



Today's Scholar-Athletes ~ Tomorrow's Leaders

April 30, 2023

Jessica Herron
Legislative Clerk
Subcommittee on Innovation, Data, and Commerce
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Jennifer Heppel's Responses to Additional Questions for the Record

Dear Ms. Herron:

I want to thank the Subcommittee for inviting me to appear before it on March 29, 2023 to testify at the hearing entitled "Taking The Buzzer Beater To The Bank: Protecting College Athletes' NIL Dealmaking Rights."

Pursuant to the Rules of the Committee on Energy and Commerce, I am attaching my answers to additional questions for the record, in the required format.

Thank you again for your help, and please let me know if you have any questions.

Sincerely,

Jennifer Heppel
Commissioner
Patriot League

Attachment - 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.

- 1. 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?**

I support the right of all athletes to participate in athletics competition. Everyone, including transgender athletes, deserves an equal opportunity to participate. As our national governing association, I consider the NCAA to be best positioned to develop sport-specific participation policies that assure opportunity and take into account up-to-date medical and legal knowledge to ensure that athletic competition is fair, equitable and respectful.

- 2. 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?**

A transgender student-athlete is a member of the team on which they have been determined eligible to participate. NIL transactions by eligible members of a women's team would be considered NIL transactions earned by women.

The Honorable Kelly Armstrong

- 1. Ms. Heppel, with your experience with smaller schools in the Patriot League, do you have concerns that a federal NIL regime would create regulatory costs that burden smaller schools, or potentially deny student-athletes NIL opportunities?**

I do not. In fact, I believe the opposite to be the case. Specifically, a federal structure will be less burdensome than the current environment in which our institutions are attempting to educate, monitor and adhere to over thirty (30) disparate NIL state laws.

There are Patriot League student-athletes from all fifty (50) states living on campuses that may or may not be located in their official state of residence. Quite honestly, there often is confusion about which state law applies to an NIL transaction. Given the chaos, institutions are at risk of not effectively educating, assisting or protecting student-athletes. It is the current environment that is a burden, it is untenable, and it is not serving the best interests of our student-athletes, coaches, administrators or institutions.

A federal law that preempts state law in the NIL area will result in a better environment for all. It will foster informed decision-making and bring integrity to the current system. A system

Ms. Jennifer Heppel

that is understood, transparent and trusted will result in more student-athletes engaging in NIL activities and will benefit institutions.

2. 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?

Recent changes to NCAA transfer rules that allow all student-athletes in all sports the ability to transfer one time and be immediately eligible, assuming the student-athlete also has met academic eligibility requirements, were very important changes for Div. I to make. The transfer portal – a software platform – serves as the vehicle which provides transparency for institutions around student-athlete decisions in the transfer space. It provides a level playing field for access to information for institutions, as well as a means by which a student-athlete is able to communicate their desire to be recruited as a transfer.

The concern that must be addressed is the promise of pay via NIL to induce a student-athlete to transfer to a specific institution. Pay-for-play and recruiting inducements disguised as NIL are illegal. Unfortunately, this is our current environment and, quite simply, it lacks integrity.

A federal law around NIL that preempts state NIL laws and requires disclosure of transactions will create transparency, an informed understanding of the marketplace, and accountability for all involved in the system. It will create a better environment for those involved in the NIL space, and it will foster informed decision-making by student-athletes. This will greatly assist in curtailing illegal pay-for-pay and recruiting inducements for all student-athletes, including those in the transfer portal.

The Honorable Larry Bucshon

1. 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?

I believe the use of a third-party administrator is appropriate to manage a required disclosure process. There are many companies capable of developing a web-based platform, a platform that also could provide financial educational features. Prospective and current student-athletes should be required to disclose all NIL activities, including terms and conditions, compensation arrangements/transactions values and the involved individuals or businesses. The platform could serve as the certification and registration platform for agents involved in NIL activities. Further, it could house important financial literacy educational opportunities for student-athletes and their families.

The federal law must compel the disclosure of NIL activities, and it must preempt state laws. The third-party administrator would not be a regulatory entity, but would serve to bring transparency to NIL activities, which will help student-athletes make informed decisions.

The Honorable Russ Fulcher

- 1. 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.)**

Student-athletes deserve a NIL structure that serves their best interests and creates an environment within which they can thrive. The current framework of over thirty (30) disparate state laws does not encourage opportunity or support informed decision making. As such, student-athletes are placed at risk.

A federal NIL law should address three key areas: 1) require disclosure of transactions, 2) require financial literacy education for student-athletes and their families, and 3) implement a certification and registration requirement for agents involved with NIL. Requiring disclosure creates transparency which, when coupled with education, will lead to informed decision making. Requiring certification and registration for involved agents promotes accountability among those in advisory roles surrounding NIL activity. Together, the three parts will bring integrity to the process and enhance opportunity and access.

Financial education is important for advancing the success of first-generation students, and as HBCUs disproportionately enroll first-generation students (*see “About HBCUs”, [Thurgood Marshall College Fund](#)*), this component of a federal NIL strategy could be particularly impactful for HBCU student-athletes.

- 2. 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?**

In the current environment, in which no national standard exists, our institutions are attempting to educate, monitor and adhere to over thirty (30) disparate NIL state laws. Further, as there is no required disclosure surrounding NIL transactions, there is no valid information about the marketplace. We are not providing our student-athletes with a framework under which they are able to make informed decisions. This places them at risk.

A federal law that preempts state NIL law will result in a better environment for all. It will foster informed decision making and bring integrity to the current system. A system that is understood, transparent and trusted will result in more student-athletes engaging in NIL activities, thereby increasing opportunity.

- 3. Can you expound upon the student athlete’s use of their NIL for their own self-promotion versus the school’s use of their NIL, and what kinds of clarifying rules**

should be in place? Does this play into concerns over student athletes becoming too much self-promotion entities versus the ideal of a sports scholarship?

NIL can represent important opportunities for student-athletes wishing to engage. Schools have a role to play in education and support of student-athletes in NIL activities, but should not secure NIL opportunities or negotiate NIL opportunities for student-athletes. Likewise, student-athletes should not be engaged in their own NIL activities while representing the institution in competition, or activities directly related to competition (e.g., news conferences, awards ceremonies, pre- and post-game activities).

Given many NIL endeavors provide important educational, professional networking, career development, and service dimensions, I believe there is a natural fit within the mission of higher education.

4. Can you provide some insight on guardrails when it comes to student athletes as “employees?” I have concerns over a range of issues that could affect both the student athlete, as well as employees of the institution.

The Patriot League does not support any outcomes that may result in our student-athletes being defined as employees. The idea that a student, who is fully participating in the academic and co-curricular opportunities available on our campuses, would be considered an employee of that institution as a result of such engagement, is incongruent with the mission and values of the Patriot League. Our institutions recognize the important role athletics participation plays in a student-athlete’s development and growth. Our coaches and administrators are respected as educators and are committed to the quality of the student-athlete experience. Athletics is an important component of the educational experience for which student-athletes choose to attend our institutions. Student-athletes are not employees as a result of their participation in athletics in the Patriot League.