

College NIL Testimony:

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Dear Chairman Wicker and Members of the United States Senate Committee on Commerce, Science, and Transportation's Subcommittee on Manufacturing, Trade and Consumer Protection:

Thank you for inviting me to participate in the "Name, Image, and Likeness: The State of Intercollegiate Athlete Compensation" hearing on Wednesday, July 1, 2020. This is an important discussion on economic rights and problem solving.

The ongoing debate around college athletes and the use of their name, image and likeness is one that I am intimately familiar with from my own experience as a college athlete. Being a Miami Hurricane in the early 2000s represented the dream of every boy that wanted to play college football. The Orange Bowl was raucous for every home game. We played in front of a massive television audience. We were covered every day on different sports and news related channels. Every radio station in South Florida and many around the nation covered 'Canes football wall to wall on their shows. Even the local television outlets were always at our practices to get footage for the evening news.

All of that coverage shined a bright light on the program and gave fans a chance to know more about the players on the team. Much of the coverage also drove sales of Miami Hurricanes team and player product. However, few of the reports showed or addressed the other side of being a major college football player that existed outside of the highlights and games. That side involved student-athletes like me maintaining a full schedule of classes each semester while balancing requirements for daily lifting, rehab, and the overall maintenance of our bodies. No one saw the coaches grilling us in the film room for hours before and after practice, which left little time to study for assignments in those classes. And no one saw the frequent times I checked my bank account balance so I could decide how to spend the very few dollars I had during the fleeting moments of free time I could squeeze in if I was lucky. I realized then, as I do now, that I signed up for the grind. I also recognize that my life may have been improved if I benefited from the various ways that grind brought significant revenue into the Hurricanes' football program, the athletic department, and the university overall.

To be clear, I understand that college requires young people to figure out how to do more with less. Anyone that has put a son or daughter through college knows that there are many demands and sacrifices. But for students who are also athletes, those requirements are ramped

up even more. People think that being a college athlete is all fun, games, and good times. The struggle is not something they think about. But it is real. Being a college athlete was and is a grind no matter what sport an athlete is involved in.

A typical weekday saw me wake before the sun for compulsory workouts. Afterward, I took the earliest classes on the university's schedule. After more classes back to back (because we had to be done with classes for the day around noon) you barely had enough time to eat lunch and get to the athletic center. Once there, you must be dressed, taped, and complete all other activities before mandatory team meetings. After a couple hours of meetings, we hit the field for another couple hours in the South Florida heat. Being "tired" was not in our vocabulary. After practice, we had a few minutes to shower and get dressed before assembling for post practice meetings. From there, I wolfed down dinner and went to mandatory study hall. I arrived back in my dorm around 9 pm. I would finish up schoolwork and try to get to bed at a reasonable hour so that I could get up to do it all over again the next day. This schedule was indicative of my Fall semesters at Miami. The Spring schedules loosened up some, but there was never much free time.

I admit that most of us knew life would be like that: nonstop and pressure packed. We signed a contract with our universities, or specifically a national letter of intent, and later a scholarship that may have referenced this. Truth be told, we probably excelled in the structure and benefited from some of the guidance. What we didn't know, was that for all the year-round effort of packing the stadiums on Saturdays, driving the media coverage, maximizing value of the television contracts, helping raise booster money at events, and influencing all the other revenue the school, conference, and the NCAA benefitted from because of our hard work, was that we would not be at least given the resources to pay for basic living expenses. When I was in school, you would only get a scholarship check for the months that classes were in session. That meant ten checks. As you can gather, an athlete is forced to save a fraction of every scholarship to cover the other two months of rent, phone bills, and all the expenses that come along with living off campus. Few if any of us had skills in budgeting. We learned quick because every dollar had to be stretched. Usually stretched so thin that we couldn't imagine being able to go to the student store and buy an official player jersey with our number or name on it as a gift for our parents.

One point that was drilled into us from the time we arrived on campus as freshmen was that we as athletes could never receive payments from anyone, for any reason, or we would be deemed ineligible. Accept a free meal from the local restaurant that just had a record day from the number of patrons there to watch you play the day before? Ineligible. Receive money to show up to a birthday? Ineligible. Come up with a crazy slogan and put it on a t-shirt that you sell? Ineligible. From day one, it was made very clear that receiving any extra benefit, other than the full scholarship and the stipend that went along with it, would make us ineligible.

What was not made clear was how we were supposed to survive in the grind as 18 to 22-year-old student-athletes. How were we supposed to make up the difference required to pay for

food, an apartment that was usually shared with fellow teammates or friends, utilities, transportation and other expenses? How were we supposed to eat to maintain health and balance? Or, go out with friends like any other student when we couldn't earn extra money? The stipend money we were provided was hardly enough to cover necessities. I understand that since I left college, some things have changed. The NCAA allows football players a second plate of food at dinner time. They even pay for the players' parents to see their sons in the National Title game – a game that is watched by tens of millions and drives huge amounts of sponsorship revenue to the universities.

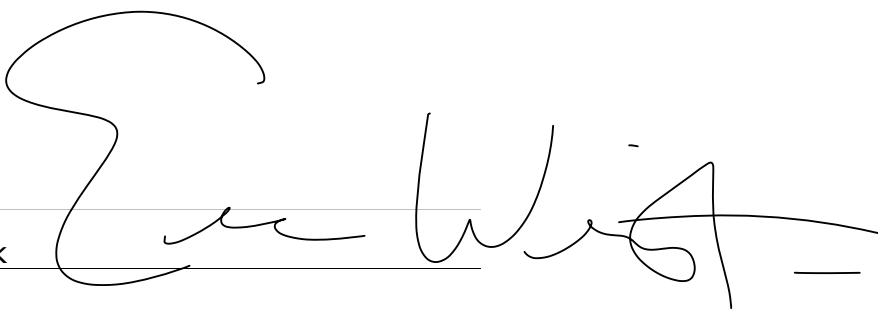
Looking back, I realize that being broke all the time was not the worst part about being forbidden to explore other avenues of compensation. A few games into my junior year, in 2004, I suffered an awful knee injury. I tore three ligaments and a muscle around the knee. The rehab was grueling; the pain of rehab was awful. What made this worse was the realization that I would have to pay for my eventual knee replacement from that injury. So, for an injury I sustained while playing at Miami, where I helped the university earn millions in revenue every year, at some point in my future, I will have to pay to fix it. It would be nice if some residuals from our collective earnings helped, or at the very least athletes were fully compensated for that risk, but the current collegiate rules do not allow it and the laws have not addressed it.

I am pleased for those minor changes that help athletes better manage life off the field. But most of those changes were put in place to ensure athletes perform at a high level. College athletes still cannot profit from fans buying their jersey or be compensated for their likeness from appearing in video games or on trading cards and it is far past time for us to address these inequities and figure out the solution. That is why we are here today and having this discussion. That is also why, after a career as an NFL player and advocating on behalf of my brothers across the league, I have now joined One Team Partners, a company that helps athletes maximize their name, image and likeness. Our infrastructure and expertise in the business can help address the old way of thinking and doing business and offer solutions to the problems facing colleges and student-athletes now and into the future.

Attached to this testimony is brief information about OneTeam Partners and how the organization may be able to provide the best guidance for how to bring NIL to the market fairly, equitably and legally.

Thank you for the opportunity to share my story and offer perspective on the crucial issue of name, image and likeness that will impact future college athletes. I remain available to the Committee or its Members should any follow up questions arise from your reading and hearing of this testimony.

Sincerely,

x 

Eric Winston

ONETEAM PARTNERS

OneTeam Partners LLC (OneTeam) was formed to help rights holders, like athletes, monetize their name, image, and likeness. Several of the unions of the major sports have for-profit subsidiaries that help professional athletes monetize these group rights. The subsidiary must acquire group licensing agreements from the players because there is nothing inherent about being a member of a union and being in a group designed for commercial usage. Once the group licensing assignments are acquired, the for-profit subsidiary markets and negotiates on behalf of the group of players (think: video games, trading cards, apparel). In part, OneTeam was created to serve as a platform to enhance rights holders' abilities to fully monetize their likenesses.

OneTeam views college group licensing as the logical first step into the NIL space and, frankly, low hanging fruit. Further, group licensing is a "win-win" for everyone involved, including the schools. A rising tide lifts all boats. Currently, each school makes \$0 from a college video game and trading cards. Further, each school hardly scratches the surface of what amount of revenue it could produce if apparel were done in a way that included the player's NIL.

OneTeam can provide protections to the athletes that are unrivaled. First, protecting and maximizing group rights is our core competency. We represent athletes' group commercial interests across sports and gender. The men of the NFL, Major League Baseball, Major League Soccer, and U.S. Rugby, as well as the women of the U.S. Women's National Soccer team, the WNBA, and U.S. Rugby trust our company to serve their best interests. There will be many who come before you claiming that they can do what we are built to do. I respectfully request that you ask one question of them: "*When have you ever done it in the past?*" There is not one agency or individual who has managed and transformed group player licensing on the scale that OneTeam and our member organizations and partners have done consistently and over several years.

Second, OneTeam provides transparency. Our system allows athletes to obtain compensation that has been cleared through NCAA regulations, is free of tax issues, and documented by compliance officers at their respective colleges. Because of our unique positioning, we understand exactly what athletes need and the logical fixes to these inherently problematic issues.

Third, the OneTeam system provides an equitable solution for athletes. There are many different formulas that can be used to compensate different members of the group. OneTeam is amenable to almost any solution and we provide a long and successful track record of best practices. For example, the current group commercial system model for NFL players compensates all of them in an equitable way while providing some players with additional payment as it relates to specific items, like player jerseys. We understand that this model could be different for college athletes – and know how to build it and execute it.

In conclusion, the OneTeam operation provides a solution to the main question driving our discussions: *“How does someone represent, protect, and pay college athletes?”* The confidence in our capabilities derives from our leadership and collective years of experience and passion for the fair and equitable treatment of ALL athletes. As I noted, I predict other groups will claim that they can do what OneTeam does. But I assure you, as a former college and professional athlete, these same groups have turned a blind eye over many years at the welfare of college athletes, and/or have or currently work for the schools themselves.

GROUP PLAYER LICENSING

Over the past several months, we have heard arguments that are not based in truth. These arguments, from public and private voices, and many working in the current system, are purposely being proposed to discourage people from looking further into the rightful opportunity for NIL freedom for college athletes.

Below are FAQs which address group player licensing and can serve as a guide for what is and is not true.

What is Group Licensing?

Group licensing is based on a collection and assignment of individual athletes’ name, image, and likeness rights. In group licensing, each athlete assigns his/her rights to a third-party property to license those collective rights to the marketplace for commercial use (e.g., consumer products like video games, trading cards and apparel and marketing and promotional campaigns).

Is an athlete union required to participate in a group licensing program?

No. Athletes, as well as any group of individuals, can collectivize a certain set of rights for a commercial purpose. By doing so, it allows these individuals to use their rights in ways that otherwise would have not been possible before such as video games, trading cards, and apparel at a large scale.

How many players makes up the “group”?

It depends. Each athlete property determines the “group” minimum threshold. For example, the NFL Players Association’s group license is defined as 6 or more (6+) NFL players. Therefore, to use more than 6 NFL players in a commercial capacity – whether it be 6 or 1,600 – an NFLPA license is required. The minimum threshold varies depending on the athlete property, and once that minimum is met, there is typically no limit as to how many athletes the licensee is able to utilize or feature across its licensed product lines and/or brand marketing campaigns. For example, EA Sports utilizes every current NFL players under its NFLPA group license for use in its Madden video game title, whereas Funko (a manufacturer of vinyl toys & collectibles)

releases roughly 25 new NFL player figures per year. In each case, the licensee is meeting the obligations of the group license, i.e., featuring a minimum of six players.

Are group licenses exclusive to the respective rights holders?

Yes, group licensing rights are typically exclusive to the athlete property and a license from the property is required to use more than the minimum group threshold.

If an athlete participates in a group licensing program, can he/she also license his/her NIL rights individually?

Yes. Individual athletes can license their individual NIL rights and enter endorsement agreements in addition to the rights granted through a group license program. An example of this is NFL player, Marshawn Lynch. While he was actively a part of the NFLPA's group license and featured across a range of NFLPA officially licensed products, (e.g., jerseys, name and number t-shirts, bobbleheads) Marshawn also developed his own in-line, trademarked brand entitled "Beast Mode." As the brand grew, Beast Mode obtained an NFLPA license to utilize additional NFL players across its range of branded merchandise.

What if a player wants to endorse a non-licensee?

Players can endorse brands and products not under an official license of the group licensing property. However, a company is limited in how many individual athletes it may work with in this capacity by the minimum set by the athlete property. For example, if Nike has an official license to feature athlete names and numbers on jerseys via a group license, an athlete may also enter an endorsement deal with a different company, like Under Armour or Adidas. The responsibility resides with the company (in this case Under Armour and Adidas) to ensure they are not in violation of the group license minimum.

What is the process for players assigning their rights to a group license?

Traditionally, a player opts into a group license program by signing a group licensing assignment (GLA) issued by the rights holder.

What is the duration of a GLA?

Varies by property; however, in the context of college athletics it likely makes the most sense for a GLA to last for the duration of a player's college eligibility.

How are players compensated under a group license structure?

This varies; however, royalty payments to players generally come in one of two ways:

1. Group Player Royalty Payments: In this scenario, revenue is shared equally by all players opted into the group license and that are deemed eligible for royalty payments as defined by the group license requirements.
2. Premium Player Royalty Payments: In this scenario, the player featured on the product itself (e.g. jersey, bobblehead), receives a majority portion (at least more than half) of royalties generated, with a minority portion allocated to the group player royalty pool.

Are there any usage rights and guidelines?

Each athlete property has its own brand guidelines and approval processes in place that dictate how its partners can utilize players across product and marketing collateral.