

Christie Cho

Figuring It Out: Proposed Reforms to the U.S. Figure Skating Athlete Selection Proposals for the Olympic Games

Just a day after placing third in the 2014 U.S. Figure Skating Championship (Nationals), Mirai Nagasu could not hold back her tears as she took the ice for the exhibition gala.¹ Her tears expressed her heartbreak: despite being the only woman to complete two clean programs at Nationals, Nagasu would not compete in the 2014 Winter Olympics in Sochi. Instead, U.S. Figure Skating selected Ashley Wagner as the third member of the U.S. team to Sochi, despite Wagner's mistake-ridden long program and fourth-place finish.² In making the unprecedented decision to deviate from the results of Nationals in absence of an injury, "USFS officials were as vague about such procedures as they were in creating selection rules that allowed body of work over the past year to carry a significant but nonspecific amount of weight."³

This paper will examine the current U.S. Figure Skating (USFS) selection process for the Winter Olympics and other international competitions and suggests that while consideration of an athlete's "body of work" may be legitimate, clear and objective standards should be implemented to increase transparency and enhance the legitimacy of the USFS and the sport of figure skating. Setting clearer written procedures for team selection will also allow USFS to avoid or answer many of the criticisms it received after 2014 Nationals and preserve its role and image as advocates of amateur athletes. While subjectivity – and ensuing controversy – may

¹ Nancy Armour, *Mirai Nagasu Doesn't Let Sadness Keep Her Off the Ice*, USA TODAY (Jan. 12, 2014), <http://www.usatoday.com/story/sports/olympics/sochi/2014/01/12/mirai-nagasu-disappointment-olympic-team-sochi/4448105/>.

² Philip Hersh, *Gold Becomes No. 1, But the Rest Wasn't by the Numbers*, CHICAGO TRIBUNE (Jan. 12, 2014), http://articles.chicagotribune.com/2014-01-12/sports/chi-despite-horrible-performanceashley-wagner-makes-olympic-team-as-mirai-nagasu-bumped-20140112_1_gracie-gold-mirai-nagasu-u-s-figure-skating-championships.

³ *Id.*

always be a part of the sport of figure skating, it does not preclude an increased level of transparency for figure skating's national governing body.

Part I recaps the drama that unfolded at the 2014 U.S. Figure Skating Championships (Nationals), which sparked a new debate about USFS team selection procedures. Part II describes the selection process and its historical application. Part III puts the USFS team selection process in context of the Ted Stevens Olympic and Amateur Sports Act, which governs the organization of national teams for international sports competitions. Part IV provides a defense of the current USFS selection policies, especially its consideration of an athlete's "body of work," while Part V raises the flaws of such a system, especially as it played out at 2014 Nationals. Finally, this paper looks to the team selection criteria employed by U.S. Freestyle Skiing as a model for a more transparent, objective method of selecting athletes for international competition.

Part I. The Drama Unfolds

Going into the 2014 Winter Olympics, USFS had a major concern: the lack of success among American women in international figure skating competitions. Ashley Wagner and Gracie Gold, the 2014 Nationals champion, were ranked fifth and seventh, respectively.⁴ However, American women have not won a *medal* at the Olympics or World Championships

⁴ *ISU World Standings for Single & Pair Skating and Ice Dance* (last visited Mar. 3, 2014), <http://www.isureresults.com/ws/ws/wsladies.htm>.

since 2006.⁵ The sport's biggest star in the U.S. remains Michelle Kwan, the retired nine-time U.S. Champion who won her last World Championships over a decade ago.⁶

The lack of success also hurt the figure skating's visibility and popularity as a whole. According to sports columnist Filip Bondy, the popularity of figure skating in the U.S. is "directly correlated to whether we have a female star."⁷ ESPN characterized the U.S. Olympic team as an "ensemble cast" of athletes "with solid but not spectacular international credentials."⁸ Many acknowledged that "[t]he American team's strongest shot at a gold medal is in the dance event, while the pairs and singles skaters . . . may be out of luck."⁹ The *Boston Globe* lamented that "the country that once produced Buttons and Albrights and Jenkinses and Boitanos and Yamaguchis and Kwans on a gilded assembly line hasn't been turning out super soloists."¹⁰

Despite the lack of a "top American lady," Gracie Gold and Ashley Wagner had a successful international competition season in 2013. Their combined performances at the 2013

⁵ Dvora Meyers, *The Real Reason Ashley Wagner Made the U.S. Olympic Figure Skating Team*, Deadspin (Jan. 16, 2014), <http://deadspin.com/the-real-reason-ashley-wagner-made-the-u-s-olympic-fig-1502787187> (praising the similarities of the USFS Olympic team selection process with the team selection process for U.S. gymnastics team, which has seen significant international success).

⁶ *Profile: Michelle Kwan*, ICE NETWORK (last accessed Mar. 5, 2014), http://web.icenetwork.com/skaters/profile/michelle_kwan.

⁷ Jessica Grose, *Women's Figure Skating Has Never Been So Unpopular*, Bloomberg BusinessWeek (Jan. 23, 2014), <http://www.businessweek.com/articles/2014-01-23/womens-figure-skating-has-never-been-so-unpopular>.

⁸ Bonnie Ford, *U.S. Team an Ensemble Cast*, ESPN (Jan. 12, 2014), http://espn.go.com/olympics/figureskating/story/_/id/10284190/2014-sochi-olympics-look-us-olympic-figure-skating-team (noting ice dancers Meryl Davis and Charlie White as the only "proven" members of the U.S. team).

⁹ Brian Cazeneuve, *One Year Out: Chan, Kim Could Rule Figure Skating at Sochi Olympics*, SPORTS ILLUSTRATED (Feb. 7, 2013), <http://sportsillustrated.cnn.com/olympics/news/20130207/sochi-olympics-one-year-out-figure-skating/>.

¹⁰ John Powers, *U.S. Figure Skaters Aren't Expected to be Forces in Sochi*, BOSTON GLOBE (Jan. 5, 2014), <https://www.bostonglobe.com/sports/2014/01/05/for-men-and-women-solo-skaters-gilded-age-past/HvkglwPUy8Bhr60cICgt2L/story.html>.

World Championships – where Wagner placed fifth and Gold finished sixth – allowed USFS to send three women to the Olympics.¹¹ This set the stage for the 2014 Nationals, where skaters would compete not only for a national title but also for one of the three spots on the U.S. Olympic team.

Mirai Nagasu entered Nationals as an “enigma.”¹² After placing fourth at the 2010 Olympics in Vancouver – the highest finish among American women – Nagasu had struggled. She finished seventh at the previous two Nationals, left her coach, frequently changed training locations, and appeared “adrift.”¹³ Also vying for a spot on the team was Polina Edmunds, a fifteen-year-old making her debut in senior competition at Nationals. Despite her lack of experience – the Olympics would be her first international competition at the senior level – Edmunds demonstrated enough technical prowess to draw comparisons to Tara Lipinski, who became the youngest Olympic champion in history in 1998.¹⁴ Meanwhile, Ashley Wagner and Gracie Gold came to Nationals as the favorites to win, having won gold and silver, respectively, in 2013. Wagner narrowly missed the Olympics in 2010 when she placed third at Nationals, and USFS could only send two women to Vancouver. Ultimately, Gold lived up to her name and

¹¹ Jim Caple, *Top Three or Best Three?*, ESPN (Jan. 10, 2014), <http://espn.go.com/espnw/news-commentary/article/10277469/espnw-top-three-best-three-us-olympic-women-figure-skating-team>.

¹² Jeré Longman, *Wagner on U.S. Team as Officials Choose Reputation Over Result*, New York Times (Jan. 12, 2014), <http://www.nytimes.com/2014/01/13/sports/olympics/klutz-over-lutz-wagner-stumbles-to-olympic-skating-berth.html>.

¹³ *Id.*

¹⁴ See Philip Hersh, *Gracie Gold Women’s Winner at U.S. Championships*, Chicago Tribune (Jan. 12, 2014), http://articles.chicagotribune.com/2014-01-12/sports/ct-women-us-figure-skating-spt-0112-20140112_1_mirai-nagasu-gracie-gold-u-s-figure-skating.

placed first at Nationals, followed by Polina Edmunds and Mirai Nagasu.¹⁵ Wagner, who fell twice during her long program, finished fourth and eight points behind Nagasu.¹⁶

Wagner's surprising fourth place created a dilemma. Would USFS leave Wagner behind – again – and send the top three Nationals finishers to the Olympics? Was Wagner, a favorite for the Olympics for at least two years and a two-time National champion, ever in jeopardy of losing her spot on the U.S. Olympic team? Before the announcement of the team, two people with knowledge of USFS selection process said that Wagner would be on the U.S. Olympic team even if she placed tenth at Nationals.¹⁷ Following the ladies short program, *The Boston Globe* predicted that Wagner would likely be named to the Olympic team as long as she placed in the top five.¹⁸ Edmunds' coach David Glynn believed that USFS “would have a hard time not naming the top three skaters to the three spots on the Olympic team,” while Gold's coach Frank Carroll – who also coached Michelle Kwan – said he would not mind if USFS deviated from the 2014 Nationals results in selecting the Olympic team.¹⁹ Sportswriters pointed out that USFS team selection process “was left vague purposely to give wiggle room for someone like Wagner . . . if she did not make the top three at these championships.”²⁰ Wagner herself stated after her

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Christine Brennan, *Ashley Wagner Has Earned U.S. Spot for Sochi*, USA TODAY (Jan. 12, 2014), <http://www.usatoday.com/story/sports/olympics/sochi/2014/01/11/ashley-wagner-us-olympic-team-sochi/4437227/>.

¹⁸ John Powers, *Multiple Women's Contenders Could Pose a Dilemma*, BOSTON GLOBE (Jan. 11, 2014), <https://www.bostonglobe.com/sports/2014/01/11/multiple-women-contenders-could-present-olympic-selectors-with-dilemma/f6Igsy5qxOBLe4gS2GehzO/story.html>.

¹⁹ Caple, *supra* note 11. Unsurprisingly, the coaches' comments aligned with the interests of their skaters. Edmunds, with her second-place finish and lack of experience, was at greater risk of losing her spot to Wagner than Gold, the more experienced Nationals champion.

²⁰ Hersch, *Gracie Gold Women's Winner*, *supra* note 14.

short program that the USFS “rules are there for a reason” and that “[y]ou could be the best skater all season, and it could just not be your two nights.”²¹

The controversy only heightened when USFS finally named its Olympic team and selected Wagner over Nagasu.²² After consulting a USFS athlete representative, Nagasu did not appeal the decision, though she expressed her disappointment in a statement.²³ However, one commentator noted that an appeal would have been “a fruitless effort,” because the selection process is “both specific and vague enough that Nagasu never would have had a case.”²⁴

Part II. Heart of the Controversy – The U.S. Olympic Team Selection Process

In response to the controversy, USFS issued a statement explaining and defending its process, which was approved by the Athletes Advisory Committee of USFS, USFS Board of Directors, and the United States Olympic Committee. The International Committee of the USFS is responsible for selecting athletes to represent the U.S. in international competitions, including the World Championships, Four Continents Championships, World Junior Championships, and the Olympics.²⁵ The International Committee, which is a permanent committee of the USFS,²⁶ also has a nine-member Management Subcommittee, which is responsible for “approv[ing] criteria proposed and used to select and enter athletes in . . . the Olympic Winter Games.”²⁷

²¹ *Id.*

²² *U.S. Figure Skating Announces 2014 U.S. Olympic Figure Skating Team*, U.S. FIGURE SKATING (Jan. 12, 2014), <http://usfigureskating.org/Story.asp?id=49828&type=media>.

²³ John Powers, *Disappointed Mirai Nagasu Does Not File Appeal*, BOSTON GLOBE (Jan. 13, 2014), <https://www.bostonglobe.com/sports/2014/01/13/nagasu-accepts-decision-keep-her-off-olympic-skating-team/AVQNMeFbUjHrr3gXj9pWII/story.html>.

²⁴ Armour, *supra* note 1.

²⁵ ICR 6.04.

²⁶ USFS Bylaws Article XVI Section 1.

²⁷ ICR 2.02(E); ICR 2.03(C).

Once a majority of the International Committee approves the nominees to the Olympic team, it is up to the U.S. Olympic Committee to give the final approval.²⁸

The International Committee performs its duties under its broad mission to “select the U.S. Figure Skating Team that *wins the maximum number of international medals and berths* possible by *strategically providing experience* to qualified members . . . and *supporting the best qualified future prospects*.”²⁹ USFS reiterated this goal in its statement after the 2014 Nationals, which echoed its official Athlete Selection Procedures³⁰ for the 2014 Winter Olympic Games:

With the stated goal in the Athlete Selection Procedures of fielding the most competitive team for the Olympic Winter Games, and in accordance with those procedures, the 35-member International Committee took into consideration the competitions listed below in priority order, whether the athlete participated in those competitions, and if so, their placements, performances and the competitive fields at those competitions:

2014 U.S. Figure Skating Championships
2013 ISU Grand Prix Final
2013 ISU World Figure Skating Championships
2013 ISU Grand Prix Series Competitions (six competitions)
2013 ISU Four Continents Championships
2013 U.S. Figure Skating Championships
2013 ISU World Junior Figure Skating Championships
2013 ISU Junior Grand Prix³¹

While USFS noted that it considered the list of competitions “in priority order,” it also emphasized that the 2014 Nationals results “do not decide who is selected to the U.S. Olympic figure skating team.”³² Instead, “it is an athlete’s *body of work* at the competitions listed above

²⁸ *U.S. Figure Skating Athlete Selection Procedures: 2014 Olympic Winter Games*, § 1.3 (amended June 20, 2013), available at <https://www.usfigureskating.org/content/OlympicSelection.pdf>.

²⁹ ICR 2.02(F) (emphasis added).

³⁰ Supra note 28.

³¹ *U.S. Figure Skating: Race Wasn't a Factor in Selection*, WALL STREET JOURNAL (Jan. 17, 2014), <http://blogs.wsj.com/speakeasy/2014/01/17/u-s-figure-skating-race-wasnt-factor-in-selection/>.

³² *Id.*

that is considered in the selection of the U.S. Olympic figure skating team.”³³ If an athlete does not compete in any of these events due to an injury, she “may still be considered for selection by petitioning to the U.S. Figure Skating International Committee Management Subcommittee for nomination to the 2014 U.S. Olympic Team.”³⁴

In the midst of the controversy surrounding Wagner’s selection for the U.S. Olympic team, former Olympic gold medallist Scott Hamilton noted that “[t]he national championships aren’t the Olympic trials.”³⁵ The selection process for the U.S. Olympic team actually “goes on for a couple of years before the Olympic games, so the nationals are part of that process, but it’s not *the* process.”³⁶ Hamilton’s description of the USFS procedures for selecting athletes for the Olympics is thus consistent with reports that Wagner would have been selected without finishing in the top three at Nationals.³⁷ In defending USFS’ choice of Wagner over Nagasu, the president of USFS pointed out that Wagner had “the top credentials” of any female American skaters.³⁸

However, despite the clear authority of USFS to ignore the actual results of Nationals, it has only done so when an athlete’s injury has prevented him or her from competing at Nationals.³⁹ After Todd Eldredge withdrew from 1992 Nationals due to back pain, USFS named him, a two-time national champion, to the Olympic team anyway.⁴⁰ Nancy Kerrigan benefited from a similar waiver in 1994, after the infamous attack shortly before Nationals, and won a

³³ *Id.* (emphasis added).

³⁴ 2014 U.S. Olympic Comm., *Figure Skating*, TEAM USA (last accessed Mar. 5, 2014), <http://www.teamusa.org/Road-to-Sochi-2014/Sports/Figure-Skating>.

³⁵ Nick Zaccardi, *Gracie Gold, Scott Hamilton Comment on Ashley Wagner/Mirai Nagasu*, NBC SPORTS (Jan. 14, 2014), <http://olympictalk.nbcsports.com/2014/01/14/gracie-gold-scott-hamilton-ashley-wagner-mirai-nagasu-controversy/>.

³⁶ *Id.*

³⁷ *See supra* text and notes 17-18.

³⁸ Longman, *supra* note 12.

³⁹ *Id.*

⁴⁰ Randy Harvey, *Eldredge Gets 2-Week Reprieve*, L.A. TIMES (Jan. 20, 1992), http://articles.latimes.com/1992-01-20/sports/sp-308_1_todd-eldredge.

bronze medal in Lillehammer.⁴¹ Michelle Kwan, the skater bumped off the team to make room for Kerrigan, also requested and received a waiver in 2006; a few weeks after missing Nationals, she performed in front of a panel of judges selected by USFS, which unanimously decided to give her a spot on the U.S. Olympic team, though she eventually withdrew due to injury.⁴² However, even justified medical waivers invited scepticism about “turning Olympic berths into something akin to lifetime achievement awards.”⁴³ In the dramatic and extreme circumstances surrounding Kerrigan’s medical waiver, USFS nonetheless expressed some reservation about placing Kerrigan on the Olympic team, citing the need to be fair to other athletes.⁴⁴ Even the beloved Michelle Kwan could not avoid criticism when she sought a medical waiver in 2006.⁴⁵

However, Wagner’s selection to the U.S. Olympic team did not involve an injury and a medical waiver from USFS. Thus, the selection of Wagner to the U.S. Olympic team reflected an unprecedented decision to depart from the results of Nationals in the absence of an injured athlete.

Part III: The Ted Stevens Olympic and Amateur Sports Act

Before examining the merits of the Olympic team selection process, it is important to put the actions and authority of USFS in context of both the U.S. Olympic Committee (USOC) and

⁴¹ Jeré Longman, *U.S. Crown for Harding, Olympic Spot for Kerrigan*, N.Y. TIMES (Jan. 9, 1994), <http://www.nytimes.com/1994/01/09/sports/figure-skating-us-crown-for-harding-olympic-spot-for-kerrigan.html>.

⁴² John Powers, *Kwan’s Quest Ends*, BOSTON GLOBE (Feb. 13, 2006), http://www.boston.com/sports/other_sports/olympics/articles/2006/02/13/kwans_quest_ends/.

⁴³ Gwen Knapp, *Credibility on Thin Ice*, SPORTS ON EARTH (Jan. 13, 2014), <http://www.sportsonearth.com/article/66521406/>.

⁴⁴ Jeré Longman, *Kerrigan Attacked After Practice; Assailant Flees*, N.Y. TIMES (Jan. 7, 1994), <http://www.nytimes.com/1994/01/07/sports/figure-skating-kerrigan-attacked-after-practice-assailant-flees.html>.

⁴⁵ Gwen Knapp, *Kwan Welcome, But Is Risking Pristine Image*, S.F. CHRONICLE (Jan. 29, 2006), <http://www.sfgate.com/sports/knapp/article/Kwan-welcome-but-is-risking-pristine-image-2505673.php>.

the International Skating Union (ISU). The Ted Stevens Olympic and Amateur Sports Act (the Ted Stevens Act) created the U.S. Olympic Committee as a federally chartered corporation⁴⁶ with the authority to “recognize as a national governing body . . . an amateur sports organization which files an application and is eligible for such recognition.”⁴⁷ The Ted Stevens Act requires a national governing body to “provide[] an equal opportunity to amateur athletes . . . to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, or national origin.”⁴⁸ A national governing body for a sport has the authority, under the Ted Stevens Act, to “recommend to the [USOC] individuals and teams to represent the United States in the Olympic Games”⁴⁹ It also has the duty to “develop interest and participation throughout the United States and be responsible to the persons and amateur sports organizations it represents.”⁵⁰

A national governing body’s authority and recognition, however, is not unconditional. The Ted Stevens Act requires a governing body to submit to binding arbitration by the American Arbitration Association regarding any issue concerning “its recognition as a national governing body.”⁵¹ As the national governing body for the sport of figure skating,⁵² USFS is subject to the requirements of the Ted Stevens Act, and is the body through which American skaters compete in ISU competitions. In addition to selecting the U.S. team for the Olympics, USFS also selects

⁴⁶ 36 U.S.C. § 220502 (2007).

⁴⁷ 36 U.S.C. § 220521(a) (2007)

⁴⁸ 36 U.S.C. § 220522(a)(8) (2007).

⁴⁹ 36 U.S.C. § 220523(a)(6) (2007).

⁵⁰ 36 U.S.C. § 220524 (2007).

⁵¹ 36 U.S.C. §§ 220522(a)(4), 220529(a) (2007).

⁵² U.S. FIGURE SKATING, <http://www.usfsa.org/About.asp> (last visited Mar. 5, 2014).

skaters to represent the U.S. in various other international competitions, including the World Championships.⁵³

Consider, then, the stated goals and policies of USFS in light of its authority and duties under the Ted Stevens Act. First, the International Committee's mission is to optimize the U.S. performance in international competitions,⁵⁴ which is well within the mission of the USOC "[t]o support U.S. Olympic and Paralympic athletes in achieving sustained competitive excellence while demonstrating the values of the Olympic Movement, thereby inspiring all Americans."⁵⁵ Second, competitive success of American skaters in international competitions, especially the Olympics, is critical to returning the sport of figure skating to its previous levels of popularity and visibility.⁵⁶ In doing so, USFS would fulfil its duty under the Ted Stevens Act to "develop interest and participation" in the sport of figure skating.⁵⁷ Third, USFS as a national governing body for figure skating has the authority to "establish national goals and the attainment of those goals"⁵⁸ and organize amateur competitions in the United States. Thus the Ted Stevens Act does not require USFS to be bound by results of any "Olympic Trials." Finally, despite the broad authority of USFS under the Ted Stevens Act, USFS must still abide by the specific requirements of the law, such as governance and athlete representation measures, and be subject to any challenges to its legitimacy as a governing body.⁵⁹

Part IV. Defending the Olympic Team Selection Process: Defining Meritocracy

⁵³ See *supra* text accompanying note 25.

⁵⁴ See *supra* text accompanying note 29.

⁵⁵ U.S. Olympic Comm., *About the USOC*, TEAM USA (last visited Mar. 5, 2014), <http://www.teamusa.org/About-the-USOC>.

⁵⁶ See *supra* text accompanying notes 7, 10.

⁵⁷ See *supra* text accompanying note 50.

⁵⁸ 36 U.S.C. § 220523(a)(2) (2007).

⁵⁹ 36 U.S.C. § 220522(a)(4) (2007).

The athlete selection procedures set by USFS for the U.S. Olympic team allows USFS to address its goal of winning medals at international competitions and developing athletes for the future. While her performance at Nationals was lacklustre, Ashley Wagner was and remains the highest-ranked female American skater.⁶⁰ Meanwhile, as of March 2014, Mirai Nagasu ranked 23rd in the world, below other American skaters Christina Gao and Agnes Zawadzki.⁶¹ Following Nationals and the U.S. Olympic team controversy, Scott Hamilton commented, “I like to see someone earn their spot on the team, but Ashely [Wagner] kind of did that. . . . [T]he reason we have three women going to the Olympics is because of Ashley Wagner.”⁶² The United States needed Ashley Wagner and Gracie Gold to have a combined placement of thirteen or better at the 2013 World Championships, which they accomplished by placing fifth and sixth, respectively.⁶³ Although failure to perform under pressure at Nationals does not bode well for the Olympics, where the spotlight will only be brighter, Wagner had demonstrated that she could withstand the pressure of international competition.⁶⁴

Moreover, following the rationale for issuing medical waivers for athletes of similar experience and reputation, Wagner’s placement on the U.S. Olympic team is not only defensible but also desirable. USFS included Nancy Kerrigan and Michelle Kwan in their respective U.S. Olympic teams presumably because it believed that those skaters could contend for a medal at the Olympics.⁶⁵ Wagner’s placement offers USFS the skill and experience that Kerrigan and Kwan brought to their respective teams, without the any concerns about a lingering injury.

⁶⁰ *ISU World Standings*, *supra* note 4.

⁶¹ *Id.*

⁶² Zaccardi, *supra* note 35.

⁶³ *Id.*

⁶⁴ *See Brennan*, *supra* note 17.

⁶⁵

One could also point to the successes of U.S. Gymnastics in defending a vague and subjective selection process for the Olympics.⁶⁶ Gymnasts qualify for the U.S. Olympic team according to the following criteria:

The individual all-around champion from the combined two-day competition at the U.S. Olympic Trials automatically qualifies for the U.S. Olympic Team.

The remaining four athletes and up to three replacement athletes will be determined by the selection committee from among the competitors at the U.S. Olympic Trials.

The final U.S. Olympic Team and replacement athletes will be announced at the Olympic Trials, pending approval by the U.S. Olympic Committee.⁶⁷

U.S. Gymnastics also allows for a similar petition process for athletes “who have legitimate injuries, illness, or unusual circumstances and who have demonstrated a high level of international potential within the last year.”⁶⁸

A more “flexible selection procedure” allows the U.S. to field a team of the best gymnasts, regardless of how they may have performed at the national championships.⁶⁹ The more flexible approach also allows USFS to “support[] the best qualified future prospects”⁷⁰ by considering subjective factors such as age and potential of athletes. Perhaps USFS justified Polina Edmunds’ selection at least partly in the hopes that she would be the future of U.S. figure

⁶⁶ However, U.S. Gymnastics may not be a perfect example for USFS. Unlike competitive figure skating, gymnastics involves competition in specialized “events” as well as the “all-around” competition. For example, McKayla Maroney made the U.S. Olympic team in 2012 as a vault specialist and only competed in that event. Therefore, selection of the Olympic team in gymnastics necessarily requires more strategic planning than in figure skating.

⁶⁷ *Olympic Games Selection Procedures*, U.S. GYMNASTICS (last visited Mar. 7, 2014), http://usagym.org/pages/pressbox/pages/selection_olympics.html.

⁶⁸ *Id.*

⁶⁹ Dvora Meyers, *The Real Reason Ashley Wagner Made the U.S. Olympic Figure Skating Team*, DEADSPIN (Jan. 16, 2014), <http://deadspin.com/the-real-reason-ashley-wagner-made-the-u-s-olympic-fig-1502787187>.

⁷⁰ ICR 2.02(F) (emphasis added).

skating.⁷¹ With the relatively inexperienced Gracie Gold and Polina Edmunds on the team, perhaps USFS wanted someone who steadily led the American women in international competitions in the last two years. The U.S. Gymnastics approach embraces the fact that many athletes “deserve” to represent the U.S. at the Olympics but that subjectivity is part of the sport and the process.⁷² Under such a regime, fairness and transparency take a backseat to the mantra of “Just win, baby.”

Part V. A Flawed Process

However, transparency and subjectivity need not be mutually exclusive. The problem with USFS’ current method of selecting athletes for the U.S. Olympic team is the vague and opaque guidelines that USFS allegedly follows. This section looks at the flaws of the “black box” approach to team selection and suggests that it is possible to consider an athlete’s “body of work” without creating unnecessary controversy. The vague rule provides little guidance to those outside of the USFS International Committee as to how athletes will truly be evaluated and selected for the U.S. Olympic team. The lack of specificity adds intrigue to the selection process, which invites criticism and suspicion towards UFSF that ultimately affects the legitimacy of the organization.

In the aftermath of announcing the U.S. Olympic team, USFS received accusations of racism. In a widely circulated commentary, Jeff Yang suggested that Wagner’s selection over Nagasu had more to do with “Wagner’s flowing blond hair, bellflower-blue eyes” that made her

⁷¹ See Meyers, *supra* note 69; see also Caple, *supra* note 11 (Figure skating coach Frank Carroll “declared [Edmunds] the future of American skating.”).

⁷² See Meyers, *supra* note 69.

“the embodiment of the ‘golden girl.’”⁷³ With Wagner replacing Nagasu, Yang noted, the U.S. Olympic team will be “a porcelain-skinned, blond-tressed triple-threat, any of whom will unleash a geyser of sponsorship money if she manages to earn a chunk of Sochi metal for the motherland.”⁷⁴ Yang further shed light on the undercurrent of xenophobia and racism by pointing to media reactions to Michelle Kwan and Olympic gold medallist Kristi Yamaguchi that implied that these women were not quite “American.”⁷⁵

Accusations of racism, no matter how easily refuted, pose a serious problem to USFS. Under the Ted Stevens Act, USFS may not discriminate against athletes “on the basis of race, color, religion, sex, or national origin.”⁷⁶ Thus, an accusation that USFS has violated the Ted Stevens Act by selecting the U.S. Olympic team based on race is much more serious than accusations about unfairness. Moreover, USFS may be subject to mandatory arbitration regarding its status as the sole governing body for figure skating in the United States.⁷⁷ Consequently, accusations of racism in its selection procedures undermine the credibility and legitimacy of USFS as the sport’s governing body in the United States.

The lack of clearly articulated standards also brought on another kind of accusation: that USFS and USOC chose Wagner because of her marketability. The heavy promotion of Wagner by NBC leading up to Nationals and the Olympics led some to point out the “coincidence” that “NBC won’t have to re-shoot its Olympic commercials, which already heavily feature

⁷³ Jeff Yang, *Mirai Nagasu, Ashley Wagner, and the Myth of the Golden Girl*, *Speakeasy Blog*, WALL ST. JOURNAL (Jan. 14, 2014), <http://blogs.wsj.com/speakeasy/2014/01/14/mirai-nagasu-ashley-wagner-and-the-myth-of-the-golden-girl/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ 36 U.S.C. § 220522(a)(8) (2007).

⁷⁷ See *supra* note 51.

Wagner.”⁷⁸ With NBC favorite Lindsey Vonn withdrawing from competition due to injury, NBC “was not about to let their other Olympic hopeful, Ashley Wagner slip by either.”⁷⁹

Such allegations are undesirable for USFS for several reasons. First, USFS as a national governing body for figure skating is supposed to provide opportunities for amateur athletes to compete, regardless of sponsors or marketability. While the amended Ted Stevens Act recognizes that professional athletes participate in the Olympics and the commercial endeavors of amateur athletes,⁸⁰ it would not condone the selection of the U.S. Olympic team based on commercial successes. While “money and sponsors matter,”⁸¹ they should not play a role in selecting the best athletes to compete in the Olympics. Second, such accusations suggest a troubling level of influence of NBC and sponsors over USOC and USFS. Finally, consideration of commercial factors and sponsorship would be inconsistent with USFS’ stated goal of achieving the best possible results at international competitions.⁸² Accusations that USFS chose Wagner because of her good looks and marketability thus hurts USFS’ credibility as a national governing body for figure skating. This damage to its credibility in turn jeopardizes USFS’ status as the national governing body for figure skating.⁸³

⁷⁸ Alexander Abad-Santos, *The Real Skating Winner Isn’t Ashley Wanger, It’s Her Sponsors*, THE WIRE (Jan. 14, 2014), <http://www.thewire.com/culture/2014/01/real-winner-isnt-ashley-wagner-its-her-sponsors/357009/>.

⁷⁹ Gabriela Guzman, *Conspiracy Suspected as USFSA Selects Wagner, Ousts Nagasu for Olympics*, EXAMINER (Jan. 13, 2014), <http://www.examiner.com/article/conspiracy-suspected-as-figure-skating-selects-wagner-ousts-nagasu-for-olympics>.

⁸⁰ OLYMPIC AND AMATEUR SPORTS ACT AMENDMENTS OF 1998, S. REP. NO. 105-325, at 2 (1988)(citing reasons to amend the Amateur Sports Act of 1978, including the fact that “sports have begun to allow professional athletes to compete in some Olympic events” and “even sports still considered ‘amateur’ have athletes with greater financial opportunities and professional responsibilities”).

⁸¹ *See id.*

⁸² *See* ICR 2.02(F).

⁸³ *See supra* text and notes 51, 77.

Transparency is especially important to USFS because the inherently subjective nature of the sport lends itself to controversy and scandal. After shocking allegations of vote-swapping among the judges for the pairs skating event resulted in the awarding of a duplicate gold medal, Randy Harvey of the *Los Angeles Times* remarked, “The sun rose in the east Tuesday morning. The Wasatch Mountains were snowcapped. It was cold outside. There was a figure skating controversy. What else is new?”⁸⁴ Adelina Sotnikova’s surprise victory in the 2014 Olympics became the latest saga in the sports “checkered judging history,” leaving even figure skating insiders confounded.⁸⁵ The “incomprehensible” scoring system, the anonymity of the judges’ scores, and the “massive conflicts of interest” on the judging panel renewed criticisms about the sport’s much-maligned judging system.⁸⁶

USFS can learn from, and not follow, ISU’s missteps. Instead of obscuring its procedures in anonymity and secrecy, USFS can improve the transparency of the organization and reduce its exposure to accusations of corruption. By shrouding its U.S. Olympic team selection process behind a vague notion of “body of work,” USFS only subjects itself to controversy. Without concrete definitions or standards to establish *how* USFS plans to look at a skater’s “body of work,” it invites unnecessary questions about the legitimacy of its process. Why not take Nagasu over Edmunds, who had never competed at the senior level internationally until the Olympics? Why not consider Nagasu’s fourth place finish in the 2010 Vancouver Olympics, since she would be the only member of the U.S. team to have direct experience with the intensified pressure of Olympic competition? Just how low could Wagner have placed at

⁸⁴ Randy Harvey, *Skating on Thin Ice? It Figures*, L.A. TIMES (Feb. 13, 2002), <http://articles.latimes.com/print/2002/feb/13/sports/sp-olyharvey13>.

⁸⁵ Philip Hersh, *Sotnikova’s Golden Scores Fuel Figure Skating Controversy*, CHICAGO TRIBUNE (Feb. 21, 2014), http://articles.chicagotribune.com/2014-02-21/sports/chi-women-figure-skating-gold-medal-20140220_1_yuna-kim-gracie-gold-carolina-kostner.

⁸⁶ *Id.*

Nationals and still made the U.S. Olympic team? These questions may have valid answers, but without specific pre-determined procedures to cite, they sound like excuses of an organization trying to rationalize its decisions.

Adding transparency would also benefit the athletes. Ashley Wagner received hate messages after her selection to the U.S. Olympic team, despite the fact that she, like Nagasu, was also at the mercy of USFS' vague policies.⁸⁷ Once in Sochi, she said that her poor performance at Nationals was on her mind while preparing for the Olympics, but admitted, "I needed to prove to myself and everybody else who doubted by belonging here in the slightest."⁸⁸ While criticism may motivate some athletes, it nonetheless adds unnecessary drama and distractions to an already high-pressure environment. Clarity in how USFS will interpret an athlete's "body of work" may also have spared Nagasu the heartache of being "robbed" of her spot on the U.S. Olympic team, since she may have had a better idea *before* Nationals of her slim chances for the Olympic team.

Part VI. Towards Transparency and Legitimacy

The selection process of U.S. Freestyle Skiing recognizes that even the best athletes may falter occasionally, but provides a more descriptive account of how the organization will go about deciding who the best athletes are.

USSA's selection process for freestyle skiing combines a series of objective criteria with a more subjective discretionary selection process. Notably, the official selection guidelines for freestyle skiing articulate how the objective and subjective criteria will be assessed. For

⁸⁷ Cindy Adams, *Ashley Wagner, U.S. Figure Skater, Receives Hate Tweets After Competition*, EXAMINER (Jan. 14, 2014), <http://www.examiner.com/article/ashley-wagner-u-s-figure-skater-receives-hate-tweets-after-competition>.

⁸⁸ Jim Caple, *Under Pressure, Wagner Shines*, ESPN (Feb. 8, 2014), http://espn.go.com/olympics/winter/2014/figureskating/story/_/id/10424189/2014-sochi-olympics-wagner-quiets-critics-solid-performance-team-event.

example, selection of athletes for ski halfpipe begins by selecting up to three athletes who have had two top-three finishes during the selection period.⁸⁹ For the 2014 Olympics, there were to be between three and seven scheduled “tryout events,” with the list of events published by June 2013.⁹⁰ A nation can send a maximum of four athletes per gender per event.⁹¹ If more than three athletes fit this description, the selection process establishes “selection points,” which are “based on [the athletes’] results in each selection event, using the FIS World Cup point scoring system.”⁹² A “ranking list” for each gender is created from each athlete’s best two results among the selection events.⁹³ With this list, USSA selects athletes who have, in order:

- a. Single highest point result during the selection events
- b. Second highest point result during the selection events
- c. Third best point result during selection events
- d. Fourth best point result during selection events
- e. Total selection points (total points earned in all selection events)⁹⁴

If the above mechanism fails to break a tie, then USSA looks to “the highest point result from the final selection event.”⁹⁵ USSA reverts to a “discretionary selection process” *only if* it has spots left after the objective process of team selection.⁹⁶

This process has clear advantages over the USFS system. Entering the final selection event, athletes, coaches, and even dedicated fans have a much better understanding of which athletes are in contention for – or have secured – a spot on the Olympic team. It also clearly

⁸⁹ U.S. Ski & Snowboard Assoc., *Athlete Selection Procedures: 2014 Olympic Winter Games* (amended Jan. 16, 2014), available at <https://ussa.org/global/olympic-team-selection-criteria-2014>.

⁹⁰ *Id.* at 12.2.1.

⁹¹ *Id.* at 1.3.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

illustrates tie-breaking procedures that rely on established international scoring standards.⁹⁷

USSA has yet another tie-breaker in place in case of an unresolved tie.⁹⁸ Another feature of the USSA system is that it accounts for consistency – by specifically nominating players who have achieved multiple top-three results in the selection events – without resorting to vague language.

Compare this to the other extreme in athlete selection. U.S. Track and Field (USATF) nominates athletes to the Olympic Games “based on rank order of finish at the . . . U.S. Olympic Team Trials.”⁹⁹ USATF only selects athletes for the relays on a discretionary basis and sets for the “discretionary criteria” for selection of athletes for the Olympic relay teams.¹⁰⁰ However, there are significant differences in the sports to justify the decision of the USFS to consider an athlete’s body of work instead of merely one competition. The performance-based aspects of figure skating, as well as the risks involved in performing each element, make the results from a single competition less reliable as an indication of an athlete’s potential. Moreover, while a sprinter may not be able to magically run faster, a skater may improve her potential score by

⁹⁷ See *supra* text accompanying note 92.

⁹⁸ See *supra* text accompanying note 95.

⁹⁹ USA Track & Field, *Athlete Selection Procedures: 2012 Olympic Games* (June 1, 2011), available at

[https://www.usatf.org/events/2012/OlympicGames/entry/12%20SOG%20\(ATH\)%20ATH%20June%202014%202011.pdf%20approved%20with%20signature.pdf](https://www.usatf.org/events/2012/OlympicGames/entry/12%20SOG%20(ATH)%20ATH%20June%202014%202011.pdf%20approved%20with%20signature.pdf).

¹⁰⁰ *Id.* The criteria includes:

(1) the athlete’s ability to pass and receive the baton with either hand; (2) the athlete’s ability to run the turn and/or straight leg; (3) the athlete’s ability and willingness to attend any relay camps and/or practices; (4) the athlete’s times run in the appropriate distances; and (5) the athlete’s World Championships, Pan American Games and Olympic Games relay experience.

Moreover, athletes must compete in the Olympic Team Trials in order to qualify for nomination to the Olympic team as a relay team member, unless a waiver is granted.

changing the difficulty of her program or switching mistake-prone elements for more reliable ones.¹⁰¹

Meanwhile, the USSA process of athlete selection is more readily transferable to figure skating. Despite the criticisms and scandals of ISU, figure skating does have established international standards in place. The scoring system, introduced in 2004 to replace the more subjective “6.0” scoring system, awards points based on the program elements and their execution, with a predetermined base value for each element.¹⁰² This scoring system is mandatory for all ISU events and international competitions, and is used for Nationals.¹⁰³ The broad use of a standardized scoring system provides USFS an opportunity to implement a system similar to the “selection points” used by USSA in freestyle skiing. Additionally, ISU maintains a ranking of skaters, which provides yet another objective standard that USFS could use in determining an athlete’s “body of work.” USFS would have had a strong, objective defense of its decision if its athlete selection policies explicitly referred to the ISU world rankings as one of the criteria for athlete selection.¹⁰⁴

USFS could also adopt other methods that better adapt to the peculiarities of its sport. The selection events for freestyle skiing occur within six months prior to the Olympics,¹⁰⁵ while

¹⁰¹ In fact, Ashley Wagner changed one of her programs merely three weeks before the Olympics and returned to an old program from a previous season. Nancy Armour, *Ashley Wagner Changes Long Program 3 Weeks Before Sochi*, USA Today (Jan. 21, 2014), <http://www.usatoday.com/story/sports/olympics/sochi/2014/01/21/sochi-olympics-figure-skating-ashley-wagner/4733375/>.

¹⁰² *International Judging System*, U.S. Figure Skating (last updated Aug. 17, 2012), http://www.usfsa.org/New_Judging.asp?id=289.

¹⁰³ *Id.*

¹⁰⁴ That said, reliance on the ISU rankings would also need to account for certain factors which are not properly reflected in the rankings, such as an injury which forced a skater to miss competitions earlier in the season, or a skater who has slowly built momentum throughout the season.

¹⁰⁵ See *supra* note 89.

the 2013 World Championships occurred almost a year before the 2014 Olympics. USFS could address this gap in time – and any intervening events and injuries – by making Nationals function as a gatekeeper to the Olympics. For example, USFS could make a top-three finish in the prior World Championships an achievement worthy of one's placement on the U.S. Olympic team, provided that the athlete also achieves certain base results at Nationals. USFS could also grant a spot for an athlete who has achieved certain impressive milestones in the course of international competitions. It could determine that the highest-ranked American skater at the time of team selection shall be granted a spot on the U.S. Olympic team. All of these would essentially codify what actually happened after the 2014 Nationals, and provide USFS with discrete policies on which to base any potentially controversial decisions.

Ultimately, this paper does not propose a change to the way that USFS selects athletes for its U.S. Olympic team. The USFS has broad discretion under the Ted Stevens Act to act in the best interest of its sport and its athletes. However, USFS could have avoided much of the drama if it had written its *actual practices* into a more detailed policy. Adherence to a predetermined procedure invites less skepticism of the USFS than an unprecedented application of vague and undefined standards. And while such policies may not have prevented Mirai Nagasu's heartbreak, it may have prepared her – and figure skating fans – for the inevitable outcome.