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NCPA Opposition to H.R. 8534

Submitted 6/12/24

Dear members of the US House of Representatives Committee on Education and the Workforce,

The National College Players Association (NCPA) is a 501c3 nonprofit advocacy organization that has spearheaded the movement to protect college athletes for over two decades. The NCPA was a sponsor of the first state law ensuring college athletes' rights to obtain representation and earn compensation for use of their name, image, and likeness (NIL). The NCPA helped usher in similar NIL laws in 11 other states, has helped develop a number of state and federal bills to help bring forth key college athlete protections, and is the charging party in the National Labor Relations Board's unfair labor practice case against the University of Southern California (USC), the Pac-12 Conference, and the NCAA as joint employers of USC football and basketball players.

While the NCPA hopes to work with the author of H.R. 8534 to help craft fair college athletics reform legislation. However, the NCPA is currently opposed to H.R. 8534, which would unfairly target college athletes and exclude them equal rights under state and federal labor laws.

NCAA sports has operated as a predatory industry that exploits college athletes physically, academically, and economically. It is not against NCAA rules for athletic personnel to sexually assault a college athlete or kill a college athlete in a hazardous workout. And while the NCAA claims that athlete employee status would allow coaches to "fire" college athletes, it is already common for coaches to "fire" college athletes. An example of this made headlines across the nation when Colorado football coach Deion Sanders admitted to removing many players from his roster. As employees, college athletes could pursue wrongful termination actions in these situations.

A major economic issue is NCAA sports' unjust limit on college athlete compensation. In America, employees get paid. NCAA sports has created many barriers to the fair compensation of college athletes. And while a recent, informal legal settlement proposal in antitrust lawsuits against the NCAA have been rumored to possibly allow colleges to pay their players, the settlement proposal

does not guarantee compensation to college athletes. One would be hard-pressed to find a workplace in the United States where an employee is not guaranteed pay by an employer.

This unfair system was not lost in the US Supreme Court's 2021 9-0 decision in favor of college athletes in the *NCAA v. Alston* antitrust lawsuit. The ruling provided several relevant and conclusions that are material to this issue. Here are two of them:

- The ruling struck down the NCAA's "amateurism" defense for illegally price-fixing educational-related football player compensation by determining, "a party cannot declare a restraint 'immune from scrutiny' by relabeling it a product feature...Moreover, the district court found the NCAA had not even maintained a consistent definition of amateurism."

  This reasoning must also apply to college athletes' employee status. Labeling a college athlete an "amateur" does not exempt NCAA sports from abiding by state and federal labor laws even if the NCAA claims that non-employee status is a product feature of NCAA sports.

- US Supreme Court Justice Brett Kavanaugh's stated in his concurring opinion:

  > "The NCAA concedes that its compensation rules set the price of student athlete labor at a below-market rate. And the NCAA recognizes that student athletes currently have no meaningful ability to negotiate with the NCAA over the compensation rules…In my view, that argument is circular and unpersuasive. The NCAA couches its arguments for not paying student athletes in innocuous labels. But the labels cannot disguise the reality: The NCAA's business model would be flatly illegal in almost any other industry in America…
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  > The bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate *billions* of dollars in revenues for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes. College presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries. Colleges build lavish new facilities. But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing… it is not clear how the NCAA can legally defend its remaining compensation rules."

The NCPA is seeking to affirm college athletes' employee status to give them a "meaningful ability to negotiate" and as an important counterweight that can help address chronic injustices plaguing college athletes.

College sports is an $18 billion per year industry and it is clear that FBS football and Division I basketball are professional sports systems similar to the NFL and NBA. Congress has not interfered with the employee status of NFL and NBA players. Similarly, Congress should not inject itself into

college athlete employee status and strip the ability of these college athletes to gain employment protections and the option to pursue safeguards through collective bargaining.

Clearly the employment status of workers on college campuses is not a nefarious situation. In fact, colleges already employ countless campus employees – faculty, administrators, maintenance employees and many students employed to work in libraries, bookstores, and in other areas. Despite the NCAA's flawed assertion that college athletes cannot be employees because they are students, students currently employed by colleges are clearly both students and employees. There is no need for clarification in this area.

Again, the NCPA hopes to work with the author to bring forth equitable treatment of college athletes.

Sincerely,

Ramogi Huma
NCPA Executive Director