

NCAA STUDENT ATHLETES AND NIL RIGHTS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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JUNE 17, 2021
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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NCAA STUDENT ATHLETES AND NIL RIGHTS

THURSDAY, JUNE 17, 2021

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

The Committee met, pursuant to notice, at 10:04 a.m. in room SR-253, Russell Senate Office Building, Hon. Maria Cantwell, Chairwoman of the Committee, presiding.

Present: Senators Cantwell [presiding], Klobuchar, Blumenthal, Baldwin, Duckworth, Tester, Rosen, Luján, Hickenlooper, and Moran.

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

The CHAIR. Good morning. The Commerce, Science, and Technology Committee will come to order.

Thank you all for being here. This morning we have a distinguished panel to talk about the continuation of a very important issue, that is, changes to name, image, and likeness for athletes across the United States of America.

I welcome our panel to continue the discussion about how important this issue is to athletes across the United States. Last week we heard from legal experts from the NCAA coach and other individuals who talked about this, but we also heard, as Mr. Gilmore said, there is so much more to be done.

Congress cannot pass an NIL law that just ignores the rights of students, it also has to hear, I believe, about the experiences in health care and scholarship that make important rights issues so central to this debate.

I'm submitting testimony from Washington State Football Player Dallas Hobbs who outlines some of these issues, particularly as it related to health care during the COVID crisis, and also Sedona Prince, an Oregon basketball player, who was left with thousands of dollars in medical bills after an injury and also pointed out the inequities in training facilities during the NCAA tournament.

[The information referred to follows:]

PREPARED STATEMENT OF DALLAS HOBBS, FOOTBALL PLAYER,
WASHINGTON STATE UNIVERSITY

Dear Chair Cantwell, Ranking Member Wicker, and members of the Senate Commerce Committee,

My name is Dallas Hobbs I am currently a member of the Washington State University football team. I recently graduated with a degree in Digital Technology & Culture, as well as a degree in Fine Arts. I am looking to pursue a master's in Business Administration while playing my two remaining years. Here at WSU, I have

been able to be a part of many student-athlete leadership groups. I am the co-founder of the Black Student-Athlete Association (BSAA), a Football Representative, and an Executive Board member on the Pac-12 Student-Athlete Advisory Committee (SAAC). I am also the WSU representative for the Pac-12 Student-Athlete Leadership Team (SALT) and a Pac-12 representative for the NCAA DI Football Student-Athlete Connection Group (SACG). This last summer I was also a leader and a part of the We Are United group that consisted of about 500 Pac-12 football players who were fighting for broad-based reforms in college athletics. These included rights and freedoms related to athlete compensation for use of our name, image, and likeness (NIL), health & safety, and a variety of other meaningful issues.

The push for NIL and other reforms is needed. I am in a state that doesn't have a NIL law so athletes like myself and others in Washington will be without the same freedoms that athletes in NIL states have. This is happening all around the country, beginning July 1st a variety of states will have an athlete that is ahead of others. This will create a major divide in college athletics and changing the experiences of the student-athletes. Congress needs to create and pass a bill that would allow all student-athletes to obtain NIL freedoms.

Securing NIL freedoms for every state would help increase student-athletes experiences. NIL freedoms would create a variety of different ways student-athletes could be more successful, increase value for themselves and their sports, give back, showcase their hobbies, and benefit in other ways. We would see a new side of athletes that would be so amazing and eye-opening. It would show that there is a lot more to an athlete than we normally see. Expressing and learning new skills would create so much positive change in student-athletes lives, as well as others. Younger athletes that look up to college athletes would see that you could be successful in a variety of skills and/or hobbies outside of athletics. They would see college athletes who are artists, musicians, designers, community leaders, and technology experts. We would see an even bigger impact on the next generation of athletes.

Many athletes would be very appreciative of their new freedoms. I am a multi-media artist, content creator, podcaster, and owner of multiple businesses. The issue is I can't promote my ventures in the same way everyone else in those areas can because I am a college athlete. For the last 4 years, I have been restricted and held back from professional growth in my fields. The NCAA says it wants us to be treated like the college students around us, but NCAA rules restrict us from having the same freedoms as our peers. We're restricted or prohibited from promotional activity, from participating with various partners or making certain investments, and many other things that a normal student can do. This seriously harms our growth and experiences as individuals, professionals, and students because we lack the full freedoms everyone else has.

As I had mentioned earlier, I helped lead about 500 Pac-12 FB players to demand fair treatment before last season. NIL freedoms were among those demands but so were other vital issues like bringing forth the enforcement of health and safety standards. We were not able to do much about health and safety standards using our platforms, but we were able to shed a very big light on the lack of enforcement. Currently, there are no standards enforced to ensure college athletic programs are not putting athletes in harm's way. This lack of enforcement has created a lot of issues for many athletes around the country.

This summer, as a part of the We Are United players movement, I was able to hear so many stories of athlete mistreatment around the country throughout various conferences and across both men's and women's sports. Before that summer, I had no clue that so many have had experiences that compromise their health and safety. Hearing these stories personally was eye-opening and concerned me because I only heard from only a fraction of the college athletes in the country. To this day it is the reason I will continue to fight for the athletes I have heard from and the athletes that don't have a voice or platform to speak from. It hurts to know that so many athletes are struggling and have been mistreated. From the outside looking in everything looks like it is going great but there is a critical issue that is ruining and harming college athletes' experiences and bodies. The enforcement of health and safety is one of the biggest things I am fighting for now and every day I have to hear new experiences that will push me harder to see that change comes soon. A lot of college athletes have been hurting for a while but now we are finally getting platforms and allies to help push our voices out there. Change and reform are needed. We need strict enforcement of health and safety standards to ensure all athletes will have a safer experience than those before them.

In addition, I would like to express a few of the major stories that are already out there and involving health and safety standards. My teammate, Tyler Hilinski's death and the discovery that he had chronic traumatic encephalopathy (CTE)—is a reminder of the risk college athletes face in football and other contact sports. CTE

has caused reduced cognitive function, depression, impulse control, and has been implicated in numerous suicides.

Washington State is not to blame for Tyler's death but it sheds light on the issues of traumatic brain injury and what can happen from them. The NFL has stated plainly that CTE is linked to football and studies show that is associated with traumatic brain injury.

Stories like this show that we need to be very aware and take major precautions for any instances where their major collisions, hits to the head, and concussions. We need to make sure that doctors and athletic trainers cannot be retaliated against for making a medical decision that's in college athletes' best interest. Several surveys from the National Athletic Trainers Association show trainers are often pressured by coaches to return players with concussions to the same game. The NCAA has been clear that it will not punish a coach for doing so. Another issue we see, players in the PAC-12 and across the Nation have been hospitalized with life-threatening conditions like heart illness and rhabdomyolysis due to hazardous work-out conditions. We all read headlines about the tragic heart illness death of Maryland FB player Jordan McNair and still, nothing has been done. As I had said earlier, I have heard so many stories of athletes going through traumatic experiences, but they had nowhere to go to share these experiences. I wish I could talk about a lot of them because they would shed light on so many issues happening in college athletics around health and safety. Athletes are scared to share what they are going through because they believe they will face repercussions or more harm from those above them. This is why we need the enforcement of health and safety standards to help stop these traumatic experiences. No athlete should have to go through experiences that have them scared enough that they won't share. Athletes deserve better and we need to see better as soon as we can. I believe if Congress doesn't address it, many more college athletes will needlessly develop traumatic brain injury and CTE, endure sexual abuse, and die from hazardous conditions.

Furthermore, the conferences are now moving toward a playoff system that will add games. USA Today says it could lead to over \$2 billion in new revenue but will increase injuries for us football players. I believe this is an amazing opportunity for all of football and every athlete wants to experience this growth. But this will make the enforcement of health and safety standards that much more important. The NCAA has made clear that it won't enforce health and safety standards. Pac-12 Commissioner Larry Scott claimed that the PAC-12 was incapable of enforcing health and safety standards in a meeting with me and other Pac-12 football leaders of the We Are United Players Movement.

I've had multiple injuries as well surgeries and I am grateful that WSU is paying for all my medical expenses. But this isn't the case for all athletes, NCAA rules allow schools to stick players with their sports-related medical bills. I have also heard of many players across the country that have been mistreated and misdiagnosed on injuries that have cost them time or even their careers. Congress should make sure players don't have to pay for sports-related medical expenses as well as creating some system that would allow for a better second opinion without cost.

I believe that it is also very important to make sure Congress corrects the NCAA's discriminatory treatment against women as was exposed in the NCAA's basketball, softball, and sand volleyball tournaments.

I've been encouraged to see many lawmakers and the media criticize the NCAA for its inaction while athletes are abused and killed in hazardous workouts. What would it say if Congress does the same? If Congress does the NCAA's bidding by passing a narrow NIL bill driven mainly by concerns of recruiting advances and disadvantages, it will become complicit in the physical and mental harm so many athletes endure in NCAA sports. It will signal its approval of the discriminatory treatment of female athletes nationwide. On behalf of so many college athletes that have never truly had a voice in their own well-being, I'm imploring members of this committee to do the right thing and address these key issues along with NIL freedoms by July 1st.

DALLAS HOBBS.

PREPARED STATEMENT OF SEDONA PRINCE, BASKETBALL PLAYER,
UNIVERSITY OF OREGON

Senator Cantwell and Members of the Committee,

My name is Sedona Prince and I am a current college athlete competing for the University of Oregon women's basketball team. I am also proud to represent the hundreds of thousands of other Division 1 student-athletes like me in a class action

lawsuit that was filed last summer against the NCAA for its rules that unfairly prohibit college athletes from monetizing their name, image, and likeness rights. Thank you very much for the opportunity to offer testimony today on this important issue.

For student-athletes, the ability to capitalize off our NILs while we are in college would allow us to finally realize the benefits of our achievements in a way that the NCAA has long prevented us from doing. It would give us the chance to earn money that we could use to fund our future goals, support our families, cover the cost of expensive medical bills that many of us have been left with because of sports injuries, and pay for the countless other expenses that come along with becoming a young adult.

Our classmates are already making this money. They are signing endorsement deals on Instagram, earning ad money from videos they've posted on YouTube, and even working for our schools as paid "campus influencers" recruiting new students at promotional events and on social media. Our coaches and athletic departments are also making this money through their own licensing, sponsorship, and endorsement contracts—and they make ad money when videos of our best performances go viral on social media. Our fellow college athletes competing in the NAIA are even making this money because their association allows it, and I have heard great stories about many NAIA athletes who have benefitted from NIL, especially on social media. Yet, although we share the same fundamental rights as other students and all individuals, NCAA athletes cannot take advantage of the same opportunities solely because NCAA rules prohibit us from doing so.

I have personally worked very hard in the last few years to grow my following on social media but, because of NCAA rules, I cannot earn a cent on the platforms I have built. I can't get sponsored on Instagram, for example, despite the fact that I already have more than 240,000 followers. And I would lose my college eligibility if I accepted any of the money that my TikTok profile has generated through the TikTok Creator Fund—*money that I have already earned*. I know of many other student-athletes, including some of my own teammates, who have been forced to turn down similar opportunities that no one else would think twice about taking.

In our lawsuit, we are just fighting for the same rights that all other college students already have, and Congress should not pass any bill that would limit our ability to do that or that would give the NCAA a free pass from legal liability for the enormous profits they have reaped at our expense. Congress does not need to give the NCAA any antitrust exemption in order to allow college athletes to benefit from their NIL rights, and there is no justification to providing them with immunity from accountability for the financial harm they have caused athletes when they continue to bring in millions upon millions of dollars every year. For student-athletes, college is the time when our NILs are most valuable and it is also the time in our lives when we are most likely to need all the financial help we can get. To deprive us of the ability to even try to recover some of the NIL money we were denied would be completely unjust.

Aside from the money, student-athletes have also been forced to miss out on important educational opportunities that our peers are taking advantage of right now—opportunities to learn about entrepreneurship, marketing, branding, financial management, and how to make smart business decisions. College is supposed to be about learning and developing the skills we're going to need to be successful in life after graduation, and the value of our education should be no less important than other students on campus. The NCAA should no longer be able to deny us any educational opportunity that other students have.

One thing I have heard some people say is that NIL must be restricted or it will only benefit the star football and men's basketball players. But as far as I can see this could not be further from the truth. I know of so many athletes in other sports who have built impressive social media followings and could definitely take advantage of valuable NIL opportunities. In fact, the ability to monetize our NIL rights in college is especially important for "non-revenue" sport athletes and female athletes like myself who have more limited professional opportunities down the road. Social media also gives us access to the world around us and allows us to connect with friends and family back home, teammates, coaches, professors, our peers on campus, and fans. The way we are able to engage with our communities impact the value of the experiences we have as college athletes, and I have made it my own personal goal to use the platform I am able to build on social media to have a voice on issues that are important to me, including student-athlete rights issues. Congress should be sure to consider gender equity and, for female athletes in particular, I believe NIL opportunities are critical for us to bring increased attention and publicity to women's sports and to have a chance at creating a better, more gender-equitable future for the girls coming up behind us—something that the NCAA has failed time and time again to prioritize.

Another thing I think Congress should think twice before doing is allowing the NCAA or schools to challenge the amount of NIL compensation that student-athletes are receiving. If the amount of compensation we get can be challenged, I strongly believe that it will discourage many student-athletes from trying to do NIL deals at all. If I was offered an NIL opportunity and the NCAA or a school challenged the amount of money I was getting, I would probably just give up the opportunity because I would be too afraid of losing my eligibility or having to pay the money back later, or being punished or retaliated against in some other way if I lost (or possibly even if I won). I think that most other athletes would feel the same way. With all of the stress we are already under with our full-time athletic and academic obligations, student-athletes should not also have to worry about whether our ability to negotiate a particularly good NIL deal might get us in trouble, and we should not be expected to go up against the money, power and influence of the NCAA alone. If NIL deals can be challenged, I think it is important that athletes are provided a lawyer to look out for us and to help us understand our rights in the process.

Thank you again for your attention to this important issue and your concern for college athletes. As you consider any potential legislation, I ask you to please think carefully about the impact that it will have on former, current, and future student-athletes. If your goal is to protect our rights and look out for our wellbeing, which I believe that it is, you should ensure that any NIL bill safeguards our ability to monetize our NILs free of unnecessary limits and restraints in the same way that every other student and every other person in this country has the right to do. Above all else, no legislation should sacrifice college athletes' rights and freedoms to protect the NCAA's bank account.

Sincerely,

SEDONA PRINCE.

The CHAIR. We're here today to welcome a very distinguished panel and I want to start by saying, Mr. McNair, I'm so sorry about the loss of your son Jordan. Thank you. My sympathies are with you and your family. I can't imagine the pain that you must feel from that loss, but I so appreciate you taking the time to advocate for a new law and thanks to you, Maryland has one. So we certainly appreciate your commitment to this issue.

We will also hear from a variety of witnesses who will tell us about the challenges they face in today's world of the NCAA athlete.

Kaira Brown, who has underscored the importance of NIL and leveling the playing field for female athletes and how this can help build leadership skills for female athletes, and we're going to hear from Sari Cureton, who also is going to tell us about the athletes and the challenges they face.

One of the things clear is that all of you want to provide mentorship and yet the challenges of providing those mentorships when we have the current rules in place make that very challenging.

I also want to welcome Ms. Chenault. Thank you so much for your leadership. I think your testimony more than others really outlines the challenges of NIL. When someone such as yourself can be a voice attracts so much attention and yet then be limited by how you could use that.

We have many challenges to face in getting legislation passed. I think some of the issues that you'll bring up in the hearing today about schools that do have a scholarship certainty and yet there seems to be still uncertainty to that plight.

There still seems to be health care but a lack of mental health in the system. There seems to be changes that we can make that I think would help us move forward on providing student athletes the kind of certainty not just on their rights, not just on their

health care and scholarship, but improve the experience for women in sports today.

So thank you all very much for being here and look forward to hearing your testimony today.

I want to thank my colleagues for being here. I don't know if anybody else wants to say anything at this moment or not.

OK. If not, we'll start with you, Ms. Chenault. Thank you so much.

**STATEMENT OF CHRISTINA CHENAULT, FORMER DIVISION 1
ATHLETE, UNIVERSITY OF CALIFORNIA, LOS ANGELES**

Ms. CHENAULT. Chairman Cantwell, Ranking Member Wicker, and Distinguished Members of the Committee, thank you all for inviting the opportunity to amplify the voice of the athlete within these conversations by allowing me to testify this morning.

This testimony is a direct reflection of my experience and the experience of my former colleagues who are current and former college athletes from across the Nation.

My name is Christina Chenault. For the past 6 years I've been a heptathlete on UCLA's Track and Field Team where I received not only my Bachelor's but a Master's degree.

During this time I served as captain, was named Second Team All American, and became Top 10 in all-time school history.

Beyond the track, I created a sports media platform, founded UCLA's Sports Business Association, and co-founded the Black Athlete Alliance.

From my resume, these years could have been the best years of my life, but instead they were overshadowed by injustice, trauma, and inequity. This experience is not an outlier but instead is simply a product of the current system of the NCAA that is riddled with financial, physical, and educational exploitation.

Specific to this hearing, I will outline my testimony in order of NIL health and safety and educational outcomes.

Within NIL, it is important to first recognize that the landscape of collegiate athletics has become completely transformed economically since its origins. College sports has become a multibillion dollar business that has a financial monopoly over its commoditized commodified athletes.

As an athlete entrepreneur, I was not able to monetize my sports media platform. This restriction disproportionately affects low-income, female, and revenue-producing athletes.

As a female athlete in the sport of track and field that has no professional American league, my window of opportunity to capitalize off my name, image, and likeness during the peak time of my athletic career was completely stripped away.

California is currently granting wide NIL and representation freedoms that I believe all athletes should have access to.

In regards to health and safety, some athletes in my program had experienced five coaches in 5 years in which some coaches reduced the scholarship of existing athletes to recruit their own athletes.

Unclear contractual regulations enabled power dynamics like this that put an athlete's worth on a conveyor belt. Scholarship reduc-

tions can be a significant cost that can become unmanageable, especially with limited rights to their name, image, and likeness.

Within mental health, I have seen coaches turn down sports psychologists because they were considered out of budget. However, later coaching staffs with the same budget were able to bring in sports psychologists.

This issue of mental health should not have been left up to the opinion of coaches. This topic of mental health is very dear to me because in my fourth year a friend and fellow college athlete at my institution committed suicide.

This traumatic experience reinforced that health and safety in college sports is a matter of life and death. I couldn't help but wonder if this could have been avoided if there were more resources, policies, and outlets put in place supporting the psychological health of athletes.

Another friend of mine was asked to compete for the greater good of the team before getting an MRI, despite physical symptoms of a reinjured meniscus. It was not until she brought in her parent that she was spoken to and treated appropriately. The MRI diagnoses after the competition revealed a career-ending injury that forced her to medically retire.

This experience shows the political posturing institutions and athletic programs will take if health and safety standards are not enforced.

The College Athlete Bill of Rights introduced by Senators Booker and Blumenthal would enforce these standards.

Last, when it comes to educational outcomes, there's a substantial educational tracking occurring within the collegiate athletic space; namely, athletes in college are predominantly housed in one to three majors at school which are socially considered athlete majors.

Despite the NCAA's claimed educational tradeoff, many athletes are limited in their degree choice, which later directly limits these athletes' professional career paths and trajectory.

In closing, I share all of this today in hopes that the true athlete voice is heard and regarded for. In a landscape where fear and power discourage the servicing of athlete stories, I come forth as one with the hope and confidence of 10,000.

In all, these institutions should be held accountable and the college athletes should be protected at greater heights.

From the protection of athlete rights, health and safety precautions, and educational outcomes, I believe that change here is necessary and change here is possible.

Thank you all for your time and consideration.

[The prepared statement of Ms. Chenault follows:]

PREPARED STATEMENT OF CHRISTINA CHENAULT, FORMER DIVISION 1 ATHLETE,
UNIVERSITY OF CALIFORNIA, LOS ANGELES

Chairwoman Cantwell, Ranking Member Wicker and distinguished members of the Committee,

Thank you all for inviting the opportunity to amplify the voice of the athlete within these conversations by allowing me to testify this morning. This testimony is a reflection of my direct experience and the experience of my former colleagues who are current and former college athletes from institutions across the Nation.

I. Introduction

My name is Christina Chenault. For the past 6 years, I've been a Heptathlete on UCLA's Track and Field team, completing my Bachelor's Degree (UCLA-B.A. Psychology '20), and most recently my Master's Degree (UCLA-M.A. Sports Educational Leadership '21) from UCLA. Here, I became a Top-10 All-Time school Heptathlete, NCAA Championship second team All-American, and awarded team captain.

Beyond the Track, I created a sports media platform to raise awareness on current social issues within Athletics (*i.e.*, mental health); I created a Sports Business Association intended to improve the educational tracking and professional outcomes of college athletes; and proudly co-founded UCLA's Black Athlete Alliance to foster spaces of diversity, inclusion, and progression on the college campus.

My media platform featured interviews with college athletes, All-Americans, ESPN anchors, former NBA All-Stars and Olympians from all different backgrounds. Due to our garnered trust within the athletic community, it organically received over 30,000 views within its first year with 0 expenses incurred. As a counter-narrative to the mainstream glamorization of college sports, it brought a sense of reality and clarity to the taboo issues athletes face in their day-to-day lives.

The Sports Business Association successfully hosted weekly seminars of over 100 guests, with speakers from Fortune 500 sports companies and franchises such as: Nike Inc., The Los Angeles Clippers, UCLA Athletics, The Los Angeles Dodgers, The Los Angeles Lakers, Creative Artists Agency (CAA), the U.S. Olympic Committee, and The Golden State Warriors . . . to name a few.

Within our pilot year, the Black Athlete Alliance nationally-elevated and reconciled policies of hate speech, while also partnering with the athletic department for social justice campaigns to move the world forward through the power of sport.

It is through the culmination of these experiences, along with my close-knit relationship to the athletic community nation-wide that allows me to speak with confidence on the issues pertaining to today's hearing: NIL, Health & Safety, and Educational Outcomes. Respectively, I will outline my testimonial experiences and hope in doing so, to emphasize the importance of greater athlete protections throughout these categories.

II. NIL (Name, Image, & Likeness)

The commodification of athletes has become rampantly apparent as the commercialization of college sports steadily rises. As a female student and athlete-entrepreneur I was not able to profit off of my own my sports media platform. Despite viral content, the potential for any wide-scale distribution or business model sustainability was completely revoked through the current restrictions of NIL. We constantly had compliance monitoring us for who we could have on our shows, what we spoke about, how we spoke, what we wore, who we worked with and how we edited our interviews. It made the process very difficult, frustrating, and less enjoyable for the sake of staying eligible.

From a business standpoint I was paralyzed, but shown the monopoly of financial power the NCAA had over us. This issue not only disproportionately affects athletes from low-income households, but affects all athletes at a psychological level. Moreover, these regulations funnel college athletes into an "athlete-only" mentality, neglecting potential creative outlets and professional development opportunities. Within the sports industry, some of these professional development opportunities that use our name, image, or likeness have a temporary window of opportunity that peaks during our college years. Especially in sports that lack established American professional leagues (*i.e.*, Track and Field), athletes are being stripped from their rights at the most imperative time.

III. Health & Safety

The conversation of health and safety is inextricably linked to the decisions around NIL. For context, when I came into my athletic program the sprints team had 5 coaches in 5 years. These coaching transitions not only made it difficult on athletes physically and emotionally, but financially as new coaches reduced the scholarship of existing athletes. This unexpected reduction of scholarship from a coach that favors their own recruits costs the initial athlete thousands of dollars. Additionally, this fear of constantly being at risk for scholarship reduction for reasons beyond your control is wrongfully common within the collegiate athletic experience. Where is the athlete supposed to suddenly come up with this significant amount of money? This has forced athletes to have to transfer, quit, or take time off from training in order to work. These unclear contractual regulations illustrate the clearly established power dynamic between the institution and the athlete where the current system fails the athlete every time.

From a psychological safety standpoint, I have seen coaches turn down sports psychologists because they were subjectively considered “out of budget”. Like any budget, the decisions are a reflection of the organizational values, further proven as later coaching staffs with the same budget were able to bring in psychologists. Other athletes I’ve spoken to do not feel comfortable as an athlete going to psychologists on campus or near athletic departments for the distrust of their institutions or the fear of being seen or reported back to their coach. Where are the athletes supposed to go if they don’t have access to mental health professionals they can trust?

A traumatic and eye-opening experience for me viewing athlete health occurred in my 4th year when I heard the devastating news that my friend, another college athlete, had committed suicide. In my grief, I wished there were more resources, and more outlets for athletes to be heard and helped. This is when I realized that these issues around athlete health were not tenuous ones, but matters of life and death. The detriments of athlete mental health stem from the win-at-all-costs culture in college sports where athletes struggle in silence in fear for their scholarship, playing time, or social ridicule.

Another experience from the product of a win-at-all-costs culture, was seen physically through the process of my friend’s medical retirement. Before granting an official medical diagnosis or MRI, she was asked to compete for the greater good of the team. She was forced to bring in her parent to advocate on her behalf to receive the proper attention and treatment of her second torn meniscus in two years. I noticed that when athletes brought in a parental figure to the training room, they were treated and spoken to completely different. This revealed the political posturing institutions and athletic programs can take if additional policy is not implemented to protect these athletes.

IV. Educational Outcomes

When it comes to educational outcomes, there is substantial educational tracking occurring within the collegiate athletic space. Namely, athletes at respective schools are predominately housed in 1–3 majors, “athlete majors”, that generally require less work or effort to fulfill. This is seen across all sports, but especially in the revenue-producing sports that have a heightened “athlete-student” culture in unison with the lucrative championship culture. Despite the claimed “educational trade off”, a majority of athletes are not on substantial scholarship yet equally face educational exploitation. Although on paper the NCAA limits practice hours to 20 hours a week, we as athletes know that this is just a formality and experience far more hours of athletically related time, closer to 40 or 50 hours each week. This exhaustive schedule tracks athletes into curriculum that is based on attainability rather than genuine intellectual curiosity.

Unfortunately, many athletes do not realize how this tracked path can affect their longterm career trajectory until they are faced with it after graduation. Athletes do not have an equal amount of time as non-athlete students to gain internship experiences or explore an academic or professional curiosity, leaving them utterly disadvantaged in the working world. Ironically, in the college recruiting process, many athletes are sold a dream for their experience athletically and educationally that is not given an equal chance or the sufficient support to materialize. Despite having a four-year degree from a renowned institution, athletes are still disadvantaged by the current collegiate athletics system in lacking the necessary professional experiences employers are looking for.

V. Conclusion

In closing, I share all of this today in hopes that the true athlete voice is heard and regarded for. In a landscape where fear and power debilitate the surfacing of athlete’s stories, I come forth as one with the courage and confidence of ten thousand. In all, these institutions should be held accountable and the college athletes should be protected at greater levels. From the protection of athlete NIL rights, health & safety precautions, and educational outcomes, I believe that change here is necessary and that change here is possible. Thank you all for your time and consideration.

The CHAIR. Thank you very much for your statement, and we appreciate you being here and for your long advocacy on this issue.
Ms. Cureton.

**STATEMENT OF SARI CURETON, FORMER DIVISION 1
ATHLETE, GEORGETOWN UNIVERSITY**

Ms. CURETON. Thank you. It is an honor to speak before you all today.

My name is Sari Cureton. I'm a recent graduate from Georgetown University where I was a walk-on for the Georgetown Women's Basketball Team.

Throughout my time at Georgetown, I helped co-found the Black Student Athlete Coalition and worked hard to advocate for student athlete rights.

Throughout my written testimony, I highlighted some key examples of what is wrong with the current collegiate model. When discussing name, image, and likeness, I mentioned how my teammate was unable to use her identity as a student athlete in affiliation with Georgetown to promote and fundraise for her nonprofit.

When talking about health and safety, I discuss problems with misdiagnosis, coaches failing to take action in cases of sexual assault, the need for NCAA assistance for schools that are unable to afford mental health professionals, the verbal mistreatment of athletes by coaches, and the dangerous culture of athletics.

I also discussed how athlete complaints regarding illnesses and injuries often go ignored.

Finally, I discussed problems with inequality with men's and women's sports but today I would like to revisit these topics and add some additional context to my written statement in the hopes that it will further illuminate the Committee's understanding of the student athlete experience.

The story of my teammate starting her own nonprofit illustrates that the current restrictions not only impact athletes in Power 5 conferences who are household names, these regulations impact all athletes.

Less than 2 percent of NCAA athletes go on to play professionally, meaning that the best years for them to monetize their name, image, and likeness is these 4 years at their university.

However, my teammate, like many others, we are forced to jump through hoops and told no while our universities and the NCAA uses our name, image, and likeness all to their own benefit.

Within this, I think it's also important to discuss the racial component and that needs to be emphasized. In D1 sports, football and men's basketball are the highest revenue-generating sports. A majority of these athletes are black. However, a majority of the individuals that are making money off of this industry that are created off the backs of these athletes are white.

These athletes have limited resources in their ability to advocate for themselves. Therefore, I would encourage the Committee to once more look at this issue as a civil rights matter.

Although name, image, and likeness is a pressing matter, the issues relating to health and safety still deserve ample attention because if not for the physical sacrifices of student athletes, this industry would not exist.

Beyond the factors previously discussed in my written testimony, the issue of financial responsibility is another one that needs to be examined. The NCAA currently does not require its member

schools to offer insurance. Most do offer some sort of support but most is not all.

The level of assistance can vary from school to school due to lack of uniform regulation. In my personal experience, the university helped with my hip surgery but when it came to prescriptions, I had to provide for the co-pay. At other universities, student athletes have to pay for a second opinion.

When you first read that, that may not sound like a big deal but when you can't trust the opinions of the medical advisors at your university, having to seek out additional medical advice and pay for it becomes a huge matter.

Even in a situation like mine where I had medical assistance from my university, the process of sending documentation to trainers and making sure that the right insurance was paying for the right thing is complicated and inefficient and if athletes do not have the support of family, it is very difficult to navigate that process.

Even now, there's still the question of who pays for your injury after you graduate. Once your eligibility is exhausted, the responsibility of the school is done and because scholarships are year to year, it is possible that a school may terminate its relationship with an athlete and a student is left with medical bills as well as tuition.

Generally speaking, through all the toll of playing at high level athletics, a lot of times your injuries outlast your 4 years of eligibility. I personally am still dealing with my injury and I've heard stories of athletes who know for certain that once they graduate, they will need surgery in order to continue on living a fulfilling life.

The final point I would like to discuss is gender inequality. This disparity in the treatment of female athletes was illustrated in the women's basketball tournament as well as the Women's College World Series.

It was illustrated that these inequalities also impact matters of health and safety with the differences in testing, PCR versus antigen testing at the women's basketball tournament, as well as the scheduling of double-headers in the Women's College World Series.

Women are continually asked to perform at a high level while being given less resources at every stage of their athletic development. It is high time that women are treated with the same respect as their male counterparts.

In conclusion, not only do these changes need to be made to better protect athletes but there must be action taken to ensure that athletes are educated on their rights.

I encourage you all to reflect on the fact that I've only scratched the surface of the issues that student athletes face. We haven't even discussed the matters of the rights of LGBTQIA members within the athletic field or even gone further into the racial disparities that exist.

I'm here today representing the stories of not only myself but many other athletes that are too afraid to speak up because they are worried of what it will mean to their future.

I, like my peers, am appreciative of the opportunities that have been afforded me through sports, but that does not mean the system is perfect. Student athletes deserve better.

Thank you.
 [The prepared statement of Ms. Cureton follows:]

PREPARED STATEMENT OF SARI CURETON, FORMER DIVISION 1 ATHLETE,
 GEORGETOWN UNIVERSITY

Thank you for the opportunity to testify before the Senate Committee on Commerce, Science & Technology Hearing on NCAA Athlete NIL Rights. It is an honor that through this written testimony this committee will learn more about the lived experiences of student-athletes to supplement the data and facts that have previously been discussed.

My name is Sari Cureton I am a recent graduate from Georgetown University where I was a walk-on for the Georgetown women's basketball team. It is my hope that through this written testimony this committee will learn more about the lived experiences of student-athletes to supplement the data and facts that have previously been discussed.

The issue of name, image, and likeness has become especially pressing because of the new legislation that will be coming into effect in various states on July 1st. Throughout my time at Georgetown I have witnessed the difficulty in navigating the current NCAA NIL policies. During the 2019–2020 season a teammate of mine sought to revitalize a non-profit she had started in high school called Rose from the Concrete. Her goal was to create a mentorship program for middle and high school students in Washington DC. However, before she embarked on this journey, she had to meet with our compliance office. There she was told that in order to remain compliant she could use her name, but she could not use her status as an athlete with Georgetown University to help with promoting or fundraising for the organization. This created an additional obstacle to starting a non-profit that other college students would not have to face. Meanwhile the school is permitted to use our name, image, and likeness to promote their charitable activities within the community. This is the heart of the issue, student-athletes are looking for opportunities to monetize themselves in ways that their universities and the NCAA has already taken advantage of for their own benefit. Although race did not factor heavily into my personal encounters with this policy, as a Black woman I am also heavily aware of the racial component to this discussion. Therefore, I encourage the committee members to consider this issue through the lens of civil rights. The issue of name, image, and likeness is a pressing matter that deserves ample discussion; however, I would be remiss if I did not discuss other pertinent problems that impact the student-athlete experience.

One of these issues is the array of concerns regarding the health and safety of student-athletes. Throughout my time at Georgetown, I suffered an injury to my hip that led to me requiring surgery. I remember being fearful that my surgery would not be covered because I was a walk-on and my injury resulted from an underlying condition which athletics exacerbated but did not directly cause. Ultimately, I was told that the university would assist me financially with the initial procedure and not to worry. I share this story because it aligns with the expectation. I had an injury, I told my trainer, I was diagnosed, and then I received treatment. However, for some injured student-athletes this is an experience they dream of having. When discussing my story with others I was made aware that athletes at some universities are not given the opportunity to seek out second opinions unless they are willing to pay for it themselves. This would not be an issue if athletes could always be confident in their diagnosis but that is not the case. I have been told various stories of athletes being given one diagnosis by a team doctor only to be given a completely different one when seeking out a second opinion. These issues not only pertain to injuries but basic care. A year ago, I witnessed a student-athlete complaint be repeatedly ignored when their symptoms began worsening after receiving treatment for an illness. They had to repeatedly ask for further assistance before receiving more medical attention. In my conversations with student-athletes there has also been widespread discussion about a failure to act in cases of sexual assault. In some situations, student-athletes have stated that they were aware of cases sexual assault that had occurred between teammates and had been reported to the coaching staff, but no action had been taken. There are other stories that I cannot share in this written statement that I have been witness to. This is because the affected individuals are fearful regarding what would happen if their respective university were to piece the information together and realize who I was speaking about. That fact alone speaks to just how vulnerable student-athletes are. If they are unwilling to share their stories in an anonymous format through someone else's voice how likely are they to report cases of negligence to the authorities within their own

universities? How many departments actually offer their athletes enough information on who to report to?

Although the care that I received at Georgetown is likely to be seen as the standard I think it is time that we push the boundary on what we view as adequate care. In order to do so it is necessary to address the question of who cares for student-athletes once they graduate from college? Many athletes sustain injuries during their four years that require care after their collegiate careers end. This is not to say that schools need to be financially responsible for every health need of former students but should there not be system in place to assist those that have to deal with lingering injuries that are directly related to their collegiate careers?

Physical health is not the only concern that should be discussed. Currently, the ability of an athletic department to have its own sports psychologist is seen as a luxury. Georgetown has one sports psychologist on staff. Her role was created because the existing mental health care system within Georgetown University was not designed for long term care and was unable to meet the unique needs of student-athletes. However, her role is still not enough to meet needs of the over 700 students within the department. Imagine, then what it is like for those student-athletes whose departments have no in-house mental health services. The NCAA should provide greater assistance for universities that do not have the financial means to hire mental health professionals within athletic departments.

Student-athletes are not the only ones that need mental health professionals. They are also needed to help educate the coaches as well. Throughout my time at Georgetown, I have heard coaches tell players that they are only there for a basketball scholarship and without it they would not have been at Georgetown University. This can be detrimental for athletes of color that already feel like imposters on a predominately white campus. Coaches have made off-handed negative comments or “jokes” regarding the weight of student-athletes without any consideration for the impact that it could have on their mental health. The reality is that in the world of college sports these statements are not seen as “that bad” some might even struggle to see the fault in them. Therefore, for an athlete to complain about this would be viewed as being unappreciative or as not having thick enough skin. There is a culture within athletics that creates a dangerous mindset of how student-athletes view themselves which can impact them for long after they graduate. In order to make strides in changing this culture athletic departments need greater access to professionals within the field of mental health.

Conversations regarding health and safety intersect with discussions of Title IX. This past March during the men’s and women’s basketball tournaments there were photos that revealed disparities between the facilities, the meals, and the gear given out to student-athletes.¹ One issue that also arose was the difference in testing practices. The men were given PCR tests while the women were given antigen testing which the CDC has referred to as “less sensitive”² when it comes to detecting the COVID-19 virus. The testing disparity between the men’s and women’s tournaments is a demonstration of the ways in which women’s sports are treated as an afterthought. This issue is not just isolated to the sport of basketball. Softball coaches have been outspoken throughout the Women’s College World Series about the disparities between their tournament and the men’s tournament.³ These examples are an illustration of a long-standing inequality that exists not only in collegiate sports but across the spectrum from youth programs to professional sports. We are given less resources and are treated as an afterthought with the expectation that we will continue to perform at a high level.

The issues that I have outlined here barely scratch the surface of the necessity for change within the current collegiate model. Student-athletes deserve to be better protected and they deserve to be treated as more than commodities. The experience of participating in collegiate sports is unparalleled and it is something that we as student-athletes are grateful for. However, we earned the positions on our teams, and we work hard to balance our athletics with our academics. Although we remain appreciative for the opportunities that have been afforded to us that does not mean we will not demand better for ourselves and for the next generation of student-athletes.

¹ On Her Turf. “Updated: Disparities at the 2021 NCAA Women’s Basketball Tournament,” March 25, 2021. <https://onherturf.nbcsports.com/2021/03/25/ncaa-womens-mens-basketball-weight-rooms-discrepancies/>.

² CDC. “Labs.” Centers for Disease Control and Prevention, February 11, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antigen-tests-guidelines.html>.

³ “College Softball Coaches Decry Treatment by NCAA: ‘What’s Lower than an Afterthought?’” *Washington Post*. Accessed June 16, 2021. <https://www.washingtonpost.com/sports/2021/04/23/ncaa-softball-college-world-series-disparities/>.

Thank you for the opportunity to share my thoughts.

The CHAIR. Thank you, Ms. Cureton. Thank you so much for being here and for that testimony.

Mr. McNair.

**STATEMENT OF MARTIN McNAIR, FATHER OF JORDAN
McNAIR AND FOUNDER, THE JORDAN McNAIR FOUNDATION**

Mr. McNAIR. Good morning. I'm Martin McNair, Founder of the Jordan McNair Foundation.

Today I'm speaking in support of the name, image, likeness bill with a notable provision that a baseline standard be set for all student athletes to have the same level of health and safety protection guidelines in place across the Nation.

The Jordan McNair Safe and Fair Play Act passed unanimously through the House and the Senate this year in the state of Maryland. The bipartisan sponsorship of Delegate Lierman, a Democrat, and Senator Justin Reedy, a Republican, agreed on the notable provision that the health, wellness, as well as the safety of our collegiate student athletes is more of a priority than paying them for their name, image, and likeness.

May 27, 2018, was the last time I had a conversation with my son Jordan Martin McNair. He was excited about football conditioning practice starting the next day as any 19-year-old would be with aspirations of making it to the NFL one day.

Less than 24 hours later, I was telling Jordan, "Son, if you can hear me, squeeze my finger. Son, if you can hear me, blink your eyes."

Within 72 hours, the doctors at the University of Maryland Hospital Shock Trauma Unit told Jordan's mom Tonya and I that 85 percent of Jordan's liver had necrosis and if we didn't agree to an emergency liver transplant, he'd be dead within 12 hours.

Last Sunday, June 13, we celebrated or honored the third year of Jordan's death as my family visited the cemetery for a 100 percent preventable heat stroke suffered that day of conditioning practice.

I've relived these last few weeks of my son fighting for his life from May 28 to June 13 for the last 3 years. I can't get out of my mind the athletic trainer on the field that day yelling, "If he can't walk, drag his ass across the field," as my son's core body temperature was above a 104 degrees, he was in a full heat stroke.

One hour and 46 minutes passed before my son finally made it to the hospital emergency room that day. No parent in America sends their student athlete away to college for them to be abused mentally, physically, or in our case worse, especially when it's at the hands of the coaching staff we entrusted our most precious gifts with.

We don't but it happens all too often in college sports. It needs to stop and the systems need to be put in place at this level of legislation. The safety protection, and wellness of all collegiate student athletes should be a paramount priority before we consider paying them for their name, image, and likeness. How can we support a student athlete getting paid when we can't keep them safe?

The College Athletes Bill of Rights introduced by Senators Booker and Blumenthal would enforce these health and safety standards of our student athletes. Let's follow the bipartisan lead of the legislators in Maryland not only to create an opportunity of economic freedom but again create a baseline standard of health, safety, as well as the protection for all of our student athletes.

Student athlete safety is something we can all relate to. There are no cultural, financial, or political differences among us. Just think, Jordan could have been anyone in this room son, brother, or family member. It's everyone in this room's responsibility to keep them all safe.

Thank you for allowing me to speak and God bless us all.
[The prepared statement of Mr. McNair follows:]

PREPARED STATEMENT OF MARTIN MCNAIR, FATHER OF JORDAN MCNAIR AND
FOUNDER, THE JORDAN MCNAIR FOUNDATION

Good Morning Members of Congress.

I'm Martin McNair, father of Jordan McNair and Founder of The Jordan McNair Foundation.

Today I stand before you in support of Senate Bill—NCAA Student Athletes and NIL Rights.

The Jordan McNair Safe and Fair Play Act was passed unanimously with bipartisan effort in the state of Maryland. The addition to the bill was the health and wellness and player safety aspect of the bill. The sponsors for this bill were Delegate Brooke Lierman, a Democrat and Senator Justin Ready, a Republican. The bill passed through the House and the Senate successfully. Governor Hogan signed off on the bill on May 14, 2021. The health and wellness as well as the player safety component will go into effect July 1, 2021. Out of 19 states to have passed the Name Image and Likeness (NIL) Bill into law, the State of Maryland is the only state to place the health, safety and well-being ahead of a student athlete being paid for their Name Image and Likeness.

The last time I spoke to my son Jordan Martin McNair was May 28, 2018. Our conversation was a typical father and son exchange. I asked him "how was he feeling and was he prepared for the first day of conditioning drills that following day?" His reply—"Yes dad, I'm ready." We talked a little more with the standard "call me later in the week" and my fatherly advice of "always wear protection," the way I ended every conversation with him since he'd been in college.

The call we received the next evening changed our lives forever.

The campus police officer said "Jordan has had a seizure while at football practice." Jordan had never been in the hospital a day after he'd been born 19 years earlier. Our thoughts raced as I and his mom Tonya sped to the hospital.

Our questions started as soon as we walked into the emergency room. "What happened?" We weren't prepared for what we saw as Jordan was lying there in a cooling suit with the attempts to get his core body temperature down. Medical terms like rhabdomyolysis had started and we still didn't know what was going on with our son.

My next conversation with him now was son if you can hear me, squeeze my finger. Son if you can hear me, blink your eyes.

After we spent the night at the hospital a medical decision was made the next day to airlift Jordan to the Shock Trauma Unit at University of Maryland Hospital.

Who knew the next two weeks would be the worst of our 19 years? How did we go from a healthy 19-year-old who was 6'5, 300 lbs, and a size 16 shoe Tuesday morning, to a child so sick that 85 percent of his liver had necrosis and if we didn't agree to an emergency liver transplant, he'd be dead within 12 hours?

Jordan had a heat stroke that humid day while running gassers. (Explain a gasser) A heat stroke is an exertional injury when your core body temperature goes above 104 degrees. It's the equivalent of your body being in a microwave oven. Your organs start to cook and you have a small window of 15–30 minutes to cool the athlete's body temperature down below 104 with the right safety equipment.

When Jordan's teammates handed him off to the athletic training staff, the head athletic trainer who was the medical professional on the field yelled "if he can't walk drag his ass across the field."

It took one hour and 46 minutes to get my son to the hospital emergency room that day.

Those two weeks Jordan was fighting for his life. We kept asking ourselves what did we miss when the coaches were sitting at our kitchen table before signing day?

We missed everything that we didn't know. I like the typical parent asked two questions. Can Jordan get some playing time and another question about mental health and substance abuse support.

I never thought to ask about any safety, preventative, or overall protection of my student athlete on or off the field. I just assumed like so many of us parents of collegiate athletes that the systems were in place in the event of. I never thought to ask what if Jordan got hurt or couldn't play anymore what would they do to protect him?

The number of student athletes who've been injured or tragically died at the hands of a college coaching staff is totally unacceptable.

Jordan was a predictable statistic that 2-3 football players would die every year from a heat related injury.

Heat related injuries are 100 percent preventable. No child regardless of the level of competition should succumb to complications of this type of injury with the right preventive systems in place.

No one sends their student athlete off to college for them not to return a better person ready for the next journey in their life.

Jordan has become a poster boy for student athlete safety at the collegiate level of competition. His death along with many others was not in vain.

The safety, protection and wellness of all collegiate student athletes should be a paramount priority before we consider paying them for their NIL. How can we support a student athlete getting paid when we can't keep them safe?

Jordan lost oxygen to his brain on June 12, 2018. He transitioned the next day. As my family visited the cemetery last Sunday, June 13th to honor him on the 3rd anniversary of his death, I always promise him to celebrate his legacy by educating and saving the lives of others.

Today let's all follow our example in the state of Maryland. The protection and safety of student athletes again should be paramount. I ask for a bipartisan show of unity on this bill as Jordan McNair could have been any of our sons, nephews, grandsons or family members.

I'd like to thank the Congressional Committee for allowing me to speak today. God bless you all.



The CHAIR. Thank you, Mr. McNair. Thank you.
Ms. Brown, welcome. Thank you for your testimony.

**STATEMENT OF KAIRA BROWN, DIVISION 1 TRACK AND FIELD
ATHLETE, VANDERBILT UNIVERSITY**

Ms. BROWN. Thank you.

Chairwoman Cantwell, Ranking Member Wicker, and Distinguished Members of the U.S. Senate Committee, thank you for inviting me to share my experiences as a student athlete today. It's a great honor and privilege to be here.

My name is Kaira Brown, and I'm a rising junior and track and field athlete at Vanderbilt University.

Today I want to share my experiences with the NCAA guidelines, gender equity in college athletics, and how my thoughts on NIL legislation could alleviate difficulties on both fronts.

Part of maintaining my eligibility means that I cannot receive what the NCAA terms "extra benefits" which refers to anything that's not available to the general Vanderbilt student body. It has also been explained as not being able to receive anything special because I'm an athlete, and while I understand the spirit of the rule intends to prevent boosters from giving me special gifts, it becomes a constant worry that I may unintentionally endanger my athletic eligibility.

Recently I completed the House Ethics training to be an intern here on the Hill and a lot of what I learned in that training echoes what I've been taught about eligibility, but I just don't think being a student athlete should be held to the same level of stress and difficulty as working on the Hill.

For example, another one of my teammate's dads once offered to buy us ice cream after a particularly successful meet and one of our coaches was jokingly like, oh, well, I didn't hear that and while it's not an extra benefit, there is an exception for family members and sort of people you already know giving you gifts.

The environment around these eligibility rights is very confusing and sometimes difficult to understand and the inclination is always to not do the thing or accept the gift just out of fear when rather we should be focused on playing our sports and sort of enjoying these 4 years rather than always tiptoeing and trying to ensure that we don't somehow get in trouble. The rule functions more as a headache than the protective barrier that it was meant to provide.

Even in the age of Title IX, men's and women's sports are sometimes also not treated equally in college sports. Some of this disparity is systemic, like we've seen at the NCAA women's basketball and softball, but other issues are simply interpersonal.

For example, there was an issue a few years ago when only the football team was having breakfast at our athlete dining hall which I'm going to be honest has the best food on campus. After some requests were made by the women's soccer team who also had morning practice, now all athletes are allowed to eat in the dining hall sort of all three meals of the day.

I don't believe this anecdote reflects malicious or sexist intent on the part of the dining hall or the athletic staff. I think, rather, it speaks to the fact that while our men's teams' needs are often top

of mind, sometimes women's accommodations can be an afterthought and that shouldn't be.

One justification provided for some gender disparities in treatment, especially on the NCAA level, is that men's sports make more money. I think the NIL legislation could be a key element contributing to that, as well.

It's well known that the NCAA also does more to promote their men's sports than their women's sports. We don't even call women's basketball tournament March Madness. I think that if female athletes were able to partner with companies or in other ways promote their own athletic endeavors that might be a way to supplement the advertising that the NCAA neglects to provide and bring more viewers to women's sports.

Passing NIL legislation would also likely free student athletes from any of their fears surrounding extra benefits and eligibility. For example, the way the rules are currently structured, I cannot be able to advertise as a track coach saying that I'm a Vanderbilt track athlete, even though that's pretty much what makes me qualified to coach the sport. That would be considered being paid for your athletic ability or reputation. Especially in sports that don't get as much publicity, this is a great way for students to earn some extra money but it's currently prohibited.

By freeing student athletes from their fears and concerns about extra benefits and rules like that, NIL legislation also has the opportunity to help student athletes to become entrepreneurs and create their own opportunities in the arena they already know well, their sports.

Thank you for your time.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF KAIRA BROWN, DIVISION 1 TRACK AND FIELD ATHLETE,
VANDERBILT UNIVERSITY

Chairwoman Cantwell, Ranking Member Wicker, and distinguished members of the United States Senate Committee on Commerce, Science, and Transportation: thank you for inviting me to share my experiences as a student athlete today. It is a great honor and privilege to be here. My name is Kaira Brown, and I am a rising junior and track and field athlete at Vanderbilt University. I want to share my experiences with NCAA guidelines, gender equity on my campus, and my thoughts on how NIL legislation could alleviate difficulties on both fronts.

Challenges of Present Eligibility Rules

Part of maintaining my eligibility means that I cannot receive what the NCAA terms "extra benefits," which refers to anything that is not available to the general Vanderbilt student body. It has also been explained as not being able to receive anything special because I am an athlete. While I understand the spirit of the rule intends to prevent boosters from giving me special gifts, it becomes a constant worry that I may unintentionally endanger my athletic eligibility. For example, I was unsure if I could accept a free flight to come to this hearing because it was an extra benefit directly tied to the fact that I am a student athlete. Even though I wasn't being rewarded for an athletic performance, I still had to call my compliance office and ensure that accepting the flight would be permissible. In another example, one of my teammates' dad once offered to buy our relay team ice cream after a particularly successful meet. After overhearing the offer, our head coach said "I'll pretend I didn't hear that," jokingly because buying ice cream might be considered an extra benefit. While there is an exception for people with whom there's an "established pre-existing relationship" and we would have been able to accept the ice cream, it just serves as another example of how the rule functions more as a headache than the protective barrier it was meant to provide.

Title IX and Unequal Treatment

Even in the age of Title IX, men's and women's sports are not treated equally in college sports. Some of this disparity is systemic and other issues are simply interpersonal. For example, the nutritionist assigned to my team when I started at Vanderbilt was also assigned to the football team. While I have seen her pick up food for the football players and even draw smiley faces on their sandwiches, I had some trouble scheduling a meeting with her to discuss my nutritional needs. There was also an issue a few years ago when only the football team was allowed to have breakfast in the athlete dining hall even though there were women's teams who also had morning practice. After some requests were made by the women's soccer team, all athletes are now permitted to use the dining hall for all three meals. Although I do not believe either of these anecdotes reflect a malicious or sexist intent on behalf of Vanderbilt athletics, I think they speak to the fact that while our men's teams needs are often top of mind, women's teams accommodations can become an afterthought.

Possibilities with NIL Legislation

One justification provided for some of the gendered disparities in treatment is that men's sports often make more money. I think that NIL legislation could also be a key element in changing that as well. It's well known that the NCAA does not promote women's sports with the same vigor that it does their men's sports. I think that if female athletes were able to partner with companies to promote their own athletic endeavors, that might be a way to supplement the advertising that the NCAA neglects to provide and bring more viewers to women's sports events.

Passing NIL legislation would also likely free student athletes from many of their fears surrounding extra benefits and eligibility. For example, the way the rules are currently structured, I would not be able to advertise as a track coach by saying that I'm a Vanderbilt track athlete even though that is what makes me qualified to coach the sport. That could be considered getting paid for athletic ability or reputation. Especially in sports that don't get as much publicity, this is a great way for student athletes to earn some extra money but it's currently prohibited. By freeing student athletes from their fears surrounding extra benefits rules, NIL legislation also has the potential to help student athletes become entrepreneurs and create their own opportunities in an arena they already know well—their sports.

The CHAIR. Thank you.

Well, I again thank all of you for being here and you each hit on very unique aspects of this challenge.

I think I want to start with you, Mr. McNair. How do you think you were successful in getting this legislation through in Maryland, focusing on the issue of health care, and how do you think, you know, given the new law that is in place there, what should we do here to make sure that these standards are met across the country?

Mr. MCNAIR. Well, one of the things—Ms. Cantwell, one of the things that I think the reason we had success in Maryland was last year we didn't make it out of the House. So that was one challenge. It was a lot of ambiguity there.

However, one of the things that we did this year was as far as our actual—we wanted to build that in line with our foundation's missions. So our foundation's mission is the promotion of awareness education and the prevention around heat-related injuries.

So we stuck to our guns in regards to the player safety and wellness component of it and one of the things I was very, very adamant about, I didn't want to use my son's name from a notoriety perspective. So if it was just going to be name, image, and likeness, that was something that we really didn't want to focus on because we knew how paramount that the actual safety of a student athlete was first.

You can pretty much, as my panel members up here state, that the challenges that they've had. I'm speaking as a parent for their safety if the shoe was on the other foot in a sense.

So I think one of the things is we just have to really stay adamant and focused about player safety. What I think at this level as opposed to us being individual states, we have to create legislation or you all have to create legislation from a perspective where it's one system that kind of governs all of it because we need a baseline protection system across the board for student athletes at all levels of college education or college competition.

The CHAIR. I think Mr. Gilmore when he was here mentioned, you know, that the fact that the statistics show that there were 30 deaths, I think, over the last decade plus in this area in NCAA while there was only one death at the NFL level.

Mr. MCNAIR. Correct.

The CHAIR. What is it that you think needs to happen to make sure that institutions across the country are adhering to a standard and enforcing it?

Mr. MCNAIR. OK. So in regards to the NFL, that was Cory Stringer to be specific and the NFL has the resources to put the right systems in place financially, the same systems that all colleges have in this sense.

So I think that one of the main things is we can't do a one-size-fits-all and I think we can't do a one size fits all approach to this in a sense. I just really think that to really keep student athletes safe, we have to put the systems in place and I don't want to sound redundant, but again that's what I really mean. We have to put the baseline systems in place.

The NCAA has to put the baseline systems in place or the states that have this bill but again we don't want to have 52 different states that protect student athletes.

I think that I would suggest is follow Maryland's lead and put this as a priority. We're not interested in name, image, and likeness, and you can wear the type of sneakers you want. We need to keep young people safe because again when you have young people—and I speak for, I'm sure, all of these—my panel members will agree with me, whenever you have any type of college sports or sports overall, it's not an issue of what's going to happen, it's a matter of when it's going to happen.

Something is always going to happen and we have to put the right systems in place that we're always prepared.

The CHAIR. Ms. Chenault, the PAC 12 is usually seen as a leader on these issues and yet you're citing still gaps in the system, particularly about second opinions and mental health.

What is it that we need to do, and also on the scholarship side, it seems like they have the best scholarships and yet you're telling me that the system still can be undermined.

Ms. CHENAULT. Yes, thank you, Senator. I think there definitely needs to be a national bill put in place. I think the autonomy can't be put in place just for the institutions to take up individually. When that happens, especially in this system where athletes do not have the power within the system, the athletes are always going to be put on the back burner or put at a state of disadvantage.

So I think there should be a widespread bill that, like Mr. McNair stated, from a health and safety standpoint can take the precedent of Maryland, from an NIL state standpoint, I think it can take the precedent of California's SB-206, and I think just for

the quality across the Nation in fairness, it should be implemented at a nationwide standpoint.

So that is definitely something that I think is an opportunity for change here and correction in the future.

The CHAIR. And I wanted to ask in those instances that you were referring to, both in your own situation or the, you know, case with the meniscus, do you think that people knew who to go to to talk to at the university, besides the coaching team? Did you think of anybody that you could go to and approach at the university?

Ms. CHENAULT. I don't think athletes really trust that many professionals at the institution. I think there's a big fear from athletes that it will all come back to their coaches or in some way have a financial implication on their end regarding their scholarship or playing time or whatever the case may be that will limit their ability to play or do what they love to do.

So I think athletes don't know who else to go to. They aren't referenced anybody else outside or externally that they can go to, as well, for medical help and assistance. So I think that aspect is really limiting, and I think there should be availability for like a third party or a second opinion that isn't currently there.

The CHAIR. Thank you. Thank you.
Senator Moran.

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

Senator MORAN. Chairwoman, thank you very much. Thank you to the panel for being here.

I recognize that it's probably a circumstance in which others have a stronger voice in the topic that we're about. I'm pleased to have students and their parents here today, student athletes to give us their perspective.

I was started down a different path but the Senator Blumenthal walked in and it caused me to turn to you, Ms. Cureton. I'm troubled by your testimony. Senator Blumenthal and I chaired and Ranking Members of a subcommittee in the past that dealt with sexual assault and abuse of the United States Olympics and you mention in your testimony, you describe a failure to act in cases of sexual assault and that you've had conversations about specific cases that were reported but no action was taken.

Then, Ms. Chenault, in response to the Chairwoman's question talking about answering the question about who do you go to and lack of trust, I mean, what strikes me here is that what we heard from U.S. Olympians was very similar to what you're describing today, (1) don't know who to report to, we don't trust anybody, we have each other is what it appeared to me with the U.S. athletes, Olympic athletes. Seemingly that would be true for you but beyond that, there's no one to talk to and then, second, sexual assault is or can occur and isn't being reported and if reported, nothing is being done.

To all of you, but maybe, Ms. Cureton, we start with you, is there something that it would be helpful for me and the Committee to know about that circumstance? I mean, what I saw at Michigan State and others in regard to the Olympics is shocking to me.

I just mean, I thought it was—it's terrible to have one victim. What I could never understand was why there was more than one or where are the adults, if that's the right word, who respond to this circumstance and if that's something that we ought to know about, I'd like to know about it?

Ms. CURETON. Yes. Thank you. I think that a bigger part of the problem is that we're underestimating the interest of these coaches in winning games and we're underestimating the interest of the athletic department in protecting their image publicly.

Athletes are told to report things, like she already mentioned, in house, but when it comes down to that, there's still the interest that wins out of winning games, keeping your job, maintaining the image of the organization that is put over the interest of student athlete health and well-being.

On top of that, like has already been discussed, oftentimes we don't know who to report to or report it to an individual and then we're told it's being handled and then come to find out later on it never got to the Title IX coordinator or we don't even know who our Title IX coordinator is.

So I think that's a lot of gaps in the system in that sense and I think the experience with the U.S. Olympic team mirrors that of a lot of student athletes of just feeling uncertain of who to talk to, who you can trust. It may even come down to being with teammates. You don't know if you can trust them either, if they're after your spot and who you can have a conversation with.

In the instances and discussions that I had, it was a case of assault between teammates. So the coach was even less likely probably to act in that scenario. In other instances where it may be an act committed by an athlete in the community, there is little conversation about how that's being handled properly.

So like I said, once again, I think it's a lack of athletes being made aware of what their rights are and who to go to, and I think at times that can be a gap, but I think sometimes that's intentional, too.

Senator MORAN. If you experienced or witnessed or were told about a sexual assault, would you have been told or are there policies in place as to who it should be reported to?

Ms. CURETON. Yes, there is a policy in place. In my experience, though, a lot of student athletes go to whoever they feel most comfortable with in the department first, but sometimes that doesn't necessarily work to their advantage.

Just like I said before, the interest of the organization are oftentimes at stake.

Senator MORAN. Senator Blumenthal, he may agree with me in this, it's very similar to what we heard in our investigation of the Olympic circumstance.

Does anybody else have any comments that I should hear about this? Mr. McNair?

Mr. MCNAIR. Oh, yes. So one of the main things, Senator Moran, Senator Blumenthal, as well, as a parent, let's not forget these are still children and these are still kids.

So again no matter how tall they are, at the end of the day my son was 6' 5", 300 pounds. He wore size 16 shoes, but he was still 19. So again, you know, one of the things in Maryland that—a bill

was passed last year, I believe in 2019, it was called the Jordan McNair Act, and what that does is because of our situation or our scenario at the University of Maryland that particular time, you have a hotline that student athletes can call and they can call without fear of retribution in the fact of a situation like this.

So maybe that should be something that we should implement in this level of legislation that you can without any—you can call if you feel uncomfortable or something that may happen that you don't know who to report to, but again you can call this number without fear of retribution, without a coach telling you, you know, don't bite the hand that feeds you and all of the mind games that half the coaching staff plays on our student athletes.

But at the end of the day, let's not forget these are young people and a lot of times when these things happen to them, this is basically unfortunately a lot of times their first real reality to life, that the world isn't a pretty place and a lot of times when this initially happens, who do they report this to? So they usually turn on each other and as parents, I think we take the onus, as well, because we'll ask—I never thought to ask Jordan about this thing in particular. You ask questions. How was school? How was practice? You'll get a one-line answer.

So if you're not asking a definitive questioning by saying do you feel uncomfortable, is somebody making you feel uncomfortable, is there something that is going on that you feel uncomfortable about that you should share. So we're not asking these questions, you know, we'll get this type of result.

Senator MORAN. Thank you for the reminder of the value of parenting.

Mr. MCNAIR. Thank you.

Senator MORAN. Chairwoman, thank you.

The CHAIR. I want to thank you, Senator Moran and Senator Blumenthal, for your work on the Olympic bill and, Ms. Cureton, I just want you to know it's intolerable that there could be evidence of a sexual assault and it was not responded to by institutions. We are not going to tolerate that and I will work with my colleagues here in our oversight role on these institutions to make sure that all incidents are reported and dealt with and communication about how they're being dealt with is there.

Senator Blumenthal.

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

Senator BLUMENTHAL. Thank you very much, Madam Chair, and thank you for having this hearing.

I think it is typical of your leadership, Senator Cantwell, that you are asking the people most directly affected, the lives who are impacted to talk to us about what this issue means.

I want to thank my colleague, Senator Moran, for being here today and for his partnership on this issue, and, Mr. McNair, I want to thank you particularly for being here. I should mention that the Jordan McNair Safe and Fair Play Act passed by Maryland was bipartisan. This cause should be bipartisan. We should all feel the grief and the anger that brings you here today.

I have four children. They've all played sports. With every one of them and the countless hours I've spent watching their moments when I hold my breath when something happens to them, as every one of you who are parents and your friends and loved ones have, as well, and today every one of you, your eloquence should motivate our colleagues to be here in spirit and to Mark Emmert, you should be listening. You should be listening with your heart to the coaches and college administrators and college presidents. You should be listening to these voices and seeing these faces because they speak for America.

The colleges are in a race with each other to recruit and they're now coming to the table because they face a patchwork of state laws that is desperately inconvenient for them in a monetary sense, but your testimony shows that athletes want more than just to be shown the money. It's about futures and careers and basic health and safety standards.

Ms. Chenault, I couldn't say it better than your testimony when you say after the grief of losing a friend to suicide, "This is when I realized that these issues around athlete health were not tenuous ones but matters of life and death."

More than just NIL standards, we need basic health and safety standards. We need guarantees of educational opportunity so that athletes will be more than just a slab of meat. As my colleague, Senator Booker, has said, the billions of dollars that colleges make from college sports are the result of the blood, sweat, and tears of athletes like yourselves.

So my hope is that we'll do more than just NIL, that we will have health and safety standards, that we will have a medical trust fund, that we will have guaranteed educational opportunities so that the scholarships last beyond just the 4-years that people may spend in school, and so that your son, Mr. McNair, will be remembered for the courage that he showed on the field but also your courage in making his memory count here.

Let me ask each of you, is the current NCAA system working? Isn't a critical part of what's needed here enforcement, in other words, accountability? The standards for education, for health care need to be enforced.

Would you support the College Athlete Bill of Rights with those standards and with enforcement mechanisms? I'll ask each of you to respond.

Ms. CHENAULT. Yes. I can go first. Thank you, Senator.

I definitely would support the College Athlete Bill of Rights. I think the NCAA right now, the system is working for how it is currently built, which is on injustice and inequity and exploitation, which is why I think it is of paramount importance to be able to enact this bill of rights for college athletes across the Nation.

I definitely think the biggest issue is the lack of accountability. Once it is left to just institutions specifically, that is, I think, the biggest issue. So I would a hundred percent support the bill of rights for college athletes, and I think it's not just a want for athletes. I definitely think this is a bipartisan act, and I think it's a need for all athletes in the future.

Senator BLUMENTHAL. Ms. Cureton?

Ms. CURETON. Yes, thank you, Senator.

I completely agree. I think that the system, it's intentional that a lot of the decisions are being left to institutions because it takes the responsibility off of the NCAA, and it makes it more difficult for enforcement measures. I think it's obvious that the NCAA is more concerned with enforcing matters of athletes monetizing their NIL as opposed to these issues that we're discussing of health care and health and safety. So, yes, I would a hundred percent support the student athlete bill of rights.

Senator BLUMENTHAL. Mr. McNair?

Mr. MCNAIR. Senator Blumenthal, of course I do. I'll say one thing. When Jordan passed, the NCAA insurance policy for all the student athletes is \$10,000. The life of a student athlete of an organization that makes hundreds of millions of dollars on the industry is only worth \$10,000. Of course I support the bill. It's needed.

Senator BLUMENTHAL. Thank you.

Ms. BROWN. Yes, I also support the student athlete bill of rights. I have had a fantastic experience at Vanderbilt thus far, but I don't think that's because of the NCAA. I think that's because of Vanderbilt and I think everyone deserves the sort of safety and enjoyment that I've found playing college sports and clearly as we've spoken about today, that's not true for everyone and it should be.

Thank you.

Senator BLUMENTHAL. Thank you. My time has expired. I have more questions. If we have an opportunity to ask them, I will, but again I just want to express my profound thanks to each of you for being here today, and I might just say in closing, Mr. McNair, there's a saying that we die twice. The first is when we take our last breath. The second is when we are forgotten. Jordan will not be forgotten. He's a part of what we need to keep in mind here.

Thank you.

The CHAIR. Thank you.

Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chair Cantwell, and thank you for holding this important hearing, second hearing which I think hearing these witnesses was really necessary.

I'll start where Senator Blumenthal ended with you, Mr. McNair, and I want to extend my condolences on the loss of your son and thank you. It takes a lot of courage to share your views after what happened and I know you just talked about the help that would come from a bill like this, but could you talk about some of the additional types of support that should be in place to ensure the well-being of students?

Mr. MCNAIR. Yes, I believe that in regards to your question, Senator, so that the extra things, even in regards to what Senator Booker and Senator Blumenthal talk about, the type of injuries, when you look at heat stroke, you look at brain injury, and you look at various other injuries that student athletes will unfortunately, you know, may come across in a sense, these are things that realistically—these things need to be diagnosed, as Ms. Chenault just said, these are things that added to the bill that should be acknowledged to the point because so many players and

so many programs, the athletic trainers may be telling people to come back or student athletes to return to play long before they're ready to return and play.

I remember when Coach Mike Locksley took over again as University of Maryland head coach and he called me, asked me, he said basically what do you want me to do, and the first thing that I asked him to do, I said, "Coach, you've got to get a team doctor just for the team and second you have to get a mental health professional just for the team." Those are things that you cannot take lightly and those are things that are paramount because young people at the end of the day, I'm speaking as a parent right now, young people are young people regardless of their size and their athletic ability. These are young people and they're just probably at the second leg or the second journey of their life where they still need parental supervision or parental guidance or the guidance of people that have their best interests at heart. So those are the things that should be added and not be taken lightly.

Senator KLOBUCHAR. Exactly. Well, thank you, and, Ms. Cureton, just following up on the words of Mr. McNair there, in your testimony, you highlighted the need to educate coaches on the health needs of student athletes, including mental health needs.

What do you think needs to be done to help support the mental health of student athletes?

Ms. CURETON. Thank you, Senator. As Mr. McNair already mentioned, the need to have mental health professionals onsite is incredibly important. We have one in-house at Georgetown but she is one person and still unable to meet the needs of the over 700 student athletes.

As far as coaches are concerned, I believe there's a dangerous culture in athletics, that a lot of times motivates athletes to (1) push through injuries but (2) accept mistreatment because they believe it's just part of the culture.

I mentioned in my testimony that I've heard coaches make comments like "the only reason you're at Georgetown is because we gave you this scholarship," which is particularly demoralizing to a group of predominantly black female athletes in a predominantly white space.

There have also been comments made about weight without any consideration for how that may affect an individual's mental health.

So when I talk about educating coaches, I'm going above and beyond at having these conversations about how the words that they say and the actions they take can impact student athletes.

The examples that I mentioned, some coaches may look at that and be like, oh, that's really not that big of a deal and they struggle to see the fault in it and that's just the baseline. It goes all the way up to what we would probably consider abuse in the student athlete community that athletes endure under this idea that it's just a part of playing a sport.

Senator KLOBUCHAR. Mm-hmm. Thank you. Ms. Brown, in your testimony, you highlighted the disparities in something Senator Cantwell mentioned between male and female athletes with respect to access to facilities and health care.

In your view, how would allowing student athletes to profit from their name, image, and likeness help close that gender pay gap?

Ms. BROWN. I think part of what the issue in gender is, is just that because right now as we spoke about earlier, men's football and basketball are sort of the banner sports. That's where your attention is drawn. I'm sure you'll get asked more questions about them. At least football is sort of like the biggest team I think on our campus.

By allowing student athletes the opportunity to better sort of explore their own avenues of revenue or other items outside of the college like individual setting, you're empowering them. So even if it's not necessarily that, I don't know, Vanderbilt is going to give me more money or something like that, if I can go outside to, say, I don't know, Nike or Athleta and ask and know from there that I am valued, I can bring that sense of value back to my school if for some reason my school isn't providing it, if that makes sense.

Senator KLOBUCHAR. Mm-hmm. Kind of like there are a lot of women consumers out there that might be interested in you and your image outside of who plays on the male football teams is, I think, one way to think about it, so, and that could then help get more interest in women's sports since that's used as the argument.

All right. Thank you very much. Thank you, Senator Cantwell.

The CHAIR. Thank you.

Senator Tester.

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

Senator TESTER. Thank you, Madam Chair, and I want to thank everybody for being here today, very much appreciate it.

I'm just curious. This isn't in my questions. I'm just curious. Ms. Chenault, what athletic sport did you excel in?

Ms. CHENAULT. Track and field.

Senator TESTER. Track and field, hurdler?

Ms. CHENAULT. Heptathlete, a little bit of everything.

Senator TESTER. Sounds tough. Ms. Brown?

Ms. BROWN. Track and field. I'm a 400 meter sprinter.

Senator TESTER. OK. And Ms. Cureton?

Ms. CURETON. Women's basketball.

Senator TESTER. Cool. Well, I want to thank you all for being here. I could pick any one of you to ask my first set of questions to but I'll ask Ms. Chenault.

In the testimony you talked about not getting—I don't want to put words in your mouth but not getting an equivalent education as other people who weren't student athletes. Can you explain why that is? Is that because practice time was so intense and it's much longer than the 20 hours, I think it's 20 hours, that they're required or is it because trips were scheduled with no sort of respect for the academic achievement or is it something else?

Ms. CHENAULT. Thank you, Senator. I think it's a combination of actually what you just spoke about. First is the fault line of college athletes being told that there are only 20 hours of a week practice schedules. I think all athletes know that's not true. We definitely exude way more than 20 hours a week of just athletically related and dedicated time.

I know the PAC 12 did a study recently of the past couple years that proved that it was closer to 40 to 50 hours of athletically related time.

Senator TESTER. Can I ask you are the administrators or anybody paying attention to how much practice time is actually occurring because it's no secret, it is no secret that you guys spend a lot of time in your sport?

Ms. CHENAULT. Yes. I think it's because the policy right now shows that it's just 20 hours maybe on the track or the field or the court. So that doesn't include necessarily all the time watching film or all the time where you are doing rehab or ice bathing or doing whatever you have to do to prepare fully. So there is a loophole kind of in that system that I think all colleges do take advantage of since it is a race to produce the highest athlete at all cost culture.

Senator TESTER. And isn't there also an unspoken, maybe it's not even unspoken, maybe it's spoken, that if you're not willing to put in the extra time, you might not be on the team?

Ms. CHENAULT. Yes. I think a lot of colleges use the, like, trust the process to get buy-in from a lot of their athletes and from an athlete standpoint, I don't think they realize right away or athletes, we don't realize right away that this is a form of educational exploitation.

We buy into that culture and then it's not until they are faced with the career realities of having to completely start over, especially if you do not go professional as an athlete, that you were not put in the best position to be able to excel.

Senator TESTER. Were you a full-time student as well as a scholarship athlete?

Ms. CHENAULT. Yes, I was.

Senator TESTER. What percentage of classes do you think you missed because of the fact that you were a scholarship athlete?

Ms. CHENAULT. Probably in winter quarter, since UCLA is built on quarters, we traveled Thursday through Sunday, so when I say we are allowed to—we're educationally tracked. I can't take a major or I can't be in a major that requires my attendance on Thursday or Friday which is two out of the 5-days and a lot of classes being Tuesday-Thursday or Wednesday-Friday. So it narrows down a lot of opportunities, maybe 10–20 percent of classes.

Senator TESTER. OK. I appreciate that information.

Mr. McNair, my sincere condolences to your family. I remember when your son—

Mr. MCNAIR. Thank you.

Senator TESTER.—passed. I remember seeing that. I'm in Montana and I remember seeing that story about a Maryland football player and I can tell you that health and safety and humidity and heat are not something—I mean humidity and heat's not something I deal with. I'm way too Nordic for that stuff, OK, and so when you have a student athlete that's out there on the field that's under distress, under stress, as your son absolutely had to be, this didn't happen like that, it happened over a period of time.

The question I have is that you were probably in the living room when they recruited your son.

Mr. MCNAIR. Kitchen table.

Senator TESTER. Kitchen table.

Mr. MCNAIR. Yes, sir.

Senator TESTER. Did they talk about this at all to you about the safety and health of your son?

Mr. MCNAIR. No, and the reason that they didn't talk is because as a parent, I didn't ask, so, and that's one of the things I believe I speak for all parents in America where we don't ask these questions in the event that something happens to my child, what systems do you have, what safety systems do you have in place?

I'm like the typical parent in America, only ask two questions. Can Jordan get some playing time, and I asked another question in regards to mental health and substance abuse support just because that's my field of business in a sense, but again I never thought to ask that because it's like I think I speak for all parents in America today, I assume that those systems were in place.

Senator TESTER. I was just going to say you didn't have to ask, you should have known, they should have known that this is a high priority. Our children are what we live for and I would just say that in your particular case, being able to set up this foundation in honor of your son is incredibly commendable and something I think athletes all over the country and families and parents all over the country very much appreciate.

I yield back, Madam Chair.

Mr. MCNAIR. Thank you.

The CHAIR. Thank you.

Senator Baldwin.

**STATEMENT OF HON. TAMMY BALDWIN,
U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. Thank you, Madam Chair.

A lot of the discussion of name, image, and likeness centers on those athletes who already have perhaps the most public recognition, star players of men's college football and basketball teams, and what monetizing NIL might mean for them, their programs and their institutions.

But I'd like to focus on something that has been raised by the testimony of the current and former female student athletes before us today and, by the way, how great it is to have three of you here representing the perspectives of college athletes. Really it's great.

Despite the incredible progress we've seen under Title IX, which is nearly 50 years old, women's athletic programs and women athletes still experience second-class status all too often. While I think that there's a lot we can and should do to further the promise of equity under Title IX itself, I'm encourage by the idea that NIL rights could give women athletes another way to raise their profile and that of their sports, achieve greater parity with male athletes and advance their athletic careers.

So starting with you, Ms. Chenault, given your experiences both as student athlete and with sports media and business development, how do you see the NIL rights issue as a way to advance equity and opportunity for women athletes?

Ms. CHENAULT. Yes, thank you, Senator. I think to your point, female athletes definitely can take advantage of NIL if it was enacted. The focus right now definitely is around the revenue-pro-

ducing male athletes but especially because there is a disparity between men's and women's sports.

I think it would help women's sports even more. For that reason as a female athlete within the sports media landscape, it was extremely difficult not being able to monetize anything just from a business standpoint. There was no aspect of sustainability.

So I think if female athletes were given the opportunity to have the rights to their name, image, and likeness, they would be able to build their platforms more, be able to build businesses. I think they would be able to have creative outlets. They aren't just limited strictly to like an athlete mentality and that's something that can help them long term.

Senator BALDWIN. Excellent. I'd love to hear your opinions, Ms. Cureton and Ms. Brown.

Ms. CURETON. Yes, I believe Ms. Chenault has covered that very substantially, but like I mentioned in my testimony, less than 2 percent of NCAA athletes will have the opportunity to play professionally and when we look at sports that don't even have a professional level, the best years for athletes to monetize are during those 4 years in college and like Senator Klobuchar already mentioned, for women's sports this is a great opportunity to reach into a new market and to be able to brand yourself and to create financial stability for yourself following your college experience. So this is definitely an opportunity for women to get more exposure.

I believe right now women's sports gets about 4 percent of the media coverage, even though we make up 40 percent of the actual athletic market. So this is another way that we can get our name out there and better advertise our sport so that way we can get, you know, better facilities since apparently that's the reason why we're not receiving those.

Senator BALDWIN. Yes. Thank you. Ms. Brown?

Ms. BROWN. Thank you. Yes, I just think that NIL legislation would give female student athletes and all student athletes the freedom to better create their images and actually have control over them.

We already have social media, Instagram, TikTok. Even if we have those followings, we're not able to sort of do more with them maybe in the ways that people want to and I think we should have the freedom to have those opportunities.

Senator BALDWIN. Excellent. I'd now like to turn to the topic of meeting the health and safety needs of our student athletes.

While I believe we must ensure that every student has access to the health services they need, I recognize that student athletes may have more and different health needs than their colleagues.

Ms. Cureton, you noted in your testimony the importance of addressing both physical and mental health in college athletics. While all college students face some level of anxiety and stress and pressure to perform, I imagine those participating in sports particularly experience those issues differently.

Why do you think it's important to focus on meeting the mental health needs of student athletes?

Ms. CURETON. I think it's important for a variety of reasons. I think the athletic environment is not always conducive to a healthy mind and that makes mental health awareness and understanding

even more important, and I think a lot of times athletes are encouraged to have the mindset to be strong and push through.

I know when I first got my injury, I was hesitant to even tell my trainer. I was like, oh, I'm not really playing that much. It must not be that big of a deal. I pulled a muscle. It turned out that my hip bone had died due to a lack of circulation. So that's the mindset that I'm approaching, you know, my sport with and imagine what that means for an athlete that's playing 40 minutes every single game and they feel like they're caring the team on their back.

They may not tell you about that injury because of their mental mindset toward it. So it can lead to physical implications. When we talk about things like anxiety, stress, and depression and all those types of things, the lifestyle that we lead as student athletes means that we put a lot of our identity into being a student, into being an athlete, and we don't take care of that mental portion of ourselves.

We'll ignore taking care of ourselves if it means we have to study an extra hour or if it means we're going to the gym to put up extra shots. So that's why mental health is especially important and I think during COVID, it was really revealed to me through the experiences of my teammates just how important that was.

They were isolated in an effort to be able to continue their sport and I think there was definitely a lack of support when it came to handling their mental health and even their physical health needs during that time.

Senator BALDWIN. Thank you.

The CHAIR. Thank you, Senator Baldwin.

I want to follow up on this since it's come up a couple of times about mental health and second opinions and counseling in general and obviously the horrific incidents of suicide on campus.

So what do you think the structure should be in the context of what do you consider either an ombudsman, a second opinion, or a layer that gives you the discretion that you need to confide in someone either about your physical or mental health? Anybody have any input about that? What do you think that structure should look like? Yes, Ms. Chenault.

Ms. CHENAULT. Yes, thank you. For one, I think mental health shouldn't be reactive. It definitely has to be proactive.

So to Mr. McNair's point, I think there should be like a checkup within the athletes that doesn't currently exist rather than the athlete having to take the autonomy themselves to go search out and find the psychologist, and the second thing is I do think the psychologist should be catered specifically to the athlete, whether it's by sport, whether it's a sport psychologist specifically, or whether it's just the representation of like gender or race as an availability or option for these athletes to be able to go to so that it's not just one person fits all within mental health.

Ms. CURETON. Yes, I definitely agree. I think in our experience we have one woman on staff and she is a white woman and in my experience it was good to have someone there, but it would have been even better if we had a wide variety of options to someone that understands my unique experience as a black woman and a female athlete.

I think there also needs to be better safeguards in place on educating staff and coaches about the mental health needs of the athletes that they're serving. So it needs to be proactive on every front. So just like you get an annual physical, you should have the opportunity to meet annually and check up with a sports psychologist.

I think we're putting our mental health secondary as if it doesn't impact the way that we function in the same way that a sprained ankle would. So I think that needs to be a change and a shift in the perspective in how we look at mental health in athletics.

Mr. MCNAIR. Yes, so I believe it boils down to the recruiting process. As the young lady just said, I think that when you have coaches, they need to be educated to even in the recruiting process.

It's all about questioning. So as I mentioned earlier, I didn't ask the right questions and I think that in fear—not in fear, but I think that when you have recruiters and coaches recruiting student athletes, they need to ask parents like, hey, does your child have any mental health issues because a lot of times usually what happens, it never comes up until it surfaces once your student athlete gets to college when in reality I think as a parent, a lot of times they may not want to blow the opportunity of their child where they're saying, hey, you know, I know they may be experimenting with substances or whatever the case may be or they may have a mental health challenge beyond what they're taking medication-wise.

I just think that it needs to be full transparency all across the board in regards to the whole process. That way, you know a coach or an athletic program knows the person that they're dealing with as opposed to finding out when it's too late in a sense from a reactionary perspective.

The CHAIR. Ms. Brown.

Ms. BROWN. I think they all covered it pretty well. I might add maybe having access or at least having the trust or faith that there's a wall between sort of whoever works with students on their mental health and sort of the coaching staff.

I think sometimes there's a fear of like what you say there, even though you know it's confidential, somehow leaking out or somebody finding out you're seeing one, that becomes an issue on your team. So just making sure there's the trust and like sort of the feeling of safety is there for the athletes so they know this is someone they can go to and it won't affect how they're treated on their team or something like that.

The CHAIR. So that's really what I was getting at. So thank you for bringing that up.

I think both on the health care side—I mean, well, broadly on health care, physical and mental, what do we—so we've had a lot of discussion with a lot of athletes about this and one of the things we've talked about is the second opinion from somebody at the university and some athletes have said, well, that might not even be, you know, enough distance, depending on whether you trust that individual not to go back or, you know, the implications of the university care.

So can this be somebody at the university or it has to be outside the university?

Ms. CHENAULT. Personally, I think it has to be someone outside of the university, yes, because when we look at the power dynamics of the university from the individual athlete level, then you have a coach, then you have the AD, then you still have like the chancellor of the school. So even for a lot of these issues that we've talked about, if the athlete brought it up to the coach and if the coach actually agreed and brought it up to the AD and there's still limitation, I think, from the top down of protecting the image of the institution as a whole. So I do think it would have to be outside.

The CHAIR. OK. Anybody else on that point?

Ms. CURETON. Yes. I think the key point is just making sure that they're accessible to athletes. So that's kind of what I worry about. I think before we had a sports psychologist, our model was that they could refer you to an outside individual but you had to ask for that. So sometimes I think that having someone that's there and present within your community might be easier as far as accessibility is concerned, but maybe having them be accountable to someone else. Like they're not accountable to your athletic director when it comes to talking about different things might be the route to go, but I do agree that the power dynamics are something that are worth considering, but I think accessibility also needs to be prioritized.

The CHAIR. So clear independence.

Ms. CURETON. Yes.

The CHAIR. So an ombudsman of sort could work or, you know, someone at the institution who is seen to have that unique role, not reporting into that system.

Ms. CHENAULT. Yes.

The CHAIR. OK. Mr. McNair.

Mr. MCNAIR. Yes. I agree with what they both said. I think that you definitely need to have an ombudsman or an outside health system that attends to these matters, especially with these types of things, because as the young lady just said, it's that tier system.

I know I can speak for—I can't speak for but I know one word, one phrase, a lot of athletic directors don't really want to hear is lack of institutional control and it's kind of like how did you miss that and again that makes the image of the organization or the school look bad.

The CHAIR. Thank you. Thank you. And, Ms. Brown, do you have anything else to add to that? You kind of started us off, so we're good. OK.

Senator Blumenthal.

Senator BLUMENTHAL. Thanks so much.

Let me follow that line of questioning, if I may. I think what we're talking about here is accountability and the College Athlete Bill of Rights provides for a commission, independent of the NCAA, independent of the colleges, to investigate and take action to penalize and hold accountable colleges.

There's a saying, history doesn't repeat but it rhymes. What's rhyming here for me is our experience in the Olympic athletes' bill where the colleges and the trainers knew. In fact, Michigan State knew about Larry Nasser's misconduct for two decades and looked the other way.

That's what we have in a lot of colleges because they are promoting the culture of win at any cost. What they want to do is win. That's how they profit. So more than just athlete sharing in that monetary profit, we need protection for them.

Let me quote what Dallas Hobbs wrote to us. "Athletes are scared to share what they are going through because they believe they will face repercussions or more harm from those above them."

The gymnasts who were victims of Larry Nasser were petrified to report the abuse because they feared they wouldn't be allowed to compete. They would be cut. They would be deprived of the opportunity of a lifetime to be part of Olympic competition.

Well, we have exactly the same phenomenon here. Athletes who are victims of cutthroat practices injurious to them immediately physically but also, as you point out, Ms. Chenault, the trajectory of their career is hampered because they are forced to major in educational pursuits that are less valuable. In effect, their education and their futures are compromised and they have no means to complain.

So that's why I think this issue of enforcement and standards is tremendously important and let me ask Mr. McNair about the accountability for the athletic department that were involved in the death of your son.

I know this is going to be a little bit—more than a little painful for you, but I just want to say the Maryland coach who was fired for creating a toxic environment that was at least partly responsible for the death of your son was fired, but now he's working elsewhere as an assistant coach at another university, and my own feeling is that a coach who's responsible for the death of an athlete, this is the extreme of the phenomenon we're discussing today, should be reported to other institutions and should be held accountable but more than just that coach, the entire athletic department, as many of you said, the entire chain of command should be held responsible. Would you agree?

Mr. MCNAIR. Yes.

Senator BLUMENTHAL. And the way to do it is through a commission, an independent body. We've talked about an ombudsman, but a commission in effect is an ombudsman that can provide for due process and fairness but at the same time impose accountability.

I hope that the athletes who are here today would agree with that idea.

Ms. CHENAULT. Yes, I do.

Ms. CURETON. Yes, as well.

Senator BLUMENTHAL. Thank you.

Ms. BROWN. Yes.

Senator BLUMENTHAL. Thank you all very, very much. Very meaningful and important testimony today. Thank you.

The CHAIR. Thank you.

So I want to go back over on the issue of NIL rights in general because I want to get a few things for the record. I know we have a couple of other colleagues who are on their way.

One, do you all support getting a Federal law in place? Ms. Chenault?

Ms. CHENAULT. Yes, I do.

Ms. CURETON. Yes, I believe that having a uniform Federal law would be beneficial for all student athletes.

Mr. MCNAIR. Yes, I do, as well.

Ms. BROWN. Agreed. I think uniformity is important.

The CHAIR. Thank you. And then one of the issues that also often comes up is how you define NIL rights and not to get into the legal ramifications of fair market value, but there are also issues about making sure that boosters or other people don't artificially influence the value or create a system where somebody's attracting someone to come to a school just, you know, for that specific purpose.

Do you have any thoughts on that, Ms. Chenault or anybody else, on how you see the California law and definition playing out now?

Ms. CHENAULT. I think I can go first. I think there should not be too many limitations on NIL just because if it is left to the institutions, like I've stated, that it won't be implemented equally or fairly across the Nation.

I think, of course, there are some precautions just to make sure that there is fairness for the athlete, too, and the institutions. So I think as long as the athletes are kept in mind first rather than just the institutions or the posturing of the institutions that really might just be trying to take away freedoms from the athlete is kept in mind, then I think the widespread NIL rights that California is implementing would be successful.

The CHAIR. So you're aware that then some states are actually within the NIL right limiting the students and not just if they conflict but basically giving institutions any ability to say they conflict which then would thereby be limiting the rights?

Ms. CHENAULT. Yes, exactly. So that's why I think it should be nationwide of kind of an implementation like California because I think that posturing the other states are taking saying that athletes shouldn't be given like full rights to their name, image, and likeness would have long-term implications that really would just limit NIL's implementation as a whole.

The CHAIR. Ms. Cureton.

Ms. CURETON. Yes. I think that a lot of the problems that we discussed here today when we talk about pay for play and amateurism and that's brought up by institutions, I feel like sometimes those words are thrown around not really in the interest of student athletes as actually protecting and preventing those instances but more in line with protecting the institution and retaining their control over NIL rights.

So as long as, like Ms. Chenault already mentioned, we put athletes first and we prioritize their right to monetize their NIL, and we're considering restrictions and things like that, I think that's the most important approach to a national legislation.

The CHAIR. And you mean by restrictions, meaning?

Ms. CURETON. When we're talking about preventing, you know, pay for play and things like that, I think that institutions will use that word as kind of like a buzz word and maybe sometimes it is a real concern but other times I think it could be more about limiting the rights of student athletes.

The CHAIR. OK.

Ms. CURETON. Yes.

The CHAIR. Anybody else on that point? Ms. Brown, anything on that?

Ms. BROWN. I guess one thing I'd add is I think sometimes in discussing like concern over how student athletes are going to manage their money, I think there's an opportunity here to like teach student athletes about how to understand the business side of sports because they already like are pretty well versed in how their sport works and they sort of know, I think, a lot more than people give us credit for about how things work.

So I think rather than letting the institutions sort of limit how we can use our name, image, and likeness, I think there could be—I don't know if this would be a legal thing or just sort of come out later, but we could be allowed to learn, I think, about how NIL would work and be given workshops and that sort of thing. I don't think we should be limited in terms of how we can use it. Maybe just taught or guided in terms of how best it works.

The CHAIR. Yes. Mr. Gilmore brought this point up last week, too, about, you know, institutions who basically are going to say you can't have NIL rights if you don't go and take some classes on finance first and so I think he was very outspoken and pointed on that.

Our colleague, Senator Luján, has arrived. Senator Luján.

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Chair Cantwell, for this important follow-up hearing so we can hear from students and families directly affected by this issue.

Mr. McNair, I want to thank you for being here, as well, and lifting up your son's memory. You're telling stories that people need to hear and you're helping students along the way and want to thank you for that.

To the three other current athletes and former athletes, I guess once you're doing this, you're always doing this with your advocacy. I want to thank you and very much appreciate that we also have a D1 track and field athlete here.

You know, we sometimes forget those national championships that I know we're all rooting for and watching and we had some athletes from New Mexico recently competing and I think that we often leave track and field out of these conversations. So it's good to see you all here.

On July 1 of this last year, New Mexico will be among the first to allow student athletes to be compensated for the use of their name, image, and likeness. You know, back home when we see these incredible athletes and they're on billboards and then you talk to some of these student athletes, they can't afford to grab a bite to eat, there's something wrong, and with it my home state will become a leader on this national issue.

Congress must ensure all students across the country have a fair shot. However, we cannot settle for a national solution that falls short or otherwise undermines solutions advanced by states like New Mexico. Our students deserve better and I'm committed to making sure that happens.

Ms. Chenault, at UCLA you competed in a wide variety of events on the field. What's more, off the field you worked diligently to ensure the needs of all athletes and were part of the national conversation. You highlighted the experiences of students who are experiencing mental health problems and racial inequalities to make sure their voices are heard. This is critical work. I applaud you for it.

I believe any legislation we pass here should benefit all students with rights over their name, image, and likeness, benefit athletes across a wide variety of sports.

Do you believe in that, yes or no?

Ms. CHENAULT. Yes, I do.

Senator LUJÁN. What more can Congress do to ensure future legislation helps all student athletes?

Ms. CHENAULT. I think it's just enacting kind of what you were talking about for New Mexico and also California. What they are doing, it's making sure that it is equal and the language in the legislation is equally treated across all states.

Senator LUJÁN. Ms. Cureton, in many of the big ticket sports, like basketball, football, minority athletes make up the majority of the players on the field, athletes of color.

In your testimony, you highlight the importance of thinking of student athlete rights as a racial justice issue. It's critical to acknowledge this.

How have past actions by the NCAA over students' rights to their name, image, and likeness impact athletes of color?

Ms. CURETON. I think the biggest way is the restrictions that they've placed on them. I think Ms. Chenault also mentioned in her testimony how it disproportionately affects low-income and athletes of color and female athletes, these restrictions that are placed on them, but when we talk about like the big ticket sports in general and the revenue that these athletes bring in, I believe it's estimated that March Madness brings in about \$1 billion annually off of the TV ads and everything considered and everyone around those student athletes are normally white. I believe 71 percent of head coaches in men's basketball in the NCAA at the Division 1 level are white while 58 percent of the athletes are black.

So when you're generating that much money and you're not even seeing anything from it as far as the use of your name, image, and likeness is concerned, I believe that negatively impacts you. As you mentioned just previously, there are athletes who have their own struggles as far as income is concerned. Oftentimes they're at school trying to get the scholarship in the hopes that they'll be able to give back to their families and support their families. So when there's an inability to provide themselves with another income, you're putting them at a disadvantage.

Senator LUJÁN. Ms. Chenault, as part of your work off the field, you worked hard to highlight those challenges the student athletes are facing. In particular, you've done a lot of important work to highlight the mental health challenges athletes all across the country are going through.

It's unacceptable that students feel like they can't rely on the very institutions that they're working so hard to represent on the national stage.

How should colleges and the NCAA work to better improve student athletes' access to mental health services?

Ms. CHENAULT. Yes. I think one of the first things is definitely the educational training of the coaches. One of the things I mentioned in my testimony is that mental health shouldn't be left up to non-mental health professionals or the jurisdiction of non-mental health professionals or the subjectivity, I guess, of non-mental professionals.

So I think that education can help change that culture that doesn't highlight or really isn't very accepting of mental health within the athlete space. So I think that is one, and I think the biggest thing when it comes to mental health for athletes is allowing them to feel safe and allowing them to feel heard and so whether that be just through the representation of gender and racial mental health professionals that they have access to or whether that be from third party mental health professionals that they can trust.

So I think either of those implementations would definitely help mental health of athletes from a day-to-day standpoint.

Senator LUJÁN. Appreciate that. And, Ms. Brown, you know, you gave a powerful testimonial today, as well.

What have you heard from fellow athletes, whether they're competing with you, alongside you at track and field, or in other sports, as well, from the institution that you attend?

Ms. BROWN. About what specifically?

Senator LUJÁN. Just in general, how they feel, how tough times can be when they're not being allowed to be compensated when, you know, we know how expensive those tickets are when we go watch you all compete, and like I said, they're just struggling trying to get by.

Do you have any of those stories that you've heard that also moved you that you're helping to carry today?

Ms. BROWN. So I know that I'm speaking from a place of privilege where I can sort of afford those flights. My parents are able to do that for me, but I have teammates who sort of don't go home as much as they'd like to maybe because that's a bigger expense for them and also we don't really have time to get jobs, a lot of us. So I just think the NIL legislation is another way that we can sort of monetize what we're already putting much more than 20 hours in a week a lot of times to do and I think we deserve that opportunity.

But, yes, I don't want to speak too much on that just because it's not my experience. That's what I'd say.

Senator LUJÁN. Appreciate that. Chair Cantwell, if I may ask Mr. McNair one other question, as well.

Sir, with the work that you've done and the memory of Jordan, with the work the family's doing here, sir, what have you learned with this foundation and what can we better be doing to make sure that we're respecting athletes and providing them that support that they've earned?

I mean, we're going to these games and I think highly of some of these coaches. I don't agree with all of them. It's easy for me to Monday morning quarterback, if you will, or call from the cheap seats, but I'm there to watch those athletes that inspire me and

you get to know some of them personally and, you know, one of the guys I got to know way back when in New Mexico is a guy named Ruben Douglas and Ruben, he played around the world. He continues to inspire us and he's doing great work in the community, but he helped me understand challenges that his fellow athletes were going through, as well.

What can you share with us today that we can be doing better?

Mr. MCNAIR. One of the many things that we've learned, that I've learned along the way, as the young people just said, the three panelists here with me just said, it's only 2 percent of student athletes that get to a professional level.

So these 4 years are extremely crucial. As the young lady just said, the time involved, the time that they commit to the school by playing a sport and obviously it's a reciprocal relationship. I mean, a reciprocal deal in regards to education component of it, but at the end of the day, these are long-term ramifications.

You know, the young lady just said she can't really take the major that she wanted to take just due to her commitment to her athletic commitment and I just think that what I've learned along the way is the value of student empowerment from a perspective of this is actual time that you can make something happen and, hey, what if one of these young ladies wanted to write a book or they played in a band or they wanted to do that and they can't be compensated because of their commitments or whatever the guidelines or the laws that are in place.

I just really think that young people's time is precious and I really think that we need to support them and really maximize that and that's just really what I notice that, you know, a lot of young people, they'll put that investment in thinking they'll get to the professional level but it's only 2 percent for the average time in the NFL was 3.5-3.6 years. You spend a lifetime for all that and when you're done, you're still almost a kid for lack of a better term.

So you still have a lot of life ahead of you. So if we don't put the profit things in place in regards to lifetime scholarships, because some people may leave feeling they have the opportunity, I need to go right now, whether I got my degree or not, so I just think it's more important as a parent or as a committee, as someone said, that we support these young people along the way and not only support them for right now, support them for the long term.

Senator LUJÁN. And, Chair Cantwell, I never played college sports, I'm a little short, I'm a little wide at this seam. Growing up I had the honor of competing with some incredible athletes where we found Junior Olympics and car washes and bake sales and whatever we could do to try to earn a buck, mow a lawn. That's what allowed us to go and travel to see these athletes that we got to watch later run and compete in the Olympics.

Jerseys that we would purchase from friends that we watched, they never got a dollar from it, and it's just not right, and I think I was the first United States Senator elected that went to Head Start. I thought everyone went to Head Start. I thought that was a program that everyone went for. I didn't know that you had to qualify for that because you didn't earn too much dough.

It's an important perspective that we're bringing here and it's an important story that you all are telling. Let's just do right by the

athletes. Let's do right by students and give them a path forward. That's what this is all about.

I thank you for your testimony today and, Chair Cantwell, thank you for the time.

The CHAIR. Thank you. Thank you, Senator Luján. Thank you for sharing that personal perspective, and I think that is why we're here today to make sure that we're hearing all perspectives on this issue.

So I would be remiss if I didn't ask the women athletes here about Title IX and about tournament and tournament play. One of the testimonies that's submitted here today is by Sedona Prince from Oregon who you may know posted a photograph of facilities during the NCAA tournament. It didn't quite look like the same facilities that the men were participating in. We so appreciate her being outspoken. She's submitted testimony on other issues, as well, particularly health care.

But this brings up an important issue about Title IX and its implementation. What else do we need to do? Do we need to make sure the NCAA complies with it? Do we make sure that tournaments have to comply with it? In your individual athletic experiences, what do we need to do to make the enforcement even across the board?

I think, Ms. Brown, you might have mentioned the name of the NCAA tournament itself being used only in, you know, one instance. You know, I'm a firm believer that the age of the internet, there will be lots of opportunities for people to see content and absorb content. I'm a huge track fan. I actually would love to see more of those events and understand who, you know, who are the individual athletes in these events?

So what needs to be done here on Title IX as it relates to the competition and making sure there's a level playing field?

Ms. CHENAULT. Thank you, Senator. I think one point of consideration that is often overlooked is within Title IX, it accounts for football just as a body count, as a head count to equate equal amount of representation for female sports, but that doesn't equate for like facilities and treatment.

So within my experience personally, I know we have our own football facility and then we have our own basketball facility, which, because of Title IX, the women's basketball team is able to use that basketball facility, but the entire football facility, which is probably maybe two-three times the size as the other facility that the rest of the remainder of all the other sports combined use, is totally different in regards to our training and our treatment.

All of our training room for all the other sports outside of football and basketball have to use that amount of limited resources, training, whether that's snacks. We don't have access to meals like the football team does. So there is a little bit of inequity. Even though Title IX emphasizes the importance of equity within head count and body count for male and female sports, it doesn't necessarily ensure that the resources and the facilities that we're able to use match or equate to that level of equity.

The CHAIR. So doing something besides head count——

Ms. CHENAULT. Mm-hmm.

The CHAIR.—is important.

Ms. CHENAULT. Definitely.

The CHAIR. Yes, Ms. Cureton.

Ms. CURETON. Yes, I think having the NCAA be required to abide by Title IX and making sure that the tournaments are also abiding by that policy, as well, would be extremely beneficial.

I think Ms. Prince's testimony as well as that she submitted during the tournament is evidence of that, of women being continually treated as an afterthought, but I can say as a female athlete that wasn't surprising to me. I didn't expect the women's tournament to have the same level of facilities as the men's tournament and that's sad to say, but we're just aware of that's how we're treated and that's how the system usually works.

So I'm glad that we're able to speak out and my own personal experience as far as athletics at Georgetown is concerned, like Ms. Chenault already mentioned, I'm a woman's basketball player. So when they redid our facility, they had to give us the same court and locker room as the men's team.

When it comes to our living situation, initially until the men moved out of the renovated apartments, we stayed in regular housing like most students do. So a lot of times we get the hand-me-downs from the men's team and that ends up equating to, oh, well, it's equal, but there's a feeling of as appreciative as we are for the resources we had, when you feel like you're an afterthought, it affects you.

The CHAIR. I would be curious as to where do you think all this can go in the future. I saw this interesting moment that I'd really didn't understand. Actually I had a chance to ask the Oregon women's basketball coach about this later, but, you know, when they have the NCAA tournament and then they have this shoot-out event where they basically load up, you know, around the horn of basically how many shots can you get off in a matter of—I don't know what it is, I don't know how many minutes.

Anyway, so they have this shoot-out tournament and then they pick a winner and they have a winner, both the men's and the women's division, and then the women and the men face off against each other. The women nailed it. The women beat the men and asking this coach about this, I guess that's a frequent thing.

Well, for me, somebody who was an observer, had no idea that women could outshoot men in that kind of tournament with that level of consistency. I thought that was fabulous. I thought that was like this great moment.

So where do you see—you know, if we could empower more, you know, of women athletes, you know, particularly, say, in the basketball area, which you're familiar with, where do you see this going? What are the kinds of things that we could do to bring more awareness, bring more revenue, bring more media attention?

Ms. CURETON. Well, I think that women's basketball is an amazing sport to watch and it's highly competitive. So if we're talking about just media attention and the marketing perspective, there's a lot of untapped potential with our tournament in general.

I know just watching it from my perspective, it's fun to watch and there's a misconception, like you just mentioned, that we can't compete like the men or it's not as entertaining because we don't

do dunks and X, Y, and Z and all that, but that's not accurate to the experience.

Most sport fans that really watch women's basketball can tell you it's just as enjoyable as watching a men's game, but on the real world impact as far as girls in sports, I think my experience, I grew up in a household where basketball was king because my father played professional sports.

But male professional athletes respect female professional athletes. You're not going to hear a man in the NBA talk down on a WNBA player because they know what we're capable of. So growing up, I was always shown female sports. There was never a time in my life where I questioned my capability to play my sport because I was a woman, and I think the more that women and young girls are exposed to that, it can increase the likelihood that we will be a part of sports.

When you think about the impact that sports has on our lives, for all the negative that we've talked about here today, my experience in athletics has helped shape me and make me into the person that is able to sit in front of you, convey these thoughts and opinions and advocate for what I believe matters, and I think that's a powerful thing.

The CHAIR. Well, I think we've seen in sports overall the more people know the story of the individuals, it also allows them to, you know, relate to those players and I just feel like there's just this big anonymous void when it comes to women's basketball, that there's so much there we'd like to know.

Ms. CURETON. Yes.

The CHAIR. I mean, obviously Arizona had a great season, had a tremendous player. I'm sure people would want to know more about her. You know, the tournament itself, I feel, doesn't get the attention. I feel like we're almost limiting it by the rules that we have in place now and, you know, some of this may be, you know, on the media, as well. I don't know. I'll have to dig in more to that, but clearly, you know, as I said, with the age of the internet, empowering these stories, you have the ability to have so much more consumed and to understand who these athletes are, which are really incredible stories, which then gets to how you empower more women athletes, which is why this is so important to do, very, very important.

Senator HICKENLOOPER. Senator Rosen.

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

Senator ROSEN. Thank you, Chair Cantwell. Appreciate it and appreciate everybody being here and the great discussions we're already having.

But I want to focus a little bit on weather and I can tell you that if you're looking at the weather this week not just across the West but across the United States, we are in record, record heat temperatures and so we have to protect our student athletes from the heat and as some of my colleagues on this committee referenced at our last hearing, since 2000, 32 student athletes have died as a result of heat-related injuries associated with college athletic workouts.

I'm especially concerned about the athletes that play outside in arid states, like Nevada, where the daily high temperatures hover for months and months around 100 degrees, this week topping over 115 all week. Like I said, just go to the news and you'll see it all across the country.

And so, Mr. McNair, I really appreciate you being here and for your passionate advocacy and I'm so incredibly sorry for the loss of your son Jordan and I hope that his memory is a blessing and inspiration to you and you and your family know the dangers of extreme heat unfortunately all too well.

Can you tell us about the work that you are doing to educate college athletes to know about their rights and to know how to listen to their bodies in extreme heat and our coaches to understand that we may not ever be able to be stronger than the climate? Would you please tell us what you're working on and what lessons Congress can learn to help this problem so it doesn't happen again?

Mr. McNAIR. Thank you, Senator. Thank you for your condolences, as well, and voicing about our strength.

One of the main things that should be known is that, as the Senator just mentioned, this is a prime time for tragedies, especially when it comes down to humidity, heat, student athletes playing outside or competing outside, but one of the main things that I've learned along the way, it's not an issue of students playing out in this type of heat. The main thing is when Jordan went down that day, the thing is you have to let student athletes acclimate. It must be a two-week process to acclimate and basically what that means is that you have to let students gradually get acclimatized to the temperatures and the actual weather conditions over a 2-week period before they do any strenuous exertional activities.

Now one of the main things with that, as well, is heat stroke isn't a bad thing. People have heat strokes all the time. The main thing with a heat stroke, a mismanaged heat stroke is bad. That's when they become tragic.

Student athletes aren't dying in games. Student athletes are dying during conditioning and practice this time when they're doing too much too quick prior to better hydration, better sleep.

Young people are young people. They're going to tell you they're ready when they're not ready. We need to have adults that can be a part of these organizations and look at a young person and say, hey, I can look at you and see that you're not ready. We need to follow up more with hydration, rest, things of that nature, but keep in mind these tragedies always happen during conditioning drills. They don't happen during games.

People don't have heat strokes during games. They happen during conditioning when the conditioning drills aren't properly supervised or the student athlete has not gone through the acclimatization process and that's key for this type of injury. Heat stroke's 100 percent preventable. This is the only injury that any medical professional will tell you that's 100 percent preventable but you have to put the right things in place in regards to acclimatization before you do anything strenuous. So it may just take a little longer and again we lost 20 young people at the AAU in high school level last year in practice, not during games, and this was beyond the college level.

So again young people are still dying but you have to have the right safety equipment in place, cold water tubs, wet bulb globe thermometers, AD machines, things like that have to be in place prior to this acclimatization period or while this acclimatization period is going on.

So, Senator, that's what I learned to keep our student athletes safe. Those are the things that should be in place.

Senator ROSEN. Well, you're right. It's a hundred percent preventable and for a person, I have lived in the Southern Nevada desert of Southern Nevada for over 40 years and I know how relentless the heat is and I surely wasn't a student athlete but being out there too long without the proper prevention, equipment, hydration, I couldn't agree more. We'll see what we can do to help you in this regard, but I hope that all of our coaches and athletic associations across the country are listening because this is a hundred percent preventable with the right precautions.

Thank you, Madam Chair.

The CHAIR. Thank you, Senator Rosen. Thank you for bringing that unique perspective as a Nevadan to it.

Senator Hickenlooper.

**STATEMENT OF HON. JOHN HICKENLOOPER,
U.S. SENATOR FROM COLORADO**

Senator HICKENLOOPER. Yes, want to thank all of you. Thank you, Madam Chair, for holding this hearing and allowing me to slip in. I want to thank you all for your testimony and for all your work on this issue.

Ms. Cureton, you said you grew up in a basketball-dominated household. So I'm just going to take a wild guess as someone who grew up in Philadelphia that there might have been someone in your house who had the nickname "The Twirl," like "Earl the Twirl" Cureton.

Ms. CURETON. Yes, that would be him.

Senator HICKENLOOPER. So one of the really wonderful people in professional basketball and won an NBA championship. I can't remember, it was either 1983 or 1984, with the Pistons and maybe one later, I can't remember, but he had a heck of a career and then our hometown hero, Chauncey Billups, almost exactly 20 years after that, won an NBA championship with the Pistons, anyway, another very classy person. Just thought I'd get that in there.

Colorado's one of 18 states to enact a law allowing student athletes to earn compensation from their NIL. Colorado's NIL law passed out of our House, our General Assembly 55 to 9, and was approved in our Senate unanimously.

So in your view, what policy principles do you think are fundamental for Congress to consider in order to get to a bipartisan NIL law that builds upon the work of states?

Ms. CURETON. For me? OK.

Senator HICKENLOOPER. Because I asked about your dad, you kind of have to answer.

Ms. CURETON. Oh, OK, yes, I was like is it just my dad or are we going to ask questions.

The CHAIR. You probably get that all the time.

Ms. CURETON. I do. Yes. I think a lot of what we discussed here today as far as we can build upon states (1) California's efforts is something to look at, (2) what we want to avoid is such heavy restrictions that athletes can't actually monetize their NIL as they would like to. So I think those are two areas to kind of watch out for, and as far as having uniform practices with the NIL, I think it's also important to talk about, you know, the other areas in which student athletes are struggling as far as health and safety concerns because I think it's all tied together.

I think it's impossible to divorce monetizing your name, image, and likeness from the health and safety concerns because, as I mentioned previously, it is our bodies that have built this industry. So those are the few areas that I would name.

Senator HICKENLOOPER. Absolutely. And, Ms. Brown, Colorado's the proud home of the U.S. Olympic and Paralympics Committee, supports thousands and thousands of talented athletes representing the United States in various sports.

In the 2016 Olympic Games in Brazil, nearly 80 percent of Team USA athletes competed collegiately representing nearly 150 U.S. colleges and universities.

In your view and others of you can answer this, as well, how can reforming the NIL rights for athletes preserve or even maybe enhance the pipeline for our Olympics competitions?

Ms. BROWN. I think it's part of the issue there is allowing people to sort of take advantage—I think especially in track and field, you see a lot of athletes in college be Olympians because this is some of our best athletic time of our lives and also college sports for track is one of the best places to get that training, I think sometimes, and so I think student athletes, whether they're in college, or actually—Sydney Latham's in my home state of New Jersey and she was 16. She was a high school student the first time she raced in the Olympics and she sort of went to the Olympics and came back because she wanted to go to college and she wasn't allowed to sort of make any money off of being a literal Olympian because she was still wanting to go to college.

I think athletes like her should have the right to sort of monetize their name and image and likeness at the time in which they're famous and not have to wait until they've done their college time in order to have that opportunity.

Senator HICKENLOOPER. Got it. I appreciate that. Does anybody else want to answer? Please.

Ms. CHENAULT. Yes. Just one thing I wanted to add is I think the implementation of NIL will also just encourage athletes to be able to pursue their education, similar to the example of Susie McLaughlin. I know at UCLA we had a lot of gymnasts, you know. They go to the Olympics at early ages and because of that, that's a peak opportunity for endorsements at an early age prior to college which then they're forced to choose between whether they want to take advantage of their name, image, and likeness, and be able to monetize and commercialize their name as offers are coming to them or if they want to pursue an education which becomes very sticky and difficult of a choice to make at the age of 17.

I know the example of like Jordan Weaver from UCLA chose to be able to become a professional and then came out of pocket to be

able to pursue her educational pursuit. I don't think that should have to be a choice that a 17-year-old should have to make and I think the implementation of NIL will alleviate that and allow athletes to move freely and monetize their name while also getting the advantages that college has to offer.

Senator HICKENLOOPER. Very insightful. I couldn't agree more and I have to say I'm staggered. You are all so thoughtful and athletes when I was 17, there were no athletes who could express themselves with the same insights and it's very impressive. It inspires me.

The CHAIR. Thank you, Senator Hickenlooper.

I have a few more things I want to cover just so we could get them on the record.

Mr. McNair, one of the things about the health standard, particularly as we brought up this issue of heat stroke, is who should be responsible for enforcement. In the legislation you were successful in passing, who is the ultimate enforcer of those standards at the universities in the state of Maryland?

Mr. MCNAIR. So within the actual state of Maryland, you have at the various universities, the state schools, the laws applicable to. Basically, you have your medical staff that should cover the oversight of heat-related injuries or who should be trained and things of that nature regarding that.

But it always boils down to your athletic training staff because those are the ones that will be out on the field or out on the course with the actual student athletes. So they have to be trained at the highest level that they can be trained at in regards to education.

As I mentioned earlier, heat strokes aren't bad and even with the University of Maryland at that particular time, they had an emergency action plan that was in place. All of these schools have emergency action plans, but it's the equivalent of a fire drill.

So this building has a fire drill, however if nobody does fire—they have a fire emergency action plan in regards to a fire drill, but if you don't execute a fire drill, how will we know what door to exit out of in the event of a fire?

So there was plans in place but they needed to be practiced and executed consistently so in the event that something does happen, we'll know what to do. Now not only that, but again student athletes need to know the peak times. They need to know their bodies and things of that nature. I need to know my teammate. If they're out of sorts in the sense this could potentially be a heat stroke just due to all of the conditions that may be going on. So the more people that are educated, the better off we'll be, but again in regards to your initial question, the medical staff and the athletic training staff should be responsible for these.

The CHAIR. And so were there penalties or just the university had to be accountable?

Mr. MCNAIR. There weren't penalties for the NCAA. However, the university was held accountable and made all the necessary changes in regards to an independent investigation and the suggestions of the independent investigation. So all of those things are in place now.

The CHAIR. And so the primary focus was about education and awareness. Is that what you're saying?

Mr. MCNAIR. Right, yes.

The CHAIR. And then just making sure that that was carried out consistently—

Mr. MCNAIR. Exactly.

The CHAIR.—so that, you know, 15 years from now that this will still be remembered and institutionalized so that people know and understand these conditions?

Mr. MCNAIR. Correct. So to always boil down to awareness education and the prevention and that's what it—it always boils down to that.

The CHAIR. And I'm curious. What has been your conversation with the NCAA about helping to make this more standard across the United States?

Mr. MCNAIR. Non-existent.

The CHAIR. Because you've tried or?

Mr. MCNAIR. No. I mean just didn't go at them at all or question them at all.

The CHAIR. OK.

Mr. MCNAIR. Yep.

The CHAIR. OK. Well, we'll find out where they are in this standard.

Another thing I wanted just to clarify. We've been having a lot of discussion about the scholarship length of time passed, you know, the 4-years of institution. I know that I think the PAC 12 is five years and it might be longer.

What should we be looking at as to guaranteeing the athletic time of scholarships just so that, you know, there's more predictability and certainty, particularly when athletics are injured?

Ms. CHENAULT. Yes. I think trying to protect the contracts as much as possible. I think once the coach commits to recruiting an athlete and has them sign something, they should be held accountable and that means there shouldn't be kind of like loopholes or different ways to get the athlete out of the contract if the coach no longer wants them a part of a team for just subjective reasons or opinions.

I think that helps protect the athlete from feeling the pressure to always have to be this commodity, to always have to perform as well, and as we've all discussed I think throughout this day, there are a lot of pressures from athletes from all different angles, and there are also a lot of circumstances out of your control, whether that be an injury or something else, that comes up during those 4 years.

So I think putting contracts in place where they cannot be easily revoked in one way, whether it's athletic reasons or whether it's academic reasons, I think that holds the institutions and coaching staffs more accountable to treat the athlete holistically rather than just as someone who can perform.

The CHAIR. Ms. Cureton, anything to add there?

Ms. CURETON. Yes. I think when it pertains to injury, I believe it's Gonzaga that has a policy like 2 years after you're injured, the university is still responsible for helping care for you and I think that extends beyond your eligibility. So I think that injury piece and that responsibility of the university to still take care of you even after you've completed your time and completed your eligi-

bility even if you're no longer on scholarship is very important because now we're looking at injuries that are more long term when we talk about football and CTE and things like that, even now coming out of COVID and the pandemic.

We don't really know the possible implications for athletes, you know, that had COVID and what that can mean long term and so when we're talking about care, I think that it's important that universities take up the responsibilities for athletes that have been negatively affected by, you know, participating in their sport, so it kind of goes beyond scholarship.

The CHAIR. OK. Ms. Brown, anything on that point?

Ms. BROWN. I'm sorry. Can you repeat the question?

The CHAIR. Well, actually, I was asking about scholarship, but Ms. Cureton added in health care which is great. So it's really about the length of time, you know. So I've talked to various coaches who said things have changed a lot, you know, in the last several years. I'm not sure how much they've changed. So I'm just trying to clarify, and I think Ms. Chenault said it best that, you know, that even at the PAC 12 level you might have five or six years to complete your scholarship. If, so if you were injured, you had that extra time to complete your education but then if there are a bunch of qualifiers on it that put you at a disadvantage. It becomes, you know, a challenge.

So just was trying to get a sense of what you thought about a Federal law that said, you know, guaranteed your scholarship for a length of time post your 4-year education as a way to make sure that if you were injured, you get to complete, you know, your scholarship.

Ms. BROWN. Yes. That definitely sounds good, just having the security to know that regardless of what happens physically about your ability to compete that you are allowed to complete your degree that you were promised that you would be able to when you signed.

The CHAIR. And then one of the other things we've been looking at is transferability, as just being able to make sure that you do have that ability to transfer. Any thoughts on that?

Ms. CHENAULT. Yes. I think transferability is definitely an issue that regards athlete freedom and their ability. I think the limitations on transfers make it very difficult or pigeonhole athletes into one institution, regardless of if they're being mistreated or abused in any way.

So I just think transferability is something that's definitely important in regards to athlete freedoms and there are so many restrictions currently that restrict athletes from being able to transfer to certain schools, whether they're in the PAC 12, you can't maybe go to another competitive school or you'll have to sit out for a year. I don't think policies like that should have to be in place and especially if coaches are able to—whether it's reduced contracts or do these other things—I think there should be more transfer freedoms for athletes, as well.

Ms. CURETON. Yes. I know for basketball, if you transfer you have to sit out a year and then in certain conferences the policy is dependent. If you transfer in conference and you sit out a year and then you don't get that year back.

So I think that restrictions on transferring can be problematic because as we have all mentioned, there are level of abuses that do occur within, you know, athletic departments that may lead an athlete to want to transfer.

I also think another issue that I've seen play out is the way coaches can kind of control where you go just by word of mouth, saying certain things about an athlete, intentionally bad mouthing an athlete, or if they request a waiver to get their year back for whatever reason, maliciously like not signing the waiver or not, you know, providing any sort of statement or assistance in that process.

So I think the coaches are given a significant amount of control over their athletes in the transfer process.

The CHAIR. And was there something waived here during COVID that made a difference?

Ms. CURETON. Yes. The NCAA did like put on a broad waiver for the year so even if you played this year like for basketball, you still get that year back and are able to continue playing.

The CHAIR. And what do you think the effect of that was? Did we learn something from that?

Ms. CURETON. Yes. I mean, I think the freedom that it offered to athletes was a big deal in the fact that a lot of athletes were able to be like, OK, like I can leave, I can make this change, like a lot of people are in the portal. It did make things a lot more hectic as far as recruiting was concerned, but I still think that the freedom that it offered was important.

The CHAIR. Ms. Brown, anything on transferability?

Ms. BROWN. Just in relation to the COVID year, I think that was really helpful, allowing students to opt out. There may have been like internal pressures at certain schools not to, but the waiver and the opt-out really allowed students to sort of put their physical health first this year which I thought was really important.

So if there was some sort of way to—we were talking about injuries earlier and sort of being encouraged to push through them, just I think the opt-out this year was sort of really easy. You could just sort of say I don't feel comfortable playing and that should be an option for student athletes regardless of whether or not we're in the middle of a pandemic.

The CHAIR. And what is that today? What do you think that is today? You can opt out, right? I mean, you can be recruited and go to an institution and then decide not to participate, right?

Ms. CHENAULT. Yes, that's true. If you decide not to participate if you're on scholarship, then your scholarship package is just revoked immediately.

The CHAIR. And you think that's across the board?

Ms. CHENAULT. I know that was at my institution, but I believe that's across the board.

Ms. CURETON. Yes. I think the way that works at Georgetown, once you're given the scholarship for the year and then you ended up attending the university, then your scholarship is maintained throughout that year, but obviously it's renewed on a year-to-year basis. So if you're a first year, you decide not to play, then you only have 1 year of education paid for. You have to figure out how to pay for the rest of the 4-years.

As far as opting out is concerned now, it's just different with COVID. So I was able to opt out. I'm a walk-on. So my scholarship isn't covered, but I did have teammates that opted out, as well, and their scholarship was still taken care of for this year.

The CHAIR. OK. Yes, Ms. Brown?

Ms. BROWN. Just to clarify, I wasn't necessarily talking about being able to sort of quit your sport and keep your scholarship, just in terms of like the safety aspect with COVID, they sort of recognized that there is a real safety risk to playing right now and you are allowed to opt out, but I think generally, even if it's for a period of time, like having the ability to say I don't feel safe in this environment or I'm in pain, I need help, and not feeling like there's going to be retribution, I think is important.

The CHAIR. That's part of the testimony we're submitting from Dallas Hobbs who played at WSU who led some concerns as it related to COVID standards during the football season and I'm bringing that up and so, yes, we definitely—I think we want to get a little more information from, you know, the institutions across the United States on these things, but we think that is one of the benefits of setting a Federal law is to basically clarify these things, to make sure that people understand them.

We do know that there's a lot of money in sports and particularly as these bowls and tournaments have continued to expand and are going to continue to expand more, so we clearly want these issues dealt with and we want clarity there for students. We so appreciate everybody being here today.

I think I have testimony from one other person, Kayleigh Spartan, who is a soccer player at WSU, and so we're going to also submit her testimony for the record.

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

The CHAIR. So Senator Duckworth.

**STATEMENT OF HON. TAMMY DUCKWORTH,
U.S. SENATOR FROM ILLINOIS**

Senator DUCKWORTH. Thank you, Madam Chair. Thank you so much for holding this hearing. I think it's absolutely critical that we address this issue.

I also want to thank the panelists for being here. It's a very brave thing you're doing to stand up and let your voices be heard.

I think most of America saw the viral videos from the NCAA basketball tournament where the women's teams were treated so completely differently than the men's teams. Everything from the type of COVID testing they were given all the way through to that sad little so-called workout gym that they had which was basically one stack of weights.

I'm hoping to hear from each of the panelists whether you think that the NCAA will ensure parity for male and female athletes or do you think that Congress needs to step in here and if you could give us any examples of disparate treatment between you and your male counterparts, the male teammates, teams, or whether you have seen some positive things the NCAA has done, we would love to hear those, as well, but do you think the NCAA is doing enough? Do you think that they will actually ensure parity and do you think Congress should step in and any examples you might have? I'd like

to hear from each of the panelists. I'd really appreciate it. Thank you.

Ms. CHENAULT. Yes. Thank you, Congresswoman. I think one of the first things that I can allude to, I don't think the NCAA ensures parity across genders at all. In a sport coming from track and field, there is a little bit more so as there's—our facility is exactly the same in that we do compete and train together. So I think in a sport like that maybe.

One thing that I did mention, though, a little bit earlier that I think definitely illustrates this difference of treatment between female and male athletes is the different facilities that excludes football.

So I think the football facility has its own ability to have—they have three meals, unlimited meals basically actually throughout the day that is catered to them, but then for all the other athletes, we only get like snacks or like bananas or things like that.

So I think that's one extreme example where the NCAA doesn't hold parity accountable in regards to the treatment of football and other athletes. Since there is no direct counterpart, they put football on the same level as. So that's just one example in my experience.

Senator DUCKWORTH. Do you think Congress should step in?

Ms. CHENAULT. I think it would be helpful in just regards to the treatment and resources that female athletes and other athletes outside of the revenue-producing sports. I definitely think that would help if Congress stepped in in regards to the treatment for the female athletes.

Senator DUCKWORTH. Thank you. From the other panelists?

Ms. CURETON. Yes, I completely agree. I think Congress stepping in would be extremely beneficial. I do not believe the NCAA does enough. I think that's evident in the way that female athletes responded to Sedona Prince's post. A lot of us weren't surprised. We've seen it before. It's happened at our own campuses.

I know Ms. Chenault is talking about is common. I've seen it at other universities where football or basketball has their own separate facility that is completely divorced from the rest of athletics.

In my experience, the men's basketball team has their own floor and athletic department. So that's like one thing. A lot of times it's chalked up to, oh, well, they bring in more money and that's kind of what you're told is the reasoning behind the treatment. So yes.

Senator DUCKWORTH. Thank you.

Ms. BROWN. Sort of like Ms. Chenault said, track and field is sort of we all run on the same track and so there's not a ton of gender disparity sort of in that sense, but I do think like we saw with women's basketball, women's softball, and so I think it would be helpful for Congress to step in and sort of hold the NCAA accountable to Title IX and that sort of gender parity because they don't have the capacity, I think, to treat sports equally.

I think it's a choice. I think it's a choice they shouldn't be allowed to make.

Ms. CURETON. Just one more thing I'd like to add really quickly.

Senator DUCKWORTH. Go ahead.

Ms. CURETON. Even in the conversation about like sports bringing in more revenue, I think it's important to cite the softball ex-

ample because in baseball and softball for both college world series tournaments, the viewership is roughly the same. So this continued excuse that it's about revenue and viewers is just not accurate. We're continually being treated as an afterthought even when we are bringing in money.

Senator DUCKWORTH. Thank you. Thank you for your comments, ladies.

I can't see how much time I have left, but I suspect I don't, Madam Chair. I yield back.

The CHAIR. Thank you. Thank you, Senator Duckworth.

Just to that last point, Ms. Cureton, this is the point I was trying to make earlier that if you actually put the viewership out there and the Internet gives you this huge opportunity to do that, you can see that you can build the audiences, and that's what's so—but you have to put the effort in and then, you know, make sure that you're giving that focus and not just focusing on, you know, one tournament or just on the male side of the equation.

So I want to thank all the witnesses. This has been a tremendous hearing and your input has just been so valuable.

The hearing record will remain open for two weeks, until July 1, 2021, and so any Senators who want to submit questions for the record should do so by that date. We ask that you respond as promptly as possible, in no case later than two weeks after the receipt of that information.

So with that, we're adjourned.

[Whereupon, at 12:07 p.m., the hearing was adjourned.]

A P P E N D I X

STATEMENT OF DAVID ROSE

NIL AND THE DEBATE OVER COLLEGE SPORTS

The legitimacy of college sports programs in American higher education has been hotly debated during the entirety of their existence. The debate centers around the core questions: Are the college sports education or entertainment? Are college athletes amateur or professional? This debate has in recent years expanded to include debate over whether college athletes should be permitted to sell their name, image, and likeness (NIL).

[A separate but related line of debate involves the nature of the relationship between athlete and school as embodied in the compensation, both the form and amount, an athlete may receive for participating in college sports.]

To sort out the legal system's and everyone else's perplexity about college sports, here are the contrasting positions in a nutshell:

The Difference in Understanding and Policies for College Sports Summarized

The Pay-for-Play Critics of the NCAA

Those who want to see Big Time men's football and basketball players paid outright see the nature of the problem as one in which Big Time teams operate as the perfect capitalist enterprise and monopoly—labor gets hardly anything and everybody else splits the winnings. In spite of all the revenue the schools make from the two sports, the compensation management offers labor—thanks to rules the NCAA defends on the grounds athletes are amateurs not professionals, but which critics see as collusive violation of anti-trust law—is the opportunity for an education.

Further, in a bait-and-switch, management often prevents labor from actually 'getting its pay,' *i.e.*, from getting an education. For the typical athlete whose eye is on the prize of the big pro contract, particularly an athlete from an educationally disadvantaged background, the financial value of a degree pales in comparison to the big prize, little better than the financial value of no degree. Furthermore, expending time and energy on studying towards a degree reduces the time and energy needed to increase one's chances of winning the big prize.

Pay-for-play critics offer two possible, related solutions.

Some argue schools should be compelled/obligated to support athletes in their quest for an education, and complain that NCAA rules, as a violation of anti-trust law, prevent schools from fulfilling this obligation. This is the line of debate in the court cases ultimately reaching the U.S. Supreme Court Case as *NCAA v. Alston*.

Other pay-for-play critics argue, rather than have the athletes come away with nothing, colleges must be compelled to pay them some money. That way the athlete will gain something for all the time and effort spent playing school sports, even if they leave college without a degree and don't get the big pro league contract.

The problem is: the credibility of their criticism rests on willful disregard for much of the context (and history) in which college sports operate within higher education. The pay-for-play critics are (willfully) oblivious to the NCAA as an organization whose members include significantly more schools than those that play Big Time football and basketball. In spite of that disregard, the pay-for-play critics insist on describing the NCAA as a cartel. The critics also conveniently disregard NCAA members' sponsorship of non-revenue-producing sports when they contend more of the revenue of college sports should go directly to athletes in the revenue-producing sports in the form of direct monetary [or indirect payment of "educational expenses"] compensation. Similarly, the pay-for-play critics discount the schools' claim their purpose in sponsoring college sports is principally to educate and only incidentally to produce revenue. The critics presume this claim is hypocritical, and that the only way to remove the hypocrisy is to pay athletes in the revenue-producing sports.

Pay-for-play critics, in other words, discount the possibility of removing hypocrisy and corrupt practices by pushing for reforms that serve to maintain the integrity of the relationship between the sports programs and their sponsors. Plaintiffs use the legal system to move college sports in the direction favored by the pay-for-play critics, as happened with the recent Wilken decisions. Those cases led to the current debates over athletes selling NIL rights [and whether school spending on educational expenses should be capped]. Pay-for-play critics support the former idea and reject the latter, and many hope each is a further push of the camel's-nose-into-the-tent of Big Time men's football and basketball players being paid "what they are worth."

One notable critic, the Knight Foundation, has recently advocated a position that the Big Time football and basketball schools should break off from the NCAA and operate quasi-or fully professional sports (entertainment) programs. Such a separation would purportedly then permit the remaining members of the NCAA to pursue college sports as the educational endeavor the foundation wishes them to be.

The NCAA's Self-Proclaimed Raison d'être: Promoting the Student-Athlete

The NCAA and its members claim college sports is a valuable part of higher education because of what its participants learn as athletes, lessons which they cannot learn or learn as well anywhere else. Since schools give financial aid to talented individuals as an inducement to attend their particular college, so they argue, it is appropriate to include talented athletes within that set. The schools welcome the interest the public has in college sports and appreciates the money they are willing to pay to watch. Colleges build football stadia and multi-purpose fieldhouses to accommodate that desire. Television further increases the opportunities to satisfy spectator interest, and over time has become an increasingly important source of revenue for college sports.

The schools use the money sports brings in to advance the mission of education, primarily by expanding the opportunities for more students to play sports at a high level of skill, to be student-athletes. Two sports, men's football and men's basketball, generate the bulk of the money schools make from sponsoring college sports. In recent decades, women's basketball has been a (modestly) revenue-producing sport. The other sports colleges sponsor used to be known as the "non-revenue-producing sports," but they have been rebranded as "Olympic sports," in recognition of the contribution of personnel they make to U.S. Olympic team rosters. In sum, defenders of college sports defend the revenue generated by Big Time men's football and basketball as killing multiple birds with one stone, not the least of which is sympathetic, supportive treatment from politicians.

Schools and athletes want to win, so naturally they will do everything they can to win. Because of the excitement and overzealousness sports can produce in trying to win, the schools recognize they run the risk of scandal; but they claim they are doing their best to keep it in check, and believe it is worth the risk because of the important and unique education the sports experience provides. Colleges resist paying athletes outright because doing so would take money away from other expenditures and, more importantly, because it would convey to everyone, including the athletes, the teams are simply a form of entertainment, not a form of education, and in effect, give in to the overzealousness. Nevertheless, schools are willing to help train individuals whose talent in sports is so exceptional, even if their academic credentials are lacking, because they have an opportunity to be paid as a professional. In so doing, schools assert they also strive to educate those individuals in areas beyond sports. Schools encourage the viewing public to understand and accept such willingness as a slight but not toxic adulteration of the overall mission of the college sports enterprise and of higher education.

Credible as the above may sound, it reflects a history in which ideas and policies were developed pragmatically, in light of realities schools confronted vis-à-vis college sports, not on the basis of principles and philosophies they had examined, found persuasive, and then implemented. The pattern was set early on. Certain sports, most importantly tackle football, participated in by men at elite colleges of American higher education—Harvard, Yale, and Princeton were the original Big Time powers—were extra-curricular activities that were so popular and made so much money, colleges had to come up with a use for the money! Ergo, the pattern of colleges offering sports that did not produce revenue. (Men's basketball did not become a significant revenue producer until the late 1960s.) This situation presented schools with a dilemma: they liked the attention the sports brought them, but the sports were extracurricular, dangerously so to the extent they took attention and effort away from the curricular! What to do? The answer: Maintain "balance" between athletics and academics; try to have it both ways—define the programs as educational but operate them as commercially successfully as possible. The men's Division 1 basket-

ball tournament is the principal means by which the NCAA finances its operations, including its efforts to enforce the rules intended to maintain that balance within the members' programs. The tournament and men's basketball's commercial success is a double-edged sword, however; basketball's smaller team size makes it a sport in which more schools can compete at the Division 1 level, and thus can compete for talented athletes.

With the passage of Title IX, women's sports became part of the debate. The leaders of women's sports programs within higher education, female physical educators, believed in the educational value of participation but were fierce critics of the way men's programs were operated. However, unlike the pay-for-play critics, the women hoped to show both the leaders of men's programs and the country how to conduct intercollegiate sports as a truly educational endeavor, without hypocrisy and the corruption sparked by the drive to make money. The women established the AIAW as the national organization to accomplish this task. Their effort succumbed to a fateful (and ultimately fatal) court decision that rejected as a violation of Title IX the AIAW's prohibition of athletic grants for female athletes. The AIAW had adopted the policy as key to operating women's intercollegiate programs as truly amateur. The court sided with the men's position at the time that the athletic grant-in-aid did not undermine the amateurism of the programs. When the AIAW dissolved, all women's programs joined men's programs under the control of the NCAA. In turn, women joined men as leaders in higher education, including in administering college sports.

As the ongoing legal challenges reflect, the courts have not resolved the debate over whether, why, and how college sports belong in higher education. The courts have simply inserted themselves into the midst of setting the policies enacted to have it both ways. NIL is (and educational expenses are) the latest arena in which the debate is waged.

The Pandora's Box of NIL

The debate over NIL within the NCAA and various branches of state and Federal government is trying to figure out how to achieve that delicate balance of continuing to have it both ways.

The sale of name, image, and likeness (NIL) became a battleground thanks to the NCAA's use of athletes' images in electronic video games that simulated NCAA competition. The video games were a new revenue stream for the NCAA, which it presumed it alone controlled. In the case *O'Bannon et al v. NCAA*, athletes sued the NCAA for infringing on the athletes' rights to control the sale of their name, image, and likeness. When the NCAA lost the case, rather than stir the hornet's nest of trying to negotiate with athletes over the distribution of the revenue it generated, the NCAA got out of the business.

Pay-for-play critics, however, saw an opening and lobbied states to pass legislation permitting athletes to sell NIL rights. The rationale put forward was restoring equity between athletes and non-athletes: non-athletes were free to sell their NIL rights, NCAA rules prevented athletes from doing so. Legal and public pressure led the NCAA to agree to permit the practice. Having agreed to the idea in principle, the NCAA was obliged to figure out how to implement it in practice. Specifically, the NCAA needed to specify the rules it proposed to put in place indicating how student-athletes may sell NIL rights without running afoul of their agreed-upon responsibilities as student-athletes to their colleges and conferences, and to the NCAA.

Complicating the task is the fact NIL is regulated on a state-by-state basis, which means states may have different rules re NIL. Which means schools in a state that has more 'flexibility' and 'generosity' in its rules may have an advantage over schools in states with more restrictive policies when they compete to attract top-level athletes. Because of this potential for inequity, the NCAA approached the U.S. Congress to pass Federal legislation overriding the states' laws in order to 'level that playing field.' Congress agreed to consider the NCAA's request but not without the NCAA first spelling out its rules. [Some members of Congress wish to go well beyond the issue of NIL and propose legislation that alters the conduct of college sports, in order to rectify what they argue is unfair, unjust treatment of athletes.]

The pay-for-play critics prefer the NCAA have little to no involvement regulating athletes' NIL activities; the most extreme among them want the athletes to have entrepreneurial freedom to do as they please, and to earn as much money as they can. The NCAA on the other hand wants to avoid NIL being used to undermine the concept of the student-athlete ("athletes are not employees") or undermine the equality of athletic competition between schools. While pay-for-play critics don't believe it, the NCAA and its members claim those two elements are crucial to the commercial success of college sports.

A major area of concern is recruiting. Part of the motivation for NIL arises from the belief that many Big Time football and basketball players are paid “under-the-table” by third parties who want to induce an athlete to attend a particular school. The practice is against NCAA rules but scandals reinforce the belief schools not only turn a blind eye but are party to the practice. The worry is that NIL may become a way to legalize that practice. The ironic question is, however: Even if the NCAA succeeds in preventing NIL from legalizing under-the-table payments, won’t under-the-table payments be likely to continue? Or is the expectation that athletes will have so much NIL income, under-the-table income will pale by comparison? Or will third parties be spending so much on NIL rights, they won’t have any money left to spend under-the-table?

This is one of many issues still to be resolved, issues such as the following, many of which have yet to receive adequate attention and discussion by the interested parties:

- 1) What, if anything, is to be done about the ‘natural’ difference in NIL earning potential between regions and within regions between municipalities? between successful, highly visible teams and everyone else? In that regard, by what logic do proponents of NIL imagine NIL enhances competitive balance within college sports, particularly in Big Time men’s football and basketball?
- 2) What is to be done about the possible/likely need to set up and finance a mechanism to enforce regulation of NIL marketing, and the associated need to have a ‘compliance officer’ at individual schools? Will this body be responsible for regulating player agents and their activities as well? What is the scope of activities agents will be allowed to perform on behalf of their clients?
- 3) Will an enforcement entity be part of the NCAA apparatus or independent of it? If independent of it, who takes leadership in setting up and funding the entity? If independent of it, how will the NCAA, the NIL enforcer, and the legal system share and/or apportion responsibility for ensuring integrity of the student-athlete and the integrity of the NIL process both as an adjunct of college sports and as a commercial enterprise in its own right? For example, what entity is responsible for ensuring NIL is NOT corrupting the recruitment, transfer, and eligibility processes? What entity is responsible for ensuring the recruiting, transfer, and eligibility process is not corrupting the sale of NIL? Example 1: How will NIL contracts established BEFORE the individual becomes a college athlete be regulated so they do not distort the recruiting process? Example 2: Rather than donating directly to a school as an inducement for the school to admit one’s desired candidate (*e.g.*, child, grandchild, niece/nephew, etc.), does NIL not open the way for a donor to produce an “admissions two-fer”—desired candidate PLUS desired athlete—by purchasing the athlete’s NIL instead? To what if any extent will individuals selling NIL be expected to contribute to regulation of NIL monitoring and enforcement?
- 4) Who is responsible for adjudicating potential NIL disputes between athletes and schools, conferences, or the NCAA? Example: A coach believes the athlete’s performance is being hindered by their NIL enterprise(s). What is to be done regarding athlete participation during adjudication? Will improper conduct re NIL be grounds for dismissal from a school’s team? Who is responsible for adjudicating disputes between players and their agents and employees? Will an athlete face consequences in terms of team participation and/or eligibility if she or his/her agent or employee runs afoul of NIL regulations administered by the school, the conference, or the NCAA?
- 5) What prevents the costs and manpower requirements of NIL enforcement and adjudication from becoming so large as to make such procedures largely impotent and thereby NIL integrity largely meaningless? Which is to say, in the world of big time college sports is NIL not simply a new domain in which abuse and corruption prove difficult to prevent?
- 6) What is to be done about the limit on the potential breadth of participation in NIL: How many ‘celebrity’ endorsers can the market support? Is it not likely that the most lucrative NIL opportunities will go to the individuals in basketball and football likely to cash in later in the avowed pro leagues anyway? In football, between positions—*e.g.*, quarterback versus running back versus right tackle? If so, what is the point?
- 7) What is to be done about the amorphous notion of “market price” in this domain, and the question of whether the amount an individual can earn can/should/will be capped? Will athletes be allowed to collect income from NIL deferred until AFTER they no longer compete in college sports? Are certain

forms of such NIL-generated income allowable while others are not? For example, will an athlete be allowed to establish an NIL contract structured to extend beyond an athlete's actual years of competing in college sports (such as an annuity)?

- 8) What if any restrictions can/should/will be placed on the types of businesses with which athletes may contract in selling NIL? on the types of activities deemed "not game/team related" for purposes of NIL selling? Example: Signing autographs? "Appearances" at public and private events? Post-game analysis podcasts? Gambling recommendation podcasts? Political analysis youtube videos? 'How to' instructional videos? Advertising revenue derived from online followers of one's blog or facebook page? Prize money and/or endorsements as an e-sports gamer? Apparel company 'deals'? Sports-themed movies or tv shows? Who/what regulates the NIL business to ensure it is not engaging in fraud or other illegal practices?
- 9) What is to be done about providing for loss of NIL income if an athlete should be injured? What is to be done about loss of NIL income if an athlete is dismissed from a squad for any reason?
- 10) Will athletes be allowed to 'unionize' and/or sell (negotiate the sale of) their NILs as a group, including in video games?
- 11) How are differences in sponsorships to be handled if an athlete contracts with a company other than the one his team and school have contracted with? How is this arrangement to be resolved in the case of group NIL? If a pre-college athlete's company differs from the one with which a school is affiliated and the college wants to recruit the athlete, what is to be done? If the two affiliations are in conflict, is the athlete expected to drop affiliation? Or might a school change its company affiliation to match those of the key athletes it is trying to recruit? What prevents each sporting apparel company from building up a stable of NIL-supported athletes as a way to compete for college affiliation business? On what legal grounds does the NCAA control an athlete's NIL activity prior to the athlete entering college?
- 12) If athletes are already pressed for time and need additional years to graduate because of the heavy time and energy demands due to their sports participation, whence comes the time and energy to spend developing and selling NIL?
- 13) Why is the time spent on NIL not better spent on getting an education? Or will NIL be argued to constitute a part of getting an education, perhaps even a new 'major' within academia, as for example a speciality in "Communications?" If the latter, will individuals be required to engage in trying to sell NIL? How will Title IX be applied to ensure equity in that regard? Will schools offer NIL training/education as part of the curriculum, or part of 'tutoring', and thereby a means by which they compete FOR recruits? That is, contrary to the argument NIL activity must be independent of the school, it becomes a new 'feature' analogous to the training room, the athletes' dorm, the free meals, the free medical and mental health care, the playing facility, and the televised games? Or will third parties fill that gap, ala the various sports youth training camps? What prevents them from corrupting the recruiting and/or academic eligibility process?
- 14) If NIL itself is contingent on academic eligibility, does that not add additional pressure toward undermining academic integrity . . . when NIL income is added to game-day performance as a justification/rationalization to keep an athlete eligible?
- 15) How will NIL affect an athlete's decisions to enroll or transfer? For all the NCAA's avowed concern, can NIL be managed so as to preclude it as a factor in such decisions? How? Does the NCAA wish to and imagine it can influence the nature of NIL agreements made prior to an athlete entering college? For example, if an apparel company's shoes are endorsed by a prominent high school athlete, how does one assess to what extent choice of college is influenced by that relationship? What does transparency of NIL support yield if that support comes from corporate entities whose ownership is kept legally hidden or comes via fake-like networks and other manipulations endemic in social media? What prevents colleges and/or coaches from becoming those hidden third parties? Will NIL rules apply to a 'walk-on' (a non-grant-in-aid athlete)? Why, or why not? Who determines purity and integrity of everyone's actions and thoughts in these matters?
- 16) If a central objective of NIL is to allow an athlete unlikely to play in an avowed pro league and unlikely to graduate with a useful (marketable) degree or to graduate at all to come away with 'something' from having been a col-

lege athlete, why bother with the NIL and not just pay the athlete outright? What avenue does NIL really open for such an athlete? Does NIL for such an individual not reinforce and amplify, rather than diminish, the hypocrisy of having such an individual on the college team in the first place? Asked differently, how is NIL not simply a (backdoor) way for such an individual to receive monetary compensation for participating in college sports in a manner that attempts to perpetuate the myth (*i.e.*, the legal fiction) college sports is NOT a form of professional sports?

- 17) If the foundational rationale for permitting NIL is the great amount of revenue generated by college sports and the great amount of money paid to coaches and administrators compared to athletes' compensation, how does NIL—as a separate endeavor of economic activity for which the athlete is purportedly and individually to take initiative and be responsible—address/redress either rationale/critique? Indeed, as implied above, what prevents NIL from becoming simply another context in which inequality prevails, in this case directly between athletes themselves?
- 18a) Is NIL to be considered a separate pool of money, one to which only athletes are entitled? Or is it a NEW pool of money, generated in a new way, but which is shared between athletes and the rest of the college sports system in some fashion? In either case, how is the sharing to be determined and managed? If the revenue is shared, how is the line drawn to maintain the myth the student-athlete is not an employee?
- 18b) Or is some of NIL extant revenue that the NCAA and its members heretofore have not recognized as such, ala the O'Bannon case, which then poses the question of whether the practice will/should be discontinued or should continue but with revenue shared as monetary compensation directly with athletes? If shared as monetary compensation, how is such sharing to be defined so as to maintain the claim the athlete is NOT an employee? If shared as monetary compensation, what if anything should be done to replace the associated reduction in how the money had previously been spent? What if any compensation to athletes should be provided for the NCAA's and its members past (inappropriate) practices? Whence the source of that compensation?
- 19) Why should FBS schools not simply acknowledge that the football and basketball programs they operate are “college-flavored sports,” that is, a ‘mixed team’ in which some participants are students but others are not? Given that acknowledgement, why not then decide the maximum number of such non-students (“ringers,” to use the sports vernacular) to allow on a team, the pay range schools are willing to follow and associated handling of expenses (room, board, medical, etc.), the maximum number of years a non-student may participate, an equitable method for distributing non-students among all FBS teams, the permissibility to transition from one status to the other in either direction, regulations regarding RE-distributing non-students between college-flavored teams, permissibility of unionization of non-students, and related policies? Congress then grants the appropriate anti-trust exemptions, including for tax and related purposes allowing schools to continue to claim non-profit status for the operation (a status without which the team's operation is NOT financially viable); and life goes on, sans (much/most? of) the hypocrisy and the threat of exposure of systemic academic cheating. [Sidenote: This is largely the essence of the proposal being put forward by Sen. Cory Booker, along with others, in Dec 2020 under the rubric the “college athletes’ bill of rights.”]
- 20) With gambling on college sports now legal, what if any safeguards are to be put in place to avoid NIL becoming a means by which to affect athletes' game performance and thereby game outcomes? Likewise, what if any safeguards are to be put in place to prevent NIL from becoming a form of “prize money” for individual and/or team success? What safeguards are to be put in place to prevent social media from being used maliciously, perhaps to create the (false) appearance of violations of NIL rules by a college's or athlete's opponent?
- 21) With NIL clearly an attempt to circumvent the “tethered to education expenses” limit the courts have imposed in granting athletes access to more compensation—since compensation beyond “tethered to education expenses” clearly destroys the myth (*i.e.*, the legal fiction) of the student-athlete and thereby college sports as we know it—but given the existence of individuals who want college athletes to be paid outright and with no limit, what firewall does NIL (and associated policies) erect to preclude additional litigation moti-

vated toward that end? If NIL does not erect a barrier, why bother? Analogously, given the known history of money going (in spite of NCAA rules) to parents or guardians of prominent college athletes, by what legal doctrine does the NCAA prevent such an individual from using NIL to achieve the same effect? “I am the mother/father/brother/girlfriend/etc. of and I’m hear to tell you that. . . .”

- 22) Can state and/or Federal law simply compel schools to distribute a portion of their sports-generated revenue directly to athletes as monetary income? Should they? Why, or why not? How does government compel such action on the one hand, and then maintain the legal fiction college athletes are NOT employees on the other? What legal distinction precludes students in other performance activities (drama, art, dance, music, etc.) from suing for similar monetary compensation? for similar non-monetary compensation?
- 23) Will colleges/conferences philosophically opposed to NIL be forced to permit them, or will they be allowed to operate under their no-NIL philosophy . . . either by remaining within the NCAA or by forming a separate national association united by this philosophy, among other principles? Obvious issue with remaining within the NCAA: What set of principles, policies, and/or financial incentives keep pro- and anti-NIL schools together within a single association? If separate organizations operate, what if any protections will be afforded each, as pertains to relations between avowed professional leagues and college sports presently, so the commercial operations of one do not infringe/undermine the commercial operations of the other?
- 24) If state NIL regulations take effect before NCAA and/or Federal regulations take effect, how are differences in said regulations to be resolved/adjudicated?

All of which is summarized by the question: Is not the haste with which the NCAA is being forced to move on NIL a recipe for disaster?

Given the substantial size of Pandora’s box NIL opens, why do so many individuals and organizations rush headlong to promote it as a solution to an embarrassing but long-standing hypocrisy in college sports? Do NIL’s various promoters sincerely believe college sports will survive and thrive regardless, or do they in fact wish to end college sports as we know it? And if college sports as we know it were to end, what if anything takes its place? Should anything take its place? Why . . . or why not?

Does the issue of student-athlete NIL not boil down to being simply a new manifestation of hypocrisy? Since proponents of permitting NIL activities for students who are athletes claim the rationale for doing so is to allow such individuals the same opportunities available to non-athlete students, how is that rationale not completely undercut by a basic distinction evident in the NCAA members’ inquiry, namely that the institutions, either individually or collectively, have little to no interest or involvement in monitoring and regulating the non-athlete student’s NIL activities but GREAT interest and concern in doing so with regard to the athlete?

Is the debate over college sports unresolvable?

The Heretofore-Hidden Resolution of the Debate

New Concepts for Understanding the Sports World

Actually, permit me to say I resolved the debate decades ago, in research I did in pursuit of graduate degrees at the University of Massachusetts, Amherst. But my academic colleagues were not pleased with my results and shunned me, which prevented me from joining their ranks upon graduation and thereby prevented me from having a platform and credible means by which to insert my ideas into the debate.

Why was I shunned? For the reason anyone is usually shunned. Because my solution was not one they wanted to hear; it was not within the bounds of what they deemed ‘acceptable.’ Nor—for similar reasons—was the NCAA receptive to my set of policy recommendations when it was trying in the late 1980s to regain credibility from the decade’s plethora of scandals.

How had my work gone outside the bounds of acceptability? For one, because it went against the accepted truths, biases, agendas, and practices predominant in higher education and in the Nation. For another, because I began my research from a very different place than everyone else. I began from the assumption that the reason the debate had gone unresolved was that the sports world’s concepts, amateur and professional, were inadequate. I developed an alternative conceptual framework by which to understand the sports world. Building on that framework in the years after completing my graduate degree, I developed a set of policies for operating college sports. Those were the policy recommendations the NCAA ignored! Ironically (from my perspective), for various—usually logically/legally embarrassing—reasons,

in the years since I completed my degree, the NCAA has steadily shifted away from referring to its programs as “amateur sports” to calling them “the collegiate model.” This amended characterization does little to clarify the debate.

The key difference in my conceptual framework is its focus on the purpose of the organization for sponsoring a program rather than on the motive of the individual for participating. My framework demarcated the sports world into four types of sport: professional, semi-professional, semi-amateur, and amateur. In the conventional dichotomy, the latter three are lumped together as “amateur,” which contributes to the confusion. In my framework, college sports are a manifestation of semi-professional sport. But I defined semi-professional sport in a very precise way—the purpose of a semi-pro sports program is to represent the quality of the sponsoring organization!

Given this definition of semi-professional sport, I was able to further delineate key transitions in the history of college sports, such as the NCAA’s decision to permit grants-in-aid for athletes after previously prohibiting them (the latter stance consistent with the traditional notion of amateurism). In the traditional amateur/professional dichotomy, the NCAA asserted the reversal did not change the amateur nature of the programs. In my framework, the decision represented a shift from semi-professional to acceptably professional sport. My research anticipated the 1980s were likely to be a decade of scandal, the result of a transition I identified as a shift to “unacceptably professional sport.” The NCAA and its members have wrestled ever since with trying to implement regulations that return and keep the programs acceptably professional sport, even as the amount of “support”—don’t call it “compensation”—to athletes increases dramatically!

Why Colleges Sports? Because They’re Central to the Colleges’ Larger Battle . . . for Money and Students

My analysis argued the principal reason colleges sponsor intercollegiate sports is to use it as advertising central to the competition for money and students in which the schools engage, as (effectively) capitalist enterprises. It is crucial to understand however that the advertising value is not simply the visibility the programs offer. Sports have served as a key advertising vehicle for colleges because the quality of the intercollegiate team is to be understood to represent the quality of the school sponsoring it. Because a school wishes to win both competitions—winning in sports enhances its chances of gaining money and students—it does its utmost to attract top quality athletes to attend. The compensation it offers athletes is not money per se but financial aid, an athletic grant-in-aid. The athlete’s acceptance of such aid from a particular school then conveys an association to all concerned between sports outcomes and the academic quality of the school—sports success signifies superior academic quality, a superior academic institution. The popularity of college sports, and the money they make, results from the college community’s (students, faculty, alumni, boosters, local businesses, politicians, etc.) interest in and support for a college to do well in this two-fold competition. That’s precisely why Big Time football and basketball coaches tend to be the highest paid employees not only in their institutions but in the case of public universities the highest paid in their states!

The term “student-athlete” is in fact the right description of the participant . . . if the relationship has integrity.

The problem is: in order to increase one’s chances of success in sports, if the need arises—and it often does—schools have shown they are willing to undermine the integrity of the representational link. But in so doing, they do their best to hide the adulteration, because exposing it calls the entire arrangement into question. Paying an athlete outright is the ultimate adulteration because it destroys the credibility of his (or her) presumed reason for choosing the school—the quality of the school not the amount of money it offers—that is the elemental component of the representational link! In other words, it is crucial to understand that NCAA rules on financial aid are intended to manifest an equality of opportunity to access higher education across its members. Differences in cost of access and attendance in other words vanish as a factor in the athlete’s decision. This purported equality of opportunity is what gives the highly recruited athlete’s choice of school its larger symbolic social meaning.

Winning in sports is important to schools because of its marketing role for the school; no other activity within higher education carries its broad social meaning to the larger society. That meaning disappears if the team is seen as simply another pro team, however financially successful it might be. If a college’s team is composed of athletes paid using money, victories are simply sports victories, not symbols of something more! Competitions in college sports are intended to be a deference challenge that extend from a team to the school to the larger socio-cultural community the team represents.

Nevertheless, rather than enforcing integrity of the representational linkage in a rigorous way throughout the world of college sports, the NCAA's Division 1 schools, especially the so-called Big Time football and basketball schools on which the pay-for-play critics focus, prefer to maintain an ambiguous, hypocritical, subject-to-scandal system. Why? Because in the American system of higher education, the schools need to win not just in sports but in the competition for money and students, or they risk economic decline and institutional demise. Victories matter . . . well beyond the field of play! Which is precisely why the Big Time powers cling so religiously to maintaining the 'sanctity' of recruiting within college sports. Recruiting is the core mechanism of the system's "flexibility," the mechanism that keeps the dominant football and basketball powers of the Big Time dominant, and keeps the Big Time schools dominant within the NCAA's operations, and keeps them dominant within American higher education, and thereby in American society. Including in the minds of government officials!

An individual is recruited not to the job of being an athlete but to the unique job of being a student-athlete! The athletic grant-in-aid is not simply a means to assist those needing financial aid to access higher education. It IS one of the means by which those deemed especially talented in ways that contribute to an entity's financial success come to believe they deserve disproportionate compensation, a notion that also extends well beyond the sports world.

The set of policies I developed for rigorously enforcing the integrity of the representational link extends far beyond practices anyone else has proposed. I contend my set is superior because it is built upon a superior conceptual framework for understanding the sports world, a framework not hamstrung by the conventional amateur/professional conceptual dichotomy under which the sports world has operated during its modern history. My framework is superior because it is based upon empirical analysis of the entirety of the modern American sports world up to the time I was doing my grad school research. That history gave rise to the concepts' definitions. My analysis explains the unique nature of sport as a commercial endeavor and the distinctive nature of programs within each conceptual category. Lacking this understanding, the legal system tries its best to adapt the Nation's laws to the distinctive nature of the sports world. But it falls short because it remains trapped by the inadequacy of the amateur/pro dichotomy and constrained by the legal principles (*e.g.*, anti-trust law) upon which court cases are brought and adjudicated.

Integrity of the Student-Athlete Role Means Enforcing 'Representation'

Armed with the idea of representation, I was able to develop a set of policies for college sports that allows it to operate with integrity rather than hypocrisy . . . integrity throughout the system. My set of policies is superior because it grounds elite participation not in the amount of revenue the elite sports generate but in the integrity of the representational link between the college sports programs and the student population as a whole, both academically and athletically, at each level of sporting competition—institution, conference, and nationally. My set implements in practice what proponents of college sports claim is the goal—student first, athlete second.

Helpful illustration: Under my policies, tackle football is exposed as a sport schools operate in a way that is NOT representative! Why is it not? For the key basic reason tackle football does NOT represent the sports participation interests of the student population. Tackle football is too expensive and too physically risky (*i.e.*, medically expensive) to operate as anything other than a spectator sport!!! Flag football is a medically safer version of football in which more people participate, but as such it is not the same as tackle football. Americans, evidence suggests, want to watch a version a football only if the participants are trying to hurt each other ("injuries are just a part of the game"). As the history of tackle football in the U.S. reveals, however, college football was Big Time BEFORE a professional tackle football league garnered substantial spectator interest. Hence the debate and controversy over the nature of college sports, thanks to college football in particular!!

The NFL is wholly dependent for its existence on the operation of tackle football as a publicly subsidized operation in secondary and higher education!!! Americans don't play tackle football, but they are more than happy to pay to watch it! That's why tackle football is not genuinely representative! Which is also to say: The claim colleges recruit the academically deficient because they do not want to deny an outstanding football player an opportunity to play in the NFL is a complete deception. Schools are motivated to recruit such individuals because such individuals help schools win the competitions important to them, the one on the field and the bigger one off the field for money and students!! Perhaps the most dubious aspect of this arrangement however is that a not-insignificant portion of the financial subsidies schools and colleges collect/receive to support their elite athletes are extracted from

people who have no interest in football whatsoever. For a long time, that set included women.

The fact that defenders of the “collegiate model” now include women in positions of power does not remove the hypocrisy. Indeed, a rationale unspoken until the debate over NIL and paying athletes brought it to the fore is that women’s sports are a major beneficiary of the revenue production by Big Time men’s football and basketball. Are women’s college sports representative of college women’s sports participation interests? For that matter, which of the men’s intercollegiate programs are representative of the broader male student body’s sports participation interests? These are questions colleges leave unasked.

Given the rationale college sports is a form of education, Title IX compelled colleges to extend the hypocrisy to sponsor women’s programs in approximate equality to men’s programs. But to repeat: education is NOT the primary reason colleges sponsor college sports; the purpose of college sports is to represent the organization in its competition with other colleges for money and students. Title IX in that sense was a convenient cudgel to increase financial support for women’s sports programs, in concert with females growing numbers in higher education and the changing perceptions of the role of women in society more generally. That battle in both the sports world and the wider world is still being waged. The NCAA’s willingness to modify its rules vis-a-vis NIL is simply the latest instance in which its members try to adapt some but not so much as to alter its basic mode of operation, given their belief its basic mode of operation is working just fine.

This illustration suggests precisely why my set of policies are unwelcome within the NCAA. It sets a standard that is too demanding, it’s a standard that goes against the operation of both American institutions of higher education and college sports as (effectively) capitalist enterprises! It upsets the dominance hierarchy!!

NIL in the Present System of College Sports Makes Matters Worse

The irony is: the argument for permitting athletes to sell NIL rights is valid only if college sports operate under my set of policies! Under the NCAA’s modus operandi, NIL simply make matters worse. Why do I say this? Because . . .

The giving of grants to athletes so that they might pursue an education has a ring of credibility to it consistent with the notion of student-athlete, as in “student AND athlete.” The selling of NIL rights by college athletes so that they might generate income beyond the compensation they receive from a school for “expenses tethered to education” is something entirely different. It further professionalizes the notion of what student-athlete means, as something now BOTH the school and the individual use to make money. The grant rewards an individual for being a student-athlete, with the principal objective (purportedly) being getting an education. Selling NIL rights rewards an individual for being a student-athlete-celebrity, with the primary objective being monetizing one’s fame as a college athlete, claims to the contrary notwithstanding. In other words, the ‘student’ element of the endeavor is likely to be diminished further. Celebrity being a rather amorphous trait, within the world of college sports as we know it NIL creates the potential for abuse and corruption on steroids. In effect, NIL monetizes the cultural link between student and community, thereby calling into question its authenticity, in a manner similar to the way commercialism of college sports undermines the representational link. Think NASCAR comes to college sports.

Which is to say, unless the NCAA can find some way to separate NIL rights by college athletes from student-athlete-celebrity, freeing college athletes to sell NIL destroys the credibility of the notion of student-athlete. Can the NCAA find a Solomon-like set of policies that delineate an individual player’s NIL into the parts derived from the school affiliation, the sports affiliation, the sports performance, and the athletic conference affiliation from the non-sports components of the individual’s name, image, and likeness, defining some forms of NIL selling acceptable while others are not, and do so while claiming the primary purpose of it all is education, NOT making money?

It is worth noting further in that regard that NIL has had a mostly negative orientation to it: one’s NIL cannot be used/sold without one’s permission. That was the central question in O’Bannon.

NIL as now being discussed in the age of the Internet has a more positive orientation: NIL is imagined as a property right by which any and everyone can make money. Which is a two-fold self-deception: i) Logically, it’s impossible that everyone can make money selling NIL. If everyone is selling NIL to everyone else, no one gains so why bother? NIL yields gain only if some relatively small subset sells to everyone else. Which is to say, NIL is not a property right of ANY value to almost everyone. Which points to a second set of issues/questions: ii) As a property right, what is it one is selling? Compared to other goods and services one can purchase

or exchange, what is one buying? Of what (use-) value is NIL? Where does the money come from that is used to purchase NIL? Why does the buyer believe it worthwhile to spend money on NIL rather than on something else? Does the buyer buy it for personal use or to use to make a profit? How is the profit made? In either case, how does the buyer gauge how much to spend?

Does anyone bother to ask such questions? Or does everyone simply accept the idea one tries to make money any way one can, which in this instance is rationalized as ‘modernizing’?

Instead of pondering about athletes selling NIL, why isn’t the focus on the question: If the lessons of competitive sports are so valuable, why is the opportunity to learn them limited to so few? What should be done about that? Of what value to society is it for people to be trying to sell NIL rights instead of doing something useful such as addressing real needs, solving real problems, that is to say, learning how to be productive, competent, empathetic participants in the polity and economy of their society? This is broader way of asking a more specific question applicable to college sports: Of what value to society is having elite athletes such as those in college sports if the bulk of the population are spectators, not participants? How representative of the society and how valuable to the society are elite athletes really?

Do Americans Want Integrity in College Sports?

My personal experience begs a pertinent question: Who is the constituency in the U.S. that wants integrity in college sports?

Do Americans want a system of college sports that operates with integrity rather than hypocrisy? Does Congress? Given the political divisions in the Nation in the 2020s, political agreement is hard to come by on pretty much anything, let alone on a subject about which most people have preconceived notions, personal biases, fond (or painful) memories, overt and covert agendas (axes to grind, favors to give or pay back, constituencies to protect or thwart, etc.), little and/or disjointed knowledge, and even less understanding.

Indeed, the NCAA’s request for Federal involvement in college athletes’ NIL reflects the diversity of opinion and modes of operation manifest in the Nation’s federated system of government and more crucially its ways of life, and the inter-relationship between these and higher education. To put it bluntly, Americans think of the Nation as “united states” only when dealing with the rest of the world; when dealing with each other, it’s a “what’s in it for me?” battle for self-enrichment and dominance. Big Time college sports manifest this understanding quite accurately. Which is to say, the question is, who wants integrity if integrity threatens one’s standing in the hierarchy?

Neither the pay-for-play critics nor the NCAA defenders come to the NIL debate with clean hands. The separate laws states are passing re college athletes’ NIL, if they take effect, WILL fracture the NCAA and open a Pandora’s box within college sports neither the critics nor anyone else have a clue how to close. Do state lawmakers care? Or are they simply complicit in pushing the NCAA to act to allow NIL in some fashion or other, as the NCAA has agreed to do, when neither lawmakers nor NCAA members have any idea how to regulate athlete NIL selling, AND when the harshest of the NCAA’s critics don’t want the NCAA involved in regulating athlete NIL at all? Without such regulation, what keeps college sports from becoming a version of professional sport in which athletes are employees? The critics believe the colleges leaders are bluffing when they say they will not sponsor such programs. Can the laws require colleges to sponsor such programs if the colleges refuse to do so? Might colleges faced with that demand instead choose to operate intercollegiate sports only if they revert to the original policy of NOT permitting grants-in-aid to athletes? Talk about irony! But reversion begs the obvious question: What ELSE needs to change if the same scandals are not to arise in college sports the second time around?

On the other hand, the NCAA’s willingness to “modernize its rules” to permit athletes’ selling NIL is simply the latest recurrence of its Big Time members needing to salvage a deteriorating image, a cyclic task endemic to college sports throughout its history. The crux of the current task is clear as far as the NCAA is concerned: NIL is acceptable so long as NIL does NOT mean athletes are employees! While much attention has focused on the labor law complications of crossing that line (*e.g.*, workman’s compensation), my analysis argues colleges do NOT want to cross that line for a much more existential reason: it undermines the fundamental reason colleges and universities sponsor college sports!! It undermines college sports as an advertising vehicle, as a representation of the quality of the institution (and the socio-political economic milieu supporting it) to the larger world.

Further, In that regard, the NCAA's concern about NIL not affecting recruiting is more about protecting the current dominance hierarchy within higher education than it is about protecting athletes. NCAA members are trying to figure out how to frame NIL as part of the difference in educational opportunities an institution makes available, rather than as another of the less honorable, unethical, or illegal techniques schools are suspected to benefit from/facilitate/resort to in order to maintain or improve their place in the dominance hierarchy of college sports and thereby higher education. My analysis is that the NCAA's efforts on NIL are simply an attempt to open Pandora's box more slowly, driven largely by the Big Time football and basketball schools' desire to continue to have it both ways! Which as noted above reflects larger political economic realities in which college sports competitions take place. Not surprisingly, then, the NCAA has NEVER explored other mechanisms for protecting the integrity of the matriculation of athletes into higher education.

I contend permitting college athletes the opportunity to sell NIL will NOT bring integrity to college sports so long as college sports and higher education continue to operate as they have. I am arguing implicitly that permitting athletes to sell NIL is an attempt to offer a seemingly simple solution to what is in fact a complex set of social problems the Nation has been unwilling to address and thereby unable to solve—problems within college sports, the Nation's decentralized and unequal approach to educating its children, and American society as a whole.

In that regard, I find it ironic to see NIL painted as a civil rights issue, as if NIL is a manifestation of inequality that demands urgent attention when in practice it affects relatively few, albeit highly visible individuals. How much of the rationale for NIL goes away if the Nation did not suffer from unequal funding of K12 education, lack of adequate housing, medical care, access to nutritious food, and employment and compensation equity for people of color and the poor, especially those who are female? To say nothing about the unequal opportunity to participate in sports and physical activity throughout one's lifetime. How many of those problems go away if college athletes are permitted to sell NIL?

I find it similarly ironic that during a period when anti-trust laws have not prevented the rise of giant corporations we see anti-trust law being used to alter the NCAA's conduct of college sports. The operation of college sports does need to be altered, that is true; but permitting athletes to sell NIL [or to receive even more in the way of 'educational benefits'] simply overlays a new layer of hypocrisy onto the existing ones.

Is it not even more ironic the debate over athletes selling NIL occurs during a time when the Nation is struggling to deal with the substantial loop into which the covid 19 pandemic has thrown it? Higher education did not escape the novel corona virus' impact, nor did college sports. Prior to covid 19, college sports and the NCAA were seen by their critics as a hypocritical, money-making monster. With covid 19, college sports as a component of higher education and the NCAA as an organization have been struggling to survive!!

That the debate over NIL proceeded apace, rather than pausing, reflected an expectation the pre-virus 'normal' of American life would somehow return relatively quickly. As of this writing (June 2021), we are in the early stages of finding out.

While some leaders of higher education claimed they can afford "concierge 24x7 medical treatment" for elite athletes, most cannot. For those who think they can, will they be able to do so should the Nation find itself battling this or new viruses for another year or two . . . or five? Will colleges' elite athletes be among the first to receive a vaccine? Will that set include all of higher education's elite athletes, or mainly those presently getting the concierge medical coverage?

Congressional debate reveals even if the virus is not a factor of health care costs for elite college athletes, college sports has a health care funding problem of its own making. Sharing revenue is being discussed as a key element of any possible solution. But anyone familiar with the history of the NCAA knows reducing inequality by sharing revenue is as anathema in the NCAA as it is in the U.S. generally.

Which points to another set of questions: Do the "regular" (*i.e.*, non-elite athlete) students in higher education get the same level of benefits as the elite athlete students? If not, on what grounds do schools justify the difference in treatment? When is the difference in treatment between the two of concern and when is it not? When is a difference in treatment rectified and when is it not? Toward which side of the difference in treatment is the difference to be rectified—the athlete or the non-athlete? Is there a principle legitimating the answer to these questions; or is it simply a matter of politics and political power?

Beyond the concern for athletes, what policies should/must schools put in place for fans to return safely? Will schools or athletic departments bear financial respon-

sibility if an athlete or fan contracts covid and suffers serious health consequences or death?

For that matter, why isn't the debate over health care for athletes part of the larger debate over health care for all Americans rather than part of the debate over what forms of special treatment should be extended to athletes? Likewise, if attending college were not so dependent on one's personal/familial financial resources, would we even be discussing the subject of compensating college athletes? Which is to say, as alluded to above, shouldn't the debate over equal treatment of athletes be part of a larger debate over equality in American life in general?

Beyond the covid 19 pandemic, the Nation and the world wrestle—unsuccessfully up till now—with many other challenges: climate change, economic stagnation, worsening inequality, and racism, to name four of the more prominent. How likely are these to be addressed in a way that allows return to the pre-virus normal? Indeed, does addressing them successfully not mean by definition we will NOT be returning to the pre-virus normal? If NIL is recognized as a potentially momentous change to the 'normal' operation of college sports, is it not even more appropriate to incorporate these larger political economic concerns into the discussion of how to reform college sports? NIL addresses NONE of these; NIL is NOT the pacing item here, nor for that matter is the state of college sports, uncertain as the latter presently feels. I am not saying Congress should not be interested in promoting reform of college sports. I am saying I worry its attempt is likely to fall short—and quite likely to make matters worse—because the immediate issue, NIL, is being discussed in a socio-cultural political environment wholly deficient in its understanding of the college sports enterprise.

I recognize my ideas about bringing integrity to college sports are dramatically outside acceptable bounds. I also acknowledge no one else understands the relationship between college sports and higher education and for that matter the larger society the way I do. That difference allows me but prevents everyone else from even contemplating how college sports will be affected should the pre-virus normal never return. To those acts, I plead no contest.

No one else has come up with the combination of conceptual framework and policies I have because no one else has begun from the perspective I did and used the methodology I did to try to resolve the debate over college sports.

Why has no one else come up with this result? Ideological bias, not on my part but on theirs. Think of it this way: If one sees an important sociological question is not being addressed adequately by the two dominant schools of thought in the field, and if each of those schools of thought believes itself superior to a third school of thought no one is using, wouldn't their failure to answer the question adequately incline one to consider looking to the third school of thought as a way to break through the blockage? It might . . . if one actually wanted to break through the blockage.

If capitalism is the economic system of the society in which college sports and sports in general are quite prominent but also quite controversial in the way they operate, wouldn't one be inclined to presume a possible connection, and investigate further . . . if one wanted to break through the blockage and try to resolve the controversy? One might. But if one did resolve it, what reception would the research and its derived policy recommendations be likely to receive . . . if capitalism was implicated as central to the problem?

In academia, as I discovered, the search for truth—especially when it comes to social matters—is not as unfettered as the marketing brochures advertise. Likewise, as the history of the U.S. demonstrates, when it comes to setting policy, not everyone is welcome to participate; and not all ideas are considered equally deserving of consideration. This is especially true when it comes to capitalism and the presumption of its superiority and inevitability as an economic system. After all, in spite of all the world's problems, doesn't the entire world know . . . “there is no alternative to capitalism?” Few in Congress—or at any level of government in the U.S., for that matter—are prepared to examine that subject with an empirically oriented, unbiased attitude.

[Sidenote: The focus on 'climate change' is a political sleight-of-hand that distracts from understanding the nature of the problem more aptly by the phrase “environmental sustainability.” That is, Americans and people living in the world's other rich nations, consume resources, both individually and collectively, at an unsustainable rate. It's a logically simple problem to state but an exceedingly difficult political economic problem to solve, as the thus-far futile debate over reducing CO₂ emissions demonstrates. Focusing on climate change allows everyone to avoid the more difficult questions: Is capitalism compatible with living environmentally sustainably? If it is, how did we get into our current precarious situation? If it is not, given our religious-like belief in capitalism, what are we to do?]

I submit this statement not because I expect Congress to rush to support its understanding of college sports and implement its recommendations BEFORE taking on the issue of athletes selling NIL. Rather, I submit this statement as a prediction and a word of caution; I submit it to hint at the existence of a standard against which all other efforts should be assessed when one claims to be trying to reform college sports, to eliminate hypocrisy in college sports, to stop exploitation of college athletes, to balance academics and athletics in college sports, to prevent discrimination of various sorts in college sports, and so on. In short, I offer it to suggest what it is required for the notion of “student-athlete” to have integrity.

Is there a constituency interested in and committed to bringing integrity to college sports? Not so far.

Addendum on balancing academics and athletics

Many critics of the NCAA complain of the Big Time football and basketball programs’ over-emphasis on athletics to the detriment of academics. To my knowledge, no one else has come up with the extensive set of policies I have that give credence to the ideal of student first, athlete second. Claims to the contrary notwithstanding, actions being taken, including those promoting NIL for athletes, indicate everyone else has given up trying to claim Big Time college football and basketball are anything but a fraud, ‘college-flavored sport’ as I referred to it earlier. Genuinely balancing athletics and academics is more than anyone really wants to accomplish. How do I know? Because they reject out of hand ideas such as the following:

One. Permit the recruiting of only those individuals whose outstanding academic performance in high school manifests their prioritization of academics over athletics and a desire to find the best academic fit for their scholarly interests as well as their sporting interests. For all other academically qualified individuals wanting to receive an athletic grant in their first year of college, distribute them via a draft. Schools select in each round of the draft by order of team graduation rate, higher rate before lower rate (as a reward), with ties broken by order of conference graduation rate. For each round of the draft, an individual is selectable if and only if his high school GPA exceeds the minimum GPA required to be eligible for selection in that round—minimum GPA in round 1 is greater than or equal to minimum GPA for Round 2, and so on.

Two: Link academic performance with the opportunity to participate on the college’s team in a way that makes it the shared responsibility of the entire college sports enterprise—individual, school, conference, and the NCAA—to graduate athletes. Key component: Athletic grants are linked directly to academic performance—a set of grants offered by the school for a sport’s team is divided up into four subsets, each subset representing one of the four years of academic progress toward graduation. To receive a year-two athletic grant, one must be an academic sophomore; year-three, an academic junior; year-four, an academic senior.

This method means an athletic grant is not simply a vehicle by which a school offers an individual a total of up to four years of athletic participation/training on a college team, as is the case now. It’s four one-year grants designed to ensure integrity of the representational link embodied in each student-athlete.

Each year’s athletic grant is thereby free-standing; an individual receiving a year-one athletic grant for example is neither guaranteed a year-two grant nor permitted to participate in a sport’s season with a year-two grant unless he has garnered enough credits to be an academic sophomore. To ensure academic integrity from the start, freshman may be permitted to practice with a team but are not eligible to participate in games. They have to show their academic mettle before being allowed to perform athletically as a genuine representative, as a student-athlete. (Returning to freshman ineligibility gets rid of the sham of “one and done” athlete in Big Time college basketball.)

With this arrangement in place, the definition of graduation rate is straightforward: the percentage of year-four athletic grant holders who graduate.

But the knowing skeptic will ask: What about the fact that schools require athletes to spend so much time and energy on athletics, they have little time and energy left for studying and making academic progress? Answer . . .

Three. Set a target rate of graduation for teams in the sport that reflects a ‘socially acceptable’ commitment to graduating individuals. “Socially acceptable” in this context is each school, conference, and the NCAA as a whole announcing their respective targets, and the public wading in on the acceptability of that set of targets. (Let that conversation become part of sports talk radio!)

Enforce meeting those targets by linking opportunities to participate in the sport to such key elements as length of season, opportunity to perform in post-season tournament(s), and opportunity to HOLD a post-season tournament. Including the NCAA’s Division 1 basketball tournament!! Meaning, for example: If the set of

schools playing Division 1 basketball is NOT graduating players at the target national rate, the following year's tournament is NOT held!

Meaning: If the set of schools playing Division 1 basketball is not graduating players at the national target rate, shorten the season until the length of the season results in hitting the target! Shorten the season by the same percentage amount by which the actual rate missed the target rate. Example: target rate = 80 percent, actual rate = 50 percent, shorten the following season by 30 percent! Compute a miss in stepwise fashion. Example: actual graduation rate of 60 percent to 69.99 percent is a miss of 20 percent if the target rate was eighty percent! Coaches talk regularly about sports being a game of inches and precise execution; on what basis do they criticize making academic performance just as rigorous and unforgiving?

"Horrors, no way," the athletic departments' business managers screech! Doesn't this approach wreak scheduling and financial havoc? Only so long as the enterprise remains a fraud. Americans have tolerated the fraud up until now because no one else has put forward an alternative vision with accompanying rationale explaining what constitutes integrity, and not enough Americans have been incensed enough about the fraud in college sports to mobilize to stop to it.

Contrast the orientation of the above ideas to that implicit in proposals put forward by others. To be blunt, they make a travesty of the claim colleges are striving to balance athletics and academics when they declare for example balancing may now include rewarding college athletes whose college athletic eligibility has been used up with an extended period of time and related benefits to attain a degree . . . of some sort. As if it's not pay for play if the pay comes after the play? Really?

Perhaps the most notable and striking example of this line of adulteration was expressed by attorney Jeffrey Kessler during oral argument in the Alston case before the U.S. Supreme Court this past March. During an exchange with Justice Barrett, Kessler stated that the opportunity to complete training at a "blue collar vocational school" (transcript 63:25) AFTER an athlete's college sports career had ended would potentially yield "life changing benefits" for those individuals unable to garner either the big pro league contract or graduate from the four-year institution on whose sports team he had performed so admirably. Could the lack of integrity in the representative relationship in Big Time college football and basketball be acknowledged any more gingerly yet openly than that?

If rigorous academic policies such as these above mean that not only colleges but also high schools and grade schools undermine academic integrity even more than they are believed to be doing already, simply to keep talented athletes academically eligible for the school's sports team, then how is the cause of educating a productive, engaged, honest, and physically and mentally healthy citizenry not completely lost?

Not all great athletes are capable of or interested in attaining a college degree. For them, the professional leagues of basketball, baseball, and ice hockey in North America could easily contribute to and/or sponsor minor league clubs. As intimated earlier, however, tackle football is another story. Privately owned minor leagues of tackle football feel to be a financial money pit of the highest order. It is virtually impossible to imagine the tackle football equivalent of the baseball player who toils away in minor leagues for years trying to reach his boyhood dream, his big chance at the premier league of his sport. To repeat, tackle football is too expensive and too medically risky to operate as minor leagues without extensive (both direct and indirect) financial support from public coffers.

If Americans want to see large-bodied men crashing into and tackling each other for fun, perhaps the time has finally come for American public education to drop tackle football and start supporting rugby. Even though the likelihood of injury remains, the medical costs of playing rugby are likely to be lower than those for tackle football. And the equipment costs would obviously be much, much lower. With smaller playing squads, rugby would give schools the option of either lowering costs when offering the sport or retaining the same level of cost by supporting multiple different teams, similar perhaps to the weight classes of wrestling.

Such granular differentiation is of course an approach schools could adopt in any sport; doing so would go far toward helping schools (and the public) sort out the debate over participation by transgender athletes, for example.

The big pot-of-gold pro league contract at the end-of-the-sports-participation rainbow is already damaging enough to our society's priorities and well-being. How much longer can we afford to deceive ourselves believing the greatness of our pro athletes' performances symbolize our Nation's greatness when in fact they manifest its failings?

Which prompts me to ask this: If Congress passes legislation granting college athletes the right to unionize, what do we hope will happen? Will college athletes negotiate for higher compensation and/or more opportunities to make money, to get better athletic training, to achieve more fame, to sell NIL without limit, to share

sports-generated revenue more equitably, and so on? Or will they act to stop the fraud and organize to ensure they and their athletic programs are oriented toward athletes getting a meaningful college education and a diploma?

If college sports operated with integrity already, would college athletes even need the right to unionize?

So let me ask again: Do Americans want integrity in college sports?

That's what we claim we want.

Is it what our colleges' elite athletes want? Is it what the institutions' student bodies and alumni want? Is it what Congress really wants? Is that what the American public really wants?

Not up till now; it hasn't been. When the Nation begins vigorous debate about policy ideas such as those indicated above, I will begin to believe otherwise.

Only when we finally do want integrity in the representational link between athletics and academics in college sports, only then may we need Congress to pass legislation, including perhaps anti-trust exemptions, to reinforce our desire and commitment to make it happen.

The current debate over NIL and other compensation for elite college athletes is nowhere near that conversation.

Postscript on the USSC's NCAA v Alston decision

Not surprisingly, given the definition of the "market" upon which the Alston case originated, namely Division 1 football and basketball players, the U.S. Supreme Court sided with the lower courts against the NCAA's cap on benefits tethered to education. Schools are now free to offer inducements that include scholarships for graduate school or vocational school, or other education-related benefits. The Court acknowledged its decision was narrow, compared to those wanting the court to open the door wide and allow college athletes to be paid outright. But the Court in its unanimous opinion agreed with the appellate court's statement: "The national debate about amateurism in college sports is important. But our task as appellate judges is not to resolve it. Nor could we. Our task is simply to review the district court judgement through the appropriate lens of antitrust law."

In a separate concurring opinion however, Justice Kavanaugh scathingly criticized the NCAA's way of operating—*i.e.*, the association and its member institutions wanting to have it both ways—and invited thereby others to pursue further legal challenges against them. His analogy between low paid college athletes and low paid cooks, and other such purported parallels as illegal 'labor price fixing' was accorded notable sympathetic visibility in media reports of the Court's decision. Ignored however was Kavanaugh's subsequent telling observation: "If it turns out some or all of the NCAA's remaining compensation rules violate the antitrust laws, some difficult policy and practical questions would undoubtedly ensue." The questions he listed leave unclear whether he is among those hoping to bring integrity to the enterprise or hoping to destroy it.

Kavanaugh's closing statement leaves little doubt however where he stands in the debate: "Nowhere in America can businesses get away with agreeing not to pay their workers a fair market value on the theory that their product is defined by not paying workers a fair market value." The statement's analytical vagueness notwithstanding, when you understand college sports the way almost all Americans do, this statement seems to make sense. It would be more accurate to say, as the Court's opinion points out: The fundamental shortcoming of the NCAA's argument is that it claims to be defending amateurism as the core of its members' operation as commercial enterprises when evidence readily shows it has no consistent definition of amateurism, either across time or across sports.

Nevertheless, the Court's claim that the legal system is agnostic in the debate over amateurism in college sports should be taken with a grain of salt; its decision in Alston joins with and gives legal stamp of approval to all those in the wider society who see college sports programs infused with exploitation and hypocrisy. If truth be told, that set includes many within the NCAA itself, a not-insignificant factor contributing to the association's legal defeat.

Thanks to the assault via the cudgel of antitrust law, amateur and professional have become simply two versions of professional sports entertainment—the "amateur" one being the version operated by colleges and universities. The arguments waged under antitrust law talk about Big Time football and basketball in precisely this fashion, including in the Court's Alston decision. Thanks to antitrust law, the distinction between amateur and professional in the sports world has become simply a marketing one, a product differentiation one . . . based on the difference in FORM of compensation. But that begs the obvious—pending—question: If the Court is using consumer demand as the proof of the pudding, why imagine, as the pay-for-

play critics dispute, the FORM of compensation is the decisive factor? Is NIL not a fortuitously convenient device to begin putting that hypothesis to the test?

The unanimous decision against the NCAA led its Division 1 Board of Directors to pull back from its scheduled vote on the association's proposed uniform regulations on NIL. The last-minute change to the proposal to be voted on was seen reflecting a fear that uniform NIL regulations if approved would become the natural target for the legal challenges the Court's unanimity was encouraging implicitly and Kavanaugh's concurrence was encouraging explicitly (behind a quite-thin veil).

If the NCAA chooses NOT to seek/fails to get an injunction (as seems likely) and if Congress is unable to act in time to pass Federal legislation superseding states' disparate NIL laws (as also seems likely), with the state-regulated floodgates allowing college athletes to sell NIL starting to open on 01 July 2021 and with the NCAA intellectually and politically powerless to hold back the resulting flood, the near-term future of college sports as of this writing (late June 2021) seems destined to be one of chaos and more lawsuits.

As I have argued above however, the universally-held view is neither the most accurate way to understand college sports nor, by my assessment, the societally preferable way to operate them.

The questions my analysis begs are these: Do Americans want integrity in college sports? That is: Do Americans want a system of college sports in which athletes are genuinely representative of their institutions, *i.e.*, of their fellow students' academic capabilities and sports participation interests? Unfortunately, no one else—not the courts or the states or the Congress or the media or the various constituencies of higher education (students, faculty, alumni, staff, administrators, donors, foundations, suppliers, etc.)—is asking these questions.

With the traditional notion of "amateur" now rendered meaningless in the case of college sports, the Court's statement above may be recognized to say that the Court is not interested in salvaging it; nor is the Court interested in articulating a new term/theoretical construct' by which to label/understand college sports and move their operation in that direction. The courts struck down female physical educators' effort to operate college sports as amateur programs with NO compensation decades ago, and no other constituency has stepped forward since to take up the cause. Nor has any subgroup of scholars dedicated itself to developing an alternative conceptual framework and political economic understanding of college sports, so there appears to be no cause for anyone to take up anyway!

Will college sports survive as an enterprise in which college athletes are paid outright and/or try to capitalize financially on their fame by selling NIL rights?

How will such a change affect American higher education?

How will it affect the American sports world?

How will it affect American society?

We seem poised to find out.

Respectfully submitted,

DAVID ROSE.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JACKY ROSEN TO
CHRISTINA CHENAULT

Potential for Industry Restrictions and Student Contract Limitations. It is critical that any federal NIL laws include robust protections for student athletes against predatory endorsement and contract practices, and that endorsement, contract, and promotional deals meet reasonable integrity standards. However, I am concerned that these integrity standards could potentially restrict critical industries—such as those in the tourism, hospitality, and gaming sectors—from participation in NIL opportunities, and therefore limit student-athlete contract opportunities. These industries fuel Nevada's economy and are the drivers of economic growth and job creation in my state.

Question. Might a prohibition on legal industry partners—such as those hotels and resorts offering gaming services in Nevada—potentially limit the scope of NIL endorsement and contract opportunities for student athletes like your former teammates at UCLA, as well as those at colleges and universities in Nevada and across the country?

Answer. A prohibition on legal industry partners would definitely limit college athlete freedoms within the scope of NIL endorsement opportunities. When I think about my former teammates as well as college athletes throughout the country, I believe they should have the equal opportunity to pursue NIL in the equivalent breadth and scope of their peers. Therefore, there shouldn't be a created ban on an

issue that does not exist yet; as there has already historically been a hyper-surveillance of college athlete activity which is the very reason by which NIL freedoms are now being granted. Furthermore, I don't believe re-regulating college athlete NIL freedoms like a "prohibition on legal industry partners—such as those hotels and resorts offering gaming services in Nevada" is necessary. Instead, for fear of any unethical activity or found abuse of the NIL freedoms, there should be a proactive education for college athletes at the institutional (NCAA and respective school) levels to first clearly inform them of the newly allowable and non-allowable parameters. Integrity standards should account for predatory endorsement but not engulf other critical commerce industries at large. My fear is that re-regulation within critical commerce industries such as tourism, hospitality, and gaming sectors would disproportionately affect the nature of college recruiting and college athlete opportunity for those in respective industry locations or states. Namely, since incoming college athletes are now making more holistic college decisions including academic, athletic, and professional-industrial potential, they may miss out on an amazing academic or athletic opportunity due to a school's affected local key industry.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RAPHAEL WARNOCK TO
CHRISTINA CHENAULT

Athlete Support. Thank you for sharing your testimony with us today. I am proud that we are elevating the health, professional, and academic needs of America's college athletes in the discussion regarding NIL legislation. I believe that by working together with athletes, coaches, athletic directors, and other involved parties, we can develop NIL legislation that benefits athletes and universities.

Question. What steps can Congress take to ensure that any NIL legislation protects athletes' access to quality education and physical and mental health resources?

Answer. In the lens of athlete protection within NIL, more prohibitions should be applied to the schools themselves. Illustrated on record through the development of college sports, it is the schools themselves and their subsequent administration that hold the power to manipulate rules and language for financial gain. With the emergence of NIL causing a landscape shift, it is hard to imagine after being a college athlete for 6 years that these operating tactics, which exemplify the well-rooted ethos and monetary motivations of schools, will simply dissipate. With this in mind, it would be a priority concern from the athlete perspective to constitute strict athletic scholarship safety despite any physical injury or mental health affective, to ensure the educational and psychological safety of college athletes. At some schools, athletes are handed papers listing majors deemed "conducive for their sport activity". This is one example of many, that displays the unethical educational tracking athletic departments have over their athletes that should also be outlawed. Any style of legislation that can prohibit this current educational mistreatment of college athletes that is polluted by a school's athletic program influence, academically referred to as the "*Flutie effect*", would better support athlete education.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RAPHAEL WARNOCK TO
SARI CURETON

Athlete Support. Thank you for sharing your testimony with us today. I am proud that we are elevating the health, professional, and academic needs of America's college athletes in the discussion regarding name, image, and likeness (NIL) legislation. I believe that by working together with athletes, coaches, athletic directors, and other involved parties, we can develop NIL legislation that benefits athletes and universities.

Question. What steps can Congress take to ensure that any NIL legislation protects athletes' access to quality education and physical and mental health resources?

Answer. Senator Warnock it was an honor to speak before your committee and I appreciate your question. I think that the College Athlete Bill of Rights provides some of the best guidelines to protecting student-athletes' access to quality education and health resources. For example, the establishment of a medical trust fund helps protect the health of athletes after they are done competing for their institutions. As it relates to mental health resources, I believe every institution needs to provide access to mental health professionals. The NCAA should offer funding for universities that are not able to afford on site professionals. However, there is concern that athletes would not trust staff that work for their department to properly care for their mental health or that department staff might gatekeep access to these professionals. I think one way to combat this is having hired psychologists, psychia-

trists, or counselors be accountable to student health services rather than an athletic director. Continued oversight of institutions will be necessary to make sure that student-athletes are actually being connected to resources. It is also crucial that student-athletes who wish to seek assistance outside of the university have the necessary financial and logistical assistance from their institution to access care. This need not only applies to mental health but physical health as well. If an athlete wishes to seek a second opinion, they should not face out of pocket expenses. In regard to quality education, I encourage any passed legislation to maintain the College Athletes' Bill of Rights prohibition on the interference of department staff in the process of athletes selecting their majors. Legislation should also maintain a scholarship safeguard that ensures athletes will have access to their scholarship for as long as it takes for them to complete their undergraduate degree. My hope is that this will allow student-athletes to fully explore their academic interests so that they may be better prepared for life after sports. There are also other important areas to discuss as it relates to the rights of student-athletes. For example, I believe it is crucial that the NCAA is forced to uphold Title IX. Another important aspect is enforcement and oversight because otherwise these measures will not be effective. I believe that the Commission on College Athletes could be an extremely important tool in the protection of student-athlete rights. However, this commission can only be effective so long as intuitions are not the ones in complete control. Along with the creation of an oversight body there needs to be a reporting mechanism that allows student-athletes to report any violations of their rights not only to the NCAA but to this commission as well. Many athletes are scared to report these incidents therefore it is imperative that those that do come forward can do so safely and without repercussion. I hope that my answer has offered greater insight to my written and oral testimony. Thank you again for your time and attention.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RAPHAEL WARNOCK TO
MARTIN MCNAIR

Question. What steps can Congress take to ensure that any NIL legislation protects athletes' access to quality education and physical and mental health resources?

Answer. I believe that Congress can ensure that Federal legislation with NIL creates a baseline standard notable provision of safety *first* and economic freedom second across the board in all states. Senators Booker and Blumenthal's Student Athletes Bill of Rights is the template to follow in order to accomplish this.

Senator, the bipartisan effort in the State of MD regarding the Jordan McNair Safe and Fair Play Act is the example that all states should follow regarding the health and wellness of all student athletes in this country.

College athletics is one of the many things we enjoy by leaving our cultural, financial and political views outside the door. We're all parents and family members of these student athletes. Let their health and safety be a paramount priority before we consider paying them for their Name Image and Likeness.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RAPHAEL WARNOCK TO
KAIRA BROWN

Athlete Support. Thank you for sharing your testimony with us today. I am proud that we are elevating the health, professional, and academic needs of America's college athletes in the discussion regarding name, image, and likeness (NIL) legislation. I believe that by working together with athletes, coaches, athletic directors, and other involved parties, we can develop NIL legislation that benefits athletes and universities.

Question. What steps can Congress take to ensure that any NIL legislation protects athletes' access to quality education and physical and mental health resources?

Answer. One way that Congress can ensure protection of student athletes is by ensuring independent enforcement for established rights. Currently, although there is some positive guidance and guidelines provided by the NCAA, the enforcement for these guidelines can be weak or nonexistent. If Congress were to provide a dependable mechanism for outside oversight for student-athlete protections, this would be a significant step to protect student-athletes' rights to quality education and physical and mental health. This entity would oversee the enforcement of protections for student athlete physical and mental health such as practice hour limits and safety guidelines.

It is imperative that this outside enforcement group also be uninfluenced by the current governing bodies of college sports. If groups such as the NCAA, conference

commissioners, and heads of schools were to oversee the enforcement body, nothing would change with the current system. These governing bodies have proven that, given the opportunity to protect student athletes, they will not. We need the outside enforcement body to be overwhelmingly made up of people who have student athletes' best interests in heart. For example, the enforcement body must include athletic trainers and sports psychologists to speak on physical and mental health. A significant portion of the enforcement body must also be made up of current and former student athletes.

In addition to an external enforcement body, there are certain assurances that Congress could provide that would also help physical and mental health for student athletes. One such assurance would be Federal legislation ensuring the promise of a four-year scholarship. While many schools and conferences purport that they guarantee four-year scholarships, the lived experience of many student athletes is that their scholarship is not promised from year to year. This is obviously incredibly stressful, especially for athletes who likely could not afford to attend the institution without this financial assistance. The knowledge that their scholarship is constantly in danger of being taken away can also lead student athletes to push their bodies further than what's medically safe in order to please their coaches and keep their scholarships. Thus, if athletes could feel confident that their scholarships were guaranteed, this would alleviate a huge mental burden as well as empower them to make the best choices for their bodies.

In conclusion, the present governing bodies of collegiate athletics often rule with their economic interests at heart rather than the interests of student athletes. Congress can protect and uplift student athletes by putting athletes, not the NCAA, first in their legislation and their enforcement. Congress must hold the NCAA and other governing bodies accountable for the protections the NCAA professes but fails to grant. They must then go further and establish a permanent accountability apparatus so that the NCAA and other such organizations no longer feel empowered to overlook the needs of the very people they claim to serve.

