

U.S. Senator Maria Cantwell

**Opening Statement at U.S. Senate Committee on Commerce, Science, and Transportation
Hearing titled “NCAA Athlete NIL Rights”**

**Witnesses: Mr. Mark Few, Head Coach, Men’s Basketball, Gonzaga University
Dr. Mark Emmert, President, NCAA
Mr. Rod Gilmore, College Football Analyst, ESPN
Dr. Wayne A. I. Frederick, President, Howard University, and Chair, Mid-Eastern Athletic
Conference’s Presidents and Chancellors
Mr. Michael McCann, Professor of Law and Sports and Entertainment Law Institute
Director, UNH Franklin Pierce School of Law
Mr. Matthew J. Mitten, Professor of Law and Executive Director, Marquette University
Law School**

June 9, 2021

CANTWELL: I want to thank all our colleagues for working so diligently on the Endless Frontier Act and point out that the committee will be very busy in the next few weeks working on our part of the Surface Transportation Act, and hopefully the broadband legislation that we also think should be part of infrastructure. So I just appreciate committee member diligence, and what has been a very, very busy work period, but I appreciate everybody's input into those important issues. And this morning we have an also very important issue in front of us, which is the issue of name, image, and likeness that my colleagues have been working on for a long time. Senators Wicker and Booker, Senators Blumenthal and Moran, have been doing a lot of work on this issue for really, literally the last several years.

So it is our hope today that this hearing will bring focus and attention to how to resolve the issues that would allow us to grant these important rights to students, and also make sure that we are taking care of our students on important issues like scholarship, health care, transferability, obviously making sure that women are treated equally within the sports arena, and making sure that we continue to have the standards that should be set to make sure that they are all protected. So today we're going to hear from a distinguished panel, so appreciative that all of them are here. We're first going to hear from our colleague Senator Booker, but I do want to say a special thanks to, we have two wonderful institutions who are going to be testifying today, Gonzaga University and Coach Mark Few, and the President of Howard University, Dr. Wayne Frederick. These are two great institutions, I have to say congratulations on a great season to Gonzaga and a great program. And certainly, you've produced a great colleague of ours, a law student, Senator Cortez Masto, so we're very proud of the Spokane Institution and the whole state of Washington. And I want to say to Dr. Frederick, it must be a special delight and moment of the 2020 year that a former graduate of Howard University raised her right hand and took the oath as the Vice President of the United States. So, we see the Vice President every day taking out the "truth and service" motto of Howard in how she does her job, so you must be very proud of her.

We're also going to hear from Mr. Rod Gilmore, who is a very articulate advocate for NIL rights and a student in his football history, I'm sure he'll elaborate a little bit on that. The NCAA

President Mark Emmert, who hopefully will illuminate some of the issues of health care, and why we should be covering more athletes' health care costs, and Mr. Michael McCann, and Matthew Mitten, who will discuss some of the more thorny legal issues related to name, image, and likeness, and how we can move forward. As I said, I really believe that this is the time to make progress on this issue. Mr. Mitten brought up in his testimony I think a very interesting point, not to steal this thunder, but his reports says, "Prior to the 23 adoption of WADC which provides the basis for International Convention Against Doping in the sport, and that was later ratified, that a serious balkanization happened with various states doing different things, and thereby leaving an unfair and unjustified hometown favoritism." We can't afford that now, what we can afford is to take care of our students and student athletes.

It's so important for us to listen to the voices that have made so many of these points clear. Dallas Hobbs, a football player at Washington State University, called attention to inadequate COVID protections and formed a group of unity with Pac-12 players. We also have heard from Sedona Prince, a college basketball player from the University of Oregon, who shined a spotlight on a persistent gender divide in college sports when she posted a video that literally compared her workout room to the workout room of male athletes during the Final Four tournament, so we can do better. I believe that Title IX should be part of this conversation and applied to the NCAA, so we will have many chances today to get clarity on these issues. But I welcome everybody in the hopes that this discussion today will move us forward on legislation.

Q&A With Witnesses

CANTWELL: So obviously a lot of material put on the table here, and I think it's our task now to take you all up on the notion that everybody wants to see NIL rights and see legislation. Question is, how are we going to get that done? Obviously our colleagues have some very important viewpoints that need to be listened to. One area that I want to probe on, Dr. Frederick, you specifically mentioned the MEC institutions, and the notion that you only have limited ability to address some of these issues. Obviously, Coach Few, and I would say probably the PAC 12 have been doing some of these things already and have created a standard. So, we have been doing our own analysis. And to me, requiring Division 1 and Division 2 schools to help cover these health care costs would be an important goal for us to achieve.

Dr. Emmert, what can the NCAA do now? Obviously we heard Mr. Gilmore and others talk about the incredible amount of money that's in college sports today, what can you do to guarantee us that we could help with these institutions like Howard University or others who can't afford to have the out of pocket expenses that other institutions are currently handling?

EMMERT: Thank you, Senator, for the question, I think it's probably at the crux of much of this, is there's general agreement I suspect among the panelists and others that student athletes ought not to be, as Coach Few articulated very nicely, not reaching into their pocket for covering independent expenses that are above and beyond or up to their deductibles, for example in their insurance. And many of the Division 1 schools in the Power Five conferences and others as well, are doing so today. The question is, first of all, how would that language be crafted and what would be the size of the cost of all of this for schools? But having said that, if the focus was on

what, in Division 1 are often labeled by the NCAA members, the low resource institutions, and those costs were simply out of pocket costs, doubtlessly there's a way to determine within Division 1 resources how to cover some of those costs. There's a variety of different vehicles for doing that. The challenge that everyone has to recognize is that, you know, there's no NCAA money, it's all the school's money, so the NCAA serves as a pass through. But if the member schools wanted, and I would be willing to put this question to them, to say, "okay can we find a mechanism for funding out of pocket expenses in low resource schools," it's certainly a doable phenomenon.

It's that--the amounts of money at least based on the modeling we've done are not unreasonable. Where it becomes very challenging is across Divisions 2 and 3. There's probably ways to ascertain how that might be done. But the devil will be in the detail, what is it precisely that they would need to be paying for is, it just out of—if it's out of pocket expenses, meaning those costs for the deductibles of a student athlete for sports related injuries only for some fixed period of time, that might be a manageable amount of money with the dollars that flow through the NCAA distribution system.

CANTWELL: I think to me, there's a lot of money in sports, and there's going to be a lot more money in sports. I'm a big believer that as we move towards internet models, there'll be lots of ways to monetize activities. So I would hope that we could make a commitment to help Dr. Frederick's institution and other MEC schools meet those obligations so that we can move forward. I get that not all the panelists are on the same point with this but to me, this should be an easier "yes, we can get this done."

I want to ask Dr. Frederick, because this issue of heat impacts and horrific news of actual deaths from this, why can't we just get better health standards to cover the NCAA institutions to set a standard for what health could be, even if it's done here at a federal level, that guidance that must be followed by institutions?

FREDERICK: You know, I think this is an important point and especially when you look around heat related issues and concussions in particular, the NFL, for example, I think has been a model in terms of embracing this issue finally, and we have to have standards around where the athletes compete, etcetera. Once again, I think some of the issues here are around education and resources. We must insist that the number of trainers that are out there with the athletes, and someone monitoring the conditions for the individual athletes are part of what is taking place. And this is not just only about heat and those things, but athletes get other issues.

While I was at University of Connecticut, there was a soccer player who I befriended who developed testicular cancer that was metastatic. He had issues during practice that led to the discovery of this major mass in his abdomen, and as we talk about health related expenses, his care, to UConn's credit was taken care of fully and he was allowed to graduate. So the other thing that I don't think we count as well is while it doesn't happen often, there are issues that do impact athletes while they are in college that may not be related to their athletic endeavors, that schools or colleges try to cover.

And the last point I'll make is that Howard, for instance, like many schools, has a self-insured trust. And so the issue with how we cover health insurance is very different among all the

institutions, and the problem with NCAA even stepping in is that for self-insured trust, you just need one of those horrific incidents that cost you over \$250,000 and triggers your excess layer, and right there, your budget, especially if it's a marginal budget, so of two of those incidents that cost \$500,000, for the \$14 million that we may expend is a huge deal at a Howard University. So putting into a fund, as Dr. Emmett has suggested, is potentially one way to do that. And then the last thing is, somebody has to be an arbiter of what constitutes an injury during the time that you were playing, versus we sometimes we have athletes who come to us with injuries. And then subsequent to that, who's going to be the arbiter if somebody shows up two or three years later, with a chronic issue that actually occurred before they started playing for us. We're going to need some type of arbitration around that issue as well.

CANTWELL: Thank you. Senator wicker.