



WASHINGTON STATE
ATHLETICS

April 27, 2023

Jessica Herron
Legislative Clerk
Subcommittee on Innovation, Data, and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-61115

RE: Responses to Additional Questions for the Record

Dear Ms. Herron,

Thank you to the Subcommittee on Innovation, Data, and Commerce for inviting me to appear on March 29, 2023, to testify on behalf of Washington State University at the hearing entitled, "Taking The Buzzer Beater To The Bank: Protecting College Athletes' NIL Dealmaking Rights."

At the request of the Subcommittee and pursuant to the Rules of the Committee on Energy and Commerce, I am attaching my response to the Members' additional questions for the record.

Please let me know if Washington State University can continue to assist or answer any additional questions.

Sincerely,

Patrick Chun
Athletics Director
Washington State University

Enclosure: Attachment 1

Attachment 1—Additional Questions for the Record

The Honorable Debbie Lesko

ESPN has given trans-identifying, male swimmer Lia Thomas recognition for Women’s History Month. I am concerned that this foreshadows how NIL could be used to undermine female athletes in contracts. Not only is it fundamental discrimination against women athletes to force them to compete against men in their own sport, but it has a direct impact on parity in representation of female athletes for NIL deals. Partnership with Thomas, for instance, could be recognized as a contract with a female athlete.

Do you believe that biological male college athletes identifying as women should be rostered and able to compete on women’s teams? Why or why not?

As a member of the NCAA, Washington State University adheres to the national policy regarding transgender student-athlete participation. Currently, that policy aligns with United States Olympic & Paralympic Committee (USOPC) and International Olympic Committee (IOC) guidance deferring to each sport's national governing body.

Do you believe that NIL contracts going to biological male athletes identifying as women should be categorized as NIL contracts in women’s sports? Why or why not?

To my understanding, there is no current, definitive methodology for calculating college athletics NIL activity.

The Honorable Kelly Armstrong

Mr. Chun, can you please touch on your experience regarding collectives and boosters preferring to send their money to individual athletes rather than the athletic program as a whole?

As you may be aware, the State of Washington currently does not have a state law regarding Name, Image and Likeness. We are, however, guided by state ethics rules and regulations that prohibit Washington State Athletics employees from providing direct support to prospective or current student-athletes and require employees to remain at arms-length from student-athletes NIL activities. But as we all recognize, donors have autonomy over the direction of their giving. Our general concern is the potential use of philanthropic donors being used for nefarious purposes within college athletics. Our institution does not bemoan the ability of student-athletes to be compensated for their true Name, Image, and Likeness value but we are concerned that our student-athletes find themselves grappling with the opaque nature of “collective NIL” in which roster management is conducted by unregulated third parties.

- a) **If federal legislation allows for collectives, what provisions would you suggest to govern the collectives?**
- b) **Mandatory disclosures, including compensation, duration and services rendered**

- c) Agent commission
- d) Clarity on application of Title IX
- e) Registration requirements

What suggestions do you have to address the transfer portal? How can we ensure that the transfer portal is used for more traditional reasons and not the promise of an NIL deal?

As suggested in the question, the traditional nature of the transfer portal and freedom for a student-athlete to choose their academic journey, generally, is not inherently negative. Student-athletes should be provided with the opportunity to find an institution best-suited to their academic and athletic goals. The issues arise when student-athletes are induced to transfer to institutions by lucrative NIL deals that are offered well before a student-athlete elects to enter the transfer portal. While this is a delicate area for regulation, one potential solution would be to increase the regulations around third-party involvement, specifically collectives. Through either an expansion of the Revised Uniform Athlete Agent Act (RUAAA) or the enactment of similar legislation, Congress could require collectives to register with a designated third-party administrator, states, and/or NCAA member institutions. This speaks to the need for a national standard to preempt the disparate state laws.

The Honorable Larry Bucshon

I believe that some kind of transparency and reporting on offered NIL deals is a good idea, but don't yet have a good idea about how that should take effect. In your opinion, who should be responsible for collecting and distributing such information? What kinds of information on offers and deals should be disclosed?

We recommend a third-party administrator be responsible for information and data collection surrounding NIL activities. Disclosures should be a legislatively mandated mechanism by which each business and student-athlete who engage in NIL agreements are jointly required to disclose (a) agreed upon compensation, (b) the initial/offer date of the agreement, (c) the duration of the agreement (d) services rendered, (e) agent commission

The Honorable Kathy Castor

Mr. Chun, please explain how schools, the NCAA, and Congress can ensure that female athletes are benefitting from their name, image, and likeness as much as their male counterparts?

There needs to be clarity on university responsibility for Title IX gender equity compliance when working with collectives and/or third parties.

The Honorable Russ Fulcher

There was witness testimony that discussed the fact that “most of the student athletes in your conference are first-generation college students.” Can you talk about the importance of education and the mission of HBCU's, especially as it relates to protecting these student

athletes from agents who don't have the best interest of the athlete in mind? (*Please Note: I am asking this question of each witness.*)

It has been well-documented that HBCU's have played a critical role in providing access to higher education for under-represented populations, and their impact has been immeasurable. The primary mission of every institution of higher education is to provide an academic foundation upon which each student can build a future. This mission is common across every NCAA division, conference, and institution.

As it relates to the perils of bad actors in the NIL environment, there are real and actual threats to the collective mission. By promising imagined or exaggerated commercial opportunities for student-athletes, the focus on the long-term impact of a four-year degree becomes clouded by the hope of an unrealistic payday. While many agents provide sound guidance and representation, there are those that seek to manipulate student-athletes for personal gain. While no institution is seeking to limit the earning power of their student-athletes, all institutions recognize the primacy of academics.

At Washington State, our student body is made up of 33.6 percent first generation students and 33.1 percent of them are students of color. While there are not HBCU's located in the Pacific Northwest, WSU is focused on providing accessible and affordable education to our students.

Can you talk about how the lack of a national standard, which makes it more difficult for athletes to assess or bargain for their true value, and can lead to being exploited? How would a national standard for NIL empower and protect student athletes? I am thinking of the "pros" and "cons" for a national standard, including things we should consider?

A national standard would create the transparency and consistency necessary for all student-athletes to maximize the opportunities of utilizing their Name, Image and Likeness. Through the knowledge of what similarly situated student-athletes are receiving, they can better assess their status and earning power. While there are aspects of NIL-centric markets that can be objectively quantified (e.g., earnings based on social media following), there are many variables inherent in collegiate athletics for which transparency is the only solution. Further, with 363 NCAA Division I institutions located across the country, student-athletes must have the ability to fully understand the laws (or lack thereof) of each state and decipher their applicability. Oklahoma recently adopted a state law that specifically rebukes the enforceability of the NCAA regarding NIL violations. These conflicts create uncertainty in our environment and emphasize the need for a consistent and fair national standard. Congress must enact federal legislation. The clarity would allow all student-athletes to move forward with confidence in the NIL parameters and with a full understanding of the marketplace.