



House subcommittee hearing leads to more of the same on NIL

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While much has changed in intercollegiate athletics since the last Congressional hearing on name, image, and likeness (NIL) legislation, two things have remained: the National Collegiate Athletic Association (NCAA) wants a federal NIL bill, and no such bill is in sight. Last week, the House subcommittee on Consumer Protection & Commerce held a hearing on NIL and invited witnesses from the NCAA, National College Players Association (NCPA), Central Intercollegiate Athletic Association (CIAA) and an athlete from the Washington State University golf team to testify as to where they believe federal NIL legislation should focus.

On the whole, and surprising no one who has been watching closely, nearly all of the witnesses who testified agreed that federal intervention in the NIL space was necessary, though NCPA Executive Director Ramogi Huma (instrumental in the passage of California's NIL law) was adamant that Congress commit to addressing a broader range of issues, including player health and preventing sexual abuse, before focusing on NIL.

The hearing came days after a group of Atlantic Coast Conference (ACC) athletes sent a letter to a number of U.S. Senators, imploring them to protect the athletes from “manipulation and exploitation . . . to ensure competitive equity for all student-athletes.” The letter, signed by representatives of all 15 ACC schools, noted that of the ACC's presence in 10 states, four states operate under a NIL state law, two under a NIL executive order, and four without any guidance at all (save for the NCAA's interim guidance). Thus, while some athletes are able to join group licensing deals, others cannot so much as use their institution's color scheme.

Altogether, both the letter from ACC athletes and testimony from several of the witnesses hit a number of recurring themes: smaller schools and schools with smaller budgets will have issues complying with broad federal NIL mandates, more

education for athletes is necessary, and lawsuits (“endless,” as noted by NCAA President Mark Emmert) will follow in the absence of some safe harbor protections for the NCAA.

Despite this seeming synergy, and an air of bipartisanship, it remains unclear how federal legislation would “level the playing field” as many have asked Congress to do. As a result, the more likely short term scenario is the creation and amendment of more state-level NIL legislation. So, while institutions may yearn for federal intervention from a compliance standpoint, the best thing to do now is continue to fine-tune your NIL policy and procedure and develop a robust educational offering for all involved in NIL on your campus.

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