2002

Save Amateur Sports: Protection from Liability under the Amateur Sports Act in Eleven Line v. North Texas Soccer Ass'n

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SAVE AMATEUR SPORTS: PROTECTION FROM LIABILITY
UNDER THE AMATEUR SPORTS ACT IN
ELEVEN LINE v. NORTH TEXAS
SOCCER ASS’N

I. Introduction

Michael Jordan, Joe Montana and Mark McGwire are legends in their respective sports.1 It is debatable, however, whether these players would have been able to raise their level of athletic excellence to such heights without an organized forum to develop their abilities when they were amateur athletes. In the early to mid-1970’s, bureaucracy, inefficiency and incompetence plagued the organization and management of amateur sports in the United States.2 These pitfalls affected the athletes at that time and threatened the foundations of amateur sports for future generations to come.3

1. See Tom Verducci, The Greatest Season Ever, Sports Illustrated, Oct. 5, 1998, at 38, 38 (stating Michael Jordan and Mark McGwire are two of greatest finishers in all of sports); Steve Wulf, Sportsman of the Year, Sports Illustrated, Dec. 23, 1991, at 82, 82 (remarking Joe Montana was one of greatest players to ever don football uniform).


3. See H.R. Rep. No. 95-1627, at 8-9 (1978) (reporting findings of President’s Commission, which sought to correct disorganization and factional disputes plaguing amateur sports); see also Nafziger, supra note 2, at 167 (describing report prepared for Congress that indicated athletes were being affected by jurisdictional feuds and fragmented organization). The Senate, in discussing the problems that athletes faced, specifically indicated the root of the problems by stating:

The sport community recognizes the futility of so many of their past disputes which have inhibited the progress of this Nation’s amateur athletic programs. America’s weakness in sports is certainly not for want of talent nor lack of resources. Our difficulties lie in failing to join together for the purpose of increasing athletic opportunities. We need to encourage physical fitness and provide more and better athletic programs.

Concern regarding the state of amateur athletics eventually led Congress to enact the Amateur Sports Act of 19784 ("Act").5 The purpose of the Act was to resolve these concerns by redistributing the power to oversee amateur athletics in an effort to advance national goals in a uniform and efficient manner.6 The Act subsequently established a vertical structure headed by the United States Olympic Committee ("USOC") and subordinate National Governing Bodies.7 The USOC oversees United States amateur athletics as a whole, while each National Governing Body ("NGB") oversees the management of a particular sport.8 Both the USOC and the individual NGBs were given broad powers and exclusive jurisdiction to govern amateur sports.9 In granting exclusive juris-


The President’s Commission on Olympic Sports ("Commission") was created in 1975 after an apparent decline in amateur sports. See Nelson, supra, at 176. The Commission was to research amateur sports, determine the root of the problem and propose solutions. See NAFZIGER, supra note 2, at 167. The Commission recommended that Congress enact the Act. See Nelson, supra, at 176.

6. See S. Rep. No. 95-770, at 17 (1978) (describing one main purpose of USOC was to "establish national goals for amateur athletic activity in the United States"); NAFZIGER, supra note 2, at 171-73 (detailing national goals established under Act); see also Melissa R. Bitting, Comment, Mandatory, Binding Arbitration for Olympic Athletes: Is the Process Better or Worse for "Job Security"?, 25 F.L.A. ST. U. L. REV. 655, 657 (focusing on national goals for amateur athletics was key objective of Act).

7. See S. Rep. No. 95-770, at 5-4 (1978) (stating that recommendations to Congress favored erection of vertical structure to control amateur sports). For further explanation of the vertical structure established under the Act and the roles of USOC and NGBs, see infra notes 40-52 and accompanying text.

8. For a further discussion of the responsibilities and authority of the USOC and NGBs, see infra notes 41-47 and accompanying text.


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diction to these entities, Congress indicated its intent to keep the regulation of amateur sports out of the courtroom.\(^\text{10}\)

In *Eleven Line v. North Texas State Soccer Ass'n*,\(^\text{11}\) the United States Court of Appeals for the Fifth Circuit addressed whether the Act exempts a state association, subordinate to a NGB, from federal antitrust laws.\(^\text{12}\) The Fifth Circuit held that the Act does not provide such an exemption.\(^\text{13}\)

This Note will discuss the congressional intent in enacting the Act and the rights and privileges given to entities established under the Act. Specifically, it will focus on whether the Act provides an implied exemption from antitrust laws, and more generally, if NGBs and state associations can be sued for eligibility rules they establish.\(^\text{14}\) Part II of this Note details the facts underlying *Eleven Line*.\(^\text{15}\) Part III provides a background of the events leading up to the enactment of the Act and an explanation of the vertical structure it established.\(^\text{16}\) Part III also details the background surrounding implied exemptions from antitrust laws and the rights of parties to bring suit against entities established by the Act.\(^\text{17}\) Part IV discusses the holding and rationale of the Fifth Circuit's ruling in

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10. *See* Nelson, *supra* note 5, at 182 (discussing Congress's intent and actions to limit role courts would play in amateur sports, leaving USOC and NGBs with power to establish remedies to settle disputes); *see also* James A.R. Nafziger, *International Sports Law: A Reply of Characteristics and Trends*, 86 Am. J. Int'l L. 489, 509 (recognizing that courts give deference to sports organizations to enforce their own rules); David B. Mack, *Note*, *Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes*, 10 Conn. J. Int'l L. 633, 657 (1995) (reviewing legislative history reveals that courts were to be left out of disputes involving USOC and NGBs).

11. 213 F.3d 198 (5th Cir. 2000).

12. *See* *Eleven Line*, 213 F.3d at 199 (hearing case involving plaintiff who claims his company lost money due to specific rule enacted by state association). State associations are members of a given NGB. *See id.* at 201. The purpose of the state association is to carry out the goals of its NGB in the particular state in which the associations is incorporated. *See id.*

13. *See id.* at 204 (holding state associations are not afforded same exemption from antitrust laws as national governing bodies).

14. *See* Behagen *v. Amateur Basketball Ass'n*, 884 F.2d 524, 529-30 (10th Cir. 1989) (holding implied exemption from antitrust law existed for NGB); Oldfield *v. Athletic Cong.*., 779 F.2d 505, 508 (9th Cir. 1985) (holding plaintiff did not have private right of action to sue under Act).

15. For a discussion of the facts of *Eleven Line*, see *infra* notes 21-39 and accompanying text.

16. For a discussion of the history of amateur athletics in the United States and the events that compelled Congress to enact the Act, see *infra* notes 40-52 and accompanying text.

17. For a discussion of cases involving implied exemptions from antitrust laws and the right to sue under the Act, see *infra* notes 53-91 and accompanying text.
Eleven Line. Part V presents a critical analysis of the Fifth Circuit's decision. Part VI concludes this note with a discussion of the potential negative impact the Fifth Circuit's opinion might have on amateur athletics.

II. FACTS

In Eleven Line v. North Texas State Soccer Ass'n, the Fifth Circuit examined whether non-profit volunteer state and local soccer associations were exempt from federal antitrust laws. In 1990 Tom Higginson, the president of Eleven Line, Inc., opened The Permian Basin Sports Center ("PBSC"), an indoor soccer arena in Midland, Texas. Higginson was drawn to the Midland area because of its ebullience towards the game of soccer and a belief that participation in indoor soccer would continue to rise. The PBSC, which served as a facility both for youths and adults, housed various leagues and interstate soccer tournaments.

The PBSC was less than successful in its first five years of existence. In 1995, due to "insufficient revenue and a manager 'who was not very good at depositing [revenue],'" the PBSC had to close its doors for 5 months from June through October. The PBSC's reopening in November 1995 led to the events from which this suit arose.

The North Texas State Soccer Association ("NTSSA"), a volunteer non-profit state association, governs amateur athletic participa-
tion in soccer for northern Texas. The NTSSA is a member of the United States Soccer Federation ("USSF"), which is the NGB for the sport of soccer for the United States.

The NTSSA enacted a rule in the 1980s entitled the "unsanctioned play rule," which stated, inter alia, that players who played in unsanctioned leagues would lose a year of eligibility in the NTSSA. When the PBSC first opened, Higginson "chose not to join the NTSSA as a 'sanctioned' facility because he disagreed with some of the organization's rules and felt that NTSSA would raise his costs and interfere with his management prerogatives."

In 1995, the Midland Soccer Association ("MSA") elected a new president who began strictly enforcing the rules promulgated by the NTSSA, specifically the unsanctioned play rule. This issue was initiated at the MSA's board meeting, which took place in November 1995, shortly after PBSC reopened. Enforcement of this rule resulted in a significant decrease in the level of participation at PBSC due to rumors that the unsanctioned play rule would now be strictly enforced and would expose PBSC participants to eligibility

28. See id. at 201 (discussing organization of entities that oversee participation of amateur athletes in soccer). Due to the popularity of the sport in Midland and the neighboring Odessa region, the Midland Soccer Association ("MSA") and the Odessa Soccer Association ("OSA") were established as members of the NTSSA. See id. The purpose of these associations was to aid the success of outdoor soccer through the assistance of numerous volunteers spending countless hours building soccer fields, raising money and training players and coaches. See id.

29. See id. For detailed discussion of the vertical structure erected by Congress and the significance of the NTSSA and the USSF, see infra notes 40-52 and accompanying text.

30. Id. (detailing provisions of "unsanctioned play rule"). The eligibility rule established by the NTSSA states:

3.2 Youth and amateur players or teams who participate with unregistered players or engage in unsanctioned play shall void their NTSSA registration and must apply for reinstatement to their appropriate Youth or Amateur Commissioner, along with a refilling fee of $2 per player.

3.2.1. Unsanctioned play rule shall include, but not be limited to:
1. Outdoor/indoor league not sanctioned by NTSSA or another USSF affiliate.
2. Outdoor/indoor tournament not sanctioned by the NTSSA or another USSF affiliate.
3. Any game (friendly or scrimmage) with a non-USSF affiliate.

Id.

31. See Eleven Line, 213 F.3d at 200 (enumerating financial reason why Higginson decided not to become sanctioned by NTSSA).

32. See id. at 201-02 (indicating players and coaches could no longer use PBSC, an unsanctioned facility, without being subject to eligibility risks). The fact that PBSC was an unsanctioned facility did not seem to pose a problem because the facility shut down and was not expected to reopen. See id. For a description of MSA, see supra note 28.

33. See id.
risks. Due to a reduction in the number of competitors who enrolled in PBSC's various leagues, PBSC was forced to close its doors permanently after six months.

Eleven Line, Inc. subsequently brought an antitrust suit against the NTSSA, MSA and Odessa Soccer Association ("OSA") in the United States District Court for the Northern District of Texas. The jury found for the plaintiff on the antitrust claim and awarded damages for lost profits. The NTSSA appealed the District Court's decision, claiming that the Act immunized them from federal antitrust laws. The Fifth Circuit affirmed the District Court's holding that the NTSSA was not immune from federal antitrust laws, but then overturned the award of damages.

III. Background

A. Amateur Sports Act

In 1978, Congress passed the Amateur Sports Act to "correct the disorganization and the serious factional disputes that seemingly plagued amateur sports." The President's Commission on

34. See id. (discussing MSA's actions regarding enforcement of unsanctioned play rule).
35. See id. (describing decrease in number of athletes competing at PBSC). PBSC's business declined from 105 youth and adult teams from the previous winter to forty-three for the following winter. See id.
36. See Eleven Line, 213 F.3d at 199-205 (outlining arguments put forth by each side and detailing reasons why Court of Appeals overruled District Court). For a description of OSA, see supra note 28.
37. See id. at 199 (detailing verdict of jury in finding for plaintiff). The jury found that the plaintiff was put out of business by the enactment of the NTSSA's unsanctioned play rule, which in essence, dictated where the area's amateur soccer players and coaches could participate in athletic competition. See id. The jury then awarded Eleven Line $100,000 for the damages it incurred because of NTSSA's actions, and the Court enjoined the NTSSA from enforcing the unsanctioned play rule. See id.
38. See id. at 203-05 (detailing analysis court used in affirming District Court's decision). For a discussion of the Act, its history, provisions and impact, see infra notes 40-52 and accompanying text.
39. See Eleven Line, 213 F.3d at 204-09. For a discussion of the Court's rationale in affirming the district court's ruling regarding immunization from federal antitrust law, see infra notes 92-118 and accompanying text.

The Act was the culmination of nearly a century of regulation of Olympic athletes. The modern Olympics began its resurgence in Paris in 1894 when the Congress of Paris established the International Olympic Committee ("IOC") for the purpose of organizing and supervising the "Olympic movement" and resurrecting the Olympic Games. See Mack, supra note 10, at 657 (discussing establish-
Olympic Sports ("Commission") recommended passing the Act as a solution to the problems that plagued amateur athletics. The Commission sought legislation to address growing concerns over inadequate performances by U.S. amateur athletes in international competition.

The IOC's charter empowers it with "supreme authority" over the "Olympic Movement," the goal of which is to "place everywhere sport at the service of the harmonious development of man . . . to promote peace." INTERNATIONAL OLYMPIC COMMITTEE CHARTER, Fundamental Principles § 3, http://www.olympic.org/ioc/e/facts/charter/charter_intro_e.html (last visited Aug. 31, 2001). The IOC, in order to promote the Olympic Movement and revive the Olympic Games, is instilled with the power to recognize National Olympic Committees ("NOC") whose goals are to "develop and protect the Olympic Movement in their respective countries." Id. at Rules 3, 31.

In 1896, the United States Olympic Committee ("USOC") was created in order to represent the United States in the IOC. See Nelson, supra note 5, at 176 (describing early period of USOC). The USOC was later incorporated in 1950 and given a federal charter by Congress, instilling it with sole dominion over amateur athletics that pertained to the Olympic Games. See DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181, 1183 (D.D.C. 1980) (noting purpose of incorporating USOC).

Unfortunately, in the middle of the 1970's, there was a decline in the competitiveness put forth by the United States in international competition. See NAFZIGER, supra note 2, at 165 (illustrating problems in 1972 Munich Olympics). This decline was due to, among other things, poor administration and an overflow of bureaucracy. See id. at 165-66. In 1975, in order to address these problems, the President's Commission on Olympic Sports (hereinafter "Commission") was created. See H.R. REP. 95-1627 at 8 (describing evident fall of American competitiveness which was occurring at significantly lower level than what nation, due to its size, was capable of achieving); Nelson, supra note 5, at 176 (indicating Commission was established to remedy disorganization that permeated through amateur athletics). The Commission, after investigating the matter, recommended that Congress enact the Amateur Sports Act. See id.

41. See Nelson, supra note 5, at 176 (noting aim of Commission was to propose best method of correcting disorganization of amateur sports in United States). The purpose of the Commission was to "reorganiz[e] the structure of amateur athletics" in the United States for the purpose of producing a higher level of success in international competition. Id.; see also NAFZIGER, supra note 2, at 167 (indicating goal of Commission was to determine inadequacies of United States Olympic program and offer solutions). The Commission's findings and recommendations led to the enactment of the Act. See Nelson, supra note 5, at 176-77 (detailing Commission's findings heavily favored reorganization of USOC).

42. See NAFZIGER, supra note 2, at 165-67 (enumerating problems that plagued United States in its participation in international competition). The inadequacy of the United States Olympic framework came to the forefront at the 1972 Olympic games in Munich, where "administrative faux pas . . . beset the United States Team." Id. at 166. Examples of these errors include sprinters failing to qualify in their events due to improper information from their coaches regarding the start time of their events; the stripping of a gold medal from a swimmer because the team doctor failed to recognize the athlete's drug list contained a stimulant prohibited by the IOC; and U.S. officials incompetently appealing a loss to the Soviet Union in the men's basketball gold medal game, when referees made extremely controversial decisions. See id.

There were other problems besides those, which appeared in Munich. See Neil Amdur, Olympic Group: Tower of Babel, N.Y. TIMES, Nov. 5 1972, § 5 at 4, col. 3.
The Commission recommended to Congress that the most effective way to govern amateur athletics was to restructure and broaden the powers of the USOC. Congress, empowering the USOC "to act as the coordinating body for amateur athletic activity," subsequently created the Act. The Act established a vertical structure to govern United States amateur athletics. The USOC, which heads the structure, is vested with "exclusive jurisdiction . . . over all matters" concerning United States amateur athletics and the power to resolve all conflicts and disputes that could arise.

USOC officials were thought to have insufficient experience, were too far removed from their sport to offer valuable input and were not concerned with legitimate issues of athletes. See N.Y. Times, Nov. 6, 1972, at 40, col. 1.

43. See Nelson, supra note 5, at 176 (discussing findings of Commission); see also Jill J. Newman, The Race Does Not Always Go to the Stronger or Faster Man . . . But to the One Who Goes to Court! An Examination of Reynolds v. Int'l Amateur Athletic Fed'n, et al., Sports Law. J. 205, 210-11 (1994) (enumerating findings of Commission that USOC needed to be main authority with respect to amateur sports in United States). For further discussion of the creation of the USOC, see infra notes 44-47 and accompanying text.

44. S. Rep. No. 95-770, at 4 (1978) (discussing purpose of enacting Act). The Act established the USOC as a corporation and set forth its broad powers and goals in overseeing amateur athletes with respect to both national and international competition. See Mack, supra note 10, at 654 (noting passage of Act would seek to ensure administrative mistakes made at 1972 Munich Olympics would not reoccur in future competitions). Congress intended to instill broad powers in the USOC with the purpose of:

[Bringing] amateur sports organizations together and establish[ing] lines of communication in order that mutual goals and priorities can be realized and problems resolved. The USOC should encourage amateur sports organizations to settle differences, to overcome shared deficiencies, and to produce more integrated programs so that a meaningful assembly of sports organizations will exist to respond to the needs of this Nation's amateur athletes.


Section 374 of the Act pronounced that the purpose of the USOC was to, among other things:

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

(2) coordinate and develop amateur athletic activity in the United States directly relating to international amateur athletic competition, so as to foster productive working relationships among sports-related organizations.


45. See Eleven Line, 213 F.3d at 203 (indicating vertical structure was most efficient way to manage amateur sports).


Section 374 states in pertinent part:

(a) The objects and purposes of the [USOC] shall be to-

(3) exercise exclusive jurisdiction, either directly or through its constituent members or committees, over all matters pertaining to the participation of the United States in the Olympic Games and in the Pan-American Games . . .
Congress also instilled the USOC with the power to recognize NGBs to oversee each particular sport represented in the Olympics.\textsuperscript{47}

The NGB for soccer in the United States is the USSF.\textsuperscript{48} The USSF consists of members that include, among others, state associations that have exclusive jurisdiction over soccer in their particular

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

\textit{Id.} \textit{See also} 36 U.S.C. § 375 which states:

(a) The [USOC] shall have perpetual succession and power to-

(1) serve as the coordinating body for amateur athletic activity in the United States directly relating to international amateur athletic competition;

(2) represent the United States as its national Olympic committee in relations with the International Olympic Committee . . .

(4) recognize eligible amateur sports organizations as national governing bodies for any sport which is included on the program of the Olympic Games or the Pan-American Games.

\textit{Id.} (current version at 36 U.S.C. § 220505(c)(1), (2), (4) (1998)).

\textsuperscript{47} See 36 U.S.C. § 391(a) (1978) (current version at 36 U.S.C. §§ 220521, 220522 (1998)) (elaborating USOC's power to recognize NGBs and enumerating requirements to establish NGBs). 36 U.S.C. § 391(a) provides:

(a) National governing body; application; notice and hearing:

For any sport which is included on the program of the Olympic Games or the Pan-American Games, the [USOC] is authorized to recognize as a national governing body an amateur sports organization which files an application and is eligible for such recognition . . .


The USOC, in § 391(b), identifies certain requirements a sports organization must meet in order to become eligible as an NGB. See 36 U.S.C. § 391(b) (1978) (current version at 36 U.S.C. § 220522 (1998)). Section 391(b) requires in part:

(b) Eligibility requirements

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

(1) is incorporated under the laws of any of the several States of the United States or the District of Columbia as a not-for-profit corporation having as its purpose the advancement of amateur athletic competition . . .

(4) demonstrates that it is autonomous in the governance of its sport, in that it independently determines and controls all matters central to such governance, does not delegate such determination and control . . .

(11) provides procedures for the prompt and equitable resolution of grievances of its members

\textit{Id.}


The USSF "shall be autonomous in its governance of the sport of soccer in the United States and may not delegate its governance responsibilities." \textit{Id.} at Bylaw 105 § 1.
State.\textsuperscript{49} A number of local associations exist under each state association to further assist in the development of the particular sport in different areas of the state. The MSA and OSA develop soccer participation in the Midland and Odessa counties respectively.\textsuperscript{51} Therefore, the vertical structure for soccer in the northern part of Texas consists of a three-tiered hierarchy, beginning with the USSF on the national level, and ending with the MSA and OSA on the local level.\textsuperscript{52}

B. Lack of Judicial Remedy under the Amateur Sports Act

Courts, in general, have found that disputes involving eligibility standards, which arise under the auspices of the Act, should not be brought to the courtroom for resolution.\textsuperscript{53} Courts have used different rationales to dismiss claims brought under the Act.\textsuperscript{54} These rationales include an implied exemption from antitrust laws, a requirement to exhaust all other remedies, and a lack of a private right of action.

\textsuperscript{49} See id. at Bylaw 202 (1)(E) (listing organizations that comprise USSF). A state association is defined as "the administrative body within a territory . . . to carry out the Federation's programs for amateur youth or amateur adult players, or both." \textit{Id.} at Bylaw 109(2). The state associations are bound to the USSF's "articles of incorporation, bylaws, policies and requirements on interplay." \textit{Id.} at Bylaw 213 \textsection (1)(a)(6).

\textsuperscript{50} See Eleven Line, 213 F.3d at 201.

\textsuperscript{51} See id. at 201.

\textsuperscript{52} See id. at 201 (discussing structure of organizations overseeing amateur soccer in Texas).

\textsuperscript{53} See Nafziger, \textit{supra} note 10, at 509-10 (indicating that while courts are more willing to hear cases brought by amateur athletes, traditionally courts "have dismissed actions on grounds of admissibility"); Newman, \textit{supra} note 43, at 213 (discussing actions of courts either dismissing actions by amateur athletes against NGBs or deferring to rules of governing bodies in construing ruling); see also Nelson, \textit{supra} note 5, at 182 (asserting that courts, in following Congress's intent, dismiss claims brought under Act because they lack subject matter jurisdiction over claims brought by amateur athletes).

\textsuperscript{54} See Behagen v. Amateur Basketball Ass'n 884 F.2d 524, 530-32 (10th Cir. 1989) (holding that there is implied exemption from federal antitrust laws due to Congress's intent in enacting Act); see also Oldfield v. Athletic Cong., 779 F.2d 505, 508 (9th Cir. 1985) (existing "administrative mechanisms for resolution of disputes over an athlete's right to compete still further betokens the absence of an implied private right."); Michels v. United States Olympic Comm., 741 F.2d 155, 157 (7th Cir. 1984) (finding no private right of action under Act existed for weightlifter suspended for drug use); Barnes v. Int'l Amateur Athletic Fed'n, 862 F. Supp. 1557, 1545 (S.D.W. Va. 1993) (holding Congress intended amateur athletes to exhaust administrative remedies that exist within Act and keep such disputes out of federal court); Devereaux v. Amateur Softball Ass'n, 768 F. Supp. 618, 625 (S.D. Ohio 1991) (seeking redress in court before exhausting administrative remedies was premature).
1. **Implied Exemption from Federal Antitrust Laws**

In *Behagen v. Amateur Basketball Ass'n of the United States*, the court addressed whether the Amateur Basketball Association, an NGB, is exempt from federal antitrust laws. In analyzing the alleged antitrust violations, the court noted that the provisions of the Act do not expressly provide an exemption from federal antitrust laws. Therefore, if an exemption from antitrust laws exists, it must be implied and "implied antitrust immunity is not favored."  

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55. 884 F.2d 524 (10th Cir. 1989).

56. *See Behagen*, 884 F.2d at 525 (hearing appeal from jury verdict granting damages under antitrust laws). The plaintiff in *Behagen*, Ronald Behagen, was a former collegiate All-American basketball player at the University of Minnesota. *See* Randy Harvey, *Olympics Could Enjoy a Touch of Magic, Bird; Pending Rules Changes would Make Most Professionals Eligible for the Games; If that Happens, the United States Might Never Lose Another Gold Medal in Basketball—Unless, Unless of Course, Magic, Bird and others Aren’t Interested; That May Be the Case*, LOS ANGELES TIMES, Apr. 21, 1986 at 12 (indicating Behagen’s efforts in court could allow United States to send professional basketball players as participants in 1988 Olympics, an option which was not available at that time). An NBA team subsequently drafted Behagen in 1975, where he played for four teams in the span of six years. *See* id.; *see also Federal Court of Appeals Reverses Dismissal of Suit Against International Amateur Basketball Association Brought by Former Professional Basketball Player, Because Issues of Fact Exist as to Whether Association Is Subject to Personal Jurisdiction under Colorado’s Long-arm Statute Even Though Headquartered in Germany*, ENT. LAW REP., Apr. 1985, vol. 6, no.11 (giving history of Behagen’s athletic activity).

In 1979, Behagen left the NBA and joined an amateur basketball team in Siena, Italy. *See Behagen*, 884 F.2d at 526. That league is governed by the Federation Internationale De Basketball Amateur (hereinafter "FIBA"), which has eligibility requirements. *See* id. In order for an American to play basketball internationally, "the player is required to qualify as an amateur by receiving an ABA/USA travel permit and a FIBA license." *Id.* at 525.

FIBA reinstated Behagen’s amateur status and issued him a license, even though he did not apply for a travel permit. *See* id. This license enabled him to play in the Italian league during the 1979-1980 season. *See* id. Behagen then returned to the United States and signed a contract to play for the Washington Bullets of the NBA, in which he participated in eight games. *See* id. After the season ended, Behagen returned to Italy to play. *See* id. The Executive Director of the Amateur Basketball Association (the FIBA member for the United States) informed FIBA that Behagen had again, played professional basketball. *See* id. This time, FIBA advised the team in Italy that Behagen was not eligible to play as an amateur athlete for their team. *See* id.

57. *See Behagen*, 884 F.2d at 524 (indicating there is no “explicit statement exempting action taken under [the Act’s] direction from the federal antitrust laws”); *see also* 36 U.S.C. §§ 391-396 (1978).

58. United States v. Nat’l Ass’n of Sec. Dealers, 422 U.S. 694, 719-20 (1974) (indicating that implied exemptions are not favored and exist only when there is clear discord between antitrust laws and regulatory system established by Congress); *see also* Gordon v. N.Y. Stock Exch., Inc., 422 U.S. 659, 682-91 (1974) (holding casual repeals of antitrust laws are not allowed, requiring dissonance between that which is regulated and antitrust laws); Silver v. N.Y. Stock Exch., 373 U.S. 341, 357 (1963) (repealing of antitrust laws are, as “cardinal principle” not favored); United States v. Borden, 308 U.S. 188, 198 (1939) (stating “repeals of antitrust laws by implication are not favored.”); *Behagen*, 884 F.2d at 528 (reiterating view
A court will find an implied exemption only if Congress clearly intended such an exemption to exist.\(^5^9\)

Issues of an implied exemption from antitrust laws arise when Congress enacts a federal statute regulating conduct in a certain industry, which could be contrary to antitrust provisions.\(^6^0\) An exemption can exist in such a case because the entity must follow the conduct proscribed by Congress even though such action might violate antitrust laws.\(^6^1\)

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59. See Behagen, 884 F.2d at 529 (stating that congressional intent is sufficient to overcome presumption that implied exemptions from antitrust laws are disfavored); United States v. Nat'l Ass'n of Sec. Dealers, 422 U.S. 694, 719-20 (1974) (finding implied exemption is only valid when “a convincing showing of clear repugnancy between the antitrust laws and the regulatory system”); Silver v. N.Y. Stock Exch., 373 U.S. 341, 357 (1963) (viewing self regulating goals of Securities and Exchange Act did not preempt application of antitrust laws); Finnegan v. Campeau Corp., 915 F.2d 824, 826 (2d Cir. 1990) (indicating that antitrust laws are not enforced when they come into conflict with those that regulatory scheme permits).


61. See id. When Congress establishes such legislation (for example the Amateur Sports Act) the regulated entity (for example the USOC) claims that there is an implied repeal of antitrust acts. See id. The repeal exists because the entity regulated must “abide by this statute in lieu of the Sherman Act [which established antitrust laws] and other laws.” Id. Finding an implied repeal is a difficult task, and courts look to congressional intent to “allow a regulatory scheme to achieve goals free of antitrust laws, particularly if an agency has approved conduct and has considered antitrust factors.” Michael L. Denger, Antitrust Overview and Horizontal Restraints ofTrade, 24 ANNUAL ADVANCED ANITTRUST WORKSHOP, 7, 32-33, (Joshua F. Greenberg 1994). A court will find that regulated conduct is implicitly immune from antitrust laws when:

(1) When a regulatory agency has, with Congressional approval, exercised explicit authority over the challenged practice itself (as distinguished from the general subject matter) in such a way that antitrust enforcement would interfere with regulation, . . . and

(2) When regulation by an agency over an industry or some of its components or practices is so pervasive that Congress is assumed to have determined competition to be an inadequate means of vindicating the public interest.

Hawley, supra note 60, at 1121. Therefore, if a court determines that Congress intended for an implied exemption to exist, and Congress legislated in such a way empowering an entity to exert control free from antitrust restrictions, the entity will be exempt from antitrust laws. See id.; Behagen, 884 F.2d at 528-29.

An example of this immunity can be seen in Silver v. New York Stock Exchange, where the court addressed whether the enactment of the Securities and Exchange Act of 1934 provided the New York Stock Exchange (“NYSE”) with an exemption from antitrust laws. See Silver, 373 U.S. at 342. The case was brought after the NYSE instructed all nonmembers to remove private wires connected to the Exchange which nonmembers could use to promptly obtain stock quotes. See id. at
The Behagen court determined that Congress, in passing the Act, intended each NGB to exercise sole and uniform control over its particular sport. The court then analyzed provisions of the Act and determined that an NGB was required to exercise monolithic control over its sport without fear of antitrust liability. Therefore, the court held that the antitrust claim brought by Behagen was barred by the express intent of Congress.64

2. Exhaust Administrative Remedies

In many cases involving eligibility standards, plaintiffs bring legal action without first utilizing the remedies provided in the Act.65

343. The NYSE subsequently disapproved of all private wires without notifying the plaintiffs, or supplying a reason and instructed all firms to disconnect their wires. See id. at 344. Plaintiff's business suffered substantially since it could not quickly receive stock quotes, and subsequently commenced the suit. See id. at 345.

The court found that the Securities and Exchange Act of 1934 was created, instilling the Securities and Exchange Commission with regulatory authority to recommend and object to rules promulgated by the various exchanges. See Silver, 373 U.S. at 357. The Securities and Exchange Act of 1934 “does not give the Commission jurisdiction to review particular instances of enforcement of exchange rules.” id. Neither does it explicitly provide for exemption from antitrust laws. See id. The court stated that there is no check provided for by the Securities and Exchange Act of 1934, which would replace the check provided by antitrust laws, ensuring that the exchanges do not promulgate its rules in a manner injuring competition without “furthering legitimate self-regulative ends.” Id. at 358. Because in certain instances no check was provided for by Congress, the regulatory scheme is subject to the external influences, over which the Commission has no control. See id. at 359. Therefore, the court found that the Securities and Exchange Act of 1934 was not exempt from antitrust laws. See id. at 360.

62. See Behagen, 884 F.2d at 528. The monolithic control given to each NGB, required that the NGB be autonomous in regulating its sport. See 36 U.S.C. § 391(b)(4) (1978) (current version at 36 U.S.C. § 220522(a)(5) (1998)). The NGBs were also given the power to establish rules regarding eligibility and provide for means of addressing disputes that arose over eligibility. See Newman, supra note 43, at 210-11.

63. See Behagen, 884 F.2d at 528-30; 36 U.S.C. §§ 391(b)(4), 391(b)(12), 393(1), 393(7) (1978) (current versions at 36 U.S.C. §§ 220522(a)(5), 220522(a)(14), 220523(a)(1), 220523(a)(7) (1998) respectively). The court examined the purpose of enacting the Act. See Behagen, 884 F.2d at 528-29. The court determined that the purpose was to correct administrative deficiencies, among other things that had been plaguing United States' amateur athletics at the time. See id. The Act was established to bring order and structure to amateur athletics through the creation of NGBs. For further discussion of Congress's goal for creating the Act, see supra notes 40-42 and accompanying text.

64. See Behagen, 884 F.2d at 525.

Courts have shown disapproval of these attempts to circumvent the remedies provided under the Act.\textsuperscript{66} If a party fails to exhaust all of the available remedies provided by the Act, a court will usually deny relief.\textsuperscript{67}

In \textit{Devereaux v. Amateur Softball Ass'n of America},\textsuperscript{68} a group of amateur softball players brought suit challenging the Association's implementation of an eligibility rule regarding participation in a softball competition.\textsuperscript{69} The court in \textit{Devereaux} analyzed the administrative remedies available to the plaintiffs under the Act.\textsuperscript{70} The court concluded that the Act and the rules of the Amateur Softball Association provided numerous remedies to the plaintiffs.\textsuperscript{71} The court, in dismissing the case, found that bringing suit without exhausting the available remedies was premature.\textsuperscript{72}

\begin{itemize}
\item[\textsuperscript{66}] See Mayes, supra note 2, at 124-25 (discussing court's view that plaintiffs must seek remedies provided by the NGB); see also Nelson, supra note 5, at 188-89 (reviewing court decision requiring eligibility disputes be resolved by arbitration).
\item[\textsuperscript{68}] 768 F. Supp. 618 (S.D. Ohio 1991).
\item[\textsuperscript{69}] See \textit{Devereaux}, 768 F. Supp. at 621. The rule, enacted by the Amateur Softball Association, required players, who play softball outside their residency or employment state, to file a written affidavit indicating which state association in which they wished to play. \textit{See id.} After playing in a state association outside of the player's state, that player may not play in another state association during the same year. \textit{See id.} Players who wished to engage in competition in both Kansas and Ohio brought the suit. \textit{See id.} at 621-22. Defendant claimed that the rule was established to "prevent the mid-season switching of players from one roster to another [which] . . . would create chaos because sponsors would continually bid and trade players throughout the course of a season . . . [which] would be contrary to the spirit of amateur sports." \textit{Id.} at 621.
\item[\textsuperscript{71}] \textit{See Devereaux}, 768 F. Supp. at 623-24. The plaintiff could appeal from the decision of the Amateur Softball Association. \textit{See id.} The plaintiff could also file for arbitration and submit a written complaint with the USOC. \textit{See id.}
\item[\textsuperscript{72}] \textit{See id.} at 624.
\end{itemize}
In *Barnes v. International Amateur Athletic Federation*, an amateur athlete was suspended from competition for testing positive for a prohibited substance and brought suit seeking an injunction of the suspension and damages. The Southern District of West Virginia found that the plaintiff did not exhaust all the administrative remedies available to him. The question for review was whether the plaintiff was required to exhaust all possible remedies. The court began its analysis by noting that the intent of Congress "is critical to any exhaustion inquiry." The court then determined, by analyzing provisions of the statute and legislative history, that Congress intended athletes to exhaust all administrative remedies


74. *See id.* at 1539. The plaintiff, at the time the action was filed, held the world record in the shot put. *See id.* On August 7, 1990, the plaintiff tested positive for the prohibited substance methyltestosterone and received a two-year suspension from athletic competition. *See id.* The plaintiff sought the injunction primarily to prohibit his exclusion from the Olympic trials; a competition that determines which athletes shall compete in the Olympics. *See id.*

75. *See id.* at 1542. The plaintiff appealed the suspension to The Athletics Congress of America's Doping Appeals Board. *See id.* The Board upheld the suspension, and the plaintiff subsequently chose not to seek other remedies that were available. *See id.* The plaintiff had the option to seek arbitration of the unfavorable decision rendered by The Athletics Congress of America. *See id.* at 1544.

76. *See id.* at 1542. The plaintiff claimed that he was not required to exhaust all remedies, citing *McCarthy v. Madigan*. *See id.* In *McCarthy*, the court held that a federal prisoner does not have to exhaust the Bureau of Prisons' administrative procedure in order to initiate an action solely for money damages. *See McCarthy v. Madigan*, 503 U.S. 140, 156 (1991).

77. *Barnes*, 862 F. Supp. at 1542 (citing *McCarthy v. Madigan*, 530 U.S. 140 (1991)) (elaborating criteria used in determining issues requiring exhaustion of remedies). Exhaustion of remedies serves the purpose of protecting administrative authority and promoting judicial efficiency. *See McCarthy*, 503 U.S. at 144-46. When Congress expressly states that exhaustion is required, then that intent is followed. *See id.* at 144. When the intent of Congress is nebulous, however, then it is up to the court's discretion to determine if exhaustion is required. *See id.* The court will weigh the statutory interest favoring exhaustion against the individuals right to have access to the courts. *See id.* at 146. The court will always be mindful of the statutory scheme put forth by Congress. *See id.* at 144. An individual's interests superecede that of administrative exhaustion in three situations: First, exhaustion is not required where resort to the administrative remedy may occasion undue prejudice to pursuit of a future court action . . . Second, an administrative remedy may be inadequate if the agency lacks the power to grant effective relief or the challenge is to the adequacy of the agency procedure . . . . Third, exhaustion may be inadequate if the administrative body is shown to be biased or has otherwise predetermined the issue.

when challenging eligibility standards.\textsuperscript{78} Since the plaintiff had not done so, the case was dismissed.\textsuperscript{79}

3. Availability of Private Right of Action

In some suits over eligibility requirements, courts do not even proceed as far as addressing issues of implied exemptions or exhaustion of remedies.\textsuperscript{80} Rather, these courts merely analyze whether the party who brings suit has a right to a private cause of action under the Act.\textsuperscript{81} Many courts have held that a private right of action does not exist to athletes bringing suit under the Act.\textsuperscript{82}

In Oldfield \textit{v. Athletic Congress},\textsuperscript{83} a world class shot putter brought suit after the Athletic Congress suspended his amateur sta-

\textsuperscript{78} See Barnes, 862 F. Supp. at 1543-44. The court focused on the general events that led Congress to enact the Act in 1978. \textit{See id.} at 1543. The court discussed the problems that faced amateur athletes during that time and the importance of correcting the disorder that was present in amateur athletics. \textit{See id.}

The court placed significant weight on the fact that Congress instilled the USOC with "exclusive jurisdiction" over amateur sports. \textit{Id.} (internal annotations omitted). The court also noted that the USOC had the power to recognize national governing bodies. \textit{See id.} These national governing bodies, recognized for each particular sport, are given monolithic control over its particular sport and can establish criteria for eligibility. \textit{See id.} For further discussion of the USOC and national governing bodies, see \textit{supra} notes 41-47 and accompanying text.

Then, in conducting an analysis of the Act's drafting, the court stated that Congress omitted from the final draft, language that would have provided federal district courts with special jurisdiction for injunction proceedings. \textit{See id.} at 1544. Taking these factors into account, the court found that Congress made clear choices to keep disputes that arise with regard to eligibility out of the courts. \textit{See id.} Therefore, the court held that Congress clearly intended for the exhaustion of administrative remedies. \textit{See id.}

\textsuperscript{79} See Barnes, 862 F. Supp. at 1546.

\textsuperscript{80} See Newman, \textit{supra} note 43, at 212-13 (noting courts typically dismiss actions brought by amateur athletes against Olympic governing bodies); \textit{see also} Mack, \textit{supra} note 10, at 666-69 (reviewing cases where courts find no private action available to plaintiff); Mayes, \textit{supra} note 2, at 125 (discussing court's ruling that Amateur Sports Act provides no private right of action); Nafziger, \textit{supra} note 10, at 509.

\textsuperscript{81} See Oldfield \textit{v. Athletic Cong.}, 779 F.2d 505, 506-07 (9th Cir. 1985) (determining if athlete who signed professional contract had cause of action against amateur athletic organizations which disqualified him from participation in amateur athletics); Michels \textit{v. United States Olympic Comm.}, 741 F.2d 155, 156-58 (7th Cir. 1984) (deciding if weight lifter who failed drug tests could bring suit in district court to challenge suspension); DeFrantz \textit{v. United States Olympic Comm.}, 492 F. Supp. 1181, 1182-83 (D.D.C. 1980) (considering action brought by athletes against USOC for its decision not to send team to XXIIInd Olympiad).

\textsuperscript{82} See Oldfield, 779 F.2d at 508 (holding Olympic athlete did not have cause of action against The Athletic Congress); Michels, 741 F.2d at 157 (ruling weight lifter had no standing to appeal suspension from USOC); DeFrantz, 492 F. Supp. at 1189 (holding that USOC could choose not to send team to Olympics for reasons unrelated to given sport).

\textsuperscript{83} 779 F.2d 505 (9th Cir. 1985).
tus for signing a professional contract with the International Track Association. The Ninth Circuit, in construing the language of the Act, determined that a private cause of action was expressly provided for by the Act. The court was then left to decide if the Act contained an implied right of action. Finding that Congress did not intend to provide for either an express or implied right of action, the court dismissed the case.

In Michels v. United States Olympic Committee, the Seventh Circuit considered whether an athlete, who had been suspended for violation of the USOC's drug policy, could bring suit seeking an

84. See id. at 506. Oldfield competed in the 1972 Olympics. See id. He subsequently signed a professional contract with the International Track Association in which he competed professionally for approximately four years. See id. Oldfield then wished to regain his status as an amateur in order to be eligible to compete in the 1980 Olympics. See id.

85. See id. at 506-07. The court reviewed the legislative history of the Act and noted the purpose of the Act was to create a hierarchical structure to oversee amateur athletics. See id. The court determined that the USOC and NGBs were vested with the power to issue swift resolution to disputes, which arose under the Act. See id.

86. See id. at 507-08 (reviewing case law involving existence of implied private right of action). The Ninth Circuit stated there are four factors to consider when determining if a statute contains an implied private right of action:

1. Whether the plaintiff is a member of a class for whose especial benefit the statute was enacted;
2. Whether there is an indication of Congress's intent to create or deny a private remedy;
3. Whether a private remedy would be consistent with the statute's underlying purpose; and
4. Whether the cause of action traditionally is relegated to state law.

Id. (citing Cort v. Ash, 422 U.S. 66, 95 (1975)).

The Ninth Circuit, citing the Supreme Court in Touche Ross & Co. v. Redington, noted that not all prongs of this evaluation should receive equal weight. Oldfield, 779 F.2d at 507 (citing Touche Ross Co. v. Redington, 422 U.S. 560, 575 (1979)). The court determined that the central inquiry involved whether Congress intended to create an implied private right of action. See id.

87. See Oldfield, 779 F.2d at 506-08 (conducting analysis of statutory provisions of the Act as well as construing Congress's intent). The Ninth Circuit felt the intent of Congress in this case was clear. See id. at 507-08. The court stated "[a]ll too frequently the intent of Congress is quite obscure. It is seldom as apparent as it is in the present case." Id. at 507. The court noted that the Act, as originally proposed, contained a provision that would allow athletes to challenge enacted rules in federal courts. See id. The athletes were to be able to challenge the practice of any sports organization, which affected the athletes' right to compete. See id. This provision was met with severe resistance by high school and college organizations. See id. A compromise was ultimately reached in which the provision was removed. See id. Finally the court looked to the "administrative mechanisms for the resolution of disputes." Id. at 508. Reviewing all these factors, the court held that an implied private right of action is not present. See id.

88. 741 F.2d 155 (7th Cir. 1984).
injunction.89 The Seventh Circuit conducted a similar evaluation of the Act as the Ninth Circuit did in Oldfield.90 The court found that there existed no express or implied private right of action available for Michels, and thereby dissolved the injunction that had been issued by the District Court.91

IV. Narrative Analysis

The Fifth Circuit in Eleven Line considered whether the NTSSA and other defendants, who are state and local associations under the NGB for the sport of soccer, violated antitrust laws in promulgating its eligibility rules.92 In order to determine if the defendant, a non-profit corporation, was guilty of violating federal antitrust laws, the court initially needed to decide if the state association fell sub-

89. See id. at 156. Michels, an amateur weightlifter, competed at the Pan American Games, which required that all athletes take drug tests. See id. The purpose of the test was to determine if any athletes had consumed testosterone in violation of the IOC anti-doping rules. See id. (internal quotations omitted). Michels' level of testosterone exceeded the permissible amount established by the IOC and he was subsequently suspended for two years. See id. Included in this two-year suspension was the 1984 Olympics; therefore, Michels was not permitted to compete for a position on the American weightlifting team. See id. Michels brought suit in district court, which issued a preliminary injunction. See id.

90. See id. at 157-58. The court found that the Amateur Sports Act was created to "settl[e] disputes between organizations seeking to be recognized as the NGB for a particular sport and to shield amateur athletes from being harmed by these struggles." Id. at 157.

The Seventh Circuit then declared that the Act does not provide an express right of action and subsequently investigated the Act to determine if it provides an implied private cause of action. See id. The court began its analysis by noting the four factors in determining the existence of an implied cause of action enumerated by the Supreme Court in Cort v. Ash. See id. For further discussion of the factors detailed in Cort v. Ash, see supra note 86 and accompanying text. The Seventh Circuit then deferred to more recent decisions by the Supreme Court indicating that the paramount determination in the analysis is that of congressional intent. See Michels, 741 F.2d at 157 (citing Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 66, 95 (1975)). "Once Congress's intent is determined, there is no need to 'trudge through all of the factors' in Cort v. Ash." Id. at 158 (quoting Merrill Lynch, 456 U.S. at 95).

91. See Michels, 74 F.2d at 158. Because the court determined that the intent of Congress was the predominant factor in determining the existence of an implied right of action, the Seventh Circuit analyzed the legislative history and provision of the Act. See id. It found that certain provisions establishing judicial remedies for athletes were dropped from the enacted Act. See id. The court also noted a speech supporting the Act was given to USOC House Delegates where it was mentioned that athletes have the ability to redress their problems through arbitration. See id. The court, therefore, concluded that Congress did not intend to create an implied private right of action. See id.

92. See Eleven Line v. N. Tex. State Ass'n, 213 F.3d 198, 205 (5th Cir. 2000) (noting that court must determine if defendants are even subject to antitrust laws).
ject to these laws. The Fifth Circuit began its analysis with a discussion of the Act, its provisions for amateur athletics in the United States and the authority it grants to the USOC and NGBs. The court determined that NGBs, which must "demonstrate autonomy in the governance of its sport," serve a vital role in the hierarchy formulated by Congress.

The Fifth Circuit then turned to the defendant's argument that the Act exempts the NTSSA from federal antitrust laws. The NTSSA contended, citing Behagen v. Amateur Basketball Ass'n, that its unsanctioned play rule should escape scrutiny for antitrust violation. The defendants evinced that the court in Behagen found the Act provides an implied exemption from antitrust laws.

The Fifth Circuit reiterated the court's finding in Behagen that Congress intended to allow "NGBs to exercise monolithic control

93. See id. at 205 (addressing defendant's argument that they are exempt from the reach of federal antitrust laws). The main defendant, NTSSA, is a "national state association" and a member of the USSF, the national governing body for the sport of soccer in the United States. Id. at 201. On appeal, the defendant claims the intent of Congress in enacting the Act was to exclude groups, such as the defendants from federal antitrust violations. See id. at 204. The defendants also cite the holding in Behagen, to indicate that they should be immune from these laws. See id.

94. See id. at 203 (describing vertical structure implemented by Act). The court explained that the Act established a vertical structure to ensure proper organization and efficiency throughout United States amateur sports. See id. At the top of the hierarchy is the USOC, which oversees all United States amateur sports that appear in the Olympics. See id. at 203. The USOC recognizes NGBs for each particular sport. See id. In the present case, the NGB for soccer in the United States is the USSF. See id. at 201. The NGB can recognize state associations to oversee the administration of the particular sport in a particular state. See id. Here the state association, which was recognized by the USSF for the sport of soccer in North Texas, is the NTSSA. See id.

95. Id. at 203 (indicating that NGB has broad range of authority in overseeing and regulating its individual sport); see also 36 U.S.C. § 220522(a)(5) (1998) (equivalent to § 391(b)(4) of the Act before its amendment in 1998). To demonstrate an NGB's autonomy, the court concluded through an analysis of 36 U.S.C. § 220522(a)(5) of the Act (equivalent to § 391(b)(4) of the Act before its amendment in 1998) that the NGB "must independently decide[] and control[] all matters central to governance; not delegate decision making and control of matters central to its governance; and be free from outside restraint." Eleven Line, 213 F.3d at 203 (internal quotations omitted). The court also determined, from § 220525 of the Act (equivalent to § 393 of the Act before the 1998 amendment), that the NGB should promulgate eligibility standards for amateur athletes, create national goals for the sport, and oversee competition. See id. at 203-04.

96. See Eleven Line, 213 F.3d at 204-05 (discussing Behagen and purpose of Act).

97. See id.

98. See id. (indicating that court should follow holding in Behagen and find defendants exempt from antitrust laws); see also Behagen v. Amateur Basketball Ass'n, 884 F.2d 524, 529-30 (10th Cir. 1989) (discussing antitrust immunity under Amateur Sports Act); see generally Silver v. N.Y. Stock Exch., 373 U.S. 341 (1963) (analyzing implied exemptions from federal antitrust laws).
over a particular sport, and the NGB could exercise such control without fear of violating the federal antitrust laws.\textsuperscript{99} The court subsequently determined that the exemption found by the Tenth Circuit was an implied exemption, because the Act did not provide an express exemption.\textsuperscript{100} Although \textit{Behagen} held that an implied antitrust exemption, which is generally disfavored, existed for the NGB, the Fifth Circuit agreed that \textit{Behagen} was properly adjudicated.\textsuperscript{101}

In applying \textit{Behagen}, the Fifth Circuit distinguished \textit{Eleven Line} and held that the defendants were not immune from federal antitrust law through an implied exemption.\textsuperscript{102} In doing so, the court highlighted certain facts that it used to indicate the defendant should not be exempt.\textsuperscript{103} Primarily, the court believed the defendant in \textit{Behagen} occupied a different level in the hierarchy of amateur sports than did the defendants in \textit{Eleven Line}.\textsuperscript{104} The defendant in \textit{Behagen} was an NGB, while the defendants in \textit{Eleven Line} were state and local associations.\textsuperscript{105}

An additional factor the Fifth Circuit identified was the rule itself.\textsuperscript{106} The court noted that the USSF neither issued nor approved the NTSSSA’s unsanctioned play rule, and the NTSSSA was the only organization of its type to enact such a rule.\textsuperscript{107} The rationale the defendants provided for establishing the rule also did not persuade the court.\textsuperscript{108} Therefore, the Fifth Circuit believed that

\textsuperscript{99} \textit{Eleven Line}, 213 F.3d at 204 (interpreting statutory language and legislative history to determine congressional intent).

\textsuperscript{100} See id. (indicating no express provision exists under Act exempting actions taken by defendant from antitrust laws). The court noted that finding an implied exemption is generally not favored. See id. The court further asserted that implied antitrust exemptions should rarely be found. See id. (citing \textit{Silver}, 373 U.S. at 357). The court stressed that finding an implied exemption should only occur when it is “necessary to the operation of another statutory scheme,” and even then, should be used sparingly. Id.

\textsuperscript{101} See id. (agreeing that existence of antitrust exemption was Congress’s intent).

\textsuperscript{102} See id. (explaining that while \textit{Behagen} case was correctly decided, certain facts of this case rendered different analysis and application of rule).

\textsuperscript{103} See id.

\textsuperscript{104} See \textit{Eleven Line}, 213 F.3d at 204. The court focused on this fact as a major factor in distinguishing this case from \textit{Behagen}. See id.

\textsuperscript{105} See id. The court appears to indicate that an exemption would be found had the suit been brought against the USSF and the NGB. See id.

\textsuperscript{106} See id. at 205 (enumerating reason to distinguish \textit{Behagen} from present cases).

\textsuperscript{107} See id. at 204-05.

\textsuperscript{108} See id. The defendants stated that the purpose of establishing the unsanctioned play rule was “(1) to deter fraudulent or mistaken insurance claims on the policy that covers players, (2) to maintain uniform discipline over the players,
such a rule was unnecessary for the administration of amateur soccer.\textsuperscript{109} Since there was no need for the rule and it was not approved by the USSF, the court held that the defendants were not exempt from federal antitrust law.\textsuperscript{110}

The court then discussed situations in which an exemption from antitrust laws could have been found.\textsuperscript{111} The court noted that had the USSF expressly approved the rule, the case would fall under the umbrella of \textit{Behagen}.\textsuperscript{112} Also, had other associations enacted similar eligibility rules, the court would have found the rule more essential to the management of the sport.\textsuperscript{113} Finally, the court implied that it would look more favorably on the rule, if a valid reason had been given by the defendants for its enactment.\textsuperscript{114}

It is interesting to note that the court mentions several times in the end of its analysis that the USSF did not issue or approve the unsanctioned play rule.\textsuperscript{115} The court, however, in recounting the facts in its Background, explicitly states that the "unsanctioned play

and (3) to control the quality and safety of facilities." \textit{Id.} at 203. The court did not feel the reasons articulated provided "a convincing rationale related to [the] management of amateur soccer in the area." \textit{Id.} at 205.

\textsuperscript{109} See \textit{Eleven Line}, 213 F.3d at 205 (finding no valid rationale for enacting rule, which was not approved and added little to administration of amateur soccer).

\textsuperscript{110} See \textit{id.}. The court noted that there could have been scenarios where an implied exemption from antitrust laws could be maintained. See \textit{id.}. For example, had other associations instituted the unsanctioned play rule all over the country, it could be inferred that this rule was necessary for the administration of amateur soccer. See \textit{id.}. Also, had the USSF enacted the rule or approved the rule, it would fall under the implied exemption found in \textit{Behagen}. See \textit{id.}.

\textsuperscript{111} See \textit{Eleven Line}, 213 F.3d at 204-05 (noting if certain facts in case had been different, defendant would have been found exempt from antitrust laws).

\textsuperscript{112} See \textit{id.} (specifying that player eligibility rule exemption established in \textit{Behagen} would be present had USSF approved rule).

\textsuperscript{113} See \textit{id.}. The court attempted to determine the importance and benefit that the unsanctioned play rule would add to amateur soccer. See \textit{id.}. It held that the rule was not necessary for the administration of amateur soccer. See \textit{id.} at 205. In making this determination, the court noted that no other state association had enacted a rule similar to the unsanctioned play rule. See \textit{id.} at 204. The Fifth Circuit also noted, in support of its proposition, this rule was unnecessary because there were few facilities, which refused to become sanctioned facilities. See \textit{id.}. Had there been more upheaval by facilities regarding the rule, then the court indicated this would "threaten [the NTSSA's] effectiveness as a . . . state association." \textit{Id.} at 205.

\textsuperscript{114} See \textit{id.} at 205 (indicating more convincing rationale would give stronger case for exemption). For further discussion on the rationale the defendant communicated to the court, see \textit{supra} note 108.

\textsuperscript{115} See \textit{id.} at 201, 204-05 (revealing explicit contradiction in statement by court). The Fifth Circuit strongly suggested that had the USSF approved the unsanctioned play rule, it would have found the defendants exempt from antitrust laws. See \textit{id.}. The court then repeatedly indicated that "USSF neither issued the NTSSA unsanctioned play rule nor explicitly approved it." \textit{Id.} at 204.
rule . . . was reviewed and approved by the USSF according to USSF’s regulations.”

This discrepancy was never addressed by the court.

After the court determined that the defendants were not exempt from antitrust laws, it analyzed the novel issue of whether the defendants, non-profit organizations, could be found guilty of antitrust violations. The court did not conclusively answer this question because it determined that the plaintiff was not entitled to damages.

V. CRITICAL ANALYSIS

In Eleven Line, the Fifth Circuit incorrectly determined that the Act did not exempt a state soccer association from antitrust laws. First, the Fifth Circuit departed from the persuasive authority established by the Tenth Circuit’s holding in Behagen. Second, the decision did not consider case law that required plaintiffs to exhaust all available administrative remedies before bringing suit.

116. Eleven Line, 213 F.3d at 201 (internal quotations omitted).

117. See id. at 205-06 (determining parents must conspire to produce harm for antitrust to be found). The court determined that the unique aspect of this antitrust suit was that none of the defendants had any economic motive to engage in anticompetitive activity because participation in soccer is not for profit. See id. at 205. Rather, the court concluded that an antitrust claim can only exist when a co-conspirator exists. See id.

The only co-conspirators the court could identify were the parents of the children who participated in the sport. See id. The organizations which manage amateur soccer are one entity under the USSF, therefore, the court held they could not be co-conspirators. See id. (citing Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 769 (1984)). The only other party that could be considered was the children and the court held they were too young to conspire. See id.

118. See id. at 206-09 (reversing plaintiff’s award of damages and indicating that determination of antitrust violation was irrelevant since damages were not awarded). The Fifth Circuit deferred analysis of this novel issue by stating that “[a]lthough this case poses ponderous and unusual antitrust questions, which may not have been fully explored . . . we note them and preserve the issues for a future day.” Id. The court went on to indicate that even if the defendant had been guilty of antitrust violations, because the plaintiff is not entitled damages, “deficiencies of the damage are much easier to explain.” Id.

119. Compare Eleven Line, 213 F.3d at 205 (departing from persuasive authority set in Behagen) with Behagen v. Amateur Basketball Ass’n, 884 F.2d 524, 529-30 (10th Cir. 1989) (holding Act contains implied exemption). Behagen was the first case to consider if the Act provides antitrust immunity. See generally Nelson, supra note 5, at 185.

120. Compare Eleven Line, 213 F.3d at 205 with Behagen, 884 F.2d at 529-30 (differenitating when defendant could be sued in claim for antitrust violations under Act). The Tenth Circuit held that the Act provides an implied exemption from antitrust laws for an NGB, while the Fifth Circuit, in Eleven Line, held no such exemption existed for a state association. See id.

121. See D.C. Tire Roadrunners v. Amateur Softball Ass’n of Am., 1995 WL 464276 (E.D. Pa. 1995) (stating due to failure to exhaust administrative remedies,
Finally, the Fifth Circuit did not review rulings that denied a plaintiff's private right of action to bring suit under the Act for eligibility standards.\textsuperscript{122} In concluding that the NTSSA was not exempt from antitrust laws, the court failed to carry out the legislative intent of the Act.\textsuperscript{123}

A. Distinguishing \textit{Behagen}

The Fifth Circuit, in its holding, contradicted the persuasive authority established by the Tenth Circuit in \textit{Behagen}.\textsuperscript{124} First, the Fifth Circuit properly determined that the Tenth Circuit's holding was valid.\textsuperscript{125} The court then stated that the \textit{Behagen} calculus was not applicable to the case at bar.\textsuperscript{126}

1. \textit{Behagen} Analysis

The Tenth Circuit in \textit{Behagen} correctly determined that the Act provides NGBs with an exemption from antitrust laws.\textsuperscript{127} Since the


122. \textit{See} Oldfield v. Athletic Cong., 779 F.2d 505, 507 (9th Cir. 1985) (holding athlete had no cause of action against amateur athletic organizations that disqualified him from participation in amateur athletics for signing professional contract); Michels v. United States Olympic Comm., 741 F.2d 155, 160 (7th Cir. 1984) (holding weight lifter, who failed drug tests, had no private right of action to challenge drug suspension); DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181, 1185 (D.D.C. 1980) (holding athletes could not bring action challenging USOC's decision not to send team to XXIInd Olympiad).

123. \textit{See generally} Mayes, supra note 2, at 124 (indicating Congress intended Act, not courts, to provide quick and efficient resolution of disputes); Nelson, supra note 5, at 185 (addressing Congress's specific acts that indicate their desire to keep disputes arising under Act out of courtrooms).

124. \textit{See} Eleven Line, 213 F.3d at 204 (noting that \textit{Behagen} was properly decided but facts in present case do not lend themselves to \textit{Behagen} analysis). The court placed weight on the fact that the defendants were on different rungs of the vertical structure established by the Act. \textit{See id.} The fact that no other state association promulgated such a rule also troubled the court. \textit{See id.}

125. \textit{See id.} (concurring with Tenth Circuit that defendants in \textit{Behagen} should have been exempt from antitrust laws).

126. \textit{See id.} (holding fact that defendant was not NGB, distinguished present case from \textit{Behagen}). The NTSSA, defendant in \textit{Eleven Line}, is a state association, while in \textit{Behagen} the ABA (defendant), was a NGB. \textit{See id.} The court noted that this difference was a significant factor setting the two cases apart. \textit{See id.}

127. \textit{See} Behagen v. Amateur Basketball Ass'n, 884 F.2d 524, 527-30 (10th Cir. 1989) (construing congressional intent to find implied exemption from antitrust laws exists under the Act).
Act contains no express exemption, the court analyzed relevant case law to determine the applicable standard for finding an implied exemption.\textsuperscript{128} The court noted, citing \textit{Silver v. New York Stock Exchange}\textsuperscript{129} and \textit{United States v. Borden Co.},\textsuperscript{130} that implied exemptions are strongly disfavored and will be found only if it is the intent of Congress.\textsuperscript{131}

The Tenth Circuit then reviewed language of the Act from §§ 391(a), 391(b)(4), 393(1), 393(7),\textsuperscript{132} and the legislative history of the Act.\textsuperscript{133} The court took particular notice of § 391(b)(4), which states that for an NGB to be eligible it must "demonstrate[ ] that it is autonomous in the governance of its sport, in that it independently determines and controls all matters central to such governance . . . ."\textsuperscript{134} The court also noted that the legislative history of the Act indicates that it was created "to correct the disorganization and the serious factional disputes that seemed to plague amateur sports in the United States."\textsuperscript{135} The court, therefore, properly held that Congress intended to extend an implied antitrust exemption

\textsuperscript{128} See id. (indicating nonexistence of express exemption does not end analysis, courts can also find implied exemptions from antitrust laws). The court continued by stating that implied exemptions are not favored but can still be found by the court. See id.

\textsuperscript{129} 373 U.S. 341 (1963).

\textsuperscript{130} 308 U.S. 188 (1939).

\textsuperscript{131} See \textit{Behagen}, 884 F.2d at 528-30 (interpreting congressional intent is key for chance to find implied exemption); see also \textit{Silver}, 373 U.S. at 357 (stating that repeal of antitrust laws is opposed unless there is clear congressional intent); \textit{Borden}, 308 U.S. at 198 (initiating notions that courts will rarely find implied exemptions); Fried, \textit{supra} note 58, at 57 (reiterating that if Congress does not intend for an exemption, no exemption is present). Implied exemptions will be found when Congress enacts a statute that regulates activities in a particular sector of commerce. See \textit{Hawley}, \textit{supra} note 60, at 1121. An implied exemption can exist in such a case because the regulated entity must perform the duties Congress has dictated even though the performance of these duties may violate antitrust laws. See id. When such a case arises, the courts will evaluate congressional intent and the language of the given statute to determine if Congress sought for such an entity to be exempt from antitrust laws. See \textit{Denger}, \textit{supra} note 61, at 32-33. If the court makes such a determination, they will not displace the design of Congress. See id.

\textsuperscript{132} Current versions at 36 U.S.C. §§ 220521(a), 220522(a)(5), 220523(a)(1), 220523(a)(7) respectively.

\textsuperscript{133} See \textit{Behagen}, 884 F.2d at 529-30. For the full provisions of the sections of the Act and discussion of legislative history, see \textit{supra} notes 40-47 and accompanying text.

\textsuperscript{134} 36 U.S.C. § 391(b)(4) (1978) (current version at 36 U.S.C. § 220522(a)(5) (1998)) (detailing certain eligibility requirements for NGBs indicating that NGB should provide for settlement of disputes that arise under its governance). The Act was established to allow NGBs to act independently to establish and enforce rules with respect to its individual sport. See id.

\textsuperscript{135} H.R Rep. No. 95-1627, at 8 (1978). For further discussion of the factors inducing Congress to enact the Amateur Sports Act, see \textit{supra} note 40-47 and accompanying text.
to all NGBs. The purpose of this exemption was to ensure that NGBs could exercise complete control over their sports and correct the serious deficiencies that were disrupting amateur sports at that time, without apprehension of violating antitrust laws.

2. **Departure from Congressional Intent**

The Fifth Circuit in *Eleven Line* incorrectly held that the defendants were not exempt from federal antitrust laws. The court determined that because the defendants were state and local associations whose eligibility rule was not approved by its NGB, they were not exempt. In *Behagen* on the other hand, the defendant was an NGB who took direct action affecting the plaintiff.

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136. See *Eleven Line*, 213 F.3d at 205 (noting that Tenth Circuit in *Behagen* was correct in concluding exemption was present).

137. See *Behagen*, 884 F.2d at 529-30.

138. Compare *Eleven Line*, 213 F.3d at 204 with *Behagen*, 884 F.2d at 524 (differentiating between finding implied exemption under Amateur Sports Act and finding no exemption). The court in *Eleven Line* cites only to *Behagen* as court authority to determine the question of exemption under the Act. See *Eleven Line*, 213 F.3d at 204.

Many other cases have dealt with issues of bringing suit under the Act, but they do not involve the specific question of antitrust violations. See e.g., *Oldfield v. Athletic Cong.*, 779 F.2d 505, 510 (9th Cir. 1985) (determining if athlete, who signed professional contract, had cause of action against amateur athletic organizations which disqualified him from participation in amateur athletics); *Michels v. United States Olympic Comm.*, 741 F.2d 155, 157 (7th Cir. 1984) (deciding if weight lifter who failed drug tests could bring suit in district court to challenge suspension); *Barnes v. Int'l Amateur Athletic Fed'n*, 862 F. Supp. 1537, 1540 (S.D.W. Va. 1993) (testing positive banned substances led to two year suspension for athlete, in which he brought suit seeking injunctive relief); *Devereaux v. Amateur Softball Ass'n of Am.*, 768 F. Supp. 618, 620 (S.D. Ohio 1991) (action brought by amateur softball player against Association for eligibility rules with regard to national tournaments); *DeFranz v. United States Olympic Comm.*, 492 F. Supp. 1181, 1185 (D.D.C. 1980) (considering action brought by athletes against USOC for its decision not to send team to XXIInd Olympiad); *Dolan v. U.S. Equestrian Team, Inc.*, 257 N.J. Super. 314, 319 (N.J. Super. Ct. App. Div. 1992) (excluding equestrian athlete from competing in world competition led to suit challenging decision).

139. See *Eleven Line*, 213 F.3d at 204-05 (distinguishing *Eleven Line* from *Behagen*). The court reads *Behagen* narrowly, construing at first that an exemption is only available for an NGB or a state association that has acted with the approval of its NGB. See *id.* The court then expands this limited view by indicating that had the rule been more tailored to effect the NTSSA's management of amateur soccer, an exemption could have been found. See *id.*

140. See *Behagen*, 884 F.2d at 526. The defendant, the American Basketball Association, enforced a rule regarding the eligibility of a player who played professionally and wished to regain his amateur status. See *id.* Behagen did not comply with this rule and subsequently was not allowed to compete as an amateur. See *id.* For further discussion of the facts in *Behagen*, see supra notes 97-101 and accompanying text.
The facts with which the Fifth Circuit is troubled are not sufficient to distinguish *Eleven Line* from *Behagen*.141 First, *Behagen* recognized it was Congress’s intent to establish a vertical hierarchy within amateur sports, which placed significant power in the respective NGBs.142 Although an NGB has the authority to recognize state associations to assist the NGB in effectuating its goals, the NGB must, in order to qualify and remain an NGB, continue to be “autonomous in the governance of its sport, in that it independently determines and controls all matters central to its governance, [and] does not delegate such determination and control . . . .”143 Thus, an NGB must have full control over any state associations it recognizes, and the state associations must comply with the rules of the NGB and the Act.144 The NTSSA was established under the guise of the USSF, a NGB, and is bound to the by-laws of the USSF and the language of the Act.145

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141. *See Eleven Line*, 213 F.3d at 204-05 (describing factors leading Fifth Circuit to hold defendants accountable for antitrust violations). For discussion of these factors, see *supra* notes 95-113 and accompanying text.

142. *See Behagen*, 884 F.2d at 527-30 (construing language of Act to effectuate intent of Congress). *See generally Nafziger, supra* note 2, at 171-72 (establishing national goals carried out through USOC and NGB was purpose of Act); Nelson, *supra* note 5, at 176-80 (detailing list of power provided as result of established hierarchy); Newman, *supra* note 42, at 209-13 (recounting that Act provides USOC and NGB broad powers for purpose of governing amateur sports). The Act was established, according to the Senate Reports, after a continual “lack of leadership in the national governing body, disagreements between the amateur sports organization and the national governing body, and an ability of the amateur sports organization to have a say in the policy decision of the national governing body.” S. Rep. No. 95-770, at 3 (1978). In creating the Act, Congress attempted to “correct this disorganization and resolve the serious factional disputes that were its result.” *Id.* As a result of a two-year investigation, Congress enacted the Amateur Sports Act, which established a hierarchical structure headed by the USOC and subsequently recognized NGBs. *See id.*

143. 36 U.S.C. § 391(b)(4) (1978) (current version at 36 U.S.C. § 220522(a)(5) (1998)). It is important to note that while the NGB is to be independent in control and management of its sport, it must comply with all rules and regulations of the USOC. *See 36 U.S.C. § 395(7) (1978).*

144. *Compare* Bylaws of the United States Soccer Federation, Bylaw 212 § 1 (1), (6), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998) (requiring state associations to comply with USSF’s bylaws and policies and Amateur Sports Act) with Articles of Incorporation of the Northern Texas Soccer Association, Article 2.2.4, http://www.ntxsoccer.org/Bylaws/ch1-2.pdf (last visited Oct. 10, 2000) (recognizing superseding authority of USSF and its articles of incorporation and bylaws). Both the bylaws of the USSF and the Articles of Incorporation recognize the USSF’s authority over the NTSSA, and the subservient status the NTSSA has with respect to the USSF. *See id.*

By holding the NTSSA to a different standard than USSF under antitrust laws, however, the court implies that the NTSSA is independent from and not bound by the rules of the USSF. This proposition appears to be contrary to the holding in Behagen and Congress's intent to establish a vertical structure where the authority rests with the USOC and NGBs. Furthering this notion, the court indicated that had the USSF approved of the eligibility standard, the case would fall under the Behagen exception. This statement indicates that there are times when the NTSSA can implement rule changes without having them approved by the USSF, which would be contrary to the language of the Act and the by-laws of the USSF.

Second, the Fifth Circuit departed from congressional intent by indicating that analyzing the merits of the unsanctioned play rule could provide an independent implied exemption. The court stated that, had other state associations enacted a similar eligi-

146. See Eleven Line, 213 F.3d at 204-05 (holding that exemption would be present had USSF acted, but because NTSSA acted alone, exemption is not present). The NTSSA is required to notify the USSF of any change it makes with respect to rules or bylaws. See Bylaws of the United States Soccer Federation, Bylaw 212 § 1(2), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998). Specifically, all state associations must "submit to the Federation any amendment to its charter or articles of incorporation, bylaws, rules and regulations not later than 90 days after adoption of such an amendment," indicating that the two entities act more as a cohesive unit with a similar goal. Id.

147. See Barnes v. Int'l Amateur Athletic Fed'n, 862 F. Supp. 1537, 1543 (S.D.W. Va. 1993) (stating that NGB has sole authority to enact eligibility rules regarding amateur athletes); see also Newman, supra note 43, at 210-11 (indicating Congress instilled power to determine eligibility standards and resolve eligibility dispute regarding amateur athletics).

148. See Eleven Line, 213 F.3d at 204 (addressing fact that rule was implemented by NTSSA, a state association, and was not approved by USSF). The court was concerned that not only had a state association enacted the rule, but its NGB was not even aware of it. See id.

149. See id. The bylaws of the USSF directly state that if a state association makes any changes to its rules, it must notify the USSF. See Bylaws of the United States Soccer Federation, Bylaw 212 § 1 (2), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998). The Fifth Circuit indicates that the NTSSA could enact rules without the express consent of the USSF, albeit it might not render it immune from antitrust violations. See Eleven Line, 213 F.3d at 204. This indication is express in contradiction with the USSF bylaws. See Bylaws of the United States Soccer Federation, Bylaw 212 § 1 (2), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998).

In addition, Congress intended to provide the NGBs with the power to determine eligibility standards for its athletes. See 36 U.S.C. § 395(5) (1978) (current version at 36 U.S.C. § 220523(a) (5) (1998)). Congress expected the NGBs "to exercise monolithic control over its particular amateur sport." Behagen v. Amateur Basketball Ass'n, 884 F.3d 524, 529 (10th Cir. 1989).

150. See Eleven Line, 213 F.3d at 204-05 (noting that alternatives to "player eligibility exemption under Behagen," which would allow for implied exemption from antitrust to be found). The court, after indicating that Eleven Line did not fall
bility rule or the NTSSA received more opposition to the rule from its local facilities, finding an implied exemption would be appropriate. The court also indicated that a stronger presumption for an implied exemption would exist had the defendants provided a more convincing rationale for enacting the rule.

The Act instills an NGB with a great deal of power with respect to the management of its sport, and expects the NGB to regulate and provide uniformity within its sport. If every state association could enact its own rule without notifying its NGB, the vertical structure established by Congress would be bypassed. The same would be true by holding the USSF and the NTSSA to different standards.

under the Behagen exemption, enumerated a list of situations involving implications of the rule that would allow for an exemption to be found. See id.

151. See Eleven Line, 213 F.3d at 204-05 (finding rule served no valuable purpose). Due to the fact that no other association enacted such a rule and other facilities did not object to the rule, the court believed the rule was not essential to the management of the sport. See id. The court continued by indicating that had other facilities refused to become sanctioned facilities, the NTSSA would face a "freeriding problem that would threaten its effectiveness as a national state association." Id. at 205. In this scenario, according to the court, finding an implied exemption would be warranted. See id.

152. See id. The court concluded its analysis of the validity of the rule by stating the defendants did not have a valid reason for its enactment. See id. The court cites the defendant's rationale for enacting the rule as "(1) to deter fraudulent or mistaken insurance claims on the policy that covers players, (2) to maintain uniform discipline over the players, and (3) to control the quality and safety of the facilities." Id. at 205.

153. See 36 U.S.C. §§ 391(b)(4), 392(a)(1), 393(2), 393(5) (current versions at 36 U.S.C. §§ 220522(a)(5), 220524(1), 220523(2), 220523(5) (1998) respectively) (creating broad powers for NGBs to establish national goals and policies for its sport and to enact and enforce all rules and guidelines pertinent to its sport). For further discussion on the power bestowed to national governing bodies, see supra notes 40-49 and accompanying text.

154. See 36 U.S.C. § 393(5) (current version at 36 U.S.C. § 220523(a)(5) (1998)) (instilling NGBs with power to enact eligibility standards for participation in its sport); see also Bylaws of the United States Soccer Federation, Bylaw 212 § 1 (1), (2), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998) (indicating that member state associations are to comply with USSF’s rules and regulations, and any change implemented to rules by state association must be submitted to USSF). Analyzing the validity of a rule established by the NTSSA without the consent or approval of the USSF has the same effect as holding that the USSF is exempt from antitrust laws while the NTSSA is not, merely because one is an NGB and the other is a state association. See 36 U.S.C. § 393(5) (current version at 36 U.S.C. § 220525(a)(5) (1998)). Both infringe on the intent of Congress through the bylaws of the organizations. See id.

This rationale also contradicts precedent established to determine the existence of an implied exemption to antitrust laws.\textsuperscript{156} Courts have held that only when Congress enacts legislation regulating an entity to act in a certain manner, which might violate antitrust laws, can an implied exemption be found.\textsuperscript{157} If the court, as suggested in \textit{Eleven Line}, begins analyzing every individual rule enacted to determine if an exemption exists, the court would infringe on long standing precedent requiring implied exemptions only when a “clear repugnancy exists between antitrust laws and the regulatory system.”\textsuperscript{158}

Finally, it is important to observe that the court expressly contradicts itself in \textit{Eleven Line} with respect to the USSF’s lack of approval or knowledge of the unsanctioned play rule.\textsuperscript{159} In describing the facts of the case, the court stated that the USSF approved the unsanctioned play rule.\textsuperscript{160} Then later, as part of its analysis, the court continually stated that the USSF never approved of, or was even aware of the rule.\textsuperscript{161} This inconsistency is significant

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  \item Oct. 10, 2000) (recognizing superseding authority of USSF and its articles of incorporation and bylaws).
  \item 156. See United States v. Nat’l Ass’n. of Sec. Dealers, 422 U.S. 694, 719-20 (1974) (holding that implied exemptions are not favored and exist only when there is clear discord between antitrust laws and regulatory system established by Congress); see also Gordon v. N.Y. Stock Exch., Inc., 422 U.S. 659, 682-91 (1974) (holding casual repeals of antitrust laws are not allowed, requiring dissonance between that which is regulated and antitrust laws); Silver v. N.Y. Stock Exch., 373 U.S. 341, 357 (1963) (repealing of antitrust laws are, as a “cardinal principle,” are not favored); United States v. Borden, 308 U.S. 188, 198 (1939) (stating “repeals [of antitrust laws] by implication are not favored”); Behagen, 884 F.2d at 528 (reiterating view that exemption through implication is not preferred). See generally Fried, \textit{supra} note 58, at 57 (detailing that Securities and Exchange Act were not exempt from antitrust laws since Congress did not provide such exemption).
  \item 157. See \textit{Silver}, 373 U.S. at 357 (viewing self regulating goals of the Securities and Exchange Act did not preempt application of antitrust laws); United States v. Nat’l Ass’n. of Sec. Dealers, 422 U.S. 694, 718 (1974) (finding implied exemption is only valid when “a convincing showing of clear repugnancy between the antitrust laws and the regulatory system”); Finnegan v. Campeau Corp., 915 F.2d 824 (2d Cir. 1990) (indicating antitrust laws are not enforced when they come into conflict with those regulatory scheme permits).
  \item 159. See \textit{Eleven Line} v. N. Tex. State Soccer Ass’n, 213 F.3d 198, 201, 204-05 (5th Cir. 2000) (expressing that USSF both approved and did not approve of unsanctioned play rule).
  \item 160. See \textit{id.} at 201.
  \item 161. See \textit{id.} at 204-05. For specific language of the case stating that the USSF neither explicitly approved nor had knowledge of the unsanctioned play rule, see \textit{supra} note 115-16 and accompanying text.
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because the court appears to imply that it would give more credence to upholding the rule had the rule been approved.  

B. Exhaust Remedies

The court in Eleven Line did not discuss the remedies available to the plaintiff, or whether the plaintiff attempted to exercise these remedies. Courts, in dealing with suits over eligibility rules, have analyzed the remedies provided to the plaintiff by the NGB and determined whether the plaintiff attempted to exercise these remedies. Courts dismiss these cases when the appropriate remedy was available under the Act, but was not utilized by the plaintiff. Although these cases primarily involve athletes bringing suit for relief from eligibility requirements, such an analysis is relevant in a case where an individual entrepreneur is seeking relief with respect to an eligibility rule.

162. See id.

163. See generally Eleven Line, 213 F.3d at 204-05. The court in Eleven Line only analyzed whether an implied exemption existed from antitrust suit. See id.


166. See 36 U.S.C. §§ 374(3), (4), (8), (9) (1978) (current versions at 36 U.S.C. §§ 220503(3), (4), (8), (9) (1998)) (stating that USOC shall have exclusive jurisdiction over amateur sports and provide for efficient remedies for disputes that may arise). For full provision of these sections, see supra notes 44-46 and accompanying text.

The language of the Act requires the USOC "to provide for the swift resolution for conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations and protect the opportunity of any amateur athlete, coach or trainer, manager, administrator or official to participate in amateur athletic competition." 36 U.S.C. § 374(8) (1978) (current version at 36 U.S.C. § 220503(8) (1998)). While the statute enumerates a list of those in whom the USOC provides a swift resolution for disputes, both congressional intent in establishing the Act and legislative history, indicate that this list is not exclusive. See
The USSF provides remedies for those involved in amateur sports by requiring its state associations to "provide for an equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete."\textsuperscript{167} The NTSSA complied with this requirement in its articles of incorporation.\textsuperscript{168} The articles of incorporation specifically provide the availability of "equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete."\textsuperscript{169}

Congressional intent indicates that an NGB should provide for swift and efficient resolutions of disputes.\textsuperscript{170} In the present case, the NTSSSA provided such a remedy.\textsuperscript{171} \textit{Eleven Line} is not the typical case of an athlete bringing suit against an eligibility rule.\textsuperscript{172} Nevertheless, congressional intent requiring swift resolution of disputes dictates that this case should fall under the prior case law requiring

Newman, supra note 48, at 210-12. The purpose for enacting the Act was to correct the disputes among groups with amateur sports, provide the USOC and NGBs with broad power to enact rules and provide for efficient solutions to disputes and exercise exclusive jurisdiction over amateur sports. \textit{See id.} Therefore, it appears that the USOC and NGB are to provide remedies to a broad group of individuals and entities that are engaged in amateur sports. \textit{See} H.R. Rep. No. 95-1627, at 8 (1978).


169. \textit{Id.}

170. \textit{See} Mayes, supra note 2, at 124-25 (discussing concern of drafters in creating Act); Nelson, supra note 5, at 179-80 (stating that Act provides "comprehensive scheme" for regulation of disputes that arise in amateur athletics); \textit{see also} H.R. Rep. No. 95-1627, at 8 (1978) (providing tool to resolve conflicts and disputes was primary goal of the Act). The drafters of the Act were troubled with the "retarding and inhibiting effects that unresolved disputes [had] on America's Olympic efforts." Mayes, supra note 2, at 124. For further discussion of the concerns of Congress leading to the creation of the Act, see supra notes 40-47 and accompanying text.


the plaintiff to exhaust his remedies.\textsuperscript{173} By failing to address this issue, the Fifth Circuit ignored that the plaintiff did not attempt to appeal the rule.\textsuperscript{174} Since the plaintiff did not exhaust the remedies provided to him, the court should have dismissed the case.\textsuperscript{175}

C. Private Right of Action

Some courts have held that the Act provides no private right of action for athletes bringing suit.\textsuperscript{176} These courts concluded that the language of the Act and congressional intent indicate that the Act possesses neither an express or implied right of action.\textsuperscript{177} While these cases primarily deal with the rights of athletes, congressional intent indicates that a broader application of this rule should be implemented.\textsuperscript{178} Given that the purpose of the Act was to establish uniformity and correct the deficiencies of the administration of amateur sports, it appears that Congress did not intend to allow every sole vender to sue because he chose not to comply with the

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\item[173] Owners of stadiums participate in amateur sports, albeit in a different manner than athletes.
\item[174] See Eleven Line, 213 F.3d at 202-03 (indicating that plaintiff brought suit directly to district court). The plaintiff in Eleven Line did not attempt to exercise the options provided by the NTSSA and the USOC. See id. The plaintiff immediately brought suit in the district court. See id.
\item[175] See id. For further discussion of why a court should dismiss cases where the plaintiff does not exercise its remedies, see supra notes 65-79 and accompanying text.
\item[176] See Oldfield v. Athletic Cong., 779 F.2d 505, 508 (9th Cir. 1985) (holding that Olympic athlete did not have cause of action against Athletic Congress); Michels v. United States Olympic Comm., 741 F.2d 155, 156 (7th Cir. 1984) (ruling weight lifter had no standing to appeal suspension from USOC); DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181-83 (D.D.C. 1980) (holding that USOC could choose not to send team to Olympics for reasons not relating to given sport).
\item[177] See Oldfield, 779 F.2d at 507 (indicating that Congress excluded provision that would have allowed athletes to bring suits directly to the district court); Michels, 741 F.2d at 157 (settling disputes between NGBs and athletes was purpose of Act); DeFrantz, 492 F. Supp. at 1181 (D.D.C. 1980) (finding that USOC and NGBs are to have exclusive jurisdiction over all matters relating to amateur sports).
\item[178] Congress intended to keep disputes involving amateur athletics out of the courts. See Nelson, supra note 5, at 182. Courts traditionally dismiss suits brought to them involving amateur athletics; see also Nafziger, supra note 10, at 509; Newman, supra note 43, at 212-13. Congress removed a final provision from the Act, which would have expressly enabled athletes to bring suit in district courts, thereby clearly indicating their intent to disallow a private right of action. See Nelson, supra note 5, at 182; Newman, supra note 42, at 211-12.
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rules provided.\textsuperscript{179} Therefore, the court should have found that the NTSSA was immune from suit by the plaintiff.

VI. IMPACT

In \textit{Eleven Line}, the Fifth Circuit decided that the Amateur Sports Act did not provide the NTSSA and its member organizations with an implied exemption from antitrust laws.\textsuperscript{180} The plaintiff was subsequently allowed to sue state and local organizations for the enactment of an eligibility standard.\textsuperscript{181} This holding raises problematic issues that could have a negative impact on the future of amateur sports.

In passing the Act, Congress intended to bring structure to the disorganization that encompassed amateur sports.\textsuperscript{182} The hierarchical structure was established to create uniformity throughout each sport, which a given NGB would oversee.\textsuperscript{183} Congress intended this structure to be self-sufficient in establishing eligibility rules and providing remedies for disputes that could arise with respect to each sport. It was clear that courts were not meant to be involved in such disputes.\textsuperscript{184}

The Fifth Circuit's finding that the defendants were not protected from suit under the Act, will cause amateur sports as a whole to suffer. Such a finding will weaken the power of NGBs and could lead to the factional disputes and disorganization that led Congress to pass the Act in the first place.\textsuperscript{185} The weakening of the NGB's power would result, because the aggregate of the state associations allows the NGB to function in an organized and efficient manner.\textsuperscript{186} While a state association is given some leeway in managing

\textsuperscript{179} For further discussion of the events, which required Congress to review the sorrowful state of amateur athletics and exact legislation to correct its deficiencies, see \textit{supra} notes 40-47 and accompanying text.

\textsuperscript{180} See \textit{Eleven Line}, 213 F.3d at 204-05. For a discussion of the analysis of antitrust exemptions, see \textit{supra} notes 54-63 and accompanying text.

\textsuperscript{181} See \textit{id}.

\textsuperscript{182} See H.R. REP. NO. 95-1627, at 8 (1978) (indicating Congress's purpose in enacting Act). For further discussion of purpose of creating the Act, see \textit{supra} notes 39-42 and accompanying text.

\textsuperscript{183} See Nelson, \textit{supra} note 5, at 177-83 (discussing power distributed to the NGB).

\textsuperscript{184} See H.R. REP. NO. 95-1627, at 9 (1978) (providing that NGBs are required to have certain responsibilities to amateur athletes).

\textsuperscript{185} For a discussion of the problem that faced amateur athletics before the Act was passed, see \textit{supra} notes 40-41 and accompanying text.

\textsuperscript{186} See H.R. REP. NO. 95-1627, at 12 (1978). The legislative history states that "[I]t is intended that this act will create a vertical structure governing each sport . . . which will include . . . all the major interests in that sport from the 'grassroots' organizations to the national governing bodies." \textit{Id}.
its particular sports in its state, decisions with respect to changes or creation of rules must pass through the NGB.\footnote{Konstantinos Yiannopoulos} Therefore, if a court allows a state association to promulgate its own rules, the authority of an NGB to oversee its state associations and determine what rules are suitable for its particular sport would be undercut.\footnote{Konstantinos Yiannopoulos} It would also allow any outside entrepreneur to try to alter eligibility rules, enacted for the benefit of the athletes, to suit that entrepreneur’s economic needs.\footnote{Konstantinos Yiannopoulos}

If these actions occur, the nation could be faced with the troubles that plagued it before the Act was created.\footnote{Konstantinos Yiannopoulos} The true victims in such a case would be the future Michael Jordans, Joe Montanas and Mark McGwires of the country. For they would be forced to deal with the bureaucracy, factionalism and inefficiency that comes with disjoint management, instead of focusing their energy and love of the game to soar above their potential and reach their dreams of becoming a legend.

Konstantinos Yiannopoulos

\footnote{See Bylaws of the United States Soccer Federation, Bylaw 212 § 1 (1), (6), http://www.us-soccer.com/members/1918_fin.pdf (Aug. 22, 1998) (establishing superceding authority of USSF over state associations).}

\footnote{See id.}

\footnote{See Eleven Line, 213 F.3d at 200-01. The plaintiff had the opportunity to become a sanctioned facility, but for financial reasons decided against it. See id.}

\footnote{For a discussion of the troubles that plagued amateur sports, see supra notes 40-41 and accompanying text.}