National Urban League

Empowering Communities. Changing Lives. For an Equitable Future.

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June 15, 2026

Governor Charlie Baker
President
NCAA
700 W. Washington St.
Indianapolis, IN 46204

Dear Governor Baker:

As President & CEO of the National Urban League, I write to express my profound concerns regarding the NCAA's (Association) documented comparison of college athletes to prison labor under the Thirteenth Amendment's "slavery exception." This is unacceptable!

The NCAA's use of this legal strategy is emblematic of the Association's longstanding efforts to protect its institutional interests over the dignity and rights of college athletes, Black athletes, in particular.

Given the seriousness of my concerns, I welcome the opportunity to meet to discuss how the NCAA can more effectively serve the interests of the college athletes who generate billions of dollars for the Association and make college sports possible.

In the pending *Johnson v. NCAA* case, the NCAA argued that the U.S. Court of Appeals for the Third Circuit should follow the reasoning of *Vanskike v. Peters*, a case holding that incarcerated individuals are not employees because the Thirteenth Amendment's "slavery exception" permits involuntary servitude as a punishment for a crime. Put simply, the NCAA shamelessly relied on a legal doctrine rooted in the Constitution's slavery exception to argue that college athletes should not be classified as employees.

The NCAA's decision to invoke a legal precedent rooted in the constitutional exception for slavery and involuntary servitude, to argue against college athletes receiving basic workplace protections, is deeply troubling. Regardless of the NCAA's intended legal strategy, the comparison itself is offensive, inappropriate, and fundamentally inconsistent with the values of higher education or college sports.

I am in complete agreement with the Third Circuit, which emphatically rejected the NCAA's argument in *Johnson*, stating: "We disagree with [the] comparison of college athletes to prisoners and refuse to equate a prisoner's involuntary servitude, as authorized by the Thirteenth Amendment, to 'the long-standing tradition' of amateurism in college athletics."

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The NCAA's use of the "slavery exception" argument is particularly disturbing given the racial composition of the college athletes who create the overwhelming majority of the billions of dollars the NCAA generates annually.

Black athletes are disproportionately represented in Division I football and men's and women's basketball, yet the NCAA chose to defend its compensation model by citing a precedent that treats labor as belonging to an institution under a constitutional exception created to permit involuntary servitude.

For many Black college athletes, families, alumni, and communities, the use of the "slavery exception" argument cannot be separated from the broader history of racial exploitation in the United States. At a minimum, it reflects a profound lack of judgment. At worst, it reveals an institutional willingness to invoke one of the most morally troubling doctrines in American constitutional law to preserve a system that has historically denied college athletes a meaningful share of the value they create.

The NCAA's position is even more troubling in light of the Supreme Court's unanimous decision in *NCAA v. Alston*. In *Alston*, the Court rejected the NCAA's longstanding compensation restrictions and held that the organization had violated federal antitrust law. Justice Brett Kavanaugh observed that "price-fixing labor is price-fixing labor" and noted that "the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing."

Rather than reflecting on the Court's criticisms, the NCAA continued to compare college athletes to prison labor in an effort to avoid recognizing college athletes as employees. Viewed in this light, the NCAA's advocacy for the *SCORE Act* and now the *Protect College Sports Act* appears less about protecting college sports and more about preserving control over college athletes while limiting their ability to secure meaningful economic and workplace rights.

The National Urban League has become keenly aware of this strategy. Over the last year, we have led a coalition composed of nearly 30 civil rights organizations, college and professional players associations, antitrust groups, lawyers, and labor unions fighting against negative policies impacting college athletes, on Capitol Hill.

Just as important, while the NCAA is actively seeking congressional intervention to overturn the Supreme Court's decision in *Alston*, it has remained notably silent regarding the Court's decision in *Louisiana v. Callais*. This is particularly striking given the concerns raised by the Congressional Black Caucus (CBC) — and the NAACP's *Out of Bounds* campaign — regarding the failure of major Southern institutions to adequately fight on behalf of Black voting rights and Black political representation despite benefiting from the labor and talents of Black college athletes disproportionately affected by these issues.

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The NCAA has shamelessly opposed or sought to weaken legal and policy developments designed to promote fairness and protect the rights of the athletes and communities that have long powered college sports — going so far as arguing that college athletes are not employees based on the Thirteenth Amendment "slavery exception".
The NCAA owes an explanation to college athletes, their families, and the broader public.

I welcome the opportunity to meet with you to discuss these concerns and the steps the NCAA intends to take to rebuild trust and accountability.

Sincerely,

Marc H. Morial
President & Chief Executive Officer
National Urban League

CC: NCAA Board of Governors
Members of Congress
National Urban League Coalition Members