



OFFICE OF THE PRESIDENT  
WITOLD BANKA

26 June 2020

**The Honorable James W. Carroll**  
Director  
Office of National Drug Control Policy  
Washington, D.C.

**Re.: ONDCP Report to the United States Congress**

Dear Mr. Carroll, Dear James,

The World Anti-Doping Agency (WADA) has long valued the U.S. as an important stakeholder that contributes significantly to WADA, to the fight against doping in sport in general and to the protection of American athletes.

It is therefore with great disappointment that I read the ONDCP Report of 17 June to the U.S. Congress, regarding WADA Reform Efforts. Given that, during our 12 June telephone meeting, we discussed a renewed spirit of cooperation, I would have expected your office to have consulted us on the Report; or, at the very least, to have verified the factual veracity of the allegations being made against WADA. Instead, in the days before publication, you informed us of the impending Report and asked us to verify three paragraphs by a certain deadline; and, when we did so in good faith, you chose not to incorporate our clarifications. As the saying goes, 'why let the truth get in the way of a good story'?

Attached you will find an Executive Summary summarizing WADA's views on the ONDCP Report; and, the Report itself with our annotations in red, which outline the misleading information and inaccuracies that the Report contains; and, what the Report omits in terms of factual information. I would kindly ask that you transmit this version to Congress without delay and that you let me know when this has been done. As a WADA Foundation Board (Board) member, with a fiduciary responsibility, I should think that you would want the U.S. Congress, and/or the appropriations committee, to deliberate and decide on WADA funding based on accurate information.

It is very disconcerting that, although the U.S. has been around WADA's Board table for 21 years, the Report's allegations have never been raised by U.S. representatives. In fact, the U.S. approved WADA's proposed governance reforms in November 2018; and, just recently you personally voted in favor of WADA's new Strategic Plan for 2020-2024. Quite frankly, the U.S.'s behavior around the Board table over the past years is simply irreconcilable with the allegations outlined within the Report.

As it relates to contributions, as you know, the contribution of the Governments to WADA's core budget has been determined by the governments of the world themselves, including the U.S. WADA has no say on how the governments' contribution is divided between them. The current government funding formula was determined, agreed by the U.S., and implemented almost two decades ago.

In terms of representation from the Americas around the Board and Executive Committee (ExCo) tables, you are also aware that these matters are discussed and agreed by the Americas as a region and not by WADA. The U.S. government may want to engage the other governments of the region to address its concerns because representation at WADA's ExCo and Board is a decision taken by them, not by WADA. In a similar vein, if the U.S. would like to have seats within the Agency's Standing Committees and other advisory bodies then, in keeping with the statutes, the U.S. must submit nominations. WADA invites stakeholders every year to nominate candidates for all vacancies.

Concerning governance, the following elements of WADA's Governance reforms, which the U.S. approved, have been fully implemented:

- Formation of a Nominations Committee to ensure the right people in terms of skills and independence serve in senior governance roles within WADA.
- An independent President and Vice-President, with a remuneration associated with the role of the President.
- A minimum of one seat each for both athlete and NADO representation in all Standing Committees.
- A limit of three, three-year terms (nine years in total) for all members of the Board, ExCo, and Standing Committees, with no possibility of stepping out for a term and returning.

The following elements are well underway:

- The addition of two independent seats – with full voting rights – to the ExCo; regarding which, candidacies are to be submitted to the Board for approval in November 2020.
- Formation of an Independent Ethics Board to ensure compliance with the standards of conduct required for good governance, which will also be submitted to the Board in November.
- Work with our Athlete Committee regarding how they can transform from an advisory body to a representative body, with a view to subsequently determining together how athlete representation can be further strengthened at various levels of WADA, including within the Agency's governing bodies. This work is currently being progressed by our Athlete Committee.

WADA's governance reform over the last three years has been comprehensive; and, has clearly shown the Agency's willingness and ability to adapt; and yet, the Report makes no mention of this progress.

I remain convinced that the U.S. Government has an important role to play in protecting Clean Sport; and, it is my sincere hope that, going forward, we can work collaboratively rather than WADA having to defend itself against unfounded attacks via the media, which do absolutely nothing to advance the global anti-doping program for athletes worldwide.

One obvious way for the U.S. government to contribute more to the fight against doping in sport may well lie in increased efforts to protect young Americans that practice sport in an environment where the rules fall short of those established by WADA. I can assure you that the Agency would gladly partner with the U.S. in such an endeavour.

As always, I would be pleased to discuss any of these matters with you at your convenience.

Yours sincerely,



**Witold Banka**  
President

## **WADA Executive Summary of Agency's Response to ONDCP Report to the U.S. Congress regarding WADA Reform Efforts**

The World Anti-Doping Agency (WADA) has long valued the U.S. as an important stakeholder that contributes significantly to WADA, to the fight against doping in sport in general and to the protection of American athletes.

It is therefore with great disappointment that WADA read the *Office of National Drug Control Policy (ONDCP) Report of 17 June to the U.S. Congress regarding WADA Reform Efforts*. As the U.S. has been a longstanding Foundation Board (Board) member of WADA, it was all the more surprising that the ONDCP did not consult the Agency on the Report; or, at the very least, verify the factual veracity of the allegations being made against WADA. Instead, in the days before publication, the ONDCP informed WADA of the impending Report and asked the Agency to verify three paragraphs by a certain deadline; and, when we did so in good faith, pointing out numerous inaccuracies and misleading statements, it chose not to incorporate our clarifications.

It is very unfortunate that the ONDCP Report was written without due regard for the facts or context and with the clear intention to discredit WADA. It is beyond WADA's comprehension that such a Report has been produced when representatives from the U.S. Government have never raised any of these concerns around the Board table over the past 21 years. On the contrary, as a member of the Board, the U.S. endorsed the Agency's governance reform package that was approved by the Board [in November 2018](#); and that, is now well underway, as well as WADA's new strategic plan (to be published in the coming days) two weeks ago. All U.S. interventions can be found in [WADA's Board meeting minutes](#), which are publicly available on WADA's website.

Today, WADA informed the ONDCP of the Agency's disappointment and shared this Executive Summary; along with, the **following annotated version of the ONDCP Report**; whereby, WADA has outlined (**in red**) the misleading information and inaccuracies that the Report contains; and, what the Report omits in terms of factual information. We have asked the Director of the ONDCP to kindly transmit this version to Congress. It is our hope that, as a new WADA Board member, he would want the U.S. Congress, and/or the appropriations committee, to deliberate and decide on WADA funding based on accurate information.

As the annotated report is quite extensive, we would simply draw your attention to the following key facts/clarifications:

### **Representation**

- The U.S. is very well represented within WADA – better than any other single nation; and this, since WADA's creation in 1999.
- The Board is WADA's highest decision-making body and the U.S. holds a seat on it.
- Like other international organizations, such as the UN Security Council, individual governments do not occupy more than one seat. An individual government is either serving on the Board or it is not. It is a binary option. Throughout WADA's 21-year existence, the United States has served continuously on the Board – one of a small handful of nations with that unique distinction. No other nation from the Americas or Europe has done that.

- White House ONDCP Director James Carroll’s current term representing the U.S. runs through until 2022 and is renewable.
- The U.S. Government is represented on the 12-member Executive Committee (ExCo) through the Americas regional representative.
- While someone from the U.S. Government does not currently serve on the ExCo, it has represented its 42-nation region more than any other nation. In fact, for seven of the past 14 years, a representative of the U.S. Government has served on the ExCo.
- In February 2020, nations of the Americas region met in Ecuador for their annual inter-governmental meeting American Sports Council (CADE) to discuss mutual anti-doping interests, including representation on WADA’s Board and ExCo for the two-year period following the meeting. Unfortunately, the U.S. chose not to attend that meeting. The representation from the Americas on WADA’s ExCo has always been decided by CADE during their annual meeting and the U.S. is well aware of that.
- WADA ExCo and Foundation Board members are appointed by their respective constituency groups, and WADA has nothing to do with the selection.
- Unusually, the U.S. Government chose not to submit any nominations for U.S. members and Chairs to any WADA Standing Committees for 2020.
  - Two nominations were received from U.S. sports bodies, of which one – former track & field and bobsled star Lauryn Williams – was appointed to the Finance and Administration Committee.
  - The primary way Committee membership is established is through nominations received from governments and sport organizations. How can they be appointed if they are not even nominated?
- Notwithstanding, when the full range of Committees and advisory bodies are considered, the U.S. still has greater representation on WADA governance bodies than any other nation. Specifically, there are currently 11 U.S. representatives participating in governance roles within WADA as follows.
  - James W. Carroll
  - Lauryn Williams
  - Matthew Porteus
  - Lee Sweeney
  - Michael Culler
  - Thomas J. Hudzik
  - Marilyn Huestis
  - Daniel Eichner
  - John Lombardo
  - Richard Young
  - Matt Fedoruk

This U.S. influence is nothing new. In fact, in every year since WADA’s formation, there have been more U.S. representatives across WADA advisory bodies than any other nation

## Funding

- The notion that countries should be represented in proportion to the amount of money they provide makes no sense. To allocate seats exclusively to the highest funders would eliminate the majority of nations of the world from ever holding a seat on WADA’s Board or ExCo and would not be in line with international best practice.
- If governments were represented in line with how much funding they provided WADA, it would bar any representation from entire continents, let alone certain nations. Countries – and not necessarily the ones with the best history of anti-doping – could effectively buy seats on WADA’s governance.
- The fact is that WADA is the global anti-doping regulator. As such, it monitors the implementation of the rules worldwide, not just in one or two places. WADA cannot be governed solely by the few richest countries. Athletes who compete against U.S. athletes come from all over the globe and in fairness to U.S. athletes, we want to ensure their competitors are subject to the same stringent rules as they are. To make sure that happens, there needs to be representation from all regions of the world.

- The contribution of the governments to WADA's core budget has been determined by the governments of the world themselves, including the U.S. WADA has no say on how the governments' contribution is divided between them. The current government funding formula was determined, agreed by the U.S., and implemented almost two decades ago (it is known as the Cape Town Declaration). The 42 Governments of North, Central, and South America and the Caribbean, including the U.S., agreed in 2002 to their continental model for their contribution to WADA. This formula was reviewed in 2008. In fact, the U.S. led the development of the regional funding formula which was agreed to unanimously within the region. If the U.S. are unhappy with their current level of funding of WADA, this is a matter they should primarily address with their fellow governments of the regions, or worldwide, rather than putting the onus on WADA, which is not involved in this process.

## **WADA Governance Reforms**

Concerning governance, the following elements of WADA's Governance reforms, which the U.S. approved in November 2018 as a member of the Board, have been fully implemented:

- Formation of a Nominations Committee to ensure the right people in terms of skills and independence serve in senior governance roles within WADA.
- An independent President and Vice-President, with a remuneration associated with the role of the President.
- A minimum of one seat each for both athlete and NADO representation in all Standing Committees.
- A limit of three, three-year terms (nine years in total) for all members of the Board, ExCo, and Standing Committees, with no possibility of stepping out for a term and returning.

The following elements are well underway:

- The addition of two independent seats – with full voting rights – to the ExCo; regarding which, candidacies are to be submitted to the Board for approval in November 2020.
- Formation of an Independent Ethics Board to ensure compliance with the standards of conduct required for good governance, which will also be submitted to the Board in November.
- Work with our Athlete Committee regarding how they can transform from an advisory body to a representative body, with a view to subsequently determining together how athlete representation can be further strengthened at various levels of WADA, including within the Agency's governing bodies. This work is currently being progressed by our Athlete Committee.

WADA's governance reform over the last three years has been comprehensive; and, has clearly shown the Agency's willingness and ability to adapt; and yet, the Report makes no mention of this progress.

**Note: What follows is the ONDCP Report as annotated by WADA in red.**



**EXECUTIVE OFFICE OF THE  
PRESIDENT  
OFFICE OF NATIONAL DRUG CONTROL  
POLICY**

**Washington, D.C. 20503**

June 17, 2020

The Honorable John Kennedy  
Chairman  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States Senate  
133 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Quigley  
Chairman  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States House of Representatives  
2000 Rayburn House Office Building  
Washington, DC 20515

The Honorable Christopher Coons  
Ranking Member  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States Senate  
125 Hart Senate Office Building  
Washington, DC 20510

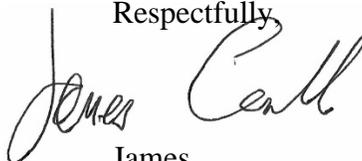
The Honorable Tom Graves  
Ranking Member  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
United States House of Representatives  
1016 Longworth House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

Pursuant to Senate Report 116-111 under P.L. 116-93, the *Consolidated Appropriations Act, 2020*, the Office of National Drug Control Policy (ONDCP) is hereby submitting a report on reform efforts undertaken by the World Anti-Doping Agency (WADA) in the wake of the Russian doping scandal. The Committee directed ONDCP to write a report “on the implementation of WADA governance reforms necessary to enhance the role of athletes in WADA decision-making, increase the independence and transparency of its operations, and restore confidence in clean competition.” Sen. Rep. No. 116-111, 116th Cong., 1st Sess. at 41- 42 (Sept. 19, 2019). The report provides information about the reform measures that WADA has implemented and whether they are sufficient to improve the world anti-doping system.

Should you have questions or concerns, please contact me at (202) 395-6700 or have your staff contact Natasha Eby of ONDCP’s Office of External & Legislative Affairs at (202) 395-6650. Please accept my sincere appreciation for your continued support of the U.S. anti-doping programs.

Respectfully,

A handwritten signature in black ink that reads "James W. Carroll". The signature is written in a cursive style with a large initial "J" and "C".

James  
W.  
Carroll  
Director

Enclosure: ONDCP Report to Congress on WADA Reform Efforts

## A. Background

### 1. World Anti-Doping Agency

The International Olympic Committee (IOC) established the World Anti-Doping Agency (WADA) in 1999. WADA is the “international independent organization monitoring the global fight against doping in sport and the custodian of the World Anti-Doping Code (Code).”<sup>1</sup> The Code has generally been effective at establishing a consistent international standard against which anti-doping policies in all sports and all countries can be measured. Given the important public interest in athlete health and well-being, the significant public funding allocated to sports organizations, and the financial contributions made by governments to WADA’s operations since 1999, the issues of WADA’s effectiveness and adherence to its mission are matters of public concern in which the Administration, including the Office of National Drug Control Policy, take an active interest.

WADA’s primary responsibilities include setting anti-doping standards of general applicability, monitoring the compliance of Code signatories and WADA-accredited laboratories with these standards and the Code, and upholding the rights and interests of clean athletes through seeking to build global anti-doping capacity; promoting collaboration to achieve anti-doping priorities;<sup>2</sup> and conducting large scale investigations, scientific research, and education.

### 2. WADA Funding

Half of the agency’s funding comes from the Olympic Movement, while the other half comes from governments of the world.<sup>3</sup> The United States is by far the single largest contributor nation to WADA.<sup>4</sup> The United States contributed \$2,714,744 in membership dues in 2020, and U.S. contributions constitute 14.5% of the governmental contributions made to WADA’s 2020 budget.<sup>5</sup> WADA’s 2020 annual operating budget is approximately \$37.4 million.<sup>6</sup> As a result of the IOC’s match of government contributions, U. S. participation will generate more than \$5.4 million to WADA in 2020.

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<sup>1</sup> H.R. Rep. No. 116-251, 116th Cong., 1st Sess. at 3 (Oct. 22, 2019).

<sup>2</sup> *Id.* at 4. See World Anti-Doping Code Article 20.7 (Roles and Responsibilities of WADA); See also <https://www.wada-ama.org/en/what-we-do>

<sup>3</sup> *Contributions to WADA’s Budget 2020*, World Anti-Doping Agency, (Mar. 27, 2020), available at, <https://www.wada-ama.org/en/resources/finance/contributions-funding>. The three main constituents of the Olympic Movement are the International Olympic Committee (IOC), the International Sports Federations (IFs) and the National Olympic Committees (NOCs). WADA membership fees are paid by these three sport constituencies.

<sup>4</sup> The top ten national contributors to WADA are: (1) United States - \$ 2,714,744; (2) Japan - \$1,502,800; (3) Canada - \$1,357,372; (4) France - \$1,015,977; (5) Germany - \$1,015,977; (6) Italy - \$1,015,977; (7) Russia - \$1,015,977; (8) United Kingdom - \$1,015,977; (9) Spain - \$534,512; and (10) China - \$493,399. *Id.* at 1-5.

<sup>5</sup> See Footnote 3, *supra*.

<sup>6</sup> *Id.*

## MISLEADING INFORMATION IN THE REPORT:

- The numbers shown in this part of the ONDCP Report are accurate but unfortunately, they do not paint a true and complete picture. The U.S. contribution is USD 2.7M, representing 14.5% of the Government contribution made to WADA's 2020 core budget. The U.S. portion of 14.5% has not changed since 2006.
- Contributions to WADA's core budget are important to WADA's mission. However, there are also other significant 'additional' contributions that have been made by different governments over the years with the same purpose of supporting WADA's mission. These additional contributions were not acknowledged in the ONDCP Report. They contributed to specific projects related to investigations, research, operations, etc.; as well as, to WADA's overall mission. If you take into account the full picture, Canada is in fact the biggest contributor in 2019 and 2020.
- In 2019, total additional contributions amounted to USD 3.6M, which were mainly from the Government of Canada; China; Japan and Poland. This increased the total core contribution from Governments from USD 17.3M to 21M. With this, the U.S. portion of the total contribution from all sources decreased from 14.5% to 12%.
- In the last five years (2015 to 2019), additional financial support above and beyond WADA's core budget amounted to USD 17.6M with consistent support from Canada of USD 7.2M; Japan USD 1.1M; China USD 3.2M; and, several other governments; such as: Brazil, Denmark, Qatar, Saudi Arabia and South Korea.
- When all contributions are taken into account for 2018 and 2019, the biggest contributors to WADA's budget break down as follows:

### Contributions combined – 2019 and 2018

<b>Rank</b>	<b>All Contributions</b>	<b>2019</b>		<b>Rank</b>	<b>All Contributions</b>	<b>2018</b>
1	Canada	2,861		1	Canada	2,785
2	USA	2,614		2	USA	2,514
3	Japan	1,696		3	Japan	1,666
4	China	1,630		4	China	1,366
5	France	947		5	France	881
5	Germany	947		5	Germany	881
5	Italy	947		5	Italy	881
5	Russian Fed	947		5	Russian Fed	881
5	UK	947		5	UK	881
6	Poland	576		6	Spain	452

## WHAT THE REPORT OMITTS:

- Governments of the world contribute to 50% of WADA's annual core budget. WADA has no say in how the government contribution to WADA's core budget is determined. It is the governments of the world who determine how the contribution is divided amongst them
- The current government funding formula was determined and implemented almost two

decades ago. Known as the [Cape Town Declaration](#), this international political statement signed by the U.S. established the formula for international governmental contributions to 50% of WADA's annual core budget. According to the formula, the breakdown of the global government contribution to WADA is as follows:

- Africa: 0,05%;
- Oceania: 2,54%
- Americas: 29%;
- Asia: 20.46%; and
- Europe: 47.5%.

The formula is currently under review by the governments of the world, independently from WADA. However, the current formula will remain in place as long as the review process progresses.

- The current WADA funding formula from the Americas was developed in 2008 by the 42 Governments of North America, Central America, South America and the Caribbean. The U.S. led the development of the regional funding formula, which was agreed to unanimously within the region, and has been adhered to by all governments in the Americas. As stated in the Americas political document, signed in San Juan, Puerto Rico in 2008, the U.S. “agrees and commits to paying 50% of the America’s region’s 29% of WADA dues.” The rest of the regional contribution is divided in the following manner: Canada pays 25% and the remainder is apportioned according to the Organization of American States (OAS) formula.
- It is important to note that:
  - WADA had no say in the development and implementation of this funding formula for the Americas or any other continent;
  - Financial contributions to WADA from the U.S. government to WADA benefits American athletes directly by enabling WADA’s efforts to level the playing field worldwide.
  - Any reduction in the U.S. contribution would have to be compensated by the other governments of the region if the region wants to fulfil its commitments;
  - There are consequences for countries that do not pay their dues to WADA as we comment upon under (4) International Convention Against Doping in Sport; and
  - The Sport Movement matches the contributions to WADA’s core budget from any governments, not just the U.S. contribution.
- The U.S. proposal is that Board seats should be allocated in proportion to contributions. If that were the case, based on today’s Board composition outlined in the table below, the following countries would be expelled from the Board; and, it would eliminate the potential of the majority of nations from ever holding a seat on the WADA ExCo or Board.

#### **Africa**

- Republic of Seychelles
- South Africa
- Egypt

#### **The Americas**

- Honduras
- Paraguay

– Ecuador

## Asia

– Saudi Arabia

## Council of Europe

– Ukraine

## European Union

– Bulgaria

– Portugal

– Romania

## Oceania

– New Zealand

### TOP 18 - 2019 CORE CONTRIBUTIONS RECEIVED

excluding additional contributions

Region	Rank	Countries	Values Amount Received	%PA
<b>AMERICAS</b>	<b>1</b>	USA.....	2,513,651	14.5%
	<b>3</b>	Canada.....	1,256,826	7.3%
	<b>13</b>	Mexico.....	375,690	2.2%
	<b>14</b>	Brazil.....	367,043	2.1%
<b>AMERICAS Total</b>			<b>4,513,210</b>	<b>26.0%</b>
<b>ASIA</b>	<b>2</b>	Japan.....	1,502,800	8.7%
	<b>10</b>	China.....	430,539	2.5%
	<b>18</b>	Republic of Korea.....	206,129	1.2%
<b>ASIA Total</b>			<b>2,139,468</b>	<b>12.3%</b>
<b>EUROPE</b>	<b>4</b>	Germany.....	946,747	5.5%
	<b>5</b>	Italy.....	946,747	5.5%
	<b>6</b>	Russian Federation.....	946,747	5.5%
	<b>7</b>	United Kingdom.....	946,747	5.5%
	<b>8</b>	France.....	946,717	5.5%
	<b>9</b>	Spain.....	491,386	2.8%
	<b>11</b>	Turkey.....	387,987	2.2%
	<b>15</b>	Netherlands.....	290,225	1.7%
<b>16</b>	Switzerland.....	236,211	1.4%	
<b>17</b>	Poland.....	225,795	1.3%	
<b>EUROPE Total</b>			<b>6,365,309</b>	<b>36.7%</b>
<b>OCEANIA</b>	<b>12</b>	Australia.....	378,677	2.2%
<b>OCEANIA Total</b>			<b>378,677</b>	<b>2.2%</b>
<b>Grand Total</b>			<b>13,396,664</b>	<b>77.3%</b>

### 3. WADA Governance and Organizational Structure

#### a. WADA Foundation Board

WADA's governance is evenly divided, with one-half of WADA's 38 member

**Foundation Board (FB) coming from sport and one-half from the world's governments.<sup>7</sup> The 19 government representatives currently on the WADA FB consist of a geographically diverse group of sport ministers, vice-ministers, or other high ranking government officials from around the globe, including 6 from Europe, 3 from Asia, 3 from Africa, 2 from Oceania, 2 from South America, 1 from North America (U.S.), 1 from Central America, and 1 from the Middle East.**

#### **INACCURATE INFORMATION IN THE REPORT:**

- The ONDCP Report does not accurately reflect the regional breakdown of [WADA's Foundation Board \(Board\)](#), which is as follows:
  - 2 x Oceania
  - 3 x Africa;
  - 4 x Americas;
  - 4 x Asia; and
  - 5 x Europe.

#### **WHAT THE REPORT OMITTS:**

- WADA did not determine the regional representation breakdown. WADA's Statutes do not dictate who fills the government/Public Authority seats. This was agreed to at the outset of WADA by the governments themselves in 1999.
- Each region is responsible for coordinating their own representation and advises WADA of the members to be appointed. WADA is not involved in these decisions. Whether or not a region chooses to break down their member appointments into sub-regions is at their discretion.
- Each country is free to submit a candidate for the election of WADA President or Vice-President. For many years, WADA has been led by non-European Presidents, i.e. Richard Pound, Canada (November 1999 – December 2007) and John Fahey, Australia (January 2008 – December 2013).

**In contrast, sport representation on the WADA FB is less diverse. Eighteen out of 19 sport representatives (95%) on the WADA FB have leadership positions in the IOC or its member organizations, including 10 IOC members, 7 Presidents of international sport organizations, and 4 chairs or vice chairs of national Olympic committees. Geographically, 12 sport representatives (63%) are from Europe, and there are: 2 from Africa, 2 from Asia, 1 from South America, 1 from North America (Canada), and 1 from Oceania.**

#### **INACCURATE INFORMATION IN THE REPORT:**

- It is no surprise that the 18-member (versus 19 given that the Vice President was elected as an independent) are from the Sports Movement as it is precisely the nature of the WADA Board. The Sports Movement has allocated their seats as follows:
  - 4 x IOC;
  - 4 x Association of National Olympic Committees (ANOC);
  - 3 x Association of Summer Olympic International Federations (ASOIF);
  - 1 x Global Association of International Sports Federations (GAISF);

- 1 x Association of International Olympic Winter Sports Federations (AIOWF);
- 4 x IOC Athlete Commission; and
- 1 x International Paralympic Committee (IPC).

**Foundation Board members serve three-year terms. Europe currently has 18 representatives (12 from sport and 6 from governments) on the 39-member WADA FB (46%). Of the world's continents, all but Europe and Oceania are under-represented. The IOC is the dominant institution represented at the WADA FB, having effective control over the selection of 50% of the representatives.<sup>8</sup>**

#### **INACCURATE INFORMATION IN THE REPORT:**

- There are 38 (versus 39) members of the Board

#### **WHAT THE REPORT OMITTS:**

- Similar to the regional representation breakdown, the Sports Movement is responsible for how they distribute or nominate their members. The Sports Movement coordinates their own representation and advises WADA of the members to fill the seats.

**With respect to governments, there is no correlation between financial contributions to WADA and membership on the WADA FB. For instance, the United States has only a single representative on the WADA FB, constituting less than 5.3% of the governmental representation at WADA, despite the U.S. contributing more than 14.5% of governmental support to WADA's 2020 budget.<sup>9</sup> The WADA FB meets twice a year and does not exercise operational control over WADA. Rather, WADA Statutes provide:**

**The Foundation Board delegates to an Executive Committee of twelve members, the majority chosen from amongst the Foundation Board members, the actual management and running of the Foundation, the performance of all its activities and the actual administration of its assets.<sup>10</sup>**

#### **MISLEADING INFORMATION IN THE REPORT:**

- Describing the U.S. representation on the Board as constituting 5.3% of the Public Authorities' presence is misleading.
  - The Board is WADA's highest decision-making body. It is composed of 36 representatives (18 from the Olympic Movement and 18 from governments of the world) plus an independent President and an independent Vice-President. Members are appointed by their respective constituency groups, and not by WADA itself. Like other international organizations (e.g., the UN Security Council), individual governments do not occupy more than one seat. Therefore, appointment to the Board, in fact, constitutes 100% representation. A government (or a sport organization) is either serving on the Board, or it is not. It is a binary option.
  - Since WADA's creation in 1999, the U.S. has served continuously on the Board. The U.S. is one of a small handful of nations with that unique distinction. No other nation from the Americas, nor from Europe, has served consecutively on the Board for 21 years. ONDCP Director James Carroll's current term representing the U.S. runs through until 2022 and is renewable.

## INACCURATE INFORMATION IN THE REPORT:

- The Board may delegate to an [Executive Committee](#) (ExCo) of fourteen members, the majority chosen from amongst the Board members:
  - the actual management and running of the Foundation; and
  - the performance of all its activities and the actual administration of its assets.

The Board may at any time amend such delegation and regain any of the powers delegated to the ExCo.

## WHAT THE REPORT OMITTS:

- As mentioned above, the contribution of the governments to WADA's core budget has been determined by the governments of the world, including the U.S. WADA has no say as to how the governments' contribution is divided between the governments of the world.
- The current government funding formula was determined and implemented almost two decades ago. Known as the Cape Town Declaration, this international political statement signed by the U.S. establishes the formula for international governmental contributions to WADA.
- Governments are to contribute to 50% of WADA's annual core budget. According to the formula, the break-down is as follows:
  - Africa: 0,05%;
  - Oceania: 2,54%
  - Americas: 29%;
  - Asia: 20.46%; and
  - Europe: 47.5%.

The formula is currently under review by the governments of the world but until this work is completed the current formula stays in place.

- As for the Americas funding formula, in 2008, it was developed by the 42 governments of North America, Central America, South America and the Caribbean. The United States led the development of the regional funding formula, which was agreed to unanimously within the region, and has been adhered to by all governments in the Americas. As stated in the Americas political document, signed in San Juan, Puerto Rico in 2008, the U.S. "agrees and commits to paying 50% of the America's region's 29% of WADA dues."

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<sup>7</sup> WADA Statutes provide for 18 Foundation Board members from the Olympic Movement and 18 from Public Authorities. In addition, the Chairman and Vice Chairman of WADA are members of the Foundation Board. In practice and as a result of the operation Article 7 of the WADA Statutes, the Chairman and Vice Chairman have alternated between the Olympic Movement and Public Authorities resulting in 19 Foundation Board members from the Olympic Movement and 19 from the Public Authorities. See WADA, Statutes, available at, [https://www.wada-ama.org/sites/default/files/resources/files/new\\_statutes\\_-\\_modified\\_november\\_2016\\_approved\\_dec\\_2017.pdf](https://www.wada-ama.org/sites/default/files/resources/files/new_statutes_-_modified_november_2016_approved_dec_2017.pdf) While the WADA Statutes refer to the "Chairman" and "Vice Chairman" of the Foundation Board, WADA has taken to referring to these individuals as WADA's "President" and "Vice President." See, e.g., <https://www.wada-ama.org/en/foundation-board>

<sup>8</sup> WADA Statutes, Article 6.1, available at, <https://www.wada->

Indeed, as of May 1, 2020, the United States contribution was 21.45% of the total governmental contributions actually received by WADA in 2020.

#### ***b. WADA Executive Committee***

As noted above, the actual authority to manage WADA's affairs is currently vested exclusively in a 12 member executive committee (the "WADA Ex Co"). The Chairman and Vice Chairman of WADA are automatically members of the WADA Ex Co.<sup>11</sup> In the event of a tie vote on the Ex Co, the Chairman "has the casting vote," meaning in the event of a tie the Chairman is effectively able to cast two votes.<sup>12</sup> Aside from the WADA Chairman and Vice Chairman, the remaining 10 members of the WADA Ex Co are appointed by the WADA FB for one-year terms.

#### **WHAT THE REPORT OMITTS:**

- As of 2021, the ExCo is to be comprised of 14 members, which will include two independent members in addition to the five representatives of the governments (one per region), the five from the Sports Movement, the independent President and the independent Vice President. The two independent members will be appointed in November 2020.
- The revised Statutes stipulate that the terms of the ExCo members are for three years versus the current one-year terms.

**current WADA Ex Co is even less diverse than the WADA FB. Seven WADA Ex Co members are from Europe. None are from North America. The only other continent with more than a single Ex Co member is Asia who has two members (China, Japan). There are 4 IOC members on the WADA Ex Co, 3 Presidents of international sport organizations and 1 national Olympic committee President.**

#### **MISLEADING INFORMATION IN THE REPORT:**

- The nationality of members is relevant only to the governments. The Agency was founded on a partnership between the Sports Movement and the Public Authorities. The Sports Movement does not determine who from the governments should sit on the governance structure, nor can the governments determine who from the Sports Movement is appointed. Each has the liberty to determine who should represent them. The Vice President is independent and not a representative of China. In fact, she was an athlete (a multiple Olympic and world champion in short track speed skating) and never had any governmental duties.

#### **WHAT THE REPORT OMITTS:**

- For clarification, the Foundation Board is WADA's highest decision-making body. The Board delegates the daily management of the Agency, including the administration of assets, to a 12-member ExCo (soon to be 14 members once the new independent members are appointed later in November 2020). The Committee thus reports to the Board, and similarly is composed equally of representatives from the Sports Movement and governments.
- As with the Board, ExCo members are appointed by their respective constituency groups, and not WADA. One nation is selected per each of the five geographic regions of the world (Africa, Americas, Asia, Europe and Oceania). Regions are considered as one and are not broken-

down into sub-regions; such as: East or West Asia; East or West Europe; or, North or South America.

- While the United States does not currently serve on WADA's ExCo, it has represented its 42-nation region more than any other nation in WADA's history. In fact, for 50% of the time during the last 14 years, the U.S. was a member of the ExCo (seven years of service).

***c. United States' Limited Influence in WADA Governance***

The United States currently has only 1 representative on the WADA FB, constituting 5.3% of the public authorities despite providing at least 14.5% of the public authorities' funding. Moreover, the United States is not a member of the WADA Ex Co, which is WADA's actual governing body. The United States' disproportionate lack of representation within WADA governance is not offset through inclusion of a U.S. perspective in other areas of WADA's governance. For example, WADA's 17 member senior management team includes no one from the United States.<sup>13</sup> Similarly, none of the 12 members of the important WADA Athletes Committee are from the United States.<sup>14</sup>

Much of WADA's work is accomplished through its 6 key standing committees.

- The Compliance Review Committee (CRC) monitors Anti-Doping Organizations' compliance with the Code. The CRC provides advice, guidance, and recommendations to WADA's Executive Committee on compliance matters.<sup>15</sup>

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<sup>10</sup> WADA Statutes, Article 11, available at, [https://www.wada-ama.org/sites/default/files/resources/files/new\\_statutes\\_-\\_modified\\_november\\_2016\\_approved\\_dec\\_2017.pdf](https://www.wada-ama.org/sites/default/files/resources/files/new_statutes_-_modified_november_2016_approved_dec_2017.pdf)

<sup>11</sup> *Id.* WADA Chairman, Witold Bank, is from Poland and Vice Chair, Yang Yang, is from China.

<sup>12</sup> *Id.*

<sup>13</sup> WADA Management, available at, <https://www.wada-ama.org/en/who-we-are/governance/wada-management>

<sup>14</sup> WADA Athlete Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/athlete-committee>

<sup>15</sup> WADA Compliance Review Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/compliance-review-committee>

- **The WADA Athlete Committee provides an athlete perspective to WADA Management, the WADA Ex Co, and WADA FB on all relevant anti-doping matters, and represents the views and rights of athletes.16**
- **The Education Committee provides expert advice, recommendations and guidance to WADA’s Management with respect to short-term education strategies and activities and longer-term approaches to WADA’s education programs. The Committee is also involved in the selection process of WADA-funded social science research projects.17**
- **WADA Finance and Administration Committee provides expert advice, recommendations and guidance to WADA’s Management and the WADA Ex Co with respect to budget development, funding, and financial and administrative policy.18**
- **The Health, Medical and Research Committee’s activities include monitoring scientific developments in sport with the aim to safeguard doping-free sport practice, as well as the overseeing of the following Expert Groups: Prohibited List, Therapeutic Use Exemptions (TUE), Laboratory accreditation, and Gene Doping. The Committee also participates in the selection process of WADA-funded scientific research projects.19**
- **The Inaugural Nominations Committee is responsible for ensuring that the appropriate people in terms of skills and independence serve in senior governance roles within WADA. The Committee recommends qualified persons to serve in various positions within WADA and vets such candidates. 20**

### **MISLEADING INFORMATION IN THE REPORT:**

- While it is technically correct to say that “the U.S. is not a member of the ExCo,” the ONDCP Report omits relevant historical and other information that provides a more accurate representation for the reader.
- It is important to reiterate that each region is responsible for coordinating their own representation and advises WADA of the members to be appointed. WADA is not involved in these decisions.
- As for the historical information, it is important to mention that, in February 2020, nations of the Americas met in Ecuador for their annual inter-governmental meeting to discuss mutual anti-doping interests; including, the important topic of representation on WADA’s Board and ExCo for the 2-year period following the meeting. To our knowledge, the U.S. government did not attend that meeting to seek a seat on the WADA ExCo.
- It is equally important to mention that, while the US does not currently serve on the ExCo, it has represented its 42-nation region more than any other nation. In fact, for 50% of the time during the last 14 years, the U.S. has been a member of the ExCo (7 years of service).
- As it relates to the overall representation of the US in WADA’s governance, the Agency relies on subject matter experts to inform nearly every aspect of its specialized work. Currently, there are [15 groups](#) (versus six listed in the Report) that provide ongoing technical advice and knowledge on a range of anti-doping issues.

- The ONDCP Report refers only to WADA’s Standing Committees and omits WADA’s Expert Groups and ad hoc Working Groups that are currently in force. Whether an advisory body is labeled a ‘Standing Committee’, ‘Expert Group or ‘Working Group’ is entirely irrelevant in terms of the role that they play in advising the Agency and assisting with its governance. The nomenclature does not reflect the level of importance, stature, nor funding provided by WADA – each group is equally vital to WADA’s governance.
- When the full range of advisory bodies are considered, the U.S. has greater representation in WADA governance than any other nation in the world. Specifically, there are currently the following 11 U.S. representatives participating in governance roles. The U.S. influence that exists in 2020 is nothing new. In fact, there have been more U.S. representatives across WADA bodies every year since the creation of the Agency.
  - James W. Carroll
  - Lauryn Williams
  - Matthew Porteus
  - Lee Sweeney
  - Michael Culler
  - Thomas J. Hudzik
  - Marilyn Huestis
  - Daniel Eichner
  - John Lombardo
  - Richard Young
  - Matt Fedoruk

#### **WHAT THE REPORT OMITTS:**

- Since WADA’s creation in 1999, the U.S. has served continuously on the Board. The U.S. is one of a small handful of nations with that unique distinction. No other nation from the Americas, nor from Europe, has served consecutively on the Board for 21 years. ONDCP Director James Carroll’s current term representing the U.S. runs through until 2022 and is renewable.
- Unlike previous years, for 2020, the U.S. government did not submit any nominations for U.S. members or Chairs to any Standing Committees, including the Athlete Committee. Two nominations were received from US sports bodies, of which one (former track & field and bobsled star Lauryn Williams) was appointed to the Finance and Administration Standing Committee. The primary way that Committee membership is established is through nominations received from governments and sport organizations. During the November 2019 Board meeting held in Poland, which was attended by ONDCP’s Deputy Director Kendall Ehrlich, the Board discussed specifically the importance of receiving nominations from governments.

**Members of these Committees are appointed for three-year terms.<sup>21</sup> However, the selections to these Committees are made in an insular, tightly controlled, and undemocratic fashion. The WADA Ex Co only appoints the Chair of each committee.<sup>22</sup> The composition of the remainder of the committee is then determined by “the Chair of the . . . committee in consultation with the Foundation Board Chair and the Director General.”<sup>23</sup>**

**This selection process has often excluded the United States government and independent anti- doping stakeholders, like the United States Anti-Doping Agency**

(USADA), from involvement on the six key WADA standing committees. Not a single representative of the United States

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<sup>16</sup> WADA Athletes Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/athlete-committee>

<sup>17</sup> WADA Education Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/education-committee>

<sup>18</sup> WADA Finance and Administration Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/finance-administration-committee>

<sup>19</sup> WADA Health, Medical & Research Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/health-medical-research-committee>

<sup>20</sup> WADA Inaugural Nominations Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/wada-inaugural-nominations-committee>

<sup>21</sup> WADA Statutes, Article 11, available at, [https://www.wada-ama.org/sites/default/files/resources/files/new\\_statutes\\_-\\_modified\\_november\\_2016\\_approved\\_dec\\_2017.pdf](https://www.wada-ama.org/sites/default/files/resources/files/new_statutes_-_modified_november_2016_approved_dec_2017.pdf)

<sup>22</sup> *Id.*

government or of U.S. anti-doping organizations is currently appointed to a WADA standing committee. In fact, only one U.S. representative serves on any of WADA's 6 standing committees and that person is a sport appointee.<sup>24</sup> This means that on all of the key WADA committees, the United States government and U.S. anti-doping stakeholders are currently omitted from participation.<sup>25</sup>

As discussed below, WADA is attempting to change its governance, including the recent creation of a Nominations Committee. However, the inaugural Nominations Committee has no U.S. members. In all, the United States only has a 1% inclusion rate in WADA governance positions; of the 76 persons involved in WADA's senior management or key standing committees, a total of 46 (61%) are collectively from Europe (32), Canada (9), and Australia (5).<sup>26</sup>

*d. WADA's Governance Processes Reflect Bloc Voting, Inadequate Representation of Athletes, and Other Practices Which Suppress Minority Viewpoints*

ONDCP believes that several of WADA's governance processes favor a cohesive IOC-backed, European, sport organization voting bloc, which results in the elimination of competing viewpoints.

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<sup>24</sup> WADA Finance & Administration Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/finance-administration-committee>

<sup>25</sup> None of the 6 members of WADA's Compliance Review Committee are from the United States. See WADA Compliance Review Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/compliance-review-committee>. None of the 12 members of WADA's Education Committee are from the United States. See WADA Education Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/education-committee>. None of the 12 members of WADA's Health, Medical & Research Committee are from the United States. See WADA Health, Medical & Research Committee, available at, <https://www.wada-ama.org/en/who-we-are/governance/health-medical-research-committee>

<sup>26</sup> WADA also maintains six expert groups, involving 66 experts, to provide guidance on technical aspects of WADA's mission. Only 7 of these 66 experts is from the U.S., and only one such expert is connected to USADA. None of the 6 members of the WADA Ethics Expert Group is from the United States. See WADA Ethics Expert Group, available at, <https://www.wada-ama.org/en/who-we-are/governance/wada-ethics-expert-group>. Two of the 6 members of the WADA Gene and Cell Doping Expert Group are from the United States. See WADA Gene and Cell Doping Expert Group, available at, <https://www.wada-ama.org/en/gene-doping-expert-group>. None of the 13 members of the WADA Laboratory Expert Group is from the United States. See WADA Laboratory Expert Group, available at, <https://www.wada-ama.org/en/who-we-are/governance/laboratory-expert-group>. Three of the 13 members of the WADA Prohibited List Expert Group are from the United States. See WADA Prohibited List Expert Group, available at, <https://www.wada-ama.org/en/prohibited-list-expert-group>. One of the 8 members of the WADA Technical Document for Sport Specific Analysis Expert Group is from the United States. See WADA Technical Document for Sport Specific Analysis Expert Group, available at, <https://www.wada-ama.org/en/who-we-are/governance/technical-document-for-sport-specific-analysis-expert-group>. One of the 10 members of the WADA Therapeutic Use Exemption Expert Group is from the United States. See WADA Therapeutic Use Exemption Expert Group, available at, <https://www.wada-ama.org/en/who-we-are/governance/tue-expert-group>. None of the 10 members of the WADA National Anti-Doping Organization Advisory Group is from the United States. See WADA National Anti-Doping Organization Advisory Group, available at, <https://www.wada-ama.org/en/who-we-are/governance/nado-advisory-group>

### *i. Bloc Voting*

As noted throughout this Report, ONDCP believes that many of WADA's current governing structures and processes minimize the ability of governments to exercise influence in proportion to the financial contributions they make to WADA. While government representation on the WADA FB and WADA Ex Co is equal to that of sport organizations, in practice, a number of factors work to favor control of WADA by institutional sport interests.

First, sport representation at WADA is determined by the IOC. Sport representatives on the WADA FB and Ex Co consist largely of a group of long time sport executives who are either IOC members themselves and/or are the heads of sport organizations that depend upon the IOC for their livelihood and the continuing economic viability of their organizations. While government ministers and representatives ordinarily participate in WADA governance as one among many duties in wide-ranging portfolios, sport representatives are different. For most sport representatives, the issues addressed by WADA may have a direct financial impact on the sport(s) they run as sport executives. Moreover, sport representatives sit on the WADA FB and Ex Co largely at the pleasure of the IOC, which has its own financial interests at stake in many of the decisions made by WADA.

Second, given the homogeneity of sport representatives in terms of background, geography, and other interests, they have a much higher likelihood of being able to achieve bloc voting. This means that on many issues sport interests are likely able to control a voting majority at the WADA Ex Co or WADA FB simply by swaying a single governmental vote to their side.

Third, a large majority of sport representatives are concentrated in Europe, potentially creating commonalities and consequent influence with European governmental representatives. Accordingly, the large concentration of European representatives in WADA's governance further increases the potential for a monolithic voting bloc of sport representatives to dominate decision-making merely by being able to draw a single governmental vote to their side

## **INACCURATE INFORMATION**

- The Report says that not a single representative of the United States government or of U.S. anti-doping organizations is currently appointed to a WADA Standing Committee, which is untrue as Matt Fedoruk, a USADA employee, is actually chairing the TDSSA Expert Group, to be renamed Strategic Testing Expert Group.

## **CLARIFICATION**

- As it relates to there not being a U.S. member on the Nominations Committee, names were proposed by Korn Ferry that is an independent U.S. recruitment firm.

## **MISLEADING INFORMATION IN THE REPORT:**

- The reference to a monolithic decision-making process or 'block voting' is hard to understand considering the reference also made in the ONDCP Report to the fact that WADA would have a practice of not doing roll-call votes. WADA Foundation Board meetings are public and in case of a vote, members are always offered the opportunity to express a dissenting opinion even if the majority is of a different position. This is reflected in the minutes, which are publicly available on WADA's website.
- The ONDCP Report also makes reference to potential commonalities of views and influence due to a large concentration of European representatives but fails to make the point with clear examples.
- The fact is that the European continent is more represented than the other continents simply because many international sports organizations/federations are based in Switzerland. This does not necessarily mean that they are automatically represented by European citizens and it certainly does not mean that the members represent the view of a European country or government.
- The nationality of members is relevant only to the governments as they represent their country and region. The Agency was founded on a partnership between the Sports Movement and the Public Authorities. The Sports Movement does not determine who from the governments should sit on the governance structure, nor can the governments determine who from the Sport Movement is appointed. Each has the liberty to determine who should represent them.
- The ONDCP Report does not accurately reflect the regional breakdown of WADA's Board in terms of government representation, which is as follows:
  - 2 x Oceania
  - 3 x Africa;
  - 4 x Americas;
  - 4 x Asia; and
  - 5 x Europe.
- As a matter of fact, it would be closer to the reality to say that WADA works and takes decision mostly by consensus. That is a better reflection of the reality than the assertion of block voting.

### *i. Procedural Barriers to Active Participation and Transparency*

WADA has a practice of not taking roll-call votes at WADA FB and Ex Co meetings. The lack of roll-call votes, particularly when dealing with controversial topics, is indicative of bloc voting by the majority. A review of meeting minutes from all 15 Ex Co and all 8 FB meetings since January 1, 2015—a period when WADA considered the most controversial topics in its history— reflects not a single roll-call vote was taken by either body.<sup>27</sup> The lack of roll-call votes has a tendency to stifle open debate and discourage the robust articulation of minority viewpoints and accountability of FB and Ex Co members for votes taken. It also serves to decrease the transparency of the divide between governments and sport on key issues.

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<sup>27</sup> Although not a roll-call vote, the minutes of the September 20, 2018, Ex Co meeting reflect those voting against the initial decision to reinstate RUSADA. A subsequent press release issued by WADA identified by title the two members voting against the recommendation to reinstate RUSADA and that one member from Europe abstained. The minutes from this Ex Co meeting reflect that a member voting against reinstatement specifically requested that his vote be recorded, confirming the general practice of not taking roll-call votes. The manner in which controversial topics are submitted to the WADA Ex Co also frequently works against public accountability, further disadvantaging minority viewpoints. For example, the rules of the WADA Compliance Review Committee (CRC) provide that where the CRC makes a recommendation to the WADA Ex Co, that “recommendation may not be made public...prior to the meeting of the WADA [Ex Co] where it is to be considered[.]” This rule is contrary to good governance principles, embodied for instance in Sunshine and Open Meetings laws, and means that CRC recommendations are considered in a vacuum without opportunity to consider viewpoints outside those presented by the limited number of individuals involved with the WADA Ex Co.<sup>28</sup>

#### **MISLEADING INFORMATION IN THE REPORT:**

- The ONDCP Report omits to mention that the requirement that the Compliance Review Committee (CRC) not make a recommendation public before it is discussed by the ExCo was proposed and strongly supported by the independent compliance experts in the committee, in line with compliance best practice applied in non-sporting industries.
- The rationale for this requirement is that any CRC recommendation should be exclusively technical and evidence-based, and not politicized. It is absolutely normal and best practice that the ExCo of an organization would have the opportunity to discuss matters before they become public.
- The reality, unfortunately, is that despite this requirement, experience has shown that the members of the ExCo discuss CRC recommendations with their respective constituency groups ahead of any ExCo meeting; and that, the CRC documents quickly make their way into the public domain.
- This was the case ahead of WADA’s 9 December 2019 ExCo discussion regarding Russia, which led WADA to publicize the CRC recommendation prior to the meeting.
- Again, secret ballots vote can be requested by members if they wish. The reality is that there has not been one single request from the U.S. for a secret ballot vote at WADA.

**An example of how these restrictive processes—lack of roll-call votes,( lack of**

amendments, bloc voting, lack of voting by WADA Athletes Committee members—work together to suppress input can be shown from the December 9, 2019 meeting of the WADA Ex Co.<sup>29</sup> This meeting was conducted for the sole purpose of considering the CRC’s recommendation on the status of the Russian Anti-Doping Agency (RUSADA) and any sanctions to be imposed on Russia in light of the discovery that Moscow laboratory data submitted by Russia to WADA in January 2019 had been intentionally manipulated. Several government representatives— notably Linda Hofstad Helleland of Norway and Richard Colbeck of Australia—stated they believed the sanctions proposed by the CRC were not sufficiently strong. However, amendments that could have increased the proposed sanctions could not be offered, due to the CRC rule discussed above.

#### **INACCURATE INFORMATION IN THE REPORT:**

- Under the International Standard for Code Compliance, the ExCo is sovereign in its decision and does not have to stick to the CRC recommendation as wrongly alleged by the ONDCP Report.
- If the ExCo does not agree with the technical recommendation from the CRC, the ExCo can send the matter back to the CRC, which has been done at least on one occasion.
- If the CRC does not amend its recommendation and the ExCo still does not agree with it, or if the ExCo does not agree with the amended CRC recommendation, the ExCo can make its own decision in terms of the asserted non-compliance of the relevant World Anti-Doping Code Signatory organization and the related consequences.

In spite of the important objections raised by the public authority representatives noted above, the Ex Co did not take a roll call vote on the CRC’s recommendation concerning RUSADA.

#### **MISLEADING INFORMATION IN THE REPORT:**

- In the case of the [9 December 2019](#) discussion of the ExCo regarding Russia, a number of interventions were made by members; however, the decision of the ExCo to support the CRC recommendation was absolutely clear, transparent to all members and was unanimous.
- The [minutes of the meeting](#), as is the case with all ExCo and Board meeting minutes, are publicly available on WADA’s website.

#### ***ii. Athlete Representation***

No members of the WADA Athletes Committee (WADA AC) sit on either the WADA FB or Ex Co, although 4 members of the IOC Athlete’s Commission (IOC AC) sit on the WADA FB, and 1 of these members sits on the WADA Ex Co. The lack of WADA AC members in WADA governance is particularly important because the positions of the WADA AC and IOC AC can diverge as was seen in relation to the Russian doping scandal. At the December 9, 2019, meeting where the WADA Ex Co considered sanctions to be imposed on Russia for manipulating laboratory data, the WADA AC Chair (who was unable to

vote) observed that the sanctions under consideration by the Ex Co were “a disappointing outcome from the WADA Athlete Committee’s perspective, and most of the members of the committee felt that it could and should have been stronger.”<sup>30</sup> In contrast, the IOC AC representative (who was able to vote) immediately responded that, “the position of the IOC athletes’ commission was to support the recommendation.”<sup>31</sup> The non-voting status of WADA AC members has meant that although the WADA AC Chair has attended Ex Co meetings, on key issues the comments of the WADA AC

#### **MISLEADING INFORMATION IN THE REPORT:**

- Athletes are currently represented in the ExCo (one seat) and the Board (four seats). The athletes in these seats have full legitimacy to represent other athletes, having been elected to the IOC Athlete Commission and being full members of WADA’s Athlete Committee.
- The views of WADA’s Athlete Committee members on the Russian doping scandal have been very diverse, similar to the global athlete community. WADA’s Athlete Committee did not reach a consensus position throughout the scandal; and, in particular, before the December 2019 decision of WADA’s ExCo in relation to the sanctions to Russia that were proposed by the CRC.
- While nine members of WADA’s Athlete Committee, including the then Chair, were in favor of a blanket ban against Russia, the other eight members (four from the IOC Athlete Commission and four that were not members of the IOC) were clearly against a blanket ban; and, they refused to support a statement from the nine members calling for such a blanket ban.

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<sup>28</sup> WADA Compliance Review Committee Terms of Reference, p. 5 (Confidentiality), available at, [https://www.wada-ama.org/sites/default/files/resources/files/crc\\_tor\\_23sept2019.pdf](https://www.wada-ama.org/sites/default/files/resources/files/crc_tor_23sept2019.pdf)

<sup>29</sup> Minutes of the WADA Executive Committee, 9 December 2019, Lausanne, Switzerland, p. 6/9, available at, [https://www.wada-ama.org/sites/default/files/resources/files/excominutes\\_9december2019.pdf](https://www.wada-ama.org/sites/default/files/resources/files/excominutes_9december2019.pdf)

<sup>30</sup> Minutes of the WADA Executive Committee, 9 December 2019, Lausanne, Switzerland, pp. 6-7, (Statement by WADA Athletes Committee Chair Beckie Scott), available at, [https://www.wada-ama.org/sites/default/files/resources/files/excominutes\\_9december2019.pdf](https://www.wada-ama.org/sites/default/files/resources/files/excominutes_9december2019.pdf)

<sup>31</sup> *Id.* at p. 7 (Statement of Emma Terho).

Chair have not been taken into account until deliberations of the voting members have largely concluded. Marginalization of the athlete voice in WADA decision-making is a serious issue on which, as discussed below, many governments have taken a strong position in favor of robust athlete participation.

## WHAT THE REPORT OMITTS:

- The current structure of WADA's governing bodies provides one seat to athlete representatives on the ExCo and four seats on the Board (all representing the IOC Athlete Commission). As mentioned above, the athletes in these seats have full legitimacy to represent other athletes, having been elected to the IOC Athlete Commission and being full members of WADA's Athlete Committee.
- WADA's President and Vice President are former, recent, international elite athletes.
- In total, at least 11 out of the 38 members of the Board are current or former international elite athletes:
  - President, Witold Banka;
  - Vice-President, Yang Yang;
  - Four current IOC athlete representatives, who are all Olympians;
  - Olympic rowing champion, Jean-Christophe Rolland;
  - Olympic swimmer, Rania Elwani;
  - Olympic swimmer, Richard Pound;
  - Water polo player Andrey Kryukov; and
  - Rower Jiri Kejval.
- In [November 2018](#), the Board agreed with the recommendation of WADA's Governance Working Group that the voice of the athletes should be strengthened beyond the existing means; but that, there was a critical need for the athlete community to determine:
  - exactly how and by what means it should be represented within WADA – which does not have direct jurisdiction on athletes nor any legitimate means to hold an election to select members of its Athlete Committee; and,
  - how the members of the WADA Athlete Committee should be selected in order for the Athlete Committee to transition from an advisory committee to a representative committee.

In response, WADA's Athlete Committee has taken the initiative to create a working group to look at the global representation of athletes worldwide. WADA Management has provided support to this group by commissioning governance experts. This work is ongoing, and WADA is hopeful that the Athlete Committee will come up during the coming months with robust proposals for discussion by the ExCo and Board.

- Finally, it is worth noting that except in 2008 and this year, WADA has had regular and consistent involvement of athletes from the U.S. on the WADA Athlete Committee, including several athletes from the U.S. at the same time in various periods. U.S. representation in the Athlete Committee included international sport stars such as Janet Evans (swimming), Lindsay Davenport (tennis) and Angela Ruggiero (ice hockey).

#### ***4. International Convention Against Doping in Sport***

**The United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the International Convention against Doping in Sport (the Convention) in 2005.<sup>32</sup> The United States ratified the Convention effective August 25, 2008.<sup>33</sup> The purpose of the**

Convention is “to promote the prevention of and the fight against doping in sport, with a view to its elimination.” The Convention is a multilateral treaty to which approximately 187 countries, including the United States, have agreed “to commit themselves to the principles of the Code” as the basis for “legislation, regulation, policies, or administrative practices” in order to achieve the objectives of the Convention. The World Anti-Doping Code (Code) and WADA International Standards provide the international legal framework for addressing doping cases and compliance or non-compliance with the Code and Standards by Signatories.<sup>34</sup> The Convention is the document by which individual countries subscribe to the Code and Standards.

There is no explicit requirement in the Convention that State Parties fund WADA. The Convention provides that “States Parties undertake to support the important mission of the World Anti-Doping Agency in the international fight against doping.”<sup>35</sup> State Parties also agree to “support the principle of equal funding of the World Anti-Doping Agency’s approved annual core budget by public authorities and the Olympic Movement.”<sup>36</sup> However, there is no requirement within the Code that a government provide a particular level of funding to WADA.

State Parties commit to “provide funding within their respective budgets to support a national testing programme across all sports or assist sports organizations and anti-doping organizations in financing doping controls either by direct subsidies or grants, or by recognizing the costs of such controls when determining the overall subsidies or grants to be awarded to those organizations.”<sup>37</sup> The United States fulfills this commitment through an annual grant to USADA. Convention Article 11(c) also provides that “where appropriate” State Parties shall “withhold some or all financial or other sport-related support from any sports organization or anti-doping organization not in compliance with the Code or applicable anti-doping rules adopted pursuant to the Code.”<sup>38</sup>

Article 11 makes clear that funding is to be withheld from WADA upon a State Party’s determination that WADA has not acted in compliance with the Code or anti-doping rules.

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<sup>32</sup> The full text of the Convention can be found at, [http://portal.unesco.org/en/ev.php-URL\\_ID=31037&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>33</sup> A list of the States accepting or ratifying the Convention can be found at, <http://www.unesco.org/eri/la/convention.asp?KO=31037&language=E>

<sup>34</sup> H.R. Rep. No 116-251 at 4.

<sup>35</sup> Convention, Article 14.

<sup>36</sup> Convention, Article 15.

<sup>37</sup> Convention, Article 11(a).

<sup>38</sup> Convention, Article 11(c).

However, even absent this provision, funding of WADA and each government’s level of funding is within the sound discretion of the State Parties as discussed above.

#### **WHAT THE REPORT OMITTS:**

- The ONDCP Report fails to mention that the U.S. government has entered into several inter-governmental political commitments related to WADA funding levels. For example, the

U.S. led a group of governments in developing the “Cape Town Declaration: Government Commitment to the International Fight Against Doping.” This international political statement, signed by the United States in 2002, establishes the procedure for WADA representation and the formula for international governmental contributions to WADA as follows:

*“Governments . . . recognizing WADA’s critical role in coordinating the international fight against doping, reaffirm their previous commitment to contribute 50% of WADA’s annual budget.*

*Agree to adopt a formula for government contributions that is fair and equitable and encourages as many governments as are able to make contributions, while taking account of each government’s capacity to pay and each nation’s level of involvement in international sport.*

*The formula provides for the following allocations to be paid by each region: Africa: 0.50% Americas: 29.00% Asia: 20.46% Europe: 47.50% Oceania: 2.54%*

*Governments confirm their ability to make payments to WADA in accordance with agreed regional funding allocations on an annual basis each region will make its own arrangements for paying government contributions to WADA.*

*Each geographic region is responsible for determining that region’s appointees to the WADA Board with appropriate recognition of cultural diversity within each region. Rotation of seats on the WADA Board and Executive Committee within the region according to arrangements reached within their regions.”*

As for the Americas funding formula, in 2008, it was developed by the 42 governments of North America, Central America, South America and the Caribbean. The United States led the development of the regional funding formula, which was agreed to unanimously within the region, and has been adhered to by all governments in the Americas. As stated in the Americas political document, signed in San Juan, Puerto Rico in 2008, the U.S. “agrees and commits to paying 50% of the America’s region’s 29% of WADA dues.”

- The ONDCP Report also fails to mention that there are consequences for countries that do not pay their dues to WADA. Recognizing the need for consistency and reliability in funding WADA, governments and the sport movement created WADA’s Constitution in such a way as to preclude the potential that a nation may one day use financial support of WADA as political leverage, as is contemplated in the ONDCP Report. Article 6 of the WADA Constitution reads:

*“Government representatives from a country which has not paid its due, or whose country has not acceded to the UNESCO International Convention on Doping in Sport, will not be eligible to sit on the Foundation Board or the Executive Committee. On 1st January of each year, any Foundation Board or Executive Committee member representing a country which has not paid its due for the previous year, representing a country in which the National Anti-Doping Organization has been declared not to be in compliance with the World Anti-Doping Code, or representing a signatory to the World Anti-Doping Code that has been declared not to be in compliance with the World Anti-Doping Code will automatically lose its seat as a Foundation Board or Executive Committee member. The same rule shall also apply to membership of ad hoc or standing committees.”*

Thus, the consequences for non-payment, or only partial payment, include ONDCP Director James Carroll automatically losing his Board seat. In addition, the ten representatives from the U.S. that currently hold seats on WADA's governance committee would also be ineligible to serve. In WADA's 21-year history, only Russia has been removed from WADA's Board and forfeited its WADA committee appointments for non-compliance with WADA statutes.

- Finally, with regards to the assertions in the ONDCP Report that the U.S. could fulfill its legal requirements to the international UNESCO Convention by funding the U.S.-based USADA, instead of WADA, an international foundation, no government has ever attempted to advance this type of position, so we are uncertain as to how the United Nations officials who monitor and report on compliance with the Convention would interpret this action. Nevertheless, the political commitments made by the U.S. government, in Cape Town and San Juan, undisputedly relate to support of WADA, not the annual grant ONDCP provides to its U.S. domestic anti-doping agency, USADA.

## A. The Russian Doping Scandal

Evidence of a Russian state-sponsored doping system had been mounting for years, well before Russian whistleblowers were publicly identified in late 2014 and in 2016. In 2008, a 16-month investigation conducted by the International Association of Athletics Federations (IAAF) resulted in the doping suspension of seven female Russian track and field athletes, five of whom were Olympians.<sup>39</sup> IAAF is Track and Field's world governing body, and their investigation found that the seven Russian athletes had illicitly substituted someone else's urine for their own in an attempt to subvert anti-doping controls. The number of suspensions, together with the varied sports involved, raised concerns at the time "about whether a deliberate, systematic attempt was made by coaches or officials to undermine drug-testing protocols."<sup>40</sup> For the next seven years, Russian athletes continued to be disproportionately represented in positive tests, resulting from doping controls conducted by independent international testers.<sup>41</sup> The continuing high number of positive tests from Russian athletes fed calls for investigation by WADA and international sport organizations.

In 2013, WADA began publishing an annual report entitled the *Anti-Doping Rules Violation Report (ADVRS)*.<sup>42</sup> The ADVRS keeps track of adverse analytical findings by sport and country. Adverse analytical findings are positive test results, *i.e.*, doping violations, for various prohibited performance enhancing substances or methods in a particular sample. WADA's inaugural 2013 ADVRS demonstrated that Russia was the world's leader in doping violations, with a staggering 225 adverse analytical findings, which was 20 percent more than the second ranked country on the list.<sup>43</sup> Russia's 225 total adverse analytical findings represented 12 percent of all violations globally. The 2014 ADVRS would again show that Russia led the world in doping violations with 148 adverse analytical findings, 20 percent above the next-highest ranked country.<sup>44</sup> On WADA's 2015 ADVRS, Russia had 176 adverse analytical findings, which represented 36 percent more doping violations than the next highest rated country.<sup>45</sup> Between 2013 and 2015, Russia had almost 550 doping violations across a wide variety of sports, which was highly indicative of a state-sponsored doping program.<sup>46</sup> For purposes of comparison, the United States had a total of 127 adverse analytical findings and Australia had 107 total adverse analytical findings during this same three-year period.<sup>47</sup>

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<sup>39</sup> *Russian Athletes are Suspended for Doping* (Aug. 1, 2008), N.Y. Times, available at, <https://www.nytimes.com/2008/08/01/sports/olympics/01doping>

<sup>40</sup> *Id.*

<sup>41</sup> *IAAF suspends 9 for doping*, (Jul. 25, 2012), available at, <https://www.vanguardngr.com/2012/07/iaaf-suspends-9-for-doping/>; *Russian long jumper Kotova suspended for doping* (Feb. 8, 2013) (“Kotova’s case has been the latest in a series of recent doping offences by Russian athletes”), available at, <https://www.rediff.com/sports/report/russian-long-jumper-kotova-suspended-for-doping/20130208.htm>; *Russian Athletics Federation President Defends Country’s Doping Record* (Apr. 12, 2013), *The Sport Digest*, (“nearly 40 Russian athletes currently serving doping bans), available at, <http://thesportdigest.com/2013/04/russian-athletics-federation-president-defends-countrys-doping-record/>

<sup>42</sup> See WADA Anti-Doping Rules Violation Reports (ADVRS), 2013 – 2015, available at, <https://www.wada-ama.org/en/resources/general-anti-doping-information/anti-doping-rule-violations-advrs-report>

<sup>43</sup> Commission on Security and Cooperation in Europe, *The Russian Doping Scandal: Protecting Whistleblowers and Combatting Fraud in Sports*, at 5, 115th Cong., 2nd Sess. (Feb. 22, 2018).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

## **MISLEADING INFORMATION IN THE REPORT:**

- WADA’s ADRV Report provides a set of global statistics on doping offences broken down by sport, testing authority and nationality. The ADRV Report’s data is provided by World Anti-Doping Code Signatories and reviewed by WADA. When WADA publishes the report, the Agency indicates that any interpretation of the data should be undertaken with caution as many contributing factors must be taken into account when attempting to interpret the data regarding sports, testing and results management authorities and nationalities.

While the foregoing statistics are just some of what was visible to the general and sporting public, WADA had long known much more. In fact, Russian whistleblowers, including an employee of the Russian National Anti-Doping Agency (RUSADA), first came forward to WADA in 2010 and began working undercover with Jack Robertson, a former decorated United States Drug Enforcement Administration agent who had become the Chief Investigator at WADA.

## **WHAT THE REPORT OMITTS:**

- It is true that, in 2010, WADA was first approached by the Russian Whistleblower, Vitaly Stepanov; principally, via the Agency’s first Chief Investigator, Jack Robertson, from the U.S.
- Mr. Stepanov said that his wife, Yuliya Stepanov, was being subjected to an institutionalized doping regime in Russia. At the time, Mr. Stepanov told WADA that he had yet to tell his wife that he was in contact with the Agency; and that, he had no concrete evidence to support his statements, that they were his words and his words alone. On this basis, Jack Robertson could not go forward with a case.
- This contact, that involved very limited meetings and irregular e-mails, continued until 2013, which is when Yuliya Stepanov was caught for doping and was suspended in Russia. It was then that, on suggestion from Jack Robertson, that Yuliya and Vitaly Stepanov, together, decided to collaborate with German channel ARD, by gathering evidence that could lead to a meaningful investigation with meaningful outcomes, as WADA did not have the power to investigate under the 2009 World Anti-Doping Code (hence Jack Robertson’s suggestion to them).

- It is important to note that, under the 2009 Code, which was in force until the end of 2014, WADA's role and authority as it related to investigations was stipulated under provision 20.7.8 of the Code as follows: "To conduct anti-doping controls as authorized by other Anti-Doping Organizations and to cooperate with relevant national and international organizations and agencies including but not limited to, facilitating inquiries and investigations."
- Therefore, WADA's role and authority under the 2009 Code was clearly defined as a facilitator, to pass on information to relevant organizations and to facilitate the conduct of investigations.
- At the time, not only was the information from the Stepanovs insufficient to take definitive action; the Code also required WADA to pass the information on to the Russian Anti-Doping Agency (RUSADA) and/or the International Association of Athletics Federations (IAAF).
- Because the Stepanovs' information included allegations of doping cover-ups against RUSADA and the IAAF, WADA determined that passing such information along would have led to negative consequences for the Stepanovs.
- The Agency believed, and still believes, that if we had exposed the initial information provided by Vitaly Stepanov between 2010 and 2013, it would have been dismissed as being the words of one individual against the strong denial of Russia. We are convinced that we would not have had anywhere near the success that we ultimately had. In fact, we believe that the international community would not even be talking about doping in Russia today.

### ***Russian Whistleblowers***

**After the 2014 Winter Olympics in Sochi, Russia, Yuliya Stepanova, a former Russian track star, and her husband Vitaly Stepanov, a former doping-control officer for RUSADA, exposed the Russian government's vast state-sponsored doping system in a televised German documentary, which led to further revelations by Dr. Grigory Rodchenkov. Dr. Rodchenkov, who has a Ph.D. in analytical chemistry, became the director of the Russian drug testing laboratory in 2005 and was widely considered a top expert in performing-enhancing drugs. In May 2016, Dr. Rodchenkov became a whistleblower and told the *New York Times* that dozens of Russian athletes participating in the 2014 Winter Olympics, including 15 medal winners, were part of a state-run doping program. Dr. Rodchenkov developed an undetectable three-drug cocktail of banned anabolic steroids that he mixed with alcohol and provided to athletes. In addition, Dr. Rodchenkov and his team, with the help of Russian intelligence (*i.e.*, the FSB, successor of the KGB), switched steroid-tainted urine of the Russian national team with clean samples, evading positive detection.<sup>48</sup> This allowed Russian athletes to continue to dope right through the Olympic Games without detection.**

### **WHAT THE REPORT OMITTS:**

- The ONDCP Report entirely omits WADA's intervention following the release of the December 2014 ARD documentary, which alleged organized doping in Russian athletics.
- Immediately thereafter, WADA committed to undertake an independent investigation into the allegations once the 2015 Code took effect on 1 January 2015, which is when the Agency acquired powers of investigation.
- On 1 January, the Pound Commission was initiated; and, on November 2015, the Pound Commission Report I highlighted widespread doping in Russian athletics, perpetuated in part

by unscrupulous athlete support personnel. Then, in January 2016, Pound Commission Report II revealed serious anti-doping breaches, corruption and bribery within the former International Association of Athletics Federation (IAAF) leadership. Taking [immediate action](#) as a result of the Commission, WADA:

- suspended the accredited laboratory in Moscow;
- removed the Moscow laboratory director (Dr. Grigory Rodchenkov) from his position; and
- declared the Russian Anti-Doping Agency (RUSADA) non-compliant.

In addition, as a result of the Commission, the IAAF suspended the Russian Athletics Federation (RUSAF); and, the IAAF Ethics Commission suspended former members of IAAF leadership from sport.

### ***Independent McLaren Report***

After Dr. Rodchenkov went public, WADA commissioned an independent investigation and appointed Professor Richard McLaren to conduct the investigation. The two-part “McLaren Report,” completed in December 2016, identified several key findings, including that an institutional conspiracy existed between summer and winter sports athletes and Russian officials within the Ministry of Sport and its infrastructure, such as RUSADA, the Russian Centre of Sports Preparation (CSP), along with the drug testing laboratory and the FSB, which enabled Russian athletes to compete while engaging in the use of doping substances and resulted in the manipulation of more than 1,000 samples. Days after the release of the First McLaren Report, Russian intelligence officers prepared to hack into the networks of WADA, USADA, and the Court for Arbitration of Sport (CAS), and were later indicted by the U.S. Department of Justice for, among other things, hacking into computer systems used by anti-doping organizations and officials and stealing credentials, medical records, and other data.<sup>49</sup> In August of 2017, WADA published what it called its RUSADA Roadmap to Code Compliance, setting forth the basis upon which Russia could be declared compliant with the Code, re-enter the international sport community and not face continuing sanctions for the institutional doping program identified by Professor McLaren.<sup>50</sup>

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<sup>46</sup> *Id.* at 6.

<sup>47</sup> See WADA Anti-Doping Rules Violation Reports (ADVRS), 2013 – 2015, *available at*, <https://www.wada-ama.org/en/resources/general-anti-doping-information/anti-doping-rule-violations-advrs-report>

<sup>48</sup> H.R. Rep. No. 116-251 at 6.

<sup>49</sup> *Id.* at 6-

### **WADA CLARIFICATIONS:**

- In July 2016, just a few weeks before the Rio Summer Games, the McLaren Investigation unveiled institutionalized manipulation of the doping control process in Russia.
- Once again WADA acted swiftly. WADA’s [ExCo recommended](#) to the IOC and the International Paralympic Committee (IPC) that they consider declining entries of all athletes submitted by the Russian Olympic Committee and the Russian Paralympic Committee for the Games. As a result:

- The IOC asked International Federations to deal with the selection of Russian athletes for Rio 2016; and
  - The IPC banned the Russian Paralympic Committee from the Rio Paralympic Games
- After the Rio Olympic and Paralympic Summer Games, the Clean Sport community rallied around the need for a more empowered WADA and recommendations were made to strengthen WADA and the global Anti-Doping System, which were endorsed by the Board in November 2016. These recommendations included development and implementation of a strong WADA-led Compliance Program that includes meaningful and proportionate sanctions for non-compliance by Signatories through a new International Standard. The new International Standard for Code Compliance by Signatories (ISCCS) entered into force on 1 April 2018. The ISCCS is one of the key legal tools that would improve the management of the Russian Doping Crisis by the various authorities in the future. It creates a lot more legal certainty around roles and responsibilities, sanctions, and mechanisms to get an independent decision on these questions. Unless all parties agree, the Court of Arbitration for Sport (CAS) is the ultimate authority that decides on the appropriate sanctions, thus taking away any political component from these decisions.

***WADA Ultimately Fails to Hold RUSADA to the RUSADA Roadmap to Code Compliance***

In December 2017, the IOC decided that as punishment for the doping scandal at the 2014 Sochi Winter Olympics, Russia would not be allowed to play its anthem, fly its flag, or accrue any medals in the overall count at the 2018 Winter Olympics in PyeongChang, South Korea. The IOC disqualified 43 Russian athletes that competed at the 2014 Sochi Olympics for doping violations and banned them for life from future sporting events. The IOC also stripped 13 medals won by Russian athletes in Sochi.<sup>51</sup> Approximately 168 Russian athletes were cleared to participate in the 2018 Winter Olympics in PyeongChang. The IOC also imposed a lifetime ban on Russian Sports Minister Vitaly Mutko (currently the Deputy Prime Minister of Russia), whose department was implicated in the doping scandal. However, on February 1, 2018, a few days before the start of the 2018 Games, the Court of Arbitration for Sport (CAS) overturned the IOC's bans issued to 28 Russian athletes. Three days after the 2018 Games ended, the IOC reinstated Russia's Olympic Committee even though two athletes had failed drug tests during the 2018 Games.<sup>52</sup>

On September 20, 2018, WADA voted to reinstate RUSADA even though RUSADA had not met all of WADA's Roadmap to Code Compliance conditions required for reinstatement, such as the turnover of data and samples on which WADA had been waiting for years. At that time, WADA set a December 31, 2018 deadline to turn over to WADA data and approximately 10,000 suspicious doping samples, which Russia had declined to submit to WADA since 2015 and which would potentially permit the prosecution of hundreds, if not thousands, of Russian athletes for past doping offenses. However, the deadline came and went without Russia complying with WADA's requirements.

**WHAT THE REPORT OMITTS:**

- During the WADA ExCo meeting of September 2018, the ExCo deliberated at length as to whether Russian authorities had fulfilled the two remaining criteria of the agreed RUSADA Roadmap to Compliance, namely:

- That the responsible authorities for anti-doping in Russia must publicly accept the reported outcomes of the McLaren Investigation; and
  - That the Russian government must provide access for appropriate entities to the stored samples and electronic data in the former Moscow Laboratory, which are sealed off due to a Federal investigation.
- On 13 September 2018, the Russian Minister of Sport wrote to the WADA President, agreeing to accept the two remaining conditions in the Roadmap as set out in the WADA President's letter of 22 June 2018.
  - On 20 September, the CRC's analysis of the Minister's letter was discussed.
  - As it related to the first criterion, the Chair of the CRC, Jonathan Taylor QC, explained that in the CRC's view, the letter from the Russian Ministry of Sport sent to WADA on 13 September 2018 amounts to an acceptance of all of the findings of the International Olympic Committee (IOC) Schmid Report (which itself endorsed the core findings of the WADA-commissioned McLaren Investigation reports), including that "a number of individuals within the Ministry of Sport and its subordinated entities" were involved in the manipulations of the anti-doping system in Russia. The Russian Ministry of Sport's letter states: "The Russian Federation fully accepted the decision of the IOC Executive Board of 5 December 2017 that was made based on the findings of the Schmid Report."
  - The ExCo resolved to reinstate RUSADA, subject strictly to the following post-reinstatement conditions:
    1. RUSADA and the Russian Ministry of Sport must procure that the authentic Information Management System (LIMS) data and underlying analytical data of the former Moscow Laboratory set out in the WADA President's letter of 22 June 2018 are received by WADA (via access to the data by an independent expert agreeable to both WADA and the Russian authorities) by no later than 31 December 2018.
    2. RUSADA and the Russian Ministry of Sport must procure that any re-analysis of samples required by WADA following review of such data is completed by no later than 30 June 2019.

In addition, as per the RUSADA Roadmap to Compliance, a successful audit of RUSADA must be carried out within four months to ensure RUSADA continues to meet compliance standards.

- These conditions were critical requirements under the International Standard for Code Compliance by Signatories (ISCCS), which came into force on 1 April 2018.
- It was agreed that, if they were not met, then the ExCo would consider proposals from the CRC to address such non-compliance based on the relevant provisions of the ISCCS, which is exactly what happened.

**In January 2019, the WADA Ex Co declined to punish RUSADA for missing WADA's deadline. WADA announced instead that RUSADA eventually provided the data and also that an audit of RUSADA was completed in December 2018 with "very positive" results. The WADA CRC accepted the late submission of Russia's information on January 9, 2019. However, it was later discovered that much of the data submitted by Russia had been manipulated and falsified.<sup>53</sup> The decision to reinstate RUSADA met fierce opposition from USADA, athletes, and others including Dr. Rodchenkov. Subsequently, the IOC's lifetime ban on Mutko was overturned by the CAS in July 2019.<sup>54</sup>**

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<sup>50</sup> WADA publishes RUSADA Roadmap to Code Compliance, (Aug. 2, 2017), *available at*, <https://www.wada-ama.org/en/media/news/2017-08/wada-publishes-rusada-roadmap-to-code-compliance>

<sup>51</sup> *IOC Bans 11 More Russian Athletes for Life*, *available at*, <https://www.npr.org/sections/thetwo-way/2017/12/22/572886569/ioc-bans-11-russian-athletes-for-life> (Dec. 22, 2017)

<sup>52</sup> H.R. Rep. No. 116-251 at 7.

<sup>53</sup> *WADA provisionally suspends approved status of Moscow Laboratory*, (Jan. 22, 2020), *available at*, <https://www.wada-ama.org/en/media/news/2020-01/wada-provisionally-suspends-approved-status-of-moscow-laboratory> (This step was taken “due to the discovery by WADA of manipulation of some of the data extracted from the Moscow Laboratory in January 2019”).

<sup>54</sup> H.R. Rep. No. 116-251 at 7.

After WADA investigators discovered that the data submitted by Russia in early 2019 contained numerous falsifications and manipulations, WADA had to then consider what punishment would be imposed for Russia’s continuing failure to flout its anti-doping obligations. As discussed above, given Russia’s continuing recalcitrance and prior promises by WADA that WADA would deal firmly with any failure by RUSADA to strictly follow the Roadmap conditions, many anticipated that WADA would recommend, as a matter of course, the complete exclusion of the Russian Olympic team from the 2020 Olympic Games as a sanction. However, as explained above, WADA once again imposed more lenient sanctions upon Russia than WADA had previously indicated.

On December 9, 2019, the WADA Ex Co accepted the WADA CRC’s recommendation to adopt those sanctions against Russia which have been widely criticized as insufficient. The WADA AC Chair and some public authority representatives had advocated for a four-year period of full expulsion of Russian athletes from all international sporting events including the 2020 Tokyo Summer Olympics and the 2022 Beijing Winter Games, with no exceptions, as punishment for the flagrant, institutional nature of the Russian doping scheme.<sup>55</sup> The sanctions ultimately endorsed by the WADA Ex Co consisted of, among other things, a four-year ban from international sporting events but allowed Russian athletes to compete at such competitions if they are not implicated in positive doping tests or if their data was not manipulated.<sup>56</sup> However, even these more lenient sanctions have been appealed by Russia to the Court of Arbitration for Sport (CAS). The Russia doping scandal, which has been lingering for more than a decade since Russian whistleblowers brought evidence of state sponsored doping to WADA in 2010, still remains unresolved.

The Russian doping scandal thus continues to demonstrate inadequacies in WADA’s independence and capacity to firmly, effectively, and in a timely manner enforce compliance with the Code, hold major countries accountable under the rules and uphold the expectations of clean athletes.

#### **WADA CLARIFICATIONS:**

- WADA continues to be convinced that without the decision of the ExCo in September 2018, it would never had had access to the relevant data and samples from the Moscow Laboratory, which were vital to WADA’s investigation.

- As a result, in January 2019, WADA’s Intelligence & Investigations Team (I&I) retrieved the Moscow Laboratory data.
- In April 2019, WADA I&I collected the targeted samples, which were removed from Russia for testing.
- In addition to its investigation of doping cases based on evidence collected, access to the data and the samples from the Moscow Laboratory also enabled WADA to determine whether the Russian authorities had respected the two conditions imposed by the ExCo to RUSADA’s reinstatement in September 2018.
- An extensive investigation conducted by WADA I&I and forensic experts concluded that some of the Moscow Laboratory data had been intentionally altered prior to and while it was being forensically copied by WADA in January 2019. To this end, the RUSADA reinstatement conditions of September 2018 were not fulfilled in that the data were neither complete nor authentic – a critical condition of reinstatement because it would ensure that any Russian athletes who had tested positive could be punished; and just as importantly it would ensure that innocent Russian athletes could be cleared of suspicion.
- As a result, in November 2019, the CRC made a recommendation to WADA’s ExCo to re-declare RUSADA non-compliant with a series of strong consequences for the Russian authorities.
- In December 2019, the WADA ExCo unanimously endorsed the entirety of the CRC recommendation. It declares RUSADA non-compliant for a period of four years; and, imposes a series of consequences, to come into effect on the date on which the decision that RUSADA is non-compliant becomes final. All details can be found in the [WADA press release](#) following the 9 December 2019 ExCo meeting.
- In December 2019, RUSADA notified WADA that they would dispute the ExCo decision, and in January 2020 WADA filed an official request for CAS to rule on the dispute. The CAS process is following its course.
- In parallel, on [30 April 2020](#), WADA announced that WADA I&I had completed its investigation of 298 Russian athletes that it had targeted as part of its ongoing ‘Operation LIMS’ probe into institutionalized doping in Russia and has provided detailed case packages to a total of 28 Anti-Doping Organizations (ADOs), including 27 International Federations (IFs) and one Major Event Organization. It is the responsibility of the relevant ADOs to decide in each case whether to bring it forward as an ADRV or not. WADA is reviewing and discussing the facts with each ADO. The Agency will also review the decisions rendered by the ADOs and appeal, if appropriate, to CAS, while it also has the option under the World Anti-Doping Code, where no decision is rendered in a reasonable timeframe, to bring cases directly to CAS.

## **B. WADA Reform Efforts**

### ***American Leadership***

**In response to WADA’s decision on September 20, 2018 to reinstate RUSADA without meeting WADA’s own previously issued RUSADA Roadmap conditions for reinstatement, the White House Office of National Drug Control Policy, together with USADA, convened a meeting with Olympic athletes and ministers from eight countries**

to discuss the urgent need to reform WADA.<sup>57</sup> The October 13, 2018, White House meeting was entitled, *Advancing International Commitment to Clean Sport and Fair-Play: Reforming the World Anti-Doping Agency*. Representatives in attendance included Linda Helleland, WADA Vice President and Norway's Minister of Youth; Shane Ross, the Irish Minister for Transport, Tourism and Sport; fourteen members of the global athletic community; and Ministers of Sport and the leaders of National Anti-Doping Organizations from Australia, Canada, Germany, Ireland, New Zealand, Norway, and the United Kingdom. American Olympic athlete Katie Ledecky sent a video message of support to the attendees, all of whom were united in their call for widespread, athlete-centered reform of WADA's anti-doping system.

The Summit concluded with the *Washington Anti-Doping Summit Declaration (the Washington Declaration)*,<sup>58</sup> which stated, in relevant part:

As a result of the recent state-sponsored doping crisis in Russia, and widespread athlete and public disillusionment in how the crisis was handled, confidence in clean sport is at an all-time low. Athletes and sports fans across the globe have lost confidence in the commitment, resolve, and willingness of WADA to stand up for the ideals upon which it was founded.

WADA must be reformed to make it stronger and more accountable to clean athletes in order for governments, the public, and athletes to continue to support and believe in it.

The Washington Declaration urged WADA to undertake the following governance reforms:<sup>59</sup>

- WADA must commit to govern and operate in a respectful, accountable, democratic, and transparent manner.

#### **MISLEADING AND MISSING INFORMATION IN THE REPORT:**

- The ONDCP Report indicate the number of governments that were present but omits to indicate the number of governments that were not represented at the Summit.
- It also omits to indicate that WADA was not informed of the Summit; was not invited; nor permitted to attend once it became aware of it via the media; and thus, was not able to provide accurate information regarding the RUSADA compliance matter, nor to correct inaccurate statements that were made during the Summit.
- While an invitation was sent to WADA's then Vice President, it was not sent to WADA. The Vice President thus attended the Summit on a personal basis not as a representative of WADA.

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<sup>55</sup> *Anti-Doping Agency Imposes 4-Year Ban on Russia*, (Dec. 9, 2019), available at, <https://www.usnews.com/news/sports/articles/2019-12-09/russia-awaits-sanctions-from-world-anti-doping-agency>

<sup>56</sup> *WADA Executive Committee unanimously endorses four-year period of non-compliance for the Russian Anti-Doping Agency*, (Dec. 9, 2019), available at, <https://www.wada-ama.org/en/media/news/2019-12/wada-executive-committee-unanimously-endorses-four-year-period-of-non-compliance>

<sup>57</sup> *Global Athletic Community Calls for Reform of World Anti-Doping Agency*, White House Office of National Drug Control Policy (Oct. 31, 2018), available at, <https://www.whitehouse.gov/briefings-statements/global-athletic-community-calls-reform-world-anti-doping-agency/>

- WADA functions in a respectful, transparent, accountable, and democratic manner. WADA has worked tirelessly to operate in a transparent manner, in order to be accountable to its vast stakeholder constituency, athletes around the globe, and the public, and respectful to diverse opinions and needs of others.

#### WHAT THE REPORT OMITTS:

- In assessing WADA's transparency and accountability, the ONDCP Report omits to mention the numerous steps that WADA takes to be transparent by publishing, in particular, the following on its website:
  - Its Statutes
  - Information on WADA's governance structure and its members/representatives
  - The minutes of its ExCo, Board and other advisory body meetings
  - Its strategic plan
  - Its Annual Report
  - Its media releases and other communications
  - An externally audited financial report according to recognized international standards.
- WADA's Board meetings are open to the public and the media.
  - **WADA must undertake greater efforts to listen to and respect the voice of athletes.**

#### WHAT THE REPORT OMITTS:

- As mentioned earlier, in total, at least 11 out of the 38 members of the Board are current or former international elite athletes:
  - President, Witold Banka;
  - Vice-President, Yank Yang;
  - Four current IOC athlete representatives, who are all Olympians;
  - Olympic rowing champion, Jean-Christophe Rolland;
  - Olympic swimmer, Rania Elwani;
  - Olympic swimmer, Richard Pound;
  - Water polo player Andrey Kryukov; and
  - Rower Jiri Kejval.
- In November 2019, WADA's Board unanimously elected two elite-level athletes, who competed at the international level, to serve as WADA President and Vice President. Since his election, President Banka has followed through on a major element of the platform he campaigned on – to engage athletes and increase their voice and role across WADA. Since assuming the Presidency only five months ago, President Banka has conferred with a significant number of athletes and will continue to frequently exchange views with individual athletes and athlete groups.
- In November 2018, the Board agreed with the recommendation of WADA's Governance

- Working Group that the voice of the athletes should be strengthened beyond the existing means; but that, there was a critical need for the athlete community to determine:
- exactly how and by what means it should be represented within WADA – which does not have direct jurisdiction on athletes nor any legitimate means to hold an election to select members of its AC; and,
  - how the members of the WADA AC should be selected in order for the AC to transition from an advisory committee to a representative committee.
- In response, WADA's Athlete Committee has taken the initiative to create a working group to look at the global representation of athletes worldwide. WADA Management has provided support to this group by commissioning governance experts. This work is ongoing, and WADA is hopeful that the Athlete Committee will come up during the coming months with robust proposals for discussion by the ExCo and Board.
  - **WADA must include athletes as full voting members on its Executive Committee and in other essential governance functions.**

#### WHAT THE REPORT OMITTS:

- In November 2018, the Board agreed with the recommendation of WADA's Governance Working Group that the voice of the athletes should be strengthened beyond the existing means; but that, there was a critical need for the athlete community to determine:
  - exactly how and by what means it should be represented within WADA – which does not have direct jurisdiction on athletes nor any legitimate means to hold an election to select members of its AC; and,
  - how the members of the WADA AC should be selected in order for the AC to transition from an advisory committee to a representative committee.
- **Call for a robust independent inquiry to examine WADA's culture, leadership, and operations following the recent allegations of bullying and acts of intimidation at WADA.**

#### WHAT THE REPORT OMITTS:

- While the ONDCP Report does not address this request that was part of the Washington Declaration, for the sake of transparency, below are the details:
  - In 2019, allegations of improper conduct were made by the Chairs of two WADA Standing Committees against two members of the ExCo.
  - WADA engaged the New York office of Covington and Burling, LLP, a U.S. law firm with a proven track record in conducting such investigations.
  - The firm conducted an extensive investigation in accordance with international best practice.
  - On [15 May 2019](#), WADA's ExCo unanimously agreed to approve and publish Covington's full 58-page report, plus appendices, that followed its in-depth and independent investigation.
  - In addition to publishing the [full report](#) to ensure transparency of its action and bring attention to this important matter, the ExCo unanimously decided to take the additional step of making publicly available the unedited audio recording of its September 2018

meeting and a transcript of the relevant portions of the meeting where the alleged conduct occurred. These are in addition to the previously published minutes from that meeting.

- Covington's investigation found that there was no bullying nor harassment.
  - **The governance structure of WADA must be overhauled in a significant and meaningful way. Individuals with active roles in sport must not simultaneously serve in leadership positions at WADA.**

#### **WHAT THE REPORT OMITTS:**

- One of the most significant reforms implemented by the Board in November 2018, and consistent with the Washington Declaration, was that the WADA President and WADA Vice President must be independent from sport and governments. Specifically, the individuals that hold these leadership positions may no longer simultaneously have active leadership positions in sport or governments while in office.
- This directly addressed the issue of real or perceived conflict of interest highlighted in the Washington Declaration. In addition, WADA is currently in the process of nominating two independent new members on WADA's ExCo.
- These significant steps toward greater independence of WADA received significant press attention. It is unclear how the ONDCP Report's author would not have been aware of this reform, or if they were, why the author would have chosen not to alert Congress to its existence.
- Suggesting that sport should not be around the WADA Board table completely ignores the reality that neither government nor sport can tackle the scourge of doping alone. The essence of WADA is to ensure that both are working together within their own sphere of responsibility. Ignoring that reality would simply result in disharmony and ultimately will prejudice all clean athletes of the world.
  - **WADA must ensure an open and transparent process regarding securing all of the anti-doping samples and laboratory data in Russia, and the WADA Compliance Review Committee must convene and make a recommendation immediately after the December 31, 2018, deadline for compliance.**

#### **WHAT THE REPORT OMITTS:**

- This has been addressed above.

**As a result of WADA's mismanagement of the Russian doping scandal, ONDCP began to reassess the United States' continued financial support for WADA. Accordingly, President Trump's FY 2020 and FY 2021 budget requests proposed consolidating anti-doping activities**

<sup>58</sup> *The Washington Anti-Doping Summit Declaration*, United States Anti-Doping Agency (Oct. 31, 2018), available at, <https://www.usada.org/announcement/the-washington-anti-doping-summit/>  
<sup>59</sup> *Id.*

funding for both domestic anti-doping activities, along with funding for WADA dues payments, in order to allow for a more rigorous review process of resources provided to WADA.

### *WADA's Response to Calls for Reform*

A large number of anti-doping stakeholders, including a group of National Anti-Doping Organizations (NADO) from seventeen nations, called for urgent reforms to WADA and the global anti-doping system in a document that has come to be known as the *Copenhagen Declaration*.<sup>60</sup> In March 2017, the United States Olympic and Paralympic Committee added its voice to calls for reform at WADA by issuing a position paper on anti-doping reform.<sup>61</sup> Among their recommended reforms, these stakeholders emphasized that WADA should take action to remove conflicts of interests among the sports organization representatives serving in governance roles within WADA. These calls came not just from the United States but from governments across the globe, from athletes, sport organizations, and independent anti-doping organizations.

In November 2016, WADA announced the formation of the WADA Governance Working Group (Working Group) that was charged with considering possible improvements to WADA's governance system.<sup>62</sup> The Working Group was selected by the WADA President and staff and made up of five representatives from the Olympic Movement, five from Public Authorities, two representatives from NADOs, and two athlete representatives. No representative of the United States government was asked to participate.<sup>63</sup> The Working Group had a series of meetings throughout 2017 and 2018. In September 2018, after meeting for nearly two years, the Working Group decided that it would submit key principles for change and improvement to the WADA FB for its approval, rather than detailed recommendations for changes to current WADA processes and protocols.<sup>64</sup>

### **INACCURATE INFORMATION IN THE REPORT:**

- As noted only in footnote 63, the U.S. was indeed represented in WADA's Governance Group by Ms. Angela Ruggiero, who is a four-time U.S. Olympian.
- Also, it is significant to note that despite the claims throughout the ONDCP Report about the purported lack of athlete and National Anti-Doping Agency (NADO) representation, arguably the most important WADA committee in recent years, the Governance Working Group, was comprised of almost 30% athletes and NADO representatives.

The Working Group's key principles for improving WADA's governance included, but were not limited to: 1) Increasing independence among WADA officers and Committee members; 2) Improving WADA's governance structures (Working Groups, Expert Groups, Standing Committees, and Nominations Committee) by increasing independence and levels of expertise;

<sup>60</sup> *USADA Fully Endorses Reform Proposals Following Special NADO Summit in Copenhagen*, (Aug. 31, 2016), available at, <https://www.usada.org/announcement/usada-endorses-anti-doping-reform-following-nado-summit/>. These reforms were subsequently endorsed by dozen of additional national anti-doping agencies. See *The Institute of National Anti-Doping Organisations (iNADO) today proposed what it described as "concrete measures" aimed at reforming the governing structures of the World Anti-Doping Agency (WADA)*, (March 12, 2017), *Inside the Games*, available at, <https://www.insidethegames.biz/articles/1047989/inado-publishes-list-of-measures-aimed-at-reforming-wadas-governing-structures>

<sup>61</sup> *Anti-Doping Reform – USOC Position Paper*, (March 2017), available at, <https://www.teamusa.org/Anti-Doping-Reform-USOC-Position-Paper>

<sup>62</sup> *WADA Working Group on Governance Matters: Recommendations for Consideration by the WADA Foundation Board, Agenda Item #4.1, Attachment 1* (Oct. 26, 2018), available at, [https://www.wada-ama.org/sites/default/files/resources/files/item\\_4\\_1\\_attach\\_1\\_wggov\\_recommendations\\_and\\_annexes\\_2610\\_2018\\_final.pdf](https://www.wada-ama.org/sites/default/files/resources/files/item_4_1_attach_1_wggov_recommendations_and_annexes_2610_2018_final.pdf)

<sup>63</sup> However, two of the government representatives were also candidates for the WADA Presidency. For a short time in 2017, U.S. athlete Angela Ruggiero, then IOC AC Chair, was a part of this group.

<sup>64</sup> Footnote 62, *supra*, at 1.

and 3) Establishing a new set of Rules for Ethical Conduct that mandate high standards of conduct required of WADA officials.<sup>65</sup>

After further deliberations, the Working Group developed a series of recommendations for improvements to WADA's governance systems. The WADA FB voted to adopt some of the Working Group's recommendations on November 15, 2018, at its meeting in Baku, Azerbaijan.<sup>66</sup> Among the concepts approved by the FB at that time were:<sup>67</sup>

- An independent President and Vice-President, with a remuneration associated with the role of the President;
- Formation of a Nominations Committee to ensure the right people in terms of skills and independence serve in senior governance roles within WADA;
- The addition of two independent seats – with full voting rights – to the Executive Committee. Nominations for these positions could be proposed by the Sports Movement and the Governments, but the candidates should have no link to either group in accordance with criteria that will be vetted by the Nominations Committee;
- A limit of three three-year terms (nine years in total) for all members of the Foundation Board, Executive Committee, and the Standing Committees, with no possibility of stepping out for a term and returning;
- Formation of an Independent Ethics Board to ensure compliance with the standards of conduct required for good governance; and
- A minimum of one seat each for both athlete and NADO representation in all Standing Committees.

Increasing athlete representation on decision-making bodies and advisory committees was an objective reportedly widely discussed within the Working Group, but the specific manner of achieving this objective was not included in the concepts approved in the FB vote on November 15, 2018. Nor has WADA subsequently adopted a clear means of incorporating independent athlete representative voices in WADA decision-making.

Although the November 2018 WADA FB approval was then described in a WADA press release as “wide-ranging governance reform,”<sup>68</sup> it is clear that none of the key elements of the *Washington Declaration* were adopted. Moreover, in the year and a half since

**WADA's limited proposals were approved by the FB, there appears to have been only minimal progress toward implementation of even those steps that were approved in 2018 by the WADA FB.**

#### **INACCURATE INFORMATION IN THE REPORT:**

- This statement in the ONDCP Report ignores numerous actions and accomplishments of WADA; its Committees; and its Working Groups over the past 18 months related to governance reform.
- the following elements of WADA's Governance reforms, which the U.S. approved, have been fully implemented:
  - Formation of a Nominations Committee to ensure the right people in terms of skills and independence serve in senior governance roles within WADA.
  - An independent President and Vice-President, with a remuneration associated with the role of the President.
  - A minimum of one seat each for both athlete and NADO representation in all Standing Committees.
  - A limit of three, three-year terms (nine years in total) for all members of the Board, ExCo, and Standing Committees, with no possibility of stepping out for a term and returning.
- The following elements are well underway:
  - The addition of two independent seats – with full voting rights – to the ExCo; regarding which, candidacies are to be submitted to the Board for approval in November 2020.
  - Formation of an Independent Ethics Board to ensure compliance with the standards of conduct required for good governance, which will also be submitted to the Board in November.
  - Work with our Athlete Committee regarding how they can transform from an advisory body to a representative body, with a view to subsequently determining together how athlete representation can be further strengthened at various levels of WADA, including within the Agency's governing bodies. This work is currently being progressed by our Athlete Committee.
- Had the ONDCP afforded WADA the common professional courtesy of reviewing its Report prior to its publication, WADA would have gladly provided responses regarding each of the demands made within the Washington Declaration, which could have been incorporated into the Report in order to provide an accurate representation of the reforms that have been carried out by WADA. These important developments are now outlined above.

**For example, an Independent Ethics Board has not been adopted by WADA, and there is no indication that the Ethics Board will be established by a date certain. While an inaugural Nominations Committee has been newly formed, at present, it ensures only that candidates for board positions receive some vetting. Recently, the new Nominations Committee refused to**

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<sup>65</sup> *Id.* at 3 – 8.

<sup>66</sup> As noted above, the *Washington Declaration* was issued on October 13, 2018, about one month before this action by the WADA FB.

<sup>67</sup> WADA Foundation Board approves wide-ranging governance reform, available at, <https://www.wada-ama.org/en/media/news/2018-11/wada-foundation-board-approves-wide-ranging-governance-reform>

(Nov. 15, 2018).

<sup>68</sup> *Id.*

move forward names for the two proposed independent members of the WADA Ex Co because there was so few nominees put forward that the Nominations Committee concluded that those put forward could not be considered truly independent.

Moreover, as the governance reform process moved forward within WADA, it picked up a concept not endorsed by the FB in its 2018 vote: requiring nominees for the independent positions to be endorsed by both the sport representatives and the public authorities. Of course, this concept actually runs counter to independence and merely gives the sport representatives and the public authorities veto power over proposed “independent” members. Therefore, outside establishing the Nominations Committee, the only “reform” proposed in 2018 that appears to have been fully implemented to date is the proposal to pay the WADA President an annual stipend, and this has been supplemented through including a stipend for the WADA Vice President as well.

Most importantly, the strong call in the *Washington Declaration* for WADA to make reforms to be responsive to the athlete’s voice has not been realized. Three years after WADA publicly announced it was initiating a process to implement significant governance reforms, based upon publicly available documents and information, it does not appear that these stated goals have been realized. There has been no material change on three key criteria that ONDCP believes should be guiding lights in terms of United States policy towards WADA:

1. There has been no change on including independent athlete representatives on WADA decision-making bodies;
2. There has been no change in increasing the independence of WADA’s governance from control by the sports organizations with a financial interest in WADA decisions; and
3. There has been no change in providing the United States a voice within WADA that is proportionate with U.S. financial contributions and with U.S. contributions to the global anti-doping movement.

#### **MISLEADING INFORMATION IN THE REPORT:**

- The U.S. voice within WADA is proportionate with U.S. funding contributions to WADA. As described above, the U.S. has served continuously on the WADA Board for 20 years. The U.S. has represented the Americas region approximately 50% of the time on the ExCo, which is more than any of the other 41 countries in the hemisphere.
- The U.S. chose not to stand for election for the ExCo this year.
- There are 11 U.S. officials on WADA governance bodies including committees and expert groups – more than any nation in the world.
- Furthermore, basing representation in WADA governance solely on the level of financial contribution to WADA is a criteria that would enable (and even encourage) certain nations with significant resources (but a less than stellar anti-doping record) to ‘buy their way’ into positions of disproportionate influence within WADA. WADA does not support this approach. We have been advised that other stakeholders also continue to strongly oppose the “pay-to-play” approach suggested in the ONDCP Report and prefer to maintain a more democratic

and diverse approach to leadership, as was previously supported by the U.S. government in the Cape Town Declaration mentioned above.

### **C. Conclusions and Recommendations**

**America's athletes devote years of effort and passion to prepare to represent the United States in international competition. They rightly dream of competing on a level playing field where the outcome of their competition will be determined on the field of play and not in a laboratory, through chemical manipulation. America's athletes, as well as all of the world's clean athletes, need and deserve our urgent intervention to make WADA independent of conflicts of interests, more effective in protecting clean athletes, and more capable of standing up against institutionalized doping. In line with the *Washington Declaration*, ONDCP believes that there are three benchmarks of progress at WADA that should be evaluated by the United States Government:**

- 1. WADA must include independent athlete and independent anti-doping stakeholder representatives on WADA's committees and other decision-making bodies;<sup>69</sup>**
- 2. WADA's governance must be free from undue influence by sports organizations with a direct financial interest in WADA decisions. This can be accomplished by reducing the number of sport organization representatives in current governance, policymaking, or executive positions within sport organizations on WADA committees and decision-making bodies. The decrease in sports organization representatives should be offset by increases in independent athletes and anti-doping stakeholders on WADA committees and decision-making bodies; and**
- 3. Representation on the WADA FB and WADA Ex Co should be proportionate to financial contributions, and likewise a proportionate number of WADA standing committee members should be from the United States.**

**ONDCP recommends that the U.S. Government continue to monitor WADA's reforms to see if they satisfy the foregoing benchmarks to restore confidence in global anti-doping practices and provide a greater voice to athletes and independent anti-doping stakeholders in the process. This will enable Congress, together with ONDCP, to monitor and evaluate whether WADA is effectively discharging its responsibility to enforce the World Anti-Doping Code and uphold the rights of clean athletes.**

**Moreover, ONDCP recommends that Congress provide ONDCP with discretion in paying annual WADA membership dues. As noted above, the United States is the single largest contributor nation to WADA, with an annual dues bill of nearly \$3 million. The United States Government has a duty to ensure that American taxpayer dollars are spent effectively for the purpose to which they are appropriated. The United States government also has a responsibility to ensure that American interests are adequately represented in institutions funded by U.S. taxpayers. American taxpayers should receive a tangible return on their investment in WADA in the form of clean sport, fair play, effective administration of the world anti-doping system and a proportionate voice in WADA decision-making.**

**ONDCP should have the explicit authority to withhold and/or decrease funding if WADA fails to meet basic standards for effectiveness, independence, transparency, and**

responsiveness to the athlete voice, and fails to promote U.S. representation commensurate with the United States' financial contributions to WADA. The authority to reduce or withhold funding is a powerful tool that could incentivize WADA to adopt reforms to achieve the purposes for which it was created and prevent similar Russian-type scandals from re-occurring. The governance reforms urged in this Report could help to restore confidence that WADA is dedicated to its original mission and open to the viewpoints of key stakeholders, including athletes and governments.

ONDCP continues to encourage reform and partnership, but at this point, WADA has made insufficient progress, despite having been given considerable time in which to shift course.

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<sup>69</sup> Independent anti-doping stakeholders include NADOs and regional anti-doping organizations that are operationally independent of sport and anti-doping academics who do not have ties to sport organizations or receive funding from sport organizations

ONDCP hopes that WADA's new leadership will implement necessary reforms to repair the damage done to WADA's reputation and credibility in the wake of the Russian doping scandal. However, the U.S. Government will not rely merely on hope but will continue to insist upon structural reform of WADA and closely scrutinize WADA's future actions to ensure it reforms and thereafter remains committed to faithfully discharging its duty to enforce the World Anti-Doping Code and to independence, freedom from conflict of interests and other good governance principles. The true victims hurt by doping scandals are the hardworking and dedicated athletes from around the world who play by the rules and strive to achieve their goals the right way. Institutionalized and other forms of doping cheats clean athletes from benefitting from the fruit of their labor. With the date of the rescheduled 2020 Olympic Games in July 2021 quickly approaching, it is imperative that WADA undertake additional governance reforms that will strengthen its ability to promote a clean, doping-free playing field.

#### **INACCURATE INFORMATION IN THE REPORT:**

- WADA feels that this statement in the Report is incorrect and not factually supported.
- WADA remains committed to strengthening its governance model and continuously seeks ways to improve its ability to enhance our shared fight against doping in sport.
- The Agency was founded, in large part, due to the U.S. government's involvement and leadership and its vision to forge an equal partnership with the Sports Movement.
- WADA remains fully committed to our partnership with the U.S. We look forward to working with the ONDCP and Congress to correct the misunderstandings contained in this Report; and, to strengthening our organizations shared goals of protecting and promoting clean sport.
- WADA looks forward to reinvigorating its alliance with the U.S. Regrettably, recent actions, in particular from its National Anti-Doping Agency, have stalled this partnership.