

**HEARING BEFORE THE UNITED STATES SENATE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

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Chairwoman Cantwell, Ranking Member Wicker and distinguished members of the Committee, thank you for the opportunity to provide testimony in support of the more than half a million student-athletes who participate in collegiate sports every year. There is nothing we do as an Association that is more important than promoting and ensuring the well-being of college athletes. The 1,200 colleges, universities and conferences of the NCAA are in the process of passing historic legislation that will allow new opportunities for student-athletes to be compensated for the use of their name, image and likeness (NIL). Despite these modernization efforts, the revered tradition of college sports is at a critical moment in its history as a patchwork of impending state NIL laws and ongoing, recurring litigation threaten the future of college sports and obstruct the ability of the Association and its member schools to provide student-athletes with the fair and level playing field they expect and deserve. In this unprecedented time, we look forward to partnering with Congress to find swift and shared solutions that will best support college athletes and protect the uniquely American tradition of college sports that is deeply rooted in the fabric of our collective communities.

**A Historic and Pivotal Moment in College Sports.**

The colleges, universities and conferences that make up the NCAA membership [stand committed](#) to allowing NIL opportunities for student-athletes consistent with the college athletics model. Our schools develop rules through a representative legislative process, not unlike most legislatures in the country. Since the development of the NCAA Board of Governors Federal and State Legislation Working Group in 2019, thousands of student-athletes, administrators, presidents, conference commissioners, subject matter experts, researchers and other college sports stakeholders have provided extensive input throughout the membership's examination of this issue. As a result of these efforts, Divisions I, II and III have developed proposals that will allow student-athletes to benefit from the use of their NIL, consistent with [guiding principles](#). As part of these proposals, college athletes could be compensated for activities such as third-party endorsements, social media opportunities, businesses they have started and personal appearances. Importantly, the proposals include guardrails that would ensure that NIL payments are not a proxy for pay-for-play, that a national recruiting environment for college sports is maintained and that student-athletes are not deemed or perceived to be employees of the institution they are attending. Though the legislative efforts of the three divisions were paused due to recent judicial, political and governmental activities, including communication from the U.S. Department of Justice Antitrust Division, the NCAA's 1,100 member schools are focused on having rules in place in time for the 2021-22 academic year.

At the moment at which NCAA colleges and universities are poised to provide historic opportunities for student-athletes to benefit from their NIL, a patchwork of state laws threatens the NCAA's ability to provide uniform NIL opportunities as well as fair, national competition to hundreds of thousands of student-athletes who participate in college sports each year. As of today, more than 30 states across the U.S. have introduced legislation related to the topic of name, image and likeness, and these bills have different effective dates

and provisions. Some statutes closely reflect the NIL proposals advanced by the Division I, II and III memberships, and some are silent on these provisions. Other laws allow for nearly unregulated use of NIL by student-athletes and contain no safeguards to ensure that NIL payments are not a substitute for athletics performance, to maintain a national recruiting environment or to protect against impermissible inducements for student-athletes to attend or remain at a college or university. Even when provisions are similar among states, regulatory interpretation and enforcement likely will differ significantly from state to state. Moreover, some states have proposed laws that would require colleges to pay student-athletes a share of the school's total sports revenue or a share of ticket revenue earned from sporting events. Not only would laws such as these undermine the NCAA's model of amateur athletics, the state laws also would threaten to transform students into paid employees of an institution. And perhaps most importantly, they would most certainly lead to the end of many nonrevenue college sports programs.

### **A Pressing Opportunity for Federal Partnership.**

Because of the engagement of state legislatures and the multiple, recurring lawsuits related to NIL and other regulation around establishment of national standards, there is an urgent need for a federal solution so that we may continue to provide all student-athletes with broad-based opportunities and a fair system of participation and competition. The NCAA and its member schools look forward to working with Congress to help the American tradition of college athletics thrive in the 21st century and urge that any federal NIL legislation include the following:

- *Ensure Federal Preemption of State Laws.* Conducting collegiate athletics among a patchwork of state laws is untenable. To date, 18 states have passed laws that permit student-athletes to be compensated for use of their NIL (Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Maryland, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, South Carolina and Tennessee). We expect legislative activity to continue in other states across the country throughout this legislative cycle. As many as half of the enacted laws can take effect as early as this July, leaving student-athletes wondering how they will be assured a fair competitive environment if they are forced to compete against other college athletes who are subject to a different set of competitive standards. To ensure student-athletes have the uniformity of rules and the fair and level playing field they undoubtedly deserve, it is critical that college sports are regulated at a national level.
- *Safeguard the Nonemployment Status of Student-Athletes.* College athletes are students and not employees of their institution. Converting student-athletes into employees would directly undercut the purpose of attending college — earning a degree — and it would destroy the opportunities college athletics provides for more than 500,000 student-athletes each year. The NCAA and its member schools support student-athletes through scholarships — many of which cover their full cost of education debt free — and numerous other benefits. Importantly, the safeguards currently in place for student-athlete financial aid and scholarships would not be protected under an employment system. Such a framework would also have debilitating implications for Title IX as the equitable protections for women under Title IX apply to education, rather than labor law. Similarly, as revenues generated for men's teams tend to significantly exceed that of women's teams, an employment model would trigger gender equity concerns as men and women competing in the same sport would likely receive widely different benefits. Further, an employment model could exert financial pressures on schools, forcing institutions to make economic decisions to eliminate opportunities for the vast majority of students competing in sports that do not generate revenue. Finally, treating student-athletes as

employees would create burdensome tax implications as their scholarships and other benefits would be open targets for state and federal revenue officers seeking to tax such passive income.

- *Establish Limited Safe Harbor Protections.* While individual states are legislating NIL and pressing the Association to provide further opportunities for student-athletes, the NCAA and its member schools are targets by lawyers using the weapon of antitrust laws and serial litigation, which diminish our ability to enact change to modernize rules to enhance opportunities for student-athletes. Federal antitrust law has frequently been used by lawyers as a tool to attempt to change or undermine the Association's rules. Already, some of the same lawyers who have challenged the NCAA's other rules changes have brought suit against the NCAA over NIL, even before the NCAA has had a chance to pass its proposals. This current lawsuit seeks a court to establish broad expansions of NIL uses contrary to legal precedent and federal copyright law. In addition, constant litigation and the threat of litigation have delayed previous efforts to modernize rules related to name, image and likeness. Without appropriate, narrow protections, these litigation challenges to NIL enactment will continue and will significantly undermine the Association's ability to take meaningful action and adopt common sense and adequate solutions to support the evolving needs of student-athletes.

In addition to these priorities described above, any NIL legislation must also maintain opportunities for sports that do not generate revenue, uphold Title IX protections, ensure that NIL payments are not a proxy for pay-for-play and maintain a national recruiting environment for college sports. We look forward to partnering with Congress to enact legislation that will ensure the Association can continue to provide student-athletes with fair national competition and safeguard the uniquely American model of college sports, which connects communities and provides a pathway of opportunity for more than half a million student-athletes each year.

### **The Continued Modernization of College Athletics.**

We recognize there are reasonable differences of opinion about how to achieve fundamental fairness within our system, and we welcome discussions on how to further enhance opportunities for college athletes. Moreover, we agree with the direction of federal legislative proposals that support student-athlete protections. It is worth highlighting that many of these proposals are consistent with recent efforts by our membership to modernize college athletics, such as those noted below:

- *Fulfilling Scholarship Commitments.* In addition to the more than \$3.6 billion that schools award in athletics scholarships each year, the NCAA funds more than \$10 million in scholarships and grants annually to support the academic success and graduation of student-athletes. We believe it is a school's obligation and responsibility to honor its promise of a scholarship to a student-athlete. Under current bylaws, Division I schools may provide current or former student-athletes with a scholarship — up to a student-athlete's five-year eligibility period — and may pay for student-athletes to finish their bachelor's or master's degrees after they finish playing sports. No school may reduce or cancel a scholarship during the period of an award for any athletics reason (including illness, injury or athletic performance), and no school may reduce or cancel a scholarship during the period of the award until after the student-athlete has been provided an opportunity for an independent hearing.
- *Providing Health Care and Covering Medical Expenses.* Promoting the health and well-being of student-athletes is at the foundation of the NCAA's mission. In support of this, schools are required to

establish an institutional line of medical authority that is in the sole interest of student-athlete health and safety. Schools must develop an administrative structure that provides independent medical care and affirms the unchallengeable autonomous authority of primary athletics health care providers to determine medical management and return-to-play decisions related to student-athletes. NCAA rules also permit member schools to provide insurance coverage, reimburse or pay for medical expenses (including second medical opinions), and provide for out-of-pocket costs for student-athletes. Schools within the five conferences with autonomy must provide medical care to a student-athlete for athletically related injuries for at least two years after graduation or separation from the institution. All schools must make mental health services and resources available to student-athletes. The NCAA also funds an [insurance policy](#) covering all college athletes who experience catastrophic injuries while playing or practicing their sport or who incur more than \$90,000 in medical costs. The policy provides up to \$20 million in lifetime insurance benefits.

- *[Ensuring Health, Wellness and Safety Standards](#)*. The colleges, universities and conferences that make up the NCAA membership remain committed to the health, well-being and lifelong success of student-athletes. The [NCAA Sport Science Institute](#) aims to provide college athletes with the best environment for safety, excellence and wellness through research, education and best practices. In collaboration with member schools, national governing bodies, key medical and youth sport organizations, and the public and private sectors, the SSI has worked to expand the Association's health and wellness protocols in recent years. Member schools retain the authority and are in the best position to establish the health and safety needs of their own students through local medical experts on the ground and to determine the best appropriate care. Meanwhile, our membership continues to look for ways to strengthen these protections, and we welcome the opportunity to discuss additional health and safety accountability mechanisms.
- *[Supporting Academic Outcomes](#)*. We are incredibly proud of the graduation success of student-athletes in all three divisions. As part of their participation in college sports, college athletes commit to academic achievement and the pursuit of a degree, and they are required to meet yearly academic standards to be able to compete. Because of this, for more than two decades, the Association has devoted attention to researching student-athlete graduation rates. All colleges and universities are required by NCAA legislation and federal law to report student graduation rates, and those institutions offering athletics aid are required to report rates for their student-athletes, as well. NCAA student-athletes consistently graduate at higher rates than their nonathlete peers, and this gap in favor of student-athletes is largest among Black men and women. Since 2019, the amount of NCAA revenue each Division I school receives every year is determined by the academic achievement of its students. The latest Division I [Graduation Success Rate data](#) shows that student-athletes are graduating at the highest rate ever as 9 out of 10 student-athletes who started college in 2013 earned degrees. While there is much to be proud of in terms of the academic success of college athletes, we must also continue to support [initiatives and grants](#), such as the NCAA Degree Completion Award Program and NCAA Former Student-Athlete Degree Achievement Program, that help the remaining 10% of student-athletes earn their degrees.
- *[Providing Transfer Flexibility](#)*. In May 2021, the NCAA Division I Board of Directors ratified the adoption of legislation so that all student-athletes, regardless of the sport they play, may transfer schools once in their period of eligibility and compete immediately. The rule is now effective and applies to all

student-athletes who transfer for the first time for the 2021-22 academic year. The waiver process remains available for those student-athletes who have previously transferred schools.

- *Promoting Student-Athlete Voice.* We strongly support the engagement and participation of student-athletes in all areas of college sports, including in the governance process. Student-athletes are at the core of the membership's existing governance structure and have a voice through campus, conference and national [Student-Athlete Advisory Committees](#), which provide insight and input on the rules, regulations and policies that affect college athletes. Student-athletes are also [supported](#) by the NCAA and its membership as they strive for a more inclusive world and identify change opportunities for social injustices. The three divisional Student-Athlete Advisory Committees and the Board of Governors Student-Athlete Engagement Committee recently collaborated to [create a national Unity Pledge](#). The pledge underscores their belief in diversity, inclusion and social justice and how engaging in all three areas can foster unity in athletics, on their campuses and in their communities.

The 1,200 colleges, universities and conferences that make up the NCAA continue to seek opportunities to evolve to meet the needs of 21st century athletes. While we unequivocally welcome the opportunity to work with Congress to find solutions to meet today's challenges, it must be emphasized that some state and federal proposals being considered would fundamentally alter the model of college sports to the extent that intercollegiate athletics would be nearly unrecognizable. These proposals, such as those that require revenue-sharing, would threaten to turn college athletes into paid employees of their institutions and jeopardize opportunities for the hundreds of thousands of student-athletes who compete in sports that do not generate revenue. Further, schools across all three divisions have very different financial situations, and the pressures exerted on resources from a revenue-sharing model could have a negative impact on sports that do not generate revenue. Only a handful of schools and conferences in Division I have media contracts that result in a net positive revenue source. Many smaller Division I conferences and most Division II and Division III schools pay to televise their contests to provide local, regional or national platforms for their student-athletes. Regardless of division, revenue earned through media contracts, sponsorships, tickets sales and/or other sources supports broad-based opportunities for student-athletes who compete in nonrevenue sports. Additionally, as 80% of the most recent U.S. Olympic team competed in college, this could in turn have a negative [impact on the success](#) of the U.S. Olympic movement. For these reasons, we cannot support revenue sharing as part of any athlete compensation or NIL structure as these common-sense concerns protect broad-based opportunities for more than half a million students every year.

Other elements of proposed legislation would require all schools, regardless of resources, to contribute a percentage of their revenues to a medical trust fund to pay for certain student-athlete health care costs. These types of financial mandates could place a disproportionate and regressive financial burden on schools with fewer resources and exert financial pressures on other schools that may not be able to absorb these mandates without eliminating opportunities for student-athletes who compete in sports that do not generate revenue. As described early in this testimony, many institutions are already supporting the health care, insurance and/or out-of-pocket costs of student-athletes many years after they have graduated or completed their eligibility. We do, however, recognize and appreciate the concerns of many members of Congress related to the issue of health care and welcome an open dialogue about how the NCAA and its member schools and conferences can further support the health and well-being of college athletes.

### **An Urgent Opportunity To Further Support and Protect College Athletes.**

We are proud of the role that college sports have played in creating opportunities for our nation's student-athletes, especially those who might not otherwise have had the opportunity to pursue higher education. Former NCAA student-athletes are [more likely](#) to be thriving in purpose, social, community and physical well-being, and these patterns persist across NCAA division, graduation cohort, gender, and race and ethnicity. Despite these achievements, we recognize that much more needs to be done to enhance opportunities for college athletes. We recognize that financial resources generated from athletic events must be focused first and foremost on providing student-athletes with the support needed to promote not just their athletic success, but also their long-term health and well-being as well as their academic and professional success. At this pivotal moment in college sports, congressional partnership is needed more than ever to help accomplish this.

Thank you for the opportunity to provide input on this important topic impacting student-athletes. We look forward to partnering with members of this committee to enact bipartisan legislation that will result in new NIL opportunities for all students and protect opportunities for future students, while continuing to facilitate fair and uniform competition among the colleges, universities and conferences that make up the NCAA. We are committed to working together with the committee and members of Congress to find swift and collective solutions that will best support current and future college athletes and preserve the uniquely American tradition of college sports that our country knows and loves.