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Mr. Alex Khlopin
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Khlopin,

I appreciated the opportunity to testify before the Subcommittee on Commerce, Manufacturing, and Trade on Tuesday, March 4, 2025, at the hearing entitled "Moving the Goalposts: How NIL is Reshaping College Athletics." I am in receipt of additional questions for the record provided by subcommittee members, and my responses to those questions are enclosed.

As a longtime athletics director, I am proud of the work that college coaches and administrators have done to promote the development of hundreds of thousands of young people across the United States. There is no question that the uniquely American model of intercollegiate athletics is worthy of protection, and I would like to reinforce the need for Congressional support in crafting legislation that (1) enshrines benefits for student-athletes into federal law, (2) clarifies the distinction between student-athletes and employees, (3) provides a legal safe harbor to allow intercollegiate athletics to develop and enforce rules necessary to promote fair and consistent national competition, and (4) preempts existing state laws related to student-athlete name, image, and likeness activities.

Thanks once more for the chance to appear before the subcommittee. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Josh Whitman
Director of Athletics
University of Illinois Urbana-Champaign

Enclosures: Responses to Additional Questions for the Record

CC:

The Honorable Gus M. Bilirakis, Chairman, Subcommittee on Commerce, Manufacturing, and Trade
The Honorable Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment – Responses to Additional Questions for the Record

The Honorable Russ Fulcher (R-ID)

1. *Do you believe transparency in agent registration and contract standardization would be beneficial and help reduce any bad actors in this space?*

I believe internal transparency creates a healthier, more informed ecosystem around our student-athletes. To protect the privacy of the young people participating in college sports – they are students, after all – visibility into that system should be limited to those functioning within the system (as opposed to public transparency). The NCAA has made inroads in this area, with new efforts underway to create databases related to student-athlete NIL arrangements, and the disclosure system being developed as part of the anticipated *House* settlement will provide even more robust transparency. Regarding agents, the NCAA also maintains a voluntary database of registered agents to help ensure that agents are compliant with NCAA rules and to protect student-athletes from potential harm. That initiative can and should be strengthened. Informed, well-intentioned, experienced agents can be very helpful to our student-athletes as they navigate their new environments, while agents who lack needed training, skills, or integrity can be harmful to the student-athletes and detrimental to the system itself.

As we prepare for potential settlement in the *House* case, standardizing the newly available NIL contracts between the student-athletes and their institutions would be extremely helpful. For college students, I support a structure that is easily understood and navigated, such that student-athletes and their families could successfully complete the institutional contract process without representation. This would provide the student-athletes with confidence in the agreements themselves and would reduce the number of negotiated terms to a more manageable number. Faced with only a small number of negotiated terms, student-athletes could work with an agent if they so choose, but an agent would not be necessary to complete an agreement.

For other NIL agreements made between student-athletes and third parties, contract standardization could be more difficult. It is important that student-athletes have the autonomy to negotiate with third parties to achieve their desired objectives. There is tremendous variation in student-athlete NIL activities, and a standard NIL contract, while theoretically beneficial, could serve to hinder the flexibility needed to arrange a social media promotion as opposed to an autograph signing, for instance.

Both agent registration and standard institutional NIL contracts could be mandated through new federal legislation supporting college athletics.

The Honorable John James (R-MI)

1. *Bad actors are already moving into the NIL space by convincing young athletes to sign contracts that exploit their earning power. Some of these contracts require athletes to pay 50 percent of their earnings to these agents. What guardrails should be created to ensure young impressionable athletes are not exploited?*

Agent registration and certification processes can help with predatory representation agreements. In 2024, the NCAA created the NIL Assist platform to help student-athletes find reputable agents, but the NCAA did not have the legal capacity to require agents to register on the platform. The NCAA has also explicitly supported the Sports Agent Responsibility and Trust Act (SPARTA), which empowers the FTC to combat unfair and deceptive practices in the context of student-athlete agents. Relatedly, most state laws require registration for professional sports agents. Using federal legislation to bolster SPARTA and to mandate that agents register with the NCAA could be an effective way to prevent student-athlete exploitation. It would also be worth considering whether there is a mechanism available to Congress to institute a standardized fee structure for NIL agents.

2. *While Adrian College wholeheartedly supports the right of college athletes to earn money from their NIL, an arms race could ensure quickly creating colleges of “haves” and “have-nots.” Is there a way to create equanimity among colleges to ensure a few rich institutions don’t have all the power to recruit top athletes?*

First, the NCAA’s organizational structure allows institutions to select their competitive peers based on the investment that each institution is prepared to make in athletics. As a result, Adrian College, which primarily competes at the Division III level, is not forced to compete against the University of Michigan, which competes entirely at the Division I level. Similarly, Eastern Michigan University primarily competes in the Mid-American Conference, apart from Michigan State University, which is a member of the Big Ten Conference. These divisional and conference structures function together to mitigate the competitive effect of significant disparities in institutional resources.

Second, if anything, the introduction of NIL has served to create greater competitive parity than we have seen in the past, especially if, as expected, the *House* settlement gains approval. Schools that can generate even modest NIL reserves can compete for student-athlete talent, even if they lack resources in other traditionally important areas, such as facilities, staffing, and student-athlete support. This has been especially evident in basketball and other small roster sports, where the addition of even one or two student-athletes can make a competitive difference.

3. *Is the amateur student-athlete model dead? Do we now have a pay-for-play professional model across the college spectrum?*

College athletics is experiencing an intense period of disruption and change, but it is far from dead. In just the past few years, seismic changes – conference realignment, NIL, increased student-athlete mobility, college sports gambling, and others – have affected college athletics. “Amateurism,” in the most traditional sense of the word, may be an increasingly outdated concept, particularly in Division I athletics, but the collegiate model remains distinct from the professional sports model, in large part because of the continued tether and intersection between a young person’s educational and athletics pursuits. It remains unchanged that college athletes must be full-time, degree-seeking students, and institutions provide expansive benefits to their student-athletes, beginning with scholarships to fund their education. And the results remain noteworthy. For example, the NCAA has indicated that scholarship student-athletes are graduating at the highest rates on record, viewership and attendance at college sporting events are at an all-time high, and postseason access continues to expand. Against this backdrop, the *House* settlement promises to allow student-athletes to receive an unprecedented set of benefits that, when existing investment in scholarships and support are combined with new scholarship funding and revenue sharing, will often exceed 50% of athletics department revenues. All of this has occurred without abdicating the NCAA’s historic prohibitions against pay-for-play. I have been associated with college athletics in various capacities for most of the last 30 years, and I am confident that now is the best time in history to be a student-athlete.

The Honorable Debbie Dingell (D-MI)

1. *It is well known that women's sports often do not receive the same support, promotion, recognition or attention as men's sports programs at schools, in the media, and elsewhere. We must strengthen Title IX, improve gender equity in NIL, and ensure collectives, schools, and conferences distribute resources more equitably.*

In April 2024, the GAO reported that 93% of institutions with athletic programs failed to meet Title IX participation standards, and data shows female athletes are shortchanged over a billion dollars annually in scholarships. Schools continue to invest more in promoting men's sports, and the success of revenue programs has enhanced male athletes' NIL and recruiting value.

Schools are indicating they will be giving men's basketball and football players 90% of new revenue sharing payments up to \$20 million a year for the next decade and publicly saying these payments don't count under Title IX.

Mr. Whitman, how can thoughtful NIL policy promote women's sports programs and bridge these disparities in treatment?

Perhaps no law in American history has had a greater impact than Title IX on the educational advancement of women and girls, especially in sports. Federal law mandates Title IX compliance in college athletics, and my visibility into our industry suggests to me that the vast majority of institutions across the country make good faith efforts to comply with both the letter and the spirit of the law. As we prepare for anticipated settlement in the *House* class action, it is unclear how Title IX will apply to the new revenue sharing opportunities it will create. Unless and until we receive greater clarity and understanding, schools like Illinois are attempting to navigate this emerging space with our best intentions. In the meantime, on the Illinois campus and I suspect on many others, our female student-athletes will see marked increases in available scholarships in every sport we sponsor, along with more female student-athletes receiving NIL opportunities, now in the form of institutional revenue share payments. These investments in our women's sports programs coincide with the recent surge in fan interest for women's sports, including, for example, upticks in viewership and attendance for women's basketball, women's volleyball, and softball, along with an increasingly vibrant NIL marketplace for our female student-athletes that has, in many cases, outpaced that of their male counterparts because of their social media presence, personal brand recognition, and overall marketability.

2. *Traditionally, all sponsorship, gate receipts, donations, and TV revenue go into one pot that supports all sports without discriminating on the basis of sex. This commitment has made the United States a world power in the Olympics and a global powerhouse.*

Mr. Whitman, can you tell us what an overhaul of this precedent would mean for the athletes?

You are correct that the traditional college athletics structure has helped make American college athletics the envy of the world and has positioned the United States for unparalleled Olympic success. I do not anticipate that changing as we move into the new paradigm expected as a result of the *House* settlement. In fact, under the proposed terms of the settlement, Division I institutions will be able to offer additional resources to all student-athletes, not only those participating in the highest profile sports and not only to men. At Illinois, a greater number of female student-athletes will enjoy enhanced benefits, in terms of scholarships, NIL opportunities, and other programmatic support, and I anticipate similar investments from our peer institutions. This should allow our Olympic pipeline to remain strong.