

Statement for the Record
Chair Richard J. Durbin
Senate Judiciary Committee Hearing on
“Name, Image, and Likeness, and the Future of College Sports”

I want to thank Senator Blumenthal for presiding over this hearing, “Name, Image, and Likeness, and the Future of College Sports,” while I recuperate from recent surgery.

I also want to thank Senator Graham, the Committee’s Ranking Member, for working with me on a bipartisan basis on today’s witness panel.

College sports is a big business that generates big profits. Over the past 20 years, college sports revenue has grown from \$4.3 billion to \$16.6 billion—an increase of 400 percent. And that number continues to grow.

The NCAA now earns approximately \$1 billion per year from its March Madness basketball tournament. In 2020, the Southeastern Conference signed a new deal with ESPN that will pay it \$3.3 billion over ten years. Less than two years later, the Big Ten agreed to a new seven-year, \$7-billion-dollar media rights deal with CBS, Fox, and NBC.

Yet, little of this money has made its way to the athletes who made these record-breaking profits possible.

Until recently, NCAA rules not only prevented college athletes from receiving compensation for their participation in sports, they also prohibited those athletes from profiting off their name, image, and likeness, or NIL, rights.

That meant former-UCLA basketball star Ed O’Bannon received nothing when EA Sports sold a blockbuster video game that included his digital avatar. It also meant NCAA champion gymnast Trinity Thomas—one of our witnesses today—couldn’t use her name to promote a camp for young gymnasts.

All the while, money flowed freely to schools, coaches, and other adults connected to college sports.

That all changed in July 2021. Following the Supreme Court’s unanimous ruling in *NCAA v. Alston* that the NCAA could not limit education-related payments to student-athletes, and in the face of state laws soon to take effect that would allow college athletes to profit off their NIL rights, the NCAA changed course. It abandoned its prior prohibition and, for the first time, allowed athletes to remain eligible while receiving NIL compensation.

Two years later, NIL is now a big business of its own. According to NIL platform Opendorse, \$1.17 billion will be spent on NIL in the 2023-2024 academic year. The average Division I male athlete will earn approximately \$3,000 per deal, while their female counterparts will earn approximately \$900 per deal.

But there are some downsides. There have been reports of collectives and others that attempt to take advantage of college athletes, including through extremely high commissions and onerous payback terms.

In addition, over half of all NIL dollars—an estimated \$595 million—are spent on Power Five college football players alone. And you would have to be naïve to think at least some of that money isn't being used to induce those football players to attend a particular school or to pay them directly for their performance on the field.

The opening of the NIL spigot has also resulted in something of a race-to-the-bottom among states seeking to gain a competitive advantage through their NIL laws. The result is a patchwork of state laws that make it difficult for schools and students alike to navigate the system.

That is why we the Committee has convened a panel of seven witnesses with unique perspectives on the issue of NIL. They will testify about the impact NIL has had on college athletics, including what it means for competitive balance, gender equity, and Title IX.

They will also testify about the impact NIL has had on the lives of college athletes. For too long, college athletes were forced to sit on the sidelines while others profited from their hard work.

Athletes couldn't accept anything beyond their scholarships, while schools used the millions they made from media rights deals on things like waterfalls in their football locker rooms. Many coaches are paid millions of dollars per year, while athletes couldn't so much as sell their autographs for a little spending money.

NIL has opened a new door for college athletes to benefit from the value they bring to their schools and communities. We should embrace this change, while recognizing the potential pitfalls it brings with it.

I appreciate the work of many of my colleagues—including several on this Committee—who have introduced bills to address NIL in college sports. As we consider today's testimony and these bills, we must focus on what is in the best interests of college athletes.