

To: Senator John Cornyn and Senator Kay Bailey Hutchinson

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Report on Grant for USADA

The United States Anti-Doping Agency's (USADA) grant is up for renewal this spring, and described below are some of the major issues and arguments pertaining to the grant which warrant your consideration before the grant is renewed. First, the USADA is requesting that its grant be doubled in response to the financial strain of persecuting high-profile cases, such as the recent Landis vs. USADA case. Secondly, the methods of testing for drug use have come under suspicion and there are several areas with possibilities for improvement within the grant. Thirdly, the trial process for the condemned athletes has the potential for greater fairness with a simple change.

The USADA exists mainly on the grant money of our government. As one of your options, you could terminate the grant. This action, however, would effectively incapacitate the agency and prevent any further prosecution of athletes that use performance-enhancing drugs. Without any sort of enforcement, it appears that many sports would be overrun with doping. In cycling, the use of the performance-enhancing drug r-EPO became so rampant that Greg LeMond, who won the Tour de France from '86-'90 was unable to compete with other cyclists in '91 when r-EPO became readily available, despite a pre-season filled with personal best times (Shermer). Since the investigation into BALCO's steroid distribution in 2002, it has become evident that abuse

of steroids and r-EPO has become common among many professional athletes, including track and field athletes Marion Jones and Tim Montgomery, and professional baseball stars Mark Maguire and Barry Bonds (Williams). In the spirit of fair play and honest competition, it is critical that the USADA remain as a working institution to uphold and enforce laws about drug use in sports.

Another question to consider when renewing the grant is the USADA's demand to double the current grant money. Many cases now involve high-profile athletes who can afford to drag out the case, costing the USADA far more to prosecute the offenders than before. However, the sum provided in the grant is substantial, and the question must be asked: where will this extra money come from? Shall we pull it from other sources and in the process leave them deficient in funds? Or shall we raise taxes to fund this and other programs and institutions that demand our attention this year? Perhaps the new grant could include a condition that required the USADA to match a certain percentage of the funds provided in the grant with private funds. The USADA certainly deserves the grant; it is now just a matter of deciding if an increase in funds is necessary to fund high-profile cases.

In 2006, the World Anti-Doping Agency (WADA) investigated Lance Armstrong for possible illegal drug use after a French sports magazine published accusations that several past samples of Armstrong's tested positive for performance-enhancing drugs. Armstrong denied the charges and the International Cycling Union (UCI) hired Emile Vrijman to investigate. The report "exonerated" Armstrong and criticized WADA and the French testing laboratories for "[behaving] in ways that are completely inconsistent with the rules and regulations of international anti-doping control testing" ("Armstrong"). It

was also reported that the laboratory did not provide evidence of a “‘chain of custody’ guaranteeing [the samples’] integrity,” exposing the sample to possible contamination (Max). Now that everything has been mishandled, there is no way of verifying whether or not the samples actually tested positive for performance-enhancing drugs, and thus no clear way to either absolve or condemn Armstrong. Policy mandates must be put in place to prevent something similar from happening within the USADA.

Critics have previously argued that the findings of WADA-accredited labs have little scientific validity because the findings are not published, peer-reviewed, or validated according to usual test procedures. This is done primarily to prevent athletes who dope and the steroid producers from abusing the knowledge to find alternative undetectable forms of performance-enhancing drugs. There are several options below, which strike a balance between maintaining privacy and establishing scientific validity.

First, multiple labs should test the samples provided by an athlete: the lab in the country where the competition is held or the athlete is training, and again in another country not related to either the competition or the athlete. This should ensure that any bias for or against the athlete is taken into account. In addition to riding the tests of potentially harmful biases, one of the most basic principles of science is that validity is determined by the ability to repeat the experiment (Siegle). By allowing the sample to be tested multiple times, the validity of the results can be confirmed, or denied, in which case further testing would be performed before a final report would be issued to the USADA or CAS.

Another option for validating the results of the tests would be to convene an independent panel of scientists to review the test processes and the “‘chain of custody’”

to ensure that proper procedures were followed while conducting the tests. WADA already allows “the *Anti-doping Organization* responsible for results management [to] conduct a review” of the results, but this still opens some holes for bias (“World”). To combat this, the scientific review panels would be independent of the USADA, IOC, CAS, and any other international sports doping agencies. They should be internationally renowned chemists who understand the processes and procedures that the accredited labs must follow, thus eliminating biases either for or against the athlete. A private panel of scientists provides an answer for both the privacy and the validity question. A panel can peer-review the work of the accredited labs and ensure that the integrity of the sample and the validity of the results has not been compromised. At the same time, the lab reports are not published to the general public, thus preventing people from exploiting the knowledge of the tests and designing undetectable drugs.

Another amendable issue in the grant is the way in which athletes whose samples generate “Adverse Analytical Findings” are tried and punished (“World” 21). As it stands now, an arbitrator holds a hearing between the two parties, the USADA and the athlete, and then renders a verdict and a proper course of punishment. Both parties then have the right to appeal the decision to the CAS for a *de novo* trial before another arbitrator. While this has served the sports community well, a slight improvement can be made and easily added as a condition of grant renewal. Rather than a single arbitrator, assemble a small panel of three arbitrators to hear the case. While it would be near impossible to make the case a civil or criminal trial and assemble a jury, holding panel arbitrations allows for more opinions to come into play and thus, the decision rendered will be more balanced.

The USADA is a much-needed source of authority and enforcement in the sports world which has been overrun with illegal performance-enhancing drugs and steroids. Without it, there would be no one to prosecute the cases of doping here in the United States. Their financial needs should be met, if at all possible, because of the necessity of their existence. The ability to meet their demand for double funds of the previous grant can only be determined by further investigation into possible sources of the funding. Regardless of how much you increase the grant, certain conditions should be added including one or both of the suggestions for improving scientific validity, and the change from a single arbitrator to a panel arbitration. With these slight alterations, the USADA will still be able to perform its role within the international sports body, but operate on a better playing field where athletes are treated fairly and justly.

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