

Testimony of Josh Whitman

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Manufacturing, and Trade

Hearing on “Moving the Goalposts: How NIL is Reshaping College Athletics”

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Chairman Bilirakis, Ranking Member Schakowsky, and distinguished members of the Committee, thank you for the opportunity to be with you today to talk about the state of collegiate sports and the multifaceted changes that are transforming our cherished American model.

Introduction and Background

My name is Josh Whitman, and I recently began my tenth year as the Director of Athletics at my alma mater, the University of Illinois, which is a founding member of both the Big Ten Conference and the National Collegiate Athletic Association (“NCAA”). At Illinois, I am responsible for all facets of an athletics program that supports nearly 500 student-athletes competing in 21 varsity sports, along with overseeing more than 300 full-time staff members, 20 major facilities, and an operating budget that surpassed \$170 million in FY24.

During my time, I have served in a variety of leadership and governance roles while becoming one of the longest tenured athletics directors in the Big Ten and across the Autonomy 4 conferences. Currently, I chair the NCAA Division I Council and, by virtue of

that position, also have a seat on both the NCAA Division I Board of Directors and the NCAA Board of Governors.

I am privileged to serve my alma mater, where I have earned degrees in both finance and law. While an undergraduate, I was a two-time Academic All-American football player and, later, played parts of four seasons in the National Football League. Following law school, I clerked on the United States Court of Appeals for the Seventh Circuit and briefly practiced law in Washington, D.C. Before returning to Illinois, I spent almost six years as the athletics director at two NCAA Division III institutions – Washington University in St. Louis and, prior to that, University of Wisconsin-La Crosse.

Raised near West Lafayette, Indiana, I am the son of two teachers: a mother who taught elementary school and a father who was a high school teacher and coach. I was raised with a book in one hand and a ball in the other, and those two ideals – education and athletics – have formed the contours of my life. Now two decades removed from my time as a competitive athlete, I continue to apply, each and every day, the lessons I learned through sports, such as self-discipline, work ethic, leadership, teamwork, personal accountability, humility, respect, empathy, poise under pressure, flexibility and adaptability, and competitiveness. Through the crucible of collegiate competition, hundreds of thousands of young people learn these same lessons year after year. I have dedicated my life to collegiate sports because I am a true believer in the benefits that a successful athletics program can have to its sponsoring university, to its many different stakeholders, and, most importantly, to the student-athletes themselves. Our model of

American collegiate sport is unique in the world, and it must not only be protected, but enhanced.

Despite being a product myself of our collegiate athletics system and an unabashed advocate for the continued intersection of education and sport, you will not hear me defend the outdated virtues of amateurism, a concept with an ever-evolving definition that has outlived its useful purpose. Student-athletes have long earned tangible rewards, financial and otherwise, for their participation in our collegiate programs. College athletics are defined by our student-athletes' pursuit of meaningful degrees from our country's institutions of higher education while, at the same time, seeking to distinguish themselves in their chosen athletics arena.

It is this deeply held connection between school and sport that defines the American collegiate athletics model – a model in which high-level sport is embedded within an educational setting, where participants are required to be full-time students who progress toward degrees that serve their personal, academic, and career aspirations. At many institutions and for thousands of student-athletes, sports open doors to a life-changing education that would otherwise remain closed. College sports are intended to be largely pursued by undergraduate students, with a natural cycle of graduating seniors and enrolling freshmen that creates perpetual renewal and opportunity within the system, providing a multigenerational butterfly effect to not only student-athletes but their families. It should be noted that the model of American collegiate sports also serves as the primary pipeline for Olympic development in our country, with results that are the envy of the world.

Current Changes to College Sports

Today, college sports are experiencing a period of intense change that is unlike anything in their history. No fewer than a dozen major changes either have occurred or are in the process of occurring across the landscape of college athletics, each of which offers its own list of advantages and disadvantages. An incomplete list of changes underway across college athletics includes:

- the introduction of a new name-image-likeness (“NIL”) paradigm;
- greater opportunity for, and frequency of, student-athlete mobility (the “transfer portal”);
- expansion of the College Football Playoff;
- conference realignment; and
- proliferation of sports gambling.

Any of these developments, by itself, would be the most meaningful change to college athletics in a generation; together, they represent a “big bang moment” that will forever reshape our beloved system of American sports.

These efforts to reform and modernize college athletics are in many ways overdue. The NCAA has not always moved with the desired pace or urgency to recalibrate an economic framework that was rooted in the early to mid-1900s. Nonetheless, progress made in the last 20 years is indisputable. In 2003, the NCAA created the Student-Athlete Opportunity Fund, which has provided millions of dollars in direct support to student-athletes and their families for a variety of expenses incidental to their participation in athletics. Beginning in

2015, the NCAA altered its scholarship rules to permit student-athletes to receive additional living expense stipends meant to cover each institution's full cost of attendance. In 2021, following the Supreme Court's decision in *NCAA v. Alston*, Division I schools began providing nearly \$6,000 annually to student-athletes as incentives for academic progress and graduation. Also in 2021, NCAA rules changed to allow student-athletes to monetize use of their own NIL – one of the most profound changes to college athletics rules since the adoption of athletic scholarships in 1956.

Not all changes have been monetary. NCAA rules now allow member institutions broad latitude to provide expansive student-athlete support in areas such as academic success, nutrition, mental health, and general (i.e., non-athletics) medical care. For almost a decade, Autonomy 4 institutions have offered additional protections against the reduction or cancellation of scholarships based on injury or athletic performance and have mandated medical care for at least two years following conclusion of a student-athlete's collegiate career. The NCAA has recently expanded these mandates to all of Division I and established a health insurance program to provide coverage for student-athletes at all 1,200-plus member institutions, regardless of division.

The Pending Settlement in *House v. NCAA*

The changes to date, although substantial, pale when compared to what is coming. In April, we are hoping for final judicial approval of what would be a historic settlement of three major class action lawsuits, commonly referred to as the "*House* settlement." If approved, *House* will open the door for many student-athletes to receive a greater share of

the revenue they help generate through participation in our most high-profile sports, paid in the form of institutional licenses to use a student's NIL. For the first time in the history of college sports, schools will be able to compensate student-athletes above and beyond the value of a full cost-of-attendance scholarship, academic awards and incentives, health care, and nutritional benefits – all of which we are already providing.

Under the terms of the *House* settlement, schools will have the option, but not the requirement, to distribute to student-athletes an amount equal to 22% of the average commercial revenues (e.g., sponsorship, ticket sales, and media revenues) at approximately 70 of the nation's most highly resourced athletics programs, including ours at Illinois. In the 2025-2026 academic year, the *House* settlement's first year of anticipated implementation, that figure will be \$20.5 million per school, with built-in growth during the ensuing years. Over the first ten years contemplated by the settlement, we expect that schools, collectively, will distribute more than \$20 billion to student-athletes. In addition, student-athletes will continue to avail themselves of traditional, market-based third-party NIL opportunities.

Current Challenges

The challenge we face today is not the pace of change – as noted, these changes are overdue and are modernizing an outdated system – but, instead, is the environment in which the change is occurring. This environment is highlighted by increasingly active state legislatures and outside entities seeking to advance their own agendas. As a result, we have an expanding patchwork of state laws that are frequently being adopted to create

competitive advantage for their hometown institutions; the infusion of driven-to-win state lawmaking into college athletics has made a national competitive framework a near impossibility. At the same time, the intensifying clamor for student-athlete employment would be catastrophic for the vast majority of the NCAA's membership, most of which are not resourced at the level of Illinois and our Autonomy 4 brethren, likely resulting in thousands of lost opportunities for student-athletes.

Further complicating the environment, efforts by the NCAA, conferences, and institutions to quell these activities are greeted by litigation that challenges the right of volunteer membership organizations like the NCAA to pass and enforce rules to govern their members, all of which have chosen freely to be associated with the organization.

The NCAA, conferences, and member institutions have demonstrated a willingness to undertake a broad-based rebuilding of the college athletics ecosystem. In so doing, however, it is important that we retain the core values and basic tenets of fair play that have formed the foundation of American collegiate sports since their inception. After many decades of admitted reluctance and limited progress, our vision is now clear and our path is identified. But we lack the legal tools needed to realize the full potential of a revamped system. To preserve the American collegiate sports model that has distinguished this country and benefited millions of students, families, and communities for generations, we need help from Congress.

Need for Congressional Legislation

Specifically, we seek comprehensive bipartisan legislation that includes the substantive elements outlined below.

First, we ask your help in codifying into federal law various benefits and protections for student-athletes, many of which already exist in NCAA rules, and establishing a uniform national NIL and revenue sharing framework largely in line with what is contemplated by the *House* settlement.

Second, we request that you preempt state laws that have become an unending race to provide competitive advantages to schools in their respective jurisdictions. Such laws began by allowing student-athletes to take full advantage of NIL opportunities and have evolved to restrict the NCAA and conferences from enforcing rules. We cannot compete on a national stage with such divergent laws benefiting certain members while disadvantaging others.

Third, we seek not a blanket antitrust exemption but a safe harbor that will allow us needed flexibility to create a reasonable and enforceable regulatory framework that serves the underlying mission of the collegiate sports model. At this point, virtually all eligibility rules are under siege through judicial intervention and the misplaced lens of antitrust. As but one example, in February 2023, a judge granted a temporary restraining order to allow a men's basketball player to participate in an eighth season of competition. On the topic of transfers, any recent effort to restrict eligibility based on student-athlete movement has been soundly thwarted by the courts, which runs counter to the educational mission of our

programs and damages the experience for others on both the departing and receiving teams.

Fourth and finally, we ask you to clarify that the relationship between student-athletes and institutions is not that of an employer and employee. We wish for the focus of the relationship between a school and a student-athlete to remain rooted in education.

Through the *House* settlement and other intended changes outlined herein, we are in the process of providing substantially more benefits, financial and otherwise, for our student-athletes – to the tune of billions of dollars. Against that backdrop, characterizing student-athletes as employees is not only unnecessary but jeopardizes the ability of our institutions to support the scale and scope of changes we intend to make for their benefit.

The NCAA comprises more than 1,200 member institutions, but fewer than 6% (approximately 70 schools) reside in the Autonomy 4. Unlike the Autonomy 4, which uses sports to fill their stands and captivate national television audiences, far more schools sponsor varsity sports to recruit student-athletes to their campus, thereby driving enrollment and providing institutions with needed resources for operation. Requiring these schools to pay wages and benefits to varsity athletes would have unintended consequences, resulting in discontinued sports (or, in some cases, perhaps entire departments) and thousands of lost opportunities for displaced student-athletes.

In conclusion, it is undeniable that we stand at the most pivotal moment in the history of American collegiate sports. After years of hesitation, those within the system are now demonstrating a willingness to enact bold change, but external factors threaten the very

foundation of the model that has been cherished by this country for more than a century.

Doors opened and doors kept closed during this transformative period will determine the trajectory of college sports for generations to come. In the past, Congressional action has altered the future of college sports for the better – adopting Title IX more than 50 years ago is responsible for the surging participation, popularity, and success of American women competing in sports both domestically and internationally.

Congress now has another opportunity to dramatically impact the future of college sports by providing us the tools needed to modernize our ecosystem while protecting the foundational pillars that are central to the American collegiate sporting model – educationally based sports that offer opportunities in higher education to hundreds of thousands of young people in our country. I look forward to continuing to work with you to achieve these noble objectives.