

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

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Chairman Graham, Ranking Member Feinstein, and distinguished members of the Committee, thank you for the opportunity to testify at today's hearing. Over the last decade, I have had the privilege of serving as the president of the NCAA, an organization led by and constituted of our member schools and dedicated to the well-being and lifelong success of college athletes. Our members support and share the Committee's interest in protecting the integrity and fairness of college athletics.

College sports are a uniquely American phenomena, which connect our communities and serve as a pathway to opportunity for student-athletes. 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. In recent years, NCAA members have expanded opportunities for student-athletes by guaranteeing scholarships, providing the full cost of attendance and extending the coverage of medical expenses beyond graduation. While these are significant steps toward improving the overall experience of student-athletes, we recognize that we must do more to meet the needs of the 21st century student-athlete without compromising the essential character of college sports.

Over the last year, our member schools, conferences, student-athletes and other stakeholders have engaged in both a national conversation and a specific legislative process to broaden name, image and likeness opportunities for student-athletes. The process has been purposively deliberative because of the complexity and high stakes: It is incredibly important that we get the rules right and that they be uniform, protect the amateurism of college sports and support rather than detract from the student-athlete's educational experience. I am pleased to report that work is underway in each of our divisions to ensure a new NIL policy will be adopted in January 2021 and take effect for the 2021-22 academic year.

I welcome the opportunity to speak with you today about the important steps that have been and will be taken to further support NCAA student-athletes and the partnership we hope to build with Congress to ensure these meaningful reforms may be realized.

***Modernization of Name, Image and Likeness Opportunities***

While the Association's modernization efforts over the past several years have increasingly enhanced opportunities for college athletes, the evolving social and technological landscape — coupled with recent federal and state legislation — has highlighted the need for our schools to thoughtfully study and consider the issue of name, image and likeness.

**Deliberative and Inclusive Due Diligence**

In recognition of this, the NCAA Board of Governors appointed a Federal and State Legislation Working Group in May 2019 to examine the ability of student-athletes to benefit

from the use of their NIL. Representing a diverse set of membership stakeholders, the 20-member working group was composed of student-athletes, presidents and chancellors, faculty athletics representatives and athletics administrators from all three divisions, and included representation from each of the Division I conferences with autonomy (Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference). The board charged the working group with considering modifications to current rules and focusing on potential solutions that would tie any changes to education, maintain the clear demarcation between professional and college sports, and further align student-athletes with the general student body.

To fulfill its charge, the working group undertook an exhaustive study of the issue of NIL, conducting 15 in-person meetings and teleconferences between June 2019 and April 2020. As part of this process, the group considered extensive feedback and engaged a diverse group of stakeholders through in-person interviews, formal presentations and hundreds of pages of written feedback. Included among these stakeholders were current and former student-athletes, faculty members, presidents and chancellors, conference commissioners, athletics administrators and coaches from Divisions I, II and III, as well as thought leaders, researchers and experts in the higher education, commercial enterprise and sports communities.

One topic that repeatedly came up during the deliberations of the working group was the possibility that the Association's attempts to modernize its rules and enhance opportunities for student-athletes could be significantly undermined by recurring litigation or by a patchwork of state laws that purport to override NCAA rules related to NIL issues. To address this, a subcommittee of the working group was formed to provide guidance to the board on what actions, if any, the Association should take to seek congressional assistance in exploring solutions to these issues.

The working group delivered an [initial report](#) to the Board of Governors on October 29 and its [final report](#) April 29.

#### Transformative Action

On October 29, the NCAA Board of Governors accepted the recommendations of the working group and took historic action to permit student-athletes the opportunity to benefit from the use of their NIL in a manner consistent with the collegiate model. The board directed the three divisions to immediately begin the process of modernizing their rules, highlighting that any modernization efforts must be adopted not later than January 2021 and occur within the following principles and guidelines, which uphold the longstanding educational values of the NCAA:

- Assure student-athletes are treated similarly to non-athlete students unless a compelling reason exists to differentiate.
- Maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensure rules are transparent, focused and enforceable and facilitate fair and balanced competition.
- Make clear the distinction between collegiate and professional opportunities.
- Make clear that compensation for athletics performance or participation

is impermissible.

- Reaffirm that student-athletes are students first and not employees of the university.
- Enhance principles of diversity, inclusion and gender equity.
- Protect the recruiting environment and prohibit inducements to select, remain at, or transfer to a specific institution.

On April 29, the board announced its support for additional and more specific progressive change related to NIL, including support for legislation that would permit student-athletes to receive compensation for use of their NIL in third-party endorsements. The board also supported legislation that would permit student-athletes to receive compensation for other opportunities, including personal appearances and social media activity as well as the promotion of their own business (codifying an existing waiver process). Further, the board supported the use of agents, advisors or professional services by student-athletes in conjunction with NIL activities. The board underscored that any modernization of divisional NIL bylaws to support these activities must be accompanied by protections to ensure that the guiding principles noted above are not compromised.

This unprecedented decision to allow student-athletes to benefit from their NIL, including endorsements and promotions, represents an important departure from existing rules and will undoubtedly change and enhance the landscape of opportunities available to student-athletes.

#### Next Steps and Implementation Timeline

Since the October directive by the Board of Governors, the three NCAA divisions have worked deliberatively to develop legislative proposals that will allow student-athletes to benefit from the use of their NIL, consistent with the principles outlined by the board. After the announcement, the divisions created leadership groups composed of student-athletes, athletics administrators and conference office staff to develop initial concepts related to NIL and solicit feedback from the broader membership. Since this time, the working groups and divisional governance bodies have undertaken widespread education and feedback efforts and are considering appropriate protections that would accompany any legislation, including a focus on pre-enrollment activity, parameters for institutional assistance and potential disclosure requirements. Formal legislative proposals related to NIL are on track to be introduced by November 1, to be voted on by January and to become effective at the start of the 2021-22 academic year.

#### ***A Pressing Need for Federal Partnership***

The Association has taken historic steps to expand NIL opportunities for student-athletes. However, its ability to make meaningful reforms is significantly undermined by impending state legislative action and outside legal factors, and underscores a compelling need for federal partnership on this issue.

As of the date of this testimony, 36 states have introduced legislation with widely differing provisions and effective dates, which address the compensation of student-athletes for use of their NIL. Proposals in California, Colorado and Florida have already become law and will take effect as early as July 1, 2021. It is apparent 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.

The history of antitrust lawsuits brought against the Association over the last several decades reveals that federal antitrust law has also consistently been used as a tool to undermine the Association's collective efforts to modernize its rules. While these lawsuits have, for the most part, been unsuccessful, the Association has been required to devote valuable resources to defending them, resources that could have been far better spent on supporting student-athletes, as has been highlighted by the growing financial impact of the current global pandemic. The NCAA recognizes and has respected that it should not be immune from antitrust scrutiny in all of its actions. But, likewise, it is untenable for NCAA rules to be judged as unlawful and subject to repetitive antitrust lawsuits every time the NCAA makes a rule change. Without appropriate protections, these antitrust challenges will continue — as evidenced by the most recent NIL class-action lawsuit filed against the Association just last month — and will interfere with the Association's ability to effectively and efficiently support the evolving needs of student-athletes.

These legal and legislative impediments threaten the ability of the Association's modernization efforts to be fully realized. Thus, on behalf of the NCAA Board of Governors and the Association's 1,100 member schools, I respectfully seek Congress' assistance to preserve the opportunity for college athletes to participate in fair and uniform national competition, ensure student-athletes remain students and not employees of a university and protect the Association from ongoing litigation related to its efforts to update rules associated with NIL. We are hopeful that, with your partnership on this issue, our member schools can continue to provide opportunities for and enhance the experiences of the nearly 500,000 student-athletes who participate in college sports each year.

### ***Conclusion***

At the NCAA, we are proud of the role that intercollegiate athletics has 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 10 years, we have actively worked to drive much-needed change and address many of the concerns that surround intercollegiate athletics. We recognize that more needs to be done, and the membership has taken steps to make meaningful and transformative change in the area of NIL. However, the evolving legal and legislative landscape around these issues could not only undermine college sports as a part of higher education, but also significantly limit the NCAA's ability to meet the needs of college athletes moving forward. With this, I urge Congress to enact legislation that will provide for a uniform name, image and likeness approach that will result in fair and uniform competition for all student-athletes and protect and ensure opportunities for future student-athletes.

I appreciate the Committee's attention to this issue and look forward to collaborating with this body to achieve these important goals. We greatly value the ongoing dialogue with you and look forward to continued dialogue with 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 college sports and the nearly half a million students who participate in intercollegiate athletics each year.