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SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY,
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UNITED STATES SENATE

TESTIMONY OF
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WADA SHAME: SWIMMING IN DENIAL OVER CHINESE DOPING

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Chairman Blackburn, Ranking Member Hickenlooper, and Members of the Committee:

My name is Dionne Koller, and I am a Professor of Law and the Director of the Center for Sport and the Law at the University of Baltimore. I have published several scholarly articles on the United States's efforts to fight doping in sport, and I currently serve on the United States Anti-Doping Agency's (USADA) Administrative Review Panel. I also co-chaired the bi-partisan Commission on the State of U.S. Olympics and Paralympics which provided its report to Congress last year.¹ I appreciate the opportunity to testify about the state of the World Anti-Doping Agency (WADA) and its effectiveness in policing and preventing cheating in international sports through prohibited athlete performance enhancement.

As an initial matter, I would like to commend this Committee for taking up the issue of how the United States should respond to WADA's continued failure to fully meet its mission. WADA has suggested that the U.S. is behaving politically and hypocritically.² Yet the U.S., and this Committee, has for decades been a leader in confronting some of the most important, difficult issues affecting elite international sport, and has never shied away from taking action, even when the target is the United States. From addressing the issue of sexual abuse of athletes in American Olympic and Paralympic sport to the Equal Pay for Team USA Act, the U.S., and this Committee, has led the effort to protect athletes and the integrity of sport. The U.S. has for decades also shown the same resolve concerning doping in sport, and the proposed Restoring Confidence in the World Anti-Doping Agency Act is a necessary step in this continuing fight.

Additionally, it is important to highlight the basis for WADA calling the U.S. "hypocritical" in decrying WADA's, and nations like China and Russia's, failure to consistently follow the rules for

¹ Passing the Torch: Modernizing Olympic, Paralympic & Grassroots Sports in America, The Final Report of the Commission on U.S. Olympics and Paralympics (2024). The report was transmitted to every member of Congress and may also be found here: <https://www.csusop.org/>.

² See, e.g., <https://english.news.cn/20240626/97b3a19c2074452db180de1c77aa6768/c.html>.

clean international sport. WADA asserts that because U.S. professional sports leagues and colleges and universities, which participate in sport according to National Collegiate Athletic Association (NCAA) rules, are not subject to USADA's anti-doping controls, USADA and the U.S. are not doing what is necessary domestically to fight doping in sport.

This critique at best reflects a fundamental misunderstanding of the structure of U.S. sport and the many features of it that differ significantly from the conduct of sport throughout the world. The United States does not have a sports ministry or government agency that controls the private entities such as the National Football League or NCAA that oversee sport in their respective contexts. Additionally, millions of athletes participate in sports programs that are embedded in schools. For those occurring in public schools, constitutional issues, among others, would likely arise with the types of doping controls used in international sport, and such controls would also involve significant disruptions to the educational setting and impact parents' rights. For sports occurring in the professional context, international doping protocols would have to be reconciled with athletes' labor and employment rights. In short, the statement that the U.S. is hypocritical fails to account for the unique way in which American sport is legally organized and implemented.

It also fails to account for the fact that because of this unique approach to sport, the United States enacted the Ted Stevens Olympic and Amateur Sports Act. Under that statute's terms, any athlete—whether professional, intercollegiate, interscholastic, or grassroots youth—who also represents the U.S. in Olympic or Paralympic Movement competition or is affiliated with a sport national governing body—must comply with all anti-doping protocols administered by USADA and mandated by the World Anti-Doping Code (WADC). The integrity of purely domestic sport, some of which occurs in educational institutions, has always been an important law and policy issue in the United States. It is not subject to WADA's jurisdiction. WADA's claims about the U.S. are therefore

an unfortunate deflection away from the real issue, which are the serious and continuing challenges to the integrity of international sport.

There is a long history of doping in the Olympic movement. Countries like the former East Germany and the Soviet Union, now Russia, as well as China, have for decades used doped athletes to win in, and disrupt, international competition. The pressure to meet this cheating even drove some United States athletes in the past to engage in doping. Since as far back as 1973, Congress has held hearings on the issue,³ and at that time, athletes made clear that they felt intense pressure to dope to keep up with the drug-tainted athletes from nations determined to subvert the integrity of international sports to win medals. It should never be this way.

The United States certainly has had its own issues in the fight against sports doping. Before USADA was formed, the former United States Olympic Committee (now the United States Olympic and Paralympic Committee) administered drug testing through each sport's National Governing Body (NGB), which was also charged with prosecuting athletes for doping violations under the NGB's own administrative procedures. This meant that the entities charged with selecting athletes for Olympic and international competition also administered drug testing and determined the sanctions, and the obvious conflict of interest prevented the United States from administering a credible drug testing and sanctioning program. Congress took notice. In the words of the late Senator John McCain, Olympic doping scandals "harm our image and will contribute to our image, whether deserved or undeserved, that the United States is a bully and unethical."⁴ The United States government took steps to ensure that rather than being perceived as cheaters, we would be leaders in the fight against doping in sport.

³ Dionne Koller, *Sports, Doping, and the Regulatory Tipping Point*, 26 Marq. Sports L. Rev. 181 (2015).

⁴ Dionne Koller, *From Medals to Morality: Sportive Nationalism and the Problem of Doping in Sports*, 19 Marq. Sports L. Rev. 91 (2008).

In the late 1990s, General Barry McCaffrey, former head of the Office of National Drug Control Policy (ONDCP), made fighting drug use in Olympic Movement and professional sports a top priority, adopting a national strategy to combat drug use and doping in sports. This strategy included leading the international efforts to develop WADA, which began operations in 1999, and USADA, which began operations in 2000. The United States also was a leader in drafting the WADC, initially adopted in 2003.

Given that governments cannot be signatories to the WADC, in 2005 UNESCO adopted the International Convention Against Doping in Sport, which was the vehicle for governments to formally recognize WADA and the WADC. The United States ratified the convention in 2008, and the International Olympic Committee and International Paralympic Committee require that all nations that seek to host an Olympic or Paralympic Games sign on. It is useful to review the rationales for, and underlying beliefs cited in the Convention, which include:

- The belief that doping has serious consequences for athlete “health, the principle of fair play . . . and the future of sport”;
- The obligation that the international community cooperate “towards the elimination of doping in sport”;
- That public authorities and sport organizations “have . . . responsibilities to prevent and combat doping in sport”; and
- That these authorities and organizations must ensure “the highest degree of independence and transparency.”

Based on these principles, the Convention obligates state parties, among other things, to fight doping within their jurisdiction and support the mission of WADA, and makes clear that state parties have an obligation to “withhold some or all financial or other sport-related support from any sports organization or anti-doping organization not in compliance with” the WADC. The United States has lived up to these obligations.

USADA was established as a private corporation and truly independent entity tasked with implementing the WADC. Congress has designated USADA as the "official" anti-doping agency for the United States, and its mission has been to ensure that American athletes train and compete clean. To that end, Congress has provided the majority of USADA's funding. This has been taxpayer money that is well spent.

In my role as co-chair of the Commission on the State of U.S. Olympics and Paralympics, I saw first-hand how USADA has performed. Although our commission was not charged by Congress to review USADA's operations, our research, surveys, and interviews regarding the topics of our study repeatedly turned up evidence that USADA is a trusted, respected organization that is fulfilling its mission. Since its formation, it has not hesitated to test and sanction even America's most accomplished, decorated athletes. USADA operates the way a national anti-doping organization should, and indeed the way any domestic and international sporting organization should. As the Commission stated in its report, USADA stands as "a beacon of confidence within the movement."

Unfortunately, I cannot today say the same about WADA. In its early years, WADA appeared to have leadership that was committed to the goals of clean sport and enforcing the WADC no matter the political circumstances. However, several doping scandals in recent years prompt important questions about whether WADA is willing and able to meet its mission. In 2014, Russia orchestrated a state-run campaign of systematic athlete doping and cover-ups that tainted the Sochi Games. In 2022, Russian skater Kamila Valieva competed in the Beijing Olympics despite a positive doping test. And, of course, 23 Chinese swimmers tested positive for a banned, performance-enhancing drug in 2021 but were cleared to compete in subsequent Olympic Games. Only through courageous whistleblower reports did the international community learn the truth.

These cases and others have made it apparent that it is not enough to *hope* that individual WADA leaders do the right thing. WADA's structure must be such that it *can and will* do the right thing. As the largest government contributor to WADA's budget, the United States must continue to demand greater accountability.

Seeking greater accountability from WADA and protecting clean sport for American athletes is not a partisan issue. Under both the previous Trump and Biden administrations, we have taken steps to ensure that WADA fulfills its promise and the U.S. remains committed to the international anti-doping effort. For instance, in 2019, Congress passed the Rodchenkov Anti-Doping Act, authorizing prosecutors to go after those who execute doping schemes in major international sports competitions. In 2020, an ONDCP report detailed the ways WADA needed to be reformed to be able operate with the transparency, accountability, and fairness the international sporting community, and sports fans, deserve. Most recently, the United States has withheld its contribution to WADA. Yet despite years of efforts to work with WADA to achieve the necessary reforms, WADA still has not fully implemented the changes necessary to ensure that the principles reflected in the International Convention Against Doping in Sport are consistently upheld and not disregarded when politically expedient.

This is not surprising, as WADA remains far too tethered to the International Olympic Committee and international sport powers and does not operate with the independence necessary to meet its mission. In my role as Commission co-chair, I saw clearly the importance of institutional independence. With its dedicated government funding and independent governance structure, USADA has fulfilled its obligations to international sport and the American public, and within the U.S. Olympic and Paralympic movement it enjoys the highest levels of trust and respect. In contrast, our Commission found that SafeSport, with its ties to the USOPC and its funding structure, is not

nearly as trusted. Similarly, WADA's structure and susceptibility to political influence mean that its legitimacy is continuously subject to question, and its actions in recent cases have not dispelled the concern that it is unable to fully ensure clean sport. Since at least 2016, WADA has been working to strengthen its governance, with an eye toward making enhancements to its structure to ensure its independence. The latest issue with the Chinese swimmers demonstrates that this work is not finished, and further delays are unacceptable.

Given our history in WADA's founding and its status as its largest government funder, the United States is in a unique position to demand the promised reforms. Indeed, continuing to fund WADA without doing so risks endorsing the status quo. It also sends a message to American athletes and the American public that clean sport and fair competition are no longer a priority. This Committee should continue its leadership around the most pressing issues in elite international sport by seeking to ensure that WADA follows through on its governance reforms and provides the type of transparency—on the issue of the Chinese swimmers and other high-profile cases—that will restore the confidence of the international sports community and international sports fans.

In conclusion, in 2008 I wrote a law journal article that questioned whether the fight for clean sport would survive in the long term, stating that “while it is hard in the current climate to imagine the anti-doping zeal waning . . . the international political climate is susceptible to change, [and] it may be that the anti-doping effort is not continued with as much force as it is today. . . if several nations which purport to adopt the World Anti-Doping Code do not follow through, and suspicions of athlete doping from countries such as China and Russia persist.”⁵ Members of the Committee, we are at that point. If the commitment to clean, fair international sport is to endure,

⁵ Dionne Koller, *From Medals to Morality: Sportive Nationalism and the Problem of Doping in Sports*, 19 Marq. Sports L. Rev. 91 (2008).

the United States must take a lead role, as it did in establishing WADA, to ensure that WADA follows through and fulfills its mission.

Thank you for the opportunity to contribute to this important discussion. I welcome your questions.