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“NCAA Athlete NIL Rights”

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## Introduction

Chairwoman Cantwell, Ranking Member Wicker and members of the Senate Committee on Commerce, Science and Transportation, thank you for the opportunity to offer testimony on the issue of NCAA athlete rights, particularly those pertaining to name, image and likeness (NIL) monetization.

Howard University is part of the Mid-Eastern Athletic Conference (MEAC) and one of 107 historically Black colleges and universities (HBCUs) in the United States. Howard offers 21 intercollegiate sports across men's and women's athletics. On our campus, academics and athletics are each critical components of a Howard education. In the classroom, our students acquire knowledge and understanding, vision and perspective. On the volleyball or basketball court, they learn to translate comprehension and preparation into action – a vital skill that they will need when they leave our campus and make their way in the world.

Many of our students come from limited means. They don't have the same privileges and opportunities as other people. But that doesn't mean that we require less of them – instead, we ask more. The same goes for our institution as well as other HBCUs and our peers in the MEAC. While we might have fewer resources than other colleges and universities, we assume a tremendous responsibility to our students, our community and our society. We all have to counter inequality with excellence.

Transcendence and perseverance are natural elements of sports, and they are integral to the Howard pedagogy. But sports also teach our students to become their own self-advocates. While we want them to learn to overcome any barriers they encounter, we also teach them to insist on fairness and equality. That's why sports are mediated by impartial referees and umpires so all athletes can begin on an equal footing, and they can use their talent and tenacity to rise above the competition.

College athletes must combine an insistence on what they are entitled to with a determination to earn everything they receive. We should seek to strike this balance both on and off the court.

Howard University and the colleges and universities in the MEAC support legislation that allows collegiate athletes to receive compensation for use of their name, image and likeness. We also support legislation that would protect students who face sports-related injury and medical expenses from incurring undue financial burdens.

At its core, this issue is about basic fairness. Collegiate athletes should have the right to share in the revenue generated from their accomplishments and marketability. They put tremendous effort and dedication into their athletic activities, and they deserve to be compensated for those endeavors and protected in the course of pursuing them.

However, it is critical we recognize that collegiate athletics is not purely or principally a money-making venture. Sports in the landscape of higher education is indeed a part of a student's education. We are cultivating leaders on the sporting field as much as we are in the classroom.

In addition, Howard and our fellow HBCUs as well as our peers in the MEAC have concerns that smaller and lesser-resourced institutions would be unable to cope with changes in collegiate athletics that require the institution to endure a heavier load in supporting student athletes, both in terms of insulating the athletes from extraneous costs as well as assisting them in earning revenue. While we desperately need federal legislation that applies equally to student-athletes across the country, this legislation must recognize the diversity across collegiate athletic programs. We cannot have legislation that privileges the already privileged institutions while placing further burdens on colleges and universities that are already struggling to bear our heavy loads.

College athletes certainly deserve more rights than they currently possess. But there should be guardrails put in place to ensure that greater rights for all college athletes do not come at the expense of other athletes who are not equally positioned to benefit from those rights or smaller colleges and universities who lack the resources to support and facilitate them.

While we recognize the complexity of these issues, we also believe that there are compromises to be had that would appeal to all parties with a vested interest in potential legislative solutions.

#### Enhancing Student Rights to Monetize their Name, Image and Likeness

Many students who attend Howard University, HBCUs and institutions in the MEAC come from low-income homes and communities. It is an unfortunate reality that many of them, at some point during their educational careers, will have to choose between pursuing their passions and chasing an income. Students should never be in a position where they cannot play collegiate sports because they cannot afford to engage in activities that require so much of their time and energy without adequate compensation and protection.

We believe that student-athletes should be able to retain agents to allow them to receive compensation for their name, image and likeness. These professional representatives can help athletes maximize earnings as well as handle certification and ensure compliance with regulations.

#### The Need for Federal Legislation Rather than State-by-State Rules and Regulations

We urge Congress to act swiftly in enacting federal legislation to enable student-athletes to monetize their name, image and likeness that would supersede the patchwork of laws that exist on a state level. Six states have already enacted legislation on this issue; 23 states have introduced NIL legislation this legislative session; and 37 states have introduced some form of NIL legislation recently.

Intercollegiate athletics absolutely constitutes interstate commerce. Student-athletes are not restricted in choosing colleges and universities by the state they happen to live in. On the contrary, they are empowered to explore any and all institutions across the country to find the one that best meets their needs and expectations.

States are motivated to pass laws that benefit their state over others rather than drafting legislation that balances the need to support the rights of all athletes while protecting smaller-market athletes and lower-resource institutions. Comprehensive national laws would level the playing field as states compete with each other in recruiting top student-athletes and ensure greater parity across the entire landscape of higher education athletics.

### Safeguarding the Amateur Status of Collegiate Sports and Maintaining Title IX

Even as we work to provide student-athletes with greater rights to earn compensation for their time spent in collegiate sports, we should also seek to protect the amateur status of athletics in higher education. If student-athletes are principally motivated by their ability to earn revenue from participating in sports, they will choose schools that provide them with the greatest opportunity to do so at the expense of other institutions that might be better equipped to support their other needs.

We at the MEAC believe that it is important that we restrict pay-for-play situations. While students can still receive compensation for their time as student-athletes, they should be able to do so in a manner that does not compromise their amateur status. Not only will this allow college athletics to retain an integral quality that distinguishes it from professional sports, but it will ensure greater parity and equality for all student athletes both within the same sport and across different sports.

If college sports were professionalized, this would mitigate the ability for students to walk on and play on teams. It would also cause undue harm on the ability of smaller universities to recruit top athletes to come to their schools, further restricting equality across NCAA divisions and schools, which would undermine the level of competitive play in college athletics.

We also must place certain limits on how student athletes can market their images to ensure alignment with the mission and values of the universities they represent. We support sensible restrictions on how a student-athletes' name, image and likeness can be used.

In addition, we have to consider the additional expenses that will arise for institutions as we seek to comply with these new federal or NCAA rules and regulations. Athletic compliance departments at the University level will require additional staffing to monitor and regulate student athlete adherence to the guidelines and any additional reporting requirements. Compliance teams at lower-resource institutions are already understaffed and overburdened. To ensure compliance without taxing already strained athletic departments, we should consider increasing NCAA or federal assistance.

## Protecting Student-Athletes' Health and Wellbeing without Burdening Institutions

The health and physical wellbeing of student-athletes must be a paramount concern. Considering the bodily strain athletes endure, they must be protected from the liability of financial distress that could arise from any injury they sustain during the course of their athletic participation.

However, it is vital that we recognize that not all institutions are able to bear the same level of financial responsibility for their student-athletes' health. Added financial strain caused by requirements to pay for student-athlete medical expenses not covered by insurance could cause devastation to smaller schools, especially those athletic programs that have smaller revenue margins. Without adequate protection and safeguards for these institutions, we could be forced to downsize or eliminate certain sports offerings entirely.

It is important that we limit the liability of colleges and universities with limited means to support student-athletes' health care costs. Whether it is by limiting health coverage to those that problems that arise during participation in sporting events or ensuring that the NCAA is able to provide additional financial support, we must find a system that both serves the health interests of the athletes while protecting institutions financially.

Current proposals, such as the College Athletes Bill of Rights (CABOR), also include excessive penalties that would cause undue harm to numerous institutions who already generate limited revenue from their athletics programs. These proposals would penalize institutions that are not able to meet certain high standards of support for student-athletes. Unfortunately, the result of these ideas would not be greater support for student athletes, but rather would force institutions to eliminate athletic offerings in order to preserve their financial welfare. The CABOR would mandate a 20 percent revenue fine for programs that are not in compliance with its enumerated standards. Since many colleges and universities in the MEAC and other conferences could never abide by these standards, a fine of this magnitude would almost certainly compel us to end many of our athletic programs, preventing many students from participating in sports they would otherwise benefit from.

### Conclusion

Once again, I would like to thank the committee for holding this hearing and its willingness to bring forward a variety of perspectives on this issue. As a representative of the MEAC and HBCUs, I have tremendous concerns about many of the proposals that would create tremendous burdens on smaller colleges and universities, particularly those historically Black institutions that do not have the same resources as some of our wealthier and more privileged peers.

It is important to recognize that, out of 1,100 college athletic programs in the NCAA, only 25 programs (2.27 percent) are profitable. The overwhelming majority of colleges and universities

extend significant institutional resources to support athletics. For example, each year Howard University expends approximately \$14 million to support our sports teams. If new rules and regulations only add to the costs that we assume without providing us with any additional assistance, we will not be able to sustain the athletic programs we currently have. This would be a tremendous loss to our institutions as well as to the students whose opportunities for academic and athletic educational experiences will be limited as a result.

While increasing student-athlete rights would certainly benefit many of our students, we must consider expanding their rights without sacrificing the needs of other student-athletes and the institutions that work so hard to support them. Thank you for your interest in this issue and your willingness to seek much-needed compromises.