

TESTIMONY IN SUPPORT OF HB 125

January 27, 2021 * Appropriations Committee

Chairwoman McIntosh and Members of the Committee:

I am a Professor of Law and the Director of the Center for Sport and the Law at the University of Baltimore School of Law. I also serve as the Associate Dean for Academic Affairs. My area of scholarly focus is Olympic and amateur sports law.

I support this important bill because it is a measured, common-sense response to issues that have long plagued intercollegiate sports, particularly in the area of athletes' health and wellbeing and athletes' use of their name, image, and likeness (NIL). The bill seeks to close important gaps left by current intercollegiate sport regulation, and is fully in step with reforms enacted or sought in the majority of states and that are now being considered at the federal level.

The college sports enterprise is one that traditionally has enjoyed freedom from federal and state regulation, with courts and legislatures generally deferring to the National Collegiate Athletic Association ("NCAA") to manage college athletics privately, with little interference. The NCAA is a private association whose rules are set by its member institutions. Student-athletes are not members of the NCAA and have no power to shape the many policies that directly affect their experience. While the NCAA has no legal duty to ensure athletes' health, wellbeing, or the quality of their education, it does profit handsomely from athletes' athletic achievements.

Today, the landscape is changing. Sports fans and courts alike are increasingly intolerant of the NCAA's sweeping rules that go farther than necessary to preserve amateurism, and instead amount to economically exploitive cartel behavior. Key to this is the NCAA's highly restrictive approach to athletes' rights. These policies operate in an environment of lavish salaries and economic opportunities for coaches and administrators, while athletes are forced to prioritize sports over academics and many do not have the funds for necessities. Beyond exploitive, today's model for college sports also has fostered unspeakable tragedies like that of Jordan McNair and the sexual abuse scandal involving Dr. Larry Nassar at Michigan State University. The current system is now widely considered unjust and unnecessarily inequitable, and is in many respects legally and morally unsustainable. Policymakers at all levels are recognizing that it is time for reform. With this bill, Maryland joins the national conversation on these issues and charts a course that will undoubtedly benefit Maryland athletes, institutions, and all of college sports.

First, the bill follows the approach of five states that have already enacted such legislation (California, Florida, Colorado, Nebraska, and New Jersey) and the more than 30 other states with similar legislation pending (or soon to be) that would restore athletes' rights to their NIL. This measure would allow a wide range of student athletes to do what all persons operating in a free market have a right to do—earn income from their NIL. Athletes have these rights before entering college athletics, and these are the same rights held by every other student on campus. Importantly, this legislation would not mandate that universities pay their athletes but would instead allow athletes to participate in the free marketplace without the restriction of anti-competitive NCAA rules.

Restoring athletes' NIL rights would also generate benefits well beyond football and men's basketball players. Female athletes—who have few professional athletic opportunities—would be able to take advantage of the short time in their lives when they are able to earn income from their athletic success. Indeed, studies have shown the potential for tremendous gender equity benefits if women athletes controlled their NIL rights, and the experience of National Association of Intercollegiate Athletics (NAIA) athletes—who have NIL rights—well supports this. Similarly, athletes from disadvantaged backgrounds who disproportionately earn the revenue generated by their athletic talent (and most of whom will not become professional athletes) will benefit greatly from this reform.

In addition, the bill's protections for athlete health, safety, and wellbeing will undoubtedly serve to strengthen Maryland college sports. As we learned with the Jordan McNair tragedy, it is imperative to address the sports medicine aspects of our intercollegiate sports programs to protect and promote athletes' health. Moreover, providing athletes with greater scholarship security, injury protections, and financial and life skills training ensures that students who participate in USM athletic programs will emerge stronger, better educated, and better prepared to meet the challenges of the 21st workforce. Because the NCAA does little to guarantee that an intercollegiate athlete can enjoy the top-notch education that our USM institutions are known for, and it does little to protect those athletes whose physical sacrifices earn so much for their campuses, it is critical that our state legislature act to fill this important gap.

In closing, I want to remind the committee that whenever there have been calls for reform in athletics, the NCAA and other regulators have predicted dire consequences and irreparable harms to sport as we know it. The Olympic Games once banned professional athletes. The NCAA warned that Title IX, the law mandating gender equity in education-based athletics, would destroy college sports. In fact, with these important reforms, fan interest and athletic participation surged, and we are all better for it. I therefore urge the committee to take action to support student-athletes and enhance the legitimacy of college sports in Maryland. Doing so is necessary to protect those whose talent and effort are the heart of the games. It is also necessary to protect the sustainability of the college sports enterprise, whose persistent inequities threaten the games that we all love. For these reasons, I ask for a FAVORABLE REPORT on HB-125.

Sincerely,

Dionne Koller