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Virtual

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**Congressional Engagement and
the Legal Landscape Surrounding
College Sports**

DONALD REMY: Hello and welcome to this 2021 NCAA Virtual Convention session on Congressional Engagement in the Legal Landscape Surrounding College Sports. I'm NCAA Chief Operating Officer and Chief Legal Officer Donald Remy and your host for the day.

It is a common refrain that 2020 was an unprecedented year. Well, 2021 has begun in an equally challenging fashion. In addition to the global pandemic, racial and social justice challenges and an unconventional election, NCAA members have been in the process of making historic changes to modernize rules, rules including unrestricted transfers and permitting college athletes to be compensated for their Name, Image and Likeness, also known as NIL.

This effort is occurring in an extraordinary context as legislators in more than 35 states have introduced NIL legislation and six states have passed those bills into law. Moreover, the NCAA and its membership remain the target of repeated litigation around these issues -- and just last week received a letter of concern from the United States Department of Justice about our proposed changes that has caused us to delay our actions. Many of these state laws, one taking effect as early as July, are quite different. Some allow for nearly unregulated commercialization of NIL; while others, under consideration would authorize



direct compensation for athletics performance.

Some would say they undermine and erode the NCAA's ability to maintain student sports and threaten to transform participants into paid professional employees of their schools. Some would even suggest that this is even the intent.

At a minimum, they create a patchwork of inconsistency across the country. And one need look no further than the House-Oliver cases filed in the midst of the NCAA's modernization efforts and the Supreme Court acceptance of the Alston case to understand the complex legal landscape.

Because of the engagement of state legislatures and the multiple recurring lawsuits related to NIL and other student benefits, the NCAA engaged members of Congress to help it ensure that the Association can provide athletes with fair national competition and to protect the college sports model in America.

With this backdrop, we have invited several members of Congress to join us to share their perspectives on the future of college sports and their respective legislative agendas for Name, Image and Likeness. They will also discuss their views on college athletics more broadly. And we have invited a former Solicitor General to talk about the workings of the Supreme Court.

And now it's my great pleasure to welcome our guest, U.S. Congressman Anthony Gonzalez. Congressman Gonzalez is a native of Cleveland, Ohio and the surrounding area. He's a former student-athlete and graduate of the Ohio State University where he played wide receiver before becoming a first-round draft pick for our very own Indianapolis Colts here in the city of Indianapolis where your national headquarters is located.

After five seasons in the NFL, Congressman Gonzalez attended Stanford Business School and launched a career in the technology industry before he returned to his home state of Ohio where he now serves as the U.S. Representative for the 16th District.



Welcome, Congressman Gonzalez. We're honored that you've taken your time to spend some time with the NCAA around this important conversation, especially given all the recent events in our nation's capital. I understand that you want to open with a few comments before we get started with questions and answers. So I'll turn it over to you.

CONGRESSMAN GONZALEZ: First off, thank you for having me. And thank you for all the work that you all do, not just at the NCAA level, but at all the institutions around the country and certainly to the athletes.

Before I get started, I do want to pause briefly and comment on the unrest that we saw in our nation's capital just a few short days ago. I'm a member of Congress. This is my second term. So, I've been here a little bit more than two years. And part of why I came here was because I believe a lot of the lessons, frankly, that I learned on the athletic field at Ohio State and that you all learn about respecting your opponents, competing hard but competing fairly and allowing normal processes to take place is important and could be brought to a place like the United States Congress.

Now, what we saw last week was nothing short of disgusting, and it can't be tolerated. And it flies in the face of everything that you learn at your universities and that we teach our kids and that we educate on.

And so I just want to thank you all for all that you do to continue that spirit, because the lessons that are taught at our college institutions, in particular on the athletic fields, those will stay with you forever. And they have to stay with you forever. The most important lessons I've learned in my life about how to be a good person, how to work productively alongside other members of Congress or people I disagree with, I learned all of those inside of locker rooms, in the classroom and in the business world.

And so I hope that you don't see what happened and lose faith, because the truth is this country needs a lot more of what you're teaching. And so I just want to thank you for all of that.

And now turning to NIL briefly, before we get into the questions, I, again, want to thank the NCAA and commend the NCAA for taking this issue up in a serious way. This is something I've thought about for my entire adult life, really. When I was at Ohio State, I was working on it -- not working on it in a congressional way, of course, but talking to different people about it. And it just felt like at some point that this day would come. And I'm glad it's here.

I'm glad it's here for the athletes who I believe deserve the economic right to be able to participate in name, image and

likeness; but I'm also glad it's here for college sports, because I think ultimately, if done correctly -- which is what I'm trying to do with our bill -- if done correctly, I think it can enhance the experience and protect the integrity of the system that is so valuable. The college sports system is unique in the world and it's unique for a lot of great reasons.

And so I'm excited to be here. I hope that this will be informative; and, again, I want to thank you, Donald, for extending the invitation.

DONALD REMY: Thank you, Congressman. You mentioned in your remarks a little bit about your student-athlete experience and how that's helped form who you are.

I'd like our members to get to know your story a little better. So, perhaps we can start with sharing with our membership a little bit about your student-athlete experience at Ohio State and how it impacted you in your professional endeavors.

CONGRESSMAN GONZALEZ: Yeah, so I got to Ohio State as an immature 18-year-old who -- they were coming off a National championship. I thought I was going to walk right in and just get a starting role. I was a great player in high school, of course they were going to let me play at Ohio State.

But reality hit me pretty instantly within our first practice, our first conditioning test. And for the first year and a half, honestly, I struggled quite a bit. It took me about a year to figure out school. I thought about transferring. I thought about giving up in a lot of ways. I have a good father who told me, well, if you come home I'm just going to put you in the steel mill. So you might want to think about sticking around a little bit longer.

So I stuck it out, overcame a little bit of adversity. And then for the last two and a half years, just had the best experience anyone could ask for. Coach Tressel was my coach, Jim Tressel, an unbelievable mentor, still a mentor to this day. My athletic director was Gene Smith, who is obviously still there, still a mentor to this day.

And the Ohio State experience and my college experience is one that I'm proud of but that has taught me so many lessons, as I said in my opening, so many lessons about just how to be, frankly, a productive adult in society. You get together with people from all different backgrounds. You learn how to work with people of every race, creed, color. And that is a beautiful thing. And that is a unique experience, because in most of our lives we just don't get to interact with people from all different backgrounds that

way. But college sports really brings everyone together in a very personal experience.

And so I loved every second of it. As I said, I think it was the most valuable time in my life from an education standpoint. I always thought the things you learn in the classroom stay with you forever. And they do in some respect. But the truth is the things that sustain me in my life and my professional life are those lessons that I learned in that locker room. It's working with people from all different backgrounds and trying to find a way to be productive, set goals and move forward as one.

I loved my college sports experience. Could it have been better? Absolutely. Sure, everybody's could have been. But that's why I'm so passionate about making sure that as we go down this road we do it thoughtfully and in a way that protects the integrity of the system, because the truth is for 99.9 percent of college athletes, college athletes are going to get a heck of a lot more out of the experience than the institution got out of them. That's my sincere belief. And somebody who is married to a college swimmer who swam at Stanford, I know she feels the same way. So I couldn't speak highly enough about it and just really excited to continue working on this legislation.

DONALD REMY: Well, among other individuals out there in the membership in the audience, you're talking to a number of student-athletes whom I'm sure share your perspective about your experience as a student-athlete. Of course, these are athletes that are participating on our campuses today and athletes that will be former student-athletes in the next couple of years.

I guess one of the questions that I have for you is have you seen a difference, a change, an evolution in the student-athlete experience from when you were competing at the Ohio State University to those who are sitting listening to you here today?

CONGRESSMAN GONZALEZ: I have. I think the media coverage, both social media and traditional media, are definitely more aggressive now than when I played. We didn't have social media. I think Facebook was introduced my sophomore year.

And I'm glad we didn't, frankly, because I think it's good to be able to be a kid and to sort of make mistakes outside of the social media environment sometimes.

But regardless, I think that's a big difference for sure because the athletes come in so prepared and so poised. I think that's the thing I'm most impressed by when I look at a lot of kids on college campuses today is they are so much more mature than I remember being and that I

remember my teammates being. And I think maybe that's the good side of having more exposure when you're young, is you understand that you have to be more thoughtful about what you put forward into public space and you have to be more methodical about how you navigate your time. And so I think that's a good evolution.

I'll tell you another one that I've noticed speaking on college campuses. I think as a society, but it's definitely happening on college campuses, I think that we've done a much better job of showing the proper respect for women. I think we had an issue with that back when I was in school where we didn't quite have that balance right. And that's an ongoing thing, obviously. You never get all the way there.

But I've been really proud of Ohio State and a lot of the initiatives they put forward. But I've seen it all across the country as well, both from a student-athlete perspective but also just broadly. So I think there's a lot of progress that has been made. Certainly this year with all the events surrounding George Floyd and some of the social unrest and social justice movements, I think you've seen progress there as well. And a lot of the most productive dialogues, frankly, that I've seen have taken place on our college campuses. And I think that's something that everybody should be proud of as well.

DONALD REMY: You talk about the advent of social media and the engagement through that vehicle. Many have talked about that as one of the reasons that there needs to be the modernization around NIL and NIL opportunities for student-athletes, because today they have opportunities that didn't exist when you were in college or when I was in college.

And we all know that you recently introduced NIL legislation, the Student Athlete Level Playing Field Act. And I believe it is the only bipartisan NIL proposal that's been introduced thus far in the Congress.

Can you give the membership, our student-athletes a little perspective about what that legislation is about and meant to achieve?

CONGRESSMAN GONZALEZ: Yeah, so, we had a handful of goals with the legislation. Two things right off the bat: Number one, I have believed for my entire adult life that the name, image and likeness right should exist for college athletes. College athletes today are basically the only people in the country who don't have this right.

As members of Congress, we actually have this right. I could write a book if I wanted to and use that to earn money. And so it's never made sense to me why the

student-athlete couldn't have these opportunities. And so I've always believed that. So that's number one.

But I also believe deeply in the college athletics experience. I believe it's the most valuable experience of my life and it will be for most of, and many of, the student-athletes who are listening here today.

So, our goal was to put a bill forward that accomplished two goals: One, let's extend the right, but let's do it so we protect the system. And we think we've done that by, one, establishing one federal standard. So we don't want 50 different laws across the country where, if you're in Florida you have these NIL rights but if you're in Ohio you have a different set of NIL rights. I think having one set of rights for all student-athletes is the right way to go.

Wanted to provide a little bit of congressional oversight to make sure that it's going correctly and smoothly. But then we also wanted to make sure that we don't muck up the recruiting business. So that's where, when it comes to protecting the integrity of the system, I think we want to make sure that these aren't inducements to come play where, hey, if you come to Alabama you'll get this deal or whatever it is. So we have to be very thoughtful about that. And I think we've done it.

And on top of that comes the bipartisanship, I think. And that's what makes the bill unique, in my opinion, as you said. There are other proposals out there but they don't have bipartisan support. And I think the reason we do is because I think people have appreciated the approach that we've taken.

And I think they understand, yes, we absolutely need to do a better job by our student-athletes and expand this right. But it's a pretty good system now and so let's not destroy the system altogether; let's keep the system intact, make sure that the folks aren't employees and things like that but still college athletes and evolve inside of that structure.

DONALD REMY: One of the things that you mentioned is to have a national standard for NIL rather than a federated system created by a bunch of different state bills and laws. Why do you think that's important?

CONGRESSMAN GONZALEZ: Well, I think it's important for the integrity of the system overall. And I think it's important to make sure that everybody's playing on a level field. Again, it's undoubtedly true that some athletes, by virtue of where they go and how they perform, will end up doing more with NIL than others. That's how any market works. So that's true.

But what I don't think would make sense is if you're a high

school junior and you're looking around and thinking about where you should go to school, looking at the state legislature that has the law that you like the best to figure out how to capitalize on NIL, I think that would pollute the recruiting process and it would pollute the fairness, the inherent fairness that would come from one national standard.

And so I liken it to, as if, when you play football in the state of Ohio, they call holding but if you go into Florida they don't call holding all of a sudden. How would that work for teams that are all of a sudden forced to go play down in these areas with different rules?

And so I think one set of rules that governs the entire college landscape, I think that's what's most fair for everybody. But I think it also is what protects the integrity of the system.

DONALD REMY: Yeah, you know there are other pieces of legislation, you and I both have talked about this, that attempt to get at the challenges around name, image and likeness, and provide this opportunity to the student-athletes. But they're a little different than the bill that you've proposed.

I don't know if you've had an opportunity to look at those. I know that you've talked to your colleagues on both sides of the aisle and both chambers. But do you have a perspective you can share with the membership around those various proposals to try to deal with this name, image and likeness issue?

CONGRESSMAN GONZALEZ: Yeah, so the way I think about it is in my heart, right, I'm an athlete. I'm a student-athlete. That's who I am. I wear that. I don't apologize for that. I always want to do as much as humanly possible for the student-athlete. That's always my goal. And I think all the bills kind of have a similar flavor in that regard.

The difference between ours and some of the others, not to get into political discussions too much, but there are some bills that are more restrictive to the student-athlete than our bill and that maybe suppress the right a little bit more than otherwise I would, by putting more restrictions in on what kinds of activities or preventing agents, things like that. Our bill goes further than that.

And then there are other bills that would require what I would argue is a professional model, which is genuine pay-for-play, revenue splits, guaranteed healthcare, these sorts of things. The issue with that in my opinion is, one, I know a lot of institutions that I've talked to have said we just can't do that model. So if we went down that path we

probably couldn't to sports anymore. So I think that's a bad outcome for sure.

And the second is to professionalize the system altogether, you would, even if you kept your football program, you would probably eliminate all the other ones because you just wouldn't have any money. And so that's just the reality. So the thing that I'm always balancing in my head is how do we extend student-athlete rights as far as we can without jeopardizing the system overall. And that's the balance that we're always trying to strike with our bill. And I think, again, that's why probably it's bipartisan because a lot of people agree with that. And we hope that we'll be able to keep it there.

DONALD REMY: One of the concerns that I've heard expressed by some is that to create a name, image and likeness system, some athletes may have a greater opportunity to capitalize on those rights than others. And what happens to those athletes in lesser visible sports or what happens to the woman student-athlete. How does your bill deal with those challenges to create some balance in that space?

CONGRESSMAN GONZALEZ: Well, that's definitely a concern that I hear raised. And here's kind of what I would say on it. I don't personally think that anybody sitting here today can say this is exactly how name, image and likeness is going to play out: If we went to it today, this is exactly what would happen. And so there's a lot of uncertainty. And so what we've done is we've created an entity that will come back to Congress two years after the bill is passed and make recommendations around things like fair market value and those sorts of things. It's a commission, a federally chartered commission. It will last for two years. It can be extended, but its job essentially is to advise Congress and to advise the NCAA here's how it's going, here's what we've noticed, and here are some changes we think you should make.

Those changes won't have force of law; we would have to enact new law. But I do think that that's a thoughtful way to approach it. And then the other thing I would say just finally, I always tell people this, the brain immediately goes to the highest profile college football or basketball player that you can think of when you think of NIL. So people think Trevor Lawrence, Justin Fields, folks like that. I actually think among the top NIL earners of the past decade would probably be Katie Ledecky from Stanford when she was a swimmer there. I don't know that to be true, but that's my guess.

And so I do think it will apply to everyone. It's just a matter of how does it apply and will it apply evenly. Probably not. But I think having the right is really the first step in making

sure that it at least gets off the ground.

DONALD REMY: Before we started we were talking about the political climate and some of the challenges that exist in this space. But there's also the reality that we have the election of President-Elect Biden and there's the recent results of the Georgia Senate races, and there's been a lot of change in Washington and we're in a new Congress now.

How do you think the new administration in Congress might impact the ability to have an NIL bill passed, and what's your plan to try to get your bill moving forward?

CONGRESSMAN GONZALEZ: You know, it's a good question. So we, with the Trump Administration, we actually had good progress in terms of getting this on their radar and at least making them know, hey, we've got to do something in the first half of the year. We've started that outreach with the Biden folks as well. So I had a meeting with them, oh, it was about a month ago, month and a half ago, talking through this issue and just raising it as, hey, this is something that I hope we can work together on. My understanding is Vice President Biden knows about the issue but he doesn't have a particularly strong opinion one way or the other on it. And so that's a challenge.

I will say on the Senate side, the Senate will now be in Democratic control, but it's still a 50/50 Senate. So I don't think it's going to change too much the dynamics on any particular bill. It will certainly make it a little different but not drastically so. So my sense is we'll have to adjust it a bit as we enter the new Congress. Every Congress you have to reintroduce the bill.

So my guess is we'll have to reintroduce and maybe it changes slightly. But really it's about building coalitions. That's what Congress is all about. And that's frankly the fun part is sitting down with folks across all sides of the aisle and say: Here's the goal; here's what we're trying to do now; will you join us? And so far we've had good luck with that.

But anything can happen. So we're not comfortable resting on our laurels. We're going to keep pounding the pavement and get in front of as many folks as possible and just try to get this across the finish line.

DONALD REMY: Excellent. I know that you all have done your homework. You've reached out to the NCAA, to conferences, to different institutions, to student-athletes; you've gathered a lot of input in developing your legislation. And for that I say thank you.

As you move forward into 2021 and have this legislation

move forward, hopefully, how can we as the NCAA be helpful and participate in this process in a meaningful way?

CONGRESSMAN GONZALEZ: I think the best thing, frankly, is for member institutions to reach out to their members of Congress and Senators, to be very coordinated in that effort and say: Here's what we're looking for; here's what we need; here's the issue that we're facing. And just knowing, going eyes wide open, knowing they may have a different perspective than you on what is needed.

But I do think outreach is the most important thing at this point, because the truth is, if we don't get it done in the first half of the year, it's going to get a little chaotic with Florida coming online and whatever happens in the courts with different bills and whatnot. So, we want to make sure we get there quickly. So the more outreach to folks like me the better. The only way I know what to do is if people are telling me this is what I care about and you need to listen. And so the quicker and more emphatically those points can be made, the better.

DONALD REMY: Well, as you know the NCAA has been moving forward with its own rules around name, image and likeness. And at this very convention we're talking about those issues and how we can move forward to provide these opportunities for student-athletes. I don't know if you've had an opportunity to review or examine or even be briefed on the NCAA's proposal. I'd like to have you share with our membership your views about that proposal how we can move that forward.

CONGRESSMAN GONZALEZ: I've seen it. I haven't gone through it in depth. I know it is something that has been worked on for a long time in a lot of different groups, and that's not easy. I think people think the NCAA can just wave a magic wand and do whatever they want. You have your own bureaucracy that's very similar to mine, actually. So it's not that easy. But I commend everything that went into it. I think it's pretty solid.

There's some things that are a little different in our bill, I think around age and representation and things like that. But overall we're not too far apart here. So that's a good sign, I think. And again, our process, it could get pulled in different directions and is less dialed in as yours, I would say, because you've been working on it so long and this is your business and that makes sense. But I think we're catching up. So hopefully these ideas kind of meld somewhere in the not too distant future.

DONALD REMY: What's your view in regard to that? What's your view on how necessary it is for the NCAA to move forward with its proposal?

CONGRESSMAN GONZALEZ: I think it would help. I really do. I think if you all got something done and could show us, hey, we're actually doing it, we're moving in this direction. There's still a skepticism, frankly, on Capitol Hill that, hey, they're really not going to do it, because I think the rule has been the rule for so long that I think there's still members on both sides of the aisle, frankly, who don't necessarily know if it's real.

I do think it's important to keep the progress up. It will keep the pressure on us and it will show that this is a sincere effort. And I'll say this, I was maybe skeptical coming into this. We had never worked together. I was an athlete a long time ago. And I have been very impressed and grateful for the partnership and the dialogues that we've had, open honest dialogues, saying: Here's what I think we can do; here's where we agree and disagree. And those conversations are ones I always value. So I'm very happy with the way that things are progressing from an NCAA standpoint and college sports standpoint. And, again, I just want to thank and commend you all for taking it up in a serious way because it can be monumentally important to student-athletes.

DONALD REMY: Yes, well, thank you. Thank you for being willing to hear us and sit down and talk about these issues. We have about two minutes. I guess I just want to ask you what message would you like to share with the NCAA membership as it continues to grapple with these challenging issues and to evolve and meet the changing needs of the 21st century athlete.

CONGRESSMAN GONZALEZ: First I would say thank you. And secondly to always put the student-athlete at the heart of every decision. I know you do. But it's such a transformative experience for kids across the country. And it's such a unique experience. And anybody who gets to do it is grateful or should be grateful. And so I would just thank and encourage you on that.

To the student-athletes and to the NCAA, what I would say is thank you for being such great role models over the course of this pandemic. What I've seen from our student-athletes across the country, what I've seen on social media with respect to social justice or any other issues that you all have pursued, I've been blown away. It's so encouraging to see the next generation of leadership step up, even if I don't agree with the position on everything. But it's always done thoughtfully. It's coming from the heart. And it's been encouraging in what has otherwise been a very difficult year.

On top of that, getting out and playing and finding a way to navigate through the coronavirus, it means a lot. It means



a lot to the student-athlete. The student-athletes have had an experience they'll never forget, but it also means a lot to every community and state across the country.

I hear it every single day: Boy, thank God the Buckeyes are on TV. Or thank God I get to watch my local team, whatever it is, because it's been such a difficult year. So you all should be so proud that you've managed through this because it is difficult and it's scary, but I think everybody's done a really solid job. So I just want to thank you for all that.

DONALD REMY: I could not agree with you more with respect to the resilience of our student-athletes. They really have gone through a lot and they continue to push through it. They're having an experience that's quite different than the experience that any student-athlete has ever had, one that they'll remember, I'm sure, for the rest of their lives. And the components of that that are similar to the experience you have, I'm sure they'll carry with them in whatever their future endeavors might be.

A very warm thank you to you, Congressman Gonzalez, for joining us. I know that you have a very, very busy schedule. And so we all appreciate you taking the time to share your perspectives and share this moment with us. May God bless you and may God bless the United States of America.

CONGRESSMAN GONZALEZ: Thank you, Donald.

DONALD REMY: A very warm thank you for joining us, Congressman Gonzalez. We're so happy to have had you. Isn't it just fabulous to have a former NCAA student-athlete like Anthony Gonzalez in the United States Congress? A couple of key takeaways from this conversation.

Your efforts in engaging members of Congress are very useful to them. Take the time to share your views. And we can expect to see reintroduction of legislation and possible action early in this Congress. Lastly, what I heard is stay the course on NIL. It matters.

I now would like to welcome Senator Richard Blumenthal and Senator Cory Booker. Like our other guests today, senators Blumenthal and Booker were former student-athletes. Senator Blumenthal received his undergraduate degree from Harvard, where he was a swimmer and went on to receive his law degree from Yale.

Senator Blumenthal has had a long and notable career in public service. He served in the U.S. Marine Corps as the U.S. Attorney for Connecticut and in the Connecticut House of Representatives and Senate prior to his current role as U.S. Senator for the State of Connecticut.

Senator Booker received his undergraduate degree and his master's degree from Stanford University. At Stanford, Senator Booker played varsity football and was awarded a Rhodes Scholarship before going on to study at the University of Oxford and Yale Law School. Senator Booker served as the mayor of Newark prior to his current role as U.S. Senator for the State of New Jersey. Welcome, Senators Blumenthal and Booker.

With all that's going on in America today, gentlemen, we greatly appreciate your willingness to join us and to share perspectives related to college sports as well as the legislation you recently introduced with Senator Schatz and Gillibrand.

As I noted in your introductions, both of you were former college athletes. I'd like to start by simply asking you to share with our membership your experiences as college athletes. I'd like for our membership to get to know you, as many of them were former student-athletes as well.

Senator Booker, would you like to start?

SENATOR BOOKER: Sure. First of all, it's an honor to be here to talk to this incredible gathering virtually. And it's an honor to be here with one of the senior senators in the United States Senate, a man of extraordinary honor, and in partnership with me in these efforts, Senator Blumenthal.

It's very simple. I would not be where I am today without football. It has been one of the defining forces in my life. And I'm not just talking about not being a United States Senator, I wouldn't be who I am without a sport that taught me so much about honor and character and courage, about leadership and grit. It was in so many ways the foundation, part of the foundation upon which I stand.

And I had extraordinary teammates who modeled for me excellence, as well as coaches, from my high school coaches who took a preeminently losing team to a state championship and turned boys into men, to college coaches like Denny Green and Tyrone Willingham and Brian Billick who taught me really about organizations and how to run them.

In so many ways I just have a debt to pay to the sport that I will probably spend my entire life trying to pay back. But in this sense, what I think Senator Blumenthal and I are doing is our attempts to try to pay it forward, the gifts that we were given.

I saw in my own experience that college football and college sports is not always empowering young people; it often exploits them. It often leaves them worse off. And

I've seen this system fail. And that's my own personal experiences are so much of what's driving me today to see how these system-wide failures have left too many athletes without degrees, with lifetimes worth of medical expenses and injuries, as well as, frankly, losing out during their peak years of earning power.

And so I'm just grateful to be in a position in the United States Senate at this time to try to shape the future of a sport that gave me so much and to try to bring more justice to it.

DONALD REMY: Thank you, Senator Booker.

Senator Blumenthal.

SENATOR BLUMENTHAL: I really want to join Senator Booker in thanking the NCAA for giving us this really very exciting and important opportunity to talk to so many great coaches and athletic directors and others interested in college athletics.

And I guess one of the most significant things I'm going to say during this session is, frankly, thank you to all of you because I know in my own experience in college sports how important the coaches were as well as my fellow athletes.

It was really so formative, as much as the actual physical experience, and it has kept me sane, as it did then, going to the Senate gym where I occasionally run into Senator Booker in the mornings, really has given me a balance that gets me through the day. I get there at five or six in the morning, or at least did before the pandemic. And we all know, anybody on this call knows how important physical exercise is to kind of give you perspective on life and the teamwork that it teaches.

I was in the Marine Corps Reserves, another formative experience, going through Parris Island, and those relationships last a lifetime. And the appreciation for depending on another human being to be at the right place at the right time, to do the thing that you depend on him or her to do, that's working as a team.

And so I think that Cory is absolutely right that we share with you a common goal, which is to make sure college athletics is the best it can be; that college athletes are protected while they're in school and then afterward.

It's not only name, image and likeness; it goes beyond the money. It's about health and protection from the bills that may accumulate as a result of injuries. And we now know those injuries are more than the visible ones. They can be traumatic, emotional injuries. They can be brain injuries

that later in life produce very disastrous results.

So I'm very proud of the Medical Trust Fund idea in this Bill of Rights and the guarantees for educational opportunities so athletes can come back to school, and the enforcement parts of this bill that make sure that the athletes themselves have rights in court that will enable them to take action along with the commission that we're establishing and the states' attorneys general.

So I look forward to working with all of you in refining those steps as we go forward in the United States Senate and the Congress, now under leadership from a new president and from a new majority that I think enables us to reach those goals.

DONALD REMY: Thank you, Senator Blumenthal. And you raised an important question in your last comment there. And we were all excited to have your interests expressed through the legislation that you've introduced.

We're now going into a new Congress, the 117th Congress, and we'll press a reset and start over. Our members are curious what your plans are to move forward with the legislation, the College Athletes Bill of Rights, in this next Congress and how you plan to get it passed.

SENATOR BLUMENTHAL: I intend to move forward as, hopefully, the chairman of the subcommittee of the Commerce Committee that has jurisdiction. It is the Subcommittee on Consumer Protection that held hearings during the last session.

We're going to be reintroducing our Bill of Rights. We may want to refine it somewhat. I'm hoping that we'll have additional cosponsors. Senator Gillibrand and Senator Schatz joined us during the last session. But legislation has to be reintroduced. And Senator Booker has really been so instrumental. He'll be again, I think, leading this effort.

I have been really pleased to work with him on the Judiciary Committee, which also has jurisdiction. So I'm a member of both committees. I hope that we can move forward and combine support from both committees to make sure that we cross the goal line, so to speak.

DONALD REMY: Senator Booker, thoughts on that?

SENATOR BOOKER: Look, again, I think there is a collective urgency here. We see a patchwork of state laws that necessitate, in my opinion, some kind of federal preemption to make sure that a lot of things we love about college athletics and the level playing fields of competition continue, particularly for revenue-generating sports.

We have an industry that's a \$15 billion industry in terms of our revenue-generating sports. And the main drivers of that are athletes who are really artists of excellence in their fields.

And you know, it's challenging for me to watch. It's now been a generation ago that I've played. But many of the things that were galling to us as athletes have not been addressed or even given symbolic approach to.

So I just see a real sense of urgency with a lot of states passing laws that take effect within months all the way to the pressing concerns I hear from former players, again, about cost of medical expenses, the failure to be able to get -- finish off their degree without paying out-of-pocket expenses, the challenges of being marquee players when they played and having their jerseys with their names on it being sold for \$80, which is more than their parents were making at times for a full day's work who failed to share in any of the revenue, billions of dollars of revenue that they were generating.

There are real urgencies for us to act and to get this right. And I've had two hearings with NCAA officials over -- between about a six-year period where I was impressed with the lip service given to some of the concerns that I brought up from my own experiences and from that of student-athletes as well as former student-athletes, but we failed to make progress substantively on things that I believe are exploited.

Now, I've talked to members on both sides of the aisle. And when I tell them real athlete's stories, they find them very compelling. So I think that there is a strong belief, on people on both sides of the aisle, that things have to change beyond just solving the name, image and likeness issue.

And if we do not, as Congress, if we do not use our authority to act, I have little faith that the NCAA will change to the degree that will begin to bring justice to a lot of athletes who, after years of playing, are left with tremendous expense, physical injury, not a degree and having lost out on peak earning years in their lives.

So I know that there is energy to solve these problems. And I know that the NCAA has a problem on their hands if they do not get federal preemption to a lot of these state laws.

But I will tell you, and this is where I'm honored to be with Senator Blumenthal, is in the Senate -- especially a 50/50 controlled Senate -- that every senator has a lot of power in those circumstances. And as one of the few people on the

Senate floor that actually played college football at a Division I level, I for one will do everything I can to make sure that nothing happens unless it addresses what I believe are exploitive issues that continue in college athletics.

DONALD REMY: I know our membership will be heartened to hear you say, Senator Booker, that the patchwork of state laws is unworkable, that preemption is necessary in some way, shape or form. Because one of the challenges that the membership has dealt with in trying to evolve its rules, not just on NIL, but other rules, is this impact that's created by a patchwork of state laws in some instances and in other instances perpetual litigation that arises.

And I wanted to know if either of you have any views on trying to create an environment that allows the NCAA on its own to continue to modernize its rules without fear that every time it does, it will be subjected to continual litigation.

SENATOR BLUMENTHAL: I'll respond to that point and, Donald, I want to be blunt but respectful. First, let me say that my background as a state attorney general for 20 years gives me a great deal of respect for state laws and state law enforcement.

And I agree with Senator Booker very, very strongly that a national standard on health; on name, image and likeness; on the standards that we apply on the field and off the field for athletes is very desirable. National standards are always to be preferred when it comes to protecting consumers or athletes or citizens. But at the same time, those standards need to be tough enough to really do the job, if we are going to preempt states.

I have a healthy respect for those six states that have adopted their own standards right now, California being at the lead, and as you mentioned at the outset for many other states that are considering their own protection.

And, again, without meaning any disrespect, I think one of the incentives for the NCAA to move forward in this area is in fact those states that have taken action and are giving them a healthy incentive to try to adopt a national standard. I think federal law should incorporate that standard. I think we need national standards that are now codified, because, frankly, we have waited a long time for the NCAA to move in this area.

Again, not only on name, image and likeness. After all, it's the athlete's name. It's the athlete's likeness and image and performance on the field. The blood, sweat and tears of those athletes are what generate that \$16, \$19 billion every year. And so college athletes, whether they're stars

or not, ought to share in some of that revenue. And, again, it goes beyond the money. They ought to be protected if they suffer injuries.

Their rights ought to be protected to a decent education. And so scholarship should be protected. And I think these kinds of strong standards should be legislated. And we need to make sure that any sort of preemption enables states still to innovate and to come forward with new ideas to meet the changes in technology or the changes in the financial structure that may come in the future.

DONALD REMY: Both of you have noted the revenue that's generated through college sports. And nobody can dispute the fact that there's a significant amount of revenue that's generated in the college sports environment. And included in your bill is a new distribution element, some would say, for that revenue that's generated.

And I've heard from many of the members of the NCAA that they're concerned that this could turn student-athletes into employees and prevent them from offering them -- being the schools -- from offering broad-based opportunities to students in nonrevenue-generating sports.

Share with the membership a little bit of your idea around this revenue distribution model and what you're trying to achieve.

SENATOR BOOKER: Sure. With deference to my more senior senator, I'll take a shot at that. Again, it is extraordinary wealth that's generated. We're talking about not just billions of dollars; we're talking about millions of dollars of coaching salaries. We're talking about luxury facilities that rival the pros'. As a mayor, when the NCAA came to town for its tournament, just the incredible wealth it drove into my own city.

And you have athletes, many of them come from low-income environments in the revenue-generating sports, who are also disproportionately Black, who see none of that revenue and are often left in situations where, throughout their entire lives, they're still giving out-of-pocket expenses, as we mentioned already, for medical expenses.

And as much as the NCAA's data often talks about their high graduation rates, the graduation rates for Black men in college sports is, in revenue-generating college sports is awful.

And so these are people, as I know, regardless of what the NCAA might say their rules are, but are spending 50, 60, 70 hours a week in labor towards their sport. And so there's just a sheer fairness is something that's lacking

here, especially, as I saw in my days. We had marquee players that were literally putting people in seats just to watch them play, who didn't have (indiscernible) careers, but yet -- who generated tremendous revenue, who saw none of it.

So I understand, actually, the concerns about creating an employee/employer relationship. That's why we've worked very hard to address that. We do not believe that the revenue-sharing component of our proposal necessitates an employee/employer relationship at all between the athlete and their institution. And we've worked really closely with legislative attorneys in the Senate to really confirm that that's not the case.

We just feel very strongly that the institutions should continue to be able to offer broad-based athletic opportunities to students of all backgrounds in a variety of sports. And we've designed the revenue component, revenue-sharing proposal in a very meticulous way to only include athletic programs that turn a profit, which is specifically athletic programs that participate in a divisional sport where the sum total of the revenue generated exceeds the total cost of the scholarship that's issued. And, again, that's what I consider to be economic justice.

And I mention sort of the racial component of this, which is really something that I think we should be always, especially at this time in American history, really speaking to, to see disproportionately African-American athletes and disproportionately lie -- and generate the revenue that we're talking about, who are at their peak moments in times of possible earnings to create wealth for their own lives, generational wealth.

It is even more so, to me, if we're talking about racial justice in America, even more urgent to address these issues. And so I've watched now -- it's been 31 years this fall since I played my last game; we beat Cal, by the way -- and to watch an entire generation of athletes create billions of dollars, now hundreds of billions of dollars in those 31 years, and to now know them personally, people who played the sport and to see what's happened with their lives, to me this is something that we all should be committed to addressing, especially that the college athletes are facing restrictions on their earnings.

I was blessed to be at Stanford and know a lot of my peers at Stanford who are very wealthy individuals based on the work and ideas and artistry that they generated while they were at Stanford, companies they were able to start and other things.

These are opportunities that are denied to others who play these revenue-generating sports. And only a small

percentage, as we all know, will go on to the pros. And we need to find a way to help these young people right these wrongs and benefit from the billions that they create.

SENATOR BLUMENTHAL: Donald, I think that the question you asked is worth emphasizing the answer that Senator Booker just gave. Our legislation does not contemplate college athletes being employees. It does not envision that there will be collective bargaining among college athletes.

In fact, as he said so well, we have framed our legislation to provide justice -- that's really a key word here, and I'm so glad he emphasized the racial justice component of what we're doing -- because there is a racial justice issue at stake here. And there is also a basic justice among athletes. There are some athletes whose name, image and likeness are going to be worth a lot, maybe millions.

And then there are others, not so much. You see it right here in this conversation. I can guarantee you, my name, image and likeness as a swimmer -- and I wasn't as good a swimmer as Cory Booker was a football player -- would have been worth pretty much what you're paying me to be on this conversation. Whereas his, I guarantee you, would have been worth a lot.

So I think that there is a justice component here that we all can respect, but people should understand we don't contemplate athletes being employees.

DONALD REMY: Thank you, Senator Blumenthal. Well, I was neither a swimmer nor a football player, so my name, image and likeness is about worth what I'm being paid to participate here.

I do want to dive into name, image and likeness, though, because that's an issue that has a lot of attention being focused on it right now. It is but one component of your bill.

And I want to commend you both on a bill that's incredibly well-drafted and clearly well-thought out. And to your point about the meticulousness that you've undertaken to create scenarios that don't create the risk that we're worried about, you can see that borne out in the text and language of the bill.

Around name, image and likeness, you both know that the NCAA has been engaged in an effort to modernize its rules in that space. And indeed so, too, have many of the states, and we've seen other pieces of legislation in the Congress.

But we continue to move forward to advance what we think

would work within our system with respect to name, image and likeness. And I suspect you both are aware of the proposals we have and how we're evaluating those proposals. And I just wonder, for our membership, how those proposals and our efforts in that space sync up with the efforts that you're undertaking in the United States Senate.

SENATOR BLUMENTHAL: I think there is a lot of common ground. And I hope very sincerely that we can work together in forming this legislation. I think that the idea that there ought to be revenue going to students for the commercial use of their name, their image or their likeness as a result of their performance on the field or in the pool ought to be a principle that is incorporated in our legislation.

We hope that you'll come to us with your ideas from the NCAA. But we also are working with the athletes themselves. We're working with the folks who have been athletes in the past, former athletes, who have ideas.

And we've incorporated many of those ideas in this proposal. So the basic principle is one of justice. It's their name, their image and their likeness. They ought to receive the financial rewards as a result of commercial use of it.

SENATOR BOOKER: And let me just say that, with a lot of just respect in my heart for the NCAA as an institution, but it is a bit frustrating to me to watch a lot of these issues and problems going on for student-athletes and the will of the NCAA to rapidly make change.

I remember when one Division I athlete who just won a national championship in basketball speaks out about going to bed hungry, and the backlash of the media against rules that I watched decades earlier force a lot of athletes into near poverty. Suddenly the NCAA, after public backlash, change the rules real quick.

And now that they are facing a situation where this industry -- and it is an industry, a billion-dollar industry -- is being threatened by the patchwork of states, the NCAA is rushing on image and likeness to make a lot of changes. But I had lip service from the NCAA in that hearing six years ago about the other issues that still have not been addressed, like the idea of lifetime scholarship. The head of the NCAA said that would be a great idea six years ago. Nothing has changed. With protecting the physical safety of athletes and creating real accountability, there seems to be no urgency to make change.

Addressing medical expenses of former athletes; no urgency to make change. I could go through a raft of

things that people give a lot of lip service to the need to address, but it wasn't until their money was being threatened, like we're seeing right now, the revenue and the sports as we know it being threatened, that there seems to be some urgency to change.

So I know name, image and likeness is at center stage, but all the other issues, even just the well-being of an athlete -- I still remember being recruited by a well-known coach to one school. And during the time of my recruitment, he switched schools. And suddenly he was recruiting me for another school and singing the praises of that school and trying to persuade me against the school he originally was recruiting me to. He had freedom of movement.

Our student-athletes don't have that same freedom. They have a monopolistic hold almost, the NCAA, over even the ability for a student-athlete to try to make a decision to get a better deal and just transferring. There's been a lot of talk about changing the transfer rules to make them more fair to a student-athlete. But the slowness with which those reforms are made are stunning to me.

And so I just have to say that, again, as we're looking for federal preemption around name, image and likeness, which my senior senator and I both agree, to me there's an outrage, as I talked to one former athlete who actually made it to the NFL, how frustrated he was to go back and see people still making money off his name.

I'm just telling you that we, at least there's a group of us senators, that the NCAA needs to get serious real quick about changing other aspects of their rules and regulations, because our intent is to impose the changes in order to allow the settling on a federal level of name, image and likeness, because I don't think anybody -- and I wish we had a forum like this where former student-athletes could tell their stories about the treatment, about their exploitation, about their lives now, years after playing, because their stories are painful and wrong. And we all can collectively do better, and there should be an urgency to do better, greater than I'm seeing right now.

DONALD REMY: Well, thank you for that. I can tell you, Senator Booker, that some in our membership would say things have changed. And certainly since your playing days or Senator Blumenthal's swimming days, that there has been a continual effort to make progress and modernize our rules in a lot of the different ways that you've described.

Admittedly, very slow. But progress, nonetheless. And so I wonder if you all have seen any of that progress that I know our membership feels deeply about in providing opportunities for student-athletes and demonstrating the

clearness of their commitment to those student-athletes and their well-being, their participation in athletics in their life beyond athletics.

You mentioned coaches, athletics directors, teachers, administrators, they all, I believe, would tell you they're deeply committed to the whole being of the student-athlete, and look back on the past years, decades, however long they've been in the college athletics arena, and say we've made progress.

Is there anything there that you've seen that to you -- and you may disagree with the perspectives of some of those in the membership -- but to you demonstrates that progress?

SENATOR BOOKER: I'll defer to you first.

SENATOR BLUMENTHAL: Senator Booker is the more recent of the two athletes among us. I've seen progress. And I just feel it's been too slow and too little. But my opinion is a lot less important than the views of the athletes that have come to us. And some have testified in hearings with very powerful and dramatic stories about how they have contributed on the field or on the basketball court and been treated basically unjustly. They've created assets and revenue that have gone to others. And some of the stories are heartbreaking, the way their lives have been shattered by injuries.

One of the great moments for me was the comment by Senator Booker during one of our hearings that an athlete who is injured can sometimes just become a piece of meat; he's tossed aside. And we've heard that in some of the stories.

But it goes also to some of the success stories where a student can have a family that is literally in poverty, and he or she is in dire straits as well financially. And yet, the name, image and likeness are generating millions. Likewise, the sports program can generate millions of dollars in revenue, never seen by any of the athletes and never really benefitting them.

So there's a justice issue here that I think has to be addressed. And there has been progress. The mere fact that the NCAA -- NCAA is coming forward with its own proposals on name, image and likeness is a step forward. But make no mistake, the states around the country are going to move forward with their own legislation.

This wave is moving. There's power in momentum to the effort to protect college athletes. And the faster and more effectively that the NCAA moves, the more responsive it is, the more it will be part of the conversation and the reforms that are implemented.

SENATOR BOOKER: So, look, I love my country, as everybody who is watching this does. I'm a patriot. And I believe we're the best nation on the planet earth. But as a Black American, I say that with also understanding that we are a nation at a point where people will say to African-Americans often, well, we've made so much progress. And yet we have a nation where there's no difference between Blacks and whites for using drugs or selling drugs, but Blacks are four times more likely to be incarcerated for that.

I watched in college and college students experimented with drugs with little consequence, but communities like the one I live in, which is a low-income African-American community, I watched a whole different set of rules.

So when you say things to me like, hey, we made progress, for folks who are experiencing injustice, that's not satisfactory. What we don't want is progress, we want to solve actual problems.

It is a problem in America right now that we have people that gave some of the best years of their lives to a sport in which their institutions made millions and millions of dollars off of them, salaries and other concessions; yet it is unjust that they now sit with medical bills, with damages to spines and knees and brains and are responsible for all those costs.

It is unjust that the demands of time that we put into our sport to make this revenue that was -- I can tell you the playbooks I was studying for Notre Dame's defense or USC's defense, demanded more time from me than my political science classes.

And yet that person is without a degree right now struggling to make ends meet for their families but their labors produced such wealth for institutions and individuals and now they're left with none.

I could continue. And what I would encourage the NCAA to do is what I've done: Notable athletes, I created safe spaces to hear their stories. And they were painful. And they were wrong. And they were unjust.

So have you made progress? Yeah, you have. But are there casualties and pain and hurt and wrong that still need to be addressed? Hell, yes. And for you not to address it, for you to satisfy yourself with a feeling that we've made progress while so many young people in the prime of their lives are getting a raw deal, that is unfortunate.

And I know my senior senator's more experienced in consumer product safety, for example. And I've seen

industries -- I mean, the seatbelt issue, for example -- say, oh, this will destroy our industry if you force us to do this. When in many ways those appropriate regulations help to affirm human life, help to secure and make people safer and help to make our nation more just.

James Baldwin said, "I love my country more than any other and that's why I feel an obligation to criticize her with intensity."

I love my sport. I am here because of football. The Stanford community, God, was incredible to me, life-changing. I love my university. I love college sports. And that is why I will criticize you until every athlete has the fair deal that is promised to them and receive the justice and the dignity, the human dignity, that they deserve.

We have a college sports that is sick right now. There are people who have been hurt by her. There are people whose lives have been exploited. We must address that with a sense of urgency. It cannot all about the dollars, cannot be all about the money. It has to be ultimately about putting student-athletes first.

DONALD REMY: Thank you, Senators. We're just about out of time. I really appreciate your passion and your focus and your perspective and your engagement, your willingness to share your thoughts with the NCAA.

I want to give you both one minute as we close to provide any message that you would like to give to the NCAA membership around your perspectives of college sports and what we can do to be better and to work with you in the United States Senate.

Senator Blumenthal, I'll ask you first.

SENATOR BLUMENTHAL: Thank you so much. Again, thank you, Donald. Thank you to the NCAA for giving us this really wonderful opportunity. And thank you to everybody who is watching for the great work you're doing with college athletes and the way you are really touching their lives and changing their futures.

I would just emphasize that what we've proposed is a Bill of Rights. It's not just name, image and likeness. And it's not just revenue sharing. It goes to those principles of justice. If somebody is injured there ought to be a trust fund to enable out-of-pocket costs to be covered, but, longer term, the costs of those invisible injuries like concussions, brain trauma and so forth that may impact future. Scholarships and education are not just for a year. They shouldn't be year to year. It ought to be a lifetime opportunity. And the enforcement is important. How are rights made real?

My career really has been about law enforcement. As a United States attorney, the chief federal prosecutor and then as attorney general, how do we make sure that people's rights are protected? That's why we've established a commission and given individual athletes their rights as well as states' attorneys general. So it's a complicated area. Our Bill of Rights is a complicated document.

We welcome your comments and we look forward to listening to them as we go into this next session of the United States Congress.

DONALD REMY: Thank you.

Senator Booker.

SENATOR BOOKER: I just want to thank you all, again, for this forum that's allowed Senator Blumenthal and I to give you our ideas, our thoughts, our candor and our heart. And I actually believe in the deep goodness of people. I love people.

And I know here in the Senate, as I've taken the time to personally get to know people on both sides of the aisle, I've been blessed by my friendships with people with many different perspectives than I have. And it's enabled us to find common ground and get things done.

I know college sports and not only am I a rabid fan, but I've gotten to know players and coaches and staff and personnel from across this country and have been in awe of who they are, their character, their moral compasses.

You all have the blessings of being a part of something that is really special about our culture as a country. And I believe in the honor of the individuals that are helping to continue the life of college athletics as bright as possible.

And so I just want to really make two points. One is that I am looking forward to this being a collaborative time. We need to sit with each other and listen to each other and learn from each other.

Senator Blumenthal and my doors are open. We are very passionate about these things. But we recognize that many people in these institutions, players and coaches and staff, know this better than we do. And we would hope that we could have more dialogue. And I invite people -- I've already talked to a number of current college coaches and players -- but I hope that you all will work with us.

I have found it unfortunate at times that the only time I hear from officials in the NCAA is often when they need something from us. So I really invite you to work with us. I

know the principles in our Bill of Rights are shared, if not universally, by most people about the protection of student-athletes, the fairness and the justice aspects.

And that would bring me to the last point is college athletics as we know it is under threat. We do face right now things that worry me about what is precious about what we do being changed. And that is the urgency for the love of sports, sports which I've seen as a kid growing up and seeing Olympic athletes not only affirm American greatness and excellence, but the ability to speak to larger principles that guide our democracy. This has been a tough stretch.

I think that Senator Blumenthal and I are still processing the horrible incidents that happened at the Capitol. But if there's any reminder from the events of past weeks, it's that more than ever we have an obligation in this generation now to put more indivisible into this one nation under God. And I hope we can commit ourselves in this sense with something as precious as our cultural institutions like college sports, commit ourselves to the urgency of finding common ground and common cause and leaving for future generations a better sport, better athletics, a better nation. That I think is our cause. And I'm grateful to be in it with you.

DONALD REMY: Well, we're grateful that you've taken time out of your very, very, busy schedules in this challenging time for the nation to spend with us. As the NCAA membership, we thank you for your perspectives. We thank you for your insight. And, most importantly, we thank you for your service to the nation.

DONALD REMY: What an insightful conversation. They clearly are passionate about these issues. A lot to unpackage there in that conversation.

One, there is a commitment to continue these efforts in this Congress. Two, the congressional members are willing to work with us. And three, we must demonstrate that we are dedicated to making change.

Now, let's turn to our next guest. We've invited Seth Waxman, partner and co-chair of the Appellate and Supreme Court Litigation practice at WilmerHale to join us and share his perspective.

Seth was Solicitor General of the United States from 1997 to 2001. Like Senator Blumenthal, he's a graduate of Harvard College and Yale Law School.

Seth is one of America's most prolific advocates before the Supreme Court, having argued over 80 cases and likely hundreds more before state and lower federal courts.



Earlier this month, The Hill stated, "There's no more respected lawyer in Washington D.C."

Having known Seth for 25 years, I simply state, I concur.

Welcome, Seth. Glad to have you here.

I think many know that the Supreme Court only grants a very small percentage of the cases that are asked to be placed before the court petitions for certiorari. Can you add a little bit more context to what's involved with the court granting a petition for review and why they might have done so in this case.

SETH WAXMAN: Sure. So in the current environment, the Supreme Court has almost no mandatory jurisdiction. It's a court of -- it decides which cases it wants to hear. If you have a case that you have filed in state or federal court, you have a right to have that case heard at the trial level. You have a right to have that case decided on appeal by a court of appeals. You do not have a right to have the United States Supreme Court then review what's done.

And in recent years, the Supreme Court, although it receives about 10,000 -- petitions in 10,000 cases a year, hears about 70 or 75 cases a year. And so filing a cert petition is a long, long way from convincing the Supreme Court to review the case.

DONALD REMY: I'm sure our membership would want to understand more about the Alston case in particular and more about why the NCAA and conference defendants think the Ninth Circuit got it wrong. And I know you've already briefed it in part to the Supreme Court. And what's the other side of that argument?

SETH WAXMAN: So, I mean, at bottom, what's at issue in this case are eligibility rules that preserve the amateur status of our student-athletes. And our argument to the Supreme Court is that, in striking down those rules, the District Court in the Northern District of California and the Ninth Circuit applied a strict, unforgiving level of legal scrutiny and a very heavy burden of proof on the NCAA that would be inconsistent with the federal antitrust laws even if the NCAA's members were commercial operations, like oil companies or auto manufacturers whose sole motive was profit.

But, of course, our member institutions are nothing of the sort. The Supreme Court has recognized that scrutiny of restrictions imposed by athletic leagues generally have to be deferential in order for the product that they provide, that is the field-level competition, to exist at all.

And the Supreme Court has recognized, in the Board of Regents case, that the NCAA, as an association of institutions whose hallmark is amateur athletics as a cornerstone of the educational environment they provide, is entitled to particular deference in setting the rules that implement the principles of amateur competition.

Now, other federal courts around the United States have recognized that that deferential level of scrutiny is the one to be applied to rules setting eligibility for athletic competition. The method of analysis that was applied by the District Court of the Ninth Circuit do not do that. And we're going to ask the Supreme Court to reiterate the uniform national federal rule that applies elsewhere in the United States.

DONALD REMY: So that's the question before the court. And you've talked about your preparation and we've talked about some of the arguments that the NCAA and its membership will make, some of the arguments that the plaintiffs might make. And I know you can't predict what the court will do, but what are the possible outcomes of a case like this?

SETH WAXMAN: Well, at the most simplistic level we could win or lose. But there actually, I think, is probably a spectrum of outcomes. I mean, the Supreme Court could -- I certainly hope that it won't and don't expect that it will -- could certainly say, yeah, we've taken a close look at this and you know what the Ninth Circuit is just right. And we affirm there's nothing wrong with the injunction, there's nothing wrong with the analysis. That would be a going-away loss.

On the other hand, we could have a going-away win. The Supreme Court could say the analysis that the lower courts applied is not consistent with our case law, is not consistent with the appropriate role of a federal court applying the Sherman Antitrust laws to a joint venture such as the NCAA. And we have examined the record in this case and it is entirely clear to us that the appropriate level of scrutiny is are these challenged rules rules that help define the amateur product that the NCAA and its member institutions provide to their communities and to the American public at large. And the answer is yes. And therefore they satisfy Sherman Act scrutiny. That would be a very satisfying result and it's what we think the Supreme Court should do.

It also could say, look, we think that the lower court applied far too strict a level of scrutiny. Much more deference is required, particularly with respect to analyzing rules that are core to defining what the product is and particularly where the product is a product of nonprofit educational

institutions that are trying to do a lot of things beyond making money for themselves and for their institutions. We're not experts on what the evidence does or doesn't show. We are going to vacate the lower court decision. And we are going to remand it for a redetermination under the correct standard, which is XYZ. That would be an outcome that's in the middle.

Now, we're shooting for, it's pretty clear that these -- it's clear that these rules survive Sherman Act scrutiny. The other side is aiming for a rule that says it is utterly clear that these rules cannot possibly be consistent with the Sherman Act and therefore you should affirm.

But the Supreme Court has in front of it any number of intermediate steps that it could take. The most important thing in the case for us, obviously, is for the Supreme Court to articulate the correct level of standard that our rules are going to be subject to and get us out of a world in which every time any rule is changed or even considered to be changed, or even a court, you know, rules on a particular rule, yet another lawsuit is filed by yet another class, series of classes of athletes that is virtually identical to the last class, subjecting the NCAA to years of incredibly expensive litigation and treble antitrust damages. There's just no way that, in my mind, that that is the way that the federal antitrust laws can possibly be understood to work.

DONALD REMY: Well, that's really helpful to understand the various paths that the court might take. I know our membership appreciates it. I know our membership appreciates the time that you've spent with us.

I want to thank you personally for taking time out of what I know is an extraordinarily busy schedule of yours and spending a little bit of it with the membership to help us all understand the workings of the Supreme Court and how the case that we have before the Supreme Court might unfold. So, Seth, thank you for joining us today. And I look forward to talking to you in the very near future.

Well, it was an honor and privilege to chat with our esteemed guests today. One common thread that I hope you gathered, as I did, like all of us, they each are deeply committed to the student-athlete experience.

It has been my pleasure to serve as the host of this Convention segment. Everyone, please stay happy, healthy, safe and positive. Have a great day. And I'll see you around the Zoom.

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