

**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.