

MANDATORY, BINDING ARBITRATION FOR OLYMPIC ATHLETES: IS THE PROCESS BETTER OR WORSE FOR “JOB SECURITY”?

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I. INTRODUCTION

Imagine an employee who rises at five o'clock every morning to make the thirty minute drive to a factory job. She shows up to work, rain or shine, and does all the work requested of her. She collects a paycheck on a regular basis. In recognition of her years of hard work, the employee is promoted. Her pay is increased, and she looks forward to continued success. Then, one day she shows up at the factory only to find that she is denied admittance for alleged misconduct. Her only recourse is to plead her case before the very people in management who have accused her of wrong-doing. Should the charges against her stand, the employee will not only be prevented from working in this particular factory, but she will not be allowed to use the skills that she has trained to perfect her whole life. As a condi-

* The author thanks her family for their patience and encouragement.

tion of employment, she agreed to waive her access to judicial review of any such charges.

Now imagine a similar scenario in a slightly different context. An Olympic caliber swimmer rises at five o'clock every morning, including weekends, to make the thirty minute drive to the pool for the first workout of the day. She shows up to practice, rain or shine, and does the miles of swimming and hours of strength training dictated by the coach. In recognition of her hard work and winning performances, the national governing body for swimming sends her a monthly stipend so that she can continue to train. Then, one day she shows up at a competition only to find that she is denied the opportunity to perform because of alleged misconduct. Her only recourse is to plead her case before the very people who have accused her of wrong-doing. Should the charges stand, the athlete will not be allowed to compete; thus, she will no longer be eligible for a monthly stipend or commercial endorsements that tout her status as a premiere competitor. As a condition of eligibility for competition, she waived her access to judicial review of any charges of misconduct.

Is there a substantive difference between the "traditional" employee and a "non-professional" athlete? The factory employee does a job and collects a paycheck. National caliber athletes also do a job by training to represent the United States in competition, and they collect money for their work.¹ This Comment argues that mandatory arbitration in the traditional employment context shares similar characteristics with mandatory arbitration in the context of athletic competitions. In particular, this Comment examines the International Olympic Committee's recently instituted policy of requiring athletes, as a condition of eligibility to compete in the Olympics, to waive their right to take a dispute to court.²

Part II of this Comment reviews the history of the Olympic Movement in the United States and some of the issues that pressed Olympic officials to come up with alternatives to lengthy and costly court battles. Part III argues that the work of athletes is comparable to that of "traditional" employees. Part IV discusses the nuances existing within the law and outlines factors that should be considered when evaluating the arbitration process. Finally, this Comment examines the current Olympic arbitration system and concludes that while arbitration may play an important role in processing time-

1. Greco-Roman wrestler Matt Ghaffari explained, "Before, you'd get out of college and you'd have to get a job, . . . [b]ut now, with money coming from USA Wrestling and the USOC stipend program, you don't have to." Liz Robbins, *Olympics Insider: Funding Keeps Athletes Returning*, PLAIN DEALER (Cleveland), July 7, 1996, at D4; see *infra* Part III.

2. See Mike Spence, *IOC Clause Aims to Keep Athletes out of Courtrooms*, COLO. SPRINGS GAZETTE TELEGRAPH, May 26, 1996, at C2.

sensitive disputes, fairness concerns regarding the mandatory waiver of the right to have disputes reviewed by a court must be addressed.

II. HISTORY

A. The United States Olympic Committee

Although the United States Olympic Committee (USOC) was originally chartered by Congress in 1950, the Amateur Sports Act (Act),³ passed in 1978, created the framework for the corporation that operates today. In an effort to focus national goals for amateur athletics, Congress gave the USOC power to “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.”⁴ Additionally, the USOC was designed to “provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete . . . to participate in amateur athletic competition.”⁵ To encourage this dispute resolution, even in the international context, Congress directed the USOC to “establish and maintain provisions for the swift and equitable resolution of disputes . . . relating to the opportunity of an amateur athlete . . . to participate in the Olympic Games.”⁶

Cognizant of the potential for dissatisfaction with the USOC decision-making procedures, Congress provided that an unsatisfied party has a right to review from any regional office of the American Arbitration Association.⁷ The Act also provides that for any sporting event held at the Olympic or Pan-American Games, the USOC can recognize a national governing body (NGB) to develop and coordinate that particular amateur athletic activity in the United States.⁸ Disputes with the national governing bodies are also subject to arbitration by the American Arbitration Association.⁹

The legislative history of the Act reveals an intent “to promote and coordinate” amateur athletics, “to recognize certain rights” of athletes, and “to provide for the resolution of disputes involving national governing bodies.”¹⁰ The bill was designed to provide the USOC with “exclusive jurisdiction over all matters pertaining to the

3. 36 U.S.C. §§ 371-396 (1994).

4. *Id.* § 374(3).

5. *Id.* § 374(8) (emphasis added).

6. *Id.* § 382(b).

7. See *id.* § 395(c).

8. See *id.* §§ 391-393.

9. See *id.* § 395(c).

10. H.R. REP. NO. 95-1627, at 1 (1978), reprinted in U.S.C.C.A.N. 7478, 7478.

participation of the United States in the Olympic games”¹¹ and with the power to protect the opportunity to compete. Congress elected to strike language from the bill that would have given United States district courts special jurisdiction for injunctive proceedings or to enforce decisions of arbitrators.¹² While Congress may have envisioned a streamlined and equitable procedure for amateur athletes, the USOC must operate within a larger international arena. It is within this larger context of overlapping jurisdictions that the potential for conflict between athletes and governing bodies reaches its peak.

B. The Olympic Movement

Several organizations fall within the parameters of, and perform multiple functions within, the Olympic Movement. Governed by the International Olympic Committee (IOC), the Olympic Movement has two main functions: planning association and competition among athletes, and serving as the spark for the development of international sports law.¹³ The IOC, International Federations (IF), National Olympic Committees (NOC), the organizing committee for a specific Olympiad, and the Olympic Congress¹⁴ make up the Olympic Movement, and each group can exercise power within its sphere of influence. As described *infra*, when an athlete is subject to rules and regulations of more than one governing organization, the chain of command may blur or completely disappear, thus leaving the individual athlete at a loss as to which rules must be followed.¹⁵

1. The International Olympic Committee

The Olympic Charter states that any person or organization involved with the Olympic Movement “shall accept the supreme authority of the IOC and shall be bound by its Rules and submit to its jurisdiction.”¹⁶ However, the IOC, as a nongovernmental organization, does not have any power to force compliance with its wishes and must rely on the good will of individual nations to accept and to carry out its commands.¹⁷

11. *Id.* at 9 (emphasis added).

12. *See id.* at 7.

13. *See* Anthony T. Povlino, Comment, Arbitration as Preventative Medicine for Olympic Ailments: The International Olympic Committee's Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes, 8 *EMORY INT'L L. REV.* 347, 350 (1994).

14. *See* Edward E. Hollis, III, Note, The United States Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures Under the Amateur Sports Act of 1978, 71 *IND. L.J.* 183, 184 (1995).

15. *See infra* Part II.C.1.

16. JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 233 (1988).

17. *See* Hollis, *supra* note 14, at 184.

2. National Olympic Committees

The Olympic Charter also provides that the IOC shall recognize each NOC in individual nations.¹⁸ The NOCs “shall be the sole authorities responsible for the representation of their respective countries at the Olympic Games as well as at other events held under the patronage of the IOC.”¹⁹ In the United States, the NOC is the United States Olympic Committee. Between the IOC and the NOCs, however, exists another set of governing bodies, the International Federations.

3. The International Federations

An IF autonomously supervises a specific sport at the international level, subject only to the limitations in the Olympic Charter.²⁰ An IF’s responsibilities include conducting international competitions, detailing eligibility rules, choosing judges and referees for competitions, running world championships, and resolving technical issues in their sport.²¹ These powerful organizations, with authority to set their own rules, often come into conflict with national governing bodies over athlete eligibility.²²

4. The National Governing Bodies

As designed by the Act, the NGBs are administrative bodies recognized by the USOC as having responsibility for running individual sports in the United States.²³ According to the Act, the NGBs are to conduct the selection process that determines who will be recommended to the USOC for inclusion on the team sent to the Olympic or Pan-American Games, and are to create internal standards for eligibility to compete in all types of domestic and international amateur competition.²⁴ Therefore, before an athlete can appeal to the USOC, she must first comply with any NGB procedures for challenging an eligibility rule. The athlete then may face additional or different rules and/or sanctions imposed by an IF. In the United States, the possibility of judicial intervention adds another potential level of regulation in the process.

18. See NAFZIGER, *supra* note 16, at 235-36.

19. *Id.* at 236.

20. See Hollis, *supra* note 14, at 185.

21. See Stephen A. Kaufman, Note, Issues in International Sports Arbitration, 13 B.U. INT’L L.J. 527, 531 (1995).

22. See *infra* Part II.C.1.

23. See 36 U.S.C. §§ 391-393 (1994).

24. See *id.* § 393(5)-(6).

C. Need for Resolution

With so many overlapping jurisdictions, resolution of eligibility disputes can prove to be complex, lengthy, and expensive. At the international level, differences in the selection process among NOCs, coupled with the difficulties facing a national court that is trying to obtain jurisdiction over an international body allegedly violating an athlete's national citizen rights, can quickly turn athletic eligibility into a confusing morass. The nature of athletic competition, however, requires quick decisions. If one athlete cannot compete, another is always ready to fill the position. Once the race is run, the opportunity is gone. Especially when a spot on the Olympic team hangs in the balance or when the chance to win an Olympic gold medal may be denied, lengthy court battles are not a valid option. As discussed below, the Butch Reynolds court battle played out as a worst-case scenario that put the sports world on notice that it had to find a better solution.

1. The Controversy That Would Not Go Away: Butch Reynolds and the International Amateur Athletic Federation Square Off

After competing in a track and field event in Monte Carlo in August 1990, Butch Reynolds submitted to a random drug test.²⁵ The individual world record holder in the 400 meters and gold and silver medalist in the 1988 Olympics tested positive for trace amounts of the steroid Nandrolone, a drug prohibited by the International Amateur Athletic Federation (IAAF).²⁶ Banned by the IAAF from all international track competitions for two years, Reynolds was effectively shut out of any opportunity to compete in the 1992 Olympics.²⁷ The United States NGB for track and field, then called The Athletics Congress (TAC), offered a hearing to Reynolds, but no date had been set when Reynolds filed suit in Ohio, alleging that the test was given negligently and provided incorrect results.²⁸ Having failed to exhaust all administrative remedies, and finding no state action that would implicate due process rights under the Fifth Amendment, the district court dismissed the due process claim and stayed any further proceedings until the administrative remedies were exhausted.²⁹ On appeal, the entire case was dismissed because Reynold's failure to

25. See *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110, 1112 (6th Cir. 1994).

26. See *id.*

27. See *id.*

28. See *id.*

29. See *Reynolds v. Athletics Congress of the U.S.A., Inc.*, No. C-2-91-0003, 1991 WL 179760, at *11 (S.D. Ohio Mar. 19, 1991).

exhaust administrative remedies prior to filing suit left the district court without subject matter jurisdiction.³⁰

In an effort to exhaust his administrative remedies, Reynolds, following the procedures outlined in the Amateur Sports Act and the USOC Constitution, submitted his dispute to an American Arbitration Association panel.³¹ The arbitrator's decision completely cleared Reynolds.³² The IAAF, however, did not honor the arbitrator's findings because the arbitration did not conform to IAAF rules; thus, the ban was not lifted.³³ In compliance with IAAF procedure, Reynolds appealed to TAC, and that body also cleared Reynolds, finding that "substantial doubt" had been cast on the validity of the drug test.³⁴

Refusing to change its decision, the IAAF initiated another independent arbitration on the theory that TAC had "misdirected itself."³⁵ Conducted in London, the home base of operations for the IAAF, this arbitration panel concluded that the tests were valid, and as there was "no doubt" about Reynolds' guilt, the two-year ban stayed in place.³⁶

Reynolds then filed another action in the Southern District of Ohio that claimed breach of contract, breach of contractual due process, defamation, and tortious interference with business relations.³⁷ Reynolds wanted monetary damages and a temporary restraining order that would permit him to run races prior to the United States Olympic trials.³⁸ The IAAF denied that the district court had jurisdiction and refused to appear.³⁹ Reynolds qualified for the trials.⁴⁰ Three days before the trials, the district court conducted a hearing on Reynolds' eligibility to compete, but the IAAF again refused to appear.⁴¹ Despite a favorable lower court ruling, Reynolds had to submit an emergency motion to Supreme Court Justice John Paul Stevens to preserve his opportunity to compete in the trials.⁴²

30. See *Reynolds v. Athletics Congress of the U.S.A., Inc.*, 935 F.2d 270, 270 (6th Cir. 1991).

31. See *Reynolds*, 23 F.3d at 1112.

32. See *id.*

33. See *id.*

34. *Id.* at 1112-13.

35. *Id.* at 1113.

36. *Id.*

37. See *id.*

38. See *id.*

39. See *id.*

40. See *id.*

41. See *id.*

42. See *id.* In his order, Justice Stevens wrote, "[A] decent respect for the incomparable importance of winning a gold medal in the Olympic Games convinces me that a pecuniary award is not an adequate substitute for the intangible values for which the world's greatest athletes compete." *Reynolds v. International Amateur Athletic Fed'n*, 505 U.S. 1301, 1301 (1992).

The IAAF threatened to bar from the Olympics every athlete who competed with Reynolds in the trials, but eventually the USOC and the IAAF reached an agreement that allowed Reynolds to compete and to qualify as a relay alternate.⁴³ However, the IAAF would not allow Reynolds to actually compete in the Olympics and added four months to the two-year ban as a penalty for competing in the United States trials.⁴⁴

In the action for monetary damages, the IAAF again refused to appear, and Reynolds was awarded \$27,356,008, with more than \$20,000,000 of the award as punitive damages.⁴⁵ When Reynolds began garnishment proceedings in 1993 against corporations with ties to the IAAF, the Association finally appeared before the district court to argue lack of jurisdiction.⁴⁶ Four years after the original eligibility dispute arose, this final suit for damages was dismissed for lack of personal jurisdiction.⁴⁷ The Olympics had come and gone. The endorsement opportunities had disappeared.⁴⁸ Efforts to comply with conflicting regulations from an NGB and an IF proved fruitless for an athlete trying to compete.

2. Arbitration as a Possible Solution

The courts are not the ideal forum to settle athletic disputes. Speed is of the essence. As the long and tortuous history of the Butch Reynolds saga shows, international parties can throw a wrench into American judicial processes, and the lack of clear and definite procedures to handle disputes can confuse those who try to comply with the rules.

Mandatory arbitration may offer a partial solution. Within the United States, arbitration in sports has been a workable solution. The American Arbitration Association has provided several arbitrations within forty-eight hours of the complaint being filed.⁴⁹ General Counsel and Director of Legal Affairs for the USOC, Ronald T. Rowan, reported that since 1983, 109 athletes have filed claims that they had been denied the chance to make the Olympic or Pan-American Team, and of those complaints that could not be resolved,

43. See Reynolds, 23 F.3d at 1113.

44. See *id.*

45. See *id.* at 1114. The court cited "the suppression of evidence, threats levied against Reynolds and his fellow athletes, and the extension of Reynolds' suspension for an additional four months" as a basis for the punitive award. *Id.*

46. See *id.*

47. See *id.* at 1121.

48. Reynolds alleged that as a result of the IAAF drug report he lost endorsement contracts worth over \$2,500,000 and appearance fees worth over \$1,500,000. See *id.* at 1117.

49. See Ronald T. Rowan, Speech: Legal Issues and the Olympics, 3 VILL. SPORTS & ENT. L.J. 395, 409 (1996).

forty-three have gone to arbitration.⁵⁰ Twenty-three of those forty-three arbitration cases have been decided in favor of the athlete.⁵¹ Athletes appear to have at least an opportunity to defend their rights to compete.

Realizing the need to inject consistency and fairness in the resolution of international sports disputes, the IOC created the International Council of Arbitration for Sport (ICAS) to "facilitate the settlement of sports-related disputes through arbitration and to ensure the protection of the rights of the parties in the context of the arbitration of disputes connected with sport."⁵² This newly formed group is based in Switzerland, and generally operates under Swiss law.⁵³ The ICAS took center stage during the summer Olympic Games in Atlanta when, for the first time, all athletes, coaches, and officials had to agree to submit their disputes to ICAS procedures for mandatory and binding arbitration as a pre-condition to participation in the Olympics.⁵⁴

D. The Olympic Entry Clause

Particularly worried that athletes competing in the Atlanta Games would seek relief in the courts of the United States for their disputes, the IOC added a clause to the entry form that said that any dispute would go, in accordance with ICAS procedures, to the Court of Arbitration for Sport (CAS) for "final and binding arbitration."⁵⁵ The form continued: "[T]he decisions of CAS shall be final, non-appealable and enforceable. I shall not institute any claim, arbitration or litigation, or seek any other form of relief in any other court or tribunal."⁵⁶ Any athlete refusing to sign the entry form was denied the opportunity to compete.⁵⁷

When 11,000 athletes from 197 countries showed up to compete in Atlanta,⁵⁸ the team of arbitrators sent by the ICAS were also in town, ready to "provide athletes with a fair, fast, independent and inexpensive way of resolving disputes."⁵⁹ Typical controversies frequently involve drug testing or general eligibility requirements.⁶⁰ Of-

50. See *id.* at 410.

51. See *id.*

52. Kaufman, *supra* note 21, at 532 (citation omitted).

53. See Richard C. Reuben, *And the Winner Is . . . Arbitrators to Resolve Disputes as They Arise at Olympics*, A.B.A. J., Apr. 1996, at 20.

54. See *id.*

55. ATLANTA COMM. FOR THE OLYMPIC GAMES, ENTRY BY NAME 1 (1996).

56. *Id.*

57. See Spence, *supra* note 2.

58. See Mark Conrad, *Arbitration Name of the Game at the Olympics*, 216 N.Y.L.J. 5, 5 (1996).

59. *Waiver Form a Must for Olympic Athletes*, HOUS. CHRON., May 9, 1996, at Sports 15.

60. See Conrad, *supra* note 58, at 5.

ten, the mere threat of litigation by athletes had been enough to prevent governing organizations from trying to impose sanctions on an athlete.⁶¹ The system put into place in Atlanta was ostensibly designed to handle the concerns of both athletes and Olympic governing officials.⁶²

Although arbitration is gaining popularity as a quicker and less costly alternative to litigation of sports-oriented controversies, a mandatory waiver of rights to seek redress, particularly the clause included on the Olympic entry form discussed above, may be subject to attack. For many Olympic caliber athletes, training and competing in their chosen sport is their job—their means of supporting themselves and their families. As a result, any contract agreement between the athlete/employee and governing officials/employer should be subject to standard contract analysis.

III. OLYMPIC ATHLETES HAVE A JOB TO DO

When the modern Olympics were launched in 1896, French Baron Pierre de Coubertin made sure that the rules of the Games would require all competitors to be amateurs.⁶³ Today, the idea of amateurism in the Olympics is all but obliterated.⁶⁴ In 1994, “amateur” was deleted from the Olympic Charter, which now reads “the best athletes” in each sport will compete in the Games.⁶⁵ Television deals are rumored to deliver \$1 billion to the IOC every four years, and multi-million dollar endorsement deals for athletes are not startling news.⁶⁶ Gymnast Kerri Strug and sprinter Michael Johnson were projected to make \$2 million each in 1996 alone, based on their performances in Atlanta.⁶⁷

Not every athlete can expect to achieve celebrity status or to garner million dollar endorsement deals, but that does not mean non-

61. See *id.* In one of the more well-known cases, figure skater Tonya Harding filed suit in Oregon state court prior to a hearing scheduled by the USOC to administratively review Harding's eligibility to compete in the 1994 Winter Olympic Games. The skater filed for “a temporary restraining order and preliminary injunction against the hearing along with \$25 million in compensatory and punitive damages if she was banned from the games.” The suit was eventually dropped, and Harding skated in the Olympics when the USOC withdrew its opposition to her eligibility. See Hollis, *supra* note 14, at 195.

62. For a discussion of how this new arbitration system worked at the Atlanta Games, see *infra* Part V.

63. See Rick Telander, Money Players Get a Chance at Just Rewards in Olympics, *CHI.- SUN TIMES*, Mar. 6, 1996, at Sports 111.

64. See *id.*

65. Rick Lawes, Getting Paid to Play, On and Off the Field, *USA TODAY*, Aug. 4, 1996, at Sports (visited Jan. 26, 1998) <<http://www.usatoday.com/olympics/olyfs278.htm>>.

66. See *id.* NBC has reportedly agreed to two separate deals that will pay the IOC \$3.55 billion to broadcast five Olympic Games between 2000 and 2008. See Christine Brennan, No Small Change for USOC, *THE WASH. POST*, May 12, 1996, at D1.

67. See Randall Lane & Peter Spiegel, The Year of the Michaels (The Highest-Paid Athletes), *FORBES*, Dec. 16, 1996, at 244.

celebrity athletes go without any remuneration. The USOC's budget for athlete support was reported at \$2.2 million during the four years prior to the 1988 Seoul Olympics.⁶⁸ That figure jumped to \$21 million prior to the 1992 Barcelona Olympics and approached nearly \$30 million prior to the Atlanta Games.⁶⁹

Support from the USOC or individual NGBs may be the only money that some athletes receive to pay the bills. Typical of many athletes who compete in "non-professional" sports, a field hockey player quit a retail job because she could not work and train.⁷⁰ A Greco-Roman wrestler supported his sports career, as well as his wife and two-year-old daughter, with private contributions that barely totaled \$30,000 and with limited support from the USOC.⁷¹ Some have characterized most Olympic athletes not as getting rich, but as surviving.⁷²

Five types of grants are available to United States athletes via the USOC. First, a basic grant of \$2500 annually for each athlete on the Olympic roster of each of the forty-one summer and winter sports is given to the NGBs to disperse as they see fit.⁷³ Second, an athlete who qualifies as a "basic grantee" and has a total income below a set limit, usually \$50,000, may qualify for special assistance by showing specific need and adequate performance in their sport.⁷⁴ Athletes considering attending college may also qualify for tuition assistance.⁷⁵ Additionally, the Olympic Job Opportunities Program helps athletes find employment with not-for-profit or government entities.⁷⁶

The total payment to an athlete under these first four categories may not exceed \$15,000 a year.⁷⁷ The \$15,000 limit, however, does not include money that the USOC or NGBs may pay on behalf of an athlete for training facilities, coaches, or even vitamins.⁷⁸

The final, and most lucrative, type of grant is Operation Gold, which is essentially prize money.⁷⁹ A gold medal in Atlanta earned a United States athlete \$15,000, a silver netted \$10,000, a bronze

68. See Mike Harris, USOC Helps Fill the Money Gap for Athletes, RICHMOND-TIMES DISPATCH, July 14, 1996, at D1.

69. See *id.*

70. See *id.*

71. See Robbins, *supra* note 1.

72. See Harris, *supra* note 68.

73. See *id.*

74. See *id.*

75. See *id.*

76. See *id.* The employing entities are compensated for hiring athletes that will need work-time flexibility.

77. See Harris, *supra* note 68.

78. See Robbins, *supra* note 1.

79. See Harris, *supra* note 68.

earned \$7500, and a fourth place finish garnered \$5000.⁸⁰ In non-Olympic years, similar but slightly lower payments are awarded to world championship competitors.⁸¹

The payments from the USOC, however, represent only part of the bounty available to athletes. The NGBs also offer cash awards for medals.⁸² For example, in Atlanta, USA Wrestling planned to award "\$25,000 for gold, \$15,000 for silver, and \$10,000 for bronze."⁸³ Placing the stakes even higher, United States Swimming offered \$50,000 for a gold medal.⁸⁴ Couple the grants with prize money, throw in commercial endorsements and appearance fees, and top off the package by paying various coaching and training expenses, and an Olympic athlete may well have their entire livelihood dependent upon competing in their sport. Even without the big money endorsement deals, appearance fees, and prize money, approximately 1600 athletes rely on their eligibility to compete to keep the monthly checks coming to them from the USOC.⁸⁵

Additionally, athletes may substantially change their life's station in reliance on the opportunities provided by their athletic eligibility. For example, after qualifying for three Olympic events, swimmer Tom Dolan forfeited his remaining NCAA eligibility at the University of Michigan to take advantage of the \$1200 per month available to him through the USOC and United States Swimming.⁸⁶ Once he started receiving grants and benefiting from endorsements connected to the Olympics, he was cut off from ever returning to collegiate competition.⁸⁷ Had he lost his eligibility prior to the Atlanta Games, he would have been banned from both collegiate and international competition, as well as losing his monthly support, his chance at prize money, and endorsement deals that depended on his performance at the Olympics.

Sports competition is thus employment for many athletes. Training for and traveling to competitions takes time, time that might otherwise be spent working a more traditional job. Monthly support

80. See *id.*

81. See *id.*

82. See *id.*

83. Robbins, *supra* note 1.

84. See *id.*

85. See *id.*

86. See Brennan, *supra* note 66.

87. NCAA rules on amateur status state that an individual loses amateur status and thus becomes ineligible for intercollegiate competition when the individual "[a]ccepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation." NATIONAL COLLEGIATE ATHLETIC ASSOC., RULES AND REGULATIONS, RULE 12.1.1(b) (1994). Additionally, accepting any bonus money for winning a medal would also violate the NCAA rule prohibiting payments "conditioned on the individual's or team's place finish or performance." *Id.* § 12.1.2(j).

checks may be the only source of income for some athletes.⁸⁸ Athletes who have achieved celebrity status, or hope to achieve such revered status, may have millions of dollars worth of endorsement opportunities tied to their eligibility. While mandatory and binding arbitration may offer the speed and efficiency that Olympic officials desire, the validity of arbitration clauses, like those in the Olympic entry form should be closely scrutinized as if they were mandatory arbitration clauses in employment contracts.

IV. EVALUATING THE ENFORCEABILITY OF CONTRACTS REQUIRING MANDATORY ARBITRATION

A. The United States Supreme Court

The U.S. Supreme Court adheres to a "liberal federal policy favoring arbitration agreements."⁸⁹ The Court found that Congress explicitly created the Federal Arbitration Act (FAA)⁹⁰ to "overcome an anachronistic judicial hostility to agreements to arbitrate."⁹¹ The Court also espoused the view that the FAA mandates that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."⁹² The pertinent language of the FAA reads:

A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.⁹³

Commerce, for purposes of the FAA, is defined to mean "commerce among the several States or with foreign nations . . . but nothing herein contained shall apply to contract of employment of . . . any other class of workers engaged in foreign or interstate commerce."⁹⁴

Despite this announced preference for arbitration, the Court may scrutinize employment contracts that contain mandatory arbitration clauses. In *Gilmer v. Interstate/Johnson Lane Corp.*,⁹⁵ the Court explicitly refused to address whether the FAA excludes "all contracts

88. See *id.*

89. *Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).

90. 9 U.S.C. §§ 1-16, 201-208, 301-307 (1994).

91. *Mitsubishi*, 473 U.S. at 625 n.14 (citations omitted).

92. *Id.* at 626 (citation omitted).

93. 9 U.S.C. § 2 (1994).

94. *Id.* § 1.

95. 500 U.S. 20 (1990).

of employment” from its coverage.⁹⁶ The Gilmer Court did, however, touch on the issue of unequal bargaining power between employers and employees and stated that “[m]ere inequality in bargaining power” would not convince the Court that employment arbitration agreements should never be enforceable.⁹⁷ Instead, the Court said that unequal bargaining power claims would have to be resolved on a case-by-case basis.⁹⁸

Gilmer was not a unanimous decision, and Justice Stevens argued, in a vigorous dissent, that “arbitration clauses contained in employment agreements are specifically exempt from coverage of the FAA.”⁹⁹ Justice Stevens cited comments made by the chairman of the American Bar Association committee that drafted the bill—comments that assured Senators that the bill “[was] not intended [to] be an act referring to labor disputes, at all.”¹⁰⁰ The Court noted that at hearings on the bill, Senator Walsh added:

The trouble about the matter is that a great many of these contracts that are entered into are really not [voluntary] things at all. . . . A man says, “These are our terms. All right, take it or leave it.” Well, there is nothing for the man to do except to sign it; and then he surrenders his right to have his case tried by the court, and has to have it tried before a tribunal in which he has no confidence at all.¹⁰¹

Furthermore, Justice Stevens stated that the Court too readily dismissed the problem of inequality of bargaining power.¹⁰² In an arbitration case decided seven years prior to Gilmer, the Court warned that “courts should remain attuned to well-supported claims that the agreement to arbitrate resulted from the sort of fraud or overwhelming economic power that would provide grounds ‘for the revocation of any contract.’”¹⁰³ However, when Gilmer, a sixty-two-year-old employee, tried to challenge an arbitration agreement that he had signed as a condition of employment, the Court found “no indication . . . that Gilmer . . . was coerced or defrauded into agreeing to the arbitration clause.”¹⁰⁴

96. *Id.* at 25 n.2. The issue was raised by amici curiae and was not a part of the case-in-chief. Additionally, the clause at issue was in a securities registration application but was not an actual part of Gilmer’s employment contract. See *id.*

97. *Id.* at 33.

98. See *id.*

99. *Id.* at 36 (Stevens, J. dissenting).

100. *Id.* at 39 (alteration in original) (citation omitted).

101. *Id.* (alteration in original) (citation omitted).

102. See *id.* at 43.

103. *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth*, 473 U.S. 614, 627 (1985) (quoting 9 U.S.C. § 2 (1985)).

104. *Gilmer*, 500 U.S. at 33.

B. Other Grounds for Revocation That Could Affect the Enforcement of Contracts With Mandatory Arbitration Clauses

Unconscionability, adhesion, duress, and age of majority are four other factors bearing on the enforceability of a contract.¹⁰⁵ If a contract or one of its terms “is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.”¹⁰⁶ Some jurisdictions have held that unconscionable contracts are not enforceable as a matter of common law. For example, in *Williams v. Walker-Thomas Furniture Co.*,¹⁰⁷ the court stated that unconscionability occurs when there is “an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.”¹⁰⁸ The *Williams* court stated further that “[i]n many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power.”¹⁰⁹

A contract of adhesion is a standardized contract that has been drawn and imposed by the party holding superior bargaining power, and the party accepting the terms may only “adhere to” the contract or reject it.¹¹⁰ However, a contract of adhesion is not necessarily unenforceable. Courts have ruled that to recognize adhesion in a contract is “the beginning and not the end of the analysis insofar as enforceability of its terms is concerned.”¹¹¹

Duress often involves imposing improper pressure to overcome a party’s will or inducing assent by improper threat that leaves a party no reasonable alternative to signing a contract.¹¹² Although ordinary contracts usually imply that the offeror will not make a deal unless her terms are met, bargaining is to be expected.¹¹³ Beyond the threat of physical harm, “[m]odern decisions have recognized as improper a much broader range of threats, notably those to cause economic harm The rules . . . [also] recognize as improper the modern ex-

105. See William F. McHugh, *Private Arbitration of Public Law Claims; Key Issues*, (Feb. 23, 1996) (unpublished manuscript, on file with author). A fifth factor discussed by Professor McHugh is fraud, but, for the purposes of this paper, fraud will not be addressed.

106. RESTATEMENT (SECOND) OF CONTRACTS § 208 (1981).

107. 350 F.2d 445 (D.C. Cir. 1965).

108. *Id.* at 449.

109. *Id.*

110. McHugh, *supra* note 105, at 2.

111. *Graham v. Scissor-Tail, Inc.*, 623 P.2d 165, 172 (Cal. 1981) (quoting *Wheeler v. St. Joseph Hosp.*, 63 Cal. App. 3d 345, 357 (Cal. Ct. App. 1970)).

112. See BLACK’S LAW DICTIONARY 504 (6th ed. 1990).

113. See RESTATEMENT (SECOND) OF CONTRACTS § 176 (1981).

tensions under developing notions of 'economic duress' or 'business compulsion.'"¹¹⁴

Finally, attaining the age of majority, and thereby having the capacity to enter a valid contract, is another consideration that is of special concern in the Olympic context. Many of the athletes in the Olympics are under the age of eighteen,¹¹⁵ but according to the Restatement (Second) of Contracts, "[u]nless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday."¹¹⁶ The Restatement reports that forty-nine states have lowered the common law age of majority below twenty-one, and the lowered age is usually eighteen.¹¹⁷ Thus, a United States Olympic athlete under the age of eighteen would appear to have the power to disaffirm any contract signed prior to her eighteenth birthday. Could the underage athlete then avoid the arbitration requirement?

Contracts signed by minors often require the additional signature of a parent.¹¹⁸ However, this co-signature does not necessarily limit the minor child's right to void her contractual agreement.¹¹⁹ In *Del Bosco v. United States Ski Association*,¹²⁰ the court asserted that any age requirement for valid "contracts is designed 'to protect minors from their possibly improvident and imprudent contractual commitments.' As a result, a party who contracts with a minor 'does so at his own peril and with the attendant risk that the minor may, at his election, disaffirm the transaction.'"¹²¹ In *Del Bosco*, a fourteen-year-old skier and her parent signed an "Acknowledgment and Assumption of Risk and Release" prior to the skier's injury in a ski race.¹²² The court noted that "approval by a parent does not necessarily validate an infant child's contract."¹²³

At least five other states have directly decided that a parent's signature does not validate an infant's contract.¹²⁴ However, other

114. *Id.* cmt. a.

115. See Brennan, *supra* note 66. For example, gold medal gymnast Dominique Moceanu was only 14 years old when she competed in the 1996 Atlanta Games. See *id.*

116. RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981).

117. See *id.* cmt. a.

118. See *Del Bosco v. United States Ski Ass'n.*, 839 F. Supp. 1470, 1474 (D. Co. 1993); *Simmons v. Parkette Nat'l Gymnastic Training Ctr.*, 670 F. Supp. 140, 143 (E.D. Pa. 1987).

119. See *Del Bosco*, 839 F. Supp. at 1474.

120. 839 F. Supp. 1470 (D. Co. 1993).

121. *Id.* (citations omitted).

122. See *id.*

123. *Id.* (citation omitted).

124. See *id.* n.2.

jurisdictions have statutorily provided that parental consent can bind a child in certain legal matters.¹²⁵

C. Application in the Olympic Context

Olympic athletes do not have any meaningful choice in deciding whether to sign the entry form. If an athlete does not sign the form, the athlete does not compete. For whatever reason an athlete wants to appear in the Olympics—fulfillment of personal training or competition goals, completing requirements for monetary support, or simply accepting what may be a once-in-a-life-time chance to participate in a time-honored tradition of excellence—the only way to make that coveted appearance is to sign the form. The Olympic Charter mandates that every person involved with the Olympics accept the “supreme authority of the IOC” and agree to be bound by the IOC’s rules.¹²⁶ An individual athlete will not have the power to resist the demands of the IOC and still retain the right to compete.

The Olympic arbitration clause on the entry form is a take-it-or-leave-it proposition. However, the contract between the athlete and the IOC is not per se invalid. Other factors, such as the impartiality of arbitrators,¹²⁷ may be considered in tandem with the adherence to determine enforceability.

Arguably, Olympic athletes have no reasonable alternative to agreeing to mandatory and binding arbitration. As discussed earlier in this Comment,¹²⁸ athletes depend on participation in the Olympics to support themselves or to fulfill terms of commercial endorsements. The opportunity to compete in the Olympics in any one given sport only occurs once every four years. Although there are exceptions, an athlete may have only one chance at the Olympic Games. That one shot is now tied to a waiver of the right to access the courts to settle disputes.

Finally, both the 1996 United States Olympic Team Code of Conduct and Grievance Procedures require the participant’s signature; a parent or guardian must sign for participants of minority age.¹²⁹ Ac-

125. See *Simmons v. Parkette Nat’l Gymnastic Training Ctr.*, 670 F. Supp. 140, 144 n.4 (E.D. Pa. 1987).

126. NAFZIGER, *supra* note 16, at 233.

127. See *Graham v. Scissor-Tail, Inc.*, 623 P.2d 165, 175 (Cal. 1981). In *Graham*, the court agreed that even absent proof of bias or prejudice, a party to a dispute is presumed to lack the impartiality necessary to settle the controversy. Moreover, allowing someone closely tied to a named party to decide disputes goes against public policy. Not only are the minimal levels of integrity required for non-judicial dispute resolution violated, but the agreement to arbitrate essentially becomes an agreement to capitulate. See *id.* at 175-76 (citations omitted).

128. See *supra* Part III.

129. See U.S. OLYMPIC COMM., 1996 UNITED STATES OLYMPIC TEAM CODE OF CONDUCT 3 (1996); U.S. OLYMPIC COMM., 1996 UNITED STATES OLYMPIC TEAM GRIEVANCE PROCEDURES FOR CODE OF CONDUCT AND TEAM SELECTION 4-5 (1996).

ording to the General Counsel for the USOC, "there is no contractual obligation on the part of an athlete under 18 years of age."¹³⁰ If it is true that an under age athlete has "no contractual obligation,"¹³¹ then the child athlete could arguably initiate proceedings outside of the Olympic agreement regardless of any parental signature. If there was no contract created with the child, the parental validation argument would not apply.¹³²

D. Factors to Consider in Determining Fairness of Arbitration

Despite the suspect attributes of forcing mandatory and binding arbitration on Olympic athletes, arbitration can be a viable option for settling Olympic disputes. The Olympics hold a special place in the sports world:

The Olympic Games stand as a model of fairness and equal opportunity for achievement, not only to athletes but to entire nations. Judicial resolution of disputes, while embodying the impartiality sought by aggrieved parties in positions of inferior bargaining power, is not without its price and, in the context of amateur athletic competition, too often that price would manifest itself in lost opportunities.¹³³

The IOC-developed arbitration body, CAS, should strive to protect the rights of the athletes and to address the need for fair and efficient resolution of disputes.

Fine-tuning the Olympic arbitration process could address some of the fairness concerns that arise when an athlete is forced to participate in the process. For instance, in 1994, the United States Departments of Labor and Commerce issued a report containing recommendations for binding arbitration to be used in public law disputes.¹³⁴ The report's quality standards for an arbitration system might work well in the Olympic arbitration context. These requirements include:

130. Letter from Ronald T. Rowan, General Counsel, United States Olympic Committee to Melissa Bitting 1 (Mar. 14, 1997) (on file with author) [hereinafter Rowan Letter]. Interestingly, the USOC is headquartered in Colorado Springs, Colorado. The Del Bosco decision holds that parental approval of a child's contract does not necessarily mean that it will be held valid in a Colorado federal court. See *supra* notes 118-25 and accompanying text.

131. Rowan Letter, *supra* note 130, at 1.

132. Also, the standard Olympic entry form requiring binding arbitration through the CAS and signed by all athletes makes no mention of the possibility of parental signature, regardless of the athlete's age. See ATLANTA COMM. FOR THE OLYMPIC GAMES, *supra* note 55, at 1.

133. David A. Botwinik & Diane Rapisarda, Under the Amateur Sports Act, All Disputes Between American Athletes and the U.S. Olympic Committee Must Be Submitted to Arbitration for Resolution, NAT'L L.J., July 22, 1996, at B5.

134. See McHugh, *supra* note 105, App. E-1.

a neutral arbitrator who knows the laws in question and understands the concerns of the parties;

a fair and simple method by which the employee can secure the necessary information to present his or her claim;

. . . .

the right to independent representation if the employee wants it;

a range of remedies equal to those available through litigation;

a written opinion by the arbitrator explaining the rationale for the result; and

sufficient judicial review to ensure that the result is consistent with the governing laws.¹³⁵

While advocating a “wait and see” approach to the mandatory use of private arbitration systems, the report did propose forbidding binding arbitration agreements of public law claims as a condition of employment.¹³⁶ The report relied on the FAA to support its position, but should there be any doubt about the scope of the FAA, the report urged Congress to “pass legislation making it clear that any choice between available methods for enforcing statutory employment rights should be left to the individual who feels wronged rather than dictated by his or her employment contract.”¹³⁷

V. THE CURRENT OLYMPIC ARBITRATION SYSTEM

A. Developing the Process

Operating since 1983, the CAS was originally designed to accept only cases in which all parties involved in a dispute agreed to submit to its jurisdiction.¹³⁸ Promoted as an independent organization made up of 150 arbitrators representing thirty-seven countries,¹³⁹ the CAS is headquartered, along with the IOC, in Lausanne, Switzerland.¹⁴⁰ All CAS arbitrators are “persons with legal training and recognized competence with regard to sport. Their experience enables the arbitrators to facilitate the settlement of disputes by offering a solution adapted to the sporting context.”¹⁴¹ Because Swiss private international law governs CAS proceedings,¹⁴² the Swiss federal Supreme Court heard a 1993 challenge to a CAS award and affirmed the power of the CAS to validly bind parties to its decisions.¹⁴³ However,

135. *Id.* App. E-3.

136. *See id.* App. E-5.

137. *Id.* (footnote omitted).

138. *See* International Olympic Comm., *Arbitration and the Olympic Movement* (visited Jan. 13, 1997) <<http://www.olympic.org/fetas.html>>.

139. *See* Jill Pilgrim, *The Competition Behind the Scenes at the Atlanta Centennial Olympic Games*, 14 *ENT. & SPORTS LAW.* 1, 21 (1997).

140. *See id.* at 22.

141. *Id.* at 21.

142. *See id.* at 22.

143. *See* International Olympic Comm., *supra* note 138.

the Swiss Supreme Court also recommended that the CAS reduce its level of dependency on the IOC.¹⁴⁴ As a result, in 1994, the 102nd IOC session approved the creation of the ICAS to replace the IOC as the supervisor and financier of the CAS.¹⁴⁵

ICAS is composed of twenty members, consisting of a mixture of representatives of the IFs, ANOCs, and the IOC.¹⁴⁶ The members must sign a declaration "undertaking to perform their functions in a personal capacity, with total objectivity and independence, and in conformity with the provisions of the Code of Sports-Related Arbitration."¹⁴⁷ In an effort to further guarantee impartiality and independence of CAS arbitrators, the ICAS members are prohibited from serving as a CAS arbitrator or as counsel to any party appearing before the CAS.¹⁴⁸

Although the CAS is a permanent body, a short-term arbitration process was created to specifically address issues arising during the Atlanta Olympic Games, and as discussed, the IOC demanded that as a condition of competing, all disputes be resolved, through ICAS procedures, by the CAS.¹⁴⁹ From its list of CAS arbitrators, ICAS created an Ad Hoc Division (AHD) of CAS¹⁵⁰ and sent approximately twelve arbitrators to Atlanta to settle disputes on the spot.¹⁵¹ A panel of three arbitrators heard each case.¹⁵²

Filing a written application with the AHD office starts the arbitration process. Upon receipt of the paperwork, the President of the AHD chooses a panel of three arbitrators from the AHD.¹⁵³ Subject to time constraints, the parties to the arbitration are allowed to have counsel.¹⁵⁴ The AHD panel must reach a decision within twenty-four hours of filing,¹⁵⁵ but in the case of extreme urgency, such as exclusion from impending competition, a stay may be immediately issued so that the competition can proceed as planned.¹⁵⁶ If the determination is later made that an athlete should have been excluded, the athlete would be disqualified, and the results changed accordingly.¹⁵⁷

The AHD panels must review each case in light of the Olympic Charter, the applicable rules of each sport and the NOC, and

144. See *id.*

145. See *id.*

146. See *id.*

147. *Id.*

148. See *id.*

149. See Rowan, *supra* note 49, at 411.

150. See Pilgrim, *supra* note 139, at 22.

151. See Reuben, *supra* note 53, at 20.

152. See *id.*

153. See Pilgrim, *supra* note 139, at 22.

154. See *id.*

155. See *id.* at 23.

156. See *id.* at 22.

157. See *id.* at 22-23.

“general principles of law,” but the ICAS rules do not define “general principles of law.”¹⁵⁸ If any part of the dispute cannot be resolved, the unresolved issues proceed to a regular CAS process, but the same panel that heard the dispute at the Olympics remains assigned to the dispute.¹⁵⁹ “A final award by the AHD is immediately enforceable because it is not subject to appeal.”¹⁶⁰

B. Arbitration at the Atlanta Games

The AHD heard six disputes during the 1996 Atlanta Olympic Games,¹⁶¹ and no lawsuits were filed as a result of any AHD decisions.¹⁶² Four of the arbitrations required the AHD to determine whether an athlete would be excluded from competition or be allowed to continue. Two athletes whose eligibility was contested were allowed to compete, and two athletes accused of drug use were allowed to keep their medals.¹⁶³ One athlete’s disqualification, based on a referee’s decision, was upheld.¹⁶⁴

One AHD decision resolved a dispute between the United States NGB for swimming and the Irish NOC.¹⁶⁵ The United States wanted Irish swimmer Michelle Smith disqualified from the 400-meter freestyle when the Irish NOC tried to substitute Smith into the 400-meter freestyle after the entry deadline.¹⁶⁶ The IF for swimming, FINA, initially refused to allow the substitution, but when FINA was informed that the IOC was not strictly enforcing the entry deadline, FINA reversed its decision and allowed Smith to enter.¹⁶⁷ The three-member AHD panel met for two hours and ruled in favor of the Irish swimmer.¹⁶⁸

In another decision, the CAS panel overruled an IOC decision to strip medals from two Russian athletes who tested positive for the

158. *Id.* at 23.

159. *See id.*

160. *Id.* (footnote omitted). Disputes involving United States athletes were handled differently because the USOC Bylaws and Code of Conduct allows the executive director of the USOC and/or the American Arbitration Association (AAA) to first hear the dispute; however, if the dispute involved one party from the United States and a foreign party not subject to AAA jurisdiction, the AHD procedures were used. *See id.*

161. *See id.*

162. *See* Rowan Letter, *supra* note 130, at 1.

163. *See* Pilgrim, *supra* note 139, at 23.

164. *See id.*

165. *See* Beth Harris, *Olympics: Late Entry Bumps Evans from Chance at History* (visited Jan. 13, 1997) <http://199.106.40.2/files/librarywire/96wireheadlines/07_96/DN96_07_22/DN96_07_22_1nhtml>.

166. *See* Pilgrim, *supra* note 139, at 24.

167. *See id.*

168. *See* Harris, *supra* note 165.

drug bromantan.¹⁶⁹ The IOC argued that bromantan was a performance-enhancing stimulant, but Russian Olympic officials countered that the drug was neither a stimulant nor officially on the banned list.¹⁷⁰ The AHD panel discovered that athletes in the 1988 and 1992 Olympics had used bromantan, and it heard testimony from the AHD-appointed medical expert that lack of data made it impossible to predict the quantitative effect of bromantan.¹⁷¹ Acknowledging that bromantan was not specifically designated in the IOC Medical Code of prohibited substances, and dissatisfied with the medical evidence about the stimulant qualities of bromantan, the AHD panel decided to let the Russian athletes keep their medals.¹⁷²

A French boxer who was disqualified by a referee for allegedly punching an opponent below the belt also tried to initiate an AHD arbitration.¹⁷³ The AHD panel refused to accept the application and noted “that the referee’s decision was purely a technical one and as such was not the type of decision that the panel should review.”¹⁷⁴ Absent a showing of an error or an intentionally malicious act, the French boxer could not gain access to the arbitration process.¹⁷⁵

C. The Future of the Expedited Olympic Procedures

Maintaining a reputation for independent, non-biased decision-making will be key to the successful continuation of AHD panel arbitration. However, as one commentator noted:

Those who have been active in this community for several years understand that the sports governing bodies and oversight organizations seem incapable of avoiding dominance by the will of strong, charismatic, or politically savvy leaders who are predominately interested in advancing their own agendas, rather than acting in the best interests of the sports that they administer.¹⁷⁶

Another area of concern is the availability of attorneys for athletes going to arbitration. The attorney who represented Butch Reynolds throughout his four-year battle with the IF for track and field¹⁷⁷ argued that the arbitration was “still an essentially in-house procedure,” and worried that most athletes using the arbitration

169. See Associated Press, *Arbitration Court Reinstates Russians* (visited Jan. 13, 1997) <<http://www.nando.net/newsroom/ap/oth/1996/oly/feat/archive/080496/oly72836html>>.

170. See *id.*

171. See Pilgrim, *supra* note 139, at 26 (footnote omitted).

172. See *id.*

173. See *id.*

174. *Id.*

175. See *id.*

176. *Id.* at 27.

177. See *supra* Part II.C.

would not be represented by counsel.¹⁷⁸ In addition to the expense of an attorney, athletes may have a hard time finding competent representation; most of the knowledgeable lawyers represent the governing bodies or other sports organizations that can afford to pay expensive legal fees.¹⁷⁹

The Departments of Labor and Commerce have issued suggested criteria to promote fairness in binding arbitration of public law disputes.¹⁸⁰ The criteria include the use of a neutral arbitrator.¹⁸¹ Even though ICAS ostensibly insulates the CAS from the IOC, all the arbitrations fall under the rubric of the "supreme authority" of the IOC on all matters pertaining to the Olympics. Moreover, both the IOC and the CAS are based in Lausanne, Switzerland. Only twelve arbitrators were available in Atlanta, and the panel of three that heard each dispute was assigned, without athlete input, by ICAS.

The Labor and Commerce criteria also include availability of a range of remedies equivalent to remedies available in court.¹⁸² For example, an athlete could make a legitimate "after the Games" claim for tortious interference with a business relationship. In addition, if an athlete can prove beyond a reasonable doubt that the CAS made a mistake, there should be some venue available to recover damages for their often very tangible loss of prize money or the less tangible loss of a once in a life-time opportunity to compete in the Olympics.

The proposed fairness criteria also include the opportunity for judicial review of arbitration decisions to ensure consistency with governing laws.¹⁸³ For a United States athlete who is used to having the protection of American courts, judicial review of a CAS award by the Swiss courts that have jurisdiction over the Swiss-based CAS may not provide satisfactory guarantees of fairness that comport with American law. However, conflicts between national laws are just the situations that the IOC was trying to avoid by including the binding arbitration clause in the first place. The price of uniformity in international sports may necessarily be a loss of rights for United States athletes.

VI. CONCLUSION

An athlete has much more to lose when her eligibility is at stake than does the IOC. The IOC will make sure that the Games go on with or without any one given athlete, but that one athlete has nowhere else to go for Olympic competition. The IOC is in the difficult

178. Reuben, *supra* note 53, at 20.

179. See Pilgrim, *supra* note 139, at 27.

180. See *supra* Part IV.D.

181. See McHugh, *supra* note 105, App. E-3.

182. See *id.*

183. See *id.*

position of maintaining the highest overall standards for the Olympics, yet the IOC should also be aware of the fairness concerns of individual athletes.

The Olympic arbitration process has the potential to fairly address the overlapping jurisdictional disputes that often plague competition. However, requiring as a condition of eligibility that an athlete agree not to challenge a CAS award in court means that particular attention must be paid to the fairness of the process. The courts caution for vigilance against adhesion and duress. Neutral arbitrators are also essential. Mandatory, binding arbitration may not be a panacea for all the concerns of Olympic athletes, but given the unique circumstances of the fast-paced world of sports competition, it may offer the most viable option to quickly settle disputes.