

Written Testimony of Kaitlin “Keke” Tholl  
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Subcommittee on Innovation, Data, and Commerce

Hearing on “NIL Playbook: Proposal to Protect Student Athletes’ Dealmaking Rights”

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Hello everyone! I first want to thank the committee for allowing me to testify before you today. Next, I want to extend my gratitude for allowing me to be here in Washington to express my opinions on the ever evolving landscape that is collegiate athletics. Name, Image, and Likeness (NIL) and college athletics have been crucial areas of my life and I feel fortunate to share my story with all of you.

My name is Kaitlin Tholl, but most refer to me as Keke. I am a senior student-athlete at the University of Michigan where I am studying business in the Stephen M. Ross School of Business. I am a Captain of the University of Michigan Softball Team and currently serve as the Vice President of the University of Michigan's Student Athlete Advisory Committee. Additionally, I serve on the athletic department's Advisory Board for Intercollegiate Athletics. As a law school hopeful, the experience testifying before you today provides me a glimpse of a future where I can see conversation create action, and action create change. I hope that my testimony provides Congress with a glimpse into my personal experiences, and the insight I have gathered throughout my college athletics career, allowing me to begin the conversation which hopefully will create action and drive change. My testimony today represents my own personal experiences and opinions, and isn't reflective of my institution, my sport, my conference, or the NCAA.

### **My Experience**

NIL became allowable by the NCAA at the start of my second year of college. At first, I was very hesitant to get into the NIL space as anything new in the landscape of collegiate athletics tends to have a rocky start. And, at the start, the rules and regulations regarding NIL were vague and unclear. Conceptually, I felt NIL was a great opportunity for student-athletes, but I feared doing something wrong and not even realizing it. There were several unknowns that emerged: "How do I do taxes? Who do I report these things to? How do I know a company is a good company? How much am I worth (or should I be worth!) to a company?" With the laundry list of unknowns, I felt it best, initially, to not participate in NIL opportunities until I saw things more clearly. As NIL stabilized to a degree, I decided to dip my proverbial toe in.

The spring of my sophomore year I signed a contract with a company called Blue By Ninety, which made customized merchandise for University of Michigan student-athletes. The deal was very low maintenance and the company I worked with made me feel valued. The contract was easy to read and I felt that I had a great relationship with all the Blue by Ninety staff. Yet even with the experience of one deal, I was hesitant to pursue anything much beyond this local opportunity. I also felt I could not handle the workload of school, softball, social life, and managing additional NIL opportunities. Thankfully, the University of Michigan hired a woman within the NCAA compliance office to serve, regulate, and educate student-athletes in the NIL space. The University of Michigan has laid a framework for student-athletes to feel more

confident stepping into the NIL space, through offering and connecting together a number of institutional resources. For example, I have been able to work with the University of Michigan's Law School Entrepreneurship clinic to have contracts looked over prior to signing NIL opportunities. With this resource at my fingertips, I've actively sent every contract to the law clinic and will continue to do so through graduation. This became a particularly important exercise as the clinic was able to protect me from entering into a deal where I now feel that I would likely have been taken advantage of.

I had reached out to a company whose products I was frequently using. They were advertising for NIL deals; I felt this would be the perfect marriage. The company sent me a contract and I submitted it for review with the law clinic. They subsequently found some areas of the contract that could become problematic for future engagements, so they assisted me in renegotiating the contract. I sent the contract back to the company and they agreed to the new terms, however, the new contract they returned to me wasn't new at all-- it was the original contract, sent through a third party. Had it not been for the law clinic, I could have found myself with unwanted legal trouble.

As student-athletes, we're not equipped to navigate legal battles with companies, nor are we likely financially sound to do so. This is a significant risk in the NIL space. Thus, education in NIL is critically important for student-athletes who might not have the means to hire an agent. With that in mind, the University of Michigan's model is to use its own institutional resources. I understand that I attend a world renowned institution, with a top law school and business school that I benefit from. Though other institutions might not have their own affiliated pre-professional schools, we should find a way for this to be a model for other schools, or to connect resources. Power Five schools could offer NIL education, or the NCAA could deliver a program so that it is uniform in nature, in order to create equitable opportunities and understanding of NIL for all student-athletes.

To date, one of my favorite NIL deals is with the United Dairy Industry of Michigan. I love this NIL because it allows me to bring together two of my favorite loves, milk and softball. The deal itself is based around promoting the health benefits of dairy and the dairy farmers in the state of Michigan. It sounds silly, but I think this is the beauty of NIL. Athletes are able to take things that we love and are passionate about, and pair them together.

The majority of my NIL experiences have been positive, but I know that is not always the case for all student-athletes. My NIL experience has allowed me to build my brand and connect my classroom experience as a business school student to real life. When you find companies you are truly passionate about, it makes NIL all the more worth it as long as there is equitable opportunity for education.

## **Guardrails**

While I've personally had a great experience with my NIL deals, that does not mean there are not significant pitfalls and concerns with the concept. The "rules" around NIL remain vague and still leave people feeling uncertain. I feel the rules should be more clear and concise, in order to create more structure and thus create a more equitable landscape.

The University of Michigan takes great pride in taking care of the school's student-athletes, regardless of sport. I feel confident that Michigan's staff are greatly invested in who we are as people, not just student-athletes, and unfortunately, I don't know if that holds true at every institution, especially when it comes to the NIL opportunity landscape. This is why education on all aspects of the NIL "rules" is necessary.

With that in mind, one area that I think is critical for employing additional guardrails is recruiting. Each states' legislation addresses recruiting differently, therefore allowing some institutions to find loopholes around bringing up NIL with a recruit. My fear in this practice is around how these promises to student-athletes are being made. How are coaches or institutions guaranteeing money? Much like a scholarship is a binding one year renewable opportunity, should NIL in recruiting be similar? How do you tell a junior in high school that you can make \$80k from a collective when you arrive at college, without knowing what the pool of money might actually be two years from now? A coach is not allowed to have access to a collective's information, so therefore it is word a mouth. What happens if a recruit signs his or her NIL deal, and when they start to attend the university, the money is no longer there or the collective has gone under? To me, that is one of the largest concerns — are we lying? There is often a honeymoon period in the recruitment process, but a scholarship is rarely ever changed. I can see both the pros and the cons of NIL in recruiting, but there must be guardrails for enforcement purposes, or nothing will change and there will be limited equity in the process. The goal for Congress should be to ensure an even playing field for all institutions and to protect student-athletes' well-being – mentally, physically, and financially.

## **Title IX**

Women's sports have come so far, and yet there is still so much to be done. I fear that NIL could push us backward. In the new NIL landscape, how does Title IX apply? No one is sure, and thus, no one is enforcing compliance. Collectives are not federally funded, which means they do not have to follow Title IX requirements, and many are supporting athletes associated with revenue generating sports like football and basketball. Yes, I understand these programs can provide funding for universities' athletics programs, but that's not the case for everyone. What about our mid-major universities or Division II and III, where that is not the case? The University of Michigan has named the Champion's Circle the official collective of Michigan athletics, and I

think it is great that our fan base wants to be engaged in the collective space. However, I believe that collectives should have to abide by Title IX and spread funding opportunities among all athletes at the university.

### **Employment**

I understand that the idea of student-athletes as employees is a growing topic not just among athletic departments and institutions but across the government. As someone who is actively involved in our athletic department as a member of the University's Student-Athlete Advisory Committee, and sits on the Advisory Board for Intercollegiate Athletics, I can see firsthand how concerning and potentially problematic this employment tag could become. While I recognize and support the notion that student-athletes could share in the revenue generated from the athletic department, there are significant concerns to consider, many of which are related to labor laws, and that, to me, should eliminate the idea of student-athletes as employees of the institution.

Insurance. Health Care. Retirement. Minimum Wage. Unions. Pensions. Salary Bands. Human Resources. These are just a few of the things that workers face regularly. These are all things that would need to be considered when thinking about student-athletes as employees. Performance evaluation is also something that can be a major part of being an employee versus a student-athlete. Are student-athletes at-will employees? Would scholarships no longer exist? How would the compensation work? Will the wage offered be enough to pay for college if a scholarship is removed? How are these employees taxed? Are we able to have a pension? Or will the athletic department match a 401k? There are so many logistics that at first glance appear to be ignored.

My biggest concern, though, is what employment status would mean for supporting all sports. If student-athletes are made into employees, budget impacts would mean that many universities likely cannot, and will not, support all sports. We then face yet another Title IX issue with the major revenue generators being male student-athletes, leaving women's sports to again face an uncertain reality.

When I arrived at college, NIL didn't exist and the proverbial floodgates of "pay for play" and student-athlete employment hadn't opened. Being able to get an education while playing a game that I am passionate about is what was, and continues to be, most important to me. My scholarship, and thus my education, is my compensation. I do realize that not everyone is on scholarship, however, I think employment goes far beyond compensation. I believe student-athletes should have opportunities to share in revenue but not at the expense of their educational opportunities in an age where a college education is increasingly the expectation.

## *Voices*

I am one athlete out of thousands of student-athletes throughout the country. I know there are many voices that want and NEED to be heard. Has anybody thought to ask more student-athletes or coaches how the impact of the current NIL landscape affects their lives? They are the ones living it. In the short time I had to research and write my testimony I was able to speak with some fellow student-athletes and college coaches. I would ask the Members of Congress before me today, how many athletes have you spoken with on this topic? The various athletes that I spoke with, representing a variety of sports (and genders) highlight that while there are similarities, there are far more differences in people's experiences. No student-athlete's experience with NIL is going to be the same – but the playing field must be leveled in an effort for collegiate athletics to continue to exist. I worry that decisions are being made without the opinions of the most important people being impacted by the current NIL landscape, the student-athletes who live this life on the playing field and in the classroom each and every day. I encourage you all to seek out more coaches and athletes who live in the NIL era to shape the best legislation that ultimately has the college athletic experience top of mind.

Thank you again for inviting me to testify before you today so that my voice can be heard – I appreciate you allowing me the opportunity to begin a conversation which hopefully will create action and drive change.