

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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February 2, 2009

Congressional Research Service

Report RL32208

*United States Olympic Committee Reform*

Nathan Brooks, American Law Division

January 5, 2005

**Abstract.** In the wake of the most recent scandal, the Senate Commerce Committee held three hearings in 2003 to discuss reforming the USOC. At the second hearing, the Commerce Committee requested that the USOC establish an independent commission to review the USOC governance structure, which the USOC did, and in June, the Independent Commission on Reform of the United States Olympic Committee released its report. This report formed the basis for the four bills introduced in the 108th Congress. Before reaching the Independent Commissions report or proposed legislation, however, it is important to first understand the current structure of the USOC.

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# CRS Report for Congress

Received through the CRS Web

## United States Olympic Committee Reform

Updated January 5, 2005

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# United States Olympic Committee Reform

## Summary

Over the past ten years, a number of scandals involving the United States Olympic Committee (USOC) have shaken the public's confidence in the USOC's ability to effectively lead the American Olympic movement. In particular, critics have leveled significant criticism at the USOC's governance structure, leading to repeated calls for Congress to step in and make changes to the way the USOC is run. In response, in the 108<sup>th</sup> Congress, there were four bills proposing structural and procedural reform of the USOC. While the four bills differed in their approaches, they all followed the general recommendations of the Independent Commission on Reform of the United States Olympic Committee report, in that they attempted to streamline the USOC's governance structure by reducing the number of members sitting on the Board of Directors and separating the volunteer corps from the professional staff. In addition, the bills each advocated varying degrees of independence for the majority of the elected Board members, the establishment of four standing committees, annual reporting requirements, decennial review of the USOC's governance structure, and the implementation of whistleblower mechanisms. This report first summarizes the law governing the USOC - and the history that shaped it - and then covers the recommendations of the Independent Commission and proposed legislation. This report will be updated as developments warrant.

## Contents

Background .....	1
The USOC Under the Amateur Sports Act .....	2
The Independent Commission Report .....	4
Legislative Efforts in Response to the Independent Commission Report ...	6

# United States Olympic Committee Reform

## Background

At the apex of the Olympic movement is the International Olympic Committee (IOC), which is organized under Swiss law as a non-profit society with legal status under both Swiss and international law.<sup>1</sup> The IOC entrusts to each country's national Olympic Committee the responsibility to determine which athletes will represent that nation in the Olympic Games. The United States first established such a committee - originally known as the United States Olympic Association - in 1950.<sup>2</sup> Fourteen years later, that body took its current name: the United States Olympic Committee (USOC).

The USOC at that time was more of a membership organization than a coordinating body, with no real hierarchy of authority, and factional disputes between the national governing bodies (NGBs) of the various sports often broke out.<sup>3</sup> By the mid-1970's, it became apparent that the American Olympic movement was suffering from this lack of coordination,<sup>4</sup> and in 1975, President Gerald Ford formed the President's Commission on Olympic Sports to determine how best to bring direction to the USOC. After two years of investigation, the Commission released its report recommending that the USOC become the national coordinating body through which the country's amateur sports organizations provide athletes to represent the United States in the Olympics.<sup>5</sup> Congress responded in 1978 by passing the Amateur Sports Act,<sup>6</sup> which adopted many of the Commission's recommendations and specified detailed procedures for recognition of NGBs and dispute resolution. Significantly, while the Amateur Sports Act was very detailed in listing the duties and responsibilities of the NGBs, the act was relatively silent on the governance structure of the USOC itself.

In the last fifteen years, the USOC has come under increasing criticism as scandals have tarred its image. In 1991, then-USOC President Robert Helmick resigned amidst allegations of ethical misconduct. A few years later, local organizing committees involved in the drive to secure the 2002 Winter Olympics for Salt Lake City were caught up in a bribery scandal that further eroded public confidence in the USOC. Early last year, internal friction between then-CEO Lloyd Ward and former

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<sup>1</sup> Walter T. Champion, Jr., *Sports Law in a Nutshell* 249 (2d ed. 2000).

<sup>2</sup> Act to Incorporate the United States Olympic Association, approved September 21, 1950 (64 Stat. 899).

<sup>3</sup> See H. Rep. No. 95-1627, at 9 (1978), *reprinted in* 1978 U.S.C.A.A.N. 7478, 7482.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> P.L. 95-606 (codified at 36 U.S.C. § 220501 et seq.).

USOC president Marty Mankamyer spilled into the public arena and resulted in a USOC Ethics Committee investigation of Mr. Ward. When the Ethics Committee ruled that Mr. Ward had committed two technical violations of the USOC's ethics code, a number of USOC executives resigned their posts in protest. By March of 2003, both Ward and Mankamyer had resigned under intense pressure.<sup>7</sup>

In the wake of this most recent scandal, the Senate Commerce Committee held three hearings in 2003 to discuss reforming the USOC. At the second hearing, the Commerce Committee requested that the USOC establish an independent commission to review the USOC governance structure, which the USOC did, and in June, the Independent Commission on Reform of the United States Olympic Committee released its report. This report formed the basis for the four bills introduced in the 108<sup>th</sup> Congress. Before reaching the Independent Commission's report or proposed legislation, however, it is important to first understand the current structure of the USOC.

## The USOC Under the Amateur Sports Act

Under current law, the USOC is a federally-chartered corporation that receives no government funding. Rather, the Committee gets almost all of its money from corporate sponsorships and licensing agreements for the rights to broadcast Olympic events.<sup>8</sup> The USOC is prohibited from engaging in business for profit, issuing stock, or engaging in political activities.<sup>9</sup> The Committee is required to submit every four years a report of its operations including a statement of receipts and expenditures and data on minority, female, and disabled participation.<sup>10</sup>

The USOC is empowered to, among other things, make contracts, acquire and transfer property, borrow money, issue publications, approve and revoke membership, sue and be sued, and do any other act necessary to carry out the Committee's purposes.<sup>11</sup> Specific to the Olympic Games, the USOC serves as the national coordinating body, represents the United States in dealings with the IOC, controls U.S. representation in the Olympic, Pan American, and Paralympic Games (hereinafter collectively referred to as "the Games"), resolves disputes regarding participation, and provides financial assistance to non-profit organizations in furtherance of the USOC's purpose.<sup>12</sup> The Committee also has exclusive rights to the names, seals, emblems, and badges associated with the Olympic Games.<sup>13</sup>

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<sup>7</sup> For a discussion of these scandals, see *United States Olympic Committee Reform Act of 2003: Report of the Committee on Commerce, Science, and Transportation*, S. Rep. No. 108-114, at 2-3 (2003).

<sup>8</sup> *Id.*, at 2 (2003).

<sup>9</sup> 36 U.S.C. § 220507.

<sup>10</sup> 26 U.S.C. § 220511.

<sup>11</sup> 36 U.S.C. § 220505(b).

<sup>12</sup> 36 U.S.C. § 220505(c).

<sup>13</sup> 36 U.S.C. § 220506.

In addition, one of the USOC's most important functions is to recognize certain amateur sports organizations as the national governing bodies (NGBs) of their respective sports.<sup>14</sup> The NGBs have general authority over their sports, which includes the ability to conduct amateur competitions, recommend to the USOC participants for the Olympic, Paralympic, and Pan-American Games, and designate participants for other international athletic competitions.<sup>15</sup>

Every four years, the USOC is required to submit to the President and Congress a report of its operations during the preceding four years.<sup>16</sup> This report must include a complete statement of receipts and expenditures, a description of accomplishments and activities during the four-year period, information on the participation of women, minorities, and the disabled in the American Olympic movement, and the steps taken to encourage their participation.<sup>17</sup>

The Amateur Sports Act directs the USOC to establish a governance structure,<sup>18</sup> but gives very little guidance on what it should look like, other than that it must account for the reasonable representation of: (1) the national governing bodies of various amateur sports; (2) amateur athletes; (3) other amateur sports organizations sufficiently connected to Olympic sporting events; and (4) the American public.<sup>19</sup> To that end, the USOC established in its Constitution a Board of Directors with ultimate responsibility over the business, policies, affairs, and activities of the Committee.<sup>20</sup> The USOC Constitution commands that the Board consist of the Committee's executives, the IOC members for the United States, and a member from each Olympic and Pan American sports organization.<sup>21</sup> Under this structure, the Board currently has 124 members.<sup>22</sup>

The Board of Directors - which is only required to meet once every four years<sup>23</sup> - selects the USOC's officers, which include the President, three Vice Presidents and

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<sup>14</sup> 36 U.S.C. § 220521. The eligibility requirements for national governing bodies are set out at 36 U.S.C. § 220522.

<sup>15</sup> 36 U.S.C. § 220523.

<sup>16</sup> 36 U.S.C. § 220511.

<sup>17</sup> *Id.*

<sup>18</sup> 36 U.S.C. § 220504(b).

<sup>19</sup> *Id.* To ensure that amateur athletes have a stake in the USOC, the Amateur Sports Act further commands the Committee in its Constitution to establish an Athlete's Advisory Council (AAC) composed of and elected by amateur athletes who have represented the U.S. in international amateur athletic competition within the previous ten years. In addition, the AAC's voting power must be at least 20 percent of the total USOC voting power. 36 U.S.C. § 220504(b)(2)(A), (B).

<sup>20</sup> USOC Constitution, Art. XII, § 1.

<sup>21</sup> USOC Constitution, Art. XII, § 3.

<sup>22</sup> Report and Recommendations of the Independent Commission on Reform of the United States Olympic Committee, at 2 (2003).

<sup>23</sup> USOC Constitution, Art. XII, § 2.

Vice President-Secretariat, and a Vice President-Treasurer.<sup>24</sup> The only executive that the Board does not select is the Chief Executive Officer (CEO), also referred to as the Secretary General, who is selected by the Executive Committee.<sup>25</sup> The Executive Committee, which is primarily responsible for establishing USOC policy, consists of the seven Committee officers, five members from the National Governing Bodies Council (NGBC), and one member from the Education-Based Multisport Organizations.<sup>26</sup>

## The Independent Commission Report

The Independent Commission's report concluded that many of the USOC's problems can be traced to its large Board membership. "The current size of the USOC Board of Directors (124 members) makes it impossible for the organization to operate in a coordinated way," the report stated. "The costs of its size are disproportionate to any value brought to the organization."<sup>27</sup> In addition, the Independent Commission found that the large number of directors leads to a lack of accountability. "No individual director will feel responsible when he or she is one of 124 directors,"<sup>28</sup> the report stated.

The Independent Commission also pointed to the lack of independence shown by the individual directors, which the Commission blamed on the size of the Board and the USOC's election process. "Nearly all USOC directors are elected to the Board by constituent groups such as the [NGBs], athletes or other organizations," the report stated. "As elected representatives of an organization, these directors will ordinarily tend to look first to the interests of the organization that elected them," rather than the best interests of the American Olympic movement.<sup>29</sup> In testimony before the Senate Commerce Committee, Donald Fehr, a member of the Independent Commission, expanded on that point: "[T]he USOC is more like a legislative body, with the differing interest groups struggling with one another to protect their own and get their piece of the pie. What this means is that, for all practical purposes, the structure of the USOC makes dispute and discord the order of the day."<sup>30</sup>

The Independent Commission's report listed other flaws in the current structure of the USOC. The report stated that the Executive Committee suffers from the same

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<sup>24</sup> USOC Constitution, Art. XI, § 2.

<sup>25</sup> *Id.*

<sup>26</sup> USOC Constitution, Art. XIII, § 2.

<sup>27</sup> Report and Recommendations of the Independent Commission on Reform of the United States Olympic Committee, at 2 (2003).

<sup>28</sup> *Id.*, at 9.

<sup>29</sup> *Id.*

<sup>30</sup> *United States Olympic Committee Reforms: Hearing Before the Senate Commerce, Science, and Transportation Committee*, 108<sup>th</sup> Cong. 7-8 (February 13, 2003) (statement of Donald Fehr, Public Sector Member of USOC and Executive Director, Major League Baseball Players Association).

structural flaws - and therefore is just as ineffective - as the Board.<sup>31</sup> The report also found, among other things, that there is no clear delineation of authority between volunteers and full-time paid personnel,<sup>32</sup> that there is a great deal of confusion within the USOC as to its overall mission,<sup>33</sup> and that the current governance structure does not promote financial transparency.<sup>34</sup>

To remedy these problems, the Independent Commission first recommended a statutory overhaul of the USOC's governance structure. The Independent Commission found that reducing the Board's membership to nine would increase the Board's ability to coordinate. The report stated that five of the nine directors should be independent,<sup>35</sup> two should be elected from individuals proposed by the Athletes Advisory Council (AAC), and two should be elected from individuals nominated by the NGBC.<sup>36</sup> The five independent directors, the report stated, should be nominated by a new Nominating and Governance Committee to be established by the Board.<sup>37</sup> The Independent Commission recommended the establishment of three additional standing committees by the Board - an Audit Committee, a Compensation Committee, and an Ethics Committee.<sup>38</sup>

For the volunteer corps of the U.S. Olympic movement, the Independent Commission recommended an Assembly representing various parties, including the NGBs and the athletes. All 124 members of the current USOC Board would have a place in the Assembly, which would act as a forum for the Board to interact with and

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<sup>31</sup> *Id.*, at 11.

<sup>32</sup> *Id.*, at 12.

<sup>33</sup> *Id.*, at 17.

<sup>34</sup> *Id.*, at 18.

<sup>35</sup> The Independent Commission recommended that the term "Independent Director" be defined as a director who: 1) has not been an officer or member of the Executive Committee of the USOC within the past two years; 2) has not been an officer or member of the Executive Committee of the AAC, the NGB Council, any NGB or any international federation or a member of the IOC within the past two years; 3) does not receive any compensation from, and does not have a personal services contract with, the USOC, any U.S. Olympic Entity, any International Olympic Entity or a member of the USOC's senior management; 4) is not, and is not affiliated with a company or firm that is, counsel or an auditor, advisor or paid consultant to the USOC, any U.S. Olympic Entity, any International Olympic Entity or a member of the USOC's senior management; 5) has no other relationship with the USOC, any U.S. Olympic Entity, any International Olympic Entity or any member of senior management of the USOC that in the judgment of the Board would adversely affect the Director's ability to represent the interests of the American public in the activities of the USOC; 6) is not affiliated with a company doing business with an Olympic Entity that in the judgment of the Board would adversely affect the Director's ability to represent the interests of the American public in the activities of the USOC; and 7) is not a member of the immediate family of any person described above. *Id.*, at 32.

<sup>36</sup> *Id.*, at 4.

<sup>37</sup> *Id.*, at 5.

<sup>38</sup> *Id.*, at 39.

take suggestions from the volunteer corps.<sup>39</sup> The Assembly would have authority over all “questions relating to the Olympic Games,” which the report defined as “pure Olympic sport matters such as the final selection of any U.S. city...as the U.S. candidate for a future Olympic Games...[q]uestions relating to the Olympic Games do not include matters relating to financial, commercial, legal, personnel, governance and other aspects of the USOC’s or any other NGB’s business and operations.”<sup>40</sup>

The Independent Commission also recommended changing the reporting requirement from every four years to every year.<sup>41</sup> In addition, the report stated that the Board should be required to establish financial and ethical whistleblower procedures for fielding complaints against USOC officials and protections for people who make such complaints.<sup>42</sup> Finally, the Independent Commission recommended that in 2013 and every ten years thereafter, an outside independent commission be appointed to review the effectiveness of the USOC governance structure.<sup>43</sup>

## **Legislative Efforts in Response to the Independent Commission Report**

In the 108<sup>th</sup> Congress, four bills were introduced in response to the Independent Commission report: S. 1404 (introduced by Senators McCain and Stevens); H.R. 3330 (introduced by Representative Buyer); H.R. 3144 and H.R. 3825 (both introduced by Representative Stearns). While the four bills differed somewhat in their approaches, they all followed the general recommendations of the Independent Commission’ report, in that they attempted to streamline the USOC’s governance structure by reducing the number of members sitting on the Board of Directors and separating the volunteer corps from the professional staff. In addition, the three bills each advocated varying degrees of independence in the majority of the elected Board members, the establishment of four standing committees, annual reporting requirements, decennial review of the USOC’s governance structure, and the implementation of whistleblower mechanisms. The McCain bill passed the Senate, but none of the bills passed the House.

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<sup>39</sup> *Id.*, at 5.

<sup>40</sup> *Id.*, at 51-52.

<sup>41</sup> *Id.*, at 6.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*