

No. 23-____

In the Supreme Court of the United States

DARRELL GAEBEL,

Petitioner,

v.

UNITED STATES POLO ASSOCIATION,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

TERESA N. TAYLOR*

**Counsel of Record*

TAFT STETTINIUS & HOLLISTER LLP

200 Massachusetts Ave NW,

Suite 500

Washington, D.C. 20001-5875

202-664-1563

tntaylor@taftlaw.com

PHILIP D. WILLIAMSON

TAFT STETTINIUS & HOLLISTER LLP

425 Walnut Street, Suite 1800

Cincinnati, OH 45202-3957

513-357-9353

pwilliamson@taftlaw.com

Counsel for Petitioner

Darrell Gaebel

QUESTION PRESENTED

Whether a private association can commit actionable defamation by publicizing defamatory material during a legally improper disciplinary hearing, even if the hearing ends without disciplinary action.

In other words, can a private association use an unlawful process itself as the means of defaming a member?

LIST OF PARTIES

The petitioner is Darrell Gaebel, a member of the United States Polo Association.

The respondent is the United States Polo Association, the national governing body for the sport of polo in the United States.

STATEMENT OF RELATED CASES

Gaebel v. United States Polo Association, No. 1:22-cv-141 (E.D.Va.), Judgment entered May 12, 2022.

Gaebel v. United States Polo Association, No. 22-1666 (4th Cir.), Judgment entered June 20, 2023.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES	ii
LIST OF DIRECTLY RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES.....	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	2
I. Factual Background.....	2
II. Procedural History	5
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION	8
APPENDIX:	
Appendix A Opinion in the United States Court of Appeals for the Fourth Circuit (June 20, 2023).....	App. 1
Appendix B Memorandum Opinion in the United States District Court for the Eastern District of Virginia (May 12, 2022)	App. 3

Appendix C	Order in the United States District Court for the Eastern District of Virginia (May 12, 2022)	App. 26
Appendix D	Judgment in the United States District Court for the Eastern District of Virginia (May 12, 2022)	App. 28
Appendix E	Amended Complaint in the United States District Court for the Eastern District of Virginia (March 2, 2022)	App. 29
	Exhibit A	App. 62
	Exhibit B	App. 87
	Exhibit C	App. 125
	Exhibit F	App. 139

TABLE OF AUTHORITIES

Statutes

28 U.S.C. §1254	1
-----------------------	---

PETITION FOR WRIT OF CERTIORARI

The United States Polo Association (“USPA”) defamed Mr. Darrell Gaebel through its disciplinary process. The USPA entertained, prosecuted, and republished an accusation that Mr. Gaebel used a vile racial slur against teenager at an exhibition polo match, and then bullied the teen by shoving him and refusing to apologize. And while the disciplinary hearing concluded with no action taken against Mr. Gaebel, the process itself was the punishment and defamation.

The USPA did not have jurisdiction to entertain the charge in the first place, and its final order left the impression that the charges were *true*, even if not proven to the level required to sanction Mr. Gaebel. The district court wrongly concluded that Mr. Gaebel suffered no harm because the USPA did not fine or suspend him. The court evidently believed that a person cannot be punished or defamed by an unlawful process itself; this Court should reverse.

OPINIONS BELOW

The Fourth Circuit issued an unreported, per curiam opinion, reproduced at Pet.App.1a–2a. The Eastern District of Virginia issued a substantive decision, reproduced at Pet.App.3a-25a.

JURISDICTION

The Fourth Circuit issued its judgment on June 20, 2023. That court’s decision is final, and this petition timely invokes the Court’s jurisdiction under 28 U.S.C. §1254.

STATEMENT OF THE CASE

I. Factual Background

Darrell Gaebel is a retired U.S. Navy Commander in his seventies. Pet.App.31a. He has been an avid polo player for more than a decade, and he is a Registered Playing member in good standing with the United States Polo Association (“USPA”). Pet.App.31a. This case began with a foul during a polo match in 2021, and rapidly escalated into a still-ongoing case of defamation. Pet.App.34a–35a

The evening of July 10, 2021, Mr. Gaebel played in a polo exhibition match at the Great Meadow Foundation in The Plains, Virginia. Pet.App.34a–35a. An exhibition match is akin to playing pickup basketball; matches attract players of all skill levels, and players who are not members of the USPA. The match was not organized by the USPA, nor was it held at a USPA member club. Pet.App.34a. During this particular match, a fourteen-year-old player (“the Minor”) T-boned Mr. Gaebel with his horse, ramming his horse’s metal bit into Mr. Gaebel’s spine. Pet.App.34a–35a. Mr. Gaebel doubled over in pain and shouted “mother-fucker” at the ground. Pet.App.34a–35a. The umpire for the match assessed a dangerous riding foul against the Minor. Pet.App.34a–35a.

After the match, the Minor told his mother and his coach that Mr. Gaebel called him a “motherfucking nigger.” Pet.App.34a–35a. That accusation was false. Pet.App.34a–35a. Mr. Gaebel was indignant (as anyone should be in the face of that kind of false accusation), and told the Minor and his family that he did not use the racial slur. Pet.App.34a–35a.

The next day, the Minor’s polo coach, Delora Burner, sent a purported complaint to the USPA. Pet.App.35a. She repeated the Minor’s false accusation, alleging that Mr. Gaebel used the highly offensive racial slur and tried to “bully” the Minor by pushing on his shoulder. Pet.App.35a. Ms. Burner did not witness the on-field incident. Pet.App.35a. But she spent a page opining that Mr. Gaebel is a racist. Pet.App.134a–136a.

The same day, Humera Rahman, the Minor’s mother, sent a letter to the USPA. Pet.App.35a–36a, 137a–138a. She likewise alleged that Mr. Gaebel called her son “motherfucker” and “the N-word,” and that he tried to intimidate the Minor by pushing his shoulder. Pet.App.35a–36a.

About two weeks later, Mr. Gaebel received a Notice of Alleged Conduct Violations, Issuance of USPA Charges, and Notice of Hearing from the USPA. Pet.App.37a. The Notice charged him with violating several provisions of the USPA’s Code of Conduct. Pet.App.37a, 125a–138a. The Notice described the alleged violation and stated that witnesses were “expected to testify” that Mr. Gaebel used a racial slur and attempted to bully the Minor. Pet.App.130a–131a. The USPA set a hearing on the charges for the first week of August. Pet.App.125a–126a.

At the outset of the August hearing, Mr. Gaebel pointed out that under its own rules, the USPA did not have jurisdiction to conduct the hearing in the first place, since the exhibition match did not take place at a USPA event. Pet.App.42a. Further, the USPA can only hear complaints by a USPA member who was a witness to the alleged violation. Pet.App.52a. Ms.

Burner is a USPA member, but she was not a “witness” to the alleged misconduct (i.e. she was not watching the match when the Minor T-boned Mr. Gaebel. Pet.App.35a. And Ms. Rahman was neither a USPA member nor a witness. Pet.App.35a–36a.

Despite the obvious jurisdictional defects, the USPA proceeded with the hearing anyway., declaring that it would address jurisdiction later. During the hearing, the USPA acted as the prosecution on the Minor’s behalf, soliciting and endorsing the defamatory accusations against Mr. Gaebel. Pet.App.41a. But no one at the hearing could corroborate the Minor’s account. Pet.App.42a–46a. Mr. Gaebel vehemently denied using the slur the night of the polo match—or on any other occasion. Pet.App.35a, 41a, 49a–50a. And the match Umpire, who *did* witness the interaction between Mr. Gaebel and the Minor, testified that he did not hear the alleged slur. Pet.App.8a.

On August 20, 2021, the USPA issued a Final Order on the allegations, made available to all Player Members of the USPA. Pet.App.45a–46a; 139a–147a. The USPA stated that there was insufficient evidence to sanction Mr. Gaebel, since the Minor did not have any corroborating evidence. Pet.App.45a–46a; 145a–146a But the USPA also said that it did not reject the Minor’s defamatory allegations; only that the Minor’s testimony alone was not enough proof to discipline Mr. Gaebel. Pet.App.45a–46a; 145a–146a. The USPA then published the original Notice of allegations as an exhibit to the Final Order, yet again publishing the defamation against Mr. Gaebel. Pet.App.46a.

In short, the Minor, his mother, and his coach declared Mr. Gaebel to be a racist of the highest order

who bullied a child. The USPA published and republished those defamatory accusations, and suggested that it believed them to be true. The Minor certainly took it that way; he later bragged to other polo players that he and his parents were going to get Mr. Gaebel fired from his job. These actions have caused Mr. Gaebel to continue to suffer from severe anxiety, reputational harm, sleeplessness, marital strife, and fear that he may lose his job as a government contractor.

II. Procedural History

In September 2021, Mr. Gaebel sued the Minor and his parents in Virginia state court for defamation and intentional infliction of emotional distress. In December 2021, Mr. Gaebel separately sued the USPA in Virginia state court for defamation, breach of contract (breaching of the USPA's constitution and bylaws), and intentional infliction of emotional distress. The USPA removed the case to United States District Court for the Eastern District of Virginia, invoking the court's diversity jurisdiction.

Mr. Gaebel filed the operative Amended Complaint on March 2, 2022. The USPA moved to dismiss it, and the court granted the motion on May 12, 2022. Mr. Gaebel timely appealed to the Fourth Circuit Court of Appeals, which affirmed in a per curiam order on June 20, 2023.

Petitioners timely petitioned this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Mr. Gaebel was accused of using a racial slur and bullying a child. Those accusations are false, and are thus patently defamatory. Like most victims of defamation, Mr. Gaebel wants his good name back. But the courts below denied him even the chance to plead his case (literally so, having ended this case at the motion to dismiss stage).

The courts below took the position that if a disciplinary hearing concludes with no discipline assessed, then the defendant has nothing to complain about. The courts ignored the fact that the process itself is the punishment.

The USPA had no authority to issue charges against Mr. Gaebel in the first place. The alleged incident did not occur at a USPA-sanctioned event or facility. But the USPA claimed the expansive authority to issue charges against and to discipline any member at any time for anything related to polo. It would be akin to Major League Baseball fining a player for a hard slide into second base during a church-league softball game. Even if the USPA *could* assert such expansive control over its members' lives, it can only act on a complaint from a USPA member who is also a witness to the complained-of infraction. Here, the USPA received complaints from a member who was not a witness (Ms. Burner) and a complainant who was neither a member nor a witness (Ms. Rahman).

Despite lacking jurisdiction, the USPA issued charges against Mr. Gaebel. And those charges published the defamatory statements and falsely told the USPA membership that "witnesses" would verify the

allegations. The USPA then issued a final order that both republished the charges and indicated that the USPA thought they were accurate—even if it could not verify them enough to sanction Mr. Gaebel. The result? The Minor who originally defamed Mr. Gaebel continues to do so—even threatening his employment. And Mr. Gaebel continues to be haunted by the rumor that he is a racist.

The USPA subjected Mr. Gaebel to a disciplinary process that it knew was outside its jurisdiction. It aired and endorsed patently defamatory statements that it knew to be false. And then the USPA attempted to dodge liability by declining to sanction Mr. Gaebel. But the damage was already done—telling the general USPA membership that Mr. Gaebel is a racist and bully is far more damaging than a fine or suspension (the USPA’s available sanctions) could have been.

The Court should take notice of the role of private associations as gatekeepers to public life. There is good reason to worry that private organizations can and will continue to use process as punishment. And the Court should reject any theory of defamation that allows a private organization like the USPA (or a bar association, or a sorority) to use a disciplinary hearing to slander a person’s name and get away with it as long as the organization does not issue any formal discipline.

The question here is a modest one: May Mr. Gaebel even advance the argument outlined above in a defamation action? The district court said no; as long as Mr. Gaebel nominally “prevailed” in the disciplinary hearing, he cannot complain about anything that

happened during the hearing. This Court should exercise jurisdiction here and reverse.

CONCLUSION

The Court should grant the petition for certiorari and reverse.

Respectfully submitted,

TERESA N. TAYLOR*

*Counsel of Record

TAFT STETTINIUS & HOLLISTER LLP
200 Massachusetts Ave NW,
Suite 500
Washington, D.C. 20001-5875
202-664-1563
tntaylor@taftlaw.com

PHILIP D. WILLIAMSON

TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
513-357-9353
pwilliamson@taftlaw.com

Counsel for Petitioner
Darrell Gaebel

SEPTEMBER 18, 2023