

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

Thomas Navarro, James Giorgio,)
and Nina Shaffer,)
)
Plaintiffs,)
)
v.)
)
United States Center for SafeSport,)
United States Olympic &)
Paralympic Committee, and United)
States Equestrian Federation, Inc.,)
)
Defendants,)
_____)

Civil Action No.: 3:24cv00030

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs Thomas Navarro, James Giorgio and Nina Shaffer, by counsel, and for their Complaint against the Defendants United States Center for SafeSport, United States Olympic & Paralympic Committee, and United States Equestrian Federation, Inc., state as follows:

INTRODUCTION

1. Plaintiffs bring this action to challenge portions of the Ted Stevens Olympic and Amateur Sports Act (the “Ted Stevens Act”), 36 U.S.C. § 220501, *et seq.*, which, among other things, unconstitutionally delegates federal legislative, executive and judicial authority to a private entity to govern Plaintiffs and others participating in Olympic and amateur sports.

2. Plaintiffs also bring this action to challenge the Defendant United States Center for SafeSport’s policies and practices that have harmed Plaintiffs because such policies and practices violate Defendant United States Center for SafeSport’s statutory authorities and duties, or, in the alternative, violate the Plaintiff’s rights to due process under the Fifth Amendment to the United States Constitution and statutory rights under the Ted Stevens Act. Defendant SafeSport’s policies

and procedures prohibit any entity other than Defendant SafeSport, including arbitrators within its procedures and purportedly this Court, from ruling on their legality. In fact, pursuant to Defendant SafeSport's policies, Plaintiffs are unable to allege all the material facts that support their claims in this Complaint because doing so would violate Defendant SafeSport's policies and procedures.

3. Plaintiffs also bring this action to challenge the enforceability of their membership agreements with Defendant United States Equestrian Federation, specifically the unconscionable provisions requiring them to submit to Defendant SafeSport's unlawful policies and procedures.

PARTIES

4. Plaintiff Thomas Navarro is a citizen and resident of the Commonwealth of Virginia, is a member of Defendant USEF, and is subject to Defendant SafeSport's authority granted under federal law.

5. Plaintiff James Giorgio is a citizen and resident of the State of Connecticut, is a member of Defendant USEF, and is subject to Defendant SafeSport's authority granted under federal law.

6. Plaintiff Nina Shaffer is a citizen and resident of the Commonwealth of Pennsylvania, is a member of Defendant USEF, and is subject to Defendant SafeSport's authority granted under federal law.

7. Defendant United States Center for SafeSport ("SafeSport" or "the Center") is a private nonprofit corporation formed and existing under the laws of the State of Colorado. The Center is authorized to transact business in the Commonwealth of Virginia.

8. Defendant United States Olympic & Paralympic Committee ("USOPC") (formerly United States Olympic Committee) is a nonprofit corporation formed and existing under the laws

of the District of Columbia. The USOPC is authorized to transact business in the Commonwealth of Virginia.

9. Defendant United States Equestrian Center, Inc. (“USEF”) is a private not-for-profit corporation formed and existing under the laws of New York with approximately 150,000 members. Thousands of USEF members are Virginia residents from whom USEF collects substantial fees for membership and for participation in scores of USEF licensed competitions held annually in Virginia.. USEF does not possess a Certificate of Authority to transact business in the Commonwealth of Virginia.

JURISDICTION AND VENUE

10. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331 because this case presents claims arising under the United States Constitution and federal statutes. This Court also has jurisdiction to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 because an actual controversy exists among the parties.

11. Venue is appropriate under 28 U.S.C. § 1391(a), (b)(1), (b)(3), (c)(2) and (d).

FACTUAL ALLEGATIONS

12. Plaintiff Thomas Navarro is a horse professional and at all times relevant herein was eligible to be a member of the Defendant USEF. Plaintiff Navarro earns his living teaching equestrians and training horses.

13. Plaintiff Navarro was ruled ineligible to participate in USEF events in a Final Decision by Defendant SafeSport. Defendant USEF is enforcing Defendant SafeSport’s Final Decision.

14. None of the Defendants provided notice or a hearing to Plaintiff Navarro before ruling him permanently ineligible to participate and publishing his name on Defendant SafeSport's website.

15. James Giorgio is a contractor who owns and breeds Morgan horses, which are competed and sold. Their value is determined, in part, by their competition record.

16. Prior to July 21, 2018, Giorgio's horses regularly competed at USEF sanctioned horse shows, thereby increasing their value and marketability.

17. Giorgio regularly attended USEF sanctioned horse shows until July 21, 2018, at which time USEF permanently banned him as a result of a decision by Defendant SafeSport.

18. None of the Defendants provided notice or a hearing to Giorgio before ruling him permanently ineligible to participate and publishing his name on Defendant SafeSport's website.

19. On July 21, 2018, Defendant USEF imposed a permanent ban on Giorgio and in an email to Giorgio stated that the ban was immediate. Defendant USEF also informed Giorgio that he could request an arbitration hearing at the cost of nearly \$6,000.00.

20. Giorgio requested the hearing and made the required payment of almost \$6,000.00 in order to receive an opportunity to be heard.

21. Giorgio also requested a stay of the ban until a hearing could be held, but the Defendants denied the request.

22. Plaintiff Shaffer is a horse professional who earns her living teaching equestrians and training horses.

23. Plaintiff Shaffer was investigated by Defendant SafeSport for alleged emotional abuse under Defendant SafeSport's "Discretionary Jurisdiction." Plaintiff Shaffer did not commit the alleged abuse.

24. On February 26, 2024, Defendant SafeSport issued a three (3) month suspension to Plaintiff Shaffer prohibiting her from participating in USEF event. SafeSport also placed Plaintiff Shaffer on a nine (9) month probation following her suspension and issued other penalties. Defendant USEF is enforcing the suspension and other penalties issued by the Defendant SafeSport against Plaintiff Shaffer. Defendant SafeSport also published Plaintiff Shaffer's name on its website.

25. None of the Defendants provided a hearing to Plaintiff Shaffer before suspending her from participating in USEF events and/or publishing her name and identifying her as having been suspended for committing "emotional abuse." Pursuant to the SafeSport Code, the only procedure available to Plaintiff Shaffer was a post-determination arbitration for which she was required to pay \$5,200.00. Plaintiff Shaffer could not afford the arbitration fee.

26. At the time each Plaintiff entered into their membership agreement with USEF, Bylaw 102 of the USEF Bylaws provided that USEF "shall protect the *right* of an athlete, coach, trainer, manager, administrator, or official to participate in athletic competitions in equestrian events." (Emphasis added).

Legislative History of the U.S. Olympic Movement

27. In 1978, Congress passed the Ted Stevens Act, which governs Olympic and amateur sports in the United States. Under the Ted Stevens Act, Defendant USOPC is responsible for governing the Olympic Movement in the United States.

28. Since 1978, the number of athletes under the "Olympic umbrella" has grown exponentially and includes hundreds of thousands of amateur athletes who have no Olympic aspirations or chance at competing at the Olympic level. The United States Equestrian Federation ("USEF") alone boasts a membership of approximately 150,000 members, many of whom are

simply horse owners, fans of the sport, and other non-riding participants. The greatest segment of membership are true amateur riders who compete at USEF sanctioned competitions but in non-Olympic disciplines and/or at non-Olympic levels.

29. Under the statutory framework of the Ted Stevens Act, the USOPC recognizes a National Governing Body (“NGB”) for each Olympic sport, and each NGB is a member of the USOPC. The Ted Stevens Act sets forth specific eligibility criteria and conditions that an entity must meet to serve as an NGB. 36 U.S.C. § 220522. These eligibility criteria include a requirement that an NGB provide “notice and a hearing” before declaring members of the Olympic movement ineligible to participate. 36 U.S.C. § 220522(8). (The Ted Stevens Act was reorganized such that current § 220522(8) was formerly § 220522(a)(8), including at the time that Plaintiffs Navarro and Giorgio were denied a hearing. The reorganization did not change the operative language in the statute. For purposes of clarity, references herein to § 220522(8) also include the former § 220522(a)(8) if appropriate.)

30. An NGB can lose its status as an NGB if it fails to fulfill the eligibility criteria and conditions in 36 U.S.C. § 220522, including the notice and hearing requirements of § 220522(8).

31. Under the original Ted Stevens Act, NGBs, including Defendant USEF, were responsible for policing emotional, physical, and sexual abuse in their sports. In doing so, NGBs, including Defendant USEF, provided members notice and a hearing before ruling on their eligibility to participate due to allegations of emotional, physical or sexual abuse.

History of SafeSport and the SafeSport Code

32. Prior to 2011, Defendant USOPC began the process of creating Defendant SafeSport as an entity within its authority.

33. On December 5, 2014, Defendant USOPC incorporated Defendant SafeSport with a principal office address of One Olympic Plaza, Colorado Springs, Colorado (the same address as USOPC).

34. Defendant SafeSport is managed by a board of directors. According to the Center's Articles of Incorporation, "[t]he number of directors, their term of office and manner of their selection and election shall be determined according to the Bylaws of the [Center] from time to time in force."

35. Pursuant to Defendant SafeSport's Bylaws, Directors have total control over the make-up of the Board of Directors. The Bylaws provide: "Directors shall be elected by the Board of Directors at the annual meeting of the Board of Directors," "[a]ny vacancy in the Board of Directors shall be filled by the Board of Directors," and "[a]ny director may be removed with or without cause by the affirmative vote of at least two-thirds (2/3) of the directors then in office."

36. Defendant SafeSport's Board of Directors also controls Defendant SafeSport's governance and affairs. Defendant SafeSport's Articles of Incorporation provide that "[t]he initial Bylaws of the [Center] shall be adopted by the [Center's] board of directors. Except to the extent otherwise provided by the Bylaws, the board shall have the power to alter, amend or repeal the Bylaws from time to time in force and to adopt new Bylaws. Such Bylaws may contain any provision for the regulation or management of the affairs of the [Center] which are not inconsistent with law or these Articles of Incorporation, as the same may from time to time be amended." The Articles of Incorporation further provide that the board may amend the Articles of Incorporation at any time.

37. The USOPC formed a working group with NGBs to draft policies and procedures governing emotional, physical and sexual abuse, including the complaint, investigation, and

adjudication process for claims of emotional, physical and sexual abuse. These policies and procedures came to be known as the “SafeSport Code.”

38. From the very beginning, Defendant USOPC intended to deny Participants a pre-determination hearing as a matter of course despite the statutory right to a pre-determination hearing granted to Participants under the Ted Stevens Act. The October 10-11, 2013 USOPC Board Minutes state, “While due process must be respected, with the process contemplating the *possibility of a hearing* before the AAA *upon request*, the primary goal of the structure is to ensure that as much accurate information is collected as possible.” (Emphasis added).

39. During the course of drafting the original SafeSport Code, officials at Defendant USOPC circulated to the NGBs a draft SafeSport Code that failed to provide notice and a hearing before SafeSport issued a Final Decision on a Participant’s eligibility. Instead, this draft SafeSport Code only provided for a hearing after appealing Defendant SafeSport’s Final Decision to and arbitrator at the Participant’s expense.

40. Defendant USEF’s General Counsel recognized the apparent conflict between the draft SafeSport Code’s failure to provide a hearing before SafeSport issued a Final Decision, and the statutory requirement that NGBs provide a hearing before ruling on a Participant’s eligibility contained in 36 U.S.C. § 220522(8). Defendant USEF’s General Counsel raised this issue to the working group leader via email. She specifically pointed out that under the SafeSport Code, Participants would be deprived of a hearing that they are afforded in every other context of sport, including anti-doping cases that are adjudicated through USADA.

41. Despite being aware of the NGB’s statutory requirement to provide a pre-determination hearing to Participants, the USOPC didn’t include a pre-determination hearing in the SafeSport Code.

42. The original SafeSport Code became effective on March 3, 2017. At that time, the Defendant SafeSport was under the jurisdiction of Defendant USOPC, and the Defendant USOPC required all NGBs to sign off on the SafeSport Code.

43. The original SafeSport Code included three separate sections: (1) SafeSport Code for the U.S. Olympic and Paralympic Movement; (2) SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement; and (3) Supplemental Rules for U.S. Olympic and Paralympic Movement Arbitration.

44. The original SafeSport Code governed anyone within the Olympic movement, including but not limited to athletes, coaches, trainers, team staff, medical or paramedical personnel, administrators, officials, other athlete support personnel, NGB employees and volunteers.

45. The original SafeSport Code provided that Defendant SafeSport had exclusive authority to investigate and resolve allegations of sexual misconduct.

46. The original SafeSport Code provided that Defendant SafeSport had discretionary authority over other allegations as follows: “On the written request of the NGB or USOPC, [SafeSport] may, in its discretion, accept authority over alleged violations of any prohibited conduct under the [SafeSport] *Code*.” This discretionary authority included allegations of emotional or physical misconduct, including bullying behaviors, hazing and harassment. If the NGB or USOPC didn’t request SafeSport accept authority over alleged violations of the SafeSport Code, then the NGB would investigate them using their own rules, which, in Defendant USEF’s case, provided a pre-determination hearing.

47. The investigation and resolution procedures in the original SafeSport Code did not provide a hearing before Defendant SafeSport issued a Decision on whether a violation occurred

and, if so, the sanctions to be issued. Instead, the original SafeSport Code only provided a limited opportunity for an accused to provide limited evidence to an investigator. The original SafeSport Code also called for SafeSport to remove the identity of witnesses from the written Decision so they couldn't be identified by an accused.

48. Under the original SafeSport Code, in order to get a limited post-determination hearing, an accused was required to request arbitration within five (5) business days and to pay a fee of \$5,200.00. In addition, the accused was also charged a "room fee" of \$400.00, which was not identified in the SafeSport Code.

49. The original SafeSport Code limited the scope of arbitration as follows: "Arbitration shall resolve only whether a Responding Party violated the *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)* and/or the appropriate sanction (if any). Challenges to, or complaints about, any organizational practices or procedures shall not be addressed and the arbitrator shall be limited to evaluating whether a Covered Individual violated the *Code*, and, if so, the appropriate sanction." Thus, the original SafeSport Code resolution procedures did not provide any opportunity for an accused to be heard on the issue of whether the SafeSport Code, and/or Defendant SafeSport's policies and practices, violated his or her rights under the Ted Stevens Act or any other source.

50. Despite an NGB's obligation to protect its members' rights and to provide a hearing before declaring them ineligible, neither Defendant USEF nor any other NGB took any action to protect its members' rights under the Ted Stevens Act.

51. Instead, USEF and the other NGBs acquiesced to the "work around" drafted by Defendant USOPC and Defendant SafeSport to avoid their obligation to provide a hearing before declaring someone ineligible to participate.

52. At the time the USOPC created Defendant SafeSport and the first version of the SafeSport Code, the USOPC and SafeSport were aware that the Ted Stevens Act required NGBs to provide a hearing to Participants before declaring them ineligible, yet ignored that statutory requirement in the SafeSport Code.

53. In March 2018, Congress passed the United States Center for Safe Sport Authorization Act of 2018 (the “2018 Amendment”), which amended the Ted Stevens Act in several respects. The 2018 Amendment made Defendant SafeSport independent from Defendant USOPC and gave Defendant SafeSport considerable legislative, regulatory, administrative, and judicial powers.

54. The 2018 Amendment declared that SafeSport “*shall ... serve as the independent national safe sport organization* and be recognized worldwide as the independent national safe sport organization for the United States,” and “*exercise jurisdiction* over the [USOPC], each national governing body, and each paralympic sports organization *with regard to safeguarding athletes against abuse, including emotional, physical, and sexual abuse, in sports.*” 36 U.S.C. § 220541 (a)(1)(A)-(B). (Emphasis added).

55. The 2018 Amendment also provided broad regulatory and enforcement powers to the Defendant SafeSport, including mandating that Defendant SafeSport shall “*maintain an office for response and resolution that shall establish mechanisms that allow for the reporting, investigation, and resolution ... of alleged sexual abuse in violation of the Center’s policies and procedures,*” and “*ensure that the [these] mechanisms ... provide fair notice and an opportunity to be heard*” 36 U.S.C. § 220541(a)(1)(D)-(E). (Emphasis added).

56. In the 2018 Amendment, Congress not only gave federal regulatory and enforcement authority to the Center, but also gave it federal legislative authority. The 2018

Amendment provides that the policies and procedures in the SafeSport Code “shall apply as though they were incorporated in and made a part of section 220524 of this title.” 36 U.S.C. § 220541(b). Thus, SafeSport’s policies would be codified in 36 U.S.C. § 220524 upon being issued by Defendant SafeSport without ever being reviewed by Congress or any federal agency.

57. The SafeSport Code governs the conduct of all Participants in Olympic and amateur sports.

58. In the 2018 Amendment, Congress required that Defendant SafeSport publicly identify persons found to be in violation of the SafeSport Code on its website.

59. Although Congress also included in the 2018 Amendment a requirement that SafeSport “ensure that the mechanisms” for reporting, investigating, and resolving SafeSport allegations provide “fair notice and an opportunity to be heard,” Defendant SafeSport never changed the SafeSport Code to provide a predetermination hearing to Participants before making a Final Decision.

60. While granting federal legislative and executive authority to the Center, Congress didn’t provide for any oversight of the Center’s activities by a federal administrative agency or department of the Executive Branch. The only oversight of the Center was minimal oversight by the Government Accounting Office (“GAO”), which is an independent agency created by Congress to assist Congress, and its oversight only pertained to fiscal issues and ensuring the Center remained independent from the USOPC and NGBs. The only other oversight called for in the 2018 Amendment is a requirement that Center “submit an annual report to Congress.” 36 U.S.C. § 220543(b).

61. After Congress passed the 2018 Amendment, Defendant SafeSport revised and/or amended the SafeSport Code but didn’t provide for a hearing before issuing a Final Decision.

Instead, the SafeSport Code still provided for an appeal to an arbitrator at the expense of the accused, and limited the scope of the appeal to whether the accused violated the code and, if so, whether the sanctions were appropriate.

62. In or around March 2017, Defendant USOPC changed its relationship with Defendant SafeSport to a purely contractual relationship. Upon information and belief, this relationship is set forth in a Master Services Agreement between the USOPC, the Center, and the NGB's, including Defendant USEF.

63. Defendant USOPC required all NGBs to sign off on the Master Services Agreement.

64. The Master Services Agreement delegates all responsibility for the adjudication and determination of SafeSport violations to the Center by the USOPC and the NGBs.

65. In the Master Services Agreement, the USOPC and the NGBs, including Defendant USEF, specifically represented that they had the "right to grant the rights [being transferred] under this MSA to [the Center]."

66. The Master Services Agreement contains a requirement that the parties comply with the law.

67. In 2020, Congress passed the Empowering Olympic and Amateur Athletes Act of 2020, which amended the Ted Stevens Act in several respects.

68. Under the 2020 Amendment, Congress added § 220541(a)(1)(h), which requires Defendant SafeSport to provide "procedural due process" to an accused Olympic Participant in every step of its investigation and resolution process.

69. Defendant SafeSport revised and/or amended the SafeSport Code effective April 15, 2019. Defendant SafeSport revised and/or amended the SafeSport Code effective April 1, 2020.

Defendant SafeSport revised and/or amended the SafeSport Code in 2021-2023. None of these revisions included any participation or oversight by Congress or any federal agency, or an opportunity for public comment or participation in the rule changing process.

70. Although the 2022 version of the SafeSport Code added the language from the new procedural due process provisions contained in the 2020 Amendment to the Ted Stevens Act, Defendant SafeSport did not change its procedures to provide a hearing to Participants before issuing a Final Decision.

71. The SafeSport Code has never provided a predetermination hearing to Participants before issuing a Final Decision.

72. Defendant SafeSport does not provide any notice of pending amendments to the SafeSport Code. Instead, SafeSport includes the following provision:

The Code is administered by the Center. The USOPC, NGBs, and Local Affiliated Organizations (LAOs) must comply, in all respects, with these policies and procedures and shall be deemed to have incorporated the provisions into their relevant policies as if they had set them out in full therein.

Participants are responsible for knowing the information outlined herein and, by virtue of being a Participant, have expressly agreed to the jurisdiction of the Center and this Code's policies and procedures, including those governing arbitration. The Center reserves the right to make changes to the Code as necessary. ***Once posted online, notice has been provided and changes are effective immediately unless otherwise noted.***

See, e.g., SafeSport Code (effective April 1, 2023), p.1. (Emphasis added).

73. Neither the SafeSport Code nor the Defendant SafeSport—while under the jurisdiction of the Defendant USOPC and while independent—has ever provided a hearing to a Participant before issuing a decision on their eligibility to participate in sport.

74. Every version of the SafeSport Code has severely restricted the scope of issues on which an accused could be heard, thereby denying accused Participants any meaningful opportunity to be heard. The SafeSport Code has never provided a pre-determination hearing and has always provided for a post-determination arbitration at the accused's expense. The SafeSport Code has limited the scope of authority of an arbitrator to the substantive issues of whether the code was violated and/or whether the penalty is appropriate. The SafeSport Code has always denied the right to appeal the arbitrator's decision. Despite providing no due process safeguards, the SafeSport Code has always contained a provision that persons found in violation without a hearing will be publicly identified on Defendant SafeSport's website.

75. Defendants have been able to deprive Participants of their statutory right to a predetermination hearing since 2017 by manipulating the procedures in the SafeSport Code to avoid any adjudication of the lawfulness of the SafeSport Code procedures by a court or an arbitrator.

76. For years, the SafeSport Code provided that issues relating to the SafeSport Code policies and procedures are not within the scope of the arbitrator. Accordingly, when Participants contested the lawfulness of the procedures during an arbitration, the Center successfully argued that the arbitrator lacked the authority to rule on these issues.

77. After Participants attempted and failed to get a ruling on the statutory and constitutional issues arising from the SafeSport Code's failure to provide a predetermination hearing, one sought a ruling in federal court. *Callaghan v. U.S. Ctr. for Safe Sport*, Case No. 2:18-cv-336-FtM-99CM (M.D.Fla. Aug. 28, 2018). In this instance, despite the language in the SafeSport Code and its arguments in arbitrations to the contrary, the Center argued that the arbitrators could review these issues through the arbitrator's independent "power to rule on his or

her jurisdiction,” even though the SafeSport Code expressly denies the arbitrator’s jurisdiction to hear these issues. The Callaghan court granted the Center’s Motion to Dismiss ruling that the Participant had failed to exhaust his administrative remedies through the arbitration process on these issues.

78. During his SafeSport investigation and arbitration hearing, Plaintiff Navarro filed a “Callaghan Motion” raising the issue of the failure of the Center and USEF to provide a pre-determination hearing as required by the Ted Stevens Act. In Plaintiff Navarro’s case, as in many other cases, the Center argued that the arbitrator did not have the authority or jurisdiction to address a participant’s objection to the SafeSport Code policies and procedures that deny them a hearing prior to issuing a Final Decision. The arbitrator agreed with the Center based on the Center’s policies and procedures limiting the scope of the arbitrator’s authority.

79. Pursuant to 36 U.S.C. § 2205727, Plaintiffs Navarro and Giorgio, as well as other Participants, filed a noncompliance complaint against Defendant USEF alleging that it was violating the Ted Stevens Act, specifically 36 U.S.C. § 220522(8), because its members were being declared ineligible prior to being afforded a hearing. Ultimately, a Panel of three AAA arbitrators heard the matter.

80. The Panel issued a lengthy Final Award (attached hereto as Exhibit A) in which it stated the following:

For nearly ten years, [USEF] and the USOPC have failed to take the steps necessary to address the conflict between the due process rights provided by the CSS/SafeSport Code and the [pre-determination hearing] right identified in [then] Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act. This case only scratched the surface regarding the reasons why [USEF] and the USOPC agreed to remove the longstanding right that an accused Olympic participant was afforded a pre-determination hearing (PDH) under [then] Section 220522(a)(8) when the SafeSport system was implemented after the Dr. Larry Nasser scandal in women's gymnastics. The limited evidence presented appears to indicate that the USOPC was either directly responsible or complicit in eliminating

this pre-determination hearing right when the SafeSport system was created. Whether proper or not, the longstanding right that an accused Olympic participant was afforded a pre-determination hearing under [then] Section 220522(a)(8) was eliminated when the SafeSport system was created by the USOPC.

[SafeSport] only doubled down on this pre-determination hearing issue in 2018 when it assumed full control and responsibility for all cases involving sexual misconduct or abuse in sport. To add to the problem, [SafeSport] also used its exclusive authority to create SafeSport Rules that prevented an accused Olympic participant from legally challenging its adjudication procedure allowing [SafeSport] to issue final decisions against an accused Olympic participant before ever providing a pre-determination hearing.

The issue is whether Claimants could prevail in federal court regarding the legal conflict between the rules and procedures of [SafeSport] and the SafeSport Code and the conflicting due process protection identified in Section 220522(a)(8) and other sections of the Ted Stevens Act. As discussed in the analysis above, Claimants clearly have a valid procedural due process claim to adjudicate and this Panel agrees that Claimants could prevail when this conflict of law issue is eventually addressed in federal court.

The USOPC and [SafeSport] efforts to diminish or minimize this right to procedural due process has been set up for a rebuke by a federal court since the passage and implementation of the original version of the SafeSport Code in 2017 ... In the meantime, hundreds of accused Olympic Participants may continue to be inappropriately deprived of a legal right to a PDH in their cases.

81. Although the arbitration panel found that “hundreds of accused Olympic Participants may continue to be inappropriately deprived of a legal right to a [predetermination hearing] in their cases,” it also found that it did not have the authority to rule on this issue. Instead, it found that the only proper forum to address this issue would be a federal court.

**COUNT I –UNCONSTITUTIONAL DELEGATION OF POWER
AND VIOLATION OF THE PRINCIPLES OF SEPARATION OF POWERS**

Against All Defendants

82. The foregoing allegations are incorporated as if fully set forth herein.

83. Article I, Section 1 of the United States Constitution reads: “All legislative Powers herein granted shall be vested in a Congress of the United States” U.S. CONST. art. I, § 1.

84. Article II, Section 1 of the United States Constitution reads: “The Executive power shall be vested in a President,” who must “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, § 1, cl. 1; U.S. CONST. art. II, § 3. See also *Seila Law, LLC v. Consumer Financial Protection Bureau*, 591 U.S. 207, 140 S.Ct. 2183, 2197, 207 L.Ed.2d 494 (2020). “The entire ‘executive Power’ belongs to the President alone.” *Seila Law, LLC v. Consumer Financial Protection Bureau*, 591 U.S. 207, 140 S.Ct. 2183, 2197, 207 L.Ed.2d 494 (2020).

85. Because the United States Constitution grants exclusive legislative authority to Congress, and exclusive executive authority to the Executive branch, Congress cannot grant these powers to other entities, especially private entities.

86. The Supreme Court of the United States has consistently recognized that the United States Constitution does not permit Congress to delegate the exclusive authority of a branch of the federal government to a private entity.

87. “The nondelegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Mistretta v. United States*, 488 U.S. 361, 371, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989).

88. “That Congress cannot delegate legislative power ... is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692, 12 S.Ct. 495, 36 L.Ed. 294 (1892).

89. Likewise, “[f]ederal lawmakers cannot delegate regulatory authority to a private entity. To do so would be ‘legislative delegation in its most obnoxious form.’” *Ass’n of Am. Railroads v. U.S. Dep’t of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013) (quoting *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 80 L.Ed. 1160 (1936)). See also *Dep’t of Transp. v.*

Ass'n of Am. Railroads, 575 U.S. 43, 64, 135 S.Ct. 1225, 191 L.Ed.2d 153 (2015) (Alito, concurring) (quoting *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 80 L.Ed. 1160 (1936)).

90. The Ted Stevens Act expressly grants legislative authority to Defendant SafeSport, which is a private entity, in violation of the nondelegation doctrine.

91. The Ted Stevens Act provides that Defendant SafeSport's policies and procedures "shall apply as though they were incorporated and made a part of Section 220524 of this Title [of the United States Code]." 36 U.S.C. § 220541(b).

92. The Ted Stevens Act expressly grants regulatory authority to Defendant SafeSport, which is a private entity, in violation of the nondelegation doctrine.

93. The Ted Stevens Act delegates broad policy-making authority to Defendant SafeSport, including mandates that the Defendant SafeSport "shall exercise jurisdiction over the [USOPC] and each national governing body with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports;" "shall develop training, oversight practices, policies, and procedures to prevent abuse, including emotional, physical, and sexual abuse, of amateur athletes;" and "shall establish mechanisms that allow for the reporting, investigation, and resolution ... of alleged sexual abuse in violation of the Center's policies and procedures...." 36 U.S.C. § 220541(a)(1).

94. The Ted Stevens Act expressly grants executive authority to Defendant SafeSport, which is a private entity, in violation of the nondelegation doctrine.

95. "As Madison explained, 'If any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws.'" *Seila Law, LLC*

v. Consumer Financial Protection Bureau, 591 U.S. 207, 140 S.Ct. 2183, 2197, 207 L.Ed.2d 494 (2020) (citing 1 Annals of Cong. 463 (1789)).

96. Defendant SafeSport is a private nonprofit corporation organized and existing under the law of the State of Colorado. Defendant SafeSport is controlled by an autonomous board of directors who control every aspect of Defendant SafeSport, including electing the board of directors, filling vacancies on the board of directors, removing directors from the board of directors, and determining the number of seats, length of terms, and other aspects of the board of directors.

97. Although Congress declared in the Ted Stevens Act that Defendant SafeSport is not a “state actor,” the Supreme Court of the United States has warned courts that this language is a red flag. “One way the Government can regulate without accountability is by passing off a Government operation as an independent private concern. Given this incentive to regulate without saying so, everyone should pay close attention when Congress ‘sponsors corporations that it specifically designates *not* to be agencies or establishments of the United States Government.’” *Dep’t of Transp. V. Ass’n of Am. Railroads*, 575 U.S. 43, 57, 135 S.Ct. 1225, 191 L.Ed.2d 153 (2015) (Alito, concurring) (Emphasis in original). “Perhaps the most telling indication of a severe constitutional problem with an executive entity is a lack of historical precedent to support it.” *Seila Law, LLC v. Consumer Financial Protection Bureau*, 591 U.S. 207, 140 S.Ct. 2183, 2201, 207 L.Ed.2d 494 (2020) (citing *Free Enterprise Fund v. Public Accounting Oversight Board*, 561 U.S. 477, 483, 130 S.Ct. 3138, 177 L.Ed.2d 619 (2010) (internal quotations omitted)).

98. The SafeSport Reauthorization Act unconstitutionally vests significant governmental power in the hands of a private corporation managed by a board of directors accountable to no one but themselves. The board is not elected by the people, nor meaningfully

controlled by someone who is. The Center does not even depend on Congress for annual appropriations. Yet the board may unilaterally without meaningful supervision amend federal statutes, issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine penalties to impose on private parties.

99. The Ted Stevens Act unconstitutionally grants to Defendant SafeSport, a private, independent, self-regulatory, non-profit corporation, the power to draft, implement, administer and enforce federal law and policy regarding emotional, physical and sexual abuse in Olympic and amateur sports. Defendant SafeSport has regulatory control over virtually anyone participating in amateur sports in the United States, including players, coaches, administrators, referees and other officials. Defendant SafeSport is charged with developing programs and promulgating rules covering all facets of emotional, physical and sexual abuse in Olympic and amateur sports in the United States. Further, the Ted Stevens Act grants Defendant SafeSport the authority to enforce alleged rules violations and requires Defendant SafeSport to publicly identify anyone found to be in violation.

100. Defendant SafeSport is funded by the USOPC, NGB's, and receives a grant from the United States Department of Justice.

101. Plaintiffs seek a declaration that the Congressional grants of authority to Defendant SafeSport contained in The Ted Stevens Act are unconstitutional grants of legislative, executive, and judicial authorities in violation of the nondelegation doctrine. In addition, Plaintiffs seek a declaration that Defendant SafeSport was without authority to create a SafeSport Code or enforce the rules and regulations contained in the SafeSport Code, and that each of the penalties issued by Defendant SafeSport and enforced by Defendant USEF be struck and that each of the Defendants be enjoined from continuing to enforce the sanctions against Plaintiffs.

COUNT II – VIOLATION OF THE APPOINTMENTS CLAUSE

Against All Defendants

102. The foregoing allegations are incorporated as if fully set forth herein.

103. In the alternative, if a court were to find that the grant of power is such that Defendant SafeSport is a public entity, it would still be unconstitutional because appointment of its Board of Directors violates the Appointments Clause of the United States Constitution.

104. Under the Appointments Clause, only the president, a head of a department, or a court of law may appoint an officer of the United States. U.S. CONST. art. II, sec. 2, cl.2.

105. If the Center is deemed public, the Center’s Board of Directors would be officers of the United States because they “occupy a continuing position established by law” and exercise “significant authority pursuant to the laws of the United States.” *Lucia v. SEC*, 585 U.S. ___, 138 S.Ct. 2044, 2051, 201 L.Ed.2d 464 (2018)(internal quotation marks omitted).

106. The Center’s Board members are not appointed by the president, a head of a department, or a court of law. Instead, they are elected by Board members *i.e.*, themselves.

107. Thus, the appointment of the Center violates the Appointments Clause.

108. Plaintiffs and other Participants are harmed by the unconstitutional appointment of the Center because they are subjected to policies and procedures that violate the Ted Stevens Act and the United States Constitution. Plaintiffs and other Participants are further harmed by the unconstitutional appointment of the Center because the dues and fees paid by them to USEF have financed the Center.

109. Plaintiffs seek a declaration that The Ted Stevens Act, specifically the authorization of the Center, violates the Appointments Clause of the United States Constitution.

COUNT III– VIOLATION OF TED STEVENS ACT

Against Defendants United States Equestrian Federation, Inc. and United States Olympic & Paralympic Committee

110. The foregoing allegations are incorporated as if fully set forth herein.

111. Since 1978, the Ted Stevens Act has required that in order to be eligible to serve as an NGB for an Olympic Sport, an NGB, including Defendant USEF, must give its members a hearing before declaring them ineligible to participate in sports competitions.

112. Pursuant to the Ted Stevens Act, Defendant USOPC has the duty to ensure that NGBs, including Defendant USEF, fulfill the eligibility requirements under the Act.

113. From approximately 2013 through 2017, Defendant USOPC, with input from the NGB's, drafted the SafeSport Code to govern emotional, physical and sexual abuse of athletes in Olympic and amateur sports. Defendant USOPC also mandated that every NGB, including Defendant USEF, sign off on the SafeSport Code and comply with its provisions. Despite the requirement of a pre-determination hearing contained in the Ted Stevens Act, 36 U.S.C. § 220522(8), Defendant USOPC did not include a pre-determination hearing in the SafeSport Code.

114. Since 2017, Defendant USEF has been in violation of the Ted Stevens Act by declaring Participants, including Plaintiffs, ineligible to participate in competition without a pre-determination hearing.

115. Defendant USEF has declared each of the Plaintiffs to be ineligible to participate without a pre-determination hearing.

116. By implementing sanctions against Plaintiffs, and dozens of other members, under the foregoing circumstances, USEF violated 36 U.S.C. §220522(8). By continuing to enforce the sanctions knowing that Plaintiffs, and dozens of other members, were not provided notice and/or a hearing, USEF continues to violate 36 U.S.C. §220522(8).

117. Since 2017, Defendant USOPC has not only failed to ensure that NGBs, including Defendant USEF, fulfilled their eligibility requirements under the Ted Stevens Act, but also directed them not to fulfill those requirements, and or assisted them in avoiding them.

118. Plaintiffs seek a declaration that 36 U.S.C. § 220522(8) provides members of Defendant USEF the right to a hearing prior to being ruled ineligible, and that Defendants USEF and USOPC have violated, and are continuing to violate, that right by enforcing the sanctions against Plaintiffs making them ineligible to participate knowing they did not receive a hearing. Plaintiffs further request that Defendant USEF be permanently enjoined from continuing to enforce the sanctions against Plaintiffs.

COUNT IV – VIOLATION OF THE TED STEVENS ACT

Against Defendant United States Center For SafeSport

119. The foregoing allegations are incorporated as if fully stated herein.

120. The Ted Stevens Act has granted the right to a pre-determination hearing to Participants since 1978.

121. Congress reiterated this right when it amended the Ted Stevens Act in 2018. The 2018 Amendment granted authority to Defendant SafeSport to draft, implement, investigate and adjudicate allegations of emotional, physical, and sexual abuse of athletes in Olympic and amateur sports. The 2018 Amendment did not in any way abrogate or amend the requirement set forth in 36 U.S.C. § 220522(8). In fact, the statute authorizing the Center, 36 U.S.C. § 220541, reinforces the requirement in 36 U.S.C. § 220522(8) and mandates that the Center's procedures must give fair notice and opportunity to be heard. 36 U.S.C. § 225041(a)(5). These two provisions must be read in harmony with one another given that they are both within the Ted Stevens Act and that Congress did not create an exception to § 220522(8) when it enacted § 220541(a)(5). *United States*

v. Banker, 876 F.3d 530 (4th Cir. 2017) (absent an indication that we should do otherwise, the Court should interpret statutes *in pari materia*, that is, in a consistent manner in which adjacent statutory subsections that refer to the same subject matter are read harmoniously to ensure that a statutory scheme is coherent and consistent).

122. Congress again reiterated the right to a pre-determination hearing when it amended the Ted Stevens Act in 2020. In the 2020 Amendment, Congress expressly required Defendant SafeSport to provide “procedural due process” in every action it takes against a participant. Also in the 2020 Amendment, Congress did not remove the pre-determination right granted to Participants under § 220522(8).

123. When Congress required Defendant SafeSport to provide “notice and an opportunity to be heard, and “procedural due process,” it meant that Defendant SafeSport was required to provide procedural due process within the meaning of the Fifth Amendment to the United States Constitution.

124. In other words, Congress found that the statutory benefits granted in the Ted Stevens Act, either separately or in combination with the potential stigma and harm to a participant’s name, honor, integrity and reputation as a result of identifying them on the Defendant SafeSport’s public website, required the protections of due process in Defendant SafeSport’s policies and procedures to deprive them of those rights.

125. When Congress grants statutory rights to individuals and directs an agency to establish a procedure affecting those rights, “it can be assumed that Congress intends that procedure to be a fair one.” *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996) (also stating doubt that Congress intended to provide a procedure that fails to provide basic due process).

126. Congress adopted the language contained in the Ted Stevens Act, the 2018 Amendment, and the 2020 Amendment in light of the history of American jurisprudence defining “notice and an opportunity to be heard,” and “procedural due process.” “Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950). “We have described ‘the root requirement’ of the Due Process Clause as being ‘that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (emphasis in original) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)).

127. Fair notice and opportunity to be heard for USEF athletes has a meaning that is set forth in the Act in §220522(8), in Bylaw 701 of the USEF, and in USEF’s long-established hearing process rules which include but are not limited to the following rights:

- a. each party will have the right to appear personally and/or through a representative;
- b. Respondents will receive written notice of any alleged violation or Complaint against them, along with a reference to potential consequences;
- c. Respondents will be given a reasonable time before a hearing in which to prepare a defense;
- d. the Hearing Panel will hold the hearing in as prompt and timely a manner as is practicable under the circumstances. The Hearing Panel will strive to

schedule a hearing within ninety (90) days of the determination that a Complaint is properly filed, and to issue its written decision within thirty (30) days after a hearing;

- e. parties will be given a reasonable opportunity to present and examine evidence, cross-examine witnesses that testify at the hearing, and present argument, all subject to limiting rulings by the Hearing Panel;
- f. The parties may present live witnesses or affidavits or other witness statements and documentary proof to support their arguments subject to limiting rulings by the Hearing Panel. The Hearing Panel will typically give less weight to affidavits or witness statements when the author is not subject to cross-examination at the hearing;
- g. all parties will receive a written decision from the Hearing Panel, which will include notice of the applicable appeal procedures;
- h. subject to applicable provisions below related to Temporary Measures, individuals will be provided with fair notice and opportunity for a hearing before being declared ineligible to participate; and
- i. in cases where a temporary measure is implemented, the opportunity for a hearing will be provided on an expedited basis so as to hear the matter as soon as practicable.

128. The legislative history of the 2018 Amendment indicates that the Center is modeled on the designation authorizing the United States Anti-Doping Agency (herein “USADA”), an independent body authorized to adjudicate athlete doping cases. (Senate Report 115-443). Unlike the Center, the USADA’s adjudication process provides for a pre-determination hearing by a

neutral arbitrator, which allows NGB's to enforce USADA determinations of ineligibility without risking their NGB status.

129. The Ted Stevens Act requires that Defendant SafeSport provide notice and a pre-determination hearing to Participants.

130. Plaintiffs seek a declaration that the Ted Stevens Act grants Participants, including Plaintiffs, the right a hearing before Defendant SafeSport can issue a decision on the complaints against them, and that Defendant SafeSport's policies and procedures violated Plaintiffs' rights by failing to provide a hearing before Defendant SafeSport issued a decision on the complaints against Plaintiffs, that Defendant SafeSport's provision of an arbitration hearing does not comply with the Ted Stevens Act, and that the sanctions imposed by Defendant SafeSport against Plaintiffs are void.

**COUNT V – THE TED STEVENS ACT VIOLATES THE PLAINTIFFS' RIGHTS TO
DUE PROCESS UNDER THE FIFTH AMENDMENT**

Against All Defendants

131. The foregoing allegations are incorporated as if fully stated herein.

132. In the alternative, The Ted Stevens Act violates the Plaintiffs' rights to Due Process under the Fifth Amendment to the United States Constitution by failing to provide a pre-determination hearing.

133. "While the legislatures may elect not to confer a property interest ... it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards The adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (internal quotations and citations omitted).

134. “The fifth amendment enjoins the federal government from depriving any person of ‘life, liberty, or property, without due process of law.’” *McNeill v. Butz*, 480 F.2d 314, 318 (4th Cir. 1973).

135. The Supreme Court of the United States has long held that “[w]here a person’s good name, reputation, honor, or integrity are at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.” *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971). When a governmental action deprives an individual “of a right previously held under state law,” or “a right or status previously recognized by state law is distinctly altered or extinguished,” the government must provide a hearing. *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976)..

136. In other words, “‘liberty’ is implicated and procedural due process is required when government action threatens an employee’s good name, reputation, honor, or integrity.” *McNeill v. Butz*, 480 F.2d 314, 319 (4th Cir. 1973) (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971); *Wieman v. Updegraff*, 344 U.S. 183, 73 S.Ct. 215, 97 L.Ed. 216 (1952)).

137. “An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and an opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985) (quoting *Mullane v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57 (1950)).

138. “Due process requires, as a general matter, an ‘opportunity to be heard at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976).

139. “An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and an opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985) (quoting *Mullane v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57 (1950)).

140. “We have described ‘the root requirement’ of the Due Process Clause as being ‘that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985) (emphasis in original) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)).

141. The Ted Stevens Act grants constitutionally protected property and liberty interests to Participants, including Plaintiffs. Each of the Plaintiffs is or was a member of Defendant USEF pursuant to their federal rights granted under the Ted Stevens Act, and eligible to participate in USEF events. As such, each of the Plaintiffs was entitled to remain a member of Defendant USEF and participate in USEF events unless they were removed for cause.

142. The Ted Stevens Act mandates the procedural requirements under which Participants, including Plaintiffs, may be deprived of the constitutionally protected rights granted by the Act.

143. The Ted Stevens Act requires Defendant SafeSport to alter or extinguish the rights afforded under the Act to Participants, including their status under the Act, and to publish the names of persons found to be in violation of the SafeSport Code, which, because of its nature, stigmatizes and threatens their reputation, honor, good name, and integrity, as well as causing them other harms.

144. Because the Ted Stevens Act requires Defendant SafeSport to publish the names, sanctions, and alleged violations of the SafeSport Code, which governs emotional, physical, and sexual abuse of athletes, a post-determination hearing is inadequate and does not provide a meaningful opportunity to be heard, as required by the Fifth Amendment of the United States Constitution.

145. If the Ted Stevens Act fails to require a hearing before depriving Plaintiffs and other Participants of their constitutionally protected rights, then the Act violates the Fifth Amendment of the United States Constitution.

146. Plaintiffs seek a declaration that the Ted Stevens Act violates Plaintiffs' Fifth Amendment rights to due process, that a post-deprivation hearing is, or was, insufficient to remedy the harm to Plaintiffs, and that the sanctions imposed by the Center are void. Plaintiffs further request that USEF be permanently enjoined from continuing to enforce the sanctions against Plaintiffs.

COUNT VI – VIOLATION OF 5TH AMENDMENT DUE PROCESS

Against Defendant United States Center for SafeSport

147. The foregoing allegations are incorporated as if fully stated herein.

148. In the alternative, Defendant SafeSport is a federal actor for purposes of the Constitution, and the SafeSport Code violates the Plaintiffs' rights to Due Process under the Fifth Amendment to the United States Constitution.

149. "The Constitution constrains governmental action 'by whatever instruments or in whatever modes that action may be taken.'" *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 392, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995) (citing *Ex parte Virginia*, 100 U.S. 339, 346-47, 25 L.Ed. 676 (1880)).

150. Each of the Plaintiffs is or was a member of Defendant USEF pursuant to their federal rights granted under the Ted Stevens Act, and eligible to participate in USEF events. As such, each of the Plaintiffs was entitled to remain a member of Defendant USEF and participate in USEF events unless they were removed for cause.

151. Defendant SafeSport, pursuant to the policies and procedures in the SafeSport Code, found each of the Plaintiffs to be in violation of the SafeSport Code, and published their names on its website, without providing notice and/or an opportunity to be heard.

152. The SafeSport Code prohibits conduct that is abhorrent by its very nature. Accordingly, being investigated for a violation of the SafeSport Code threatens a person's reputation, honor, integrity, and good name, as well as other harms.

153. Defendant SafeSport investigated Plaintiff Navarro and found him in violation of the SafeSport Code without giving him notice of the charges against him or an opportunity to be heard. SafeSport first notified Plaintiff Navarro after it reached its Final Decision, including his sanction. As a result, Defendant SafeSport ruled Plaintiff Navarro was "permanently ineligible" to participate in any activities in Olympic and amateur sports.

154. In addition to changing Plaintiff Navarro's eligibility status and depriving him of his federal right to be a member, SafeSport published Plaintiff Navarro's name on its publicly available website, which states he is "permanently ineligible" because of a "criminal disposition – involving a minor." This has caused Plaintiff Navarro to be stigmatized and has harmed his reputation, honor, integrity, and good name, as well as other harms.

155. On July 21, 2018, Defendant USEF imposed a permanent ban on Plaintiff Giorgio and in an email to Giorgio stated that the ban was immediate. The email notifying him of the

permanent ban was the first time Giorgio learned that he had been under investigation by the Center or that his USEF membership status was at risk.

156. Plaintiff Giorgio was not given notice before being declared ineligible to participate.

157. Plaintiff Giorgio was not provided a hearing prior to being declared ineligible to participate.

158. In addition to changing Plaintiff Giorgio's eligibility status and depriving him of his federal right to be a member, SafeSport published Plaintiff Giorgio's name on its publicly available website, which states he is "permanently ineligible" because of a "criminal disposition – involving a minor." This has caused Plaintiff Giorgio to be stigmatized and has harmed his reputation, honor, integrity, and good name, as well as other harms.

159. Defendant SafeSport assumed discretionary jurisdiction over the complaint made against Plaintiff Shaffer.

160. Defendant SafeSport determined that Plaintiff Shaffer had violated the SafeSport Code without providing a hearing.

161. Had Defendant SafeSport not assumed its "discretionary jurisdiction" over Plaintiff Shaffer's complaint, Plaintiff Shaffer would have been afforded a pre-determination hearing under Defendant USEF's bylaws.

162. In addition to changing Plaintiff Shaffer's eligibility status and depriving her of her federal right to be a member, SafeSport published Plaintiff Shaffer's name on its publicly available website, which states she is "suspended" because of a "emotional misconduct." This has caused Plaintiff Shaffer to be stigmatized and has harmed her reputation, honor, integrity, and good name, as well as other harms.

163. “The fifth amendment enjoins the federal government from depriving any person of ‘life, liberty, or property, without due process of law.’” *McNeill v. Butz*, 480 F.2d 314, 318 (4th Cir. 1973).

164. Plaintiffs have a protected property interest in their membership in Defendant USEF and their right to participate in amateur athletic events pursuant to the Ted Stevens Act.

165. Plaintiffs have a protected liberty interest in their good name, reputation, honor and integrity because Defendant SafeSport has altered and/or extinguished their rights and status under the Ted Stevens Act.

166. The Supreme Court of the United States has long held that “[w]here a person’s good name, reputation, honor, or integrity are at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.” *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971).

167. In other words, “‘liberty’ is implicated and procedural due process is required when government action threatens an employee’s good name, reputation, honor, or integrity.” *McNeill v. Butz*, 480 F.2d 314, 319 (4th Cir. 1973) (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971); *Wieman v. Updegraff*, 344 U.S. 183, 73 S.Ct. 215, 97 L.Ed. 216 (1952)).

168. Defendant SafeSport, acting as a governmental actor, failed to provide due process pursuant to the meaning of the 5th Amendment by failing to provide a hearing before depriving Plaintiffs of their protected property and liberty interests.

169. “An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and an opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985)

(quoting *Mullane v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57 (1950)).

170. “Due process requires, as a general matter, an ‘opportunity to be heard at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S.319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976).

171. “An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and an opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985) (quoting *Mullane v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57 (1950)).

172. “We have described ‘the root requirement’ of the Due Process Clause as being ‘that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, (1985) (emphasis in original) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)).

173. Defendant SafeSport has deprived Plaintiffs of their protected property interests.

174. Defendant SafeSport has permanently deprived all Plaintiffs of their protected liberty interests.

175. Because the Ted Stevens Act requires SafeSport to publish the names, sanctions, and alleged violations of the SafeSport Code, which governs emotional, physical, and sexual abuse of athletes, a post-determination hearing is inadequate and does not provide a meaningful opportunity to be heard.

176. Plaintiffs seek a declaration that the Defendant SafeSport violated Plaintiffs' Fifth Amendment rights to due process, that a post-determination hearing is, or was, insufficient to remedy the harm to Plaintiffs, and that the sanctions imposed by the Center are void. Plaintiffs further request that USEF be permanently enjoined from continuing to enforce the sanctions against Plaintiffs.

COUNT VII –UNCONSCIONABLE ADHESION CONTRACT

Against Defendant United States Equestrian Federation, Inc.

177. In order to participate in USEF recognized horse shows, an athlete must be a member of USEF.

178. Every member must enter into USEF's membership agreement which mandates acceptance of the SafeSport Code. Members cannot negotiate the terms of the membership agreement with USEF. Thus, the membership agreement is an adhesion contract.

179. Plaintiffs each entered into the take-it-or-leave-it membership agreement with USEF.

180. The terms of the SafeSport Code, which are part of the membership agreement, are unconscionable, and, as such, unenforceable.

181. In addition to not providing a hearing before a determination of ineligibility, which is an unlawful and unconscionable provision, the SafeSport Code is rife with other unconscionable, one-sided provisions.

182. The most abhorrent of these provisions is that in order to obtain a post-determination hearing with a neutral party, Plaintiffs were required to pay \$5,200.00 plus a "room fee." This is an unconscionably high price to pay when a pre-determination hearing is unconditionally afforded by statute.

183. In addition to the unconscionably high price, an athlete cannot get a hearing on the merits until after the Center issues its decision and the sanctions are published on the internet.

184. Other examples of unconscionable provisions include, but are not limited, to:

- a. There is no discretion for the arbitrator to permit discovery.
- b. The investigation report prepared by the Center automatically becomes admissible evidence in the merits arbitration.
- c. The claimant is questioned only by the arbitrator, but the accused is subject to cross-examination by the Center's lawyer.
- d. The SafeSport Code has no nexus to NGB activities. A non-participant may bring a complaint against a Participant arising out of facts that are wholly unrelated to sport and the Center will adjudicate the complaint.
- e. Aiding and abetting is interpreted to prevent Participants from interacting with banned Participants on private property while engaging in private activities with no nexus to NGB activities or sanctioned events.

185. Plaintiffs seek a declaration that their membership agreements were unconscionable, adhesion contracts, and are therefore void and unenforceable, and that the sanctions imposed on them by virtue of their membership agreements are void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

- a. Declare that The Ted Stevens Act's delegation of legislative, executive, and/or judicial authority to Defendant SafeSport is unconstitutional because it violates the private nondelegation doctrine (Count I);

- b. Declare that The Ted Stevens Act's grant of executive authority to the Defendant SafeSport is unconstitutional because it violates the Appointments Clause of the United States Constitution. (Count II);
- c. Declare that 36 U.S.C. § 220522(8) grants Plaintiffs a right to a hearing before being ruled ineligible to participate, and that Defendants USEF and USOPC have violated, and are continuing to violate, that statutory right by enforcing the sanctions against Plaintiffs (Count III);
- d. Declare that the Ted Stevens Act required Defendant SafeSport to provide notice and a hearing to Plaintiffs prior to ruling on the complaints against them and as a result of Defendant SafeSport's failure to provide these rights the sanctions imposed by the Center are void (Count IV);
- e. In the alternative, declare that the Ted Stevens Act violates Plaintiffs' Fifth Amendment rights to due process, that a post-deprivation hearing is, or was, insufficient to remedy the harm to Plaintiffs, and that the sanctions imposed by Defendant SafeSport are void (Count V);
- f. In the alternative, declare that Defendant SafeSport violated Plaintiffs' Fifth Amendment rights to due process, that a post-deprivation hearing is, or was, insufficient to remedy the harm to Plaintiffs, and that the sanctions imposed by Defendant SafeSport are void (Count VI);
- g. Declare that Plaintiffs' membership agreements with USEF are unconscionable, adhesion contracts, and are therefore void and unenforceable, and that the sanctions imposed on Plaintiffs by virtue of their membership agreements are void (Count VII);

- h. Award permanent injunctive relief prohibiting Defendant USEF from continuing to enforce the sanctions against Plaintiffs (Counts I-VII);
- i. Award Plaintiffs their costs associated with this action; and
- j. Award such other and further relief as may be appropriate under the circumstances.

Respectfully Submitted,

/s/ William C. Tucker

William C. Tucker (Va. Bar No. 40754)

Tamara L. Tucker (Va. Bar No. 39805)

Tucker Law Firm, PLC

690 Berkmar Circle

Charlottesville, Virginia 22901

(833) 388-2537 Phone

(833) 388-2537 Fax

bill.tucker@tuckerlawplc.com

tamara.tucker@tuckerlawplc.com

Attorneys for Plaintiffs

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

Case Number: 01-20-0015-8031

James Giorgio, Estate of Robert Gage,
Mitchell Steege; Eduardo Zavala Sanchez;
Dylan Harries; Thomas Navarro;
Thomas Serio, Claimants,
v.
United States Equestrian Federation, Respondent.

FINAL DECISION – PANEL AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties on the merits held at the final hearing on November 7, 8 & 13, 2023, hereby AWARD as follows:

Estate of Robert Gage, Mitchell Steege; Eduardo Zavala Sanchez; Dylan Harries; Thomas Navarro; Thomas Serio, were represented in these proceedings by Tucker Law Firm, PLC, Patterson Law Firm, LLC, and Michael R. Romm, P.A. United States Equestrian Federation was represented in these proceedings by Bryan Cave Leighton Paisner, LLP and Sonja Keating of United States Equestrian Federation.

SUMMARY

Our ruling is a comprehensive evaluation of a jurisdictional issue that has not been directly addressed by any prior court or administrative authority. The question asked is simple but frustrating. What administrative or judicial body has the jurisdictional authority to address a conflict between the rules and procedures of the U.S. Center for SafeSport (CSS and the SafeSport Code) and the conflicting due process protection identified in Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Olympic and Amateur Sports Act, 26 U.S.C. 220501, *et seq.* (the Ted Stevens Act). We note that some confusion did arise in this case because Section 220522(a)(8) was the designated subsection at issue under the Ted Stevens Act until the 2020 amendment when it was re-designated as subsection 220522(8) by Congress.

See Exhibits R-251 and R-256 (the parties recognize that Claimants due process claims occurred prior to the 2020 amendment). We agree with Claimants that a clear and apparent conflict of law has been identified and requires resolution. However, the authority of an AAA arbitration panel to directly address this jurisdictional issue under the authority of the USOPC Dispute Resolution Policy is limited and/or is otherwise premature under the circumstances of this case.

Based on the limited authority provided or known to exist at this time, the proper original forum to address this conflict of law issue should be a federal district court. Whether Claimants had the opportunity to appeal their adverse JAMS arbitration decisions to federal court under the Federal Arbitration Act (FAA) or any other jurisdictional basis remains unknown and unresolved. No such appeals to federal court were initiated by Claimants after their JAMS arbitration decisions. Although Claimants provided a compelling argument that this specific conflict of law issue cannot be addressed under the FAA, this Panel does not agree that we are the proper forum for making that jurisdictional determination. *See Day 3 Transcript*, Final Arguments at pgs. 242, 248-249. This Panel agrees that such a jurisdictional ruling should be made by a federal court addressing one of Claimants potential appeals after their JAMS arbitrator issued the decision in one of their cases. Had the federal court provided a ruling that it did not have jurisdiction to address the conflict of law issue regarding the due process protections identified in Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act, then it would be clear that such a legal review is not available to Claimants under the entirety of the administrative process of CSS and the SafeSport Code. In effect, Claimants jurisdictional avenues to seek a conflict of law review of the CSS administrative SafeSport hearing and JAMS appeal process would have been administratively denied by CSS and all avenues for review exhausted to the fullest jurisdictional extent that is available under the established CSS and SafeSport adjudication process.

Had Claimants' available avenues to seek their conflict of law under the CSS adjudication process been fully exhausted in favor of CSS, the first, and potentially only, jurisdictional opportunity to properly address the conflict between the due process rights provided by the CSS/SafeSport Code and the pre-determination hearing right identified in Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act would actually arise, for the first time, in Claimants' enforcement proceedings before Respondent and the USOPC (including

this limited appeal to an AAA arbitration panel pursuant to the USOPC Dispute Resolution Policy). Had all of these jurisdictional circumstances been established and exhausted by Claimants, the Panel recognizes that Respondent and the USOPC would have jurisdiction as well as a fiduciary duty to address the conflict between the rules and procedures of the CSS/SafeSport Code and the conflicting due process protection identified in Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act. In that situation, however, Respondent and the USOPC are confronted with a new legal issue and potential conflict. As emphasized by Respondent, the mandatory enforcement provisions of the SafeSport Code and Ted Stevens Act would severely limit how Respondent could fulfil its duty and exercise jurisdiction to help address Claimants' issue. Neither the Respondent nor the USOPC would be able to fulfill this fiduciary duty by addressing this conflict of law issue directly. *See* SafeSport Code Section VII, and Section 220505(d)(1)(c) of the Ted Stevens Act. As discussed by the Panel and Respondent throughout these proceedings, the proper procedure to fulfill Respondent and/or the USOPC's fiduciary duty to address the identified conflict of law issue would require Respondent, or Respondent and the USOPC, to file a declaratory judgment action in the federal court. Without taking any position that might violate SafeSport Code Section VII, and Section 220505(d)(1)(c) of the Ted Stevens Act, Respondent would seek a binding court declaratory judgement ruling that resolved the conflict of law issue. Such a federal court declaratory judgement proceeding would fulfill Respondent's fiduciary duty to its Olympic participants and other members without taking any direct administrative steps or internal actions that could be contrary to the SafeSport Code or the Ted Stevens Act.

For nearly ten years, Respondent and the USOPC have failed to take the steps necessary to address the conflict between the due process rights provided by the CSS/SafeSport Code and the PDH right identified in Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act. This case only scratched the surface regarding the reasons why Respondent and the USOPC agreed to remove the longstanding right that an accused Olympic participant was afforded a pre-determination hearing under Section 220522(a)(8) when the SafeSport system was implemented after the Dr. Larry Nasser scandal in women's gymnastics. The limited evidence presented appears to indicate that the USOPC was either directly responsible or complicit in eliminating this pre-determination hearing right when the SafeSport system was created. Whether proper or not, the longstanding right that an accused Olympic participant was

afforded a pre-determination hearing under Section 220522(a)(8) was eliminated when the SafeSport system was created by the USOPC.

The CSS only doubled down on this pre-determination hearing issue in 2018 when it assumed full control and responsibility for all cases involving sexual misconduct or abuse in sport. To add to the problem, CSS also used its exclusive authority to create SafeSport Rules that prevented an accused Olympic participant from legally challenging its adjudication procedure allowing CSS to issue final decisions against an accused Olympic participant before ever providing a pre-determination hearing. As emphasized by Claimants, this allowed CSS to publicly place the accused Olympic participant's name on what Claimants refer to as the CSS "Wall of Shame" list before ever providing the accused with a hearing. As emphasized by Claimants, the lives and careers of many longstanding Olympic participants were publicly ruined before an accused ever had the opportunity for a hearing. If the accused Olympic participant chose to request a post-determination arbitration hearing to address the CSS decision that they had violated a provision of the SafeSport Code, the accused Olympic participant was required to pay the arbitration fee to get their hearing. Claimants in this case have now spent over three years just attempting to maneuver through the CSS administrative system and USOPC review process in an attempt to exhaust their administrative remedies and obtain a merits hearing addressing whether the SafeSport adjudicative process that does not provide a pre-determination hearing is illegal under the Ted Stevens Act. The final step was this appeal to an AAA arbitration panel under the USOPC Dispute Resolution Policy. We now address the issues presented.

ISSUES

The issues to be addressed are:

1. Did Respondent and the USOPC Hearing Panel error in determining that Claimants failed to state a claim for relief that can be granted regarding whether Section 220522(a)(8) and other sections of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian?
2. Did Respondent error in determining that Respondent did not have jurisdiction to address

- whether Section 220522(a)(8) and other sections of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian?
3. Did the USOPC Hearing Panel error in determining that, under a Section 10 appeal, the USOPC did not have jurisdiction to address whether Respondent erred in determining that Respondent did not have jurisdiction to address whether Section 220522(a)(8) and other sections of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian?
 4. Should Respondent be awarded sanctions against the Claimants represented by Mr. Romm and Mr. Silvey because of the delays and failures to comply with discovery and other deadlines ordered by this Panel?

BACKGROUND

In 2018-2020, Claimants' rights to participate in the Olympic sport of equestrian were either suspended or permanently revoked by final decisions issued from the CSS under the authority of the Ted Stevens Act (Final Decision). *See* Exhibits C-80, R-33, R-54, R-62, R-76, R-93, R-100 & R-124. Certain Claimants then exercised their right to appeal the final CSS decisions to JAMS arbitrators pursuant to the SafeSport Code. *See* Exhibits R-14 at ¶5, R-34, R-57 pg. 1, R-63 pg. 2, R-77, R-119 pg. 2, & R-131 pg. 2. One Claimant, Eduardo Zavala Sanchez, testified that he could not afford the fee required to appeal his final CSS decision to a JAMS arbitrator and was never sure if or when to file his arbitration appeal. *Day 2 Transcript, Testimony of Claimant Sanchez* at pgs. 83–87. After the CSS and/or any JAMS arbitration proceeding against each Claimant CSS case was concluded by the issuance of a Final Decision or ruling, Claimants exercised their rights under Section 504 of the Respondent's bylaws to file a complaint requesting a hearing before Respondent to address the enforcement of the Final Decision in each case. Exhibits C-78, C-80 – C83, R-14 at ¶8. Claimants each raised the issue before Respondent of whether the final decision of suspension or permanent revocation imposed by CSS was unenforceable without a hearing (commonly referred to throughout this case as a pre-determination hearing or PDH) having occurred in compliance with Section 220522(a)(8) of the Ted Stevens Act. *Id.* Claimants argued that the penalties imposed by CSS violated Claimants'

Section 220522(a)(8) due process right to a PDH hearing “before declaring the [Claimants] ineligible to participate” in the sport of equestrian governed by Respondent. *Id.* Respondent does not dispute the fact that Claimants did not receive a PDH from CSS as part of their SafeSport penalty proceedings. *Day 3 Transcript*, Final Arguments at pg. 265. Claimants’ cases were consolidated by Respondent for a resolution of the Section 220522(a)(8) argument. Without addressing the merits of Claimants Section 220522(a)(8) claim, Respondent ruled that, (1) Respondent did not have jurisdiction or authority to address Claimants’ Section 220522(a)(8) argument or due process issue; and (2) the Claimants had failed to otherwise state a valid claim for relief that required a hearing before Respondent. Claimants then exercised their right under Section 220527(b)(1) and Section 10 of the USOPC Bylaws to address Respondent’s procedural dismissal of their Section 220522(a)(8) claim/argument before a hearing panel (the USOPC Hearing Panel) appointed by the USOPC. Exhibit R-1 at ¶¶4-6. Claimant Serio was added to the case at this stage since his Section 220522(a)(8) argument was consistent with the other Claimants. Exhibit R-14 at ¶¶8-10. The USOPC Hearing Panel issued a decision affirming the ruling issued by Respondent on the sole basis that the USOPC Hearing Panel “does not have jurisdiction over the subject matter of [Claimants] Complaint and that the Complaint does not state a claim upon which the Hearing Panel could provide relief.” Exhibit R-1 at ¶23. The USOPC Hearing Panel did not consider any other claims or contentions raised by the parties in the Claimants’ Section 10 appeal to the USOPC. *Id.* at ¶¶24-25. Claimants then exercised their right to appeal the USOPC hearing panel decision to this AAA arbitration panel pursuant to the USOPC Dispute Resolution Policy. For the reasons stated below, this Panel affirms the decision issued by the USOPC hearing panel.

ANALYSIS

The facts and legal precedent that was presented by the parties is extensive. First, we specifically emphasize that this analysis does not address any procedural due process issues that might be related to interim sanctions and measures that CSS could or did impose on any Claimant when their initial cases were opened for investigation by CSS. This analysis only addresses the Final Decision to impose sanctions, measures and penalties against Claimants after the internal investigation by CSS was completed.

To address the primary issues, we start with the enactment of the original version of Section 220522(a)(8) of the Ted Stevens Act in 1978. *See* Exhibits R-253 at §391(b)(6). According to the testimony of Respondent's expert, Mr. Jeffery Benz, §391(b)(6), currently Section 220522(a)(8) under the Ted Stevens Act, was originally enacted in 1978 and utilized to ensure that Olympic athletes could not be prohibited from participation in an Olympic event without first receiving an independent hearing (commonly referred to as a pre-determination hearing or PDH) before their respective NGB. Exhibit R-133 at ¶42; *Day 3 Transcript*, Testimony of Benz at pgs. 191-198. Based on the limited evidence presented, Section 220522(a)(8) was uniformly applied by NGB's whenever an USOPC Olympic participant's right to participate in an Olympic sport were at risk of suspension or permanent sanction for any alleged reason. *Id.* Mr. Benz also agreed that the legal "duty" to provide Olympic participants with a PDH was specifically placed on the NGBs by Section 220522(a)(8) of the Ted Stevens Act. *Day 3 Transcript*, Testimony of Benz at pg. 198. Based upon the evidence presented, this PDH structure remained in place until the drafting and implementation of the new SafeSport Code by the USOPC after the Larry Nasser crisis arose in women's gymnastics. *See* Exhibit C-1; *Day 3 Transcript*, Testimony of Benz at pgs. 191-198. In 2018, Congress also amended the Ted Stevens Act and enacted the Protecting Young Victims from Sexual Abuse and SafeSport Authorization Act (the Ted Stevens 2018 Amendment). *See* Exhibit R-256. Another amendment to the Ted Stevens Act was passed by Congress in October, 2020. (the Ted Stevens 2020 Amendment). *See* Exhibit R-251. Under the Ted Stevens 2020 Amendment, Section 220541(a)(1)(H) was added by Congress requiring that CCS must provide procedural due process to an accused Olympic Participant such as Claimants before issuing a Final Decision and specifically set out five minimum requirements. (Emphasis added).

The original version of the SafeSport Code went into effect in March 2017. *See* Exhibit R-269. The USOPC began creating the structure, rules and funding for CSS and the SafeSport Code prior to the Dr. Larry Nasser story breaking into the news media. *See* Exhibit RT-133 at ¶ 14. Initially, the CSS was under the exclusive oversight of the USOPC. *See* *Day 3 Transcript*, Testimony of Benz at pg. 196. The first updated version of the SafeSport Code was effective in March, 2018. *See* Exhibit R-270. The second updated version of the SafeSport Code was effective on April 15, 2019. *See* Exhibits C-30 and R-271. The third update to the SafeSport

Code was effective on April 1, 2020. *See* Exhibit R-272. Additional updates were made to the SafeSport Code in 2021-2023. *See* Exhibits R-273 through R-275. Under Section IV of the initial two versions of the SafeSport Code the adjudication process and hearing procedures were vaguely written. *See* Exhibits R-269 pg. 9; R-270 pg. 9. After the enactment of the Ted Stevens Act 2018 Amendment, CSS established a new Section XI to the 2019-2021 versions of the SafeSport Code identifying specific dispute resolution procedures involving a Final Decision without a PDH and the new PDA hearing process was specifically implemented. Exhibit R-271 pgs. 21-26; Exhibit R-272 pgs. 22-26; Exhibit R-273 pgs. 21-26. Under the 2022 version of the SafeSport Code, the new procedural due process provisions set out in the Ted Stevens 2020 Amendment were specifically added as a new subsection J into Section XI but the CSS did not otherwise change its procedure for issuing a Final Decision without a PDH and continued with the same PDA hearing process. Exhibit R-274 pgs. 21-26. It is undisputed that no version of the SafeSport Code dispute resolution process was ever recognized by CSS to provide an accused Olympic participant with a PDH under Section 220522(a)(8) prior to the issuance of a Final Decision. *See* Exhibits R-269 through R-275.

Based on a series of emails circulated among an early working group of elite attorneys and staff within the USOPC and NGBs, the original SafeSport adjudicative hearing procedures for the original version of the SafeSport Code were discussed and formulated between February 2015 and March 2017. *See* Exhibit 1. In the email documents provided to the Panel as evidence in this case, no direct mention of Section 220522(a)(8) was included in the due process hearing discussions by the working group. *Id.* Our expert, Mr. Benz, was involved and asked to weigh in on the legal/procedural aspects of the creation of the original SafeSport adjudicative hearing process. *Day 3 Transcript*, Testimony of Benz at pgs. 130-139. Due to potential attorney-client privilege issues with the USOPC, Mr. Benz was not able to elaborate or testify further about his input or advice regarding this SafeSport hearing process that transitioned to the removal of the PDH in the new hearing procedures. *Id.* However, in March 2015, Ms. Keating, Senior VP and general counsel for Respondent, wrote an email to the group leader stating her concerns that the proposed CSS hearing procedures were not providing an accused a proper hearing “expressly require[d]” by the Ted Stevens Act. Exhibit 1 at stamped pgs. 001935-36; *See Day 3 Transcript*, Final Arguments at pgs. 255. Ms. Keating also made clear that the type of hearing she was

referencing was the one already in place for “anti-doping cases” provided by the USADA. *Id.* Mr. Benz confirmed that a PHD system was created long before SafeSport and remains in place for an Olympic athlete accused of a doping violation by the USADA. *Day 3 Transcript*, Testimony of Benz at pg. 198. To this day, a PDH is still required before any permanent doping sanction is imposed by the USADA. *Id.* Under Ms. Keating’s scenario, an accused would not be given the USADA equivalent for a PDH by CSS and the NGBs would be exposed to liability because they would not be in compliance with the Ted Stevens Act and “the federal court [would find] the NGB liable because the federal statute supersedes the USO[P]C Bylaws.” *Id.* At the time of this 2015 email exchange by Ms. Keating, the only hearing requirement under the Ted Stevens Act was the PDH required by Section 220522(a)(8). In response, the group leader responded that the group was looking at hearing requirements in “student disciplinary proceedings in public schools . . . [along with] policy arguments arguing in favor of a shift in our [USOPC] approach to hearings in the context of sexual misconduct.” *Id.* at pg. stamped 001934. Clearly, Ms. Keating was predicting the scenario that Claimants have asked CSS, the JAMS arbitrator(s), Respondent, and this Panel to address and resolve. To date, CSS, the USOPC and the NGBs have been able to avoid any federal court review of this very issue.

The original SafeSport entity (eventually the CSS) and SafeSport Code were created for the protection of the Olympic athletic community from sexual assault and abuse was chartered by the USOPC in 2017 pursuant to the USOPC Bylaws. *See Exhibit R-269; Day 3 Transcript*, Testimony of Benz at pg. 35-36. It wasn’t until Congress intervened in early 2018 to the Ted Stevens 2018 Amendment when CSS was officially made independent from the USOPC. *See Section 220503(15) and 220541(a)(2).* Prior to the break from USOPC oversight and jurisdiction, the initial SafeSport rules and procedures addressing the hearing process for accused Olympic participants was first being promulgated for implementation under the USOPC’s control. *See Exhibit 1.* It was this initial set of SafeSport rules and procedures that created the conflict of law issue under Section 220522(8) that Claimants have asked CSS, Respondent and this Panel to address in this case. This conflict of law issue with Section 220522(a)(8) was something that the USOPC was fully aware of when it addressed the initial SafeSport rules and procedures. *See Exhibit 1* at stamped pgs. 001935-36. Respondent’s counsel, Ms. Keating, specifically identified the PDH issue when the USOPC and other

controlling participants were promulgating the initial SafeSport rules and procedures. *Id.* Despite Ms. Keating's specific identification of the PDH issue, the USOPC and other controlling participants enacted the initial SafeSport rules and procedures without requiring a PDH before issuing a Final Decision regarding an Olympic participant's right to participate. Exhibit R-269. Instead, the USOPC and other controlling participants created a "post-determination" right to appeal the final decision issued by CSS to an independent arbitration hearing conducted before a JAMS arbitrator (identified as the JAMS PDA in this case). Exhibits R-269-272. It is this transformation into an appellate right to pay for an independent JAMS arbitration appeal (only after CSS has rendered its Final Decision) that Claimants assert as a specific violation of their due process right under Section 220522(a)(8). *Day 3 Transcript*, Final Arguments at pgs.248-251. The history of this due process change imposed by USOPC continued in 2018 when Congress stepped in to make the CSS totally independent from the USOPC. Exhibits R-271-272.

When Congress enacted the Ted Stevens Act 2018 Amendment to codify and create the CSS as an independent administrative entity that was independent from the USOPC, it also authorized CSS to develop policies and procedures to prevent the abuse of amateur athletes and establish mechanisms to allow the reporting, investigating and resolution of alleged sexual abuse in violation of the CSS policies and procedures. See Section 220541(a)(3), (4). The CSS policies and procedures were also to be applied as though they were incorporated in and made a part of the Ted Stevens Act [Section 220544]. See Section 220541(b). Congress also required that CSS "ensure that the mechanisms" for reporting, investigating, and resolving SafeSport allegations provide for "fair notice and an opportunity to be heard." See Section 220541(a)(5). However, the Ted Stevens Act 2018 Amendment, left the due process PDH provision in Section 220522(8) intact and failed to specifically cross-reference, explain or otherwise merge the different wording between Section 220522(8) and Section 220541(a)(5). After the Ted Stevens Act 2018 Amendment went into effect, CSS neither changed the JAMS PDA hearing structure for those accused of a SafeSport violation nor included a PDH structure under Section 220522(8) before rendering a Final Decision against any accused Olympic participant. *Day 3 Transcript*, Final Arguments at pg. 265. An accused Olympic participant under the jurisdiction of CSS was still limited to a JAMS PDA after CSS completed its investigation, internal adjudication process,

and issuance of the Final Decision against the accused. *Id.* These were the versions of the SafeSport Code and Ted Stevens Act that were in effect when all Claimants received their Final Decisions from CSS that imposed the penalties and sanctions that are being challenged throughout this long administrative appeal process of this case.

During this overlapping timeframe, CSS entered into a Master Services Agreement with USOPC (the MSA) that contractually addressed the transition to an independent relationship between the two entities. *See* Exhibit C- 26A. All NGBs were also required to sign off on the new MSA. *Id.*, see attached exhibit 1. Similar to the Ted Stevens Act 2018 Amendment, the MSA delegated all responsibility for the adjudication and determination of SafeSport violations to CSS by the USOPC and all NGBs. *Id.*, pgs. 3-4. The USOPC and NGBs specifically represented that they had the “right to grant the rights [being transferred] under this MSA to [CSS].” *Id.*, pg. 11. No reference was made to Section 220522(a)(8) or other due process aspects of the CSS adjudication process utilized prior to the date of the MSA. *Id.* The standard “Compliance with Laws” provision in Section 14 of the MSA was the only other possible aspect of the MSA that would indirectly incorporate Sections 220522(a)(8) and 220541(a)(5) of the Ted Stevens Act into this contractual agreement between CSS, USOPC and NGBs. *Id.*, at 15.

The other important procedural development during the timeframe of Claimants’ CSS cases was the issuance of the *Callaghan v. U.S. Center for SafeSport* decision and order entered by Judge Chappell in the ruling by the United States District Court for the Middle District of Florida. Exhibit C-90. *Callaghan* was a request for a declaratory judgment and injunctive relief by an accused. *Id.* at pgs. 7-11. The *Callaghan* court specifically noted that under the Ted Stevens Act Section 220503(8), the USOPC is required to provide “swift resolution of conflicts involving amateur athletes . . . and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition.” *Id.* at pg. 6 (emphasis added). However, the Court agreed with CSS that despite established CSS arbitration rules preventing the arbitrator’s ability to address any of the CSS practices or procedures during the arbitration proceeding, these CSS rules could be properly reviewed by the arbitrator who has the independent “power to rule on his or her jurisdiction.” *Id.*, at pgs. 11-13. The motion to dismiss was granted without prejudice so that the accused could exhaust his remedies by seeking a JAMS arbitration ruling regarding whether CSS could limit the jurisdiction of the JAMS

arbitrator to review the CSS rules and CSS practices and procedures. *Id.* As applicable to future cases and Claimants' cases in particular, this requirement is commonly referred to as a *Callaghan* motion.

In the present case, several Claimants filed *Callaghan* motions during their CSS proceedings and JAMS PDA hearings. *See* Exhibits C-97A, R-58, R-64, R-90, R-104, R-119, R-131. Only Claimant Sanchez did not request a JAMS PDA due to financial and other reasons. *See Day 2 Transcript, Testimony of Claimant Sanchez* at pg. 83, ln. 7; pg. 87, ln. 1. Consistent throughout the Claimants' JAMS PDA proceedings was the CSS position that the JAMS arbitrator did not have the authority or jurisdiction to address Claimants objection to the SafeSport Code policies and procedures that denied Claimants a PDH prior to CSS issuance of a Final Decision. *Id.* ; *See Day 3 Transcript, Final Arguments* at pgs. 244-245. In Claimants' JAMS PDA cases, the JAMS arbitrator agreed with CSS and dismissed Claimants request for a ruling regarding the Section 220522(a)(8) PDH. *See* Exhibit C-97 pgs. 2-4; C-104 pgs. 1-3; R-79 pgs. 5-7; R-90 pg. 3; R-104 pgs. 2-3; *Day 3 Transcript, Final Arguments* at pg. 245-246. In effect, no merits decision was issued by a JAMS arbitrator addressing the conflict between the due process rights provided by the CSS/SafeSport Code and the PDH right identified in Section 220522(a)(8) of the Ted Stevens Act. After Claimants' *Callaghan* motions were denied by the JAMS arbitrators, no appeal was taken by any Claimant for review by a federal court under the FAA.

REASONED DECISION

1. Did Respondent and the USOPC Hearing Panel error in determining that Claimants failed to state a claim for relief that can be granted regarding the issue of whether Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian? The answer to this first question is yes the Respondent and the USOPC Hearing Panel did error. The reasons for their error are identified below.

When addressing Claimants' procedural due process claim, the Panel's analysis doesn't focus on whether Claimants would formally prevail in federal court on the issue of whether Section

220522(a)(8) and other sections of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian. The issue is whether Claimants could prevail in federal court regarding the legal conflict between the rules and procedures of CSS and the SafeSport Code and the conflicting due process protection identified in Section 220522(a)(8) and other sections of the Ted Stevens Act. As discussed in the analysis above, Claimants clearly have a valid procedural due process claim to adjudicate and this Panel agrees that Claimants could prevail when this conflict of law issue is eventually addressed in federal court. Mr. Benz disagrees. *Day 3 Transcript*, Testimony of Benz at pgs. 184, 201-202. Mr. Benz believes that no conflict exists between the SafeSport Code and the due process provisions of the Ted Stevens Act and any statutory interpretation of a conflict of language in the statute would be resolved in favor of CSS. *Id.* Because Respondent and the USOPC have fiduciary duties to Olympic participants such as Claimants, it is this Panel's determination that their duty to assist these Olympic participants in obtaining a federal court ruling once their jurisdiction has been established must be undertaken and fulfilled if jurisdiction has been established.

The reasons Claimants might prevail in federal court are numerous. Respondent has the duty and responsibility to assist USEF athletes, participants and members with addressing their PDH rights under Section 220522(a)(8). The duty and responsibility to adjudicate allegations of sexual misconduct were changed after the Larry Nasser incident became international news and this process was delegated by USOPC to CSS. *See Day 3 Transcript*, Testimony of Benz at pgs. 91-94, 222 and 226 (Describing the Nasser incident as "a complete and utter failure of the system to protect athletes from abuse in sports," and recognizing the delegation of the established NGB adjudication procedure by the USOPC to CSS.). However, despite changes to the Ted Stevens Act in 2018 and 2020, Congress never changed or removed the due process PDH protections for an accused set forth in Section 220522(a)(8). *Day 3 Transcript*, Testimony of Benz at pgs. 196-197. The USOPC delegation of the adjudicative process for sexual misconduct and abuse cases from NGBs to CSS can be reasonably be interpreted to have only occurred with a contemporaneous transfer to CSS of the Ted Stevens Act duties and due process obligations in place at that time. *See Day 3 Transcript*, Testimony of Benz at pg. 219. The Panel disagrees with Respondent and Mr. Benz that simply because NGBs are no longer "declaring" the individual ineligible to participate in their sport, the duties and obligations delegated to CSS as the

replacement “declarant” (effectuated by the USOPC and Congress) did not include any of the rights, responsibility or procedural due process protections of an accused contained in Section 220522(a)(8) and Section 220541(a)(1)(H). *See Day 3 Transcript*, Final Arguments at pgs. 266-267 and 270. Claimants also point out that in order for Respondent to “enforce” a CSS Final Decision against an accused, the only method to do so is to formally “declare” that the accused ineligible. *Day 3 Transcript*, Final Arguments at pgs. 287-288. This due process issue was clearly identified by Ms. Keating to the elite working group that promulgated the initial SafeSport Code and should have been directly addressed in this initial version of the SafeSport Code. Exhibit 1. The “Compliance with Laws” provision required under the MSA also supports Claimants’ position that the original CSS acceptance of the adjudicative process for addressing allegations of sexual misconduct and abuse came with established legal due process duties and responsibilities under the Ted Stevens Act, being a PDH requirement under Section 220522(a)(8). Exhibit C-26A. Section 8.4.1(e)(iv) of the USOPC Bylaws also includes similar language to Section 220522(a)(8) protecting an Olympic participant’s opportunity to a hearing before declaring the individual ineligible to participate. Congress also weighed in with the passage of the Ted Stevens 2018 Amendment when it added Section 220541(a)(5) requiring CSS to provide an accused an “opportunity to be heard” and stated in the Senate report that the new adjudication process for dealing with sexual misconduct allegations by CSS should be modeled after the adjudication process for anti-doping cases administered by the USADA which included a PDH process. *See Exhibit C-80 at ¶11*. Some of this tracks the closing argument and reasoning presented by Claimants. *See Day 3 Transcript*, Final Arguments at pgs. 251-260. Because the “opportunity to be heard” wording did not tract the exact “opportunity for a hearing . . . before declaring such individual ineligible to participate” wording in Section 220522(a)(8), this discrepancy could easily be resolved in Claimants’ favor by principles of statutory construction. *See United States v. Banker*, 876 F.3d 530 (4th Cir. 2017) (recognizing that the Court should interpret statutes *in pari materia*, in a consistent manner in which adjacent statutory subsections that refer to the same subject matter are read harmoniously to ensure that a statutory scheme is coherent and consistent). Respondent’s expert, Mr. Benz, did disagree and would apply principles of statutory construction to justify the CSS dispute resolution process without a PDH and because his legal interpretation only applies Section 200522(a)(8) due process protections to non-SafeSport cases. *Day 3 Transcript*, Testimony of Benz at pgs. 52-55, 196-197. The passage of

Section 220541(a)(1)(H) by Congress under the Ted Stevens 2020 Amendment made it clear that Congress wanted the “procedural due process” right of an accused protected by CSS. Section 220522(a)(8) was the only other provision in the Ted Stevens Act that provided a clear “procedural due process” right to an accused, specifically a pre-determination hearing before the accused can be declared ineligible to participate in an Olympic event. Again, the discrepancy in wording of one of the minimal procedural due process rights identified under Section 220541(a)(1)(H)(iii) as “an opportunity to be heard during the investigation” could also easily be resolved in Claimants’ favor by principles of statutory construction. *See U.S. v Barker* cited above. Mr. Benz also disagrees with this possible application of statutory construction and would still interpret the 2020 change to justify the CSS dispute resolution process without a PDH. *Day 3 Transcript*, Testimony of Benz at pgs. 55-57.

Finally, the Panel will not repeat why it continues to believe that Claimants case is supported by the provisions or procedural protections under the umbrella of the Olympic Charter or International Olympic Committee’s Safeguard Framework discussed at length in the Panel’s Order dated July 11, 2020. *See Exhibit C-108*. Mr. Benz best explanation of why the IOC requirement that “any decision shall be grounded in and respect the principles of due process, including, in particular, the right to be heard and the right to appeal” set forth the current version of the IOC Basic Universal Principles of Good Governance of the Olympic and Sports Movement do not provide clear support for Claimants position is based upon his belief that “[d]ue [p]rocess means different things to different [people].” *See Exhibit R-140; Day 3 Transcript*, Testimony of Benz at pgs. 100-102. In explaining why the due process protections set forth in Subsection 12 of the Athletes’ Rights and Responsibilities Declaration do not support Claimants position, Mr. Benz stated “it suffers from the same process of a lack of definition . . . a lack of context of what [d]ue [p]rocess means in a document that is operative in both English and French.” *See Exhibit 143; Day 3 Transcript*, Testimony of Benz at pgs. 103-104. Due to issues with displaying Exhibit C-112 during the video conference, Mr. Benz was not able to provide the Panel with an analysis or explanation for the PDH process set forth in Article 163.8 of the 1/1/20 FEI General Regulations. *See Day 3 Transcript*, Testimony of Benz at pgs. 153-161. We continue to agree that many of these protections, although some may only be aspirational, provide guidance and support to Claimants’ argument and ability to prevail in federal court regarding the procedural due process issue in this case. *See Exhibits C-108, C-112, R-140, R-143; Day 3 Transcript*, Testimony of

Benz at pgs. 77-78, 82-88, 100-104.

Despite the Larry Nasser incident tarnishing the U.S. Olympic movement and the USOPC, Congress has refused to amend, clarify or remove the procedural due process protections afforded to an accused Olympic participant since the 1978 enactment of §391(b)(6) - currently Section 220522(a)(8) of the Ted Stevens Act. The USOPC and CSS efforts to diminish or minimize this right to procedural due process has been set up for a rebuke by a federal court since the passage and implementation of the original version of the SafeSport Code in 2017. This is exactly what Ms. Keating warned everyone on the elite working group would potentially happen back in 2015. The Panel agrees with Ms. Keating that this unfortunate result is a viable reality that may just be waiting to happen. Mr. Benz also agrees that the only proper forum to address this issue would be a federal court, whenever it finally gets there. *Day 3 Transcript*, Testimony of Benz at pgs. 202-223. In the meantime, hundreds of accused Olympic participants may continue to be inappropriately deprived of a legal right to a PDH in their cases.

2. Did Respondent error in determining that Respondent did not have jurisdiction to address whether Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian? The answer to this second question is no, the Respondent did not error in determining that Respondent did not have jurisdiction at this time. The reasons for the Panel's ruling of no error are set forth below.

The Panel recognizes from the record that Claimants have been using their best efforts to obtain a definitive ruling on the first issue in this case for nearly four years. It is not as though Claimants have failed to ask that this procedural due process issue be addressed by seeking *Callaghan* motions before CSS, the JAMS arbitrators in their cases, or a hearing before Respondent. As Respondent clearly points out, jurisdiction to review and definitively address this procedural due process issue does require an exhaustion of available administrative remedies. At the final hearing, Respondent argued that Claimants must exhaust all available administrative remedies before invoking the jurisdiction of a federal court or the Respondent's potential jurisdiction to address Claimants' Section 220522(a)(8) and Section 220541(a)(1)(H) claim. *Day 3 Transcript*,

Final Arguments at pg. 277. Respondent asserts that the failure to appeal the JAMS PDA decisions to federal court under the FAA constitutes a failure to exhaust the final administrative remedy available under the CSS disciplinary proceeding process and precludes raising the same Section 220522(a)(8) and Section 220541(a)(1)(H) issue anew when their final decisions were sent to Respondent for enforcement. *Id.* at pgs. 277-281; *See Day 3 Transcript*, Testimony of Benz at pgs. 202-217. Effectively, Respondent asserts that Claimants had the right to go directly to federal court once the JAMS PDA decisions were issued and obtain an affirmative ruling by the federal court regarding the validity of their procedural claim that CSS violated their Section 220522(a)(8) and Section 220541(a)(1)(H) rights. *Id.* Mr. Benz also agreed with this argument that Claimants had the opportunity to go directly to federal court after their JAMS PDA appeal decisions were issued in their cases. *Day 3 Transcript*, Testimony of Benz at pgs. 118-125, 228-232. One JAMS PHA arbitrator also suggested that Claimants pursue a FAA appeal of the JAMS arbitration decision. *Day 3 Transcript*, Final Arguments at pgs. 246-247. Claimants counter that the JAMS PDH decision is final and binding with no right to appeal under the SafeSport rules and/or that the narrow scope of a federal court appeal set forth in the FAA does not allow a review of a JAMS PDA decision in any SafeSport case. *Day 3 Transcript*, Final Arguments at pgs. 242, 248-249. Unfortunately, whether Claimants position is correct has never been tested in court. Judge Chappell in the *Callaghan* case was asked to test the validity of the CSS adjudicative process but procedurally remanded the matter and never addressed the due process issues presented. *See Exhibit C-90* at pgs. 7-11.

This Panel agrees with Respondent that Claimant must first exhaust its available administrative remedies before it can ask Respondent to seek a federal court review of its procedural due process claim. The unanswered federal question is: when Claimants completed the CSS administrative review process by obtaining decisions in their JAMS PDA appeals, were Claimants then required to seek a federal court review of the CSS adjudicative process and a ruling that directly addressed their procedural due process claim against CSS? No federal court precedent or ruling is currently known to exist that answers this specific legal question for the Panel. It was not necessary that the federal court agree with Respondent that it had jurisdiction to address Claimants' procedural due process claim. It was only necessary that this jurisdictional requirement be exhausted before moving to the next administrative forum to seek the review of Claimants' procedural due process

claim. If a federal court ruling already existed as precedent or a federal court established precedent by ruling on whether it had jurisdiction to address Claimants' procedural due process issue, then Claimants would have exhausted all available avenues to seek a procedural due process review and remedy under the CSS and SafeSport adjudication process. At that point, if the federal court denied jurisdiction to review Claimants' procedural due process claim, the next available forum to jurisdictionally seek such a review would have been before Respondent when CSS sent the Final Decision for enforcement by Respondent. The Panel agrees that, only under those circumstances, would Respondent have jurisdiction to address Claimants' procedural due process issue. Unfortunately, Claimants did not seek a ruling from a federal court after obtaining decisions in their JAMS PDA appeals. Claimants sought a *Callaghan* ruling in several of their JAMS PDAs, and set up this procedural due process issue for a FAA appeal, or related proceeding in federal court, to challenge the legality of the CSS procedural adjudicative system. *See* Exhibits C-137 at pgs. 13-30, R-58 at pg. 2, R-90 at pg. 3, R-116, R-119 pg. 2. The Panel agrees with Respondent that this constitutes a failure by Claimants to exhaust its duty to protect USEF member rights to a procedural due process PDH hearing by seeking a declaratory judgment in federal court would only arise once jurisdiction over this issue was properly established to exist before Respondent. Despite Claimants best argument, jurisdiction was not established to exist in this case. *See Day 3 Transcript, Final Arguments* at pgs. 248-251. However, the Panel's analysis and reasoning should assist Respondent in the future if it is required to address whether jurisdiction exists in another case. If another USEF member has properly exhausted all the available remedies within the CSS and SafeSport adjudication process, then jurisdiction could legally exist before Respondent to fulfill its duty to protect the USEF member's right to a procedural due process PDH hearing by seeking a declaratory judgment ruling in federal court. Or, as Claimants point out, Respondent and the USOPC could take a proactive approach by addressing the issue directly with CSS or by seeking a declaratory judgment ruling in federal court without waiting until an NGB is ordered to do so by the USOPC or a subsequent Section 10 arbitration panel. *See Day 3 Transcript, Final Arguments* at pg. 262.

3. Did the USOPC Hearing Panel error in determining that, under a Section 10 appeal, the USOPC did not have jurisdiction to address whether Respondent erred in determining

that Respondent did not have jurisdiction to address whether Section 220522(a)(8) and potentially Section 220541(a)(1)(H) of the Ted Stevens Act require a hearing before a decision by SafeSport may be enforced by Respondent depriving Claimants of their right to participate in the Olympic sport of equestrian? The answer to this third question is no. The reasons for the Panel's ruling are set forth below.

The USOPC Hearing Panel refused to consider several contentions raised by Claimants in their Section 10 proceeding. *See* Exhibit R-1 at ¶¶23-25, 44, 53. As referenced by the USOPC Hearing Panel, it only has limited authority and jurisdiction to review any appeal of an NGB ruling under a Section 10 appeal. Exhibit R-1 at ¶¶53, 59, 61 and 62. If Respondent had erred in denying Claimants jurisdiction in this case, Claimants were required to properly raise this issue before the USOPC Hearing Panel in their Section 10 appeal. *See* Exhibit R-1 at ¶25. Even then, the USOPC Hearing Panel would be limited to remanding the case back to Respondent to implement corrective measures, place Respondent on probation, or suspending/revoking its recognition as an NGB. *Day 3 Transcript*, Final Arguments at pgs. 267-268 and 275. However, because the USOPC Hearing Panel determined that Claimants failed to properly present this issue for review in their Section 10 appeal, the Hearing Panel was not required to address this contention. The Panel also agrees that since Respondent did not err in denying jurisdiction in this case, the USOPC decision not to consider other matters in the Claimant's Section 10 appeal is now moot.

4. Should Respondent be awarded sanctions against the Claimants represented by Mr. Romm and Mr. Silvey because of the delays and failures to comply with discovery and other deadlines ordered by this Panel? For the reasons set forth below, the Panel decides not to award Respondent sanctions against the Claimants represented by Mr. Romm and Mr. Silvey.

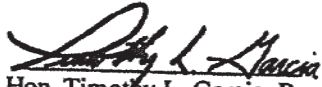
This Panel agrees with Respondent that Mr. Romm may have delayed this case for up to a year due to his constant requests for continuances, failures to be prepared for hearings, failures to comply with motion deadlines, failures to timely respond to discovery requests, failures to comply with Panel orders, and other indiscretions identified by Respondent. *See* Respondent's Request for Sanctions dated 11/27/23. We balance those failures with Mr. Romm's health issues, pro bono status, and his agreement to obtain Mr. Silvey as co-counsel for his clients so that the

case could finally move forward to conclusion in 2023. *See* Claimant's Response to USEF's Renewed Request for Sanctions dated 11/28/23. The Panel also balances the overall economic reality for Claimants in this attempt to pursue their claim in multiple forums for nearly four years and the financial disparity between parties. Although the circumstances may warrant the potential issuance of sanctions to Respondent based upon the serious delays, discovery violations and other failures to comply with orders issued by this Panel, the award of sanctions is left to the discretion of the Panel. *See* AAA Commercial Arbitration Rule R-60(a) (effective 9/1/22). We do not condone the failures of Mr. Romm in this case. However, in our discretion, we will not add the further burden of sanctions upon Mr. Romm's clients for his failures in this case.

All other pending matters or arguments that have not been directly addressed by this Decision and Award of the Panel are deemed denied or moot at this time. The administrative fees and expenses of the American Arbitration Association shall be borne as incurred, and the compensation and expenses of the arbitrators shall be borne as incurred.

THIS DECISION AND AWARD IS NOW ENTERED BY THE PANEL.

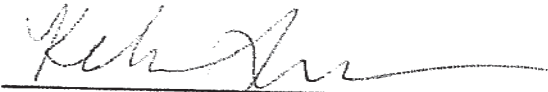
Dated: December 27, 2023.



Hon. Timothy L. Garcia, Panel Chair



X. M. "Mike" Frascogna Jr. Esq., Panel Member



Kelvin Smith Esq., Panel Member