

**UNITED STATES OLYMPIC COMMITTEE**

**KEN HACKMEISTER,**

**Complainant**

**v.**

**AMATEUR SOFTBALL ASSOCIATION.**

**Respondent.**

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**DECISION**



**December 15, 1993**

I.

**BACKGROUND**

The National Governing Body ("NGB") for the Sport of Softball in the United States is the Amateur Softball Association ("ASA"). The ASA was recognized by the United States Olympic Committee ("USOC") as the NGB for the Sport of Softball pursuant to the Amateur Sports Act of 1978 (36 USC 371 et seq). The sport of softball has been competed in the last Pan American Games and is on the agenda of the next Olympic and Pan American Games.

The Amateur Sports Act and the USOC Constitution and Bylaws provide for the processes by which an organization or individual may register a complaint against an NGB with respect to compliance with the USOC Constitution and Bylaws. Included in these processes is the ultimate right to seek arbitration before the American Arbitration Association ("AAA"). These rights are outlined in Article VIII and Chapters VI and VIII of the USOC Constitution and Bylaws, and Section 205, (36 USC 395) of the Amateur Sports Act. These processes require that certain conditions, also outlined in these documents, be met. Article VIII, Chapters VI and VIII, and Section 205 are attached to this Decision.

On October 20, 1992, the USOC Received Complainant's Complaint against the ASA regarding the suspension of Complainant within the organization.

The ASA filed an Answer to the Complaint and Appeal on December 7, 1992.

Upon filing of the Answer, the Parties were asked to enter into informal discussions in an attempt to resolve the Complaint. These discussions were unsuccessful.

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On April 7, 1993, the Complainant requested mediation to which the ASA agreed and the USOC President, LeRoy Walker, appointed James S. Morris as Mediator. After substantial attempts to mediate by Mr. Morris, the Parties reached a tentative agreement which ultimately was rejected by Mr. Hackmeister.

On August 27, 1993, the USOC received notice from the Complainant that the USOC should proceed with formal proceedings in this matter.

In accordance with the USOC Bylaws (Chapters VII & VIII), the USOC President appointed a panel of five voting members of the USOC Board of Directors for the purpose of deciding the procedural and jurisdictional issues raised in this matter as well as any matters which the Panel determines to be related. The Panel

members are:       Ralph Hale, Chair and  
                          Therese Abair,  
                          Paul George,  
                          Jim Joy and  
                          Marty Mankamyer

On September 13, 1993, the USOC received ASA's Motion to Dismiss the Complaint and Appeal based on the fact that Complainant's suspension was over as of September 14, 1993, and therefore, the Appeal was moot. The Motion also restated its previous exhaustion of remedies position contained in its December 7, 1992 Answer.

Following significant efforts to establish a hearing date, a hearing date of December 15, 1993 was established in Washington DC. Complainant stated that he could not travel to the hearing site and that he did not desire to participate in a

conference call. The Chair set a conference call to take place on the 15th without oral argument.

The Conference call began at 9:00 o'clock on the morning of December 15, 1993 and completed at 10:00 o'clock in the morning.

**II.**

**ISSUES CONSIDERED**

A. The Appeal of the Complaint is Moot. The original Complaint of the Complainant referenced an appeal of his suspension as a coach in the State of Utah and apparently from participation as a coach at the national level. This suspension, or loss of eligibility was for a period from September 14, 1992 to September 14, 1993. The ASA claims that the period of suspension or ineligibility has terminated and the Complainant is now eligible to participate in any ASA activity.

B. Complainant Failed to Exhaust Remedies. Article VIII, Section 1 of the USOC Constitution requires that any action taken pursuant to that Article be done only after having exhausted all remedies available under the organic documents of such NGB for correcting deficiencies.

In addition, Chapter VIII, Section 1(C) of the USOC Bylaws requires that the Complainant must set forth in the Complaint, at a minimum, the efforts made to exhaust available remedies. Other minimum requirements are also outlined in Chapter VIII. ASA

contends, among other things, that the Complainant has not met this minimum requirement in his Complaint, and that, in fact, he has not exhausted his available remedies within the NGB regarding the various charges of non-compliance.

**III.**

**DECISION**

After having considered all of the written documents submitted by the Parties, which are incorporated herein by reference, the Panel unanimously concurs in the following decision:

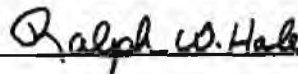
A. Mootness of the Appeal. The Complainant, the ASA and the USOC expended considerable time and effort in an attempt to negotiate a resolution of the issue of the suspension or ineligibility of the Complainant. Unfortunately, those efforts were not successful. It is not clear to the Panel that it has authority over this issue as characterized in this Article VIII Complaint. Nonetheless, the Complainant is now eligible to coach in any ASA activity and therefore, this portion of the Complaint is moot.

B. Exhaustion of Remedies. It is clear on the face of the Complaint that the Complainant has not alleged efforts to exhaust remedies within the NGB as is required

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by Chapter VIII, Section 1(C) of the USOC Bylaws. This is a minimum requirement of such a Complaint. The requirement that such efforts be alleged is not just a technical requirement. It is intended to establish that efforts to exhaust such remedies have actually been taken, as is required by Article VIII, Section 1(A) of the USOC Constitution. Therefore, the Motion of the ASA to Dismiss is well taken.

**The Respondent's Motion to Dismiss is granted.**

  
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Ralph Hale, Chair

Therese Abair, Panel Member  
Paul George, Panel Member  
Jim Joy, Panel Member  
Marty Mankamyer, Panel Member

**Dated this 15th day of December, 1993.**

UNITED STATES OLYMPIC COMMITTEE

Ken Hackmeister v. Amateur Softball Association

Attachments to the USOC Hearing

Panel's Decision

(Attachments will be forwarded by U. S. Mail)

December 15, 1993



COPY

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# UNITED STATES OLYMPIC COMMITTEE CONSTITUTION AND BYLAWS

Constitution and Bylaws of the United States Olympic Committee adopted at the Annual Meeting of the House of Delegates of the USOC, Colorado Springs, April 28-29, 1979; amended April 12, 1980; January 31, 1981; April 17, 1982; April 16, 1983; April 7, 1984; February 9, 1985; April 12, 1986; April 3, 1987; April 29, 1988; February 18, 1989; February 19-20, 1990. House of Delegates was terminated February, 1990. The Board of Directors amended Constitution and Bylaws February 2-3, 1991; March 7-8, 1992, and October 11, 1992.

UNITED STATES OLYMPIC COMMITTEE  
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**ARTICLE VIII - COMPLAINT, MEDIATION, CHALLENGE, AND  
ARBITRATION PROCEDURES**

**Section 1. Complaints against a National Governing Body**

(A) Any amateur sports organization or person which belongs to, or is eligible to belong to, a National Governing Body, or any member of the Board of Directors, may seek to compel such National Governing Body to comply with the requirements of Article IV, Section 4(B) and Article VII, Sections 1 and 2 of the Constitution by filing a written complaint with the USOC. Such organization or person may take such action only after having exhausted all remedies available

1 under the organic documents of such National Governing Body for correcting deficiencies, unless  
2 it can be shown by clear and convincing evidence that those remedies would have resulted in  
3 unnecessary delay. The USOC shall establish procedures for the filing and disposition of  
4 complaints received under this Subsection which are contained in the Bylaws. A copy of the  
5 complaint shall also be served on the applicable National Governing Body.

6 (B) Within thirty (30) days after the filing of the complaint, the USOC shall determine  
7 whether the complainant has exhausted its remedies within the applicable National Governing Body,  
8 as provided in Subsection A of this Section. If the USOC determines that such remedies have not  
9 been exhausted, it may direct that such remedies be pursued before the USOC will further consider  
10 the complaint.

11 (C) Within ninety (90) days after the filing of a complaint under Subsection A of this  
12 Section, if the USOC determines that all such remedies have been exhausted, it shall hold a hearing  
13 to receive testimony for the purpose of determining if such National Governing Body is in  
14 compliance with the requirements of Article IV, Section 4(B) and Article VII, Sections 1 and 2 of  
15 the Constitution.

16 (D) (1) If the USOC determines, as a result of the hearings conducted pursuant to this  
17 Subsection, that such National Governing Body is in compliance with the requirements of  
18 Article IV, Section 4(B) and Article VII, Sections 1 and 2, it shall so notify the complainant  
19 and such National Governing Body.

20 (2) If the USOC determines, as a result of hearings conducted pursuant to this  
21 Subsection, that such National Governing Body is not in compliance with the requirements  
22 of Article IV, Section 4(B) and Article VII, Sections 1 and 2, it shall --

23 (a) place such National Governing Body on probation for a specified period  
24 of time not to exceed one hundred eighty (180) days, which it considers necessary  
25 to enable such National Governing Body to comply with such requirements; or

26 (b) revoke the recognition of such National Governing Body.

27 (3) If the USOC places a National Governing Body on probation pursuant to this  
28 paragraph, it may extend the probationary period if the National Governing Body has  
29 proven by clear and convincing evidence that, through no fault of its own, it needs  
30 additional time to comply with such requirements. If, at the end of the period allowed by  
31 the USOC, the National Governing Body has not complied with such requirements, the  
32 USOC shall revoke the recognition of such National Governing Body.

### 33 Section 2. Mediation of Complaints

34 Any amateur sports organization or person which belongs to, or is eligible to belong to, a  
35 National Governing Body, or any member of the Board of Directors, who alleges that a National  
36 Governing Body is not in compliance with the requirements of Article IV, Section 4(B) or Article  
37 VII, Sections 1 and 2 of the Constitution may, in conjunction with, or prior to filing a written  
38 complaint pursuant to the complaint and challenge procedures set forth in Article VIII of the  
39 Constitution, file a written grievance with the Executive Director, who shall, as expeditiously as  
40 possible, cause an investigation to be made and, if appropriate, recommend to the affected parties  
41 steps to be taken to resolve the matter. A referral to the Executive Director under this Article shall  
42 be made without prejudice to the rights and remedies available to the USOC or any other affected  
43 party under the Constitution.

### 44 Section 3. Challenge of a National Governing Body

45 (A) Any amateur sports organization may seek to replace an incumbent as the National  
46 Governing Body for a particular sport by filing with the USOC a written application for such  
47 recognition. Such application shall be filed

48 (1) within the one-year (1-year) period after the final day of any Olympic Games  
49 in the case of a sport for which competition is held in the Olympic Games or in both the  
50 Olympic and Pan American Games; or

(2) within the one-year (1-year) period after the final day of any Pan American Games in the case of a sport for which competition is held in the Pan American Games and not in the Olympic Games. If two (2) or more organizations file applications for the same sport, such applications shall be considered in a single proceeding.

(B) Any application filed under this Subsection shall be filed with the USOC by certified mail. The content of such application, and its disposition after receipt, shall comply with the provisions of the Bylaws. A copy of any such application for recognition shall also be served on the applicable National Governing Body. The USOC shall inform the applicant for recognition that its application has been received.

(C) Within one hundred-eighty (180) days after receipt of an application filed under this Subsection, the USOC shall conduct a formal hearing in accordance with procedures set forth in the Bylaws to determine the merits of the application. The USOC shall publish notice of the time and place of such hearing in a regular issue of its principal publication at least thirty (30) days, but not more than sixty (60) days, prior to the date of the hearing. In the course of such hearing, the applicant and the National Governing Body shall be given a reasonable opportunity to present evidence supporting their respective positions. During such hearing, the applicant amateur sports organization must establish by a preponderance of the evidence that it meets the criteria for recognition as a National Governing Body under Article IV, Section 4(B), and that --

(1) the National Governing Body does not meet the criteria of Article IV, Section 4(B) or Article VII, Section 1; or

(2) it more adequately meets the criteria of Article IV, Section 4(B), is capable of more adequately meeting the criteria of Article VII, Section 1, and provides, or is capable of providing, a more effective national and international program of competition than the National Governing Body in the sport for which it seeks recognition.

(D) Within thirty (30) days of the close of the hearing required under this Subsection, the USOC shall --

(1) uphold the right of the National Governing Body to continue as the National Governing Body for its sport;

(2) revoke the recognition of the National Governing Body and declare a vacancy in the National Governing Body for that sport,

(3) revoke the recognition of the National Governing Body and recognize the applicant as the National Governing Body; or

(4) decide to place the National Governing Body on probation not to exceed one hundred-eighty (180) days, pending the compliance of the National Governing Body, if such National Governing Body would have retained recognition except for a minor deficiency in one of the requirements of Article IV, Section 4(B) or Article VII, Section 1.

If the National Governing Body does not comply within the prescribed time period, the USOC shall revoke the recognition of the National Governing Body and either recognize the applicant as the National Governing Body, or declare a vacancy in the National Governing Body for that sport.

(E) Within sixty-one (61) days after recognizing an amateur sports organization as a National Governing Body in accordance with this Subsection, the USOC shall recommend and support in any appropriate manner such National Governing Body to the appropriate International Sports Federation as the representative of the United States for that sport.

#### Section 4. Arbitration of Challenge

(A) The right to review by any party aggrieved by a determination of the USOC under the requirements of this Article or Article IV, Section 4(B) shall be at any regional office of the American Arbitration Association. Such demand for arbitration shall be submitted within thirty (30) days of the determination of the USOC. Upon receipt of such a demand for arbitration, the Association shall serve notice on the parties to the arbitration and on the USOC, and shall immediately proceed with arbitration according to the commercial rules of the Association in effect at the time of the filing of the demand, except that --

(1) the arbitration panel shall consist of not less than three (3) arbitrators, unless the parties to the proceeding mutually agree to a lesser number;

(2) the arbitration hearing shall take place at a site selected by the Association, unless the parties to the proceeding mutually agree to the use of another site; and

(3) the arbitration hearing shall be open to the public.

(B) The arbitrators in any arbitration are empowered to settle any dispute arising under the provisions of the Amateur Sports Act prior to making a final award, if mutually agreed to by the parties to the proceeding and achieved in a manner not inconsistent with the Constitution and Bylaws of the USOC.

(C) Each contesting party may be represented by counsel or by any duly authorized representative at the arbitration proceeding. The parties may offer any evidence which they desire and shall produce any additional evidence as the arbitrators believe necessary to an understanding and determination of the dispute. The arbitrators shall be the sole judges of the relevancy and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary.

(D) All decisions by the arbitrators shall be by majority vote unless the concurrence of all is expressly required by the contesting parties.

(E) Final decision of the arbitrators shall be binding upon the involved parties if such award is not inconsistent with the Constitution and Bylaws of the USOC.

(F) The hearings may be reopened by the arbitrators upon their own motion or upon the motion of any contesting party at any time before a final decision is made, except that, if any contesting party makes such a motion, all parties to the decision must agree to reopen the hearings if such reopening would result in the arbitrators' decision being delayed beyond the specific period agreed upon at the beginning of the arbitration proceedings.

(G) If the final arbitration award upholds the claim of an amateur sports organization to replace the incumbent as the National Governing Body for its sport,

(1) such organization shall be deemed elected to Olympic or Pan American Sport Organizations membership, and the membership of the incumbent shall be deemed terminated without further action of the Board of Directors; and

(2) the incumbent shall cease to exercise the authority of a National Governing Body as specified in Article VII, Section 3<sup>\*</sup>. The USOC shall, within sixty-one (61) days after such award, recommend and support in any appropriate manner the new Olympic or Pan American Sport Organizations member to the appropriate international sports federation for recognition by such federation as the United States National Governing Body in that sport, any provision to the contrary in Article IV notwithstanding. Such action shall include, without limitation, formally advising such federation of the decision of the USOC and recommending acceptance of such action by the federation as well.

(H) In the event that there is a significant delay in the acceptance of the new Olympic or Pan American Sport Organizations member as the United States member in such federation, the Board of Directors shall take any and all interim steps that may be necessary, but which are not inconsistent with the other requirements of this Subsection, to protect the right of United States athletes to participate in international amateur athletic competition.

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\* BELLMON RIDER (ENACTED INTO LAW BY CONGRESS ON JULY 8, 1980): "No portion of the funds appropriated hereunder shall be used (except as determined by the Secretary to be in the national interest) for the financing of programs conducted by, and none of the National Governing Body authority specified in Section 203 of Public Law 95-606 as hereby amended shall be exercised by, a National Governing Body member of the Committee for a particular sport, when another amateur sport organization has been declared (pursuant to binding arbitration proceeding prescribed by the organic documents of the Committee) entitled to replace such National Governing Body as the member of the Committee for that sport."

## **CHAPTER VI - HEARING PROCEDURE**

Section 1. At any hearing conducted pursuant to the filing of a challenge or a complaint, as provided in Article VIII; Article IV, Section 4(C); or Article VI, Section 3 of the Constitution, all parties shall be given a reasonable opportunity to present oral or written evidence, to cross-examine witnesses, and to present such factual or legal claims as desired. Hearings shall be open to the public. In addition, the proceedings shall be stenographically recorded and a verbatim transcript thereof made available to each interested party upon request and payment thereof. The rules of evidence shall not be strictly enforced; instead, rules of evidence generally accepted in administrative proceedings shall be applicable.

Section 2. The burden of proof shall be upon the challenger or complainant who shall also initially have the burden of going forward with the evidence. Upon completion of the presentation of the petitioner's evidence, the respondent may move to dismiss for failure to sustain the burden of proof. If such motion to dismiss is denied, the respondent shall then have the burden of going forward with evidence in opposition to the challenge or complaint and in support of its position.

## **CHAPTER VII - CHALLENGE PROCEDURE**

Section 1. Any challenge filed pursuant to Article VIII, Section 3 of the Constitution shall be in writing and signed under oath by the chief executive officer of the organization making the challenge. It shall be filed with the Executive Director by certified mail with a copy served at the same time by certified mail on the applicable National Governing Body (respondent). The challenge shall set forth the factual allegations in numbered paragraphs, each paragraph containing a single factual allegation, and shall contain at a minimum the following --

- (A) names and addresses of the parties;
- (B) jurisdictional basis of the challenge;
- (C) the factual basis upon which, pursuant to the criteria of Article VIII, Section 3(C) of the Constitution, the challenger (applicant) claims that it is entitled to replace the respondent; and
- (D) the relief sought. A copy of the applicant's organic documents shall be appended to the challenge.

### **Section 2.**

(A) If the respondent contends that jurisdiction of the challenge is improper, or that there is some other procedural or jurisdictional defect that would preclude a hearing on the merits, it may move to dismiss the challenge. Such motion to dismiss shall set forth the grounds for dismissal and shall be filed with the Executive Director by certified mail, with a copy served at the same time by certified mail on all parties, not later than twenty (20) days after receipt of the challenge. Failure to raise any procedural or jurisdictional defense to the challenge within the twenty (20) day period shall be considered a waiver of such defense, except that the defenses of failure to state a claim upon which relief can be granted, failure to join an indispensable party, or a lack of jurisdiction which could result in the dismissal of the proceeding may be raised whenever appropriate.

(B) Any procedural or jurisdictional objections to the challenge shall be determined in accordance with Section 3 of this Chapter and the hearing procedures set forth in Chapter VI of these Bylaws.

(C) If there is no procedural or jurisdictional objection to the challenge, the respondent must file an answer with the Executive Director, with a copy served on the applicant, not later than twenty (20) days after receipt by the respondent of the challenge.

### **Section 3.**

(A) Any objection to a challenge on procedural or jurisdictional grounds shall be decided within fifty (50) days after the filing of a challenge by a panel of five (5) persons appointed by the President in accordance with the requirements of Section 9 below. Unless otherwise determined by the panel, the matter shall be decided solely on the basis of written presentations of the parties, any documentary evidence that the parties respectively wish to submit, and if either party so requests, upon oral argument before the panel by counsel. The written presentation and documentary evidence of the respondent (together with any request for oral argument) shall

1 accompany the motion to dismiss, and the written presentation and documentary evidence of the  
2 applicant (together with any request for oral argument) shall be filed with the Executive Director  
3 by certified mail, with a copy served at the same time on all parties, not later than twenty (20) days  
4 after the applicant's receipt of the respondent's motion to dismiss. Promptly upon his/her  
5 appointment, the chair of the panel shall determine a date for consideration by the panel of the  
6 parties' presentations and evidence, and for hearing oral argument, if any, and such hearing shall  
7 be stenographically recorded. The burden shall be on the respondent to sustain the validity of its  
8 motion to dismiss. The panel shall report its decision in writing to the parties and the Executive  
9 Director within the fifty (50) day time period prescribed above.

10 (B) If the panel finds against the respondent with respect to its motion to dismiss, it shall  
11 direct the respondent to file an answer to the challenge not later than twenty (20) days after the  
12 date of its decision, in accordance with Section 4 of this Chapter, in anticipation of a hearing on the  
13 merits.

14 **Section 4.** An answer to the challenge, if required, shall be filed by the respondent with the  
15 Executive Director by certified mail, with a copy served by certified mail on the parties. The  
16 answer shall admit or deny the allegations of each separately numbered paragraph of the challenge.  
17 If the respondent is without sufficient knowledge or information to admit or deny a given factual  
18 allegation, the respondent may so respond.

19 **Section 5.**

20 (A) Unless a challenge is dismissed pursuant to a procedural or jurisdictional objection, the  
21 Executive Director shall refer the challenge and answer to the Board of Directors for a hearing on  
22 the merits of the challenge. Such hearing shall be conducted in accordance with the hearing  
23 procedures set forth in Chapter VI of the Bylaws, not later than one hundred-eighty (180) days after  
24 filing the challenge. The Board of Directors shall render its decision within thirty (30) days after  
25 the hearing on the challenge.

26 (B) To assist the Board of Directors in expeditious consideration of the challenge, the  
27 President shall appoint a hearing panel of five (5) voting members of the Board of Directors, in  
28 accordance with the requirements of Section 9 below, to hear evidence on the challenge.

29 (C) Within ten (10) days after receipt of an answer by the Executive Director, the President  
30 shall appoint the hearing panel and shall notify the parties by registered or certified mail of the  
31 identity thereof and of the dates for the hearing before the panel and for the subsequent hearing  
32 before the Board of Directors. The date for initial hearing of the matter by the hearing panel shall  
33 not be less than forty (40) days from the date of the notice.

34 (D) Within twenty (20) days after the date of the President's notice, the parties shall  
35 simultaneously exchange and shall provide to each member of the hearing panel the following:  
36 copies of all documents intended to be introduced at the hearing; a list of proposed witnesses and  
37 a summary of the anticipated testimony of each; and (if desirable) a prehearing memorandum,  
38 summarizing the respective positions of the parties. Within thirty (30) days from the date of the  
39 President's notice, the parties shall simultaneously exchange and shall provide to each member of  
40 the hearing panel copies of any rebuttal documents intended to be introduced at the hearing; and  
41 a list of proposed rebuttal witnesses and a summary of the anticipated testimony of each; and a  
42 written stipulation of facts or other relevant matters upon which the parties agree. To the extent  
43 possible, the parties should stipulate those facts and other relevant matters upon which they agree,  
44 and limit their presentation of evidence at the hearing to matters in genuine dispute.

45 (E) The hearing panel shall convene at the time specified in the President's notice, and at  
46 such additional times as the panel may determine, to hear evidence presented by the parties in  
47 accordance with the hearing procedures set forth in Chapter VI of the Bylaws. Unless otherwise  
48 determined by the panel, however, the hearing or hearings shall not in any case exceed a total of  
49 five (5) working days. Based upon the record made by the parties before it, the panel shall prepare  
50 and submit a full written report, not later than one hundred-fifty (150) days after filing of the  
51 challenge --

52 (1) summarizing such evidence for the Board of Directors; and

(2) forwarding to the Board of Directors any written materials requested by the parties. Such report shall be sent simultaneously to the Executive Director and the parties.

**Section 6.**

(A) At least fifteen (15) days prior to the date of the Board of Directors meeting specified in the President's notice for hearing of the challenge, the Executive Director shall mail to each member of the Board a copy of the report of the hearing panel. At the hearing before the Board of Directors, the Board shall consider the panel's report and may elect to receive further written or oral evidence or presentations, or may make its decision based on the report and materials submitted by the panel.

(B) At the hearing before the Board of Directors, the applicant must establish by a preponderance of evidence that --

(1) the applicant meets the criteria for recognition as a National Governing Body under Article IV, Section 4(B) of the Constitution; and

(2) either --

(a) the respondent does not meet the criteria of Article IV, Section 4(B) or Article VII, Section 1 of the Constitution, or

(b) the applicant more adequately meets the criteria of Article IV, Section 4(B) of the Constitution, is capable of more adequately meeting the criteria of Article VII, Section 1 of the Constitution and provides or is capable of providing a more effective national program of competition than the respondent for the sport in which the applicant seeks recognition.

**Section 7.** Within thirty (30) days of the close of the hearing before the Board of Directors, the Board of Directors shall --

(A) uphold the right of the respondent to continue as the National Governing Body for its sport;

(B) revoke the recognition of the respondent and declare a vacancy in the National Governing Body for that sport;

(C) revoke the recognition of the respondent and recognize the applicant as the National Governing Body; or

(D) decide to place the respondent on probation for a specified period of time not to exceed one hundred-eighty (180) days, pending compliance by the respondent, if respondent would have retained recognition except for a minor deficiency in one of the requirements of Article IV, Section 4(B), or Article VII, Section 1 of the Constitution.

If the Board of Directors places the respondent on probation pursuant to Section 7(D) above, it shall within thirty (30) days after expiration of the probation period hold a subsequent hearing to determine compliance by the respondent. At such hearing, if both the applicant and the respondent have not complied within the prescribed time period, the Board of Directors shall revoke the recognition of the respondent as National Governing Body and either recognize the applicant as the National Governing Body, or declare a vacancy in the National Governing Body for that sport.

**Section 8.** There shall be no right of appeal to any other USOC body from a decision of the panel referred to in Section 3(B) above, or from a determination of the Board of Directors referred to in Article VIII, Section 2 of the Constitution (Section 7 of this Chapter). Any applicant which considers itself aggrieved by a decision of the panel referred to in Section 3(B) above may, within thirty (30) days after such decision, file a demand for arbitration. The dates provided herein for a hearing on the merits of the challenge shall be tolled during the pendency of such arbitration. Any party to the challenge which considers itself aggrieved by a determination of the Board of Directors may, within thirty (30) days after such determination, file a demand for arbitration. A respondent shall be entitled in a demand for arbitration to raise any jurisdictional or procedural objection to the challenge raised in its original motion to dismiss, but determined against it by the panel which considered the jurisdictional or procedural challenge pursuant to Section 3 above.

**Section 9.**

(A) The identity of the members of the panel appointed by the President pursuant to Sections 3(A) or 5(B) above shall be subject to approval by the Executive Committee, and shall be determined and announced within ten (10) days after the filing of a motion to dismiss or answer, as the case may be. Such a panel shall consist of one (1) USOC officer (who shall chair the panel), two (2) Olympic or Pan American Sport Organizations Board representatives, one (1) Community-Based Multisport, Education-Based Multisport, or Armed Forces Organization Board representative, and one (1) athlete who has been elected to the Board of Directors by the Athletes' Advisory Council, but shall not include any member of the Board of Directors having a direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding.

(B) No member of the Board of Directors having a direct interest, either personally or by organizational affiliation, in the outcome of the proceedings shall be entitled to participate in the proceedings on the challenge before the Board of Directors set forth in Sections 6 and 7 above.

**Section 10.** In the event a demand for arbitration is filed pursuant to the provisions of Section 8 of this Chapter, and at least eighty percent (80%) of the Board of Directors present and voting have voted in favor of a party to the challenge, the USOC shall, at the request of such party, undertake the defense of such party in the arbitration.

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**CHAPTER VIII - COMPLAINT PROCEDURE PURSUANT TO ARTICLE VIII**

**Section 1.** Any complaint filed pursuant to Article VIII, Section 1 of the Constitution shall be in writing and signed under oath by the individual or the chief executive officer of the group or organization making the complaint. It shall be filed with the Executive Director by certified mail with a copy served at the same time by certified mail on the respondent. The complaint shall set forth the factual allegations in numbered paragraphs, each paragraph containing a single factual allegation, and shall contain, at a minimum, the following --

- (A) names and addresses of the parties;
- (B) jurisdictional basis of the complaint;
- (C) efforts made to exhaust available remedies, or if such remedies have not been exhausted, the grounds upon which the complainant alleges that exhaustion would result in unnecessary delay;
- (D) the alleged grounds of noncompliance;
- (E) supporting evidence or documentation forming the basis of the complaint; and
- (F) the relief sought.

**Section 2.**

(A) If the respondent contends that jurisdiction of the complaint is improper, or that the complainant has failed to exhaust available remedies, or that there is some other procedural or jurisdictional defect that would preclude a hearing on the merits, it may move to dismiss the complaint. Such motion to dismiss shall set forth the grounds for dismissal and shall be filed with the Executive Director by certified mail, with a copy served at the same time by certified mail on all parties, not later than twenty (20) days after receipt of the complaint. Failure to raise any procedural or jurisdictional defense to the complaint within the twenty (20) day period shall be considered a waiver of such defense, except that the defenses of failure to state a claim upon which relief can be granted, failure to join an indispensable party or a lack of subject matter jurisdiction which could result in the dismissal of the proceeding may be raised whenever appropriate.

(B) Any procedural or jurisdictional objections to the complaint shall be determined in accordance with Section 3 of this Chapter and the hearing procedures set forth in Chapter VI of these Bylaws.

(C) If there is no procedural or jurisdictional objection to the complaint, the respondent must file an answer with the Executive Director, with a copy served on the complainant, in accordance with Section 4 of this Chapter.

**Section 3.**

(A) Any objection to a complaint on procedural or jurisdictional grounds shall be heard and considered within thirty (30) days after the filing of the complaint by a panel of five (5) persons appointed by the President from among the voting members of the Board of Directors. If appointed, such a panel shall consist of one (1) USOC officer (who shall chair the panel), two (2) Olympic or Pan American Sport Organizations Board representatives, one (1) Community-Based Multisport, Education-Based Multisport, or Armed Forces Organization Board representative, and one (1) athlete who had been elected to the Board of Directors by the Athletes' Advisory Council, but shall not include any member of the Board of Directors having a direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding. The complainant shall be given the opportunity to submit papers in opposition to the respondent's motion to dismiss; and the hearing shall be conducted in accordance with the provisions governing hearings set forth in Chapter VI of the Bylaws.

(B) The panel shall render its decision, which shall be final, within thirty (30) days after the filing of the complaint. With respect to a challenge to the complaint on the grounds that the complainant has failed to exhaust available remedies, the panel shall dismiss the complaint (without prejudice to renew the complaint at a future date) if it determines that the complainant has failed to exhaust all available remedies under the organic documents of the Olympic or Pan American Sport Organizations member, unless it is shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.

(C) If the panel finds against the respondent with respect to its motion to dismiss, it shall direct the respondent to file an answer to the complaint in accordance with Section 4 of this Chapter in anticipation of a hearing on the merits.

**Section 4.** An answer to the complaint, if required (see Sections 2(C) and 3(C) of this Chapter, supra), shall be filed by the respondent with the Executive Director by certified mail, with a copy served by certified mail on the parties, within forty-five (45) days after the filing of the complaint. If the respondent is without sufficient knowledge or information to admit or deny a given factual allegation, the respondent may so respond. Failure to file an answer, if required, within the requisite time period shall serve as a default, except upon a showing of good cause.

**Section 5.**

(A) Unless a complaint is dismissed pursuant to a procedural or jurisdictional objection (see Sections 2 and 3, supra), the complaint and answer shall be referred to the Board of Directors for a hearing on the merits of the complaint. However, any member of the Board of Directors having a direct interest, either personally or by virtue of an organizational affiliation, in the outcome of the proceedings, shall be disqualified from adjudicating the complaint. Such hearing shall be conducted in accordance with the hearing procedures set forth in Chapter VI of the Bylaws (unless the President elects first to refer the matter to a panel of Board of Directors members in accordance with paragraph (B) below). In either case, a hearing by the Board of Directors shall be held not later than ninety (90) days after filing the complaint. The Board of Directors shall render its decision within thirty (30) days after the hearing on the complaint.

(B) If the President believes it will serve the interest of expeditious consideration of the complaint, he/she may, with the approval of the Executive Committee, appoint a hearing panel of five (5) voting members of the Board of Directors to hear evidence on the complaint. If appointed, such a panel shall consist of one (1) USOC officer (who shall chair the panel), two (2) Olympic or Pan American Sport Organizations Board members, one (1) Community-Based Multisport, Education-Based Multisport, or Armed Forces Organization Board member, and one (1) athlete who has been elected to the Board of Directors by the Athletes' Advisory Council; but shall not include any member of the Board having direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding. The panel, so appointed, shall convene as expeditiously as possible; shall hear evidence presented by the parties in accordance with the hearing procedures set forth in Chapter VI of the Bylaws; and shall prepare and submit a full written report --

1 (1) summarizing such evidence for the Board of Directors; and  
2 (2) forwarding to the Board of Directors any written materials requested by the  
3 parties. Upon receipt of such report and materials, the Board of Directors may elect to  
4 receive further written or oral evidence or presentations, or may make its decision based  
5 on the report and materials submitted by the panel.

6 **Section 6.**

7 (A) If the Board of Directors determines, as a result of hearings conducted pursuant to  
8 Section 5, that the respondent is in compliance with the requirements of Article IV, Section 4(A)  
9 and Article VII, Sections 1 and 2 of the Constitution, it shall so notify the complainant and  
10 respondent, in which event the matter shall be at an end.

11 (B) If the Board of Directors determines as a result of hearings conducted pursuant to  
12 Section 5 that the respondent is not in compliance with the requirements of Article IV, Section 4(A)  
13 and Article VII, Sections 1 and 2 of the Constitution it shall either --

14 (1) place the respondent on probation for a specified period of time not to exceed  
15 one hundred-eighty (180) days which it considers necessary to enable the respondent to  
16 comply with such requirements, or

17 (2) revoke the recognition of the respondent.

18 **Section 7.** If a respondent is placed on probation pursuant to Article VIII, Section 1(D)(2)(a) of  
19 the Constitution, it shall submit a report of the compliance to the Executive Director at the  
20 conclusion of the probationary period (and any additional probationary period authorized by the  
21 subsequent terms of this Section). Within thirty (30) days following receipt of the report of  
22 compliance by the Executive Director, the Board of Directors shall again review the matter, shall  
23 give both the complainant and the respondent a reasonable opportunity to be heard, and shall  
24 determine whether the respondent has brought itself into compliance. If the Board determines that  
25 the respondent is not in compliance, it shall then either --

26 (A) revoke the recognition of the respondent, in which event the matter shall be at an end.

27 or

28 (B) extend, if it has not previously granted an extension, the probationary period if the  
29 respondent has proven by clear and convincing evidence that, through no fault of its own, it needs  
30 additional time to comply with such requirements. If at the end of such additional probationary  
31 period granted by the Board of Directors, it is determined by the Board of Directors that the  
32 respondent has still not complied with the pertinent requirements, the Board of Directors shall  
33 revoke the recognition of such respondent, in which event the matter shall be at an end.

34 **Section 8.** There shall be no right of appeal to any other USOC body from a decision of the panel  
35 referred to in Section 3(B) above or from a determination of the Board of Directors referred to in  
36 Article VIII, Section 1 of the Constitution (Section 5 of this Chapter). Any complainant which  
37 considers itself aggrieved by a decision of the panel referred to in Section 3(B) above may, within  
38 thirty (30) days after such decision, file a demand for arbitration. Any party to the complaint which  
39 considers itself aggrieved by a determination by the Board of Directors may, within thirty (30) days  
40 after such determination, file a demand for arbitration. A respondent shall be entitled in a demand  
41 for arbitration to raise any jurisdictional or procedural objection to the complaint raised in its  
42 original motion to dismiss, but determined against it by the panel which considered the  
43 jurisdictional or procedural challenge pursuant to Section 3(C) above.

44 **Section 9.** In the event a demand for arbitration is filed pursuant to the provisions of Section 8  
45 of this Chapter and at least eighty percent (80%) of the Board of Directors present and voting have  
46 voted in favor of a party to the complaint, the USOC shall, at the request of such party, undertake  
47 the defense of such party in the arbitration.

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the Olympic Games and the Pan-American Games) and certify, in accordance with applicable international rules, the amateur eligibility of such individuals and teams.

"Sec. 204. The Corporation may review all matters relating to the continued recognition of a national governing body and may take such action as it considers appropriate, including, but not limited to, placing conditions upon the continued recognition of the national governing body.

Review.  
36 USC 394.

→ "Sec. 205. (a) (1) Any amateur sports organization or person which belongs to or is eligible to belong to a national governing body may seek to compel such national governing body to comply with the requirements of sections 201 (b) and 202 of this title by filing a written complaint with the Corporation. Such organization or person may take such action only after having exhausted all available remedies within such national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay. The Corporation shall establish procedures for the filing and disposition of complaints received under this subsection. A copy of the complaint shall also be served on the applicable national governing body.

Complaints.  
36 USC 395.

Filing  
procedures.

"(2) Within 30 days after the filing of the complaint, the Corporation shall determine whether the organization has exhausted its remedies within the applicable national governing body, as provided in paragraph (1) of this subsection. If the Corporation determines that any such remedies have not been exhausted, it may direct that such remedies be pursued before the Corporation will further consider the complaint.

"(3) (A) Within 90 days after the filing of a complaint under paragraph (1) of this subsection, if the Corporation determines that all such remedies have been exhausted, it shall hold a hearing to receive testimony for the purpose of determining if such national governing body is in compliance with the requirements of sections 201 (b) and 202 of this title.

Hearing.

"(B) If the Corporation determines, as a result of the hearings conducted pursuant to this subsection, that such national governing body is in compliance with the requirements of sections 201 (b) and 202 of this title, it shall so notify the complainant and such national governing body.

"(C) If the Corporation determines, as a result of hearings conducted pursuant to this subsection, that such national governing body is not in compliance with the requirements of sections 201 (b) and 202 of this title, it shall—

"(i) place such national governing body on probation for a specified period of time, not to exceed 180 days, which it considers necessary to enable such national governing body to comply with such requirements, or

"(ii) revoke the recognition of such national governing body.

"(D) If the Corporation places a national governing body on probation pursuant to this paragraph, it may extend the probationary period if the national governing body has proven by clear and convincing evidence that, through no fault of its own, it needs additional time to comply with such requirements. If, at the end of the period

allowed by the Corporation, the national governing body has not complied with such requirements, the Corporation shall revoke the recognition of such national governing body.

"(b) (1) Any amateur sports organization may seek to replace an incumbent as the national governing body for a particular sport by filing with the Corporation a written application for such recognition. Such application shall be filed (A) within the 1-year period after the final day of any Olympic Games, in the case of a sport for which competition is held in the Olympic Games or in both the Olympic and Pan-American Games; or (B) within the 1-year period after the final day of any Pan-American Games, in the case of a sport for which competition is held in the Pan-American Games and not in the Olympic Games. If two or more organizations file applications for the same sport, such applications shall be considered in a single proceeding.

"(2) Any application filed under this subsection shall be filed with the Corporation by registered mail. The Corporation shall establish procedures for the filing and disposition of applications received under this subsection. A copy of any such application for recognition shall also be served on the applicable national governing body. The Corporation shall inform the applicant for recognition that its application has been received.

Hearing.

"(3) Within 180 days after receipt of an application filed under this subsection, the Corporation shall conduct a formal hearing to determine the merits of the application. The Corporation shall publish notice of the time and place of such hearing in a regular issue of its principal publication at least 30 days, but not more than 60 days, prior to the date of the hearing. In the course of such hearing, the applicant and the national governing body shall be given a reasonable opportunity to present evidence supporting their respective positions. During such hearing, the applicant amateur sports organization must establish by a preponderance of the evidence that it meets the criteria for recognition as a national governing body under section 201(b) of this title, and that—

"(A) the national governing body does not meet the criteria of section 201(b) or 202; or

"(B) it more adequately meets the criteria of section 201(b), is capable of more adequately meeting the criteria of section 202, and provides or is capable of providing a more effective national program of competition, than the national governing body in the sport for which it seeks recognition.

"(4) Within 30 days of the close of the hearing required under this subsection, the Corporation shall—

"(A) uphold the right of the national governing body to continue as the national governing body for its sport;

"(B) revoke the recognition of the national governing body and declare a vacancy in the national governing body for that sport;

"(C) revoke the recognition of the national governing body and recognize the applicant as the national governing body; or

"(D) decide to place the national governing body on probation of not to exceed 180 days, pending the compliance of the national governing body, if such national governing body would have

retained recognition except for a minor deficiency in one of the requirements of section 201(b) or 202 of this title.

If the national governing body does not comply within the prescribed time period, the Corporation shall revoke the recognition of the national governing body and either recognize the applicant as the national governing body, or declare a vacancy in the national governing body for that sport.

"(5) Within 61 days after recognizing an amateur sports organization as a national governing body, in accordance with this subsection, the Corporation shall recommend and support in any appropriate manner such national governing body to the appropriate international sports federation as the representative of the United States for that sport.

"(c) (1) The right to review by any party aggrieved by a determination of the Corporation under the requirements of this section or section 201(c) shall be to any regional office of the American Arbitration Association. Such demand for arbitration shall be submitted within 30 days of the determination of the Corporation. Upon receipt of such a demand for arbitration, the Association shall serve notice on the parties to the arbitration and on the Corporation, and shall immediately proceed with arbitration according to the commercial rules of the Association in effect at the time of the filing of the demand, except that—

"(A) the arbitration panel shall consist of not less than three arbitrators, unless the parties to the proceeding mutually agree to a lesser number;

"(B) the arbitration hearing shall take place at a site selected by the Association, unless the parties to the proceeding mutually agree to the use of another site; and

"(C) the arbitration hearing shall be open to the public.

"(2) The arbitrators in any arbitration are empowered to settle any dispute arising under the provisions of this Act prior to making a final award, if mutually agreed to by the parties to the proceeding and achieved in a manner not inconsistent with the constitution and bylaws of the Corporation.

"(3) Each contesting party may be represented by counsel or by any other duly authorized representative at the arbitration proceeding. The parties may offer any evidence which they desire and shall produce any additional evidence as the arbitrators believe necessary to an understanding and determination of the dispute. The arbitrators shall be the sole judges of the relevancy and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary.

"(4) All decisions by the arbitrators shall be by majority vote unless the concurrence of all is expressly required by the contesting parties.

"(5) Final decision of the arbitrators shall be binding upon the involved parties, if such award is not inconsistent with the constitution and bylaws of the Corporation.

"(6) The hearings may be reopened, by the arbitrators upon their own motion or upon the motion of any contesting party, at any time before a final decision is made, except that, if any contesting party makes such a motion, all parties to the decision must agree to reopen

the hearings if such reopening would result in the arbitrators' decision being delayed beyond the specific period agreed upon at the beginning of the arbitration proceedings.

36 USC 396.

"Sec. 206. Any amateur sports organization which conducts amateur athletic competition, participation in which is restricted to a specific class of amateur athletes (such as high school students, college students, members of the Armed Forces, or similar groups or categories), shall have exclusive jurisdiction over such competition. If such an amateur sports organization wishes to conduct international amateur athletic competition to be held in the United States, or sponsor international amateur athletic competition to be held outside the United States, it shall obtain a sanction from the appropriate national governing body."

Approved November 8, 1978.

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**LEGISLATIVE HISTORY:**

HOUSE REPORT No. 95-1627 (Comm. on the Judiciary).

SENATE REPORT No. 95-770 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

May 8, considered and passed Senate.

Sept. 26, considered and failed of passage in House.

Oct. 11, 13, considered and passed House, amended.

Oct. 15, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 45:

Nov. 8, Presidential statement.

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