SHORTCOMINGS OF THE PROTECT COLLEGE SPORTS ACT OF 2026 AND HOW THEY SHOULD BE ADDRESSED

NOTE: This Appendix is organized and sequenced based upon the Section number of S.4668, the Protect College Sports Act of 2026.

TOPIC: REASONABLE PROTECTIONS FOR STUDENT-ATHLETE FROM THE CHILLING EFFECT OF PAYING ATTORNEYS' FEES AND COSTS FOR OTHER THAN NONMERITORIOUS COMPLAINTS

Section 102 – MODIFICATIONS TO SPORTS AGENT RESPONSIBILITY AND TRUST ACT
Sec 5A. Private Right of Action
(c) Attorney's Fees and Costs

What to Do: Amend this subsection as follows ….

"In a civil action brought under subsection (a) in which the defendant is not an institution (as defined in section 100 of the Protect College Sports Act of 2026), the court may, in its discretion, award reasonable attorney's fees and litigation costs, ***provided, however*****, reasonable attorney's fees and litigation costs may be awarded against a student only if the student's claim was frivolous, unreasonable, or without foundation."**

Section 119 – PRIVATE RIGHT OF ACTION

§ 119(c) Relief

What to Do: Amend this subsection as follows ….

§119(c) "Relief. In a civil action brought under subsection (a) in which the plaintiff prevails, the court may aware plaintiff –

(1) actual damages; and

(2) any other relief, including equitable relief or declaratory relief, that the court determines appropriate (including attorney's fees, if otherwise allowed under applicable law, ***provided, however,*** **reasonable attorney's fees and litigation costs may be awarded against a student only if the student's claim was frivolous, unreasonable, or without foundation."**

Rationale: Without these amendments, a student could bring a legitimate claim, lose the case (e.g., due to a legitimate judicial interpretation of the law), yet be exposed to a judgment to pay an Agent's or Institution's attorneys' fees and costs. The practical result for a student to such exposure will "chill" a student's inclination/willingness to pursue legitimate claims under Section 102 and Section 119. In practical terms, the college athlete risks bankruptcy Clearly, Agent's, Institutions, Conferences, etc., typically well-covered by comprehensive insurance policies, do not need to be protected from legitimate claims but deserve redress and deterrents from claims that are frivolous, unreasonable or without foundation. Institutions cannot be trusted NOT to seek student payment of fees and costs as a deterrent to future student lawsuits. Neither should we rely upon the courts to do so without this type of explicit instruction as part of the law in this post-Chevron climate. The fees and costs provisions of Sections 102(c) [relative to agents] and 119 need to be amended to apply the asymmetrical standard from the US Supreme Court's decision in Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978). There is existing precedent to support this common-sense approach.

TOPIC: REASONABLE PUBLIC DISCLOSURE PROVISIONS

Section 104 – DISCLOSURES AND ESTABLISHMENT OF NAME, IMAGE, AND LIKENESS AGREEMENT DATABASE.
§104(b) Disclosures by Associations and Database
§104(b)(1) In General

What to Do: Amend this subsection as follows ….

§104(b)(1) "In General. Not later than September of the first year beginning after the date of the enactment of this Act, each intercollegiate athletic association shall establish and maintain a publicly accessible, searchable database **which shall include data collected separately under subsection (a)(1)(A) and (a)(1)(B) by NIL service rendered and total amount of compensation for that service in the aggregate by institution and by sport to allow the public,** student athletes and their agents to estimate the fair market value for name, image, and likeness agreements**, and** which shall include data collected under subsection (a)(2)."

Rationale: Before this edit, the subsection provided that although the database was "publicly accessible" it was "… for student athletes and their agents… [.]"and the language DID NOT say it was also for "the public" and did not include data under §104 (a)(1)(A). Further, given the existing Act requirement that data be anonymized to protect individuals and the fact that institutions are regularly required to report to the NCAA and the Department of Education in the aggregate and by sport, such transparency of scholarships, NIL payments, and revenue-cap and retention fund compensation via annual public reports by each Institution should be supported.

TOPIC: ADDRESS INSUFFICIENT ATHLETE PROTECTION FROM ABUSIVE CONDUCT

Section 107- HEALTH, WELLNESS, AND SAFETY STANDARDS.
§107(b) Measures to Prevent, Assess, and Remediate Abuse or Misconduct

What to Do: Deleted this subsection and substitute in its place …

~~Each institution, conference, and intercollegiate athletic association shall take reasonable actions to prevent, assess, and remediate—~~

~~(1) abuse or hazing of any student athlete, including physical and sexual abuse; and~~

~~(2) sexual assault, sexual misconduct, and sexual harassment.~~

§107(b) "Measures To Prevent, Assess, and Remediate Abuse or Misconduct. **National collegiate athletic associations shall establish codes of conduct applicable to athletes, coaches, and staff of all member Institutions that are at least as stringent as the U.S. Center for Safe Sport SafeSport Code. Institutions shall be responsible for educating athletes, coaches, and staff and enforcing the code."**

Rationale: There is no need to "reinvent the wheel" after Congress recently addressed the same issue of sport-specific athlete abuse policies in non-school sports by establishing the U.S. Center for Safe Sport. We recommend adding a SafeSport Code for school sports. This would not be costly. Higher education institutions already operate personnel offices and are required to have a Title IX compliance officer, providing the investigation and adjudication mechanisms that are not present in non-school sports. Also, the PCSA establishes a new Ombuds Office and a Health and Safety Officer position that will be able to provide greater health, medical, mental health, and safety oversight, in addition to SafeSport Code enforcement, to address and prevent professional misconduct. This is an issue of particular concern to women, with one in five experiencing sexual assault in college.

TOPIC: MEDICAL AND MENTAL HEALTH WAIVERS AND OTHER EXTENUATING CIRCUMSTANCES MUST BE REQUIRED UNDER THE NEW 5-YEAR ELIGIBILITY RULE

Section 113- ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE SPORTS.
§113(b) Years of Eligibility
§113(b)(2) Exceptions

What to Do: Amend this subsection as follows …

§113(b)(2)(D) "Other periods of absence~~**, which may include serious athletic injury or medical condition,**~~ ~~adopted by rule or bylaw by an intercollegiate athletic association that apply uniformly to all student athletes.~~ **created by serious athletic injury, medical or mental health condition or significant extenuating circumstances unrelated to the loss of potential earnings or economic benefits, with waivers determined by an independent panel of medical experts and certified health counselors.**

Rationale: The absence of a mandated (rather than "may") exception for athletic injury, medical or health conditions, disincentivizes reporting or seeking treatment for athletic injuries or medical or mental health conditions and incentivizes premature return to play. The NCAA appears reluctant to take on the workload of reasonable waivers for participation in an educational activity. A separate committee on rules waivers, composed of independent medical, academic, and other experts, to ensure consistent rulings and to prohibit waivers based on loss of potential earnings or economic benefits. For example, the constituent membership of such a committee could be comprised of membership of members of the American College of Sports Medicine, and others.

TOPIC: THE NEW RETENTION FUND AND ITS $5 MILLION NON-REVENUE SPORTS INCENTIVE PROVISION ARE FINANCIALLY UNSUSTAINABLE AND ARE ACHIEVABLE BY NO MORE THAN 10-20 INSTITUTIONS

Section 114- PROHIBITED COMPENSATION AND AGREEMENTS.
§114(a) – Certain Agreements and Compensation Prohibited
§114(a)(1) Prohibition
§114(a)(1)(C) Multimedia Rights Holders, Sponsors, Apparel Companies, and Vendors

What to Do: Amend this subsection as follows:

"**§114 (a)(1)(C)(i)** the multimedia rights holder shall provide a signed certification to the intercollegiate athletic association or its designated enforcement entity affirming that the institution in which the student athlete is enrolled or plans to enroll is not the originating source of the compensation to be paid to the student athlete or the prospective student athlete and that the payment of the compensation is not coming directly or indirectly from the institution, **and that the multimedia rights holder neither was or is retained to source, identify or negotiate any name, image or likeness agreement for the institution's athletes or the prospective student athlete**."

"**§114(a)(1)(C)(ii)** the third party or the sponsor, apparel company, or vendor benefitting from the name, image, and likeness of the student athlete or prospective student athlete shall provide a signed certification to the intercollegiate athletic association or its designate enforcement entity affirming that it is the originating source of the compensation to be paid to the student athlete, that it did not receive funds, directly or indirectly, from the institution in which the student athlete is enrolled or plans to enroll for the purpose of financing the agreement, that the institution did not forgo funds due **or to be due** from the third party or the sponsor, apparel company, or vendor for the purpose of financing the agreement, that the institution did not negotiate for and determine the amount of compensation to be paid to the student athlete or prospective student athlete through the agreement, **and that the third party or the sponsor, apparel company, or vendor neither was or is retained by the institution to source, identify or negotiate any name, image or likeness agreement for the institution's athletes or the prospective student athlete**."

"**§114(a)(1)(C)(iii)** the institution at which the student athlete is enrolled or plans to enroll ~~if required by the intercollegiate athletic association or its designated enforcement entity,~~ shall provide a signed certification to the intercollegiate athletic association or its designate enforcement entity that the institution is not circumventing the revenue share cap through the name, image, and likeness agreement, or negotiation for and determining the amount of compensation to be paid to the student athlete or prospective student athlete through the agreement, **<u>and that the institution did not retain the multimedia rights holder, or the third party, or the sponsor, apparel company or vendor benefiting from the name, image, and likeness of the student athlete or prospective student athlete to source, identify or negotiate any name, image or likeness agreement for the institution's athlete(s) or the prospective student athlete</u>**."

Rationale: These amendments remove possible loopholes in these provisions.

§114(a) – Certain Agreements and Compensation Prohibited
§114(a)(2) Retention Fund
§114(a)(2)(A) Retention Fund Exception

What to Do: Amend this subsection as follows:

"**§114(a)(2)(A)** Except as provided in subparagraph (B), an institution may exceed the revenue share cap by not more than $22,500,000 per academic year for the purpose of retaining a student athlete or group of student athletes who have spent at least one full competitive season at the institution**<u>, provided, such institution demonstrates to the intercollegiate athletic association that: its athletic programs are economically sustainable taking into consideration all direct and allocated expenses (*See*, NCAA MFRS Accounting Rules for direct and allocable expense categories), and such economic sustainability has been achieved without the use of institutional subsidies (e.g., student fees), and it has maintained non-revenue sports at or above the 2024-25 levels, and its athletic programs are compliant with federal law (e.g., Title IX), and it certifies its compliance with §114(d)-Payments to Coaches and Managers.</u>**"

Rationale: This amendment provides a critical prerequisite condition to allowing an institution to spend money on athletes via the Retention Fund. The new §114(a)(2)(A) creates a novel benefit to institutions authorizing them to spend an additional $22.5 million – a Retention Fund (recall, this is in addition to the 2026-27 $21.3 million with escalators already available to institutions via the Revenue Share). The new §114(a)(2)(B)(i) creates a novel benefit to institutions to exceed their Revenue Share payments – up to $5 million – in proportion to the NIL compensation the institution provides through the Revenue Share cap and Retention Fund to athletes in non-revenue sports. Note: this provision does <u>not</u> fund non-revenue programs, and it does <u>not</u> require that the additional room (i.e., the up to $5 million) benefit non-revenue athletes. The "incentive" provides an unfair advantage to those few institutions that can afford it. It is available only to institutions with $5 million of discretionary capacity remaining <u>after</u> they have exhausted a Revenue Share cap ($21.3 million with escalators) and a Retention Fund ($22.5 million).

Appendix B contains data demonstrating that even the wealthiest institutions in the P-4 are not in a financial position to sustain Year One and Year Two projected costs of the Settlement with regard to athlete payments.

The Retention Fund rewards institutions already positioned to spend heavily and does very little for schools whose central problem is that they lack the money to spend in the first place. The number of schools likely to take advantage of this provision is in the 10-to-20 institution range and more likely to be among those members of the Power Two conferences (SEC and BigTen). Why? The wealthiest institutions competing for success in both the College Football Playoff and the Final Four basketball championship must spend most of their Revenue Share Pool on recruiting football and men's basketball athletes who will be first year athletes at the institution because the Retention Fund can only be used for athletes who have successfully completed one year at an institution. Therefore, the bulk of the Retention Fund must be used to keep those same recruits from transferring during their years 2 through 5 at the institution. In practical terms, it widens the distance between the few P-2 programs that can afford both pools ($43.8 million) and all other Division I programs that cannot.

One can also reasonably assume that retaining a multiyear backlog of recruited top football and basketball producers will take precedent to awarding dollars to non-revenue sports. In effect, the $5 million spent on non-revenue sports will become a de facto ceiling from those funding sources, rather than a floor with no real incentive other than enabling institutions to "say" they are using those funds to support both male and female non-revenue sport athletes.

§114(b) – Personal Athletic and Education Benefits Permitted

What to Do: Amend this subsection as follows:

"§114 (b) Personal Athletic and Education Benefits Permitted - An intercollegiate athletic association, a conference, an institution, or any representative thereof shall not, pursuant to the Injunctive Relief Settlement Agreement approved by the court in "In Re College Athlete NIL Litigation", No. 20–cv–03919 (N.D. Cal. June 6, 2025), restrict the ability of a student athlete enrolled at an institution to receive compensation from an intercollegiate athletic association, an institution, a conference, or an associated entity, for personal benefits related to education or intercollegiate athletics, if those benefits are—

(1) reasonable costs of transportation and temporary lodging for family members of a student athlete while the student athlete is experiencing a documented physical or mental health concern or participating in an intercollegiate athletic competition; **or**

(2) reasonable costs for meals, shelter, medical coverage, and medical expenses not provided or covered by the institution; or

(3) reasonable education-related financial benefits, such as institution fees, books, or other incidental educational expenses that are not otherwise provided by the institution **<u>and</u>**

<u>(4) awarded through the institution regardless of the source of funding</u>.”

Rationale: This section codifies a House v. NCAA settlement provision permitting certain payments to athletes from conferences, national governance associations and institutions for reasonable educational, medical, and championship costs. By specifying that such payments be made <u>through the institution</u>, institutions, conferences and the NCAA would not be able to evade the application of Title IX.

§114(d) Payments to Coaches and Managers

“§114(d) Payments to Coaches and Managers.—(1) IN GENERAL.—Any institution **<u>of higher education that is a recipient of federal funds</u>** **~~described in paragraph (2)~~** may not compensate or otherwise provide or promise any type of payment or benefit **<u>to all coaches that exceeds in the aggregate</u> <u>the financial assistance and training benefits (other than medical, mental health, and academic support) to all athletes in the aggregate at that institution.</u>~~$500,000 to any coach, assistant coach, general manager, or other person who coaches or manages a varsity sports team by using, diverting, budgeting, or otherwise obtaining funds from any source other than college sports revenue or a donation or contribution to the athletic department of the institution.~~**

~~(2)~~ **~~INSTITUTION DESCRIBED.— An institution described in this paragraph is an institution with more than $80,000,000 in total annual athletics revenue during the preceding academic year.~~**

<u>(2) National athletics governance organizations shall limit the total number of coaches per sport based on instructional ratios related to the sport's nature and safety considerations related to supervision and the number of coaches who may be involved in off-campus recruiting activities.</u>

(2) <u>Multi-year coach employment agreements may not exceed five years; and</u>

(3) <u>Coach employment agreement exit provisions for no cause may not exceed payment of the balance of the contract, excluding unearned bonuses.”</u>

Rationale: As currently written, institutions with $80 million or more in athletics-generated revenues cannot pay more than $500,000 to personnel unless such payment is funded by athletics-generated revenues or donations/contributions to the athletic department. The current provision puts pressure on institutions to prioritize personnel acquisitions over Title IX compliance, broad sports programs, and expenditures on non-revenue sports if revenues over $80 million or donor contributions are insufficient. Further, capping aggregate expenditures on coaches and other personnel should remove

any argument about capping financial assistance to athletes while doing likewise for coaches and staff. Coaches employed by the non-profit institution to provide athletic program instruction and/or athlete recruiting should receive salaries and benefits appropriate for an educational non-profit organization, determined by the institution, and limited only by requirements that balance the institution's allocation of resources between college athletes and coaching staff, and represent reasonable financial constraints that support the financial stability of the institution's athletics program.

TOPIC: SEC 115 IS NEW. IT IS AN ATTEMPT TO RESOLVE THE PCSA'S RELIANCE ON THE *HOUSE* SETTLEMENT FOR ITS REVENUE SHARE PROVISIONS THROUGH AN ILL-CONCEIVED CONGRESSIONAL FAST-TRACK PROCESS, BUT IN DOING SO IT MISSES THE PARAMOUNT PRECONDITION TO THE IMMEDIATE AND LONG-TERM FUTURE OF REVENUE SHARE AND THE RETENTION FUND

Section 115 – CONGRESSIONAL APPROVAL OF CONTINUATION OF REVENUE SHARE CAP AND RETENTION FUND

What to Do: Delete the entire subsection and substitute the following:

"§115 (a) Continuation Upon Congressional Approval

(1) In the event of termination, expiration or any revision determined by legislation following adoption of the Act, including action on Sports Commission recommendations:

(A) In the case of termination or cessation, current athlete agreements remain in force for the current year, new and renewed athlete agreements are prohibited pending final Congressional action on continuation, and

(B) Congress shall immediately convene a special commission of experts to examine the financial sustainability of the revenue share/retention fund systems which shall be given 90 days to submit its recommendations for the consideration of Congress, and Congress shall act upon such proposed recommendations with legislation, OR

(C) If such an examination has been completed by the Sport Commission in anticipation of expiration or termination, Congress shall act upon the recommendations of the Sport Commission and shall act upon such proposed legislation."

Rationale: Under current §114, the PCSA codifies the House settlement's revenue-share cap. Sec.115 provides that when the settlement expires or is terminated[1], the cap does not automatically continue but gives Congress the power to decide whether the cap survives the settlement.[2] Therefore, §115 converts the revenue-share cap from a settlement-derived limitation into a congressionally controlled, renewable statutory framework. As currently proposed, the Act preserves the basic architecture of the House v. NCAA settlement rather than reconsidering whether the settlement itself is the

[1] §115's approach arguably "covers" the fragile construct of incorporating into the PCSA an economic structure that is currently on appeal to the 9th Circuit Court of Appeals, with no assurance of its outcome and without regard to the fact that regardless of the outcome, most certainly will be taken on appeal to the U.S. Supreme Court.

[2] No discussion is provided here concerning §115's logistical steps and process by which Congress exercises its §115 power, nor the annual percentage increases or the recalculation at 22% of Average Shared Revenue.

appropriate foundation for college-athletics governance. It perpetuates a <u>revenue-driven</u> framework without making the sustainability of the overall athletics cost structure a prerequisite to revenue sharing. In doing so, it does not ask whether the Institution can afford the payment. It should not perpetuate any cap without considering the ability of the institution to sustain the required athletics model, including

- ***total athletics expenses***
- ***athletics operating deficits***
- ***institutional subsidies of athletics***
- ***debt attributable to athletics***
- ***deferred athletics maintenance***
- ***coaching and administrative compensation***
- ***facilities costs***
- ***travel costs***
- ***Title IX compliance costs***
- ***The cost of maintaining non-revenue sports***
- ***The Institution's overall financial condition***
- ***The ability of the Institution to sustain institutional subsidy of the athletics program***

Instead, as proposed in the latest draft of the PCSA, the principal economic variable is <u>revenue</u>. Congress is focusing on a revenue-side governance model and completely ignoring whether a sustainable financial model of revenues, operating expenses and outstanding debt exists. In exercising its §115 power due to the settlement having expired or been terminated, Congress should ask: What percentage of sustainable athletics surplus, after all legitimate and necessary costs of operating the athletics programs, can appropriately be allocated to college-athlete compensation? As proposed in the latest draft, §115, Congress never gets to this question. Congress should not merely decide how much of the existing revenue mode to redistribute; it should first determine whether the underlying model is financially, educationally, and institutionally sustainable. Lastly, the proposed amendment above provides a safe harbor" until Congress acts.

TOPIC: REVIEW OF REVENUE POOL LIMITS REQUIRES A COMPREHENSIVE FINANCIAL REVIEW OF REVENUES AND EXPENDITURES

Section 116. COMMISSION ON THE FUTURE OF COLLEGE ATHLETICS

What to Do: Amend this subsection as follows:

> **"116 (d)(1)(D)** whether to eliminate, extend, or change the ~~Pool Benefits Limit set forth in the Injunctive Relief Settlement Agreement as approved or amended by the court in "In Re College Athlete NIL Litigation", No. 20cv03919 (N.D. Cal. June 6, 2025);~~ **revenue share cap, including consideration of the calculation of the revenue share cap and the categories of data that should be included in such calculation following a comprehensive examination and determination of whether Division I athletic programs are economically sustainable taking into consideration all direct and allocated expenses (*See*, NCAA MFRS Accounting Rules for direct and allocable expense categories), and such economic sustainability has been achieved without the use of institutional subsidies (e.g., tuition, student fees), and it has maintained non-revenue sports at or above the 2024-25 levels, and its athletic programs are compliant with federal law (e.g., Title IX), and whether institutions are complying with §114(d)-Payments to Coaches and Managers.**"

Rationale: Congress should not merely decide how much of the existing revenue mode to redistribute; it should first determine whether the underlying model is financially, educationally, and institutionally sustainable.

TOPIC: NATIONAL AND CONFERENCE GOVERNANCE RESTRUCTURE AS A CONDITION TO RECEIVING ANTITRUST EXEMPTIONS OR PREMPTION OF STATE LAWS — CONGRESS MUST FIX THE RIGHT THING

Section. 118 LIMITATION ON LIABILITY

What to Do: Amend the subsection as follows

"§118(c) Governance Conditions Required for Limitation of Antitrust Liability. ~~Requirements for an Intercollegiate Athletic Association.~~ An intercollegiate athletic association shall not be entitled to the antitrust exemptions set forth in subsections (a) and (b) unless the intercollegiate athletic association has established rules, bylaws, or other regulations implementing paragraphs (1) through ~~(9)~~ **(9)** of subsection (a) and paragraphs (1) through (4) of subsection (b) **and, if consisting of multiple competitive divisions or subdivisions with independent rulemaking authority, is governed by an independent board of directors meeting the requirements of this subsection.**

(1) INDEPENDENT DIRECTORS. Independent directors are individuals who have not held a position as a president, member of a governing board, faculty member, athletic director, and/or other paid employee of a higher education institution or non-profit collegiate athletic association or conference within the past five years, nor college athletes within the past 10 years prior to or at any time during their term or position as a director.

(2) COMPOSITION AND TERMS. No less than 12 members serving staggered terms, and at least 60 percent of whom have served as presidents or chancellors at institutions reflecting membership in each of the organization's competitive divisions, at least 50 percent have participated in intercollegiate athletes, and at least 40% of whom are recognized for their financial or legal acumen and revenue generation success, and all of whom have had experience directing the affairs of a multi-billion dollar organization. Directors shall be limited to serving three consecutive terms.

(3) DESIGNATED RESPONSIBILITIES. Directors are responsible for exercising governance duties in the educational and health interests of athletes in all competitive divisions, including but not limited to:

(A) ensuring that the controlling authority of member institutions and conferences is exercised through the following legislative processes:

(i) a one-member, one-vote process at an annual or special convention with no weighted voting, requiring a two-thirds majority for new or amended constitutional provisions applicable to all member institutions in all competitive divisions.

(ii) a one-member, one-vote process with no weighted voting and a majority vote requirement for adopting bylaws and other rules by competitive division or subdivision.

(iii) Constitutional provisions, bylaws, or other rules shall be consistent with federal laws that specify higher education institution obligations under the Protect College Sports Act of 2026, Title 20 of the U.S. Code, including those detailed as Title IV Higher Education Act "Program Participation Agreements.

(iv) composition and structure of division or subdivision boards of directors, which shall consist of no less than 40 percent current presidents or chancellors, 30 percent athletics managers, and 30 percent current or former college athletes who have graduated within the last 10 years, and shall operate on the principles of a one-member-one-vote and no weighted membership.

(v) all-division and division or subdivision committees with the authority to establish and enforce rules or bylaws shall be comprised of no less than 30 percent current or former student athletes who have graduated from their institutions during the preceding 10-year period.

(B) oversee maximizing the revenue yield of national organization assets

(C) determining the distribution of organization revenues consistent with constitutional policies

(D) approve all commercial sponsorships, media rights agreements, and service contracts;

(E) veto the actions and rulemaking of any division or subdivision that are inconsistent with the constitution or not in the best interest of the national organization as a whole.

(F) provide for a common rules enforcement structure for all member institutions consisting of independent investigators and adjudicators and a commitment to due process.

(G) maintain an organizational commitment to advancing education objectives, broad sports programs, the equitable treatment of men's and women's programs, and support of Olympic sports."

Rationale: The problem to be fixed is NCAA governance. Antitrust immunity is being given by Congress to the very organization that has repeatedly lost, on the merits, cases in which Courts have had no hesitation in finding, for example, its eligibility governance arbitrary. Presumably, the intent is to rescue the NCAA from a broken litigation environment when, in fact, such litigation is functioning as it should—a check and balance against failed governance and arbitrary and inconsistent rulemaking. §118 does not fix NCAA flawed

governance, it simply makes those governance decisions unreviewable. Only by replacing the NCAA Board of Governors with an independent board acting in the best interest of all members, reinstating a one-member/one-vote governance, and prohibiting weighted voting or positions on decision-making structures, will Congress send the message to the new Governors that they, not Congress, are responsible for reclaiming non-self-interested president control and ensuring an educationally sound course correction. The above proposed governance structure changes address the root causes of the NCAA governance problem. Due to FBS and Power Five conferences threats to leave the association starting in 1997 and continuing to the present in dictating PCSA concessions to meet its commercial success needs, the membership acceded the one-member-one vote principle of institutional control to permit the most commercially successful institutions and conferences to control governance entities through allowing them weighted voting or weighted representation on decision-making structures. These privileged entities were and are thereby insulated from questioning, challenging or remedying by those institutions or athlete stakeholders who have been victimized by such decision-making. Therefore, any antitrust exemption or state law preemption for governance association rules, should include the above governance structure conditions to restore a check and balance system that places educational integrity above commercial success:

TOPIC: CORRECT OMISSION OF SECTION 125 (Protection of Women's Sports and Oly FROM PRIVATE RIGHT OF ACTION –

Section 119- PRIVATE RIGHT OF ACTION

What to Do? Amend the following Section of 119 as follows to correct the omission of §125 from this private right of action protection:

"§119 (a) VIOLATIONS.
(11) Section 114(b) **and**
(12) <u>Section 125"</u>

Rationale: As currently drafted, Section 125 (Protection of Women's Sports and Olypmic Sports) provides no stated Federal Trade Commission, Attorney General, Department of Education or any other federal regulator enforcement mechanism. There are no administrative penalties and no annual certification. The compliance mechanism is: an athletic association or Conference is to "provide that" its covered institutions maintain the baseline. Compare §109 (Comparable Standards For Access To Facilities, Services and Events) in which "compliance" is enforced via the Private Right of Action under §119. Therefore, Section 119(a) should be amended so as to provide that Section 125 is enforceable by a Private Right of Action.

TOPIC: ATHLETES SHOULD HAVE THE RIGHT TO CHOOSE ARBITRATION WITHOUT THE AGREEMENT OR PERMISSION OF THE INSTITUTION

Section 119- PRIVATE RIGHT OF ACTION.

§119(d) Limitation on Pre-dispute Agreements and Waivers
§119(d)(1) Pre-Dispute Arbitration Agreement
§119(d)(1)(B) Treatment of Claim

What to Do: Amend this subsection as follows …

"§119(d)(1)(B) "TREATMENT OF CLAIM. If a claim for a violation of this title arises, a student athlete has the option to arbitrate the dispute. ~~**if the intercollegiate athletic association, conference, or institution agrees to the arbitration."**~~

Rationale: Why would anyone object to a non-litigious approach to dispute resolution? The NCAA has repeatedly taken the position that it needs "relief" from all of the "litigation". Arbitration is a cheaper and faster way to resolve disputes. If the institution is required to approve, it can force the athlete into expensive litigation, creating a major chilling effect on efforts to reach a resolution. Women, who are overrepresented among non-revenue sport athletes, are less likely than revenue sport athletes to have the money to sue. Requiring such "agreement" is seemingly innocuous; however, the provision "raises the bar" to entry for seeking legitimate resolution of disputes.

TOPIC: SEC. 125 PROTECTION OF WOMEN'S SPORTS AND OLYMPIC SPORTS DOES NOT PROTECT EITHER

Section 125. PROTECTION OF WOMEN'S SPORTS AND OLYMPIC SPORTS

§125 (a) General
§125 (b)(1) and (c) (1) General

What to Do? Amend this subsection to more exactly specify obligations to maintain non-revenue sport programs for all Division I institutions that award athletics-related financial assistance and to eliminate financial hardship waivers as follows:

"§125 (a) GENERAL. An intercollegiate athletic association or conference comprised of Division I institutions, as defined by bylaw 20.9 of the National Collegiate Athletic Association, or a successor bylaw, shall not reduce the minimum intercollegiate athletic competitions, minimum **number of** participants **that comprise** a varsity sports team **in order to be considered a countable sport under Division minimum sports sponsorship requirements**, **and** the number of varsity sports teams, including the number of men's and women's varsity sports teams or Olympic varsity sports teams, that an institution must sponsor for membership within **a Division and shall not eliminate a viable men's or women's sport team in existence during the 2024-25 academic year and replace it with a less expensive alternative-**

(1) Division I of the National Collegiate Athletic Association, or a successor bylaw; or

(2) The Football Bowl Subdivision, as defined by bylaw 20.9.9 of the National Collegiate Athletic Association, or successor bylaw."

Rationale: This more precisely specifies the participant and sports requirements and protects men's and women's non-revenue sports from replacement with a less expensive alternative.

What to Do: §125(b)(2) and (4), (c)(1), (2), (3) and (4) and (d) DELETE ALL PROVISIONS IN THEIR ENTIRETY but add new §125(b) and (c) as follows and renumber (e) accordingly:

"§125 (b) IN GENERAL. ~~**Except as provided in paragraph (2),**~~ **A** Division I intercollegiate athletic association or conference comprised of institutions **that provide athletics-related financial assistance to athletes** shall ~~provide~~ **require** that each institution shall, consistent with applicable intercollegiate athletic association rules, offer and maintain at least **1)** as many total **full** grant-in-aid **equivalencies opportunities, 2) as much other payments then permitted in addition to grants-in-aid,** and 3) **as many** roster spots for non-revenue generating intercollegiate sports programs including women's and Olympic intercollegiate sports programs, during each academic year as the member institution provided during the academic year 2024-2025."

Rationale: These amendments more precisely specify the total participation obligations and financial aid requirements that protect men's and women's non-revenue sports. Title IX applies to all financial assistance, not only grants-in-aid. Financial assistance is money, not the number of individuals who may receive a grant-in-aid. The 2024-25 NCAA grant-in-aid limit for each sport was set by rule as the maximum number of full-cost-of-education scholarship equivalencies, with most sports able to award partial and full grants. Grants-in-aid did not include other important forms of financial assistance, such as summer school aid, special assistance funds, academic awards, and summer training expenses that women and Olympic athletes received in 2024-25. Thus, there is no reason to limit the 2024-25 financial aid category to grants-in-aid only. Doing so would establish a floor of financial support lower than what women's sports and Olympic sports actually received in 2024-25. Further, we note that this bill establishes a roster spots floor (total number of participants) that the GAO 2024 research report showed did not meet the Title IX sex equity standard of "proportional to undergraduate enrollment" at 93% of all higher education institutions with athletics programs.

(i) "The term Non-revenue generating intercollegiate sports program means an intercollegiate sports program at an institution for which, during an academic year, the revenues generated specifically attributable to that sports program **defined as "total operating revenues" in the NCAA Member Financial Reporting System Agreed Upon Procedures publication applicable to that year** are less than the direct and allocated operating expenses of that sports program **defined as "total operating expenses" by NCAA Member Financial Reporting System Agreed Upon Procedures publication applicable to that year."**

Rationale: The 2024-25 NCAA grant-in-aid limit for each sport was set by rule as the maximum number of full-cost-of-education scholarship equivalencies, with most sports able to award partial and full grants. Grants-in-aid did not include other important forms of financial assistance, such as summer school aid, special assistance funds, academic awards, and summer training expenses that women and Olympic athletes received in 2024-25. Thus, there is no reason to limit the 2024-25 financial aid category to grants-in-aid only. Doing so would establish a floor of financial support lower than what women's sports and Olympic sports actually received in 2024-25. The meaning of "non-revenue producing" is tied to revenue and expense definitions applicable to the annual NCAA audited financial report required of all Division I institutions.

"§125 (c) An institution may be granted a waiver from compliance with §125 (b) for not more than one academic year if there are extraordinary circumstances related to the occurrence of a natural disaster, act of war, or another catastrophe,

that are beyond the control of the institution. As a condition of seeking a waiver under subparagraph (A)(i), an institution shall first reduce the total compensation of the coaching staff of its revenue-generating varsity sports programs by the same proportion as any planned reduction in expenditures for its non-revenue generating intercollegiate sports programs during the waiver period."

Rationale: The deleted Sections provide financial hardship waivers for differently-sized institutions within Division I to meet their athlete financial assistance and participation opportunities and new (c) replaces in its stead a waiver provision applicable to all Division I institutions in the case of a natural disaster or circumstance not under its control. Federal laws that prohibit discrimination on the basis of sex, race, and disability do not allow financial insufficiency as a justification for differential treatment. Further, we note as explained above that 93 percent of collegiate athletic programs were not in compliance with the participation provisions of Title IX and 63% were not in compliance financial aid equity requirements. This was before 82 percent of Division I institutions voluntarily opted into the House v. NCAA settlement, with preliminary indications that expending Revenue Share pool funds under that agreement will primarily favor male athletes participating in revenue producing sports without regard to Title IX equity requirements. Institutions that cannot afford Title IX compliance should not be allowed financial hardship waivers. Institutions who cannot sustain the financial commitment required to participate in the settlement Revenue Share pool, should not be in Division I or should not opt in to the settlement. These institutions have the option to participate in Division II with lower participation and financial aid standards. These revisions also eliminate the 9-year limit to non-revenue sport requirements which is unwarranted given the minimal commitment to maintain 2024-25 support levels while supporting escalating expenditures in revenue sports.

TOPIC: PROVIDE AN INCENTIVE TO FUND WOMEN'S AND NON-REVENUE SPORTS FROM THE TITLE II SPORTS BROADCAST REVENUE POOL

Section 203- REQUIREMENTS FOR ENTITIES SELLING MEDIA RIGHTS.
§203(d) Revenue Allocation Formula
§203 (d)(2) Requirements

What to Do: Amend this subsection as follows …

§203(d)(2)(C) "distribute the collective media rights revenue that remains after compliance with sub-paragraphs (A) and (B), **50 percent** to member institutions based on the performance of each institution during the academic year with respect to the institution's contribution to the collective media rights revenue **and 50% to member institutions that sponsor sports programs above the minimum specified in SEC. 125(a).**"

Rationale: This amendment would provide an incentive to sponsor women's and non-revenue sports above the minimum level required for Division I membership and reward institutions who are currently doing so only after first ensuring that institutions be made whole at pre-Broadcast Act levels (Sec. 205(d (2)(A) and (B).