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## ATHLETICS

### ***Responses to the United States Senate Judiciary Committee from University of Notre Dame Vice President and Director of Athletics Jack Swarbrick***

November 7, 2023

#### ***Responses to Senator Whitehouse***

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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?
    - i. **We all share an inherent responsibility to ensure student-athletes are protected from exploitation. A central governing body that oversees agents and understands the workflow of the entire process is needed to ensure protections nationwide.**
  - b. What processes or regulations are necessary to ensure student-athletes do not fall victim to predatory business practices?
    - i. **A variety of potential processes or regulations can be created including, but not limited to a reputable and accredited agent database (and process on how to become accredited), training and education and mandatory reporting that shows outlier transactions (both low and high).**
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?
    - i. **The regulation needed in regards to NILI (Name, Image, Likeness and Ideas) is needed throughout all**



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**student-athletes, not just “star” student-athletes.**

- 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?
    - i. **Regulations should treat each student-athlete the same - mandatory reporting, no “pay to play”, all student-athletes are true students.**
  - c. How can Congress or the NCAA ensure fairness and equity between men’s and women’s collegiate athletics in securing NIL deals?
    - i. **Treat each student-athlete the same in terms of the regulations put in place**
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?
    - i. **We should work to create a central medical trust fund to support our student-athletes across the nation. At Notre Dame, we cover athletic-related injuries up to 10 years post injury (5x the national standard). Additional reading on the topic - University President Rev. John Jenkins’ July 1, 2021 NYT op-ed: <https://www.nytimes.com/2021/07/01/opinion/college-athletes-pay-NCAA-Notre-Dame.html>**
  - b. If so, how should the fund be structured and what other important considerations should be kept in mind when creating such a fund?
    - i. **We strongly believe in finding ways to support schools with more limited resources to cover costs of a central medical trust fund for student-athletes.**



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### *Responses to Senator Durbin*

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1. Notre Dame is an outlier in the structure of its athletics department. The football team competes independently of any conference, while its other sports compete within a conference—the Big Ten for men’s ice hockey and the ACC for the rest of the sports.
  - a. How has that structure worked for Notre Dame athletes?
    - i. **It’s been fantastic. Our partners at the Atlantic Coast Conference for 24 sports and the Big Ten Conference for hockey have always been terrific in working through issues that arise. Additionally, in terms of football, it has allowed our student-athletes and our University a great opportunity to spread education and our mission throughout the country and World. Our departing football senior class has played games in 15 different states, all four domestic U.S. time zones and two different countries (where many of them traveled outside the U.S. for the first time).**
  - b. Do you see this as a model that could be replicated by other institutions, where football competes in one conference or other arrangement, while other sports compete in a more regional conference?
    - i. **In clarification, our conference affiliations since 1995 (aside from Hockey) have not been as a part of a regionalized conference. Prior we played in the Midwestern City Conference (the current Horizon League) in all sports but football, basketball and hockey.**  
  
**There is nuance to the model presented above that would have to be analyzed to better understand the dynamics.**
2. In your written testimony, you offered a proposal that included the right of college athletes to negotiate the terms and conditions of their athletic participation with the conferences in which they compete, while still preserving their status as students.
  - a. Do you propose this model for all college athletes or only those in revenue-generating sports?
    - i. **All student-athletes.**



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- b. In the absence of employment status, how would you operationalize a collective bargaining system for college athletes?
  - i. **Find a way to allow student-athletes to stay students, while also providing a required voice on a variety of topics that pertain to them exclusively.**
  
- c. Due to the limited window during which they can participate as college athletes, along with other factors, college athletes may have limited bargaining power when negotiating with conferences. Should there be minimum terms and conditions that should be set by law or regulation and not subject to collective bargaining? If so, what are they?
  - i. **Yes, there is a large variety of support already being provided to student-athletes at Notre Dame through student-athlete academic support, nutrition, sport performance, personal brand support, travel, etc. However, national minimum standards should also be set in regards to our academic promise as the athletic & personal support is commonplace throughout the country. The two pressing issues for minimum standards are below:**
    - 1. **Scholarship Degree Completion - Regardless of injuries of performance on field, grant-in-aid should remain with the student-athlete through graduation. Additionally, if a student-athlete who leaves in good academic standing leaves to go professional in their sport (or for other potential reasons) we will cover their tuition if they return to complete their degree.**
    - 2. **Extended Injury Medical Coverage**
  
- 3. 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?
    - i. **Difficult. We are located in a state, Indiana, with no NILI law, so our conversation may be different than other states.**
  
  - b. Have there been any documented instances of enforcement of state laws related to NIL?



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i. **Enforcement mechanisms are non-existent**

4. 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?
- i. **Yes. All student-athletes should remain students and not employees. The reason we have been in support of NILI since we came out back in 2015 in the New York Times to support it is we believe student-athletes should be treated the same as all other students - playing by the same rules. Our student-athletes live in residence halls for three years - the same as their classmates. Our student-athletes are assigned a random roommate - the same as their classmates. Our student-athletes take in-person education - the same as their classmates. To build a divide in the collegiate system is an antithesis to the mission of Notre Dame and higher education to grow young people academically, athletically and spiritually (as a person).**
- 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?
- i. **Yes. Regulations should treat each student-athlete the same.**
- 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?
- i. **Yes. Regulations should treat each student-athlete the same.**



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- d. What other distinctions, if any, should Congress make when crafting rules for NIL, revenue sharing, and employment status for college athletes?
  - i. **Keep student-athletes as students first, federal legislation usurps state laws (preemption), central NILI clearinghouse for mandatory reporting**

### *Responses to Senator Grassley*

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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. **Yes. Preemption is required to ensure competitive equity across collegiate athletics. The main issues at hand aside from preemption:**
    - i. **Student-athletes remain students and not employees**
    - ii. **Can't generally stand in way of NILI opportunities of student-athletes - need to allow the same functional opportunities all students have on campus**
    - iii. **Education and protection of student-athletes in regards to agents & "bad actors"**
    - iv. **Mandatory reporting of NILI deals to ensure market value and not a "pay to play" model of enticement to a particular College or University**
    - v. **Degree Completion assurances to student-athletes**
    - vi. **Central Medical Trust Fund**
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 needs to act to put the entire country on the same guidelines - preempting the patchwork state laws. This is needed to create competitive equity across the U.S.**
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. **Depends on scope of the new NILI Law.**
4. What transparency requirements should be imposed upon athletes, colleges, conferences and collectives with respect to NIL agreements?



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- a. **Mandatory reporting should happen to ensure partnerships are market value and not “pay to play” enticements.**
5. What safeguards do you believe are needed to ensure student athletes are protected from unfavorable contracts?
  - a. **Proper education and ability for a reputable and registered third-party to be involved.**
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?
  - a. **We are located in a state in which has no NILI law, therefore it has not come up locally. However, with no preemption, it could create violations due defined support of a male sport over a female sport that infringes on the three-pronged Title IX test.**
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?
  - a. **There are a variety of bills that have been introduced or “drafted” that have positive positioning on a variety of issues. Key elements of a Congressional package should include:**
    - i. **Student-athletes remain students, not employees**
    - ii. **Protection of student-athletes from “bad actors”**
    - iii. **Allow student-athletes to benefits from name, image, likeness and deas like all other students on campus**
    - iv. **Federal law preempts state laws**
    - v. **Allow central governing body and conferences to build and develop rules to ensure competitive equity**
    - vi. **University pays for degree completion for grand-in-aid student-athletes**
    - vii. **Central medical trust to support student-athletes for a set period post injury.**
    - viii. **Mandatory reporting of NILI partnerships and transactions**
    - ix. **Accreditation process for agents to work with collegiate student-athletes**