



New Analysis from the National College Players Association

Death Blow to PCSA Enforcement of Athlete Protections: Public Universities' State Sovereign Immunity

Summary

[The Protect College Sports Act \(PCSA\)](#) enforcement system is strikingly one-sided. An athlete can lose eligibility for receiving even \$50 in compensation that violates the bill's protected compensation cap. But if that same athlete is sexually abused and the university covers up the abuse, the bill provides no NCAA penalty against the university for that PCSA violation; and *sovereign immunity* can block the athlete's PCSA damages lawsuit. The PCSA's restrictions on athletes have teeth, but the protections promised to athletes often do not.

That imbalance is especially severe for athletes at public universities. The PCSA contains a gaping sovereign-immunity loophole that strikes a death blow to private damages enforcement of the bill's athlete protections for many athletes at public universities that qualify as arms of a State. Those athletes could prove that their university violated the PCSA's health and safety, medical, NIL, scholarship, transfer, or anti-retaliation protections and still be unable to recover damages from their university under the PCSA.

This is not a narrow problem. The PCSA's safety standards extend beyond Division I, and Department of Education EADA data include more than 1,100 public two- and four-year institutions with intercollegiate athletics. Public institutions alone represent almost two-thirds of NCAA Division I membership. The PCSA contains no nationwide mechanism that makes its promised monetary remedies enforceable against the many public universities that qualify as arms of a State and possess sovereign immunity. Congress already knows how to prevent that result. Federal law governing Title IX states: "A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation" of Title IX [42 U.S.C. § 2000d-7\(a\)\(1\)](#). The PCSA contains no comparable waiver of state sovereign immunity. Congress could fix this by conditioning specified federal education funding on a public university's knowing and voluntary waiver of sovereign immunity for PCSA claims and remedies using the same basic funding-conditioned model applied under Title IX.

And for sexual abuse, even Title IX does not fill this gap. [US Supreme Court precedent](#) can bar Title IX damages against a university even when a coach sexually abuses an athlete. That can happen when no appropriate university official had actual notice, or when lower-level athletics personnel knew about the misconduct but failed to report it to an official whose knowledge satisfies the Title IX damages standard. Those same facts could violate the PCSA's broader duties to prevent, assess, and remediate sexual abuse. There is no justification for Congress to leave many public-university athletes unable to recover damages when the PCSA's sexual-abuse protections are violated.

State law is no reliable fallback either: Florida and Texas law can shield a public university from damages arising from a coach's or team doctor's intentional and malicious assault or sexual abuse of an athlete.

The controlling Supreme Court rules governing state sovereign immunity are well established, and the PCSA fails to ensure that its private right of action is enforceable by these athletes. It is not enough for Congress to simply enact a law authorizing damages lawsuits against an arm of the State:

- Congress cannot use the Commerce Clause or other ordinary Article I powers to subject States to private damages lawsuits unless States knowingly and voluntarily waive their immunity.

- Congress cannot override State immunity under Section 5 of the Fourteenth Amendment unless it is enforcing Fourteenth Amendment rights and its remedies meet U.S. Supreme Court standards for addressing the identified constitutional violations.

To be clear, Congress does not need to write State sovereign immunity into the PCSA for it to apply. Under U.S. Supreme Court precedent, that immunity remains unless a State knowingly and voluntarily waives it or Congress has constitutional authority to override it.

The current PCSA contains no mechanism requiring public universities to knowingly and voluntarily waive sovereign immunity. The bill's text also does not identify a Fourteenth Amendment violation that its athlete protections are designed to enforce or establish the constitutional foundation required by Supreme Court precedent for Congress to override state sovereign immunity.

The result is a two-tier system of athlete protections: athletes at private universities can pursue the PCSA's damages remedy, while athletes at many public universities can be denied that same remedy for the same violation solely because their university possesses sovereign immunity.

The PCSA would replace *enforceable* covered state NIL protections with *weaker* federal rights. Sovereign immunity can block many public university athletes from recovering damages for violations of their federal NIL rights. And strikingly, Congress left the right to retain an agent or lawyer out of the Private Right of Action entirely, denying both public schools and private school athletes an express PCSA lawsuit to enforce that protection.

This should be a major red flag for every Senator being asked to vote for the PCSA. Sovereign immunity was raised during the bill's development [by the SEC](#) and briefly [during the Senate Commerce Committee markup](#) (June 18, 2026, video at 55:05–56:00). However, in both instances, the consequences for athletes went unexplained to the public. The SEC's reported concern focused on preserving public universities' immunity from litigation, without addressing that this same shield can leave athlete victims unable to recover damages when those universities violate their rights. The lack of public explanation of such a fundamental problem is itself a compelling reason to slow consideration of this more than 170-page bill and allow meaningful public vetting.

Senators should determine whether the sponsors understood this defect and, if so, whether they disclosed it to Senators and to stakeholders (outside the NCAA, conferences, and universities) whose support they sought. Stakeholders and media who discussed the PCSA with its sponsors should ask themselves the same question. Now that the loophole has been identified, the sponsors should state publicly whether they will fix it or continue pushing its passage despite this unjust treatment of athletes.

Even for athletes at private universities, the PCSA's private right of action is severely weakened by additional loopholes:

- **No right to sue over aggregate roster spots and scholarship opportunity protections.** The bill's "Private Right of Action" completely omits its limited and temporary "Protection of Women's Sports and Olympic Sports," leaving athletes with no private right of action to enforce its aggregate roster and scholarship-opportunity protections. Those aggregate protections only apply to about 30% of Division I universities and sunset after four years for mid-sized institutions and nine years for large institutions.
- **The 30-day "cure" provision can eliminate an athlete's lawsuit after the harm is already done, and the PCSA does not define what constitutes a "cure."** If a university claims to have cured a safety violation that harmed an athlete and provides the required written assurance, the bill may bar a damages lawsuit. The bill does not expressly preserve damages for physical, academic, or financial harm already suffered under this 30-day cure provision.

- **No guaranteed attorney’s fees under the general Private Right of Action, even for a prevailing athlete.** Without guaranteed fees, many athletes harmed by PCSA violations may be unable to secure a lawyer willing to take on expensive litigation against a university.

The NCPA remains opposed to the PCSA for other reasons as well, but the bill’s claim to protect college athletes is not credible if many athletes cannot enforce those protections when their universities violate them. At minimum, Congress must ensure all athletes can enforce any athlete protection a federal law claims to provide.

Detailed Analysis

1. The PCSA does not provide a constitutionally secure damages remedy against many public universities.

The PCSA plainly regulates public universities. Its definition of an “institution of higher education” includes public institutions, and its “Private Right of Action” and “Whistleblower Protection” provisions authorize lawsuits and monetary relief against institutions. But the bill does not expressly state that States or arms of the State are subject to private damages suits notwithstanding sovereign immunity, nor does it mention sovereign immunity, waiver, or congressional authority to override it.

The Supreme Court requires more than simply making a federal law applicable to States. In [*Atascadero State Hospital v. Scanlon*](#), 473 U.S. 234 (1985), the Court held that Congress must make its intent to subject States to suit unmistakably clear in the statutory text; a general authorization to sue is insufficient. [*Kimel v. Florida Board of Regents*](#), 528 U.S. 62 (2000), illustrates the contrast: the Court found the clear-statement requirement satisfied where the federal statute expressly included state governments within its definition of covered employers and connected that definition to private enforcement. Even if a court concludes that the PCSA sufficiently expresses Congress’s intent to permit damages suits against public universities, Congress must still possess constitutional authority to override state sovereign immunity.

That second requirement creates the larger problem. In [*Seminole Tribe of Florida v. Florida*](#), 517 U.S. 44 (1996), the Supreme Court held that Congress cannot use its Commerce Clause authority to override state sovereign immunity from private suits in federal court. In [*Alden v. Maine*](#), 527 U.S. 706 (1999), the Court held that Congress cannot avoid that constitutional limit by authorizing private Article I claims against States in state court. To the extent the PCSA relies on the Commerce Clause or other ordinary Article I authority, that authority cannot by itself make the bill’s damages remedies enforceable against a public university that qualifies as an arm of the State.

To be clear, Congress does not need to write sovereign immunity into the PCSA for it to apply. Under Supreme Court precedent, that immunity already exists and remains unless Congress has constitutional authority to override it or a State knowingly and voluntarily waives it.

2. The PCSA does not establish a valid Fourteenth Amendment basis for overriding immunity.

Congress does have another potential constitutional path. [*Fitzpatrick v. Bitzer*](#), 427 U.S. 445 (1976), recognizes Congress’s power under Section 5 of the Fourteenth Amendment to override state immunity when Congress is validly enforcing Fourteenth Amendment rights. But that power has strict limits.

[*City of Boerne v. Flores*](#), 521 U.S. 507 (1997), requires legislation enforcing the Fourteenth Amendment to be appropriately tailored to the constitutional violations Congress seeks to prevent or remedy—the Supreme Court’s “congruence and proportionality” standard. The Court has repeatedly applied that limitation to reject damages actions against States.

In *Kimel*, the Court held that Congress clearly intended to subject States to Age Discrimination in Employment Act damages suits but lacked sufficient Section 5 authority for that remedy. [*Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*](#), 527 U.S. 627 (1999), invalidated a federal patent damages remedy against States because Congress had not established and addressed an adequate pattern of unconstitutional state conduct. [*Board of Trustees of the University of Alabama v. Garrett*](#), 531 U.S. 356 (2001), similarly rejected Title I ADA damages suits against States because the legislative record and remedy did not satisfy the Section 5 standard.

Congress does not have to cite Section 5 by name, and a court can examine the legislative record. But the current PCSA text does not identify a Fourteenth Amendment violation that its NIL, medical, scholarship, transfer, safety, and retaliation provisions are designed to enforce or establish the constitutional foundation required by these Supreme Court decisions. The bill therefore does not provide a constitutionally secure, across-the-board Fourteenth Amendment basis for imposing private damages liability on nonconsenting arms of the State.

3. The result is unequal and often ineffective enforcement.

The practical result is a two-tier system of athlete protections. An athlete at a private university can pursue the PCSA's damages remedy, while an athlete suffering the same violation at a public university that qualifies as an arm of the State may have that damages claim dismissed solely because the university possesses sovereign immunity.

[*Ex parte Young*](#), 209 U.S. 123 (1908), can sometimes permit an athlete to sue an appropriate university official for prospective relief to stop an ongoing violation of federal law. But [*Edelman v. Jordan*](#), 415 U.S. 651 (1974), makes clear that this doctrine does not authorize retrospective monetary relief against the State. A prospective injunction cannot compensate an athlete for harm already caused by sexual abuse, permanent brain damage, a preventable death, lost NIL income, unpaid medical bills, a lost scholarship, or retaliation.

This distinction is especially important because the PCSA itself creates health and safety protections addressing serious injuries, medical conditions, death, physical abuse, sexual abuse, sexual assault, sexual misconduct, and harassment. A federal protection cannot provide meaningful nationwide damages enforcement if an athlete at one university can recover for its violation while an athlete at a state university may be denied that same remedy.

Title IX is not a substitute for enforceable PCSA safety protections. Title IX's damages standard is substantially different from the PCSA's safety duties. Under [*Gebser v. Lago Vista Independent School District*](#), 524 U.S. 274 (1998), damages for employee-on-student sexual harassment generally require actual notice to an appropriate institutional official with authority to take corrective action and deliberate indifference to the misconduct. The PCSA, by contrast, expressly requires institutions to take reasonable actions to *prevent, assess, and remediate* sexual abuse, sexual assault, sexual misconduct, and sexual harassment.

That is a significant difference that can matter in disturbing circumstances where a PCSA safety claim could be viable even though a Title IX damages claim fails:

- A coach sexually assaults an athlete, but no appropriate university official had actual notice of the misconduct before the abuse.
- Assistant coaches, athletic trainers, or strength coaches know of misconduct or serious warning signs but fail to report them to an official whose knowledge satisfies *Gebser*.
- A university hires or retains a coach despite serious sexual-misconduct red flags that fall short of Title IX's actual-notice standard.

- A university uses a settlement, confidentiality agreement, or other practice to conceal known sexual misconduct and thereby fails to take reasonable action to prevent further abuse, even though the concealment does not itself establish Title IX damages liability.

In circumstances such as these, an athlete could establish that a university violated the PCSA's broader federal safety duties yet still fail to satisfy Title IX's separate damages standard. At an immune public university, state sovereign immunity could then eliminate the athlete's PCSA damages remedy as well. Title IX therefore does not fill the gap when an athlete cannot satisfy Title IX's separate damages standard and sovereign immunity blocks the broader PCSA damages claim.

The enforcement problem may go even further for protections the PCSA leaves out of its Private Right of Action. The PCSA clearly knows how to create enforcement mechanisms: it expressly authorizes private lawsuits for selected protections and separately protects NCAA and conference sanctions for selected restrictions. But Congress chose not to provide those enforcement paths for every protection it created. In *Seminole Tribe of Florida v. Florida*, the Supreme Court held that *Ex parte Young* cannot be used to get around an enforcement system Congress intended to limit. [*Armstrong v. Exceptional Child Center, Inc.*](#), 575 U.S. 320 (2015), likewise held that Congress can expressly or implicitly prevent courts from creating another path to enforce a federal law. The PCSA expressly allows courts to grant equitable relief for violations included in its Private Right of Action, so those athletes have a stronger argument that they can still seek a court order to stop an ongoing violation. But the bill says a person may sue "only" for specified violations and leaves some protections out of that Private Right of Action entirely. Public universities could therefore argue that athletes cannot get around those exclusions simply by suing a university official for a court order. It is uncertain whether a court would accept that argument, but if it did, some PCSA protections could lack even a private path to make an ongoing violation stop.

Consider the PCSA's women's and Olympic-sports protections. The bill requires associations and conferences to make covered institutions maintain specified aggregate roster spots and scholarship opportunities, but gives athletes no Private Right of Action to enforce those protections and provides no PCSA-protected NCAA sanction authority for violating them. If a covered public university cuts those opportunities below the protected levels and an athlete sues a university official simply to stop the cuts, the university could argue that Congress deliberately excluded that protection from private enforcement. If a court accepts that argument, the athletes could be left without even a PCSA lawsuit to stop the cuts. The PCSA also gives state attorneys general no special authority to enforce these protections. In a State where the attorney general lacks independent authority to bring such an action against the public university, or is charged with defending the university, there may be no realistic state enforcement backstop.

The same problem can hit an individual athlete directly. The PCSA says a university may not restrict an athlete's eligibility because the athlete hired a lawyer or agent, yet Congress left that protection out of the Private Right of Action. A public university could knowingly bench an athlete for hiring legal counsel in violation of the PCSA, while the athlete has no express PCSA right to sue for that violation. If a court also accepts the university's argument that Congress's limited enforcement scheme blocks a separate *Ex parte Young* lawsuit, the athlete could be left without a PCSA damages remedy and without a PCSA court order restoring eligibility. Congress would have declared the university's conduct unlawful while potentially leaving the athlete without an effective PCSA remedy to enforce that protection.

This omission is especially significant because the PCSA also preempts state laws governing institutional, conference, or NCAA policies that regulate athlete NIL compensation. Existing state NIL laws can provide stronger enforcement. [Pennsylvania's NIL law](#), for example, protects athletes' rights to earn NIL compensation and obtain agent or legal representation and gives athletes a private civil action, including costs and reasonable attorney's fees for a prevailing plaintiff. The PCSA would displace covered state NIL protections while separately creating a federal right to representation that Congress omitted from its own Private Right of Action.

The bill also fails to guarantee attorney's fees under its general Private Right of Action. Even when an athlete prevails, the court merely "may" award relief, and attorney's fees are included only "if otherwise allowed under applicable law." Without guaranteed reasonable attorney's fees and litigation costs, many athletes may be unable to secure counsel willing to undertake expensive litigation against a university.

4. Preserved state-law claims are no substitute for enforceable PCSA rights.

The PCSA preserves certain state personal-injury, wrongful-death, sexual-assault, harassment, civil-rights, and campus-safety claims. But preserving a state claim does not preserve the PCSA's federal duty or remedy. Those claims remain subject to each State's own duties, immunities, damages limits, and deadlines and have stark consequences.

Florida: A coach or trainer could intentionally and maliciously assault or sexually abuse an athlete while the public university itself remains shielded from damages for that conduct [Fla. Stat. § 768.28\(9\)\(a\)](#). Even when university negligence is actionable, Florida generally limits what the public entity can be required to pay to \$200,000 per person [Fla. Stat. § 768.28\(5\)\(a\)](#). After UCF football player Ereck Plancher died during conditioning drills, his parents won a \$10 million jury verdict, but the Florida Supreme Court held that sovereign immunity limited the UCF Athletics Association's liability for payment to \$200,000 [Plancher v. UCF Athletics Ass'n, Inc.](#)

Texas: Under Texas sovereign immunity, a public university would remain immune from a state-law damages claim arising from its coach's intentional assault or sexual abuse of an athlete - even where the assault occurs under circumstances that establish the university violated the PCSA's federal safety protections [Tex. Civ. Prac. & Rem. Code § 101.057\(2\)](#).

California: Even a State that generally permits substantially broader recovery against public universities does not replicate the PCSA. Brian Lilly Jr.'s family alleged that sustained mental and emotional abuse by his coach drove the UC San Diego rower to suicide. A federal court applying California law held that the university and an athletics administrator had no state-law duty to protect Lilly from that nonphysical harm. [Lilly v. University of California-San Diego](#). The PCSA, by contrast, expressly imposes *a duty to prevent, assess, and remediate athlete "abuse"*.

California presents another striking gap involving potentially fatal medical conditions. NCAA rules already require preparticipation medical examinations and confirmation of athletes' sickle-cell-trait status because athletes with the trait can collapse and die during intense conditioning; the PCSA would make compliance with specified sickle-cell safety precautions a federal duty. Yet California expressly immunizes public entities from claims arising from failing to conduct, or adequately conduct, physical examinations intended to identify conditions hazardous to an athlete's health. The California Supreme Court has specifically recognized that this immunity encompasses examinations used to determine the qualifications of athletes [Creason v. Department of Health Services](#). That immunity would bar a damages claim based on the university's failure to conduct the exam that would have revealed an athlete's sickle-cell trait - even if the athlete later died in a workout where the PCSA's sickle-cell precautions would have applied had the trait been identified.

Congress should not create nationwide federal protections and then force victims into a state-law gantlet in which the same misconduct can result in substantial damages in one State, sharply capped damages in another, and no comparable claim against the university in another. If the PCSA promises federal rights, its own private remedy must be enforceable against public and private universities alike.

5. Congress already has an established path to fix the sovereign-immunity defect.

Congress has already addressed the immunity problem in Title IX. Federal law governing Title IX states: "**A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from**

suit in Federal court for a violation” of Title IX [42 U.S.C. § 2000d-7\(a\)\(1\)](#). The Supreme Court has described § 2000d-7 as Congress’s “unambiguous waiver of the States’ Eleventh Amendment immunity.” [Lane v. Peña](#), 518 U.S. 187, 200 (1996). And in a case directly involving Title IX, the Fourth Circuit held that a public university waived its Eleventh Amendment immunity by accepting federal education funding subject to § 2000d-7. [Litman v. George Mason University](#), 186 F.3d 544, 554–55 (4th Cir. 1999). Title IX therefore provides an existing model for the PCSA: Congress can expressly condition the acceptance of covered federal funding on a State’s waiver of sovereign immunity for specified PCSA claims and remedies. The PCSA contains no comparable waiver or funding condition.

Congress could fix this by adding language such as:

“As a condition of accepting Federal financial assistance provided under title IV of the Higher Education Act of 1965 to an institution of higher education or to a student for attendance at such institution, a State or public institution of higher education that is an arm of a State shall knowingly and voluntarily waive sovereign immunity from private actions under this title in Federal or State court, including immunity from all damages, backpay, attorney’s fees, costs, and other monetary or equitable remedies authorized by this title.”

[College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board](#), 527 U.S. 666 (1999), rejects the idea that a State implicitly waives sovereign immunity merely by participating in federally regulated activity. A waiver must be knowing and voluntary. [Pennhurst State School and Hospital v. Halderman](#), 451 U.S. 1 (1981), requires federal funding conditions to be stated unambiguously so States understand the consequences of accepting the funds. [Sossamon v. Texas](#), 563 U.S. 277 (2011), likewise held that accepting federal funds did not establish consent to damages where the statute failed to provide sufficiently clear notice of monetary liability.

Most recently, [Landor v. Louisiana Department of Corrections and Public Safety](#), 609 U.S. ____ (2026), reaffirmed that liability imposed through Spending Clause legislation requires the knowing and voluntary consent of the party to be bound.

Congress can therefore identify federal funding sufficiently related to higher education, college athletics, or athlete health and safety and expressly condition acceptance of those funds on a knowing and voluntary waiver of sovereign immunity. Consistent with [South Dakota v. Dole](#), 483 U.S. 203 (1987), the condition should be related to the federal interest served by the funding, and under [National Federation of Independent Business v. Sebelius](#), 567 U.S. 519 (2012), it cannot be impermissibly coercive.

The waiver should clearly cover:

- private PCSA actions in both federal and state court;
- all damages, backpay, and other monetary remedies authorized by the PCSA;
- guaranteed reasonable attorney’s fees and litigation costs for prevailing athletes; and
- claims arising while the State or authorized public university accepts the conditioned funds.

6. The PCSA separately creates a one-sided enforcement system.

The one-sided enforcement structure is built into the PCSA itself. The bill expressly protects NCAA, conference, and school enforcement of athlete compensation, eligibility, transfer, and recruiting/tampering from antitrust liability, and separately protects NCAA or conference fines and competition sanctions used to enforce those rules. But Congress provides no comparable federally protected NCAA sanction authority when universities violate athletes' scholarship, medical, health-and-safety, whistleblower, or women's and Olympic-sports protections. The bill even expressly states that an athlete's private lawsuit does not reduce the antitrust protection granted to the NCAA, conferences, and schools.

Critically, the PCSA writes the dangerous practice of university self-policing of athlete safety into federal law. It requires each university to designate a health and safety officer who remains a university employee, but creates no independent third-party entity with the duty and authority to investigate safety violations and impose penalties. Congress embraced a different model for sexual abuse in Olympic sports specifically to reduce conflicts of interest. In 2017, then-Senate Commerce Chairman John Thune, who introduced SafeSport legislation with Senator Bill Nelson, [said an independent watchdog was a "necessary step."](#) and the legislation was designed to give athletes an "independent and non-conflicted entity" to report abuse. The PCSA should likewise require independent third-party enforcement of its athlete health and safety protections.

The result can be extreme. If a university pays an athlete even \$50 that puts the athlete's compensation over the PCSA-protected cap, the NCAA or conference can strip the athlete of eligibility. But if that same athlete is sexually abused and university personnel conceal or fail to address the abuse, the NCAA infractions system does not investigate or punish that misconduct as an NCAA rules violation. At many public universities, sovereign immunity can also defeat the athlete's PCSA damages claim against the university. The restrictions on athletes have teeth; the protections promised to athletes often do not.

Conclusion

The PCSA promises federal protections and private remedies but contains no constitutionally secure, nationwide mechanism ensuring that its damages remedies can be enforced against public universities that qualify as arms of a State. This is a present and central enforcement defect, not a remote hypothetical. Multiple U.S. Supreme Court decisions establish the governing rules, and the current bill does not overcome them.

Congress should correct the sovereign-immunity loophole by establishing a constitutionally sound funding-conditioned waiver. Congress should also correct the PCSA's one-sided enforcement structure and the other private-right-of-action defects identified in the Executive Summary, including the 30-day cure provision and the failure to guarantee reasonable attorney's fees and litigation costs for prevailing athletes.