APPENDIX

APPENDIX CONTENTS

Appendix A: Opinion of the U.S. Court of Appeals for the Fourth Circuit (April 27, 2026) 1a

Appendix B: Opinion of the U.S. District Court for the Western District of Virginia (January 15, 2025) 26a

Appendix C: Order denying rehearing in the U.S. Court of Appeals for the Fourth Circuit (May 26, 2026) 66a

Appendix D: 36 U.S.C. § 220541 ..... 67a

Appendix E: 36 U.S.C. § 220524 ..... 79a

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1150

THOMAS NAVARRO; JAMES GIORGIO; NINA SHAFFER,

Plaintiffs - Appellants,

v.

UNITED STATES CENTER FOR SAFESPORT; UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE; UNITED STATES EQUESTRIAN FEDERATION, INC.,

Defendants - Appellees,

and

UNITED STATES OF AMERICA,

Intervenor.

Date of entry: April 27, 2026

Reversed in part and affirmed in part by published opinion. Judge Thacker wrote the opinion, which Judge Niemeyer and Judge Berner joined.

THACKER, Circuit Judge

In this case, three equestrian trainers -- Thomas Navarro, James Giorgio, and Nina Shaffer (collectively, "Appellants") -- claim that the United States Center for Safe Sport ("SafeSport") violated their Fifth Amendment rights by barring them from involvement in United States Olympic sports without first holding hearings on their alleged misconduct. Appellants further contend that SafeSport, a private organization,

unconstitutionally wields governmental power. Therefore, Appellants sued SafeSport, as well as the United States Olympic and Paralympic Committee (the "USOC") and the United States Equestrian Federation (the "USEF") (collectively, "Appellees"), which enforce SafeSport's sanctions.

The district court dismissed Appellants' claims. The court held that (1) Shaffer had failed to exhaust her administrative remedies; (2) Appellants lack standing to sue USOC; (3) Appellees are not state actors and thus are not subject to the Fifth Amendment; and (4) SafeSport's sanction powers do not violate the private non-delegation doctrine.

For the reasons detailed below, we reverse the district court's holding regarding administrative exhaustion. But we affirm the court's holdings that Appellants lack standing to sue the USOC and that Appellees are not state actors subject to the Due Process Clause. Finally, we hold that we lack jurisdiction to reach Appellees' private non-delegation claim.

I.

A.

Statutory Background

Olympic sports have historically been private affairs. When the first Olympic Games were held in 1896, the government had no part in organizing the United States delegation. Members of the Amateur Athletic Union, a private international sporting organization, played that role instead. Those members later formed a new organization specifically dedicated to funding and organizing American representation in the Olympic Games. This new organization would eventually be known as the USOC. But Congress did

not formally recognize the USOC until 1950 when it granted the USOC a congressional charter[1] and the exclusive right to organize United States delegations to the Olympic and Pan-American Games. Ben Wilhelm, Cong. Rsch. Serv., R47850, The United States Olympic and Paralympic Committee: A Primer 1–3 (2023).

Then, in 1978, the Ted Stevens Olympic and Amateur Sports Act of 1978, Pub. L. No. 95-606, 92 Stat. 3045 ("ASA") put in place the structure of Olympic sports as we know it today. The ASA granted the USOC the power to recognize one national governing body ("NGB") for each Olympic sport from which Olympic athletes would be selected. It also guaranteed access to the games for members of each NGB. But the law did not create any NGBs. Instead, it permitted private organizations to apply to serve as NGBs, provided that they complied with certain statutory criteria. Relevant to this appeal is the requirement that each NGB provide its members with "notice and opportunity for a hearing" before sanctioning them for violations of the NGB's rules. 36 U.S.C. § 220522(8). In addition, the ASA requires the USOC, the NGBs, and their members to submit disputes within the scope of the ASA to binding arbitration. Pub. L. No. 95-606 §§ 201, 205(c).

For the next forty years, the NGBs mostly governed themselves. But a growing series of abuse scandals within Olympic sports made that arrangement

---

[1] A congressional charter is a "statute that establishes a new organization or gives legal recognition to an existing organization," generally of "private, nonprofit corporations that appear to be of a patriotic character or national in scope." Henry B. Hogue, *Title 36 Congressional Charters*, Congress.gov (Nov. 15, 2021), [https://perma.cc/9R5H-NR3J].

unsustainable. As a result, the USOC developed a plan to centralize and standardize abuse investigations involving NGB members. In 2014, the USOC incorporated SafeSport with the intention that it would handle those claims. Around that time, the USOC also convened a working group of governing bodies to draft a code to govern all allegations of emotional, physical, and sexual abuse within Olympic sports. The working group issued the first draft, known as the SafeSport Code, on March 3, 2017, after which SafeSport officially began operation.

In 2018, Congress codified and expanded SafeSport's authority via the Protecting Victims from Sexual Abuse and Safe Sport Authorization Act of 2018, Pub. L. 115-126, 132 Stat. 318, (codified as amended at 36 U.S.C. §§ 220541–43) (the "SafeSport Authorization Act" or the "Act"). That law, as amended,[2] states that SafeSport "shall . . . exercise jurisdiction over the [USOC] and each [NGB] with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports." *Id.* § 220541(a)(1)(B). The Act also makes compliance with the SafeSport Code a condition of eligibility for any private organization to serve as an NGB. *Id.* § 220541(a). And, like the ASA, it requires SafeSport to provide accused NGB members "fair notice and an opportunity to be heard," but expressly states, "[n]othing in this subsection shall be construed . . . to preclude [SafeSport] from imposing interim measures or sanctions on an individual *before* an opportunity for a hearing or arbitration." *Id.* §§ 220541(a)(1)(E), (a)(2), (b) (emphasis supplied).

---

[2] *See* Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, 134 Stat. 943.

The Act also retains the ASA's stated preference for arbitration by according SafeSport "discretion [to] utilize a neutral arbitration body . . . to resolve allegations of sexual abuse within its jurisdiction." *Id.* § 220541(c)(1). And it clarifies, "[n]othing in this subsection shall be construed . . . to give rise to a claim under State law or to create a private right of action," or "to render [SafeSport] a state actor." *Id.* § 220541(a)(2). Finally, the Act requires SafeSport to "publish and maintain a publicly accessible internet website that contains a comprehensive list of adults who are barred by [SafeSport]" from participating in Olympic sports. *Id.* § 220541(a)(1)(G).

SafeSport says that it has received more than 32,000 reports of sexual, physical, and mental abuse since the first version of the SafeSport Code was promulgated in 2017. As a result of those allegations, SafeSport has named more than 2,200 individuals as ineligible to participate in amateur or Olympic competitions. U.S. Ctr. for SafeSport, 2024 Annual Report 20 (2025), uscenterforsafesport.org/wp-content/uploads/2025/08/2024-Annual-Report_072225_v4c-Web.pdf [https://perma.cc/Y3JN-P2KK]. And as required by the Act, the SafeSport website publicly lists all sanctioned individuals in a searchable table that includes their full name, city of residence, offense, and the resulting penalty. SafeSport adds new entries almost daily. *Centralized Disciplinary Database*, U.S. Ctr. for SafeSport, https://uscenterforsafesport.org/response-and-resolution/centralized-disciplinary-database/ [https://perma.cc/LP7C-RGNS].

The USEF is the NGB for equestrian Olympic sports. Although it does not encompass all equestrian sports in the United States, its affiliation with the Olympics makes it the largest, most important, and

most prestigious equestrian organization. The USEF counts 150,000 athletes, coaches, breeders, and trainers as members. To join the USEF -- and thus to be eligible to participate in USEF and Olympic events, or to work with USEF members -- a prospective member must agree to comply with the USEF bylaws. In turn, as required by the Act, the USEF bylaws require compliance with the SafeSport Code.

B.

Factual & Procedural History

1.

Each of the Appellants in this case was or is a USEF member. Navarro and Shaffer train horses and riders. Giorgio breeds horses. SafeSport investigated and sanctioned each of them for separate and independent abuse allegations.

a.

Navarro

In December 2018, Navarro received a notice letter from SafeSport informing him that he had been deemed ineligible for membership in the USEF because in 1998 he pled guilty to child sexual abuse, an offense which violates the SafeSport Code. SafeSport explained that the nature of Navarro's offense justified a permanent ban from participation in any USEF or USOC event. SafeSport further explained that any USEF or USOC member who associates with Navarro in the future may be subject to similar sanctions, thus functionally barring Navarro from working with any member of those organizations.

Pursuant to the SafeSport Code, Navarro requested arbitration. The arbitrators held two hearings

in March 2019, wherein Navarro, who was represented by counsel, submitted testimony and evidence in his defense. Navarro raised two issues: (1) whether SafeSport had violated his due process rights; and (2) whether permanent ineligibility was an appropriate sanction.

The arbitrator declined to credit Navarro's due process argument after noting that the Supreme Court has consistently held that the USOC and its affiliates are not state actors and thus are not subject to the Due Process Clause of the Fifth Amendment. The arbitrator also found that a permanent ban was a reasonable sanction under the circumstances.

b.

Giorgio

SafeSport permanently banned Giorgio from USEF membership in 2018 after learning of his 2007 guilty plea to child sexual abuse. At Giorgio's request, SafeSport agreed to re-open its investigation and conduct a further review of the sanctions SafeSport had imposed. Giorgio submitted a psychological evaluation and character statements arguing that he showed little risk of re-offending. Nonetheless, SafeSport affirmed its earlier decision.

Giorgio then submitted the matter to arbitration as permitted by the SafeSport Code. The arbitrator was unconvinced by Giorgio's arguments and found SafeSport's sanction reasonable under the circumstances. Accordingly, the arbitrator affirmed SafeSport's sanction. Giorgio is thus functionally barred from professionally associating with any USEF or USOC member.

c.

Shaffer

Shaffer is the only Appellant who is still a USEF member. In August 2021, SafeSport received a complaint alleging that Shaffer had violated the SafeSport code. As part of SafeSport's investigation of the accusations against her, Shaffer was interviewed in July 2022. Following the investigation, SafeSport determined that Shaffer had exhibited a pattern of abusive behavior in violation of the SafeSport Code and sanctioned her with three months' suspension and nine months' probation. Shaffer was informed of her right to arbitrate the decision but declined to do so, claiming that the arbitration fee was cost prohibitive.

2.

In addition to the procedures contained in the SafeSport Code, the USEF bylaws grant any member the right to "file a grievance against the [USEF] . . . pertaining to any matter within the cognizance of the [USEF] and alleging a violation of any provision of the [USEF] Bylaws or Rules, the [ASA], or the USOC's Bylaws." J.A. 310.[3] The USEF bylaws also entitle any party who files such a grievance to a hearing and a written determination. And the USOC bylaws grant USEF members the right to appeal the results to a panel of USOC personnel. Finally, the USOC dispute resolution policy grants any NBG member the right to appeal a decision of a USOC panel to an arbitral panel, which has the final say on any such dispute.

Navarro and Giorgio -- but not Shaffer -- pursued this recourse. Navarro and Giorgio joined a group of five other claimants and filed a grievance with the

[3] Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

USEF alleging that SafeSport had violated their procedural rights pursuant to the ASA and the Due Process Clause of the Fifth Amendment by declining to grant them notice and a hearing before sanctioning them. The USEF determined that it lacked authority to hear the claims because they concerned constitutional and statutory rights rather than rights pursuant to the USEF bylaws. Consequently, the USEF dismissed the action. The claimants appealed that decision to a panel of USOC personnel. That panel also determined that it lacked authority to reach questions of federal law and rejected the appeal.

The claimants then sought to arbitrate their claims.[4] The arbitration involved a single issue: "What administrative or judicial body has the . . . authority to address a conflict between the rules and procedures of [SafeSport] and the conflicting due process protection identified in [36 U.S.C. § 220522(8)]?" J.A. 48. The section of the ASA at issue states that an organization is qualified to serve as an NGB only if it "provides an equal opportunity to [its members] to participate in amateur athletic competition . . . with fair notice and opportunity for a hearing to any [member] *before* declaring the individual ineligible to participate" in NGB events. 36 U.S.C. § 220522(8) (emphasis supplied).

The arbitration panel determined that only a federal court could review the alleged "conflict of law" between the SafeSport Code and the ASA. J.A. 56, 63–

---

[4] This arbitration was distinct from the earlier arbitrations that Navarro and Giorgio had with SafeSport. The earlier arbitrations were instituted pursuant to the SafeSport Code and concerned the validity of SafeSport's sanctions. This second round of arbitration was instituted pursuant to the USEF and USOC bylaws and concerned the power of the USEF to enforce SafeSport's sanctions.

66. In doing so, the panel indicated that it believed the SafeSport Code violates the ASA. It found compelling that the NGBs like the USEF are required to enforce SafeSport sanctions, which SafeSport can impose before the sanctioned party has been given a hearing, even though Section 220522(8) of the ASA expressly requires NGBs to grant their own members a hearing before imposing any sanctions.

3.

Following the arbitration decision, Appellants filed suit in federal district court against Appellees. Appellants asserted that (1) the ASA and the SafeSport Code unconstitutionally deprive them of their constitutional right to pre-determination notice and hearings; and (2) Congress has unconstitutionally delegated legislative, executive, and judicial powers to SafeSport.[5]

Appellees each filed motions to dismiss for lack of subject matter jurisdiction and failure to state a claim. The district court granted those motions. The court first held that Appellants lacked standing to raise any claims against the USOC because Appellants had not articulated any injury fairly traceable to that organization. The court also dismissed Shaffer's claims after finding that she had failed to exhaust administrative remedies, given that she did not arbitrate SafeSport's initial sanction as permitted by the SafeSport Code. And the district court held that Appellants' due

[5] Appellants also claimed that SafeSport operates in violation of the Appointments Clause, that SafeSport's denial of pre-determination hearings violates the ASA, and that the USEF forces unlawful adhesion contracts on its members. The district court dismissed each of those claims, but Appellants did not appeal those dismissals.

process claims were barred because Appellees are not state actors. Finally, the court held that Congress could not have unconstitutionally delegated governmental power to SafeSport because SafeSport does not exercise governmental power.

This appeal timely followed.

II.

We review motions to dismiss de novo. *Blair v. Appomattox Cnty. Sch. Bd.*, 147 F.4th 484, 491 (4th Cir. 2025). We must accept all well-pled facts as true and draw all reasonable inferences in favor of the plaintiffs. *Id.* Dismissal is appropriate if the complaint fails to allege sufficient factual matter to state a plausible claim for relief. *Id.*

And, as always, we must also satisfy ourselves of our own subject matter jurisdiction before addressing the merits. *See Talley v. Folwell*, 133 F.4th 289, 297 & n.3 (4th Cir. 2025).

III.

Appellants makes four arguments on appeal: (1) Appellants have standing to sue the USOC; (2) Appellant Shaffer was not required to arbitrate her claims before raising them in federal court; (3) Appellees are state actors subject to the Due Process Clauses of the Fifth and Fourteenth Amendments; and (4) SafeSport unconstitutionally wields governmental power. We address each in turn.

A.

Standing

1.

Appellants first argue that the district court wrongly dismissed their claims against the USOC for lack of standing. The district court held that Appellants lacked standing to sue the USOC because Appellants did not allege in their complaint any injury fairly traceable to the USOC. The district court specifically found that the USOC had not contributed to Appellants' ineligibility determinations, had not drafted the relevant provisions of the SafeSport Code, and had been stripped of any power to review SafeSport's eligibility determinations by the time SafeSport sanctioned Appellants.[6]

Appellants argue that this holding was erroneous. They reason that the ASA requires the USOC "to enforce the requirements and duties of NGBs." Appellants' Opening Br. at 33. And, the argument goes, one such requirement is that an NGB must grant members notice and a hearing before the NGB may declare the member ineligible for continued membership. Thus, Appellants argue that they have articulated an injury against the USOC because the USOC declined to compel the USEF to grant Appellants notice and a hearing before enforcing SafeSport's ineligibility determinations.

2.

Federal courts have jurisdiction over actual cases and controversies. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992). Standing is an essential element of both. *Id.* at 560. Standing has three elements: injury,

---

[6] The Safe Sport Authorization Act became effective on February 14, 2018. Pub. L. 115–126, 132 Stat. 318. SafeSport did not render Giorgio's decision until July of that year. The decision in Navarro's case came five months later, and Shaffer's not until February 2024.

causation, and redressability. *Id.* at 560–61. The first element, injury, requires invasion of a legally protected interest. *Id.* at 560. The second, causation, requires that the alleged injury be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party." *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)) (cleaned up). And the third element, redressability, requires that a plaintiff demonstrate that a favorable decision is likely to remedy the injury complained of. *Lujan*, 504 U.S. at 561.

3.

There are two issues with Appellants' argument. First, the USOC did not cause Appellants any injury. Appellants acknowledge that it was SafeSport, not the USEF or the USOC, that imposed the sanctions at issue. But SafeSport is not an NGB and therefore is not subject to the jurisdiction of the USOC. Rather, the reverse is true. Federal law plainly states that SafeSport "shall . . . exercise jurisdiction *over the* [*USOC*] and each national governing body with regard to safeguarding amateur athletes against abuse . . . in sports." 36 U.S.C. § 220541(a)(1)(B) (emphasis supplied). And the ASA only requires NGBs to grant a pre-determination hearing *before* "declaring [an] individual ineligible to participate" in Olympic sports. *Id.* § 220522(8). Significantly, the SafeSport Authorization Act expressly exempts SafeSport from that requirement, stating, "[n]othing in this subsection shall be construed . . . to preclude [SafeSport] from imposing interim measures or sanctions on an individual before an opportunity for a hearing or arbitration." *Id.* § 220541(a)(2) (emphasis supplied). Thus, if the USEF had declared Appellants ineligible for membership, the ASA would obligate the USEF to first grant notice

and a hearing on the matter, and the USOC would be obligated to enforce the ASA's notice and hearing rules against the USEF. But critically, it was SafeSport that sanctioned Appellants -- not the USEF. And neither the USEF nor the USOC had any power to review SafeSport's decisions or the processes by which they were made. Rather, both the USEF and the USOC were required by law to enforce SafeSport's determinations. *Id.* § 220541(b). As a result, the USOC did not cause the alleged injury and did not have any power to prevent it. Thus, Appellants have not demonstrated the causation required to establish standing against the USOC.

Beyond the lack of causation, Appellants have not demonstrated that a favorable ruling would remedy the alleged harm. SafeSport is an "independent" organization. 36 U.S.C. § 220541(a)(1)(A). It has jurisdiction over the USOC and the NGBs concerning questions of members' eligibility in light of allegations of abuse. *Id.* § 220541(a)(1)(B). Pursuant to the SafeSport Code, SafeSport's eligibility determinations may only be challenged in arbitration. *Id.* § 220541(a)(1)(H)(v). Even so, Appellants argue that the ASA requires the USEF to grant Appellants notice and a hearing before the USEF recognizes SafeSport's sanctions, and they argue that the USOC must enforce that requirement against the USEF. But ruling as much would do nothing to redress the harm that Appellants allege -- namely, that they have been sanctioned without due process.

Appellants do not dispute that SafeSport has rendered a final decision in each of their cases. And as we explain above, neither the USEF nor the USOC may revisit those decisions in any way. Therefore, even if we were to order a hearing, it would simply lead to the

same result -- that is, the USEF enforcing SafeSport's sanctions and the USOC affirming that decision. Thus, Appellants have not demonstrated that a favorable ruling would redress their injuries and consequently lack standing to sue the USOC. We affirm the district court's holding on this issue.

B.

Exhaustion

Appellants next argue that Shaffer was not required to exhaust the remedies afforded to her by the SafeSport Code before raising claims in federal court. Appellees argued before the district court that all of Shaffer's claims should be dismissed because she declined to arbitrate the sanctions SafeSport imposed on her. The district court agreed. Citing to two unpublished, out of circuit district court opinions,[7] the court held, "plaintiffs must exhaust SafeSport's arbitration procedures before filing a civil complaint." J.A. 590. The court acknowledged Shaffer's argument that she could not afford arbitration. But the court noted that sanctioned parties may apply to SafeSport for a need based waiver of arbitration fees. Because Shaffer did not apply for that waiver, the court concluded that she had failed to exhaust her administrative remedies and dismissed her claims.

The ASA grants SafeSport "discretion" to "utilize a neutral arbitration body . . . to resolve allegations of sexual abuse within its jurisdiction to determine the opportunity of any [member] . . . to participate in

---

[7] The district court cited to *Sanderson v. U.S. Ctr. for SafeSport*, No. 21-cv-01771, 2021 WL 3206322, at *5 (D. Colo. July 29, 2021) and *Callaghan v. U.S. Ctr. for SafeSport*, No. 2:18-cv-336, 2018 WL 4107951, at *5–6 (M.D. Fla. Aug. 29, 2018)).

amateur athletic competition." 36 U.S.C. § 220541(c)(1). Thus, if the law contains an arbitration requirement, it is necessarily limited to those two issues. Appellees have themselves repeatedly endorsed this position. At the conclusion of the USEF hearing with respect to the claims of Navarro and Giorgio, the USEF concluded that it "did not have jurisdiction or authority to address [Appellants'] Section 220522(a)(8) argument or due process issue." J.A. 53. And when Navarro and Giorgio appealed that holding to the USOC, it likewise affirmed that it "does not have jurisdiction over the subject matter of [their] Complaint and that the Complaint [did] not state a claim upon which the Hearing Panel could provide relief." *Id.*

Even the SafeSport Code itself, through successive iterations, has consistently maintained that SafeSport's jurisdiction extends only to abuse claims among NGB members and their eligibility for continued membership. *See* J.A. 160–61 (2023 SafeSport Code defining the organization's jurisdiction as including only abuse claims against NGB members); J.A. 188 (2023 SafeSport Code limiting the scope of arbitration to "whether a Respondent violated the [SafeSport] Code"); J.A. 139 (2018 SafeSport Code explaining that "[a]rbitration shall resolve only whether a Responding Party violated the *SafeSport Code* . . . . Challenges to, or complaints about, any organizational practices and procedures shall not be addressed and the arbitrator shall be limited to evaluating whether a Covered Individual violated the *Code*" (emphases in original)).

Moreover, the authorities cited by the district court do not support its conclusion -- not to mention that such authorities are not precedential, given that they

are not only unpublished but also outside our circuit. In *Callaghan*, the plaintiff, Callaghan, alleged that SafeSport had "violated its own rules and procedures in investigating allegations of sexual misconduct" against Callaghan. *Callaghan*, 2018 WL 4107951, at *1. Consequently, Callaghan sued for "breach of contract" and "breach of contractual due process," alleging that the "interlocking agreements between Safe Sport, [the] USOC, NGBs, and members of the NGBs" created a binding contractual relationship between Callaghan and SafeSport. *Id.* at *4. The Middle District of Florida dismissed those claims because they had not first been raised in arbitration. *Id.* at *5–7. But crucially, the court did so only because both claims were or conceivably could have been within the scope of the SafeSport Code's arbitration provision, which is limited to "whether a Responding Party violated the Safe Sport Code . . . and/or the appropriate sanction." *Id.* at *4, 6.

Similarly, in *Sanderson*, the District of Colorado took up an athlete's claim that he was entitled to reinstatement after SafeSport disqualified him from Team USA Shooting. *Sanderson*, 2021 WL 3206322, at *3. The court dismissed that claim for lack of subject matter jurisdiction because federal law grants SafeSport "exclusive jurisdiction" over "all matters pertaining to the United States participation in the Olympic Games" and expressly declines to grant a private right of action. *Id.* at *3 (citing 36 U.S.C. §§ 220503(3)(A) & 220541(a)(1)(B)).

Shaffer's claims, by contrast, challenge the constitutionality of SafeSport and its procedures -- not the merits of its sanctions. Therefore, Shaffer's claims could not have been resolved in arbitration. As a result, there was no exhaustion requirement.

Accordingly, we reverse the district court's determination that Shaffer was required to exhaust administrative remedies pursuant to the bylaws of the USEF and the USOC before bringing this lawsuit.

C.

Due Process

1.

Appellants next argue that the district court wrongly dismissed their due process claims against Appellees. The district court dismissed those claims after concluding that Appellees are not state actors and thus are not subject to the Due Process Clause of the Fifth Amendment. In so holding, the district court noted that in *San Francisco Arts & Athletics, Inc. v. USOC*, 483 U.S. 522 (1987) (hereinafter, "*SFFA*"), the Supreme Court determined that the USOC is not ordinarily a state actor for due process purposes because it is a private organization that does not perform traditional governmental functions. The district court further reasoned that because the USEF and SafeSport are also private and perform similar functions as the USOC, the logic of *SFAA* necessarily applies to those organizations as well. Thus, the court concluded that none of Appellees are state actors subject to the Due Process Clause.

Appellants assert that the district court erred for two reasons. First, Appellants again claim that the ASA guarantees them the right to a pre-determination notice and a hearing regardless of whether Appellees are state actors. Second, Appellants argue that the ASA "delegat[es] governmental powers to [SafeSport]," thus making SafeSport a state actor subject to the Due Process Clause. Appellants' Opening Br. at 30.

2.

As we explain above, the ASA does not require SafeSport to grant any NGB member notice and a hearing before issuing preliminary sanctions. Rather, the ASA only requires the NGBs themselves to do so. SafeSport is not an NGB. *See* 36 U.S.C. § 220522(8). And although the SafeSport Authorization Act requires SafeSport to provide accused NGB members "fair notice and an opportunity to be heard," it expressly states, "[n]othing in this subsection shall be construed . . . to preclude [SafeSport] from imposing interim measures or sanctions on an individual *before* an opportunity for a hearing or arbitration." *Id.* §§ 220541(a)(1)(E), (a)(2), (b) (emphasis supplied). Thus, the only question is whether the district court correctly held that Appellees are not subject to the Due Process Clause.

The Constitution binds only state actors. *San Fran. Arts & Athletics, Inc.*, 483 U.S. at 542. "[T]here is no bright-line rule separating state action from private action." *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 116 (4th Cir. 2022) (en banc). Consequently, the inquiry into whether a private actor should be treated as an agent of the state "is highly fact-specific in nature." *Id.* But generally, a private entity will be treated as a state actor only under four scenarios: (1) when the entity "perform[s] [an] essential governmental function traditionally and exclusively reserved to the state"; (2) when the government has "outsourced one of its constitutional obligations to [that] private entity"; (3) when the government's "engagement or encouragement is so significant" that the entity must fairly be held subject to the Constitution's requirements; and (4) when there is pervasive entwinement between the private entity and public institutions or

officials. *Id.* at 115–16 (quoting *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809–10 (2019)).

As the district court noted, the Supreme Court held in *SFAA* that the USOC is not a state actor in the ordinary course of its business. *San Fran. Arts & Athletics, Inc.*, 483 U.S. at 547. The Court provided two reasons for this holding: (1) the USOC is a private entity that does not "perform[ ] functions that have been 'traditionally the exclusive prerogative of the Federal Government;' " and (2) in that case, there was no allegation that the government had directly compelled any of the USOC's actions. *Id.* at 542–47. In *SFAA*, the Court acknowledged that the USOC is congressionally chartered, is subject to extensive federal regulation, and performs functions in service of the public good. *Id.* at 543–45. Nonetheless, the Court held that none of those factors were sufficient to transform the USOC into a state actor. *Id.*

Here, given the Supreme Court's clear holding in *SFAA*, we are compelled to conclude that neither the USEF nor SafeSport are state actors. The USEF is a private corporation that exists by virtue of New York law. And although SafeSport is congressionally chartered, it is also a private organization incorporated in Colorado. Additionally, neither organization exercises any power materially different than those wielded by the USOC at the time the Supreme Court decided *SFAA*. Neither organization exercises traditional governmental authority, but instead, like the USOC, only facilitates United States representation in the Olympic Games. And although SafeSport has some investigatory and adjudicative power, such authority extends only to allegations of abuse against NGB members, and its findings only have the effect of determining membership in private organizations. SafeSport has

no general investigatory or enforcement power. Further, its jurisdiction is created and limited by the contracts that NGB members enter as a condition of membership.

There is also no evidence that Congress has compelled the injuries about which Appellants now complain. That is, Congress did not direct SafeSport to undertake the investigations against Appellants or sanction them without providing pre-enforcement procedures. To be sure, Congress provided Appellants with some general instructions. But Congress never instructed SafeSport to adopt the particular procedures Appellants now challenge. *See* 36 U.S.C. § 220541(a)(1) (stating that SafeSport "shall" undertake certain general obligations, such as "exercis[ing] jurisdiction over the corporation and each national governing body with regard to safeguarding amateur athletes against abuse"); *Id.* §§ 220542(a)(1)(C), (H) (instructing SafeSport to develop "policies[ ] and procedures to prevent the abuse . . . of amateur athletes participating in" Olympic sports but providing only "minim[al]" direction on how to do so). Nor did Congress instruct Appellees to take any action that may implicate Appellants' specific liberty interests. *See Halleck*, 587 U.S. at 809 ("Under this Court's cases, a private entity can qualify as a state actor in a few limited circumstances—including . . . when the government compels the private entity to take a particular action.") (emphasis supplied).

The relevant legislative history forecloses any remaining doubt on this issue. From the inception of the Olympic Games, private individuals and organizations have been solely responsible for training and sponsoring American Olympic athletes. That tradition has persisted for 130 years. Congress has intervened

only twice in the face of compelling national crises. Both times, it opted for minimal intervention with the express intent of preserving the private character of United States amateur, Olympic, and Paralympic sports. *See* Ben Wilhelm, Cong. Rsch. Serv., R47850, The United States Olympic and Paralympic Committee: A Primer 1–3 (2023).

Congress enacted the first such intervention, the ASA, to mitigate fights between rival athletic organizations. But the ASA expressly preserved the private character of Olympic sports by leaving a network of private organizations in charge of selecting, training, and managing the United States Olympic delegation. The second intervention, the SafeSport Authorization Act, took essentially the same approach by empowering yet another private organization to remove abusive individuals from Olympic sports, thereby aiding the original mission of the USOC and the NGBs. Notably, in both the ASA and the SafeSport Authorization Act, Congress declined to go so far as to grant access to the courts. Thus, because none of Appellees possess state authority or acted at the direction of government entities, none of Appellees are state actors for the purposes of this lawsuit and consequently are not subject to the Due Process Clause.

Appellants do not present a compelling case to the contrary. Their primary argument is that SafeSport exercises traditional government authority because it "is charged with rulemaking, investigating, and adjudicating the conduct of citizens." Appellants' Opening Br. at 29. This argument is incorrect for a number of reasons. First, as explained above, SafeSport does not have powers of general applicability: It has jurisdiction only by virtue of the contracts NGB members voluntarily enter as a condition of working and

competing under the Olympic umbrella. More importantly, the USOC, through the NGBs, previously had the same investigatory authority SafeSport now holds. In *SFAA*, the Supreme Court held that the USOC was not a state actor despite possessing such authority. *SFAA*, 483 U.S. at 544–48. Thus, Appellants argue in effect that *SFAA* was wrongly decided. We do not have the power to revisit that decision, nor to set aside Congress's clear intention to keep Olympic sports private.

Therefore, we hold that Appellees are not state actors subject to the Fifth and Fourteenth Amendments and consequently affirm the district court's dismissal of Appellants' due process claims.

D.

Private Non-delegation

1.

Finally, Appellants allege that Congress has unconstitutionally delegated judicial, executive, and legislative power to SafeSport in violation of the private non-delegation doctrine. The district court dismissed this claim. It held that "Congress has not delegated any [governmental] power to SafeSport," and specifically noted that SafeSport "lacks authority to promulgate or enforce federal rules." J.A. 602.

Appellants argue that the district court erred, and that "Congress has granted [SafeSport] sweeping rulemaking and enforcement authority over other private entities" in clear violation of the private non-delegation doctrine. Appellants' Opening Br. at 16. In support, Appellants cite to several portions of the SafeSport Authorization Act that purport to grant SafeSport "jurisdiction" over abuse allegations within

Olympic sports and instruct SafeSport to establish membership and personal conduct rules for NGBs. Appellants' Opening Br. at 15–18 (quoting 36 U.S.C. § 220541(a)(1)(A)). Appellants also argue, "the SafeSport Code, in its entirety, is incorporated into and made a part of the ASA by the federal statute," which states, "[t]he policies and procedures developed under subsection [220541(a)(1)(C)] shall apply as though they were incorporated in and made part of section 220524." Appellants' Opening Br. at 16–18 (quoting 36 U.S.C. § 220541(b)). Thus, Appellants assert that SafeSport in effect wields governmental authority. Because the constitution permits private entities to perform only "ministerial or advisory rules" on behalf of the government, Appellants argue that SafeSport's "considerable legislative, regulatory, administrative, and enforcement powers" violate the private non-delegation doctrine. Appellants' Opening Br. at 4, 15–16 (quoting *Pittston Co. v. U.S.*, 368 F.3d 385, 395 (4th Cir. 2004)).

2.

Before proceeding to the merits of this allegation, we must first assure ourselves of our own jurisdiction. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Standing is an essential element of that inquiry. *Id.* A general grievance that the government is acting unconstitutionally is insufficient to confer standing. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024); *United States v. Richardson*, 418 U.S. 166, 172–74 (1974); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–78 (1992) ("[A]n injury amounting only to the alleged violation of a right to have the Government act in accordance with [the Constitution] [is] not judicially cognizable."). Rather, before a plaintiff may challenge an allegedly unconstitutional delegation, they must first articulate

a concrete and particularized injury fairly traceable to some unlawful act by a defendant. Once a plaintiff has done so, they may also raise related, generalized questions of constitutional law -- including non-delegation claims. *See Collins v. Yellen*, 594 U.S. 220, 243–44 (2021) ("[T]he relevant inquiry is whether the plaintiffs' injury can be traced to 'allegedly unlawful conduct' of the defendant, not to the provision of law that is challenged.").

Here, however, Appellants have failed to articulate a cognizable injury that is fairly traceable to Appellees. As a result, the district court dismissed each of Appellants' claims. They appealed only two merits issues: their due process allegations and the non-delegation claim. As we explain above, Appellants' due process claims cannot proceed. Appellants thus lack standing to raise a non-delegation claim, and we must affirm the district court's dismissal of Appellants' lawsuit.

IV.

For the foregoing reasons, the district court is

REVERSED in part and
AFFIRMED in part.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

No. 3:24-cv-00030

Thomas Navarro, *et al.*,

Plaintiffs,

v.

United States Center for SafeSport, *et al.*,

Defendants.

Date of entry: January 15, 2025

MEMORANDUM OPINION

Plaintiffs Thomas Navarro, James Giorgio, and Nina Shaffer were suspended or permanently banned from participating in United States Equestrian Federation, Inc. ("USEF") events based on eligibility decisions issued by the United States Center for SafeSport ("SafeSport"). Plaintiffs brought this lawsuit against SafeSport, USEF, and the United States Olympic & Paralympic Committee ("USOPC") to challenge the procedures SafeSport applied in their cases. They allege that the policies and statutory framework governing SafeSport adjudications violate the United States Constitution, the Ted Stevens Olympic and Amateur Sports Act ("Amateur Sports Act"), and Virginia common law. Plaintiffs seek declaratory and injunctive relief that would vacate SafeSport's eligibility decisions in their cases.

This matter is before the court on motions to dismiss filed by each Defendant (Dkts. 29, 30, 33). Defendants move to dismiss under Federal Rule of Civil

Procedure 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim. For the reasons outlined below, the court will grant Defendants' motions.

I. Background

The facts in this section are taken from Plaintiffs' complaint and supporting exhibits and are accepted as true when resolving the motions to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165–66 (4th Cir. 2016). The court also considers certain exhibits Defendants attached to their motions because they are integral to the complaint and Plaintiffs do not dispute their authenticity. *See Goines*, 822 F.3d at 166.

A. Overview of the U.S. Olympic Movement and SafeSport's Functions

The Amateur Sports Act[1] governs the United States' participation in the Olympic and Paralympic movement. Under the Act, USOPC, a federally chartered corporation, is responsible for overseeing and promoting amateur athletic programs and other matters related to the United States' representation in the Olympic and Paralympic Games. 36 U.S.C. §§ 220502(a), 220503; (Compl. ¶ 27 (Dkt. 1)).

The Amateur Sports Act requires USOPC to designate one National Governing Body ("NGB") for each Olympic sport. 36 U.S.C. § 220521(a); (*see* Compl. ¶ 29). USEF is the NGB for equestrian sports. (*See* Compl. ¶ 31.) It has approximately 150,000 members,

---

[1] As discussed below, Congress has amended the Amateur Sports Act multiple times since its initial passage. The court uses "Amateur Sports Act" as a shorthand for the entire statutory framework.

including horse trainers, amateur riders, non-riding participants, and fans of the sport. (*See id.* ¶ 28.) NGBs have broad autonomy to govern amateur competitions in their respective sports, as well as the selection of Olympic and Paralympic teams, coaches, and staff. *See* 36 U.S.C. §§ 220522, 220523.

The Amateur Sports Act enumerates eligibility criteria that an amateur sports organization must satisfy to serve as an NGB. *See id.* § 220522. One criterion requires that NGBs provide "fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate" in amateur athletic competition. *Id.* § 220522(8)[2]; (*see* Compl. ¶ 29).

Historically, USEF and other NGBs were responsible for policing emotional, physical, and sexual abuse in their respective sports. (Compl. ¶ 31.) Between 2014 and 2017, USOPC began developing a more centralized approach for responding to reports of abuse in amateur sports. (*See id.* ¶¶ 33, 37, 42–46.) USOPC formed SafeSport to manage investigations and enforcement in this area. (*See id.*) As a first step, USOPC worked with NGBs to develop the SafeSport Code, which governs the complaint, investigation, and adjudication processes for claims of emotional, physical, and sexual abuse across the Olympic and Paralympic movement. (*Id.* ¶ 37.) Around March 2017, USOPC, SafeSport, and the NGBs (including USEF)

---

[2] Prior to 2020, this provision was found at 36 U.S.C. § 220522(a)(8). Congress reorganized the Amateur Sports Act in 2020 but did not change the relevant language of the provision. *See* Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. 116-189, 134 Stat. 943, 956–57 (2020); (Compl. ¶ 29).

entered into a Master Services Agreement that delegated to SafeSport all responsibility for adjudicating alleged violations of the SafeSport Code. (*Id.* ¶¶ 62–65.)

The SafeSport Code went into effect in March 2017. (Id. ¶ 42.) At first, SafeSport remained under the jurisdiction of USOPC, and USOPC required all NGBs to adopt the SafeSport Code. (*Id.* ¶ 42.) The Code gave SafeSport exclusive authority to investigate and resolve allegations of sexual misconduct. (*Id.* ¶ 45.) It also allowed SafeSport to accept authority over other alleged violations of the Code upon request from USOPC or an NGB. (*Id.* ¶ 46.) That discretionary authority covered allegations of emotional or physical misconduct, including bullying, hazing, and harassment. (*Id.*) If USOPC and the NGB did not ask SafeSport to accept authority over such allegations, the NGB would investigate them under its own rules. (*Id.*)

In early 2018, Congress enacted the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act (the "2018 Amendment"), which amended the Amateur Sports Act to codify SafeSport's roles and responsibilities. (*Id.* ¶ 53); *see* Pub. L. No. 115-126, 132 Stat. 318, 320–24 (2018). The 2018 Amendment designated SafeSport as "the independent national safe sport organization for the United States." 132 Stat. at 320; (Compl. ¶¶ 53–54). It provided that SafeSport would "exercise jurisdiction over the [USOPC], each [NGB], and each paralympic sports organization with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports." 132 Stat. at 320; (Compl. ¶ 54). The 2018 Amendment also outlined SafeSport's functions and responsibilities. Among other duties,

SafeSport must "maintain an office for response and resolution that shall establish mechanisms that allow for the reporting, investigation, and resolution . . . of alleged sexual abuse in violation of [SafeSport's] policies and procedures." 132 Stat. at 321; (Compl. ¶ 55). The 2018 Amendment required SafeSport to ensure that its mechanisms for resolving reports of abuse "provide fair notice and an opportunity to be heard." 132 Stat. at 321; (Compl. ¶ 59). But unlike the section of the Amateur Sports Act governing NGBs, the new provisions did not expressly require SafeSport to hold a hearing before issuing an eligibility decision. *See* 132 Stat. at 320–24; (Compl. ¶ 59).

Congress made further changes to the Amateur Sports Act in the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020 (the "2020 Amendment"). Pub. L. 116-189, 134 Stat. 943 (2020); (*see* Compl. ¶ 67). The 2020 Amendment added language requiring that SafeSport "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." 134 Stat. at 961; (*see* Compl. ¶ 68). It then listed the "minimum" forms of process that SafeSport must provide, which include "an opportunity to be heard during the investigation." 134 Stat. at 961. But it did not add an express requirement for SafeSport to hold a pre-determination hearing before making eligibility decisions. The 2020 Amendment also prohibited USOPC and NGBs from interfering with or attempting to influence SafeSport's investigations. *Id.* at 962.

B. Plaintiffs' SafeSport Cases

Plaintiffs Thomas Navarro, James Giorgio, and Nina Shaffer are professional horse trainers or breeders and members of USEF. (Compl. ¶¶ 4–6, 12, 15, 22.) To become a member of USEF, a person must sign a membership agreement that requires them to accept the terms of the SafeSport Code. (*Id.* ¶ 178.)

1. Giorgio and Navarro

SafeSport issued decisions declaring Giorgio and Navarro permanently ineligible to participate in USEF events in July 2018 and December 2018, respectively. (SafeSport Sealed Ex. D, U.S. Center for SafeSport Arbitration Hearing Decision for James Giorgio at 1 (Dkt. 34-9) [hereinafter "Giorgio Arbitration Decision"]; SafeSport Sealed Ex. C, U.S. Center for SafeSport Arbitration Hearing Decision for Thomas Navarro at 1 (Dkt. 34-8) [hereinafter "Navarro Arbitration Decision"].)[3] As required by the Amateur Sports Act, SafeSport then published their names on an online list of adults barred from competition. *See* 36 U.S.C. § 220541(a)(1)(G); (Compl. ¶¶ 14, 18).

Giorgio and Navarro's SafeSport cases were governed by the version of the SafeSport Code that went into effect on March 21, 2018. (*See* USOPC Ex. 1, 2018

[3] The court may consider these exhibits at the motion-to-dismiss stage because they are integral to Plaintiffs' complaint and Plaintiffs do not dispute their authenticity. *See Goines*, 822 F.3d at 166. SafeSport filed these two documents, as well as SafeSport's Notice of Decision in Shaffer's case (Dkt. 34-10), under seal. The parties have conferred with the court and confirmed that this opinion does not cite any sensitive material from the three sealed documents.

SafeSport Code at 3 (Dkt. 29-2).)[4] That version of the Code did not give respondents an opportunity for a hearing before SafeSport's Director of Investigations issued eligibility decisions. (2018 SafeSport Code at 19–20; *see* Compl. ¶¶ 47–48.) Instead, after the Director made a decision, the respondent could request a hearing before a neutral arbitrator to challenge it. (2018 SafeSport Code at 21.) Neither Giorgio nor Navarro received notice or a hearing before SafeSport ruled them permanently ineligible to participate in USEF events in 2018. (Compl. ¶¶ 14, 18.)

The Code also established the rules for arbitration proceedings. (*See* 2018 SafeSport Code at 25–37.) Under those rules, a respondent who wished to arbitrate the Director's decision had to pay an arbitration fee of $5,200 or request a hardship exemption. (*Id.* at 38; *see* Compl. ¶ 48.) And, importantly, the rules limited the types of claims a respondent could raise during arbitration:

> Arbitration shall resolve only whether a Responding Party violated the SafeSport Code . . . and/or the appropriate sanction (if any). Challenges to, or complaints about, any organizational practices or procedures shall not be addressed and the arbitrator shall be limited to evaluating whether a Covered Individual violated the Code, and, if so, the appropriate sanction.

(2018 SafeSport Code at 27; *see* Compl. ¶ 49.) This provision barred respondents from raising legal

---

[4] This document is also integral to Plaintiffs' complaint—which raises several challenges to the process the SafeSport Code provided—and Plaintiffs do not dispute its authenticity. The same is true of the 2023 version of the SafeSport Code cited below. The original pagination in the 2018 SafeSport Code is inconsistent, so this opinion cites to the document's Bates numbers.

challenges to SafeSport's procedures during arbitration. (Compl. ¶¶ 75–76.) That said, the arbitrator did have "the power to rule on the arbitration body's jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." (2018 SafeSport Code at 28.) The rules provided that the arbitrator's decision "shall be considered final and binding," and the respondent "waive[d], to the fullest extent permissible by law, any right to challenge in court the arbitrator's decision." (*Id.* at 34.)

Giorgio and Navarro both requested arbitration after SafeSport issued the decisions permanently banning them from USEF events. (*See* Compl. ¶¶ 20, 78.) In both cases, arbitrators affiliated with JAMS upheld SafeSport's decisions. (*See* Giorgio Arbitration Decision at 1; Navarro Arbitration Decision at 12.) During his arbitration proceedings, Navarro filed a motion arguing that SafeSport's failure to provide a pre-determination hearing violated the Amateur Sports Act. (Compl. ¶ 78.) The arbitrator concluded that he lacked the authority or jurisdiction under the Code to address that issue. (*Id.*) Navarro also argued that SafeSport's failure to provide a pre-determination hearing violated his due process rights under the U.S. Constitution. (*See* Navarro Arbitration Decision at 2.) The arbitrator did consider that argument, but he concluded that SafeSport was not a governmental actor and thus was not subject to constitutional due process requirements. (*Id.*) Giorgio did not attempt to raise any procedural claims during his JAMS arbitration; he only challenged the sanction SafeSport imposed (*See* Giorgio Arbitration Decision at 3–9.)

Navarro and Giorgio next attempted to challenge SafeSport's decisions by filing complaints with USEF

and USOPC. (*See* Compl. Ex. A, American Arbitration Association Commercial Arbitration Tribunal Final Decision at 5–6 (Dkt. 1-1) [hereinafter "AAA Panel Decision"]; Compl. ¶ 79.)[5] They alleged that SafeSport's failure to offer a pre-determination hearing violated 36 U.S.C. § 220522(8), which mandates that NGBs provide "fair notice and opportunity for a hearing . . . before declaring [an] individual ineligible to participate." (Compl. ¶ 79.) USEF and USOPC both held that they lacked jurisdiction to hear that argument. (AAA Panel Decision at 6.) Per USOPC's dispute resolution process, Giorgio and Navarro appealed the USOPC decision to a panel of three American Arbitration Association ("AAA") arbitrators. (Id.; Compl. ¶¶ 79–80.) In a decision issued in December 2023, the panel concluded that it, too, lacked jurisdiction over the statutory claim. (AAA Panel Decision at 2, 18.) It reasoned that the proper method of raising the claim was to file suit in federal court after exhausting all administrative remedies in the SafeSport arbitration process. (*Id.* at 2.)

There is no indication that Giorgio or Navarro appealed either the JAMS arbitration decisions or the later AAA Panel decision to any federal or state court.

2. Shaffer

---

[5] USEF's bylaws permits members to file complaints with USEF to challenge the enforcement of a SafeSport decision. (AAA Panel Decision at 5.) In addition, the Amateur Sports Act allows members of an NGB to "seek to compel the [NGB] to comply with sections 220522, 220524, and 220525 of this title by filing a written complaint with [USOPC]." 36 U.S.C. § 220527(a)(1). Such claims are resolved under USOPC's dispute resolution policy, which includes proceedings before a USOPC hearing panel and, ultimately, an opportunity to appeal the hearing panel's decision to an AAA arbitration panel. (*See* AAA Panel Decision at 6.)

In February 2024, SafeSport issued a decision suspending Shaffer from USEF events for three months, followed by a nine-month probation period. (Compl. ¶ 24; SafeSport Sealed Ex. E, SafeSport Notice of Decision, *In re*: Nina Shaffer (Dkt. 34-10) [hereinafter "Shaffer Notice of Decision"].) Shaffer's case was governed by the version of the SafeSport Code that went into effect in April 2023. (*See* USOPC Ex. 2, 2023 SafeSport Code at 1 (Dkt. 29-3).) The 2023 Code incorporated the 2020 Amendment's language requiring SafeSport to "provide procedural due process to the Respondent." (*Id.* at 24); 36 U.S.C. § 2220541(a)(H). But like the earlier version of the Code, the 2023 Code did not provide for a pre-determination hearing. (*See* 2023 SafeSport Code at 21–26.) The 2023 Code also amended the arbitration rules to remove the restrictions on hearing claims related to SafeSport's procedures. (*See id.* at 29–31.)

Shaffer did not request an arbitration hearing because she could not afford the $5,200 arbitration fee. (*See* Compl. ¶ 25.) SafeSport's Notice of Decision informed her that she could request an arbitration hearing and pointed her to the sections of the SafeSport Code that discussed "waiver of fees in cases of financial hardship." (Shaffer Notice of Decision at 7; *see* 2023 SafeSport Code at 39–40.)

C. Procedural History

On April 28, 2024, Plaintiffs filed suit in this court against SafeSport, USEF, and USOPC. Their complaint alleges seven causes of action that raise constitutional, statutory, and state common-law challenges to SafeSport's adjudication procedures:

- **Count I** (against all Defendants): Alleges that the Amateur Sports Act unconstitutionally delegates

legislative, executive, and judicial authority to SafeSport.

- Count II (against all Defendants): Alleges that SafeSport's method of appointing its directors violates the Appointments Clause in Article II, Section 2 of the U.S. Constitution.
- Count III (against USEF and USOPC): Alleges that USEF and USOPC violated the Amateur Sports Act by failing to ensure that SafeSport provides a pre-determination hearing to respondents.
- Count IV (against SafeSport): Alleges that SafeSport violated the Amateur Sports Act by failing to provide respondents with a pre-determination hearing.
- Count V (against all Defendants): Alternatively alleges the Amateur Sports Act, by failing to require SafeSport to hold pre-determination hearings, violates Plaintiffs' rights to due process under the Fifth Amendment.
- Count VI (against SafeSport): Alleges that SafeSport violated Plaintiffs' rights to due process under the Fifth Amendment by failing to provide a pre-determination hearing.
- Count VII (against USEF): Alleges that USEF's membership agreement, which requires members to agree to the SafeSport Code, is an unconscionable adhesion contract.

(*Id.* ¶¶ 82–185.)

Plaintiffs request declaratory and injunctive relief. (*Id.* at 37–39.) They ask the court to declare that SafeSport's procedures are unlawful and that the sanctions SafeSport imposed in their cases are void.

(*Id.* at 37–38.) They also seek a permanent injunction prohibiting USEF from continuing to enforce the sanctions against them. (*Id.* at 39.)

Each Defendant separately moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkts. 29, 30, 33.) After the parties completed briefing, the court held a hearing on the motions on December 5, 2024. (Dkt. 52.)

II. Standard of Review

A motion to dismiss under Rule 12(b)(1) challenges the court's subject matter jurisdiction over a complaint. *See* Fed. R. Civ. P. 12(b)(1). A defendant may bring either a facial or factual challenge to subject matter jurisdiction. *See Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017). A facial challenge, which Defendants make here, "contend[s] that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (internal quotation marks omitted). "[T]he facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Id.*

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Co. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim satisfies the plausibility standard "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged." *Id.* To avoid dismissal, the plaintiff must allege more than "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "naked assertion[s]" unsupported by "further factual enhancement." *Id.* (quoting *Twombly*, 550 U.S. at 555, 557).

When reviewing a Rule 12(b)(6) motion to dismiss, the court must "accept as true all well-pleaded facts in a complaint and construe them in the light most favorable to the plaintiff." *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017). In addition to the facts alleged in the complaint, the court may examine documents attached to the complaint as exhibits or those explicitly incorporated into the complaint by reference. Fed. R. Civ. P. 10(c); *see Goines*, 822 F.3d at 166. It also may consider documents submitted by the defendant if they are "integral to the complaint" and the plaintiff does not dispute their authenticity. *Goines*, 822 F.3d at 166.

III. Analysis

A. Subject Matter Jurisdiction

Defendants raise two threshold challenges to the court's subject matter jurisdiction. First, USOPC argues that Plaintiffs lack Article III standing to sue USOPC. Second, SafeSport and USEF argue that the Amateur Sports Act deprives the court of jurisdiction over Plaintiffs' claims. The court concludes that Plaintiffs have not established standing to sue USOPC and will dismiss the claims against USOPC for lack of subject matter jurisdiction. The court finds, however, the Amateur Sports Act, as amended in 2018 and 2020, does not eliminate the court's subject matter jurisdiction over Plaintiffs' claims against SafeSport and USEF.

1. Article III Standing

Plaintiffs allege four claims against USOPC: that the Amateur Sports Act unconstitutionally delegates authority to SafeSport (Count I); that SafeSport's method of appointing directors violates the Appointments Clause (Count II); that USOPC and USEF violated the Amateur Sports Act by failing to require that SafeSport hold pre-determination hearings (Count III); and that the Amateur Sports Act violates Plaintiffs' rights to procedural due process (Count V). (*See* Compl. ¶¶ 82–118, 131–46.) USOPC argues that Plaintiffs lack standing to bring those claims. (USOPC Br. in Supp. of Mot. to Dismiss at 14–19 (Dkt. 29-1) [hereinafter "USOPC Br."].)

The court may exercise subject matter jurisdiction over the claims against USOPC only if Plaintiffs satisfy the constitutional requirements for Article III standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs bear the burden of establishing standing and must show "(1) an injury in fact; (2) a causal connection between the injury and the conduct complained of, such that the injury is fairly traceable to [USOPC's] actions; and (3) a likelihood that the injury will be redressed by a favorable decision." *Ali v. Hogan*, 26 F.4th 587, 596 (4th Cir. 2022) (citing Lujan, 504 U.S. at 560–61). "[T]he standing inquiry must be evaluated separately as to each defendant." *Disability Rights S.C. v. McMaster*, 24 F.4th 893, 900 (4th Cir. 2022).

USOPC argues that Plaintiffs fail to show either causation or redressability. To satisfy the causation element, Plaintiffs must allege that their injuries were fairly traceable to USOPC's alleged conduct. *E.g.*, *DiCocco v. Garland*, 52 F.4th 588, 592 (4th Cir. 2022). While USOPC's "conduct need not be the last

link in the causal chain," Plaintiffs "must be able to demonstrate that the alleged harm was caused by [USOPC], as opposed to the independent action of some third party not before the court." *Disability Rights S.C.*, 24 F.4th at 901 (internal quotation marks omitted).

Plaintiffs have not alleged any injuries that are fairly traceable to USOPC. They do not allege that USOPC played any role in issuing the eligibility decisions or imposing the sanctions in their cases. To the contrary, they acknowledge that SafeSport made the decisions and that USEF enforced them. (*See* Compl. ¶¶ 13, 17, 19, 24–25.) Further, they recognize that the 2018 Amendment to the Amateur Sports Act "made Defendant SafeSport independent from Defendant USOPC." (*Id.* ¶ 53.) Plaintiffs all were sanctioned after that amendment went into effect. Their complaint notes that USOPC provides funding to SafeSport, (*id.* ¶ 100), but it does not identify any connection between that funding and SafeSport's eligibility decisions. And while Plaintiffs make a conclusory statement that USOPC is "enforcing" SafeSport's decisions, (*id.* ¶ 118), they do not identify any specific enforcement role that USOPC plays.[6] *See Disability Rights S.C.*, 24

---

[6] At the motions hearing, Plaintiffs' counsel suggested that USOPC enforced SafeSport's eligibility decisions by reviewing Giorgio and Navarro's complaints against USEF (which ultimately resulted in the AAA Panel Decision). (Tr. of Dec. 4, 2024 Mots. Hr'g at 42:13–43:17.) USOPC's role in reviewing their complaints does not establish that USOPC caused Giorgio or Navarro's alleged injuries. Those injuries were complete well before Giorgio and Navarro filed the complaint with USOPC, and Giorgio and Navarro do not allege any claims related to USOPC's conduct in reviewing the complaint. The court thus cannot conclude that their alleged injuries were fairly traceable to USOPC's

(*Footnote continued*)

F.4th at 901 (recognizing the "the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute" (quoting *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc))).

Plaintiffs do allege that USOPC failed to ensure compliance with the statutory requirement that NGBs provide "fair notice and opportunity for a hearing . . . before declaring [a member] ineligible to participate." (Compl. ¶ 117); *see* 36 U.S.C. § 220522(8). They claim that USOPC "directed [NGBs] not to fulfill those requirements, and or [sic] assisted them in avoiding them" by deliberately omitting a pre-determination hearing from the original SafeSport Code.[7] (Compl. ¶ 117; *see id.* ¶¶ 38–41.) But USOPC's role in drafting the original SafeSport Code is too attenuated from Plaintiffs' injuries to support an inference of causation. Any authority USOPC exercised over SafeSport's

---

dispute resolution process. It is also worth noting that neither the USOPC hearing panel nor the AAA arbitration panel even addressed the merits of SafeSport's decisions—both held that they lacked jurisdiction to review the claims. (*See* AAA Panel Decision at 2, 6.)

[7] The AAA Panel Decision provides some relevant background on the drafting history of the SafeSport Code. It notes that USOPC officials, when drafting the Code, circulated a draft version that did not provide for notice and a hearing before SafeSport issued a "Final Decision" on a member's eligibility, and instead only allowed a respondent to appeal a Final Decision to an arbitrator at the respondent's expense. (*See* AAA Panel Decision at 8–10; Compl. ¶¶ 39–41.) When discussing the draft, USEF's general counsel raised concerns that this approach might conflict with the statutory requirement that NGBs provide a pre-determination hearing. (AAA Panel Decision at 8–10; Compl. ¶ 40.) Nonetheless, the SafeSport Code did not provide for a pre-determination hearing when it was adopted in 2017. (*See* AAA Panel Decision at 10.)

operations ended with the 2018 Amendment, which made SafeSport a formal independent entity separate and apart from USOPC. That amendment empowered SafeSport to exercise jurisdiction *over* USOPC and each NGB "with regard to safeguarding amateur athletes against abuse." 36 U.S.C. § 220541(a)(1)(B). It also gave SafeSport the independent authority to develop (and revise) its policies and procedures, including the Code. *See id.* § 220541(a)(1)(C), (D). Plaintiffs do not explain how USOPC could have required SafeSport to hold pre-determination hearings in their cases, and, at least at the time of Shaffer's case, the Amateur Sports Act expressly prohibited USOPC from interfering in or attempting to influence the outcome of SafeSport investigations. Id. § 220541(f)(4)(A).

Plaintiffs also suggest the court has subject matter jurisdiction because they are seeking declaratory relief and USOPC has "an interest in the determination of the issues of whether they are bound by the SafeSport Code as a matter of federal law." (*See* Pls.' Am. Resp. in Opp'n to Defs.' Mots. to Dismiss at 6–7 (Dkt. 45) [hereinafter "Pls.' Resp."].) But a plaintiff in a declaratory judgment action is not excused from Article III standing requirements.[8] *See, e.g.*, *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 181–83 (4th Cir. 2013); *Patrick v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 860 F. App.'x 828, 831–32 (4th Cir. 2021).

---

[8] Plaintiffs also ask the court to exercise its statutory discretion to hear their claims for declaratory relief. (Pls.' Resp. at 7–8). But that discretion comes into play only when the declaratory action first satisfies the constitutional requirements for subject matter jurisdiction. *See* 28 U.S.C. § 2201(a); *Mitcheson v. Harris*, 955 F.2d 235, 237 (4th Cir. 1992).

Because Plaintiffs have not established Article III standing to sue USOPC, the court will dismiss the claims against USOPC for lack of subject matter jurisdiction. And even if Plaintiffs had standing, their claims against USOPC would be subject to dismissal under Rule 12(b)(6) for the reasons discussed in Sections III.B. and III.D below.

2. Effect of Amateur Sports Act

SafeSport argues that the Amateur Sports Act prohibits the court from exercising subject matter jurisdiction over any of Plaintiffs' claims. (SafeSport's Mem. in Supp. of Mot. to Dismiss at 14–15 (Dkt. 34) [hereinafter "SafeSport Mem."].) According to SafeSport, the Act eliminates courts' jurisdiction to hear claims that challenge its eligibility decisions or the procedures it follows when making them. (*Id.*)

As SafeSport points out, a few courts have held that the Amateur Sports Act "preempts" courts from exercising subject matter jurisdiction over "state-law causes of action that essentially seek relief based on the athlete's eligibility." *Sanderson v. U.S. Ctr. for SafeSport, Inc.*, No. 21-cv-01771, 2021 WL 3206322, at *4 (D. Colo. July 29, 2021) (holding that the Act preempted state-law breach-of-contract and retaliation claims against SafeSport because the claims went "to the heart of [plaintiff's] eligibility to compete in the Olympics"); see also Slaney v. Int'l Amateur Athletics Fed'n, 244 F.3d 580, 594–96 (7th Cir. 2001) (holding that the Act preempted state-law breach-of-contract and tort claims arising from a USOPC eligibility determination); *Pliuskaitis v. USA Swimming, Inc.*, 243 F. Supp. 3d 1217, 1226–27 (D. Utah 2017) (holding that the Act preempted claims that "sound[ed] in state law and challenge[d] USA Swimming's determination regarding Plaintiff's eligibility to coach"), *aff'd*, 720 F.

App'x 481 (10th Cir. 2018); *Graham v. U.S. Anti-Doping Agency*, No. 5:10-CV-194-F, 2011 WL 1261321, at *5–6 (E.D.N.C. Mar. 31, 2011) (holding that the Act precluded subject matter jurisdiction over *pro se* plaintiff's federal constitutional claims that "essentially s[ought] to challenge his eligibility to coach amateur Olympic athletes" as determined by the U.S. Anti-Doping Agency). Some of these courts have held that the Act also bars procedural challenges to eligibility decisions. *See Slaney*, 244 F.3d at 596; *Sanderson*, 2021 WL 3206322, at *4.[9]

In construing the Act to preclude subject matter jurisdiction over such claims, these courts relied on statutory language that authorizes USOPC to exercise "exclusive jurisdiction . . . over all matters pertaining to United States participation in the Olympic Games." 36 U.S.C. § 220503(3)(A); *see, e.g.*, *Slaney*, 244 F.3d at 594–95; Sanderson, 2021 WL 3206322, at *3–4. But even assuming this language limits courts' jurisdiction over certain eligibility disputes within the Olympic movement, it does not follow that it has the same effect in cases arising from *SafeSport*'s eligibility decisions. The 2018 Amendment made SafeSport independent of USOPC and empowered SafeSport to "exercise jurisdiction *over*" USOPC and NGBs on matters related to abuse prevention. 36 U.S.C. § 220541(a)(1)(B) (emphasis added). In other words, the amendment established a role for SafeSport outside of

[9] These courts have recognized a "limited exception" to the general restriction on subject matter jurisdiction. *See, e.g.*, *Slaney*, 244 F.3d at 595–96. Under that exception, claims are not preempted when they allege that the decision-making body "clearly breached its own rules, that breach will imminently result in *serious* and irreparable harm to the plaintiff, and the plaintiff has exhausted all internal remedies." *Id.* (emphasis in original).

the "exclusive jurisdiction" USOPC otherwise exercises in this area. Because SafeSport operates independently, § 220503(3)(A)'s language concerning USOPC's jurisdiction does not limit the court's jurisdiction over claims related to SafeSport's decisions. Only one court has held otherwise, and, with great respect to that court's analysis, it did not consider the effect of the 2018 Amendment. *See Sanderson*, 2021 WL 3206322, at *3–4.

The question, then, is whether any other provisions of the Amateur Sports Act prohibit the court from exercising subject matter jurisdiction over claims challenging SafeSport decisions. It is well-established that a "rule is jurisdictional only '[i]f the Legislature *clearly states* that [it] shall count as jurisdictional.' " *Stokes v. Stirling*, 64 F.4th 131, 139 (4th Cir. 2023) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 146 (2012)) (emphasis in original); see Arbaugh v. Y&H Corp., 546 U.S. 500, 515–16 (2006) (same). The parts of the Amateur Sports Act that address SafeSport say nothing about divesting federal courts of jurisdiction to hear certain claims. They merely state that SafeSport shall "exercise jurisdiction over [USOPC] and each [NGB] with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports." 36 U.S.C. § 220541(a)(1)(B). That is not a clear statement prohibiting courts from hearing claims arising from SafeSport's operations.

In fact, the Act expressly authorizes federal courts to hear such claims in some circumstances. Section 220541(d)(3) provides that "[a]ny civil action brought in a State court against [SafeSport] relating to the responsibilities of [SafeSport] under this section, section 220542, or section 220543, shall be removed, on request by [SafeSport], to the district court of the United

States in the district in which the action was brought." 36 U.S.C. § 220541(d)(3). It then states that "such district court shall have original jurisdiction over the action without regard to the amount in controversy or the citizenship of the parties involved." *Id.*

SafeSport describes this provision as a narrow carve-out from the general rule prohibiting federal courts from exercising subject matter jurisdiction in these cases. (*See* Tr. of Dec. 5, 2024 Mots. Hr'g at 17:2–25.) But, again, SafeSport does not identify any textual basis for that supposed rule. While § 220541(d)(3) does not expressly speak to the court's original jurisdiction in non-removal cases, that silence does not suggest the court lacks jurisdiction in such cases. Instead, it only underscores that the statute does not contain any clear statement limiting the court's subject matter jurisdiction over claims arising from SafeSport decisions.

The 2020 Amendment did add two provisions to § 220541 clarifying that the Amateur Sports Act does not create a private right of action. One provides that SafeSport's statutory duties should not be construed "to give rise to a claim under State law or to create a private right of action." 134 Stat. at 961; 36 U.S.C. §§ 220541(a)(2)(C). The other states more broadly that "[n]othing in this chapter shall be construed to create a private right of action." 134 Stat. at 962; 36 U.S.C. § 220541(d)(3)(B); *see also* 36 U.S.C. § 220505(b)(9) (similarly stating that no "provision of this chapter shall create a private right of action under this chapter"). While this language limits a person's ability to seek remedies under the statute, it does not "speak in jurisdictional terms." *Stokes*, 64 F.4th at 139 (quoting *Gonzalez*, 565 U.S. at 143).

For these reasons, the court concludes that the Amateur Sports Act does not deprive it of subject matter jurisdiction over Plaintiffs' claims.

B. Exhaustion of Administrative Remedies

Defendants next argue that Shaffer failed to exhaust her administrative remedies because she did not request arbitration after SafeSport issued the decision suspending her. (USOPC Br. at 26–27; USEF's Am. Mem. in Supp. of Mot. to Dismiss at 20–22 (Dkt. 38) [hereinafter "USEF Mem."]; SafeSport Mem. at 12–14.)

The Amateur Sports Act does not contain an express exhaustion requirement, but at least two courts have held that plaintiffs must exhaust SafeSport's arbitration procedures before filing a civil complaint. *See Sanderson*, 2021 WL 3206322, at *5; *Callaghan v. U.S. Center for SafeSport*, No. 2:18-cv-336, 2018 WL 4107951, at *5–6 (M.D. Fla. Aug. 29, 2018). That position is compatible with the text of the Amateur Sports Act, which authorizes SafeSport to "utilize a neutral arbitration body and develop policies and procedures to resolve allegations of sexual abuse within its jurisdiction to determine the [eligibility] of any amateur athlete, coach, trainer, manager, administrator, or official who is the subject of such an allegation." 36 U.S.C. § 220541(c)(1); *see also Callaghan*, 2018 WL 4107951, at *5 ("The general purpose of an exhaustion requirement is so that a specialized entity may have the first opportunity to investigate and, if appropriate, negotiate a resolution."). As members of USEF, Plaintiffs agreed to abide by the SafeSport Code, including the arbitration rules. (Compl. ¶ 178). In any event, Plaintiffs do not dispute that the Act imposes some exhaustion requirement.

Here, Shaffer failed to exhaust her administrative remedies by never requesting that an arbitrator review SafeSport's suspension decision. Plaintiffs state that Shaffer could not afford the hefty arbitration fee. (Compl. ¶ 25.) But as Defendants point out, the SafeSport Code permitted respondents to apply for a "hardship exemption" to the fee. (*See* 2023 SafeSport Code at 39–40.) Plaintiffs do not allege that Shaffer applied for that exemption, even though SafeSport's notice of its suspension decision informed her that respondents may request a waiver of the arbitration fee. (*See* Shaffer Notice of Decision at 7.) Other courts have concluded that plaintiffs failed to exhaust in very similar circumstances. *See Sanderson*, 2021 WL 3206322, at *5 (noting in *dicta* that plaintiff had failed to exhaust administrative remedies for claims against SafeSport because he "did not pay the required arbitration deposit, ask for an extension, or seek a hardship exemption"); *Callaghan*, 2018 WL 4107951, at *6 (dismissing plaintiff 's claims against SafeSport for failure to exhaust because plaintiff had not raised the claims in arbitration).

Accordingly, the court will dismiss Shaffer's remaining claims under Rule 12(b)(6).[10]

---

[10] USEF argues that Giorgio and Navarro also failed to exhaust administrative remedies because they did not appeal the JAMS or AAA Panel decisions to a court under the Federal Arbitration Act. (USEF Mem. at 23–24.) The court will assume that both Giorgio and Navarro satisfied exhaustion requirements by participating in the JAMS and AAA arbitrations. USEF does not point to any statutory scheme that treats a judicial complaint as a required administrative remedy. Such a scheme would seem inconsistent with the purpose of administrative exhaustion requirements, which encourage plaintiffs to resolve disputes with non-judicial actors before turning to a court for relief.

C. *Res Judicata*

USEF and SafeSport argue that Navarro and Giorgio's claims are barred by *res judicata* because they raised (or could have raised) the claims during arbitration and did not seek judicial review of the arbitration decisions under the Federal Arbitration Act ("FAA"). (USEF Mem. at 22–23; SafeSport Mem. at 8–12.)

"Under the doctrine of res judicata, 'a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.' " *Andrews v. Daw*, 201 F.3d 521, 524 (4th Cir. 2000) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)). For *res judicata* to attach, "a party must establish: (1) a final judgment on the merits in a prior suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits." *Id.* (quoting *Jones v. SEC*, 115 F.3d 1173, 1178 (4th Cir. 1997)). A defendant may raise a res judicata defense in a Rule 12(b)(6) motion, but "only if it clearly appears on the face of the complaint." *Id.* at 524 n.1 (quoting *Richmond, Fredericksburg & Potomac R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993)). The court may, however, "take judicial notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact." *Id.*

Here, the parties primarily dispute whether there is "an identity of the cause of action" between their arbitrations and the instant lawsuit. *Id.* at 524. That element "acts as a bar not only to the specific legal claims that were actually raised in the first case, but also to any legal claims that 'could have been raised' based on the same transaction or occurrence." *Addison v. Volvo Trucks N. Am.*, No. 7:12-cv-00314, 2013 WL

1123857, at *3 (W.D. Va. Mar. 15, 2013) (quoting *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). Giorgio and Navarro's claims in the arbitrations and this lawsuit arise from the same transaction or occurrence: SafeSport's decisions banning them from participating in USEF events. *See Pliuskaitis*, 243 F. Supp. 3d at 1228 (holding that claims challenging an NGB's eligibility determination arose from same transaction or occurrence as claims brought in post-determination arbitration). Thus, the question is whether Giorgio and Navarro raised—or could have raised—their challenges to SafeSport's procedures during the JAMS arbitrations.

The undisputed record shows that Navarro raised one of his claims—a constitutional due process challenge to SafeSport's procedures—during his JAMS arbitration. (Navarro Arbitration Decision at 2.) The arbitrator's written decision considered that argument and rejected it on the ground that SafeSport is not a governmental actor subject to due process requirements. (*Id.*) SafeSport was the adverse party in the JAMS arbitration, and Plaintiffs do not dispute that the arbitrator's decision qualifies as a "final judgment on the merits" for *res judicata* purposes. *Andrews*, 201 F.3d at 524. Thus, Navarro's due process claim against SafeSport (Count VI) is barred by *res judicata*.

By contrast, the complaint and other documents properly considered at the motion-to-dismiss stage do not clearly show that *res judicata* bars Giorgio and Navarro's other claims. *Res judicata* applies only when the plaintiff had a "full and fair opportunity to litigate" their claims in the original case. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 n.22 (1982); *see also Thornock v. JES Found. Repair*, No. 7:23-cv-00638, 2024 WL 1739755, at *6 (W.D. Va. Apr. 23,

2024) (quoting *Kremer* for this proposition). The court cannot conclude that Giorgio and Navarro had such an opportunity to litigate their remaining claims during the JAMS arbitrations. At the time, the SafeSport Code expressly prohibited arbitrators from considering challenges to SafeSport's "organizational practices or procedures." (Pls.' Resp. at 2–3 (quoting 2018 SafeSport Code at 27).) Although the arbitrator did hear Navarro's due process argument (potentially in violation of the arbitration rules), it is far from clear that the arbitrator would have entertained any other challenges to SafeSport's procedures. In fact, the complaint alleges that Navarro filed a motion arguing that SafeSport's failure to provide a pre-determination hearing violated the Amateur Sports Act, and that the arbitrator concluded he lacked jurisdiction to address that issue. (Compl. ¶ 78.) This suggests it is unlikely that the arbitrator would have considered any additional procedural challenges.

Unlike Navarro, Giorgio did not attempt to challenge SafeSport's procedures during his JAMS arbitration; the arbitration focused solely on whether his sanction was appropriate. (*See* Giorgio Arbitration Decision at 3–9.) Giorgio's decision not to allege procedural claims is understandable, given that the SafeSport Code in effect at the time prohibited litigating such issues in arbitration. Defendants emphasize that the Code gave the arbitrators the power to resolve issues related to their jurisdiction. (*See* 2018 SafeSport Code at 28.) This, they contend, shows that Giorgio could have argued that the arbitrator should consider procedural claims. (SafeSport Reply at 3); *see also Callaghan*, 2018 WL 4107951, at *5–6 (applying same reasoning to hold that plaintiff failed to exhaust administrative remedies for procedural claims arising from SafeSport decision). But it would be inherently

unfair to fault Giorgio for not making this argument when another section of the Code expressly prohibited parties from challenging SafeSport's procedures during arbitration. Based on that restriction, the court declines to hold that Giorgio clearly had a "full and fair opportunity to litigate" his claims during the JAMS arbitration. *Kremer*, 456 U.S. at 481 n.22.

For these reasons, the court will not dismiss Giorgio and Navarro's claims (aside from Navarro's claim in Count VI) for *res judicata*.[11] Ultimately, however, this conclusion has no effect on the outcome of the motions to dismiss, as Giorgio and Navarro's claims fail under Rule 12(b)(6) for other reasons.

D. Analysis of Plaintiffs' Individual Claims

Defendants' remaining Rule 12(b)(6) arguments focus on the sufficiency of Plaintiffs' individual claims. The court concludes that Counts I through VI all fail as a matter of law and the court will decline to exercise supplemental jurisdiction over Plaintiffs' one state-law claim (Count VII).

1. Alleged Violations of Amateur Sports Act (Counts III and IV)

Counts III and IV allege that SafeSport's adjudication procedures violate 36 U.S.C. § 220522(8), which

---

[11] USEF separately argues for *res judicata* based on the AAA Panel's December 2023 decision resolving the complaint Giorgio and Navarro filed with USOPC. (USEF Mem. at 22–23.) But the AAA Panel's decision does not have preclusive effect because it was not a final judgment on the merits. The AAA Panel concluded that it lacked jurisdiction to resolve the claims, (AAA Panel Decision at 2), and dismissals for lack of jurisdiction do not qualify as final adjudications on the merits. *See, e.g.*, *Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1180–81 (4th Cir. 1989); Fed. R. Civ. P. 41(b).

requires NGBs to provide "fair notice and opportunity for a hearing . . . before declaring [an] individual ineligible to participate" in an Olympic or Paralympic sport. (Compl. ¶¶ 110–30.) Defendants argue that the Amateur Sports Act does not provide a private right of action to sue for violations of the statute. (USEF's Reply in Supp. of Mot. to Dismiss at 18–20 (Dkt. 48); SafeSport Mem. at 21–22.)

Plaintiffs appear to concede, as they must, that the Amateur Sports Act has barred private rights of action for alleged violations of the statute since the 2020 Amendment. That amendment added two express provisions to § 220541—the section addressing SafeSport—stating that the statute does not "create a private right of action." 134 Stat. at 960–62; 36 U.S.C. §§ 220541(a)(2)(C), 220541(d)(3)(B). But Plaintiffs emphasize that those provisions were not in the Act in 2018, when SafeSport issued the decisions banning Giorgio and Navarro from USEF events. (Pls.' Resp. at 15–16.) They contend that the version of the Act in effect at that time provided an implied private right of action to challenge SafeSport's compliance with the statute. (*Id.* at 16–17.)

Plaintiffs overlook that the Act expressly prohibited private rights of action even before the 2020 Amendment. A section of the Act that predates 2018, § 220505(b)(9), states that no "provision *of this chapter* shall create a private right of action under this chapter." 36 U.S.C. § 220505(b)(9) (emphasis added); *see* Pub. L. 105-277, 112 Stat. 2681-604 (1998). The relevant chapter, Chapter 2205, includes § 220541 and the other sections governing SafeSport.

Section 220541 does appear to confer certain rights on respondents in SafeSport cases—such as the requirement of "fair notice and an opportunity to be

heard." 132 Stat. at 321. However, such fair notice and an opportunity to be heard are to be provided in connection with SafeSport's investigation and resolution of alleged sexual abuse cases in violation of its policies and procedures. 36 U.S.C. § 220541(a)(1)(E). The court therefore concludes that the Amateur Sports Act prohibits Giorgio and Navarro from bringing a statutory cause of action to challenge SafeSport's decisions.[12] *See, e.g.*, *Haney v. USA Gymnastics, Inc.*, No. 21-07213, 2022 WL 909871, at *3–4 (D.N.J. Mar. 29, 2022) (holding that § 220505(b)(9) required dismissal of plaintiff 's claims that USA Gymnastics, an NGB, violated the Act). Accordingly, Counts III and IV fail as a matter of law.

2. Constitutional Due Process Claims (Counts V and VI)

Counts V and VI allege violations of the Fifth Amendment Due Process Clause. Count V (alleged against all Defendants) asserts that the Amateur Sports Act violates the Due Process Clause by failing to require a pre-determination hearing in SafeSport cases. (Compl. ¶¶ 131–46.) Count VI (alleged against SafeSport only) claims that the SafeSport Code violates Plaintiffs' due process rights. (*Id.* ¶¶ 147–76.)

Plaintiffs' due process claims turn on Defendants' status as governmental actors. Plaintiffs try to argue

[12] The fact that Plaintiffs seek declaratory relief does not affect this conclusion. As Defendants note, the Declaratory Judgment Act does not provide a cause of action where none is otherwise available—declaratory relief is available only when there is some other right to a judicial remedy. *See Doe v. U.S. Ctr. for SafeSport, Inc.*, No. C23-6067, 2024 WL 3924663, at *10 (W.D. Wash. Aug. 23, 2024) (citing *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878 (9th Cir. 2022)); *see also Schilling v. Rogers*, 363 U.S. 666, 677 (1960).

otherwise. They suggest their right to relief under Count V "does not depend on a party being a state actor" because they are merely seeking a declaratory judgment that the Amateur Sports Act is unconstitutional. (Pls.' Resp. at 18.) That argument is unavailing. Because only a governmental actor can violate one's due process rights, the Act may run afoul of the Due Process Clause only if Defendants qualify as governmental actors. *See, e.g.*, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989).

The Supreme Court has squarely held that USOPC is not a governmental actor subject to the Due Process Clause. *See S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 542–47 (1987) [hereinafter SFAA]. USEF and SafeSport argue that they do not qualify as governmental actors for similar reasons. (USEF Mem. at 7–11; SafeSport Mem. at 16–17.) Plaintiffs concede that USOPC and USEF are not governmental actors, (Tr. of Dec. 5, 2024 Mots. Hr'g at 46:3–14), so the only contested question is whether SafeSport so qualifies.

The Fourth Circuit has "recognized four exclusive circumstances under which a private party can be deemed to be a state actor": "(1) when the state has coerced the private actor to commit an act that would be unconstitutional if done by the state; (2) when the state has sought to evade a clear constitutional duty through delegation to a private actor; (3) when the state has delegated a traditionally and exclusively public function to a private actor; or (4) when the state has committed an unconstitutional act in the course of enforcing a right of a private citizen." *DeBauche v. Trani*, 191 F.3d 499, 507 (4th Cir. 1999) (quoting *Andrews v. Fed. Home Loan Bank of Atlanta*, 998 F.2d 214, 217 (4th Cir. 1993)).

The Supreme Court's reasoning in *SFAA* is useful when evaluating whether SafeSport meets one of those criteria. In *SFAA*, the Court considered the structure of USOPC (then known as USOC) and the authority the Amateur Sports Act granted to it. To start, the Court recognized that USOC was a private corporation established under federal law, but noted that "[t]he fact that Congress granted it a corporate charter does not render the USOC a Government agent." *SFAA*, 483 U.S. at 543–44. In fact, "[e]ven extensive regulation by the government does not transform the actions of the regulated entity into those of the government." *Id.* at 544. Nor did "the intent on the part of Congress to help [the entity] obtain funding" indicate that USOC was a governmental actor. *Id.* ("The Government may subsidize private entities without assuming constitutional responsibility for their actions.").

The Court then looked to the various functions USOC performed. *Id.* at 544–45. It recognized that "the activities performed by the USOC serve a national interest," *id.* at 544, but, it explained, the fact "[t]hat a private entity performs a function which serves the public does not make its acts [governmental] action," *id.* (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982)). The Amateur Sports Act, the Court noted, "merely authorized the USOC to coordinate activities that always have been performed by private entities. Neither the conduct nor the coordination of amateur sports has been a traditional governmental function." *Id.* at 544–45.

Finally, the *SFAA* Court reasoned that the government "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either

overt or covert, that the choice must in law be deemed to be that of the [government]." *Id.* at 546 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)). The Court concluded that the USOC power in question—the ability to enforce an exclusive right to use the word "Olympic"—was not a governmental decision, and it found "no evidence that the Federal Government coerced or encouraged the USOC in the exercise of its right." *Id.* at 547. Rather, the government merely approved of or acquiesced in USOC's initiatives, which was not enough to transform USOC into a governmental actor. *Id.* (citing *Blum*, 457 U.S. at 1004–05).

Applying those principles here, the court concludes that SafeSport is not a governmental actor. As an initial matter, the Amateur Sports Act explicitly states that it should not be construed "to render [SafeSport] a state actor." 36 U.S.C. § 220541(a)(2)(D). But courts should not necessarily give much weight to that kind of disclaimer. *See Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43, 56 (2015) (Alito, J., concurring) (stating that statutory language disclaiming Amtrak's status as a government department, agency, or instrumentality "cannot control for constitutional purposes").

That said, SafeSport's structure and functions point to the same conclusion. Unlike USOPC, SafeSport is not even a federally chartered entity—it is a private corporation formed under Colorado state law. (Compl. ¶ 7.) Nor does the Amateur Sports Act delegate a "traditionally and exclusively public function" to SafeSport. *DeBauche*, 191 F.3d at 508. While Congress made SafeSport independent from USOPC, SafeSport's functions still relate to "the conduct [and] coordination of amateur sports," which have "always have been performed by private entities." *SFAA*, 483

U.S. at 544–45. SafeSport's investigation and adjudication functions fall under that umbrella, as they determine a person's eligibility to participate in amateur sports.

The Act does enumerate SafeSport's functions and set certain parameters for performing them—including the requirement that SafeSport "provide fair notice and an opportunity to be heard." 36 U.S.C. § 220541(a)(1)(E). But "[e]ven extensive regulation by the government does not transform the actions of the regulated entity into those of the government." *SFAA*, 483 U.S. at 544. SafeSport (and before it, USOPC and NGBs) created and oversee the core policy framework governing SafeSport's response to reports of abuse. The 2018 and 2020 Amendments to the Act are best understood as establishing some requirements that SafeSport must follow when exercising that private authority. They did not transform SafeSport's private conduct into federal action. If Congress wished to federalize eligibility decisions, it could have established a federal agency to perform those functions. *See NCAA v. Tarkanian*, 488 U.S. 179, 194–95 (1988) (holding that state university's adoption of NCAA's private disciplinary rules did not transform the NCAA into a state actor because the university retained the ability to "establish its own standards"). Instead, Congress has largely "approv[ed] of or acquiesce[d] in" the private model the Olympic movement developed. *SFAA*, 483 U.S. at 547 (quoting *Blum*, 457 U.S. at 1004–05).

Finally, Congress has not "coerced" SafeSport to make eligibility decisions without a pre-deprivation hearing—SafeSport may choose to amend its Code to provide for one. *DeBauche*, 191 F.3d at 508. SafeSport's decisions therefore cannot be "deemed to

be [those] of the [government]." SFAA, 483 U.S. at 546.

In short, there is no basis for treating SafeSport as an arm of the federal government. Plaintiffs barely respond to SafeSport's arguments on this issue, and they do not offer any persuasive counterarguments. The court concludes that no Defendant qualifies as a governmental actor and will dismiss Counts V and VI.[13]

3. Constitutional Claims: Separation of Powers (Counts I and II)

Counts I and II raise separation-of-powers challenges to SafeSport's structure and authority. Count I alleges that the Amateur Sports Act unconstitutionally delegates federal authority to SafeSport in violation of the nondelegation doctrine. (Compl. ¶¶ 82–101.) Count II alleges that the appointment of SafeSport's board of directors violates the

---

[13] Even if Plaintiffs had not conceded the issue, USEF would not qualify as a governmental actor. USEF is private non-profit corporation chartered under state law. (Compl. ¶ 9.) USOPC—not the federal government—makes the decision to certify USEF and other amateur sports organizations as NGBs. 36 U.S.C. § 220521(a). While the Act sets out several eligibility requirements for NGBs, *id.* § 220522, it does not prescribe any congressional or other direct federal oversight of NGBs—that is USOPC's responsibility. Nor does the Act delegate to NGBs any traditional government functions. As is the case with USOPC and SafeSport, NGBs' delegated functions all relate to "the conduct [and] coordination of amateur sports," which "always have been performed by private entities." *SFAA*, 483 U.S. at 544–45; *see also Behagen v. Amateur Basketball Ass'n of U.S.*, 884 F.2d 524, 531 (10th Cir. 1989) ("Proceeding from this certain ground that [USOPC] is not a governmental actor, it follows a fortiori that [an NGB] is also not a governmental actor.").

Appointments Clause because the directors qualify as "officers of the United States." (*Id.* ¶¶ 102–09.)

i. *Count I: Unconstitutional Delegation Claim*

In Count I, Plaintiffs allege that Congress has unconstitutionally delegated to SafeSport the power to "draft, implement, administer, and enforce federal law and policy regarding emotional, physical, and sexual abuse in Olympic and amateur sports." (*Id.* ¶ 99.) The Constitution vests federal legislative power in Congress, executive power in the President, and judicial power in the federal courts. U.S. Const. art. I, § 1; *id.* art. II, § 1; *id.* art. III, § 1. By implication, the Vesting Clauses prohibit the federal government from delegating "governmental function[s]" to private parties. *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936). While private entities may participate in "developing government standards and rules" under the oversight of a federal entity, they may not "create[ ] the law or retain[ ] full discretion over any regulations" that have the effect of federal law. *Oklahoma v. United States*, 62 F.4th 221, 228–29 (6th Cir. 2023).

The Amateur Sports Act does not cross this constitutional line. To be sure, SafeSport enjoys broad autonomy and operates without direct oversight from a federal agency. If SafeSport exercised federal rulemaking or enforcement power, that lack of oversight would violate the nondelegation doctrine. *See Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 881 (5th Cir. 2022) ("If the private entity does not function subordinately to the supervising agency, the delegation of power is unconstitutional."). Critically, though, Congress has not delegated any such power to SafeSport. SafeSport lacks the authority to promulgate or enforce federal rules. *Cf. id.* at

872–73, 886–87 (holding that the Horseracing Integrity and Safety Act, as originally enacted, violated the nondelegation doctrine because it empowered the Horseracing Integrity and Safety Authority to promulgate federal regulations without giving the Federal Trade Commission any power to modify them). Nor does the Amateur Sports Act give SafeSport any federal enforcement authority, such as subpoena power. *See id.* at 874 (noting that the Horseracing Integrity and Safety Authority's enforcement powers included the power to issue subpoenas).

Instead, the 2018 and 2020 Amendments to the Act merely set parameters for SafeSport to follow when deciding whether individuals are eligible to participate in amateur sports—a role that "always ha[s] been performed by private entities" and is not a "traditional governmental function." *SFAA*, 483 U.S. at 545. Because SafeSport's underlying policies and procedures do not have the force or effect of federal law, Congress has not violated the nondelegation doctrine by codifying some of SafeSport's functions and responsibilities.

Plaintiffs argue that one provision in § 220541 compels the opposite result. They point to the statutory language stating that the policies and procedures SafeSport develops "shall apply as though they were incorporated in and made a part of section 220524" (the section addressing the duties of NGBs). 36 U.S.C. § 220541(b). This, Plaintiffs allege, codifies the SafeSport Code as part of the statute and unconstitutionally delegates legislative power to SafeSport. (Compl. ¶¶ 90–91.)

Section 220541(b) is not a model of clarity, but the court concludes that it does not give legislative effect to the SafeSport Code. Instead, the provision simply establishes that NGBs must adhere to relevant parts

of the Code. Section 220541(b) was added to the Act via the 2018 Amendment. *See* 132 Stat. at 321. At the time, § 220524 did not contain any language addressing NGBs' obligations to safeguard amateur athletes from sexual abuse. By "incorporat[ing]" SafeSport's policies and procedures into § 220524, Congress clarified that NGBs' duties include an obligation to follow the SafeSport Code.[14] There is no indication that Congress, by adopting § 220541(b), intended to give the Code the full force and effect of a federal statute.

The Amateur Sports Act does not delegate any legislative or other governmental authority to SafeSport. Accordingly, the court will dismiss Count I.

ii. *Count II: Appointments Clause Claim*

Under the Appointments Clause, the President has the power to nominate, and with the advice and consent of the Senate, appoint "Officers of the United States." U.S. Const. art. II, § 2, cl. 2. In addition, Congress may vest the power to appoint "inferior Officers" in "the President alone, in the Courts of Law, or in the Heads of Departments." *Id.*

SafeSport's directors are not appointed via any of these methods. Rather the board of directors is responsible for electing individual directors. (*See* Compl. ¶¶ 35, 106.) To state a claim for an Appointments Clause violation, Plaintiffs must plausibly allege that SafeSport's directors are "inferior Officers." To qualify

---

[14] The 2020 Amendment later added express language to § 220524 that requires NGBs to adopt policies and procedures for reporting abuse allegations that are "consistent with . . . the policies and procedures developed" by SafeSport. 134 Stat. at 959–60; 36 U.S.C. § 220524(a)(16). Even after that amendment, § 220541(b) continues to serve a purpose by providing that NGBs must comply with all relevant parts of the SafeSport Code.

as an inferior Officer, an individual "must occupy a continuing position established by law" and "exercis[e] significant authority pursuant to the laws of the United States." *Lucia v. S.E.C.*, 585 U.S. 237, 245 (2018) (quotation marks omitted); *see Freytag v. Comm'r*, 501 U.S. 868, 881 (1991).

SafeSport's directors do not meet either requirement. Starting with the first, their position is not "established by law." The Amateur Sports Act says nothing about SafeSport's board of directors. *Cf. Freytag*, 501 U.S. at 881 (holding that Special Trial Judges ("STJs") for the U.S. Tax Court occupy a continuing position established by law, in part because the U.S. Tax Code specified their "duties, salary, and means of appointment"); *Lucia*, 585 U.S. at 247–48 (holding that Administrative Law Judges ("ALJs") for the Securities and Exchange Commission ("SEC") meet this requirement, in part because their "appointment is to a position created by statute").

Nor do SafeSport's directors (or the officials who make eligibility decisions) exercise any "significant authority pursuant to the laws of the United States." Although the Amateur Sports Act establishes guidelines for SafeSport's operations, SafeSport does not create or enforce any substantive federal law. *Cf. Freytag*, 501 U.S. at 873 (noting that STJs prepare proposed findings adjudicating charges and tax liabilities); *Lucia*, 585 U.S. at 249 (noting that SEC ALJs can issue decisions containing factual findings, legal conclusions, and remedies, which may be treated as the final action of the SEC). Instead, SafeSport resolves essentially private disputes about eligibility to participate in amateur sports. *See SFAA*, 483 U.S. at 544–45.

Because SafeSport's directors are not "inferior Officers," Count II also fails as a matter of law.

4. State-Law Contract Claim (Count VII)

Finally, Count VII alleges that Plaintiffs' membership agreements with USEF were unconscionable adhesion contracts because they required Plaintiffs to agree to the SafeSport Code and its unlawful adjudication procedures. (Compl. ¶¶ 177–85.) Plaintiffs seek a declaratory judgment "that the sanctions imposed on them by virtue of their membership agreements are void." (*Id.* ¶ 185.) They do not allege that the court has diversity jurisdiction over Count VII—in fact, they do not address the court's jurisdiction over this count at all. (*See id.* ¶¶ 10, 177–85.)

Because the court will dismiss all federal claims in this action, it will exercise its discretion and decline supplemental jurisdiction over Count VII. A district court has "wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." *Henderson v. Harmon*, 102 F.4th 242, 251 (4th Cir. 2024) (quoting *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995)). When deciding whether to exercise supplemental jurisdiction over a state-law claim in this scenario, the court weighs multiple factors, including "judicial economy, convenience, fairness, and comity." *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)). "[G]enerally, when a district court dismisses all federal claims in the early stages of litigation . . . it should decline to exercise jurisdiction over any remaining pendent state law claims by dismissing those claims without prejudice." *Id.* (citation omitted).

Here, the court concludes that dismissing Count VII would not be unduly inconvenient, unfair, or wasteful of judicial resources. At this early stage of the proceedings, the parties have not conducted discovery, and the court notes that the parties' briefing on the motions to dismiss devotes little attention to the merits of Count VII. The court therefore finds it appropriate to dismiss this claim without prejudice.

IV. Conclusion

For the reasons set forth above, the court will grant Defendants' motions to dismiss (Dkts. 29, 30, 33). All counts alleged against USOPC will be dismissed without prejudice for lack of subject matter jurisdiction. Aside from Count VII, all counts alleged against SafeSport and/or USEF will be dismissed with prejudice, as the court concludes that Plaintiffs cannot correct the legal deficiencies in those claims via amendment. Count VII will be dismissed without prejudice.

An appropriate Order shall accompany this Memorandum Opinion.

ENTERED this 15th day of January, 2025.

/s/ Jasmine H. Yoon
HON. JASMINE H. YOON
UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1150

THOMAS NAVARRO; JAMES GIORGIO; NINA SHAFFER,

Plaintiffs - Appellants,

v.

UNITED STATES CENTER FOR SAFESPORT; UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE; UNITED STATES EQUESTRIAN FEDERATION, INC.,

Defendants - Appellees,

and

UNITED STATES OF AMERICA,

Intervenor.

Date of entry: May 26, 2026

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Thacker, and Judge Berner.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix D

§ 220541. Designation of United States Center for SafeSport

(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, 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 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) 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) 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.

(b) POLICIES AND PROCEDURES.—The policies and procedures developed under subsection (a)(1)(C) shall apply as though they were incorporated in and made a part of section 220524 of this title.

(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) 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.

(4) DEFINITION OF APPLICABLE ENTITY.—In this subsection, the term "applicable entity" means—

(A) the Center;

(B) a national governing body;

(C) the corporation;

(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

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

(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) not less frequently than every 3 years, update such training materials.

(f) INDEPENDENCE.—

(1) 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) 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 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) 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) MANDATORY PAYMENTS.—

(A) 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) 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

(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) IN GENERAL.—Not less frequently than annually, the Center shall carry out an audit of the corporation and each national governing body—

(A) 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) 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 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) EFFECT OF NONCOMPLIANCE.—If the corporation fails to enforce a corrective measure within 72 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) 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.

(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.

(C) A finding of whether the corporation has interfered in, or attempted to influence the outcome of, an investigation by the Center.

(D) 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.

Appendix E

§ 220524. General duties of national governing bodies

(a) IN GENERAL.—For the sport that it governs, a national governing body shall—

(1) develop interest and participation throughout the United States and be responsible to the persons and organizations it represents;

(2) minimize, through coordination with other organizations, conflicts in the scheduling of all practices and competitions;

(3) keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions;

(4) disseminate and distribute to amateur athletes, coaches, trainers, managers, administrators, and officials in a timely manner the applicable rules and any changes to such rules of the national governing body, the corporation, the appropriate international sports federation, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organization;

(5) allow an amateur athlete to compete in any international amateur athletic competition conducted by any organization or person, unless the national governing body establishes that its denial is based on evidence that the organization or person conducting the competition does not meet the requirements stated in section 220525 of this title;

(6) provide equitable support and encouragement for participation by women where separate programs for male and female athletes are conducted on a national basis;

(7) with respect to a sport for which a national governing body conducts separate programs for female and male athletes, ensure that female and male

athletes who represent the United States in international amateur athletic events receive, from funds directly provided by the national governing body to the athlete (excluding any prize or award based on the athlete's performance in an international amateur athletic competition), equivalent and nondiscriminatory compensation, wages, benefits, medical care, travel arrangements, and payment or reimbursement for expenses, all insofar as these are implemented in connection with such amateur athletic events, where "equivalent" means "equal" except that it shall be permissible—

(A) to consider merit, performance, seniority, or quantity of play in determining contract or other terms of participation; and

(B) to provide more beneficial terms of participation to athletes representing the United States in international events to address disparities in outside income, including in compensation made available by international sports federations and other event organizers, or the need to foster underdeveloped programs or address documented and justifiable personal need on the part of specific athletes or teams;

(8) take all reasonable steps, in collaboration with affected athletes, to advocate to international sports federations and other event organizers to equalize prizes, compensation, funding, and other support provided to athletes by such federations and organizers;

(9) encourage and support amateur athletic sports programs for individuals with disabilities and the participation of individuals with disabilities in amateur athletic activity, including, where feasible, the expansion of opportunities for meaningful

participation by individuals with disabilities in programs of athletic competition for able-bodied individuals;

(10) provide and coordinate technical information on physical training, equipment design, coaching, and performance analysis;

(11) encourage and support research, development, and dissemination of information in the areas of sports medicine and sports safety;

(12) 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;

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

(14) 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;

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

(16) 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).

(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.