

Protecting the Integrity of College Athletics Hearing Testimony for the Record

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My name is Brian Hess, I am the Executive Director of Sports Fans Coalition, a nationwide non-profit advocacy organization devoted to representing fans wherever public policy impacts the games we love. We are best known for leading the campaign to end the Federal Communications Commission's sports blackout rule, which we accomplished in 2014 despite massive opposition from the NFL and broadcast industry. We've also been on the front lines fighting massive media consolidations, the NFL's concussion cover-up, corruption within the United States Soccer Federation and their inequitable treatment of women and youth, and ticket fraud.

We advocate on behalf of sports fans in all of these areas and more in Washington, DC and state capitals around the country. I would like to thank Chairman Graham, Ranking Member Feinstein, and the Members of the Senate Judiciary Committee for convening a hearing on the important topic of college athletics. Sports Fans Coalition hereby submits this written testimony in support of legislation addressing the rights and needs of college athletes.

College Athletes Bill of Rights

Sports Fans Coalition enthusiastically supports the enactment of a College Athletes Bill of Rights. These rights should include name image and likeness, healthcare, greater academic opportunities, no penalty on transfers, the creation of a third-party enforcement entity, and collective bargaining.

Name, Image, and Likeness

Sports Fans Coalition has long supported the extension of name, image and likeness (NIL) rights to college athletes. The NCAA, sports apparel and merchandise companies, and media conglomerates earn billions of dollars in college sports-related revenue each year, yet claim to operate in the name of so-called "amateurism." While college athletic programs often help students gain a college education, they too often extract economic gains from athletes while denying those young men and women a real chance to complete their degrees or otherwise share in the bounty created by the athletes' own blood, sweat, and tears. When you become a student-athlete, you sign away your likeness to the NCAA. If you ever make any money off of your identity, you are stripped of your eligibility. Yet, the NCAA can rake in billions off of your

image if they want. This is absurd and unfair to thousands of athletes who struggle to afford books, food, or rent.

Healthcare

College athletes should have the right to free healthcare. The rigors of college athletics take a large toll on a student's body, and the health issues that result from some injuries can last a lifetime. The financial burden that students carry well beyond college from their injuries can be overwhelming and cause severe economic hardship. Athletic programs should fully cover the healthcare of their athletes while they are playing and the long-term healthcare costs associated with life-long injuries.

Coverage of healthcare is one thing, but athletic programs need to also create evidence-based standards for an athlete's wellbeing — especially with regard to brain injury. As Senator Booker pointed out in the hearing, an enforcement officer was never asked to investigate for failing to follow the NCAA's concussion protocol, let alone the lack of enforcement penalties for failing to comply. This is unacceptable. Rules are only as good as the teeth they are given, and the fact that the NCAA fails to enforce the health and safety of their athletes is appalling. Athletes deserve to have the right to enforcement.

Greater Academic Opportunities

There needs to be greater emphasis on the "student" part of "student athletes." Most student-athletes never go to play in the pros. As Mr. Radakovich admits in his testimony, most students "will embark on professions determined by their interests and by their achievements in the classroom."¹ Yet, with 20, 30, 40 or more hours per week devoted to their sports obligations, student athletes often cannot perform to their best ability academically.

Personally, when I was an undergraduate student at Virginia Tech, I tutored college athletes in the evenings. What I witnessed was appalling. The hours alone that my students had to dedicate to workouts, practice, and other team activities left them no time for academics. I watched as my students struggled to keep up with required homework assignments and in the classroom. It was tough to watch because I was also restricted as to the services I could provide. I was only allowed to meet with them at certain times and was prohibited from offering too much assistance on homework — even though that hour I spent with my students was the only time they had to do their homework.

¹ *Protecting the Integrity of College Athletics, Hearing before the S. Comm. on Judiciary*, 116th Cong. (2020) (statement of Dan Radakovich, Athletic Director, Clemson University).

The threat of losing a scholarship by prioritizing academics over athletics is terrifying to a student-athlete. If they focus too much on school and fail to perform on the field, they could lose their scholarship at the end of the year, which could have devastating economic consequences for the athlete. Because of this, many athletes take the bare minimum of classes required, and stretch out their college education to six years, resulting in at least two years of lost earning potential in the marketplace. This has a much larger impact on student-athletes of color who make up the majority of athletes in revenue-generating sports and already have to contend with pay disparities. Only by guaranteeing scholarship opportunities and loosening time constraints on athletes can students realize the right to educational opportunities that they deserve.

No Penalties on Transferring

It is imperative that Congress remove the double standard between coaches and athletes with regard to school transfers. College athletes should be allowed to change schools without penalty for any reason. Whether that be for better academic, economic, or athletic opportunities, college athletes should not have to sacrifice eligibility to pursue their dreams. Coaches are not held to the same standard, so why should their athletes?

Enforcement

None of these rights mean anything without an independent third party oversight entity which has enforcement capabilities. This entity should be comprised of athletes, policy experts, academics, athletic program directors, and fans. Fan representatives should be included in these decisions because their motivation is purely the love of the game. They have no ties to the business side of the collegiate sports industry; they can offer impartial insight that is designed to protect the game and those involved.

Collective Bargaining

Congress should expressly authorize collective bargaining rights for student athletes. As fans, we want our athletes to be safe, healthy, and happy. Collective bargaining would empower college athletes, protect them from multi-billion dollar corporate bullies, and provide the kind of educational opportunity that these athletes were promised.

Congressional action is necessary to overturn a decision by the National Labor Relations Board, which ruled that Northwestern University's football team could not organize since doing so "would not promote stability in labor relations." The 2015 NLRB decision also said that reforms

“may well change in the near future.”² The NLRB is not clairvoyant. The unwillingness of the NLRB to provide worker protections to college athletes demonstrates the need for Congress to do so.

The only way such a Bill of Rights would work is to create a national standard. Chairman Graham is right to be wary of the bidding war which will inevitably ensue as a result of the current and growing patchwork of state laws. Sports Fans Coalition supports such a federal effort to protect America’s student-athletes from exploitation.

Antitrust Exemption

The NCAA has proposed tying a new, expanded antitrust exemption to granting college athletes rights to their names, images, and likenesses. Sports Fans Coalition disagrees. Such an exemption is dangerous to the student-athletes who would have to live under the tyranny of the NCAA.

Sports Fans Coalition has blown the whistle time and time again on the antitrust abuses of pro sports leagues, including how they apply the antitrust exemptions they enjoy under federal law. For example, we successfully advocated to end the FCC’s Sports Blackout Rule³, which the NFL had justified for decades as an outgrowth of its antitrust exemption for broadcasting games. We proved this theory wrong as a matter of law and policy. After the FCC vacated the rule, the NFL voluntarily suspended its local blackout policy and, contrary to the league’s own predictions, the sky did not fall.

In SFC’s experience, if Congress gives a league an inch of antitrust exemption, the league will take a yard of additional anticompetitive, abusive behavior. Congress should not enact any new antitrust exemptions for the NCAA.

Gambling on College Sports

States are rapidly legalizing sports betting and creating just as much of a patchwork of laws as we see with respect to college athletes’ names, images, and likenesses. The issue of whether or not to allow gambling on college sports is complicated. Very often, state legislatures try to split the baby, so to speak, by prohibiting in-state betting on their local college games but allowing out-of-state betting on those very same games. This misses one of the main problems inherent in college sports betting: the people most likely to gamble on college sports are the students themselves — many of whom are too early in their development to make responsible gaming

² *Northwestern University*, 362 NLRB 1350, 1350-1388 (2015).

³ *Sports Black Out Rules*, Report and Order, 29 FCC Rcd 12053 (2014).

decisions. However, the black market will continue to persist if outright bans on college sports betting continue. To mitigate risks to college students, while allowing for a legitimate market to thrive, legislatures should legalize college sports betting only if the law establishes a minimum age of 21 and a prohibition of brick-and-mortar betting parlors near universities.

Sports Fans Coalition actively lobbies state lawmakers to pass sports betting consumer protections as a part of any legalization effort. Our Sports Bettors' Bill of Rights⁴ consists of five principles that should accompany these laws. They are:

1. The Right to Integrity and Transparency
2. The Right to Privacy and Data Security
3. The Right to Self-exclude
4. The Right to Protection of the Vulnerable
5. The Right to Recourse

The Commonwealth of Virginia and the District of Columbia both enacted The Sports Bettors' Bill of Rights within the last year, and more states are poised to do so when they return for the 2021 legislative session. However, Sports Fans Coalition also calls on Congress to set a federal baseline of these consumer protections in any legislation that aims to address sports betting, especially if college sports are involved.

Conclusion

Fans want the best for their teams' players. For student-athletes, that starts with giving them back rights over their own image and likeness, providing for the health and wellbeing of those athletes, expanding educational opportunities, and providing the means for athletes to advocate for themselves.

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⁴ David R. Goodfriend, *et al.*, *Sports Bettors' Bill of Rights*, Sports Fans Coalition (2018), https://d3n8a8pro7vhmx.cloudfront.net/sportsfans/pages/1785/attachments/original/1533053700/Sports_Bettors%27_Bill_of_Rights_White_Paper.pdf?1533053700.