TABLE OF APPENDICES

From: SJCCommClerk@sjc.state.ma.us
Subject: FAR-28148 - Notice: FAR denied
Date: May 13, 2021 at 3:07:02 PM
To: mjsmith0304@hotmail.com

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. FAR-28148

NICHOLAS FRENCH, personal representative,
vs.
MICHELLE J. SMITH & others

Norfolk Superior Court No. 1482CV00639
A.C. No. 2019-P-1572

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on May 13, 2021, the application for further appellate review was denied.

Francis V. Kenneally Clerk

Dated: May 13, 2021

To: Ann Pinheiro, Esquire
Michelle J. Smith
William Ameen
David Dickerman
Kelly Dickerman
Kevin F Fall

Sharon Hurley
Joseph Kelliher
Janet M. Lambert
Sean Reed

App 3

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1572

NICHOLAS FRENCH, personal representative,[1]

vs.

MICHELLE J. SMITH & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendants, signatories to a letter to the Amateur Softball Association (ASA) accusing the plaintiff, Martin D. French, of various forms of misconduct, appeal from an amended judgment after a jury trial for defamation, intentional infliction of emotional distress, and interference with contractual or prospective advantageous relations. They also appeal from an order denying their pro se motion for relief from

[1] Of the estate of Martin D. French. During the pendency of this appeal, Martin D. French died, and leave was granted for a motion to be filed in the trial court regarding the appointment of a substituted party for Martin D. French. The trial court subsequently allowed a motion to substitute Nicholas French as the plaintiff-appellee. We refer to the original plaintiff, Martin D. French, as the plaintiff throughout this memorandum and order.

[2] Kevin F. Fall, William Ameen, William Kazanek, Joseph Kelliher, Kelly Dickerman, David Dickerman, Sean Reed, Janet M. Lambert, and Sharon M. Hurley.

judgment pursuant to Mass. R. Civ. P. 60, 365 Mass. 828 (1974).

Finding no merit in their various claims of error, we affirm.

1. Transfer of venue. The lawsuit was originally filed in Suffolk County, which was not a proper venue. When the defendants moved to dismiss for improper venue, a Superior Court judge ordered that the matter be transferred to Norfolk County, where there was proper venue. When faced with a lawsuit filed in the wrong venue, a judge has the discretion under G. L. c. 223, § 15, to transfer the matter to the proper venue. Generally, there is "no basis on which to dismiss the case as a matter of discretion" simply because it was filed in the wrong venue. Cormier v. Pezrow New England, Inc., 437 Mass. 302, 307 (2002). Accordingly, we discern no abuse of discretion in the judge's order of transfer.[3]

2. Anti-SLAPP motion. A special motion to dismiss pursuant to the anti-Strategic Litigation Against Public Participation law, G. L. c. 231, § 59H, must be "filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." Here, the defendants waited until over three years from the filing of the complaint, after discovery had closed, to file

[3] Similarly, we see no indication in the record that the judge was misled by the plaintiff's citation of irrelevant statutes in his opposition to the motion to dismiss. The judge's order was arguably the only one permitted under Cormier.

their anti-SLAPP motion. The motion judge denied the motion as untimely, concluding that "[b]oth parties have endured the expense of litigation over the last three years since this case was filed, and as such, the allowance of such a late motion in this case would not serve the policy underlying the statute."

To conclude that the motion judge abused his discretion we would have to find a "clear error of judgment in weighing the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives." Spinosa v. Tufts, 98 Mass. App. Ct. 1, 6 (2020), quoting L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). As "[t]he purpose of the anti-SLAPP statute is to provide 'a procedural remedy for early dismissal' of meritless SLAPP suits . . . with a 'specific goal of resolving "SLAPP" litigation quickly with minimum cost,'" Blanchard v. Steward Carney Hosp., Inc., 483 Mass. 200, 211 (2019), quoting Office One, Inc. v. Lopez, 437 Mass. 113, 126 (2002); Duracraft Corp. v. Holmes Prods. Corp., 427 Mass. 156, 161 (1998), we discern no abuse of discretion in the motion judge's decision.[4]

3. Exclusion of evidence of alcohol use. The defendants proposed to introduce evidence that, during a tournament trip to

[4] As the anti-SLAPP motion to dismiss was properly denied, the defendants' request for attorney's fees under G. L. c. 231, § 59H, is denied.

North Carolina, the plaintiff drank alcohol while not around the players. There was no mention of this in the letter, nor were any such allegations otherwise communicated to the ASA. "Relevant evidence is admissible unless unduly prejudicial, and, '[i]n weighing the probative value of evidence against any prejudicial effect it might have on a jury, we afford trial judges great latitude and discretion, and we uphold a judge's decision in this area unless it is palpably wrong.'" Bank v. Thermo Elemental, Inc., 451 Mass. 638, 670 (2008), quoting Commonwealth v. Arroyo, 442 Mass. 135, 144 (2004). Here, the evidence of alcohol use had no connection to the defamation case, and we discern no abuse of discretion in the trial judge's determination that any probative value was outweighed by its prejudicial effect. See Masters v. Khuri, 62 Mass. App. Ct. 467, 471 (2004).

4. Judicial bias. The defendants argue that the trial judge exhibited bias, but they made no objection or request for recusal during trial. "Substantial authority exists that recusal motions filed after trial are presumptively untimely at least absent a showing of good cause for tardiness." Demoulas v. Demoulas Super Mkts., Inc., 428 Mass. 543, 547 (1998). The defendants' "belated request suggests a tactical decision in the face of an adverse ruling." Matter of a Care & Protection Summons, 437 Mass. 224, 239 (2002). Moreover, had the

defendants interposed a timely motion for recusal, we would discern no evidence of judicial bias. Even where a judge exhibits frustration with the unnecessarily slow pace of a trial, "nothing the judge said or did would cause his impartiality reasonably to be questioned, and so it was not an abuse of discretion not to recuse himself." Cooper v. Keto, 83 Mass. App. Ct. 798, 810 (2013).[5]

5. Denial of motion for a directed verdict. "[A] jury verdict shall be sustained if 'anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be made in favor of the [nonmovant].'" Filbey v. Carr, 98 Mass. App. Ct. 455, 461 (2020), quoting O'Brien v. Pearson, 449 Mass. 377, 383 (2007). The defendants focus their argument on the claim of defamation. "To prevail on a claim for defamation, a plaintiff must establish that (1) the defendant published a defamatory statement of and concerning the plaintiff; (2) the statement was a false statement of fact (as opposed to opinion); (3) the defendant was at fault for making the statement, and any privilege that may have attached to the statement was abused;

[5] The defendants misunderstand the import of finding that a witness is hostile. This is merely a finding that the witness's interests are contrary to that of the party calling him or her and allows counsel to ask leading questions on direct examination. See White v. White, 40 Mass. App. Ct. 132, 142 n.6 (1996).

and (4) the plaintiff suffered damages as a result, or the statement was of the type that is actionable without proof of economic loss." Lawless v. Estrella, 99 Mass. App. Ct. 16, 18-19 (2020).

The statement in the letter accusing the plaintiff of misappropriating funds had little basis. William Ameen, Joseph Kelliher, Sean Reed, Sharon Hurley, and William Kazanek testified that they never saw the plaintiff taking or handling money. Kevin F. Fall testified that he handled the money the first year. Kelly Dickerman testified that she gave money to Melissa Kelleher,[6] never to the plaintiff, and "just assumed" that the plaintiff was responsible. Michelle J. Smith testified that she gave money to Reed at one point and to Kelleher and the plaintiff jointly at another point, contradicting earlier deposition testimony that she gave money to the plaintiff. The plaintiff and Kelleher both testified that the plaintiff did not handle the money. The jury could reasonably have found that the accusation that the plaintiff misappropriated funds was false and that the defendants had no reasonable basis for making it.

Similarly, the jury could reasonably have found that the statement in the letter that the plaintiff exposed himself to players was knowingly false and that the suggestion that the

[6] Joseph Kelliher and Melissa Kelleher have similar last names but are not related.

plaintiff might have exposed himself knowingly to players had no basis. The plaintiff denied ever exposing himself, being told that he exposed himself, or even failing to wear underwear. The jury was entitled to believe this testimony. See, e.g., Gyulakian v. Lexus of Watertown, Inc., 475 Mass. 290, 301 n.19 (2016) ("The jury, having observed the witnesses, were entitled to credit [the plaintiff's] testimony").

Ameen, Kelliher, Kazanek, and Janet M. Lambert testified that they never saw any exposure. Reed testified to two incidents of exposure, but neither occurred in front of "a lot of girls in the organization" as the letter alleged. Fall testified to one of the incidents that Reed testified to, but saw no exposure to female players. David Dickerman also testified to an incident of exposure but did not testify to any specifics.

Kelly Dickerman and Hurley testified to seeing the plaintiff expose himself to the softball players, but Karen Bigley testified that Kelly Dickerman testified to the opposite at the ASA hearing and that Hurley did not testify to the exposure at the hearing. Smith's testimony about exposure was internally inconsistent; she testified that she saw him exposed for two to three minutes, but also that she looked away immediately.

Even if the jury believed that the plaintiff exposed himself, which they were under no obligation to do, there was no evidence to support the allegation that the exposure might have been knowing. The Dickermans each testified that they thought the exposure they witnessed was unknowing. Smith testified that she asked the plaintiff to change his shorts and that he immediately did so and never exposed himself again. Nonetheless, she justified alleging that the plaintiff may have exposed himself knowingly saying, "I couldn't be definitively sure that it was unknowingly, so I wrote knowingly." The jury was entitled to conclude that not being definitively sure that someone did not commit the crime of indecent exposure was not adequate cause to publicly accuse him of that crime.

Regarding the allegations that the plaintiff stated that certain girls either would become, or already were, prostitutes and exotic dancers, again the plaintiff denied doing so, and the jury could have believed his testimony and thus concluded that the defendants were lying. See, e.g., Gyulakian, 475 Mass. at 301 n.19. In this regard, the Dickermans, Ameen, Kelliher, and Lambert never heard such statements.

The testimony of the defendants who purported to hear such comments was remarkably inconsistent. Reed described this as happening at a bar with Kelleher and Arnie Milks. Minutes later, perhaps realizing that Kelleher would not corroborate

this, Reed denied saying that Kelleher was there. Fall and Kazanek testified to being there, contrary to Reed's testimony. Furthermore, the plaintiff fired Reed,[7] and Reed formed a new softball organization that competed with the plaintiff's, giving Reed ample reason to lie to remove the competition unfairly. Smith testified to hearing such a comment about her own daughter at practice but then admitted that she left her daughter on the team and that her husband later asked the plaintiff for a recommendation for that daughter for another softball program. In short, the jury could reasonably have concluded that the defendants' testimony about hearing these comments was simply false. See, e.g., Glavin v. Eckman, 71 Mass. App. Ct. 313, 316-317 (2008) ("The jury were free to disbelieve the [defendants'] testimony").

For these reasons, the defendants' argument that the verdicts were against the weight of the evidence also fails. "The judge should only set aside a verdict as against the weight of the evidence when it is determined that the jury 'failed to exercise an honest and reasonable judgment in accordance with the controlling principles of law.'" Parsons v. Ameri, 97 Mass.

[7] In their brief, the defendants claim that Reed was not fired, but that directly contradicts the testimony of Reed, not to mention Ameen and the plaintiff. Indeed, it appears that one of the reasons the ASA suspended the plaintiff was for failing to fire Reed earlier.

App. Ct. 96, 103 (2020), quoting O'Brien, 449 Mass. at 384. Here, the evidence well supported the verdicts.

6. Amendment of the judgment. The original judgment called for prejudgment interest beginning on May 6, 2014, when the case was transferred to Norfolk County. On the motion of the plaintiff, the trial judge amended the judgment to include prejudgment interest from August 23, 2013, the date on which the complaint was filed in Suffolk County. "In any action in which a verdict is rendered . . . for pecuniary damages for personal injuries to the plaintiff or for consequential damages, . . . there shall be added by the clerk of court to the amount of damages interest thereon at the rate of twelve per cent per annum from the date of commencement of the action." G. L. c. 231, § 6B. This statute "provides that the clerk of the court shall add interest to damages from the date of the complaint to the date of judgment." Gore v. Arbella Mut. Ins. Co., 77 Mass. App. Ct. 518, 537 (2010). Accord Salvi v. Suffolk County Sheriff's Dep't, 67 Mass. App. Ct. 596, 610 (2006). Although there is an exception for when the damages are not incurred until after the filing of the complaint, see Bank, 451 Mass. at 662-663, here that exception is inapplicable. Accordingly, the trial judge properly amended the judgment.

7. Waived issues. The defendants argue that they had various defenses against the defamation claim -- a privilege

under the First Amendment; the litigation privilege; the Noerr-Pennington doctrine; and that the plaintiff was a public figure, limited public figure, or the letter was on a subject of public interest, such that the plaintiff had to show actual malice to prevail. None of these claims, however, were raised at trial. "Issues not raised in the trial court are considered waived on appeal." Trapp v. Roden, 473 Mass. 210, 220 n.12 (2015). Accord Zielinksi v. Connecticut Valley Sanitary Waste Disposal, Inc., 70 Mass. App. Ct. 326, 335-336 (2007).

Similarly, the defendants neither objected to a juror being excused on the third day of trial nor requested a mistrial on the ground that the jury were then seven persons. See G. L. c. 234A, § 74 (error in juror procedure "shall not be sufficient to cause a mistrial or to set aside a verdict unless objection to such irregularity or defect has been made as soon as possible after its discovery or after it should have been discovered and unless the objecting party has been specially injured or prejudiced thereby"). Accordingly, this is not a basis to reverse the verdicts. See Commonwealth v. Santa Maria, 97 Mass. App. Ct. 490, 500-501 (2020).[8]

[8] Also not raised in the trial was the defendants' claim that they "were forced to atone for a false charge" because the complaint mislabels defamation per se as "slander per se." The complaint properly described the defamation as libel in the text, and the trial judge instructed the jury on defamation and defamation per se. Similarly, the defendants raised no request

8. Denial of motion for relief from judgment. "The resolution of motions for relief from judgment 'rests in the discretion of the trial judge.'" Atlanticare Med. Ctr. v. Division of Med. Assistance, 485 Mass. 233, 247 (2020), quoting Wojcicki v. Caragher, 447 Mass. 200, 209 (2006). "[A]n appellate court will not reverse the motion judge's decision 'except upon a showing of a clear abuse of discretion.'" Stephens v. Global NAPs, 70 Mass. App. Ct. 676, 684-685 (2007), quoting Tai v. Boston, 45 Mass. App. Ct. 220, 224 (1998).

In briefing, the defendants argue that the judge who ruled on the motion, who was also the trial judge, should have granted them a new trial because of the asserted incompetence of their trial counsel. Where a litigant has a constitutional right to counsel such that the Commonwealth must appoint counsel if the litigant is indigent, the litigant may seek relief on the basis of ineffective assistance of counsel. See, e.g., Poe v. Sex Offender Registry Bd., 456 Mass. 801, 811 (2010); Commonwealth v. Saferian, 366 Mass. 89, 96-97 (1974). Here, however, the defendants have no right to counsel to defend against a defamation action, and "[w]here there is no constitutional right to counsel there can be no right to effective assistance of

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for a "[d]efamation by implication" instruction at trial, and thus waived that issue. See, e.g., Matsuyama v. Birnbaum, 452 Mass. 1, 36 (2008).

counsel." Noe v. United States, 601 F.3d 784, 792 (8th Cir. 2010), quoting Pollard v. Delo, 28 F.3d 887, 888 (8th Cir. 1994). The defendants chose their counsel and are now bound by the results of that choice. Cf. Lewis v. Sumner, 13 Met. 269, 272-273 (1847) ("a litigant party shall not be permitted to deny the authority of his attorney of record, whilst he stands as such on the docket. He may revoke his attorney's authority, and give notice of it to the court and to the adverse party; but whilst he so stands, the party must be bound by the acts of the attorney").

The defendants also argue that the verdicts were inconsistent. "Where, as here, a jury returns a special verdict, an objection that verdicts on several counts are inconsistent with each other must be taken at the time when the verdicts are returned and before they are recorded, so that the trial judge has an opportunity to correct the error if there is one." Netherwood v. American Fed'n of State, County & Mun. Employees, Local 1725, 53 Mass. App. Ct. 11, 21 n.11 (2001). Here, there was no such objection, and the claim is waived.

In any event, "[t]o constitute inconsistent verdicts, it must be shown that the verdicts are based on inconsistent findings of fact." Palriwala v. Palriwala Corp., 64 Mass. App. Ct. 663, 672-673 (2005), quoting Technical Facilities of Am., Inc. v Ryerson & Son, Inc., 24 Mass. App. Ct. 601, 605 (1987).

The third statement in the letter, on which the jury concluded that the plaintiff did not prove defamation, was supported by Smith's testimony that the plaintiff made about a derogatory statement regarding a player other than Smith's daughter. The jury could reasonably have believed that the plaintiff made the third statement while disbelieving the inconsistent testimony of Reed, Fall, and Kazanek regarding the second statement in the letter, on which the jury concluded that the plaintiff did prove defamation. There was no inconsistency in the jury verdicts. See, e.g., Wodinsky v. Kettenbach, 86 Mass. App. Ct. 825, 836 n.28 (2015).[9]

Amended judgment and order denying motion for relief from judgment affirmed.

By the Court (Rubin, Neyman & Ditkoff, JJ.[10]),

Joseph F. Stanton

Clerk

Entered: February 19, 2021.

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[9] The plaintiff's motion for attorney's fees is denied. Although there is little in the defendants' brief that offered a reasonable hope of reversal, we cannot say that the appeal is frivolous, especially in light of the defendants' consulting with appellate experts before proceeding. See Filbey, 98 Mass. App. Ct. at 462 n.10, quoting Gianareles v. Zegarowski, 467 Mass. 1012, 1015 n.4 (2014) ("Although the appeal . . . is unsuccessful, it is not frivolous").

[10] The panelists are listed in order of seniority.

From: SJCCommClerk@sjc.state.ma.us

Subject: DAR-27185 - Notice of Entry: DAR

Date: Nov 22, 2019 at 10:03:58 AM

Docket 9/19/19

65.0

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
Civil No. 14-639

MARTIN D. FRENCH
Plaintiff

vs.

MICHELLE J. SMITH, & others[1]
Defendants

9/19/19
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

MEMORANDUM AND ORDER ON DEFENDANT MICHELLE J. SMITH'S MOTION FOR NEW TRIAL

In June 2018, a jury returned a verdict for plaintiff Martin D. French ("French") on claims of defamation, intentional infliction of emotional distress, and interference with contractual or prospective advantageous relations, and awarded $69,250 to plaintiff against defendants. With authorization from the Appeals Court, the case is now before me on a motion by defendant Michelle J. Smith ("Smith") for a new trial under Mass. R. Civ. P. 60(b).[2] Smith and the other defendants were represented by counsel at trial. Smith now files her motion pro se. Plaintiff moves to strike certain exhibits Smith filed to support her motion. For the following reasons, Smith's motion is denied and plaintiff's cross-motion is denied as moot.[3]

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[1] Kevin F. Fall, William Ameen, William Kazanek, Joseph Kelliher, Kelly Dickerman, David Dickerman, Sean Reed, Janet M. Lambert and Sharon M. Hurley.

[2] In Docket 2019-P-0133, the Appeals Court granted the defendants leave to file for, and granted the trial court leave to consider, relief from judgment under Mass. R. Civ. P. 60(b). The Appeals Court denied defendants' request to stay the appellate proceedings while they pursued a Rule 60(b) motion. Although leave was granted to all defendants, only Smith has filed a motion under Rule 60.

[3] The parties have not sought a hearing under Superior Court Rule 9A(c)(2). I presided over the trial, had a chance to assess the credibility of trial witnesses, and have reviewed my trial notes and the parties' filings. I do not require a hearing to resolve the pending motions.

BACKGROUND

A brief initial description of the case will suffice.[4]

French, a softball coach, filed this action after defendants signed or agreed to sign, and distributed, a letter dated August 24, 2010 ("the 2010 Letter"), which contained a number of statements of fact that French alleged were false and which raised serious questions about his character, his financial ability to manage a softball team, and his suitability to be around young girls playing competitive softball. At the time, French was involved with, and was one of the softball coaches for a team in, the Baystate Blaze organization, a group of girls' travel softball teams, which played through and outside the Massachusetts chapter of the Amateur Softball Association ("ASA"). French also coached women's softball at Massasoit Community College and gave private softball instruction. A reasonable jury could have found that, as a result of defendants' distribution of the 2010 Letter, French suffered a number of professional setbacks and lost income from his work in and related to youth and college softball.

The case was originally filed in Suffolk Superior Court on August 23, 2013, just before the three-year statute of limitations expired. The Complaint named ten individual defendants, see, supra, at 1 & n.1, plus a "Jane/John Doe" defendant. Returns of service filed on October 25, 2013, demonstrated timely service on the named defendants by September 30, 2013.

Defendants filed a motion to dismiss for improper venue under Mass. R. Civ. P. 12(b)(3), arguing that none of the parties lived or worked in Suffolk County. See G.L. c. 223, § 1. Plaintiff advanced a number of arguments in opposing the motion to dismiss, including a good faith mistake and inclusion of the "Jane/John Doe" defendant still to be identified. After hearing,

[4] I discuss other facts below as needed to address Smith's claims under Rule 60(b).

the Court (Fahey, J) denied the motion on January 28, 2014, and ordered the case transferred to Norfolk County "w/o prejudice to π seeking to retransfer to Suffolk after Jane and John Doe are identified." Defendants did not seek reconsideration of the motion to dismiss.

Pursuant to Judge Fahey's order, in or about May 2014, the case was transferred to Norfolk Superior Court. Defendants filed their Answer in the Norfolk Superior Court. In their Answer, defendants did not raise improper venue or insufficient service of process as affirmative defenses. Shortly thereafter, the Court (Brady, J.) dismissed the "John/Jane Doe" defendant for plaintiff's failure to make service. The case was delayed a number of times due to discovery disputes. At a Final Pretrial Conference in October 2016, the case was scheduled for trial in April 2017.

On March 21, 2017, defendants filed a notice of intention to file a special motion to dismiss under the anti-SLAPP statute, G.L. c. 231, § 59H. On April 4, 2017, they filed their special motion to dismiss, in part based on the Supreme Judicial Court's then-recent decision in Cardno Chemrisk, LLC v. Foytlin, 476 Mass. 479 (2017), which they characterized as "expand[ing] its [the anti-SLAPP statute's] application to the right of individuals to petition to non-governmental entities." Defendant's Special Motion to Dismiss . . . at 2 (Docket #24.0). They argued that their actions petitioning for discipline by the ASA, Massasoit Community College, and other national softball organizations was protected under G.L. c. 231, § 59H. See Memorandum of Law in Support of Defendants' Special Motion to Dismiss . . . at 5 (Docket #24.1).

On April 5, 2017, the Court (Connors, J.) granted defendants' motion to continue the trial so the special motion to dismiss could be heard. In October 2017, Judge Connors heard and denied the anti-SLAPP motion in a thoughtful decision that addressed both the timing and the

merits of the motion. On the merits, Judge Connors found the 2010 Letter "to the ASA did not constitute petitioning activity alone because it was not made to influence, inform, or reach, either directly or indirectly, governmental bodies"; "[t]he ASA and the other organizations the letter was sent to, including the plaintiff's employer Massasoit [Community College] are not legislative, executive, or judicial bodies and the letter was not submitted to affect consideration in any governmental action." Memorandum of Decision and Order . . . at 5 (Oct. 16, 2017) (Docket #27). On the record before him, Judge Connors found plaintiff had also shown the letter to the Attorney General's Office referenced in the 2010 Letter did not implicate the anti-SLAPP statute because it "was devoid of reasonable factual or legal support." Id. at 5-6.

The case was tried before a jury in June 2018 on claims of defamation,[5] intentional infliction of emotional distress, and interference with contractual or prospective advantageous relations. The jury did not have to parse or apportion liability among the defendants because the parties agreed that if any one defendant were liable, all defendants were liable.

Regarding the defamation claim, the jury had to consider four specific statements about French in the August 2010 Letter. The jury found three of the four statements were false and defamatory. Specifically, the jury found that the 2010 Letter (1) falsely implied that French was responsible for thousands of dollars going missing from the BayState Blaze organization; (2) falsely asserted that "Mr. French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner. He has stated with no basis that these girls will become

[5] Count I, labeled "Slander Per Se – Injury to Personal Reputation," identified parts of the 2010 Letter that plaintiff alleged were "libelous" "assertion[s] of facts." Complaint at 3 (Docket #1). Libel and slander are two forms of defamation. Ravnikar v. Bogojavlensky, 438 Mass. 627, 629 (2003). Smith does not contend that she objected to the defamation claim being submitted to the jury because of a defect in the pleadings. There is no merit to Smith's current argument that the label on Count I entitles her to a new trial. See Mem. at 13.

'strippers and pole dancers', he has said that a few of the 13 year old girls will be pregnant by age 16, he has said that a few of the girls 'are already walking the streets' doing unspeakable acts."; and (3) falsely asserted that "Mr. French has also exposed himself, either knowingly or unknowingly, to a lot of girls in the organization as well as other coaches and parents."[6] The jury did not have to credit defendants' testimony and never heard from any of the players on French's team. The jury had sufficient evidence to support its conclusions, including that these were statements of fact, not opinion; they were knowingly false or made in reckless disregard of whether the statement was true or false; and plaintiff suffered damages as a result. The jury awarded $44,250 in damages on the defamation claim.

The jury also found for plaintiff on the claim of intentional infliction of emotional distress and awarded an additional $25,000. Although the jury found defendants liable on the claim of interference with contractual or prospective advantageous relations, it awarded nothing more as damages on that claim.

After the jury's award, I denied defendants' motion for judgment notwithstanding the verdict. Defendants appealed. Smith now seeks a new trial under Mass. R. Civ. P. 60(b). After discussing the standard that must be applied in deciding such a motion, I address Smith's various arguments to the extent I can distill them from her supporting memorandum.

DISCUSSION

I. The Standard for Relief under Rule 60(b)

The trial court "may relieve a party . . . from a final judgment . . . for the following reasons:"

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[6] The jury found that plaintiff had not proved the statement that "Mr. French . . . said 'she could have raised $1,500 lying on her back for one hour'" to be false and defamatory.

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Mass. R. Civ. P. 60(b). The party against whom a judgment is entered must move for relief under Rule 60(b) "within a reasonable time," and if under clauses (1), (2), or (3), then "not more than one year after the judgment . . . was entered." Id.

Smith does not bring her motion based on newly discovered evidence. Instead, as discussed below, she fires off a blunderbuss of overlapping and severable alleged errors by her trial counsel, plaintiff and his counsel, the court, and the jury. She seeks relief under Rule 60(b)'s clauses (1) (mistake or excusable neglect), (3) (fraud or misconduct by an adverse party), (4) (a void judgment), and (6) (the catchall provision). The standard of proof for obtaining relief under these sections is strict.

A defendant does not start with a clean slate when filing a Rule 60(b) motion, nor is Rule 60 a substitute for normal appellate review. See Jones v. Boykan, 464 Mass. 285, 291 (2013). Much that went before must be assessed to determine if a judgment should be set aside. For example, to demonstrate "excusable neglect" under Rule 60(b)(1) "requires circumstances that are unique or extraordinary[, not] any kind of garden-variety oversight." Johnny's Oil Co. v. Eldayha, 82 Mass. App. Ct. 705, 708-709 (2012), quoting Feltch v. General Rental Co., 383 Mass. 603, 613-614 (1981). As a result, a defendant "bears the considerable burden of showing that the mistake was indeed excusable, and not due simply to its [or its counsel's] own carelessness." Gath v. M/A-Com, Inc., 440 Mass. 482, 497 (2003).

Rule 60(b)(3) allows relief from a judgment due to fraud, misrepresentation or misconduct. "Fraud covered by Rule 60(b)(3) must be of such a nature as to have prevented the moving party from presenting the merits of h[er] case." Mass. R. Civ. P. 60, Reporter's Notes (1973). However, because "neither the fraud nor misrepresentation is presumed[,] the moving party has the burden of proving by clear and convincing evidence that the alleged fraud or misrepresentation exists and that [s]he is entitled to relief." Id. See also Pina v. McGill Development Corp., 388 Mass. 159, 165 (1983).

Under Rule 60(b)(4), a judgment may be set aside as "void" if the court lacked subject matter over the dispute or personal jurisdiction over a party, or if the court's processes did not conform to due process requirements as, for example, where an indigent parent was deprived of counsel before termination of parental rights. See In re Adoption of Rory, 80 Mass. App. Ct. 454, 457 (2011).

A motion under Rule 60(b)(6) will only be granted "in extraordinary circumstances, which are not presented when the allegedly aggrieved party could have reasonably sought relief by means of direct appeal." In re Georgette, 54 Mass. App. Ct. 778, 788 (2002). "To secure relief under rule 60(b)(6) requires a showing of extraordinary circumstances. . . . If cases are to have finality, the operation of rule 60(b) must receive extremely meager scope. . . . Rule 60 is to litigation what mouth-to-mouth resuscitation is to first aid: a life-saving treatment, applicable in desperate cases." Bowers v. Board of Appeals of Marshfield, 16 Mass. App. Ct. 29, 33 & n.5 (1983) (internal quotations and citations omitted).

II. Smith's Arguments for a New Trial

In convoluted and repetitive fashion in her Memorandum of Law and Facts ("Mem."), Smith advances numerous arguments to justify a new trial. Having carefully reviewed her

filings, I find no merit to her arguments. Although it is difficult to address all of the arguments and characterizations in Smith's papers,[7] I attempt to address the most significant arguments Smith asserts as a basis for relief under Rule 60(b).

A. Alleged Errors by Defendants' Counsel

Smith argues that the 2010 Letter submitted to ASA was privileged, and not subject to a defamation claim. Mem. at 1, 2, 3, 4, 7, 8. She argues that her counsel, Edward Joyce, "failed to perform even a cursory amount of legal research" regarding the privileged nature of the 2010 Letter to ASA, neglected to file an anti-SLAPP motion in a timely manner, failed to investigate and argue that the ASA and Massaoit were under the jurisdiction of the U.S. Olympic Committee and U.S. Board of Education, and neglected to argue that plaintiff 's claim presented a federal question that could not be decided in the state court.[8] See Mem. at 2, 4, 16-19. These arguments do not rise to the level of excusable neglect and do not present a basis for me to grant a new trial. Smith contends that she was aware of these arguments and had requested her counsel to conduct this research and file an anti-SLAPP motion "at the onset of this lawsuit." Mem. at 16. She fails to explain why, with full access to the public record, she failed to pursue the issue further, failed to change counsel,[9] or otherwise seek recourse from the court.

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[7] Throughout her papers, Smith colorfully attacks plaintiff's motives and his counsel's actions, describing the case, for example, as motivated by "malicious and vexatious intentions," "meritless," designed "to harass" and "to intimidate," the product of "underhanded, bad faith tactics," an "abuse of process and malicious prosecution," an "assault on our judicial system," and an "affront on not only Defendant's physical, psychological and societal health but on the overall health of the Public." See Mem. at 1, 3, 4, 9. Smith's unrestrained invective and indignation adds no persuasiveness to her arguments.

[8] Smith also seems to argue the Court erred in failing to dismiss the claim on a defense assertion of privilege. Either way, the argument fails.

[9] Smith concedes that she had "proposed thoughts of retaining the Boston law firm of Todd and Weld to defend me instead." Mem. at 18.

More to the point, there is no merit to Smith's claim that her statements, if false (as found by the jury), were not actionable. The First Amendment does not insulate a person from a valid defamation claim. See, e.g., King v. Globe Newspaper Co., 400 Mass. 705, 708-209 (1987) ("there is no constitutional value in false statements of fact"), quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-340 (1974). Nor, as Judge Connors found, can Smith find protection in the anti-SLAPP statute, even on her proposed additional evidence.[10] The anti-SLAPP statute protects a "party's exercise of its right of petition," which is defined to mean a statement

> made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; . . . made in conjunction with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; . . . , reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; . . . reasonably likely to enlist public participation in an effort to effect such consideration; or . . . falling within constitutional protection of the right to petition government.

G.L. c. 231, § 59H, para. 1, 6. The mere fact, if true, that at the time ASA was subject to the U.S. Olympic Committee, or that Massasoit Community College was subject to U.S. Department of Education regulations, does not render either organization a "legislative, executive or judicial body," nor has Smith cited any authority to suggest otherwise. The 2010 Letter did not address, nor was it designed to influence or precipitate, "any other governmental proceeding." Smith could not have fairly sought protection from tort claims arising out of the 2010 Letter under the anti-SLAPP statute. If Smith believes her counsel was negligent, she may

[10] Much of plaintiff's proposed new information is well after the 2010 Letter. As such, it says little about the organizational structure or regulatory oversight in place in 2010. Even if it were considered as fairly suggesting what oversight existed in 2010, it would not convert the ASA or Massasoit Community College into a governmental agency.

pursue a claim in that regard, but her arguments do not suggest the type of unique or extraordinary neglect that warrants a new trial.

B. Alleged Misconduct by Plaintiff or His Counsel

Smith argues plaintiff's counsel was able falsely to portray plaintiff as a victim who lost his reputation in the community, but, in fact, he continued to participate in the community.[11] Mem. at 3-4. Smith similarly claims plaintiff and his counsel provided insufficient evidence, asserted things that were not true, and misconstrued or misrepresented the facts or inferences that could be drawn from the facts. See generally, e.g., Id. at 3-4, 13-15. Any facts in this regard were known or knowable to defendants at trial and were or could have been brought out to the jury. Indeed, defense counsel argued extensively that plaintiff had not suffered, or had failed to prove that he had suffered, damages as a result of the defendants' publication of the 2010 Letter, argued that defendants (not plaintiff) should be deemed credible, and argued contrary inferences that could be drawn from the evidence.

Smith argues the procedure of the trial was unfair because plaintiff called Smith as a witness in plaintiff's case, forcing her to testify "against myself without being advised by counsel that it was my right under the 5th Amendment to refrain without penalty from testifying for the Plaintiff." Mem. at 6. This argument fails for a number of reasons.[12] First, a plaintiff may call an opposing party in the plaintiff's case-in-chief. See G.L. c. 233, § 22; Mass. R. Civ. P. 43(b) ("A party may call an adverse party . . ."). Second, the Fifth Amendment to the United States Constitution does not bar a defendant from testifying for a plaintiff at trial. Instead, it

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[11] Notably, Smith does not contend that any of this information constitutes newly discovered evidence under Mass. R. Civ. P. 60(b)(2).

[12] It is immaterial whether Smith claims this was misconduct by plaintiff's counsel, a failing by her own counsel, or an error by the court to act sua sponte.

allows a defendant not to testify in a civil case if doing so would tend to incriminate her with respect to criminal wrongdoing; and it generally would allow a fact-finder in a civil dispute to draw an adverse inference against the defendant who so fails to testify. See, e.g., Lentz v. Metropolitan Prop. & Cas. Ins. Co., 437 Mass. 23, 26 (2002). Here, Smith does not provide any evidence to suggest that her testimony would tend to incriminate her in any criminal conduct. She simply has not shown any valid Fifth Amendment right not to testify.

Smith argues plaintiff's former counsel, Karen Bigley, testified as a witness for plaintiff, while acting as an advocate for plaintiff during the trial in violation of an attorney's ethical obligations. See Mass. R. Prof. Cond. 3.7(a) (generally "lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness").[13] She argues Ms. Bigley was still plaintiff's lawyer during the trial because she took notes in the courtroom and was "sharing with Plaintiff." Mem. at 6, 9, 15. The argument that Ms. Bigley was plaintiff's advocate is factually unsupportable and does not justify relief. First, Ms. Bigley, who represented French before the ASA, did not act as plaintiff's advocate in this case. At trial, plaintiff was represented by Ann Pinheiro, as he was since 2013 when the case was filed. Ms. Bigley did not file an appearance in the case. She made no statements to the jury (other than as a witness, testifying largely about her familiarity with French and the ASA process), did not interrogate any witnesses, or otherwise represent plaintiff before the Court. Notetaking, and talking with plaintiff, does not constitute lawyering. Ms. Bigley simply did not act as an advocate in this case. Nothing in the ethical rules barred Ms. Bigley, as plaintiff's former counsel, from testifying at trial. Nor has Smith demonstrated any reason to set aside the verdict even if a violation of the attorney ethical rules

[13] Although Smith also cites to Mass. R. Prof. Cond. 1.9(b)(2), (c)(1), and (c)(2), Mem. at 6, she provides no facts or argument to suggest that Ms. Bigley previously represented anyone involved in the case other than French or that she transgressed any of these rules.

had occurred. She does not point to any way in which she was adversely impacted by Ms. Bigley's conduct during the trial.

Smith seeks a new trial under Rule 60(b)(3) with the argument that plaintiff's counsel misled the court related to the motion to dismiss for improper venue, including by citing to G.L. c. 223, § 13, and G.L. c. 260, § 32. Mem. at 10-13. From all appearances, the first statute is inapplicable to this case. It deals with cases where the court finds that a party "cannot, by reason of local prejudice or other cause, have an impartial trial in the county where the action or proceeding was commenced." G.L. c. 223, § 13. The second statute Smith says was cited in error, G.L. c. 260, § 32, relates to the way in which an action may be refiled after being dismissed.[14] As an initial matter, Smith argues that the statute is inapplicable because the action was not "duly commenced" within the time authorized under Chapter 260. This argument misconstrues what is required for tolling the statute of limitations. An action is commenced (and the limitations period tolled) upon filing; service need not be completed within the limitations period. See, e.g., Ahern v. Warner, 16 Mass. App. Ct. 223, 227 (1983). French filed this case in Suffolk Superior Court on August 23, 2013, which was within the three-year limitations period for tort actions. G.L. c. 260, § 2A. Even if the two statutes were inapplicable, the mere citation of a inapplicable statute does not constitute misconduct, nor does it render the court's decision to transfer venue unlawful or an abuse of discretion.

[14] G.L. c. 260, § 32, states: "If an action duly commenced within the time limited in this chapter is dismissed for insufficient service of process by reason of an unavoidable accident or of a default or neglect of the officer to whom such process is committed or is dismissed because of the death of a party or for any matter of form, or if, after judgment for the plaintiff, the judgment of any court is vacated or reversed, the plaintiff or any person claiming under him may commence a new action for the same cause within one year after the dismissal or other determination of the original action, or after the reversal of the judgment; and if the cause of action by law survives the executor or administrator or the heir or devisee of the plaintiff may commence such new action within said year."

More importantly, in opposition to the motion to dismiss, plaintiff argued far more than just citing the two statutes plaintiff claims are inapt, and Judge Fahey appears to have decided the motion to dismiss (and transferred the case to Norfolk) on other grounds. Even if there were merit to Smith's arguments, and I find that there is not, all of the arguments she advances were known or available to Smith and her counsel for the entirety of this litigation. Smith never asked Judge Fahey to reconsider her decision on defendants' venue motion. Moreover, the issue of an improper change of venue may be presented on appeal. It can hardly be said to "be of such a nature as to have prevented [Smith] from presenting the merits of h[er] case," Mass. R. Civ. P. 60, Reporter's Notes (1973), and is not a basis to set aside the jury's verdict under Rule 60(b)(3) for fraud or misconduct.

C. Alleged Judicial Errors

Smith argues her anti-SLAPP motion was denied improperly. Mem. at 2, 3. I have addressed this argument above. See, supra, at 8-10.

Smith argues that the Court erred in failing to provide the jury with a copy of the ASA decision confirming plaintiff's five-year suspension, which the jury requested during deliberations. She contends the ASA decision was part of the record with her anti-SLAPP motion, and therefore should have been provided to the jury in response to its inquiry. Mem. at 4-5. This argument misapprehends how evidence is admitted during a trial. Much information comes before the court prior to trial, which is never admitted during a trial. Only evidence admitted during the trial may be put before the jury. The ASA decision was not admitted at trial for good reason. There was no error in not providing the ASA decision to the jury on its request; indeed, it may have been reversible error to have given the decision to the jury.

Smith argues "defamation by implication" was not explained to the jury, and therefore the jury did not apply the law correctly to the question of whether the 2010 Letter was false and defamatory when it implied that Mr. French was responsible for "thousands of dollars of missing funds from the BayState Blaze organization." Mem. at 7. 14. See Verdict Slip at 1 (Docket #43.0) (Question 1A). Smith cites no law in Massachusetts suggesting any separate standard for a defamatory statement made by implication as opposed to one made directly. The jury was properly instructed on the applicable principles of law relevant to French's defamation claim. The jury could have reasonably found based on the preponderance of the evidence that the answer to Question 1A was "Yes."

D. Alleged Juror Errors

Smith argues at length that her intentions were good, that she had no doubt about the truth of the statements in the 2010 Letter, and that she had "a moral and civic duty" to safeguard the well-being of the young girls interacting with plaintiff. See Mem. at 5, 8, 9-10. This argument amounts to a claim that the jury got it wrong, or that the jury should have found defendants credible, should have found the statements in the 2010 Letter to be "opinions," should have concluded that those "opinions were protected under 1st amendment rights of free speech and right to petition," and should have found French did not suffer resulting damages. Mem. at 3, 5, 7, 8. I disagree. The jury was specifically instructed on the law regarding defamation and the distinction between statements of fact and opinion. The jury's decision finding certain statements to have been false and defamatory was sufficiently supported by the evidence.

Smith argues that the jury "misunderstood preponderance of the evidence." Mem. at 6. Smith does not argue that there was any error in the court's instructions on the standard of proof, and does not challenge the principle that "[j]uries are presumed to follow the judge's

instructions." Commonwealth v. Imbert, 479 Mass. 575, 587 (2018). Instead, Smith essentially argues the jury must have misunderstood the standard if it found against her.[15] Again, I disagree. There was nothing inconsistent in the jury's verdict, as Smith suggests at Mem. 5, 6, 8. The jury found that plaintiff had not proved false and defamatory the statement that plaintiff "said 'she could have raised $1,500 lying on her back for one hour,'" but found for plaintiff with respect to the statement that "Mr. French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner . . ." Compare Verdict Slip at 1, Questions 1B and 1C (Docket #43.0). There is nothing inconsistent between the first finding which relates to a statement as to a single person ("she"), and the finding as to the second, which relates to statements "on numerous occasions" and referring "to a lot of the girls in the organization."

Smith also complains that the jury did not "reach their decision by clear and convincing evidence" or find "actual malice." Mem. at 7, 8, 9. The "clear and convincing" standard does not apply in a civil tort case, including one for defamation against a private person. See, e.g. Massachusetts Superior Court Civil Jury Instructions § 6.2 at 6-2 (3d ed. 2018). Nor does malice have to be proved outside the context of statements about public officials.

ORDER

Pro Se Defendant, Michelle J. Smith's Motion for Relief from Judgment Pursuant to Mass.R.Civ.P. 60(b)(1)(3)(4)(6) (Docket #64.0) is **DENIED**. In light of this ruling, plaintiff's cross-motion to strike certain of defendant's exhibits is **DENIED as moot**.

Dated: September 18, 2019

Peter B. Krupp
Justice of the Superior Court

[15] Throughout her papers, Smith argues the evidence was insufficient to support the verdict. See, e.g., Mem. at 6-7, 8, 9, As I found in denying the motion for judgment notwithstanding the verdict, and as I have indicated above, there was sufficient evidence to support the verdict.

CLERK'S NOTICE	DOCKET NUMBER 1482CV00639	Trial Court of Massachusetts The Superior Court
CASE NAME: Martin D French vs. Michelle J Smith et al		Walter F. Timilty, Clerk of Courts
TO: Ann M Pinheiro, Esq. The Law Office of Ann Pinheiro, PC One State St Suite 1500 Boston, MA 02109		COURT NAME & ADDRESS Norfolk County Superior Court 650 High Street Dedham, MA 02026

You are hereby notified that on 07/24/2018 the following entry was made on the above referenced docket:

Endorsement on Motion for judgment not withstanding verdict (#44.0): After review, DENIED (dated 7/24/18) notice sent dl

Judge: Krupp, Hon. Peter B

DATE ISSUED	ASSOCIATE JUSTICE/ ASSISTANT CLERK	SESSION PHONE#
07/24/2018	Hon. Peter B Krupp	

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. SUPERIOR COURT
Civil No. 14-639

MARTIN D. FRENCH
Plaintiff

vs.

MICHELLE J. SMITH, KEVIN F. FALL, WILLIAM AMEEN, WILLIAM KAZANEK, JOSEPH KELLIHER, KELLY DICKERMAN, DAVID DICKERMAN, SEAN REED, JANET M. LAMBERT and SHARON M. HURLEY
Defendants

VERDICT SLIP

Defamation

1. Did Martin D. French prove by a preponderance of the evidence that any of the following statements in the August 24, 2010 letter were false and defamatory and of and concerning Mr. French?

   A. An implication that Mr. French was responsible for "thousands of dollars of missing funds from the BayState Blaze organization."

   Yes X No _____

   B. "Mr. French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner. He has stated with no basis that these girls will become 'strippers and pole dancers', he has said that a few of the 13 year old girls will be pregnant by age 16, he has said that a few of the girls 'are already walking the streets' doing unspeakable acts."

   Yes X No _____

   C. "Mr. French . . . said 'she could have raised $1,500 lying on her back for one hour.'"

   Yes _____ No X

   D. "Mr. French has also exposed himself, either knowingly or unknowingly, to a lot of girls in the organization as well as other coaches and parents."

   Yes X No _____

(If you answered "Yes" to Questions 1A, 1B, 1C or 1D, please proceed to Question 2. If you answered "No," to Questions 1A, 1B, 1C and 1D, please proceed to Question 6.)

2. Did Martin D. French prove by a preponderance of the evidence each element of the claim for defamation?

Yes X No _____

(If you answered "Yes" to Question 2, please proceed to Question 3. If you answered "No," please proceed to Question 4.)

3. What amount of money will fairly and reasonably compensate Martin D. French for the damages he sustained from the defamation you found in response to Question 2?

Amount in figures: $ 44,250.00

Amount in words: forty four thousand two hundred & fifty dollars.

(Please proceed to Question 4.)

Intentional Infliction of Emotional Distress

4. Did Martin D. French prove by a preponderance of the evidence each element of the claim for intentional infliction of emotional distress?

Yes X No _____

(If you answered "Yes" to Question 4, please proceed to Question 5. If you answered "No," please proceed to Question 6.)

5. What amount of money will fairly and reasonably compensate Martin D. French for the damages he sustained from the intentional infliction of emotional distress you found in response to Question 4?

Amount in figures: $ 25,000.00

Amount in words: twenty five thousand dollars only

(Please proceed to Question 6.)

Interference with Contractual or Prospective Advantageous Relations

6. Did Martin D. French prove by a preponderance of the evidence each element of the claim for interference with contractual or prospective advantageous relations?

Yes X No _____

(If you answered "Yes" to Question 6, please proceed to Question 7. If you answered "No," your deliberations are complete; please sign this document and inform the court.)

7. What amount of money will fairly and reasonably compensate Martin D. French for the damages he sustained from the interference with contractual or prospective advantageous relations you found in response to Question 6?

Amount in figures: $ 0.00

Amount in words: zero dollars

I certify that the above are the answers of at least 5/6 of the deliberating jury (6 out of 7).

Amy F. MacDonald
Foreperson

Date: 6/15/18

Time: 2:46 pm

Is the amount ($25,000) that you awarded in response to Question #5 included in or additional to the amount ($44,250) that you awarded in response to Question #3?

___ Included as part of the $44,250

X Additional to the $44,250

Amy F. MacDonald
Foreperson

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. SUPERIOR COURT
Civil No. 14-639

MARTIN D. FRENCH
Plaintiff

vs.

MICHELLE J. SMITH, KEVIN F. FALL, WILLIAM AMEEN, WILLIAM KAZANEK, JOSEPH KELLIHER, KELLY DICKERMAN, DAVID DICKERMAN, SEAN REED, JANET M. LAMBERT and SHARON M. HURLEY
Defendants

JURY INSTRUCTIONS

My instructions will be in three parts: (1) I will give you some instructions that apply to most civil jury cases; (2) I will instruct you about the law specific to this case, that is, what the plaintiff must prove to make his case; and (3) I will provide guidelines for your deliberations.

I. GENERAL INSTRUCTIONS

A. Role of the Participants

First, a reminder of our different roles. My job has been to see that this trial was conducted fairly. I ruled on what you may consider as evidence, and now I instruct you on the law. You must follow the law as I state it to you, whether you agree with it or not. You should consider my instructions as a whole. You may not ignore any instruction, or give special attention to any one instruction.

The lawyers' role is to present evidence to you. They also are supposed to object when the other side offers evidence that that lawyer believes was not admissible under our rules of evidence. You should not hold it against any party that an attorney objected to any question. Nor should you be influenced by my ruling on any objection.

Your function is to decide the fact issues in this case. You decide what evidence to believe and how important any evidence is that you do believe. You also decide what conclusions to draw from all the evidence.

You must fairly consider the evidence and decide the case based on the evidence. You must be completely fair and impartial, and may not be swayed by prejudice or sympathy, by bias or anger. As I told you during jury selection on Monday, everyone has feelings, assumptions, perceptions, fears and stereotypes that we may not be aware of that are sometimes referred to as "implicit biases." These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. You are not to decide the case based on "implicit biases." You must evaluate the evidence carefully to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. You must not be influenced by the nature of the claims or by personal likes or dislikes toward either side. The law demands that you return a just verdict based solely on your

evaluation of the evidence, your reason and common sense, and my legal instructions.

I have no opinion about how you should decide this case. If you believe I have an opinion about the facts of this case, you must disregard it.

B. What is Evidence

1. Forms of Evidence

To decide the fact issues in the case, you should consider all the evidence that was presented to you. But what exactly counts as evidence? Just three things:

1. The witnesses' answers to questions asked by the lawyers and presented to you here in court;
2. The exhibits, that is, the documents that I admitted; and
3. The factual stipulations of the parties, and as to the stipulations, you will take the stipulated facts as true.

Here are things that are not evidence:

1. Your guesses, suspicions, and gut-feelings are not evidence.
2. Any information that you heard about the case outside of the courtroom is not evidence.
3. My instructions to you and any other comments I made are not evidence.

4. Answers that I struck from the record or told you to disregard are not evidence.

5. The lawyers' opening and closing statements and any comments they may have made are not evidence.

6. Any item that was not admitted as an exhibit is not evidence.

7. Finally, any notes you took are not evidence. They are just an aid to your memory.

When you think about the evidence you have seen and heard, you must decide what to believe and how much weight to give it. When I refer to the weight of the evidence, I mean its importance or persuasive force. The law does not give witness testimony greater or lesser weight than exhibits.

As you try to remember what each witness said, your memory of it might be different from the lawyers' -- that is, what a lawyer might have said in closing argument. If this happens, you must follow your memory of the evidence.

2. <u>Direct and Circumstantial Evidence</u>

We can think about evidence in two other ways -- what we call direct and circumstantial evidence. When a witness testifies about something that he or she saw or heard, that is direct evidence. If a witness says she saw a mailman put mail in her mailbox, this is direct evidence that a mailman delivered her mail. With direct evidence, you have to decide if you find the witness' testimony credible.

The other type of evidence is called indirect or "circumstantial" evidence. If a witness says that she saw her mailbox empty when she left the house and full of mail when she came home, this is indirect evidence the mailman delivered mail. It is indirect because she did not actually see or hear him deliver it. You have to infer the mailman came from other information. With indirect evidence, you have to decide two things: (i) whether you find the witness' testimony credible, and (ii) whether you draw an inference from that testimony.

With indirect evidence, you can reach the same conclusion as with direct evidence, but you have to make an inference -- or draw a conclusion -- to get there. Many people think indirect evidence is weaker than direct evidence. This is not true. It makes no difference whether evidence is direct or indirect to establish the facts of a case. Both types of evidence can be used to prove a fact issue in dispute.

You may make an inference -- or draw a conclusion -- even if it is not necessary or inescapable, so long as it is reasonable and warranted by the evidence. Any inferences or conclusions you draw must be reasonable based on your common sense. If you need to use surmise, conjecture or guesswork to reach an inference, then you are prohibited from making the inference.

3. Assessing Witness Credibility

So how are you to analyze the evidence? In deciding a case, you have to decide which witnesses to believe – or to believe in part – and how much weight to

give their testimony. You may believe everything a witness said, some of it, or none of it.

You bring all your common sense to jury service. You should use it in evaluating the evidence. You may consider the probability or improbability of the witness' testimony. You may ask yourself whether the witness had a reason to lie or whether the witness could be affected by the outcome of the case and be influenced by that. Simply because a witness has an interest in the outcome of the case does not mean the witness is not trying to tell the truth as he/she recalls it, but a witness' interest in the case is a factor you may consider in deciding whether the witness is telling the truth. Sometimes it may be how a witness testifies that might give you a clue about whether to accept that witness' testimony.

You may also consider whether a witness made an earlier statement different from his/her in-court testimony. The earlier statement is admitted solely for you to evaluate the witness' credibility or believability. If you find that a witness' earlier statement is different from a statement the witness made in court, you may decide the witness' credibility or believability is or is not affected, but that is the only purpose for which you may use the earlier statement. You may not consider the earlier statement as proof of the truth of any fact in the earlier statement.

Inconsistencies in the testimony of a witness, or between different witnesses, may or may not cause you to discredit the testimony of one or more witnesses. But

remember, people may forget things or get confused or remember an event differently. In weighing such discrepancies, you should consider whether they involve important facts or only minor details.

You are not required to accept a witness' testimony even if that testimony is uncontradicted. You may decide such testimony is not worthy of belief because of the witness' bearing and demeanor, the inherent probability or improbability of his or her testimony, or for other reasons sufficient to you. Or, if you are satisfied that some or all of a witness' testimony was credible, you may accept that testimony and consider it, along with all of the other evidence.

C. **Burden of Proof**

Now I will talk about the burden of proof, that is, what the plaintiff must do to succeed in this case. Because this is a civil case, the plaintiff has the burden to prove his claim by a preponderance of the evidence. To establish a preponderance of the evidence means to prove that something is more likely so than not so; more likely true than not true. As I told you on Monday, the standard of proof beyond a reasonable doubt is a higher standard that applies only in criminal cases. It does not apply in a civil case like this one. Here, plaintiff must prove the elements of each of his claims by a preponderance of the evidence, that is, he must show that each element is more likely true than not true.

You have probably seen Lady Justice, holding the scales. The plaintiff must provide proof that is convincing enough to tip the scale, however slightly, toward the plaintiff's version of the facts in your eyes. For example, on any of plaintiff's claims, if the scale tips towards the plaintiff on the claim even a little bit, then he has proven the claim by a preponderance of the evidence. If, however, the scales remain exactly balanced, or tend toward the defendant's side at all, then the plaintiff has not proven the claim by a preponderance of evidence.

II. CASE-SPECIFIC INSTRUCTIONS

I will now turn to the instructions on the specific claims you must decide. The plaintiff, Martin French, brings claims against the defendants for defamation, intentional infliction of emotional distress, and interference with contractual or prospective advantageous relations. Each claim is brought against each of the defendants individually, but the parties agree as to each claim that if any one defendant is found liable, then all will be liable. I will now describe the elements of each claim.

A. Defamation

Mr. French brings a defamation claim against the defendants based on the letter of August 24, 2010, which was admitted as Exhibit 1. Specifically, he contends that the following statements in that letter were defamatory: (i) the implication that he was responsible for thousands of dollars of missing funds from

the Bay State Blaze organization; (ii) the statement that "Mr. French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner. He has stated with no basis that these girls will become 'strippers and pole dancers', he has said that a few of the 13 year old girls will be pregnant by age 16, he has said that a few of the girls 'are already walking the streets' doing unspeakable acts."; (iii) the statement that "Mr. French . . . said 'she could have raised $1,500 lying on her back for one hour.'"; and (iv) the statement that "Mr. French has also exposed himself, either knowingly or unknowingly, to a lot of girls in the organization as well as other coaches and parents."

To prove a claim for defamation, Mr. French must prove by a preponderance of the evidence each of the following three elements:

1. One or more of the defendants published a false and defamatory statement (or statements) of and concerning the plaintiff to a third party;
2. The defendant (a) knew that the statement was false; (b) acted in reckless disregard as to whether the statement was true or false; or (c) acted negligently in failing to ascertain whether the statement was true or false before publishing it and the statement was not conditionally privileged; and

3. The defamatory statement either caused the plaintiff economic loss or was of the type that is actionable without proof of economic loss.

I will instruct you on each of these elements.

As to the first element, to prove the statements were "published," the plaintiff must prove that a defendant communicated the statements to some third-party other than the plaintiff. There is no requirement that the statements be communicated to a large number of people. A person who republishes a defamatory statement without privilege is just as liable as if he had originally published it. The defendant need not be the actual person who publishes the statement. It is enough that the individual defendant made the statement with the intention that another person would publish the statement, and the statement was actually published by the other person.

A statement is "defamatory" if it tends to hold the plaintiff up to scorn, hatred, ridicule, or contempt – or otherwise discredits the plaintiff – in the minds of any considerable and respectable segment of the community. The statement can also be defamatory if it tends to so harm the reputation of the plaintiff as to lower him in the estimation of the community or to deter third persons from associating or dealing with the plaintiff. In making this determination, the statement must be interpreted in light of the totality of the circumstances in which it was made and

the common sense meaning that the statement generally conveys. Strained and unnatural interpretations of statements do not make a statement defamatory. As such, you should consider all of the words used, not merely a particular phrase or sentence. You may also consider whether individuals who read the statement interpreted it to be defamatory.

A statement is false if in substance it is not true. If you find that the defendant has proved to you by a preponderance of the evidence that the defamatory statements of and concerning the plaintiff are true or substantially true, then this constitutes an absolute defense and you must return a verdict for the defendant. A false statement is generally one that would have a different effect on the mind of the reader from that which the truth would have produced. As a result, minor inaccuracies do not constitute falsity if the substance or the gist of the statement is true.

Mr. French must also show that the defendant's statements were "of and concerning" him. Mr. French may show that the statement was "of and concerning" him by proving either: (1) the defendant intended his/her words to refer to the plaintiff and that they were so understood by a third person other than the plaintiff; or (2) the defendant's words could reasonably be interpreted to refer to the plaintiff, and the defendant was negligent in publishing the words in a way which could reasonably have been interpreted to refer to the plaintiff.

Defamatory statements of fact may be actionable, but pure opinions are not. The law does not allow recovery for merely stating one's opinion, regardless of how ridiculing, contemptuous, derogatory or unjustified the opinion may be. Under the First Amendment, there is no such thing as a false opinion.

You must decide whether the statement at issue is one of fact or opinion. In making this determination, you must examine the statement in the totality of the circumstances in which it was published. This includes whether the statement is verifiable; and the medium in which the statement appeared and the audience to which was directed. You must consider all of the words used, not merely a particular word, phrase or sentence. You should also consider any cautionary terms used by the defendant in publishing the statement. The context of the statement is important because a statement of fact in one context can be a statement of opinion in another.

For example, where potentially defamatory statements are published in a setting in which the audience may anticipate efforts by the parties to persuade others as to their position by the use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may be seen as statements of opinion. It is for you to decide if the statement can reasonably be construed as a statement of fact in light of all the circumstances.

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exchange of relevant information among those engaged in a common enterprise or activity and permit them to make appropriate internal communications and share consultations without fear of suit. A common interest does not encompass a general interest such as safety across an entire industry. The burden is on the defendants to prove by a preponderance of the evidence that any statements you find to have been false and defamatory were conditionally privileged.

If the defendants demonstrate their statements were conditionally privileged, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the conditional privilege was lost. A conditional privilege may be lost if the defendant abused the privilege by (1) engaging in an unnecessary, unreasonable, or excessive publication of the defamatory statement; (2) publishing the defamatory statement knowing it was false or with reckless disregard for its truth or falsity; or (3) publishing the defamatory statement with actual malice. "Malice" means the defamatory statement was not published in furtherance of the common interest which created the conditional privilege, but out of some base ulterior motive, intending to injure the plaintiff.

If you find the defendants' statements were conditionally privileged, and that the conditional privilege was not lost in any of the ways I have described, then you shall find for defendants on the defamation claim. If you find that no conditional

privilege existed, or that a conditional privilege applies but has been lost in one of the ways I have described, then you must consider the third element of damages.

As to the third element, Mr. French must prove by a preponderance of the evidence that the defamatory statement either caused him economic loss or was of the type that is actionable without proof of economic loss. Statements that are actionable as defamatory without proof of economic loss include statements that are false or defamatory that were made in writing, statements that charge a plaintiff with a crime, statements that allege a plaintiff has certain diseases, and statements that may prejudice a plaintiff's profession or business. If the defamatory statement falls into one of these categories, the plaintiff may recover non-economic losses.

If you find the plaintiff has proven each of these elements that I have described for you, Mr. French is entitled to recover money damages. The purpose of money damages is to compensate a plaintiff for the actual loss caused by the wrong of another. Thus, in order to obtain damages, Mr. French must prove to you by a preponderance of the evidence that he suffered actual injury as a result of the defendant's defamatory statement(s). Actual injury includes not only out-of-pocket loss, but also impairment to the plaintiff's reputation and standing in the community, emotional distress, personal humiliation, shame and disgrace, and mental suffering caused by the defamation.

If the plaintiff proves by a preponderance of the evidence that he suffered specific losses having an economic value, he is also entitled to recover for those additional special damages. Special damages may include the loss of an existing advantage, such as wages from a job, employment benefits, or business clients. It may also include loss of a future advantage, such as an inability to get a new job. The plaintiff must prove that the defamatory publication was a cause of these economic losses. In other words, the plaintiff must prove that but for the defamatory publication, the plaintiff would not have suffered these losses.

You may not award damages to the plaintiff to punish the defendant. You must consider what amount of money would be full, fair and reasonable based on all the evidence. As a result, you should award damages only for harm caused by the defendant's wrongful conduct, and damages should not be duplicative. The amount of damages should be based on just and reasonable inferences, even though there may be an element of uncertainty in your determination.

B. Intentional Infliction of Emotional Distress

Mr. French brings a claim of intentional infliction of emotional distress based on the distribution of defamatory statements in the letter of August 24, 2010. If Mr. French has failed to prove by a preponderance of the evidence that the August 24, 2010 letter contained defamatory statements, you will not reach this

claim. To prove a claim for intentional infliction of emotional distress, Mr. French must prove by a preponderance of the evidence the following four elements:

1. One or more of the defendants either intended to inflict emotional distress or knew or should have known that emotional distress was likely to result from the defendant's conduct;
2. The defendant's conduct was extreme and outrageous, was beyond all possible bounds of decency, and was utterly intolerable in a civilized society;
3. The defendant's conduct caused plaintiff emotional distress; and
4. Plaintiff's emotional distress was severe and of a nature that no reasonable person could be expected to endure it.

These elements are fairly clear, but a few warrant some explanation.

To prove the first element, Mr. French must prove that one or more of the defendants either acted with the desire or knowledge that emotional distress would result from their conduct or should have known that their conduct would cause Mr. French to suffer emotional distress.

"Extreme and outrageous" conduct is more than just workaday insults, hurt feelings from bad manners, annoyances, or petty oppressions. "Outrageousness"

means a high order of recklessness, ruthlessness or deliberate malevolence. As such, "extreme and outrageous" encompasses particularly reprehensible conduct. What is extreme and outrageous is for you to consider given all of the facts. For instance, outrageous behavior may be found by a repeated series of incidents, or a pattern of conduct, even if those incidents, when taken individually, might not be sufficiently extreme. Also, conduct otherwise reasonable may give rise to liability when it is directed at a person known to the speaker to be particularly susceptible to emotional distress because of some physical, emotional, or other vulnerability.

The defendant's conduct can be said to cause the plaintiff's emotional distress if the emotional distress would not have occurred absent the defendant's conduct. In other words, if the plaintiff's emotional distress would have happened anyway, the defendant is not liable. It is not necessary for the party bringing a claim for intentional infliction of emotional distress to prove that physical injury resulted from the severe emotional distress.

If you find the plaintiff has satisfied each element of the claim for intentional infliction of emotional distress, you must consider the issue of damages. Damages are awarded to provide the equivalent in money for the actual loss caused by the wrong of another. You must consider what amount of money would be full, fair and reasonable compensation for the emotional distress suffered based on all the evidence, no more and no less. The amount of damages should be based on just

and reasonable inferences, even though there may be an element of uncertainty in your determination.

C. Interference with Contractual or Prospective Advantageous Relations

Mr. French claims in this case that he had an existing contractual relationships with Massasoit Community College and with the Amateur Softball Association, and that he had prospective advantageous business relations with them and others; and that the defendants improperly interfered with their performance of their obligations under those contracts and interfered with Mr. French's prospective advantageous relations. To prevail on this claim, Mr. French must prove the following four elements by a preponderance of the evidence:

1. Plaintiff had a binding contract or a prospective business relationship with another entity;
2. One or more of the defendants knew about the contract or prospective business relationship, and intentionally induced or persuaded the other entity not to perform its obligations under that contract, or not to enter into or continue the prospective relationship, or prevented the plaintiff from acquiring or continuing the prospective relationship;
3. The defendant's interference with the other entity's performance of its obligations, or interference with plaintiff's

prospective business relationship, was improper in motive or in means; and

4. Plaintiff was harmed as a result.

The plaintiff must prove by a preponderance of the evidence that he and a third party had a valid contract in force and effect at the time of the actions complained of, which contract was breached by the third party due to the defendant's conduct; or that there were prior dealings between the plaintiff and a third party from which the plaintiff had a reasonable expectation of future economic benefit.

A contract is simply an agreement between two or more persons, called "parties," to do or not to do a certain thing for "consideration", or a thing of value. Mutual promises to do or not to do a certain thing in the future are sufficient consideration for each other. For example, an agreement to employ a person for a particular purpose at a particular salary or wage is a contract.

A contract may be oral or in writing. It may also be express or implied. An "express contract" is one actually stated or written in words. An implied contract is one which is not expressly stated but which, from the sense of the agreement as a whole, or the parties' actions, was intended by the parties to be a contract. A contract is considered to be in full force and effect if, at the time in question, the agreement was in effect between the parties.

To show the reasonable expectation of a "prospective business relationship," the plaintiff must show the expected benefit with some degree of specificity, demonstrating that it was a realistic expectation, but need not show reasonable expectation of future economic benefit with certainty because prospective things – that is, things to occur in the future – are necessarily uncertain. The law requires more than a mere hope or optimism; what is required is a reasonable likelihood or probability.

In determining whether a defendant acted improperly in interfering with any contractual relationship or prospective business relationship that the plaintiff enjoyed or reasonably expected, you should weigh both the defendant's motive and the means the defendant used to interfere. The plaintiff need only establish either improper means or improper motive, not both, to sustain a claim for intentional interference with contractual relations. In determining whether the motive or the means was improper, you may consider (i) the nature of the defendant's conduct, (ii) the defendant's motive, (iii) the interests of the third party with which the defendant's conduct interfered, (iv) the interests the defendant sought to advance, (v) the social interests in protecting the freedom of the defendant and the contractual interests of the other, (vi) the proximity or remoteness of the defendant's conduct to the interference, and (vii) the relation between the parties.

These factors are not determinative on their own and should be considered in light of the specific circumstances.

If you find for the plaintiff on this claim, you may award the plaintiff damages to compensate him for the profits or financial benefit he lost, if any, by reason of the defendant's conduct. In arriving at such a figure, you may consider the plaintiff's past earnings in his business, together with all other evidence concerning the general economic and competitive conditions that you find have a bearing on the issue of lost profits. Such damages must be proved by a preponderance of the evidence and may not be speculative in nature.

III. CLOSING INSTRUCTIONS

Now I am about to submit the case to you so let me say a few words about your deliberations. I know that I do not need to remind you that you have an important responsibility.

Because this is a civil case, you are not required to reach a unanimous verdict. All jurors need not agree. Whatever verdict you reach in this case must be agreed to by at least 5/6th of the jury, which in this case is at least 6 of the 7 of you. The same 6 jurors need not agree on each of the questions, but at least 6 of you must agree on each question to reach a verdict.

You will be given a verdict slip specifying the questions that you must answer. Each question must be considered separately. [verdict slip explained]

Your first job as a jury is to select a foreperson. The foreperson is a juror like all of you with the same voice and the same vote except that she or he will also act as a facilitator of your discussions and will speak for you in court. It will be the foreperson's responsibility to complete the verdict slip and to sign it once the jury has reached a verdict.

You should not start deliberations until you are all together in the jury room, and should stop deliberating if any juror is not present in the room. You should not communicate with anyone outside the jury room about the deliberations or about anything concerning this case. There is one exception: if it becomes necessary during your deliberations to communicate with me, you may send a note through the court officer to me, signed by the foreperson, listing the time of the note. I will consult with the attorneys regarding the appropriate response and will then respond back to you. If possible, while you are waiting, please continue your deliberations.

No member of the jury should try to communicate with me except through a signed note. If you do send me a note, do not disclose anything to me about the content of your deliberations. Specifically, do not disclose to me (or to anyone) how the jury stands, numerically or otherwise, until you have reached a verdict.

After you have reached a verdict, let the court officer know that you have done so and he will bring you into the courtroom to announce it.

Now before you begin to deliberate I want to say a final word to you about your process. I suggest you approach this task with mutual respect for your fellow jurors; that you listen to each other's views, and do not be afraid to change your opinion if the discussion persuades you that you should. At the same time, each of you must decide this case for yourself, so you should not surrender your honestly held conclusions simply to arrive at a verdict.

Jury deliberations are not the time to be shy. They are not the time to be overbearing. You have all heard the same evidence. You have all taken the same oath. Bear in mind that you are not partisans, and you are not advocates. You are the judges of the facts and that is a truly awesome responsibility.

Dated: June 15, 2017

Peter B. Krupp
Justice of the Superior Court

Denied.

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EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1482CV00639

MARTIN D. FRENCH,
PLAINTIFF

V.

MICHELLE J. SMITH, KEVIN F. FALL, WILLIAM AMEEN, WILLIAM KAZANEK, JOSEPH KELLIHER, KELLY DICKERMAN, DAVID DICKERMAN, SEAN REED, JANET M. LAMBERT, SHARON M. HURLEY, and JOHN/JANE DOE,
DEFENDANTS

RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY
10/19/17

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS SPECIAL MOTION TO DISMISS ALL COUNTS OF PLAINTIFF'S COMPLAINT PURSUANT TO THE ANTI-SLAPP STATUTE, G. L. c. 231, § 59H

This action arises out of complaints made by the defendants, a group of parents whose children play on the BayState Blaze softball team, against the team's coach, the plaintiff Martin French. The plaintiff brings claims for slander, intentional or reckless infliction of emotional distress, intentional interference with advantageous and contractual business relations, and interference with prospective business relationships. The matter is currently before the Court on the defendants' special motion to dismiss all claims alleged against them under the Massachusetts Anti-Strategic Litigation Against Public Participation (anti-SLAPP) statute, G. L. c. 231, § 59H, and for leave to file an affidavit for attorney's fees.

After a hearing, and for the reasons set forth below, the special motion to dismiss is **Denied**.

Legal Standard

The Massachusetts anti-SLAPP statute, G. L. c. 231, § 59H, is directed at "'meritless suits' that use litigation to 'intimidate opponents' exercise of rights of petitioning and speech." *Vittands* v. *Sudduth*, 49 Mass. App. Ct. 401, 413 (2000), quoting *Duracraft Corp.* v. *Holmes Products Corp.*, 427 Mass. 156, 161–64 (1998). To prevail on such a special motion to dismiss, the moving party "must make a threshold showing through pleadings and affidavits that the claims against it are based on the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities." *Fustolo* v. *Hollander*, 455 Mass. 861, 865 (2010). If the movant is able to make such a threshold showing, the burden shifts to the nonmoving party to show, "by a preponderance of the evidence, that the special movant's petitioning activity was devoid of any reasonable factual or legal support and that it caused the nonmoving party actual injury." *Cardno ChemRisk, LLC* v. *Foytlin*, 476 Mass. 479, 484 (2017). If the nonmoving party cannot make such a showing , it may still meet its burden and defeat the special motion to dismiss by demonstrating that each of its claims were not brought "to chill the special movant's legitimate petitioning activities" but rather to seek damages for personal harm caused by the movant's actions. *Blanchard* v. *Steward Carney Hospital, Inc.*, 477 Mass. 141, 160 (2017).

Factual Background

The following facts are alleged in the plaintiff's complaint. The plaintiff worked as a youth softball coach/trainer and manager of the Bay State Blaze Softball Organization, as a softball coach for Massasoit Community College (Massasoit), and as a private trainer in pitching for minors and adults. In August 2010, the defendants sent a letter to the Massachusetts Amateur

Softball Association (ASA) concerning the plaintiff. The letter stated that the parents had submitted a complaint to the Massachusetts Attorney General's Office concerning thousands of dollars of missing funds from the Bay State Blaze organization. Further, it detailed several occasions in which the plaintiff allegedly had made sexual remarks to the players on the team and had bullied them. A copy of the letter was also sent to Massasoit, to the National Softball Associations, and to the National Junior Athletic Association. As a result of the allegations made in the letter, the plaintiff lost his position as Massasoit as well as his other employment and volunteer positions coaching softball.

Ruling

The defendants contend that the letter they sent to the ASA and to other organizations about the plaintiff's interactions with the players on the team constitutes petitioning activity and therefore, that claims against them based on the letter are subject to dismissal under the anti-SLAPP statute. The plaintiff asserts that the special motion to dismiss should be denied because it is untimely.

A special motion to dismiss may be filed of a right under the anti-SLAPP statute within sixty days of the service of the challenged claims. See G. L. c. 231, § 59H. A court, however, has discretion under the statute to allow such a motion to be filed "at any later time upon terms it deems proper." *Id.* The purpose of § 59H is to permit anti-SLAPP suits to be "resolved quickly with minimum cost" by establishing "a procedural remedy for early dismissal." *Duracraft*, 427 Mass. at 161. Such a motion was designed to be heard before discovery is completed. *O'Gara v. St. Germain*, 91 Mass. App. Ct. 490, 494 (2017).

The defendants' anti-SLAPP motion was filed over three years after the plaintiff filed his complaint and after the close of discovery. Both parties have endured the expense of litigation over the last three years since this case was filed, and as such, the allowance of such a late motion in this case would not serve the policy underlying the statute. Nevertheless, the defendants argue that the Court should allow their late motion, contending that the Supreme Judicial Court's recent decision, *Cardno Chemrisk, LLC* v. *Foytlin*, 476 Mass. 479 (2017), changed the law by expanding the anti-SLAPP statute's scope of petitioning activities such that the letter now falls within the protected activity under the statute. The Court disagrees.

Petitioning activity under G. L. c. 231, § 59H, includes:

> [1] any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; [2] any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; [3] any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; [4] any statement reasonably likely to enlist public participation in an effort to effect such consideration; or [5] any other statement falling within constitutional protection of the right to petition government.

In *Cardno Chemrisk, LLC*, the Supreme Judicial Court considered whether a blog posting by environmental activists which criticized the past activities of a scientific consulting firm that had assessed the effects of an oil spill constituted petitioning activity under the statute. The Court, noting that the blog posting was intended to influence governmental bodies by increasing the amount and changing the tenor of coverage regarding the environmental consequences of the oil spill, ruled that it qualified as petitioning activity under the anti-SLAPP statute because it was a "statement reasonably likely to enlist public participation." *Id.* at 485-486; See G. L. c. 231,

§ 59H. Such an interpretation provided no fundamental change in governing law that would warrant a late filing in the factual circumstances at issue in the instant case.

Even if this Court were to consider this late-filed motion, it would fail on the merits. The letter to the ASA did not constitute petitioning activity alone because it was not made to influence, inform, or reach, either directly or indirectly, governmental bodies. See *Blanchard*, 477 Mass. at 149. The ASA and the other organizations the letter was sent to, including the plaintiff's employer Massasoit, are not legislative, executive, or judicial bodies and the letter was not submitted to effect consideration in any other governmental action. For that reason, the letter cannot properly be considered petitioning activity within the meaning of § 59H. See *Cardno Chemrisk, LLC, supra* at 485-486; *Blanchard*, 477 Mass. at 151-152 (e-mail message sent from hospital president to employees had no plausible nexus to hospital's efforts to sway a government licensing agency).

To the extent that the complaint to the Attorney General's Office regarding the finances of the Bay State Blaze could be considered apart and independently from the letter, it still would not be subject to dismissal under the anti-SLAPP statute. It is true that the defendants' complaint to the Attorney General's Office falls squarely within § 59H's definition of petitioning activity. However, under the anti-SLAPP statute, on the parties' submissions the plaintiff could still defeat the special motion to dismiss by showing that the petitioning activity was devoid of any reasonable factual or legal support and that it caused him actual injury. See *Fabre* v. *Walton*, 436 Mass. 517, 520 (2002); G. L. c. 231, § 59H ("the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based").

In this case, because of the timing of the anti-SLAPP motion, the parties have a fully amplified record. A review of the documents submitted shows, *inter alia*, that the corporate documents for the Bay State Blaze list only an individual named Melissa Kelleher as the agent and officer for the organization. Furthermore, in opposition to the motion, the plaintiff has submitted an affidavit that indicates that he had no involvement in any impropriety concerning the missing funds. It states that the plaintiff assisted Kelleher with the organization of the Bay State Blaze and that Kelleher herself opened a bank account for the organization. Bank documents in the record indicate that Kelleher was the sole signatory on that bank account and that the plaintiff had no authority to withdraw funds or to write checks from the account. Notably, the plaintiff also avers and documents in the record confirm that one of the defendants, Kevin Fall, himself performed accounting activities for the Bay State Blaze and had opened a bank account under his own name for depositing money collected from the players and from fundraising activities. In response, the defendants have produced no evidence which contradicts these statements. Cf. *Benoit* v. *Frederickson*, 454 Mass. 148, 154 n.7 (2009) (determining that petitioning activities had reasonable factual support where moving parties provided "evidence that, if believed, would support a finding in [their] favor"). Accordingly, the plaintiff has demonstrated that the defendants' petitioning activity directed to the Attorney General was devoid of reasonable factual or legal support. See *Vittandi*, 49 Mass. App. Ct. at 414–15 (non-moving party's affidavits demonstrated that she had obtained all the necessary permits before her neighbors commenced a declaratory action against her).

The plaintiff has also demonstrated that he has suffered actual injury. The plaintiff asserts in his affidavit that as a result of the defendants' accusations of harassment and financial

impropriety, he has lost his employment at Massasoit as well as another potential position at a high school and also his private coaching positions. The defendants have again put forward no evidence to contradict this assertion. See *id.* at 415. (non-moving party met burden of establishing actual injury by averring that she suffered both financial and personal injuries due to the neighbors' petitioning activity); *Gillette Co.* v. *Provost*, 91 Mass. App. Ct. 133, 139 (2017) (non-moving party showed actual injury by allegations in complaint of lost investors and distribution partners). Thus, the plaintiff has satisfied his burden under the anti-SLAPP statute to defeat the special motion to dismiss.

Order

For the foregoing reasons, it is hereby **ORDERED** that the Defendants' Special Motion to Dismiss (paper no. 24) is **DENIED**.

October 16, 2017

Thomas A. Connors
Justice of the Superior Court

I ATTEST THAT THIS DOCUMENT IS A CERTIFIED PHOTOCOPY OF AN ORIGINAL ON FILE.
Deputy Assistant Clerk
10/19/17

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT

~~CIVIL ACTION NO.: SUCV2013-03032~~

MARTIN D. FRENCH,
Plaintiff,

v.

MICHELLE J. SMITH, KEVIN F. FALL, WILLIAM AMEEN, WILLIAM KAZANEK, JOSEPH KELLIHER, KELLY DICKERMAN, DAVID DICKERMAN, SEAN REED, JANE M. LAMBERT, SHARON M. HURLEY, and JOHN/JANE DOE,

Notice sent
1/29/2014
A. P.
E. M. J.,JR.
N. & J.

(sc)

2013 OCT 30 PM 1:40

DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE

NOW COME the Defendants, Michelle J. Smith, Kevin F. Fall, William Ameen, William Kazanek, Joseph Kelliher, Kelly Dickerman, David Dickerman, Sean Reed, Jane M. Lambert, and Sharon M. Hurley, and hereby respectfully move this Honorable Court, pursuant to Mass.R.Civ.P. 12(b)(3), 365 Mass. 755 (1974), to dismiss this matter for improper venue. As grounds for this Motion, Defendants state that per M.G.L. c. 223, §1 venue is improper in Suffolk Superior Court as none of the parties in this "transitory action...lives or has their usual place of business" in Suffolk County.

In further support of this Motion, the Defendants attach their Memorandum of Law.

App 69

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT 13-3032 B
CIVIL ACTION

Martin D. French,
Plaintiff,

V.

Michelle J. Smith, Kevin F. Fall,
William Ameen, William Kazanek,
Joseph Kelliher, Kelly Dickerman,
David Dickerman, Sean Reed,
Janet M Lambert, Sharon M. Hurley,
And John/Jane Doe
Defendants.

COMPLAINT

PARTIES

1. Plaintiff, Martin French at all times relevant was a resident of Rockland, Plymouth County, Massachusetts.

2. Defendant Michelle J. Smith (herein known as "Smith"), upon information and belief was a resident of Kingston, Plymouth County, Massachusetts at all times relevant.

3. Defendant Kevin F. Fall (herein known as "Fall"), upon information and belief was a resident of Weymouth, Plymouth County, Massachusetts at all times relevant.

4. Defendant William Ameen (herein known as "Ameen"), upon information and belief was a resident of Brockton, Plymouth County, Massachusetts at all times relevant.

5. Defendant William Kaszanek (herein known as "Kaszanek"), upon information and belief was a resident of East Bridgewater, Plymouth County, Massachusetts at all times relevant.

Plaintiff's motion for reconsideration of denied on the record. At the conclusion of all evidence defendants' renewed oral motion for directed verdict heard and reserved until after the jury returns a verdict.

6. Defendant Joseph Kelliher, (herein known as "Kelliher"), upon information and belief was a resident of Quincy, Norfolk County, Massachusetts at all times relevant.

7. Defendant David Dickerman, (herein known as "D. Dickerman"), upon information and belief was a resident of Kingston, Plymouth County, Massachusetts at all times relevant.

8. Defendant Kelly Dickerman, (herein known as "K. Dickerman"), upon information and belief was a resident of Kingston, Plymouth County, Massachusetts at all times relevant.

9. Defendant Sean Reed, (herein known as "Reed"), upon information and belief, was a resident of Kingston, Plymouth County, Massachusetts at all times relevant.

10. Janet M Lambert, (herein known as "Lambert"), upon information and belief, was a resident of Brockton, Plymouth County, Massachusetts at all times relevant.

11. Sharon M. Hurley, (herein known as "Lambert"), upon information and belief was a resident of Kingston, Plymouth County, Massachusetts at all times relevant.

12. The true names of defendant "DOES" are unknown to plaintiff who consequently sue such defendant by said fictitious names at this time. Plaintiff sues those defendants by such fictitious names Plaintiff will seek leave to amend their Complaint to state Defendants true names when such have been ascertained. At all times mentioned herein, said Defendants were

FACTS

13. Plaintiff had worked and volunteered as a Softball Coach for approximately 30 years.

14. Plaintiff has at all time enjoyed a good reputation, both generally and as a Softball Coach/Trainer and Manager/Coordinator of the Bay State Blaze Softball Organization.

15. Plaintiff was not an Officer of any youth softball organization or the Bay State Blaze, Inc. in 2010.

16. Plaintiff was gainfully employed by Massasoit Community College as its softball coach.

17. Plaintiff was employed as a training coach for minors and adults in the field of Softball and pitching.

18. Plaintiff was a volunteer coach and trainer for softball teams.

19. On or about August 24, 2010, Defendants published false and defamatory rumors to third parties including the Office of the Attorney General, Plaintiff's employer, Massasoit

Community College, to Massachusetts Amateur Softball Association, National Softball Associations, and National Junior College Athletic Association, which Plaintiff had been a member in good standing (See Attached Exhibit A).

20. Plaintiff lost his position at Massasoit Community College, lost all volunteer coaching/training positions, and lost his pitching instructional program.

COUNT I

SLANDER PER SE – INJURY TO PERSONAL REPUTATION

21. Paragraphs 1 through 18 of the Complaint are hereby incorporated by reference as if set forth fully herein.

22. The statements by defendants concerned the plaintiff and the statements were false.

23. The letter published by defendants referred to plaintiff by name throughout, was made of and concerning plaintiff, and was so understood by those who read the letter.

24. The letter (Annexed Exhibit A) is libelous on its face. It clearly exposes plaintiff to scorn, hatred, ridicule or contempt because it charges plaintiff with exposing himself to minors

25. The letter states in part, "We have already filed a complaint with the Massachusetts Attorney General's office concerning thousands of dollars of missing funds from the Bay State Blaze organization. Mr. French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner... a 52 year old man should not be thinking of any girl in this way but especially a 14 year old...It is completely lewd and inappropriate. Mr. French also exposed himself, either knowingly or unknowingly, to a lot of girls in the organization as well as other coaches and parents..."

26. The above written statements are an assertion of facts, not opinions.

27. The letter signed by defendants was seen and read on or about August 24, 2010 by John Federici, Brad Tittrington, John Brooks and Joseph Alfonse; by persons at the Office of the Attorney General; by persons at Massasoit Community College; and collegues of the plaintiff.

28. As a direct and proximate result of the above-described publication, plaintiff suffered the loss of his reputation in the community, shame, mortification, injury to mind, body, nerves and nervous system, endured and will in the future endure extreme mental pain and suffering, emotional distress, loss of employment, loss of earnings, and loss of earning capacity.

29. WHEREFORE, plaintiff Martin French demand judgment against defendants in a sum exceeding the jurisdictional minimum of this Court, exclusive of interest and costs and whatever and further relief this Court or jury deems just.

COUNT II

INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS

30. Paragraphs 1 through 18 and Count I of the complaint are hereby incorporated by reference as if set forth fully herein.

31. Defendants' statements and publication of the attached letter were extreme and outrageous.

32. Defendants knew and intended that plaintiff would suffer severe emotional distress as a result of their statements and publication.

33. Defendants' statements were intentional and malicious. In the alternative, they were negligent.

34. As a result of defendants' extreme and outrageous conduct, Martin French was, is, and, with a high degree of likelihood, will continue to be emotionally distressed due to defendants' defamation of him.

35. As a result of defendants' extreme and outrageous conduct, Mr. French has suffered and will continue to suffer mental pain and anguish, severe emotional trauma, embarrassment, and humiliation.

36. The defendants' actions were done intentionally and recklessly, and their conduct was extreme and outrageous and beyond all bounds of decency, excuse or justification and therefore, the defendant knew or should have known that such conduct would, and in fact did, cause Mr. French emotional distress.

37. As a direct and proximate result of the above-described publication, plaintiff suffered the loss of his reputation in the community, shame, mortification, injury to mind, body, nerves and nervous system, endured and will in the future endure extreme mental pain and suffering, emotional distress, loss of employment and loss of earning capacity.

38. WHEREFORE, plaintiff Martin French demand judgment against defendants in a sum exceeding the jurisdictional minimum of this Court, exclusive of interest and costs and whatever and further relief this Court or jury deems just.

COUNT III

INTENTIONAL INTERFERENCE WITH ADVENTAGEOUS AND CONTRACTUAL BUSINESS RELATIONS

39. Paragraphs 1 through 18 and Count I & Count II of the complaint are hereby incorporated by reference as if set forth fully herein.

40. Martin French had an advantageous business relationship with Massasoit Community College, volunteer softball organizations and softball training and pitching instructional program.

41. Defendants knew that plaintiff was an employee of Massasoit Community College and an active volunteer coach and trainer in the sport of Softball.

42. Defendants with improper motive and/or through the use of improper means, intentionally interfered with Martin French's advantageous/contractual relationship with Massasoit Community College and volunteer softball organizations.

43. As a direct and proximate result of the above-described publication, plaintiff suffered the loss of his reputation in the community, shame, mortification, injury to mind, body, nerves and nervous system, endured and will in the future endure extreme mental pain and suffering, emotional distress, loss of employment and loss of earning capacity.

44. As a direct and proximate result of the above-described publication, plaintiff suffered and continues to suffer loss of income, loss of benefits, loss of personal and professional reputation, loss of professional opportunities and other losses.

45. WHEREFORE, plaintiff Martin French demand judgment against defendants in a sum exceeding the jurisdictional minimum of this Court, exclusive of interest and costs and whatever and further relief this Court or jury deems just.

COUNT IV

INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

46. Paragraphs 1 through 18 and Count I, Count II & Count III of the complaint are hereby incorporated by reference as if set forth fully herein.

47. Martin French had an advantageous business relationship with Massasoit Community

College, volunteer softball organizations and softball training and pitching instructional program.

48. Defendants knew that plaintiff was an employee of Massasoit Community College, an active volunteer coach and trainer in the sport of Softball.

49. Defendants with improper motive and/or through the use of improper means, intentionally interfered with Martin French's advantageous/contractual relationship with Massasoit Community College and volunteer softball organizations.

50. As a direct and proximate result of the above-described publication, plaintiff suffered the loss of his reputation in the community, shame, mortification, injury to mind, body, nerves and nervous system, endured and will in the future endure extreme mental pain and suffering, emotional distress, loss of employment and loss of earning capacity.

51. As a direct and proximate result of the above-described publication, plaintiff suffered and continues to suffer loss of income, loss of benefits, loss of personal and professional reputation, loss of professional opportunities and other losses including emotional distress and mental suffering.

52. WHEREFORE, plaintiff Martin French demand judgment against defendants in a sum exceeding the jurisdictional minimum of this Court, exclusive of interest and costs and whatever and further relief this Court or jury deems just.

PLAINTIFF DEMANDS TRIAL BY JUDGE,
ON ALL COUNTS OF THIS COMPLAINT

Respectfully submitted,
MARTIN FRENCH
By his attorney,

Ann Pinheiro, Esq. (BBO #667154)
The Law Office of Ann Pinheiro, PC
6 Pleasant Street
Taunton, MA 02780
Tel: 781-888-0307
Fax: 401-725-2223
apinheiro@verizon.net

Dated: August 21, 2013

EXHIBIT C

August 24, 2010

MA – ASA Softball
265 Winn St. Suite 303
Burlington, MA 01803

RE: complaint against softball coach, Martin French

To Whom it May Concern,

We would like to file a complaint against softball coach, Martin French. He is the head softball coach for Massasoit Community College in Brockton, MA, he is the assistant softball coach for Weymouth High School, Weymouth, MA, and he is the director of the BayState Blaze, AAU softball organization as well as the U16 head coach for this organization. The BayState Blaze Organization is registered with the ASA and as a registered team we would appreciate to have the ASA address and take action in this matter.

We are a group of concerned parents from the BayState Blaze organization. We have already filed a complaint with the Massachusetts Attorney General's office concerning thousands of dollars of missing funds from the BayState Blaze organization. The complaint that we would like to have on record with your Association is that of serious misconduct by Martin French. His organization, The BayState Blaze, consists of girls ages 12-17. Mr French has on numerous occasions referred to a lot of the girls in the organization in a sexual manner. He has stated with no basis that these girls will become "strippers and pole dancers", he has said that a few of the 13 year old girls will be pregnant by age 16, he has said that a few of the girls "are already walking the streets" doing unspeakable acts. He is a 52 year old man who should not be thinking of girls in his organization in this way. The most disturbing comment was about a 14 year old girl. This girl had raised $1,000 with 3 other girls for a tournament that they were participating in. When the money was given to Mr. French and he was told who got credit for the money, he singled out this particular girl and said " she could have raised $1,500 lying on her back for one hour." This is complete filth and a 52 year old man should not be thinking of any girl in this way but especially a 14 year old. It is completely lewd and inappropriate. Mr. French has also exposed himself, either knowingly or unknowingly, to a lot of girls in the organization as well as other coaches and parents. Regardless if he knew or not, when you are a person of authority in any situation you take the appropriate precautions to ensure that you are not exposed. Martin French also uses his position as the girls coach to intimidate and bully them to stay with him. He has told a number of girls and their parents that if they leave the Blaze organization "the girls' softball careers will be over..they will never play with another organization or in college and he will make sure of it." He is a classic bully who unfortunately has had the platform to exercise these unsavory traits. He needs to be stopped for the safety of all of these girls and future girls who just want to play softball!

Please look into this very unfortunate situation.

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Thank you for your time and consideration.

EXHIBIT C

Sincerely,

The undersigned parents of Baystate Blaze softball players.

Michelle J. Smith 781-953-7682 parent 14U/16U

Kristi L. Faul - Coach 12U/parent

Brian Amen 508.217.8738 Coach 14U/parent

Coach 12U/parent

Susan M. Hall parent 16U

J. F. Kelleher parent 14U

Janet Pankhurst parent 16U

Kelly Puckerman parent 16U

David Puckerman parent 16U

Sanford coach 14U/parent

Contact Information: 40 High Pines Dr.
Kingston, MA 02364
(781) 953-7682

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Evidence

MASS. ASA SOFTBALL

Mass. ASA Softball
265 Winn St. Suite 303
Burlington, MA 01803

THE NATIONAL GOVERNING BODY OF SOFTBALL

September 14, 2010

Mrs. Michelle Smith
40 High Pines Dr.
Kingston, MA 02364

Mrs. Smith,

We are in receipt of your letter of complaint regarding Mr. Martin French. The ASA National Office has also received the copy you have mailed to them as well. In speaking with the Executive Director of the ASA, we have one small problem with your letter prior to taking action; you have not specifically identified the ASA as one of the organizations to which the Blaze belongs.

Have no question, the Blaze IS registered, but for us to address this issue, your letter must state you're asking the ASA to take action because you're a registered team. It's quite alright that you mentioned the AAU, High School, and College, but we can only proceed on your addressing the ASA specifically.

Any questions please contact the undersigned at 1-800-931-6148 ext. 501.

Respectfully,

Joe Alfonse
Commissioner
Mass. ASA Softball

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Mass. ASA Softball
265 Winn St. Suite 303
Burlington, MA 01803

THE NATIONAL GOVERNING BODY OF SOFTBALL

October 6th, 2010

Dear Ms. Smith:

You (along with your other signatories) have requested that the ASA take action against Mr. Martin French for listed complaints. In following the ASA code (found online at http://www.asasoftball.com/about/asa_code.asp), we have scheduled a hearing on October 13th 2010 at 7:00p.m at the address listed above.

This hearing will only concern the issue of whether Mr. French will be permitted to continue to participate in ASA activities.

The hearing panel will hear from any person who chooses to provide information concerning the general issues raised by the Complainants.

You, the other signatories, and any witnesses you choose to bring will have the opportunity to present testimony when called upon during the hearing. You (et al) will have the opportunity to have your legal counsel present, if you so choose.

The hearing will be closed to the public. The only people allowed to hear testimony will be Mr. French (and counsel if he so chooses), the hearing panel, myself, and any person who is, at the time, providing information as a witness to the hearing panel.

Witnesses will attend the hearing only during the times they are providing information to the hearing panel.

The Complainants will put forth their witnesses first. Each witness will provide whatever information he/she desires to the hearing panel, then the hearing panel will have an opportunity to ask questions of the witness, and then Mr. French (or counsel) will have an opportunity to ask questions of the witness.

A decision will not be rendered immediately. You will be notified within 14 days after the hearing.

Sincerely,

Joe Alfonse
Commissioner
Mass. ASA Softball

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Mass. ASA Softball
265 Winn St. Suite 303
Burlington, MA 01803

THE NATIONAL GOVERNING BODY OF SOFTBALL

End

3 November 2010

Mr. Martin French
35 Tralfagar Ct.
S. Weymouth, MA 02190

Mr. French,

After conducting a hearing on October 26, 2010 (in which you were present) and allowing 7 days for further documentation from both you and the complainants, the panel has reconvened this date and reached the following ruling:

That effective this date, you are hereby suspended from all ASA activities for a period of five (5) years ending 2 November 2015.

You were found in violation of the following ASA Code items:

Article(s) 505 A 6 and A 7.

Most specifically in regards to these violations, the board has found that you have acted in conflict with:

Article 103 (D) " ... establish principles for ethical behavior and matters ..."
Article 104 (E) "Shall take seriously their responsibility as a role model and encourage competitiveness in a positive manner."

Testimony from the complainants as well as you was considered in making this decision in regards to all of the facts mentioned below.

In reaching its determination, the panel considered the following as significant facts put forth before the hearing panel;

a. You have admitted to refusing to provide financial information to team parents.
b. You have admitted to making degrading comments regarding one of your youth players in front of other players. To quote: "There's your all-star" upon watching an error in the outfield.
c. You have admitted to smoking in front of the youth players on your team whether around the bench as well as in a team van during a tournament.
d. You have admitted to arguing with parents when youth players were nearby in a manner contrary to what is considered a role model.

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e. You have admitted sending text messages to your youth players without parent's approval to contact the players using this manner.

f. You have admitted to keeping as part of your program coaches working for you that were not keeping the best interests of the ASA in mind. The board does acknowledge that you did remove these coaches at later times during the season, but feels it should have been handled much sooner.

g. You have provided conflicting information in regards to who actually was running the Blaze program, starting with you were the sole owner, to co-owner, then finding out that a third party was the sole person listed on the filed documentation with the State of Mass.

Whereas the panel has imposed this 5 year suspension you have the right to appeal in accordance with Article 505B(5) of the ASA code. As stated in said paragraph, you have fourteen (14) days to appeal in writing to the Executive Director or their designee, whose decision shall be final. The Executive Director must render a decision on any appeal within fourteen (14) days.

If you have any questions as to how to submit your appeal, please feel free to contact the undersigned. Please be aware though, that now that this decision has been made, the appeal authority is now in the hands solely of the Executive Director or their designee.

Respectfully submitted:

Joseph Alfonse
Commissioner
Mass. ASA Softball

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THE NATIONAL GOVERNING BODY
OF SOFTBALL

AMATEUR SOFTBALL ASSOCIATION • USA SOFTBALL
2801 N.E. 50th Street, Oklahoma City, OK 73111-7203 Phone: (405) 424-5266 Fax: (405) 424-3855
asasoftball.com • usasoftball.com • officialgear.com • softballoutlet.com

December 1, 2010

Karen Semier Bigley
38 Comfort St.
Bridgewater, MA 02324

Re: Appeal – Martin French

Dear Ms. Bigley:

As Executive Director of ASA, I have carefully considered the appeal presented on behalf of Martin French from his suspension for five years from ASA by the Massachusetts ASA Hearing Panel. It appears that proper notice and due process were given to Mr. French by Massachusetts ASA. While there appears to be a dispute regarding some of the facts, there is no basis to overturn the decision made. Therefore, the decision of Massachusetts ASA is affirmed.

This decision does not affect Mr. French in any area other than in connection with participation in ASA for the next five years. ASA has not disclosed the complaint that gave rise to this action to anyone outside the ASA offices.

Sincerely,

RON RADIGONDA
Executive Director,
Amateur Softball Association of America

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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

May 4, 2010

Melissa Kelleher, President
Bay State Blaze, Inc.
68 Hansuff Street Rear
Rockland, MA 02370

COPY

Dear Ms. Kelleher:

The Division of Public Charities ("Division") has received information that Bay State Blaze, Inc. is currently engaging in charitable work and raising funds in the Commonwealth.

Under M.G.L. c. 12 § 8F, a public charity is required to register with the Division *before* engaging in charitable work or raising funds in Massachusetts. As a nonprofit organization with a charitable mission (to "put forth a quality fast-pitch softball program for girls and young women...") that benefits the general public, Bay State Blaze, Inc. is deemed a public charity under Massachusetts law. A search of our database shows no registration for your organization.

Because your organization is not registered with the Division and not in compliance with Massachusetts law, Bay State Blaze, Inc. is not in possession of a certificate for solicitation and is not legally permitted to raise funds in the Commonwealth. You must cease and desist any and all fundraising activity in Massachusetts immediately.

In order to come into compliance with Massachusetts law and to be issued a certificate for solicitation, you must send to the Division the following items:

- A copy of your articles of incorporation;
- A copy of your by-laws;
- Names and addresses of your current board members;
- A copy of any tax-exempt determination letter issued by the IRS;
- Short Form PC and $50 registration fee.

Your organization is subject to the annual financial reporting requirements of M.G.L. c. 12 § 8F. Annual reports consist of Form PC, Form 990 or 990EZ, and a filing fee based on total revenue as specified in that statute. If your income exceeds certain thresholds, a reviewed or an audited financial statement prepared by an independent certified public accountant is also required.

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Green, Jonathan (AGO)

From: Melissa Kelleher [melissa.kelleher@gmail.com]
Sent: Tuesday, October 04 2011 6:12 PM
To: Green, Jonathan (AGO)
Subject: Re: Bay State Blaze

Hello Jonathan,
My apologies for not being in touch by phone, I do not have any missed calls - please feel free to give me a call at 774-219-2464 on my cell phone. I would be glad to discuss the Blaze with you. As it is, the organization is actually no longer in operation & my accountant whom I was working with actually passed away in April. Perhaps you can help me with any logistics thus forth.
Also, I do know that it has come to my attention that a parent of the organization opened a bank account & what not using the Blaze name, perhaps you can help me make sure that his accounts are seperate from the organizations? The accounts he opened were not authorized accounts of the Blaze and were opened using his personal social security number and not the tax ID I secured.
I am working tonight until 9pm and tomorrow (Wednesday 10/5) from 1pm-9pm. Let me know the best way to be in touch!
Thank you,
Melissa Kelleher

On Oct 4, 2011 4:28 PM, "Green, Jonathan (AGO)" <jonathan.green@state.ma.us> wrote:
> Ms. Kelleher:
>
> I have tried to reach you by phone regarding the Bay State Blaze, a public charity of which you are the President and Treasurer. Please get in touch with me as soon as possible. My contact information is below.
>
> Sincerely,
>
> Jonathan C. Green
> Assistant Attorney General
> Office of the Attorney General
> Non-Profit Organizations/
> Public Charities Division
> One Ashburton Place
> Boston, MA 02108
> Phone: 617-963-2919
> Fax: 617-727-2920
> www.mass.gov/ago <http://www.mass.gov/ago>

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S.534 - Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017

115th Congress (2017-2018)

Sponsor: Sen. Feinstein, Dianne [D-CA] (Introduced 03/06/2017)
Committees: Senate - Judiciary
Latest Action: 02/14/2018 Became Public Law No: 115-126. (TXT | PDF) (All Actions)
Roll Call Votes: There has been 1 roll call vote
Tracker: Introduced Passed Senate Passed House Resolving Differences To President **Became Law**

There are 6 versions: Public Law (02/14/2018)

Text available as:

TXT

PDF

Shown Here:
Public Law No: 115-126 (02/14/2018)

[115th Congress Public Law 126]
[From the U.S. Government Publishing Office]

[[Page 317]]

PROTECTING YOUNG VICTIMS FROM

SEXUAL ABUSE AND SAFE SPORT

AUTHORIZATION ACT OF 2017

[[Page 132 STAT. 318]]

Public Law 115-126
115th Congress

An Act

To prevent the sexual abuse of minors and amateur athletes by requiring the prompt reporting of sexual abuse to law enforcement authorities, and for other purposes. <<NOTE: Feb. 14, 2018 - [S. 534]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017.>>

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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(a) <<NOTE: 36 USC 101 note.>> Short Title.--This Act may be cited as the ``Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017''.

(b) Table of Contents.--The table of contents of this Act is as follows:

TITLE I--PROTECTING YOUNG VICTIMS FROM SEXUAL ABUSE

SEC. 101. REQUIRED REPORTING OF CHILD AND SEXUAL ABUSE.

(a) Reporting Requirement.--Section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341) is amended--

(1) in subsection (a)--

(A) by striking ``A person who'' and inserting the following:

``(1) Covered professionals.--A person who''; and

(B) by adding at the end the following:

``(2) Covered individuals.--A covered individual who learns of facts that give reason to suspect that a child has suffered an incident of child abuse, including sexual abuse, shall as soon as possible make a report of the suspected abuse to the agency designated by the Attorney General under subsection (d).'';

(2) in subsection (b), in the matter preceding paragraph (1), by striking ``subsection (a)'' and inserting ``subsection (a)(1)'';

(3) in subsection (c)--

(A) in paragraph (7), by striking ``and'' at the end;

(B) in paragraph (8), by striking the period at the end and inserting a semicolon; and

(C) <<NOTE: Definitions.>> by adding at the end the following:

``(9) the term `covered individual' means an adult who is authorized, by a national governing body, a member of a national governing body, or an amateur sports organization that participates in interstate or international amateur athletic competition, to interact with a minor or amateur athlete at an amateur sports organization facility or at any event sanctioned by a national governing body, a member of a national governing body, or such an amateur sports organization;

``(10) the term `event' includes travel, lodging, practice,

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competition, and health or medical treatment;
``(11) the terms `amateur athlete', `amateur athletic competition', `amateur sports organization', `international amateur athletic competition', and `national governing body' have the meanings given the terms in section 220501(b) of title 36, United States Code; and
``(12) the term `as soon as possible' means within a 24-hour period.'';
(4) in subsection (d), in the first sentence, by inserting ``and for all covered individuals'' after ``reside'';
(5) in subsection (f), in the first sentence--
(A) by striking ``and on all'' and inserting ``on all''; and
(B) by inserting ``and for all covered individuals,'' after ``lands,'';
(6) in subsection (h), by inserting ``and all covered individuals,'' after ``facilities,''; and
(7) by adding at the end the following:

``(i) Rule of Construction.--Nothing in this section shall be construed to require a victim of child abuse to self-report the abuse.''.

(b) Penalty for Failure To Report.--Section 2258 of title 18, United States Code, is amended by inserting ``or a covered individual as described in subsection (a)(2) of such section 226 who,'' after ``facility,''.

SEC. 102. CIVIL REMEDY FOR PERSONAL INJURIES.

Section 2255 of title 18, United States Code, is amended--
(1) by striking subsection (a) and inserting the following:

``(a) In General.--Any person who, while a minor, was a victim of a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains or liquidated damages in the amount of $150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred. The court may also award punitive damages and such other preliminary and equitable relief as the court determines to be appropriate.'';

(2) <<NOTE: Deadlines.>> in subsection (b), by striking ``filed within'' and all that follows through the end and inserting the following: ``filed--
``(1) not later than 10 years after the date on which the plaintiff reasonably discovers the later of--
``(A) the violation that forms the basis for the claim; or
``(B) the injury that forms the basis for the claim; or
``(2) not later than 10 years after the date on which the victim reaches 18 years of age.''; and
(3) by adding at the end the following:

``(c) Venue; Service of Process.--
``(1) Venue.--Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

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``(2) Service of process.--In an action brought under subsection (a), process may be served in any district in which the defendant--

``(A) is an inhabitant; or

``(B) may be found.''.

TITLE II--UNITED STATES CENTER FOR SAFE SPORT AUTHORIZATION

SEC. 201. EXPANSION OF THE PURPOSES OF THE CORPORATION.

Section 220503 of title 36, United States Code, is amended--

(1) in paragraph (13), by striking ``; and'' and inserting a semicolon;

(2) in paragraph (14), by striking the period at the end and inserting ``; and''; and

(3) by adding at the end the following:

``(15) to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of any amateur athlete.''.

SEC. 202. DESIGNATION OF THE UNITED STATES CENTER FOR SAFE SPORT.

(a) In General.--Chapter 2205 of title 36, United States Code, is amended by adding at the end the following:

``Subchapter III <<NOTE: 36 USC 220541 prec.>> --United States Center for Safe Sport

``Sec. 220541. <<NOTE: 36 USC 220541.>> Designation of United States Center for Safe Sport

``(a) In General.--The United States Center for Safe Sport shall--

``(1) serve as the independent national safe sport organization and be recognized worldwide as the independent national safe sport organization for the United States;

``(2) exercise jurisdiction over the corporation, each national governing body, and each paralympic sports organization with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports;

``(3) maintain an office for education and outreach that shall develop training, oversight practices, policies, and procedures to prevent the abuse, including emotional, physical, and sexual abuse, of amateur athletes participating in amateur athletic activities through national governing bodies and paralympic sports organizations;

``(4) maintain an office for response and resolution that shall establish mechanisms that allow for the reporting, investigation, and resolution, pursuant to subsection (c), of alleged sexual abuse in violation of the Center's policies and procedures; and

``(5) ensure that the mechanisms under paragraph (4) provide fair notice and an opportunity to be heard and protect the privacy and safety of complainants.

``(b) <<NOTE: Applicability.>> Policies and Procedures.--The policies and procedures developed under subsection (a)(3) shall apply as though they were incorporated in and made a part of section 220524 of this title.

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``(c) Binding Arbitration.--

``(1) In general.--The Center may, in its discretion, utilize a neutral arbitration body and develop policies and

procedures to resolve allegations of sexual abuse within its jurisdiction to determine the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official, who is the subject of such an allegation, to participate in amateur athletic competition.

``(2) Preservation of rights.--Nothing in this section shall be construed as altering, superseding, or otherwise affecting the right of an individual within the Center's jurisdiction to pursue civil remedies through the courts for personal injuries arising from abuse in violation of the Center's policies and procedures, nor shall the Center condition the participation of any such individual in a proceeding described in paragraph (1) upon an agreement not to pursue such civil remedies.

``(d) Limitation on Liability.--

``(1) In general.--Except as provided in paragraph (2), an applicable entity shall not be liable for damages in any civil action for defamation, libel, slander, or damage to reputation arising out of any action or communication, if the action arises from the execution of the responsibilities or functions described in this section, section 220542, or section 220543.

``(2) Exception.--Paragraph (1) shall not apply in any action in which an applicable entity acted with actual malice, or provided information or took action not pursuant to this section, section 220542, or section 220543.

``(3) Definition of applicable entity.--In this subsection, the term `applicable entity' means--

``(A) the Center;

``(B) a national governing body;

``(C) a paralympic sports organization;

``(D) an amateur sports organization or other person sanctioned by a national governing body under section 220525;

``(E) an amateur sports organization reporting under section 220530;

``(F) any officer, employee, agent, or member of an entity described in subparagraph (A), (B), (C), (D), or (E); and

[[Page 132 STAT. 322]]

``(G) any individual participating in a proceeding pursuant to this section.

``Sec. 220542. <<NOTE: 36 USC 220542.>> Additional duties.

``(a) In General.--The Center shall--

``(1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent the abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and

``(2) include in the policies and procedures developed under section 220541(a)(3)--

``(A) a requirement that all adult members of a national governing body, a paralympic sports organization, or a facility under the jurisdiction of a national governing body or paralympic sports organization, and all adults authorized by such members to interact with an amateur athlete, report immediately any allegation of child abuse of an amateur athlete who is a minor to--

``(i) the Center, whenever such members or adults learn of facts leading them to suspect

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reasonably that an amateur athlete who is a minor has suffered an incident of child abuse; and

``(ii) law enforcement consistent with section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341);

``(B) a mechanism, approved by a trained expert on child abuse, that allows a complainant to report easily an incident of child abuse to the Center, a national governing body, law enforcement authorities, or other appropriate authorities;

``(C) reasonable procedures to limit one-on-one interactions between an amateur athlete who is a minor and an adult (who is not the minor's legal guardian) at a facility under the jurisdiction of a national governing body or paralympic sports organization without being in an observable and interruptible distance from another adult, except under emergency circumstances;

``(D) procedures to prohibit retaliation, by any national governing body or paralympic sports organization, against any individual who makes a report under subparagraph (A) or subparagraph (B);

``(E) oversight procedures, including regular and random audits conducted by subject matter experts unaffiliated with, and independent of, a national governing body or a paralympic sports organization of each national governing body and paralympic sports organization to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, and subject to parental consent, to members who are minors, regarding prevention of child abuse; and

``(F) a mechanism by which a national governing body or paralympic sports organization can--

``(i) share confidentially a report of suspected child abuse of an amateur athlete who is a minor by a

member of a national governing body or paralympic sports organization, or an adult authorized by a national governing body, paralympic sports organization, or an amateur sports organization to interact with an amateur athlete who is a minor, with the Center, which in turn, may share with relevant national governing bodies, paralympic sports organizations, and other entities; and

``(ii) withhold providing to an adult who is the subject of an allegation of child abuse authority to interact with an amateur athlete who is a minor until the resolution of such allegation.

``(b) Rule of Construction.--Nothing in this section shall be construed to limit the ability of a national governing body or paralympic sports organization to impose an interim measure to prevent an individual who is the subject of an allegation of sexual abuse from interacting with an amateur athlete prior to the Center exercising its jurisdiction over a matter.

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``Sec. 220543. <<NOTE: 36 USC 220543.>> Records, audits, and reports

``(a) Records.--The Center shall keep correct and complete records of account.

``(b) Report.--The Center shall submit an annual report to Congress, including--

~~``(1) an audit conducted and submitted in accordance with section 10101; and~~

``(2) a description of the activities of the Center.''.

(b) Conforming Amendment.--Section 220501(b) of title 36, United States Code, is amended--

(1) by redesignating paragraphs (4) through (8) as paragraphs (6) through (10), respectively; and

(2) <<NOTE: Definitions.>> by inserting after paragraph (3), the following:

``(4) `Center' means the United States Center for Safe Sport designated under section 220541.

``(5) `child abuse' has the meaning given the term in section 212 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20302).''.

(c) Technical Amendment.--The table of contents of chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by adding at the end the following:

``subchapter iii--united states center for safe sport

``220541. Designation of United States Center for Safe Sport.
``220542. Additional duties.
``220543. Records, audits, and reports.''.

SEC. 203. ADDITIONAL REQUIREMENTS FOR GRANTING SANCTIONS FOR AMATEUR ATHLETIC COMPETITIONS.

Section 220525(b)(4) is amended--

(1) in subparagraph (E), by striking ``; and'' and inserting a semicolon;

(2) in subparagraph (F), by striking the period at the end and inserting ``; and''; and

(3) by adding at the end the following:

``(G) the amateur sports organization or person requesting sanction from a national governing body will implement and abide by the policies and procedures to prevent the abuse, including emotional, physical, and child

abuse, of amateur athletes participating in amateur athletic activities applicable to such national governing body.''.

SEC. 204. GENERAL REQUIREMENTS FOR YOUTH-SERVING AMATEUR SPORTS ORGANIZATIONS.

(a) In General.--Subchapter II of chapter 2205 of title 36, United States Code, is amended by adding at the end the following:

``Sec. 220530. <<NOTE: 36 USC 220530.>> Other amateur sports organizations

``(a) In General.--An applicable amateur sports organization shall--

``(1) comply with the reporting requirements of section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341);

``(2) establish reasonable procedures to limit one-on-one

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interactions between an amateur athlete who is a minor and an adult (who is not the minor's legal guardian) at a facility under the jurisdiction of the applicable amateur sports organization without being in an observable and interruptible distance from another adult, except under emergency circumstances;

``(3) offer and provide consistent training to all adult members who are in regular contact with amateur athletes who are minors, and subject to parental consent, to members who are minors, regarding prevention and reporting of child abuse to allow a complainant to report easily an incident of child abuse to appropriate persons; and

``(4) prohibit retaliation, by the applicable amateur sports organization, against any individual who makes a report under paragraph (1).

``(b) Definition of Applicable Amateur Sports Organization.--In this section, the term `applicable amateur sports organization' means an amateur sports organization--

``(1) that is not otherwise subject to the requirements under subchapter III;

``(2) that participates in an interstate or international amateur athletic competition; and

``(3) whose membership includes any adult who is in regular contact with an amateur athlete who is a minor.''.

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(b) Technical Amendment.--The table of contents of chapter 2205 of title 36, United States Code <<NOTE: 36 USC 220501 prec.>> , is amended by inserting after the item relating to section 220529 the following:

``220530. Other amateur sports organizations.''.

Approved February 14, 2018.

LEGISLATIVE HISTORY--S. 534 (H.R. 1973):

HOUSE REPORTS: No. 115-136, Pt. 1 (Comm. on the Judiciary) accompanying H.R. 1973.
CONGRESSIONAL RECORD:

Vol. 163 (2017):
Nov. 14, considered and passed Senate.

Vol. 164 (2018):
Jan. 29, considered and passed House, amended.
Jan. 30, Senate concurred in House amendment.

<all>

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CONGRESS.GOV

S.2330 - Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020

116th Congress (2019-2020)

Shown Here:
Public Law No: 116-189 (10/30/2020)

[116th Congress Public Law 189]
[From the U.S. Government Publishing Office]

[[Page 134 STAT. 943]]

Public Law 116-189
116th Congress

An Act

To amend the Ted Stevens Olympic and Amateur Sports Act to provide for congressional oversight of the board of directors of the United States Olympic and Paralympic Committee and to protect amateur athletes from emotional, physical, and sexual abuse, and for other purposes. <<NOTE: Oct. 30, 2020 - [S. 2330]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020. 36 USC 101 note.>>

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020''.

SEC. 2. <<NOTE: 36 USC 220501 note.>> FINDINGS.

Congress makes the following findings:

(1) The courageous voice of survivors is a call to action to end emotional, physical, and sexual abuse in the Olympic and Paralympic movement.

(2) Larry Nassar, the former national team doctor for USA Gymnastics, sexually abused over 300 athletes for over two decades because of ineffective oversight by USA Gymnastics and the United States Olympic Committee.

(3) While the case of Larry Nassar is unprecedented in scale, the case is hardly the only recent incident of sexual

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abuse in amateur sports.

(4) Survivors of Larry Nassar's abuse and all survivors of abuse in the Olympic and Paralympic movement deserve justice and redress for the wrongs the survivors have suffered.

(5) After a comprehensive congressional investigation, including interviews and statements from survivors, former and current organization officials, law enforcement, and advocates, Congress found that the United States Olympic Committee and USA Gymnastics fundamentally failed to uphold their existing statutory purposes and duty to protect amateur athletes from sexual, emotional, or physical abuse.

(6) USA Gymnastics and the United States Olympic Committee knowingly concealed abuse by Larry Nassar, leading to the abuse of dozens of additional amateur athletes during the period beginning in the summer of 2015 and ending in September 2016.

(7) Ending abuse in the Olympic and Paralympic movement requires enhanced oversight to ensure that the Olympic and Paralympic movement does more to serve athletes and protect their voice and safety.

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SEC. 3. DEFINITIONS.

Section 220501(b) of title 36, United States Code, is amended--

(1) in paragraph (4), by striking ``United States Center for Safe Sport'' and inserting ``United States Center for SafeSport'';

(2) in paragraph (6), by striking ``United States Olympic Committee'' and inserting ``United States Olympic and Paralympic Committee'';

(3) by amending paragraph (8) to read as follows:

``(8) `national governing body' means an amateur sports organization, a high-performance management organization, or a paralympic sports organization that is certified by the corporation under section 220521.'';

(4) by striking paragraph (9);

(5) by redesignating paragraphs (4), (5), (6), (7), (8), and (10) as paragraphs (5), (6), (7), (8), (9), and (12), respectively;

(6) by inserting after paragraph (3) the following:

``(4) `Athletes' Advisory Council' means the entity established and maintained under section 220504(b)(2)(A) that--

``(A) is composed of, and elected by, amateur athletes to ensure communication between the corporation and currently active amateur athletes; and

``(B) serves as a source of amateur-athlete opinion and advice with respect to policies and proposed policies of the corporation.''; and

(7) by inserting after paragraph (9), as so redesignated, the following:

``(10) `protected individual' means any amateur athlete, coach, trainer, manager, administrator, or official associated with the corporation or a national governing body.

``(11) `retaliation' means any adverse or discriminatory action, or the threat of an adverse or discriminatory action, including removal from a training facility, reduced coaching or training, reduced meals or housing, and removal from competition, carried out against a protected individual as a result of any communication, including the filing of a formal

complaint, by the protected individual or a parent or legal guardian of the protected individual relating to the allegation of physical abuse, sexual harassment, or emotional abuse, with--

``(A) the Center;

``(B) a coach, trainer, manager, administrator, or official associated with the corporation;

``(C) the Attorney General;

``(D) a Federal or State law enforcement authority;

``(E) the Equal Employment Opportunity Commission; or

``(F) Congress.''.

SEC. 4. MODERNIZATION OF THE TED STEVENS OLYMPIC AND AMATEUR SPORTS ACT.

(a) In General.--Chapter 2205 of title 36, <<NOTE: 36 USC 220501 prec.>> United States Code, is amended--

(1) in the chapter heading, by striking ``UNITED STATES OLYMPIC COMMITTEE'' and inserting ``UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE'';

(2) in section 220502, by amending subsection (c) to read as follows:

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``(c) References to United States Olympic Association and United States Olympic Committee.--Any reference to the United States Olympic Association or the United States Olympic Committee is deemed to refer to the United States Olympic and Paralympic Committee.'';

(3) in section 220503--

(A) in paragraph (3), by striking ``and the Pan-American Games'' each place it appears and inserting ``the Pan-American Games, and the Parapan American Games''; and

(B) in paragraph (4), by striking ``and Pan-American Games'' and inserting ``the Pan-American Games, and the Parapan American Games'';

(4) in section 220504(b)(3), by striking ``or the Pan-American Games'' and inserting ``the Pan-American Games, or the Parapan American Games'';

(5) in section 220505(c)--

(A) in paragraph (3), by striking ``and the Pan-American Games'' and inserting ``the Pan-American Games, and the Parapan American Games'';

(B) by amending paragraph (4) to read as follows:

``(4) certify national governing bodies for any sport that is included on the program of the Olympic Games, the Paralympic Games, the Pan-American Games, or the Parapan American Games;''; and

(C) in paragraph (5), by inserting ``the Parapan American Games,'' after ``the Pan-American Games,'';

(6) in section 220506--

(A) in subsection (a)--

(i) in paragraph (1), by striking ``United States Olympic Committee'' and inserting ``United States Olympic and Paralympic Committee'';

(ii) in paragraph (2), by striking ``3 TaiGeuks'' and inserting ``3 Agitos''; and

(iii) in paragraph (4), by inserting `` `Parapan American','' after `` `Pan-American','';

(B) in subsection (b), by inserting ``the Parapan

American team,'' after ``the Pan-American team,''; and

(C) in subsection (c)(3), by striking ``or Pan-American Games activity'' and inserting ``Pan-American, or Parapan American Games activity'';

(7) in section 220509(a)--

(A) in the first sentence, by inserting ``the Parapan American Games,'' after ``the Pan-American Games,''; and

(B) in the second sentence, by striking ``or the Pan-American Games'' and inserting ``the Pan-American Games, or the Parapan American Games'';

(8) in section 220512, by striking ``and Pan-American Games'' and inserting ``Pan-American Games, and Parapan American Games'';

(9) in section 220523(a), by striking ``and the Pan-American Games'' each place it appears and inserting ``the Pan-American Games, and the Parapan American Games'';

(10) in section 220528(c)--

(A) in subparagraph (A), by striking ``or in both the Olympic and Pan-American Games'' and inserting ``or in each of the Olympic Games, the Paralympic Games, the

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Pan-American Games, and the Parapan American Games''; and

(B) by amending subparagraph (B) to read as follows:

``(B) any Pan-American Games or Parapan American Games, for a sport in which competition is held in the Pan-American Games or the Parapan American Games, as applicable, but not in the Olympic Games or the Paralympic Games.''; and

(11) in section 220531, by striking ``United States Olympic Committee'' each place it appears and inserting ``United States Olympic and Paralympic Committee''.

(b) Conforming Amendment.--The table of chapters for part B of subtitle II of title 36, United States Code, <<NOTE: 36 USC 101 prec.>> is amended by striking the item relating to chapter 2205 and inserting the following:

``2205. United States Olympic and Paralympic Committee.....220501''.

SEC. 5. CONGRESSIONAL OVERSIGHT OF UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE AND NATIONAL GOVERNING BODIES.

(a) In General.--Chapter 2205 of title 36, United States Code, is amended--

(1) by redesignating the second subchapter designated as subchapter III <<NOTE: 36 USC 220541 prec.>> (relating to the United States Center for SafeSport), as added by section 202 of the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 (Public Law 115-126; 132 Stat. 320) as subchapter IV; and

(2) by adding at the end the following:

``SUBCHAPTER V <<NOTE: 36 USC 220551 prec.>> --DISSOLUTION OF BOARD OF DIRECTORS OF CORPORATION AND TERMINATION OF RECOGNITION OF NATIONAL GOVERNING BODIES

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``Sec. <<NOTE: 36 USC 220551.>> 220551. Definitions

``In this subchapter, the term `joint resolution' means a joint resolution--

``(1) which does not have a preamble; and

``(2) for which--

``(A)(i) the title is only as follows: `A joint resolution to dissolve the board of directors of the United States Olympic and Paralympic Committee'; and

``(ii) the matter after the resolving clause--

``(I) is as follows: `That Congress finds that dissolving the board of directors of the United States Olympic and Paralympic Committee would not unduly interfere with the operations of chapter 2205 of title 36, United States Code'; and

``(II) prescribes adequate procedures for forming a board of directors of the corporation as expeditiously as possible and in a manner that safeguards the membership and voting power of the representatives of amateur athletes at all times, consistent with the membership and voting power of amateur athletes under section 220504(b)(2); or

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``(B)(i) the title is only as follows: `A joint resolution relating to terminating the recognition of a national governing body'; and

``(ii) the matter after the resolving clause is only as follows: `That Congress determines that _____, which is recognized as a national governing body under section 220521 of title 36, United States Code, has failed to fulfill its duties, as described in section 220524 of title 36, United States Code', the blank space being filled in with the name of the applicable national governing body.

``Sec. 220552. <<NOTE: Effective dates. 36 USC 220552.>> Dissolution of board of directors of corporation and termination of recognition of national governing bodies

``(a) Dissolution of Board of Directors of Corporation.--Effective on the date of enactment of a joint resolution described in section 220551(2)(A) with respect to the board of directors of the corporation, such board of directors shall be dissolved.

``(b) Termination of Recognition of National Governing Body.--Effective on the date of enactment of a joint resolution described in section 220551(2)(B) with respect to a national governing body, the recognition of the applicable amateur sports organization as a national governing body shall cease to have force or effect.''.

(b) Technical and Conforming Amendments.--The table of sections for chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended--

(1) by striking the second item relating to subchapter III (relating to the United States Center for SafeSport), as added by section 202 of the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 (Public Law 115-126; 132 Stat. 320) and inserting the following:

``subchapter iv—united states center for safesport''; and

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(2) by adding at the end the following:

``subchapter v--dissolution of board of directors of corporation and termination of recognition of national governing bodies

``220551. Definitions.
``220552. Dissolution of board of directors of corporation and termination of recognition of national governing bodies.''.

(c) <<NOTE: 36 USC 220551 note.>> Effective Date.--The amendments made by this section shall take effect on the date that is 1 year after the date of the enactment of this Act.

SEC. 6. MODIFICATIONS TO UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE.

(a) Purposes of the Corporation.--Section 220503 of title 36, United States Code, is amended--

(1) in paragraph (9), by inserting ``and access to'' after ``development of'';

(2) in paragraph (14), by striking ``; and'' and inserting a semicolon;

(3) in paragraph (15), by striking the period at the end and inserting ``; and''; and

(4) by adding at the end the following:

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``(16) to effectively oversee the national governing bodies with respect to compliance with and implementation of the policies and procedures of the corporation, including policies and procedures on the establishment of a safe environment in sports as described in paragraph (15).''.

(b) Membership and Representation.--Section 220504 of title 36, United States Code, is amended--

(1) in subsection (a), by inserting ``, and membership shall be available only to national governing bodies'' before the period at the end;

(2) in subsection (b), by amending paragraph (2) to read as follows:

``(2) amateur athletes who are actively engaged in amateur athletic competition or who have represented the United States in international amateur athletic competition, including through provisions that--

``(A) establish and maintain an Athletes' Advisory Council;

``(B) ensure that the chair of the Athletes' Advisory Council, or the designee of the chair, holds voting power on the board of directors of the corporation and in the committees and entities of the corporation;

``(C) require that--

``(i) not less than \1/3\ of the membership of the board of directors of the corporation shall be composed of, and elected by, such amateur athletes; and

``(ii) not less than 20 percent of the membership of the board of directors of the corporation shall be composed of amateur athletes

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who--

``(I) are actively engaged in representing the United States in international amateur athletic competition; or

``(II) have represented the United States in international amateur athletic competition during the preceding 10-year period; and

``(D) ensure that the membership and voting power held by such amateur athletes is not less than \1/3\ of the membership and voting power held in the board of directors of the corporation and in the committees and entities of the corporation, including any panel empowered to resolve grievances;''; and

(3) by adding at the end the following:

``(c) <<NOTE: Time period.>> Conflict of Interest.--An athlete who represents athletes under subsection (b)(2) shall not be employed by the Center, or serve in a capacity that exercises decision-making authority on behalf of the Center, during the 2-year period beginning on the date on which the athlete ceases such representation.

``(d) Certification Requirements.--The bylaws of the corporation shall include a description of all generally applicable certification requirements for membership in the corporation.''.

(c) Duties.--

(1) In general.--Section 220505 of title 36, United States Code, is amended--

(A) in the section heading, by striking ``Powers'' and inserting ``Powers and duties''; and

(B) by adding at the end the following:

``(d) Duties.--

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``(1) In general.--The duty of the corporation to amateur athletes includes the adoption, effective implementation, and enforcement of policies and procedures designed--

``(A) to immediately report to law enforcement and the Center any allegation of child abuse of an amateur athlete who is a minor;

``(B) to ensure that each national governing body has in place policies and procedures to report immediately any allegation of child abuse of an amateur athlete, consistent with--

``(i) the policies and procedures developed under subparagraph (C) of section 220541(a)(1); and

``(ii) the requirement described in paragraph (2)(A) of section 220542(a); and

``(C) to ensure that each national governing body and the corporation enforces temporary measures and sanctions issued pursuant to the authority of the Center.

``(2) Rule of construction.--Nothing in this subsection shall be construed to preempt or otherwise abrogate the duty of care of the corporation under State law or the common law.''.

(2) Conforming amendment.--The table of sections for chapter

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2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by striking the item relating to section 220505 and inserting the following:

``220505. Powers and duties.''.

(d) Restrictions.--

(1) Policy with respect to assisting members or former members in obtaining jobs.--Section 220507 of title 36, United States Code, is amended by adding at the end the following:

``(c) Policy With Respect to Assisting Members or Former Members in Obtaining Jobs.--The corporation shall develop 1 or more policies that prohibit any individual who is an employee, contractor, or agent of the corporation from assisting a member or former member in obtaining a new job (except the routine transmission of administrative and personnel files) if the individual knows that such member or former member violated the policies or procedures of the Center related to sexual misconduct or was convicted of a crime involving sexual misconduct with a minor in violation of applicable law.''.

(2) Policy with respect to terms and conditions of employment.--

(A) In general.--Section 220507 of title 36, United States Code, as amended by paragraph (1), is further amended by adding at the end the following:

``(d) Policy Regarding Terms and Conditions of Employment.--The corporation shall establish a policy--

``(1) not to disperse bonus or severance pay to any individual named as a subject of an ethics investigation by the ethics committee of the corporation, until such individual is cleared of wrongdoing by such investigation; and

``(2) that provides that--

``(A) <<NOTE: Determination.>> if the ethics committee determines that an individual has violated the policies of the corporation--

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``(i) the individual is no longer entitled to bonus or severance pay previously withheld; and

``(ii) the compensation committee of the corporation may reduce or cancel the withheld bonus or severance pay; and

``(B) <<NOTE: Investigation.>> in the case of an individual who is the subject of a criminal investigation, the ethics committee shall investigate the individual.''.

(B) <<NOTE: 36 USC 220507 note.>> Applicability.--The amendment made by subparagraph (A) shall not apply to any term of employment for the disbursement of bonus or severance pay that is in effect as of the day before the date of the enactment of this Act.

(e) Resolution of Disputes and Protecting Abuse Victims From Retaliation.--Section 220509 of title 36, United States Code, is amended--

(1) in subsection (a), in the first sentence, by inserting ``complaints of retaliation or'' after ``relating to'';

(2) by amending subsection (b) to read as follows:

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``(b) Office of the Athlete Ombuds.--

``(1) In general.--The corporation shall hire and provide salary, benefits, and administrative expenses for an ombudsman and support staff for athletes.

``(2) Duties.--The Office of the Athlete Ombuds shall--

``(A) provide independent advice to athletes at no cost about the applicable provisions of this chapter and the constitution and bylaws of the corporation, national governing bodies, international sports federations, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organization, and with respect to the resolution of any dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition or other protected competition as defined in the constitution and bylaws of the corporation;

``(B) assist in the resolution of athlete concerns;

``(C) provide independent advice to athletes with respect to--

``(i) the role, responsibility, authority, and jurisdiction of the Center; and

``(ii) the relative value of engaging legal counsel; and

``(D) report to the Athletes' Advisory Council on a regular basis.

``(3) Hiring procedures; vacancy; termination.--

``(A) Hiring procedures.--The procedure for hiring the ombudsman for athletes shall be as follows:

``(i) The Athletes' Advisory Council shall provide the corporation's executive director with the name of 1 qualified person to serve as ombudsman for athletes.

``(ii) The corporation's executive director shall immediately transmit the name of such person to the corporation's executive committee.

``(iii) The corporation's executive committee shall hire or not hire such person after fully considering

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the advice and counsel of the Athletes' Advisory Council.

``(B) Vacancy.--If there is a vacancy in the position of the ombudsman for athletes, the nomination and hiring procedure set forth in this paragraph shall be followed in a timely manner.

``(C) Termination.--The corporation may terminate the employment of an individual serving as ombudsman for athletes only if--

``(i) the termination is carried out in accordance with the applicable policies and procedures of the corporation;

``(ii) the termination is initially recommended to the corporation's executive committee by either the corporation's executive director or by the Athletes' Advisory Council; and

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``(iii) the corporation's executive committee fully considers the advice and counsel of the Athletes' Advisory Council prior to deciding whether or not to terminate the employment of such individual.

``(4) Confidentiality.--

``(A) In general.--The Office of the Athlete Ombuds shall maintain as confidential any information communicated or provided to the Office of the Athlete Ombuds in confidence in any matter involving the exercise of the official duties of the Office of the Athlete Ombuds.

``(B) Exception.--The Office of the Athlete Ombuds may disclose information described in subparagraph (A) as necessary to resolve or mediate a dispute, with the permission of the parties involved.

``(C) Judicial and administrative proceedings.--

``(i) In general.--The ombudsman and the staff of the Office of the Athlete Ombuds shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the duties of the Office of the Athlete Ombuds.

``(ii) Work product.--Any memorandum, work product, notes, or case file of the Office of the Athlete Ombuds--

``(I) shall be confidential; and

``(II) shall not be--

``(aa) subject to discovery, subpoena, or any other means of legal compulsion; or

``(bb) admissible as evidence in a judicial or administrative proceeding.

``(D) Applicability.--The confidentiality requirements under this paragraph shall not apply to information relating to--

``(i) applicable federally mandated reporting requirements;

``(ii) a felony personally witnessed by a member of the Office of the Athlete Ombuds;

``(iii) a situation, communicated to the Office of the Athlete Ombuds, in which an individual is at imminent risk of serious harm; or

``(iv) a congressional subpoena.

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``(E) Development of policy.--

``(i) <<NOTE: Deadline. Federal Register, publication.>> In general.--Not later than 180 days after the date of the enactment of the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, the Office of the Athlete Ombuds shall develop and publish in the Federal Register a confidentiality and privacy policy consistent with this paragraph.

``(ii) <<NOTE: Records.>> Distribution.--The Office of the Athlete Ombuds shall distribute a copy of the policy developed under clause (i) to--

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``(I) employees of the national governing bodies; and

``(II) employees of the corporation.

``(iii) Publication by national governing bodies.--Each national governing body shall--

``(I) <<NOTE: Web posting.>> publish the policy developed under clause (i) on the internet website of the national governing body; and

``(II) communicate to amateur athletes the availability of the policy.

``(5) Prohibition on retaliation.--No employee, contractor, agent, volunteer, or member of the corporation shall take or threaten to take any action against an athlete as a reprisal for disclosing information to or seeking assistance from the Office of the Athlete Ombuds.

``(6) Independence in carrying out duties.--The board of directors of the corporation or any other member or employee of the corporation shall not prevent or prohibit the Office of the Athlete Ombuds from carrying out any duty or responsibility under this section.''; and

(3) by adding at the end the following:

``(c) Retaliation.--

``(1) In general.--The corporation, the national governing bodies, or any officer, employee, contractor, subcontractor, or agent of the corporation or a national governing body may not retaliate against any protected individual as a result of any communication, including the filing of a formal complaint, by a protected individual or a parent or legal guardian of the protected individual relating to an allegation of physical abuse, sexual harassment, or emotional abuse.

``(2) Disciplinary action.--If the corporation finds that an employee of the corporation or a national governing body has retaliated against a protected individual, the corporation or national governing body, as applicable, shall immediately terminate the employment of, or suspend without pay, such employee.

``(3) Damages.--

``(A) In general.--With respect to a protected individual the corporation finds to have been subject to retaliation, the corporation may award damages, including damages for pain and suffering and reasonable attorney fees.

``(B) Reimbursement from national governing body.--In the case of a national governing body found to have retaliated against a protected individual, the corporation may demand reimbursement from the national governing body for damages paid by the corporation under subparagraph (A).''.

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(f) Reports and Audits.--

(1) In general.--Section 220511 of title 36, United States Code, is amended to read as follows:

``Sec. 220511. Reports and audits

``(a) Report.--

``(1) Submission to president and congress.--Not less

frequently than annually, the corporation shall submit simultaneously to the President and to each House of Congress a detailed report on the operations of the corporation for the preceding calendar year.

``(2) Matters to be included.--Each report required by paragraph (1) shall include the following:

``(A) A comprehensive description of the activities and accomplishments of the corporation during such calendar year.

``(B) <<NOTE: Data.>> Data concerning the participation of women, disabled individuals, and racial and ethnic minorities in the amateur athletic activities and administration of the corporation and national governing bodies.

``(C) A description of the steps taken to encourage the participation of women, disabled individuals, and racial minorities in amateur athletic activities.

``(D) A description of any lawsuit or grievance filed against the corporation, including any dispute initiated under this chapter.

``(E) The agenda and minutes of any meeting of the board of directors of the corporation that occurred during such calendar year.

``(F) A report by the compliance committee of the corporation that, with respect to such calendar year--

``(i) identifies--

``(I) the areas in which the corporation has met compliance standards; and

``(II) the areas in which the corporation has not met compliance standards; and

``(ii) <<NOTE: Assessments. Compliance. Plan.>> assesses the compliance of each member of the corporation and provides a plan for improvement, as necessary.

``(G) A detailed description of any complaint of retaliation made during such calendar year, including the entity involved, the number of allegations of retaliation, and the outcome of such allegations.

``(3) <<NOTE: Web posting.>> Public availability.--The corporation shall make each report under this subsection available to the public on an easily accessible internet website of the corporation.

``(b) Audit.--

``(1) <<NOTE: Deadline.>> In general.--Not less frequently than annually, the financial statements of the corporation for the preceding fiscal year shall be audited in accordance with generally accepted auditing standards by--

``(A) an independent certified public accountant; or

``(B) an independent licensed public accountant who is certified or licensed by the regulatory authority of a State or a political subdivision of a State.

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``(2) Location.--An audit under paragraph (1) shall be conducted at the location at which the financial statements of

the corporation normally are kept.

``(3) Access.--An individual conducting an audit under paragraph (1) shall be given full access to--

``(A) all records and property owned or used by the corporation, as necessary to facilitate the audit; and

``(B) any facility under audit for the purpose of verifying transactions, including any balance or security held by a depository, fiscal agent, or custodian.

``(4) Report.--

``(A) In general.--Not later than 180 days after the end of the fiscal year for which an audit is carried out, the auditor shall submit a report on the audit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on the Judiciary of the House of Representatives, and the chair of the Athletes' Advisory Council.

``(B) Matters to be included.--Each report under subparagraph (A) shall include the following for the applicable fiscal year:

``(i) Any statement necessary to present fairly the assets, liabilities, and surplus or deficit of the corporation.

``(ii) <<NOTE: Analysis.>> An analysis of the changes in the amounts of such assets, liabilities, and surplus or deficit.

``(iii) A detailed statement of the income and expenses of the corporation, including the results of any trading, manufacturing, publishing, or other commercial endeavor.

``(iv) A detailed statement of the amounts spent on stipends and services for athletes.

``(v) A detailed statement of the amounts spent on compensation and services for executives and administration officials of the corporation, including the 20 employees of the corporation who receive the highest amounts of compensation.

``(vi) A detailed statement of the amounts allocated to the national governing bodies.

``(vii) Such comments and information as the auditor considers necessary to inform Congress of the financial operations and condition of the corporation.

``(viii) <<NOTE: Recommenda- tions.>> Recommendations relating to the financial operations and condition of the corporation.

``(ix) A description of any financial conflict of interest (including a description of any recusal or other mitigating action taken), evaluated in a manner consistent with the policies of the corporation, of--

``(I) a member of the board of directors of the corporation; or

``(II) any senior management personnel of the corporation.

``(C) Public availability.--

``(i) <<NOTE: Web posting.>> In general.--The corporation shall make each report under this paragraph available to the public on an easily accessible internet website of the corporation.

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``(ii) Personally identifiable information.--A report made available under clause (i) shall not include the personally identifiable information of any individual.''.

(2) Conforming amendment.--The table of sections for chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by striking the item relating to section 220511 and inserting the following:

``220511. Reports and audits.''.

(g) Annual Amateur Athlete Survey.--

(1) In general.--Subchapter I of chapter 2205 of title 36, United States Code, is amended by adding at the end the following:

``Sec. 220513. <<NOTE: 36 USC 220513.>> Annual amateur athlete survey

``(a) In General.--Not less frequently than annually, the corporation shall cause an independent third-party organization, under contract, to conduct an anonymous survey of amateur athletes who are actively engaged in amateur athletic competition with respect to--

``(1) their satisfaction with the corporation and the applicable national governing body; and

``(2) the behaviors, attitudes, and feelings within the corporation and the applicable national governing body relating to sexual harassment and abuse.

``(b) Consultation.--A contract under subsection (a) shall require the independent third-party organization to develop the survey in consultation with the Center.

``(c) <<NOTE: Reports.>> Prohibition on Interference.--If the corporation or a national governing body makes any effort to undermine the independence of, introduce bias into, or otherwise influence a survey under subsection (a), such activity shall be reported immediately to Congress.

``(d) <<NOTE: Web posting.>> Public Availability.-- The corporation shall make the results of each such survey available to the public on an internet website of the corporation.''.

(2) Conforming amendment.--The table of sections for chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by inserting after the item relating to 220512 the following:

``220513. Annual amateur athlete survey.''.

SEC. 7. MODIFICATIONS TO NATIONAL GOVERNING BODIES.

(a) Certification of National Governing Bodies.--

(1) In general.--Section 220521 of title 36, United States Code, is amended--

(A) in the section heading, by striking ``Recognition of amateur sports organizations as national governing bodies'' and inserting ``Certification of national governing bodies'';

(B) by amending subsection (a) to read as follows:

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``(a) In General.--With respect to each sport included on the program of the Olympic Games, the Paralympic Games, the Pan-American Games, or the Parapan American Games, the corporation--

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``(1) may certify as a national governing body an amateur sports organization, a high-performance management organization, or a paralympic sports organization that files an application and is eligible for such certification under section 220522; and

``(2) may not certify more than 1 national governing body.'';

(C) in subsection (b), by striking ``recognizing'' and inserting ``certifying'';

(D) in subsection (c), by striking ``recognizing'' and inserting ``certifying''; and

(E) by amending subsection (d) to read as follows:

``(d) <<NOTE: Deadlines.>> Review of Certification.--Not later than 8 years after the date of the enactment of the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, and not less frequently than once every 4 years thereafter, the corporation--

``(1) shall review all matters related to the continued certification of an organization as a national governing body;

``(2) may take action the corporation considers appropriate, including placing conditions on the continued certification of an organization as a national governing body;

``(3) <<NOTE: Reports.>> shall submit to Congress a summary report of each review under paragraph (1); and

``(4) <<NOTE: Public information.>> shall make each such summary report available to the public.''.

(2) Technical and conforming amendments.--

(A) Chapter 2205 of title 36, United States Code, is amended--

(i) in section 220504(b), by amending paragraph (1) to read as follows:

``(1) national governing bodies, including through provisions that establish and maintain a National Governing Bodies' Council that is composed of representatives of the national governing bodies who are selected by their boards of directors or other governing boards to ensure effective communication between the corporation and the national governing bodies;'';

(ii) in section 220512, by striking ``or paralympic sports organization'';

(iii) in section 220522--

(I) by striking subsection (b); and

(II) in subsection (a)--

(aa) by striking ``recognized'' each place it appears and inserting ``certified'';

(bb) by striking ``recognition'' each place it appears and inserting ``certification'';

(cc) in paragraph (6), by striking ``the Olympic Games or the Pan-American Games'' and inserting ``the Olympic Games,

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the Paralympic Games, the Pan-American Games, or the Parapan American Games'';

(dd) in paragraph (11)--

(AA) in the matter preceding subparagraph (A), by inserting ``, high-performance management organization, or paralympic sports organization'' after ``amateur sports organization''; and

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(BB) in subparagraph (B), by striking ``amateur sports'' and inserting ``applicable'';

(ee) in paragraph (14), by striking ``or the Pan-American Games'' and inserting ``the Pan-American Games, or the Parapan American Games''; and

(ff) by striking the subsection designation and heading and all that follows through ``An amateur sports organization'' and inserting ``An amateur sports organization, a high-performance management organization, or a paralympic sports organization'';

(iv) in section 220524, by striking ``amateur sports'' each place it appears;

(v) in section 220528--

(I) by striking ``recognition'' each place it appears and inserting ``certification'';

(II) by striking ``recognize'' each place it appears and inserting ``certify''; and

(III) in subsection (g), in the subsection heading, by striking ``Recognition'' and inserting ``Certification'';

(vi) in section 220531--

(I) by striking ``, each national governing body, and each paralympic sports organization'' each place it appears and inserting ``and each national governing body''; and

(II) in subsection (c)(2), by striking ``each paralympic sports organization,'';

(vii) in section 220541(d)(3), by striking subparagraph (C);

(viii) in section 220542--

(I) by striking ``or paralympic

sports organization'' each place it appears; and

(II) in subsection (a)(2)--

(aa) in subparagraph (A), in the matter preceding clause (i), by striking ``, a paralympic sports organization,'';

(bb) in subparagraph (E), by striking ``or a paralympic sports organization of each national governing body and paralympic sports organization''; and

(cc) in subparagraph (F)(i)--

(AA) by striking ``, or an adult'' and inserting ``or an adult'';

(BB) by striking ``, paralympic sports organization,''; and

(CC) by striking ``, paralympic sports organizations,''.

(B) The table of sections for chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by striking the item relating to section 220521 and inserting the following:

``220521. Certification of national governing bodies.''.

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(b) Eligibility Requirements With Respect to Governing Boards.--Section 220522 of title 36, United States Code, as amended by subsection (a)(2), is further amended--

(1) in paragraph (2), by inserting ``, including the ability to provide and enforce required athlete protection policies and procedures'' before the semicolon;

(2) in paragraph (4)(B)--

(A) by striking ``conducted in accordance with the Commercial Rules of the American Arbitration Association'' and inserting ``which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council''; and

(B) by striking ``Commercial Rules of Arbitration'' and inserting ``standard commercial rules of arbitration of such designated provider'';

(3) in paragraph (5), in the matter preceding subparagraph (A), by inserting ``except with respect to the oversight of the organization,'' after ``sport,'';

(4) by redesignating paragraphs (10) through (15) as

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paragraphs (11) through (16), respectively;
(5) by inserting after paragraph (9) the following:
``(10) <<NOTE: Criteria.>> ensures that the selection criteria for individuals and teams that represent the United States are--
``(A) <<NOTE: Determination. Consultation.>> fair, as determined by the corporation in consultation with the national governing bodies, the Athletes' Advisory Council, and the United States Olympians and Paralympians Association;
``(B) clearly articulated in writing and properly communicated to athletes in a timely manner; and
``(C) consistently applied, using objective and subjective criteria appropriate to the applicable sport;'';
(6) by striking paragraph (13), as so redesignated, and inserting the following:
``(13) <<NOTE: Guidelines.>> demonstrates, based on guidelines approved by the corporation, the Athletes' Advisory Council, and the National Governing Bodies' Council, that--
``(A) <<NOTE: Criteria. Procedures.>> its board of directors and other such governing boards have established criteria and election procedures for, and maintain among their voting members, individuals who--
``(i) are elected by amateur athletes; and
``(ii) are actively engaged in amateur athletic competition, or have represented the United States in international amateur athletic competition, in the sport for which certification is sought;
``(B) any exception to such guidelines by such organization has been approved by--
``(i) the corporation; and
``(ii) the Athletes' Advisory Council; and
``(C) the voting power held by such individuals is not less than \1/3\ of the voting power held by its board of directors and other such governing boards;'';

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(7) in paragraph (15), as so redesignated, by striking ``; and'' and inserting a semicolon;
(8) in paragraph (16), as so redesignated, by striking the period at the end and inserting a semicolon; and
(9) by adding at the end the following:
``(17) commits to submitting annual reports to the corporation that include, for each calendar year--
``(A) a description of the manner in which the organization--
``(i) carries out the mission to promote a safe environment in sports that is free from abuse of amateur athletes (including emotional, physical, and sexual abuse); and
``(ii) addresses any sanctions or temporary measures required by the Center;
``(B) a description of any cause of action or complaint filed against the organization that was pending or settled during the preceding calendar year; and
``(C) a detailed statement of—

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``(i) the income and expenses of the organization; and

``(ii) the amounts expended on stipends, bonuses, and services for amateur athletes, organized by the level and gender of the amateur athletes;

``(18) commits to meeting any minimum standard or requirement set forth by the corporation; and

``(19) provides protection from retaliation to protected individuals.''.

(c) General Duties of National Governing Bodies.--Section 220524 of title 36, United States Code, is amended--

(1) in the matter preceding paragraph (1), by striking ``For the sport'' and inserting the following:

``(a) In General.--For the sport'';

(2) in subsection (a), as so designated--

(A) in paragraph (8), by striking ``; and'' and inserting a semicolon;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

``(10) develop 1 or more policies that prohibit any individual who is an employee, contractor, or agent of the national governing body from assisting a member or former member in obtaining a new job (except for the routine transmission of administrative and personnel files) if the individual knows that such member or former member violated the policies or procedures of the Center related to sexual misconduct or was convicted of a crime involving sexual misconduct with a minor in violation of applicable law or the policies or procedures of the Center;

``(11) promote a safe environment in sports that is free from abuse of any amateur athlete, including emotional, physical, and sexual abuse;

``(12) take care to promote a safe environment in sports using information relating to any temporary measure or sanction issued pursuant to the authority of the Center;

``(13) immediately report to law enforcement any allegation of child abuse of an amateur athlete who is a minor; and

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``(14) have in place policies and procedures to report immediately any allegation of child abuse of an amateur athlete, consistent with--

``(A) the policies and procedures developed under subparagraph (C) of section 220541(a)(1); and

``(B) the requirement described in paragraph (2)(A) of section 220542(a).''; and

(3) by adding at the end the following:

``(b) Rule of Construction.--Nothing in this section shall be construed to preempt or otherwise abrogate the duty of care of a national governing body under State law or the common law.''.

(d) Elimination of Exhaustion of Remedies Requirement.--Section 220527 of title 36, United States Code, is amended--

(1) by striking subsection (b);

(2) in subsection (c), by striking ``If the corporation'' and all that follows through ``subsection (b)(1) of this

section, it'' and inserting ``The corporation''; and
(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(e) Arbitration of Corporation Determinations.--Section 220529(a) of title 36, United States Code, is amended by striking ``any regional office of the American Arbitration Association'' and inserting ``the arbitration and mediation provider designated by the corporation under section 220522(a)(4)''.

(f) Ensure Limitations on Communications Are Included in Limitations on Interactions.--Section 220530(a) of title 36, United States Code, is amended--

(1) in paragraph (2), by inserting ``, including communications,'' after ``interactions''; and
(2) in paragraph (4), by striking ``makes'' and all that follows through the period at the end and inserting the following: ``makes--

``(A) a report under paragraph (1); or
``(B) any other report relating to abuse of any amateur athlete, including emotional, physical, and sexual abuse.''.

SEC. 8. MODIFICATIONS TO UNITED STATES CENTER FOR SAFESPORT.

(a) Designation of United States Center for SafeSport.--

(1) In general.--Section 220541 of title 36, United States Code, is amended--

(A) in the section heading by striking ``safe sport'' and inserting ``safesport'';
(B) by amending subsection (a) to read as follows:

``(a) Duties of Center.--

``(1) In general.--The United States Center for SafeSport shall--

``(A) serve as the independent national safe sport organization and be recognized worldwide as the independent national safe sport organization for the United States;
``(B) exercise jurisdiction over the corporation and each national governing body with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports;
``(C) maintain an office for education and outreach that shall develop training, oversight practices, policies, and procedures to prevent the abuse, including emotional,

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physical, and sexual abuse, of amateur athletes participating in amateur athletic activities through national governing bodies;
``(D) maintain an office for response and resolution that shall establish mechanisms that allow for the reporting, investigation, and resolution, pursuant to subsection (c), of alleged sexual abuse in violation of the Center's policies and procedures;
``(E) ensure that the mechanisms under subparagraph (D) provide fair notice and an opportunity to be heard and protect the privacy and safety of complainants;
``(F) maintain an office for compliance and audit

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that shall--

``(i) ensure that the national governing bodies and the corporation implement and follow the policies and procedures developed by the Center to prevent and promptly report instances of abuse of amateur athletes, including emotional, physical, and sexual abuse; and

``(ii) establish mechanisms that allow for the reporting and investigation of alleged violations of such policies and procedures;

``(G) <<NOTE: Public information. Website. List.>> publish and maintain a publicly accessible internet website that contains a comprehensive list of adults who are barred by the Center; and

``(H) ensure that any action taken by the Center against an individual under the jurisdiction of the Center, including an investigation, the imposition of sanctions, and any other disciplinary action, is carried out in a manner that provides procedural due process to the individual, including, at a minimum--

``(i) <<NOTE: Notice.>> the provision of written notice of the allegations against the individual;

``(ii) a right to be represented by counsel or other advisor;

``(iii) an opportunity to be heard during the investigation;

``(iv) in a case in which a violation is found, a reasoned written decision by the Center; and

``(v) the ability to challenge, in a hearing or through arbitration, interim measures or sanctions imposed by the Center.

``(2) Rules of construction.--Nothing in this subsection shall be construed--

``(A) to preclude the Center from imposing interim measures or sanctions on an individual before an opportunity for a hearing or arbitration;

``(B) to require the Center to meet a burden of proof higher than the preponderance of the evidence;

``(C) to give rise to a claim under State law or to create a private right of action; or

``(D) to render the Center a state actor.'';

(C) in subsection (b), by striking ``subsection (a)(3)'' and inserting ``subsection (a)(1)(C)'';

(D) in subsection (d), as amended by section 7(a)(2)--

(i) in paragraph (3), by inserting after subparagraph (B) the following:

``(C) the corporation;'';

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(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2) the following:

``(3) Removal to federal court.--

``(A) In general.--Any civil action brought in a State court against the Center relating to the

responsibilities of the Center under this section, section 220542, or section 220543, shall be removed, on request by the Center, to the district court of the United States in the district in which the action was brought, and such district court shall have original jurisdiction over the action without regard to the amount in controversy or the citizenship of the parties involved.

``(B) Rule of construction.--Nothing in this chapter shall be construed to create a private right of action.''; and

(E) by adding at the end the following:

``(e) Training Materials.--The office for education and outreach referred to in subsection (a)(1)(C) shall--

``(1) develop training materials for specific audiences, including coaches, trainers, doctors, young children, adolescents, adults, and individuals with disabilities; and

``(2) <<NOTE: Deadlines. Updates.>> not less frequently than every 3 years, update such training materials.

``(f) Independence.--

``(1) <<NOTE: Time period.>> Prohibition with respect to former employees and board members.--A former employee or board member of the corporation or a national governing body shall not work or volunteer at the Center during the 2-year period beginning on the date on which the former employee or board member ceases employment with the corporation or national governing body.

``(2) Athletes serving on board of directors of national governing body.--

``(A) In general.--An athlete serving on the board of directors of a national governing body who is not otherwise employed by the national governing body, may volunteer at, or serve in an advisory capacity to, the Center.

``(B) <<NOTE: Time period.>> Ineligibility for employment.--An athlete who has served on the board of directors of a national governing body shall not be eligible for employment at the Center during the 2-year period beginning on the date on which the athlete ceases to serve on such board of directors.

``(3) Conflicts of interest.--An executive or attorney for the Center shall be considered to have an inappropriate conflict of interest if the executive or attorney also represents the corporation or a national governing body.

``(4) Investigations.--

``(A) In general.--The corporation and the national governing bodies shall not interfere in, or attempt to influence the outcome of, an investigation.

``(B) Report.--In the case of an attempt to interfere in, or influence the outcome of, an investigation, not later than 72 hours after such attempt, the Center shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and

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Commerce and the Committee on the Judiciary of the House

of Representatives a report describing the attempt.

``(C) Work product.--

``(i) In general.--Any decision, report, memorandum, work product, notes, or case file of the Center--

``(I) <<NOTE: Confidentiality.>> shall be confidential; and

``(II) shall not be subject to discovery, subpoena, or any other means of legal compulsion in any civil action in which the Center is not a party to the action.

``(ii) Rule of construction.--Nothing in this subparagraph shall be construed to prohibit the Center from providing work product described in clause (i) to a law enforcement agency for the purpose of assisting in a criminal investigation.

``(g) Funding.--

``(1) <<NOTE: Time periods.>> Mandatory payments.--

``(A) <<NOTE: Effective date.>> Fiscal year 2021.--On January 4, 2021, the corporation shall make a mandatory payment of $20,000,000 to the Center for operating costs of the Center for fiscal year 2021.

``(B) <<NOTE: Deadline.>> Subsequent fiscal years.--For fiscal year 2022 and each fiscal year thereafter, the corporation shall make a mandatory payment of $20,000,000 to the Center not later than the close of business on the first regular business day in January.

``(2) Funds from national governing bodies.--The corporation may use funds received from 1 or more national governing bodies to make a mandatory payment required by paragraph (1).

``(3) Failure to comply.--

``(A) In general.--The Center may file a lawsuit to compel payment under paragraph (1).

``(B) Penalty.--For each day of late or incomplete payment of a mandatory payment under paragraph (1) after January 1 of the applicable year, the Center shall be allowed to recover from the corporation an additional $20,000.

``(4) Accountability.--

``(A) In general.--Amounts transferred to the Center by the corporation or a national governing body shall be used, in accordance with section 220503(15), primarily for the purpose of carrying out the duties and requirements under sections 220541 through 220543 with respect to the investigation and resolution of allegations of sexual misconduct, or other misconduct, made by amateur athletes.

``(B) Use of funds.--

``(i) In general.--Of the amounts made available to the Center by the corporation or a national governing body in a fiscal year for the purpose described in section 220503(15)--

``(I) not less than 50 percent shall be used for processing the investigation and resolution of allegations described in subparagraph (A); and

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``(II) not more than 10 percent may be used for executive compensation of officers and directors of the Center.

``(ii) Reserve funds.--

``(I) In general.--If, after the Center uses the amounts as allocated under clause (i), the Center does not use the entirety of the remaining amounts for the purpose described in subparagraph (A), the Center may retain not more than 25 percent of such amounts as reserve funds.

``(II) Return of funds.--The Center shall return to the corporation and national governing bodies any amounts, proportional to the contributions of the corporation and national governing bodies, that remain after the retention described in subclause (I).

``(iii) Lobbying and fundraising.--Amounts made available to the Center under this paragraph may not be used for lobbying or fundraising expenses.

``(h) Compliance Audits.--

``(1) <<NOTE: Deadlines.>> In general.--Not less frequently than annually, the Center shall carry out an audit of the corporation and each national governing body--

``(A) <<NOTE: Assessment.>> to assess compliance with policies and procedures developed under this subchapter; and

``(B) to ensure that consistent training relating to the prevention of child abuse is provided to all staff of the corporation and national governing bodies who are in regular contact with amateur athletes and members who are minors subject to parental consent.

``(2) Corrective measures.--

``(A) In general.--The Center may impose on the corporation or a national governing body a corrective measure to achieve compliance with the policies and procedures developed under this subchapter or the training requirement described in paragraph (1)(B).

``(B) Inclusions.--A corrective measure imposed under subparagraph (A) may include the implementation of an athlete safety program or specific policies, additional compliance audits or training, and the imposition of a probationary period.

``(C) Enforcement.--

``(i) In general.--On request by the Center, the corporation shall--

``(I) enforce any corrective measure required under subparagraph (A); and

``(II) <<NOTE: Reports.>> report the status of enforcement with respect to a national governing body within a reasonable timeframe.

``(ii) Methods.--The corporation may enforce a corrective measure through any means available to

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the corporation, including by withholding funds from a national governing body, limiting the participation of the national governing body in corporation events, and decertifying a national governing body.

``(iii) <<NOTE: Time period. Reports.>> Effect of noncompliance.--If the corporation fails to enforce a corrective measure within 72

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hours of a request under clause (i), the Center may submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce and the Committee on the Judiciary of the House of Representatives a report describing the noncompliance.

``(3) Annual report.--

``(A) In general.--Not less frequently than annually, the Center shall submit to Congress a report on the findings of the audit under paragraph (1) for the preceding year and the status of any corrective measures imposed as a result of the audit.

``(B) Public availability.--

``(i) In general.--Each report under subparagraph (A) shall be made available to the public.

``(ii) Personally identifiable information.--A report made available to the public shall not include the personally identifiable information of any individual.

``(i) Reports to Corporation.--Not later than 30 days after the end of each calendar quarter that begins after the date of the enactment of the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, the Center shall submit to the corporation a statement of the following:

``(1) The number and nature of misconduct complaints referred to the Center, by sport.

``(2) The number and type of pending misconduct complaints under investigation by the Center.

``(3) The number of misconduct complaints for which an investigation was terminated or otherwise closed by the Center.

``(4) The number of such misconduct complaints reported to law enforcement agencies by the Center for further investigation.

``(5) The number of discretionary cases accepted or declined by the Center, by sport.

``(6) The average time required for resolution of such cases and misconduct complaints.

``(7) Information relating to the educational activities and trainings conducted by the office of education and outreach of the Center during the preceding quarter, including the number of educational activities and trainings developed and provided.

``(j) Certifications of Independence.--

``(1) <<NOTE: Deadline. Public information.>> In general.--Not later than 180 days after the end of a fiscal year, the Comptroller General of the United States shall make available to the public a certification relating to the Center's independence from the corporation.

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``(2) Elements.--A certification required by paragraph (1) shall include the following:

``(A) A finding of whether a violation of a prohibition on employment of former employees or board members of the corporation under subsection (f) has occurred during the year preceding the certification.

``(B) A finding of whether an executive or attorney for the Center has had an inappropriate conflict of interest during that year.

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``(C) A finding of whether the corporation has interfered in, or attempted to influence the outcome of, an investigation by the Center.

``(D) <<NOTE: Recommenda- tions.>> Any recommendations of the Comptroller General for resolving any potential risks to the Center's independence from the corporation.

``(3) Authority of comptroller general.--

``(A) In general.--The Comptroller General may take such reasonable steps as, in the view of the Comptroller General, are necessary to be fully informed about the operations of the corporation and the Center.

``(B) Specific authorities.--The Comptroller General shall have--

``(i) access to, and the right to make copies of, any and all nonprivileged books, records, accounts, correspondence, files, or other documents or electronic records, including emails, of officers, agents, and employees of the Center or the corporation; and

``(ii) the right to interview any officer, employee, agent, or consultant of the Center or the corporation.

``(C) Treatment of privileged information.--If, under this subsection, the Comptroller General seeks access to information contained within privileged documents or materials in the possession of the Center or the corporation, the Center or the corporation, as the case may be, shall, to the maximum extent practicable, provide the Comptroller General with the information without compromising the applicable privilege.''.

(2) Technical and conforming amendments.--

(A) Subchapter IV of chapter 2205 of title 36, United States Code, as redesignated by section 5(a)(1), <<NOTE: 36 USC 220541 prec.>> is amended in the subchapter heading by striking ``SAFE SPORT'' and inserting ``SAFESPORT''.

(B) The table of sections for chapter 2205 of title 36, United States Code, <<NOTE: 36 USC 220501 prec.>> is amended by striking the item relating to section 220541 and inserting the following:

``220541. Designation of United States Center for SafeSport.''.

(b) Additional Duties of Center.--Section 220542 of title 36, United States Code, is amended--

(1) in the section heading, by striking the period at the

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end; and

(2) in subsection (a)--

(A) in paragraph (1), by striking ``; and'' and inserting a semicolon; and

(B) in paragraph (2)--

(i) in subparagraph (A), by striking clauses (i) and (ii) and inserting the following:

``(i) law enforcement consistent with section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341); and

``(ii) the Center, whenever such members or adults learn of facts leading them to suspect reasonably that an amateur athlete who is a minor has suffered an incident of child abuse;'';

(ii) by redesignating subparagraphs (B) through (F) as subparagraphs (E) through (I), respectively;

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(iii) by inserting after subparagraph (A) the following:

``(B) <<NOTE: Requirement.>> a requirement that the Center shall immediately report to law enforcement consistent with section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341) any allegation of child abuse of an amateur athlete who is a minor, including any report of such abuse submitted to the Center by a minor or by any person who is not otherwise required to report such abuse;

``(C) 1 or more policies that prohibit any individual who is an employee, contractor, or agent of the Center from assisting a member or former member in obtaining a new job (except for the routine transmission of administrative and personnel files) if the individual knows that such member or former member violated the policies or procedures of the Center related to sexual misconduct or was convicted of a crime involving sexual misconduct with a minor in violation of applicable law;

``(D) <<NOTE: Requirement.>> a requirement that the Center, including any officer, agent, attorney, or staff member of the Center, shall not take any action to notify an alleged perpetrator of abuse of an amateur athlete of any ongoing investigation or accusation unless--

``(i) the Center has reason to believe an imminent hazard will result from failing to so notify the alleged perpetrator; or

``(ii) law enforcement--

``(I) authorizes the Center to take such action; or

``(II) <<NOTE: Time period.>> declines or fails to act on, or fails to respond to the Center with respect to, the allegation within 72 hours after the time at which the Center reports to law enforcement under subparagraph (B);'';

(iv) in subparagraph (F), as so redesignated, by inserting ``, including communications,'' after ``interactions'';

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(v) by amending subparagraph (G), as so redesignated, to read as follows:

``(G) procedures to prohibit retaliation by the corporation or any national governing body against any individual who makes--

``(i) a report under subparagraph (A) or (E); or

``(ii) any other report relating to abuse of any amateur athlete, including emotional, physical, and sexual abuse;'';

(vi) in subparagraph (H), as so redesignated, by striking ``; and'' and inserting a semicolon;

(vii) in subparagraph (I), as so redesignated, by striking the period at the end of clause (ii) and inserting a semicolon; and

(viii) by adding at the end the following:

``(J) <<NOTE: Determination.>> a prohibition on the use in a decision of the Center under section 220541(a)(1)(D) of any evidence relating to other sexual behavior or the sexual predisposition of the alleged victim, or the admission of any such evidence in

[[Page 134 STAT. 968]]

arbitration, unless the probative value of the use or admission of such evidence, as determined by the Center or the arbitrator, as applicable, substantially outweighs the danger of--

``(i) any harm to the alleged victim; and

``(ii) unfair prejudice to any party; and

``(K) training for investigators on appropriate methods and techniques for ensuring sensitivity toward alleged victims during interviews and other investigative activities.''.

(c) Records, Audits, and Reports.--Section 220543 of title 36, United States Code, is amended--

(1) by striking subsection (b) and inserting the following:

``(b) Audits and Transparency.--

``(1) Annual audit.--

``(A) In general.--Not less frequently than annually, the financial statements of the Center for the preceding fiscal year shall be audited by an independent auditor in accordance with generally accepted accounting principles--

``(i) to ensure the adequacy of the internal controls of the Center; and

``(ii) to prevent waste, fraud, or misuse of funds transferred to the Center by the corporation or the national governing bodies.

``(B) Location.--An audit under subparagraph (A) shall be conducted at the location at which the financial statements of the Center normally are kept.

``(C) Report.--Not later than 180 days after the date on which an audit under subparagraph (A) is completed, the independent auditor shall issue an audit report.

``(D) Corrective action plan.--

``(i) In general.--On completion of the audit

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report under subparagraph (C) for a fiscal year, the Center shall prepare, in a separate document, a corrective action plan that responds to any corrective action recommended by the independent auditor.

``(ii) Matters to be included.--A corrective action plan under clause (i) shall include the following for each such corrective action:

``(I) The name of the person responsible for the corrective action.

``(II) A description of the planned corrective action.

``(III) The anticipated completion date of the corrective action.

``(IV) In the case of a recommended corrective action based on a finding in the audit report with which the Center disagrees, or for which the Center determines that corrective action is not required, an explanation and a specific reason for noncompliance with the recommendation.

``(2) Access to records and personnel.--With respect to an audit under paragraph (1), the Center shall provide the independent auditor access to all records, documents, and personnel and financial statements of the Center necessary to carry out the audit.

``(3) Public availability.--

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``(A) <<NOTE: Web posting.>> In general.--The Center shall make available to the public on an easily accessible internet website of the Center--

``(i) each audit report under paragraph (1)(C);

``(ii) the Internal Revenue Service Form 990 of the Center for each year, filed under section 501(c) of the Internal Revenue Code of 1986; and

``(iii) the minutes of the quarterly meetings of the board of directors of the Center.

``(B) Personally identifiable information.--An audit report or the minutes made available under subparagraph (A) shall not include the personally identifiable information of any individual.

``(4) Rule of construction.--For purposes of this subsection, the Center shall be considered a private entity.

``(c) Report.--The Center shall submit an annual report to Congress, including--

``(1) <<NOTE: Strategic plan.>> a strategic plan with respect to the manner in which the Center shall fulfill its duties under sections 220541 and 220542;

``(2) <<NOTE: Compliance.>> a detailed description of the efforts made by the Center to comply with such strategic plan during the preceding year;

``(3) any financial statement necessary to present fairly the assets, liabilities, and surplus or deficit of the Center for the preceding year;

``(4) <<NOTE: Analysis.>> an analysis of the changes in the

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amounts of such assets, liabilities, and surplus or deficit during the preceding year;

``(5) a detailed description of Center activities, including--

``(A) the number and nature of misconduct complaints referred to the Center;

``(B) the total number and type of pending misconduct complaints under investigation by the Center;

``(C) the number of misconduct complaints for which an investigation was terminated or otherwise closed by the Center; and

``(D) the number of such misconduct complaints reported to law enforcement agencies by the Center for further investigation;

``(6) a detailed description of any complaint of retaliation made during the preceding year by an officer or employee of the Center or a contractor or subcontractor of the Center that includes--

``(A) the number of such complaints; and

``(B) the outcome of each such complaint;

``(7) information relating to the educational activities and trainings conducted by the office of education and outreach of the Center during the preceding year, including the number of educational activities and trainings developed and provided; and

``(8) a description of the activities of the Center.

``(d) Definitions.--In this section--

``(1) <<NOTE: Assessments.>> `audit report' means a report by an independent auditor that includes--

``(A) an opinion or a disclaimer of opinion that presents the assessment of the independent auditor with respect to the financial records of the Center, including whether

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such records are accurate and have been maintained in accordance with generally accepted accounting principles;

``(B) an assessment of the internal controls used by the Center that describes the scope of testing of the internal controls and the results of such testing; and

``(C) a compliance assessment that includes an opinion or a disclaimer of opinion as to whether the Center has complied with the terms and conditions of subsection (b); and

``(2) `independent auditor' means an independent certified public accountant or independent licensed public accountant, certified or licensed by a regulatory authority of a State or a political subdivision of a State, who meets the standards specified in generally accepted accounting principles.''.

SEC. 9. EXEMPTION FROM AUTOMATIC STAY IN BANKRUPTCY CASES.

Section 362(b) of title 11, United States Code, is amended--

(1) in paragraph (27), by striking ``and'' at the end;

(2) in paragraph (28), by striking the period at the end and inserting ``; and''; and

(3) by inserting after paragraph (28) the following:

``(29) under subsection (a)(1) of this section, of any action by--

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``(A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or

``(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.''.

SEC. 10. ENHANCED CHILD ABUSE REPORTING.

Section 226(c)(9) of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341(c)(9)) is amended--

(1) by striking ``adult who is authorized'' and inserting the following: ``adult who--

``(A) is authorized'';

(2) in subparagraph (A), as so designated, by inserting ``or'' after the semicolon at the end; and

(3) by adding at the end the following:

``(B) is an employee or representative of the United States Center for SafeSport;''.

SEC. 11. COMMISSION ON THE STATE OF U.S. OLYMPICS AND PARALYMPICS.

(a) Establishment.--There is established within the legislative branch a commission, to be known as the ``Commission on the State of U.S. Olympics and Paralympics'' (referred to in this section as the ``Commission'').

(b) Composition.--

(1) <<NOTE: Appointments.>> In general.--The Commission shall be composed of 16 members, of whom--

(A) 4 members shall be appointed by the chairman of the Committee on Commerce, Science, and Transportation of the Senate;

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(B) 4 members shall be appointed by the ranking member of the Committee on Commerce, Science, and Transportation of the Senate;

(C) 4 members shall be appointed by the chairman of the Committee on Energy and Commerce of the House of Representatives; and

(D) 4 members shall be appointed by the ranking member of the Committee on Energy and Commerce of the House of Representatives.

(2) <<NOTE: Designations.>> Co-chairs.--Of the members of the Commission--

(A) 1 co-chair shall be designated by the chairman of the Committee on Commerce, Science, and Transportation of the Senate; and

(B) 1 co-chair shall be designated by the chairman of the Committee on Energy and Commerce of the House of Representatives.

(3) Qualifications.--

(A) In general.--Each member appointed to the Commission shall have the following qualifications:

(i) Experience in 1 or more of the following:

(I) Amateur, Olympic and Paralympic, or professional athletics.

(II) Elite athletic coaching.

(III) Public service relating to

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sports.
(IV) Professional advocacy for increased minority participation in sports.
(V) Olympic and Paralympic sports administration or professional sports administration.
(ii) Expertise in bullying prevention and the promotion of a healthy organizational culture.
(B) Olympic or paralympic athletes.--Not fewer than 8 members appointed under paragraph (1) shall be current or former Olympic or Paralympic athletes.

(c) <<NOTE: Deadline.>> Initial Meeting.--Not later than 30 days after the date on which the last member is appointed under paragraph (1), the Commission shall hold an initial meeting.

(d) Quorum.--11 members of the Commission shall constitute a quorum.
(e) No Proxy Voting.--Proxy voting by members of the Commission shall be prohibited.
(f) Staff. <<NOTE: Appointments.>> --The co-chairs of the Commission shall appoint an executive director of the Commission, and such staff as appropriate, with compensation.

(g) Public Hearings.--The Commission shall hold 1 or more public hearings.
(h) Travel Expenses.--Members of the Commission shall serve without pay, but shall receive travel expenses in accordance with sections 5702 and 5703 of title 5, United States Code.
(i) Duties of Commission.--
(1) Study.--
(A) In general.--The Commission shall conduct a study on matters relating to the state of United States participation in the Olympic and Paralympic Games.
(B) Matters studied.--The study under subparagraph (A) shall include--

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(i) <<NOTE: Review.>> a review of the most recent reforms undertaken by the United States Olympic and Paralympic Committee;
(ii) a description of proposed reforms to the structure of the United States Olympic and Paralympic Committee;
(iii) <<NOTE: Assessment.>> an assessment as to whether the board of directors of the United States Olympic and Paralympic Committee includes diverse members, including athletes;
(iv) <<NOTE: Assessment.>> an assessment of United States athlete participation levels in the Olympic and Paralympic Games;
(v) a description of the status of any United States Olympic and Paralympic Committee licensing arrangement;
(vi) <<NOTE: Assessment.>> an assessment as to whether the United States is achieving the goals for the Olympic and Paralympic Games set by the United States Olympic and Paralympic Committee;

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(vii) <<NOTE: Analysis.>> an analysis of the participation in amateur athletics of—

(I) women;

(II) disabled individuals; and

(III) minorities;

(viii) a description of ongoing efforts by the United States Olympic and Paralympic Committee to recruit the Olympic and Paralympic Games to the United States;

(ix) <<NOTE: Evaluation. Analysis.>> an evaluation of the functions of the national governing bodies (as defined in section 220501 of title 36, United States Code) and an analysis of the responsiveness of the national governing bodies to athletes with respect to the duties of the national governing bodies under section 220524(a)(3) of title 36, United States Code; and

(x) <<NOTE: Assessment.>> an assessment of the finances and the financial organization of the United States Olympic and Paralympic Committee.

(2) Report.—

(A) In general.—Not later than 270 days after the date of the enactment of this Act, the Commission shall submit to Congress a report on the results of the study conducted under paragraph (1), including a detailed statement of findings, conclusions, recommendations, and suggested policy changes.

(B) <<NOTE: Web posting.>> Public availability.—The report required by subparagraph (A) shall be made available to the public on an internet website of the United States Government that is available to the public.

(j) Powers of Commission.—

(1) Subpoena authority.—The Commission may subpoena an individual the testimony of whom may be relevant to the purpose of the Commission.

(2) Furnishing information.—On request by the executive director of the Commission, the head of a Federal agency shall furnish information to the Commission.

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(k) Termination of Commission.—The Commission shall terminate 90 days after the date on which the Commission submits the report under subsection (i)(2).

(l) Authorization of Appropriations.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 12. <<NOTE: 36 USC 220501 note.>> SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, is determined to be unenforceable or invalid, the remaining provisions of this Act and the amendments made by this Act shall not be affected.

Approved October 30, 2020.

LEGISLATIVE HISTORY—S. 2330:

SENATE REPORTS: No. 116-245 (Comm. on Commerce, Science, and

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Transportation).
CONGRESSIONAL RECORD, Vol. 166 (2020):
Aug. 4, considered and passed Senate.
Oct. 1, considered and passed House.

<all>

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NEWS

Great Day For Athlete Safety As U.S. House Matches Senate To Pass Empowering Olympic, Paralympic, and Amateur Athlete Act (S2330)

Craig Lord 2020-10-01 Reading Time: 11 minutes

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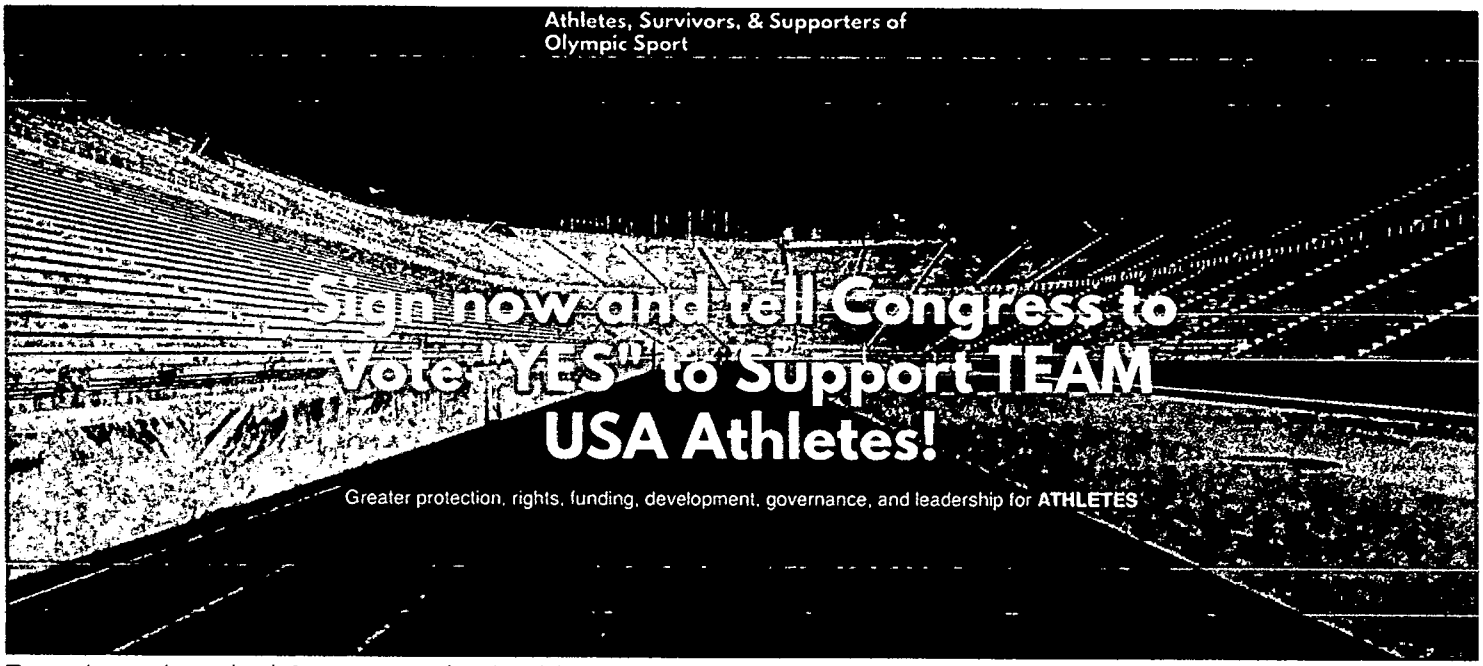
Greater protection, rights, funding, development, governance, and leadership for ATHLETES



Team Integrity asked Congress to back athlete safety in law - today the dream came true

The United States House of Representatives has matched the Senate's unanimous vote in passing (in just eight minutes) transformative **Olympic reform legislation** – the **Empowering Olympic, Paralympic, and Amateur Athlete Act (S2330)** – today.

The end of the autonomy of Olympic governance is nigh: the Act, which now heads to the White House for final thumbs up and seal, grants Congress the power to dissolve the **United States Olympic and Paralympic Committee** (USOPC) Board of Directors.

In a vote today, The House ensured that the powers extend to decertifying National Governing Bodies (NGBs) of individual sports if federations are deemed to have failed to represent the best interests of athletes.

The **Empowering Olympic, Paralympic, and Amateur Athlete Act (S2330)** transcends its

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towering American context and is a triumph for **Team Integrity** advocates such as 1984 Olympic 100m freestyle champion **Nancy Hogshead-Makar**, coach advocates such as **Dia C. Rianda**, and the victims of abuse, such as USA gymnasts who helped jail Larry Nasser, and others like Olympic swimming gold medallist **Deena Deardurff** whose 2010 public confirmation about the abuse she suffered between the ages of 11 and 15 gave others the courage to come forward to name and shame their abusers and force reform at organisations such as USA Swimming.

In the past, the International Olympic Committee has suspended nations if it perceives political "interference" in matters such as selection of (or deselection of) National Olympic Committee officials. The S2330 legislation effectively makes it game, set and match on that IOC approach, unless they ever opt for suspending the USA and waving goodbye to NBC rights contract, the vast sums of money that flow – and related arrangements.

In the United States, the need for Olympic reform legislation grew out of anger and frustration over what has widely been seen as unchecked abuse of athletes, sexual, physical and psychological, at the heart of Olympic sports. The issues are highlighted in the documentary **Athlete A** but date back much further to cases reported in the 1970s but ignored for decades.

The S2330 bill "potentially places the U.S. Olympic & Paralympic Committee **on a path to suspension** by the International Olympic Committee, the Sports Examiner noted in its Big Picture column. It reported the following remarks made by Democratic Rep. ***Karen Bass*** (D-California) and ***Guy Reschenthaler*** (R-Pennsylvania).

Bass:

*"This comes in the wake of **Larry Nassar**'s sexual abuse scandal. Bi-partisan investigations launched in the House and Senate revealed systemic failures within the Olympic Committee that contributed to widespread instances of sexual abuse of athletes, including minors. These include a lack of effective oversight of the U.S. Olympic and Paralympic Committee and National Governing Bodies, the failure of these organizations to uphold their duty to protect athletes from abuse by failing to report allegations of wrongdoings to appropriate law enforcement authorities, and concealing these failures and neglecting to enact serious reforms.*

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> *"S. 2330 addresses these issues through a series of governance and oversight reforms, including increasing the liability of the USOPC and NGBs, providing Congressional authority to decertify NGBs, increasing the level of amateur athlete representations on the USOPC board and NGB governing structures and requiring the USOPC to establish clear procedures and reporting requirements to protect athletes. It strengthens the work of the nonprofit organization that is responsible for investigating allegations of sexual abuse against athletes.*

"The bill requires $20 million in funding for the Center for SafeSport each year to cover its operating costs. The bill also prevents potential conflicts of interest by prohibiting individuals who are employed by the USOPC or an NGB from serving the Center for SafeSport and limiting the ability of former employers and Board members from serving.

"S. 2330 is supported by the USOPC, the Center for SafeSport and a coalition of hundreds of Olympic and Paralympic athletes, sports leaders and sexual abuse survivors. The bill was passed by the Senate by unanimous consent on August 4, 2020, and its companion bill has bi-partisan support here in the House as well."

Reschenthaler:

"In 2016, we were shaken by the revelations of abuse that permeated USA Gymnastics in the Olympic community. While the blame for this abuse falls squarely at the feet of the predator, USA Gymnastics and the U.S. Olympic and Paralympic Committee also failed the victims. ...

"S. 2330 supports the work that [the U.S. Center for SafeSport] is doing. It helps address the shortcomings in the Committee that allowed the abuse to occur. One of the most important reforms in this bill is a requirement that athletes serve on the governing bodies that oversee their

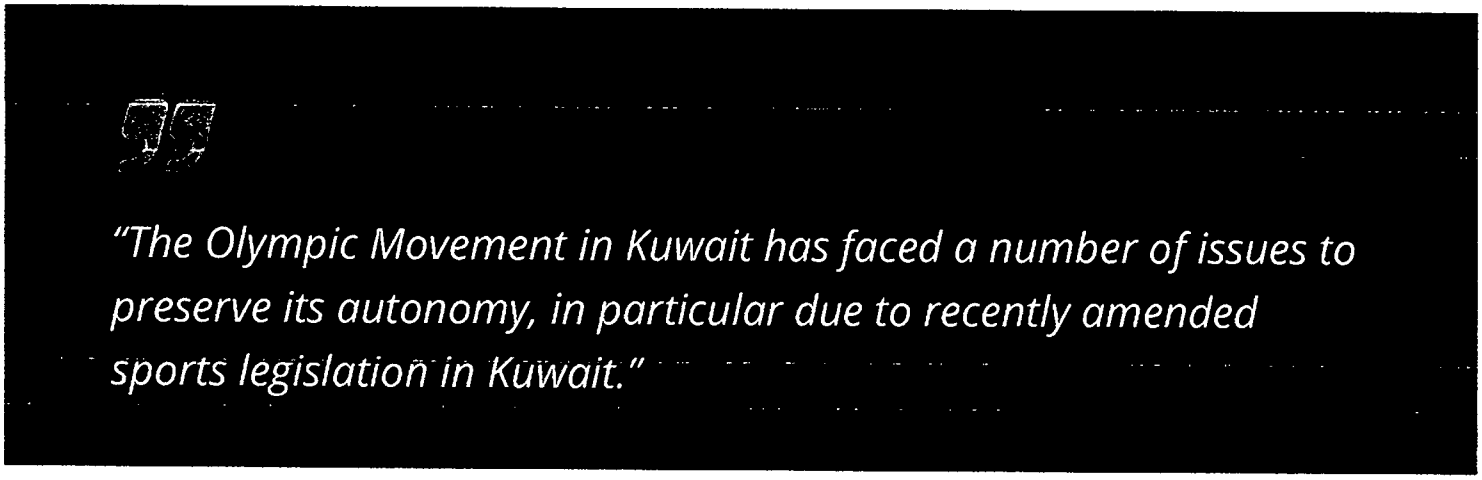
sports, ensuring that athletes finally get a seat at the table."

Abuse is a worldwide crisis in sport and unfolds in a largely autonomous bubble of Olympic governance, in which authorities serving as guardians and regulators have been accused of failing to take responsibility for events that unfold on their watch, including various forms of abuse, doping in the mix.

Power of states to eject those at the helm of national Olympic committees has been fiercely resisted by the **International Olympic Committee (IOC)**, with nations such as Kuwait suspended from the Olympic Movement when its Government sought to exercise control over Olympic matters, including calls to replace key power-brokers at the heart of the IOC.

Events surrounding the second suspension of Kuwait from the Olympic Movement in 2015, highlight the issue of Olympic autonomy and how that sits with the right of states to say who represents them in international forums (fora).

Upon suspending Kuwait in 2015, the IOC stated:



The new legislation in the United States grants democratically elected politicians the power to determine who represents the country and its athletes at the helm of the Olympic Movement in the United States, the power to decide if those in charge are fit for purpose and following the laws and standards set for all citizens of the country. The priority issue in focus: the protection and welfare of athletes, Olympic sports underpinned by a massive worldwide community of children.

S2330 Olympic reform legislation makes provision for whistleblowers and renders retaliation a crime.

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The Act was founded in the hard work and courage of victims and their advocates, its importance to Olympic sport hard to overstate, say the architects of S2330.

Calls for the Senate to back the Olympic reform legislation included a Who's Who of Olympic medallists in swimming, alongside some swim coaches and supporters.

Nancy Hogshead-Makar, the 1984 Olympic 1500m freestyle champion, helped frame the Act as co-chairman of Team Integrity, the committee of Olympians and member of the American Olympic community advocating for an overhaul of the USOPC. Hogshead-Makar told reporters in August after the Senate vote in favour:

> *"This bill is a repudiation of the USOPC board's adoption of a 'money and medals' corporate culture. This bill gives athletes far more rights, while holding the corporation to a higher standard of care for the athletes compromising our youth sports, feeder sports and elite sports programming. ... I am grateful that after many years of bipartisan collaboration, this legislation will benefit those participating in the U.S. Olympic Movement. The Olympics are a unique treasure for us. Striving for excellence, to be the best-of-the-best, reflects our American identity ... Our quest remains: to fix a broken sport governance system on behalf of those most vulnerable in the Olympic Movement, and those most impacted by the Sports Act. These legislators answered the call. I look forward to working collaboratively to assure that athletes are equal stakeholders in USOPC governance."*

The bill was backed by the U.S. House of Representatives today.

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The Olympic reform legislation requires the USOPC to contribute $20 million annually to the operation of the U.S. Center for SafeSport. In 2019, the NOC contributed $7.5 million. As the *Orange County Register* reported, that contribution is "some $300,000 less than the $7.8 million the USOPC paid to Jet Set Sports, a New Jersey firm specializing in Olympic-related corporate hospitality, according to financial records".

NGB exemption from decertification in bankruptcy proceedings is brought to an end by the new Act, which calls for the creation of 16-member commission on the state of the USOPC and American Olympic movement. Congress will select the members of the commission, with a requirement that at least eight members must be current or former Olympic or Paralympic athletes.

USOPC CEO **Sarah Hirshland** welcomed the legislation in a statement after the Senate vote, saying:

> *"We would like to thank Chairman Moran and Senator Blumenthal for their work in drafting and advancing this important legislation. It will cement increases in athlete representation in the U.S. Olympic and Paralympic movements, improvements in athlete safety protections, and increases in transparency and accountability in our system. The USOPC board recently approved the second phase of the most sweeping governance reforms in recent history. Building on that commitment and this legislation, we will move rapidly to implement reforms to address any outstanding provisions from this bill."*

Hirschland and others face questions over financial records released on Monday by the USOPC showing that the organization spent nearly $20 million more in 2019 on its

employees than it did on direct financial support to American elite athletes. The accounts showed that nearly $26 million was spent by USOPC in legal-process related expenses in 2018 and 2019, after $667,300 were paid out in legal expenses in 2017. The 2019 lobbying bill for USOPC was $180,366.

Joy Over Bipartisan Support For Athlete Safeguarding Through Olympic Reform Legislation

News of the unanimous Senate vote in August was received with joy by those who fought hard for the protection of athletes to be enshrined in law.

Among them is **Dia C. Rianda**, who was forced to walk a tightrope of official resistance and legal threat after reporting the abusive behaviour of a coach in California.

Today, Rianda said of the unanimous support for S2330:

> *"This is a huge milestone for American athletes."*

After the Senate voted unanimously in favour back in August, Coach Rianda told this author:

> *"This news gives me hope in humanity. This is the beginning of the End of the Olympic Movement as we have known it in the USA and it is a good thing.*

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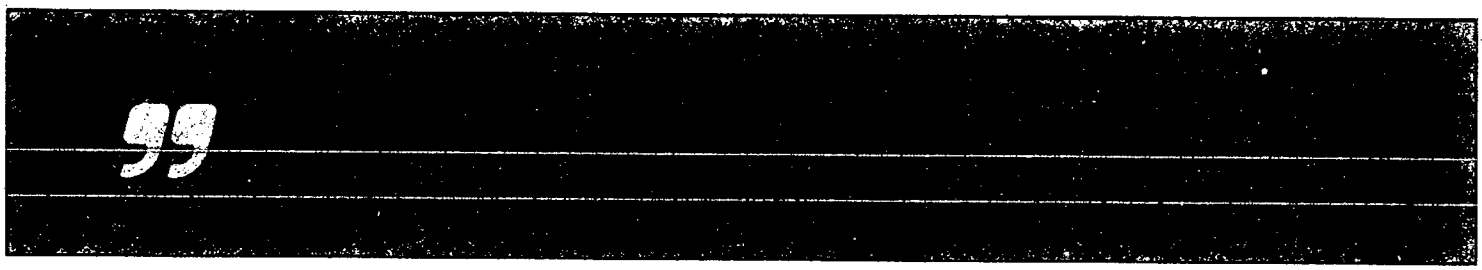
> *I worked so very hard to get this passed, as did a few others. 'Passed Unanimously'. I'm hopeful for the future, but there is still so much more work to be done."*

> *"The message is now crystal clear now – 'If you are an abuser, exploiter of athletes, an abuse enabler, part of coverup and silencing athlete / child / victims it is time to go. There will be no place for you in the future of Olympic Sport and history will not remember you kindly even as you take credit for athlete successes."*

She added: "For the first time in 8 years I feel hope in my heart for athletes in the Olympic Movement."

Rianda lamented that more coaches had not signed up to the process of backing and supporting the Act but the job now almost done as far as getting the Olympic reform legislation on the books, she noted that the pathway to progress required stakeholders to play an active role in forcing change:



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"I spoke up loudly. I reported and I openly advocated. I paid a heavy price for that but that price was worth every tear and all the crap I have experienced because things are changing in my country for better for children who aspire and work for the Olympic Dream. The price albeit high was worth a better future."

Rianda noted one of the most heartening aspects of the Olympic reform legislation: Bipartisan support. In other words, no hiding place behind any political flag or colour; surround-sound support for the empowerment and protection of athletes in law, the notion of Olympic autonomy beyond the law of the land whacked out of the park.

Hailing bipartisan support and backing for the Olympic reform legislation as a great moment for athletes, for those who support their right to work in a safe environment that affords them protection from rogues, Rianda recalled the long road of campaigning and the work of Senators:

> *"When I met with Richard Blumenthal and his aides I felt sincere empathy and they took much time to listen and ask questions. He and Jerry Moran showed extreme care and respect for athletes speaking up. They were not the only ones. Many on both sides of the political spectrum on the House side showed extreme interest and concern. I don't think there will be any issue of this clearing the House of Representatives."*

The new athlete safety Act brings pressure to bear on Olympic sports federations who have

lent on legal advice designed to represent and protect them, as opposed to the athletes and survivors of abuse – in some cases with obvious push-back against those coming forward with allegations. Victims and the advocates will now have a law to lean on.

An Athlete Act With The Power To Dissolve NOC Board & Decertify NGBs

The **Empowering Olympic, Paralympic, and Amateur Athlete Act** places far greater legal liability on the USOPC and NGBs for sexual abuses by coaches, officials and employees than has existed to date.

It also provides Congress with mechanisms to dissolve the USOPC's board of directors and decertify NGBs, groups that Congress and athletes allege have put Olympic success and attracting corporate sponsors over the safety and welfare of every athlete.

The Olympic reform legislation is designed to transform the toxic culture within American Olympic sports that enabled and then ignored sexual abuse of the kind seen in the case of Larry Nassar in gymnastics but suffered by victims working with predatory coaches and officials in sports far and wide, swimming included, as USA Swimming list of the permanently banned.

That list is incomplete as far as survivors and advocates are concerned as they ponder the vexed question of historic abuse and allegations of abuse that went unheeded for decades.

Among outstanding cases is that of coach **Paul Bergen**, accused of sexual abuse of minors by the women who trained in his programs as teenagers in the 1970s. The abuse was first reported to police authorities in the 1970s and the predecessor, in name, of USA Swimming. It came up again during meetings of USA Swimming's Abuses Committee in 1991 but never resulted in any inquiry nor action. Allegations of abuse by Bergen have been widely reported since Deena Deardurff made an excruciating and damning statement in 2010 confirming what she had told others in the sport on many occasions down the years.

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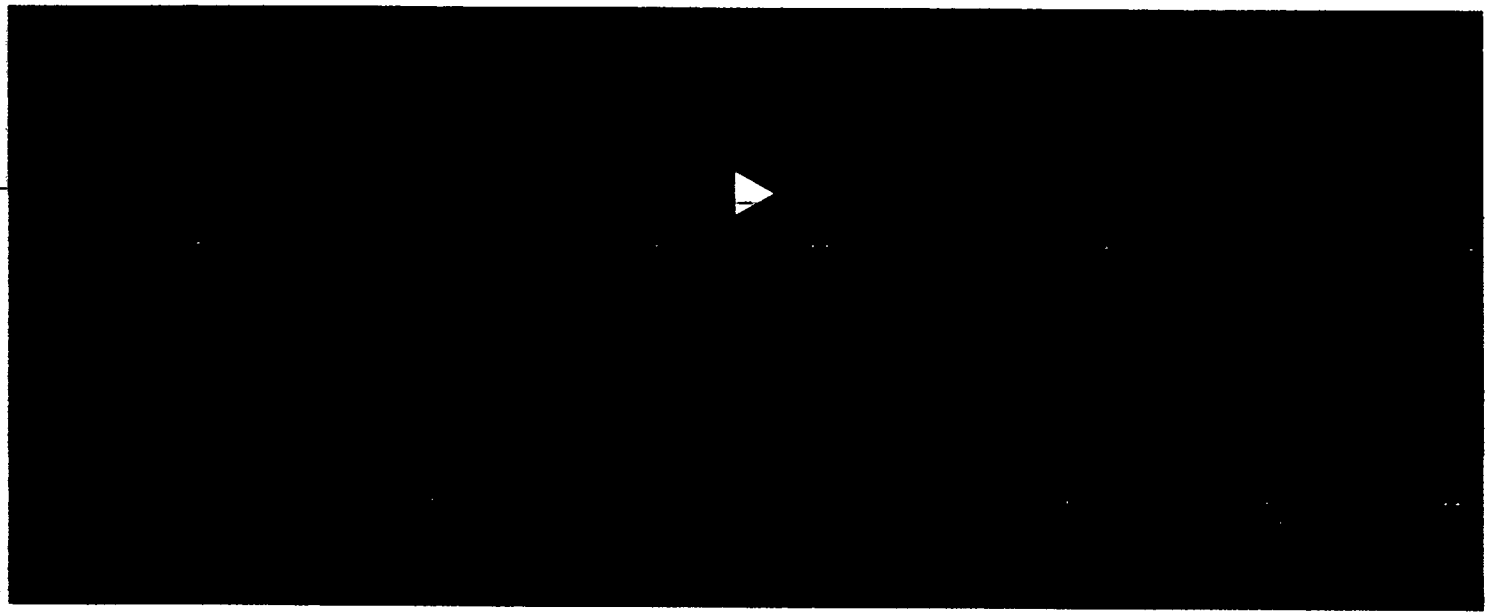

"Critical step towards providing effective safeguards and protections"

Back in August when the Senate voted in favour of S2330, U.S. **Senators Jerry Moran** (R-Kansas) and **Richard Blumenthal** (D-Connecticut), the Olympic athlete safety reform legislation bill's sponsors, issued a statement saying:

> *"Today's Senate passage of our Olympic reform legislation marks a critical step towards providing effective safeguards and protections to Olympic, Paralympic and amateur athletes pursuing the sports they love. We could not have passed this bill in the Senate today without the input and guidance of the survivors – athletes who traveled to Washington countless times, shared their stories and demanded change. While powerful institutions failed these survivors in the past, we aren't going to."*

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The legislation was introduced in July 2019 in response to the Nassar case. After the unanimous vote on Tuesday, Sen. Blumenthal told reporters:

> *"Larry Nassar became the face of a pattern of systemic failure and abuse and he reflected a culture of putting medals and money above the lives of athletes, prioritizing those tangible signs of victory above the human lives that were impacted so adversely.*
>
> *"Systematic failures were reflected in Larry Nassar's success in terrorizing these young athletes and it affected other trainers, other coaches who similarly betrayed trust, it affected other sports, figure skating and swimming as well as gymnastics. None were immune to this sexual, physical or emotional abuse."*

The Bill's passage follows an 18-month Senate investigation into abuse in Olympic sports sanctioned by the USOPC, a Colorado Springs-based tax exempt, non-profit organisation.

"Sen. Moran and I heard again and again and again that the USOPC and NGBs have failed their athletes at every turn," Blumenthal said.

> *"Men and women in these organizations knew what was*

happening. They did nothing. They already had a legal duty under the law to report what was going on, clearly laying out in the law what should be obvious, that you must report allegations of sexual misconduct involving minors was not enough for them. They betrayed not only their trust with these athletes but their legal and moral responsibility."

Companion legislation was introduced in the U.S. House of Representatives by Rep. Ted Lieu (D-California) and others.

The Olympic reform legislation requires the USOPC to assert greater oversight of the NGBs and provides the USOPC with bigger weapons to discipline federations judged to have failed when it comes to protecting athletes. The Bill obliges the USOPC to establish clear procedures and reporting requirements on abuse.

Athletes are also guaranteed a third of all NGB governing structure presence under the bill.

Questions Over Olympic Governance Autonomy

The Olympic athlete safety reform legislation in the United States brings into focus the wider world of Olympic governance and accountability to stakeholders.

FINA, the international swimming federation, backed the IOC suspension of Kuwait with its own but did not extend that to the Kuwaiti member of the ruling Bureau, **Hussain Al-Musallam**, who next year will stand unopposed for the FINA presidency as the latest head of the federation who hails from a country with no world-class swimming program back home.

Of late, there have been reports that Al-Musallam's candidature is backed by the Kuwaiti regime. If that were true, then it would amount to political interference in the process under the same terms as those cited when Kuwait was suspended by the IOC. Beyond that, there are more serious issues yet to be tested in a court of law.

Al-Musallam and his fellow Kuwaiti and boss at the Olympic Council for Asia (OCA), **Sheikh**

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Ahmad al-Fahad al-Sabah, were cited by the United States Department of Justice in 2017 as co-conspirators to fraud in the guilty-plea case of Guam soccer official Richard Lai, who received more than $800,000 in payments from a bank account said to be in the sole control of the two Kuwaitis.

When Kuwait's swimming federation sought to remove Al-Musallam from candidacy for office at FINA in 2017 – in accordance to its right as a member federation – FINA's leadership rejected the plea on grounds that the nation was suspended. Instead, as time of Kuwait's suspensions it pressed ahead with an election that saw a Kuwaiti official confirmed as "first vice-president" of the organisation.

Related complaints made to the FINA Ethics Panel at the time highlighted the lack of independence in the integrity process at the swimming federation.

The IOC has urged FINA to move to a system akin to that World Athletics has adopted, the establishment of the Athletics Integrity Unit having established an independent body open to hearing complaints of stakeholders without the risk of interference from federation officials.

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Abuse Prevention

Preventing Child Sexual Abuse in Youth Sport – New Federal Legislation Takes Extraordinary Step

Gregory S. Love, Esq.
Kimberlee D. Norris, Esq.

February 2, 2018

-Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017
-Impact of new 'Safe Sport Act' will impact <u>all</u> of youth sport – *directly or indirectly*
-Finally ... legislation that is preventative and not just reactive

Analysis of New Law – Overview

This article attempts to describe the highlights and ramifications (direct and indirect) of *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017* (hereinafter: 'Safe Sport Act') for those entities involved in youth sport. Clearly, the Act contemplates many direct ramifications – especially for NGBs. An important *indirect* ramification is the creation of a 'standard of care' for all youth sport organizations, including athletic and sport programs offered by local leagues, churches, schools, camps and non-profits. All aspects of the Act are meant to prevent sexual abuse in youth sport, primarily through prevention training, prevention policies, and mandatory reporting.

Analysis of New Law – Background

In March 2017, the United States Senate introduced <u>Senate Bill 534 (S.534)</u> aimed at preventing child sexual abuse in youth sport contexts. In May of 2017, the United States House of Representatives introduced <u>House Bill 1973 (H.R.1973)</u>; virtually identical to its sister bill in the Senate, but more expansive. Both were passed unanimously, sending a clear message that all elected officials were ready to respond to the unfolding tragedy in gymnastics.

Representatives from the Senate and the House worked together in the Fall of 2017 to create a bill that would satisfy lawmakers in both chambers. The amended version of S.534 was passed in the Senate on November 14, 2017; S.534 was passed in the House on January 29, 2018. Signature by the President is expected within the month; <u>S.534</u> as submitted to White House.

Analysis of New Law – Construction

Many struggle to understanding the legislative process, relying on analysis from the media, organizational leaders or licensing bodies. Reading legislation – like the Safe Sport Act – can be confusing, because legislation does not 'read like a book' (introduction, body and conclusion). Instead, it is akin to reading modifications and edits to other, preexisting books. For example, the first section of the Act addresses the legislative intent to expand the list of federally-

mandated child abuse reporters to include adults involved in youth sport. To accomplish this, the Act modifies an existing piece of legislation: Section 226 of the Victims of Child Abuse Act of 1990 (34 USC 20341: Child Abuse Reporting). Another section relates to legislative intent to authorize the US Center for Safe Sport to address the risk of sexual abuse in youth sport. To accomplish this, Safe Sport Act modifies the Ted Stevens Olympic and Amateur Sports Act (36 USC 2205: United States Olympic Committee).

In short, understanding the Safe Sport Act requires an understanding of existing law, and this is particularly true regarding the changes in reporting requirements.

Who is Impacted and How

In 2017, federal lawmakers set out to address the issue of child sexual abuse in youth sports, generally, not limited to gymnastics. Attempting to address the risk of child sexual abuse at the federal level has both an upside and a downside, in terms of who is impacted by the new law.

The primary upside is the breadth of coverage; federal legislation impacts a specific activity in every state. Though each state should actively pursue legislation that protects its citizens from sexual abuse (i.e., Texas Youth Camp Act), the states generally failed to pass legislation creating safeguards in youth sport. Federal lawmakers have now created nationally what states should have created locally.

The upside is breadth of coverage; the downside is depth of coverage. Clearly, federal lawmakers can enact legislation that governs youth sport organizations or individuals that 'participate in interstate or international amateur athletic competition', like a National Governing Body (i.e., USA Gymnastics), but how does the Act impact the Ladybugs – a team of 5-year olds who do not compete in interstate or international competition? The power of federal lawmakers is broad, particulary given use of the commerce clause, but not unlimited. For jurisdiction to exist, the individuals and organizations subject to the legislation must be engaged in interstate commerce or activities.

Organizations and individuals involved in youth sport that do not compete in 'interstate or international competition' are still impacted by the requirements of the Safet Sport Act. At a minimum, the Safe Sport Act creates a 'standard of care' for the Ladybugs and all other youth sport organization participants (camps, public and private schools, country clubs, sport facilities).[1]

In general, the essential 'categories' of those impacted by the Safe Sport Act are as follows:
- -a National Governing Body;
- -a Paralympic Sports Organization;
- -an Amateur Sports Organization *sanctioned by an NGB (§220525)*; and
- -an Amateur Sports Organization ***not*** *sanctioned by an NGB (§220530).*

[1] Expect state legislatures to 'close the loop' by enacting similar legislation to prevent sexual abuse in youth sport at the state level.

The first three categories are clearly covered by the Act and under the direct jurisdiction of the US Center for Safe Sport. The 'catch-all' is the last category: an Amateur Sports Organization not sanctioned by an NGB. This category is defined in §220530(b) as follows:
An amateur sports organization that ... participates in interstate or international amateur athletic competition, and whose membership includes any adult who is in regular contact with an amateur athlete who is a minor.

Caution: Do not read this definition, above, and quickly assume the Act does not impact or apply to an organization or individual. The Safe Sport Act is creating an unmistakeable 'standard of care' for all amateur sport organizations and those participating in youth sport. (See 'Standard of Care' below.)

USA Gymnastics and the Ladybugs are the extremes; a wide spectrum of amateur youth sport organizations exist in between. An organization's first challenge is to determine 'who am I' under the new Safe Sport Act. Secondarily, an organization must determine what the Act requires of the organization and its participants. Finally, each organization must determine how/where to access prevention training and policies, which meet the new standard of care.

What follows is a brief discussion of the *changes* mandated by the Safe Sport Act.[2]

Legislative Change – Mandatory Reporting in Youth Sport

The Safe Sport Act expands the list of individuals required to report child sexual abuse by modifying Section 226 of the *Victims of Sexual Abuse Act of 1990* (34 U.S.C. 20341). The list of mandatory reporters now includes:

> (9) 'covered individual'.
> *The term 'covered individual' means an adult who is authorized by a national governing body, a member of a national governing body, or an amateur youth sport organization that participates in interstate or international amateur athletic competition, to interact with a minor or amateur athlete at an amateur sports organization facility or at an event sanctioned by a national governing body, a member of a national governing body, or such an amateur sports organization;*

Note the breadth of the federal legislation AND the interstate competition qualification for amateur youth sport organizations not sanctioned by a National Governing Body.

The Safe Sport Act also extends the mandatory reporting requirement to each 'covered individual', interpreted broadly as an *adult authorized to interact with minor or amateur athletes*.[3] Safe Sport Act §220530(a)(2)(A) requires all adults working with a National

[2] Safe Sport Act expands access to civil courts and civil redress for sexual abuse victims through a broader interpretation of the civil discovery rule and availability of monetary damages. The scope of this article is limited to the required changes affecting youth sport organizations.
[3] *See* Purpose & Summary of the House Bill; H. Rep. No. 115-136 (2017-18). Link to Highlighted Text.

Governing Body (NGB) or Paralympic Sports Organization to immediately report *suspicions of abuse* to the US Center for Safe Sport ('Center') **and** the appropriate law enforcement agencies, as determined by state and federal law.

For Amateur Sports Organization ***not*** *sanctioned by an NGB (§220530)*, participating adults are included in the list of 'covered individuals' required to report *suspicions of abuse* to the appropriate law enforcement agencies, as determined by state and federal law – but do not appear to be required to report suspicions of abuse to the Center.

In essence, the anticipated legislation creates a *mandatory reporting obligation* in youth sport, regardless of whether the program is USA Gymnastics or the Ladybugs. Each organization needs to determine whether a report to the US Center for Safe Sport is also required.

Further, each state has a reporting statute related to child abuse and neglect; some states require *every adult* to report suspicions of abuse and neglect, other states list categories of individuals or circumstances triggering a mandatory report. The *Protecting Young Victims from Sexual Abuse Act of 2017* has created a federal mandatory reporting obligation for all 'covered individuals' (see above). It is imperative that each youth sport organization, and the individuals within that organization, understand the new federal obligations, as well as the respective state-specific obligations.

New Requirement for All – Prevention Training

As referenced above, an organization's first challenge is to determine 'who I am' under the Act. Secondarily, an organization must determine what the Act requires of the organization and its participants. For National Governing Bodies and Paralympic Sports Organizations, there is clearly additional oversight and requirements are spelled out in the Act. Some requirements, however, are applicable to <u>all</u> youth sport organizations: 'prevention training' and 'prevention policies'.

While changes in mandatory reporting requirements are vital, a requirement for 'prevention training' may be the most significant feature of the Safe Sport Act.

Prevention Training – Required for All

For an Amateur Sports Organizations ***not*** *sanctioned by an NGB* (Ladybugs), the requirement for prevention training is found in §220530:

> **§220530. Other amateur sports organizations**
> "(a) In General – An applicable amateur sports organization shall –
> (3) offer and provide consistent training to all adult members who are in regular contact with amateur athletes who are minors, and subject to parental consent, to members who are minors, regarding prevention and reporting of child abuse ... .
> *[elipses and emphases added]*

For Paralympic Sports Organizations and National Governing Bodies – and, presumably, those people/organizations sanctioned by an NGB – the requirement for prevention training is more difficult to find; contained in the Act's provision related to audits (§220542):

§220542. Additional duties.

"(a) In General – The Center [US Center for Safe Sport] shall –

(1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and

(2) include in the policies and procedures ...

(A) *[mandatory reporting]*

(B) *[mechanism for reporting]*

(C) *[prevention policies]*

(D) *[procedures to prohibit retaliation]*

(E) oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, ... regarding prevention of child abuse; *[elipses and emphases added]*

Prevention Training – not 'Indicators Training'

The requirement for consistent training related to *prevention* of sexual abuse may be the most significant element of the Safe Sport Act. Teaching millions of parents, coaches and league officials how to prevent sexual abuse is truly ambitious and groundbreaking. The key to prevention is an understanding of the 'grooming process' of the sexual offender – the process utilized by an offender to gain access to a child within the offender's age and gender of preference, groom that child for sexual interaction, then keep the child silent.

Sexual abusers have no visual profile, but can be recognized by their behavior. This is a risk that must be addressed *behaviorally*. Prevention training highlighting the abuser's grooming process gives each trainee 'eyes to see' the grooming process and common grooming behaviors *before* a child is victimized. Effective prevention training must be proactive, rather than reactive, and therefore *preventative*.[4]

This is a fundamental distinction between 'prevention training' and 'abuse indicators' or 'abuse recognition' training: one is proactive, the others are reactive. Abuse indicators and recognition trainings provide signs, traits, behaviors, and indicators that may reveal a child *has been abused* – followed by the instructions concerning how and to whom to report the abuse. Prevention training, by contrast, provides information related to behaviors and circumstances

[4] For a sample sport-specific sexual abuse prevention training, contact Abuse Prevention Systems or MinistrySafe.

(i.e., unsupervised one-on-one interaction) that may place a child *at risk* of abuse. Effective prevention training allows adults to see and recognize problematic behaviors *before the child is abused* ... it is preventative.

If 20 million American adults are trained to understand the offender's grooming process through the training requirements of the Safe Sport Act, 20 million sets of eyes will be better equipped to recognize predatory behaviors *before a child is victimized.* As a result, children will be safer in youth sport programs.

New Requirement for All – Prevention Policies

In addition to prevention training, each youth sport organization – regardless of category – is required to establish policies and procedures to prevent abuse of young athletes.

Prevention Policies – Required for All

For Amateur Sports Organizations ***not*** *sanctioned by an NGB* (Ladybugs), the requirement for prevention policies is found in §220530:

> **§220530. Other amateur sports organizations**
> "(a) In General – An applicable amateur sports organization shall –
> (2) establish reasonable procedures to limit one-on-one interactions between an amateur athlete who is a minor and and adult ... without being in an observable and interruptible distance from another adult, ... *[elipses and emphases added]*

For Paralympic Sports Organizations and National Governing Bodies – and, presumably, those people/organizations sanctioned by an NGB – the requirement for prevention policies, again, is more difficult to find, contained in the Act's provision related to audits (§220542):

> **§220542. Additional duties.**
> "(a) In General – The Center [US Center for Safe Sport] shall –
> (1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and
>
> (2) include in the policies and procedures ...
> (A) *[mandatory reporting]*
> (B) *[mechanism for reporting]*
> (C) *[prevention policies]*
> (D) *[procedures to prohibit retaliation]*
> (E) oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, ... regarding prevention of child abuse; *[elipses and emphases added]*

Prevention Policies – Limited to 'one-on-one' Interaction?

Though all categories of youth sport organizations are required to establish reasonable procedures to protect young athletes, the legislation on this point is weak. Clearly, the intent is for youth sport organizations to establish policies and procedures that prevent abuse. The Safe Sport Act, however, provides little direct guidance. Again, an understanding of the grooming process is the key to establishing such procedures.

Child protection safety principle: In general, the type of fence built is driven by what is desired to be *kept out*. When youth sport leaders understand the grooming process, they are equipped to understand the patterns and behaviors an abuser employs to victimize children. As a fundamental premise, molesters are desirous of *trusted time alone* with a child being groomed for sexual interaction. Creating opportunity for unobserved and uninterruptible one-on-one is certainly a key element of the abuser's grooming process. Prior to the one-on-one interaction, however, the abuser is grooming the gatekeepers (parents, other coaches) as well as the minor athlete. Prevention policies should address far more than one-on-one interactions. A deeper understanding of the grooming process through effective training provides the foundation of policies and procedures that prevent abuse.

What follows is a brief overview of the abuser's grooming process:

-Gaining Access: *through a program serving children within an age and gender of preference*;
-Selecting a Child: *often a child easily isolated from the group (elite skill, single-parent home)*;
-Introducing Nudity and Sexual Touch: *abuser engages in 'barrier testing and erosion'*;
-Keeping the Victim Quiet: *subtle or direct threats, shame, embarrassment, access to team.*

Though it follows a predictable pattern, the grooming process may play out in different forms depending on the sport, age and gender of victim, facility, and other factors.

The Safe Sport Act calls for Prevention Policies, but stops short of providing specific direction beyond limiting one-on-one interaction between adult and minor athlete.[5]

[5] Sample Codes of Conduct rooted in the grooming process (prevention policies) are available through Abuse Prevention Systems and MinistrySafe.

Regular and Random Audits to Ensure Compliance

Safe Sport Act §220542(a)(2)(E) seems to call for a periodic audit of each National Governing Body and Paralympic Sports Organization to ensure that prevention policies are developed and followed correctly, and that prevention training is offered and completed.[6]

> **§220542. Additional duties.**
> "(a) In General – The Center [US Center for Safe Sport] shall –
> (1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and
> (2) include in the policies and procedures ...
> (E) oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, ... regarding prevention of child abuse; *[elipses and emphases added]*

There appears to be no corresponding 'regular and random audit' requirement for an Amateur Sports Organization ***not** sanctioned by an NGB (§220530).*

New Standard of Care in Youth Sport – Indirect Application

Safe Sport Act has direct application to many youth sport organizations, like USA Gymnastics. But how does the Act impact youth sport organizations that do not participate in interstate or international athletic competitions? Or athletic programs in public and private schools? What about private and parochial athletic associations that do not compete out of state? What about the sport camps and country club leagues?

At a minimum, all youth sport organizations that are not directly impacted by the Safe Sport Act are impacted indirectly through Safe Sport Act's creation of a new 'standard of care': a *reasonable standard* for all organizations providing youth sport programming or activities.

Now, all youth sport organizations are *on notice* that child sexual abuse is a real risk in youth sport, and reasonable steps should be taken to protect young athletes – including reporting, effective training, tailored policies, oversight practices and periodic safety system reviews. As to this risk, Safe Sport Act will provide a yardstick measuring the efforts of all youth sport programs.

[6] It is unclear from Safe Sport Act whether Amateur Youth Sports Organizations *sanctioned by a NGB* are subject to 'regular and random audits' to ensure compliance.

Summary

Involvement in youth sport provides enormous benefit to young athletes. The *Protecting Young Victims from Sexual Abuse Act of 2017* will attempt to preserve those benefits by addressing the risk of child sexual abuse inherent in youth sport.

Appendix – Latest Version of S.534 *(with highlights)*

Click [here] to access a highlighted version of S.534 as passed by the US Senate on November 14, 2017 and the US House on January 29, 2018.

Love & Norris, Attorneys at Law. Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love and Norris provide consulting services to secular and ministry organizations that provide services to children. Consulting services often include safety effort evaluations, assessments and audits. Representative clients include the United States Olympic Committee, US Center for SafeSport, Awana International, Bright Horizons Daycare, Gladney Center for Adoption, and many schools, camps, non-profits and ministries.

Abuse Prevention Systems and **MinistrySafe.** In addition to an active law practice, Love and Norris are co-founders and Directors of **Abuse Prevention Systems** and **MinistrySafe**, entities dedicated to sexual abuse awareness and prevention. **Abuse Prevention Systems** provides Sexual Abuse Awareness Training (live and online) and assists child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before youth sport organizations and associations, educational entities, adoption and foster care organizations, youth camps, and other non-profits. They have addressed national and regional audiences for organizations such as USA Volleyball, US Rowing, US Youth Soccer (USYS), NorCal State Soccer Association, Tennessee State Soccer Association, Major League Lacrosse, the Risk Management Society (RIMS), Principles of Large Schools (POLS), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

Abuse Prevention Systems and **MinistrySafe** are endorsed by Philadelphia Insurance Companies, the American Camp Association and the Christian Camp and Conference Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, New York, Pennsylvania, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).