



## **THE DRAKE GROUP CONTENDS THE NCAA CANNOT SURVIVE GIVEN WHAT SCOTUS PORTENDS AND PROPOSES BLUEPRINT FOR MAJOR EDUCATIONAL SPORT CORRECTION**

***PRESS RELEASE, June 24, 2021 New Haven, CT***

***Contact: Donna A. Lopiano, President  
Donna.Lopiano@gmail.com***

The Supreme Court's unanimous decision this week in *NCAA v. Alston* advanced the interests of college athletes and sent a clear message to the NCAA: enactment by the NCAA of any governance rule that has an economic impact will likely precipitate antitrust scrutiny from the federal courts. Such a rule could, for example, require internship stipends to reflect a going rate, define "legitimate" academic cash awards, or identify "acceptable" educational benefits (e.g., computers, musical instruments, tutoring assistance, etc.). Existing rules related to the playing field, including required numbers of teams and scholarships, will presumably face renewed judicial scrutiny.

In this environment, the NCAA will have difficulty governing without an antitrust exemption. Only Congress can grant the exemption, but Congress is loath to do so because for decades, the NCAA has exploited college athletes for institutional gain, allowed coaches, athletic directors, conference commissioners and NCAA leaders to pocket princely (now seven-figure) salaries, enabled institutions to build lavish athlete-only facilities (especially for football), and spent hundreds of millions of dollars to defend itself against lawsuits by athletes.

This is a moment of *déjà vu*. In the 1970s Congress was faced with a similar circumstance. The Amateur Athletic Union created eligibility rules and defined "amateurism," strictly controlling what nonschool Olympic sport athletes could receive in prize money, sponsorship or other forms of support. Athletes possessed little or no power to question AAU rules or sanctions levied against them for violating such rules. Sound familiar? Following a three-year study by the President's Commission on Olympic Sports, Congress passed the Ted Stevens Olympic and Amateur Sports Act in 1978. The Act established a federally chartered nonprofit corporation, the United States Olympic Committee (USOC), to replace the AAU and restore the integrity of Olympic and non-school club sports. Congress now has the opportunity to mandate collegiate athletics reform – resetting the educational sport compass.

The Drake Group proposes that Congress establish a Commission on Intercollegiate Athletics that would mandate the restructure of the NCAA, restore the academic integrity of athletic programs, and install strong college athlete health, safety, education, and economic protections in return for granting the newly restructured association a limited and conditional antitrust exemption. The Drake Group proposes the following or a similar blueprint that should be considered by such a Congressional Commission:

## A CONGRESSIONAL ACT THAT APPLIES TO ...

A NONPROFIT ASSOCIATION CONSISTING OF AT LEAST 1000 FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION WITH AT LEAST 300 ATHLETIC PROGRAMS THAT GENERATE >\$1 MILLION IN REVENUES

### CONGRESS GRANTS THE ASSOCIATION THE FOLLOWING POWERS/OBLIGATIONS...

#### LIMITED & CONDITIONAL ANTITRUST EXEMPTION

Enables control of athletics expenditures without fear of antitrust litigation

#### SUBPOENA POWER

To create fair and effective enforcement system

#### ELIGIBILITY FOR FEDERAL FUNDS

Leverage to require 4-yr institutions to adhere to educationally sound collegiate sport governance mandates

### CONDITIONED ON THE ASSOCIATION ENFORCING THE FOLLOWING STRUCTURE/POLICIES...

#### BOARD OF INDEPENDENT DIRECTORS

- Expert FORMER college presidents, trustees, athletic directors, faculty & athletes determine all financial, athlete health and benefit, ethical and educational rules
- 1 member/1 vote legislative assembly for sport rules, conduct of championships, advisory committees

#### DUE PROCESS GUARANTEES

- Cases w/ significant penalties require independent investigators/former judges who oversee discovery with subpoena power
- Athlete welfare advocate to advise athletes of their rights

#### MUST OWN ALL NATIONAL CHAMPIONSHIPS

- National championship revenues provide insurance/full medical expense/catastrophic athletic injury/disability protection for 480,000 athletes and trust fund for longer term impact of athletic injuries (concussion, etc.)

#### COMMERCIAL CONDITIONS

- Institutions, conferences, NCAA own revenues from their respective athletic events-no share to athletes/athletes are students-not employees
- Institution owns rights to own athletic events and may require use of athlete NILs to promote such events & as condition of participation – cannot use athlete NILs on products
- College athletes own their own NILs for outside employment – no restriction on athletic ability employment other than as a pro athlete

#### EDUCATIONAL CONDITIONS

- Full scholarship = 5-year guarantee –not yr. to yr.
- Faculty/athlete whistle-blower protection
- Required peer review certification of program
- Academic support program control by academic authority-not athletic department
- Cap on coach/athletic director salaries/outside income and facility spending
- Athlete medical screening/treatment rights/all medical/insurance expense from institution

#### EDUCATIONAL CONDITIONS (cont.)

- Athletes have right to protest social causes – no restrictions or retaliation
- Educational benefits (internships, cash awards for academic achievement, etc. must be legitimate (i.e., at fair market value)
- Minimum GPA of 2.0 for athletics eligibility; practice hour limits for ineligible athletes
- No freshman eligibility if high school GPA or SAT is more than one standard deviation below the academic profile of incoming class
- If institution not in compliance with Title IX, all teams ineligible for post-season play
- Faculty senate must approve missed class policies
- Limit time on athletics to permit academics
- Education trust fund – grant program
- If athletic scholarship withdrawn, no athletics personnel on institutional appeal committee
- Faculty only committee mandated for annual academic oversight/report to Faculty Senate
- Vote and consent of student government on use of mandatory student fees for athletics