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SPORTS AGENT RESPONSIBILITY AND TRUST ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

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COMMERCE
HOUSE OF REPRESENTATIVES

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CONTENTS

Page

Testimony of:

Beales, Howard, Director, Bureau of Consumer Protection, Federal Trade Commission 19

Donnelly, James F. "Boots," Athletic Director, Middle Tennessee State University 24

Osborne, Hon. Tom, a Representative in Congress from the State of Nebraska 6

Saum, William S., Director of Agent, Gambling and Amateurism Activities, National Collegiate Athletic Association 28

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

WEDNESDAY, JUNE 5, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322 Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Shadegg, Towns, DeGette, Capps, and Gordon.

Staff present: Brian McCullough, majority counsel; Ramsen Betfarhad, policy coordinator; and Will Carty, legislative clerk.

Mr. STEARNS. Good morning. The Subcommittee on Commerce, Trade, and Consumer Protection will convene.

We will receive now testimony on H.R. 4701, the Sports Agent Responsibility and Trust Act.

My good friend, the gentleman from Tennessee, Mr. Gordon, introduced the legislation to address problems associated with unscrupulous sports agents that use deceptive tactics to sign collegiate athletes to contracts. I am pleased to be a co-sponsor of the legislation, because I think H.R. 4701 addresses a very significant problem where the Federal Government can and should play a constructive role.

Sports agents provide a valuable service to their athlete clients. This legislation is not directed at the legitimate professionals who abide by the rules. This legislation is directed at those individuals who do not follow the rules and willingly jeopardize the careers of collegiate athletes and their school's program.

Today's witnesses include our colleague from Nebraska, who also co-sponsored H.R. 4701, Mr. Osborne from Nebraska. The distinguished former coach of the University of Nebraska's football team that won three national championships under his tenure can elaborate on the problems the legislation seeks to address.

I am also glad to see Mr. Saum from the NCAA has returned to discuss this issue that was briefly touched upon at our previous sports hearing. I am pleased to see that any differences of opinion have been resolved and that the NCAA is now supportive of the legislation.

Given the enormous contracts and signing bonuses of today's elite professional athletes, it is not surprising that an element of society will do anything to court promising collegiate athletes with

the hope of being their agent and riding their coattails to future riches.

Talented collegiate athletes that hold even the slightest promise of professional stardom are targeted by these individuals. Unfortunately, odds are against most collegiate athletes reaching the professional ranks and the accompanying fame and fortune.

Instead, what is left in the wake of some of the purported agents' activities are all too often athletes who have lost their collegiate eligibility and the schools left to deal with possible violations. And let us be clear: the consequences for the athlete and the school can be serious and have lasting effect.

Sanctions for violations can include the return of post-season appearance money, forfeiture of games played with ineligible athletes, loss of scholarships, and ban on televised games. These are the rules and the penalties the schools have imposed upon themselves, and I understand why they exist. Yet despite the stiff penalties for the school and the athlete, the repercussions for the perpetrator range from minimal to nonexistence.

Because the States recognize this problem, many have enacted laws to curb the abuses. Unfortunately, the patchwork of varying laws is not currently sufficient to deal with this problem. While progress is being made by many States to enact the Uniform Athlete Agent Act, it can only be a true countermeasure once all the States have enacted it.

Currently, only 16 States—my home State of Florida is included—have taken that step. And while another 12 States have introduced the legislation, over a dozen States remain without any law to address this problem.

H.R. 4701 will provide an additional remedy for the States that already have an existing athlete agent law. More significantly, it will provide a new enforcement mechanism at the Federal and State level where none currently exists. State attorneys general are given the authority to bring civil action in Federal district court.

The FTC has all its available powers and authority to bring action against a violator under the legislation, including the ability to fine a violator up to the maximum of $11,000 per violation per day and to seek restitution to the injured.

It is clear that Federal legislation is required in order to provide the State attorneys general with the authority to bring action under a Federal statute. My colleagues, what is not clear to me entirely is whether the Federal Trade Commission requires legislation to enunciate certain conduct as unfair, deceptive, or if its existing authority under Section 5 already accords it the necessary authority to bring action against violators.

So I look forward to comments of our witnesses today and thank them for their participation.

With that, my distinguished colleague from New York, the ranking member, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman, and I would also like to thank you for holding this hearing. As an original cosponsor of the bill, I am very pleased that, in our previous sports hearings, my friend from Tennessee, Bart Gordon, was able to push this piece of legislation forward. I have heard of the horror stories out there and realize that something needs to be done.

This legislation is a significant step in the right direction. It not only protects young people, who seemingly need representation at a younger age every day, but also ensures that bad actors in the sports agent business are held accountable when they illegally solicit those whom they hope to one day represent. The bill would create a Better Business Bureau for agents, through which amateur athletes and their families could file complaints and gain recompense from those who do harm to their careers.

I would like to make it clear not all sports agents are bad actors, and I hope that those agents who play by the rules and who represent their clients ethically will come forward and support this legislation. I also hope that all of my colleagues support this bill, and that we can mark this bill up for consideration by the full committee as early as possible.

Let us face it, something has to be done, and it has to be done now.

I yield back the balance of my time, and I look forward to hearing from the witnesses and, from of course, my colleague, Mr. Osborne, who has been very, very involved in these issues throughout the years. On that note, I yield back.

Mr. STEARNS. I thank the gentleman, and now we will recognize the author of the bill, Mr. Gordon from Tennessee.

Mr. GORDON. Thank you, Mr. Chairman, and also thank you very much for not only co-sponsoring but for giving this a prompt hearing. You certainly have been cooperative, and I do appreciate that.

Our hearing today, as our chairman said, is on H.R. 4701, the Sports Agent Responsibility and Trust Act, or SPARTA. I appreciate the support of so many folks here that have made this possible.

First, I want to take a moment to introduce one of the witnesses that we have today. He is a friend of mine from my district and also my alma mater. Coach Boots Donnelly is our former successful football coach at MTSU and now our athletic director, and I appreciate Coach Donnelly taking the time to come up here and being part of this and bringing some real-world advice and information to this hearing.

I also want to thank my distinguished colleague, Representative Tom Osborne from Nebraska, for his support in putting this legislation together. I have been working on the problem of predatory sports agents since 1996 when a friend and constituent of mine, Coach Ken Ship, came to see me about the need for uniform Federal law to protect kids from unscrupulous sports agents.

The agent problem has only grown worse since 1996. With professional signing bonuses in the millions, it has become open season on our young men and women. Agents hoping to cash in on the next NFL or WNBA or NBA star will promise anything to student athletes with even a remote chance of playing professional sports to get them to end their college careers and sign with them so they can get a piece of the potential windfall.

Agents offer athletes cash, cars, cell phones. They pay runners to curry favor with star athletes. They give free trips to their friends and offer jobs to their family members, who are in a position to influence the athlete. They harass them by telephone, stalk them at hotels and dorm lobbies. Coaches from the University of

Tennessee tell me that when they have to—or when they have bowl games, they have to post guards to keep the sports agents away from their players.

Agents know it is against NCAA rules for kids to sign with an agent while they are still eligible to play college sports. It is also against NCAA rules and many State laws for them to offer anything of value to a student athlete. Yet agents continue to aggressively pursue student athletes with little regard for their future or the school's athletic program.

And why? Under the current rules, when an agent crosses the lines and gives gifts or money to a student athlete, the only person who is not held accountable is the sports agent. The student athlete loses his or her scholarship. The university faces fines and sanctions. The agent generally faces no consequences from the damage they cause.

If it is illegal in the student's home State, it is easy enough to contact the student athlete when they are on the road. When sports agents give money and gifts to student athletes, it threatens the athlete's educational experience and the integrity of the amateur athletes.

I introduced the Sports Agent Responsibility and Trust Act with Representative Osborne to shift the burden of responsibility and hold sports agents accountable for their behavior. SPARTA would make it unfair—it would make it an unfair and deceptive business practice for sports agents to give anything of value to student athletes in order to entice them into signing an agency contract.

The bill would also prohibit agents from giving false or misleading information to athletes and from failing to tell athletes in writing that they may lose their NCAA eligibility if they sign a contract. The bill would cover not only agents but also runners and other individuals connected to the agents.

The bill deputizes State attorney generals to prosecute violators in Federal district court on behalf of the FTC with fines of $11,000 per offense per day the violation continues. Finally, the bill requires sports agents to immediately notify a student athlete's school in writing when an athlete signs an agency contract, so that the athlete is not unknowingly played in a game and subjecting the school to sanctions and disqualifications.

Schools will be given their right to pursue civil remedies if they are harmed by illegal recruiting activities of the sports agent. The pressures on student athletes and colleges are tremendous. I believe we have a responsibility to educating our student athlete and protecting them from the unscrupulous sports agents whose bottom line is their own financial gain.

Our student athletes need to make good, informed decisions about their future. This legislation will send a loud signal to bad apple agents that they will be held accountable for unethical recruiting practices. The bill is supported by the NCAA and a growing list of coaches and athletic directors across the nation.

So once again, thank you, Mr. Chairman, for bringing this bill to a prompt hearing.

Mr. STEARNS. I thank my colleague.

Unfortunately, we have a vote, and then there will be a picture on the House floor. So I appreciate your indulgence and patience.

We are going to reconvene the committee after we have this picture and this vote. So the subcommittee will recess.

[Brief recess.]

Mr. STEARNS. The subcommittee will reconvene.

We had our opening statements.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for holding this hearing today to discuss H.R. 4701 and the associated problems that give rise to the need for Federal legislation.

Today, we will here testimony regarding sports agents using fraudulent and deceptive conduct to sign collegiate student athletes to a professional sports contract. As the salaries of our professional athletes have magnified over the years, the number of deceitful sports agents has also multiplied. These worthless agents have often broken the rules and suffered little or no consequence compared to the athlete and the school. Many of these violations have led to schools bearing the large financial impacts.

These agents, who only care about money, are willing to do whatever it takes to represent any student-athlete who has even a slim chance of playing professional sports in order to acquire the enormous fees that accompany the representation of professional athletes. It is time to end all of the secret payments and gifts that are given to athletes, friends or relatives who have the ability to influence the athlete.

In the end, I hope we can work together to forge bipartisan legislation that will build on our Committees' recent progress and result in continued improvements in our collegiate athletics.

Thank you, Mr. Chairman, for holding this hearing today. I look forward to the witnesses' testimony.

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you Chairman Stearns for holding this legislative hearing this morning. And let me also to take a moment to thank the sponsor of this bill, Mr. Bart Gordon, of Tennessee, for being concerned enough about our young collegiate athletes to pursue a legislative remedy. I know this has been a longstanding concern of his and I share the concern that young athletes are too often preyed upon by unscrupulous sports agents.

With the amount of television exposure of college athletics, we sometimes forget that these young athletes are just that—young and often naïve, without the benefit of the wisdom and experience that comes with age. Unfortunately, a few of these so-called sports agents—vultures really—know this fact well, and will exploit it for their own personal gain with little regard for the athlete. Sign a young collegiate star who makes it big as a professional and the windfall to the agent is tremendous.

Fortunately, we can set rules of fair play and set penalties for those who choose to break them. I know that many states, including Louisiana, already have laws to address the conduct of sports agents. I am also aware that a uniform state law has been enacted by a number of states and is moving through several other state legislatures. So there has been some recognition at the state level that there is a problem and some attempts have been made to address it.

The questions I have this morning relate to why current laws are insufficient. Is it a matter of states enforcing the laws they have? Or is the system only as strong as its weakest link? Why have some states never enacted a law to address sports agents?

Given that some states have yet to enact a law or move the uniform state act, it appears the state efforts will be a lengthy process. It seems logical that the Federal government could play a role that would provide a remedy and deterrent where none currently exists.

That being said, human nature is susceptible to greed and we cannot change the fact that some people will do anything for the lure of a quick dollar—or in the case of multimillion-dollar sports contracts, quite a few quick dollars. For that reason alone, I think it will require tremendous effort and vigilance to minimize current abuses under *any* regulatory environment.

I am very interested in hearing answers to my questions and look forward to a discussion of these issues.

Thank you, Mr. Chairman, and I yield back my remaining time.

Mr. STEARNS. We will welcome Coach Osborne, the Congressman from the 3rd District of Nebraska, and appreciate his attendance, and we look forward to your testimony. Thank you.

STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. OSBORNE. Thank you, Mr. Chairman, and appreciate Mr. Gordon's work on this bill, his attendance.

Mr. Terry, good to have you here today.

And I am a co-sponsor of H.R. 4701, the SPARTA Act. Mr. Gordon really took the lead on it, and I guess the only thing I bring to the table is maybe a little bit of firsthand experience with what goes on out there.

And, you know, things have changed a lot. In 1961, I played here in this town with a guy who was a first round draft pick. He was the No. 1 of all No. 1s, and his total salary that year was about $16,000. And today the No. 1 pick would probably be more like $16 million.

Nobody at that time had an agent. A lot of all pros played for $10,000 or $12,000 a year. So as the money escalated, the interest in making off of players and agents began to proliferate. So today an agent can make several thousand dollars or maybe several hundred thousand dollars or even a million for very little work. And so it has really changed things.

Ed Garvey, who used to be the head of the Players Association, at one time made a stab at regulating the thing a little bit by, at the University of Wisconsin Law School where he was a faculty member, said that they were going to set up a training course, which they did, and you had to have some qualifications to pass the course. You had to know something about contracts. You had to have some expertise.

And what it advocated was an hourly wage. And, you know, you can hire a pretty good attorney for $300 or $400 an hour, and most people wouldn't have to pay more than $5,000 or $10,000, even a first round pick, at an hourly rate. But that isn't the way most of these guys operate, so they are making hundreds of thousands off of the top picks.

There are some effective sports agents, and I think it is important we say that up front. They are well trained. They are registered. Many of them are attorneys. They follow NCAA rules and State and Federal laws, and I think they perform a service. I was never crazy about the profession, but I do recognize that there are some good people out there.

The main problem that we are facing is that in 2002 the NFL Players Association said that they had 1,196 registered agents. And the thing about it, these are people who are qualified to negotiate a contract for somebody in the NFL. The problem is that of those 1,196, more than 800 did not have a client, and there are several hundred more out there who are not registered.

So you can represent a player coming out of college and not be registered with the National Football League Players Association. All you have to do to be an agent is say you are one. And so we have guys who have no training, don't even have a college degree,

who are telling guys that they can handle their contracts, do their taxes, handle all of their public relations, and, you know, they have no training in any of these issues.

A marginal agent can't compete. Obviously, when you have got that proliferation of people out there, a guy who has no expertise, who has no training, is not going to be able to wait until the young man or young man has graduated from college and do things the right way. So the only chance they have is to approach a lot of these young people while they are still in school, while they still have eligibility remaining.

And so they will use a variety of tactics. One is simply trying to beat the door down, and so most of our better players in Nebraska ended up having to get unlisted numbers in their junior and senior years, mainly because of agents. The agents were so numerous and calling them every night that they just finally decided they couldn't handle it anymore. So that is one of the things that happened.

And I remember one time getting ready to go to a bowl game down in the Orange Bowl, and we were getting ready to get on the bus and I couldn't find my quarterback and found him in the lobby of the hotel between two agents who were browbeating him 2 hours before the kickoff.

Well, that didn't set real well with me. And, of course, I mean, it was sort of a deal where they just grabbed him coming off the elevator, and he didn't want to be discourteous, and so he sat down. But that type of thing does happen.

Sometimes they sign a player to a contract before eligibility expires, and they often times will ask—or will add an inducement such as some cash, cars, clothes. We had one player who was taken out to Los Angeles and met some Hollywood stars, and he was told there was nothing illegal about the trip.

And, of course, when he took the trip he became ineligible, and that player suffered an injury and subsequently never did play for us, but he would not have been eligible anyway. And he met Patti LaBelle and some people, and it really, you know, turned his head a little bit.

So, anyway, that was—that is something that sometimes happened. And the problem is that when a player takes something early, such as cash or cars or clothes, or whatever, to some degree he belongs to that agent, because the agent can then say, "Well, listen, if you don't go along with me, if you don't cooperate, I am going to blow the whistle on you, and you are going to lose your eligibility, and your school is going to get in trouble, and your school is going to have to forfeit some games." The school may not have to forfeit, but that is often said.

And so, as a result, the agent becomes a more dominant person in that player's life than the coach does. And to some degree, the agent owns the player. And he may have inadvertently gotten into it, but once he is into it it is pretty tough.

Sometimes there is misrepresentation. On a couple of occasions we had young men who had been former players who showed up, maybe after 10 years, and we hadn't seem him for a while, and they seemed to be very interested in the program. And they would hang around and befriend the players, and the first thing we would know they were runners. They are working for an agent, and they

try to sort of infiltrate the program. And because of their previous player status, they were certainly welcomed back, because nobody knew what they were doing.

And so some of that happened, and we had one or two unfortunate incidents where players got involved, in some cases not even knowing for sure what they were getting involved with because of the runner situation.

The other thing that is particularly insidious about the agent business is they many times will misrepresent what they can deliver, and the most common ploy at the present time is to assure a player that the agent somehow will get him drafted higher.

And so, in recent years, Nebraska had a couple of players who were very good players, and there is a committee in the National Football League that you can call that consists of player personnel people, and they can give you a pretty good idea of whether you are going to be drafted early—I mean, before the draft ever occurs.

And so for one of these young men I called that committee, and I put the young man on the phone with the chairman of the committee, and the committee told him that he would be drafted in the third round. And he was a junior, and so, you know, we said, "Well, you do what you have got to do. But, you know, you stick around; there is a pretty good chance you are going to be first round pick next year." And the difference between a third round pick and a first round pick is probably $800,000 for a third round pick and $6-, $7-, $8 million average for a first round. Well, you know, usually that is worth a year's wait.

But the young man was told—and I think his family was told—that that was a lot of malarkey. They were just trying to keep him around and that he was going to be a first round pick. Well, the draft came, and he was third round pick. And there was a lot of consternation, some folks, you know, that were really unhappy, and they said that the coaching staff had badmouthed the player. Nobody had done anything like that.

So sometimes when the player—when the agent makes that kind of a promise, and then it doesn't come true, then he will point the finger at others. But anyway, that is something that is very commonly done at the present time, and many times it results in a player coming out early who shouldn't come out.

And each year there are some players who actually declare for the draft, lose their eligibility, and then aren't drafted at all. So they lose their education, they lose dollars, and all of this, of course, works against the school and the player.

And then, of course, sometimes there is folks who are pre-dating and post-dating contracts. We had a player, two players actually, who were contacted at their home in the summer, quite a distance from Nebraska, and were convinced that they should sign contracts that would be post-dated.

They did so, and then, as we were down at a bowl game, that same agent was harassing those guys all week telling them that if they didn't honor that contract that he was going to blow the whistle on them. And so their mind was not on the football game, and I didn't find out about it until months later. But they didn't have their best game, and we were playing for the national champion-

ship. So that is one reason I am not real thrilled about some agents, not all, but some.

So let me conclude by saying this. I think the legislation is needed because there are currently 17 States that have no regulation of sports agents, and I think Mr. Gordon and I both agree that we are not trying to supersede State law. We would like to see every State with regulation, but right now we have a hodgepodge.

Some States cover this; some cover that. Seventeen have no regulation. And most of these guys, these agents, operate across State lines. And so you had Norby Walters, Lloyd Bloom, who went to prison, Tank Black recently, and they had multiple people that were involved illegally across many different lines.

So what this does, it provides a uniform Federal backstop, which we think will serve athletes well. It serves the schools well, and it allows the States, and the schools particularly, to go after an agent who has done something deliberately in violation of NCAA rules, because the school, not just the player—the player suffers certainly—but if the school loses a good player prematurely, the school gets a black eye. It is almost as though somehow the school wasn't doing their job, but it is very hard to keep a finger on all of this. And then they lose a good player.

So, anyway, I think it is certainly legislation that is needed, and we appreciate this subcommittee addressing the issue. I would be more than happy to answer any questions that any of you have regarding the issue that we are talking about.

[The prepared statement of Hon. Tom Osborne follows:]

PREPARED STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Thank you Chairman Stearns, Ranking Member Towns, and Members of the Committee. I appreciate the opportunity to come and speak with you today about legislation that the gentleman from Tennessee, Mr. Gordon, has introduced. I am pleased to join him in support of H.R. 4701, the Sports Agent Responsibility and Trust Act, or SPARTA.

Each year, hundreds of college athletes are offered illegal inducements to enter into contracts prior to the exhaustion of the athletes' eligibility by unscrupulous sports agents. During my 36 years as a football coach, I was deeply concerned by overly aggressive, unethical sports agents who compromised a student-athlete's eligibility or took financial advantage of student-athletes and their families. With the lure of big money involved in professional sports, I witnessed first-hand the difficulty in trying to keep agents and their runners from attempting to illegally recruit my players with cash and gifts. In pursuit of the hefty fees that are associated with representing professional athletes, sports agents engage in unethical behavior that undermines the integrity of college sports.

In addition, when sports agents engage in this type of impermissible behavior, their actions often result in three major problems for student-athletes and the schools they attend, while sports agents themselves often face little or no consequences.

First, when sports agents provide inducements to student-athletes and therefore break NCAA rules, the student-athletes lose his eligibility to compete in collegiate competitions, and often times lose his scholarships. For many of these collegiate athletes enticed into forfeiting eligibility, the loss of eligibility means the loss of a college education if they cannot afford to pay their own way. In addition to facing sanctions they may not expect, these athletes often times damage promising professional careers. When a sports agent promises a student-athlete fame and fortune—or a first-round draft selection—a focus on superstardom and wealth may prevent them from considering the consequences of signing away their NCAA eligibility.

Personally, I experienced having a player in the 1980s who was offered some illegal inducements, and in turn lost his eligibility, which for the most part ruined his career. This particular player was involved with agents who had already given illegal inducements to players across the country. Eventually, these agents were in-

dicted on a number of felonies, leading them to go as far as threaten some of the players with bodily harm. At the time, however, we lacked the laws to pursue these agents in the State of Nebraska, and these loopholes still exist today.

Unscrupulous agents often take advantage of students who have little or no experience in contract negotiations, potentially causing financial harm for student-athletes, their teams, and their respective schools. On a personal note, I had a player back in the 1980s that thought he signed a contract giving 3 percent of his earnings to the agent, but somewhere buried in the contract was a much larger figure of 13 percent of his earnings, causing him to lose thousands of dollars. Fortunately, this player was able to recover more than $300,000 under California state law where this agent originated. In my home state of Nebraska, however, we did not have the laws to go after this agent.

Schools also stand to lose financially from the deceptive actions of sports agents. If a student-athlete loses his eligibility because he accepted inducements from an agent, and his ineligibility is not disclosed to the school and the ineligible student is allowed to compete in violation of the rules, that school may face a number of sanctions, including suspensions, fines, and the possible loss of post-season play and all the revenue that this might represent.

When student-athletes lose their eligibility by entering into an agency contract with unethical agents, intercollegiate athletics suffers because of the negative perception that is often associated with this type of activity. In recent years, the number of incidents where student-athletes were persuaded by unscrupulous agents to accept payment or other consideration in exchange for exclusive representation has created a negative perception that threatens the integrity of college athletics and the educational institution involved. While colleges and universities rarely do anything wrong in these situations, the mere fact that their student-athlete entered into such an agent contract reflects negatively on the school.

Why is this legislation necessary? As of April 2002, the National Football League Players Association reported that there were 1,196 certified football agents, almost double the number from 10 years ago. But, more than 800 of these agents have no clients. Hundreds of these so-called "agents" lack both certification and qualification. Unethical sports agents, often motivated purely by greed, will use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports.

Currently, 17 states in our country, including my home state of Nebraska, have no regulations governing the conduct of sports agents, while many other states have a patchwork of vague and differing agent regulations. Until all 50 states adopt the same standards for regulating sports agents, there will be no uniformity in the laws governing sports agents. SPARTA would provide a minimum federal backstop for regulating sports agent conduct, while at the same time respecting tough state laws.

SPARTA would make it unlawful for an agent to give false or misleading information or make false promises or representations in order to entice a student-athlete into signing an agency contract. This legislation would also make it unlawful for an agent to fail to disclose to the student in writing before signing a contract that the student may lose his eligibility to compete in collegiate athletics. SPARTA requires sports agents and student-athletes to notify the school's athletic director within 72 hours—or before the student-athlete's next sporting event—of signing an agency contract. This legislation is needed in order to protect our student-athletes from unscrupulous sports agents.

The bottom line is, most student-athletes do not make it in professional sports. But, they may have been enticed to leave school early only later to realize that their agents acted solely for their own financial benefit, with no concern for the athletes' future. Over 36 years of coaching I saw too many student-athletes taken advantage of by sports agents looking out for their own bottom lines. I firmly believe we need to treat sports agents who lie, cheat and deceive, as we would treat any other businessperson who promises the world but delivers only heartache.

Thank you again for the opportunity to be here today to offer my thoughts about this important legislation.

Mr. STEARNS. Coach, thank you very much. I think it has been very enlightening for all of us to hear this, and particularly from your standpoint. Most of us have not had the distinguished career that you have had in athletics. So for you to step forward and to not only endorse this bill but to go out and speak in a proactive manner is very helpful.

You can bring keen insight that many of us don't have. I mean, you can name agents and players, and you know the history. So it is very important that you participate, so I want to thank you for doing that.

When I was thinking about this hearing, I was sort of appalled, just like you are, how agents are—it is sort of like the Wild West. They can do almost anything they want. Now, it appears—I asked staff—that Nebraska has yet to enact this—a State law. If I am correct, that is correct, isn't it?

Mr. OSBORNE. Right. There have been numerous attempts in the State legislature to enact some type of law, and it is has been blocked every time and for various reasons. And one thing I would like to point out is that this really shouldn't alarm attorneys. Sometimes attorneys get worried about things, but most of—there are very few of the agents that we are talking about are not—are attorneys. You know, most of these people have no training at all.

Mr. STEARNS. You say they don't have a college degree, a lot of them? No training?

Mr. OSBORNE. Some of them don't, yes. Right.

Mr. STEARNS. And they are saying, "I am an expert on PR. I am an expert on taxes," and so forth.

Mr. OSBORNE. Yes.

Mr. STEARNS. But I guess what I am trying to understand, why hasn't this been solved sooner? I think my colleague from Tennessee has done a great bill here, but I am really—from what you just said this morning, what the staff has told me earlier, it is—I just can't understand why the State of Nebraska has not done it. Has it been politics, do you think? Or is there anything you could reveal to us that—why the State of Nebraska has not done something about which is so corrupting and is so omnipresent?

Mr. OSBORNE. Well, you know, the difficulty has been that we have had an influence in the State legislature that says that if a player—you know, the NCAA and colleges exploit players. Therefore, if a player can get something, even if it is illegal, he ought to be allowed to do it. And that has been one of the arguments, and so I—you know, this is obviously something I have not adhered to.

But every State has their own reason. Sometimes it can be an individual who blocks it. Sometimes it can be, you know, several. But, obviously, it does seem to make sense to us that we need an overall Federal umbrella that would at least give some safety net.

Mr. STEARNS. And that is probably another reason why we should go ahead with this, is because we have got States that are reluctant to do it because of maybe political reasons, so maybe on the Federal side that we could solve that.

When these agents do some of the things you talk about, these deceptive practices, that perhaps lose the eligibility for the player, is it—are there any laws that they are breaking at all in terms of something fraudulent or deceptive that would break any known rules? Or is this—there is no known rules existing other than the player loses his eligibility if he or she takes a gift.

Mr. OSBORNE. Yes. And many agents have said, "Look, I didn't break any laws. You know, NCAA rules don't affect me."

Mr. STEARNS. So the player gets hit, but the agent never gets hit because——

Mr. OSBORNE. Yes, the player in school, right.

Mr. STEARNS. So there is no laws at all on the agents. So they are free——

Mr. OSBORNE. Well, some of the individuals I mentioned previously went to prison because they had violated some laws. In one case, I know that they actually used physical threats against players and threatened to break their leg or something like that, which probably isn't something you ought to be doing.

And we did have one case where we had a player who ended up signing with an agent that was rather unscrupulous, and the player thought he was signing for a 3 percent agent fee, and somewhere buried in the contract was 13 percent. So he ended up paying 13 percent, and this particular agent was from California.

California did have a State law. The agent did not register in California, which he should have. Therefore, there was some redress, and the player was able to recover about $300,000 in excess fees because California had a law. In Nebraska we couldn't touch him, and so it does show you how a law can work. It can help, and in some cases does. But since we have no uniform standard, we have got a problem.

Mr. STEARNS. My last question, Coach, is a lot of these players are very susceptible. And, as you pointed out, this one player went out to Los Angeles and the bright lights turned his head. The question of the player knowingly or not knowing—I mean, do you think that we should be clear that some of these players are so naive, and they are so wishing to believe that a statute should provide whether he knew or not what was happening—in other words, how do we protect from those people that are just naive and go out there and an agent comes up to him—I am sure if an agent came up to me in high school and said something, I would just say "gosh" and go along.

Mr. OSBORNE. Well, you know, unfortunately, people tend to believe what they want to hear.

Mr. STEARNS. Yes.

Mr. OSBORNE. And so you can have a very good relationship with a player. You may have recruited him. You have been with him for 4 years. And yet when it comes to professional athletics, sometimes he will trust the word of somebody that he met 2 hours before more than he will the coach.

Mr. STEARNS. Right.

Mr. OSBORNE. And it is unbelievable. To me, it was genuinely unbelievable. And I don't want to say that the players have no responsibility, because the players are told over and over and over again what the rules are. But there are a few times when an agent can come in and say, "Look, you know, if you sign this, it really doesn't mean anything because it isn't dated until 6 months from now." So it really doesn't go into effect, so you are really not obligated.

But when you make a verbal or a written agreement, you have compromised your eligibility. And so then the agent can come back and say, "Well, you signed it, and we have an agreement, and you are in trouble. And, therefore, you better go along with me."

So there is some naivete here, and then there are some cases where the player just becomes a little greedy. But in any case, it

doesn't work out well. I would say 95 percent of the time a player that has signed early will become disenchanted and will try to get out of that contract, if not before he leaves school, after. None of these relationships last very long.

And as I mentioned, usually it is—the agent that comes in early is not a very competent agent. The only chance he has to sign a player is to come in early.

Mr. STEARNS. I am going to ask you one last question. It is a little more difficult, and it is asking you to really keep your hat on as coach and not as a Congressman. Mr. Gordon has done a great job on this bill. But if you could be the Speaker of the House, and you are sitting out there, and this bill has passed the House and it has passed the Senate—it has gone to conference—is there anything you would add to this bill to make it stronger?

You know, there is a question of preempting States' laws so that we have one Federal national law, so that we don't have 50 courts deciding in 50 States. You know, that is one possibility. Or, you know, I mean, so you are the Speaker of the House. It is in conference. What would you do? Anything different to the bill? I mean, in the early stages here, without——

Mr. OSBORNE. I don't think that I have anything, Mr. Chairman, I would add. Mr. Gordon and I have talked. We have worked together. We made a couple of minor changes, which I suggested. I think at one point there was an opportunity for the school to sue the player. I didn't think that would probably play very well in some regards, and so we took that out, because sometimes a player does something knowingly, sometimes he doesn't.

And so, anyway, we have made some changes. But my problem is I am not an attorney. I am not an expert in legal affairs. Therefore, I may be missing something there. I do know pretty much the ins and outs of the agent game from the college coaching side of it.

Mr. STEARNS. I think my time has expired.

The gentleman from Tennessee.

Mr. GORDON. Speaker Osborne, congratulations for your promotion. A lot of us had to stay around a lot longer to reach that. And I also thank you so much for all your expertise in what you have brought to this bill. Let me address a couple of things that were brought up.

I guess one question—why not before? I think part of it is, as you pointed out, the dollar figures have escalated so dramatically in the last few years that it is a different problem than it was before.

I think the other thing, as I have talked with sports writers around here and there, there is a natural inclination to be skeptical, particularly in the sports community, for anything with the Federal Government, any kind of regulation, more than probably even the business community or anywhere else. So there has been a reticence. And even when I first introduced it, the NCAA was opposing the bill, not the concept but preferring that it be done on a State level.

Well, I think now we have seen the problem has only gotten worse, that some States have moved forward, some haven't. And there has got to be some kind of uniformity, and there are different rules. And another question you asked, "Is there nothing you can

do?" Yes, there are some fraud type of laws that they are violating. But it is in a broad sense, and this I think narrows it, gives more remedies, and also things like notifying the school. This law will require the schools be notified.

Besides the student being disadvantaged, here you are as a coach, I mean, how many times have you told the players—you know, you are really trying to get them to act right, and then all of a sudden somebody comes in, a runner that pretended like they were a friend, an uncle, or whatever they might have been influenced, and they undo all the work that you have done. And so there is just a lot of things that can be done there.

I want to go back to another point, Representative Osborne, that you made, and that is that a lot of agents are good and decent, obviously, and serve a good purpose. But what has happened now I think is that you are brought down to the lowest common denominator. As a football coach, if the rest of the folks in your conference are cheating in some way and winning, it puts a lot of pressure on you, you know, not to do whatever they are doing, you know, and maybe lose.

So I think that the good sports agents are going to say thank you for bringing this in, so that it helps us do our job better and takes the pressure off of these other folks.

Mr. OSBORNE. I think you are correct. If I might interject there, a lot of the more reputable agents have gone to something recently simply to survive, and that is that once a player has completed their eligibility they have had to say play the game, that we are going to get you drafted higher.

And so they will say, "Well, now that you have finished, what we need to do is we need to take you to Los Angeles. And we are going to get you a personal trainer, and this guy is going to work with you every day. And we are going to get you a nutritionist, and we are going to work out with you. And when you go to that combine in Indianapolis, you are going to be faster and bigger and stronger than ever. And we are going to get you drafted higher. You know, you will be a first round pick."

So even the good guys are saying that kind of thing, and the problem is that that is a lot of malarkey. I mean, in Nebraska, we have got a better weight program, we have got a better nutritionist, we have got a better everything than what they have got in Los Angeles. And usually within two or 3 weeks these guys are disillusioned, and they say, "Hey, I left a place that prepared me better than any place could have."

They come back, but in the meantime they have dropped out of school. And they may only need 3 hours to graduation, and some of them never complete their degree. And so it is something that drove me crazy from an academic standpoint, even with a guy that had legitimately approached a player at the right time.

Mr. GORDON. I mean, these are 20-year olds that really, in this situation, don't have a second chance. One bad decision and they are out.

Mr. OSBORNE. Right. Yes, you can pretty well ruin your career in about 10 minutes.

Mr. GORDON. Yes. We have received a number—and we should—we will be getting those out later on, but a number of endorse-

ments from different coaches, from athletic directors, from all across the country. Can you—I mean, is there any reason that some—that a coach would not want this? I mean, is there—you know, why wouldn't we do this?

Mr. OSBORNE. I can see no reason. I don't know of any coach who would oppose it. I don't know any athletic director who would oppose it. I don't know any player that would oppose it if he had the big picture. And I think the NCAA at one point thought that it would be better to do it through the States, and it would be ideal if we could get all States to do it. But we have been at this a long time.

I mean, we have had State laws on the books for—in some States for 15 years. And, you know, we had the case at Penn State with Enos Sudaclose, who lost his eligibility, the FootLocker deal, Florida State—you know, some guy took some players down, and they thought they were just getting a free pair of tennis shoes. Well, a whole bunch of guys were all of a sudden obligated, and in some cases a State had a redress, and in some cases a State all of a sudden decided they were going to pass a law because they lost a high-profile player. But until something like that happens you just can't get their attention.

Mr. GORDON. If I could just real quickly close. Let me—I just want to point out also, we are not setting up a Federal sports police operation here. By and large, what this bill does is it deputizes the State attorney generals, and so the FTC—or no one else is going to be going out and doing this.

But it allows a coach or an athletic director, or whatever, in a particular State to go to their attorney general and say, "We have got this problem. You have got the authority. Take care of it." There is not a Federal police force for this.

Thank you.

Mr. OSBORNE. I might just add, you mentioned the part of the bill that requires the agent and the player to notify the school within 72 hours of signing a contract. That gives some legal foothold for the attorney general of the State or the school, because if a guy signs early, you know, and he hasn't reported it, and obviously he is not going to report it, you know, the agent and the player are in a catch 22 also, particularly the agent. And so I think that is a very good provision of the bill, that they have to notify the athletic director in writing within 72 hours or the next game before—after signing.

Mr. STEARNS. I thank the gentleman.

The gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I thank you for holding this hearing, and I compliment both you, Coach Osborne, and Mr. Gordon for offering this legislation.

I want to follow up on a point you just made with regard to the remedy for the university and some of the questions that the chairman asked with regard to the remedy. I guess one of the things that I am curious about would be the remedies under the bill. I see that, at least in the language of the bill, it makes this conduct unlawful, and it imposes what appear to be quasi-criminal penalties, including, as I—a summary that was given to me says $11,000 per incident per day.

One of the questions that I would have would be, it seems to me there are a number of victims in this circumstance. Obviously, the young 20-year old athlete is a victim of an unscrupulous agent in this circumstance. It seems to me that an athletic program can also be a victim, if that athlete loses eligibility.

And I guess the question I would have for you or Mr. Gordon either one, or maybe staff, was there any thought given—and I just skimmed through the language of the bill and didn't see it—of inserting a declaration that it is against public policy for athletes to be induced to enter these contracts based on false representations or upon gratuities? And that upon any finding that that has happened that the contract itself is null and void as violative of public policy?

And I guess my thought there is, if you could declare the contract void, the contract that the athlete entered into with the agent, maybe you could then escape the athlete's ineligibility, since at least under these circumstances the athlete is induced to sign an agent's contract under circumstances that are either deceptive or violative of public policy.

That is, he was lied to or misrepresented about what signing the contract would mean, lied to about, for example, post-dating it, that that wouldn't have any effect, or lied to that taking the gratuity wouldn't violate his eligibility. And it seems to me if you could insert language saying this is against public policy, and, therefore, the contract is void, you might be able to undo the damage done to that athlete, and it seems to me also possibly undo the damage done to the athletic program, because if you can undo the contract, you render it void, maybe that athlete doesn't lose his or her eligibility. And I just wondered if any thought was given to that as a remedy.

Mr. OSBORNE. Well, that is a very good point. And I think the NCAA will be testifying, I believe, in some of their State—the legislation that they have tried to initiate at the State level. That provision may be there and——

Mr. GORDON. If I might help, Representative Osborne, on this.

Mr. OSBORNE. Yes, go ahead.

Mr. GORDON. As I understand it, to——

Mr. STEARNS. The gentleman yields to the gentleman from——

Mr. SHADEGG. Be happy to yield.

Mr. GORDON. The contract law really is a State jurisdiction, and so with Federal law we don't have the authority to make it null and void. But also, the other—you really want to stop this in the front end. The other problem that you have is, even having these kind of conversations, much less the signing, against—they can lose their eligibility through the NCAA.

The other sort of—an earlier part of your question about the school's sort of helplessness—under this law, the schools also have a right of litigation against the sports athlete. If they are penalized, if—you know, if—for some illegal activity, that they can't go to a bowl game, or this player can't play, they can take action also against the agent.

Mr. SHADEGG. Well, maybe it is better for me to ask somebody from the NCAA. But it seems to me that if we are going to pass a Federal law, if there is a need for a Federal statute, it seems to

me that Congress ought to have the right to declare something against public policy, and maybe there is a thought that we should put some injunctive right in there against—for a university or even the NCAA to go after agents and enjoin them from this conduct if they know there are agents out there doing it.

Mr. GORDON. If you would yield once again.

Mr. SHADEGG. I would be happy to yield.

Mr. GORDON. I think these are good ideas, and that we need to take this and see if it can be incorporated. Our earlier first shot at this through a—through not necessarily logic or good sense, but there are different jurisdictional matters for different purposes. There really ought to be criminal activity here, but we are—since we are going through the FTC, they only have jurisdiction really for civil.

All of those are good questions that need to be reviewed, and I think it, once again, goes to the reason or to our—the bill also encourages the States to move forward with their own——

Mr. SHADEGG. I see that.

Mr. GORDON. [continuing] criminal legislation. So I think it is going to be a combination. All of this will be reviewed, and we will take another shot at it, because I think you have raised some very good points.

Mr. SHADEGG. I throw those thoughts out and compliment you on your efforts.

Mr. OSBORNE. Yes. It would be ideal if we could just undo what had been done. And it is a little bit complex, because then the NCAA would also have to say, well, okay, we are going to exonerate you and give you your eligibility back, and we can't speak for the NCAA.

Mr. SHADEGG. Clearly, they have the jurisdiction to make that decision.

Mr. OSBORNE. Right.

Mr. SHADEGG. Thank you, Mr. Chairman. I yield back my time.

Mr. STEARNS. The gentleman yields back.

The gentlelady from California, Ms. Capps.

Ms. CAPPS. Thank you, Mr. Chairman. Thank you for holding this hearing, and I am pleased to be a part of a hearing where my colleague, Mr. Osborne, is testifying. And as he knows, I have relatives in the State of Nebraska, and some of your shine can rub off onto me. Being here in the presence of Coach Osborne, as he is known throughout the State that loves him so much for what he has done for athletics, is a great honor.

Mr. OSBORNE. Thank you.

Ms. CAPPS. We have a valuable witness here today who holds the idea of college athletics in the high and lofty view that it should be.

Mr. OSBORNE. Thank you.

Ms. CAPPS. I want to take advantage of your expertise and your relationship with the NCAA over the years and talk to us about the NCAA can become more empowered to educate, along with the colleges, young athletes.

Maybe we need to start in our secondary schools, as some of the sports agents, reach down into the high schools. We need an edu-

cated athlete, don't we, in terms of what their responsibility is. Is there any way that we can help to foster that within NCAA?

Mr. OSBORNE. Well, the NCAA can probably speak to that. I don't know that they have a formal educational program. You know, they certainly talk to the schools, and we talk to our players continually. We bring in former players. We bring in former agents. We had—you know, I don't think many of our players could say they weren't informed.

Ms. CAPPS. Right.

Mr. OSBORNE. But I think it is symptomatic of the culture that we tend to be very materialistic, and a lot of times if enough money is waved in front of a player, even a fairly ethical person sometimes will waiver. And I think the NCAA recognizes that. But I think you are correct that if you had every player doing the right thing, then this would not be a problem.

Ms. CAPPS. That is right.

Mr. OSBORNE. But, you know, the temptation is great. And I would have to say that probably in 30 or 40 percent of the cases there is some way that the agent has convinced the player that he is not doing anything wrong.

Ms. CAPPS. Right.

Mr. OSBORNE. Even though he has been educated, still that the idea——

Ms. CAPPS. Right.

Mr. OSBORNE. [continuing] Well, there is another angle here. So it is a problem, and I think that would be a question that would be well put to the NCAA.

I know the NFL has an organized program of different speakers who come around and talk to players about staying in school. You know, and they do talk about the agent issue, and they have done a pretty good proactive job. But still, it isn't enough.

Ms. CAPPS. So do you think the NCAA could model a progam after the NFL?

Mr. OSBORNE. I have been out of it now for 4 years. Maybe they are doing something I don't know about, but I don't remember any speaker from the NCAA coming in and saying, you know, we really want to talk to your players, and we have got this organized program.

Ms. CAPPS. Right.

Mr. OSBORNE. But, you know, a lot of times people take shots at the NCAA, and some of their rules are pretty restrictive. But the NCAA—as we used to say, the NCAA is us. The NCAA isn't out there. It is not some foreign agency. It is really composed of the member institutions, and somebody has got to do the dirty work of policing the thing, and nobody likes the police when you are doing something wrong.

So he gets a bad name, but it is an effective organization. They do a good job. And it is voluntary, too.

Ms. CAPPS. Well, I do appreciate the work that you have done on this legislation of which I am happy to be a co-sponsor. What we are talking about today is a very big issue in colleges across this country. And whatever we can do to support good ethical behavior we want to do.

Mr. OSBORNE. They are very interested in it. And as I said earlier, they would like to do it at the State level, but it just hasn't gotten done. So I think this is needed. And, fortunately, you have a great university, and they may do some great things academically. And yet, if your football team gets in trouble, on a national scene it maybe does more damage to that university than, you know, if the chemistry department falls apart. It shouldn't be that way.

Ms. CAPPS. No.

Mr. OSBORNE. But that is kind of the hard, cold facts of the way things are right now.

Ms. CAPPS. And, in fact, at some universities they do away with organized athletics because they have gotten into so much trouble. And in the end, we all suffer as a result of that, because when done right it is an asset to higher education.

Mr. OSBORNE. That is right. And, of course, the sudden death penalty at SMU kind of raised the bar a little bit, and I think did help greatly. But it was very painful to SMU.

Ms. CAPPS. Thank you very much. I yield back.

Mr. STEARNS. I thank my colleague.

Coach, thank you very much for coming. We appreciate your testimony.

Mr. OSBORNE. Ookay. Thank you.

Mr. STEARNS. And now we will go to panel No. 2. We have Howard Beales, Director of the Bureau of Consumer Protection, Federal Trade Commission; James F. "Boots" Donnelly, the Athletic Director of Middle Tennessee State University; and William S. Saum, Director of Agent, Gambling and Amateurism Activities at The National Collegiate Athletic Association.

Let me welcome all of you folks here, and we look forward to your opening statement. And I think we will go from my left to my right, and we will start off with Mr. Beales, Director of Consumer Protection of the Federal Trade Commission.

STATEMENTS OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; JAMES F. "BOOTS" DONNELLY, ATHLETIC DIRECTOR, MIDDLE TENNESSEE STATE UNIVERSITY; AND WILLIAM S. SAUM, DIRECTOR OF AGENT, GAMBLING AND AMATEURISM ACTIVITIES, THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. BEALES. Thank you, Mr. Chairman, and members of the subcommittee. I am pleased to be here today to discuss the Sports Agent Responsibility and Trust Act, which designates as deceptive or unfair certain conduct by sports agents relating to the signing of contracts with student athletes.

The written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and not necessarily those of the Commission or any individual commissioner.

The FTC has been directed by Congress to act in the public interest. The Commission continually monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The Commission, therefore, focuses its resources on cases involving a large number of complaints or other evidence that

deceptive or unfair practices are widespread or an emerging trend. It does not generally focus on individual disputes.

We have some threshold concerns about this bill. Certain provisions appear to endorse and strengthen private restraints contained primarily in the NCAA's rules on student athlete eligibility to participate in collegiate sports. The proposed legislation furthers the NCAA's rules prohibiting student athletes who wish to maintain their college eligibility from entering into sports agency contracts.

Our general experience is that although many industry self-regulatory programs provide significant and desirable protections for consumers, it is important to consider whether particular private restraints may function to protect the industry rather than consumers.

For example, some have questioned the underlying basis of the NCAA's eligibility rules and how much of the revenue generated by college sports should flow to the students. Similarly, one might ask whether the government should endorse private NCAA rules that can result in the permanent loss of eligibility for even inadvertent violations.

Losing eligibility can reduce the athlete's chances of playing professionally and cost the athlete a scholarship that provides an opportunity for a college education. Because of such questions, it is important that Congress carefully examine the effects of the underlying private restraints before adopting legislation that supports them.

We are also concerned that some of the requirements in the proposed legislation are static. In particular, the required disclosure in the sports agent contract will apparently remain the same, absent additional Congressional action, even if at some future time the NCAA's eligibility rules change as the Olympic eligibility rules have changed. In such a case, not only may the disclosure itself become misleading, but the disclosure requirement could hamper otherwise worthwhile changes in the rules.

Furthermore, although there is clearly no room in any transaction for the false or misleading statements the proposed legislation would prohibit, some conduct addressed in the legislation is acceptable in many other markets. It is problematic here only because of the NCAA rules.

In particular, incentives as inducements to signing a contract are a common feature of marketing in many industries. Even understanding the vulnerability of many college athletes to tempting sales presentations with financial inducements, it may be possible to craft a less restrictive legislative proposal to address this concern.

We would urge the subcommittee to examine these issues before enacting legislation. We have some suggestions to modify the proposed legislation to better achieve its objectives. First, Section 3 of the bill prohibits sports agents from giving false or misleading information. Such deceptive statements are already prohibited by Section 5 of the FTC Act and numerous little FTC acts.

If Congress sees a need for additional avenues to challenge such practices, we believe that the most appropriate avenue would be a private right of action rather than additional public enforcement

provisions. A private right of action for student athletes would enable individuals to vindicate their rights in specific cases that might not be appropriate for Commission action taken in the broader public interest.

In addition, given the apparent close relationship between the proposed legislation and the existing NCAA rules, we suggest requiring a more complete disclosure of the circumstances that may lead to loss of eligibility under the rules. For example, we recommend amending several provisions of the legislation to clarify that a student athlete can lose eligibility by agreeing orally or in writing to enter into an agency agreement.

The suggested changes to these provisions, as well as other suggestions to more closely conform the legislation to the NCAA rules or to State law, are set forth in more detail in the Commission's written statement.

In sum, the FTC protects consumers from deceptive or unfair practices, but it generally focuses on acts and practices that affect a significant number of consumers or signify an emerging trend. We ask this subcommittee to examine carefully the need for and appropriateness of the underlying private restraint before enacting it into law.

In the event this subcommittee continues with the proposed legislation, we have provided suggestions on how the legislation can be revised to better achieve its stated goals.

Mr. Chairman, the FTC greatly appreciates this opportunity to testify, and I look forward to answering any questions you and the other members may have.

[The prepared statement of Howard Beales follows:]

PREPARED STATEMENT OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am Howard Beales, Director of the Bureau of Consumer Protection at the Federal Trade Commission (FTC). I am pleased to be here today to discuss H.R. 4701, a bill known as the "Sports Agent Responsibility and Trust Act" that designates as deceptive or unfair certain conduct by sports agents relating to the signing of contracts with student athletes.[1] This testimony begins with a general overview of the FTC and its enforcement authority. Second, it discusses the criteria the Commission considers in deciding whether to challenge deceptive or unfair practices under existing authority. Third, it notes the Commission's concerns about certain provisions of H.R. 4701. Fourth, it suggests possible revisions to enable the legislation to better achieve its stated goal.

II. THE COMMISSION'S CONSUMER PROTECTION MISSION

The FTC is charged with protecting consumers and promoting a competitive marketplace. The cornerstone of the Commission's mandate is Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC's consumer protection mission focuses on stopping actions that threaten consumers' opportunities to exercise informed choice. The FTC Act authorizes the Commission to halt deceptive or unfair practices through administrative cease and desist actions and equitable actions filed by FTC attorneys in federal district court. In appropriate cases, the Commission also may seek civil penalties, restitution to injured consumers, or disgorgement to the U.S. Treasury of defendants' ill-gotten gains.

[1] This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and are not necessarily those of the Commission or any individual Commissioner.

III. THE PUBLIC INTEREST

The FTC has been directed by Congress to act in the public interest.[2] When determining whether to initiate a law enforcement action, the Commission considers a number of factors, including: the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; the likelihood of preventing future unlawful conduct; and the likelihood of securing appropriate relief, including redress. The Commission also considers to what extent states have regulated the area and the existence and effectiveness of appropriate voluntary industry standards and self-regulation.

The Commission continually monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The Commission, therefore, focuses its resources on cases involving a large number of complaints or other evidence that the deceptive or unfair act or practice is widespread or an emerging trend, rather than individual disputes. For example, because of numerous complaints regarding deceptive practices used by modeling scams to persuade young consumers or their parents to pay exorbitant up-front fees for unnecessary services, the Commission has brought a number of cases against these types of scams.[3] Similarly, because of large numbers of complaints regarding scholarship service scams proclaiming "FREE MONEY FOR COLLEGE," the Commission has filed nine cases against 11 companies and 30 individuals to combat this fraud.[4]

IV. THRESHOLD CONCERNS ABOUT CERTAIN PROVISIONS OF H.R. 4701

Certain provisions of H.R. 4701 appear to endorse and strengthen private restraints contained primarily in the NCAA's rules on student athletes' eligibility to participate in collegiate sports.[5] The proposed legislation furthers the NCAA's rules prohibiting student athletes who wish to maintain their collegiate eligibility from entering into sports agency contracts. Specifically, the bill requires that any sports agency/representation contract include a disclosure clearly stating that the student athlete may lose eligibility if he or she signs the contract. The legislation also enacts a substantive ban on any gifts by sports agents to student athletes prior to the signing of a contract.

Our general experience is that, although many industry self-regulatory programs provide significant and desirable protection for consumers, it is important to consider whether particular private restraints may function to protect the industry rather than consumers. The Commission's extensive enforcement and oversight history with other self-regulatory industry organizations counsels us to advise caution before Congress enacts federal legislation to support or endorse specific non-public regulation. Academic articles on the effects of NCAA eligibility rules reveal diversity of opinion on their fairness and application.[6] The public debate surrounding NCAA eligibility rules underscores the need for the careful examination of the effects of underlying private restraints before enacting legislation that supports them.[7]

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[2] Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), provides that

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue . . . a complaint stating its charges.

[3] *See, e.g., United States v. National Talent Associates,* Civ. Action No. 96-2617 (D.N.J.); *FTC v. Screen Test U.S.A.,* Civ. Action No. 99-2371 (WGB) (D.N.J.); FTC v. Model 1, Inc., Civ. Action No. 99-737-A (E.D.Va.) (the local Better Business Bureau had received more complaints about this company than any other in its history).

[4] *FTC v. Career Assistance Planning, Inc.,* Civil Action No. 1:96-CV-2187-MHS (N.D. Ga.); *FTC v. College Assistance Services, Inc.,* Case No. 96-6996-CIV-Highsmith (S.D. Fla.); *FTC v. Deco Consulting Services, Inc.,* Case No. 96-7196-CIV-Nesbitt (S.D. Fla.); *FTC v. National Grant Foundation, Inc.,* Case No. 97-7339-CIV-Lenard (S.D. Fla.); *FTC v. National Scholarship Foundation, Inc.,* Case No. 97-8836-CIV-Ferguson (S.D. Fla.); *FTC v. Christopher Nwaigwe,* Case No. 96-CV-2690 (D. Md); *FTC v. Student Assistance Services, Inc.,* Case No. 96-6995-CIV-Roettger (S.D. Fla.); *FTC v. Student Aid Incorporated,* Case No. 96-CIV-6548 (S.D.N.Y.); and *FTC v. College Resource Management, Inc.,* Civil Action No. 3-01-CV-0828-G (N.D. Tex.).

[5] It is our understanding that the Uniform Athlete Agents Act of 2000, which has been adopted by a number of states, similarly endorses NCAA rules on agent contracts.

[6] *See, e.g.,* Arthur A. Fleisher III, Brian L. Goff, and Robert D. Tollison, The National Collegiate Athletic Association, A Study in Cartel Behavior (1992); Gary Roberts, *The NCAA, Antitrust, and Consumer Welfare,* 70 Tul. L. Rev. 2631 (1996); Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan,* 46 Ala. L. Rev. 487 (1995); Lee Goldman, *Sports and Antitrust: Should College Students be Paid to Play?,* 65 Notre Dame L. Rev. 206 (1990).

[7] *Cf. United States v. Walters,* 997 F.2d 1219, 1224-25 (7th Cir. 1993) (Court rejected use of the mail fraud statute "to shore up the rules of an influential private association'" against a

We also are concerned that some of the requirements of the proposed legislation are static. In particular, the required disclosure in sports agent contracts will apparently remain the same, absent additional Congressional action, even if, at some time in the future, the NCAA's eligibility rules change, as the Olympic eligibility rules have changed. In such a case, not only may the disclosure itself become misleading, but the disclosure requirement could hamper worthwhile changes in the rules.

Furthermore, although there is clearly no room in any consumer or commercial transaction for the false or misleading statements the proposed legislation would prohibit, some conduct addressed in the legislation is acceptable in many other markets. In particular, the use of incentives as inducements to signing a contract are common features of marketing in many industries. Even understanding the vulnerability of many college student athletes to tempting sales presentations with financial inducements, it may be possible to craft a less restrictive legislative provision to address this concern. We would urge the Subcommittee to examine these issues before enacting legislation.

V. SUGGESTIONS TO MODIFY THE PROPOSED LEGISLATION

We have some suggestions to modify the proposed legislation. First, Section 3 of H.R. 4701 prohibits sports agents from giving false or misleading information—such deceptive statements that already are prohibited by Section 5 of the FTC Act and numerous state "Little FTC" Acts. If Congress sees a need for additional avenues to challenge such practices, we believe that the most appropriate avenue would be a private right of action rather than additional public enforcement provisions. A private right of action would enable individuals to vindicate their rights in specific cases that might not be appropriate for Commission action taken in the public interest. We note, however, that although Section 6 of H.R. 4701 provides for a private right of action to universities injured as a result of an agent's conduct, there is no similar private right of action provided to injured individual student athletes. Adding such a cause of action would further the proposed legislation's purpose to protect student athletes.

In addition, given the apparent close relationship between the proposed legislation and the existing NCAA rules, we suggest requiring a more complete disclosure of those circumstances that may lead to loss of eligibility under the rules. Such a fuller disclosure would better provide student athletes with opportunities to exercise informed choices. For example, it is our understanding that the NCAA rules prohibit a high school or college student athlete from agreeing, either orally or in writing, to be represented by an agent (regardless of when the contract becomes effective). Accordingly, to better protect student athletes from unwittingly losing eligibility, the definition of "agency contract," which currently refers only to written contracts, should be amended to clarify that the agreement may be oral or written.

In addition, Section 3(b) of the proposed legislation requires the agent to provide a written disclosure that the student athlete must sign before the student athlete signs an agency contract. Because NCAA rules prohibit a verbal commitment as well as a written commitment, we recommend modifying the language to require the disclosure before there are any substantive discussions regarding possible representation that might give rise to commitment.

As another example, it is our understanding that NCAA rules prohibit student athletes, as well as family members and friends who may be able to influence a student athlete, from receiving any benefits or gifts from an agent. Accordingly, we recommend modifying Section 3(a)(1)(B) to include providing anything of value to student athletes, family members, or friends who may influence a decision.

Further, it is our understanding that state law may restrict some student athletes' ability to enter into a contract on their own due to their age, and that a parent or guardian must sign the contract on their behalf. To ensure the proposed legislation protects all student athletes, regardless of age, we recommend inserting "or parent or guardian" after "student athlete" in proposed Section 3(a)(2).

Finally, we recommend that the Congress consider three modifications to the required disclosure set forth in Section 3(b). First, as a general matter, it has been our experience that disclosures in "plain English," so consumers can easily understand them, are the most effective. Second, to avoid inadvertently misleading student athletes, the disclosure should both track the NCAA's current rules regarding oral or written commitments and provide for adjustments should the rules change. Third, although section 6 of the proposed legislation imposes on student athletes the obligation to notify their educational institutions within 72 hours after they have

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sports agent who secretly signed college football players to agency contracts before their college eligibility expired).

entered into an agency contract, the proposed legislation takes no steps to ensure student athletes are aware of this obligation. The required disclosure, therefore, should alert student athletes of their notification obligations under the proposed legislation.

VI. CONCLUSION

In sum, the FTC protects consumers from deceptive or unfair acts and practices, but it generally focuses on acts and practices that affect a significant number of consumers or signify an emerging trend. We ask this Subcommittee to examine carefully the need for and the appropriateness of the underlying private restraint before enacting it into law. In the event this Subcommittee continues with the proposed legislation, we have provided suggestions, based on our experience with consumer disclosures, on how the legislation can be revised to better achieve its stated goal.

Mr. Chairman, the FTC greatly appreciates this opportunity to testify. I would be happy to answer any questions that you and other Members may have.

Mr. STEARNS. I thank the gentleman.

Mr. Donnelly, we welcome your opening statement.

STATEMENT OF JAMES F. "BOOTS" DONNELLY

Mr. DONNELLY. Before I begin, let me also thank Congressman Gordon and Congressman Osborne for their leadership in introducing the Sports Agent Responsibility and Trust Act.

You know, I basically come as an athletic director, ex-head football coach for well over 22 years. The sports agent is a problem. It is a major problem. Congressman Osborne touched on just about everything that I will be touching on, but I can give you examples. He spoke earlier about an agent by the name of Bloom, who is—I believe he is still in prison.

The sports agent Bloom was on my campus as far back as 1986-87. He came in at 10:30 at night, went directly to an athlete that I had room, would not leave the room. We came very close to having a physical confrontation, not only a heated conversation with him. There were stretch limos, bodyguards, threats of physical harm to players, and later he ended up in prison.

I come before you as a coach, as a member of Middle Tennessee State University, and we know what the problem is, because we have been there. We don't know what the solutions are.

The biggest headaches that we have is Congressman Gordon—Osborne, excuse me, spoke about the athlete and the agent. What it really brings down the pike is a tremendous amount of terrible publicity for the individual, university, and also for the athletic department at any university. And, you know, there are so many horror stories out there, and all of them are basically true.

We even had a young man come to our campus and walk on, ask permission to walk on as a kicker, and stayed and befriended our players, took them to dinner, paid for movies, even went to Florida and different locations for vacation and became obligated, became very, very close friends of our players. And later on down the road they found out that he was a runner.

Some of you may not understand who the runners are. The runners can be ex-players. The runners can be people that is in the community. Runners can be students. Runners can basically be anywhere, and we cannot get our hands on all of them. We have even had—agents have runners. Any time our basketball teams or whatever would fly commercially, they would get on the commercial flight to every location that you would play.

Congressman Osborne spoke about agents being in the lobby. They are free to do that. They are free to get on commercial flights. They know exactly what they can and what they cannot do.

He touched on also the athlete leaving school early. We have one currently left school at the end of the fall semester because he was drafted. The agent that he signed with convinced him that he needed to leave, go to the State of Florida, and spend the rest of the spring working out with a trainer or whatever it may be. And they get themselves obligated, and they get themselves in these binds, and they lose out for the last semester of school.

So many things—so many ways they get to our athletes. We keep speaking of a runner. Does the athlete know what he is doing is right or wrong? In most of the cases they—probably all of the cases, the point that I want to touch on is that if you will look at where money is coming from—and there is millions of dollars in signing in the first round, the second round, and it is reduced down for the third. But where the majority of the money is made is in the first three rounds in the NFL draft.

But you have 30 NFL football teams, so you are talking about 90 top athletes who are going to have the opportunity to make a large sum of money. But you have approximately 2,000 agents that are registered with the NFL; 800 of them don't have an agent. So that is where everything starts trying to figure how, do you go about getting the upper hand on signing one of these top athletes, and they go through aunts, they go through uncles.

And if you have ever gone into the inner cities down in the south, Georgia, the mountains of Tennessee, and see the economic background of these people, then you start understanding why it is pretty easy for these agents to entice them to get them to come and sign early with them, to take clothing or whatever it may be.

So I am here to ask that you strongly consider this bill, pass this bill. There is no AD that I know, there is no university president that I know, there is no coach, that will not endorse this. And we need this bill passed as quickly as we can possibly get it passed, and I do thank you for my time.

Thank you very much.

[The prepared statement of James F. Donnelly follows:]

PREPARED STATEMENT OF JAMES F. DONNELLY, ATHLETICS DIRECTOR, MIDDLE TENNESSEE STATE UNIVERSITY

I am James F. Donnelly, current athletic director and former head football coach for 22 years at Middle Tennessee State University. Middle Tennessee State University is located in Murfreesboro, Tennessee and is regarded as one of the leading universities in the region. Middle Tennessee competes at the highest level of intercollegiate athletics in 17 sports and is a member of the Sun Belt Conference. The university has an enrollment of over 20,000 students.

Before I begin, I would like to thank Congressman Gordon and Congressman Osborne for their leadership in introducing the Sports Agent Responsibility and Trust Act (SPARTA).

As of April 2002, the National Football League Players Association reported that there were 1,196 certified football agents, almost double the number from 10 years ago—over 800 of them, however, have no clients.

WHY COACHES AND UNIVERSITIES ARE CONCERNED ABOUT SPORTS AGENTS?

1. In today's society, professional athletes are highly compensated and most have agents that perform valuable services.

2. Unfortunately, the illicit practices of some of these agents, would-be agents and their runners have caused serious problems for student-athletes and educational institutions as these agents aggressively pursue the substantial fees that accompany the representation of professional athletes.

3. These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports. They frequently employ tactics that involve secret payments to friends and relatives who may be in a position to influence the athlete, unrealistic promises, and considerable arm-twisting.

4. There can be significant damage that results from these impermissible and oftentimes illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following:

a. Student-athlete ineligibility for participation in NCAA competition.
b. Harsh penalties on the team and the university (including the imposition of NCAA sanctions that have resulted in the repayment of monies received from NCAA championship competition, forfeiture of contests and other penalties).
c. Student-athletes may be enticed to pursue a professional career and leave school early only to later realize that their agent gave them bad advice.

WHY WE NEED TO ADOPT THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT (SPARTA).

H.R. 4701 has many important features:

- The adoption of the Act will make it unlawful for an agent to: Provide false or misleading information; Make false or misleading promises or representations; Provide anything of value to the student-athlete or anyone associated with the athlete; Fail to disclose to the student in writing that they may lose their eligibility to compete in collegiate sports before signing a contract; or Predate or postdate contracts.

EXAMPLE #1

Facts: In the mid-1980s, a high profile athlete was resting in his dorm room at approximately 10-10:30 p.m. when a sports agent and his entourage parked a limousine in front of the athletic dorm. The sports agent then walked into the dorm and went directly to the student-athlete's room and knocked on the door. The student-athlete closed the door, then immediately called the head coach. The head coach went to the dorm and had a heated conversation with the agent, and eventually the agent left campus. Not only did the agent know the student-athlete's room number, but he also had his phone number and he continued to call and harass the student-athlete.

Institutional Action: During this time, an athlete was declared ineligible for the remainder of the athletic season if he had any lengthy conversations with a sports agent. The rule has now been changed to where the penalty is for signing with a sports agent.

EXAMPLE #2

Facts: A student asked permission to become a walk-on for the football program. The student is full-time, joins the team and becomes friends with a number of team members. The student then pays for various meals, movies, and other entertainment as a friend of certain players. Later, the players and staff find out the student is actually a runner for a sports agent.

Institutional Action: No action was taken since the athlete never met the agent.

EXAMPLE #3

Facts: Student-athlete and his roommate traveled via automobile from certifying institution's community to Las Vegas, NV. Student-athlete and his roommate stayed in Las Vegas April 6-10, 2001. Institution noted that student-athlete stayed in one hotel, and his roommate stayed at another hotel. A representative of a sports agency paid for student-athlete's roommate's hotel bill ($268.02). Student-athlete noted that he was not aware that his roommate's hotel was paid for by the representative and did not become aware of the violation until he was questioned by institution. Institution noted that the representative was not aware that student-athlete and/or his roommate would be in Las Vegas during the time period in question. While in Las Vegas, student-athlete engaged in pick-up contests with other individuals. Student-athlete did not know the other individuals who participated in the pick-up basketball contests, except for one individual. Two professional sports agents were present at the pick-up basketball game. Student-athlete knew that the two individuals watching the pick-up basketball contests were professional sports agents, since he was previously introduced to the agents by a former teammate.

Institutional Action: Institution required student-athlete to repay the value of the impermissible benefit to a charity of student-athlete's choice.

EXAMPLE #4

Facts: Student-athlete accepted transportation (13 blocks) from an individual who student-athlete knew was a runner for a sports agent. Student-athlete was also provided with the use of a leased 2002 Ford Expedition for approximately six weeks by an individual who met student-athlete during his freshman year at institution. Institution has valued the use of the vehicle at $807.57 due to the monthly lease payments of $538.38. Early in August, student-athlete had previously driven a 1994 Chrysler Sebring, which was owned by his mother until the brakes failed, and the car was towed for repairs. Early in September, student-athlete asked his roommate to give him a ride to a car dealership where student-athlete was dropped off. Student-athlete, the runner and a former student-athlete, now institutional groundskeeper, were at the dealership on the same day. Student-athlete states that the runner was not near student-athlete when he was looking at various cars and had a conversation with a sales manager. Student-athlete and former student-athlete left the dealership after looking at a number of cars. The runner and the sales manager then were engaged in conversation. After the conversation, a 2002 Ford Expedition was put on hold until November 18 in the runner's name. The runner then transported student-athlete to his apartment from the dealership. Several days later the runner was with the individual at the dealership and the individual leased the same Expedition on September 15. Individual and student-athlete then had a telephone conversation where the individual offered the use of the Expedition to student-athlete in light of student-athlete's car being repaired. Several days later the individual dropped off the Expedition of student-athlete's apartment for student-athlete to use until student-athlete got his car back from being repaired. Student-athlete had use of the car for approximately six weeks.

Institutional Action: Institution required repayment for use of the vehicle ($807.57). The student-athlete was withheld from 60 percent of the season.

EXAMPLE #5

Facts: Prior to initial collegiate enrollment, student-athlete signed a contract with a sports management group. Student-athlete signed the contract in December 2000, at the age of 19. Under the terms of the contract the sports management group was to act as student-athlete's manager and advisor. Student-athlete, a foreign student, signed the contract in an attempt to gain entry into higher caliber track meets. Specifically, the owner of the sports management group also serves as the media officer for the foreign country's Olympic team. Student-athlete hoped that his association with the sports management groups owner would assist him in gaining access to track meets that he would not have otherwise been invited to. Student-athlete did not receive any compensation or sponsorship agreements from the contract. Further, student-athlete did not gain entry to any track events. The contract was terminated as soon as the student-athlete learned that such a contract was not permissible under NCAA regulations.

EXAMPLE #6

Facts: Student-athlete accepted a plane ticket ($339), transportation ($18.60) and a meal ($6.00) from an acquaintance that was a runner for an agent. While speaking to the acquaintance via telephone during the 2000 fall semester, student-athlete stated his desire to go a different city for the weekend because once applicant institution's basketball season began there would not be a break until the end of the season. Student-athlete's acquaintance purchased student-athlete an electronic plane ticket and met student-athlete at his arrival at the airport of the different city. Student-athlete's former high school classmate, also an elite Division I men's basketball student-athlete currently attending a separate institution located in a different city, was with student-athlete's acquaintance when acquaintance picked student-athlete up at the airport. Student-athlete's acquaintance provided student-athlete with transportation and a meal during the weekend. At some point during the weekend student-athlete's acquaintance informed student-athlete that he wished for student-athlete to meet an agent. After breakfast on Sunday morning, student-athlete's acquaintance transported student-athlete to the agent's home and introduced student-athlete to agent. The agent informed student-athlete that he wished to represent him when he became a professional athlete and student-athlete informed the agent that he would consider it. Student-athlete was interviewed three times and provided false and misleading information to institution and NCAA enforcement officials during first two interviews.

Institutional Action: Institution withheld student-athlete from one exhibition contest, six regular season contests and required student-athlete to repay benefits received from agent and/or runner.

CONCLUSION—I URGE CONGRESS TO ADOPT THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT (SPARTA)

1. The Sports Agent Responsibility and Trust Act is strongly supported by the NCAA and its 1,000 member institutions. I think I speak for all my administrative and coaching colleagues in Tennessee when I say that we strongly urge Congress to adopt H.R. 4701 as quickly as possible.

2. Will this be a panacea for all athlete agent problems? No. However, there is no question that the act will provide protections for student-athletes and institutions while also providing uniform rules across all states for agents to conduct their business.

THERE'S NOT ENOUGH CATS (NCAA AND COACHES) TO CATCH ALL THE RATS (SPORTS AGENTS AND RUNNERS) IN INTERCOLLEGIATE ATHLETICS.

FOR PROTECTION OF OUR ATHLETES ACROSS THE COUNTRY, I STRONGLY ENCOURAGE THE PASSAGE OF H.R. 4701.

Mr. STEARNS. Thank you, Mr. Donnelly.

Mr. Saum, we welcome your opening statement.

STATEMENT OF WILLIAM S. SAUM

Mr. SAUM. Good morning. Thank you for opportunity to testify on behalf of The National Collegiate Athletic Association and to express our support for H.R. 4701, the Sports Agent Responsibility and Trust Act.

The NCAA is a tax-exempt, unincorporated association of approximately 1,260 colleges, universities, athletic conferences, and related organizations devoted to the regulation and promotion of intercollege athletics for both male and female student athletes.

As Director of Agent, Gambling and Amateurism Activities, and a former campus administrator and coach, I am acutely aware of the impact that the unscrupulous athlete agent can have on the lives of college student athletes. In today's society, professional athletes are highly compensated, and most have agents that perform valuable services.

Unfortunately, the illicit practices of some of these agents, would-be agents, and their runners have caused serious problems for student athletes and our educational institutions as these folks have aggressively pursued the substantial fees that accompany the representation of professional athletes.

These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student athlete who has even a remote chance of playing a professional sport. They frequently employ tactics that include secret payments or gifts, including autos, cash, clothing, and trips, given to the athlete, or undisclosed payments to friends and relatives who may be in a position to influence the athlete, or provide unrealistic promises and considerable arm twisting.

There can be significant damage that results from these impermissible and often times illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following: student athlete ineligibility for participation in NCAA competition, harsh penalties on the team, the university, including the imposition of NCAA sanctions that have resulted in the repayment of monies received from participation in NCAA championships, and the forfeiture of contests and other penalties.

SPARTA would make it unlawful for an agent to give false or misleading information, to make false or misleading promises, and to provide anything of value to the student or any individual associated with the student; fail to disclose in writing to the student that they may lose their eligibility to compete as a student athlete if they sign an agency contract; or pre-date or post-date contracts. All of these activities are necessary to protect our student athletes from unscrupulous sports agents.

In addition, the NCAA strongly supports Section 7 of SPARTA that recommends States pass the Uniform Athlete Agent Act. The adoption of the State model creates a comprehensive uniform registration process that will provide important consumer information for student athletes, parents, and institutions, as they will have access to the detailed information contained in the agent application.

Currently, the Uniform Athlete Agent Act has passed in 16 jurisdictions, and we plan to work hard in the coming year to get it passed in more States. The NCAA has developed an arsenal of educational information on athlete agents, including videos that raise awareness about agents and NCAA rules, an NCAA information packet, including a list of questions that student athletes should ask when interviewing agents. Also, an important brochure entitled "A Career in Professional Athletics" is available to our member schools.

The NCAA's Agent, Gambling and Amateurism Activities staff works closely with high school athletes, member institutions, and even sports agents organizations through the professional players associations. In short, we want to educate student athletes, athletic administrators, and agents, to prevent violations of NCAA rules and enforce the current agent regulations.

Our member schools have developed a variety of programs to achieve these results. Several schools conduct agent days where a student athlete can meet with an agent in an organized and monitored manner. Many of our schools also conduct educational seminars for their elite athletes, which include alumni who have participated at the professional level. These alumni provide firsthand experiences for the enrolled student athletes to learn from.

Finally, our schools provide a panel of experts that we call the Pro Sports Counseling Panel, for athletes to visit with regarding the search for an agent. SPARTA, in conjunction with the Uniform Athlete Agent Act in all 50 States, will provide important and necessary steps to address the problem of the unscrupulous athlete agent. The NCAA plans to continue its strong efforts and use its resources to pass the UAAA in the remaining States.

Thank you for this opportunity, and we would be happy to answer any of your questions.

[The prepared statement of William S. Saum follows:]

PREPARED STATEMENT OF WILLIAM S. SAUM, DIRECTOR OF AGENT, GAMBLING AND AMATEURISM ACTIVITIES, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

I appreciate the opportunity to testify on behalf of the National Collegiate Athletic Association (NCAA) and to express our support for H.R. 4701, the Sports Agent Responsibility and Trust Act (SPARTA). The NCAA is a tax-exempt, unincorporated association of approximately 1,260 colleges, universities, athletics conferences and related organizations devoted to the regulation and promotion of intercollegiate athletics for male and female student-athletes.

As director of agent, gambling and amateurism activities, and a former campus administrator and coach, I am acutely aware of the impact that unscrupulous athlete agents can have on the lives of college student-athletes. In today's society, professional athletes are highly compensated and most have agents that perform valuable services. Unfortunately, the illicit practices of some of these agents, would-be agents and their runners have caused serious problems for student-athletes and educational institutions as these agents aggressively pursue the substantial fees that accompany the representation of professional athletes. These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports. They frequently employ tactics that involve secret payments or gifts (goods, autos, cash, clothing) to the athlete, undisclosed payments to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm-twisting.

There can be significant damage that results from these impermissible and oftentimes illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following: student-athlete ineligibility for participation in NCAA competition, harsh penalties on the team and the university (including the imposition of NCAA sanctions that have resulted in the repayment of monies received from NCAA championship competition, forfeiture of contests and other penalties.)

The SPARTA would make it unlawful for an agent to give false or misleading information or make false or misleading promises or representations; provide anything of value to students or any individuals associated with these students; fail to disclose in writing to students that they may lose their eligibility to compete as student-athletes if they sign an agency contract; or to predate or postdate contracts. All of these activities are necessary to protect our student-athletes from unscrupulous agents.

In addition, the NCAA strongly supports Section 7 of SPARTA that recommends states pass the Uniform Athlete Agent Act. The adoption of the state model bill creates a comprehensive, uniform registration process that will provide important consumer information for student-athletes, parents and institutions, as they will have access to the detailed information contained in the agent application. Currently, the Uniform Athlete Agent Act (UAAA) has been passed in 16 jurisdictions; we plan to work hard in the coming year to get it passed in many more states.

The NCAA has developed an arsenal of educational information on athlete agents, including videos that raise the awareness about agents and NCAA regulations, an NCAA information packet and a list of questions that student-athletes should ask agents. Also, an important brochure entitled "A Career in Professional Athletics" is available to member schools.

The NCAA's agent, gambling and amateurism activities staff works closely with high school athletes, member institutions and even agent groups, through the professional players associations. In short, we want to educate student-athletes, athletics administrators and agents, prevent violations of NCAA regulations, and enforce the current agent rules.

Our member institutions have developed a variety of programs to achieve these results. Several schools conduct agent days where a student-athlete can meet with an agent in an organized and monitored manner. Many of our schools also conduct educational seminars for their elite athletes, which include alumni who have participated at the professional level. These alumni provide first-hand experiences from which enrolled athletes can learn. Finally, our schools provide a panel of experts (Pro Sports Counseling Panel) for athletes to visit with regarding the search for an agent.

The SPARTA, in conjunction with the UAAA in all 50 states, will provide important and necessary steps to address the problem of unscrupulous athlete agents. The NCAA plans to continue its strong efforts and use its resources to pass the UAAA in the remaining states.

Mr. STEARNS. Thank you, Mr. Saum. I will start with my opening questions.

Mr. Beales, in your opening statement, you talked about the FTC has the responsibility, is charged with protecting consumers, and, of course, at the same time promoting a competitive marketplace. You said the cornerstone of your responsibility is the implementing and enforcing of Section 5 of the FTC Act, 15 U.S.C. 45, which pro-

hibits unfair methods of competition and unfair or deceptive acts or practices.

Now, has the FTC has been asleep at the wheel here? You heard two coaches talk. Why hasn't the Commission pursued any action against sports agents under Section 5, like you said in your opening statement?

Mr. BEALES. Typically, the way we approach case selection is we look for places where there are relatively widespread problems involving——

Mr. STEARNS. Obviously, there is widespread problem.

Mr. BEALES. [continuing] in particular a particular company. It may be that the heart of the difficulty here is that there is sort of one problem per agent because that is all the students that they represent. But in terms of the complaints that come to us, we don't have any complaints about problems that have involved sports agents.

Mr. STEARNS. We have heard complaints today.

Mr. BEALES. We certainly have.

Mr. STEARNS. Okay. You would agree on that.

Mr. BEALES. Yes.

Mr. STEARNS. Okay. Does that mean today you are going to go back and do something?

Mr. BEALES. Well, we haven't heard—and this is an area where if there was an agent that was systematically making misrepresentations to potential student athlete clients, we would certainly be interested in a case like that. That would be a violation of Section 5. It is something we would want to pursue.

Mr. STEARNS. But what do you have to do? What has to be initiated to get your attention? What do you consider in determining whether or not there is enforcement of Section 5? I mean, is there something that has not been brought here in this hearing that—are there other considerations that would get you folks galvanized to do something?

Mr. BEALES. Well, there are two primary considerations that go into all of our case selection decisions. One is the number of people affected, the number of——

Mr. STEARNS. It has to be more than one, two, five, a hundred? How many people have to be affected?

Mr. BEALES. There is not a bright line, but our alternative case might be something where there are millions of consumers affected.

Mr. STEARNS. Okay. So if——

Mr. BEALES. And there is a small resource allocation budget.

Mr. STEARNS. You wouldn't be concerned with a small number.

Mr. BEALES. Well, sometimes we do pursue cases where there are small numbers, where we see an emerging trend or a new practice that is—that we need to address as the particular practice. So it is not—I mean, there is not a bright line standard. But in terms of how we allocate our resources, we are looking for cases where there are larger numbers of people affected and larger injury per person affected. And that is—there is nothing distinct about any particular industry that says it is in or it is out.

Mr. STEARNS. So that is the sum summary of whether you determine whether to act under Section 5, whether there is a lot of people and there is financial damage.

Mr. BEALES. Well, the damage doesn't have to be financial. The injury can occur in many sorts of ways. But whether—the number of people affected and the extent of injury, absolutely.

Mr. STEARNS. Has there been any case in which you have pursued, under Section 5 pertaining to this sports agent, in the history of the FTC?

Mr. BEALES. Not to my knowledge.

Mr. STEARNS. And why do you think that is? I guess because there has been no infractions?

Mr. BEALES. I don't think there have been any—we don't know of any infractions that have risen to a level that any prior Bureau director or Commission has thought warranted FTC action.

Mr. STEARNS. So the FTC's position, then, is that there has been no infractions that occurred that have—that would require your attention at this time. Am I pretty much putting into words what you are just saying?

Mr. BEALES. Not that there have been none, because we don't know that. But none that have come to our attention, I mean, which is a different statement.

Mr. STEARNS. You had mentioned in your testimony that you are afraid that H.R. 4701 is endorsing and strengthening the restraints imposed by a self-regulatory organization, namely the NCAA. Can you please explain what you mean by that?

Mr. BEALES. Well, the NCAA is a private organization. It represents, I am certain ably, the interests of the institutions that are part of it. It does not include other people who have an interest in the outcome of its rules and are affected by its rules, and it makes decisions based on what it sees as the public interest. But it is a private organization making that decision.

It may be the right answer. Our only question—our only comment was that we think it makes sense for the Congress to look at whether those rules are the right rules before it enacts laws based on those rules.

Mr. STEARNS. Seventeen States have passed similar laws to this, like this, which, you know, implicit in these laws that they pass are the same thing they are endorsing and strengthening restraints imposed upon a self-regulatory organization. Do you think they are wrong in doing that?

Mr. BEALES. I have no idea the extent to which they looked at the rules, and that is all we are saying. If you assume the rules are the right rules, then a lot of this makes sense. That is—but our point is we don't have—we don't know that these are the right rules. It is not an area in which we have devoted any particular attention.

We do know that private restraints tend to look out for the people who wrote the restraint, and they don't always serve the interests of consumers.

Mr. STEARNS. So, then, the position of the FTC, as I understand it this morning, is you do not endorse this bill.

Mr. BEALES. I think that is correct, yes, sir.

Mr. STEARNS. So you would say that we should rewrite it, or are you saying—are you saying that the FTC, under Section 5, can take care of this, and we need no legislation?

Mr. BEALES. For the parts that are deceptive or unfair practices, that we can do without legislation, if there are problems that are out there that would warrant our attention. Some parts of this, like, for example, the prohibition on gifts, would not, in ordinary circumstances, violate Section 5. I mean, that is a common practice, as I said, in a number of industries.

So in other places, if you want to achieve that result, then you do need legislation. I think our comment is—goes mostly to what we think you should look at in making that decision, which is to look at the rules themselves as well as the conduct of the agents.

Mr. STEARNS. Okay. My last question. Mr. Donnelly, you had mentioned some of these problems. But as I understand from staff, the State of Tennessee passed a bill. Now, has that affected you in any way? I mean, has that—what they passed in the legislature——

Mr. DONNELLY. Well, they basically——

Mr. STEARNS. [continuing] made the problem go away for you as a coach?

Mr. DONNELLY. No, sir, it has not.

Mr. STEARNS. And why is that?

Mr. DONNELLY. Because the teeth of that law, they basically asked that each agent register with the State. The agents that have absolutely nothing to hide, the good agents——

Mr. STEARNS. They register. The runners and the illegal agents don't.

Mr. DONNELLY. The others don't. They don't.

Mr. STEARNS. So it still—the law has had no effect.

Mr. DONNELLY. It has no effect as—on the local level in our State. There is X number of very fine quality agents that come directly to you, directly to your office, or go by—however you want it to be handled they will go by it. The others, they are like in the still of the night that they come in, and they go out. And once they get the athlete committed, then the athlete is not going to talk either, because they start threatening with whatever it may be.

Mr. STEARNS. Wow, what an awful scene to have a guy with a stretch limousine out there sitting in the locker—in the dorm talking to one of your key players, and you can't even get him out.

Mr. DONNELLY. Not only can you get him out, legality-wise he is free to come on our campus.

Mr. STEARNS. And go into the dorm like that and wake the player up and say, "This is"——

Mr. DONNELLY. They can go up and down the halls, other than knocking on the door, and then intruding on a student, that became illegal. The problem at that time was that if our athletes spent any time whatsoever face to face talking with him, then he could have been declared ineligible.

Mr. STEARNS. And you as a coach can go into that dorm and tell him to leave and he won't leave.

Mr. DONNELLY. And he had the henchman or a muscle man with him and——

Mr. STEARNS. Body guards.

Mr. DONNELLY. [continuing] they later went on to become notorious in Sports Illustrated and——

Mr. STEARNS. I understand.

Mr. DONNELLY. [continuing] ended up serving some time.

Mr. STEARNS. Okay. Thank you.

The ranking member, Mr. Towns.

Mr. TOWNS. Thank you, Mr. Chairman.

Mr. Saum, the last time you were here discussing the commercialization of amateur athletics, you stated that the NCAA has the ability to actually police itself. What brought about your change of heart?

Mr. SAUM. Change of heart in regards to this bill?

Mr. TOWNS. Yes.

Mr. SAUM. There really has never been a change in heart. We have had a great couple months working with Representative Gordon and his staff in trying to work together in creating a bill that would meet his goals and also fit into some of our experiences of intercollegiate athletics.

We found that by working with him that we could—we believe that this bill would be a very good Federal backstop to help prop up the State laws and work with our elite student athletes to assist them in working against the agents with the stories you have heard today that—and I can assure you from an angle of Coach Donnelly and Coach Osborne, I was a coach, and now my many years at the NCAA, those are very much true stories.

Mr. TOWNS. In your opinion, is there such thing as a good agent?

Mr. SAUM. Well, I have heard Coach Osborne and Coach Donnelly say that there are. I suppose it is because of my job description, I would say I haven't met very many, because I work on—as Coach Osborne said, I am kind of the cop of the agent world for the NCAA. So I have not met very many good ones.

Mr. TOWNS. How about you, Coach Donnelly?

Mr. DONNELLY. Let me add what we consider integrity of the sports agent is when we simply ask the agent, "When you contact our players, please come through us," and the good ones do that. The others are not going to do that. That is what we consider a fine agent.

Mr. TOWNS. Let me ask this question then. Do you think that paying these athletes might cut down on some of the misbehavior? I have heard of stories where an athlete's uncle or aunt dies, and they don't have the money to return home. This agent gives them the money and violates NCAA rules.

If they were paid, they would probably have the money to go home and do whatever else they wanted to do. They could get in a taxi and ride wherever they want to go and avoid a ride from somebody they shouldn't be riding with.

So what do you think about athletes being paid?

Mr. DONNELLY. Well, I am—let me say this first. We have an emergency loan situation for our student athletes now that we did not have 5 years ago, 6 years ago.

Mr. TOWNS. How does that work, Coach?

Mr. DONNELLY. It works great. It works unbelievably well for the athletes. If you do have an emergency and you need to get home, they make it home now. And you are correct, 10 years ago or so, or 8 years ago, you could not do that.

To pay an athlete, where do you start? Where do you stop? I am from basically the old school. We have got an awful lot of students

that they pay their way to go to college, and they work at the 7-Eleven, or they work at wherever, the pizza place, and they pay the money to get the education. We pay other students to come to our university to play sports.

How much money do you want in their back pocket? And the bottom line is agents will just escalate the amount of money that they are going to give. As opposed to giving X number of dollars, they are just going to move it up if a kid has got a little bit more money in their pocket.

Ninety-nine percent of your problem is they come from broken homes, they come from low economic areas, where the flash, people driving around with the stretch limos with the Mr. T starter kits around their neck, showing a lot of hundred dollar bills, impressive, 19-, 20-, 21-, 22-year old kids. And paying them X number of dollars is not going to solve our problem.

Mr. TOWNS. Mr. Saum?

Mr. SAUM. Mr. Towns, Coach Donnelly began with the explanation of the emergency student loan program, and that is not only individual campuses but that comes from the television contract. We talked about that last time we were here. There is over $15 million in that fund, and our student athletes can ask for money to do just about anything they need that they believe is an emergency.

Our student athletes also at our Division I institutions receive their Pell money. And then, finally, we—I am happy to say that one thing that has changed since the last time that I was fortunate enough to testify here is that we now have what we call fee for lesson that has been okayed at the Division I level.

And to explain it very simply, it is where a quarterback can go out this summer and teach young kids how to throw the football and be paid for it. Now, in the past, we had a rule that prohibited basically—and, again, I am simplifying this—prohibiting the athlete to use their ability to make money during the summer. So we have now found another way that I think can be a benefit to them.

The other quick item, if you would permit me to say, is that in my experiences over the last 14 years, student athletes who have received benefits from agents didn't take meal money, laundry money, or pizza money. They are taking SUVs. They are taking women. They are taking limos, hotels, airline trips, trips to Vegas, etcetera. So paying a student athlete a nominal amount would not solve this issue at all.

Mr. TOWNS. In your testimony, Mr. Beales, you cite specific concerns, but you also give some suggestions for improving the bill. If those cited provisions were altered, would the Commission be inclined to support this legislation?

Mr. BEALES. Well, I don't think the Commission has a position either for or against the legislation. I think our threshold reservation goes to what should be examined in—to what Congress should examine in deciding about this legislation, and that is that it should look at the underlying rules that the legislation would help enforce.

Mr. TOWNS. Let me just ask one last question. I am just trying to figure out an effective way to deal with these agents. Is the penalty in the legislation harsh enough? Either one of you.

Mr. DONNELLY. I think it is a great start as opposed to where the penalties could end up. But right now, I think it gives us a little bit of teeth in being able to sit down with our athletes knowing that the agent is going to have to expose if he doesn't, and is going to end up being, if I am reading it correctly, $11,000 for each offense each day, or whatever it may be.

It is better than what we have had it. It has not worked on the individual State level. And, again, I strongly—we need to get something enacted as quickly as we possibly can. August camps are starting. We need to go back and start pushing, because agents have been on my campus this summer. We have a couple of high-profile athletes. They have been in the dorm. They have already spoken to them, and they have the telephone numbers of the girls, aunts, uncles, cousins. They have got it all, and we need to get something out there as quickly as we possibly can.

Mr. TOWNS. Let me say this in closing. I think this is very serious, and I find it upsetting——

Mr. DONNELLY. It is serious.

Mr. TOWNS. [continuing] that both the success of a program and the career of an athlete can be jeopardized by the tampering of an unscrupulous agent. I hope that we really move forward with the legislation and clean this whole mess up. Those agents out there have to be held accountable, and I am not sure that the existing penalties are sufficient to do so.

Anyway, the bill is a step in the right direction, and I am for it.

Mr. STEARNS. I thank my colleague and recognize the gentleman from Tennessee.

Mr. GORDON. Thank you.

The last time the NCAA was here my good chairman and friend pointed out to me after the hearing that I was a little obnoxious. I think that he was more courteous and said aggressive. So let me today say, Mr. Saum, that I appreciate your cooperation and work. I think we have come up with a good product, and you have been helpful, and so, again, I thank you for that.

And, Mr. Beales, sort of understanding where you come from, I don't—I will just paraphrase. If I am off base, you can tell me. But it was—FTC has to sort of look at the big picture. You know, if there is telecommunication fraud, or whatever, and there is millions of people involved, you have got so many folks, so much time, and that is simply where you have got to put your, you know, time rather than a few hundred that might be affected with this sports agent bill.

I would point out a couple of things. One, my grandfather used to tell me that the most important road in the county was the one in front of your house. So, you know, for these kids and their parents and the schools, it is pretty important to them.

I would also point out that, really, you are a conduit, in that we are using your authority to deputize State attorney generals, and that it is really not going to be taking a lot of the FTC's time, or any for that matter. So I would point that out.

Also, you mentioned that there is already laws against—or that the FTC has authority against giving false or misleading information. That is correct. However, it is only a cease and desist, at least

on the first time out. So I think this gives more teeth and provides a number of other types of remedies.

So with that said, let me move to Coach Donnelly. Coach Donnelly, you I think made a good point, and I want to be sure that everybody understands. This is really more than the sports agents. Sports agents I guess is where it all starts, but the real problem, or everyday problem, are these runners. And they are the ones that are coming in and really causing the problems or being the closest on campus.

This legislation extends to those runners. So it is not just the sports agent, but it extends to the runners or any type of person that may be carrying their water. I wanted to point that out.

And, finally, you know, trying to—you know, again, this—everybody sort of says, "Well, golly, let us get on with this. What is—you know, why wouldn't you do this?" I guess the best case that I can think of why you wouldn't do this was raised the other day with me, and a sports writer said, "Well, listen, you know, these are 20-year old kids. They know the rules. You know, the coaches have told them this over and over. The NCAA tells them what they are supposed to do." I mean, how much hand-holding, you know, do we really need to do?

So I will—if that is the best case, what is the best answer?

Mr. DONNELLY. Well, you know, I don't know if there will ever be a best answer or an absolute answer. But regardless of whether they are 20, 21, 22, the education is there, through the universities, through the NCAA——

Mr. GORDON. I am sorry, Coach. What I mean is, what is the answer to folks that say, "Don't pass this because these kids know what they are getting into, and we can't hold their hand for the rest of their life"?

Mr. DONNELLY. Well, no, we can't hold their hands for the rest of their lives, but we can continue to put the teeth into a bill that will take a 35-, 40-year old that continuously impresses, induces, lies to, whatever it may be, a 20-, 21-, 22-year old. And you have got to remember this, in my opinion: they are not going after the highly intelligent No. 1 draft choice in the country.

They are going after the people that they know that they can induce because of the socioeconomic background of which these people come from. Regardless of whether you are 22 years old, if you are living in a double-wide trailer, and you don't have the accommodations of other people, you are going to help your mother out if you get an opportunity.

And that is where they bleed you. They go through the back door. They don't come through the front door. "By signing with us early, we will help pay for your rent. Your mother is getting ready to be evicted." Whatever it may be. That is tough for a 21- or 22-year old not to accept. Even—they state to them, "Even if you lose your eligibility, you are going to still be a No. 1 draft choice, No. 2, No. 3."

Whether it materializes or not, I don't think there is a person in here that, if you have ever been raised that way, would not understand why they take it, regardless of what and how you have educated them. It is just they have to get out of that environment. That is the quickest and easiest way to do that.

So that is the reason the teeth has to be in the bill to punish the runner and to punish the people that are trying to induce them to take what is not right.

Hopefully, I answered that correctly. I don't know.

Mr. GORDON. Thank you, sir.

I think my light went on.

Mr. STEARNS. I thank the gentleman.

The gentlelady from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman. And first, let me apologize for my tardiness. As usual, I am double set with hearings this morning, so I was at another hearing.

I just have a couple of quick questions to follow up on some of the earlier questioning. I would like to welcome our witnesses. I know that the chairman posed the question about whether Federal legislation was really necessary to enact these kind of non-public regulations. And I am wondering if perhaps, Mr. Beales, you could address the issue of what harm there might be in enacting this type of regulation, and if there is any precedent for this that we know of.

Mr. BEALES. Well, you would have to look more closely at the rules themselves to say what harm there might be. But the potential harm is there are things that the rules prohibit, which may or may not be good things to prohibit, that you are writing into Federal law. And I think our point is that you should think about the underlying conduct that the rules restrict and not just the fact that it is an NCAA rule.

I mean, the damage to the institution, for example, of the institution getting suspended for the conduct of student athletes is a consequence of the rule. It is not a consequence of the conduct, and maybe that is a good thing, but maybe not, but that is what the question ought to be.

Ms. DEGETTE. I mean, don't we have other legislation, though, where you might want—where the actual legislation is stating the policy, and you might have to change the rules in some way to enact the policy?

Mr. BEALES. Sure. But those are usually cases where the rules are written by some governmental agency, as opposed to a private party.

Ms. DEGETTE. I see. Do you know of any other precedent where there is a law enacted that promulgates privately enacted rules? That is exactly the issue here.

Mr. BEALES. There are—not that I know of. It is conceivable that there are some. I don't know of any off the top of my head.

Ms. DEGETTE. Okay. Mr. Saum, do you know of any situations like this, where there is a statute that is basically enacting private—rules of a private organization?

Mr. SAUM. Well, my answer to that is no, but I am also not qualified to answer that question.

Mr. GORDON. If my colleague would——

Ms. DEGETTE. Happy to.

Mr. GORDON. Most recently, the Gram-Leach-Bliley legislation that we passed gave their regulators the ability to regulate within their own industry and gave them penalties to go forward with that——

Ms. DEGETTE. But those——

Mr. GORDON. [continuing] an insurance regulation.

Ms. DEGETTE. But that was over—you are exactly right.

Mr. GORDON. In other words, it gave them the Federal authority to regulate—to enforce their regulations that they put forth.

Ms. DEGETTE. Right. But the reason we did that in Gram-Leach-Bliley, as I recall—I, by the way, am not taking——

Mr. GORDON. Surely. Sure.

Ms. DEGETTE. As a matter of fact, my own State of Colorado has this law on the books. But what we did in Gram-Leach-Bliley, as I recall, because we didn't want to set up a whole new insurance regulatory agency, we allowed the current regulatory structure to stay in place. But I think that is different than just wholesale enacting these private rules that apply to student athletes, but I might be wrong, and I think that is a really good example of a place that we did it.

Let me ask both the coach and also Mr. Saum this question. You know, I understand the need to protect student athletes from unfair and deceptive acts and practices of agents. But under this legislation, colleges and universities also would be protected if this conduct occurred. And I am wondering, what is the public policy reason to do that? What is the public policy reason to protect the colleges and universities?

Mr. DONNELLY. If we find that a basketball player has signed early and that basketball team wins the NCAA Final Four, that money is returned, and it is an astronomical amount of money that they would garner from winning the championship.

The NCAA strips them of the championship. The university receives a tremendous amount of very poor publicity. The athletic director, the coach, is held responsible. The player, again, can go on and be drafted No. 1 in the NBA. He is not hurt. The money that is lost to the university, the prestige that is lost to the university, the criticism that the coach and the athletic department gets is severe.

Ms. DEGETTE. If I just may follow up on that, but—but the whole concept is we need to protect these unsophisticated athletes. Certainly, you would not argue that the colleges and universities are also——

Mr. GORDON. If you would yield, I think I can answer that. The purpose was not so much to protect the colleges and universities, but another vehicle for enforcement. In other words, certainly the colleges and universities had damages, and it would be good for them I guess to be reimbursed.

What you have is the FTC is going to say, "We don't have time to go after all of these sports agents." Other people may say, "We don't have time to go after all of these sports agents." So by virtue of giving the universities the right of action, then they can go after the agents, and that is another way to help control them. And so, really, it is not a matter of protecting universities. It is giving a right of action so you have one more policeman on the street trying to stop this activity.

Ms. DEGETTE. Right. I think the right of—reclaiming my time, I think the right of action is a good thing. But doesn't the legislation also protect them from liability?

Mr. GORDON. No. If you would yield, no. I don't think it protects them from liability. It gives them a right of action to collect damages.

Ms. DEGETTE. Okay. All right.

Mr. GORDON. And so that is what—you know, and, again, I think those damages are real. But the purpose—the real purpose in this really is more the additional policemen than it is to protect the university.

Ms. DEGETTE. That is not how I read the bill, but I will take your assurances, Mr. Gordon.

Thank you, and I will yield back.

Mr. STEARNS. Yields back. Would my colleagues—any other questions that they would have?

If not, let me just sum up and thank the witnesses. Mr. Beales, I think I am trying to sort of sum up what you said when you said your extensive enforcement and oversight history with self-regulatory industries, organization, you sort of counseled the committee to use caution before Congress enacts Federal legislation to support or endorse specific non-public regulation. I think that sort of sums up what you say—to use caution.

Mr. BEALES. I think that is a fair summary. Many times those private restrictions are very useful and very good, and sometimes they are not.

Mr. STEARNS. Yes. But wouldn't you also agree that if Congress deems a specific non-public regulation good public policy, it could actually codify such regulation?

Mr. BEALES. Sure. If indeed it deems it good public policy, but that I think is the question.

Mr. STEARNS. Yes. So I think that is where perhaps our hearing sort of hinges on, and that is where we are at.

Yes?

Mr. GORDON. Just one final thing. Let me just say that I am thoroughly convinced that this legislation is done for the right reasons and will be helpful. But also, let me point out that all wisdom doesn't originate immediately, even sometimes with me, and that the purpose of these hearings is to bring additional information, and I think we are going to have a better bill because of the questions that Ms. DeGette has asked and that Mr. Beales has brought forward. We want to take these things in and try to have a better bill.

We are also somewhat handcuffed by—you are somewhat pushing from behind in trying to get a remedy for these kind of problems. And so it is not the cleanest way, but I think it is a way—it is the best way within the tools that we have. So, again, we are listening to all that you have to say. And because of that, I think we are going to have a better bill. And certainly, I think this is going to benefit our country and a lot of individuals.

Ms. DEGETTE. Let me just say——

Mr. STEARNS. Yes.

Ms. DEGETTE. [continuing] add my 2 cents, Mr. Chairman. I also support the legislation. I just want to make sure that we write it as narrowly as possible to achieve the intended goal. One thing I have learned in my years in legislative services is about the law of unintended consequences. Talking about Gram-Leach-Bliley, for

example, you know, we are still dealing with the fallout from that bill.

I really want to thank the sponsors for bringing it up, and I do think it is a growing problem in college athletics and one we need to deal with.

Mr. STEARNS. I thank the gentlelady. And thank you for your patience while we had to go vote.

The hearing is adjourned.

[Whereupon, at 12:14 p.m., the subcommittee was adjourned.]