



# Global Market Advisors

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## Research Brief: U.S. Senate Judiciary Committee – Protecting the Integrity of College Athletics – July 2020

Today, the United States Senate Judiciary Committee held a hearing titled “Protecting the Integrity of College Athletics.” The full committee, chaired by Senator Lindsey Graham (R-SC), heard testimony on two major topics in college athletics, Name Image Likeness (“NIL”) and sports betting. These are two issues that, while extraordinarily important in college athletics, the NCAA clearly lacks the proper education to understand their true impacts. The hearing was divided into two panels with a total of seven testimonies on these two major topics:

### **Panel I: Name Image Likeness**

- Dan Radakovich, Athletic Director, Clemson University
- Professor Matt Mitten, Executive Director of the National Sports Law Institute, Marquette University School of Law
- George Wrihster III, Former Member of the National Football League Players Association (“NFLPA”) Board of Representatives
- Dr. Mark Emmert, President of the National Collegiate Athletic Association (“NCAA”)
- Ramogi Huma, Executive Director of the National College Players Association (“NCPA”)

### **Panel II: Sports Betting**

- Bill Miller, President and CEO of the American Gaming Association (“AGA”)
- Heather Lyke, Director of Athletics at the University of Pittsburgh

All of the participants provided verbal and written testimony on their respective issues and took a series of questions from several members of the committee during each of the two panels.

## HIGHLIGHTS FROM THE HEARING

The hearing began with three members of the Committee providing opening statements on both issues. The first was Senator Graham who provided an overview of the number of states that had passed NIL legislation (California, Florida, Colorado, and Nebraska which just passed legislation yesterday that is now headed to the Governor for potential signature) and the need not to create a bidding war with college recruits. He advocated for a national solution to developing a framework to prevent what would be the “wild west that will lead to the destruction of college athletics.” He also expressed his concerns on sports betting, particularly of the amount being wagered on athletes in college. He also echoed the Committee to Stop Internet Gaming in his statements to prevent wagering through online and mobile applications.

Senator Richard Blumenthal (D-CT), who competed at Harvard University as a swimmer, focused most of his comments on the protection of student-athletes. This covered not only the items related to NIL, including fair compensation and revenue sharing, but also addressing health and wellbeing issues, as well as graduation rates. He expressed that in a \$14 billion industry, athletes receive no share of the revenue, and the NCAA continues to resist all reforms. Blumenthal believes that the reason for today’s hearing was that college athletes brought this up and forced the school’s hands. He is also concerned about the racial inequities on the revenue sharing that may exist.

Senator Cory Booker (D-NJ), who played wide receiver at Stanford University, stated that he has worked on this issue since he was a college student. His position is that while athletics do open up opportunities for those that would not normally have access, athletes are still being exploited, especially among minorities. He also highlighted the United State Senate hearing from 2014 in the Commerce Committee and that he had not seen significant progress since discussing those issues over six year ago. Ultimately, Booker found that the proposals highlighted prior to today’s hearing by the Power 5 Conferences as well as the NCAA are coming up short on the issue and not providing real reforms, but rather “symbolism over substance.”

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### PANEL I: NAME IMAGE LIKENESS

Dan Radakovich, Athletic Director at Clemson University, began the panel with his [testimony](#) that highlighted educational benefits and monetary compensation that is part of the student-athlete package. He argued that this is part of the reason that college athletics is unique and that it needs to remain so that these individuals are students and not employees. Without federal action, it will be problematic as states craft an unfair playing field across the country, including Title IX implications and other equity issues. He noted that the legislation passed in Florida earlier this summer would go into effect in less than one year from now. College sports in the U.S. need



standard, universal principals. He was also driven to support a third-party entity to provide educational assistance for student-athletes and act as a clearinghouse for registration of entities and registry of deals.

Matt Mitten, who serves as a professor and the Executive Director of the National Sports Law Institute at Marquette University School of Law, [discussed](#) his need for national policy to protect student athletics as well as eliminate the differences between states. He also outlined a scope for permissible licensing and to protect the rights of all, not just a select few. In addition, he advocated for a narrow scope for an antitrust exception for the NCAA as well as its member educational institutions and conferences as it relates to NIL.

George Wrihster III is a former member of the NFLPA Board of Representatives who began his [testimony](#) presenting different stories from coaches and athletes about the challenges that many parents face in trying to attend these events, as well as the ability for athletes to make money through their talent. In a laissez-faire approach to providing testimony, Wrihster said it was “un-American to cut off the free market.” He also said that other students are allowed to profit off of their own individual talents while student athletes are not, and they should be able to earn their revenue and value. He also argued that there should not be a clearinghouse to post these deals, but that they have been private deals and should remain that way.

Dr. Mark Emmert, President of the NCAA, provided extensive [testimony](#) about how they have been proactive in response to SARS-CoV-2 and the protection of student-athletes. He highlighted that they are not looking for broad antitrust exemptions in any federal legislation. The NCAA is committed to fairness to all athletics and will work on the rules beginning in January 2021 among all three divisions of college athletics. This was delayed because of the current challenges resulting from the pandemic. These rules will go into effect for the 2021-22 season, and the NCAA would take a collaborate approach in working with Congress to establish a federal framework.

Ramogi Huma, who serves as Executive Director of the NCPA, [discussed](#) how his organization pushed forward with legislation in California and Florida and continues to work on legislation across 12 of the 28 states that are moving forward on this issue. Huma advocated for a level playing field that does not exist in the current rules. He highlighted how the Ohio State University generated \$208 million last year whereas its neighbor in Ohio University only generated \$28 million. It does not create equality for college athletes. He also highlighted racial discrimination, a need for a wide range of reforms in healthcare, graduation rates, due process rights, and a need for a broader based bill than NIL is currently proposing.



After all five members completed their testimony, those Senators present provided two rounds of questions and answers over the NIL issue. The questions ranged from creating a level playing field, discussing antitrust liability, and reviewing general student-athlete issues. A main concern of Senator Graham, who started the line of questioning, was in regard to the regulator for NIL from a third-party perspective, where Mr. Emmert was definitive in expressing the need for such an entity outside of the system.

Senator Blumenthal began the line of questioning that was mostly aimed at the NCAA, with his distinct views on the issue and his deep disappointment in the NCAA's proposals. In reference to the NCAA, Blumenthal stated, "There is (*sic*) not medals for treading water, [it's] more of the status quo, give us broad exemptions, let us emulate professional sports, and exempt us out of state law; it is a race to the bottom." He was also concerned about the NCAA's lack of response on the bill of rights for student-athletes (College Athlete Pandemic Safety Act) on SARS-Cov-2. Blumenthal then referred to many of the concerns raised by Mr. Huma in his testimony.

Senator Ben Sasse (R-NE) focused his line of questioning on the "inertia of motion" path if Congress were to do nothing. He was concerned about the patchwork of state laws and the effects on recruiting. He also was concerned about student-athlete health and how that might affect graduation rates and would like to see data on the issue. Booker went after Emmert for not having a conversation over the last six years and that the NCAA needed to step up. Senator Michael Lee (R-UT) and Senator Joshua Hawley (R-MO) also interjected with a few questions. Senator Graham ended this portion of the panel saying that there will be some bipartisan approach to the NIL as well as a basics rights package for student-athletes by September 15<sup>th</sup>.

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## PANEL II: SPORTS BETTING

The second portion of the hearing on sports betting was much shorter, lasting only about 30 minutes. It was kicked off by Heather Lyke, who serves as the Director of Athletics at the University of Pittsburgh. Lyke, who has been a staunch opponent of sports betting since the repeal of PASPA, highlighted in her [testimony](#) that legalized gaming will have a "corrosive effect" on college athletics. Lyke, who works in a state that legalized sports betting before the repeal of PASPA, discussed the risk and temptations that student-athletes face, taking their own risks and being susceptible to corruptions either directly or through their peers. While also highlighting her distain for prop bets, she also discussed how some states are have recognized the challenges and exempted wagering on college sports outright.

Bill Miller, who serves as President and CEO of the American Gaming Association, provide solid [testimony](#) on the state of sports betting in the United States, the importance of states and tribal organization to offer strict regulation in the governance of sports betting, and the continued need



to bring the illegal market out of the shadows and into the hands of these regulators. Miller noted that legal operators have always been the first to alert to improprieties in the market and bring these issues to regulators that have, in turn, addressed the issue. Miller concluded by expressing his opposition to federal rules and advocating for gaming legislation to be left to the states, urging the repeal of the federal excise tax and to support legal operators in working with the Department of Justice (“DOJ”) to go after illegal operators.

During the questioning period, Senator Graham, who has proposed various pieces of gaming related legislation over the years on the potential influence of the games, agreed with Miller on his commitment to deal with the illegal sites but showed concern about prop bets. When questioning Lyke, her concern was that a legal market only provides the opportunity for more people to gamble and that college athletes are different and susceptible to temptation. Senator Graham also questioned Miller on online gaming and his thoughts on the Wire Act.

Senator Blumenthal conveyed concerns to both panelists about the prevalence of match fixing as well as the potential influence of organized crime. Lyke responded saying that more money would lead to more temptation, but she could not say how many sports and contests may involve match fixing today. Miller provided a logically appropriate response, saying that a regulated market provides protection and will identify issues better than anyone, and that it is hidden in the illegal market. Miller also highlighted a recent AGA study discussing consumer perceptions on the illegal market that offers no protections and the need to allow legal books to combat the illegal market.

## POTENTIAL IMPACT ON THE SPORTS BETTING MARKET

Both NIL and sports betting are important to the integrity of college athletics and could potentially have an impact on each other due to the federal scope desired by several members of the committee. Let it be noted that the NCAA, while seeking a federal solution for both issues and likely desired to be part of the sports betting discussion today, is only in this position because of its poor response in reacting to the legalization of both sports betting and NIL. The repeal of PASPA was the result of a lawsuit wherein the NCAA stood against New Jersey and its right to offer sports betting. It has, along with most of its member institutions for the past two years, not followed up on its promise to provide education and promote the health of student-athletes, coaches, administrators, donors, and other key stakeholders. This also includes putting their head in the sand when it comes to legislation and allowing their ignorance to result in the use of scare tactics and half-truths which only caused confusion in the debate. The NCAA has had two years to respond to the legalization of PASPA and has ignored multiple attempts from multiple organizations to provide education, programs to member institutions, and an understanding of



how best to operate internally in a legal market. Their lack of engagement will only continue to feed the illegal market and the ills that come along with it.

In GMA's view of Ms. Lyke testimony, it provided the epitome of an argument that fails to realize the realities of sports betting, the benefits of combating the illegal market, and the naivety of the existence of the illegal market that has surround college sports for decades. She, like the NCAA, fundamentally misunderstands and refuses to listen to the facts on the issue. Even Tom Osborne, former Congressman and head football coach at Nebraska who is a true believer that gambling is wrong, has acknowledged on multiple occasions that fans would come up to him while he was coaching with displeasure of too many points being scored or not enough at the end of a game that would have affected a fan's illegal bet at the time. While Ms. Lyke may be in the same camp as Osborne in being a true believer against gaming, her written and verbal testimony did not speak well as an individual that works at an institution of higher education, has sports betting located in her own state of Pennsylvania, and a casino just down the road from her institution. Both Lyke and the NCAA have had every opportunity to be properly educated on this matter and have not made it a priority to do so. It begs the question, as pointed out by some of the Senators on the committee, of whether they truly have the student-athletes' best interests at heart.

Miller provided the only voice of reason as it related to sports betting and further highlights why the AGA, operators, and other interested parties need to continue to provide education to a Congress. This education will hopefully allow our legislators to understand how sports betting works, the benefits that a legal market can bring in combating the illegal market, and the need for states to continue crafting and operating their own sports betting markets. A positive outcome from the hearings was Senator Graham's commitment to working with regulators, operators, and the DOJ to go after the illegal market in a meaningful way. During his questioning, Senator Graham did bring up online gaming, and Miller was right to acknowledge the differences within the industry on how to proceed forward. However, even among those operators and stakeholders opposed to online gaming, tackling the illegal market is one issue where all parties can agree that the federal government should be involved.

Global Market Advisors is steadfast that a universal, federal sports betting legislation remains unlikely as it would be a direct affront to the sovereignty of states and tribes that already provide the sound regulatory structure for gaming and sports betting. As of today, 24 jurisdictions within the U.S. have legislated sports betting with 19 having active operations today. The only federal interjection into the process should deal with the illegal operators and providing the DOJ and regulators the resources to enforce and address the nearly sixty-year-old Wire Act.



GMA believes that any full package on federal legislation would take years to pass and even more time to implement, should such a bill ever pass. This includes the draft of a bill circulating from Senator Chuck Schumer (D-NY) and Senator Mitt Romney (R-UT). In a current climate that does not allow for agreement on the next stimulus package in response to the pandemic – let alone the ability to pass a federal budget, immigration reform, or an infrastructure bill – gaming should not be the priority and does not need to occur at the federal level.

Nearly every state and territory continue to discuss what sports betting may look like within their jurisdictions. While each state provides their own approach to regulating their market, they all recognize that integrity comes first and foremost. These existing legislations are the best form of action against the illegal sport betting activity (both professional and college) that has existed in the shadows for decades. By not allowing legal sports books to take bets at the college level, this would only allow the illegal market to flourish and puts student-athletes, the NCAA, and its member institutions at further risk.

Shedding light on the illegal market is the best disinfectant.



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## **CONTACT INFORMATION**

Brendan D. Bussmann  
Partner, Director of Government Affairs  
[bdb@globalmarketadvisors.com](mailto:bdb@globalmarketadvisors.com)

Steven M. Gallaway  
Managing Partner  
[smg@globalmarketadvisors.com](mailto:smg@globalmarketadvisors.com)

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