



THE DRAKE GROUP

Advancing Positive Legislative
Change In College Athletics



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Issue Report #3
Confronting the Failure of the NCAA Enforcement Process

Rep. Josh Harder
(CA-09-D)

Rep. David Kustoff
(TN-08-R)

Sen. Cory Booker
(NJ-D)

Sen. Marsha Blackburn
(TN-R)

NCAA Accountability Act

In December of 2021 Representative David (TN-08-R) Kustoff with co-sponsor Josh Harder (CA-9-D) introduced The NCAA Accountability Act because Kustoff believed the University of Memphis, a school in his district was not being fairly treated during an NCAA enforcement process. The NCAA enforcement process has long been considered flawed. It has complete control of the infractions process. It establishes the rules, decides when to enforce the rules, determines if rule violations have taken place, and issues sanctions. Essentially, the NCAA acts as the judge, jury, and executioner. This unchecked authority leads to conflict of interests, favoritism, and biased decision making. Further, the NCAA provides its members with minimal due process protections. Its investigations lack transparency and established procedures, its operating rules are ambiguous, and accused individuals are not provided with fair notice. Lastly, the NCAA's sanctions for rule violations are inconsistent, unpredictable, and often disproportionately severe with respect to the alleged violation. One college athlete may get off scot-free for a violation, while another may receive a life-altering penalty for a similar violation.

The bill would provide the following due process protections for universities and individuals under investigation for bylaw infractions:

- Requires the NCAA to provide its member universities with fair notice regarding enforcement proceedings, including information about: the status of the investigation, alleged violations being investigated, the involved individuals and programs, the potential penalties of each allegation, and the rights and resources available to the accused. The NCAA is required to provide this information through:
 - A notice of inquiry (when the NCAA opens an investigation into a member).
 - A notice of allegations (if the NCAA files formal charges).
- Requires the NCAA complete any investigation no later than one year after it begins.
- Statute of limitations. Prohibits the NCAA from penalizing any violation that occurred more than two years prior.
- Prohibits information from confidential sources from being offered into the NCAA's enforcement decisions.
- Prohibits the NCAA from publicly disclosing information relating to an ongoing investigation into a member institution until formal charges are filed in the notice of allegations.

The bill would provide more fairness, consistency, and accountability, by providing institutions and athletes the right to resolve disputes with the NCAA through arbitration by a 3-person arbitration panel mandated to provide an independent, unbiased review and legally binding decision and requiring equitable penalties with respect to severity of the infraction and the institution's history of infractions. The U.S. Department of Justice would provide oversight to see that the NCAA followed these mandates.

What The Drake Group (TDG) is Doing About This. This bill is a great example of “the long game” when working with Congress to accomplish major change. Originally filed in the 117th Congress (2021-22) and again in the current 118th Congress (2023-24), it is unlikely that the bill will get to the floor for a vote prior to the end of the 118th Congress (2023-24) on January 3, 2025. Granted, complicating efforts is the fact that we are dealing with the most unproductive and dysfunctional Congresses ever. Putting that fact aside, persistence, leadership on both sides of the aisle, willingness to compromise, and educating members will always be keys to success.

TDG is committed to supporting bipartisan efforts and legislation. Knowing a bill must pass both the House and the Senate, we've been working with Representative Kustoff's office to get more co-sponsors in the House. We were also successful working together to get an identical “companion bill” filed in the Senate—again bi-partisan, with Marsha Blackburn (TN-R) and Cory Booker (NJ-D) as the lead co-sponsors. We're ready to continue this work in

the 119th Congress when we expect both the House and Senate bills to be refiled. Interested in the details? Check out [H.R. 5491](#) and [S. 3739](#).

Asking for Your Support. If you aren't a member already, please consider becoming a dues-paying member/supporter of TDG to help advance these efforts. Membership is nominal (\$10/students, \$35/faculty, \$50/general) and other gifts in any amount are appreciated. [You may do so here.](#)

We have no staff members — we are all volunteer sports management and sports law faculty, economists, and experts in issues related to needed college athletics reforms. We are non-partisan and highly respected by Congress for providing the trustworthy, fact-based information needed for good legislation and agency policy making. Your donations will be used to pay for student research, manage our website, operate our communications platforms and fund limited trips to meet with Congress (90 percent of our work educating Congressional staff members is via Zoom communication).

Most of all, we do what we do because we believe in the extraordinary developmental impact of intercollegiate athletics on participants — confidence, discipline, work ethic. We also believe in athletics because it contributes to a vibrant campus community and is part of the 'glue' that keeps alumni involved in higher education. We must keep these benefits while we solve the challenges created by the commercialization of college sport.

Thanks for considering this request – we'd appreciate your help.

Gratefully,

Donna



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