

**NAME, IMAGE, AND LIKENESS,
AND THE FUTURE OF COLLEGE SPORTS**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

OCTOBER 17, 2023

Serial No. J-118-35

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON THE JUDICIARY

RICHARD J. DURBIN, Illinois, *Chair*

SHELDON WHITEHOUSE, Rhode Island	LINDSEY O. GRAHAM, South Carolina, <i>Ranking Member</i>
AMY KLOBUCHAR, Minnesota	CHARLES E. GRASSLEY, Iowa
CHRISTOPHER A. COONS, Delaware	JOHN CORNYN, Texas
RICHARD BLUMENTHAL, Connecticut	MICHAEL S. LEE, Utah
MAZIE K. HIRONO, Hawaii	TED CRUZ, Texas
CORY A. BOOKER, New Jersey	JOSH HAWLEY, Missouri
ALEX PADILLA, California	TOM COTTON, Arkansas
JON OSSOFF, Georgia	JOHN KENNEDY, Louisiana
PETER WELCH, Vermont	THOM TILLIS, North Carolina
LAPHONZA BUTLER, California ¹	MARSHA BLACKBURN, Tennessee

JOSEPH ZOGBY, *Chief Counsel and Staff Director*

KATHERINE NIKAS, *Republican Chief Counsel and Staff Director*

¹At the time of the hearing, Senator Butler was not a Member of the Committee on the Judiciary. The Senate agreed to S.Res.411, assigning Senator Butler to the Committee later that day, October 17, 2023.

CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	
Prepared statement	54
Blumenthal, Hon. Richard	1
Graham, Hon. Lindsey O.	3

WITNESSES

Manchin, Hon. Joe, III, a U.S. Senator from the State of West Virginia	46
Baker, Charlie	4
Prepared statement	56
Responses to written questions	59
Bodensteiner, Jill	13
Prepared statement	85
Responses to written questions	88
Huma, Ramogi	10
Prepared statement	97
Responses to written questions	102
Jones, Walker	12
Prepared statement	116
Responses to written questions	122
Petitti, Tony	6
Prepared statement	134
Responses to written questions	138
Swarbrick, Jack	15
Prepared statement	150
Responses to written questions	154
Thomas, Trinity	8
Prepared statement	161
Responses to written questions	163

APPENDIX

Items submitted for the record	53
--------------------------------------	----

NAME, IMAGE, AND LIKENESS, AND THE FUTURE OF COLLEGE SPORTS

TUESDAY, OCTOBER 17, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in Room 216, Hart Senate Office Building, Hon. Richard Blumenthal presiding.

Present: Senators Blumenthal [presiding], Whitehouse, Klobuchar, Coons, Booker, Padilla, Ossoff, Graham, Grassley, Cornyn, Lee, Cruz, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

Also present: Senator Manchin.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BLUMENTHAL. The hearing of the Judiciary Committee is called to order. Please take your seats, and welcome to all of our witnesses.

I am very grateful to my colleague Senator Durbin for giving me this opportunity to chair the hearing, and we wish him a very, very speedy recovery. He evidently had knee surgery. I believe it may have been because of a college sports injury. And I don't know exactly all the details of his sports prowess. I've seen him in the Senate gym.

But all of you know our colleague Senator Booker, who is truly a college athlete star and very knowledgeable on this topic and a partner with me in long-standing efforts to reform the system.

I want to thank our Ranking Member, Senator Graham, who's been very interested and involved in this issue. And I'm going to put in the record a statement from Chairman Durbin before I begin my remarks.

[The prepared statement of Chair Durbin appears as a submission for the record.]

Senator BLUMENTHAL. We all know, today, that this system of college athletes is in need of reform. That's why you're here. It's in need of reform now, which is why we're here. The system, all too long and often, has been exploitive and abusive financially, emotionally, physically. And we have had a number of hearings in other Committees—the Commerce Committee, as well as this one. And I am hopeful that this very impressive bipartisan group of witnesses can help to guide us toward specific steps with a sense of urgency that is appropriate for this kind of problem.

The system, very simply, has been far more focused on profits than protecting students, and it has failed to safeguard them against the abusive and often exploitive system that takes advantage of their blood, sweat, and tears in creating a \$16 billion industry.

Make no mistake, it is a \$16 billion or more industry that is fueled by the blood, sweat, and tears of these athletes, and all too often, they fail to benefit from it.

Many States have passed NIL legislation. The Supreme Court has ruled in a 9-to-0 decision that has forced, in a sense, a day of reckoning. And I believe strongly that we need a national standard for name, image, and likeness, mainly to protect the athletes against potential disreputable agents or unscrupulous deals in a race to the bottom among a patchwork of States.

That's important not only to protect the schools against unfair competition but also the athletes, themselves. And the idea of a national standard is what brings us here today in a very immediate sense.

Student-athletes are better off now than they were, and many of your organizations have recognized the need for change. Charlie Baker, the head of the NCAA, specifically outlined some of the reforms that they have taken voluntarily.

We've all read and heard alarming examples of these instances of exploitation and abuse. Every year, at least two college football players die of heat stroke. Just 3 months ago, Myzelle Law, from MidAmerica Nazarene, in Kansas, was found in the locker room after football practice, suffering a seizure with a body temperature of 108 degrees. Myzelle never recovered, and he died a week later.

Heat stroke is one of the most gruesome ways to die. Truly horrible. It's absolutely preventable. These deaths are a product of bullying, a win-at-all-costs culture that is far too common in athletic departments.

That culture creates the condition that costs the lives of talented young men and women like Myzelle, and it fosters the abusive hazing and sexual assault that we've seen at Baylor, Northwestern, San José State, and elsewhere.

The NCAA, in past years, has failed to address this abuse as quickly and effectively as it should have. I agree that we should set a strong national standard and we ought to enshrine it in Federal law—enforceable, not just put it in the statutes but make sure that it is enforceable either through the separate corporation that Senator Booker and I have proposed, to enforce an Athletes Bill of Rights, or through some other means.

As importantly as NIL, though, we need to address enforceable health and safety standards much more broadly and comprehensively. We need to ensure that college athletes are able to get an education in return for their blood, sweat, and tears.

In July, I was proud to announce a draft bipartisan bill with Senator Booker and Senator Moran, the College Athletes Protection and Compensation Act. Our draft legislation would establish a strong national NIL standard, but it would also protect the well-being and educational success of student-athletes.

Our student-athletes rights package would set health and safety standards to protect college athletes from serious injury, mistreat-

ment, abuse, and even death. It would guarantee tuition and aid to student-athletes that suffer a career-ending injury or are cut from a team. It would establish a medical trust fund to cover health care for long-term injuries resulting from college athletes' participation in sports. And it would bring transparency to the NIL market and to college athletes programs.

We've talked about these kinds of reforms for more than a decade. The time for action is now. There are lives ongoing, careers at stake, individuals who really need and deserve this kind of protection, and I'm very grateful to Senator Durbin and the Committee for addressing this topic. And I'd like to turn now to the Ranking Member.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Senator Blumenthal. Yes, we're hoping that Senator Durbin gets back soon. I don't know what his 40 time will be after the knee injury, but in my case, I just want to run 40. I don't care how long it takes. I'm going to try to get Senator Booker's number and put it online, see if it'll make a little bit of money. What number were you?

Senator BOOKER. 81.

Senator GRAHAM. 81. So, we meet today with the world on fire. To my Democratic colleagues, you have been very good to work with in trying to find a response to this horrific attack by Hamas against Israel that will make the world a better and safer place.

So, as we talk about one of the more fun things in American life, college sports, I just want to let everyone out there know that this Committee is working hard to try to find a way to be helpful.

In terms of being helpful, where I come from, South Carolina—and many people on this side—college football is not a sport, it's a religion. And we're very concerned about where this thing is going.

I think there's a lot of bipartisan support; there needs to be a national standard. All of your schools need to have some guidance that applies to everybody, all the time. I think if you make college athletes employees, you're going to knock out sports programs for Division II. A lot of non-revenue-generating sports, particularly women's athletics, will go away.

As you try to elevate some of the star players to make sure they get a piece of the pie, we don't want to create an environment where Division II or smaller Division I schools will be knocked out of the game because they can't afford it. I want it still to be an amateur sport, to the best that we can.

So, to me, I want to associate myself with what Senator Blumenthal said. There needs to be a Federal standard.

Utah is offering everybody on the team a new truck. There's no end to this. You know, donors are out there competing ferociously. In pro sports, you sign a contract. That means nobody's going to take that player away from you for a certain period of time. You've got a chance to get your money back.

Between the portal and NIL, college football is in absolutely chaos, and we need to fix it. And so national legislation is the only way to fix it, and in our desire to protect the athlete, which is a

worthy goal, we can't destroy by making it so expensive, non-revenue-generating sports. And we want to make sure that athletes at every level in college—smaller colleges—can play, too. That's the goal. I look forward to trying to find a solution. Thank you.

Senator BLUMENTHAL. Thanks, Senator Graham. I'll introduce the witnesses, and then we'll swear them in and turn to their statements.

We're pleased to have all of you here today.

Charlie Baker, our first witness, is president of the National Collegiate Athletic Association, or the NCAA. Mr. Baker is a former basketball player at Harvard, who also happened to serve as Governor of Massachusetts from 2015 to 2023.

We're joined by Tony Petitti, Commissioner of the Big Ten Conference. The Big Ten, one of the so-called Power Five conferences, is home to several powerhouse college athletic programs, which I know Chair Durbin would like to note includes the University of Illinois and Northwestern University.

Our next witness is Trinity Thomas, an All-American gymnast at the University of Florida. Among her many accomplishments, Ms. Thomas is a two-time Honda award winner, given to top female athletes in college gymnastics, and she holds the NCAA record for perfect 10s, with 28. She is currently pursuing her second master's degree and has built an impressive NIL portfolio.

We are also joined by Ramogi Huma, executive director of the National College Players Association, an organization he helped to found for college athletes' rights. Mr. Huma earned a bachelor's degree and a master of public health degree from UCLA, where he was a member of the football team. And he's been very helpful in the past, not only in advocacy but also in helping us shape legislation.

Mr. Walker Jones, executive director of The Grove Collective, an entity designed to help athletes at the University of Mississippi monetize their NIL rights. Mr. Jones graduated with a bachelor's degree from the University of Mississippi, where he was a member of the college football team.

Ms. Jill Bodensteiner, vice president and director of athletics at St. Joseph's University, a member of the board of directors of Women Leaders in College Sports. She can speak to the perspective of how smaller universities are dealing with the advent of NIL.

And, finally, Jack Swarbrick, vice president and director of athletics at the University of Notre Dame. Mr. Swarbrick has helped to shape modern college athletics. Earlier this year, he co-authored an op-ed in The New York Times discussing the state of college sports.

We welcome all of you, and would you please rise to take the oath, which is our custom?

[Witnesses are sworn in.]

Senator BLUMENTHAL. Thank you. Mr. Baker, we'll begin with your testimony, please.

STATEMENT OF CHARLIE BAKER, PRESIDENT, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, INDIANAPOLIS, INDIANA

Mr. BAKER. [Off microphone.]

Senator BLUMENTHAL. I think your microphone may not be on.

Mr. BAKER. Better?

Senator BLUMENTHAL. Yes.

Mr. BAKER. Okay. Thank you very much, Senator Blumenthal. To you and to Ranking Member Graham and the distinguished Members of the Committee, I want to start by thanking you all for the opportunity to be here today.

Before I begin, I do want to say that on behalf of college sports, generally, we condemn the recent violence perpetrated by Hamas. These acts were horrific, hard to comprehend, and our thoughts are with the people of Israel and the innocents that are involved in that conflict.

In advance of my testimony today, we did speak with leaders from all three divisions, and others, to ensure that I'm speaking for as broad a collection of NCAA voices as possible. That this Committee has made time to discuss college sports speaks to their importance, and we very much appreciate it.

College sports are a ticket to an education for a half a million young people, generating \$4 billion in college aid. College sports are cornerstones to countless campuses, and in turn they are cornerstones for thriving communities. College sports are America's Olympic pipeline, with 75 percent of the 2022 Team USA coming up through NCAA sports.

College sports are also long overdue for a change, but I'm proud to say we have been doing something about that. Since I took over as NCAA president 7 months ago, we've created a student-athlete health insurance fund that will provide all athletes across all three divisions access to health insurance for athletically related injuries for up to 2 years post-eligibility or graduation.

Every DI school is now required to provide health care benefits, degree completion funds for at least 10 years after they stop competing, and mental health services to their student-athletes. Scholarships are protected, and schools must offer academic counseling, financial literacy, and career preparation. We've prioritized equitable championship experiences, and I've directed national office leadership to put gender equity at the center of everything they do.

The NCAA also continues to advance commonsense changes to sports betting policies and enforcement policies that penalize the adults, not the young people.

And the NCAA is moving NIL bylaws forward, to improve outcomes for student-athletes—we share your concern there—because they deserve to profit from their NIL, free from manipulation. These changes are long overdue, and they're happening now, thanks in part to calls for action from Members of this Committee and from the student-athletes themselves.

There are some issues college sports face that we, the NCAA, cannot address on our own. Our new NIL bylaw proposal requires student-athletes to disclose certain information to their schools only and offers incentives to use fair contract terms and reputable agents. We want to partner with Congress to go further and curtail inducements and prevent collectives and other third parties from tampering with students, and we would like to have a national standard where a patchwork of laws, as you pointed out, Senator Blumenthal, currently exists.

Schools, conferences, and the NCAA are making changes to the benefits that we provide. And to enable enhanced benefits while protecting programs from a one-size-fits-all approach, we support codifying current regulatory guidance into law by granting student-athletes special status that would affirm that they are not employees. And on this point, we're not alone.

I visited Augustana College in South Dakota a few months ago, with Senator John Thune, to hear student-athletes talk about why they don't want to become employees. The elected student-athlete representatives from all three divisions are on record saying the same thing. They fear the current legal landscape turning them into employees, and they have called for action.

The athletic conferences representing the vast majority of Historically Black Colleges and Universities have also supported this policy. They believe the progress they've made educating young people of color would be at risk if their athletic departments had to become employers.

We also think there's opportunity for Congress to ensure, in this new era of collectives, that there's no discrimination on the basis of race, gender, or sport in the marketing or facilitation of NIL agreements.

And, last, we want to partner with Congress to grant limited liability protection, so we can set reasonable competition standards and enforce student health and well-being requirements with direction from Congress.

Let me just close with this. We're grateful for the time you're giving us today and appreciate the chance to exchange ideas with you. And I learned, serving as Governor, that the legislation branch has immense power and rightfully yields it sparingly. But I believe we can find common ground on this, and I look forward to helping student-athletes succeed in this new era. Thank you.

The prepared statement of Mr. Baker appears as a submission for the record.]

Senator BLUMENTHAL. Thanks, Governor Baker. Mr. Petitti?

**STATEMENT OF TONY PETITTI, COMMISSIONER,
BIG TEN CONFERENCE, ROSEMONT, ILLINOIS**

Mr. PETITTI. Thank you. Senator Blumenthal, Ranking Member Graham, and distinguished Members of the Committee, thank you for the opportunity to discuss the pertinent issues impacting collegiate athletics, including name, image, and likeness, commonly known as NIL. And thank you for your strong commitment to finding legislative solutions.

We have been working closely with Senators Cruz, Blumenthal, and Booker on their legislative proposals, and I am encouraged to see there is strong interest in addressing the issues facing college sports.

My name is Tony Petitti, and since May I've been proud to serve as the seventh commissioner of the Big Ten Conference, the country's oldest Division I collegiate conference. Although I've only been the Big Ten commissioner for 6 months, I have a long history of working in professional and college sports, particularly in Major League Baseball.

I'm also a former student-athlete—was the first in my family to attend college. Like millions of Americans, being a college athlete helped me pursue a higher education while continuing to follow my passion for sports, which for me was baseball.

The Big Ten Conference is deeply committed to academics, research, and broad-based sports opportunities for all students. We take great pride in the success of our student-athletes, both inside and outside the classroom during their time at Big Ten institutions, as well as afterwards. Student-athlete health and welfare is a top priority for us at the Big Ten. We provide both on-campus and post-separation health care, which guarantees that our student-athletes have access to medical care and mental health services both during and after their time on campus.

While the Big Ten and other Autonomy Five conferences currently provide these important benefits, the Big Ten is open to and supports efforts to discuss additional health and wellness benefits for our student-athletes.

As we've all discussed in recent years, the long-standing "rat" student-athlete model has undergone an incredible and rapid transformation. We see this confluence of events as an opportunity to fundamentally modify the dynamics that exist for student-athletes.

We are prepared to modernize our guidelines to create a new framework for collegiate athletics, one that more fairly provides benefits to student-athletes directly from member institutions, maintains broad-based sports opportunities for men and women, and upholds Title IX.

We see four main challenges that must be addressed by proper regulation to better protect and serve our student-athletes and to support a new governing structure.

First, there are now more than 30 different State laws related to name, image, and likeness. Many States are passing NIL and associated laws designed specifically to provide their in-State universities with a competitive advantage in recruiting through the promise of NIL. To provide certainty, equity, and competitive balance, a uniform Federal statute is needed to preempt this network of State laws.

Second, because of a combination of court decisions, current litigation, and State actions, the NCAA is unable to make or enforce commonsense regulations governing athletics. Through legislation, Congress should grant limited and conditional liability protections so that we can set and enforce reasonable competitive standards and promote student-athlete welfare.

Third is the ability to effectively identify true NIL deals from pay-for-play or inducement schemes, particularly with the precipitous rise of collectives. Student-athletes are frequently being induced by collectives to attend specific institutions and transfer from one school to another without a true NIL deal. This has resulted in a pay-for-play system primarily controlled by boosters and executed under the guise of NIL.

We are concerned that management of college athletics is shifting away from the universities to collectives. The Big Ten will continue to support students making true business deals off of their name, image, and likeness and provide student-athletes the free-

dom to choose the institutions from which they will obtain an education.

We do not, however, support such activity when it is tied to a pay-for-play scheme disguised as NIL. Simply put, as the collegiate sports environment has evolved, so too have the motivations and goals of many collectives, which are now trying to create competitive advantages and are not subject to Title IX.

We are already seeing that payments from collectives will not be easy to sustain. Without action from Congress, we will continue to lack the ability to manage collegiate athletics.

Finally, I want to touch on the question of whether student-athletes should be classified as employees. Not only is employment status complex, but it is contrary to the educational model that has long flourished in American collegiate athletics.

The Big Ten strongly supports congressional proposals that would codify benefits for student-athletes, that guarantee consistency across States and sports, without the need to classify student-athletes as employees.

With many new challenges on the horizon, we look to Congress for your partnership in helping us embrace change and ensure that we tackle these new challenges effectively, while celebrating and promoting college athletics. Thank you, again, for the opportunity to appear before you today, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Petitti appears as a submission for the record.]

Senator BLUMENTHAL. Thank you, Mr. Petitti. Ms. Thomas?

**STATEMENT OF TRINITY THOMAS, GYMNAST,
UNIVERSITY OF FLORIDA, GAINESVILLE, FLORIDA**

Ms. THOMAS. Thank you for giving me the opportunity to speak here today.

I've spent the last 5 years competing on the University of Florida's gymnastics team. Over the course of my time at UF, I've completed my bachelor's degree in applied physiology and kinesiology and my master's degree in health education and behavior. I've had the privilege of competing before and after name, image, and likeness opportunities became available for student-athletes.

The experiences that I've had along the way have helped me develop into the young woman that I am today. I'm currently serving as student assistant coach for the gymnastics team at the University of Florida, while pursuing a second master's degree in entrepreneurship and training for a chance to compete at the U.S. Olympic trials in 2024.

As a student-athlete at the University of Florida, I've had the opportunity to receive an education from a top five university while also competing against some of the best gymnasts in the Nation. Competing against the best athletes on the biggest stages has provided me with more opportunities than I ever imagined possible when I started gymnastics as a little girl in Pennsylvania.

One of the biggest opportunities that college gymnastics has given me is the ability to benefit from the changes in NIL policies that have recently come to college athletics. While student-athletes weren't yet able to benefit from NIL when I first arrived at the

University of Florida, I was immediately intrigued once the rules were changed.

It took many of my—me and my fellow athletes time to learn to navigate the waters of NIL, and everyone is still learning as we go, given it is a new and uncharted territory. It's been interesting to navigate, but I was able to interview and sign with agencies, partner with various companies, learn to become an entrepreneur, focus on building my brand, and work on so many cool personal projects that mean a lot to me.

The first year that student-athletes had the ability to take advantage of NIL, I was able to get iPads for my younger siblings as Christmas gifts. Kids' gymnastics camps had the ability to promote the fact that I would be coming to work with them. I worked with companies to support women's sports and more.

Unfortunately, one of the parts of NIL that makes it difficult for student-athletes is the varying laws and regulations that are in place from State to State. There currently is no single standard that applies to all student-athletes in all sports, which oftentimes leaves us confused. In some cases, the different laws also place certain student-athletes at a disadvantage, depending on where they go to school.

Recently, I was invited to attend SEC Day on the Hill in Washington, DC, to speak with Representatives from Congress. Most of my discussions centered around the issue of NIL and allowed me to share some of my personal experiences as a student-athlete, including how NIL policies have impacted me personally, both the positives and the areas where there could still be improvements.

While discussions were positive, it seems clear that the best path forward for everyone would be if we had a Federal NIL policy that applied to all athletes from every sport at every school and at every level.

This will create equal opportunity for all student-athletes to benefit from NIL and will create a uniform standard to ensure we're all playing by the same rules and eliminate confusion and unfair advantages. A Federal law will also have the benefit of ensuring the future of sports, like gymnastics, are protected.

The SEC is one of the Nation's hotbeds for showcasing and developing Olympic talent, and it would be a huge loss that would be felt well beyond just college athletics if these sports were put at risk due to any future legislation that might come from one State or another.

Protecting the future of my sport and the dozens of other sports that have developed future Olympians should be a top priority. Not only do women's and Olympics sports at the collegiate level help young women like me receive a college education, but they also help athletes benefit from the very same NIL opportunities that I have experienced during my time as a student-athlete at the University of Florida.

While college sports took a step forward with NIL during my time as a student-athlete, more can still be done to better the lives of all student-athletes. I'm hopeful we will soon have a national standard and the future of college athletics will be improved for the next generation of great student-athletes.

Thank you for taking the time to focus on a topic that is important to me and hundreds of thousands of student-athletes all over the Nation.

[The prepared statement of Ms. Thomas appears as a submission for the record.]

Senator BLUMENTHAL. Thank you so much, Ms. Thomas. Mr. Huma?

STATEMENT OF RAMOGI HUMA, EXECUTIVE DIRECTOR, NATIONAL COLLEGE PLAYERS ASSOCIATION, NORCO, CALIFORNIA

Mr. HUMA. Good morning. First, I would like to thank Chairman Durbin and Ranking Member Graham, Senator Blumenthal for allowing me to testify today.

The National College Players Association, the NCPA, served as a sponsor of the first State NIL law in the Nation and successfully fought for the passage of NIL laws in a dozen other States. College athletes now have the ability to earn NIL compensation, just like other college students and American citizens.

As hard as the NCPA has fought for college athletes' NIL freedoms, NIL should not be a priority for Congress, because athletes already have these freedoms. While there are some NIL-related areas that should be fine-tuned, such as athlete agent certification, there are more important issues that athletes desperately need Congress to prioritize.

Instead of adopting an NIL-only bill, Congress should include broad-based reform that is critical in protecting college athletes.

Many are shocked to learn that the NCAA refuses to enforce safety standards. It's not against NCAA rules for college athletics personnel to force an athlete back into the same game with a concussion, sexually abuse an athlete, or kill an athlete in a hazardous workout.

Instead of helping these athlete victims, the NCAA coldly responds that it has no duty to protect college athletes. Then whose duty is it? These colleges receive Federal funds while creating hazardous conditions for their athletes. The NCPA's stance is that Congress has a responsibility to protect college athletes.

The NCPA asks this Committee and Congress not to follow the NCAA's lead by skirting this important duty. The NCPA is grateful for so many of the Members of this Committee taking an active role in trying to address problems in NCAA sports through legislation.

We believe there can be a bipartisan solution that can iron out some of the NIL issues as well as bringing forth critical broad-based reform, including the enforcement of safety standards, coverage for athletes of sports-related medical expenses, and prohibiting the NCAA from discriminating against female college athletes, like we saw during its March Madness tournament.

The NCPA has been working closely with Senators Booker, Blumenthal, and Moran on a bipartisan draft that not only addresses NIL issues, it includes important broad-based reforms. And this draft continues to head in a promising direction.

As a practical matter, any bipartisan legislation that can actually move through the Senate cannot have poison pills that would kill it. Such a bill shouldn't attempt to require or prohibit athlete rev-

enue-sharing, require or prohibit athlete employment status, or attempt to give NCAA sports an antitrust exemption. There are strong beliefs about these areas among stakeholders, but these issues should be set aside so that bipartisan progress can be made in other important areas.

Both before and after State NIL laws became effective, the NCAA and its conferences lobbied Congress for an antitrust exemption, which the NCPA strongly opposes. Antitrust lawsuits, U.S. DOJ antitrust investigations, and State legislation targeting NCAA antitrust violations have brought forth important economic freedoms and protections for college athletes.

Because of antitrust laws, the NCAA can no longer price-fix an athletic scholarship below the cost of attendance, limit scholarships to only 1 year, prohibit colleges from providing medical coverage to athletes, or ban athletes from earning NIL compensation. The NCAA is a chronic antitrust violator and a glaring example of why antitrust laws are needed in this country.

Another important issue, and one that is worthy of its own separate bill, is the harmful conference realignment that will require college athletes to spend many additional hours traveling at the expense of their academics and their health. These developments are nothing but a greedy TV money grab that treats athletes like commodities and their education like a punch line.

Using athletes in predominantly Black sports to generate more TV dollars at the expense of their education, while Black football and basketball athletes suffer the lowest graduation rates, is unjustifiable.

Another problem is that, as megaconferences emerge, each team and fan base will have less of a chance to win their conference. Colleges in megaconferences are literally selling out their athletic future for TV dollars, just to give a pay bump to coaches, athletic administrators, and spend on more shiny facilities.

This is short-sighted, this harms college athletes, and the NCPA is encouraging Congress to pass legislation that would base conference realignment on reasonable regional proximity and limit the number of colleges in a conference.

It's no secret that there are partisan divisions in many areas in American life, but sports is a special area. The NCPA has worked with lawmakers on both sides of the aisle to pass NIL laws in red States, blue States, and purple States, because when it comes to the well-being of college athletes, lawmakers who care about athletes find themselves on the same team, regardless of political party.

Every future, current, and former college athlete in each of your States needs you to join this team and pass meaningful broad-based legislation. Thank you.

[The prepared statement of Mr. Huma appears as a submission for the record.]

Senator BLUMENTHAL. Thanks very much, Mr. Huma. Mr. Jones?

**STATEMENT OF WALKER JONES, EXECUTIVE DIRECTOR,
THE GROVE COLLECTIVE, COLLIERVILLE, TENNESSEE**

Mr. JONES. Senator Blumenthal, Ranking Member Graham, and Members of the Committee, thank you so much for inviting me to be here today.

My name is Walker Jones, and I'm the executive director of The Grove Collective, representing student-athletes at the University of Mississippi, and I'm also a founding member of the TCA, or The Collective Association, which is comprised of 25 collegiate collectives from across the Power Five landscape, serving as advocates for over 50,000 student-athletes in 25 sports.

Our goal is to serve as a unified voice to shape the development of NIL, of the NIL market in college sport, by creating a sustainable model that gives student-athletes the ability to maximize their NIL platforms.

Current data shows that collectives are responsible for approximately 80 percent of the money being paid to NCAA athletes through their NIL activities. Given this figure, the TCA is unique in that our members possess and are willing to share our firsthand knowledge of how NIL is working in your local communities, and we seek to partner with anyone who wants to produce well-informed and effective legislation benefiting collegiate student-athletes first.

Unlike all our stakeholders in college sports, we work with everyone in the ecosystem by sitting at the point of intersection within NIL commerce.

Before we delve into the substance, let me be very clear about one thing. Our organization and I are extremely bullish on college athletics. Are there aspects of the current model that need addressing and evolving? Of course. But the overwhelming majority of commerce with name, image, and likeness is positive.

As a student-athlete in the late 90s, I can tell you that today's student-athletes have the resources and ability to deal with the realities that inevitably come to them in life. Whether they play professional sports or not, athletes now have the ability to solve for socio-economic issues, stay in school longer to further their academic careers, locate the best possible competitive situations athletically, and be a more functional contributor to society when they leave their respective campuses.

Finally, as TV viewership continues to break records each weekend in the college football season this year and this past spring with March Madness in basketball, the marketplace for athletes to maximize their value has never been stronger.

The NIL landscape continues to experience the inevitable growing pains of any free-market model, but the overall health of college athletics is strong. The TCA members feel those in this panel today and other important stakeholders share the expertise and passion, along with Congress, to work together for long-term sustainability and growth of college athletics.

If need is the mother of all innovation, collectives were born from the need for student-athletes to have a stable, secure, and trusted entity representing their interests. Student-athletes trust our collectives, and this has caused some tension at times between our affiliate institutions, collegiate conferences, and the NCAA.

But we are comfortable in the discomfort, because at the end of the day, our singular focus is on the student-athletes who would otherwise be forced to navigate this new and constantly evolving environment on their own.

We root for and work with every student-athlete that chooses to work with us, not just the superstar athletes. While no one would be surprised that the majority of the student-athletes and work originate around football and men's basketball, our efforts have particularly benefited women and non-revenue sports. In fact, there was a 20 percent increase in women's NIL deals from 2021 to 2022, and we expect an even larger increase at the end of 2023.

All this leads me to talk about what we, as collectives, stand for. We stand for creating opportunities for athletes to match with national and local sponsors, nonprofits, and charities, while creating avenues to interact with their fan bases. We are independent businesses, separate from universities and the athletic departments, and feel our student-athletes are served best by that independence.

We provide resources and tools to help our student-athletes not only monetize their value but prepare for their future professions and careers. We provide best practices and standards to keep the bad actors out of the marketplace and create sustainability in the model. We provide transparency and disclosure to our university partners to remain compliant with State and NCAA rules and regulations.

And, finally and most importantly, we are committed to diversity and inclusion in sourcing NIL opportunities for all athletes, regardless of the sport they play.

Additionally, I thought it'd be helpful to elaborate on what we as collectives are not. We are not owned, nor are we agents. We are not financial advisors to the athletes we serve. That being said, most of our collectives provide financial literacy and tax planning and assistance with any financial questions that come their way.

We do not participate in the recruiting process and desire to not—to only work with athletes once they have decided to attend our school. That is best left to coaches and athletic departments, under the strict watch of the NCAA.

We are not rogue organizations run by out-of-control boosters and donors. Most collectives operate as full-time businesses with infrastructures, staff, transparency with our universities and our constituents. I thank you for your time and look forward to answering any and all your questions.

[The prepared statement of Mr. Jones appears as a submission for the record.]

Senator BLUMENTHAL. Thanks, Mr. Jones. Ms. Bodensteiner?

STATEMENT OF JILL BODENSTEINER, VICE PRESIDENT AND DIRECTOR OF ATHLETICS, SAINT JOSEPH'S UNIVERSITY, PHILADELPHIA, PENNSYLVANIA

Ms. BODENSTEINER. Senator Blumenthal, Ranking Member Graham, and distinguished Members of the Committee, thank you for the opportunity to testify here today.

I am especially appreciative of the invitation because I fear that the voice of institutions like St. Joe's has been lost in the public narrative. As you know, college athletics is extraordinarily diverse.

The reality is, at a Division I school like St. Joe's, college athletics is actually working quite well.

Before we consider starting over and transitioning all student-athletes across the country to employee status based largely on the issues facing one sport, I'd like to tell you a little bit more about life at St. Joe's.

We have 478 student-athletes, which equates to 10 percent of our student body. We offer 20 sports. Football is not one of them. We have an incredible departmental culture that is consistent with our Jesuit mission: holistic development of our student-athletes. Our student-athletes go to class, and they select majors which they're passionate about.

More than half of our student-athletes participate in sports that aren't bound to a regular season conference schedule, meaning that they rarely travel overnight and miss class.

Our student-athletes outperform our non-student-athletes in GPA, retention rates, and graduation rates. We have many student-athletes who are former Olympians, professional athletes, Hall of Fame coaches, but most of our athletes go on to very successful careers outside of sport.

Last year, just 3.9 percent of our undergraduate student-athletes transferred. Our annual expense budget is just over \$20 million, which includes almost half of that which goes toward student financial aid. As you know, many Power Five institutions have budgets 10 times as large as ours.

Our revenue, while growing, does not equal our expenses. In fact, the university subsidizes our athletic department to the tune of 80 percent per year. So, why does the university make this investment? Primarily because athletes benefit and are enriched from the experiences they gain from being a student-athlete, and it prepares them to be the leaders of tomorrow.

Division I athletics also benefits the entire university by creating a more vibrant campus experience and providing national exposure.

At St. Joe's, we're not waiting for an NCAA rule to tell us to protect the health and safety of our student-athletes. We do so because it's the right thing to do and it's fundamental to who we are.

We employ dozens of individuals whose sole job is to support the physical and mental well-being of our student-athletes and their academic success. Finally, outside of team travel, our number one operating expense is student-athlete insurance premiums and medical expenses.

I hope that you'll agree that athletics is working quite well for student-athletes in institutions like St. Joe's. In my opinion, the primary crisis facing college athletics is the threat of our student-athletes becoming employees.

I practiced labor and employment law for 15 years before getting into this line of work. I do not believe employment status is the answer, and nor do our student-athletes. They don't want to have to apply for posted positions, when what they're really going for is an education. They don't want to go through the State work comp system for their injuries. They don't want to punch a time clock, worried about what might be compensable time under the FLSA.

If our student-athletes are deemed employees, we will transition their financial aid to wages in order to stay competitive. The tax-

ation differences between wages and tuition are extreme and not in the favor of our student-athletes. Our 51 international student-athletes want to compete, and they would not be able to do so as employees, due to their F-1 student status.

For these reasons and many more, I am passionate about the granting of special status to student-athletes that would confirm that they are not employees of their respective institutions.

On the other hand, we desperately need reform when it comes to NIL. Like most athletic directors, I've always been supportive of student-athlete NIL. The legitimate endorsement deals like those obtained by Ms. Thomas are awesome, especially for women, who have limited opportunities in professional sports and whose value peaks during their college years.

Unfortunately, the current NIL situation is untenable for three reasons.

Number one, NIL collectives are engaged in bidding wars for the attendance and retention of student-athletes.

Number two, under current rules, Title IX does not apply to collectives, resulting in a disproportionate percentage of collective dollars going to male athletes.

And, number three, the patchwork of conflicting State laws governing NIL are confusing to everyone, especially the student-athletes, and create a profoundly unequal playing field.

In sum, thank you for your attention today, and thank you especially for hearing the voice of the non-Power Five schools like St. Joe's and beyond.

[The prepared statement of Ms. Bodensteiner appears as a submission for the record.]

Senator BLUMENTHAL. Thank you very, very much, Ms. Bodensteiner. And we'll now turn to Mr. Swarbrick, of your alma mater, Notre Dame.

**STATEMENT OF JACK SWARBRICK, VICE PRESIDENT AND
JAMES E. ROHR DIRECTOR OF ATHLETICS, UNIVERSITY OF
NOTRE DAME, SOUTH BEND, INDIANA**

Mr. SWARBRICK. Thank you very much, Chairman Blumenthal, Ranking Member Graham, and Members of the Committee, both for the invitation to be with you today but also for your interest in this important topic. Chairman Blumenthal, the University of Notre Dame shares both your sense of urgency and your belief in need for reform.

I'm on the final leg of a 40-year journey to support youth Olympic and collegiate athletes. It's been the privilege of a lifetime because it's allowed me to assist, on a firsthand basis, remarkable young people like Ms. Thomas, for whom sport is a root to education, to leadership development, and to brighter futures.

College athletics represents the most compelling example of that for me. It's a uniquely American asset that has enabled education for first-generation Americans, made our colleges and universities more diverse places, contributed to the very fabric of the university community, and sustained and supported our Olympic movement in this country.

But that unique asset must evolve if it is going to continue to deliver those sorts of benefits. That we at Notre Dame understood

that was evident in 2015 when President Jenkins became the first university president in the country, in an op-ed piece, to call on the granting of rights for name, image, and likeness for all student-athletes.

More recently, in an op-ed piece, Father Jenkins also demonstrated our support for a medical trust fund and for graduation guarantees to student-athletes.

The common thread in that view at the University of Notre Dame is normalizing the experience of student-athletes against that of students who are not athletes. That was the basis of our opinion on name, image, likeness, and ideas. If every other student at our campus had that right, why shouldn't student-athletes?

Similarly, where there is a difference based on athletic participation, in this case the risk of injury in contact sports or the potential to leave early to pursue a professional opportunity, then a distinction's appropriate, and that's why we supported both the medical trust fund and the graduation guarantee. We recognize that that reform must continue, and there's a necessary role for Congress to play in it, but it can be limited in scope.

We, the members of the NCAA, must accept the responsibility to do more. We support fully President Baker's efforts to reform name, image, likeness, and ideas to provide the medical and graduation protections he articulated, and we must do more to help ensure that the opportunity to transfer does not undermine the opportunity to gain an education in our colleges and universities.

But there are three areas in which we do need your help.

The first has been referred to by several people here, and that is to make sure to retain the student-athlete status as students. That status is being attacked administratively, in litigation that's ongoing, and in State legislation. It is central to our model that our student-athletes be students and not employees, for many of the reasons Ms. Bodensteiner articulated.

But most importantly, our student-athletes don't want a change in status. They come to Notre Dame to be students, to have the experience of students: living in dorms, going to the same classes, and pursuing the same majors. The risk of changing that model has many faces, but the one that concerns me the most is the risk to our Olympic sports and our female sports in colleges and universities. It will create a pressure to separate the sports, and with that separation comes a challenge to the funding of our Olympic sports.

We also need help in preempting the myriad of State laws which set different standards for college athletics. College athletics is the quintessential example of interstate commerce. We have more of our contests outside the State of Indiana than in it.

And, finally, we need a way to satisfy the student-athletes' interest in competitive equity. They want the opportunity to participate and win. They want to know there's an even playing field.

We have to find a way to deliver that to them. That can come either by empowering the NCAA in limited areas to enable competitive equity or to develop a process by which we can agree with our student-athletes on what those rules and regulations should be. Our student-athletes deserve the competitive equity that we need to deliver to them. Thank you very much.

[The prepared statement of Mr. Swarbrick appears as a submission for the record.]

Senator BLUMENTHAL. Thank you very, very much, Mr. Swarbrick. I thank you, all, for this really excellent testimony.

We're going to have questions now from Committee Members. We'll have 5-minute rounds. I'll begin and then turn to the Ranking Member, and then we'll go in the order of appearance.

What I hear here is a really strong endorsement of college athletics as a unifying force for our communities, and Senator Graham mentioned that college athletics is a religion in South Carolina.

I don't know whether it is in Connecticut, but we celebrate victory in Connecticut. As you know, UConn Huskies men's team won their fifth championship.

[Laughter.]

Senator BLUMENTHAL. Our Quinnipiac hockey team was victorious, as well, and we had parades, literally, through the streets of Hartford when it happened.

So, I think you've all highlighted the unique unifying force that college athletics plays and the opportunities it affords to students and the unique opportunity that we have—and the need to do it now—for reform.

I hear also strong reservations, indeed opposition to classifying athletes as employees. I hear a general feeling that the reform very likely should go beyond just strictly NIL.

And what I hear, very encouragingly, is that some of your colleges—St. Joseph's and Notre Dame—most impressively are already embarking on many of the reforms that Senators Booker and Moran and I have proposed.

But we need to avoid a race to the bottom in name, image, and likeness, a bidding war among colleges that often tempt college athletes with unscrupulous deals or agents and put colleges at the mercy of an unequal playing field.

What I'd like to do is now focus on the reforms that may avoid the need for even that employee status that seems so alluring to many who proposed reforms. I'd like to ask all of you, and in the interest of time, I'm going to put it to you collectively. Would any of you oppose the creation of a medical trust fund to cover health care for student-athletes' long-term injuries? If you would oppose it, raise your hand, and I'll call on you.

Nobody opposes it, the record should show.

Would you oppose guaranteeing the scholarships of student-athletes that suffer career-ending injury or who are cut from a team? If you oppose it, please raise your hand.

Again, the record should show no one here opposes it.

Would you oppose setting enforceable health, safety standards to protect college athletes from serious injury, mistreatment, abuse, and death?

Again, no one opposes it.

And, finally, would you oppose a requirement for at least high-revenue schools to support the insurance costs and out-of-pocket medical expenses of student-athletes?

No opposition. I think your views on this issue are profoundly important and show that we need to think beyond just NIL standards.

I am struck, and this issue has been raised, by the difference, often, in treatment of women athletes. Female athletes, under the present system, apparently earn approximately \$900 per NIL deal, as compared to the \$3,000, which is the average for male athletes, as reported by the NIL platform, Opendorse. It seems to me that this area is one where reform is necessary, and I'd like to ask Ms. Thomas and Ms. Bodensteiner for your views on this topic.

Ms. THOMAS. Can you first repeat the question for me, please?

Senator BLUMENTHAL. The disparate treatment of men and women in college sports. Do you see it as an issue, and how pressing?

Ms. THOMAS. Yes, I do see it as an issue. Me, as a female athlete, I feel like I personally have to do a lot more, especially in the NIL space, to receive what I feel like I deserve.

Senator BLUMENTHAL. Ms. Bodensteiner?

Ms. BODENSTEINER. Thank you for the question, Senator. And just to bring a little life to that, right now at St. Joe's, you know, male basketball student-athletes are, I wouldn't say demanding, but asking what the collective will do for them.

That is not happening in any of our women's sports, and I think it's absolutely essential that we find a way to ensure that male and female athletes have equal opportunity to earn NIL money.

Senator BLUMENTHAL. Thank you. My time has expired, so I'm going to turn to Senator Graham. I have a lot more questions, but we'll have a second round, I hope.

Senator GRAHAM. Thanks, Senator Blumenthal. So, if Congress does nothing, where does this thing go, Mr. Swarbrick?

Mr. SWARBRICK. Well, I think we'll wind up with a series of rulings that declare students as employees subject to the FLSA rules, or other rules and regulations, but it won't happen uniformly. It'll happen serially and create an unsustainable difference from State to State.

We'll have a patchwork of State legislation that will also create differences which are unsustainable. That, for me, is—are the things that are most important to avoid at the moment, while we continue the reforms that Senator Blumenthal articulated.

Senator GRAHAM. Governor Baker, do you agree with that? Where do you see this thing going if we do nothing?

Mr. BAKER. I would say, first of all, that I think the—while I appreciate Walker Jones' optimism about men and women when it comes to NIL participation, the numbers are so—well, first of all, there are no publicly available numbers. Okay?

So, the first thing we really need there, more than anything, is some form of transparency around what people are actually getting. There are reporters who cover college sports who won't write about NIL, because they don't believe anything anybody tells them. That's one of the—

Senator GRAHAM. Well, just hold on a second. Mr. Jones, who's the highest paid NIL person in college football?

Mr. JONES. Well, again, a lot of that is some urban legend.

Senator GRAHAM. I'm not asking about urban legend.

Mr. JONES. Well—

Senator GRAHAM. You're in this business. You should know. Tell me.

Mr. JONES. Well, again, probably the highest grossing is a gymnast, actually, Olivia Dunne from LSU.

Senator GRAHAM. Okay. How much does she make?

Mr. JONES. Again, she's making into the seven figures. I don't know the exact figure, but she's well into the seven figures in her endorsements.

Senator GRAHAM. Mr. Petitti, is that—Tony? Can I just call you Tony?

Mr. PETITTI. That's fine, Senator. Thank you.

Senator GRAHAM. Okay. Where does this thing go if we just sit on the sidelines?

Mr. PETITTI. I agree, what's been said. I think where we're going to end up is we're going to be having a system that's been dictated by a myriad of State laws, by the results of litigation, and by the results of employment action. It's completely unmanaged change. I think the results are unpredictable, and I think the—

Senator GRAHAM. Let me give you my concern.

Mr. PETITTI. Yes, Senator.

Senator GRAHAM. Between the portal and the poaching of players, I think you'll have chaos. I mean, you've got the University of Utah offering everybody who'll play, a truck. So, we're headed down the road, here, of a bidding war. Do you agree with that, Tony?

Mr. PETITTI. I do. I think our coaches would echo the same sentiment across multiple sports, in terms of just the money entering the system. It's called NIL, but it's not really NIL. So, we say that collectives are responsible for the overwhelming amount of money in the system. That money is not really true NIL deals right now. So, I feel you are correct, Senator.

Senator GRAHAM. So, here's my concern to the Committee—is that, you know, college athletics needs to be available to men and women at every level. Non-generating—Ms. Thomas, does the gymnastics team make money for the University of Florida, or do you know?

Ms. THOMAS. I'm not sure.

Senator GRAHAM. Okay. Well, you have done—you've got a lot to be proud of. But there are a lot of programs out there that don't make money. Is that true, Ms. Bodensteiner?

Ms. BODENSTEINER. That is correct.

Senator GRAHAM. If it's all about money, they're going to be left behind.

Division II schools. If you made Division II—if you made people employees, Governor Baker, what would happen to Division II schools?

Mr. BAKER. I think it's pretty clear that Division II and Division III schools would get out of the interscholastic collegiate sports business and probably—

Senator GRAHAM. And, now, just—

Mr. BAKER [continuing]. Turn most of their stuff into—

Senator GRAHAM [continuing]. Listen to what he said.

Mr. BAKER [continuing]. Club sports. I mean, the typical—

Senator GRAHAM. It's going to happen. Right? If you make these people employees, they can't afford it.

Mr. BAKER. You tax everything, and you completely change the model. And it's sort of a 4x increase in what the costs would be, if—I mean, the typical DII school has an athletic budget of 5 or \$6 million. I mean, that's the way you should start—and DIII is more or less the same.

It's 95 percent of the schools lose money on sports. Ninety-five. Right? Five percent of them have serious budgets with serious revenue and a concern about employment but a willingness to do a lot more around what they believe they should be doing for student-athletes.

But you're right, Senator. The impact on DII and DIII—and, by the way, a lot of DI schools would be—and their athletes, student-athletes, would be profound.

Senator GRAHAM. Seems to me we want to avoid that. To make, you know, college sports available to a lot of people at different levels—that should be one of our goals. Do you all agree with that?

Everybody nods.

So, Mr. Chairman, let's try to find a way, Senator Blumenthal, to deal with the money problem, NIL, make sure that people are taken care of as athletes and it's not just the Wild, Wild West out there.

But, final comment, if this Committee and the Commerce Committee doesn't act in about a year, this thing is going to be an absolute mess, and you're going to destroy college athletics as we know it. Thanks.

Senator BLUMENTHAL. Thanks, Senator Graham. I think Wild West is exactly the right term to characterize where we're going. Senator Whitehouse.

Senator WHITEHOUSE. Thanks. Thank you, Chairman, for holding this. We've got so many witnesses here that it's going to be hard to ask a question and get through all seven, let alone ask a bunch of questions and get through all seven. So, what I think I'll do is mention three concerns that I have that you all are welcome to respond to in writing. We take questions for the record, here, and your answers become a part of the record of the proceedings.

So, the first concern is helping student-athletes avoid unfair contracts where they get, like, locked in for too long or get locked into contracts that have huge, you know, management and other fees, so forth. Who's in charge of protecting student-athletes when there's so much pressure and money involved, and they're not exactly experts in the art of contract negotiations? So, that's one.

Two is, the NIL will naturally take pretty good care of the star, high-value student-athletes. And the question is, when this flood of money opens up, how much should we be looking at the non-star teammates of the star student-athletes? How much should we be looking at the non-remunerative teams, in addition to the teams that make enormous amounts of money? And what do we do about schools that don't field either remunerative teams or star athletes? Do they just get left behind, or should there be a fund that tries to reach into all of those areas? So, that's two.

And the third is a pretty obvious piece, which is that there are lots of injuries that take place during student athletics, and how we manage those injuries out into the future—it would seem to me that if loads of money is flooding in, one good way to—one good

thing to have it flood into would be a fund that can make sure that athletes get their health care covered for injuries that are traced back to their collegiate sports careers, even if the manifestation comes later.

We do this with veterans all the time. You have an exposure during your service in a foreign country, 20 years later, something manifests, you look back, and the VA provides the coverage. Something along those lines.

Those are the thoughts that come to mind for me. And if you have any helpful advice on that, I'd be grateful to have each of you take a moment to share your thoughts in writing on those three. And with that, Chairman, thank you very much.

Senator BLUMENTHAL. Thanks, Senator Whitehouse. Senator Grassley.

Senator GRASSLEY. Yes. Well, thank you, all, for coming. You're right in the middle of a lot of things that go on in the fall of the year with this university sports and everything.

Anybody that wants to respond to this—because it's a concern of mine—if there is no Federal preemption of State NIL laws, do you believe that there will be any Title IX concerns?

And, if there is a Federal NIL proposal, what do you propose Congress do to mitigate Title IX concerns, if you think that there should be concerns raised? I don't expect all of you to answer that, but if any of you want to dig into that, I'd appreciate hearing your opinion.

Mr. HUMA. I'd like to give a little perspective here, I think, on—you know, Title IX is Federal law, and it's enforceable. You know, there are some—you know, the collective, it's kind of difficult to see the degree to which they are collaborating with the schools or separate from schools or anywhere in between.

And, you know, collectives acting as an arm of the school, sharing essential services—I think this was addressed in the draft Senators Booker, Blumenthal, and Moran—you know, there has to be kind of a clear line. Is this an extension of the school? And if it is, Title IX should apply. If not, then it's just like Nike or some other third party out there.

And as much as we all—you know, the beginning of NIL, it was all about free-market opportunities for college athletes, the same ones that the coaches get, the pros get, every American citizen gets. With the free market, sometimes the free market isn't very equitable in all walks of life.

If you look at advertisers, you know, there's been complaints from different groups that advertisers aren't including diversity in various areas, but you don't have Congress trying to come in and define things. You know, the free market's one thing. We advocate on our organization, when it comes to direct pay, you know, Title IX is applicable. Free market's free market.

I think there was—there's issues being raised about whether or not male athletes get more than female athletes, and that is a reflection, in part, again—aside from the idea that some of these collectives are actually acting as an extension of the school, which should apply—Title IX would apply. You know, really, it's a reflection of society. There's inequitable treatment amongst various sub-

sets of groups in the free market. I think that's what we're seeing here.

The other is to point out that this industry, no secret, \$17 billion primarily generated football and basketball players, sports that are predominantly Black. The one area where they might have freedom, equal freedoms, is in NIL. The degree to which any of this money is flowing more toward football and basketball players because of market interests—that's our economic system, free market, capitalism.

When it comes to third parties, that's the whole vein. That's what—when we advocated from California, the very first NIL State, and every State in between, that's clearly understood. I think there's a bit of a blur here when we're talking about third-party NIL versus things that the school gives directly.

Again, if a collective is an extension of the school, then it absolutely should be—Title IX should apply. But Title IX's the law. It's enforceable now. And complaints should go to the Department of Education Office for Civil Rights in the appropriate areas, lawsuits.

But I don't know that it's even appropriate for Congress to start dictating what the free market should look like, only for college athletes, which may so happen to take money out of Black athletes' pockets in the first—after the first couple years of them finally getting equal treatment. I think that would be inappropriate and misguided.

Senator GRASSLEY. I've still got a minute left. Anybody else want—

Mr. JONES. Yes, sir. Senator Grassley, I'd like to respond to that, as well. And just speaking to Title IX from a collective standpoint, you know, what we're seeing—remember, we're just now into year three of this marketplace, so it's still evolving. We're still adjusting.

But I can tell you, on the ground level, from a trend standpoint, we are seeing a correction on those revenue sports, your football, men's basketball, and some self-governance that's taking place with the way we're contracting with the student-athletes.

But the inverse is happening for our non-revenue and women's sports. We are seeing more and more deals that are asking for female involvement. I know, speaking from the University of Mississippi's standpoint, we've tripled our female roster of NIL from last year to this year. Our first team-wide deal at Ole Miss was our women's basketball team. Some of the highest earners in NIL, as I told Senator Graham, are female athletes.

Now, there's not as many of them, but what I would just encourage everybody, that whether Title IX applies to us from a collective standpoint or not, it would not change how we operate. We are operating to have a very diverse and inclusive athlete roster because at the end of the day, that's what brands want. And that creates more value, when we have brand campaigns. And we are getting requests from outside brands more for female student-athletes.

So, that trend is developing. Is it acceptable, to this point? Not acceptable, but it is moving in the right direction. So, while your high-revenue sports are kind of self-governing and correcting themselves, your non-revenue and female sports are seeing a boost, as the figures are showing us and what we're seeing at the ground level.

Senator GRASSLEY. Mr. Chairman, I'll put the rest of my questions for answer in writing.

Senator BLUMENTHAL. Thank you, Senator Grassley. You're welcome to do so. Thank you. Senator Coons.

Senator COONS. Thank you, Mr. Chairman. Mr. Swarbrick, I read with great interest your editorial, along with Father Jenkins', and just wanted to lift up your focus on college athletics as part of a route to education, to leadership, and to opportunity. Your focus on and your support for a medical trust fund and graduation guarantees, I thought, was admirable.

I want to focus in on one area, which is whether or not student-athletes should be considered employees. This is currently being examined in the Third Circuit and the NLRB, and that sparked fierce opposition from your institution, as well as Ms. Bodensteiner's institution, as well as the University of Delaware, in my home State.

Why does Notre Dame oppose classifying student-athletes as employees, and what do you think the harmful impact would be on athletics across the University of Notre Dame and then across, more broadly, institutions of all sizes, if that were to happen?

Mr. SWARBRICK. What defines the unique American model of intercollegiate athletics—and, to be clear, it doesn't exist anywhere else—it's a club system everywhere else in the world—is the integration into the educational institution. It is the opportunity to have all of the same rights and privileges as any other student.

And if you put them in a separate category, with all the consequences that have been articulated here, that goes away immediately, and we no longer have the model that we understand as intercollegiate athletics today and fundamentally separates it from the educational value.

As President Baker's association points out regularly, the vast, vast majority of student-athletes are not going on to continue their sport after they leave college. It is the education which is the primary value of their experience. We have to protect that. We have to protect their ability to be admitted under the same standards, to be educated under the same standards, and to learn under the same standards. If you take that away, you do enormous damage to those—to those current students.

Senator COONS. I know this is a period of huge change in college athletics, and as the Chair and Ranking Member have said, we need to act. And, Mr. Swarbrick, thank you for your testimony, and Go Irish.

Ms. Bodensteiner, if I might, are there some factors that are applicable across institutions of all sizes? You are athletic director at a school with a different profile than maybe a Big Ten university or even the University of Notre Dame. Are there some specific factors that are key to your institution and others like it in the greater Philadelphia area, and across our country, that Congress should keep in mind as we attempt to draft NIL legislation that would preempt State legislation and apply to all the universities in America?

Ms. BODENSTEINER. I appreciate your question very much, Senator. Thank you. I tend to agree with colleagues at Power Five and other institutions when it comes to NIL. I think our basketball

coaches are as disappointed in what has happened in the market than anybody in the country.

And so, you know, on the employment front I do think we have some unique challenges if student-athletes were to be deemed employees, and really it's the expense, whether through taxation—I mean, our, you know, human resources department is overwhelmed, as we are, with two mergers happening, and to give them 487 additional employees to process, many of whom are, you know, leaving on an annual basis—again, the taxation issues.

I mean, for an institution like us—and, again, I can't stress enough that we are spending \$20 million and bringing in \$4 million in revenue for athletics—that this would just be an untenable situation, which, again, I worry about the ability for us to continue fielding all 20 of our sports.

Senator COONS. Understood. Mr. Baker, if I might, just a closing question. Across the different legislative proposals that are in front of us, and across the wide array of State laws, what do you think are the most critical provisions for us to include in legislation, moving forward?

Mr. BAKER. Well, I would certainly support the State preemption issue, because there—I mean, if you think about this just at a conference level, most conferences have multiple States.

And if you're trying to create anything that looks like a level playing field, and to get back to Trinity Thomas' comment about the fact that—I thought she said it well. There should be one set of rules for all athletes across all sports at all schools. I think that's exactly right.

I think the employment question is obviously on everybody's mind, and I'm sure there are things schools—especially those that can do it, which would be the 5 percent I talked about before—who would do far more, if they felt like they could do it in an environment where their student-athletes were still students.

I think the issue around safe harbor, limited liability, whatever it is you want to call it, I get the fact that's a really big issue, and what I would say to Congress is, if you want—if you want to create some sort of framework around that, and guardrails, that's fine.

But I do worry that we're going to head down a road where people are going to start challenging whether or not we should have, you know, minimum academic standards for people to be eligible to play. Are people going to change the rules around?

Let's suppose we pursue the rule that I was talking about earlier, where we want to create some transparency around NIL, because, you know, with all due respect to you, Walker, nobody knows what's going on, and everything is sort of a guess and a rumor.

So, when people say we're doing much better when it comes to women student-athletes and NIL, I don't know if that's true or not, and neither does anybody else.

And I think we need to give the student-athletes, frankly, a lot more visibility into what the price signals are, so that they can make the best decision for them and their families. Under the current system, they're in a "Trust us" game with practically everybody.

And Trinity, I give you enormous credit for what you've managed to do in that kind of an environment, but there are a lot of student-athletes for whom that's going to be very challenging.

And I think the final one would be the whole conversation that we've already had about trying to figure out sort of the best way to deal with some of the issues around health and safety, because national standards on that I think we can all support.

Senator COONS. Thank you for that input. I do think transparency, fairness, and preserving the educational mission that is at the core of higher education are key parts, as we work together to move forward. Thank you, to all the witnesses. Thank you, Mr. Chair.

Senator BLUMENTHAL. Thanks, Senator Coons. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. It's clear to me, from listening today, that we still have a lot of work left to do.

I want to start with trying to look at this issue from 30,000 feet. For many years now, college athletics has generated enormous revenues. I'm not saying that's a bad thing. That's a good thing.

The Supreme Court comes along in, what, the *Alston* case—is that right—in 2021 and changes where that money's going.

Before, that money was going to TV stations and universities and coaches and others—I guess construction companies, if we're building them new stadiums.

And then, after the Supreme Court decides the *Alston* case in 2021, the kids start getting paid, and all hell breaks loose.

I mean, is that what is going on here? The fact that the money is being redistributed, and that's going to cause the world to spin off its axis? Because the kids are getting a share of the dough? Governor?

Mr. BAKER. What I would say, Senator, in response to the *Alston* decision is, there is flexibility for schools that can afford to make *Alston* payments to do so, and they can make *Alston* payments in particular sports, as long as they manage to satisfy the Title IX requirements. And they can choose what level they want to support, and they—

Senator KENNEDY. Well, I understand that, Governor—

Mr. BAKER [continuing]. Can also choose to play or not.

Senator KENNEDY [continuing]. But you're getting down into the weeds. And I'm not saying that's a bad thing. We're—

Mr. BAKER. Okay.

Senator KENNEDY [continuing]. Going to have to get in the weeds. But that's what this—before the *Alston* case, everything was just fine. And then the *Alston* case is handed down, and the kids start getting some of the money, not the adults. The adults have got to share. And all of a sudden, the world's on fire. What am I missing here?

Mr. BAKER. For the record, I support the *Alston* stuff. I also support NIL. I just would like to see a little more transparency and support for information to make it easier for student-athletes to succeed in this space.

Senator KENNEDY. Well, let me make this suggestion to you, and I want to hear from the rest of the panel. I would strongly encourage you and your colleagues to try to get together and come up

with a new system for us to consider that looks like somebody designed it on purpose.

You may regret asking Congress to intervene here. All of a sudden, you're going to be micromanaged. Now, I'm not saying we shouldn't, and my colleagues have raised excellent points, and it sounds to me like we do have a bit of a—I don't know, a Wild, Wild West, as Chairman Blumenthal described it. But I'd be real careful before you invite Congress in to start micromanaging your business.

Let me go back to the original question. Any of you, what am I missing about this? Isn't this fight over the fact that the kids are now getting some of the money that the adults were getting before? Yes, sir?

Mr. HUMA. Absolutely. Absolutely. The injustice that has been inflicted on college athletes seemed to be fine for the industry until we won some court rulings and State legislatures started passing laws. Essentially, the industry [microphone feedback] had a monopoly on college athletes' NIL value. They owned every penny. Nike wants to slap a logo on a kid, got to pay the school. The kid can't get a penny. That's what this is about.

They even—many of the schools even said, hey, if that happens, we're going to lose money. Well, that means you've been stealing money from these kids, if it's against, like, the Supreme Court—if it violates antitrust law. That's the problem.

You know, the opposition—even employment status. All this is about, we don't want to pay them fairly. You know, NIL—just so you know, this is not equitable economic situation here. That's like saying, go get another job because we're not going to pay you for what you do here. You know, we're in a cap—you have a national price fix for a scholarship, no matter—and a lot of these schools [microphone feedback]—I don't know if that's me or not.

Senator KENNEDY. That's the NFL, man.

Mr. HUMA. Is it? So, and we can't treat every division as if it's the same. FBS schools masquerading as DIII schools, saying, there are no employees here. You know, at Notre Dame, I know they—I would imagine they have students in the bookstore as employees. It doesn't seem to harm their educational opportunity. There's no congressional hearings about that.

We're talking about equal rights. And this industry is operating in an illegal fashion. It's breaking antitrust law, breaking labor laws, and now it's coming home, and players are getting, you know, avenues [microphone feedback] and leverage and pulling kind of pulling leverage, and here we are, saying the sky's going to fall, but—

Senator KENNEDY. I—I—

Mr. HUMA [continuing]. It's not the truth.

Senator KENNEDY. I agree with you. I don't mean to go over so much, Mr. Chairman. We are talking about rights here, but we're also talking about money. And it just seems to me that this controversy, in part, has been caused by a model of redistribution for that money.

And I've got a lot of sympathy for kids, I have to tell you. The adults seem to be able to take care of themselves, but it's the kids that make all of this possible. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thanks, Senator Kennedy. I just want to make clear before I introduce the next Senator, who happens to be the co-author with me of the College Athletes Protection and Compensation Act, there's no effort here to micromanage anything.

And I think that Mr. Huma makes an excellent point that even the limited benefits, so far, to college athletes that we've seen have come because of a fight, because of an effort on the part of advocates like Mr. Huma and others who are here, to treat athletes more fairly.

And nobody's been a stronger advocate than Senator Booker. I'm pleased to call on him. He genuinely would've benefited from NIL, had it existed when he was playing football at Stanford.

We often joke, I was a college swimmer, and there's no one—no way anybody would've offered me a contract to do anything in NIL, but he was a genuine star, and he's been a star—

Senator KENNEDY [continuing]. Well, Mr. Chairman—

Senator BLUMENTHAL [continuing]. On this issue.

Senator KENNEDY. Can I respond? And look, Richard, you make a very valid point, and I'm not denigrating anybody's efforts here. I'm just suggesting that we do need to be careful.

Once Congress decides to get involved, it really gets involved. I don't want to have Congress in the business of trying to establish concussion protocols for each school, because that's where it can lead to. That's all I'm saying.

Senator BLUMENTHAL. Thanks for that point. Senator Booker.

Senator BOOKER. Chairman, thank you very much. You've been an extraordinary partner and leader in this area, and I'm just grateful to have you involved.

Senator Moran has been extraordinary, as has been a number of other Republican colleagues who I've worked with over the last, God, decade.

I want to thank Maria Cantwell, as well, who's the Chairwoman of the Commerce Committee, who's just done an extraordinary job on these issues, as well.

This is about, to the day, the 10-year anniversary of when I was elected to the United States Senate. And I came here to work on a lot of issues, but this was definitely one of them. I have these strange two thoughts about college sports.

One is, it's one of the best parts of American culture. I literally would not be sitting here today if it wasn't for the opportunities that were afforded me as a football player in high school and college. It is one of the bright lights—at a time when America has so many forces dividing us—that unifies us in a way that I think is very special.

The challenge I found 10 years ago is I—and the first Commerce Committee hearing on this, I was very angry, because I also knew the dark side of college sports and knew too many of my friends whose bodies were beaten and battered who were going in, in their own pocket, years later, to try to pay for spinal cord injuries or shoulders, knees.

And, God forbid, I saw the challenges with CTE, guys who were coming out of ball who had head injuries, depression, and so many other symptoms that we now know are symptoms of CTE, but nobody there to help them or support them.

More than this, I just couldn't understand how we could have a system that guys who spent over 80 hours, 70 hours, 60 hours playing this sport, who didn't graduate on time, were going in their own pocket after their football career was over, just to pay for the last few credits that they had. I couldn't understand how low-income kids who got a chance to play ball didn't have the money to even, you know, get their parents to come see them play, while the jersey with their names on it were being sold in student bookstores for more money than one of their parents made in a full day's labor.

And what frustrated me was, at that time, the NCAA was giving lip service to a lot of the changes but seemed to only move when they got embarrassed, whether it was being embarrassed like Shabazz Napier saying, "I couldn't afford to eat," when he won the NCAA championship, or the embarrassment of showing the differential treatment of women versus men in NCAA tournaments.

I am so glad that this group is here now, because the folks here before us have been extraordinary in their leadership.

I cannot thank President Baker enough for being willing to work with me and my team, for his, what I think has been, very progressive leadership in bringing about change.

Commissioner Petitti, you have been a great partner in trying to develop something that could be bipartisan and actually can work to put some common-sense guardrails.

And Brother Huma, we've been working on this since you and I both had hair, and it is—I cannot tell you how grateful I am for your leadership and advocacy in fighting for what most people who watch sports think should be the norm, that the men and women who are contributing most of this \$15 billion industry should, at the very least, have some basic standards for health, safety, and justice, when it comes to these issues.

And so I'm grateful to be here with folks who are really constructive in trying to find a way, number one, to preserve college sports, which is now being threatened, in my opinion, by a lot of the Wild, Wild West which has been mentioned. And I think, Mr. Huma, you're correct. There is so much bipartisan place to land on this, while the controversial stuff we could leave aside, if we could just find a pathway forward in keeping athletes centered and first.

So, I'm extraordinarily encouraged by the work of Senator Blumenthal, Senator Moran. The discussion document that we put out—the feedback has been so great. There is so much accord. We've got to move forward and, to Senator Kennedy's point, not to have any unintended consequences, to do it with a light touch but, again, protect college athletes.

Just very quickly, I'd really like to turn to the one college athlete that's actually here. Ms. Thomas, it's extraordinary that you are here, and I can't thank you enough for being here. You are playing and have played at a level that's just great.

I don't think folks understand the physical demands and the mental demands. You've seen very personally the challenges that—a lot of folks don't understand what athletes go through while trying to balance difficult academic schedules.

And I guess I just would love, in the last seconds I have—why do you think it's so important that, whatever we do, we prioritize

the health, safety, mental health, well-being of college athletes, teammates, and others? Can you just express the urgency of the moment?

Ms. THOMAS. Yes. Being a student-athlete is super difficult. Hours upon hours. Obviously, you're a student, too, and that's a lot already, and then you're putting on that—I mean, we practice. Every single day we're doing something, whether it's conditioning or practice or training or letting our trainers work on our bodies for us. It's a lot. And the traveling, on top of that, is a lot, and competing in our sport.

So, everything outside of that, that's extra, needs to be so that it's taking care of us. I'm obviously not a student-athlete anymore, technically, but for all of my former teammates and all of the student-athletes that are going to come after me, I want the very best for them. I know how hard it is to be successful as a student-athlete, and we just need to make sure that we're doing the best for them.

Senator BOOKER. Thank you. And again, Tony, Ramogi, Governor, I'm so grateful for the work we're doing. I really think we can get someplace for this.

I just want to say, for the record, Notre Dame has been one of the best partners that we've had, extraordinary and honorable in the way you're doing it, and that's the only reason why, in this hearing, I am restraining from talking about my best career football game, when Notre Dame was ranked number one, and we went into South Bend, Indiana, and upset—

[Laughter.]

Senator BOOKER [continuing]. I think Sports Illustrated called it the greatest upset in all of college sports, that year—

[Laughter.]

Senator BOOKER [continuing]. All sports except for when Buster Douglas beat Mike Tyson. But I'm not going to talk about that at all, out of respect for your institution and gratitude for your partnership.

Mr. SWARBRICK. Thank you for your restraint.

Senator BOOKER. Thank you very much.

[Laughter.]

Senator BLUMENTHAL. You should listen to Senator Booker when he's unrestrained.

[Laughter.]

Senator BLUMENTHAL. Thanks, Senator Booker, and thanks for all your work on this measure. And I second your thanks to Senator Moran as well as to Senator Cantwell and others on the Committee who have been very thoughtful on this issue. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Thank you, all, for being here.

Governor Baker, I think probably a year or two from now, you're going to consider being a Republican Governor in a Democrat State one of the simpler jobs you've had. You've got a lot of work to get done.

Mr. BAKER. I already do, Senator.

Senator TILLIS. I had a question, and Mr. Huma, I want to make sure I heard this right. I think in your opening statement you said

that the NCAA has no duty to protect college athletes. Could you, in about 30 seconds, explain to me why—

Mr. HUMA. Sure.

Senator TILLIS [continuing]. The basis for that?

Mr. HUMA. In the Derek *Sheely v. NCAA* lawsuit, where Derek Sheely was—he died during a football practice, and the family sued. The NCAA's legal defense and public defense is that the NCAA has no legal duty to protect college athletes, and it has kept that stance in every lawsuit in its defense.

Senator TILLIS. That said—I guess, Governor Baker, I'm going to ask you about that, but, I mean, a part of what we're talking about is that the universities themselves have the primary responsibility for the health and safety of the student. And it would seem to me that even if you want to set aside the humanitarian factors, that you want every athlete to be healthy, every day of the week, doing the best that they can do, to get the most people to watch that sport.

It seems like there's an inherent obli—or, not an obligation—there's an economic driver behind trying to protect these people. So it's very difficult for me to have anybody, you know, viewed as you're running through a mill. It just doesn't make sense to me. You want the best athletes on the field every Saturday—and I'm a football fan, and basketball, I guess, every day of the week. It's harder to follow, for me. Too many of them.

But, I mean, I just want to dispense with the notion that you would actually have somebody recruit a kid to St. Joseph's and not care about their health and well-being. It would seem like it'd be in the forefront. Am I correct, Ms. Bodensteiner?

Ms. BODENSTEINER. Yes, that was the comment—intent of my opening statement, to say we're not waiting around for an NCAA rule, nor do we feel like it's lacking. We do it for several reasons, already, proactively. And if something does happen, our insurance and coverage—

Senator TILLIS. I just don't get it.

Ms. BODENSTEINER [continuing]. Is rich.

Senator TILLIS. You want the stars on the field, because it's the stars that attract people to the games, and it's that attraction that generates revenue and creates the economic cycle.

Ms. THOMAS, first off, congratulations on your academic and athletic prowess. How many 10s did you say that you've—did, I think, the Chairman said you got over your career, athletic—

Ms. THOMAS. Twenty-eight.

Senator TILLIS. Twenty-eight. And I don't know if you're—if you're not comfortable, just say you're not comfortable with this. Can you tell me a little bit about the income that you're receiving from your NIL contracts right now?

Ms. THOMAS. I'm not comfortable answering that.

Senator TILLIS. Okay. Well, I think it's interesting. I'd like to learn more, and maybe you know. I've read reports about—when we're thinking about NIL, we're thinking about Olivia Dunne—Dunne, I'm sorry—a gymnast who I think her career high in the uneven bars was a 9.925. So, she's never gotten a 10, and she's one of the most highly compensated people in NIL right now.

But I've also heard reports of people that are just making enough to where they can pay their college tuition, that they're finding ways, through NIL. They're athletes, they're student-athletes, but they're not the big names that are actually making revenue.

Is that—did I—is that just anecdotal, or are we seeing some sense, Mr. Jones, that other people are finding this as a way to pay for their education, then move on to something other than the collegiate sport that attracted them?

Mr. JONES. Yes, sir, Senator. I would tell you that, you know, one of the things that we're seeing at the ground level is athletes solving for socio-economic issues that are inevitable in their life: family-related issues, like it said, paying off a sibling's student debt—

Senator TILLIS. Yes.

Mr. JONES [continuing]. Flying their parents to come watch them play. So, the athletes—which then also gives them the ability to stay in school longer and pursue their academic career.

Senator TILLIS. Well, I think—I—I think everybody here has stipulated that they support NIL. I mean, that, to me—anybody leaving this meeting thinking anybody's detracting from that I don't think's been paying attention.

I do disagree with some of my colleagues who don't think—and I think I disagree with you, too, Mr. Jones, that we don't need rules of the road. I think it was Mr. Swarbrick that said this is the essence of interstate commerce. It was one of you, in your testimony. I thought it was you.

But I guess in my remaining time, several States—we've implemented a patchwork. I think that we have to eliminate that. I think that we do have to create rules of the road.

This is where it gets dangerous, because it means Congress has to get involved, to get it right. So, I guess the question I have, are there—is there a national model that we should be instructed by, or is there a given State or jurisdiction—and, Mr. Swarbrick, I'll let you answer this, if you have the information—that's done it particularly well or that we should be instructed by as we proceed down that path?

Mr. SWARBRICK. Unfortunately, Senator, I don't think there is an example to look to right now.

Senator TILLIS. So, they're all just bad examples?

Mr. SWARBRICK. Well, they're—it's been motivated by a bit of a race to the bottom for recruiting purposes. Right? And—

Senator TILLIS. Okay.

Mr. SWARBRICK [continuing]. So that's been the challenge. If there's one thing we could do that would address the Title IX issues and otherwise, would be try to get it where name, image, likeness, and ideas has to relate to name, image, likeness, and ideas.

Senator TILLIS. Mm-hmm.

Mr. SWARBRICK. If we could do that—the most well-known basketball player in the country right now is from Iowa, and she's a woman.

When it's really about name, image, and likeness, you have an equity that's achieved, and it relates to the level of accomplishment

and fame. In most pro teams, there's a handful of men or women that have marketing deals.

But yet in college, everybody on the team has one. It's not a marketing deal. We need to get back to where they relate to name, image, likeness, and ideas.

Mr. JONES. And, Senator, just to respond to that, we are for regulation. We're not asking that there not be transparency. We are already very transparent.

Senator TILLIS. But a national NIL?

Mr. JONES. We're fine. If there's a national preemption on State statutes, we—we support that, as well.

Senator TILLIS. All right, I missed—I'm glad——

Mr. JONES. We are——

Senator TILLIS. I'm glad you——

Mr. JONES. We are for——

Senator TILLIS [continuing]. Clarified that.

Mr. JONES [continuing]. That, and we are ready to work with anybody that wants to regulate. The problem is, nobody is, and we're having to navigate it ourselves. But we support regulation and oversight.

Senator TILLIS. Well, thanks for clarifying. I think we have to do it. And, folks, there are a lot of things, the employment status—Ms. Bodensteiner, I wasn't going to put you in that position.

If they become employment status, you're going to have a skeleton of an athletic program that you have today, because the numbers don't work. They already don't work for you. You just reach a point to where there'll be certain sports that'll be forgotten in collegiate athletics, which really begins the beginning of the end of their sports being relevant in any level, at the pro or semi-pro level.

So, thank you, all, for being here. We've got work to do, and I, for one, think that we should. Thank you, Mr. Chair.

Senator BOOKER [presiding]. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. I want to thank you, Senator Blumenthal, and you, Senator Booker, for your work. And I'm looking forward to working with you on both my positions on Judiciary and Commerce to get this done.

I will try to show the same restraint as you did, Senator Booker—it's not as good, but it's pretty good—in asking my first question to Governor Baker and noting that, given that he's from Massachusetts, where they play a lot of hockey, that the University of Minnesota Duluth and U of M women's hockey teams have collectively won 11 NCAA championships since 2001. I'm not sure you can have that record in Massachusetts. Is that correct?

Mr. BAKER. I got nothing there. I got nothing. No.

Senator KLOBUCHAR. Okay. All right.

Mr. BAKER. Harvard has won several women's NCAA championships, but those numbers in Minnesota are very special.

Senator KLOBUCHAR. Excellent. Excellent answer. Okay. Next, can you elaborate on how the NCAA's new policies will help student-athletes, the ones that you note in your written testimony about improving financial outcomes, including in areas of financial literacy, standard contract terms, agent registration?

Mr. BAKER. Sure. The policies that the DI Council is working their way through should be voted on before the end of the year, but they're basically designed to create what I would describe as some transparency and accountability.

The financial literacy piece is something some schools already do. We would like to see everybody required to do that.

The uniform standard contract is basically about doing exactly the same thing we do in almost every financial transaction industry in America, which is to have a contract that represents basic terms, and if an agent wants to move off of that, they need to explain to the student-athlete and the family why they want to move off it.

The third part is to create what I would describe as a system where student-athletes would make available to their schools what their deal looks like, and then all that data would get deidentified and incorporated into kind of a public distribution.

So that, if you were a gymnast, if you were a football player, if you were a basketball player, you would have some idea of what, traditionally, NIL looks like for you or for somebody like you, so that you have some idea about what it is you should get.

And then the final piece is to make sure that we have an agents registry where agents have to, among other things, say they work for their customer, their client—

Senator KLOBUCHAR. Mm-hmm.

Mr. BAKER [continuing]. Because there's way too many examples, at this point, of agents taking advantage of student-athletes.

Senator KLOBUCHAR. I remember we talked about that when we met. Thank you.

Mr. BAKER. Yes.

Senator KLOBUCHAR. Mr. Petitti, how do the lack of uniform rules—I think, what, we have 31 State laws now that have emerged. How do the lack of rules put schools in States without NIL laws, like Minnesota, at a disadvantage because they cannot take advantage of State laws that preempt NCAA rules and are more permissive?

Mr. PETITTI. It's creating a recruiting and a transfer advantage in those States where money can flow to student-athletes that is encouraging attendance. It's encouraging transfer.

States that have not enacted, so far, are in different positions. What we have, it's been mentioned earlier, is a situation where we compete in one conference across many States. We want that to be somewhat balanced. There's already enough—we have different size stadiums.

There's a lot of things that impact competitiveness, but in this case we're seeing States increasingly keep ratcheting up what they're doing, to try to improve competitively. So, it starts at one place, and the next State, the next State keeps going—

Senator KLOBUCHAR. Right.

Mr. PETITTI [continuing]. In one direction.

Senator KLOBUCHAR. And, Ms. Thomas, does that lack of a single nationwide standard make things more difficult for student-athletes?

Ms. THOMAS. Yes. It makes things much more difficult and very confusing, a lot of times.

Senator KLOBUCHAR. Okay. Another issue that's related. Ms. Bodensteiner, after 50 years of Title IX, our athletes shouldn't have to fight to get adequate pay.

As you know, Senator Cantwell and the Commerce Committee, we've worked to pass legislation, the Equal Pay for Team USA Act, which now requires equal pay and resources. How can we ensure that gender pay disparities don't persist under an NIL system?

Ms. BODENSTEINER. I think it's a combination of what Governor Baker and Mr. Swarbrick have already mentioned. One is transparency, and two is getting back to legitimate NIL deals, where the actual capitalist market is paying, in which case women will succeed at a greater level, I believe, than male athletes.

But I think it all comes down to getting rid of this, you know, imper—should be impermissible market of paying athletes to attend institutions.

Senator KLOBUCHAR. Okay. Mr. Petitti, back to you. When we had a hearing, we all saw firsthand Simone Biles, Aly Raisman, McKayla Maroney, and Minnesotan Maggie Nichols testify before the Senate Judiciary Committee in 2021. By coming forward, we know they made a difference.

What measures are the Big Ten and its member institutions implementing to ensure these types of abuse don't occur? We're very proud to have the final Olympic gymnastics trials destined for Minnesota in June of 2024 and think there'll be a lot of discussion about that. So, if you could just answer it from the Big Ten's perspective.

Mr. PETITTI. Yes. Thank you, Senator. First, we obviously—we want to make sure we ensure the safest environment for student-athletes, for coaches, and for the students that work in athletic departments. That's number one.

Since then, we were the first to install a chief medical officer. The amount of attention and resources from the conference office—what we're trying to do is make sure that our members have, you know, the best resources to make sure that we're guaranteeing a safe environment for everybody involved.

Senator KLOBUCHAR. Thank you. And I'll ask on the record, Mr. Huma, questions I had about the announcement on the long-term health and disability benefits which I'd like to—I'll do it later and defer to my colleagues. Thank you.

Senator BOOKER. I think next is my fellow Stanford man. I played tight end. I think he played far right wing on the soccer team—Josh Hawley.

[Laughter.]

Senator HAWLEY. Thank you, Mr. Chairman. And thanks to all of the witnesses for being here.

Mr. Baker—Governor Baker, if I could just start with you, I appreciated your comments in your opening statement about the attacks, the terrorist attacks on the state of Israel and the need to condemn those for what they are.

Let me ask you about some of the statements that student groups on the campuses of your member schools have said recently.

Students at Harvard wrote they, quote, “hold the Israeli regime entirely responsible for all unfolding violence.”

Students at Ohio State University praised, quote, “the heroic”—heroic—“resistance in Gaza.”

Students at the University of North Carolina claimed, quote, “It is our moral obligation to be in solidarity with the dispossessed. This includes violence.”

Students at New York University wrote, “Peaceful discourse must be rejected” and instead said, “There is no peace in a colonized people living under occupation, subjugation, and apartheid,” referring to Israel.

And, finally, I’m sure you know Columbia University—Columbia was actually forced to close its campus when an Israeli student was assaulted and numerous Jewish-American students were threatened. Would you condemn this rhetoric of violence and anti-semitism at these campuses?

Mr. BAKER. I think it’s important—and I say this as much as a former Governor as I say it as the current head of the NCAA—for all of us, whether we agree with someone’s general political philosophy or not, to condemn any support for violence. There is never an excuse for unprovoked attacks on innocent people.

And I, you know, I’ve said many times, and I said it a lot when I was Governor, that we have gotten really casual about the way we think about violence in this country. And I said it all the way through the summer of 2020, when we had some really horrible things that happened to members of our Black community.

And I think the—I think we have a cultural problem there as much as anything else, Senator. And I think it’s important for everybody on all sides of the political spectrum to call that stuff out.

Senator HAWLEY. Good. I agree with you. I’m glad you’re willing to say it. I think it’s important that the NCAA be willing to say it. You’ve got many Jewish-American athletes, I’m sure.

Mr. BAKER. And Jewish-American students.

Senator HAWLEY. Indeed. And while—and I think you were gesturing to this. While the First Amendment certainly protects the right of anybody on our campuses and across the country to say what they want, peacefully—peacefully—that doesn’t mean that we have to condone it and act as if it’s morally acceptable.

And I think it’s vital that we take a stand. I’m going to ask the Senate to take a stand on the same rhetoric and condemn it as the violent antisemitic rhetoric that it is.

Let me ask you about a student safety issue of a different kind. Earlier this year, this Committee heard testimony from a 12-time All-American swimmer, Riley Gaines. She testified that in March of 2022, at the national championships where she was swimming, she was forced to share a locker room with a biological male, Lia Thomas.

Let me just read from her testimony. “In addition to being forced to give up our awards, our titles, and our opportunities, the NCAA forced me and my fellow swimmers to share a locker room with Thomas. Let me be clear. We were not forewarned, we were not asked for our consent, and we, the women, did not give our consent.” Is that still NCAA policy?

Mr. BAKER. First of all, I’m not going to defend what happened in 2022. I wasn’t there. I was still Governor of the Commonwealth. What I will say is, we have very specific rules and standards

around the safety and security of all our student-athletes, and anyone who hosts one of our national championships has to know—has to accept that they know what they are and then abide by them accordingly.

Senator HAWLEY. But—and does that include female athletes having to share locker rooms with biological males not being warned or consent? Do they—are they asked for their consent?

Mr. BAKER. I don't believe that—I don't believe that policy would be the policy we would use today.

Senator HAWLEY. Currently not in—

Mr. BAKER. Correct.

Senator HAWLEY. In—yes.

Mr. BAKER. Yes.

Senator HAWLEY. Well, let me just ask you this. Would you support the right of student-athletes to unionize—athletes like Ms. Gaines, Ms. Thomas here today—to unionize, to have some bargaining power on some kind of an equal footing to deal with the NCAA, whether it's over safety issues like this one, whether it's over name, image, and likeness, whether it's over compensation?

It seems like these institutions have all of the power. The NCAA has a lot of power, as we heard from Ms. Gaines. Should student-athletes have the right to unionize, to be able to speak with a little bit of an equal voice?

Mr. BAKER. I think the most important thing for us to remember here is to unionize—if student-athletes were to unionize—and we're going to have court cases on that, which is why—there's currently two NLRB cases that involve this issue. I'm more likely than not to not want to speak specifically to those.

I do have concerns, and I've raised these before, about creating a system where you put one brush across all 19,000 teams, all 1,100 schools, all 500,000 athletes, and say they should all be employees, because I do believe in your State and in the State of every single person on this Committee, literally thousands of your interscholastic athletic programs will go away. Because it completely changes everything about what it means to be a student-athlete and what it means to be a college that supports student athletics. And I think that's a problem.

Senator HAWLEY. Well, I appreciate your responses and your candor. I will just say, in conclusion, that I think we've got to find some way to give these student-athletes a voice, and whether it's the issues like the ones Ms. Gaines raised or NIL issues or others, currently I think there's a huge power disparity. Thank you, Mr. Chairman.

Mr. BAKER. Can I just make one final point, Senator, which is all three of our student-athlete advisory councils, which are elected by their peers, have expressed deep concerns about being considered to be employees. And I've talked to probably 1,000 student-athletes since I got this job, and I haven't talked to one yet who wants to be an employee. I think that's important.

Senator BOOKER. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Thank you to each of you for being here. As most of you know, whether it's the Commerce Committee or here at Judiciary Committee, we have

been focused on what we're going to do with the NIL issue and how it's going to affect student-athletes.

Likewise, we have been very concerned about men in women's sports and what that does to the student experience.

And Trinity, congratulations to you on your outstanding record. I am absolutely delighted that we have the opportunity to hear your perspective today.

Governor Baker, it's no surprise to you I want to come to you first. And one of the things—pardon me—that we are looking at is the patchwork of State laws and how that affects so many different processes with the recruiting process, dealing with NIL, different approaches, different types of collectives.

So, as you look at this patchwork, knowing that it's going to impact schools differently, whether it is Ole Miss or St. Joe or whomever, talk for a moment about how you're going to clean this up, and what is your timeline for delivering it?

Your predecessor never could give us a date, time, and place that something was going to happen. So, give me a timeline. Give me a way forward. I think every university—there's 1,000 schools in this country that you all cover, and they all want to know, what is that process?

Mr. BAKER. So, thank you very much for that question, Senator, and I do appreciate the time you've given me on these issues. With respect to student-athlete transparency and access to information and consumer protections, which is sort of how I think about it, those are in the process of being written up, and I expect they'll be ratified before the end of the calendar year. Okay?

And those are going to—

Senator BLACKBURN. And the implementation would be at what point?

Mr. BAKER. It would be effective the beginning of the next scholastic year, so let's call it August of 2024.

Senator BLACKBURN. Okay.

Mr. BAKER. With respect to institutional involvement, which is another issue we've talked about quite a bit here, I would expect those to be done by March, and I would expect that right around March we'd also be dealing with the issues around recruitment, also effective August of 2024.

Senator BLACKBURN. Okay. So, there would be—

Mr. BAKER. Now, the question then becomes, Senator, those will be the ratified and voted-on bylaws by the organization, by the NCAA and its membership. But that doesn't necessarily mean that, in the current legal and regulatory environment, everybody will comply with them. And I fully expect at some point we'll have—

Senator BLACKBURN. And then with women—with men in women's sports, when do you expect some specific guidance? Because you just responded to Senator Hawley that you didn't think the situation with Lia Thomas and Riley—

Mr. BAKER. Yes.

Senator BLACKBURN [continuing]. Gaines, who, by the way, is a Tennessean—that the position would be the same. So, when will there be specificity on that?

Mr. BAKER. Well, first of all, the rules around—as I said before, the rules around transgender athletes generally are more restric-

tive today than they were in 2022. And I can state pretty clearly that no one's going to get forced into any sort of situation that's going to make them uncomfortable. We make that very clear in the guidance that we give to anybody who hosts one of our championships, period.

Senator BLACKBURN. Okay. Thank you. Mr. Jones, if I could come to you, please. The collectives are something that we have looked at, and, of course, as we know and has been discussed today, 98 percent of your college athletes do not play pro sports.

And then looking at the NIL issue, the financial benefit to the student, the need for financial literacy in this, the need to prepare that 2 percent that do go on to the pros, because we hear 78 percent of those athletes end up in bankruptcy—talk a little bit about what the collective is doing.

You said in your testimony that you all don't help with recruitment. You jump in after the students are there. So, how do you help prepare them for this?

Mr. JONES. Well, I think a lot of what we've heard today about collectives are outdated perceptions that probably were formed over 12 months ago when collectives were first being formed. They weren't as well staffed, they didn't have as much guidance, and they were just trying to figure things out.

I think collectives, like everything, has evolved over the last 12 months, Senator, to a much more functional, well-staffed organization run by business professionals that provide resources and tools, because at the end of the day—I think originally collectives were about just writing a check to the athlete. There's no doubt about that.

But I think what's happened now, collectives, and at least for mine, specifically, at the University of Mississippi, it's as much about developmental as it is compensation. And I believe that's philosophically the way we should be going, to protect the well-being of our student-athletes, to make them better prepared and more functional members of society when they leave their campus.

So, most collectives in the 25, in the TCA, we stand united for—we already are very transparent. We have our contracts on file with universities. We are all about getting the bad actors out, with an agent registry. And a standardized contract? We have no problem with those things. So, we support a lot of what we've heard today. I just think the perception of collectives is outdated.

We have evolved, just like the market has evolved, and we are giving our athletes resources and tools so they're better prepared in financial literacy, being a taxpaying citizen, networking in business, protecting the value of their name on social media, and all those tools, and how to deliver an obligation where you're compensated, which is the tools they're going to need, Senator, whether they play, to your point, professional sports or not. And the majority will not. And the tools that we are providing on the collectives of today are helping them prepare for that.

Senator BLACKBURN. Mr. Chairman, my time has expired. I think it might be helpful to us, knowing there are other collectives in the room, if we could get a written statement from them of what their process of participation is, with their students, as we look at

having some certainty and consistency in this process across the country.

Senator BOOKER. Thank you. I'm turning it back over to the real Chairman, but I just want to say, next up is the Deion Sanders of the Republican caucus, Ted Cruz.

[Laughter.]

Senator CRUZ. That may be the kindest introduction I have ever gotten in my life.

[Laughter.]

Senator CRUZ. And I will say to the Senator from New Jersey, he may find that introduction played in attack ads against him in his home State, so I apologize for that ahead of time.

[Laughter.]

Senator CRUZ. Welcome, to all the members of this panel. Thank you for being here. Thank you for your testimony on this topic, which I think is an exceptionally important topic.

College sports are amazing. They are something that pulls us together. We're in a time where it seems we can't agree on what time of day it is. We're yelling and fighting over everything, and yet every week, millions of Americans come together and they cheer for their schools and they stand unified, and no one cares what race, what ethnicity, no one cares what political party they are, no one cares what religion they are. They stand together, and they cheer, and that's—that's important. I get enormous joy cheering for Texas schools every week. We—and that's true all across—all across the country.

College athletics has also been an incredible avenue for millions of young men and millions of young women to get a great education—young men and women who might not otherwise have an opportunity to go to college, to have their college paid for and to get all of the benefits of participating in organized sports.

Most college athletes will never play pro ball. They're not going to be on the cover of a Wheaties box. They're not going to get a Nike contract. But they are learning discipline and teamwork and sportsmanship, and they're learning to be gracious winners, and they're learning to be gracious losers, and they're learning all sorts of skills that will help them every day of their life.

And I'm very worried about the state of college athletics right now. In addition to serving on the Judiciary Committee, I'm also the Ranking Member of the Senate Commerce Committee, which has jurisdiction over athletics.

And as each of the witnesses know, I've spent much of the past year visiting and listening to stakeholders, listening to the NCAA, listening to conferences, listening to universities and institutions, listening to athletes.

And across the board, I'm hearing real concern about the state of college athletics right now, that it is a Wild West, and that there is a real risk that if Congress doesn't act and act quickly, that we risk doing enormous damage to a system that is providing enormous benefits to millions of Americans.

I've introduced draft legislation to address this issue, and the legislation I've introduced takes a different approach than some of the other pieces of legislation that have been introduced. And lots

of Members of this body have introduced legislation. There's a lot of interest in it.

My legislation protects NIL rights, front and center. I think it's important. I think it's right that athletes deserve to enjoy the fruit of their hard labors. And if their skills are generating millions of dollars and are a massive economic powerhouse, it's only right that these young men and young women should enjoy significant fruits from their hard work and their performance.

But at the same time, I don't think anyone wants to see a world where you have a few giant schools with all the money, that buy all the top athletes, and we destroy competitiveness across college athletics.

One of the great things about March Madness is 64 teams, and any one of them can win, in any given year. That makes it incredible fun to watch.

I think it is also important that we protect college athletes across the board, so it's not just, you know, football and basketball at big marquee programs. But it's Division II, Division III schools—it's all sorts of non-revenue sports that are really important but are not going to produce millions of dollars and, you know, be on TV nationally.

So, I'd like to ask a couple of questions to each of the witnesses, quickly. Number one, do each of you believe it is important that Congress act and provide a uniform national standard rather than 50 States having 50 different standards? Do you think it's important that Congress act? And I'm just going to ask for a yes or no.

Mr. BAKER. Yes.

Mr. PETITTI. Yes.

Ms. THOMAS. Yes.

Mr. HUMA. No.

Mr. JONES. Yes.

Ms. BODENSTEINER. Yes.

Mr. SWARBRICK. Yes.

Senator CRUZ. Okay. A second question, and a difference between the way my bill approaches it and other bills, is that my bill empowers the NCAA to work with conferences, to work with universities to set the rules of the road.

I think that's a better solution than the Federal Government stepping in, either an existing Government agency or a brand new Government agency. I think nobody wants to see Congress and politicians deciding what roughing the passer is. And bad things will happen, I believe, if Government takes over college sports.

So, I'd like to ask everyone on the panel again to answer yes or no, or actually not yes or no, but do you believe the NCAA should be setting the rules, or do you believe the Federal Government should be setting the rules? Governor?

Mr. BAKER. Well, that's kind of an easy one for me, Senator. I'll go with the NCAA on that one.

Senator CRUZ. I figured that.

Mr. PETITTI. NCAA.

Ms. THOMAS. I don't have an opinion on that.

Senator CRUZ. Okay.

Mr. HUMA. The Federal Government, by extension of establishing a third party.

Senator CRUZ. Okay.

Mr. JONES. The devil's in the details, but we would be open to the NCAA.

Ms. BODENSTEINER. The NCAA, in compliance with existing Federal laws.

Senator CRUZ. Okay.

Mr. SWARBRICK. The NCAA, especially if they can figure out targeting.

Senator CRUZ. Okay. I'm confident Congress cannot. I don't understand who gets called for targeting, but I know it pisses me off when it's against my schools.

All right. Last question. There's a big debate over whether student-athletes should be classified as employees or not. I believe that would be a very serious mistake. It would subject scholarships to taxation. It would subject student-athletes to all sorts of wage and hour regulations. It would mean, if suddenly you have a receiver who drops a bunch of passes, you can be fired and lose your scholarship.

All of that seems really bad for college athletics, not to mention the cost that it would impose on smaller programs that I think would lead to eliminating smaller programs. Going down the panel, do you believe student-athletes should be treated as employees, yes or no?

Mr. BAKER. No.

Mr. PETITTI. No.

Ms. THOMAS. No.

Mr. HUMA. Yes, for FBS football, Division I men and women's basketball.

Mr. JONES. No.

Ms. BODENSTEINER. No.

Mr. SWARBRICK. No.

Senator CRUZ. Mr. Chairman, I would ask unanimous consent to enter into the record two different letters that I have here.

One is a letter dated October 13, 2023, from four Historically Black Athletic Conferences, saying any legislative framework classifying student-athletes as employees would have a staggering impact on our athletic program and schools—an employment model for college sports is simply not the answer.

And then second is a letter from the chair of the Division I Student-Athlete Advisory Committee, which represents nearly 190,000 student-athletes, noting that student-athletes should not be employees of their institutions.

Senator BLUMENTHAL [presiding]. Without objection, so ordered. [The information appears as submissions for the record.]

Senator CRUZ. Thank you.

Senator BLUMENTHAL. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. I had to step out for a presiding officer shift but have been tracking this important conversation, which I'm not unfamiliar with. Right, Mr. Huma?

Appreciate you all participating here today. And I have heard that this question of whether there should be a national standard versus State-by-State standard keeps getting revisited, and I just want to register my position on that.

I agree that, ideally, there would be a national standard, but only if it's done right and not if it undermines or compromises any of the protections or gains that have been made in different States. And I speak from experience.

You know, when I served in the California State legislature, we worked hard to pass the Nation's first-ever student-athlete bill of rights.

We even got through all the debates about student-athletes versus athlete-students—but that, maybe, is a discussion for another day—a student-athletes bill of rights to require universities to increase protections, health care, and resources to support student-athletes, not just their health, but with a specific eye toward academic support and graduation rates.

And so I want to make a point here, for the record. While the NCAA has reported that 90 percent of Division I athletes have graduated within 6 years in 2022, this statistic fails to include athlete transfers who do not re-enroll.

There's other concerns about the methodology. Bottom line here is statistics from NCAA are inaccurate and misleading. Using the standard Federal graduation rate, just 69 percent of Division I athletes graduated within 6 years.

So, as we have this important conversation today, I want to make sure that the billions of dollars in profit that is made off of the performance, the work, and the sacrifice of student-athletes in collegiate sports is also used to support their pursuit of a college degree. Again, we intentionally call them student-athletes, not athlete-students. The student part comes first, not just in name. It also needs to come first in practice.

Question for Mr. Huma. What protections exist today, and what protections are still needed to further support student-athlete graduation rates?

Mr. HUMA. Thank you. And thank you for all the work you've done in the past on college athletes' rights in California, setting a great example of what States can do.

But, you know, first and foremost, if you look at the Pac-12 surveys, they did a survey a few years ago, and across all sports, athletes reported spending 50 hours a week in their sport alone. Fifty hours, on top of full-time school. So, you know, that survey's not going to change the TV schedules and the game schedules, but it's important that athletes on the back end have enough time to graduate.

So, one important issue is to make sure athletes have enough time to graduate. I know the NCAA is saying that it's going to pass legislation for years and years afterwards, but the thing is, without enforcement, any rules that the NCAA adopts, if there's no enforcement, it's not going to happen, you know, so they don't have to abide by that.

Senator PADILLA. And so I'd offer to my colleagues, for consideration, a threshold, as we did at the State level. Certain programs, certain schools whose graduation rates, by program, fall below a certain threshold would then trigger requirements for additional investment, additional support, whether it's tutoring or anything else—if we're genuine and sincere when we call them student-athletes, right, not just athletes or athlete-students.

I know my time is brief, but I also want to just ask a follow-up question to you on, in addition to academic support, I mean, the mental health needs—stress is real, and that’s been under, you know, programs to date, conference structures to date.

I can imagine—only imagine, under new conference structures, more travel time, more money at stake, time away from home and family, et cetera. What recommendations would you have for better supporting the students in that capacity?

Mr. HUMA. Well, I think first, if you address some of the root problems, you know, it’s making sure injuries are taken care of, coaches can’t push players back with injuries. There’s a lot of athletes who are broken because they’ve been betrayed by the universities. And there has to be a third party. You know, it’s not the honor system. Many schools do it right, many don’t.

The surveys show it. The trainers are saying that coaches are forcing players back in competition before they’re ready. Fifty-nine percent of trainers say that. Twenty percent report returning players to play without even medical clearance. That’s what’s happening, really, at the schools. They’re breaking kids.

And now you realign conferences on opposite coasts? That’s more pressures on academics, travel, their health, their rest. So, some of the structural issues need to be addressed. That will go a long way. And for the schools, many schools should be prioritizing having proper mental health services on campus.

Senator PADILLA. Yes. And there’s no such thing as a full 4-year ride. And I know my time is up, but I do want to ask just one more question, because I think it’s timely, particularly for the State of California.

And it’s going to be for Governor Baker: It’s my understanding that, following the 2021 Supreme Court decision, student-athletes are no longer forced to choose between their collegiate eligibility and NIL contracts.

As all of you know, Los Angeles will be hosting the 2028 Olympic and Paralympic Games, and preparations are well underway. To ensure the success of Team USA in these Games, we must address any remaining barriers to participation by our student-athletes.

Governor Baker, you mentioned in your testimony that collegiate sports programs have been a significant pipeline for Team USA. Are there any remaining barriers for student-athletes who are also Olympic athletes? And whether it’s accessing stipends from Olympic training programs or endorsing products during the Games, how would some of the rules that are entertained at State by State or here, federally, going to impact that conversation?

Mr. BAKER. What I think I would like to do, Senator, is get back to you in writing on that, because that’s a really important question with a lot of detail in it, and I don’t want to get it wrong. Okay? So, I will get you an answer in writing.

Senator PADILLA. I look forward to that.

Mr. BAKER. Okay.

Senator PADILLA. Thank you very much. Thank you, Mr. Chair.

Senator BLUMENTHAL. Thanks, Senator Padilla. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. President Baker, I’d like to turn to you first. A few minutes ago, my colleague Senator Hawley asked you a couple of questions related to Riley Gaines.

Now, Riley Gaines was here just a few months ago. She testified in front of this Committee, at another hearing, about how the NCAA discriminated against her when she was required to compete against a biologically male athlete, Lia Thomas, and also required to share changing facilities with that same biologically male athlete.

Another female swimmer, Kylee Alons, was so uncomfortable being required, without advance notice, to share changing facilities with a biologically male competitor that she went and found a supply closet, instead.

Now, when Senator Hawley asked you those questions, you demurred, noting that those occurred before you came on as president. I understand that, and I look forward to those sorts of things not happening.

But I think it's still relevant for us to ask what's been done about those. So, I'd like to know, first, have you apologized to those female athletes and any others similarly situated, for the trauma that was inflicted on them as a result of those decisions by NCAA?

Mr. BAKER. Again, Senator, I'm not going to speak to or defend what happened in 2022.

Senator LEE. That's not my question. I'm asking whether you've apologized.

Mr. BAKER. I understand that. I don't know. I'm assuming you're asking—when you say you, you mean the—

Senator LEE. Yes.

Mr. BAKER [continuing]. NCAA?

Senator LEE. Yes.

Mr. BAKER. I don't know the answer to that question. I'll have to get back to you.

Senator LEE. Okay. Thank you. Tell me what rules, regulations, restrictions, policies you may have put in place to allow these sorts of things from—to prevent these sorts of things from happening in the future.

Mr. BAKER. Well, I can tell you that the standards with respect to participation for trans athletes in women's sports have been adjusted since then and continue to be adjusted based on conversations with other governing bodies. And, again, I'm happy to put that to you in writing, which I think would be helpful.

Senator LEE. Yes, that'd be great. Separate from the issue of competing, what about the question of sharing changing facilities? Do you have policies that you've adopted since then that address that particular issue?

Is there a means by which female student-athletes are allowed, number one, to know in advance of when they might be required to share changing facilities with a biologically male student-athlete?

And, number two, after notifying them, do you have policies and procedures in place to allow them to make alternative arrangements for changing facilities?

Mr. BAKER. Our policies with respect to the safety and security of student-athletes participating in our championships is pretty explicit about making clear that student-athletes should not be forced into uncomfortable situations. I will confirm that that would in-

volve situations such as the one that you're raising here, and again, I'll get that to you in writing.

Senator LEE. Thank you very much.

Mr. Jones, I'd like to turn to you next. As a former student-athlete at Ole Miss, when you played for my colleague, Coach Tuberville, you weren't allowed to receive any compensation.

Players now are allowed to profit based on their name, image, and likeness, which can lead to great benefits for the student-athlete and for collegiate athletics more broadly.

For example, because of NIL, some players may choose to stay in college longer, allowing them to showcase their talents and, at the same time, pursue degrees instead of leaving early to go play in the pros.

The University of Utah football team has recently arranged for their players to get leases on trucks, all of them driving the same truck, which I know a lot of them enjoy. Can you speak to the role that collectives play in NIL and their role going forward?

Mr. JONES. Yes. And thank you, Senator, for your question. As I explained to Senator Blackburn, I think the role of collectives has evolved the last 12 years, and thankfully so, for the student-athletes. Again, what may have been started just as a organization to write a check or to compensate an athlete has now turned into a resource that provides tools, transparency in an area that didn't have any.

And so, you know, but we've got to remember, too, that the student-athletes, this is a new environment for them. This is something that they've never experienced—18-, 19-, 20-year-old kids and their parents, and they're trying to navigate. They're—sometimes it's overwhelming to make sure that they don't do anything that would preclude their eligibility—would inhibit their eligibility.

And we have taken the approach, at our collective at Ole Miss—but the other collectives in our association—about trying to make this just as much about development of the student-athlete. Financial literacy is really important, being a taxpaying citizen, understanding that when somebody pays you, the service that you need to provide and the obligation that you are owed. And all those things speak to making them more functional members of society when they leave our campus.

So, again, I think collectives have evolved to create a structure where we can provide guidance, we can provide resources, we can provide knowledge.

And we stand ready, as I've said in my written testimony and today, to have governance, to have oversight, to have a Federal standard. We share—ready to work with all our colleagues up here on this panel and with the Government, where necessary, because, Senator, we're lucky enough that we deal with the athletes every day. We're in the trenches with them. We're in the realities. And we just don't buy into all the negativity that you hear.

Are there some things that need addressing? Absolutely. But overall, the impact that NIL has had in the health and well-being of our student-athletes has been overwhelmingly positive. We see that with our student-athletes. We see them to develop their maturity level.

And again, I think if we're doing our part, we can provide really transparent and tangible detail to all the stakeholders, so we can provide the necessary guidance and be able to make the most informed decisions going forward. But I do think we have—we are much more about development than we are just compensation, for the last 12 months.

Senator LEE. Thank you. I appreciate all that you and folks like my friend, Russ Skousen, do for student-athletes. Thank you.

Mr. JONES. Thank you, Senator.

Senator BLUMENTHAL. Thanks, Senator Lee.

We've been joined by Senator Manchin, who's done a lot of work in this area. I'm going to give him the opportunity to make a statement, and then I'll have a few closing questions. Senator Manchin.

**STATEMENT OF HON. JOE MANCHIN, III,
A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator MANCHIN. Well, first of all, thank you, Senator Blumenthal, for being so kind to allow me in. And this is something very near and dear to my heart.

It's good to see my friend, Governor—Governor—Commissioner Baker, I think, would be the appropriate term, and to all of you.

I know you're all here because you care as much as we all do about the student-athlete. But, you know, we—I think we're losing sight of the word student, because basically, allowing them to switch around as they can right now with portals and everything else, there's—their chances of graduating are slim to none. And something has to be done.

So, here's what we've done. We have a piece of legislation, Senator Blumenthal—and I've shared it with him and all that—myself and Tommy Tuberville, who was a coach at Auburn.

We put a bill together which is called the PASS Act. And what we're trying to do is kind of put some guardrails, if you will, for boosters and collectives, to make sure they're associated with the schools and they're in sync with the schools, for the purpose of making coordination there. We're not trying to harm any student from able to sell their value. We just don't believe it should be auctioned off, school against school. Pretty simple.

If you've got that value and that talent, you're on TikTok, whatever you are, get yourself a lawyer, get yourself an agent, and go to it. Just don't come to West Virginia University and then basically say, they'll give me this much, and now Maryland's going to give me this much, or so and so. So, we're trying to take that out of it.

The other thing is moderating the transfer portal. I was fortunate enough to get a scholarship at WVU, and got hurt very early. Back then, in the 60s, they still kept me. They didn't have to.

But right now, if I got a Division I scholarship, a Division I school scholarship, full scholarship, in one of the major sports, they're committed to keeping me for 4 years and giving me an education. They're that committed to education.

The bottom line is, I'm not committed to stay. I can leave the first month, if I'm unhappy. They told me I'm going to play quarterback, and I go in, and now all of a sudden you're going to put me defensive back? Oh, no, I'm sorry—I'm going somewhere else.

That is not what developing young athletes is about. They're going to have to be structured and coached somewhere. So, we're putting guardrails on that. Three years: freshman, sophomore, junior. Junior year—after that, go anywhere you want to. That coach has had a chance.

Now, there's still going to be a waiver provision. I've spoken to Commissioner Baker about all these things, and if you've seen our bill—if not, we'll make sure you receive it, providing transparency of how these are operating, clarifying the NIL activities, which I just talked about, providing additional protection for student-athletes.

The bottom line is, they should—our main goal is to get them an education, get them a skill set. There's less than 2 percent that go into NL—NFL, or NBA, or whatever they may think they would love to do. We all have those grandeur dreams. Doesn't work out always. So, that's the most important thing.

The other thing—I don't know if you all have considered that most of these student-athletes are receiving Pell grants. So, that means that the Federal Government is paying through Pell grants for the most highest valued part of the scholastic—it's basically the money that comes in through the large sports programs.

And that doesn't seem fair to me. All these schools have other students that really need the Pell grants very badly, but there's enough value within the system that would pay for those students. I don't think anyone intended that to happen that way. It just has evolved. I don't know if you all were aware of that or not. It's been brought to my attention. I think that's something that has to be corrected, too.

Enforcing oversight, also health and safety, and our bill basically says you will take care of a student-athlete 8 years after they finish their playing days or curriculum or graduate. And that means it has to be a sport-related injury to the sport they played. So, it'll probably be in orthopedics, things of that sort.

We're trying to make sure they have the full value of having a quality of a healthy education and have a healthy life to provide for themselves and their family, but also the experience of being a student-athlete.

They're coming in as professionals now. The NIL has basically just about destroyed what I know the system was and how it was supposed to be. Heck, I would've paid WVU to let me go play. And I'm to tell you the love of the sport, it still has to be there.

If it's all about chasing the dollar, from when you're on Pop Warner teams and your parents are pushing you and all these—that's not what it was designed to be. So, if they're that good, go right in from high school to the pros. Don't come through the college system and basically have an auction bid. It doesn't—that's not what it was intended to be.

So, I know everyone has different opinions about this. I've heard everything from a player's union—you want to really screw a school and screw Title IX and everything else, try that one on. And Title IX's going to get hurt the worst, and no one's even looking at that, to the point to where we're just worried about the two major sports that have all the money.

So, I, you know, I've got a lot of problems, I really do, with this, seeing it up close and personal, seeing a lot of young men and women who've really made tremendous contributions to society, not through athletics, after they finished the athletic scholarship they had. They did it because they were developed young people who were matured enough to go out and share their value. And that's been tremendous.

I think—I've always said this. I never could figure out, when we were in school, we used to get tickets, and we would sell the tickets, and that'd give us a little bit of spending money. We got \$30 a month for laundry. That was it. I said, that's pretty good. We could almost live on \$30 a month, back in the 60s. So, we felt good about all these things, but then we thought, man that's a bonus. I didn't expect that.

And then, I says, so and so—some of my classmates and my ball players—their own parents couldn't afford to come watch them play. And if an alumni tried to pay to get the parent there, it was a violation. Crazy. I said, how come your mom's not here? Oh, my grandma wrote. She can't afford it. I just said, we've got to fix that.

So, I know you all have good intentions. Guys, you've got to help us. If not, we're going to lose something that I see as one of the greatest pastimes we've ever had.

And no matter where you went to school, no matter if you played or not, you're still there. It's still part of you. And you're rooting for the system, but you're rooting for the kids. And anymore, it's kind of hard to root for the kids when they're starting multimillionaires at freshman, sophomore.

So, that's my two cents, Mr. Senator President—Mr. President Senate—no, Senator Blumenthal's been so kind.

We have a lot of the same concerns, and we have a little different opinion of how it should be done, but if you help us, we can make changes, I think we really can, that's going to be constructive. And Mr. Baker, Charlie Baker, my friend, so glad you are where you are. I think you can put basically some common sense to this thing. I don't think we'd have never been there if we had the strength of leadership back when this thing evolved to where it got to today.

So, I'm hoping all of us can work together and take the politics out of it. And I know it's hard to do that anywhere.

But if you can take the politics out and be able to look at really what's our purpose, that student-athlete should have the best experience in their life—to be a basically contributing, quality adult, to give something back. Ninety-eight percent of them could do that. About 2 percent will stay and make their fortune in the arena. So, thank you.

Senator BLUMENTHAL. Thanks, Senator Manchin. I have a few closing questions which I'd like to pose to the panel as a whole. Some of you may be aware that international students are treated differently than American citizens who are college athletes.

I've raised this issue of foreign student-athletes being able to benefit from their NIL with Secretary Mayorkas, actually in this room, before the Judiciary Committee.

The current visa system puts those athletes at risk of losing their legal status here if they earn any NIL money. In my view, this

kind of discrimination is deeply unfair to them and demonstrably outdated.

For example, international students like Adama Sanogo, a star on the UConn Huskies basketball team and a significant part of our victory last year, is totally unable to earn any NIL benefits despite his prowess on the court.

These student-athletes' diligence, discipline, and determination are equally deserving of monetary reward, in my opinion.

Let me ask the panel as a whole, maybe beginning with Governor Baker, would you support changes in our laws and regulation to permit those international students who may not be citizens to benefit from their NIL status without fear of losing their visas or other legal status?

Mr. BAKER. Absolutely.

Mr. PETITTI. Absolutely yes.

Ms. THOMAS. Yes.

Mr. HUMA. Yes.

Mr. JONES. Yes, and we actually do contract with international student-athletes.

Ms. BODENSTEINER. Yes.

Mr. SWARBRICK. Yes.

Senator BLUMENTHAL. And just to be clear, Mr. Jones, it's not a question of whether schools would be willing to let them or sponsors would be willing to pay them. It's their status, if they accept such payment under our current visa laws. That's what we need to change. So, thank you for helping them, but they are still at risk of losing their legal status.

Mr. JONES. Yes. I agree.

Senator BLUMENTHAL. We haven't talked much about enforcement. I'm a former prosecutor. Most of my career has been spent in law enforcement. And whatever standards are adopted, whatever reforms are enacted, they will be meaningless unless they are enforced.

The bill—draft bill that Senator Booker and I and Senator Moran have written would establish a federally chartered College Athletics Corporation. It would also give power to the State attorneys general. I happen to be a former State attorney general.

I'd like to ask all of you, again, whether you think that kind of independent enforcer is important and whether you have any specific views on who should be doing it. Governor Baker?

Mr. BAKER. So, I guess I'd say a couple things. One is, I think that's a conversation we have had and I'm happy to continue to have. I do have some concerns about some of the details. And the AGs, we should talk about that a little. I've had some interesting experiences with AGs since I got this job.

Senator BLUMENTHAL. And before, probably, too.

Mr. BAKER. Yes, before, too. Yes.

Senator BLUMENTHAL. Well, I would welcome continuing our conversation about it. Mr. Petitti?

Mr. PETITTI. Yes, I would just need to know more about the structure and how it'd be set up to really have a strong opinion, I think. But initially, I'm more inclined to try to see if we can figure out a way for the NCAA to do this. But we're open to having those discussions with you.

Ms. THOMAS. I would also need more information to have an opinion.

Senator BLUMENTHAL. Mr. Huma?

Mr. HUMA. It's important that enforcement be conducted by an entity that's independent of the colleges, conferences, and the NCAA. I believe the industry wants enforcement when it comes to policing inducements to be the same entity that enforces health and safety and other aspects that protect college athletes.

Mr. JONES. I would generally agree with Commissioner Petitti. Need more detail and more substance and context, but we're certainly open to oversight and governance, for sure.

Ms. BODENSTEINER. I agree more discussion is warranted. I'm a little bit worried about the lack of enforcement on current State laws such as NIL laws and agent laws that exist right now. I'm not sure the States have been very active in enforcing those.

Mr. SWARBRICK. I think increasing the effectiveness of enforcement is a critical area that has to be addressed. I'm not sure. I don't have enough detail to respond to that proposal.

Senator BLUMENTHAL. Well, I thank you, all, for your willingness to talk, but let me just emphasize the real test here is going to be whether the rules are enforced.

I mean, the best rules in the world are dead letter unless they're enforced. And I'm certainly more than happy to hear from you about how the enforcement should be done, but in my view: independent, effective, well resourced, and intentional enforcement, with an emphasis on independent, is key to making this whole system work—not just on NIL but on health and safety, on scholarships, on medical trust fund, on all of the good things that we've agreed are important.

And if we are heading now toward the Wild, Wild West and dangerous chaos with a patchwork of different measures, a national standard on any of these issues will depend on enforceability and, in fact, someone willing to take the reins and make sure that those athletes are really protected.

Because we all know that the athletes themselves don't have the resources to go to court, and often, there's a lot of psychological pressure for them to just take it, suck it up, go with the program. And I think Ms. Bodensteiner is absolutely right that State enforcement, so far, has been lacking. So, I would not rely exclusively on State enforcement, whether it's by attorneys general or anyone else.

And I would not rely exclusively on a Federal agency. I would allow the athletes themselves to go to court, but I think there has to be some enforcing agency here or entity. Obviously, we're talking about a college athletes corporation, which is not the FTC or an existing Government agency. But I'm open to considering one of those enforcement mechanisms, as well.

I think the other area that Governor Baker has very rightly emphasized, it is transparency. We need prompt, full, accurate disclosure here, and I think that message has come across from this panel very compellingly and forcibly, and I think it is a fact of life that a lot of these very relevant issues need more sunlight, more disclosure and transparency. And I thank you for your willingness to work on that with us.

Mr. Swarbrick, you commented very eloquently on the employee classification issue. The panel has seemingly with unanimity said no to employee classification, except for Mr. Huma. And I'd like to just ask you to maybe elaborate on the exception that you would make to barring employee status.

Mr. HUMA. Sure. And that would be to, you know, really look at equal rights under the law. But we know we're not talking about high school athletes, Division II, Division III. We're talking about top football and basketball. That's why the discussion's happening, and it's a realization that those athletes are generating much more revenue that they're receiving in terms of fair pay.

There's a lack of protections, workplace protections that are involved, as well, and also, to Senator Hawley's point, the ability to eventually have some real say and collectively bargain with an industry that is hostile.

We're talking about, you know, people are discussing closing the door on employee status without paying the athletes fairly. That hasn't come up in this hearing, and that's at really one of the pivotal points. It's also an issue that I encouraged to put to the side because I don't think Congress is going to actually proactively pay college athletes fairly.

I don't think that legislation that would ban college athlete pay would get through, either, so there's a lot of issues that we can, I think, come to agreement on, but I think that issue is not one of them.

Senator BLUMENTHAL. So, you're talking about it only for some sports and some schools?

Mr. HUMA. Correct. Correct.

Senator BLUMENTHAL. And what if the athlete didn't want to be an employee?

Mr. HUMA. So there's, throughout our conversations in all the different States, there was athletes from, you know, the NCAA's committees or the colleges' committees that would say, "Hey, look, I'd rather not have NIL, because a school told me that would divert money from our school and force us to cut my sport, and I'm afraid of that."

So, you've got to take it—you have to understand that the athletes that—they may truly have a difference of opinion, but it shouldn't negate the entire Nation, you know, of, you know, rights and progress for all athletes, you know, whether it be a handful of athletes or groups.

What is equal rights under the law? Do athletes have labor rights or not? And I don't think that Congress should be creating—special status is what I heard, but it's a second-class citizenship. When you carve out players from rights, that's a big issue in this country, and we oppose that.

Senator BLUMENTHAL. I think we'll continue to talk about this issue, and I'm certainly sympathetic to the idea of collective bargaining. I've been a long-standing champion of unions and the vital role they play in employment settings, and I'd like to continue this conversation with you.

I think one of the objectives here is to guarantee fairness and protection to athletes in all schools and all sports, and perhaps that kind of exception makes sense for some colleges and some sports,

but I think the line drawing may be difficult to do. But we can continue this conversation.

I am grateful to all of you for being here today. It's been a remarkably productive and informative hearing. Each of you has brought a perspective that is singular and extraordinarily significant, and I want to thank all of you.

I think that one point that comes across loud and clear is that the present system isn't working. It is broken. And the corrective action taken so far is commendable but, so far, inadequate, and that Congress has to do its job to protect student-athletes.

Thank you, all, for being here today. The record will remain open for 1 week for questions that may be submitted or any additional comments, and we welcome them, that you want to add, in writing. And with that, the hearing is closed.

[Whereupon, at 12:47 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Submitted by Chair Durbin:

Berlo, Josh, letter	170
Braun, Amanda, letter	172
Byun, Elise, letter	175
Chapman, Brent, letter	178
Cheeks, Davaris, letter	180
Choate, Bryce, letter	183
Hellmuth, Avery, letter	186
Jackson, Simone, letter	188
Walkowiak, Betsey, letter	189

Submitted by Ranking Member Graham:

United States Olympic & Paralympic Committee (USOPC) and Team USA athletes, letter	191
--	-----

Statement for the Record
Chair Richard J. Durbin
Senate Judiciary Committee Hearing on
“Name, Image, and Likeness, and the Future of College Sports”

I want to thank Senator Blumenthal for presiding over this hearing, “Name, Image, and Likeness, and the Future of College Sports,” while I recuperate from recent surgery.

I also want to thank Senator Graham, the Committee’s Ranking Member, for working with me on a bipartisan basis on today’s witness panel.

College sports is a big business that generates big profits. Over the past 20 years, college sports revenue has grown from \$4.3 billion to \$16.6 billion—an increase of 400 percent. And that number continues to grow.

The NCAA now earns approximately \$1 billion per year from its March Madness basketball tournament. In 2020, the Southeastern Conference signed a new deal with ESPN that will pay it \$3.3 billion over ten years. Less than two years later, the Big Ten agreed to a new seven-year, \$7-billion-dollar media rights deal with CBS, Fox, and NBC.

Yet, little of this money has made its way to the athletes who made these record-breaking profits possible.

Until recently, NCAA rules not only prevented college athletes from receiving compensation for their participation in sports, they also prohibited those athletes from profiting off their name, image, and likeness, or NIL, rights.

That meant former-UCLA basketball star Ed O’Bannon received nothing when EA Sports sold a blockbuster video game that included his digital avatar. It also meant NCAA champion gymnast Trinity Thomas—one of our witnesses today—couldn’t use her name to promote a camp for young gymnasts.

All the while, money flowed freely to schools, coaches, and other adults connected to college sports.

That all changed in July 2021. Following the Supreme Court’s unanimous ruling in *NCAA v. Alston* that the NCAA could not limit education-related payments to student-athletes, and in the face of state laws soon to take effect that would allow college athletes to profit off their NIL rights, the NCAA changed course. It abandoned its prior prohibition and, for the first time, allowed athletes to remain eligible while receiving NIL compensation.

Two years later, NIL is now a big business of its own. According to NIL platform Opendorse, \$1.17 billion will be spent on NIL in the 2023-2024 academic year. The average Division I male athlete will earn approximately \$3,000 per deal, while their female counterparts will earn approximately \$900 per deal.

But there are some downsides. There have been reports of collectives and others that attempt to take advantage of college athletes, including through extremely high commissions and onerous payback terms.

In addition, over half of all NIL dollars—an estimated \$595 million—are spent on Power Five college football players alone. And you would have to be naïve to think at least some of that money isn't being used to induce those football players to attend a particular school or to pay them directly for their performance on the field.

The opening of the NIL spigot has also resulted in something of a race-to-the-bottom among states seeking to gain a competitive advantage through their NIL laws. The result is a patchwork of state laws that make it difficult for schools and students alike to navigate the system.

That is why we the Committee has convened a panel of seven witnesses with unique perspectives on the issue of NIL. They will testify about the impact NIL has had on college athletics, including what it means for competitive balance, gender equity, and Title IX.

They will also testify about the impact NIL has had on the lives of college athletes. For too long, college athletes were forced to sit on the sidelines while others profited from their hard work.

Athletes couldn't accept anything beyond their scholarships, while schools used the millions they made from media rights deals on things like waterfalls in their football locker rooms. Many coaches are paid millions of dollars per year, while athletes couldn't so much as sell their autographs for a little spending money.

NIL has opened a new door for college athletes to benefit from the value they bring to their schools and communities. We should embrace this change, while recognizing the potential pitfalls it brings with it.

I appreciate the work of many of my colleagues—including several on this Committee—who have introduced bills to address NIL in college sports. As we consider today's testimony and these bills, we must focus on what is in the best interests of college athletes.

**HEARING BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

October 17, 2023

Written Testimony of Charlie Baker
President, National Collegiate Athletic Association

Chairman Durbin, Ranking Member Graham and distinguished members of the Committee, thank you for the opportunity to be here today. Over the past seven months, I have served as the president of the NCAA, an organization that supports more than half a million student-athletes who participate in college sports every year across 90 different championships and that serves as the premier developmental stage for women's and Olympic sports. Prior to my time as the president of the NCAA, I had the privilege of serving as the 72nd Governor of Massachusetts for two terms, from 2015-2023. More notably, my wife, two of our three children and I were all beneficiaries of college sports and have firsthand experience as NCAA student-athletes.

It is no surprise to anyone here today when I share that college sports are at a time of great change and much-needed modernization. This change is largely due to the cultural, legal and financial forces that are coalescing to evolve student-athletes' needs and expectations. Given our Association's mission to provide a world-class athletics and academic experience for student-athletes, we recognize that the NCAA needs to modernize ourselves to shape a fair, fulfilling, inclusive and sustainable future for college sports.

COLLEGE SPORTS REFORMS

I want to take a moment to recognize the legislative efforts made by Sens. Booker, Blumenthal and Moran, calling attention to the importance of the health and welfare of college athletes. I also believe this is a critical topic and have worked with our membership to pass new requirements that promote the physical, mental and academic well-being of today's and tomorrow's student-athletes. I am proud to share that over the past few months, the NCAA has taken significant steps forward in our modernization efforts with the creation of a student-athlete health insurance fund. This newly established fund will provide student-athletes from *all NCAA divisions* access to health insurance for athletically related injuries up to two years after graduation. This was a priority that student-athletes themselves expressed to the NCAA consistently and one I'm proud we'll be able to meet going forward.

Additionally, our new holistic student-athlete benefits model, which was adopted unanimously by our Division I Board of Directors this spring, provides support for student-athletes in a number of new ways. In addition to post-eligibility injury insurance coverage, the holistic model now requires all Division I universities to provide degree completion funds for student-athletes during the 10 years after the conclusion of their athletics experience, expands campus-level support for mental health services for student-athletes, protects scholarships, and increases programming in areas ranging from academic counseling to financial literacy and career preparation.

LEGISLATIVE PRIORITIES

In these and other ways, college sports are thriving, and the NCAA is modernizing for the better. Since the Association passed legislation two years ago, college athletes have experienced tremendous economic opportunities to benefit from the use of their name, image and likeness. While we have all seen great positive impacts, I continue to hear from students that the patchwork of nearly 30 state laws is incredibly confusing for them to navigate and that it would be helpful to have some protections from unqualified and unaccountable actors who don't have their best interests in mind.

I recognize that I can't come to a committee like yours asking for partnership without taking the necessary steps to reform internally. During my short time on the job, the Association has taken concrete and actionable steps to modernize and address many of these issues. Just two weeks ago, the NCAA Division I Council advanced proposals on new NIL bylaws designed to enhance student-athlete protections in areas of financial literacy, standard contract terms and agent registration. In addition to the recent advancements in student-athlete health and well-being, the NCAA is also moving forward with several other reforms that aim to make college sports fairer, safer and more equitable. Since I joined the NCAA this year, we have prioritized equitable championship experiences across all sports and host locations, and I have directed national office senior leadership and staff that a continued commitment to gender equity must be at the center of everything we do. The NCAA also continues to advance commonsense changes to sports betting and marijuana testing policies.

There are some areas, however, where the scope of a national association like ours is limited, and it is in these areas that our schools, conferences and student-athletes seek your partnership. To secure future opportunities for all college athletes, regardless of sport, division or gender, and to ensure millions of Americans continue to have access to these opportunities, our academic and student-athlete leaders are eager to partner with Congress on the following priorities:

- Enhance Student-Athlete Welfare: Our bylaws currently require Division I schools provide student-athletes with guaranteed scholarships, academic support, degree completion funds, healthcare for sport-related conditions, life skills training, and access to mental health and well-being resources. We are open to working with congress to make these requirements law. Similarly, the NCAA will soon provide post-eligibility injury insurance for student-athletes across all divisions and again support making this program required by law.
- Improve NIL Outcomes for College Athletes: Our recent NIL bylaw process deals with student-athletes and disclosing certain information and offers incentives to use fair contract terms and reputable agents but we can only go so far. We want to partner with Congress to curtail NIL inducements, prevent collectives from tampering with students and to prohibit bad actors from trying to serve as agents.
- Protect Opportunity: Codify current regulatory guidance into law by granting student-athletes special status that would affirm they are not employees of an institution and allow them to receive enhanced benefits while protecting all athletic programs from one-size fits

all actions in the courts. This would create consistency across public and private institutions, protect the Olympic pipeline, and safeguard equitable, sustainable access for the more than 500,000 student-athletes, including international student-athletes and those student-athletes at under-resourced schools, most Historically Black Colleges and Universities, and all Divisions II and III schools which traditionally do not provide similar benefits.

- Protect Title IX: Bolster Title IX provisions to ensure discrimination, on the basis of gender, race, or sport, in the marketing or facilitation of NIL agreements for prospective or current college athletes is prohibited.
- Competitive Fairness and Effective Governance: Grant limited and conditional liability protection to conferences and intercollegiate associations so they can set reasonable competition standards and enforce student-athlete health and well-being requirements and other provisions for all schools with direction from Congress.

I am grateful to many of you on this committee who have already put thoughtful consideration into this topic and what a legislative solution could look like. Senator Cruz has effectively addressed these areas in his proposal, and Senators Booker and Blumenthal put forward several thoughtful approaches to protecting student-athletes in their draft, including in Section 4 of their bill, which gives student-athletes the ability to rescind their contracts if they are no longer participating in college sports. I believe together we can craft a solution that accomplishes all of these goals without putting the federal government into the position of having to administer college sports – an outcome just about everyone I have talked to in Congress shares.

CONGRESSIONAL PARTNERSHIP

College sports are a uniquely powerful and beloved institution. College sports matter to communities and to your constituents. Specifically, college sports serve as a critical developmental tool for the future leaders of this country. They generate \$3.8 billion in scholarships annually, serve as the premier stage for many women's sports, support local economies and bring communities together to thrill millions of fans. Simply put, college sports provide 500,000 young men and women with a pathway to obtain an education and chase their athletic dreams simultaneously.

I recognize Congress has a number of pressing issues to tackle, so thank you for the opportunity to talk with you about this important topic. I would also like to take this opportunity to thank those Members of Congress, including many on this committee, who are working to find bipartisan solutions to just these issues. I believe the NCAA is taking the right steps to improve outcomes for student-athletes, and we look forward to working with each of you to ensure opportunities for college athletes continue today and for years to come.



Charlie Baker
President

November 7, 2023

VIA EMAIL

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Honorable Members of the Senate Judiciary Committee,

On behalf of the more than 1,100 colleges, universities and conferences that make up the NCAA, I would like to thank you for your continued interest in college sports and for the opportunity to share my testimony at the recent hearing before the committee.

During the hearing, many important concerns were raised about the health and well-being of college athletes, as well as the opportunity for some student-athletes to receive additional benefits. The leaders across college sports and I share your interest in these issues, and during my eight-month tenure, I have worked closely with our membership to pass new requirements that enhance the physical, mental and academic well-being of all college athletes. As I mentioned in my testimony, the NCAA has taken significant steps forward in our modernization efforts, including developing a new [health insurance fund](#) for all college athletes and requiring all Division I schools to provide [enhanced benefits to student-athletes](#) like scholarship protections, degree completion opportunities, and paying for and providing access to other health care benefits.

In addition to the responses provided below to the Questions for the Record, I would also like to take this opportunity to provide clarification for the following issues that were raised during the hearing:

Academic Success and Lifelong Wellness.

As we contemplate legislation that includes protections for the future of college sports, the academic success of college athletes must not be overlooked. Importantly, *student-athletes continue to graduate at higher rates* on average than their nonathlete peers. We believe the [Graduation Success Rate](#) is a more accurate method of measuring graduation rates because it accounts for students who transfer in, transfer out and enroll midyear, as well as other

Questions for the Record Responses

November 7, 2023

Page No. 2

events that the federal rate does not account for, to provide as clear a picture as possible of whether student-athletes are attaining their degree in a timely manner. In the 20 years since the NCAA has been tracking GSR, the overall graduation rate for student-athletes has increased by 16 percentage points, the rate for Black women student-athletes has increased nearly 20 percentage points, the rate for Black football players in the Football Bowl Subdivision has increased by 27 percentage points, and the rate for Black Division I men's basketball players has increased by 35 percentage points. Even when using the outdated Federal Graduation Rate metric, Division I Black male student-athletes are graduating at higher rates than their Black nonathlete peers by 12 percentage points and Division I Black female student-athletes are graduating at higher rates than their Black female nonathlete peers by 13 percentage points. In addition to outperforming their peers during their collegiate experience, a recent Gallup study showed that student-athletes excel after graduation, too. In areas of social well-being, physical health, community and purpose, former student-athletes [thrive at greater rates](#) than their nonathlete counterparts.

Health and Safety.

Member colleges and universities have repeatedly reaffirmed the NCAA's constitutional principle that all Division I, II and III schools conduct their programs in a manner designed to protect, support and enhance the physical and mental health, safety and performance of student-athletes. The schools also have passed specific health and safety bylaws including implementing provisions related to concussion education, evaluation, return-to-learn and return-to-play protocols; providing mental health care and education at each school in a manner consistent with NCAA Mental Health Best Practices; and providing independent medical care for student-athletes that affirms the unchallengeable autonomous authority of the schools' primary athletics health care providers (i.e., team physicians and athletic trainers) to make return-to-play and all other medical management decisions. The principles of independent medical care and medical provider autonomy recognize that the primary athletics health care providers at each college and university share a direct relationship with their student-athletes and that the school's medical staff retains the authority to make autonomous, unchallengeable medical decisions in consultation with the student-athlete. The NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, with the ongoing assistance of the NCAA Sport Science Institute, supports colleges and universities with resources and best practice guidance for a host of relevant mental and physical health, safety and performance topics in collegiate sport, including [mental health](#), [preventing catastrophic injury and death](#) (e.g., exertional heatstroke), [concussion safety](#), [independent medical care](#), [cardiac care](#), [sexual violence prevention](#), and [hazing prevention](#). This approach provides evolving best practices to each school's medical staff

Questions for the Record Responses**November 7, 2023****Page No. 3**

and honors the direct relationship between student-athletes and their primary athletics health care providers. The NCAA also supports mental and physical health, safety and performance in college sport through the work of playing rules committees for each NCAA sanctioned sport. Each playing rules committee makes changes to playing rules to enhance safety in sport, and these recommendations are guided by the independently operated NCAA Injury Surveillance Program, which is the only injury surveillance program for collegiate sports in the world. The NCAA also provides grants to support independent medical research. As just one of many examples, the NCAA and the Department of Defense have awarded over \$100 million in grants for the NCAA-DOD CARE Consortium, which is the most comprehensive study of concussion and repetitive head impact exposure in the world. In summary, while the NCAA national office does not directly provide medical care or engage in research, the constitutional principles of the NCAA ensure that student-athletes at all member schools are provided medical care and safety standards that reflect best practices, which are guided by cutting-edge research, education and policy.

Employment.

During the hearing, the overwhelming consensus from the witness panel was that an employment model would be immensely damaging to the ecosystem of college sports. There was a suggestion that such a model could apply only to Division I FBS football and men's and women's basketball student-athletes. But this suggestion reflects a misunderstanding of both the current legal environment and the practical realities schools and student-athletes would face. As you heard at the hearing, the vast majority of Division I schools could not adopt such a model and continue to provide the array of support they give to their student-athletes. There are also serial litigation efforts that seek to expand the employment designation to student-athletes far past this isolated group, and no consideration appears to have been given as to how women and Olympic sports would be protected under such a model. Importantly, without intervention from Congress, immigration experts warn that the participation opportunities for the nearly 25,000 international student-athletes, who many believe deserve access to name, image and likeness opportunities, would likely be [eliminated](#) under an employment model due to the employment restrictions of F-1 student visas.

Thank you again for the thoughtful questions and discussion during the hearing. As requested, below are answers to the committee's Questions for the Record. We look forward to the opportunity to engage in an ongoing dialogue and work together to develop a federal solution that will best support all student-athletes and protect the long-term integrity of college sports.

Questions for the Record Responses
November 7, 2023
Page No. 4

Respectfully,



Charles D. Baker
President, NCAA

Questions for the Record Responses
November 7, 2023
Page No. 5

The Honorable Senator Durbin

1. Following the Supreme Court's June 2021 unanimous decision in *NCAA v. Alston* that the NCAA violated federal antitrust law when it attempted to limit education-related payments to student-athletes, the NCAA adopted a policy largely deferring to state name, image, and likeness (NIL) laws, the first of which were set to take effect in July 2021. Now, the NCAA and athletic conferences have lobbied Congress on the need for a national, uniform NIL policy.

a. What, in your view, is the proper role of the federal government in college sports?

The NCAA and its schools and conferences fully support the ability of college athletes to benefit from their NIL. In 2021, the NCAA passed NIL legislation intended to *mitigate* the impact of a patchwork of state laws and create a standard that would provide equitable opportunities for all student-athletes, regardless of what state they live in. Because the Association and our colleges and universities do not have authority over state laws, the federal government can create a national standard that preempts the 30 state NIL laws, many of which codify recruiting advantages for schools in their own state. A federal law would allow the NCAA to provide student-athletes with a fair environment and level playing field and effectively regulate issues like NIL and benefits received by college athletes. Under the ideal model, the NCAA can continue to make rules consistent with any law and enforce those that apply to its schools. The federal government could enforce those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview.

b. In the absence of legislative action, how does the NCAA plan to regulate and enforce policies governing college athletics?

The Association is taking considerable steps to address areas of much needed modernization, including in [areas of NIL](#) and with an increased focus on gender equity, health and wellness, and enhanced benefits. Yet, with resources consistently being deployed to address legal litigation and a proliferation of state NIL laws, it is becoming increasingly difficult for the Association to make commonsense rule changes. Congress is the only entity that can pass a federal law and guarantee student-athletes have the ability to compete on a level playing field. Additionally, without any form of safe harbor protections from certain liability complaints from Congress, the Association's ability to create, interpret and enforce new rules and

Questions for the Record Responses

November 7, 2023

Page No. 6

implement new policies will continually be stymied by overzealous plaintiffs' attorneys and endless litigation, which costs the Association valuable resources that should be reserved for our membership.

2. When you became NCAA president in March 2023, you made a comment about college athletes playing either “traditional college sports” or “big-time college sports.”

a. Could you elaborate on what the distinction is between “traditional” and “big-time college sports” in your view?

The NCAA membership comprises more than 1,100 colleges and universities, supporting over 500,000 student-athletes across three divisions. The vast majority of Division I athletics programs, as well as those in Division II and Division III, do not generate significant revenue and rely heavily on school-appropriated funds and donations to operate their athletics programs. Yet, there is a small percentage of programs at the Division I level that do generate revenue from their athletics programs and thus have the most resources. The approximately 95% of collegiate institutions that do not generate athletics revenue sufficient to fund their athletics departments without subsidy would be challenged to continue offering athletics opportunities if student-athletes were deemed employees of their institutions. I am committed to finding solutions that both safeguard opportunities for all of college athletics and address concerns related to the small minority of schools producing the vast majority of the revenue without changing the unique relationship between all student-athletes and their schools.

b. Should “big-time college sports” or conferences operate outside the NCAA and/or under a different set of rules? Why or why not?

Since 2014, Division I schools that are also members of the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference have operated under an [autonomy system of governance](#), which allows them to adopt independent legislation in certain areas of the NCAA rulemaking process. Division I schools that are not members of autonomy conferences have the ability to opt in to any rules that have been adopted. This approach has allowed for college sports to operate under one umbrella, culminating in one national championship, while allowing flexibility for those schools with additional resources to offer enhanced benefits to student-athletes.

Questions for the Record Responses
November 7, 2023
Page No. 7

3. The NCAA has long argued that college sports are different from professional sports because the players are students who are not paid to play, which allegedly enhances fan interest and ensures athletes are focused on academics. With the most recent round of conference realignment, geography has taken a back seat to football-driven media dollars, and students who attend schools on the West Coast will now be traveling across the country to compete in conference matches. These revenue-driven decisions appear to be detrimental to the academic pursuits of “student-athletes.”
- a. How do you envision “student-athletes” balancing coursework and bicoastal travel for games?
 - b. What role will the NCAA play in preserving the “student” part of “student-athlete”?
 - c. Should there be a more concerted effort for conferences to be geographically aligned or for non-football sports to remain in geographically aligned conferences?

(Please note, the answers to questions 3a, b and c are combined into the paragraph below).

While the 1984 U.S. Supreme Court Board of Regents antitrust case limited the NCAA's role in conference realignment, the Association is committed to prioritizing the academic success of college athletes and ensuring they are students first. All Division I schools must adhere to rules that regulate the demands on student-athletes' time and ensure student-athletes meet progress-toward-degree requirements, fulfill minimum academic credits per semester and complete minimum GPA requirements. All Division I schools are also required to give student-athletes at least one day off per week during their playing season, and for Division I schools with autonomy, travel cannot occur on a student-athlete's required day off. With a small percentage of NCAA college athletes going on to play professionally, we understand our role in helping prepare students for life after college, and we celebrate that student-athletes graduate at higher rates on average than their nonathlete peers.

Like many others, I am concerned about the impact realignment activities could have on student-athletes. While we have rules in place to protect the academic and personal welfare of college athletes, transcontinental realignment can be highly disruptive for schools and student-athletes. As I move forward in my tenure, I will

Questions for the Record Responses
November 7, 2023
Page No. 8

work together with our university and college presidents, commissioners, and college athletes to explore solutions to address these growing concerns.

4. In your opening statement, you called for “limited and conditional liability protection to conferences and intercollegiate associations so they can set reasonable competition standards and enforce student-athlete health and well-being requirements and other provisions for all schools with direction from Congress.” However, litigation has proven critical to college athletes’ efforts to gain the rights and benefits to which they are entitled.

For example, federal antitrust investigations and litigation have resulted in (1) elimination of the NCAA’s prohibition on year-round comprehensive health insurance coverage for college athletes; (2) elimination of the NCAA’s one-year scholarship rule; and (3) elimination of NCAA rules that limited the education-related benefits that schools could make available to college athletes.

If the NCAA were granted the “limited and conditional liability protection” you requested, what would ensure that the NCAA would not use this liability protection to take advantage of college athletes and/or deny them the rights and benefits to which they are entitled?

The leaders within college sports recognize that the Association has been slow to move on many issues. Since my arrival to the NCAA eight months ago, I have prioritized reforms to enhance and support student-athlete welfare at every step of the way, and I intend to continue to push this work forward at every level of the Association’s operations. The NCAA supports the opportunities for student-athletes to profit from their name, image and likeness. But increasingly those who disagree with NCAA rules have used the courts to mount challenges. These lawsuits are expensive, take years to resolve and create uncertainty about whether college sports can be governed nationally. In the future, these attacks could also seek to call into question areas like how many years a student-athlete can have eligibility or whether they must be a full-time student at all. To provide an even playing field and experience for college athletes, the NCAA must have the ability to create and enforce national rules surrounding areas like eligibility, recruiting and increased benefits for student-athletes. We understand your concerns and recognize any liability protections could and should likely come with appropriate federal oversight. We welcome the opportunity to work with you and your peers to establish parameters that would allow the NCAA to continue to govern, with

Questions for the Record Responses
November 7, 2023
Page No. 9

some limited safe harbor protections.

5. College athletics in the United States play a unique role in developing the athletes that will go on to compete internationally and in the Olympics.

a. What would be the impact on the U.S. Olympic and Paralympic Committee (USOPC) if many schools eliminate their sports programs that do not generate profits or break even?

College sports serve as an essential pipeline for Team USA. Unlike other countries competing in the Olympic Games, the U.S. does not provide direct financial support to the Olympic movement. As a result, the USOPC is in large part supported by the development of athletes that occurs during their intercollegiate athletics participation. U.S. colleges and universities spend over \$5 billion a year on Olympic sports, and this investment provides opportunities for student-athletes to develop into elite athletes at their school facilities — and not because government officials hand-select them to compete on global stages. For the 2020 Olympic Games in Tokyo, approximately 75% of U.S. Olympic athletes competed in college. If schools were forced to eliminate their athletics programs due to financial constraints such as those that would likely occur under an employment model, the historic tradition and success of the U.S. Olympic teams simply wouldn't be able to continue in the same way.

b. If USOPC development is reliant on college sports that generate significant revenue — namely football and basketball — is this model sustainable? Should the USOPC develop a new model for Olympic development?

It is our understanding that, unlike every other country in the world, the U.S. Olympic Committee and the various sport federations do not receive government funding or support. We are unable to address or speak to the sustainability of this financial model and would recommend discussing adjustments to the Olympic development pipeline with USOPC leadership.

6. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.

a. How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

While the NCAA's current NIL policy provides more flexibility for student-athletes

Questions for the Record Responses
November 7, 2023
Page No. 10

to benefit from their NIL than many state laws, the Association does not have authority to interpret those laws with one uniform framework. The existing patchwork of approximately 30 state NIL laws is incredibly difficult for student-athletes and even administrators on campus to navigate, with each law containing different provisions, requirements and enforcement approaches. Additionally, in the absence of any standard, uniform contract terms, transparency around NIL deals, and robust regulation on agent behavior, it is very challenging for athletes to know whether they are achieving their true market value. We see a real need to enhance safeguards and provide resources for student-athletes to mitigate the risk of bad actors in the NIL market, ensure that contracts and commitments are honored, and guarantee student-athletes are compensated fairly.

b. Have there been any documented instances of enforcement of state laws related to NIL?

We are not aware of any documented cases of states enforcing their NIL laws. The NCAA is concerned the lack of protections may only leave litigation for a student to later challenge contracts that contain patently unfair terms. In addition, most state laws do not appear to delegate a state agency for the enforcement or oversight of compliance with state NIL laws.

7. As Congress considers potential legislation to regulate college sports, please answer the following questions.

- a. In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?
- b. In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?
- c. In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as

Questions for the Record Responses
November 7, 2023
Page No. 11

other athletes? Why or why not?

(Please note, the answers to questions 7a, b and c are combined into the paragraph below).

For NIL, we are fully supportive of student-athletes maximizing their NIL potential, regardless of the sport they compete in. We also believe the current policy that prohibits NIL payments that are disguised as pay-for-play or a recruiting inducement should apply to all student-athletes, regardless of conference, school or sport.

Regarding employment, we strongly believe all college athletes should remain students first. In June, the elected Division I, II and III Student-Athlete Advisory Committees [expressed their support](#) for federal legislation that would grant special status that ensured they were not employees of their institutions. Protections such as these codified in federal law would enable schools to provide additional benefits to student-athletes consistent with Title IX while protecting opportunities across the ecosystem of college sports.

d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?

When crafting NIL legislation, we believe provisions that protect student-athletes — such as agent registration, uniform contract elements, financial literacy training, and giving student-athletes data to help realize their full NIL potential and prevent exploitation — must be part of any proposal. We also believe the governance of college sports is best run by those on-the-ground experts, rather than a politicized and inefficient system maintained by the government. Student-athletes should have a voice at all levels — including at the national level. Under an ideal model, the NCAA can continue to make rules consistent with any law and enforce those that apply to its schools, while the federal government could enforce those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview. Additionally, to ensure future opportunities for all college athletes, regardless of sport or division, we strongly believe any legislation should affirm the current and unique relationship between universities and student-athletes, rather than student-athletes as employees of an institution.

Questions for the Record Responses
November 7, 2023
Page No. 12

The Honorable Senator Grassley

- 1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?**

Federal preemption of state laws is an essential part of any NIL framework. The current patchwork of 30 state laws means that college athletes competing in the same sport, in the same division, and sometimes in the same conference are often playing according to different rules. This system tilts the playing field in a way that is unfair to student-athletes and leaves them vulnerable to deception, exploitation and predatory behavior. We are also increasingly seeing a race to the bottom in which states are passing laws designed only to benefit the colleges and universities in their state. As many as six states have now passed laws that limit or prevent the NCAA from enforcing NIL or other rules in the state. A state-by-state approach is not good for national competition, is not good for intercollegiate athletics and is not good for student-athletes.

- 2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?**
- 3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?**
(Please note the answers to questions 2 and 3 are combined into the paragraph below).

We believe the governance of college sports is best run by on-the-ground stakeholders and experts, rather than a politicized and bureaucratic system maintained by the government. Under an ideal model, the NCAA can continue to create rules consistent with any law and enforce those that apply to its schools, while the federal government enforces those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview. Additionally, to ensure future opportunities for all college athletes, regardless of sport or division, we strongly believe any legislation should affirm the current and unique relationship between universities and student-athletes, rather than student-athletes as employees of an institution.

- 4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?**

We believe any federal proposal should include provisions that give student-athletes data to help realize their full NIL potential and prevent exploitation. Recently, the Division I Council supported NIL-related concepts that are now out for membership

Questions for the Record Responses

November 7, 2023

Page No. 13

feedback. The proposals include a voluntary registration process for NIL service providers, disclosure requirements for key stakeholders, uniform contract elements and required NIL education. The NCAA proposal specifies that student-athletes must disclose to their schools NIL activities valued at greater than \$600 within 30 days of signing an NIL agreement. If the proposal is adopted, the NCAA will make available an aggregated database of disclosed NIL information, recognizing student-athletes' privacy interests.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

We believe any federal proposal should include provisions that protect student-athletes, including standardized contract elements. Recently, the Division I Council supported NIL-related concepts that are now out for membership feedback. The proposals include a provision requiring the NCAA to make available a comprehensive education program focusing on NIL activities. Such education will include best practices on how to evaluate an NIL contract. In addition, service providers registering with the NCAA will be able to commit to using recommended contract elements so that student-athletes can make informed decisions on which service providers to use.

6. Concerns have been raised regarding possible Title IX violations if there is no federal preemption of state NIL laws. Do you agree? If so, what would you propose Congress do to mitigate Title IX concerns?

We have significant concerns about schools ensuring equitable opportunities for men and women in this new era of NIL. While there is no existing database of all NIL transactions, recent reports from some NIL services suggest that only about a third of collectives are creating NIL deals for college athletes who are women, and the deals that do exist compensate women less than men. For these reasons, we support Congress bolstering Title IX provisions to ensure discrimination on the basis of gender or sport is prohibited in the marketing or facilitation of NIL agreements for college athletes.

7. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

I am grateful to many of the leaders on the Senate Judiciary Committee that have put forth legislation that creates a federal standard for NIL and other areas that impact college athletes. Senator Cruz has effectively addressed our priorities in his draft legislation, most notably, ensuring that student-athletes remain students rather than classifying them as employees. Senators Booker and Blumenthal also put forward

Questions for the Record Responses
November 7, 2023
Page No. 14

several thoughtful approaches to protecting student-athletes in their draft, including in Section 4 of their bill, which gives student-athletes the ability to rescind their contracts if they are no longer participating in college sports. We are committed to working with all Members to address their concerns and look forward to working with the committee to develop and advance bipartisan legislation.

Questions for the Record Responses
November 7, 2023
Page No. 15

The Honorable Senator Lee

1. Mr. Baker, at last week's hearing, I asked whether you or anyone else associated with the NCAA has apologized to female NCAA swimmers, including Riley Gaines and Kylee Alons, who were traumatized after being forced to share a locker room with a biological male swimmer. You said that you have not, but that you would get back to me as to whether anyone associated with the NCAA has apologized. Has anyone associated with the NCAA apologized to Ms. Gaines, Ms. Alons, or any similarly situated female athletes for the trauma inflicted upon them by the decisions of the NCAA?

I am not aware of any NCAA staff member responding to these individual student-athletes regarding this topic. The NCAA welcomes the opportunity to meet with student-athletes who have concerns about locker rooms or other aspects of championship events. The NCAA solicits feedback from all participants and takes that information into consideration for future events.

2. I asked questions about your policies regarding biological males competing in women's sports. You stated that the NCAA had updated these policies and promised to provide the updated policies in writing. Please provide these policies in writing.

The NCAA's competition eligibility policy for transgender student-athletes can be found [here](#). The policy was adopted by the NCAA Board of Governors after recommendation by the Committee on Safeguards and Medical Aspects of Sports – a group of athletics administrators, coaches, sports medicine staff, researchers, faculty and student-athletes elected by their peers from all 1,100 member institutions.

3. I also asked whether you put any policies in place to ensure that female athletes are not forced to share locker rooms with biological males against their will; whether these policies required that female athletes be notified in advance if a biological male would be given access to their locker room; and whether, after being notified, alternative arrangements are made available to the athletes. In response, you agreed to send me the NCAA's updated policies in writing. Please provide these policies in writing.

Host institutions must follow local, state and federal law and the NCAA Board of Governors nondiscrimination policy when providing locker room space for championship participants. As developed by the NCAA Board of Governors, the NCAA has a policy to conduct events that protect student-athlete well-being and safeguard

Questions for the Record Responses
November 7, 2023
Page No. 16

the experience of our students, fans and campus communities alike. Event hosts must have an ability to deliver and maintain an environment that is safe, healthy and free of discrimination and respects the dignity of all persons. Host entities are expected to provide several components to support the administration of championships. Locker, changing room and restroom options specific for the sport and separately available to men and women are provided for each championship site. Further, a host entity's local and/or campus regulations require adherence and may impact the administration of championships. Specifically for the Division I Swimming and Diving Championships, single-person, gender-neutral options are also available for the participants. Options available for changing rooms are communicated to attending coaches and expected to be communicated with participating college athletes. All event details for the Division I Swimming and Diving Championships, including locker room details, are outlined for participants in the Participant Manual, which is made available in advance of the championship. The manual is sent directly to the head coaches at the time of selection. This manual was shared in advance of the 2022 championships. For the 2022 championships, all the locker room options available — two large locker rooms and individual, single-use, gender-neutral spaces — were outlined for all participants in that manual. The single-use gender-neutral spaces are labeled "Participant Unisex Locker Room" and "Participant Unisex Restroom" on a map provided by host institution Georgia Tech; gender-neutral spaces for multiperson use were not provided. The map was included in the Participant Manual, and on-site signage labeled all spaces. Further, the map was included in the packet that each team received at check-in. In addition, all participant policies and details are reviewed during the coaches meeting. The host personnel review all locker room options, including the single-use spaces, with the coaches during that time. Head coaches are responsible for sharing the information about locker room access and all championship policies with their athletes. In 2022, the Participant Manual stated the following related to locker rooms at the championships:

Locker Rooms / Changing Stations

The Aquatic Center has locker rooms dedicated to the users of the competition and leisure pools. During the women's championships, both locker rooms will be available for use by the NCAA competitors and female coaches/staff. During the men's week, these locker rooms will only be available to the NCAA competitors and male coaches/staff. Additional restrooms can be found in the deck-level locker room spaces.

In 2022, the Host Operations Manual, which provides direction to the host institution for planning the championship, contained the following directions on locker rooms:

Questions for the Record Responses
November 7, 2023
Page No. 17

Locker Rooms

Participants typically prefer to carry their own gear and supply their own towels. Locker assignments are not necessary, but adequate space for changing should be provided. If possible, both the men's and women's locker rooms should be designated for the appropriate gender of participating student-athletes, and a restroom for opposite gender individuals should be designated.

4. Where does the NCAA derive its authority to define the eligibility category in women's sports as anything other than being a biological female?

Under the NCAA's constitution, all Association-wide decisions such as the transgender student-athlete participation policy are made by the Board of Governors. Association rules, set by the members through a legislative process call for input from subject specific committees. While the NCAA transgender student-athlete participation policy (which governs only eligibility for competition) approved by the Board of Governors is informed by other sport-governing policies, the NCAA membership committees charged with operationalizing the policy make final determinations of its requirements (e.g., testosterone thresholds). Like the competition eligibility policy, guidance on facilities provided to host institutions is informed by local, state, and federal law, industry best practices and, sometimes, policies of other sport governing bodies. Specifically, the NCAA aligns with the 2021 International Olympic Committee framework that states unequivocally the need to address fairness, inclusion and nondiscrimination. In addition, decisions about who appears on team rosters are made by each institution. Finally, Title IX and state law may inform the decisions on the participation opportunities provided by NCAA member schools.

5. NCAA policy allows males identifying as women to participate and compete on women's teams and win titles — how is this consistent with Title IX?

The U.S. Department of Education has recently released new proposed rulemaking for the athletics participation of transgender athletes. Under the proposed regulation, our understanding is that schools would not be permitted to adopt or apply a one-size-fits-all policy that categorically bans transgender students from participating on teams consistent with their gender identity. Under this approach, the NCAA's transgender policy appears to be consistent with the guidance from the federal government, and we have not received an indication from the Office of Civil Rights that conflicts with that understanding. The Association will adjust the policy, as necessary, to help its members conform with future Title IX regulations.

Questions for the Record Responses

November 7, 2023

Page No. 18

6. **How does the NCAA justify disparate impact sex discrimination (a violation of Title IX) in women's sports if biological male athletes are taking titles from female athletes? Has a woman identifying as a man won a national title?**

See answer to question 5 above. We are not aware of a circumstance in which a transgender male student-athlete has won a national title in a men's championship. In Division I, only one out transgender woman has won a national title in an NCAA women's championship.

7. **What NCAA officials have met with female athletes directly impacted by biological males who have competed on collegiate women's teams?**

The NCAA welcomes the opportunity to meet student-athletes who have concerns about any policies.

8. **Has the NCAA assessed the physical, emotional, psychological harm of its transgender inclusion policy on female athletes? If so, what are the findings? If not, why not?**

The NCAA has not conducted any research related to the current transgender policy.

Questions for the Record Responses
November 7, 2023
Page No. 19

The Honorable Senator Tillis

1. What changes has the NCAA made at an organizational level to address NIL concerns?

The NCAA's current NIL policy, adopted in 2021, provides significant flexibility for student-athletes to be compensated for their NIL. Under the policy, student-athletes may be compensated for their NIL as long as it is provided by a third party and is not a proxy for pay-for-play or a recruiting inducement. More specific guidance in the areas of recruiting and institutional involvement was released in [May](#) and [October](#) 2022. These policy adjustments reflected the Association's ability to respond to and make real-time adjustments to a changing landscape. The NCAA Division I Council also [recently introduced](#) proposals that outline voluntary agent and service provider registration, disclosure requirements that will provide transparency for NIL activities and a national education program that will include modules such as best practices around contract review. These proposals are slated to be voted on at the 2024 NCAA Convention in January. While the Association is making every effort to address NIL through its own internal reform process, it does not have jurisdiction over state law and requires the assistance of Congress to establish a national, uniform NIL framework that creates a level playing field for all college athletes.

2. What do you believe are the top three hurdles that the NCAA currently faces? What if any involvement should Congress have in resolving these challenges?

The three biggest threats facing student-athletes and college sports are 1) the increasing approach taken by states to pass laws that are in conflict with a national system of governance and are often designed to provide a competitive advantage only to the schools in their state, 2) the legal and federal actions that seek to change current Department of Labor guidance and reclassify student-athletes as employees of their institutions, and 3) ongoing, repetitive lawsuits that restrict the Association's ability to make national rules and have a chilling effect on adopting policies that allow for additional student-athlete benefits. Congress is best equipped to address these challenges and should pass legislation that 1) preempts the patchwork of state laws impacting colleges sports, including NIL, to create consistent policies nationwide, 2) codifies current regulatory guidance into law by granting student-athletes special status that would affirm they are not employees of an institution and allow them to receive enhanced benefits while protecting all athletics programs from one-size-fits-all actions in the courts, and 3) grants limited and conditional liability protection to conferences

Questions for the Record Responses
November 7, 2023
Page No. 20

and intercollegiate associations so they can set reasonable competition standards and enforce other provisions of a bill passed by Congress.

- 3. As you are probably aware, multiple bills have been introduced this Congress that touch on NIL. Do you believe that the path forward in Congress is a tailored bill or a broader bill that goes beyond just NIL?**

We are grateful for the efforts put forward this Congress to address the issues of NIL through federal legislation. We believe a path forward must include priorities that address student-athlete welfare, advance NIL protections, secure opportunities for all athletes as students, bolster Title IX provisions and grant the NCAA limited protections to continue to govern the Association in a reasonable manner. Senator Cruz has effectively addressed these priorities in his draft legislation. Senators Booker and Blumenthal also put forward several thoughtful approaches to protecting student-athletes in their draft, including in Section 4 of their bill, which gives student-athletes the ability to rescind their contracts if they are no longer participating in college sports. We are committed to working with all Members to address their concerns and look forward to working with the committee to develop and advance bipartisan legislation.

- 4. What role does the NCAA play in conference realignment? Is there a situation in which the NCAA will have to play an increased role if the process goes poorly?**

While the 1984 U.S. Supreme Court Board of Regents antitrust case limited the NCAA's role in the area of conference realignment, the Association is committed to prioritizing the academic success of college athletes and ensuring they are students first. All Division I schools must adhere to rules that regulate the demands on student-athletes' time and ensure student-athletes meet progress-toward-degree requirements, fulfill minimum academic credits per semester and complete minimum GPA requirements. All Division I schools are also required to give student-athletes at least one day off per week during their playing season, and for Division I schools with autonomy, travel cannot occur on a student-athlete's required day off. With a small percentage of NCAA college athletes continuing on to play professionally, we understand our role in preparing students for life after college, and we celebrate that student-athletes graduate at higher rates on average than their nonathlete peers. Like many others, I am concerned about the impact realignment activities could have on student-athletes. While we have rules in place to protect the academic and personal welfare of college athletes, transcontinental realignment can be highly disruptive for schools and student-athletes. As I move forward in my tenure, I will work together with our university and college presidents, commissioners, and college athletes to explore solutions to address

Questions for the Record Responses
November 7, 2023
Page No. 21

these growing concerns.

- 5. In my home state, there are 27 college and universities who compete in Division II and III athletics. How is the NCAA ensuring that smaller institutions are also being involved in the NIL discussions?**

In my first 150 days in office, I made it a priority to speak with student-athletes and administrators from all 97 conferences across all three divisions. It was critical that I heard their perspectives on an array of issues, including NIL. Division II and III have separate governance structures, which include presidents, commissioners, athletics directors and student-athletes at Division II and III colleges and universities. When speaking with student-athletes and administrators at Division II and Division III campuses, however, I am struck by their overwhelming and more immediate concern about an employment model being forced upon their institutions and conferences. Some institutions report an anticipated financial impact of four times their current costs, the possibility of cutting sports, and damage to institutions that rely on college sports for enrollment.

- 6. What is the number of international NCAA student-athletes that are unable to profit off of their NIL due to visa restrictions?**
7. Do you have a total number of international student-athletes that compete at North Carolina colleges and universities?

(Please note the answers to questions 6 and 7 are combined into the paragraph below).

There are nearly 25,000 [international student-athletes](#) who compete across all three NCAA divisions, and approximately 1,700 of them compete at institutions in North Carolina. Current visa requirements restrict the ability of many if not all of these athletes to benefit from their NIL. Due to these same visa restrictions, immigration experts believe that without congressional intervention the opportunity for international student-athletes to compete in college sports at all would likely be [eliminated](#) under an employment model.

- 8. How are the 200 or so NIL collectives across the country affecting NCAA sports?**
 NIL collectives are operating in a space that is unregulated, often unrestricted, and without transparency — with different state laws impacting each collective differently. It is widely believed that collectives are operating as a third-party arm of an athletics department, as a way to direct compensation to their student-athletes. Yet, without regulation, deal transparency and the guarantee of contract honoring, collectives are

Questions for the Record Responses
November 7, 2023
Page No. 22

adding to the already complicated terrain of NIL. Further, many collectives appear to be operating in a manner inconsistent with Title IX and principles of gender equity.

Questions for the Record Responses
November 7, 2023
Page No. 23

The Honorable Senator Whitehouse

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.
 - a. Who should be responsible for ensuring that student-athletes are protected from exploitation?
 - b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?
(Please note the answers to questions 1a and b are combined into the paragraph below).

The NCAA is in the process of [adopting policies](#) that protect student-athletes, including proposals related to agent and service provider registration, standardized contract terms, and disclosure requirements to provide transparency for NIL activities. Additionally, beginning August 2024, education related to NIL and financial literacy will be required of all Division I institutions. However, without federal preemption of the patchwork of 30 state laws, the NCAA cannot effectively regulate NIL and provide a level playing field to student-athletes, so it will be important to see these protections also enshrined into federal law. We are also not aware of any documented cases of states enforcing their NIL laws, so federal preemption also allows for appropriate enforcement.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.
 - a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?
 - b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?
 - c. How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?
(Please note the answers to questions 2a, b and c are combined into the paragraph below).

Questions for the Record Responses

November 7, 2023

Page No. 24

We believe college athletes across sports, teams and genders should have the same opportunity to access and benefit from NIL contracts. Currently, there is no uniform system that tracks student-athlete NIL across sport or gender. While the NCAA Division I Council has [introduced proposals](#) that require disclosure of NIL agreements, we recognize the limitations of an association like our own, especially when facing state NIL legislation that does not have uniform requirements. Recent reports from NIL services providers also indicate that only about a third of collectives using their services are providing equitable opportunities for women and the deals that do exist compensate women less than men. To address this, we support Congress bolstering Title IX provisions to ensure discrimination on the basis of gender or sport is prohibited in the marketing or facilitation of NIL agreements for college athletes.

3. **It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.**
- a. **Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?**
- b. **If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?**

(Please note the answers to questions 3a and b are combined into the paragraph below).

We agree that the health and safety of college athletes should be of the utmost priority for the Association and its member colleges and universities. Sports come with some inherent and understood risk, and our schools provide expert health care throughout and at least two years after a student-athlete's collegiate experience. The Association also has two primary programs designed to financially support the health care costs of student-athletes. The newly created [NCAA Post-Eligibility Injury Insurance Program](#) funds athletic health care costs for all student-athletes for up to two years after they graduate or leave an institution. The [NCAA Catastrophic Injury Insurance Program](#) provides health care coverage for any student-athlete who is catastrophically injured while participating in intercollegiate athletics activity. The policy has a \$90,000 deductible and provides benefits in excess of any other valid and collectible insurance.

Questions for the Record Responses
November 7, 2023
Page No. 25

We support college athletes getting the medical care and coverage they need for as long as they need it. Because most sport activity begins in early adolescence and continues through the duration of a college athlete's lifetime, we are open to discuss how some of the models proposed could be realistically implemented. Given the lifetime and diversity of athletic and life experiences that contribute to injuries and the requirements insurance programs have for clear and evidence-backed claims, we welcome the opportunity to work with you to address these concerns and any current gaps in health care funding.

Questions for the Record Responses
November 7, 2023
Page No. 26

Note: The information below was not a formal part of the QFR process. The question was requested during the hearing and was pulled directly from the hearing transcript.

Honorable Senator Padilla

1. **To ensure the success of Team USA in these games, we must address any remaining barriers to participation by our student-athletes. Governor Baker, you mentioned in your testimony that collegiate sports programs have been a significant pipeline for Team USA. Are there any remaining barriers for student-athletes who are also Olympic athletes? And whether it's accessing stipends from Olympic training programs, or endorsing products during the games? How would some of the rules that are entertained at state by state here federally going to impact that conversation?**

NCAA rules allow for student-athletes to compete as Olympic athletes, and for domestic and international student-athletes to receive Olympic stipends (e.g., Operation Gold training stipends, training expenses) without jeopardizing their eligibility. Division I rules allow an individual (prospective student-athlete or enrolled student-athlete) to accept funds administered by the U.S. Olympic and Paralympic Committee. An international prospective student-athlete or international student-athlete may accept funds from a country's national Olympic and/or Paralympic governing body (equivalent to the USOPC) based on place finish in one event per year that is designated as the highest level of international competition for the year by the governing body. For expenses approved and provided directly by the USOPC, the appropriate national governing body in the sport (or, for international student-athletes, the equivalent organization of that nation) or a governmental entity, an individual (prospective or enrolled student-athlete) may receive actual and necessary expenses to cover developmental training, coaching, facility usage, equipment, apparel, supplies, comprehensive health insurance, travel, housing and food.

HEARING BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

October 17, 2023

Written Testimony of Jill Bodensteiner, JD, MBA
Vice President and Director of Athletics, Saint Joseph's University

Chairman Durbin, Ranking Member Graham and distinguished members of the Senate Committee on the Judiciary, thank you for the opportunity to testify at today's important hearing. I am Jill Bodensteiner, Vice President and Director of Athletics at Saint Joseph's University in Philadelphia. Prior to my current position, I was a senior administrator in Notre Dame Athletics for nine years; prior to that role, I practiced labor and employment law for fifteen years. I also had the honor of serving as a judicial clerk for The Honorable Catherine Perry in the U.S. District Court for the Eastern District of Missouri.

I am incredibly appreciative of the invitation to testify at this important hearing because I fear that the voice of institutions like Saint Joseph's – which make up the majority of Division I – has been somewhat lost in the current narrative surrounding college athletics. Colleges and universities differ significantly in a variety of ways, including the opportunities offered to student-athletes and the benefits realized by institutions from athletics.

Saint Joseph's is a vibrant institution undergoing a strategic evolution, including two mergers that have increased its academic programs substantially. Saint Joseph's is one of 27 Jesuit colleges and universities in the United States, with an undergraduate enrollment of just under 5,000 students.

This fall, Saint Joseph's has 478 student-athletes, which equates to approximately 10% of our student body. Saint Joseph's is a proud member of the Atlantic 10 conference. We offer 20 intercollegiate sports as part of our broad-based athletics program, anchored by our men's and women's basketball programs. We do not offer football. We have an incredible athletic department culture based on relationships, community and student-athlete development. And make no mistake about it – we are passionate about competing and winning at the highest level. Our student-athletes follow the lead of our iconic Hawk mascot, who never stops flapping, and every day they live up to our "The Hawk Will Never Die" mantra. We routinely compete against Power 5 and Big East institutions in several sports, and we have prevailed over many of those schools in my five years on Hawk Hill, including Connecticut, Villanova, Vanderbilt, Penn State, Wake Forest, and North Carolina.

College athletics faces a crossroads, and issues related to the transfer portal, Name, Image and Likeness (or NIL), and collectives, employment status, antitrust issues and much more are rightly dominating the news. Meanwhile, here is what happens back on Hawk Hill. Our student-athletes go to class, select majors that they are passionate about, and outperform our non-student-athletes in GPA, graduation rates, retention, and more. We conduct an annual student-athlete survey and one of the questions we ask is whether they can select their desired major and play Division I athletics. Not a single student-athlete has answered "no" in my 5 years at Saint Joseph's. Last week, I met with our soon-to-be Dean of Nursing to get a jump on how we can accommodate student-athletes in our new nursing program – even with the 780 required clinical hours.

Our student-athletes are more diverse than our non-student-athletes in terms of race, ethnicity, and geography. This semester, 51 of our 478 student-athletes are international. Because most of them came to my house for our annual international dinner this week, I can attest to how much they add to our campus by sharing their rich cultures and their sense of adventure. We promise and deliver transformative experiences to our student-athletes through our *Beyond the Hill* program – which includes development in the areas of academic success, diversity, equity and inclusion, career, leadership, community service and spirituality.

Most of the current issues facing college athletics involve money; in that regard, our athletic department looks quite different from any Power 5 institution. While Power 5's annual budgets all exceed \$100 million and some are closer to \$250 million, our annual expense budget – which includes student-athlete financial aid, salary and benefits, and operating expenses – is just over \$20 million dollars. The largest of those expenses is student financial aid by a wide margin. We are not an administratively top-heavy department; in fact, I have eliminated multiple administrative positions in favor of adding certified athletic trainers, strength and conditioning coaches, sports psychologists, and a nutritionist to support the well-being of our student-athletes. Outside of team travel, our largest single operating expense is student-athlete insurance premiums and medical expenses. Our revenue, while growing, does not match our expenses. In fact, the University subsidizes the department of athletics to the tune of 80% per year.

Why does the institution make this investment? For many reasons, but most importantly, the incredible value that athletics provides to our student-athletes. Athletics complements the education our student-athletes receive in the classroom and helps prepare them to be leaders. Of course, the university also enjoys benefits from sponsoring Division I athletics – benefits that include community, enrollment, and national exposure. In fact, it was 20 years ago this year that Coach Martelli, Jameer Nelson and others led the Hawks to an undefeated regular season, a Sports Illustrated cover, and a trip to the NCAA tournament Elite Eight.

With that background in mind, how do we at Saint Joseph's feel about the issues facing college athletics today?

Saint Joseph's student-athletes are adamant that they do not want to be employees of the University. They do not want to apply for posted positions. They do not want to go through the state workers' compensation system for their injuries. They do not want to punch a timeclock, and stress about what is considered compensable time under the Fair Labor Standards Act. If student-athletes are deemed employees, Saint Joseph's would likely transition the current athletic financial aid to pay student-athlete wages; it is an "either/or," not an "and." Our student-athletes do not want to receive a W-2 and pay taxes instead of receiving financial aid, most of which is a qualified educational benefit that is not subject to income tax. Our international student-athletes want to compete, and that likely would not happen due to the work limitations on their F-1 student visa status.

Furthermore, as a former labor attorney, I cannot imagine how student-athlete unionization would end up anything other than a patchwork of a handful of bargaining units around the country trying to compete in sports amidst extraordinarily different terms and conditions of employment. If student-athletes were deemed "employees" – that does not mean all or even many of them would unionize. In addition to the

varying state laws governing public employees applicable to our member institutions, some student-athletes simply would not want to unionize.

Employee status for all student-athletes in college athletics is not the answer. Athletics at Saint Joseph's is thriving and is consistently providing incredible benefits for its student-athletes. There is no need for a "one size fits all" solution that would treat them the same as Power 5 football student-athletes. Institutions like Saint Joseph's offer significant athletics financial aid and an incredible academic and athletic experience for student-athletes, and hope that we can continue to do so. For the reasons set forth above, I am passionate about the granting of special status to student-athletes that would confirm they are not employees of their respective institutions.

With respect to Name, Image and Likeness, I am and always have been supportive of the student-athletes' right to get paid in exchange for the use of their NIL, and remain so today. That is the case for the vast majority of my colleagues around the country. The legitimate endorsement, sponsorship, and personal appearance deals that have emerged since 2021 are incredible and well-deserved for so many student-athletes around the country – especially for women who have far fewer opportunities than men in professional sports, and therefore whose NIL value peaks during their college years.

Unfortunately, the current NIL situation is untenable for three reasons:

1. NIL collectives, which are typically independent organizations formed by alumni and other supporters, are engaged in bidding wars for the attendance and retention of student-athletes. Imagine if the alumni of an institution of higher education offered \$500,000 per year for four years to secure the attendance of a non-student-athlete at the institution. Such conduct would surely violate public policy if not the Higher Education Act's financial aid rules.
2. Under current rules, Title IX does not apply to NIL collectives. The result is that male student-athletes are receiving a disproportionate amount of collective dollars, while female student-athletes are largely earning their NIL money through endorsements and hard work.
3. The patchwork of conflicting state laws governing what is and is not permissible in the NIL space are confusing to everyone, especially the student-athletes, and they create a profoundly unequal playing field for colleges and universities.

Under the leadership of NCAA President Charlie Baker, the association is working tirelessly to solve many of the issues in college sports today, including those related to NIL. My hope is that Congress, the NCAA, and the membership institutions can work together to improve certain aspects of college sports while maintaining the core of a system that is working extremely well for thousands of student-athletes, including those at Saint Joseph's. On behalf of my non-Power 5 colleagues in the Atlantic 10 and throughout Division I, I want to offer my heartfelt appreciation to the members of this Committee and other members of Congress for your interest in the future of college athletics, and for understanding the importance of our viewpoint.



November 7, 2023

Sent Via Email

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Honorable Members of the Senate Judiciary Committee,

I would like to offer my sincere gratitude for your ongoing engagement in the issues facing college athletics, and for inviting me to testify at the recent hearing. I am extremely appreciative of the opportunity to offer the perspective shared by many non-football institutions like Saint Joseph's University. In light of the existing legal environment, I truly believe that we need assistance from Congress so that we can continue to make improvements to college athletics while preserving many aspects that make college athletics so special. I am encouraged by the engagement of and thoughtful questions posed by the Senate Judiciary Committee members – during the hearing and in the following Questions for the Record.

Before responding to the Questions for the Record, I would like to offer a general comment regarding the future of college athletics. The NCAA and its member institutions have made many positive changes for student-athletes in the past few years, and we must continue to evaluate additional changes. However, many colleagues and I have a growing concern that we are drifting farther than ever from our educational mission in contemplating these changes. As long as we continue to seek Congressional assistance, I hope that you will continue to ask important questions about the role of education in college athletics.

Thank you again for your engagement, and I look forward to continued participation in this important conversation.

Sincerely,

A handwritten signature in black ink that reads "Jill Bodensteiner".

Jill Bodensteiner, JD, MBA
Vice President and Director of Athletics



Bodensteiner Response to Questions for the Record

The Honorable Senator Durbin

1. You have experience working at both Notre Dame—where football dominates the athletic scene—and Saint Joseph’s, a smaller Division I, non-football school. You also previously specialized in employment litigation as an associate at a law firm in Chicago. The case *Johnson v. NCAA* in the U.S. Court of Appeals for the Third Circuit is examining whether college athletes should be classified as employees. Relatedly, there is a proposal in the California state legislature that would require revenue sharing with some college athletes.

a. How would classifying college athletes as employees impact universities like St. Joseph’s? How, if at all, would the impact differ at a university like Notre Dame?

If college student-athletes are classified as employees, institutions like Saint Joseph’s would have to make difficult decisions regarding whether to continue to support varsity athletics and at what level. If we elected to continue to sponsor some or all of our 20 sports, we would have to make significant changes. For starters, we would likely reduce or eliminate all athletics financial aid (approximately \$9 million) and instead use that money toward student-athlete wages. To stay competitive at the national level in basketball, we might have to spend a significant portion of that money on basketball student-athletes. As we have seen with the widespread payment of NIL unrelated to legitimate active or passive use of student-athlete NIL (i.e., impermissible recruiting and retention inducements from collectives), the open market would surge immediately. Notably, some Division I men’s basketball programs – through collectives – are currently spending \$3 million or more annually on men’s basketball alone. Presumably, there would be no national collective bargaining agreement or antitrust exemption to serve as a governor on basketball compensation. Furthermore, unlike money from collectives, Title IX would apply to employment compensation and would (appropriately) lead to similar wages for men’s and women’s basketball student-athletes. Spending \$9 million on basketball student-athlete wages is untethered to the amount of revenue produced and entirely inconsistent with the educational mission of institutions like Saint Joseph’s.

If we elected to continue to offer Division I sports, and we could support funding for reasonable wages, the administrative considerations would be overwhelming. For example, neither our existing Human Resources nor Student Employment personnel could manage the applications, onboarding, compensation analysis, employee relations, payroll, and other functions associated with 500 student-athletes; as such, we would likely have to reduce the number of student-athletes.

I hesitate to speculate on how the classification of student-athletes as employees would impact the University of Notre Dame but will note the obvious fact that Title IX would add a significant challenge to the equation for schools that sponsor football.



b. How would forcing universities to share a portion of their revenues with college athletes impact universities like St. Joseph's? How, if at all, would the impact differ at a university like Notre Dame?

At Saint Joseph's, we want to remain competitive nationally in several of our sponsored sports; currently, we routinely (and oftentimes successfully) compete against institutions with much larger total budgets. Under the few proposals for revenue share that we have seen to date, Saint Joseph's would be exempt by virtue of its annual revenue. Although this would seem to be a positive on its face, it would be difficult to maintain an equitable competitive environment with some institutions offering revenue share and others not.

Notre Dame likely would not be exempt from any revenue share requirements and therefore would be in a much different position. In my opinion, the most challenging aspect of revenue share at this level would be deciding how to distribute the revenue to student-athletes in compliance with Title IX in light of the source of most current media revenue.

2. College sports are not a monolith. Within the NCAA, member universities are divided into Divisions I, II, and III. Further, Division I football is broken into the Football Bowl and Football Championship Subdivisions. In many respects, college sports operations at institutions like the Universities of Texas, Alabama, and Michigan look very different than college sports operations at St. Joseph's, or universities in Divisions II and III.

a. Given the differences that exist between NCAA divisions and even within NCAA divisions, does a "one-size-fits-all" approach to addressing issues like NIL make sense?

I believe that a one-size-fits-all approach to NIL is appropriate. The legitimate use of NIL is such that the market should determine who earns the most opportunities regardless of the sport played or institution attended. Likewise, all student-athletes should be entitled to the same level of protection in the NIL market.

b. What are some possible solutions that could account for differences across schools and sports?

I do not believe there should be any difference in NIL solutions across schools or sports. In addition to the opportunities for legitimate NIL activity referenced above, no student-athletes – regardless of sport played or institution attended – should be paid through alleged NIL simply to attend or remain at an institution.

c. Given your background in employment litigation, can you explain how schools or conferences might operationalize a revenue-sharing model for select sports?

I believe that key elements of any proposal for revenue share would have to include an evaluation of the sources of revenue; Title IX considerations; the importance of



maintaining a competitive environment in college athletics; clarity on whether revenue share renders student-athletes “employees”; the possibility of unlimited amounts of revenue being shared; and recognition that the primary mission of institutions of higher education is to educate students.

- 3. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.**

How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

It is difficult for me to keep up with and understand the various state laws, so I am confident that current and prospective student-athletes are confused. I also have reason to believe that – due to such confusion and extremely limited enforcement of state laws – many individuals involved in NIL activity feel no responsibility to understand or abide by state laws.

- 4. As Congress considers potential legislation to regulate college sports, please answer the following questions.**

- a. **In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not? See below for a combined answer to (a) - (d).**
- b. **In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences’ football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not? See below for a combined answer to (a) - (d).**
- c. **In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men’s college basketball tournament. The extension was for \$8.8 billion over eight years. Should men’s basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not? See below for a combined answer to (a) - (d).**
- d. **What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?**

I recognize that additional student-athlete benefits must be considered and that there is a case to be made that student-athletes in certain sports deserve additional benefits beyond those in other sports. However, I remain steadfast in my beliefs that (i) NIL rules should be market-driven and consistent regardless of sport or institution and (ii) student-athletes should not be considered employees of their institution.



The Honorable Senator Grassley

- 1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?**

Yes, I believe that federal preemption of state laws is an essential aspect of any NIL solution. In a competitive environment that includes institutions of higher education in all 50 states, I do not see any role for state NIL laws. In addition, states with agent and NIL laws on the books have demonstrated little to no interest in enforcing such laws. Uneven adoption and enforcement of state laws – whether due to resources, the interest of states in seeing their own institutions succeed in athletics, or other factors – has and will continue to create confusion and hinder the competitive environment.

- 2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?**

As with other aspects of college athletics, I believe the best NIL solution includes a role for Congress, one or more federal agencies, and the NCAA. An example of the foregoing joint approach to governance is Title IX – a law passed by Congress, with implementing regulations and enforcement by the Department of Education's Office for Civil Rights, and regarding which the NCAA has imposed additional obligations on member institutions. Working alone, the NCAA is incapable of solving the issues that exist in the current NIL environment for legal and practical reasons. Furthermore, the existing NIL climate is already creating issues that have or should (arguably) result in government guidance or enforcement in the following areas: tax, student visa status, FTC advertising regulations, financial aid rules, and gender equity, to name a few.

- 3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?**

I believe that enforcement of any federal NIL law should be a joint effort. The NCAA, conferences, and member institutions should oversee and enforce the day-to-day requirements of the law. The federal government should be involved in at least two ways: (1) enforcement of the federal NIL law as it applies to individuals or entities over whom the NCAA has no jurisdiction and (2) monitoring whether individuals and entities involved in college NIL are in compliance with existing federal laws and regulations, including those promulgated by the IRS, FTC, Department of Education (including the OCR), and DHS, among others.



4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?

Transparency in the NIL environment is important for several reasons, including compliance with existing federal and state laws and NCAA regulations, and the opportunity to contradict the misinformation that is currently flowing to the detriment of both student-athletes and institutions. For privacy reasons, aggregate reporting is warranted rather than individually identifiable reporting. In addition, I am aware that many state laws currently require disclosure; despite those existing laws, many student-athletes are not disclosing their deals to their respective institutions. As such, any proposed transparency requirements should include incentives for reporting and/or consequences for non-reporting. Notably, the NCAA membership is now considering several changes to NCAA NIL regulations, including student-athlete disclosure of NIL activity with a value over \$600.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

I believe that any federal NIL law should include provisions that protect student-athletes. Notably, the NCAA membership is now considering several changes to NIL regulations related to student-athlete protection, including an NCAA-produced, comprehensive education program; standardized contract terms; voluntary registration for NIL service providers; and disclosure and transparency.

6. Concerns have been raised regarding possible Title IX violations if there is no federal preemption of state NIL laws. Do you agree? If so, what would you propose Congress do to mitigate Title IX concerns?

Although reliable data regarding the current NIL market is limited, there appears to be a stark difference between legitimate NIL activity and NIL payments made by collectives (many of which are not legitimate NIL transactions, but rather payments made by donors and friends of the university intended to recruit or retain one or more student-athletes). Although women are faring extremely well in the legitimate NIL activity market for several reasons, NIL payments made by collectives are predominantly intended to benefit male student-athletes. If collectives continue to exist in their current form, I believe that the OCR should consider treating collectives as a "program or activity" of the institution that they support, thereby subjecting them to the requirements of Title IX.

7. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

Many of the leaders on the Senate Judiciary Committee have suggested thoughtful legislation addressing various aspects of college athletics. In my opinion, Senator Cruz has addressed many of the current issues in college athletics effectively. Senators Booker



and Blumenthal also put forward several thoughtful provisions designed to protect student-athletes, including a provision that gives student-athletes the ability to rescind their contracts upon completion of their participation in college sports.

The Honorable Senator Whitehouse

1. **Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.**
 - a. **Who should be responsible for ensuring that student-athletes are protected from exploitation? See below for a combined answer to (a) - (b).**
 - b. **What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?**

Student-athletes are permitted to retain any number of service providers (e.g., legal counsel, tax experts, marketing representatives, agents) to assist them with NIL activity, and many are doing so. I do NOT believe that institutions of higher education should provide tax, legal, marketing, or agent services to student-athletes. In fact, I believe that providing free professional services to a commercial enterprise would jeopardize the tax-exempt status of non-profit institutions of higher education for the same reasons articulated in the IRS Office of the Chief Counsel's general legal advice memorandum dated June 9, 2023 (related to NIL collectives).

Notably, the NCAA membership is considering several changes to NCAA NIL regulations related to student-athlete protection, including an NCAA-produced, comprehensive education program; standardized contract terms; voluntary registration for NIL service providers; and disclosure and transparency. Any federal NIL law should reinforce these elements of an NIL program designed to protect student-athletes.

I believe that enforcement of a federal NIL law should be a joint effort. The NCAA, conferences, and member institutions should oversee and enforce the day-to-day requirements of the law. The federal government should consider involvement in two ways: (1) enforce the federal NIL law as it applies to individuals or entities over whom the NCAA has no jurisdiction, including agents, representatives, and service providers, and (2) help ensure that individuals and entities involved in college NIL are in compliance with existing federal laws and regulations, including those promulgated by the IRS, FTC, Department of Education (including the OCR), and DHS, among others. Finally, I do not believe that state laws would be effective in protecting student-athletes. Many states currently have agent and NIL laws on the books and have demonstrated no interest in enforcing such laws. Uneven enforcement of state law – whether due to resources, the interest of states in seeing their



institutions succeed in athletics, or other factors – has and would continue to cause confusion to student-athletes and hinder the competitive environment.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.

- a. **To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?** *See below for a combined answer to (a) - (c).*
- b. **To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?** *See below for a combined answer to (a) - (c).*
- c. **How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?**

In an ideal world, all NIL activity for college student-athletes should be related to legitimate passive (e.g., jerseys, trading cards, video games) or active (e.g., autographs, endorsement of a product or service) use of a student-athlete's name, image or likeness. As such, the open market should dictate which student-athletes generate more revenue through NIL. Unfortunately, a large part of the current NIL activity market consists of direct payments – especially those from collectives to student-athletes – that have no relation whatsoever to legitimate passive or active use of a student-athlete's name, image or likeness and instead are purely offered as recruiting and retention inducements. Although there is current disagreement as to whether institutions should pay student-athletes directly through revenue share, employment, or in another manner, I do not believe that direct payments from donors (or, for that matter, from institutions) to student-athletes disguised as NIL activity is the answer.

Institutions should comply with existing Title IX regulations. Namely, under current NIL regulations, any resources or other support provided by institutions that are designed to promote student-athletes or assist them in entering into legitimate NIL activity must be provided in an equitable manner consistent with Title IX regulations.

3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.

- a. **Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?** *See below for a combined answer to (a) - (b).*
- b. **If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?**



The health and safety of our student-athletes is the most important aspect of what we do in college athletics. At Saint Joseph's, like many Division I institutions, we are extremely proud of our integrated well-being model that includes:

- incredible partnerships with local physicians and other medical providers;
- considerable investment in institutional personnel whose primary role is to support our student-athletes' well being;
- comprehensive training on matters of health and safety;
- a culture that reinforces the "unchallengeable authority" of physicians and certified athletic trainers when it comes to decisions that impact the health and safety of student-athletes;
- and a robust insurance plan.

The insurance offered by NCAA member institutions and the NCAA (through its catastrophic insurance plan) is comprehensive and provides significant protection for our student-athletes. That being said, there are limitations to any insurance plan and, for that reason, I support the evaluation of a medical fund. There are many operational issues to evaluate with respect to such a fund, including funding, eligibility criteria and determination (causation would be the most challenging aspect of administering such a fund), and claims administration. I do not believe the NCAA or its member institutions should be responsible for the determination of eligibility or claims administration.



PO Box 6917
Norco, CA 92860

951-898-0985
info@ncpanow.org
www.ncpanow.org

**US Senate Judiciary Committee Hearing
"Name, Image, and Likeness and the Future of College Sports"**

Ramogi Huma Written Testimony

October 17, 2023

Dear Chairman Durbin, Ranking Member Graham, and members of the Judiciary Committee,

Thank you very much for inviting me to participate in the "Name, Image, and Likeness and the Future of College Sports" hearing on Tuesday, October 17, 2023. This discussion encompasses important freedoms and protections college athletes should be afforded. The National College Players Association (NCPA) served as a co-sponsor of California SB 206 known as The Fair Pay to Play Act, and served as the primary advocate for NIL laws in a dozen other states.

Please accept this summary and full written testimony as my written testimony.

Summary

Congress should not ignore sexual and physical abuse, deadly negligence, poor graduation rates, and other serious issues that harm college athletes while passing NIL-only legislation. Instead, the NCPA encourages Congress to adopt broad based reform that includes the enforcement of health and safety standards, ensure athletes' sports-related medical expenses are covered, ending the NCAA's discrimination against female college athletes, and other key provisions for college athletes.

Full Written Testimony

NCAA sports has sentenced generations of college athletes, many of whom are Black athletes from underprivileged households, into second class citizenship. Separate is not equal in education and college athletes should have equal rights and freedoms

afforded to other students and Americans. NCAA sports is asking Congress to eliminate college athletes' protection under both antitrust and labor law in return for tinkering with just a sliver of the racially discriminatory economic exploitation inflicted upon college athletes.

College athlete name, image, and likeness (NIL) pay is the smoke that hovers above the raging fire of injustices at the core of NCAA sports. College athletes' economic, academic, and physical well-being continue to be consumed by an insatiable greed and a mentality that treats players as property rather than people.

Broad Based Reform

It would be unjust for Congress to turn a blind eye on critical aspects of college athlete well-being and economic equity that are much more important than narrow NIL compensation.

The NCAA says it has no duty to protect college athletes and refuses to enforce health and safety standards despite negligent deaths during workouts, sexual assaults against hundreds of college athletes, and athletic trainer surveys finding rampant mistreatment of concussions and other serious injuries nationwide. The NCAA says it has no duty to ensure a quality education for college athletes while football and basketball players' federal graduation rates hover around 50% and many college athletes are pushed into classes and majors that they do not want to take for athletic eligibility purposes.

Economic equity for college athletes is inextricably tied to not only college athlete NIL freedoms, but it is tied to their freedom from medical expenses, freedom from preventable sports-related injury and abuse, freedom from serious obstacles that impede degree completion, and freedom from illegal, cartel activity that stifles their economic opportunities.

Instead, the NCPA is asking Congress to pursue broad-based reform that is critical to college athletes' well-being. I ask for a continued dialogue with each of your offices so that we can work together to bring forth a fair and just arrangement for college athletes.

Oppose Antitrust Exemption for NCAA Sports

The NCPA is asking Congress to decline NCAA sports' request for an antitrust exemption.

The NCAA is a chronic antitrust violator whose immoral, illegal price fixing schemes have harmed generations of college athletes. The US Supreme Court made very clear in its 9-0 decision in favor of plaintiffs in the *Alston v. NCAA* antitrust lawsuit that the NCAA is subject to federal antitrust laws and deserve no special treatment. The NCPA agrees.

Each antitrust action against the NCAA has resulted in benefits for countless college athletes. The NCPA has assisted antitrust lawsuits and investigations that have led to important advancements for college athletes such as the elimination of an NCAA prohibition on medical coverage during summer workouts (*White v. NCAA* antitrust lawsuit settlement), removing the NCAA's 1-year scholarship limit (US DOJ Antitrust Investigation), eliminating the NCAA's ban on player stipends to cover basic necessities (*O'Bannon v. NCAA* NIL antitrust ruling), and, thanks to the US Supreme Court's ruling in *Alston v. NCAA*, the option for colleges to pay athletes educational-related compensation including up to \$6000 per year in academic achievement awards. If the NCAA already had an antitrust exemption, these gains would never have been made and the states would have never had the ability to adopt NIL laws at the core of this hearing.

The very narrow areas where restraint of trade are justified such as prohibiting NIL deals to be used as inducements for prospective college athletes should be enacted directly by Congress. Congress does not need to give the NCAA an antitrust exemption to accomplish these things.

Do Not Ban NIL Pay from Collectives, Ignore the Competitive Equity Myth

NIL arrangements with collectives and boosters should not be banned in the name of competitive equity because competitive equity does not exist in college sports. These same sources already give athletic programs money that is used to recruit the best recruits, win the most games, and generate the biggest TV deals that allow rich athletic programs to continue their dominance. In their most recent report to the Department of Education, Ohio State University reported \$247 million dollars in athletic revenue while Ohio University reported only \$28 million in athletic revenue. They are both in the FBS Division. How can anyone suggest that these two colleges compete on an equal playing field? How can colleges, conferences, and the NCAA justify denying college athletes economic freedoms in the name of competitive equity when this severe disparity among colleges exists and is held up as the system that should be preserved? Colleges, conferences, and the NCAA have not moved to address these inequities – they haven't banned booster payments to colleges and they don't share athletics revenue equally among colleges in the name of competitive equity. In addition, other leagues do not ban 3rd party NIL deals with fan clubs and those leagues operate very well.

Federal legislation should not sacrifice college athletes' freedoms so that NCAA sports can pretend that competitive equity exists. Additionally, roster and scholarship limits keep the inequity from "getting worse". There is a finite number of recruits each year and the top recruits already flow to the Power 5 Conferences. If fair legislation inadvertently changes recruiting migrations to where some of the top recruits begin to flow away from some of the Power 5 Conferences, it would actually increase competitive equity compared to where it is today.

"Patchwork of State Laws"

The last two years of college athletes' NIL freedom exposes as false claims that the NCAA, conferences, and colleges would be unable to withstand competitive inequities or navigate around a patchwork of state name, image, and likeness (NIL) laws. It is clear that the NCAA and its colleges are capable of complying with an array of different laws – just as other businesses involved in interstate commerce must do. Federal NIL legislation is not necessary to preserve college sports. And federal law is not necessary to ensure college athletes gain NIL compensation freedoms since state action has already accomplished this. For these reasons, Congress should treat NIL as a low priority issue in college sports reform.

“Need for Regional Conference Alignment”

Another important issue, and one that is worthy of its own separate bill, is the corrosive conference realignment that will require college athletes to spend many additional hours traveling at the expense of their academics and their health. These developments are nothing but a greedy TV money grab that treats athletes like commodities and education as a punch line. Using athletes in predominantly Black sports to generate more TV dollars at the expense of their education while Black football and basketball athletes suffer the lowest graduation rates is unjustifiable.

Another problem is that as mega-conferences emerge, each team and fanbase will have less of a chance to win their conference. Colleges in mega-conferences are literally selling out their athletic future for TV dollars, just to give a pay bump to coaches, athletic administrators, and spend on shiny facilities. This is short-sighted. This harms college athletes, and the NCPA is encouraging Congress to pass legislation that would base conference membership on reasonable regional proximity and limit the number of colleges in a conference.

“Bipartisan Legislation”

The NCPA has worked with lawmakers on both sides of the aisle to pass NIL laws in red states, blue states, and purple states because, when it comes to the well-being of college athletes, lawmakers who care about athletes find themselves on the same team, regardless of political party.

As a practical matter, any bipartisan legislation that can actually move through the Senate cannot have any poison pills that would kill it. Such a bill shouldn't attempt to require or prohibit athlete revenue sharing, require or prohibit college athlete employment status, or attempt to give NCAA sports an antitrust exemption. There are strong beliefs about these areas among stakeholders, but these issues should be set aside so that bipartisan progress can be made in other important areas.

Thank you again for the opportunity to participate in this hearing and I am committed to working with this committee in continuing discussions on this issue and other issues concerning college athletes' well-being.

Sincerely,

A handwritten signature in black ink, appearing to read "Ramogi Huma". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ramogi Huma
NCPA Executive Director

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Responses to Senator Durbin's Questions
By Ramogi Huma, Executive Director, National College Players Association
Submitted November 6, 2023

1. **As Founder and President of the College Athletes Players Association and former UCLA football player, you have been a leading voice for college athletes for over a decade. You have a depth of experience working both nationally and at the state level, including in California, to support college athletes.**

a. How can the federal government best support college athletes?

Despite decades of advocacy, scrutiny from lawmakers and the media, NCAA sports has failed to prioritize the well-being of college athletes. The federal government can best support college athletes by passing legislation that provides protections that college athletes desperately need. This includes ensuring the enforcement of safety guidelines to prevent serious injury, sexual abuse, death among college athletes, coverage for college athletes' short-term and long-term sports-related medical expenses and prohibiting NCAA and conference discriminatory treatment against athletes in women's sports.

The federal government can also refuse to grant the NCAA's and conferences' demands of an NIL only bill and legislation that would cast college athletes into second-class citizenship by prohibiting them from receiving a direct share of the revenue that they produce, denying them equal rights and protections under antitrust and labor laws.

b. What lessons can be learned from California's work on college athletics, especially with respect to revenue-sharing and gender equity?

I'm glad you asked this question. For years, the NCAA and conferences have claimed that it would be impossible to pay college athletes fairly without cutting non-revenue/Olympic sports, and that Title IX would prevent football and basketball players from being paid fairly. It was a strategy of divide and conquer – pit athletes and their supporters against each other.

The NCPA is the sponsor of California Assembly Bill 252, "The College Athlete Protection Act". This legislation is authored by former San Diego State basketball player Chris Holden. Not only would it ensure broad-based reform such as the enforcement of safety standards and coverage for athlete's medical expenses, it would also require revenue share and other protections to benefit athletes from all sports:

- Require Division I colleges that pay their athletes less than fair market value (includes scholarship amount) to use any newly generated athletic revenue to pay these athletes upon the completion of their degree.
- Sets fair market compensation for athletes at 50% of their respective team's revenue as

reported to the US Department of Education

- Prohibits Division I colleges from reducing sports, roster spots, total athletic scholarship amounts, or funds for athlete support services.
- Ensures equal pay for athletes in women's sports and requires colleges to abide by Title IX when making payments.
- Requires colleges to comply with Title IX proportionality requirements for scholarship money
- Requires colleges to generate and publicly report Title IX transparency requirements.

AB 252 is the embodiment of the proof that the NCAA, its conferences, and colleges were misleading athletes, lawmakers, and the public about the possibility of requiring revenue without harming various sports. It's a model where all athletes win, colleges athletes are paid fair market value, and athletes in women's sports are treated equally.

It's important to note that, while the bill must still be approved by the California Senate and Governor, the California Assembly already voted in favor. This chamber recognizes that fair market compensation for college athletes is 50% of their respective team's revenue. If Congress moves to require athlete revenue sharing, it should also set athletes' fair market value for direct pay at 50% of team revenue.

2. **When people talk about issues in college sports, a lot of the conversation focuses on big-time college football and basketball. For instance, conference realignment is largely driven by football and the pursuit of more lucrative media rights deals. Yet, athletes in all sports in those conferences have to live with the consequences.**
 - a. **With TV money appearing to drive these decisions, do we need to rethink "one-size-fits-all" approaches to things like conference membership and how various sports are treated?**

Cut-throat conference realignment driven by universities' relentless pursuit of football TV revenue imposes academic, physical and mental health, and familial hardships on college athletes. The NCPA is opposed to conference realignment that forces college athletes to play against conference members who are outside their college's region and reduces athletes' conference championship opportunities by creating mega-conferences.

In terms of conference membership, some colleges already sponsor intercollegiate teams that belong to different conferences. This goes to show how shortsighted college sports leaders are acting when they sign deals to require every team to join a conference with conference members that are far outside their campus – all to chase football and basketball TV revenue. At the very

least, they could have kept nonrevenue sports in regional conferences to spare these athletes various hardships and spared themselves significant travel expenses.

However, the well-being of football and basketball players should not be sacrificed for TV dollars either. They should also be in regional conferences. College sports has already grown into a \$17 billion dollar industry. This did not require college football and basketball players to compete in conferences well outside their campuses. According to USA Today, the average salary for a head basketball coach and head football coach at a public school is \$3.4 million and \$6.2 million per year, respectively. These same colleges are realigning into new conferences but they already have plenty of money. Not all money is good money.

It's important to point out the hypocrisy when colleges claim revenue sharing would require them to cut sports but remain silent about economic losses imposed on colleges like Washington State and Oregon State that might result in these colleges cutting sports.

These colleges receive federal funds and receive billions in tax-free athletics revenue due to their educational mission. That educational mission cannot be replaced with a mission to chase TV money. Congress has a responsibility to hold colleges accountable in prioritizing their athletes' education and well-being.

In addition, lawmakers, players, parents, alumni, and fans are being told to celebrate new TV money, but these huge conferences leave their team with far less of a chance of winning a conference championship. It's the very definition of selling out your athletic program in the name of salary increases for athletic directors, conference commissioners, and coaches.

b. If so, what might a new system look like?

In a new system, there should be one area in which "one size fits *almost* all". With few exceptions (i.e. the University of Hawaii), colleges should be limited to conference membership in which conference members are within a certain travel time radius from each other.

While some may feel that addressing realignment that has already occurred is too difficult to achieve, it isn't. It wasn't long ago when some people would have thought it impossible for conferences to align the way they have. Conferences and colleges can and should be required to realign based on reasonable regional parameters and conference membership maximums.

3. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.

How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

I don't believe there are any statistics about the degree to which current and prospective college athletes feel that it's a challenge to stay on top of different state laws. Similar to differences in colleges' student code of conduct or other state laws that may or may not affect colleges athletes from one state to the next, it hasn't been something that college athletes seem to be focused on.

The NCPA is unaware of any prospective or current college athlete that has been charged or prosecuted over a violation of a state NIL law, and only about half of the states have an NIL law. After almost two and a half years, it appears that a patchwork of state laws is working well.

The NCPA supports prospective and current athletes being fully informed on NIL freedoms throughout the country. The NCAA, conferences, and colleges could and should make this information available publicly online and in recruiting materials. Instead, they are claiming that the only way to accomplish this is for Congress to pass a uniform law.

The NCPA only supports a uniform NIL law that does not unjustly reduce athletes' NIL freedoms and is accompanied by meaningful broad-based reform.

4. As Congress considers potential legislation to regulate college sports, please answer the following questions.
 - a. **In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?**
 - b. **In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?**
 - c. **In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not?**
 - d. **What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?**

Answers to Questions 4a.-d.

Regarding the issues of NIL, revenue sharing, employment status, there are various aspects to consider.

First, since the primary NIL issue being debated centers on inducements, it's worth discussing whether this should apply in college athletic associations and divisions where there is likely little to no concern about inducements. Should there be a policing of inducements among college athletes who are never recruited to NCAA Division I? Is it worthwhile for Congress to outlaw and find ways to police inducements that likely don't exist on the community college, NAIA, or NCAA Division 2 or 3 levels? Probably not. While athletes on all levels should have NIL freedoms, enforced safety standards, and other protections, it would be more reasonable to focus any NIL inducement restrictions exclusively on the Division I level.

In the fall of 2021, the National Labor Relations Board issued a memo declaring that Northwestern football players and similarly situated athletes are employees under the National Labor Relations Act. Subsequently, the NCPA filed unfair labor practice charges with the NLRB to affirm employee status for FBS football players and Division I men's and women's basketball players. The NCPA holds that athletes in these sports are similarly situated. In aggregate, these athletes consistently receive amounts that are significantly below fair market compensation relative to what they generate for their respective teams and clearly meet the definition of employees under the NLRA. The NCPA's focus on FBS football and Division I basketball players does not equate to the NCPA promoting a federal law prohibiting other athletes from employee status and labor law protections. That issue calls for additional analyses and discussions. It's important to note that [a recent poll](#) found that 64% of Americans support employee status for college athletes. The same poll also found that 67% of Americans believe colleges should pay their athletes.

It's safe to say that, at this time, revenue share should only be a consideration among NCAA Division I colleges. Unlike other NCAA divisions and other athletic associations, the nature of Division I is big business.

The fair and practical way to approach revenue share is to ensure Division I college athletes receive roughly the same percentage of revenue from their respective team as athletes in other professional sports such as the NFL and NBA - approximately 50% of total revenue. Again, the California Assembly voted to establish 50% of total team revenue as fair market pay for Division I college athletes. Many Division I athletes already receive 50% or more of team revenue in the form of an athletic scholarship, while others receive far less than 50% (primarily in FBS football, and Division I men's and women's basketball).

Your thoughtful questions highlight that colleges in Power 5 conferences are clearly generating vast amounts of money from the talents of their athletes. However, there are plenty of other colleges that do not belong to a Power 5 conference that report significant amounts of FBS

football and basketball revenue that should also be required to share revenue with their athletes.

For example,

- Fordham University reported over \$4 million in women's basketball revenue
- Temple University reported \$4.6 million in women's basketball revenue
- St. Joseph's University reported over \$5 million in men's basketball revenue
- Creighton University reported \$10 million in men's basketball revenue
- University of Connecticut reported generating \$18.5 million, \$24 million, \$8.5 million in football, men's basketball, and women's basketball, respectively
- San Diego State University reported football and men's basketball revenues of approximately \$20 million and \$10 million, respectively
- Gonzaga reported \$17 million in men's basketball revenue

Additionally, colleges inside and outside of the FBS revenue reported significant revenue for athletes in sports other than football and basketball. For example:

- 20 Power 5 and non-Power 5 colleges reported women's soccer revenue between \$2-3.7 million
- 6 Power 5 and non-Power 5 colleges reported women's gymnastics revenue of \$1.9-\$3.1 million
- 10 Power 5 and non-Power 5 colleges reported baseball revenue between \$5-11.5 million
- The University of Hawaii, Manoa reported \$5.1 million in men's golf revenue & \$5.2 million in women's golf revenue
- Howard University reported \$5.7 million in women's golf revenue

These are examples of colleges reporting significant amounts of revenue for teams in sports other than football and basketball that should be required to share revenue with its these athletes.

However, the NCPA is open to discussions exploring the idea of allowing some Division I colleges reporting very low revenue to opt-in/out of sharing revenue with its athletes. For instance, of 353 Division I colleges, 117 of them reported less than \$20 million in total athletic revenue across all sports and sources.

There are two fair models of revenue share Congress should be aware of and consider. One model is for athletes on each team to receive 50% of their team's revenue. This would yield very different payments among college athletes at different colleges who participate in the same sports. This is the model in California AB 252.

The second model is to identify Division I sports where, throughout Division I, athletes in a particular sport who do not receive fair market pay (in aggregate) are paid an equal amount from a fund that Division I colleges collectively pay into. While a state like California does not have the power to do this, Congress does. This model should also leave a pathway for fair

compensation for athletes who receive significantly less than fair market value even if athletes in that sport receive fair market pay in aggregate.

Senator Sheldon Whitehouse
Senate Committee on the Judiciary
Hearing on “Name, Image, and Likeness, and the Future of College Sports”
Written Responses to Senator Whitehouse’s Questions
By Ramogi Huma, Executive Director, National College Players Association
Submitted November 6, 2023

1. **Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.**
 - a. **Who should be responsible for ensuring that student-athletes are protected from exploitation?**
 - b. **What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?**

Answers to Questions 1a. & b.

My answer to these questions has two parts. First, the colleges, conferences, NCAA and their business partners should not have any powers in this area. These entities have colluded to impose economically exploitative systems on college athletes and recruits. The only reason athletes have NIL and representation freedoms today is because state lawmakers outlawed NCAA sports’ self-serving, monopolistic athlete NIL and representation bans. To this day, colleges use the Letter of Intent, a one-sided legal agreement that commits athletes to a college but does not commit the college to the athletes. To this day, the NCAA, conferences, and colleges shamelessly collude to impose bans on direct athlete compensation that violate federal and state antitrust laws. These entities should not be given any regulatory power to certify athlete representatives or decide what is and is not allowable. However, colleges can and should provide mandatory workshops teaching their athletes about NIL contracts, taxation, and other financial skills which will help protect them from exploitative contracts.

Second, Congress can directly prohibit and render void certain exploitative arrangements i.e. predatory recoupable loans camouflaged as NIL deals. Congress should also assign a third party (possibly funded through mandatory fees paid by the NCAA, high revenue conferences, and colleges) to certify athlete representatives for athletes in any sport that does not have a union of performing this function. Whether or not athletes ever form a union remains to be seen. But there will surely be athletes in various sports in different divisions that will likely never have an athlete union. These athletes need to be protected from negligent, fraudulent, and predatory representatives as well.

2. **Star athletes playing collegiate men’s football and basketball at dominant institutions have secured the majority of NIL deals.**

- a. **To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?**
- b. **To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?**
- c. **How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?**

Answers to Questions 2a.-c.

There are two forms of compensation that college athletes should be free to earn – direct compensation from their colleges and NIL pay. While direct compensation from colleges can be a pathway to ensuring all athletes on a team are paid equally (not just the stars), NIL compensation is different. It is paid by third parties based on free market forces that prioritize the real or expected value that an NIL brings to promote a product, service, enhance an experience, etc.

In terms of increasing NIL opportunities for all sports, there's a stark difference between *promoting* NIL opportunities and *regulating* NIL opportunities in pursuit of bringing forth similar NIL compensation. The NCPA encourages both the NCAA and Congress to find ways to promote NIL opportunities for athletes in all sports. One way to close the gap between NIL opportunities among athletes in men's and women's sports is for Congress to improve Title IX transparency and enforcement. One major reason that football and men's basketball players have more NIL opportunities is because the colleges have not invested in the promotion of women's sports equal to that of men's sports – football and men's basketball in particular. Also, because of the lack of Title IX enforcement, there are 15,000 fewer NCAA Division I athletes in women's sports nationwide compared to athletes in Division I men's sports (EADA statistics). This may be a contributing factor to the difference in NIL opportunities between athletes in men's and women's sports. Another area is to ensure that any NIL collectives that are sharing central functions with colleges are also subject to Title IX's equal promotions requirements.

I've explained why the NCAA should have no power to *regulate* NIL. Congress should not *regulate* the college athlete NIL market in an attempt to require NIL earnings to be paid evenly across sports and all athletes. Congress does not pass federal law to make sure endorsements are equally offered and paid among any other subgroups of Americans – other college students (i.e. influencers, actors), well-known and unknown actors appearing in commercials from different ethnicities/genders, or among well-known lesser known athletes from different ethnicities/genders in other professional sports. Congress should not impose such regulations exclusively in college sports. Additionally, college football and basketball players generate a disproportionate amount of college sports revenue, and the NCAA's unjust ban on direct athlete compensation disproportionately harms athletes in these sports. These athletes are predominantly Black which highlights the racial injustice in this illegal activity. It would be racially unjust for Congress to regulate NIL in a way that takes NIL pay from football and basketball players to give to other athletes.

As you mention in your question, NIL is an area where college athlete stars can earn large amounts of NIL earnings, and rightfully so. Across all professions including other professional

sports, the stars and athletes in the most popular sports earn a disproportionate amount of NIL earnings. It's also true that these stars are otherwise among the most financially exploited athletes in the country. Coaches earn millions of dollars in salary extensions and performance bonuses based to a significant degree on the talents of these stars. Yet NCAA compensation limits prevent these stars from receiving direct pay from colleges which, in turn, inflate salaries to coaches and athletic directors.

- 3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.**
- a. Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?**
 - b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?**

Answers to Questions 3a.&b.

Yes, there is great need for a fund to pay former college athletes ongoing sports-related medical expenses. [One study found](#) that approximately 50% of former Division I athletes across all sports report suffering chronic injuries sustained during their college sports years. Some pay out of pocket for treatment while others forgo treatment because they can't afford it. Neither situation is acceptable.

A medical trust fund should be established and funded by high revenue conferences and associations. Current and former athletes should be formally involved in determining how the fund operates.

Former athletes should have a process to apply and be approved for reimbursements for out-of-pocket expenses not otherwise covered by their insurance. There should be an awareness program to ensure all former athletes are aware of the fund and how to apply for assistance.

The public should be able to access information on how many athletes applied for funds, qualified for funds, the amount that was spent on various categories of medical services, the amount that was spent based on demographics, and determinations on whether the fund was too little or too much relative to the need of qualifying athletes.

Senate Committee on the Judiciary
Hearing on “Name, Image, and Likeness, and the Future of College Sports”
Written Responses to Senator Amy Klobuchar’s Questions
By Ramogi Huma, Executive Director, National College Players Association
Submitted November 6, 2023

For Ramogi Huma, Executive Director, National College Players Association:

In August, the NCAA announced that starting next school year, it will allow colleges to cover athletes’ healthcare for two years after leaving school and will cover injuries that occur while playing for their schools. But many injuries that athletes sustain can have long-term and even lifelong health consequences.

- **Based on your experience working with student-athletes is there a need to ensure that student-athletes have access to long term care for injuries they suffered while playing collegiately?**

- **Do you believe that two-years after leaving school is a sufficient amount of coverage?**

There is tremendous need to college athletes to have access to long-term care for their college sports injury. [One study found](#) that approximately 50% of former Division I athletes across all sports report suffering chronic injuries sustained during their college sports years. Some pay out of pocket for treatment while others forgo treatment because they cannot afford it. Former college athletes should never be stuck with college sports related medical expenses or forgoing treatment for college sports related-injuries because they cannot afford it.

While coverage for two years may be a sufficient amount of time to fully address some college sports injuries, it’s not enough time for many others. The fact that 50% of former college athletes report *chronic sports injuries* provides evidence that 2 years of coverage is not enough. Anyone claiming that two years is sufficient should not oppose longer periods of coverage because, if they are correct, all injuries would have been addressed in the first two years. There would be no risk or expense in guaranteeing coverage for a longer period of time.

Senate Committee on the Judiciary
Hearing on “Name, Image, and Likeness, and the Future of College Sports”
Written Responses to Senator Grassley’s Questions
By Ramogi Huma, Executive Director, National College Players Association
Submitted November 6, 2023

**1. Do you believe federal preemption of state laws is the best way to deal with NIL?
What issues do you believe should be addressed at the federal level and what issues,
if any, should be left to the states?**

It’s important to keep in mind that the injustice surrounding NIL, which was that the NCAA and conferences unjustly and illegally prohibited college athletes from NIL freedoms, has already been addressed. Because of state laws, college athletes enjoy maximum NIL freedoms. They’ve had these freedoms for almost two and a half years and the NCAA and conferences’ pre-NIL assertions that college sports would be destroyed without a federal law to ensure NIL uniformity and give the NCAA an antitrust exemption (recently re-branded as “limited liability protection”) predictably did not come to pass.

The NCAA and conferences now decry that inducements have ruined college sports. They haven’t. The NCAA pretends that inducements were non-existent before NIL and are a new issue that demands Congressional action. Inducements did not destroy college sports prior to NIL freedoms, and they are not destroying college sports today. It’s important to unpack three aspects related to the NCAA and conferences’ weak arguments.

First, the argument that reducing or eliminating athlete inducements would bring forth competitive equity is false. Federal courts have concluded multiple times that a level playing field does not exist under NCAA rules. Prior to athletes’ NIL freedoms, colleges with the most revenue and wealthiest boosters have the largest recruiting budgets, hire the best coaches, build the best facilities, and in turn, they get the best recruits, win the most games, and score the richest TV deals allowing them to continue their dominance. A number of these colleges and their boosters used inducements to lure recruits to their schools. This all remains true today. College athletes shouldn’t be forced to sacrifice their economic freedoms and rights so the NCAA and its colleges can *pretend* that a level playing field exists.

Second, with blinding hypocrisy, the NCAA and conferences seek unlawful powers to stamp out inducements offered to athletes in the name of competitive equity but do not seek to ban inducements (multimillion dollar salary offers) that colleges use to poach high value football and basketball coaches in order to gain competitive advantages. This is no small factor given that the average Power 5 head football and basketball coach’s salary is much more than the total of amount of scholarships paid to athletes on these respective teams.

Third it’s important to highlight the racially unjust aspect of this. The NCAA and conferences have no problem at all when coaches, the vast majority of whom are White, operate in an unrestricted free market (including enjoying the economic benefits of inducements/poaching) that allows them to earn the maximum amount of money. In contrast, they are lobbying

Congress to prevent football and basketball players, the majority of whom are Black, to benefit from an unrestricted free market.

The reality is that the NCAA and conferences' Congressional lobbying efforts is based on using the fear of inducements as an excuse to unjustly re-monopolize money their boosters use to gain competitive advantage. They want to regain the money flowing to players from collectives so they can use it to grant athletic admins and coaches more raises. They also seek other unjust goals of an antitrust exemption to prevent athlete revenue share from becoming a reality, and further harm college athletes by denying them equal rights under labor laws. They are using the issue of inducements as a trojan horse to make it lawful for them to treat college athletes as second-class citizens.

In terms of NIL, state NIL laws have been highly effective in granting and protecting college athletes' NIL freedoms. Congress should not pass an NIL-only law.

Congress should pass federal law that addresses vital issues regarding college athlete protections such as requiring the enforcement of safety standards to prevent serious injury, sexual abuse, death, college athletes' medical expenses, and equal treatment of athletes in women's sports. As a compromise, it would be reasonable for Congress to include NIL reforms that prohibit clear inducements if it acts on these issues. However, the NIL reforms should ensure that all is done to maximize, not undermine, college athletes' NIL freedoms. Such a bill should also ensure that a third party certifies athlete agents to help weed out bad actors and predatory practices.

- 2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?**

- 3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?**

Answers to 2&3:

If Congress passes a federal law that includes NIL, it should include many freedoms and regulations directly in the law. Congress should designate a third party that is completely independent of the NCAA, conferences, and colleges to create any remaining guidelines and processes and enforce what Congress enacts. This will prevent any conflicts of interests and ensure fair enforcement.

The NCAA and its conferences should not be in charge of creating or enforcing NIL guidelines requirements or restrictions. Let's not forget that when they wielded these powers in the past, they abused them. They operated in violation of antitrust laws and cannot be trusted to have such powers. These entities have colluded to impose economically exploitative systems on college athletes and recruits. The only reason athletes have NIL and representation freedoms today is because state lawmakers outlawed NCAA sports' self-serving, monopolistic athlete NIL and representation bans. To this day, colleges use the Letter of Intent, a one-sided legal

agreement that commits athletes to a college but does not commit the college to the athletes. To this day, the NCAA, conferences, and colleges shamelessly collude to impose bans on direct athlete compensation that violate federal and state antitrust laws.

4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?

It is not common for Americans to be forced to publicly disclose NIL deals. Any transparency requirements should be minimal and should be focused on ensuring that NIL agreements meet standards adopted by Congress. Details should be kept confidential by the enforcement entity unless a college athlete chooses to make them public.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

Congress can directly prohibit and render void certain exploitative arrangements i.e. predatory recoupable loans camouflaged as NIL deals. Congress should also assign a third party (possibly funded through mandatory fees paid by the NCAA, high revenue conferences, and colleges) to certify athlete representatives for athletes in any sport that does not have a union of performing this function. Whether or not athletes ever form a union remains to be seen. But there will surely be athletes in various sports in different divisions that will likely never have an athlete union. These athletes need to be protected from negligent, fraudulent, and predatory representatives as well.

6. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

The NCPA does not support any current bill that has been introduced in the House or Senate because they have one or more of the following... They unjustly limit college athletes' NIL freedoms, do not include broad based reform to address vital issues in adequate ways, ban college athlete revenue share or prevent states from requiring revenue share, strip college athletes of equal rights under antitrust law by giving the NCAA an antitrust exemption, or strip college athletes of equal rights under labor law by declaring that they can never be employees.

While the NCPA does not support any bill that has been introduced, it is supportive of many of the provisions in a bipartisan draft circulated by Senators Booker, Blumenthal, and Moran. There is a need for some improvements, but the draft includes solid broad based reforms, reasonable NIL parameters, and does not seek to give the NCAA an antitrust exemption, ban revenue share, or ban athlete employee status.

Testimony of Walker Jones, Executive Director, The Grove Collective
Senate Judiciary Committee, October 17, 2023

Chairman Durbin, Ranking Member Graham and Members of the Committee, thank you for inviting me to speak with you all today. My name is Walker Jones. I am the Executive Director of The Grove Collective, representing student athletes at the University of Mississippi.

Additionally, I am a proud member of The Collective Association (TCA), which is comprised of 25 (twenty-five) Collegiate Collectives from across the Power 5 landscape serving as advocates for over 50,000 student athletes in 25+ sports. We continue to grow as like-minded organizations with a common purpose. Our goal is to serve as a unified voice to shape the development of the name, image, and likeness (NIL) market in college sports while creating a sustainable model that gives student athletes the ability to maximize their NIL platforms. Current data shows that collectives are responsible for approximately 80% of money being paid to NCAA athletes for their NIL activities. Given this figure, TCA is unique in that our members possess and are willing to share our first-hand knowledge on how NIL is working in your local communities, and we seek to partner with anyone who wants to produce well-informed and effective legislation benefiting collegiate student athletes first. Unlike other stakeholders in college sports, we work with everyone in the ecosystem by sitting at the point of intersection within NIL related commerce.

Before we delve into the substance, let me be very clear about one thing, our TCA organization and I are extremely bullish on the state of collegiate athletics. Are there aspects in the current model that need addressing and evolving? Of course, but the overwhelming majority of commerce with name, image and likeness (NIL) is positive. As a student athlete in the late 90's, I can tell you that today's student athletes have the resources and ability to deal with the

realities that life will inevitably bring their way. Whether they play professional sports or not, athletes now have the ability to solve socio-economic issues, stay in school longer to further their academic careers, locate the best possible competitive situations athletically, and be a more functional contributor to society when they leave their respective campuses. Finally, as TV viewership continues to break records each weekend of the college football season and this past spring with March Madness in basketball, the ability for athletes to maximize their value has never been stronger. The marketplace continues to experience the inevitable growing pains of any free market model, but the overall health of collegiate athletics is strong. TCA Members feel those on this panel today and other important stakeholders share the expertise and passion to work together for the long-term sustainability and growth of intercollegiate athletics.

I think it's important to remind everyone how we got here. Until a unanimous decisions handed down by the Supreme Court in 2021, the NCAA and its allies stood sentry, blocking student athletes from capitalizing on their inalienable rights. While O'Bannon and Altson are the names everyone knows, there are countless others who, for decades, lost the ability to capitalize on their NIL, eligibility, livelihood and dignity because of the outdated mindset of these stakeholders.

If need is the mother of all innovation, collectives were born from the need for student athletes to have a stable, secure and trusted entity representing their interests. Collectives continue to evolve and develop resources, tools, and information to create and enhance each student athlete's NIL platforms while helping to protect their well-being. We are proud of our accomplishments to date and believe the future can continue to be a bright one for collegiate student athletes regardless of sport.

I'm proud of my work and the work of other professionals who run collegiate collectives across the country. Most of us had professional careers in and around sports before the

Supreme Court case and many of us gave up stable, higher paying jobs to follow our passion in supporting our alma mater's athletes. Student athletes trust our collectives and look to us to offer guidance and resources in understanding and navigating this new and constantly evolving world of name, image, and likeness (NIL). We are not conflicted in supporting any other agenda except assisting those student athletes who choose to find opportunities to maximize the power of their brand. Our focus and commitment singularly point towards our participating student athletes and the long-term viability and health of collegiate athletics. That commitment has caused tension at times between our affiliate institutions, college conferences and the NCAA—but we are comfortable in that discomfort because at the end of the day our singular focus is on the collegiate student athlete.

I would encourage the Committee to take a fulsome view of what is happening in college athletics. There are those who would seek to cast blame on collectives for actively working to promote and pay our participating collegiate student athletes. However, I, like many of my colleagues running collectives, often rely on our business experiences and contacts to provide education and resources for the betterment of our student athletes. After my playing days as an Ole Miss football player for now Senator Tommy Tuberville ended, I was a collegiate coach and administrator at the power 5 level, worked in sports marketing for one of the largest sports apparel companies in the world, worked as a sports agent for one of the most reputable sports agencies in North America, and helped launch the largest youth sports programming company in our country. All of these experiences have allowed me and others running collectives to be a stabilizing force in college athletics. Due to the nature of how we operate, collectives offer tangible, real time information and feedback that all stakeholders can use to make the most informed decisions in the future. We root for and work with every student athlete who chooses to work with us, not just the superstar athletes. While no one would be surprised that the majority of our student athletes and work originate around football and men's basketball; our

efforts have particularly benefited women and non-revenue sports. In fact, there was a 20% increase in women's NIL deals from 2021 to 2022 and we expect an even larger increase when 2023 comes to a close and in the years to come.

All of this leads me to talk about what we—as collectives—stand for:

- 1) We stand for creating opportunities for athletes to match with national and local sponsors, while creating avenues for athletes to market themselves directly to fans (merchandise, memorabilia, social posts and appearances),
- 2) We stand for the ability to connect athletes to nonprofits and charities they care about so they can help raise awareness and funds for their personal causes.
- 3) We are independent businesses, separate from universities and athletic departments and feel student athletes are best served by that independence.
- 4) We provide resources and tools to help our student athletes not only maximize their value but also prepare for their future professions and careers.
- 5) Provide best practices and standards to keep bad actors out of the marketplace and add sustainability for the long-term betterment of current and future student athletes.
- 6) We provide transparency and disclosure to our University partners to remain compliant with state and NCAA rules and regulations, as arbitrary as they may be.
- 7) Finally, and most importantly, we are committed to diversity and inclusion in sourcing NIL opportunities for all athletes regardless of the sport they play.

Additionally, I thought it would be helpful to elaborate on what TCA members are NOT:

- 1) We are not owned by nor are we agents.

- 2) We are not financial advisors to the athletes we serve. That being said, most of our collectives provide financial literacy and tax planning services to our athletes if needed.
- 3) We do not want to participate in the recruiting process and desire to only work with athletes once they have decided to attend school. I want to be clear that we have NO interest in being part of the active recruiting process. That is best left to coaches and athletic departments under the strict watch of the NCAA.
- 4) We are not shadow organizations run by out-of-control boosters and donors. Most collectives operate as full-time businesses with infrastructure, staff, and transparency with our universities and constituents.

The past few years have seen change in college athletics at a pace none of us could have imagined. There are pressing challenges to address and to that end, The Collective Association strives to be a good faith partner to Members of this Committee and others seeking solutions. Here are a few of our suggestions as you deliberate next steps:

- 1) We stand ready to assist in rooting out the bad actors who seek to profit off children and student athletes—an agent registry should be a bare minimum requirement.
- 2) We believe athletes should continue to have the right to monetize their NIL just like any other individual—the free market coupled with marketplace platforms provide the much-needed transparency to monitor growth while also providing necessary safeguards.
- 3) A revenue sharing plan would allow collegiate athletes to see the true value being produced for their respective institutions and conferences, which could also be used to increase enforcement and oversight of the marketplace.

- 4) Some level of uniformity that creates a national standard as it relates to state NIL statutes and laws.

Some have asked what we are AGAINST in this conversation, and I would simply say that we would counsel Senators to be leery of drafting federal legislation that places control over collegiate athletes back into the hands of traditional powers. Any federal bill that arbitrarily limits student athletes' abilities to maintain complete control over their Name, Image, and Likeness would do just that.

TCA looks forward to being a resource to the Committee and all interested policymakers moving forward and once again, I want to thank you once again for the invitation, for your time and look forward to answering your questions.

**Senator Grassley's Written Questions for Walker Jones
Senate Committee on the Judiciary
Hearing on "Name, Image, and Likeness, and the Future of College Sports"
October 17, 2023**

1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?

A: The TCA believes that the federal government can create clarity in the college sports ecosystem by ensuring states are not creating an unequal playing field for their home state institutions. Any federal law should 1) recognize Collective's value to student athletes in the college sports ecosystem, 2) protect the privacy, health, and safety of the athletes and 3) not place arbitrary limits on how student athletes monetize their Name – Image – Likeness rights. 4) and finally, create a national standard for enforcement and oversight regardless of state or conference affiliation.

2. Who do you believe should be in charge of creating NIL guidelines, requirements, and restrictions – Congress, the FTC or another third party, or the NCAA? Why?

A: Congress should look critically at current practices that deny athletes long term healthcare while violating their privacy and limiting opportunities to maximize their NIL rights. Additionally, we feel the ineptitude and inaction of traditional governing bodies has led to a lack of trust and confidence to truly have the student athletes' best interest at heart. The TCA would suggest a hybrid approach to governance and oversight between the NCAA, Conferences, state guidelines, Universities. Not one of these groups can effectively oversee the landscape of collegiate athletics and its varying levels of competition. That is why we would suggest a collaborative approach between these stakeholders.

3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?

A: I believe the FTC should use its existing authority to ensure agents and other predatory practices are fully prosecuted, but I honestly believe that

with a light touch from Congress, conferences are uniquely situated to ensure NIL guidelines are enforced. I don't think it would be wise to hand this responsibility back to traditional powers or the federal government. Conferences control membership as well as a large portion of the revenue generated through TV and licensing agreements.

4. What transparency requirements should be imposed upon athletes, colleges, conferences, and collectives with respect to NIL agreements?

A: Senators should be wary of efforts to publicize NIL agreements or even certain specific data points of NIL agreements. Efforts to publicize these deals in the name of "transparency" only put a target on student athletes for 1) unscrupulous actors in the marketplace, 2) fans and social media critics and 3) could endanger their personal safety and that of their families. It's important to note that Collectives and our partner institutions review these contracts to comply with eligibility requirements and state laws. If NIL deals are made public, so should the financial dealings at every level of college athletics.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

A: We are strongly in favor of an agent registry. I would note that the value proposition of Collectives is that we negotiate contracts particularly for athletes who do not have official representation, free of charge. We also believe that keeping agreements private—or at least between Collectives, the athlete, and our partner institutions—offers a layer of protection to our athletes from unscrupulous practices, social media critics and others with criminal intent. Keep in mind, the majority of Collectives disclose their contracts with their university compliance departments to ensure alignment with applicable state and NCAA rules and guidelines. This level of transparency helps our athletes stay away from unfavorable contractual agreements.

6. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

A: TCA would formally support any piece of legislation that does the following:

- 1) Sees Collectives as a vital part of the college sports ecosystem—particularly as a bulwark against traditional powers and unscrupulous behavior.
- 2) Provides for the current and long-term health, safety, and privacy of student athletes.
- 3) Does NOT seek to arbitrarily set limits on an athlete's ability to monetize their NIL rights.
- 4) Creates a national standard of enforcement and oversight at the state level.

Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing
Name, Image, and Likeness, and the Future of College Sports
Questions for the Record
for Walker Jones, Executive Director, the Grove Collective
Submitted October 24, 2023

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.
 - a. Who should be responsible for ensuring that student-athletes are protected from exploitation?
 - b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?

A: Senator Whitehouse, thank you for these questions. First, one of the major value propositions of TCA members is that we negotiate contracts for those athletes who do not have formal representation at NO CHARGE. We act as their partner but also coordinate compliance between our partner institutions and other entities to ensure the student athletes are protected from bad actors but also just a simple mistake that could affect their NCAA eligibility. Collectives provide a level of guidance and transparency that does not endanger the student athlete or require that they have outside representation.

A revenue sharing model would likely be the most transparent and equitable way to not only allow athletes to be paid their fair market value but also create a system where bad actors are not incentivized nor rewarded for cheating these athletes while also providing a fund to pay for long-term safety/healthcare needs of the athletes.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.
 - a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?
 - b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?
 - c. How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?

A: Senator, the free market is creating these opportunities already and you're going to see these numbers continue to increase across every sport for both men and women every year moving forward. I do think Congress might consider thinking about this from a standpoint that Football and Men's Basketball subsidize every other program in an athletic department across the country and are the reason why conferences are merging and chasing larger partnership deals with media companies, etc. When you consider that fact, it makes sense that the lions share of NIL deals go to these athletes, but I want to repeat that we are seeing an exponential leap in deals for women and non-revenue

sports and expect that growth to continue—which is great not only for these athletes but for the businesses who support them! So in actuality, the larger, revenue producing sports are helping create opportunities for non-revenue and female sports like never before. Anecdotally, we are seeing more brands attracted to female student athletes as endorsers while also seeing a gradual market correction in larger sports which has led to a redistribution of a percentage of NIL revenue. We would suggest let this trend continue with the oversight of collectives and universities to make concerted efforts to equality where possible.

3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.
 - a. Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?
 - b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?

A: Senator, this is EXACTLY why the NCAA was created by President Teddy Roosevelt—to prevent deaths in college athletics—football in particular. Traditional powers who benefit from the work of student athletes should absolutely create a fund that pays for long term health and safety of Student Athletes. We support these efforts and if they won't do it on their own, it should be mandated by Congress.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Walker Jones
Executive Director, The Grove Collective
October 24, 2023

1. It is my understanding that collectives are supposed to be independent from schools. Yet, there are reports that collectives have improperly used name, image, and likeness (NIL) contracts to induce athletes to attend their favored universities, either out of high school or as transfer students.

There have also been concerns around how collectives are exacerbating funding disparities between male and female athletes, since the money is not flowing through the university and, therefore, is not subject to Title IX.

Thank you, Mr. Chairman. First and foremost, I think it's important to note that the word "inducement" is being used to perpetuate some myths about Collectives in an attempt to place arbitrary limits on student athletes' ability to monetize their NIL rights. As you

know, this is a two plus year-old business created out of the Supreme Court decision in 2021. Collectives are evolving not only in definition but in practice and we truly have become the stabilizing entity between institutions who are not legally allowed to pay athletes and donors who want to fund their alma maters. Our contracts and interactions with athletes are professional and we work in hand with the compliance departments of our partner institutions on every contract that is signed to ensure our athletes, athletic department and the Collective is acting in an appropriate manner.

- a. **How does The Grove Collective determine which Ole Miss athletes to proactively reach out to and work with?** We are constantly researching the 400+ student athletes on campus looking for those that have NIL value in the marketplace or that fit the description of endorsers our corporate brand partners are looking for. Many companies and brands use the collective to help select and identify the types of athlete endorsers they want to include in their campaign. We also have athletes proactively reach out to the Grove Collective for advice, guidance, and assistance with building an NIL platform. This is done free of charge to all our athletes.
- b. **When donors contribute funds to The Grove Collective, how do you determine which athletes the funds should go to?** Donors sometimes earmark funds for specific teams and athletes which is permissible by law, and we then distribute accordingly with a set of services and obligations for that student athlete. In the absence of this, the Grove Collective will look at market trends, needs, and relevant brand campaigns to distribute in an equitable manner where possible. To date, the Grove Collective has signed an athlete from all 18 sports represented on campus and has tripled our female athlete roster in the last 8 months to over 50 athletes.
- c. **How does The Grove Collective consider gender equity in these decisions?** The Grove Collective was founded on the principle of being an NIL platform for all student athletes at the University of Mississippi that choose to take part in name, image, and likeness. Regardless of gender or revenue vs non-revenue sports, the collective works with all 18 sports on campus and has over 200 athletes currently under contract. Our female athlete roster has tripled in the last 8 months and our first team wide NIL agreement was with our women's basketball team. We have a fundamental belief and mission to be as equitable as possible regardless of whether or not Title IX applies to collectives or not. It would not change how we operate.
- d. **How do you think collectives should be regulated and who should regulate them?** The Grove Collective and the TCA support regulation and oversight as long as it does not

limit or restrict the student athletes voice and ability to earn their fair share of revenue. We feel regulation and oversight should be a shared endeavor between the NCAA, Conferences, and the Universities the collectives represent. We feel one group alone, cannot effectively govern the space and therefore a collaborative approach for governance and oversight is needed to address the many nuances that exist at each level of collegiate athletics.

2. NIL data indicates that at Power 5 schools the vast majority of compensation for male athletes—87 percent—comes from donors, while only 13 percent comes from local or national brands. In terms of the number of deals, about 71 percent are with brands and 22 percent are with donors. The implication of this data appears to be that donors, who often operate through collectives, are paying athletes more to do less.

A: Data without context can be used to create a narrative that doesn't tell the entire story. I'll go back to the fact that this is an evolving industry in just its third year and individuals as opposed to institutions (like national brands) are always more risk tolerant with a start-up culture be that in the tech space or in the case of supporting Collectives. I do think you will continue to see more companies and brands become involved as the market settles and they see that Collectives are adding to the stability of the marketplace by working with compliance departments and ensuring our athletes are being treated fairly. Keep in mind, this is a new industry for brands, companies, athletes, universities, etc. Everyone is trying to figure out how best to navigate this landscape. Collectives evolving over the past 12 months to much more structured and reputable organizations will help to even out the flow of revenue.

Any suggestion that these student athletes are being compensated for doing "less" is a troubling accusation and takes away from the true value of student athletes and their contributions to the bottom lines of traditional powers in the college sports ecosystem.

There is also anecdotal evidence that some collectives and boosters are engaging in activities that appear to be inducing recruits and transfers to attend certain institutions or that look like "pay-for-play" in the guise of NIL payments. These payments are often directed to members of the football or men's basketball teams, and there appears to be a great disparity in the amount of funds that pass through a collective to athletes in these sports compared to other sports.

- a. **How does The Grove Collective determine an athlete's NIL value when licensing their publicity rights? What metrics and objective data points are used in this**

determination?

A: We use a variety of metrics and datapoints for each specific athlete. Sport, personal background, demographic and geographic athlete data, level of activity/engagement in the marketplace via social media, traditional media, etc. All of these factors help us best determine the types of campaigns each athlete should participate in, the value they deliver to a specific brand or campaign, and future opportunities as they arise. If the college sports ecosystem truly wanted to compensate athletes for their NIL value, there should be a revenue sharing system which would also allow for the traditional powers in the college sports ecosystem to pay for the athlete's long-term health and safety needs.

b. Do you have any objection to NIL being used to induce recruits or transfers to specific schools? Why or why not?

A: NIL is a recruiting tool used by coaches—do coaches use NIL as a tool? Undoubtedly, but that question is best answered by them. But I would also add there is nothing impermissible with a coach referring to the success his or her collective has generated for their student athletes. Marketing materials, websites, social media, articles, etc. can all be used to show recruits that if they choose to attend that university, they will have a great collective ready to support, create and enhance their respective NIL platforms. As for financial inducements in recruiting, we have no interest in being part of that process and feel a “best practice” is for Collectives to engage athletes who are already enrolled or have signed with a particular school. We fully support governance and oversight in this space.

c. What guardrails, if any, do you think are necessary to ensure collectives are not inducing athletes or operating as “pay-for-play” arrangements?

A: Pay for play contracts are already impermissible. The Committee should re-think what defines an inducement—facilities built by schools, the ability to play on TV in primetime, better dorms and restaurants on campus have been used to induce/recruit for the better part of the last 20 years.

TCA is firmly against any effort to place arbitrary limits on athletes' ability to monetize their NIL value.

3. In addition to leading The Grove Collective, you also serve as a member of The Collective Association (TCA), which is comprised of 25 Collegiate Collectives from across the Power 5 landscape.

- a. Please provide the following data on deals The Grove Collective entered into or otherwise facilitated, disaggregated by gender and sport: the number of deals The Grove Collective has entered into with athletes or otherwise facilitated; the average value of deals The Grove Collective has entered into with athletes or otherwise facilitated; the number of NIL activities performed through The Grove Collective; the amount of money received by athletes as a percentage of The Grove Collective's total funds distributed to athletes; and any other pertinent information to assess the value, volume, and types of deals.

A: We are not comfortable sharing all of the specific data points requested but we can speak to several points. The Grove Collective has contracted with over 220 student athletes at The University of Mississippi over the last 2 years. We have a minimum of one student athlete representing each of the 18 sports on campus. Our current athlete roster is 68% male/ 32% female with football skewing those numbers due to its larger roster of athletes. We have distributed over 9m in NIL funds and our athletes have interacted with 70+ local, regional, and national brands.

- b. Please provide the following data on the deals TCA members entered into or otherwise facilitated disaggregated by gender and sport: the number of deals TCA members entered into with athletes or otherwise facilitated; the average value of deals TCA members entered into with athletes or otherwise facilitated; the number of NIL activities performed through TCA members; the amount of money received by athletes as a percentage of TCA members' total funds distributed to athletes; and any other pertinent information to assess the value, volume, and types of deals.

A: We place a premium on athlete privacy for a number of reasons. First, we believe publicizing this data makes them a target for 1) bad actors in the marketplace including but not limited to unscrupulous agents and financial advisors, 2) a target for social media trolls and others who would harm their mental health and 3) could endanger their physical safety or that of their family members. Every one of our contracts is on file with the University of Mississippi and we feel that is the proper place for them to be reviewed before we write one check to a student athlete. Sadly, I don't feel comfortable sharing this in the Congressional Record much like Miss Thomas was uncomfortable talking about her NIL earnings. More than a comfort level, there is a right to an athlete's privacy with a goal of shielding them from any number of negative circumstances. I would happily meet with you and your staff to talk through some of these issues privately and want to reiterate my intention to be an ally to the Committee. If athletes are subject to full transparency the Congress should mandate full transparency across the entire college sports ecosystem.

c. What type of data do you believe should be accessible to the public on the deals collectives are signing with athletes?

A: Traditional powers in the college sports ecosystem would have you believe that complete transparency would magically solve the challenges you are attempting to solve but the TCA stands firmly behind our belief that any federal solution should insulate athletes from becoming targets. Making the data anonymous isn't enough and I'll go back to the fact that there is zero transparency in large swaths of the college sports ecosystem—providing that transparency would help solve a great deal of the challenges facing college sports while not subjecting student athletes to unnecessary stress and targeting.

4. There have been numerous reports about college athletes being impermissibly promised NIL money by outside third parties, which then may not keep their promises.

What needs to be done to prevent these abuses and protect college athletes?

A: If a contract is broken and found to be in violation of the law, those parties should be held responsible. Context is important here because two and a half years ago, every booster who wanted to pay a recruit started calling themselves a "collective." TCA members are professionally run organizations and stand as a model for stability and responsibility. Early on (and we are still early on in this to be fair) there was a flood of actors into this marketplace. I've been pleased with how quickly the vast majority of these bad actors have been washed out and again look forward to continuing our leadership in keeping this marketplace clean and supporting student athletes from efforts to limit their ability to earn as close to their true value as possible.

5. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.

How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

A: I defer to student athletes on the state-by-state portion of the question but one of the value propositions of TCA members is that we help the athletes navigate every aspect of the contract process—at no charge to them—to ensure they personally are not running afoul of the law and therefore endangering their eligibility.

6. As Congress considers potential legislation to regulate college sports, please answer the following questions.

- a. In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?
- b. In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?
- c. In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not?
- d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?
 - A) My response to all of these questions can be summed up in the following way. The Power 5—football and basketball in particular—are a world unto its own. The numbers you quote in the question make that clear. This isn't necessarily bad or good it's just the truth. I know and understand why all of these schools aren't interested in their athletes becoming employees—and in my personal experience I don't know an athlete who wants to be an employee either. I go back to the fact that if athletes had access to a revenue sharing model that these "revenue sport" athletes from the Power 5 Conferences would make more money than they are currently and might allow for a fund to be created to pay for athletes' healthcare and other long-term needs. Collectives stand ready to serve as the partner to both the athletes, our partner institutions, conferences, and other members of the college sports ecosystem to ensure these funds are disbursed fairly and in a timely fashion.

**Questions from Senator Thom Tillis
for Walker Jones**

1. At the hearing, you commented on collectives being open to potentially supporting federal regulation. Please expand on this and give any suggestions you have for such regulation.

- A) The TCA believes that the federal government can create clarity in the college sports ecosystem by ensuring states are not creating an unequal playing field for their home state institutions. Any federal law should 1) recognize Collective's value to student athletes in the college sports ecosystem, 2) protect the privacy, health, and safety of the athletes and 3) not place arbitrary limits on how student athletes monetize their Name – Image – Likeness rights. 4) and finally, create a national standard for enforcement and oversight regardless of state or conference affiliation.



Testimony of Tony Petitti
Commissioner of the Big Ten Conference
U.S. Senate Committee on the Judiciary
October 17, 2023

Chairman Durbin, Ranking Member Graham, and distinguished members of the Judiciary Committee, on behalf of the Big Ten Conference, I want to thank you for providing me the opportunity to appear before you today to discuss the pertinent issues impacting collegiate athletics, including the use of student-athletes' name, image, and likeness (NIL).

I would like to thank the Senators on this Committee for their strong commitment to finding legislative solutions to the many challenges currently facing collegiate athletics. I have had many important and substantive conversations with members of this panel and I am encouraged to see there is strong interest in addressing the issues facing college sports.

My name is Tony Petitti, and I am proud to be serving as the seventh Commissioner of the Big Ten Conference, the country's oldest Division I collegiate conference. While I may be relatively new to my role as Big Ten Commissioner, my dedication to student-athletes and collegiate athletics runs deep and is fueled by a lifelong passion for sports. I have a long history of working in professional and college sports, recently as the Deputy Commissioner and Chief Operating Officer of Major League Baseball and President and Chief Executive Officer of the MLB Network. I also have previous experience in senior leadership positions in the media and broadcast space at CBS Sports, ABC Sports, and a local broadcast station in New York.

I was also a student-athlete, having played baseball while pursuing my undergraduate degree at Haverford College. Like millions of Americans, being a student-athlete allowed me to pursue a higher education and be the first in my family to attend college. As such, I understand on a personal and professional level the unique opportunities that collegiate sports can provide to our young adults and the need for us, as a conference, to support them to the greatest extent possible.

Starting in 2024, the Big Ten Conference will represent 18 institutions in 14 states, with championships in 28 sports, nearly 12,000 student-athletes, and over \$16.7 billion in research dollars. We are a conference deeply committed to academics, research, and broad-based sports programming that understands the important contributions of our student-athletes in helping our conference and member institutions flourish.

We are not a professional sports league, nor do we want to be. Our primary goal is to allow student-athletes the opportunity to excel at their sport while providing them with a world-class education that

will benefit them for the rest of their lives. While there is a lot of good in the system, there is also a lot that can be improved upon. The Big Ten is ready to make changes to benefit our students in a manner that does not throw out what is good within the uniquely American system of collegiate athletics. To do so, we need Congressional assistance.

As Big Ten Commissioner, I take great pride in the success of our student-athletes in the classroom. The graduation rate of student-athletes across Big Ten institutions is a testament to the commitment of our student-athletes both inside and outside of the classroom during their time on campus – as well as afterward. While student-athletes are committed to perfecting their craft, it is important to not lose sight that they are student-athletes, with “student,” coming first.

Furthermore, the Big Ten has taken significant strides in advancing women’s sports and we continue to build upon the successes of Title IX through expansion in participation across the women’s sports community. Just recently, the University of Nebraska set a new record for the largest crowd to watch a women’s sporting event in the United States, when more than 92,000 fans filled Nebraska’s Memorial Stadium to watch the Nebraska Women’s Volleyball team in an outdoor match.

We must also acknowledge the pivotal role college athletic programs play in bolstering a strong Olympic and Paralympic pipeline. Many accomplished Olympians come from a collegiate sports background. For example, nearly 200 Big Ten athletes participated in competitions at the 2020 Tokyo Olympics, and 45 Big Ten athletes participated in the 2022 Beijing Winter Olympics. Through collegiate sports, these Olympians are able to realize their Olympic dreams and gain the skills necessary to perform at the highest level.

At the Big Ten, we view student-athlete health and welfare as a top priority. That is why we strongly support and provide both on-campus and post-separation health care guarantees, which ensure that our student-athletes have access to medical care and mental health services both during and after their time on campus. Of equal importance is the Big Ten’s commitment to on-field health and safety standards during practice and play. As the first of the Autonomy Five (A5) Conferences to appoint a Chief Medical Officer, we firmly believe that every one of our student-athletes should have access to the same high standards of medical care and safety precautions while participating in collegiate athletics. While the Big Ten and other A5 Conferences currently provide these important benefits, the Big Ten is open to, and supports efforts to discuss additional health and wellness benefits for our student-athletes, such as life-long learning, financial literacy, and other life-skills training. We recognize that there is still room for growth and that more benefits need to go directly to our student-athletes and are committed to working with members of this Committee to identify ways in which that can be accomplished.

It is also no secret that the collegiate athletics community is at a pivotal turning point in its history – NIL, media and other revenue, transfer rules, state intervention, realignment, and a changing governance model are all impacting the landscape. At the Big Ten, we see this confluence of events as an opportunity to fundamentally modify the dynamics that exist for student-athletes. We are prepared to modernize our guidelines to create a new framework for collegiate athletics that more fairly provides benefits to student-athletes directly from member institutions, maintains broad-based sports opportunities for men and women, and upholds Title IX.

We see four main challenges that must be addressed by proper regulation to better protect and serve our student-athletes. These federal regulations need to (1) preempt the developing patchwork of state laws pertaining to college athletics; (2) provide the NCAA and conferences with the ability to regulate more effectively; (3) better identify “true NIL” deals from “pay-for-play” or inducement schemes; and (4) codify the classification of student-athletes as students.

Preemption of NIL State Laws

There is no doubt that student-athletes can and should be able to monetize their name, image, and likeness. At the Big Ten, we are very supportive of the exposure and financial benefits students can receive through NIL deals but would like to see legislation at the federal level that makes the regulatory environment easy for student-athletes to navigate, allows conferences and the NCAA to certify compliance, and ensures that there is no undue competitive advantage being provided to specific institutions. However, there are now more than 30 different state laws related to NIL and college athletics, with many states passing laws specifically designed to provide individual institutions with a competitive advantage in recruiting top talent. To provide certainty, equity, and competitive balance, a uniform federal statute is needed to preempt this growing network of state laws.

Ability to Regulate

A combination of court decisions, current litigation, and state action has rendered the NCAA increasingly unable to make or enforce common-sense regulations governing college athletics. As such, through legislation, Congress should grant limited and conditional liability protections so that the Big Ten and NCAA can set and enforce reasonable competitive standards and promote student-athlete welfare. Specifically, we are focused on the problematic area of agent registration, transparency of deals, and the codification of a no inducement regime or “pay-for-play” system.

Identifying “True NIL” Deals From “Pay-for-Play” or Inducement Schemes

One of the biggest challenges facing institutions and athletic departments today is the ability to identify *true* NIL deals from “pay-for-play” or inducement schemes, particularly with the precipitous rise of collectives. In today’s current regulatory environment, student-athletes are frequently being induced by collectives to attend specific institutions and transfer from one school to another – without a true NIL deal. This has resulted in a “pay-for-play” system, primarily driven by boosters and executed under the guise of NIL. Unfortunately, in some instances, this system fails to deliver on promises made to student-athletes. As collectives become more influential, we are concerned that operational control of college athletics is shifting away from institutions to collectives.

To be clear, the Big Ten will continue to support students making *true* business deals (such as being paid to promote a product or service on social media) from their name, image, and likeness, and provide student-athletes the freedom to choose the institution from which they will obtain an education. However, we do not support such activity when it is tied to a “pay-for-play” scheme disguised as NIL.

Simply put, as the collegiate sports environment has evolved, so too have the motivations and goals of many collectives, which are now trying to create competitive advantages and are not subject to Title IX. We are already seeing that payments from collectives will not be easy to sustain. Without action from Congress, we will continue to lack the ability to manage collegiate athletics.

Codifying Student Status

In tandem with the other challenges NIL brings, we feel it is important for Congress to work with the NCAA and conferences to clarify that student-athletes should not be classified as employees. Speaking on behalf of the Presidents and Chancellors of the Big Ten's institutions, employment status is not only complex, but it is contrary to the educational model that has long flourished in American college athletics.

Consider, for instance, the recruitment process of smaller schools, which offer athletic programs to encourage student enrollment. Mandating that student-athletes be reclassified as employees and requiring specific benefits and wages may render lesser-resourced schools incapable of providing various opportunities and experiences to those student-athletes.

Employment status would also push collegiate sports towards a more professional outlook but would fail to recognize the reality that while student-athletes in football and field hockey are equally dedicated to their sport, revenues in each sport are radically different – likely resulting in different benefits to similarly situated students. The Big Ten does not support a world in which students in non-revenue generating sports receive less support simply because they have little to no employment bargaining power.

As such, the Big Ten instead strongly supports Congressional proposals that would codify benefits for student-athletes that guarantees consistency across states and sports, without the need to classify student-athletes as employees. Bolstering these benefits through legislation would strike a balance between the interests of student-athletes and the values of the Big Ten and NCAA.

Moving Forward

While there are many important issues that we will discuss during today's hearing and beyond, it is important to understand that student-athletes must be kept at the forefront of our minds. With many new challenges on the horizon, we look to Congress for your partnership in helping us embrace change and ensure that we tackle these new challenges effectively, while celebrating and promoting the magic that is college athletics.

I look forward to working with each member of the Committee to ensure our student-athletes are properly taken care of during and after their college sports careers.



November 7, 2023

Chairman Richard J. Durbin
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin:

Thank you for the opportunity to testify before the Senate Committee on the Judiciary during the hearing entitled "Name, Image, and Likeness, and the Future of College Sports" on Tuesday, October 17, 2023.

Please find attached my written responses to the questions for the record.

I look forward to continuing to work with the Committee to ensure our student-athletes are properly taken care of during and after their college sports careers. Please let me know if you have additional questions.

Sincerely,

A handwritten signature in black ink that reads "Tony Petitti".

Tony Petitti, Commissioner
The Big Ten Conference

PRIVILEGED AND CONFIDENTIAL

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Tony Petitti
Commissioner, Big Ten Conference
October 24, 2023

1. In your opening statement, you said that the Big Ten “view[s] student-athlete health and welfare as a top priority.” Next year, the Big Ten will welcome the University of Southern California (USC), the University of California, Los Angeles (UCLA), the University of Oregon, and the University of Washington as members, transforming the historically Midwest-based conference into one that stretches from coast to coast. The addition of these schools will result in increased travel for the conference’s athletes and more time away from the classroom. From the outside, the conference’s decision to expand appears to be based less on what is best for the health and welfare of athletes, and more on what generates the most revenue for member schools.

How does the Big Ten plan to ensure students are successful both in the classroom and on the field, especially as conference realignment will increase the time and travel demands on athletes?

The Big Ten’s commitment to the health and welfare of our student-athletes remains unwavering and student-athlete success in the classroom will continue to be at the forefront. Now that our conference stretches from the east-to-west coast, we are taking precautions to limit the amount of travel needed from one coast to another. We recently released the Big Ten Conference football schedules for the next five years and limited the amount of east-to-west coast travel being conducted by universities. As for other sports, we are continuing to collaborate with faculty representatives when producing upcoming schedules and are ensuring that this is a sport-by-sport process, understanding that specific sports may have different scheduling layouts that require more tailored travel needs. We are also exploring neutral cities to play, which can help alleviate the burden of long-distance travel for our sports teams. Finally, we believe long-distance travel presently occurring during nonconference play will be reduced.

This is an iterative process that will be refined over time and we will learn from the community as we continue to progress, taking feedback from student-athletes, coaches, and university faculty about how best to approach travel for sports. We are very excited to be welcoming these new member institutions to our Big Ten family and agree that travel considerations for student-athletes must continue to be discussed and commit to you that such concerns will stay top-of-mind for us at the Big Ten as we work through future scheduling.

2. The past several years have seen significant realignment among the Power 5 conferences, including the Big Ten expanding to include USC, UCLA, the University of Oregon, and the University of Washington. This realignment has left some schools behind—most notably Oregon State University and Washington State University, the only remaining members of

PRIVILEGED AND CONFIDENTIAL

the Pac-12. Those schools' inability to find a home in one of the major football conferences will have profound impacts on their students, fans, and budgets. Commentators speculate that future realignment will lead to further consolidation around the biggest college football brands.

What assurances can you provide that current members of the Big Ten will not be left out during future conference realignment?

The Big Ten Conference is comprised of 14, soon to be 18, world class educational institutions, and we are committed to all of our member institutions. Our focus is on making decisions that strengthen the Conference.

3. *USA Today* recently reported that the public schools in the Power 5 conferences will pay their head football coaches an average of \$6.2 million this year, a 14.8 percent increase from 2022. *USA Today* also reported that those schools will pay their head men's basketball coaches an average of \$3.35 million this year. Many schools are also paying fired coaches millions of dollars in buyouts.

Additionally, massive media-rights contracts—including the Big Ten's recent seven-year, \$7 billion deal with Fox, CBS, and NBC—will pay huge amounts of money to Power 5 universities, largely for the right to broadcast football and men's basketball games.

- a. **With Power 5 conferences, schools, and coaches making such large sums of money, does the classification of college athletes—especially football and basketball players—as amateurs continue to make sense?**

The Big Ten will continue to support efforts to classify student-athletes as students, as opposed to employees. We see the issue of student classification as a major discussion point that we need Congress to help address and support Congressional proposals that would codify benefits for student-athletes that guarantee consistency across states and sport, without the need to classify our student-athletes as employees/professionals.

- b. **Athletes at Big Ten institutions receive scholarships, access to healthcare, high-quality training, academic support services, and other benefits. Nonetheless, in light of the massive amount of money being generated by these athletes, does the Big Ten support sharing a portion of its revenue directly with athletes? Why or why not?**

We understand that college athletics is at a pivotal turning point. We are prepared to modernize our guidelines to create a new framework for collegiate athletics that more fairly provides benefits to student-athletes directly from member institutions, maintains broad-based sports opportunities for men and women, and upholds Title IX.

4. Name, image, and likeness (NIL) rights in college sports are here to stay. However, there are differences among the various stakeholders in how NIL should be regulated. Thus far, the NCAA's policies regarding NIL have been largely permissive and deferential to the

PRIVILEGED AND CONFIDENTIAL

patchwork of state laws that have emerged.

a. How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

More than 30 disparate state laws have created a destabilizing landscape for college athletics. Big Ten institutions recruit nationally, and the footprint of the Conference will soon include 14 states. It is unreasonable to expect prospects to track and understand a continually shifting collection of diverse state laws. A recent trend has been states passing laws that explicitly say that the NCAA or conferences cannot penalize institutions for violations of NIL policies, and this includes the role and relationship of collectives to universities. States are passing laws specifically designed to provide individual institutions with a competitive advantage in recruiting top talent. To provide certainty, equity, and competitive balance, a uniform federal statute is needed to preempt this growing network of state laws.

b. Have there been any documented instances of enforcement of state laws related to NIL?

We are unaware of any such enforcement.

c. If there is to be a national, uniform NIL policy—whether it comes from Congress or the NCAA—what, in your view, are the key things that should be included? For instance, should schools be allowed to play a more direct role in NIL? Should there be more regulation around the operation of collectives?

Federal legislation needs to (1) preempt the developing patchwork of state laws pertaining to college athletics; (2) provide the NCAA and conferences with the ability to regulate more effectively; (3) better identify “true NIL” deals from “pay-for-play” or inducement schemes; and (4) codify the classification of student-athlete as students. Schools should be more involved and there should be more regulation around collectives. Federal legislation should also require NIL deals negotiated by collectives to adhere to Title IX protections.

d. If there is a national policy, who do you believe should lead enforcement efforts?

Given the longstanding role of the NCAA in creating, implementing, and enforcing policies related to college athletics, the Conference feels that the NCAA is the entity best poised to continue enforcement responsibilities - provided that they are granted appropriate legal protections to do so.

5. College athletics in the United States play a unique role in developing the athletes that will go on to compete internationally and in the Olympics.

a. What would be the impact on the U.S. Olympic and Paralympic Committee

PRIVILEGED AND CONFIDENTIAL

(USOPC) if many schools eliminate their sports programs that do not generate profits or break even?

Broad-based college sports offerings play a tremendously significant role in developing Olympians in the United States. We are concerned that legislative efforts mandating revenue sharing will shift resources away from women's and Olympic sports toward men's basketball and football. These efforts also raise significant Title IX concerns. It is important to maintain a strong Olympic and Paralympic pipeline. Through collegiate sports, Big Ten student-athletes are able to realize their Olympic dreams and gain skills necessary to perform at the highest level.

- b. If USOPC development is reliant on college sports that generate significant revenue—namely football and basketball—is this model sustainable? Should the USOPC develop a new model for Olympic development?**

It is important to acknowledge the pivotal role college athletic programs play in bolstering a strong Olympic and Paralympic pipeline. We defer to the USOPC on any changes to their model; however, we would note that not all athletes become Olympians. Broad-based college sport offerings provide thousands of opportunities in higher education through sport, in many cases to students who but for their athletic ability would not be able to attend college.

6. As Congress considers potential legislation to regulate college sports, please answer the following questions.

- a. In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?**

Athletes at any institution, regardless of whether they are at an Autonomy 5 institution or at a Division III institution should be entitled to the same benefits and protections of a federal NIL framework. With respect to the revenue sharing and employment status, the likely result is that either of these concepts would likely require lower-resourced institutions to end sports programs due to the inability to meet the economic burdens required.

- b. In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?**

The Big Ten believes that the economic framework for student-athletes in all sports

PRIVILEGED AND CONFIDENTIAL

across all A5 institutions should be similar. There is no differentiation between the passion and effort displayed by a women's field hockey player relative to a football player. She should have the same rights (and protections from unscrupulous actors) enjoyed by her football counterpart in the monetization of her NIL rights. Similarly, she should be provided the same student-athlete welfare benefits (e.g., health care, life-long learning, mental health, and academic benefits, etc.) as her football counterparts – regardless of the lack of revenue generated by field hockey. The Big Ten believes strongly in the tenets of Title IX and that – with Congress' help – we can fashion a more equitable system that doesn't sacrifice the core principles of broad-based sport and ties to education.

- c. In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not?**

The Big Ten believes that the economic framework for student-athletes in all sports across all A5 institutions should be similar. There is no differentiation between the passion and effort displayed by a women's field hockey player relative to a men's basketball player. She should have the same rights (and protections from unscrupulous actors) enjoyed by her basketball counterpart in the monetization of her NIL rights. Similarly, she should be provided the same student-athlete welfare benefits (e.g., health care, life-long learning, mental health, and academic benefits etc.) as her basketball counterparts – regardless of the lack of revenue generated by field hockey. The Big Ten believes strongly in the tenets of Title IX and that – with Congress' help – we can fashion a more equitable system that doesn't sacrifice the core principles of broad-based sport and ties to education.

- d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?**

Nothing in addition to the responses above.

PRIVILEGED AND CONFIDENTIAL

**Questions from Senator Thom Tillis
for Commissioner Tony Petitti**

1. As a conference commissioner, what do you believe are the top three hurdles that the NCAA currently faces? What if any involvement should Congress have in resolving these challenges?

We see four main challenges that must be addressed by proper regulation to better protect and serve student-athletes. Federal legislation needs to (1) preempt the developing patchwork of state laws pertaining to college athletics; (2) provide the NCAA and conferences with the ability to regulate more effectively; (3) better identify "true NIL" deals from "pay-for-play" or inducement schemes; and (4) codify the classification of student-athlete as students.

2. As you are probably aware, multiple bills have been introduced this Congress that touch on NIL. Do you believe that the path forward in Congress is a tailored bill or a broad one?

The Big Ten supports congressional proposals that address the current challenges facing college athletes as provided in the answer above. Congress is the only entity capable of setting an even playing field for NIL and related policies across the US. Conferences and universities work across state lines every day and the lack of clarity is confounding even to the most seasoned administrators. Only Congress can create a fair, national NIL framework that will sustain the educational benefits and opportunities colleges and universities provide to student-athletes - the vast majority of whom are in non-revenue sports and more than 50% of whom are female.

3. As commissioner, how are you managing the NIL collectives within the Big Ten Conference?

One of the biggest challenges facing institutions and athletic departments today is the ability to identify and differentiate true NIL deals from "pay-for-play" or inducement schemes from collectives. We believe it is critical to be able to enforce the NCAA rules prohibiting "pay for play" and inducements from collectives, but such efforts are hindered by the current onslaught of litigation. We at the Big Ten will continue to support students making true business deals from their name, image, and likeness, but need Congressional support to ensure that we have the authority and resources to manage collegiate athletics and protect our student-athletes from nefarious actions taking place at the hands of some collectives which don't always have our students' best interest in mind.

4. Do you believe that NIL and NIL Collectives are factors influencing the increase of conference realignments?

PRIVILEGED AND CONFIDENTIAL

We do not believe that NIL and NIL collectives are factors in conference realignment. However, we are concerned that groups unassociated with universities, often comprised of boosters, have turned true NIL into something that is damaging college athletics - directly paying student-athletes, under the guise of NIL, to attend a specific school, to transfer from one school to another, or not to transfer and remain at their current school. The proliferation of collectives is pushing management of college sports away from institutions and we believe that to be unhealthy.

5. Do you believe that conference realignments could lead to 2-3 super conferences?

The Big Ten Conference is comprised of 14, soon to be 18, world class educational institutions, and we are committed to all of our member institutions. Our focus is on making decisions that strengthen the Conference.

6. Are there concerns about creating a conference monopoly that could potentially lead to Congressional oversight?

The Big Ten Conference is focused on its mission of creating and providing the best academic and athletic opportunities for our student-athletes. In so doing, we remain cognizant of the legal and regulatory landscape and seek to fulfill our mission without violating established principles. However, Congressional action could provide greater clarity in the current environment of uncertainty in the governance of college sports.

PRIVILEGED AND CONFIDENTIAL

Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing
Name, Image, and Likeness, and the Future of College Sports
Questions for the Record
for Tony Petitti, Commissioner, Big Ten Conference
Submitted October 24, 2023

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.
 - a. Who should be responsible for ensuring that student-athletes are protected from exploitation?
 - b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?

The Big Ten is supportive of enacting student-athlete protections including requiring agent registration, uniform contract elements that protect student-athletes, and financial literacy training, and giving student-athletes data to help realize their full NIL potential and prevent exploitation.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.
 - a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?
 - b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?
 - c. How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?

If NIL is appropriately limited to "true" NIL transactions (i.e., those third-party transactions based at market rates) rather than "pay for play" or inducement payments, then no additional regulation of the market is needed. Men and women compete vigorously for market-based deals; the disparity created by "pay for play" and inducements to student-athletes in predominantly men's sports is problematic.

3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.
 - a. Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?

PRIVILEGED AND CONFIDENTIAL

Student-athlete health and welfare is a top priority for us at the Big Ten. That is why we strongly support and provide both on-campus and post-separation health care guarantees. This ensures that our student-athletes have access to medical care during their time on campus, and afterwards, should injuries recur or manifest at a later date.

While we currently provide important benefits to our Big Ten student-athletes, we are open to, and support efforts to discuss additional health and wellness benefits, and look forward to continuing a dialogue with you and your office about advancements to continue supporting the health and wellness of our student-athletes.

- b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?

The Big Ten is supportive of enshrining into federal legislation health, safety, and education protections that each student-athlete deserves. We currently provide two years of post-separation/graduation health insurance. The Big Ten is open to, and supports, efforts to discuss additional health and wellness benefits for our student-athletes.

PRIVILEGED AND CONFIDENTIAL

Senator Grassley's Written Questions for Tony Petitti
Senate Committee on the Judiciary
Hearing on "Name, Image, and Likeness, and the Future of College Sports"
October 17, 2023

1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?

We do believe that federal preemption of state laws is best for collegiate athletics and more specifically, for student-athletes. With the growing network of state laws pertaining to collegiate athletics, particularly NIL, the environment is becoming complex and difficult to navigate for student-athletes. The last thing we want to do is punish our student-athletes for seizing the opportunity to monetize their name, image, and likeness in a way that may be compliant in one state, but is not compliant in another.

That is why the Big Ten supports Congressional efforts to develop federal regulations that would ensure an easy and uniform regulatory environment for students, schools, and conferences to navigate, and would provide the necessary tools to the NCAA and conferences to certify compliance and ensure there is no undue competitive advantage being provided to specific institutions.

2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?

At this point given the patchwork of state laws and the growing hostility of state legislatures to the NCAA, only Congress can create the framework in which either the NCAA or the NCAA in collaboration (oversight or co-regulation) with another entity can effectively regulate and enforce common sense NIL and other rules. It is important to create a durable framework providing both guardrails and flexibility so Congress need not intervene in routine rulemaking and enforcement.

3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?

Given the longstanding role of the NCAA in creating, implementing, and enforcing policies related to college athletics, the Conference feels that the NCAA (either alone or in collaboration or co-regulation with another entity) is the entity best poised to continue enforcement responsibilities-provided that they are granted appropriate legal protections to do so.

4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?

PRIVILEGED AND CONFIDENTIAL

Transparency is very important in understanding the current fair market value for NIL deals. There is a particular lack of transparency related to deals with collectives that make it impossible to distinguish these arrangements between true NIL deals and inducements or “pay-for-play” schemes. We would be supportive of deals with collectives being publicly reported, including who contributes to the collective. Additionally, we feel strongly that collectives should have to adhere to existing federal law, including Title IX.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

A registry of agents, similar to what currently exists in professional sports would be a good first step to protect athletes from unscrupulous actors who are motivated by how they can profit rather than securing beneficial deals for athletes. Similarly, we believe that college athletes should have the broad ability to rescind NIL deals that extend beyond their college career or contain particularly unfavorable terms.

6. Concerns have been raised regarding possible Title IX violations if there is no federal preemption of state NIL laws. Do you agree? If so, what would you propose Congress do to mitigate Title IX concerns?

Congress should enforce the mandates of Title IX, which outlaw discrimination on the basis of gender, on any entity – including collectives – controlled or acting in concert with federally funded institutions of higher education. After working for decades to get financial boosters out of college athletics, they are now back in quasi-autonomous collectives and without any incentive to comply with Title IX, protect student-athletes, generally, positively impact graduation rates or support the educational mission of our institution.

7. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

I have had the opportunity to meet with many Members of Congress and am encouraged by the discussions that are being had. The Big Ten looks forward to continuing to work with members of this Committee to find legislative solutions to the many challenges currently facing collegiate athletics and we are working towards a bill that includes benefits and protections for student-athletes while also preempting state law, allowing for enforceable common-sense regulation, and codifying that student athletes are not employees. There is strong bipartisan interest in addressing the issues facing college sports and we look to Congress for your partnership in helping us embrace change and ensure we tackle these new challenges effectively.



**Testimony of Jack Swarbrick
Vice President & James E. Rohr Director of Athletics
University of Notre Dame**

Before the U.S. Senate Judiciary Committee

October 17, 2023

Thank you, Chairman Durbin, Ranking Member Graham, and distinguished Members of the committee.

I am honored to represent the first university in the country to call for the NCAA to eliminate its prohibition on the ability of student-athletes to benefit from the value of their name, image, likeness, and ideas. When Notre Dame's President John I. Jenkins advanced that argument in a 2015 interview with *The New York Times*, his rationale for doing so was clear; it is a principle that lies at the heart of Notre Dame's approach to collegiate athletics. We believe student-athletes are first and foremost students. And because we do, we believe anytime a rule is made or a policy developed that draws a distinction between a student-athlete and his or her fellow students, the rationale for doing so must be compelling. Denying students-athletes the rights enjoyed by all other students to exploit their name, image, likeness or idea under some misguided pursuit of competitive equity did not pass that test.

This principle of normalizing the experience of the student-athlete against the experience of other students is central to Notre Dame's approach to college athletics. It is why the decision to admit a student-athlete rests exclusively with our university's admissions office, and it is why our student-athletes live in our residence halls, dine in our student cafeterias, and take the same courses as all other students.

Similarly, we also firmly support comprehensive care and protections for our nation's student-athletes. Notre Dame takes very seriously its commitment to our student-athletes, and ensuring their long term well-being and success, to include degree completion and increased medical support.

THE STATUS OF THE STUDENT-ATHLETE

This notion of athletics, and the athletes who participate in them, being integrated fully into the college or university is at the heart of the uniquely American model that is intercollegiate athletics. Virtually everywhere else in the world, elite athletic activity for 18-24 year-olds is conducted in private or state-sponsored club systems. The consequence of America's unique approach has been extraordinary. It has made possible the education of many first-generation students, helped to lead the integration of America's colleges and universities, fostered an unprecedented growth in women's sports, and largely underwritten the country's Olympic success.

We recognize that not all colleges and universities are equally committed to this model of the athlete as student – a reality that has been reinforced by institutions where transactions that are being characterized as NIL arrangements might best be classified as talent acquisition deals. And because they are not, these deals and relationships have led to a host of legislative, administrative, and litigation efforts to declare student-athletes as employees. This, we would respectfully submit, is the place ***where Congressional intervention is most needed – to resolve, once and for all, the status of student-athletes as students rather than employees.***

Why is this issue so important to Notre Dame and other colleges and universities that choose to pursue a similar commitment to the student-athlete model? The answer lies first and foremost in the preference of our student-athletes. This is not just a matter of asking our student-athletes what they prefer, which we have. It is about knowing that our recruiting and admissions processes ask students to affirmatively commit to a model that requires full participation in the university, in the same manner as all students who choose Notre Dame.

It is important to note, there are sports like baseball and hockey that offer all students a version of this choice, in that talented athletes may elect to go directly to the professional ranks out of high school rather than continuing to pursue their sport in college. Perhaps that is the reason why the legal efforts to reclassify student-athletes as employees elect not to focus on these sports. Professional sports team rules should not undermine the commitment Notre Dame has to its students. The fact that the NBA's eligibility rules may force individuals who have little interest in being students to nevertheless enroll in college for a year or that the NFL offers no alternative to college (relying instead on America's colleges and universities to underwrite its player development function) are not reasons to require Notre Dame to abandon its model.

Notre Dame treats its students who participate in varsity athletics as students, not employees. And those individuals view themselves as students. But the risk that an administrative agency, legislative body, or court will rule otherwise has become so significant that we believe federal legislation is necessary to protect the traditional model of college athletics and the student status of our student-athletes that is at the core of that model.

In arguing that student-athletes are first and foremost students, we do not mean to be understood as arguing that the unique experiences of student-athletes should not be recognized. Just as student-athletes should never have been excluded from the benefits afforded other students in terms of name, image, likeness, and idea rights or the benefits available to other students as part of scholarships offered by a university (e.g. full cost of attendance), there are differences between students and student-athletes that should be recognized. For example, student-athletes that participate in sports like hockey, lacrosse, and football may face risk of long-term medical issues that ought to be able to be covered by the college or university after the student-athlete has graduated. Similarly, grant-in-aid student-athletes who leave school early to pursue professional sport opportunities ought to have the assurance that their scholarship will be honored if they return to school. ***Ultimately, we need to foster a system that supports and protects student-athletes.***

STATE PREEMPTION

State legislative incursions into the structure of college athletics, especially with regard to state laws attempting to limit the authority of the NCAA and to regulate NIL transactions, are increasingly prevalent. Given that intercollegiate athletic competition largely involves interstate commerce, these state efforts are especially disruptive and inappropriate. For that reason, ***we believe it is reasonable to also request that Congress exercise its authority to preempt state legislatures when it comes to the regulation of college athletics.***

FUTURE REGULATION OF COLLEGIATE ATHLETICS

Notre Dame's final request of Congress is the most far reaching. In order to be fair to participants and of interest to fans, athletic competition requires some measure of competitive equity. That is why youth and scholastic sport organizations have strict age and residential rules. Professional sports employ player entry drafts, salary caps, transfer fees, luxury taxes, limitations on free agency, and a host of other devices designed to ensure a level playing field, regardless of market size. These rules allow the players and fans of teams like the Milwaukee Bucks, Kansas City Chiefs, and Tampa Bay Devil Rays know that it is possible to win a championship.

The lone exception to this fundamental principle of athletic competition is American collegiate sports. Virtually every effort to create even modest degrees of competitive equity – efforts that typically involve attempting to limit the amount that colleges and universities can spend to field a team – have run afoul of the country's antitrust laws. The NCAA's "greatest hits" of misguided attempts in this regard include: the attempt to regulate the sale of broadcast rights; a restriction on how much a certain class of coaches could earn; and, limitations on what could be included in an athletic scholarship.

Currently, collegiate sports are unable to create rules for competitive equity like those employed elsewhere simply because enterprises sponsoring the competition are colleges and universities

and the participants are students. They are not entities organized for the purpose of conducting sporting events, and the participants are not merely competitors.

The response to this dilemma, for some, is to argue the solution lies in designating student-athletes as employees in order to deliver an acceptable measure of competitive equity. Ignoring, for the moment, the challenge of negotiating across a competitive landscape that involves individual schools, ever-shifting conferences, and the NCAA, the potential for traditional collective bargaining to solve rule-making challenges is not a basis to justify calling students something they are not, namely employees.

There are at least two alternatives to a traditional collective bargaining approach. First, is to authorize the NCAA to adopt rules and regulations reasonably related to producing an acceptable measure of competitive equity, such standards that: govern the conduct of competition; squad size (including number of student-athletes, coaches, and support staff); participant eligibility; season-length; practice time; and, postseason format and selection. As part of this approach, Congress could require significantly greater involvement of student-athletes in the governance of the NCAA.

The second, admittedly more radical approach, would be to craft legislation articulating the rights of student-athletes, including the right to negotiate with the conferences in which they compete over the terms and conditions of their athletic participation. Such an approach would protect the rights of student-athletes while also preserving their essential status as students, first.

COLLEGE ATHLETICS IS IN CRISIS

College athletics are a treasured national institution, and our student-athletes are worth fighting for. Without action, we risk losing one of our nation's strongest college scholarship programs, eliminating opportunities for many to partake in a collegiate atmosphere, and eroding America's cherished Olympic sports model.

Most importantly, without action, America's student-athletes will surely suffer. Greater support to our country's student-athletes must be pursued. Several Members of this committee have advanced legislative proposals that do just that. Notre Dame welcomes and supports your continued leadership on these fronts, to include the incorporation of evidence-based health, safety and wellness standards; sustained attention on improved educational outcomes and opportunities; and, longer term medical and scholarship assurances.

We call on universities to reaffirm that student-athletes are students first, and to ensure their athletic programs serve the schools' broader educational mission, not the other way around. We call on the NCAA and athletic conferences to set policies that support that goal. And we urge Congress to protect the NCAA's ability to regulate the competition for new players to ensure it remains fair and above board.



ATHLETICS

***Responses to the United States Senate Judiciary Committee from
University of Notre Dame Vice President and Director of Athletics Jack
Swarbrick***

November 7, 2023

Responses to Senator Whitehouse

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.
 - a. Who should be responsible for ensuring that student-athletes are protected from exploitation?
 - i. **We all share an inherent responsibility to ensure student-athletes are protected from exploitation. A central governing body that oversees agents and understands the workflow of the entire process is needed to ensure protections nationwide.**
 - b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?
 - i. **A variety of potential processes or regulations can be created including, but not limited to a reputable and accredited agent database (and process on how to become accredited), training and education and mandatory reporting that shows outlier transactions (both low and high).**
2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.
 - a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?
 - i. **The regulation needed in regards to NILI (Name, Image, Likeness and Ideas) is needed throughout all**



ATHLETICS

student-athletes, not just “star” student-athletes.

- b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?
 - i. **Regulations should treat each student-athlete the same - mandatory reporting, no “pay to play”, all student-athletes are true students.**
 - c. How can Congress or the NCAA ensure fairness and equity between men’s and women’s collegiate athletics in securing NIL deals?
 - i. **Treat each student-athlete the same in terms of the regulations put in place**
3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete’s life.
- a. Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?
 - i. **We should work to create a central medical trust fund to support our student-athletes across the nation. At Notre Dame, we cover athletic-related injuries up to 10 years post injury (5x the national standard). Additional reading on the topic - University President Rev. John Jenkins’ July 1, 2021 NYT op-ed: <https://www.nytimes.com/2021/07/01/opinion/college-athletes-pay-NCAA-Notre-Dame.html>**
 - b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?
 - i. **We strongly believe in finding ways to support schools with more limited resources to cover costs of a central medical trust fund for student-athletes.**



ATHLETICS

Responses to Senator Durbin

1. Notre Dame is an outlier in the structure of its athletics department. The football team competes independently of any conference, while its other sports compete within a conference—the Big Ten for men’s ice hockey and the ACC for the rest of the sports.
 - a. How has that structure worked for Notre Dame athletes?
 - i. **It’s been fantastic. Our partners at the Atlantic Coast Conference for 24 sports and the Big Ten Conference for hockey have always been terrific in working through issues that arise. Additionally, in terms of football, it has allowed our student-athletes and our University a great opportunity to spread education and our mission throughout the country and World. Our departing football senior class has played games in 15 different states, all four domestic U.S. time zones and two different countries (where many of them traveled outside the U.S. for the first time).**
 - b. Do you see this as a model that could be replicated by other institutions, where football competes in one conference or other arrangement, while other sports compete in a more regional conference?
 - i. **In clarification, our conference affiliations since 1995 (aside from Hockey) have not been as a part of a regionalized conference. Prior we played in the Midwestern City Conference (the current Horizon League) in all sports but football, basketball and hockey.**

There is nuance to the model presented above that would have to be analyzed to better understand the dynamics.
2. In your written testimony, you offered a proposal that included the right of college athletes to negotiate the terms and conditions of their athletic participation with the conferences in which they compete, while still preserving their status as students.
 - a. Do you propose this model for all college athletes or only those in revenue-generating sports?
 - i. **All student-athletes.**



ATHLETICS

- b. In the absence of employment status, how would you operationalize a collective bargaining system for college athletes?
 - i. **Find a way to allow student-athletes to stay students, while also providing a required voice on a variety of topics that pertain to them exclusively.**

- c. Due to the limited window during which they can participate as college athletes, along with other factors, college athletes may have limited bargaining power when negotiating with conferences. Should there be minimum terms and conditions that should be set by law or regulation and not subject to collective bargaining? If so, what are they?
 - i. **Yes, there is a large variety of support already being provided to student-athletes at Notre Dame through student-athlete academic support, nutrition, sport performance, personal brand support, travel, etc. However, national minimum standards should also be set in regards to our academic promise as the athletic & personal support is commonplace throughout the country. The two pressing issues for minimum standards are below:**
 - 1. **Scholarship Degree Completion - Regardless of injuries of performance on field, grant-in-aid should remain with the student-athlete through graduation. Additionally, if a student-athlete who leaves in good academic standing leaves to go professional in their sport (or for other potential reasons) we will cover their tuition if they return to complete their degree.**
 - 2. **Extended Injury Medical Coverage**

- 3. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.
 - a. How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?
 - i. **Difficult. We are located in a state, Indiana, with no NILI law, so our conversation may be different than other states.**

 - b. Have there been any documented instances of enforcement of state laws related to NIL?



ATHLETICS

i. Enforcement mechanisms are non-existent

4. As Congress considers potential legislation to regulate college sports, please answer the following questions.
- a. In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?
 - i. **Yes. All student-athletes should remain students and not employees. The reason we have been in support of NILI since we came out back in 2015 in the New York Times to support it is we believe student-athletes should be treated the same as all other students - playing by the same rules. Our student-athletes live in residence halls for three years - the same as their classmates. Our student-athletes are assigned a random roommate - the same as their classmates. Our student-athletes take in-person education - the same as their classmates. To build a divide in the collegiate system is an antithesis to the mission of Notre Dame and higher education to grow young people academically, athletically and spiritually (as a person).**
 - b. In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?
 - i. **Yes. Regulations should treat each student-athlete the same.**
 - c. In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not?
 - i. **Yes. Regulations should treat each student-athlete the same.**



ATHLETICS

- d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?
 - i. **Keep student-athletes as students first, federal legislation usurps state laws (preemption), central NIL clearinghouse for mandatory reporting**

Responses to Senator Grassley

1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?
 - a. **Yes. Preemption is required to ensure competitive equity across collegiate athletics. The main issues at hand aside from preemption:**
 - i. **Student-athletes remain students and not employees**
 - ii. **Can't generally stand in way of NILI opportunities of student-athletes - need to allow the same functional opportunities all students have on campus**
 - iii. **Education and protection of student-athletes in regards to agents & "bad actors"**
 - iv. **Mandatory reporting of NILI deals to ensure market value and not a "pay to play" model of enticement to a particular College or University**
 - v. **Degree Completion assurances to student-athletes**
 - vi. **Central Medical Trust Fund**
2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?
 - a. **Congress needs to act to put the entire country on the same guidelines - preempting the patchwork state laws. This is needed to create competitive equity across the U.S.**
3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?
 - a. **Depends on scope of the new NILI Law.**
4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?



ATHLETICS

- a. **Mandatory reporting should happen to ensure partnerships are market value and not “pay to play” enticements.**
5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?
 - a. **Proper education and ability for a reputable and registered third-party to be involved.**
 6. Concerns have been raised regarding possible Title IX violations if there is no federal preemption of state NIL laws. Do you agree? If so, what would you propose Congress do to mitigate Title IX concerns?
 - a. **We are located in a state in which has no NILI law, therefore it has not come up locally. However, with no preemption, it could create violations due defined support of a male sport over a female sport that infringes on the three-pronged Title IX test.**
 7. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?
 - a. **There are a variety of bills that have been introduced or “drafted” that have positive positioning on a variety of issues. Key elements of a Congressional package should include:**
 - i. **Student-athletes remain students, not employees**
 - ii. **Protection of student-athletes from “bad actors”**
 - iii. **Allow student-athletes to benefits from name, image, likeness and deas like all other students on campus**
 - iv. **Federal law preempts state laws**
 - v. **Allow central governing body and conferences to build and develop rules to ensure competitive equity**
 - vi. **University pays for degree completion for grand-in-aid student-athletes**
 - vii. **Central medical trust to support student-athletes for a set period post injury.**
 - viii. **Mandatory reporting of NILI partnerships and transactions**
 - ix. **Accreditation process for agents to work with collegiate student-athletes**

HEARING BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

October 17, 2023

Written Testimony of Trinity Thomas
Former student-athlete at the University of Florida

Thank you for giving me the opportunity to speak here today. I have spent the last five years competing on the University of Florida's gymnastics team. Over the course of my time at UF, I've completed my bachelor's degree in Applied Physiology and Kinesiology and my master's degree in Health Education and Behavior.

I've had the privilege of competing before and after name, image, and likeness (NIL) opportunities became available for student athletes. The experiences that I've had along the way have helped develop me into the young woman that I am today. I am currently serving as student-assistant coach for the gymnastics team at the University of Florida while pursuing a second master's degree in entrepreneurship and training for a chance to compete at the US Olympic trials in 2024.

As a student-athlete at the University of Florida, I have had the opportunity to receive an education from a top 5 university while also competing against some of the best gymnasts in the Nation. Competing against the best athletes on the biggest stages has provided me with more opportunities than I ever imagined possible when I started gymnastics as a little girl in Pennsylvania. One of the biggest opportunities collegiate gymnastics has given me is the ability to benefit from the changes in NIL policies that have recently come to college athletics.

While student-athletes weren't yet able to benefit from NIL when I first arrived at the University of Florida, I was immediately intrigued once the rules were changed. Admittedly, it took many of my fellow athletes and me time to learn how to navigate the waters of NIL, and everybody is still learning as we go, given it is new and uncharted territory. It's been interesting to navigate but I was able to interview and sign with agencies, partner with various companies, learn to become an entrepreneur, focus on building my brand, and work on so many cool personal projects that mean a lot to me.

The first year that student-athletes had the ability to take advantage of NIL, I was able to get iPads for my younger siblings as Christmas gifts, Kids gymnastics camps had the ability to promote the fact that I would be coming to work with them, I worked with companies to support women's sports, and more.

Unfortunately, one of the parts of NIL that makes it difficult for student-athletes is the varying laws and regulations that are in place from state to state. There currently is no single standard that applies to all student-athletes in all sports, which oftentimes leaves us confused. In some cases, the different laws also place certain student-athletes at a disadvantage depending on where they go to school.

Recently, I was invited to attend SEC Day on the Hill in Washington, D.C. to speak with representatives from Congress. Most of my discussions centered around the issue of NIL and allowed me to share some of my experiences as a student-athlete, including how NIL policies have impacted me personally – both the positives and the areas where there could still be improvements.

While the discussions were positive, it seems clear that the best path forward for everyone would be if we had a federal NIL policy that applied to all athletes from every sport, at every school, and at every level.

This will create equal opportunity for all student-athletes to benefit from NIL and will create a uniform standard to ensure we're all playing by the same rules and eliminate confusion and unfair advantages.

A federal law will also have the benefit of ensuring the future of sports like gymnastics are protected. The SEC is one of the nation's hotbeds for showcasing and developing Olympic talent, and it would be a huge loss that would be felt well beyond just college athletics if these sports were put at risk due to any future legislation that might come from one state or another.

Protecting the future of my sport, and the dozens of other sports that help develop future Olympians should be a top priority. Not only do women's and Olympic sports at the college level help young women like me receive a college education, but they also help athletes benefit from the very same NIL opportunities I have experienced during my time as a student-athlete at Florida.

While college sports took a step forward with NIL during my time as a student-athlete, more can still be done to better the lives of all student-athletes. I am hopeful we will soon have a national standard and the future of college athletics will be improved for the next generation of great student-athletes.

Thank you for taking the time to focus on a topic that is important to me and hundreds of thousands of student-athletes all over the nation.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Trinity Thomas
Gymnast, University of Florida
October 24, 2023

1. You have experienced the evolution of name, image, and likeness (NIL) in college sports, and personally benefitted from college athletes' ability to profit from their NIL rights. Additionally, as a highly successful athlete that has partaken in NIL activities in various forms, you provide a valuable perspective and insight into the system.

a. What impact has the ability to profit from your NIL rights had on your life?

One of the biggest opportunities collegiate gymnastics has given me is the ability to benefit from the changes in NIL policies that have recently come to college athletics. The first year that student-athletes had the ability to take advantage of NIL, I was able to get iPads for my younger siblings as Christmas gifts, kids' gymnastics camps had the ability to promote the fact that I would be coming to work with them, I worked with companies to support women's sports, and more. I am grateful for these opportunities, as well as the chance to build financial independence while still being a student-athlete. Ultimately, I was given the opportunity to begin setting myself up for success beyond my collegiate career.

b. How, if at all, would you like to see the current approach to NIL in colleges sports changed going forward?

I believe a federal NIL policy is needed that applies to all student-athletes, in all sports, at every level. This will create equal opportunity for all student-athletes to benefit from NIL and will create a uniform standard to ensure we're all playing by the same rules and eliminate confusion and unfair advantages. One of the parts of NIL that makes it difficult and confusing for student-athletes is the varying laws and regulations in place from state to state. In some cases, the different laws also place certain student-athletes at a disadvantage depending on where they go to school.

A federal law will also have the benefit of ensuring the future of sports like gymnastics are protected. The SEC is one of the nation's hotbeds for showcasing and developing Olympic talent, and it would be a huge loss that would be felt well beyond just college athletics if these sports were put at risk due to any future legislation that might come from one state or another.

Protecting the future of my sport, and the dozens of other sports that help develop future Olympians should be a top priority. Not only do women's and Olympic sports at the college level help young women like me receive a college education, but they also help

athletes benefit from the very same NIL opportunities I have experienced during my time as a student-athlete at Florida.

I also believe that NIL has become a recruiting tool that creates an unlevel playing field in college athletics and would support efforts to keep NIL out of recruiting.

c. How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

It took me and many of my fellow athletes significant time to learn how to navigate the waters of NIL, and everybody is still learning as we go, given it is new and uncharted territory. Not only do the varying laws and regulations that are in place from state to state make it difficult and confusing to navigate, but you are also learning the ropes of becoming an entrepreneur, interviewing and signing with agencies, negotiating and reviewing contracts, focusing on building your own brand, all while balancing school and competition.

Eliminating the confusion caused by a patchwork of state laws and regulations would take one of these issues off the table and that's why I support the establishment of a uniform, federal NIL policy.

d. What has your process been for finding and securing NIL deals?

Many of my deals have come to me or my agents. Most times my agents and I negotiate changes that we would like to see from there. Other times, I seek out businesses that I am interested in working with and see what their interest levels are from there.

e. Have you worked with an NIL collective? If so, what was your experience like?

I've had very little experience working with the Florida Victorious which is the collective that works with the University of Florida student-athletes. They mostly worked with football and basketball and had some events and things that they invited other sports to. They just onboarded the entire gymnastics team this month.

f. What is your view on the role played by collectives in college sports and whether there needs to be more regulation around these entities?

The collectives seem like an amazing thing for student-athletes from an outside perspective. However, I do think that there need to be more rules and regulations surrounding them. For example, I don't believe that collectives should be permitted to use NIL to recruit student-athletes.

2. As Congress considers potential legislation to regulate college sports, please answer the

following questions.

- a. **In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?**
- b. **In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?**
- c. **In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as other athletes? Why or why not?**
- d. **What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?**

NIL: I believe federal NIL policies should be uniform for all student-athletes to avoid confusion.

Revenue Sharing: Any revenue sharing should be carefully executed to ensure it does not eliminate current opportunities for students to compete in college athletics by shifting funds that currently sustain non-revenue and women's sports programs.

Employee Status: I do not believe that student-athletes should be deemed employees of the institutions we represent as athletes. We are students first and foremost, who have the opportunity to compete and train at an elite level and receive tuition and other benefits that allow us to thrive in balancing both academics and competition. I worry that categorizing us as employees rather than students who embrace the opportunity to simultaneously compete in college athletics would upset that balance and force us to put sports ahead of academics when that should be a decision of our own.

Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing
Name, Image, and Likeness, and the Future of College Sports
Questions for the Record
for Trinity Thomas, Gymnast, University of Florida
Submitted October 24, 2023

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.

- a. Who should be responsible for ensuring that student-athletes are protected from exploitation?

While I do not personally have a position on who should be responsible for this, I think there is a role for the universities and athletic departments to play in regard to providing resources, financial literacy training, and other guidance for students related to the negotiation of NIL contracts. I also believe that the regulation of agents representing student-athletes and transparency around agents and NIL deals is appropriate.

- b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?

I support transparency and oversight to ensure agents are acting in the best interests of the college athletes they represent.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.

- a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?

I support efforts to create more NIL opportunities for a wide array of student-athletes, and also educate student-athletes on how to create opportunities for themselves.

- b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?

I support efforts to create more NIL opportunities for a wide array of student-athletes, and also educate student-athletes on how to create opportunities for themselves.

- c. How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?

Title IX should certainly apply to university involvement with NIL. I am not a policy expert, but as I said in my testimony, as a female athlete I feel like I have to do a lot more work in the NIL space to receive what I feel like I deserve. I support efforts to ensure there are more and equal opportunities for female student-athletes.

3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.
 - a. Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?

Healthcare coverage is an important benefit that my university currently offers to its students and I welcomed the recent NCAA announcement that it will soon offer college athletes two years of post-eligibility injury insurance coverage. Lifetime coverage for sports-related injuries would be a great benefit.

- b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?

Any fund established for lifetime insurance coverage should be carefully executed to ensure it does not eliminate current opportunities for students to compete in college athletics by shifting funds that currently sustain non-revenue and women's sports programs.

**Senator Grassley's Written Questions for Trinity Thomas
Senate Committee on the Judiciary
Hearing on "Name, Image, and Likeness, and the Future of College Sports"
October 17, 2023**

1. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?

Transparency and disclosure of NIL agreements would aid student-athletes in negotiating their own agreements and would be useful in ensuring that NIL deals are indicative of a students' actual NIL value, rather than simply serving as a recruiting inducement.

2. What safeguards do you believe are needed to ensure student-athletes are protected from unfavorable contracts?

I believe there is a role for the universities and athletic departments to play in regard to providing resources, financial literacy training and other guidance for students related to the negotiation of NIL contracts that will help student-athletes navigate the NIL landscape. I also believe that the regulation of agents representing student-athletes and transparency around agents and NIL deals is appropriate, including transparency and oversight to ensure agents are acting in the best interests of the college athletes they represent.

3. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

I have not independently assessed each of the NIL bills, but I support efforts to provide a federal NIL policy that applies to all student-athletes in all sports at every level. This will create equal opportunity for all student-athletes to benefit from NIL and will create a uniform standard to ensure we're all playing by the same rules and eliminate confusion and unfair advantages. One of the parts of NIL that makes it difficult and confusing for student-athletes is the varying laws and regulations that are in place from state to state. In some cases, the different laws also place certain student-athletes at a disadvantage depending on where they go to school.

A federal law will also have the benefit of ensuring the future of sports like gymnastics are protected. The SEC is one of the nation's hotbeds for showcasing and developing Olympic talent, and it would be a huge loss that would be felt well beyond just college athletics if these sports were put at risk due to any future legislation that might come from one state or another.

Protecting the future of my sport, and the dozens of other sports that help develop future Olympians should be a top priority. Not only do women's and Olympic sports at the college level help young women like me receive a college education, but they also help athletes benefit from the very same NIL opportunities I have experienced during my time as a student-athlete at Florida.

Finally, I believe a federal law should ensure that student-athletes do not become employees of the institutions we represent as athletes. We are students first and foremost, who have the opportunity to compete and train at an elite level and receive tuition and other benefits that allow us to thrive in balancing both academics and competition. I worry that categorizing us as employees rather than students who embrace the opportunity to simultaneously compete in college athletics would upset that balance and force us to put sports ahead of academics when that should be a decision of our own.



October 12, 2023

Dear Senator Durbin,

Greetings from the fourth floor of the Daniel L. Ritchie Center on the beautiful campus of the University of Denver (DU). My name is Josh Berlo and I serve as the Vice Chancellor for Athletics here at DU. Along with Missouri - Kansas City, North Dakota, North Dakota State, Nebraska - Omaha, Oral Roberts, St. Thomas, South Dakota, and South Dakota State, DU is a member of the Summit League. Collectively, our membership provides intercollegiate athletic opportunities for approximately 3,000 student-athletes across seven states.

College students have been competing in athletics for over 100 years and it is arguably the best human-development model in the world. No other model provides holistic personal development opportunities like NCAA sports, including the following.

1. Earning a college degree through rigorous academic curriculum.
2. Partaking in leadership growth as an athlete in a team-centric environment.
3. Experiencing life lessons on perseverance, humility, and integrity as both a student and athlete.
4. Maximizing the potential to achieve a desired output as an athlete.

We have reached our next point of inflection and evolution in our history. The confluence of what was known as an 'amateur model' with escalating economics, conference realignment, and legal/legislative hurdles, is presenting our greatest challenge. The experiences and opportunities for a large portion of 500,000 student-athletes across most of Divisions I, II, III are being threatened.

It is important that policy makers understand the vast majority, including those across the Summit League, are not afforded the economic opportunities experienced by a portion of Division I. However, a continually fueled public narrative 'casts a wide net' across the entire industry, which has many believing the entire industry operates with copious financial resources and those resources are not being used to benefit student-athletes. The reality is the Summit League, and most athletic departments have been focused for decades on how any available resource (much through institutional support or student fees) can be used to develop student-athletes into future leaders and provide excellent cocurricular experiences.

Leaders like myself recognize and agree that college sports must modernize. We must do more to provide greater benefits, experiences, and opportunities for student-athletes. Through the support of the NCAA Division I Board of Directors, steps have been taken, including enhanced benefits for degree completion, scholarship protections, and post-participation medical coverage. Additionally, the ability for a student-athlete to benefit from the name, image, and likeness (NIL) is universally supported and available. Although progress has been made, we understand more needs to be done.

The ability for the NCAA and member institutions to address the challenges on our own is likely impossible, especially due to litigation and wide variance with recently enacted state laws. For us to provide the experience we all expect, we are asking Congressional leaders for help.

- **Special Status of Student-Athletes:** Affirm the current and unique relationship between universities and student-athletes, which is not an employee-employer association. Pressures and potential laws to classify student-athletes as employees are likely our greatest threat. It would forever alter the student-athlete experience, risking opportunities for student-athletes, especially those competing in Olympic and women's sports. The escalating economic success of some should be managed in a manner where more financial benefit is shared with and invested back into student-athletes. However, potential employee-employer law that encompasses 500,000 student-athletes, categorizing all similarly, is concerning and could possibly result in the elimination of some athletic programs.
- **NIL Student-Athlete Support & Protection:** Enhance safeguards and provide resources for student-athletes to feel protected in the NIL market and ensure that contracts and commitments are honored. Through increased deal transparency, an NIL registry, and agent requirements, student-athletes will be able to maximize their NIL opportunities with necessary protections.
- **Preemption of State Law:** Preemption of state law, particularly with rules around name, image, and likeness is necessary. The current variance of more than 30 different state NIL laws has created an uneven competitive environment, which was/is not the intention of NIL. Federal law allows NIL to be managed uniformly and to do two things. First, it provides a transparent and uniform framework by which all student-athletes can benefit. Second, it removes aspects of using NIL to induce student-athletes to one school over another because of perceived advantages with state laws being removed.
- **Safe Harbor from Select Liability Complaints:** The current state of the industry impacted by legal challenges is making it unwieldy to manage. More specifically, some of the litigation currently faced is targeted around a minority portion of the entire Association. Yet, in many ways, the litigation has already or will directly impact all of college sports. Addressing the above items will likely assist in managing legal action, but assuming our industry provides the appropriate protections and benefits for student-athletes, we need the ability to operate effectively without the threat of further litigation.

Our industry must remain grounded in what has allowed college athletics to thrive for decades. No other model provides academic, athletic, and holistic personal development opportunities like NCAA sports. Support of student-athletes in these areas is core to college athletics and what must be preserved to ensure the over 500,000 student-athletes can take advantage of the opportunities that make it special.

I look forward to the opportunity to discuss this topic further with you. Do not hesitate to contact me at josh.berlo@du.edu or (303) 871-3399. Thank you.

Best Regards,



Josh Berlo
Vice Chancellor for Athletics
and Ritchie Center Operations



October 12, 2023

The Honorable Senator Dick Durbin
711 Hart Senate Office Building
Washington D.C. 20510

Chapman Hall 180
P.O. Box 413
Milwaukee, WI
53201-0413
klduce@uwm.edu
414-229-5188

Dear Senator Durbin,

As the Athletic Director at an NCAA Division I school, I write to request your partnership to address the urgent threats facing college sports and the unique impacts they will have on the University of Wisconsin – Milwaukee (UWM). UWM boast 65 NCAA tournament appearances by our 15 NCAA Division I teams. We've won 7 Horizon League all-sport trophies, 153 conference championships and have over 330 Panther student athletes. Our student athletes have earned a 3.0 GPA or above for 46 consecutive semesters.

UWM's student-athletes have voluntarily chosen to participate in intercollegiate athletics following high school, as opposed to seeking out professional sports opportunities, and have done so to continue participation on teams in sports they enjoy while also earning degrees and enjoying the collegiate experience. Different from the professional sports experience, our student-athletes are integrated into the campus culture and enjoy a first-class education. They are supported by our university and athletics department with academic support, sports medicine, nutrition, and mental health services as well as career preparation programs and community networking opportunities.

UWM is different than Power 5 football playing schools. Our university heavily subsidizes the intercollegiate athletics program, accounting for approximately 75% of our annual budget. This commitment by our university exists because of the value our intercollegiate athletics program adds to the university community through campus pride, school spirit, positive visibility, and community engagement. While there is not a net positive financial benefit to the university, intercollegiate athletics is still viewed as an important aspect of campus life and engagement with our community.

I recognize college sports are undergoing a massive transformation. On one hand, intercollegiate athletics is thriving. The number of students participating in college sports continues to set records while graduation rates among student-athletes continue to rise. At the same time, these opportunities – particularly those for student-athletes participating in women's and Olympic sports – are under increasing legal and legislative pressures that threaten to upend opportunities at schools like ours.

I want to be clear, leaders like myself recognize and agree that college sports must modernize. The colleges and universities that make up the NCAA believe student-athletes deserve to benefit from their name, image and likeness and the NCAA Division I Council is in the process of developing proposals to continue to improve the NIL environment for college athletes. Relatedly, the NCAA Division I Board of Directors recently approved requirements for schools to provide [enhanced benefits](#) for degree completion, scholarship protections and post-participation medical coverage for all Division I student-

athletes. Beginning August 1, 2024, the NCAA will also be providing [post-eligibility injury insurance](#) for student-athletes from across all three divisions.

Still, it is essential that policy makers recognize the impact of the disparate state laws and impending court and federal activity on schools like ours. Without Congressional action to address these threats, it is very possible that at some point universities will be required to pay their student-athletes as employees – even universities like ours that do not at all profit financially from their athletics programs. If this occurs, the entire model of intercollegiate athletics will be altered with a high probability of the cutting of entire athletics programs, the reduction in the number of sports sponsored, and the reduction of athletics scholarships.

The NCAA has and will continue to modernize but the Association can only go so far in the current legal environment. I believe Congress is the only body positioned to update college sports' legal framework and provide student-athletes with a fair, inclusive and consistent experience. To do this, I urge you to work with your colleagues in Congress to advance legislation that addresses the following:

- **Student-Athlete Support:** Enhance safeguards and provide resources for student-athletes to mitigate the risk of bad actors in the NIL market and ensure that contracts and commitments are honored. Through increased deal transparency, an NIL registry and agent requirements, student-athletes will be able to maximize their NIL opportunities.
- **Preemption of State Law:** Codify that federal law preempts state law in certain areas, such as name, image, and likeness. The current patchwork of more than 30 disparate state NIL laws creates an uneven playing field for all college athletes. Unifying federal legislation on topics such as NIL will both empower student-athletes to monetize their NIL and maintain the current collegiate athletics model to ensure competitive equity for all student-athletes.
- **Special Status of Student-Athletes:** Affirm the current and unique relationship between universities and student-athletes, rather than student-athletes as employees of an institution. Legal and legislative pressures to classify student-athletes as employees would forever alter the student-athlete experience, risking opportunities for student-athletes across athletic programs, especially those competing in Olympic and women's sports. Without special status, the cost of operating the current level of athletics across most of Division I, all of Division II and Division III could become staggering and result in fewer opportunities for competition.
- **Safe Harbor from Select Liability Complaints:** Identify select areas where the NCAA membership needs safe harbor from legal complaints to effectively oversee college sports nationally. Governing bodies such as the NCAA are best positioned to enforce or adjust many of the provisions of this proposal but lack the ability to do so effectively. Protect the Association from endless litigation only in matters essential to the carrying out the provisions above so a non-government entity can continue to administer college athletics in line with the direction provided by Congress.

As Athletic Director at an institution that provides broad based sports programs under significant financial pressures, I urge you to partner with UW-Milwaukee student-athletes and their families to advance a uniform, federal solution for the challenges facing colleges sports. Together, we can ensure all young people continue to access life changing competition, and team play on a level playing field for all.

I look forward to the opportunity to discuss this topic further with you. Do not hesitate to contact me directly at abraun25@uwm.edu.

Go Panthers,

Amanda Braun
Athletic Director
University of Wisconsin – Milwaukee

cc: Dr. Mark Mone, Chancellor (mone@uwm.edu)
Keri Duce, UWM Chief Government Relations Officer (klduce@uwm.edu)
Allison Steil, UW System Federal Relations (asteil@uwsa.edu)

October 12, 2023

The Honorable Members of the U.S. Senate Committee on the Judiciary
Senate Hart Office Building
Washington, D.C. 20515

Dear Honorable Members of Congress:

My name is Elise Byun. I am a Division I student-athlete from the University of California, Berkeley on the Women's Gymnastics Team. Beyond my athletic career, I am the Pac-12 Conference Representative to Division I National Student-Athlete Advisory Committee (SAAC). My SAAC peers and I serve on behalf of all Division I student-athletes and use our voice to strengthen the student-athlete experience. As a Division I student-athlete, I am part of an ever-changing landscape that impacts my experience on and off the competition floor. While college sports are growing and providing the tools and support we need to compete at a high level while pursuing a degree, the industry is facing major barriers that could erase these opportunities for current and future student-athletes.

One ongoing lawsuit seeks to classify all Division I student-athletes as employees of their university for purposes of federal minimum wage law, which could impact Division II and Division III student-athletes as well. Another legal action seeks to classify Division I student-athletes in select sports (men's basketball, football and women's basketball) as employees at select schools.

I urge you to pass legislation that would declare a special status for student-athletes, so we do not become employees of our institution.

One of my main reasons I committed to Cal was the intensity of both athletics and academics. But little did I know 7 years ago, I made the decision to invest in excellence in all aspects of my life. As a Division I student-athlete, the pursuit of excellence goes beyond the classroom and competition floor, extending to professional development, leadership experiences, and community impact. This constant drive to embrace the most of every situation, while pushing yourself to exceed even your own expectations, has shaped my collegiate experience in more ways than one.

The classification of being an employee may not be directly associated with our gymnastics division; however, the potential trickle-down effect could be detrimental to every single student-athlete's experience. An employee model could jeopardize the opportunities that the NCAA has granted to millions of student-athletes for decades. It will inevitably create new expectations based on performance set by institutions that would limit our access to support as well as our ability to grow in the classroom and in our athletic journey. In my time as a Cal student-athlete, the lessons and experiences I have gained are worth more than any amount of money. I would hate to see current and future student-athletes not get the chance to live out a life-changing experience because of a desire for capital gain.

An employee model is not sustainable!

Cal Athletics supports 30 sports with over 900 student-athletes. As we prepare our transition to the ACC and the inevitable battles of conference realignment, we as an institution do not have the capability to maintain a high level of success if 900 student-athletes were also classified as employees. Even though we are a part of a Power 5 Conference, financially, something has to give. In turn, it creates a threat of discontinuing non-revenue Olympic sports, ultimately cutting short the opportunities for hundreds of student-athletes. With collegiate athletics being so important in developing Olympic athletes, many of whom are female athletes, it is important to sustain this growth. This model also puts NCAA sports at risk of becoming extracurricular activities in comparison to the high-level competitive landscape that is played throughout all three divisions. Student-athletes across the three divisions are extremely diverse (e.g., socioeconomic status, some are international students). Existing scholarships and grants allow for an inclusive experience with limited barriers to compete and receive the education that most students struggle to afford.

If we are employed for our athletic achievements, what does that mean for our academics? A main component of our identity is being a **student-athlete**, pursuing a degree in higher education. With the onset of employment, our priorities flip. It switches the NCAA model to athlete-student, putting the emphasis on athletics rather than the duality of both opportunities.

My athletic story at Cal has not been the fairytale story I had hoped it would be. My freshman year, I fully tore my achilles. Sidelined by injury my entire first season, I rehabbed and began a comeback for my following season. About 9 months into my recovery, I re-tore my same achilles sophomore year. Some of my most memorable growth moments came in those years of struggle. With two major surgeries in one year, I was forced to learn who I was outside of the sport of gymnastics. I became heavily involved in the student-athlete experience, engaging in both institutional and conference level SAAC. I fell in love with these committees and the power of the student-athlete voice, later becoming the Pac-12 Representative to D1 National SAAC, committee chair of the Pac-12 Student-Athlete Leadership Team, and member of the NCAA Committee of Women's Athletics. Being able to embrace the hardship and grow in spite of injury, I was able to find my passion in what it means to use your voice for change. With an employee model, poor performances could lead to termination and little to no room for growth. This fear of job security could be detrimental to the athletic and academic experience and add to the mental health crisis that still directly impacts hundreds of thousands of student-athletes around the world. I would not be the player, student, and leader I am today without the security of my position on the team. I represent over 900 Cal student-athletes and 7,500 Pac-12 student-athletes, all of who have unique lived experiences while being a collegiate athlete. Overcoming adversity, hardship, and obstacles should not impact your athletic status on a team, one which employment would directly do.

To be clear, this is not a message supporting the status quo. The priorities of student-athletes continue to evolve and the support we receive from our universities, conferences and the NCAA must evolve, too. For example, one of the most prominent topics of discussion recently are the attempts to strengthen name, image and likeness opportunities and protections for college student-athletes.

Student-athletes should be able to benefit from NIL opportunities in a uniform and transparent environment. Our Division I National Student-Athlete Advisory Committee advocated for the current NIL legislation that provides more opportunities for student-athletes. However, all this work could prove to be meaningless with an employee model, as we would no longer be able to build our individual brand and represent ourselves the way we currently do. The need for a national solution to the current patchwork of state laws and regulations is paramount.

Student-athletes are the biggest stakeholders in college sports, and I believe Congress is the only body that has the ability to stabilize college sports' legal environment and provide student-athletes with a fair, inclusive and consistent experience. Your voice could be the difference between student-athletes being able to receive encouraging athletic experiences that motivate us in the classroom and push us to create generational changes that positively impact communities all over the country. The protection of the current NCAA model that prioritizes student-athlete wellbeing, equity and academic excellence are pivotal to the economic growth of our country and exemplify a platform for young leaders to come out of college with versatile skill sets that display resilience and adaptability in many different capacities.

I would be happy to discuss this topic further or provide additional information.

Kind regards,

Elise Byun
Women's Gymnastics
University of California, Berkeley - Pac12 Conference



Brent Chapman
Chief Executive Officer
myNILpay, Inc.
7325 Fiore Lane
Frisco, TX 75034

Senator Dick Durbin
Chair, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin,

Over the last two years, college sports have experienced a monumental shift that is reshaping the landscape of amateur athletics with the introduction of Name, Image, and Likeness (NIL) rights for student-athletes. While NIL is creating opportunity, it is also creating inequity. Experts estimate that the top 4% of student-athletes are earning most of the money generated through NIL deals. With more than 500,000 NCAA student-athletes from over 1,000 schools across all three levels, a majority of athletes aren't able to fully take advantage of their rights.

Like many of today's challenges, technology and innovation are creating solutions to benefit the greater good. This is why I founded myNILpay, to serve ALL student-athletes and allow them the ability to maximize earning opportunities through NIL. myNILpay provides an avenue for student-athletes across all NCAA divisions to even the playing field in monetizing their NIL rights directly through the support of college sports fans and school alumni. Student-athletes receive a minimum of 90% of gross revenue through myNILpay payments, the highest known pass-through on NIL deals. All transactions are taxable, trackable and, most importantly, compliant under NCAA guidelines.

We designed our platform to serve the best interests of student-athletes, bringing consistency, structure, stability, and equal opportunity for all college athletes – particularly those who may not have NIL opportunities because they're enrolled at a smaller school or don't play nationally televised games. Those underserved student-athletes deserve a pathway to NIL support and myNILpay is in their corner to ensure they have the same opportunities as every other NCAA athlete.

We have fully embraced the challenge of democratizing NIL and we are opening doors for more student-athletes to compliantly benefit from the rights bestowed upon them by the NCAA's rules. As a proud emerging market platform, we aim to continue pushing the envelope for how we can better serve student-athletes and provide the necessary guidance, structure, and

transparency that is crucial in democratizing opportunities. As NIL continues to evolve and this committee plays a crucial role in determining the best path forward for student-athlete rights, I am eager to share what we've learned from serving student-athletes across all walks of life – from the softball pitcher at a D-I school, to the tennis player at a D-III school, to the offensive lineman at a Power Five school.

Thank you for your time, attention, and dedication to collegiate athletics. I look forward to further discussion about this committee's efforts to better serve our college athletes through NIL and building a more transparent process to create greater consistency and opportunities for all student-athletes.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Chapman". The signature is stylized and cursive.

Brent Chapman
CEO, myNILpay

October 16, 2023

Dear Judiciary Committee:

My name is Davaris Cheeks. I am a football student-athlete at Concordia University, St. Paul and a representative of the NCAA Division II Student-Athlete Advisory Committee (SAAC). I recently concluded my tenure as Student Body President and was heavily involved on campus with diversity initiatives, mental health advocacy, and dedication to creating the best experience for our students. I was also formerly the President of SAAC on my campus and currently represent the Northern Sun Intercollegiate Conference on NCAA Division II National SAAC. The classification of a student-athlete embodies the balance of two rigorous ventures including being a devoted student and a committed athlete; all the same, the memories made at our institutions are incomparable and truly make the college experience second to none. I am originally from Aurora, Illinois, a large suburb just west of Chicago. Growing up in my hometown presented many challenges that would be overbearing for most young children. I grew up in a single parent household with low income and unstable living conditions. My father was not present for the majority of my childhood and my community swarmed with the constant sound of gunshots and police sirens. As a young African-American boy, the reality was if I ever wanted to make it out of my environment, the answer was sports and pursuing an education.

Sports essentially saved my life, and I reach out as an advocate to preserve the platform that has changed so many lives throughout generations. Instead of feeling protected by gang affiliation, I was poured into by coaches. With little to no guidance from my family structure, my outlet was my teammates. I was fortunate enough to have an opportunity to make it to college and continue my athletic and academic pursuits, but the harsh reality is that the majority of people from my hometown do not experience these same privileges. I have lost high school teammates to gun violence and can only imagine where they would be if they were presented with the same opportunities as me.

With lawsuits and bills looking to reclassify student-athletes as employees, the light at the end of the tunnel that I had as a high school senior grows dim as that outcome would be detrimental for college athletics. Even though the implications are directed towards Division I, the effects for Division II and Division III would be exponentially challenging, putting over 500,000 student-athletes at jeopardy for a number of reasons.

I urge you to pass legislation that declares a special status for student-athletes, so we do not become employees of our institution.

Specifically, as a heavily involved Division II student-athlete, many of my accomplishments would not have been attainable without the "life in the balance" philosophy that our institutions uphold, allowing us to find balance between athletics, academics, and other areas of involvement that student-athletes choose to pursue. Having the expectations of an employee would shift all the existing flexibility towards a model that demands minimum hours of work, specific performance expectations, and severed relationships between coaches and players. In

addition, student-athletes have been unfortunately immersed in the mental health phenomena for decades and there have been many advocacy efforts to better support the demands that come with being a college athlete. This reclassification would create a pressure to perform, as expectations and income would become justified by performance, experience, and talent. This directly contradicts the current framework the NCAA works under that has allowed over 37,000 student-athletes (or 84.7% graduation rate across the three divisions) to obtain a degree by the end of their athletic career.

Alongside these ramifications, Olympic sports would be at jeopardy as this model would merely only support sports and schools that generate enough revenue to provide this employee based payment model which does not encompass the majority of Division III, Division II, and many Division I institutions. It is important to note that minimum wage is different by state, so this model would naturally create conflict between state and federal laws and distort the accessibility barrier that is already present for international student-athletes looking to find work and obtain the proper visas.

Student-athletes are the biggest stakeholders in college sports, and I believe Congress is the only body that has the ability to stabilize college sports' legal environment and provide student-athletes with a fair, inclusive and consistent experience. Your voice can be the difference between student-athletes being able to receive encouraging athletic experiences that motivate us in the classroom and push us to create generational changes that positively impact communities all over the country. The protection of the current NCAA model that prioritizes student-athlete wellbeing, equity and academic excellence is pivotal to the economic growth of our country and exemplifies a platform for young leaders to come out of college with versatile skill sets that display resilience and adaptability in many different capacities. College sports saved my life and have provided me a platform to assist student-athletes with similar upbringings as my own. Please, help me in this effort to fortify the foundation that has proven to inspire student-athletes all over the country and ensure that we can maintain a future to excel in our pursuits during and after our collegiate tenures.

I would be happy to discuss this topic further or provide additional information.

Kind regards,

Davaris Cheeks
Concordia University, St. Paul

B.A. Public Relations, Former Student Body President
NSIC Division II SAAC Representative



Resources

NCAA.org. (2022, November 15). *Student-athletes continue to graduate at record rates*.
<https://www.ncaa.org/news/2022/11/15/media-center-student-athletes-continue-to-graduate-at-record-rates.aspx>

U.S. Senate Committee on the Judiciary Senate
Senate Hart Office Building
Washington, D.C. 20515

October 16, 2023

Dear Honorable Members of the Senate Committee on the Judiciary,

Thank you for taking the time to discuss the topics of Name, Image and Likeness and the Future of College Sports at the upcoming hearing on October 17th. Given my lived experience, I think it is important to share my perspective with you all ahead of your discussion.

I am a former track and field athlete from Oral Roberts University, a small NCAA Division I institution. My athletic scholarships allowed me to complete a bachelor's and master's degree while competing in a sport that I loved. My collegiate athletic experience was transformational in more ways than I can detail in a single letter, but I will do my best to highlight the incredible opportunities it afforded me.

I have been a voice for college athletes since the first year I arrived at Oral Roberts University. I transferred as an NAIA All-American from Tennessee Wesleyan University. I followed my track and field coach, who accepted a new coaching position at Oral Roberts University. He was asked to select an athlete to represent his team on the school's Student-Athlete Advisory Committee (SAAC). He chose me, referencing the leadership skills I exhibited with our previous team. At the end of the academic year, our campus SAAC needed to replace our representative to our athletic conference's SAAC. I volunteered and was selected as that representative in 2018. While serving on the Summit League SAAC, I learned about the Division I National SAAC. In 2019, I applied to become The Summit League's representative on Division I National SAAC (there is one representative from each of the 32 Division I conferences). I was selected by my peers on Division I SAAC to serve in that capacity the Summer of 2019.

My eyes were opened as I was privileged to see the NCAA decision-making process firsthand. I advocated for the athletes in my conference on key issues as part of Division I SAAC. In 2021, I was elected as the Vice Chair of Division I SAAC, allowing me to serve on Division I Council (the primary legislative body of Division I). I was in the room when the Council discussed a comprehensive package to allow compensation for an athlete's name, image, and likeness (NIL). We spent years working on said package and were close to passing it. However, the NCAA and Division I Council did not act quickly enough, which opened the door for state laws to govern NIL. From the time I joined Division I SAAC, I advocated for the NCAA to allow NIL compensation along with my colleagues. In my opinion, though, we failed to overcome the fear of the unknown.

College athletes are finally able to profit from their NIL, which is what we wanted all along. However, the ambiguity of the current landscape has created confusion and allowed some to take advantage of athletes. Many athletes are not benefiting from their NIL at all out of fear or

lack of understanding. This needs to be addressed if athletes are to reach their full potential of earning compensation related to NIL. There needs to be more education and resources for our athletes. There also needs to be an enforceable regulatory structure to protect our athletes. I am glad the Division I Council has taken a step in the right direction by introducing proposals related to NIL into their legislative cycle. I believe their work is incredibly valuable, and I believe they will enhance our ability to protect athletes.

I do want to highlight the brilliance and intelligence of our athletes. We do not need a paternalistic system that treats our athletes like children. College athletes should have the ability to make educated decisions for themselves. Mistakes may happen, but we should provide as much support as possible to mitigate them. College athletes are also smart and capable enough to speak for themselves. In some ways, we have been able to speak for ourselves. However, it has not been enough. The voice of athletes must be broadened and empowered.

I am privileged to be the first former Division I athlete representative on the NCAA Board of Governors. My experiences and current position as a voice for athletes uniquely qualifies me to speak to the current issues facing college athletics. I have seen the world of college athletics from almost every level. I know how flawed it is because I have seen it closely. Yet, I still choose to work within the NCAA to advocate for change. I am doing this because I have hope that the issues can be addressed in a way that is in the best interest of college athletes.

I would be honored to speak and engage with you all to help develop solutions to college athletics' immense challenges. The process for change will be difficult, but I believe it is worth it. I am a direct result of the amazing opportunity of being a college athlete. I am returning to my alma mater to make a difference in their athletic department because I care about the college athlete experience. I have seen how transformational it can be, and I want as many people to enjoy that as possible.

Specifically, I worry about pay for play/recruiting inducements triggering employment because it raises several questions and concerns outlined below. These questions would need to be answered in a way that is beneficial for all our student-athletes before I could comfortably support a new model. I encourage all lawmakers to think critically about these questions as well.

1. How would employment status impact Title IX, if at all?
2. What are the terms of an employment contract?
 - a. Can student-athletes be fired at-will at any point?
 - b. Are student-athletes going to be restricted in their ability to transfer if they are signing employment contracts?
 - c. Will there be financial repercussions if a student-athlete leaves a contract to transfer to a new institution?
 - d. What happens if a student-athlete has an injury or mental health needs?
 - e. Could coaches "fire" student-athletes because they cannot perform while injured or facing mental health struggles?

3. Who determines how much each student-athlete is compensated, and will it be the same for all student-athletes?
4. Will universities be forced to reduce or eliminate scholarships to afford the salaries or other forms of compensation they must provide?
5. Will universities have to cut sport programs or reduce their roster sizes to afford the costs?

These are all real questions that should be answered thoroughly. I cannot support any model that does not handle these questions in a way that does not limit opportunities and the ability to support all athletes. As an athlete in a non-revenue sport at a smaller Division I institution, certain solutions could eliminate the opportunity I was so blessed to have. The financial implications of paying all or some athletes for playing their sport at the collegiate level could have far-reaching and devastating impacts if not handled carefully. I want athletes to receive the compensation they deserve. I also want to maintain the number of incredible opportunities available to all athletes. Is there a perfect solution? It is not likely. Is there a solution that provides more benefits to athletes while preserving as many opportunities as possible for all athletes, across all divisions? I certainly believe so.

My sincere request is for you to consider the full scope of athletes who will be impacted by any decision related to Federal legislation. Then, think about how we can maximize their mental and physical well-being. Find a way to enhance their voice in the decision-making process. Create a solution that gives more of the revenue our athletes create to them. Finally, do your best to preserve the opportunities afforded to so many athletes. Without that opportunity, I would not be who I am or where I am today. I know there are countless others who can say the same. This is no small task. I understand that more than most. I also know it is worth the countless hours I have devoted, and you will say the same.

I hope this small window into my story proves how impactful college athletics can be. We can work together to ensure the same opportunities are available for the next generation of athletes. Please, feel free to contact me to ask any questions. I am happy to be part of this conversation and look forward to working together at such a critical time in the history of college sport.

Sincerely,



Bryce Choate
Former Division I Track and Field Student-Athlete
NCAA Board of Governors
423-836-4114
brycetchoate@gmail.com

October 13, 2023

The Honorable Members of the Senate Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Honorable Members of the Senate Judiciary Committee:

My name is Avery Hellmuth. I am a Division II volleyball student-athlete from Oklahoma Baptist University, a representative of the NCAA Division II Student-Athlete Advisory Committee (SAAC) and the President of the Great American Conference SAAC. My peers and I serve on behalf of all Division II GAC student-athletes and use our voice to strengthen the student-athlete experience. As a Division II student-athlete, I am part of an ever-changing landscape that impacts my experience on and off the court. While college sports are thriving and providing the tools and support we need to compete at a high level as we pursue a degree, the industry is facing major barriers that could erase these opportunities for current and future student-athletes.

One ongoing lawsuit seeks to classify all Division I student-athletes as employees of their university for purposes of federal minimum wage law, which could impact Division II and Division III student-athletes as well. Another legal action seeks to classify Division I student-athletes in select sports (men's basketball, football and women's basketball) as employees at select schools.

I urge you to pass legislation that would declare a special status for student-athletes, so we do not become employees of our institution.

As a Division II student-athlete, one of the main benefits is our "life in the balance" philosophy that revolves around us being able to enjoy high-level athletics experiences while also pursuing our academic journey. As part of this, we can join extracurricular activities that provide professional development and result in a positive impact on our campuses and communities. This philosophy enables us to enjoy the college experience and become leaders inside and outside of the sports we play.

The classification of being an employee may not be directly associated with our division; however, the potential trickle-down effect could be detrimental to our DII student-athlete experience. An employee model could jeopardize the opportunities that the NCAA has granted to millions of student-athletes for decades. It will inevitably create new expectations based on performance set by institutions that would limit our access to support as well as our ability to grow in the classroom and in our athletic journey.

An employee model is not sustainable, particularly at Division II and Division III schools. This model also puts NCAA sports at risk of becoming extracurricular activities in comparison to the high-level competitive landscape that is played throughout all three divisions. Student-athletes across the three divisions are extremely diverse (e.g., socioeconomic status, some are international students). Existing scholarships and grants allow for an inclusive experience with limited barriers to compete and receive the education that most students struggle to afford.

Also, when thinking about the classification of an employee and the expectations and standards that come with that position, student-athletes would have to perform at a certain level to maintain their place on the team. Some of my most memorable growth moments throughout my college career were in times of adversity when I was trying to overcome an injury or had a poor performance. Having to lean on my teammates and coaches to change my circumstances pushed me to grow in many different aspects. I would not be the player or student I am today without the security of my position on the roster. Everyone has a bad game or a bad practice. Being able to learn from my mistakes and be coached by those who've poured into me have helped me grow over the course of my career. With an employee model, poor performances could lead to termination and little to no room for growth. This fear of job security could be detrimental to the athletic and academic experience and add to the mental health crisis that still directly impacts hundreds of thousands of student-athletes around the world.

To be clear, this is not a message supporting the status quo. The priorities of student-athletes continue to evolve and the support we receive from our universities, conferences and the NCAA must evolve, too. For example, one of the most prominent topics of discussion recently are the attempts to strengthen name, image and likeness opportunities and protections for college student-athletes.

Student-athletes should be able to benefit from NIL opportunities in a uniform and transparent environment. Our Division II National Student-Athlete Advisory Committee advocated for the current NIL legislation that provides more opportunities for student-athletes. However, all this work could prove to be meaningless with an employee brand model, as we would no longer be able to build our individual brand and represent ourselves the way we currently do. The need for a national solution to the current patchwork of state laws and regulations is paramount.

Student-athletes are the biggest stakeholders in college sports, and I believe Congress is the only body that has the ability to stabilize college sports' legal environment and provide student-athletes with a fair, inclusive and consistent experience. Your voice could be the difference between student-athletes being able to receive encouraging athletic experiences that motivate us in the classroom and push us to create generational changes that positively impact communities all over the country. The protection of the current NCAA model that prioritizes student-athlete wellbeing, equity and academic excellence are pivotal to the economic growth of our country and exemplify a platform for young leaders to come out of college with versatile skill sets that display resilience and adaptability in many different capacities.

I urge you to sign on to bipartisan legislation that addresses the threats facing intercollegiate athletics and help student-athletes like myself.

I would be happy to discuss this topic further or provide additional information. Do not hesitate to contact me directly.

On behalf of the student-athletes in the Great American Conference,

Avery Hellmuth
Volleyball Student-Athlete
Oklahoma Baptist University '24
President of Great American Conference SAAC

To Whom It May Concern:

My name is Simone Jackson and I am a student-athlete at the University of Southern California. I play for USC's Women's Soccer Team as well as US Soccer's U-23 Women's National Team. I signed a Name, Image, and Likeness deal with Nike my freshman summer and I was the first student-athlete to sign to our university's collective, House of Victory. I have had an extremely positive experience in all of my NIL dealings and I fear more regulations would prohibit the amount of opportunities that I, as a female athlete, am able to secure.

As a junior currently navigating the NIL space, I stand on the side of less regulations entering the college athletics space because it has the potential to create a barrier of entry in an already male-dominated space. Title IX does not carry over to Name, Image, and Likeness. Regulations made, if any, I hope will address the differing interest, support and advisory for male and female collegiate athletes equally.

Having a brother who played for USC Football during my time here, I've seen this need to address equity in the NIL space for women firsthand. A lot of what we sign is self-navigated rather than brought to us by an advisor. Many of my teammates want to enter the NIL space, but are overwhelmed because they serve as their own advisor. I am concerned that regulations will scare the tentative NIL deal seeking female-athletes out of the space altogether.

Furthermore, every university has unique NIL opportunities that may not conform to a uniform ruling. This might make the student-athlete have to jump through even more hoops on top of the demanding hours of schoolwork and training we participate in.

In regards to NIL in recruiting, having competitive advantages and disadvantages is the name of the game in sports. I believe in truth and transparency when it comes to collectives, etc. However, I don't see the issue in having universities compete for the student-athlete for a change.

Thanking you all in advance for your time and consideration.

Sincerely,

Simone Jackson

October 17, 2023

The Honorable Members of the U.S. Senate Committee on the Judiciary
Senate Hart Office Building
Washington, D.C. 20515

Dear Honorable Members of Congress:

My name is Betsy Walkowiak. I am a Division I student-athlete from the University of Wisconsin-Green Bay and a representative of the Student-Athlete Advisory Committee at the institutional, conference, and national levels. I serve on behalf of the 3,000 student-athletes within the Horizon League conference which spans across the Midwest region. As a student-athlete, I use my voice to strengthen the student-athlete experience and well-being. As a Division I student-athlete, I am part of an ever-changing landscape that impacts my experience in and out of the pool. It's important to recognize the challenges facing the college sports industry, especially when it comes to ensuring opportunities for student-athletes. While the support and resources available are valuable, it's crucial to address the barriers that could impact the future of college sports and those student-athletes who participate in their designated sports domain.

One ongoing lawsuit seeks to classify all Division I student-athletes as employees of their university for purposes of federal minimum wage law, which could impact Division II and Division III student-athletes as well.

I urge you to pass legislation that would declare a special status for student-athletes, so we do not become employees of our institution.

As a Division I student-athlete, one of the main benefits is that we are able to compete at the highest level of competition while also earning a degree from a prestigious university. Division I athletics provides opportunities to student-athletes both in their education, athletically, and professionally as they embark on a career. Being at a Division I institution I have been involved in various activities that I would not have been able to if I were not a student-athlete. In fact, if I was not involved in the student-athlete advisory committee I would not have the knowledge of employment status issues that has been on the rise and impacting current and future college athletes.

The classification of being an employee is directly associated with our division; however, it could also impact all three divisions within the NCAA. The effect of student-athlete employment will greatly impact all three divisions student-athlete experience. An employee model could jeopardize the opportunities that the NCAA has granted to millions of student-athletes for decades. It will inevitably create new expectations based on performance set by institutions that would limit our access to support as well as our ability to grow in the classroom and in our athletic journey.

An employee model is not sustainable, particularly at Division II and Division III schools. This model also puts NCAA sports at risk of becoming extracurricular activities in comparison to the high-level competitive landscape that is played throughout all three divisions. Student-athletes across the three divisions are extremely diverse (e.g., demographically). It is worth noting that international student-athletes, who account for more than a third of all NCAA student-athletes, would face an uncertain future if they were classified as employees and paid accordingly. This is because such a move would put their student visas at risk, which would be a major setback for those who want to pursue an education and

compete in collegiate sports in the United States. The impact of this decision could be felt across all three divisions of the NCAA, affecting a large number of student-athletes.

Also, when thinking about the classification of an employee and the expectations and standards that come with that position, student-athletes would have to perform at a certain level to maintain their place on the team. This means that student-athletes could no longer “walk on” a varsity team. Thus, the roster sizes would be significantly smaller than in previous years. With an employee model, poor performance could lead to termination and little to no room for growth. This fear of job security could be detrimental to the athletic and academic experience and add to the mental health crisis that still directly impacts hundreds of thousands of student-athletes around the world. Having employment looming over student-athletes could cause serious psychological harm since being a student-athlete takes a majority of an individual's time. Competing in an Olympic sport I worry about the future of my sport and if we were to be considered employees there is a great chance that swimming and diving as well as sports such as track and field would be cut out of athletic departments. This leads to a drastic decline in student-athletes participating in college athletics thus this could ultimately show a decline in college education for a vast number of student-athletes.

The priorities of student-athletes continue to evolve and the support we receive from our universities, conferences, and the NCAA must evolve, too. For example, one of the most prominent topics of discussion recently is employment status, NIL (name, image, and likeness), and transfer portal windows. However, it is important to note that the most predominate topics now were not an issue three years ago instead they evolved into a serious conversation needing to be had on a national platform. These serious conversations will greatly impact the future of college athletics and greatly impact the student-athlete body at each level within the NCAA.

Providing equitable treatment for student-athletes who dedicate a significant amount of time and energy to their athletic pursuits is why I believe this topic needs to be discussed at a national level. It is crucial for the legislative branch to intervene and establish a legal framework that upholds this principle. With any luck, we will witness favorable outcomes in the not-too-distant future. Your voice could be the difference between student-athletes being able to receive encouraging athletic experiences that motivate us in the classroom and push us to create generational changes that positively impact communities all over the country. The preservation of the current NCAA model, which prioritizes the well-being of student-athletes, equity, and academic excellence, is essential for the economic growth of our nation. This model serves as a platform for young leaders to emerge from college with versatile skill sets that demonstrate resilience and adaptability in various capacities.

I would be happy to discuss this topic further or provide additional information.

Kind regards,

Betsy Walkowiak
Women's Swimming
University of Wisconsin-Green Bay, Horizon League Conference



United States
Olympic & Paralympic
Committee
1 Olympic Plaza
Colorado Springs, CO 80909

October 18, 2023

The Honorable Richard Durbin
Chair, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Lindsey O. Graham
Ranking Member, Senate Committee on the Judiciary
211 Russell Senate Office Building
Washington, DC 20510

Dear Chair Durbin, Ranking Member Graham, and Members of the Senate Committee on the Judiciary,

On behalf of the United States Olympic & Paralympic Committee (USOPC) and Team USA athletes, I want to express our appreciation for your attention to collegiate athletics and efforts to enhance student athletes' access to compensation for the commercial use of their name, image, and likeness.

The collegiate sport system in our country has been incredibly successful for numerous American athletes, especially those on Team USA. We are continuously striving to improve the athletes' experience, including exploring ways to increase their compensation and benefits, which we consider crucial.

As Congress explores solutions to enhance the collegiate athletic system, particularly for football and basketball players, we would like to emphasize the importance of not losing sight of the full range of collegiate sport disciplines offered on campuses nationwide. This includes baseball, fencing, field hockey, gymnastics, softball, swimming, water polo, wrestling, and many others. It is imperative to sustain opportunities for collegiate student athletes, including those aspiring to represent Team USA in the Olympics and Paralympics.

College athletic programs provide unparalleled access to diverse and broad-based sport offerings, which have been instrumental in providing opportunities to thousands of athletes across the country each year. Moreover, they foster invaluable life skills such as leadership, teamwork, strategic thinking, and a shared commitment to excellence.

We kindly request careful consideration of the potential effects any federal legislation may have on America's youth, high school, and college sport communities, as well as on the elite experience of U.S. Olympic and Paralympic team athletes training and competing in collegiate sports. Many Team USA athletes choose schools that support their academic and athletic development. Numerous institutions, including Division-1 athletic programs, serve as national leaders in providing Olympic and Paralympic sport opportunities. These institutions proudly offer 20+ varsity sports and have consistently supported a significant number of U.S. Olympic and Paralympic athletes, with many currently striving to represent Team USA at the Paris 2024 Olympic and Paralympic Games and beyond.

Supporting athletes lies at the core of our mission. The college sports model allows athletes from diverse backgrounds to pursue their academic and athletic dreams. Therefore, it is vital for Congress to ensure that any solution addressing NIL and compensation for collegiate athletes also safeguards broad-based athletics and Olympic and Paralympic participation opportunities, which already operate on a small portion of athletic departments' budgets.

The USOPC recognizes the evolving collegiate sports landscape and proudly advocates for athlete support services and athlete rights. We urge Congress to collaborate with members of the Olympic and Paralympic community to ensure that athletes' personal and athletic needs are met during this crucial developmental period, while also ensuring that future student-athletes, like those on Team USA, have expanded access to education through sport.

We are fully prepared to partner with Congress and other stakeholders to advance and preserve the scholastic sport pathway within our country.



United States
Olympic & Paralympic
Committee
1 Olympic Plaza
Colorado Springs, CO 80909

Sincerely,

A handwritten signature in black ink that reads "Sarah Hirshland".

Sarah Hirshland
Chief Executive Officer, United States Olympic & Paralympic Committee