

United States Senate  
WASHINGTON, DC 20510

March 1<sup>st</sup>, 2023

Charlie Baker  
President  
National Collegiate Athletic Association  
700 W. Washington Street  
Indianapolis, IN 46206

Dear President Baker:

As you begin your tenure as the National College Athletic Association (NCAA) President, I want to congratulate you on this new role. Your reputation as an independent, thoughtful, compromise oriented leader will serve you well in a job that seems, from the outside, to be one of the most difficult in our nation. But I also write to you to urge you to buck the NCAA's long history of fighting positive change in college sports and instead be a partner in finally centering the rights and well-being of all college athletes in the work that the NCAA and its members take on.

The past few years have brought about long-overdue reforms in college sports. College athletes have more rights today than they have ever had. Athletes can finally earn money for the use of their own name, image, and likeness (NIL), they are relatively free to transfer to programs that better suit their interests and support them, and they are increasingly organizing together to enact change. All of these reforms represent a tidal shift in how we think about college sports, from a so-called 'amateur' model that serves to exploit athletes and restrict their rights for the financial benefit of administrators, coaches, and corporate executives, to a system that truly values and respects athletes' contributions and sacrifices.

Unfortunately, much of this recent change required athletes and advocates to fight the NCAA in courts and in state capitols. Regarding athletes' NIL and compensation rights, the NCAA has spent the past decade arguing in federal courts that athletes had no right to their NIL and compensating them directly beyond a scholarship would destroy college athletics. In both *O'Bannon v. NCAA* and *Alston v. NCAA*, federal courts rightfully found that the NCAA's use of athletes' NIL without compensation and the NCAA's broader restrictions on compensation both violated federal antitrust laws and amounted to the NCAA acting as an illegal cartel. As Justice Kavanaugh commented in his concurring opinion in the *Alston* case, the NCAA's amateurism business model that is predicated on prohibiting compensation for college athletes "would be flatly illegal in almost any other industry in America." Along with fighting the NCAA in courts, athletes also faced opposition from the NCAA in pushing state lawmakers to secure their NIL rights. The NCAA lobbied against laws like California's *Fair Pay To Play Act*, which became the catalyst for athletes nationwide to earn money on their NIL.

The NCAA has also acted as a barrier to progress when it comes to the equitable treatment of women athletes. It is encouraging to see how the NCAA has responded to the unacceptable treatment of women basketball players at the 2021 NCAA tournament, which notably only came after athletes spoke up. However, as the NCAA's own gender equity review concluded, the inequitable treatment of women athletes extends far beyond tournament amenities. Currently, the majority of the NCAA's members do not comply with Title IX, as they continue to fail to offer athletic opportunities for women that are proportionate to their enrollment. Fifty years ago, the NCAA fought against the passage of Title IX and the inclusion of athletics in its non-discrimination requirements. Twenty years ago, the NCAA further argued to the Supreme Court they are not accountable to Title IX at all. Despite this history, I hope the NCAA can at last become an active partner in addressing the many ways colleges treat their women athletes unfairly.

As I urge you to move the NCAA in a more proactive direction, I want to be more specific about what that means. Instead of fighting against the rights of athletes and speaking for their interests, the NCAA should fully incorporate them into all decisions that impact their lives. Across the many issues facing college sports right now, it is inappropriate and ineffective to try and solve these problems by speaking and acting for the athletes rather than bringing them to the table to negotiate these issues. When decisions are considered and made in relation to conference membership; the future role of NIL collectives and colleges' involvement in athletes' NIL activities; the amount of revenue that should be shared with the athletes directly; or protecting college athletes' health, safety, and academic opportunities, among many other issues, athletes must be at the table. One way to accomplish this would be to recognize voluntarily that many athletes are already employees by the way the NCAA and its member colleges treat them, and to come to the table with independent representation chosen by the athletes to negotiate and collectively bargain with them. No federal law is needed to do this. The NCAA can choose to do the right thing; it does not need to wait for Congress to compel it to do so.

As the new NCAA president, you have a choice: take the opportunity to position the association as a proactive force that builds on the recent positive changes in college athletics, or continue the NCAA's legacy of protecting the interests of athletic departments and corporate partners over the athletes themselves. I am eager to work with you and the NCAA's members in the event that your leadership brings a new and welcome path forward.

Sincerely,



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Christopher S. Murphy  
United States Senate