



In residence at the University of New Haven College of Business

CONGRESSIONAL ADVISORY COMMISSION ON INCOLLEGIATE ATHLETICS ACT OF 2019

QUESTIONS AND ANSWERS

(Revised as of 12-29-2019)

CONTENTS

1. Who are the lead Democrat and Republican co-sponsors of H.R. 5528?
2. Why do commercialized athletics programs within institutions of higher education need to have reforms initiated by Congress?
3. Is the proposed Congressional Advisory Commission an attempt by Congress to control the NCAA, a private 501 (c) (3) organization?

General

1. Who are the lead Democrat and Republican co-sponsors of H.R. 5528?

Representative Donna Shalala (FL-27th), a member of the House Education and Labor Committee, former President of the University of Miami, University of Wisconsin, and Hunter College and former U.S. Secretary for Health and Human Resources, is the lead Democrat co-sponsor and Representative Ross Spano (FL-15th) is the lead Republican co-sponsor of this bipartisan bill. Read Congresswoman Shalala's [December 18, 2019 press release](#) announcing the filing of the bill.

2. Why do commercialized athletics programs within institutions of higher education need to have reforms initiated by Congress?

The following timeline reviews the origins of the National Collegiate Athletic Association's (NCAA) loss of control of collegiate athletics and explains why college athletes are now demanding a larger share of the revenues and a turn toward professional sport:

- In 1973 the NCAA, under pressure from coaches and athletic directors, abandoned four-year scholarships that supported athletes through completion of a degree for one-year renewable grants, which continued the transformation of big-time college athletes into a well-disciplined (under threat of loss of athletic scholarship) and relatively cheap source of exploitable labor.¹

¹ Gurney, Gerald, Donna Lopiano and Andrew Zimbalist. (2017) *Unwinding Madness: What Went Wrong with College Sports and How to Fix It*. Brookings Institution Press: Washington, D.C., p. 14. This rule allowed a coach

- In 1984, the University of Georgia and the University of Oklahoma, on behalf of the College Football Association schools, sued the NCAA on antitrust grounds, arguing that they were entitled to agree to sell their TV rights to networks without NCAA interference. The Supreme Court agreed that the NCAA's television rule limited output and restrained prices with no legitimate competitive justification and, accordingly, was illegal under the Sherman Act. In distinguishing the television plan from other NCAA eligibility rules, the Court noted that college athletes must not be paid. That issue was not before the Court and caused great confusion in cases going forward.
- In 1997, using threats to leave the NCAA, Football Bowl Subdivision (FBS) institutions were given dominant voting control of the NCAA Executive Committee (now the Board of Governors) and the Division I Board of Directors by vote of the NCAA membership, thereby institutionalizing commercial athletic program control and pursuit of self-interest. This action also ensured limits to the support of Divisions II and III and elimination of what had been the check and balance system of Divisions II and III members being able to overturn Division I actions not in the best interest of college athletics. The other ultimatum was that if the NCAA started a FBS football national championship (there were only bowl games at the time), 100 percent of the revenues would go only to FBS institutions. In actuality, this was an FBS insurance policy – a promise the NCAA would not start a competing championship to the College Football Playoff which the FBS institutions established in 1998 as the Bowl Championship Series and which is solely owned by the FBS conferences and the University of Notre Dame. This action kept a revenue source as significant as the NCAA Basketball Final Four away from the NCAA membership. The FBS is not about to act in a way that reduces its power or financial revenues.
- It took several decades for O'Bannon, other former athletes, the Justice Department and others to begin using the same tactic (antitrust law) as the College Football Association used in the 1980s to attack the NCAA cartel. These forces of athlete interest appear to be making substantial progress in attacking the system that enriches coaches, athletic directors and conference commissioners while ignoring the educational and health protection needs of college athletes. Athletes should have the right to file antitrust lawsuits that maximize the educational benefits covered by athletic scholarships and completely defeat NCAA control of their ability to retain agents, earn outside income from employment or the independent exploitation of their own names, images and likenesses.
- In 2011, the NCAA, apparently in response to these athlete lawsuits, made half-hearted compromises to athlete interests such as making multiyear year scholarships optional for member institutions and considering stipends to supplement athletic scholarships.
- In March of 2014, the Region 13 National Labor Relations Board ruled that Northwestern University football players were employees and could unionize. However, on appeal, the National Labor Relations Board refused to validate the ruling on the basis that it did not have jurisdiction. It further stated that Congress should decide whether college athletes are professional athletes.
- In August of 2014, the trial court issued a judgement in the O'Bannon lawsuit that (1) granted an injunction that prohibited the NCAA from limiting athletic scholarships to an amount lower than "full cost of attendance", the federal standard for student financial aid, and (2) ordered that FBS football and Division I basketball players be allowed to receive up to \$5,000 per year (held in trust until completion of college) for each year of eligibility, completely funded from institutional group licensing revenues. The court also rejected the NCAA's definitions of amateur status and

to cancel an athlete's scholarship for just about any reason, thereby installing the trapping of an employment contract.

suggested that Congress might more appropriately define such. The Ninth Circuit reversed the part of the decision that permitted up to \$5,000 annually be put in trust for athletes on the basis that the funds were not tethered to education.

- In August of 2015, the NCAA Division I Board of Directors gave further autonomy and control to the Power Five conferences, the 65 most powerful institutions within the FBS subdivision.
- In March of 2019, the trial court issued a judgement in the Alston/Jenkins lawsuit prohibiting NCAA rules that limited educational benefits included in athletic scholarships. It upheld the rules that limited benefits to athletes that were not tethered to education. The decision is on appeal to the Ninth Circuit with oral argument schedule for the week of March 9, 2020.
- Only 24 of the 1,100 NCAA college and university athletic programs make more money than they spend, and even this accounting excludes a substantial share of capital and indirect costs. Even FBS members have median annual deficits of \$16.3 million. The rest of these athletic programs are heavily subsidized by mandatory student athletic fees that at many schools are \$1,000 or more a semester (which are contributing to all-time high college student debt) and institution general funds (created by student tuition), both of which are propped up by close to \$30 billion in annual federal Pell grants and more than \$100 billion in additional higher education support. Congress has every right to be concerned about the financial sustainability of this system and its impact on non-athlete students and academically related needs.

There are two routes to social justice. One is to openly recognize athletes as the full-time employees they have become under one-year scholarships, 40- to 50-hour athletics work weeks and almost total control of outside employment under an arbitrary and Draconian definition of “amateur status”. The other is to create a system where college athletes are an integral part of the student body, time spent on athletics is brought under control, the institution is responsible for all insurance and medical costs related to athletics injury, scholarships are four- or five-year agreements of support for a bona fide college education, and college athletes are treated as students rather than employees. The current NCAA has failed miserably at the latter. It is time to stop this system from exploiting athletes by funneling them into sports while dangling the carrot of professional sports opportunity (especially minority athletes who play football and basketball), a hollow promise for all but a select few. It is time to legitimately prepare these students to serve in Congress, law firms, and on Wall Street or as teachers, social workers, or in other white-collar jobs. Only a real education can do this. Only by fulfilling a promise of educating all college athletes will real social justice be achieved.

3. Is the proposed Congressional Advisory Commission an attempt by Congress to control the NCAA, a private 501 (c) (3) organization?

No. The Commission is not authorized to do anything but study and make recommendations. It cannot take legal actions. Congress took similar action in 1975 when then President Gerald Ford established a President’s Commission on Olympic Sports. Following three years of study, upon recommendation of the Commission, the Ted Stevens Olympic and Amateur Sports Act of 1978 was adopted by Congress. This law established the United States Olympic Committee (“USOC”) as a federally chartered organization to govern and protect athletes in open amateur sport that were not being protected under the Amateur Athletic Union (AAU) governance system, effectively replacing the AAU with the USOC. Thus, it will be up to Congress to consider the eventual recommendations of the Commission to ensure that postsecondary educational institutions receiving federal financial assistance protect the health, safety, equitable participation, and educational opportunities of their students who play commercialized college sports. We cannot predict what these recommendations will be.