



POSITION STATEMENT

The Drake Group Raises Concerns Regarding July 22 U.S. Senate Judiciary Committee Hearing Testimony on College Athlete NILs/Compensation¹

The Drake Group² is encouraged that the U.S. Senate Committee on the Judiciary reviewed issues related to integrity in intercollegiate athletics on July 22, 2020. While [the hearing](#) mostly focused on Name, Image, and Likeness (NIL) rights along with various state and federal NIL proposals, there were also important exchanges on COVID-19, concussions, racial disparities, and gambling on college sports. Several key points surfaced at the hearing from the panelists including Clemson Athletic Director Dan Radakovich, NCAA President Dr. Mark Emmert, National Collegiate Players Association Executive Director Ramogi Huma, Executive Director of the National Sports Law Institute Matt Mitten, Former NFL football player George Wrihster and University of Pittsburgh Athletic Director Heather Lyke.

While there was basic agreement on the need for a national standard on NIL rights with third-party administration of the process, there was clear disagreement among the panelists on what had been proposed by the NCAA and the Power 5 Conferences, including restrictive measures such as (1) no first-semester access to NIL rights and (2) many NIL opportunities being off-limits because of existing school sponsorships. The Drake Group takes issue with a number of the positions raised during the hearing.

First, prohibiting monetization of NIL opportunities during the athlete's first semester is not educationally justified. Instead, The Drake Group believes that the appropriate rule to protect academic time throughout the athlete's college career is requiring that no classes or exams be missed as a result of outside employment, including NIL endorsements. Given the fact that college athletics is demanding 30-50 hours per week of the athlete's time during each and every semester of eligibility, it would seem more appropriate for the NCAA to emphasize the importance of first semester academic study habits and the preeminence of academics by having a freshmen ineligibility rule.

Second, mandating that the college athlete stay out of the institution's sponsorship lane with no NIL employment during the first semester or suggesting that entire sponsorship categories be reserved for the institutions is entirely self-serving. The economic interests of the NCAA and member institutions

¹ Preferred citation: David Ridpath, Julie Sommer, Emmett Gill, Gerald Gurney, Karl Idsvoog, Donna Lopiano, Allen Sack, Sandy Thatcher and Andrew Zimbalist (2020) Position Statement: The Drake Group Raises Concerns Regarding July 22, U.S. Senate Judiciary Committee Hearing Testimony on College Athlete NILs/Compensation. (August 5, 2020). Retrieve from <http://thedrakegroup.org>.

² The Drake Group is a national organization of faculty and others whose mission is to defend and achieve educational integrity and freedom in higher education by eliminating the corrosive aspects of commercialized college sports.

should not take precedence over athletes' rights to be employed by third parties outside their institutions. To accomplish that end, The Drake Group has been consistent in calling for a federal standard and unbiased third-party administration of NILs as detailed in our [2020 NIL Position Statement](#). College athletes should have broad access to fundamental NIL rights. The NCAA and its member institutions are not equipped to provide such oversight and there are potential conflicts of interest for any institution's compliance department in managing them.

Third, the NCAA has continually expressed a need for guardrails and a limited anti-trust exemption to protect it from potential lawsuits along with protecting the "sanctity of amateur athletics." This subject received much attention at the hearing. The Drake Group believes that independent third-party administration and transparency are the best regulators of NILs and an unbiased third-party entity must receive an anti-trust exemption and enforcement powers narrowly limited to carry out the instructions of Congress. Further, other entities (i.e., conferences, the NCAA, etc.) should also receive a limited antitrust exemption strictly limited to the express purpose of restricting eligibility for athletic participation consistent with the federal law and the findings and conclusions of the Congressionally designated unbiased third-party entity. Potential problems with NIL rights can be minimized with such effective third-party administrative oversight that will screen and ensure that all transactions are transparent and fair. Proper NIL oversight can actually improve the recruiting process through transparency and reducing incentives to cheat.

Fourth, with regard to racial disparities, Ramogi Huma correctly noted that the NCAA is using "amateurism" to justify systematically undervaluing predominantly Black athletes, while paying predominantly white administrators and coaches lavish salaries. The Drake Group continues to believe that the first priority on use of athletics revenues must be the protection of athlete health and well-being (e.g., payment of all athletic injury related-medical costs, insurance and long-term disability) and the provision of a real education (e.g. five year guaranteed scholarships, grants for graduate education, etc.).

Fifth, there was a concern expressed at the hearing that NILs would only benefit a few male star athletes. Yes, market forces will result in star male and female athletes receiving more money than lesser known athletes. And yes, star male athletes generally will receive more, in part because they have been better promoted by their institutions than female counterparts. However, many lesser known athletes will benefit because they are stars in their own communities or will bring their aggregated social media lists into the internet marketplace to be monetized by commercial entities.

A sixth concern expressed was that giving college athletes NIL rights would compromise Title IX compliance. Maintaining that giving college athletes these rights would result in Title IX non-compliance is false unless the institution intentionally treats one sex better than the other, including in the following ways: (1) promoting male and female athletes and teams to media, sponsors, etc., (2) brokering NIL deals, or (3) sharing institutional revenues via joint licensing agreements. There is a danger that OCR will continue its track record of not enforcing Title IX with regard to these potential NIL-related elements. However, we believe this Title IX concern is a red herring – a convenient excuse; for it is a fact that few institutions are currently treating their male and female athletes equally with regard to promotion and media exposure or other Title IX treatment and benefits mandates.

Last, another Title IX concern expressed was that, as a result of institutions losing their sponsorship deals and the likelihood some boosters will do NIL deals with athletes instead of donating to the institution, schools with less revenue will cut or spend less on women's sports. If the institution

chooses to cut programs, Title IX will require that men's and women's sports suffer equally. If institutions want to support just men's basketball and football and eliminate other sports to reduce expenses, they must also support enough women's teams corresponding to the same proportion of male athletes. Thus, both men's and women's sports will suffer but fewer women's sports will be cut than men's sports and Title IX would allow it. The Drake Group maintains that if athletic department revenues are reduced as a result of athlete NIL rights, the institution's first response should be the elimination of waste and inefficiency (building of lavish facilities, seven- and eight-figure coach/administrator salaries, chartered flights to recruit, etc., most of which supports more male than female athletes).

With the passage of sound NIL legislation and third-party oversight, Congress can effectively remove the motivation behind back-room dealings currently conducted in some nefarious recruiting settings. And, significantly, college athletes will then benefit from the ability to pursue NIL and other outside compensation. Effective legislation will work to shift some economic power to college athletes who will be better able to negotiate their value with third-party entities as opposed to non-negotiable, exploitive inducements by boosters or limited scholarship-related benefits offered by institutions. We urge the Judiciary Committee to continue to work toward these college athlete economic outcomes and reject the current self-serving athlete-restrictive NCAA and institutional power plays.