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NCPA Executive Director Ramogi Huma's Answers to US Senate Judiciary Committee Member's Follow-Up Questions

Submitted August 11, 2020

Dear Chairman Graham, Senator Booker, Senator Klobuchar, and Senator Sasse,

Thank you for allowing me to testify in the US Senate Judiciary's Hearing on "Protecting the Integrity of College Athletics" hearing on July 22, 2020. Additionally, thank you for the opportunity to respond to each of your questions. My answers are below. I would like to stay in regular communication with the Subcommittee on these issues so please feel free to contact me on any matter regarding the well-being of college athletes.

Written Questions Submitted by Senator Cory Booker to Mr. Ramogi Huma

Question 1a. and 1b.

1. Mr. Huma, you played college football at UCLA, and you worked to help unionize the Northwestern football team.
 - a. In your assessment, what are the benefits to college athletes of having a union?
 - b. In your assessment, how has the absence of a union—or anything that functions like a union—adversely affected college athletes? Or, put another way, how would college athletes benefit from having a player-focused organization that advocates on their behalf?

Answer to Question 1a. and 1b.

1a. Many of the problems that plague college athletes stem from the fact that they lack the means to collectively voice their concerns and engage in the development of policies that greatly affect their lives. The absence of mandatory health and safety standards, the lack of guaranteed sports-related medical expenses, scholarships that are not long enough in duration to allow enough players to complete their degree, and the lack of fair compensation are a few examples of issues that could have already been addressed if college athletes had a players' association. Without a seat at the table with NCAA sports' policymakers, players are left with a deeply exploitative system that needlessly ignores too many athletes who have died in negligent workouts, are victims of sexual assaults and misconduct, and are denied key economic freedoms guaranteed to other Americans.

1b. I believe many gaps in important protections such as resuming college sports during the COVID-19 pandemic without uniform, enforceable COVID safety standards that would prioritize their athletes' health and safety would be addressed if college athletes had a seat at the table. College athletes did not have any real input, transparency, consideration, or participation necessary to ensure that resuming college sports would take place with proper precautions. Reports of COVID-19 cases at ninety colleges across the nation and mass college sports cancellations have made national headlines. Several college athletes who contracted COVID are reported to have suffered a resulting heart condition. America now watches a slow train wreck whereby many players will needlessly contract COVID-19 as conferences return them to play without adequate standards in search of football dollars.

The link between the lack of a players' association and the unsafe, financially unjust return to college sports has not been lost on many college football players. Hundreds of Pac-12 football players organized the #WeAreUnited campaign to opt-out of the season due to inadequate COVID-19 protections and racially unjust NCAA policies that harm them economically. A #BigTenUnited campaign representing over 1000 Big Ten athletes also sought COVID protections that their conference failed to implement. Both the Pac-12 and Big Ten announced the postponement of fall sports, including football, due to health and safety concerns. A number of additional football players whose season is in jeopardy launched the #WeWantToPlay campaign. Football leaders from these three campaigns soon partnered in support of uniform, mandatory COVID-19 health and safety standards, scholarship and eligibility preservation of players who choose to opt-out, and stated their intention of forming a college football players' association. They understand that health and safety and other key issues will not be addressed without players collectively participating in developing athletic policies.

Written Questions Submitted by the Senator Amy Klobuchar to Mr. Ramogi Huma

As the Ranking Member of the Antitrust Subcommittee, I have a strong interest in ensuring that our antitrust laws protect the interests of consumer and workers. In past years, student-athletes have filed a number of antitrust lawsuits by against the National Collegiate Athletic Association (NCAA).

Questions 1. and 2.

1. In your opinion, how important are the federal antitrust laws to allowing student-athletes to defend their interests?
2. If the NCAA were granted a broad exemption to the antitrust laws, what do you think the effect on student-athletes would be?

Answer to Question 1 & 2.

1. Federal antitrust laws have been the most important powerful means by which college athletes across the nation have secured key protections and economic support. I was an advisor in various antitrust lawsuits and my organization assisted the US DOJ on antitrust matters.

In 2008, the NCAA settled the *White v. NCAA* antitrust lawsuit that challenges the NCAA's limit on "full" athletic grant-in-aid scholarships that was set below the cost of attendance (the price tag of the school) by an average of about \$2000-\$5000 per player per year. The settlement was disappointing in that it did not affect the NCAA's limit on scholarships, but it eliminated the NCAA's prohibition on colleges paying for athletes' sports-related medical expenses during summer workouts. Though colleges can now pay for these expenses, such payment is not mandatory. Colleges can require their athletes to pay for their sports-related medical expenses.

A 2011-12 US DOJ antitrust investigation into the NCAA's 1-year scholarship limit led the NCAA to begin allowing multiyear scholarship offers. Today, several dozen colleges issue 4-5 year scholarships instead of the NCAA's minimum 1-year scholarship that can be nonrenewed for any reason.

In 2015, the 9th Circuit upheld a ruling in the *O'Bannon v. NCAA* name, image, and likeness antitrust lawsuit which prohibited the NCAA from limiting athletic grant-in-aid scholarships below the cost of attendance.

Federal antitrust laws permit states to act in the best interest of their athletes. In 2019, California adopted a state law that would allow college athletes to secure legal and professional representation and earn money from use of their name, image, and likeness (NIL). Approximately 30 states followed California's lead in pursuing similar freedoms for their athletes. In 2020, Florida, Colorado, and Nebraska adopted their own NIL laws.

In May 2020, the 9th Circuit upheld a ruling in the *Alston v. NCAA* antitrust lawsuit challenging the NCAA's limit on athlete compensation that prohibits the NCAA from limiting colleges from paying players educational-related compensation including but not limited to academic achievement awards worth up to approximately \$14,000 per player per year.

In short, every significant benefit and freedom over the last 12 years has been made possible through antitrust lawsuits and scrutiny against the NCAA's overly restrictive policies and practices.

2. There is no doubt that the NCAA would use an antitrust exemption to limit college athletes' economic freedoms to the most extreme extent possible. If the best predictor of future behavior is past behavior, then it's worth noting that the NCAA fought each reform listed above – to the detriment of college athletes. Moreover, the NCAA and Power 5 conferences are actively lobbying Congress to significantly and unjustly narrow important NIL freedoms coming to college athletes via state laws.

Nothing fundamental in the NCAA's structure, policies, or practices provides any assurance that the NCAA would not use such power to continue to impose economically stifling restrictions on college athletes. Had the NCAA already had an antitrust exemption, it would have prevented each of the reforms listed in my answer to your first question. Congress should not give the NCAA an antitrust exemption. Any narrow restraint of trade Congress believes to be necessary such as prohibiting the use of NIL deals as an inducement to prospective college athletes, it can and should do directly in legislation. The NCAA has been found to be in violation of federal antitrust laws multiple times. Remedies were issued, the quality of life for college athletes improved, and interest and revenue in college sports have remained strong.

Written Questions Submitted by the Senator Ben Sasse to Mr. Ramogi Huma

For all members of Panel I:

1. What is your best estimate of the number of college athletes who are covered by insurance policies in case of an injury that inhibits or prohibits their future earning potential as professional athletes?
2. What is your best estimate of the breakdown by sport—and, if possible, position—of which college athletes are covered by such policies?
3. To the best of your knowledge, how often have these policies paid out?
4. What are the obstacles to more widespread use of these policies?
5. In your opinion, should the premiums on these policies be paid by universities or student athletes in an ideal world?
6. If you had to choose between universities paying for these policies or allowing student athletes to monetize their NIL, which would you choose and why?

Answers to Questions 1-6

1-3. I do not know. However, I believe football and men's basketball players are the most likely to have this coverage compared to other sports.

4. Many college athletes are unaware that these policies exist and that the NCAA allows their college to pay for such coverage. I believe there is a need to inform college athletes about such coverage as well as to what degree such coverage may be beneficial.

5. I believe universities should cover these policies. The players who qualify for this program are among the most talented and valuable to their athletic program. NCAA rules prohibit them from receiving fair compensation so this is the least their schools can do.

6. If I had to choose, I would choose college athlete NIL freedoms over guaranteed loss of earnings coverage for college athletes. NIL freedoms would give economic freedom to all college athletes whereas loss of value insurance would apply only to very few players who would not benefit unless they suffered an injury that affected their future value. However, I do not believe this should be an either/or proposition – college athletes should have both.

Thank you each again for allowing me to answer your questions. Again, I would like to continue these important discussions with each of you and the Subcommittee as ideas for federal legislation progress.

Sincerely,



Ramogi Huma
NCPA Executive Director