

**HEARING BEFORE THE UNITED STATES SENATE COMMERCE
SUBCOMMITTEE ON MANUFACTURING, TRADE AND CONSUMER
PROTECTION**

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Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee, thank you for the opportunity to submit this testimony in connection with today's hearing. For almost ten years I have had the privilege of serving as the president of the NCAA, a school-led organization dedicated to the well-being and lifelong success of college athletes on the field, in the classroom, and in life. We appreciate the Subcommittee's attention to the important issue of name, image, and likeness ("NIL") opportunities.

College sports in America is at a critical juncture: while a record number of college athletes are benefiting from more opportunities than ever before, there is a legitimate concern about the fundamental fairness of our system. We share that concern, and NCAA schools and conferences are currently evaluating reforms to give athletes opportunities to take advantage of their own NILs. We believe that these efforts will address the concerns that have been raised about how to treat student-athletes equitably. But the process will take time, because we need to make sure that we operate consistent with two principles that are not always aligned. On the one hand, we want to allow opportunities for students to benefit from their NILs. On the other hand, we want to preserve the character and quality of the uniquely American phenomenon of college sports. And with ongoing serial litigation and NIL legislation pending in over half the states, we may need your help to accomplish this on a nationwide basis.

I welcome the opportunity to speak to you today about our progress and goals, and I welcome the opportunity to hear from the Members of this Subcommittee. We greatly value the ongoing dialogue with you and look forward to the continued support of the Congress as we work toward a solution that meets the needs of student-athletes in a manner consistent with the long-held educational values of the NCAA, its schools and conferences, and the nearly 500,000 individuals who participate in college sports each year.

NCAA Background: Who We Are

I would like to begin by briefly describing the mission of the NCAA. As the governing body for intercollegiate athletics, the NCAA prioritizes three important principles in providing opportunities for students: academic success, well-being, and fairness. While most people associate the NCAA primarily with college sports, the truth is that education is at the heart of our work. Each year, students from across the country and the world participate in sports they love. 16% are first-generation college students, and a similar number report that they would not have attended college if not for athletics. To make

these opportunities possible, our member schools award nearly \$3.5 billion in athletic scholarships each year, including up to the cost of attendance. Athlete recruitment to attend a particular institution is one of the key principles that sets apart college sports from professional sports. This unique recruiting environment encourages student choice in where to attend college. No other model in sports is like it—not the Olympics nor professional sports.

Student-athlete graduation rates are the highest ever, with 84% earning their degrees. In Division I, nearly 9 in 10 student-athletes are earning bachelor's degrees, their highest rate ever. 83% of men's basketball players graduate, as well as 82% of Football Bowl Subdivision participants. And in particular, since 2002, the graduation rate for African-American men's basketball players has increased by 36 percentage points, and 79% of African-American student-athletes are earning their degrees. Historically, student-athletes have graduated at rates higher than the rest of the student body.

But I acknowledge that what happens off the field does not always garner as much attention as what happens on the field. When many people think of college sports, they think of March Madness, the College Football Playoff, or College Game Day. They think of the popularity and success of powerhouses like the University of Kansas men's and the University of Connecticut women's basketball teams. They see multi-million dollar contracts, elaborate facilities, and Hollywood-style productions. But this is just a sliver of college sports. College sports is half a million student-athletes in 24 different sports spread across three divisions and 19,000 teams, most of which generate no revenue. College sports is a culture in which hundreds of thousands of fans feel connected through alma mater or geography and appreciate that the athletes are "kids" in pursuit of an education that will last them a lifetime. College sports is, and always has been, about students playing other students.

College sports has always had commercial aspects, but its rules have consistently promoted education, opportunity, well-being, and fairness. While we are considering important and necessary changes to create additional monetary opportunities for student-athletes, any changes must take into consideration these core values.

NCAA Rules: The Legislative Process and Enforcement

College sports as we know it is evolving. For over a hundred years, the NCAA's member schools have provided significant opportunities to tens of millions of athletes to obtain an education at this country's top colleges and universities. But recent increases in the popularity of NCAA-governed competition have brought greater interest in college sports, raising questions about how to ensure that this evolving system is inclusive, equitable, and fair.

The internal balancing act between preservation and reform poses particular challenges in an organization with hundreds of diverse schools. Each of our schools brings a unique perspective to college sports, often informed by the size of the school and its athletic program, the NCAA division in which it competes, its mission, its geography, and myriad other factors. Each perspective is valuable individually, but the adoption of each, without

harmonizing, would result in a chaotic college sports landscape. The NCAA's role reflects the reality that no one school has the expertise or resources to ensure that all opponents play by the same set of rules, both on and off the field. The voluntary agreement to a central governing system offers a whole that is greater than the sum of its parts.

In its role as convener, the NCAA National Office oversees a ground-up, school-driven legislative process in which representatives serve on committees that propose rules, and schools ultimately decide which rules to adopt. Reflecting the diversity of our schools and conferences, each of the NCAA's three divisions develops and approves legislation unique to that division. Groups of presidents and chancellors lead each division through committees with regularly scheduled meetings. Once the NCAA schools and conferences establish a rule through the legislative process, responsibility for enforcing that rule on campus rests on both the institutions and the NCAA National Office. By mutual agreement, each school agrees to establish mechanisms to detect, prevent, and discourage rule violations, as well as protocols to self-report and cure any rule violations.

Student Equity in the NCAA Model: Recent Reforms

As president of the NCAA, my role is to make sure that, during our rigorous rulemaking process, our schools and conferences are considering the best interests of students in a constantly evolving college sports landscape while keeping our values front and center. In recent years, we have undertaken initiatives or changed rules to promote better student well-being. For example, within the last few years the NCAA:

- Partnered with leading organizations to develop best practices and training modules for coaches and administrators in support of student-athlete mental well-being. The goal of these resources is to encourage a culture in which reaching out for mental health care is normal and expected.
- Paired with the U.S. Department of Defense to launch a landmark alliance to enhance the safety of athletes and service members by more accurately preventing, diagnosing, and treating concussions. This alliance is undertaking the most comprehensive longitudinal study of concussion and head impact ever conducted, managed by the Concussion Assessment, Research, and Education ("CARE") Consortium. Twenty-six participating universities enrolled their student-athletes in the study, and the four military academies enrolled all cadets. The CARE Consortium is continuing its work in a phase known as CARE 2.0, featuring 40,000 participants.
- Funded and operated the Sport Science Institute (the "Institute"), which promotes health and safety through a variety of initiatives, including research and training on cardiac health, concussions, overuse injuries, drug testing, mental health, nutrition and sleep, sexual violence prevention, athletics healthcare administration, and data-driven decisions. Last year, the Institute, in partnership with the NCAA Office of Inclusion, released the second edition of a sexual violence prevention tool kit that provides schools with appropriate tools to

support a safer campus environment. The new tool kit was developed with input from leading professionals in the field and aims to help NCAA schools reduce incidents of sexual violence involving student-athletes and other college students, and to respond appropriately when they occur. The Institute also is collaborating with the most respected medical and sports organizations in the country to promote research, education, and best practices around cardiac health to reduce injuries and death from heart conditions.

- Enhanced funding for an insurance policy covering all college athletes who experience catastrophic injuries while playing or practicing their sport—providing up to \$20 million in lifetime insurance benefits—and saw many of our schools provide medical coverage for athletic-related injuries for at least two years after a student-athlete graduates or leaves school.
- Permitted any Division I institution to provide athletic scholarships to the federally-defined cost of attendance, without limits on duration.
- Enhanced student voice and vote by expanding the Division II and III student representation to Division I, where they are now voting participants at all levels of governance.
- Allowed college basketball players investigating their professional options to be represented by an agent.
- Reformed the transfer rules to make it easier for students to change schools.
- Required Division I schools to provide independent medical care for student-athletes to determine medical management and return-to-play decisions.

These reforms demonstrate that the NCAA is ready and able to address emerging challenges to ensure that students are treated equitably and the essential character of the college sports is preserved. While we have more work to do, including on the issue of NILs (discussed below), I am confident that the NCAA, in partnership with Congress, has the tools to achieve a balance that minimizes unintended consequences.

Modernization of Name, Image, and Likeness Rules

We have heard the concerns about the NCAA's current rules governing an athlete's ability to license his or her NIL for commercial purposes, and we recognize that changes need to be made. Currently, the NCAA schools and conferences are reviewing our rules and proposing changes. We are moving thoughtfully on this, and our membership plans to vote on those changes in January 2021.

Recent Developments around NIL

Recognizing the need to further modernize our rules with respect to NILs, in October 2019 our Board of Governors directed each of the NCAA's three divisions to

immediately begin considering how the relevant NCAA rules could be modified to permit student-athletes the opportunity to benefit financially from the use of their NILs consistent with the values of intercollegiate athletics—including and especially the principle of amateurism. This principle means that students are “students first” and not professional athletes who are paid for their athletic performance. What makes college sports different from and more popular than other sporting options (such as minor-league professional sports) is that college athletes are participating in a sport they love as part of their educational experience, because the reality is that most student-athletes will not play professional sports and thus need to rely on their education to support their success in life. Our schools and conferences’ commitment to amateurism helps keep athletics programs and student-athletes integrated within the larger educational mission, promotes competitive balance among schools, and creates a fairer system for recruiting and retaining top talent. Without rules, the highest-resourced schools would use their greater financial resources to attract the most promising student-athletes, depriving other schools of the ability to build strong teams and decreasing fair competitive opportunities for many student-athletes.

The Board of Governors’ decision followed the work of our Federal and State Legislation Working Group (a group consisting of presidents, commissioners, athletics directors, administrators, and student-athletes) in gathering input on NIL issues from current and former student-athletes, coaches, presidents, faculty, and commissioners across all three divisions in response to federal and state legislators proposing NIL legislation. The Board directed these modernization efforts to take place in harmony with eight principles and guidelines.

- First, schools should assure that student-athletes are treated similarly to non-athlete students unless a compelling reason exists to differentiate.
- Second, schools should maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Third, schools should ensure rules are transparent, focused, and enforceable and facilitate fair and balanced competition.
- Fourth, schools should make clear the distinction between collegiate and professional opportunities.
- Fifth, schools should make clear that compensation for athletics performance or participation is impermissible.
- Sixth, schools should reaffirm that student-athletes are students first and not employees of the university.
- Seventh, schools should enhance principles of diversity, inclusion, and gender equity.

- Eighth, schools should protect the recruiting environment and prohibit inducements to select, remain at, or transfer to a specific institution.

The Working Group will continue to gather feedback from the schools and conferences and their student-athletes through April 2020 and will refine its recommendations. And the NCAA's divisions are working to create new NCAA bylaws reflecting divisional priorities. This effort is to be completed in January 2021.

We have undertaken this modernization effort committed to balancing the vital need for the continuation of college sports with the need to adapt our rules to changing student-athlete environments. We want to improve the experience for our student-athletes, as well as fans, alumni, and student bodies. We remain committed to our student-athletes being students first, with emphasis on their education and the physical, mental, and social benefits to be derived from intercollegiate athletic competition.

It is for this reason that, as part of this modernization effort, we will not consider any concepts that could be construed as payment for athletic play. We believe it is imperative to the success of college sports as both an integral component of the educational experience and a popular form of entertainment that we maintain a clear line of demarcation between college and professional sports. To do so, payment to student-athletes for use of their NILs should not be a substitute for or vehicle to deliver pay for athletic performance; nor should the payment serve as an inducement for a prospective or current student-athlete to select or remain at a particular NCAA school. Consequently, the NCAA has no intention of taking any action that is contrary to the position advocated by the NCAA or accepted by the Ninth Circuit with respect to the types of NIL payments that were at issue in the *O'Bannon* case decided a few years ago.

Need for National Uniformity

Just as the NCAA has done in the past on issues involving student fairness, we believe that the modernization efforts currently underway with respect to NILs will address the concerns about equity. But given the current legislative landscape, uniformity will not be achieved without federal support for our mission.

The Subcommittee is aware of the dozens of proposals on NILs in state legislatures that, in our view, risk converting college sports into professional sports. While we understand the desire to assist student-athletes, we believe many of these ideas would be harmful to intercollegiate athletics and its many stakeholders, including the student-athletes. For instance, one state has passed legislation that effectively eliminates the distinction between college and professional sports. It allows payments for NILs to serve as pay for play and thus turns college athletes into employees. This law in particular, and others like it, threaten to undermine the mission of college sports within the context of higher education—that student-athletes are students first and choose to play a sport they love while earning a degree.

In the short term, such legislation is creating confusion for current and future student-athletes, coaches, administrators, and campuses. Some of these laws would take effect as

early as July 2020. If implemented, these laws would give some schools an unfair recruiting advantage and open the door to sponsorship arrangements being used as recruiting inducements. This would create a huge imbalance among schools and could lead to corruption in the recruiting process.

As more states consider their own NIL legislation, it is clear that a patchwork of different laws from different states will make unattainable the goal of providing a fair and level playing field—let alone the essential requirement of a common playing field—for our schools and nearly half a million student-athletes nationwide. It is thus critical that the administration of college sports be supported at a national level. We believe that, given its role, the NCAA—informed by its schools and conferences—is best positioned to provide a uniform and fair NIL approach for *all* student-athletes on a *national* scale. But we cannot effectively achieve our goals if we are pulled in various and potentially inconsistent directions by state legislatures that may be focused on serving one set of constituents rather than serving the entire array of participants that the NCAA's own rulemaking processes are designed to serve.

Conclusion

At the NCAA, we are proud of the role that intercollegiate athletics 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. Over the last ten years, we have actively worked to drive much-needed change and address many of the concerns that surround intercollegiate athletics. Our membership is large and diverse with an equally large and diverse range of viewpoints. While this diversity can, at times, slow the pace of reform in our democratically governed association, we have made significant strides across a variety of areas and are actively working to modernize in the area of NIL opportunities. But that process takes time, and we may need Congress's support in helping maintain uniform standards in college sports. I appreciate the Subcommittee's attention to this issue and look forward to collaborating with this body to achieve these important goals. Thank you again and I look forward to your questions.