA unless the IOC placed

39. See Neville Cox, *Victory with Honour or Victory at All Costs: Towards Principled Justification for Anti-Doping Rules in Sport*, 22 DUBLIN U. L.J. 19, 33 (2000).

40. Darryl C. Wilson, *Let Them Do Drugs—A Commentary on Random Efforts at Shot Blocking in the Sports Drug Game*, 8 FLA. COASTAL L. REV. 53, 54 n.9 (2006).

41. Kyle Jaeger, *How U.S. Bullying in the 1990s Led to the Olympics Marijuana Ban Behind Richardson's Suspension*, MARIJUANA MOMENT (July 9, 2021), <https://www.marijuanamoment.net/how-u-s-bullying-in-the-1990s-led-to-the-olympics-marijuana-ban-behind-richardsons-suspension/>.

42. *Id.*

43. ONDCP, AGENCY ACCOMPLISHMENTS AND SIGNIFICANT ACTIONS, JANUARY 1993-DECEMBER 2000, NCJ No.185694, at 52 (2001).

44. *Id.*

45. Jaeger, *supra* note 41. The war on drugs describes an ongoing set of American policies started by the Nixon administration and continuing to the present day that aggressively criminalizes illegal drug use and disparately burdens people of color. See, e.g. Thomas Salazar, *Trip or Treat: Psychedelic Drug Reform in California*, 53 U. PAC. L. REV. 321 (2022).

cannabis on the banned substances list.⁴⁶ In 1999, such efforts proved successful after the IOC outlawed cannabis use by athletes.⁴⁷

In response to the various drug scandals, the IOC created WADA in November 1999 to streamline testing of athletes for prohibited substances and disqualification after a positive test.⁴⁸ Naturally, the U.S. currently plays a significant role in WADA's administration.⁴⁹ For example, the U.S. sits on WADA's Foundation Board—the organization's "highest decision-making body."⁵⁰ Additionally, the U.S. "played a leadership role" in creating the World Anti-Doping Code (WADC) to reflect its interests in curbing drug use and increased drug testing.⁵¹ On March 5, 2003, WADA adopted the WADC, and the 2004 Olympic Games in Athens, Greece became the first games governed by the code.⁵² Moreover, all countries interested in participating in the Olympics were required to implement the WADC.⁵³ The code has been revised four times since its adoption: 2009, 2015, 2018, and 2021.⁵⁴

46. Michael Grunwald, *Heat Dome Can't Unfreeze Biden's Climate Agenda*, POLITICO (July 2, 2021, 6:30 PM EDT), <https://www.politico.com/newsletters/politico-nightly/2021/07/02/heat-dome-cant-unfreeze-bidens-climate-agenda-493463> (While other countries provided WADA funding, the lack of U.S. funds would have been costly).

47. Edward Jurith et al., *Regulations Governing Drugs and Performance Enhancers in Sports*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 337, 375 n.150 (2002).

48. See Henry T. Greely, *Disabilities, Enhancements, and the Meanings of Sports*, 15 STAN. L. & POL'Y REV. 99, 116-17 (2004).

49. Dionne L. Koller, *How the United States Government Sacrifices Athletes' Constitutional Rights in the Pursuit of National Prestige*, 2008 BYU L. REV. 1465, 1518 n.292 (2008).

50. WADA, *Foundation Board*, <https://www.wada-ama.org/en/foundation-board> (last visited Jan. 24, 2022).

51. Dionne L. Koller, *Does the Constitution Apply to the Actions of the United States Anti-Doping Agency?*, 50 ST. LOUIS U. L.J. 91, 104 (2005).

52. Ryan Connolly, *Balancing the Justices in Anti-Doping Law: The Need to Ensure Fair Athletic Competition Through Effective Anti-Doping Programs vs. The Protection of Rights of Accused Athletes*, 5 VA. SPORTS & ENT. L.J. 41, 45 (2006).

53. See Maureen A. Weston, *Simply a Dress Rehearsal? U.S. Olympic Sports Arbitration and De Novo Review at the Court of Arbitration for Sport*, 38 GA. J. INT'L & COMP. L. 97, 106 n.40 (2009).

54. See Muhammed Ali, *Pakistan Signs Declaration for New World Anti-Doping Code 2021*, DAILY TIMES (May 21, 2020), <https://dailytimes.com.pk/615491/pakistan-signs-declaration-for-new-world-anti-doping-code-2021/>.

II. THE WORLD ANTI-DOPING AGENCY'S CURRENT CANNABIS REGULATIONS

As previously explained, certain types of cannabis⁵⁵ are strictly prohibited under the WADA code. WADA only tolerates cannabis use if an athlete obtains a therapeutic use exemption.⁵⁶ However, a therapeutic use exemption request must have WADA approval and does not guarantee acceptance.⁵⁷ WADA grants athletes a therapeutic use exemption if the following conditions are met: (1) the athlete would suffer a “significant impairment to health” if the exemption is withheld; (2) a doctor establishes there is no viable alternative treatment; and (3) the use of the drug grants no additional enhancement other than a return to the normal health-state.⁵⁸ Satisfying all three conditions requires a fact-intensive test and does not grant automatic acceptance, despite legalization of medical cannabis.⁵⁹

55. Under WADA's guidelines, all natural and synthetic cannabinoids with the exception of cannabidiol (CBD) are prohibited. See WADA, *The Prohibited List*, <https://www.wada-ama.org/en/prohibited-list#faq-anchor> (last visited Feb. 1, 2022).

56. See, e.g., TUE Therapeutic Use Exemption Policy, U.S. ANTI-DOPING AGENCY, <https://www.usada.org/substances/tue/policy/> (last updated Jan. 1, 2021); Iman K. McAllister, *The NFL and Mary Jane: The Early Makings of a Love Story*, 7 ARIZ. STATE SPORTS & ENT. L.J. 193, 199 (2017) (“Furthermore, Olympic athletes may seek a Therapeutic Use Exemption for marijuana, allowing them to circumvent this rule.”).

57. Ben Adlin, *Can Olympic Athletes Use Cannabis? Officially No, But...*, LEAFLY (Feb. 13, 2018), <https://www.leafly.com/news/politics/can-olympic-athletes-use-cannabis-medical-marijuana-testing>; C.f. Louise Gwilliam, *Cannabis and Sport: NFL's Mike James Asks for Permission to use Cannabis*, BBC SPORT (June 1, 2018), <https://www.bbc.com/sport/american-football/44021469> (chronicling the NFL's denial of Mike James' therapeutic use exemption request for medical cannabis to treat his opioid addiction).

58. WADA CODE art. 4.3.

59. Colby Stivers, *The First Competitive Video Gaming Anti-Doping Policy and Its Deficiencies Under European Union Law*, 18 SAN DIEGO INT'L L.J. 263, 291 (2017).

In the event of a positive test, an athlete faces severe penalties.⁶⁰ If an athlete proves their cannabis use occurred out-of-competition⁶¹ and such use was not to enhance performance, the athlete is suspended for three months.⁶² However, athletes may reduce their ineligibility to one month if they enter a WADA-approved substance abuse treatment program.⁶³

III. A LEAGUE OF THEIR OWN: COMPARATIVE ANALYSIS OF OTHER SPORTING LEAGUES' CANNABIS POLICIES

WADA's cannabis policies are considerably outdated in comparison with that of the NFL, Major League Baseball (MLB), National Hockey League (NHL), and National Basketball Association (NBA). Notably, none of the four major sports leagues suspend players for an initial positive cannabis test as WADA does.⁶⁴

A. National Football League

On March 15, 2020, the NFL overhauled its cannabis policy by implementing a new ten-year collective bargaining agreement.⁶⁵

60. See Josiah Hesse, *It's Time to Stop Demonizing Athletes for Using Marijuana*, MEN'S HEALTH (Sept. 16, 2021), <https://www.menshealth.com/health/a37622765/runners-high-cannabis-in-sports/>.

61. WADA describes in-competition as the period commencing twelve hours before a competition in which the athlete is scheduled to participate through the end of such competition and the sample collection process related to such competition. See Dimitrios P. Panagiotopoulos et al., *The Implementation of the WADA Code in Greece Through Law 4373/2016*, 7 KUTAFIN U. L. REV. 321, 323 n. 10 (2020).

62. WADA CODE art. 10.2.4.

63. *Id.*

64. Jeff Eisenberg & Henry Bushnell, *Sha'Carri Richardson's Olympic Drug Ban: Why is Marijuana a Prohibited Substance?*, YAHOO! SPORTS (July 2, 2021), <https://sports.yahoo.com/sha-carri-richardsons-olympic-drug-ban-why-is-marijuana-a-banned-substance-141633284.html>.

65. Dylan McGowan, *Pain Mismanagement: The Opioid Problem in the NFL*, 31 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 223, 234-35 (2020). Collective bargaining agreements are negotiated by players and owners. They "govern conditions of employment, including the player entry draft, free agency restrictions, minimum and maximum salaries, salary caps and luxury taxes, revenue sharing, roster sizes, player discipline, drug testing, practice times, season length, travel expenses, health benefits, and myriad other issues impacting the players and owners." Gabe

Although cannabis remains a banned substance in the NFL, the league made several reforms.⁶⁶ First, the NFL significantly raised the threshold for positive tests from thirty-five nanograms to 150 nanograms.⁶⁷ WADA employs the same 150 nanograms threshold. Second, the 2020 collective bargaining agreement narrowed the period in which players may be drug tested from four months to only the first two weeks of training camp.⁶⁸ Most notably, players are no longer suspended solely for a positive cannabis test. Instead, after their first positive test, a board of medical professionals determines if the player needs medical treatment.⁶⁹ Subsequent positive tests can result in fines of up to three weeks' pay.⁷⁰ While the NFL's changes lessened the penalties for cannabis use, the league still bans the substance like WADA does. Similar to WADA, NFL athletes may seek a therapeutic use exemption if they meet the same three criteria employed by WADA.⁷¹ By adopting these new policies, the NFL is moving away from a severe discipline

Feldman, *Collective Bargaining in Professional Sports: The Duel Between Players and Owners and Labor Law and Antitrust Law*, OXFORD HANDBOOK AM. SPORTS L. (Sept. 2017), <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190465957.001.0001/oxfordhb-9780190465957-e-10>.

66. See Bryce Robinson, *NFL's New Marijuana policy is a Much-Needed Change*, THE BATTALION, https://www.thebatt.com/opinion/nfl-s-new-marijuana-policy-is-a-much-needed-change/article_0134d6f2-a965-11eb-b9d1-f755cab16db1.html (last visited May 8, 2021).

67. Emily Kaplan, *How Weed Became 'Whatever': Leagues are Ditching Old Policies*, ESPN (Apr. 30, 2020), https://www.espn.com/nfl/story/_id/29114415/future-marijuana-drug-policy-nfl-pro-sports.

68. Tom Schad, *Here are the Six Biggest Changes in the NFL's New Collective Bargaining Agreement*, USA TODAY (Mar. 15, 2020, 4:16 PM), <https://www.usatoday.com/story/sports/nfl/2020/03/15/nfl-cba-collective-bargaining-agreement-changes-details/4878786002/>.

69. Jackson Thompson, *NFL Players Can Smoke Marijuana for the First Time During the Offseason and the Window Opened on 4/20*, INSIDER (Apr. 20, 2021, 1:49 PM), <https://www.insider.com/nfl-players-can-smoke-marijuana-without-discipline-starting-420-2021-4>.

70. Jason Owens, *New NFL CBA Would Eliminate Suspensions for Positive Drug Tests, Marijuana Included*, YAHOO! SPORTS (Mar. 5, 2020), <https://sports.yahoo.com/new-nfl-cba-would-eliminate-suspensions-for-positive-drug-tests-including-marijuana-215756378.html>.

71. See McGowan, *supra* note 65, at 239-40.

approach like WADA and towards an approach centered on treatment.⁷²

B. National Hockey League

The NHL was considered a pioneer for a more relaxed cannabis policy in sporting leagues.⁷³ The NHL, unlike WADA, does not place medical or recreational cannabis on its list of banned substances.⁷⁴ Only one-third of NHL players are even subjected to drug testing, unlike WADA where all players are tested in-competition.⁷⁵ In the event a NHL player does test positive for cannabis, they are not disciplined.⁷⁶ Only when a player tests positive with “dangerously high levels” of cannabis are they referred to a player assistance program for re-evaluation.⁷⁷ The optional program primarily focuses on treatment for players.⁷⁸

72. Thompson, *supra* note 69 (“The NFL will be moving away from severe discipline for marijuana use to an approach focused more on treatment.”).

73. Hilary Bricken, *Trial and Error: Cannabis and the Big Four Sports Leagues*, HARRIS BRICKEN (May 13, 2020), <https://harrisbricken.com/cannalawblog/trial-and-error-cannabis-and-the-big-four-sports-leagues/> (“The NHL was a first mover on more relaxed cannabis consumption policies for players.”).

74. See Joseph M. Hanna, *It’s Time to Get Real About Marijuana and Professional Sports: Part 1*, AM. BAR ASS’N (Feb. 25, 2019), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2019/marijuana-professional-sports/>.

75. Jacob Leyland, *The Road to Redemption: Chronicling Josh Gordon’s Path to Reinstatement and Dissecting the NFL’s Substance Abuse Policy*, 26 JEFFREY S. MOORAD SPORTS L.J. 81, 106 n.192 (2019); See also *Smokers, Jokers, Midnight Tokers: A look at how the NFL, NBA, MLB and NHL Test for Marijuana*, N.Y. DAILY NEWS (July 30, 2016), <https://www.nydailynews.com/sports/i-team/nfl-nba-mlb-nhl-test-marijuana-article-1.2732129>.

76. Ritika Singh, *A Game Played on Grass, Not Cannabis: National Football League’s Substance Abuse Policy Burdening the Players’ Health and Performance*, 26 SPORTS LAW. J. 1, 17 (2019).

77. Ken Belson, *The NFL Loosens Rules Over Players’ Use of Marijuana*, THE IRISH TIMES (Apr. 13, 2020), <https://www.irishtimes.com/sport/other-sports/the-nfl-loosens-rules-over-players-use-of-marijuana-1.4227738>.

78. See Jacob Mauren, *Opioids or Cannabis?*, IOWA STATE DAILY (July 11, 2021), https://www.iowastatedaily.com/opinion/opinion-editorial-isd-editorial-board-opioids-or-cannabis/article_1d590a8a-e2bb-11eb-9e4b-c32e9a24a6f5.html.

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This approach is praised for its focus on treatment and confidentiality rather than punishment.⁷⁹ Perhaps, the NHL's lack of reprimand makes one of the more lenient policies amongst the four major sports leagues.⁸⁰

C. Major League Baseball

The MLB mirrors the same cannabis policy as the NHL, with the exception being the mandatory evaluation after signs of on-the-clock cannabis impairment. Following the lead of the NHL, the MLB removed cannabis as a prohibited substance in December 2019.⁸¹ Notably, the MLB's 2019 policy change signifies that more sporting leagues are not punishing players for cannabis, whereas WADA has yet to follow suit.

This was not a major change for the MLB because the players were previously only tested for cannabis if "reasonable cause" existed.⁸² Essentially, the MLB now treats cannabis the same as alcohol—players can be disciplined for the drug in certain cases.⁸³ Specifically, the MLB can take action against players who violate governmental cannabis laws or appear under the influence during games, practices, workouts,

79. See Kelli Rodriguez Currie, *A Commitment to the Whole Athlete: Embracing the Role of Cannabinoids in Collegiate Athletics*, 43 SEATTLE U. L. REV. 921, 927 (2020).

80. Leyland, *supra* note 75.

81. See Robert Pannullo, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. LAB. & EMP. L. 443, 451 n.63 (2020). The MLB changed its cannabis policy in response to Tyle Skaggs's death who aspirated on his own vomit with fentanyl, oxycodone, and alcohol in his system. Lia Assimakopoulos, *Deep in the Weed: A Look Into the Future of Marijuana Regulation in Sports*, PITTSBURGH POST-GAZETTE (July 19, 2021), <https://www.post-gazette.com/sports/olympics/2021/07/19/Marijuana-legalization-Sha-Carri-Richardson-Tokyo-Olympics-Steelers/stories/202107180036>.

82. See Robert F. Moore, *The Interaction Between the Americans with Disabilities Act and Drug and Alcohol Addiction in Sports*, 16 SPORTS L. J. 231, 240 (2009).

83. Jeff Tracy, *Where it Stands: Weed Policies by U.S. Sports League*, AXIOS (Oct. 20, 2021), <https://www.axios.com/weed-policies-sports-leagues-nba-mlb-nfl-nhl-d4323e10-9b38-41ae-a35b-d3739c177dda.html>.

meetings, or employment related activities.⁸⁴ Players who violate this policy must submit to a mandatory evaluation for a potential treatment program.⁸⁵

D. National Basketball Association

On the other hand, the NBA's cannabis policy is described as "the harshest in North American professional sports."⁸⁶ Under the NBA's current collective bargaining agreement, cannabis is a prohibited substance.⁸⁷ A first positive test means a player *must* report to a mandatory cannabis treatment program.⁸⁸ A second positive test results in a \$25,000 fine.⁸⁹ The third violation leads to a five-game suspension and five more suspensions for each subsequent violation (ten games for a fourth violation, fifteen games for a fifth violation, etc.).⁹⁰ However, the NBA does not enforce this regime during the off-season.⁹¹ In addition, the league has suspended random cannabis drug testing for both the 2020-2021 and 2021-2022 seasons in light of the COVID-19 pandemic.⁹² Such developments have led some to speculate that

84. Jeff Passan, *MLB: Players Still Subject to Penalty for Using Pot*, ESPN (Feb. 28, 2020), <https://www.espn.com/mlb/story/id/28804440/mlb-players-subject-penalty-using-pot>.

85. *Id.*

86. Kaplan, *supra* note 67; Dustin Foote, *The NBA Is Considered a Progressive League. But Its Hardline Stance on Pot Shows It's Not Perfect*, DEADSPIN (Apr. 30, 2020, 7:29 PM), <https://deadspin.com/the-nba-is-considered-a-progressive-league-but-its-har-1843188356>.

87. See Warren Chu, Note, *WADA Time to Choose a Side: Reforming the Anti-Doping Policies in U.S. Sports Leagues While Preserving Players' Rights to Collectively Bargain*, 44 COLUM. J.L. & ARTS 209, 216 n.52 (2021).

88. Christopher R. Deubert et al., *Comparing Health-Related Policies and Practices in Sports: The NFL and Other Professional Leagues*, 2017 HARV. J. SPORTS & ENT. L. (Special Issue) 1, 149-50. (2017).

89. *Id.* at 150.

90. Kaplan, *supra* note 67.

91. Singh, *supra* note 76, at 17 n.113.

92. Tim Reynolds, *NBA Will Not Randomly Test Players for Marijuana This Season*, AP NEWS (Oct. 6, 2021), <https://apnews.com/article/nba-sports-business-national-basketball-players-association-marijuana-2e87b462473607da9e1829a6ebc4652a>.

cannabis will not be a banned substance in the NBA's next collective bargaining agreement.⁹³

Currently, the NBA, like WADA, is reconsidering its cannabis drug testing policy.⁹⁴ Yet, like the NFL and WADA, the NBA still bans cannabis use.⁹⁵ The NBA's mandatory counseling program after an initial positive test differs from WADA, where players are suspended even after their first positive test, potentially causing them to miss their once-in-a-lifetime chance to compete in the Olympic games.⁹⁶

IV. SHAKY GROUND: QUESTIONING THE WORLD ANTI-DOPING AGENCY'S JUSTIFICATIONS FOR BANNING CANNABIS

WADA prohibits in-competition cannabis use for at least two of the three following reasons: (1) cannabis can enhance or potentially enhance performance; (2) cannabis presents an actual or potential health risk; and (3) cannabis violates the "spirit of the sport."⁹⁷ WADA does not specify which of the three boxes are checked by cannabis.⁹⁸ Arguably, cannabis checks *none* of the three boxes listed by WADA.

A. *Cannabis is Unlikely to Enhance Athletic Performance*

One of WADA's justifications for banning athlete cannabis use is that the substance can potentially enhance athletic performance.⁹⁹ However, this justification fails for two reasons. First, WADA relies on inconclusive scientific research. Second, many recent scientific studies

93. Bennett A. Herbert, *A Global Pandemic and a Wildcat Strike: How COVID-19 and Civil Unrest Could Impact the NBA's Labor Relations*, 17 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 59, 76 (2021).

94. Kyle Jaeger, *Sha'Carri Richardson Ban Prompts World Anti-Doping Agency Review*, FILTER (Sept. 15, 2021), <https://filtermag.org/shacarri-richardson-international-athlete-cannabis-ban/>.

95. Deubert et al., *supra* note 88, at 148.

96. *See id.* at 150.

97. Ashley Mateo, *Is Weed Really Performance-Enhancing?*, RUNNER'S WORLD (Aug. 20, 2021), <https://www.runnersworld.com/health-injuries/a37350981/is-marijuana-performance-enhancing/>.

98. *See id.*

99. *Id.*

reveal cannabis use hinders, rather than enhances, athletic performance.¹⁰⁰

In justifying its policy, WADA primarily relies on a 2011 paper conducted by WADA scientists.¹⁰¹ The 2011 paper titled, “Cannabis in Sport: Anti-Doping Perspective,” states “In conclusion, although much more scientific information is needed, based on current animal and human studies [and] interviews with athletes and information from the field, cannabis can be performance enhancing for some athletes and sports disciplines.”¹⁰² Specifically, the 2011 paper notes that cannabis use in human and mice studies lead to “risk taking behavior without affecting decisions making,” and reduced memories of fear.¹⁰³ Thus, the authors suggests that cannabis benefits athletes by allowing them to “perform better under pressure,” reduce anxiety, and alleviate stress during competition.¹⁰⁴ Yet, to reach this conclusion, the paper’s authors misstate research conclusions and rely on both anecdotal and speculative evidence.¹⁰⁵

A closer examination of the 2011 paper’s sources cast doubt on its conclusion that cannabis is performance enhancing.¹⁰⁶ One scientific

100. See Jérémie Charron, *Acute Effects of Cannabis Consumption on Exercise Performance: A Systematic and Umbrella Review*, J. SPORTS. MED. & PHYSICAL FITNESS 1, 11-12 (2021).

101. See Chris Bengel, *World Anti-Doping Agency Reviewing Cannabis’ Status as Banned Substance Following Sha’Carri Richardson’s DQ*, CBS SPORTS (Sept. 15, 2021), <https://www.cbssports.com/olympics/news/world-anti-doping-agency-reviewing-cannabis-status-as-banned-substance-following-shacarri-richardsons-dq/> (“In 2011, the WADA published a paper that stated that marijuana is banned because cannabis could ‘potentially endanger athletes’ . . . [WADA] also believes that cannabis can be ‘performance enhancing’ for athletes.”).

102. Marilyn A. Huestis et al., *Cannabis in Sport: Anti-Doping Perspective*, 41 SPORTS MED. 949 (2011).

103. *Id.*

104. *Id.*

105. Kathryn B. Ashton & Eric P. Berlin, *Cannabis Client Alert—Week of July 12, 2021*, DENTONS (July 16, 2021), <https://www.dentons.com/en/insights/newsletters/2021/july/16/us-cannabis-newsletter/cannabis-client-alert-week-of-july-12-2021> (“[The 2011 paper] overstated anecdotal and speculative evidence. . . [It also] misstates the conclusions of two cited studies that found cannabis to worsen performance, rather than improve it.”).

106. Matt Richtel, *Science Doesn’t Support Idea That Marijuana Aids Athletes’ Performance*, N.Y. TIMES (July 23, 2021), <https://www.nytimes.com/2021/07/09/sports/olympics/marijuana-sports-performance-enhancing.html>.

study the authors cite to Dr. Jon Wagner's 1989 research paper titled, *Abuse of Drugs Used to Enhance Athletic Performance*.¹⁰⁷ The authors of the 2011 paper identified that Wagner described cannabis as "ergogenic," meaning performance enhancing.¹⁰⁸ Today, Dr. Wagner disagrees.

Dr. Wagner states, "I didn't write that [cannabis is ergogenic]."¹⁰⁹ Instead, Wagner wrote cannabis does not improve vital capacity and if the drug did aid in athletic performance, it would be limited to relaxation benefits.¹¹⁰ Moreover, Dr. Wagner's point regarding relaxation benefits was based on conversations he had with tennis players, which casts doubt on the reliability of the evidence and sources—mere anecdotal evidence.¹¹¹

Yet, half-truths, anecdotal evidence, and speculation abound in the 2011 paper. Moreover, a smaller scale study followed twelve cannabinoid¹¹² using cyclists.¹¹³ The study was cited for its conclusion that cannabis is performance enhancing.¹¹⁴ However, upon closer examination, the study actually contradicts that conclusion. The study found a "decrease in peak exercise performance" caused by cannabis, was due to a "premature achievement of maximum heart rate."¹¹⁵ The only way to twist the 2011 paper to support the theory of cannabis as performance-enhancing is utilizing speculation. In this study, the researchers opined that cannabis use improved tissue oxygenation.¹¹⁶

107. Huestis et al., *supra* note 102.

108. *See id.*; *See also*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 424 (11th ed. 2020) ("enhancing physical performance"). By contrast, ergolytic means "[p]ertaining to any substance that impairs exercise performance." *Ergolytic*, FREE DICTIONARY, <https://medical-dictionary.thefreedictionary.com/ergolytic> (last visited Jan. 26, 2022).

109. Richtel, *supra* note 106.

110. *Id.*

111. *Id.*

112. A cannabinoid is "[a]ny of various organic substances, such as THC, found in cannabis." *Cannabinoid*, FREE DICTIONARY, <https://medical-dictionary.thefreedictionary.com/cannabinoid> (last visited Jan. 26, 2022).

113. *See* Huestis et al., *supra* note 102.

114. *Id.*

115. Andrea M. Renaud & Yvon Cormier, *Acute Effects of Marihuana Smoking on Maximal Exercise Performance*, 18 MED. & SCI. SPORTS & EXERCISE 685, 688 (1986).

116. *See id.*

However, this was not what the researchers were studying, and their ultimate conclusion was that cannabis decreased athletic performance.¹¹⁷

WADA also relies on a study that makes no definitive conclusion regarding cannabis being performance enhancing. The authors of the 2011 paper cite, “Performance-Enhancing Drugs, Fair Competition, and Olympic Sport,” for the proposition that cannabis increases athletic performance for sports demanding greater concentration.¹¹⁸ Nevertheless, the researchers took no position on whether cannabis enhanced performance.¹¹⁹ Instead, they wrote one potential argument that cannabis decreases athletic performance while “some argue that it might enhance performance in sports that require great concentration.”¹²⁰ This is not a conclusive statement that cannabis can be used to enhance performance, but mere conjecture.

Beyond questionable sources, the 2011 paper appears outdated in light of new research presenting cannabis as not performance enhancing. Several recent scientific studies¹²¹ investigated whether cannabis is performance enhancing and reached an opposite conclusion to that of the 2011 paper. In 2020, a team of scientists conducted a

117. *See id.*

118. *See* Huestis et al., *supra* note 102; Don H. Catlin & Thomas H. Murray, *Performance-Enhancing Drugs, Fair Competition, and Olympic Sport*, 276 J. AMER. MED. ASSN. 231 (1996).

119. Huestis et al., *supra* note 102.

120. *Id.*; Other commentators have written that some experts believe cannabis can help in sports where a steady hand is needed. *E.g.* Kate Kelland, *Performance Enhancing Dope: Should Sport Ban Cannabis?*, REUTERS (Aug. 6, 2012), <https://www.reuters.com/article/us-oly-dop-cannabis-day10/performance-enhancing-dope-should-sport-ban-cannabis-idUSBRE87519120120806> (“[S]ome experts say it could prove helpful in sports like shooting or golf where a steady hand is needed.”). However, one small scale study showed cannabis improved some golfers’ scores and decreased other golfers’ scores. Coleman Bentley, *How Does Marijuana Affect Your Golf Game? An Investigation*, GOLF DIG. (May 30, 2018), <https://www.golfdigest.com/story/how-does-marijuana-affect-your-golf-game-an-investigation>.

121. Studies predating the 2011 study show cannabis impairs rather than enhances performance. *E.g.* David S. Janowsky et al., *Marijuana Effects on Simulated Flying Ability*, 133 AM. J. PSYCHIATRY 384 (1976) (finding cannabis use impairs a pilot’s cognitive functions by decreasing reaction time, disrupting hand-eye coordination, perception, and dividing attention for up to thirty-six hours following usage).

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literature review (cross-sectional, longitudinal, and intervention studies) of all relevant scientific studies to determine the effects of cannabis on exercise performance.¹²² The researchers found “no reason based on current data to believe that cannabis has any significant ergogenic [performance-enhancing] effect.”¹²³ The following year, a team of scientists from the University of Quebec in Montreal conducted another literature review and found:

Based on the articles included in this review, the authors conclude that cannabis consumption has an ergolytic effect on exercise performance and, therefore, does not act as a sport performance enhancing agent as raised by popular beliefs. Thus, cannabis consumption prior to exercise should be avoided in order to maximize performance in sports.¹²⁴

Based on their immense review, the researchers concluded cannabis causes negative athletic effects such as decreased performance, unwelcome physiological responses, and adverse neurological effects.¹²⁵

On balance, the vast majority of scientific research shows cannabis does not enhance performance.¹²⁶ Rather, cannabis diminishes athletic performance. Ultimately, WADA should not take away an athlete’s ability to compete and make a living without conclusive proof that cannabis is performance enhancing.¹²⁷ Without more conclusive evidence, beyond a problematic 2011 WADA paper, cannabis does not definitively fit criteria one.

122. Andrew Kramer et al., *Chronic Cannabis Consumption and Physical Exercise Performance in Healthy Adults: A Systematic Review*, 2 J. OF CANNABIS RSCH. 1 (2020).

123. *Id.* at 7.

124. Charron, *supra* note 100, at 3.

125. *Id.*

126. *E.g., id.* at 11-12.

127. Ultimately, American scientific studies regarding cannabis are difficult to commence because of complex regulations and limited research grade cannabis available for use. Janet Wells, *Dazed and Confused*, UCSF MAG. (Summer 2017), <https://magazine.ucsf.edu/dazed-and-confused>.

B. The Adverse Health Risks of Cannabis Are Too Minor to Meet the World Anti-Doping Agency's Criteria

When considering the health consequences of cannabis, the drug's possible benefits must also be contemplated.¹²⁸ Cannabis use does pose some health risks to users. Like tobacco, smoking cannabis may invoke respiratory health problems (including COVID-19)¹²⁹ and possibly lead to serious damage to the lungs amongst long term or frequent users.¹³⁰ In regards to mental health, studies suggest cannabis causes short-term memory impairment.¹³¹ While there are also effects on verbal recall, they are not lasting.¹³² Yet, studies show cannabis use does have negative impacts on the developing brains of adolescents and people with family history of psychosis—a subset of cannabis users.¹³³ Finally, there are other short-term effects while under the influence of cannabis, including the potential for anxiety, impaired motor coordination, weaker athletic performance, and dangerous driving.¹³⁴

Nevertheless, to get a complete picture regarding cannabis and its health impacts, the drug's benefits must also be measured. Medicinally, cannabis is widely used for Alzheimer's disease, cancer, Crohn's disease, epilepsy, glaucoma, mental health, eating disorders, muscle

128. See Jordan Maddy, *Forbidden Flower: How Allowing Medical Cannabis Flower in West Virginia Helps Heal Patients and the State Economy*, 122 W. VA. L. REV. 253, 259-60 (2019).

129. Daniel B. Rossoff et al., *Smoking is Significantly Associated with Increased Risk of COVID-19 and Other Respiratory Infections*, COMMC'N BIOLOGY (2021).

130. Helia Garrido Hull, *Lost in the Weeds of Pot Law: The Role of Legal Ethics in the Movement to Legalize Marijuana*, 119 PA. STATE L. REV. 333, 341 (2014).

131. David Malleis, *The High Price of Parenting High: Medical Marijuana and Its Effects on Child Custody Matters*, 33 U. LA VERNE L. REV. 357, 373-74 (2012).

132. Lisa Marshall, *Should Marijuana Still be Banned from Sport?*, CU BOULDER TODAY (July 7, 2021), <https://www.colorado.edu/today/2021/07/07/should-marijuana-still-be-banned-sport>.

133. *Id.*

134. Stacy Hickox, *Drug Testing of Medical Marijuana Users in the Workplace: An Inaccurate Test of Impairment*, 29 HOFSTRA LAB. & EMP. L.J. 273, 284-85 (2012).

spasms, nausea, and pain management.¹³⁵ Additionally, research shows that cannabis use correlates with lowered waist circumference, lower body mass index and fasting insulin levels, improved blood sugar control, and greater insulin sensitivity.¹³⁶

Beyond its medicinal benefits, cannabis is relatively harmless for casual users.¹³⁷ Notably, in the ten thousand years that humans have been acquainted with cannabis, not one death has been attributed to the drug.¹³⁸ This is probably attributed to the fact that a person would have to consume nearly “1,500 pounds of [cannabis] within about fifteen minutes to induce a lethal response.”¹³⁹ By contrast, opioids killed more than 42,200 people in 2016,¹⁴⁰ while “alcohol-related overdoses and disease are linked to roughly 88,000 U.S. fatalities.”¹⁴¹ Both publicly and privately funded research studies largely conclude the casual use of cannabis is generally not harmful to most people.¹⁴² For example, the medical journal, *The Lancet*, stated that “cannabis [is] less of a threat than alcohol or tobacco On the medical evidence available moderate

135. Ivan Feris, Jr., *The Dormant Monster: Florida’s Intrastate Marijuana Regulation and Its Susceptibility to Dormant Commerce Clause Challenge*, 15 FIU L. REV. 457, 461 (2021).

136. Elizabeth A. Penner et al., *The Impact of Marijuana Use on Glucose, Insulin, and Insulin Resistance Among U.S. Adults*, 126 AM. J. MED. 583, 586 (2013) (observing said findings).

137. *See generally*, United States v. Vaughn, 790 F. App’x 655, 657 (6th Cir. 2019) (“[a] ‘social user’ [of cannabis] is ‘an individual who smokes one marijuana cigarette per week.’ A chronic user refers to ‘an individual who smokes one or more marijuana cigarettes a day.’”).

138. Dana Petersen, *High Society: Washington State’s Recreational Cannabis Law and Its Effects on Child Custody and Visitation Rights*, 13 SEATTLE J. SOC. JUST. 973, 990 (2015).

139. Cyriaque Lamar, *How Many Joints Would You Have to Smoke to Die of a Marijuana Overdose?*, GIZMODO (Mar. 8, 2012), <https://gizmodo.com/how-many-joints-would-you-have-to-smoke-to-die-of-a-mar-5891425/amp>.

140. *See* Emma Masse, *Missouri Shows the True Meaning of the “Show-Me” State—Missouri’s Unfounded Hesitation to Enact a Prescription Drug Monitoring Program*, 83 MO. L. REV. 217, 217 (2018).

141. Leo Beletsky, *America’s Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis*, 19 UTAH L. REV. 833, 845 (2019).

142. Eric Blumenson & Eva Nilsen, *Liberty Lost: The Moral Case for Marijuana Law Reform*, 85 IND. L.J. 279, 288 n.26 (2010) (collecting studies).

indulgence in cannabis has little ill effect on health.”¹⁴³ As stated by Professors Eric Blumenson and Eva Nilsen, “Marijuana use does pose some health risks, although it is surely less dangerous to health than alcohol, nicotine, acetaminophen, fried foods, and downhill skiing.”¹⁴⁴ Yet, alcohol, nicotine, and acetaminophen are permitted by WADA despite their health risks. Ultimately, while cannabis may pose a health risk for frequent users and certain people, the drug does not pose a health risk to casual users. If WADA can allow athlete consumption of alcohol, cigarettes, or fattening foods—which all pose a greater health risk than cannabis—then WADA should not prohibit cannabis on this condition.¹⁴⁵

C. An Athlete’s Cannabis Use Does Not Violate the Spirit of Sport

Another justification for the prohibition of cannabis rests on the extent to which the drug undermines the “spirit of sport.” WADA defines the “spirit of sport” as: “Ethics, fair play and honesty, health, excellence in performance, character and education, fun and joy, teamwork, dedication and commitment, respect for rules and laws, respect for self and other participants, courage, and community and solidarity.”¹⁴⁶ A review of the aforementioned factors show that all are moral or character determinations, with the exception of athlete health. Such amorphous determinations are criticized as “amounting to forced introduction of private moral values into an important area of public activity.”¹⁴⁷

These values are difficult to define, and WADA failed to clearly articulate how a substance violates or does not violate the “spirit of

143. Editorial, *Dangerous Habits*, THE LANCET, Nov.14, 1988 (n.9140), at 1565.

144. Eric Blumenson & Eva Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform*, 17 VA. J. SOC. POL’Y & L. 43, 65 (2009).

145. Elizabeth Chuck, *Advocates Say THC Does Not Enhance Sports Performance. So why is it Banned?* NBC NEWS (July 2, 2021, 12:22 PM PDT), <https://www.nbcnews.com/news/us-news/advocates-say-thc-does-not-enhance-sports-performance-so-why-n1272979> (“If an athlete likes a drink, that is a health risk. If an athlete smokes a cigarette, that poses a health risk. If an athlete likes to have a big, fat, greasy cheeseburger, that poses a health risk.”).

146. Chu, *supra* note 87, at 232.

147. *Id.*

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sport.”¹⁴⁸ WADA appears to restrict in-competition cannabis for two reasons: (1) the illegality of cannabis in many parts of the world, and (2) athletes have a role model status among young people and cannabis use runs contrary to that role.¹⁴⁹

As time progresses, WADA’s first justification regarding the wide illegality of cannabis is becoming significantly outdated. In 2019, an estimated 200 million people worldwide used cannabis,¹⁵⁰ a number that surely increased from that time. In the past decade, eighteen percent more people used cannabis.¹⁵¹ As of this writing, the following countries have legalized recreational use of cannabis: Canada, Georgia, Malta, Mexico, South Africa, and Uruguay, with Germany and Luxembourg set to follow.¹⁵²

The evolution in cannabis acceptance includes the U.S.—the country that originally pushed for WADA’s prohibition of the substance.¹⁵³ In particular, the state of Oregon—where Sha’Carri Richardson consumed the cannabis that led to her suspension—legalized recreational cannabis in 2014.¹⁵⁴ Oregon is among eighteen states that have legalized adult recreational cannabis use.¹⁵⁵ Despite

148. See Huestis et al., *supra* note 102.

149. See *id.*

150. Pia Lee-Brago, *Illegal Drug Trade Back to Business as Usual—UN*, THE PHILIPPINE STAR (June 28, 2021), <https://www.philstar.com/headlines/2021/06/28/2108575/illegal-drug-trade-back-business-usual-un>.

151. See *id.* (This occurred around the same time as the 2011 WADA paper.)

152. AGENCE FRANCE-PRESSE, *Tiny Nation Makes Big Legal Nod to Recreational Marijuana*, PHILIPPINE DAILY INQUIRER (Dec. 19, 2021), <https://newsinfo.inquirer.net/1529360/tiny-nation-makes-big-legal-nod-to-recreational-marijuana>.

153. Adam Kilgore & Rick Maese, *The Doping Rules That Cost Sha’Carri Richardson Have a Debated, Political History*, WASH. POST (July 3, 2021, 4:45 PM EDT), <https://www.washingtonpost.com/sports/olympics/2021/07/03/shacarri-richardson-marijuana-olympics-doping-ban/>.

154. See Eric Boehm, *If Sha’Carri Richardson Can Get High and Still Outrun Everybody, She Should Be Allowed to Do It*, REASON (July 2, 2021, 4:00 PM), <https://reason.com/2021/07/02/if-shacarri-richardson-can-get-high-and-still-outrun-everybody-she-should-be-allowed-to-do-it/>.

155. Daniel G. Orenstein, *Nowhere to Now, Where? Reconciling Public Cannabis Use in a Public Health Legal Framework*, 126 PA. SATE L. REV. 59, 76 (2021) (These eighteen states are Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington).

cannabis's federal illegality, support for nationwide recreational cannabis legalization is widespread and an increasingly nonpartisan issue.¹⁵⁶ Support from politicians of both parties likely stems from the fact that sixty percent of Americans believe recreational cannabis should be legalized.¹⁵⁷

The shifting societal attitude towards cannabis disturbs WADA's reasoning that cannabis use is a moral shortcoming or character flaw. Despite the idea of athletes as role models,¹⁵⁸ society's view on cannabis is evolving and an athlete should not have to suffer disqualification for the legal use of a substance that does not enhance performance and has minimal negative health effects. Instead, WADA should treat cannabis like alcohol—not as a hindrance to ethics or an enhancer to performance, but something used in moderation.¹⁵⁹ Despite research showing that cannabis use is safer than alcohol consumption,¹⁶⁰ Olympic athletes consume alcohol and appear in

156. See Sam Reisman, *Another Year Without Federal Pot Reform, But States Step Up*, LAW360 (Dec. 10, 2021), <https://www.law360.com/articles/1447402/another-year-without-federal-pot-reform-but-states-step-up> (highlighting difficulty regarding federal legalization but showcasing increased statewide legalization).

157. See Ted Van Green, *Americans Overwhelmingly Say Marijuana Should Be Legal for Recreational or Medical Use*, PEW RSCH. CTR. (Apr. 16, 2021), <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use/>.

158. Eoin Carolan, *The New WADA Code and the Search for a Policy Justification for Anti-Doping Rules*, 16 SETON HALL J. SPORTS & ENT. L. 1, 29 (2006) (“For every writer who accepts the enormous influence of sporting idols, there is another equally eminent author who challenges the notion of athlete as role model.”). Some athletes like Charles Barkley reject the idea of athletes as a role model and believe that role falls on parents. Christopher Geoffrey Rapp, *Blue Sky Steroids*, 99 J. CRIM. L. & CRIMINOLOGY 599, 608 (2009).

159. Ken Ford, *The Spirit of Sport Made Sha'Carri Richardson a Living Martyr*, CULTIVA L. (July 4, 2021), <https://cultivalaw.com/the-sprit-of-sport-made-shacarri-richardson-a-living-martyr/> (“But that is what we loved about Sha'Carri because she was so down to earth. She reminded you of the kids racing in the streets barefoot. She reminded you of the girl from the hood.”).

160. Erin Brodwin, *We Took a Scientific Look at Whether Weed or Alcohol Is Worse for You—and There Appears to Be a Winner*, INSIDER (Aug. 28, 2018), <https://www.businessinsider.com/alcohol-marijuana-which-worse-health-2017-11> (“When it comes to addiction profiles, risk of death or overdose, and links to cancer, car crashes, violence, and obesity, the research suggests that marijuana may be less of a health risk than alcohol.”).

alcohol related advertisements,¹⁶¹ effectively encouraging consumption by young people.¹⁶²

In addition, WADA should consider whether they are perpetuating the War on Drugs that precipitated its cannabis ban.¹⁶³ The War on Drugs is losing political momentum due to its disparate impact on people of color.¹⁶⁴ WADA should consider how perpetuating the War on Drugs, which disparately affected people of color, furthers the “spirit of sport.” The cannabis ban destroys the dreams of hopeful athletes, like Sha’Carri Richardson, for using state permitted substances.¹⁶⁵

161. E.g., *Estonia’s Saku Brewer to Remove Outdoor Ads Depicting Olympic Gold Winner*, BALTIC NEWS SERV. (July 6, 2005) (on file with author). Saku Olletheas Brewery also sponsored Andrus Veerpalu during his Olympic appearances. See Jaan Väljaots, *Eesti! Eesti! Veerpalu! Veerpalu!*, OHTULEHT (Feb. 25, 2002), <https://www.ohtuleht.ee/119090/eesti-eesti-veerpalu-veerpalu>.

162. Kelly Wallace, *The More Alcohol Ads Kids See, the More Alcohol They Consume*, CNN (Sept. 9, 2016, 1:40 PM EDT), <https://www.cnn.com/2016/09/07/health/kids-alcohol-ads-impact-underage-drinking/index.html>.

163. See *supra* text accompanying note 45.; See Dan Adams, ‘Mindless.’ ‘Tragic.’ ‘Draconian.’ ‘Unfair’—*Cannabis Experts Slam Suspension of Sha’Carri Richardson*, BOS. GLOBE (July 3, 2021), https://www.bostonglobe.com/2021/07/03/marijuana/mindless-tragic-draconian-unfair-cannabis-experts-slam-suspension-shacarri-richardson/?p1=BGSearch_Advanced_Results (“What spirit? The ghost of the drug war? It’d be comical if it wasn’t so tragic to this young woman’s career.”).

164. Emilie Kurth, *Drug Conspiracy Sentencing and Social Injustice*, 91 U. COLO. L. REV. 1215, 1228 (2020) (“Like the war on drugs itself, the application of the conspiracy doctrine to drug possession and trafficking crimes disproportionately implicates low-income people of color who experience greater enforcement and prosecution than their white peers.”); Scott Holmes, *Resisting Arrest and Racism—The Crime of “Disrespect,”* 85 UMKC L. REV. 625, 666 (2017) (“The War on Drugs has turned out to be a war on poor people of color. Instead of reducing the amount of drugs in our Country, the war on drugs have increased the number of non-violent poor people of color in prison or under court supervision. It has been another form of social control, and not a path to increased community safety.”); Altaf Rahamatulla, *The War on Drugs Has Failed. What’s Next?*, FORD FOUND. (Mar. 23, 2017), <https://www.fordfoundation.org/ideas/equals-change-blog/posts/the-war-on-drugs-has-failed-what-s-next/> (describing disparate impact of the drug war on black and Latino communities).

165. See Adams, *supra* note 163.

CONCLUSION

WADA's removal of cannabis from its list of prohibited in-competition substances is long overdue. WADA's policy of suspending athletes after only one positive cannabis test grossly misaligns with the policies of other major U.S. sporting leagues.¹⁶⁶ WADA should move away from imposing American morals on others and instead offer athletes treatment and support.¹⁶⁷ Moreover, WADA's three-listed rationale for banning cannabis does not withstand scrutiny. Because cannabis does not meet *any* of WADA's three listed criteria, the organization should remove cannabis from its list of prohibited substances. WADA has the opportunity to prevent future injustice against athletes, like the suspension against Sha'Carri Richardson, from happening again.

166. Eisenberg & Bushnell, *supra* note 64.

167. Adams, *supra* note 163.