



November 7, 2023

Chairman Richard J. Durbin
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin:

Thank you for the opportunity to testify before the Senate Committee on the Judiciary during the hearing entitled “Name, Image, and Likeness, and the Future of College Sports” on Tuesday, October 17, 2023.

Please find attached my written responses to the questions for the record.

I look forward to continuing to work with the Committee to ensure our student-athletes are properly taken care of during and after their college sports careers. Please let me know if you have additional questions.

Sincerely,

A handwritten signature in black ink that reads "Tony Petitti".

Tony Petitti, Commissioner
The Big Ten Conference

**Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Tony Petitti
Commissioner, Big Ten Conference
October 24, 2023**

1. In your opening statement, you said that the Big Ten “view[s] student-athlete health and welfare as a top priority.” Next year, the Big Ten will welcome the University of Southern California (USC), the University of California, Los Angeles (UCLA), the University of Oregon, and the University of Washington as members, transforming the historically Midwest-based conference into one that stretches from coast to coast. The addition of these schools will result in increased travel for the conference’s athletes and more time away from the classroom. From the outside, the conference’s decision to expand appears to be based less on what is best for the health and welfare of athletes, and more on what generates the most revenue for member schools.

How does the Big Ten plan to ensure students are successful both in the classroom and on the field, especially as conference realignment will increase the time and travel demands on athletes?

The Big Ten’s commitment to the health and welfare of our student-athletes remains unwavering and student-athlete success in the classroom will continue to be at the forefront. Now that our conference stretches from the east-to-west coast, we are taking precautions to limit the amount of travel needed from one coast to another. We recently released the Big Ten Conference football schedules for the next five years and limited the amount of east-to-west coast travel being conducted by universities. As for other sports, we are continuing to collaborate with faculty representatives when producing upcoming schedules and are ensuring that this is a sport-by-sport process, understanding that specific sports may have different scheduling layouts that require more tailored travel needs. We are also exploring neutral cities to play, which can help alleviate the burden of long-distance travel for our sports teams. Finally, we believe long-distance travel presently occurring during nonconference play will be reduced.

This is an iterative process that will be refined over time and we will learn from the community as we continue to progress, taking feedback from student-athletes, coaches, and university faculty about how best to approach travel for sports. We are very excited to be welcoming these new member institutions to our Big Ten family and agree that travel considerations for student-athletes must continue to be discussed and commit to you that such concerns will stay top-of-mind for us at the Big Ten as we work through future scheduling.

2. The past several years have seen significant realignment among the Power 5 conferences, including the Big Ten expanding to include USC, UCLA, the University of Oregon, and the University of Washington. This realignment has left some schools behind—most notably Oregon State University and Washington State University, the only remaining members of

the Pac-12. Those schools' inability to find a home in one of the major football conferences will have profound impacts on their students, fans, and budgets. Commentators speculate that future realignment will lead to further consolidation around the biggest college football brands.

What assurances can you provide that current members of the Big Ten will not be left out during future conference realignment?

The Big Ten Conference is comprised of 14, soon to be 18, world class educational institutions, and we are committed to all of our member institutions. Our focus is on making decisions that strengthen the Conference.

3. *USA Today* recently reported that the public schools in the Power 5 conferences will pay their head football coaches an average of \$6.2 million this year, a 14.8 percent increase from 2022. *USA Today* also reported that those schools will pay their head men's basketball coaches an average of \$3.35 million this year. Many schools are also paying fired coaches millions of dollars in buyouts.

Additionally, massive media-rights contracts—including the Big Ten's recent seven-year, \$7 billion deal with Fox, CBS, and NBC—will pay huge amounts of money to Power 5 universities, largely for the right to broadcast football and men's basketball games.

- a. **With Power 5 conferences, schools, and coaches making such large sums of money, does the classification of college athletes—especially football and basketball players—as amateurs continue to make sense?**

The Big Ten will continue to support efforts to classify student-athletes as students, as opposed to employees. We see the issue of student classification as a major discussion point that we need Congress to help address and support Congressional proposals that would codify benefits for student-athletes that guarantee consistency across states and sport, without the need to classify our student-athletes as employees/professionals.

- b. **Athletes at Big Ten institutions receive scholarships, access to healthcare, high-quality training, academic support services, and other benefits. Nonetheless, in light of the massive amount of money being generated by these athletes, does the Big Ten support sharing a portion of its revenue directly with athletes? Why or why not?**

We understand that college athletics is at a pivotal turning point. We are prepared to modernize our guidelines to create a new framework for collegiate athletics that more fairly provides benefits to student-athletes directly from member institutions, maintains broad-based sports opportunities for men and women, and upholds Title IX.

4. Name, image, and likeness (NIL) rights in college sports are here to stay. However, there are differences among the various stakeholders in how NIL should be regulated. Thus far, the NCAA's policies regarding NIL have been largely permissive and deferential to the

patchwork of state laws that have emerged.

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

More than 30 disparate state laws have created a destabilizing landscape for college athletics. Big Ten institutions recruit nationally, and the footprint of the Conference will soon include 14 states. It is unreasonable to expect prospects to track and understand a continually shifting collection of diverse state laws. A recent trend has been states passing laws that explicitly say that the NCAA or conferences cannot penalize institutions for violations of NIL policies, and this includes the role and relationship of collectives to universities. States are passing laws specifically designed to provide individual institutions with a competitive advantage in recruiting top talent. To provide certainty, equity, and competitive balance, a uniform federal statute is needed to preempt this growing network of state laws.

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

We are unaware of any such enforcement.

c. If there is to be a national, uniform NIL policy—whether it comes from Congress or the NCAA—what, in your view, are the key things that should be included? For instance, should schools be allowed to play a more direct role in NIL? Should there be more regulation around the operation of collectives?

Federal legislation needs to (1) preempt the developing patchwork of state laws pertaining to college athletics; (2) provide the NCAA and conferences with the ability to regulate more effectively; (3) better identify “true NIL” deals from “pay-for-play” or inducement schemes; and (4) codify the classification of student-athlete as students. Schools should be more involved and there should be more regulation around collectives. Federal legislation should also require NIL deals negotiated by collectives to adhere to Title IX protections.

d. If there is a national policy, who do you believe should lead enforcement efforts?

Given the longstanding role of the NCAA in creating, implementing, and enforcing policies related to college athletics, the Conference feels that the NCAA is the entity best poised to continue enforcement responsibilities - provided that they are granted appropriate legal protections to do so.

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?

Broad-based college sports offerings play a tremendously significant role in developing Olympians in the United States. We are concerned that legislative efforts mandating revenue sharing will shift resources away from women's and Olympic sports toward men's basketball and football. These efforts also raise significant Title IX concerns. It is important to maintain a strong Olympic and Paralympic pipeline. Through collegiate sports, Big Ten student-athletes are able to realize their Olympic dreams and gain skills necessary to perform at the highest level.

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 important to acknowledge the pivotal role college athletic programs play in bolstering a strong Olympic and Paralympic pipeline. We defer to the USOPC on any changes to their model; however, we would note that not all athletes become Olympians. Broad-based college sport offerings provide thousands of opportunities in higher education through sport, in many cases to students who but for their athletic ability would not be able to attend college.

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?

Athletes at any institution, regardless of whether they are at an Autonomy 5 institution or at a Division III institution should be entitled to the same benefits and protections of a federal NIL framework. With respect the revenue sharing and employment status, the likely result is that either of these concepts would likely require lower-resourced institutions to end sports programs due to the inability to meet the economic burdens required.

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?

The Big Ten believes that the economic framework for student-athletes in all sports

across all A5 institutions should be similar. There is no differentiation between the passion and effort displayed by a women's field hockey player relative to a football player. She should have the same rights (and protections from unscrupulous actors) enjoyed by her football counterpart in the monetization of her NIL rights. Similarly, she should be provided the same student-athlete welfare benefits (e.g., health care, life-long learning, mental health, and academic benefits, etc.) as her football counterparts – regardless of the lack of revenue generated by field hockey. The Big Ten believes strongly in the tenets of Title IX and that – with Congress' help – we can fashion a more equitable system that doesn't sacrifice the core principles of broad-based sport and ties to education.

- 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?**

The Big Ten believes that the economic framework for student-athletes in all sports across all A5 institutions should be similar. There is no differentiation between the passion and effort displayed by a women's field hockey player relative to a men's basketball player. She should have the same rights (and protections from unscrupulous actors) enjoyed by her basketball counterpart in the monetization of her NIL rights. Similarly, she should be provided the same student-athlete welfare benefits (e.g., health care, life-long learning, mental health, and academic benefits etc.) as her basketball counterparts – regardless of the lack of revenue generated by field hockey. The Big Ten believes strongly in the tenets of Title IX and that – with Congress' help – we can fashion a more equitable system that doesn't sacrifice the core principles of broad-based sport and ties to education.

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

Nothing in addition to the responses above.

**Questions from Senator Thom Tillis
for Commissioner Tony Petitti**

1. As a conference commissioner, 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?

We see four main challenges that must be addressed by proper regulation to better protect and serve student-athletes. Federal legislation needs to (1) preempt the developing patchwork of state laws pertaining to college athletics; (2) provide the NCAA and conferences with the ability to regulate more effectively; (3) better identify "true NIL" deals from "pay-for-play" or inducement schemes; and (4) codify the classification of student-athlete as students.

2. 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 broad one?

The Big Ten supports congressional proposals that address the current challenges facing college athletes as provided in the answer above. Congress is the only entity capable of setting an even playing field for NIL and related policies across the US. Conferences and universities work across state lines every day and the lack of clarity is confounding even to the most seasoned administrators. Only Congress can create a fair, national NIL framework that will sustain the educational benefits and opportunities colleges and universities provide to student-athletes - the vast majority of whom are in non-revenue sports and more than 50% of whom are female.

3. As commissioner, how are you managing the NIL collectives within the Big Ten Conference?

One of the biggest challenges facing institutions and athletic departments today is the ability to identify and differentiate true NIL deals from "pay-for-play" or inducement schemes from collectives. We believe it is critical to be able to enforce the NCAA rules prohibiting "pay for play" and inducements from collectives, but such efforts are hindered by the current onslaught of litigation. We at the Big Ten will continue to support students making true business deals from their name, image, and likeness, but need Congressional support to ensure that we have the authority and resources to manage collegiate athletics and protect our student-athletes from nefarious actions taking place at the hands of some collectives which don't always have our students' best interest in mind.

4. Do you believe that NIL and NIL Collectives are factors influencing the increase of conference realignments?

We do not believe that NIL and NIL collectives are factors in conference realignment. However, we are concerned that groups unassociated with universities, often comprised of boosters, have turned true NIL into something that is damaging college athletics - directly paying student-athletes, under the guise of NIL, to attend a specific school, to transfer from one school to another, or not to transfer and remain at their current school. The proliferation of collectives is pushing management of college sports away from institutions and we believe that to be unhealthy.

5. Do you believe that conference realignments could lead to 2-3 super conferences?

The Big Ten Conference is comprised of 14, soon to be 18, world class educational institutions, and we are committed to all of our member institutions. Our focus is on making decisions that strengthen the Conference.

6. Are there concerns about creating a conference monopoly that could potentially lead to Congressional oversight?

The Big Ten Conference is focused on its mission of creating and providing the best academic and athletic opportunities for our student-athletes. In so doing, we remain cognizant of the legal and regulatory landscape and seek to fulfill our mission without violating established principles. However, Congressional action could provide greater clarity in the current environment of uncertainty in the governance of college sports.

Senator Sheldon Whitehouse
Senate Judiciary Committee Hearing
Name, Image, and Likeness, and the Future of College Sports
Questions for the Record
for Tony Petitti, Commissioner, Big Ten Conference
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?

The Big Ten is supportive of enacting student-athlete protections including requiring agent registration, uniform contract elements that protect student-athletes, and financial literacy training, and giving student-athletes data to help realize their full NIL potential and prevent exploitation.

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?

If NIL is appropriately limited to "true" NIL transactions (i.e., those third-party transactions based at market rates) rather than "pay for play" or inducement payments, then no additional regulation of the market is needed. Men and women compete vigorously for market-based deals; the disparity created by "pay for play" and inducements to student-athletes in predominantly men's sports is problematic.

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?

Student-athlete health and welfare is a top priority for us at the Big Ten. That is why we strongly support and provide both on-campus and post-separation health care guarantees. This ensures that our student-athletes have access to medical care during their time on campus, and afterwards, should injuries recur or manifest at a later date.

While we currently provide important benefits to our Big Ten student-athletes, we are open to, and support efforts to discuss additional health and wellness benefits, and look forward to continuing a dialogue with you and your office about advancements to continue supporting the health and wellness of our student-athletes.

- b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?

The Big Ten is supportive of enshrining into federal legislation health, safety, and education protections that each student-athlete deserves. We currently provide two years of post-separation/graduation health insurance. The Big Ten is open to, and supports, efforts to discuss additional health and wellness benefits for our student-athletes.

Senator Grassley's Written Questions for Tony Petitti
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?

We do believe that federal preemption of state laws is best for collegiate athletics and more specifically, for student-athletes. With the growing network of state laws pertaining to collegiate athletics, particularly NIL, the environment is becoming complex and difficult to navigate for student-athletes. The last thing we want to do is punish our student-athletes for seizing the opportunity to monetize their name, image, and likeness in a way that may be compliant in one state, but is not compliant in another.

That is why the Big Ten supports Congressional efforts to develop federal regulations that would ensure an easy and uniform regulatory environment for students, schools, and conferences to navigate, and would provide the necessary tools to the NCAA and conferences to certify compliance and ensure there is no undue competitive advantage being provided to specific institutions.

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?

At this point given the patchwork of state laws and the growing hostility of state legislatures to the NCAA, only Congress can create the framework in which either the NCAA or the NCAA in collaboration (oversight or co-regulation) with another entity can effectively regulate and enforce common sense NIL and other rules. It is important to create a durable framework providing both guardrails and flexibility so Congress need not intervene in routine rulemaking and enforcement.

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?

Given the longstanding role of the NCAA in creating, implementing, and enforcing policies related to college athletics, the Conference feels that the NCAA (either alone or in collaboration or co-regulation with another entity) is the entity best poised to continue enforcement responsibilities-provided that they are granted appropriate legal protections to do so.

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

Transparency is very important in understanding the current fair market value for NIL deals. There is a particular lack of transparency related to deals with collectives that make it impossible to distinguish these arrangements between true NIL deals and inducements or “pay-for-play” schemes. We would be supportive of deals with collectives being publicly reported, including who contributes to the collective. Additionally, we feel strongly that collectives should have to adhere to existing federal law, including Title IX.

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

A registry of agents, similar to what currently exists in professional sports would be a good first step to protect athletes from unscrupulous actors who are motivated by how they can profit rather than securing beneficial deals for athletes. Similarly, we believe that college athletes should have the broad ability to rescind NIL deals that extend beyond their college career or contain particularly unfavorable terms.

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?

Congress should enforce the mandates of Title IX, which outlaw discrimination on the basis of gender, on any entity – including collectives – controlled or acting in concert with federally funded institutions of higher education. After working for decades to get financial boosters out of college athletics, they are now back in quasi-autonomous collectives and without any incentive to comply with Title IX, protect student-athletes, generally, positively impact graduation rates or support the educational mission of our institution.

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 have had the opportunity to meet with many Members of Congress and am encouraged by the discussions that are being had. The Big Ten looks forward to continuing to work with members of this Committee to find legislative solutions to the many challenges currently facing collegiate athletics and we are working towards a bill that includes benefits and protections for student-athletes while also preempting state law, allowing for enforceable common-sense regulation, and codifying that student athletes are not employees. There is strong bipartisan interest in addressing the issues facing college sports and we look to Congress for your partnership in helping us embrace change and ensure we tackle these new challenges effectively.