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FLIPPING AND SPINNING INTO LABOR REGULATIONS: ANALYZING THE NEED AND MECHANISMS FOR PROTECTING ELITE CHILD GYMNASTS AND FIGURE SKATERS

KRISTIN A. HOFFMAN*

I. INTRODUCTION

At the 2012 Summer Olympics, sixteen-year-old Gabrielle Douglas captivated the world as she won the individual all-around gold medal in women's gymnastics.¹ A decade earlier, sixteen-year-old Sarah Hughes won the gold medal in the women's figure skating long program at the 2002 Winter Olympics.² In 1998, fifteen-year-old Tara Lipinski became the youngest Olympic figure skating gold medalist.³ Dominique Moceanu was only fourteen when she contributed to the USA Gymnastics⁴ women's team's gold medal at the 1996 Summer Olympics.⁵ Further, two of the three 2014 United States (U.S.) Figure

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1. Chris Greenberg, *Gabby Douglas Wins Gold in Women's Gymnastics Individual All-Around*, HUFFINGTON POST, (Aug. 2, 2012), http://www.huffingtonpost.com/2012/08/02/gabby-douglas-gold-gymnastics-olympics_n_1733692.html.

2. Mark Starr, *Sarah-Dipity!*, NEWSWEEK, Mar. 4, 2002, at 34.

3. Nick Zaccardi, *Tara Lipinski to Judge Miss Universe*, OLYMPICTALK (Nov. 4, 2013), <http://olympictalk.nbcsports.com/2013/11/04/tara-lipinski-miss-universe-judge/>.

4. The United States' national governing body for gymnastics. See *About USA Gymnastics*, USA GYMNASTICS, https://usagym.org/pages/aboutus/pages/about_usag.html (last visited May 7, 2015).

5. Kevin Cook & Richard O'Brien, *Whose Money Is It, Anyway?*, SPORTS ILLUSTRATED, Nov. 2, 1998, at 40.

Skating⁶ Olympic women's team⁷ members were teenagers: Gracie Gold, eighteen years old, and Polina Edmunds, fifteen years old.⁸

The USA Gymnastics and U.S. Figure Skating women's teams continuously select young, teenage girls for their Olympic teams.⁹ More importantly, these elite child athletes work like traditional, adult professional athletes but are not protected in the same manner.¹⁰ Their training and hours spent in the gym or rink are neither regulated nor monitored by their sports' national governing bodies (NGBs),¹¹ and they are constantly dealing with "hazardous" and dangerous conditions¹² as they push their bodies to their limits.

This Comment argues that elite child athletes should be protected by federal law, the rules of their respective sports' NGBs, or state law, arguing strongly for protection under federal law. Section II outlines the history and background

6. The United States' national governing body for figure skating. See *About Us*, US FIGURE SKATING, <http://www.usfsa.org/About.asp> (last visited May 7, 2015).

7. See Press Release, U.S. Figure Skating, *U.S. Figure Skating Announces 2014 U.S. Olympic Figure Skating Team* (Jan. 12, 2014), <http://www.usfsa.org/Story.asp?id=49828&type=media>.

8. See *Gracie Gold*, ICENETWORK, http://web.icenetwork.com/skaters/profile/gracie_gold (last visited May 7, 2015); *Polina Edmunds*, ICENETWORK, http://web.icenetwork.com/skaters/profile/polina_edmunds (last visited May 7, 2015).

9. The U.S. Olympic women's gymnastics team is generally younger than the U.S. Olympic women's figure skating singles team, and gymnasts appear to suffer more from physical and mental issues (based upon what has been reported); therefore, this Comment will focus on elite child gymnasts. Also, men's bodies develop later in life, as opposed to women's bodies, which is why the men's Olympic teams tend to be comprised of older athletes as opposed to the women's teams. Rachel Propson, Note, *A Call for Statutory Regulation of Elite Child Athletes*, 41 WAYNE L. REV. 1773, 1774 n.13 (1995); see Erica Siegel, Note, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427, 456 (2000). The Author recognizes that these previously cited law review comments analyzed this issue within the last two decades; however, those authors conclude differently and analyze the issue differently. Importantly, society and the athletic culture are very different now, especially in regards to collegiate athletics, and the Author reflects this in this Comment. Overall, the maintenance of the status quo of not protecting these young athletes proves that literature and ideas must still be produced to encourage action.

10. Propson, *supra* note 9, at 1782–85; see NFL COLLECTIVE BARGAINING AGREEMENT art. 24 § 1(d) (2011) (including practice hour limitations); Anne from Gymnastike, *Coach Mary Lee Tracy on a Typical Training Week for Her Elite Gymnasts and Prepping for Visa Championships*, GYMNASTIKE (June 22, 2011), <http://www.gymnastike.org/coverage/238670-Cincinnati-Gymnastics-Academy/video/497832-Coach-Mary-Lee-Tracy-on-a-Typical-Training-Week-for-her-Elite-Gymnasts-and-Prepping-for-Visa-Championships#.Uv7JYPldXng> (stating that her elite gymnasts practice a minimum of thirty-three hours a week, year-round).

11. Propson, *supra* note 9, at 1774, 1785–1786, 1800 (citing RULES AND POLICIES FROM U.S.A. GYMNASTICS (1993); THE OFFICIAL UNITED STATE FIGURE SKATING ASSOCIATION RULEBOOK (1991); Telephone Interview by Rachel Propson with Ramonna Robinson, Public Relations Coordinator, USA Gymnastics (Jan. 27, 1995)).

12. See Fair Labor Standards Act of 1938, 29 U.S.C. § 203(l) (2012).

of the issues that young gymnasts and figure skaters endure while training at an elite level. Section III discusses the Fair Labor Standards Act (FLSA) and select state statutes that address child labor in the entertainment industry. Section IV addresses the suggested proposals for regulating the labor of elite child athletes. Lastly, this Comment concludes that more comprehensive regulation and protection for these child athletes will most likely be successful under either the FLSA or the respective NGBs' regulations.

II. HISTORY AND BACKGROUND

Children's work conditions and limitations were first regulated through the FLSA.¹³ The FLSA was enacted "[t]o provide for the establishment of fair labor standards in employment in and affecting interstate commerce, and for other purposes."¹⁴ Importantly, the FLSA created standards for "[o]ppressive child labor"¹⁵ and includes a specific section for "[c]hild labor provisions."¹⁶ While some exemptions to the FLSA exist, including an exemption for children in the entertainment industry,¹⁷ elite child athletes are not recognized in any of the exemptions within the FLSA.¹⁸

At fourteen years old, Dominique Moceanu was the youngest member of the gold-medal winning U.S. women's gymnastics team at the 1996 Olympics.¹⁹ Moceanu later sought emancipation from her parents, seeking full power to control her money, because her parents had been depleting her assets since the 1996 Games.²⁰ At seventeen, Moceanu sued her parents, claiming that she "ha[d]

13. *See id.* §§ 201–219; Propson, *supra* note 9, at 1788 (referencing 29 U.S.C. §212(c) (1988)).

14. U.S. WAGE AND HOUR DIV., WH PUBLICATION 1318, THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED 1 (2011).

15. *Id.* § 203(l); Propson, *supra* note 9, at 1788 n.85 (quoting 29 U.S.C. § 203(1)) (1988)).

16. 29 U.S.C. § 212.

17. *Id.* § 213(c)(3).

18. *See id.* § 213.

19. Cook & O'Brien, *supra* note 5; *see also* Siegel, *supra* note 9, at 427.

20. Cook & O'Brien, *supra* note 5; *see* Siegel, *supra* note 9, at 427, 439–40 (citing *Moceanu Breaks from Her Parents' Jurisprudence: Olympic Gymnast, 17, Petitions Court for Adulthood to Gain Control of Her Earnings*, L.A. TIMES, Oct. 22, 1998; Terri Langford, *Olympic Gymnast Sues Parents to Be Legal Adult*, NEW ORLEANS TIMES-PICAYUNE, Oct. 22, 1998, at A14; Paul Daugherty, *Check Your Child at the Door*, CINCINNATI ENQUIRER, Oct. 23, 1998, at D01; *Gymnast Split with Parents Difficult*, ARIZ. REPUBLIC, Oct. 24, 1998, at C2; Editorial, *Teen's Plea for Freedom Shows Pressures on Sports Prodigies*, SUN-SENTINEL FT. LAUDERDALE, Oct. 26, 1998, at 8A; Karen M. Thomas, *Divorcing Mom and Dad: Separation Anxiety Takes on a New Meaning When Kids Move Legally to Break Free from Their Folks*, DALL. MORNING NEWS, Nov. 4, 1998; *Balance of Power: Dominique Moceanu Talks About Wanting Emancipation from Her Parents* (NBC television broadcast Oct. 26, 1998)).

reason to believe that her father ha[d] mismanaged millions of dollars she earned from endorsements, exhibition tours and other work, including an autobiography. . . ,” and that “[a] trust fund established in her name ‘is, for all practical purposes, broke.’”²¹ Moceanu and her parents eventually settled and agreed that she would receive legal and financial independence.²²

Elite child athletes continue to experience economic threats, such as those Moceanu endured, but they also experience other serious issues: namely, physical, mental, and social harms.²³ The proof is in the history of gymnastics and figure skating; many of these children often work under extreme conditions and are not protected from intense labor.

A. *Corruption of the Body*

In an almost whistle-blowing manner, a book written in the 1990s analyzed the severe physical issues plaguing young elite female gymnasts and figure skaters.²⁴ Young athletes are belittled by their coaches and sometimes even by officials,²⁵ who try to convince the girls to find a way to suppress their pain to

21. Cook & O’Brien, *supra* note 5. In November 1997, Moceanu met with a Dallas lawyer to discuss setting up a trust fund for her recent \$173,000 check that she received from her gymnastics exhibition tour, but upon hearing of this plan, Moceanu’s father drove to Dallas and took the check and his daughter back to Houston. Jodie Morse & Deborah Fowler, *Vaulting into Discord*, TIME, Nov. 2, 1998, at 80. Moceanu stated in her complaint that her father had been using and wasting her money since she turned professional at ten years old. *Olympic Gymnast, 17, Sues to be Free of Her Parents*, CHI. TRIB. (Oct. 21, 1998), http://articles.chicagotribune.com/1998-10-21/news/9810220149_1_dominique-moceanu-dumitru-moceanu-parents; *see also* Siegel, *supra* note 9, at 427, 440 (citing *Balance of Power: Dominique Moceanu Talks About Wanting Emancipation from Her Parents*, *supra* note 20; *Gymnast Split with Parents Difficult*, ARIZ. REPUBLIC, Oct. 24, 1998, at C2; Langford, *supra* note 20, at A14; *Moceanu Breaks from Her Parents’ Jurisprudence: Olympic Gymnast, 17, Petitions Court for Adulthood to Gain Control of Her Earnings*, *supra* note 20; *Teen’s Plea for Freedom Shows Pressures on Sports Prodigies*, *supra* note 20, at 8A; Thomas, *supra* note 20).

22. *Moceanu, Parents Settle*, CHI. TRIB. (Oct. 28, 1998), http://articles.chicagotribune.com/1998-10-28/sports/9810280253_1_dominique-moceanu-financial-independence-parents. In addition to Moceanu’s emancipation, Mary Lou Retton, the first American female gymnast to win an Olympic gold all-around medal, and Shannon Miller, a two-time Olympic Women’s Gymnastics team member in the 1990s, were both granted emancipation from their parents based on arguments over the girls’ earnings. PAULO DAVID, HUMAN RIGHTS IN YOUTH SPORT: A CRITICAL REVIEW OF CHILDREN’S RIGHTS IN COMPETITIVE SPORTS 139 (Mike McNamee & Jim Parry eds., 2005).

23. *See* Propson, *supra* note 9, at 1776.

24. *Id.* at 1774 n.13; *see* JOAN RYAN, LITTLE GIRLS IN PRETTY BOXES: THE MAKING AND BREAKING OF ELITE GYMNASTS AND FIGURE SKATERS 23 (1995).

25. *See* Propson, *supra* note 9, at 1787–88 (citations omitted). The day before America’s top gymnast Brandy Johnson left for the 1989 World Championships, she injured her foot, which affected her performance at the practices leading up to the Championships. RYAN, *supra* note 24, at 38–39. The officials select the order that the gymnasts will perform based on their performances at the practices, and the gymnasts want to perform last—the most coveted spot. *Id.* Johnson was in so much pain that

practice and compete.²⁶ Ibuprofen is routinely taken, with some girls taking six to eight pills daily during workouts,²⁷ and some girls even refuse casts for injuries,²⁸ all because “[i]t [is] just like, either you are paralyzed and you can’t move, or you train.”²⁹ While abusing ibuprofen and refusing casts are extreme examples of the culture of elite gymnastics, young gymnasts have suffered from even worse.

Russian gymnast Elena Moukina became a paraplegic after attempting a tumbling trick that she knew she was unprepared to complete, but she refrained from saying anything to her coach.³⁰ American gymnast Julissa Gomez also became a paraplegic after attempting a similar tumbling trick.³¹ After her accident, Moukina stated in an interview that “[i]t is . . . eas[y] to work with small, mute creatures who look at a coach as an idol and perform everything without ever talking back.”³² While children should certainly respect authority, this obedience and constant training should not rise to the detriment of children’s health.³³ In gymnastics, children are more than willing to push their bodies beyond their limits.³⁴ In some cases, this mentality has led to severe disabilities and, in other cases, it has stunted the development of these young girls’ bodies.³⁵

Elite child athletes generally experience health problems unlike average children.³⁶ An Oregon State University study surveyed college gymnasts and

she did not want to compete, but the officials told her that she had to perform. *Id.* at 39.

26. RYAN, *supra* note 24, at 23, 35–36, 40; Propson, *supra* note 9, at 1776.

27. Elizabeth Traylor, an eleven-year-old gymnast training with the renowned coach Béla Károlyi in Houston, Texas, routinely took this amount of Advil, as well as sprayed her knees with an anesthetic to dull the pain. RYAN, *supra* note 24, at 40.

28. Betty Okino, a member of the 1992 American gymnastics team, refused casts, competed with multiple stress fractures, and even had a tendon reattached to her knee to compete. *Id.* at 35–36; *see also* Siegel, *supra* note 9, at 458.

29. RYAN, *supra* note 24, at 35 (quoting Okino about training as an elite gymnast).

30. *Id.* at 24.

31. *Id.* at 49–50. Gomez was performing a sequence on the vault when she suffered her life-altering injury. *Id.* at 49.

32. *Id.* at 24.

33. *See generally* John P. DiFiori et al., *Overuse Injuries and Burnout in Youth Sports: A Position Statement from the American Medical Society for Sports Medicine*, 24 *CLINICAL J. SPORTS MED.* 3, 16 (2014); Kevin Young & Philip White, *Sport, Physical Danger, and Injury: The Experiences of Elite Women Athletes*, 19 *J. SPORT & SOC. ISSUES* 45, 51–53 (1995).

34. *See generally* AMERICAN ORTHOPEDIC SOCIETY FOR SPORTS MEDICINE, *SPORTS TIPS: GYMNASTICS INJURIES* (2010), available at http://www.stopsportsinjuries.org/files/pdf/AOSSM_Gymnastics.pdf; *Youth Gymnastics Injuries*, UMPG, <http://www.upmc.com/services/sports-medicine/my-sport/pages/gymnastics.aspx> (last visited May 7, 2015).

35. *See infra* notes 36–38.

36. Jane E. Brody, *Personal Health; Effects of Exercise on Menstruation*, *N.Y. TIMES* (Sept. 1,

revealed that college gymnasts begin menstruating at sixteen, while girls generally begin menstruating at thirteen.³⁷ Sports that focus on the leanness of their athletes (e.g., gymnastics and figure skating) “are more likely to have a high percentage of [their] athletes” experience delayed menstruation or even menstrual disorders.³⁸ Corruption of the body has, thus, taken place.

B. Corruption of the Soul

In sports where the athletes’ clothing is limited, it should be no surprise that the athletes who participate worry about their weight and how they look in their leotards and costumes, and that this self-consciousness may gradually lead to eating disorders.³⁹ The uniforms, the unique skill sets required to compete, and the girls’ race against time to become successful before their bodies fully develop can lead to unhealthy eating habits and intense training regimes.⁴⁰ The cultural phenomenon to be thin has not only increased the percentage of eating disorders among the general female population, but it also affects female athletes more frequently than their non-athlete female counterparts.⁴¹

Anorexia Nervosa (Anorexia) is an eating disorder that results in a person taking measures to modify, distort, and control her appetite to the point that, when severe enough, her appetite may be severely diminished.⁴² Persons with *Anorexia* starve themselves, which can eventually lead to death.⁴³ *Bulimia Nervosa (Bulimia)* is an eating disorder that occurs when a person practices binge

1982), <http://www.nytimes.com/1982/09/01/garden/personal-health-effects-of-exercise-on-menstruation.html?pagewanted=1> (explaining the effect of vigorous athletic training on girls’ menstruation cycles).

37. RYAN, *supra* note 24, at 44.

38. CONSTANCE M. LEBRUN, MENSTRUAL CYCLE DYSFUNCTION 2, (n.d.), *available at*, <http://www.acsm.org/docs/current-comments/menstrualcycledysfunction.pdf>; *see also* Brody, *supra* note 36 (explaining that figure skaters and gymnasts often experience exercise-induced delayed menstruation or menstrual irregularity due to the nature of their vigorous training).

39. Propson, *supra* note 9, at 1773, 1776–82; *see also* Margaret Renkl, *The Scary Trend of Tweens with Anorexia*, CNN (2011), <http://www.cnn.com/2011/HEALTH/08/08/tweens.anorexia.parenting/> (last visited May 7, 2015). *See generally* Jorunn Sundgot-Borgen, *Risk and Trigger Factors for the Development of Eating Disorders in Female Elite Athletes*, 26 MED. SCI. SPORTS EXERCISE 414, 414 (1994), *available at* http://general.utpb.edu/fac/eldridge_j/kine6362/Readings/Unit5_2.pdf.

40. *See generally infra* note 47.

41. *See* Virginia G. Overdorf, *Eating Related Problems in Female Athletes*, in *EATING DISORDERS AMONG ATHLETES: THEORIES, ISSUES AND RESEARCH*, 67, 69 (David R. Black ed., 1991); *see also* Propson, *supra* note 9, at 1776–77, 1780.

42. Barton J. Blinder & Karin H. Chao, *Eating Disorders: A Historical Perspective*, in *UNDERSTANDING EATING DISORDERS: ANOREXIA NERVOSA, BULIMIA NERVOSA, AND OBESITY* 3, 3 (LeeAnn Alexander-Mott & D. Barry Lumsden eds., 1994).

43. *Id.*

eating—uncontrollable and repetitive overeating—followed by purging of any consumed food.⁴⁴ Persons with *Bulimia* typically purge through self-induced vomiting or the use of laxatives to remove any consumed food.⁴⁵

Both *Anorexia* and *Bulimia* typically affect females in their pre-teen, teen-age, and young adult years.⁴⁶ These eating disorders are more prevalent among female athletes involved in sports in which light weight or small body size is required for athletic success, and when aesthetic ideals of beauty and thinness apply more than in other female sports where bigger and stronger athletes are desired for athletic success.⁴⁷

As previously mentioned, elite athletes aim to please their coaches and are often afraid to speak up if they are injured or uncomfortable about practicing a skill.⁴⁸ These mentalities, combined with a pressure to look good in skimpy leotards and costumes, create an atmosphere for eating disorders.⁴⁹ One gymnast dying of an eating disorder stated that “[i]n gymnastics, they’re always telling you, “Don’t eat that, don’t eat that.” Pretty soon you become so paranoid that everyone is watching what you eat, and you feel everything is bad. You felt like you were really, really doing something wrong if you ate.”⁵⁰ The stories surrounding many of the gymnasts included in Ryan’s book are graphic and

44. *Id.* at 16.

45. *Id.*

46. *See id.* at 3, 16.

47. Propson, *supra* note 9, at 1777, 1781; *see also* Barbara Bickford, *The Legal Duty of a College Athletics Department to Athletes with Eating Disorders: A Risk Management Perspective*, 10 MARQ. SPORTS L. J. 87, 87–88 (1999) (citing Andrew A. Skolnick, “Female Athlete Triad” Risk for Women, 270 JAMA 921 (1993); Sharon R. Guthrie, *Prevalence of Eating Disorders Among Intercollegiate Athletes: Contributing Factors and Preventative Measures*, in EATING DISORDERS AMONG ATHLETES: THEORIES, ISSUES AND RESEARCH, 43, 55 (David R. Black ed., 1991); Lionel W. Rosen & David O. Hough, *Pathogenic Weight Control Behaviors of Female College Gymnasts*, 16 PHYSICIAN & SPORTSMED. 141, 146 (Sept. 1988); Jack L. Katz, *Long-Distance Running, Anorexia Nervosa and Bulimia: A Report of Two Cases*, 27 COMPREHENSIVE PSYCHIATRY 74, 78 (1986); Suzanne Nelson Steen & Shortie McKinney, *Nutrition Assessment of College Wrestlers*, 14 PHYSICIAN & SPORTSMED. 100, 116 (Nov. 1986); James A. Blumenthal et al., *Is Running an Analogue of Anorexia Nervosa?*, 252 JAMA 520, 523 (1984).

48. *See supra* notes 27–29; Propson, *supra* note 9, at 1776, 1781.

49. Propson, *supra* note 9, at 1777, 1781; Lori Van Lonkhuyzen, *Female Gymnasts Prone to Eating Disorders*, BALT. SUN (July 29, 1994), http://articles.baltimoresun.com/1994-07-29/sports/1994210028_1_eating-disorders-anorexia-persons-with-eating.

50. RYAN, *supra* note 24, at 93. Christy Henrich died once her weight dropped below fifty pounds and her organs could no longer function. *Id.* at 94; Propson, *supra* note 9, at 1773 (citing Eve Ellis, *Girls Dying for Success*, NEWSDAY, Aug. 7, 1994, at 18); *see also* Merrell Noden, *Dying to Win: For Many Women Athletes, the Toughest Foe is Anorexia; Gymnast Christy Henrich Lost Her Battle*, SPORTS ILLUSTRATED (Aug. 8, 1994), <http://www.si.com/vault/1994/08/08/131742/dying-to-win-for-many-women-athletes-the-toughest-foe-is-anorexia-gymnast-christy-henrich-lost-her-battle>.

difficult to read, as she details the limited food these young girls were provided on competition trips and how they would often seek out gymnasts from the boys' teams or possibly sympathetic trainers to sneak them food.⁵¹

All the while, coaches speak negatively towards these young girls, eating away any remaining self-esteem or body confidence.⁵² Béla Károlyi, the former Romanian women's gymnastics national team coach who immigrated to the U.S. in the 1980s to coach gymnastics, had an incredible reputation for his ability to develop champions.⁵³ However, while coaching his young gymnasts he also used scare tactics such as name calling, calling them "pregnant spider," "a pumpkin or a butterball," "tank," and "pregnant goat."⁵⁴ Károlyi and the culture surrounding gymnastics and figure skating easily and often can corrupt the young athletes' souls.

C. *Quasi-Militant Training Leading to Irregular Schooling of Elite Child Athletes*

At Károlyi's gym in Houston, he selected a special elite team to train for the Olympics, and these girls trained forty-six hours a week and were given only Sundays off, three days off around Christmas, and one day off for the Fourth of July.⁵⁵ At another gym across the country, Christy Henrich, the previously mentioned gymnast who died from eating disorder complications, trained from six until nine in the morning and then again from two-thirty until nine at night,⁵⁶ while gymnast Kristie Phillips trained for four hours a day before she even turned five.⁵⁷

The training hours are intense and sometimes extreme, as Coach Mary Lee Tracy⁵⁸ has indicated that her elite gymnasts practice a minimum of thirty-three

51. RYAN, *supra* note 24, at 70–71.

52. *See infra* note 54; Propson, *supra* note 9, at 1776 (citing RYAN, *supra* note 24, at 141–71, 197–238).

53. Alex Hannaford, *Béla Károlyi: The Somersault Svengali*, TELEGRAPH (Mar. 27, 2012), <http://www.telegraph.co.uk/sport/olympics/gymnastics/9160224/Bela-Karolyi-The-somersault-svengali.html>.

54. RYAN, *supra* note 24, at 74.

55. *Id.* at 20–21.

56. *Id.* at 56; Propson, *supra* note 9, at 1773 (referencing Ellis, *supra* note 50, at 18).

57. RYAN, *supra* note 24, at 110.

58. Coach Mary Lee Tracy is the President and Head Coach at Cincinnati Gymnastics Academy. *About Mary Lee Tracy*, CINCINNATI GYMNASTICS, <http://cincinnati-gymnastics.com/about/about-mary-lee-tracy/> (last visited May 7, 2015). Tracy is a USA Olympic Coach, and she has been inducted into the USA Gymnastics Hall of Fame. *Id.* Tracy has coached Olympic team members and many other national team members throughout her coaching career. *Id.*

hours a week, every week during the year.⁵⁹ Based on the training regime that Coach Tracy describes, it is apparent that her athletes must drop out of school in favor of correspondence courses, tutoring, or attending only a few hours of school a day.⁶⁰ The FLSA was partially enacted to protect children's⁶¹ rights to an education and to help prevent them from dropping out to work.⁶² Elite child gymnasts and figure skaters need protection to prevent them from choosing work over education, and the current legal system and Olympic governance simply is not delivering adequate protection for these children.

III. PRIOR LEGAL HISTORY

The young elite athletes who are making significant earnings may be subjected to negative parental control, while their counterparts in entertainment are seemingly better protected.⁶³ Even though the current state laws (specifically those of California and New York) that protect child entertainers include some limited language protecting child athletes, these children are not adequately protected because the statutes primarily focus on the entertainment industry and not on the athletic industry.⁶⁴ Adequate protections are also missing under the FLSA, and a brief legal history of both the FLSA and a few state laws presents some of the problems that elite child athletes face under the current law.

A. *The FLSA of 1938*

The federal government enacted the FLSA to maintain and regulate minimum standards for the health and well-being of employees engaged in commerce.⁶⁵ This federal statute protects only those who are “employees” as defined by the FLSA.⁶⁶ An employee, generally, is one who is employed by an

59. Anne from *Gymnastike*, *supra* note 10.

60. Tracy's athletes train from 8:30 AM until 12:30 PM and from 2:00 PM until 4:00 PM on Mondays, Wednesdays, and Fridays. *Id.* In between the two sessions, Tracy indicates that the athletes will typically eat lunch and complete any necessary therapy to rehabilitate their bodies. *Id.* Tracy's athletes train from 7:00 AM until 12:00 PM on Tuesdays, Thursdays, and Saturdays. *Id.* Other sessions throughout the week include dance training, conditioning, and time for sports psychology. *Id.*

61. Children indeed: Coach Tracy indicates that during the sports psychology sessions, her athletes “love when I have a craft. They love when they get to color.” *Id.*

62. *See infra* notes 72–73.

63. *Child Entertainment Laws as of January 1, 2015*, U.S. DEP'T LAB. WAGE & HOUR DIVISION, <http://www.dol.gov/whd/state/childentertain.htm> (last revised Dec. 2014).

64. *See* CAL. FAM. CODE § 771(b) (West 2014) [hereinafter FAM. CODE]; N.Y. ARTS & CULT. AFF. LAW § 35.03 (Consol. 2014) [hereinafter ARTS & CULT. AFF.].

65. 29 U.S.C. § 202 (2012).

66. *Id.* § 203(e)(1).

employer.⁶⁷ “Employ” refers “to suffer[ing] or permit[ing] to work.”⁶⁸

The FLSA also created the first standard for the minimum wage rate that employers shall pay their employees.⁶⁹ To combat the problem of overworking employees, the FLSA also established the maximum hours (forty) that an employee could work during the week when engaged in interstate commerce, unless the employer compensated the employee no “less than one and one-half times [an employee’s] regular [hourly] rate.”⁷⁰

The FLSA states that employers shall not use “any oppressive child labor in commerce . . . or in any enterprise engaged in commerce.”⁷¹ “Oppressive child labor” for children between sixteen and eighteen is defined as a condition of employment of which

any employee under the age of sixteen years is employed by an employer (other than a parent . . .) in any occupation, or . . . [of which] any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous . . . or detrimental to their health or well-being⁷²

In regards to oppressive child labor for children between fourteen and sixteen,

[t]he Secretary of Labor shall provide . . . that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be

⁶⁷. *Id.*

⁶⁸. *Id.* § 203(g).

⁶⁹. *See id.* § 206(a).

⁷⁰. *Id.* § 207(a)(1).

⁷¹. *Id.* § 212(c). “‘Commerce’ means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.” *Id.* § 203(b).

“Enterprise engaged in commerce . . .” means an enterprise that . . . has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and . . . is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000

Id. § 203(s)(1).

⁷². *Id.* § 203(l)(1)–(2).

deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.⁷³

A few years after the FLSA was enacted, the U.S. Supreme Court upheld its constitutionality in *United States v. Darby*.⁷⁴ The Court indicated that Congress has the power to regulate intrastate activities if there is an effect on interstate commerce.⁷⁵ The Court also stated that the Tenth Amendment of the U.S. Constitution does not bar federal intervention because Congress's power is absolute, and "[t]he motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control."⁷⁶ Based on the ruling in *Darby*, the federal government is able to regulate activities affecting or relating to interstate commerce, including those activities involving child labor.⁷⁷

Not only is the FLSA constitutional, but courts have held that the FLSA's purpose, in relation to eliminating oppressive child labor, aims at availing "children the opportunity to go to school," especially during the "times when they could and should be in school" (e.g., during the regular school day hours).⁷⁸ Protecting and regulating children's right to an education is a primary focus of the FLSA's child labor provisions.⁷⁹

B. State Statutes Enacted for the Protection of Children's Earnings Based on Their Employment in the Entertainment Industry

A complete federal exemption covers children employed in the entertainment industry from the FLSA's child labor laws.⁸⁰ In pertinent part, the FLSA provides that "[t]he provisions . . . relating to child labor shall not apply to any

73. *Id.* § 203(l)(2).

74. 312 U.S. 100, 125–26 (1941).

75. *Id.* at 118; Propson, *supra* note 9, at 1788 (citing *Darby*, 312 U.S. at 118).

76. *Darby*, 312 U.S. at 115; Propson, *supra* note 9, at 1788–79 (citing *Darby*, 312 U.S. at 115).

77. *Darby*, 312 U.S. at 115.

78. *Shultz v. Brannon*, No. 69-122, 1970 U.S. Dist. LEXIS 12226, at *4–5 (E.D. Okla. Apr. 2, 1970).

79. *See* 29 U.S.C. § 203(l)(2) (2012).

80. *See id.* § 213 (c)(3); *see also Exemptions from Child Labor Rules in Non-Agriculture*, U.S. DEP'T OF LAB., <http://www.dol.gov/elaws/esa/flsa/cl/exemptions.asp> (last visited May 7, 2015).

child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”⁸¹ Based on this exemption, states are left to establish their own child entertainment laws,⁸² and thirty-two states currently have such laws.⁸³ Consistency, therefore, is neither required nor commonplace among state child labor laws pertaining to child entertainers, as the laws vary widely from state to state.⁸⁴ The states with laws regulating this industry generally aim to protect children’s earnings and prevent parents from having complete control over their children’s earnings.⁸⁵ According to the 2014 U.S. Department of Labor’s Bureau of Labor Statistics, California and New York are the two states with the highest employment levels for adults in the arts, design, entertainment, sports, and media occupations;⁸⁶ therefore, this Comment will primarily focus on the child entertainment laws in these two states. Further and more importantly, the Screen Actors Guild’s “A Guide for Young Performers” includes separate sections about the basics for child performers working in California and New York, collectively grouping the other states as “Outside California and New York.”⁸⁷

California’s Family Code sections 6750–53⁸⁸ are commonly referred to as the Coogan Act, named after the early twentieth century child actor Jackie Coogan, who upon turning twenty-one asked his mother for his earnings, only to find his mother had spent his earnings throughout the years.⁸⁹ The Coogan

81. § 213(c)(3); Siegel, *supra* note 9, at 443 (citing 29 U.S.C. § 213(3) (2000) (current version at 29 U.S.C. §213(c)(3) (2012))).

82. Propson, *supra* note 9, at 1793 (citing Gerald Solk, *Legal Rights and Obligations of Minors in the Entertainment Industry: The California Approach*, 4 J. JUV. L. 78 (1980)); Siegel, *supra* note 9, at 428, 443 (citing 29 U.S.C. §§ 201–219; Solk, *supra* note 82, at 80)).

83. *See Child Entertainment Laws as of January 1, 2015*, *supra* note 63; *see also* Siegel, *supra* note 9, at 3.

84. *See Child Entertainment Laws as of January 1, 2015*, *supra* note 63.

85. *See* FAM. CODE § 771(b) (West 2014); ARTS & CULT. AFF. § 35.03 (Consol. 2013). *See generally* *Child Entertainment Laws as of January 1, 2015*, *supra* note 63 (detailing every state’s child entertainment laws).

86. *Occupational Employment and Wages, May 2014*, BUREAU OF LAB. STAT., <http://www.bls.gov/oes/current/oes270000.htm> (last modified Mar. 25, 2015).

87. SCREEN ACTORS GUILD, *YOUNG PERFORMERS HANDBOOK: A GUIDE FOR YOUNG PERFORMERS* 8–12 (2010), available at http://youngperformers.sagaftra.org/files/youngperformers/YPH_FNL3.pdf.

88. *See* FAM. CODE §§ 6750–53 (2013).

89. Danielle Ayalon, Note, *Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment*, 35 HASTINGS COMM. & ENT. L.J. 353, 355 (2013); Siegel, *supra* note 9, at 428 (referencing SCREEN ACTORS GUILD, *supra* note 87; Randy Curry, *The Employment Contract with the Minor Under California Civil Code Section 36: Does the ‘Coogan Law’ Adequately Protect the Minor?*, 7 J. JUV. L. 93, 95 (1983); *The Work of the 1939 California Legislature*, 13 S. CAL. L. REV. 1, 44 (1939); Paul Petersen, “Kids and the Law,” *A Minor Consideration*, <http://www.minorcon.org>

Act requires a minor's employer to set aside fifteen percent of the minor's gross earnings in a trust fund or a bank account, and at least one of the minor's parents or legal guardians is to be appointed as the trustee.⁹⁰ This money may be accessed by the minor only upon turning eighteen⁹¹ or by the parent or guardian only upon petitioning the court showing good cause for reason to stray from the standard.⁹²

California's Family Code section 771 states that any earnings unemancipated minors earn related to a contract protected under the Coogan Act shall remain the sole legal property of those children.⁹³ Contracts protected under the Coogan Act include contracts in which a minor is employed to provide "artistic or creative services" (acting, dancing, singing, etc.);⁹⁴ to provide the use of the child's literary, music, or performance-type properties (likeness);⁹⁵ or to render services as an athlete.⁹⁶

New York's Arts and Cultural Affairs section 35.03 is not as straightforward as the Coogan Act statute; however, it provides that the court will fix an amount of the child's new earnings from the services provided under the term of a contract to be set aside, keeping the child's best interests in mind.⁹⁷ The contracts that the courts look to include those entered into by a child "to perform or render services as an actor, actress, model, dancer, musician, vocalist or other performing artist, or as a participant or player in professional sports."⁹⁸

While these two states' statutes potentially provide for elite child athletes retaining some of their own earnings, these statutes do not suggest that labor regulations exist for these same children.⁹⁹ Certainly, it is important for children to have access to their money; however, the exemptions¹⁰⁰ under the FLSA can be extremely detrimental to their health and well-being—the very issues the FLSA sought to protect when enacted in 1938.¹⁰¹ Due to the lack of protection

(last visited May 7, 2015)).

90. FAM. CODE § 6752(b)(1)–(2).

91. *Id.* § 6753(b).

92. *Id.* § 6752(c)(5).

93. *Id.* § 771(b). *See generally* Propson, *supra* note 9, at 1794 (citing Solk, *supra* note 82).

94. FAM. CODE § 6750(a)(1).

95. *Id.* § 6750(a)(2).

96. *Id.* § 6750(a)(3).

97. ARTS & CULT. AFF. § 35.03(3)(b) (Consol. 2014).

98. *Id.* § 35.03(1)(a).

99. *See* FAM. CODE § 771(b) (West 2013); ARTS & CULT. AFF. § 35.03 (Consol. 2013).

100. These exemptions do not exist for elite child athletes but instead for children strictly in the entertainment business.

101. *See* 29 U.S.C. § 203(l)(1)–(2) (2013).

for elite child athletes under current federal and state statutes, the next section of this Comment will analyze three possible solutions to correct the current gaps in the federal legislation, NGB regulations, and state legislation.

IV. PROPOSED SOLUTIONS

Currently, elite child athletes are not fully protected under federal labor law, the NGB regulations, or any state statute, but these three proposals provide potential solutions. Under Proposal A, elite child athletes could be considered employees under the FLSA and protected like other employed children. Proposal B suggests that NGBs add language to their bylaws or policies to protect these young children from extreme labor in their respective sports. Finally, Proposal C purports that states add more specific language to their child entertainment-based statutes to provide better protections for elite child athletes.

A. Protection Under the FLSA

The FLSA, as drafted, protects children from extreme workloads, hours, and conditions.¹⁰² However, elite child athletes are not considered employees under the FLSA because, unlike their peers engaged in the entertainment industry, their activities are considered extracurricular activities, and they do not receive compensation for their services.¹⁰³ To the contrary, elite child athletes could be viewed as employees and, therefore, be protected under the oppressive child labor regulations in the FLSA.

Elite child athletes have not been considered employees because they are much more difficult to classify than someone receiving a specific salary from an employer.¹⁰⁴ However, these elite child athletes are just as much employed and engaged in work as a teenage bag boy at the grocery store.¹⁰⁵ *Hodgson v. Ledet's Foodline of Larose, Inc.* involved a grocery store that employed children

102. The FLSA protects children from oppressive labor and specifically addresses workload and conditions in sections 203(l)(1)–(2). *See supra* Part III.A.

103. *See* 29 U.S.C. § 203(e)(1) (specifically focusing on the definition of employee as any person employed by an employer); Propson, *supra* note 9, at 1782–83 (citing RAY YASSER, SPORTS LAW CASES AND MATERIALS 3 (1st ed. 1985); Comment, *Administration of Amateur Athletics: The Time for an Amateur Athlete's Bill of Rights Has Arrived*, 48 FORD. L. REV. 53, 54 (1979).

104. *See, e.g.,* *Hodgson v. Ledet's Foodliner of Larose, Inc.*, No. 70–3226, 1974 U.S. Dist. LEXIS 12702, at *1 (E.D. La. Jan. 18, 1974) (stating that children are employed when performing bag boy activities at a supermarket); *see also* Propson, *supra* note 9, at 1799 (referencing USFSA, OFFICIAL USFSA RULEBOOK ER 1.01 (1992); Siegel, *supra* note 9, at 457 (citing 29 U.S.C. § 203(l); Propson, *supra* note 9, at 1782); Interview by Rachelle Propson with Johnny Johns, Executive Director and Coach, Detroit Skating Club (Mar. 1, 1995)).

105. *Hodgson*, 1974 U.S. Dist. LEXIS 12702 at *1–2.

as bag boys without providing them with sufficient minimum wages or compensation, and also violated overtime provisions under the FLSA's oppressive child labor provisions.¹⁰⁶ These bag boys, ages fourteen to sixteen, were working more than eighteen hours per week when school was in session and more than eight hours per day when school was not in session.¹⁰⁷ As determined by the court in *Hodgson*, the grocery store engaged these children in oppressive child labor,¹⁰⁸ and elite child athletes can be equated to these bag boys and should be similarly protected, especially in regards to the time restraints. This section will discuss how many hours elite child athletes devote to their sport, creating a comparison between the bag boys and the athletes and requiring similar protection from conditions that put their health and well-being in danger, which again, was behind the purpose of the FLSA.¹⁰⁹ Without the inclusion of language similar to that which exempts child entertainers from protection under the FLSA, it is reasonable to assume that elite child athletes should be protected under the FLSA, just like bag boys.¹¹⁰

As mentioned above, "[n]o employer shall employ any oppressive child labor in commerce . . . or in any enterprise engaged in commerce."¹¹¹ Elite gymnasts and figure skaters engage in labor involving commerce because the Olympic movement is a business venture.¹¹² Various gymnastics and figure skating championships and events are televised throughout the year,¹¹³ and, while gymnastics and figure skating do not earn the same air-time as other professional sports in the U.S., such as football and basketball, it is not uncommon to find gymnastics and figure skating on television.¹¹⁴ During the 2012 Olympics, NBC used the women's gymnastics competition as its anchor story in its first-Tuesday primetime slot, which drew about 38.7 million viewers.¹¹⁵ During the 2014

106. *Id.* at *3–4.

107. *Id.* at *2, *4.

108. *Id.* at *4.

109. 29 U.S.C. § 202(a) (2013).

110. *See id.* §§ 201–19.

111. *Id.* § 212(c).

112. *See Hennessey v. Nat'l Collegiate Athletic Ass'n*, 564 F.2d 1136, 1149, n.14 (5th Cir. 1977); Propson, *supra* note 9, at 1795, 1807 (citing *U.S. v. Int'l Boxing Club*, 348 U.S. 236, 241 (1995); Skolnick, *supra* note 47).

113. *See Figure Skating Viewing Schedule*, US FIGURE SKATING, <http://www.usfsa.org/Events.asp?id=544> (last visited May 7, 2015); *TV Schedule*, USA GYMNASTICS, https://usagym.org/pages/events/pages/tv_schedule.html (last visited May 7, 2015).

114. *See TV Schedule*, *supra* note 113.

115. Scott Collins, *London Olympics: Women's Gymnastics Gold Powers NBC to Big Ratings*, L.A. TIMES (Aug. 1, 2012), <http://articles.latimes.com/2012/aug/01/entertainment/la-et-st-olympics-2012-womens-gymnastics-gold-powers-nbc-to-high-ratings-20120801>.

Olympics, NBC used the women's figure skating program as its anchor story in its second-Wednesday primetime slot, which drew about 20.2 million viewers.¹¹⁶ Elite child athletes, therefore, are certainly involved in commerce, fulfilling the first requirement for protection under the FLSA.¹¹⁷

Second, elite child athletes' work falls within the FLSA's definition for "employ," which "includes to suffer or permit to work."¹¹⁸ The scope of what "employed" actually means has remained broadly construed because an employer-employee relationship is not necessary to label a child as "employed."¹¹⁹ The U.S. Supreme Court has held that, in applying the term "employee," it is necessary to consider the common law definition.¹²⁰ "Under the common law, an employee is a person who performs services *for another* under a contract of *hire*, subject to the other's control or right of control, and *in return for payment*."¹²¹ Therefore, a child may still be considered employed under the FLSA, even if no compensation is awarded for the work, based on the surrounding circumstances of the parties' relationship.¹²² Here, simply because elite child gymnasts and figure skaters do not receive salaries, like traditional, professional athletes,¹²³ it should not mean that these children are not employed under the FLSA. These elite child athletes are not paid based on a traditional employer-employee relationship,¹²⁴ but the analysis does not stop here because the surrounding circumstances must then be analyzed to determine whether a potential employer-employee relationship exists. While elite child athletes are not under official contracts with their NGBs, the relationship between the two contains sufficient

116. Dominic Patten, *UPDATE: Sochi Olympics' Second Wednesday Ratings Best Since Salt Lake 2002*, DEADLINE, <http://www.deadline.com/2014/02/ratings-rat-race-sochi-olympics-second-wednesday-viewership-on-par-with-vancouver-2010-american-idol-slides/> (last updated Feb. 20, 2014); see also Neil Best, *NBC Releases Winter Olympics Ratings Data*, NEWSDAY, <http://www.newsday.com/sports/olympics/nbc-releases-winter-olympics-ratings-data-1.7204742> (last updated Feb. 25, 2014) (addressing the overall ratings data for the 2014 Winter Olympics); Keith Weir, *Figure Skating: Women's Final to Prove TV Ratings Winner*, REUTERS (Feb. 17, 2014), <http://www.reuters.com/article/2014/02/17/us-olympics-figureskating-women-media-idUSBREA1G0WD20140217>.

117. 29 U.S.C. § 207(a)(1) (2013).

118. *Id.* § 203(g); Propson, *supra* note 9, at 1807-08.

119. Propson, *supra* note 9, at 1807-08.

120. Decision and Direction of Election, Northwestern Univ. Coll. & Coll. Athletes Players Ass'n, No. 13-RC-121359, N.L.R.B. Pub., at *13 (Mar. 26, 2014).

121. Brown Univ., 342 N.L.R.B. 483, 490, n.27 (2004) (citing *NLRB v. Town & Country Elec.*, 516 U.S. 85, 94 (1995)).

122. *Id.*; Propson, *supra* note 9, at 1807-08.

123. See Propson, *supra* note 9, at 1799, 1783 (citing Allan L. Schwartz, Annotation, *Validity, Construction, Application, and Effect of Child Labor Provisions of Fair Labor Standards Act (29 USCS § 212 and Related Sections)*, 21 A.L.R. FED. 391, 418 (1974)).

124. *Id.* at 1799 (citing Johns, *supra* note 104).

employment characteristics to create a quasi-employer–employee relationship, suggesting an expansive reading of the FLSA to protect these athletes as employees.¹²⁵

Much like a traditional interview process where an employer selects the best candidate for a job opening, NGBs select the best performers to send to the Olympics for their teams.¹²⁶ Many elite child athletes also relocate to train at better gyms, much like someone relocates for a better position in a company or to work for another company. For example, at fourteen, gymnast Gabrielle Douglas left her home in Virginia to go train at the Iowa gym where 2008 Olympian Shawn Johnson trained.¹²⁷ Douglas lived with a host family and trained at the Iowa gym until the 2012 London Olympics.¹²⁸ More recently, Home & Garden Television’s (HGTV) program “House Hunters” featured a family searching for a new home after the parents of six decided to uproot from Nebraska to Minnesota so their fourteen-year-old gymnast daughter could train at a highly successful gym.¹²⁹ The mother consistently stated throughout the episode that she wanted a house near the gymnastics training center for a short commute to the gym where her daughter would likely train twice a day.¹³⁰ Children leisurely participating in athletics and their families do not take such drastic measures to find the best gym. Elite child athletes are unique and exceptional athletes who should be protected under the FLSA.

It is important to also note the employer–employee-like NGB selection process for choosing Olympic athletes. Douglas automatically qualified for the 2012 Olympic team based on her performance at the 2012 U.S. Olympic Trials for Gymnastics;¹³¹ however, USA Gymnastics’ Women’s Selection Committee chose the remaining four members of the 2012 women’s gymnastics team, as

125. 29 U.S.C. § 203(e)(1) (2013); Propson, *supra* note 9, at 1808 (citing Schwartz, *supra* note 122, at 418).

126. Propson, *supra* note 9, at 1808; see *U.S. Figure Skating Athlete Selection Procedure 2014 Olympic Winter Games (Ladies, Men, Pairs, Ice Dance & Team Event)*, US FIGURE SKATING (Sept. 19, 2012), <http://www.usfsa.org/content/14%20OWG%20FSK%20ATH%20-%20September%2019,%202012%20executed%20f.pdf>; *USA Gymnastics Athlete Selection Procedures 2012 Olympic Games Women’s Artistic*, USA GYMNASTICS (July 25, 2011), http://usagym.org/PDFs/Pressbox/Selection%20Procedures/selection_w_12olympics.pdf.

127. Bryce Miller, *Gabby Douglas Leaves Longtime Coach, Base in Iowa*, USA TODAY (Aug. 21, 2013), <http://www.usatoday.com/story/sports/olympics/2013/08/21/gabby-douglas-leave-coach-chow-iowa/2681563/>.

128. *Id.*

129. *House Hunters: Family of Eight Moves to Minneapolis for Gymnast Daughter’s Training* (HGTV television broadcast S101/EP1 2015) (featuring Twin Cities Twisters Gymnastics).

130. *Id.*

131. *USA Gymnastics Announces Women’s Gymnastics Team for 2012 Olympic Games*, USA GYMNASTICS (July 1, 2012), <http://www.usagym.org/pages/post.html?PostID=10403>.

well as the alternates.¹³² Member selection for the 2014 Winter Olympic U.S. Figure Skating women's team was based on the athletes' finishes at eight competitions throughout 2013 and early 2014.¹³³ Also, skaters who were at least fifteen years old as of July 1, 2013 and in good standing with U.S. Figure Skating could have petitioned to the U.S. Figure Skating International Committee Management Subcommittee for nomination to the 2014 Olympic team if they were not able to complete both segments of any of the eight qualifying competitions during 2013 and 2014 due to injury or illness.¹³⁴ Because the NGBs select who they want to represent them at international competitions, elite child athletes seemingly function as employees of the NGBs, fulfilling the second requirement under the FLSA for employment on the part of the children.¹³⁵

Elite child athletes participate in an industry involved in interstate commerce, and they are employed by their roles to compete for their NGBs. This, combined with the conditions under which they work, leads to the conclusion that many are engaged in oppressive child labor that warrants protection under the FLSA.¹³⁶ Oppressive child labor exists for children between sixteen and eighteen years old if the work conditions are hazardous or detrimental to their health or well-being,¹³⁷ and for children between fourteen and sixteen years old when the employment interferes with their schooling, in addition to interfering with their health and well-being.¹³⁸

Elite child athletes practice hours on end, nearly every day, to perfect their craft and certainly miss more school than the average teenager.¹³⁹ Some even opt to bypass the traditional high school route and are homeschooled to accommodate their training and traveling schedules.¹⁴⁰ At sixteen, gymnast Jordyn

132. *Id.* The 2012 Women's Selection Committee included the USA Gymnastics' Women's National Team Coordinator, the International Elite Committee chairman, and an athlete representative. *Id.* Additionally, all Olympic Team members are subject to approval by the U.S. Olympic Committee's Board of Directors. *Id.*

133. *Sochi 2014: Figure Skating*, TEAM USA, <http://www.teamusa.org/Road-to-Sochi-2014/Sports/Figure-Skating> (last visited May 7, 2015).

134. *Id.*

135. 29 U.S.C. § 203(e)(1) (2013).

136. *Id.* §§ 203(l)(1)–(2); Propson, *supra* note 9, at 1808–09 (citing 29 U.S.C. § 203(1)).

137. 29 U.S.C. § 203(1)(2).

138. *Id.* § 203(1)(1).

139. *See supra* Part II; *see also* Propson, *supra* note 9, at 1776 (Joan Ryan, *Getting on with Life After the Gym: 'I Felt Like I Had Nothing to Live for,' Says Former Prodigy*, PLAIN DEALER, Dec. 26, 1992, at E4; Barbara Kantrowitz, *Living with Training*, NEWSWEEK, Aug. 10, 1992, at 24; Interview by Rachelle Propson with Jane Doe, Figure Skater (Oct. 5, 1994)).

140. *See, e.g.,* Alyssa Roenigk, *Wieber Fever*, ESPN, <http://sports.espn.go.com/espn/eticket/story?page=wieberfever> (last visited May 7, 2015).

Wieber reported that she attended only two classes per day at her local high school between her morning and evening practices and completed the rest of her course work online.¹⁴¹ Wieber certainly had to compromise her academics for gymnastics. If young gymnasts and figure skaters were regulated and protected from this form of oppressive child labor, better competitive balance throughout the sports would likely exist, and the children would then maintain more balanced lifestyles and receive better education.¹⁴²

Additionally, comparisons between collegiate student-athletes and elite child athletes are necessary for the FLSA analysis. Worker's compensation law has generally viewed collegiate student-athletes only as students and not as employees.¹⁴³ While elite child athletes competing in gymnastics and figure skating are not competing in traditional, professional sports leagues, these elite athletes certainly differ from college (amateur) student-athletes, who may not enter endorsement deals or receive any extra benefits¹⁴⁴ and who have hourly restrictions on athletically related activities.¹⁴⁵ Therefore, a clear distinction exists between elite child athletes and college athletes, who are highly regulated, protected, and currently not considered employees,¹⁴⁶ to the detriment of the elite

141. *Id.* The Author's cousin attended DeWitt (Michigan) Public Schools with Wieber and indeed told her years ago that Wieber, while very smart, did not attend full days of school because of her gymnastics schedule.

142. See *Finding a Balance Between School and Sports*, UW HEALTH (Sept. 16, 2013), <http://www.uwhealthkids.org/news-and-events/finding-a-balance-between-school-and-sports/41754>.

143. See *Rensing v. Ind. State Univ. Bd. of Trs.*, 444 N.E.2d 1170, 1173–75 (Ind. 1983) (holding that an employee–employer relationship did not exist between the student-athlete and the institution and, therefore, the student-athlete was not able to receive workers' compensation from the institution in the aftermath of his injury); *Waldrep v. Tex. Emp'rs Ins. Ass'n*, 21 S.W.3d 692, 701 (Tex. App. 2000) (holding that the record reflects, by more than a “mere scintilla of evidence” that the student-athlete was not an employee of the institution at the time of his injury and could not recover workers' compensation benefits).

144. 2014–15 NCAA DIVISION I MANUAL art. 12.5.2.1 (2014) [hereinafter NCAA MANUAL] (explaining the nonpermissible advertisements and promotions of student-athletes).

After becoming a student-athlete, an individual shall not be eligible for participation in intercollegiate athletics if the individual:

- (a) Accepts any remuneration for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind; or
- (b) Receives remuneration for endorsing a commercial product or service through the individual's use of such product or service.

Id.

145. See *infra* Part IV.B.

146. With exception of the recent National Labor Relations Board decision rendering Northwestern

child athletes who are harmed due to their limited protections. These elite child athletes neither receive protection as employees under the FLSA nor under regulations like NCAA student-athletes.¹⁴⁷ Further distinctions arise between these two types of athletes that support the notion that elite child athletes are more akin to professional athletes, who are considered employees, rather than to non-employee collegiate student-athletes.

Elite child athletes may earn unlimited prize money from competitions and enter into endorsement and commercial deals.¹⁴⁸ Collegiate student-athletes may earn only very limited prize money based on performance,¹⁴⁹ may not enter any endorsement or commercial deals,¹⁵⁰ and have clearly been regarded as strictly amateur student-athletes—neither professionals nor employees of their institutions.¹⁵¹

For example, elite child gymnasts and figure skaters have received extensive endorsement deals before and after winning Olympic medals based on their ability to gain international success.¹⁵² After the USA Women's Gymnastics team's success at the 2012 Olympics, the "Fab Five," sometimes referred to as the "Fierce Five," were catapulted into the national spotlight, and the girls¹⁵³ received countless endorsement deals.¹⁵⁴ Procter & Gamble signed a deal with

University scholarship football student-athletes as employees. Nw. Univ. and Coll. Athletes Players Ass'n, No. 13-RC-121359, N.L.R.B. Pub., at *13 (Mar. 26, 2014). This caveat is discussed later in this subsection.

147. Propson, *supra* note 9, at 1785, 1799 (referencing *Rensing*, 444 N.E.2d 1170; State Comp. Ins. Fund v. Indus. Comm'n, 314 P.2d 288 (Colo. 1957); Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–19 (1970) (current version at 29 U.S.C. §§ 201–19 (2012)); Joan Ryan, *Young Shoulders Carrying Big Loads: When Female Athletes Reach World Class Status at a Tender Age, the Physical and Psychological Demands Can Take a Toll on Bodies and Minds*, PLAIN DEALER, Dec. 26, 1992, at 1E).

148. *Id.*

149. NCAA MANUAL, *supra* note 144, art. 12.1.2.4.

150. *See id.* art. 12.5.2.1.

151. *Id.* arts. 12.3.1, 12.4.1.1, 12.5.2.1 (2014). *See generally* Bloom v. Nat'l Collegiate Athletic Ass'n, 93 P.3d 621 (Colo. App. 2004).

152. *See infra* pp. 584–586.

153. The five Olympians were Gabby Douglas, McKayla Maroney, Aly Raisman, Kyla Ross, and Jordyn Wieber. Jerry Hinnen, *'Fab Five' Are the Greatest U.S. Gymnastics Team of All-Time*, CBSSPORTS (July 31, 2012), <http://www.cbssports.com/olympics/eye-on-olympics/19696315>; *see also* Sam R. Quinn, *2012 Women's Olympic Gymnastics Team: Meet the US Squad for London*, BLEACHER REP. (July 1, 2012), <http://bleacherreport.com/articles/1243821-2012-womens-olympic-gymnastics-team-meet-the-us-squad-for-london> (proving that "women" really is not an accurate statement for the team when the oldest member was only eighteen years old); Hannah Orenstein, *Olympic Trials: 5 Teens Named to U.S. Women's Gymnastics Team*, HUFFPOST TEEN (July 2, 2012), http://www.huffingtonpost.com/2012/07/02/olympic-trials-5-teens-na_n_1643385.html.

154. *See infra* p. 585.

Jordyn Wieber before the 2012 Olympics for its “Raising an Olympian” commercial campaign.¹⁵⁵ Wieber also signed two other endorsement deals before the Olympics: (1) a Kellogg’s deal, where she would be the only gymnast featured in the Team Kellogg’s campaign, and (2) an Auto-Owners Insurance deal, where she would appear in commercials.¹⁵⁶ Gabrielle Douglas signed her first endorsement deal with Procter & Gamble during the 2012 Olympics for the same “Raising an Olympian” campaign as Wieber.¹⁵⁷ Douglas also signed with Kellogg’s Corn Flakes, after her gold medal performance,¹⁵⁸ and she later toured with the Kellogg’s-sponsored traveling gymnastics tour, receiving a cut from the revenues, as well.¹⁵⁹ One industry expert has estimated that Douglas could earn nine to ten million dollars through endorsements over the next few years.¹⁶⁰ Aly Raisman, captain of the 2012 USA Gymnastics Olympic team, secured a sponsorship with Ralph Lauren,¹⁶¹ signed a one-year deal after the Olympics endorsing Poland Spring water,¹⁶² and signed (and later renewed) an endorsement deal with PANDORA Jewelry.¹⁶³ Teenage figure skaters have not received as much national attention as gymnasts in the U.S.,¹⁶⁴ but sixteen-year-

155. Alicia Jessop, *Gabby Douglas’ Gold Medals at the London Olympics Mean Multi-Million Dollar Endorsement Deals*, FORBES (Aug. 2, 2012), <http://www.forbes.com/sites/aliciajessop/2012/08/02/gabby-douglas-gold-medals-at-the-london-olympics-mean-multi-million-endorsement-deals/>.

156. Roenigk, *supra* note 140.

157. Jessop, *supra* note 155.

158. E.J. Schultz, *Gabby Douglas’ Gold Worth Millions in Endorsement Deals*, ADVER. AGE (Aug. 3, 2012), <http://www.adage.com/article/news/gabby-douglas-gold-worth-millions-endorsement-deals/236509/>.

159. Darren Rovell, *Endorsements Lucrative for Gabby Douglas*, ESPN BLOG (Aug. 6, 2012, 2:52 PM), http://espn.go.com/blog/playbook/dollars/post/_id/835/endorsements-lucrative-for-gabby-douglas (stating that as an endorser of Kellogg’s, Douglas would receive a cut from the Kellogg’s-sponsored traveling gymnastics tour’s revenues).

160. Jessop, *supra* note 155.

161. Dan Alexander, *Sports Marketing Experts Say Aly Raisman, Gabby Douglas Could Rake in \$10 Million from Gold Medals*, FORBES (Aug. 9, 2012), <http://www.forbes.com/sites/danalexander/2012/08/09/sports-marketing-experts-say-aly-raisman-gabby-douglas-could-rake-in-10-million-from-gold-medals/>.

162. Associated Press, *Aly Raisman, Poland Spring Sign Endorsement Deal*, HUFFPOST SPORTS (Aug. 22, 2012), http://www.huffingtonpost.com/2012/08/22/aly-raisman-poland-spring-endorsement-deal_n_1821021.html.

163. *PANDORA Jewelry Renews Endorsement Deal with Three-Time Medalist Aly Raisman*, PR-NEWswire (June 25, 2013), <http://www.prnewswire.com/news-releases/pandora-jewelry-renews-endorsement-deal-with-three-time-medalist-aly-raisman-213006051.html>.

164. The most recent American women’s figure skater to medal in the singles’ Olympic figure skating event was Sasha Cohen at the 2006 Olympics, and she was twenty-two at the time. *See generally Sasha Cohen*, ICENETWORK, http://web.icenetwork.com/skaters/profile/sasha_cohen (last visited Apr. 17, 2015).

old Sarah Hughes was unveiled on the Wheaties box in February 2002, after she won gold at the Winter Olympics.¹⁶⁵

Turning back to the FLSA, “unemployed” is not defined;¹⁶⁶ however, the Merriam-Webster Dictionary defines unemployed as “not employed . . . not being used . . . not engaged in a gainful occupation . . . not invested.”¹⁶⁷ Presumably, unemployed individuals would not be offered lucrative endorsement deals such as those described above. The numerous endorsement deals that these young athletes enter into further support the conclusion that they are also employed by the companies that they endorse because the companies use these athletes to promote their products, leading to the athletes’ gainful occupation as they earn upwards of a million dollars.¹⁶⁸ These young Olympians do not fit within the unemployment definition and based on their endorsement deals could be considered employed under the FLSA.

While these elite child athletes who compete in gymnastics and figure skating are generally considered amateurs and not professionals,¹⁶⁹ it is fair to conclude the opposite: they are professionals and, therefore, are employees—child employees—and should be protected as such under the FLSA. Gymnast Jordyn Wieber turned professional as a minor, forfeiting her opportunity to compete in college;¹⁷⁰ however, she is still unprotected by any labor laws. An elite child athlete who turns professional loses her ability to compete in college and enjoy collegiate model protections, all the while not being sufficiently protected under either federal or state labor laws. Having the status of a professional but not having any labor protection, unlike traditional athletes in professional sports leagues with collective bargaining agreements, is to the detriment of these young elite athletes. They should be afforded some protection. The FLSA could provide the protection for these children.

If the argument that elite child athletes are more similar to professional ath-

165. Jane Weaver, *Who Will Win Endorsement Gold?*, NBC NEWS, (Feb. 25, 2002), <http://www.nbcnews.com/id/3073446/t/who-will-win-endorsement-gold/#.UssI9vRDuSo>.

166. *See generally* 29 U.S.C. § 203 (2012) (noting that the definitions section does not include “unemployed”).

167. *Unemployed Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/unemployed> (last visited Apr. 17, 2015).

168. *See* Alexander, *supra* note 161.

169. *See* Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501–29 (2012) (establishing the United States Olympic Committee, creating the National Governing Bodies for the Olympic sports, and referring to the athletes as amateurs). “[A]mateur athlete” means an athlete who meets the eligibility standards established by the national governing body . . . for the sport in which the athlete competes.” *Id.* § 220501.

170. Roenigk, *supra* note 140.

letes than to their amateur collegiate student-athlete counterparts is not convincing, the following may also play in the elite child athletes' favor looking forward. On March 26, 2014, the Chicago Regional Director (Director) of the National Labor Relations Board (NLRB) found that Northwestern University's (Northwestern) football student-athletes receiving grant-in-aid scholarships are employees—under the common law definition—of Northwestern under the FLSA.¹⁷¹ These “players receiv[e] scholarships to perform football-related services for the [benefit of the] Employer [Northwestern] under a contract for hire in return for compensation and are subject to the Employer’s control” in the performance of their duties, creating the necessary employee–employer relationship for protection under the FLSA.¹⁷²

In the aftermath of this decision, these student-athletes could conduct an election for the purposes of collective bargaining and unionization.¹⁷³ Northwestern immediately filed an appeal with the NLRB in Washington D.C. seeking a review and overturn of the ruling made by the Regional Director.¹⁷⁴ The NLRB’s board in Washington D.C. will review the ruling, and the Northwestern football players’ election ballots are impounded until the NLRB issues a decision of its review of the Director’s determination.¹⁷⁵ While not a party in the dispute, the NCAA later filed an amicus brief with the NLRB in support of Northwestern’s appeal.¹⁷⁶ At this time, the parties are still awaiting a ruling

171. Nw. Univ. & Coll. Athletes Players Ass’n, No. 13-RC-121359, N.L.R.B. Pub., at *14 (Mar. 26, 2014).

172. *Id.*

173. *Id.* at * 2, 23.

174. See Alan K. Cabbage, *Northwestern Asks National Labor Relations Board to Overturn Regional Director’s Ruling on Football Players’ Unionization*, NW. U. NEWS (Apr. 9, 2014), <http://www.northwestern.edu/newscenter/stories/2014/04/northwestern-asks-nlr-to-overturn-ruling-on-football-players-unionization.html>. See generally Northwestern’s Request for Review of Regional Director’s Decision and Direction of Election, Nw. Univ. & Coll. Athletes Players Ass’n, No. 13-RC-121359 (Apr. 9, 2014).

175. News Release, *NLRB Grants Request for Review in Northwestern University Athletes Case*, NLRB (Apr. 24, 2014), <http://www.nlr.gov/news-outreach/news-story/nlr-grants-request-review-northwestern-university-athletes-case>; see also Northwestern University’s Brief to the Board on Review of Regional Director’s Decision and Direction of Election, Nw. Univ. & Coll. Athletes Players Ass’n, No. 13-RC-121359, N.L.R.B. Pub. (July 3, 2014).

176. See Press Release, *NCAA Files Brief Opposing Union*, NCAA.ORG (July 3, 2014), <http://www.ncaa.org/about/resources/media-center/press-releases/ncaa-files-brief-opposing-union> (“Affirming the Regional Director’s decision will negatively impact . . . potentially the millions of present and future student-athletes in all sports across America,” stated Donald Remy, the NCAA’s Chief Legal Officer.). See generally Brief of Amicus Curiae National Collegiate Athletic Ass’n in Support of Northwestern University, Nw. Univ. & Coll. Athletes Players Ass’n, No. 13-RC-121359, N.L.R.B. Pub. (July 3, 2014).

from the NLRB.¹⁷⁷

If the football student-athletes receiving grant-in-aid scholarships at Northwestern, and potentially those at other private Division I institutions, are still deemed employees after the appeals process,¹⁷⁸ elite child athletes would have a stronger argument that when compared to these other amateur athletes; they are certainly more “employed,” through their significant training time spent each week, their endorsement deals, and other professional-like decisions, than the football student-athletes receiving grant-in-aid scholarships.

In summary, whether based on the similarities between elite child athletes and professional athletes or based on future affirmations and decisions that some NCAA student-athletes are employees, the FLSA should protect elite child athletes in the same manner it protects children in other child labor circumstances. Elite child athletes would greatly benefit from the decreased stress placed on their bodies, and they would also be afforded the opportunity to focus more on school, which was a major purpose behind the FLSA’s enactment.

B. Protection Under the NGBs Regulations

If the more broad interpretation of the FLSA is not persuasive enough to protect elite child athletes, the NGBs—USA Gymnastics and U.S. Figure Skating—should provide protection for these minors. Based upon the current USA Gymnastics’ Bylaws¹⁷⁹ and U.S. Figure Skating Rulebook,¹⁸⁰ it is apparent that the NGBs could draft separate provisions for child labor and protection of their respective elite child athletes.

USA Gymnastics’ governance philosophy is “[t]o encourage participation and the pursuit of excellence in all aspects of gymnastics.”¹⁸¹ U.S. Figure Skating has an objectives section within its mission statement, stating that its mission is “to provide programs to encourage participation and achievement in the sport of figure skating.”¹⁸² This section of governance philosophy might be a possible

177. Ben Strauss, *Still Awaiting Union Ruling, Northwestern Players Focus on Field*, N.Y. TIMES (Nov. 28, 2014), http://www.nytimes.com/2014/11/29/sports/ncaafotball/-still-awaiting-union-ruling-athletes-focus-on-field-.html?_r=0.

178. Importantly, similarly situated student-athletes attending public institutions would have to be deemed employees under their respective states’ labor laws, as the FLSA applies only to private institutions.

179. See generally USA GYMNASTICS BYLAWS (2013) [hereinafter GYMNASTICS BYLAWS].

180. See generally THE 2015 OFFICIAL U.S. FIGURE SKATING RULEBOOK (2014) [hereinafter U.S. FIGURE SKATING RULEBOOK].

181. GYMNASTICS BYLAWS, *supra* note 179, art. 2.03.

182. U.S. FIGURE SKATING RULEBOOK, *supra* note 180, art. II.

location to add language about limiting the hours of participation for these athletes.

Inserting practice and activity limitation language near these philosophy and objective sections in the NGBs' bylaws and rulebook would significantly protect the NGBs' athletes from over-use, injuries, fatigue, and other consequences of over-training.¹⁸³ A good model for this language is from the NCAA's Bylaws and Regulations. The NCAA imposes time limits for countable athletically-related activities.¹⁸⁴ A student-athlete's participation in these activities during the playing season¹⁸⁵ shall generally be limited to a maximum of four hours per day and twenty hours per week.¹⁸⁶ Further, the NCAA Bylaws mandate one required day off from countable athletically related activities during each week of the playing season.¹⁸⁷ The NCAA, which regulates student-athletes who are even older than the athletes at issue here, includes these countable athletically-related activities limitations to protect fair competition and promote the safety, health, and well-being of the student-athletes.¹⁸⁸ The NGBs

183. See generally DiFiori et al., *supra* note 33; Young & White, *supra* note 33.

184. NCAA MANUAL, *supra* note 144, art. 17.02.1.

Countable athletically related activities include any required activity with an athletics purpose involving student-athletes and at the direction of, or supervised by, one or more of an institution's coaching staff (including strength and conditioning coaches) and must be counted within the weekly and daily limitations Administrative activities (e.g., academic meetings, compliance meetings) shall not be considered as countable athletically related activities.

Id.

185. Note that the NCAA Bylaws reflect different, heightened daily and weekly hour limitations outside the playing season. See *id.* art. 17.1.7.2.

186. *Id.* art. 17.1.7.1.

187. *Id.* art. 17.1.7.4. Note that the NCAA Bylaws reflect the mandate for two required days off from countable athletically-related activities outside the playing season. *Id.* art. 17.1.7.5.

188. *Id.* at xiv. Here, the NCAA Manual addresses the "Commitments to the Division I Collegiate Model" and includes "The Commitment to Fair Competition" and "The Commitment to Student-Athlete Well-Being." *Id.* Fair competition is understood as the NCAA's commitment to promote as much equality among the institutions as possible to ensure competitive balance. See *id.* Well-being requires a more extensive explanation.

The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize interference with their academic pursuits. It is the responsibility of each member institution to establish and maintain an environment in which student-athletes' activities, in all sports, are conducted to encourage academic success and individual development and as an integral part of the educational experience. Each member institution should also provide an environment that fosters fairness, sportsmanship, safety, honesty and positive relationships

should take notice of the NCAA's extensive action to ensure that its Bylaws reflect the importance of competitive balance and student-athlete well-being. Certainly, if college student-athletes are protected under countable athletically-related activities limitations promulgated by their national association, language restricting the countable athletically-related activities of elite child gymnasts and figure skaters should be added to the USA Gymnastics and U.S. Figure Skating Bylaws and Rulebook.

Not only does the NCAA restrict the countable athletically-related activities, but its Bylaws also reflect limitations on the length of the playing season¹⁸⁹ and the maximum number of dates of competition¹⁹⁰ each sport may compete in during the season. Some state high school athletic associations also restrict the maximum number of team contests,¹⁹¹ and some associations include specific competition and practice guidelines per sport.¹⁹² If both the NCAA and state high school athletic associations provide regulations for practice and competition,¹⁹³ NGBs should also seriously consider following the lead of these other associations who have taken measures to protect the competitive balance among their schools, as well as the well-being of their athletes.

Ultimately, the NGBs should incorporate language into their bylaws and rules to address the importance of ensuring the well-being of all of their members. Inserting new articles in the NGBs' respective bylaws and rules would ultimately create more competitive balance and would certainly improve the elite child athletes' well-being, which should be an important NGB mission. One problem with leaving labor regulation up to the NGBs is the organizations' desires to win,¹⁹⁴ which may cause apprehension in adding these improved

Id.

189. *Id.* art. 17.11.1 (explaining the gymnastics' length of playing season).

190. *Id.* art. 17.11.5.1 (explaining the gymnastics' maximum number of dates of competition).

191. See IND. HIGH SCH. ATHLETIC ASS'N, INC., 2014–15 BY-LAWS & ARTICLES OF INCORPORATION R. 105, available at <http://www.ihsaa.org/Portals/0/ihsaa/documents/about%20ihsaa/2014-15%20By%20Laws.pdf> (specifically stating the maximum competition limit on the number of competitions for gymnastics).

192. See WIS. INTERSCHOLASTIC ATHLETIC ASS'N, 2014–15 WINTER SEASON REGULATIONS, 17–19 (2014), available at <http://www.wiaawi.org/Portals/0/PDF/Publications/winterregulations.pdf> (addressing the length of season and maximum allowed meets, among other categories, for Wisconsin high school gymnastics); see also *High School Sports Research Resources*, MARQ. UNIV. L. SCH., <https://law.marquette.edu/national-sports-law-institute/high-school-sports-research-resources> (last visited May 7, 2015) (including links to all state high school association manuals).

193. See *supra* notes 184–92.

194. See Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501–29 (2012). The federal government enacted this federal statute to create the United States Olympic Committee as the one governing body authority overseeing all of the NGBs, and with the specific purpose “[t]o promote and coordinate amateur athletic activity in the United States, to recognize certain rights for United

standards and protecting these elite child athletes.

C. Protection Under Expanded State Entertainment Laws

While unlikely to have as much impact as either of the two previously offered solutions, expanded state entertainment laws are a third option for protecting elite child athletes.¹⁹⁵ Unlike the entertainment industry that is primarily located in California and New York, the gyms and skating rinks that elite child athletes train at are more widespread across the country.¹⁹⁶ Indeed, only two of the five 2012 U.S. Olympic Women's Gymnastics team members trained in the same state (California), while the remaining three trained at various gyms across the country.¹⁹⁷ However, all three of the 2014 U.S. Olympic Women's Figure Skating Singles team members trained in California.¹⁹⁸ These three athletes, though, are originally from a variety of states, including California, Virginia, and Massachusetts,¹⁹⁹ supporting the assertion that elite child athletes move to find the best place of "employment," or the best location for training.

If states were to enact statutes to better protect their elite child athletes, California's Coogan Act²⁰⁰ and New York's Arts and Cultural Affairs statute²⁰¹ could provide some guidance.²⁰² California protects a child's contract for "render[ing] services as an [athlete],"²⁰³ and New York protects a child's contract for "perform[ing] or render[ing] services . . . as a participant or player in professional sports."²⁰⁴ The problem with this language is that not all of the children become professionals in their respective sports, even though they practice the same amount as their peers who claim their professional status.²⁰⁵ To protect

States amateur athletes, to provide for the resolution of disputes involving [NGBs]." Amateur Sports Act of 1978, Pub. L. No. 95-606, 92 Stat. 3045 (amended in 36 U.S.C. §§220501-220529 (2012)); *see also* Propson, *supra* note 9, at 1786, 1800.

195. Propson, *supra* note 9, at 1793.

196. *See infra* notes 197-99; Propson, *supra* note 9, at 1802-03.

197. The remaining three trained at a gym in Iowa, a gym in Massachusetts, and a gym in Michigan. *USA Gymnastics Announces Women's Gymnastics Team for 2012 Olympic Games*, *supra* note 131.

198. *See Ashley Wagner*, ICENETWORK, http://web.icenetwork.com/skaters/profile/ashley_wagner (last visited May 7, 2015); *Gracie Gold*, *supra* note 8; *Polina Edmonds*, *supra* note 8.

199. *Ashley Wagner*, *supra* note 196; *Gracie Gold*, *supra* note 8; *Polina Edmonds*, *supra* note 8.

200. *See* FAM. CODE §§ 6750-25 (West 2013).

201. *See* ARTS & CULT. AFF. § 35.03 (Consol. 2013).

²⁰² Propson, *supra* note 9, at 1802.

²⁰³ FAM. CODE § 6750(a)(3).

204. ARTS & CULT. AFF. § 35.03(1)(a).

205. Alicia Sacramone is one Olympic gymnast who competed for some time as a collegiate student-athlete, while competing in the international gymnastics scene, before declaring her status as a profes-

these non-professional child athletes, the state statutes should insert additional language about protecting child athletes who compete at the Olympic or international level, regardless of their professional status. If California and New York were to add this type of language to their current statutes and other states were then to follow suit, state statutes might provide the necessary protection for elite child athletes. State legislation could allow for and encourage some variance and autonomy among their respective child labor laws but still ultimately better protect these elite athletes' well-being.

V. CONCLUSION

In recent decades, the elite child athlete has risen to prominence in women's gymnastics and women's figure skating. While certainly not a new phenomenon, based on a strong history of young female gymnasts winning gold medals at the Olympics,²⁰⁶ today, more Olympians are young teenagers.

As of now no one is truly and solely advocating for the protection of these young athletes.²⁰⁷ Their coaches, gyms and skating rinks, and parents can work them hours upon hours, subject to no regulations and guidelines because the current language of the FLSA does not protect these children.²⁰⁸ With potentially severe physical, mental, and psychological health implications looming due to over-training, it is paramount that the FLSA be expanded to protect these elite child athletes, that measures be undertaken by the NGBs, or that state legislatures expand their existing statutes or enact new statutes to protect these young, athletic sensations.

Until then, elite child athletes will unfortunately continue to develop severe eating disorders, burn out from the sports that bring them to international prominence, and experience extreme mental and physical suffering, all while compromising their education and future well-being.²⁰⁹ Some middle ground must

sional athlete. See *Alicia Sacramone*, BROWN, http://www.brownbears.com/sports/c-gym/mtt/sacramone_alicia00.html (last visited May 7, 2015); see also Gordon Morton, *Tasting the Gold*, BROWN ALUMNI MAG. (Jan./Feb. 2008), <http://www.brownalumnimagazine.com/content/view/1894/40/>; John Powers, *Balancing Act*, BOS. GLOBE (Jan. 3, 2007), http://www.brestyans.com/AliciaAlbum/AliciaAlbum_files/BalancingAct1.pdf; *Alicia Sacramone*, TEAM USA, <http://www.teamusa.org/Athletes/SA/Alicia-Sacramone> (last visited May 7, 2015).

206. Fourteen-year-old Romanian Nadia Comaneci and sixteen-year-old American Mary Lou Retton won gold medals at the Olympics. Rick Weinberg, *70: Mary Lou Gets the Gold in Olympic All-Around*, ESPN25, (June 30, 2004), <http://sports.espn.go.com/espn/espn25/story?page=moments/70>.

207. Propson *supra* note 9, at 1800; see Siegel, *supra* note 9, at 457–58 (citing RYAN, *supra* note 24, at 11).

208. Propson, *supra* note 9, at 1782, 1810; see Siegel, *supra* note 9, at 457 (citing Fair Labor Standards Act of 1938, 29 U.S.C. § 203(l); Propson, *supra* note 9, at 1782).

209. Propson, *supra* note 9, at 1775–76, 1810 (referencing RYAN, *supra* note 24, at 141–71, 197–

be achieved between complete open-ended exemptions for these young athletes (even though the FLSA does not include them in its exemptions) and the extreme measure of denying these talented athletes opportunities to continue to compete. Without this necessary action, extreme child labor will continue to go unregulated to the ultimate detriment of elite child gymnasts and figure skaters.²¹⁰ Let some group lead the charge for change before another headline shares the somber news that another elite child athlete has died from oppressive labor at the hands of her Olympic movement, coach, or parents.

238; Toni Luppino, *What Price Fame? Hopeful Athletes and Winning*, 8 AM. FITNESS 32 (1990); Kantrowitz, *supra* note 137, at 24; Noden, *supra* note 50, at 56; Ryan, *supra* note 137, at E4; Jane Doe, *supra* note 139; Johns, *supra* note 104).

210. Propson, *supra* note 9, at 1810.