

## EVALUATION OF CHOICES RELATED TO SUPPORT OF S.4668 - PROTECT COLLEGE SPORTS ACT

### CHOICE 1 – The PCSA is defeated or Congress does nothing.

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**If the House of Representatives fails to pass the bill OR the bill does not come to the floor for a vote, these things will continue to happen:**

- **Unlimited Transfers Continue.** Why does this matter? Data already shows that graduation rates drop by about 20 percentage points when a student-athlete transfers more than once.
- **The Athletic Eligibility Model Continues to Be Legally Challenged.** Professional athletes and 25+-year-olds may return to participate in college sports. Sports played on a college campus are becoming increasingly disconnected from the traditional academic model. Costly lawsuits threaten universities — particularly mid-major universities, but most likely all non-Power 4 Division I schools — ability to sustain their athletic programs and scholarships.
- **Student-Athletes' Benefits and Earning Potential Will Be Reduced.** The current model allows institutions to share \$21.5M in institutional NIL (understood to be redirected through their MMR, which was not the intention of the House settlement structure) and educationally tethered cash payments. The bill increases this by \$22M-\$27M, used primarily to recruit a limited number of blue-chip athletes in revenue sports. Existing benefits, such as grant-in-aid scholarships and academic awards, are rolled back to fund this targeted distribution. Desirable athlete experience benefits that would have been required by the bill (e.g., medical support, academic degree completion support, voice in decision-making) do not occur.
- **Predatory Agent Behaviors Continue. Agents will continue taking advantage of athletes, including through high commission rates and onerous contractual terms governing control of athlete rights.**
- **Varying State Laws & Legal Interpretations Continue to Create Widespread Legal Uncertainty.** The multitude of state laws, intended to provide competitive advantage for institutions within a state, will continue to be enforced. This will provide advantages for some schools over others.

## **CHOICE 2 - Support the PCSA as written – giving the Power 4 what they want.**

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**S.4668, as written, is fiscal insanity, with the Power 4s holding Division I schools hostage. The ultimatum is clear: Vote to escalate the Division I basketball/football arms race, giving the Power 4s anticompetitive control and an economic advantage, by increasing athlete payments from \$20.5 million to \$47.5 million as a condition for the Power 4s to support Congress's attempt to resolve the administrative chaos. This chaos is the result of the Power 4s' failed control of NCAA governance and their lack of interest in the financial and educational well-being of all Division I institutions and their athletic programs.**

**ECONOMIC IMPACT** – These new spending obligations do not come without consequences for all institutions competing for March Madness and for recruiting talented college athletes. The pressure to finance this escalating athletic arms race is likely to create:

- **Pressure to increase institutional subsidies**, which draw support away from broader university resources, is mounting during a period when many institutions are facing enrollment declines due to the birthrate cliff. Approximately 98% of college athletic programs rely on institutional subsidies. Congress should ask a simple question: “How much additional spending can colleges absorb before athletics begins to crowd out educational priorities?”
- **Pressure to increase student activity fees and to use general fund tuition dollars to cover increased costs.** If student activity fees or tuition is raised to support athletics, student loan debt will increase. Students now leave college with an average student loan debt of \$40,000.
- **Donors choosing between athletics and institutional gifts, increasing the likelihood of long-term donor fatigue.**
- **Pressure to increase ticket prices.**
- **Negative response to athletic subsidies from taxpayers and state legislatures that may affect their higher education funding decisions.**
- **Pressure to increase advertising, sponsorships and consider new revenue sources**, likely to create less desirable choices such as accepting support from gambling entities or private equity interests seeking returns from tax-subsidized athletics enterprises; and

- **Elimination of scholarships, operating support, coaches, and other support for women's sports, Olympic sports, and non-revenue programs when revenues fail to keep pace or ADs are pressured to provide increased funding to revenue sports.**
- **Increased Title IX litigation risk based on current inequities** (93% of all athletic programs not in compliance with Title IX participation equity requirements) and the soon-to-be-demonstrated distribution of new athlete financial assistance to men's revenue sports and disregard for Title IX obligations.
- **Revenue pressures on non-Power 4s will center on securing enough funding to win their respective conference championships**, spending as much as the richest team in the conference to recruit and retain talent, as the door to at-large berths is closed by Power 4s dominating March Madness and the CFP at-large selections and economic payouts. All mid-majors, except conference champions (who receive automatic berths), likely will not be selected at-large.
- **Power 4 programs will continue to bleed talent from the mid-majors by cherry-picking proven talent developed by non-Power 4 programs**, forcing the mid-majors into a subordinate athlete-development role and compelling them to recruit beyond blue-chip high school talent, who will then continually seek a better deal through the transfer portal, even with a one-transfer-without-penalty limitation.

### **CHOICE 3 – Call for an Immediate Administrative Relief “Skinny Bill”**

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**Oppose S.4668 as written but publicly call for a "skinny bill" alternative as a substitute – including only those elements of the PCSA that address the administrative chaos faced by all D-I programs and are broadly supported, and referring provisions that unnecessarily escalate costs (i.e., the Retention Fund) to the Commission established by the PCSA for continued work, with a 30-month timetable for reporting recommendations to Congress.**

**Work with other non-Power 4 D-I schools to advance the “skinny bill” solution and demand (a) that the House committees of jurisdiction openly invite amendment requests (in contrast to the Senate, which did not consider many) to ensure the administrative solutions work and are enforceable, and (b) that any antitrust exemption or state law preemption for the NCAA be conditioned on a mandated change in NCAA governance (see SEC. 118 below).**

**Overview of "skinny bill" provisions pulled from the PCSA alternative that would solve the current chaos over amendment proposals invited by House committees of jurisdiction:**

TITLE I

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- SEC. 101 Name, image, and likeness protections
- SEC. 102 Modifications to Sports Agent Responsibility and Trust Act
- SEC. 103 Agent registry requirements for intercollegiate Athletic associations
- SEC. 104 Disclosures and establishment of name, image, and likeness agreements database
- SEC. 105 Academic protections
- SEC. 106 Medical coverage requirements
- SEC. 107 Health, wellness, and safety standards
- SEC. 108 Office of the Student Athlete Ombudsman
- SEC. 109 Comparable standards for access to facilities, services, and events (this provision only applicable to conference national association championships)
- SEC. 110 Rules governing certain mid-season coaching transitions
- SEC. 112 Transfer protections
- SEC. 113 Eligibility to participate in intercollegiate sports
- SEC. 114 Prohibited compensation and agreements excluding SEC.(a)(2) retention fund provisions and SEC. (e) payments to coaches and managers
- SEC. 116 Commission on the Future of College Athletics (30-month deadline to produce recommendations with consideration of athlete employment and collective bargaining as its first order of business)
- SEC. 117 Recruitment and tampering
- SEC. 118 Limitation on liability (with a 30-month sunset provision on the SEC. 118 antitrust exemption and SEC. 121 below state law preemption, and requiring renewal of authorization following a report of the Commission, and a condition requiring the NCAA to replace its current governance structure and process with (a) an independent board of governors (all directors at least 5 years removed from employment or affiliation with the NCAA, its conferences, or its member

institutions), (b) adoption of all divisional and constitutional (all divisions) legislation via a one-member-one-vote process with no weighted voting, and (c) each division's board of directors composed of one representative from each conference, elected by the members of that conference).

- SEC. 119 Private right of action (must include SEC. 125)
- SEC. 120 Whistleblower protection
- SEC. 121 Relationship to existing law (see SEC. 118 above for sunset, reauthorization, and NCAA governance conditions)
- SEC. 122 Neutrality on employee or non-employee status
- SEC. 123 Applicability
- SEC. 124 Severability
- SEC. 125 Protection of women's and Olympic sports (requires careful attention to ambiguous language regarding participation, scholarship opportunities, and consideration of a 2025-26 minimum support level instead of 2024-25)
- SEC. 127 Title IX savings clause
- SEC. 129 Disclosure of foreign financing of intercollegiate athletics

## TITLE II

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- All included except the addition of a pooled television media rights revenue-sharing distribution share for all D-I schools, based on the number of sports, the number of participants, and scholarship commitment, to create an incentive for non-rev. program support by the institution.

## TITLE III

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- All included except addition of an appropriation for this purpose (WORKING ON AMOUNT)

### **Excluded from the "skinny" bill but referred to the Commission on the Future of Athletics:**

- SEC. 111 Student-athlete representation on intercollegiate athletic association governing boards (for consideration in relation to collective bargaining and employment status and SEC. 118/121 governance changes)

- SEC. 115 Congressional approval of continuation of revenue share cap and retention fund
- SEC. 126 Mid-sized college representation on intercollegiate athletics governing boards (new SEC. 118 and 121 NCAA governance conditions may replace the necessity of the provision)
- SEC. 128 Protecting opportunities for American athletes (review with regard to higher education foreign student enrollment issues)