

WHEN SOVEREIGNS COLLIDE: WHY AMERICA'S FIGURE SKATING COMPETITORS ARE THE ULTIMATE LOSERS UNDER THE AMATEUR SPORTS ACT OF 1978*

"The most important thing is not to win but to take part, just as the most important thing in life is not the triumph but the struggle."¹

I. INTRODUCTION

Figure skating was the last bastion of true amateur competition, embodying the ideal of "sport for the sake of sport." In May, 1990, however, the world of skating changed. Approximately one hundred delegates and office holders representing thirty-seven countries met in New Zealand at the 43rd Ordinary Congress of the International Skating Union ("ISU")² to consider changes to its eligibility-to-compete rules.³ During the Congress, the ISU enacted sweeping new rules that significantly relaxed its eligibility-to-compete requirements.⁴ With the adoption of these new rules, the ISU brought skating into the modern world of sports.⁵

* Copyright © 1990 by Jonathan S. Fishbein. All Rights Reserved. This Note is dedicated to Priscilla Millier who always seems able to see light in a very dark tunnel.

¹ *Executive Summary*, THE FINAL REPORT OF THE PRESIDENT'S COMMISSION ON OLYMPIC SPORTS 1975-1977, at 1 [hereinafter *Executive Summary*] (quoting Baron Pierre de Coubertin, founder of the Modern Olympic Games).

² The ISU is the worldwide governing body of speed skating and figure skating. INTERNATIONAL SKATING UNION CONST. 1990, art. 2(1) [hereinafter ISU CONST.] (copy on file in the *Cardozo Arts & Ent. L.J.* office). Its Congress is usually held every two years. *Id.* art. 9(1)(a).

³ Eligibility-to-compete rules are specific regulations governing the eligibility of an individual to participate in events recognized by the ISU. See INTERNATIONAL SKATING UNION REGULATIONS 1990, Rules 102, 103, at 3-6 [hereinafter ISU REGS.] (copy on file in the *Cardozo Arts & Ent. L.J.* office). All Olympic sports must be governed by eligibility-to-compete regulations. See *infra* note 4.

⁴ The 1990 eligibility rule effectively eliminates the differentiation between "amateurs" and "professionals" by classifying all competitors as either "eligible" or "ineligible" to compete. The few differences that still exist between the two classes of competitors are explained *infra* at note 106 and accompanying text. For the texts of the old and new ISU eligibility rules see *infra* notes 87-88 and accompanying text.

⁵ For several years, the trend was to allow amateurs and professionals to compete together in "open" competitions without regard for eligibility status or even to remove restrictions entirely. For example, in 1985 the International Olympic Committee ("IOC") voted to allow professionals to compete with amateurs in ice hockey, tennis, and soccer. Thomas, *Olympics to Allow Pros in 3 Sports*, N.Y. Times, Mar. 1, 1985, at A19, col. 1. But see Lloyd, *I.O.C. Letter Alters Olympic Eligibility*, N.Y. Times, Dec. 24, 1989, § 8

Unfortunately, the modern world of sports has its problems. While there are nominal benefits arising from the new ISU rules, the regulations create an apparent conflict with the Amateur Sports Act of 1978 ("Amateur Act" or "Act").⁶ This conflict poses particular problems for the United States Figure Skating Association ("USFSA"),⁷ which is the United States Member⁸ of the ISU for figure skating, and which is obligated to observe the new ISU rules. The USFSA also qualifies as a national governing body ("NGB")⁹ under the Amateur Act and, therefore, is bound by its provisions. Put differently, the USFSA is in the precarious

(Sports), at 8, col. 1. In December, 1989, the International Olympic Committee set limits on this trend by indicating that it would require the international sports federations to retain minimum eligibility standards. *Id.*

⁶ 36 U.S.C. §§ 371-396 (1988). For an in-depth look at the history of the Act and its effectiveness during the first five years after enactment, see Nafziger, *The Amateur Sports Act of 1978*, 1983 B.Y.U. L. Rev. 47 [hereinafter Nafziger].

⁷ [The] USFSA is composed of [over 400] member clubs, individual members and a few affiliated schools and colleges. It is run by [a Board of Directors of 45 voting members] which meets twice a year and is composed of six officers, chairmen of the [9] standing committees, . . . [15] representatives from the three sections [East, Midwest and Pacific Coast] of the country [nine athletes, three coaches, the immediate Past President, and two representatives to the ISU and the United States Olympic Committee, respectively].

Findings of Fact and Supporting Material, THE FINAL REPORT OF THE PRESIDENT'S COMMISSION ON OLYMPIC SPORTS 1975-1977, at 84 [hereinafter *Findings of Fact*]; see Board of Directors, THE 1990-91 OFFICIAL USFSA RULEBOOK 267-69 [hereinafter 1990-91 USFSA RULEBOOK].

The USFSA was founded in 1921 and joined the ISU in 1923. Except for the period between 1927 and 1947 when the ISU membership was held by the Amateur Skating Union of the United States, of which the USFSA was a member, the USFSA has been and continues to be recognized by the ISU as the National Association controlling figure skating in the United States. Interview with Benjamin T. Wright, ISU Historian and Past President of the USFSA, in Belmont, Mass. (Oct. 12, 1990) [hereinafter Interview with Wright] (Mr. Wright is currently compiling an in-depth history for the 100th anniversary of the ISU in 1992); ISU REGS., *supra* note 3, at 171-72.

Pursuant to the Amateur Sports Act of 1978, the USFSA is also recognized by the United States Olympic Committee as the national governing body ("NGB") for figure skating in the United States. 36 U.S.C. § 391 (1988). For the Amateur Act's definition of NGB, see *infra* note 9.

⁸ A "Member" of the ISU is a National Association controlling speed or figure skating in a country. ISU CONST., *supra* note 2, art. 6. The National Associations recognized by the ISU are referred to as "Members." *Id.* art. 1(1). Members are bound by the Constitution and Regulations of the ISU. *Id.* art. 7(1). For the full text of art. 7(1), see *infra* note 72 and accompanying text.

⁹ An NGB is an amateur sports organization recognized by the United States Olympic Committee under 36 U.S.C. § 391. The Amateur Act specifies standards which must be maintained to avoid revocation of the NGB franchise. See *id.* § 391(b).

The ISU does not recognize the term "national governing body," choosing instead to use "National Association." By definition, "National Associations are those organizations recognized by the I.S.U. as controlling in a country either or both of the branches of skating (speed and figure)." ISU CONST., *supra* note 2, art. 1(3).

The Amateur Act's definition of NGB and some additional terms of art are included in section 373:

- (2) "amateur athletic competition" means a contest, game, meet, match, tournament, regatta, or other event in which amateur athletes compete;
- (3) "amateur sports organization" means a not-for-profit corporation, club,

position of either violating the Amateur Act, by adopting eligibility rules that are more restrictive than those of the ISU, or violating the rules of the ISU, by adopting eligibility rules that are less restrictive than those required by the ISU but permitted by the Amateur Act.¹⁰ Although violation of the Amateur Act could result in loss of the NGB franchise,¹¹ a violation of the ISU eligibility rules could also result in a ban on American competitors in International, World, and Olympic Figure Skating competitions.¹² Thus, the effect of the 1990 ISU eligibility rule changes illustrates the problem of what happens when two sovereigns—the United States Government and an International Sports Federation—collide.¹³

This Note examines the conflict between the Amateur Act and the ISU, as well as the effects of this conflict on American competitors representing the United States at home and abroad.¹⁴ Part II discusses the legislative history of the Amateur Act, specifically its jurisdiction over and interaction with the sport of figure skating, prior to the 1990 ISU Congress.¹⁵ Part III examines the genesis and scope of ISU sovereignty¹⁶ and Part

federation, union, association, or other group organized in the United States which sponsors or arranges any amateur athletic competition;

(4) "Corporation" means the United States Olympic Committee;

....
 (6) "national governing body" means an amateur sports organization which is recognized by the Corporation in accordance with section 391 of this title

....
 36 U.S.C. § 373 (1988).

¹⁰ The USFSA has adopted eligibility rules that are not in violation of the new 1990 ISU eligibility-to-compete regulations. See *infra* note 123. Although the ISU is concerned only with international skating events and does not directly regulate skating events in a Member's country this distinction is ultimately unimportant. See *infra* note 72 and accompanying text. For example, in the United States only the Junior and Championship level competitors that can qualify to skate internationally must comply with ISU eligibility regulations. However, if the USFSA enacts less restrictive eligibility rules in violation of ISU Regulations for lower level competitors who cannot qualify for international competition, those competitors will be banned from competing in ISU competitions as Junior and Championship level competitors because they violated the minimum requirements of the ISU eligibility regulations. Thus, if any competitor violates the ISU eligibility-to-compete rules at any point in their skating career, that competitor becomes "ineligible" and can never again compete in ISU competitions or Championships. See *infra* notes 93-94 and accompanying text.

¹¹ See 36 U.S.C. § 391(c).

¹² See ISU REGS., *supra* note 3, Rule 102(6)(a), at 5.

¹³ See *infra* notes 118-38 and accompanying text.

¹⁴ In figure skating, skaters who either are residents of or hold citizenship in other countries, may select the country they will represent in competition. For example, an American skater of Italian descent, Susan Driano, represented Italy during the 1970s. These competitors are not affected by the Amateur Act. Interview with Claire Ferguson, Acting President of the USFSA, in Lexington, Mass. (Oct. 14, 1990).

¹⁵ See *infra* notes 21-56 and accompanying text.

¹⁶ See *infra* notes 57-72 and accompanying text.

IV discusses the new 1990 ISU eligibility rules and the problem they create for the USFSA.¹⁷ In Part V, this Note suggests that the ISU, as the supreme sovereign in speed and figure skating, will continue through its Member, the USFSA, to effectively control the development of figure skating in the United States.¹⁸ Part VI discusses how, despite some nominal benefits the Amateur Act affords figure skating, the Act is detrimental to the sport and suggests specific modifications.¹⁹ Finally, while this Note suggests that figure skating might be exempted from the Amateur Act, it recommends that those provisions of the Act in conflict with the ISU Constitution and Regulations be amended to comply with the original intent of the Act.²⁰ The Appendix proposes legislation that, if enacted, would remedy the issues addressed in this Note.

II. THE AMATEUR SPORTS ACT OF 1978

In 1975, the President's Commission on Olympic Sports ("Commission") "was established to determine what factors [prevented] the United States from fielding its best teams in international competition."²¹ Between 1975 and 1977, the Commission conducted a series of hearings and studies, ultimately identifying five primary areas of authority that the United States Olympic Committee ("U.S. Olympic Committee")²² needed to address. In order to remove existing barriers to a unified sports system for the country, the Commission recommended that the U.S. Olympic Committee establish:

- A means to settle organizational disputes over the right to be the recognized national governing body (NGB) in a sport;
- A means to induce all organizations with significant national programs in a sport to belong to the NGB so that

¹⁷ See *infra* notes 73-117 and accompanying text.

¹⁸ See *infra* notes 118-38 and accompanying text.

¹⁹ See *infra* notes 139-49 and accompanying text.

²⁰ The original intent of the Act was expressed in the legislative proposals included in the Commission's final report. *Executive Summary, supra* note 1, at ix-x, 63, 139-40. The Act was intended, among other things, to "protect[] an athlete's right to participate in unrestricted competition," *id.* at 3, 63; increase available funding sources for athletes and NGBs, *id.* at 3-4; "bring [NGBs] into conformity with the [eligibility] regulations of international [sports] federations and to work toward further liberalization of international [eligibility] codes as appropriate." *Id.* at 4. For a discussion of the objects and purposes of the Act, see *infra* note 92.

²¹ *Executive Summary, supra* note 1, at ix.

²² The Amateur Sports Act of 1978 established the U.S. Olympic Committee and charged it with, among other things, the duty of selecting, or delegating the selection of, the United States Olympic Team. 36 U.S.C. §§ 373-374 (1988).

their activities can be coordinated;²³

- A means to guarantee an athlete's right to compete;
- A means to finance amateur sports more effectively; and
- A central policy-making forum to identify U.S. sports problems and effect solutions.²⁴

The Commission suggested the rechartering of the U.S. Olympic Committee with a vertical structure of representative organizations composed of independent NGBs regulating the existing thirty Olympic and Pan-American sports, and the thirteen multi-sport organizations.²⁵ The Commission found a definitive link between such a reorganization and a necessary increase in funding in order to realize the Commission's articulated goals.²⁶ The Commission determined that \$215 million was needed to "kick-start" their recommendations with \$160 million designated for renovating existing facilities and building new ones.²⁷

Nonetheless, when the Senate first passed the Amateur Act on May 8, 1978,²⁸ it included a one-time only allocation to the U.S. Olympic Committee of thirty-million dollars,²⁹ or less than fourteen percent of the Commission's recommended funding level. Since the Amateur Act was ostensibly designed to quell the feud between the National Collegiate Athletic Association ("NCAA") and the Amateur Athletic Union ("AAU"),³⁰ Senate sponsors stated that their intention was to pass a bill that no major sports organization would

²³ One example is the numerous scheduling conflicts between the competitions run by the USFSA and the Ice Skating Institute of America ("ISIA"). The ISIA, a trade association of rink owners and operators, coordinates a national program of basic skill testing, competitions, and exhibitions. (author's footnote added). See *infra* note 85.

²⁴ *Executive Summary*, *supra* note 1, at 2.

²⁵ *Id.* at 2-4; Nafziger, *supra* note 6, at 61 n.76. The twelve multi-sport organizations mentioned by Nafziger do not include the NCAA which withdrew from the U.S. Olympic Committee in 1972. *Id.* at 48; Dürsö, *N.C.A.A. Quits U.S. Olympic Committee*, N.Y. Times, Oct. 27, 1972, at 47, col. 4. See *infra* note 30.

²⁶ 124 CONG. REC. 31,665 (1978).

²⁷ *Id.*

²⁸ S. 2727, 95th Cong., 2d Sess., 124 CONG. REC. 31,656-71 (1978).

²⁹ See *id.* at 12,853. Within six months of the enactment of the Act, Congress agreed to investigate continuing sources of funding to the Corporation. *Id.* In every Olympic quadrennial since 1980, however, Congress has passed an act authorizing the minting of Olympic coins and directing that the profits from Olympic coin sales be used by the U.S. Olympic Committee for the benefit of Olympic athletes. Olympic Commemorative Coin Act, Pub. L. No. 97-220, 98 Stat. 222 (1983); 1988 Olympic Commemorative Coin Act, Pub. L. No. 100-141, 101 Stat. 832 (1987) (codified at 31 U.S.C. § 5113 (1988)).

³⁰ 124 CONG. REC. 35,648 (1978) (statement of Rep. Michel (R-Ill.)). "The reason we had a Presidential Commission was to try once and for all to get under one roof those warring factions of the AAU and the NCAA and all the rest. The quarreling between the various sports organizations has resulted in the denial of participation by athletes in certain competitions . . ." *Id.* See Durso, *N.C.A.A. Quits U.S. Olympic Committee*, N.Y. Times, Oct. 27, 1972, at 47, col. 4; *Olympic Leader Hits Back*, N.Y. Times, Oct. 28, 1972, at 24, col. 1; Amdur, *Olympic Group: Tower of Babel*, N.Y. Times, Nov. 5, 1972, § 5 (Sports), at 4, col. 3.

oppose and "[t]hat determination called for some real negotiating."³¹ While the USFSA found little benefit in the Amateur Act itself, it found the potential congressional funding of the U.S. Olympic Committee sufficient reason not to oppose the bill.³² In effect, the thirty-million dollar "carrot" kept the NGBs from opposing the bill.³³ When Congress passed the Amateur Act³⁴ it incorporated the principal recommendations of the Commission with one major exception. After extensive debate, Congress removed the financing provision from the final version of the Act.³⁵

Figure skating is governed by the provisions of the Amateur Act and is one of the winter sports officially recognized by the International Olympic Committee.³⁶ Upon the Amateur Act becoming law, the USFSA filed the appropriate application with, and was recognized by, the U.S. Olympic Committee as the NGB for figure skating.³⁷ Thus, as the NGB for figure skating, the USFSA is a member of the U.S. Olympic Committee and is required to adhere to the provisions of the Act to maintain its NGB franchise.³⁸ Through the USFSA's adherence to the Amateur Act's provisions, figure skating has accrued certain benefits, but has also encountered a plethora of problems.

A. *The Amateur Act's Benefits to Figure Skating*

Prior to enactment of the Amateur Act, both competitors and coaches were conspicuously absent from the USFSA Board of Directors. Now, to obtain or maintain NGB status, the Amateur Act requires amateur sports organizations to include, as voting members on their board of directors, "individuals who are actively engaged in amateur athletic competition . . . or who have represented the United States in international amateur athletic competition . . . within the preceding 10 years."³⁹ These athletes must constitute a minimum of twenty percent of the voting mem-

³¹ 124 CONG. REC. 37,549 (1978) (statement of Sen. Ted Stevens (R-Alaska)).

³² Telephone interview with Benjamin T. Wright, ISU Historian and Past President of the USFSA (Jan. 13, 1990) [hereinafter Telephone interview with Wright].

³³ *Id.*

³⁴ The Amateur Sports Act of 1978, Pub. L. No. 95-606, 92 Stat. 3045 (codified at 36 U.S.C. §§ 371-396 (1988)), was passed by the House on October 13 and by the Senate on October 14, 1978, as amended. 124 CONG. REC. 37,074, 37,551 (1978). President Carter signed the bill into law on November 8, 1978. *Presidential Statement*, 14 WEEKLY COMP. PRES. DOC. 1976 (Nov. 8, 1978).

³⁵ See 124 CONG. REC. 31,665-71, 35,646-49, 37,070-74, 37,549-50 (1978).

³⁶ 36 U.S.C. § 391 (1988). See *infra* note 58.

³⁷ 36 U.S.C. § 391.

³⁸ *Id.* §§ 391-392.

³⁹ *Id.* § 391(b)(8).

bership of the board of directors.⁴⁰ Currently, there are nine athletes among the forty-five voting members of the USFSA Board of Directors and, although not required by the Act, the board now also includes three coaches.⁴¹

U.S. Olympic Committee funding provides another, and more direct, benefit to the NGB franchise holder. In 1980, the U.S. Olympic Committee provided the USFSA with an initial grant of \$20,900.⁴² After the 1984 Olympics, the Los Angeles Olympic Organizing Committee distributed a portion of the profits from the Olympic Games through the U.S. Olympic Committee to the NGBs. As a result, the USFSA received a one-time only distribution of \$499,063 from the U.S. Olympic Committee.⁴³ By May 1990, expected U.S. Olympic Committee annual funding had grown to \$420,500, which was approximately fifteen percent of the USFSA's operating budget.⁴⁴

The Amateur Act also provides a specific procedure that athletes can use to address grievances. The Act requires that NGBs "provide[] procedures for the prompt and equitable resolution of grievances of its members."⁴⁵ In 1981, to comply with the Act and thereby maintain its NGB status, the USFSA changed its

⁴⁰ *Id.* Enactment of the Amateur Act brought to fruition an idea first proposed in 1961 when F. Ritter Shumway tried unsuccessfully to put athletes on the USFSA Executive Committee. Interview with F. Ritter Shumway, USFSA President 1961-64, in Rochester, New York (Mar. 13, 1974); Interview with Wright, *supra* note 7.

⁴¹ 1990-91 USFSA RULEBOOK, *supra* note 7, at 267-69.

In 1977, the President's Commission on Olympic Sports found that:

Figure skating is the only Olympic sport in the U.S. that specifically excludes coaches from membership in the governing body and therefore from positions on the technical committees and as officers of the association. In all other sports coaches are encouraged to take an active role in the national governing body. . . . It is worth noting that the ISU [C]onstitution does not require this exclusion of coaches, only that competitors and meet officials be amateurs.

Coaches are involved day-to-day in the sport . . . and are most aware of the impact that rule changes will have on skaters. In many instances their expertise and commitment to figure skating surpass that of the part-time volunteer judges and officials who currently are more influential in the sport governing body.

Findings of Fact, supra note 7, at 85.

⁴² USFSA, *Report of the Treasurer, 1982 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN* 49, Supplement A to Schedule 5 (May 7-8, 1982). The U.S. Olympic Committee allocation from 1981 through 1984 was approximately \$94,000 per annum. *Id.* It is important to note that the USFSA's budget is based on a fiscal year of October 1 to September 31. The U.S. Olympic Committee's budget is based on the calendar year.

⁴³ USFSA, *Report of the Treasurer, 1987 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN* 53, Schedule 5 (May 8-9, 1987).

⁴⁴ USFSA, *Report of the Treasurer, 1990 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN* 62, 233 (May 11-12, 1990); Interview with John Holdsworth, USFSA Treasurer, in Lexington, Mass. (Oct. 14, 1990).

⁴⁵ 36 U.S.C. § 391(b)(11) (1988).

rules to include a grievance procedure.⁴⁶ While it is entirely possible that these beneficial changes would have eventually occurred without the Amateur Act, there is little question that the Act produced a fast and positive response.⁴⁷

B. *Problems the Act Creates for Figure Skating*

Along with the Act's benefits have come problems for the USFSA. For example, the U.S. Olympic Committee, under its grant of authority from the Amateur Act,⁴⁸ has created another bureaucratic layer for the USFSA to overcome in the form of a by-law which appropriated the television rights revenues from all "Olympic Trials."⁴⁹ Prior to the Amateur Act, the USFSA selected its International, World and Olympic teams based primarily on the results of the immediately preceding national championships. However, after the passage of the Act, the USFSA, in order to retain the television revenue generated by its national championships, began selecting its international teams from a combination of events so that no single event determined the members of the United States Olympic Figure Skating Team.⁵⁰ The cost to the athlete of participating in additional events and the complicated formula used to designate the

⁴⁶ Compare THE 1980-81 OFFICIAL USFSA RULEBOOK, General Rules, GR 1.01-3.04, at 186-88 with THE 1981-1982 OFFICIAL USFSA RULEBOOK, General Rules, GR 4.01-4.07, at 194-95 (addition of the grievance procedure). See also THE 1982-1983 OFFICIAL USFSA RULEBOOK, By Laws art. 25-27, at 216; THE 1983-1984 OFFICIAL USFSA RULEBOOK, By Laws art. 25-27, at 224-25 (grievance procedure incorporated into the USFSA by-laws in 1981).

⁴⁷ See *supra* note 40 and accompanying text. Seventeen years after it was first proposed, amateur competitors were given 20 percent of the voting seats on the USFSA Board of Directors. This allocation met the minimum required by the Amateur Act for the USFSA to retain its NGB status. 36 U.S.C. § 391(b)(8).

⁴⁸ See 36 U.S.C. § 375(b) (1988) (giving the U.S. Olympic Committee the authority to adopt and amend a constitution and by-laws).

⁴⁹ The U.S. Olympic Committee defined "Olympic Trials" as any amateur athletic competition whose winners earned a berth on the Olympic team. "The entire net income of all tryouts shall be paid into the Olympic Fund . . ." See UNITED STATES OLYMPIC CONST. AND BY-LAWS, ch. XXXII, § 6 (1989). "U.S. figure skating officials are concerned that th[e] 1988 National Championships are] being inaccurately portrayed as the sport's 1988 Olympic trial. The Olympic team will not necessarily be the top finishers . . ." *Not the Olympic Trial*, USA Today, Jan. 5, 1988, § C, at 2, col. 4.

⁵⁰ The current USFSA Olympic team selection criteria precludes any specific event from being considered an "Olympic Trial" as no single event determines the team's composition. "Olympic Team [selection] is based on several factors," including competitive performance as follows:

National Championships	- Current year (75%)
	- previous year (5%)
World Championships	- Previous year (10%)
U.S. Olympic Festival	- Previous year (5%)
Other International Events	- (5%)

International Committee Rules, 1990-91 USFSA RULEBOOK, *supra* note 7, ICR 5.03(b), at 71.

Olympic team have added time and expense to the selection process of international and Olympic teams.⁵¹

More importantly, the Amateur Act creates the problem of conflicting authority for the USFSA. The Amateur Act grants specific rights to those NGBs it recognizes.

For the sport which it governs, a national governing body is authorized to—

(1) represent the United States in the appropriate international sports federation;

.....
(4) exercise jurisdiction over international amateur athletic activities and sanction international amateur athletic competition held in the United States and sanction the sponsorship of international amateur athletic competition held outside the United States;

.....
(7) designate individuals and teams to represent the United States in international amateur athletic competition (other than the Olympic Games and the Pan-American Games) and certify, in accordance with applicable international rules, the amateur eligibility of such individuals and teams.⁵²

Effectively, the Amateur Act, in 1978, granted to the USFSA what it had already obtained more than half a century earlier. In 1923, the USFSA became the representative for United States figure skating when it was accepted as a Member of the ISU.⁵³ Since that time, the USFSA has had the authority to sanction international amateur athletic competitions held in the United States and to designate the individuals and teams to represent the United States in international amateur athletic figure skating competitions. Interestingly, the U.S. Olympic Committee grants NGBs the authority to sponsor or organize international amateur athletic competitions held outside the United States, while the ISU only allows Members to sponsor or organize competitions in their respective countries.⁵⁴ Thus, the federal government passed a statute that purports to give authority to an NGB which the NGB cannot exercise without violating a long-standing regulation of its governing international sports federa-

⁵¹ The USFSA selection process is, perhaps, an example of *the right result for the wrong reason*. By relying on more than one competition, the USFSA is achieving increased national exposure and national name recognition for those competitors involved and for the sport itself. While the issue of increased expenses for competitors needs to be addressed, that subject is beyond the scope of this Note.

⁵² 36 U.S.C. § 393(1), (4), (7) (1988).

⁵³ See *supra* note 7 and accompanying text.

⁵⁴ With the exception of ISU Rule 105(5), the principle of exclusive jurisdiction is implied only. See ISU REGS. *supra* note 3, Rule 105(5), at 8.

tion.⁵⁵ If the USFSA were to exercise this authority granted under the Amateur Act, it would risk expulsion from the ISU and a ban on American competitive figure skaters from International, World, and Olympic events.⁵⁶

III. THE INTERNATIONAL SKATING UNION

The ISU was established in 1892 to set uniform standards for and to supervise and conduct international speed and figure skating competitions.⁵⁷ In 1894, the International Olympic Committee ("IOC") recognized the ISU as the official international sports federation for both speed and figure skating because it was the first and only organization to regularly conduct international speed and figure skating competitions.⁵⁸

The ISU is the oldest of the international sports federations representing winter sports.⁵⁹ It is also one of the strongest of the international sports federations, because unlike most federations, it governs not one but two sports.⁶⁰ In addition, the ISU-sanctioned figure skating exhibition at the Olympic Winter Games provides significant revenue for the IOC and the Olympic figure skating competitions yield the highest television ratings and the best ticket sales.⁶¹ As a result, the ISU has attained significant bargaining power within the IOC structure.

The ISU Members are represented in the ISU Congress and

⁵⁵ The sole exception to this situation is in "open" territory where there is no ISU Member representing the territory in question.

⁵⁶ See ISU CONST., *supra* note 2, art. 7(1); *infra* notes 118-25 and accompanying text. This scenario would ban American figure skaters from international competition for a minimum of two years since the ISU Constitution requires that a potential Member must be the NGB for the two years prior to admission. ISU CONST., *supra* note 2, art. 6(3)(a) at 7.

⁵⁷ The first formal ISU Constitution and Regulations were adopted in 1895 at the second ISU Congress held in Copenhagen. ISU CONST., *supra* note 2, at 2; Interview with Wright, *supra* note 7. See ISU REGS. *supra* note 3, at 2.

⁵⁸ General Viktor Balck, a native of Sweden, who became President of the ISU in 1895, was also a charter member of the IOC and was instrumental in the IOC's recognition of the ISU. Figure skating events have been a part of the modern Olympic Games since their inception in 1908 and again when the games resumed in 1920. They became part of the Olympic Winter Games in 1924. Speed skating events first appeared in the 1924 Olympic Winter Games. Telephone Interview with Wright, *supra* note 32.

⁵⁹ The ISU is second only to the International Rowing Federation as the oldest of the international sports federations. *Id.*

⁶⁰ *Id.* "The I.S.U. has jurisdiction over all forms of international speed and figure skating on ice through-out the world." ISU CONST., *supra* note 2, art. 2(1).

⁶¹ Traditionally, the most highly rated nights of Winter Olympics coverage features figure skating. Calgary, in 1988, was no exception.

— ABC experienced phenomenal ratings during the Ladies' Finals with more than 60 million viewers. It was the largest Saturday night TV audience since "Roots" in 1977.

— The nights Figure Skating aired consistently received above a 20 share.

the ISU Council. At the biennial Congress, formal rules of parliamentary procedure are not followed,⁶² thereby permitting amendments to the ISU Constitution and new ISU Regulations to be presented from the floor.⁶³ Complicated issues are usually referred to *ad hoc* drafting committees which require a simple majority vote for presentation to the full ISU Congress.⁶⁴

The ISU Regulations consist of general and special regulations. The general regulations apply to both speed and figure skating and are acted upon by the ISU Congress as a whole.⁶⁵ The regulations govern, among other things, eligibility-to-compete in international competitions, obligations of the Members, conduct of competitions, and doping controls.⁶⁶ During the Congress, the delegates divide into separate speed and figure skating sections which consider and act upon the proposed special regulations.⁶⁷ ISU decisions, with respect to changes in the ISU Constitution and the ISU Regulations, are made by a two-thirds majority vote with each Member association receiving one

Ed Lewi Associates, *Figure Skating — Top-Rated Olympic Event* (March 28, 1989) (copy on file in the *Cardozo Arts & Ent. L.J.* office)

According to CBS Sports, "[Figure skating] beats championship boxing, gymnastics, and track and field . . . [and e]xcept for the NFL, Figure Skating by far is consistently, year in and year out, top-rated." *Do We Rate!*, ICE PRINTS, Spr. 1987, at 42.

[B]roadcasts of [the 1986 United States Figure Skating Championships] brought ABC's "Wide World of Sports" some of the best [television] ratings ever. [In fact], [i]n the 1984 Olympic [Winter Games], Figure Skating did so well that the [ABC Sports 1988] Calgary team increased its planned Figure Skating coverage by 14 hours.

(Ironically, the ratings point was driven home at the '84 Olympics when persistent weather postponements of skiing events forced producers to turn to Figure Skating as a broadcast replacement, and the understudy's ratings outclassed those projected for the erstwhile "star" [skiing].)

Id.

"The 1985 Skate America International Invitational Exhibition of Champions was rerun by ESPN against the 1986 Super Bowl and garnered higher ratings than any other event put head to head with the Super Bowl on network or cable." Interview with Ed Lewi, Ed Lewi Associates Publicity and Public Relations, in New York, N.Y. (Oct. 15, 1989).

⁶² *Robert's Rules of Order*, for example, states that "each society should adopt rules for the amendment of its constitution, by-laws, and rules of order, adapted to its own case, but *always requiring previous notice* and a two-thirds vote." ROBERT'S RULES OF ORDER § 68 (Morrow, paperback ed. 1971)(emphasis added). See also ROBERT'S RULES OF ORDER § 49 (modern ed., completely rev. 1989).

⁶³ See *Procedural Provisional to the Constitution*, ISU CONST., *supra* note 2, ¶ 5. See generally, *id.* ¶¶ 2, 3 (other procedures for getting motions and amendments before the ISU Congress). "During sessions of Congress the [ISU] President serves as chairman. He is entitled to move resolutions and amendments." *Id.* ¶ 16.

⁶⁴ Telephone interview with Wright, *supra* note 32.

⁶⁵ See *Congress Meeting Procedure*, ISU CONST., *supra* note 2, at 25.

⁶⁶ Doping rules regulate approved medication and banned substances which may enhance a competitors performance. See ISU REGS., *supra* note 3, Rule 139, at 28-29 (text of ISU doping rules).

⁶⁷ See *id.* at 27 (Speed Skating Section Meeting Procedure), 28 (Figure Skating Section Meeting Procedure).

or two votes, depending upon whether it governs one or both sports.⁶⁸

The ISU is not a treaty organization and it does not seek the official recognition of its Members' governments. As such, the ISU's recognition of the USFSA in 1923 as the "National Association"⁶⁹ controlling figure skating was not negotiated by the President of the United States or confirmed by the Senate.⁷⁰ Furthermore, the right of the ISU to govern any Member is not affected by the laws of any nation.⁷¹ The ISU Constitution specifically establishes the sovereignty of the ISU, providing that "Members of the I.S.U. . . . are bound by th[e] Constitution, the Regulations and by decisions of the [ISU] Council concerning all international matters" with regard to speed and figure skating.⁷² Given the 1990 changes in the ISU eligibility regulations, the singular status of the ISU assumes great importance in regard to the Amateur Act.

IV. THE NEW ISU ELIGIBILITY REQUIREMENTS

The Amateur Act broadly defines an "amateur athlete" so as to reconcile several different definitions of varying scope.⁷³ As

⁶⁸ See *Procedural Provisions to the Constitution, ISU CONST.*, *supra* note 2, ¶ 8, at 22. The United States and Canada, each representing more competitive figure skaters and each with more skating facilities individually than all other ISU member countries combined, each get one vote. Mexico, whose champion trains in the United States, also receives one vote. *Id.* ¶ 9, at 22.

⁶⁹ A "National Association" is the term used by the ISU to describe an NGB. For the ISU's definition of "national association" and the Amateur Act's definition of "national governing body," see *supra* note 9.

⁷⁰ Except for the period between 1927 and 1947 when the ISU recognized the Amateur Skating Union of the United States, the USFSA has been the "National Association" controlling figure skating in the United States. See *supra* notes 7, 9.

⁷¹ See *supra* note 60.

⁷² ISU CONST., *supra* note 2, art. 7(1).

⁷³ Each NGB has its own definition of "amateur athlete."

The following definitions are representative of a variety of amateur athletic associations' attempts to define "amateur":

National Collegiate Athletic Association: An amateur student-athlete is one who engages in a particular sport for the educational, physical, mental and social benefits derived therefrom and to whom participation in that sport is an avocation. [1985-86 NCAA Manual, Constitution 3-1]

Amateur Athletic Union: Person who engages in sport solely for the pleasure and physical, mental, or social benefits he desires therefrom and to whom sport is nothing more than an avocation. [Code/Art. 1 section 101.3(I) (1675)]

United States Swimming, 1982 Code: An amateur swimmer is one who engages in swimming solely for pleasure and the physical, mental and social benefit derived therefrom, and to whom swimming is nothing more than recreation for which no remuneration is received. [United States Swimming Rules and Regulations 1985, article 43 — Eligibility, section 343.1]

one commentator has observed, "[I]n an Act [designed] to encourage and unfetter United States participation in international competition, it would be counter-productive to create a detailed definition of *amateur* that might be unacceptable to . . . the international sports federations which govern [the different sports]."⁷⁴ Nonetheless, the Amateur Act defines an "amateur athlete" as "any athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes."⁷⁵

The ISU complied with a 1984 IOC request that all international sports federations delete the words "amateur" and "professional" from their constitution, by-laws, and regulations and replace them with the words "eligible" or "ineligible person."⁷⁶ As a result, the USFSA no longer recognizes the term "amateur athlete." In fact, the word "amateur" was completely removed from the *Official USFSA Rulebook* in 1987 and replaced with the phrase "eligible person."⁷⁷ Accordingly, today an "eligible person" in skating is defined as:

a person who participates in the sport as an avocation, [or] for pleasure and not as a means of livelihood, [and] has received no financial rewards or material benefits in connection with his or her participation therein, except as otherwise permitted by the Official Rules of the USFSA or the rules of the ISU.⁷⁸

Prior to the 1990 ISU Congress, this definition of "eligible person"

United States Tennis Association (USTA): Any tennis player is an amateur who does not receive and has not received, directly or indirectly, pecuniary advantage by the playing, teaching, demonstrating or pursuit of the game (meaning that the amateur has not in any way used his tennis skills for pecuniary advantage), except as expressly permitted by the USTA. [1982 Yearbook: *Standing Orders of the USTA*, Article IIB]

2 R. BERRY & G. WONG, *LAW AND THE BUSINESS OF THE SPORTS INDUSTRIES* 2 (1986) (brackets in original).

⁷⁴ Nafziger, *supra* note 6, at 52 (emphasis in original). "The [U.S. Olympic Committee], each NGB, each international sports federation, and the IOC itself all have [had] a hand in defining the phrase 'amateur athlete.'" *Id.* at 52 n.34.

⁷⁵ 36 U.S.C. § 373(1) (1988). However, as the international sports federations remove the distinction between "amateur" and "professional" athletes, the Amateur Act's 1978 definition fails to reflect the realities of athletic competition in the 1990s. For a complete definition of "amateur athlete" under the Act, see *supra* note 9.

⁷⁶ Compare INTERNATIONAL SKATING UNION REGULATIONS 1984, Rule 102, at 3-5 with INTERNATIONAL SKATING UNION REGULATIONS 1986, Rule 102, at 3-6 (showing compliance with IOC request).

⁷⁷ Compare *Amateur Status Rules*, THE 1985-86 OFFICIAL USFSA RULEBOOK, ASR 1.01, at 185 with *Amateur Status Rules*, THE 1986-87 OFFICIAL USFSA RULEBOOK, ASR 1.01, at 194 (ASR now a sub-section of the Sanction Rules (SR)) and *Eligibility Rules*, THE 1987-88 OFFICIAL USFSA RULEBOOK, ER 1.01, at 195 (showing the complete elimination of all references to "amateur" competitions).

⁷⁸ *Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, ER 1.01, at 227.

was fully in accord with ISU rules. More importantly, the USFSA definition conformed with the Amateur Act's requirement that eligibility-to-compete regulations could not be more restrictive than the rules of the appropriate international sports federation.⁷⁹

The new ISU regulations change all this. The new eligibility rules give to each ISU Member the responsibility "to establish the basis, including any financial arrangement, in which its skaters are permitted to participate in I.S.U. Championships and/or International Competitions."⁸⁰ As a result, the 1990 ISU eligibility rules, which leave the determination of eligibility-to-compete criteria⁸¹ largely to the discretion of the individual Member, directly conflict with section 391(b) of the Amateur Act.⁸² Although ISU rule 102(9)(a) requires Members to adhere to all restrictions of the ISU eligibility rules, it allows Members to "include additional restrictions."⁸³ Because section 391(b) of the Amateur Act forbids the USFSA from setting *any* eligibility requirements that would be *more* restrictive than the eligibility criteria of the ISU,⁸⁴ setting *any* such criteria—more restrictive than the ISU minimums—would be inconsistent with section 391 of the Act and could be grounds for revocation by the U.S. Olympic Committee of the USFSA's franchise as the NGB for figure skating.⁸⁵ To comply with the Amateur Act, the

⁷⁹ Section 391(b)(12) of the Amateur Act mandates that "[n]o amateur sports organization is eligible to be recognized or is eligible to continue to be recognized as a national governing body unless it . . .

(12) does not have eligibility criteria relating to amateur status which are more restrictive than those of the appropriate international sports federation . . ." 36 U.S.C. § 391(b)(12) (1988). See ISU REGS., *supra* note 3, Rules 102, 103, at 3-6.

⁸⁰ ISU REGS., *supra* note 3, Rule 102, at 3.

⁸¹ See *infra* note 87 and accompanying text. The 1990 changes to ISU Rule 102 place minimal restrictions on competitors, including a limitation that a person who receives remuneration from an ice show or the teaching of skating for gain may still compete, but may not be an official or judge in the Olympic Winter Games, ISU Championship, or International Competition, or be a member of the ISU Council, or a delegate to an ISU Congress. *Id.*

⁸² See *supra* note 79.

⁸³ ISU REGS., *supra* note 3, Rule 102(7)(a), at 5.

⁸⁴ For the text of ISU eligibility rules, see *infra* note 87 and accompanying text.

⁸⁵ Such a chain of events sets the stage for a rival organization, such as the ISIA, to petition the U.S. Olympic Committee for NGB status in figure skating. Under current USFSA eligibility rules, rink owners and managers, although they may be members of the USFSA, are ineligible persons in the sport of figure skating. See *Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, ER 4.011, at 239.

The ISIA, a trade association of skating rink owners and operators, sponsors a test structure and non-qualifying competitions for recreational amateur competitors that in many ways are very competitive with, and in some areas of the country rival, the USFSA. None of these events are coordinated with the USFSA and USFSA and ISIA competitions often occur on the same date and in close proximity to one another. The USFSA's Competitions Committee has a policy of trying to avoid conflicts among USFSA competitions, but conflicts continue to occur both among USFSA competitions and between ISIA and USFSA competitions on a regular basis. See Letter from Ellie Kimelman to Marie Pierce (Nov. 12, 1985) (discussing the scheduling of conflicting competitions).

USFSA could not specify any rules of eligibility that are more stringent than the ISU minimum standards.⁸⁶

The 1990 ISU eligibility rule, which retains much of the original 1986 ISU Rule 102(2),⁸⁷ reads as follows:

(copy on file in the *Cardozo Arts & Ent. L.J.* office). The 1991 Darien Open Figure Skating Competition, sanctioned by the USFSA, and the 1991 LowTor Skating Competition, sanctioned by the ISIA, are both scheduled to occur during the last weekend in April and within forty miles of each other. Telephone interview with Ellie Kimelman, President, Darien Skating Club of Southern Connecticut, Dec. 27, 1990.

This raises a question as to the USFSA's ISU status in the event that the USFSA is found to be in violation of the Act and its NGB status is revoked.

As private bodies, NGBs have historically have been responsible to their respective parent international sport federations. Efforts over the years in this country to subject their often arbitrary conduct to judicial scrutiny have been singularly unsuccessful. Challenges to NGB conduct on a "due process" or "equal protection" theory have been unavailing . . . [and] attempts to apply the anti-trust laws have normally also foundered So, in effect, these NGBs have been permitted to operate over the years in this country as unregulated mini-monopolies, free to use their enormous power over athletes and others in their domain without any regard for substantive or procedural fairness.

Nafziger, *supra* note 6, at 59-60 n.68. While the Amateur Act was enacted to solve these and other problems, it is the ISU itself that decides the eligibility of its Members and it is under no obligation to recognize a body recognized under the Act by the U.S. Olympic Committee. For a complete discussion of a similar situation involving two competing national wrestling associations, see *id.*, at 88-91.

"Any amateur sports organization may seek to replace an incumbent as the national governing body for a particular sport by filing with the [U.S. Olympic Committee] a written application for such recognition." 36 U.S.C. § 395(b)(1) (1988).

⁸⁶ An argument can also be made that since the ISU eligibility rules permit additional restrictions, to include them is not a violation of the Act. This argument is contrary to a plain language reading of section 391(b) of the Act. Nevertheless, this may provide the U.S. Olympic Committee with a workable legal fiction, by which it could find the USFSA in compliance with the Act protecting the USFSA's NGB franchise and the U.S. Olympic Committee's "winningest" and most profitable Olympic Winter Sport. See *supra* note 61, and *infra* note 134 and accompanying texts.

⁸⁷ For purposes of comparison, ISU Rule 102(2) as it read prior to the 1990 modifications is printed below:

A person is not eligible in skating if he or she has:

- a) practiced or taught skating for gain . . . ;
- b) participated in any capacity in a skating competition or exhibition in violation of the rules of the I.S.U. or of the I.S.U. member concerned . . . ;
- c) signed a contract providing for remuneration as an athlete or coach in skating prior to the completion of an I.S.U. Championship or an International Competition;
- d) accepted direct or indirect financial benefit without the authorization of the I.S.U. Member concerned in connection with their preparation or participation in competition . . . ;
- e) permitted their name, picture, personal appearance or performance to be used to advertise any commercial product, service or enterprise, except in accordance with contracts entered into either by the I.S.U. or the Member concerned. All payments to be made under such contracts shall be to the I.S.U. or to the Member and not directly to the athlete concerned, . . . ;
- g) in the performance of sport manifestly contravened the Rules of the I.S.U. and the spirit of fair play and good sportsmanship.

INTERNATIONAL SKATING UNION REGULATIONS 1988, Rule 102(2), at 4 (no (f) in the original) (copy on file in the *Cardozo Arts & Ent. L.J.* office). See also INTERNATIONAL SKATING

A person is not eligible in skating if he or she:

a) is a person who has accepted direct or indirect financial benefit without the authorization of the Member concerned in connection with the preparation for or participation in competition and without such benefit being made available through the Member concerned;

b) participated in any capacity in a skating competition in violation of the Rules of the I.S.U. or of the Member concerned;

c) performed in an ice show, exhibition or instructed in skating, permitted the use of his or her name, picture or personal appearance to advertise any commercial product, service or enterprise, unless approved by the Member concerned.

d) in the performance of the sport, manifestly contravened the Rules of the I.S.U. and the spirit of fair play and good sportsmanship.⁸⁸

This rule makes participation in competitions that are not held in accordance with the Rules of the ISU, such as professional competitions, an act which causes the loss of eligibility.⁸⁹ Thus, former Olympic Champions from the United States, like Brian Boitano and Scott Hamilton, who have participated in the Nutrasweet World Professional Figure Skating Championships, are barred from future Olympic competition.⁹⁰

The retention of a modified rule 102(2)(b), prohibiting participation in professional competitions, reflects the concern that speed and figure skating are youthful sports. That is, the participants are young and there are only a limited number of years in which skaters may remain successfully competitive. More experienced senior skaters remaining in the competitive cycle would prevent the upward movement of new skaters.⁹¹ This would stifle the development of

UNION REGULATIONS 1986, Rule 102, at 3-6 (Rule 102 remained unchanged from 1986 until 1990 except for two minor points which are not relevant to this Note).

⁸⁸ ISU REGS., *supra* note 3, Rule 102(2) at 4.

⁸⁹ Although not specifically stated in the rule as drafted, the ice shows exclude "amateur" shows properly sanctioned by the Member, where the participants are not paid for their performances other than with a nominal gift. The "ice shows" referred to in the rule include, among others, such professional shows as *Ice Capades*, *Discover Card Stars on Ice* and *Walt Disney's World on Ice*.

"Professional" competitions include those competitions that are not sanctioned by the appropriate governing body, such as the USFSA. Despite continued turmoil, ISIA-sanctioned competitions are, however, recognized as competitions, participation in which does not violate USFSA eligibility rules under the joint policy statements first adopted in October, 1974. *USFSA-ISIA Statements of Policy*, 1990-91 USFSA RULEBOOK, *supra* note 7, at 266. See also *Findings of Fact*, *supra* note 7, at 86 (discussing the ISIA and its interaction with the USFSA).

⁹⁰ Janofsky, *New Rules Rebuff Professional Veterans*, N.Y. Times, May 2, 1990, at B10, col. 3. See Stevenson, *ISU Sets Eligibility Rules*, *BLADES ON ICE*, Vol. 1, No. 1, at 20.

⁹¹ Telephone interview with Kathy Casey, President, Professional Skaters Guild of

figure skating, limit participation, and violate the U.S. Olympic Committee's mandate to "promote and encourage . . . participation in amateur athletic activities" under section 374 of the Act.⁹² Thus, ISU rule 102(2)(b) effectively prevents those skaters who have participated in competitions not held in accordance with ISU Regulations from entering competitive events organized by ISU Members in the future. While the ISU and the individual NGBs do have reinstatement rules,⁹³ these rules do not apply to skaters who have participated in professional competitions.⁹⁴ Indeed, the ISU reinstatement rule 103(1) expressly excludes regaining the right to compete in such instances.⁹⁵

While the Amateur Act allows the NGB to enact less stringent eligibility rules than the ISU, the ISU does not allow skaters who

America (Apr. 18, 1990). The Guild is an association of figure skating professionals and other interested individuals whose purpose is to promote and maintain a high standard of ethical and professional conduct and skill among its members.

⁹² Section 374 of the Amateur Act states:

The objects and purposes of the [U.S. Olympic Committee] shall be to—

- (1) establish national goals for amateur athletic activities and encourage the attainment of those goals;
- (2) coordinate and develop amateur athletic activity in the United States directly relating to international amateur athletic competition, so as to foster productive working relationships among sports-related organizations;
- (3) exercise exclusive jurisdiction, either directly or through its constituent members of committees, over all matters pertaining to the participation of the United States in the Olympic Games and in the Pan-American Games,

. . . .
(6) promote and encourage . . . participation in amateur athletic activities

36 U.S.C. § 374 (1988).

⁹³ See, e.g., *Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, ER 8.00 - 9.00, at 231-32; ISU REGS., *supra* note 3, Rule 103, at 5-6.

⁹⁴ The ISU reinstatement rules only apply to those competitors who violate doping controls or rules of conduct. ISU REGS., *supra* note 3, Rule 103, at 5-6. The revised ISU Rule 103 reads as follows:

1. A person who has been ineligible, in accordance with the provisions of Rule 102, may not thereafter compete in I.S.U. Championships, the Olympic Winter Games or International Competitions, even though reinstated as an eligible person.

2. A person who has been ineligible, in accordance with the provisions of Rule 102, may not thereafter be a Referee, Assistant Referee, [or] Judge . . . in I.S.U. Championships, the Olympic Winter Games or International Competitions, or a member of the I.S.U. Council, a Technical Committee or the Appeals Commission or a delegate to an I.S.U. Congress, unless he has been reinstated as an eligible person by the I.S.U. Council.

3. Requests for reinstatement as an eligible person by the Council shall be made:

- a) only by I.S.U. Members;
- b) only once for the same person;

. . . .
5. Reinstatement of ineligible persons for all national activities may be made as desired by the Member concerned in accordance with its own rules.

Id.
⁹⁵ *Id.*

qualify under less stringent rules to participate in ISU sanctioned events.⁹⁶ Thus, the USFSA eligibility rules *must* mirror the eligibility rules of the ISU since the Amateur Act, in effect, forces the USFSA to adopt the ISU rules. This situation produces problems by exposing the USFSA to lawsuits from two fronts. First, professionals who have previously competed in professional events, such as the World Challenge of Champions, the World Challenge Cup, the World Professional Figure Skating Championships, or the U.S. Open Professional Figure Skating Championships, would not be permitted to enter the Olympics, ISU Championships, or International Competitions under ISU Rule 102(2)(b).⁹⁷ The affected competitors and the producers of the professional competitions might bring an antitrust suit alleging that the NGBs have effectively violated section 2 of the Sherman Act, which restrains market monopolies.⁹⁸ However, since the ISU made only minor changes to rule 102(2)(b), plaintiffs have little hope of recovery as they would have violated a rule which they already knew, or should have known, would cause a loss of their eligibility-to-compete.⁹⁹

The other front for legal attack may also be a paper tiger. The 1990 ISU rule changes allow individual NGBs to determine how skaters may directly earn money during their competitive careers.¹⁰⁰ The promoters of the various *professional* competitions may find their *trade* restrained as skaters may choose to remain in the ISU *recognized system* of eligibility under the USFSA umbrella. The ISU eligibility rules clearly state the ISU's position that those competitors who have already violated rule 102(2)(b) are permanently banned from

⁹⁶ "The eligibility Rules of all I.S.U. Members must include all the restrictions of the eligibility Rules of the I.S.U. and may include additional restrictions." ISU RECS., *supra* note 3, Rule 102(7)(a), at 5.

⁹⁷ See *supra* note 87 and accompanying text.

⁹⁸ A monopoly cause of action arises when a party's actions are deemed to have interfered with free competition in the market. 15 U.S.C. § 2 (1988). Furthermore, a firm which holds a lawful monopoly by virtue of ownership of a unique resource is guilty of monopolization if it exploits that resource in ways which exclude or disadvantage customers. *Otter Tail Power Corp. v. United States*, 410 U.S. 366 (1973).

Since the NGBs impose stricter eligibility criteria than the criteria applied by the international federation—which is a clear violation of the Amateur Act, 36 U.S.C. 391(b)(12) (1988)—and thus, effectively restrains the skaters' access to the producers of competitions not held in accordance with the rules of the ISU, eligible competitors might bring an antitrust suit against the NGBs alleging a violation of their monopoly power. The ISU has had eligibility rules since 1895. See *supra* note 2.

⁹⁹ Certainly the old legal maxim "*Ignorantia legis neminem excusat*" applies here. John Selden restated and expanded this maxim by stating, "Ignorance of the Law excuses no man, not that all men know the Law, but tis an excuse every man will plead & no man can tell how to confute him." SELDEN, TABLE TALK OF JOHN SELDEN 68 (F. Pollock editor, Selden Society ed. 1927) [hereinafter SELDEN].

¹⁰⁰ See *supra* note 83 and accompanying text.

competitions sponsored or organized by its Members.¹⁰¹ The concern then is that competitors, like 1988 Olympic Champion Brian Boitano, who have skated in professional events, in violation of the ISU rules, may sue the NGB for the right to participate in USFSA-sanctioned events. But such a suit would be hard for an *ineligible* competitor to win. Even if a competitor who was made ineligible by violating ISU Rule 102 is reinstated, the reinstatement does *not* include the right to compete.¹⁰²

Additionally, any skater who violates ISU rule 102(2)(b) knows, or should know, that he is violating the rule and that the ISU's enforcement of that rule does not disenfranchise such a skater from anything to which that skater was previously entitled.¹⁰³ The skater has no remedy as there is no injury. A skater who violates the rule by participating in a non-sanctioned competition¹⁰⁴ and then complains because the rule was not changed or repealed, does not have a cause of action.

The goal of the Amateur Act is to promote amateur athletic competition.¹⁰⁵ Following the International Olympic Committee's lead, the USFSA substituted "eligible" for "amateur," and "ineligible" for "professional." Thus, the only difference between eligible and ineligible persons is not *if* they receive money for their athletic ability but *how* they receive that money.¹⁰⁶

In a letter to the International Yacht Racing Union ("IYRU") dated December 7, 1989, the IOC stated that it had never accepted open eligibility and that the IYRU had gone too far by eliminating all eligibility requirements.¹⁰⁷ The IOC ruled that the IYRU had to keep sailors under the control of the NGB in order to insure that all competitors in Olympic sports play by the same rules.¹⁰⁸ For example, no sailor could compete in a non-sanctioned regatta¹⁰⁹ without losing eligibility status and being barred from Olympic competi-

¹⁰¹ ISU REGS., *supra* note 3, Rule 103(1), at 5. This rule has remained effectively unchanged since 1984. See INTERNATIONAL SKATING UNION REGULATIONS 1984, Rule 103(1), (5), at 5-6.

¹⁰² ISU REGS., *supra* note 3, Rule 103(1), at 5.

¹⁰³ SELDEN, *supra* note 99.

¹⁰⁴ The ISU does not sanction events. For reasons of flow and clarity, however, this Note will use "sanctioned" and "held in accordance with ISU rules" interchangeably throughout the text.

¹⁰⁵ 36 U.S.C. § 374(2) (1988). See *supra* note 92.

¹⁰⁶ *Interim Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, at 229.

¹⁰⁷ Lloyd, *I.O.C. Letter Alters Olympic Eligibility*, N.Y. Times, Dec. 24, 1989, § 8 (Sports), at 8, col. 1.

¹⁰⁸ *Id.*

¹⁰⁹ A non-sanctioned regatta is one in which the appropriate sanction has not been obtained either because the required sanction fee has not been paid and/or the rules of the United States Yacht Racing Union, the NGB, have not been followed. *Id.*

tion.¹¹⁰ Similarly, then, under existing rules for skaters, no skater could compete in a non-sanctioned competition without losing ISU and Olympic eligibility.

Each ISU Member has the right, under the new regulations, to decide under what circumstances participants may receive pecuniary gain for their skating performances and the eligibility rules which govern participation in the Member's sanctioned events.¹¹¹ The ISU assumes that individual Members, like the USFSA, will set reasonable eligibility rules in accord with the overall purposes of ISU Rule 102.¹¹² The 1990 ISU eligibility rules set minimum standards. While the ISU is willing to allow its Members to enact stricter eligibility standards, those eligibility rules must be at least as strict as the minimum criteria set by the ISU.¹¹³ Conversely, the Amateur Act requires the NGB to have eligibility standards no greater than the international federation that governs that sport, effectively setting an upper limit—a ceiling—on eligibility requirements.¹¹⁴ Thus, the ISU provides—a floor—minimum eligibility requirements since the ISU seeks, through its 1990 eligibility rule changes, to allow each Member to freely determine eligibility rules above the floor set by the ISU's basic minimum requirements.¹¹⁵

Aside from the floor/ceiling problem, the U.S. Olympic Committee has accepted, by acquiescence, that the USFSA may have stricter eligibility-to-compete rules since this is permitted by the ISU regulations.¹¹⁶ This situation merely adds to the USFSA's dilemma because the Amateur Act does not give the U.S. Olympic Committee any authority to sanction violations.¹¹⁷

V: THE ULTIMATE SOVEREIGN

The IOC grants to the ISU the right and obligation to conduct the speed and figure skating competitions at the Olympic Games. Simultaneously, the IOC also empowers the individual

¹¹⁰ *Id.*

¹¹¹ See *supra* note 81 and accompanying text.

¹¹² See ISU REGS., *supra* note 3, Rule 102 at 3-5.

¹¹³ *Id.*, Rule 102 (7)(a), at 5. "The eligibility rules of all Members must include all of the restrictions of the eligibility rules of the I.S.U. and may include additional restrictions." *Id.*

¹¹⁴ 36 U.S.C. § 391(b)(12) (1988).

¹¹⁵ ISU REGS., *supra* note 3, Rule 102, at 3. "It is the responsibility of each Member to establish the basis, including any financial arrangement, in which its skaters are permitted to participate in ISU Championships and/or International Competitions." *Id.* See also *supra* note 113 (Member eligibility rules must include ISU minimums).

¹¹⁶ See *supra* note 83.

¹¹⁷ See generally 36 U.S.C. §§ 371-396 (1988) (no provision in the Amateur Act vests in the U.S. Olympic Committee the power to condone violations of the Act).

National Olympic Committees¹¹⁸ to select their country's Olympic Team. Under the Amateur Act, the U.S. Olympic Committee may designate the NGB to select the Olympic Team for the NGB's sport or the U.S. Olympic Committee may select the team on its own initiative.¹¹⁹

The effect of the ISU Regulations is that the U.S. Olympic Committee cannot prevent USFSA competitors from participating in the Olympics.¹²⁰ In fact, the Olympic Sports Festival is the only event in which the U.S. Olympic Committee can refuse to allow USFSA figure skaters to participate.¹²¹ In reality, the U.S. Olympic Committee probably would not eliminate USFSA skaters since skating produces significant revenue at the Olympic Sports Festival. Skating produces "some of the highest" television ratings and in 1990 was the number one ticket draw at the Festival.¹²² This makes figure skating one of the most valuable sports in the Festival and one which the U.S. Olympic Committee would prefer not to lose.

More significantly, the actions of the USFSA indicate that the ISU is the ultimate sovereign and that the U.S. Olympic Commit-

¹¹⁸ The U.S. Olympic Committee is the National Olympic Committee for the United States.

As a creature, or at least [as] an integral part, of the Olympic movement, it is subject to the Olympic Charter, rules, and decisions. The [U.S. Olympic Committee] has first and foremost an international character. While the [U.S. Olympic Committee] may cooperate with national government, Rule 24C of the Olympic Charter proscribes any association with an undertaking which would conflict with the principles of the Olympic movement.

Nafziger, *supra* note 6, at 67.

¹¹⁹ 36 U.S.C. § 374(4) (1988).

¹²⁰ The Olympic Winter Games "are subject to the Regulations of the I.S.U. and the [International Olympic Committee] governing such competitions." ISU REGS., *supra* note 3, Rule 126(2), at 18.

Only competitors from I.S.U. Members may participate in the skating events of the Olympic Winter Games, and then only if such events have been announced by an I.S.U. Member authorized to do so by the National Olympic Committee of the country in which the Olympic Winter Games are held.

Id. Rule 126(6), at 19.

Malta tried to enter a skater in the 1988 Olympic Winter Games held in Calgary, Alberta, Canada. The Calgary Olympic Organizing Committee originally had accepted the entry, but since Malta was not a Member of the ISU, the skater's entry ultimately had to be refused by the organizing committee. The Maltese skater did not compete. Interview with Benjamin T. Wright, in Lexington, Mass. (Oct. 14, 1990).

¹²¹ The Olympic Sports Festival is a national multi-sport competition coordinated and funded by the U.S. Olympic Committee with each sport's NGB selecting its own competitors. U.S. OLYMPIC COMMITTEE, U.S. OLYMPIC FESTIVAL '87 OFFICIAL MAGAZINE at cover, 43, 45, 61, 75 (1987) (copy on file in the *Cardozo Arts & Ent. L.J.* office). The Olympic Sports Festival is held annually except in Olympic years. *See id.* at 160-76. The competition in each sport is conducted under the rules of the appropriate NGB.

¹²² Telephone interview with Diane Lamb, ESPN Communications Co-ordinator (Dec. 21, 1990); Telephone interview with Jeff Cravens, U.S. Olympic Coordinator of Programs (Dec. 27, 1990).

tee is relatively powerless.¹²³ If the U.S. Olympic Committee finds the USFSA in violation of the Amateur Act, the only remedy available to the U.S. Olympic Committee is to revoke the USFSA's NGB status and assign the NGB franchise for developing amateur figure skating to another entity. However, under the Olympic Charter, the U.S. Olympic Committee "is obliged to follow IOC rules which prohibit the [U.S. Olympic Committee] from recognizing an NGB that is not a member of an international federation."¹²⁴ Under the ISU Constitution, an applicant for Member status must be "recognized as the national governing body [for figure skating] for not less than two years prior to application for membership" in the ISU.¹²⁵ Since only the USFSA meets this criteria, the ISU would continue to recognize the USFSA as the Member from the United States under the ISU Constitution. Thus, the USFSA would continue as before, qualifying and sanctioning international competitors under the auspices of the ISU.

Being disenfranchised by the U.S. Olympic Committee, however, would cost the USFSA approximately \$420,500 in 1990 alone.¹²⁶ Prior to 1986, U.S. Olympic Committee funding was less than \$94,000 per annum and depended on the ability of the U.S. Olympic Committee to generate sponsors and ultimately of the Olympics to make money.¹²⁷ Today, although U.S. Olympic Committee funding has become more substantial and, therefore, has assumed a greater importance in USFSA decisions, it amounts to less than fifteen percent of the USFSA annual budget.¹²⁸ However, because figure skating generates substantial revenue and broadcast television ratings, it is highly unlikely that the U.S. Olympic Committee would cut off one of its larger sources of income.¹²⁹

Consequently, amateur athletes and their NGBs face a dilemma—the sports law of the United States and the rules of an

¹²³ Just one week after the meeting of the ISU Congress, the USFSA held its Annual Governing Council Meeting. At the Governing Council Meeting, the USFSA passed interim eligibility rules which directly violate section 391 of the Amateur Act by establishing eligibility rules that are stricter than the minimum standards set by the ISU. See *Interim Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, at 229.

¹²⁴ Nafziger, *supra* note 6, at 91.

¹²⁵ ISU CONST., *supra* note 2, art. 6(3)(a).

¹²⁶ Telephone interview with John Holdsworth, USFSA Treasurer (Mar. 11, 1990). See USFSA, *Report of the Olympic Representative*, 1990 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN 233 (May 11-12, 1990).

¹²⁷ Telephone interview with John Holdsworth, USFSA Treasurer (Mar. 11, 1990).

¹²⁸ *Id.* The USFSA receives less funding from the U.S. Olympic Committee than all other Olympic sports organizations. *Id.*

¹²⁹ See *supra* note 61.

international sports federation are in conflict. The choice of which master to obey is critical to the continued development of American World- and Olympic-class athletes as well as the grass-roots programs developed for the average citizen. The USFSA is now being forced to violate section 391(b)(12) of the Amateur Act in order to fulfill the Act's mandate of increasing participation in amateur athletics.¹³⁰ Since the ISU, and thus the USFSA, will win this confrontation, skaters who want to compete will be forced to violate federal law.

The USFSA's decision to follow the new ISU regulations by establishing interim eligibility rules¹³¹ places the USFSA in violation of section 391(b)(12) of the Amateur Act because, in setting its own standards, the USFSA is using criteria stricter than the ISU's eligibility rules.¹³² This creates an opening for the U.S. Olympic Committee to enfranchise another NGB to replace the USFSA. However, the ISU will not accept any new U.S. Olympic Committee-designated NGB as a Member under its current constitution.¹³³ Thus, the USFSA will retain Membership in the ISU and continue to qualify and sanction skaters for International and World competitions.

While the U.S. Olympic Committee may designate the NGB to select competitors for the Olympics, or may choose to do so itself, the ISU Regulations require that any competitor chosen be a member of the ISU Member for the competitor's country.¹³⁴ Since the ISU Member is the USFSA, the competitor would have to belong to the USFSA. Thus, if the U.S. Olympic Committee disenfranchised the USFSA, the U.S. Olympic Committee would be in the unique position of being required to obtain membership in and permission from a disenfranchised NGB in order to enter its new NGB's competitors in the Olympics. In effect, the USFSA would still hold the international and Olympic franchise. Even if the U.S. Olympic Committee granted the NGB figure skating franchise to another entity, the franchise would be worth-

¹³⁰ *Supra* note 79 and accompanying text. For the Amateur Act's mandate, see *supra* note 92.

¹³¹ See *Interim Eligibility Rules*, 1990-91 USFSA RULEBOOK, *supra* note 7, at 229.

¹³² 36 U.S.C. § 391(b)(12) (1988). See *supra* note 79.

¹³³ ISU CONST., *supra* note 2, art. 6(3).

¹³⁴ The Amateur Act authorizes the U.S. Olympic Committee to "obtain for the United States, either directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each competition and event of the Olympic Games . . ." 36 U.S.C. § 374(4) (1988) (emphasis added). Nevertheless, the U.S. Olympic Committee "is obliged to follow IOC rules which prohibit the [U.S. Olympic Committee] from recognizing an NGB that is not a member of an international federation." Nafziger, *supra* note 6, at 91.

less because the USFSA skaters will still be the World and Olympic competitors representing the United States under the ISU Regulations.¹³⁵

In this scenario, the U.S. Olympic Committee would face an additional dilemma—the possible loss of its television revenues. The United States Figure Skating Championships are known for the exceptional ability of its competitors. The Championships' capacity to bring in the all important television ratings points, and thus sell advertising air time, makes the USFSA a valued member of the U.S. Olympic Committee.¹³⁶ Network television would not broadcast competitions and championships featuring a host of unknown skaters who have no possibility of becoming World or Olympic champions because the network would not be able to attract advertisers to pay for the programming.¹³⁷ Known competitors bring in the audience.¹³⁸ As a result, the U.S. Olympic Committee could be forced to sue the USFSA to insure compliance with the Amateur Act. By commencing such a suit, the U.S. Olympic Committee would be seeking to protect its Olympic Sports Festival television revenue and its share of Olympic funding. Unfortunately, if the USFSA is sued by the U.S. Olympic Committee, money and other resources on both sides will be diverted to the defense of the suit rather than the financing of future figure skating competitors.

VI. PROPOSED CHANGES TO THE AMATEUR ACT

Despite the minimal benefits the Amateur Act affords to the sport of figure skating,¹³⁹ the Amateur Act is poor legislation as applied to the sport. From its inception in 1921, the USFSA, on its own, has been extremely successful in developing World-class and Olympic champions. In fact, "with [34] medals since 1920, [figure skating] is the second most successful U.S. sport in the [Olympic] Winter Games, exceeded only by speed skating with [42]. However, on a percentage basis, figure skating is the 'winningest' sport since it has only four events to speed skating's

¹³⁵ ISU REGS., *supra* note 3, Rule 126, at 19. "In such a situation, the USOC must depend upon the good will of the international [sports] federations to defer to the reasonable provisions of the Act . . ." Nafziger, *supra* note 6, at 91.

¹³⁶ See *supra* note 61. The "Battle of the Brians" and the "Battle of the Carmen's" are two of the more recent media hypes which indicate the important relationship between competitive figure skaters, audience draw, and television revenues. See Cotton, *The Party's Almost Over*, SPORTS ILLUSTRATED, Feb. 29, 1988, at 98.

¹³⁷ Telephone interview with Ed Lewi, Ed Lewi Associates Publicity and Public Relations (Oct. 15, 1989).

¹³⁸ *Id.*

¹³⁹ See *supra* notes 39-47 and accompanying text.

nine."¹⁴⁰

The combined effect of the ISU's relaxed eligibility rules and section 391(b)(12) of the Act jeopardizes that success. However, changing the Amateur Act to comply with the new reality of "open competition"¹⁴¹ may not be easy in the short term. Despite the "administrative faux pas that beset the United States team in the 1972 Munich Olympics,"¹⁴² Congress was unable to enact the Amateur Athletic Act of 1974.¹⁴³ Furthermore, alterations in the Act must not be allowed to continue either to increase the federal government's involvement with Olympic sports through the U.S. Olympic Committee or any other body, or to create another layer of federal bureaucracy.

Nonetheless, specific modifications in the Act would benefit all concerned. First, section 391(b)(12) of the Amateur Act should be modified so that the NGB's eligibility rules are no more restrictive than the appropriate international sports federation regulations, unless the international sports federation so permits. This modification would be the least restrictive means of achieving the Act's goals of setting one nation-wide eligibility standard in each sport and insuring participation in international competition. It is important to note that no other country or ISU Member must labor under the Act. They may freely choose to have eligibility standards that are well above the ISU minimums.

In addition, subsections (1) and (2) of section 374 should also be rewritten to clarify whether the Amateur Act grants the U.S. Olympic Committee jurisdiction solely over international competition or includes all amateur athletic activities in the United States as well.¹⁴⁴ If the Act applies only to the Olympic

¹⁴⁰ *Findings of Fact*, *supra* note 7, at 84. The number of medals was adjusted to include the 1980, 1984 and 1988 Olympic Winter Games. FOUNDATION FOR INTERNATIONAL ICE SKATING ADVANCEMENT, INTERNATIONAL WINTER SPORTS DIRECTORY 7-8, 12-13 (premier ed. 1988-89).

¹⁴¹ See *supra* note 5.

¹⁴² Nafziger, *supra* note 6, at 47.

For example, a team doctor failed to note that a swimmer's drug list contained a stimulant which was on the International Olympic Committee's (IOC) prohibited list; as a result, the swimmer lost his gold medal. Two sprinters failed to qualify because their coach gave them the wrong time for their trials. Two medal winners were disqualified from all future competitions because they refused to face the American flag during the awards ceremony. The final blow was the unprecedented defeat of a United States men's basketball team by the Soviets amid controversial calls by the referees, which were unsuccessfully and, some maintained, incompetently appealed by United States officials.

Id.

¹⁴³ See Shuck, *Administration of Amateur Athletics: The Time For an Amateur Athlete's Bill of Rights Has Arrived*, 48 *FORDHAM L. REV.* 53, 66-67 (1979).

¹⁴⁴ See *supra* note 92.

and Pan-American Games,¹⁴⁵ this fact should be clearly stated. If, on the other hand, the Act applies to all amateur athletic activity,¹⁴⁶ then speed and figure skating should be exempted from section 391(b)(12) of the Act which is detrimental to the continued development of World- and Olympic-class figure skating competitors. Free from the constraints of the Act, the USFSA would be able to continue its more than sixty-five years of successfully qualifying and funding competitive skaters.¹⁴⁷

The language in section 391(b)(12) should also be changed to reflect the position of the IOC that former professionals in a sport, if otherwise eligible, should be able to compete internationally on all levels of competition. Simultaneously, NGBs must be allowed to develop an eligibility criteria which addresses the needs of true amateurs—those who participate in sports as an avocation only.

In support of this argument, the United States District Court for the District of Utah recently held that the USFSA “was obligated to follow” the eligibility rules of the ISU.¹⁴⁸ The court acknowledged that the “USFSA did not create” the ISU eligibility rules but that its action enforcing those rules by denying a sanction was “an act which [the USFSA] has the legal right to do.”¹⁴⁹ This decision opens the door, but can not take the next logical step of modifying, through legislation, the anachronisms of the Amateur Act or of exempting those sports, like figure skating, that suffer under its burdens.

VII. CONCLUSION

Since the passage of the Amateur Act in 1978,¹⁵⁰ a dramatic change has occurred to the rules determining which athletes can

An . . . argument can be made that ‘national goals’ for ‘amateur athletic activity’ are not limited to Olympic or Pan-American sports. . . .

The USOC has, however, taken the position that it must work principally through its NGB’s. It is unlikely to set national goals outside the area of Olympic and Pan-American sports because it is not designed to work independently of its NGB’s.

Nafziger, *supra* note 6, at 54.

¹⁴⁵ 36 U.S.C. § 374(3) (1988). See *supra* note 92.

¹⁴⁶ See *supra* note 144.

¹⁴⁷ See *supra* notes 61, 140 and accompanying text.

¹⁴⁸ Jensen v. United States Figure Skating Ass’n, Civ. No. 85-C-1301 S, at 12-13 (D. Utah Apr. 20, 1990).

¹⁴⁹ *Id.* at 13 (citation omitted). Although the decision does not directly discuss the ISU eligibility rules, the court directly implies those rules when it discusses “rules USFSA did not create but was obligated to follow.” *Id.* at 12-13. USFSA sanction rules and eligibility rules were combined and merged in 1987. See *supra* note 77 and accompanying text.

¹⁵⁰ See *supra* note 34.

compete and under what conditions. Today, while the goals of the Amateur Act—to increase amateur athletic participation nationally and the number of Olympic medals won by American competitors internationally—remain admirable, the results are mostly illusory.¹⁵¹ The Amateur Act has failed American athletes by not adapting to the rapidly changing eligibility criteria dictated by the IOC and the various international sports federations.

Congress must pass corrective legislative measures if the goals of the Amateur Act are to be achieved. New statutory standards must provide a clear definition as to the scope of the Act—domestic, international or both—and must provide NGBs the freedom to act in accordance with the dictates of the NGB's parent international sports federation.

If Congress fails to pass corrective legislation, the most radical and controversial solution would be to exempt figure skating from the Amateur Act entirely.¹⁵² More likely is a continuation of the current "default" action by the U.S. Olympic Committee in which the USFSA follows the rules of the ISU and ignores those sections of the Act which are in conflict with the rules of the ISU. Clearly, the U.S. Olympic Committee's best interest, both financially and in the total number of Olympic medals won, would not be served by allowing figure skating, the "winningest" Olympic sport,¹⁵³ to leave the fold. The U.S. Olympic Committee probably has an understandable fear of opening the floodgates; the very real fear that if the USFSA were allowed to leave, other NGBs would be sure to follow.

¹⁵¹ See FOUNDATION FOR INTERNATIONAL ICE SKATING ADVANCEMENT, INTERNATIONAL WINTER SPORTS DIRECTORY 7-13 (premier ed. 1988-89). The number of United States medals won in ISU Championships has not increased significantly since the passage of the Amateur Act. *Id.* The USFSA membership for the 1989-90 fiscal year was 67,146 an increase from an average membership just over 37,000 from 1978 to 1988. But in real numbers, the increase does not reflect an increase in the actual number of participants in USFSA's official test and competition structure. The higher number reflects the inclusion of Basic Skills Program beginning skaters not previously counted in the official totals. Basic Skills skaters were first included in USFSA membership totals in 1986. For the 1989-90 fiscal year, Basic Skills skaters totaled 32,952. Thus, total USFSA membership, not including Basic Skills skaters, has actually declined to 34,194 for the 1989-90 fiscal year. USFSA, *Report of the Membership Committee*, 1990 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN 153 (May 11-12, 1990); USFSA, *Report of the Membership Committee*, 1989 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN 158 (May 12-13, 1989); USFSA, *Report of the Membership Committee*, 1985 ANNUAL MEETING OF THE GOVERNING COUNCIL: REPORTS OF THE OFFICERS AND COMMITTEE CHAIRMEN 141 (May 3-4, 1985).

¹⁵² Although highly unlikely, this could be accomplished through congressional legislation, by the U.S. Olympic Committee Board of Directors, or by the USFSA itself, after consultation with the ISU Council.

¹⁵³ See *supra* note 140 and accompanying text.

Thus, a better solution is to amend the Amateur Act so that speed and figure skating would be exempt from section 391(b)(12). A proposed model for such an amendment is set forth in the Appendix accompanying this Note. This minor change would increase participation in recognized competitions and allow appropriate funding of competitors. Furthermore, this modification to the Act would give the USFSA the freedom to adopt eligibility-to-compete rules within the full range allowed by the ISU without violating the Amateur Act.

Jonathan S. Fishbein

[Proposed Draft]
December 18, 1990

____ CONGRESS

____ SESSION

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee on _____.

A BILL

To amend the Amateur Sports Act of 1978 to conform with changes in terminology as promulgated by the International Olympic Committee; to eliminate conflicts between the Act and the international sports federations that govern Olympic and Pan-American sports worldwide; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Amateur Sports Improvement Act of 1991".

SEC. 2. DEFINITIONS

Section 373 of the Amateur Sports Act of 1978 (36 U.S.C. § 373) is amended—

(1) in paragraph (1) by striking the word "amateur" and inserting "eligible".

(2) by making all changes necessary in sections 371 to 396 so that said sections conform with this section.

SEC. 3. OBJECTS AND PURPOSES OF CORPORATION

Section 374 of the Amateur Sports Act of 1978 (36 U.S.C. § 374) is amended—

(1) in paragraph (1) by inserting "and international" after "national";

(2) in paragraph (2) by inserting "national and international" before "sports-related";

(3) in paragraph (2) by inserting ", and so as not to interfere with the directives and regulations of the appropriate international sports federation and its national governing body" after "organizations";

(4) in paragraph (8) by striking the word "amateur" and inserting "eligible" after "involving" and after "opportunity of any";

(5) in paragraph (9) by striking both occurrences of the words "amateur athletes" and inserting "eligible athletes" after both occurrences of "for use by";

(6) in paragraph (14) by striking the word "amateur" and inserting "eligible" after "assistance to".

SEC. 4. POWERS OF THE CORPORATION

Section 375 of the Amateur Sports Act of 1978 (36 U.S.C. § 375) is amended—

(1) in paragraph (3) by striking the word "amateur" and inserting "eligible".

(2) in paragraph (5) by striking the word "amateur" and inserting "eligible".

SEC. 5. MEMBERSHIP

Section 376 of the Amateur Sports Act of 1978 (36 U.S.C. § 376) is amended—

(1) by striking paragraph (b)(2) and inserting immediately after paragraph (b)(1) the following new paragraph designated (b)(2): "eligible athletes who are currently or have been actively engaged only in national amateur athletic competition within the preceding 10 years or who are currently or have represented the United States in international amateur athletic competition within the preceding 10 years;".

SEC. 6. NATIONAL GOVERNING BODIES

Section 391 of the Amateur Sports Act of 1978 (36 U.S.C. § 391) is amended—

(1) in paragraph (b)(3) by striking "amateur" and inserting "eligible" after "opportunity of any";

(2) in paragraph (b)(5) by striking "amateur" and inserting "eligible" after "who is an";

(3) in paragraph (b)(6) by striking “amateur” and inserting “eligible” after “opportunity to” and after “hearing to any”;

(4) in paragraph (b)(8)—

(A) by inserting “currently or have been” before “actively”;

(B) by striking “in amateur athletic competition” and inserting “only in national amateur athletic competition within the preceding 10 years” after “engaged”;

(C) by inserting “are currently or” before “have represented”;

(5) in paragraph (b)(12) by striking “amateur” and inserting “eligibility-to-compete” before the word “status” and by inserting “unless the rules and/or regulations of the international sports federation specifically permit the NGB to enact stricter eligibility requirements” after “federation”.

SEC. 7. DUTIES OF NATIONAL GOVERNING BODIES

Section 392 of the Amateur Sports Act of 1978 (36 U.S.C. § 392) is amended—

(1) in paragraph (a)(3) by striking “amateur” and inserting “eligible”;

(2) in paragraph (a)(4)(B) by striking “amateur” and inserting “eligible” after “United States”; and

(3) in paragraph (a)(5) by striking “amateur” and inserting “eligible” after “allow an”.

SEC. 8. AUTHORITY OF NATIONAL GOVERNING BODIES

Section 393 of the Amateur Sports Act of 1978 (36 U.S.C. § 393) is amended—

(1) by redesignating, as paragraph (a), the existing text in section 393 by inserting (a) before “For the sport”; and

(2) by inserting after paragraph (7) the following new paragraph:

“(b) Nothing in this Act shall require a national governing body to use any authority granted by this Act that the national governing body is prohibited from exercising by its international sports federation. Nothing in this Act shall remove from or place any limitation on any authority granted to a national governing body by its international sports federation.”

SEC. 9. EFFECTIVE DATE.

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the enactment of this Act.

* * *

This section of the Appendix is provided in order that the reader may clearly understand the incorporation of the proposed changes within the context of the Amateur Sports Act of 1978. Words omitted are contained within brackets and new wording is underlined.

§ 373. Definitions

As used in this chapter, the term—

(1) “[amateur] eligible athlete” means any athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes;

....

§ 374. Objects and purposes of Corporation

The objects and purposes of the Corporation shall be to—

(1) establish national and international goals for amateur athletic activities and encourage the attainment of those goals;

(2) coordinate and develop amateur athletic activity in the United States directly relating to international amateur athletic competition, so as to foster productive working relationships among national and international sports-related organizations, and so as not to interfere with the directives and regulations of the appropriate international sports federation and its national governing body;

....

(8) provide for the swift resolution of conflicts and disputes involving [amateur] eligible athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any [amateur] eligible athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition;

(9) foster the development of amateur athletic facilities for use by [amateur] eligible athletes and assist in making existing amateur athletic facilities available for use by [amateur] eligible athletes;

.....

(14) encourage and provide assistance to [amateur] eligible athletes of racial and ethnic minorities for the purpose of eliciting the participation of such minorities in amateur athletic activities in which they are underrepresented.

§ 375. Powers of Corporation; amendment of constitution

(a) The Corporation shall have perpetual succession and power to—

.....

(3) organize, finance, and control the representation of the United States in the competitions and events of the Olympic Games and of the Pan-American Games, and obtain, either directly or by delegation to the appropriate national governing body, [amateur] eligible representation for such games;

.....

(5) facilitate, through orderly and effective administrative procedures, the resolution of conflicts or disputes which involve any of its members and any [amateur] eligible athlete, coach, trainer, manager, administrator, official, national governing body, or amateur sports organization and which arise in connection with their eligibility for and participation in the Olympic Games, the Pan-American world championship competition, or other protected competition as defined in the constitution and bylaws of the Corporation;

.....

§ 376. Membership; establishment and maintenance of reasonable representation provisions in constitution and bylaws

.....

(b) In its constitution and by laws, the Corporation shall establish and maintain provisions with respect to its governance and the conduct of its affairs for reasonable representation of—

.....

(2) [amateur] eligible athletes who are currently or have been actively engaged only in national amateur athletic competition within the preceding 10 years or who are currently or have represented the United States in international amateur athletic competition within the preceding 10 years;

.....

§ 391. Recognition of amateur sports organizations

.....
 (b) Eligibility requirements

No amateur sports organization is eligible to be recognized or is eligible to continue to be recognized as a national governing body unless it—

.....
 (3) agrees to submit, upon demand of the Corporation, to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association in any controversy involving its recognition as a national governing body, as provided for in section 395 of this title, or involving the opportunity of any [amateur] eligible athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, as provided for in the Corporation's constitution and bylaws;

.....
 (5) demonstrates that its membership is open to any individual who is an [amateur] eligible athlete, coach, trainer, manager, administrator or official active in the sport for which recognition is sought, or to any amateur sports organization which conducts programs in the sport for which recognition is sought, or to both;

(6) provides an equal opportunity to [amateur] eligible athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, age, sex, or national origin, and with fair notice and opportunity for a hearing to any [amateur] eligible athlete, coach, trainer, manager, administrator or official before declaring such individual ineligible to participate;

.....
 (8) demonstrates that its board of directors or other such governing board includes among its voting members individuals who are currently or have been actively engaged only in national amateur athletic competition in the sport for which recognition is sought within the preceding 10 years or who are currently or have represented the United States in international amateur athletic competition in the sport for which recognition is sought within the preceding 10 years, and that the membership and voting power held by such individuals is not less than 20 percent of such membership and

voting power held in that board of directors or other such governing board;

.....
(12) does not have eligibility criteria related to [amateur] eligibility-to-compete status which are more restrictive than those of the appropriate international sports federation;

§ 392. Duties of national governing bodies

(a) For the sport which it governs, a national governing body is under duty to—

.....
(3) keep [amateur] eligible athletes informed of policy matters and reasonably reflect the views of such athletes in its policy decisions;

(4) promptly review every request submitted by an amateur sports organization or a person for a sanction . . . (B) to sponsor United States [amateur] eligible athletes to compete in international amateur athletic competition . . . ;

(5) allow an [amateur] eligible athlete to compete in any international amateur athletic competition conducted under its auspices or that of any other amateur sports organization or person, unless . . . ;

§ 393. Authority of national governing bodies

(a) For the sport which it governs, a national governing body is authorized to—

.....
(b) Nothing in this Act shall—

(1) require a national governing body to use any authority granted by this Act that the national governing body is prevented from exercising by its international sports federation;

(2) remove from or place any limitation on any authority granted to a national governing body by its international sports federation.