

February 11, 2020

William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building 2 East Wing
11 Bladen St.
Annapolis, Maryland 21401

Re: SB-518 – Council on the Fair Treatment of Student Athletes (Jordan McNair Safe and Fair Play Act) – Letter in Support

Dear Chairman Smith:

I am a Professor of Law and Director of the Center for Sport and the Law at the University of Baltimore School of Law. I also serve as the Associate Dean for Academic Affairs. My area of scholarly focus is Olympic and amateur sports law.

I support this important bill because it is a measured, common-sense response to the issues that have long plagued intercollegiate sports, particularly in the area of athletes' health and wellbeing and the use of their name, image, and likeness (NIL).

The college sports enterprise is one that traditionally has been immune from regulation, with courts and legislatures generally deferring to the National Collegiate Athletic Association ("NCAA") to manage college athletics privately, with little interference. The NCAA is a private association whose rules are set by its member institutions. Student-athletes are not members of the NCAA and have no power to shape the many policies that directly affect their experience. While the NCAA has no legal duty to ensure athletes' health, wellbeing, or the quality of their education, it does profit handsomely off athletes' athletic achievements.

Today, the landscape is changing. Sports fans and courts alike are increasingly intolerant of the NCAA's commercialization of college athletics combined with an overly restrictive approach to athletes' rights. Details of lavish salaries for coaches and administrators, athletes without funds for necessities, and unspeakable tragedies like that of Jordan McNair have fueled the perception that the current college athletics system is exploitative, unjust, and unnecessarily inequitable. In short, the college sports model as currently operating is becoming legally and morally unsustainable, and it is time for reform. With this bill, Maryland joins that national conversation and charts a course that will undoubtedly benefit college sports.

First, the bill follows California's approach and the more than 20 other states with similar legislation pending to give students the same rights to their NIL as every other student on their campuses. This modest, common sense, measure would allow a wide range of student athletes to do what every other person operating in a free market has a right to do – earn income from their NIL. Importantly, this legislation would not mandate that universities pay their athletes, but would instead allow athletes to participate in the free marketplace without the restriction of anti-competitive NCAA rules. It would also generate benefits well beyond football and men's basketball players. Female athletes – who have few professional athletic opportunities – would be able to take advantage of the one time in their lives when they could earn income from their athletic success. Similarly, athletes from disadvantaged backgrounds who disproportionately earn the revenue generated by their athletic talent (and most of whom will not become professional athletes) will benefit greatly from this free-market reform.

In addition, the bill's establishment of a commission to study athlete health, safety, and wellbeing will undoubtedly serve to strengthen Maryland college sports. There is currently no clear, effective mechanism for gathering information and making proposals that can balance the important interests at stake in college athletics. In the absence of such important work, we learn – as we did with the tragic death of Jordan McNair – far too late about the state of our athletic programs and the needs of those who participate in them. An independent commission can therefore help strengthen the legitimacy of our state's athletic programs and ensure that our understanding of the needs of athletes is not limited to times of scandal and tragedy. A Commission that engages in meaningful study of the complex issues involved, with the participation of athletes, could formulate balanced proposals to protect athlete interests and strengthen college sports.

In closing, I want to remind the committee that whenever there have been calls for reform in athletics, the NCAA and other regulators have predicted dire consequences and irreparable harms to sport as we know it. The Olympic Games once banned professional athletes. The NCAA warned that Title IX, the law mandating gender equity in education-based athletics, would destroy college sports. In fact, with these important reforms, fan interest and athletic participation surged, and we are all better for it. I therefore urge the committee take action to support student-athletes and enhance the legitimacy of college sports in Maryland. Doing so is necessary to protect those whose talent and effort are the heart of the games. It is also necessary to protect the sustainability of the college sports enterprise, whose persistent inequities threaten the games that we all love. For these reasons, I ask for a FAVORABLE REPORT on SB-518.

Sincerely,

A handwritten signature in black ink that reads "Dionne Koller". The signature is written in a cursive, flowing style.

Dionne Koller