AkilPatterson_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

Senate Bill 518

Mr. Chair and members of the committee

In 2001 I had the honor to play football and be on the last ever ACC Championship team at the University of Maryland College Park; 10 years later, I would also serve as a Coach/ Administrator for Kerry McCoy's Wrestling ACC Championship wrestling team. All in total I have eight different Conference and Bowl Championship Rings. Since that time, I have lived a beautiful life having done Diversity and Inclusion work for the MLB, NBA, and NFL; but I had to also experience levels of discrimination as I played. I am one of the first Publicly gay Athletes in America to have the chance to come out in college sports, but one thing I Also had was to deal with bigotry, racism, and abuse from the public, fans, and even coaches.

Hear your name attached to words like Faggot, Pillow bitter and sinner, all while just merely trying to perform a duty in a contract. I even remember my Coach at Maryland when I wanted to take a class about LGBTQ rights to ask me, "What are you some faggot." These words at the time hurt me deeply, but I was not one to back down and passed it off as a mistake, but what was the mistake was that I had nowhere to turn to about a coach or staff questioning my academic choice. Today I am here to advocate for the 18-year-old Akil Patterson who was not tough enough to stop his coaches from limiting my academic life and understanding of self.

Athletes live a different life, waking up at 5 am for a 5:30 am workout halfway across campus and only a scooter or bike to make it on time in the cold. We sleep on buses and in corners of the gym with our books or tablets packed in our book bags. Even more so today having lived the BIG 10 life, many of our athletes miss 2 to 3 classes a week while traveling and they can not complain of protest to anyone because if they do, some type of retaliation may happen. They can be benched or scholarships were taken away for failure to comply with NCAA policies. We also know that athletes are not always open about issues with coaches and administration because they do not want to bring unneeded attention. Jordan McNair lost his life because the University Staff did not allow him to make a real choice in his life on how he wanted to live. After all, Jordan probably told to Suck it up. How many times have people been told to suck it up? Suck it up is not what a hurting athlete wants to hear and so we must pass legislation so that in the best interest of the student-athletes

Although Parts of this bill i am in favor of i would ask, that committee take a more in-depth look at the name of this bill. Saying Jordan's name does not mean that this bill is part of a legacy where we should connect it to NCAA reps, Lawyers or Agents.

Akil S. Patterson

Former Athlete / National Advocate for Sports

EmmettGill_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

Senator Justin Ready (R)
Maryland District 05
State Capitol
11 Bladen Street
Annapolis, MD 21401-1991

Emmett L. Gill, Jr., PhD, MSW, LMSW
NIL Incorporated
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25107 Manhattan Way
San Antonio, TX 78261

Support for The Jordan McNair Safe and Fair Play Act (SB518)

NIL Incorporated is testifying in support of SB518 - The Jordan McNair Safe and Fair Play Act (The Jordan McNair Act).

The Jordan McNair Act is important to NIL Incorporated (NIL Inc.) because we aim to mentor college athletes in the development of their authentic identities, integrate NIL opportunities into their educational experience, and develop and vet sponsorship opportunities for college athletes. In 2018, the University of Maryland (UMD) received $26.1 million from the Big Ten for television licensing revenue and has a $34 million contract with Under Armour. Terrapin college athletes do not receive any revenue from UMD sponsorship agreements despite their enormous and perpetual contribution, some do not graduate with functional degrees, and other do not graduate at all!

With respect to the 10 critical properties of Name, Image and Likeness (NIL) legislation, The Jordan McNair Act meets all of the 10 major criteria for "model" NIL legislation. Further, The Jordan McNair Act includes the most comprehensive task force of the 20 NIL bills under review by NIL Inc. and is the only proposed bill to include a special effort to explore the impact of NIL legislation on HBCU's. NIL Inc. not only supports but is enthusiastic about the creation and proposed efforts of the Council on the Fair Treatment of Student-Athletes. As a former staff member of UMD athletics, I believe college athletes mental health and wellness needs to be addressed by an outside entity to help ensure that athletic departments invest in best practices like mental health event crisis planning and multidisciplinary mental health staffers.

Carefully crafted NIL legislation is critical to statues that will truly enhance the educational experience of college athlete and move closer to a level playing field when it comes to the economic windfall triggered by college athletics. While this act will provide college athletes with opportunities to pursue name, image and likeness efforts, NIL Incorporated hopes the sponsors of this bill understand that "the devil is in the details".

At the University of Maryland at College Park Department of Athletics there are 46 individuals dedicated to marketing, media relations, digital marketing, and creative services. On the other hand, college athletes will be limited to an agent and financial advisor. This inequity increases the likelihood that athletic departments will have the ability to monopolize sponsorships and

severely limit the number of conflict-free NIL opportunities available to college athletes. NIL Inc. hopes the sponsors of this bill will explore provisions on the Jordan McNair Act that that will mandate that schools to provide the resources for college athletes to maximize their NIL opportunities while inserting checks and balances to minimize an athletic departments' ability to monopolize sponsorships that create conflicts (of interest) with opportunities for college athletes.

With respect to the proposed Council on the Fair Treatment of Student-Athletes Task Force. NIL Incorporated believes that the proposed composition of the task force is appropriate for the litany of issues associated with the college athlete experience. NIL would like to suggest that as opposed to the Council on the Fair Treatment of Student-Athletes mandating the appointment of a sports psychologists or a social worker to the task force – that both helping professional be required. Many of the issues that the Jordan McNair Act aim to address fall under the realm of the social work profession including - advocate, case manager, broker, and clinician. The Alliance of Social Workers in Sports (ASWIS) is a membership group of social workers that includes over 20 social workers who work in college athletics.

NIL Inc. would like to applaud Senator Ready for the proposed implementation date of the Jordan McNair Act – I am hopeful that the date will not be amended. The proposed implementation date from many NIL bills are at least two or more years away. Meanwhile, companies like INCFR are quickly partnering with athletic departments to provide video content for college athletes social media accounts. Thus, college athletes are essentially using their social media accounts to increase the social media reach for their athletic departments without any compensation. This is just one example of how athletic departments are moving to monopolize the marketplace prior to the implementation of NIL legislation.

In closing NIL Inc. supports The Jordan McNair Act, believes that "Justice delayed is Justice Denied" and hopes that the state of Maryland will enact this legislation on July 1st 2020.

JordanMcNairFoundation_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

Senate Bill 518 – Testimony

Marty McNair Jordan McNair's Father and Founder of The Jordan McNair Foundation.

In support of Senate Bill 518 . I remember when the coaches from Jordan's college of choice , sat at our kitchen table a few days before National Signing Day. We asked questions about his well being and playing time. They told us if Jordan came to spring practice well conditioned , he'd get an opportunity. We were assured your child will be safe here ,"we'll take care of him as if he was our own ". Of course we trusted and believed them . Unfortunately that wasn't the case, when Jordan complained and was in visible distress during conditioning workouts , the coaches didn't take care of him. We didn't think to ask about an emergency action plan if Jordan or any of his teammates got hurt on the field. Like so many parents we didn't think to ask what policies were in place , what guarantees were in place if he couldn't play football again , and most importantly we didn't think to ask anything beyond our information source. While Jordan was in a hospital bed for two weeks fighting for his life from a 100 percent preventable injury we continuously asked ourselves what questions did we not ask.The Jordan McNair Safety Act will educate and empower everyone about what we unknowingly send our student athletes into as an opportunity for a college education and a chance to play at a professional level of sports. The NCAA has a mere 10,000.00 life insurance policy on all student athletes in the event of a tragedy . A student athletes life is worth very little in the world of profitable collegiate sports ,this must change. The more empowered student athletes are in their true value and self worth gives them a voice in the decisions that are made regarding their safety, education, success and overall well being.

Koller_FAV_SB-518
Uploaded by: Senator Ready, Senator Ready
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February 11, 2020

William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building 2 East Wing
11 Bladen St.
Annapolis, Maryland 21401

Re: SB-518 – Council on the Fair Treatment of Student Athletes (Jordan McNair Safe and Fair Play Act) – Letter in Support

Dear Chairman Smith:

I am a Professor of Law and 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 the issues that have long plagued intercollegiate sports, particularly in the area of athletes' health and wellbeing and the use of their name, image, and likeness (NIL).

The college sports enterprise is one that traditionally has been immune from 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 off athletes' athletic achievements.

Today, the landscape is changing. Sports fans and courts alike are increasingly intolerant of the NCAA's commercialization of college athletics combined with an overly restrictive approach to athletes' rights. Details of lavish salaries for coaches and administrators, athletes without funds for necessities, and unspeakable tragedies like that of Jordan McNair have fueled the perception that the current college athletics system is exploitative, unjust, and unnecessarily inequitable. In short, the college sports model as currently operating is becoming legally and morally unsustainable, and it is time for reform. With this bill, Maryland joins that national conversation and charts a course that will undoubtedly benefit college sports.

First, the bill follows California's approach and the more than 20 other states with similar legislation pending to give students the same rights to their NIL as every other student on their campuses. This modest, common sense, measure would allow a wide range of student athletes to do what every other person operating in a free market has a right to do—earn income from their NIL. 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. It 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 one time in their lives when they could earn income from their athletic success. 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 free-market reform.

In addition, the bill's establishment of a commission to study athlete health, safety, and wellbeing will undoubtedly serve to strengthen Maryland college sports. There is currently no clear, effective mechanism for gathering information and making proposals that can balance the important interests at stake in college athletics. In the absence of such important work, we learn—as we did with the tragic death of Jordan McNair—far too late about the state of our athletic programs and the needs of those who participate in them. An independent commission can therefore help strengthen the legitimacy of our state's athletic programs and ensure that our understanding of the needs of athletes is not limited to times of scandal and tragedy. A Commission that engages in meaningful study of the complex issues involved, with the participation of athletes, could formulate balanced proposals to protect athlete interests and strengthen college sports.

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 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 SB-518.

Sincerely,

Dionne Koller

Dionne Koller

Ready_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

JUSTIN READY
Legislative District 5
Carroll County

Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 12, 2020

Higher Education – Council on the Fair Treatment of Student Athletes (Jordan McNair Safe and Fair Play Act)

HB 533 (Lierman); SB 518 (Ready)

The NCAA was founded in 1906 to protect athletes from "dangerous and exploitative athletic practices." Today, more than a century later, college sports generates billions of dollars in revenue every year while athletes - unlike every other student on their campuses - are denied the right to engage in the free market and benefit from their name, image, and likeness. State legislatures have long ceded oversight of college athletics to the NCAA. Over the decades, however, the NCAA has developed insular, rigid, and outdated practices that have not evolved. The NCAA has no legal duty to ensure the quality of an athlete's education; no duty to protect athletes from injuries or guarantee an athlete medical coverage for sports-related injuries; and has not held university athletic departments responsible for failures to ensure the safety and wellbeing of college athletes. Rather, they have doubled down on arbitrary standards for allowing transfers without losing eligibility, granting medical redshirts, and other quality of life issues.

WHAT THIS BILL DOES: PROMOTING FAIR & SAFE PLAY

The bill has two parts. First, it follows the lead of California and twenty other states considering similar proposals in ensuring that student athletes at Maryland public universities are not prohibited from using their name, image, or likeness to earn an income. Any college student who is not an NCAA athlete already has this right - this bill will ensure that all students, athlete or not, have this right. Second, the bill establishes the Commission on the Fair Treatment of Student Athletes to be a body of experts, parents, and athletes and make recommendations to the General Assembly regarding matters of student athletes' well-being, including issues related to:

- Health insurance and sports medicine care

● Educational opportunities for student athletes

● A student athlete's ability to transfer, or to engage in work while attending the public institution

● The ability to challenge provisions in the NCAA bylaws that inhibit the growth, needs, and long–term success of student athletes at public institutions

The primary goal of SB518 is the physical safety, health, and the economic well-being of Maryland student athletes. All college students – except student athletes - are free to use their talent or skills to earn a living while in school, from computer science to art students to engineering majors. Olympic athletes receive sponsorships but are still considered amateurs. However, NCAA athletes are denied the right to earn outside income. This an anti-competitive restriction that exacerbates athletes' financial challenges and is particularly unfair to the majority of male athletes and nearly all female athletes who lack professional sports opportunities and are therefore prohibited from earning an income during their prime athletic years.

The ability of athletes to earn income from third parties for the use of their name, image, and likeness is particularly important because of the known risks and long-term effects of college sports participation. College athletes often suffer serious injuries while engaged in NCAA-related activities:

● About 67% of college athletes suffer a major college sports injury and 50% suffer chronic injuries.

● An NCAA survey discovered that 50% of athletic trainers admit to knowingly returning players with concussions to the same game.

● Even with a full athletic scholarship, over 80% of college athletes are living below the federal poverty line.

Many college athletes come from low-income households, and many are the first in their families to go to college. In Division I, 56% of men's basketball players, 47% of women's basketball players, and 48% of football players are African-American. Student Athletes should have at least the same ability to support themselves as their fellow students have. They should be protected from harmful and unjust policies and practices. However, whether they come from poor, middle class, or wealthy backgrounds, student athletes should be allowed to earn income based on their name, image, and likeness.

It is time for us to step up for our student athletes and set a fair, safe, and level playing field for all. I ask for a favorable report for SB518.

SportFanCoalMD_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

Testimony of Brian Hess
Executive Director, Sports Fans Coalition

Chairman Pinsky and Members of the Committee:

Thank you for the opportunity to testify this afternoon in favor of S. 518, which provides for name, image, and likeness rights along with creating an adivsory council to advocate for college athletes.

My name is Brian Hess, and I am the Executive Director of Sports Fans Coalition. Founded in 2009, SFC is a national 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 and have testified before the Maryland legislature on ticket resale and other issues. We are the creators of the Sports Bettors' Bill of Rights, a set of five principles we believe should accompany sports betting legislation to protect consumers while maximizing state revenues.

Jordan McNair Safe and Fair Play Act is a great way to begin the conversation about the treatment of college athletes. The NCAA, sports apparel and merchandise companies, and media conglomerates earn billions of dollars in sports-related revenue each year, yet professes 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.

Personally, when I was an undergraduate student at a public university, I tutored college athletes in the evenings. What I witnessed was disgraceful. The hours alone that my students had to dedicate to grueling workouts, frequent practices, extensive travel, and other team activities left them no time for academics. My students struggled to keep up with homework, study for exams, and reach their potential in the classroom. Outside of tutoring, if I saw one of my students walking in the rain across campus, I was strictly forbidden from offering them a ride as that would be seen as "a gift based on their status." In other words, I have seen first-hand the gap between what athletes provide to a state university and what that university offers in return. Mine is not an isolated experience.

These unreasonable restrictions on student-athletes are exactly why the commission this bill creates is important. Today, college-athletes have no organized representation, no lobbyists, no one. Absent an advocate, it falls on the shoulders of the fans to stand up for our athletes against the exploitation of the NCAA. Maryland's college-athletes deserve more than the support of 40,000 sports fans. They deserve their Senators.

It is with that in mind that I urge the members of this committee to support S 518 and take this historic step to protect Maryland college athletes.

Thank you

UMDSamayKindra_FAV_SB518
Uploaded by: Senator Ready, Senator Ready
Position: FAV

The University of Maryland Student Government Association
Testimony for SB518
Education, Health, and Environmental Affairs Committee, Wednesday, February 12th, 2020
Higher Education – Council on the Fair Treatment of Student Athletes (Jordan McNair Safe and Fair Play Act)
POSITION: FAVORABLE

On behalf of the University of Maryland Student Government Association and University of Maryland students, we would like to thank Senator Ready for introducing this bill. We would also like to thank the Education, Health, and Environmental Affairs Committee for the opportunity to explain how the measures in this bill would positively impact student athletes at UMD and across the state of Maryland.

Unfortunate events over the past two years, namely the Jordan McNair tragedy, have made it evident that our student athletes are vulnerable in the current state of affairs. Any and all vulnerable student populations deserve their safety and wellbeing to be ensured first and foremost. Student athletes are no exception. By establishing the Commision on the Fair Treatment of Student Athletes, this bill begins the process of ensuring the safety and wellbeing of student athletes. Coming from a group of experts, students, and parents, the recommendations of the commission will come from a well-rounded perspective of the student athlete experience.

Additionally, this bill will have Maryland follow in the footsteps of California and over twenty other states by removing the current prohibition on student athletes from generating income from third parties based on their name, image, or likeness. Currently, all college students are allowed to use their talents and skills to earn a living while in college - except student athletes. By removing this prohibition, student athletes will finally have the same ability as their collegiate peers to earn an income with the talent and skills they accrue during their college careers. Allowing student athletes to earn income from third parties for the use of their name, image, or likeness also works towards ensuring their safety and wellbeing. Even with a full athletic scholarship, over 80% of student athletes live below the federal poverty line. Generating income from their name, image, or likeness will allow some of these student athletes to improve their current dire financial situations.

The policies laid out in SB518 have the potential to ensure the safety and wellbeing of student athletes while also allowing them to to earn a living based on their work in college just as any other student may do. As representatives of the University of Maryland Student Government Association, we ask you to vote yes on SB518.

Sincerely,

Ireland Lesley
Student Body President

Samay Singh Kindra
Director of Government Affairs

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Position: FAV

The Ethical Evolution of the NCAA

Consider a hypothetical scenario in which the National Collegiate Athletic Association (NCAA) embraces various radical reforms in pursuit of its stated goals of providing college athletes robust academic services; unique educational opportunities and experiences; financial assistance; wellness and health insurance; and personal and professional development. This fundamentally new and different vision for the NCAA and its member universities would affect in-house counsel who advise any business that interacts with the US$14 billion college athletic industry — from general counsel of universities to billion-dollar apparel manufacturers to the solo in-house counsel advising a local restaurant partnering with the small university down the road.

By Ellen M. Zavian and Sathya S. Gosselin

CHEAT SHEET

- *NCAA.* The US National Collegiate Athletic Association (NCAA) is a tax-exempt not-for-profit 501(c)(3) organization that serves as the dominant governing body for college sports with an annual revenue of nearly US$1.1 billion.
- *NIL.* As of October 2019, the NCAA will allow college athletes to be compensated for the use of their name, image, or likeness (NIL) by sponsors. However, no guidance has been released to accompany the change in policy.
- *Taxes.* The US Tax Cuts and Jobs Act of 2017 will have several consequences for universities, including no longer allowing the schools to offset income from profitable unrelated business activities with losses from unprofitable activities.
- *Business structure.* The NCAA could consider moving to a nonprofit with a for-profit arm, for-profit entity, or benefit or public corporation business structure to better serve the needs of college athletes.

Led by California, which recently passed a law that allows college athletes to earn revenue from their name, image, and likeness (NIL) beginning in 2023, the foundation of the NCAA is beginning to shift.

At a time of increased scrutiny of college athletics and ascendant revenues, calls for reform are getting louder. Athletes have filed numerous lawsuits against the NCAA, which have met with varying degrees of success. Elsewhere, at least some educators are dissatisfied with the current status quo in the NCAA's Division I, which can underdeliver on the NCAA's promise of a "world-class education." State and federal legislators in the United States are also now examining ways to increase economic opportunities for college athletes, which could incentivize college athletes to remain in school and complete their degrees before pursuing other opportunities, whether in sports or elsewhere. Led by California, which recently passed a law that allows college athletes to earn revenue from licensing their name, image, or likeness (NIL) beginning in 2023, the foundation of the NCAA is beginning to shift. In October 2019, the NCAA's top governing board voted unanimously to allow college athletes to be compensated for their NIL in some form or fashion, without yet providing any significant details. Clearly, things are changing.

This article is meant to spur dialogue and highlight possible changes to the current model, including one that leverages new forms of corporate structure to create a distinct ethical framework for college athletics.

Current status

As the dominant governing body for college sports, the NCAA is a tax-exempt not-for-profit 501(c)(3) organization. In 2018, total NCAA revenues were nearly US$1.1 billion, with Division I basketball and its March Madness basketball tournament bringing in US$900 million, about 90 percent of its annual revenue.[2] According to the NCAA's 2017 Form 990, "the NCAA is a member-led organization dedicated to well-being and lifelong success of college athletes with more than 1,100 member colleges and universities. The NCAA is united around one goal: creating opportunities for college athletes."[3] Further, per the NCAA, "[e]very year, the NCAA and its members equip more than 480,000 college athletes with skills to succeed on the playing field, in the classroom, and throughout life. They do that by prioritizing academics, well-being, and fairness.[4]

One might question, however, whether the NCAA is fulfilling its stated ethical mission with regard to the well-being of college athletes.[5] Graduation rates, for example, vary drastically by sport and race. Within six years of matriculation, graduation rates for certain college athletes can be as low 40 or 50 percent (or as high as 100 percent for certain sports, divisions, and conferences), and college athletes given a four-year scholarship must pay tuition if they remain in school beyond four years.[6] The injury rate for college athletes is about 12,500 per year.[7] And while all college athletes are required by the NCAA to have health insurance, the NCAA does not require colleges to pay for it. Thus, when an athlete is injured, the primary reimbursement often comes from an athlete's parent's insurance, if at all.

As questions mount about whether the NCAA is fulfilling its stated mission, we consider two areas for potential reforms: (1) greater engagement with, and fewer economic restrictions on, college athletes; and (2) changes to the NCAA's business model that might better facilitate its stated mission.

Increasing economic and governance opportunities for college athletes

Perhaps the most pressing reform issue among NCAA member schools is the severe economic restrictions that are a condition of an athlete's eligibility. These restrictions are exclusive to college athletes, in stark contrast to the general student body — and NCAA coaches, athletic directors, and executives. Even as incoming revenues from broadcast contracts and corporate sponsorships soar, college athletes cannot monetize their talents and achievements above the cost-of-attendance scholarship, which the NCAA defines as the sum total of their educational expenses. Schools cannot give, and college athletes cannot accept, payment for their athletic contributions, even if both parties are so inclined. College athletes also face myriad outside employment restrictions, beginning with their existing athletic workload (often as many as 40 hours per week for Division I athletes, in season). Were that not enough, college athletes may lose their eligibility if

Ellen M. Zavian was the first female NFL agent and has represented US women's soccer, softball, break dancers, and extreme athletes. She currently teaches sports/negotiation law at George Washington University in Washington, DC (for both the MBA program and law school), and she serves as a coach to the GWU Law Students Moot Court program. She is also general counsel and executive director for the United Breakin Association. *zavian@gwu.edu*

Sathya S. Gosselin is a partner in Hausfeld's Washington, DC office, where he served as trial counsel in the landmark *O'Bannon v. NCAA* litigation, in which he examined and cross-examined witnesses at trial, deposed key NCAA executives, briefed complex constitutional issues advanced by the NCAA and television networks, and helped negotiate a US$40 million settlement with Electronics Arts Inc., which was distributed among current and former college athletes. *sgosselin@hausfeld.com*

they license their names, images, and likenesses (NIL) to third parties, such as corporate sponsors, at least under present rules. Under the existing rules,[8] it is virtually impossible for college athletes to earn money, a bizarre and unique status in a nation that otherwise prizes economic liberty and freedom.

Easing restrictions on college athletes' ability to earn money

Current NCAA rules prohibit college athletes from receiving benefits or compensation from licensing NIL rights to local or national businesses, depriving college athletes of an important source of revenue.[9] Such endorsements are commonplace and represent a substantial income stream for *professional* athletes. Sidestepping for now the debate about the ability of member schools to compensate college athletes for their athletic contributions, there is good reason to explore lessening restrictions on NIL compensation *from outside sources*, because they come, or at least can come, at no cost to the schools.[10] The California legislature, among those in other states,[11] has recognized the issue — and recently enacted Senate Bill 206, which prohibits California postsecondary educational institutions from interfering with a college athlete's ability to receive compensation as a result of an athlete's licensing their NIL rights to third parties, thereby extinguishing the NCAA's current rule, at least insofar as it applies to California schools. (The law provides certain safeguards to prevent conflicts between individual sponsorships and team sponsorships.) It does not take effect until January 1, 2023. Other state legislatures are already following suit, for reasons that may include preventing California schools from having a significant recruiting advantage. Finally, after California took the first step to compensate athletes, the NCAA changed

The history of NCAA athletics

Long ago, when Harvard and Yale met in a sporting competition, getting a ticket was as difficult as getting an NCAA Final Four ticket today. Ivy League rivalries were all the craze in the mid-1800s, starting in the sport of rowing and then moving on to American football. A freestanding organization governed each sport. For example, the Rowing Association of American Colleges or the Intercollegiate Rowing Association set the eligibility and competition rules for rowing.

This system worked well until other schools began fielding teams, creating inconsistent rules. And injuries quickly became a problem. Then-President Theodore Roosevelt took action in response to on-field football deaths by encouraging 62 higher educational institutions to become founding members of the newly formed Intercollegiate Athletic Association of the United States (IAAUS). The IAAUS officially opened its doors in 1906, and took its present name, the National Collegiate Athletic Association (NCAA), in 1910.[1]

What started as a mere discussion group morphed into a rulemaking, nonprofit entity that established its first national championship in 1922, the National Collegiate Track and Field Championship. Eventually, its single rule book came to span multiple volumes, and the number of championships grew exponentially (the current basketball championship emerged in 1939). It did not take long until the NCAA hired a full-time leader, Walter Byers, in 1951, who further developed the NCAA's media rights deals over their ever-growing inventory of games.

The Olympics' approach to NIL can serve as a model for the NCAA

Prior to the 2016 Rio Games, Olympic athletes frequently tweeted "thank you" messages about their sponsors before the Olympics because, once at the Olympic Games, mentions of their sponsors were not permitted until the end of the events. Rule 40 of the Olympic Charter limits the use of an athlete's image during the dates of the Games.

WHAT IS RULE 40?
Under a previous iteration of Rule 40, only Olympic sponsors, such as McDonald's, Nike, Visa, and Coca-Cola, could use an athlete's image in conjunction with the Olympic Games to market or promote their brand or company.

The Rule was created to "preserve the unique nature of the Olympic Games by preventing over-commercialization" of the event. However, many skeptics argue it has more to do with preference for Olympic sponsors that have spent millions of dollars on the exclusive marketing rights during the spectacle.

IN 2015, RULE 40 WAS RELAXED:
The International Olympic Committee (IOC) decided to allow "generic" or "non-Olympic advertising" during the Olympic Games (i.e., not mentioning the Games themselves or utilizing Olympic trademarks), starting in 2015. In addition, the IOC allowed the Olympic athletes to comment on social media about their own sponsors as long as they did not use any Olympic properties in doing so. For example, the non-Olympic sponsors could not use verbiage like "Summer Games," "Olympiads," or "Olympic Games," to name a few. If a message violating these rules occurs, the athlete can be disqualified, or their medals can be stripped.

IN 2019, RULE 40 WAS RELAXED FURTHER:
In October 2019, the US Olympic and Paralympic Committee (USOPC) relaxed Rule 40 even more, permitting athletes the right to thank their personal sponsors, appear in advertisements for these sponsors, and receive congratulatory messages from them during the Tokyo 2020 Olympic Games.

While the official partners of the USOPC will still maintain exclusive use of terms like "Olympic Games," the athletes' personal sponsors will be permitted to push out generic ads even during the Olympic Games. Notably, a German federal agency ruled in summer 2019 that the IOC was subject to existing competition laws, paving the way for this revised sponsorship rule.

As state legislatures, universities, and the NCAA move toward the licensing of college athletes' NIL rights, the current parameters of Rule 40 can provide a model for athletes to interact with personal and team sponsors in a way that does not detract from or interfere with the overall endeavor.

course to allow college athletes to be compensated for their NIL, although guidance for implementation is still forthcoming. Previously, the NCAA had vigorously opposed this and other similar efforts as inconsistent with its principles of amateurism.

When, in 2019, the NCAA convened a working group on NIL reforms,[12] it presumably did so in response to pending legislation. That group, whose work continues, "will not consider any concepts that could be construed as payment for participation in college sports," consistent with the proposal embodied by SB 206. Rather than leaving these important changes to the states alone, which may breed inconsistencies, the NCAA might instead choose to embrace the proposal embedded in SB 206 and begin seriously exploring how to regulate the practice. The NCAA's sudden receptiveness to NIL compensation by third parties leaves the door open as to how all three NCAA divisions might craft their own rules.

Never before have college athletes been so uniquely situated to monetize their NIL rights. With the advent of social media, individual branding and self-promotion have become accessible to everyone. Allowing athletes to earn money from their NIL rights could come at no cost to the NCAA or its member schools and provide new financial resources to college athletes, the majority of whom will never go pro. While the NCAA and its member schools have suggested that there is serious potential for individual sponsorships to conflict with *team* sponsorships — every professional league has found a way to accommodate both, in good faith. So too can be the case here, with the appropriate planning and framework.

Changes to the NCAA's business model

The NCAA could also consider moving away from its nonprofit status to another business structure to better serve the needs of college athletes today.

For-profit entity

The NCAA could restructure itself as a for-profit limited liability corporation (LLC) or a C-corporation in order to take full advantage of sponsorship opportunities. Freeing itself of its nonprofit status would allow sponsorship dollars to flow in with total disregard as to its effect on the nonprofit's unrelated business income tax (UBIT) or liability. Anytime a nonprofit engages in a transaction with a for-profit, the nonprofit organization, such as the NCAA, has an obligation to avoid any private benefit

and figuring out the definition of private benefit could get one in trouble if one errs in the wrong assumptions.[13]

Even if the NCAA is slow to embrace this structure, some of its schools are moving their athletic departments from nonprofit to for-profit status already. One example is Florida State University (FSU). Although one suspects the motivation is to lower the transparency requirements (a nonprofit must publish its 990 tax returns, for example), this move may also allow schools to prepare for the sea change under the new 2017 tax laws as well as laying the groundwork for the inevitable: paying college athletes for their intellectual property (IP). Presumably, the NCAA would seek a model that retains a great deal of its revenue while still not opening itself to tax liability.

Nonprofit with a for-profit arm

While professional leagues, such as the National Football League, National Basketball Association, National Hockey League, and Major League Baseball, could choose to be a nonprofit member association, they currently are not set up as such. And, as for the player associations in these same professional leagues (National Football League Players Association (NFLPA), National Basketball Players Association (NBPA), etc.), are 501(c)(5), labor union nonprofit entities with a for-profit arm. For example, the NFLPA has Players Inc., a separate limited liability corporation in which 100 percent of the stock is owned by the NFLPA. Similarly, the NBPA has recently established a for-profit entity named the National Basketball Players Inc. for the same purposes — marketing their athletes.

Thus, the precedent set at the pro level could convince the NCAA to do the same, running its marketing and championships out of a for-profit arm. This would free the new entity of some Interal Revenue Service restrictions on sponsorship for nonprofits. Taking it a step further, it could also open up the NCAA to explore a separate for-profit entity for basketball and football, the dominant revenue-generating sports, that many argue can no longer be deemed "amateur" and fit within their mission statement. In addition, this could allow the athletes to own a portion of the stock in the for-profit entity, permitting the dividends from the stocks to be funneled into an escrow account, ultimately shared with the athletes after graduation.

Although the NCAA is in no hurry to replicate its professional league brethren, some of its member schools have not hesitated. As noted earlier, nonprofit schools like FSU have recently established a new organization, a for-profit entity, that will run the school's athletic department (The Florida State University Athletics Association). While

Presumably, the NCAA would seek a model that retains a great deal of its revenue while still not opening itself to tax liability.

The impact of the 2017 tax law on educational institutions

The US Tax Cuts and Jobs Act of 2017 will have several consequences for universities.

- **Certain private colleges and universities will be subject to a 1.4 percent excise tax on net investment income.**
- **There is a 21 percent excise tax on annual compensation of US$1 million or more paid to the organization's top five highest paid employees.**
- **Charitable deductions paid to colleges associated with preferential seating at athletic events have been eliminated.**
- **Nonprofits with multiple unrelated business activities are no longer allowed to offset income from profitable business activities with losses from unprofitable activities.**

Robert Turner, former college athlete and current professor, on the state of the NCAA

HAS THE NCAA OUTLIVED ITS PURPOSE?
In its current structure, yes. When the NCAA first started, college sports were defined as amateur, and the NCAA was solely a rules organization. Since then, much has changed. However, the NCAA is still trying fit into their original "amateur" definition. This is like trying to shoehorn an amateur sport into a newer model. Especially for the revenue-generating sports, such as football and basketball. Conversely, for sports in categories — such as Division III — that do not award scholarships, the amateur definition still fits.

WHAT IS AT THE HEART OF THE ISSUE?
This is really about workers' compensation. Athletes get injured and need insurance for life. This is costly and the NCAA and/or NCAA universities do not want to take out the costly insurance policy for their athletes. Thus, they fight to keep a warped definition of amateur to save millions, on the backs of their athletes.

WHAT IS THE SOLUTION?
Universities have no business in the sports business. Thus, simply remove the money. Division III is a perfect money-free example since there are no issued athletic scholarships, no large budgets, and no highly paid coaches. All NCAA member institutions should be at this level, and the revenue-generating sports like basketball and football should be allowed to embrace another independent business model.

HOW ARE SOME IMPEDIMENTS TO AND CATALYSTS FOR THIS SOLUTION?
We know that a congressman from a state like Alabama (a Division I school) is heavily lobbied by the NCAA to keep the status quo. Consequently, at the federal level, there is zero interest in changing the model. However, at the state level, California, with many top public schools, could come in and mandate some rule changes for their "citizens," possibly causing other states to follow suit.

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the school is promoting the message of synergy, some have seen this as controversial. This move to privatize FSU's athletics department essentially gives it all the benefits of being a private corporation while still operating on behalf of a taxpayer-funded nonprofit institution. In addition, under Florida state law, the school is immune from any tort judgments over US$200,000. This gives the institution enormous benefits typically unavailable to private corporations.[14]

Furthermore, the creation of a for-profit subsidiary could lay the best tax foundation if any direct IP payments to athletes begin (the recent California law does not address this possibility). It would allow for a full business tax deduction for the IP payments, rather than having to deal with the much more restrictive tax deduction rules governing tax-exempt organizations that earn unrelated business income (UBI).

Another motivator is the new 2017 federal tax law, which changes provisions applicable to nonprofit educational institutions. May 15, 2019, marked the beginning of a period in which nonprofits, such as athletic departments, now have to pay taxes on activities that were not taxable prior to the 2017 changes.

For instance, there is a new requirement for tax-exempt organizations known as the "separate silos" breakdown. This new silo rule requires nonprofits to break down unrelated business income into "separate silos" for each "trade or business" activity, and unlike their for-profit counterparts, nonprofits can no longer aggregate profits and losses in one UBI bucket. Thus, organizations with multiple unrelated business activities can no longer offset income from one line of activity with losses from another line of activity. Prior to the new rule, organizations could aggregate the income and deductions from all of their unrelated business activities.[15]

Applying this to the FSU example, the nonprofit athletic department could only deduct the player IP payments from a bucket on income that was "related" to the player payments (activity). Conversely, as a for-profit entity, FSU's athletic department can now deduct the player payments from any income as a business expense.[16]

Another new rule in the 2017 tax law applies a 21 percent excise tax on the top five nonprofit employee compensation packages in excess of US$1 million. This hefty tax applies to a college coach's base salary as well as any additional "parachute" payments and noncash benefits (such as apparel deals). Given that 78 percent of college football head coaches in Division I make more than US$1 million per year, it is no wonder the colleges are rethinking the athletic department

structure. Colleges are well aware of the controversy that can ensure every time a coach is paid a high-level package, which can undermine other organizational priorities.[17]

Applying this to the highest paid college coach provides an example of why other athletic departments may follow suit. Under the 2017 tax law, Alabama's contract with its football coach Nick Saban could cost the university at least US$1.2 million — on top of the US$11.125 million in basic compensation he was paid in 2018. The tax also applies to his US$4 million signing bonus issued in 2018 and his incentive bonuses that could total US$700,000 each year of his eight-year deal, running through Jan. 31, 2025.[18]

Furthermore, the FSU athletic department could also be looking at keeping their donors happy. Under the new tax law, donations are no longer considered tax deductible if their contributions are tied to rights to purchase tickets and/or business expenses incurred for entertainment costs associated with taking clients to sporting events. Because this generous benefit no longer exists, schools can now move to the for-profit model with fewer complaints from their biggest donors.[19]

Benefit corporation

The NCAA could also register as a benefit corporation. Indiana is one of more than 30 states that have enacted legislation to permit the formation of benefit corporations (also known as a B-Corp). Indiana Code Section 23-1.3-2-7 defines a B-Corp as a for-profit entity that maintains a mission to provide some public benefit. While a corporation certainly does not need to be a B-Corp to do good, the primary goal of for-profit entities is to benefit its shareholders, not to provide a public benefit.

Imagine if the NCAA restructured under the B-Corp model: It could set aside a portion of its revenue (e.g., 80 percent), to go to the nonrevenue sports solely. This would enable the two revenue-generating sports, football and basketball, to either create their own for-profit entity or receive the 20 percent remaining in the B-Corp.

Should the NCAA register as a B-Corp, it would have to stick to its designated "good" to maintain its status and shareholders and could not extinguish or dilute the commitment from year to year. This is quite different from a for-profit company contributing to a charitable organization where the selected tax-exempt organization can change from year to year.

Public corporation

While some B-Corps are privately held, such as Ben and Jerry's ice cream, a B-Corp can go public if it keeps its mission "to do good" as part of the transformation. This would allow the NCAA to register as a B-Corp, sell stock privately or publicly, and even file for an initial public offering. This is no different than what the Pac-12 conference is currently exploring. According to reports, the Pac-12 has multiple bids of at least US$750 million from companies seeking to become equity investors in the conference. No college conference had ever sought outside investors before.[20] Should the Pac-12 and other conferences move in this direction, perhaps a restructuring of the relationship with the NCAA will need to follow.

Change is coming

The NCAA knows change is coming, and it must respond to a significant shift in public perception and opinions regarding college athletics. Until the organization enacts significant reforms, college athletes will continue to resort to the courts, and federal and state legislators will press for external solutions.[21] Taxpayers, who fund public universities nationwide, can also serve as a voice for change. As the NCAA wrestles with its ethical dilemma, in-house counsel should keep an eye on developments as they will have wide-ranging effects on businesses that partner with college and athletes amid a changing landscape. **ACC**

Until the organization enacts significant reforms, college athletes will continue to resort to the courts, and federal and state legislatures will press for external solutions.

NOTES

1 *https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1393&context=sportslaw.*

2 *www.usatoday.com/story/sports/college/2018/03/07/ncaa-reports-revenues-more-than-1-billion-2017/402486002/.*

3 *https://projects.propublica.org/nonprofits/organizations/440567264/201811719349300516/IRS990.*

4 *www.ncaa.org/opportunity/.*

5 *https://nccsir.unc.edu/.*

6 *www.congress.gov/bill/101st-congress/senate-bill/580.*

7 Two entities that compile injury statistics for the roughly 380,000 male and female college athletes. The NCAA and the National Athletic Trainers' Association have an injury surveillance system that collects injury reports submitted by trainers. It has been in operation since 1988. Through 2004, there were 200,000 injury reports — filed when an athlete misses a day or more of practice or competition — which works out to about 12,500 injuries per year. That number has been relatively consistent over the years. *www.livestrong.com/article/513231-frequency-of-injury-among-college-athletes/.*

8 See 2019-2020 NCAA Division I Manual, h*ttps://web3.ncaa.org/lsdbi/reports/getReport/90008.*

9 *See* NCAA Rule 12.1.2 (detailing the various ways in which an individual "loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport" if he or she receives certain payments), *https://web3.ncaa.org/lsdbi/reports/getReport/90008.*

10 We leave for another day any debate about whether corporate sponsorship of athletic departments might diminish as individual opportunities for college athletes increase. We note, however, that broadcast revenue in Division I continues to rise at such a rapid rate that we think this concern is unlikely to develop.

11 We refer here principally to *O'Bannon v. NCAA* (N.D. Cal.); *Keller v. NCAA* (N.D. Cal.); and *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.* (N.D. Cal.), although other recent cases have also advanced the interests of college athletes. In the interest of transparency, we note that one of the authors, Mr. Gosselin, served as counsel to the *O'Bannon* plaintiffs.

12 *www.ncaa.org/about/resources/media-center/news/ncaa-working-group-examine-name-image-and-likeness.*

13 *www.councilofnonprofits.org/tools-resources/corporate-sponsorship.*

14 *https://deadspin.com/florida-state-is-privatizing-its-athletic-department-to-1835378761.*

15 Congress intended "that a deduction from one trade or business for a taxable year may not be used to offset income from a different unrelated trade or business for the same taxable year." Here's the full statute (26 U.S.C. § 512(a)(6)):
(6) Special rule for organization with more than 1 unrelated trade or business In the case of any organization with more than 1 unrelated trade or business —
(A) unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),
(B) the unrelated business taxable income of such organization shall be the sum of the unrelated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and
(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.

16 The 2017 law changes the way tax-exempt organization will report Unrelated Business Income(UBI) on more than one unrelated trade or business. Specifically, it implemented the "silo rule," which means organizations can no longer offset the net income of one unrelated business with the net losses of another. So, every unrelated business now stands alone (except parking and transportation), and organizations will be required to pay income taxes on the profitable ones as individual entities. *www.irs.gov/pub/irs-drop/n-18-67.pdf.*

17 *www.cnbc.com/2017/12/20/tax-reform-smacks-down-excessive-nonprofit-executive-pay-commentary.html.*

18 *https://www.usatoday.com/story/sports/2018/07/27/nick-saban-alabama-coach-new-contract-highest-paid/852534002/*

19 *www.usatoday.com/story/sports/ncaaf/2017/12/20/college-sports-impact-new-tax-bill-millions/968741001/.*

20 The numbers are based on the valuation for NewCo, which is the holding company for the conference's media rights and networks. For example, a bidder who valued NewCo at $5 billion would invest $750 million in exchange for a 15% equity stake. Sources say that the conference has received multiple bids based on a valuation of $5 billion or more. To have bids come in at those numbers is encouraging for the conference's leaders. *www.cougcenter.com/2019/6/7/18656758/pac-12-equity-partner-media-rights.*

21 "The chairman of a powerful group of Republicans in the US House called on the NCAA to allow college athletes to profit from their name, image and likeness, joining a growing chorus of influential people advocating for major change to the way colleges treat college athletes and threatening legislation if the NCAA does not make changes quickly. Rep. Mark Walker, from Greensboro, wrote that current NCAA rules regarding the name, image and likeness of college athletes 'strips them of their identity and sovereignty over their public image.'" *www.newsobserver.com/opinion/article210946329.html.*

ACC EXTRAS ON... Lawyers and professional sports

ACC Docket

Genesis of an Industry: The Emerging Workforce and Regulations of esports (April 2019). *accdocket.com/articles/resource.cfm?show=1498889*

From the Conference Room to the Locker Room: Lawyers in Sports Operations (April 2018). *accdocket.com/articles/lawyers-in-sports-operations.cfm*

What In-House Counsel Can Learn from the Fantasy Sports Industry (Sept. 2016). *acc.com/resource-library/what-house-counsel-can-learn-fantasy-sports-industry*

ACC HAS MORE MATERIAL ON THIS SUBJECT ON OUR WEBSITE. VISIT *WWW.ACC.COM,* WHERE YOU CAN BROWSE OUR RESOURCES BY PRACTICE AREA OR SEARCH BY KEYWORD.

ACC LEGAL OPERATIONS
Maturity Benchmarking Survey

Submission deadline extended through January 24.

ACC Maturity Model
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ACC has teamed up with Wolters Kluwer to learn where legal departments currently stand across 15 legal operations competencies—such as contracts management, financial management, and information governance—as well as across dozens of sub-competencies.

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TESTIMONY OF
Professor Ellen M. Zavian, Esquire
JORDAN MCNAIR ACT

March Madness is less than a month away and the NCAA is hard at work. But instead of being focused on the hardwood court, it has turned its focused to the Judicial Court, fighting lawsuits trying to change their needed definition of 'amateurism'.[1] "Amateurism", just what does it really mean?[2] [3]

1906: the NCAA was created to protect the health of the players. At this time, athletes were called 'students' and the NCAA forbid any payment or financial aid;[4]

1910, the NCAA decided that athletes would, henceforth, be known as 'amateur-athletes', to make sure they were not paid;[5]

1951, the NCAA President, Walter Byers, decided the term 'amateur-athlete' would be replaced by 'student-athlete' to protect his institutions from every having to pay their athletes workers' compensation;[6]

1988, the NCAA fired Byers when he began to change his mind and push for 'student-athlete's' right to access commercial endorsements.[7]

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[1] https://en.wikipedia.org/wiki/National_Collegiate_Athletic_Association
[2] Zavian/Gosselin NCAA Ethical Evolution, ACC Docket, 2020, https://www.accdocket.com/articles/the-ethical-evolution-of-the-ncaa.cfm

[3] https://en.wikipedia.org/wiki/Amateurism_in_the_NCAA
[4] This came after 18 student deaths and 150 severe student injuries.

[5] 1916, the NCAA decided that 'amateur-athletes' could only play for the pure enjoyment and development of their mental, physical, moral, and social skills, and not for any payment in return;

1920's, the NCAA decided that 'amateur-athletes' were forbidden from accepting any type of scholarship for their athletic performance;

1948, the NCAA decided to roll out the 'Sanity Code', which prohibited colleges from providing 'amateur-athletes' with any additional financial aid unavailable to the ordinary college student;

1949, the NCAA decided the 'amateur-athlete' could receive payment to only cover their tuition and fees in order to attend school, but not to cover room and board;

[6]1950's, the NCAA decided 'student-athletes' would now get room, board, and laundry money via an athletic scholarship.

[7] 2001, the NCAA decided to allow Olympian athletes to earn money off their athletic ability when performing in the Olympics;

2011, the NCAA President Mark Emmert allowed Division 1 institutions to give an extra $2000 stipend to student-athletes.

2014, the NCAA lost a lawsuit, O'Bannon v NCAA, but after appeals, the Courts ruling kept the status of student-athletes as amateurs;

2019, California passed the Fair Pay to Play Act, giving the rights of student-athletes to profit off their image and likeness without losing their scholarship or eligibility.[8]

When it passed, Lebron James tweeted "Game Changer"; [9] [10]

In Former NCAA President Byers' book *Unsportsmanlike Conduct: Exploiting College Athletes*, Byers stated the NCAA is "a nationwide money-laundering scheme." (P. 73).[11] Furthermore, it is time to 'free the athletes' and enact a "comprehensive College Athletes' Bill of Rights." (P. 374). [12] [13]

That is what we are here to do today.

Don't be fooled by the recent NCAA vote in 2019 that they would allow student-athletes to make money off their names "in a matter consistent with the collegiate model". Let this new term, "collegiate model" not fool those in this room. It is a made-up term, like 'student-athlete'.

2013, the NCAA prohibited Jeremy Bloom, an Olympic level skier, from financially benefiting from skiing since he played an NCAA scholarship sport.

[8] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB206

[9] Today, the athletes want the very same thing their institutions fought for back in 1984. In the 1984 US Supreme Court the individual colleges won back their TV rights from the NCAA. Now it is time for the athletes to have the same right.

[10] https://www.si.com/nba/2019/09/05/lebron-james-california-student-athlete-compensation-bill-sb-2016

[11] Byers also revealed that the NCAA developed the term "student-athlete" in order to insulate the colleges from having to provide long term disability payments to players injured while playing their sport (and making money for their university and the NCAA). (P. 69).

[12] He says that "[t]his is *not* a suggestion for new government controls; on the contrary, it is an argument that the [government] should require deregulation of a monopoly business operated by not-for-profit institutions contracting together to achieve maximum financial returns." Doing so would treat the "twin curses of exploitation and hypocrisy that have bedeviled college athletics in direct proportion to its intensified commercialization," and would prevent colleges from denying players the freedoms available to other students. (P. 375). Finally, he says, "Collegiate amateurism is not a moral issue; it is an economic camouflage for monopoly practice. . . , [one which] 'operat[es] an air-tight racket of supplying cheap athletic labor.'" (Pp. 376, 388).

[13] https://en.wikipedia.org/wiki/Walter_Byers

Well, we are at this time in history that we need to take care of those that come to our state with the best intentions and limited protections/resources.[14] You must ask yourself, "How much does winning mean to you?"[15]

As we sit here today, the NCAA is lobbying Congress to act before the states do. Maryland can take the lead today and protect not only the player's images and likeness, but their health and safety while in our jurisdiction.

I have no doubt, when we pass this Bill, Jordan McNair can tweet, from heaven above, "Game Changer Is ON, in the State of Maryland, thanks to the State Legislatures and my family".

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[14] We all know the stats…coaches make millions, players make tuition, and billion-dollar facilities are being built in MD as we speak here today with …the goal to be able to recruit better high school players and be more competitive in [the] conference and maybe nationally which, in turn, would create more revenue from tickets and concessions and potentially memorabilia and merchandise.

[15] How did we get here…? Some would say poor decisions and greed. Others would say it was inevitable. Maryland has to ask themselves the very question retired NC Supreme Court Justice Bob Orr stated, "Maybe we've just reached the point where if a university is going to cheat academically, the public needs to look to the university and the university leadership and say, 'Does winning mean that much to you?"

USM_Ellen Herbst_UNF_SB0518
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UNIVERSITY SYSTEM of MARYLAND

Wednesday, February 12, 2020
Senate Bill 518 – Council on the Fair Treatment of Student Athletes
(Jordan McNair Safe and Fair Play Act) Testimony
Letter of Concern
Maryland Senate Education, Health, and Environmental Affairs Committee Ellen Herbst, USM Vice Chancellor for Administration and Finance

Chair Pinsky, Vice Chair Kagan and members of the committee, the University System of Maryland (USM) offers the following testimony to be considered in the deliberations over the proposed Senate Bill 518.

The USM Board of Regents places the highest priority on the health and well-being of all its students—including those who participate in intercollegiate athletics. Over the past year the Board has worked with leadership at USM institutions to identify issues and areas for improvement, and institutions have responded with enhancements to programs related to the care and training of student-athletes.

The USM shares the intentions and motivations behind Senate Bill 518 but must point out general and specific areas of concern. The past 20 months have been tragic and difficult for all impacted by the passing of Jordan McNair, and has prompted both internal and independent reviews of athletics and the associated medical care provided to student-athletes, not just at University of Maryland, College Park (UMCP), but at each of the USM institutions with athletics programs. The chair of the Board of Regents, Linda Gooden, has made it a top priority to address the recommendations identified in the Walters report, a report that examined procedures and policies specific to athlete-training and the care of university student-athletes, and implement them. USM institutions have responded by adopting the recommendations of the Walters report.

The Walters report included several dozen recommendations which the Board has directed all USM institutions with athletics to review and adopt. Importantly, and relevant to the consideration of the proposed bill, UMCP has created an independent Athletic Medical Review Board comprised of approximately a dozen medical and sports performance professionals from outside the university to review and advise on student-athlete medical protocols and health and well-being matters.

Provisions relating to a state-wide Council on the Fair Treatment of Student Athletes

The Board of Regents has reviewed and improved its oversight of intercollegiate athletics at USM institutions, strengthening the existing workgroup of Regents that has been effective in providing sustained and focused attention on issues and concerns associated with academic achievement and progress, Title IX and equity considerations, appropriate fiscal management,

and student-athlete physical and mental health matters. Through its Workgroup on Intercollegiate
2

Athletics, the Board of Regents regularly reviews financial, academic and Title IX compliance information submitted in accordance with Board policy. It has also investigated matters relating to academic support resources, institutional pay practices for coaches and athletic directors, and medical support arrangements. The Regents routinely consult with athletic directors and institution presidents ultimately responsible for the operations of their campuses, including athletics, to ensure that communication and lines of accountability are maintained and recognized.

This established Board of Regents Workgroup has a scope and focus which includes many of the matters proposed for the Council in the bill, and has an established and direct route for proposing policy, collecting essential information in a manner that protects student privacy concerns, communicating with institution presidents and athletic directors to initiate needed change outside of Board of Regents policy, and has a proven track record of overseeing improvement both in oversight as well as program management, such as the mechanisms in place to monitor, in near real-time, academic progress of student-athletes. The Regents also oversee other areas covered in the proposed bill through its Education Policy Committee.

Establishing a state-wide review and advisory group proposed in the bill, distinct and outside of the University System of Maryland, such as the Council, would create a conflict between the role of the proposed Council and the responsibilities and authorities of USM Regents, Chancellor, and institution Presidents. The Board of Regents Workgroup on Intercollegiate Athletics has been effective in the review of athletics programs and student-athlete academic information, and in assessing operational activities such as student-athlete academic support and, more recently, medical support services available to student-athletes.

The USM and the Board of Regents welcomes the voice of the General Assembly, in addition to student-athletes, parents, and others with interest, in identifying new areas of focus or improvement, but believe the proposed Council will undermine and diminish the work and effectiveness of USM governance mechanisms put in place to date.

The requirement that the USM provide staffing for the proposed Council will require the addition of specialized staff, both at the USM Office, as well as within athletics departments. This will add considerable cost to the USM Office budget, but more importantly, to the staffs of institutions' athletic departments. This is an important concern, as USM institutions, like most athletics programs at colleges and universities across the country, are expected, by policy, to be self-supporting. This means the Board expects athletics spending to be done with athletics monies, and not place pressure on tuition levels or use funds of other activities. This fiscal mandate is difficult to achieve, and USM institutions work extremely hard to satisfy the expectation. That point made, of the five institutions in the University System of Maryland with Division 1 athletics programs, four rely heavily on a student-athletics or activities fee that is used to support athletics. Any additional cost imposed on the athletic department must be covered by additional revenue, and the only plausible source is increased student athletics or activities fees, which increase the cost of attendance for all students at that institution. None of the USM

institutions have any significant amount of reserves or surplus operating revenues to fund the additional costs expected to be incurred as a result of the proposed legislation. Importantly, it

will also represent additional workloads for the staff at the universities that currently support our student athletes and oversee the universities' support of student athletes.

Provisions relating to student-athletes use of name, likeness, or image

The USM and its institutions share the values and intent of the proposed legislation relating to student-athletes' ability to benefit from the use of name, likeness, and image. Across the country, a number of states are considering, or have adopted legislation relating to student-athletes' use of their names, likeness, or image. At the same time, there is strong interest in Congress to adopt federal legislation that would affect and compel NCAA and conference rule changes, and some legislative action is expected. The prospect of a patchwork of federal law and individual, differing state requirements is concerning to the USM, and we believe that any legislative initiative is best handled at a federal, rather than state, level so that there is a clear and consistent set of standards devoid of conflicts between differing legislative initiatives in different legislative bodies. Further, the implementation of rule changes adopted by the NCAA and the various conferences are matters where institutional decision-making, rather than the perspective of a detached and independent Council, will balance the concerns and needs of the entire campus community.

Lastly, issues like the impact of compensation received by student-athletes for the use of name, likeness, or image may have implications for federal financial aid processes and calculations, and potentially accreditation matters that are better addressed through federal legislative processes.

In summary, while the University System of Maryland shares the values, intentions, and motivations behind Senate Bill 518, we have significant concerns with the proposed bill as written, for the reasons and concerns laid out above.