

INTERNATIONAL SKATING UNION

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Decision of the ISU Council

The Council of the International Skating Union, at its meeting held in Geneva on February 1, 2005, has decided, in accordance with rule 102, paragraph 7 of the ISU General Regulations (2002 edition) that

- 1) Ms. Janet Garden has breached the ISU eligibility rules and that as a consequence of such breach, Ms. Garden has lost the ISU eligibility;**
- 2) an appeal against this decision will have no postponing effect and this decision becomes therefore effective immediately upon publication in the ISU Communications.**

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The decision is based on the following grounds:

I. Facts.

1. On March 25, 2003 during the ISU World Figure Skating Championships in Washington, D.C. USA, certain individuals carried out a surprise press conference to announce the formation of the organization named "World Skating Federation ("WSF").
2. Appearing at this press conference and/or presented at such conference to the "press" and public as organizers and supporters of the WSF were certain well-known ISU figure skating officials and/or even Office Holders. They included Ronald Pfenning, Jon Jackson, Sally Anne Stapleford, Donald McKnight, Britta Lindgren, Judit Fürst-Tombor and Janet Garden (hereafter, when mentioned collectively, referred to as "the Persons Concerned").
3. The Persons Concerned were identified by names and biographical resumes in the written WSF materials distributed at the Washington press conference under the title "Founding Members" of the WSF.
4. In July, 2003, the WSF website identified Ronald Pfenning, Sally Anne Stapleford, Donald McKnight, Judit Furst-Tombor and Jon Jackson by name, photograph and biographical resume as speakers at the press conference. These named persons plus Janet Garden and Britta Lindgren were further described on this website under the caption WSF BIOGRAPHIES as members of the Planning Committee.
5. According to the Form 1023 documents filed by Mr. Jon Jackson with the U.S. Internal Revenue Service and the WSF incorporation documents from the State of Nevada, Ronald Pfenning is identified as President or Acting President; Mr. Jon Jackson is identified as the Incorporator of the WSF in Nevada, its registered agent in Nevada, and also the Secretary and Treasurer of WSF. The WSF Incorporation Documents further list

R. Pfenning, Jon Jackson and Sally Stapleford as members of the initial governing board of the WSF.

6. According to the press conference, website publicity and documents created and distributed under the name of the WSF, the WSF was formed to replace the ISU as the international federation governing the sport of figure skating.
7. Also on March 25, 2003 Ronald Pfenning sent an urgent fax message to the IOC President in Lausanne, Switzerland in which he severely criticized the ISU and its leadership, asked for a meeting and expressed the belief that the WSF would soon become a member of the Olympic family. This message, on WSF letterhead, issued by Ronald Pfenning as "Acting President WSF" clearly demonstrates that the WSF was seeking to replace the ISU as the international federation recognized by the IOC as exclusively governing worldwide the sport of figure skating. Further, this same goal is explicitly stated in article 4 of the WSF Constitution.
8. According to the printed material of the WSF, and public statements made on behalf of the WSF by speakers at the Washington press conference and press reports written by experienced figure skating news reporters and based on statements made or interviews given by some of the Persons Concerned, one of the main goals of the WSF is separation of the sport of Figure Skating from the sport of Speed Skating.
9. On April 10, 2003 Acting President of WSF Ronald Pfenning wrote to all ISU Members: "The time has come for us to take control of our sport and to share all revenues generated through figure skating events solely with figure skating athletes and members. It is time to split figure skating and speed skating". And further: "(WSF's) purpose is the governing and promoting of Figure Skating throughout the world".
10. According to the repeated statements of the WSF Incorporator, Treasurer and Secretary Jon Jackson, WSF was attempting to take over the figure skating segments of current ISU contracts with its television partners.
11. The WSF Constitution was first publicly disclosed at the Washington press conference on March 25, 2003. It declares: "The WSF constitutes an association having its own legal identity in accordance with Article 60 of the Swiss Civil Code.". However, it was thereafter disclosed that Jon Jackson, as Incorporator, did incorporate a non-profit corporation in the state of Nevada, USA named WORLD SKATING FEDERATION on January 10, 2003, more than two months prior to the announcement made in Washington.
12. This same Nevada entity was the subject of a United States Internal Revenue Service ("IRS") APPLICATION FOR RECOGNITION OF EXEMPTION UNDER SECTION 501 (c) (3) OF THE INTERNAL REVENUE CODE (IRS Form 1023) filed January 7, 2003 by Jon Jackson, and supplemented by letter received by the U.S. IRS on April 15, 2003 from Jon Jackson responding to questions raised by the IRS concerning the Form 1023 APPLICATION. In response to an IRS question the letter from Jon Jackson states: "The World Skating Federation is seeking to replace the International Skating Union as the International Olympic Committee (IOC) recognized federation for the governance of figure skating."

13. Evidently, the March 25, 2003 Washington press conference must have been preceded by extensive work over a substantial period of time by some or all of the Persons Concerned, and others, in the assembly and coordination of resume information, preparation of organizational and legal documents, creation of publicity materials, including detailed press releases, reserving hotel and meeting rooms, designing and procuring background WSF posters and podium display, arranging the "head table", and effecting many other preparations.
14. In preparing for this surprise Washington press conference all of the Persons Concerned obviously cooperated by furnishing resumes and most of them agreed to appear at the secretly scheduled conference. It has been stated openly by some of them that they all were bound by a strict oath of secrecy sanctioned by a severe financial penalty, i.e. under the Non-Disclosure Agreement which is in evidence and which Ms. Stapleford admitted at the hearing that she had signed.
15. The written materials distributed at the Washington press conference included the purported WSF organizational documents, resumes of the Founding Members and descriptions of their respective roles in support of the WSF. No evidence was presented to indicate that any of the Persons Concerned objected at the press conference or at any time later to the publication of printed contents of their resumes, or the printed descriptions of their respective roles relative to the WSF.
16. Further, the subsequent written explanations furnished by the Persons Concerned, while in certain instances denying the accuracy of the descriptions contained in such WSF materials, did not explain how it happened that they were so described in the materials distributed to the press and public, and how it happened that they were similarly described in other WSF documents filed in the State of Nevada, and on the WSF website, or what steps they took to correct such descriptions, if erroneous. Among the Persons Concerned, three did not appear in person at the February 1, 2005 hearing, three declined to answer questions from the Council at the hearing and one only gave very limited answers. All the Concerned Persons present at the hearing, however, confirmed their position as far as their support of the WSF was concerned.
17. Some, if not all of the Persons Concerned, in cooperation with others, were secretly working on the formation of WSF. It appears from the evidence that this secret effort lasted for approximately nine months starting after the ISU Kyoto Congress held in June 2002. Prior to the Washington press conference, the Persons Concerned pretended to be loyal, although critical members of the ISU and some of them acted as ISU officials at ISU events. Ronald Pfenning served as an elected ISU Office Holder, namely as a member of the ISU Figure skating Technical Committee. He served also as Referee at the ISU Four Continents Figure Skating Championships in Beijing China in February 2003.
18. These proceedings have been opened on April 9, 2003 when, based upon the Washington press conference appearances and the WSF documents then and there distributed, the ISU Council sent to each Person Concerned a letter informing them that as a result of their participation in the formation and support of WSF, which was in breach of the ISU principles and policies and of the eligibility rules, they have become ineligible under Rule 102, paragraph 1), a) and 7, a) and b). The Persons Concerned were given a 60-day

period for presentation of their explanations and informed that thereafter the Council would make a final ruling.

19. During the stated period all Persons Concerned sent in their explanations. The letters of explanations were all almost identical and referred also to an identical legal memorandum attached to the letters. All Persons Concerned denied the charges, denied that the ISU Constitution and General Regulations supported the claim of breach of eligibility rules and argued that any decision of the Council supporting the charges would be in violation of the ISU Constitution and Rules. Further, they demanded that they be heard in person before the Council and that they be permitted to be represented by legal counsel at such hearing.
20. On July 29, 2003 the ISU sent to the Persons Concerned the written documents that would be presented to the Council as evidence. Ultimately, the Persons Concerned were given 60 days to provide comments on such evidence.
21. The evidence before the Council and copied to the Persons in support of the facts stated above and of the alleged breach of eligibility is the following:
 - 1) WSF Constitution
 - 2) Fax of March 25, 2003 to the IOC President Dr J. Rogge.
 - 3) Biographies of Acting President, acting Vice President and "Founding Members"
 - 4) WSF Mission Statement
 - 5) WSF Fundamental (General) Principles
 - 6) photo of the head table at the Press conference as published on the WSF website
 - 7) photo of the headtable from the IFS Magazine
 - 8) photos of speakers at the press conference published on the WSF website
 - 9) WSF Biographies - Planning Committee published on the WSF website
 - 10) WSF corporation filing form - filed on June 10, 2003
 - 11) translation of the interview given by J. Tombor to Hungarian National Sport Online on April 1, 2003
 - 12) QandA with Ronald Pfenning published on www.goldenskate.com
 - 13) Globe and Mail article by Beverly Smith published on March 26, 2003
 - 14) foxsports.news.com article of March 26, 2003
 - 15) article by Avid Barron of March 25, 2003 - Houston Chronicle
 - 16) article by Christine Brennan in USA today of March 24, 2003
 - 17) article by Christopher Clarey, NYTimes of March 26, 2003
 - 18) article by Angela Court , The Times UK of March 26, 2003
 - 19) article By Jim Morris, Canadian Press, Winnipeg Sports of March 27, 2003
 - 20) article by Lairie Nealin (Reuters), of March 25, 2003
 - 21) article by Beverly Smith in Globe and Mail.com on March 25, 2003
 - 22) article in World Sports - AFP (on Yahoo) of March 25, 2003
 - 23) WSF President letter to ISU Members of April 10, 2003.

Two further documents before the Council as evidence were sent to all Persons Concerned by letter of the ISU dated November 10, 2003. The persons Concerned have sent in or have had the opportunity to send in their comments on these two documents which are:

- 24) Non-Disclosure Agreement
- 25) Nevada Registration Papers as included as part of Form 1023 IRS APPLICATION mentioned in Paragraph 11 of this decision.)
22. While not every piece of the evidence refers to each of the Persons Concerned, the evidence as a whole establishes to the satisfaction of the Council, the following relevant and salient facts, namely that
- (i) The WSF (whether as a Swiss or as a Nevada entity) was founded to replace the ISU in governing the sport of figure skating world-wide and as the IOC-recognized international sport federation,
 - (ii) among the principles of WSF is separation of the two branches of skating, namely figure skating and speed skating,
 - (iii) each of the Persons Concerned took an active part in permitting their names, faces, reputations, titles and personalities to be publicly used in support of the formation, announcement and start-up activities of the WSF,
 - (iv) the Persons Concerned took part in secret meetings and/or activities during the period of preparation of the founding of the WSF and permitted themselves to be designated as "Founding Members" of the WSF.
 - (v) later all Persons Concerned were represented by the WSF to be "members of the Planning Committee" of the WSF,
 - (vi) the Persons Concerned made statements and/or gave interviews to the media as representatives and/or supporters of the WSF.

The Council also took notice of all official ISU actions, appointments of officials and Council decisions taken during the period subsequent to the Kyoto ISU Congress 2002.

23. The letters and briefs submitted to the Council by the Persons Concerned for consideration are the following:
- May 29, 2003 letter received by ISU from all Persons Concerned except Sally-Anne Stapleford
 - June 6, 2003 letter received by ISU from Sally-Anne Stapleford
 - June 6, 2003 letter received by ISU from all except Sally-Anne Stapleford with an identical Memorandum of same date appended to each letter
 - August 5/6/11 and 27, 2003 letters received by ISU from all except Sally-Anne Stapleford
 - August 15/22/29, 2003 letters received by ISU from Lindgren, McKnight, Fürst-Tombor, Garden
 - August 18, 2003 letter received by ISU from Jackson and Pfenning
 - August 21, 2003 letter received by ISU from Sally-Anne Stapleford
 - September 19/22/25/30, 2003 letters received by ISU from all except Sally Anne-Stapleford
 - September 23, 2003 letter received by ISU from Sally-Anne Stapleford
 - October 20, 2003 letter received by ISU from all except Sally Anne-Stapleford
 - November 25, 2003 letter received by ISU from McKnight, Garden, Lindgren, Fürst-Tombor
 - November 29, 2003 letter received by ISU from Sally-Anne Stapleford

- January 12, 2004 letter received by ISU from Garden, McKnight, Fürst-Tombor, Lindgren
- January 13, 2004 letter received by ISU from Sally-Anne Stapleford
- January 21, 2004 letter received by ISU from Fürst-Tombor, Garden, McKnight, Lindgren
- February 16, 2004 letter received by ISU from Sally-Anne Stapleford
- April 15, 2004 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- April 21, 2004 letter received by ISU from Benjamin Kaplan (attorney representing Jon Jackson and Ronald Pfenning)
- April 21, 2004 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- April 26, 2004 letter received by ISU from Sally-Anne Stapleford
- April 27, 2004 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- April 21, 2004 letter and Statement of Appeal received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- May 6, 2004 letter received by ISU secretariat and Appeals Commission from Judit Fürst-Tombor, Janet Garden Britta Lindgen and Donald McKnight
- May 13, 2004 letter received by Appeals Commission from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- May 19, 2004 Answer to Respondent's Reply received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- May 19, 2004 letter received by ISU from Sally-Anne Stapleford
- May 28, 2004 letter received by Appeals Commission from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- August 25, 2004 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- November 12, 2004 two letters received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- November 23, 2004 two letters received by ISU from Benjamin Kaplan
- November 24, 2004 Letter received by ISU from Benjamin Kaplan
- November 26, 2004 letter received by ISU from Sally-Anne Stapleford
- December 14, 2004 letter received by ISU from Sally-Anne Stapleford
- December 15, 2004 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- December 16, 2004 letter received by ISU from Benjamin Kaplan
- January 17, 2005 letter received by ISU from Judit Fürst-Tombor, Janet Garden, Britta Lindgen and Donald McKnight
- January 21, 2005 letter received by ISU from Judit Fürst-Tombor, Janet Garden, and Donald McKnight and letter received by ISU from Benjamin Kaplan
- January 23, 2005 letter received by ISU from Steven Hazen (attorney representing
J. Furst-Tombor, J. Garden, B. Lindgren and D. McKnight)
- January 26, 2005 letter received by ISU from Steven Hazen

24. All Persons Concerned requested that a hearing be held before the Council. After several postponements, a hearing finally took place in Geneva on February 1, 2005. It should be mentioned that the main reason why these proceedings took an unusually long time were

the numerous unfounded objections, protests, requests and even interim appeals made by the Persons Concerned as evidenced by the correspondence on file.

25. **Ms. Janet Garden** did not appear at the hearing. No personal explanation was therefore furnished by Ms. Garden at the hearing in accordance with rule 102 paragraph 7 c).

II. Grounds

26. These proceedings have been opened under the 2002 edition of the ISU Constitution and General Regulations. These documents have been changed or amended by the 2004 ISU Congress but due to the time of the opening of the proceedings the applicable provisions have been applied in the original 2002 version. All references to articles of the Constitution and General Regulations in this decision are to the 2002 edition, unless explicitly stated otherwise.
27. According to its Constitution, the ISU administers the Figure Skating and Speed Skating Sport at the international level. The ISU is recognized in this capacity by the IOC as far as the Olympic Games are concerned.
28. The ISU Constitution, in its Art. 7, paragraph 1, a), states that all Members and their members as well as all persons claiming standing as participants in the ISU activities are bound by the Constitution, Regulations and are subject to Council decisions in international matters. Subparagraph b) states that Members have the obligation to support the objects, activities and unity of the ISU and that Members shall not participate in any activities against the integrity, the exclusive role and interests of the ISU.
29. General Regulations include Rule 102, the heading of which is "Eligibility". Paragraph 1, a), states that the eligibility is based upon the following principle: "a person has the privilege to take part in the activities and competitions under the jurisdiction of the ISU only if such person respects the principles and policies of the ISU as expressed in the ISU Constitution and Regulations, and fulfills those obligations on the basis of which the ISU functions and governs all its activities".
30. Rules 102, 103, 121 and others show that ISU structure and activities are based on the principle of distinction between eligible and ineligible persons and that participation in ISU activities are, in general, open to eligible persons only. Participation of ineligible people is restricted and is allowed only in cases of explicitly stated exceptions.
31. Rule 102, paragraph 7 states that the "... consequence of the breach of the eligibility rules shall be the loss of eligibility".
32. There is no doubt that the unity of the ISU, its role as international sport federation governing Figure Skating and Speed Skating and the requirement of eligibility (as defined in the ISU Constitution and Regulations) belong to the most important principles and policies of the ISU.
33. These rules and requirements are in accordance with Swiss Law governing associations created under art. 60 sq. of the Swiss Civil Code (Jean-François Perrin, Droit de

l'association, Schultess, 2004; Christine Sattiva-Spring, Les associations fédératives en droit suisse, Lausanne, 1990; Margareta Baddeley, L'association sportive face au droit, Bâle et Francfort, 1994; Piermarco Zen-Ruffinen, Droit du sport, Schultess, 2002).

34. As it appears from the documents of the WSF mentioned in the list of evidence, the goals and proclaimed activities of the WSF are clearly in contradiction with the above stated principles and policies of the ISU:
 - a) The main goals of the WSF are replacement of the ISU as international sport federation governing figure skating, achieving IOC recognition as the Olympic federation for figure skating, and taking over the figure skating segments of the ISU TV contracts.
 - b) Another stated principle of the WSF is to exclude the speed skating branch from the international sport federation governing figure skating, thus contrary to the historical unity of both branches on which the ISU Constitution is based.
 - c) The WSF wants to allow all skaters, whether eligible or ineligible under the current ISU rules, to participate in all competitions.
35. There can be therefore no doubt that persons active in forming and promoting the WSF are acting in contradiction with the essential interests of the ISU and against its principles and policies. The goal of the WSF is not to co-exist with the ISU, but to replace it.
36. The ISU rejects the concept that persons participating in organizing or promoting a new, separate organization dedicated to the destruction of the ISU, an organization with goals, rules and principles which contradict those of the ISU, may claim to remain eligible within the ISU. This concept of the Persons Concerned is beyond common sense and understanding. They chose not to seek change of the ISU from the inside in accordance with the ISU's democratic and organizational rules, but from the outside under principles that are not compatible with those ISU statutes legitimately adopted by the Members at the ISU Congresses. The Persons Concerned were free to make such a choice, but on the other hand they must accept responsibility and consequences for it.
37. What is deplorable and beyond common sense again is that the Persons Concerned acted secretly during a period when they were ISU Office Holders and/or ISU Officials and kept on taking part in ISU activities. For up to nine months, some of them were attending meetings, seminars and competitions in the said capacity and had their expenses paid by the ISU. The acting President of the WSF Ronald Pfenning went so far that in his capacity as a member of the ISU Technical Committee he let himself be accredited for the 2003 ISU World Figure Skating Championships and stayed in the official ISU hotel, having his accommodation and board fully paid, until the very last day of the Championships although in the middle of the Championships the formation of the WSF and his Presidency of the WSF was announced. In the opinion of the Council, minimum standards of ethics should have motivated the Persons Concerned to first resign from all positions in the ISU before starting activities in respect of founding a competing federation. The Council also believes that the decision to hold a press conference with the purpose of announcing and promoting the WSF in Washington in the middle of the

ISU World Championships was a hostile move and an attempt to disrupt the Championships and damage the ISU.

38. It is correct that Article 7, paragraph 1, b), when stipulating the obligations to support the objects, activities and unity of the ISU, and the prohibition to participate in any activities against the integrity, the exclusive role and interests of the ISU, speaks about obligations of ISU Members and does not mention explicitly their own individual members. However:
- a) The Members are legal entities which can as such act only through their own members who are individuals. This clearly and obviously stands out of Article 7, paragraph 1, a) which makes reference to individual members and all persons claiming standing as participants in ISU activities. The Members can meet their obligations only through their own members and only if these members respect and perform the obligations of the Member. From this point of view an obligation of the Member is clearly binding also for its members. Therefore the members too must support the objects, activities and unity of the ISU and may not participate in any activities against the integrity, the exclusive role and interests of the ISU.
 - b) This very obvious principle is also exactly what reflects in Rule 102, paragraph 1, a) which, when stating the very basic requirement for eligibility, does not speak about fulfillment of obligations of Members but about fulfillment by an individual of "those obligations on the basis of which the ISU functions and governs all its activities.". There can be no doubt that the provision of Article 7, paragraph 1, b) specifies the most important obligations which are essential for the functioning of the ISU and all its activities, i.e. obligations on the basis of which the ISU functions and governs all its activities.
39. It is licit under Swiss Association Law that an association has the rules and right to protect itself against individuals who disagree with its rules and policies and elect to not challenge them within the organization and under its own rules, but rather attempt to participate from outside in activities which are harmful to its integrity and interests (Jean-François Perrin, *Droit de l'association*, Schultess, 2004, pp. 147 sq.; Margareta Baddeley, *L'association sportive face au droit*, Bâle et Francfort, 1994, pp. 95 sq.; Piermarco Zen-Ruffinen, *Droit du sport*, Schultess, 2002; p. 111). The ISU, like any association, therefore has the right to exclude from its ranks under eligibility rules any person who actively supports, forms and/or organizes a hostile competitor organization such as the WSF and who does not abide by the ISU rules and basic principles.
40. The argument that the above mentioned kind of activity of any person is protected by the freedom of speech or other general principles is also without merit. Freedom of speech guarantees the right to express a different opinion. Freedom of speech is as a matter of fact guaranteed within the ISU within the limits set forth by the law. Freedom of speech does however obviously not include the right of a person to remain a participant in ISU activities when that person actively organizes, supports and participates in activities of a hostile competitor organization with principles that are incompatible with those of the ISU stated in its own Constitution.

41. The Persons Concerned, although engaged in the activities of the WSF, deny that they have breached the eligibility rules. They claim that “the facts do not support the charges” and that any ruling of the Council supporting the charges would be “in violation of the ISU Constitution and Rules, the requirements of the CAS, the laws of Switzerland and other laws and legal precepts, including Article 82 of the treaty of Rome”. They all have sent in the same letters and among others the same legal Memorandum dated June 6, 2003 in their defense.
42. The Memorandum denies that any of the Persons Concerned is “a member of the WSF, much less a “founding member” of it. This argument is without merit. The positions of the Persons Concerned within the WSF are proven by the evidence. The WSF itself has published and distributed at the Washington press conference documents in which all these persons are named as “Founding members”. Their biographies were attached. In WSF documents published later, including those on the Internet, the Persons Concerned are called “members of the Planning Committee” of the WSF. In official papers of the WSF filed with the State of Nevada and the IRS, some of the Persons Concerned are named as Officers and Directors of the WSF (see para. 5 above).
43. None of these documents have been declared false or fabricated by any of the Persons Concerned. The Persons Concerned did not deny the authenticity of the evidence, but claimed that it did not support the charges or that it did not refer to him or her personally. Further, they claimed that some of the documents are based just on rumors. However, media news cannot be designated as rumors only since they are widely based on statements, interviews and information given directly by the Persons Concerned. Most of the articles used quotations and the Persons Concerned did not allege that these quotations were not accurate.
44. In addition, it is not the name or description of the function which is relevant and decisive but the activity and action taken. The evidence establishes to the satisfaction of the Council that all the Persons Concerned have been active in the secret formation of the WSF and/or in its public support after that formation was made public. Mr. Pfenning, Ms. Stapleford, Mr. Jackson, Mr. McKnight and Ms. Tombor have presented themselves as representatives of the WSF at the Washington Press Conference, sat at the head table under banners of the WSF and made public statements on behalf of the WSF. B. Lindgren and J. Garden have never denied that they were supporting “the goals and principles” of the WSF and they have never publicly protested against the inclusion of their names in the list of the “founding members” or of the members of the Planning Committee of the WSF. The argument that they “are not founding members” and cannot be members at all since the WSF does not have any members yet and could only have members in the sense of Member federations, and that they merely supported the fundamental principles that the WSF espouses and have therefore only exercised their right of free speech, is therefore similarly without merit.
45. The Memorandum further denies that the WSF is seeking to replace the ISU. It claims that the WSF is only trying to modify the ISU (the WSF would allow the ISU to continue as international sport federation for speed skating) and that even such modification is not in the hands of the WSF but in those of the IOC. This argument is without merit. The word “replace” has been used in many WSF documents and in statements of the members of the WSF group as can be seen in the evidence. Based on such statements, no

media had any doubt about the final goal of the WSF in this respect. Headlines like the WSF wants “to overthrow the ISU”, to “oust the ISU”, to “have the ISU frozen out of power”, “splinter group in power struggle with ISU” and others described correctly the understanding of the media of the objective of the WSF. The fact that WSF does not wish to replace the ISU as international sport federation for Speed Skating is therefore irrelevant. Similarly, the fact that recognition of sport federations is in the hands of the IOC as far as the Olympic Games are concerned does not change anything to the fact that the WSF has taken action to seek to convince the IOC to take such recognition away from the ISU and to give it to WSF.

46. The Memorandum claims that a person who is not engaged in ISU activities requiring the eligibility status at the time when this status is being investigated cannot become ineligible. It states further that the Persons Concerned have in the meantime either resigned from the ISU positions or asked their own national federations that their names be removed from the ISU List of Referees and Judges. Such argument has no logic and no sense. All seven Persons Concerned were at the time when they performed their activity in or for the WSF, ISU Officials. In addition, two of them, Mr. Pfenning and Mr. McKnight, were ISU Office Holders. Those positions required that all of them be eligible under the ISU Rules. The question is whether they, at any time during the period when they were and had to be eligible, violated the requirements for and obligations of eligible persons.

The declaration of loss of eligibility a) is namely the consequence of the breach of eligibility rules during the time when the Persons Concerned were eligible, and b) prevents the Persons Concerned from re-joining their ISU activities as eligible persons at any time in the future depending just on their own decision.

47. The Memorandum further argues that only skaters can violate the eligibility rules and that “there is actually no way for a “non-skater” previously meeting the standards of Rule 102/1, b) to “become ineligible” under rule 102 as all the provisions which lead to that result are applicable solely to competitors as provided in rule 102/2 or to persons “otherwise violating rule 102”. This argument has obviously no merit:
- a) Rule 102/1, a), (i) formulates the very basic and essential requirement and condition of eligibility which any person, whether skater or official or other participant in ISU activities, must meet in order to be and remain eligible. That condition reads that the person must “respect the principles and policies of the ISU as expressed in the ISU Constitution and Regulations, and fulfills those obligations on the basis of which the ISU functions and governs all its activities;”.
Breach of this basic condition of eligibility, i.e. non respecting the principles and policies as expressed in the ISU Constitution and Regulations, represents a breach of this rule governing eligibility.
 - b) Other provisions of rule 102 specify some additional requirements for specific groups of persons taking part in ISU activities the violation of which also results in loss of eligibility. However, these provisions do not cancel the need to satisfy the general requirement of eligibility stated in paragraph 1, a), (i) and applicable to all persons who have to be eligible.

- c) It is not correct that paragraph 2 applies to skaters only. Participating in a competition does not mean only skating in a competition. Referees, Judges and all other officials are also among those who participate in a competition. Therefore also a judge may become ineligible under this provision. In addition also Rule 102 para. 3, which reads “only eligible persons, including skaters, are permitted to take part in ISU Events, the Olympic Winter Games and other international competitions,” clearly supports this conclusion.
 - d) Although violation of the basic requirement for eligibility mentioned above does not need to be mentioned again in another provision, rule 102, paragraph 2 (iv) clearly gives additional support to this decision of the Council. The sentence that “a person becomes ineligible by otherwise violating this Rule 102” definitely covers the situation when a person violates the basic requirement set forth in paragraph 1, a), (i) of that rule.
48. In view of the above, the conclusion of the Memorandum, which in fact claims that an ISU official can never commit a breach of the eligibility rules and that the ISU does not have the authority to declare any of the Persons Concerned ineligible, is completely unfounded and contrary to the clear wording of the applicable provisions of the ISU Constitution and General Regulations.
49. Finally, the Memorandum refers to article 82 of the Treaty of Rome and to the decisions of the EU Commission and describes them as prohibition to sport bodies to prevent officials recognized by that sport body from participating in the activities of a competitor of such sport body. The Memorandum cites the “FIFA case” as the authority for the conclusion that such action of a sport body constituted an abuse of dominant market position and thus violation of Article 82. The Memorandum does not elaborate and merely refers to consultation of “The Study of the Impact of EC Activities on Sport”.
50. The Treaty of Rome is regulating trade between the Member States. It has been applied to sport bodies and to sport activities only in cases where the decisions of the sport bodies and/or the sport activities had an impact on such trade or on free competition of those who are entering the EU market. The EU does not regulate voluntary sport activities of persons who are not active on the (commercial) market. That definitely includes the case of ISU officials who are non paid volunteers and not earning their living through ISU activities.
51. The ISU is an association organized under article 60 sq. of the Swiss Civil Code. Its Constitution and Regulations are in conformity with the laws of Switzerland and there is no rule which would prohibit an association based on voluntary membership and voluntary activities:
- a) to regulate the duties, obligations and responsibilities of its voluntary officials and of those who wish to take part in the activities of the association and,
 - b) to apply eligibility rules and/or disciplinary sanctions, including exclusion, against such officials and participants who do not respect such duties, obligations and responsibilities.

Even when declared ineligible by the ISU, the Persons Concerned may join any other sport federation including the WSF and continue there their voluntary activities. Any person has the freedom of choice of activities he/she wishes to perform and of the association(s) he/she wishes to join, but must, on the other hand, accept the consequences of such choice when incompatible with the rules of another association.

52. The decision of the Council is based on the authority given to the Council in Rule 102, paragraph 7, b) which reads: "the ISU Council, upon presentation of such evidence as it considers sufficient at its sole discretion, may rule upon an alleged breach of the eligibility rules, whether or not any protest has been made against an individual's eligible status in skating".
53. After the announcement of formation of the WSF and review of the documents distributed by the WSF, the Council considered that there was prima facie evidence for applying the rule against the Persons Concerned and a letter to this effect was sent on April 9, 2003 to each of them. This decision of the Council was a preliminary decision which was in full compliance with the Rule 102/7. That was clearly stated in the letter. The Persons Concerned were given the 60 day period to furnish their explanation as required by subparagraph c) of the Rule and they were informed that only then the Council would make a final ruling.
54. Through this letter and the evidence submitted as support to the charges, the Persons Concerned have been validly informed of these charges pending against them. Their Memorandum dated June 6, 2003 and all the other letters and briefs they did submit do conclusively demonstrate that they have correctly understood the charges which they did precisely address in more than a hundred pages altogether raising all possible arguments in that respect. The argument that the charges have not been specified or specified enough, and all reservations made in that respect, are therefore completely unfounded and even frivolous.
55. In terms of procedure, the Persons Concerned have used their right and sent in their explanations and legal arguments in (an unprecedented) more than thirty-nine written submissions. All documentary evidence retained by the Council has been submitted to the Persons Concerned and each of them had or took several opportunities to express factual or legal arguments. All briefs and submissions by the Persons Concerned were copied and given to every Council member for review and consideration. A hearing was granted to furnish a further personal explanation in strict and legitimate accordance with rule 102 paragraph 7 c) although this was at the discretion of the Council. Although all the Persons Concerned demanded a hearing, only some of them appeared at the hearing. In addition, as stated in paragraph 25 above, those attending restricted their presence to reading statements only and refused, with the exception of Ms. Stapleford, to answer any questions. The procedure before the Council is therefore in full compliance with the general due process requirements of Swiss Law applicable to such decision by the executive body of a Swiss Law association.
56. Similarly, Rule 102, paragraph 7, b) constitutes a definite and admissible standard of evidence and any and all reservations made in that respect are without merit. The

decision of the Council is validly based on evidence it considers sufficient at its discretion under this standard.

57. The Council, after having carefully considered all the evidence made available to the Council and also all explanations, legal arguments and other defenses presented by the Persons Concerned, has therefore arrived at the conclusion that the eligibility rules of the ISU have been breached by Ms. Garden. Under rule 102 paragraph 7, a), the loss of eligibility is an automatic consequence of such breach.
58. An appeal against this decision may be filed with the ISU Appeals Commission within 21 days after communication of the decision to the Person Concerned (art. 22 paragraph 6 c) of the Constitution (2004 Edition).
59. However, for such case the Council decided in accordance with article 22 paragraph 10 of the Constitution (2002 Edition) that any appeal would have no postponing effect. The Council concluded that the actions of the Persons Concerned represent the most serious violation of the Constitution and Rules in the history of the ISU and that the integrity of the ISU would be very much jeopardized if the Persons Concerned were allowed to continue to be eligible for any ISU activity for which the eligibility status is required .

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International Skating Union

Ottavio Cinquanta, President

Fred Schmid, General Secretary

