

**Senator Grassley’s Written Questions for Walker Jones
Senate Committee on the Judiciary
Hearing on “Name, Image, and Likeness, and the Future of College Sports”
October 17, 2023**

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?

A: The TCA believes that the federal government can create clarity in the college sports ecosystem by ensuring states are not creating an unequal playing field for their home state institutions. Any federal law should 1) recognize Collective’s value to student athletes in the college sports ecosystem, 2) protect the privacy, health, and safety of the athletes and 3) not place arbitrary limits on how student athletes monetize their Name – Image – Likeness rights. 4) and finally, create a national standard for enforcement and oversight regardless of state or conference affiliation.

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?

A: Congress should look critically at current practices that deny athletes long term healthcare while violating their privacy and limiting opportunities to maximize their NIL rights. Additionally, we feel the ineptitude and inaction of traditional governing bodies has led to a lack of trust and confidence to truly have the student athletes’ best interest at heart. The TCA would suggest a hybrid approach to governance and oversight between the NCAA, Conferences, state guidelines, Universities. Not one of these groups can effectively oversee the landscape of collegiate athletics and its varying levels of competition. That is why we would suggest a collaborative approach between these stakeholders.

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?

A: I believe the FTC should use its existing authority to ensure agents and other predatory practices are fully prosecuted, but I honestly believe that

with a light touch from Congress, conferences are uniquely situated to ensure NIL guidelines are enforced. I don't think it would be wise to hand this responsibility back to traditional powers or the federal government. Conferences control membership as well as a large portion of the revenue generated through TV and licensing agreements.

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

A: Senators should be wary of efforts to publicize NIL agreements or even certain specific data points of NIL agreements. Efforts to publicize these deals in the name of "transparency" only put a target on student athletes for 1) unscrupulous actors in the marketplace, 2) fans and social media critics and 3) could endanger their personal safety and that of their families. It's important to note that Collectives and our partner institutions review these contracts to comply with eligibility requirements and state laws. If NIL deals are made public, so should the financial dealings at every level of college athletics.

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

A: We are strongly in favor of an agent registry. I would note that the value proposition of Collectives is that we negotiate contracts particularly for athletes who do not have official representation, free of charge. We also believe that keeping agreements private—or at least between Collectives, the athlete, and our partner institutions—offers a layer of protection to our athletes from unscrupulous practices, social media critics and others with criminal intent. Keep in mind, the majority of Collectives disclose their contracts with their university compliance departments to ensure alignment with applicable state and NCAA rules and guidelines. This level of transparency helps our athletes stay away from unfavorable contractual agreements.

6. 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?

A: TCA would formally support any piece of legislation that does the following:

- 1) Sees Collectives as a vital part of the college sports ecosystem—particularly as a bulwark against traditional powers and unscrupulous behavior.
- 2) Provides for the current and long-term health, safety, and privacy of student athletes.
- 3) Does NOT seek to arbitrarily set limits on an athlete's ability to monetize their NIL rights.
- 4) Creates a national standard of enforcement and oversight at the state level.

Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing
Name, Image, and Likeness, and the Future of College Sports
Questions for the Record
for Walker Jones, Executive Director, the Grove Collective
Submitted October 24, 2023

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?

A: Senator Whitehouse, thank you for these questions. First, one of the major value propositions of TCA members is that we negotiate contracts for those athletes who do not have formal representation at NO CHARGE. We act as their partner but also coordinate compliance between our partner institutions and other entities to ensure the student athletes are protected from bad actors but also just a simple mistake that could affect their NCAA eligibility. Collectives provide a level of guidance and transparency that does not endanger the student athlete or require that they have outside representation.

A revenue sharing model would likely be the most transparent and equitable way to not only allow athletes to be paid their fair market value but also create a system where bad actors are not incentivized nor rewarded for cheating these athletes while also providing a fund to pay for long-term safety/healthcare needs of the athletes.

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?

A: Senator, the free market is creating these opportunities already and you're going to see these numbers continue to increase across every sport for both men and women every year moving forward. I do think Congress might consider thinking about this from a standpoint that Football and Men's Basketball subsidize every other program in an athletic department across the country and are the reason why conferences are merging and chasing larger partnership deals with media companies, etc. When you consider that fact, it makes sense that the lions share of NIL deals go to these athletes, but I want to repeat that we are seeing an exponential leap in deals for women and non-revenue

sports and expect that growth to continue—which is great not only for these athletes but for the businesses who support them! So in actuality, the larger, revenue producing sports are helping create opportunities for non-revenue and female sports like never before. Anecdotally, we are seeing more brands attracted to female student athletes as endorsers while also seeing a gradual market correction in larger sports which has led to a redistribution of a percentage of NIL revenue. We would suggest let this trend continue with the oversight of collectives and universities to make concerted efforts to equality where possible.

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?

A: Senator, this is EXACTLY why the NCAA was created by President Teddy Roosevelt—to prevent deaths in college athletics—football in particular. Traditional powers who benefit from the work of student athletes should absolutely create a fund that pays for long term health and safety of Student Athletes. We support these efforts and if they won't do it on their own, it should be mandated by Congress.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Walker Jones
Executive Director, The Grove Collective
October 24, 2023

1. It is my understanding that collectives are supposed to be independent from schools. Yet, there are reports that collectives have improperly used name, image, and likeness (NIL) contracts to induce athletes to attend their favored universities, either out of high school or as transfer students.

There have also been concerns around how collectives are exacerbating funding disparities between male and female athletes, since the money is not flowing through the university and, therefore, is not subject to Title IX.

Thank you, Mr. Chairman. First and foremost, I think it's important to note that the word "inducement" is being used to perpetuate some myths about Collectives in an attempt to place arbitrary limits on student athletes' ability to monetize their NIL rights. As you

know, this is a two plus year-old business created out of the Supreme Court decision in 2021. Collectives are evolving not only in definition but in practice and we truly have become the stabilizing entity between institutions who are not legally allowed to pay athletes and donors who want to fund their alma maters. Our contracts and interactions with athletes are professional and we work in hand with the compliance departments of our partner institutions on every contract that is signed to ensure our athletes, athletic department and the Collective is acting in an appropriate manner.

- a. **How does The Grove Collective determine which Ole Miss athletes to proactively reach out to and work with?** We are constantly researching the 400+ student athletes on campus looking for those that have NIL value in the marketplace or that fit the description of endorsers our corporate brand partners are looking for. Many companies and brands use the collective to help select and identify the types of athlete endorsers they want to include in their campaign. We also have athletes proactively reach out to the Grove Collective for advice, guidance, and assistance with building an NIL platform. This is done free of charge to all our athletes.
- b. **When donors contribute funds to The Grove Collective, how do you determine which athletes the funds should go to?** Donors sometimes earmark funds for specific teams and athletes which is permissible by law, and we then distribute accordingly with a set of services and obligations for that student athlete. In the absence of this, the Grove Collective will look at market trends, needs, and relevant brand campaigns to distribute in an equitable manner where possible. To date, the Grove Collective has signed an athlete from all 18 sports represented on campus and has tripled our female athlete roster in the last 8 months to over 50 athletes.
- c. **How does The Grove Collective consider gender equity in these decisions?** The Grove Collective was founded on the principle of being an NIL platform for all student athletes at the University of Mississippi that choose to take part in name, image, and likeness. Regardless of gender or revenue vs non-revenue sports, the collective works with all 18 sports on campus and has over 200 athletes currently under contract. Our female athlete roster has tripled in the last 8 months and our first team wide NIL agreement was with our women's basketball team. We have a fundamental belief and mission to be as equitable as possible regardless of whether or not Title IX applies to collectives or not. It would not change how we operate.
- d. **How do you think collectives should be regulated and who should regulate them?** The Grove Collective and the TCA support regulation and oversight as long as it does not

limit or restrict the student athletes voice and ability to earn their fair share of revenue. We feel regulation and oversight should be a shared endeavor between the NCAA, Conferences, and the Universities the collectives represent. We feel one group alone, cannot effectively govern the space and therefore a collaborative approach for governance and oversight is needed to address the many nuances that exist at each level of collegiate athletics.

2. NIL data indicates that at Power 5 schools the vast majority of compensation for male athletes—87 percent—comes from donors, while only 13 percent comes from local or national brands. In terms of the number of deals, about 71 percent are with brands and 22 percent are with donors. The implication of this data appears to be that donors, who often operate through collectives, are paying athletes more to do less.

A: Data without context can be used to create a narrative that doesn't tell the entire story. I'll go back to the fact that this is an evolving industry in just its third year and individuals as opposed to institutions (like national brands) are always more risk tolerant with a start-up culture be that in the tech space or in the case of supporting Collectives. I do think you will continue to see more companies and brands become involved as the market settles and they see that Collectives are adding to the stability of the marketplace by working with compliance departments and ensuring our athletes are being treated fairly. Keep in mind, this is a new industry for brands, companies, athletes, universities, etc. Everyone is trying to figure out how best to navigate this landscape. Collectives evolving over the past 12 months to much more structured and reputable organizations will help to even out the flow of revenue.

Any suggestion that these student athletes are being compensated for doing “less” is a troubling accusation and takes away from the true value of student athletes and their contributions to the bottom lines of traditional powers in the college sports ecosystem.

There is also anecdotal evidence that some collectives and boosters are engaging in activities that appear to be inducing recruits and transfers to attend certain institutions or that look like “pay-for-play” in the guise of NIL payments. These payments are often directed to members of the football or men's basketball teams, and there appears to be a great disparity in the amount of funds that pass through a collective to athletes in these sports compared to other sports.

- a. **How does The Grove Collective determine an athlete's NIL value when licensing their publicity rights? What metrics and objective data points are used in this**

determination?

A: We use a variety of metrics and datapoints for each specific athlete. Sport, personal background, demographic and geographic athlete data, level of activity/engagement in the marketplace via social media, traditional media, etc. All of these factors help us best determine the types of campaigns each athlete should participate in, the value they deliver to a specific brand or campaign, and future opportunities as they arise. If the college sports ecosystem truly wanted to compensate athletes for their NIL value, there should be a revenue sharing system which would also allow for the traditional powers in the college sports ecosystem to pay for the athlete's long-term health and safety needs.

b. Do you have any objection to NIL being used to induce recruits or transfers to specific schools? Why or why not?

A: NIL is a recruiting tool used by coaches—do coaches use NIL as a tool? Undoubtedly, but that question is best answered by them. But I would also add there is nothing impermissible with a coach referring to the success his or her collective has generated for their student athletes. Marketing materials, websites, social media, articles, etc. can all be used to show recruits that if they choose to attend that university, they will have a great collective ready to support, create and enhance their respective NIL platforms. As for financial inducements in recruiting, we have no interest in being part of that process and feel a “best practice” is for Collectives to engage athletes who are already enrolled or have signed with a particular school. We fully support governance and oversight in this space.

c. What guardrails, if any, do you think are necessary to ensure collectives are not inducing athletes or operating as “pay-for-play” arrangements?

A: Pay for play contracts are already impermissible. The Committee should re-think what defines an inducement—facilities built by schools, the ability to play on TV in primetime, better dorms and restaurants on campus have been used to induce/recruit for the better part of the last 20 years.

TCA is firmly against any effort to place arbitrary limits on athletes' ability to monetize their NIL value.

3. In addition to leading The Grove Collective, you also serve as a member of The Collective Association (TCA), which is comprised of 25 Collegiate Collectives from across the Power 5 landscape.

- a. Please provide the following data on deals The Grove Collective entered into or otherwise facilitated, disaggregated by gender and sport: the number of deals The Grove Collective has entered into with athletes or otherwise facilitated; the average value of deals The Grove Collective has entered into with athletes or otherwise facilitated; the number of NIL activities performed through The Grove Collective; the amount of money received by athletes as a percentage of The Grove Collective's total funds distributed to athletes; and any other pertinent information to assess the value, volume, and types of deals.

A: We are not comfortable sharing all of the specific data points requested but we can speak to several points. The Grove Collective has contracted with over 220 student athletes at The University of Mississippi over the last 2 years. We have a minimum of one student athlete representing each of the 18 sports on campus. Our current athlete roster is 68% male/ 32% female with football skewing those numbers due to its larger roster of athletes. We have distributed over 9m in NIL funds and our athletes have interacted with 70+ local, regional, and national brands.

- b. Please provide the following data on the deals TCA members entered into or otherwise facilitated disaggregated by gender and sport: the number of deals TCA members entered into with athletes or otherwise facilitated; the average value of deals TCA members entered into with athletes or otherwise facilitated; the number of NIL activities performed through TCA members; the amount of money received by athletes as a percentage of TCA members' total funds distributed to athletes; and any other pertinent information to assess the value, volume, and types of deals.

A: We place a premium on athlete privacy for a number of reasons. First, we believe publicizing this data makes them a target for 1) bad actors in the marketplace including but not limited to unscrupulous agents and financial advisors, 2) a target for social media trolls and others who would harm their mental health and 3) could endanger their physical safety or that of their family members. Every one of our contracts is on file with the University of Mississippi and we feel that is the proper place for them to be reviewed before we write one check to a student athlete. Sadly, I don't feel comfortable sharing this in the Congressional Record much like Miss Thomas was uncomfortable talking about her NIL earnings. More than a comfort level, there is a right to an athlete's privacy with a goal of shielding them from any number of negative circumstances. I would happily meet with you and your staff to talk through some of these issues privately and want to reiterate my intention to be an ally to the Committee. If athletes are subject to full transparency the Congress should mandate full transparency across the entire college sports ecosystem.

c. What type of data do you believe should be accessible to the public on the deals collectives are signing with athletes?

A: Traditional powers in the college sports ecosystem would have you believe that complete transparency would magically solve the challenges you are attempting to solve but the TCA stands firmly behind our belief that any federal solution should insulate athletes from becoming targets. Making the data anonymous isn't enough and I'll go back to the fact that there is zero transparency in large swaths of the college sports ecosystem—providing that transparency would help solve a great deal of the challenges facing college sports while not subjecting student athletes to unnecessary stress and targeting.

4. There have been numerous reports about college athletes being impermissibly promised NIL money by outside third parties, which then may not keep their promises.

What needs to be done to prevent these abuses and protect college athletes?

A: If a contract is broken and found to be in violation of the law, those parties should be held responsible. Context is important here because two and a half years ago, every booster who wanted to pay a recruit started calling themselves a “collective.” TCA members are professionally run organizations and stand as a model for stability and responsibility. Early on (and we are still early on in this to be fair) there was a flood of actors into this marketplace. I've been pleased with how quickly the vast majority of these bad actors have been washed out and again look forward to continuing our leadership in keeping this marketplace clean and supporting student athletes from efforts to limit their ability to earn as close to their true value as possible.

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

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

A: I defer to student athletes on the state-by-state portion of the question but one of the value propositions of TCA members is that we help the athletes navigate every aspect of the contract process--at no charge to them—to ensure they personally are not running afoul of the law and therefore endangering their eligibility.

6. 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 other athletes? Why or why not?
- d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?

A) My response to all of these questions can be summed up in the following way. The Power 5—football and basketball in particular—are a world unto its own. The numbers you quote in the question make that clear. This isn't necessarily bad or good it's just the truth. I know and understand why all of these schools aren't interested in their athletes becoming employees—and in my personal experience I don't know an athlete who wants to be an employee either. I go back to the fact that if athletes had access to a revenue sharing model that these "revenue sport" athletes from the Power 5 Conferences would make more money than they are currently and might allow for a fund to be created to pay for athletes' healthcare and other long-term needs. Collectives stand ready to serve as the partner to both the athletes, our partner institutions, conferences, and other members of the college sports ecosystem to ensure these funds are disbursed fairly and in a timely fashion.

Questions from Senator Thom Tillis **for Walker Jones**

1. At the hearing, you commented on collectives being open to potentially supporting federal regulation. Please expand on this and give any suggestions you have for such regulation.

- A) The TCA believes that the federal government can create clarity in the college sports ecosystem by ensuring states are not creating an unequal playing field for their home state institutions. Any federal law should 1) recognize Collective's value to student athletes in the college sports ecosystem, 2) protect the privacy, health, and safety of the athletes and 3) not place arbitrary limits on how student athletes monetize their Name – Image – Likeness rights. 4) and finally, create a national standard for enforcement and oversight regardless of state or conference affiliation.