



Charlie Baker
President

November 7, 2023

VIA EMAIL

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Honorable Members of the Senate Judiciary Committee,

On behalf of the more than 1,100 colleges, universities and conferences that make up the NCAA, I would like to thank you for your continued interest in college sports and for the opportunity to share my testimony at the recent hearing before the committee.

During the hearing, many important concerns were raised about the health and well-being of college athletes, as well as the opportunity for some student-athletes to receive additional benefits. The leaders across college sports and I share your interest in these issues, and during my eight-month tenure, I have worked closely with our membership to pass new requirements that enhance the physical, mental and academic well-being of all college athletes. As I mentioned in my testimony, the NCAA has taken significant steps forward in our modernization efforts, including developing a new [health insurance fund](#) for all college athletes and requiring all Division I schools to provide [enhanced benefits to student-athletes](#) like scholarship protections, degree completion opportunities, and paying for and providing access to other health care benefits.

In addition to the responses provided below to the Questions for the Record, I would also like to take this opportunity to provide clarification for the following issues that were raised during the hearing:

Academic Success and Lifelong Wellness.

As we contemplate legislation that includes protections for the future of college sports, the academic success of college athletes must not be overlooked. Importantly, *student-athletes continue to graduate at higher rates* on average than their nonathlete peers. We believe the [Graduation Success Rate](#) is a more accurate method of measuring graduation rates because it accounts for students who transfer in, transfer out and enroll midyear, as well as other

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events that the federal rate does not account for, to provide as clear a picture as possible of whether student-athletes are attaining their degree in a timely manner. In the 20 years since the NCAA has been tracking GSR, the overall graduation rate for student-athletes has increased by 16 percentage points, the rate for Black women student-athletes has increased nearly 20 percentage points, the rate for Black football players in the Football Bowl Subdivision has increased by 27 percentage points, and the rate for Black Division I men's basketball players has increased by 35 percentage points. Even when using the outdated Federal Graduation Rate metric, Division I Black male student-athletes are graduating at higher rates than their Black nonathlete peers by 12 percentage points and Division I Black female student-athletes are graduating at higher rates than their Black female nonathlete peers by 13 percentage points. In addition to outperforming their peers during their collegiate experience, a recent Gallup study showed that student-athletes excel after graduation, too. In areas of social well-being, physical health, community and purpose, former student-athletes [thrive at greater rates](#) than their nonathlete counterparts.

Health and Safety.

Member colleges and universities have repeatedly reaffirmed the NCAA's constitutional principle that all Division I, II and III schools conduct their programs in a manner designed to protect, support and enhance the physical and mental health, safety and performance of student-athletes. The schools also have passed specific health and safety bylaws including implementing provisions related to concussion education, evaluation, return-to-learn and return-to-play protocols; providing mental health care and education at each school in a manner consistent with NCAA Mental Health Best Practices; and providing independent medical care for student-athletes that affirms the unchallengeable autonomous authority of the schools' primary athletics health care providers (i.e., team physicians and athletic trainers) to make return-to-play and all other medical management decisions. The principles of independent medical care and medical provider autonomy recognize that the primary athletics health care providers at each college and university share a direct relationship with their student-athletes and that the school's medical staff retains the authority to make autonomous, unchallengeable medical decisions in consultation with the student-athlete. The NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, with the ongoing assistance of the NCAA Sport Science Institute, supports colleges and universities with resources and best practice guidance for a host of relevant mental and physical health, safety and performance topics in collegiate sport, including [mental health](#), [preventing catastrophic injury and death](#) (e.g., exertional heatstroke), [concussion safety](#), [independent medical care](#), [cardiac care](#), [sexual violence prevention](#), and [hazing prevention](#). This approach provides evolving best practices to each school's medical staff

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and honors the direct relationship between student-athletes and their primary athletics health care providers. The NCAA also supports mental and physical health, safety and performance in college sport through the work of playing rules committees for each NCAA sanctioned sport. Each playing rules committee makes changes to playing rules to enhance safety in sport, and these recommendations are guided by the independently operated NCAA Injury Surveillance Program, which is the only injury surveillance program for collegiate sports in the world. The NCAA also provides grants to support independent medical research. As just one of many examples, the NCAA and the Department of Defense have awarded over \$100 million in grants for the NCAA-DOD CARE Consortium, which is the most comprehensive study of concussion and repetitive head impact exposure in the world. In summary, while the NCAA national office does not directly provide medical care or engage in research, the constitutional principles of the NCAA ensure that student-athletes at all member schools are provided medical care and safety standards that reflect best practices, which are guided by cutting-edge research, education and policy.

Employment.

During the hearing, the overwhelming consensus from the witness panel was that an employment model would be immensely damaging to the ecosystem of college sports. There was a suggestion that such a model could apply only to Division I FBS football and men's and women's basketball student-athletes. But this suggestion reflects a misunderstanding of both the current legal environment and the practical realities schools and student-athletes would face. As you heard at the hearing, the vast majority of Division I schools could not adopt such a model and continue to provide the array of support they give to their student-athletes. There are also serial litigation efforts that seek to expand the employment designation to student-athletes far past this isolated group, and no consideration appears to have been given as to how women and Olympic sports would be protected under such a model. Importantly, without intervention from Congress, immigration experts warn that the participation opportunities for the nearly 25,000 international student-athletes, who many believe deserve access to name, image and likeness opportunities, would likely be [eliminated](#) under an employment model due to the employment restrictions of F-1 student visas.

Thank you again for the thoughtful questions and discussion during the hearing. As requested, below are answers to the committee's Questions for the Record. We look forward to the opportunity to engage in an ongoing dialogue and work together to develop a federal solution that will best support all student-athletes and protect the long-term integrity of college sports.

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Respectfully,



Charles D. Baker
President, NCAA

The Honorable Senator Durbin

1. Following the Supreme Court's June 2021 unanimous decision in *NCAA v. Alston* that the NCAA violated federal antitrust law when it attempted to limit education-related payments to student-athletes, the NCAA adopted a policy largely deferring to state name, image, and likeness (NIL) laws, the first of which were set to take effect in July 2021. Now, the NCAA and athletic conferences have lobbied Congress on the need for a national, uniform NIL policy.

a. What, in your view, is the proper role of the federal government in college sports?

The NCAA and its schools and conferences fully support the ability of college athletes to benefit from their NIL. In 2021, the NCAA passed NIL legislation intended to *mitigate* the impact of a patchwork of state laws and create a standard that would provide equitable opportunities for all student-athletes, regardless of what state they live in. Because the Association and our colleges and universities do not have authority over state laws, the federal government can create a national standard that preempts the 30 state NIL laws, many of which codify recruiting advantages for schools in their own state. A federal law would allow the NCAA to provide student-athletes with a fair environment and level playing field and effectively regulate issues like NIL and benefits received by college athletes. Under the ideal model, the NCAA can continue to make rules consistent with any law and enforce those that apply to its schools. The federal government could enforce those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview.

b. In the absence of legislative action, how does the NCAA plan to regulate and enforce policies governing college athletics?

The Association is taking considerable steps to address areas of much needed modernization, including in [areas of NIL](#) and with an increased focus on gender equity, health and wellness, and enhanced benefits. Yet, with resources consistently being deployed to address legal litigation and a proliferation of state NIL laws, it is becoming increasingly difficult for the Association to make commonsense rule changes. Congress is the only entity that can pass a federal law and guarantee student-athletes have the ability to compete on a level playing field. Additionally, without any form of safe harbor protections from certain liability complaints from Congress, the Association's ability to create, interpret and enforce new rules and

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implement new policies will continually be stymied by overzealous plaintiffs' attorneys and endless litigation, which costs the Association valuable resources that should be reserved for our membership.

2. **When you became NCAA president in March 2023, you made a comment about college athletes playing either “traditional college sports” or “big-time college sports.”**

a. **Could you elaborate on what the distinction is between “traditional” and “big-time college sports” in your view?**

The NCAA membership comprises more than 1,100 colleges and universities, supporting over 500,000 student-athletes across three divisions. The vast majority of Division I athletics programs, as well as those in Division II and Division III, do not generate significant revenue and rely heavily on school-appropriated funds and donations to operate their athletics programs. Yet, there is a small percentage of programs at the Division I level that do generate revenue from their athletics programs and thus have the most resources. The approximately 95% of collegiate institutions that do not generate athletics revenue sufficient to fund their athletics departments without subsidy would be challenged to continue offering athletics opportunities if student-athletes were deemed employees of their institutions. I am committed to finding solutions that both safeguard opportunities for all of college athletics and address concerns related to the small minority of schools producing the vast majority of the revenue without changing the unique relationship between all student-athletes and their schools.

b. **Should “big-time college sports” or conferences operate outside the NCAA and/or under a different set of rules? Why or why not?**

Since 2014, Division I schools that are also members of the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference have operated under an [autonomy system of governance](#), which allows them to adopt independent legislation in certain areas of the NCAA rulemaking process. Division I schools that are not members of autonomy conferences have the ability to opt in to any rules that have been adopted. This approach has allowed for college sports to operate under one umbrella, culminating in one national championship, while allowing flexibility for those schools with additional resources to offer enhanced benefits to student-athletes.

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3. The NCAA has long argued that college sports are different from professional sports because the players are students who are not paid to play, which allegedly enhances fan interest and ensures athletes are focused on academics. With the most recent round of conference realignment, geography has taken a back seat to football-driven media dollars, and students who attend schools on the West Coast will now be traveling across the country to compete in conference matches. These revenue-driven decisions appear to be detrimental to the academic pursuits of “student-athletes.”
- a. How do you envision “student-athletes” balancing coursework and bicoastal travel for games?
 - b. What role will the NCAA play in preserving the “student” part of “student-athlete”?
 - c. Should there be a more concerted effort for conferences to be geographically aligned or for non-football sports to remain in geographically aligned conferences?

(Please note, the answers to questions 3a, b and c are combined into the paragraph below).

While the 1984 U.S. Supreme Court Board of Regents antitrust case limited the NCAA’s role in conference realignment, the Association is committed to prioritizing the academic success of college athletes and ensuring they are students first. All Division I schools must adhere to rules that regulate the demands on student-athletes’ time and ensure student-athletes meet progress-toward-degree requirements, fulfill minimum academic credits per semester and complete minimum GPA requirements. All Division I schools are also required to give student-athletes at least one day off per week during their playing season, and for Division I schools with autonomy, travel cannot occur on a student-athlete’s required day off. With a small percentage of NCAA college athletes going on to play professionally, we understand our role in helping prepare students for life after college, and we celebrate that student-athletes graduate at higher rates on average than their nonathlete peers.

Like many others, I am concerned about the impact realignment activities could have on student-athletes. While we have rules in place to protect the academic and personal welfare of college athletes, transcontinental realignment can be highly disruptive for schools and student-athletes. As I move forward in my tenure, I will

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work together with our university and college presidents, commissioners, and college athletes to explore solutions to address these growing concerns.

4. In your opening statement, you called for “limited and conditional liability protection to conferences and intercollegiate associations so they can set reasonable competition standards and enforce student-athlete health and well-being requirements and other provisions for all schools with direction from Congress.” However, litigation has proven critical to college athletes’ efforts to gain the rights and benefits to which they are entitled.

For example, federal antitrust investigations and litigation have resulted in (1) elimination of the NCAA’s prohibition on year-round comprehensive health insurance coverage for college athletes; (2) elimination of the NCAA’s one-year scholarship rule; and (3) elimination of NCAA rules that limited the education-related benefits that schools could make available to college athletes.

If the NCAA were granted the “limited and conditional liability protection” you requested, what would ensure that the NCAA would not use this liability protection to take advantage of college athletes and/or deny them the rights and benefits to which they are entitled?

The leaders within college sports recognize that the Association has been slow to move on many issues. Since my arrival to the NCAA eight months ago, I have prioritized reforms to enhance and support student-athlete welfare at every step of the way, and I intend to continue to push this work forward at every level of the Association’s operations. The NCAA supports the opportunities for student-athletes to profit from their name, image and likeness. But increasingly those who disagree with NCAA rules have used the courts to mount challenges. These lawsuits are expensive, take years to resolve and create uncertainty about whether college sports can be governed nationally. In the future, these attacks could also seek to call into question areas like how many years a student-athlete can have eligibility or whether they must be a full-time student at all. To provide an even playing field and experience for college athletes, the NCAA must have the ability to create and enforce national rules surrounding areas like eligibility, recruiting and increased benefits for student-athletes. We understand your concerns and recognize any liability protections could and should likely come with appropriate federal oversight. We welcome the opportunity to work with you and your peers to establish parameters that would allow the NCAA to continue to govern, with

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some limited safe harbor protections.

5. College athletics in the United States play a unique role in developing the athletes that will go on to compete internationally and in the Olympics.

a. What would be the impact on the U.S. Olympic and Paralympic Committee (USOPC) if many schools eliminate their sports programs that do not generate profits or break even?

College sports serve as an essential pipeline for Team USA. Unlike other countries competing in the Olympic Games, the U.S. does not provide direct financial support to the Olympic movement. As a result, the USOPC is in large part supported by the development of athletes that occurs during their intercollegiate athletics participation. U.S. colleges and universities spend over \$5 billion a year on Olympic sports, and this investment provides opportunities for student-athletes to develop into elite athletes at their school facilities — and not because government officials hand-select them to compete on global stages. For the 2020 Olympic Games in Tokyo, approximately 75% of U.S. Olympic athletes competed in college. If schools were forced to eliminate their athletics programs due to financial constraints such as those that would likely occur under an employment model, the historic tradition and success of the U.S. Olympic teams simply wouldn't be able to continue in the same way.

b. If USOPC development is reliant on college sports that generate significant revenue — namely football and basketball — is this model sustainable? Should the USOPC develop a new model for Olympic development?

It is our understanding that, unlike every other country in the world, the U.S. Olympic Committee and the various sport federations do not receive government funding or support. We are unable to address or speak to the sustainability of this financial model and would recommend discussing adjustments to the Olympic development pipeline with USOPC leadership.

6. Currently, there is no national, uniform law addressing NIL in college athletics, leaving NIL policy to be governed by a patchwork of state laws.

a. How difficult is it for current and prospective college athletes to understand and stay on top of the different state laws addressing NIL?

While the NCAA's current NIL policy provides more flexibility for student-athletes

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to benefit from their NIL than many state laws, the Association does not have authority to interpret those laws with one uniform framework. The existing patchwork of approximately 30 state NIL laws is incredibly difficult for student-athletes and even administrators on campus to navigate, with each law containing different provisions, requirements and enforcement approaches. Additionally, in the absence of any standard, uniform contract terms, transparency around NIL deals, and robust regulation on agent behavior, it is very challenging for athletes to know whether they are achieving their true market value. We see a real need to enhance safeguards and provide resources for student-athletes to mitigate the risk of bad actors in the NIL market, ensure that contracts and commitments are honored, and guarantee student-athletes are compensated fairly.

b. Have there been any documented instances of enforcement of state laws related to NIL?

We are not aware of any documented cases of states enforcing their NIL laws. The NCAA is concerned the lack of protections may only leave litigation for a student to later challenge contracts that contain patently unfair terms. In addition, most state laws do not appear to delegate a state agency for the enforcement or oversight of compliance with state NIL laws.

7. As Congress considers potential legislation to regulate college sports, please answer the following questions.

- a. In 2022, the Power 5 conferences reported a combined \$3.3 billion in revenue. Should athletes in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in non-Power 5 conferences? Why or why not?
- b. In the past few years, the Big Ten (seven years, \$7 billion), SEC (ten years, \$3 billion), and Big 12 (six years, \$2.28 billion) signed massive media-rights deals driven largely by the rights to air the conferences' football games. Should football players in Power 5 conferences be subject to the same rules with respect to NIL, revenue sharing, and employment status as athletes in other sports and conferences? Why or why not?
- c. In 2016, the NCAA extended its contract with Turner Sports and CBS to broadcast the men's college basketball tournament. The extension was for \$8.8 billion over eight years. Should men's basketball players be subject to the same rules with respect to NIL, revenue sharing, and employment status as

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other athletes? Why or why not?

(Please note, the answers to questions 7a, b and c are combined into the paragraph below).

For NIL, we are fully supportive of student-athletes maximizing their NIL potential, regardless of the sport they compete in. We also believe the current policy that prohibits NIL payments that are disguised as pay-for-play or a recruiting inducement should apply to all student-athletes, regardless of conference, school or sport.

Regarding employment, we strongly believe all college athletes should remain students first. In June, the elected Division I, II and III Student-Athlete Advisory Committees [expressed their support](#) for federal legislation that would grant special status that ensured they were not employees of their institutions. Protections such as these codified in federal law would enable schools to provide additional benefits to student-athletes consistent with Title IX while protecting opportunities across the ecosystem of college sports.

d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?

When crafting NIL legislation, we believe provisions that protect student-athletes — such as agent registration, uniform contract elements, financial literacy training, and giving student-athletes data to help realize their full NIL potential and prevent exploitation — must be part of any proposal. We also believe the governance of college sports is best run by those on-the-ground experts, rather than a politicized and inefficient system maintained by the government. Student-athletes should have a voice at all levels — including at the national level. Under an ideal model, the NCAA can continue to make rules consistent with any law and enforce those that apply to its schools, while the federal government could enforce those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview. Additionally, to ensure future opportunities for all college athletes, regardless of sport or division, we strongly believe any legislation should affirm the current and unique relationship between universities and student-athletes, rather than student-athletes as employees of an institution.

The Honorable Senator Grassley

- 1. Do you believe federal preemption of state laws is the best way to deal with NIL? What issues do you believe should be addressed at the federal level and what issues, if any, should be left to the states?**

Federal preemption of state laws is an essential part of any NIL framework. The current patchwork of 30 state laws means that college athletes competing in the same sport, in the same division, and sometimes in the same conference are often playing according to different rules. This system tilts the playing field in a way that is unfair to student-athletes and leaves them vulnerable to deception, exploitation and predatory behavior. We are also increasingly seeing a race to the bottom in which states are passing laws designed only to benefit the colleges and universities in their state. As many as six states have now passed laws that limit or prevent the NCAA from enforcing NIL or other rules in the state. A state-by-state approach is not good for national competition, is not good for intercollegiate athletics and is not good for student-athletes.

- 2. Who do you believe should be in charge of creating NIL guidelines, requirements and restrictions – Congress, the FTC or another third party, or the NCAA? Why?**
- 3. Who do you believe should be in charge of overseeing and enforcing provisions of a new NIL law – Congress, the FTC or another third party, or the NCAA? Why?**
(Please note the answers to questions 2 and 3 are combined into the paragraph below).

We believe the governance of college sports is best run by on-the-ground stakeholders and experts, rather than a politicized and bureaucratic system maintained by the government. Under an ideal model, the NCAA can continue to create rules consistent with any law and enforce those that apply to its schools, while the federal government enforces those elements of a bill that apply to agents, third parties and any other individuals who fall outside the NCAA's existing purview. Additionally, to ensure future opportunities for all college athletes, regardless of sport or division, we strongly believe any legislation should affirm the current and unique relationship between universities and student-athletes, rather than student-athletes as employees of an institution.

- 4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?**

We believe any federal proposal should include provisions that give student-athletes data to help realize their full NIL potential and prevent exploitation. Recently, the Division I Council supported NIL-related concepts that are now out for membership

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feedback. The proposals include a voluntary registration process for NIL service providers, disclosure requirements for key stakeholders, uniform contract elements and required NIL education. The NCAA proposal specifies that student-athletes must disclose to their schools NIL activities valued at greater than \$600 within 30 days of signing an NIL agreement. If the proposal is adopted, the NCAA will make available an aggregated database of disclosed NIL information, recognizing student-athletes' privacy interests.

5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?

We believe any federal proposal should include provisions that protect student-athletes, including standardized contract elements. Recently, the Division I Council supported NIL-related concepts that are now out for membership feedback. The proposals include a provision requiring the NCAA to make available a comprehensive education program focusing on NIL activities. Such education will include best practices on how to evaluate an NIL contract. In addition, service providers registering with the NCAA will be able to commit to using recommended contract elements so that student-athletes can make informed decisions on which service providers to use.

6. Concerns have been raised regarding possible Title IX violations if there is no federal preemption of state NIL laws. Do you agree? If so, what would you propose Congress do to mitigate Title IX concerns?

We have significant concerns about schools ensuring equitable opportunities for men and women in this new era of NIL. While there is no existing database of all NIL transactions, recent reports from some NIL services suggest that only about a third of collectives are creating NIL deals for college athletes who are women, and the deals that do exist compensate women less than men. For these reasons, we support Congress bolstering Title IX provisions to ensure discrimination on the basis of gender or sport is prohibited in the marketing or facilitation of NIL agreements for college athletes.

7. Several bills dealing with NIL have been introduced in the House and Senate. Which bill or bills do you support? Why? Which bill or bills do you oppose? Why?

I am grateful to many of the leaders on the Senate Judiciary Committee that have put forth legislation that creates a federal standard for NIL and other areas that impact college athletes. Senator Cruz has effectively addressed our priorities in his draft legislation, most notably, ensuring that student-athletes remain students rather than classifying them as employees. Senators Booker and Blumenthal also put forward

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several thoughtful approaches to protecting student-athletes in their draft, including in Section 4 of their bill, which gives student-athletes the ability to rescind their contracts if they are no longer participating in college sports. We are committed to working with all Members to address their concerns and look forward to working with the committee to develop and advance bipartisan legislation.

The Honorable Senator Lee

1. **Mr. Baker, at last week's hearing, I asked whether you or anyone else associated with the NCAA has apologized to female NCAA swimmers, including Riley Gaines and Kylee Alons, who were traumatized after being forced to share a locker room with a biological male swimmer. You said that you have not, but that you would get back to me as to whether anyone associated with the NCAA has apologized. Has anyone associated with the NCAA apologized to Ms. Gaines, Ms. Alons, or any similarly situated female athletes for the trauma inflicted upon them by the decisions of the NCAA?**

I am not aware of any NCAA staff member responding to these individual student-athletes regarding this topic. The NCAA welcomes the opportunity to meet with student-athletes who have concerns about locker rooms or other aspects of championship events. The NCAA solicits feedback from all participants and takes that information into consideration for future events.

2. **I asked questions about your policies regarding biological males competing in women's sports. You stated that the NCAA had updated these policies and promised to provide the updated policies in writing. Please provide these policies in writing.**

The NCAA's competition eligibility policy for transgender student-athletes can be found [here](#). The policy was adopted by the NCAA Board of Governors after recommendation by the Committee on Safeguards and Medical Aspects of Sports – a group of athletics administrators, coaches, sports medicine staff, researchers, faculty and student-athletes elected by their peers from all 1,100 member institutions.

3. **I also asked whether you put any policies in place to ensure that female athletes are not forced to share locker rooms with biological males against their will; whether these policies required that female athletes be notified in advance if a biological male would be given access to their locker room; and whether, after being notified, alternative arrangements are made available to the athletes. In response, you agreed to send me the NCAA's updated policies in writing. Please provide these policies in writing.**

Host institutions must follow local, state and federal law and the NCAA Board of Governors nondiscrimination policy when providing locker room space for championship participants. As developed by the NCAA Board of Governors, the NCAA has a policy to conduct events that protect student-athlete well-being and safeguard

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the experience of our students, fans and campus communities alike. Event hosts must have an ability to deliver and maintain an environment that is safe, healthy and free of discrimination and respects the dignity of all persons. Host entities are expected to provide several components to support the administration of championships. Locker, changing room and restroom options specific for the sport and separately available to men and women are provided for each championship site. Further, a host entity's local and/or campus regulations require adherence and may impact the administration of championships. Specifically for the Division I Swimming and Diving Championships, single-person, gender-neutral options are also available for the participants. Options available for changing rooms are communicated to attending coaches and expected to be communicated with participating college athletes. All event details for the Division I Swimming and Diving Championships, including locker room details, are outlined for participants in the Participant Manual, which is made available in advance of the championship. The manual is sent directly to the head coaches at the time of selection. This manual was shared in advance of the 2022 championships. For the 2022 championships, all the locker room options available — two large locker rooms and individual, single-use, gender-neutral spaces — were outlined for all participants in that manual. The single-use gender-neutral spaces are labeled "Participant Unisex Locker Room" and "Participant Unisex Restroom" on a map provided by host institution Georgia Tech; gender-neutral spaces for multiperson use were not provided. The map was included in the Participant Manual, and on-site signage labeled all spaces. Further, the map was included in the packet that each team received at check-in. In addition, all participant policies and details are reviewed during the coaches meeting. The host personnel review all locker room options, including the single-use spaces, with the coaches during that time. Head coaches are responsible for sharing the information about locker room access and all championship policies with their athletes. In 2022, the Participant Manual stated the following related to locker rooms at the championships:

Locker Rooms / Changing Stations

The Aquatic Center has locker rooms dedicated to the users of the competition and leisure pools. During the women's championships, both locker rooms will be available for use by the NCAA competitors and female coaches/staff. During the men's week, these locker rooms will only be available to the NCAA competitors and male coaches/staff. Additional restrooms can be found in the deck-level locker room spaces.

In 2022, the Host Operations Manual, which provides direction to the host institution for planning the championship, contained the following directions on locker rooms:

Locker Rooms

Participants typically prefer to carry their own gear and supply their own towels. Locker assignments are not necessary, but adequate space for changing should be provided. If possible, both the men's and women's locker rooms should be designated for the appropriate gender of participating student-athletes, and a restroom for opposite gender individuals should be designated.

4. Where does the NCAA derive its authority to define the eligibility category in women's sports as anything other than being a biological female?

Under the NCAA's constitution, all Association-wide decisions such as the transgender student-athlete participation policy are made by the Board of Governors. Association rules, set by the members through a legislative process call for input from subject specific committees. While the NCAA transgender student-athlete participation policy (which governs only eligibility for competition) approved by the Board of Governors is informed by other sport-governing policies, the NCAA membership committees charged with operationalizing the policy make final determinations of its requirements (e.g., testosterone thresholds). Like the competition eligibility policy, guidance on facilities provided to host institutions is informed by local, state, and federal law, industry best practices and, sometimes, policies of other sport governing bodies. Specifically, the NCAA aligns with the 2021 International Olympic Committee framework that states unequivocally the need to address fairness, inclusion and nondiscrimination. In addition, decisions about who appears on team rosters are made by each institution. Finally, Title IX and state law may inform the decisions on the participation opportunities provided by NCAA member schools.

5. NCAA policy allows males identifying as women to participate and compete on women's teams and win titles — how is this consistent with Title IX?

The U.S. Department of Education has recently released new proposed rulemaking for the athletics participation of transgender athletes. Under the proposed regulation, our understanding is that schools would not be permitted to adopt or apply a one-size-fits-all policy that categorically bans transgender students from participating on teams consistent with their gender identity. Under this approach, the NCAA's transgender policy appears to be consistent with the guidance from the federal government, and we have not received an indication from the Office of Civil Rights that conflicts with that understanding. The Association will adjust the policy, as necessary, to help its members conform with future Title IX regulations.

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- 6. How does the NCAA justify disparate impact sex discrimination (a violation of Title IX) in women's sports if biological male athletes are taking titles from female athletes? Has a woman identifying as a man won a national title?**

See answer to question 5 above. We are not aware of a circumstance in which a transgender male student-athlete has won a national title in a men's championship. In Division I, only one out transgender woman has won a national title in an NCAA women's championship.

- 7. What NCAA officials have met with female athletes directly impacted by biological males who have competed on collegiate women's teams?**

The NCAA welcomes the opportunity to meet student-athletes who have concerns about any policies.

- 8. Has the NCAA assessed the physical, emotional, psychological harm of its transgender inclusion policy on female athletes? If so, what are the findings? If not, why not?**

The NCAA has not conducted any research related to the current transgender policy.

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The Honorable Senator Tillis

1. What changes has the NCAA made at an organizational level to address NIL concerns?

The NCAA's current NIL policy, adopted in 2021, provides significant flexibility for student-athletes to be compensated for their NIL. Under the policy, student-athletes may be compensated for their NIL as long as it is provided by a third party and is not a proxy for pay-for-play or a recruiting inducement. More specific guidance in the areas of recruiting and institutional involvement was released in [May](#) and [October](#) 2022. These policy adjustments reflected the Association's ability to respond to and make real-time adjustments to a changing landscape. The NCAA Division I Council also [recently introduced](#) proposals that outline voluntary agent and service provider registration, disclosure requirements that will provide transparency for NIL activities and a national education program that will include modules such as best practices around contract review. These proposals are slated to be voted on at the 2024 NCAA Convention in January. While the Association is making every effort to address NIL through its own internal reform process, it does not have jurisdiction over state law and requires the assistance of Congress to establish a national, uniform NIL framework that creates a level playing field for all college athletes.

2. What do you believe are the top three hurdles that the NCAA currently faces? What if any involvement should Congress have in resolving these challenges?

The three biggest threats facing student-athletes and college sports are 1) the increasing approach taken by states to pass laws that are in conflict with a national system of governance and are often designed to provide a competitive advantage only to the schools in their state, 2) the legal and federal actions that seek to change current Department of Labor guidance and reclassify student-athletes as employees of their institutions, and 3) ongoing, repetitive lawsuits that restrict the Association's ability to make national rules and have a chilling effect on adopting policies that allow for additional student-athlete benefits. Congress is best equipped to address these challenges and should pass legislation that 1) preempts the patchwork of state laws impacting colleges sports, including NIL, to create consistent policies nationwide, 2) codifies current regulatory guidance into law by granting student-athletes special status that would affirm they are not employees of an institution and allow them to receive enhanced benefits while protecting all athletics programs from one-size-fits-all actions in the courts, and 3) grants limited and conditional liability protection to conferences

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and intercollegiate associations so they can set reasonable competition standards and enforce other provisions of a bill passed by Congress.

3. As you are probably aware, multiple bills have been introduced this Congress that touch on NIL. Do you believe that the path forward in Congress is a tailored bill or a broader bill that goes beyond just NIL?

We are grateful for the efforts put forward this Congress to address the issues of NIL through federal legislation. We believe a path forward must include priorities that address student-athlete welfare, advance NIL protections, secure opportunities for all athletes as students, bolster Title IX provisions and grant the NCAA limited protections to continue to govern the Association in a reasonable manner. Senator Cruz has effectively addressed these priorities in his draft legislation. Senators Booker and Blumenthal also put forward several thoughtful approaches to protecting student-athletes in their draft, including in Section 4 of their bill, which gives student-athletes the ability to rescind their contracts if they are no longer participating in college sports. We are committed to working with all Members to address their concerns and look forward to working with the committee to develop and advance bipartisan legislation.

4. What role does the NCAA play in conference realignment? Is there a situation in which the NCAA will have to play an increased role if the process goes poorly?

While the 1984 U.S. Supreme Court Board of Regents antitrust case limited the NCAA's role in the area of conference realignment, the Association is committed to prioritizing the academic success of college athletes and ensuring they are students first. All Division I schools must adhere to rules that regulate the demands on student-athletes' time and ensure student-athletes meet progress-toward-degree requirements, fulfill minimum academic credits per semester and complete minimum GPA requirements. All Division I schools are also required to give student-athletes at least one day off per week during their playing season, and for Division I schools with autonomy, travel cannot occur on a student-athlete's required day off. With a small percentage of NCAA college athletes continuing on to play professionally, we understand our role in preparing students for life after college, and we celebrate that student-athletes graduate at higher rates on average than their nonathlete peers. Like many others, I am concerned about the impact realignment activities could have on student-athletes. While we have rules in place to protect the academic and personal welfare of college athletes, transcontinental realignment can be highly disruptive for schools and student-athletes. As I move forward in my tenure, I will work together with our university and college presidents, commissioners, and college athletes to explore solutions to address

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these growing concerns.

5. **In my home state, there are 27 college and universities who compete in Division II and III athletics. How is the NCAA ensuring that smaller institutions are also being involved in the NIL discussions?**

In my first 150 days in office, I made it a priority to speak with student-athletes and administrators from all 97 conferences across all three divisions. It was critical that I heard their perspectives on an array of issues, including NIL. Division II and III have separate governance structures, which include presidents, commissioners, athletics directors and student-athletes at Division II and III colleges and universities. When speaking with student-athletes and administrators at Division II and Division III campuses, however, I am struck by their overwhelming and more immediate concern about an employment model being forced upon their institutions and conferences. Some institutions report an anticipated financial impact of four times their current costs, the possibility of cutting sports, and damage to institutions that rely on college sports for enrollment.

6. **What is the number of international NCAA student-athletes that are unable to profit off of their NIL due to visa restrictions?**
7. **Do you have a total number of international student-athletes that compete at North Carolina colleges and universities?**

(Please note the answers to questions 6 and 7 are combined into the paragraph below).

There are nearly 25,000 [international student-athletes](#) who compete across all three NCAA divisions, and approximately 1,700 of them compete at institutions in North Carolina. Current visa requirements restrict the ability of many if not all of these athletes to benefit from their NIL. Due to these same visa restrictions, immigration experts believe that without congressional intervention the opportunity for international student-athletes to compete in college sports at all would likely be [eliminated](#) under an employment model.

8. **How are the 200 or so NIL collectives across the country affecting NCAA sports?**

NIL collectives are operating in a space that is unregulated, often unrestricted, and without transparency — with different state laws impacting each collective differently. It is widely believed that collectives are operating as a third-party arm of an athletics department, as a way to direct compensation to their student-athletes. Yet, without regulation, deal transparency and the guarantee of contract honoring, collectives are

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adding to the already complicated terrain of NIL. Further, many collectives appear to be operating in a manner inconsistent with Title IX and principles of gender equity.

The Honorable Senator Whitehouse

1. Student-athletes are young and have little experience with contract negotiations, leaving them vulnerable to bad actors who attempt to take advantage of them in one-sided NIL contracts.

- a. Who should be responsible for ensuring that student-athletes are protected from exploitation?**
- b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?**

(Please note the answers to questions 1a and b are combined into the paragraph below).

The NCAA is in the process of [adopting policies](#) that protect student-athletes, including proposals related to agent and service provider registration, standardized contract terms, and disclosure requirements to provide transparency for NIL activities. Additionally, beginning August 2024, education related to NIL and financial literacy will be required of all Division I institutions. However, without federal preemption of the patchwork of 30 state laws, the NCAA cannot effectively regulate NIL and provide a level playing field to student-athletes, so it will be important to see these protections also enshrined into federal law. We are also not aware of any documented cases of states enforcing their NIL laws, so federal preemption also allows for appropriate enforcement.

2. Star athletes playing collegiate men's football and basketball at dominant institutions have secured the majority of NIL deals.

- a. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for all student-athletes, not just the star players?**
- b. To what extent should Congress or the NCAA try to create NIL regulations that promote NIL deals for teams that do not generate revenue for their universities?**
- c. How can Congress or the NCAA ensure fairness and equity between men's and women's collegiate athletics in securing NIL deals?**

(Please note the answers to questions 2a, b and c are combined into the paragraph below).

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We believe college athletes across sports, teams and genders should have the same opportunity to access and benefit from NIL contracts. Currently, there is no uniform system that tracks student-athlete NIL across sport or gender. While the NCAA Division I Council has [introduced proposals](#) that require disclosure of NIL agreements, we recognize the limitations of an association like our own, especially when facing state NIL legislation that does not have uniform requirements. Recent reports from NIL services providers also indicate that only about a third of collectives using their services are providing equitable opportunities for women and the deals that do exist compensate women less than men. To address this, we support Congress bolstering Title IX provisions to ensure discrimination on the basis of gender or sport is prohibited in the marketing or facilitation of NIL agreements for college athletes.

3. It is important that we protect the health and safety of student-athletes. Injuries are very common in collegiate athletics, and some injuries recur or manifest later in an athlete's life.

- a. **Should there be a fund to pay for medical care for former student-athletes whose injuries can be traced back to their collegiate careers, even if those injuries manifest later in life?**
- b. **If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?**

(Please note the answers to questions 3a and b are combined into the paragraph below).

We agree that the health and safety of college athletes should be of the utmost priority for the Association and its member colleges and universities. Sports come with some inherent and understood risk, and our schools provide expert health care throughout and at least two years after a student-athlete's collegiate experience. The Association also has two primary programs designed to financially support the health care costs of student-athletes. The newly created [NCAA Post-Eligibility Injury Insurance Program](#) funds athletic health care costs for all student-athletes for up to two years after they graduate or leave an institution. The [NCAA Catastrophic Injury Insurance Program](#) provides health care coverage for any student-athlete who is catastrophically injured while participating in intercollegiate athletics activity. The policy has a \$90,000 deductible and provides benefits in excess of any other valid and collectible insurance.

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We support college athletes getting the medical care and coverage they need for as long as they need it. Because most sport activity begins in early adolescence and continues through the duration of a college athlete's lifetime, we are open to discuss how some of the models proposed could be realistically implemented. Given the lifetime and diversity of athletic and life experiences that contribute to injuries and the requirements insurance programs have for clear and evidence-backed claims, we welcome the opportunity to work with you to address these concerns and any current gaps in health care funding.

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Note: The information below was not a formal part of the QFR process. The question was requested during the hearing and was pulled directly from the hearing transcript.

Honorable Senator Padilla

1. **To ensure the success of Team USA in these games, we must address any remaining barriers to participation by our student-athletes. Governor Baker, you mentioned in your testimony that collegiate sports programs have been a significant pipeline for Team USA. Are there any remaining barriers for student-athletes who are also Olympic athletes? And whether it's accessing stipends from Olympic training programs, or endorsing products during the games? How would some of the rules that are entertained at state by state here federally going to impact that conversation?**

NCAA rules allow for student-athletes to compete as Olympic athletes, and for domestic and international student-athletes to receive Olympic stipends (e.g., Operation Gold training stipends, training expenses) without jeopardizing their eligibility. Division I rules allow an individual (prospective student-athlete or enrolled student-athlete) to accept funds administered by the U.S. Olympic and Paralympic Committee. An international prospective student-athlete or international student-athlete may accept funds from a country's national Olympic and/or Paralympic governing body (equivalent to the USOPC) based on place finish in one event per year that is designated as the highest level of international competition for the year by the governing body. For expenses approved and provided directly by the USOPC, the appropriate national governing body in the sport (or, for international student-athletes, the equivalent organization of that nation) or a governmental entity, an individual (prospective or enrolled student-athlete) may receive actual and necessary expenses to cover developmental training, coaching, facility usage, equipment, apparel, supplies, comprehensive health insurance, travel, housing and food.