

**HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

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Chairwoman Schakowsky, Ranking Member Bilirakis and distinguished members of the Subcommittee: thank you for the opportunity to provide testimony on the importance of finding a uniform path forward for the issue of college athlete name, image and likeness (NIL).

I wish to be very clear that the NCAA supports the right of student-athletes to benefit from the use of their NIL. This summer, the 1,200 colleges, universities and conferences that constitute the NCAA adopted historic rules that provided new opportunities for more than half a million college athletes to benefit from using and licensing their NIL. This new policy has resulted in millions of dollars in new financial prospects for student-athletes across the country. Though the modernization of the Association's rules has opened economic doors for all college athletes, the nearly 30 disparate state laws across the nation have left them without a level playing field and without equal earning opportunities.

In just the few months these laws have been in effect, this patchwork approach to NIL has created serious inequities among student-athletes and athletics programs. We already are hearing from athletics programs giving evidence of a negatively changed recruiting landscape. As new states rush to "keep up" with the states that have enacted NIL reform, we are likely to see a "race to the bottom," with each state trying to ensure that its schools have a competitive advantage over other states until eventually the protections for student-athletes become so thin that there is little discernible difference between college athletes and professional sports figures.

We share the committee's interest in providing all college athletes with an equal chance to benefit from these new opportunities if they choose to do so and I fear that the longer this patchwork of laws becomes rooted in college sports culture and metastasizes, the more difficult, if not impossible, it will become to reestablish a national framework that ensures fair competition and the primacy of the "student" side of the student-athlete. The NCAA has long sought to work with Congress on this subject and we look forward to working together with the members of this subcommittee to find a common federal framework that will best support college athletes and preserve the character of American college sports. Each day without federal preemption and a uniform standard is another opportunity for state and perhaps even local governments to tilt the playing field.

**A New Era of Opportunity for College Athletes**

In June 2021, the NCAA adopted an interim policy that provided all college athletes who wish to do so - regardless of what state they live in - the opportunity to benefit from the use of their NIL, while also preserving the collegiate model and the integrity of the recruiting environment. According to press reports, student-athletes have collectively reported millions in NIL earnings in just a few short months as a result of this new policy. It has been exciting to see all student-athletes, regardless of sport or gender, now able to take advantage of their NIL. We are seeing innovative arrangements where college athletes have new opportunities to take advantage of their earning power that haven't existed before, such as agreements for posting social media content, licensing rights, autographs and contractual arrangements for four, five and six-figures. In addition to the immediate financial impact NIL has provided many students-athletes, we

expect these opportunities, experiences and exposures also will positively contribute to their long-term financial health, professional success and personal development. NCAA schools across the country are contributing to this development by providing financial literacy and other education to support student-athletes in this new endeavor.

### **Growing Challenges and Troubling Trends**

While it has been compelling to see college athletes access new financial opportunities, we are quickly seeing many challenges and concerning trends that could negatively impact student-athletes and college sports more generally, many of which may be very difficult to reverse. Because of this, we still firmly believe there is a need for Congress to take action to create a federal NIL standard to establish a level playing field and protect the long-term integrity of college athletics.

#### *An Increasingly Uneven Playing Field*

Despite the work of the NCAA's colleges and universities to create a standard that would provide equitable opportunities for all student-athletes, regardless of what state they live in, a patchwork of state laws has left student-athletes subject to different standards than their peers in other states and wondering how they will be assured a fair competitive environment. As of today, 35 states have passed laws, introduced legislation or issued executive orders that govern student-athlete name, image and likeness. These statutes and proposed policies have disparate provisions that, in some cases, attempt to legislate well beyond the issue of NIL and turn student-athletes into paid professional employees of a school. Even those laws and bills that are confined to the topic of NIL have a wide array of often incongruent and conflicting components. Some states regulate the type of NIL activities for which a student-athlete can engage, such as prohibiting endorsements for alcohol, tobacco products, sports wagering or other categories of endorsement. Other states regulate the parameters around NIL activity, such as limiting when an NIL activity can occur, prohibiting the use of school logos or requiring contractual disclosures, or agent registration. Even those laws that appear to have similar intent are written differently and can be interpreted and enforced differently, depending on the state in which the legislation was introduced or passed.

#### *Lack of Uniform Student-Athlete Protections*

Student-athlete protections, including the opportunity to be educated about the basics of contract law and afforded some financial counseling, vary across the patchwork of state laws. Not every student-athlete will be approached by professional service providers and third parties with good intentions. With no uniform standard to educate college athletes or protect them from bad actors or exploitative agreements, many student-athletes will sign deals that are clearly one-sided and perhaps even harmful. With many national companies making NIL offers over social media and direct messaging, student-athletes are often making impulse decisions about binding, and sometimes long-term, contractual agreements without appropriate counsel to evaluate a contract or maximize their earning potential. Additionally, many student-athletes are likely not aware of the potential tax implications of these arrangements and may find themselves saddled with unanticipated tax bills they may be unable to pay. Other students who receive Pell Grants or other student aid tied to need could unknowingly lose their eligibility for financial assistance because of the income they now receive from NIL. This lack of uniformity has also caused confusion among international student-athletes. Many are apprehension of taking advantage of these new opportunities without clear guidance as to how entering into a NIL contract in any given state will impact their visa status. We want student-athletes to have all the information possible at their disposal with access to advisors who have their best interests in mind to ensure they can make informed and educated NIL decisions.

#### *Recruiting Challenges*

While college athletes from all sports and all genders have been able to access new financial opportunities by monetizing their NIL, initial data from third-party providers suggest an inequitable distribution of NIL

earnings. This data indicates that the vast majority of reported NIL contracts are been offered to student athletes competing in men's sports, with football student-athletes capturing nearly 80% of the market share. This skewed distribution of NIL earnings is not simply a result of market behaviors. Anecdotal stories of student-athletes who have made a commitment to one school only to be persuaded to rescind their agreement after a promise of NIL payments are becoming increasingly prevalent and alarming. The NCAA has long sought to regulate in this area, putting restrictions around booster and other third-party activity to protect the student-athlete from unscrupulous actors who have no regard for the student's best academic, cultural, competitive or team fit, but who are incentivized by their own financial interests. The current legal environment, however, has challenged the manner in which the NCAA can place fair, uniform guardrails around the recruitment space and we look forward to working together with Congress to support a uniform, reasonable level of regulation. In addition to these challenges, the upcoming recruitment cycle will highlight the disadvantages student-athletes in certain states will face in considering schools, sometimes in the same conference, which may have vastly different NIL policies. We believe that any federal approach should include not only a uniform framework, but also guardrails around recruitment so that third parties and others are not able to have undue influence over a student-athlete's independent decision about where to attend school.

#### *Lack of Transparency Leading to Threats to the Collegiate Model*

While some NIL-related data has been disclosed through third-party service providers, there is no one entity that has a complete picture of the types of deals that have been made or their parameters. Similarly, because no mechanisms that allow for the transparent disclosure of transactions exist, there is no way to know if a transaction is legitimate or if it is simply a pay-for-play scheme disguised as NIL compensation. While quid pro quo is required of NIL agreements, proof of payment for services or activities is rare. Further, campus authority and decision-making seem to be shifting away from compliance administrators, making disclosure and monitoring even more difficult at the local level. Because we are not seeing the transparency and enforcement promised by many state laws, these worrisome trends may be difficult, if not impossible, to reverse without congressional action. Any federal framework must include a transparent clearinghouse mechanism to disclose NIL transactions that ensures privacy, as well as the integrity of the college sports model.

#### *Lack of Enforcement*

We are supporting the efforts of students and schools to best comply with the various state laws. However, there is much confusion surrounding the numerous rules and lack of uniform standard when it comes to enforcement. Historically, the membership has relied on the national office to provide regulatory guidance and has been frustrated by the inability to receive national guidance, particularly when conflicting state laws are present. Even those statutes that use the same or similar language to confer NIL rights have different enforcement mechanisms. In many cases, no enforcement or consumer protection responsibility is articulated at all. NIL regulations should be enforced uniformly, and federal support is urgently necessary to give students and schools guidance around what they should be expected to do, prevent abuses in the system and ensure all student athletes are provided the same opportunities to succeed.

#### **A Continued Need for Federal Partnership**

For nearly 120 years, college sports have operated without the need for federal intervention. In this unprecedented time, we look forward to partnering with each of you to establish a national, bipartisan approach that will fairly and best support the economic freedom of all college athletes. Such legislation must include the following provisions to maintain a level playing field, ensure student-athletes are students first and provide safe harbor for schools, conferences and the Association against recurring and ongoing litigation:

### *Preempt State Laws*

Conducting collegiate sports among a hodgepodge of state laws is untenable. More than half of the states across the country have passed laws governing NIL, all with different terms and provisions. Some of these laws have extended beyond NIL to other topics, which could escalate the confusion around college sports participation. Despite the efforts of the NCAA membership to mitigate these disparities and adopt a national standard that brings clarity for student-athletes and schools, the patchwork of disparate state laws has brought with it a range of inequities with students confused but still competing amid an increasingly uneven playing field. A single federal framework is essential to protect student-athletes and ensure they benefit from their NIL in an environment that is fair to themselves, their teammates and other student-athletes.

### *Safeguard the Nonemployment Status of Student-Athletes*

Student-athletes are and should remain students first. Their fundamental focus should always be his or her academic success. In any federal legislation, Congress should clearly articulate that student-athletes are not school employees and cannot be hired and fired. Converting student-athletes into employees will significantly and irreparably interfere with student-athletes' higher education experience and shatter college athletics and the broad-based scholarship and participation opportunities it provides for nearly half a million student-athletes each year.

### *Establish Limited Safe Harbor Protections*

It is unsustainable for NCAA rules to be judged as unlawful and subject to recurring lawsuits each time the Association attempts to make a rule change or policy decision. Without appropriate protections, these litigation challenges will continue, and they will continue to interfere with the Association's ability to effectively and efficiently support the evolving needs of student-athletes.

Importantly, any NIL legislation also must protect the recruiting environment of college sports, ensure that NIL payments are not a proxy for pay-for-play, maintain opportunities for sports that do not generate revenue and uphold Title IX protections for all student-athletes.

Thank you for the opportunity to share my experiences and perspectives on this critical issue. While the benefits of the new NCAA policy have created broad new financial opportunities for student-athletes, the fractured state landscape and resulting challenges require federal intervention to create a level playing field and ensure long-term consistency for students, schools and conferences. Without it, this largely unregulated environment could quickly become harmful to college sports and ultimately and most importantly, harmful to student-athletes.

We look forward to partnering with each of you to find a national and bipartisan path forward for name, image and likeness that will fairly and best support the economic freedom of all college athletes. We continue to be proud of the role that college sports have played in creating opportunities for our nation's student-athletes. We also recognize that much more needs to be done to enhance opportunities. We welcome the opportunity to work together with Congress to find shared solutions that will best support college athletes across the country.