THE DRAKE GROUP
Advancing Positive Legislative Change In College Athletics

PCSA Briefing Memo #3

ATHLETES MUST BE HEARD

Welcome to this third in our series of briefings on the Protect College Sports Act (S.4668). Briefing #1 "followed the money," explaining why passage of the Act would impose financial conditions colleges and universities could not afford to sustain. Briefing #2 showed that, if adopted, the Act would not protect women's, Olympic, and men's and women's non-revenue-producing sports. **This brief focuses on the voices of athlete organizations independent of the NCAA. They must be heard.**

If institutions of higher education continue to treat athletes like employees:

- openly giving them cash payments untethered from educational expenses or purposes,
- signing them to NIL employment contracts at rates far in excess of what anyone gets paid for posting messages online, speaking at alumni events, or making appearances at community events, or
- determining their cash payments based on whether they participate in revenue-producing sports…

…then we must treat them as the employees they are. This is pay-for-play.

Pro Sports in a Non-Profit Shell

We must confront the fact that our higher education institutions are attempting to run professional sports programs while using their tax-exempt status and subsidies derived from student tuition and activity fees to cover athletics operating deficits and facility costs – something private professional sports teams would never be permitted to do.

Deaf to Athlete Voices

If Congress is not prepared to install a "student" model, by dismantling this sham structure created by the NCAA and the Power Four conferences, it must acknowledge the reality of athlete "employees." To date, Congress is only listening to coaches and administrators who argue that athlete employees will bankrupt college athletes, doing so while paying themselves lavish salaries and bonuses, a disingenuous situation at best, and a purposeful

deceit at worst. Especially under these circumstances, athletes' organizations must be heard. We summarize their positions here.

Athletes.org (AO)

- Rules governing athlete compensation, transfers, eligibility, and working conditions should be negotiated by athletes, not imposed on them by legislation.
- Real stability comes from representation, negotiation, and enforceable standards, not from one-sided restrictions protected by Congress.
- An unprecedented antitrust exemption for the NCAA, a serial antitrust violator, will place college athletes back in the NCAA's, its conferences', and its member institutions' grasp, this time in perpetuity.
- Passing the PCSA will send a message to other industries—if you operate illegally but spend enough money lobbying, then Congress will do the same thing for you.

College Football Players Association (CFBPA)

- The bill does not answer the question of whether college athletes are employees.
- The bill would lock in NCAA rules made "by management" without athletes' input by adopting a federal statute, meaning no collective bargaining without Congress first repealing the law.
- The bill would not solve the problems in college athletics and would likely lead to more problems and lawsuits.
- The Act is based on a false sense of urgency pushed by the NCAA, the powerful conferences it would benefit, and a multimillion-dollar promotional and Congressional lobbying campaign.
- The bill does not address the most glaring cost problem in college football – insane coaching salaries, coach buyouts even when coaches are fired, or bloated athletic staffs

National College Players Association (NCPA)

- "Bill would eliminate billions of dollars in lawful athlete pay, grants NCAA immunity to operate above the law, allows cuts to NIL and Olympic/women's sports, and includes self-policing that would lead to more university cover ups of sexual abuse and negligent actions".

- The Act uses transfer and eligibility concerns as a "Trojan horse" to deliver the NCAA and conference "special immunity from the law and the power to suppress athletes' economic rights."
- The bill sells out women's and Olympic sports by offering participation protections that are conditional, not guaranteed. It ties basic roster spots and scholarships to a revenue-maximizing scheme, also sending the message that "women's and Olympic sports are expendable unless they come with a financial upside."
- "All athletes lose when participation is treated as conditional and athletes' labor is used as leverage."

AFL-CIO Sports Council

- "The bill empowers the NCAA to unilaterally set rules for athletes, shielded from antitrust liability, with no suggestion that the rules ever be collectively bargained with athletes at the table."
- The bill would establish federal law that "would overrule state laws and carve college athletes out of legislation passed to protect their health and safety, including workers' compensation. Rather than provide wage replacement and other benefits for athletes injured on the job, it would cap compensation and limit it to medical expenses only."
- The Act would undermine Title IX and progress for women athletes "by locking in compliance standards at a level that does not sufficiently address gender discrimination."

Women's National Basketball Players Association (WNBPA) and the National Women's Soccer League Players Association (NWSLPA)

- The Act would "decimate women's sports by letting the NCAA lock down revenue-sharing caps and transfer rules into a federal statute."
- The bill locks in standard NCAA rules that will undermine future Title IX compliance by freezing spending disparities between men's and women's collegiate programs.

What can be done now?

The House of Representatives reconvenes on November 9 and, at some point, as yet unscheduled, will consider S.4668, which has been adopted by the Senate. If the House of

Representatives follows “regular order,” every committee with jurisdiction (Commerce, Education, Judiciary) would have an opportunity to amend the bill before it goes to the House Rules Committee for final review before it goes to the floor for a vote. We don’t know if “regular order” will prevail. The Speaker of the House could send the bill directly to the Rules Committee to consider amendments before a vote. If even one amendment is attached, the bill must return to the Senate for their approval. Many anticipate an effort to “railroad” the bill with no amendments, for an early vote, rather than risk running out of time before the end of the 119th session on January 3, 2027, a period that only includes 20 legislative workdays.

What should be done?

The Drake Group believes there are too many flaws in the bill for Congress to fix it within this limited time frame. Rather than voting to oppose the bill, a more sensible course is to consider a "skinny bill” alternative as a substitute. The substitute would include immediate implementation of only those elements of the PCSA that address the administrative chaos faced by all D-I programs and are broadly supported and would refer provisions that unnecessarily escalate costs (i.e., the Retention Fund) or about which there is disagreement to the Commission established by the PCSA for continued work, with a 30-month timetable for reporting recommendations to Congress.