

**Testimony on Behalf of the University of Maine System
by University of Maine Director of Athletics Ken Ralph
Neither For Nor Against LD 1893, *An Act Regarding the Use of a
Student Athlete's Name, Image, Likeness or Autograph* – Jan. 25, 2022**

Senator Rafferty, Representative Brennan and distinguished members of the Joint Standing Committee on Education & Cultural Affairs: My name is Ken Ralph and I am the Director of Athletics at the University of Maine, the state's only National Collegiate Athletic Association (NCAA) Division I program. I am here on behalf of my colleagues at UMaine and across the University of Maine System (UMS) to express the strongest support for our student athletes benefiting from their name, image and likeness (NIL), as is the intent of LD 1893.

At UMaine, our student athletes control and can now monetize their personal NIL to the fullest extent allowed by NCAA and conference rules, as well as university policies, including [our own NIL policy](#) (attached). This policy, which was put into place last July after the NCAA altered its own following a Supreme Court decision, is incredibly permissive. It has since also been adopted by other UMS universities including the University of Southern Maine. In the last six months, a dozen Black Bears have directly signed deals, with \$1,000 being the highest value so far.

While our preference is that any NIL law be enacted at the federal level so it is equally applied in all states and does not create confusion for student athletes as they compete across the country, we appreciate why Maine would want to enshrine the important rights of student athletes, as we have already done with our own institutional policy. That said, there are some technical concerns with LD 1893 as it is currently drafted that we urge you to address if you determine it is necessary to move this bill forward:

- §12971, Section 2 includes a definition for an “institutional contract,” but there is no reference to an institutional contract elsewhere in the bill. Consistent with UMaine’s NIL policy, any law that allows students to earn compensation from NIL should also prohibit student athletes from entering into contracts that conflict with institutional contracts.
- By law, compensation a student earns, including from the NIL, must be reported as income and could impact eligibility for need-based financial aid, including federal Pell, Maine State Grant and UMS institutional aid. The U.S. Department of Education released [initial implementation guidance](#) in November. Given this, §12972, Section 1.B. should be struck in its entirety, or at least amended to, “...from receiving a need-based scholarship, grant...”
- Student athletes may also be employees of the university, including through federal work study programs, provided they were not hired based on their athletic abilities. §12974 should be amended to read: “A student athlete may not be considered an employee of the college or university that the student athlete attends ~~based on the student athlete's participation in the intercollegiate athletic program~~ and may not receive any benefits accruing to a college or university employee solely based on the student athlete's participation in the intercollegiate athletic program.”
- Finally, it is critically important that public and private colleges and universities have the ability to adopt and adapt NIL policies that reflect institutional values and evolving NCAA and conference rules that our teams must be compliant with in order to compete. For example, UMaine and other UMS universities feel strongly our students should not be able

to use their NIL to promote products or activities that are illegal, or that leverage trademarked or copyrighted university logos. This is reflected in our own NIL policy. As written, we question whether the blanket prohibition in §12972, Section 1 against an institution adopting policies that prevent students from benefiting from NIL conflicts with these necessary provisions of our own policy.

This is an exciting time for Black Bear Athletics. Historic investment from the Harold Alfond Foundation in our facilities in Orono will enhance the opportunities for our athletes and all Maine youth to equitably participate in, and enjoy the benefits of, playing sports. The ability for our student athletes to derive an income from their name, image and likeness is also exciting, and long-overdue. We are not opposed to a simple State law that makes clear college student athletes at Maine colleges and universities can earn compensation from NIL, consistent with institutional, conference and other governing organization policies, and that those institutional policies must be posted on publicly accessible websites. Additionally, we fully support the rights of our student-athletes to retain representation in negotiating deals and understanding their legal and tax implications, and encourage them to do so.

However, other states that have moved too quickly to preempt NCAA guidelines and Congressional action have already begun repealing those laws, having realized they were more restrictive than what is finally allowed. As we work together to protect and promote this new tool for our student athletes, let us not do the same here in Maine and unintentionally create confusion that jeopardizes eligibility and opportunity.

I thank you for the chance to testify today and for your ongoing support of our students. I look forward to your questions.

University of Maine Athletics

N.I.L. Guidance

The University of Maine (the University) is supportive of its students being able to control and monetize their personal name, image, and likeness (NIL). This allows students who are participating in varsity programs the same rights as other University students. The policy for Black Bear Athletes will be as follows. The University recognizes that rules and laws regarding NIL are evolving. The University may change this policy as applicable rules or laws are implemented.

Black Bear Varsity athletes will be allowed to engage in NIL activities to the fullest extent allowed by NCAA and member Conference rules, any applicable state or federal law, and the University Student Code of Conduct, subject to the following conditions:

- Students may not utilize University marks or logos for the purposes of monetizing their NIL or during the content of production for NIL purposes.
- Students may not film themselves inside University athletic facilities for purposes of monetizing their NIL or during the production of content for NIL purposes.
- Students may not utilize University employees in the generation of content for NIL purposes.
- Students understand they are fully responsible for handling all legal and tax issues regarding their NIL.
- Students understand they will not receive free or reduced cost facility rentals from the University for the conduct of camps/clinics or other activities conducted using their NIL.
- Students agree they will not seek to receive compensation from protected University sponsors (New Balance, Bangor Savings Bank, etc.) without the approval of the University Department of Athletics. A list of these sponsors is available through Black Bear Sports Properties.
- Students may not use their NIL to promote products or activities which are illegal.