

Testimony of Chris McIntosh
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U.S. House Committee on the Judiciary, Subcommittee on the Administrative State, Regulatory Reform,
and Antitrust
Hearing on “Antitrust Law and the NCAA: Examining the Current Climate”
March 11, 2025

Welcome Message and Introduction

Chairman Fitzgerald, Ranking Member Nadler, and distinguished members of the Committee, thank you for the opportunity to be with you today to talk about the state of collegiate sports and the many challenges posed by the numerous uncertainties we face.

My name is Chris McIntosh and I have the privilege of serving as the Athletic Director at the University of Wisconsin–Madison. I also was lucky enough to play football at the University of Wisconsin and go on to play for several seasons in the NFL. I am responsible for all aspects of an athletics program that supports nearly 800 student-athletes competing in 23 varsity sports, along with overseeing more than 400 full-time staff members, 13 major facilities, and an operating budget that surpasses \$171 million in FY25.

I am a native of Wisconsin and my ability to compete in sport meant not only did I receive a world-class education, but invaluable life lessons that I call upon every day as I mentor young student-athletes. Our system is truly unique in the world, a system where athletes not only compete at the top levels of sport but also receive a valuable education that benefits them long after their competitive years are over. There is no doubt that college athletics is at an inflection point where the decisions made over the next couple of years will define the landscape for the foreseeable future. It is critical now more than ever that Congress work together to pass meaningful legislation that stabilizes college athletics for future generations.

Historical Context for the Current State of College Athletics

As a uniquely American enterprise, college sports have followed the tracks of our country’s historical arc. Like our country, college sports have grown and evolved over successive generations to reflect a changing world while remaining firmly rooted in some basic but unconquerable ideals. In the case of college sports, the bedrock foundation of the mission is that participation in sport is to be embedded within and part of the overall educational experience. Consistent with that educational mission, a fundamental purpose of the American college sports system is to provide life-altering opportunities to receive college degrees to hundreds of thousands of young people each year through a broad range of sport offerings. For some of these young people, these opportunities would not exist but for their athletics ability.

Byproducts of our American college sports system include the fact that the system serves as the primary developmental pipeline for American Olympians. Another byproduct is the fact that some sports at some places (football at Wisconsin, for example), or some events in the case of NCAA Division I basketball tournaments and the College Football Playoff, have significant commercial value commensurate with the level of entertainment appeal among the public. As a result, college sports is in fact a multi-billion-dollar industry, but while acknowledging that, there are two really important points to keep in mind.

The first is that the multi-billion-dollar industry is attributable to a very small subsection of the colleges and universities and an even smaller fraction of the thousands of competitive events in which student-athletes participate each year. To put into context, Wisconsin is one of 68 institutions that comprise the four Autonomy conferences, which is a collection of institutions in which some, but not all, have athletics departments that are financially self-sufficient—many (if not all) of the other 1,100-plus institutions that comprise the NCAA rely on substantial institutional support. To illustrate further, at Wisconsin, two of our 23 sports generate positive net revenues—football and men’s basketball. The revenue from those two sports in turn funds the operational costs of the opportunities, support, care, and benefits provided to student-athletes in the other 21 varsity sports we sponsor.

To broaden the aperture on the above point, 75 percent of the approximately 190,000 Division I student-athletes nationwide play sports other than football and men’s basketball. Consequently, the vast majority of opportunities are either subsidized by revenue from one or two teams, or by that revenue in addition to substantial institutional support. Furthermore, it is noteworthy in the present context that the majority of participants in those two sports at the Division I level are men of color, some of whom come from disadvantaged socio-economic backgrounds. As the college athletics financial framework shifts to one of direct revenue sharing between institutions and student-athletes, these points are relevant to determinations on how revenue should be distributed.

The second point to keep in mind is that commercial value derived from a small number of teams and events does not preempt the bedrock educational mission of college sports. The intersection of commercialism and education may present challenges that must be addressed to protect and fortify that underlying educational mission—it has since the earliest days of college sports—but the challenges are vastly outweighed by the value of the educational opportunities, experiences, care provided, and what soon will be a reimagined economic framework that are all made possible by the commercial success of college sports.

With the above as backdrop, it is undeniable that we are in a period of incredible change in college sports, arguably the most transformative time in its history, but there have been monumental inflection points in the past. Racial integration and the growth of opportunities for women come to mind as two of the most important. Moreover, this is hardly the first economic sea change in college sports, examples of which include allowing athletic scholarships beginning in the 1950s, deregulation of NCAA restrictions on television broadcasts in the 1980s, and removing restrictions on a student-athlete’s ability to monetize their name, image, and likeness (NIL) as of 2021. If the *House* settlement (discussed in greater detail below) is approved, the ability for institutions to share revenue above and beyond scholarships and other benefits already provided will be a paradigm-shifting addition to the list.

Through the history of collegiate athletics, a steady stream of reforms have enhanced and strengthened the underlying educational mission and commitment to student-athletes. An example from the earliest days includes the requirement that participants be full-time students. More recent examples include heightened academic standards to ensure student-athletes graduate within five years and new metrics with corresponding incentives and disincentives to raise student-athlete graduation rates.

Some of the significant positive reforms and changes have been made from within, such as the advent of athletic scholarships, many academic reforms, and creation of the NCAA Student Assistance Fund, an under-publicized fund that has provided hundreds of millions of dollars to student-athletes in need since its inception nearly 20 years ago. Nevertheless, other reforms have resulted from external activity,

including litigation and Congressional intervention, perhaps most notably Title IX of the Higher Education Amendments of 1972.

Why the Present Moment of Change is Different and Requires Congressional Help

As the section above illustrates, change is not new to college sports. However, there is a critical difference between the inflection points of the past and the current period of transformation that calls for Congressional involvement. Unlike previous moments of significant change, the present environment threatens the foundational bedrock ideals of college athletics discussed above (having sport embedded within and part of the educational experience and opportunities for college degrees through sport).

To explain, we are transitioning to a new economic paradigm for student-athletes, the heart of which consists of two primary components. First is the ability for student-athletes to control and use (or not use) their NIL as they choose. This includes monetization of their NIL, whether by promoting their own personal brands or commercial entities or products. Opportunities range from appearing in television commercials for large multinational brands, to social media posts for a local “mom and pop” sandwich shop, to a paid appearance at an event, and everything in between.

Second is that, pending approval of the *House* settlement, institutions will be able to share revenue directly with their student-athletes. This shared revenue will be in addition to full cost-of-attendance scholarships, “Alston” payments, medical care, nutrition, and many other tangible benefits student-athletes may already receive. Each institution will have discretion as to how shared revenue will be distributed, but for the first time in the history of college sports, student-athletes will be able to receive monetary benefits that correspond to the revenue generated by the sports they play. As you will read in greater detail below, the dollar figures involved with the *House* settlement are significant.

While the changes above are exciting and many agree long overdue, the combination of litigation and state legislation has resulted in a patchwork landscape of shifting and inconsistently applied rules. Again, external forces driving reform in college sports is not a new phenomenon, but we are now experiencing a dangerous chain reaction that we have no ability to stop through changes from within. Specifically, a continuous stream of litigation has already resulted in judicial outcomes that erode the educational mission of college sports. For example, due to lawsuits brought by state attorneys general, student-athletes may transfer every year and are immediately eligible to compete. High-performing athletes face pressures and incentives to transfer between schools, potentially in search of increased playing time, better NIL opportunities, or – very soon – a bigger revenue share. Detrimental academic impacts are inevitable when student-athletes constantly move from one institution to another, imperiling a core mission of college sports. In addition, the U.S. Supreme Court’s decision in *NCAA v. Alston* provided a path to challenge all NCAA rules, so at this moment, there are numerous pending challenges to other eligibility rules. Some have been successful, some have not, and some have landed in between, but more are being filed weekly.

In addition to litigation that is eroding the educational mission, states motivated to outcompete one another use executive orders and state laws to create competitive advantages for colleges and universities in the respective states. These actions were initially focused on NIL but have evolved over time. Some states now prohibit enforcement of certain rules by the NCAA or conferences. Some states are now considering exempting NIL payments for state income tax purposes. This ever-shifting patchwork of state laws makes it impossible for there to be an enforceable uniform national regulatory

framework to serve what is otherwise a system built upon national competition played by students selected through a national recruiting process. It also makes it impossible for student-athletes navigating the recruiting process to understand the rules of the road from one school to the next.

Finally, moving the American college sports model into an employment regime where the relationship between institutions and members of varsity teams becomes an employer-employee relationship would do more harm than good, but control over that determination is also out of our hands. To illustrate just one undesirable outcome, a world in which student-athletes are employees simply by being varsity athletes would present one set of potential consequences to institutions like Wisconsin, but an entirely different set of threats to lower-resourced institutions. Those most at risk would be institutions that sponsor varsity sports as part of an institutional enrollment strategy supporting the financial viability of the institution. Requiring those institutions to pay wages and benefits would defeat the purpose of sponsoring varsity sports in the first place, and discontinued sports and possibly entire athletics departments would be sure to follow. This is not theoretical. Within the past two years there have been two NCAA institutions—one at the Division I level and one at the Division II level—that have announced the discontinuation of their entire athletics departments.

Settlement

As hinted above, we are on the brink of entering into a historic settlement of three significant antitrust cases. Collectively those cases are combined into *House v. NCAA*, or simply as “*House*”. If approved, possibly in late April or early May, *House* will allow student-athletes for the first time to receive a portion of the revenue they help create through the permissive licensing of that student’s NIL to their institution. Athletes are not required to enter into these licenses, but we expect the vast majority will avail themselves of the financial opportunity if presented to them.

Should the settlement be approved, schools will be able to distribute to student-athletes an amount equal to 22% of revenues generated by sponsorship, ticket sales and media revenues. No school is required to distribute the revenue, but in the Big Ten Conference all schools will be entering into revenue sharing along with the University of Wisconsin–Madison. In the 2025-2026 academic year, when these revenue sharing payments are first made, that figure will be \$20.5 million per school, with established increases during the ensuing years. Over the initial ten-year window, we expect that schools will distribute more than \$20 billion to student-athletes. Student-athletes will also be able to continue to avail themselves of market-based third-party NIL opportunities. We have been making extensive preparations to begin implementing the provisions in the settlement as soon as it is approved.

Ask of Congress

In light of the foregoing, we seek comprehensive bipartisan legislation with four key elements:

- First, it is imperative that we codify the many benefits and protections that are currently offered at institutions like the University of Wisconsin–Madison. These include such benefits and protections as on-field health and safety standards, world-class health care, post-participation health care, scholarship guarantees, and lifelong degree-completion opportunities.
- Second, we also ask that Congress pass legislation that will preempt the ever-changing patchwork of state laws that make having a uniform national framework for a national intercollegiate competition system impossible.

- Third, we seek liability protection that is specific and limited in scope. I want to clarify that we are not asking for a blanket antitrust exemption from Congress. We are instead seeking a safe harbor that will give us the necessary stability and predictability to maintain a regulatory framework that serves the underlying educational mission of the collegiate sports model.
- Fourth and lastly, although recognizing that this issue falls outside the jurisdiction of the House Judiciary Committee, we ask Congress to clarify that the relationship between student-athletes and institutions is not that of an employer and employee. It is extremely important to the educators at our institutions that the focus of a student-athlete's college tenure remains based in education. Importantly, as described previously, although the University of Wisconsin–Madison may not be in this category, an employment regime for college sports would be devastating to the vast majority of the 1,200-plus member institutions of the NCAA.

Conclusion

In conclusion, we are in an extremely consequential time in the history of American college athletics. A national enterprise based on national competitions played by students who are recruited nationally must necessarily have an enforceable uniform national framework. Moreover, stopping and reversing the erosion of the underlying educational mission of college sports and safeguarding a model that provides opportunities through a variety of sports to hundreds of thousands of young people each year are essential to preserving the things Americans cherish most about college sports. Unfortunately, we are past the point where we can do any of those things on our own, which is why we need help from Congress. Past Congressional action in college sports, like the passage of Title IX, has been responsible for changing the future of college sports for the better. You now have another opportunity to forever benefit student-athletes. I look forward to continuing to work with all of you on these important and pressing issues.