

# EXPLORING A COMPENSATION FRAMEWORK FOR INTERCOLLEGIATE ATHLETES

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## HEARING

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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JULY 1, 2020

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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## **EXPLORING A COMPENSATION FRAMEWORK FOR INTERCOLLEGIATE ATHLETES**

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**WEDNESDAY, JULY 1, 2020**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:08 a.m., in room SR-253, Russell Senate Office Building, Hon. Roger Wicker, Chairman of the Committee, presiding.

Present: Senators Wicker [presiding], Thune, Cruz, Fischer, Moran, Sullivan, Gardner, Blackburn, Capito, Young, Scott, Cantwell, Blumenthal, Peters, Tester, Sinema, and Rosen.

### **OPENING STATEMENT OF HON. ROGER WICKER, U.S. SENATOR FROM MISSISSIPPI**

The CHAIRMAN. All right, thank you very much. And this hearing will come to order.

Today, the Committee convenes to discuss the issue of compensating student athletes for the use of their name, image, and likeness, NIL.

I welcome our distinguished panel of witnesses, and thank them for appearing. Today, we will hear from Mr. Keith Carter, Vice Chancellor for Intercollegiate Athletics for The University of Mississippi, my alma mater, where I lettered in zero sports; Mr. Michael Drake, Chair of the National Collegiate Athletic Association, Board of Governors, and President Emeritus of The Ohio State University; Ms. Dionne Koller, Professor of Law and Director of the Center for Sport and the Law at the University of Baltimore School of Law; Mr. Greg Sankey, Commissioner of the Southeastern Conference; and Mr. Eric Winston, Chief Partnerships Officer for OneTeam Partners, former President of the NFL Players Association, and former NFL player and college athlete. College sports are a rich part of the fabric of America's families, communities, and states. College sports have long been deeply rooted in our culture. This is true in my home state of Mississippi, where there are over 30 institutions of higher learning that offer college athletic programs.

Like a lot of places across the United States, college sports is never far from the minds and—or memories of Mississippians. Reliving and recounting the results of past contests is a common occurrence. For example, Ole Miss fans still talk about Senquez Golson's game-winning interception in the end zone to help Ole Miss knock off top-ranked Alabama in 2014. I was there. I remember where I was sitting in Vaught-Hemingway Stadium at the

time. And it's still thrilling to recall Morgan William's overtime jumper to help the Mississippi State Lady Bulldogs end UConn's 111-game winning streak in 2017. We just needed one more win.

College sports contribute so much more than triumphant or heartbreaking memories. Sports help ingrain in our student athletes the values of fair play, sportsmanship, and teamwork. Sports have helped lead societal change, and they continue to help unite the country. College sports also offer valuable academic opportunities for students who might otherwise have none. With these things in mind, I approach the topic of today's hearing with an abundance of caution and reluctance, even skepticism and trepidation. On this issue, Congress might well heed the time-honored Hippocratic Oath, "First do no harm." As the Committee of jurisdiction over youth, amateur, collegiate, and professional sports, this committee seeks expert advice today as we decide which direction we begin to take for congressional action on the issue of NIL compensation in college sports.

More than 30 states have adopted, introduced, or signaled plans to introduce legislation allowing for student athletes to be compensated for the use of their NIL. I believe my colleagues recognize the need to avoid differences among the states by having a uniform set of standards by which our collegiate student athletes compete, a set of uniform standards that will strive for a level playing field. At the same time, we must recognize that any standards for the compensation of NIL must also provide protections for students, schools, and associations, particularly for the student athletes. We must be mindful of the law of unintended consequences. Human nature being what it is, we need to realize that some of our fellow mortals will seek, and likely find, loopholes for an unfair advantage. Over the last 4 months, I've spent hours on the phone with university presidents, athletic directors, and former collegiate athletes to help understand the current collegiate student athlete system and how to approach a national policy on NIL. As part of that process, and in preparation for this hearing, I sent a list of 20 questions to 50 collegiate associations, conferences, universities, colleges, and service academies. We have summarized those responses and put that information on the Committee's website.

Without objection, I will enter that summary document into the record at this point.

Hearing none, that will be done.

[The information referred to was unavailable at time of printing.]

The CHAIRMAN. In May, the NCAA Board of Governors' Working Group issued a report on student athlete compensation, the modernization of rules related to NIL commercialization and recommendations, to Congress. We are grateful to have that input, as well.

And I ask unanimous consent to insert that into the record also.

Without objection, it will be done.

[The information referred to was unavailable at time of printing.]

The CHAIRMAN. In almost every discussion I've had, the topic inevitably turns to a look at the many ways this issue might be abused or go awry. For example, will high school athletes choose to attend a university in a large media market because they believe it will generate more NIL value? How will universities or their sup-

porters be prevented from manipulation of NIL contracts in the recruiting process? Will businesses invest in student athlete NIL rights to promote a legitimate business, or as an avenue to create access to athletes, coaches, and athletic programs? Will it be easier or harder for the star player on a team to put the team first, even when showcasing individual talent may increase NIL income? Will NIL result in a rise in student athlete transfers to universities in bigger advertising markets? How will third parties contracting student athletes be regulated, and how will that impact schools' ability to ensure compliance and enforcement of NCAA rules? Is an 18-year-old emotionally and financially prepared to make all the choices required to enter into NIL contracts? What will be the impact on the student's academic obligations? Will permitting compensation for NIL further widen the gap between the haves and the have-nots among institutions for higher learning? And what about the effect on Title IX and women's sports? The list goes on and on.

Let me single out Senator Moran for taking the first steps on this issue by holding a subcommittee hearing on NIL earlier this year. I know he shares with me the sense of importance and urgency this issue demands.

I look forward to working with him and all of the members of the Commerce Committee as we move forward to seek a solution. Many questions remain. I hope our committee will gain a better understanding of these complicated issues and the challenging—challenges before us by means of these expert witnesses today.

Let me again thank them for being here and recognize my dear friend and colleague, Ranking Member Cantwell, for her opening remarks.

Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. And thank you for that long and thoughtful statement and a little bit of reminiscing about your own experiences.

I consider myself a sports fan, and definitely a collegial sports fan, but certainly one that sides with wanting to have amateur athleticism and to make sure that we're keeping amateur athleticism. If anything, I feel like we should be doing more as a committee in our oversight of the violations of that athleticism and amateurism that occur all the time. And mark me down as not a fan of one-and-done, but somebody who really believes in the collegial system, as you said, of giving athletes an experience of leadership, teamwork, building all sorts of character that I hope that we can continue to preserve as we look at this legislation.

And I want to thank our witnesses for being here today, too. I know you come from a breadth and depth of experiences on these issues. At the outset, I hope that we have a chance to talk about the current healthcare crisis. As we are moving closer to the beginning of the academic year and know that the pandemic is not relenting, I want to make sure we're putting into place safeguards to protect our student athletes as we look forward to what the colle-

gial environment might be this fall. So, I'll have the chance to ask people about this.

This issue of compensation for student athletes is a complex one, as the Chairman just mentioned, with strong feelings on both sides and growing legal battles in the courtrooms and State legislatures around the country. Despite its complexity, it is impossible to ignore the simple facts that these athletes do produce billions of dollars of value for the NCAA and member institutions, and aren't able to market themselves as other athlete students would be. So, the status quo is especially jarring as we look at this national reckoning on racial justice and civil rights issues, and want to understand the impacts of the NIL on all athletes.

So, I look forward to the discussion and potential solutions that we're going to talk about today.

I am not a fan of an NCAA antitrust exemption. I think that quashing all momentum for change with this blunt legal instrument is both unnecessary and ill-advised. Similarly, I oppose the Congress fully deferring to the NCAA on just coming up with the rules on name, image, and likeness. I think Congress should not abdicate its role, and I think the Chairman's very thoughtful discussion and hard work on this shows that we need to have some input and oversight to make sure it's done right. The Chairman just articulated a long list of complexity to the issue, which I very much appreciate his understanding and the delicate balance that so many institutions have already tried to achieve by complying with the rules that are on the books today. And so, I agree with the Chairman that we don't want to see a new system in which violations would occur because somebody sees a new avenue to promote a competitive edge in what is, hopefully, as balanced as we can get. But, again, like I said, I think we should have more oversight on these issues.

So, how can we find a solution that preserves both the character of college sports while also providing athletes with well-deserved rights? So, as I said, I believe in preserving amateurism and that athletes would be able to grow. And I look forward to hearing Professor Koller's comments on this issue and exactly how we can achieve this.

I believe Congress should take the time to get this right. It must be an open process. Hundreds of thousands of current athletes, and millions of future athletes and their families, are depending on it. And, as the Chairman said, this is a long tradition. It's part of our culture, these institutions, these athletic events, and we don't want to turn them into one more avenue of, again, people just gaming a system on behalf of the athletes and then leaving the athletes, again, without their own recourse.

So, I'll look forward to seeing the set of solutions that we can agree on, and I hope that we can also, at some point in time, Mr. Chairman, look more closely at mechanisms to ensure that female athletes have the same opportunity to earn compensation as their male colleagues. I think this is an important issue that deserves its own hearing and deserves its own focus, and hopefully we can get to that at some future date.

So, thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Cantwell.



And now the written statements by all five of our witnesses will be entered into the record in their entirety. We ask each witness to summarize their testimony in 5 minutes. And, of course, Mr. Winston will be joining us remotely.

So, we'll just begin at the left end of the table here, and proceed down the table.

Mr. Carter, you are recognized.

**STATEMENT OF KEITH CARTER, VICE CHANCELLOR FOR  
INTERCOLLEGIATE ATHLETICS, UNIVERSITY OF MISSISSIPPI**

Mr. CARTER. Chairman Wicker, Ranking Member Cantwell, and the members of the Commerce Committee, good morning.

My name is Keith Carter, and I'm the Vice Chancellor for Intercollegiate Athletics at the University of Mississippi, or more commonly referred to in athletic circles as "Ole Miss." It's certainly an honor and a privilege to represent our great University, the Southeastern Conference, and other athletics directors and student athletes from across the country regarding name, image, and likeness.

I would like to thank Senator Wicker for inviting me to testify today, and, to everyone on the Committee, for your interest and the attention as we look to work together and answer your questions regarding this timely and critical issue for student athletes across the country, the need for Federal legislation that provides a uniform standard for name, image, and likeness nationwide.

I believe it is time for intercollegiate athletics to find a pathway forward. Legislation of this magnitude dealing with student athlete's personal image and how a compensation model could potentially be implemented must be done in a deliberate, thoughtful, and inclusive manner, as it will shape the future of intercollegiate athletics.

Athletics has been a vital part of my life since I was 5 years old. Growing up, I played baseball and basketball, and ultimately had an opportunity to pursue a lifelong dream of competing at the highest level and fulfill a goal of completing my undergraduate degree. I was recruited by numerous schools, and chose to be a student athlete at the University of Mississippi. When I played basketball at Ole Miss, I enjoyed the student athlete experience. While the schedule was rigorous—class, study hall, weight training, practice, and certainly competition—the student athlete experience shaped and molded me to the person that I am today.

I also noticed, during my time as a student athlete, that my image and presence grew as I improved as a player and as my team became more successful. I was more recognized on campus and within the community. Interview requests increased, public appearances increased. And, looking back, there would have been some level of market value for myself and my teammates.

Today, the landscape has drastically changed. Whether it's social media, endorsements, or promotions, our student athletes have an unprecedented opportunity to capitalize on their name, image, and likeness, similar to thousands of other students with whom they attend college.

After finishing my basketball career in Europe, I realized that I wanted to be back on a college campus, working in an athletic department. Being a product of college athletics and having a real-

life story of how much my student-athlete experience prepared me for the future, I felt a great obligation to give back. Special people, such as coaches, administrators, professors, and countless others, made a difference in my life. I wanted to use my experience as a student athlete, and the lessons I learned along the way, to help other young men and women achieve their goals.

As I moved into a leadership role as athletics director at my alma mater, I take great pride in listening to student athletes. I often get questions about the opportunity to benefit from their NIL in the same way that their non-athlete classmates do, and the timing around any potential legislation. What does this model look like? It is obviously very complex, but we have an opportunity to shape what this could look like and ensure that unintended consequences do not cause long-lasting ripple effects on the ability to support our almost-400 student athletes. It is also vitally important that the governance structure be formed around Federal legislation to ensure that each state, and therefore each university in the Nation, has a uniform framework that continues to focus on education and the unique appeal of the current amateur model. Ensuring that our student athletes remain students and college athletics does not become pay-for-play—essentially, another professional league—is essential in any potential solution. In my opinion, the preferred NIL system involves third-party compensation only, where colleges and universities are not allowed to pay for, or otherwise facilitate, NIL opportunities for their student athletes. Another important component of any new legislation must ensure that NIL opportunities are kept out of the recruiting process. Absent sufficient regulatory framework, NIL opportunities could be used as improper inducements during recruiting that could deter prospective student athletes from appropriately considering the academic and athletic opportunities a particular university may offer him or her. Regulation of agents and boosters in facilitating or offering NIL opportunities is also essential to a healthy framework.

We come before you today to speak to the need for Federal legislation to provide a baseline consistency for this much-needed opportunity. Our goal is to work with you to put forth a national framework, and, first and foremost, protect the interests of all student athletes, both male and female, preserve the amateur model of intercollegiate athletics, safeguard the recruiting process, and ultimately provide equal opportunities for all student athletes to benefit from their NIL in the very same manner as their non-athlete classmates.

Thank you again for this opportunity. Ultimately, we believe that more can and should be done for our student athletes, but it must be done in a way that continues to promote education and give consistent opportunities for all. I look forward to working toward a solution and enhancing the lives of our student athletes in the future.

Thank you.

[The prepared statement of Mr. Carter follows:]

PREPARED STATEMENT OF KEITH CARTER, VICE CHANCELLOR FOR INTERCOLLEGIATE  
ATHLETICS, THE UNIVERSITY OF MISSISSIPPI

### Introduction

Mr. Chairman and members of the committee, thank you for the opportunity to provide my perspective as Congress works toward developing a compensation framework in the best interest of intercollegiate athletes.

### Keith Carter, VC for Intercollegiate Athletics, The University of Mississippi

My name is Keith Carter, and I am a proud long-time member of the University of Mississippi<sup>1</sup> family. Since November 2019, I have served as the Vice Chancellor for Intercollegiate Athletics, a position I started in an interim capacity in May 2019. I began my career in the Ole Miss Athletics Department in 2009, later became the Executive Director of the Ole Miss Athletics Foundation, and then served as the Deputy Athletic Director for Resource and Development Acquisition.

While I was a University of Mississippi student, I was a four-year starter on the Ole Miss men's basketball team, which won SEC Western Division titles in 1997 and 1998. I earned All-American honors after my senior season in 1999. I received All-SEC first and second team honors in 1998 and 1999. I also won a gold medal as a proud member of the U.S. national team at the 1998 Goodwill Games and played professional basketball in Italy from 2001 until 2008.

As a former Ole Miss student-athlete, former professional athlete and a current senior administrator at a SEC university, I hope my perspective will add helpful insight to this important conversation. Addressing NIL opportunities for student-athletes within the model of amateur athletics is a complex topic, and it is critical for Congress to consider all aspects of the issue and arrive at the best possible solution as these decisions will impact the futures of so many dedicated college students.

### Role of the University

The University's principal obligation as an academic institution is to provide academic excellence for all of our students. It is a privilege, and enormous responsibility, to earn the trust that students and their families place in us. It is our duty to hold all students to high standards for achievement including student-athletes as they are students first and foremost.

Our student-athletes, like all University of Mississippi graduates, must enter the world prepared to thrive in a competitive environment on and off the field. The University is obligated to provide them with a foundation to experience lifelong growth and to contribute in all aspects of today's society.

We are extremely proud of our accomplished Ole Miss student-athletes who thrive in their academic pursuits and move on to great success in a variety of careers and professions. The University of Mississippi is dedicated to supporting all students and empowering them to reach their greatest potential, and athletics is one avenue to honor our commitment.









### Current University Support of Student-Athletes

Under the existing model of amateur intercollegiate athletics, student-athletes are not compensated for their athletic participation, ability or performance potential. Student-athletes are eligible for full or partial athletics scholarships, academic scholarships, and financial aid up to the cost of college attendance (*i.e.*, tuition, fees, room and board, books, supplies, transportation, and other related expenses). Because all eighteen of the University's sponsored teams are fully funded, coaches may award athletics scholarships up to the NCAA limit for their respective sports. The University also provides student-athletes medical care and academic services in support of the recognized goal of graduation. In addition, student-athletes may request support from the Student Assistance Fund to mitigate any financial hardship they may experience.

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<sup>1</sup>The University of Mississippi and its athletics programs are widely known to alumni, students, and friends under the name Ole Miss. The terms "University of Mississippi" and "Ole Miss" are used interchangeably throughout this testimony.

# SUPPORT PER STUDENT-ATHLETE

	<b>\$5,153</b> Academic Services
	<b>\$4,261</b> Strength & Conditioning
	<b>\$8,411</b> Medical Services
	<b>\$3,461</b> Nutrition
	<b>\$25,216<sup>1</sup> / \$41,170<sup>2</sup></b> Scholarship
	<b>\$7,671<sup>1</sup> / \$10,867<sup>2</sup></b> Non-Traditional Academic Term Scholarship
	<b>\$1,235</b> Academic Break Meals & Housing
	<b>\$1,088</b> Opportunity Fund

1- In-state 2- Non-Resident

\* Non Traditional Academic Term Scholarship includes a student-athlete taking one Winter Intercession course and two Summer classes. All costs are budgeted costs for the 2017-18 academic year. Student-Athlete support does not include coaching salaries, travel, facilities expenses, event management and other administrative expenses.

**Old Miss**  
ATHLETICS

## VISION

TO BE THE NUMBER ONE ACADEMIC AND ATHLETICS PROGRAM THROUGH THE STRONG EMPHASIS OF CORE VALUES AND THE OPPORTUNITY TO EXPERIENCE ATHLETIC PURSUITS AT THE HIGHEST LEVEL.

## PURPOSE

TO DEVELOP STUDENTS TO THEIR FULLEST POTENTIAL THROUGH ATHLETICS.

## CORE VALUES

ACADEMIC EXCELLENCE  
INTEGRITY  
SOCIAL RESPONSIBILITY  
STUDENT-ATHLETE WELFARE  
UNIVERSITY INTEGRATION  
COMMUNITY ENGAGEMENT  
COMPETITIVE EXCELLENCE



### The Need for Federal Name, Image, Likeness (NIL) Legislation

In light of the inconsistent state laws being enacted in the NIL space, The University of Mississippi supports Federal legislation that allows student-athletes to pursue NIL promotional and marketing opportunities with third-parties. Intercollegiate athletics, as a whole, is best served by a Federal regulatory framework, where the amateur collegiate model is preserved and academic institutions are prohibited from compensating student-athletes for the use of their NIL or otherwise identifying, facilitating, or arranging such opportunities. This approach reaffirms and preserves the unique relationship between amateur student-athletes and their universities. Consequently, the existing amateur model for collegiate sports does not include a mechanism by which schools can license intellectual property rights from student-athletes or “compensate” their students for athletic services.

The University of Mississippi believes the appropriate regulatory authority or model is a hybrid approach, in which the NCAA retains its compliance enforcement authority over member institutions, and Congress delegates the administration, oversight, and rulemaking authority for any new NIL legislation to an independent body, preferably a non-profit. This body would have nationwide oversight over the myriad of issues implicated by NIL, such as agent regulation and discipline, NIL revenue reporting and disclosure requirements, fair market valuation and analysis, and support services for student-athletes.

The administration of NIL on a nationwide level remains a heavily debated topic. The University's views on the issues surrounding enforcement necessarily remain open to continued discussions with our conference, the NCAA and Congress.

For the reasons above, I, along with the University of Mississippi, generally support the recommendations to the NCAA Board of Governors regarding the modernization of the NIL rules. We likewise recognize that while the Board has flagged multiple issues related to NIL, those issues warrant more analysis and development to ensure the effective administration and enforcement of any modernized rules.

More importantly, some of the issues surrounding NIL also implicate legal and policy considerations that the NCAA has no authority to address. Explicit and detailed Federal guidance on these issues is necessary and should be codified, where warranted, to address conflicting state laws any conflicting state laws.

Federal NIL legislation should provide the necessary regulatory framework for NIL by specifically addressing the following unresolved considerations, among others:

- the identity and scope of authority for the regulatory body charged with administering and enforcing any Federal NIL legislation,
- requirements for the certification, regulation, investigation, and discipline of agents/advisors who represent student-athletes,
- mandatory cooling periods and time limits on when student-athletes are first eligible to pursue NIL opportunities,
- prohibitions on “lifetime” sponsorship deals and endorsement agreements that extend beyond college,
- Title IX gender equity guidance regarding NIL,
- restrictions to length of time and extent to which student-athletes may assign their NIL rights to trade associations for commercial exploitation,
- the inclusion of opt-out clauses in NIL agreements that allow student-athletes to reschedule or postpone NIL engagements that interfere with their athletic commitments, academic studies, and degree progress,
- disclosure requirements and reporting obligations for student-athletes,
- prohibitions on universities compensating students for the use of their name, image and likeness, whether such payments are made directly from the university or indirectly through the use of university facilities, trademarks or other intellectual property or by involvement of a university-affiliated entity or person,
- regulation of boosters in facilitating or offering NIL opportunities, and
- clarity on the extent to which universities may provide NIL education and support services (*e.g.*, financial literacy training modules).

Federal legislation will provide much-needed clarity and a uniform national framework for NIL. Currently, three states have enacted NIL laws and more than twenty states have different versions of NIL legislation pending. The effective date of Florida's NIL legislation is July 1, 2021. A patchwork of inconsistent state legislation unless preempted, will disrupt the amateur model for intercollegiate sports, undermine the integrity of the recruiting process, and could leave student-athletes vulnerable to the predatory practices of unregulated agents. Federal legislation will ensure that all student-athletes have an equal opportunity to monetize their NIL in a framework that best protects their academic and financial interests.

#### **Impact on Amateurism**

As a general matter, NIL would provide male and female student-athletes an unprecedented opportunity to capitalize on the promotional and endorsement activities now available to all other students. Any such legislation, however should preserve the amateur model of collegiate athletics and ensure that student-athletes remain students and are not paid by their institutions to play sports. If properly regulated on a uniform nationwide basis, NIL licenses can be of significant benefit to student-athletes, particularly students with limited financial means, or those with limited to no opportunity to play professional sports.

If, however, a standardized approach to NIL is not implemented on the Federal level, and states are allowed to supersede the NCAA's rulemaking authority, as some pending legislation would allow, NIL could negatively impact the amateur model. Absent sufficient regulatory framework, NIL opportunities could be used as improper inducements during recruiting that could deter prospective student-athletes from appropriately considering the academic and athletic opportunities a particular university may offer him or her. The unregulated involvement of boosters, agents and other third-parties could result in "play for pay" arrangements, in which student-athletes are impermissibly compensated for their participation or performance in athletics competitions. Student-athletes and their families are uniquely vulnerable, particularly considering that most students may be in high school when first approached by an agent for representation. The amateur model would be further compromised if the pending legislation in certain states is enacted and student-athletes are allowed to receive NIL payments either directly or indirectly from their schools. The student-athlete is effectively rendered an employee or independent contractor of the university, rather than one of its students.

I am concerned that the proposed NIL legislation in some states creates an unfortunate dynamic where student-athletes essentially become talent-for-hire for their respective universities. This outcome will cause irreparable harm not only to the amateur model of collegiate athletics, but also to the system of higher education as a whole.

A Federal framework for NIL is needed to protect student-athletes' interests, preserve the amateur model of intercollegiate athletics, and safeguard the integrity of the recruiting process. The Federal legislation should include reasonably tailored exemptions or immunity to ensure that universities can comply with the legislation without being exposed to multimillion-dollar lawsuits similar to those filed against the SEC and NCAA.

#### **Impact on Female Athletes and Non-Revenue Generating Sports**

Whether NIL could adversely impact gender equity Title IX turns on the scope of the particular legislation ultimately enacted. For example, the NIL legislation proposed in some states will allow universities to pay student-athletes for the use of their NIL. If institutions in those states elect to pay, but fail to provide NIL equal opportunities to male and female student-athletes equitably, gender equity concerns under Title IX may be implicated.

Under the proposed NIL legislation in other states, universities are prohibited from entering into NIL promotional or endorsement deals with student-athletes, who may only pursue such ventures with third-parties who have no affiliation to the university. This model is unlikely to trigger Title IX gender equity issues, since no university funds or resources will be leveraged to make or otherwise facilitate any NIL payments. Alternatively, some states have either enacted or proposed NIL legislation that rejects this approach. If these various state laws take effect, endorsement deals between universities and student athletes will be legal in some states, but prohibited in others. As such, gender equity and Title IX implications of NIL could vary depending on where the university is located. In sum, Title IX implications are more likely if universities have a role in the marketing, promotion, endorsement, or disbursement of NIL funds to their student-athletes.

An additional concern is that no existing Title IX regulations or policies address the extent to which universities should offer NIL education and support services to student-athletes with NIL earning potential. Universities likewise have no clarity on how the value of these NIL education and support services should be quantified and presented in their annual Title IX disclosures. None of the hundreds of pages of new Title IX regulations that take effect in August 2020 address these issues. Federal guidance will be vitally beneficial and is necessary to ensure that the various state laws on NIL do not undercut Title IX gender equity. I encourage Congress to closely examine gender equity issues as Federal legislation is developed.

#### **Conclusion**

Thank you for the opportunity to share the University of Mississippi's perspectives on the many complex issues involved in NIL. We are grateful for the thoughtful way Chairman Wicker and Senate Commerce Committee members are approaching the discussion and Ole Miss commits to being a helpful partner going forward in the best interest of the student-athletes.

The CHAIRMAN. Thank you very much, Mr. Carter.  
Dr. Drake, welcome.

**STATEMENT OF DR. MICHAEL DRAKE, CHAIRMAN,  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,  
BOARD OF GOVERNORS**

Dr. DRAKE. Thank you very much, and good morning, Chairman Wicker—yes, I had a green light. I was—sorry—I was thinking “go.”

Good morning, Mr. Chairman. Good to see you today. And, Ranking Member Cantwell, good morning. Members of the Committee, on behalf of the National Collegiate Athletic Association and The Ohio State University, where I was introduced as the Chairman—or the President Emeritus, which has been the case for about 10 and a half hours, so I appreciate my new short-lived status, but I appreciate your interest on the important issue of compensating student athletes related to name, image, and likeness.

As a medical doctor and a 20-year member of the National Academy of Medicine, I have testified before as a subject-area expert, and am grateful to do so again.

In spring 2019, interest in this issue heightened with the introduction of Federal and State legislation that would permit student athletes to be compensated for use of their NIL. The NCAA Board of Governors established an NCAA Federal and State Legislation Working Group in May 2019 to examine this issue and develop recommendations.

In October 2019, the NCAA Board of Governors unanimously supported the Working Group’s recommendations and began the process of modernizing its rules to allow students participating in athletics the opportunity to benefit from the use of their NIL.

As outlined in my testimony, the Association’s ability to move forward is hampered by three factors that we encourage you to focus on today. Specifically, we’re asking for your partnership to preempt State bills on NIL with differing provisions and start dates so that there is a uniform standard and approach. Two, to protect universities and conferences from antitrust litigation that adversely affects our ability to effectively and efficiently support the evolving needs of student athletes. And three, to protect amateurism in college sports that is guided by longstanding values of education, opportunity, well-being, and fairness.

I would like to recognize that—the attention that members of this committee and others in Congress are giving to the issue of name, image, and likeness in collegiate athletics. I also want to recognize Ohio Congressman Anthony Gonzalez, an Ohio State alumnus, an outstanding collegiate and professional football player, for his support of student athletes, and the work that he has done around this issue. Together, we can enact and implement legislation that will provide a uniform name, image, and likeness approach. I believe this action will result in fair and uniform competition for all student athletes, and protect and ensure opportunities for future student athletes.

Thank you.

[The prepared statement of Dr. Drake follows:]

PREPARED STATEMENT OF DR. MICHAEL DRAKE, PRESIDENT EMERITUS, THE OHIO  
STATE UNIVERSITY; AND CHAIR, NCAA BOARD OF GOVERNORS

Chairman Wicker, Ranking Member Cantwell, and distinguished members of the Committee, thank you for the opportunity to submit this testimony in connection with today's hearing. This week, I will conclude my six-year tenure as president of The Ohio State University. It has truly been an honor to serve the students, faculty, staff and supporters of the Buckeye community. I am proud of what we have collectively accomplished at Ohio State and am confident the institution will continue to be a leader in research, medical innovation and academic excellence. For the last year, I have also had the honor of serving as chair of the NCAA Board of Governors, the highest-ranking governing body within the NCAA governance structure. On behalf of the NCAA Board of Governors, I would like to thank the Committee for holding this hearing to discuss the important issue of name, image and likeness.

While it might not be a surprise that I have been intimately involved with college sports throughout my career in higher education, many are not aware of my personal connections to intercollegiate athletics. My father was an avid athlete and was a defensive lineman and captain of the 1933 Morgan State football team, which won the Colored Intercollegiate Athletic Association Championship. My younger son ran cross country and track at Stanford University and was an All-American athlete in both sports. He ended up running in a two-time national championship program, and that was a dream come true. If you show great promise at a young age, one of the most prominent avenues forward is to go to a great college that has a great athletic program. That is the American collegiate model of sports. Through my personal and professional experiences, I have witnessed first-hand the tremendous impact that this uniquely American phenomenon has had on students and their families, institutions of higher education and communities throughout this country. While not perfect, intercollegiate athletics is worth preserving and its evolution should be guided by its long-standing values of education, opportunity, well-being and fairness.

Despite the intrinsic benefits and value college sports provides to participants and the higher education community, it is apparent that the NCAA and its member schools must do more to meet the needs of the 21st-century student-athlete. In recent years, NCAA members have further supported student-athletes by increasing scholarships to cover full cost of attendance, extending the coverage of medical expenses and providing unlimited meals. While these are significant steps toward improving the overall experience of student-athletes, leaders in higher education must continue to evolve without compromising the values that make college athletics unique and so beneficial to diverse students from throughout the world. As directed by the NCAA Board of Governors, the most recent initiative has focused on modernizing rules related to a student's ability to be compensated for use of their name, image and likeness. I look forward to discussing the important steps that have and will be taken to further support NCAA student-athletes.

**The Modernization of Opportunities Related to Student-Athlete Name, Image and Likeness**

The issue of student-athlete name, image and likeness (NIL) is complex and nuanced. With the effusion of recent technological and social media advances, it has garnered increasing attention by many in the Association, the public and legislators across the country. In spring 2019, interest in this issue heightened with the introduction of Federal and state legislation which would permit student-athletes to be compensated for the use of their NIL. These proposals expressly prohibited the NCAA from enforcing rules that restrict the use of a student's NIL and compensation provided by third parties. Further, state legislation threatened to create local differences that would make it impossible to provide student-athletes with fair, uniform championships, and legislation at both levels threatened to materially alter the principles of college sports.

*NCAA Federal and State Legislation Working Group*

These legislative proposals necessitated conversations and agreements about how the membership should respond, and in May 2019, the NCAA Board of Governors appointed a Federal and State Legislation Working Group to examine this issue. Representing a diverse set of membership stakeholders, the 20-member working group was composed of student-athletes, presidents, faculty athletics representatives and athletics administrators from all three divisions, and included representation from each of the Division I conferences with autonomy (Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference).

Specifically, the working group was directed as follows:



- a. Consider whether modifications to NCAA rules, policies and practices should be made to allow for NIL payments;
- b. Remain mindful that NIL payments must not be compensation for athletics participation; that paying students as employees for play is anathema to the NCAA mission focused on students competing against students; and that no legislation which permitted either of those outcomes should be considered;
- c. Assure that any proposed legislative solutions kept in mind that student-athlete benefits must be tethered to educational expenses or incidental to participation;
- d. Examine whether any modifications to allow for NIL payments, beyond what the U.S. Circuit Court of Appeals for the Ninth Circuit required in *O'Bannon* and other court rulings, would be achievable and enforceable without undermining the distinction between professional sports and collegiate sports; and
- e. Preserve the Association's ability to sponsor or host fair interstate competitions and national championships.

The Board of Governors also charged the working group with producing a set of Association-wide principles to provide each division guidance in developing a consistent approach on legislation related to NIL payments.

#### *Working Group Process*

To fulfill its charge, the working group undertook an exhaustive study and review of the issue of student-athlete NIL, conducting four in-person meetings and 11 teleconferences between June 2019 and April 2020. As part of this process, the group considered extensive feedback and deliberated challenges and opportunities related to the ability of student-athletes to be compensated for the use of their NIL. The working group engaged a diverse group of stakeholders through in-person interviews, formal presentations and hundreds of pages of written feedback. Included among these stakeholders were current and former student-athletes, faculty, presidents, conference commissioners, athletics administrators and coaches from Divisions I, II and III, as well as thought leaders and experts in the higher education and college sports communities.

#### *Presidential Subcommittee on Congressional Action*

A topic that consistently emerged during the deliberations of the working group was the possibility that the Association's attempts to modernize its rules related to NIL could be deterred by state laws that purport to supersede NCAA rules or serial litigation which purports to undermine the ability of the NCAA to modernize its rules. To address this issue, and in response to the introduction of Federal NIL legislation and interest by Members of Congress, in November 2019, the Board of Governors Executive Committee directed that a subcommittee of the working group be formed. The purpose of the subcommittee was to provide input on potential assistance that the Association should seek from Congress to support any efforts to modernize the rules in NCAA sports, while maintaining the latitude that the Association needs to further its mission to oversee and promote intercollegiate athletics on a national scale. The subcommittee conducted a total of seven meetings and teleconferences between December 2019 and April 2020. Its recommendations are included in the working group's final report.

#### *Working Group Reports*

The working group delivered an initial report to the Board of Governors on October 29, 2019, and requested an extension of its work through April 2020 to continue to gather feedback and work with the membership on the development and adoption of new NCAA legislation. The working group delivered its final report to the Board of Governors on April 29, 2020.

#### *NCAA Board of Governors Actions*

The NCAA Board of Governors unanimously supported the recommendations provided in the working group's October and April reports and promptly took action. On October 29, 2019, the board recognized that the Association must embrace change to provide the best possible experience for student-athletes and directed the three divisions to immediately begin the process of modernizing its rules to allow students participating in athletics the opportunity to benefit from the use of their NIL. The divisions were directed to, not later than January 2021, adopt new rules related to NIL consistent with the following guiding principles:

- Ensure student-athletes are treated similarly to nonathlete students unless a compelling reason exists to differentiate.

- Maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensure rules are transparent, focused and enforceable, and facilitating fair and balanced competition.
- Make clear the distinction between collegiate and professional opportunities.
- Make clear that compensation for athletics performance or participation is impermissible.
- Reaffirm that student-athletes are students first and not employees of the university.
- Enhance principles of diversity, inclusion and gender equity.
- Protect the recruiting environment and prohibiting inducements to select, remain at or transfer to a specific institution.

At its April 2020 meeting, the Board of Governors supported the working group's final recommendations and reinforced the importance of the divisions continuing to make significant progress on related rule changes. These rules changes, consistent with the guiding principles, should be adopted by January 2021 and effective no later than the 2021–22 academic year. The board highlighted that any modernization of the divisional NIL bylaws must be accompanied by guardrails to ensure that:

- Any compensation received by student-athletes for NIL activities represents a genuine payment for use of their NIL, and is not pay for athletics participation;
- Schools and conferences play no role in a student-athlete's NIL activity;
- Schools or boosters are not using NIL opportunities as a recruiting inducement;
- The role of third parties in student-athlete NIL activities is regulated; and
- Liberalization of NIL rules does not interfere with NCAA members' efforts in the areas of diversity, inclusion or gender equity.

Provided these guardrails could be established, the board supported the development of legislation by the divisions which permit student-athletes to receive compensation for use of their NIL in third-party endorsements; for the use of their NIL in their work product (including social media influencer activity, promotion of a business or work product or personal promotion); and to use agents, advisors or professional services in conjunction with the NIL activities, provided appropriate regulation is established.

Further, the Board of Governors supported the recommendations in the report related to the work of the Presidential Subcommittee on Congressional Action, including the NCAA's engagement with Members of Congress to seek preemption of state NIL laws, safeguard the non-employment status of student-athletes and establish a safe harbor to protect the Association against lawsuits filed for changes to name, image and likeness rules.

#### *Next Steps and Implementation*

Since the October directive by the Board of Governors, the three NCAA divisions have been working thoughtfully and expeditiously to develop legislative proposals that will allow student-athletes to benefit from the use of their NIL. Following the announcement, each division developed a working group which included student-athletes, athletics administrators and conference office staff to develop initial concepts related to NIL and solicit feedback from the broader membership. Since this time, the working groups and divisional governance bodies have undertaken widespread education and feedback efforts and are considering appropriate guardrails that would accompany any legislation, including a focus on pre-enrollment activity, parameters for institutional assistance and potential disclosure requirements. Formal legislative proposals related to NIL are expected to be introduced by November 1, 2020, voted on by January 2021 and effective at the start of the 2021–22 academic year.

#### **A Pressing Need for Federal Partnership**

The Association's ability to make meaningful reforms in the area of NIL is significantly undermined by impending state legislative action and outside legal factors, and underscores a compelling need for Federal partnership on this issue.

#### *Impediments Posed by State Legislation*

As of the date of this testimony, 36 states have introduced bills which address the compensation of student-athletes for use of their NIL. This patchwork of state proposals includes bills with widely differing provisions and effective dates. Nearly all of the 36 bills expressly prohibit the NCAA and its member institutions from enforcing rules regarding the compensation of a student-athlete for their NIL, while

some proposals under consideration would erode the NCAA's ability to maintain the collegiate model even further. Importantly, bills in California, Colorado and Florida have already passed into law and take effect as early as July 1, 2021.

A patchwork of state laws creates the very real possibility that NCAA members in different states will be governed by different rules related to NIL. This would prevent the NCAA from sponsoring sports and championships on a truly national level. It would also gravely undermine the ability of the NCAA's members to achieve their shared goal of providing fair and uniform competition to all student-athletes. These state laws have interstate consequences that make Federal legislation far more appropriate.

#### *Impediments Posed by Continuing Antitrust Litigation*

The history of antitrust lawsuits brought against the Association over the last several decades reveals that Federal antitrust law has frequently been used as a tool to attempt to change or undermine the Association's rules. While these lawsuits have, for the most part, been unsuccessful, the Association has been required to devote scarce and valuable resources to defending them, resources that could have been better spent on supporting student-athletes, as has been highlighted by the growing financial impact of the current global pandemic. Without appropriate protections, these antitrust challenges will continue—as evidenced by the most recent NIL class-action lawsuit filed against the Association on June 16—and will interfere with the Association's ability to effectively and efficiently support the evolving needs of student-athletes.

For these reasons, it is appropriate and advisable for the Association to seek Federal preemption over state NIL laws and safe harbor protection for its modernization efforts related to NIL.

#### **Conclusion**

I am proud of the experiences and opportunities that college sports provide to our country's student-athletes, particularly to those who might not otherwise have had the opportunity to earn a college degree. NCAA members have a long history of expanding these opportunities by progressively adapting to evolving student-athlete environments and adopting changes that support college athletes in a manner consistent with NCAA values and principles. It is critical that the Association continues to embrace change and adapt to the opportunities and needs of the 21st-century student-athlete.

While the Association has taken historic steps to enhance opportunities for student-athletes for the use of their name, image and likeness, the evolving legal and legislative landscape around these issues could not only undermine college sports as a part of higher education, but also significantly limit the NCAA's ability to meet the needs of college athletes moving forward. With this, I urge Congress to enact legislation that will provide a uniform name, image and likeness approach that will result in fair and uniform competition for all student-athletes and protect and ensure opportunities for future student-athletes.

I appreciate the Committee's continued and thoughtful interest in this issue and for the opportunity to share the work the NCAA Board of Governors has undertaken related to this issue. Thank you again and I look forward to answering any questions you might have.

The CHAIRMAN. Thank you.

And our next witness, I'd bet, likes to have her name pronounced correctly, so—"Kohler."

Ms. KOLLER. "Kohler."

The CHAIRMAN. OK. You are recognized for 5 minutes.

Ms. KOLLER. Thank you, Mr. Chairman.

The CHAIRMAN. Glad to have you with us.

#### **STATEMENT OF DIONNE KOLLER, LAW PROFESSOR, UNIVERSITY OF BALTIMORE**

Ms. KOLLER. Chairman Wicker, Ranking Member Cantwell, and members of the Committee, my name is Dionne Koller, and I'm a professor of law and the Director of the Center for Sport and the Law at the University of Baltimore. I am also a former athlete and

the proud parent of an NCAA Division 3 athlete. Thank you for inviting me here to speak with you about these important issues.

For decades, Congress and courts have deferred to the NCAA to build the model for intercollegiate sports that has grown into a multibillion-dollar industry. The NCAA calls this the American model. Courts are increasingly calling it a violation of antitrust law. Today, the NCAA purports to seek legislation so that it can preserve what it defines as amateurism. In reality, it seeks to preserve the cartel profits that an unnecessarily restrictive amateurism model yields. This committee should not be moved. The action sought by the NCAA would not only cause further harm to athletes, but ultimately to the entire college sports enterprise. It is a model that is literally breaking under the weight of its own injustice. The decades of excesses and abuses perpetrated under the guise of amateurism are well known and, at times, have been the subject of congressional hearings and reports, including the series of reports Senator Murphy released last year. The profound unfairness of this model is even more apparent, considering that it is black men, often from socioeconomically disadvantaged backgrounds, who disproportionately provide the labor that pays predominantly white coaches and administrators bloated, above-market salaries. The NCAA model, therefore, is not just an economic issue, it is increasingly a social justice issue.

Today, the NCAA and college sports interests are asking Congress for even more than deference, they are asking for an unprecedented level of insulation from the free-market rules that nearly every other American industry must follow. Granting this extraordinary request is not at all necessary to preserve the many benefits that intercollegiate sports provides. There is no urgency presented by this issue. While a Federal solution to the name, image, likeness issue could be useful, competitive balance and the NCAA model are not irreparably threatened by State legislation. In addition, if any guardrails are necessary, the NCAA should not be the ones to craft them. Athletes can, like other students on campus, enter the free market and strike deals for the use of their name, image, and likeness. The only guardrails needed in this situation are those provided by Federal antitrust law that would prevent the NCAA from imposing unreasonable restraints on trade in the name of amateurism.

Rather than seeking protection from Congress to impose economic restraints on athletes, the NCAA should craft rules that better support athletes' health, safety, and well-being. Indeed, if athletes are currently able to sign waivers to facilitate their return to practice during a global health pandemic, they should be permitted to make deals to market their name, image, and likeness.

The NCAA also asserts that NIL rights for athletes could somehow threaten the gains made by Title 9. This is assuredly not the case. In fact, these rights would promote and not undermine gender equity. To promote gender equity, the NCAA and its member institutions should instead focus on Title 9 compliance, something that has yet to be fully realized.

Perhaps most importantly, an antitrust exemption is not warranted here. The NCAA often asserts that an exemption is necessary to prevent vague, unsubstantiated predictions of harm to

the amateurism model. Antitrust cases, however, have documented that the NCAA's overly restrictive rules produce very real, demonstrable harm to athletes and the free market. An antitrust exemption would, therefore, serve to shield an industry that has struggled to demonstrate that its anticompetitive restraints on athletes, in fact, are fully necessary to produce college sports.

Finally, this committee is well aware that unchecked power by sports regulators too often leads to cultures that harm athletes and threaten the games, themselves. The example of the United States Olympic and Paralympic Committee is instructive. I applaud this committee for its work to address these issues, most recently with bills such as the Equal Pay for Team USA Act. Through the important leadership of this committee, Congress has taken significant steps to protect athletes and restore confidence in the U.S. Olympic movement, and it has the opportunity to do the same for intercollegiate sports.

In conclusion, in nearly every context where athletes have advanced arguments for fundamental fairness, equality, and the protection of their health and well-being, sports regulators, like the NCAA, have countered with dire predictions that sport, itself, would be threatened. The predicted harm never materializes. History has shown that initiatives which promote athletes' rights have strengthened the integrity, sustainability, and popularity of sports, and I have no doubt that allowing intercollegiate athletes the right to market their name, image, and likeness, without unnecessary restriction by the NCAA, will do the same.

I thank you, and I look forward to your questions.

[The prepared statement of Ms. Koller follows:]

PREPARED STATEMENT OF DIONNE KOLLER, PROFESSOR OF LAW, DIRECTOR, CENTER FOR SPORT AND THE LAW, UNIVERSITY OF BALTIMORE SCHOOL OF LAW

Chairman Wicker, Ranking Member Cantwell, and Members of the Committee:

My name is Dionne Koller, and I am a Professor of Law, the Director of the Center for Sport and the Law, and the Associate Dean for Academic Affairs at the University of Baltimore School of Law. I am also a former athlete and the proud parent of an NCAA Division III athlete. Thank you for inviting me here today to speak with you about the important issue of allowing intercollegiate athletes to enjoy the same rights that we all hold to earn income from our name, image, and likeness (NIL). As I explain below, while a national policy solution through Federal legislation could benefit college athletes, a solution that simply defers to the NCAA and its member institutions, and insulates them from antitrust scrutiny, is an unwarranted step in the wrong direction. In my view, such a step would not only hurt college athletes, it would substantially harm college sports. I urge this Committee instead to adopt a solution that rejects the NCAA's overreach in regulating athletes and reinforces the voice of athletes and the value of the free market in the enterprise that is college sports.

#### **The Current Issue in Context**

In considering the NIL issue, it is important to situate it in the legal and policy landscape that has shaped intercollegiate and Olympic sports in the United States. To do so, this Committee should start with an understanding of the traditional view of Congressional involvement in sports. This is perhaps best captured by a quote from the late Senator John McCain. When asked how much the government should be involved in sports, Senator McCain answered: "[A]s little as possible."<sup>1</sup> Senator McCain's statement reflects the traditional view that the government—Congress, Executive Branch agencies, courts, and state legislatures—should defer to sports ad-

<sup>1</sup> *The Dan Patrick Show*, NBC Sports Network television broadcast, May 2, 2014.

ministrators such as the NCAA to regulate themselves. This view underlies today's efforts by the NCAA to seek a Federal legislative solution to the NIL issue.

Yet despite the mantra that the government should stay out of sports, the reality is that the government is very much a part of our current intercollegiate and Olympic sports models. This is because, for decades, Congress and courts largely have left entities such as the NCAA and the United States Olympic and Paralympic Committee (USOPC) to regulate athletes and manage their respective athletic spheres with little oversight or accountability. Staying on the sidelines has amounted to an endorsement that the prevailing model represents the best policy choice. I urge this Committee to take a new approach.

Congress has deferred to the NCAA and its member institutions to regulate college sports since President Theodore Roosevelt responded to the crisis of violence and deaths in college football by calling a White House summit to urge colleges and universities to make the game safer. This deference continued through decades of persistent concerns—often the subject of Congressional hearings—over the treatment of athletes, involving issues from basic due process rights to athlete traumatic brain injury. Lack of Congressional regulation has provided powerful space for the NCAA and its member institutions to structure their programs, restrict athletes' rights, and profit from the results in such a way that what is often referred to as the "American Model" of sports is widely considered unjust. "Amateurism," as self-servingly defined and re-defined by the NCAA, has become synonymous with a model that exploits athletes more than it educates.

Traditionally, the NCAA has advanced several rationales for why it should be insulated from government regulation. Drawing on athletic programs' relationship with colleges and universities, the NCAA and its member institutions have resisted regulation by arguing that intercollegiate sport is not commerce, and Congress and courts should not interfere with the education process. The NCAA also has argued that regulation will make administering sports too costly or burdensome, thereby limiting participation opportunities and undermining gender equity. The NCAA regularly invokes patriotic values, stating that the collegiate sports model is a uniquely American phenomenon and an example to the world. Most frequently, the NCAA and its member institutions simply assert that they must have regulatory deference to freely administer intercollegiate sports to "preserve amateurism"—an ever-changing, elusive concept that often serves to burden and disempower, and not protect, athletes.

Congress's decades-long "hands off" approach to intercollegiate sports has provided the NCAA an opportunity to build a multi-billion-dollar model for sports that is popular and profitable. It is also a model that is breaking under the weight of the unfairness and injustice it perpetuates.

### **The Results**

Today's issue once again features the NCAA arguing for deference, and it must be evaluated in light of the decades of examples of harm to athletes and the state of intercollegiate athletics today. To be sure, intercollegiate sports participation has significant benefits. Many athletes receive scholarships that cover tuition and the cost of attendance, avoiding the enormous student loan debt burden carried by many of their peers. Sports participation can provide important short and long-term health benefits and teach important life lessons. More broadly, intercollegiate sports programs can contribute to campus unity, alumni engagement and fundraising, and student recruitment. There is no doubt, and courts have regularly recognized, that some horizontal restraints and athlete regulation must occur to produce intercollegiate sports. There is also no doubt that intercollegiate sports are an important, long-standing feature of American culture.

Unfortunately, the NCAA model is one that too often works for everyone in the intercollegiate athletics enterprise except the athletes whose labor makes it possible. The excesses and abuses are documented and well known, including through Senator Murphy's series of reports released last year. The excesses and abuses are persistent and not likely to change with further deference to the NCAA. The NCAA and its members schools bring in billions every year in athletics related revenue—little of which is shared with the athletes whose labor makes it possible. Athletes under current NCAA rules receive no pay beyond their cost of attendance and are denied the right to profit in any way from their athletic talent. Instead, the intercollegiate sports "arms race" drives bloated budgets that include multi-million-dollar coaches' and administrators' salaries (often far exceeding the salaries of those in professional sports), millions in severance packages, lavish facilities, and layers of highly compensated support staff. While expenses for coaches, facilities, and non-athlete administrators make up nearly two-thirds of athletics spending, according to a Knight Commission report, only a little over 1 percent of the spending is on

athlete health care. This over-spending is not only unfair to athletes, it has enormous consequences for all students. Mandatory student fees to support college and university athletic departments are bundled into student loans. Some estimates are that the Nation's non-athlete students borrow as much as \$4 billion per year to pay athletic fees.

Yet the approximately \$14 billion a year in revenue generated by college sports is not buying a better experience for athletes. The NCAA and its member institutions have done little to hold schools accountable for wide-ranging, persistent harms to athletes. The NCAA asserts that it has no legal duty to protect athletes from sexual predators such as former Michigan State University team physician Dr. Larry Nassar. There is little meaningful enforcement of sideline concussion protocols, with surveys of athletic trainers showing that athletes who suffer traumatic brain injuries are often not removed from play or are prematurely cleared to return to play. Athletes are not protected from abusive coaching and workouts that in some cases have required hospitalization, and in extreme and particularly tragic cases, resulted in death. Most recently, with the COVID-19 pandemic still widely active, the NCAA and its member institutions are bringing athletes back to campus (in many cases while non-athlete students and staff remain at home) to begin training for fall football season. While it is not at all clear that it is safe, athletes are reportedly being asked to sign liability waivers and "pledges" that purport to immunize their institution from any virus-related liability.

Beyond health and safety, athletes' access to a full education, particularly in the revenue-generating sports of football and men's basketball, is substantially curtailed. The NLRB's 2015 decision on the Northwestern University football players' petition to form a collective bargaining unit noted that players spent up to 50–60 hours per week in team activities, practices, and games. Participation on a team often means an athlete is limited in the ability to register for certain classes, major in certain subjects, and even attend courses for which the athlete is registered. Athletes' educations have in some cases been so undermined by their participation in sports it has amounted to outright academic fraud. The NCAA and its member institutions have no duty to provide an adequate education, and graduation rates in revenue-generating sports show that schools often fail to adequately support students in even attaining a degree.

Athletes have little ability to change these circumstances. They are not members of the NCAA or represented by unions and have no meaningful administrative or legal recourse if their athletics experience is physically and emotionally harmful. They have little choice but to comply with the directives of coaches and administrators. They have no recourse if the demands of sports participation prevent them from getting the education for which they purportedly enrolled. They share in none of the revenue, beyond their scholarship, that is claimed by coaches' and administrators' salaries, and they often face long-term, uncompensated health expenses. Seen in this light, the NCAA's "amateurism" model is one that is profoundly unfair.

The unfairness of the NCAA model is even more apparent when we consider who provides the labor that generates the billion-dollar revenues. In Division I, 56 percent of men's basketball players are Black. In contrast, most coaches and administrators are White. Similarly, in football, nearly half the players are Black, while the vast majority of coaches and staff, down to graduate assistants, are White. Moreover, there is a persistent graduation rate disparity between Black and White players, and there is also a troubling graduation rate disparity between Black male athletes and Black male non-athlete undergraduates (despite athletes having the benefit of financial and academic supports). These Black athletes frequently come from socio-economically disadvantaged backgrounds, so that the reality of their athletics experience is that they earn millions for White coaches and administrators while the athletes' own families often cannot afford to even travel to watch them play.

Indeed, our current circumstances illustrate well the impact the NCAA model has on Black male athletes. Although evidence shows that communities of color are being the most severely impacted by the COVID-19 pandemic, Black male athletes are forced to return to campus to train for the upcoming season. To many, this is yet another example of the NCAA model using Black male labor (and in this case risking Black men's lives) to generate the revenue that generously supports White coaches and administrators. Thus, while participation in intercollegiate athletics is frequently touted as a way to uplift and advance Black men and their families, it can also be seen as part of an American culture plagued by systemic racism. In this way, the current model for intercollegiate sports is not simply an NCAA regulation issue, it is a social justice issue.

Put in its proper context, then, the continued deference to the NCAA in the face of decades of evidence of harm to athletes can no longer be characterized as simply taking a "hands off" approach to sports regulation. Instead, such deference puts

Congress's thumb on the scale to weight the interests of sports administrators—those who manage and profit from sports—ahead of the athletes who play the games. The time has come for a different approach.

### **The NCAA Argument for Federal Legislation**

The NCAA's arguments around the NIL issue represent a troubling extension of the "hands off" logic. Through the NIL issue, the NCAA is not only asking Congress for deference, it is asking for an unprecedented level of insulation from legal accountability and the free-market rules that nearly every other important American industry must follow. It is also asking for an endorsement of a model that perpetuates multiple levels of injustice in the name of "amateurism." Importantly, Congress need not defer to or endorse the NCAA's formulations of "amateurism" and the "American Model" to ensure that our country enjoys the many benefits of college sports.

***There is No Urgency.*** While a national solution to the NIL issue supplied by Federal law could be useful, it is not nearly as urgent as the NCAA would suggest. States are taking common sense steps to protect athletes' rights in this area. While the NCAA and its member institutions and affiliated conferences argue that state legislation would threaten competitive balance, and by extension, the very model for intercollegiate sports, there is little evidence that this is true. The NCAA has had decades to craft rules to promote competitive balance, and very few would claim that it has been achieved. There is also little evidence that regulating athletes' use of their NIL would do anything more to restore balance to a college athletics landscape that is characterized by schools and conferences who are clearly divided by the haves and have-nots. Similarly, regulating athletes' use of their NIL or capturing revenue from athletes' NIL is in no way necessary to "preserve" the current model or for intercollegiate sports to exist.

***NCAA-Crafted "Guardrails" Are Not Necessary.*** Explicitly deferring to the NCAA to craft so-called "guardrails," or rules for athletes to market their NIL is also not necessary. Athletes can, like other students on campus, enter the free market and strike deals for the use of their NIL. Athletes are no less capable of managing this process than any other student, and NCAA-crafted "guardrails" can easily become unreasonable barriers to the free market. In fact, the only "guardrails" needed in this situation are those which prohibit unreasonable restraints on trade that the NCAA and its member institutions have too often imposed in the name of "amateurism."

Similarly, the rationale that the NCAA and its member schools can best protect athletes from unscrupulous boosters or agents is also misplaced. The NCAA has failed (and indeed denies it has such a duty) to protect students' health, safety, wellbeing, and education. Seeking legislation to protect athletes should be viewed skeptically where athletes themselves are not asking for it. In contrast, athletes are asking for the types of protections that support their health and safety—from concussions, from abusive coaches, and most recently, from the COVID-19 pandemic. Indeed, if athletes are currently able to sign waivers to facilitate their return to practice during a global health pandemic, they should be trusted and permitted to make deals to market their NIL.

***Title IX/Gender Equity is Not Threatened.*** The NCAA also often vaguely asserts that allowing athletes free access to the market for their NIL would somehow threaten gender equity and the gains made by Title IX. Of course, Title IX has no applicability to athletes' transactions with third parties who would compensate them for their NIL. Full NIL rights also would promote, and not undermine, gender equity. Because women have fewer opportunities to participate in professional sports than men, their years as college athletes often provide the only opportunity they will have to earn income from their athletic participation. In addition, NIL marketing by female athletes can raise the profile of their sports, building interest along with women's brands. Rather than limiting with "amateurism" restrictions women athletes' use of their NIL, the NCAA and its member institutions should focus on Title IX compliance, something that has yet to be fully realized.

In short, if the NCAA and its member institutions were to ask Congress for Federal legislation to protect athletes and promote gender equity, it would do well to start with the issues described above that are of the most importance to athletes. Focusing now on NIL rights does little to protect them, but it stands a strong chance of perpetuating the many harms the NCAA "amateurism" model engenders.

***An Antitrust Exemption is Not Warranted.*** The NCAA has long sought an antitrust exemption and granting one now, purportedly for the limited area of NIL rules, is particularly troubling. Antitrust exemptions can be statutory or non-statutory (judicially created). The statutory antitrust exemptions Congress has granted in sports were targeted and important to facilitating the growth of nascent sports



leagues through legislation such as the Sports Broadcasting Act (permitting joint television broadcasting agreements) and the legislation permitting the creation of the modern NFL. The Curt Flood Act of 1998 specifically limited baseball's historic common law antitrust exemption by providing that major league players' issues were no longer covered (though they may claim the protection of the non-statutory labor exemption).

The rationale for granting the NCAA a statutory antitrust exemption is not nearly as clear. Such an exemption would not be to enhance consumer welfare by supporting the market power of smaller firms who face competition from a dominant market player. The NCAA, of course, is the dominant market player in intercollegiate sports. An exemption also would not enhance efficiency but would instead further entrench a system where artificially above-market salaries are possible because revenue is not shared, beyond the scholarship, with athletes. Viewed in light of recent antitrust decisions on the NCAA's "amateurism" restraints, it is clear that an exemption would simply serve to shield an industry that has struggled to demonstrate that its anti-competitive restraints on athletes are in fact necessary to produce college sports. In this way, the NCAA is no different than the many industries throughout history that have sought an antitrust exemption to avoid the critical accountability that the Sherman Act guarantees.

It is, however, of course true that an antitrust exemption in sports can be used to promote important countervailing interests. In professional sports, the non-statutory labor exemption serves to insulate unionized sports leagues from antitrust litigation to allow collective bargaining to take place. In this context, athletes' rights and voices are protected through the operation of labor law and overall athlete wellbeing is enhanced. Here, intercollegiate athletes have no union or meaningful voice in the process that will result in NIL rules. An antitrust exemption would give the NCAA unchecked power to restrict athletes' free market rights far more than necessary without any accountability.

In addition, any NCAA argument that it should not be subject to the burden of antitrust suits or court rulings that could invalidate its rules is highly troubling given the recent history of antitrust litigation which found that the NCAA in fact violated antitrust law and adopted rules that were more restrictive than necessary to achieve their stated purpose of "protecting amateurism." Far from impeding the NCAA's ability to manage college sports, the integrity of the enterprise is enhanced, and positive change has resulted, from judicial checks on unfettered NCAA overreach. Under these circumstances, where an antitrust exemption is not coupled with unionization, the danger is far too great that the NCAA will once again abuse its power and unreasonably restrain athletes' rights. Moreover, while the NCAA often submits that an antitrust exemption and its overly restrictive restraints on athletes' rights are necessary to prevent vague, unsubstantiated claims of harm to the "amateurism model," antitrust cases have documented the very real, demonstrable harm that such restraints have on athletes and the free market.

**Unchecked Power Leads to Abuse.** Finally, this Committee is well aware that unchecked power by sports regulators too often does not enhance athlete welfare, but instead can lead to cultures of inequality, abuse, exploitation, and persistent athlete harm. The example of the USOPC is instructive. Decades of Congressional deference and a lack of accountability fostered a culture where the USOPC's monopoly over U.S. Olympic Movement sport produced high medal counts with an even higher price: years of mismanagement, scandals, and generous administrative salaries while athletes suffered sexual and other forms of abuse and pervasive gender inequality. I applaud this Committee for its work to address these issues by enacting meaningful reform such as the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, and more recently with bills such as the Equal Pay for Team USA Act that would guarantee equal pay and benefits for our Olympic athletes. Through the important leadership of this Committee, Congress has taken significant steps to replace wholesale deference to the USOPC with targeted, appropriate regulation that has improved the lives of our Olympic Movement athletes and strengthened public confidence in Olympic Movement sports. Congress has an opportunity to do the same thing for intercollegiate sports.

### **How Should Congress Respond**

If Congress chooses to legislate, it should do so in a way that seeks to promote the rights, health, and wellbeing of athletes. For too long, the deference to the NCAA and its member institutions has fostered a so-called "amateurism" model that privileges everyone but the athletes who generate the revenue. Congress therefore should use its power to enact comprehensive legislation that will address intercollegiate athletes' health and wellbeing and fully protect their rights to market their name, image, and likeness.

- Legislation should include a uniform, enforceable standard for athlete safety to ensure that intercollegiate athletes receive quality health care (including the payment of all athletics related medical expenses), particularly in the management of concussions and heatstroke, the prevention of abusive workouts, and protection from forced participation during public health crises such as that posed by COVID-19.
- Congress should affirm athletes' right to market their name, image, and likeness. To the extent any "guardrails" are deemed necessary, they should be written into legislation and not left for the NCAA to craft with the protection of antitrust immunity. Thus, Congress could, for instance, prohibit NIL deals used for inducements to recruits or prohibit colleges and universities from coordinating NIL deals for their athletes.
- If Congress is not prepared to act now to address the myriad problems with NCAA regulation of intercollegiate athletes, Congress would do better by doing nothing and allowing states to continue to legislate in this area. A so-called "patchwork" of state laws that provide athletes with rights is not a threat to the NCAA intercollegiate sports model, and it can provide important data that Congress can use to craft a future national solution if warranted. A rushed Federal response that takes power from states and athletes to once again privilege the NCAA is not warranted.

### **Conclusion**

In nearly every context where athletes have advanced arguments for fundamental fairness, equality, and the protection of their health and wellbeing, sports regulators like the NCAA and USOPC have countered with dire predictions that their very model for sport will be threatened. The arguments always center on vague predictions of harm and shifting definitions of "amateurism" and "competitive balance." Across all levels of sport, the arguments are the same and the predicted harm never materializes. The NCAA argued for years against Title IX, on the grounds that it would destroy, among other things, football. Major League Baseball argued that eliminating the reserve clause to permit free agency would irreparably harm the game. Olympic regulators argued that allowing professionals into the Games would kill the Olympic model within a few years. The PGA Tour argued that Casey Martin's clam to protection under the Americans with Disabilities Act would deal a mortal blow to golf, if not all sports. None of these dire predictions have materialized. Importantly, advances which serve to promote athletes' rights have strengthened the integrity, sustainability, and popularity of sports. I have no doubt that allowing intercollegiate athletes the right to market their name, image, and likeness—without unnecessary restriction by the NCAA—will do the same. Thank you and I look forward to your questions.

The CHAIRMAN. Thank you very much, Ms. Koller.  
Commissioner Sankey, you are recognized, sir.

### **STATEMENT OF GREG SANKEY, COMMISSIONER, SOUTHEASTERN CONFERENCE**

Mr. SANKEY. Thank you, Chairman Wicker, and thank you, Ranking Member Cantwell and distinguished members of the Committee. On behalf of the Southeastern Conference, I appreciate the opportunity to visit on the important topic of student athlete name, image, and likeness.

My name is Greg Sankey, and I've served as Commissioner of the Southeastern Conference since June 2015. That is part of a 33-year career in college athletics, including work on a small Division 3 campus in Upstate New York, a small Division 1 football playing university in Natchitoches, Louisiana, being commissioner of the Southland Conference, with universities in Texas and Louisiana, and now with the SEC. My objective is to share the important view that we must get this name, image, and likeness issue right in order to ensure that we are able to provide opportunities for many young women and young men, both now and in the future, and

that we preserve the characteristics of college athletics that make it unique, appealing, and important to so many in our country.

In reality, this issue presents unique and challenging complexities that can be misunderstood and may result in those unintended consequences that have been identified. And so, I offer the following for your consideration:

First, as we implement these NIL changes, our student athletes must remain students and not become employees of colleges and universities. We must continue to emphasize their academic progress as students, particularly as we add additional responsibilities upon an already busy schedule.

Second, we must not allow college athletics to devolve into a pay-for-play system. This means prohibiting colleges and universities from paying student athletes, directly or indirectly, for their name, image, and likeness rights. The California NIL law, which is scheduled to take effect in 2023, allows just that, or even university head coaches to purchase student athlete name, image, and likeness rights, and provide that compensation to members of their team once they enroll. That's simply a pay-for-play model.

Third, the reality is, there's no draft process in college sports, which means we must keep NIL activity out of recruiting. In practical terms, this means Federal legislation must preclude athletic department boosters from using name, image, and likeness compensation as a recruiting inducement for high school students or for college students contemplating a transfer to another institution.

Fourth, we need to enact meaningful protections for student athletes. The realities—the reality is, outside parties will have great interest in taking advantage of student athletes who lack experience in making business decisions, selecting agents, determining advisors, and other experience in evaluating whether a deal is just too good to refuse.

Finally, we need a Federal law to address these issues, because college athletics needs a uniform system for regulating name, image, and likeness activities, as 50 different State laws will not support national competition or national championships in a fair and effective manner.

Also, I believe our high school athletes being recruited nationally by multiple universities and multiple states need to understand one clear standard for evaluating their name, image, and likeness opportunities. And we need protection from claims and liability arising from the implementation of new NIL standards, and from continual challenges to the validity of NCAA rules, which we have discussed in a more lengthy manner in my response to Senator Wicker's questions and in my written testimony. We seek protection from claims related to implementation of Federal legislation that will create opportunities for student athletes.

We seek to work with this committee and others in Congress to produce a Federal law that provides a path for student athletes to benefit from their name, image, and likeness in a way that will preserve the key tenets of college athletics, create a uniform national standard, and protect the stakeholders from potential liability.

In 33 years of working in college athletics, I've learned many things, but at the top of the list is: We're not perfect. Yet, we do

some incredible things in college sports. We provide opportunities. We provide education for young people. We engage our public. We celebrate achievement. And we guide students as they transition from adolescence to adulthood. We do all of that very well.

I look forward to working with you to continue these successes, and thank you for the opportunity to have this conversation.

[The prepared statement of Mr. Sankey follows:]

PREPARED STATEMENT OF GREG SANKEY, COMMISSIONER,  
SOUTHEASTERN CONFERENCE

Chairman Wicker, Ranking Member Cantwell and distinguished members of the Commerce Committee, on behalf of the Southeastern Conference and our 14 member universities, thank you for providing me with this opportunity to testify on the important topic of student-athletes' use of their name, image and likeness ("NIL").

My name is Greg Sankey. I have served as Commissioner for the Southeastern Conference since June 1, 2015. My work with the Southeastern Conference began in 2002 and my experience includes a total of 33 years working in intercollegiate athletics.

College athletics provides the path to educational opportunities for many young men and women, and our universities are making profound positive impacts on thousands of student-athletes each year. It is vital that we continue to provide these opportunities to all student-athletes—both now and in the future.

In reality, name, image and likeness presents complex and challenging issues. We are tasked with balancing and serving the interests of all student-athletes while also ensuring that we are being fair to a relatively small subset who may have greater marketing and business opportunities related to their name, image and likeness.

I have concerns about potential unintended consequences from some of the proposed changes in the NIL area, such as NIL activities leading to student-athletes being paid to play college sports, or how we prevent boosters from using NIL compensation as a recruiting inducement to attend a particular university. To be clear, however, I am not here to oppose NIL change. It is clear that change is occurring as a result of both the enactment of state laws and the consideration of "Name, Image and Likeness" laws in many other states. My aim instead is to share my thoughts on the importance of getting this right to provide opportunities for student athletes and preserve the characteristics of college athletics that make it unique, appealing and important to so many in our country. I offer the following observations for your consideration.

First, as we implement NIL changes, our student-athletes must remain students first and foremost, and not become employees of colleges and universities. We must continue to emphasize academic progress and success among student-athletes, particularly if NIL demands are added to their already busy schedules as students and athletes. We must continue to provide educational, athletic and career opportunities for the many student-athletes who otherwise would not have attended college. It is critical for us all to work to preserve, protect and enhance the academic aspect of college athletics.

Second, we must not allow college athletics to devolve into a pay-for-play system similar to professional sports. Central to this goal is the prohibition of colleges and universities paying student-athletes, directly or indirectly, for their NIL rights. If universities are allowed to pay student-athletes for NIL rights, at a minimum, the public will begin to perceive college athletics as a semi-professional sport, and the level of support for other student-athletes and their sports programs will decrease. This issue has not been at the forefront of the NIL discussion, as the focus has been on third-party endorsement and social media influencer activities. The fact remains that the California NIL law that will go into effect in 2023 allows universities—or even head coaches at universities—to purchase NIL rights and provide NIL compensation to student-athletes after they enroll. In addition to prohibiting such direct payments by universities, Federal NIL legislation must also prohibit employees or contractors of universities from engaging in NIL payments to student-athletes.

Third, we must protect the integrity of the college recruitment process by keeping NIL activity out of recruiting. In practical terms, this means Federal NIL legislation must eliminate boosters from using NIL compensation as an inducement to recruit high school students or entice enrolled student-athletes who are considering transferring to another institution. Without the appropriate guardrails, it is easy to envision boosters becoming the primary recruiters who will pursue elite high school ath-

letes or reach out to college transfers, acting with no regard for actual NIL value but instead pursuing those individuals identified by the universities and coaches they support. The task of prohibiting such abuses is particularly complex and will require collaboration to arrive at the right balance.

The Autonomy Conferences—which includes the SEC, Big Ten, Big 12, Pac 12 and ACC—have worked closely together throughout this process, and we have spent a considerable amount of time on these issues. We believe a strategy worth considering is to make the pre-enrollment process and first semester of academic courses off-limits for NIL activity. We must also closely monitor NIL agreements entered after enrollment to ensure these agreements are legitimate and related to a student-athlete's actual NIL value.

Fourth, we must provide meaningful protections for student-athletes. NIL activities will be like other commercial activities in that third parties will look to take advantage of student-athletes who might lack the experience needed in such matters. The list of potential bad actors includes agents, advisors, business entities and other third parties. We need meaningful agent certification requirements and disciplinary rules. The same is true of standards that require student-athletes to promptly disclose their NIL agreements and compensation. This type of system will provide a level of review that protects student-athletes from being taken advantage of by third parties. We must design a structure that properly supports student-athletes who will, for the first time in their lives, be dealing with tax filings, legal contracts, accounting needs, schedule management, and an entirely new financial reality, while also balancing their academic responsibilities, engaging in high-level athletic competition and maintaining their own mental wellness and physical health.

Finally, we need a Federal law to address these NIL issues and there are two primary reasons for this need.

One, collegiate athletics needs a uniform system for regulating NIL activities, as a system of 50 different state NIL laws is not workable and would make it impossible to support a system for fair national competition and championships.

Two, we need protection from claims and liability arising from the implementation of new NIL standards and from continual challenges to the validity of NCAA rules. History has shown us time and again that changes in NCAA rules to expand or improve benefits for student-athletes results in litigation against the NCAA and conferences. We discussed this in more detail in our response to Senator Wicker's questions. Last week, we were sued again in a class action lawsuit seeking damages related to NIL when the current NIL rules have yet to be changed and have been found to be legally appropriate in prior litigation. You might recall that I predicted this would happen in my June 5 letter to Senator Wicker, only we did not expect such a lawsuit to be filed before any NIL changes actually occurred. We seek protection from claims related to the implementation of Federal NIL legislation, which it seems very likely will increase NIL opportunities for student-athletes while also incorporating some parameters to preserve collegiate athletics and address some of the concerns raised above. We should not be subject to years of litigation as a consequence of complying with a Federal NIL law.

My goal is to work with this Committee and other members of Congress to produce a Federal NIL law that provides a workable path for student-athletes to benefit from the use of their name, image and likeness in a way that will preserve the key tenets of collegiate athletics identified above, create a uniform national standard and protect stakeholders such as the SEC and its universities from potential liability. It is critically important we get this right. Each year, the Southeastern Conference alone currently provides incredible, meaningful and life-changing opportunities for approximately 8,000 student-athletes. Across the country, at the Division I level, these same types of opportunities are available for more than 180,000 student-athletes—men and women, from all races and backgrounds, in a multitude of sports, all of which are grounded in the educational values of our colleges and universities. The reality is we have to get this right because we must preserve and improve each of these opportunities.

I began my comments by sharing that my entire career has been committed to working, serving and leading within higher education through college athletics. I have learned many things during the past 30+ years, and at the top of the list of learning is that we are not perfect. Yet, in college athletics, what we do—provide opportunity and education for young people, engage our public, celebrate achievement and guide young people as they move from adolescence to adulthood—we do all of these very well.

In the midst of this debate, let's not lose sight of the fact that we are all privileged to enjoy something very special through the uniquely American experience of college sports.

I look forward to working with you to achieve these objectives.

The CHAIRMAN. Thank you very much, Commissioner.  
And now, remotely, we are joined by Mr. Eric Winston.  
Sir, can you hear us?

Mr. WINSTON. Yes, I can hear you, Senator.

The CHAIRMAN. Now, you are recognized. And we appreciate you being with us.

**STATEMENT OF ERIC J. WINSTON,  
CHIEF PARTNERSHIPS OFFICER, ONETEAM PARTNERS;  
FORMER PRESIDENT, NFL PLAYERS ASSOCIATION (2014–20);  
FORMER NFL ATHLETE (2006–17); FORMER UNIVERSITY  
OF MIAMI FOOTBALL PLAYER (2002–06)**

Mr. WINSTON. Thank you.

Good afternoon, Mr. Chairman, Ranking Member, and members of the Committee. And thank you for inviting me today and allowing me to attend virtually for this important discussion on economic rights and problem-solving.

I join you today, not as a former college and NFL football player, but as an advocate for helping everyone in college athlete—college athletics come up with a fair and equitable system around the name, image, and likeness of college athletes.

The conversation is one I—that I am familiar with from my playing days at the University of Miami in the early 2000s. When I was at Miami, the Orange Bowl was sold out for every game, we played in front of massive television audiences, and were covered by the national media every day. That attention shined a spotlight on the program, increased the popularity of the school, and generated large sums of revenue. Sales of team and player product went through the roof. Broadcasters and sponsors spent millions annually to be a part of the experience. All of those positive things were a result of the players' and the team's success.

Away from the bright lights and success of the playing field, however, was a far different story. That side involved players like me struggling to maintain a full schedule of classes while balancing requirements for daily training, rehab, and preparation to remain at an elite level. While people are more aware today of the challenges and demands of competitive athletics, there is still a notion, in some corners, that we were—that we are merely just lucky to get a scholarship. The reality is that there is very little time for scholarship. In fact, the more successful we were, the greater the pressure and the demands.

Most of us knew life would be something like that—would be something like once we signed up our college scholarship, nonstop and pressure-packed. But, what we didn't know was that, for our year-round effort to win games and pack stadiums, drive media, maximize TV contracts, raise booster money, and create revenue to the school, the conference, and the NCAA, we would hardly have enough money to pay for our basic living expenses. We received a scholarship check for the months that we were in class. Ten checks. I was forced to save a fraction of every check to make up the difference during the other 2 months to pay for all my expenses. The stipend was hardly enough to cover necessities. Every month, every

dollar was stretched. While some things have changed since then, I know college athletes still face these issues.

After school, I transitioned to the NFL and worked hard to have a distinguished 12-year career in the NFL, including a 6-year tenure as the NFLPA president. At the NFLPA, I came to understand the value of group commercial activity and how everyone can benefit from incremental revenue generated.

From there, my career path led me to OneTeam Partners, because I know that the inequities that existed during my college days are not fixed, and I want to be part of that solution. For the benefit of the Committee, OneTeam Partners represents the group rights of male and female athletes from across pro sports, from the NFL, MLB, MLS, to the WNBA, U.S. Women's Soccer, and U.S. Rugby. And we believe college group licensing is the logical first step into the NIL space and, frankly, low-hanging fruit, which can be implemented rather seamlessly.

Our team has the experience, expertise, and resources to maximize the opportunities for both the athletes and the institutions for which they play. A thoughtful group licensing program is a win-win for everyone involved. Schools and athletic departments can benefit from new revenue streams, such as video games, trading cards, and the athletes can pocket some money to ease the worries about where their next meal is going to come from, and the fans can benefit from officially licensed products. Innovation in this space is so important right now, and change in college athletics is already here. We can resist this change and the evolving big business of college athletics, or we can work together to create a fair and equitable system that puts the headlines back where they belong: on the sports, themselves. Athletes are driving the business already, so we need to get on board and support them.

Thank you for your time, and I look forward to your questions.  
[The prepared statement of Mr. Winston follows:]

PREPARED STATEMENT OF ERIC J. WINSTON, CHIEF PARTNERSHIPS OFFICER, ONETEAM PARTNERS; FORMER PRESIDENT, NFL PLAYERS ASSOCIATION (2014–20); FORMER NFL ATHLETE (2006–17); FORMER UNIVERSITY OF MIAMI FOOTBALL PLAYER (2002–06)

Dear Chairman Wicker and Members of the United States Senate Committee on Commerce, Science, and Transportation's Subcommittee on Manufacturing, Trade and Consumer Protection:

Thank you for inviting me to participate in the "Name, Image, and Likeness: The State of Intercollegiate Athlete Compensation" hearing on Wednesday, July 1, 2020. This is an important discussion on economic rights and problem solving.

The ongoing debate around college athletes and the use of their name, image and likeness is one that I am intimately familiar with from my own experience as a college athlete. Being a Miami Hurricane in the early 2000s represented the dream of every boy that wanted to play college football. The Orange Bowl was raucous for every home game. We played in front of a massive television audience. We were covered every day on different sports and news related channels. Every radio station in South Florida and many around the Nation covered 'Canes football wall to wall on their shows. Even the local television outlets were always at our practices to get footage for the evening news.

All of that coverage shined a bright light on the program and gave fans a chance to know more about the players on the team. Much of the coverage also drove sales of Miami Hurricanes team and player product. However, few of the reports showed or addressed the other side of being a major college football player that existed outside of the highlights and games. That side involved student-athletes like me maintaining a full schedule of classes each semester while balancing requirements for daily lifting, rehab, and the overall maintenance of our bodies. No one saw the

coaches grilling us in the film room for hours before and after practice, which left little time to study for assignments in those classes. And no one saw the frequent times I checked my bank account balance so I could decide how to spend the very few dollars I had during the fleeting moments of free time I could squeeze in if I was lucky. I realized then, as I do now, that I signed up for the grind. I also recognize that my life may have been improved if I benefited from the various ways that grind brought significant revenue into the Hurricanes' football program, the athletic department, and the university overall.

To be clear, I understand that college requires young people to figure out how to do more with less. Anyone that has put a son or daughter through college knows that there are many demands and sacrifices. But for students who are also athletes, those requirements are ramped up even more. People think that being a college athlete is all fun, games, and good times. The struggle is not something they think about. But it is real. Being a college athlete was and is a grind no matter what sport an athlete is involved in.

A typical weekday saw me wake before the sun for compulsory workouts. Afterward, I took the earliest classes on the university's schedule. After more classes back to back (because we had to be done with classes for the day around noon) you barely had enough time to eat lunch and get to the athletic center. Once there, you must be dressed, taped, and complete all other activities before mandatory team meetings. After a couple hours of meetings, we hit the field for another couple hours in the South Florida heat. Being "tired" was not in our vocabulary. After practice, we had a few minutes to shower and get dressed before assembling for post practice meetings. From there, I wolfed down dinner and went to mandatory study hall. I arrived back in my dorm around 9 pm. I would finish up schoolwork and try to get to bed at a reasonable hour so that I could get up to do it all over again the next day. This schedule was indicative of my Fall semesters at Miami. The Spring schedules loosened up some, but there was never much free time.

I admit that most of us knew life would be like that: nonstop and pressure packed. We signed a contract with our universities, or specifically a national letter of intent, and later a scholarship that may have referenced this. Truth be told, we probably excelled in the structure and benefited from some of the guidance. What we didn't know, was that for all the year-round effort of packing the stadiums on Saturdays, driving the media coverage, maximizing value of the television contracts, helping raise booster money at events, and influencing all the other revenue the school, conference, and the NCAA benefitted from because of our hard work, was that we would not be at least given the resources to pay for basic living expenses. When I was in school, you would only get a scholarship check for the months that classes were in session. That meant ten checks. As you can gather, an athlete is forced to save a fraction of every scholarship to cover the other two months of rent, phone bills, and all the expenses that come along with living off campus. Few if any of us had skills in budgeting. We learned quick because every dollar had to be stretched. Usually stretched so thin that we couldn't imagine being able to go to the student store and buy an official player jersey with our number or name on it as a gift for our parents.

One point that was drilled into us from the time we arrived on campus as freshmen was that we as athletes could *never* receive payments from anyone, for any reason, or we would be deemed ineligible. Accept a free meal from the local restaurant that just had a record day from the number of patrons there to watch you play the day before? Ineligible. Receive money to show up to a birthday? Ineligible. Come up with a crazy slogan and put it on a t-shirt that you sell? Ineligible. From day one, it was made very clear that receiving any extra benefit, other than the full scholarship and the stipend that went along with it, would make us ineligible.

What was not made clear was how we were supposed to survive in the grind as 18 to 22-year-old student-athletes. How were we supposed to make up the difference required to pay for food, an apartment that was usually shared with fellow teammates or friends, utilities, transportation and other expenses? How were we supposed to eat to maintain health and balance? Or, go out with friends like any other student when we couldn't earn extra money? The stipend money we were provided was hardly enough to cover necessities. I understand that since I left college, some things have changed. The NCAA allows football players a second plate of food at dinner time. They even pay for the players' parents to see their sons in the National Title game—a game that is watched by tens of millions and drives huge amounts of sponsorship revenue to the universities.

Looking back, I realize that being broke all the time was not the worst part about being forbidden to explore other avenues of compensation. A few games into my junior year, in 2004, I suffered an awful knee injury. I tore three ligaments and a muscle around the knee. The rehab was grueling; the pain of rehab was awful. What



made this worse was the realization that I would have to pay for my eventual knee replacement from that injury. So, for an injury I sustained while playing at Miami, where I helped the university earn millions in revenue every year, at some point in my future, I will have to pay to fix it. It would be nice if some residuals from our collective earnings helped, or at the very least athletes were fully compensated for that risk, but the current collegiate rules do not allow it and the laws have not addressed it.

I am pleased for those minor changes that help athletes better manage life off the field. But most of those changes were put in place to ensure athletes perform at a high level. College athletes still cannot profit from fans buying their jersey or be compensated for their likeness from appearing in video games or on trading cards and it is far past time for us to address these inequities and figure out the solution. That is why we are here today and having this discussion. That is also why, after a career as an NFL player and advocating on behalf of my brothers across the league, I have now joined One Team Partners, a company that helps athletes maximize their name, image and likeness. Our infrastructure and expertise in the business can help address the old way of thinking and doing business and offer solutions to the problems facing colleges and student-athletes now and into the future.

Attached to this testimony is brief information about OneTeam Partners and how the organization may be able to provide the best guidance for how to bring NIL to the market fairly, equitably and legally.

Thank you for the opportunity to share my story and offer perspective on the crucial issue of name, image and likeness that will impact future college athletes. I remain available to the Committee or its Members should any follow up questions arise from your reading and hearing of this testimony.

Sincerely,

ERIC WINSTON.

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#### ONETEAM PARTNERS

OneTeam Partners LLC (OneTeam) was formed to help rights holders, like athletes, monetize their name, image, and likeness. Several of the unions of the major sports have for-profit subsidiaries that help professional athletes monetize these group rights. The subsidiary must acquire group licensing agreements from the players because there is nothing inherent about being a member of a union and being in a group designed for commercial usage. Once the group licensing assignments are acquired, the for-profit subsidiary markets and negotiates on behalf of the group of players (think: video games, trading cards, apparel). In part, OneTeam was created to serve as a platform to enhance rights holders' abilities to fully monetize their likenesses.

OneTeam views college group licensing as the logical first step into the NIL space and, frankly, low hanging fruit. Further, group licensing is a "win-win" for everyone involved, including the schools. A rising tide lifts all boats. Currently, each school makes \$0 from a college video game and trading cards. Further, each school hardly scratches the surface of what amount of revenue it could produce if apparel were done in a way that included the player's NIL.

OneTeam can provide protections to the athletes that are unrivaled. First, protecting and maximizing group rights is our core competency. We represent athletes' group commercial interests across sports and gender. The men of the NFL, Major League Baseball, Major League Soccer, and U.S. Rugby, as well as the women of the U.S. Women's National Soccer team, the WNBA, and U.S. Rugby trust our company to serve their best interests. There will be many who come before you claiming that they can do what we are built to do. I respectfully request that you ask one question of them: "*When have you ever done it in the past?*" There is not one agency or individual who has managed and transformed group player licensing on the scale that OneTeam and our member organizations and partners have done consistently and over several years.

Second, OneTeam provides transparency. Our system allows athletes to obtain compensation that has been cleared through NCAA regulations, is free of tax issues, and documented by compliance officers at their respective colleges. Because of our unique positioning, we understand exactly what athletes need and the logical fixes to these inherently problematic issues.

Third, the OneTeam system provides an equitable solution for athletes. There are many different formulas that can be used to compensate different members of the group. OneTeam is amenable to almost any solution and we provide a long and successful track record of best practices. For example, the current group commercial system model for NFL players compensates all of them in an equitable way while

providing some players with additional payment as it relates to specific items, like player jerseys. We understand that this model could be different for college athletes—and know how to build it and execute it.

In conclusion, the OneTeam operation provides a solution to the main question driving our discussions: *“How does someone represent, protect, and pay college athletes?”* The confidence in our capabilities derives from our leadership and collective years of experience and passion for the fair and equitable treatment of ALL athletes. As I noted, I predict other groups will claim that they can do what OneTeam does. But I assure you, as a former college and professional athlete, these same groups have turned a blind eye over many years at the welfare of college athletes, and/or have or currently work for the schools themselves.

## GROUP PLAYER LICENSING

Over the past several months, we have heard arguments that are not based in truth. These arguments, from public and private voices, and many working in the current system, are purposely being proposed to discourage people from looking further into the rightful opportunity for NIL freedom for college athletes.

Below are FAQs which address group player licensing and can serve as a guide for what is and is not true.

### **What is Group Licensing?**

Group licensing is based on a collection and assignment of individual athletes’ name, image, and likeness rights. In group licensing, each athlete assigns his/her rights to a third-party property to license those collective rights to the marketplace for commercial use (*e.g.*, consumer products like video games, trading cards and apparel and marketing and promotional campaigns).

### **Is an athlete union required to participate in a group licensing program?**

No. Athletes, as well as any group of individuals, can collectivize a certain set of rights for a commercial purpose. By doing so, it allows these individuals to use their rights in ways that otherwise would have not been possible before such as video games, trading cards, and apparel at a large scale.

### **How many players makes up the “group”?**

It depends. Each athlete property determines the “group” minimum threshold. For example, the NFL Players Association’s group license is defined as 6 or more (6+) NFL players. Therefore, to use more than 6 NFL players in a commercial capacity—whether it be 6 or 1,600—an NFLPA license is required. The minimum threshold varies depending on the athlete property, and once that minimum is met, there is typically no limit as to how many athletes the licensee is able to utilize or feature across its licensed product lines and/or brand marketing campaigns. For example, EA Sports utilizes every current NFL players under its NFLPA group license for use in its Madden video game title, whereas Funko (a manufacturer of vinyl toys & collectibles) releases roughly 25 new NFL player figures per year. In each case, the licensee is meeting the obligations of the group license, *i.e.*, featuring a minimum of six players.

### **Are group licenses exclusive to the respective rights holders?**

Yes, group licensing rights are typically exclusive to the athlete property and a license from the property is required to use more than the minimum group threshold.

### **If an athlete participates in a group licensing program, can he/she also license his/her NIL rights individually?**

Yes. Individual athletes can license their individual NIL rights and enter endorsement agreements in addition to the rights granted through a group license program. An example of this is NFL player, Marshawn Lynch. While he was actively a part of the NFLPA’s group license and featured across a range of NFLPA officially licensed products, (*e.g.*, jerseys, name and number t-shirts, bobbleheads) Marshawn also developed his own in-line, trademarked brand entitled “Beast Mode.” As the brand grew, Beast Mode obtained an NFLPA license to utilize additional NFL players across its range of branded merchandise.

### **What if a player wants to endorse a non-licensee?**

Players can endorse brands and products not under an official license of the group licensing property. However, a company is limited in how many individual athletes it may work with in this capacity by the minimum set by the athlete property. For example, if Nike has an official license to feature athlete names and numbers on jerseys via a group license, an athlete may also enter an endorsement deal with a

different company, like Under Armour or Adidas. The responsibility resides with the company (in this case Under Armour and Adidas) to ensure they are not in violation of the group license minimum.

**What is the process for players assigning their rights to a group license?**

Traditionally, a player opts into a group license program by signing a group licensing assignment (GLA) issued by the rights holder.

**What is the duration of a GLA?**

Varies by property; however, in the context of college athletics it likely makes the most sense for a GLA to last for the duration of a player's college eligibility.

**How are players compensated under a group license structure?**

This varies; however, royalty payments to players generally come in one of two ways:

1. Group Player Royalty Payments: In this scenario, revenue is shared equally by all players opted into the group license and that are deemed eligible for royalty payments as defined by the group license requirements.
2. Premium Player Royalty Payments: In this scenario, the player featured on the product itself (*e.g.*, jersey, bobblehead), receives a majority portion (at least more than half) of royalties generated, with a minority portion allocated to the group player royalty pool.

**Are there any usage rights and guidelines?**

Each athlete property has its own brand guidelines and approval processes in place that dictate how its partners can utilize players across product and marketing collateral.

The CHAIRMAN. Thank you very much, Mr. Winston.

And thank you all.

And now we'll begin a series of questions. And we'll use the 5-minute round.

Mr. Carter, you attended Ole Miss just a few years before Mr. Winston attended Miami. Is that correct?

Mr. CARTER. Correct.

The CHAIRMAN. And he listed a pretty tough set of circumstances: little time for study, coaches grilling us in the film room for hours and hours, very sketchy allowance for expenses, and having to check the bank account to see if you could pay for living expenses, only receiving those checks 10 months out of the year, rather than 12. Is that something you recognized, in your collegiate career? And has that changed since that time?

Mr. CARTER. Yes, sir. That's a great question. And I would agree with Eric on that, from a standpoint of, when I was in school, there were times when you didn't have a lot of money in your pocket. You know, your scholarship check, a lot of those things, you had the essentials. You had your room and board paid for. You had a lot of those things done. But, the extracurricular activities, sometimes you didn't have the money to pay for those. And, you know, again, I do think things have changed a lot since the late 1990s, when I was at Ole Miss. You know, I look at some of the things that our student athletes have now, with unlimited meals, with cost-of-attendance checks that were implemented, you know, 3 or 4 years ago. I do feel like there are—

The CHAIRMAN. Is that NCAA-wide, or is that—

Mr. CARTER. Each institution, basically, decides how much of cost-of-attendance they want to pay. And, for us, we will—we pay up to the full amount for each student athlete. And so, you know, for us, it—we think that we're providing a lot of resources, and obviously we're here today to discuss opportunities to provide, you

know, potentially, more resources, which I think is a great thing. But, I would say, without a doubt, student athletes now are in a much better place from a lot of the things Mr. Winston mentioned than, maybe, when he and I were in school.

The CHAIRMAN. Well, you provided a list of benefits for a scholarship athlete at the University of Mississippi in your written testimony. What does the average Ole Miss basketball scholarship recipient receive today? What's the entire compensation package?

Mr. CARTER. Well, for an out-of-state student, a non-resident student, the—

The CHAIRMAN. Like you were.

Mr. CARTER. Yes, exactly. You're looking at about \$42,000 just for the tuition and all the things that go along with cost of attendance there. We've calculated that there's probably about another \$25,000 that would go to a student athlete on an annual basis, based on—whether it be medical situations, academic services, strength and conditioning, a lot of the things that if—for example, if these students were professional athletes, they would have to pay for. And so, we feel like that the total number at Ole Miss, at our full-ride headcount student athletes get is around \$68,000 to \$70,000.

The CHAIRMAN. And what about—is there some provision, for most universities, for day-to-day living expenses, being able to run downtown and eat at a restaurant, things like that?

Mr. CARTER. Yes, sir. I think that, again, there are—you know, certainly the fact that a lot more meals are provided now, things that maybe, again, when Mr. Winston and I were in school, that we had to pay for out of a scholarship check or those type of things, now there are incidental meals, there's, basically, unlimited meals. There are snacks—you know, basically, our student athletes, anywhere they turn around on our campus, in our athletic facilities, they have an opportunity to grab food, which allows them to have more money in their pocket to spend on other things. And then, as I mentioned, 3 or 4 years ago, when, basically, the full cost-of-attendance option was available, that's allowing—in the State of Mississippi, where we are, in Oxford, it's about \$4,800 per student athlete, per year. So, again, more money in their pocket. And, you know, obviously, we're here to talk about doing more. But, I do feel like, over the years, we've done a lot to enhance the experience of our student athletes. And certainly, I know that it has been a good thing.

The CHAIRMAN. What's your graduation rate among scholarship athletes at Ole Miss?

Mr. CARTER. We're very high. We're up in the 80 percentile, which is obviously higher than the normal student population. We have job placement. We placed 100 percent of our graduating seniors last year that had jobs as they left our institution. There are so many resources that are available to the student athletes, besides just the actual scholarship, itself. We talk about—

The CHAIRMAN. What's that figure in the SEC, Mr. Sankey?

Mr. SANKEY. It will vary. So, we'll have programs or universities that are at or near 100-percent graduation rate, and we'll trail down into the 80s. Perhaps, I think, the lowest, off the top of my head, is in the high 70s, from a percentage rate. And that doesn't

include—that's a 6-year window, analysis that doesn't include post-eligibility returns, which, over the last 5 years, are in the hundreds of opportunities provided for young people to come back and complete their degrees.

The CHAIRMAN. Thank you very much.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Professor Koller, I couldn't agree with you more on amateurism and protecting amateurism, and that we should be doing more oversight of this issue, not less. I feel like there are a lot of things that happen that don't get the bright light of day shone on them, and so we should take that opportunity.

What—how do you think that name, image, and likeness and amateurism can work together? And what kind of oversight do you think is necessary to make sure that the students are—or the athletes are—have their rights independently protected?

Ms. KOLLER. Senator, I think name, image, and likeness can work with the amateurism model, but where I part company with some of the NCAA suggestions is, Who should be in the business of enforcing that and writing the restrictions? And so, what the NCAA Board of Governors report is asking for is a blank check to the NCAA to write the restrictions. I think that either Congress can write restrictions on NIL use into legislation or, for instance, some have proposed an independent commission that could be in charge of that. So, I think the blank check to the NCAA to come up with restrictions on NIL use is suspect, given that all the terrific benefits Mr. Carter's talked about that student athletes now receive, those benefits were really the result of antitrust litigation. So, I think it can work together, but I think we need an independent body coming up with the necessary safeguards, so to speak, and enforcement.

Senator CANTWELL. And how do you protect the athletes, you know, on the amateurism issue, in and of itself?

Ms. KOLLER. So, there are lots of ways to protect athletes in an amateurism system. So, if you're talking specifically about name, image, and likeness, you can have prohibitions on schools setting up these deals for their athletes, you can have prohibitions on using these deals as recruiting enhancements. I think there are a lot of ways that you can do that. You can write it into legislation, or you can have an independent commission do it. But, again, what the NCAA has asked for through its Board of Governors report is a far more, sort of, expansive definition of that, and I think that's unnecessary.

Senator CANTWELL. I mentioned this issue of the pandemic. And so, Dr. Drake, will you allow students to refuse to compete or participate in college-mandated activities because of COVID?

Dr. DRAKE. Absolutely. The participation is voluntary. Of course.

Senator CANTWELL. OK. So—but, why am I seeing this thing called the Buckeye Pledge, returning students sign a liability waiver before participating in athletic—

Dr. DRAKE. Well, thank you, Senator. Let me just say that they do not sign a liability waiver. That's just not true. It's a pledge that all of our students are going to be signing to, basically, follow the good public-health guidelines that you and I and everyone should

follow to help protect us against this—against the pandemic. In fact, the guidelines are exactly parallel to the CDC-issued guidelines that came out just yesterday. And what that pledge says is that you'll wear a mask when you're in public, you'll wash your hands, you'll keep 6 feet of distance, and, if you become ill, you'll report this to people to allow you to be protected.

Senator CANTWELL. So, a football player could say, "I don't want to participate in this fall season," and not have any of his compensation or—

Dr. DRAKE. Yes. A scholarship—specifically in the pledge, it says that this will not affect your scholarship—whether or not you participate will not affect your scholarship.

Senator CANTWELL. OK. So, it's—

Dr. DRAKE. Specifically written to say that.

Senator CANTWELL. Ms. Koller—

Dr. DRAKE. So, it's a pledge, not a—yes, not a waiver, which I would not support.

Senator CANTWELL. OK. Thank you.

Ms. Koller, do you have any comments about this?

Ms. KOLLER. Well, I certainly don't want to challenge Dr. Drake on what the intent is behind the Buckeye Pledge. And, as an administrator, myself, trying to bring students back to campus, I know that we need to have some collective understandings of public health. So, I think that's very important.

I would say, as a lawyer and a law professor, however, the Buckeye Pledge—and I don't want to focus on that too much; I think the University of Tennessee has an actually worded release of liability that is deeply concerning, and other schools do, as well—but, even things like the Buckeye Pledge, which are important for public health, I think, can cross over and be used later on down the line to be, sort of, an assumption of the risk.

Senator CANTWELL. OK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Thune.

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman.

Mr. Sankey, would your conference today be able to comply with several State laws seeking to address the issue of name, image, and likeness?

Mr. SANKEY. It would be difficult and confusing. And a piece of my concern is, we have one in our region, and knowing the competition within my 11 States, I can foresee, quickly, the other 10 one-upping each other. And I think that's a problem for fair and equitable competition.

Senator THUNE. Is there anybody here on the panel that does not believe that there is a need for a nationwide standard?

Mr. SANKEY. No.

Senator THUNE. I know you've kind of suggested, Ms. Koller, not to the extent that others are perhaps advocating.

Ms. KOLLER. Yes. It's not an emergency, but I think it's desirable, certainly.

Senator THUNE. OK.

Mr. Drake, when Dr. Emmert testified before the Committee earlier this year, he stated that he envisioned each individual division having some degree of control over the rules to allow athletes to benefit from their name, image, and likeness, as long as they follow the larger set of parameters established by the NCAA Board of Governors. Is that how you envision the rule working?

Dr. DRAKE. Yes. The divisions have different rules, because they have—they have different rules on scholarships and other things, so there would be a modifications to distinguish Divisions 1, 2, and 3, Senator. But, there would be an overarching framework that would guide this.

Senator THUNE. As those rules are being set, what steps are each of the respective divisions taking to ensure that fair and balanced competition continues between the larger and the smaller schools?

Dr. DRAKE. Yes, thank you, Senator. What's happening now, in fact, is that each of the divisions is working on its recommendations for the details of the policy that will come to the Board of Governors in October, and those are the kind of details they're focusing on.

Senator THUNE. Yes. All right.

It has been suggested that there should be a limit on the amount of funds a potential NIL sponsor can offer a student, to protect students from inappropriate predatory actions. Do you all agree with that? Limits?

[Heads nod.]

Senator THUNE. OK.

The CHAIRMAN. Well, let's let every witness answer, including Mr. Winston.

Would each witness support a limit on the amount of NIL compensation a student athlete could receive?

Ms. Koller?

Ms. KOLLER. I don't support a limit on the amount of compensation. I can see a need for some commonsense limits on the ways that these deals come to be, so they're not recruitment inducements and other things, but I don't support limiting the compensation.

The CHAIRMAN. That was your question, right?

Senator THUNE. Correct, yes.

The CHAIRMAN. OK. Well, let's let the other three members answer.

Dr. Drake.

Dr. DRAKE. Thank you, Senator. Yes, I'd just—commonsense limits so that you couldn't get \$50,000 for—whatever—a T-shirt. I mean, just commonsense limits that would be—I think I agree with Ms. Koller on that.

Mr. SANKEY. I started to lean in, Senator, and then I was waiting to see how the answer was going to play out. I do believe there needs to be a structure around how this is deployed, some of which have been identified. I've not envisioned simply a numerical limit. I think sources are important to consider for limitations. I think the nature of those relationships that might be in legislation should be considered. I've had conversations, generally, about a numerical limit, and that's not been the focus of our thinking at this point.

Mr. CARTER. And I would just add to that. You know, we've talked a lot about market value and giving our student athletes the same opportunities as non-student athletes. So, I think that you would refer back to the market value, and certainly some common-sense approach in the structure needs to be there. But, the market value is where we would fall back to.

The CHAIRMAN. And Mr. Winston—

Mr. WINSTON. Senator, I'll jump in here. Yes, I'll jump in here, as well.

Yes, I don't see a need for a limit, per se. Obviously, when we think about commonsense thought processes around how that's paid out, or the restrictions around it, I would echo what Mr. Carter and Ms. Koller have said on this already.

The CHAIRMAN. And, Senator Thune, I've taken some of your time, so you go ahead and take another 2 or 3 minutes.

Senator THUNE. No, that's all right. I've—that's a good—that was good to get that answer on the record in more specific terms.

Let me ask you—and this is for any of you—whether you believe that rules around name, image, and likeness should affect the college athletic recruitment process? And the second question is, Will it affect the college recruitment process?

Mr. SANKEY. The "Will it?" part, it absolutely has the potential. And that's why, in my comments, I observed the need to address the issue specifically. And I view that in several ways. One, if this activity is around recruitment, it's simply an inducement, and we lose the conversations that currently occur in recruiting around education, around geography, around the nature and support of the program, and it becomes transactional. I think that is legitimately a concern that we should have.

The difficult part is to create—whether it's guardrails, fencing, framework for that limitation within legislation, and then to monitor that activity in a way that eliminates it or reduces it from recruiting. And I think it's not simply an issue for high school students. I also think, with what will be a freer environment for transfer student athletes, that same type of recruiting activity transfers itself to the college level under an unstructured name, image, and likeness atmosphere.

Senator THUNE. Mr.—

Dr. DRAKE. Yes, if I may. I am the son of a college athlete. My father went to college on a college scholarship, wouldn't have gone to college otherwise. He went because he wanted to play football, not because he wanted to go to college. And then, actually, he graduated from college, which he hadn't ever thought of, and then practiced medicine—got a medical degree and practiced medicine till he was 99 years old. So, it changed his life, and it changed my life and our family's lives. And so, the pathway was extraordinarily important.

And I'm also, then, the father of a Division 1 collegiate athlete, now graduated and a visiting professor at NYU. But, he—I remember the recruitment process—he heard from 300 colleges when he was in high school, and was recruited very actively by colleges in different states, and then made a decision of the college he wanted to go to, and it turned out to be a wonderful process for him, very affirming for him, and gave him the ability to look across the coun-



try and pick the best match. And I think that's a great part of this process. You're not drafted and pointed to one team.

I have a nephew who played in the NFL for 6 years, and I've watched that process, as well. It's quite a different process than the recruitment process. So, I think that that's something that needs to be protected.

And we've seen, with the laws that have passed already, that people in those states have been referring to the State of Florida, in particular—referring to Florida now as a place that students—athletes ought to come, because of the NIL laws that would take place in Florida before others. And so, this one-upsmanship, as Commissioner Sankey has mentioned, has already started.

Senator THUNE. And that would be one of the biggest concerns I have as a—representing a state where you've got some schools that are mid-major-conference schools, Division 2, NEIA, is how it could affect the ability of some of those really quality schools, many of which have attracted athletes from the region, for many of the benefits that you all have talked about if this becomes a money issue, how that could impact that recruiting process. And I think that's something we have to be really careful of, aware of, as we work through this issue.

And I will tell you, it has come a long ways. My dad was a Division 1 athlete, played at the University of Minnesota back in the late 1930s and early 1940s. He is one of the—in fact, he's 100 years old, and he, I think, by far, is the only athlete still alive from that—when he was competing in the Big 10. But, at that time, the idea of a scholarship was, you worked for your room and board. He worked at a fraternity to make his board. So, that was—it has changed a lot, and it's great that these athletes have these opportunities. But, we certainly want to make sure that this is done in a way that doesn't create a lot of potential for bad things to happen.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune.

My dad was a junior college athlete, back before World War II, and it—indeed, he will tell you, at age 96, that it changed his life.

Senator Tester, you are next. I'm guessing you ran cross-country in college.

#### **STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA**

Senator TESTER. Pretty close. Well, I was just going to tell you, my dad was a farmer and a meat cutter, and lived to be darn near 89, so it's a good thing.

Hey, guys. First of all, I want to thank all of you for testifying. I appreciate it. We need to stay in touch on this issue.

I agree with Senator Thune about—it has got to be equitable. You cannot give advantages to the moneyed conferences, so to speak. If it does, we haven't done our job. But, more importantly, it has to be fair to the athlete. And I think that's why we're all here.

My first question is for Mr. Sankey. Mr. Sankey, could you very briefly tell me the differences that you see between the Florida law and the—and NCAA's proposal on NIL?

Mr. SANKEY. Well, I think the challenge with what the NCAA's put together right now is, it is principle-based, where Florida's law is operationalized. From my perspective, the Florida operate—the Florida law is pretty effective. I think it's an improvement of—over what you've seen out of California. We obviously, through our university, had an opportunity to be in conversation about that law. I think the challenge for the NCAA's Working Group report is how to actually legislate the rules, to legislate the rules in a way that would withstand legal scrutiny, and one that would satisfy the extent, for instance, of the California law, which I've never thought is possible. And so, my basis for believing there needs to be a Federal law is that these differences are significant. In particular, the effective date of the Florida law being next summer is of great significance in needing to move this law in a—move this along in a time-efficient manner.

Senator TESTER. I gotcha. But, what you're, basically, saying is, is the issue here isn't necessarily the law itself—and don't let me put words in your mouth—it isn't necessarily the law itself, it's the fact that it needs to be a nationwide law. Any law that we have, there has to be a preempt so you guys know the rule of the road for every state you're recruiting.

Mr. SANKEY. Yes. From my perspective, Florida did what I would consider to be a pretty good job. They can't preempt other State laws, obviously, and they can't deal with some of the legal issues I've identified today.

Senator TESTER. OK.

Mr. SANKEY. The agent oversight is a concern, still, from that law. And I think that's one of the challenges that would be present even with a Federal law, is, How do we oversee and hold agents and representatives accountable to standards in the right sort of fashion, in real time?

Senator TESTER. Gotcha.

Well, when Senator Moran had the hearing for—early on, a few months back, we talked about a catastrophic injury fund. Mr. Sankey, this is for you. Do you think that if we do something on NIL, that that would prevent—are you asking us to—that would prevent us from doing anything else on, like, an injury fund for injured athletes?

Mr. SANKEY. No, not at this time. I'm not familiar with that exact conversation. I know of the fund.

Senator TESTER. Yes.

Mr. SANKEY. In fact, as a conference, our institution explored disability insurance and loss-of-value insurance for student—

Senator TESTER. Right.

Mr. SANKEY.—athletes on a—

Senator TESTER. Well, I guess what I'm asking you is, if we do a bill on NIL that is a national bill, you do not see that as preempting Congress from doing something in some other area to help athletes outside of NIL—for example, an injury?

Mr. SANKEY. I'll do the dangerous thing, which is to say, "No, I don't," but I don't know enough of the details to be the expert at this point. But, no—

Senator TESTER. OK.

Mr. SANKEY.—I don't want to react to that negatively in this moment.

Senator TESTER. That's good enough for me.

Ms. Koller, aside from name, image, and likeness, and taking care of injured athletes, do you see any other issues that need to be part of a conversation, discussion?

Ms. KOLLER. Well, I think we've discussed the issues, in terms of compensation, but I think what needs to be part of the conversation is really athlete health and safety and well-being, and national standards in that area, as well. So, I think that's part of what my testimony was, that, you know, we shouldn't be so rushed to simply move on NIL that we forget—and Congress has held hearings on things like national standards for treatment of concussions, heat strokes, sports medicine. You know, we have thousands of different approaches to how athlete healthcare is delivered because of its—the NCAA's decentralized model. So, what I would say is, is that, as you look for a national solution and work toward a national solution on NIL, you not forget these other important issues.

Senator TESTER. Mr. Winston, first of all, I appreciate your career. You played for Tampa Bay, right?

Mr. WINSTON. Houston, mostly. Houston and Cincinnati.

Senator TESTER. OK. Well, and I don't think you weigh near what you did back in your playing days—

[Laughter.]

Senator TESTER. But, what I wanted to ask you is, the schedule that you laid out didn't include much for academics. I have heard this from other athletes, that if you're a scholarship student, that your first obligation is to that sport. And it's just the nature of the beast. I'm not being critical of college. What I'm saying is, is that—is it—I mean, is that pretty much it? Football comes first, in your case—or basketball, or cross-country, or whatever you might be—and academics kind of fill in the gaps?

Mr. WINSTON. Yes. I always somewhat joke that I was an athletic student, not necessarily a student athlete. It—listen, it's a tough schedule. It's something that I think we understand, from coming—even coming from high school, especially if you're at a big high school program. There's not a lot of time for extracurriculars, either. It doesn't make it OK, but I think it's a—it's an understanding that—you're right. I mean, you have a study hall until 9 o'clock, and you go to bed, and then you get up at 6 a.m. the next day and you start it again. Right? And that's something that, unfortunately, quite frankly, maybe we get used to. Some guys really thrive in that structure, to be completely frank. But, at the same time, you're right, it's a complete balancing act every day.

Senator TESTER. OK. One last—

The CHAIRMAN. Thank you, Senator Tester.

Senator TESTER. No, I just need to get from Mr. Winston his college group licensing proposal, just so I can take a look at it and see—

Mr. WINSTON. Yes, I'm happy to send it.

Senator TESTER. Thank you.

The CHAIRMAN. Thank you, Senator Tester.

Senator Cruz.

**STATEMENT OF HON. TED CRUZ,  
U.S. SENATOR FROM TEXAS**

Senator CRUZ. Thank you, Mr. Chairman.

Thank you, to each of the witnesses, for being here, and for your good work.

There are a lot of reasons people choose to come to Texas, and one of them is to play sports. And in Texas, we take our sports very seriously. Indeed, ESPN still ranks as the greatest national championship game ever the game in 2005, when the Texas Longhorns and Vince Young stunned USC, and the Heisman Trophy winner, Reggie Bush—and, I'll tell you, Heidi and I were at that game, in the Rose Bowl—and I, for one, agree with ESPN that there has never been a game like it.

Texas is a home to 53 colleges and universities whose student athletes compete at the NCAA level. Twenty-three are Division 1. Of those 23 Division 1 schools, six are in the Power Five conferences—the ACC, the Big 10, the Big 12, the PAC-12, and the SEC. Four of those six are, right now, the reigning national champions in at least one sport.

One of the challenges of this issue that each of y'all are considering is, How is it going to impact parity and competitiveness between big schools and wealthy schools and those that may not be as big and may not be as wealthy? Texas is home to a number of schools that are not in the Power Five. For example, University of Houston, a phenomenal basketball school, and Phi Slama Jama was as great a collegiate program—yes, I'm using it as an opportunity to revel in old memories.

The CHAIRMAN. Get to the point.

[Laughter.]

Senator CRUZ. But, the University of Houston's in the American Athletic Conference.

Dr. Drake, in your opinion, should the NCAA determine an NIL policy that will apply to all member schools? And how do you avoid giving additional advantages to large and wealthy programs?

Dr. DRAKE. Well, thank you, Senator. That is one of the concerns in the NIL program. Their issues would be large—well, wealthy programs, programs in urban areas versus programs in rural areas, et cetera, and these are the devilish details that are being worked out to try to get them as much parity as there can be. There's not total parity, as we speak. But, the idea is to try to move forward to something that gives more opportunity for student athletes without disadvantaging institutions unnecessarily, but to focus on the student athlete.

Senator CRUZ. It seems to me that, if the NCAA is going to consider this initiative, that two guiding principles ought to be looked to. Number one, fairness, being fair to student athletes. And student athletes undoubtedly put enormous time and energy and dedication, and a great many of those student athletes are not going to go on to a professional career. And fairness is certainly important. A whole lot of revenue is being generated, often by the—quite literally, the sweat of their brow. And so, fairness matters. But, at the same time, preserving competitiveness. I think a test of success would be the competitiveness we see in sports today that any change in policy wouldn't significantly alter it to just draw all the

money and power in a handful of schools, and disadvantage the others.

How's NCAA accounting for both of those principles: fairness and preserving competitiveness?

Dr. DRAKE. Well, thank you again, Senator. Fairness is extraordinarily important to us. The opportunity for student athletes is extraordinarily important. You mention a very important point. We, at The Ohio State University, have about 1,100 NCAA athletes. So, when we think about name—the marketable name, image, and likeness of individuals, there would be a handful. I mean—a few of them would be in that category. And we think very much about what happens to the other thousand-plus athletes that we have.

My wife and I have them over for—teams over for dinner, and have been doing this for 15 years. And we get to meet our student athletes and talk to them about their experiences. It's a wonderful chance, actually, to hear what they're experiencing, going through.

And I will say that I also—I was a medical school professor for years. I was the dean of admissions at my medical school. And I used to look at the student athlete grades as they came in. And I had a—I would say, “Gosh, if it's a basketball player, I'm going to give him a little bit of credit for the winter, because they're playing games and traveling and all in that.” And that was me trying to be smart as the son of a college athlete. What I noticed is, as often as not, they would actually have better grades and test scores during the time that they were in season, because the discipline of working—I surmised, the discipline of working through what they were doing helped a lot. So, we think of these as great opportunities for the student athletes, and want to make sure that we maintain that fairness.

And so, the three divisions are working on rules to be able to implement in a way that allows the competitive advantages to stay as fair as possible while providing opportunities for student athletes across the board.

Senator CRUZ. Thank you.

The CHAIRMAN. Thank you very much, Senator Cruz.

Senator Rosen joins us remotely.

**STATEMENT OF HON. JACKY ROSEN,  
U.S. SENATOR FROM NEVADA**

Senator ROSEN. Well, good morning, everyone. I hope you can hear me OK.

The CHAIRMAN. You're great.

Senator ROSEN. Thank you.

So, thank you, Mr. Chairman, Ranking Member Cantwell, to all of the witnesses, for appearing here today.

Higher education has gone through a major upheaval since the start of the coronavirus pandemic. School closures, of course, forced universities and colleges to move classes online and cancel all of our wonderful sporting events. I think each one of us could—I saw Senator Cruz—we all have some good team memories, so we'll have to all talk about that when we get together at lunch. But, we love our college sports, for sure.

But, as college athletes begin to return to campuses for voluntary training, COVID-19 is on everyone's mind. So, in the past few

weeks, a number of Division 1 schools have reported college athletes testing positive for the coronavirus. Although the NCAA has published guidelines—just guidelines for restarting college sports, it has left it up to individual schools to decide on how to implement health and safety policies. So, the lack of a unified response from the NCAA may result in what we see playing out in the states, a patchwork of mandatory and voluntary guidelines potentially resulting in spikes in transmission of the virus in some states, in some schools, and not in others. And some colleges test their students every week, others only when you have symptoms. And so, we need a strategy, generally, for the coronavirus, where we need a 50-state strategy, one for our whole country, not a 50 one-state strategy. We have to have a nationwide approach. So, for Division 1 athletics, it seems advisable to have a one-school strategy for all those 353 schools when we combat the virus.

So, Dr. Drake, does the NCAA plan to issue universal coronavirus guidelines to all participating colleges and universities?

Dr. DRAKE. I'll say this is under—thank you, Senator—this is under discussion actively on a daily basis, and we'll be talking about this later on in this week. I certainly support that.

Senator ROSEN. But, you know, you've used your oversight powers in the past, most notably in addressing sexual assault. So, I believe that, in extreme cases, such as matters of a global pandemic, it shouldn't—that the NCAA should step in to provide a nationwide framework. Not all schools have the resources to develop this, and we want to protect the safety—health and safety of all our student athletes. They are our children, and we need to be sure that, if there are any long-lasting effects of this virus, we don't want to expose them to a lifelong chronic health disease.

And so, do you know, so far, if this lack of a uniform guideline, if they're impacting people's decisions to come back to school?

Dr. DRAKE. No, I couldn't answer that, Senator. I mean, I'll say that the policies—because it's a 50-state organization with 1,100 schools, the health policies tend to be guided locally over the years. I mean, that's been the tendency. This is a new, obviously, and evolving circumstance, and we have guidelines that we've used at our institution, which I support and would recommend for everyone. And I'll—as I've said, the NCAA, my colleagues there and I, have been discussing this on an ongoing basis as the pandemic has rolled forward.

Senator ROSEN. Well, I hope that you address that, because I think that having a level playing field—we're talking about sports here—would be great, that all universities, colleges, whoever, is—are under your umbrella, they're operating off the same set of rules. It makes a lot of sense.

We're going to just build off what people have spoke about before in, just, the remaining time that I have.

We know that, given the time commitment that athletes spend in practice, training, traveling for their respective sport, and the comparatively small amount of time they spend in the classroom, is there a case to be made that some of these athletes are really no longer amateurs? And should we be consider—reconsidering how we define “student athlete”? And how do we ensure that, given these demands, college and universities are giving student athletes

the realistic time they need to have a quality education that's going to serve them the rest of their life?

And, Dr. Drake, you can go ahead and answer again, please.

Dr. DRAKE. Oh, thank you very much.

We believe very much in the "student" part of "student athlete." As Commissioner Sankey and others have said, our student athletes graduate at an even higher rate than our general student body. And for them to maintain their eligibility, they have to maintain progress through school, and we support that and think about that all the time. It has been an avenue toward getting to school for so many students—we appreciate that—an avenue toward staying in school for so many, but also an avenue toward graduating from school for so many. And that's an important part of our work.

Senator ROSEN. Well, I appreciate all of your work, and we want to set all of our students up for success after they graduate. And that's the purpose of this hearing today.

Thank you.

The CHAIRMAN. Thank you very much, Senator Rosen.

Senator Moran.

**STATEMENT OF HON. JERRY MORAN,  
U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, thank you. Thank you, to you and the Ranking Member, for conducting this hearing. Thank you for the opportunity you gave Senator Blumenthal and I to have a hearing February the 11th related to this topic of NIL, and now—and in this hearing, perhaps more broadly, just the care and well-being of student athletes.

Let me start. I've got so many questions and so little time. Mr. Sankey or Mr. Carter, I want to talk about the A5 conferences. The requirement for providing healthcare, it's my understanding that among the reforms that came about, I think in 2015, there's a requirement that A5 schools must provide medical care to former student athletes for at least 2 years after graduation. Under this kind of—under this requirement, what kind of care, what kind of costs are covered, and should the—what's the magic number about 2 years? Is there any suggestion or belief that it should last longer than that?

Mr. SANKEY. I don't know the exact expenditure, so I'll allow Keith to share perspective from a campus. You're correct that we did, at the Autonomy 5 level, adopt that legislation.

Debate about two years, as I recall, generated from discussion at a State level, and the PAC-12 conference, introduced the original concept, which we all supported. And, in fact, even without legislation, we have provided medical care at a campus level for student athletes, post eligibility. That's more a habit than a requirement that's taken place over the years prior to that legislation, which, as you noted, does now exist.

Mr. CARTER. Yes. And I'll just—

Senator MORAN. Does that cover all student athletes?

Mr. SANKEY. The new rule did, that's right.

Senator MORAN. OK.

Mr. CARTER. Yes—

Senator MORAN. Anything further on that?

Mr. CARTER. I'll just piggyback on that, just briefly. You know, obviously, for us, we're here to talk about student athletes. And, I think, for this particular issue, it's the right thing to do. And, I think, for us, we're going to make sure that our student athletes are healthy. We want to make sure that we talk to them in the recruiting process about how, "This is a family, and we want to take care of you, and the things that you need to get done." We want to make sure that we come forward with that at the end, as well. So, I think it's a great policy. I don't—with Commissioner Sankey, I'm not exactly sure on why the 2 years was a part of the policy, but certainly we want to take care of our student athletes.

Senator MORAN. Let me turn to transferring to other schools. My understanding is that, in most circumstances, after transferring to a different institution, the student athlete must sit out for a year before coming eligible to play again. Is there a belief that that's the appropriate requirement? Do you think that a student athlete should be able to transfer without having to sit out for that year? If not, in what circumstances do you believe that would be appropriate? And I would welcome the comments of any of our witnesses.

Mr. SANKEY. We're clearly moving in that direction, so there are, I think, five sports—there are really three with which I deal on a regular basis—football, men's and women's basketball—that have that 1-year residence requirement. The others will have the ability to have an exception to that rule. By January, the NCAA, nationally, has said that it will entertain or review legislation to alter that 1-year transfer withholding. We have just removed the set of restrictions on communication to free up communication, destination, and financial aid once you transfer. I think that was a good first step. This next consideration needs to consider issues like academics. I think that's an important part of the transfer world. I also believe the team to which an individual is transferring, and those student athletes, have to be considered in how you prepare a team and collect the team. But, I've certainly indicated openness to the change that you've identified, which is the removal of that residence requirement. But, I think there are some considerations that need to be introduced rapidly so that we can solve this problem sooner rather than later.

Senator MORAN. I have several other questions, but I'd welcome anybody else who has a quick comment on this one.

The CHAIRMAN. Who wants to volunteer?

Senator MORAN. Don't encourage them, Mr. Chairman. I want to ask about scholarships.

What's the most common reason that a student athlete's scholarship is revoked? And are there circumstances in which, if you told us why an athlete's scholarship was revoked, that we would find that objectionable? Are they always revoked for what would seem to the average American, to us on this committee, which may not be the same thing as average Americans—let me go back to average Americans. Would they find it objectionable for the way that student athletes are treated in regard to maintaining their scholarships and the circumstances in which they might be revoked?

Mr. CARTER. Yes, I would say that—probably a couple of reasons. One would be an academic reason. One would be that, if they were not fulfilling their academic requirements, that's obviously a rea-



son. And then, certainly, if there was a disciplinary reason that reached a level that we deemed that the student athlete did not need to be at our university. Those are probably the main two reasons. But, obviously, you know, most of the time, student athletes are there, they have that scholarship, and they're going to be able to have that throughout their career.

Dr. DRAKE. Senator, I think that most Americans would be surprised at the circumstances under which student athletes keep their scholarship, that it's not something that's—that pay on—play on the field has removed from them, and that we bring them in and support them through their educations routinely.

Senator MORAN. Thank you for that answer.

Thank you, Mr. Chairman.

The CHAIRMAN. And thank you, Chairman Moran.

And, Senator Blackburn, are you with us?

**STATEMENT OF HON. MARSHA BLACKBURN,  
U.S. SENATOR FROM TENNESSEE**

Senator BLACKBURN. I'm with you. Thank you—

The CHAIRMAN. You are recognized.

Senator BLACKBURN.—so much. Thank you, Mr. Chairman. And I thank you for the hearing today on this.

But, I will tell you, for our guests that are there—and we thank you for the time that you're giving us—it ought not to take a—another congressional hearing to have the NCAA address NIL issues. And, as Chairman Moran mentioned, this is the second time we have had a hearing on this. And we had Dr. Emmert in front of us earlier this year for what proved to be a very unsatisfactory hearing and approach.

So, I want to do some yes-and-no questions. And, Mr. Carter, we're going to start with you. Full disclosure, my son ran cross-country there at Ole Miss. My daughter is also an Ole Miss grad. But, let me work through a series of questions, and just starting with you, going to—all the way through the list, to Mr. Winston. A simple yes or no. Do you believe student athletes should be able to profit from their NIL? Yes or no?

Mr. CARTER. Yes.

Senator BLACKBURN. OK.

Mr. Drake?

Dr. DRAKE. I'm sorry. Yes. I've got it.

Senator BLACKBURN. Yes.

Ms. KOLLER. Yes.

Mr. SANKEY. I'm working on moving to a yes.

Mr. WINSTON. Yes.

Senator BLACKBURN. OK. All right. Thank you.

And second question. Has the NCAA adequately handled this situation?

Again, Mr. Carter, start with you. Yes or no?

Mr. CARTER. Not yet. No.

Senator BLACKBURN. OK.

Dr. DRAKE. Not completed, so—you know, we're in process.

Ms. KOLLER. No.

Mr. SANKEY. It's a work in progress.

Mr. WINSTON. No.

Senator BLACKBURN. OK.

And the third question. Will a patchwork of State laws be problematic?

Mr. CARTER. Yes.

Dr. DRAKE. Yes.

Ms. KOLLER. Not as much as they say.

Mr. SANKEY. It will, yes.

Mr. WINSTON. I agree with Ms. Koller. It's overstated, the issues that will happen from a patchwork.

Senator BLACKBURN. OK.

Well, what we know is that the NCAA has not adequately addressed this, they have—that a patchwork would present some problems, and that student athletes should be able to be compensated for their name, image, and likeness.

Let's see. I—Mr. Carter and Mr. Sankey, let me come to you. And Ms. Koller touched on this with putting things in legislation being a little bit prescriptive. And I think we've all looked at the report that came from the NCAA, and that was not satisfactory, to say, "Here are some guidelines. We may or may not take a vote." That is not addressing the issue. And I think you all have to agree, this is an issue that has gotten away from you.

So, Mr. Carter and then to Mr. Sankey, how can Congress help ensure accountability and transparency in this legislation, in NIL legislation, expecting that the NCAA is not going to, on their own, come up with something? So, how do we ensure accountability? How do we ensure transparency in this?

Mr. CARTER. Well, I think, obviously, that's why we're here today, to talk about a lot of these potential solutions. And I think that we've outlined a framework that makes a lot of sense. There are certainly some things that we need to be cautious of. And we talked about those. But, I do think that putting our foot on base at some point—obviously, we have a timeframe. You know, we've got about 12 months before this goes into effect in Florida. So, you know, I think that doing that, and then certainly, you know, coming back to what—where does the final enforcement and monitoring lie? And I think that ends up with a hybrid—you know, a hybrid approach, where the NCAA is involved, the Congress is involved, and then, ultimately, probably a third party is involved to help administer this when it's all said and done.

Senator BLACKBURN. Do you think that there should be a morality clause included in legislation so that there would be a way to deal with bad actors?

Mr. CARTER. Absolutely. Yes, I think we're going to have to anticipate those type of things. I think that, certainly, with the recruiting issues—the potential issues that we've talked about, with agents and different people that are going to be involved in the process, I think there has got to be some guardrails there to protect against that.

Senator BLACKBURN. OK.

Mr. Sankey?

Mr. SANKEY. I think Keith identified the need for a third party. I would absolutely be open to that approach. As currently structured, I'm not convinced the NCAA enforcement model is designed to handle this issue in real time. Where that authority rests, I

think, remains for conversation, and I think it is an important conversation.

Senator BLACKBURN. So, you see a third party, as opposed to a committee from the NCAA, handling this.

Mr. SANKEY. Senator, I'm open to that. I've not seen other models that solve the problem beyond that part of the conversation.

Senator BLACKBURN. Thank you.

Yield back.

The CHAIRMAN. Thank you, Senator Blackburn.

Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman.

We come here in the context of a history of athletes, unfortunately, being used as profit centers. They are a source of revenue to the colleges. Very often, they are unable to benefit from their name, image, and likeness. By now, I think we've thoroughly established it in this committee, through our subcommittee hearing back in February, and now in this one, but there's just abundant evidence of the profiting by schools, at the expense of athletes. It may be for causes that are regarded as worthwhile, like financing other sports or the cause of athleticism and the university in general. But, I think the question for us is, How do we protect the athletes? How do we make sure that they are not, maybe inadvertently, victims of the process that puts them behind profits?

And I think the latest example, frankly, are these waivers. Senator Booker and I have introduced legislation that essentially would prohibit them. And, President Drake, you and I spoke yesterday about the Buckeye Pledge. I've since reviewed it. I know, in good faith, you told me it was a pledge. But, it says, very explicitly, that, quote, "I understand that, although the university is following the coronavirus guidelines issued by the CDC and other experts to reduce the spread of infection, I can never be completely shielded from all risk of illness caused by COVID-19 or other infections." And then it goes on to say that, "The signer"—and the athlete signs this document—"acknowledges that," quote, "these expectations and pledge are a condition of my participation," et cetera. The other pledges are even more explicit. University of Tennessee, which we have, for example; University of Missouri. I understand we're trying to get SMU. But, all of them, as the University of Missouri says, quote, "I pledge to accept the responsibility to abide by these guidelines in order to keep myself, my teammates," et cetera, "safe." They use the word "risk," and they provide for an assumption of risk by the athlete. That is, in effect, a waiver, from my standpoint as a lawyer.

And I guess my question to the panel is, Isn't it unethical to ask a college athlete to assume the risk of participating, which has the effect of waiving rights in court if that athlete becomes sick and if his or her future is imperiled, not to mention their health, if they are affected by coronavirus? Isn't that unethical? And shouldn't it be illegal? Don't you think that the measure that Senator Booker and I have introduced should be passed forbidding these kinds of waivers?

We can begin with you, or any of you.

Dr. DRAKE. Well, let me speak, maybe, first. And, Senator Blumenthal, I appreciate your question and our conversation.

And I'll say that I don't support a waiver or an assumption of risk, in a legal sense. What we want to do is to make sure that people are behaving in a responsible fashion to protect themselves and their community. And—

Senator BLUMENTHAL. So, on behalf of Ohio State University, if any athlete ever sued—your institution—you would say, "No rights have been foregone or waived or sacrificed."

Dr. DRAKE. I certainly would say that.

Senator BLUMENTHAL. As a result of this document.

Dr. DRAKE. Yes, just—I mean, period. I would say that we're—that we would not want this—anyone to sign any of their—

Senator BLUMENTHAL. I hope your lawyers—

Dr. DRAKE.—rights.

Senator BLUMENTHAL.—agree with you.

Dr. DRAKE. Well, I hope so, too. But, I—again, we—our goal really was to make sure that the students took their individual behavior as an important thing that they were going to follow to make sure they were doing what they could to protect themselves.

The CHAIRMAN. Thank you, Senator Blumenthal.

Senator Capito.

#### **STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM WEST VIRGINIA**

Senator CAPITO. Thank you, Mr. Chairman.

Thank all of you for being here today.

Mr. Sankey, when that question was asked, "Should athletes be able to be compensated for their name, image, and likeness," and you said you're leaning toward—you're trying to get to yes. I'm with you. I'm trying to get to yes, here. But, I'm also a realist. I realize this train has left the station, and we've got to do it right.

So, briefly, I would—I have several concerns. One is on the Title 9 issue. And many of you mentioned this in your statements. But, I am concerned for the women athletes. My daughter was a Division 1 athlete. I was actually one, back in the day, myself. And we've come a long way, obviously, since the 1970s. But, I am concerned of what I could see as developing inequities in the ability to earn from your name, image, and likeness, for a female athlete, as opposed to the more higher-profile sports that the male athletes are playing.

Mr. SANKEY. I'll ask everybody a question on that.

Mr. SANKEY. It's a bit of a hypothesis. And my assumption is, football being what football is, there will be a great deal of this activity driven there. But, we've had women's basketball teams when national championships do play at the same time in a national championship contest with highly prominent young women involved, or gymnastics—

Senator CAPITO. Right.

Mr. SANKEY.—on our network every Friday night has drawn attention. But, I am concerned that the amount of NIL activity around football and men's basketball will pull away funding from women's sports.

Senator CAPITO. Ms. Koller.

Ms. KOLLER. Senator, I think this is an area where there's just a gender-equity opportunity. So, Title 9, of course, does not apply at all to name, image, and likeness deals that are provided by third parties. So, if colleges get involved, which I don't think anybody on this panel supports, then we'd have a Title 9 problem, a direct Title 9 problem. But, the types of deals talked about now present no Title 9 issue.

In terms of promoting gender equity generally, the main time when women athletes can profit from their name, image, and likeness is in college sports. They very often don't have professional opportunities. And I think the SEC is a great example. I mean, these women can really monetize what they have. And I think it would promote gender equity, not hinder it.

Senator CAPITO. Dr.—

Dr. DRAKE. Yes—Drake.

Senator CAPITO.—Drake. Yes.

Dr. DRAKE. Thank you, Senator. Yes, I—we, in our principles that we've brought forward—

Senator CAPITO. Right.

Dr. DRAKE.—preserving the gains we've made, and continuing to move forward in this area, is important in anything that is developed in name, image, and likeness—

Senator CAPITO. I think Mr. Sankey—

Dr. DRAKE.—monetization.

Senator CAPITO.—though, is—there's going to be—well, we'll see. I hope not. But—

Dr. DRAKE. Yes—

Senator CAPITO. I have no faith it's going to be a 50-50 deal, here.

Mr. CARTER. Yes, just quickly. I think that there are going to be—if we can get to the framework that we all hope to get to, there will be, hopefully, an equal opportunity for both men and women. I think that there were some models that came out, maybe last month, that showed some of the high-profile athletes and what their value—their market value might be, and there were some women's gymnasts on the West Coast—

Senator CAPITO. Based on their social media, right?

Mr. CARTER. Correct.

Senator CAPITO. Yes.

Mr. CARTER. Correct. And so, where I think, individually, you know, women could certainly do very well, but I do kind of echo what the Commissioner said, that I do think that it could potentially take away from the overall aspect of women's sports.

Senator CAPITO. OK.

Mr. Winston, did you have a comment?

Mr. WINSTON. Yes, Senator. Thank you, Senator.

One thing, I think, to remember, too, is that NIL is incremental. We're not taking from a—pie. We're trying to add to it, especially for the players and allowing the players and athletes to use their likeness to benefit more. So, I want to make sure that that's out there.

And then, number two, I agree with Ms. Koller, there's—I think—and, you know, when you look at female athletes, they

might be at the height of their market ability to produce profit for themselves, or benefit for themselves, whether it's in social media or appearances, especially when you think about certain sports that don't have professional ranks yet.

Senator CAPITO. I appreciate that. And I thank you for that perspective.

I do think that if the male athlete has the pro leagues ahead of him, it's in his best interest to even really ramp himself up in college, in terms of his worth, through social media and other things, performance, to be able to, "Hey, this guy, you know, he's really going to bring it in, he's going to sell the tickets," and all that kind of stuff. So, I have some skepticism around this particular question.

My other issue is the agents. I mean, we read every day about some college athlete who has—parents have been moved to the city, shoe deals, shirt deals. The NCAA is not really able to police that as efficiently and as effectively. And I understand they are—you know, they're cracking down. There have been some very high profile cases. But, you know, when does the agent approach the athlete? When they're in ninth grade? When does the agent approach the athlete on campus to help them? I mean, this, to me, is—you know, I want to be yes. I want to be yes, but I think this is going to be an issue on campus.

Mr. Sankey, do you have—

Mr. SANKEY. It will.

Senator CAPITO. And even earlier.

Mr. SANKEY. It is an important part of the conversation, and the oversight of agents is important. We have a Uniform Agent Act that—its enforcement varies from state to state, depending on where that enforcement responsibility is signed and how it's funded. We have had those issues arise in my conference, where people are trying to go—

Senator CAPITO. Everybody has.

Mr. SANKEY.—through a backdoor. If there can be sunshine and transparency brought to the relationships, that's healthy, but how far back can that go? And I would simply observe the activity around Zion Williamson. I don't know the details. I simply know what I've read in the media, where there are lawsuits around marketing deals after his eligibility at Duke. They had a year to plan. Whether people like one-and-done, you had a year to plan and prepare. And it's still difficult, even in that circumstance.

Senator CAPITO. Thank you.

Mr. SANKEY. It's not going to be easier for a 16- or 17-year-old.

Senator CAPITO. No. No, it's not.

Thank you.

My time is expired. Thank you.

The CHAIRMAN. Thank you, Senator Capito.

Commissioner Sankey, this agents' law is a suggested uniform State law that is adopted, or not adopted, by the 50 States. Is that what you're saying?

Mr. SANKEY. That's the existing Uniform Agent Act. I think the focus for this conversation has been SPARTA, which is a Federal law. I will confess to not being an expert, but has been identified as a potentially more effective mechanism—

The CHAIRMAN. OK. We'll try to get up to speed on that, too.

Senator Sullivan is next.

**STATEMENT OF HON. DAN SULLIVAN,  
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman.

And thank you all for being here.

It's a really important topic. I think it's an interesting topic. It's a hard topic. I mean, I love college athletics. I think we all do. It's a great part of our universities and our American culture.

But, my question is going to just—it's just one question, really for all the panelists. And it really is just expanding on what Senator Capito is asking about.

You know, the way in which we're moving forward—or it looks like we're moving forward—on the NIL issues, are we thinking enough about either—whatever you want to call it—inequities or unintended consequences in different categories? Let me throw out just three, and then I'll throw the question open to all of—all the panelists.

What Senator Capito mentioned, which is, kind of, the male-female sports and Title 9 issues. The second one is, What about smaller divisions, smaller universities, right? We have Ohio State here, obviously Big 10, but, you know, I—my State, the great state of Alaska, has wonderful college athletics, but it's not always in the conferences that, you know, get the big TV deals. And then, even more fundamentally, you know, the mission of the university system and colleges, which we have in America—and it's a great advantage of ours, right?—so many great universities throughout our country, relative to any other country—but, it's about higher education, about educating Americans. And I have the privilege of sitting on the Board of Visitors for the U.S. Naval Academy, part of my duties on the Armed Services Committee. And, you know, we discuss a lot this issue of education, leadership, character, and then balancing college athletics, which, at the Naval Academy, are serious, but you never—in my view, you don't want to create an institution that emphasizes college athletics so much that you start to actually undermine the more important mission, which I think we would all agree on, which is education, character, leadership of the next generation of Americans.

So, that's a broad question. I'll throw it out to all the panelists, but I'd like you take a crack at it. Unintended consequences on those areas that I just mentioned and, potentially, inequities—not just male-female, but big-school, small-school.

The CHAIRMAN. Who'll go first?

Mr. SANKEY. I'll jump—

The CHAIRMAN. Mr. Sankey.

Mr. SANKEY.—in. I do think there are these unintended consequences, or unimagined, I think, is maybe a better phrase, because the need to think about this, even while we have a time deadline looming because of State law becoming effective, it needs to be considered. I think the educational aspect, when young people talk about their time demands, which, by the way, they said to me, "I'd love to have those time demands right now, because I've been disrupted in my spring," but you add running your own business effectively, your name, image, and likeness business on top. If

you're stressed now, between athletics and academics, and now you have economic activity on top of that, I'm concerned about where that time is drawn. I'm concerned it comes from academics. I think that is a proper conversation. And I shared earlier——

Senator SULLIVAN. And the message it sends about the importance of economics——

Mr. SANKEY. That's right. This is your economic opportunity. Where we have viewed, whether you fault it or not, that we will educate you, help you grow as a leader and as a person through your educational experience. As I said before, we're not perfect in that. We do that very well. And I spent 11 years of my career in the 1AA world of football—FCS, as it's known—smaller State universities in small towns. And I still represent small towns in the SEC. And those economic demands and expectations are going to vary from place to place. And if I were still commissioner of the Southland Conference, I think my schools would be asking me how am I going to manage this with my student athletes. Not that they're running it, but how do they manage town-and-gown relationships? And all of a sudden that economic activity is now added to the relational issues in a small college community. Those are real challenges under this concept.

Ms. KOLLER. Senator, I'd say——

Mr. WINSTON. Senator, I'll——

Ms. KOLLER.—I'd say that I think—as I said before, I think we do a lot in the name of sports prospectively, worried about unintended consequences, and we're overly restrictive in our restraints when we do. And what I would say is, every student on campus currently that is not an athlete enjoys these rights. And campuses are well positioned to work with student athletes, to counsel them on time management. We, in higher ed, do that every day. And I know from my kids, being a social media influencer or an Instagram star is actually a career. So, these student athletes can learn to balance these things, and this can be a long-term entry into productive employment for them.

And, finally, on the Title 9 issue, again, this really has the possibility of enhancing gender equity and drawing a spotlight onto women's sports where it hasn't existed before.

Mr. WINSTON. I'll go next, Senator, if you don't mind.

Senator SULLIVAN. Sure.

Mr. WINSTON. There's a—there's a perceived, it seems like, fallacy going on right now that there isn't already massive inequity in the college athletic system. Take a look at the facilities at Ohio State compared to Ohio University, at Ole Miss compared to Southern Miss. There's massive disparities already. So, acting as if we're going to give college students some rights to make money, as if that's going to create some massive inequity in a system that already has a massive recruiting inequity already is—I think, is a big fallacy that is being, kind of, perpetrated, not necessarily by—intentionally by the members here, or by the witnesses here. I'm just saying that it seems like we're pretending that there is some sort of equity across the playing field of college athletics right now that simply does not exist. The—just simply look at the facilities of some of these big-time colleges compared to the smaller D1 col-



leges, UT to University of Houston, even. There's massive differences here.

And then, I would also say there's a little bit of—I don't know if hypocrisy is the right word that—we're asking kids to sign waivers to deal with an epidemic, but yet they're—or a pandemic—but they can't balance tweeting something out for \$100 and still go to class.

So, I get—I want to give the college athlete, while he has to balance, and she has to balance, a lot, more credit than that, and also point out that inequity that already exists in the system, and that this NIL would be incremental and not take away from anything that—currently happening.

The CHAIRMAN. Thank you.

Other members of the panel may want to supplement their answers to Senator Sullivan's question.

Senator Scott.

**STATEMENT OF HON. RICK SCOTT,  
U.S. SENATOR FROM FLORIDA**

Senator SCOTT. Thanks for being here.

The—I was Governor of Florida from 2011–2018, and one thing we did was, we really focused our university system and our State college system on results. And so, we actually allocated \$580 million to our university system, primarily tied to three things: What's it cost to get a degree? So, we knew, you know, our students were going to get degrees. Number two, did you get a job? And how much money do you make?

Now, my understanding is, the NCAA keeps track of graduation rates, but not, you know, with—people are employed afterwards, or how much money do they make. So, the way I look at this is, anything we're going to do, it ought to be tied to somebody having success. And that means be employed—having a job after school and making as much money as they're interested in making. So, what do you think about that? And do you think that makes any sense? If we're going to do anything, shouldn't it be tied to job creation and compensation after graduation?

Mr. SANKEY. The NCAA just released a Gallup survey that tracked, I think, satisfaction. I think some of that was job success for student athletes, which was, by comparatives, higher than the general student population. I'm not an expert on that report, but it was released last week. For the Southeastern Conference, when I began as Commissioner, one of our issues was, How do we help young people transition in their careers? And our universities have led in that. Vanderbilt University, through an internship program during the summer, rather than just being in summer school, to prepare people for that transition. We have a career tour that, unfortunately, was disrupted in the spring, where we would have been in Dallas, Texas, with a group of football student athletes, introducing them to corporate leaders there. And we've had success in exploring what is really a new activity for a conference office for that purpose, Senator.

Dr. DRAKE. I'd say that, when—at Ohio State, we—and I am President of Ohio State for 6 years. I was the Chancellor at the University of California—Irvine for 9 years. So, a different level of

competitive focus there. I'd say, at Ohio State, when we arrived, we actually changed the Athletic Director's contract so that he was compensated for the job placement or going to graduate school or serving in the military for our student athletes when they finished, rather than for success in—

Senator SCOTT. That's great.

Dr. DRAKE.—Olympic sports, because we think that's critically important.

Senator SCOTT. That's great. I didn't know that.

Mr. CARTER. And I'll just add, too, I think—I'm short-term AD at Ole Miss. I'm in the first year. But, doing recruiting presentations to parents and potential student athletes, we always talk about, "We want you to come in and be a part of our family. We're going to put you in a position to succeed. And that means not only getting a degree, but getting a meaningful degree, something that you can go out, after you finish your playing days, and be successful." And, as I mentioned to the group earlier, with our class last year that graduated, we placed 100 percent of those into jobs. Some were professional athletes, others going into just the normal working world. But, that's what it's all about. And so, if there's any way we can tie back any of this potential legislation to that education piece, I'm all for it.

Senator SCOTT. All right. Thank you.

The CHAIRMAN. Thank you, Senator Scott.

The term "booster" is a term of art under the NCAA. Dr. Drake, what does—what—in short, what is a booster?

Dr. DRAKE. I think that's someone who supports the athletic program, and the term of art is used because sometimes that support can be overly aggressive.

The CHAIRMAN. Would you support legislation, as we move to NIL, to prohibit boosters from paying student athletes for NIL?

Dr. DRAKE. Well, again, it's a term of art, and broadly described. But, I would say that the—any compensation for NIL should be market-based and appropriate. And, if I could use a term "boosterism" to make the term a little larger, when one got beyond normal market-based support, then that would be the thing that I'd be concerned about.

The CHAIRMAN. Well, I think you—Dr. Drake, you said you think it will end up that a "handful" of student athletes will benefit from NIL if this goes forward. And it appears it's going forward. Could you put a percentage on that?

Dr. DRAKE. Yes. And I'll say this, that there are—we—you know, we've heard about group licenses, which would be a different thing, which would potentially benefit more. I was thinking more of individual licenses and the number of those athletes that we have that are—have a marketable image, and then those who might make it on social media as influencers—

The CHAIRMAN. Say you have 22 starters on a football team.

Dr. DRAKE. Well, how many would you be able to name, you know, if I asked you? I mean, I'm—forgive me, Senator, not to reverse the questions, but—in our own university—

The CHAIRMAN. Offensive tackles.

Dr. DRAKE. Yes.

The CHAIRMAN. We like them.

Dr. DRAKE. We would—we think that the real potential might be for, again, a handful; three, four students might be the ones who'd be able to do commercials or those kinds of things.

The CHAIRMAN. Mr. Carter, what about this? What do you think? Would it be just—

Mr. CARTER. Well, I—

The CHAIRMAN.—a handful?

Mr. CARTER. Yes. I think, overall, it's probably a handful that end up with these larger sponsorship deals. But, I think it's certainly nuanced. Because you could have the offensive guard that you referenced that maybe it doesn't—isn't as well known, but, back in their hometown, they are well known. And so, they could go back to their hometown and do something that maybe they couldn't currently do now. So, I think it could extend a little farther than maybe just the nationally recognized players, because I think there's an opportunity for some other people, back with their own constituencies.

The CHAIRMAN. Well, isn't it easy to envision a hometown guy or gal having some sort of little sweet deal in every little hometown, and it approaches pay-for-play pretty quick?

Mr. CARTER. Yes, absolutely. And I think that's where the proper structure and the proper framework has got to be in place, where we do have, kind of, that hybrid approach, where NCAA is working with—you know, working with Congress, working with this third party, and certainly with our athletics departments to talk about compliance and making sure that we're following the right protocols and procedures.

The CHAIRMAN. And if any of you want to follow on—I'll ask Ms. Koller first. Give us for-instances. And I was particularly interested in your point that collegiate women players had significant opportunities to monetize their fame and popularity. Would you give us some examples of that so that we can understand it?

Ms. KOLLER. Yes. I think the car dealership hometown-hero model is an outdated model, in the sense that that's always going to happen. But, if you look at women athletes, if you look at Katelyn Ohashi, from UCLA, the 10.0 floor routine that went viral for gymnastics fans last year, she could have really monetized that. She could have been an Instagram influencer, social-media star, started a YouTube channel. These are things that my kids could explain to you probably better than I can. But, I think this is where women athletes can really use digital platforms to launch brands, to create brands. Nutrition podcasts. I mean, there are any number of things. If you look at NCAA waivers on this issue that is in the Board of Governors report, you can see women athletes trying to seek waivers so that they can do these types of things.

So, maybe women athletes aren't going to be, necessarily, endorsing the car dealerships, but they are going to have a viral floor routine, they are going to have a great softball game, they're going to have something where they can take their personality, elevate their sport, and elevate themselves.

The CHAIRMAN. Do you agree with Dr. Drake that this will affect only a handful, or do you think, as—on the surface, I imagine that this is going to be almost everybody by the time it's over with.

Ms. KOLLER. Yes. I think, when we have discussions about this, we tend to focus on the super-superstars in the revenue-generating sports. And I think what's exciting about name, image, likeness and legislation is that this opens up new frontiers. Students from small schools, from under-appreciated sports—again, women's sports—people can become stars on the Internet that maybe aren't stars that you and I always see. And so, I think, actually, there are many, many more athletes that could capitalize on these rights.

The CHAIRMAN. Fifty percent? Seventy percent?

Ms. KOLLER. It's hard to put a number on it, but what I would say is, if the restrictions were lifted, what we are—what's happening is that the free market goes to work. And so, 50 percent or more, I think, students will try. I think they will try and launch their podcast, I think they will try and become Instagram influencers, I think they will try and take advantage of these rights that, in some cases, can lead to long-term careers, because I think that the lift is so easy when we're talking about digital platforms. So, I do think it's far greater than a handful, but, you know, whether it's half or 75 percent, I don't know. I think a lot of people will try. How many succeed, the market will sort out.

The CHAIRMAN. Who was this example you mentioned, I think, at Ohio State?

Ms. KOLLER. Oh, I mentioned Katelyn Ohashi, the gymnast from UCLA.

The CHAIRMAN. From UCLA, OK.

Ms. KOLLER. Yes.

The CHAIRMAN. And without embarrassing her, what do you think she could have received, had she been able to monetize her success in social media?

Ms. KOLLER. I'm going to defer to Mr. Winston to talk about actual numbers. What I will say is, you can look at the millions of views she got for that one floor routine that was put out on Twitter. And so, you can be paid \$400, \$200, you can be paid for social media posts. It's a great way to make a living. So, I think, after that floor routine went viral, she could have had a lot of digital endorsements, she could have had a lot of, sort of, brick-and-mortar-type situations.

So, I think Mr. Winston can probably put a number on it better than I can. But, if you look at the millions of views she had, she could have turned that into real dollars.

The CHAIRMAN. OK. Well, we'll take an answer from Mr. Winston.

We're going to take a second round, Senator Blumenthal, and so you'll be recognized next, sir.

But, Mr. Winston, you want to weigh in on an estimate of how she might have monetized her—

Mr. WINSTON. Well, I don't think anybody can be certain, because the market's not—hasn't been available. But, if you look at influencers—professional influencers, not even just athletes, but other entertainers or people that have built followings, you know, we could be talking about several thousand dollars even in, you know, into, like, a small five-figure amount, because of that following. And what Ms. Koller's saying is right on.

And it is nuanced, as Mr. Carter said, as well. You know, if somebody, when I was in college, said, “Hey, I’ll give you \$100 to tweet something out, an ad for a local restaurant or something like that,” that would have been great, too. So, I also think, when we talk about, you know, what kind of compensation will be available for how many people, it is a wide-ranging scale, but that—Ms. Koller is spot-on that technology will be driving a lot of this for a lot of people, because, obviously, their audiences will be similar-aged and they will be able to create content themselves. And the list really goes on into the possibilities.

The CHAIRMAN. Well, you know, if I were—if I had the money, as a local businessman, and I could do it, I would want to pay \$100 to every member of the Ole Miss football team to tweet something out on my behalf. And I just wonder if that’s where we’re headed.

Mr. WINSTON. Possibly. I don’t—I can’t—you know, it’s—obviously, it’s impossible to see the future. I’m not sure if you’re referring to some sort of pay-for-play scheme. I don’t look at it like that, but I—obviously, if there’s a local restaurant that wants to associate himself with the offensive line, perhaps, obviously—you know, could it have an appearance by the offensive line at the—at their restaurants, pubbing up their steaks or their ribs would probably be a good venture for them, or even simply Instagram, a picture of them eating at the restaurant or being in front of the restaurant, or whatever. There’s so many different ways to do this, actually, in a very streamlined and time-efficient way now, that it’s—I don’t think anybody’s realized, maybe, all of the possibilities that are out there.

The CHAIRMAN. Thank you very much.

Senator Blumenthal, for round two.

Senator BLUMENTHAL. Thanks, Mr. Chairman. And thank you again for the hearing, and for the second round.

I just want to pursue this line of questioning that I began, because it is so immediately concerning. According to a June 26th VICE report, and I’m quoting, “more than 150 players at NAAC—at NCAA Division 1 revenue sports have tested positive for coronavirus,” end quote. These numbers are almost certainly lower than the actual number, because only 64 of the 130 relevant schools are publicly reporting their positive COVID-19 cases. Just as we’re seeing astronomic rises in certain states among the general population, we’re seeing, unquestionably, rising numbers among college athletes reporting back to school.

And so, number one, I’d like to ask Mr. Drake, Will you commit to requiring all colleges to disclose the number of COVID-19 cases that occur at their schools?

Dr. DRAKE. Yes. I mean, I—that’s a—you know, HIPAA and other issues are in effect, so I think that disclosing information is useful. So.

Senator BLUMENTHAL. So, you will commit to requiring them to report those cases?

Dr. DRAKE. I don’t know that I commit to requiring—forgive me, Senator. The—

Senator BLUMENTHAL. Commit to require the disclosure of the number of positive COVID-19 cases?

Dr. DRAKE. I'm just—I don't want to be difficult. How—who would I commit to do—what—I don't know what authority I'd have to—

Senator BLUMENTHAL. To disclose publicly, to require them to report, and for you to disclose publicly.

Dr. DRAKE. I believe it's appropriate for the schools to report. And with proper privacy protections for the individuals in place, I think that's a reasonable thing.

Senator BLUMENTHAL. But, general numbers, they should be reporting.

Dr. DRAKE. Yes.

Senator BLUMENTHAL. And on the issue of waivers, is there anyone here who does not support the legislation that Senator Booker and I have introduced that would prohibit waivers of rights on the part of college athletes if they contract COVID-19?

Mr. CARTER. I'll just tell you our experience at Ole Miss. We did not ask our student athletes to sign a waiver when they came back. And, obviously, all workouts are voluntary. We felt like the procedures and protocols that we put into place were very good. And what we found is that, as student athletes returned, we had a few positive cases. As they spent time together, the cases spiked some, and now we're seeing it go back down. I think they've—they're starting to realize the protocols are needed, they need to do the things—

Senator BLUMENTHAL. So, you saw some positive cases?

Mr. CARTER. We did, yes, sir. And—but, again, I think our protocols were there. What we did, we tested for both COVID and antibodies when they arrived, and, from there, we basically test based on symptoms.

Senator BLUMENTHAL. But, you would support what we've introduced as the College Athlete Pandemic Safety Act to address this concern that the colleges are asking them to waive rights? And I understand that you have not asked any—for any such waiver, but you would have no problem with the legislation.

Mr. CARTER. Well, I would probably have to know a little bit more about the legislation to put my foot on base. But, based on our actions, we did not require the waiver, and will not require the waiver.

Senator BLUMENTHAL. I understand that the NCAA would like broad Federal preemption over State laws concerning athlete compensation and guardrails for athlete earning streams, and, in addition, would like an antitrust exemption, and to be the oversight body and regulator of NIL deals. In the past, the NCAA has really, in many ways, failed to protect the athletes. Wouldn't it be better, Mr. Drake, to have an independent body to oversee these deals, rather than have the NCAA do it?

Dr. DRAKE. Well, I certainly would support continuing discussions about how the oversight should be done, and would certainly be open to an independent body being part of that. Sure.

Senator BLUMENTHAL. Let me ask you, Professor Koller, what do you think about those issues, the antitrust exemption, the oversight, independence, and so forth?

Ms. KOLLER. Well, I strongly oppose a blanket antitrust exemption for the NCAA, for the fact that what we've seen in recent anti-

trust cases is, it has produced good for student athletes. I mean, what Mr. Carter talked about with increased food availability, stipends, cost of attendance, this is as a result of antitrust cases. And I think that's an important accountability check on the free market and on the NCAA.

But, second of all, I don't think they should get a blank check, here, because we don't know yet exactly what they're going to do. The Board of Governors report is very, very squishy, as I would say to my law students, in terms of principles. They've had years to come up with pointed, guiding, you know, concrete steps. We don't have that. And what they're asking for now in their report is a broad-based antitrust exemption, which would be extraordinary even in sports.

Senator BLUMENTHAL. Well, it would be, certainly, extraordinary in college athletics. As you well know, NHL, Major League Baseball, and so forth, have antitrust exemptions.

Ms. KOLLER. That's with the presence of a union, Senator. That's the non-statutory labor exemptions, where athletes have a voice. That's a very, very different scenario than what we have here.

Senator BLUMENTHAL. That is a—an excellent point. And, in fact, in my view, those antitrust exemptions ought to be reviewed and scrutinized, because they are highly exceptional. And I think it could be argued that those leagues have failed to live up to the public-interest trust that they are conditioned on.

So, I have more questions. I'll submit them for the record.

I'd like these waivers to be submitted for the record.

The CHAIRMAN. And without objection, that will be done.

[The information referred to follows:]

### BUCKEYE ACKNOWLEDGEMENT AND PLEDGE

All members of Buckeye Nation have an important role to play in keeping our fellow students and the Ohio State community safe by doing our part to stop the spread of COVID-19. As a member of Buckeye Nation, I know that I must take steps to stay well in order to protect others and promote a safe return to campus for all Buckeyes. Because of this, I pledge to take responsibility for my own health and help stop the spread of the COVID-19.

Ohio State's highest priority is the safety of its students, faculty, staff, and visitors. I know that by engaging in campus activities, including attending classes, pursuing my education, living on campus, eating in the dining halls, attending activities, participating in sports and recreation, I may be exposed to COVID-19 and other infections. I also understand that despite all reasonable efforts by the university, I can still contract COVID-19 and other infections. In order to reduce my risk, I agree to be an active participant in maintaining my own health, wellbeing and safety, as well as the safety of others, by following all the guidelines and expectations outlined by the university.

As more information is gathered and known, I understand that Ohio State may modify these guidelines and expectations. It is my responsibility to make every effort to keep myself apprised of these changes to protect myself and the university community.

It is my Buckeye Pledge to protect myself, my peers, and the Ohio State community by doing the following:

- Agree to testing for COVID-19 and potential subsequent self-quarantining if I am identified as a contact of anyone who has been determined to be positive for COVID-19.
- If I test positive for COVID-19, I agree to self-quarantine in a designated location until:
  - o My symptoms have resolved, and
  - o It has been at least ten days since the start of my symptoms, and
  - o I have a negative COVID-19 test result.
- Timely report any known or potential exposures to COVID-19 to the Athletic Training Staff.
- Monitor for the following symptoms:
  - o A fever of 100.4°F or higher
  - o Respiratory symptoms, such as dry cough or shortness of breath
  - o Sore throat
  - o Headache
  - o Body aches
  - o Chills
  - o Loss of taste or smell
  - o Please note that up-to-date symptoms can be found at:  
<https://wexnermedical.osu.edu/features/coronavirus/patient-care/symptoms-and-prevention>

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- If I develop the above symptoms, to contact my athletic trainer, and to follow the medical staff's instructions which may include being tested for COVID- 19 and self-quarantining while the test results are pending, and/or being evaluated by the Athletic Training Staff.
- Stay at home if I am feeling sick.
- Get a flu vaccination.
- Participate fully and honestly with the Athletic Training Staff for contact tracing to determine whom I might have potentially exposed to COVID-19.
- Wear a mask or the appropriate PPE in all public spaces.
- Practice physical distancing as much as possible.
- Frequently wash and/or sanitize my hands.
- Keep my personal space, shared common space, and my belongings clean.

I understand COVID-19 is a highly contagious virus and it is possible to develop and contract the COVID-19 disease, even if I follow all of the safety precautions above and those recommended by the CDC, local health department, and others. I understand that although the university is following the coronavirus guidelines issued by the CDC and other experts to reduce the spread of infection, I can never be completely shielded from all risk of illness caused by COVID-19 or other infections.

I have read, understand, and agree to comply with my Buckeye Pledge above. I also acknowledge that these expectations and pledge are a condition of my participation in Ohio State Athletics and that any failure to comply with my Buckeye Pledge above may lead to immediate removal of athletic participation privileges (not my athletics scholarship) and/or the inability to use Athletics facilities.

I take my Buckeye Pledge seriously and will do my part to protect Buckeye Nation.

\_\_\_\_\_  
Date  
[STUDENT-ATHLETE ELECTRONIC SIGNATURE]

\_\_\_\_\_  
Date  
[PARENT/GUARDIAN ELECTRONIC SIGNATURE  
IF UNDER 18]

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**Sports Medicine Department at SMU**  
**ACKNOWLEDGEMENT OF RISK FOR COVID-19 SUMMER 2020**

I, \_\_\_\_\_, acknowledge I must be an active participant in my own healthcare. In consideration of my voluntary involvement in the intercollegiate athletic program(s) at SMU, I have had an opportunity to carefully read the current CDC Notice and Travel Health Precautions regarding travel. I received educational information provided by SMU discussing potential COVID-19 virus-related health risks and recommended precautions. I was given an opportunity to ask questions regarding the COVID-19 virus and my COVID-19 virus-related questions were answered.

I acknowledge and agree to the following: (initial next to each for consent)

\_\_\_\_\_ I am aware of the COVID-19 virus as reported by the CDC <http://wwwnc.cdc.gov/travel/notices>. International air travel may also involve travel rerouting, interruption and delays, increased security checks and additional air passenger restrictions. I have considered all of these risks, made my own inquiry and investigation, and voluntarily agree to assume them.

\_\_\_\_\_ I voluntarily and willingly choose to participate in returning to the SMU campus.

\_\_\_\_\_ I voluntarily and willingly choose to participate in intercollegiate athletics on the SMU campus.

\_\_\_\_\_ I further agree to voluntarily assume all risks related to the COVID-19 virus.

\_\_\_\_\_ I also agree to comply with the Center for Disease Control and Prevention guidelines for travel as well as any notices issued by the U.S. Department of State, <http://www.state.gov/travel>.

\_\_\_\_\_ I, on behalf of myself, my heirs, successors and assigns, hereby waive and release SMU, its employees, trustees, officers and agents from and against all claims, liability, rights, causes of action, costs, attorney's fees and expenses of any nature whatsoever, whether known or unknown, for any injury, loss, or damage, due to contracting the COVID-19 virus. I agree and understand if for any reason I am unable to participate in intercollegiate athletics, SMU is not responsible to me for any amounts I have expended in connection with intercollegiate athletics.

\_\_\_\_\_ I understand this agreement and any claims arising from my participation in intercollegiate athletics shall be construed according to the laws of the State of Texas, which shall be the exclusive forum for any lawsuits or actions brought pursuant or incident to this agreement. If any part of this agreement is held to be invalid or unenforceable, the remainder of the agreement shall remain in full force and effect.

**CHOOSE ONE:**

I, \_\_\_\_\_, have read the above and agree the statements are accurate.

**OR**

I, \_\_\_\_\_, have read the above and decline the option to return to campus with concerns regarding the COVID-19 virus. I understand this decision will not affect my eligibility or scholarship. I understand I may have to file the necessary paperwork for a medical hardship/medical exemption based on my decisions.

This acknowledgement shall be in effect from the date this document is signed and shall remain in effect until the subsequent Acknowledgement of Risk for COVID-19 form is executed.

\_\_\_\_\_  
 Student-Athlete (print name)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Student-Athlete

\_\_\_\_\_  
 Date of Birth and Age

\_\_\_\_\_  
 Sport

\_\_\_\_\_  
 Parent/Guardian (print name if student-athlete is a minor)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Parent/Guardian (if student-athlete is a minor)

Senator BLUMENTHAL. And I would like to ask every one of the witnesses—first of all, let me say for the record that I would like your response in writing on this legislation. I understand that only Mr. Carter expressed any objection here, and asking to review it. But, I understand that the others may want to review it, as well. If you'd give me your views, I would greatly appreciate it.

And I would like for the witnesses to submit to me any other waiver documents that you become aware of. This will apply, I think, particularly to Mr. Sankey and—

The CHAIRMAN. Well—

Senator BLUMENTHAL.—Mr. Drake—Dr. Drake.

The CHAIRMAN. OK, thank you, Senator Blumenthal.

And clearly, questions for the record will be submitted by Senators, including Senator Blumenthal. And witnesses will be asked to cooperate in getting us a timely response.

So, thank you very much.

Our next questioner is Senator Moran, for round two.

Senator MORAN. Mr. Chairman, thank you. Thank you for the second round.

Let me express my gratitude to you in your cooperation with our subcommittee, and Senator Blumenthal, the Ranking Member of our subcommittee, for our dealings on this topic. It's a difficult one that does absolutely need our attention.

I just have one question. I want to have a better understanding of the financial consequences to athletic departments, a better understanding of what—I'm talking about with an—with the legislation dealing with NIL, what that legislation might mean to nonrevenue-generating sports. And I'm asking this question of all of our witnesses.

My understanding is that, looking at 2018 financial data that was developed by USA Today, the publication, only 12 of 230 athletics departments analyzed produced a profit on an annual basis. The remaining departments received additional support from other sources, such as their institutions, student fees, or State support. Approximately 91 percent of athletic departments received over a million dollars in support. And, for nearly 80 percent of the departments, that support accounted for more than a quarter of their revenue.

So, the question is, How does NIL legislation affect the financial circumstances of an athletic department? Is it positive, negative? How—why would it have a consequence to a—to the department's revenues, either positive or negative? And what should we be worried about when it comes to the consequences of NIL legislation to non-revenue-producing sports?

The CHAIRMAN. Shall we just go down the line, there, Senator Moran?

Senator MORAN. That would be fine, Mr. Chairman, thank you.

The CHAIRMAN. Mr. Carter.

Mr. CARTER. A very good question. I think that the answer, and the hope, is that it would be a neutral effect. You know, I think that if we could find the right framework, that the monies Mr. Winston mentioned would be new revenue.

However, I do think that, using our market as an example, a small market, where our media-rights partner, Learfield, may go

out to a local sponsor to do a sponsorship through our partnership—well, that may—that sponsor may then have the decision to make, Do I spend that money through the Ole Miss athletic department and Learfield, or do I give it to a student athlete? And, obviously, we want the best for our student athletes. And if that was the direction that they went, we're all for that. But, it would decrease the amount coming into our department, which could have trickle-down effects to some of our sports and some of our programming. So—and again, unintended consequences, things that we've talked about a lot, but there could be some of those that we don't foresee.

The CHAIRMAN. Dr. Drake.

Dr. DRAKE. Thank you. I would expect it to be, essentially, neutral, if it's third-party money coming in from outside. I've overseen two programs, one that's a high-resource program, and then one that was a deficit program of about 10-or 11-million dollars a year. So, I've seen it from both ways. And this should be money coming in from the outside.

The CHAIRMAN. Professor Koller, college athletics is still going to be a multibillion-dollar business for the universities and for the media, whether this goes through or not, correct?

Ms. KOLLER. Correct. That's correct. I—in response to the Senator's question, what I think is, is, to the extent that—and I think the colleagues here on the panel have said it's not clear that it would affect non-revenue sports, but, to the effect we do have problematic effects, then college athletic departments need to be better stewards of their budget, maybe look at the salaries for strength and conditioning coaches and support your volleyball team instead.

The CHAIRMAN. Mr. Sankey.

Mr. SANKEY. Finally forgot to press the button.

We support our programs very well across the board in the Southeastern Conference. But, we've also had questions about the range of college and university athletic programs. It will not be simply a neutral impact across the board.

Now, Mr. Carter describes the third-party-rights activity that happens with local advertising sales. Is that an impact? Sure. But, in the scope of millions and billions, probably not the largest impact. Yet, we're here talking about the range of Division 1, Division 2, Division 3 universities, and others, where it will be impacted, because it's not an unlimited pool of resources locally. What happens in social media is a different world, so that's almost a different conversation, but the local impact that we transitioned to in one of the earlier conversations will be felt, and it'll depend on the scope of that program to be able to identify the results. We're also in a really interesting economic time to make predictions about what will or won't happen.

The CHAIRMAN. Certainly true.

Mr. Winston.

Mr. WINSTON. Yes. Thank you, Senator.

I would say neutral to additive. Obviously, when you think about how much money the programs are making now from video games, that's zero dollars; how much they're making from trading cards, being able to license their marks to trading cards, that's zero dollars. So, that's completely additive. Obviously, if a student athlete

is tweeting something or doing something, that's—you know, that's additive to them. I would even submit, on the sponsorship front that Mr. Carter broke up that—brought up—you know, I've heard that, and I understand the argument. I would also say, though, that, when you combine the player marks with the school marks on the sponsorship front, that's even more valuable, right? It's even more valuable to both sides. You can look at professional sports on the sponsorship model. They'll tell you that if you have the athlete with the professional marks, that's worth more. So, again, I would say that, at the very least, it's going to be neutral, but I think it's going to—I think people will be creative, and I think it will be additive for both sides.

The CHAIRMAN. Thank you.

And thank you, Senator Moran.

Senator MORAN. Thank you.

The CHAIRMAN. Let me ask. In terms of agents, does anyone wish to weigh in on the question of whether an agent should be able to approach a high school athlete before he signs with a college or university? Any opinions on that?

Surely—Mr. Winston, surely you have a—an idea on that.

Mr. WINSTON. Yes.

The CHAIRMAN. Should we limit it in—

Mr. WINSTON. Senator, no, I would agree with that. Yes, I wouldn't—you wouldn't want agents in this process, especially at the high school level. Obviously, when you're talking about, you know, a star player that would be considered in a—some sort of deal—right?—you would want professional representation, or at least the family, I'm guessing, would want professional representation, whether that be a lawyer or an agent. But, you know, I think we can probably all agree that anything—any sort of—and I would even go as far—and this was a previous remark—we wouldn't want to see any inducements, obviously, to go to college from that. Now, I wouldn't want to use that—those words against me on—in—from derivative side, either. Right? I mean, obviously, the market's going to dictate certain behavior. But, at the same time, I wouldn't want a college or someone saying to a player, obviously, "You'll make this much money if you come here."

The CHAIRMAN. Anybody else want to weigh in on the issue of agents?

[No response.]

The CHAIRMAN. OK. I think we're about finished, Senator Blumenthal.

Dr. Drake, I understand you have been President Emeritus now for some 12 hours and 20 minutes. Is that correct? So—and I assume, based on how you look, that it was a rather modest retirement party.

Dr. DRAKE. COVID—yes—COVID-controlled, yes.

The CHAIRMAN. Thank you very much.

And, Mr. Carter, does the date February 14, 1998, mean anything to you?

Mr. CARTER. It does.

The CHAIRMAN. How many three-pointers did you get against the University of Kentucky in that 73 to 64 victory?

Mr. CARTER. Several.

[Laughter.]

The CHAIRMAN. Well, you'll be allowed to submit that question for the record.

I want to thank the panel for a very interesting and, I think, important hearing, and for providing us with quite a bit of expert testimony.

As I alluded earlier, the hearing record will remain open for two weeks. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit their written answers to the Committee as soon as possible, but by no later than Wednesday, July 15, 2020.

And, with that, I conclude the hearing. I thank the witnesses. And this hearing is adjourned.

[Whereupon, at 12:21 p.m., the hearing was adjourned.]

## A P P E N D I X

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER WICKER TO KEITH CARTER

*Question 1.* Maintaining fairness and an even playing field among all states and universities is a key part of name, image, and likeness (NIL) discussion. Could you please discuss how the recruitment process for high-school student-athletes could be impacted by the commercialization of NIL?

Answer. The current recruitment process focuses on educational opportunities, a prospective student's fit within a college and athletics program, and geographical location. NIL, by adding an economic consideration into that mix, could alter the process in problematic ways. For a prospective student, a short-term economic decision may come at the expense of the best educational and experiential option and ultimately supersede what would be the best fit for the prospect. Without a national framework, this could include prospects choosing a particular school solely because the state's NIL legislation goes into effect first or choosing a school solely because the state has NIL laws that are most advantageous to student-athletes. Furthermore, even with national legislation done correctly, boosters can still present problems and potentially give undue influences and inducements to prospects. Ultimately, the goal must be to give student-athletes the ability to capitalize on their economic value but not at the expense of making a college decision that will offer them the most beneficial educational opportunities, the best fit within the college and athletics programs, and the most ideal geographical location.

a. What safeguards should be considered in Federal legislation to ensure that there is fairness among all universities and colleges during the recruitment process?

Answer. There are a number of safeguards that could be implemented, such as:

- Agent/advisor certification requirements
- Timing of when NIL agreements can be signed
- Prohibition of "lifetime" sponsorship deals
- Disclosure requirements and reporting obligations for student-athletes
- Prohibition on universities compensating students for their NIL directly or indirectly

One additional safeguard that would separate NIL from the recruiting process would be to allow NIL awards to occur only after the student-athlete is enrolled in the institution; for example, the student-athlete would have to complete an academic semester before becoming eligible to enter into an NIL contract.

*Question 2.* As Congress considers Federal legislation on the commercialization of NIL, once rules are developed, they will need to be enforced. Who should be responsible for enforcing new NIL rules? Should it be universities, divisions, conferences, or the NCAA? Is there a role for the Federal Trade Commission or should an independent commission be formed to enforce NIL activities?

Answer. We consider a hybrid approach to be the best option, incorporating the NCAA, Congress, and ultimately an independent commission. In our opinion, it is critical that whatever enforcement agency is established has the ability and resources to enforce in a timely and consistent nature. The NCAA likely does not have the capability to enforce in real-time, and therefore an independent commission option makes more sense. The independent commission would work closely with both the NCAA and individual institutions but ultimately have governing power over the NIL process.

a. If an independent commission is formed to enforce NIL activities, how should Congress determine who is a part of the Commission?

Answer. The independent commission could be selected through a process that solicits recommendations from athletics directors, athletics conferences, the NCAA, and former student-athletes, including professional athletes.

*Question 3.* Given your experience as a former college athlete and now Athletics Director, do you have any concerns about how NIL activities could impact internal team dynamics if one athlete has more NIL opportunities than another? Have you heard concerns from coaches about how NIL activities may impact the coach-player relationship?

Answer. NIL could bring about negative team dynamics as some players with a higher market value signing NIL contracts could create new issues in the locker room. However, we already have some of these dynamics in place now, as some players naturally get more attention based on their status or profile on the team. Marketing materials are largely based on the more high-profile student-athletes as they are more recognizable. Also, the presence of both scholarship and non-scholarship athletes on a team creates some level of division. In non-head count sports, athletes have different equivalencies of scholarships, which at times can lead to negative dynamics as well. Overall, NIL may just present another layer of dynamics similar to some of the ones referenced above. However, for the most highly marketable athletes, it could present different challenges in the framework of the team.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
KEITH CARTER

Many of the witnesses mentioned that they would support an independent legislative body or commission to overview the implementation of NIL compensation for student athletes.

*Question 1.* If an independent commission were set up to overview the process of NIL legislation, specifically in terms of recruiting, who would you recommend be appointed to the independent commission and why?

Answer. Ideally, the independent commission will be a cross-disciplinary team of professionals from various backgrounds with experience or subject-matter expertise in the following areas: agency administration and regulatory oversight, intercollegiate athletics, the operational aspects of a public universities, NCAA compliance, the regulation of sports agents, and the licensing of the name, image, and likeness of athletes, influencers, or other high net worth individuals. These individuals could be government officials and former university presidents, athletics directors, athletics conference commissioners, university compliance officers, professional athletes, attorneys, or accountants.

The independent commission should be one component of a hybrid approach to NIL, in which the NCAA retains its compliance authority over member institutions while Congress delegates the administration, oversight, and rulemaking authority for any new NIL legislation to this independent body, preferably a nonprofit. This independent body or commission would have nationwide oversight over the myriad of issues implicated by NIL, such as agent regulation and discipline, NIL revenue reporting and disclosure requirements, fair market valuation and analysis, and support services for student-athletes.

If support grew for the independent commission to overview the process of implementation, there would be many stipulations that come with that idea. One concern involves the appointment of the members, some of which may have ulterior motives to the success of the commission.

*Question 2.* Who would you recommend be put in charge of appointing the members of this independent commission?

Answer. The independent commission could be selected through a process that solicits recommendations from athletics directors, athletics conferences, the NCAA, and former student-athletes, including professional athletes.

*Question 3.* What steps or consequences would you recommend putting in place to prevent boosters of an athletic program from using future endorsement promises as part of a recruiting pitch? How might legislation assist in keeping boosters away from the recruiting process?

Answer. Federal NIL legislation could deter boosters from offering impermissible recruiting inducements by imposing fines or monetary penalties for booster misconduct or voiding the NIL license or NIL agreement to which the booster is a party. Federal NIL legislation could further deter boosters from interfering in the recruitment process by reaffirming the NCAA's existing authority to sanction boosters and impose non-monetary penalties for booster misconduct.

As an added measure, Federal NIL legislation should prohibit impermissible recruiting inducements altogether and impose reasonable limits on the extent to which student-athletes may pursue NIL opportunities with boosters. For example, the legislation should:



- prohibit a prospective student-athlete from accepting compensation or a future promise or commitment from any person or entity as an inducement to enroll or remain enrolled at a specific academic institution, and
- prohibit a prospective or current student-athlete from granting an NIL license or entering into an NIL agreement with any person or entity that has made a financial donation to the athletics department or the athletics foundation of the student-athlete's prospective or current academic institution within the last five (5) years.

*Question 4.* How closely do you envision schools working with an independent commission to come up with the proper definitions regarding use of NIL to deal with ambiguous instances to set precedent going forward?

Answer. Universities and colleges should be afforded a meaningful opportunity to help the pertinent NIL oversight body or commission define the permissible scope of NIL opportunities allowed under any Federal legislation. The commission should also serve as a resource to assist universities, student-athletes, athletics conferences, agents, and the NCAA with rules interpretation and unanticipated or ambiguous circumstances not otherwise contemplated by any existing Federal NIL legislation. This approach will allow the pertinent NIL body or commission to implement the additional rules necessary to set precedent and ensure consistent treatment of similar future circumstances.

*Question 5.* A change in athlete monetization of this magnitude is sure to change the relationship that student athletes have with their schools. Given the NCAA's stance on compensating student athletes in the past, do you envision schools taking issue with student athletes receiving compensation for use of their NIL and pursuing legal action against their student athletes or another relevant party?

Answer. Ole Miss does not take issue with and will not pursue legal action against student-athletes and those individuals or entities who may assist them with pursuing legitimate NIL opportunities. Ole Miss strongly supports the enactment of NIL legislation that will allow its student-athletes the same opportunities as other students to monetize their NIL under a uniform national framework that protects student-athletes from unscrupulous bad actors, preserves the amateur model of collegiate athletics, and safeguards the integrity of the recruiting process, including the autonomy of students to select a college or university of their choice.

Ole Miss also supports the creation of a national office, agency or commission charged with the certification, regulation, and discipline of any agents or advisors who seek to represent student-athletes, particularly in relation to NIL opportunities. This approach ensures that all agents or advisors for student-athletes are held to the same certification requirements, standards of conduct, investigative process, and disciplinary procedures nationwide.

Mississippi's Uniform Athletes Agent law (MUAA) authorizes litigation against former student-athletes and agents, *but not merely because the student was compensated for NIL*. Under the MUAA, Ole Miss has a right to sue agents and former student-athletes who engage in misconduct in violation of that law when it results in Ole Miss being penalized, disqualified or suspended from participation in athletics competitions by the NCAA. Therefore, if an agent or former student-athlete engages in affirmative misconduct in relation to NIL that also violates the MUAA, and that misconduct results in the NCAA sanctioning Ole Miss, the University necessarily has the right to seek recourse against the bad actor under Mississippi law. Under this scenario, Ole Miss would not be pursuing legal action merely because a former student-athlete received compensation for use of their NIL. Quite differently, the agent's or former student-athlete's illegal conduct that ultimately culminated in NCAA sanctions and damages to Ole Miss would be the impetus for any suit.

*Question 6.* Would you support a section of potential NIL legislation to include health insurance and medical coverage for student athletes provided by the NCAA or from ticket sales revenue?

*Question 7.* Would you support a student athlete trust fund created from ticket sale revenue to assist athletes who have undergone career ending or career altering injuries?

Answer. Questions six and seven are answered as follows. Health insurance for existing student-athletes and other long-term care benefits for individuals who have experienced career-ending or disabling injuries are issues of critical importance. Historically, Ole Miss has voluntarily procured health insurance and other benefits for its student athletes, including AD&D insurance, that exceed the minimum policy limits contemplated by the NCAA. Without the benefit of reviewing the proposed legislation, the University is unable to say whether it supports a law that mandates

the use of ticket sales revenue for health insurance or a student-athlete trust fund. The University welcomes an opportunity to comment on any proposed legislation that provides additional measures of protection for student-athletes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
KEITH CARTER

As you may know, an Arizona State University swimmer, Grant House, is a named plaintiff in a Federal antitrust lawsuit regarding athletes' ability to be compensated for their name, image, and likeness. The issue of antitrust liability protections was raised multiple times during the hearing and has been referenced as a possible provision in Federal legislation.

*Question 1.* In your opinion, are antitrust liability protections a necessary aspect of Federal legislation related to NCAA athlete compensation? Please explain your position. If you believe that liability protections should be included, how broad should the liability protections be?

Answer. Antitrust liability protections are an essential and necessary component of any NIL Federal legislation. Universities could soon find themselves parties to similar NIL litigation recently brought against the SEC and NCAA. NCAA member institutions must abide by any amateur rules on NIL that the NCAA ultimately adopts. Universities nationwide could be accused of acting in concert in violation of Federal antitrust laws for doing nothing more than complying with NCAA rules. Antitrust class actions typically last several years. The defense costs in those cases are often exorbitant. In addition, the prevailing party in an antitrust case may be awarded monetary damages, and the court may also award reasonable attorney's fees and costs. In a real sense, a university's potential financial exposure in an NIL antitrust class action could be reasonably unquantifiable.

The various pending state laws on NIL create an additional complicating factor. Unless preempted by a Federal NIL law that implements a uniform national standard, multiple states will continue to enact NIL laws that either conflict with NCAA rules or proscribe the NCAA's rulemaking authority. This outcome creates confusion and uncertainty for student-athletes and an additional, unnecessary litigation risk for universities, athletics conferences, and the NCAA. To avoid this unfortunate outcome and those discussed above, any Federal NIL legislation should provide for reasonable yet narrowly tailored immunity from antitrust liability. Specifically, no antitrust litigation should be allowed against any intercollegiate athletics association, athletics conference, or any academic institution for either complying with any Federal NIL legislation, or the adoption, implementation, or enforcement of any NIL rule in accordance with the legislation.

As a vocal supporter of athletic opportunities for women and girls, I am reviewing the potential impacts of proposed name, image, and likeness legislation on Title IX and women's collegiate athletics on the whole.

*Question 2.* What potential impacts on women's collegiate athletics should lawmakers study when considering name, image, and likeness legislation, and how can we ensure that any changes to NCAA athlete compensation rules will empower women athletes and strengthen women's athletics?

Answer. When considering NIL legislation, lawmakers should study and eventually adopt a uniform national standard, where universities are prohibited from entering into NIL licensing, promotional, or endorsement deals with student-athletes. This approach promotes women collegiate athletics, because female and male student-athletes have an equal opportunity to pursue NIL opportunities with unaffiliated third-parties, within a framework that preserves the amateur model of college athletics in the United States. This approach also ensures that the Federal NIL legislation does not otherwise implicate any other Title IX gender equity issues, since no university funds or resources will be leveraged to make or otherwise facilitate any NIL payments to any students (whether male or female). This approach has the added benefit of preserving the amateur model of collegiate sports by ensuring that student-athletes remain students and are not compensated for services rendered as university employees or independent contractors.

To ensure no adverse impact on women's athletics, NCAA athlete compensation rules must be implemented within the existing regulatory framework for gender equity in collegiate sports. Under Title IX, universities that receive Federal funding have a continuing obligation to provide female and male student-athletes equitable opportunities for publicity, including the availability and quality of sports information personnel, access to publicity resources, and the quantity and quality of publications and other promotional devices featuring men's and women's sports programs. Universities, as a matter of Federal law, are prohibited from implementing

any rules—NCAA NIL rules or otherwise—that violate the gender equity requirements of Title IX. Notably, the NCAA has issued meaningful guidance to its member institutions regarding their Title IX gender equity compliance obligations. *See, e.g., NCAA Gender Equity Planning Best Practices*. Given the NCAA's prior attention to this issue, the NCAA should reasonably contemplate that all of its NIL rules must align with the gender equity requirements of Title IX, so as not to erode the protections necessarily afforded female student-athletes under the statute. As it engages in NIL rulemaking, the NCAA should likewise know to update its Title IX equity planning best practices, to account for any new issues or concerns its NIL rules may implicate.

I readily acknowledge that the interplay between Federal NIL legislation and Title IX gender equity is a meaningful concern. Title IX is administered by the Department of Education (DoEd). Presumptively, the DoEd will issue Dear Colleague letters or other guidance to address any open issues implicated by NIL legislation, such as the extent to which universities may offer NIL education and support services to student-athletes with NIL earning potential, and how those NIL education and support services should be quantified and presented in a university's annual Title IX disclosure.

*Question 3.* What is the appropriate role for agents and what sort of oversight and regulation of agents should be established in name, image, and likeness legislation?

Answer. Qualified and certified agents can assist student-athletes with recognizing, negotiating, and procuring legitimate NIL opportunities that do not constitute impermissible "pay for play" arrangements, improper recruiting inducements, or otherwise impair a student-athlete's NCAA eligibility.

Agents should be subject to meaningful oversight and regulation to protect student-athletes and the integrity of amateur collegiate sports from unscrupulous practices. For example, agents should be subject to: (a) examination and agent certification requirements, (b) agent standards of conduct and ethics rules, (c) limitations on the form, duration, and requirements for student-athlete agency contracts, and (d) disclosure requirements related to third-party licensing agreements and agency contracts. Agents should be required to develop and disseminate educational materials to student athletes. These materials should cover, among other issues, the implications of long-term licensing agreements, the possible tax consequences of licensing agreements, and the implications of contractual provisions that purport to limit a student-athlete's choice of institutions. Agents should also face investigation and discipline for agent misconduct. This discipline may include fines, civil penalties, and the suspension, revocation, or non-renewal of agent certifications. Where the circumstances warrant, criminal penalties should be imposed against agents engaged in illegal conduct.

Some, but not all, of the above limitations are provided for under the Sports Agent Responsibility and Trust Act. Some states, but not all, have adopted the Uniform Athletes Agents Law, which regulates agents in the manner proposed above. The Uniform Athletes Agents Law was revised in 2015 to impose even more limitations on agents, but the revised law has not been uniformly adopted in every state. Because of this, the specific limitations and requirements imposed on a student-athlete's agent could vary depending on the state where he or she conducts business. Federal NIL legislation should require all agents who represent student-athletes to adhere to a uniform national set of agent regulations. For example, Congress could amend the Sports Agent Responsibility and Trust Act to incorporate the necessary requirements, restrictions, and limitations sufficient to protect student-athletes. Congress should also create a specific office or agency that would have complete oversight and rulemaking authority over agents who represent student-athletes.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER WICKER TO  
DR. MICHAEL DRAKE

*Question.* One recommendation in the NCAA Board of Governors' report included establishing an antitrust exemption for the NCAA. Could you please elaborate on why the NCAA is seeking an antitrust exemption in Federal NIL legislation and how that would benefit student-athletes?

Answer. A narrowly tailored safe harbor provision which would prohibit recurring litigation and allow the Association to continue to make rules to meet the needs of the 21st century athlete is an important part of Federal legislation. Without that protection, the ability to modernize rules for the benefit of student-athletes and the ability to preserve academic and athletic opportunities for college athletes would be greatly impaired.

Throughout the Board of Governors' deliberations related to the modernization of NIL rules, it became apparent that potential impediments posed by outside legal factors could significantly undermine the Association's ability to take meaningful action in this area. As I mentioned in my testimony, the history of antitrust lawsuits brought against the Association over the last several decades reveals that Federal antitrust law has frequently been used as a tool to attempt to undermine the Association's ability to govern and our schools' decisions about how to provide benefits to student-athletes without turning college athletics into professional sports. The Association has been required to devote valuable resources to defending the broader attack against NCAA rules, resources that could have been better spent on supporting student-athletes. Current antitrust lawsuits are creating further strain on our schools' ability to provide athletic opportunities in the current global pandemic. Without appropriate protections, these litigation challenges will continue and will interfere with the Association's ability to effectively and efficiently support the evolving needs of student-athletes.

Student athletes will benefit directly from granting the NCAA limited safe harbor protection against litigation challenging the membership's appropriate implementation of name, image and likeness rules. Indeed, without such protection, the NCAA and its members will be unable to create and sustain a viable system—without it getting tied up in litigation—that can assure that student athletes, regardless of school, sport, or state, can participate fairly and equitably in an NIL market within the context of college sports. For these reasons, I, along with my Board of Governors colleagues steadfastly believe that it is appropriate and advisable for the Association to seek Federal safe harbor protection for its modernization efforts related to NIL. I appreciate and agree with the idea that the NCAA should not be immune from antitrust scrutiny in all of its actions. Likewise, however, it is untenable for NCAA rules to be judged as unlawful and subject to repetitive antitrust lawsuits each time the Association attempts to make a rule change.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DR. MICHAEL DRAKE

Many of the witnesses mentioned that they would support an independent legislative body or commission to overview the implementation of NIL compensation for student athletes.

*Question 1.* If an independent commission were set up to overview the process of NIL legislation, specifically in terms of recruiting, who would you recommend be appointed to the independent commission and why?

Answer. The composition of an independent commission overseeing the implementation of NIL legislation is critically important. I believe it is imperative that members of the commission possess the expertise, professionalism and impartiality to ensure that student-athletes take advantage of a wide range of significant NIL opportunities without compromising the integrity of the recruitment process and amateurism. I would encourage the NCAA and Members of Congress to consider individuals who have direct experience within intercollegiate athletics, including student-athletes, faculty athletics representatives, chancellors and presidents, directors of athletics, compliance administrators, marketing executives, external thought leaders in college sports, former coaches with recent coaching and recruiting experience and individuals with dispute resolution such as attorneys and judges.

If support grew for the independent commission to overview the process of implementation, there would be many stipulations that come with that idea. One concern involves the appointment of the members, some of which may have ulterior motives to the success of the commission.

*Question 2.* Who would you recommend be put in charge of appointing the members of this independent commission?

Answer. Every aspect of the commission must be as independent as possible—from the selection of commission members to the way it operates. I would recommend allowing the NCAA and a group such as the Knight Commission to put forward a minimum of 50 names each selection cycle and allow Republican and Democrat leadership in the House and Senate to appoint members from that group.

Whoever is appointed to lead the independent commission would have to enforce the rules set up for the athletic programs under the umbrella of the NCAA. With the recruiting scandals that have come out in the last couple of years, especially in college basketball, there would have to be strict enforcement of the legislation to prevent improper recruiting from boosters of the programs.

*Question 3.* What steps or consequences would you recommend putting in place to prevent boosters of an athletic program from using future endorsement promises as part of a recruiting pitch? How might legislation assist in keeping boosters away from the recruiting process?

Answer. Protecting the collegiate recruiting process, in which prospective and transfer student-athletes have the freedom to select an institution that offers the best academic, athletic and personal opportunities for that individual, is one of the guiding principles for NIL modernization identified by the NCAA Board of Governors. Members of any independent commission should have a keen understanding of the significant role that recruiting plays in the success of an institution's athletics program and the involvement of individuals associated with the program attempting to secure the enrollment of prospects who can contribute to such success. With this, the engagement of boosters must be carefully considered to ensure the integrity of this process is not compromised and to ensure compensation to student-athletes for use of their NIL does not become a substitute form of payment for their athletics performance. Currently, leadership groups in all three divisions—including a Division I subgroup with representation from each of the five conferences with autonomy—are working to develop appropriate legislation to mitigate these concerns including the possibility of using a third-party entity to assist in the administration of NIL-related activities—such assistance could include monitoring booster involvement. Legislative proposals are on track to be introduced by November 1, 2020.

The enactment of NIL compensation legislation will make it extremely important that the relationships between athletic programs and the legislative body remain positive to prevent issues from occurring.

*Question 4.* How closely do you envision schools working with an independent commission to come up with the proper definitions regarding use of NIL to deal with ambiguous instances to set precedent going forward?

Answer. As we collectively seek to further our shared interest in expanding opportunities for student-athletes and protecting the longstanding educational values of college sports, I wholly support the full engagement of member schools in working with an independent commission. The NCAA is a school-led organization with a diverse membership of nearly 1,100 institutions which have vastly different enrollments, localities and resources. It is essential that any process which supports the modernization of NIL rules reflect the deep heterogeneity which makes up the Association and the expertise embedded within each school, student-athlete, administrator and conference office. Further, processes will have to be developed to ensure proper application and interpretation of existing NCAA legislation, interpretations and case precedent.

*Question 5.* A change of this magnitude in athlete monetization is sure to change the relationship that student athletes have with their schools. Given the NCAA's stance on compensating student athletes in the past, do you envision schools taking issue with student athletes receiving compensation for use of their NIL and pursuing legal action against their student athletes or another relevant party?

Answer. The NCAA membership has a long history of modernizing its rules to meet the evolving needs of student-athletes. More specifically, Division I, II and III member schools have taken meaningful steps to modernize their rules to enhance NIL opportunities for college athletes. Each division is on track to develop legislative proposals by November 2020, meet the January 2021 deadline established by the Board of Governors to adopt these proposals and implement any rule changes for the 2021–22 academic year. All schools, as a fundamental obligation of their membership, must adhere to and conduct their activities consistent with the Association's rules, including any updates to NCAA rules related to the ability of student-athlete to be compensated for their NIL. NCAA rules that may be passed regarding NIL would govern the relationship between institution and student-athlete, which would foreclose the need for any legal challenges between them.

Over 30 states have put legislation forward for student athlete compensation. Some of those pieces of legislation, such as what has been introduced in Alabama or Massachusetts, have allowed for insurance and medical coverage.

*Question 6.* Would you support a section of potential NIL legislation to include health insurance and medical coverage for student athletes provided by the NCAA or from ticket sales revenue?

Answer. Importantly, the Association has several established mechanisms to support the health care costs of student-athletes. Existing NCAA legislation requires that college athletes have health insurance in order to participate in intercollegiate athletics and schools are permitted to pay for these costs. Additionally, the five conferences with autonomy are required to extend the medical coverage of student-athletes for two years after graduation. The Association also has a Catastrophic Injury

Insurance Program designed to cover instances in which a student-athlete might be catastrophically injured while participating in intercollegiate athletics or to cover a student-athlete whose medical expenses exceed \$90,000.

The NCAA's nearly 1,100 member schools have a wide range of fiduciary approaches to, and resources available for, funding their athletics programs. Notably, only a small fraction of NCAA schools generate a net revenue from ticket sales; the overwhelming majority of colleges and universities across all three divisions subsidize part or all of their athletics programs. Federal legislation which takes a one-size fits all approach and prescribes the allocation of resources for the college athletic programs ignores this existing revenue structure and the great diversity in financial resources available to each school. Thus, this approach would eliminate the independence of schools to manage their own unique budgets and preclude their ability to allocate funds in a way that meets the individual priorities of each campus and the holistic needs of all student-athletes.

*Question 7.* Would you support a student athlete trust fund created from ticket sale revenue to assist athletes who have undergone career ending or career altering injuries?

Answer. The NCAA has an existing structure in place to assist athletes who have experienced a career-ending or career-altering injury. This program, the Catastrophic Injury Insurance Program, is designed to cover a student-athlete who is catastrophically injured while participating in intercollegiate athletics or to cover a student-athlete whose medical expenses exceed \$90,000.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO  
DR. MICHAEL DRAKE

The NCAA has proposed guardrails around payments for name, image, and likeness to prevent pay-for-performance and to maintain recruiting integrity.

*Question 1.* How do you envision the compliance responsibilities being distributed among the universities, the NCAA, and other stakeholders?

Answer. There is no question we will need a collaborative effort to ensure compliance integrity. I expect much of the responsibilities associated with new NIL legislation would mirror the existing structure to ensure compliance with NCAA rules. This structure—in which member schools propose and adopt legislation then monitor and self-report violations—coupled with NCAA investigations and enforcement—would likely continue to be an appropriate approach for NIL-related rules. Member schools are currently exploring additional structures that might prove valuable to monitor and comply with any changes to NCAA rules, including the use of a third-party entity to maintain disclosure, ensure contractual integrity, monitor involvement of agents and boosters and possibly handle dispute resolution responsibilities. Use of a third-party administrator could provide an opportunity to prioritize objective administration while reducing the compliance burden for many of our campuses. This burden is especially relevant for our Division II and III memberships and lower-resourced Division I institutions, particularly in the current financial environment.

*Question 2.* Do you foresee any conflict-of-interest risks in relying on universities for enforcement, to the extent that a student athlete's endorsement deals may complement or clash with those of the university?

Answer. NCAA schools in all three divisions are considering protections which ensure any new rules related to NIL are consistent with guiding principles developed by the Board of Governors, including principles which ensure rules are transparent, focused and enforceable. Among the protections being considered are provisions which would restrict institutional involvement with a student-athlete's NIL activity as well as consider the use of a third-party entity to assist in the compliance and enforcement of NIL contracts. While additional discussion is needed, one model could specify that if a conflict is identified, the third-party administrator or the national office—rather than the relevant institution—could assume all enforcement responsibilities related to a particular activity. Member schools are in the process of drafting such protections and are on target to introduce proposals in November 2020.

Many of your stated concerns seem muted or absent in the group-licensing context: it is harder to imagine boosters or other unscrupulous actors using group-licensing deals as veiled recruitment incentives or performance pay.

*Question 3.* Why do the NCAA's recommendations not include a mechanism to support group-licensing opportunities? Do you believe that individual and group licensing rights can coexist in intercollegiate athletics?

Answer. I believe that individual and group licensing opportunities can coexist, if not thrive, in college sports. The Board of Governor's principles around NIL, however, require that institutions are not involved with providing compensation for students' name, image, and likeness. Group licensing of professional athletes' NIL is accomplished because the athletes are employees who have collectively bargained for an agreed upon equitable distribution of payments. That legal structure does not exist in college sports because student-athletes are not employees, and the student's institution is not allowed to determine a compensation structure that would create fixed payments related to that employment. The Board of Governors welcomes an open dialogue with the Committee to discuss solutions to this issue.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
DR. MICHAEL DRAKE

As you may know, an Arizona State University swimmer, Grant House, is a named plaintiff in a Federal antitrust lawsuit regarding athletes' ability to be compensated for their name, image, and likeness. The issue of antitrust liability protections was raised multiple times during the hearing and has been referenced as a possible provision in Federal legislation.

*Question 1.* In your opinion, are antitrust liability protections a necessary aspect of Federal legislation related to NCAA athlete compensation? Please explain your position. If you believe that liability protections should be included, how broad should the liability protections be?

Answer. A narrowly tailored safe harbor provision which would prohibit recurring litigation and allow the Association to continue to make rules to meet the needs of the 21st century athlete is indeed an important part of Federal legislation. Without that protection, the ability to modernize rules for the benefit of student-athletes and the ability to preserve academic and athletic opportunities for college athletes would be greatly impaired.

Throughout the Board of Governors' deliberations related to the modernization of NIL rules, it became apparent that potential impediments posed by outside legal factors could significantly undermine the Association's ability to take meaningful action in this area. As I mentioned in my testimony, the history of antitrust lawsuits brought against the Association over the last several decades reveals that Federal antitrust law has frequently been used as a tool to attempt to undermine the Association's ability to govern and our schools' decisions about how to provide benefits to student-athletes without turning college athletics into professional sports. The Association has been required to devote valuable resources to defending the broader attack against NCAA rules, resources that could have been better spent on supporting student-athletes. Current antitrust lawsuits are creating further strain on our schools' ability to provide athletic opportunities in the current global pandemic. Without appropriate protections, these litigation challenges will continue and will interfere with the Association's ability to effectively and efficiently support the evolving needs of student-athletes.

Student athletes will benefit directly from granting the NCAA limited safe harbor protection against litigation challenging the membership's appropriate implementation of name, image and likeness rules. Indeed, without such protection, the NCAA and its members will be unable to create and sustain a viable system—without it getting tied up in litigation—that can assure that student athletes, regardless of school, sport, or state can participate fairly and equitably in an NIL market within the context of college sports. For these reasons, I, along with my Board of Governors colleagues steadfastly believe that it is appropriate and advisable for the Association to seek Federal safe harbor protection for its modernization efforts related to NIL. I appreciate and agree with the idea that the NCAA should not be immune from antitrust scrutiny in all of its actions. Likewise, however, it is untenable for NCAA rules to be judged as unlawful and subject to repetitive antitrust lawsuits each time the Association attempts to make a rule change.

As a vocal supporter of athletic opportunities for women and girls, I am reviewing the potential impacts of proposed name, image, and likeness legislation on Title IX and women's collegiate athletics on the whole.

*Question 2.* What potential impacts on women's collegiate athletics should lawmakers study when considering name, image, and likeness legislation, and how can we ensure that any changes to NCAA athlete compensation rules will empower women athletes and strengthen women's athletics?

Answer. The NCAA and its member schools are committed to conducting intercollegiate athletics in a fair and equitable manner. That is why the Board of Governors identified gender equity as one of its guiding principles related to the mod-

ernization of NIL rules. To avoid any Title IX implications, NCAA legislative proposals are being considered which would not allow for institutional involvement with NIL opportunities. However, as the Association moves toward modernizing its rules to allow student-athletes to be compensated for use of their name, image, and likeness, there remain some unknowns about how it might impact women, less resourced and rural institutions and non-revenue sports. While compensation provided by third parties would be outside the protections of Title IX and the purview of member schools, NCAA member schools are considering mechanisms—such as transparency and educational requirements—to address potential imbalances created by the market's offerings. It is important for all stakeholders to avoid implementing rules and regulations that will reduce the range of collegiate athletic opportunities currently being made available for all student-athletes, and this is a top priority for member schools in all three divisions.

*Question 3.* What is the appropriate role for agents and what sort of oversight and regulation of agents should be established in name, image, and likeness legislation?

Answer. In an effort to further support student-athletes, the Board of Governors supported the use of agents and professional service providers to assist exclusively with NIL opportunities. While modernizing rules related to NIL will provide student-athletes with new and exciting opportunities, there is concern with how bad actors might negatively impact student-athletes and their collegiate experience. I believe it is important that these individuals be certified through a state or federally mandated registration process to ensure that qualified and high character individuals serve in this capacity for student-athletes. Use of a third-party administrator would facilitate disclosure and monitoring of the use of professional-service providers and perhaps include a registration/competency requirement that could be aligned with the NCAA's current agent-registration program.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER WICKER TO  
DIONNE KOLLER

*Question 1.* During the hearing on July 1, 2020 you stated in your testimony that there is little evidence that state legislation on NIL would threaten the competitive balance in sports. Would you please provide more information on this assertion?

Answer. There is currently little “competitive balance” in NCAA sports. The Power-Five conference teams enjoy an enormous advantage over smaller programs, with some studies noting a \$4 billion dollar revenue gap between Power-Five schools and Group-of-Five Schools. Resource-rich schools regularly deploy private jets, upscale hotels during team travel, and facilities upgrades that consistently lure top athletic talent to the wealthiest programs. A recent Drake Group Report stated that “all 31 five-star football recruits from the class of 2020” have signed with Power-Five schools. Similarly, “23 out of 27 five-star recruits” in basketball have committed to a Power-Five program. This is not an anomaly. The Drake Group goes on to note that the massive recruiting advantages translate to championships, as Power-Five schools dominate national championships in football and basketball. Thus, we are not currently in an environment of “competitive balance.” Restoring NIL rights for athletes cannot harm competitive balance that does not exist. Indeed, serious efforts at maintaining competitive balance, such as in the professional leagues, focus on team spending and not restrictions on athletes' rights.

The real issue is whether restoring athletes' NIL rights will change what is currently an unbalanced situation. I do not believe this would be the case. First, states that are concerned that their institutions will not be equipped to compete for top athletic talent can simply provide that athletes, like all state citizens, may benefit from their NIL rights. Second, the number of athletes for whom NIL rights would potentially make a difference in the college decision is quite small. For these students, NIL rights might provide additional reason to join an already high-profile program. However, this is highly speculative, and does not account for the majority of athletes who could marginally benefit from NIL rights, but who likely would not find such rights to be determinative. Recruiting athletes is a process that encompasses many factors. Proximity to home, general comfort level with the coach and program, projected playing time, ability to get a degree, and many, many more issues are significant. In addition, recent events this summer demonstrated that athletes are interested in issues such as the racial justice views of coaching staff and the campus climate. As a result, I do not think it can be said at this point that NIL rights would be the deciding factor even for the small group of athletes for whom it might matter most.

There are also persuasive arguments that restoring NIL rights for athletes will actually promote competitive balance. Social media has dramatically changed the



NIL marketplace. The barriers to entry are low and time involved is relatively small. A small program with an athlete whose personality draws a social media following can give a school attention it might not otherwise have had. Similarly, social media followings in athletics often depend on the position (*e.g.*, starter, quarterback, etc.). Thus, being a starter on a small program's team can lead to a social media presence that can be monetized in a way that being the second-string player may not. This provides opportunities for schools to potentially land athletic talent because enhanced NIL presence, along with, for instance, being a starter, could be a determinative factor in the recruiting process.

Finally, my concern over using competitive balance as a prospective justification for limiting athletes' rights is problematic because there simply is not credible data that show this is the case. Recent antitrust cases have demonstrated that NCAA justifications of athlete restrictions based on harm to "consumer interest" and "competitive balance" have not been substantiated. Indeed, a recent study found that providing additional benefits to college football players (post-O'Bannon) did not in any way diminish fan interest, as the NCAA argued it would. In my view, rather than prospectively restrict athletes' rights based on the concern over future harm, the better approach is to enact legislation where necessary to mitigate actual harm.

*Question 2.* During the hearing and in your written testimony, you stated that an antitrust exemption for the NCAA is not warranted, either to enhance consumer welfare or to protect the organization from lawsuits regarding NIL rules it may promulgate.

a. Do you believe that antitrust suits would not or could not interfere with NIL rules promulgated by the NCAA at the direction of Congress? Or, do you believe the harm of granting the NCAA an antitrust exemption would outweigh any benefits of eliminating interference to NIL rules caused by antitrust lawsuits? Please explain.

Answer. First, I generally do not believe that antitrust lawsuits are necessarily a harm to be avoided. The current antitrust analysis applied to the NCAA is quite deferential and takes account of the unique nature of the education-based sports model. Historically, the NCAA has won the majority of antitrust lawsuits filed against it. Moreover, the benefits to athletes that witnesses cited at the hearing (*e.g.*, full cost of attendance, additional stipends for meals, other educational benefits) came as a result of antitrust litigation. Indeed, there seemed to be a consensus that the results of these recent successful suits have produced positive outcomes for college sports.

With that said, it is of course inefficient and costly to make change with litigation. This can be avoided if Congress does not defer to the NCAA to make the rules for NIL rights. Courts have found that the NCAA takes an overly restrictive approach to athletes' rights, with recent cases finding that the NCAA was so restrictive that it amounted to an "unreasonable" restraint on trade. This can be avoided by Congress simply legislating to provide rights directly to athletes and not deferring to the NCAA to craft the rules.

Finally, even if the NCAA legislated in this area and Congress did not provide an antitrust exemption, it is not at all clear that such rules would trigger antitrust scrutiny. Restoring athletes' NIL rights in the fullest way possible, with only narrow limits to these rights, could easily pass antitrust muster. Again, the NCAA is asking for a blank check remedy for a problem that has not yet manifested itself.

b. In your testimony you highlighted the distinction between statutory and judicially-created antitrust exemptions. Understanding that Congress can only act via statute, are there solutions to the antitrust issue that are better suited to one type of exemption or the other?

Answer. In sports, statutory antitrust exemptions have worked best for discrete areas that generally do not affect athletes' rights (*e.g.*, Sports Broadcasting Act of 1961; Football Merger Act of 1966). These exemptions increased consumer welfare, strengthened sports, and did not harm athletes. A statutory antitrust exemption here would not fit this pattern. The non-statutory antitrust exemption has worked best for issues that involve athletes' rights because labor law and the collective bargaining process provide athletes with power and a voice on issues that will directly impact them. Here, NCAA athletes have no union, so the non-statutory labor exemption would not apply. However, the lessons from this exemption are useful in this context. With labor law providing athletes with a means to address issues that affect their health, wellbeing, and athletic careers, antitrust law is not as crucial to provide a vehicle for athletes to seek redress. In the context of college sports, athletes are powerless. As a result, we see the use of antitrust law as the only mechanism by which they can address the serious issues that impact the conditions of their sports participation.

Seen in this light, it is clear that an antitrust exemption for the NCAA would not strengthen the college sports enterprise. It would render athletes even more powerless, while schools, coaches, and administrators continued to profit. This imbalance has been described as exploitation, and without a means to address it, the enterprise itself will be threatened. Fans are increasingly disturbed by these conditions and alternatives to NCAA participation are being developed in revenue-generating sports. Rather than grant the NCAA an antitrust exemption, Congress could strengthen college sports by providing rights to athletes and a mechanism whereby they can have a meaningful voice in their experience.

c. In your written testimony, you stated that an antitrust exemption would give the NCAA “unchecked power to restrict athletes’ free market rights far more than necessary without any accountability.” Do you believe a more limited statutory antitrust exemption could be crafted to address your concerns by limiting the NCAA’s power and providing appropriate oversight? If so, what would such a provision look like?

Answer. I do not support giving the NCAA any antitrust exemption. If Congress determined that exempting NIL rules from litigation was warranted to address this issue, I support granting a truly independent entity exclusive jurisdiction to create rules for and oversee enforcement of athlete NIL issues, with athletes having the benefit of seeking arbitration. A similar model is used for the American Olympic Movement, with the USOPC having exclusive authority over such matters and athletes having the ability to seek relief through commercial arbitration.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DIONNE KOLLER

Many witnesses mentioned that they would support an independent legislative body or commission to overview the implementation of NIL compensation for student athletes.

*Question 1.* If an independent commission were set up to overview the process of NIL legislation, specifically in terms of recruiting, who would you recommend be appointed to the independent commission and why?

Answer. First, I would recommend that 30 percent of the members of such commission be recent athletes. This could be achieved through a process of appointing individuals who were within 5 or 10 years of graduating as NCAA athletes (similar to the process used for athlete representation in the U.S. Olympic Movement). I do not believe that an adequate athlete voice can be present on such a commission by simply relying on sports administrators or others who at one time were athletes.

Second, I believe 30 percent should be full-time, tenured faculty from different sizes and levels of NCAA schools. Since one of the main thrusts of the NCAA’s argument against restoring athletes’ NIL rights is the unique model of sports programs embedded in education programs, those with a stake in the educational mission should have a seat at the table. In addition, tenured faculty can provide any level of expertise thought necessary for such a position (*e.g.*, economics, business, marketing). Moreover, educators are in a strong position to evaluate what supports or restrictions would best enhance athletes’ education. Finally, tenured faculty operate outside of athletic departments and have job protections so can exercise a needed level of independence.

Third, 30 percent should be college sports administrators (again, across levels of NCAA schools) to provide a voice about the needs and workings of sports programs.

Finally, the remaining members should be independent members of the public. Ultimately, NIL rights, which we all enjoy, are free market rights. Independent members who are both consumers of college sports and/or sellers of NIL opportunities, can provide an important perspective.

If support grew for the independent commission to overview the process of implementation, there would be many stipulations that come with that idea. One concern involves the appointment of the members, some of which may have ulterior motives to the success of the commission.

*Question 2.* Who would you recommend be put in charge of appointing the members of this independent commission?

Answer. I would suggest two possibilities. First, the commission could be a private body funded through NCAA revenues and with a stipend from Congress. Like the United States Olympic and Paralympic Committee, United States Anti-Doping Agency or the United States Center for SafeSport, the entity could have an organizational structure approved by Congress to include the categories of appointees I suggested above. Such a commission would operate as a quasi-governmental entity.

A second possibility is a commission with members appointed by the Executive Branch. In this case, I would suggest a process that is managed through the Department of Education that would include eligibility prerequisites. Specifically, for the categories I mentioned above that would derive commission members from colleges and universities, the Department of Education could ensure that to be eligible to nominate a commission member, the school is Title IX compliant and graduates athletes at a pre-determined threshold.

Whoever is appointed to lead the independent commission would have to enforce the rules set up for the athletic programs under the umbrella of the NCAA. With the recruiting scandals that have come out in the last couple of years, especially in college basketball, there would have to be strict enforcement of the legislation to prevent improper recruiting from boosters of the programs.

*Question 3.* What steps or consequences would you recommend putting in place to prevent boosters of an athletic program from using future endorsement promises as part of a recruiting pitch? How might legislation assist in keeping boosters away from the recruiting process?

Answer. I do not support deferring to the NCAA to craft rules for implementation by an independent commission. An independent commission should operate entirely independent from the NCAA. I believe Congress should craft the least restrictive rules possible and any independent commission should implement those.

The NCAA currently has rules limiting booster conduct. Using NIL deals as a recruitment pitch in a way that contravenes current rules can be sanctioned through the NCAA and does not need independent enforcement. If there is concern that certain high-profile recruits could be involved in fraudulent NIL deals, a narrowly tailored requirement for disclosure can ensure that such deals come to light (*e.g.*, deals involving top recruits in revenue sports over a certain dollar threshold must be disclosed).

The enactment of NIL compensation legislation will make it extremely important that the relationships between athletic programs and the legislative body remain positive to prevent issues from occurring.

*Question 4.* How closely do you envision schools working with an independent commission to come up with the proper definitions regarding use of NIL to deal with ambiguous instances to set precedent going forward?

Answer. If an independent commission is charged with crafting rules for NIL deals, I believe the guidance for such rules should come from Congress. The commission, with membership as I have proposed, can then draft specific provisions if necessary. I strongly support a model like that used for the anti-doping movement. The United States Anti-Doping Agency is independent of the United States Olympic and Paralympic Committee, and it is this independence that restored integrity to the American anti-doping program. Similarly, any entity writing and enforcing rules for NIL rights should be independent and not subject to undue influence or regulatory capture by NCAA member institutions.

*Question 5.* A change in athlete monetization of this magnitude is sure to change the relationship that student athletes have with their schools. Given the NCAA's stance on compensating student athletes in the past, do you envision schools taking issue with student athletes receiving compensation for use of their NIL and pursuing legal action against their student athletes or another relevant party?

Answer. I do not agree with the premise of this question. Other students on campus are able to monetize their NIL and this does not interfere with their relationship with their schools—in fact, they often become celebrated alums. I also do not think that schools would take legal action against their athletes. The rights of schools and athletes can be made clear through legislation (*e.g.*, schools can be required to provide a disclosure to athletes that define the rights schools and students have so that students understand their rights do not conflict with team's rights to broadcast and publicize the team). In addition, the number of students who would command noteworthy NIL deals is likely quite small. For the rest, it is like the relationship between any student to his or her educational institution.

Over 30 states have put legislation forward for student athlete compensation. Some of those pieces of legislation, such as what has been introduced in Alabama or Massachusetts, have allowed for insurance and medical coverage.

*Question 6.* Would you support a section of potential NIL legislation to include health insurance and medical coverage for student athletes provided by the NCAA or from ticket sales revenue?

Answer. I strongly support a more comprehensive approach to regulating college sports and protecting athletes. Restoring athletes' NIL rights is an important part of this. I support requiring NCAA schools to provide more comprehensive medical

insurance and payment for athletics-related medical expenses. I also support requiring schools to meet the standard of care for managing conditions such as heatstroke and concussions or face sanctions (*i.e.*, instead of sports medicine “guidelines,” I support requiring schools to provide a minimum level of care and face sanction if they do not).

*Question 7.* Would you support a student athlete trust fund created from ticket sale revenue to assist athletes who have undergone career ending or career altering injuries?

Answer. I strongly support legislation that would require schools to provide full insurance and payment for all athletics-related medical expenses. However, I cannot comment on a proposal for a trust fund to “assist” athletes with career-ending injuries. Athletes in revenue-generating sports with professional potential are situated differently from athletes in sports with no professional potential. Adopting a blanket rule that every injured athlete be “assisted” for an indeterminate period is likely to be financially unworkable. Instead, I endorse greater supports for those athletes for whom loss-of-value insurance does not provide a remedy. This should include greater educational benefits (*e.g.*, truly guaranteed scholarships). I also support a trust fund that would be used to fund (on an applicant basis) a return to school for athletes who did not complete their degree.

I do not support any trust fund to hold athletes’ NIL income for later distribution—athletes should be permitted to earn income from their NIL rights and enjoy that income immediately.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO  
DIONNE KOLLER

Reports that U.S. Women’s National Soccer Team players continue to earn less than their male counterparts has brought attention to the persistent gender pay gap in U.S. sports. In your testimony, you noted that providing full NIL rights to student-athletes would help close the gender pay gap in U.S. sports.

*Question.* In your view, would allowing student athletes to profit from their name, image, and likeness help close the gender pay gap in sports?

Answer. College athletes do not get paid to play, so NIL rights would not affect a literal pay gap at that level. However, I believe that restoring NIL rights to athletes would have a very positive effect on women athletes. First, they could build interest in their sports and their individual “brands.” This would undoubtedly have the effect of building interest in women’s sports generally and in specific women athletes that could lead to enhanced professional opportunities in the future and increased fan interest in their sports at the college level. Second, allowing women to earn income from their NIL during what is for most women athletes their prime athletic years can benefit them tremendously. Currently, due to the lack of professional opportunities in most women’s sports (and lower pay opportunities where professional leagues exist), women do not have the same ability to earn income from their athletic abilities as do men. NIL legislation can help level the playing field.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO  
DIONNE KOLLER

*Question 1.* If a Federal law narrowly preempts state legislation on compensation for name, image, and likeness, what rights would it need to guarantee for intercollegiate athletes, in order to earn your support?

Answer. Federal legislation should restore athlete NIL rights with little or no qualification. I do not support caps on NIL payments, delays or waiting periods for athletes to enjoy their NIL rights, or restrictions on deals that athletes can do based on existing or proposed school or conference partnerships. I would support a disclosure requirement and a limited restriction for deals that trigger sport integrity concerns (*e.g.*, sponsorships for gambling, performance-enhancing drugs).

*Question 2.* If a Federal law broadly preempts state legislation on all aspects of intercollegiate athlete compensation, what other provisions would need to be included for it to earn your support?

Answer. If Federal law is to be used to displace state authority and provide the NCAA the “national solution” it seeks, it should impose uniform, enforceable standards for athlete health and safety (*e.g.*, for concussion management and sports medicine care generally), should set standards for athlete training conditions (*e.g.*, enforceable limits on hours per week spent on sport), ensure Title IX compliance, and

protect academic integrity. Congress should not give the NCAA a Federal law bail out without seeking to protect athletes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
DIONNE KOLLER

As you may know, an Arizona State University swimmer, Grant House, is a named plaintiff in a Federal antitrust lawsuit regarding athletes' ability to be compensated for their name, image, and likeness. The issue of antitrust liability protections was raised multiple times during the hearing and has been referenced as a possible provision in Federal legislation.

*Question 1.* In your opinion, are antitrust liability protections a necessary aspect of Federal legislation related to NCAA athlete compensation? Please explain your position. If you believe that liability protections should be included, how broad should the liability protections be?

Answer. An antitrust exemption is not necessary. Congress can restore athletes' NIL rights, protect schools' right to broadcast games and publicize its programs, and simply allow the free market to operate. The NCAA argues that liability protections are necessary because courts recently have found its rules limiting athletes' rights were more restrictive than necessary to maintain the college sports model and therefore an unreasonable restraint on trade. Because the NCAA's proposed regulations of athletes' NIL rights appear to have the same problems, they seek liability protection.

In this context, I do not believe that antitrust lawsuits are necessarily a harm to be avoided. The current antitrust analysis applied to the NCAA is quite deferential and takes account of the unique nature of the education-based sports model. Historically, the NCAA has won the majority of antitrust lawsuits filed against it. Moreover, the benefits to athletes that witnesses cited at the hearing (*e.g.*, full cost of attendance, additional stipends for meals, other educational benefits) came as a result of antitrust litigation. Indeed, there seemed to be a consensus at the hearing that the results of these recent successful suits have produced positive outcomes for college sports.

With that said, it is of course inefficient and costly to make change with litigation. This can be avoided if Congress does not defer to the NCAA to make the rules for NIL rights. Courts have found that the NCAA takes an overly restrictive approach to athletes' rights, with recent cases finding that the NCAA was so restrictive that it amounted to an "unreasonable" restraint on trade. This can be avoided by Congress simply legislating to provide rights directly to athletes and not deferring to the NCAA to craft the rules.

Finally, even if the NCAA legislated in this area and Congress did not provide an antitrust exemption, it is not at all clear that such rules would trigger antitrust scrutiny. Restoring athletes' NIL rights in the fullest way possible, with only narrow limits to these rights, could easily pass antitrust muster. Again, the NCAA is asking for a blank check remedy for a problem that has not yet manifested itself.

As a vocal supporter of athletic opportunities for women and girls, I am reviewing the potential impacts of proposed name, image, and likeness legislation on Title IX and women's collegiate athletics on the whole.

*Question 2.* What potential impacts on women's collegiate athletics should lawmakers study when considering name, image, and likeness legislation, and how can we ensure that any changes to NCAA athlete compensation rules will empower women athletes and strengthen women's athletics?

Answer. The biggest threat to women's college athletics is not NIL rights. It is the lack of budgetary discipline by athletic departments and—nearly 50 years after the law was passed—a persistent failure to take the steps necessary to fully achieve Title IX compliance. Restoring women athletes' NIL rights will strengthen women's sports by allowing women to promote themselves and their sport, and allow women to earn income from their sports, something that, due to few professional opportunities, most women currently cannot do. Congress should study the many ways women college athletes can earn income from their NIL and build brands and skills that will serve them in the future.

*Question 3.* What is the appropriate role for agents and what sort of oversight and regulation of agents should be established in name, image, and likeness legislation?

Answer. There is a role for agents and advisors to give advice, particularly to elite college athletes, on potential marketing deals. Existing NCAA regulations and Federal and state laws regulate athlete agents and could apply in this context.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER WICKER TO  
GREG SANKEY

*Question 1.* A part of our responsibility is to ensure that any NIL legislation protects student-athletes from deceptive business practices in this new market. What kinds of protections should Federal legislation provide to student-athletes engaging in NIL activities to make sure they are not taken advantage of or exploited?

Answer. The Southeastern Conference (SEC) agrees that Federal NIL legislation must include safeguards and protections for student-athletes. These protections are needed in several areas. First, Federal NIL legislation must provide for meaningful agent certification requirements, and where agent misconduct occurs, serious penalties must be administered by an independent entity. Second, Federal NIL legislation must protect student-athletes to the extent possible from entering unfair or unfavorable agreements, perhaps by providing review of the terms and conditions of NIL agreements by an independent third party for fairness and to ensure the agreements are legitimate and not being used as pay-for-play or inducements for a student-athlete to attend a particular institution. When student-athletes enter unfavorable agreements without the benefit of sound representation, they should have the ability to escape these unfair agreements at the conclusion of their college careers. Having a qualified, neutral entity charged with the duty to review agreements for fairness will provide additional protection for student-athletes, which they need and deserve.

*Question 2.* Do you believe universities in rural areas will face recruiting disadvantages compared to those in larger cities and states that may have larger media markets, if there are no safeguards in place?

Answer. Yes. Several SEC member institutions have expressed this concern to me.

*Question 3.* During the hearing on July 1, 2020 you discussed in your testimony how boosters should be prohibited from using NIL compensation as an inducement to recruit high-school students. Are there other ways Congress should consider regulating the involvement of boosters in college sports to prevent “play for pay” arrangements?

Answer. It is critical that NIL not serve as a means by which boosters and other third parties provide recruiting inducements to high school students or potential transfer student-athletes in exchange for their enrollment at a particular institution. The SEC realizes that a recruit might consider the particular circumstances of an institution (such as location, athletics success, academic reputation, support structure, fan base and potential NIL marketing opportunities) in making his or her choice of schools, but provision or promises of NIL compensation in exchange for attendance at a particular institution must be prohibited.

SEC has identified the following as key in prohibiting pay-for-play of student-athletes by boosters, including but not limited to the recruitment process, to the extent possible:

- Prohibit abuses by boosters:
  - No NIL agreements or offers to high school students prior to enrollment
  - NIL agreements may not be used to induce an enrolled student-athlete to remain at or transfer to an institution
- Student-athletes may not sell memorabilia items (uniforms, equipment, etc) until they complete their college careers, as promised or actual funds for such items from boosters would amount to pay-for-play.
- Student-athletes must actually perform contractual obligations to receive NIL compensation.

*Question 4.* Professor Koller stated in her written testimony that an antitrust exemption would give the NCAA “unchecked power to restrict athletes’ free market rights far more than necessary without any accountability.” Do you believe a more limited statutory antitrust exemption could be crafted to address Professor Koller’s concerns by limiting the NCAA’s power and providing appropriate oversight? If so, what would such a provision look like?

Answer. Yes. The SEC believes narrow and targeted liability protections are necessary in Federal NIL legislation. Contrary to remarks made by some during the July 1, 2020 hearing, we do not seek a broad antitrust exemption or antitrust immunity. Instead, we believe Federal NIL legislation should include a provision that protects the SEC, NCAA, other conferences and institutions from legal claims or liability for claims that arise from compliance with the Federal NIL legislation. To put into context, the NCAA, SEC and other Autonomy Conferences have been sued in two class actions in the past 6 weeks where student-athletes seek monetary dam-

ages for NIL-related claims. The current NIL rules have been validated as legal under antitrust laws in prior litigation, and if Congress chooses to allow student-athletes to receive NIL compensation, the SEC (and other conferences and NCAA) should not be subject to potentially significant legal exposure arising from the act of complying with Federal NIL legislation. This is the liability protection we seek. We do not seek a broad antitrust exemption or antitrust immunity.

The SEC also submits the written testimony of Matt Mitten, Professor of Law at Marquette University Law School and Executive Director of the National Sports Law Institute, on the issue of liability protection. Professor Mitten testified at the Senate Judiciary Hearing on July 22, 2020.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
GREG SANKEY

Many of the witnesses mentioned that they would support an independent legislative body or commission to oversee the implementation of NIL compensation for student athletes.

*Question 1.* If an independent commission were set up to oversee the process of NIL legislation, specifically in terms of recruiting, who would you recommend be appointed to the independent commission and why?

Answer. The Southeastern Conference (SEC) is open to having an independent commission or entity oversee the implementation of Federal NIL legislation. Of the many issues we have been discussing related to NIL legislation, the enforcement of provisions related to recruiting, and in particular, provisions that prohibit NIL compensation from being used as recruiting inducements to attend a particular institution, is the area the NCAA is best equipped to handle. If oversight of recruiting provisions is assigned to an independent commission, we believe the commission should be staffed with persons knowledgeable of college sports and the recruitment of student-athletes, who also are experienced in conducting investigations. Congress should also decide whether the commission will have the authority to compel testimony under oath and subpoena documents, as the absence of these powers often currently impedes the NCAA in its ability to investigate potential rules infractions.

If support grew for the independent commission to oversee the process of implementation, there would be many stipulations that come with that idea. One concern involves the appointment of the members, some of which may have ulterior motives to the success of the commission.

*Question 2.* Who would you recommend be put in charge of appointing the members of this independent commission?

Answer. The SEC believes the members of the commission should represent a breadth of experience, ethnic diversity and geographical location, and could be appointed initially by a Federal agency based upon the recommendations of the athletics conferences and the NCAA. It is important to avoid partisan politics and maintain objectivity, both in actuality and in public appearance, in the investigation process.

Whoever is appointed to lead the independent commission would have to enforce the rules set up for the athletic programs under the umbrella of the NCAA. With the recruiting scandals that have come out in the last couple of years, especially in college basketball, there would have to be strict enforcement of the legislation to prevent improper recruiting from boosters of the programs.

*Question 3.* What steps or consequences would you recommend putting in place to prevent boosters of an athletic program from using future endorsement promises as part of a recruiting pitch? How might legislation assist in keeping boosters away from the recruiting process?

Answer. It is critical that NIL not serve as a means by which boosters and other third parties provide recruiting inducements to high school students or potential transfer student-athletes in exchange for their enrollment at a particular institution. The SEC realizes that a recruit might consider the particular circumstances of an institution (such as location, athletics success, academic reputation, support structure, fan base and potential NIL marketing opportunities) in making his or her choice of schools, but provision or promises of NIL compensation in exchange for attendance at a particular institution must be prohibited.

The SEC has identified the following as key in prohibiting pay-for-play of student-athletes by boosters, including but not limited to the recruitment process, to the extent possible:

- Prohibit abuses by boosters:

- No NIL agreements or offers to high school students prior to enrollment; and
- NIL agreements may not be used to induce an enrolled student-athlete to remain at or transfer to an institution.
- Student-athletes may not sell memorabilia items (uniforms, equipment, etc) until they complete their college careers, as funds promised or actually provided by boosters for such items would amount to pay-for-play.
- Student-athletes must actually perform contractual obligations to receive NIL compensation.

The enactment of NIL compensation legislation will make it extremely important that the relationships between athletic programs and the legislative body remain positive to prevent issues from occurring.

*Question 4.* How closely do you envision schools working with an independent commission to come up with the proper definitions regarding use of NIL to deal with ambiguous instances to set precedent going forward?

Answer. We envision universities and their conferences working closely with such a commission to establish proper definitions and framework to address ambiguous or difficult areas. We have found through the NCAA process that often it is easier for a conference to canvas its members on certain issues, determine the prevailing view of those members and then speak on their behalf with a single voice.

*Question 5.* A change of this magnitude in athlete compensation is sure to change the relationship that student athletes have with their schools. Given the NCAA's stance on compensating student athletes in the past, do you envision schools taking issue with student athletes receiving compensation for use of their NIL and pursuing legal action against their student athletes or another relevant party?

Answer. We do not envision our universities pursuing legal action against student-athletes. One potential exception to this statement is related to the use of university trademarks and logos without proper consent or authorization.

It is unknown what disclosure requirements will be implemented or what the consequences will be for failure to comply.

With regard to "another relevant party," we assume you mean legal action against third parties for misconduct toward student-athletes related to NIL activities. If this assumption is correct, we do not anticipate universities being involved in those disputes, as the universities will not be parties to those agreements, and student-athletes will choose their own professional representation and be responsible for handling issues related to NIL activities.

Over 30 states have put legislation forward for student athlete compensation. Some of those pieces of legislation, such as what has been introduced in Alabama or Massachusetts, have allowed for insurance and medical coverage.

*Question 6.* Would you support a section of potential NIL legislation to include health insurance and medical coverage for student athletes provided by the NCAA or from ticket sales revenue?

Answer. The SEC is not able to answer this question yes or no without more information, but we are open to discussion of extending existing health insurance and medical coverage for student-athletes. Contrary to statements made during the July 22, 2020 hearing of the Senate Judiciary Committee, our institutions (and other institutions in Autonomy Conferences) are already required to provide medical care for all athletically-related injuries from the time a student-athlete enrolls until two years after he or she separates from the institution (*i.e.*, transfers to another institution, graduates, eligibility expires, or drops out of school). This extended care also includes mental health services.

*Question 7.* Would you support a student athlete trust fund created from ticket sale revenue to assist athletes who have undergone career ending or career altering injuries?

Answer. The SEC is not able to answer this question yes or no without more information about how the trust fund would function but does not support a system where disability or similar benefits are dependent on or tied to ticket sale revenues. Student-athletes currently are covered under the NCAA's catastrophic injury insurance coverage. In addition, SEC universities already provide support for student-athletes who suffer such injuries. For those who suffer a career-ending injury, under NCAA rules, these student-athletes maintain their athletics scholarships, as well as medical care for two years after they separate from the university. The same is true for student-athletes who suffer injuries that alter their careers. Institutions also are allowed to provide funding for disability and loss of value insurance policies for elite student-athletes in certain sports.



Given the unprecedented nature of this legislation, and the fact that an independent commission has never been formed by the NCAA, there are many questions to address. Given the statements made in the hearing, you would support Federal legislation as opposed to individual state legislation.

*Question 8.* What would be your primary concerns of formal legislation creating an oversight commission overseeing providing students with greater NIL rights?

Answer. Without knowing the composition or authority of the independent commission, our concerns would be to ensure that commission members are knowledgeable of and have meaningful experience in college sports and matters related to NIL. We also would be concerned how the commission members are selected and want protections to avoid partisan or politicized appointments. Finally, we would be concerned about the scope of government presence and authority on an ongoing basis in college sports.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
GREG SANKEY

As you may know, an Arizona State University swimmer, Grant House, is a named plaintiff in a Federal antitrust lawsuit regarding athletes' ability to be compensated for their name, image, and likeness. The issue of antitrust liability protections was raised multiple times during the hearing and has been referenced as a possible provision in Federal legislation.

*Question 1.* In your opinion, are antitrust liability protections a necessary aspect of Federal legislation related to NCAA athlete compensation? Please explain your position. If you believe that liability protections should be included, how broad should the liability protections be?

Answer. Yes, the SEC believes limited liability protection is necessary in Federal NIL legislation. Contrary to remarks during the July 1, 2020 hearing of the Senate Commerce Committee and the July 22, 2020 hearing of the Senate Judiciary Committee, we do not seek a broad antitrust exemption or antitrust immunity. Instead, we ask that we not be subject to legal claims or liability for claims that arise from compliance with the Federal NIL legislation. To put into context, the NCAA, SEC and other Autonomy Conferences have been sued in two class actions in the past 6 weeks where current and former student-athletes seek monetary damages for NIL-related claims. The current NIL rules have been validated as legal under antitrust laws in prior litigation, and if Congress chooses to allow student-athletes to receive NIL compensation, the SEC (and other conferences and NCAA) should not be subject to potentially significant legal exposure arising from complying with Federal NIL legislation. This is the liability protection we seek. We do not seek a broad antitrust exemption or antitrust immunity.

As a vocal supporter of athletic opportunities for women and girls, I am reviewing the potential impacts of proposed name, image, and likeness legislation on Title IX and women's collegiate athletics on the whole.

*Question 2.* What potential impacts on women's collegiate athletics should lawmakers study when considering name, image, and likeness legislation, and how can we ensure that any changes to NCAA athlete compensation rules will empower women athletes and strengthen women's athletics?

Answer. This question is particularly important and difficult to answer without knowing the structure of the NIL system in the future. The collegiate athletics model is unique in many ways. First and foremost among these traits is the fact that sports programs are not run as individual businesses, with only those sports generating net revenue continuing to exist. In the SEC, football, men's basketball and some in baseball are the only programs that consistently produce revenue (from different sources) that exceeds expenses. The revenue from these sports provides financial support and opportunities for the remaining programs (women's sports and non-revenue men's sports). As athletics revenues have increased, so have the support and opportunities provided for women's sports. It is critical that these advances in women's sports be preserved as part of collegiate athletics.

Against this backdrop, we offer a few observations, some perhaps less speculative than others:

- First, if institutions are allowed to make NIL payments directly to student-athletes, it seems likely that these payments will primarily be made to student-athletes in higher profile sports that generate revenue (football and men's basketball). It seems inevitable that these payments will reduce the financial support for remaining sports programs, including women's sports, or perhaps result in the elimination of some sports programs in a manner that complies with

Title IX. This is true whether the NIL payments by institutions are subject to Title IX or not, as under either scenario, there likely will be significant impact on the institutions' athletics budgets.

- We believe institutional NIL payments to student-athletes will be likely to damage fan interest in collegiate athletics, as the differentiation between college and professional sports will be decreased. It is important that institutions be prohibited from making NIL payments directly to student-athletes.
- The same threat to Title IX advances exists if boosters and third parties are allowed to use NIL compensation as inducements for a student-athlete to play sports at a particular institution, as this is an indirect form of pay-for-play. Although not directly impacting funding for all athletics programs as institutional NIL payments, it seems likely that payments by boosters to student-athletes will decrease their donations to support athletics programs, reducing the funds available to support all programs, including women's sports.

The uncertainty surrounding the COVID-19 pandemic has already resulted in numerous Division I members discontinuing sports programs, thereby reducing opportunities for young people to participate as student-athletes at a Division I member university. We do not want to experience additional sports being dropped and see even more opportunities lost.

*Question 3.* What is the appropriate role for agents and what sort of oversight and regulation of agents should be established in name, image, and likeness legislation?

Answer. Many agents have demonstrated a long history of complying with regulatory expectations and properly interacting with student-athletes. We also have seen numerous circumstances of agents—or the representatives of agents—inserting themselves into the life of a talented high school student-athlete, without regard to legal or ethical considerations. Given the meaningful concerns present, I see merit in having such an entity serve in some of these oversight roles, particularly in collecting NIL agreements. I envision NCAA enforcement being responsible for enforcement of the prohibitions on institutions paying NIL compensation directly to student-athletes and prohibitions on boosters and other third parties using NIL compensation as inducements to attend or remain at an institution. The envisioned neutral entity may be expected to enforce the procedural requirements of Federal NIL legislation (such as disclosure requirements and certification requirements for agents and advisors). While I have serious concerns about the impact of widespread introduction of agents into collegiate athletics, I believe it to be inevitable, as many student-athletes will want to have individual representation of their own choosing. Protecting student-athletes from unscrupulous agents will be a critical component of any Federal NIL legislation.

We must be creative in developing meaningful protections for student-athletes to prevent exploitation by agents, advisors and other third parties. We need meaningful agent certification requirements, and where agent misconduct occurs, serious penalties must be administered by an independent entity. Whether this is performed by an existing or newly created Federal body, or by the NCAA or conferences, is open for discussion. Protecting student-athletes from entering unfair or unfavorable agreements is an additional priority that must be addressed through Federal legislation. When student-athletes enter unfavorable agreements without the benefit of sound representation, they should have the ability to escape these unfair agreements at the conclusion of their college careers. Having a qualified, neutral entity charged with the duty to review agreements for fairness will provide additional protection for student-athletes, which they need and deserve.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
ERIC J. WINSTON

Many of the witnesses mentioned they would support an independent legislative body or commission to overview the implementation of NIL compensation for student athletes.

*Question 1.* If an independent commission were set up to overview the process of NIL legislation, specifically in terms of recruiting, who would you recommend be appointed to the independent commission and why?

Answer. In our view, the primary group to look to when considering these positions would be former collegiate athletes, coaches, and athletic directors that have no current affiliation with the NCAA. This would allow them to be close enough to the subject matter without being too close to make the correct call. That group should be supported by thoughtful executives and industry professionals with a bonus consideration given to those who participated college athletics themselves. A

viable pool of candidates must also include other thought leaders in the space that are not beholden to schools, conferences, or the NCAA. Why? Because this is an interesting space that requires the knowledge and experience within it to truly understand the nuances of it.

If support grew for the independent commission to overview the process of implementation, there would be many stipulations that come with that idea. One concern involves the appointment of the members, some of which may have ulterior motives to the success of the commission.

*Question 2.* Who would you recommend be put in charge of appointing the members of this independent commission?

Answer. While we do not have a specific person or people in mind, much like the profile listed above, the best fit would be an executive with experience participating in sport as an athlete. It is important the person chosen is not, and has not been, involved with the NCAA, its board of governors, or its advisory committees.

Whoever is appointed to lead the independent commission would have to enforce the rules set up for the athletic programs under the umbrella of the NCAA. With the recruiting scandals that have come out in the last couple of years, especially in college basketball, there would have to be strict enforcement of the legislation to prevent improper recruiting from boosters of the programs.

*Question 3.* What steps or consequences would you recommend putting in place to prevent boosters of an athletic program from using future endorsement promises as part of a recruiting pitch? How might legislation assist in keeping boosters away from the recruiting process?

Answer. There must be a robust system of checks and balances for booster activity. Such a framework may be built on the ground already established by the Sports Agent Responsibility and Trust Act. The framework would require boosters to live under the same standards as professionals, such as contract advisors and financial advisors, that seek to recruit these athletes. Consequences should vary based on the level of activity and the scope of the harm. Again, enhancing SPARTA may provide fertile ground for such a framework.

The enactment of NIL compensation legislation will make it extremely important that the relationships between athletic programs and the legislative body remain positive to prevent issues from occurring.

*Question 4.* How closely do you envision schools working with an independent commission to come up with the proper definitions regarding use of NIL to deal with ambiguous instances to set precedent going forward?

Answer. If established, the Commission should set the rules and a system of arbitration to handle disputes. The Commission may also need legal authority to offer opinions for clarity. The space we are moving into will have emerging technologies and relationships—some of which may move, grow or develop faster than the regulatory process. I might argue it would behoove all those involved in the process to have a living and breathing organization that may need to grow and evolve with the space it is servicing. This would also allow outside practitioners to learn and grow with the space as well.

*Question 5.* A change in athlete monetization of this magnitude is sure to change the relationship that student athletes have with their schools. Given the NCAA's stance on compensating student athletes in the past, do you envision schools taking issue with student athletes receiving compensation for use of their NIL and pursuing legal action against their student athletes or another relevant party?

Answer. In our view, this should be a positive and welcome change. Students who participate in athletics should have the same access to their earning ability for their skills as other students on the same campus. Your work in this space will help that happen. Do we envision schools taking issue with that or raising legal actions? Hope springs eternal that they will be true to their word and that we have moved past such actions, but history seems to demonstrate some may not be willing participants.

Over 30 states have put legislation forward for student athlete compensation. Some of those pieces of legislation, such as what has been introduced in Alabama or Massachusetts, have allowed for insurance and medical coverage.

*Question 6.* Would you support a section of potential NIL legislation to include health insurance and medical coverage for student athletes provided by the NCAA or from ticket sales revenue?

Answer. Yes. Student-athletes deserve to have their health care covered. Every day student-athletes strain and push their bodies to compete at the highest level possible. Because of this fact, student-athletes are more likely to have acute physical injuries, and face other medical issues (e.g., mental health problems related to the

combined pressure from school *and* sports) that need to be treated. Further, the absence of health insurance likely can put a strain on the athlete's family that is unwarranted and unfair to them.

*Question 7.* Would you support a student athlete trust fund created from ticket sale revenue to assist athletes who have undergone career ending or career altering injuries?

*Answer.* Yes. Student-athletes deserve to have their injuries treated regardless of when that treatment occurs. Further, several injuries, like the knee injury I suffered in college, will probably require a replacement at some point. The colleges should help. Finally, for those athletes who sustained injuries in college, and lost the opportunity to generate revenue during a full college career like their teammates, I believe they should be eligible to earn in some way, too.

Student athletes will have their lives both in college athletics and potentially their image on campus changed considerably with this type of legislation. That would likely require looking at this legislation from their viewpoint in more depth.

*Question 8.* What should be taken into consideration to address any concerns to student athlete wellbeing and what protections should be put into place?

*Answer.* Students who use their name, likeness, and image for monetary gain already exist on campus. Athletes are usually well marketed and known already on and around their campus. Additional protections and safeguards may be necessary for both populations. Legislation should include consideration for the general safety of students with an emphasis on protecting the rights of privacy as well as the rights of publicity. The main consideration should be what is in the best interest of the student within this educational environment. Consideration should be given to protecting the student population from harm or being taken advantage of by others.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO  
ERIC J. WINSTON

In your testimony, you discussed your views on allowing student-athletes to benefit from their NIL.

*Question.* In your view, what are the most important factors to consider in assessing proposals to enable college athletes to receive compensation for their NIL?

*Answer.* I would start my consideration through the lens of these four questions—How does it treat students? How many may participate? What happens if they do well? What happens if they do not? Were it me, I would focus on rebuffing any restrictions that prevent athletes from receiving the market value of their NIL. For example, preventing schools from creating restrictive sponsor categories that are off limits from working with athletes if those same companies are working with the schools. This would create another system of restriction on the rights given to the athletes if not properly moderated or eliminated.

I might also take steps to maximize the number of students who may participate individually and through a group licensing vehicle. Some of the eligible students will choose to take things to the next step by working hard to build their own brand that is valuable in the marketplace. If they are willing to dedicate themselves to that, they should be rewarded. With respect to other students who may choose to focus simply on working hard and winning games, I believe they should also be able to participate in the upside potential captured within the group licensing structure.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
ERIC J. WINSTON

As you may know, an Arizona State University swimmer, Grant House, is a named plaintiff in a Federal antitrust lawsuit regarding athletes' ability to be compensated for their name, image, and likeness. The issue of antitrust liability protections was raised multiple times during the hearing and has been referenced as a possible provision in Federal legislation.

*Question 1.* In your opinion, are antitrust liability protections a necessary aspect of Federal legislation related to NCAA athlete compensation? Please explain your position. If you believe that liability protections should be included, how broad should the liability protections be?

*Answer.* Anti-trust exemptions should not be given to the schools. They are not needed and give the schools the ability to restrict a specific group of students' earning power in the free market in a way they would not attempt to restrict other students on the same campus. The schools could also restrict the availability of vendors

an athlete could do commercial activity with and that would cause a serious chilling effect on the market.

As a vocal supporter of athletic opportunities for women and girls, I am reviewing the potential impacts of proposed name, image, and likeness legislation on Title IX and women's collegiate athletics on the whole.

*Question 2.* What potential impacts on women's collegiate athletics should law-makers study when considering name, image, and likeness legislation, and how can we ensure that any changes to NCAA athlete compensation rules will empower women athletes and strengthen women's athletics?

Answer. Women students will not be harmed by allowing NIL in any way. In fact, it may very likely have the opposite effect. Much like the current exposure the WNBA and its players are receiving as the world enjoys their return to sport, so too is the world clamoring for more access to women college athletes. Title IX dictates how and where schools will spend the revenue it produces. An athlete's NIL compensation will not run through the school.

Further, the highest earning potential many women athletes have is during college days because they do not have the same number of professional opportunities in our American marketplace. Lifting the unfair ban placed on women college athletes will allow them to earn compensation for their abilities at a time when it can be both helpful and beneficial to all parties. For example, a volleyball player should be able run a camp, do a promotional activity with a ball maker, or negotiate some sort of apparel deal should she chose. She may also be a great math student and could potential start a streaming podcast about math and court advertisers like any other student on the campus. Both should be viable options for the athlete and the math major. Schools have no place restricting either.

*Question 3.* What is the appropriate role for agents and what sort of oversight and regulation of agents should be established in name, image, and likeness legislation?

Answer. Agents are well regulated by the various players' organizations and a myriad of state laws dedicated to monitoring their activity. If there is a desire to do more, enhancing the protections available under SPART seems to be a good starting point.

