



**MEMORANDUM**

**September 28, 2021**

**To: Subcommittee on Consumer Protection and Commerce Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Hearing on “A Level Playing Field: College Athlete’s Rights to Name, Image, and Likeness”**

**On Thursday, September 30, 2021, at 10:30 a.m. (EDT), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing**, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “A Level Playing Field: College Athletes’ Rights to Their Name, Image, and Likeness.”

**I. BACKGROUND**

The National Collegiate Athletic Association (NCAA), athletic conferences, and colleges and universities had historically prohibited collegiate athletes from earning compensation for the use of their name, image, and likeness (NIL).<sup>1</sup> These rules barred collegiate athletes from generating revenue from activities such as endorsements, advertisements, and autograph signings.<sup>2</sup> At the same time, the NCAA, conferences, colleges and universities, and television networks have generated and collected substantial revenues from college sporting events.<sup>3</sup>

Several student athletes have challenged the NIL rules.<sup>4</sup> In *O’Bannon v. NCAA*, one of the most notable of these challenges, the U.S. Court of Appeals for the Ninth Circuit held that although the NCAA rules violated antitrust laws, the Court did not require the NCAA to provide

---

<sup>1</sup> *The NCAA’s “Amateurism” Rules, What’s In A Name?*, Milken Institute Review (Oct. 28, 2019).

<sup>2</sup> *Id.*; National Collegiate Athletic Association, *Division I Manual* (Aug. 2021) ([www.web3.ncaa.org/lstdbi/reports/getReport/90008](http://www.web3.ncaa.org/lstdbi/reports/getReport/90008)).

<sup>3</sup> *The NCAA’s new March Madness TV Deal Will Make Them a Billion Dollars a Year*, SB Nation (Apr. 12, 2016); *The SEC has Record Revenue in 2018, But Big Ten Schools Rake in More Per-school Distribution*, USA Today (May 20, 2021); *The American Athletic Conference is Reportedly Getting a Healthy Raise Without Sacrificing Flexibility*, SB Nation (Mar. 19, 2019).

<sup>4</sup> See note 1.

college athletes with compensation or benefits unrelated to educational expenses.<sup>5</sup> Since *O'Bannon*, states began considering and enacting their own legislation granting NIL rights to collegiate athletes.<sup>6</sup> These developments have led to calls to establish a national NIL law.<sup>7</sup>

## II. STATE LEGISLATIVE ACTIVITY

In 2019, California became the first of 28 states to propose an NIL law allowing for collegiate athletes to earn on their NIL, with the *Fair Pay to Play Act*.<sup>8</sup> Of the 28 states that have passed NIL laws, 15 states' laws have gone into effect.<sup>9</sup> At least three other states have legislation pending.<sup>10</sup>

While most of the state NIL laws that have been enacted generally require that collegiate athletes be allowed to receive compensation for their NIL without losing their eligibility, states' approaches vary.<sup>11</sup> For example, Alabama, Pennsylvania, and Texas prohibit collegiate athletes from earning NIL compensation from an endorsement from an alcohol company.<sup>12</sup> Georgia law allows colleges and universities to require that collegiate athletes share up to 75 percent of their NIL compensation "for a fund for individuals previously enrolled as student athletes in the same postsecondary educational institution."<sup>13</sup> Differing state laws could create competitive imbalances, foreseeably encouraging collegiate athletes to attend institutions of higher education in states with more lucrative NIL protections.<sup>14</sup>

## III. NCAA RESPONSE

---

<sup>5</sup> *Supreme Court Questions NCAA's Amateurism amid Name, Image, Likeness Debate*, Bleacher Report ([bleacherreport.com/articles/10000546-supreme-court-questions-ncaas-amateurism-amid-name-image-likeness-bill-debate](https://bleacherreport.com/articles/10000546-supreme-court-questions-ncaas-amateurism-amid-name-image-likeness-bill-debate)) (accessed Sept. 18, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *As July 1 Nears, Congress Making Critical Progress on NIL and College Athletes' Rights*, Sports Illustrated (May 18, 2021).

<sup>8</sup> National Conference of State Legislatures, Student-Athlete Compensation ([www.ncsl.org/research/education/student-athlete-compensation.aspx](https://www.ncsl.org/research/education/student-athlete-compensation.aspx)) (accessed Aug. 18, 2021).

<sup>9</sup> *Everything You Need to Know About the NCAA's NIL Debate*, ESPN (July 14, 2021).

<sup>10</sup> *Id.*

<sup>11</sup> Congressional Research Service, *Student Athlete Name, Image, Likeness Legislation: Considerations for the 117th Congress* (July 1, 2021) (R46828).

<sup>12</sup> Ala. Code § 8-26B-30 (2019); S.B. 1385, 87th Leg. (Tx 2021); S.B. 381, Pa. Gen. Assem. 2021 (Pa. June 30, 2021).

<sup>13</sup> H.B. 617, Ga. Gen. Assem. 2021-2022 Reg. Session (Ga. May 6, 2021).

<sup>14</sup> *With Recruiting in Mind, States Jockey to One-Up Each Other in Chaotic Race for NIL Laws*, Sports Illustrated (Mar. 4, 2021).

With pending legal action and some states' NIL laws going into effect in July 2021, the NCAA began working on its own rules to ensure all collegiate athletes would be able to benefit.<sup>15</sup> In the recent case *NCAA v. Alston*, the Supreme Court ruled that certain NCAA restrictions on education-related compensation for student athletes violated antitrust law, raising concerns that restrictions on NIL compensation are also unlawful.<sup>16</sup>

Following the Supreme Court's decision, on June 30, 2021, the NCAA Board of Governors voted unanimously to implement an interim policy to allow college athletes to be compensated for the use of their NIL, and also directed its three divisions to update their rules accordingly.<sup>17</sup> This new policy allows collegiate athletes to earn compensation for participating in sports camps, social media posts, autograph signings, and endorsement deals, all of which had previously been prohibited.<sup>18</sup> Schools in states without NIL laws will be able to develop their own policies as long as they do not violate the NCAA's prohibitions on pay-for-play and improper recruiting inducements.<sup>19</sup>

In addition to implementing the interim policy, the NCAA is seeking federal legislation that it says would help to "secure the appropriate legal and legislative framework to modernize our rules around name, image[,] and likeness."<sup>20</sup> Specifically, the NCAA is seeking legislation that would establish federal preemption over state NIL laws; establish an antitrust exemption for the NCAA; ensure student athletes retain their non-employee status; maintain the distinction between college and professional athletes; and protect diversity, inclusion, and gender equity.<sup>21</sup>

#### IV. FEDERAL ACTION

Several bills have been introduced in recent years that grant collegiate athletes additional rights and protections, including the right to earn compensation for NIL.<sup>22</sup> The College Athletes Bill of Rights, introduced by Subcommittee Chair Schakowsky (D-IL) in the 116th Congress, would also address healthcare for student athletes, transfer rights, educational benefits, and

---

<sup>15</sup> *NCAA Memo: Emmert Urges Schools to Act on NIL or He Will*, Associated Press (Jun. 18, 2021).

<sup>16</sup> *National Collegiate Athletic Association v. Alston*, 594 U.S. \_\_\_\_ (2021).

<sup>17</sup> *NCAA Clears Way for Athletes to Profit from Name, Image, and Likeness*, ESPN (Oct. 29, 2019).

<sup>18</sup> *NCAA Adopts Temporary Policy on Name, Image and Likeness in Seismic Shift for College Sports*, USA Today (June 30, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> NCAA, *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements and Promotions* (Apr. 29, 2020) (press release).

<sup>21</sup> *Id.*

<sup>22</sup> H.R. 1804, 116th Cong. (2019); S. 4004, 116th Cong. (2020); S. 5003, 116th Cong. (2020); H.R. 9033, 116th Cong. (2020); H.R. 8382, 116th Cong. (2020); H.R. 850; H.R. 3895; H.R. 2841; S. 414.

oversight.<sup>23</sup> Other legislation, such as the College Athlete Economic Freedom Act, introduced by Rep. Trahan (D-MA), would provide athletes a federal right to profit from their NIL, protect their right to organize, and prohibit athletic associations or colleges and universities from regulating athletic representation, among other things.<sup>24</sup> Reps. Gonzalez (R-OH) and Cleaver (D-MO) also introduced a bill that would establish national NIL rights for college athletes and would provide oversight through a Congressionally appointed commission.<sup>25</sup>

## V. WITNESSES

The following witnesses have been invited to testify:

**Ramogi Huma**  
Executive Director  
National College Players Association

**Dr. Mark Emmert**  
President  
National College Athletic Association

**Dr. Linda Livingstone**  
President  
Baylor University

**Jacqie McWilliams**  
Commissioner  
Central Intercollegiate Athletic Association

**Cameron March**  
College Athlete  
Women's Golf  
Washington State University

---

<sup>23</sup> H.R. 9033, 116th Cong. (2020).

<sup>24</sup> H.R. 850

<sup>25</sup> H.R. 2841