

RODCHENKOV ANTI-DOPING ACT OF 2019

OCTOBER 22, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 835]

The Committee on the Judiciary, to whom was referred the bill (H.R. 835) to impose criminal sanctions on certain persons involved in international doping fraud conspiracies, to provide restitution for victims of such conspiracies, and to require sharing of information with the United States Anti-Doping Agency to assist its fight against doping, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, strike line 4 and all that follows through line 14 on page 6.

Page 7, strike lines 6 through 21 and insert the following:

(5) MAJOR INTERNATIONAL SPORT COMPETITION.—The term “Major International Sport Competition”—

(A) means a competition—

(i) in which 1 or more United States athletes and 3 or more athletes from other countries participate;

(ii) that is governed by the anti-doping rules and principles of the Code; and

(iii) in which—

(I) the competition organizer or sanctioning body receives sponsorship or other financial support from an organization doing business in the United States; or

(II) the competition organizer or sanctioning body receives compensation for the right to broadcast the competition in the United States; and

Page 9, strike lines 15 through 17, and insert the following:

(2) FORFEITURE.—Any property real or personal, tangible or intangible, may be seized and criminally forfeited to the United States if that property—

(A) is used or intended to be used, in any manner, to commit or facilitate a violation of section 4; or

(B) constitutes or is traceable to the proceeds taken, obtained, or retained in connection with or as a result of a violation of section 4.

Page 10, line 8 strike “cleared” and insert “appeared”.

Page 11, line 3, insert after “prohibited by law” the following: “and except in cases in which the integrity of a criminal investigation would be affected”.

Page 11, beginning on line 9, strike “or anti-doping rules adopted by USADA pursuant to the Code”.

Purpose and Summary

H.R. 835, the “Rodchenkov Anti-Doping Act of 2019,” imposes criminal sanctions under Title 18 of the United States Code on certain persons involved in international doping fraud conspiracies, provides restitution for victims of such conspiracies, and requires sharing of information with the United States Anti-Doping Agency (USADA) to assist its fight against doping.

Background and Need for the Legislation

I. BACKGROUND

A. Doping in Sports

The use of performance enhancing substances in sport dates back as far as Ancient Greece and the Roman Empire.¹ But it was not

¹See Robert Alexandru Vlad, Gabriel Hancu, Gabriel Cosmin Popescu, Ioana Andreea Lungu *Doping in Sports, a Never-Ending Story*, *Advanced Pharm. Bulletin* (Nov. 29, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6311632/>; Claudia L. Reardon and Shane Creado, *Drug Abuse in Athletes*, *Substance Abuse and Rehab* Vol. 2014:5, 95–105 (2014); *Doping in sport: What is it and how is it being tackled?* (Aug. 20, 2015), <https://www.bbc.com/sport/athletics/>

until the 1920s when the International Association of Athletics Federation became the first world governing body to ban doping by athletes.² Years later, prompted in part by the amphetamine-related death of British cyclist Tommy Simpson during the Tour de France in 1967, the International Olympic Committee established the Medical Commission to fight doping in sports and a year later, the IOC instituted the first compulsory drug testing at the Winter Olympic Games in Grenoble, France and again at the Summer Olympic Games in Mexico City.³ By the 1970s, most international sport federations had introduced drug testing.⁴ About a year after a major doping scandal at the 1998 Tour de France, the World Anti-Doping Agency (WADA) was established.

There have been numerous allegations and instances of doping in professional sports and international sports competitions in recent years, including the doping scandals involving former American professional cyclist Lance Armstrong, Chinese swimmer Sun Yang, Uzbek wrestler Artur Taymazov, Australian swimmer Shayna Jack, the blood doping scandal involving athletes competing in the Nordic skiing world championships, organized crime groups trafficking of counterfeit medicines and doping materials, and many others.⁵ The summer and winter Olympic Games (Games, in particular have been plagued with doping scandals throughout the years.⁶

B. International Sport Governance Structure

World Anti-Doping Agency

The IOC established the World Anti-Doping Agency (WADA) in 1999. WADA is the “international independent organization monitoring the global fight against doping in sport and the custodian of the Word Anti-Doping Code (Code).”⁷ The Code harmonizes anti-doping policies in all sports and all countries.⁸

WADA also maintains the Prohibited List of substances and methods in- and out-of-competition, which includes: (1) substances prohibited at all times (both in-competition and out-of-competi-

33997246; *Historical Timeline: History of Performance Enhancing Drugs in Sport*, (Aug. 13, 2013), <https://sportsanddrugs.procon.org/view.timeline.php?timelineID=000017>.

²See *id.*

³*Id.*

⁴See Claudia L. Reardon and Shane Creado, *Drug abuse in athletes*, Substance Abuse and Rehab. Vol. 2014:5, 95–105 (2014); *Doping in sport: What is it and how is it being tackled?* (Aug. 20, 2015), <https://www.bbc.com/sport/athletics/33997246>; *Historical Timeline: History of Performance Enhancing Drugs in Sport*, (Aug. 13, 2013), <https://sportsanddrugs.procon.org/view.timeline.php?timelineID=000017>.

⁵See *Lance Armstrong Admits to Using Performance-Enhancing Drugs*, Nat’l Pub. Radio (Jan. 17, 2013), <https://www.npr.org/sections/thetwo-way/2013/01/17/169650077/lance-armstrong-to-admit-to-using-performance-enhancing-drugs>; Michelle R. Martinelli, *Why Swimmers Are Protesting against China’s Sun Yang at World Championships*, USA Today (July 23, 2019), <https://ftw.usatoday.com/2019/07/sun-yang-swimming-world-championships-mack-horton-duncan-scott-protest-podium>; *Shayna Jack Banned from Multimillion-Dollar Swim League after Failed Drug Test*, The Guardian (July 30, 2019), <https://www.theguardian.com/sport/2019/jul/30/shayna-jack-banned-from-multimillion-dollar-swim-league-after-drug-testing>; *Why 2012 London Olympics Drug Cheats Are Still Being Caught*, The Guardian (Aug. 6, 2019); Francois Murphy, *Nordic Skiing: Five Athletes Arrested in Doping Raids at World Championships*, Reuters (Feb. 27, 2019), <https://www.reuters.com/article/us-skiing-doping-arrests/nordic-skiing-five-athletes-arrested-in-doping-raid-at-world-championships-idUSKCN1QG1UF>; Craig Lord, *WADA Joins Operation Viribus to Bring Down 17 Organised Crime Groups Trafficking Doping*, Swimming World Magazine (July 8, 2019), <https://www.swimmingworldmagazine.com/news/wada-joins-operation-viribus-to-bring-down-17-organisers-crime-groups-trafficking-doping/>.

⁶See <https://www.olympic.org/>.

⁷See https://www.wadaama.org/sites/default/files/resources/files/WADA_PK_Global_ADO_Chart_200901_EN.pdf.

⁸See https://www.wada-ama.org/sites/default/files/wada_2019_english_prohibited_list.pdf.

tion)—substances not approved for medical use, anabolic agents (steroids which help build muscle mass), peptide hormone, growth factors, related substances, and mimetics, beta-2 agonists (for asthma), hormone and metabolic modulators, diuretics and masking agents; (2) methods prohibited at all times (both in-competition and out of competition)—manipulation of blood and blood components, chemical and physical manipulation, gene and cell doping; (3) substances prohibited in-competition only—stimulants, narcotics, cannabinoids, and glucocorticoids; and (4) substances prohibited in particular sports—beta-blockers.⁹

WADA’s primary activities include scientific research, education, development of anti-doping capacities, and the monitoring of the Code. Approximately half of the agency’s funding comes from the IOC while the other half comes from governments of the world.¹⁰ The United States is the single largest contributor to WADA and contributed \$2,327,455 in 2018. WADA’s primary activities include scientific research, education, and development of anti-doping capacities. Its annual budget is approximately \$30 million.

In support of the Code, the United Nations Educational, Scientific and Cultural Organization (UNESCO)¹¹ adopted the International Convention against Doping in Sport (the Convention) in 2005.¹² The purpose of the Convention is “to promote the prevention of and the fight against doping in sport, with a view to its elimination.”¹³ The Convention is a multilateral treaty by which approximately 187 countries have agreed “to commit themselves to the principles of the Code” as the basis for “legislation, regulation, policies, or administrative practices” in order to achieve the objectives of the Convention.¹⁴ According to UNESCO, the Convention ensures the effectiveness of the Code by providing the legal framework for governments to address specific areas of the doping problem that are outside the domain of nongovernmental sports organizations.¹⁵

The International Olympic Committee (IOC)

The IOC is a not-for-profit independent international organization that leads the Olympic Movement.¹⁶ The IOC is funded through broadcast rights deals, sponsorships, and licensing and marketing.¹⁷ According to the IOC, it redistributes more than 90 percent of its revenues from the Games into sport and athlete de-

⁹ See https://www.wada-ama.org/sites/default/files/wada_2019_english_prohibited_list.pdf; https://www.usada.org/substances/prohibited-list/athlete-guide-2019-prohibited-list/https://www.wada-ama.org/sites/default/files/resources/files/WADA_PK_Global_ADO_Chart_200901_EN.pdf; see also Claudia L. Reardon and Shane Creado, *Drug Abuse in Athletes*, Substance Abuse and Rehab Vol. 2014:5, 95–105 (2014).

¹⁰ See https://www.wada-ama.org/sites/default/files/resources/files/wada_contributions_2018_update_en_1.pdf <https://www.olympic.org/funding>.

¹¹ See <https://en.unesco.org/about-us/introducing-unesco>. The UNESCO mission is “to build peace through international cooperation in Education, the Sciences and Culture.”

¹² See <http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>.

¹³ See Int’l Convention against Doping in Sport, Article I—Purpose of Convention, UNESCO (Oct. 19, 2005).

¹⁴ See <http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>; <http://www.unesco.org/eri/la/convention.asp?KO=31037&language=E>.

¹⁵ See <http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>.

¹⁶ See <https://www.olympic.org/about-ioc-olympic-movement>.

¹⁷ See <https://www.olympic.org/how-we-do-it>.

velopment, and specifically toward staging the Games.¹⁸ The IOC makes the Code mandatory for the entire Movement and during the Games, the IOC oversees all doping control and testing processes in compliance with the Code regulations.¹⁹ According to the IOC, protecting clean athletes is a “top priority” and it has established a zero-tolerance policy to combat doping.²⁰

U.S. Anti-Doping Agency

The U.S. Anti-Doping Agency (USADA) is the national anti-doping organization in the United States for Olympic, Paralympic, Pan American, and Parapan American sport.²¹ The USADA is a signatory to the Code and charged with managing the anti-doping program, including testing, results management processes, drug reference resources, and athlete education for all United States Olympic Committee (USOC) recognized sport national governing bodies, their athletes, and events.²² USADA also supports scientific research and education and outreach initiatives.²³ USADA is authorized to receive appropriations of \$14.1 million in fiscal year 2019 and approximately \$14.8 million in fiscal year 2020.²⁴

Court of Arbitration for Sport

The Court of Arbitration for Sport (CAS) is an independent, quasi-judicial body that settles disputes related to sport.²⁵ It was set up by the IOC in 1984 to offer resolution of sports-related disputes with the use of arbitrators.²⁶ The CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. Around 300 cases are registered by the CAS every year. The CAS claims to be independent, but senior IOC member John Coates heads the International Council of Arbitration for Sport (ICAS), a body set up to ensure CAS’s independence and is responsible for the administration and financing of CAS.²⁷ CAS typically handles disputes related to: (1) contracts (e.g., sponsorship, the sale of television rights, staging of sports events, player transfers, transfers and relations between players or coaches and clubs and/or agents, and civil liability for accidents that occurred during a sports competition); and (2) disciplinary cases, of which a large number are doping-related.²⁸ WADA has a right of appeal to CAS for doping cases under the jurisdiction of organizations that have implemented the Code.²⁹

Definition of “Doping”

Article I of WADA defines “doping” as the occurrence of one or more of the anti-doping rule violations set forth in Articles 2.1 through 2.10 of the Code: (1) presence of a prohibited substance or its metabolites or markers in an athlete’s sample; (2) use or at-

¹⁸ See *id.*

¹⁹ See <https://www.olympic.org/fight-against-doping>.

²⁰ See *id.*

²¹ See 21 U.S. Code § 2001; <https://www.usada.org/about/>.

²² See <https://www.usada.org/about/>.

²³ See <https://www.usada.org/about/>.

²⁴ See 21 U.S. Code § 2003.

²⁵ See <https://www.tas-cas.org/en/general-information/frequently-asked-questions.html>.

²⁶ See <https://www.tas-cas.org/en/general-information/history-of-the-cas.html>.

²⁷ See Factbox: The IO, WADA, CAS and the Russian doping story explained, Reuters (Feb. 8, 2018); see also <https://www.olympic.org/the-ioc>. <https://www.tas-cas.org/en/index.html>.

²⁸ See <https://www.tas-cas.org/en/general-information/history-of-the-cas.html>.

²⁹ See <https://www.wada-ama.org/en/court-of-arbitration-for-sport>.

tempted use by an athlete of a prohibited substance or prohibited method; (3) refusing or failing without compelling justification to submit to sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading sample collection; (4) violation of applicable requirements regarding athlete availability for out-of-competition testing; (5) tampering or attempted tampering with any part of doping control; (6) possession of prohibited substances and prohibited methods; (7) trafficking or attempted trafficking in any prohibited substance or prohibited method; (8) administration or attempted administration; (9) complicity; and (10) prohibited association.³⁰

C. The Russian Doping Scandal

2014 Sochi Winter Olympics

After the 2014 Sochi Winter Olympics, Yuliya Stepanova, former Russian track star, and her husband Vitaly Stepanov, a former doping-control officer at the Russian Anti-Doping Agency, exposed the Russian Government's vast state-sponsored doping system in a televised German documentary, which led to further revelations by Dr. Grigory Rodchenkov.³¹

Dr. Rodchenkov, who has a Ph.D. in analytical chemistry, became the director of the Russian drug testing laboratory in 2005 and was widely considered a top expert in performing-enhancing drugs.³² In May 2016, Dr. Rodchenkov became a whistleblower and told the New York Times that dozens of Russian athletes participating in the 2014 Sochi Winter Olympics, including 15 medal winners, were part of a state-run doping program.³³ Dr. Rodchenkov developed a three-drug cocktail of banned anabolic steroids that he mixed with alcohol and provided to athletes.³⁴ In addition, Dr. Rodchenkov and his team, with the help of Russian intelligence (*i.e.*, the FSB, successor of the KGB), switched steroid-tainted urine of the Russian national team with clean samples, evading positive detection.³⁵ Dr. Rodchenkov was the subject of the Oscar-winning Netflix documentary "Icarus."

WADA's McLaren Report

After Dr. Rodchenkov went public, WADA commissioned an independent investigation and appointed Professor Richard McLaren to conduct the investigation. The two-part "McLaren Report," completed in December 2016, identified several key findings including that an institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the Russian Anti-Doping Agency (RUSADA), the Russian Centre of Sports Preparation (CSP), and the drug testing laboratory, along with the FSB, which enabled Russian athletes to compete while engaging in the

³⁰ See World Anti-Doping Code 2015 with 2019 Amendments, Art. 1 (May 30, 2019).

³¹ See John Brant, *The Marriage That Led to the Russian Track Team's Olympic Ban*, N.Y. Times (June 22, 2016); *The Secrets of Doping: How Russia Makes Its Winners* (2014), WDR/ARD Sportschau, <https://vimeo.com/249176658>.

³² See Rebecca R. Ruiz and Michael Schwirtz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, N.Y. Times (May 12, 2016), <https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html>.

³³ See *id.*

³⁴ *Id.*

³⁵ *Id.*

use of doping substances.³⁶ Days after the release of the First McLaren Report, Russian intelligence officers prepared to hack into the networks of WADA, USADA, and CAS and were later indicted by the U.S. Department of Justice for, among other things, hacking into computer systems used by anti-doping organizations and officials and stealing credentials, medical records, and other data.³⁷

Aftermath of Russian Doping Scandal

Approximately 168 Russian athletes were cleared to participate in the 2018 Winter Olympics in PyeongChang, South Korea.³⁸ In December 2017, the IOC decided that as punishment for the doping scandal in Sochi, Russia would not be allowed to play its anthem, fly its flag, or accrue any medals in the overall count at the 2018 Winter Olympics in PyeongChang, South Korea.³⁹ The IOC also imposed a lifetime ban on Russian Sports Minister Vitaly Mutko (currently the Deputy Prime Minister of Russia), whose department was implicated in the doping scandal.⁴⁰

However, on February 1, 2018, a few days before the start of the 2018 Games, the CAS overturned the IOC's bans issued to 28 Russian athletes.⁴¹ U.S. Olympic athlete Katie Uhlaender, a veteran U.S. women's skeleton racer who was in line to be awarded a medal as a result of those bans, stated, "I can say without a doubt, the integrity of sport is on the line . . . [a]nd I'm looking to the leaders of a movement to do something to save it."⁴² Three days after the 2018 Games ended, the IOC reinstated Russia's Olympic Committee even though two athletes had failed drug tests during the 2018 Games.⁴³ Subsequently, in September 2018, WADA voted to reinstate the Russian Anti-Doping Agency (RUSADA) event though the agency had not met all of the conditions of reinstatement.⁴⁴ In January 2019, WADA's executive committee declined to punish RUSADA for missing the end of the year deadline to hand over data on approximately 10,000 suspicious doping samples.⁴⁵ WADA announced that RUSADA eventually provided the data and also that an audit of RUSADA was completed in December 2018

³⁶ See Professor Richard H. McLaren, *The Indep. Pers. 1st Report* (July 16, 2016), and *The Indep. Pers. 2nd Report* (Dec. 9, 2016).

³⁷ See *U.S. Charges Russian GRU Officers with International Hacking and Related Influence and Disinformation Operation*, U.S. Dep't of Justice (Oct. 4, 2018), <https://www.justice.gov/opa/pr/us-charges-russian-gru-officers-international-hacking-and-related-influence-and>.

³⁸ See Victor Mather, *Why Is Russia at the Olympics?*, N.Y. Times (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/sports/olympics/russia-olympics-doping.html>.

³⁹ See Jake Rudniksy and Eben Novy-Williams, *Russia Banned From 2018 Winter Olympics After Doping Investigation*, Time (Dec. 5, 2017); Richard Perez-Pena and Tariq Panja, *28 Russian Athletes Win Appeals of Doping Bans*, N.Y. Times (Feb. 1, 2018).

⁴⁰ Graham Dunbar, *IOC: Russian can compete at Olympics, but without flag*, The Associated Press (Dec. 6, 2017), https://www.washingtonpost.com/world/olympics/ioc-russians-can-compete-at-olympics-but-without-flag/2017/12/06/232386de-da4f-11e7-a241-0848315642d0_story.html.

⁴¹ Richard Perez-Pena and Tariq Panja, *28 Russian Athletes Win Appeals of Doping Bans*, N.Y. Times (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/sports/olympics/russia-doping-ban.html>.

⁴² Tim Reynolds, Uhlaender: "The integrity of sport" at stake over doping, The Associated Press (Feb. 1, 2018), <https://apnews.com/6864f17b1c645cf8a8b38cd90b50b6d>.

⁴³ Vladimir Soldatkin, *Russian Olympic Committee reinstated by IOC* (Feb. 28, 2018), Reuters, <https://www.reuters.com/article/us-olympics-2018-russia-ioc-reinstatement/russian-olympic-committee-reinstated-by-ioc-idUSKCN1GC1Z5>.

⁴⁴ See Mitch Phillips, *WADA votes to reinstate RUSADA amid widespread protests*, Reuters (Sept. 20, 2018), <https://www.reuters.com/article/us-sport-doping-russia-reinstatement/wada-votes-to-reinstate-rusada-subject-to-conditions-idUSKCN1M01RD>.

⁴⁵ See Kevin Draper, *No Punishment for Russia Over Delay on Doping Data*, N.Y. Times (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/sports/olympics/wada-russia.html>.

with “very positive” results.⁴⁶ The decision met fierce opposition from USADA, athletes, and others including Dr. Rodchenkov. In addition, the IOC’s lifetime ban on Mutko was overturned by the CAS in July 2019.⁴⁷ Russian President Vladimir Putin has denied that Russia operated a systematic, state-sponsored doping program and cover-up scheme.⁴⁸

Several countries including Austria, France, Germany, Italy, and Spain have enacted laws that criminalize the use of doping and related activities such as prescribing, purchasing, administration, and trafficking.⁴⁹ Chinese and Russian media also reported that their countries have recently criminalized doping use by athletes.⁵⁰ WADA has issued a statement that it does not believe that doping should be made a criminal offense for athletes.⁵¹

The Helsinki Commission

In February 2018, the Commission on Security and Cooperation in Europe (CSCE or Helsinki Commission)⁵² held a briefing on “The Russian Doping Scandal: Protecting Whistleblowers and Combating Fraud in Sports.”⁵³ The briefing featured Dr. Rodchenkov’s attorney, Jim Walden, for a conversation on combating fraud in international sports competitions and the role of whistleblowers in safeguarding the integrity of international competitions. Walden discussed combating fraud in sports and the role of whistleblowers in safeguarding the integrity of international competitions. Walden called on Congress to pass legislation to add criminal penalties for doping and stated that a statute could be similar to the Foreign Corrupt Practices Act, a “long-arm statute,” which sanctions foreign government officials for actions that impact U.S. businesses, or amending the Controlled Substances Act to give the U.S. govern-

⁴⁶ See *id.*

⁴⁷ See Gabrielle Tetrault-Farber, *Doping: CAS lifts Olympic ban on former Russian Sports Minister Mutko*, Reuter Sports News (July 11, 2019), <https://www.reuters.com/article/us-sport-doping-russia-mutko/doping-cas-lifts-olympic-ban-on-former-russian-sports-minister-mutko-idUSKCN1U616V>.

⁴⁸ See *Putin calls on Russia to play by doping rules for Olympics*, The Associated Press (Mar. 27, 2019), <https://www.apnews.com/902aba01fb864514b84315a34b456989>.

⁴⁹ Jaan Murphy, *Where in the world is doping a crime?* Parliament of Australia (Apr. 24, 2013), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2013/April/Where_in_the_world_is_doping_a_crime_doping_in_sports_pt_6; Chuck Penfold, *Germany’s anti-doping law comes into force* (Dec. 18, 2015), DW Akademie, <https://www.dw.com/en/germanys-anti-doping-law-comes-into-force/a-18928499>.

⁵⁰ See Xinhua, *China to criminalize doping in 2019*, China Daily (Dec. 28, 2018), <https://www.chinadailyhk.com/articles/175/172/77/1546009389297.html>; Sergei Kiselyov, *Athletes Caught Doping in Russia to Face Fines Under New Bill*, The Moscow Times (Apr. 11, 2019), <https://www.themoscowtimes.com/2019/04/11/athletes-caught-doping-in-russia-to-face-fines-under-new-bill-a65192>.

⁵¹ WADA *Statement on the Criminalization of Doping in Sport* (Oct. 25, 2015), <https://www.wada-ama.org/en/media/news/2015-10/wada-statement-on-the-criminalization-of-doping-in-sport>.

⁵² See www.csce.gov. The Helsinki Commission is an independent commission of the U.S. government agency created in 1976 by members of the U.S. Congress to monitor and encourage compliance with the Helsinki Final Act and other Organization for Security and Cooperation in Europe (OSCE) commitments. The Commission was founded to strengthen the legitimacy of human rights monitoring, to defend those persecuted or acting on their rights and freedoms, to ensure that violation of Helsinki provisions were given full consideration in U.S. foreign policy, and to gain international acceptance of human rights violations as a legitimate subject for one country to raise with another. When warranted, Senate and House Commissioners act in their capacity as Members of Congress to introduce and seek passage of legislation. The Commission consists of nine members from the U.S. Senate, nine members from the U.S. House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

⁵³ *The Russian Doping Scandal: Protecting Whistleblowers and Combating Fraud in Sports*, CSCE, 115th Cong. (Feb. 22, 2018), <https://www.csce.gov/sites/helsinkicommission.house.gov/files/DopingScandal.pdf>.

ment power to persecute foreign officials and athletes that engage in doping and provide whistleblower protection. In March 2018, the Helsinki Commission sponsored a workshop regarding the 2016 Global Magnitsky Act, a law that allows the U.S. government to sanction those who it sees as human rights offenders, freezing their assets and banning them from entering the United States.⁵⁴

In July 2018, the Helsinki Commission held a hearing on “The State of Play: Globalized Corruption, State-Run Doping, and International Sport.”⁵⁵ The witness panel consisted of: (1) Travis Tygart, CEO, USADA; (2) Katie Uhlaender, U.S. Olympian; (3) Yuliya Stepanova, former Russian Olympian and anti-doping whistleblower; (4) Dagmar Freitag, Chairwoman, Sports Committee of the German Bundestag; and (5) Jim Walden, the attorney for Dr. Rodchenkov. The witnesses testified about the current state of anti-doping policing, the ineffective responses of WADA, IOC, and CAS, the need for stiff criminal penalties and civil remedies for international doping fraud, the clean athletes who have been defrauded of medals and cheated out of lucrative opportunities such as sponsorships, and the necessity to protect whistleblowers. The Helsinki Commission’s position is that the international sport governance bodies, such as WADA, IOC, and CAS, have failed to address the underlying problems with doping in sport and that the Rodchenkov Anti-Doping Act would fill an important gap with regard to U.S. law enforcement, serve as a deterrent to those considering engaging in doping fraud, and will provide a portal to gain visibility into a wider net of international corrupt practices that are connected to doping fraud.⁵⁶

II. NEED FOR THE LEGISLATION

There is no federal statute that provides explicit, comprehensive protection against doping in international sports competitions. The federal statutory protections that currently exist are limited and criminalizes gambling-related corruption, bribes, kickbacks, money laundering, and other illegal activities. For example, the Bribery in Sporting Contests Act of 1964, 18 U.S.C. 224 criminalizes gambling-related corruption in sports.⁵⁷ In addition, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1962, originally used to prosecute members of the Mafia engaged in long-running criminal organizations, has more recently been broadly applied to other criminal organizations including those involved in international sports competitions.⁵⁸ RICO also provides for a civil cause of action for acts performed as part of an ongoing criminal organization.⁵⁹ In 2015, the U.S. Department of Justice charged Fédération Internationale de Football Association (FIFA) officials and corporate executives with racketeering, wire fraud, and money

⁵⁴ *How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act*, CSCE (Mar. 13, 2018), <https://www.csce.gov/international-impact/press-and-media/press-releases/helsinki-commission-workshop-explain-global>.

⁵⁵ *The State of Play: Globalized Corruption, State-Run Doping, and International Sport: Hearing Before the CSCE*, 115th Cong. (July 25, 2018).

⁵⁶ Paul Massaro, *Coping with Doping, Getting Off the Sidelines*, *The Am. Interest* (Feb. 18, 2019), <https://www.the-american-interest.com/2019/02/18/getting-off-the-sidelines/>.

⁵⁷ See <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg203-3.pdf>; <https://www.law.cornell.edu/uscode/text/18/224>.

⁵⁸ See <https://www.govinfo.gov/app/details/USCODE-2017-title18/USCODE-2017-title18-partI-chap96-sec1962>; <https://www.law.cornell.edu/uscode/text/18/1962>.

⁵⁹ See *id.*

laundering conspiracies, among other offenses, in connection with the defendants' participation in a 24-year scheme to enrich themselves through the corruption of international soccer.⁶⁰

The bill would allow extraterritorial jurisdiction specifically over doping fraud conspiracies linked to international sports events. It will establish criminal penalties for participating in a doping conspiracy in international sport competitions, provide restitution to victims such as athletes, protect whistleblowers from retaliation, and establish coordination and sharing of information with USADA.

Hearings

The Committee held no hearings on H.R. 835.

Committee Consideration

On Wednesday, October 16, 2019, the Committee met in open session and ordered H.R. 835 favorably reported as amended, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 835.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this Report from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this Report contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 835 establishes or reauthorizes a program of the federal government known to be duplicative of another fed-

⁶⁰See <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

eral program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 835 would protect American athletes from doping fraud in international sports competitions.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 835 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Rodchenkov Anti-Doping Act of 2019.”

Sec. 2. Definitions. Section 2 adds definitions the majority of which are used in Article 2 of the UNESCO International Convention Against Doping in Sport including “athlete,” “anti-doping organization,” “prohibited method,” and “prohibited substance.” “Scheme in commerce” is a term used in section 224 of Title 18, Bribery in sporting contests.

Sec. 3. Major International Doping Fraud Conspiracies. Section 3(a) states, “It shall be unlawful for any person, other than an athlete, to knowingly carry into effect, attempt to carry into effect, or conspire with any other person to carry into effect a scheme in commerce to influence by use of a prohibited substance or prohibited method any major international sports competition.”

Section 3(b) establishes extraterritorial jurisdiction for these offenses.

Sec. 4. Criminal Penalties and Statute of Limitations. Section 4(a)(1) provides that a violation of section 3 shall receive a term of imprisonment for not more than 10 years or fined not more than \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both.

Section 4(a)(2) provides that any property used or intended to be used in the commission of offense specified in section 3, may be forfeited to the United State and provides specificity for these procedures.

Section 4(b)(1) provides for a limitations provision for section 3 offenses: “No person shall be prosecuted, tried, or punished for violation of section 3 unless the indictment is returned or the information is filed within 10 years after the date on which the offense was completed.”

Section 4(b)(2) sets forth a tolling provision for evidence of an offense in a foreign country: “Upon application in the United States, filed before a return of an indictment, indicating that evidence of an offense under this chapter is in a foreign country, the district

court . . . shall suspend the running of this statute of limitation for the offense if the court finds by the preponderance of evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was in such foreign country.”

Sec. 5. Restitution. Section 5 amends 18 U.S.C. 3663A to require that any defendant convicted of “an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019” make restitution to the victims of that offense.

Sec. 6. Coordination and Sharing of Information with USADA. Section 6 provides that in accordance with the Convention, except as otherwise prohibited by law and except in cases in which the integrity of a criminal investigation would be affected, certain federal agencies shall coordinate with USADA with regard to any investigation related to a violation of section 3 of this Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 835, as reported, are shown as follows:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

* * * * *

§ 3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim’s estate.

(2) For the purposes of this section, the term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed

by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 4 of the Rodchenkov Anti-Doping Act of 2019;

[(iii)] *(iv) an offense described in section 1365 (relating to tampering with consumer products); or*

[(iv)] *(v) an offense under section 670 (relating to theft of medical products); and*

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) *or (iii)* if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

* * * * *

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

October 18, 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

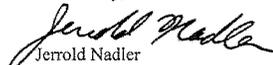
Dear Chairman Pallone:

I am writing to you concerning H.R. 835, the "Rodchenkov Anti-Doping Act of 2019."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Energy and Commerce. I acknowledge that your Committee will not formally consider H.R. 835 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 835 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,


Jerrold Nadler
Chairman

c: The Honorable Doug Collins, Ranking Member
The Honorable Thomas J. Wickham, Jr., Parliamentarian

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
October 18, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

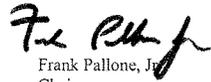
Dear Chairman Nadler:

I am writing to you concerning H.R. 835, the "Rodchenkov Anti-Doping Act of 2019," which was additionally referred to the Committee on Energy and Commerce. Certain provisions in the bill fall within the jurisdiction of the Committee on Energy and Commerce. In the interest of permitting your committee to proceed expeditiously to floor consideration of this important bill, the Committee on Energy and Commerce agrees to waive formal consideration of the bill.

The Committee takes this action with the mutual understanding that it is not waiving any jurisdictional claim over this or similar legislation, and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. I further request that you support my request to name members of the Committee on Energy and Commerce to any conference committee to consider such provisions.

Finally, I would appreciate a response to this letter confirming this understanding and your inclusion of that response into the *Congressional Record* during floor consideration of H.R. 835.

Sincerely,


Frank Pallone, Jr.
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Steny Hoyer, Majority Leader
The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham, Jr., Parliamentarian

JERROLD NADLER, New York
CHAIRMAN

DOUG COLLINS, Georgia
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

October 18, 2019

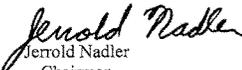
The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone:

I am writing to acknowledge your letter dated October 18, 2019 responding to our request to your Committee that it waive any jurisdictional claims over the matters contained in H.R. 835, the "Rodchenkow Anti-Doping Act of 2019," that fall within your Committee's Rule X jurisdiction. The Committee on the Judiciary confirms our mutual understanding that your Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation, and your Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within your Committee's jurisdiction.

I will ensure that this exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,


Jerrold Nadler
Chairman

c: The Honorable Nancy Pelosi, Speaker
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary
The Honorable Steny Hoyer, Majority Leader
The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Thomas J. Whickham, Jr., Parliamentarian