



Charlie Baker
President

February 22, 2024

VIA EMAIL

U.S. House Energy and Commerce Committee
2125 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Honorable Members of the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce:

Thank you for the opportunity to discuss the important issues facing college sports during the “NIL Playbook: Proposal to Protect Student-Athletes’ Dealmaking Rights” subcommittee hearing.

As I mentioned during the hearing, I am proud of the numerous steps the NCAA has taken to modernize our model over the past year, including the passage of bylaws just last month to establish student-athlete protections related to name, image and likeness. We appreciate the subcommittee’s interest in further protecting these opportunities by creating a national, uniform framework that preempts the patchwork of nearly 30 state NIL laws.

In light of the recent ruling by the National Labor Relations Board’s regional director and the multiple recent lawsuits filed by state attorneys general, I would also like to take this opportunity to reinforce the need for the committee to pass legislation that establishes special status for student-athletes, ensuring they are not employees of their institutions, as well as to pass legislation that establishes limited safe harbor protections that allow our member colleges and universities to make and enforce national rules.

Along with our student-athlete leaders, schools and conferences, I am grateful for your continued interest in college sports. We look forward to working together with Members of the subcommittee to find a bipartisan path forward that considers all 1,100 of our members and that protects opportunities for the more than 500,000 college athletes.

Below are responses to the additional Questions for the Record. Thank you once again for the opportunity to speak before your subcommittee. If the subcommittee has any follow-up questions, do not hesitate to contact Dawn Buth, NCAA managing director of government relations, at [REDACTED].

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Respectfully,



Charles D. Baker
President, NCAA

Additional Questions for the Record

The Honorable Gus M. Bilirakis

1. The NCAA is a member-based institution. Will your position as the President of the NCAA be imperiled by pursuing NIL violations to the full extent? What bylaws would you use to do so?

The NCAA and its schools and conferences fully support the ability of college athletes to benefit from their name, image and likeness. The Association's interim policy on NIL opportunities was adopted as broadly permissive. Rather than focusing specifically on "NIL violations," the NCAA enforcement staff investigates pay-for-play and improper behaviors that are prohibited by preexisting rules and that have been affirmed by the Division I Board of Directors. These include, but are not limited to, recruiting behaviors, such as tampering with student-athletes at another institution or offering inducements contingent on enrollment. These bylaws are found in **Articles 13 and 16 of the Division I Manual**. The NCAA and its member institutions support appropriate NIL opportunities for student-athletes. However, the NCAA and its member institutions do not support unregulated recruiting, and members expect accountability when violations occur. In practice, member institutions also tend to resist when facing accountability for their own actions. Additionally, the nearly 30 disparate state NIL laws and increasing legal challenges from state attorneys general make the Association's ability to enforce these rules increasingly difficult. Given Congress' role in regulating and protecting interstate commerce, congressional assistance that allows the NCAA membership to make and enforce rules that provide a level playing field for college athletes and schools across the country remains critically important.

2. What jurisdiction does the NCAA have over boosters, collectives, or other third parties?

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NCAA rules apply to member schools and their representatives, including boosters and collectives. Per the NCAA Manual, a “booster” is a “representative(s) of the institution’s athletics interests.” Member schools are accountable for the actions of their representatives, including boosters and collectives. The NCAA does not have authority over third parties who do not trigger booster status. In the proposed legislation, we were glad to see that the Federal Trade Commission could be used to help address jurisdictional issues related to third parties.

3. What enforcement mechanisms can the NCAA bring against a booster, collective, or third party?

The NCAA does not allege violations against boosters, collectives or third parties, nor can it sanction them directly. Per NCAA rules, member institutions are accountable for the actions of their representatives, including boosters and collectives. The enforcement mechanism is to allege violations for which the school is accountable and to work with the school through resolution. Any penalty prescribed by the Committee on Infractions — composed of volunteers from institutions and conferences, as well as legal experts from the general public — attaches to the member school. For example, a penalty might limit how the school engages with its collective, or what benefits the school may provide a booster. There is no enforcement mechanism for the conduct of a third party who is not a representative of the institution’s athletics interests, as these entities are not within the NCAA’s jurisdiction.

4. What enforcement mechanisms does the NCAA have if a booster, collective, or third party violates the penalties placed on it by the NCAA, such as a prohibition to attend NCAA sporting events?

To begin, infractions penalties do not directly attach to a booster or collective. If a booster or collective, acting in the interests of a school’s athletics department, violates NCAA rules, only the member institution would be subject to penalties. Member institutions are obligated to comply with penalties prescribed by the Committee on Infractions, and it is a violation if the school fails or refuses to comply. Schools are not accountable for actions of a third party who is not a representative of the institution’s athletics interest. There are no penalties for conduct of those individuals or entities; however, due to the activities of many collectives, these entities often meet the NCAA’s definition of a booster, thereby triggering school accountability.

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The Honorable Russ Fulcher

1. Mr. Baker, the FAIR College Sports Act gives the NCAA a non-voting chair on the Board of the USIAC. How do you envision the NCAA would work with a non-governmental, self-regulatory body like that envisioned in the FAIR College Sports Act?

We believe the governance of college sports in Divisions I, II and III is best run by on-the-ground stakeholders and experts, rather than a politicized and bureaucratic system maintained by a government, quasi-government or third-party entity. Under an ideal model, the NCAA can continue to create rules consistent with any law and enforce those that apply to its schools, while the federal government enforces those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview. We welcome the opportunity to work with Members of the subcommittee to find effective ways to address any concerns they may have related to oversight. We believe there are common-sense solutions that can create accountability; prevent duplicative, complicated, and overlapping systems of governance; and retain the ability of experts and stakeholders to make the rules that most impact them.