AMERICAN ECONOMIC LIBERTIES PROJECT

MEMORANDUM

TO: Interested Parties
FROM: American Economic Liberties Project
DATE: July 11, 2025
RE: The Student Compensation and Opportunity through Rights and Endorsements (SCORE) Act

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On Thursday, July 10th, a group of Republicans, including House Judiciary Chairman Jim Jordan and two Democrats, introduced the Student Compensation and Opportunity through Rights and Endorsements (SCORE) Act, a bill ostensibly drafted "[t]o protect the name, image, and likeness [NIL] rights of student athletes and to promote fair competition with respect to intercollegiate athletics…."[1] While four lines in Section 3 of the SCORE Act prohibit universities, their conferences, and the NCAA from "restrict[ing] the ability of a student athlete to enter into a [NIL] agreement," protections for college athletes economic and intellectual property rights effectively stop there.

The SCORE Act presents significant antitrust and labor concerns that fall directly within the jurisdiction of the House Judiciary, Energy & Commerce, and Education & Workforce Committees. Despite its stated goals of protecting college athletes, the bill would grant the NCAA unprecedented antitrust immunity while undermining recent legal victories for college athletes and creating unworkable regulatory frameworks that could harm college athletes, the student population writ large, and smaller universities already struggling to compete in the landscape of modern college athletics.

I. BACKGROUND

Compensation for college athletes has always been tightly controlled by the NCAA. There have been strict limits on athletic scholarships, grants in aid, and other education-related benefits. Until recently, schools were barred from sharing any revenue with their athletes, and athletes were barred from receiving any compensation for their NIL.

All of that changed with the Supreme Court's 2021 decision in *NCAA v. Alston*. In a unanimous decision, the Court described the lawsuit as one "involv[ing] admitted horizontal price fixing in a market where the defendants exercise monopoly control" where the NCAA was asking for "immunity from the normal operation of the antitrust laws." It rejected the NCAA's arguments and upheld the lower court ruling, finding NCAA limits on certain types of compensation to be a violation of the Sherman Act. The Court agreed that (1) amateurism was a vague concept that did

[1] NIL rights refer to a person's legal right to control and profit from the commercial use of their name, physical appearance, and personal brand. NIL agreements are typically endorsement contracts, such as when an athlete appears on a Wheaties box or in a Gatorade commercial. Agreements can include paid personal appearances, social media sponsorships, autograph signings, television contracts, merchandising.

not generate any pro-competitive benefits for consumers that might justify the NCAA's artificial restraints on athlete earnings, and (2) the NCAA was indeed violating our antitrust laws. Justice Kavanaugh joined the opinion but authored his own "to underscore that the NCAA's remaining compensation rules also raise serious questions under the antitrust laws."

The NCAA responded by suspending its rules prohibiting NIL deals, and a door of opportunity for college athletes to realize their full earning potential was opened. It also faced a raft of lawsuits challenging the many rules and policies that it has used to suppress college athletes' earnings since 1953. Then last month, a district court approved the settlement of one of those lawsuits, *House v. NCAA*, that completely restructures how athletes are compensated.

The settlement has been highly controversial and drew objections from a wide range of class members affected by it. Among other things, it allows colleges to share revenue with their athletes, but it places artificial restrictions on that compensation and on third-party NIL deals. They are likely illegal and can't be implemented unless Congress gives them something extraordinary and rare—an exemption from United States antitrust laws that would nullify the Supreme Court's ruling in *Alston*.

The NCAA has been engaged in an expensive lobbying effort on Capitol Hill over the last four years to secure that relief. The SCORE Act is the culmination of that effort, but it is wholly inadequate and counterproductive. The bill would reverse the enormous progress college athletes have made over the last four years to overcome decades of exploitation. It would also entrench the biggest athletic programs' economic power at the expense of smaller schools and create a host of regulatory and administrative problems.

The NCAA, which has proven time and again that it cannot be trusted with unchecked monopoly power, is not deserving of immunity that almost no other industry in the United States enjoys. College athletes, on the other hand, deserve to be fairly compensated for their work and share in the profits that have until now gone only to the bloated salaries of the coaches and administrators that the NCAA caters to.

II. KEY POLICY CONCERNS

A. Antitrust Exemption Creates Problematic Precedent

The SCORE Act would grant the NCAA an exemption from antitrust laws that the Supreme Court unanimously denied in *NCAA v. Alston*. This represents a significant departure from established antitrust principles and could set a concerning precedent for other industries seeking similar exemptions. The legislation essentially permits what Justice Kavanaugh described as wage fixing that would be "illegal in any other industry."

Only one other sports league enjoys immunity from our antitrust laws, Major League Baseball. That exemption is not the result of a Congressional act, but a 1922 Supreme Court decision that is widely reviled. And the MLB has used it to engage in a panoply of anti-competitive behavior, including capping minor league player salaries at $15,000 a year and forcing them to attend spring training without pay.

Section 7 of the SCORE Act limits the NCAA's exemption to "[c]ompliance with the Act" and promulgation of rules, regulations, and standards to comply with the Act. But conduct that might be covered by the Act could include additional limits on revenue sharing and NIL deals, restrictions on college athletes' ability to transfer between schools, overly restrictive roster limits, and the use of algorithms designed to further suppress athlete earnings. Even more troubling is the absence of language limiting the exemption to the NCAA and its members. Third parties could agree to fix rates for NIL deals and claim that they are merely complying with the Act's restrictions on those agreements.

B. Unworkable NIL Compensation Standards

The Act's definition of "prohibited compensation" limits college athletes' earnings from third-party NIL deals to rates "commensurate with compensation paid to individuals with name, image, and likeness rights of comparable value who are not student athletes." This definition creates a confusing and unworkable regulatory standard. The legislation provides no methodology for determining comparable value or identifying appropriate comparison groups. It could be used to limit rates to those an ordinary college student could demand, which ignores that college athletes' status *as athletes* is what drives the value of their NIL rights.

C. Flawed "Pool Limit" System Advantages Wealthy Programs

Unlike salary caps in leagues like the NFL that look at the average revenue of all teams, the SCORE Act's pool limit, a restriction on revenue sharing, would be calculated using only the 70 highest-earning schools' revenue. Wealthy schools in the College Football Playoff system that can meet that limit would gain a significant recruiting advantage over smaller schools, creating a fly wheel where the biggest programs keep winning games and bowl game prize money, and the smaller programs become less and less relevant. Those schools' future television contracts, sponsorships, and other revenue are enormous.

D. Unfunded Mandate on Universities

The Act requires universities to field at least 16 athletic programs without ensuring adequate funding mechanisms. This could force institutions to increase student tuition and fees to cover budget shortfalls or eliminate athletic programs altogether. Though this requirement, and the other mandates of Section 5,[2] appear to be targeted only at Division I schools, the $250,000 coach's salary that serves as the threshold can easily be avoided by setting salaries just below that number. The bill also does not address how this mandate operates with respect to Title IX requirements.

[2] Section 5's other mandates, which attempt to provide athletes with better healthcare, and academic and financial support, are so vague that they could be satisfied with meager efforts by the schools.

E. Data Collection Provisions Enable Wage Suppression

The bill explicitly permits schools to collect and share "aggregated and anonymized data related to name, image, and likeness agreements," creating a breeding ground for algorithms that NIL collectives and advertisers could use to suppress athlete earnings. The NCAA's newly created College Sports Commission is already doing this with its "NIL Go" clearinghouse. It's an algorithm created by Deloitte that's designed to evaluate every NIL deal in college athletics for "fair market value." The algorithm has already rejected 70% of existing booster deals.

F. Overrides Recent Legal Victories

The bill specifically prohibits universities from treating college athletes as employees, ensuring they would never receive the benefits and protections of the Fair Labor Standards Act. This would undo last year's decision from the 3rd Circuit Court of Appeals, which said the NCAA cannot use "amateurism" as an excuse for denying athletes employment status.

G. Preemption

The bill preempts all state laws governing "the compensation, payment, benefits, employment status, or eligibility of a student athlete." This deprives states of the ability to govern state run educational institutions funded by taxpayer dollars and deprives college athletes of protections identified by their state legislators.

H. Limited Stakeholder Input

The legislation is being developed without meaningful input from athlete representatives, despite affecting their fundamental rights and compensation. This contrasts sharply with professional sports, where athletes participate in collective bargaining processes that produce comprehensive agreements addressing wages, safety, healthcare, and working conditions.

The 30-page bill attempts to restructure a workforce of over 500,000 student athletes while ignoring issues athletes have raised for years regarding safety standards, exhausting travel schedules created by geographically dispersed conferences, and international students' ineligibility for NIL deals.

III. RECOMMENDATION

The SCORE Act's fundamental flaws—including federalization of salary caps, unworkable NIL standards, intrusion on state rights, and systems that advantage wealthy programs—demand significant revision or alternative approaches. Its sponsors use of NCAA's favorite references: "guardrails"; "stability, clarity, and transparency"; and the "Wild Wild West". In truth, college athletes are facing a calcified organization that cannot adapt to progress. Any uncertainty that exists is the NCAA's own making.

The bill's sponsors also talk about the importance of preserving schools' "educational mission" in helping athletes earn a "quality education." But college athletic programs are not educational programs. They are commercial enterprises that prioritize profits over learning. The latest

mergers that have created mega-conferences prove this. The new Big 10 television contract is worth $7 billion, and athletes have to criss-cross the country and miss classes to play in those televised games.

Members and their staff should consider whether the stated goals of athlete protection and competitive balance can be achieved through less problematic means—ones that don't require unprecedented antitrust exemptions, the legislation of salary caps, or entrenching the most powerful athletic programs to the detriment of smaller ones. Alternative approaches that would more effectively preserve athletes' economic rights and welfare and create a more "stable" recruiting environment include:

- **Collective Bargaining:** Allow athletes to unionize and negotiate comprehensive agreements covering compensation, safety, and working conditions. Any agreement that resulted would fall under the already existing non-statutory labor exemption to antitrust laws and resolve most of the antitrust issues the NCAA is dealing with. It would also help level the playing field between our youngest athletes and the schools that currently hold all the power.
- **Employment Status:** Make clear that college athletes, who perform significant work for the economic benefit of their schools, are employees within the meaning of the FLSA and must be compensated accordingly.
- **Targeted Reforms:** Address specific issues like safety standards, healthcare, and transfer rules without broad antitrust exemptions. Hearings should focus on the hours athletes devote to their sport, the travel demands that conference mergers are creating, the academic roadblocks that make it difficult for athletes to transfer like their peers if they're unhappy, and whether schools are truly educating athletes playing at the highest levels of college sports.

The NCAA has exploited its athletes for decades, prioritizing institutional profits and bloated administrator and coaching salaries over athletes' welfare. This bill would cement the NCAA's monopoly power and give it unchecked power to unilaterally set standards governing athletes' earnings and working conditions, without input from those athletes *or* the universities it governs. A unanimous Supreme Court correctly found that power is unlawful under the Sherman Act and that the NCAA does not have, need, or deserve antitrust immunity. Congress should not override that decision.

This memo is intended to highlight key antitrust and labor concerns raised by the Student Compensation and Opportunity through Rights and Endorsements (SCORE) Act. Additional analysis of specific provisions and potential amendments is available upon request.