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When Coaching Becomes Criminal

Amanda J. Peters

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Amanda J. Peters

When Coaching Becomes Criminal

20 U.N.H. L. REV. 1 (2021)

AUTHOR. Godwin Lewis PC Research Professor & Professor of Law at South Texas College of Law Houston. I would like to thank Professor Nancy Levit at University of Missouri-Kansas City School of Law for asking me to participate in drafting an amicus brief for five women who had been abused, sexually assaulted, and sexually trafficked by their Taekwondo coaches. This Article is dedicated to all survivors of athlete abuse of all forms. My hope is the legal community can help you hold coaches and organizations responsible for their abuse and that all forms of athlete abuse would come to an end. I would also like to thank my employer and my family for always supporting and encouraging my scholarship.

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INTRODUCTION

Athletes are pursuing an end to abusive coaching practices worldwide. News of widespread sexual abuse in gymnastics¹ led to revelations that athletes in other sports have endured physical, sexual, and psychological abuses at the hands of their coaches. In addition to gymnasts,² athletes in swimming,³ artistic swimming,⁴ diving,⁵ water polo,⁶ tennis,⁷ Taekwondo,⁸

¹ Tim Evans et al., *Former USA Gymnastics Doctor Accused of Abuse*, INDYSTAR (Sept. 12, 2016, 3:46 PM), <https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734/> [<https://perma.cc/LB2H-Q9GT>].

² *E.g.*, Doe v. Michigan State Univ., No. 1:17-CV-29, 2019 WL 5683452, at *1 (W.D. Mich. Feb. 11, 2019) (athletes are suing Michigan State University for sexual assaults they suffered); Raisman v. U.S. Olympic Comm., No. 18-CV-02479-BLF, 2019 WL 95928, at *1 (N.D. Cal. Jan. 3, 2019) (former Olympic medalist is suing the USOPC for sexual abuse).

³ Juliet Macur, *Former Athletes File Sex Abuse Lawsuits Against U.S.A. Swimming*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/2020/06/10/sports/olympics/swimming-abuse-coaches-lawsuit.html> [<https://perma.cc/EMV6-P4MZ>]; *e.g.*, Alanna Vagianos, *Olympic Swimmer Says Former USA Swimming Coach Sexually Abused Her For Years*, HUFFINGTON POST (Feb. 8, 2018, 10:00 AM), https://www.huffpost.com/entry/olympic-swimmer-ariana-kukors-former-usa-swimming-coach-sexually-abused-her_n_5a7c4c6de4b044b38219f016 [<https://perma.cc/63U8-W7E2>] (“Dozens of elite swimming coaches have been accused of sexually abusing their athletes over the years.”).

⁴ Jeré Longman & Gillian R. Brassil, *Complaints of Emotional Abuse Roil Synchronized Swimming*, N.Y. TIMES (Mar. 9, 2021), <https://www.nytimes.com/2021/03/09/sports/olympics/synchronized-swimmers-abuse.html> [<https://perma.cc/YG8G-6857>].

⁵ Stevens v. USA Diving, Inc., No. 1:18-CV-3015-WTL-MJD, 2019 WL 2210808, at *1, 2 (S.D. Ind. May 21, 2019) (alleging USA Diving-certified coach sexually exploited, assaulted, and raped multiple female athletes).

⁶ Scott M. Reid, *USA Water Polo Aware in 2017 of Sexual Assault Allegations Against Bahram Hojreh and His Club*, ORANGE COUNTY REGISTER (Oct. 27, 2020, 8:46 AM), <https://www.ocregister.com/2020/10/27/special-report-usa-water-polo-aware-in-2017-of-sexual-assault-allegations-against-bahram-hojreh-and-his-club/> [<https://perma.cc/49JL-8LDE>].

⁷ *E.g.*, Jensen v. U.S. Tennis Ass’n, No. 20-2422-JWL, 2020 WL 6445117, at *1–3, *5 (D. Kan. Oct. 30, 2020) (U.S. Tennis Association-certified coach sexually harassed and assaulted teenage athlete he coached at a U.S. Tennis Association-sanctioned tournament); Complaint for Damages; (1) Sexual Assault & Battery.; (2) Negligence.; (3) Intentional Infliction of Emotional Distress at 12–13, W.S. v. U.S. Tennis Ass’n, No. 17-CV-311193, 2019 WL 7373420 (Cal. Super. Dec. 27, 2019) (Nos. RG19048474, 17CV311193) (U.S. Tennis Association-certified coach sexually molested boy he coached).

⁸ *E.g.*, Brown v. USA Taekwondo, 483 P.3d 159, 161 (Cal. 2021); Jacey Fortin, *Lawsuit Accuses Taekwondo Olympian and His Coach, Who Are Brothers, of Sexual Abuse*, N.Y. TIMES (May 6, 2018), <https://www.nytimes.com/2018/05/06/sports/lopez-taekwondo-sex-abuse.html>

volleyball,⁹ track and field,¹⁰ figure skating,¹¹ skiing,¹² speed skating,¹³ college football,¹⁴ professional and college soccer,¹⁵

[<https://perma.cc/WV9A-TV9J>].

⁹ Christine Hauser, *Athletes Who Say Volleyball Coach Abused Them Speak Out*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/sports/volleyball-coach-sexual-abuse-illinois.html?searchResultPosition=10> [<https://perma.cc/TN5N-6R6Q>].

¹⁰ *E.g.*, Aldrich v. Nat'l Collegiate Athletic Ass'n, 484 F. Supp. 3d 779, 784 (N.D. Cal. 2020); Mary Cain, *I Was the Fastest Girl in America Until I Joined Nike*, N.Y. TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/opinion/nike-running-mary-cain.html> [<https://perma.cc/6WX5-8MJB>]; Larry Lage, *Ex-Track Athletes Detail Alleged Sex Abuse by College Coach*, ASSOCIATED PRESS (Mar. 12, 2020), <https://apnews.com/article/78d76efacdd1350273a35ff71eacfaf2> [<https://perma.cc/LT9B-Z7TS>].

¹¹ Jeré Longman, *Figure Skating Coach Sentenced to 24 Years for Sexual Abuse*, N.Y. TIMES (Sept. 27, 2019), <https://www.nytimes.com/2019/09/27/sports/figure-skating-abuse-Thomas-Incantalupo.html?searchResultPosition=63> [<https://perma.cc/88E9-REYE>]; Jeré Longman, *Richard Callaghan, Figure Skating Coach, Is Barred for Sexual Misconduct*, N.Y. TIMES (Aug. 21, 2019), <https://www.nytimes.com/2019/08/21/sports/richard-callaghan-figure-skating-sex-abuse.html> [<https://perma.cc/T2AQ-DETT>]; Jeré Longman, *Skating Is Familiar With Scandal. Now It Is Confronting Something Grimmer.*, N.Y. TIMES (Jan. 21, 2019), <https://www.nytimes.com/2019/01/21/sports/coughlin-figure-skating.html> [<https://perma.cc/7AWN-DGXX>].

¹² *E.g.*, *Alpine Skiing: Sex-Abuse Victims of Former Coach Suing Alpine Canada*, REUTERS (Dec. 12, 2018, 6:54 PM), <https://www.reuters.com/article/idUSKBN1OB30N> [<https://perma.cc/F4DB-FJVE>].

¹³ Rick Maese, *U.S. Speedskating Short-Track Coach Fired Less Than a Year Before Beijing Games*, WASH. POST (Mar. 23, 2021, 5:05 PM), <https://www.washingtonpost.com/sports/2021/03/23/wilma-boomstra-fired-us-speeskatng/> [<https://perma.cc/85A8-GU2J>]; *e.g.*, Kim Tong-Hyung, *More Sexual Abuse Claims Rock South Korean Skating*, ASSOCIATED PRESS (Jan. 21, 2019), <https://apnews.com/article/2745f78a87a54cfb8bbc5dea31dedf18> [<https://perma.cc/QME2-GBQP>].

¹⁴ *E.g.*, Michael Errigo & Cindy Boren, *With Football on Pause, Colorado State Promises Investigation into Allegations of Racism, Verbal Abuse*, WASH. POST (Aug. 9, 2020), <https://www.washingtonpost.com/sports/2020/08/08/colorado-state-suspends-football-indefinitely-following-allegations-racism-verbal-abuse/> [<https://perma.cc/7KNA-Z2RQ>]; Billy Witz, *37 More Former Ohio State Athletes Sue the University in Sexual Abuse Case*, N.Y. TIMES (May 29, 2019), <https://www.nytimes.com/2019/05/29/sports/ohio-state-sex-abuse-richard-strauss.html?searchResultPosition=16> [<https://perma.cc/7BBM-WEFH>].

¹⁵ *E.g.*, Jake Curtis, *TV Station Reports Problems in Cal's Women's Soccer Program*, SPORTS ILLUSTRATED (Nov. 22, 2020), <https://www.si.com/college/cal/other-sports/cal-womens-soccer-allegations> [<https://perma.cc/6WBX-P5W4>]; Juliet Macur & Kevin Draper, *'Devastated, Disgusted, but I'm Not Shocked'*, N.Y. TIMES (Oct. 8, 2021) <https://www.nytimes.com/2021/10/08/sports/soccer/womens-soccers-problem-with-men.html> [<https://perma.cc/6NJM-6P3H>] (addressing allegations that "coaches sexually abused or harassed players as executives looked the

and college basketball,¹⁶ among others,¹⁷ have alleged coaches and staff injured them. A “tsunami” of abuse has recently been uncovered in club sports in America.¹⁸ This discovery has been difficult for abused athletes to process, as they learn about decades of abuse that could have been prevented in their sports while learning to cope with their own trauma.¹⁹

other way” in women’s professional soccer.)

¹⁶ E.g., Matt Bonesteel, *Gregg Marshall Resigns from Wichita State, Will Get \$7.75 Million Despite Abuse Allegations*, WASH. POST (Nov. 17, 2020, 8:07 PM), <https://www.washingtonpost.com/sports/2020/11/17/gregg-marshall-resigns/> [https://perma.cc/39XY-ENG2]; Jake Russell, *Texas Tech AD Vows to Improve Women’s Basketball Culture After Firing Abusive Coach*, WASH. POST (Aug. 8, 2020), <https://www.washingtonpost.com/sports/2020/08/08/texas-tech-improve-culture-firing-abusive-coach/> [https://perma.cc/AJ5S-PCSR].

¹⁷ E.g., Simon Denyer, *Olympic Chief Shake-up in Tokyo Casts Light on Wider Sexism in Japanese Sport*, WASH. POST (Feb. 12, 2021, 1:39 AM), https://www.washingtonpost.com/world/japan-mori-sport-abuse-sexism-olympics/2021/02/12/3db6dcca-6aee-11eb-a66e-e27046e9e898_story.html [https://perma.cc/K3XV-27UG] (coach abuse of athletes in Japan led athletes in table tennis, basketball, and volleyball to commit suicide); Yuri Kageyama, *Judo in Japan: Getting Unwanted Scrutiny for Abuse, Violence*, ASSOCIATED PRESS (Oct. 9, 2020, 1:28 AM), <https://www.usatoday.com/story/sports/olympics/2020/10/09/judo-in-japan-getting-unwanted-scrutiny-for-abuse-violence/114247672/> [https://perma.cc/B7H8-529J]; Niki Kitsantonis, *Olympic Athlete Speaks of Assault and Breaks a Bigger Silence in Greece*, N.Y. TIMES (Jan. 23, 2021), <https://www.nytimes.com/2021/01/23/world/europe/greece-metoo-sofia-bekatoroucyprus.html#:~:text=the%20main%20story-,Olympic%20Athlete%20Speaks%20of%20Assault%20and%20Breaks%20a%20Bigger%20Silence,issue%20has%20long%20been%20ignored> [https://perma.cc/ZMY2-4LDG] (a senior federation official within the Greek Olympic Committee was accused of sexually assaulting a Greek Olympic sailing champion, leading other athletes in Greece to echo widespread sexual harassment and assault within Greek sports); Rick Maese, *This Group is Supposed to Handle Olympic Sex Abuse Complaints. A report Shows Its Limits.*, WASH. POST (Sept. 19, 2019), https://www.washingtonpost.com/sports/olympics/sex-misconduct-report-on-water-ski-champ-shows-limits-of-safesports-reach/2019/09/19/17696572-d8bb-11e9-ac63-3016711543fe_story.html [https://perma.cc/H33N-SD9J] (detailing SafeSport suspensions and bans in water skiing and equestrian sport); Choe Sang-Hun, *South Korean Triathlete’s Suicide Exposes Team’s Culture of Abuse*, N.Y. TIMES (July 9, 2020), <https://www.nytimes.com/2020/07/09/world/asia/korea-triathlete-suicide.html> [https://perma.cc/2TQC-HJHQ] (team-sanctioned physical and psychological abuses and bullying led Korean triathlete to commit suicide).

¹⁸ Rachel Sturtz, *Unprotected*, OUTSIDE ONLINE, 2 (Nov.12,2014), <https://www.outsideonline.com/2162781/unprotected> [https://perma.cc/79KW-35CM].

¹⁹ See, e.g., KANSAS CITY STAR, *Simone Biles to USA Gymnastics: “You had one damn job and you failed to protect us”*, YOUTUBE (Aug. 17, 2019), <https://www.youtube.com/watch?v=kYjTQBvFrQ> [https://perma.cc/X8GK-3FPW] (Simone Biles tearfully told journalists how traumatizing it is to know that USA Gymnastics knew of abuse within the sport and did nothing to protect her and her peers).

As a result of these revelations, some coaches and staff have been banned or suspended²⁰ while others face criminal prosecution for abuse or failure to report what they knew to authorities.²¹ A number of agencies and governments are now investigating. The Senate Committee on Commerce, Science, and Transportation, the Senate Judiciary Committee, twenty-seven members of the House of Representatives, the House Committee on Oversight and Government Reform, the House Energy and Commerce Committee, the Department of Education, the U.S. Department of Justice, the Michigan House of Representatives, the Michigan Attorney General, and the Indiana Attorney General have all opened investigations.²² Some athletes are now pursuing civil claims against these institutions using state tort laws, human trafficking laws, corporate laws, and federal racketeering criminal laws designed to overthrow criminal syndicates.²³

²⁰ E.g., Danielle Allentuck, *Maggie Haney, Elite Gymnastics Coach, Is Suspended for 8 Years*, N.Y. TIMES (Apr. 29, 2020), <https://www.nytimes.com/2020/04/29/sports/gymnastics-coach-banned-maggie-haney.html> [<https://perma.cc/JM9V-J52X>]; Rachel Axon, *Comprehensive List of Banned Coaches Finally Published, but not by SafeSport*, USA TODAY (Feb. 22, 2019, 1:12 PM), <https://www.usatoday.com/story/sports/2019/02/22/olympic-sports-scandal-full-list-banned-coaches-finally-available/2945056002/> [<https://perma.cc/5R8X-98JY>].

²¹ E.g., Sandra E. Garcia, *Former Coach Is Convicted of Lying About Knowledge of Abuse by Larry Nassar*, N.Y. TIMES (Feb. 14, 2020), <https://www.nytimes.com/2020/02/14/us/kathy-klages-trial-larry-nassar.html> [<https://perma.cc/6YQB-B5QS>]; Allyson Waller & Juliet Macur, *Human Trafficking Charges and Coach's Death Reopen Gymnastics' Deep Wounds*, N.Y. TIMES (Feb. 25, 2021), <https://www.nytimes.com/2021/02/25/sports/john-geddert-gymnastics.html> [<https://perma.cc/F5SE-MKZB>].

²² JOAN MCPHEE & JAMES P. DOWDEN, ROPES & GRAY, REPORT OF THE INDEPENDENT INVESTIGATION: THE CONSTELLATION OF FACTORS UNDERLYING LARRY NASSAR'S ABUSE OF ATHLETES 31 (2018), <https://www.ropesgray.com/-/media/Files/USOC/ropes-gray-full-report.pdf> [<https://perma.cc/8HBR-7WXE>]; U.S. DEPT OF JUSTICE, OFFICE OF THE INSPECTOR GEN., INVESTIGATION AND REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S HANDLING OF ALLEGATIONS OF SEXUAL ABUSE BY FORMER USA GYMNASTICS PHYSICIAN LAWRENCE GERARD NASSAR 1 (2021), <https://oig.justice.gov/sites/default/files/reports/21-093.pdf> [<https://perma.cc/N7A5-QD9D>]; Sarah N. Lynch, *Simone Biles Condemns U.S. Olympic Committee, FBI for Sex-Abuse Crisis*, REUTERS (Sept. 16, 2021, 2:56 AM), <https://www.reuters.com/lifestyle/sports/gymnasts-simone-biles-aly-raisman-testify-us-senate-sex-abuse-probe-2021-09-15/> [<https://perma.cc/GG2J-XMBY>].

²³ E.g., *Brown v. USA Taekwondo*, 483 P.3d 159, 161 (Cal. 2021); *Jensen v. U.S. Tennis Ass'n*, No. 20-2422-JWL, 2020 WL 6445117, at *1 (D. Kan. Oct. 30, 2020) (raising tort and human trafficking claims); *Aldrich v. Nat'l Collegiate Athletic Ass'n*, 484 F. Supp. 3d 779, 800-01 (N.D. Cal. 2020) (raising false imprisonment claim); *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 716 (Cal. App. 2019), *modified on denial of reh'g* (Nov. 6, 2019), *aff'd*, No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021) (raising negligence, negligent hiring and retention, and negligent and intentional infliction of

The MeToo movement heightened awareness of sexual harassment and assault within sports.²⁴ Though awareness of athlete abuse has existed for decades,²⁵ it was not until journalists revealed Dr. Larry Nassar's decades of sexual assaults²⁶ that athletes in America and across the world²⁷ began to discuss rampant abuses in their own sport. These discussions have revealed a dark side of sports,²⁸ an "ecosystem that facilitated . . . criminal acts."²⁹

emotion distress claims); *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1121–23 (D. Colo. 2019) (raising human trafficking and RICO claims); *Stevens v. USA Diving, Inc.*, No. 1:18-CV-3015-WTL-MJD, 2019 WL 2210808, at *3–4 (S.D. Ind. May 21, 2019) (raising negligence claims); Complaint and Jury Demand at 113–42, *Jane L.B. Doe v. U.S. Olympic Comm.*, No. 1:19-cv-00902 (D. Colo. Mar. 26, 2019) (suing based on tort, corporate, and Title IX claims).

²⁴ Anne Marie Burke, *Raising the Bar: Increasing Protection for Athletes in the Olympic Movement from Sexual Harassment and Abuse*, 31 J. LEGAL ASPECTS SPORT 60, 92 (2021); Kitsantonis, *supra* note 17.

²⁵ *E.g.*, David W. Chen, *Coaching Legends Were Accused of Abuse. Will Someone Finally Pay?*, N.Y. TIMES (Dec. 17, 2019), <https://www.nytimes.com/2019/12/17/sports/coaches-sexual-abuse.html> [https://perma.cc/3GWL-XQ22] (after passing a New York law that allows adults to file lawsuits based upon abuse that happened when they were children, at least 60 lawsuits were filed accusing sports coaches of abuse); *Ex-Coach Receives 40-Year Sentence*, ASSOCIATED PRESS (Jan. 30, 2010), <https://www.espn.com/olympics/swimming/news/story?id=4872192> [https://perma.cc/8NHW-YQFN]; Scott M. Reid, *Don Peters, Coach of Groundbreaking 1984 Olympic Team, Faces Sexual Abuse Lawsuit*, ORANGE CNTY. REG. (Mar. 11, 2021, 3:10 PM), <https://www.oregister.com/2021/03/11/don-peters-coach-of-groundbreaking-1984-olympic-team-facing-sexual-abuse-lawsuit/> [https://perma.cc/Y64G-BWLY].

²⁶ *See Denhollander v. Michigan State Univ.*, No. 1:17-CV-00029, 2019 WL 5697817, at *1 (W.D. Mich. Feb. 1, 2019).

²⁷ *E.g.*, *British Athletes Commission Calls for Investigation of Abuse Claims*, REUTERS (July 7, 2020, 12:50 PM), <https://www.reuters.com/article/idUSKBN2482HZ> [https://perma.cc/AD8H-Y54L]; Angela Charlton, *Hundreds of French Sports Figures Accused of Sexual Violence*, ASSOCIATED PRESS (Apr. 3, 2021), <https://apnews.com/article/sports-violence-sexual-assault-violence-in-sports-9e7459499b952a01be97eedb2dff88ea> [https://perma.cc/QC3F-WY7T]; Denyer, *supra* note 17; *Gymnastics: Abuse Allegations Deeply Concerning, Says New Zealand Government*, REUTERS (Aug. 3, 2020, 5:19 AM), <https://www.reuters.com/article/idUSKBN24Z10M> [https://perma.cc/88BT-Y7QK]; Kitsantonis, *supra* note 17; Juliet Macur, *Gymnasts Worldwide Push Back on Their Sport's Culture of Abuse*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2020/08/03/sports/olympics/gymnastics-abuse-athlete-a.html> [https://perma.cc/72XE-VGYE]; Sang-Hun, *supra* note 17. *See also* Burke, *supra* note 24, at 78–80 (detailing the fall of French Federation for Ice Sports' Didier Gailhaguet and Afghanistan Football Federation's Keramuudin Karim).

²⁸ *E.g.*, Cain, *supra* note 10 (Cain's coaches emotionally and physically abused her, starved her, and prescribed banned substances, which led her to have a medical condition that caused her bones to break from lack of nutrition).

²⁹ MCPHEE & DOWDEN, *supra* note 22, at 2 (athletes had a larger voice in the 1980s, but that has diminished as the USOPC has reorganized itself into a hierarchical business).

Athletes discovered the institutions that oversee their sport – the National Collegiate Athletic Association (NCAA),³⁰ colleges and universities,³¹ the National Governing Bodies (NGBs) and the United States Olympic and Paralympic Committee (USOPC)³² – knew about abuse but ignored it to protect their public images and finances.³³ Though the USOPC and NGBs are mandated by Congress and federal law to “promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse” of amateur athletes,³⁴ these sports organizations failed to comply. Congress and courts have begun to closely examine whether these organizations broke criminal laws and whether civil liability exists for these failures.³⁵ A number of high-ranking officials within sports have been charged with, or convicted, of covering up athlete abuse or tampering with evidence to conceal it.³⁶

³⁰ *E.g.*, *Aldrich v. Nat'l Collegiate Athletic Ass'n*, 484 F. Supp. 3d 779, 784–90, 795 (N.D. Cal. 2020) (alleging colleges gaslighted athletes who were sexually and psychologically abused by their coach, John Rembao, after they alleged abuse and the NCAA had a duty to protect them from predatory coaches).

³¹ *See, e.g.*, sources cited *supra* notes 14–16.

³² The USOPC was formally known as the USOC. In 2019, it changed its name to include the Paralympics and its athletes. U.S. Olympic & Paralympic Committee, *U.S. Olympic Committee Changes Name to U.S. Olympic & Paralympic Committee*, TEAM USA (June 20, 2019, 12:47 PM) <https://www.teamusa.org/News/2019/June/20/US-Olympic-Committee-Changes-Name-To-US-Olympic-Paralympic-Committee> [<https://perma.cc/S5X2-6P3R>]. This Article will refer to the former USOC and current USOPC as “USOPC.”

³³ *E.g.*, *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1131 (D. Colo. 2019) (alleging U.S.A. Taekwondo refused to act on claims of coach abuse because it wanted to pursue money and medals instead of athlete protection); *Raisman v. U.S. Olympic Comm.*, No. 18-CV-02479-BLF, 2018 WL 6067254, at *1 (N.D. Cal. Nov. 20, 2018) (Olympic Committee should have known about sexual abuse alleged by multiple athletes, but instead chose to pursue money and medals); *Pilar Melendez, Top U.S. Swim Coaches Abused Teens, Impregnated Them, Covered It Up for Decades: Lawsuit*, THE DAILY BEAST (June 10, 2020, 3:25 PM), <https://www.thedailybeast.com/six-women-file-lawsuits-accusing-usa-swimming-officials-of-decades-of-sexual-abuse> [<https://perma.cc/B2XX-MQCW>] (lawsuit against U.S.A. Swimming claims it placed its reputation and profits above athlete safety).

³⁴ 36 U.S.C. § 220503(15) (2020).

³⁵ Juliet Macur, *Congress Holds Hearing Into Sexual Abuse in Olympic Sports*, N.Y. TIMES (May 23, 2018), <https://www.nytimes.com/2018/05/23/sports/larry-nassar-house-hearing.html> [<https://perma.cc/2F6H-LVKL>]; *see, e.g.*, Brian Melley, *California Court: Sports Organizations Must Protect Athletes*, ABC NEWS (Apr. 1, 2021, 8:06 PM), <https://abcnews.go.com/Sports/wireStory/california-court-usa-taekwondo-protect-athletes-76815126> [<https://perma.cc/7CFQ-NQ79>].

³⁶ *E.g.*, *McPHEE & DOWDEN*, *supra* note 22, at 105–09 (detailing the criminal actions of former CEO of USA Gymnastics, Steve Penny, as he tried to cover up Nassar’s abuse by tampering with evidence); *Resignations, Firings, Charges Filed: How the Larry Nassar Abuse Scandal has Shone a Spotlight*

Athletes have raised human trafficking claims, alleging sports organizations have entered into business ventures with coaches and staff who trafficked athletes for profit.³⁷ Some lawsuits have alleged these organizations acted as criminal enterprises, benefitting from the organized crime that they ignored, sanctioned, and covered up.³⁸ After decades of turning the other way, perhaps these criminal and civil cases may force governing sports organizations to adopt safeguards for athletes.

This Article examines the abusive sports environment in America and the novel ways attorneys have used criminal law and other legal claims to hold individuals and athletic institutions accountable for it. Part I of the Article examines the hierarchies of sports organizations, their monopoly over sports in America, and the enormous amounts of money that infiltrate sports. Part II of this Article discusses the prevalence of abuse in sports, the various types of abuse that are common in the coach-athlete power dynamic, past coverups of abuse, and the creation of the SafeSport Center. Part III of the Article identifies novel legal theories that have recently been used to hold the USOPC, NGBs, and colleges and universities liable for coach-athlete abuse. Part IV considers how these organizations could reprioritize safety in a way that enhances athlete performance.

I. BACKGROUND

In order to understand why lawyers are using novel legal theories to hold sports organizations liable for athlete abuses, it is important to examine the background of these organizations' hierarchy, finances, and monopoly. This analysis helps explain why abuse is so prevalent in sports and why lawsuits are the catalysts forcing change.

on Others, CHICAGO TRIBUNE (Jan. 16, 2019, 7:20 PM), <https://www.chicagotribune.com/sports/college/ct-spt-larry-nassar-scandal-others-affected-20190116-story.html> [https://perma.cc/R9Y9R-H6JM] (detailing charges, firings, and resignations among coaches and high-ranking administrators within USA Gymnastics, the USOPC, and connected college officials); see also Charlton, *supra* note 27 (400 French coaches and people are suspected of abuse or covering it up; 60 have faced criminal charges).

³⁷ *E.g.*, Jensen v. U.S. Tennis Ass'n, No. 20-2422-JWL, 2020 WL 6445117, at *5–6 (D. Kan. Oct. 30, 2020) (athletes raised a *tort* joint venture claim in another athlete abuse lawsuit, but it was not successful); Brown v. USA Taekwondo, 253 Cal. Rptr. 3d 708, 716 (Cal. App. 2019) *modified on denial of reh'g* (Nov. 6, 2019), *aff'd* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021); Gilbert, 423 F. Supp. 3d at 1135–44.

³⁸ *E.g.*, Gilbert, 423 F. Supp. 3d at 1144–45.

A. *The Organization of American Sports*

While independent gyms and sports programs within America exist, sports organizations generally fit a hierarchical model that begins with grassroots-level clubs and gyms, followed by regional organizations, and national organizations.³⁹ This structure – with athletes at the club and gym level at the bottom and national organizations at the top – has allowed abuse to occur in sports the same way it has in other hierarchical organizations with no centralized oversight, like religious organizations and the Boy Scouts.⁴⁰ In order to demonstrate the problems with this structure, this Article will use the Olympic movement as an illustration.

The American Olympic structure came into being in the last century. In the 1970s, President Gerald Ford sought to unify and encourage the American amateur sports system to make athletes more competitive at the Olympics.⁴¹ Whereas communist countries had well-oiled machines in place to train athletes, which led to more medals, a fragmented American system led to fewer medals.⁴² President Ford's appointed investigatory commission would eventually create the Ted Stevens Olympic and Amateur Sports Act,⁴³ which created what is now known as the United States Olympic and Paralympic Committee (USOPC).⁴⁴

The USOPC is given exclusive, federal, statutory power over Olympic participation.⁴⁵ However, it is not a state actor, but a private, federally chartered, corporate entity.⁴⁶ It has the authority to designate a National Governing Body

³⁹ See, e.g., U.S. CENTER FOR SAFESPORT, SAFESPORT CODE FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT 1 (2021), file:///C:/Users/ajp12/Downloads/1555339511859.2019-safesport-code---04.15.19---hyperlinked.pdf [hereinafter "Code"] (identifying the USOPC, NGBs and Local Affiliated Organizations (LAO) in descending order of authority).

⁴⁰ See *Jensen*, 2020 WL 6445117, at *1.

⁴¹ Mark Conrad, *The Covid-19 Pandemic, the Empowering Olympic, Paralympic and Amateur Athletes Act, and the Dawn of a New Age of U.S. Olympic Reform*, 31 J. LEGAL ASPECTS SPORT 1, 10 (2021); Anne Hart, *Torching Athlete Rights: Examining the Fiduciary Duties of the United States Olympic and Paralympic Committee Board of Directors*, 61 B.C. L. REV. 2695, 2696 (2020).

⁴² *S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 544 (1987) (describing pre-Act sports in the U.S. as disorganized and full of factional disputes); Conrad, *supra* note 41, at 9–10.

⁴³ Conrad, *supra* note 41, at 10. This Act was subsequently renamed The Olympic and Amateur Sports Act, 3S. Rep. No. 95-770, at 4. It contains no language about abuse or protecting athletes from abuse. This was not an issue or a concern when the Act was created. See 36 U.S.C. § 220501 (1998) (amended 2020).

⁴⁴ Conrad, *supra* note 41, at 10–11.

⁴⁵ See 36 U.S.C. § 220505(c) (2020).

⁴⁶ *DeFrantz v. U.S. Olympic Comm.*, 492 F. Supp. 1181, 1187, 1192–93 (D. D.C. 1980).

(NGB) over each individual Olympic sport.⁴⁷ There are roughly fifty current NGBs regulating American summer and winter sports.⁴⁸ Examples of NGBs include USA Track and Field, U.S. Figure Skating, USA Diving, and U.S. Ski & Snowboard.⁴⁹ These NGBs receive varying amounts of funding from the USOPC,⁵⁰ which allocates funds in a results-based way to NGBs with better odds of medaling.⁵¹

The NGB not only selects and trains Olympic athletes, but oversees a grassroots talent pool that begins with thousands of sports clubs that train amateur and elite athletes across the country.⁵² Each NGB sets the criteria for competition at the regional and national levels.⁵³ Each also educates clubs, coaches, doctors, trainers, and athletes.⁵⁴ NGBs generate their funds through membership fees that clubs and athletes pay and through coach and club certification agreements.⁵⁵ In exchange for these fees, clubs and coaches receive the benefit of USOPC and NGB affiliation, which attracts more members.⁵⁶ If an athlete or club wants to participate in a

⁴⁷ 36 U.S.C. § 220505(c).

⁴⁸ *United States Olympic & Paralympic Committee*, WIKIPEDIA https://en.wikipedia.org/wiki/United_States_Olympic_%26_Paralympic_Committee [<https://perma.cc/HY23-7S38>] (the list includes 49 members, but the text of the article identifies sport climbing as a new field for the upcoming, yet delayed 2020 Olympics whose NGB, U.S.A. Climbing, is not listed); see USA CLIMBING, <http://www.usaclimbing.org/> [<https://perma.cc/zZRE-W98G>].

⁴⁹ Sources cited *supra* note 48.

⁵⁰ 36 U.S.C. § 220505(c); Hart, *supra* note 41, at 2731–32.

⁵¹ Hart, *supra* note 41, at 2731–32; *Athlete Services, Financial Resources*, TEAM USA <https://www.teamusa.org/Team-USA-Athlete-Services/Financial-Resources> [<https://perma.cc/K422-PJ2Z>].

⁵² *E.g.*, Will Hobson, *USA Gymnastics CEO Steve Penny Resigns in Wake of Sex Abuse Scandal*, WASH. POST (Mar. 16, 2017), https://www.washingtonpost.com/sports/olympics/usa-gymnastics-ceo-steve-penny-resigns-in-wake-of-sex-abuse-scandal/2017/03/16/fe4f27de-0a77-11e7-93dc-o0f9bdd74ed1_story.html [<https://perma.cc/7LFG-ZJ42>].

⁵³ 36 U.S.C. § 220523(a)(2)–(4), (6)–(7) (2020).

⁵⁴ See Letter from Cong. Comm. on Oversight and Gov't Reform to Kerry Perry, President and CEO, USA Gymnastics, (Feb. 8, 2018), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-02-08-OGR-to-USA-Gymnastics-Gymnastics-Team-due-2-22.pdf>.

⁵⁵ See, *e.g.*, *Stevens v. USA Diving, Inc.*, No. 1:18-CV-3015-WTL-MJD, 2019 WL 2210808, at *1 (S.D. Ind. May 21, 2019) (athletes must pay membership fees to the NGB and coaches and clubs must pay fees too).

⁵⁶ See, *e.g.*, *id.* at *2 (clubs use NGB banners to entice athletes to join; athletes expect these clubs are safe to join); Complaint and Jury Demand at 5, *Maurizi v. Callaghan*, 1:20-cv-00922-JLS-LGF (July 20, 2020) (only reason coach was chosen by parent was because of his U.S. Figure Skating affiliation).

USOPC-sponsored event, it must be a member of the NGB, which comes at a price.⁵⁷ In addition to membership and club fees, NGBs also receive funds through corporate sponsorships.⁵⁸

Think of the Olympic structure as hierarchical, with a pyramidal shape. The International Olympic Committee (IOC) sits at the top of the pyramid, overseeing 206 national Olympic committees.⁵⁹ Next to the top are the national committees like America's USOPC, then NGBs, then individual sports clubs, then coaches, trainers, and staff, then amateur athletes.⁶⁰ This tiered approach is problematic when it comes to determining who is responsible for athlete safety.

The Olympic structure has allowed the IOC, USOPC, and even NGBs to deny responsibility for abuse.⁶¹ All tiers have deflected the blame further up or down the pyramid and have ignored the problem of abuse.⁶² NGBs looked to the USOPC to develop policies to protect athletes, but the USOPC did nothing.⁶³ Meanwhile, the USOPC tried to lay the burden for creating policies and policing abuse on the NGBs, which in turn deferred to local clubs.⁶⁴ When an athlete alleged abuse at a gym or club, the higher tiers' defense was that the clubs are self-regulated, they hire their

⁵⁷ *E.g.*, *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 717 (Cal. App. 2019) *modified on denial of reh'g* (Nov. 6, 2019), *aff'd* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021).

⁵⁸ Bill Hutchison, *USA Gymnastics CEO Resigns Amid Fallout from Larry Nassar Abuse Scandal*, ABC NEWS (Sept. 4, 2018, 3:03 PM), <https://abcnews.go.com/US/usa-gymnastics-ceo-resigns-amid-fallout-larry-nassar/story?id=57589866> [<https://perma.cc/9W9A-PUUH>] (former CEO of USA Gymnastics, Kerry Perry, drew the ire of athletes following the revelations of mass sexual assaults by Dr. Larry Nassar when she prioritized securing corporate sponsorships with Nike and other high-profile companies over restructuring the organization).

⁵⁹ *National Olympic Committees*, INTERNATIONAL OLYMPIC COMMITTEE, <https://www.olympic.org/national-olympic-committees> [<https://perma.cc/NXD7-R2QN>].

⁶⁰ Burke, *supra* note 24, at 61–62.

⁶¹ *Id.* at 82.

⁶² *E.g.*, Complaint and Jury Demand, *supra* note 23, at 18 (the USOPC did not create an auditing process to track sexual abuse allegations nor did it require NGBs to track this information). The IOC continues to ignore the issues of sexual harassment and abuse within sport. Burke, *supra* note 24, at 83. The NCAA denies it has any duty to protect athletes, instead relegating that duty to the colleges and universities below. Ted Tatos, *Abuse and Mistreatment of Athletes at U.S. Universities: Legal Implications for Institutional Duty-to-Protect*, 21 TEX. REV. ENT. & SPORTS L. 1, 41 (2020).

⁶³ *E.g.*, Nancy Armour & Rachel Axon, *USOC Did Not Heed Sexual Abuse Warnings in 2004, 2005*, USA TODAY (Mar. 31, 2017, 6:03 AM), <https://www.usatoday.com/story/sports/olympics/2017/03/31/usoc-sexual-abuse-usa-swimming-senate/99826600/> [<https://perma.cc/AXM7-KLTF>].

⁶⁴ U.S. OLYMPIC & PARALYMPIC COMM., BYLAWS OF THE U.S. OLYMPIC & PARALYMPIC COMM., § 8.4.1(c) (Mar. 11, 2021) [hereinafter *Bylaws*] (making NGBs alone responsible for athlete safety); Sturtz, *supra* note 18, at 2.

own coaches and personnel, and set their own rules, so the USOPC and NGB were not liable.⁶⁵ When each tier asserts that protection from abuse is another tier's responsibility, no one takes responsibility and coaches are more likely to abuse their athletes.⁶⁶

There has also been resistance among the various levels of sport when it comes to adopting rules designed to protect athletes.⁶⁷ In 2010, for example, the USOPC commissioned a taskforce that suggested all NGBs create policies and procedures to prevent sexual abuse.⁶⁸ Many did not.⁶⁹ This allowed NGBs the power to “protect the sport’s image and the winning coach, and to avoid liability and adverse publicity.”⁷⁰ When an organization is structured this way, harassment and abuse occur more frequently.⁷¹ While the pyramid structure presents accountability problems, so does the monopoly these structures have over sports in America.

B. The Monopoly & Money in American Sports

Without organizations to compete against the USOPC or the NCAA, sports are monopolized in America. At the time the organizations in the previous section were created, they had fewer funds; athletes took center stage, not money and corporate sponsorship.⁷² Now everything is about the brand of sport: winning, corporate sponsors and partners, selling out sport venues, social media followers, ever increasing members, and revenue.⁷³ This focus on sponsorship has created perverse incentives when it comes to transparency about the prevalence of abuse in sports.

The USOPC is “a federally chartered nonprofit corporation holding an intended benevolent monopoly over organized Olympic sports in the United States.”⁷⁴ The

⁶⁵ See Sturtz, *supra* note 18, at 5.

⁶⁶ See Burke, *supra* note 24, at 82.

⁶⁷ Alexandria Murphy, *Better Late Than Never: Why the USOC Took So Long to Fix a Failing System for Protecting Olympic Athletes from Abuse*, 26 JEFFREY S. MOORAD SPORTS L.J. 157, 180 (2019) (for example, USA Softball argued it should control when or if background checks on coaches after the USOPC attempted to mandate them on all sports).

⁶⁸ *Jensen v. U.S. Tennis Ass’n*, No. 20-2422-JWL, 2020 WL 6445117, at *3 (D. Kan. Oct. 30, 2020).

⁶⁹ See, e.g., *id.* (the U.S. Tennis Association resisted coming up with a plan until 2014, four years after the taskforce made its recommendations).

⁷⁰ Maureen Weston, *Tackling Abuse in Sport Through Dispute System Design*, 13 U. ST. THOMAS L.J. 434, 445 (2017).

⁷¹ See *id.* at 444–45; Burke, *supra* note 24, at 82.

⁷² MCPHEE & DOWDEN, *supra* note 22, at 145.

⁷³ See *id.* at 168.

⁷⁴ Hart, *supra* note 41, at 2734.

USOPC has the exclusive authority to appoint athletes to a team and control the team.⁷⁵ An athlete – even the best athlete in the country – cannot decide to join an Olympic team on his or her own merit.⁷⁶ Athletes are at the mercy of the USOPC, the NGB, or the person – maybe the abusive coach – who chooses the team.⁷⁷

The number of athletes and the funds these athletes generate for NGBs are astounding. Consider just a few of the fifty sports represented by NGBs in the United States. In 2018, U.S. Ski & Snowboard had over 34,500 members and over \$76 million in assets.⁷⁸ USA Swimming reported over \$12 million in receipts on its 990-tax form in 2019 alone.⁷⁹ These monies came from local clubs (over 3100) and swimmers (over 400,000) who participate in USA Swimming-sponsored events.⁸⁰ In 2019, it was estimated there were millions of NGB members – U.S. Tennis has 700,000 alone – along with tens of thousands of NGB staff and volunteers.⁸¹

America's unique sports-obsessed culture costs and generates money; much of that money flows to the top of the Olympic sports pyramid.⁸² It is the forty-four

⁷⁵ 36 U.S.C. § 220503(3)(A) (2020); 36 U.S.C. § 220505(c)(3) (2020); *see also* DeFrantz v. U.S. Olympic Comm., 492 F. Supp. 1181, 1183 (D.D.C. 1980) (the USOPC is given the sole discretion to place individuals on the Olympic team).

⁷⁶ Sources cited *supra* note 75.

⁷⁷ Hart, *supra* note 41, at 2723; Rachel Sturtz & Alex Heard, *Is the USOC Running a Sex Trafficking Ring?*, OUTSIDE (May 4, 2018) <https://www.outsideonline.com/2303571/us-olympic-committee-trafficking-ring> [<https://perma.cc/R4UF-3KRR>] (Taekwondo Olympic coach who selected the team was sexually assaulting, along with his brother, multiple athletes).

⁷⁸ U.S. SKI & SNOWBOARD ASS'N, 2018 ANN. REP. 28 (2018), https://usskiandsnowboard.org/sites/default/files/files-resources/files/2019/USS_18AnnualReport_FA.pdf; United States Ski & Snowboard and Affiliated Entities, *Combined/Consolidated Financial Statements April 30, 2019 and 2018*, 5 (July 30, 2019), <https://usskiandsnowboard.org/sites/default/files/files-resources/files/2019/1.%20USSA%20Consolidated%20FS%204-30-19.pdf>.

⁷⁹ USA SWIMMING, 990 TAX FORM (2020), <https://www.usaswimming.org/docs/default-source/foundationdocuments/financials/usa-swimming-foundation-2019-form-990-public-disclosure.pdf>.

⁸⁰ *Id.*; *Overview, About USA Swimming*, USA SWIMMING, <https://www.usaswimming.org/about-usas/organization/overview#:~:text=We%20have%20over%203%2C100%20clubs%2C%20servicing%20400%2C000%2B%20members> [<https://perma.cc/V4BV-VXAB>].

⁸¹ *See* Phila. Indem. Ins. Co. v. U.S. Olympic Comm., 418 F. Supp. 3d 673, 677 (D. Colo. 2019); Complaint for Damages, *supra* note 7, at 1.

⁸² *See, e.g.*, Sturtz, *supra* note 18, at 2; Will Hobson & Steven Rich, *Every Six Weeks for More Than 36 Years: When Will Sex Abuse in Olympic Sports End?*, WASH. POST (Nov. 17, 2017), https://www.washingtonpost.com/sports/every-six-weeks-for-more-than-36-years-when-will-sex-abuse-in-olympic-sports-end/2017/11/17/286ae804-c88d-11e7-8321-481fd63f174d_story.html [<https://perma.cc/SB2D-BHVU>]; Rick Maese, *Olympics Reform Bill Passes House, Promising Sweeping*

million athletes and their families at the bottom of that pyramid that fund mid-level NGBs and the top-level USOPC.⁸³ The USOPC's average annual revenue is \$230 million.⁸⁴ Some of that money supports the executive salaries and overhead. In 2018, the former USOPC CEO made almost \$3 million, the chief marketing officer made over \$850,000, and every member of the USOPC staff made between \$300,000 and \$500,000.⁸⁵ Some CEOs of NGBs make between six and seven figure salaries.⁸⁶ Very little of the money generated by NGBs makes it into the pockets of athletes.⁸⁷

Another way sports organizations become flooded in cash is through corporate sponsorships. Some argue the Olympic movement in this country has significant financial pressures compared to other countries, because the federal government does not fund it.⁸⁸ However, there is an abundance of non-governmental funds available, including athlete and club fees, as well as corporate sponsorships.⁸⁹ The USOPC CEO and Chairman of the Board of Directors have made it their mission in recent years to develop sponsor relationships to sharply increase revenue.⁹⁰

Official sponsorships for the IOC exceed \$1 billion.⁹¹ Corporate sponsorships

Change After Abuse Scandals Rocked Sports, WASH. POST (Oct. 1, 2020, 2:35 PM) <https://www.washingtonpost.com/sports/2020/10/01/olympics-reform-bill-house-abuse/> [https://perma.cc/FF9C-NN9G] (quoting a lawyer who said, "All the new money flowing into the USOPC went to the staff, while most athletes currently live in abject poverty.").

⁸³ Hobson & Rich, *supra* note 82.

⁸⁴ *Id.*

⁸⁵ Conrad, *supra* note 41, at 41–42.

⁸⁶ *See id.* at 42.

⁸⁷ Will Hobson, *Congresswoman Says USOC 'Has Failed,' Proposes Bill that Could Initiate an Overhaul*, WASH. POST (June 17, 2019), https://www.washingtonpost.com/sports/olympics/congresswoman-says-usoc-has-failed-proposes-bill-that-could-initiate-an-overhaul/2019/06/17/42742512-912c-11e9-b570-6416efdc0803_story.html [https://perma.cc/2RHP-EGWH].

⁸⁸ Alexandra Starr, *These Women Are Fighting to Expose Olympic Taekwondo Legends as Predators*, THE DAILY BEAST (Feb. 16, 2020, 11:49 PM), <https://www.thedailybeast.com/the-women-fighting-to-expose-olympic-taekwondo-legends-steven-and-jean-lopez-as-predators> [https://perma.cc/WFV4-RYP5]; *see also* Sturtz, *supra* note 18, at 3 (one UK researcher who heads a British government-funded organization that protects children in sports complains that America is the worst at protecting children precisely because the government is not involved in regulating sport).

⁸⁹ Sources cited *supra* notes 78–81.

⁹⁰ *See* MCPHEE & DOWDEN, *supra* note 22, at 143.

⁹¹ *Corporate Sponsors of Olympians Enter the #MeToo Fray*, THE CONVERSATION (Jan. 29, 2018, 6:27 AM), <https://theconversation.com/corporate-sponsors-of-olympians-enter-the-metoo-fray-90675> [https://perma.cc/AP46-L6UN].

make up 35% of the USOPC's annual budget.⁹² Team USA collectively has eighteen corporate sponsors that generate \$100 million over a four-year Olympic term.⁹³ For example, Nike agreed to sponsor the U.S.A. Track & Field Olympic Team for twenty-three years beginning in 2014 and will sponsor the U.S. Olympics through 2028.⁹⁴ Because NGBs receive fewer than 10% of their annual revenues from the USOPC, they depend on sponsorships, in addition to membership and event fees, to grow.⁹⁵ Sponsoring companies like to link their name and brand to successful athletes, a healthy lifestyle, and the positive experience of sports and the Olympics.⁹⁶ But corporate sponsors are fair-weather friends.

Once a sport's image becomes tarnished, companies terminate endorsements for fear of losing revenue.⁹⁷ Sponsors have become so valuable to NGBs and the USOPC that these organizations have avoided disclosures that might damage their feel-good, do-good reputations at all costs.⁹⁸ Abuse revelations have devastating ripple effects. For example, just before Nassar was sentenced for his crimes, AT&T and Proctor & Gamble cut ties with USA Gymnastics.⁹⁹

While the USOPC and NGBs operate as non-profit entities, the Olympics and the athletes are "involved in a commercial endeavor infused with money, contracts, and terms."¹⁰⁰ In fact, athletes must agree to commercial terms as a precondition to participation.¹⁰¹ One elite athlete said she felt she was "treated like a business

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Chris Chavez, *Inside the Toxic Culture of the Nike Oregon Project 'Cult'*, SPORTS ILLUSTRATED (Nov. 13, 2019), <https://www.si.com/track-and-field/2019/11/13/mary-cain-nike-oregon-project-toxic-culture-alberto-salazar-abuse-investigation> [<https://perma.cc/4ZXJ-Q7Q6>]; Chris Isidore, *Simone Biles Drops Nike and Signs with Athleta*, CNN (Apr. 23, 2021, 1:22 PM) <https://www.cnn.com/2021/04/23/business/simone-biles-nike-gap-athleta/index.html> [<https://perma.cc/RF8T-EJKA>] (Nike's sponsorship deals in 2020 amounted to \$9.3 billion).

⁹⁵ Conrad, *supra* note 41, at 22.

⁹⁶ *Corporate Sponsors*, *supra* note 90.

⁹⁷ *Id.*

⁹⁸ *E.g.*, *Sponsors Flee Scandal-Plagued USA Gymnastics; Future Cloudy*, CHICAGO TRIBUNE (Jan. 25, 2018, 3:35 PM), <https://www.chicagotribune.com/sports/olympics/ct-larry-nassar-sponsors-flee-usa-gymnastics-20180125-story.html> [<https://perma.cc/VP4H-GMHT>]; *see also Corporate Sponsors*, *supra* note 90 (analyzing the dangers of corporate sponsorship ties to Olympic scandals).

⁹⁹ Sources cited *supra* note 97.

¹⁰⁰ Class Action Complaint and Jury Demand at 15, *Pryor v. USA Diving, Inc.*, No. 1:18-cv-02113-WTL-MJD (S.D. Ind. July 18, 2018).

¹⁰¹ *Id.* at 16.

plan.”¹⁰² College athletes have said universities exploit them for the benefit of the university, but have neglected to look after their safety and welfare.¹⁰³

When a scandal involving sexual harassment or abuse arises, there is a tendency for everyone, including the victim, to stay quiet because it could result in lost sponsorships.¹⁰⁴ If athletes raise concerns, “safeguarding the institutional brand all-to-often receives priority.”¹⁰⁵ Everyone within the sport hierarchy is concerned about sponsorships and revenue¹⁰⁶ more than preventing abuses within sport. It is no coincidence that the last USOPC CEO, Scott Blackmun, was a former partner at Bryan Cave, a law firm notorious for fighting and silencing athletes whose testimony of abuse could damage a sports organization.¹⁰⁷ Critics say these organizations have a vested interest in hiding abuse, so they also have an inherent conflict of interest in investigating or reporting it.¹⁰⁸

II. THE PREVALENCE OF ABUSE IN SPORTS

Sports are supposed to be challenging, competitive, and sometimes painful. Even so, most athletes do not envision being kicked, punched, sexually assaulted, molested, and harassed by coaches, trainers, and medical personnel.¹⁰⁹ Nor do they imagine being so emotionally bullied by coaches that they drop out of their sport

¹⁰² Mitch Weiss & Holbrook Mohr, *US Gymnasts Tell AP Sport Rife with Verbal, Emotional Abuse*, ASSOCIATED PRESS (Feb. 24, 2018), <https://apnews.com/article/oc67e962d7524c87a865d3c468bdd521#:~:text=Thirteen%20former%20U.S.%20gymnasts%20and,broken%20bones%20and%20othe r%20injuries> [<https://perma.cc/BW5R-YGWA>].

¹⁰³ Tatos, *supra* note 62, at 34.

¹⁰⁴ Maese, *This Group*, *supra* note 17.

¹⁰⁵ Tatos, *supra* note 62, at 52.

¹⁰⁶ College sports are arguably worse. See Sally Jenkins, *College Sports Embraced Reckless Greed. With the Coronavirus Crisis, the Bill Has Come*, WASH. POST (Aug. 7, 2020) <https://www.washingtonpost.com/sports/2020/08/07/college-sports-embraced-reckless-greed-with-coronavirus-crisis-bill-has-come-due/> [<https://perma.cc/M4SK-DNA3>] (the NCAA is “a multibillion-dollar sports entertainment industry embedded in our higher education system” that acts like a corporation on a spending spree without shareholder oversight).

¹⁰⁷ Jeré Longman, *U.S. Olympics Chief Received \$2.4 Million Severance Amid Scandal*, N.Y. TIMES (July 3, 2019), <https://www.nytimes.com/2019/07/03/sports/olympics-scott-blackmun.html> [<https://perma.cc/6X27-C7M3>]; Sturtz, *supra* note 18, at 5–9.

¹⁰⁸ Sturtz, *supra* note 18, at 3.

¹⁰⁹ Scott M. Reid, *Gymnastics Official Calls for New Rules on Banned Coaches*, ORANGE CNTY. REG. (Oct. 5, 2011, 12:06 PM), <https://www.oregister.com/2011/10/05/gymnastics-official-calls-for-new-rules-on-banned-coaches/> [<https://perma.cc/V5ZS-MVHL>].

altogether or attempt suicide.¹¹⁰ Unfortunately, abuses in sport are more common than one may think. Consider what happened in the late 1990s that established the prevalence of sexual abuse in athletics and organized sports' reluctance to eradicate it. In 1999, the USOPC mandated that all NGBs buy insurance to cover coach-athlete sexual abuse lawsuits, then threatened to restrict access to Olympic training facilities until they complied.¹¹¹ For decades, organizations have refused to protect athletes from coach abuse.

A. Abuse Types

Abuse is common and varied within sport. A group of international sports and medical experts found that the primary categories of abuse athletes endure are psychological, sexual, and physical.¹¹² Other common forms include harassment, neglect – particularly deliberate emotional, physical, and medical disregard – hazing, stalking, bullying, being forced to perform while seriously injured, and overtraining to the point of creating long-term medical complications.¹¹³

Experts have found elite athletes are the ones most likely to be abused.¹¹⁴ The reasons are not surprising: these athletes train away from family for long periods of time, making them more vulnerable; perpetrators have more opportunities to abuse in environments with less supervision; and elite athletes are so determined to succeed that they may rationalize abusive tactics.¹¹⁵ Age is also a factor. Young elite athletes face unique pressures to make the team, spend more time with coaches and staff, and most work in a male-dominated environment.¹¹⁶ One prominent athlete's

¹¹⁰ *E.g.*, Maese, U.S. *Speedskating Short-Track*, *supra* note 13 (Olympic-trained speed skaters left the sport after their Olympic coach bullied them); *e.g.*, Choe Sang-Hun, *supra* note 17 (coach and teammate abuses and bullying led Olympic team Korean triathlete to commit suicide).

¹¹¹ *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 717 (Cal. App. 2019) *modified on denial of reh'g* (Nov. 6, 2019), *aff'd* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021).

¹¹² Margo Mountjoy et al., *International Olympic Committee Consensus Statement: Harassment and Abuse (Non-Accidental Violence) in Sport*, 50 BRITISH J. SPORTS MED. 1019, 1021 (2016), <https://bjsm.bmj.com/content/50/17/1019> [<https://perma.cc/8HS6-JGRA>].

¹¹³ *Id.* at 1019; *see also* Liz Clarke, *Some See Ban of Laurie Hernandez's Coach as Progress for USA Gymnastics but Question the Timetable*, WASH. POST (May 2, 2020) <https://www.washingtonpost.com/sports/2020/05/02/some-see-ban-laurie-hernandezs-coach-progress-usa-gymnastics-question-timetable/> [<https://perma.cc/7HW7-WF7V>] (one elite gymnast developed a permanent muscular disorder related to her coach's consistent overtraining); Code, *supra* note 39, at 7.

¹¹⁴ Mountjoy et al., *supra* note 111, at 1020; MCPHEE & DOWDEN, *supra* note 22, at 3.

¹¹⁵ *See* Starr, *supra* note 88.

¹¹⁶ Burke, *supra* note 24, at 71–74; Sturtz, *supra* note 18, at 2.

mom told the *Washington Post*, “[m]ost Olympic sports are set up in a way that is not great for protecting children. You have people at the higher levels who really, really want to win. And then you have lots of young women spending lots of time with older men.”¹¹⁷ All of these factors contribute to a culture that creates power imbalances¹¹⁸ favoring older men, secrecy, and deference, which can create the perfect storm for abuse.¹¹⁹

A *Washington Post* investigation found that between 1982 and 2017, 290 USOPC-affiliated coaches were publicly accused of sexual abuse by athletes.¹²⁰ In its first year of operation, the SafeSport Center, which will be discussed later in this Article, received complaints from athletes covering thirty-five sports within the fifty NGBs.¹²¹ The *Washington Post* investigation exposed sexual abuse in fifteen different sports, 175 officials who had been convicted of sexual crimes, and multiple officials who received lifetime bans from their sport.¹²² The USOPC and NGB officials long resisted these kinds of compilations.¹²³ The leaders in these organizations also resisted other measures that could have easily reduced the incidence of sexual abuse.

Consider sexual relationships between coaches and athletes in swimming, though it has happened in other sports too.¹²⁴ For decades, multiple USA Swimming coaches – adult men – had sex with multiple underage swimmers, raped them, impregnated them, paid for their abortions, dated, proposed to, and even married them without any repercussions.¹²⁵ In 2013, one USA Swimming official was given

¹¹⁷ Hobson & Rich, *supra* note 82; Sturtz, *supra* note 18, at 3 (sexual abuse in athletics is “committed by mostly white male coaches.”).

¹¹⁸ Code, *supra* note 39, at 4, 6–7 (SafeSport recognizes that power imbalances have led to unauthorized consent in romantic relationships in sport).

¹¹⁹ Mountjoy et al., *supra* note 111, at 1025.

¹²⁰ Hobson & Rich, *supra* note 82.

¹²¹ Complaint and Jury Demand, *supra* note 23 at 18–19.

¹²² Hobson & Rich, *supra* note 82.

¹²³ Some resisted doing so in recent years. See Axon, *supra* note 20 (at the time of the article, cycling, tennis, and soccer continued to keep banned coach lists private).

¹²⁴ McPHEE & DOWDEN, *supra* note 22, at 167 (USA Gymnastics created numerous procedural requirements to filing complaints designed to block or delay action).

¹²⁵ Melendez, *supra* note 33 (lawsuit against U.S.A. Swimming claims it placed its reputation and profits above athlete safety); Sturtz, *supra* note 18, at 2 (citing Andy King, who raped a dozen girls before he was caught, and abused many others, as one example of many swimming coaches who sexually exploited underage swimmers).

a list of twenty-four coaches who had married young athletes.¹²⁶ A former Olympic swimmer said these marriages did two things: they validated long-tolerated abuse and made other athletes normalize the coaches' actions because they accepted it.¹²⁷

These inappropriate coach-athlete relationships were not confined to club-level sports. Authoritarian coaches, often found in elite sports, are associated with higher incidents of sexual abuse.¹²⁸ One predatory coach was promoted to the U.S. National Swim Team while another was promoted to the Olympic Swimming team; both were later banned for life for sexual abuse and assault.¹²⁹ Coaches and sports organizations should not characterize these relationships as "dating" and "romantic" but should call them what they are: child sexual abuse and molestation.¹³⁰

Since 1997, 590 swimmers have made sexual abuse accusations against coaches and 252 coaches were arrested, charged, or disciplined.¹³¹ USA Swimming executives knew about sexual predators within the sport, yet did nothing.¹³² Instead, leaders in the organization lobbied against laws that would allow abused swimmers to sue abusive coaches.¹³³

On the rare occasions when it did act, USA Swimming kept coach discipline secret, which resulted in banned coaches going elsewhere to coach and abuse

¹²⁶ Sturtz, *supra* note 18, at 4.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Melendez, *supra* note 33; Scott M. Reid, *USA Swimming Sued Under New California Sexual Abuse Victims Law*, ORANGE CNTY. REG. (June 10, 2020), <https://www.ocregister.com/2020/06/10/usa-swimming-sued-under-new-california-sexual-abuse-victims-law/> [<https://perma.cc/U3WS-KAQ6>].

¹³⁰ *E.g.*, Alie Grasgreen, *Out of Bounds Relationships*, INSIDE HIGHER ED (May 1, 2012), <https://www.insidehighered.com/news/2012/05/01/ncaa-asks-colleges-prohibit-romantic-relationships-between-athletes-coaches> [<https://perma.cc/FCZ7-BPFU>] (discussing the ethics of "romantic" relationships between coaches and athletes); DREXEL UNIVERSITY, *AMOROUS RELATIONSHIPS INVOLVING ATHLETICS DEPARTMENT PERSONNEL AND STUDENT ATHLETES* (2013), <https://drexel.edu/hr/resources/policies/dupolicies/hr4601/> [<https://perma.cc/D4LD-XBXL>] (referring to sexual "relationships" between coaches and athletes as "amorous" and "dating.").

¹³¹ Heather Udowitch, *The Larry Nassar Nightmare: Athletic Organizational Failures to Address Sexual Assault Allegations and A Call for Corrective Action*, 16 DEPAUL J. SPORTS L. 93, 126 (2020).

¹³² *Id.* at 126; Reid, *USA Swimming Sued*, *supra* note 128 ("top USA Swimming executives, board members, . . . officials and coaches . . . were aware of sexually predatory coaches for years, in some cases even decades, but did not take action against them"); Sturtz, *supra* note 18, at 1 ("Many of these coaches had well-known, long histories of sexual abuse, yet [USA Swimming's Executive Director Chuck] Wielgus enabled these men to continue to coach for years.").

¹³³ Melendez, *supra* note 33 (lawsuit against U.S.A. Swimming claims it placed its reputation and profits above athlete safety).

girls.¹³⁴ There were no criminal background check requirements until 2006 and no formal methods for dealing with allegations of abuse until 2011.¹³⁵ Rules prohibiting coach-athlete sexual relationships were not enacted until 2013, after the USOPC threatened to pull its funding for USA Swimming for refusing to act.¹³⁶

Beyond excusing and normalizing child sexual assaults, the NGB and local swim clubs failed to acknowledge that coaches hold extreme power over children and teenagers who swim on their teams. “When a coach holds a[n] . . . athlete’s future in his hands – including her scholarship, playing time, roster spot, workouts and Olympic aspirations – any sexual contact constitutes an abuse of power.”¹³⁷

A number of swimmers are now suing USA Swimming for its role in sanctioning the abuse, and federal investigators and prosecutors have opened an investigation into potential money laundering, sex trafficking, and child sex labor within the organization.¹³⁸ USA Gymnastics and the USOPC are also being investigated for the same criminal law violations.¹³⁹ Multiple sexual abuse scandals have plagued other NGBs and sports organizations; athletes allege their NGBs knew and tolerated open sexual relationships between adults and minors.¹⁴⁰

Coaches and staff often engage in body abuse. For instance, more than 100 current and past artistic swimmers told the New York Times they had endured bullying, harassment, and psychological abuse from coaches in a sport that rewards eating disorders to achieve thin, tall, uniformly shaped bodies.¹⁴¹ One elite gymnast admitted to taking between five and fifteen laxatives daily for six years to appease

¹³⁴ Reid, *USA Swimming Sued*, *supra* note 128.

¹³⁵ Sturtz, *supra* note 18, at 5.

¹³⁶ Carly Geehr, *USA Swimming Passes Legislation Restricting Coach-Swimmer Relationships*, SWIM SWAM (Sept. 14, 2013), <https://swimswam.com/breaking-usa-swimming-passes-legislation-banning-coach-swimmer-marriages/> [<https://perma.cc/3TKY-WF98>].

¹³⁷ Lage, *supra* note 10.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *E.g.*, *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 719 (Cal. App. 2019) *modified on denial of reh’g* (Nov. 6, 2019), *aff’d* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021) (coach had open relationship with more than one athlete, which people within the sport commonly acknowledged); Christine Hauser & Karen Zraick, *Larry Nassar Sexual Abuse Scandal: Dozens of Officials Have Been Ousted or Charged*, N.Y. TIMES (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/sports/larry-nassar-case-scandal.html> [<https://perma.cc/4HRW-2AGV>]; Longman, *Figured Skating Coach Sentenced*, *supra* note 11; Jon Wertheim, *Why Aren’t More People Talking About the Ohio State Sex Abuse Scandal?*, SPORTS ILLUSTRATED (Oct. 20, 2020), <https://www.si.com/college/2020/10/05/ohio-state-sex-abuse-daily-cover> [<https://perma.cc/5REH-36KX>].

¹⁴¹ Longman & Brassil, *supra* note 4.

her coaches and the national team staff.¹⁴² College athletes have complained of punishment workouts so intense they caused long-term damage to their internal organs.¹⁴³

A former Olympic gymnastics coach forced injured athletes to remove casts and train on injured limbs once they were behind the sealed doors of her gym and away from parents.¹⁴⁴ This same coach worked an elite gymnast to such extremes that she developed a permanent muscular disorder from overtraining.¹⁴⁵ Another elite athlete who broke her back three times before she turned fourteen, hid her pain for fear of getting yelled out by her coach and looking weak, injuring herself further.¹⁴⁶ Most of these coaches create what is known as “athlete Darwinism:” they threaten that if an athlete cannot handle the abusive and intense trainings, someone else is more than willing to take their spot on the team.¹⁴⁷

Negative press can reduce membership in a sport.¹⁴⁸ A prominent athlete has the national platform to reveal embarrassing and horrific truths about the sport.¹⁴⁹ To keep an athlete silent, an NGB might punish the athlete by not placing her on a team, or by hiding the criminal acts she tries to bring to light.¹⁵⁰ NGBs with highly

¹⁴² MCPHEE & DOWDEN, *supra* note 22, at 114.

¹⁴³ Tatos, *supra* note 62, at 13–14.

¹⁴⁴ Allentuck, *supra* note 20.

¹⁴⁵ *Id.*

¹⁴⁶ MCPHEE & DOWDEN, *supra* note 22, at 116.

¹⁴⁷ Udowitch, *supra* note 130, at 106.

¹⁴⁸ Mountjoy et al., *supra* note 111, at 1019 (citing reputational harm as a fear that leads to silence in sports organizations about abuse). Negative media coverage about the dangers of football players receiving concussions led to a decrease in football enrollment among kids and teens. Lisa Rapaport, *Fewer U.S. High School Athletes Play Football Amid Concussion Fears*, REUTERS (Mar. 12, 2018, 4:40 PM), <https://www.reuters.com/article/us-health-kids-tackle-football/fewer-u-s-high-school-athletes-play-football-amid-concussion-fears-idUSKCN1GO2LY> [<https://perma.cc/J7GT-LYH7>].

¹⁴⁹ Tracy Connor & Sarah Fitzpatrick, *Gymnast Maggie Nichols was First to Report Abuse by Larry Nassar*, NBC NEWS (Jan. 8, 2018, 6:33 PM), <https://www.nbcnews.com/news/us-news/gymnast-maggie-nichols-was-first-report-abuse-larry-nassar-n836046> [<https://perma.cc/AT54-5V86>].

¹⁵⁰ Marisa Kwiatkowski, *Maggie Nichols: Olympic Dreams, Larry Nassar and Falling Back in Love with Gymnastics*, INDYSTAR (Oct. 1, 2018, 6:00 AM), <https://www.indystar.com/story/news/investigations/2018/10/01/maggie-nichols-gymnast-overcomes-injury-larry-nassar-abuse-become-ncaa-champion-oklahoma/1420435002/> [<https://perma.cc/R2UP-MXY6>] (despite earning a score at Nationals that would indicate she should be on an Olympic team as an alternate, Maggie Nichols was kept off the team, while she and her family quietly battled the CEO of USA Gymnastics over her sexual assault at the hands of team doctor Larry Nassar).

subjective judging criteria and insular politics can remove an athlete who has complained from a team without raising suspicion or label her a problem child and encourage others to ostracize her.¹⁵¹ Retaliation is a form of abuse. To address the problem of retaliation, the USOPC promulgated bylaws for the 2020 Olympics that prevent NGBs from denying or threatening to deny the right to participate in sport as punishment for whistleblowing.¹⁵²

Sometimes all forms of abuse go hand in hand. Consider gymnastics coaching and training at the famed Karolyi Ranch in Texas, one of a handful of gymnastic Olympic training sites.¹⁵³ Former gymnasts said that girls at the Karolyi Ranch were starved, which intentionally delayed puberty, body shamed, and ridiculed for starting menstrual cycles or developing into women.¹⁵⁴ The Karolyi's success with Olympic athletes validated verbal, emotional, and physical abuse of athletes at the highest coaching levels.¹⁵⁵ Their success created "a win-at-all cost culture rife with verbal and emotional abuse in which girls were forced to train on broken bones and other injuries."¹⁵⁶ When an athlete told the Karolyis about Nassar's sexual abuse at the Ranch, no one reported it to authorities, even though failure to do so is a crime in Texas.¹⁵⁷

One of the earliest people to openly raise concerns about Nassar's "medical treatment," Maggie Nichols, known as "Athlete A" in the investigation, was left off the 2016 Olympic team, even though her score at Nationals qualified her to be an alternate.¹⁵⁸ In a Netflix documentary called *Athlete A*, she and her parents wondered whether her report of sexual abuse, then only known within the highest echelon of USA Gymnastics, led to her absence on the team and the organization's decision to block corporate sponsors from hiring her.¹⁵⁹ In this isolated Olympic training site,

¹⁵¹ See MCPHEE & DOWDEN, *supra* note 22, at 5.

¹⁵² Bylaws, *supra* note 64, at § 9.1.

¹⁵³ Katherine Hampel, *Whose Fault Is It Anyway? How Sexual Abuse Has Plagued the United States Olympic Movement and Its Athletes*, 29 MARQ. SPORTS L. REV. 547, 558 (2019).

¹⁵⁴ MCPHEE & DOWDEN, *supra* note 22, at 129; Weiss & Mohr, *supra* note 101.

¹⁵⁵ Weiss & Mohr, *supra* note 101.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Connor & Fitzpatrick, *supra* note 148; Mike Davis, *Was Maggie Nichols Unfairly Left Off the Olympic Team?*, THE MEDAL COUNT (June 30, 2020), <https://themedalcount.com/2020/06/30/was-maggie-nichols-unfairly-left-off-the-olympic-team/> [<https://perma.cc/TQB7-74G9>].

¹⁵⁹ Davis, *supra* note 157.

the Karolyi Ranch, located within a National Park,¹⁶⁰ the most elite girls in American gymnastics were subject to every form of abuse. That this happened at all is shameful. That people in power tried to cover it all up is reprehensible.

NGBs sometimes defend abusive behavior as effective coaching. U.S. Speedskating, despite widespread complaints from elite athletes, continued to defend a coach who made belittling comments, screamed at athletes daily, humiliated teammates publicly, used vulgar language, created punitive practices, and played favorites, which created a culture of distrust among teammates.¹⁶¹ She was ultimately fired, but not before several athletes quit the sport altogether or trained apart from the team just to avoid her.¹⁶²

In other instances, abusive coaches were permitted to continue coaching due to negligence, indifference, or because officials could not agree how to move forward.¹⁶³ The U.S. Tennis Association gave a tennis foundation its accreditation even though the owner had been fired as a teacher for sexually abusing kids and criminally charged for sexual battery before he applied for his certification.¹⁶⁴ The Association did not run a criminal background check on the man before approving his membership status.¹⁶⁵ Other NGBs suspended coaches for sexual abuse but allowed them to continue coaching until a ban went into effect.¹⁶⁶ Some NGB officials fought over whether to punish abusive coaches.¹⁶⁷ One middle-aged Taekwondo coach who openly had sexual relationships with teens he coached was not banned from coaching until he was convicted of sexual child abuse, because officials within the sport disagreed on whether to ban him at all.¹⁶⁸

The USOPC and NGBs have often made it difficult for athletes and their parents

¹⁶⁰ MCPHEE & DOWDEN, *supra* note 22, at 131 (one athlete who trained there said the ranch is “completely isolated, and that’s no mistake. That is how the Karolyis wanted it”); Udowitch, *supra* note 130, at 104.

¹⁶¹ Rick Maese, *U.S. Speedskating Found a Coach was ‘Threatening’ Athletes — and let her keep coaching*, WASH. POST (Aug. 24, 2020), <https://www.washingtonpost.com/sports/2020/08/24/speedskating-wilma-boomstra-bullying-allegations/> [<https://perma.cc/RV86-YCTZ>].

¹⁶² Maese, *U.S. Speedskating Short-Track*, *supra* note 13.

¹⁶³ *E.g.*, *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 719 (Cal. App. 2019) *modified on denial of reh’g* (Nov. 6, 2019), *aff’d* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021) (NGB’s board president allowed sexually abusive coach to continue coaching; the NGB was later sued for negligence).

¹⁶⁴ *Complaint for Damages*, *supra* note 7, at 12–13.

¹⁶⁵ *Id.*

¹⁶⁶ *Brown v. USA Taekwondo*, 483 P.3d 159, 162 (Cal. 2021).

¹⁶⁷ *Brown*, 253 Cal. Rptr. 3d at 719.

¹⁶⁸ *Id.*

to report abuse.¹⁶⁹ The USOPC requires that any person making a complaint against an NGB must pay \$250, which may or may not be refundable.¹⁷⁰ U.S. Figure Skating required complaints be reported within 60 days of the abusive event.¹⁷¹ The problem is, most athletes who are young do not realize at the time they have been abused.¹⁷² U.S. Speedskating requires a fee of \$500 to be paid when one person files a complaint against another.¹⁷³

Until SafeSport recently mandated otherwise,¹⁷⁴ many NGBs were permitted to deny reports of abuse from anyone other than the athlete or the athlete's parents.¹⁷⁵ No third-party or anonymous reports of abuse were investigated or pursued.¹⁷⁶ In order to act on a USA Gymnastics complaint, the NGB required that the victim provide a written, signed complaint with specific allegations.¹⁷⁷

There is evidence the USOPC and NGBs actively hid allegations of abuse or discouraged investigation of abuse.¹⁷⁸ One athlete said, "[t]heir priority was winning by any means necessary . . . [Coaches] were willing to cover up injuries and

¹⁶⁹ *E.g.*, *Phila. Indem. Ins. Co. v. U.S. Olympic Comm.*, 418 F. Supp. 3d 673, 677 (D. Colo. 2019) (USOPC's insurance company complained so many lawsuits allege USOPC and NGB knowledge that it should not be required to cover all of the lawsuits alleging abuse); MCPHEE & DOWDEN, *supra* note 22, at 5 (the complaint process was challenging to navigate). U.S. Figure Skating went to great lengths to interfere with the grievance process, including removing two officials who oversaw grievances, in an effort to cover up abuse. *E.g.*, *Complaint and Jury Demand*, *supra* note 56, at 15–16 (alleging N.Y. law permitted plaintiff to sue, otherwise statute of limitations prevented it); *Complaint and Jury Demand*, *supra* note 23, at 21 (NGB "erected numerous procedural obstacles in the complaint resolution process).

¹⁷⁰ *Bylaws*, *supra* note 64, at § 10.3; MCPHEE & DOWDEN, *supra* note 22, at 142, 163 (the USOPC and NGBs created an ineffective process for raising complaints).

¹⁷¹ *Callaghan v. U.S. Ctr. for Safe Sport*, No. 2:18-CV-336-FTM-99CM, 2018 WL 4107951, at *1 (M.D. Fla. Aug. 29, 2018).

¹⁷² *E.g.*, *Starr*, *supra* note 88 (one Taekwondo elite athlete was groomed and then sexually assaulted when she was 14; she didn't realize it until she became an adult but by then it was too late to press charges).

¹⁷³ *Maese, U.S. Speedskating Found a Coach*, *supra* note 160.

¹⁷⁴ *Code*, *supra* note 39, at 1, 18–20 (permitting third-party and anonymous parties to make abuse allegations).

¹⁷⁵ *E.g.*, *Udowitch*, *supra* note 130, at 138; *see also, e.g.*, MCPHEE & DOWDEN, *supra* note 22, at 186.

¹⁷⁶ This has changed with recent Code revisions to SafeSport's policy; now NGBs are required to notify law enforcement agencies and SafeSport when an anonymous or third-party allegation of abuse is made. *Code*, *supra* note 39, at 18–20.

¹⁷⁷ MCPHEE & DOWDEN, *supra* note 22, at 177.

¹⁷⁸ *E.g.*, *Complaint and Jury Demand*, *supra* note 23, at 18–19.

abuse so they could maintain their fake image and continue to win.”¹⁷⁹ Athletes who worked up the courage to speak out were left feeling the organization attempted to silence them.¹⁸⁰

B. Abuse Cover Ups

In a few recent lawsuits, athletes alleged abuse coverups dating back to the 1970s and 1980s.¹⁸¹ In 1999, former USA Gymnastics CEO Bob Colarossi warned USOPC top officials that NGBs needed to implement measures to protect athletes.¹⁸² He predicted that the USOPC could be a leader in protecting young athletes or it could ignore the problem and be forced to deal with it later “under much more difficult circumstances.”¹⁸³ Even though outwardly it promised to do the former, it chose to do the latter. The reckoning Colarossi predicted came to pass a little more than a decade later nationally and even outside of gymnastics.

In 2010, USOPC CEO Scott Blackmun promised to take steps to prevent sexual abuse in sports.¹⁸⁴ The USOPC recommendations were half-hearted: they offered to help NGBs, but refused central oversight; they offered to help run background checks, but did not want to maintain a central database of sanctioned coaches; nor did they want any outside group’s assistance.¹⁸⁵

In 2010, a series of revelations indicated sexual abuse was prevalent, yet ignored and maybe even condoned within Olympic swimming.¹⁸⁶ USA Swimming publicly acknowledged it made complaints difficult for its athletes to file and permitted

¹⁷⁹ Udowitch, *supra* note 130, at 105.

¹⁸⁰ See Longman, *Figure Skating Coach Sentenced*, *supra* note 11.

¹⁸¹ See e.g., *Brown v. USA Taekwondo*, 483 P.3d 159, 162 (Cal. 2021) (alleging abuse in the 1980s between minors and their coaches); *Callaghan v. US Ctr. for Safe Sport*, No. 2:18-CV-336-FTM-99CM, 2018 WL 4107951, at *1 (M.D. Fla. Aug. 29, 2018) (ice skater alleged his Olympic coach sexually abused him in the 1970s and 1980s).

¹⁸² Will Hobson, *Victims Say the USOC Deserves Blame for America’s Olympic Sex Abuse Problem*, WASH. POST (Feb. 23, 2018), https://www.washingtonpost.com/sports/olympics/victims-say-the-usoc-deserves-blame-for-americas-olympic-sex-abuse-problem/2018/02/23/b5afe70a-1270-11e8-9065-e55346f6de81_story.html [<https://perma.cc/SH2Z-QX8L>].

¹⁸³ *Id.*

¹⁸⁴ Lynn Zinser, *U.S.O.C. to Take Steps to Protect Against Sexual Abuse*, N.Y. TIMES (Sept. 28, 2010), <https://www.nytimes.com/2010/09/29/sports/29usoc.html?searchResultPosition=14> [<https://perma.cc/4HR3-FHFV>].

¹⁸⁵ *Id.*

¹⁸⁶ T.J. Quinn & Greg Amante, *Sex Abuse Pervasive in USA Swimming*, ESPN (Apr. 9, 2010), <https://www.espn.com/espn/otl/news/story?id=5071820> [<https://perma.cc/FRM9-GM6S>].

pedophile coaches continued access to children.¹⁸⁷ The CEO of USA Swimming admitted winning medals was a priority, not child safety.¹⁸⁸

In 2011, a California journalist discovered USA Gymnastics was taking too long to investigate and ban coaches for sexual abuse.¹⁸⁹ By way of example, the journalist disclosed that one former U.S. national team gymnastics coach who hit, kicked, strangled, slapped, burned, and sexually assaulted underage girls was still coaching at a gym owned by a convicted sex offender.¹⁹⁰ Then USA Gymnastics CEO, Steve Penny, defended the NGB saying, “USA Gymnastics does not turn a blind eye to such issues.”¹⁹¹ While addressing another well-known sexually abusive coach, he said these coaches’ actions were “by no means indicative of our sport’s culture.”¹⁹² Five years later, when the Nassar scandal broke, Penny’s words proved cheap.

There were many abuse coverups within gymnastics.¹⁹³ The NGB’s policies are partly to blame. USA Gymnastics had a policy that all sexual abuse complaints must be reported to its lawyers, not to law enforcement.¹⁹⁴ Another policy was to prioritize confidentiality in a way that kept gyms, parents, and athletes in the dark when a coach with a history of sexual or physical abuse left one workplace for another.¹⁹⁵

Some NGB actions were designed to protect the organization while harming the athlete. Take, for example, the money unwittingly paid by athletes for the lawyers the organization uses to defend itself against the very same athletes.¹⁹⁶ Before the

¹⁸⁷ Hobson, *Victims Say*, *supra* note 181.

¹⁸⁸ *Id.*

¹⁸⁹ Reid, *Gymnastics Official*, *supra* note 108.

¹⁹⁰ *Id.*

¹⁹¹ Scott M. Reid, *USA Gymnastics Chief Seeks Change in Bylaws*, ORANGE CNTY. REG. (Oct. 5, 2011, 12:00 AM), <https://www.oregister.com/2011/10/05/usa-gymnastics-chief-seeks-change-in-bylaws/> [<https://perma.cc/8WD2-ZKTJ>].

¹⁹² *Id.*

¹⁹³ *E.g.*, Reid, *Don Peters*, *supra* note 25 (Don Peters, banned from the sport in 2011, had friends who continued to allow him to make appearances and work at a nationally-known gymnastics facility).

¹⁹⁴ Scott M. Reid, *Police Were Not to Be Called On Predatory Coaches at USA Gymnastics, Says Former Worker*, ORANGE CNTY. REG. (June 23, 2021, 6:49 PM), <https://www.oregister.com/2021/06/23/police-were-not-to-be-called-on-predatory-coaches-at-usa-gymnastics-says-former-worker/> [<https://perma.cc/WCP4-ZFVY>].

¹⁹⁵ *See id.*

¹⁹⁶ Sturtz, *supra* note 18, at 7 (“the money used to pay [attorneys] fees came from an insurance company set up by USA Swimming . . . swimmers were paying into a fund that, if they ever took legal action about an abuse claim, might be used to pay the lawyers who would oppose them.”).

SafeSport Center opened, NGBs funneled abuse complaints to these lawyers, who investigated the complaint, gathered evidence, ran the hearings, and often denied the athlete's complaint, before becoming the athlete's legal adversary.¹⁹⁷ This process was used to protect the NGB's pockets and public image.¹⁹⁸

Gaslighting was a popular tactic used to get athletes to go away. A number of athletes complained about Nassar's sexual abuse beginning in 1997, and the complaints continued through 2014.¹⁹⁹ Multiple people in authority turned a blind eye or convinced athletes they were confusing Nassar's "medical treatment" with sexual abuse.²⁰⁰ Even after dozens of gymnasts came forward, Nassar's friends within the sport accused the young women of lying²⁰¹ and allowed him to work at their gyms where he sexually abused other children.²⁰² Following a congressional hearing, Congress confirmed the USOPC, USA Gymnastics, Michigan State University, and the FBI knowingly concealed Nassar's widespread sexual abuse within gymnastics.²⁰³

Coverups are not unique to NGBs. In 2016, during a deposition for cases involving an Olympic athlete who was raped by her coach at an Olympic training center, a USOPC lawyer said the organization's chief priorities were to send athletes

¹⁹⁷ *Id.*

¹⁹⁸ USA Swimming's "standard tactic" when lawsuits stemming from abuse arose was to wear the plaintiff and plaintiff's counsel down. *Id.* at 6. One attorney recalls being inundated with paperwork, motions, refusals to comply with discovery requests, lawsuits filed against him by the organization's lawyers, and requests for sanctions. *Id.* Though the Judge overseeing his case dismissed all of the defendant's claims, the lawyer was left with a \$10,000 legal bill and higher malpractice insurance rates as a result of USA Swimming's lawyers' actions. *Id.*

¹⁹⁹ Gabrielle Bruney, *Athlete A Examines the Crimes of Larry Nassar. Here's a Timeline of Everything That Happened*, *ESQUIRE* (June 24, 2020), <https://www.esquire.com/entertainment/movies/a32954682/athlete-a-what-did-larry-nassar-do-case-timeline/> [<https://perma.cc/UZG9-U7EW>].

²⁰⁰ MCPHEE & DOWDEN, *supra* note 22, at 5 (USA Gymnastics created numerous procedural requirements to filing complaints designed to block or delay action); *id.*

²⁰¹ Several USA Gymnastics officials hired immediately after the Nassar sexual assaults came to the nation's attention lost their jobs because they had initially stood by Nassar. Hutchinson, *supra* note 58.

²⁰² Dan Barry et al., *As F.B.I. Took a Year to Pursue the Nassar Case, Dozens Say They Were Molested*, *N.Y. TIMES* (Feb. 3, 2018), <https://www.nytimes.com/2018/02/03/sports/nassar-fbi.html> [<https://perma.cc/T3X7-QT5X>].

²⁰³ Sarah Fitzpatrick et al., *Congress: U.S. Olympic Committee, FBI Failed to Protect Athletes from Larry Nassar's Abuse*, *NBC NEWS* (July 30, 2019, 7:13 AM), <https://www.nbcnews.com/politics/congress/congress-u-s-olympic-committee-fbi-failed-protect-athletes-larryn-1035751> [<https://perma.cc/76G7-7MXR>].

to games and ensure they did well there.²⁰⁴ When asked if protecting athletes from abuse was a priority, he replied that the organization does not have any athletes.²⁰⁵ While this may be true if one considers that the USOPC supervises NGBs, not athletes, his heartless response was clear: the USOPC's will accept no moral, ethical, or legal duty to safeguard children or athletes in any of the club or elite sports the organization oversees. Thankfully, the U.S. Department of Justice, Attorneys General in Michigan, California, and Indiana, as well as a Grand Jury in Washington D.C. have all opened investigations because they do not share the same view.²⁰⁶

This short-sighted view is dangerous for the leaders in these organizations. Following recent revelations, coaches and staff have been sentenced to decades in prison or have committed suicide, university officials have been stripped of their posts or have been charged with crimes, USOPC and NGB CEOs and leaders resigned under pressure, were fired, or charged with crimes, and entire boards of directors were replaced.²⁰⁷ So many of these people could have done the right thing by aligning themselves with protecting athletes rather than protecting criminals. Because they chose the latter, they lost their positions of power.

The next section will discuss the Center for SafeSport. However, it is important to discuss here that in updating its Code, the Center has acknowledged that prohibited conduct now includes aiding and abetting abusers, and a failure to report abuse is considered misconduct worthy of punishment by the SafeSport Center.²⁰⁸ Lawmakers passed federal legislation after recent abuse scandals that made failure to report child abuse a federal crime in cases that involve USOPC and NGB-certified facilities.²⁰⁹ They passed this law to combat sport officials' erroneous

²⁰⁴ Hobson, *Victims Say*, *supra* note 181.

²⁰⁵ *Id.*

²⁰⁶ Rebecca Davis O'Brien, *DOJ Investigating Sex Abuse Within Olympic Organizations*, WALL ST. J. (Sept. 13, 2019, 11:34 AM), <https://www.wsj.com/articles/doj-investigating-sex-abuse-within-olympic-organizations-11568384974> [<https://perma.cc/NK5W-DXZ6>]; Will Hobson, *Olympic Organizations Face Multiple Investigations by Justice Department, State Attorneys General*, WASH. POST (Sept. 13, 2019), https://www.washingtonpost.com/sports/olympics/olympic-organizations-face-multiple-investigations-by-justice-department-state-attorneys-general/2019/09/13/7e190fa2-d654-11e9-9343-40db57cf6abd_story.html [<https://perma.cc/R7JB-ZYMF>].

²⁰⁷ Christine Brennan, *USOC Fires Chief of Sport Performance Alan Ashley After His Silence in Nassar Case*, USA TODAY (Dec. 10, 2018, 2:30 PM), <https://www.usatoday.com/story/sports/olympics/2018/12/10/larry-nassar-case-usoc-fires-chief-sport-performance-alan-ashley/2268573002/> [<https://perma.cc/NVW7-9AXR>]; Bruney, *supra* note 198; *Resignations*, *supra* note 36.

²⁰⁸ Code, *supra* note 39, at 7.

²⁰⁹ 18 U.S.C. § 2258 (2018); Juliet Macur, *Facing Congress, Some Sports Officials (Not All) Begin to Confront Sexual Abuse*, N.Y. TIMES (Mar. 29, 2017), <https://www.nytimes.com/2017/03/>

or willfully ignorant beliefs that they were not obligated to report child abuse.²¹⁰

C. SafeSport

There are other articles that dedicate significant time and space to the Center for SafeSport. The aim of this section is to establish that the Center cannot be trusted to eradicate abuse for a variety of reasons.

SafeSport has a legislative duty to “develop[] training, oversight practices, policies, and procedures” for NGBs that prevent all forms of abuse.²¹¹ The Center’s employees are responsible for investigating allegations of abuse in the USOPC, and across all NGBs, as well as developing protocols for reporting abuse.²¹² The Act that created SafeSport makes it a federal crime for failure to report abuse, it mandates easy reporting procedures be adopted, and it prohibits retaliation for reporting abuse.²¹³ The Center maintains a database of individuals who have been sanctioned and permanently banned from sports.²¹⁴

That the Center is up and running does not mean its creation came about seamlessly. In 2010, the USOPC convened a working group to ensure safer sports.²¹⁵ In 2012, it formally issued a safe sport policy.²¹⁶ But another five years would pass before the SafeSport Center would become a reality and only then because Congress got involved.²¹⁷ For years, there was an unwillingness to open an investigative center that operated independently of the USOPC or NGBs because neither organization wanted to cede the control it had.²¹⁸ Furthermore, NGBs resisted

29/sports/facing-congress-some-sports-officials-not-all-begin-to-confront-sex-abuse.html [https://perma.cc/3CG6-2W2S].

²¹⁰ MCPHEE & DOWDEN, *supra* note 22, at 192; sources cited *supra* note 208.

²¹¹ 36 U.S.C. § 220542(a) (2020).

²¹² 36 U.S.C. § 220541(a) (2020).

²¹³ 36 U.S.C. § 220542(a)(1)–(2)(A)–(D).

²¹⁴ U.S. Center for SafeSport, *Centralized Disciplinary Database*, <https://uscenterforsafe-sport.org/response-and-resolution/centralized-disciplinary-database/> [https://perma.cc/G434-HAKU].

²¹⁵ Weston, *supra* note 70, at 445–46.

²¹⁶ *Id.* at 451.

²¹⁷ 36 U.S.C. § 220541; MCPHEE & DOWDEN, *supra* note 22, at 162.

²¹⁸ Jensen v. U.S. Tennis Ass’n, No. 20-2422-JWL, 2021 WL 1226625, at *2 (D. Kan. Apr. 1, 2021) (2012 letter from U.S. Tennis Association revealed the organization “strongly resists the USOC’s proposal that would mandate certain standards for its NGBs in favor of permitting each NGB to develop and implement their own SafeSport policies for their respective sports”); Brown v. USA Taekwondo, 11 Cal. 5th 204, 210 (2021)(athletes alleged they were abused by coaches in part because

USOPC efforts to create grassroots-level policies to combat abuse because they had a territorial viewpoint of the hierarchy below and a meddling viewpoint of the hierarchy above.²¹⁹

The USOPC and NGBs refused to create a reporting process, track abuse, or conduct auditing of any kind.²²⁰ They were willfully ignorant. They resisted legislation and protective systems, claiming they may result in lawsuits, and even waited to implement criminal background checks and abuse training until decades after similar organizations made them mandatory.²²¹ A SafeSport Center was supposed to be operational before the 2016 Olympic Games.²²² It was not until 2017 and the passing of an Act by Congress before the Center for SafeSport opened.²²³ This congressional intervention happened precisely because the USOPC refused to act to stop athlete abuse.²²⁴

While it is good that SafeSport is now operational, outsiders have concerns about it. One relates to its independence.²²⁵ It receives money from the USOPC, which critics suggest interferes with the Center's "impartiality because of its inherent interest in protecting the image of the sport and the winning coach, as well as avoiding liability."²²⁶ SafeSport was not the first organization to create a comprehensive list of banned coaches, which left critics questioning why the organization created to protect athletes was not leading that effort.²²⁷

A second concern is that the Center has been underfunded, understaffed, and ill equipped to investigate the thousands of abuse reports filed by athletes every year.²²⁸ The USOPC authorized approximately \$3 million for SafeSport in 2018, approximately \$6 million in 2019, and it expects an annual budget of \$20 million beginning in 2021.²²⁹ The last substantial budget increase happened because

their NGB failed to enact USOPC-mandated policies and procedures in a timely fashion); Conrad, *supra* note 41, at 55.

²¹⁹ MCPHEE & DOWDEN, *supra* note 22, at 149, 160.

²²⁰ *Id.* at 157.

²²¹ Hobson & Rich, *supra* note 82; Macur, *Former Athletes File Sex Abuse Lawsuits*, *supra* note 3.

²²² Weston, *supra* note 70, at 455.

²²³ 36 U.S.C. § 220541; Conrad, *supra* note 41, at 54, 58 (the fact that Congress had to pass an Act to come to the rescue of the Center shows USOPC reforms were inadequate).

²²⁴ Class Action Complaint and Jury Demand, *supra* note 99, at 28.

²²⁵ Axon, *supra* note 20; Weston, *supra* note 70, at 454.

²²⁶ Weston, *supra* note 70, at 454.

²²⁷ Axon, *supra* note 20.

²²⁸ Hobson & Rich, *supra* note 82.

²²⁹ 36 U.S.C. § 220541(g)(1)(A); Complaint and Jury Demand, *supra* note 23, at 26; Longman,

Congress mandated that all of the NGBs must contribute funds to SafeSport.²³⁰ There is also a tremendous backlog in cases;²³¹ one recent suspension of a well-known abusive coach took four years from the filing of the complaint to the suspension.²³² In 2019, SafeSport received approximately eighty-five complaints a month.²³³ The USOPC's CEO stated "there is no doubt that the capacity of [SafeSport] is not where it needs to be to handle the volume" of complaints.²³⁴

A third concern is that SafeSport may act only once it receives a complaint.²³⁵ In order for a complaint to make it to investigators, an athlete must recognize what happened to her was abuse and she must report it, or those who learn about the abuse must report it.²³⁶ This process gets interrupted when a coach quits, abruptly leaves a team, joins another team after suspicions arise, or someone convinces athletes or others who know about the abuse to be quiet, or pressures them to leave the team.²³⁷ This happens all too often. Teams or parents may place performance over athlete safety.²³⁸ Teams and parents may ostracize or bully abuse victims and their families.²³⁹ For all of these reasons, complaints never make it to SafeSport.

A fourth concern is that a number of factors make the Center's tasks incredibly challenging.²⁴⁰ One lawyer representing abused athletes calls the workload "insane."²⁴¹ The Center is quasi-law-enforcement and quasi-legal.²⁴² It operates out

Skating Is Familiar With Scandal, *supra* note 11.

²³⁰ Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189 § 8 (g), 134 Stat. 943, 960, 963 ("On January 4, 2021, the corporation shall make a mandatory payment of \$20,000,000 to the Center for operating costs of the Center for fiscal year 2021.").

²³¹ Conrad, *supra* note 41, at 56.

²³² Clarke, *supra* note 112.

²³³ Longman, *Skating Is Familiar With Scandal*, *supra* note 11.

²³⁴ *Id.*

²³⁵ Hobson & Rich, *supra* note 82.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ MCPHEE & DOWDEN, *supra* note 22, at 124 (detailing parental denials and acceptance of coach abuse).

²³⁹ Sturtz, *supra* note 18, at 2 (one track athlete was attacked on social media by fans of her college coach after he resigned for pressuring her to have sex with him).

²⁴⁰ See Maese, *This Group*, *supra* note 17.

²⁴¹ *Id.*

²⁴² *E.g.*, Nyman v. U.S. Ctr. for SafeSport, No. 3:20-CV-2256, 2021 WL 857084, at *1 (N.D. Ohio Mar. 8, 2021) (arbitrator set aside some discipline for coach who was suspended for abuse and who retaliated against the athlete who complained because retaliation was not against NGB's policies).

of Colorado, but must investigate claims of abuse from all American jurisdictions dating back decades.²⁴³ It also must comply with fifty NGBs' varying policies and rules.²⁴⁴ Punishments are inconsistent: SafeSport may issue harsh penalties or light ones; sometimes NGB arbitrators, who handle the appeal of a suspension or ban,²⁴⁵ may dismiss evidence SafeSport considered, reduce punishments, or even reinstate coaches banned for life.²⁴⁶ Over the years, due process concerns have heavily favored sanctioned coaches.²⁴⁷ This can leave athletes feeling the system is rigged against them.

Some athletes have found reporting abuse to SafeSport, rather than the NGB – which is what happened before the Center existed – is easier because there are no obtuse deadlines or desires to hide abuse.²⁴⁸ NGBs took an extremely conservative approach to discipline following abuse; they often waited until a coach was convicted to invoke a suspension or ban.²⁴⁹ In cases where coaches were acquitted, never prosecuted because the statute of limitations had run, or did not plead guilty, abusive coaches continued coaching.²⁵⁰ When NGBs investigated complaints, if they investigated anything at all, athletes risked retaliation from an organization seeking to protect a popular or successful coach.²⁵¹ SafeSport has made the process fairer and less punitive than it was before. However, SafeSport's ability to sanction is limited to abusive participants affiliated with the USOPC, NGBs, or local sports clubs; it has no authority to discipline or sanction others who may have been aware

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Code, *supra* note 39, at 25.

²⁴⁶ Juliet Macur, *Suspension Reduced for Gymnastics Coach Accused of Emotional and Physical Abuse*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/2020/12/09/sports/olympics/maggie-haney-gymnastics-abuse.html?searchResultPosition=22> [<https://perma.cc/7HYF-SQEJ>]; Maese, *This Group*, *supra* note 17.

²⁴⁷ See MCPHEE & DOWDEN, *supra* note 22, at 181, 187.

²⁴⁸ See Longman, *Skating Is Familiar With Scandal*, *supra* note 11 (showing that athlete who had his original complaint dismissed for missing deadline was able to refile with SafeSport nearly twenty years later and finally get the coach suspended because SafeSport had no obtuse deadlines).

²⁴⁹ Murphy, *supra* note 67, at 177–78.

²⁵⁰ Statutes of limitations play a large role in many of these claims. *E.g.*, *Aldrich v. Nat'l Collegiate Athletic Ass'n*, 484 F. Supp. 3d 779, 797–800 (N.D. Cal. 2020) (showing how the court carefully examines all plaintiffs' claims to assess whether they are barred by their respective states' statutes of limitations); Udowitch, *supra* note 130, at 108.

²⁵¹ Complaint and Jury Demand, *supra* note 23, at 21; MCPHEE & DOWDEN, *supra* note 22, at 165 (USA Gymnastics created numerous procedural requirements to filing complaints designed to block or delay action).

of the abuse.²⁵²

While the USOPC states it will investigate systemic problems and offenses,²⁵³ it has a history of internalizing those investigations.²⁵⁴ This is where innovative criminal law approaches may have more success at revealing the dark side of sports and making changes from the outside in.

III. NOVEL LEGAL APPROACHES IN ATHLETE ABUSE CASES

Recently, a number of abused athletes have sued the USOPC and NGBs using federal criminal statutes that allow victims to recover civil damages. Lawyers and prosecutors have pursued human trafficking, racketeering, obstruction of justice, and tampering with evidence claims to hold these entities and top officials liable. Several states recently created grace periods for statutes of limitations that allow victims to pursue older abuse and sexual assault claims. All of these claims and new laws should make previously untouchable defendants nervous about their exposure to liability.

A. *Human Trafficking*

It is unlikely that the legislators who enacted the Trafficking Victims Protection Reauthorization Act (TVPRA), the Federal Act used to combat human trafficking, envisioned American athletes using it to hold coaches and sports organizations accountable for their abuse. But Senator Dianne Feinstein (D-Calif.) who, along with Senator Susan Collins (R-Maine), authored the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, connected the two.²⁵⁵ In 2017, on the Senate floor, Senator Feinstein said the Act “strengthens the law that allows victims of sex abuse to file suits against those who abuse them to commit crimes such as sex trafficking.”²⁵⁶ She may have provided the impetus for linking athlete abuse cases to the crime of human trafficking.

Other legal experts believe that using human trafficking laws is “a creative legal strategy . . . [that] could set a precedent for future legal fights involving coaches in the high-pressure world of elite sports.”²⁵⁷ The law fits these scenarios well. As a

²⁵² Code, *supra* note 39, at 1–6.

²⁵³ *Id.* at 2.

²⁵⁴ Sources cited *supra* notes 194–98.

²⁵⁵ Class Action Complaint and Jury Demand, *supra* note 99, at 2.

²⁵⁶ *Id.*

²⁵⁷ Allyson Waller, *A Gymnastics Coach Was Charged with Human Trafficking. What Does That Mean?*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/sports/human-trafficking->

result, a number of lawyers and athletes have filed human trafficking claims in athlete abuse cases.²⁵⁸ Recently, the SafeSport Code was updated to prohibit sexually exploiting, prostituting, or trafficking athletes.²⁵⁹

In order to understand why athletes are raising these claims, it is important to discuss the criminal laws. Generally, these claims invoke 18 U.S.C. §§ 1589, 1590(a), 1591(d), 1595(a), and 2255 of the TVPRA.²⁶⁰ All of these sections provide an opportunity for victims to receive civil damages from their traffickers. Section 1589 states that if someone benefits from a human trafficking venture and uses threats, force, harm, abuse, or fear to compel the victim's labor or services, that person can be punished by imprisonment or fined.²⁶¹ Section 1590 makes it punishable to transport trafficked victims or to obstruct law enforcement.²⁶² Section 1591 makes child sex trafficking a crime and prohibits anyone from obstructing law enforcement.²⁶³ Section 1595 allows trafficking victims to file federal claims against traffickers and those who benefitted from a trafficking venture.²⁶⁴ Lastly, Section 2255 allows any person who was exploited as a child – whether through trafficking crimes or other sexual abuse crimes – to sue the person who exploited them for personal injuries.²⁶⁵ State human trafficking laws have also been invoked in athlete abuse cases.²⁶⁶

There are some benefits to using these federal statutes in athlete abuse cases. First, human trafficking terms have been interpreted broadly and could easily be

john-geddert-gymnastics.html#:~:text=A%20Gymnastics%20Coach%20Was%20Charged%20With%20Human%20Trafficking,What%20Does%20That&text=Although%20many%20people%20associate%20human,context%20of%20abusive%20athletic%20environments [https://perma.cc/CY9S-HPXF].

²⁵⁸ *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1121-22 (D. Colo. 2019); *e.g.*, *Jensen v. U.S. Tennis Ass'n*, No. 20-2422-JWL, 2020 WL 6445117, at *2 (D. Kan. Oct. 30, 2020); *Complaint for Damages and Injunctive Relief and Jury Demand at 85-90, Jane Doe 26 v. Michigan State Univ.*, No. 1:19-cv-00847-GJQ-SJB (W.D. Mich. Oct. 15, 2019).

²⁵⁹ Code, *supra* note 39, at 10-11.

²⁶⁰ *Id.*

²⁶¹ 18 U.S.C. § 1589(a)-(b), (d) (2008).

²⁶² 18 U.S.C. § 1590(a)-(b) (2008).

²⁶³ 18 U.S.C. § 1591(a)-(d) (2018).

²⁶⁴ 18 U.S.C. § 1595(a) (2018).

²⁶⁵ 18 U.S.C. § 2255(a) (2018).

²⁶⁶ Don Babwin, *Human Trafficking Charges Novel Approach in Gymnastics Case*, ASSOCIATED PRESS (Feb. 26, 2021), <https://apnews.com/article/larry-nassar-2020-tokyo-olympics-gymnastics-human-trafficking-olympic-games-42c578596732879e8d6aff0eb2085615> [https://perma.cc/5S6Z-NRPZ]; Sturtz & Heard, *supra* note 77.

applied to these cases.²⁶⁷ Second, coaches and sports organizations benefit from athletes, who have been and can be exploited for financial gain.²⁶⁸ This scenario is similar to other clear-cut human trafficking cases. Consider the similarities in a Tenth Circuit case of human trafficking involving a church, a law firm, and one of its partners who protected convicted pedophile and religious leader Warren Jeffs:

In this case, . . . defendants were well aware of the crimes being committed against plaintiffs, did nothing to expose these atrocities, tacitly approved of the conduct by constructing a scheme for the purpose of enabling it, and benefited for years from plaintiffs' payments . . . [to them].²⁶⁹

The facts are remarkably similar to the coach-athlete abuse and the people and organizations who ignored, tolerated, covered up, and financially benefitted from it.

Third, athletes may allege a joint venture between the coach and the organization who are joined by their profit interests.²⁷⁰ Profit is not limited to money or the economic benefits of employment.²⁷¹ Courts consider anything of value and have included a trafficked victim's sexual acts, photographs, pornographic videos, help in preventing criminal schemes from coming to light, and manual labor that benefits someone other than the trafficker.²⁷² Many of the things an athlete does in the coach-athlete relationship, as a team member, or at a gym could be considered a benefit or a profit.

What is promising about these claims is they allow athletes to pursue claims against the USOPC, NGB, a college or university, or the NCAA if these organizations knew about, covered up, and benefitted from an athlete's forced labor or sexual acts. The claims that have been raised have had varying degrees of success, but they may provide athletes with greater damages from deeper pockets and motivate organizations to meaningfully tackle abuse.

In order to hold these entities liable for human trafficking using a venture

²⁶⁷ Waller, *supra* note 253.

²⁶⁸ *Id.*

²⁶⁹ *Bistline v. Parker*, 918 F.3d 849, 854, 876 (10th Cir. 2019).

²⁷⁰ 18 U.S.C. § 1591; *Ricchio v. McLean*, 853 F.3d 553, 556 (1st Cir. 2017) (using "joined in fact" to define venture); *Gilbert v. USA Taekwondo*, No. 18-CV-00981-CMA-MEH, 2020 WL 2800748, at *5 (D. Colo. May 29, 2020); *Jensen v. U.S. Tennis Ass'n*, No. 20-2422-JWL, 2020 WL 6445117, at *6 (D. Kan. Oct. 30, 2020); Complaint for Damages and Injunctive Relief and Jury Demand, *supra* note 254, at 85–90; Class Action Complaint and Jury Demand, *supra* note 99, at 47–54.

²⁷¹ *U.S. v. Cook*, 782 F.3d 983, 988–90 (8th Cir. 2015); *U.S. v. Kaufman*, 546 F.3d 1242, 1248 (10th Cir. 2008).

²⁷² *Bistline*, 918 F.3d at 873–76; *Cook*, 782 F.3d at 988–90; *Kaufman*, 546 F.3d at 1263.

theory, athletes must prove the defendant knew of the abuse and benefitted from it or recklessly disregarded it.²⁷³ Courts have ruled against plaintiff-athletes who never reported the abuse or who failed to allege the abuse was known or witnessed by others.²⁷⁴ That sexual abuse coverups have existed in sports is not enough to establish that the defendant-organization entered into a venture agreement to traffic the athlete in exchange for a benefit.²⁷⁵

One of the first settled lawsuits to raise human trafficking claims involved a gymnast who sued Michigan State University and others for Nassar's sexual abuse.²⁷⁶ The plaintiff alleged the defendants promoted Nassar's medical skill, reputation, and their affiliation in a criminally symbiotic way.²⁷⁷ He gratified his desires by sexually abusing young female athletes using exploitation, force, and coercion, whereas they needed his medical care and Olympic doctor status to attract elite athletes to their facilities.²⁷⁸ The plaintiff alleged there was a commercial venture between Nassar and the defendants because he was paid by the defendants as an employee to treat the plaintiff, the plaintiff paid fees to the defendants, the defendants benefitted from Nassar's role within the gym, and thus the sexual abuse had a commercial element to it.²⁷⁹ Another lawsuit against abusive coach Marvin Sharpe's estate, USA Gymnastics, and others alleged a joint venture based on forced and threatened labor and sexual trafficking, along with aiding and abetting.²⁸⁰

Two underage elite athletes alleged their diving coach exploited them by coercing them into a sexual relationship with him in exchange for his certified USA Diving instruction.²⁸¹ The NGB paid him to travel and coach, the NGB sponsored the athletes, and during that time, the coach forced them and other young divers to

²⁷³ *Jensen v. U.S. Tennis Ass'n.*, No. 20-2422-JWL, 2021 WL 1226625, at *1 (D. Kan. Apr. 1, 2021); *Jensen*, 2020 WL 6445117, at *5.

²⁷⁴ *Jensen*, 2020 WL 6445117, at *6.

²⁷⁵ *Id.* at *6.

²⁷⁶ Complaint for Damages and Injunctive Relief and Jury Demand, *supra* note 254, at 85–90; Mitch Smith & Anemona Hartocollis, *Michigan State's \$500 Million for Nassar Victims Dwarfs Other Settlements*, N.Y. TIMES (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/larry-nassar-michigan-state-settlement.html> [https://perma.cc/HN58-ZH8U].

²⁷⁷ Complaint for Damages and Injunctive Relief and Jury Demand, *supra* note 254, at 85–90.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Class Action Complaint at 18, *Doe v. USA Gymnastics*, No. 1:19-cv-01716-JRS-TAB (Apr. 29, 2019).

²⁸¹ Class Action Complaint and Jury Demand, *supra* note 99, at 29–42.

engage in coerced and exploitive sexual acts with him.²⁸² Yet, the coach maintained his position for another year before he was banned.²⁸³ After his ban, he continued to coach privately for three more years with the NGB's knowledge.²⁸⁴ No one notified the police and his victims were bullied and retaliated against by teammates for reporting him.²⁸⁵

The plaintiffs alleged, "USA Diving benefitted (financially and otherwise) from [his] actions . . . by collecting money through sponsorships, licensing, grants, publicity, for medals achieved at competitions, and for his recruitment and training of other competitive divers, despite knowing that [the plaintiffs were] being repeatedly sexually abused and raped."²⁸⁶ The divers alleged the NGB entered into a criminal venture with the coach, enforced child sexual and labor trafficking, and obstructed and interfered with law enforcement's investigation.²⁸⁷

The case that has had the most success thus far with human trafficking theories has been *Gilbert v. USA Taekwondo*, where five elite athlete-plaintiffs have sued USA Taekwondo and Steven Lopez, a gold medal winning athlete and coach in the sport.²⁸⁸ The lawsuit, which began in 2018, includes multiple human trafficking claims against USA Taekwondo²⁸⁹ and against Lopez.²⁹⁰ The federal court has acknowledged the magnitude of the case for the plaintiffs and the public policy issues it raises.²⁹¹ The court stated that the "heart" of the case concerns whether USA Taekwondo financially benefitted from ignoring Steven and his brother Jean Lopez's abusive conduct so the brothers could continue to coach, travel, and compete while

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 36–42.

²⁸⁶ *Id.* at 48.

²⁸⁷ *Id.* at 47–54.

²⁸⁸ Compare *Gilbert v. USA Taekwondo*, No. 18-CV-00981-CMA-MEH, 2020 WL 2800748, at *1 (D. Colo. May 29, 2020) (listing USA Taekwondo and Steven Lopez as defendants), with *Gilbert v. U.S. Olympic Comm.*, No. 18-CV-00981-CMA-MEH, 2018 WL 11189642 (D. Colo. Oct. 5, 2018) (listing the USOPC, USA Taekwondo, the U.S. Center for SafeSport, Steven Lopez, Jean Lopez, and John Does 1-5 as defendants); Starr, *supra* note 88. The lawsuit also initially listed the USOPC, the Center for SafeSport, and Steven's brother and Olympic coach, Jean Lopez as defendants too. But claims against those defendants were either later dropped or dismissed.

²⁸⁹ *Gilbert*, 2020 WL 2800748, at *1, *3.

²⁹⁰ *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1122–41 (D. Colo. 2019).

²⁹¹ *Gilbert*, 2018 WL 11189642, at *3–5.

sexually and physically abusing elite female athletes.²⁹² This is not the only lawsuit filed against USA Taekwondo, their coaches, and officials stemming from abuse, but it is the most successful to raise human trafficking allegations.²⁹³

The plaintiffs in *Gilbert* were all elite Taekwondo athletes who were physically assaulted, raped, and sexually trafficked by their coaches in a pay-to-play scheme that required them to have sex with and date coaches as they traveled to USOPC and USA Taekwondo events if they wanted to remain on the team.²⁹⁴ Several female members of the team were raped.²⁹⁵ Women and girls who refused to engage in sexual relationships with the brothers did not remain on the team; those who had sex with their adult coaches did so out of fear and coercion.²⁹⁶ The first athlete who alleged she was raped made complaints in 2006 while others made them as late as 2015 and the brothers were not banned from coaching until 2018, only after the plaintiffs' allegations made national news.²⁹⁷

The federal judge determined that the plaintiffs could proceed on claims that USA Taekwondo knowingly aided and abetted Lopez in his sex trafficking scheme, benefited financially from the venture, transported athletes to competitions to be trafficked sexually, and obstructed law enforcement by lying to various agencies and entities.²⁹⁸ The *Gilbert* court is the first to interpret human trafficking cases in an athlete abuse context; it explains what it takes for athletes to successfully raise a human trafficking venture claim and survive attempts by the defense to dismiss the case.

The court made several important distinctions when it denied USA Taekwondo's motion to dismiss.²⁹⁹ First, the benefit USA Taekwondo received from

²⁹² *Gilbert*, 2020 WL 2800748, at *2.

²⁹³ *E.g.*, *Brown v. USA Taekwondo*, 483 P.3d 159, 162 (Cal. 2021); *Gonzalez v. U.S. Ctr. for SafeSport*, 374 F. Supp. 3d 1284, 1288 (S.D. Fla. 2019) (coach had improper sexual relationship with a minor athlete he coached).

²⁹⁴ Emanuella Grinberg, *Lawsuit Accuses US Olympics, Taekwondo Stars of Sex Trafficking*, CNN (May 8, 2018, 6:13 AM), <https://www.cnn.com/2018/05/07/us/taekwondo-lopez-brothers-lawsuit/index.html> [<https://perma.cc/8M4Z-GMXH>]; Starr, *supra* note 88; Sturtz & Heard, *supra* note 77.

²⁹⁵ Starr, *supra* note 88; Grinberg, *supra* note 290; Sturtz & Heard, *supra* note 77.

²⁹⁶ *E.g.*, *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1126, 1135 (D. Colo. 2019).

²⁹⁷ Will Hobson, *Lawsuit Accuses USOC, USA Taekwondo of Sex Trafficking By Not Acting on Complaints*, WASH. POST (May 7, 2018), https://www.washingtonpost.com/sports/olympics/lawsuit-accuses-usoc-usa-taekwondo-of-sex-trafficking-by-not-acting-oncomplaints/2018/05/07/afed21e6-5228-11e8-9c91-7dab596e8252_story.html [<https://perma.cc/35AZ-6F3R>].

²⁹⁸ *Gilbert v. USA Taekwondo*, No. 18-CV-00981-CMA-MEH, 2020 WL 2800748, at *3–10 (D. Colo. May 29, 2020).

²⁹⁹ *Id.* at *1.

allowing Lopez to continue training and coaching teams and winning medals was the money it received from “sponsorships, licensing, grants, publicity, . . . medals . . . , recruitment . . . , and training.”³⁰⁰ These benefits were enough to establish a venture between the benefits Lopez received (sexual acts and a paid coaching position) and the benefits USA Taekwondo received (Lopez’s status as a successful gold-medal-winning Olympian and coach who trained athletes who medaled).³⁰¹

Second, to succeed on an obstruction of law enforcement claim, the plaintiff must allege the defendant obstructed a *government* investigation.³⁰² In *Gilbert*, the plaintiffs alleged USA Taekwondo lied to Congress, failed to provide the FBI with records, and claimed it had notified local law enforcement authorities about the abuse when it never had even contacted the police.³⁰³ This is sufficient. The court clarified that lying to athletes, ignoring complaints, or advising athletes not to pursue claims does not satisfy an allegation of obstruction under the TVPRA.³⁰⁴

Third, a venture theory claim has specific elements and must be supported by a perpetrator –the person who trafficked the victims– as well as someone who benefited from the scheme.³⁰⁵ In order to bring a venture claim, there must be at least two parties involved.³⁰⁶ The plaintiffs must prove (1) a venture relationship existed between the defendants (2) it benefitted both parties, (3) it involved human trafficking, and (4) the party who benefitted knew or recklessly disregarded the trafficking scheme.³⁰⁷ This does not mean the venture claim has to be brought against all or both parties; it can be brought solely against the person who benefitted and other trafficking claims can be filed against the perpetrator.³⁰⁸ But a venture is defined as “any group of two or more individuals associated in fact, whether or not [they are] a legal entity” or as “an undertaking that involves risk,” especially “a speculative commercial enterprise.”³⁰⁹ Thus, it begins with two parties, not one.

While the above plaintiffs pursued civil damages under federal criminal laws,

³⁰⁰ *Id.* at *6.

³⁰¹ *Id.*

³⁰² *Id.* at *8.

³⁰³ *Id.* at *8–9, *8 n. 4.

³⁰⁴ *Id.* at *8 n. 2.

³⁰⁵ *Id.* at *10.

³⁰⁶ *See id.* at *10.

³⁰⁷ *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1131–32 (D. Colo. 2019).

³⁰⁸ *Gilbert*, 2020 WL 2800748, at *9.

³⁰⁹ *Bistline v. Parker*, 918 F.3d 849, 873 (10th Cir. 2019); *Gilbert v. U.S. Olympic Comm.*, No. 18-CV-00981-CMA-MEH, 2019 WL 1058194, at *11 (D. Colo. Mar. 6, 2019).

some state prosecutors are pursuing criminal cases based on state human trafficking laws against abusive coaches. Michigan Attorney General Dana Nessel indicted former Olympics coach John Geddert for twenty-four felony offenses, twenty of which were felony human trafficking violations.³¹⁰ She alleged Geddert's coaching methods amounted to criminal child labor because he terrorized and threatened girls into performing with injuries for his own economic benefit then ignored their medical care.³¹¹ While he made millions as a former Olympic coach training girls in his own gym in Michigan,³¹² he was described by his gymnasts as a "ticking timebomb" and a bully who abused and then retaliated against his own gymnasts.³¹³ Unfortunately, his prosecution ended shortly after it began because he committed suicide on the day his charges were publicly announced.³¹⁴ The case would have been the first to bring state human trafficking charges against an abusive coach. Before his death, Geddert and his wife, who owned Twistars, the gym where girls were abused by Nassar and Geddert, settled all of the abuse civil claims for \$2,125,000.³¹⁵

B. RICO

Athlete-plaintiffs have faced hurdles when alleging that the USOPC or NGBs are engaging in criminal racketeering in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO).³¹⁶ RICO was enacted to end organized crime by tackling criminally infiltrated industries that had cornered marketplaces.³¹⁷ In theory, the Act could be a good fit for tackling human trafficking within a

³¹⁰ Michigan Department of Attorney General, *AG Nessel's Office Files 24 Criminal Charges Against Twistars USA Gymnastics Coach John Geddert*, https://www.michigan.gov/ag/o,4534,7-359-92297_47203-552927--,00.html [https://perma.cc/SWC5-EMNT].

³¹¹ Louise Radnofsky & Rebecca Davis O'Brien, *How John Geddert's Coaching Came to Be Seen as a Crime*, WALL ST. J. (Feb. 26, 2021, 5:04 PM), <https://www.wsj.com/articles/john-geddert-coaching-olympics-gymnastics-suicide-11614377006> [https://perma.cc/TA25-FLT7].

³¹² Babwin, *supra* note 262 (reporting Geddert's income was \$2.7 million between 2014 and 2018).

³¹³ Radnofsky & O'Brien, *supra* note 307.

³¹⁴ Dan Murphy & John Barr, *Ex-USA Gymnastics Coach John Geddert Kills Himself After Felony Charges, Including Human Trafficking, Sexual Assault*, ESPN (Feb. 25, 2021), https://www.espn.com/olympics/story/_/id/30964459/ex-usa-gymnastics-coach-john-geddert-kills-felony-charges [https://perma.cc/S3QT-LSJF].

³¹⁵ Udowitch, *supra* note 130, at 111.

³¹⁶ See *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112, 1144–45 (D. Colo. 2019).

³¹⁷ Benjamin Levin, *American Gangsters: Rico, Criminal Syndicates, and Conspiracy Law As Market Control*, 48 HARV. C.R.-C.L. L. REV. 105, 108–09 (2013).

monopolistic organization. But one hurdle athletes have difficulty scaling is that civil remedies are limited to those whose business or property has been injured by racketeering.³¹⁸

The *Gilbert* plaintiffs raised RICO claims, but the court found the plaintiffs did not satisfy the necessary pleading requirements, so it dismissed their claims.³¹⁹ Though the plaintiffs alleged racketeering-like activity, they had no standing to bring suit because they failed to allege that the USOPC or USA Taekwondo damaged their businesses or property interests.³²⁰ The magistrate dismissed the plaintiffs' claims that the defendants damaged their reputations, which led to lowered income, unlawfully made them pay fees, and destroyed their Taekwondo careers.³²¹ Reputational harms do not qualify as property or business law under RICO unless they directly interfere with promised or contracted-for work.³²² "[I]njuries to . . . reputation, dignity, and emotional damages are not the type of injuries redressable by . . . RICO."³²³

The fees claim failed for other reasons. To bring a civil claim under RICO, the plaintiff has to allege the defendant (1) invested, controlled, or conducted, "(2) an enterprise (3) through a pattern (4) of racketeering."³²⁴ When the defendant commits predicate criminal acts, meets the above four criteria, and these actions injure the plaintiff's business or property, she may sue for civil damages under RICO.³²⁵ However, there is a causation element: a plaintiff must plead and prove that the defendant's acts are the but-for cause *and* the proximate cause for the injury.³²⁶ In other words, the defendant's racketeering activity must lead to the plaintiff's injuries.³²⁷

In *Gilbert*, the plaintiffs were unable to establish they paid the fees because of

³¹⁸ 18 U.S.C. § 1962(c); 18 U.S.C. § 1964(c)-(d).

³¹⁹ *Gilbert*, 423 F. Supp. 3d at 1144-45.

³²⁰ *Id.*

³²¹ *Gilbert v. U.S. Olympic Comm.*, No. 18-CV-00981-CMA-MEH, 2019 WL 1058194, at *34 (D. Colo. Mar. 6, 2019); *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006).

³²² *Gilbert*, 2019 WL 1058194, at *24; *Santana v. Cook Cty. Bd. of Review*, 679 F.3d 614, 623 (7th Cir. 2012).

³²³ *Tal*, 453 F.3d at 1254.

³²⁴ *Id.* at 1261.

³²⁵ *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985).

³²⁶ *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 889 (10th Cir. 2017).

³²⁷ *Id.*

the defendants' human trafficking or obstruction of law enforcement.³²⁸ Rather, they paid fees to USA Taekwondo to be members and compete within the organization. The plaintiffs' claims of destroyed taekwondo careers failed because the end of each plaintiff's career came before the defendant committed any predicate criminal acts that could establish a racketeering enterprise.³²⁹ For these reasons, the federal court dismissed all RICO claims raised by the athletes.³³⁰

Another athlete abuse lawsuit from California alleges the predicate acts in a RICO claim were sexual exploitation, human trafficking, and abuse.³³¹ The gymnast athlete is suing Nassar, USA Gymnastics, four former CEOs, and the USOPC, alleging they injured her proprietary interest in her image and likeness when she was a member on the National Team.³³² While she was being sexually abused by Nassar, the other defendants were covering up the sexual abuse and at the same time, using her images on television and at the Olympic trials in order to raise money for the NGB and the USOPC.³³³ It has yet to be seen whether these RICO violations will succeed. Given the fact that sports organizations in America are monopolistic,³³⁴ it is possible with the right facts and right pleadings that the USOPC, NGBs, and top officials within these organizations could be held responsible under RICO the same way other criminal syndicates have.

C. Other Legal Claims

Recent laws enacted in New York,³³⁵ New Jersey,³³⁶ Texas,³³⁷ and California,³³⁸ among others, permit victims of sexual abuse a narrow window to sue that would

³²⁸ Gilbert v. U.S. Olympic Comm., No. 18-CV-00981-CMA-MEH, 2019 WL 1058194, at *25 (D. Colo. Mar. 6, 2019).

³²⁹ *Id.* at *25.

³³⁰ Gilbert v. U.S. Olympic Comm., 423 F. Supp. 3d 1112, 1144–1145 (D. Colo. 2019).

³³¹ First Amended Complaint at 57–58, Baker v. Nassar, No. 5:19-cv-00110-LHK (N.D. Cal. Nov. 23, 2020).

³³² *Id.* at 2, 58.

³³³ *Id.* at 58.

³³⁴ See Conrad, *supra* note 41, at 23.

³³⁵ NY R BRONX FIL R Doc. 13 (McKinney 2019), <https://www.nysenate.gov/legislation/bills/2019/a9036> [<https://perma.cc/4L32-RVU5>].

³³⁶ N.J. STAT. ANN. § 2A:14-2 (West 2019).

³³⁷ Legiscan, Texas House Bill 3809 (2019), <https://legiscan.com/TX/bill/HB3809/2019> [<https://perma.cc/DB8N-XJXJ>].

³³⁸ CAL. CIV. PROC. CODE § 340.16 (West 2018).

otherwise be prohibited due to the statute of limitations.³³⁹ Out of the thousands of lawsuits filed in New York, dozens involve coaches who sexually or physically abused athletes.³⁴⁰ The sexual assaults alleged in these lawsuits date back to 1970.³⁴¹ California's law is expected to result in dozens of lawsuits against NGBs like USA Swimming and USA Gymnastics – both organizations lobbied against the law – as well as the USOPC for abuses dating back to the 1980s.³⁴²

Another legal option is to look to tort special relationship laws. The Supreme Court of California recently used an athlete abuse case in Taekwondo to clarify its special relationship theory of liability in tort law.³⁴³ In *Brown v. USA Taekwondo*, several former athletes sued a sexually abusive coach, the USOPC, and USA Taekwondo for a variety of tort claims based upon negligence.³⁴⁴ The plaintiffs alleged the entities overseeing their coach and their sport were in a unique position to protect them and other young athletes from abuse.³⁴⁵ They further argued that USA Taekwondo had a duty to enact protective policies to prevent sexual abuse, but did not.³⁴⁶ The parties also alleged the entities were vicariously liable under tort law because they entered into a joint venture with the coach.³⁴⁷

The plaintiffs alleged the USOPC and USA Taekwondo breached a duty owed to them by failing to enact policies and practices that banned sexual relationships between coaches and athletes.³⁴⁸ Their coach, an adult male, had open relationships with underage athletes and the organizations knew or should have known about it.³⁴⁹ In the past, NGBs and the USOPC specifically did not enact rules and policies, or create an independent SafeSport Center because their lawyers advised them it

³³⁹ *E.g.*, Complaint and Jury Demand, *supra* note 56, at 2–3 (alleging N.Y. law permitted plaintiff to sue, otherwise statute of limitations prevented it).

³⁴⁰ Chen, *supra* note 25.

³⁴¹ *Id.*

³⁴² Scott M. Reid, *New California Law Could Bring Dozens of New Abuse Cases Against USA Swimming*, ORANGE CNTY. REG. (Oct. 14, 2019, 4:01 PM), <https://www.oregister.com/2019/10/14/new-california-law-could-bring-dozens-of-new-abuse-cases-against-usa-swimming/> [https://perma.cc/497R-VUKJ].

³⁴³ See *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 715–16 (Cal. App. 2019) *modified on denial of reh'g* (Nov. 6, 2019), *aff'd* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021).

³⁴⁴ *Id.* at 715–16.

³⁴⁵ *Id.* at 716.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ See *id.* at 719.

³⁴⁹ *Id.* at 718–19.

may open them to liability.³⁵⁰ So it is apt that this lawsuit alleged they were liable based upon their *failure* to act.

The California Supreme Court said the key to a special relationship theory of liability “is that the defendant’s relationship with . . . the tortfeasor places the defendant in the best position to protect against the risk of harm.”³⁵¹ The Court described the relationship as one of dependency where one party has control over the situation and the other relies on the one in control for protection.³⁵² The special relationship is defined by boundaries – the controlling party has no duty to protect everyone in society – just those under its control, who are vulnerable and depend on the controlling party for protection.³⁵³

The Court then considered whether organizations owe a duty to minors under their control.³⁵⁴ It relied upon precedent involving a case of athlete abuse within a youth soccer league, a case of sexual abuse within the Boy Scouts, and cases involving abuse within churches, community programs, and college organizations, all of which employed the special relationship theory of tort liability.³⁵⁵ The Supreme Court held that the plaintiffs alleged facts that showed USA Taekwondo “was in a unique position to protect young athletes against the risk of sexual abuse by their coaches.”³⁵⁶ It also found that there was a societal goal of safeguarding young athletes from abuse that outweighed the burdens placed on the NGB.³⁵⁷

On the other hand, the Court found the athletes had not pled facts to establish the USOPC was able to exercise control over the abusive coach through USA Taekwondo.³⁵⁸ While the USOPC had the ability to control the NGB’s adopted policies and those policies could eliminate abusive coaches, the relationship between the USOPC and the abusive coach in this case was too tenuous.³⁵⁹ The Court also rejected the joint venture theory of *tort* liability.³⁶⁰ For tort joint venture liability, the parties must (1) jointly control the venture, (2) jointly share in the profits

³⁵⁰ Hobson & Rich, *supra* note 82.

³⁵¹ *Brown*, 253 Cal. Rptr. 3d at 723.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.* at 724.

³⁵⁵ *Id.* at 724–25.

³⁵⁶ *Id.* at 726.

³⁵⁷ *Id.* at 730–31.

³⁵⁸ *Id.* at 731–32.

³⁵⁹ *Id.* at 732.

³⁶⁰ *Id.* at 733.

and losses of the venture, and (3) jointly own an interest in the venture.³⁶¹ In the *Brown* case, the athletes failed to plead facts that established an agreement to share in the profits and losses or control over the venture.³⁶² In the end, the Court dismissed the USOPC from the suit but permitted the case to continue against USA Taekwondo.³⁶³ A different special relationship lawsuit failed for reasons unique to the home state's tort laws.³⁶⁴

What *Brown* does beautifully is offer a policy reason for liability: whoever is in the better position to guard against abuse of children shall do so. All of the criticisms against the USOPC and NGB – from athletes, parents, and the community – stem from these organizations' knowledge, failure to act, and the increased pool of abused athletes. An independent investigation into USA Gymnastics by federal prosecutors noted that the NGB

was uniquely situated to provide its membership with educational material, develop and enforce protocols and policies to ensure a safer gymnastics experience, learn of abusive coaches and improper conduct by its members, take effective action that could prevent such predators from moving from gym to gym, and otherwise build a positive culture conducive to promoting the safety of athletes.³⁶⁵

Athletes and parents expected the NGB would protect their children from abuse.³⁶⁶ They had no idea the organization dedicated to their children's athletic success was so unwilling to take steps to protect them from abusive people within their ranks.³⁶⁷ There were so many unnecessary victims. The *Brown* court decided, as a matter of public policy, that when an organization has the power to control an abusive coach, it must because children are vulnerable and depend on the organization's protection.³⁶⁸

³⁶¹ *Id.*

³⁶² *Id.* at 734.

³⁶³ *Id.* at 738.

³⁶⁴ *Gilbert v. USA Taekwondo*, No. 18-cv-00981-CMA-MEH, 2020 WL 2800748, at *10 (D. Colo. May 29, 2020) (state law requires special relationship tort theory of liability to be based on nonfeasance, not misfeasance, as pled by plaintiffs).

³⁶⁵ *McPHEE & DOWDEN*, *supra* note 22, at 174.

³⁶⁶ *Id.* at 91, 117–18, 179, 195 (gyms intentionally excluded parents from gyms, training camps, and out-of-town competitions and promised they were taking care of their children, but kept parents in the dark when abuse allegations arose).

³⁶⁷ *Id.* at 174.

³⁶⁸ *Brown*, 253 Cal. Rptr. 3d at 730–33.

IV. PRIORITIZING SAFETY OVER MONEY & MEDALS

In countless interviews, whether with athletes or Senators, and in countless lawsuits, the phrase “medals and money” is mentioned over and over again.³⁶⁹ In an independent investigation conducted by former federal prosecutors at the request of USA Gymnastics after the Nassar scandal, the authors stated the USOPC’s “focus on athletic and monetary success was such that a former . . . executive recalled the words ‘money and medals’ were probably uttered at every staff meeting, typically more than once, with the effect of marginalizing other topics.”³⁷⁰ Contrast the USOPC’s and NGBs repeated statements that they “are in the medal business” with a former USOPC CEO’s statement that handling sex abuse was not even in his top fifteen priorities.³⁷¹ Many athletes have long and rightly believed that these organizations prioritize revenue, sponsorships, and Olympic medals over athlete safety and well-being.³⁷²

Another priority is to make bad press go away. In the wake of abuse reports, the USOPC and NGBs responded defensively, rather than humbly admit they erred. For example, after learning about Nassar’s abuse, covering it up, and banning Nassar from appearing at future gymnastics events, the CEO of USA Gymnastics, Steve Penny’s first instinct was to find a way to kill the story and discredit the abused athletes who came forward.³⁷³ It is because of his response that attorneys for gymnasts have criticized the NGB for treating abuse “like a public relations problem” instead of “the systemic rape of young women and girls.”³⁷⁴

³⁶⁹ Gilbert v. U.S. Olympic Comm., No. 18-cv-00981-CMA-MEH, 2019 WL 1058194, at *4 (D. Colo. Mar. 6, 2019); Class Action Complaint and Jury Demand, *supra* note 99, at 3 (quoting Senator Dianne Feinstein’s speech about the wrong-headed focus on money and medals within Olympic sport); Hobson, *supra* note 181 (Rhonda Rousey’s mom, herself an athlete believes the USOPC and NGBs cared more about money and power and treated athletes as “just a means to an end.”); *e.g.*, Longman, *Figure Skating Coach Sentenced*, *supra* note 11 (a lawyer who represents an abused athlete stated, “The U.S. Figure Skating Association has a long and shameful history of placing money, medals and the reputation of coaches above the protection of child athletes.”); Udowitch, *supra* note 130, at 127 (medals and money was a priority in diving).

³⁷⁰ MCPHEE & DOWDEN, *supra* note 22, at 144.

³⁷¹ *Id.* at 136, 158.

³⁷² Hobson & Rich, *supra* note 82 (other athletes “highlight a culture in which limiting legal risk and preserving gold medal chances have been given priority over safeguarding children.”); Radnofsky & O’Brien, *supra* note 307 (one gymnast said, “If [USA Gymnastics] hadn’t prioritized money over the safety of children, we would’ve been done with all of this . . . years ago.”).

³⁷³ MCPHEE & DOWDEN, *supra* note 22, at 184.

³⁷⁴ Nancy Armour, *USA Gymnastics Offers to Pay Larry Nassar Survivors \$215 Million in Bankruptcy Settlement*, USA TODAY (Jan. 31, 2020, 5:33 PM), <https://www.usatoday.com/story/>

College athletes have made similar observations: the most important thing in college sports are public relations and avoiding negative press.³⁷⁵ There is a lot at stake for these entities, but placing public relations before public safety creates twisted incentives. One person familiar with college athletics said:

In these types of closed [athletic] systems where abuse is taking place, it's hidden in plain sight; everybody knows the truth but they are afraid to address it because of the fear of losing their jobs or scholarships or being blackballed. [T]he people you are reporting the truth to are the very people whose job it is to polish the brand. They are trying to manage the abuse, not stop it.³⁷⁶

The culture of sport wants to limit legal risk, increase revenue and participation, and prioritize winning, gold medals, feel-good stories, and good public relations.³⁷⁷ Accepting responsibility for training, preventing, or revealing abuse go against the priorities of that culture.³⁷⁸ One study found that fears of reputational loss, ignorance, silence, and complicity all contributed to harassment and abuse in sports.³⁷⁹ The enormous funding these organizations receive conflicts with their interest in protecting athletes and creates a corporate-like culture that seeks to minimize financial risks and legal exposure.

The USOPC has argued (1) it is not responsible for athletes or coaches, and in the alternative, if it is, (2) it is not responsible for anyone other than Olympic athletes as they prepare for or compete in the current Olympics.³⁸⁰ Critics have suggested this attempt to narrow responsibility is “evasive legalese.”³⁸¹ Meanwhile, NGBs have stated they have no control over the local gyms, coaches, and clubs because they are not an enforcement agency.³⁸²

The position of the USOPC and NGBs is illogical. They want all of the money

sports/olympics/2020/01/30/usa-gymnastics-offers-pay-larry-nassar-survivors-215-million/2858853001/ [https://perma.cc/89JW-JYEW]; Juliet Macur, *As Gymnasts Who Were Abused Seek Answers, They Are Offered Only Money*, N.Y. TIMES (Aug. 31, 2021), https://www.nytimes.com/2020/03/03/sports/olympics/biles-gymnastics-settlement-nassar.html [https://perma.cc/CY8t-WMLV] (one gymnast characterized it this way: “We are talking about the biggest sexual assault in sports history.”).

³⁷⁵ See Tatos, *supra* note 62, at 2.

³⁷⁶ Errigo & Boren, *supra* note 14.

³⁷⁷ See Murphy, *supra* note 67, at 158–59.

³⁷⁸ See *id.* at 159.

³⁷⁹ Mountjoy et al., *supra* note 111, at 1019.

³⁸⁰ Murphy, *supra* note 67, at 178–79.

³⁸¹ *Id.* (quoting *New York Times* reporter Jeré Longman).

³⁸² MCPHEE & DOWDEN, *supra* note 22, at 180.

from sport to funnel upward, they want all of the glory and credit for grassroots-to-elite-sports programs, and they want all of the accolades and good press. However, they want none of the blame, negative press or responsibility that comes with the monopoly they run. When any club, trainer, coach, or association pays the USOPC or NGB for licensing, the person or club bears the organization's stamp of approval. Yet when abuse occurs, these organizations distance themselves from the people and clubs that pay for that stamp. As stated in *Brown*, the parties with the resources and clout to guarantee protection from abuse have a duty to provide it.³⁸³

The USOPC's and NGBs' positions are illogical for other reasons. Stopping abuse actually increases athletic performance, club enrollments, and eventual medal count. One study found that abused athletes "suffer performance detriments, opportunity costs, reduced medal chances, and loss of sponsorship."³⁸⁴ Abuse also depletes the current talent pool. Because abuse happens with more frequency in elite sports, these organizations are losing their best athletes by not protecting them.³⁸⁵ Finally, abuse brings reputational harm that scares would-be participants away.³⁸⁶ This last factor seems to be what sports organizations fixate on, which explains the cover-ups. However, by focusing on athlete well-being and removing abusive coaches, these organizations could resolve the losses that eventually lead to fewer athletes, lower morale, and lower medal count. Some Olympians are discovering they are happier and more successful with coaches who support them and listen.³⁸⁷ Perhaps the next movement in coaching will be kinder and will provide the safety and protections athletes deserve.

CONCLUSION

Athletes and their families have grown weary with their athletic organizations' broken promises to protect them and reform the culture of athletics. The Judge who presided over Nassar's criminal case, Judge Rosemarie Aquilina, said "[a]thletes cannot thrive in a system that values money and medals over the safety of athletes[] . . . [w]e need to flip the script."³⁸⁸ Thankfully, some creative lawyers have found

³⁸³ *Brown v. USA Taekwondo*, 253 Cal. Rptr. 3d 708, 730–33 (Cal. App. 2019) *modified on denial of reh'g* (Nov. 6, 2019), *aff'd* No. S259216, 2021 WL 1218492 (Cal. Apr. 1, 2021).

³⁸⁴ Mountjoy et al., *supra* note 111, at 1024.

³⁸⁵ *Id.* at 1021; *e.g.*, Choe Sang-Hun, *supra* note 17.

³⁸⁶ See Mountjoy et al., *supra* note 111, at 1024.

³⁸⁷ Juliet Macur, *Gymnastics Learns a New Trick: Athletes Talk and Coaches Listen*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2021/06/07/sports/olympics/usa-gymnastics-sexual-abuse-scandal.html> [https://perma.cc/PC9A-5JPF].

³⁸⁸ Hobson, *Congresswoman Says*, *supra* note 87.

ways to do just that. If the USOPC, NGBs, NCAA, and other organizations continue to delay reforms, cover-up abuses, and even tolerate them, athletes, their lawyers, and governments will continue to find ways to hold them accountable. It appears that reforms must be *legal* and they must come from the *outside* to be effective.³⁸⁹

For too long, sports organizations have gotten away with failing to safeguard athletes from abusive coaches. Congress has tried to stop this practice. The Empowering Olympic, Paralympic, and Amateur Athletes Act allows Congress to decertify NGBs and dissolve the USOPC's board of directors.³⁹⁰ It also requires better athlete representation in NGBs and more funding for the SafeSport Center.³⁹¹ The purpose of the new federal legislation is to end abuse in the U.S. Olympic movements by increasing Congressional oversight to better serve athletes.³⁹² Human trafficking laws, RICO, special relationships in tort law and many others can be used to hold these organizations accountable as well. Regardless of whether the USOPC, NGBs, and the NCAA prevent abuse and discipline abusers, athletes and their lawyers will continue to blaze new legal paths to find ways to hold them accountable.

³⁸⁹ Longman, *U.S. Olympic Chief*, *supra* note 107.

³⁹⁰ Maese, *Olympics Reform*, *supra* note 82.

³⁹¹ *Id.*

³⁹² Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189 Section 2 (7), 134 Stat. 943.