

No.

Supreme Court of the United States

THOMAS NAVARRO,
JAMES GIORGIO,
and NINA SHAFFER,

Petitioners,

v.

UNITED STATES CENTER FOR SAFE SPORT,
UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE,
UNITED STATES EQUESTRIAN FEDERATION, INC.,
and UNITED STATES OF AMERICA,

Respondents.

On petition for a writ of certiorari to the
United States Court of Appeals for the Fourth Circuit

Petition for a writ of certiorari

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QUESTIONS PRESENTED

SafeSport is a private corporation with the power to make federal law: its policies “apply as though they were incorporated in and made a part of” the United States Code. 36 U.S.C. § 220541(b).

SafeSport sanctioned Petitioners for violating its policies. Petitioners then sued, arguing that Congress delegated governmental power to a private entity. Alternatively, if SafeSport is a governmental actor, Petitioners argued that SafeSport violated due process by not giving notice and a hearing before sanctioning them.

The district court brushed aside § 220541(b)—the provision that gives SafeSport legislative power—calling it “not a model of clarity.” The court of appeals did not even address the provision, holding instead that Petitioners “lack standing to raise a non-delegation claim” because their due process claim failed. In other words, the court held that Petitioners could not bring a private nondelegation claim without also having a separate meritorious constitutional claim. Even SafeSport was confused by that reasoning and chose not to adopt it in related litigation.

The questions presented are:

Whether, to have standing to bring a private non-delegation claim, a person must also have a separate meritorious constitutional claim?

Whether Congress unconstitutionally delegated legislative and other government powers to SafeSport in the Ted Stevens Olympic and Amateur Sports Act (ASA), 36 U.S.C. chapter 2205?

Whether SafeSport is a governmental actor subject to the Fifth Amendment’s Due Process Clause?

PARTIES AND PROCEEDINGS

PARTIES BELOW

Thomas Navarro (Appellant)

James Giorgio (Appellant)

Nina Shaffer (Appellant)

United States Center for SafeSport (Appellee)

United States Olympic & Paralympic Committee (Appellee)

United States Equestrian Federation, Inc. (Appellee)

United States of America (Intervenor)

RELATED PROCEEDINGS

U.S. District Court for the Western District of Virginia:

Navarro v. U.S. Ctr. for SafeSport

No. 3:24-cv-00030

Judgment entered January 15, 2025

U.S. Court of Appeals for the Fourth Circuit:

Navarro v. U.S. Ctr. for SafeSport

No. 25-1150

Judgment entered April 27, 2026

TABLE OF CONTENTS

	Page
Questions presented	i
Parties and proceedings	ii
Table of contents	iii
Appendix contents	v
Table of authorities.....	vi
Introduction	1
Opinions below	2
Jurisdiction	2
Provisions involved	3
Statement of the case	4
I. Legal background.....	4
A. Amateur sports	4
B. SafeSport.....	5
II. Factual background	10
III. Procedural history	11
A. Arbitration	11
B. District court.....	12
C. Court of appeals	14
Reasons for granting the petition	16
I. Congress’s unconditional delegation of its legislative power to SafeSport warrants the Court’s review.....	16
A. Congress’s delegation of its power to SafeSport endangers liberty and undermines government accountability. ..	16

B. This case is the most suitable vehicle to address the private nondelegation doctrine because Congress delegated its legislative power directly to a private entity without any government oversight.....	20
II. The decision below was wrongly decided.	23
A. The decision below created a new requirement for standing that conflicts with precedents of the Court and other courts of appeal.	23
B. Congress violated the private nondelegation doctrine by delegating governmental power to SafeSport, a private entity.	29
C. Alternatively, SafeSport is a governmental actor subject to the Fifth Amendment’s Due Process Clause.	34
Conclusion.....	38

APPENDIX CONTENTS

	Page
Fourth Circuit’s opinion	1a
District court’s order.....	26a
Fourth Circuit’s order denying rehearing.....	66a
36 U.S.C. § 220541.....	67a
36 U.S.C. § 220524.....	79a

TABLE OF AUTHORITIES

	Page
CASES	
<i>A.L.A. Schechter Poultry Corp. v. United States</i> , 295 U.S. 495 (1935)	18, 26
<i>Bd. of Regents v. Roth</i> , 408 U.S. 564 (1972)	35
<i>Behagen v. Amateur Basketball Ass’n of U.S.</i> , 884 F.2d 524 (10th Cir. 1989)	4
<i>Bond v. United States</i> , 564 U.S. 211 (2011)	26
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	33
<i>Carter v. Carter Coal Co.</i> , 298 U.S. 238 (1936)	1, 29, 31, 34
<i>Collins v. City of Harker Heights</i> , 503 U.S. 115 (1992)	34–35
<i>Collins v. Yellen</i> , 594 U.S. 220 (2021)	24–26
<i>Consumers’ Rsch. v. FCC</i> , 109 F.4th 743 (5th Cir. 2024).....	27
<i>Craig v. Boren</i> , 429 U.S. 190 (1976)	25–26
<i>Dent v. West Virginia</i> , 129 U.S. 114 (1889)	17

<i>DOT v. Ass’n of Am. R.R.</i> , 575 U.S. 43 (2015)	16, 18–20, 23, 27, 34–35
<i>FCC v. Consumers’ Rsch.</i> , 606 U.S. 656 (2025)	1, 21–23, 27, 29–31
<i>FEC v. Cruz</i> , 596 U.S. 289 (2022)	28
<i>Greene v. McElroy</i> , 360 U.S. 474 (1959)	17, 35
<i>Gundy v. United States</i> , 588 U.S. 128 (2019)	1, 16, 18–19
<i>INS v. Chadha</i> , 462 U.S. 919 (1983)	26–27
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018)	33
<i>Lucia v. SEC</i> , 585 U.S. 237 (2018)	27
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	26
<i>McGowan v. Maryland</i> , 366 U.S. 420 (1961)	25
<i>Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black</i> , 178 F.4th 224 (5th Cir. 2026).....	22, 27
<i>Oklahoma v. United States</i> , 163 F.4th 294 (6th Cir. 2025).....	22

<i>Paul v. Davis</i> , 424 U.S. 693 (1976)	35
<i>Pittston Co. v. United States</i> , 368 F.3d 385 (4th Cir. 2004)	28
<i>Pub. Utils. Comm’n of D.C. v. Pollak</i> , 343 U.S. 451 (1952)	34
<i>Russo v. Sec’y, U.S. Dep’t of Com.</i> , 189 F.4th 1264 (11th Cir. 2026).....	27
<i>San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee</i> , 483 U.S. 522 (1987)	14, 36–37
<i>State v. Rettig</i> , 987 F.3d 518 (5th Cir. 2021)	28
<i>Sunshine Anthracite Coal Co. v. Adkins</i> , 310 U.S. 381 (1940)	29–31
<i>Texas v. Comm’r</i> , 142 S. Ct. 1308 (2022)	1, 20–21
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	26
<i>United States v. Nixon</i> , 418 U.S. 683 (1974)	23
<i>USPS v. Konan</i> , 607 U.S. 391 (2026)	33
<i>Valley Forge Christian Coll. v. Ams. United for Separation of Church & State</i> , 454 U.S. 464 (1982)	23–24

<i>Warth v. Seldin</i> , 422 U.S. 490 (1975)	28
<i>Whitman v. Am. Tr. Ass'ns</i> , 531 U.S. 457 (2001)	23

STATUTES

28 U.S.C. § 1254(1)	2
28 U.S.C. § 1331.....	12
36 U.S.C. § 220501(b)(1)–(2).....	4
36 U.S.C. § 220505(d)(1)(C)	7
36 U.S.C. § 220521(a)	4
36 U.S.C. § 220522(8)	7, 11
36 U.S.C. § 220523(a)(4)–(5).....	4
36 U.S.C. § 220524.....	3, 6, 32
36 U.S.C. § 220541.....	3, 7
36 U.S.C. § 220541(a)(1)(B)	5
36 U.S.C. § 220541(a)(1)(C)	16, 19, 32
36 U.S.C. § 220541(a)(1)(C)–(G).....	7
36 U.S.C. § 220541(a)(1)(H).....	7
36 U.S.C. § 220541(a)(2)(A).	7
36 U.S.C. § 220541(a)(2)(D).....	7, 19

36 U.S.C. § 220541(b)	i, 1, 6, 13–14, 16–17, 19, 31–33, 36
36 U.S.C. § 220541(g)(1)	31
36 U.S.C. § 220541(h)(3)(A)	31
36 U.S.C. § 220541(j)(1)	31
36 U.S.C. § 225043(c)	31

CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 1	3, 23
U.S. Const. art. II, § 1, cl.1	3, 23
U.S. Const. art. II, § 2, cl. 2	5, 17, 32
U.S. Const. art. III, § 1	3, 23
U.S. Const. amend V	3, 34

RULE

Supreme Court Rule 16.1	29
-------------------------------	----

LAW REVIEWS & TREATISES

Alexander Volokh, <i>The Myth of the Federal Private Nondelegation Doctrine</i> , 99 Notre Dame L. Rev. 203 (2023)..	18, 35
John Locke, <i>Second Treatise of Government</i> (Philip B. Kurland & Ralph Lerner eds., Univ. of Chi. Press 1986) (1690)	17–18

Paul J. Larkin, Jr., <i>The Private Delegation Doctrine</i> , 73 Fla. L. Rev. 31 (2021)	35
---	----

LEGISLATIVE MATERIALS

144 Cong. Rec. 10406–07 (1998).....	4
164 Cong. Rec. 1303–14 (2018).....	6
Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, 134 Stat. 943	5
Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, 132 Stat. 318 (2018).....	5
Senate Amendment 1584 to S.534 (Nov. 14, 2017) ...	6

INTERNET MATERIALS

2027 United States Equestrian Federation Rule Book § GR704	9
<i>Navarro v. U.S. Ctr. for SafeSport</i> , No. 25-1150 (4th Cir.), Oral argument	33
<i>Strine v. U.S. Ctr. for Safe Sport</i> , No. 25-1407 (10th Cir.), Oral argument (<i>Strine</i> OA).....	28, 33–34
U.S. Census Bureau, <i>Annual Estimates of the Resident Population for the United States, Regions, States, District of Co- lumbia and Puerto Rico: April 1, 2020 to July 1, 2025</i>	6

U.S. Center for SafeSport, <i>2025 Annual Report</i> (Annual Report).....	5–6, 31
U.S. Center for SafeSport, <i>2026 SafeSport Code for the U.S. Olympic and Paralympic Movement</i> (Jan. 1, 2026) (SafeSport Code or Code)	8–9, 17
U.S. Center for SafeSport, <i>Board of Directors</i>	32
U.S. Olympic & Paralympic Committee, <i>2025 Demographic Data Report US Bowling Congress</i>	5
U.S. Olympic & Paralympic Committee, <i>National Governing Bodies & USOPC Managed Sports</i>	4

PETITIONS FOR WRIT OF CERTIORARI

Petition for a Writ of Certiorari, <i>DOT v. Ass’n of Am. R.R.</i> , 575 U.S. 43 (2015), No. 13-1080, 2014 WL 953507	20
Petition for a Writ of Certiorari, <i>Texas v. Comm’r</i> , 142 S. Ct. 1308 (2022), No. 21-379, 2021 WL 4116806	20
Petition for a Writ of Certiorari, <i>FCC v. Consumers’ Rsch.</i> , 606 U.S. 656 (2025), No. 24-354, 2024 WL 4371883	21
Petition for a Writ of Certiorari, <i>FCC v. Consumers’ Rsch.</i> , 606 U.S. 656 (2025), No. 24-422, 2024 WL 4505272	21

Petition for a Writ of Certiorari, <i>Horseracing Integrity & Safety Auth. Inc. v. Nat'l Horsemen's Benevolent & Protective Assoc.</i> , No. 26-199, 2026 WL 2435523 (Aug. 10, 2026)	22
Petition for a Writ of Certiorari, <i>Horseracing Integrity & Safety Auth. Inc. v. Nat'l Horsemen's Benevolent & Protective Assoc.</i> , No. 26-201, 2026 WL 2552983 (Aug. 14, 2026)	22

INTRODUCTION

Two terms ago, one Justice noted her “skepticism” whether the private nondelegation doctrine “is a viable and independent doctrine.” *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 710 (2025) (Jackson, J., concurring). Three terms earlier, three Justices called for the Court to “clarify the private non-delegation doctrine in an appropriate future case.” *Texas v. Comm’r*, 142 S. Ct. 1308, 1308 (2022) (Alito, J., joined by Thomas and Gorsuch, JJ., respecting the denial of certiorari). This case presents the best vehicle for the Court to decide and clarify the viability and scope of the private non-delegation doctrine.

Unlike in *Consumers’ Research*, here Congress delegated *carte blanche* legislative and other governmental powers to a private entity in a form equally “obnoxious” to the delegation invalidated in *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936). Notably, Congress unconditionally delegated to a private corporation—SafeSport—the power to make federal law. 36 U.S.C. § 220541(b) (“The policies and procedures developed” by SafeSport “shall apply as though they were incorporated in and made a part of” the United States Code.). SafeSport’s exercise of its governmental powers, as delegated by Congress, is neither reviewed nor approved by Congress or any federal agency.

Congress’s delegation is extraordinary and breathtaking. It makes a mockery of the Constitution’s promise that “only the people’s elected representatives may adopt new federal laws restricting liberty.” *Gundy v. United States*, 588 U.S. 128, 149 (2019) (Gorsuch, J., dissenting, joined by Roberts, C.J., and Thomas, J.). The Court should grant certiorari to keep that promise.

OPINIONS BELOW

The Fourth Circuit's decision is reported at 174 F.4th 378 and reproduced in the appendix at App.1a.

The district court's decision is unreported but available at 2025 WL 209166 and reproduced at App.26a.

JURISDICTION

The Fourth Circuit entered judgment on April 27, 2026. A petition for rehearing was timely filed on May 11, 2026. The Fourth Circuit denied rehearing on May 26, 2026.

Chief Justice Roberts granted Petitioners an extension to October 23, 2026, to file a petition for a writ of certiorari. No. 26A173. The Court has jurisdiction under 28 U.S.C. § 1254(1).

The notification required by Rule 29.4(b) has been made.

PROVISIONS INVOLVED

“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. Const. art. I, § 1.

“The executive Power shall be vested in a President of the United States of America.” U.S. Const. art. II, § 1, cl. 1.

“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” U.S. Const. art. III, § 1.

“No person shall be ... deprived of life, liberty, or property, without due process of law” U.S. Const. amend V.

36 U.S.C. § 220541 (reproduced at App.67a)

36 U.S.C. § 220524 (reproduced at App.79a)

STATEMENT OF THE CASE

I. Legal background

A. Amateur sports

The Ted Stevens Olympic and Amateur Sports Act (ASA), 36 U.S.C. chapter 2205, governs amateur sports in the United States. “Amateur” is a broad term of art that covers any athlete who meets certain standards—regardless if they are competing recreationally, professionally, or internationally in competitions like the Olympics. *See* 36 U.S.C. § 220501(b)(1)–(2); *see also* 144 Cong. Rec. 10406–07 (1998) (statement of Sen. Ted Stevens).

Under the ASA, each sport is governed by a national governing body—commonly called an NGB—certified by the United States Olympic and Paralympic Committee (Committee). 36 U.S.C. § 220521(a). NGBs exert “monolithic control” over their sports. *Behagen v. Amateur Basketball Ass’n of U.S.*, 884 F.2d 524, 529 (10th Cir. 1989). Among other things, they conduct competitions and set standards for participation in competitions. 36 U.S.C. § 220523(a)(4)–(5).

The Committee recognizes 53 NGBs for a variety of sports.¹ Some sports are well known, like swimming and gymnastics. Other sports are for athletes who have impairments, like boccia and goalball. And some sports—like bowling, golf, tennis, skiing, canoeing, and shooting—are enjoyed recreationally by many Americans.

Though very few compete in international competitions, the number of individuals subject to the NGBs’

¹ U.S. Olympic & Paralympic Committee, *National Governing Bodies & USOPC Managed Sports*, <https://ti-nyurl.com/54erwz63>

jurisdictions is vast. For example, the bowling NGB has a mere 28 national team members, yet 941,330 individuals are subject to its jurisdiction.² The NGB in this case—the United States Equestrian Federation, Inc.—“counts 150,000 athletes, coaches, breeders, and trainers as members.” App.6a. As discussed next, one of the Respondents—the United States Center for SafeSport—has asserted jurisdiction over more than 13 million individuals affiliated with NGBs.

B. SafeSport

The United States Center for SafeSport is a private corporation formed under state law. App.57a. None of its directors, officers, or agents are Officers of the United States or inferior Officers. *See* App.62a–64a; *cf.* U.S. Const. art. II, § 2, cl. 2 (Appointments Clause).

In 2018 and 2020, Congress amended the ASA and delegated substantial power to SafeSport. *See* Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, 132 Stat. 318 (2018); Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, 134 Stat. 943.

Congress gave SafeSport “jurisdiction over the [Committee] and each [NGB] with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports.” 36 U.S.C. § 220541(a)(1)(B). According to SafeSport, it has authority over more than 13 million individuals—more than the population of all but five states. U.S. Center for SafeSport, *2025 Annual Report* 6 (Annual

² U.S. Olympic & Paralympic Committee, *2025 Demographic Data Report US Bowling Congress* 3, <https://ti-nyurl.com/mrx5wwxu>

Report)³; U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia and Puerto Rico: April 1, 2020 to July 1, 2025*.⁴

Strikingly, Congress gave SafeSport the power to make and amend federal law: SafeSport’s policies and procedures for preventing abuse of amateur athletes “apply as though they were incorporated in and made a part of section 220524 of [Title 36 of the United States Code].”⁵ 36 U.S.C. § 220541(b). This exercise of legislative power is neither reviewed nor approved by Congress or any federal agency. App.60a.

There was no congressional debate about § 220541(b). It first appeared in an amendment that passed by unanimous consent in the Senate immediately after it was introduced. *See* Senate Amendment 1584 to S.534 (Nov. 14, 2017).⁶ Although the House debated the bill, there was no discussion of § 220541(b). *See* 164 Cong. Rec. 1303–14 (2018).

In granting SafeSport unchecked power over 13 million-plus individuals, Congress mandated that SafeSport:

- develop policies and procedures to prevent abuse of amateur athletes;
- establish mechanisms for investigating and resolving allegations of sexual abuse;

³ <https://tinyurl.com/4sp82cbn>

⁴ <https://tinyurl.com/43zfujzt>

⁵ Section 220524 lists the NGBs’ general duties. 36 U.S.C. § 220524.

⁶ <https://tinyurl.com/ymt4snav>

- ensure that the NGBs and the Committee implement and follow SafeSport’s policies and procedures; and
- “publish and maintain a publicly accessible internet website that contains a comprehensive list of adults who are barred by [SafeSport].”

36 U.S.C. § 220541(a)(1)(C)–(G).⁷

Congress contemplated that SafeSport would sanction and discipline individuals. *Id.* § 220541(a)(1)(H). NGBs and the Committee must enforce SafeSport’s sanctions. *Id.* § 220505(d)(1)(C); App.14a. Unlike NGBs—which must provide “fair notice and opportunity for a hearing ... before declaring the individual ineligible,” 36 U.S.C. § 220522(8)—SafeSport may “impos[e] interim measures or sanctions on an individual before an opportunity for a hearing or arbitration,” *id.* § 220541(a)(2)(A).

The ASA states that neither SafeSport’s statutory duties nor its imposition of sanctions and discipline “shall be construed ... to render [SafeSport] a state actor.” *Id.* § 220541(a)(2)(D).

SafeSport’s policies and procedures—which are part of federal law—are embodied in its own private code, which SafeSport amends periodically.⁸ *See* U.S.

⁷ This petition emphasizes Congress’s delegation of legislative power to SafeSport, as that is the most egregious constitutional violation. But § 220541 also delegates executive and judicial power to SafeSport, and thus the question presented encompasses all forms of governmental power that Congress has delegated to SafeSport. *Supra* at i.

⁸ SafeSport attached the 2023 version of its Code to its motion to dismiss in the district court. Doc.34-6. (“Doc.” citations are to the district court docket.) SafeSport amended the Code twice since: in 2024 and 2026.

Center for SafeSport, *2026 SafeSport Code for the U.S. Olympic and Paralympic Movement* (Jan. 1, 2026) (SafeSport Code or Code).⁹

SafeSport defines which individuals are subject to its Code and thus also subject to federal law. SafeSport decided to subject a wide range of individuals to its private Code (and federal law) by adopting a broad definition of “Participants.” *Id.* at 1, 10. That definition includes “[a]ny individual who is seeking to be, currently is, or was at the time of any alleged Code violation” a member, license holder, employee, or board member of an NGB, a local affiliated organization,¹⁰ or the Committee, as well as any individual “[a]uthorized, approved, or appointed by” any of these entities “to have regular contact with or authority over Minor Athletes.” *Id.* at 10.

Under its Code, SafeSport has “exclusive jurisdiction” to investigate and resolve allegations of sexual misconduct, child abuse, and “Other Inappropriate Conduct.” *Id.* at 2. The prohibited conduct is detailed in 18 single-spaced pages. *Id.* at 12–30. In addition to sexual and child abuse, the Code also prohibits: “encouraging or knowingly permitting an Athlete to return to play prematurely following a serious injury”; “denying adequate hydration, nutrition, medical attention or sleep”; “and “[u]se of rumors or false statements about someone to diminish that person’s reputation.” *Id.* at 21–23. A participant found in violation of the Code is subject to sanctions, including a written warning, probation, suspension or other eligibility

⁹ <https://tinyurl.com/pvcwmtpt>

¹⁰ A local affiliated organization is a “regional, state or local club or organization that is directly affiliated with an NGB or that is affiliated with an NGB by its direct affiliation with a regional or state affiliate of said NGB.” SafeSport Code at 9.

restrictions, and temporary or permanent ineligibility. *Id.* at 51–52.

SafeSport’s Code—and thus federal law—also prohibits adult participants from aiding and abetting sanctioned persons. *Id.* at 26–27. That includes allowing “any person who has been identified as Suspended or otherwise Ineligible by [SafeSport] to coach or instruct Participants.” *Id.* at 26. So, for example, if a coach were suspended by SafeSport, an adult participant could not take a private lesson from the coach on private property.

When SafeSport deems a person ineligible, the person cannot participate “in any capacity, in any program, activity, Event, or competition sponsored by, organized by, or under the jurisdiction of the [Committee], any NGB, or any [local affiliated organization], or at a facility under the jurisdiction of the same.” *Id.* at 52. “Event” is broadly defined to include “travel, lodging, practice, competition, and health or medical treatment.” *Id.* at 9.

Ineligibility carries further consequences. The Equestrian Federation’s rules, for example, restrict the participation of spouses of an ineligible person. 2027 United States Equestrian Federation Rule Book § GR704.¹¹

In less than a decade, SafeSport has deemed more than 2,200 individuals ineligible. App.5a. As mandated by Congress in the ASA, SafeSport’s website “publicly lists all sanctioned individuals in a searchable table that includes their full name, city of residence, offense, and the resulting penalty.” *Id.*

¹¹ <https://tinyurl.com/4yszmxxk>

II. Factual background

Petitioner Thomas Navarro trains horses and riders. App.6a. In December 2018, SafeSport deemed him permanently ineligible because twenty years earlier he entered a guilty plea for sexual misconduct involving a minor. *See id.* SafeSport explained that any Equestrian Federation or Committee member who associates with Navarro may be subject to similar sanctions, thus functionally barring Navarro from working with any member of those organizations. *Id.*

Petitioner James Giorgio breeds horses. *Id.* In July 2018, SafeSport deemed him permanently ineligible because eleven years earlier he entered a guilty plea for sexual misconduct involving a minor. *See App.7a, 12a n.6.* Like Navarro, Giorgio is functionally barred from working with any Equestrian Federation or Committee member. App.7a.

Neither Giorgio nor Navarro received notice or a hearing before SafeSport deemed them permanently ineligible. App.32a. As mandated by Congress in the ASA, SafeSport published their information on its online database of sanctioned persons. App.31a.

Petitioner Nina Shaffer trains horses and riders. App.6a. In February 2024, SafeSport determined that Shaffer “had exhibited a pattern of abusive behavior” and sanctioned her with three months’ suspension and nine months’ probation. App.8a, 12a n.6.

As required by the ASA, the Equestrian Federation enforced SafeSport’s sanctions against Petitioners. *See App.40a.*

III. Procedural history

A. Arbitration

Navarro and Giorgio sought review of their sanctions in arbitration under the SafeSport Code. App.6a–7a. Shaffer did not because she could not afford the \$5,200 arbitration fee. App.35a. Arbitrators upheld the sanctions. App.7a.

Navarro and Giorgio later filed complaints with the Equestrian Federation and the Committee. App.8a–9a. They argued that SafeSport violated the Due Process Clause of the Fifth Amendment by failing to provide notice and a hearing before sanctioning them. App.9a. Both the Equestrian Federation and the Committee determined they lacked authority to reach that issue. *Id.*

Navarro and Giorgio then sought to arbitrate their due process claim—this time, under the Equestrian Federation’s and the Committee’s bylaws. App.9a & n.4. The arbitration panel determined that only a federal court could decide the issue. App.9a. Still, the panel “indicated that it believed the SafeSport Code violates the ASA.” App.10a. The panel “found compelling that the NGBs like the [Equestrian Federation] are required to enforce SafeSport sanctions, which SafeSport can impose before the sanctioned party has been given a hearing, even though Section 220522(8) of the ASA expressly requires NGBs to grant their own members a hearing before imposing any sanctions.” *Id.*

The arbitrators commented that SafeSport “used its exclusive authority to create SafeSport Rules that prevented an accused Olympic participant from legally challenging its adjudication procedure allowing [SafeSport] to issue final decisions against an accused

Olympic participant before ever providing a pre-determination hearing.” Doc.1-1, *Arbitration Award* at 4. This, the arbitrators said, “allowed [SafeSport] to publicly place the accused Olympic participant’s name on ... [the] ‘Wall of Shame’ list before ever providing the accused with a hearing.” *Id.* As a result, “the lives and careers of many longstanding Olympic participants were publicly ruined before an accused ever had the opportunity for a hearing.” *Id.*

B. District court

After the arbitration, Petitioners filed suit in district court against SafeSport, the Committee, and the Equestrian Federation. App.35a. Petitioners claimed that Congress violated the nondelegation doctrine by delegating governmental power to SafeSport, a private entity. App.35a–36a. Petitioners alternatively claimed that SafeSport, as a governmental actor, violated due process by not giving notice and a hearing before sanctioning Petitioners.¹² App.36a.

Petitioners sought retrospective and prospective relief. For the nondelegation claim, they asked the court to declare that the delegation of power to SafeSport in the ASA is unconstitutional, to strike SafeSport’s sanctions, and to enjoin Respondents from enforcing the sanctions. Doc.1, *Complaint* at 21. For the due process claim, Petitioners asked the court to declare that SafeSport violated their rights to due process, that a post-determination hearing is, or was, insufficient to remedy the harm to Petitioners, and that SafeSport’s sanctions are void. *Id.* at 36. Petitioners further asked the court to permanently enjoin the

¹² Petitioners also raised other claims not addressed in this petition. The district court had federal-question jurisdiction under 28 U.S.C. § 1331.

Equestrian Federation from enforcing the sanctions. *Id.*

Respondents moved to dismiss. App.37a. The district court granted the motions. App.65a.

The district court rejected the private nondelegation claim on the merits, concluding that Congress did not delegate any governmental power to SafeSport. App.60a–62a. The court recognized that SafeSport “operates without direct oversight from a federal agency” and that “[i]f SafeSport exercised federal rule-making or enforcement power, that lack of oversight would violate the nondelegation doctrine.” App.60a. However, the court concluded that SafeSport did not have such power. App.60a–62a.

The court brushed aside § 220541(b)—the provision that says SafeSport’s own policies and procedures for preventing abuse “apply as though they were incorporated in and made a part of” the U.S. Code—calling it “not a model of clarity.” App.61a. The court concluded that § 220541(b) “does not give legislative effect to the SafeSport Code” and “simply establishes that NGBs must adhere to relevant parts of the Code.” App.61a–62a.

The court concluded that § 220541(b) “serve[s] a purpose by providing that NGBs must comply with all relevant parts of the SafeSport Code.” App.62a n.14. The court failed to explain the distinction between a provision that delegates to a private corporation law-making authority and a provision that requires persons to comply with a private corporation’s code that is neither enacted by Congress nor adopted by another government branch.

The district court also rejected the due process claim on the merits, concluding that SafeSport is not

a governmental actor. App.54a–59a. The court relied on *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee*, 483 U.S. 522 (1987)—a decision that predated SafeSport’s existence, concerned a trademark dispute, and did not address the nondelegation doctrine. App.56a–59a.

C. Court of appeals

The Fourth Circuit did not reach the merits of the private nondelegation claim. App.23a–25a. Instead, it held that Petitioners “lack standing to raise a non-delegation claim” because their due process claim failed. App.25a. In other words, the court held that Petitioners could not bring a private nondelegation claim without also having a separate meritorious constitutional claim. *Id.* The court’s analysis comprised only two paragraphs. App.24a–25a.

The Fourth Circuit’s theory of standing was not raised in briefing or at oral argument. Respondents never questioned Petitioners’ standing to bring the nondelegation claim.¹³

The court rejected the due process claim on the merits, holding that SafeSport is not a governmental actor. App.19a–23a. Like the district court, the Fourth Circuit relied on *San Francisco Arts. Id.* The Fourth Circuit never addressed the import of § 220541(b)—the provision that gives SafeSport legislative power.

Petitioners sought rehearing by the panel and the entire court. They argued that the panel’s decision “effectively created a new rule that conflicts with

¹³ Respondents did challenge Petitioners’ standing to bring a claim against the Committee, and the Fourth Circuit separately held that Petitioners lack standing to sue the Committee. App.12a–15a. Petitioners do not seek review of that holding.

Supreme Court decisions by requiring a plaintiff to assert a separate cause of action *in addition* to a non-delegation claim even when the injuries complained of flow directly from the *ultra vires* actions taken by a private party.” Pet. Reh’g 1.

The Fourth Circuit summarily denied rehearing. App.66a.

REASONS FOR GRANTING THE PETITION

I. Congress’s unconditional delegation of its legislative power to SafeSport warrants the Court’s review.

A. Congress’s delegation of its power to SafeSport endangers liberty and undermines government accountability.

“The Constitution promises that only the people’s elected representatives may adopt new federal laws restricting liberty.” *Gundy*, 588 U.S. at 149 (Gorsuch, J., dissenting). Why did the framers constitutionally enshrine this promise? “They believed the new federal government’s most dangerous power was the power to enact laws restricting the people’s liberty.” *Id.* at 154 & n.22 (citing *The Federalist* No. 48, at 309–12 (J. Madison)).

Congress broke this sacred promise when it unconditionally granted a private entity—SafeSport—some of the federal legislative powers that the people granted exclusively to Congress. Specifically, Congress in 2018 broke this promise when it directed that SafeSport’s “policies[] and procedures”—including those developed after 2018—“shall apply as though they were incorporated in and made a part of” the U.S. Code. 36 U.S.C. § 220541(a)(1)(C), (b).

“[T]he framers understood [the legislative power] to mean the power to adopt generally applicable rules of conduct governing future actions by private persons.” *Gundy*, 588 U.S. at 153 (Gorsuch, J., dissenting); accord *DOT v. Ass’n of Am. R.R.*, 575 U.S. 43, 88–89 (2015) (Thomas, J., concurring in the judgment). That is precisely the power that Congress unlawfully delegated to SafeSport—without any oversight by any Officer of the United States or even by an inferior

Officer. *Cf.* U.S. Const. art. II, § 2, cl. 2 (Appointments Clause).

Under § 220541(b), SafeSport—not Congress—adopts generally applicable rules of conduct governing future actions by 13 million-plus individuals and by the Committee and NGBs. Anyone who violates these rules—all of which are “incorporated in and made a part of” the United States Code—is subject to SafeSport’s sanctions and discipline. *See* SafeSport Code at 51–52. Though such sanctions do not include incarceration, they do restrict one’s liberty and property, including the right to earn a living and pursue a profession. *See id.*

An individual has a natural right to earn a living, as “every Man has a *Property* in his own *Person*.” John Locke, *Second Treatise of Government* ch. V § 27 (Philip B. Kurland & Ralph Lerner eds., Univ. of Chi. Press 1986) (1690). “The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.” *Id.* Locke described this labor as “the unquestionable Property of the labourer.” *Id.*; *see also Greene v. McElroy*, 360 U.S. 474, 492 (1959) (“[T]he right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the ‘liberty’ and ‘property’ concepts of the Fifth Amendment.”); *Dent v. West Virginia*, 129 U.S. 114, 121 (1889) (“It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition.”).

Of course, private entities may voluntarily refuse to employ individuals, and Congress may make federal laws that restrict or disqualify individuals from working in certain professions. But § 220541(b) does

neither. Instead, the statute authorizes a *private entity to make the federal laws* that restrict or disqualify individuals from working in certain professions.

“[A] delegation of legislative power [to a private entity] is unknown to our law[] and is utterly inconsistent with the constitutional prerogatives and duties of Congress.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935); *see also Ass’n of Am. R.R.*, 575 U.S. at 61 (Alito, J., concurring) (“Even the United States accepts that Congress cannot delegate regulatory authority to a private entity. Indeed, Congress, vested with enumerated ‘legislative Powers,’ Art. I, § 1, cannot delegate its exclusively legislative authority at all.” (cleaned up)); *but see* Alexander Volokh, *The Myth of the Federal Private Nondelegation Doctrine*, 99 Notre Dame L. Rev. 203, 235 (2023) (“*Schechter Poultry* adds nothing to our understanding of whether Congress can delegate power to private parties.”). As Locke explained, “[t]he legislative cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people,” and the “people alone” decide to whom this power is delegated. *Gundy*, 588 U.S. at 153–54 & n.21 (Gorsuch, J., dissenting) (quoting Locke, *Second Treatise* § 141, at 71).

Three years before Congress gave SafeSport the power to amend the U.S. Code, Justice Alito warned against such a delegation. In a case concerning Amtrak, one statute said Amtrak was not an “agency,” yet Congress also “command[ed] Amtrak to act like an agency.” *Ass’n of Am. R.R.*, 575 U.S. at 59 (Alito, J., concurring). Justice Alito said such statutes “should raise red flags” and were an “oddity.” *See id.* The same is true about the ASA, which declares that SafeSport is not a “state actor” yet commands SafeSport to police

amateur sports and “incorporate[s]” the SafeSport Code into and as “part of” federal law. 36 U.S.C. § 220541(a)(1)(C), (2)(D), (b).

Why should we insist that Congress retain—and not delegate—its legislative power? “Liberty requires accountability,” as Justice Alito explained:

When citizens cannot readily identify the source of legislation or regulation that affects their lives, Government officials can wield power without owning up to the consequences. One way the Government can regulate without accountability is by passing off a Government operation as an independent private concern. Given this incentive to regulate without saying so, everyone should pay close attention when Congress sponsors corporations that it specifically designates *not* to be agencies or establishments of the United States Government.

Ass’n of Am. R.R., 575 U.S. at 57 (Alito, J., concurring) (cleaned up); *accord Gundy*, 588 U.S. at 155 (Gorsuch, J., dissenting) (“[B]y directing that legislating be done only by elected representatives in a public process, the Constitution sought to ensure that the lines of accountability would be clear”).

In sum, Congress’s unconditional delegation of its legislative power to SafeSport is an extraordinary breach of the Constitution’s promise that only the people’s elected representatives may adopt federal laws restricting liberty.

B. This case is the most suitable vehicle to address the private nondelegation doctrine because Congress delegated its legislative power directly to a private entity without any government oversight.

The Court has appeared to labor, without success, to find a suitable case to decide the viability and scope of the private nondelegation doctrine. A major reason may be that the cases brought to the Court have involved a mixture of delegations to both government agencies and private entities. This case, by contrast, involves delegation *solely to a private entity*. This case therefore provides the best vehicle for the Court to address the private nondelegation doctrine.

The recent attempts to find a suitable vehicle start with the 2015 Amtrak case. There, the question presented was whether a law that required the Federal Railroad Administration and Amtrak to “jointly develop” the metrics and standards for Amtrak’s performance was “an unconstitutional delegation of legislative power to a *private entity*.”¹⁴ The Court did not answer the question because it held that “for purposes of determining the validity of the metrics and standards, Amtrak is a *governmental entity*.” *Ass’n of Am. R.R.*, 575 U.S. at 46 (emphasis added).

Next, in a Medicaid case, Texas and other states asked the Court to decide “[w]hether an *agency rule* delegating rulemaking authority to a private entity violates the nondelegation doctrine.”¹⁵ According to

¹⁴ Petition for a Writ of Certiorari at I, *DOT v. Ass’n of Am. R.R.*, 575 U.S. 43 (2015), No. 13-1080, 2014 WL 953507, at I (emphasis added).

¹⁵ Petition for a Writ of Certiorari at I, *Texas v. Comm’r*, 142 S. Ct. 1308 (2022), No. 21-379, 2021 WL 4116806, at I (emphasis added).

three Justices, the case had “complications” that warranted a “reluctant[]” denial of the petition. *Texas v. Comm’r*, 142 S. Ct. at 1309 (Alito, J., joined by Thomas and Gorsuch, JJ., respecting the denial of certiorari). Putting aside those complications, the Texas Medicaid case—unlike this case—did not involve a *direct* delegation of legislative power from *Congress to a private entity*. See *id.* at 1308. Rather, like most other cases in the private nondelegation arena, Congress assigned responsibility to a government agency, which in turn subdelegated power to a private entity. *Id.*

Consumers’ Research, a 2025 case, is the Court’s latest foray into the private nondelegation doctrine. There too, however, the questions presented did not concern a *direct* delegation of legislative power from *Congress to a private entity*. Instead, they concerned Congress’s assignment of responsibility to a government agency, which in turn subdelegated power to a private entity.¹⁶

In *Consumers’ Research*, the Court distilled the principle that “[a]s long as an agency ... retains decision-making power, it may enlist private parties to give it recommendations.” 606 U.S. at 692. Applying that principle, a majority of the Court concluded that the agency—not the private entity—was “the final authority,” and thus the Constitution was not violated. *Id.* at 694. The three dissenters, on the other hand, never even addressed the *private* nondelegation doctrine, concluding that the threshold delegation to the government agency was unconstitutional. *Id.* at 720

¹⁶ Petition for a Writ of Certiorari at i, *FCC v. Consumers’ Rsch.*, 606 U.S. 656 (2025), No. 24-354, 2024 WL 4371883, at i; Petition for a Writ of Certiorari at i, *FCC v. Consumers’ Rsch.*, 606 U.S. 656 (2025), No. 24-422, 2024 WL 4505272, at i.

(Gorsuch, J. dissenting, joined by Thomas and Alito, JJ.).

The Fifth Circuit recently held that an act governing horseracing violated the private nondelegation doctrine. *Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black*, 178 F.4th 224 (5th Cir. 2026). And the Sixth Circuit held to the contrary. *Oklahoma v. United States*, 163 F.4th 294 (6th Cir. 2025). Those decisions spawned multiple petitions that are pending before the Court.¹⁷ Although both this case and those cases involve horses, the legal regimes are very different.

Notably, the horseracing cases involve a private entity subject to the “oversight” of a government agency. *Black*, 178 F.4th at 231. Like *Consumers’ Research*, the horseracing cases therefore require an analysis of the extent to which the agency retains authority. Indeed, in its petition, the private entity emphasizes “the meaningful ways Congress subordinated the [private entity’s] enforcement activities to the [agency]’s approval, oversight, and independent power to ensure that the [agency] ultimately ‘retains decision-making power.’”¹⁸ In its own petition, the agency likewise says it “retains final ‘decision-making-authority.’”¹⁹

Here, by contrast, it’s undisputed that the private entity, SafeSport, “enjoys broad autonomy and operates without direct oversight from a federal agency.” App.60a. The Court can thus address the private nondelegation doctrine in a categorical manner without

¹⁷ Nos. 25-1325, 26-199, 26-201, 26-332, 26-335, 26-430.

¹⁸ Petition for a Writ of Certiorari at 13, *Horseracing Integrity & Safety Auth. Inc. v. Nat’l Horsemen’s Benevolent & Protective Assoc.*, No. 26-199, 2026 WL 2435523, at *13 (Aug. 10, 2026).

¹⁹ Petition for a Writ of Certiorari at 10, *Horseracing Integrity & Safety Auth. Inc. v. Nat’l Horsemen’s Benevolent & Protective Assoc.*, No. 26-201, 2026 WL 2552983, at *10 (Aug. 14, 2026).

drawing a line about how much government oversight is required. That makes this case the most suitable vehicle to address whether the private nondelegation doctrine “is a viable and independent doctrine.” *Cf. Consumers’ Rsch.*, 606 U.S. at 710 (Jackson, J., concurring).

II. The decision below was wrongly decided.

A. The decision below created a new requirement for standing that conflicts with precedents of the Court and other courts of appeal.

Through the Vesting Clauses, the Constitution commits the government’s powers—legislative, executive, and judicial—to Congress, the President, and the federal courts respectively. U.S. Const. art. I, § 1; art. II, § 1, cl. 1; art. III, § 1. These powers cannot be “delegated” to or “shared” with other branches of government or private persons. *E.g.*, *United States v. Nixon*, 418 U.S. 683, 704 (1974); *Whitman v. Am. Tr. Ass’n*, 531 U.S. 457, 472 (2001); *Ass’n of Am. R.R.*, 575 U.S. at 88 (Thomas, J., concurring in the judgment).

Accordingly, “[a] law violates the traditional (or call it, for comparison’s sake, ‘public’) nondelegation doctrine when it authorizes an agency to legislate.” *Consumers’ Rsch.*, 606 U.S. at 697. “And a law ... violates the private nondelegation doctrine when it allows non-governmental entities to govern.” *Id.*

Until the decision below, no court had ever treated a nondelegation claim (public or private) differently than any other claim for purposes of standing. After all, “[t]he requirement of standing ‘focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.’” *Valley Forge Christian Coll. v. Ams. United for*

Separation of Church & State, 454 U.S. 464, 484 (1982). There is no “‘sliding scale’ of standing” that depends on the type of claim being raised. *Id.*

The decision below broke with precedent by creating a new requirement for standing to bring a nondelegation claim. The Fourth Circuit concluded that “before a plaintiff may challenge an allegedly unconstitutional delegation, they must first articulate a concrete and particularized injury fairly traceable to some unlawful act by a defendant. Once a plaintiff has done so, they may also raise related, generalized questions of constitutional law -- including non-delegation claims.” App.24a–25a. Even though Petitioners had raised a separate constitutional claim—a due process claim—the Fourth Circuit concluded that the due process claim lacked merit and thus Petitioners did not have standing to raise a nondelegation claim. App.25a. In other words, the court held that a person cannot bring a nondelegation claim without also having a separate meritorious constitutional claim.

To support this novel theory of standing, the Fourth Circuit explained its reasoning in only two paragraphs and cited only one authority: *Collins v. Yellen*, 594 U.S. 220, 243–44 (2021). App.24a–25a. *Collins* does not support the Fourth Circuit’s reasoning.

In *Collins*, the petitioners claimed that an act was unconstitutional because it limited the President’s power to remove an agency director. 594 U.S. at 227, 235, 250. The petitioners did not raise any other constitutional claim. *Id.*

As for standing, the Court applied the traditional three-part *Lujan* test and held that the petitioners satisfied it. *Id.* at 242–43. First, the petitioners had an injury in fact because they alleged that the value of

their corporate shares had been transferred. *Id.* at 243. Second, the Court emphasized that “for purposes of traceability, the relevant inquiry is whether the plaintiffs’ injury can be traced to ‘allegedly unlawful conduct’ of the defendant, not to the provision of law that is challenged,” so the petitioners did not need to “trace their injury to the [act’s] removal restriction.” *Id.* The petitioners’ injury was fairly traceable to the conduct of the agency in question because the agency was responsible for transferring the value of the shares. *Id.* Finally, the Court said that “a decision in the [petitioners’] favor could easily lead to the award of at least some of the relief that the [petitioners] seek.” *Id.*

Nowhere in *Collins* did the Court provide support for the Fourth Circuit’s holding that, to have standing to bring a nondelegation claim, a person must also have a separate meritorious constitutional claim. Again, *Collins* involved only one constitutional claim. The Court applied ordinary principles of standing.

Applying *Collins* correctly, the standing question here should have been whether Petitioners suffered an injury in fact fairly traceable to SafeSport’s conduct that would likely be redressed by a favorable decision. 594 U.S. at 242. The answer is yes.

Petitioners suffered an injury in fact because two of them were permanently barred, and one was suspended, from membership in the Equestrian Federation. This harms their livelihoods and prevents them from working with other members—a “direct economic injury.” See, e.g., *McGowan v. Maryland*, 366 U.S. 420, 430–31 (1961) (plaintiffs had standing to challenge laws that restricted their ability to sell goods on Sundays); *Craig v. Boren*, 429 U.S. 190, 192–

94 (1976) (plaintiff had standing to challenge law that “constrict[ed] her buyers’ market”).

The sanctions—which Congress has mandated SafeSport to publish on the internet—also harm Petitioners’ reputations. *E.g.*, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (identifying “reputational harm[]” as an example of a concrete injury). SafeSport’s website acts as an offender registry, branding Petitioners Navarro and Giorgio as having a “Criminal Disposition - involving a minor.” SafeSport, Centralized Disciplinary Database.²⁰

This case involves concrete injuries—not a mere “generally available grievance about government.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573 (1992). An individual “can assert injury from governmental action taken in excess of the authority that [the Constitution] defines.” *See Bond v. United States*, 564 U.S. 211, 220 (2011).

The injury is traceable to SafeSport’s conduct. SafeSport issued the sanctions for violations of its own policies and published the sanctions on its own website. As in *Collins*, “the relevant inquiry is whether the plaintiffs’ injury can be traced to ‘allegedly unlawful conduct’ of the defendant, not to the provision of law that is challenged.” 594 U.S. at 243.

Finally, Petitioners’ injuries would be redressed by a favorable decision, which would void SafeSport’s sanctions against Petitioners. *See, e.g.*, *A.L.A. Schechter*, 295 U.S. at 551 (reversing convictions under provisions held to be invalid under the nondelegation doctrine); *INS v. Chadha*, 462 U.S. 919, 936 (1983) (holding that a person had standing to

²⁰ <https://tinyurl.com/wv78zks2>

challenge the constitutionality of an act because a favorable decision would cancel his deportation order under the act); *cf. also Lucia v. SEC*, 585 U.S. 237, 251 (2018) (“[T]he ‘appropriate’ remedy for an adjudication tainted with an appointments violation is a new ‘hearing before a properly appointed’ official.”); *Russo v. Sec’y, U.S. Dep’t of Com.*, 189 F.4th 1264, 1269–70 (11th Cir. 2026) (explaining that the remedy for an appointments violation “would be to declare invalid any action taken with the Council’s unconstitutionally delegated executive authority”).

The Fourth Circuit’s novel theory of standing conflicts with precedents of the Court and other courts of appeal. Indeed, the Court has repeatedly adjudicated nondelegation claims on the merits—including private nondelegation claims—even where the claimants did not have separate meritorious constitutional claims.

Take, for instance, the Court’s recent decision in *Consumers’ Research*. The only constitutional claim was a violation of the nondelegation doctrine (both public and private). 606 U.S. at 664, 670–72. Even though the petitioners did not raise a separate constitutional claim—as the Fourth Circuit’s decision below would have required—the Court addressed the nondelegation claim on the merits. *Id.* at 672–98. Likewise, the en banc Fifth Circuit expressly held in that case that at least one petitioner had standing. *Consumers’ Rsch. v. FCC*, 109 F.4th 743, 752–53 (5th Cir. 2024) (en banc).

Other examples abound. *See, e.g., Gundy*, 588 U.S. at 132–48 (addressing merits of public nondelegation claim without requiring petitioner to raise a separate constitutional claim); *Ass’n of Am. R.R.*, 575 U.S. at 45–56 (addressing merits of private nondelegation claim without assessing merits of other constitutional claims); *Black*, 178 F.4th at 237 (holding that the petitioners had

standing to raise a private nondelegation claim, even though their other constitutional claims failed); *State v. Rettig*, 987 F.3d 518, 527–29 (5th Cir. 2021) (same). Even the Fourth Circuit has addressed the merits of a private nondelegation claim without assessing the merits of other constitutional claims. *Pittston Co. v. United States*, 368 F.3d 385, 393–98 (4th Cir. 2004).

Not only was the Fourth Circuit wrong to require a separate constitutional claim, but it was also wrong to require the separate claim be meritorious. The Court has explained that “standing in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975). “For standing purposes, [the Court] accept[s] as valid the merits of [the plaintiff’s] legal claims” *FEC v. Cruz*, 596 U.S. 289, 298 (2022).

Not even SafeSport buys the Fourth Circuit’s reasoning. A separate lawsuit against SafeSport is pending in the Tenth Circuit, in which the plaintiff likewise raises a private nondelegation claim. *Strine v. U.S. Ctr. for Safe Sport*, No. 25-1407 (10th Cir.) At oral argument in *Strine*,²¹ SafeSport’s counsel (who also represents SafeSport in this case) remarked that “the standing issue that came up in the Fourth Circuit” was not “fully explained.” *Strine* OA at 18:05–18:14. A judge on the panel then noted that SafeSport had not raised the standing issue in the Tenth Circuit, in response to which SafeSport’s counsel said: “I didn’t because frankly I didn’t understand the Fourth Circuit’s reasoning for that until last night when I was working on this.” *Id.* at 19:00–19:11.

²¹ Oral Argument, *Strine v. U.S. Ctr. for Safe Sport*, No. 25-1407 (Sept. 15, 2026), <https://tinyurl.com/yumc6py8> (*Strine* OA).

In sum, the decision below created a new requirement for standing that conflicts with precedents of the Court and other courts of appeal. Even if the Court does not accept jurisdiction to answer the questions presented, it should summarily reverse and remand for the Fourth Circuit to address Petitioners' nondelegation claim on the merits. *See* Rule 16.1.

B. Congress violated the private nondelegation doctrine by delegating governmental power to SafeSport, a private entity.

As discussed *supra* § II.A, “a law ... violates the private nondelegation doctrine when it allows non-governmental entities to govern.” *Consumers’ Rsch.*, 606 U.S. at 697.

The Court recently noted that “the leading case” on the issue is *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936). *Consumers’ Rsch.*, 606 U.S. at 692. In *Carter*, a statute authorized certain coal producers to set maximum hours and minimum wages for the industry. 298 U.S. at 283–84. “The power conferred” was “in effect, the power to regulate.” *Id.* at 311. The Court described that as “legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.” *Id.* The Court said that “one person may not be entrusted with the power to regulate the business of another” and that “a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property.” *Id.* The Court therefore struck down the statute as unconstitutional. *See id.* at 311, 317.

Carter “has a counterpart case”—*Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381 (1940)—that

addressed “how Government agencies may rely on advice and assistance from private actors.” *Consumers’ Rsch.*, 606 U.S. at 692. *Sunshine Anthracite* concerned a statute enacted in response to *Carter*. 310 U.S. at 387. The statute permitted private actors to propose minimum coal prices to a government agency for approval, disapproval, or modification. *Id.* at 388. The Court held that Congress had not delegated its legislative authority because the private actors “function[ed] subordinately” to the government agency. *Id.* at 399. “[The agency], not the [private actors], determine[d] the prices.” *Id.* “And [the agency] ha[d] authority and surveillance over the activities of th[e] [private actors].” *Id.* “Since law-making [was] not entrusted to the [private actors],” the Court held that the statute was constitutional. *Id.*

As noted *supra* § I.B, the Court’s latest foray into the private nondelegation doctrine was *Consumers’ Research*. The Court concluded there was no nondelegation violation because the private entity at issue—the Administrator—was “broadly subordinate” to a government agency, the Federal Communications Commission. *Id.* at 692–93.

Indeed, the Commission appointed the Administrator’s board of directors and approved its budget. *Id.* The Administrator could “not make policy” and had to carry out all its tasks “consistent with” the Commission’s rules, orders, written directives, and other instructions. *Id.* at 693. Anyone aggrieved by an action of the Administrator could seek de novo review by the Commission. *Id.* “So in the relationship between the two, the Commission dominate[d].” *Id.*

Although the Administrator “play[ed] an advisory role, the Commission alone ha[d] decision-making authority.” *Id.* The Administrator’s tasks largely

involved “doing arithmetic” to make projections; they involved “no policy-making.” *See id.* If the Administrator confronted an unsettled issue, it had to “ask the Commission rather than resolve the problem itself.” *Id.* at 693 n.10. The Commission could review and revise the projections before approving them. *Id.* at 694. “In every way that matters to the constitutional inquiry, the Commission, not the Administrator, [wa]s in control.” *Id.* at 695. The Court therefore held that the private nondelegation claim failed. *Id.*

This case is like *Carter* and unlike *Sunshine Anthracite* or *Consumers’ Research*.

Like in *Carter*, Congress delegated its legislative power to a private entity—SafeSport. By statute, SafeSport’s policies “apply as though they were incorporated in and made a part of” the U.S. Code. 36 U.S.C. § 220541(b).

Unlike in *Sunshine Anthracite* or *Consumers’ Research*, neither Congress nor any federal agency retains authority over SafeSport. SafeSport’s sole obligation to Congress is to submit annual reports. 36 U.S.C. §§ 220541(h)(3)(A), 225043(c). The only other government involvement is that the Comptroller General certifies SafeSport’s “independence” from the Committee. *Id.* § 220541(j)(1). SafeSport’s actions are not subject to approval by anyone, and no one can tell it what to do.

Congress does not set SafeSport’s budget. Instead, SafeSport is largely funded by the Committee (a private entity), which has no say over how SafeSport uses those funds. *Id.* § 220541(g)(1). In 2025, the Committee provided 83.6% of SafeSport’s funding. Annual Report at 45. Other income sources included grant revenue, services and partnership, and interest. *Id.*

SafeSport’s leadership is not comprised of any Officers of the United States—not even inferior Officers—as it is not appointed by the President, the Congress, the Heads of Departments, or the Courts of Law. *See* App.62a–63a; U.S. Const. art. II, § 2, cl. 2. Instead, SafeSport is led by a board of directors, which elects its own directors. App.62a. Each director is a private individual. *See* SafeSport, *Board of Directors*.²²

In short, as the district court recognized, “SafeSport enjoys broad autonomy and operates without direct oversight from a federal agency.” App.60a. Or, as the court of appeals put it, “SafeSport is an ‘independent’ organization.” App.14a.

The district court understood that “[i]f SafeSport exercised federal rulemaking or enforcement power, that lack of oversight would violate the nondelegation doctrine.” App.60a. Where the district court erred, however, is in concluding that § 220541(b) does not give SafeSport legislative power. Dismissing that provision as “not a model of clarity,” the court concluded that § 220541(b) “does not give legislative effect to the SafeSport Code.” App.61a.

The district court’s interpretation contravenes the statute’s text. Section 220541(b) plainly states that “[t]he policies and procedures developed under subsection (a)(1)(C)^[23] *shall apply as though they were incorporated in and made a part of* section 220524^[24] of this

²² <https://tinyurl.com/83afax3f>

²³ This refers to SafeSport’s “policies, and procedures to prevent the abuse ... of amateur athletes participating in amateur athletic activities through [NGBs].” 36 U.S.C. § 220541(a)(1)(C).

²⁴ Section 220524 lists the general duties of NGBs. 36 U.S.C. § 220524.

title.” 36 U.S.C. § 220541(b) (emphasis added). The statute does not, as the district court read it, “simply establish[] that NGBs must adhere to relevant parts of the Code.” App.61a–62a.

The district court rewrote the statute to avoid the nondelegation problem. But “[s]potting a constitutional issue does not give a court the authority to rewrite a statute as it pleases.” *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). “The canon of constitutional avoidance does not supplant traditional modes of statutory interpretation.” *Boumediene v. Bush*, 553 U.S. 723, 787 (2008). Accordingly, a court “cannot ignore the text and purpose of a statute in order to save it.” *Id.* The “cardinal canon” is that “a legislature says in a statute what it means and means in a statute what it says there.” *USPS v. Konan*, 607 U.S. 391, 406 (2026).

The district court’s attempt to minimize the effect of § 220541(b)—that it “simply establishes that NGBs must adhere to relevant parts of the Code,” App.61a–62a—is unavailing. There is no meaningful distinction between Congress’s delegation of lawmaking authority to a private corporation and a congressional act that requires persons to comply with a private corporation’s code that is neither enacted by Congress nor adopted by another government branch.

The Fourth Circuit seemed to recognize the unusual nature of § 220541(b). At oral argument below, a judge on the panel remarked that § 220541(b) was “a different kind of statute than anything else [she] was aware of.” Oral Argument at 27:40–57.²⁵ Likewise, at oral argument in *Strine*, counsel for SafeSport described § 220541(b) as a “unicorn.” See *Strine* OA at

²⁵ <https://tinyurl.com/yd7h9pes>

26:02–15.²⁶ The Fourth Circuit avoided having to confront this unconstitutional anomaly by inventing a new requirement for standing and holding that Petitioners did not satisfy it. *Supra* § II.A.

The Court has not invalidated a statute under the private nondelegation doctrine in the ninety years since *Carter*, 298 U.S. at 238. The Court should grant certiorari and decide that Congress’s unconditional delegation of governmental power to SafeSport violates the private nondelegation doctrine and is unconstitutional.

C. Alternatively, SafeSport is a governmental actor subject to the Fifth Amendment’s Due Process Clause.

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. It is “intended to secure the individual from the arbitrary exercise of the powers of government.” *See Collins v. City of Harker Heights*, 503 U.S. 115, 127 n.10 (1992) (citation omitted).

The Due Process Clause does not restrict private persons. *Pub. Utils. Comm’n of D.C. v. Pollak*, 343 U.S. 451, 461 (1952). “One way the Government can regulate without accountability is by passing off a Government operation as an independent private concern.” *Ass’n of Am. R.R.*, 575 U.S. at 57 (Alito, J., concurring). That “passing off”—which Congress has done here—violates the private nondelegation doctrine and

²⁶ Counsel for SafeSport also said: “in part, I would love for my client that you strike [§ 220541(b)] ... because then I wouldn’t waste all my client’s money ... up here arguing consistently over and over again that somehow this language creates federal law.” *Strine* OA 18:20–18:40.

the Vesting Clauses. *Cf.* Paul J. Larkin, Jr., *The Private Delegation Doctrine*, 73 Fla. L. Rev. 31, 69 (2021) (“The Vesting Clause offers a broader challenge to private delegations because it could disqualify *all* private parties from exercising state power”).

Delegation to a private entity also may violate the Due Process Clause. *See id.* at 68–83. Under its original meaning, the Due Process Clause “guarantee[s] that the government comply with the ‘law of the land’ before trespassing on someone’s life, liberty, or property.” *Id.* at 31. The “government cannot legislate around the Constitution by empowering a private party to act in a lawless fashion.” *Id.* That is, Congress “cannot empower a private party to operate in lieu of the government but outside of the Constitution.” *Id.* at 73; *see also* Volokh, *supra*, at 226 (“A popular account of the Article I Nondelegation Doctrine is that it’s about preventing ‘arbitrariness’ and ‘uncontrolled discretionary power.’ This theory folds the doctrine into something like due process”).

If the Court were to decide that SafeSport is a government entity, then there would be no private nondelegation violation. *Cf. Ass’n of Am. R.R.*, 575 U.S. at 46. Yet, SafeSport would still be subject to the Due Process Clause. Here, in the alternative to the private nondelegation claim discussed *supra* § II.B, Petitioners argue that SafeSport is a governmental actor and thus subject to the Due Process Clause.

This case implicates an interest protected by the Due Process Clause: the natural right to earn a living. *See, e.g., Greene*, 360 U.S. at 492. This is particularly true where, as here, there is stigma to reputation because SafeSport listed Petitioners on its sanctions website. *See, e.g., Bd. of Regents v. Roth*, 408 U.S. 564, 573–74 (1972); *Paul v. Davis*, 424 U.S. 693, 701 (1976).

The district court and the Fourth Circuit concluded that SafeSport is not a governmental actor, both relying on *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee*, 483 U.S. 522 (1987). App.19a–23a, 56a–59a.

In *San Francisco Arts*, the Committee sued to enjoin a corporation’s use of the word “Olympic.” 483 U.S. at 527. The district court entered the injunction, and the court of appeals affirmed, concluding that the ASA granted the Committee exclusive use of the word. *Id.* On review, the corporation argued that the Committee enforced its rights in a discriminatory manner in violation of the Fifth Amendment. *Id.* at 542. The Court disagreed, concluding that the Committee was not a government actor. *Id.* at 547.

The Court emphasized that the ASA “merely authorized the [Committee] to coordinate activities that always have been performed by private entities,” noting that “[n]either the conduct nor the coordination of amateur sports has been a traditional governmental function.” *Id.* at 544–45. The Court further emphasized that the Committee’s “choice of how to enforce its exclusive right to use the word ‘Olympic’ simply is not a governmental decision.” *Id.* at 547.

San Francisco Arts is distinguishable. Critically, it concerned the Committee—not SafeSport. 483 U.S. at 542–47. SafeSport did not exist and was not created until nearly 30 years later. App.4a.

Whereas the Committee was merely choosing how to enforce its exclusive right to use the word “Olympic,” here SafeSport has the power to promulgate policies and procedures that “apply as though they were incorporated in and made a part of” the U.S. Code. 36 U.S.C. § 220541(b). SafeSport then sanctioned

Petitioners for violating those policies—harming Petitioners both by limiting their future employment opportunities and stigmatizing their reputations by publicly listing Petitioners on its sanctions website. Thus, this case is unlike *San Francisco Arts*, and the lower courts erred in concluding that SafeSport is not a governmental actor for purposes of the Due Process Clause.

In sum, if Congress's delegation of governmental power to SafeSport was constitutional, then SafeSport is a governmental actor subject to the Fifth Amendment's Due Process Clause. The Court should grant certiorari, decide that SafeSport's exercise of governmental power is subject to the Due Process Clause, and remand to the lower courts to decide whether SafeSport provided sufficient process under the Clause.

CONCLUSION

The Constitution promises that only Congress may adopt laws restricting the people's liberty. Congress can't pass the buck to a private entity. But if it can do that, then the people subject to the private entity's code are entitled to due process.

The Court should grant the petition for a writ of certiorari. Alternatively, the Court should summarily reverse and remand with instructions for the Fourth Circuit to address Petitioners' private nondelegation and due process claims on the merits.

Respectfully submitted,

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