

TESTIMONY OF  
Professor Ellen M. Zavian, Esquire  
JORDAN MCNAIR ACT

March Madness is less than a month away and the NCAA is hard at work. But instead of being focused on the hardwood court, it has turned its focused to the Judicial Court, fighting lawsuits trying to change their needed definition of ‘amateurism’.<sup>1</sup> “Amateurism”, just what does it really mean?<sup>2 3</sup>

1906: the NCAA was created to protect the health of the players. At this time, athletes were called ‘students’ and the NCAA forbid any payment or financial aid;<sup>4</sup>

1910, the NCAA decided that athletes would, henceforth, be known as ‘amateur-athletes’, to make sure they were not paid;<sup>5</sup>

1951, the NCAA President, Walter Byers, decided the term ‘amateur-athlete’ would be replaced by ‘student-athlete’ to protect his institutions from every having to pay their athletes workers’ compensation;<sup>6</sup>

1988, the NCAA fired Byers when he began to change his mind and push for ‘student-athlete’s’ right to access commercial endorsements.<sup>7</sup>

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<sup>1</sup> [https://en.wikipedia.org/wiki/National\\_Collegiate\\_Athletic\\_Association](https://en.wikipedia.org/wiki/National_Collegiate_Athletic_Association)

<sup>2</sup> Zavian/Gosselin NCAA Ethical Evolution, ACC Docket, 2020,  
<https://www.accdocket.com/articles/the-ethical-evolution-of-the-ncaa.cfm>

<sup>3</sup> [https://en.wikipedia.org/wiki/Amateurism\\_in\\_the\\_NCAA](https://en.wikipedia.org/wiki/Amateurism_in_the_NCAA)

<sup>4</sup> This came after 18 student deaths and 150 severe student injuries.

<sup>5</sup> 1916, the NCAA decided that ‘amateur-athletes’ could only play for the pure enjoyment and development of their mental, physical, moral, and social skills, and not for any payment in return;

1920’s, the NCAA decided that ‘amateur-athletes’ were forbidden from accepting any type of scholarship for their athletic performance;

1948, the NCAA decided to roll out the ‘Sanity Code’, which prohibited colleges from providing ‘amateur-athletes’ with any additional financial aid unavailable to the ordinary college student;

1949, the NCAA decided the ‘amateur-athlete’ could receive payment to only cover their tuition and fees in order to attend school, but not to cover room and board;

<sup>6</sup>1950’s, the NCAA decided ‘student-athletes’ would now get room, board, and laundry money via an athletic scholarship.

<sup>7</sup> 2001, the NCAA decided to allow Olympian athletes to earn money off their athletic ability when performing in the Olympics;

2011, the NCAA President Mark Emmert allowed Division 1 institutions to give an extra \$2000 stipend to student-athletes.

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2014, the NCAA lost a lawsuit, O'Bannon v NCAA, but after appeals, the Courts ruling kept the status of student-athletes as amateurs;

2019, California passed the Fair Pay to Play Act, giving the rights of student-athletes to profit off their image and likeness without losing their scholarship or eligibility.<sup>8</sup>

When it passed, Lebron James tweeted "Game Changer";<sup>9 10</sup>

In Former NCAA President Byers' book *Unsportsmanlike Conduct: Exploiting College Athletes* Byers stated the NCAA is "a nationwide money-laundering scheme." (P. 73).<sup>11</sup> Furthermore, it is time to 'free the athletes' and enact a "comprehensive College Athletes' Bill of Rights." (P. 374).<sup>12 13</sup>

That is what we are here to do today.

Don't be fooled by the recent NCAA vote in 2019 that they would allow student-athletes to make money off their names "in a matter consistent with the collegiate model". Let this new term, "collegiate model" not fool those in this room. It is a made-up term, like 'student-athlete'.

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2013, the NCAA prohibited Jeremy Bloom, an Olympic level skier, from financially benefiting from skiing since he played an NCAA scholarship sport.

<sup>8</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB206](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB206)

<sup>9</sup> Today, the athletes want the very same thing their institutions fought for back in 1984. In the 1984 US Supreme Court the individual colleges won back their TV rights from the NCAA. Now it is time for the athletes to have the same right.

<sup>10</sup> <https://www.si.com/nba/2019/09/05/lebron-james-california-student-athlete-compensation-bill-sb-2016>

<sup>11</sup> Byers also revealed that the NCAA developed the term "student-athlete" in order to insulate the colleges from having to provide long term disability payments to players injured while playing their sport (and making money for their university and the NCAA). (P. 69).

<sup>12</sup> He says that "[t]his is *not* a suggestion for new government controls; on the contrary, it is an argument that the [government] should require deregulation of a monopoly business operated by not-for-profit institutions contracting together to achieve maximum financial returns." Doing so would treat the "twin curses of exploitation and hypocrisy that have bedeviled college athletics in direct proportion to its intensified commercialization," and would prevent colleges from denying players the freedoms available to other students. (P. 375). Finally, he says, "Collegiate amateurism is not a moral issue; it is an economic camouflage for monopoly practice. . . , [one which] 'operat[es] an air-tight racket of supplying cheap athletic labor.'" (Pp. 376, 388).

<sup>13</sup> [https://en.wikipedia.org/wiki/Walter\\_Byers](https://en.wikipedia.org/wiki/Walter_Byers)

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Well, we are at this time in history that we need to take care of those that come to our state with the best intentions and limited protections/resources.<sup>14</sup> You must ask yourself, “How much does winning mean to you?”<sup>15</sup>

As we sit here today, the NCAA is lobbying Congress to act before the states do. Maryland can take the lead today and protect not only the player’s images and likeness, but their health and safety while in our jurisdiction.

I have no doubt, when we pass this Bill, Jordan McNair can tweet, from heaven above, “Game Changer Is ON, in the State of Maryland, thanks to the State Legislatures and my family”.

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<sup>14</sup> We all know the stats...coaches make millions, players make tuition, and billion-dollar facilities are being built in MD as we speak here today with ...the goal to be able to recruit better high school players and be more competitive in [the] conference and maybe nationally which, in turn, would create more revenue from tickets and concessions and potentially memorabilia and merchandise.

<sup>15</sup> How did we get here...? Some would say poor decisions and greed. Others would say it was inevitable. Maryland has to ask themselves the very question retired NC Supreme Court Justice Bob Orr stated, “Maybe we’ve just reached the point where if a university is going to cheat academically, the public needs to look to the university and the university leadership and say, ‘Does winning mean that much to you?’”