

**House Energy and Commerce Subcommittee on Consumer Protection and Commerce Hearing
on “A Level Playing Field: College Athletes’ Rights To Their Name, Image, And Likeness”**

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Thank you to Chairwoman Schakowsky, Ranking Member Bilirakis, and members of the House Energy and Commerce Subcommittee on Consumer Protection and Commerce for the opportunity to testify on the issue of name, image, and likeness (NIL) rights for student-athletes.

As the President of Baylor University, as a former Division I student-athlete myself, the spouse of a former Division I student-athlete, and as the mother of a recent Division I student-athlete who is now coaching in the college ranks, I am deeply invested in making sure the college athletic experience is a positive one for all student-athletes. I believe this is a critical time for college athletics, as much of the status quo of recent decades is undergoing numerous changes, including the Supreme Court decision in the *National Collegiate Athletic Assn. v. Alston* case, conference realignment, and NIL state laws. These are all elements of a broader conversation higher education leaders are having to reshape college athletics to better serve the future needs of our students and institutions. To this end, I am pleased to currently serve as the Vice Chair of the Board of Directors of the Big XII Conference and also am proud to have been appointed by the NCAA Board of Governors to the NCAA’s Constitution Committee last month. This committee will look at the core principles that define college sports and propose a new governance model that allows for the NCAA to make quicker changes to better serve student-athletes.

Congress should have an important role in shaping the future of college athletics as well, and now is the time to establish a uniform national standard that addresses the many challenges becoming evident in the NIL space. I look forward to sharing my perspective with each of you on what we have learned as an institution and our concerns regarding the multiple NIL state laws now in effect. I also look forward to discussing my recommendations for how Congress can play a role in ensuring NIL rights for student-athletes in the future and preserving the missions of institutions of higher education (IHEs) across the country.

About Baylor University and Baylor Athletics

Located in Waco, Texas, Baylor University is a private Christian university and a nationally ranked research institution. The University was chartered in 1845 by the Republic of Texas through the efforts of Baptist pioneers and is the oldest continually operating university in the state. For the current fall semester, Baylor enrolled 20,626 students, including 15,191 undergraduate and 5,435 graduate and professional students. We are extraordinarily proud of the University’s success in educating students for worldwide leadership and service by integrating academic excellence and Christian commitment within a caring community.

Ever since Baylor fielded its first athletics team in 1899, the University has sought to compete at the highest levels of intercollegiate competition with excellence and character. As Baylor Bears, we are extremely proud of our athletics program and participation in the Big 12 Conference, of which Baylor was a founding member when the conference began competition in the fall of 1996. Today, participating in 19 sports, Baylor’s more than 500 student-athletes continue to achieve remarkable success both on and off the field, winning national and conference championships and consistently leading the Big 12 in graduation rates. As you all may know, our women’s basketball team holds three national titles, and our

men's basketball team brought home its first national championship this past spring. Our Football Team won the Big XII Conference twice in the last ten years and played in the Sugar Bowl in 2019. Additionally, Baylor student-athletes first competed in the Olympic games beginning in 1904, and our student-athletes have won one or more Olympic gold medals in every Olympics but one since 1992. This past summer, six Baylor Bears competed in the Tokyo Summer Olympics for three different countries.

Baylor Athletics is committed to our motto: "Preparing Champions for Life." Our athletics leadership and coaches have integrated a championship process that focuses on academic achievement, athletic success, character formation, and spiritual growth into meaningful interactions with our student-athletes across all sports. The goal is to prepare our student-athletes in all aspects of their lives so they leave Baylor with a depth of understanding of what transforms an individual into a champion in the home, workplace, and society overall.

At Baylor, we are committed to prioritizing our student-athletes as students first. We invest over \$80,000 per fully scholarshiped student-athlete each year in the form of tuition, room, nutrition, medical care and training services. Baylor places the highest priority on the health and safety of our student-athletes and continues to implement best practices in our health and safety protocols to ensure we are protecting and caring for our student-athletes' well-being. This includes our requirements for medical professionals treating student-athletes to report to school officials or representatives outside of athletic coaches to avoid any scenarios that could present a conflict of interest and to ensure the student-athlete's health is always prioritized over winning games. We also have implemented protocols to address concussions and other medical injuries, and have sports psychologists on staff within the athletics department to support student-athletes with mental health issues. Beyond prioritizing our student-athletes' health and safety, we also care deeply about their future and have implemented a four-year program to help student-athletes with personal branding, financial literacy, and general business education which will be even more critical as more student-athletes take advantage of NIL opportunities through recent changes in the law.

As we discuss NIL during the hearing, it is important to remember that the resources provided and the aspirational mission of Baylor Athletics, and those of our similarly situated institutions in the top handful of Division I athletic conferences, is vastly different than the resources and mission of hundreds of other academic institutions fielding thousands of student-athletes each year. Any legislation Congress passes on NIL must fully contemplate that a "one-size-fits-all" federal solution will have serious consequences for institutions of higher education across the nation.

The Problem with the Patchwork Status Quo

To date, 30 states have passed NIL bills, and approximately 20 of them have taken effect. The current patchwork system is confusing for institutions and students, is not transparent, and creates risks for student-athletes and institutions who suffer as a result of the disparity. Such a legal landscape should not be permanent.

Many of these state laws, like the one we have in Texas, are good laws that put student-athletes first. For example, the Texas law:

- Provides clear guidelines around what student-athletes can endorse;
- Limits how much IHEs can govern the compensation process for student-athletes but does allow them to place reasonable restrictions on what student-athletes can sponsor to align with the

institution's student conduct policy in addition to state-mandated prohibitions on sponsoring drugs, alcohol or tobacco, and products in several other categories;

- Allows IHEs to control when their brand and marks can be used by student-athletes related to endorsements; and
- Requires IHEs to provide financial literacy training for student-athletes.

Nevertheless, even if every state had a law based on the same principles, implementation would be problematic and confusing—for institutions of higher education and student-athletes alike—if the law itself is different from one state to the next.

The current decentralized approach has already created numerous issues for colleges and universities and will raise conflict of law issues. For instance, consider the complexity of the legal issues involved when a student signs a multi-year deal with a company which is authorized under one state's law and wishes to transfer for academic reasons to another institution which does not permit the sponsorship?

Moreover, NIL laws should not be used to create incentives to attend one school over another for recruiting purposes. Pay-for-play threatens the collegiate model, and an unregulated NIL compensation structure should not be used to compromise the academic commitments of IHEs to their student-athletes. We are already hearing of sponsorships which are being established to provide scholarships to all student-athletes on a football roster at an institution, or to all walk-on student-athletes in a particular sport. While NIL aspects are included in the transaction, examples such as these demonstrate how the line is already being blurred as to what constitutes pay-for-play.

Three Key Principles to Contemplate in Federal NIL Legislation

All laws governing NIL for student-athletes should treat them as students first and foremost. To treat student-athletes otherwise would directly undercut the purpose of attending college—earning a degree—and it would jeopardize the diverse opportunities college athletics provides for hundreds of thousands of student-athletes each year. Safeguards currently in place for student-athlete financial aid and scholarships would not be protected under any legislation that would treat compensation of student-athletes under that of an employment system, and Congress should ensure that the student-athlete model continues to link eligibility to academic progress.

Federal legislation also should support the current mission of broad sport offerings for a diverse group of student-athletes, made possible by revenue shared from higher visibility sports. As revenues generated for men's sports, specifically football and men's basketball, tend to greatly exceed those of women's sports, federal legislation must address equity concerns as men and women competing in the same sport could receive widely different benefits. If NIL rights basically become a way to generate income only for football and men's basketball programs, for example, they may ultimately force institutions to compromise their educational priorities by reducing institutional support for other sports, including all women's athletics programs. I know first-hand the transformative power of Title IX on women's college athletics and the transition to NIL rights for student-athletes needs to work for our female student-athletes and their sports teams. Further, an employment model of NIL 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. Treating student-athletes as employees would further cause institutions to review the increased costs of their non-revenue programs and determine how to limit those expenses.

Finally, as I stated previously, while guaranteeing all student-athletes have the same NIL rights no matter where they study, we also must ensure each IHE's mission is preserved and unique circumstances are recognized, appreciating that different schools have different resource levels. According to the NCAA, there are more than 1100 institutions across the three divisions. Of those 1100 institutions, only 25 institutions with athletic departments generated revenue that exceeded their expenses in 2018-19. For instance, IHEs must be able to retain flexibility to implement programs for student wellbeing, such as health care, in ways that best leverage existing campus assets like teaching hospitals, and future financial commitments must not be so open-ended as to jeopardize the long-term viability of IHEs.

Policy Considerations for Congressional Action on NIL

I appreciate the time and interest Congress has already put into this issue through previous hearings and introduced legislation to provide NIL rights to student-athletes. As Congress contemplates federal action on NIL, I encourage you to seek a national standard that includes the following:

- Preemption of all current and future NIL state laws. As I previously shared, a federal solution that pre-empts all current and future NIL state laws is critical to ensuring we provide a level playing field for all student-athletes across the country. A federal bill that pre-empts state laws would also guarantee that all student-athletes have the same NIL rights, regardless of where they live or study.
- Clear definitions of NIL. NIL legislation should also clearly define NIL as commercial activity between student-athletes and third parties, not between student-athletes and universities. It should prohibit pay-for-play models that may be disguised as NIL by prohibiting the use of NIL as an inducement to enroll or remain at an institution as a student-athlete.
- Prioritization of student-athletes. Federal NIL legislation should seek to enhance the student-athlete experience overall and preserve diversity in sport offerings for men and women. It also should provide protection for student-athletes to seek qualified advice about the use of their NIL.
- Narrow safe harbor for compliant entities. Without a narrow safe harbor for entities that comply with a federal NIL law, universities are at risk of endless litigation that could threaten the core missions of our institutions simply for seeking to comply with NIL laws and the will of Congress. I recognize exemptions under antitrust law are rarely granted by Congress and are outside the jurisdiction of this subcommittee, but I encourage you to work with your colleagues to consider including a narrow safe harbor in federal NIL legislation that allows universities and athletic associations like the NCAA to modernize rules to enhance opportunities for student-athletes. This type of provision would promote compliance with the law and allow universities to implement NIL rules without fear of legal challenges that may seek to use those rules as leverage to eliminate collegiate athletics.

Thank you for the opportunity to testify before the subcommittee and to provide input on this important topic. Baylor University greatly appreciates your interest in this issue and your willingness to seek a much-needed federal solution to the current patchwork of state NIL laws. I look forward to working with subcommittee members and others to enact bipartisan legislation to provide NIL opportunities for all student-athletes while also ensuring we continue to treat our student-athletes as students first.