



Law Dean's Conference on Navigating a New Era in College Sports

*Panel 3: The Academic Perspective on Collegiate
Sports and Evolving Economic and Societal Norms*

Maureen Weston Professor of Law

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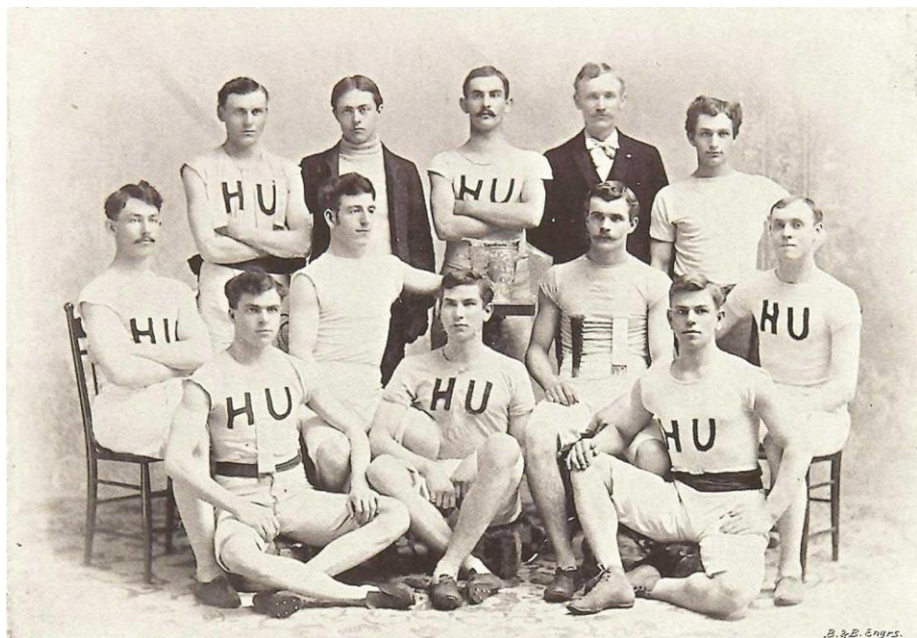
U.S. College Sports

The New (not necessarily improved) Era

State of US College Sports ...



How did we get here?



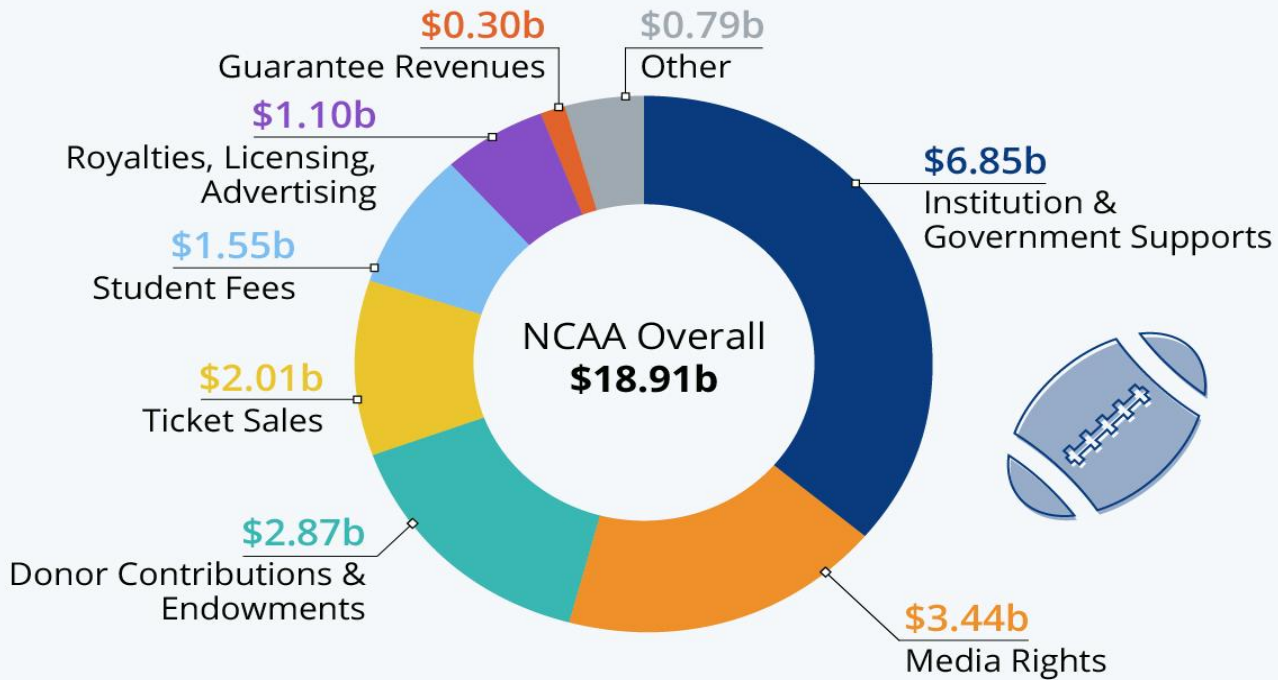
U.S. College Sports: Amateur/Education Model (*RIP*)

- Since 1906, NCAA regulatory body for intercollegiate sports
- 1,200 member institutions; 500k+ student-athletes, 24 sports
- Sports as part of Higher Educational Program
- “Amateurism” Eligibility Requirement
 - No Pay for Play
 - No Endorsements
 - No Agents
 - Protection from exploitation*
 - No commercialism, **yet**



U.S. College Sports Are A Billion-Dollar Game *FOR SOME*

Total revenue generated by NCAA athletic departments in 2019, by source



Source: National Collegiate Athletic Association



NCAA March Madness:

\$1B from media rights fees, ticket sales, corporate sponsorships, and ads anchored around the three week long tournament.

Coach Salaries: \$1-10M

D-I FBS Football Revenue & Media Deals

Power 4 (\$11.8 B)

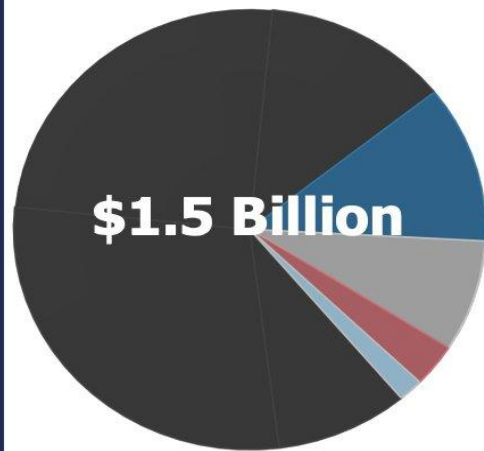
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U.S. College Sports: A Billion Dollar Game *(for some)*



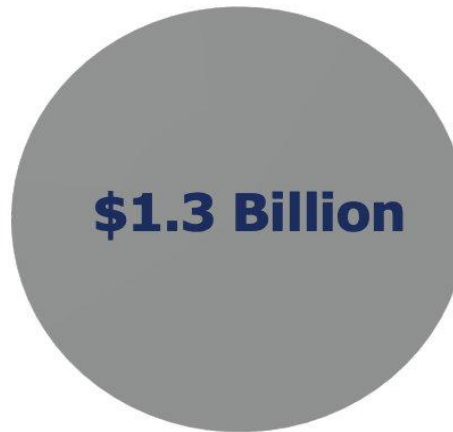
2027 Projected Annual Gross Revenue



- **1,100** schools
- **\$600M+** to **352** DI Schools
- Revenues from **90** NCAA Championships only
- Funds national costs of FBS Football (legal, insurance, rules, eligibility, etc.)
- Distributions incentivize NCAA priorities



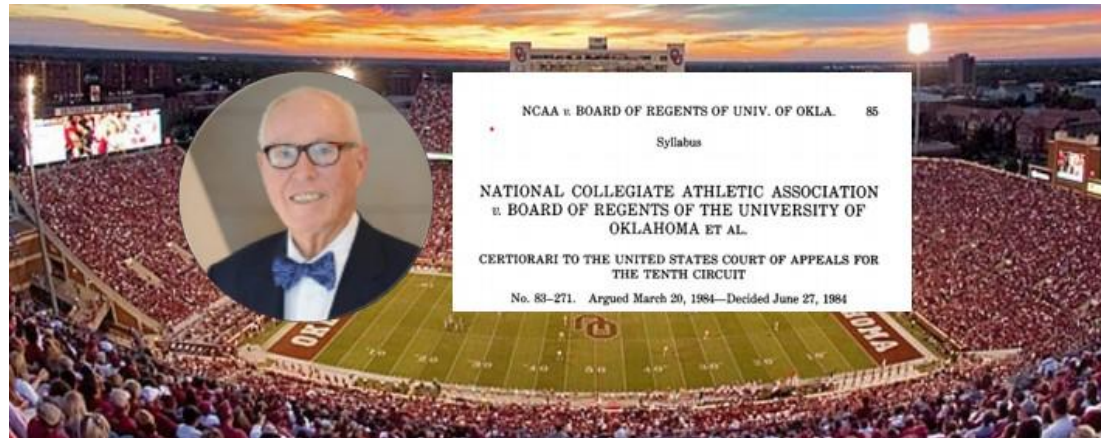
COLLEGE
FOOTBALL
PLAYOFF



- **\$1.1B (90%)** to **67** P4 Schools
- Revenues from **1** non-NCAA Championship
- Pays NCAA **\$0** for operating FBS Football
- Distributions incentivize FBS Football success

Antitrust Challenges to NCAA Rules – *why FBS Keeps \$\$*

- *OU Board of Regents v. NCAA*, 468 U.S. 85 (1984)
 - NCAA Television Plan controlled and fixed the sale, price, appearances of NCAA football games to TV networks;
 - Held: Violated Sherman Antitrust Act – Horizontal Price Fixing
 - *Thus, Conferences & Schools Right to Negotiate Own Media Deals*
 - *Law v. NCAA*, (9th Cir) (limits on coach pay violated antitrust law)
- But ...*
- "In order to preserve the character and quality of the [NCAA's] 'product,' **athletes must not be paid**, must be required to attend class, and the like."



From the Court to Court



Antitrust Attacks on Amateurism: Use of Player Images (NIL)

- *Bloom, et. al.* (2008 -)
 - Pro Skier Needed Endorsement to fund Olympic Sport
 - Courts Upheld Restriction on Athlete Endorsements
- *O'Bannon v. NCAA* (9th Cir. 2015)
 - Full Cost of Attendance
- *Alston v. NCAA*, (US 2021) (9-0)
 - Unlimited *education-related* + “Alston” benefits
- State “Fair Pay to Play” [NIL] Laws (next day)
- Transfer Portal (2021) (2024): No Limits/Window



“The Wild West” of NIL Dealmaking, Collectives + Transfers

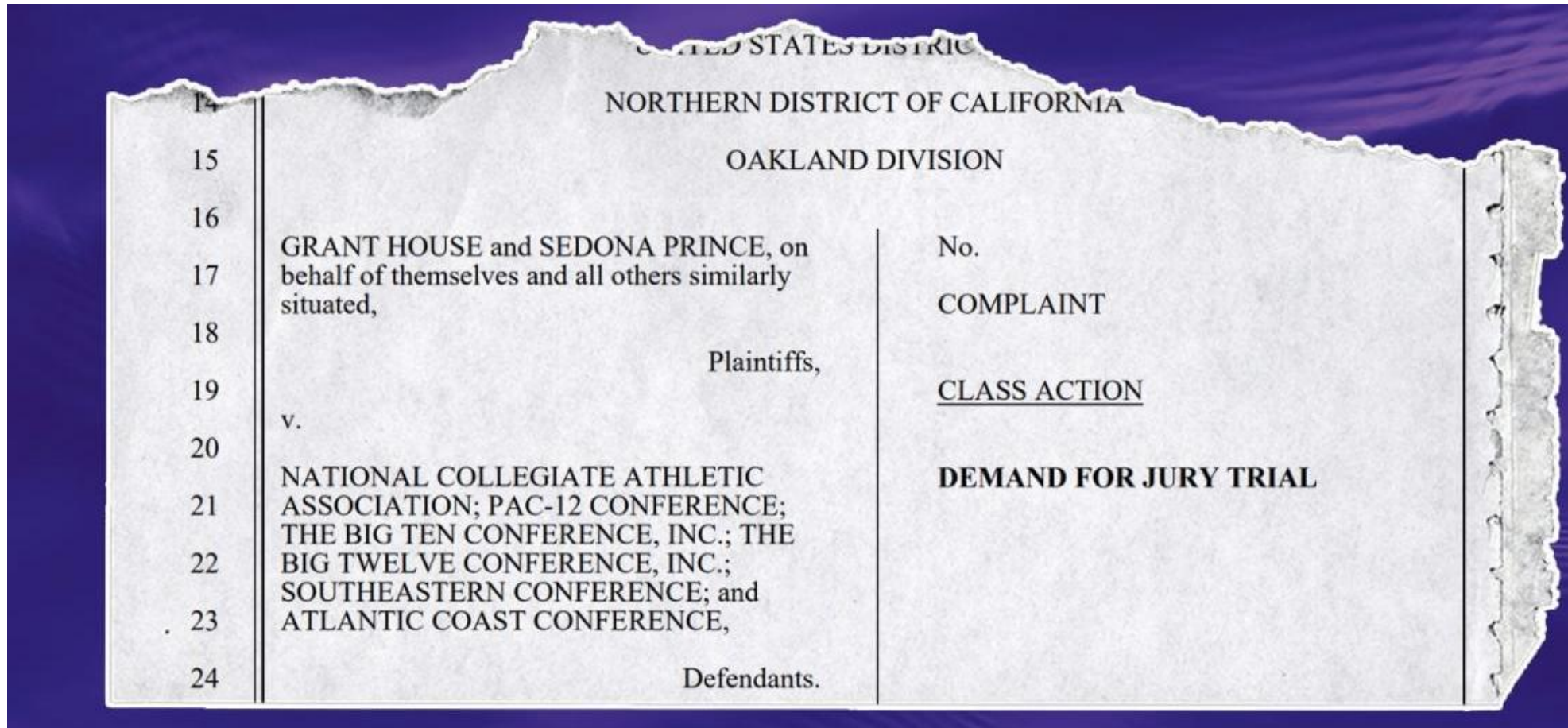
- Thousands of NIL deals, varied levels
- Immediate Eligibility for Transfers
- Roster Mayhem
- Collectives de facto paying players
- Coach Calipari: “People are looking to us' on how to handle NIL deals”



The New NIL Era Run Amok: The Intent was Never for Schools to be the Brokers for Athlete NIL Deals

- Schools implore **Boosters** to provide NIL deals
- Pop-up organizations, marketing, tech agencies and “agents”
- Donor-led collectives are pushing the sport toward a more professionalized model, blurring the lines between endorsement contracts and employment deals
- Cash as well as comp cars, apartment rentals and free meals
- Athlete compensation and recruiting through NIL
- Tax-Exempt Charitable Purpose Suspect





House v. NCAA (N.D. Calif. 2020)
In re College Athlete NIL Litigation
Class Action Antitrust Challenge for NIL Pay Rights

HOUSE V. NCAA

- **Plaintiffs:** Class of student-athletes including Grant House (ASU swimmer); Sedona Prince (Oregon Women's Basketball); and Tymir Oliver (Illinois Football).
- **Defendants:** NCAA, Member Schools, Power 5 Conferences
- Class action suit filed June 2020 claiming Ds violated antitrust laws for restricting their NIL compensation for NCAA participation. Sought:
 - (1) an injunction voiding the policies prohibiting them from earning NIL compensation, and
 - (2) damages based on earnings they could have received if not for the NCAA's prohibitions.Protracted Litigation: \$750M Plaintiff Attorney Fees

The House “Settlement” (June 6, 2025)

- **“Back Pay” Damages:** \$2.8 billion to D-I athletes (2016- 2024)
 - Football-75%; M & W Basketball-20%; Other sports-5%
- **“Revenue” Sharing:** Division I member schools can "opt in" to initially **pay own athletes*** up to 22% revenues (initial cap \$20.5M annually)
- **No Limits on Scholarships, but Roster Caps ****
- **3P/Athlete FMV & VBP NIL Ks permitted**
- **College Sports Commission**
- **“NIL GO” 3d party NIL Ks >\$600**
 - Deloitte “Fair market value” database/review
 - Snitch HotLine
- **Arbitration & Enforcement**



New Governing Body?

College Sports Commission (CSC)

- Created by NCAA & Power 5 as a for-profit LLC
- Regulates revenue-sharing and NIL compliance
- NILGo platform (run by Deloitte) reviews deals VBP & FM
- Aims to control collectives
- Uses arbitration [with subpoena power?]
- Member “Participation Agreement”*
- Snitch Line & Investigations



How NIL Go Works

Evaluation will be based on:

Associated Status

The relationship(s) between the Deal Sponsor and/or Deal Facilitator and a given institution

Valid Business Purpose (VBP)

Whether a deal is being made with the purpose of using the student-athlete's NIL for a valid business purpose related to the promotion or endorsement of goods or services being provided to the general public for profit

Range of Compensation (RoC)

Whether the compensation paid to the student-athlete is commensurate with compensation paid to similarly situated individuals

CSC Deal Review & Outcomes

NIL Go analyzes the information provided by the student-athlete to determine if based on the information provided the third-party NIL deal is:

- **Cleared** –deal meets necessary requirements and can proceed.
- **Not Cleared** – Deal fails to meet necessary requirements. Athlete has three options to consider
- **Flagged for Additional Review** –due to concerns regarding associated status, compensation amount, or contract terms. CSC will conduct an additional review and provide guidance to the athlete.

If a deal is not cleared, student-athletes can:

1. **Revise the deal and resubmit:** Athletes have the option to work with the Deal Sponsor and/or Deal Facilitator to renegotiate the deal and resubmit it to NIL Go.
2. **Cancel the deal:** SAs have the option to cancel the deal and refund any money already received.
3. **Appeal to neutral arbitration:** Student-athletes can appeal through a neutral arbitration process to obtain a neutral review of the decision.

SA who continues with the deal as submitted may face enforcement consequences, i.e., loss of eligibility.

18 Nebraska football players challenging CSC over rejection of third-party NIL deals worth over \$1 million

- Ross Dellinger, Yahoo Sports (March 10, 2026)

- **NEBRASKA, HUSKERS ATHLETES SHARE REPRESENTATION IN CSC ARBITRATION**, Daniel Libit, Sportico (March 14, 2026)

- Joint Representation of School & 18 s
- QB \$3M Dylan Raiola (2025)
- State NIL Law: entities can't penalize players
- CSC Arbitration



Legal & Practical Challenges: The 'Opt In' Arms Race

- **Title IX Gender Equity** Challenges to Revenue-Sharing Deals
 - Oregon Women Title IX Lawsuit on NIL Collectives
- **Employee Classification Q** - Federal Employment & Labor laws
 - *Johnson v. NCAA*, (3rd Cir. 2024), remand to E.D. Pa. for FLSA trial
- Non-Revenue/**Olympic Sports** at Risk
- Sustainability of Fund-Raising (**Donor Fatigue**)
- **Agent** and Collective Regulation Issues
- Financial Literacy and **Taxation** Concerns
- **Continued Litigation**: 4 Year Eligibility; Statute of Limitations
- Challenges to the Settlement and CSC Regime

Executive Order #1 (June 2025) EO#2 (April 2026?)

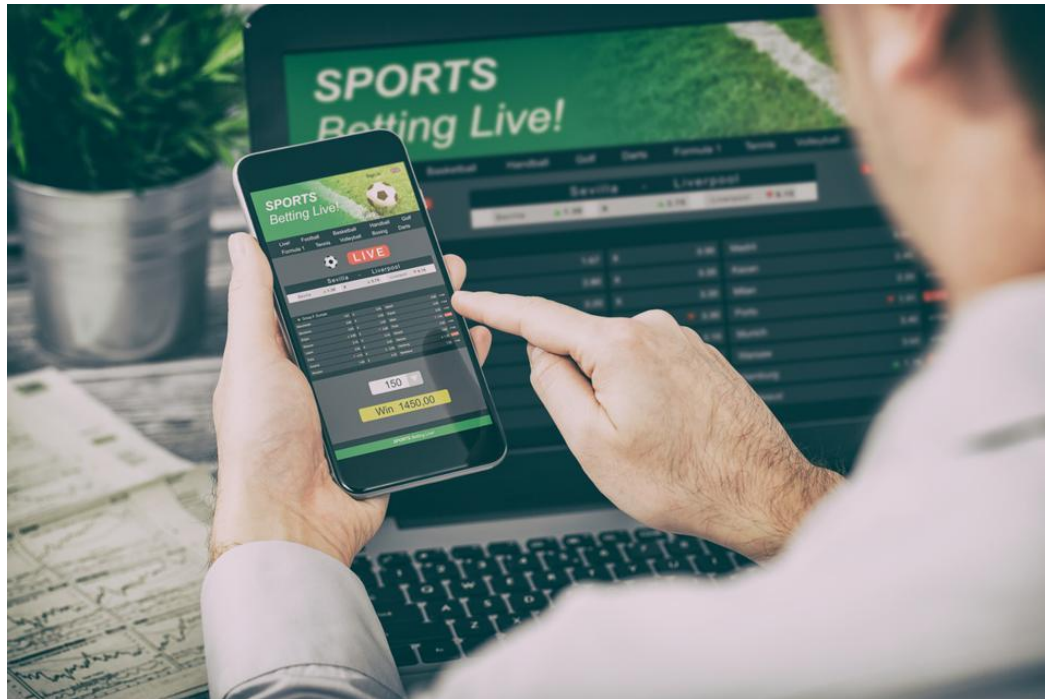
- “This has created an out-of-control, rudderless system in which competing university donors engage in bidding wars for the best players, who can change teams each season. Meanwhile, more than 30 States have passed their own NIL laws in a chaotic race to the bottom, sometimes to gain temporary competitive advantages for their major collegiate teams.”



What Comes Next?

- Proposed Federal legislation vs. State Fragmentation
 - **SCORE ACT** (Student Compensation & Opportunity through Rights & Endorsements)
 - Federal NIL standard; antitrust immunity; no employee status; transfers (1x); eligibility; collectives (limits); Olympic sports (resources)
 - **SAFE ACT** (Student Athlete Fairness & Enforcement Act)
 - National SA protections; amend SBA to allow conference pooling of broadcast rights; limit transfers; regulate and cap agent fees
- Unionization and Collective Bargaining
- **Private Equity** | LLC | License school IP, facilities, employ athletes?
- Institutional Stratification -> “**Super D-1 League**”?
- **Governance:** uncertain future of CSC and NCAA
- Reports some collectives & athletes bypass NILGo altogether

Other Student-Athlete Concerns



*An
Academic's
Perspective
....?*



Thank you

The Big 12 Law Deans' CLE on Navigating a New Era in College Sports

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Six Misunderstandings About Legal Issues in Contemporary College Sports

- This presentation will address what I regard as six misunderstandings about the application of labor, employment, antitrust and intellectual property laws to contemporary college sports.

1. “NIL Deals are about NIL”

- This is **often untrue**, especially in the context of college athletes who play football or basketball at power conference schools.
- NIL has become a popular moniker in the 2020s, and it is often framed as a “new right,” but it is based on a longstanding IP law principle—the right of publicity.
- NIL is the removal of a restraint on college athletes to use a right they already had. They can now use their right of publicity without running afoul of NCAA eligibility rules.
- Prior to 2021, college athletes who signed endorsement, sponsorship or influencing deals could be deemed ineligible, and thus lose their scholarship.

- Some colleges and their boosters, through collectives, have used NIL to recruit and retain top athletes, who sign what are ostensibly called “NIL deals” but their compensation is better understood at pay-to-play, which the NCAA prohibits.
- These deals function as signing bonuses or employment contracts.
- The House settlement is supposed to address this issue through the creation of the College Sports Commission, but the practice of using NIL for recruitment is still occurring.
- Some NIL deals are legit, meaning they resemble what in pro sports are called endorsement or influencing deals.

2. “The Supreme Court Gave College Athletes NIL Rights”

- This is **false** even though major media have written that.
- NCAA v. Alston (2021) was an antitrust case (not a right of publicity or “NIL” case) that concerned NCAA rules limiting member schools’ ability to reimburse athletes for education-related expenses.
- The case had nothing to do with NIL. In Alston, neither the phrase “name, image and likeness” nor “NIL” appears even once in the roughly 13,000 words in the opinions.
- In ruling against the NCAA, the Court made clear that the NCAA is not owed deferential review under antitrust law.

In ruling against the NCAA in *Alston*, the Court made clear that the NCAA is not owed deferential review under antitrust law.

The NCAA had effectively enjoyed deferential review through *NCAA v. Board of Regents* (1984), but *Alston* explained that case was dicta.

Alston means NCAA rules that regulate athlete compensation are subject to ordinary antitrust scrutiny.

3. “Extending Sports Broadcasting Act to College Sports Would Be a Game Changer”

- This is **largely false**.
- The SBA provides a limited antitrust exemption to professional football, basketball, baseball and hockey leagues when they and their teams negotiate TV contracts that provide “**sponsored telecasting**” of games.
- Some members of Congress want to amend the SBA to include college sports, in hopes that this would allow colleges and conferences to more efficiently market media rights and generate more revenue to fund women’s and Olympic sports.

- As several federal courts have held over the years, the SBA's antitrust immunity applies only to "**sponsored telecasts**"—meaning over-the-air telecasts that were free to watch so long as an antenna picked up the signal.
- Sponsored telecasts fit the technology and economics of the 1960s.
 - Sponsors paid for commercials, which provided revenues to networks and regional affiliates airing those commercials.
 - This arrangement also greatly expanded fan bases, as viewers could watch games on TV for free.

- As the decades marched on, sponsored telecasts became less relevant to live sports viewing.
- **Sponsored telecasts do not include telecasts transmitted by cable, paid satellite, or streaming.**
- That is a significant limitation, since fewer than 20% of homes in the U.S. have antennas and sports viewing nowadays is usually through cable, paid satellite and streaming services.
- The SBA could be amended to include modern means of transmission, but that would be controversial – see *NFL Sunday Ticket antitrust* litigation.

4. “The Score Act Would Immunize NCAA, Schools from Athlete Lawsuits”

- This is **largely false**.
- The act would confer antitrust protection to the NCAA and its members when they establish rules regarding player economics.
- It would also declare that college athletes aren't employees and that state laws can't conflict with the act.

- Problem: It's not a positive that an exemption is "needed" when some data shows that defendants in antitrust cases have won 97% of the time (see Maurice Stucke's work).
 - Antitrust exemptions are unpopular. As the U.S. Department of Justice bluntly stated in 2021, "competition through free enterprise and open markets is the organizing principle for the U.S. economy."
 - Even when exemptions are enacted, the Supreme Court has stressed they must be narrowly construed.
 - In January 2021, Trump signed the Competitive Health Insurance Reform Act into law, repealing key aspects of the antitrust exemption for insurance, including coverage for the "business of health insurance."

- Problem : Any federal college sports law would likely face a bevy of legal challenges.
 - Advocates for states' rights could argue the law interferes with rights traditionally understood as belonging to the states, including the topics of public university employment and unionization, and the right of publicity.
 - Equal-protection claims on grounds the law denies college athletes the same rights and opportunities as their classmates who don't play sports.
 - Free speech claims if the law restrains NIL opportunities and interferes with First Amendment freedom of expression.
 - Non-delegation problem with legislation that delegates regulatory power to private athletic associations such as the NCAA or College Sports Commission.

5. “Trump Executive Order is the Solution”

- This is **probably false**.
- An executive order attempting to create an antitrust exemption from the Sherman Act would be immediately challenged.
- A president cannot unilaterally rewrite a statute to suit preferred policies, and Article I of the U.S. Constitution vests lawmaking power in Congress.
- Amending a statute must go through Congress, which drafted the statute.
- As the U.S. Supreme Court recently held in rejecting Trump’s attempts to impose tariffs through the International Emergency Economic Powers Act, the president must be authorized by a statute’s actual text.

- An executive order declaring that college athletes cannot be employees or unionize would invite challenges under the NLRA and the FLSA, both of which govern employment.
- Even if an order that college athletes are not employees survived judicial review, it wouldn't prevent some athletes from being classified as employees under state law.
- All 50 states have their own labor and employment statutes, which vary widely and govern employment at public universities.
- Trump may favor executive orders, but for the NCAA and colleges, they offer little stability.

6. “College Athletes Aren’t Employees”

- This is **under attack**.
- *Johnson v. NCAA*: Male and female athletes from Division I programs argues that student athletes are employees within the meaning of the FLSA and state minimum wage laws. Athletes seek unpaid minimum wages as far back as 2016.
- Division I colleges and the NCAA, as a membership organization, are depicted as joint employers, meaning they together control and share responsibility for athletes’ scheduling, supervision and other workplace-like conditions.
- As stressed in the complaint, NCAA rules apply to all athletes on an equal basis, and those rules govern recruitment, eligibility, hours of participation, discipline and other topics that are portrayed as employment terms.

- The plaintiff athletes maintain that college athletes are student employees, in the same vein as work-study students who are paid to perform tasks in campus offices, dining halls, libraries and bookstores.
- Student employment is legally distinguishable from professional employment.
 - For example, student employment is exempt from FICA taxes (Social Security and Medicare) that apply in ordinary employment.
- As the athletes point out, some work-study students have jobs in athletics, such as student ticket takers, seating attendants and food concession workers at NCAA contests.
- Those students, unlike their classmates who compete in NCAA contests, are paid on a minimum wage scale.

- The four-part “economic realities” test that weighs whether college athletes (a) perform services for another party, (b) necessarily and primarily for the college’s benefit, (c) under the college’s control or right of control and (d) in return for “express” or “implied” compensation or “in-kind benefits.”
- Interscholastic athletics aren’t part of any academic curriculum or course, and aren’t conducted for academic credit. Further, the life and career skills obtained through college sports are depicted as the kind found in work environments.
- The athletes also insist that they perform services for the benefit of colleges while under the control of their colleges, including when they pick courses.

- The athletes underscore how colleges provide the “tools and means,” such as training, equipment and preventative care, needed for them to play NCAA sports. These allegedly resemble the “in-kind compensation provided by pro sports teams to pro athletes,” consistent with employment.
- Likewise, the athletes insist they aren’t independent contractors or volunteers who “would have to cover” their expenses “out of pocket.” The athletes can’t switch schools for a new gig like an independent contractor in information technology or ride sharing.

- Maybe colleges would be better off if some athletes were employees, unionized and bargained rules.
- Even when colleges sign multi-year NIL contracts, some of those players have left. In January, Duke sued QB Darian Mensah, who signed an NIL deal through 2026, for breach of contract after he entered the transfer portal to transfer to Miami. Duke sued a student over a transfer—a matter of enrollment, not employment. Mensah had contractually pledged not to transfer when he signed his NIL deal.
- Cincinnati is suing QB Brendan Sorsby, who started for school in 2024 and 2025 and recently transferred to Texas Tech,.

Don't Forget Dartmouth Basketball



- On Dec. 31, 2024, the union representing Dartmouth College men's basketball players withdrew their petition to the National Labor Relations Board.
- But remember: In February 2024, NLRB regional director Laura Sacks held that the Dartmouth players were employees within the meaning of the NLRA because the players perform work in exchange for compensation (including preferred admissions into an elite university, per diem, clothing, sneakers, etc.) and the school has the right to control that work.
- The decision remains as citable, persuasive authority and has not been reversed or vacated.

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20 YEARS LATER, TEACHING SPORTS LAW IS A WHOLE NEW BALLGAME

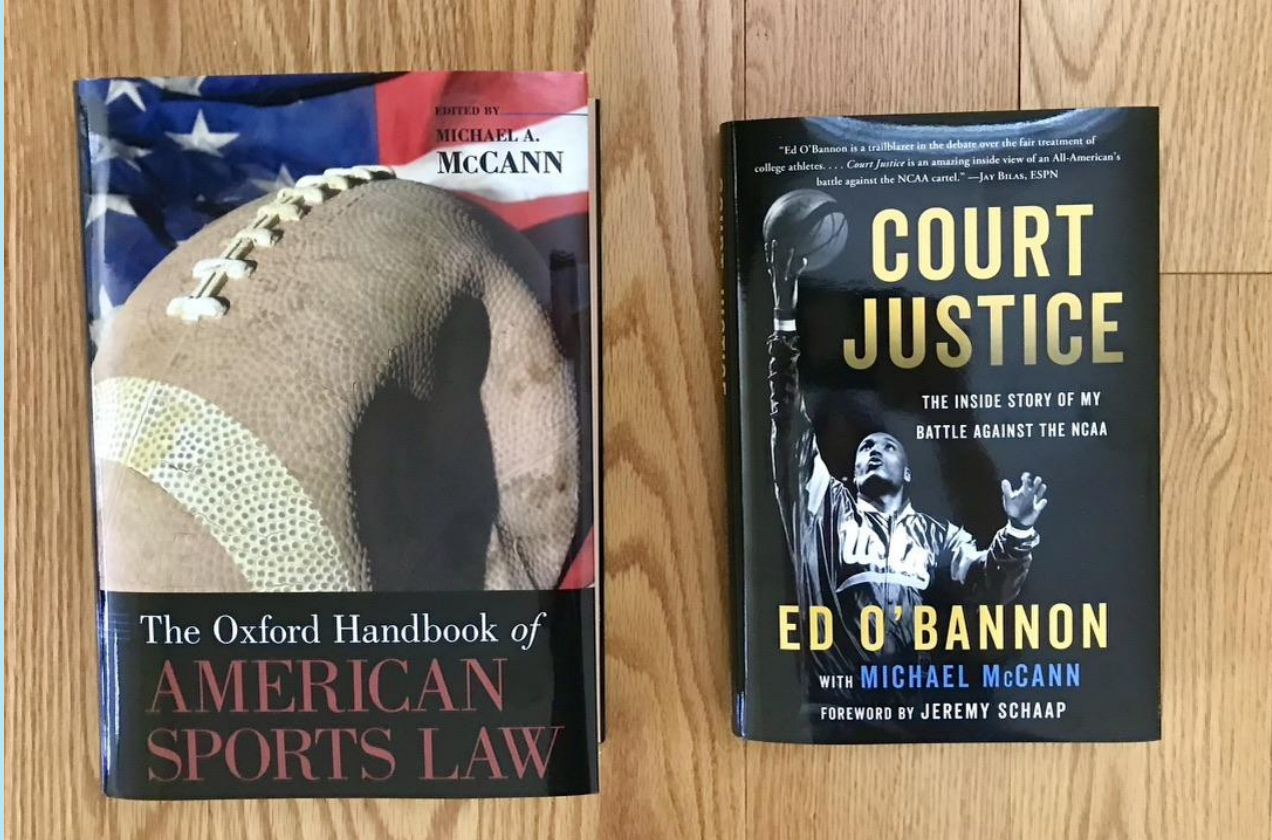
BY MICHAEL MCCANN  September 8, 2025 5:55am



Ed O'Bannon's case was a catalyst for major changes to sports law and how the course is taught.
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**VIRGINIA SPORTS AND ENTERTAINMENT
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**ILLEGAL DEFENSE: THE IRRATIONAL ECONOMICS OF BANNING
HIGH SCHOOL PLAYERS FROM THE NBA DRAFT**

MICHAEL A. McCANN

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Maurice Clarett and one of his lawyers
in *Clarett v. NFL* 20 Years later.

