

A CALL FOR TRANSPARENCY IN SPORTS TO THE GOVERNMENT OF PUERTO RICO

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ABSTRACT

Much like a state, Puerto Rico is self-governed, but cannot interfere with federal law. However, sports federations in Puerto Rico are not governed by the existing applicable federal law. Sports federations are avoiding most of the strict regulations imposed by federal acts, mainly because Puerto Rico has its own Olympic identity, and is recognized by the International Olympic Committee as a separate country. As a result, the language on the federal acts has been interpreted to only apply to those organizations representing the United States. Because of this, federations avoid strict auditing procedures, and other regulations, which consequently have deterred athlete's rights, as well as the long-term development of sports on the island. Using the New Haven School of Thought, also known as Policy-Oriented Jurisprudence, this article analyzes the problem of lack of regulation in sports in Puerto Rico, how it has impacted the community, presents the decisions made to address this issue, and develops recommendations to improve solutions.

I. THE PROBLEM

For decades, Puerto Rico has been home to record-breaking athletes.² Yet, with time, it has become a trend that many professional Puerto Rican athletes migrate to the United States to attain their maximum potential in their respective sport outside the island.³ Unfortunately, this is just one of the many ways that

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² See David Adler, *Clemente tops list of greatest players from PR*, MLB (Sep. 9, 2020), <https://www.mlb.com/news/best-puerto-rican-baseball-players-of-all-time>.

³ See American Keni Harrison, *the World Record Holder, Loses 100 Meter Hurdles Olympic Gold to Jasmine Camacho-Quinn, Who Was Representing Puerto Rico*, CBS NEWS (Aug. 2, 2021, 4:07 AM), <https://www.cbsnews.com/news/keni-harrison-silver-jasmine-camacho-quinn-gold-100-meter-hurdles-tokyo-olympics>; see also Univision & EFE, *Mónica Puig: "Soy latina y muy fiel a donde nací,"*, TUDN (Aug. 12, 2016, 4:08 PM), <https://www.tudn.com/juegos-olimpicos-rio>.

lack of regulation has affected sports in Puerto Rico. In the United States, sports federations are known as National Governing Bodies.⁴ The federal law that regulates National Governing Bodies is known as The Amateur Sports Act of 1978 (“Sports Act of 1978”).⁵ National Governing Bodies, at the face of this law, “represent the United States in the appropriate international sports federation.”⁶ This language limits the applicability of the law strictly to the United States, and leaves athletes in Puerto Rico unprotected by the federal law. Additionally, although Puerto Rico is a United States territory, it has its own Olympic identity and is recognized as a country in the Olympics.⁷ The International Olympic Committee has the sole authority to recognize a National Olympic Committee, and in 1948 they recognized Puerto Rico as a separate entity from the United States.⁸ This makes it the responsibility of the territory itself to regulate sports however it deems appropriate. Unfortunately, not enough has been done to protect athletes’ rights, or the general wellbeing of sports in Puerto Rico. The Government of Puerto Rico has only enacted one law, the Organic Law of the Department of Sports and Recreation, that attempts to regulate national governing bodies.⁹ This law creates the Sports and Recreation Department of Puerto Rico, whose primary functions include but are not limited to: the formulation and implementation of sports law, the impulse of sports and of high-level, high-performance Puerto Rican athletes, and the overall promotion of sports on the island.¹⁰ In sum, it makes the Sports and Recreation Department oversee sports federations, to some degree.¹¹ However, it does not require any financial auditing procedures for sports federations, or layout any national, professional, or amateur athlete’s rights. In fact, it does not even require a sanctioning protocol to manage sexual harassment claims in sports.¹² In the United States, National Governing Bodies are classified as congressionally chartered corporations.¹³ This status requires that the entity be incorporated first under state law,

2016/monica-puig-soy-latina-y-muy-fiel-a-donde-naci (explaining how she trains physically and mentally in the United States, despite choosing to compete in Puerto Rico).

⁴ See 36 U.S.C.A. § 220524 (2020).

⁵ See 36 U.S.C.A. § 220501 (2020) (illustrating the Ted Stevens Olympic and Amateur Sports Act is a United States law (codified at 36 U.S.C. Sec. 220501 et seq. of the United States Code) that charters and grants monopoly status to the United States Olympic Committee, and specifies requirements for its member national governing bodies for individual sports).

⁶ See 36 U.S.C.A. § 220523 (2020).

⁷ See Claire Bermudez, *Why Puerto Rico has its own Olympic team competing in Tokyo*, CBS8 (Aug. 3, 2021), <https://www.cbs8.com/article/sports/olympics/why-puerto-rico-has-own-olympic-team/507-bd1ae2b7-1214-488f-a09c-0b5fe0a81586>.

⁸ *Id.*

⁹ See Ley Orgánica del Departamento de Recreación y Deportes, P.R. Laws tit. 3, §§ 442–44 (2004).

¹⁰ See *id.* § 444(b).

¹¹ See *id.*

¹² See Zulymar D. Guerrero, *Sin medidas contra el hostigamiento sexual principales ligas de Puerto Rico*, A CUENTAGOTAS (Apr. 24, 2020), <https://revistaacg.com/2020/04/24/sin-medidas-contra-el-hostigamiento-sexual-principales-ligas-deportivas-en-puerto-rico>.

¹³ See KEVIN R. KOSAR, CONG. RSCH. SERV., RL30340, CONGRESSIONALLY CHARTERED NONPROFIT ORGANIZATIONS (“TITLE 36 CORPORATIONS”): WHAT THEY ARE AND HOW

then request that Congress grant them a congressional or federal charter.¹⁴ Although the National Governing Bodies are classified as non-profit, Congress requires, all “private corporations established under federal law,” as defined and listed in Subtitle II, are required to undergo independent audits annually, and to submit the findings along with the audit report to Congress.¹⁵ In Puerto Rico, sports federations are incorporated as mere non-profit entities, which do not pay taxes or contributions, and are not subject to financial auditing.¹⁶

In order for a non-profit corporation to receive tax exemptions in Puerto Rico, it must request an exemption certificate from the Department of the Treasury on the island.¹⁷ However, the Department of Treasury lacks personnel to oversee these requests.¹⁸ A disproportionately small amount of employees in the Department of Treasury audit and inspect the Sales and Use Tax (IVU), the 1.2 million tax returns filed, the business and individual filings, the taxes, and taxes on foreigners. Moreover, even fewer employees oversee the non-profit corporation tax exemption applications and look for any irregularities.¹⁹ Due to its nature, a nonprofit corporation cannot report year-end earnings; however, they can furnish their executives and directors with whatever salary they deem appropriate, and expend egregious amounts of money on rent and consulting fees.²⁰

As a result, sports federations and other non-profit entities incorporated as sports teams and leagues in Puerto Rico have no say in their decisions and expenditures, ultimately leaving the door open for the misuse of public property and funds, lack of financial transparency and accountability, and infringement on athletes’ rights.²¹

CONGRESS TREATS THEM (2011) (defining congressionally chartered corporations as “[A] charter [that] typically provides the following characteristics []: (1) Name; (2) Purpose(s); (3) Duration of existence; (4) Governance structure (e.g., executives, board members, etc.); (5) Powers of the corporation; and (6) Federal oversight powers.”).

¹⁴ *Id.*

¹⁵ See 36 U.S.C.A. § 10101.

¹⁶ See Jay Fonseca, *Dando el tumbe sin fines de lucro*, PRIMERA HORA (Jun. 14, 2015, 8:52 PM), <https://www.primerahora.com/opinion/jay-fonseca/columnas/dando-el-tumbe-sin-fines-de-lucro>.

¹⁷ See *Sin Fines de Lucro*, DEPARTAMENTO DE HACIENDA, <http://www.hacienda.gobierno.pr/comerciantes/sin-fines-de-lucro> (last visited Dec. 10, 2022).

¹⁸ See Fonseca, *supra* note 16.

¹⁹ See *id.*

²⁰ See *id.*

²¹ See Antolín M. Ríos, *El BSN atrae nuevos inversionistas y su dinero: ¿por qué ven la liga como una oportunidad de negocios?*, EL NUEVO DÍA (Jan. 27, 2022, 10:40 PM), <https://www.elnuevodia.com/deportes/baloncesto/notas/el-bsn-atrae-nuevos-inversionistas-y-su-dinero-por-que-ven-la-liga-como-una-oportunidad-de-negocios> (explaining how wealthy investors see Puerto Rican sports leagues as business opportunities, especially after athletes’ capped salaries decreased from \$120,000 to \$40,000 each).

II. INTRODUCTION

To fully comprehend the nature of the problem, it is imperative to first understand two concepts: (1) the historical relationship between the United States and Puerto Rico, and (2) the degree of autonomy of the commonwealth.

A. Historical Relationship Between the United States and Puerto Rico

On July 25 of 1898, towards the end of the Spanish-American War, United States military leader, Nelson Miles, reached the port of Puerto Rico's southern city of Guánica, and proceeded to invade the island.²² The island was colonized by Spain at the time, and the subsequent war with Spanish forces lasted only three days.²³ After the defeat of Spain, representatives of the United States and Spain met at the French capital on December 10 of 1898 to sign the Treaty of Paris, which officially ended the Spanish-American War.²⁴ The treaty approved the cession of Puerto Rico (as well as the Philippines, Cuba, and Guam) to the United States.²⁵ Once military victory was achieved in the summer of 1898, the United States rapidly set up a military government on the island that lasted until 1900.²⁶

In 1900, the United States Congress enacted the Organic Act of 1900, more commonly known as the "Foraker Act," which provided for a civil government under Governor Charles Allen.²⁷ The Foraker Act acknowledged Puerto Rico as a territory belonging to the United States, but denied American citizenship to Puerto Ricans.²⁸ Just about one month before the United States entered World War I, President Woodrow Wilson signed the Jones-Shafroth Act, which granted U.S. citizenship to the residents of Puerto Rico, but this did not change the territorial and colonial condition of the island.²⁹ In 1948, after years of demanding leadership by an elected governor, Puerto Ricans were led by their first

²² See Kevin Hymel, *Puerto Rico and the Philippines: The Lesser Known Campaigns of the Spanish-American War*, ARMY HIST. FOUND., <https://armyhstory.org/puerto-rico-and-the-philippines-the-lesser-known-campaigns-of-the-spanish-american-war/> (last visited Dec. 10, 2022); see also ANNUAL REPORTS OF THE WAR DEPARTMENT FOR THE FISCAL YEAR ENDED JUNE 30, 1898: REPORT OF THE SECRETARY OF WAR, MISCELLANEOUS REPORTS 18, 42 (1898) (noting the section of the Secretary's report was a compilation of reports on the Spanish-American War by a number of generals. The portion reproduced here concerns operations in Puerto Rico and was submitted by Maj. Gen. Nelson A. Miles).

²³ See Hymel, *supra* note 22; see also FRANK FREIDEL, *THE SPLENDID LITTLE WAR* 276 (1958) (breaking down timeline of the U.S.-Puerto Rico invasion).

²⁴ See Treaty of Paris, U.S.-Spain, Dec. 10, 1898, T.S. 343.

²⁵ *Id.*

²⁶ See DAVID F. TRASK, *THE WAR WITH SPAIN IN 1898*, at 320 (Louis Morton ed., 1981); see also FRANK FREIDEL, *THE SPLENDID LITTLE WAR* 261 (1958) (discussing how the U.S. entered Puerto Rico through Ponce and thereafter set up camp).

²⁷ See Foraker Act, ch. 191, 31 Stat. 77 (1900) (repealed 1917).

²⁸ See *id.*

²⁹ See Jones-Shafroth Act, ch. 446, 64 Stat. 319 (1917); see also *Puerto Ricans become U.S. citizens, are recruited for war effort*, HISTORY (Mar. 1, 2021), <https://www.history.com/this-day-in-history/puerto-ricans-become-u-s-citizens-are-recruited-for-war-effort> (highlighting the effect that the Act had on extending U.S. citizenship).

governor-elect, Luis Muñoz Marín.³⁰ After the United States received pressure from the United Nations to liberate their colonies, the United States Congress approved a new Puerto Rican Constitution, where it was established that Puerto Rico was now a freely associated U.S. commonwealth.³¹ With over 70 years under this political status, Puerto Rico faces three clear options regarding the future of the island's status; (1) maintain its current status as a commonwealth of the United States, (2) become independent, or (3) become a state. All throughout history, Puerto Rico has held a total of six referendums regarding their political status.³² These referendums are non-binding, since the United States Constitution explicitly grants Congress the power “to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States” thereby having plenary power over the status of Puerto Rico.³³ The process is not always neutral, and sometimes ballot language has been phrased to favor the party in office.³⁴ For example, in 1998 “none of the above” was included as an option, and was the preferred form of recourse in this referendum.³⁵ In 2012, 61% of counted votes went to statehood, and half a million ballots were left blank.³⁶ The latest referendum was held on November 2020, with a majority of voters opting for statehood.³⁷

B. Degree of Autonomy

Although Puerto Rico is subject to Congress' plenary powers because of Puerto Rico's status as an unincorporated U.S. territory, the citizens of Puerto Rico do not have any voting representation in the U.S. Federal government.³⁸

³⁰ See generally Luis Muñoz Marín, BRITANNICA (Apr. 26, 2021), <https://www.britannica.com/biography/Luis-Munoz-Marín> (noting the biography of Puerto Rico's first governor-elect).

³¹ *Id.*

³² See Nicole Narea, *Puerto Ricans have voted in favor of statehood. Now it's up to Congress.*, VOX (Nov. 4, 2020, 7:44 PM), <https://www.vox.com/policy-and-politics/2020/11/4/21536603/puerto-rico-status-referendum-statehood-results>.

³³ U.S. CONST. art. IV, § 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . .”).

³⁴ See generally Charles R. Venator-Santiago, *Constitutional Questions Incident to President Obama's Puerto Rico Status Plebiscite*, 48 NEW ENG. L. REV. ON REMAND 61 (2014) (citing R. Sam Garrett, *Puerto Rico's Political Status and the 2012 Plebiscite: Background and Key Questions*, CONG. RSCH. SERV., (June 25, 2013)).

³⁵ See STAFF OF H. COMM. ON RESOURCES, 106TH CONG., THE RESULTS OF THE 1998 PUERTO RICO PLEBISCITE (Comm. Print 1999).

³⁶ See Frances Robles, *23% of Puerto Ricans Vote in Referendum, 97% of Them for Statehood*, N.Y. TIMES (June 11, 2017), <https://www.nytimes.com/2017/06/11/us/puerto-ricans-vote-on-the-question-of-statehood.html>.

³⁷ See H.R. Res. 1522, 117th Cong. (2021) (finding that “[i]n November 2020, following Alaska and Hawaii precedent, Puerto Rico voters were presented with the question: ‘Should Puerto Rico be admitted immediately into the Union as a State? Yes or No.’ A clear majority of 52.52% voted in the affirmative.”).

³⁸ See Amber L. Cottle, *Silent Citizens: United States Territorial Residents and the Right to Vote in Presidential Elections*, 1995 U. CHI. LEGAL F. 315, 337 (citing John M. Van Dyke, *The Evolving*

Instead of having direct representation through Senators and House Representatives, Puerto Rico has one non-voting Resident Commissioner in the House of Representatives.³⁹ Much like states, Puerto Rico has its own Constitution that cannot interfere with U.S. federal law.⁴⁰ Because of what is set forth by the Federal Relations Act of 1950, all federal laws that are “not locally inapplicable” are instantly governing law in Puerto Rico.⁴¹ The Supreme Court has held that the unincorporated territory status means that Federal laws can be applied to Puerto Rico differently, and that Congress “may treat Puerto Rico differently from States so long as there is a rational basis for its actions.”⁴² This has limited the social and political development of Puerto Rico and hindered its economy.⁴³

III. CONFLICTING CLAIMS

Lack of regulation in sports concerns not only athletes, sports organizations, and educational institutions, but society in general.

A. Athletes

All Puerto Rican athletes have suffered the effects of government involvement and lack of financial auditing in sports federations, but national athletes are the ones who have been most directly affected.⁴⁴ Currently, there is no applicable law in Puerto Rico that protects athletes’ physical or emotional health, fair compensation, or elite level resources to develop their maximum potential as athletes in their respective sports.⁴⁵

Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands, 14 HAWAII L. REV. 445, 450 (1992)).

³⁹ See Foraker Act, ch. 191, 31 Stat. 77 (1900) (repealed 1917) (“That the qualified voters of Porto Rico shall, on the first Tuesday after the first Monday of November, anno Domini nineteen hundred, and every two years thereafter, choose a resident commissioner to the United States, who shall be entitled to official recognition as such by all Departments . . .”); see also Michael Wines, *She’s Puerto Rico’s Only Link to Washington. She Could Be Its Future Governor.*, N.Y. TIMES (July 26, 2019), <https://www.nytimes.com/2019/07/26/us/Jennifer-Gonzalez-Colon-puerto-rico.html> (discussing the role of Puerto Rico’s non-voting Resident Commissioner).

⁴⁰ See U.S. CONST. art. VI.

⁴¹ 48 U.S.C. § 734 (“The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States . . .”).

⁴² *Harris v. Rosario*, 446 U.S. 651, 651–52 (1980).

⁴³ See H.R. Res. 1522, 117th Cong. (2021).

⁴⁴ See Angel Camacho, *Con uniformes viejos de [doce] años así jugó la Selección de Béisbol en Lima*, SOLO PELOTA (Aug. 9, 2019), <https://solopelotanews.com/con-uniformes-viejos-de-12-anos-asi-jugo-la-seleccion-de-beisbol-en-lima> (explaining that the national baseball team had to wear dirty uniforms from twelve years prior despite being a gold-winning team).

⁴⁵ See Guerrero, *supra* note 12.

Monica Puig was the first Puerto Rican athlete to win Olympic gold for Puerto Rico.⁴⁶ She did so in the sport of tennis.⁴⁷ Although Puerto Rican, Puig developed herself as a tennis star in the United States, where she grew up.⁴⁸ With the hopes of following in her footsteps, Lauren Anzalotta (“Anzalotta”) decided to pursue a similar route.⁴⁹ Blessed with the support of her family in Puerto Rico, she was able to get recruited at a very young age to train amongst the top tennis prospects in the United States.⁵⁰ While training there, she was forced to choose which country to represent: Puerto Rico or the United States.⁵¹ Her strong sense of honor and pride for her roots made her choose Puerto Rico, despite training full time in the United States.⁵² For nearly a decade, her family made personal and economic sacrifices to give Anzalotta the opportunity to live out her dreams.⁵³ She eventually ranked number seventy-four amongst the ITF Junior Rankings, and was named the 2019 Tennis Athlete of the Year in Puerto Rico.⁵⁴ By the age of 17, she was the first Puerto Rican to ever win the Coffee Bowl in Costa Rica and made the semi-finals of the Copa Barranquilla in Colombia.⁵⁵ Both of these tournaments were Grade 1 tournaments, which is the second highest level of professional tennis, next to Grade A.⁵⁶ Grade A tournaments include the more commonly known Grand Slams.⁵⁷ Furthermore, Anzalotta played in all major Junior Grand Slams, except for one; the Australian Open.⁵⁸ Her entire tennis career was funded by her family, and for the first time, the Puerto Rican Tennis Association (PRTA) agreed to help fund her

⁴⁶ See Carlos Nava, *Monica Puig makes history by winning gold medal*, ESPN (Aug. 14, 2016), https://www.espn.com/olympics/summer/tennis/story/_id/17298802/monica-puig-makes-history-winning-gold-medal.

⁴⁷ See *id.*

⁴⁸ See ‘*Moment of My Life*’: Puerto Rico’s Monica Puig on Tennis Gold Medal Win at Rio Olympics, NBC MIAMI (Aug. 14, 2014, 8:20 PM), <https://www.nbcmiami.com/news/local/moment-of-my-life-puerto-ricos-monica-puig-on-tennis-gold-medal-win-at-rio-olympics/>.

⁴⁹ Telephone Interview with Dina Kynoch-Anzalotta, mother of Lauren Anzalotta (Sep. 23, 2021).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Yamaira M. Pérez, *Lauren Anzalotta lamenta falta de apoyo*, EL VOCERO (Jan. 24, 2020), https://www.elvocero.com/deportes/lauren-anzalotta-lamenta-falta-de-apoyo/article_7a349532-3d6a-11ea-96a2-735640e19243.html.

⁵⁵ Telephone Interview with Dina Kynoch-Anzalotta, mother of Lauren Anzalotta (Sep. 23, 2021); see *Lauren Anzalotta Kynoch Results*, CORETENNIS, <https://www.coretennis.net/tennis-player/lauren-anzalotta-kynoch/85793/results.html> (last visited Oct. 7, 2022) (listing tournaments that Lauren competed in, including the ones in Costa Rica and Colombia).

⁵⁶ See *About the Copa Del Café*, COPA CAFE, <https://www.copacafe.cr/about-the-copa> (last visited Oct. 7, 2022) (classifying the tournament as Grade 1); see also Euroelite Tennis, FACEBOOK (Jan. 25, 2019), <https://es-la.facebook.com/EuroeliteTennis/posts/we-have-a-semifinalist-at-the-grade-1-copa-de-barranquilla-columbia-kevin-chahou/2147375108660638/> (referring to the Colombian tournament as a Grade 1 tournament).

⁵⁷ See *ITF Junior Rules*, U.S. TENNIS ASS’N, http://www.playerdevelopment.usta.com/itf_junior_rules/ (last visited Dec. 10, 2022) (including Grand Slams within Group A).

⁵⁸ Telephone Interview with Dina Kynoch-Anzalotta, mother of Lauren Anzalotta (Sep. 23, 2021).

participation in the Australian Open.⁵⁹ Notably, the PRTA hosted a golf tournament as a fundraiser for her and other promising prospects, where she dedicated a speech of appreciation to the contributors.⁶⁰ A day before she was supposed to part to Australia, the PRTA contacted her saying they no longer had the funds to send her to the Australian Open.⁶¹ Anzalotta was fined for waiting until the last moment to drop out of the competition.⁶² The lack of transparency in financial records in the Puerto Rican Tennis Association protects the federation, but hurts promising prospects like Anzalotta.⁶³ The federation's actions remain basically absolute, with no way of appealing and or knowing where all the money collected from the donations is or what it was used for.⁶⁴

Cristina Torres ("Torres"), a young prospect of Puerto Rico's National Soccer Team, has had a very successful career as well.⁶⁵ She has played for the National Team since she was fourteen years old, trained in Spain with the club Levante, and was offered to stay and become a part of the Spanish Division 2 team.⁶⁶ Recently, Torres was recruited to play the French Cup.⁶⁷ A few weeks after returning from France, she posted her concerns on Instagram regarding the Puerto Rican Football Federation.⁶⁸ In this post she highlighted that the female team was already scheduled to play within 10 months, and the federation had not appointed a head coach.⁶⁹ Torres also indicated that the national team had not started training or announced the list of players who would compete. Since Torres's Instagram post, the National Team had four international meets and

⁵⁹ *Id.*

⁶⁰ See Lauren Anzalotta, FACEBOOK (Oct. 26, 2019, 7:05 PM), <https://www.facebook.com/Lauren-Anzalotta-274253770004893/videos/gracias-a-la-asociación-de-tenis-de-puerto-rico-por-la-invitación-al-2do-torneo-/527370377828670/> (demonstrating the appreciation speech delivered at the golf club).

⁶¹ Telephone Interview with Dina Kynoch-Anzalotta, mother of Lauren Anzalotta (Sep. 23, 2021).

⁶² *Id.*

⁶³ See P.R. LAWS ANN. tit. 3, §§ 442–44 (2004) (showing that this is the only law regulating sports in Puerto Rico and that there are no auditing procedures to ensure transparency in financial records, transactions, or operations).

⁶⁴ See *id.* (showing that this is the only law regulating sports in Puerto Rico and that there is no appeal process regarding federative actions).

⁶⁵ See Roselyn R. Pérez, *Continúan las boricuas en el extranjero*, FÚTBOL BORICUA (Nov. 13, 2020), <https://futbolboricua.co/continuan-las-boricuas-en-el-extranjero/>.

⁶⁶ See Comunicados Redacción, *supra* note 66; see also Héctor V. Muñiz, *Cristina Torres y Ángela Díaz entrenan en España*, QUE PALO (Nov. 20, 2019), <https://www.quepalo.com/cristina-torres-y-ngela-daz-entrenan-en-espaa-7427/>.

⁶⁷ See Comunicados Redacción, *Cristina Torres jugará en la Copa Francia con el Espoir Club Bastiais*, FÚTBOL BORICUA (Oct. 3, 2020), <https://futbolboricua.co/cristina-torres-jugara-en-la-copa-de-francia-con-el-espoir-club-bastiais/>; see also Jessica R. Andino, *Cristina Torres Jugará en la Copa de Francia con el Espoir Club Bastiais*, FPF PUERTO RICO (Oct. 2, 2020), <https://www.fpfpuertorico.com/cristina-torres-jugara-en-la-copa-de-francia-con-el-espoir-club-bastiais/>.

⁶⁸ See Cristina Torres (@cristina.torres11), INSTAGRAM, <https://www.instagram.com/cristina.torres11/> (last visited Dec. 10, 2022) (posting about her concerns regarding the administrative decisions in the Puerto Rican Football Federation in a now deleted post dated Dec. 11, 2020).

⁶⁹ *Id.*

did not call her to train or be part of the team.⁷⁰ However, it was only after the news broke regarding this incident that the National Team has called her once again to be a part of the team.⁷¹ Because there is no committee or organization on the island where players can appeal decisions made by federations, Torres was left without options during this timeframe.⁷² If Puerto Rico was governed by the federal statute, Torres would have had the right to appeal the federation's act of retaliation against her at the Office of the Athlete Ombuds.⁷³ The duties of the Office of the Athlete include, but are not limited to:

assist[ing] in the resolution of athlete concerns, and provid[ing] independent advice to athletes at no cost about the applicable provisions of this chapter and the constitution and bylaws of the corporation, national governing bodies, international sports federations, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organization, and with respect to the resolution of any dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition or other protected competition . . .

⁷⁴

In the United States Soccer Federation, a similar situation occurred, where players from the United States Women's National Soccer Team filed a class lawsuit against their sport's governing body for paying women substantially less than their male counterpart solely based on sex.⁷⁵ The complaint was filed in 2019, but the players involved in the suit were still called to play in the 2019 FIFA Women's World Cup; where they became Champions.⁷⁶ The Ted Stevens Olympic Act not only protects players from acts of retaliation, but it also

⁷⁰ See Edwin Jusino, *Cristina Torres sigue vetada por la Federación*, FÚTBOL BORICUA (Oct. 7, 2021), https://futbolboricua.co/cristina-torres-sigue-vetada-por-la-federacion/?utm_source=rss&utm_medium=rss&utm_campaign=cristina-torres-sigue-vetada-por-la-federacion.

⁷¹ See *Convocada Selección Femenina para Eliminatorias Mundialistas*, SIN CENSURA DEPORTIVA (Feb. 11, 2022), <http://www.sincensuradeportiva.com/2022/02/convocada-seleccion-femenina-para-eliminatorias-mundialistas/>.

⁷² See generally P.R. LAWS ANN. tit. 3, § 444 (2004) (highlighting the absence of an appeal process regarding federative actions under the laws regulating sports in Puerto Rico).

⁷³ See 36 U.S.C. § 220509(c) (2022).

⁷⁴ 36 U.S.C. § 220509(b)(2)(A) (2022).

⁷⁵ See *Morgan v. U.S. Soccer Fed'n, Inc.*, 445 F. Supp. 3d 635, 640 (C.D. Cal. 2020); see also Patrick Dorrian, *U.S. Women Soccer Players File Class Suit Over Unequal Pay (1)*, BLOOMBERG LAW (Mar. 8, 2019, 12:21 PM), <https://news.bloomberglaw.com/daily-labor-report/u-s-women-soccer-players-file-class-suit-over-unequal-pay-1>.

⁷⁶ See Dorrian, *supra* note 75; see also *FIFA Women's World Cup France 2019*, FIFA, <https://www.fifa.com/tournaments/womens/womensworldcup/france2019> (last visited Oct. 1, 2022).

protects their First Amendment right to free speech.⁷⁷ Torres was punished for criticizing, or merely expressing her opinion about the Puerto Rican Football Federation.⁷⁸ This punishment contradicts the very reason why the First Amendment was made in the first place-- to prohibit the licensing of publication and to prohibit punishment for criticism of the government.⁷⁹ Players' safety is also affected by lack of regulation.⁸⁰ In the United States, it is required that "[e]ach NGB (National Governing Body) shall require criminal background checks for those individuals it formally authorizes, approves or appoints (a) to a position of authority over, or (b) to have frequent contact with athletes."⁸¹ The aforementioned is not the case in Puerto Rico.⁸² Recently, the Puerto Rican Football Federation hired Elgy Morales as their head coach for all their male teams.⁸³ It was later known that Elgy Morales was a convicted felon in Costa Rica, where he was found guilty of armed robbery and sentenced to 6 years in prison.⁸⁴ In Puerto Rico, he was the subject of a restraining order set against him for domestic violence.⁸⁵ Although no official complaints have been filed against him specifically, various underage soccer players have spoken out anonymously to the local football-devoted media outlet "Fútbol Boricua" about how they were raped and sexually assaulted by coaches in different clubs.⁸⁶ The case is no

⁷⁷ See 36 U.S.C. § 220509(c); see also U.S. CONST. amend. I (relying on "[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . .").

⁷⁸ See Jusino, *supra* note 70.

⁷⁹ See ERWIN CHERMERINSKY, CONSTITUTIONAL LAW 1503 (Rachel E. Barkow et al. eds., Aspen Publishing, 6th ed. 2020).

⁸⁰ See generally P.R. LAWS ANN. tit. 3, § 444 (2004) (highlighting the absence of background check requirements on coaches or employees who exercise power or control over the players and lack of sanctioning or termination protocols for sexual misconduct cases or claims under the laws regulating sports in Puerto Rico).

⁸¹ NGB Athlete Safety Policy, U.S. Olympic Committee Policy (Team USA 2017), <https://www.teamusa.org/-/media/TeamUSA/Media/NGB-Athlete-Safety-Policy---Final---06-20-17.pdf?la=en&hash=9BD0C825075D478FDAF0FA369ADCAA7D86A1758C> (last visited Oct. 20, 2022).

⁸² See generally P.R. Laws Ann. tit. 3, § 444 (2004) (highlighting the absence of criminal background check requirements for employees under the laws regulating sports in Puerto Rico).

⁸³ See Elgy Morales es el nuevo director entrenador de la Selección masculina de fútbol, EL NUEVO DÍA (May 25, 2019), <https://www.elnuevodia.com/deportes/futbol/notas/elgy-morales-es-el-nuevo-entrenador-de-la-seleccion-masculina-de-futbol/>.

⁸⁴ See Sala Tercera de La Corte Suprema de Costa Rica [Third Chamber of the Supreme Court of Justice] Feb. 2, 2001, Poder Judicial; see also Comunicados Redacción, *Es Elgy quien dice ser*, FÚTBOL BORICUA (Oct. 9, 2020), <https://futbolboricua.co/es-elgy-morales-quien-dice-ser/>.

⁸⁵ See Comunicados Redacción, *Seleccionador Nacional de Fútbol de Puerto Rico fue acusado de violencia de género por excompañera consensual*, FÚTBOL BORICUA (Oct. 26, 2020), <https://futbolboricua.co/seleccionador-nacional-de-futbol-de-puerto-rico-fue-acusado-de-violencia-de-genero-por-excompanera-consensual/>; see also Comunicados Redacción, *Aclaración de FBNET sobre las expresiones del Sr. Elgy Morales*, FÚTBOL BORICUA (Oct. 19, 2020), <https://futbolboricua.co/aclaracion-de-fbnet-sobre-las-expresiones-del-sr-elgy-morales/>.

⁸⁶ See Edwin Jusino, *La Federación Puertorriqueña de Fútbol tiene el machismo institucionalizado*, FÚTBOL BORICUA (May 15, 2021), <https://futbolboricua.co/la-federacion-puertorriqueña-de-futbol-tiene-el-machismo-institucionalizado/>.

different for other sports on the island.⁸⁷ Volleyball player Glorimar Ortega told Zulymar Droz-Guerrero for the investigative magazine “A Cuenta Gotas” she was only 19 years old when she was the victim of sexual harassment by the coach of the team to which she belonged.⁸⁸ At the time, Ortega - now with over twenty seasons of experience - was in her fourth season in the Women's Superior Volleyball League (LVSF).⁸⁹ Similarly, the two-time taekwondo world medalist, Ineabelle Díaz, also spoke out and stated that sexual harassment in sports on the island is more common than people imagine.⁹⁰ Díaz reported that she was the victim of sexual harassment in the 1990s by a national taekwondo coach and later by the federation's president.⁹¹ Currently, there is no law that establishes a sanctioning protocol or intends to regulate sexual harassment cases in sports leagues and federations.⁹² The research article titled “Experiences and response patterns on sexual harassment among Puerto Rican student-athletes,” carried out by sports psychologist, Enid Rodríguez-Nogueras, noted that 46.4% of college student-athletes in the Inter-collegial Athletic League of Puerto Rico (LAI) responded as having received unwanted sexual attention.⁹³ This can include comments of a sexual nature, physical contact, or sexual assault.⁹⁴ In fact, the secretary of the Sports and Recreation Department herself stated that “in the Department [of Recreation and Sports of Puerto Rico] (DRD) we do not have any law that requires sports entities to have this protocol.”⁹⁵ This lack of regulation encourages athletes who have been victims of these terrible acts to speak out in hopes for a change in the law.⁹⁶

B. Sports Federations and other organizations

Sports federations, that have been historically governed mainly by political influences, benefit from the lack of financial auditing.⁹⁷ However, they also

⁸⁷ See Guerrero, *supra* note 45.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* (“En el Departamento [de Recreación y Deportes de Puerto Rico] (DRD) nosotros no tenemos ninguna ley que obligue a entidades deportivas a tener este protocolo.”).

⁹¹ *Id.*

⁹² See *A Cuentagotas*, *supra* note 12 (noting that no law obligates sports entities to have sexual harassment protocol).

⁹³ See Guerrero, *supra* note 45 (citing Enid Rodríguez Nogueras, *Sexual harassment perceptions among Puerto Rican female former athletes*, INTERNATIONAL JOURNAL OF SPORT AND EXERCISE PSYCHOLOGY, 9(4), 323-337).

⁹⁴ See *id.*

⁹⁵ Zulymar Droz Guerrero, *Sin medidas contra el hostigamiento sexual principales ligas deportivas en Puerto Rico*, A CUENTA GOTAS, <https://revistaacg.com/2020/04/24/sin-medidas-contra-el-hostigamiento-sexual-principales-ligas-deportivas-en-puerto-rico/> (last visited Dec. 10, 2022).

⁹⁶ See Guerrero, *supra* note 12.

⁹⁷ See generally Eduardo V. Martínez, *La administración pública de la recreación y los deportes en el contexto sociocultural, político y educativo en Puerto Rico*, EF DEPORTES (Jun. 2014), <https://www.efdeportes.com/efd193/la-administracion-publica-de-los-deportes-en-puerto-rico.htm> (discussing the factors that affect the sports administration in Puerto Rico, including the failure of

suffer from bad reputation, loss of confidence by future sponsors, and less achievements on international arenas, which ultimately leads to loss of income for the federations, athletes, and the Puerto Rican government.⁹⁸ There is no recent market analysis that calculates how much money fluctuates in the sports sector within the island.⁹⁹ However, a study that was commissioned by the Puerto Rico Olympic Committee (COPUR) and the Convention Bureau in 2010, places the economic impact of sports in Puerto Rico at \$629 million.¹⁰⁰ Importantly, this study was conducted in the year 2010 and does not take into consideration all the stimulus and economic injection into sports leagues like the Superior National Basketball League, locally known as the “BSN”.¹⁰¹ For example, this past year alone in the BSN, two major urban music artists bought their own basketball team with the purpose “to promote a better future through sports, music, and the arts . . . [t]he main objective is to encourage ideas and dreams in Puerto Rican youth, which provoke an authentic and real social transformation.”¹⁰² The world-famous urban artist known as Bad Bunny, bought the basketball franchise “Cangrejeros de Santurce.”¹⁰³ Shortly after, the Puerto Rican trap artist known as Anuel AA took over the “Capitanes de Arecibo” franchise in the same league.¹⁰⁴ Though there is no data on how much money has been generated from ticket sales, broadcasting or merchandising, this season consisted of an unprecedented number fan attendance for the league, where over 800,000 people attended games in the 2021 season.¹⁰⁵ Promising live shows

communication by the leaders of the organization). *See also* P.R. LAWS ANN. tit. 3, § 444(a) (establishing that the Sports and Recreation Department is under the direction of a Secretary, appointed by the Governor, with the advice and consent of the Senate, in accordance with Section 5 of Article IV of the Constitution of the Commonwealth of Puerto Rico).

⁹⁸ *See generally* Ben McClure, *Financial Reporting: The Importance of Corporate Transparency*, INVESTOPEDIA (June 12, 2021), <https://www.investopedia.com/articles/fundamental/03/121703.asp> (holding that “when financial statements are not transparent, investors can never be sure about a company’s real fundamentals and true risk.”).

⁹⁹ *See* Gustavo Vélez et al., *El deporte: Inversión por un mejor Puerto Rico*, INTELIGENCIA ECONÓMICA (Dec. 27, 2019), <https://www.economiapr.com/single-post/2019/12/27/el-deporte-inversión-por-un-mejor-puerto-rico>.

¹⁰⁰ *See id*; *see also* Gustavo Vélez et al., *El deporte como catalítico de la economía*, EL NUEVO DÍA (Apr. 13, 2019), <https://www.pressreader.com/puerto-rico/el-nuevo-dia/20190413/281543702310854> (discussing the revenue that the sports industry draws in to Puerto Rico).

¹⁰¹ *See* Emilio E. Huyke, *Historia del Baloncesto en Puerto Rico*, BSN, <https://www.bsnpr.com/otros/historia.asp> (last visited Oct. 21, 2022).

¹⁰² Jessica Roiz, *Bad Bunny is now the Co-Owner of Puerto Rican Basketball Team Los Cangrejeros de Santurce*, BILLBOARD (May 18, 2021), <https://www.billboard.com/articles/columns/latin/9574500/bad-bunny-co-owner-of-basketball-team/>; *see also* *Cangrejeros le dan la Bienvenida a Benito Antonio Martínez*, CANGREJEROS BASKET (May 17, 2021), <https://cangrejerosbasket.com/cangrejeros-le-dan-la-bienvenida-a-benito-antonio-martinez-2/>.

¹⁰³ *See* Roiz, *supra* note 102.

¹⁰⁴ *See* Billboard Staff, *Anuel AA Is the New Owner of Puerto Rican Basketball Team Capitanes de Arecibo*, BILLBOARD (June 15, 2021), <https://www.billboard.com/articles/columns/latin/9587364/anel-buys-basketball-team-capitanes-de-arecibo/>.

¹⁰⁵ *See* *El BSN Registró sobre 800 mil asistentes a su temporada 2021*, BSN (Dec. 20, 2021), <https://bsnpr.com/noticias/detalles.asp?r=20689#.Ygs9ny-B3zA>.

and celebrity appearances, both of these teams have had consistent high attendance from fans around the island.¹⁰⁶ The amount of money these teams have generated remains unknown, mainly because a lot of these teams, as well as the league, are incorporated as non-profit entities, where they are treated differently than for profit entities.¹⁰⁷ The question is; how did these public figures buy a nonprofit entity?¹⁰⁸ Under the Department of State in the Registry of Corporations and Entities, there are several entities with the same name.¹⁰⁹ For example, in the case of Capitanes de Arecibo, one of the entities that is incorporated under this name is an LLC, which is for profit.¹¹⁰ This LLC is what, in this case Anuel AA, bought.¹¹¹ They also created a non-profit with the same name, where they also listed themselves as the resident agent.¹¹² While logical assumptions of this scheme are not enough to evidence any wrongdoing, it does raise concern over the potential misuse of state property and funds.¹¹³ This fact alone imposes a duty on these teams to be transparent with the public and the government on their financial statements.¹¹⁴ The government of Puerto Rico is essentially losing money by funding privately owned teams and allowing them to take advantage of the non-profit status.¹¹⁵ Comparatively, in the United States, NBA teams are not incorporated as non-profit entities and pay contributions on their profits.¹¹⁶

Historically, Puerto Rico has been home to baseball legends.¹¹⁷ As of late 2021, the Puerto Rico National Baseball Team is ranked 12th best in the world

¹⁰⁶ See *id.*

¹⁰⁷ See *Registry of Corporations and Entities*, DEP'T OF STATE OF P.R., <https://prcorpfil-ing.flhst.com/CorporationSearch.aspx> (last visited Oct. 4, 2022) (demonstrating that Cangrejeros de Santurce is a non-profit); see also *Registry of Corporations and Entities*, DEP'T OF STATE OF P.R., <https://prcorpfil-ing.flhst.com/CorporationSearch.aspx> (last visited Oct. 4, 2022) (demonstrating that Capitanes de Arecibo is a non-profit).

¹⁰⁸ See Roiz, *supra* note 102; see also Billboard Staff, *supra* note 104.

¹⁰⁹ See *Registry of Corporations and Entities*, *supra* note 107 (showing the different entities associated with the name: Capitanes de Arecibo).

¹¹⁰ *Id.*

¹¹¹ See Billboard Staff, *supra* note 104.

¹¹² See *Registry of Corporations and Entities*, *supra* note 107.

¹¹³ See Joel O. Rivera, *Equipos del BSN esperan por aportaciones económicas de sus municipios*, EL NUEVO DIA (Apr. 12, 2018), <https://www.elnuevodia.com/deportes/baloncesto/notas/equipos-del-bsn-esperan-por-aportaciones-economicas-de-sus-municipios/>.

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See Nadelle Grossman, *What Is the NBA?*, 25 MARQ. SPORTS L. REV. 101, 103–04 (2014) (explaining that the NBA is a partnership and not a non-profit unincorporated association because it is commercial in nature); see also Andrew Zimbalist, *The Nonprofit Status of Sports Leagues Is Irrelevant*, THE NEW YORK TIMES (Sept. 14, 2014, 12:59 PM), <https://www.nytimes.com/roomfordebate/2014/09/03/should-pro-sport-leagues-get-tax-breaks/the-nonprofit-status-of-sports-leagues-is-irrelevant> (“The leagues are not profit centers. They are pass-through entities that pay salaries for their personnel; cover other expenses such as office rent, legal and consulting fees, travel and entertainment; and then distribute any surplus to the teams.”).

¹¹⁷ See David Adler, *Clemente Tops List of Greatest Players From PR*, MLB (Sept. 9, 2020), <https://www.mlb.com/news/best-puerto-rican-baseball-players-of-all-time> (“Puerto Rico has given

and has won international competitions like the Central-American Games and the Pan-American games.¹¹⁸ With a team that is usually comprised of future Major Baseball League players, Puerto Rico's National Baseball Team made one of their latest international appearances wearing 12-year-old used uniforms.¹¹⁹ Head coach, Juan Gonzalez, affirmed the team had no money to buy new ones.¹²⁰

The national baseball team, which in 2017 placed runner up in the World Baseball Classic, won prize money totaling \$2 million.¹²¹ The national team had been runner ups in the same tournament five years earlier where they received \$1.7 million in prize money.¹²² Without taking into consideration money that is given to the federation from the Olympic Committee, the Sports and Recreation Department, broadcasting revenue, merchandise sales, and sponsors, it is very unlikely that the Baseball Federation ran out of money to pay for new uniforms just two years after placing second place in the World Baseball Classic.¹²³ However, since there is no governing law that requires that federations be audited,¹²⁴ there is no way to know where this money was spent, and if the federation really had no money to pay for new uniforms.¹²⁵ Situations like these create a high level of skepticism for new sponsors, and set a high barrier for stimulating investment in local sports.¹²⁶

C. Educational Institutions

By the early 2000's, a fair share of college athletes in the United States were already receiving academic scholarships as compensation for playing in their university.¹²⁷ The organization that governs intercollegiate sports in the United

Major League Baseball some of the best players in the game today. . . [i]t's also given MLB some of the great players of the past -- some of the greatest to ever play the game, in fact.”)

¹¹⁸ See *WBSC Baseball & Softball World Rankings*, WBSC (Dec. 31, 2021), <https://rankings.wbssc.org/team/PUR/baseball/men>.

¹¹⁹ See Juan “Igor” Gonzalez *aclara que no criticó a la Federación de Béisbol ni al Copur*, PRIMERA HORA (Aug. 10, 2019, 1:46 PM), <https://www.primerahora.com/deportes/beisbol/notas/juan-igor-gonzalez-aclara-que-no-critico-a-la-federacion-de-beisbol-ni-al-copur/>; see also Angel Camacho, *Con uniformes viejos de 12 años así jugó la Selección de Béisbol en Lima*, SOLO PELOTA (Aug. 9, 2019), <https://solopelotanews.com/con-uniformes-viejos-de-12-anos-asi-jugo-la-seleccion-de-beisbol-en-lima/> (reporting how 12-year-old uniforms have been used by the Puerto Rico National Baseball Team to play at an international level).

¹²⁰ See generally Camacho, *supra* note 119 (discussing how the team played with old uniforms instead of purchasing new ones).

¹²¹ See Joel O. Rivera, *De casi \$2 millones el premio de Puerto Rico*, PRIMERA HORA (Mar. 23, 2017, 12:00 AM), <https://www.primerahora.com/deportes/beisbol/notas/de-casi-2-millones-el-premio-de-puerto-rico/>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See 36 U.S.C. § 220511; see also LEY ORGÁNICA DEL DEPARTAMENTO DE RECREACIÓN Y DEPORTES 3 L.P.R.A. § 444 (showing that U.S. federal law requires auditing, and the law in Puerto Rico governing sports federations does not).

¹²⁵ See McClure, *supra* note 98; see also PRIMERA HORA, *supra* note 119.

¹²⁶ See McClure, *supra* note 98.

¹²⁷ See *Amateur Athletes*, Article Under *Sports Law*, LAW LIBRARY – AMERICAN LAW AND LEGAL

States is the National Collegiate Athletic Association (NCAA).¹²⁸ This organization was originally founded to protect student-athletes from exploitative practices that were common at the time.¹²⁹ However, universities on the island are part of an independent conference, which means they are not governed by NCAA guidelines.¹³⁰ The amount of collegiate athletic programs that choose to remain independent is surely decreasing over time.¹³¹ There are three main reasons why a university would want to join a conference: (1) to take advantage of broadcasting exposure, (2) to capitalize on part of its revenue, and (3) to avoid difficulties in coordinating opponents and guarantee a full season of scheduled matches.¹³² With rapidly growing collegiate sports becoming increasingly popular, it only seems logical for a university to want to join an NCAA conference. Nonetheless, Puerto Rico remains independent and its schools compete in the Inter-collegial Athletic League (“LAI”).¹³³

The LAI is a non-profit organization whose main purpose is to regulate sports amongst its member institutions.¹³⁴ The league was founded in 1929 by Cosme Beitía of the University of Puerto Rico at Rio Piedras, Charles Leker from the Interamerican University of Puerto Rico, and Luis Izquierdo Galo and José D. Morales from the University of Puerto Rico at Mayagüez.¹³⁵ The league is best known for its yearly inter-collegiate sports event locally called “Las Justas”.¹³⁶ It is administered by an “Administrative Council” made up of the Deans of Students, athletic directors, and a student representative.¹³⁷ There is also a governing body called the “Junta de Gobierno” made up of the rectors

INFORMATION, <https://law.jrank.org/pages/10435/Sports-Law-Amateur-Athletes.html> (last visited Oct. 20, 2022).

¹²⁸ See JOSEPH N. CROWLEY, IN THE ARENA: THE NCAA'S FIRST CENTURY 15 (2016) (ebook).

¹²⁹ *Id.*

¹³⁰ See *University of Puerto Rico-Rio Piedras, NCAA*, <https://www.ncaa.com/schools/pr-rio-piedras> (last visited Oct. 21, 2022) (illustrating the conference, in which the Rio Piedras is the independent conference).

¹³¹ See Press Release, *WAC Announces Expedited Entrance for Four Texas Institutions*, WESTERN ATHLETIC CONFERENCE (Jan. 21, 2021), <https://wacsports.com/general/2020-21/releases/20210121f62s76>.

¹³² See Jim Rayburn, *College Football: Being an Independent Presents Many Challenges*, DESERET NEWS (Aug. 19, 2010, 3:53 AM), <https://www.deseret.com/2010/8/19/20135418/college-football-being-an-independent-presents-many-challenges>. But see Tadd Haislop, *Why Is Notre Dame Not in a Conference? Four Reasons the Irish Remain Independent in Football*, THE SPORTING NEWS (July 10, 2020), <https://www.sportingnews.com/us/ncaa-football/news/notre-dame-conference-independent-football/v59x02eh6yt21nc786brczykn>.

¹³³ See *Breve Historia de la LAI de Puerto Rico*, ENCICLOPEDIAPR (Jan. 7, 2010), <https://enciclopediapr.org/content/breve-historia-de-la-lai-de-puerto-rico/>.

¹³⁴ See *Misión, LAI*, <https://laipr.org/nosotros> (last visited Dec. 10, 2022) (“La LAI es una asociación voluntaria de instituciones de educación superior, organizada para promover y regular el deporte en sus instituciones miembros.”).

¹³⁵ See ENCICLOPEDIAPR, *supra* note 133.

¹³⁶ See *Primera Hora, Las Justas de la LAI cumplen 90 años*, PRIMERA HORA (Mar. 13, 2019, 1:24 PM), <https://www.primerahora.com/deportes/otros/notas/las-justas-de-la-lai-cumplen-90-anos/>.

¹³⁷ See *Liga Atlética Interuniversitaria de Puerto Rico*, HMONG, https://hmong.es/wiki/Liga_Atlética_Interuniversitaria_de_Puerto_Rico (last visited Oct. 8, 2022).

and presidents of the member institutions. The “Junta de Gobierno” selects a representative called “The Commissioner” who is appointed to act as executive officer of the LAI for a period of two years.¹³⁸ Among the many problems athletes are facing, one clear example is how the University of Puerto Rico tried to wrongfully influence their students.¹³⁹ The University of Puerto Rico and the Metropolitan Football Academy were set to play a women’s soccer match in September 12, 2021 as part of the Quintana Cup.¹⁴⁰ However, the Metropolitan F.A. realized a symbolic protest to shed light on the unjust situation that the players from the University of Puerto Rico are facing.¹⁴¹ Athletes who are a part of the University of Puerto Rico team are forced to sign an agreement that only allows them to compete at the professional level as part of the Spadi Football Club.¹⁴² Note that the University of Puerto Rico competes in the LAI, which is an amateur league.¹⁴³ The day of the match, Metropolitan F.A.’s athletic director issued a statement explaining their motives behind the symbolic protest, the retaliation that players who decided not to sign the agreement were facing, and all the reasons detailing why the agreement would be invalid.¹⁴⁴ Here, the director expressed that first; the agreement is signed by women under the age of 21 without parental consent.¹⁴⁵ This agreement does not exist for the team’s male counterpart, which would make the agreement discriminatory on its face.¹⁴⁶ There is also no similar agreement in any other sport or university on the island and players who choose not to sign the agreement risk losing their scholarship.¹⁴⁷ There is no nexus between the University of Puerto Rico and Spadi other than the university’s head coach, Dariel Collazo, who is also the President of Spadi.¹⁴⁸ This agreement clearly attempts to limit each player’s constitutional rights.¹⁴⁹ It has been addressed and settled by each player individually, and as a group, as well as through parents taking on legal

¹³⁸ See LIGA ATLETICA INTERUNIVERSITARIA DE PUERTO RICO E ISLAS VIRGENES, REGLAMENTO GENERAL (Nov. 8, 2018) (on file with Liga Atletica Interuniversitaria de Puerto Rico).

¹³⁹ See Edwin Jusino, *Controversia en el fútbol femenino por jugadoras universitarias*, FÚTBOL BORICUA (Sep. 21, 2021), <https://futbolboricua.co/controversia-en-el-futbol-femenino-por-jugadoras-universitarias/>.

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ See ENCICLOPEDIAPR, *supra* note 133.

¹⁴⁴ See Jusino, *supra* note 139.

¹⁴⁵ See *id.*

¹⁴⁶ See *id.*

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ Memorandum from Jhoana Astudillo, Athletic Director of Metropolitan Football Academy (Sep. 12, 2021) (on file with Metropolitan Football Club) (currently unavailable). [ALTERNATIVE CITATION (SEE COMMENT) Cf. Rafael R. Diaz Torres, *Discrimination and Harassment: Rivals for Women on Puerto Rico’s Sporting Arenas*, Centro de Periodismo Investigativo (May 26, 2022), <https://periodismoinvestigativo.com/2022/05/discrimination-and-harassment-rivals-for-women-on-puerto-ricos-sporting-arenas/> (explaining the Puerto Rican player’s experiences in the unregulated collegiate environment).]

representation.¹⁵⁰ However, a lot of these athletes still face retaliation, and the lack of regulation once again leaves them unprotected, while granting absolute power to the coaches and institutions, with no check on their actions.¹⁵¹

III. PAST TRENDS IN DECISIONS AND CONDITIONING FACTORS

A. *In the United States*

Professional sports in the United States were purposely structured to be administered by the private sector and not the federal government.¹⁵² In 1975, President Gerald Ford signed an executive order and created a Commission on Olympic Sports to study the reasons why the United States was not as successful in international competition as its Cold War opponents.¹⁵³ This Committee reached the conclusion that the United States did not have a central organizing body with the authority to identify and recruit the best athletes, though the Committee states it was “clear that it did not want the Federal Government running amateur athletics in this country.”¹⁵⁴

Congress then enacted the Amateur Sports Act of 1978, organizing the United States Olympic and Paralympic Committee (USOPC) as “a federally chartered, non-profit patriotic corporation and not a federal agency.”¹⁵⁵ Congress granted the USOPC “exclusive jurisdiction” over “all matters” that related to the participation of the U.S. in the Olympic Games.¹⁵⁶ The Act states: “The purposes of the USOPC include, but are not limited to; [1] coordinating and developing athletic activities related to international athletic competition, [2] obtaining the best athletes for participation in the Olympic Games, and [3] developing grass roots youth sports.”¹⁵⁷ To achieve this, the Olympic and Amateur Sports Act provided that “the Committee would recognize privately incorporated National Governing Bodies for each Olympic sport.”¹⁵⁸ Congress also gave the USOPC “the exclusive right to use the Olympic trademarks to ensure the USOPC could fund its activities without government support.”¹⁵⁹ “The

¹⁵⁰ *Cf. id.*

¹⁵¹ *Cf. id.*

¹⁵² See Dionne L. Koller, *How the United States Government Sacrifices Athletes’ Constitutional Rights in the Pursuit of National Prestige*, 2008 B.Y.U. L. REV. 1465, 1478.

¹⁵³ See Exec. Order No. 11,868, 40 Fed. Reg. 26, 255 (July 22, 1975).

¹⁵⁴ Dionne L. Koller, *A Twenty-First-Century Olympic and Amateur Sports Act*, 20 VAND. J. ENT. & TECH. L. REV. 1027, 1047 (2018); see also H.R. REP. NO. 95-1627, at 7482 (1978) (“The President’s Commission made it clear that it did not want the federal government directing amateur athletics in this country.”).

¹⁵⁵ See Dionne Koller, *Amateur Regulation and the Unmoored United States Olympic and Paralympic Committee*, 9 WAKE FOREST L. REV. ONLINE 88, 90–91; see also 36 U.S.C. §§ 220501–29 (2012).

¹⁵⁶ Koller, *supra* note 155, at 91.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

USOPC is [actually] the only national Olympic committee in the world that is supported exclusively through the private sector and not the federal government.”¹⁶⁰

Corporations that are federally chartered are created by statute and are in the “twilight zone” between the public and private sectors.¹⁶¹ The USOPC is known as a “Title 36 corporation” because it is not-for-profit and grouped in the United States Code along with other “fraternal and patriotic organizations.”¹⁶² Congress has chartered hundreds of Title 36 corporations, and “it is free to draft corporate charters to include whatever elements it deems appropriate.”¹⁶³ However, the USOPC is not like many other corporations because most of them do not have “the same public profile and wide-ranging responsibilities.”¹⁶⁴ The USOPC has a duty “to develop grassroots sports, represent the United States in the international Olympic and Paralympic Movement, and supervise the U.S. Olympic and Paralympic Movement,” which means it carries “a position of public importance that not many other organizations, if any, bear the burden to fulfill.”¹⁶⁵

Corporations that are federally chartered often create confusion due to their quasi-governmental status.¹⁶⁶ These types of corporations are not considered government corporations, because their debts are not financed with taxpayer dollars.¹⁶⁷ Government corporations are agencies of the federal government, like the Federal Bureau of Investigation (“FBI”) or the Internal Revenue Service (“IRS”), which are federal programs.¹⁶⁸ A Congressional Research Service Report mentions

while federally chartered Title 36 corporations enjoy an ‘official imprimatur to their activities’ along with the prestige and financial benefits that may result, members of Congress have expressed ‘concern that the public may be misled . . . into believing that somehow the U.S. government approves and supervises the corporations, when in

¹⁶⁰ *Id.*; see B. DAVID RIDPATH, ALTERNATIVE MODELS OF SPORTS DEVELOPMENT IN AMERICA 27 (2018).

¹⁶¹ Koller, *supra* note 155, at 91 (first citing KEVIN R. KOSAR, CONG. RSCH. SERV., RL30533, THE QUASI GOVERNMENT: HYBRID ORGANIZATIONS WITH BOTH GOVERNMENT AND PRIVATE SECTOR LEGAL CHARACTERISTICS 6 (June 22, 2011); and then citing KEVIN R. KOSAR, CONG. RSCH. SERV., RS22230, CONGRESSIONAL OR FEDERAL CHARTERS: OVERVIEW AND ENDURING ISSUES 1 (Apr. 19, 2013)).

¹⁶² *Id.*; see Kosar, *supra* note 13, at 3.

¹⁶³ Koller, *supra* note 155, at 91; see Kosar, *supra* note 13, at 5.

¹⁶⁴ Koller, *supra* note 155, at 91.

¹⁶⁵ *Id.* (citing KEVIN R. KOSAR, CONG. RSCH. SERV., RS22230, CONGRESSIONAL OR FEDERAL CHARTERS: OVERVIEW AND ENDURING ISSUES 1 (Apr. 19, 2013)).

¹⁶⁶ *See id.*

¹⁶⁷ *See id.*

¹⁶⁸ *See* KEVIN R. KOSAR, CONG. RSCH. SERV., RL30365, FEDERAL GOVERNMENT CORPORATIONS: AN OVERVIEW 2 (2011); *see also* 5 U.S.C. § 103(1) (stating that a government corporation is “a corporation owned or controlled by the Government of the United States”); *see also* 31 U.S.C. § 9104(a)(2) (stating that appropriations for government corporations are made by Congress).

fact this is not the case.¹⁶⁹

Unlike private corporations, government entities are required to operate with legal restrictions, for example: constitutional limitations, and the applicability of the Freedom of Information Act.¹⁷⁰ Furthermore, federally chartered corporations are not overseen by a government agency, and the supervision by Congress is “very limited.”¹⁷¹ Federally chartered corporations lack “government attributes,” such as having their debt guaranteed by the full faith and credit clause of the U.S. Government, and they do not exercise government power.¹⁷² In sum, federally chartered corporations are patriotic, but hold no direct relationship with the federal government.¹⁷³

However, the Supreme Court recognized in *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee* that the USOPC acts in the “national interest.”¹⁷⁴ In Justice Brennan’s dissent he reasoned that the USOPC performs an important government function by representing the United States to the world and coordinating U.S. Olympic Movement sports.¹⁷⁵ Although not a traditional government function, Justice Brennan explained that Congress endowed the USOPC with unique authority to serve an important governmental interest, and Congress put the “power and prestige of the United States Government” behind it.¹⁷⁶

Athletes in the United States have a greater level of protection after the enactment of the Ted Stevens Olympic and Amateur Sports Act, which is now United States law.¹⁷⁷ Before the act entered into law, the Amateur Athletic Union (AAU) was the governing entity for international competition matters and amateur sports in the United States.¹⁷⁸ The AAU had adopted controversial

¹⁶⁹ Koller, *supra* note 155, at 92; *see* KOSAR, *supra* note 13, at 13 (concluding that “the chartering process itself tends to send mixed signals to the public. Although the charter does *not* award any material governmental status to the nonprofit corporation . . . there is an understandable assumption on the part of the public that somehow the charter signifies U.S. government approval of the corporation’s activities and that the corporation is being supervised. Neither assumption is merited.”); *see also* Ronald C. Moe, *Congressionally Chartered Corporate Organizations (Title 36 Corporations): What They Are and How Congress Treats Them*, 46 *FED. LAW.* 35, 37 (1999) (describing how the federal chartering process implies a direct relationship with the federal government that does not actually exist).

¹⁷⁰ *See* Koller, *supra* note 155, at 92.

¹⁷¹ KOSAR, *supra* note 13, at 8.

¹⁷² *See id.* at 4–5 (stating that Congress “does not make these organizations ‘agencies of the United States’ or confer any powers of a governmental character or assign any benefits. These organization [sic] generally do not receive direct appropriations, they exercise no federal powers, their debts are not covered by the full faith and credit of the United States, and they do not enjoy original jurisdiction in the federal courts.”).

¹⁷³ *See id.* at 4.

¹⁷⁴ *See* *S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 544 (1987).

¹⁷⁵ *See id.* at 550 (Brennan, J., dissenting).

¹⁷⁶ *See id.* at 559 (Brennan, J., dissenting).

¹⁷⁷ *See* 36 U.S.C. § 220501.

¹⁷⁸ *See* *Amateur Athletic Union of the United States*, *ENCYCLOPEDIA BRITANNICA* (Jul. 20, 1998), <https://www.britannica.com/topic/Amateur-Athletic-Union-of-the-United-States>.

rules; like prohibiting women from participating in marathons because they are not “physiologically able to run a marathon,” as well as prohibiting women from competing in running events that involved running more than 1.5 miles for the same reason.¹⁷⁹ This prohibition propelled the historic participation of Bobbi Gibb (“Gibb”) in the Boston Marathon-- the first woman to ever run a marathon.¹⁸⁰ Gibb signed up to run the Boston Marathon but received a letter from the organizers which explained the AAU prohibitions and why she would not be able to compete.¹⁸¹ However, Gibb was determined to prove the AAU wrong by hiding behind bushes near the finish line and disguising herself using her brother’s hoodie and shorts.¹⁸² Three hours, twenty-one minutes, and forty seconds later, Gibb crossed the finish line and placed among the top 33% of all male competitors.¹⁸³ Congress soon after adopted the Amateur Sports Act in response to criticism of unfair and unequal regulations like these from the AAU and then proceeded to remove the organization from having any governance role.¹⁸⁴

The 95th Congress of the United States passed the Amateur Sports Act, which created national governing bodies and stated that no one organization may govern more than one sport.¹⁸⁵ This decision took power away from the AAU, but did not completely eliminate it.¹⁸⁶ Instead, it forced the association to turn back to the basic principles upon which it was founded: to maintain amateur sports and to protect the mutual interests of its members while advancing and improving amateur sports.¹⁸⁷ The Amateur Sports Act establishes the United States Olympic Committee, which can then charter a national governing body (NGB) for every sport.¹⁸⁸ Subsequently, each NGB institutes the rules for selecting the athletes that will represent the United States in its respective Olympic event, and promotes competition within that sport.¹⁸⁹ Amateur Sports Act also bestows athletes with due process and appeal rights with regards to their eligibility and participation disputes.¹⁹⁰ The current version of the Amateur Sports Act was adopted in 1998 and was sponsored by Senator Ted

¹⁷⁹Ailsa Ross, *The Woman Who Crashed the Boston Marathon*, JSTOR DAILY (Mar. 18, 2018), <https://daily.jstor.org/the-woman-who-crashed-the-boston-marathon/>; see also Roy M. Wallock, *How Bobbi Gibb Changed Women’s Running, and Finally Got Credit for It*, ESPN.COM: ENDURANCE (Jan. 6, 2016), https://www.espn.com/sports/endurance/story/_/id/15090507/endurance-sports-bobbi-gibb-first-woman-run-boston-marathon.

¹⁸⁰ See Ross, *supra* note 179.

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ *Id.*

¹⁸⁴ See Ted Stevens Olympic and Amateur Act, 36 U.S.C §§ 220501–220529.

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ *Amateur Athletic Union of the United States*, *supra* note 178.

¹⁸⁸ See §§ 220501–220529.

¹⁸⁹ See *id.*

¹⁹⁰ See *id.*

Stevens.¹⁹¹ This revision addresses changes in amateurism requirements in international sports, as well as the broadening of the U.S. Olympic Committee's role by including the Paralympic Games, and more athlete representation.¹⁹²

B. In Puerto Rico

In 1927, one of the first laws in Puerto Rico that attempted to regulate sport was enacted.¹⁹³ This law created the "Athletic Commission" under supervision of the athletic commissioner.¹⁹⁴ It was originally intended to regulate boxing and wrestling.¹⁹⁵ The duties of the athletic commissioner at that time included but were not limited to: "(1) schedule matches, (2) set the sports tax rate, (3) determine the necessary protective equipment, and (4) controlled the business of betting and ticket sales."¹⁹⁶ Although this law was specifically created to set safety standards for a violent sport, the state noticed a sport that was making big profits in the middle of the Great Depression, and was more focused on the professional requirements of the sport with the intent to make boxing the official sport of Puerto Rico.¹⁹⁷

In 1932, the legislature separated the sport of boxing into its own category by creating the position of "boxing commissioner."¹⁹⁸ At the same time, a group of citizens, with the help of politicians, were organizing sports on their own terms, sent athletes to compete in the Central American and Caribbean Games, and sought to create the Puerto Rican Olympic Committee.¹⁹⁹ Here, Puerto Rico made its first international sporting appearance, and because the island was seen as a colony of the United States, the team was forced to carry the United States flag.²⁰⁰ A few years later, Puerto Rico won gold in the next Central American Games in El Salvador, where the anthem for El Salvador was played, since there was still no anthem or national symbol recognized for Puerto Rico.²⁰¹ This drove the International Olympic Committee to recognize Puerto Rico as a separate country from the United States in 1948.²⁰²

Although the Olympic Committee was created from within the structure of the Athletic Federation of Puerto Rico, it was formally created by Law No. 8 in

¹⁹¹ *See id.*

¹⁹² *See id.*

¹⁹³ *See* Ley de la Industria y el Deporte de Puerto Rico, 15 L.P.R.A § 198.

¹⁹⁴ *Id.*

¹⁹⁵ *See* ANTONIO SOTOMAYOR, THE SOVEREIGN COLONY: OLYMPIC SPORT, NATIONAL IDENTITY, AND INTERNATIONAL POLITICS IN PUERTO RICO 66 (University of Nebraska Press 2016) (explaining the origins of sports regulation in Puerto Rico).

¹⁹⁶ *Id.* at 66–67.

¹⁹⁷ *See id.* at 67.

¹⁹⁸ *Id.* at 67.

¹⁹⁹ *See id.* at 67–68.

²⁰⁰ *See* Rishi Kapoor & German Chaves, *Sports in Puerto Rico*, UNIV. OF MICH. (Dec. 20, 2004), http://websites.umich.edu/~ac213/student_projects06/student_projects/spr/contact.html.

²⁰¹ *See* SOTOMAYOR, *supra* note 195 at 90.

²⁰² *See* Bermudez, *supra* note 7.

1933.²⁰³ Law No. 8 originally established that the Puerto Rico Olympic Committee had to be comprised of the governor, the commissioner of education José Padín, the president of the house of representatives, Miguel A. García Mendez, the president of the Senate Rafael Martínez Nadal, the Chancellor of the University of Puerto Rico Carlos E. Chardón, the city manager of San Juan, the mayors of several towns, and several other industrialists.²⁰⁴ The list of politicians and powerful families throughout the industrialization era on the island indicates this requirement was an attempt to secure financial backing.²⁰⁵ This Olympic Committee did not follow the International Olympic Committee's (IOC) official parameters of nongovernmental involvement, which led to a conflict with the IOC in the 1950's.²⁰⁶ In the 1950's the Athletic Federation wanted to take the federation from the government to the people, but also keep asking for government funds.²⁰⁷

On June 13, 1980, the functions, faculties and powers assigned to the Administration of Public Parks and Recreation and to the Administrator thereof, were respectively transferred to the Department of Recreation and Sports and to the Secretary of said Department, in accordance with Article 5 of Law No. 126.²⁰⁸ The Sports and Recreation Department would retain “[a]ll the functions, powers, duties, and obligations of the Public Recreation and Parks Administration, . . . as well as the personnel, property, and records in the custody of said Administration.”²⁰⁹ The mission of the Department of Recreation and Sports is to improve the quality of life of all citizens through the promotion of better use of free time by ensuring that programming and recreational and sports facilities are accessible to all, regardless of their condition, social or physical.²¹⁰ It is also responsible for designing and implementing the National Plan for Recreation and Sports that embodies the national action plan for the development of recreation and sports in conjunction with the entities or organizations that participate in the management of sports and recreational areas.²¹¹

Shortly after, a Committee was created to study the essence of this department and where it should be directed.²¹² After this analysis, it concluded that a complete transformation was required in order to put the Department of Recreation and Sports on the right path.²¹³ For these purposes, on January 8, 2004,

²⁰³ See SOTOMAYOR, *supra* note 195, at 68.

²⁰⁴ See *id.* at 69.

²⁰⁵ See *id.* at 69,70.

²⁰⁶ See *id.* at 70.

²⁰⁷ See *id.* at 72.

²⁰⁸ 3 L.P.R.A. § 442(d) (1980) (Repealed 2004).

²⁰⁹ *Id.*

²¹⁰ Ley Orgánica del Departamento de Recreación y Deportes de 1980, 3 L.P.R.A. §§ 442(a)–(y) (1980) (Repealed 2004).

²¹¹ *Id.* at § 442(f).

²¹² See Johnny Torres Rivera, *La Recreación Pública*, PUERTA DE TIERRA, http://www.puertadetierra.info/edificios/adminparques/administracion_parques.htm, (last visited Dec. 10, 2022).

²¹³ *Id.*

Act No. 8 was approved to, among other things, “provide for the restructuring of the Sports and Recreation Department [and] establish public policy regarding recreation and sports [in Puerto Rico]. . . .”²¹⁴ The Sports and Recreation Department was restructured, in accordance with the provisions of this Act, and retained its legal personality and is now under the direction of a Secretary, who is appointed by the Governor, with the advice and consent of the Senate, in accordance with the Constitution of the Commonwealth of Puerto Rico.²¹⁵

IV. FUTURE DECISIONS

Puerto Rico’s status controversy has shaped politics on the island.²¹⁶ Each party represents a status option for the future and claim to advocate towards it during their time in office.²¹⁷ Instead of offering clear left- or right-wing policies, the two main political parties in Puerto Rico are defined by their belief on statehood.²¹⁸ The Popular Democratic Party favors keeping Puerto Rico a territory and the New Progressive Party is pro-statehood.²¹⁹ The Popular Democratic Party and the New Progressive Party usually hold the majority votes, and both have Democratic- and Republican-aligned members.²²⁰ There are several politicians that have been vocal about proposing alternatives to all the non-binding referenda as a way to define Puerto Rico’s status.²²¹ For example, the New York Democratic House representative Alexandria Ocasio Cortez has set forth a proposal to create a “status assembly,” which she defined as “a convention of delegates who would craft concrete proposals on statehood, independence and a looser free association relationship with the U.S.”²²² Those proposals would then be negotiated with Congress and voted on by the people of Puerto Rico.²²³

As discussed earlier, Puerto Rico’s status faces several choices. Each year, the United Nations Special Committee on Decolonization meets and passes a

²¹⁴ Ley Orgánica del Departamento de Recreación y Deportes, 3 L.P.R.A. § 444 (2004).

²¹⁵ See P.R. CONST. Art. IV. § 5.

²¹⁶ See Manuel Rodríguez-Orellana, *The Decolonization of Puerto Rico in Light of International Legal Precedents: A Case for Post-Independence Advocacy*, 5 B.C. THIRD WORLD L.J. 45, 46 (1984).

²¹⁷ See ROBERT W. ANDERSON, PARTY POLITICS IN PUERTO RICO (1965).

²¹⁸ See *id.*

²¹⁹ See *id.*

²²⁰ See *id.*

²²¹ See Nydia Velázquez & Alexandra Ocasio-Cortez, *Puerto Rico, not Congress, must determine its future. Our bill enables it to do so.*, NBC NEWS (Aug. 25, 2020, 11:48 AM), <https://www.nbcnews.com/think/opinion/puerto-rico-not-congress-must-determine-its-future-our-bill-ncna1238032>; see also Efraín Vázquez-Vera & Juan López-Bauzá, *Free Association: The Political Option That Can Save Puerto Rico*, THE GLOBE POST (Dec. 31, 2019), <https://theglobe-post.com/2019/12/31/puerto-rico-free-association/>.

²²² Rashid Carlos Jamil Marcano Rivera, *Puerto Rico wants statehood – but only Congress can make it the 51st state in the United States*, THE CONVERSATION (Dec. 14, 2020, 8:27 AM), <https://theconversation.com/puerto-rico-wants-statehood-but-only-congress-can-make-it-the-51st-state-in-the-united-states-150503>.

²²³ See *id.*

resolution demanding that the United States “again expedite a process that would allow the people of Puerto Rico to fully exercise their inalienable right to self-determination and independence, as well as take decisions, in a sovereign manner, to address their economic and social needs.”²²⁴ This committee does not have jurisdiction over Puerto Rico.²²⁵ In fact, the United States does not even cooperate with the committee.²²⁶ The United States contends that they are not bound by these resolutions because “Puerto Rico’s status has been resolved in 1953,” and because it would be “undue intervention in a United States domestic matter.”²²⁷ Generally, countries must report annually to the U.N. on their Non-Self Governing Territories.²²⁸ Thus, after Puerto Rico’s constitution was approved in 1953, the UN removed Puerto Rico from its list of Non Self Governing Territories,²²⁹ consequently relieving the U.S. from having to report to the Decolonization Committee.

Currently, Puerto Rico has the possibility of preserving its current political status, becoming an independent country, or a state of the United States.²³⁰ Due to the uncertainty of Puerto Rico’s political future, concerns have been raised on how a change in status would affect sports. If Puerto Rico were to remain with its current status, or become an independent country, its Olympic identity will likely be preserved. However, people fear that if Puerto Rico were to become a state, it would face the possibility of losing its Olympic identity as a country. If this were to happen, and Puerto Rico lost its Olympic identity, it would eliminate the need to amend the federal law, since Puerto Rico would then be represented within the United States, and the federal statute would be applicable. But note, the Olympic Charter states that any subsequent change or amendment to the status of a National Governing Body is subject to approval by the International Olympic Committee Executive Board.²³¹ This means that even if Puerto Rico became a state, its Olympic identity is not automatically extinguished since it is at the International Olympic Committee Executive Board’s discretion to preserve or remove Puerto Rico’s Olympic identity.²³²

²²⁴ *U.N. Decolonization Committee Hearings on Puerto Rico*, PR51ST (June 20, 2016), <https://www.pr51st.com/u-n-decolonization-committee-hearings-on-puerto-rico/>.

²²⁵ *Id.*

²²⁶ *See UN Committee Notes Plebiscite Results, Calls for Nationhood or Statehood Action*, PUERTO RICO REPORT (Jun. 21, 2013), <https://www.puertoricoreport.com/un-committee-notes-plebiscite-results-calls-for-nationhood-or-statehood-action/#.YYQs9y2cYml>.

²²⁷ JOSE TRÍAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* 137–38 (1997).

²²⁸ *See id.* at 138.

²²⁹ *See id.* at 138–39.

²³⁰ *See* Cristina Corujo, *What to know about Puerto Rico’s divide over its territorial status*, ABC NEWS (Apr. 27, 2021), <https://abcnews.go.com/US/puerto-ricos-divide-territorial-status/story?id=76679606>.

²³¹ *See* INTERNATIONAL OLYMPIC COMMITTEE, *OLYMPIC CHARTER* 64 (2020).

²³² *See id.*

Puerto Rico recently passed the Senate Bill 426.²³³ This bill establishes the Law for the Strengthening and Development of Puerto Rican Sports.²³⁴ The measure indicates that beginning in fiscal year 2021-2022 approximately \$10 million per year is assigned to the Department of Recreation and Sports (DRD) during the first six months of the calendar year, for the use and disposal of COPUR and its federations.²³⁵ However, it imposed no auditing or financial reporting requirements, and did not change the existing law that governs sports on the island.²³⁶

V. APPRAISAL AND RECOMMENDATIONS

Due to Puerto Rico's status, there are two viable solutions: (1) to amend the existing law, or (2) to create local legislation.

A. Amend Ted Stevens Olympic Act

It is clear that U.S. policy is not perfect, but it is far superior than the reality in Puerto Rico.²³⁷ Claims from U.S. Women's Gymnastics team regarding sexual abuse and Women's Soccer fighting against unfair compensation serve as more than enough evidence to prove change is needed.²³⁸ There is no doubt that steps must be taken to increase the accountability of the United States Olympic Movement to ensure athlete's rights.²³⁹ With this inevitable and upcoming change in the Amateur Sports Act, Congress could also include in its amendment a change in the language of the statute in order to protect U.S. Territories, though in reality, this is unlikely.

B. Create local legislation

Due mainly to its political status, and the aforementioned history, Puerto Rico faces its own circumstances and a completely different reality from the U.S. when it comes to sports. This significant difference is a great opportunity to redefine sports on the island and create an original piece of legislation that caters to the needs of Puerto Rico. This new legislation must focus on two

²³³ See P.S. 426, 19th Leg., 1st Ord. Sess. (Pr. 2021).

²³⁴ See *id.*

²³⁵ See *id.*; see also Yaritza Rivera Clemente, *Senado aprueba medida para asignar más fondos al Copur y otras organizaciones deportivas*, EL VOCERO (Sept. 7, 2021), https://www.elvocero.com/gobierno/senado-aprueba-medida-para-asignar-m-s-fondos-al-copur-y-otras-organizaciones-deportivas/article_9da38390-100c-11ec-850c-0f7685414539.html.

²³⁶ See P.S. 426, 19th Leg., 1st Ord. Sess. (2021); see also Rivera Clemente, *supra* note 235.

²³⁷ See generally Koller, *supra* note 155, at *passim*.

²³⁸ See *People v. Nassar*, No. 345699, 2020 WL 7636250, at *1 (Mich. Ct. App. Dec. 22, 2020).

²³⁹ See Koller, *supra* note 154, at 1057.

important aspects: (1) more transparency in financial statements,²⁴⁰ and (2) preserving athlete's rights.²⁴¹

To restore trust, the new piece of legislation must prioritize financial transparency.²⁴² Puerto Rico already has an office dedicated to serve this purpose called the Office of the Comptroller of Puerto Rico.²⁴³ Its main purpose is to examine all income, accounts, and disbursement of funds from the Commonwealth of Puerto Rico, its municipalities, and all its agencies in order to ensure every transaction has been made pursuant to the governing law.²⁴⁴ The Constitution of Puerto Rico lays out that the head of this office must serve for a period of ten years in order to prevent political biases.²⁴⁵ One of the first steps the Puerto Rican government should take is to remove the status of non-profit to federations and create a new status for organizations that are non for profit, but at the same time serve patriotic and public interest.²⁴⁶ Similar to the congressionally chartered corporations in the United States, as discussed above, the office of the Comptroller of Puerto Rico should conduct independent yearly auditing of all organizations that serve a patriotic and public interest and make public all of its findings, as well as each organization's financial statements over the last five years, and the salaries for all their officials.²⁴⁷ This information should be made easily accessible to the public.²⁴⁸ This will not only restore trust from athletes, but it will also potentially attract new investment and sponsorship into each sport.²⁴⁹

Once the organizations have been recategorized under this new status, the legislation must prioritize athlete's rights.²⁵⁰ Under the Department of Sports

²⁴⁰ Cf. Ley Orgánica del Departamento de Recreación y Deportes, 3 L.P.R.A. § 444 (being the only law that regulates sports federations in Puerto Rico, but not addressing this issue).

²⁴¹ Cf. *id.* (being the only law that regulates sports federations in Puerto Rico, but not elaborating on this topic).

²⁴² See Ben McClure, *Financial Reporting: The Importance of Corporate Transparency* (Jun. 12, 2021), <https://www.investopedia.com/articles/fundamental/03/121703.asp>.

²⁴³ 2 L.P.R.A. § 71 (1952) (creating the office of the Contralor de Puerto Rico).

²⁴⁴ See P.R. CONST. art. III. § 22; see also 2 L.P.R.A. § 73 (1952).

²⁴⁵ See P.R. CONST. art. III. § 22; see also 2 L.P.R.A. § 73 (1952).

²⁴⁶ 36 U.S.C. §§ 220501–29 (2012) (describing the United States national governing bodies are incorporated as congressionally chartered, non-profit corporations that serve a public and patriotic interest, therefore owing a high level transparency to the public).

²⁴⁷ See 36 U.S.C. § 220511 (requiring annual auditing of the corporations' financial statements). *But cf.* Ley Orgánica del Departamento de Recreación y Deportes, 3 L.P.R.A. § 444 (failing to require any auditing).

²⁴⁸ See 36 U.S.C. § 220511(b)(4)(C) (requiring “[t]he corporation shall make each report under this paragraph available to the public on an easily accessible internet website of the corporation.”). *But cf.* Ley Orgánica del Departamento de Recreación y Deportes, 3 L.P.R.A. § 444 (being the only law that regulates sports federations in Puerto Rico, and failing to address this issue).

²⁴⁹ See Ben McClure, *Financial Reporting: The Importance of Corporate Transparency*, *INVESTOPEDIA* (June 12, 2021), <https://www.investopedia.com/articles/fundamental/03/121703.asp>.

²⁵⁰ Cf. Ley Orgánica del Departamento de Recreación y Deportes, 3 L.P.R.A. (being the only law governing sports federations in Puerto Rico and failing address the emerging issues regarding athletes rights, including salaries, maternity leave, and even health insurance).

and Recreation, or the Office of the Comptroller, a new division must be created to provide support, guidance, and manage disputes between athletes, federations, and their officials.²⁵¹ This office should be the place where athletes will be able to file complaints against federations or their officials, report misconduct, appeal to any decision made by the organization or their officials, and receive guidance for dispute resolution.²⁵² The office must have the power to enforce new regulation and suspend federation officials due to misconduct, as well as serve as a check on each organization's actions.²⁵³ Furthermore, the legislation must require every athletic organization to include in their regulations a sanctioning protocol for members accused of sexual misconduct, and require criminal background checks for every employee whose job involves any degree of power or authority over players.²⁵⁴ In the long run, the Government of Puerto Rico should also aim to reassess the non-profit status it has granted to professional sports leagues and athletic organizations.²⁵⁵ A removal of this non-profit status, along with these new regulations would not only reduce government spending and increase revenues,²⁵⁶ but it would also provide athletes with better resources in preparation for their international commitments. Consequently, this would lead to the safe and memorable experience Puerto Rican athletes deserve and more international achievements.²⁵⁷

The effectiveness of each sports federation in Puerto Rico is what ultimately determines how well athletes perform in that sport. Additionally, federations are the only organizations that are vested with the power to represent Puerto Rico internationally and serve in a public and patriotic interest. This imposes an ethical and moral duty on them, which is the highest level of transparency in their operations with the public they serve.²⁵⁸

²⁵¹ See 36 U.S.C. §220509 (b)(2)(2020) (showing that the United States has created the Office of the Athlete Ombuds, whose purpose includes serving athletes by offering cost-free, confidential, and independent advice regarding athlete's rights, dispute resolution and various other policies and procedures).

²⁵² See *id.*

²⁵³ See *id.*

²⁵⁴ See Guerrero, *supra* note 12 (explaining how there is no law that requires these sanctioning protocols).

²⁵⁵ See Chris Edwards, *Privatization, DOWNSIZING THE FEDERAL GOVERNMENT* (Jul. 12, 2016) <https://www.downsizinggovernment.org/privatization> (explaining "privatization has improved government finances by raising revenues and reducing spending." The same principle applies to the government of Puerto Rico and would therefore be a great benefit).

²⁵⁶ See *id.*

²⁵⁷ See generally, David Ingold & Eben Novy-Williams, *Money for Medals: Inside the Performance-Driven Funding of U.S. Olympic Teams*, BLOOMBERG (Aug. 5, 2016), <https://www.bloomberg.com/graphics/2016-olympics-usoc-return-on-investment/> (detailing the sports that do not receive necessary funding).

²⁵⁸ The research and recommendations regarding financial transparency in this article were adopted to present PC 1203 in Puerto Rico, which passed unanimously in both the House of Representatives and the Senate, and was signed into law on December 18, 2022.