

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members of the Committee on Small Business

FROM: Committee Majority Staff

DATE: September 15, 2023

RE: Full Committee Hearing Titled: “Athletes and Innovators: Analyzing NIL’s Impact on Entrepreneurial College Athletes.”

On **September 20, 2023, at 10:00 AM ET** the Committee on Small Business will hold a hearing titled “**Athletes and Innovators: Analyzing NIL’s Impact on Entrepreneurial College Athletes.**” The meeting will convene in room 2360 of the Rayburn House Office Building. The purpose of this hearing is to examine the impact the National Collegiate Athletics Association’s (NCAA) name, image, and likeness (NIL) policy changes have had on student athletes’ ability to be entrepreneurial, as well as subsequent challenges student athletes face.

I. Witnesses

- **Mr. Eugene (Gene) Smith**, Senior Vice President & Wolfe Foundation Endowed Athletic Director, The Ohio State University (OSU)
- **Mr. Jeremiah Donati**, Director of Intercollegiate Athletics, Texas Christian University (TCU)
- **Mr. Gino Torretta**, Heisman Trophy Winner & 2-Time National Champion, Member of the College Football Hall of Fame
- **Ms. Madeline (Maddie) Salamone**, Vice President (Attorney & Athlete Advocate), College Football Players Association (CFPBA)

II. Background

It has been said that the athletic department is the ‘front porch’ to a university. Besides drawing prospective students to attend, college athletic programs are a major source of revenue for various parties. College football and men’s basketball alone have generated billions of dollars for television networks, corporate sponsors, and universities. However, for the first 115 years of NCAA governance over college sports, the individual college athlete had no legal right to earn a monetary profit from their athletic performance.

A series of court cases and various state laws caused the NCAA to drastically change their policy on NIL on July 1, 2021. After passing an interim uniform policy across the three NCAA divisions, applicable to all college sports, college athletes were able to monetize their NIL overnight. Since then, there has been a cascade of positive and negative repercussions.

These changes have allowed entrepreneurial college athletes to treat their college experience like running a small business. They can now look for ways to maximize their own value and for innovative avenues to start building their own brand. Some student athletes have seen major success in the NIL space—landing brand partnerships spanning from large, global brands, to local small businesses in their community. The policy changes have allowed student athletes to earn \$917 million in year one and are expected to earn over \$1 billion in year two.¹

NIL has been extremely beneficial to student athletes who may not go on to play professional sports, and who are now able to leverage their collegiate presence and generate income. Athletes who previously may have left school early to enter professional sports are encouraged by NIL earnings to stay in school.² However, success in the space has not been seen across the board.³ Colleges with smaller markets and therefore less money in their ecosystem are becoming less attractive to top talent.⁴ NIL is not necessarily bad for students attending small schools—athletes in smaller markets have successfully partnered with small local businesses.⁵

Additionally, the rapid expansion of the NIL space has opened the door for bad actors to take advantage of college athletes. While some universities actively educate their students on applicable topics such as contract negotiation, brand management, and financial literacy, some college athletes have fallen victim to predatory contracts and false promises.⁶ Schools with fewer resources may not be able to offer the same level of assistance to their athletes as far as educating them on how to navigate the space.

The NIL era's current state of affairs is best summed up as the "Wild West." In addition to the complicated regulatory framework, the solution for management of bad actors is unclear, as is how to handle rapidly developing innovation in the space. This hearing will bring to light the various challenges and opportunities presented as a federal solution is considered, and to ensure NIL policy changes are beneficial for student athletes above all else.

¹ *Protecting Your Future and Capitalizing on Opportunity: Two Years Into the NIL Marketplace*, FREDRIKSON & BYRON, P.A. (Jun. 27, 2023).

² Jeff Eisenberg, *Should I stay or should I go? How NIL is making this The Year of the Big Man in college basketball*, YAHOO!SPORTS (Nov. 10, 2022).

³ Josh Schafer, *NIL: Here's how much athletes earned in the first year of new NCAA rules*, YAHOO! FIN. (Jul. 1, 2022).

⁴ Ross Dellenger, *Big Money Donors Have Stepped Out of the Shadows to Create 'Chaotic' NIL Market*, SPORTS ILLUSTRATED (May 2, 2022).

⁵ Alan Blinder, *The Smaller, Everyday Deals for College Athletes Under New Rules*, THE N.Y. TIMES (Dec. 9, 2021).

⁶ Mark Schlabach, *Florida legislator says Bears DT Gervon Dexter's NIL deal violated law*, ESPN (Sep. 5, 2023).