November 18, 2025

The Hon. Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

The Hon. Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Hon. John Thune
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Hon. Chuck Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

Dear Speaker Johnson, Minority Leader Jeffries, Majority Leader Thune, and Minority Leader Schumer:

As former antitrust enforcers from both Republican and Democratic administrations, we write to share our concerns regarding the scope and substance of H.R. 4312, the "Student Compensation and Opportunity through Rights and Enforcement (SCORE) Act." In particular, we are concerned about the bill's proposed antitrust exemption and associated preemption of federal and state labor law.

Background

The SCORE Act would codify and extend provisions from the June 2025 settlement in the *House v. NCAA* antitrust class action suit.[1] Among other things, the *House* settlement, which has a ten-year term, permits college athletic departments the *option* to pay college athletes directly; requires the NCAA and its major conferences to pay approximately $2.8 billion in damages to athletes previously barred from signing Name, Image and Likeness (NIL) deals; and creates a new private enforcement arm, the College Sports Commission, to limit outside NIL payments and cap athletic department direct payments at 22% of "Average Shared Revenue" as defined by a formula. Judge Wilken's final order explicitly states that approval of the settlement agreement does not grant antitrust immunity to the NCAA or its member institutions.[2]

The *House* settlement followed several earlier antitrust legal actions involving the NCAA, including the landmark 2021 Supreme Court decision in *Nat'l Collegiate Athletic Assoc'n v. Alston*, which unanimously held the NCAA was not only subject to the antitrust laws but that it had unlawfully used its monopoly power to limit NIL compensation to college athletes.[3]

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[1] Opinion Regarding Order Granting Mot. for Final Approval of Settlement Agreement, In Re College Athlete NIL Litig., No. 20-cv-03919 CW (N.D. Cal. June 6, 2025).

[2] In re College Athlete NIL Litig., No. 4:20-cv-03919-CW (N.D. Cal. June 6, 2025) (order granting final approval of settlement).

[3] 594 U.S. 69 (2021). In his concurrence, Justice Kavanaugh made clear that "the NCAA is not above the law." *Id*. at 112 (Kavanaugh, J., concurring). *See also* O'Bannon v. Nat'l Collegiate Athletic Ass'n, 802 F.3d 1049 (9th Cir. 2015) (affirming that NCAA compensation rules prohibiting schools from offering athletic scholarships equal to the full cost-of-attendance violate antitrust law); Tennessee v. Nat'l Collegiate Athletic. Ass'n, 718 F.Supp.3d 756 (E.D.

Although the *House* settlement does not contain any antitrust immunity, the SCORE Act would, as a practical matter, overturn the *Alston* Supreme Court decision by including an antitrust exemption insulating several potentially anticompetitive actions by the NCAA and its athletic conferences and institutions.[4] These include rules limiting NIL compensation paid by third parties that do not have a "valid business purpose" or are not made on terms comparable to "individuals … who are not student athletes," possible algorithmic price fixing by schools with regard to NIL agreements,[5] and limits on compensation paid by member institutions above a "pool limit" set at 22% of "average annual college sports revenue."[6] The SCORE Act also preempts federal and state laws that would otherwise allow college athletes to be considered employees in contravention of a recent federal court of appeals decision.[7]

Despite our substantive and political differences, each of us strongly supports the role of antitrust law in protecting competition across the U.S. economy. We are also cognizant of the serious harm that can result from unnecessary or overbroad antitrust exemptions and immunities. The proposed antitrust exemption and associated preemption of labor law in the SCORE Act raise significant substantive and procedural concerns. Our concerns are heightened here where the Supreme Court declared just four years ago in *Alston* that college athletes suffer from distorted, price fixed markets at the hands of the NCAA.

Substantive Concerns

Rather than enhancing competition for college athletes, as drafted, the legislation would restrict competition. As the Antitrust Division explained in its Statement of Interest filed in the *House* settlement—which H.R. 4312 closely tracks—"the Proposed Settlement may not 'cure the ill effects of the illegal conduct and assure the public freedom from its continuance' . . . Instead,

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Tenn. 2024*)* (enjoining NCAA rule banning use of NIL compensation during recruiting process); Ohio v. Nat'l Collegiate Athletic. Ass'n, 706 F.Supp.3d 583 (N.D. W.V., Dec. 13, 2023) (enjoining NCAA's transfer eligibility rule).

[4] H.R. 4312, 118th Cong, §7(a) (2025) ("[A]doption of, agreement to, compliance with, or enforcement of any rule, regulation, requirement, standard, or other provision established pursuant to, or in compliance with, section 6 of this Act shall be treated as lawful under the antitrust laws and any similar State provision having the force and effect of law.").

[5] This is because the legislation authorizes the College Sports Commission to both require college athletes to disclose NIL information and to "collect and publicly share" the information on an aggregated and anonymized basis. *Id*. § 6.

[6] *Id.* (authorizing an "interstate intercollegiate athletic association," acting through a council that it establishes, that sets enforcement rules and standards for college sports teams and competition—to be comprised by at least 20% of student athletes and 30% of member institutions drawn from the 70 largest athletic revenues—to establish and enforce rules with respect to, among other things, "prohibited compensation" for current or prospective student athletes: (a) at a college for NIL payments unless it is for a "valid business purpose" for promoting goods or services being provided to the public on a for-profit basis at fair market value for non-student athletes with respect to that same college; and (b) compensation paid by the college in excess of the relevant pool limit that it may set of at least 22% of the average sports revenue of the 70 largest institutions).

[7] Johnson v. Nat'l Collegiate Athletic Ass'n*,* 556 F.Supp.3d 491 (E.D. Pa. 2021).

[it] allows the NCAA, an adjudicated monopsonist, to continue fixing the amount its member schools can pay students for the use of their name, image, and likeness."[8]

These concerns were reiterated in a recent bipartisan letter from five state attorneys general concerning the SCORE Act: "By eliminating any serious checks on NCAA authority, we expect the SCORE Act will ultimately deliver arbitrary and unaccountable enforcement by an NCAA fully empowered to be more overbearing than it has ever been before."[9]

Moreover, unlike other antitrust exemptions, the SCORE Act is not conditioned on any federal or state regulatory supervision. For example, while the Shipping Act exempts shipping agreements if they are filed with, and reviewed by, the Federal Maritime Commission,[10] and the McCarran-Ferguson Act exempts the business of insurance if it is regulated by state law,[11] no such regulatory safeguards are included in the SCORE Act. Rather, under the SCORE Act federal and state regulation is superseded by private rulemaking.[12]

The legislation's contrast with the antitrust treatment of professional sports is particularly telling. While professional sports leagues are able to limit player salaries without being subject to the antitrust laws if they have been agreed to through the collective bargaining process, the SCORE Act does not allow for that safeguard because its preemption of federal and state labor law bars college athletes from being treated as employees.[13] As the Antitrust Division explained in its Statement of Interest, "while professional athletes can rely on their unions to bargain on their behalf, college athletes have no such union representation."[14] In our view therefore, any proposal combining an antitrust exemption while also preempting labor law protections would have the effect of codifying and freezing in place a one-sided economic structure in the absence of any regulatory oversight or countervailing means by which college athletes would be able to protect their financial and health and safety interests.

Procedural Concerns

The proposed legislation suffers from serious substantive flaws that should preclude its going forward. The 2007 bipartisan Antitrust Modernization Commission found that "[s]tatutory

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[8] Statement of Interest of the United States of America, In Re: College Athlete NIL Litig., No. 4:20-cv-03919-CW (N. D. Cal, Jan. 16, 2025), https://www.justice.gov/atr/media/1385436/dl?inline.

[9] Letter from Jonathan Skrmetti, Att'y Gen. of Tenn. et al., to Hon. Tim Walberg et al., Chairs and Ranking Members of the House Comms. on Ed. & Workforce, Judiciary, and Energy & Comm. (July 22, 2025).

[10] 46 U.S.C. §§ 40101–44106.

[11] 15 U.S.C. §§ 1011 *et seq.* The McCarran-Ferguson Act further excludes conduct which involves an agreement or act to boycott, coerce, or intimidate.

[12] *See supra* notes 4 and 9 (state attorneys general explained in their letter, "the SCORE Act would federalize the NCAA's private, non-transparent rulemaking process, giving legal imprimatur to rules drafted in the shadows by stakeholders whose primary interest is preserving control.").

[13] *Supra* note 4 § 8.

[14] *Supra* note 8.

exemptions from the antitrust laws undermine rather than upgrade the competitiveness and efficiency of the U.S. economy" and should generally be "disfavored."[15]

The proposed law also suffers from serious procedural shortcomings. At present:

- The House Judiciary Committee, which has jurisdiction in the House over antitrust, has not held a legislative hearing or markup, significantly limiting the development of a public record.

- The only public input received from the FTC or DOJ was the Statement of Interest filed by the Antitrust Division opposing the *House* settlement.[16]

- The SCORE Act's antitrust immunity is not qualified by any requirement of federal or state regulatory review. In fact, its substantive cornerstone is to prevent federal and state regulatory oversight.

- The SCORE Act's antitrust immunity is sweeping and permanent—even as it binds the economic rights and liberties of future college athletes who have had no say in the *House* settlement or the legislative process.

In this respect, the process for consideration of the SCORE Act is disturbingly similar to the manner in which the 1994 legislation codifying DOJ antitrust settlements with Ivy League and other elite colleges and universities who were illegally collaborating on student financial aid terms was enacted. The law – which granted the colleges and universities a temporary antitrust exemption[17]—was enacted in the absence of House or Senate Judiciary Committee hearings or input from the antitrust agencies. The exemption proved unworkable in practice and Congress allowed it to sunset in 2022—though not before a sweeping antitrust lawsuit surfaced allegations that more than a dozen colleges and universities had abused their antitrust exemption to price fix financial aid.[18] Congress should not repeat its mistake.

Based on the foregoing concerns we respectfully request that the Congress reject the SCORE Act entirely, or absent that, remove the antitrust exemption and preemption of labor law protections from the legislation.

Thank you for your consideration of this important matter.

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[15] ANTITRUST MODERNIZATION COMM'N, REPORT AND RECOMMENDATIONS 335 (2007).

[16] On January 17, 2025, the Antitrust Division filed a Statement in an antitrust case challenging the NCAA's four-year limits on athlete's eligibility, explaining that the lawfulness of the rule could be considered under an antitrust rule of reason analysis. *See supra* note 8.

[17] Improving America's Schools Act of 1994, Pub. L. No. 103-382, § 568, 108 Stat. 3518, 4057.

[18] See Michael T. Nietzel, *Financial Aid Blues: Elite Colleges See Federal Antitrust Exemption Expire as Price-Fixing Lawsuit Advances*, FORBES (July 3, 2022).

Sincerely,

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