

TCA Submitted Testimony

U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Innovation, Data, and Commerce

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NIL Playbook: Proposal to Protect Student Athletes' Dealmaking Rights
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The Collective Association (TCA) is pleased to share our views through submitted testimony for today's hearing. We have substantive concerns with the draft legislation being considered today and will express those concerns but did want to provide what we feel would be helpful guidance to the Committee as they consider legislative solutions to the current challenges facing college athletics.

WHO WE ARE

TCA is a newly formed association comprised of over 35—and growing—collegiate affiliated collectives from across the Power 4 landscape working to ensure **ALL** college athletes have the ability to maximize their Name, Image, and Likeness (NIL) platforms and to create a sustainable model for college athletes moving forward. The athlete rosters of our membership represent 25+ sports providing a truly diverse population of gender, ethnicity, geography, socio economic factors and opinions that enable us to stay current and impactful in this developing collegiate landscape.

TCA members are private organizations supported by fans, alumni, donors, and numerous local, regional, and national brands with a goal of empowering college athletes and supporting our affiliated schools. Collectives are not agencies and do not take a percentage of profits away from our partner athletes. We proudly assist athletes in ensuring their NIL deals are legal, compliant with NCAA and school guidelines and in market for the services athletes are being asked to perform. Our athletes trust our collectives to provide fair compensation, guidance, and navigation through a disjointed regulatory model, while adding resources and tools that help prepare them for life beyond the athletic arena.

HOW WE GOT HERE

Before we discuss the present and how to build for the future it is important to remind the Committee how we arrived at this point. The NCAA stood sentry for decades preventing athletes from capitalizing on their inalienable rights until their loss at the Supreme Court in 2021. This has produced change in the marketplace that has moved faster than anyone could have imagined and sadly traditional powerbrokers in college sports have been unable to adapt to these changing times.

To hear them tell it, if we could just go back to the good old days—when the NCAA had full control and athletes had no rights—everything would be ok in college athletics. We do not believe that the NCAA warrants the trust of the Congress to grant them an anti-trust exemption nor do we believe that the NCAA has college athletes’ best interests in mind when it requests said exemption.

HOW TO FIX IT

The NCAA and other traditional powers in college sports lost power and control. Since that time, they have spent more time trying to figure out how to regain that power and control instead of working to establish a sustainable future in line with a post-Alston reality.

NIL is part of the present and future of college sports so any plan to move forward **MUST** start with everyone at the table. To this point, TCA members have yet to be asked to participate in conversations with the NCAA and other traditional powerbrokers. This doesn’t seem to make sense given that over 80% of NIL deals are paid through our school affiliated Collectives. Any serious discussion regarding the future structure of college sports must include all major stakeholders, and that includes Collectives.

Instead of trying to discriminate between athletes and non-athletes, revenue and non-revenue sport athletes, small and big schools—let’s create an orderly marketplace where 1) every athlete has the opportunity to maximize their NIL platform in line with the free market, 2) Collectives and their affiliated schools work closely to create opportunities for all their athletes who wish to participate, 3) schools and collectives have clearly defined rules around recruiting that are enforced in a clear and consistent fashion and 4) the NCAA is tasked to get back to their reason for being in the first place: promoting athlete safety and welfare.

This conversation could start with all the parties saying on the record what everyone in this room today already knows: Power 4 college football is completely different than ANYTHING else in college sports.

Power 4 College Football can live in a world of its own and create value for athletic departments to fund other sports while fully compensating the players on the field. This might allow traditional conferences to be put back together to the benefit of non-football athletes, athletic department budgets and fans alike—all while evolving college football to maximize its’ value for everyone!

Collectives and Athletic Departments should have the ability to forge closer working relationships in service to their athletes. Collectives can continue to fill the gaps that current athletic departments are unprepared for such as 1) ensuring contracts are appropriate and compliant with both eligibility standards and in market; 2) maintain the non-employee status of college athletes that everyone seems to agree would not be

helpful to the vast majority of programs and players; 3) Lessen donor fatigue in service to a sustainable and orderly NIL Marketplace.

TCA Members are eager to align on a set of rules creating a sustainable future for every level of the college sports ecosystem. That isn't as difficult as some would try to make you believe. The most important step is an acknowledgement from traditional powerbrokers to accept new voices as part of that ecosystem and invite them to participate in creating the future. We might also point out that Congressional action might be easier if every stakeholder could align around one proposal.

To that end, Congress should at a minimum demand that the NCAA, Conference Commissioners, College Athletes and Collectives work together to develop a transparent process for: 1) revenue sharing, 2) recruiting, and 3) addressing the potential long term mental and physical health needs of college athletes.

Outlined below are a few of TCA's topline thoughts on each of these topics:

1. **Revenue Sharing:** TCA called for revenue sharing in the spirit of allowing all athletes to truly capture their marketplace value over a year ago. Any true NIL benefit should include revenue sharing because the athletes competing on TV is the real value being created. Let's come up with a formula that compensates these athletes—in every sport appropriate—for this value.

We are heartened to see important voices like Coach Jim Harbaugh, Chip Kelly and others speaking out in favor of revenue sharing while noting that Collectives are uniquely positioned to best assist our affiliated institutions in distributing these dollars without cost to College Athletes.

2. **Recruiting:** Collectives are not interested in being part of some underground recruiting process. NIL is part of the current and future landscape of college sports. As part of official visits, recruits should be allowed to have a conversation with the school affiliated collective to get a sense as to what their value might be in a particular marketplace. These conversations should be kept confidential to protect the family's privacy but with full knowledge that they occur on official visits to promote a more transparent process. Conversations with school affiliated collectives are not appropriate unless the recruit is actively considering attending the institution and we would encourage guardrails to ensure those unaffiliated with Collectives are not offering unrealistic promises to recruits or their families.
3. **Addressing long-term physical and mental health needs:** It is no secret that college athletes sacrifice their bodies in service to their love of the game but also in service to their institution. TCA Members feel strongly that there should be investments made so that former college athletes who need medical and/or mental health care later in life can get the help they need.

There is precedent for Congress pressuring recalcitrant private parties to action. We hope these conversations can begin immediately and look forward to working with every level of the college sports ecosystem to create a better future grounded in reality for programs, players, and partners alike.

LEGISLATION

TCA is in favor of common-sense regulation that produces an orderly marketplace and a sustainable future for the entire college sports ecosystem.

The Committee today is considering a draft bill written by Chairman Bilirakis and Congresswoman Dingell. We want to underscore our offer to be a resource to any Member and this Committee in particular in the same way we've worked with Senators Cruz, Booker, Moran and Blumenthal and Congresswoman Lori Trahan to develop a workable piece of legislation that is inclusive of the current reality in college sports. Our topline concerns with the discussion draft include:

- 1) This bill seems to be targeted to only certain segments of the college sports ecosystem. Why does the bill leave out coaches, athletic departments, and the NCAA from their responsibilities in ensuring that rules and laws aren't broken. What happens if they break the law? Or are they viewed as above the law with the new government agency that would regulate college sports?
- 2) We do not see a need for a new government agency to oversee college sports and subject well intentioned programs, partners, and players to FTC rule-making authority. Bad actors, like agents and those who seek to cheat college athletes, should be prosecuted to the fullest extent of the law.
- 3) Thresholds on what constitutes an NIL deal should not be decided arbitrarily by the government and the FTC.
- 4) Athlete compensation would be limited by this bill. No other college student—or American—is limited in their ability to earn money in return for their work. Burdensome disclosure policies under the guise of transparency only limit athlete pay and put power back into the government and NCAA's unqualified and untrustworthy hands.
- 5) Important voices have explicitly been left out. Collectives, among other voices, are ineligible to sit on the new oversight board of the government agency and must subject themselves to a kangaroo court to appeal any infractions brought against them by the government or the NCAA.
- 6) The new government agency appears to be an unfunded mandate but has the ability to charge user fees. Who would pay these user fees? Would third parties and collectives

have to pay the government for the ability to work on behalf of college athletes? Do television revenues that could otherwise go to college athletes pay for this?

- 7) The 90-day prohibition for an athlete to begin exercising their rights is discriminatory. This prohibition particularly discriminates against fall sport athletes including Volleyball, Women's Soccer, Cross Country, Football and Basketball. This creates a two-tier system where spring sport athletes do not face any prohibition in reality. We would also note that football and basketball is predominantly played by athletes of color, and this would be incredibly harmful to their rights while not limiting the lacrosse, golf, squash, tennis, or baseball teams in the least.
- 8) Disclosure Provisions: Burdensome regulations on third parties, collectives, and athletes—while unjust and undue on their face—would stifle contributions and partnerships and therefore financial opportunities for all athletes. Women and non-revenue athletes would likely see an immediate negative impact on their opportunities.

CONCLUSION

Thank you again for the opportunity to submit this testimony and our thoughts on how to best position college sports for a successful present and future. TCA hopes to have the opportunity to work with the NCAA and other stakeholders to align around a commonsense solution and looks forward to presenting a product to the Congress that all of you can enthusiastically support. As with any emerging free market model, collectives have evolved and adapted to the changing landscape and now function as efficient and well-organized entities that are trusted by the athletes and universities they represent. By sitting at the crossroads of the overwhelming majority of name, image and likeness commerce, the TCA is well positioned to provide tangible and actionable feedback to all major stakeholders committed to the long-term health of collegiate athletics.