

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS

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ON

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SPORTS AGENT RESPONSIBILITY AND TRUST ACT

THURSDAY, MAY 15, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. The Committee will come to order. We are gathered here today for a hearing on H.R. 361, the "Sports Agent Responsibility and Trust Act." I would find it hard to believe that anyone in this room today has not been moved in some way by athletics in their lives, whether it is eagerly awaiting the tip-off of game seven of the NBA finals, gathering together with friends and family in anticipation of the kickoff of the Super Bowl, or cheering the likes of Mark McGwire and Barry Bonds in their quest to set home run history. I suspect everybody in this room has done all those things and more.

Sports touches all of us. It is a unique form of entertainment, athletic appreciation, and geographic pride. We sit in front of our televisions, we make trips to the stadiums, we even approach those we may not know very well with the comfortable oft-used phrase: "Did you catch the game last night?" But there is a business and personal side that can often be not quite as entertaining, usually with very real and sometimes sad results.

The multi-million dollar value of professional athletes' salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of questionable ethical practices by some sports agents more concerned with lining their pockets than the welfare of those they are supposed to represent. These people are willing to break the rules in order to sign promising student athletes to representational contracts. They are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the agent will risk little consequence in comparison to the athlete or the school.

Motivated largely by financial gain, agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. The reality that a college athlete will succeed professionally is highly speculative. It has been estimated that an NCAA athlete has no more than a 1 percent chance of making a professional team even in a backup

role. These agents or their cohorts, often known as runners, will use tactics, including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence him or her, unrealistic promises, and even pressuring the athlete through intimidation and threats. In some cases, these agents have made secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the violation of collegiate rules, thus jeopardizing the student's competitive eligibility. These acts go unpunished due to disparate, ineffective or, in some cases, a complete absence of State laws.

A student athlete entering into an oral or written agency contract generally forfeits collegiate eligibility. The college or university may be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact on the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenues.

Currently, there is no Federal law that directly addresses the actions of these agents, although a majority of the States do regulate in varying degrees athlete, agents, and/or their conduct. Most recently, the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete's Agent Act addressing the conduct, practices, and registration of athlete agents. H.R. 361 will provide remedies for student athletes and the educational institutions, particularly in those States with no existing law addressing athlete-agent conduct.

I appreciate the fact that we have our Ranking Member Mr. Watt here with us today, and I am assured that many of our colleagues on this Subcommittee will be here before we finish this hearing.

It is my pleasure to welcome those who are with us today to testify regarding the subject matter of today's hearing. Each brings a unique perspective and a wealth of knowledge to this body.

As Dean of the Tennessee delegation, Congressman Bart Gordon is currently serving his tenth term in Congress. Congressman Gordon serves on the House Energy and Commerce Committee and on the Science Committee, where he is the second Ranking Democrat, is the Ranking on the Subcommittee on Space and Aeronautics. He also serves on two Subcommittees in Energy and Commerce, Health and Telecommunications and the Internet.

Educated in Rutherford County Public Schools, Congressman Gordon graduated with honors from Middle Tennessee State University in 1971. He served in the Army Reserves from 1971 to 1972 and received an honorable discharge in 1972. Gordon went on to receive his law degree from the University of Tennessee School of Law in Knoxville. The Murfreesboro lawmaker is married to Leslie Peyton Gordon, and the two have a daughter, Peyton Margaret Gordon.

As author of H.R. 361, we appreciate his presence and the testimony to be offered today.

Mr. Osborne became a Member of the United States House of Representatives on January 3, 2001. Congressman Tom Osborne

sits on the Committees on Agriculture, Education and the Workforce, and Resources. From 1972 until 1997, Representative Osborne served as the head football coach of the University of Nebraska Cornhuskers. Representative Osborne retired as the most winning active football coach in the NCAA Division 1-A. Prior to retiring, Congressman Osborne led the Huskers to three national championships in 1994, 1995, and 1997, thereby becoming a household name. Congressman Osborne and Mrs. Osborne have three children, Mike Osborne, Ann Wilke, and Susie Dobbs, as well as four grandchildren.

The author of several books, including *More than Winning* and *Faith in the Game*, Congressman Osborne graduated with a B.A. in history from Hastings College in 1959. Following graduation, he played three seasons in the National Football League. He earned an M.A. in educational psychology from the University of Nebraska, Lincoln, in 1963, and a doctorate in educational psychology from the University of Nebraska-Lincoln in 1975.

Congressman Osborne has a concurrent markup going on with this hearing, and so we are going to ask him to testify first and then move to Congressman Gordon. And then we will hear from Scott Boras, who is the owner and president of Scott Boras Corporation. Among his clients are such superstars and potential Hall of Famers as Greg Maddox, Kevin Brown, Barry Bonds, Alex Rodriguez, and Kevin Millwood, who just last week pitched a successful no-hitter for the first time in his career.

Mr. Boras has become a leader in his field, negotiating the first 50 million, 100 million, and \$200 million contracts in major league baseball history. Would you like to come into politics, sir? Just kidding. As well as negotiating the largest athlete contract in the history of professional sports. In 2002, the *Sporting News* recognized Mr. Boras as one of the 100 most powerful people in sports and was the most highly ranked athlete representative in all sports.

Mr. Boras played with the St. Louis Cardinals and Chicago Cubs organizations in the mid-1970's, after which he returned to law school at the University of the Pacific McGeorge School of Law. The Scott Boras firm provides legal counseling to amateur athletes. In addition, the agency also provides legal athlete representation and contract negotiations services for numerous professional baseball players. Mr. Boras is also the owner of Impact Sports Marketing and Agency, which secures and negotiates contracts for endorsements, personal appearances, equipment, and baseball cards.

In addition, William Saum, Director of Agent, Gambling, and Amateur Activities for the National Collegiate Athletic Association will be appearing through written testimony only.

Again, thank you for coming to today's hearing, and Mr. Osborne, you are recognized for 5 minutes.

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

Mr. OSBORNE. Thank you, Mr. Chairman, Ranking Member Watt, Members of the Committee, and also Congressman Gordon and Scott Boras. I am really pleased to have a chance to be able to speak to you about H.R. 361 today.

I would like to recognize the fact that Congressman Gordon has worked on this for a long time, and so I have joined him recently in the last couple of years and appreciate his leadership on this issue. My comments are going to be directed primarily to the world of football, because that is what I understood best. There is certainly a lot of agents in other sports.

I would say the reasons that we need this legislation are several, and the first that I would mention is that the financial incentives for agents and for athletes have become huge. If you are a first-round draft pick in the National Football League, the average amount of money, bonus and salary, that you could expect to receive in the first year would be \$8 to \$9 million. So the going rate for many agents is about 3 percent, so that is \$250,000 if you represent a high draft pick, and the amount of time required is not huge. You could represent theoretically eight or nine or 10 first-round picks, which would add up to some fairly large money. So we think that the money is big.

Secondly, it is important to realize that the National Football League certifies each year about 1,200 agents. These agents are required to be certified in order to represent a player who has already made the National Football League. So these would be players going in their second, third, fourth, fifth year. If you are coming out of college, you don't need to be certified by anyone. All you have to do is say you are an agent, and if you say you are one, you are one. You have no qualifications at all.

So we have 1,200 agents certified by the NFL, probably another 3 or 400 that aren't certified. And the difficulty is that there are only about 400 of those agents who represent anybody. So roughly three-fourths of the agents out there don't represent anybody in the National Football League. So there is tremendous competition to have access to an athlete.

So if you are not very competent and if you have no background or any expertise, what you often do is go after an undergraduate player, because the reputable agents normally will not do that.

So they will go to great lengths. And so if you check with your players, you will find out most of them have unlisted numbers because the agents start badgering them. They will go see them in the dorm even as early as their freshmen and sophomore years. So this makes it very difficult as far as education is concerned.

Of course, there are a great many illegal inducements that are offered. Sometimes it is money, sometimes it is a car, sometimes it is clothes, sometimes it is trips, and occasionally it even gets into drugs and women and the whole nine yards. So it is a fairly seamy business. It is not very attractive.

Oftimes what these people will do, with an undergraduate particularly, is to offer an agency contract which obligates the player, and many times they will couch it in terms as though we will post date the contract, it really doesn't mean anything, it is not going to affect your eligibility. But when you sign that contract, even when it is post dated, your eligibility is gone. If anybody finds out about it, if the NCAA finds out about it, it is gone. So that is one thing that they often do.

Probably the most common issue that I have run into that is really misleading is that they will promise a player that he will be

a higher draft pick. So you called in the National Football League, and they have a Committee that will tell you how high a player is going to be drafted. And they say, well, so and so is going to be in the third round. And the agent will invariably say, well, that is a lot of hogwash, they are just trying to keep you in school. I will make you a first-round pick if you will come with me, and I am going to get you a personal trainer, I am going to get you a nutritionist. We are going to take you to California and we are going to have you prepared, and you are going to go up in that draft because you are going to go and test so well at the combine that you are going to be a first-round pick.

Well, actually, nobody can make a player better in the draft. You know, that is a false promise. But it is what a lot of players want to hear, so obviously they buy into it. And a lot of them will invariably leave school. They may have 3 hours left to graduate. They will bail out, and they will go follow some agent somewhere. And of course that is a problem.

Also, we find that many of these agents will promise to handle the contract, they will handle taxes, they will handle endorsements, and also they will ask for power of attorney. And so we have some cases of people who are 35 years old all of a sudden find that their career is over and they have no money. One-half of the players leaving the National Football League have no money. Sometimes it is their own fault, sometimes it is the problem with the individual agents.

I am probably going to have to hustle here. Let me just give you three examples of some cases that impacted us very greatly. I went out to—we are getting ready to go to the Orange Bowl one night, and I can't find my starting quarterback. I find him sitting between two agents who have got him over in the corner of a hotel lobby, and we are 2 hours from kickoff. And these guys are hammering him. And of course none of these guys have any credentials at all.

Another guy we had signed in the 1980's, and buried in his contract was 13 percent. Normally it would be 2 or 3 percent. So he had to pay 13 percent in his contract. Fortunately, that particular agent was from California that did have some laws governing agents, and as a result we were able to prosecute and get \$300,000 back for that individual.

The last thing I will mention very quickly. We had a player who took a trip to California and we began to hear about it. It didn't sound good. He was talking about meeting Patty LaBelle and somebody else who was a TV star. And so I—there was a guy named Lloyd Bloom, whose name came up. And I called Lloyd, and I said, "Look, is this guy involved with you?" And Lloyd said, "Oh, no. No. We would never do anything to jeopardize his eligibility." Well, it turned out that we were sure that he had taken a trip, it was unauthorized, and so we declared him ineligible. He had one more year, and he probably would have been a first-round draft pick. So this guy lost his eligibility, and eventually Lloyd Bloom and Norby Walters went to prison, as did Tank Black and some others.

But, anyway, those are some of the examples of things that happen.

So, anyway, I know Congressman Gordon can fill you in on the details. But we think this is absolutely necessary that we have this type of legislation, and we appreciate your consideration of the legislation.

[The prepared statement of Mr. Osborne follows:]

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

Thank you Chairman Cannon, Ranking Member Watt, and Members of the Committee. I appreciate the opportunity to come and speak with you today about legislation that Representative Bart Gordon and I have introduced. As you may know, I feel strongly about H.R. 361, the Sports Agent Responsibility and Trust Act, or SPARTA, and am thankful for the committee's consideration of this important legislation.

While the notorious cases of Norby Walters, Lloyd Bloom and Tank Black have shed some light on deceptive sports agents, we still allow unethical sports agents to prey upon hundreds of college athletes on campuses across this country each year. During my 36 years as a football coach, I was deeply concerned by overly aggressive, unethical sports agents who knowingly 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 experienced 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 often engage in unethical behavior that undermines the integrity of college sports.

When sports agents engage in this type of impermissible behavior, their actions undermine the integrity of college sports and threaten the athlete's college experience. By accepting anything of value from an agent, a student-athlete loses his eligibility and scholarship, the school faces sanctions, the reputation of the institution is tarnished, and the sports agent walks away with absolutely no consequences for his actions.

If a sports agent provides inducements to a student-athlete and therefore breaks NCAA rules, the student-athlete loses his eligibility to compete in collegiate competitions, and often times loses his scholarship. 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 student-athletes 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.

In the 1980s, one of my players 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 indicted on a number of felonies, leading them to go as far as threatening 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, the potential loss of post-season play and 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.

As of April 25, 2003, seventeen states in our country, including my home state of Nebraska, had 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. CANNON. Thank you, Mr. Osborne. I think that we don't have the pressure of a vote; we have about 13 minutes left. I am inclined, Mr. Gordon, if you would like to go ahead and testify, then we expect, Mr. Osborne, that you will rejoin us. You are certainly welcome, Bart, to come back if you would like. And Mr. Boras, if you wouldn't mind, I think this is going to be a quick vote, and we can come back. So why don't you go ahead with your 5 minutes, Mr. Gordon?

STATEMENT OF THE HONORABLE BART GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. GORDON. Thank you, Chairman Cannon, Ranking Member Watt, and Members of the Committee. And also many thanks to my friend Tom Osborne for bringing his expertise and help into this bill.

Chairman Cannon, you basically gave my opening statement in your opening statement, so I will just ask that my statement be made a part of the record, and I will try to be mercifully brief since I think that we have something of a consensus here.

I first became interested in this issue really in 1996, when a friend of mine at home who was a former NFL as well as college coach started telling me about the real problems that they are having, and with the escalation in money since that time they have

only gotten worse and younger in that this is into the high schools, and even with some gymnasts even younger than that.

Mr. Osborne went through a lot of the horror stories, so I won't go into that much more other than to say that the real problem now is not as much the agents as their runners. I mean, they go so far as to have walk-ons go on the football teams to get to know some of the star players so they then can get to know them better and entice them in some way later on. And what we are trying to do here is stop really a win situation and a lose for everybody else but the agents. Right now, if some kid takes a gold chain, a suit of clothes, a trip or something by an agent or by one of their runners, then that athlete loses his scholarship, loses his eligibility. The school is penalized even though they have done everything they can to try to stop it. And the kid, since he loses his scholarship, he is out. The agent is the winner. Nothing happens to him. But now the kid can't play ball anymore, and so he winds up going ahead and signing. He or she.

And what we are trying to do is make those agents obviously more accountable. And we want to try to do this by not setting up a Federal, you know, police force for athletics, but rather we are going to be deputizing the State Attorney Generals, allowing them to use current unfair and deceptive practices through the FTC, and this way we can really allow the States to move forward.

Now, some States already have legislation, but it is not uniform. You have a situation where North Carolina doesn't have anything, so you can have a kid that could be playing at the University of Tennessee where we do have a State law but they are from North Carolina, so when you go down in North Carolina they get you, or if they go up and play Boston College, there is not a law in Massachusetts, they can get you there.

So what we do is make it an unfair and deceptive practice by a sports agent or a runner giving false or misleading information or promises to an athlete, providing anything of value to a student or anyone associated with those students, fail to disclose in writing to students that they can lose their eligibility to play college sports if they sign with an agent. Also, to pre-date or post-date a contract. Additionally, they are required to notify the school if a kid signs, so that the school then won't mistakenly play him in a game somewhere and wind up being penalized.

As I say, this is about as consensus as you can get. This bill has been endorsed by the NCAA, the National Association of Collegiate Directors of Athletics, the Black Coaches Association, the National Association of Basketball Coaches, the American Football Coaches Association, the National Junior College Athletic Association, the Knight Foundation Commissioner on Intercollegiate Activities, and a growing list of coaches, Tubby Smith to Joe Paterno. So this really has been vetted and I think presents a good approach.

It also does not hinder any State that wants to take their legislation further. These are not criminal penalties; these are civil penalties. If the State wants to do more, they can.

Also, I want to thank my staff, Dana Lichtenberg, for all the time she has put in on this by building these coalitions. You have done a good job, Dana. Thank you for your help.

And I will yield back my time.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF THE HONORABLE BART GORDON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE

Thank you Chairman Cannon, Ranking Member Watt and Members of the Committee. I appreciate the opportunity to come and speak with you today about H.R. 361, the Sports Agent Responsibility and Trust Act.

I have been working on the problem of predatory sports agents since 1996 when a friend and constituent of mine, Coach Ken Shipp, came to see me about the need for a uniform federal law to protect kids from unscrupulous sports agents.

The agent problem has only grown since 1996. Agents hoping to cash in on the next NFL or NBA star will stop at nothing to convince a student-athlete with even a remote chance of playing professional sports to drop out of school and go pro early. Agents offer athletes cash, cars and clothing. They pay runners to curry favor with star athletes. They secretly pay off their friends and offer jobs to their family members who are in a position to influence the athlete. Sometimes physical threats are involved.

Agents know it's against NCAA rules for kids to sign with an agent and still compete in college sports. It's also against NCAA rules and many state laws for them to bribe a student-athlete. Yet agents, would-be agents and their runners continue to aggressively pursue student-athletes with little regard for their future or the school's athletic program.

That's because unscrupulous agents know they face little or no consequences under most state laws for enticing student-athletes with lies and gifts, even though these actions may cost student-athletes their scholarships, and may result in significant fines and penalties for the schools. If these practices are illegal in the student's home state, it is easy enough to contact student-athletes when they are in a state with no sports agent law.

Efforts are underway on the state level to create a comprehensive uniform licensing process for sports agents. However, the Uniform Athlete Agent Act (UAAA) has been passed in only 21 states.

Rep. Osborne and I introduced H.R. 361 to address this interstate problem head on. It is intended to work hand in hand with state law by creating a basic uniform federal standard for sports agent conduct vis a vis student-athletes without preempting stronger state laws. This will stop sports agents from using the 29 states with weak or no sports agent laws as safe havens to prey on student-athletes.

SPARTA would make it an unfair and deceptive business practice for a sports agent to give false or misleading information or make false or misleading promises or representations; provide anything of value to students or anyone associated with these students; fail to disclose in writing to students that they may lose their eligibility to play college sports if they sign an agency contract; or predate or postdate contracts.

In addition, the bill requires sports agents to immediately notify a student-athlete's school in writing when an athlete agrees to an agency contract so the athlete is not unknowingly played in a game, and subjecting the school to sanctions and disqualifications.

The bill deputizes state attorneys general to prosecute violators in federal district court on behalf of the FTC. In addition, schools would be given the right to sue to recoup damages caused by the illegal recruiting activities of a sports agent.

The pressures on student-athletes in college are tremendous. I believe we have a responsibility to educate our student-athletes and protect them from unscrupulous sports agents whose bottom line is their own financial gain. This legislation will send a loud signal to "rotten apple" agents that they will be held accountable for unethical recruiting practices.

SPARTA is supported by the NCAA, National Association of Collegiate Directors of Athletics, Black Coaches Association, National Association of Basketball Coaches, American Football Coaches Association, National Junior College Athletic Association, the Knight Foundation Commission on Intercollegiate Athletics, and a growing list of coaches including Tubby Smith of the University of Kentucky, Joe Paterno of Penn State University and R.C. Slocum of Texas A&M.

Thank you again Chairman Cannon, Ranking Member Watt, and Members of the Committee for the opportunity to speak to you today about this very important issue.

Mr. CANNON. Thank you, Mr. Gordon. The Chair would now like to recognize that Mr. Delahunt has joined us from Massachusetts, Mr. Coble from North Carolina, who has another hearing or a

markup at the same time, Mr. Flake from Arizona, Mr. Carter from Texas, Mr. Chabot from Ohio.

And Mr. Boras, if you wouldn't mind, you are sort of an attractive witness, and I think if we leave you until after the vote, we will get everybody back so we get this marked up and move on. And with that, the Chair will recess for a 15-minute period to handle this vote.

Let me remind all Members of the Committee we need you back here for the markup. This markup should not take long, so please.

[Recess.]

Mr. CANNON. We are going to call this hearing back to order. Thank you. We do expect several Members of the Committee to join us. But in the meantime, Mr. Boras, if you would like to give us your testimony, we are anxious to hear it.

STATEMENT OF SCOTT BORAS, OWNER/PRESIDENT OF THE SCOTT BORAS CORPORATION

Mr. BORAS. Thank you, Chairman Cannon and Ranking Member Watt and Members of the Committee. This is something that is very close to heart for me because of my personal experiences being a professional athlete and being recruited to a college and being really a student athlete that has gone through the system and watching how the system has changed from when I processed through it as an athlete to the current system that we see in the 1990's and 2000.

The field of sports agency I think is one that has resulted in a different field, depending on the sports. In football and basketball you have identifiable named players that are coming out of primarily college that are going to be of immediate benefit to professional franchises. As a result of that, you have an immediate benefit that then would result to the sports agents. A sports agency by its nature is that the fee is only gained when the student athlete becomes a professional. Sports teams are only improved if they gain under contract the athlete's skills.

So when we have the relationship of university, sports agent, and professional team, the interplay of the three is something that creates the dynamic of concern. Pro sport teams I noticed have been undressed in the process of what we have begun to undertake, which I think primarily is the concern for the student athlete; is that we really want to make sure that the student athlete makes an informed decision, that the student athlete has the appropriate information to enter professional sports if he so chooses knowing the risk. Professional sports teams—and I know of none in any sport—ever publish or provide to universities or to student athletes the risk of professional sport. How many players in any sport spend 6 years or 3 years? What is the average earned income? And none of those teams provide that information to anyone. It is an undisclosed fact, it is a hidden risk. And it is something that, if that information was provided and if there was cooperation from the professional sports teams, I think that the university officials, I think the sports agents and their contacts to suggest that the overpromotion of the athlete, to suggest that will be a great major league player or professional football player or basketball player, once those numbers are revealed by the league and the universities

have them, then we can begin the information and education process.

The student athlete needs information. The NCAA rules state that an athlete cannot have a sports agent but he is allowed to have legal counsel. One of my concerns—and I support this bill greatly—the sports agency industry has absolutely no methods—we have heard from the panel and Congressman Osborne and Congressman Gordon that there is no criteria, there is no qualifications. So where do we go to make sure the student athlete is aware of the needed qualifications and what type of system do we mandate?

In a bill, I think that when universities are given the access to sanction and damages, certainly there should be requirements that—the universities also benefit from student athletes, and there should be requirements by the universities to provide information to these student athletes. Panels. For example, when I went to Georgia Tech to see Kevin Brown, Georgia Tech University had an agent review committee, and they may have interviewed, I don't know, 70, 80 agents and examined their qualifications, their experience. And so Kevin Brown got an opportunity to—he was not interfaced with agents directly. The university had a system by which there was a review panel and they were able to really provide a scrutiny so that the athlete was protected, and, through that process, learned of the qualifications needed to be properly advised in a professional career.

Many universities have—while they certainly, I think, want to have great athletic programs, and go to great lengths to recruit athletes—and I think we have heard a lot about how sports agents recruit athletes. Let us not forget how universities recruit athletes. And part and parcel of that process, and if we want to really devise a bill that considers what the needs of the student athlete are, certainly the university is an educational institution and it can do a great job of having classes, panels, methods of getting information to the athletes of the knowledge of this bill itself and of the knowledge of who out there in the world is qualified to provide information to the student athlete.

Pro sport teams, colleges, high schools open their arms to them. They have access to the campuses, they have the ability to talk to the student athletes, they have the ability to reach out to them. This is a level of recruitment. When we hear about what agents do, I want to point out that if you become a professional athlete, you understand that everyone wants your services and your skills. And pro sport teams are trying to acquire you at the lowest cost. Consequently, pro sport teams do not want athletes to attend college. It provides a leverage point for them. It provides something where that athlete is not under control by that team. It also provides the fact that the athlete may improve in college, and therefore increase the acquisition cost by the professional team.

The bill should also include some mechanism by the universities where pro sport teams are required to report contact to the student athlete. Because remember, the student athlete's belief about their success in professional sports doesn't alone come from sport agents; it comes from the scouts and people in professional sports who are trying to lure that athlete away from college sometimes earlier

than graduation to pursue a professional sports career, because what you pay a rookie is a lot less than what you pay a seasoned veteran. And, consequently, if you can get a great athlete as a rookie, it lowers the cost of operation to the professional sports team.

So in looking at a bill—and while this is a tremendous first step, I think that we have to really consider the dynamic and prioritize that the student athlete needs to be protected. We are talking about 18, 19, 20-year-old young men who are walking into a system. You are given a scholarship, you go to college, and all of a sudden the pro world is opened up to you, and now where do I go. If education is the measurement of the university, and we know that a career development is part of the university program, when you invite great athletes to your campus, you should also have as a part of the athletic department programs which certify, qualify representatives and give the athlete knowledge of his future career, which may be in pro sports.

Secondarily—

Mr. CANNON. Mr. Boras.

Mr. BORAS. Yes.

Mr. CANNON. Your time has expired. If you could wrap up fairly quickly, we will then go to questioning.

Mr. BORAS. I will. Thank you, Mr. Cannon. Nothing new about a sports agent talking too much.

Finally, I think the bill is a wonderful first step. We are finally putting some credence to the process. The bill creates a cause of action for the university. It allows the recovery of damages. I think it should be required that allocation of those damages to the university should at minimum provide scholarship to the student athlete from which the damages arose.

Secondarily, they should consider a private right of action for the student athlete in the bill itself in addition to the private right of action for the university.

Thirdly, I think that we should provide something in the bill that requires the universities who benefit from the sanctioning power and the damage action to also control the conduct of professional teams.

Thank you.

[The prepared statement of Mr. Boras follows:]

PREPARED STATEMENT OF SCOTT BORAS

To Mr. Chairman Cannon, Ranking Member Watt and members of the Committee:

I am a former college and professional baseball player. After finishing my pro career, I attended law school. During that time, my former professional teammates approached me to serve as their baseball attorney. My law practice grew and I began providing legal advice to high school and amateur baseball players.

In my 20 years as a baseball attorney, my company has strongly encouraged 99 percent of our athletes—including potential first-round draft picks—to attend college. Our research provided to colleges and universities shows that less than 1 percent of the student-athletes go on to have a 6-year pro career. Our college recommendation is unpopular with professional baseball franchises that want the student-athletes to turn pro.

The unfortunate part of sports agency is that because agents' fees are gained only when a student-athlete signs a professional contract, many agents encourage the athlete to skip college and pursue a pro career. Thus, because we promote college, we concur that the Sports Agent Responsibility and Trust Act is needed to regulate agents who are following their own interests as opposed to the student-athletes.

Although H.R. 361 creates a cause of action and remedy for the university, Federal Trade Commission remedy and state attorney general remedy, paramount attention should be directed to providing relief for the student-athlete. The bill should be amended to create a cause of action and remedy for student-athletes if agents damage them.

Student-athletes and their families rarely understand the complexity of the NCAA and professional sports rules. In most instances, athletes are only left with the information that is given to them by a university or outside counsel. The decision whether to forgo a college scholarship and pursue a professional career requires sophisticated analysis and legal counsel. Any bill drafted to insure attendance and completion of a college education should promote the use of legal counsel to assist the student-athlete in making a fully informed decision. In its present state, the bill does not distinguish between a sports agent whose relationship has one intended direction for the student-athlete and that of an attorney, who is mandated to serve the best interest of the student-athlete.

While H.R. 361 is the first step to protect student-athletes from inappropriate conduct by sports agents, the conduct of professional sports teams also needs to be monitored. Team representatives are invited to visit high school and college campuses. They draft and sign the players. And yet, the teams are not accountable.

This bill should include a provision requiring pro sports franchises to report to the NCAA their meetings and discussions with student-athletes, and which agents they've had contact with. The conduct of a pro sports franchise should be subject to the same scrutiny as that of a sports agent.

The bill should include a meaningful remedy for a student-athlete who is damaged by inappropriate agent conduct. The bill should require agents to hold up to a million dollar bond or proof of net worth in that amount. If the agent relies on net worth, then any damage award against the agent should be a non-dischargeable debt.

Additionally, the bill should authorize the athlete to recover up to one million dollars in damages from an agent whose conduct results in termination of the athlete's collegiate eligibility or loss of scholarship.

If the athlete has a significant remedy, the agent would be unable to count on the athlete's secrecy in the agent's wrongdoing. This remedy would be an effective deterrent to unauthorized oral and written agreements between the student-athlete and agent.

To conclude, student-athletes who have the ability to perform at the college or professional level have decisions and opportunities that most students do not face upon entering college. This bill represents a major step in regulating how academic institutions, sports franchises, and sports agents interact with the student-athlete. Currently, the student-athlete suffers due to the absence of a uniform state or federal regulation that oversees the interaction of these three entities. This bill will help in the resolution and creation of a responsible approach to the advancement of our coveted student-athletes through the academic and professional system.

[The prepared statement of Mr. Saum follows:]

PREPARED STATEMENT OF WILLIAM S. SAUM

I appreciate the opportunity to provide written comments on behalf of the National Collegiate Athletic Association (NCAA) and to express our support for H.R. 361, 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 21 jurisdictions, and 12 additional jurisdictions have introduced the Act into their state legislatures. 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. CANNON. Thank you, Mr. Boras.

Mr. Watt, do you have questions?

Mr. WATT. Thank you, Mr. Chairman. I think I will be brief. I hope I will.

I am a cosponsor of this legislation. But it is always easier to be a cosponsor of a piece of legislation that has kind of high-powered, high-minded sounding purposes than it is to take the consideration of that legislation seriously and do the job that we are here to do. And one of the concerns I had as a Member of the Judiciary Committee I think I have satisfied myself about, but I will give Representative Gordon a chance to talk about it just a little bit. And that is the concern that there is a Federal interest here that we are furthering. And the way you seem to have done that is you have defined some conduct that seems to be unfair, and you have made it in effect an unfair and deceptive trade practice under the Federal Trade Commission Act. That presumes that there is some overriding Federal purpose here that we are trying to achieve. And just talk to me about that aspect of it a little bit.

Mr. GORDON. Well, I think it is certainly again unfair and deceptive to approach these young athletes with bad information as it would be to try to sell an automobile or anything else. So I think you have the same type of Federal interest.

This was what you might call sort of the lowest impact type of approach. We wanted to try to do this in a way where we weren't setting up, again, a Federal sports police, trying to use existing vehicles to accomplish our goal, and this seemed to be the easiest way to do it.

Mr. WATT. Is there a notice that you have and a provision for an action by the Commission and an action by States and Attorney Generals and ultimately an action by educational institutions, which I want to ask you a question about also. But I presume under the unfair and deceptive trade practices statute of the Federal Trade Commission Act, there is also a private right of action. Is there not, or is there?

Mr. GORDON. I would not think so. No.

Mr. WATT. Why wouldn't that be the first recourse that we would be talking about providing?

Mr. GORDON. Well, again, you are talking about—

Mr. WATT. First and foremost, it is the athlete that gets injured. I understand the State's interest, I understand the Commission's interest. I think I understand the educational institution's interest, although I may have some reservations about giving them an independent right of action. But why wouldn't the student athlete and/or his guardian or family be the first in line to have a private right of action?

Mr. GORDON. Well, as a practical matter, you are still dealing with 18, 19, 20-year-olds, many of which are coming from an already fairly desperate economic situation, that probably also doesn't have either experience or a comfort maybe level in the court system, and that it would seem that it would be better to, again, through using your State Attorney Generals they would be more comfortable taking this action. And as a practical matter, what happens here—and I have to take some disagreement in terms of the universities' role. I think the universities have a very big role here, and all the coaches that I have talked to have made it very clear to me that they spend a lot of time trying to inform their athletes about these type of problems. And so you really have got a built-in situation where you have got the universities that are trying to look after the athletes, who then can go to the Attorney General that already has a vehicle to take quick action. And that was sort of the process that we set up, rather than leaving it just to an individual, who wouldn't be familiar and may be even uncomfortable with this type of action.

Mr. WATT. Okay. I guess I have some reservations about is there any cause of action that the individual independently has who gets really taken advantage of by an agent?

Mr. GORDON. You know, potentially through contract law in the individual States you might be able to. And, again, this is somewhat of an umbrella to give uniformity across the country. And individual States, some have criminal penalties and some, you know, go much further than this. So I think the States would be able to do it in that regard.

Mr. WATT. All right. I will yield back in the interest of time.

Mr. GORDON. You know, and I am not sure—you asked a good question and I am sorry I don't have a complete answer; I can get you more. But I am not even sure that we would have jurisdiction to give that personal—

Mr. WATT. Well, an individual, unfair and deceptive trade practice, I mean, the harm is actually to the individual in addition to the public harm that we assume goes with an unfair and deceptive trade practice. The most direct harm is to the individual. And if there is a Federal interest in doing it on the global level, I would think there would be a Federal interest in giving some cause of action to the individual student athlete who has the most direct injury, much more direct than either the Commission, the Attorney General, who is supposed to protect the public's interest through the State, or the university's interest, all of whom have an interest. But I guess I assume that the individual had a private cause of action under the Unfair and Deceptive Trade Practices Act, and apparently that is not the case.

So we will take a closer look at that. I am not saying that that is necessarily a good idea. I kind of started with the assumption that there was a private cause of action, and that was—I am glad we clarified it at least.

Mr. GORDON. That is why we have hearings, to bring in more thought and look at these issues a different way. That was something that really didn't occur earlier.

Mr. WATT. I yield back.

Mr. CANNON. Thank you, Mr. Watt. Inasmuch as we have a markup left, does anyone to my right have a burning desire to ask questions?

Mr. GORDON. I would point out, I see that my neighbor Mrs. Blackburn is here. I guess you were probably your first term in the Tennessee State Senate when the Tennessee equivalent of this bill came forward.

Mrs. BLACKBURN. I think that you are correct, and I think that that was handled by—

Mr. GORDON. Mr. Womack.

Mrs. BLACKBURN. Mr. Womack. Thank you. I was struggling for his name there. But yes, he always did a good job with the higher education and secondary education issues. And thank you for your good work on this.

Mr. CANNON. Mr. Feeney, would you like to—

Mr. FEENEY. Yes, Mr. Chairman, just briefly. A couple questions. And it occurs to me that Mr. Watt from North Carolina is maybe correct, that the student has an interest here. And perhaps, Mr. Watt, what we may want to do is take a look at putting a provision in the bill at some point perhaps allowing the athlete to void the contract within a period of time, say 2 or 3 years, and require the agent to disgorge him or herself of any profits that were gained from the illicit activity. At a minimum, that would allow the athlete to protect him or herself.

Mr. WATT. If the gentleman would yield. I am not sure that would go as far as I would want to go. If he still has lost his eligibility, he has lost—you know, he has been damaged far in excess

of just the ability to void a contract, I think. So, but we can talk about that further.

Mr. FEENEY. At a minimum, that might be something we could move toward.

But I guess I would ask Mr. Boras, because student athletes have other legal needs at times other than a formal agent to negotiate a percentage clause of a deal, and I guess I would ask, how do we delineate—you have used the term “agency contract.” but, for example, supposing a student athlete is anticipating some new-found wealth or may be already wealthy and is talking to attorneys about estate planning or insurance needs, supposing that I happen to be fortunate enough to be dating the best female collegiate golfer in school and she decides that she wants to, before we get married, enter into a prenuptial contract, how are we going to make sure that we are getting and precluding the activity that we want to preclude without making it difficult for attorneys to render competent advice and counsel to student athletes?

Mr. BORAS. I think one of the reasons that we are here today and discussing this bill is the very delineation between licensed, qualified and, maybe more importantly, bonded and held to fiduciary responsibilities by State and, you know, National Bar Association rules. The NCAA has drafted rules. If you look at them, the overriding view of college coaches and of the athletes themselves is that someone who is an expert in a sport field, who also is an attorney, however you want to label him, he is an agent. So don't—stay completely away.

I come in contact with the big issue of high school athletes who are drafted annually by major league baseball teams. The percentage of high school athletes that make it to the major leagues for 6 years is .0025 percent. The teams draft them because every now and then they get a superstar that becomes an Alex Rodriguez. But the reality of it is, is that this is bad medicine. Now, we have told teams this; we show them the data, we give the data to the families. The scouts of the teams go to the families and say, don't talk to them, they are agents, you are going to lose your eligibility. So, whenever these bills are drafted—and the first thing that I saw was, we need to clearly delineate and distinguish between use of an attorney. And I must tell you that an athlete—negotiating with a major, with a professional team is something that an athlete definitely needs economic and legal counsel on, without a doubt. And he needs legal counsel on a number of other areas. But the confusion that pro teams promote is—and sometimes colleges promote is that use of legal counsel is akin to an agent, it is illegal, it will get you in trouble. And I think responsible drafting and further education of coaches and universities, I think will help to allow the student athlete to know what directions he can go, with the fine line being an attorney who is an agent is acting as an attorney provided he doesn't do the one thing, and that is negotiate with a professional franchise.

Mr. FEENEY. Thank you.

I yield back, Mr. Chairman.

Mr. CANNON. Thank you, Mr. Feeney.

I want to thank the panel. We appreciate the testimony. It has been very clear, very concise, and we appreciate—and particularly,

Mr. Boras, your comments on what we might do in further legislation with colleges. We will view that as it comes up.

Again, thank you very much for being here now. You are free to depart if you wish. We are going to go forward and mark up this bill.

So thank you very much.

[Whereupon, at 2 p.m., the Subcommittee was adjourned.]

