

TESTIMONY OF

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BEFORE THE

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ON THE FUTURE OF ATHLETE SAFETY

“Strengthening and Empowering U.S. Amateur Athletes: Moving Forward with Solutions”

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Russell Senate Office Building, Room 253

Mr. Chairman and Members of the Committee:

My name is Han Xiao, and I am the elected Chair of the US Olympic Committee Athletes' Advisory Council, also known as the AAC. I have served in this position since January 2017. Prior to that, I served as a representative for the sport of table tennis in the AAC from 2013-2016, and served on the board of directors of USA Table Tennis from 2008-2016.

In 1978, the U.S. Congress enshrined the AAC into law and designated it as the voice of the athletes of the United States.¹ As the Chair of the AAC, I am providing this testimony as the official spokesperson for elite athletes under the USOC umbrella, including U.S. Olympians and Paralympians. My testimony will reflect what I believe is the most accurate opinions of the athletes who comprise Team USA. On behalf of these athletes, I want to thank you for exercising oversight of the Olympic and Paralympic system during this critical juncture.

To be clear; we believe athlete sexual abuse is a symptom of broader systemic issues that must be addressed to empower and protect U.S. athletes moving forward. Sexual abuse is the canary in the coal mine. I will highlight some of the key concerns of athletes in this testimony and provide some possible solutions.

1. The U.S. Center for SafeSport must succeed.

National media and Congress have rightly focused on the sexual abuse of athletes throughout the past year. It is vitally important that we continue to make substantive improvements to the SafeSport system. The problem is far bigger than the USOC anticipated; the U.S. Center for SafeSport received its 1000th complaint of sexual abuse after just 15 months of opening its doors.

But even after the heroic testimony of our gymnasts, the Center could still fail in its mission to protect athletes. For example, SafeSport efforts could be derailed by the stories we're hearing suggesting that the rights of the accused are not being appropriately protected. In other cases, we hear that SafeSport complaints are being used by staff against athletes, as yet another way to exercise power over them. If the Center does not have buy-in from the

¹ 36 U.S.C. Sec. 220501 et seq., available at: <https://www.teamusa.org/Footer/Legal/Governance-Documents>

stakeholders, including athletes, coaches, club owners and officials, it will not be able to protect athletes.

The prevention arm of the U.S. Center for SafeSport, its education and training, varies in thoroughness and effectiveness greatly from sport to sport. Athletes have informed me that in some sports, receiving a SafeSport “certification” for completion of training is a mere formality that can be granted upon viewing a video or having someone pick up their certificate for them.

To be successful, SafeSport must have the technical expertise to conduct investigations and hearings, and it must have independence from the USOC. Congress must increase funding for the U.S. Center for SafeSport so that it has the resources to adequately fulfill its mission and reduce the Center’s reliance on funding from the USOC and national governing bodies (NGBs). The firewall between the U.S. Center for SafeSport and NGBs’ legal counsel must be ironclad. Subject matter experts, including prosecutors, academics, abuse survivors, victims’ advocates, and parties interested in protecting the due process rights of all the parties involved should all be engaged to improve the adjudication process.

2. Insufficient Reporting Channels for Athlete-Whistleblowers

Retaliation against athlete-whistleblowers has been a concern within our movement for many years. This problem is exacerbated when the whistleblower is a currently-competing athlete, who has issues that they need to report, yet are still dependent on their NGB for future Team USA membership, funding and support. The set-up is unfair; it is unrealistic to expect athletes to require their NGB comply with the Sports Act or to enforce good corporate governance. Below is a summary of what an athlete must do to resolve a dispute with their NGB.

Under current procedures, athletes must file a formal grievance under their NGB’s prescribed procedures. If the issue still has not been resolved after exhausting their remedies within the NGB, the athlete can file what’s known as a “Section 10 Complaint” with the USOC, alleging NGB noncompliance with the Sports Act.² The complaint is then heard and adjudicated by a three-person hearing panel. I have sat personally on one of these hearing panels. The

² Id. 36 U.S.C. Sec. 220501 et seq., available at: <https://www.teamusa.org/Footer/Legal/Governance-Documents>

ultimate sanction in a Section 10 complaint process is decertification of the NGB. In other words, the athlete's remedy is to remove recognition from the NGB entirely, with a new governance group and organization potentially taking over as the new NGB. Understandably, the NGB staff sees the athlete as a problem. This is a precarious and impossible position for any Olympic or Paralympic hopeful.

To make matters worse, the Section 10 process has no anonymity; even if the athlete prevails through the process and corrective changes or sanctions against the NGB are prescribed, their conflict often leads to tensions between the athletes initiating the complaint and staff or even other athletes within their sport.

Additionally, the process does not allow whistleblowers to raise issues that are not explicitly addressed by the Sports Act. For example, if an athlete is concerned that his/her NGB is prioritizing staff compensation above supporting elite athletes, this is not a complaint that the athlete can have adjudicated through a Section 10 complaint, because staff compensation, consistent with other similar-sized non-profits, or fair distribution of NGB resources between staff and athletes, is not part of the Sports Act. Similarly, if an athlete is concerned that athletes are being intimidated by coaches and staff members to remain quiet about staff incompetence, that too is not explicitly listed in the Sports Act, and cannot be resolved with the remedy provided in the Sports Act. However, given a trend of similar complaints regarding an NGB or the USOC itself, it would be prudent to have an improved method to investigate such concerns in a timely fashion.

Finally, under the Sports Act, an athlete cannot recover their attorney's fees in bringing a Section 10 complaint. Some of these Section 10 complaints take a year's work or more, and can result in hundreds of thousands of dollars in legal fees and costs. Even an athlete who prevails 100% on the merits of their case is still responsible for these legal fees. Meanwhile, the NGBs generally have far more resources to combat these complaints. NGBs and the USOC are not reliant on pro-bono legal care, as many athletes are. For these reasons, the athlete should not be responsible for guaranteeing that the USOC and NGBs comply with the Sports Act.

3. Instituting an Office of the Inspector General

To address these problems, Congress should establish an autonomous authority to receive complaints confidentially, investigate facts, and report on necessary corrective action for the USOC, NGBs, and other actors within the Olympic and Paralympic movement, such as the U.S. Anti-Doping Agency (USADA) and the U.S. Center for SafeSport. The role of this authority would be like that of an Office of Inspector General that would oversee a federal or state agency. While the Inspector General would communicate with the USOC, ideally the position would report to the Senate Commerce Committee and the AAC, rather than directly to the USOC. Most of the same qualifications, authorities, and responsibilities outlined in the Inspector General Act of 1978 and subsequent amendments in 2008 should also apply to this new office. Congress may wish to further examine some of the key questions regarding who appoints the Inspector General, what authorities are given to this position, and the reporting mechanisms for the position. One potential model, for example, would have the Inspector General appointed and removed by the Chair of a separate Senate committee, most likely the Senate Judiciary Committee, and require the Inspector General to report on its operations to the Senate Commerce Committee on an annual basis. I would be happy to have follow-up conversations with appropriate members and staff to discuss these specifics.

The benefits of the establishment of an Inspector General's Office would include, but not be limited to:

- Preserving the anonymity of athletes raising legitimate concerns about their NGBs and the USOC; thereby providing protection for whistleblowers;
- Allowing for the investigation of other issues that arise outside the protections afforded by the Sports Act;
- Assisting in proactively identifying issues within NGBs and the USOC, including possible corrective actions;
- Contributing to more routine and proactive oversight of the USOC and the entire Olympic and Paralympic system;
- Improving the athletes' and the American public's trust in USOC and NGB governance;

- Reducing legal costs for all parties due to the reduction in necessary Section 10 hearings and their binding arbitrations when the Inspector General intervenes.

I will reiterate some of these same themes in other observations and recommendations below, which further highlights the potential advantages of establishing this office.

4. Instituting Professional Athlete Advocacy; The Athlete Advocate

The growth and professionalization of Olympic and Paralympic sports has caused a shortage of athlete advocacy services. These services are needed for many reasons.

First, in many types of grievances, such as the right to compete³ or suspected doping violations, the athlete may need legal advice before deciding upon a course of action. Currently the Athlete Ombudsman's Office only advises athletes of their rights, informs athletes of available resources, and provides mediation services; the Athlete Ombudsman is not able to represent an athlete, or advocate for the athlete in a dispute. In addition, resolving these disputes are expensive; as stated earlier, there is no attorney's fee provision in the Sports Act. Considering the time, effort and expense of pursuing the rights granted to them by Congress, athletes may decide against pursuing their case altogether. To truly protect athletes' rights, Congress should fill the current void of competent and affordable athlete advocacy.

Currently, the AAC is the primary body actively advocating for athletes' rights. The AAC is structurally limited; it can only effectively address policy and governance issues and has no authorities beyond its ability to nominate representatives to various boards and serving as a communication channel. In addition, the AAC is comprised solely of volunteers, whereas USOC and NGB staff members are full-time employees. In general, the AAC is better suited to providing feedback for policy proposals and procedures and advocating for athletes' interests at a high level; it is not the resource to advocate for the rights of individual athletes or to provide legal advice to athletes.

To address many of these concerns, Congress should establish a new position, an Athlete Advocate. The Athlete Advocate's role would be to provide confidential legal advice to athletes and actively advocate for their rights and interests on a full-time basis. In certain cases,

³ In "right to compete" grievances, the athlete is typically arguing that the NGB did not properly comply with their own Team USA selection criteria, or that the NGB unfairly imposed a discipline on them.

especially those that impact many athletes or those that have the potential to set important precedent in the Olympic movement, the Athlete Advocate's office could choose to directly represent the athletes involved, or to assist the athletes in hiring competent representation. For cases that exceed the capacity of the office, the Athlete Advocate could provide preliminary legal advice, recommend competent representation, have a budget for outside legal counsel, and follow up after the case is adjudicated. In addition to directly representing athletes, the Athlete Advocate would work with other athlete representatives in the movement to raise observed issues with the USOC, NGBs, and other organizations and advocate for athletes' rights; to give the 20,000 foot view of athlete-issues.

There are several funding and reporting models that could potentially work for the Athlete Advocate's office. However, for the office to be effective, it must be able to maintain attorney-client privilege when working with athletes. In addition, the Athlete Advocate position must come with enough autonomy from the USOC and the NGBs so that athletes can trust that the Athlete Advocate will always put their best interests first in any situation. The Athlete Advocate cannot be beholden to the USOC CEO or an NGB. As with the Inspector General's office, Congress may wish to further examine questions regarding who appoints the Athlete Advocate, what authorities are granted to this position, and the reporting mechanisms for the position. A potential structure here would be authorizing the AAC to appoint and/or remove the Athlete Advocate directly with the approval of the Senate Commerce Committee.

5. Improving NGB Oversight for Sports Act Compliance

Congress has given the USOC the power to investigate and adjudicate noncompliance complaints and influence NGBs to comply with the requirements of the Sports Act.⁴ Historically, USOC staff took the approach that the NGBs were independent organizations and that the USOC had limited leverage to affect their behavior, the main levers being reduction in funding, probationary status, and decertification. Their argument in support of their "hands off" approach was that any of these behaviors had the potential to hurt athletes and impact athlete support.

⁴ See attached memo from The Committee to Restore Integrity to the USOC, on the Sports Act and USOC Bylaws that provide the USOC with the authority to audit and oversee NGBs, submitted March 12, 2018.

In fact, the USOC can and must hold NGBs accountable while continuing to directly support elite athletes in cases of noncompliance. We have seen this in practice; recently the USOC flexed its muscle as the parent organization, when the USOC demanded the resignation of the CEO of USA Gymnastics, as well as its Board of Directors, as the depth of Dr. Larry Nassar's sexual abuse became known, including the NGB's failures to protect some of the country's best gymnasts.

Congress should leave no doubt that the USOC must proactively provide NGB oversight and serve as the main point of adjudication for NGB compliance with the Sports Act. This can be done by giving the USOC the tools and authority to provide NGB oversight as the Sports Act currently does, and probably more importantly, also holding the USOC responsible within the Sports Act for continuing to recognize NGBs that are not appropriate fulfilling their requirements under the law or are failing to protect and support athletes.

USOC oversight of NGBs should be focused on organizational governance as well as functions critical to athletes' interests, such as more objective team selection criteria, ethical codes of conduct for coaches and staff, and conflict of interest policies. In addition to responding to Section 9 and Section 10 complaints, the USOC should periodically audit each NGB and follow up on recommendations from institutions such as the Athlete Ombudsman's Office as well as the Inspector General and Athlete Advocate, as they are established. Providing effective NGB oversight and enforcing best practices in many of these key areas will contribute to better support for athletes, more fairness in team selection, fair athlete funding, and fewer situations where athletes are placed in vulnerable situations without recourse. In turn, this will cultivate trust between the athlete body and the entire USOC family.

It is also important to note the special importance of the Inspector General in this initiative if Congress were to establish that office. As mentioned previously, the Inspector General would contribute substantially to improving the oversight of NGB operations, especially in areas where systemic issues arise. The ability for the Inspector General to identify threats and weaknesses in the system would allow the USOC to hear what the problems are and where additional audits and corrective actions should be focused. The Inspector General would also be able to ensure that the USOC is fulfilling its mandate to provide NGB oversight and allow

Congress to hold the USOC accountable if it is not performing this function in a satisfactory manner through its routine reporting on USOC and NGB issues.

6. Consistently Defining Paralympic Governance and Management

Paralympic athletes currently are governed and managed in a variety of different ways; there is very little consistency in approach. Some Para sports and disciplines are fully integrated into an NGB structure. Other Para sports are only managed by an NGB but do not have defined Para governance. Still other Para sports are managed completely by non-NGB entities. Yet another group of Para sports are operated and governed by the U.S. Paralympics. Depending on the sport, Para athletes may or may not have defined representation within the governance of the sport. This inconsistency makes it particularly difficult for Para athletes to know how or if they are being represented and heard within their respective sports.

In addition, it can be extremely difficult for the same representatives who represent able-bodied athletes to represent the interests of Para athletes, not only because of differences between sporting disciplines, but also because the Paralympics are a maturing brand with unique characteristics compared to the Olympic Games. In short, Para athletes have a very different set of challenges and often have significantly different priorities than their Olympian counterparts. In boardrooms where Paralympic interests are integrated with those of the rest of the organization, there is often little to no voice advocating for the interests of Para athletes on a routine basis. In others, where there happen to be one or more board members who are aware of Para athlete priorities, the question “But what about Para athletes?” can often be heard after discussion of key topics affecting athletes.

It is my opinion that Congress should begin working with stakeholders and Para athletes to determine the course of action that is in the best interest of Para athletes moving forward. A possible approach would be to more clearly define the responsibilities and governance requirements of the existing Paralympic sport organizations (PSO) as defined in the Sports Act. There is currently no requirement for these organizations to provide any sort of board or oversight committee to govern the management operations of each of these programs, which should be a requirement of each PSO. NGBs that have integrated Para athletes under their

governance should work collaboratively to determine how best to ensure that Para athletes can be adequately represented within those sport governance structures.

In general, we must have a clear and consistent approach to the governance and management of Para athletes moving forward so that the system serves their needs, especially as the Paralympics continue to grow in profile.

7. Routine Oversight of the Olympic and Paralympic System

Since the last amendment to the Sports Act in 1998, we have seen increasing professionalization of Olympic and Paralympic sports, as significantly more funds move into the system. In the past decade, we have also seen several obstacles, including the sexual abuse scandals, and bloated executive compensation and bureaucracy. Several systemic concerns must be addressed.⁵ As these concerns grow, adjusting the governance system to correct systemic flaws becomes more complex and difficult. The USOC suffers from organizational inertia, primarily due to its size, and its monopoly-status, as granted by Congress. The Olympic and Paralympic system are uniquely immune from market pressures. While this inertia may have provided stability at one time, it has also proven to slow the organization's response to both current and potential threats and weaknesses within the movement.

The Olympic and Paralympic movement need more routine oversight, as well as consistent evaluations of systemic and governance flaws that must be corrected. The Inspector General's office would provide to more independent oversight, but routine USOC Board oversight would also allow the USOC to react more swiftly to situations and more readily question policies, procedures, and behaviors that seem problematic or suboptimal. I recommend one of two potential solutions: the first would be for Congress to establish an oversight committee in the same model as the U.S. Service Academies. An independent USOC Oversight Committee should consist of well-respected non-profit or civic leaders with the requisite expertise to evaluate the business practices of the USOC, provide recommendations to the USOC Board of Directors, and report directly back to Congress periodically. Alternatively, Congress could appoint several members of the USOC Board of Directors in a bi-partisan

⁵ See section 2 and 3 for a more thorough discussion of structural changes to the Sports Act.

manner. Both models would provide more outside perspective to the USOC's governance structure without significantly impacting the stability of the organization.

Ideally, the reports from Congressional appointees overseeing the USOC would be combined with reports from the Inspector General's office, reports from the USOC CEO, and information from other stakeholders to provide a balanced view of the current health of the Olympic and Paralympic ecosystem in the US as well as the crucial issues facing the movement. Congress would be able to use this information to more iteratively and accurately amend the Sports Act when necessary.

8. Establishing a truly Athlete-First culture within the USOC

To fully protect and empower athletes within the Olympic and Paralympic system, there must be a shift to a truly "athlete-first" culture throughout the movement. Although many staff members are inspired by Team USA athletes and provide excellent service and support, there are examples of employees, policies, procedures, and behaviors that would suggest the USOC does not have a culture of doing whatever it takes to maximize athlete support and protection. These examples include:

- **The USOC's lack of urgency protecting athletes' safety and well-being:** the USOC response to athlete sexual abuse has been delayed. Only under hell-hot temperatures from the public, media and you, the Congress, has the USOC sped up its response. As mentioned previously, SafeSport training within each sport is too often ineffective, inconsistent and seen as a formality and a box to check. Fewer than half of the NGBs have easily accessible online disciplinary records listing any suspended and banned members. In another well-documented issue involving athlete well-being, post-Games depression, the Athlete Career and Education Program provides some resources to some athletes, but the issue does not seem to be a demonstrable priority for the USOC and the NGBs.
- **The movement's excessive and wasteful spending:** I was elected to serve as one of two athlete services coordinators providing services to Team USA for the 2016 Rio Olympics. Several months before the Games, we participated in an exercise called the "high-

performance strategy meeting.” Around 70 staff members from the USOC and various NGBs flew to Rio de Janeiro to participate in this multi-day meeting, which included venue visits, high performance training site visits, and several strategy sessions to plan for both success and adversity at the Games. The trip was fun and it added some value, but I am skeptical that so many people needed to travel to Brazil to participate. Most athletes who hear the story agree, and some athletes have recounted similar excessive travel by their NGB staff, especially around international competitions and preparation for major international competitions. This leads the athletes to question the fiscal decisions and expense policies of the USOC and NGBs, asking whether the USOC assets are truly being managed and controlled appropriately. As described earlier, there is no remedy in the Sports Act for athletes to challenge wasteful spending.

- **The USOC underutilizes many resources:** By my understanding, the Olympic Training Center in Colorado Springs has seen a substantial reduction in residency programs over the past few decades. I have been told that there are currently just over 100 resident athletes and coaches, even though the training center has a capacity of 500. With the facilities, staff, and infrastructure already in place, the marginal cost of adding additional resident athletes is minimal compared to the cost the same athletes would bear on the open market to secure food, shelter, and appropriate training conditions. There are elite, Olympic and Paralympic level athletes that would greatly benefit from these training facilities and support services. Although some of the unused capacity of the Colorado Springs training center is rented out to campers and foreign teams to generate additional revenue, by all accounts the training center is nowhere near capacity in terms of its operation, even with these other users. Unless the USOC plans to hand off ownership and management of the Colorado Springs training center as it did with its Chula Vista, California training center, increasing the center’s utilization with high-performance athletes in the development pipelines of various sports would certainly indicate a greater commitment to athlete support.
- **The USOC rewards staff with medal bonuses:** In 2016, several athletes discovered that staff members were delighted to be receiving high medal bonuses due to the excellent

performances of our athletes at the Rio Olympics and Paralympics. I was told by a staff member that part of their compensation included bonuses based on whether Team USA reached certain medal counts during the Games. Naturally, the athletes found this extremely troublesome and some of us questioned this practice. The explanation we were given was that staff were more responsive to athletes' needs if they had at-risk compensation based on athlete performance. This is problematic on several levels, not least because one would think that supporting athletes should already be the primary motivation of USOC employees.

- **Imbalance of power between USOC / NGB staff and athletes:** Athletes report to me they are put into inherently vulnerable situations and feel that they have little or no recourse. This is especially true for those in sports with subjective team selection criteria, where the coaches and administrators hold even more power over an athlete's future. In some sports, coaches and other staff members have absolute power over athletes by completely controlling both team selection and funding decisions, with minimal checks over this unconditional authority. This has led to situations where athletes feel they must sacrifice their own physical and mental well-being to comply with the wishes of NGB staff. The athlete must be hyper-obedient and compliant to have the opportunity to succeed athletically. This can even be an issue if the athletes are successful and winning medals, since the NGB often credits the staff members overseeing the program with the success of the program, rather than the hard work and sacrifice of the athlete. In some extreme cases, staff members see athletes as expendable pieces that can be easily replaced. One athlete representative mentioned overhearing a staff member saying that athletes come and go, but the staff and administrators are always there. Under these conditions, it should be no surprise that our athletes cannot report abuse.
- **NGBs that intentionally circumvent athlete representatives:** In the past five years, several AAC representatives have reported that their NGBs attempted to circumvent their authority using a variety of tactics. These have included, but are not limited to:
 - Using appointed rather than elected athlete representatives to sign documents;

- Keeping an electronic signature of the AAC representative on file to sign documents;
- Giving an AAC representative a document with very little time before a submission deadline and asking for a signature; and
- Circumventing athlete representation by scheduling meetings such that competing athlete representatives cannot attend, or unilaterally removing what the NGB perceives to be a problematic athlete representative.

Issues have included team selection criteria and funding decisions, among others, which are vital athletes' rights issues.

These are just a few reasons why the culture within the Olympic movement is not an athlete-first culture. Although there are staff members that do want to support athletes, it does not appear that the *system* is prioritizing the support of athletes above all other concerns. The recommendations that have appeared in this testimony should contribute to changing this organizational culture through effective and more routine oversight.

In addition to those initiatives, some adjustments can be made to further strengthen athletes' voices within the USOC and NGBs. For example, the 20 percent athlete representation rule within the Sports Act should be revisited. The statute should specify that athlete representation within USOC and NGB boards, committees, and entities should be elected by athletes, just as AAC representatives must be elected by athletes. In addition to the Athlete Advocate, Congress should also strengthen the athlete voice in the Olympic movement by extending the eligibility requirements for an athlete representative. Currently under the Sports Act, elite athletes are eligible for up to ten years after their last qualifying international competition. Although this requirement ensures that these athletes have more recent experience competing internationally, older retired athletes can receive relevant current information from currently competing athletes while bringing more professional experience, stability, and time to the position. Extending the eligibility requirement has the potential to greatly strengthen athlete advocacy within the movement and bring more engaged athlete voices into critical discussions and decision making processes.

9. Conclusion

The sexual abuses that have emerged within Olympic and Paralympic sport are a tragedy that has shed light on the movement's cultural deficiencies. Athletes have minimal power to report injustices, especially while they are competing, due to governance design flaws. More resources must be made available to support a properly running U.S. Center for SafeSport, to address the unprecedented avalanche of sexual abuse reports, and to assure that these cases can be handled properly.

Unfortunately, the U.S. Center for SafeSport itself is not enough to combat the systemic issues that I see within our system. The Olympic movement is inherently reactive, and athlete-whistleblowers still have far too little recourse. Congress can give a voice to those who have legitimate concerns about how our sport organizations are governed and operated. Congress must create an independent Inspector General position, as well as an Athlete Advocate, in order to protect our athletes by shifting power.

Even after the Nassar victims have spoken up so bravely, and so eloquently, it is still too difficult for individuals who are passionate about improving the USOC family to have their opinions heard and heeded. I'm therefore asking you, as the Chair of the AAC, and as the leader of Team USA athletes, to amend the Amateur Sports Act so that the USOC can become a model non-profit organization in service to our athletes and so that the Olympic and Paralympic system can protect the interests of Team USA athletes long into the future.

I appreciate this Committee's continued efforts to provide oversight, and I thank you for considering the perspectives of American athletes in that process.

I am happy to respond to any questions members of the Committee may have.