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HOUSE COMMITTEE ON ENERGY  
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HOUSE COMMITTEE ON  
HOMELAND SECURITY

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4311**

May 19, 2023

Dear Friend,

Next week, the Innovation, Data, and Commerce Subcommittee Chairman will release his Name, Image, and Likeness (NIL) discussion draft legislation for stakeholder feedback.

While we do not yet have the bill's text for circulation, I am prepared to offer a synopsis of what the bill will entail. This will be a narrow proposal broken up into the jurisdiction of three committees: the Energy and Commerce, Education and Workforce, and Judiciary Committees. This bill will not veer too far from the consistent themes of state NIL laws, and I am pleased to see the initial proposal include several vital priorities of mine.

The legislation will include protections from retaliation by an institution of higher education for student-athletes who have signed a NIL deal. Additionally, there will be certain industries student-athletes will be prohibited from entering into a partnership with. While an exact list is still being developed, states with NIL laws currently prohibit 'traditional vice industries' which typically include tobacco, alcohol, adult entertainment, gambling and related entities, and drug and drug paraphernalia. While some have called on industries such as abortion to be prohibited, I would be careful to legislate moral issues as it could become a slippery slope.

The most significant portion of this proposal will create a new regulatory body tasked with establishing and enforcing rules pertaining to collectives, boosters, and student-athlete endorsement contracts. Student-athletes who enter into a contract will be required to report their agreement to this new body and their university within a specified period. The makeup of this new entity is going to be a critical component throughout its legislative development, and it is vital Texas voices are part of this conversation. While I do have reservations about creating a new regulatory body, I believe it is a better option than delegating such a responsibility to the Federal Trade Commission (FTC) under Chair Lina Kahn. The only instance in which the FTC will intervene is in cases of deceptive practices.

Two of my top priorities for a federal NIL standard are also included in the discussion draft: language clarifying that student-athletes are not eligible for employee status, and language providing liability protection to protect institutions from frivolous litigation.

In the Education and Workforce Committee will be the language clarifying that student-athletes are not considered employees of their institution of higher education. In the Judiciary Committee will be language providing institutions of higher education liability protection from frivolous lawsuits. These are two of my top priorities and institutions across the state of Texas. It is imperative that they are included in the final version of the bill.

Unfortunately, this discussion draft lacks language blocking states from establishing a revenue-sharing model. Currently, legislation is moving through the California State Assembly to require D1 schools to distribute 50 percent of the revenue generated by a sport to its respective athletes. This proposal is problematic as only two sports typically generate revenue: football, men's basketball, and in a few cases baseball. The revenue generated from these sports is then used to support other sports in athletic departments nationwide, such as soccer, women's basketball, softball, swimming, golf, and tennis. If a revenue-sharing model were to become the national standard, it could pose an existential threat to all of these college sports. I have begun working on language to ensure that any federal NIL standard has protections to preserve the viability of these programs.

Ultimately, a federal NIL standard must balance the talents of student-athletes with the long-term viability of college sports. I look forward to your feedback and partnership as we work to protect college sports for future generations.

Sincerely,



August Pfluger  
Member of Congress