

Written Testimony of Justin Falcinelli, Vice President, College Football Players Association
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The problems of college football are not so large that they cannot be solved by those within the industry—namely administrators, coaches and players collectively through players associations. At the College Football Players Association (CFBPA), we’ve developed a platform which attempts to address the key problems within the game and create workable solutions with those who wish to partner with us. Our Platform for Change is as follows:

- 1) CFBPA representatives at the bargaining table debating any changes to college football including, but not limited to, transfer portal regulations, NIL and expansion of the college football playoffs.
- 2) Guaranteed independent medical care enforced by CFBPA-employed full-time employee representatives.
- 3) Healthier practices similar to the NFL and Ivy League football enforced by a CFBPA-employed full-time employee representatives.
- 4) Post-football health protections
- 5) A real off-season
- 6) A percentage of big money media rights revenue contracts for the players whose name, image and likeness are used in that media.
- 7) Competitive group NIL deals for college football players, facilitated by the CFBPA.

Elaboration of the CFBPA Platform for Change

Plank #1: CFBPA representatives at the bargaining table debating any changes to college football including, but not limited to, transfer portal regulations, NIL and expansion of the college football playoffs.

In July 2021, coinciding with the founding of the CFBPA, college athletes for the first time had access to the free market to monetize their name, image and likeness (NIL). This basic economic freedom, enjoyed by every other American, had been denied to college athletes by the NCAA. In fact, over the twenty-first century, the NCAA spent many millions of dollars in legal and public relations fees seeking to deny college athletes this basic right, thus making them second-class citizens. College athletes fought back in the courts and in state legislatures to secure access to this free market for the first time. With the writing on the wall, the NCAA finally dropped their restrictions on athletes monetizing their NIL nationwide. Thus, since July 2021, we have new evidence of the impact of athletes monetizing their NIL. The vast majority of that evidence suggests that the impact has been overwhelmingly positive. College athletes have secured new wealth for themselves and their families. This NIL wealth has come largely in two different forms. First, athletes have made different deals with brands and companies to promote products and services using the power of their social media. Secondly, college athletes have been paid largely for their athletic skills through so-called independent “collectives” on some university campuses. It is the position of the CFBPA that both forms of NIL are net-positive and welcome.

Additionally, also since 2021, athletes and their advocates have employed the courts and state legislatures to secure them the basic right of any other student on university campuses to transfer to another school if they so choose. Additionally, these same athletes also have been exercising their right as individual laborers to test the market and see if they could garner higher NIL compensation by transferring to another school. Once again, for athletes with high-earning

potential, this new freedom of movement, which had previously been restricted by the NCAA, has been a net positive.

Despite the combination of NIL and the transfer portal being good for some individual athletes, the combination of the two have created a much more chaotic environment within college athletics. At the CFBPA, we agree that a more sustainable framework is necessary. That solution is collective bargaining with college football players. Administrators within the conferences and the College Football Playoffs should sit down with the players through their independent players association and carve out new rules and regulations together which will create a more sustainable framework for college football and, by extension, all of college athletics. Once an agreement was made, the CFBPA could assist with enforcement and with screening attorneys and agents to protect the interests of the players. Platform plank #1 is designed to give college athletes a real collective voice in the decision-making within college athletics. Whether it is changes to NIL guidelines and their enforcement; transfer portal changes; college football playoff expansion; or any other changes to college football conferences and College Football Playoff administrators need to end the paternalism of the past. They should come to the table and bargain with the players as equals regarding the conditions of their workplace. Everyone in college athletics would benefit from this more sustainable, collectively bargained, solution which would be insulated from legal challenge.

Plank #2: Guaranteed independent medical care enforced by CFBPA-employed full-time employee representatives.

Lack of independent medical care is a massive problem for all college athletes, but particularly for college football players given the violence of the sport. Almost every college athlete, at almost every intuition, knows somebody, or has experienced themselves, inadequate medical care. Many athletes have been pushed to return to play before their body or mind has fully healed by

compromised medical providers within their athletic departments. A 2019 report by the National Athletic Trainers' Association indicated that 36% of athletic trainers reported that coaches influenced the hiring and firing process for sports medicine staff in their athletic department.¹ Such influence is usually done so a coach can secure a medical staff which will yield to the coaches' decisions regarding medical care. In football, this often means "rushing guys back" before their injuries have fully healed. We saw a tangible example of this recently in the court case of CFBPA advisor Dr. Scott Lynch. A Pennsylvania jury awarded Dr. Lynch \$5.25 million after finding that he had been fired as head team doctor for Penn State football in retaliation for complaining about head football coach James Franklin interfering with medical treatment and return-to-play decisions.² The suit also alleges that former Athletic Director Sandy Barbour acted as an enabler for Coach Franklin in these actions and in hiring medical staff which would be more easily influenced by the football coaching staff. To this day, the NCAA and the Big Ten have remained silent on the jury verdict and damages against their member institution Penn State. No investigation has been launched. Given that the NCAA and conferences have shown unwillingness to address this well-known problem which undoubtedly exists at other schools besides Penn State, we at the CFBPA believe that new solutions are needed. We believe that at least part of the solution to this systemic problem is independent medical care ensured by a CFBPA-employed full-time player employee representative. This representative would be an on-the-ground advocate for players on a team to ensure they were getting proper independent medical care including a guaranteed second opinion on an injury from non-university-affiliated medical staff. The rep would be employed by the CFBPA to ensure independence and would likely be drawn from our pool of Alumni Members given their familiarity

¹ <https://www.nata.org/press-release/062619/only-half-collegiate-level-sports-programs-follow-medical-model-care-student>

² For more on the case see: https://www.espn.com/college-football/story/_/id/40242103/penn-state-scott-lynch-doctor-james-franklin-verdict

with the realities of the game and with the realities of what it means to play, and be injured in, college football.

Plank #3: Healthier practices similar to the NFL and Ivy League football enforced by a CFBPA-employed full-time employee representatives.

The CFBPA full-time employee representatives described in plank #2 would also make interventions in the practice environment in college football. The practice environment, particularly the off-season practice environment, needs reigning in. Injury rates, especially concussion injury rates, remain extraordinarily high in off-season practices. Tragically, player deaths are present as well. The well-known death of Jordan McNair in a University of Maryland football practice in May 2018 is likely the first to come to mind, but this was not a one-off event. Between 2000 and 2016, 33 NCAA football players died playing the game. Six of these were caused by traumatic injuries (severe collisions) while the remaining 27 were caused by intense exercise. Overall, 32 of the 33 deaths occurred during the offseason.³

The shocking thing about all of this is it doesn't have to be this way. Practices remain controlled situations where coaches have almost complete authority over the risks taken by players. Additionally, the NFL and Ivy League football have shown a different path. Over the past decade, the NFLPA has bargained for more sane practice environments which have reduced contact and thus reduced injuries. For instance, once study showed that while 72 percent of concussions occur during practices in college football, the number in the NFL is only 7 percent.⁴ Moreover, only one NFL player has died this century in practices. Likewise, the Ivy League has also dialed back contact

³ For more on the practice environments of college football, especially in the off-season, see Jason Stahl, "The Off-Season Black Box," *Jason Stahl's Newsletter*, 9 February 2021, <https://jasonstahl.substack.com/p/the-off-season-black-box>.

⁴ For a summary of the study and a link to its findings, see: Alan Blinder, "[Football Practices Pose More Concussion Risk Than Games, Study Suggests](#)," *New York Times*, 1 February 2021.

in football practice with excellent results. Dartmouth College has been at the forefront of this movement by employing new technology designed to eliminate players on the same team hitting one another entirely in practice.⁵ These NFLPA and Ivy League reforms could be replicated across college football and enforced by the CFBPA rep.

Plank #4: Post-football health protections

At the CFBPA, we have many Alumni Members from across the country—these are players who have played the game in the past and want to support our efforts building an independent players association. I myself am one such member. This platform plank was written with them specifically in mind. Quite simply, there are many, many, many men across the United States who continue to suffer in silence with their playing days injuries to their brain and body. Many lack adequate medical care and have family members who care for them without the necessary resources to do so. We welcome conference administrators sitting down at the bargaining table with CFBPA representatives and figuring out the best way to provide post-football health protections to these suffering ex-athletes. We are open to all solutions to this problem and think particularly that access to university hospitals and clinics, free of charge, needs to be on the table when considering the care that is needed for individuals suffering with injuries from their playing days.

Plank #5: A real off-season

College football players, and college athletes generally, are massively overworked. It is well-known among college athletes that the 20-hour limit of countable “athletically-related activities” in-season and the 8-hour limit out of season are broken as a matter of routine. The NCAA used to

⁵ For more on Dartmouth, see Leana S. Wen, “[Here’s One Way to Make Football Safer](#),” *Washington Post*, 28 November 2022.

have clear PDF charts online which athletes could download to understand the 20/8 limits, but even those have been removed.⁶ Representatives of independent players associations need to be involved in establishing clear work hours limitations that are then enforced by representatives from these associations. Quite simply, the NCAA and the conferences have shown no interest in real enforcement. Any coach who wants to break the limits knows he/she is free to. In addition, college football players, and college athletes generally, need to have an enforced and clearly demarcated off-season to be with their families and friends. When we attempted to organize our first CFBPA chapter at Penn State University in July 2022, one of our members there told us that the off season was effectively whittled down to just two weeks. This is unacceptable.

Plank #6: A percentage of big money media rights revenue contracts for the players whose name, image and likeness are used in that media

Media rights contracts for Power Four football conferences and the College Football Playoff Championship (CFP) have exploded in recent years and will continue to do so in the future. In the coming years, FBS football – particularly at the Power Four level – will be awash in many billions more of new dollars. The players that generate this wealth deserve to share in it. Thankfully, the NCAA, the conference and the member institutions have finally dropped their long-standing resistance to revenue sharing through the antitrust settlement in the *House*, *Hubbard* and *Carter* cases. Should the settlement for these cases receive final approval this April, revenue sharing—the vast majority of which will go to the college football players who generate this wealth—will begin in July of this year. Even if the settlement is not granted final approval, it is still obvious that schools will

⁶ The charts used to be available in a link at this page, but the link is now dead:
<https://www.ncaa.org/sports/2013/11/19/division-i-20-8-hour-rule-materials.aspx>.

begin revenue sharing revenue anyways. Schools are having athletes sign revenue sharing agreements and are prepared to begin doing so whatever the outcome of final approval. This is all welcome.

As with other athlete advocates, we are worried that the settlement was negotiated without the direct input of college football players through a players association as is the case in other professional sports. Thus, the cap that was negotiated on revenue sharing—as well as other elements of the settlement—are open to further legal challenges of the type that have plagued the NCAA and its member institutions. While the CFBPA has issued no such legal challenges itself, and would very likely not do so in the future, actual negotiations with college football players collectively is what is so clearly needed to create a more sustainable model for college athletics. Thankfully, the terms of the settlement provide for a new framework to be collectively negotiated with college athletes through their players associations in the future. Such a model would be protected from legal challenges and create the sustainable solution needed by all. Collective bargaining with college football players is the clear way forward. It is a tried and tested solution for professional sports like college football. We extend a hand to anyone who wishes to partner on the implementation of such a future.