NAME, IMAGE, AND LIKENESS ("NIL") INSTITUTIONAL REPORT

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Is 'Saving College Sports' *Truly* Saving College Sports?

A Review of the Latest Executive Order Aimed at College Sports and the Latest Decisions in Retroactive NIL Compensation Lawsuits

*By Adam R. Bialek and Dara S. Elpren**

On July 24, 2025, President Donald Trump signed an Executive Order titled, "Saving College Sports," the stated purpose of which is to "protect student athletes and collegiate athletic scholarships and opportunities, including in Olympic and non-revenue programs, and the unique American institution of college sports."

The Order comes at a time of significant upheaval in college athletics, with ongoing debates over student athlete compensation, the future of non-revenue sports, and the overall structure of collegiate competition. Recent court decisions and the president's Executive Order are causing many to question whether the recent changes to monetary influence in college athletics is "saving college" sports or forever altering the landscape of "amateur" sports, diluting the difference between organized college sports and professional sports leagues.

College sports support more than 500,000 student athletes, but the impact of college sports on the public is even more significant. The University of Michigan alone averages more than 110,000 fans for their home games, and in excess of 12 million viewers watched the Michigan vs. Ohio State football game on television on November 30, 2024. Similarly, the National Collegiate Athletic Association's (NCAA's) March Madness averaged

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Fair Game? The NIL Era: Athletes, Colleges, Coaches and Donors

By Willow Clark, David Keller, Jennifer Mashaal, Samuel Nechi, William Wu[1]

Name, image, and likeness ("NIL") deals are booming among student-athletes at colleges across the country, as student-athletes are now able to generate income from their participation in college athletics on an unprecedented scale. The rapidly changing commercial and legal landscape in college sports, however, suggests a need for thoughtful and comprehensive reform, and likely the intervention of Congress and federal agencies. In this article, we will explore some considerations affecting various NIL stakeholders and propose a cross-compensation model for NIL-related athlete transfers that will help balance the interests of student athletes with those of colleges, coaches and donors.

Nonathlete NIL Stakeholders

A. Coaches

In addition to student-athletes, coaches are profoundly impacted by the current NIL deals, many of which are non-transparent, unverified, and potentially if not likely detrimental to both. The role of the college coach continues to shift, demanding not only strategic and recruiting acumen but also managerial, legal and financial skills.[2] To remain competitive, coaches have been forced to adapt their programs. Coaches must (1) connect student-athletes to brands and alumni to obtain competitive NIL deals; (2) include financial literacy training in their programs so that student-athletes can manage their earnings; (3) prioritize ensuring their team has a strong culture of fairness, transparency and communication to escape conflicts caused by NIL contracts; (4) build flexible rosters that take into consideration short-term tenures; and (5) use NIL opportunities strategically to retain top student-athletes.3

A first challenge for coaches is that some student-athletes may be more focused on short-term financial gain than practice.4 Second, coaches are

1 Willow Clark, David Keller, Jennifer Mashaal, Samuel Nechi, William Wu are law students at Georgetown University, University of Virginia, McGill University, Columbia University, and Northwestern University, respectively.

2 Don Philabaum, *The Exodus of College Coaches: NIL, Transfer Portal, and a Changing Landscape,* LinkedIn (Dec. 30, 2024), https://www.linkedin.com/pulse/exodus-college-coaches-nil-transfer-portal-changing-don-philabaum-suurc.

3 Robert Muhler, *How College Basketball Coaches are Adapting to the NIL Era,* College Insider, https://www.collegeinsider.com/coach-column/how-college-basketball-coaches-are-adapting-to-the-nil-era (last visited July 15, 2025).

4 Bruno Rukavina, *Penny Hardaway breaks down how the biggest problem of the NIL deals is that it takes away the hunger to succeed from players,* Basketball Network (Jan. 10, 2025), https://www.basketballnetwork.net/latest-news/penny-hardaway-breaks-down-how-the-biggest-problem-of-the-nil-

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Implications of Updated College Sports Commission Guidance Related to NIL Collectives, Transactions

By Bernard G. Dennis III & Jason S. Kaner, of Jackson Lewis

The College Sports Commission (CSC) has updated its guidance to clarify its enforcement position in response to questions over the continued viability of "NIL collectives" and transactions.

The CSC established the NIL Go portal in partnership with Deloitte as part of the House v. NCAA settlement. Through NIL Go, the Commission plans to review and approve all third-party NIL deals exceeding $600 to weed out pay-for-play agreements from legitimate transactions. The CSC will evaluate these NIL based on:

a) The nature of the payor's relationship with the athlete's institution (Associated Status);

b) Whether the payment serves a valid business purpose (VBP); and

c) Whether the compensation is comparable to similarly situated athletes engaged in similar promotional work – Range of Compensation (RoC).

According to its updated guidance, the CSC will evaluate the VBP of a transaction to meet all of the following conditions:

(1) Involve the promotion of a for-profit good or service;

(2) Reflect fair market value; and

(3) Serve a legitimate business purpose.

The Commission clarified that its definition of "for-profit" refers to the nature of the transaction, not the tax status or profitability of an entity. This clarification will permit NIL collectives to continue using dual funding sources (donors and commercial partnerships). NIL collectives are organizations, independent of a college or university, that pool funds from donors, alumni, fans, or businesses to help student-athletes profit from their NIL rights.

This clarification builds on prior CSC guidance outlining review of Associated Status to determine the NIL transaction's relationship with the student-athlete's institution and RoC using external benchmarks to capture a student-athlete's NIL value.

The update guidance allows for the CSC's comprehensive evaluation of each NIL transaction, but uncertainty remains. There is no precedent regarding CSC's review of these transactions. Thus, enforcement challenges based on inconsistent enforcement and lack of due process are probable. The CSC expects to review and make determinations prior to a transaction being finalized. Thus, the Commission's ability to make timely determinations and resolve challenges, including through arbitration, surely will affect future NIL deals.

(Summer Associate Gabrielle Painter contributed to this post.)

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NIL

Courtside With Women's Sports: NIL, Women's Collegiate Athletes, And The Law

By Sarah Rathke, of Squire Patton Boggs

I've been listening to Deja Kelly's fascinating podcast, NILosophy. Kelly is a lights-out women's basketball player, and a talented broadcaster. She and her guests – often but not exclusively young women – discuss the changing college sports world under NIL. And many times during these interviews, I have been struck by how quickly these young athletes have to grow up, and the sophisticated adult decisions they are called upon to make.

Many of these decisions have legal implications, but very few collegiate athletes have any legal training. Therefore, I wanted to use this post to highlight some common scenarios where athletes may benefit from legal advice in a NIL collegiate world.

This is particularly true for female college athletes, since they are less likely to participate in direct revenue-sharing at high levels, and equally if not more likely to find outside NIL deals.

First, I'd like to note that traditional practicing lawyers are not agents (although many agents actually are lawyers, though often not actively practicing law). Sports agents typically focus on securing commercial opportunities for their athletes. Attorneys, on the other hand, protect and secure their clients' legal rights.

Attorneys are also different from financial advisors, whose focus is generally on the strategic investment of client funds. However, attorneys can provide an independent check on agents and/or investment advisors, and have heightened confidentiality and fiduciary duties to their athlete clients. Moreover, most sports attorneys bill by the hour, rather than taking a percentage of their clients' earnings. Consequently, a contract review or similar analysis can be accomplished in a short amount of time, confidentially, with maximum benefit to the client.

Below is a short list of issues that collegiate athletes may face, which might benefit from legal advice. In short, legal issues are often confronted any time a large amount of money comes in or goes out of an athlete's portfolio, as follows:

- **NIL agreements** – including fully understanding the athlete's obligations and the meaning of potentially murky reputational or behavioral clauses;
- **Agent or investment advisor agreement review** – including ensuring that the costs to the athlete are standard, market, and fair;
- **Transfer opportunities** – including understanding their impact on existing revenue-sharing and NIL agreements;
- **IP branding, trademark, and other protections** – including protecting words, logos, and phrases associated with the athlete;
- **Cease and desist letters** – to curb unwanted or defamatory online activity;
- **Immigration issues** – for athletes and their families, including ensuring that athletes can legally be compensated for play in the United States;
- **Business formation** – athletes are businesspeople! Attorneys can assist with setting up business entities to maximize earnings and minimize potential liability;
- **Real estate purchases** – these are inherently legal agreements; athletes should be well protected;
- **Other large purchases or sophisticated investments;**
- **Gifts to family members, etc.** – including making sure that they comply with applicable tax laws;
- **Charitable foundation formation, partnerships, and assets** – athletes often want to give back to their communities, but need to be legally protected while doing so;
- **Sports camps** – athletes often run sports camps for youth in their communities, but also need to ensure they are legally protected from accidents, etc.

College Sports Commission Memo Addresses NIL Deals Involving Collectives

By Michael Sheridan

On July 10, 2025, the College Sports Commission ("CSC") issued a memo to Division I athletic directors to provide an update on NIL Go and other early trends post-*House* settlement.

The primary takeaway was the CSC asserting that "[a]n entity with a business purpose of providing payments or benefits to student-athletes or institutions, rather than providing goods or services to the general public for profit, does not satisfy the valid business purpose requirement of Rule (NCAA Bylaw) 22.1.3.[1] The CSC added that "most" of the NIL deals that have been denied by NIL Go since the system went live on June 11 involved agreements that failed to satisfy the valid business purpose requirement in Bylaw 22.1.3.

The CSC is implicitly targeting deals that student-athletes sign with collectives, which are often some of the most lucrative. Since July 2021, collectives have spread throughout college sports and staked a large position within the NIL marketplace. Contracts that student-athletes sign with collectives often require the athletes to promote the collectives, or attend events sponsored by collectives, which generates revenue to fund future NIL activity. This approach to compensating student-athletes for use of their NIL rights has sparked criticism of collectives within the industry, including by administrators and coaches who want stronger regulation in this area. The CSC memo marks the beginning of the new enforcement entity's efforts to police the NIL and revenue-sharing spaces.

Both The Collective Association ("TCA") and *House* plaintiffs' attorneys quickly released statements criticizing the CSC memo. TCA characterized the commentary as "not only misguided but deeply dismissive of the collective organizations and the tens of thousands of fans who fuel them." TCA added that "[a]ny attempt to delegitimize the role collectives play in today's collegiate athletics landscape ignores both legal precedent and economic reality." Counsel for the *House* plaintiffs called for a retraction of the memo, arguing that the CSC was undermining, and taking an approach inconsistent with, the terms of the settlement. The CSC is currently standing by its position but pledges to work with plaintiffs' counsel to resolve their concerns.

[1] **Bylaw 22.1.3 – Involvement of Associated Entities or Individuals in Student-Athlete Name, Image and Likeness Activities.** An associated entity or individual shall not enter into an agreement with or provide payment to a prospective student-athlete or student-athlete unless the agreement or payment terms, as determined by the name, image and likeness clearinghouse, are for a valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit, with compensation at rates and terms commensurate with compensation paid to similarly situated individuals with comparable name, image and likeness value who are not prospective student-athletes or student-athletes of the institution.

USC's Gould School of Law Taps Spander to Teach NIL Class

The University of Southern California's Gould School of Law has asked SLA member Debbie Spander to teach its first-ever class on Name, Image & Likeness, mixing in case law and experiential negotiations.

"I previously taught NIL, with husband Marc Isenberg, at USC Annenberg School of Journalism," Spander said. "I am excited to pivot to a class focusing on college sports/college athletes' legal fight to get where we are today, going all the way back to *NCAA vs Board of Regents* through the *House* decision and NIL Go, and culminating with simulated negotiations."

For Spander, the opportunity was too good to pass up.

"I am passionate about college athletes being treated equally from legal, economic and social standpoints," she said. "Ultimately, I want college athletes to have a seat at the negotiating table and full representation."

Spander is the ideal candidate to teach the class.

"I have been crafting and negotiating NIL-like deals for two decades," she said. "While NIL is relatively new

to college athletes, I have been negotiating sports sponsorship and marketing agreements for years. Everything that I do at my agency, Insight Sports Advisors (ISA), flows from protecting clients financially and legally and adding value to their professional careers. I am excited to share my knowledge base and professional experience with USC law students."

Prior to ISA, Spander was an agent at Wasserman Media Group, where she rose to Senior Vice President of its Broadcasting and Coaching Division representing high profile talent, coaches and executives. She was also a founding member of Wasserman's Diversity, Equity & Inclusion Council.

Spander began her media career at Fox Sports Networks, where she was the lead negotiator and lawyer for all national telecast licenses, including the ground-breaking $1.2B NASCAR telecast rights agreement. She also helped create Pac-10 Properties and re-launch the Pac-10 (Pac-12) basketball tournament, and structured and negotiated tens of millions of dollars in sponsorship and marketing agreements for Fox Cable Integrated Sales and Marketing.

Spander is a Director for the Arizona State University Bud Selig Sports Business & Law Program, and serves on the Boards of Team to Win, a Los-Angeles based charity which funds medical care and trainers for high school athletes and programs as well as for Westcoast Sports, a charity that funds after-school programs for underserved youth.

John Bramlette Named College Sports Commission Head Of Operations & Deputy General Counsel

The College Sports Commission has announced that John Bramlette will serve as its Head of Operations & Deputy General Counsel.

With "extensive legal, operational and strategic experience," Bramlette will help build and lead the organization as it begins its work "overseeing transformative changes to college athletics."

Bramlette will oversee many of the day-to-day operations of the Commission and provide legal counsel related to the new rules on revenue sharing, student-athlete NIL deals and roster limits. In partnership with the CEO, he will develop and execute strategic plans, manage key organizational priorities and hire and onboard additional team members. Additionally, Bramlette will manage the relationships with external partners and vendors to ensure the Commission's systems and technology support its mission.

Bramlette joins the College Sports Commission following "a distinguished tenure" with the Washington Nationals, where he most recently served as Chief of Staff & Senior Vice President of Internal Operations. In this role, he spearheaded cross-departmental initiatives to advance the organization's strategic goals, led personnel management initiatives, managed ballpark operations and guest experience, and represented ownership in key decision-making processes. Prior to that, he served as Vice President & Deputy General Counsel for the Nationals, where he advised team leadership on complex legal matters, including contract negotiations, compliance and litigation management.

Bramlette's career also includes leadership roles at Ripken Baseball, Washington Nationals Philanthropies, and The Headfirst Companies, as well as experience as a litigation associate at Nixon Peabody LLP. He holds a J.D. from the George Washington University Law School and a B.A. in Political Science with Honors from Haverford College, where he was a varsity baseball player.

Bryan Seeley, CEO of the College Sports Commission, expressed his enthusiasm for Bramlette's appointment: "John is an exceptional leader with a proven track record of managing complex operational and legal challenges. His experience in both sports and the legal field makes him uniquely suited to help guide the College Sports Commission as we work to build a fair, transparent, and sustainable future for college athletics. I am thrilled to welcome John to our team and look forward to the impact he will make."

Attorney Kayla Williams Joins the Sports Law Expert Podcast to Discuss Her Legal Work in Collegiate Athletics

Hackney Publications has announced that Kayla Williams of Lightfoot, Franklin & White, who offers expertise in the area of collegiate athletics and NIL, is the latest guest on the Sports Law Expert Podcast.

The segment can be heard here.

"Kayla is one of emerging young sports lawyers, who is making a name for herself in collegiate athletics," said Holt Hackney, the CEO of Hackney Publications. "Combine that with the fact that she is part of a highly respected legal team at Lightfoot and it is easy to see why we selected her as a guest."

In addition to her work in collegiate athletics, Williams also handles cases involving toxic torts, product liability, and employment discrimination.

She earned her J.D. from Tulane Law School. A three-year merit scholar, Williams refined her skills in oral advocacy, while serving as the head coach of the Tulane Moot Court team. Earning several recognitions during law school, she was honored as a Greater New Orleans Martinet Society Scholarship Recipient, ABA Negotiation National Finalist, National Black Law Student Association Negotiations Finalist and Tulane Intraschool Champion.

In addition to securing her sports law certification at Tulane, Williams clerked for the U.S. Olympic and Paralympic Committee in Colorado Springs. During that time, she expanded her knowledge of NIL and collegiate legal matters, managing client intake for anti-doping charges and sexual harassment and abuse allegations. Williams also offered mediation and dispute resolution resources to athletes at the Tokyo Olympics.

For more on her background, visit here.

About Hackney Publications

Hackney Publications is the nation's leading publisher of sports law periodicals. The company was founded by journalist Holt Hackney. Hackney began his career as a sportswriter, before taking on the then-nascent sports business beat at Financial World Magazine in the late 1980s. A few years later, Hackney started writing about the law, managing five legal newsletters for LRP Publications. In 1999, he founded Hackney Publications. Today, Hackney publishes or co-publishes 25 sports law periodicals, including Sports Litigation Alert.

Antitrust and Sports: Legal Framework and Evolving NIL Landscape

By Sabria McElroy and Savannah Mora, of Boies Schiller Flexner

Sports organizations in the United States have long operated under a patchwork of legal precedents and statutory exemptions that have largely shielded them from antitrust liability in the past. But as professional and collegiate sports become increasingly intertwined with technology, media, streaming platforms, and other commercial sectors, there has been a shift. Recent high-profile cases signal that litigants, enforcers, and courts are increasingly scrutinizing whether specific arrangements are truly necessary for the sporting product or merely a tool to grow profits.

The U.S. sports industry would not exist without some level of cooperation among competitors. Professional sports teams, for instance, are independent business entities that compete for victories, merchandise sales, and fan loyalty. But they must work together—to establish playing rules and competitive formats, coordinate scheduling, and negotiate broadcasting agreements—to establish the framework within which that competition occurs. Similarly, in collegiate athletics, the NCAA and its member institutions must coordinate on eligibility requirements, recruitment rules, academic standards, and competitive formats to create a competitively balanced system of intercollegiate competition. The Supreme Court recognized this reality in *NCAA v. Board of Regents*, noting that horizontal restraints on competition are "essential if the product is to be available at all" in the context of collegiate sports. 468 U.S. 85, 101 (1984).

This inherent need for cooperation distinguishes sports from most other commercial industries and has histori-

cally been used to justify more lenient antitrust treatment for restrictions and agreements that promote competitive balance. Major League Baseball (MLB), for example, has benefited from a broad, though antiquated, antitrust exemption since the Supreme Court's 1922 decision *Federal Baseball Club v. National League*. Other major professional leagues—the NFL, NBA, and NHL—are subject to antitrust laws but they have generally succeeded in defending their practices in antitrust challenges. The Supreme Court's 2010 decision in *American Needle v. NFL* clarified that these leagues are not single entities immune from antitrust scrutiny for all purposes and emphasized that their agreements should be evaluated under the "flexible rule of reason" that considers both anticompetitive effects and procompetitive justifications. This analysis has often served as a protective shield for sports leagues, allowing them to defend coordinated conduct by demonstrating its necessity for maintaining competitive balance or protecting the integrity of the sport.

Congress also shaped the landscape with the Sports Broadcasting Act (SBA) of 1961, which grants a limited antitrust exemption for the collective sale of over-the-air broadcast rights by the "Big Four" professional sports leagues (NFL, NBA, MLB, and NHL). The Act, which enabled leagues to negotiate lucrative national television contracts and share the revenues among all teams, was intended to promote competitive balance and support the growth of professional sports.

However, the expansion of sports into streaming, data monetization, and merchandising has increased antitrust risks. As leagues and their partners enter new commercial areas, their conduct affects markets beyond traditional competition, and courts are less likely to defer to sporting justifications when arrangements appear to primarily maximize profit.

Recent developments illustrate this trend:

Streaming and Media Rights: The migration of sports content from traditional broadcast and cable to digital streaming platforms has triggered new antitrust challenges. Leagues and media companies are negotiating exclusive streaming deals and bundling rights, raising concerns about market concentration and consumer access. Courts have generally held that the SBA's protections do not extend to agreements involving paid television services or streaming platforms—a significant limitation as the industry shifts away from traditional over-the-air broadcasting toward subscription-based streaming models that fall outside the Act's coverage.

Recent litigation has focused on whether joint ventures and exclusive streaming arrangements stifle competition and inflate prices for consumers. For instance, the NFL's exclusive Sunday Ticket arrangement with DirectTV (now with YouTube TV) led to a $4.7 billion jury verdict in 2024, later overturned by the trial court judge, over allegations of anticompetitive bundling. The case, now on appeal, centers on whether bundling out-of-market games into a single expensive package violates antitrust law. The DOJ is also investigating Disney's proposed acquisition of a controlling stake in FuboTV, examining whether the merger would unduly concentrate the sports streaming market and eliminate competition between direct rivals.

Sports Data and Betting Technology. Leagues have long treated the collection and commercialization of live sports data as an ancillary revenue opportunity, but the explosive growth of in-game betting has turned this data into a valuable input for this market. Major sports leagues and their exclusive data partners have moved aggressively to secure and monetize control over "official" league data through long-term, exclusive licensing agreements with select data companies. These practices are already being challenged through litigation. Earlier this year, PANDA Interactive, which offers a digital streaming and betting platform, alleged that dominant data providers, Genius Sports and Sportradar, have engaged in anticompetitive tying and market allocation schemes. According to the amended complaints, defendants—who have secured long-term exclusive data distribution rights with major sports leagues and the NCAA—condition the use of this essential data on the use of their proprietary betting technology, effectively excluding rival technology platforms from the market. PANDA Interactive also asserts that defendants have divided exclusive rights across major sports leagues, creating a duopoly that hurts consumers and impedes the entry of innovative competitors. These claims echo broader concerns raised by legal scholars about the risks of monopolization in sports data markets, particularly as leagues seek to leverage their control over game information into dominance over downstream technology and betting services.

Exclusive Merchandising Deals. Exclusive merchandising agreements between sports leagues and apparel or equipment companies have also come under antitrust scrutiny as the commercial stakes in sports merchandising rise. These deals, in which sports leagues often grant a single company the right to produce and sell official league merchandise, can generate substantial revenues for both leagues and their partners. However, critics argue that such exclusivity may stifle competition and ultimately lead to reduced output and inflated prices. As leagues enter into increasingly complex, multi-platform agreements, companies in the sports industry should anticipate heightened antitrust risk in this area.

Athlete NIL and Compensation. As leagues, players associations, and teams, enter into lucrative partnerships with merchandise companies, media platforms, and sportsbooks, the value of athlete-driven marketing has soared. This shift has triggered a wave of antitrust challenges to restrictions that limit athletes' compensation and ability to profit from their name, image, and likeness (NIL), particularly at the college level, where longstanding NCAA rules prohibiting student-athletes from receiving compensation have faced repeated legal challenges. The recent settlement in *House v. NCAA* represents a pivotal development: the NCAA agreed to pay nearly $2.8 billion in back damages and to implement a revenue-sharing model that will allow college athletes to receive direct compensation for the use of their NIL.

These NIL challenges are not confined to college sports. A class action brought by professional tennis players this year against the world's leading men's and women's pro tours alleges that the sport's governing bodies operate as a cartel and engage in anticompetitive practices that harm players, including requiring players to assign their NIL rights to the tours and tournament organizers for use in media, advertising, and promotion without compensation and preventing players from entering into independent sponsorship agreements with brands outside of a narrow set of approved categories.

The professional tennis players' federal antitrust lawsuit also demonstrates how the growing commercialization of the sports industry—and the accompanying revenue generated by sports leagues, teams, and governing bodies—fuels scrutiny of the disparity between organizational profits and athlete compensation. In their complaint, the players highlight the "eye-popping sums of money" generated by the defendants' media rights and sponsorship deals. The players argue that, through wage and ranking manipulations, the pro tours keep the fruits of the multibillion-dollar global industry to themselves. Similarly, this February a federal judge approved a $375 million settlement for over 1,100 former UFC fighters after a decade-long wage suppression battle in which the fighters' declarations revealed that many lacked access to healthcare and other necessities. The fighters alleged that the UFC—which by 2023 earned over $1 billion in revenue, an increase largely due to media rights and content fees—paid its fighters less than 20% of total UFC revenues, compared to the over 50% of league revenue shared with athletes by the NBA, NFL, MLB, and NHL.

Given the rapid growth of sports betting, streaming platforms, and athlete NIL opportunities, additional litigation is particularly likely in areas involving exclusive data and merchandising agreements, digital media bundling arrangements, and restrictions on athlete compensation and sponsorship rights. As the sports industry continues to expand into new commercial frontiers, organizations and their partners must navigate an increasingly complex antitrust landscape where traditional justifications for cooperation are subject to heightened scrutiny. Ongoing legal challenges and regulatory investigations underscore the need for careful compliance and proactive risk management as the boundaries between sports, technology, and media continue to blur.

Sabria McElroy, Partner, Boies Schiller Flexner

Sabria is a partner in Boies Schiller Flexner's Fort Lauderdale office. Her practice focuses on representing clients on both the defense and plaintiff's side in high-stakes disputes involving antitrust, financial services, and technology issues. Sabria has been recognized as a Lawdragon 500 Leading Litigator, one of Global Competition Review's 2025 Women in Antitrust, and by Bloomberg Law in 2022 as one of the nation's Top 40 Lawyers Under 40 in the antitrust practice area.

Savannah Mora, Associate, Boies Schiller Flexner

Savannah is an associate in Boies Schiller Flexner's Fort Lauderdale office. Her practice focuses on high-stakes civil litigation on behalf of both plaintiffs and defendants in federal and state court. Her work at the trial and appellate level includes commercial and employment disputes, election law issues, shareholder actions, and antitrust

Navigating the Noise: Sports Lawyers Look at NIL and Other Issues

By Oliver Canning

The complicated and often contentious relationship between music and sports licensing captivated a Friday panel during the 50th Annual Sports Lawyers Association Conference. Experts in the field and industry leaders explored the evolving landscape, the complexities of Performance Rights Organizations (PROs), the nuances of music use in stadiums versus social media, the impact of Name, Image, and Likeness (NIL) deals, and the emerging questions and considerations surrounding AI-generated content in sports.

Guiding the discussion was Loren Mulraine, Partner at Spencer Fane, who utilized his expertise in entertainment and sports law to moderate the panel. He was joined by a distinguished group of legal minds: Valeria Williams, Vice President and General Counsel for the Tennessee Titans, offering an in-house perspective from a top NFL franchise; Tim Epstein, Partner at Duggan Bertsch LLC, who frequently represents promoters, venues, and talent in sports and entertainment; Jim Dudukovich, Partner at Nelson Mullins, with extensive experience in advising brands in advertising, intellectual property, and influencer marketing; and Carron Mitchell, Partner at Nixon Peabody LLP, with an impressive track record in intellectual property, music, and entertainment law, particularly as it applies to licensing and publishing.

Valeria Williams, VP and General Counsel, Tennessee Titans

Williams provided a behind-the-scenes look at how an NFL team handles music licensing. She clarified the distinction between the team's own PRO licenses, which cover music played within the stadium during games, versus licenses required by external third-party event promoters using their venue. "We have our own PRO licenses," Williams explained, "[b]ut when events come to our venue, whether it's a concert [or] a live event, we look to that event promoter to have their own specific license." She stressed that the NFL provides a licensing library for in-game music but cautioned this doesn't necessarily clear fan-captured social media clips containing that music.

Addressing the NIL era, Williams noted the commercial implications for athletes. "If they're selling their own merch and promoting themselves and their brand . . . and they're pulling music from an Instagram library, they might not think that that's a commercial use, but it is." This point by Williams highlights the need for an audit of how athletes use music in their content. Furthermore, Williams discussed the team's internal challenges, educating social and marketing teams on the complexities of reposting player content that might feature unlicensed music, even if the player is in team attire. On the topic of AI, she stressed a proactive approach for sports organizations, urging for "parameters, governing measures, setting an AI policy," and robust risk assessment, noting the NFL's own AI regulatory initiatives to manage the inevitable growth and use of such technology.

Tim Epstein, Partner, Duggan Bertsch LLC

Epstein drew parallels between music licensing and collective bargaining, explaining how PROs are increasingly seeking a larger share of event revenue beyond just performance fees, asking for percentages of VIP lift, parking, merchandising, and ticket sales. This demand, he noted, is being fiercely and actively contested and resisted by promoters. He also crucially outlined the need for synchronization licenses when music is paired with video, a common occurrence with fan recordings or team-generated content. "That's going to require you to . . . get a license from the owner of the sound recording . . . and then you're also going to need a license for the composition side," Epstein explained, underscoring the potential complexity with multiple rights holders.

Epstein also emphasized the importance of contractual protections, encouraging lawyers to include clauses for indemnification and to advise and educate their clients—whether they are athletes or promoters—on their responsibilities. He further pointed out the issue of the "empty pocket" if an individual talent is sued but lacks the funds for indemnity, making education and financial awareness of the utmost concern. Another significant point he raised was the distinction between event sponsorship and individual endorsement, where brands might try to leverage event content

to imply an athlete endorses their product without a separate agreement. Finally, Epstein touched upon the often-contentious morals clauses in contracts, urging attorneys to understand their clients' proclivities and not to accept overly broad clauses from venues that could restrict the types of artists or events that can be booked.

Jim Dudukovich, Partner, Nelson Mullins

Dudukovich focused heavily on the digital realm, particularly the common misunderstandings and myths surrounding social media usage. He highlighted how young social media managers for teams or brands often misapply personal social media habits to commercial accounts, where fair use principles typically don't apply. Educating creatives so that they understand what they may do on their personal social media, but not on a brand's social account, is therefore essential to partnership success, especially with influencer social media account "takeovers." He also pointed out the crucial difference between general music libraries on platforms like TikTok and Instagram and their separate, often more restrictive, commercial libraries intended for business use.

Dudukovich warned that technology has made enforcement easier for rights holders. "The technology is there now that when you're posting music on social media, the public will find out . . . the technology is going to trap us." He provided examples of major trendy brands facing lawsuits for unlicensed music in social media content. Beyond just contractual clauses for liability, he advocated for due diligence on any third-party creating content and for using contracts as an educational tool, especially with less sophisticated parties like influencers. When it comes to AI, Dudukovich cautioned against using technology to create "sound-alike" music in a bid to avoid licensing fees, as the prompts themselves could be "your smoking gun" in an infringement case. He suggested using AI for tasks one already has familiarity with, wherein the accuracy and the appropriateness of the result can be more easily verified.

Carron Mitchell, Partner, Nixon Peabody LLP

Mitchell also shed light on the intricacies of music libraries themselves, explaining that even if a song is in a platform's commercial library, issues can arise if "there might be co-writers on that song [whose] publisher didn't agree to put those songs in the commercial library." This can make individual tracks unavailable or problematic even though they initially appear usable. She also addressed user-generated content (UGC), stating, "[i]f you're using that user's video to promote the brand, promote the team," then it becomes a commercial use requiring appropriate clearances.

A key area Mitchell addressed was the impact of NIL on student-athletes, who tend to lack sophistication when it comes to licensing. "A lot of student athletes don't know that they need to have the right licenses in place," she observed, particularly when brands encourage or request that they create promotional content and posts. She warned that brands sometimes attempt to offload the licensing burden onto their talent and that "publishers, the record labels, they're going after talent themselves." Her advice to athletes and their agents and representatives is to explore royalty-free music options or to have the proper synchronization licenses secured and in place for use in branded content.

Loren Mulraine, Partner, Spencer Fane (Moderator Insights)

Beyond guiding the conversation, Mulraine offered direct insights. He clarified the difference between a "master use license" (for the original recording) and a "song license" (for the underlying composition). This, he explained, is the reason why "sometimes when you see commercials on TV and there are songs played, it's not the original version of a song," as it can be cheaper to license only the composition for a new recording. Mulraine also used a trademark example case involving a Gatorade commercial with college athletes to illustrate licensing complexities, noting subtle distinctions in how different university branding was displayed, likely due to varying agreements. He stressed that lawyers, especially those advising NIL athletes, need to have a "holistic view" in order to be able to anticipate potential "potholes" their clients may not see, emphasizing the lawyer's role in preventing future litigation through diligent up-front work.

The panel collectively reinforced that as sports, media, and technology continue to increasingly intertwine, a thorough understanding of music licensing—from traditional PROs to the latest AI tools—is more vital than ever for sports lawyers and their clients to avoid costly litigation and ensure compliant and legitimate use of musical works.

Continued from page 2

9.3 million viewers on television over the first two rounds, with the national championship averaging 18.1 million viewers. With annual revenues in the billions of dollars, college sports is big business.

The business goes beyond just the athletics. In a report commissioned by tourism venue Destination Ann Arbor, the economic impact of Michigan football games on the region found that the football season alone generated $226.7 million in direct visitor spending from visitors to Ann Arbor who live outside the county. Local boosters and third parties who stood to gain from the impact, along with die-hard fans, created a cottage industry of finding ways to support their local universities, and in some cases athletes, by contributing hundreds of millions of dollars to schools and arranging for student athletes to find jobs or have benefits provided to their family members. Thus, college sports have far-reaching implications to the economies of large and small cities and towns across the country. Any change that could impact that calculus could send ripples through the economy. College sports have therefore been a guarded industry – until recently.

With the legal, administrative, and legislative changes that have arisen over the past few years, student athletes now command more control over their images and their ability to transfer schools, and the leverage that schools previously had over college sports may be changing. While the large revenue-producing sports have often controlled what schools can do with non- or low-revenue-producing sports, many people worry about the impact that the change in college sports could have on the availability for scholarships and opportunities for students to participate in the lesser-known or non-monetized sports.

Key Provisions of the Executive Order

Ban on Third-Party "Pay-for-Play" Payments

The change in the college sports equilibrium and the potential impact it could have on non-revenue sports (and the athletes who participate in such sports) did not go unnoticed by the government. President Trump's Executive Order draws a line between permissible and impermissible compensation for student athletes. While it continues to allow legitimate, fair-market-value NIL (name, image, likeness) endorsement deals, it explicitly prohibits any payments from third parties – including boosters and collectives – that amount to "pay-for-play." This provision is intended to curb the growing influence of outside entities in recruiting and retaining athletes, while still permitting athletes to benefit from their personal brands. The Order, however, went further to try to ensure the integrity of the college sports system and the opportunities it has offered many student athletes.

As the White House's "Fact Sheet" notes, "President Trump recognizes the critical role of college sports in fostering leadership, education, and community pride, the need to address urgent threats to its future, including endless litigation seeking to eliminate the basic rules of college sports, escalating private-donor pay-for-play payments in football and basketball that divert resources from other sports and reduce competitive balance, and the commonsense reality that college sports are different than professional sports."

Support for Women's & Non-Revenue Sports

The Order takes a tiered approach to preserving and expanding opportunities in women's and non-revenue sports:

- Programs with more than $125 million in athletic revenue (2024–2025) must increase scholarships and roster spots for women's and non-revenue sports such as gymnastics and track.
- Programs with $50–$125 million in athletic revenue are required to at least maintain current scholarship levels in these sports.
- Programs with less than $50 million in athletic revenue or without revenue-sharing sports must avoid reducing scholarship opportunities or roster spots in women's and non-revenue sports.

This structure is designed to ensure that the financial pressures facing major college athletic programs do not result in cuts to women's and non-revenue sports, which have historically been vulnerable during periods of budget tightening.

Clarifying the Employment Status of Student Athletes

A central issue in recent years has

been whether student athletes should be classified as employees, with all the attendant rights and obligations. The Order directs the Secretary of Labor and the National Labor Relations Board to issue guidance or rules clarifying that student athletes are *not* employees. The stated goal is to preserve the amateur status of college athletes and protect the viability of non-revenue sports, which could be threatened by the costs associated with employee status.

Antitrust Shield & Federal Oversight

The Order instructs the Attorney General, the Department of Education, and the Federal Trade Commission to:

- Develop enforcement strategies within 30 days
- Use Title IX, federal funding decisions, litigation, enforcement, and administrative actions to protect student athletes, uphold competitive balance, and stabilize college sports amid antitrust challenges.

This provision is a direct response to the wave of antitrust litigation that has challenged NCAA rules and the traditional structure of college sports. By invoking federal oversight and enforcement, the Order seeks to provide a legal shield for colleges and universities as they navigate these challenges.

Consultation with Olympic & Paralympic Authorities

Recognizing the role of college sports in developing elite athletes for international competition, the Order requires the White House Domestic Policy team to consult with U.S. Olympic and Paralympic organizations. The goal is to ensure that college sports continue to serve as a pipeline for Olympic and Paralympic success, and that any changes to the collegiate model do not undermine the United States' competitiveness on the world stage.

Impact of the Order

The Order's language on pay-for-play keeps the status quo by largely restating the current NCAA rules and many state law prohibitions against direct payments to student athletes for their athletic performance, while still permitting legitimate, fair-market-value NIL deals. Effectively, the Order makes no real impact or changes as to how college sports currently operate.

However, the Order does mandate interesting new protections for scholarships and roster spots for women's and non-revenue sports. While Title IX already requires gender equity, this specific, revenue-based tiered approach to preserving and expanding opportunities in non-revenue sports is new and could force some athletic departments to rethink their resource allocation.

Finally, the Order marks a significant shift in college sports by bringing the federal government into the NIL rule-making space, by instructing the Secretary of Labor and the National Labor Relations Board to issue guidance or rules clarifying that student athletes are not employees, and instructing federal agencies to implement a layer of oversight that does not currently exist. We have yet to see exactly how the federal government will become involved.

While the Order seeks to address pressing concerns about athlete compensation, the future of non-revenue sports, and the legal status of student athletes, its effectiveness will depend on implementation, enforcement, and the evolving legal and political context. Colleges, athletes, and stakeholders should closely monitor further guidance and potential litigation as the Order's provisions take effect.

Update: Lawsuits on Retroactive Compensation for NIL

In previous articles, we discussed several lawsuits against the NCAA pertaining to the retroactive compensation of NIL student athletes who played prior to June 15, 2016. These litigations are fairly active, and decisions are issued frequently that could change the landscape of the "business" of college sports.

On April 28, 2025, U.S. District Court Judge Paul A. Engelmayer granted the NCAA's motion to dismiss a proposed class action by 16 former men's basketball players accusing the NCAA of exploiting them long after their careers ended. *Mario Chalmers et al. v. National Collegiate Athletic Association et al.*, 1:24-cv-05008, in the U.S. District Court for the Southern District of New York. Judge Engelmayer agreed with the NCAA that the plaintiffs' claims expired long ago.

On July 18, 2025, Ohio U.S. District Court Judge Sarah D. Morrison in *Pryor v. National Collegiate Athletic Association et al*, 2:24-cv-04019, in the U.S. District Court for the Southern District of Ohio, Eastern Division, dismissed Pryor's proposed class action. Judge Morrison found that Ohio State was immune from the claims due to sovereign immunity under the Eleventh Amendment and that Pryor's claims against the NCAA, OSU, and others were untimely.

The next day, on July 19, 2025,

defendants in *Denard Robinson et al. v. NCAA et al.*, 2:24-cv-12355, in the U.S. District Court for the Eastern District of Michigan, filed a Notice of Supplemental Authority requesting that the Court take notice of the decision in *Pryor* in support of their motion to dismiss. As expected, on July 21, 2025, plaintiffs responded in opposition to the defendants' notice, arguing that the merits of the two cases are materially different and that the defendants misrepresent Judge Morrison's analysis.

Similarly, since the decision in *Pryor*, plaintiffs (the "Cardiac Pack") in *Members of North Carolina State University's 1983 NCAA Men's Basketball National Championship Team et al. v. National Collegiate Athletic Association et al.*, 2024CVS17715, in the North Carolina Business Court, have argued that the Order in *Pryor* has no bearing on the issues in their cases. The plaintiffs argued that it "does not address questions central to resolving Defendant's Motion to Dismiss, such as the timeliness of Plaintiffs' misappropriation, UDPTA and monopoly claims, and it side-steps the critical question of whether Claim One (price-fixing) is timely if, as Plaintiffs here allege, the forms did not validly convey rights to the NCAA."

Nevertheless, on August 7, 2025, the court in the "Cardiac Pack" case issued an order and opinion dismissing plaintiffs' claims. Special Superior Court Judge for Complex Business Cases Mark A. Davis found that the statute of limitations expired and that the players lacked a legally enforceable right of publicity in the game footage under North Carolina law.

Further, on August 15, 2025, former Heisman trophy winner Reggie Bush urged a Los Angeles Superior Court judge to reconsider his tentative ruling that would dismiss Bush's claim that accused the NCAA, USC, and the Pac-12 Conference of exploiting his NIL. The Court had issued a tentative ruling finding that the statute of limitations expired on Bush's claims, as he last played college football two decades ago, and that he had signed a contract giving up his NIL rights in perpetuity.

Taken together, these decisions underscore a growing judicial consensus that, whatever the merits of the underlying NIL theories, claims seeking retroactive compensation for pre-2016 conduct are largely time-barred. Federal judges in New York and Ohio, as well as a North Carolina Business Court, have all concluded within the past few months that the applicable statute-of-limitations periods expired well before the plaintiffs filed suit, and defendants in other jurisdictions are already invoking those rulings to bolster their own dismissal motions (with a decision pending in Los Angeles Superior Court). The prevailing trajectory suggests that most, if not all, retroactive NIL compensation lawsuits will continue to rest on timeliness grounds.

Will the new rules and the court decisions change college sports, or will they save college sports as President Trump's Executive Order claims? Change is likely and has already been seen with athletes moving more freely through the transfer portal and elite athletes selecting schools based on their "NIL packages." Yet college sports continue to garner higher attendance and ratings, and show no signs of slowing. It may, however, take years to see the impact on smaller schools, the lesser-known or non-revenue sports, as well as women's sports, and to see whether the president's Order helps to "save" college sports.

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facing retention challenges, with yearly student-athlete turnover. The transfer portal creates a dynamic where student-athletes explicitly or implicitly may coerce their athletic programs into seeking more lucrative NIL deals (or they may transfer to another college).5 Coaches must often re-recruit their own student-athletes after each season.6 Last, coaches are facing decreased authority regarding team culture, academic advancement, etc., as student-athletes have new leverage in transferring elsewhere for better NIL deals.7 In sum, juggling the evolving NIL landscape makes it increasingly difficult for coaches to maintain their multifaceted role while also fostering athlete development and team success.

B. Colleges

Colleges across the country are divided as to whether NIL is beneficial for college athletics -- nearly half of athletic directors anonymously surveyed stated that they do not support student-athletes being compensated for commercial use of their NIL.[8] For high-performing student-athletes, NIL creates a strong incentive to consider transferring to a different college for a richer or longer-term NIL deal.[9] However, under the current system, colleges are not compensated by the colleges to which their student-athletes transfer, regardless of whether or not those student-athletes have an existing NIL deal.[10] This poses a significant problem for colleges that lose student-athletes to the transfer portal, as these colleges are unable to capture any reimbursement for the time, money, and effort their coaches invested in recruiting and developing their student-athletes.[11]

C. Donors

College donors are also divided as to the way that NIL incentivizes student-athletes to choose one athletic program over another and as to other impacts on their alma maters and teams. More traditionally, donors would rather donate to a college as a whole than donate to NIL initiatives, trusting the college's overall budgeting and allocation process and/or donating on a restricted basis to specific sports programs. However, some ultra-wealthy college donors have single-handedly recruited top student-athletes to colleges of their choosing by donating to an NIL initiative.[12]

Donors can benefit by having the opportunity to become more involved (singularly involved in some cases) with athletic programs and to form relationships with exciting student-athletes.[13] Indeed, because NIL collectives are independent of colleges and coaches, some mega-donors may, unhelpfully, start to resemble and act more like professional team owners than passive supporters and fervent fans.[14]

Student-Athletes

The most important stakeholders in the NIL landscape are, of course, the student-athletes, who are poorly served by the current patchwork of NCAA, state, college, and conference rules and regulations affecting their daily lives and prospects.

As one example, student-athletes must understand the disclosure, financial and tax implications of NIL agreements.[15] While many colleges

deals-is-that-it-takes-away-the-hunger-to-succeed-from-players.

5 *Id.*

6 *Id.*

7 CleanKonnect Education Team, *Will NIL Ruin the Authority of Coaches?* CleanKonnect (May 10, 2023), https://nilcertifications.cleankonnect.com/blog/will-nil-ruin-authority-coaches.

8 *What Do Athletic Directors Think About Name, Image and Likeness?*, Athletic director u, https://athleticdirectoru.com/articles/what-do-athletic-directors-think-about-name-image-and-likeness/ (last visited July 15, 2025).

9 Will Schiffler, *Exploring the Impact of NIL on College Athletes in the Transfer Portal*, The Minnesota Republic (Apr. 2, 2024), https://mnrepublic.com/10136/sports/exploring-the-impact-of-nil-on-college-athletes-in-the-transfer-portal/.

10 Stewart Mandel, *How is College Football Trying to Rein in "Wild West" of Transfers? Make Players Pay to Leave*, The Athletic (Mar. 14, 2025), https://www.nytimes.com/athletic/6197275/2025/03/14/college-football-transfer-portal-nil-contract-buyout-clauses/.

11 Eli Boettger, *An Analysis Of College Football Return On Investment*, Athletic director u, https://athleticdirectoru.com/articles/analysis-of-college-football-return-on-investment/ (last visited July 15, 2025).

12 *Michigan Flipped QB Bryce Underwood With Some Help From Oracle Founder Larry Ellison And Tom Brady*, Fox Sports, https://www.foxsports.com/articles/cfb/michigan-flipped-qb-bryce-underwood-with-some-help-from-oracle-founder-larry-ellison-and-tom-brady (last visited July 17, 2025).

13 *Id.*

14 *See* Jason Penry, *Insights from Top NIL Supporters at the Group of 5 Level*, Athletic director u, https://athleticdirectoru.com/articles/insights-top-g5-nil-supporters/ (last visited July 15, 2025).

15 *See Student-Athletes Involved in Name Image Likeness (NIL) Agreements Should Be Aware of Their Tax Obligations*, Taxpayer Advocate, https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-

are beginning to offer student-athletes education and training regarding NIL, the NCAA currently limits the advice and legal and financial services that colleges can provide to student-athletes.[16] There are also financial and opportunity ramifications from the *House v. NCAA* settlement, whereby colleges who opt into the settlement may now provide scholarships to student-athletes but subject to new roster limits for each sport, which could mean as many as 13,000 roster spots lost (and any related NIL opportunities).[17]

Student-athletes interested in seeking out alternative athletic opportunities through the transfer portal may face conflicting priorities. For one, NIL deals may be the driving factor in a student-athlete's decision to transfer. Because of this, student-athletes may neglect to focus on academics, athletics, their potential "fit" at the college, and more when choosing the college to which they will transfer.[18] Further, before a student-athlete even considers transferring, they may spend significant time seeking NIL deals, leaving less time to focus on academics and athletics, which could harm their future transfer potential and/or prospects.[19] Lastly, there may be negative mental health implications associated with the evolving NIL structure as student-athletes face increasing pressure from coaches, family and friends to secure NIL deals.[20]

Recommendations

The emergence of NIL, and the changing legal landscape, have created financial benefits for some student-athletes, but also problems and uncertainty for all stakeholders. Indeed, some have questioned the viability of college athletics as we have known it.[21] Accordingly, there is a need for policymakers, particularly the NCAA, Congress and federal agencies, to introduce and/or refine standards that address all stakeholders' interests related to college athletics. One idea that policymakers should consider is implementing a transfer fee system like professional soccer's Premier League.

A. Premier League Model

A Premier League model for managing the transfers of college student-athletes would introduce a transfer fee, paid by the college acquiring an athlete to the college that loses them. Professional soccer athletes often transfer between clubs throughout their careers. Under the regulations set by FIFA, the global governing body for the sport, professional soccer athletes are required to sign binding contracts with their respective clubs, which can last for up to five years.[22]

If another club wishes to acquire a professional soccer athlete before the expiration of their existing contract, it must negotiate and pay a transfer fee to the professional soccer athlete's current club as compensation for terminating the agreement prematurely.23 College athletics could adopt a similar model.

Today, coaches recruit and sign student-athletes, use significant resources to train and develop them. A transfer fee system could help "level the playing field" particularly for smaller and less wealthy programs by providing colleges/coaches with compensation to be used toward their athletic programs when they lose an athlete. The fee could be structured as a percentage of the NIL and overall revenue package the student-athlete secures from their new college. Importantly, this fee should not come out of the student-athlete's contract itself, but rather operate as a separate payment, much like the transfer fee in global soccer, which is paid between clubs and kept separate from the professional soccer athlete's negotiated compensation.

Smaller athletic departments often rely on the revenue generated by their top student-athletes through fan engagement, donor contributions, advertising and media deals. This transfer fee system could give smaller-budget colleges continued incentive to recruit aggressively and help them

student-athletes-involved-in-nil-agreements-should-be-aware-of-their-tax-obligations/2023/12/ (last visited July 18, 2025).

16 *See* Ben Cahill, *Understanding Tax Implications of NIL Income for NCAA Student Athletes*, CLA (Jan. 1, 2025), https://www.claconnect.com/en/resources/articles/25/tax-implications-of-nil-income-for-college-athletes.

17 *See* Kristi Dosh, *New Roster Limits Set by House v. NCAA*, Business of College Sports (June 8, 2025), https://businessofcollegesports.com/other/new-roster-limits-set-by-house-v-ncaa/.

18 *See supra* note 12.

19 *See* David Hitz, *Embracing Change: The Forward Trajectory of NIL in College Sports*, Athlete Narrative (May 14, 2024), https://athletenarrative.com/blog/embracing-change-the-forward-trajectory-of-nil-in-college-sports/.

20 *See* William L. Hollabaugh, *Name, Image, and Likeness and the Health of the Young Athlete: A Call to Action for Sports Medicine Providers and the Athletic Healthcare Network*, National Library of Medicine (Nov. 20, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10916771/.

21 *See* Ben Nuckols, *NCAA head warns that 95% of student athletes face extinction if colleges actually have to pay them as employees*, Fortune (Feb. 24, 2024), https://fortune.com/2024/02/24/ncaa-college-sports-employees-student-athletes-charlie-baker-interview/.

22 *See How does a football transfer work?*, BBC (Aug. 28, 2017), https://www.bbc.com/worklife/article/20170829-how-does-a-football-transfer-work.

23 *Id.*

avoid becoming "farm team" operations for big-time programs. With a transfer fee in place, small colleges could recoup some value if a top athlete moves on, making the risk of losing talent more manageable. A potential challenge to implementing the transfer fee system is the fact that student-athletes are not classified as employees as they are in the Premier League. In the Premier League, the transfer fee is used to buy the right to contract with a professional soccer athlete before their contract expires.

Reclassifying Student-Athletes as Employees

If all Division I student-athletes were classified as employees, it would provide coaches, student-athletes and colleges with reliability, flexibility and enforceability in their athletic programs. It would allow colleges to create legally binding contracts that include term lengths, NIL rights and individualized student-athletes incentives, bringing greater uniformity, transparency and enforceability to college sports and particularly the NIL market.

In *Johnson v. NCAA*, the Third Circuit accepted the argument that at least some student-athletes may be classified as employees, entitling them to the gamut of employment protections that they currently lack. The court in *Johnson* created a four-part test to further define what qualifies as an employee. According to the test, an employee "(a) perform[s] 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.'"[24] Student-athletes should be reclassified as employees since they satisfy all prongs: (a) playing for the colleges, (b) doing so necessarily and primarily for the colleges' benefit, (c) acting under the control of the colleges, and (d) in return for the express or implied compensation from NIL and scholarships. Two main reasons student-athletes are not currently treated as employees are (i) the nonprofit status of colleges, and (ii) Title IX implications.

Colleges fear that classifying student-athletes as employees could (i) jeopardize their 501(c)(3) nonprofit status, which provides critical financial benefits such as federal tax exemptions, eligibility for charitable donations, and access to public funding and grants, and (ii) result in new obligations including payroll taxes, workers' compensation, health benefits and compliance with labor laws, burdens that colleges currently avoid under the amateurism model. This problem could be solved if Congress or the courts created narrowly tailored exemptions, such as limited antitrust or nonprofit status protections, specifically for college athletics. Further, Congress, the NCAA, or the newly created College Sports Commission could decide whether colleges should be required to, or are exempted from, paying student-athletes a minimum wage if they are to be considered employees. As a result, colleges could simultaneously avoid taking on these new obligations as well as the associated risk of losing their nonprofit status.

Additionally, to avoid entangling academic institutions directly in employment relationships, the employment structure could be shifted to a centralized body, similar to how Major League Soccer holds athlete contracts on behalf of teams.[25] In this way, collegiate athletic conferences, the NCAA, or a third-party entity (e.g., the College Sports Commission) would contract with student-athletes directly and hold such contracts on behalf of individual college teams. Then, if a student-athlete entered the transfer portal and another college wanted to add the student-athlete to their roster, the receiving college would purchase the rights to the student athlete's employment contract, held by a third party, from the sending college.

Regarding Title IX issues, employment status could trigger equal pay requirements across men's and women's sports, potentially leading to widespread legal challenges and significant financial strain on colleges. In *Johnson v. NCAA*, the Third Circuit acknowledged that if student-athletes in high-revenue sports only, primarily football and men's basketball, qualify as employees under the Fair Labor Standards Act, a gendered divide in compensation could emerge.

Both 501(c)(3) nonprofit status and Title IX problems could arguably be resolved by Congress or courts creating narrowly tailored exemptions such as limited antitrust or nonprofit

24 *See Johnson v. National Collegiate Athletic Association*, Harvard Law Review (Feb. 10, 2025), https://harvardlawreview.org/print/vol-138/johnson-v-national-collegiate-athletic-assn-108-f-4th-163-3d-cir-2024/.

25 Mutonga Kamau, *How Major League Soccer Handles Player Transfers and Contracts*, Cleats, https://vocal.media/cleats/how-major-league-soccer-handles-player-transfers-and-contracts (last visited July 15, 2025).

status protections, specifically for college athletics, and by shifting the employment relationship for Division I student-athletes to a centralized body that holds student-athlete contracts on behalf of colleges.

Conclusion

The future of college athletics depends on a bold reform that balances the interests of all stakeholders. Implementing a transfer fee system would compensate colleges for lost athlete investments and bring better stability to the transfer portal. Reclassifying student-athletes as employees would allow for enforceable contracts, promote transparency in the NIL market, and provide legal protections that benefit all stakeholders, while add-ons such as centralized employment through conferences or limited nonprofit exemptions could address legal and financial concerns. Together, these proposals would help create a more transparent, equitable, and sustainable model of college sports that benefits student-athletes, colleges, donors and fans.