



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

S.B. NO. 3263, S.D. 1, RELATING TO THE UNIVERSITY OF HAWAII.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS AND ON COMMERCE AND
CONSUMER PROTECTION

DATE: Tuesday, March 3, 2026 **TIME:** 10:16 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Candace J. Park,
Deputy Attorney General, at 808 586-0618)

Chairs Dela Cruz and Keohokalole and Members of the Committees:

The Department of the Attorney General provides the following comments.

This bill establishes the Name, Image, and Likeness Endowment Fund, a trust fund to be administered by the University of Hawaii (UH) to compensate student athletes participating in UH's name, image, and likeness program.

For clarification purposes, we recommend naming the fund the "Name, Image, and Likeness Endowment Trust Fund," and making the following revisions:

(1) Replace "fund" or "endowment fund" with "endowment trust fund" on page 1, lines 5, 7, 13, and 16; page 2, lines 8, 11, and 21; page 3, lines 4, 5, and 17; and page 4, lines 5, 6-7, 8, and 16; and

(2) Revise page 2, lines 3-6, as follows:

(b) There shall be an initial corpus of not less than \$10,000,000, ~~which corpus shall be an~~ in the name, image, and likeness endowment trust fund to provide a sustainable, long-term revenue stream for the university of Hawaii's name, image, and likeness program.

Section 304A- (h)(3) (page 4, lines 8-10) requires UH to include "a list of student athletes compensated by the fund and the amount of compensation for each student athlete" in its annual report to the Legislature. Because UH would receive and administer public funds through the Name, Image, and Likeness Endowment Trust

Fund, this disclosure requirement raises significant legal concerns under the Family Educational Rights and Privacy Act of 1974 (FERPA).

FERPA generally prohibits educational institutions that receive federal funding from disclosing personally identifiable information from students' educational records without prior written consent, unless a specific statutory exemption applies. Information identifying a student athlete as a compensation recipient, when maintained by or on behalf of UH in connection with the student's enrollment or participation in UH programs, may constitute protected education records. The bill's mandatory public disclosure of the identities of compensated student athletes and the amounts paid could therefore result in the unauthorized release of protected information, potentially subjecting UH to federal enforcement actions, loss of federal funding, and related legal liability. Accordingly, absent a clear FERPA exemption or valid student-athlete consent, the disclosure requirement of the Name, Image, and Likeness Endowment Trust Fund raises substantial legal compliance concerns under FERPA.

Because UH is the recipient and administrator of public funds supporting the Name, Image, and Likeness Endowment Trust Fund, any determination regarding legal or regulatory compliance resides with the UH Board of Regents, in consultation with UH's legal counsel.

Thank you for the opportunity to provide these comments.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Ways and Means
and

Senate Committee on Commerce and Consumer Protection
Tuesday, March 3, 2026 at 10:16 a.m.

by

Matt Elliott, Athletics Director
Department of Athletics
University of Hawai'i at Mānoa

SB 3263 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chairs Dela Cruz and Keohokalole, Vice Chairs Moriwaki and Fukunaga, and Members of the Committees:

The Department of Athletics at the University of Hawai'i at Mānoa (UHM Athletics) supports SB 3263 SD1. Creating a long-term, sustainable revenue stream for Name, Image, and Likeness (NIL) will help create opportunities to recruit and retain elite student-athletes. Since July 1, 2025, collegiate institutions have been permitted to use funding to provide additional scholarships and share revenue, and the money generated from this proposed endowment fund may be granted to students within the new national NIL framework. NIL opportunities are important to college sports because they recognize the real economic value that student-athletes create while preserving their ability to benefit from their own work and identity.

In addition to supporting SB 3263 SD1, which establishes a long-term, sustainable funding mechanism for NIL, the University has also requested \$5 million in the 2026–2027 state budget to address immediate NIL needs. This request is necessary even if the proposed endowment is established. While the endowment creates a pathway for long-term sustainability, UHM Athletics requires near-term funding to meet existing and ongoing commitments.

Immediate funding is critical because the department is actively recruiting and retaining student-athletes in an increasingly competitive NIL environment. These resources are necessary to provide stability, honor current obligations, and allow the department to fully pursue its objectives of attracting, retaining, and supporting student-athletes so they can graduate from the University of Hawai'i while remaining competitive in the Mountain West and Big West Conferences.

At present, UHM Athletics is relying heavily on private fundraising to meet its NIL commitments. State support will help stabilize the program, reduce reliance on

unpredictable private sources, and ensure the University can compete equitably during the transition to a sustainable, endowment-based NIL model.

While UHM Athletics is grateful for and supports SB 3263 SD1, the department requests that the committees consider the following modifications:

- In section 304A(b), the department proposes that the endowment commence with no less than \$2 million total dollars, as opposed to establishing a \$10 million minimum. It will take time to raise \$5 million dollars in matching funds, and the department and student-athletes would benefit if the endowment fund could start as soon as possible.
- In section 304A(f), the department proposes revising the language to say that if the student-athlete hires an agent, then they must use a registered agent or parent. However, some students will elect not to use agents, and the department does not believe it is necessary to compel a student to use an agent.
- In section 304A(h)(3), the department proposes modifying the reporting requirements so that the department provides information on the amounts provided to each team, but not each individual student-athlete, to avoid disclosing any personally-identifiable information.

UHM Athletics supports SB 3263 SD1 with the proposed modifications and encourages the committees to pass the bill.

March 3, 2026, 10:06 a.m.

Hawaii State Capitol

Conference Room 211 and Videoconference

To: Senate Committee on Ways and Means

Sen. Donovan M. Dela Cruz, Chair

Sen. Sharon Y. Moriwaki, Vice Chair

Senate Committee on Commerce and Consumer Protection

Sen. Jarrett Keohokalole, Chair

Sen. Carol Fukunaga, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: COMMENTS ON SB3263 SD1 — RELATING TO THE UNIVERSITY OF HAWAII

Aloha chairs, vice chairs and other members of the committees,

The Grassroot Institute of Hawaii offers **comments** on [SB3263 SD1](#), which would establish a name, image and likeness endowment fund for student athletes to be administered by the University of Hawaii and requires UH to establish certain rules concerning NIL activities and disbursements. It also contains a blank appropriation for that fund, with the previous committee suggesting an appropriation of \$5 million.

Inasmuch as this bill seeks to clarify NIL rules and enable students to participate in NIL contracts, it deserves praise. This is an evolving area that would be helped by greater clarity for both students and schools, though federal legislation¹ may soon change the landscape of NIL payments.

However, the bill should also include a provision clarifying that state funds cannot be used to compensate athletes. Thus, any appropriation provided for the establishment of an NIL program should be limited to

¹ [H.R. 4312](#) – SCORE Act, 119th Congress (2025-2026).

administrative and educational needs and should not be used to make direct payments to athletes. If the university decides to pay its athletes, it should follow the established practice of other schools, which pay student athletes from third-party contracts, donations, revenues and other funding sources, not taxpayer dollars.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

SB-3263-SD-1

Submitted on: 2/27/2026 6:19:06 PM

Testimony for WAM on 3/3/2026 10:16:00 AM

Submitted By	Organization	Testifier Position	Testify
Sean Spencer	Individual	Support	Written Testimony Only

Comments:

I support SB3263 SD1. UH is facing the new realities of college sports. If UH doesn't have an NIL fund, we will not be competitive.

Written Testimony of Carlos A. Santana

March 3, 2026

**Prepared for the Hawai`i State Legislature – Senate Committees on Ways and Means &
Commerce and Consumer Protection**

**For consideration of SB3263: Relating to the University of Hawai`i
Proponent Testimony**

My name is Carlos A. Santana. I am a graduate of the William S. Richardson School of Law. I have also completed graduate-level coursework on Name, Image, Likeness and Athlete Compensation through the University of Florida. I submit this testimony in support of SB3263 relating to student-athlete compensation.

Name, Image, and Likeness

The landscape of college athletics is changing rapidly. The University of Hawai`i must keep up to remain competitive. Many of these changes are coming through litigation and judiciary decisions. Many of these court cases allege the National Collegiate Athletic Association (“NCAA”) has violated antitrust laws by restricting athletes from earning compensation for the use of their name, image, and likeness (“NIL”). As the courts incrementally dismantle the NCAA’s policies on NIL compensation, the Hawai`i legislature should provide specific guidance for the state court through legislation specific to the issue of student-athlete compensation.

In 2015, the Ninth Circuit court held that the NCAA’s rules operate as an unreasonable restraint on trade, in violation of antitrust law.¹ This was only the beginning of the end of the NCAA’s NIL policy. The most notable court case is *In re College Athlete NIL Litigation*, commonly known as *House v. NCAA*. In this federal case, the plaintiff filed an antitrust challenge against the NCAA and five athletic conferences.² The complaint alleges that the NCAA’s restrictions on athlete compensation for NIL use constitute an unreasonable restraint on trade.³ The complaint also alleges that the NCAA, defendant conferences, and member institutions engaged in a conspiracy to collectively refuse to negotiate with athletes for compensation.⁴ After other plaintiffs joined the case, the court certified it as a

¹ *O’Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).

² The Atlantic Coast Conference (“ACC”), Big Ten, Big 12, Southeastern Conference (“SEC”), and Pac-12 were co-defendants in the case.

³ *In re College Athlete NIL Litigation*, 4:20-cv-03919 (N.D. Cal.)

⁴ *Id.*

class action. The case was settled in June 2025 when the court approved an agreed-upon settlement between the parties.

The biggest impact of this settlement is in the area of student-athlete compensation. The settlement provided for \$2.8 billion in damages to the various classes of athlete plaintiffs dating back to 2016. The settlement also included:

- Allowing member institutions to be able to enter into direct NIL agreements with athletes for their broadcast NIL rights (up to a cap of 22 percent of Average Shared Revenue for Power Five institutions);
- Eliminating scholarship limits in favor of roster limits; and,
- Enacting restrictions on NIL deals entered into between athletes and third parties, specifically boosters and booster collectives, where such deals must be for a valid business purpose and for fair market value.⁵

International Students

Legislation should also address the matter of international students. In a recent case, an Australian national was denied a P-1A visa. International students typically apply for F-1 student visas to attend universities in the United States. However, a student is not permitted to work off-campus with an F-1 visa. As this is the case, many international athletes apply for a P-1A visa, which allows international athletes to compete in the United States. In this case, the Australian student-athlete attending a university in the United States applied for the P-1A visa. The U.S. Citizen and Immigration Services (“USCIS”) denied the application because (1) her proposed NIL activities were not seen as "ancillary promotional activities" and are unrelated to her status as an athlete, (2) her NIL representation agreement is not an agency agreement; and (3) she cannot attend school on a P-1A visa.⁶ The student-athlete is challenging this decision and the overall limits on P-1A visa access for college athletes.

The problem:

- Students cannot work on an F-1 visa
- Athletes cannot attend school on a P-1A visa

The solution:

⁵ *Id.*

⁶ *Poa v. Jaddou (USCIS)*, 3:24-cv-00887, Louisiana Middle District Court

- Create a new visa (possibly an F-1A) for foreign students to attend a university, participate in intercollegiate athletics, and avail themselves of NIL opportunities.

The legislature and the University of Hawai`i must persuade federal legislators to require the USCIS to create this new visa program for international student-athletes.

Student-Athletes as University Employees

In July 2024, the Third Circuit Court of Appeals issued an opinion finding that some college athletes can and should be considered employees under the Fair Labor Standards Act (“FLSA”).⁷ In doing so, they developed a four-part test for determining whether particular athletes should be considered employees. Under this test, college athletes may be employees under the FLSA when they (a) perform services for another party, (b) necessarily and primarily for the other party's benefit, (c) under that party's control or right of control, and (d) in return for "express" or "implied" compensation or "in-kind benefits."⁸ This case has not been resolved and is pending a decision on the NCAA’s motion to dismiss.

HB2384 would resolve this issue in Hawai`i courts as it states that nothing in the amended law would create an employment relationship between a student-athlete and the university.

Conclusion

I support this legislation to support the student-athletes and the university. Creating NIL opportunities for all student-athletes, including international student-athletes, is good for the participants, the institution, and the state. While some might feel that it is unfortunate that college athletics has evolved to be about monetary compensation for the athletes, this is the world we live in, and we must stay on par to contend with other universities.

The federal courts and several state legislatures have been weighing in on the issue of athlete compensation. The Hawai`i legislature has an opportunity show that it supports student-athletes’ rights and also supports the university’s efforts to remain competitive in a rapidly changing environment.

As part of an educational curriculum, athletics teaches goal setting and teamwork, among many other benefits. It’s time to show the student-athletes that the legislature is part of the team.

I fully support SB3263 and encourage all legislators to vote in favor.

⁷ 9 U.S.C. §§ 201 et seq.

⁸ *Johnson v. NCAA*, No. 22-1223 (3d Cir. 2024)

March 3, 2026

Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Members of the Committee on Ways & Means

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Members of the Committee on Commerce
& Consumer Protection
Thirty-Third Legislature, Regular Session of 2026

RE: **STRONG SUPPORT** for SB 3263, SD1 – Relating to the University of Hawaii

Hearing Date: March 3, 2026, at 10:16 AM

Aloha Chair Dela Cruz, Chair Keohokalole and Members of the Committees,

Mahalo for the opportunity to submit testimony in **STRONG SUPPORT** of SB 3263, SD1. This bill would allow UH to adopt policies for NIL agreements and activities, as well as provide education, support, and funding for NIL compensation.

As a former student-athlete at UH, I know first-hand of the countless hours that go into practicing, watching films and working out required to represent UH with pride and be part of a successful athletic program. Student-athletes must balance rigorous schedules with their full-time academic pursuits. Although financial aid is available to some student athletes, it rarely covers the cost of attendance when you factor in living expenses without the opportunity for employment. NIL compensation can provide student-athletes with the ability to supplement their scholarships/financial aid with additional income to help make ends meet.

Importantly, NIL has shifted from a recruiting enhancement only available at Power 4 programs to a critical component of collegiate athletics. Coaches across the country — including at UH — emphasize that NIL is central not only to recruiting top talent, but also to retaining players who might otherwise look elsewhere for such opportunities. The absence of sufficient NIL for UH athletes has and will continue to put our programs at a disadvantage compared to other similarly positioned programs. The lack of sufficient NIL has also significantly hindered UH’s ability to recruit from Hawaii high schools.

The rise of NIL has also created confusion and the risk of unscrupulous representatives taking advantage of student-athletes. Most student-athletes lack the resources and

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expertise to properly evaluate the consequences of NIL marketing agreements, tax liability or other potential pitfalls. Hawaii needs a reasonable framework to educate and provide structured and equitable NIL support to student-athletes. SB 3263, SD1 would ensure UH's student-athletes have the same opportunities to benefit from their hard-earned reputation and marketplace value as their peers nationwide, while at the same time protecting them from confusion and risk. Without the framework, Hawai'i will be at a competitive disadvantage compared to other national programs.

I appreciate the committee's willingness to put forth a reasoned approach to NIL for UH's student-athletes, and strongly urge this committee to pass SB 3263, SD1.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Michael L. Iosua". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael L. Iosua