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July 12, 2012

R. Gil Kerlikowske, Director  
Office of National Drug Control Policy  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Director Kerlikowske:

The Office of National Drug Control Policy (ONDCP) provides approximately \$9 million per year in grant funding to the United States Anti Doping Agency (USADA) accounting for a majority of USADA's total budget. Congress has recognized USADA as "the official anti-doping agency for Olympic, Pan American and Paralympic sport in the United States."

On June 12, 2012, USADA notified Lance Armstrong that it had opened a formal action against him for violating anti-doping rules from 1998 through the present. USADA seeks to strip Armstrong of his achievements and the substantial winnings that accompanied them without offering him even basic due process. The alleged lack of fairness raises concerns for athletes of all levels, the majority of whom lack the resources and platform to challenge USADA's actions.

The United States Congress has no role in determining whether an individual athlete doped, but we do have a great interest in how taxpayer money is spent. As USADA's main funding source, ONDCP should take interest in the agency's conduct. Nonetheless, I have found virtually no evidence of ONDCP oversight of USADA. Just as Congress's spending authority creates an obligation to ensure that appropriated funds are used effectively, ONDCP should take a serious interest in how its funds are spent.

USADA's accusations appear to stem from a broader federal investigation in which USADA worked with the Department of Justice (DOJ), the Federal Bureau of Investigation and the United States Postal Service Office of Inspector General. In February, 2012 DOJ announced that it was dropping its investigation. Four months later, USADA announced that it was sanctioning Armstrong.

USADA's authority over Armstrong is strained at best. The agency seeks to strip Armstrong of earnings and titles dating from before its own existence. Congress designated USADA as the United States' National Anti-Doping Organization in 2000, but the agency is seeking to sanction Armstrong for conduct beginning in 1998. Furthermore, during Armstrong's cycling career, the International Cycling Union (UCI) had exclusive authority to sanction Armstrong for violation of its anti-doping rules. Even if USADA had jurisdiction over Armstrong, the majority of Armstrong's cycling career should be protected by USADA's 8 year statute of limitations.

To circumvent its jurisdictional challenges and its statute of limitations, USADA has adopted a novel conspiracy theory. The agency alleges, not that Armstrong doped during individual events, but that he engaged in a sweeping conspiracy to violate anti-doping rules beginning in 1998 and extending to the present. Since the alleged conspiracy is ongoing, USADA asserts that it now has authority over Armstrong's entire career without regard to its statute of limitations.

Prosecutors have alleged conspiracies in criminal trials to charge conduct outside of a statute of limitations, but importantly, a criminal trial offers a defendant due process protections that allow him to challenge the conspiracy's existence. In Armstrong's case, USADA asserts that Lance Armstrong must either accept the sanctions it proposes or contest the charges to an arbitration panel subject to USADA's rules where the burden of proof will rest on him.

USADA's arbitration system was established in light of the more regular circumstance where an athlete fails a drug test. Typically, sanctions would stem from a test result indicating that an athlete violated anti-doping rules. USADA would then decide whether to sanction that athlete. If sanctioned, the athlete would have the option of accepting the sanction or challenging the test results in arbitration.

Armstrong, however, has never failed a drug test despite having been tested over 500 times. USADA's allegations are instead based on witness testimony. To date, USADA has not even disclosed to Armstrong who is testifying against him. At the arbitration hearing, the witnesses could refuse to be cross-examined and would not be required to testify in person. USADA has no obligation to disclose exculpatory evidence. Presumably, USADA has offered other athletes inducements to testify against Armstrong, but USADA has no obligation to disclose what those inducements were or whether it offered them. Arbitrators are not chosen under the election procedures afforded by the Federal Arbitration Act to ensure neutral arbitration. The only judicial review permitted would be in Switzerland, not the United States. It is clear that the USADA arbitration process lacks the most basic due process.

If Armstrong submits to USADA's arbitration, he will be in the unenviable position of carrying the burden to rebut testimony from witnesses he cannot even cross examine. As attorneys for Armstrong asserted, "USADA has created a kangaroo court that it asserts has the power to bar Mr. Armstrong for life from his chosen profession and to strip him retroactively of the victories he has earned, including victories earned prior to USADA's creation."

The actions against Armstrong come in the midst of inconsistent treatment against athletes. Athletes are charged or cleared in an apparently ad hoc manner within the sole discretion of USADA. While USADA's charging letter accuses Armstrong of a vast conspiracy involving numerous riders, the agency has not charged any associated athletes other than Armstrong.

Sporting events offer talented athletes the potential for great rewards. Fans deeply invest themselves in the outcomes of events and rightfully take patriotic pride in the accomplishments of their countrymen. Fundamental fairness and public health demand clean competition, and I wholeheartedly support the USADA's mission, but fairness on the field cannot come at the expense of fairness off the field. USADA, an agency created to ensure fairness, must proceed fairly.

In response to this letter, please describe the role ONDCP plays in ensuring that USADA fulfills its Congressional mandate in a manner that protects the due process rights of athletes subject to its authority. In addition, please provide a response to the following questions by July 27, 2012:

1. Has ONDCP analyzed USADA's process for charging athletes with violations of anti-doping rules? If so, does ONDCP consider the process fair?
2. What steps does ONDCP take to ensure that adjudicatory bodies that receive ONDCP grants offer fundamental due process protections?
3. Does ONDCP conduct oversight of USADA?
4. How frequently and in what manner does ONDCP review USADA's procedures?
5. As the primary coordinator of drug testing and control within the Administration, were you briefed on DOJ's investigation of Lance Armstrong? If so, do you believe it was a complete, unbiased investigation?
6. Do you approve or condone USADA conducting a follow-up investigation of the same issues that DOJ has already investigated?

I appreciate your prompt attention to this matter.

Sincerely

A handwritten signature in black ink, appearing to read "F. James Sensenbrenner, Jr.", written in a cursive style.

F. JAMES SENSENBRENNER, JR.  
Member of Congress