

# Breaking Cultural and Financial Barriers in Olympic Sports

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## ABSTRACT

*Nelson Mandela has said that “[s]port has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does . . . . It is more powerful than governments in breaking down [] barriers.”<sup>1</sup> Sports can have tremendous value, not only to the individual participants in promoting physical and mental health, skills, and teamwork, but also to society in fostering community, civic pride, and a sense of belonging, even among the fans.<sup>2</sup> Sports have significant economic, political and cultural impacts at the local, national, and international spheres.*

*This Article considers a new addition to the Olympic Programme, “breaking,” as a potential means to expand Olympian demographics and “break” cultural, racial, and economic barriers. It examines the governing structure and fundamental principles of the Olympic Movement, analyzing whether breaking is itself a sport; it explores issues of defining what is a sport, who decides whether a sport fits that definition, and the process for recognizing an Olympic sport employed within the United States and at the international sport level. Finally,*

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\* My fascination with “breaking” piqued on a trip with my son to Medellin, Colombia. We visited Comuna 13 and experienced a deep appreciation for the history, struggle, and culture of this beautiful country. I could never have imagined that this trip to Colombia with my son would be our last together. We loved to travel, explore, and connect with people across the world. I dedicate this paper to the loving memory of my wonderful son, Cedric M. Halloran. Life was better with you.

1. Adam Fraser, Sport Has the Power to Change the World, *The Global Goals* (Apr. 6, 2021), <https://www.globalgoals.org/news/sport-for-development-and-peace/> [<https://perma.cc/R8MV-M8LZ>].

2. See Harshit Bhimrajka, *International Human Rights in Sports*, IPLEADERS (Jan. 31, 2021), <https://blog.ipleaders.in/international-human-rights-sports/> [<https://perma.cc/26CT-LS7P>].

*the Article considers whether breaking can achieve and sustain expanded opportunities and access for diverse athletes worldwide.*

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### I. INTRODUCTION

Comuna 13 is a barrio on a steep mountainside in Medellin, Colombia, with a complicated and varied history. In the early 2000s, Comuna 13 was regarded as the most dangerous place on earth, having been taken over by paramilitaries, drug lords, and ravaged by violence.<sup>3</sup> The gang warfare of the Pablo Escobar era has finally subsided.<sup>4</sup> Although still economically distressed, the locals are now back on the streets, this time connecting and expressing themselves through dance, art, and innovation.<sup>5</sup> In walking through Comuna 13, the beauty of the neighborhood and Colombian people shines amid the graffiti, murals, street art, food, music, and kids playing soccer. And on the street, dancers, breaking it down, not just for the few tourists, but for the

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3. Verity Raphael, *Adri (Casa Kolacho): How Hip Hop Is Healing and Transforming Medellin's Comuna 13*, RAVE REP. (Aug. 16, 2022), <https://www.theravereport.com/blog/hip-hop-in-comuna-13> [<https://perma.cc/HZQ9-VMQE>]; see *Comuna 13 in Medellin: History and Present*, MEDELLIN DAYTRIPS, <https://www.medellindaytrips.com/comuna-13-in-medellin-history-and-present/> [<https://perma.cc/39ZW-JU5D>] (last visited Oct. 10, 2023).

4. See MEDELLIN DAYTRIPS, *supra* note 3.

5. See Raphael, *supra* note 3.

community, and for themselves. B-boys and b-girls, many with sparse economic means, but rich in spirit, talent, and hope through dance.<sup>6</sup>

Break dancing, now more commonly or preferably known as “breaking,” is believed to have originated in the 1970s in the largely Black and Latino neighborhoods of New York’s South Bronx.<sup>7</sup> Some report that breaking started as a way for rival street gangs to settle disputes.<sup>8</sup> Dancer crews would throw down cardboard and “battle” mixed dance moves, headspins, backspins, windmills, and kicks with loud music in the background.<sup>9</sup> Decades later, breaking evolved alongside the hip-hop and rap movements, spreading to the streets in Europe, Asia, the Americas, and Oceania, gaining popularity around the world.<sup>10</sup> While breaking may have emerged as an activity in the streets in marginalized communities, few would imagine that a b-boy or b-girl dancing in the streets of the barrio could someday become an Olympian.

Nelson Mandela has said that “[s]port has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does . . . . It is more powerful than governments in breaking down [] barriers.”<sup>11</sup> Sports can have tremendous value, not only to the individual participants in promoting physical and mental health, skills, and teamwork, but also to society in fostering community, civic pride, and a sense of belonging, even among the fans.<sup>12</sup> Sport has significant economic, political and cultural impacts at the local, national, and international spheres. The influential nature of organized

6. See *id.*

7. Les Carpenter, *Break Dancing in the Paris Games: Celebrating a Culture or Co-opting It?*, WASH. POST (July 26, 2023, 9:00 AM), [https://www.washingtonpost.com/sports/olympics/interactive/2023/breakdancing-paris-olympics/?utm\\_campaign=wp\\_for\\_you&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_personalizedforyou&utm\\_content=content-packs\\_CP-11\\_\\_position1](https://www.washingtonpost.com/sports/olympics/interactive/2023/breakdancing-paris-olympics/?utm_campaign=wp_for_you&utm_medium=email&utm_source=newsletter&wpisrc=nl_personalizedforyou&utm_content=content-packs_CP-11__position1) [<https://perma.cc/B55E-636P>]. Others report that breaking moves can be traced approximately 500 years ago from the ancient Brazilian Capoeira, the martial art developed by African slaves as they trained for their escape. See Jake Fuller, *History of Breakdance, B-Boy and Capoeira. Originated in Brazil Approximately 500 years ago*, CENT.HOME, <https://www.centralhome.com/breakdance.htm> [<https://perma.cc/GZJ7-YPU8>] (Sept. 29, 2023).

8. Red Bull Editorial Team, *History of Breakdancing: A Breakdown of Important Events*, RED BULL (Sept. 1, 2020, 12:24 PM), <https://www.redbull.com/us-en/history-of-breakdancing> [<https://perma.cc/26W7-UW6Z>] (“Dancers from each gang would show off their moves, and the one with the most innovative and complex moves was determined to be the winner.”).

9. See Carpenter, *supra* note 7; see also *Breakdancing Basics: A Guide to Breaking’s History and Moves*, MASTERCLASS, <https://www.masterclass.com/articles/breakdancing-guide> [<https://perma.cc/BK5Y-J4KZ>] (June 8, 2021) (describing the five foundational moves of a breakdance set: toprock, downrock, drops, power moves, and freezes).

10. See MASTERCLASS, *supra* note 9 (describing the upcoming debut of breakdance as an Olympic sport in the 2024 Summer Olympics).

11. Fraser, *supra* note 1.

12. See Bhimrajka, *supra* note 2.

sports is recognized in international human rights conventions.<sup>13</sup> For example, the United Nations Human Rights Council Resolution on Promoting Human Rights and Peace Through Sports encourages member countries “[t]o promote sport as a means to combat all forms of discrimination . . . and to use sport as a tool to promote human rights, development, peace, dialogue and reconciliation . . . .”<sup>14</sup> Indeed, sport can unite people of all backgrounds. Billions of people across the globe participate in various forms of recreational or competitive sports.<sup>15</sup> The Olympic Games are the preeminent multi-sport global sports competition in which thousands of athletes from around the world represent their respective countries, vying for the celebrated medals in team and individual events. Yet the Olympics are not just about sport. A stated goal of Olympism is to blend sport with art, culture, and education, and to use sport to foster peace and human dignity.<sup>16</sup> For the first time, breaking will be featured as a provisional Olympic sport as Paris hosts the Summer 2024 Games.<sup>17</sup>

This Article considers breaking as a potential means to expand Olympian demographics and “break” cultural, racial, and economic barriers. Part II examines the governing structure and fundamental principles of the Olympic Movement.<sup>18</sup> In analyzing whether breaking is itself a sport, Part III explores the surprisingly semi-existential

13. See, e.g., Roger O’Keefe, *The “Right to Take Part in Cultural Life” Under Article 15 of the ICESCR*, 47 INT’L & COMPAR. L.Q. 904, 904–05 (1998) (describing how the ICESCR, through Article 15 on the right to participate in cultural life, recognizes the right to sport).

14. G.A. Res. 37/18, ¶¶ 1–2 (Mar. 23, 2018); see Int’l Olympic Comm., *UN Human Rights Council Acknowledges Contribution of Sport to Human Rights Promotion*, OLYMPICS (Oct. 8, 2014), <https://olympics.com/ioc/news/un-human-rights-council-acknowledges-contribution-of-sport-to-human-rights-promotion> [<https://perma.cc/QX54-TPW3>].

15. *New Study Reports \$1.1 Trillion Global Sports Market and Predicts 3.5 Billion in Global Sports Participation by 2025*, SIGNA SPORTS UNITED (May 11, 2021), <https://investor.signa-sportsunited.com/news/news/news-details/2021/New-Study-Reports-1.1-Trillion-Global-Sports-Market-And-Predicts-3.5-Billion-In-Global-Sports-Participation-By-2025/default.aspx> [<https://perma.cc/FAK6-9B28>] (“Global sports participation is expected to increase by one billion people by 2025, reaching 3.5 billion people.”).

16. INT’L OLYMPIC COMM., OLYMPIC CHARTER, ¶ 1, at 8 (Aug. 8, 2021) [hereinafter OLYMPIC CHARTER], <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> [<https://perma.cc/T4R2-JF98>].

17. *Breaking, Skateboarding, Sport Climbing and Surfing Provisionally Included on Paris 2024 Olympic Sports Programme*, INT’L OLYMPIC COMM. (June 27, 2023, 4:27 PM), <https://olympics.com/en/news/breaking-skateboarding-sport-climbing-and-surfing-provisionally-included-on-pari> [<https://perma.cc/VL68-CBEP>].

18. “The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world’s athletes at the great sports festival, the Olympic Games.” OLYMPIC CHARTER, *supra* note 16, ¶ 3, at 8.

question of what is a sport, who decides, and the process for recognizing an Olympic sport employed within the United States and at the international sport level. Part IV delves into the origins of breaking, the rationale for recognizing it as a sport, at a minimum for Paris 2024,<sup>19</sup> and concludes by considering whether breaking can achieve and sustain expanded opportunities and access for diverse athletes worldwide.

## II. THE OLYMPIC MOVEMENT GOVERNANCE AND FUNDAMENTAL PRINCIPLES

The Olympic Charter establishes the governance structure and codifies the fundamental principles and rules for the Olympic Movement.<sup>20</sup> The Charter designates the International Olympic Committee (IOC) as the supreme authority governing the Olympic Games.<sup>21</sup> Key constituents include International Sports Federations (IFs), responsible for governing specific sports at the world level; National Olympic Committees (NOCs), which have exclusive authority to govern and select athletes to represent their respective countries at the Games and international competitions; and the Organizing Committee for the Olympic Games (OCOG), which serve as the Host City for the specific Olympic Games.<sup>22</sup> The Olympic Movement includes, of course, the athletes, and other organizations, governing bodies, sport officials and stakeholders who agree to comply with the Olympic Charter.<sup>23</sup>

The Olympic flag, composed of five equal interlocking rings in colors blue, dark yellow, black, green, and red, represents the five inhabited continents.<sup>24</sup> Over 10,000 athletes from 205 countries compete in the Summer Games, and around 2,800 athletes from eighty

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19. ZK Goh, *Breaking Approved as One of Four Provisional Sports for Paris 2024*, OLYMPIC.COM (June 25, 2019), <https://olympics.com/en/news/paris-2024-provisional-breaking-climbing-surfing-skateboard>. After initially postponing its decision on the sports programme for the LA 2028 Olympics, the IOC recently announced its decision to exclude breaking, in favor of other sports including flag football, baseball and softball, lacrosse, squash, and cricket. Vimal Sankar, *IOC Postpones Decision on Sports Programme for Los Angeles 2028 Olympics*, INSIDE THE GAMES (Sept. 6, 2023), <https://www.insidethegames.biz/articles/1140560/la-programme> [<https://perma.cc/ZZ8X-J3VU>]; *infra* Part V.

20. OLYMPIC CHARTER, *supra* note 16, at 6.

21. *Id.* at ch. 1, § 1(1).

22. *See id.* at ch. 1, § 1(2); *see also id.* at ch. 3, § 25 (IFs); *id.* at ch. 4, § 27(3) (NOCs); *id.* at ch. 5, § 35 (OCOG).

23. *Id.* at ch. 1, § 1(3).

24. *Id.* at ch. 1, § 8.

countries in the Winter Games.<sup>25</sup> The Winter Games include disciplines in the categories of (1) ice sports; (2) alpine, skiing, and snowboarding events; and (3) Nordic sports.<sup>26</sup> The Summer Games include a wider range of sports, such as athletics (track and field), swimming, and gymnastics, with thirty-two sports scheduled for Paris 2024.<sup>27</sup> Governments, or their respective National Olympic Committees, select Olympic athletes to represent their countries on the world's foremost athletic stage.<sup>28</sup>

### A. *Nondiscrimination and Sport as a Human Right*

The Olympic Charter, among its fundamental principles, states that “[t]he practice of sport is a human right.”<sup>29</sup> Under the Charter, any form of discrimination, with regard to a country or a person on grounds of “[r]ace, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status” is incompatible with the Olympic Movement.<sup>30</sup> In promoting Olympism, the IOC’s role is, *inter alia*, to ensure opportunities for all in sport, to protect against discrimination, and to support initiatives blending sport with culture.<sup>31</sup>

25. *How Many Countries and Athletes Participate in the Olympic Games?*, INT’L OLYMPIC COMM. <https://olympics.com/ioc/faq/competing-and-being-part-of-the-games/how-many-athletes-and-countries-take-part-in-the-olympic-games> [<https://perma.cc/FZ45-YUUT>] (last visited Oct. 30, 2023).

26. The Olympic Games are normally held every four years, alternating between the Summer and Winter Games, every two years in the four-year period. *See* INT’L OLYMPIC COMM., <https://olympics.com/en/sports/winter-olympics> [<https://perma.cc/9KHC-SUZZ>] (last visited Oct. 9, 2023); *Since When Have the Summer and Winter Games No Longer Been Held in The Same Year?*, INT’L OLYMPIC COMM., <https://olympics.com/ioc/faq/history-and-origin-of-the-games/since-when-have-the-summer-and-winter-games-no-longer-been-held-in-the-same-year> [<https://perma.cc/2KMR-BRUS>] (last visited Oct. 30, 2023).

27. *See Frequently Asked Questions*, INT’L OLYMPIC COMM., <https://olympics.com/en/sports/#:~:text=Frequently%20Asked%20Questions,2026%2C%20the%20next%20Winter%20Olympics> [<https://perma.cc/4DXX-69L6>] (last visited Oct. 9, 2023). Paris 2024 Summer Games will feature thirty-two sports: Aquatics; Archery, Athletes, Badminton, Basketball, Boxing, Canoe, Cycling, Equestrian, Fencing, Football (soccer), Golf, Gymnastics, Handball, Hockey, Judo, Modern Pentathlon, Rowing, Rugby, Sailing, Shooting, Table Tennis, Taekwondo, Tennis, Triathlon, Volleyball (Beach Volleyball, Volleyball), Weightlifting, and Wrestling (Greco-Roman Wrestling, Freestyle Wrestling). New sports for Paris 2024 include Skateboarding, Sport Climbing, Surfing, and Breaking. *See id.*

28. OLYMPIC CHARTER, *supra* note 16, at ch. 4, § 27(3).

29. *Id.* ¶ 4, at 8.

30. *Id.* ¶ 6, at 8.

31. *Id.* at ch. 1, §§ 2(6), 2(13), 2(16); *see also id.* ¶ 4, at 8 (“Every individual must have the possibility of practiced sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”).

### B. Socioeconomic, Demographic, and Diversity Gaps

Notwithstanding laudable humanitarian goals, the Olympic Games do not necessarily reflect athletes from diverse racial, socioeconomic, or geographic backgrounds.<sup>32</sup> In a study of the sociodemographics of Olympic athletes, Dr. David Lawrence at the University of Toronto determined that Olympic athletes are disproportionately white, privately educated, and wealthy.<sup>33</sup> Access to financial resources is “[a] major barrier to participation in many sports.”<sup>34</sup>

Lawrence emphasizes the financial burden of participating in competitive sports continues to surmount as an athlete advances to the more elite levels of their sport.<sup>35</sup> These costs can be more than economic and require substantial time commitments for both the parents and the athlete. The lack of international representation is particularly acute in Winter Sports, which by Olympic definition involve sports done on ice or snow.<sup>36</sup> Few athletes from African, South Asian, or warmer-climate countries can participate, not only due to the climate, but also

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32. Simon Worrall, *There's a Dark History Behind the Glittering Olympic Games*, NAT'L GEOGRAPHIC (July 31, 2016), <https://www.nationalgeographic.com/history/article/olympic-games-history-rio-david-goldblatt> [<https://perma.cc/943B-V8LS>]. Worrall describes the genesis of the Modern Olympic Games akin to a “gentleman sporting amateur aristocrat” event and noting that women athletic events were restricted for many years. *Id.* But acknowledges that:

Today, we are approaching 50 percent parity in the Olympics . . . [O]ne of the most exciting things about Olympic history is seeing the long evolution and struggle, in terms of race, gender and disability, from what started as a game for white aristocratic men to truly become the games of humanity.

*Id.*

33. See Nicole Bodnar & Katie Babcock, *Olympic Athletes Disproportionately White and Privately Educated, U of T Researcher Finds*, UNIV. OF TORONTO (May 11, 2017), <https://www.utoronto.ca/news/olympic-athletes-disproportionately-white-and-privately-educated-u-t-researcher-finds> [<https://perma.cc/87AR-NL65>] (noting that researchers found 94.9 percent of Winter, and 81.7 percent of summer athletes were white); see also Sherri Sheu, *The Hidden History That Explains Why Team USA is Overwhelmingly White*, WASH. POST (Feb. 17, 2022, 6:00 AM), <https://www.washingtonpost.com/outlook/2022/02/17/hidden-history-that-explains-why-team-usa-is-overwhelmingly-white/> [<https://perma.cc/N7TA-QK8R>]; Kennedy Elliott & Ted Mellnik, *Are the Winter Olympics For the Rich?*, WASH. POST (Feb. 17, 2022, 6:00 AM), <https://www.washingtonpost.com/wp-srv/special/sports/2014-olympics/winter-vs-summer-olympics/> [<https://perma.cc/N7TA-QK8R>] (showing that only six low-income countries of the eighty-six countries participated in the 2014 Winter Games and that not one has medaled since 1990).

34. Bodnar & Babcock, *supra* note 33. Socioeconomics also impact Paralympians. See Cheuk-Wing Lui & Hon-Kwong Lui, *Who Wins the Paralympic Medals? An Analysis of the Socio-Economic Determinants*, J. ASIAN BUS. STUD., May 24, 2022, at 1, 12.

35. Bodnar & Babcock, *supra* note 33.

36. See D.W. Lawrence, *Sociodemographic Profile of an Olympic Team*, 148 PUB. HEALTH 149, 156 (2017); OLYMPIC CHARTER, *supra* note 16, at ch. 1, § 6(2) (“Only those sports which are practiced on snow or ice are considered as winter sports.”).

due to the prohibitively high costs of equipment and the lack of opportunities for training, facilities, and travel required to compete at the elite level.<sup>37</sup>

The Summer Games do provide more sport opportunities for athletes from varied geographic and socioeconomic backgrounds; however, this may be concentrated in a few marquee, lower-cost sports, such as athletics, basketball, and table tennis.<sup>38</sup> Yet, certain Olympic sports, such as archery, equestrian, sailing, cycling, shooting, modern pentathlon, and rowing are, as the Toronto study found, “disproportionately dominated by wealthy, privately educated, Caucasian participants.”<sup>39</sup> Commentator Peter Berlin describes these rosters as “blindingly white.”<sup>40</sup>

On the individual level, the economics of sports can often make or break an elite athlete. Becoming an elite athlete requires not only the individual physical skill and prowess, but also extraordinary financial resources, a network of coaches, and access to training, equipment, competition, and travel.<sup>41</sup> Various sources estimate \$5,000 to over \$250,000 in annual costs to fund an Olympic athlete, depending upon the sport.<sup>42</sup>

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37. Amy Woodyatt, *The Winter Olympics Don't Really Represent the World: Costs, Climate and Quotas Keep the Majority Off the Podium*, CNN (Feb. 22, 2022, 5:21 AM), <https://www.cnn.com/2022/02/21/sport/winter-olympics-elite-wealthy-intl-spt/index.html> [<https://perma.cc/RL78-A2BE>]; see also Peter Berlin, *The Olympic Color Barrier*, POLITICO (Aug. 21, 2016, 6:55 AM), <https://www.politico.eu/article/the-olympic-color-barrier-rio-2016-racism-sport/> [<https://perma.cc/US6Q-BBMH>].

38. See Bodnar & Babcock, *supra* note 33 (“While Summer Olympic athletes demonstrated greater diversity in ethnicity and affluence, athletics (track and field), basketball, gymnastics, taekwondo, table tennis and judo were sports found to exhibit the most ethnic and wealth diversity.”).

39. *Id.*; see Lawrence, *supra* note 36, at 153.

40. Berlin, *supra* note 37 (noting that “[B]lack athletes are winning most of their medals in sports where black athletes have always won medals: those in which the economic obstacles to participation are minimal”).

41. See Lucy Ferriss, *Raising an Elite Athlete a Financial Challenge for Most Parents*, MOMSTEAM, <https://www.momsteam.com/successful-parenting/parenting-elite-athletes/travel-academics-international-competition/raising-an-?page=0%2C1> [<https://perma.cc/HPP2-CB34>] (last visited Oct. 9, 2023); see also Berlin, *supra* note 37; Andrew Smith, Paul J. Greene, Christian Keidel & Alexander Engelhard, *The Funding and Employment Status of Elite Athletes – A Comparison of the UK, USA and Germany*, LAWINSPORE (May 6, 2016), <https://www.lawinsport.com/topics/item/the-funding-and-employment-status-of-elite-athletes-a-comparison-of-the-uk-usa-and-germany> [<https://perma.cc/NHF7-GDRH>].

42. See Woodyatt, *supra* note 37; Ferriss, *supra* note 41 (reporting that skiers can easily spend more than \$40,000 per year, whereas nationally competitive soccer players may spend only \$5,000 per year and stating that “[t]he so-called class differences among sports are not accidental; in a society where families are expected to shoulder the costs of their children’s sports involvement, prestige attaches to those sports that carry the higher price tag”).



How athletes around the world are funded varies widely depending upon each country's sport infrastructure.<sup>43</sup> In the United States, elite athletes typically fund their training and competition from a panoply of sources, starting primarily with financial support from family, then advancing to collegiate athletic scholarships, and commercial sponsorships, endorsements, or prize money.<sup>44</sup> The US Olympic & Paralympic Committee (USOPC), a federally chartered, non-governmental organization, receives its funding primarily from commercial broadcast revenue, sponsorships, donations, and investments.<sup>45</sup> The USOPC, and through the respective sport national governing body, provides some funding, coaching, and training support to elite athletes once selected to represent TEAM USA in the Olympic and Paralympic Games.<sup>46</sup> Yet this funding comes only to the athletes in TEAM USA Olympic contention.<sup>47</sup> In other countries, governments or sport ministries may provide funding and training opportunities for selected elite athletes.<sup>48</sup> Yet athletes who have not yet achieved the highest of these elite levels largely must self-fund.<sup>49</sup>

While sports are seemingly egalitarian in the sense of a defined winner, competing at the elite levels of sport requires substantial

43. See Smith et al., *supra* note 41.

44. See generally Tom Van Riper, *The Costs of Raising a Summer Olympian*, FORBES (July 24, 2012, 11:31 AM), <https://www.forbes.com/sites/tomvanriper/2012/07/24/the-cost-of-raising-a-summer-olympian/?sh=5bf63904c805> [<https://perma.cc/LH9Z-56CK>]. In 2012, Forbes reported the costs for summer Olympians at ranged from \$15,000 to over \$25,000 per year for sports such as archery, table tennis, fencing, and gymnastics, and noted that the training period for these sports span 5–8 years, along with the hidden lost opportunity costs of delaying professional careers. *Id.* Over a decade later, these costs have increased exponentially, depending upon the sport. See, e.g., Caryn Maconi Lawler, *How Much Does it Cost to Make an Olympian?*, OUTSIDE (Apr. 19, 2023), <https://www.triathlete.com/culture/news/how-much-does-it-cost-to-make-an-olympian/> [<https://perma.cc/S3WY-RBCH>] (“According to the USA Triathlon Foundation, the annual costs of producing an Olympic triathlete — coaching, equipment, recovery, travel, training camps, lodging, and nutrition — can easily surpass \$100,000 per year.”); see also *How Much Does it Actually Cost to Prepare an Olympic Champion? We Talk to the Man in the Know*, THE DAILY SKIER (Feb. 2, 2022), <https://dailyskier.com/2022/02/02/how-much-does-it-actually-cost-to-prepare-an-olympic-champion-we-talk-to-the-man-in-the-know/> [<https://perma.cc/5M5B-GUTJ>].

45. See Rich Perelman, *Lane One: USOPC Nears \$900 Million in Total Assets, Spent \$200 Million on Athlete Support, with \$81 Million to Athletes in 2021, but Needs More*, THE SPORTS EXAM’R (July 12, 2022), <https://www.thesportsexaminer.com/lane-one-usopc-nears-900-million-in-total-assets-spent-200-million-on-athlete-support-and-81-million-to-athletes-in-2021-but-needs-more/> [<https://perma.cc/DH3X-7KGU>].

46. See *About the U.S. Olympic & Paralympic Committee*, USOPC, <https://www.usopc.org/about-the-usopc> [<https://perma.cc/S5J5-58SN>] (last visited Oct. 9, 2023).

47. See *Grants & Funding*, USOPC, <https://www.usopc.org/grantsandfunding> [<https://perma.cc/8PKW-PSXT>] (last visited Oct. 10, 2023).

48. See Perelman, *supra* note 45.

49. See *id.*

financial, social, and educational resources.<sup>50</sup> Many considerations exist beyond physical talent and commitment, such as the financial ability to afford, navigate, and access quality coaching. The lack of such resources tends to reinforce a cycle favoring an “in-group” demographic, while athletes from different backgrounds encounter obstacles, financial and otherwise, impairing their full acceptance and potential success in sport.

### *C. IOC Measures to Address Inclusion Concerns*

Bias and discrimination in sports manifest in many forms and at many levels, including exclusion by virtue of sparse resources and support. Money is often at the root of discrimination, including in sports, as well as race, including at the Olympics.<sup>51</sup> In an effort to respond to these types of concerns as well as to appeal to a younger, more diverse demographic, the IOC has sought to promote new and emerging sports in the Olympic Games.<sup>52</sup> For example, the IOC added snowboarding in 1994, bringing a more youthful (and albeit still predominately white) sport to the Winter Olympics.<sup>53</sup> In an effort to be proactive in maintaining relevancy of the Olympic movement and to safeguard Olympic values and the role of sport in society into the future, the IOC engaged in an initiative reflected in its Olympic Agenda 2020.<sup>54</sup> As part of the reform, the Organizing Committee for the host country collaborates with the IOC to propose new sports to feature at the Games that reflect the cultural significance to the region.<sup>55</sup> Paris2024 President Tony Estanguet reported that Paris2024 aspires for a

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50. See PROJECT PLAY ASPEN INST., <https://projectplay.org/state-of-play-2022/costs-to-play-trends> [<https://perma.cc/AFR2-RR2M>] (last visited Oct. 10, 2023). \$30 to \$40 billion is the “[e]stimated annual money spent by families in the U.S. on their children’s sports activities, based on the Aspen Institute’s analysis of parent survey data.” *Id.*

51. Berlin, *supra* note 37 (“The archery, canoe/kayak, cycling, equestrian, rowing, modern pentathlon, sailing, shooting and triathlon squads are blindingly white. These are equipment sports. They require a bike, a horse, a weapon, a boat or — in the case of modern pentathlon — a horse and two weapons.”).

52. See INT’L OLYMPIC COMM., OLYMPIC AGENDA 2020 CLOSING REPORT 5 (2020) [hereinafter CLOSING REPORT].

53. Joe Michalitsianos, *Here’s a Guide to Snowboarding at the 2022 Winter Olympics*, NBC (Feb. 12, 2022, 12:20 PM), <https://www.nbcnewyork.com/news/sports/beijing-winter-olympics/guide-to-snowboarding-2022-winter-olympics-beijing/3535967/> [<https://perma.cc/9X2B-SEPU>].

54. See CLOSING REPORT, *supra* note 52, at 4 (setting forth forty recommendations “[b]uilt on the three pillars of Credibility, Sustainability, and Youth”).

55. See OLYMPIC CHARTER, *supra* note 16, at ch. 5, § 3 (“The OCOG of a specific edition of the Olympic Games may propose to the IOC the inclusion, for such edition only, of one or more additional events . . .”).

dynamic Games concept and inclusivity, inspiring a new audience and hosting socially responsible Games.”<sup>56</sup> The Paris 2024 Organizing Committee thus proposed four new sports for provisional inclusion in the Paris Summer Games: surfing, skateboarding, climbing, and “breaking.”<sup>57</sup> In reporting the IOC’s unanimous approval of the proposal, IOC President Thomas Bach stated that these sports help to make the Games “more gender balanced and more urban, and offer the opportunity to connect with the younger generation.”<sup>58</sup>

### III. IT’S COOL. BUT IS BREAKING A SPORT?

#### A. *What Is a Sport, Who Decides, & How?*

Surprisingly, the concept of a “sport” is an ambiguous one. Of course, familiar physical activities such as football, baseball, soccer, and tennis are commonly considered to be sports. They involve physical competition where a winner and loser can be determined by a clock or points scored. Yet other physical activities are not (universally) considered sports, such as tag or yoga.<sup>59</sup> And some activities, although not physically demanding, surprisingly may be considered sports, such as esports and even chess.<sup>60</sup> Yet other solely mentally competitive

56. See INT’L OLYMPIC COMM., *supra* note 17.

57. *Id.*

58. *Id.*

59. See *Yoga As a Sport?*, INT’L YOGA SPORT FED’N, <https://www.iysf.org/about/yoga-as-a-sport> [<https://perma.cc/RER3-2K7Z>] (last visited Oct. 10, 2023). Whether yoga is a spiritual practice, discipline, religion, or “sport” is also subject to debate. According to its website, the International Yoga Sport Federation (IYSF) “is currently working on meeting the criteria for inclusion in GAISF (Global Association of International Sports Federation, [gaisf.sport](http://gaisf.sport)) which is the first step to becoming an Olympic Sport.” *Id.* “This requires meeting several criteria, including unifying 40 active federations spread on 5 continents, regular national and international competitions, and developing rules and regulations and IYSF’s own educational program for coaches, judges and athletes.” *Id.*; cf., Anne Kennedy, *The Role of Yoga in Sport and Exercise Psychology*, BELIEVE PERFORM, <https://members.belieperform.com/the-role-of-yoga-in-sport-exercise-psychology/> [<https://perma.cc/3UB7-2E6Q>] (last visited Oct. 10, 2023) (“The skills learned on the yoga mat are skills for life and not just for sport. It is a grounding practice that infiltrates every part of your life with the ultimate goal to strip back all that is negative to help us achieve contentment and happiness.”).

60. Yes, the IOC has recognized “Olympic Esports,” featuring ten sports, such as archery, baseball, chess and taekwondo, played in virtual team competitions formats, but faced criticism that that true “esports” involves established gaming titles such as League of Legends, DOTA, and not digital recreation of physical sports. Satish Cheney, *When is an Esport Not an Esport? Olympic Event Puzzle Gamers*, JAPAN TIMES (June 20, 2023), <https://www.japan-times.co.jp/sports/2023/06/20/olympics/esports-olympic-event-singapore/> [<https://perma.cc/ACL6-NEYJ>]; *Chess is an Official Sport*, CHESSSPORT.COM,

games, such as poker, are not deemed sports.<sup>61</sup> The English High Court rejected the European Bridge Union's request to recognize the card game bridge as a sport due to its lack of physical exertion.<sup>62</sup> Yet, Sport England, a governmental body responsible for developing sport in England, has recognized darts, an established pub game, as a sport since 2006.<sup>63</sup> As the BBC noted, "[t]he word 'sport' comes from the Old French word 'desport,' meaning leisure, with the oldest definition in English from around 1300 being 'anything humans find amusing or entertaining'."<sup>64</sup> Sports agent Lee Steinberg has acknowledged the debate on "what constitutes a sport."<sup>65</sup> He notes that although dictionary definitions suggest sport is an athletic activity requiring skill, physical exertion, and competition, what constitutes a sport is perhaps "in the eye of the beholder." More precisely, the media viewers decide with their viewership.<sup>66</sup>

Even the US Court of Appeals for the Second Circuit Court has weighed in on defining "sport."<sup>67</sup> In *Biediger v. Quinnipiac Univ.*, the University pledged to establish "competitive cheerleading" as a new varsity sport.<sup>68</sup> Yet, the Court held that competitive cheer did not, (as

[http://www.chesssport.com/about/sport.html#:~:text=In%20addition%20to%20being%20an,International%20Olympic%20Committee%20\(IOC\)](http://www.chesssport.com/about/sport.html#:~:text=In%20addition%20to%20being%20an,International%20Olympic%20Committee%20(IOC)) [<https://perma.cc/DD6C-X7LU>] (last visited Oct. 10, 2023) (noting IOC recognition of the World Chess Federation).

61. FRANCO CARRARO, INT'L OLYMPIC COMM., REVIEW OF THE OLYMPIC PROGRAMME AND THE RECOMMENDATIONS ON THE PROGRAMME OF THE GAMES OF THE XXIX OLYMPIAD, BEIJING 2008 § 2.5 (2002) [https://stillmed.olympic.org/Documents/Reports/EN/en\\_report\\_527.pdf](https://stillmed.olympic.org/Documents/Reports/EN/en_report_527.pdf) [<https://perma.cc/E8GD-YEPJ>].

62. *What Constitutes a Sport?*, BBC, <https://www.bbc.co.uk/teach/what-constitutes-a-sport/z4vfmfr> [<https://perma.cc/5PBT-PWU3>] (last visited Oct. 10, 2023).

63. See Sport ENG., <https://www.sportengland.org/about-us/#howweare-12165> [<https://perma.cc/64ZQ-WMSR>] (Oct. 10, 2023); BBC, *supra* note 62 (noting that the Council of Europe charter on sport defines "sport" to mean "all forms of physical activity, which through casual or organized participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels").

64. BBC, *supra* note 62.

65. See Leigh Steinberg, *What Defines a "Sport"?*, FORBES (July 28, 2018, 1:00 PM), <https://www.forbes.com/sites/leighsteinberg/2018/07/28/what-defines-a-sport/?sh=787540002d66> [<https://perma.cc/XD2A-62MZ>].

66. See *id.* Others weigh in on the debate, see, e.g., Kelly Scaletta, *Settling the Debates: Is It a Sport or Not a Sport?*, BLEACHER REP. (Sept. 13, 2011), <https://bleacherreport.com/articles/848465-settling-the-debates-is-it-a-sport-or-not-a-sport> [<https://perma.cc/37FS-WMUD>] (discussing the three factors that make up a "sport": modicum of "physical exertion," actual physical "skill," and competition).

67. See *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 105 (2d Cir. 2012).

68. See *id.* at 91, 93–94 (quoting Letter from Stephanie Monroe, Assistant Sec'y for C.R., Off. for C.R., U.S. Dep't of Educ., to Colleagues (Sept. 17, 2008)), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.html> [<https://perma.cc/9Z38-XMRN>] ("If a school is a member of a recognized intercollegiate athletic organization, such as the National Collegiate

of then in 2012) qualify as a sport under Title IX of the Education Act of 1972.<sup>69</sup> While recognizing the undoubted physicality and genuine student interest in competitive cheer, the court considered a variety of factors relevant in determining whether an activity constituted a “sport” for purposes of Title IX.<sup>70</sup> These factors include the structure, administration, governance, team preparation, and quality of competition.<sup>71</sup> Although Quinnipiac University’s athletic department generally structured and administered the university’s competitive cheer program, the court declined to recognize cheer’s status as a sport.<sup>72</sup> The court cited several factors, including the school’s lack of a competitive cheer team locker space, that the NCAA had not yet recognized cheer as a sport, and that no uniform set of rules had applied to the cheer competition throughout the season.<sup>73</sup> Thus, the Court did not consider Quinnipiac’s thirty roster positions for competitive cheerleading for Title IX purposes because the activity did not yet afford women genuine participation opportunities in a varsity sport.<sup>74</sup>

By contrast, the IOC recognized competitive cheer in 2021, and, in January 2023, the USOPC recognized USA Cheer as the national governing body for the “sport” of cheer.<sup>75</sup> As of July 2023, the NCAA and

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Athletic Association (‘NCAA’), that subjects the activity at issue to its organizational requirements, OCR will ‘presume’ that the activity is a sport and that participation can be counted under Title IX. But if that presumption does not apply or has been rebutted, OCR will determine whether the activity qualifies as a sport by reference to several factors relating to ‘program structure and administration’ and ‘team preparation and competition.’”).

69. *Biediger*, 691 F.3d at 105. Title IX of the Education Amendments of 1972 requires that educational institutions receiving federal funds provide gender equitable participation opportunities, including competitive athletics programs. 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance.”); see, e.g., *Cohen v. Brown*, 101 F.3d 155, 167, 187 (1st Cir. 1996). The Office for Civil Rights (OCR) is charged with enforcing the Act. *Title IX and Sex Discrimination*, U.S. DEPT OF EDUC. (Aug. 2021), [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html#:~:text=The%20U.S.%20Department%20of%20Education's,the%20Education%20Amendments%20of%201972](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html#:~:text=The%20U.S.%20Department%20of%20Education's,the%20Education%20Amendments%20of%201972) [https://perma.cc/968Y-LQM3].

70. *Biediger*, 691 F.3d at 103–05 (acknowledging the “record evidence showing that competitive cheerleading can be physically challenging, requiring competitors to possess ‘strength, agility, and grace’”).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 105.

75. *USA Cheer Recognized by US Olympic and Paralympic Committee*, USA CHEER (Jan. 11, 2023), <https://usacheer.org/usa-cheer-recognized-by-us-olympic-and-paralympic-committee> [https://perma.cc/6Y8N-Z4JY].

OCR only recognize competitive cheer as an extracurricular activity and not a sport.<sup>76</sup>

How an activity evolves from a game to a sport first happens on the local level.<sup>77</sup> A new activity is invented, or existing activities are combined into a formalized competition.<sup>78</sup> For example, in the 1970s, the San Diego Track Club invented Triathlon by creating a “swim-bike-run” competition.<sup>79</sup> If a sport begins to gain local popularity, the creator can register the name of the sport as an official trademark with the US Patent and Trademark Office and publish the official rules, which are eligible for copyright protection.<sup>80</sup> If the sport involves a newly invented piece of equipment, the inventor can apply for a patent with the USPTO as well.<sup>81</sup> Rarely do new sports develop international popularity, although globalization and social media have made this possible at a faster rate than ever before, as the recent pickleball phenomenon evinces.<sup>82</sup> Creators of a new sport, or groups of early adopters, can form

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76. Jennifer Gerson, *The Olympics Could Change the Future of College Cheerleading*, THE 19TH (Apr. 5, 2023, 2:10 PM), <https://19thnews.org/2023/04/college-cheerleading-future-the-olympics/> [<https://perma.cc/PNP6-F7XT>].

77. See Sean Phelps, *The Creation and Development of an International Sport Federation: A Case Study of the International Triathlon Union from 1989-2000* (2006) (Ph.D dissertation, Florida State University), [http://purl.flvc.org/fsu/fd/FSU\\_migr\\_etd-0290](http://purl.flvc.org/fsu/fd/FSU_migr_etd-0290) [<https://perma.cc/B72N-GLYL>].

78. See *id.*

79. See *id.*

80. See, e.g., *USA Pickleball Trademarks*, GERBEN (Sept. 17, 2023), <https://www.gerbenlaw.com/trademarks/sports-leagues/usa-pickleball/#:~:text=On%20March%2030%2C%202021%2C%20USA,trademark%20for%20its%20association%20services> [<https://perma.cc/9KXJ-PXNJ>] (“On March 30, 2021, USA Pickleball obtained federal trademark registration for ‘[sic] USA PICKLEBALL,’ and uses the trademark for its association services.”); see Robert Wood, *Registering a New Sport*, TOPEND SPORTS, [https://www.topendsports.com/sport/new/guide-copyright.htm#:~:text=Copyright%20is%20an%20automatic%20right,\(the%20copyright%20owner\)%20permission](https://www.topendsports.com/sport/new/guide-copyright.htm#:~:text=Copyright%20is%20an%20automatic%20right,(the%20copyright%20owner)%20permission) [<https://perma.cc/QW74-6WPR>] (last visited Oct. 10, 2023) (“Copyright will prevent the rules of the sport being republished or disseminated without your (the copyright owner) permission. The copyright can also be assigned to a third party such as the ‘governing body’ of the new sport.”).

81. See, e.g., Damyán Kolomayets, *Major League Patents – How Patent Law Has Shaped America’s Pastime*, IP BYTES (Apr. 17, 2020), <https://blogs.luc.edu/ipbytes/2020/04/17/major-league-patents-how-patent-law-has-shaped-americas-pastime/> [<https://perma.cc/DE2X-V8HW>] (describing specific patents since the 1880s on baseballs, bats, gloves, and modern electronic strike zones).

82. See, e.g., Jacob Feldman, *What is Pickleball, and How Did It Become So Popular?*, SPORTICO (Mar. 13, 2023, 12:01 AM), <https://www.sportico.com/business/sports/2023/history-of-pickleball-1234712282/> [<https://perma.cc/C227-KC4W>].

official 501(c)(3) nonprofit organizations furthering the sport's development.<sup>83</sup>

The standard of “what is a sport” may seem reminiscent of the Justice Potter’s “know it when you see it” definition of obscenity.<sup>84</sup> The Australian Clearinghouse for Sport recognizes that as a practical matter, “sport” is defined by its social interpretation as well as its strong association with physical exertion and performance measures. “What we perceive as ‘sport’ in one instance may not be in another; sport takes on many forms and is constantly changing based upon societal norms, trends, and new directions.”<sup>85</sup>

Although no one authority defines what constitutes a sport, common elements include a formal organization structure for competition, a governing body, established rules, requirements for physical skill and athleticism, and standard for participation and evaluation.<sup>86</sup> As illustrated in the examples above, whether certain activities may be considered a sport can vary among organizations, regions, or cultures.<sup>87</sup> Of course, recognition in major sporting events, such as the Olympic Games, provides the imprimatur of a legitimate sport.

### B. USOPC Process for Sport Recognition

In the United States, federal law empowers the USOPC to recognize a sport organization as the official National Governing Body (NGB) for an individual sport on the Olympic program.<sup>88</sup> Section 8 of the USOPC Bylaws sets forth the process and membership conditions for a sport organization seeking NGB recognition.<sup>89</sup> The USOPC’s

83. See *Amateur Sports 501(c)(3) and Nonprofits Sports Organizations*, BRYTEBRIDGE NONPROFIT SOLS., <https://brytebridge.com/501c3-organizations/amateur-sports-501c3/> [https://perma.cc/UE8V-DTFM] (last visited Oct. 10, 2023).

84. See Artemus Ward, *Potter Stewart*, FREE SPEECH CTR. AT MIDDLE TENN. STATE UNIV. (Aug. 10, 2023), <https://firstamendment.mtsu.edu/article/potter-stewart/> [https://perma.cc/QX6Q-7HGJ].

85. *What is Sport?*, CLEARINGHOUSE FOR SPORT (July 8, 2021), [https://www.clearinghouseforsport.gov.au/kb/what-is-sport#:~:text=Sport%20is%20an%20activity%20involving,formally%20through%20organisations.\(p.\)](https://www.clearinghouseforsport.gov.au/kb/what-is-sport#:~:text=Sport%20is%20an%20activity%20involving,formally%20through%20organisations.(p.)) [https://perma.cc/B54S-NMK3].

86. *Id.*; see also *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 103–05 (2d. Cir. 2012).

87. See Steinberg, *supra* note 65 (acknowledging that “[a]t a certain level there is no arbitrator or Commissioner of Sport to provide a definitive” definitions of sport, and discussing some of the varying definitions of “sport”).

88. 36 U.S.C. § 220521(a) (2020).

89. U.S. OLYMPIC & PARALYMPIC COMM., GOVERNANCE DOCUMENTS AND BYLAWS § 8.2 (2023) [hereinafter USOPC BYLAWS] <https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/blt0fd168b92e40dae/>

certification process requires that a proposed NGB satisfy requirements for: (1) governance and compliance; (2) financial standards and reporting practices; (3) athlete safety; (4) sports performances; and (5) operational performance.<sup>90</sup> Under the NGB Certification Policy, a Certification Review Group (CRG) conducts the due diligence to ensure that both prospective and existing NGBs comply with all standards.<sup>91</sup>

Initially, once a sport has gained popularity in the United States, the USOPC issues a public “call for applicants,” soliciting applications from organizations to serve as the official NGB in charge of governing a particular sport.<sup>92</sup> The application process requires the organizations to submit an initial interest form that certifies its IRS 501(c)(3) non-profit status, along with the contact information of key directors.<sup>93</sup> The CRG reviews applications and votes whether to reject or move forward.<sup>94</sup> Organizations that advance this review undergo a Certification Audit and present their NGB qualifications at a public hearing.<sup>95</sup> At a second public hearing, the NGB candidate presents a management plan responding to identified audit issues and any other questions.<sup>96</sup> The CRG then renders its final recommendation report to

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64371f918f121010dc4ca654/USOPC\_Bylaws\_Phase\_4\_Update\_Clean\_for\_Publication\_31723\_004\_Effective\_April\_1\_2023\_FINALua.pdf [https://perma.cc/D2AA-DJ64].

90. *Id.* § 8.4.1.

91. *Id.* § 5.10.3; U.S. OLYMPIC & PARALYMPIC COMM., NGB CERTIFICATION PROCEDURE 1 (2021), [https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/bltc0e1d36a76bc51c7/64874b4850d8ed833e2f0fd3/NGB\\_Certification\\_Procedure.pdf](https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/bltc0e1d36a76bc51c7/64874b4850d8ed833e2f0fd3/NGB_Certification_Procedure.pdf) [https://perma.cc/LB6V-LY4X].

92. *See* U.S. OLYMPIC & PARALYMPIC COMM., *supra* note 91 (“The Certification Review Group (CRG) is tasked with reviewing NGBs and the amateur sports organizations that apply to become NGBs holistically and making a recommendation on the organizations’ NGB certification . . . look[ing] at both *what* the NGB candidate is doing, as well as *how* the NGB candidate operates in practice. By conducting this process, the CRG does the necessary due diligence to ensure that organizations certified as an NGB comply with the requirements of an NGB, including those included in the Ted Stevens Olympic and Amateur Sports Act (the Act), the USOPC Bylaws, and the NGB Compliance Standards, as well as operate effectively as an NGB, both at the time of the certification review and sustainably moving forward.”).

93. *Id.* at 2.

94. *Id.* (“[T]he CRG will vote to move forward with or reject an organization’s application for NGB certification. The CRG may also choose to decline all applicants during this initial review stage if, in the CRG’s judgement, none of the applicants are capable of operating as an NGB.”).

95. *See id.* (“During the first public hearing, the NGB candidate will have the opportunity to provide an overview of its organization, its future plans, and will take questions from attendees, including members of the CRG. No later than 30 days prior to the public hearing, the CRG will send a written notice, including a copy of the NGB candidate’s application, to known amateur sports organizations for the sport.”).

96. CHIEF ETHICS AND COMPLIANCE OFFICER, NGB CERTIFICATION PROCEDURE 3 (2021), <https://web.archive.org/web/20220601123720/https://www.teamusa.org/-/media/Legal/NGB-Certification-Procedure.pdf> [https://perma.cc/B83W-DMPK]. The CRG review criteria encompasses several categories to evaluate the NGB or NGB candidate’s focus on its mission and support



the NGB Oversight and Review Committee.<sup>97</sup> Once the Board of Directors ratifies this report, the NGB candidate becomes the certified exclusive governing body in charge of administering the sport across the country.<sup>98</sup> NGBs must comply with USOPC guidelines for athlete representation, governance, financial reporting, athlete protection, athlete rights, and sport performance to maintain their status.<sup>99</sup>

For example, cheerleading satisfied these requirements, as the USOPC recognized USA Cheer as a sport when it joined the Recognized Sport Organizations (RSO) category.<sup>100</sup> The RSO category is comprised of national organizations that administer a sport not currently in the Olympic or Paralympic program.<sup>101</sup> The RSO requires these organizations to have an affiliation with an international federation the IOC recognizes.<sup>102</sup> Five new RSOs will join current members, including Orienteering USA, the Underwater Society of America, USA Dance, USA Football, USA Ultimate, and the United States Polo Association.<sup>103</sup> This process most recently took place regarding the new sports the IOC added for the Olympic Games Tokyo 2020: surfing, skateboarding, and sport climbing.<sup>104</sup>

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of athletes. *Id.* The CRG reviews NGB's cooperation with CRG auditors and compliance officers. The CRG also reviews the robustness of an NGB's (1) general services, (2) Athlete Services, (3) Dispute Resolution Unit (DRU), (4) Diversity Equity and Inclusion policies, (5) Paralympics policies, (6) Sport Performance, and (7) Athlete Safety guidelines. *See id.*

97. CHIEF ETHICS AND COMPLIANCE OFFICER, *supra* note 96, at 6. There were fifty-five NGBs scheduled for re-certification by the USOPC as of 2021. *Id.*

98. USOPC BYLAWS, *supra* note 89, § 8.3.1. Eligibility for membership as Olympic Sport Organization will be limited to those amateur sports organizations that are recognized and certified by the corporation as the NGBs for sports that have competed on the program of the Olympic Games or competed in medal sports in the immediate past Olympic Games. *Id.* § 8.3.2. The term "sports that have competed on the program" means sports that have been approved by the IOC to participate as medal sports at an upcoming Olympic Games. *Id.* § 8.3.1. An Olympic Sport Organization that has participated in the immediate past Olympic Games is eligible to remain an Olympic Sport Organization until determined that it is not included on the program of the next Games. *Id.* Each Olympic Sport Organization will be identified with a sport included on the program of the Olympic Games. *Id.* In accordance with the IOC's Olympic Charter, the corporation will not recognize or certify more than one NGB in each sport. *Id.* Olympic Sport Organizations will be United States members of Ifs recognized by the IOC. *Id.*

99. *Id.* §§ 8.4.1(a)–(e).

100. *See* USA CHEER, *supra* note 75.

101. USOPC BYLAWS, *supra* note 89, § 16.3.4.

102. *Id.*

103. USA CHEER, *supra* note 75.

104. *See* Emily St. James, *How to Become an Olympic Sport*, VOX (July 24, 2021, 3:00 PM), <https://www.vox.com/22584397/tokyo-olympics-2020-new-sports-surfing-skateboarding-baseball-softball-karate-sport-climbing> [<https://perma.cc/9MXG-G3S4>].

### C. IOC Recognition Process

The process for approving a sport to the Olympic program first requires the IOC to certify an IF to act as the exclusive governing body for the sport, including over member NGBs, at the world level.<sup>105</sup> Only sports with official IOC recognition and subject to IF and NGB governance may be considered for the Olympic program.<sup>106</sup> An IF establishes international rules, standards, and hosts international championships.<sup>107</sup> For example, *Fédération Internationale de Football Association* (FIFA) is the IF for soccer (football) and runs the FIFA Men's and Women's World Cups.<sup>108</sup>

To achieve IOC recognition, an IF must comply with and enforce the Olympic Charter, the World Anti-Doping Code, and the Olympic Movement Code on the Prevention of the Manipulation of Competition.<sup>109</sup> The IF must also submit to the jurisdiction of the Court of Arbitration for Sport (CAS).<sup>110</sup> A federation seeking recognition for Summer Olympic sport participation must have at least fifty affiliated

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105. OLYMPIC CHARTER, *supra* note 16, at ch. 3, § 26.

106. *What are the Conditions Required for a Sport to be Recognised by the IOC?*, INT'L OLYMPIC COMM., <https://olympics.com/ioc/faq/sports-programme-and-results/what-are-the-conditions-required-for-a-sport-to-be-recognised-by-the-ioc> [<https://perma.cc/H2C2-4VZB>] (last visited Sept. 29, 2023) ("This is required in order to conform to the Rules of the Olympic Charter, the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of Competitions.").

107. See Jörg Krieger, Lindsay Parks Pieper & Ian Ritchie, *International Federations and National Governing Bodies: The Historical Development of Institutional Policies in Response to Challenging Issues in Sport*, SPORT HIST. REV., 2020, at 1, 2–3.

108. See *id.* ("Perhaps as the most notable example, the Fédération Internationale de Football Association (FIFA), the international governing body for the sport of football, opted to install its own world championships in 1930. The IOC's strict interpretation of amateurism as a requirement for Olympic participation convinced FIFA to host a separate championship tournament with less stringent eligibility rules. The decision paved the way for the financial success of the FIFA World Cup; according to FIFA financial documents, the 2018 FIFA World Cup generated \$6.1 billion in revenue. FIFA's World Cup profits also allowed for professionalization in football outside of the IOC's control.").

109. See *Prevention of Competition Manipulation*, INT'L OLYMPIC COMM., <https://olympics.com/ioc/integrity/prevention-competition-manipulation> [<https://perma.cc/4WT5-T5FB>] (last visited Sept. 29, 2023); Phelps, *supra* note 77 ("Recognition by the International Olympic Committee grants the international federation a monopoly-like control over a particular sport, thus guaranteeing clienteles, in terms of athletes and national governing bodies having to operate under the auspices of the international federation, for the organization.").

110. *How a Sport Can Become an Olympic Sport*, ELITE L., <https://www.elitelaw.ch/how-a-sport-can-become-an-olympic-sport/> [<https://perma.cc/2KX9-CAUX>] (last visited Oct. 18, 2023) ("The recognition by the IOC is conditional, among others, on the federation's commitment to comply with the OC, which consists of 6 chapters and 61 articles. It is an official document, inspired by de Coubertin himself and then amended several times over the years, which codifies the fundamental principles of the Olympic movement.").

countries, and those countries must be located on at least three different continents.<sup>111</sup>

Upon meeting these requirements, an organization called SportAccord reviews the prospective federation's application.<sup>112</sup> If SportAccord approves a preliminary screening, the request can advance to the IOC Executive Board, which determines if the federation meets the requirements and, if so, issues provisional recognition.<sup>113</sup> Provisional recognition lasts two years and serves as a trial period, at the end of which the IOC Session can issue official recognition, rendering the federation a Recognized International Sports Federation (RISF).<sup>114</sup>

Official status as an RISF does not mean the IOC automatically includes the sport in the Olympics.<sup>115</sup> For the IOC to include the sport in the Olympic Games, the RISF must submit another formal request to the IOC showing the federation meets more specific criteria.<sup>116</sup> Namely, the sport must be even more popular than the RISF standard.<sup>117</sup> For example, a men's sport must be practiced in seventy-five countries on at least four continents; and a women's sport must be practiced in forty countries and three continents.<sup>118</sup>

The IOC will also consider more subjective criteria.<sup>119</sup> According to Elite Law, "the sport must increase the value and attractiveness of the Olympic Games [and] it must not be a purely 'mental' sport or one that depends on mechanical propulsion."<sup>120</sup> These criteria allow the IOC to exclude any sport it deems invaluable or unattractive as well as define what is physically challenging rather than a "purely mental" sport.<sup>121</sup> Although a not-for-profit organization, the IOC is still primarily concerned whether the sport has the potential to generate a

111. *Id.*

112. *See id.*; *What is SportAccord?*, SPORTACCORD, <https://www.sportaccord.sport/what-is-sportaccord/> [<https://perma.cc/TB9J-K7RW>] (last visited Oct. 17, 2023).

113. *How a Sport Can Become an Olympic Sport*, *supra* note 110.

114. *Id.* ("At the end of the provisional recognition period, the IOC Session decides if the full recognition is granted, issuing an official notification with their decision.")

115. *Id.* *Compare Recognized Federations*, INT'L P'SHIP AGAINST CORRUPTION IN SPORT, <https://www.ipacs.sport/recognised-federations> [<https://perma.cc/Z8F9-V8QB>] (last visited Oct. 17, 2023), *with Sports*, INT'L P'SHIP AGAINST CORRUPTION IN SPORT, <https://www.ipacs.sport/sports> [<https://perma.cc/TZ2T-H23L>] (last visited Sept. 27, 2023).

116. *How a Sport Can Become an Olympic Sport*, *supra* note 110.

117. *See id.*

118. *Id.*

119. *See id.*

120. *Id.* ("[T]his is why chess and motor racing have always been excluded.")

121. *See id.*

net positive economic impact on the Games.<sup>122</sup> To complicate matters even further, the IOC's inclusion of a sport in the Olympics can vary at each iteration of the Games because any host country must have venues which accommodate the specific requirements of hosting the proposed sport.<sup>123</sup>

If a sport meets these heightened conditions, a group of interested parties forms the Olympic Programme Commission, which includes supportive IOC members, athletes in the sport, Federation representatives, and members of the NOC, which formed the RISF.<sup>124</sup> The Commission will advocate for IOC admission as one of a new sport, a new discipline, or a new event.<sup>125</sup> A new sport is an entirely new category under an IF which has met the recognition and inclusion requirements.<sup>126</sup> A discipline is a particular branch of a sport and can include one or more events.<sup>127</sup> An event is a unit of competition giving rise to rankings.<sup>128</sup> For example, Ice Skating is a sport included at the Winter Olympics under the International Skating Union.<sup>129</sup> Two major disciplines under Skating are Speed Skating and Figure Skating.<sup>130</sup> Within the Figure Skating discipline, there are multiple events, such as men's singles, women's singles, and mixed pairs, and an athlete may be eligible to compete in one or more events.<sup>131</sup>

The IOC has historically attempted to keep the number of participating RISFs consistent but has since focused on setting a fixed limit on the number of events or number of athlete participants per the

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122. See *id.*; *Funding*, INT'L OLYMPIC COMM., <https://olympics.com/ioc/funding> [<https://perma.cc/8VRY-LZKQ>] (last visited Sept. 27, 2023).

123. See *How a Sport Can Become an Olympic Sport*, *supra* note 110; see, e.g., Sean Zak, *The Complicated Relationship Between Golf and the Olympics*, GOLF (July 28, 2021), <https://golf.com/news/golf-olympics-complicated-relationship/> [<https://perma.cc/XG7T-W9PF>].

124. *How a Sport Can Become an Olympic Sport*, *supra* note 110.

125. *Id.* ("The Commission submits its opinion to the IOC, which can admit an activity into the Olympic programme in three ways: as a sport; as a discipline, understood as a branch of a sport; as an event, understood as a competition within a discipline.")

126. *Sports, Programme and Results*, INT'L OLYMPIC COMM., <https://olympics.com/ioc/faq/sports-programme-and-results> [<https://perma.cc/5ZTD-692A>] (last visited Sept. 26, 2023); see *How a Sport Can Become an Olympic Sport*, *supra* note 110.

127. INT'L OLYMPIC COMM., *supra* note 126.

128. *Id.*

129. *Figure Skating*, OLYMPIC.ORG (Feb. 5, 2007), [https://web.archive.org/web/20070205081841/http://www.olympic.org/uk/sports/programme/disciplines\\_uk.asp?DiscCode=FS](https://web.archive.org/web/20070205081841/http://www.olympic.org/uk/sports/programme/disciplines_uk.asp?DiscCode=FS) [<https://perma.cc/5Q52-GUMZ>].

130. *Skating*, OLYMPIC.ORG (Feb. 19, 2007), [https://web.archive.org/web/20070219102906/http://www.olympic.org/uk/sports/programme/index\\_uk.asp?SportCode=SK](https://web.archive.org/web/20070219102906/http://www.olympic.org/uk/sports/programme/index_uk.asp?SportCode=SK) [<https://perma.cc/5NTM-UG46>].

131. *Figure Skating*, *supra* note 129.

Agenda 2020 recommendations.<sup>132</sup> However, the IOC can amend the Olympic Charter and set new limits.<sup>133</sup> If a sport brings economic profitability to the Games, the IOC will make exceptions for that sport if it exceeds Olympic Charter limits.<sup>134</sup> A high level of sport turnover persists among iterations of the Games, as the culture and capabilities of the Host country play an important role in determining which sports it includes.<sup>135</sup> In fact, only a few sports have been present at every Summer Olympic Games since 1896: gymnastics, swimming, cycling, fencing, and athletics (track and field).<sup>136</sup> Karate was featured in the Tokyo Games but will not be included in the Paris 2024 program in order to make room for other sports, disciplines, and events, including “breaking.”<sup>137</sup> Breaking’s growth from a cultural movement to a competitive activity, and eventual recognition and inclusion as a sport on the international stage will make its Olympic debut at the Paris 2024 Games after a long road of development.<sup>138</sup>

#### IV. BREAKING IN PARIS 2024

##### A. History and Olympic Inclusion of Breaking

In the decades since breaking evolved as part of the hip-hop movement in largely African American and Latino communities of South Bronx in the 1970s, breaking has become an international sensation and professional competitive activity.<sup>139</sup> Germany first held

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132. See CLOSING REPORT, *supra* note 52, at 14 (limiting summer games to 310 events).

133. OLYMPIC CHARTER, *supra* note 16, ch. 1, § 18. The IOC has already exceeded the limits set in 2021 and must amend the charter to accommodate this change. See *Olympic Games Paris 2024 Sports Calendar Released*, INT’L OLYMPIC COMM. (July 25, 2022, 12:47 PM), <https://olympics.com/en/news/olympic-games-paris-2024-sports-calendar-released> [https://perma.cc/DUU6-Y3JJ] (noting that the 2024 summer games to have 329 events).

134. See *Olympic Programme - Host City Proposal Evaluation Criteria for Events*, INT’L OLYMPIC COMM. (June 8, 2015), [https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Olympic-Programme/Olympic-programme-Host-city-proposal-Evaluation-criteria.pdf?\\_ga=2.183395748.304873666.1627395939-amp-UgplLEJdCMnJ\\_sH5bkzn1g](https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Olympic-Programme/Olympic-programme-Host-city-proposal-Evaluation-criteria.pdf?_ga=2.183395748.304873666.1627395939-amp-UgplLEJdCMnJ_sH5bkzn1g) [https://perma.cc/PHV4-K9P6] (listing finances as one factor for evaluating new events).

135. See Matt Traub, *Sports Wait, Watch for Final Decision on LA28 Olympic Program*, SPORTS TRAVEL (Aug. 31, 2023), <https://www.sportstravelmagazine.com/sports-wait-watch-for-final-decision-on-la28-olympic-program/> [https://perma.cc/79Q4-BY8J].

136. Robert Wood, *Olympic Sports List*, TOPEND SPORTS (May 2010), <https://www.topend-sports.com/events/summer/sports/index.htm> [https://perma.cc/34L8-GKY7] (last visited Oct. 18, 2023).

137. See Traub, *supra* note 135.

138. See *Breaking*, PARIS 2024, <https://www.paris2024.org/en/sport/breaking/> [https://perma.cc/NJY6-KG6T] (last visited Oct. 18, 2023).

139. *Id.*

the Battle of The Year (BOTY) competition, which is now a premier annual international competition held in Montpellier, France.<sup>140</sup> In 1997, the IOC officially recognized the World DanceSport Federation (WDSF), as the international governing body for DanceSport (covering various forms of dance, including breaking).<sup>141</sup> Since 2004, Red Bull has sponsored the “Red Bull BC One,” holding over sixty annual qualifier events around the world which culminate at the championship event with the top sixteen breakers in the world to compete.<sup>142</sup> Since 2007, South Korea has hosted R16, an annual international breaking tournament.<sup>143</sup>

Breaking was featured in the 2018 Youth Olympics in Buenos Aires, signaling another step towards Olympic inclusion.<sup>144</sup> In 2019, the Southeast Asian Games in the Philippines held breaking competitions.<sup>145</sup> By February 2019, the Paris Organizing Committee officially proposed adding breaking for the 2024 Games, receiving the IOC’s unanimous approval.<sup>146</sup> Tony Estanguet, head of the Paris 2024 Organizing Committee, hailed inclusion of these sports as making the 2024 Olympics more urban and artistic.<sup>147</sup> IOC President Thomas Bach supported its inclusion as part of a plan to make the Games “more

140. *Battle of the Year*, BBOYEVENT.COM, [https://www.bboyevent.com/special/1/battle\\_of\\_the\\_year](https://www.bboyevent.com/special/1/battle_of_the_year) [<https://perma.cc/NU96-XNWA>] (last visited Oct. 18, 2023).

141. *See History*, WORLD DANCESPORT FED’N, <https://www.worlddancesport.org/WDSF/History> [<https://perma.cc/83Q9-UV24>] (last visited Oct. 18, 2023).

142. *Red Bull BC One*, RED BULL, <https://www.redbull.com/us-en/event-series/bc-one> [<https://perma.cc/G7YG-UFXU>] (last visited Oct. 18, 2023); *see also* Tom Schad, *Breaking, Also Known as Breakdancing, Becomes an Olympic Sport and Some Hope the Move Won’t Dilute Its Soul*, USA TODAY, <https://www.usatoday.com/story/sports/olympics/2020/12/07/breakdancing-breaking-becomes-olympic-sport-2024-olympics/3849970001/> [<https://perma.cc/7N44-T54S>] (Dec. 7, 2020, 6:10 PM) (“Energy drink company Red Bull has hosted an annual breaking competition called Red Bull BC One since 2004 . . .”).

143. Victoria Namkung, *Seoul’s Bumping B-Boy Scene*, N. Y. TIMES (Dec. 16, 2017), <https://www.nytimes.com/2017/12/16/style/south-korea-hip-hop-breakdancing-seoul> [html <https://perma.cc/332K-6RGH>].

144. Sean McAlister, *Breaking News: When Breaking Made Its Debut at the Buenos Aires 2018 YOG*, INT’L OLYMPIC COMM. (Apr. 29, 2022, 2:48 PM), <https://olympics.com/en/news/breakings-debut-at-the-buenos-aires-2018-yog> [<https://perma.cc/4RP7-DSB6>].

145. Martin Jahns, *Breakdance Becomes Olympic Sport in 2024*, ISPO.COM (June 21, 2022), <https://www.ispo.com/en/news-trends/breakdance-becomes-olympic-sport-2024-olympics-paris> [<https://perma.cc/6CGG-YQVQ>].

146. Jenna West, *Breaking to Make Its Olympic Debut in Paris in 2024*, SPORTS ILLUSTRATED (Dec. 7, 2020), <https://www.si.com/olympics/2020/12/07/breaking-approved-olympics-2024-paris> [<https://perma.cc/MX53-CSXL>].

147. *Id.*

gender balanced, more youthful[,] and more urban.”<sup>148</sup> Bach has been transparent about the IOC’s goal to “introduce sports which are particularly popular among the younger generations . . . and take into account the urbanization of sport.”<sup>149</sup>

### B. Will Breaking Achieve Greater Cultural Diversity?

For the Paris 2024 Games, the IOC has set limits on accreditation at 10,500 athletes.<sup>150</sup> Thus, adding new sports such as breaking required the unfortunate elimination of athlete “spots” in other sports, such as weightlifting and boxing categories.<sup>151</sup> The new sports are intended to bring greater cultural diversity and afford athletes in a sport like breaking the chance to compete at the highest level for the first time in accordance with the IOC’s goals of increased youthfulness and urbanization.<sup>152</sup> Breaking has been termed a “glocal” activity because it has become popular across the globe but is different and unique in each neighborhood as new and different style variations develop.<sup>153</sup> As *Diggit* author Christopher Sling describes:

B-boying is an urban strategy to cope with difficult situations, it brings empowerment in times of inequality, and can be seen as an extension and reflection of a person’s identity. This strategy is sustained by a community that identifies as

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148. Sean Ingle, ‘More Urban’: Competitive Breakdancing Added to Paris 2024 Olympic Games, *GUARDIAN* (Dec. 7, 2020, 2:49 PM), <https://www.theguardian.com/sport/2020/dec/07/breakdancing-paris-2024-olympic-games-ioc> [<https://perma.cc/U5Y7-YPZY>].

149. Schad, *supra* note 142.

150. *Gender Equality and Youth at the Heart of the Paris 2024 Olympic Sports Programme*, INT’L OLYMPIC COMM. (Dec. 7, 2020), <https://olympics.com/ioc/news/gender-equality-and-youth-at-the-heart-of-the-paris-2024-olympic-sports-programme> [<https://perma.cc/S4M4-ZBHF>].

151. See Jenna West, *Breakdancing Proposed as Olympic Sport for 2024 Summer Games in Paris*, *SPORTS ILLUSTRATED* (Feb. 21, 2019), <https://www.si.com/olympics/2019/02/21/breakdancing-proposed-olympics-sport-added-paris-2024> [<https://perma.cc/CU7C-W7DU>] (“The IOC capped the number of Olympic participants at 10,500, meaning space will have to be made elsewhere to accommodate any sports added in Paris.”); Ingle, *supra* note 148.

152. See Melanie de Klerk, *Breakdancing Breaking Down Barriers at the 2024 Olympic Games*, *GLOB. NEWS* (Dec. 20, 2020, 11:43 PM), <https://globalnews.ca/news/7529975/breakdancing-olympic-games-2024/> [<https://perma.cc/MZ9J-SB4K>] (“In 2024, traditional events like boxing and weightlifting will be downsized. Both sports have troubled governing bodies and are mostly practised by men, which made them easy sports for the IOC to target in an effort to increase gender parity in the games.”).

153. See Christopher Sling, “Breakdance”: Breaking Global Cultural Boundaries Through Dance, *DIGGIT MAG.* (Mar. 29, 2019), <https://www.diggitmagazine.com/papers/breakdance-breaking-global> [<https://perma.cc/4ZRL-ZFRX>] (“In other words, participant observation is one of the main tools that breakers use to learn the craft. This local interaction with breaking is what gives it its uncanny and unique glocal attributes. One must actively pursue and engage with breaking in order for the breaking environment to engage back, therefore breaking is different everywhere it appears.”).

multicultural and inclusive from the beginning, breaking down hierarchic forms of oppression everywhere it is found.<sup>154</sup>

Breaking is said to also benefit gender equity compared with sports which traditionally favored male participants, such as athletics, weightlifting, and cycling.<sup>155</sup> For Paris 2024, the male and female breaking categories each have sixteen participation slots.<sup>156</sup> The viewership and sponsorship potential for b-boys and b-girls participating at the Olympics may grow its popularity and profitability, leading to increased participation and sponsorship opportunities for the sport at the competitive and amateur levels.<sup>157</sup>

### C. Enhancing or Exploiting?

Despite the excitement and hope that breaking will enhance diversity and opportunities for traditionally underrepresented individuals, some are concerned that increased exposure can ironically erase the art form and innovative basis for the sport when “scoring” or dress becomes the focus, akin to gymnastics or figure skating. Increased corporate sponsorships, such as the Red Bull competitions, have become popular, but some contend those sponsorships can result in cultural appropriation.<sup>158</sup> Others disagree that breaking is even a sport,<sup>159</sup> or argue that other forms of “dance” should qualify, if breaking does.<sup>160</sup>

Breaking has been an economically and culturally inclusive activity since its inception because the barriers to entry are very low.

154. *Id.*

155. See Aarish Ansari, *Explained: Breaking Rules, Moves and Format*, INT’L OLYMPIC COMM. (Nov. 2, 2021, 11:24 AM), <https://olympics.com/en/news/breaking-breakdancing-rules-for-format-moves> [<https://perma.cc/4EDU-RGU7>] (providing a full explanation of the competition format and judging criteria).

156. Marta Martin, *How to Qualify for Breaking at Paris 2024. The Olympic Qualification System Explained*, INT’L OLYMPIC COMM. (Aug. 6, 2022, 4:06 PM), <https://olympics.com/en/news/how-to-qualify-paris-2024-breaking-qualification-system-explained> [<https://perma.cc/VC7H-XE4B>].

157. See Danielle Rossingh, *Breakdancing at the 2024 Paris Olympics? Here’s Why it Makes Perfect Sense*, FORBES (Feb. 21, 2019, 10:44 AM), <https://www.forbes.com/sites/daniellerossingh/2019/02/21/breakdancing-at-the-2024-paris-olympics-heres-why-it-makes-perfect-sense/?sh=2fdbb9586d0b> [<https://perma.cc/8MXP-BVAP>].

158. See Carpenter, *supra* note 7. Increased corporate investment in breaking, however, may be essential to the sports inclusion in future Olympic contention. See *infra*, Conclusion.

159. See Gabrielle Chenault, *Break Dancing Fostered Black and Brown Unity. Some of its Pioneers Worry of Erasure*, L.A. TIMES (Aug. 21, 2023, 10:35 AM), [https://www.latimes.com/de-los/story/2023-08-21/de-los-break-dancing-story?utm\\_id=108682&sfmc\\_id=1081579&skey\\_id=22705c5b308644753ab3bfe0a5e437e9b20325a9601e93249dc11c3f5547d895](https://www.latimes.com/de-los/story/2023-08-21/de-los-break-dancing-story?utm_id=108682&sfmc_id=1081579&skey_id=22705c5b308644753ab3bfe0a5e437e9b20325a9601e93249dc11c3f5547d895) [<https://perma.cc/ES6H-2V7Z>].

160. See *Why Isn’t Dance in the Olympics*, DANCE INSIGHT (Feb. 12, 2018), <https://danceinsight.com/dance-in-the-olympics/> [<https://perma.cc/LAD8-VHL8>].



There is “no expensive equipment barrier,” such as those present in many Olympic sports; to participate in breaking, “you can literally just throw down some cardboard and get down on the concrete, that’s a way to express yourself.”<sup>161</sup> Yet the cost of travel to international competition, even to Paris 2024, can be a barrier for breakers.<sup>162</sup> Today, many athletes first learn about breaking by watching videos online.<sup>163</sup> The 2018 Youth Olympics allowed participants to submit videos for consideration, enabling athletes who could not fund travel costs potentially to compete.<sup>164</sup> Further, the multiethnic roots of breaking and expanded diversity of new athletes may inspire increased participation.<sup>165</sup>

Breaking’s inclusivity spans across gender as well.<sup>166</sup> While the 2024 Games will have separate categories for men and women, the 2018 Youth Olympics also featured a “mixed team” event.<sup>167</sup> Moreover, some professional breaking competitions have utilized mixed team competitions, a model which the IOC could employ for future Games.<sup>168</sup> Importantly, because “the sets of rules and scoring for men and women in individual competitions are the same,” breaking’s current format affords men and women equal opportunities, which in turn promotes gender inclusivity.<sup>169</sup>

161. de Klerk, *supra* note 152.

162. See Tom Maddocks, *Australia’s Breakdancers are Still Fighting for Funding and Respect Ahead of Olympic Debut*, ABC NEWS (May 29, 2023, 6:28 PM), <https://www.abc.net.au/news/2023-05-30/breakdancing-olympics-paris-2024/102407926> [<https://perma.cc/N2VT-7N6J>] (concerning the limited funding by the Australian Olympic Committee and considerable expense of holding a qualifying competition in Oceania, including flying in international judges to Australia).

163. See Zhi Yang, YuJie Bai & MingTao Wei, *The Importance of Creativity in the Sportification of Breakdance*, FRONTIERS EDUC. (Mar. 7, 2022), at 1, 3, <https://www.frontiersin.org/articles/10.3389/feduc.2022.855724/full> [<https://perma.cc/77QY-9YVA>].

164. West, *supra* note 151 (“Breakers submitted videos online to compete in the Youth Olympics. The winners were selected to participate in the World Breaking Championships in Japan for a chance to advance to the Youth Olympics.”).

165. See de Klerk, *supra* note 152; see also Sling, *supra* note 153 (“Here we see that the only qualification and valuation paradigm within the breaking community is that of battling and the direct demonstration of one’s style in the heat of the moment. This enables everyone to be able to participate to the degree to which the person’s skill set, creativity and style allow. Similarly, battles are an opportunity to learn and exchange with others, which causes socialization between people of completely different backgrounds.”).

166. See West, *supra* note 146.

167. See *id.* (“At the 2018 Youth Olympics, dancers between the ages of 16–18 competed head-to-head in either men’s, women’s or mixed-team battles.”).

168. See Delilah Bourque, *Opinion: Olympic Breakdancing Would Promote Inclusion*, PITTNEWS (Feb. 26, 2019), <https://pittnews.com/article/145178/opinions/opinion-olympic-breakdancing-would-promote-inclusion/> [<https://perma.cc/V6W8-A2Y9>].

169. *Id.*

### D. Why Not Other Forms of Dance?

The term “DanceSport” typically describes “an activity . . . that is uniquely accessible and sociable, allowing participants to improve physical fitness and mental well-being, to interact, and to obtain results at all levels.”<sup>170</sup> The Olympic Programme recognizes the World DanceSport Federation (WDSF) which governs several disciplines of dance: Acrobatic Rock’n’Roll, Boogie Woogie, Breaking, Disco Dance, Hip Hop, Latin Dances, Para DanceSport, Rhythm, Salsa, Smooth dances, Stage Dance, and Standard Dance.<sup>171</sup> The WDSF Associate Members sanction separate World and Continental Championships, World Cups, and Opens.<sup>172</sup> The Associate Members of the WDSF hold separate tournaments in the dance styles their rules and regulations govern.<sup>173</sup> Wheelchair DanceSport, Rock ‘n’ Roll, and other competitions regularly occur in parallel format to the traditional disciplines such as Latin and Standard.<sup>174</sup>

However, unlike the other forms of dance the WDSF governs, breaking possesses a unique, “inherently competitive” nature.<sup>175</sup> While judges may score other forms of dance for technique and execution, they remain fundamentally collaborative and noncompetitive at the social level.<sup>176</sup> On the other hand, breaking, even at the grassroots level, occurs in a head-to-head format called “battling.”<sup>177</sup> Thus, breaking shares a key element with most traditional “sports,” whether at the individual or team level: the occurrence of a clear winner and loser. The

170. See *About DanceSport*, WORLD DANCESPORT FED’N, <https://www.worlddancesport.org/About> [<https://perma.cc/3Y8J-ZM7U>] (last visited Oct. 18, 2023).

171. See *DanceSport Disciplines*, WORLD DANCESPORT FED’N, <https://www.worlddancesport.org/About/Dance-Styles/DanceSport-Disciplines> [<https://perma.cc/Y92V-7PA9>] (last visited Oct. 18, 2023).

172. See *Competition Structure*, WORLD DANCESPORT FED’N, <https://www.worlddancesport.org/About/Competition/Competition-Structure#:~:text=The%20WDSF%20Associate%20Members%20sanction,by%20their%20rules%20and%20regulations> [<https://perma.cc/P7V8-LJQ7>] (last visited Oct. 18, 2023).

173. See *id.*

174. *Id.*

175. Schad, *supra* note 142 (“Breaking is most easily categorized as a style of dance, but it more easily lends itself to the realm of sports than other styles because it is inherently competitive.”).

176. See *Judging Criteria*, BRAZILIAN ZOUK DANCE COUNCIL, <https://www.brazilianzoukcouncil.com/competitors/judging-criteria/> [<https://perma.cc/D58Y-8HS8>] (last visited Oct. 18, 2023).

177. See Schad, *supra* note 142 (“‘Back in the Bronx, when it first started, it was always neighborhoods of kids just battling each other,’ said 26-year-old Victor Montalvo, known professionally as B-boy Victor. ‘That’s how they did it back in the day. Now, it’s big-stage competitions and people flying all over the world, battling the best of the best.’”).

“back and forth” model of breaking contributes to this competitive aspect, wherein “one competitor breaks for about thirty to forty-five seconds, and the other responds,” and the judges pick a winner between the two.<sup>178</sup> Although breaking is not a contact sport, its head-to-head format closely resembles traditional sports like boxing, which the IOC has consistently included in the Olympics since 1904.<sup>179</sup>

Another unique aspect of breaking is the level of adjustment and improvisation. While “some combinations of moves can be practiced,” an element of unpredictability exists due to the opponent’s role in the competition, and breaking involves frequent improvisation.”<sup>180</sup>

While the WDSF continues to promote global competition across several disciplines of dance, none have been able to advance to the level of Olympic inclusion—except breaking.<sup>181</sup> Breaking’s inclusion in the 2024 Games is attributed to reflecting a theme of Paris’s urban, cultural, and diverse community, in addition to the sport’s relatively lower expenses and need for facilities. While many forms of dance have become popular across the globe, the relatively recent development of breaking has allowed for its “viral” popularity growth across the globe. Unlike other forms of dance, which may be deeply ingrained in the culture of certain nations and thus afford a competitive advantage to those groups, breaking’s global appeal makes its inclusion in the Olympic Games a more appealing prospect for the IOC.

## V. CONCLUSION

Breaking’s path to inclusion in the 2024 Olympic Games offers an exciting example of change and development at the peak of international sport. Breaking will help the Paris 2024 Games include a new and diverse group of athlete participants and will draw in a new demographic of viewership who previously lacked representation at the Olympic level. While the Los Angeles 2028 (LA28) Organizing Committee declined to include breaking on the program for the 2028

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178. *Id.*

179. See Aditya Rangarajan, *Analyzing The Changes in the Scoring System and Rules of Olympic Boxing*, SPORTSKEEDA, <https://www.sportskeeda.com/boxing/explaining-the-boxing-scoring-system-is-there-a-chance-fighters-can-fall-victim-to-judges-bias> [https://perma.cc/JPR7-5J54] (Aug. 11, 2016, 7:17); *Boxing*, U.S. OLYMPIC & PARALYMPIC MUSEUM, <https://usopm.org/hall-of-fame/boxing/> [https://perma.cc/BUW4-CV32] (last visited Oct. 18, 2023) (“Boxing has been contested at the Summer Olympic Games since St. Louis 1904, with the exception of the 1912 Stockholm Games.”).

180. Schad, *supra* note 142.

181. See *Breaking Officially Added to Olympic Games Paris 2024*, WORLD DANCESPORT FED’N (July 12, 2020), [https://www.worlddancesport.org/News/WDSF/Breaking\\_officially\\_added\\_to\\_Olympic\\_Games\\_Paris\\_2024-3147](https://www.worlddancesport.org/News/WDSF/Breaking_officially_added_to_Olympic_Games_Paris_2024-3147) [https://perma.cc/VLF2-MPHV].

Summer Games in Los Angeles, breaking's inclusion in Paris 2024 represents major strides for Olympic inclusivity. LA28 instead opted to include flag football, baseball and softball, lacrosse, squash, and cricket.<sup>182</sup> The NFL is “thrilled” at LA28’s inclusion of flag football, as this decision aligns with the “NFL’s mission to globalize American football and generate meaningful revenue abroad.”<sup>183</sup> Some criticize this exclusion as “dead wrong.”<sup>184</sup> Although “profoundly disappointed, the WDSF has vowed to ensure the success of breaking in Paris and future Games. In this effort, the WDSF commits “[to demonstrate on the dance floor that Breaking, a sport popular among youths from diverse backgrounds, and a sport rooted in beautiful values such as inclusivity, is a perfect fit for the Olympic Games.”<sup>185</sup> Indeed, since the IOC decides anew each Olympics which sports to include, breaking could well feature in future Games.

In the meantime, breaking on the Paris Olympic stage can hopefully reach wide audiences and inspire youth on the urban streets around the world to aspire to the Olympic ideals. The Olympic b-boys and b-girls as athletes deserve the support, infrastructure, and commercial opportunities as traditional Olympians and to ensure breaking’s continued Olympic success. The diversity and inclusion of breaking can positively impact emerging sports, and it can also potentially prime other diverse sports, including esports and other forms of dance, for Olympic inclusion. Breaking’s inclusion as an Olympic sport in 2024 is an opportunity to unite diverse backgrounds and combat discrimination. The hope is that breaking will set an example for many new sports to achieve IOC recognition and continue “breaking” down barriers of race and gender in sport.

As the Olympic Movement is about not only sport, but also celebrating culture, art, and building a more peaceful world, perhaps watching this new “sport” and Olympic dancers on the streets of Paris in 2024 will achieve, at least for the moment, that goal.

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182. David Wharton, *LA Names Coveted Five Provisional Sports it Wants to Add for 2028 Olympics*, LA TIMES (Oct. 9, 2023), <https://www.latimes.com/sports/olympics/story/2023-10-09/los-angeles-2028-olympics-provisional-sports> [<https://perma.cc/ZQ6J-2TFU>].

183. Ben Fisher, *LA28 Gives NFL International a Big Win*, SPORTS BUSINESS J. (Oct. 9, 2023), <https://www.sportsbusinessjournal.com/Articles/2023/10/09/la28-flag-football-olympics-nfl.aspx#:~:text=LA28%20Chair%20Casey%20Wasserman%20personally,a%20stake%20in%20the%20Olympics> [<https://perma.cc/RPW4-NWQV>]. See also NFL, *Flag Football is LA28 Bound*, <https://www.nfl.com/videos/flag-football-is-la28-bound>.

184. See Yussuf Khan, *LA28 Olympic Organizers are Dead Wrong for Excluding Breaking*, FirstandPen (Oct. 28, 2023), <https://firstandpen.com/la28-olympic-organizers-are-dead-wrong-for-excluding-breaking/> [<https://perma.cc/D4G7-UPUX>].

185. See Breaking Excluded from LA28 Olympics, WDSF (Oct. 10, 2023), <https://www.worlddancesport.org/News/WDSF/Breaking-Excluded-from-LA28-Olympics-WDSFs-Commitment-to-Future-Inclusion-3362> [<https://perma.cc/T3BN-UXG9>].