

Support For Federal Anti-Doping Bill Seems To Be Waning

By **Gavin Parrish and Miguel Salcedo** (November 6, 2019, 4:59 PM EST)

In 2016, whistleblower Dr. Grigory Rodchenkov exposed the massive Russian state-sponsored doping that took place during the 2014 Sochi Olympics. The international outcry, and the weak response from the International Olympic Committee was chronicled in 2017's Academy award-winning documentary, "Icarus."^[1]

In January, the Rodchenkov Anti-Doping Act^[2] was introduced in both houses of Congress with bipartisan sponsorship, responding to the widely perceived lackadaisical enforcement by the World Anti-Doping Agency and the IOC.

RADA would target individuals (e.g., doctors, trainers) participating in international doping fraud conspiracies anywhere in the world where Americans compete with foreign athletes, with penalties including fines up to \$1 million or 10 years imprisonment, depending on the offense and the number of people involved.

It would also provide restitution to victims of such conspiracies, extend statute of limitations for penalties and protect individuals who report violations (such as eponymous whistleblower Dr. Rodchenkov, who remains in hiding under U.S. protection).

Although RADA does not seem to be a high priority in today's polarized political climate, it represents the latest in an ongoing effort by U.S. law enforcement to pursue anyone using U.S. dollars, the U.S. banking system or its territory to plan or conduct an illegal act, in sports and otherwise.

U.S. Laws Governing Sports Anti-Corruption

Big money breeds corruption, and there is big money in sports. In 2017, the global spectator sports market was valued at \$265 billion in sales, and the U.S. was the largest country, accounting for \$48.6 billion or 18.3% of the market.^[3]

Professional sports have been plagued by high-profile corruption throughout history, from baseball's infamous "Black Sox"^[4] match fixing at the 1919 World Series to corruption cases connected with FIFA in 2015.^[5]



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There are many existing statutes that have been used to fight sports corruption, but none of them specifically addresses doping as RADA does.

RICO

Although the FIFA case specifically addresses bribery, U.S. law defines bribery as improper payment of government officials, excluding nongovernmental bodies like FIFA (although bribery to influence the outcome of sporting contests is specifically prohibited[6]). As such, prosecutors have instead alleged racketeering, wire fraud and money-laundering conspiracies under the Racketeer Influenced and Corrupt Organizations Act, originally intended for use against the mafia.[7]

The 2015 indictment against those complicit in the fraud alleges that:

Certain individuals and entities employed by and associated with the enterprise ... conspired with one another to use their positions within the enterprise to engage in schemes involving the solicitation, offer, acceptance, payment, and receipt of undisclosed and illegal payments, bribes, and kickbacks.[8]

This is an example of U.S. law enforcement making use of the legal remedies at their disposal to pursue international conspiracies in sports.

Travel Act

FIFA officials also have been charged with violations of the Travel Act, which says that it is illegal to engage in interstate or foreign travel or the use “any facility in interstate commerce” (email, telephone, courier) to carry out an illegal activity (whether federal and state).[9] Anyone who uses a facility of interstate commerce within U.S. territory in the course of criminal activity can be indicted under the Travel Act.

So, when an employee of FirstCaribbean International Bank Ltd. in the Bahamas allegedly flew to New York to collect a bribe of \$250,000 that violated state bribery laws, the employee was charged for under the Travel Act for flying to New York to commit a crime, not for the crime itself.[10]

FCPA

In 2015, the U.S. Securities and Exchange Commission charged a global resources company with violating the Foreign Corrupt Practices Act when it sponsored the attendance of 176 African and Asian government officials at the 2008 Summer Olympics in Beijing.[11] The company agreed to pay a penalty of \$25 million to settle the charges stemming from lax compliance controls around tickets distributed through the company’s Olympic hospitality program.[12]

FCA

In 2010, American cyclist Floyd Landis accused fellow cyclist Lance Armstrong and other top riders of the U.S. Postal Service Team of doping, leading to Armstrong’s well-publicized downfall. Landis filed a federal whistleblower lawsuit against Armstrong under the federal False Claims Act, in which he alleged that Armstrong and team managers defrauded the U.S. government by accepting money from the U.S. Postal Service for use in an endeavor tainted by doping fraud.[13]

In 2013, the U.S. Department of Justice joined Landis in the lawsuit[14], and in 2017, the court determined that the federal government's \$100 million civil lawsuit[15] against Armstrong would proceed to trial. The matter was settled in April 2018 when Armstrong agreed to pay the government \$5 million[16], with Landis receiving \$1.1 million for his whistleblower role.

As shown above, the U.S. government takes a keen interest in fighting corruption in sports and already has several measures to pursue justice beyond American borders. RADA fills a necessary – if mostly symbolic – gap in U.S. enforcement policy by targeting state-sponsored doping that happens outside of U.S. jurisdictions.

Will RADA Pass?

The U.S. justifies its broader jurisdiction with RADA by highlighting its \$2.3 million (more than any other nation) annual contribution to WADA to fight sports doping. Criminalizing doping in major international competitions may seem like an expedient way to address widespread anti-doping rule violations, and many other countries such as Germany, Austria, Belgium, Denmark, France, Italy, Sweden, Switzerland and Spain, have embraced criminal sanctions for doping fraud violations.

However, public outrage stemming from the exposure of Russia's state-sponsored doping program at the 2014 Sochi Olympics, and its subsequent cover-up, seems to be fading, along with public support for RADA.

As RADA continues to lose momentum, it may take several more doping scandals before effective anti-doping legislation becomes reality. If RADA is enacted, it will give the U.S. government another tool to enforce fair competition in the world of sports. But even if RADA does not pass, the U.S. will continue to fight corruption in sports by following the money that fuels misconduct using the legal tools in its arsenal.

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[3] Spectator Sports Global Market Report 2018, PRNewswire

[4] Black Sox Scandal, Baseball Reference

[5] How America is pursuing FIFA, The Economist

[6] 18 U.S.C. § 224 (1964)

[7] Chapter 96—Racketeer Influenced and Corrupt Organizations, Office of the Law Revision Counsel. 18

U.S.C. § 1961 (1970)

[8] 15 CR 0252(RJD)(RML), US District Court Eastern District of New York

[9] U.S. Code § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises, Legal Information Institute 18 U.S.C. § 1952 (1961).

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[13] 31 U.S.C. § 3729 (1863)

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[15] Lance Armstrong handed defeat by federal judge, USA Today

[16] Lance Armstrong Agrees to Pay \$5 Million to Settle False Claims Allegations Arising from Violation of Anti-Doping Provisions of U.S. Postal Service Sponsorship Agreement, US Department of Justice

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