

HUSCH BLACKWELL



2024 NCAA Compliance Report










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About Husch Blackwell's Higher Education Practice

Husch Blackwell's Higher Education practice group comprises more than 40 attorneys located throughout the firm's nationwide, 20-plus-office footprint.

Our team is unique for an Am Law 100 law firm in that we tackle both day-to-day operational and legal challenges for our clients and also provide counsel on issues of tremendous reputational or strategic importance, such as high-profile litigation, sensitive internal investigations, and large capital projects. Simply put, there is no area of higher education that our team can't handle.

Within that framework, our team routinely assists clients with:

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|  Compliance and strategy |  Litigation and administrative actions |
|  Collegiate athletics and NCAA compliance |  Labor and employment |
|  Student affairs |  IP prosecution, litigation and licensing |
|  Title IX |  Data privacy |
|  Title IV Federal Student Aid |  Mergers, acquisitions, and changes of control |

As one would expect from such a large and varied team, our lawyers serve clients across the spectrum of higher education, including:

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|  Major research institutions |  Religiously affiliated institutions |
|  Private colleges |  Community colleges |
|  Academic medical centers |  Regional universities |
|  Nursing and allied health schools |  Proprietary schools and publicly traded school groups |

Welcome to Husch Blackwell's 2024 NCAA Compliance Report

The NCAA, at the Division I level, is once again in a state of transition as a result of challenges to the traditional NCAA regulatory system and collegiate sports model exerted by outside entities, including plaintiffs' attorneys, state attorneys general, courts, administrative agencies, and state legislatures who are challenging the NCAA's authority to govern sport and attempting in some cases to establish a new economic relationship between colleges and universities and the athletes who represent them. The collegiate sports model and the regulatory system that governs it were designed with the fundamental principal that college athletics is an avocation and not a vocation, and individuals receive intrinsic value through their involvement in higher education as both students and athletes. The U.S. Supreme Court's 2021 decision in *Alston v. NCAA*, however, reignited the debate regarding the appropriate economic relationship between college athletes and their schools, specifically, whether colleges and universities should share the revenue generated through lucrative television contracts with their athletes and whether college athletes should be employees of colleges and universities. The outside legal and social pressures, exacerbated by the continued monetization of live sport content, particularly in Division I football and basketball, has placed significant strains on the NCAA's current collegiate model with respect to rule-making, enforcement, and general governance. Our 2024 NCAA Compliance Report attempts to identify the complex,

and sometimes confusing, regulatory and legal landscape that colleges, universities, and their athletic departments are navigating while trying to maintain competitiveness.

We begin by analyzing key pieces of litigation that will likely dictate the future of college sports. Next, we dive into name, image, and likeness (NIL) and the transfer portal. We then discuss Title IX gender equity, which is applicable to nearly every issue facing college sports. Lastly, we discuss the rise of sports gambling.

Despite the legal and regulatory uncertainty the NCAA and its member schools are facing, especially at the Division I level, the popularity of college sports is at an all-time high. It is important to note that the collegiate sports model in the United States remains the envy of the world when it comes to gender equity, competition, educational opportunities, and exposure for young athletes. We hope our Compliance Report sheds some additional light on the key issues driving change and prepares college athletics leaders to develop a strategy to be successful in 2024 and beyond.



**Hayley
Hanson**
Partner



**Jason
Montgomery**
Partner



**TaRonda
Randall**
Senior Counsel



**Kristina
Minor**
Senior Athletic Consultant

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The Post-*Alston* Pile-On and Athletes as Employees Argument

In last year’s report, we discussed *House v. National Collegiate Athletic Association*—the third case in a trilogy filed by current and former student-athletes who claim the NCAA, as well as the Power 5 conferences, violated antitrust law by prohibiting athletes from earning compensation based on their Name, Image and Likeness (NIL) from third parties, and also that football and basketball players should have the ability to share in telecast group licensing revenue.

Trial is set for January 2025, but the athletes picked up two huge wins this past fall. In late September 2023, U.S. District Judge Claudia Wilken, who presided over *O’Bannon* and *Alston*, certified an injunctive relief class that includes student-athletes who are competing, have competed or will compete from June 15, 2020, to the judgment of the case. Then, in November 2023, Judge Wilken granted class-action status in the damages portion, which could result in more than 14,000 current and former student-athletes being eligible to claim damages.

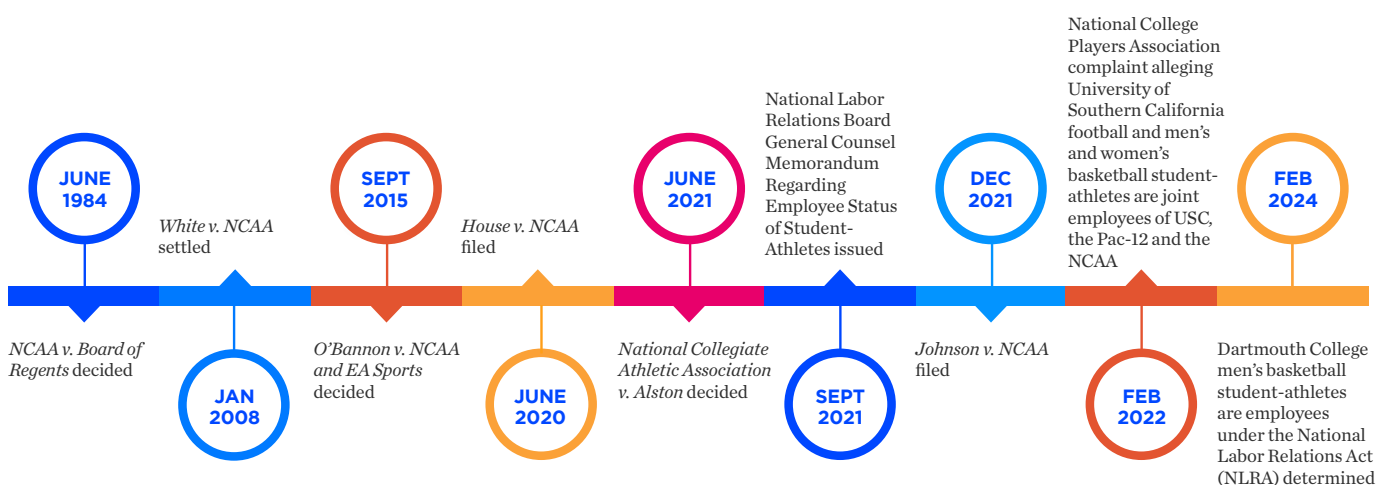
The *House* class is seeking backpay for lost NIL broadcast revenue, lost NIL video game revenue, and lost NIL revenue since June 15, 2016, but for the NCAA’s prior NIL rules that were lifted in 2021. Judge Wilken is also presiding over

another similar class action antitrust suit, *Hubbard v. NCAA*, the plaintiffs in which are seeking backpay for lost Alston education-related benefits. A loss for the NCAA in *House*, and potentially *Hubbard*, could result in billions of dollars in damages. For this reason, a review of how the NCAA managed another antitrust claim in January 2008 (*White v. NCAA*) is relevant.

In *White v. NCAA*, the precursor to *O’Bannon* and *Alston*, plaintiffs challenged the NCAA’s amateurism rules and alleged the NCAA and its member schools were parties to a horizontal agreement that denied the plaintiffs of their legitimate share of the financial benefits obtained through the business of “big-time college sports.”

Thomas Baker, a sports law professor in the Sport Management Program at the University of Georgia penned an article for [Forbes](#), writing:

The plaintiffs in *White*, however, posed a more serious threat than prior cases because they were not requesting the court to ignore the dicta in *Board of Regents* by holding that the NCAA’s concept of amateurism violated antitrust. Instead, the plaintiffs in *White* merely wanted to extend existing



compensation restrictions to account for educational and economic realities so as to include the full cost of attending a university or college. The plaintiffs' request in *White* was so compelling that it would eventually become the relief granted to the plaintiffs in *O'Bannon v. NCAA*. In *O'Bannon*, the Ninth Circuit found that expanding athlete compensation to the full cost-of-attendance was a less-restrictive approach to preserving amateurism.

The key difference between *White* and *House* is not only the money at stake, but also that in *White* the "NCAA still enjoyed significant judicial deference for its amateurism policy, with strong legal precedent supporting a presumption of validity for NCAA amateurism rules in the Third, Fifth, Sixth, and Seventh Circuits," Baker wrote. Now, post-*Alston*, *Board of Regents* dicta is no longer applicable and there is little to no deference to any concept of NCAA amateurism. It is equally true that the Justices went out of their way in *Alston* to indicate that their decision was not intended to address "pay for play" or athlete employment, which would fundamentally alter the pre-professional collegiate sports model in the United States.

Regardless, as with *White*, it is unlikely that the NCAA or college sports governance at the Division I level will be able to move forward to enact meaningful legislation or structural reforms until this case is settled. If *House* and *Hubbard* are not settled and plaintiffs prevail, it could force the Supreme Court to decide whether colleges and universities should be required to share revenue. In addition, there are a number of other lawsuits, (e.g., *Bewley v. NCAA*, *Carter v. NCAA*, and *Fontenot v. NCAA*), seeking more general judgments to permit "pay for play" and eliminate "amateurism" altogether. While we know at least one Justice, Justice Kavanaugh, believes any limitation to compensation for college athletes likely violates antitrust law, it is unclear how the remaining eight Justices would rule. From a public policy standpoint, it is clear that the Supreme Court will likely be the authority to rule on issues that fundamentally alter collegiate sports at all levels in the United States.

[*Johnson et al. vs. NCAA*](#)

Since our report last year, the Third Circuit has yet to rule in *Johnson v. NCAA*, where student-athletes, beyond those who compete in the Power 5 or in traditionally revenue-generating sports, have requested recognition as employees entitled to protections under the Fair Labor Standards Act (FLSA), such as minimum wages and overtime. A win for the student-athletes would create a circuit split. Prior to *Alston*, the Seventh and

Ninth circuits held as a matter of law that FLSA did not apply to college athletes. Such a split would almost certainly necessitate a review by the Supreme Court.

The initial public narrative surrounding student-athlete employment was born out of the opinion that "student-athletes should be entitled to compensation for making their schools money." However, it is critical to note that the *Johnson* lower court's ruling focused on the "control" of the alleged employer and the relationship between athletics and the students' educational program. Notably, while control is certainly a relevant factor for traditional employment matters, the fundamental nature of varsity sport at all levels, including high school, requires some level of control by the coach, school, and governing athletics association. However, the manner in which this could affect youth and preprofessional sports at all levels was not a consideration for the lower court, nor was the lack of precedent from any federal court or government agency regulating employment. A final decision on this question will not be limited to revenue-generating sports, nor will it be limited to private colleges and universities, unlike the NLRB cases described below.

[National Labor Relations Board](#)

Dartmouth College Men's Basketball

Outside of federal court, the NCAA is also facing two substantial complaints before the National Labor Relations Board (NLRB). On February 5, 2024, NLRB Regional Director Laura Sacks determined that Dartmouth College men's basketball student-athletes are employees under the National Labor Relations Act (NLRA) and directed an election be held for the men's basketball student-athletes to decide whether to unionize. The Regional Director's decision was based on the rationale that (1) student-athletes perform "work" that benefits Dartmouth; (2) Dartmouth has the right to control the "work" performed by the men's basketball student-athletes; and (3) the men's basketball student-athletes perform "work" in exchange for compensation. Prior to the decision, many practitioners believed that because the Ivy League does not offer athletic scholarships, there would be no compensation argument. However, the Regional Director determined compensation included items such as academic support, counseling, and nutrition services. It was also noted that athletes receive preferential admission and athletics apparel, including shoes, that the Regional Director valued as worth thousands of dollars.

On March 5, 2024, the Dartmouth men's basketball student-athletes voted 13-2 to unionize. However, Dartmouth has appealed the decision to the full Board. If Dartmouth is unsuccessful, the men's basketball student-athletes, as members of Service Employees International Union Local 560, will attempt to negotiate a collective bargaining agreement with the University that would cover "working conditions."

USC, Pac-12, and NCAA

Similarly, albeit 3,000 miles away in California, the National College Players Association (NCPA), issued a complaint alleging that University of Southern California (USC) football and men's and women's basketball student-athletes are joint employees of USC, the Pac-12, and the NCAA and have been subjected to unfair labor practices. The USC case is the first to consider whether an athletics conference and NCAA are joint employers. Whereas the NLRA only applies to private schools, if the Pac-12 and NCAA are found to be joint employers, it opens the possibility of union representation of athletes from both private and public NCAA member schools. This concept of joint employer was first explored in a 2021 Memo published by NLRB General Counsel Jennifer Abruzzo who suggested that certain student-athletes in the sports of men's and women's basketball and football were employees under the Fair Labor Standards Act. At the heart of the complainants' arguments are the following factors, similar to what was argued in a 2015 NLRB case involving Northwestern football:

- Athletes play football and basketball (perform a service) for their university, conference, and the NCAA, thereby generating tens of millions of dollars in profit and positive impact on the university's reputation;
- Athletes receive significant compensation, including scholarships and stipends to cover additional expenses;
- The NCAA controls the terms and conditions of the athletes' employment including practice and competition hours, scholarship eligibility, academic eligibility and limits some forms of compensation; and
- The university controls the manner and means of the athletes' work on the field and other facets of their lives.

General Counsel Abruzzo has even taken exception to the use of the term "student-athlete," now part of the lexicon in sports sponsored by colleges and universities. Following the USC complaint, General Counsel Abruzzo stated that misclassifying

college athletes as "student-athletes" instead of employees "deprives these players of their statutory right to organize and to join together to improve their working/playing conditions if they wish to do so. Our aim is to ensure that these players can fully and freely exercise their rights."

Setting aside what seems to be some level of absurdity utilizing a 1930's era labor law, which was designed to address conditions of laborers in the mining industry and specifically excluded some industries like the railways and airlines, to reform the collegiate sports model, this "employment debate" is based on a belief that there is an economic fairness issue because of the money derived from media deals in the sports of football and men's basketball. The belief is underscored, not only by the fact that the complaint involves only three sports, but also by the reliance on the NCAA and its conferences earning millions of dollars in profit as a rationale for employment categorization. Never mind that the money from Division I football and men's basketball is used to fund all other sports, including those in Division II and Division III, as well as the pre-professional league and Olympic training models; or that college athletes generally have a competition window of approximately four to five years. The economic fairness concerns disregard the institutional brand's role in generating value to support broad-based opportunities, the limited and transitory nature of college athletes, and the educational value of sport within the larger context of higher education. Pending employment status decisions could also lead to athletes who perfect the exact same "job" for the same "employer" being classified differently (e.g., softball athletes and men's basketball athletes).

The Transfer Portal and Name, Image and Likeness (NIL)

The athletics news cycle for the first quarter of 2024 has centered on two things: the transfer portal and college athletes' ability to earn compensation based on the use of their Name, Image and Likeness (NIL), which in some instances appear to go hand in hand based on the current prevalence of some NIL collectives and schools attempting to use NIL to entice athletes to transfer to other athletics programs.

Previously, all Division I student-athletes, regardless of sport, had a free one-time transfer, provided they met the following conditions found in the NCAA Division I Bylaws:

1. The student-athlete has not previously transferred, unless they used the discontinued/non-sponsored sport exception.
2. The student-athlete would have been academically eligible had the student remained at his or her prior institution.

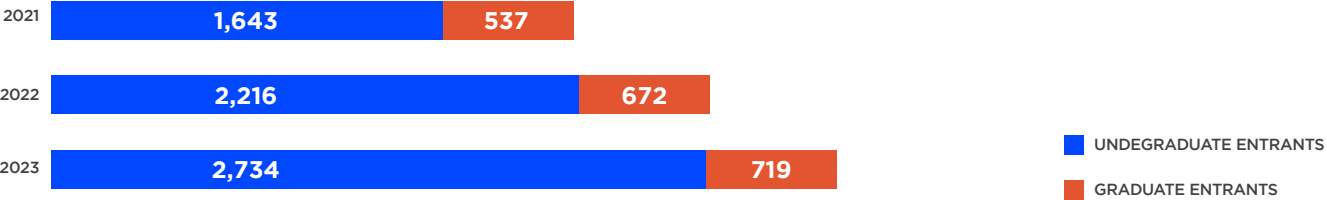
3. The head coach of the institution to which the student-athlete transfers certifies that no contact was made with the student-athlete or any individual associated with the student-athlete without authorization through the notification of transfer process.
4. The student-athlete provided written notification of transfer to the institution during the time period specified for their sport (i.e., "Transfer Portal Window").

As expected, the joy of increased flexibility did not last long. Almost immediately upon establishing a uniform one-time transfer exception, the onslaught of waiver requests for two-time and three-time undergraduate transfers, transfers who missed the Transfer Portal Window, and midyear transfers seeking immediate winter or spring eligibility began.

DIVISION I TRANSFER PORTAL DATA



DIVISION II TRANSFER PORTAL DATA



Source: Transfer Portal Data: Division I Student-Athlete Transfer Trends, NCAA

In an attempt to explain additional parameters, NCAA transfer waiver guidelines reached an unsustainable length, and member schools, who were not privy to specific personal and protected information of other student-athletes, had difficulty reconciling the waiver granted for Student-A from the waiver denied for Student-B. Then, a few institutions, received one waiver denial too many.

After the NCAA denied the transfer waiver appeals of several men's basketball student-athletes, from West Virginia, Miami of Ohio, and Cincinnati, several Attorneys General filed suit in U.S. District Court for the Northern District of West Virginia alleging that (1) NCAA transfer rules restrain the labor market of Division I talent, and restrain student-athletes from freely moving to improve their economic opportunity, personal growth, and well-being; and (2) the NCAA Rule of Restitution is unlawful.

Ohio Attorney General Dave Yost commented, "The rule is riddled with so many exceptions that the NCAA cannot plausibly substantiate its prior justifications...We're challenging it in order to restore fairness, competition and the autonomy of college athletes in their educational pursuits."

The District Court granted a 14-day Temporary Restraining Order (TRO), finding the NCAA's Transfer Eligibility Rule likely violates Section 1 of the Sherman Act. Five days later, on December 18, plaintiffs and the NCAA agreed to convert the TRO into a preliminary injunction, and the NCAA agreed to suspend enforcement of its transfer restrictions for all student-athletes seeking to transfer and be eligible for the 2024-25 academic year.

In mid-January 2024, the Department of Justice joined 10 states and the District of Columbia after the plaintiffs filed an amended complaint to add the United States, the states of Minnesota, Mississippi and Virginia and the District of Columbia as co-plaintiffs.

Ohio et al. v. NCAA is yet another case that began with revenue sports but the consequences of which will affect all sports. The sports that did not have the one-time transfer exception until the 2021-22 academic year—football, men's basketball, women's basketball, baseball, and men's ice hockey—are

certainly at the forefront. However, now that there is a uniform rule applicable to all sports, any challenges to that rule will also apply to all sports.

On April 22, 2024, the NCAA approved significant changes to NCAA Division I transfer eligibility and NIL rules, effective immediately. The NCAA adopted legislation allowing immediate eligibility for all NCAA Division I transfer student-athletes who are academically eligible; in good standing in accordance with their previous institution's standards; and meet the applicable "progress-toward-degree" requirements at their new institution.

Name, Image, and Likeness

Since the day it became permissible for student-athletes to partake in commercial endorsements, the NIL landscape has been called the "Wild, Wild, West." For three years, there have been dozens of competing state laws, interpretations, and policies coupled with a boldness of certain individuals seemingly prompted by a perceived lack of enforcement of the remaining rules. When the NCAA attempted to enforce rules related to NIL collectives engaging in activities with prospective student-athletes, it once again resulted in an antitrust case and preliminary injunction that prohibited enforcement of certain NCAA rules related to boosters and NIL Collectives' ability to communicate with athletes prior to enrollment at an institution. The Attorneys General from Tennessee and Virginia brought the action in Tennessee federal court on behalf of prospective student-athletes who were ostensibly denied the opportunity to negotiate compensation for NIL with any third-party entity including boosters or a collective of boosters by NCAA rules. In making its determination, the court stated, "Fair market value may be equal to or less than the NIL deals student-athletes can currently receive after selecting a school. But without the give and take of a free market, student-athletes simply have no knowledge of their true value. It is the suppression of negotiating leverage and the consequential lack of knowledge that harms student-athletes."

The NCAA continues to lobby Congress to intervene and establish some stability. Various federal bills have been introduced that would codify students' NIL rights, ban boosters

and other third parties from offering inducements to students to play for a particular university, and establish disclosure requirements. However, legislatures seem uninterested in participating in the NCAA's whack-a-mole approach to governance. Instead, they want to see comprehensive legislation that includes guaranteed rights to student athletes, including health and safety measures and long-term protections. With an upcoming election and a number of domestic and international issues to manage, few are optimistic that the NCAA's legislative issues will be addressed by Congress any time soon. As a result, it will be up to the individual institutions, conferences, and NCAA national office to figure out how to make this work. The NCAA subsequently announced it would pause NIL investigations until further notice. For all the months of controversy regarding the nuances of NIL rules, Division I membership seemed to unanimously agree on two NIL concepts: no pay-for-play and no recruiting inducements. But the current legal landscape would suggest that even those foundational concepts may come to an end, sooner than many may like.

With respect to immediate action, in January, the NCAA Division I Council adopted legislation that creates (1) a voluntary registration process for NIL professional service providers such as agents and advisors; (2) a de-identified disclosure database of athlete NIL deals of \$600 or more, which also makes disclosed information available for examination by the NCAA upon request; (3) an athlete penalty for failure to disclose their NIL agreements within 30 days; and (4) the development of educational resources including standardized NIL contract terms. These initiatives will go into effect in August 2024. On April 22, the NCAA also adopted legislation providing additional discretion for its schools to be more involved in directly arranging and facilitating NIL opportunities. However, this discretion stopped short of bringing all NIL operations and NIL collectives "in-house" or permitting schools to negotiate NIL deals directly on behalf of their student-athletes.

Title IX: College Sports Equity Conscience

Contrary to popular belief that Title IX was passed to create gender equality in sports, the 1972 Title IX statute does not reference athletics programs. Instead, athletics program requirements are specifically addressed in a 1975 rule.

Title IX prohibits discrimination in educational programs or activities on the basis of “sex.” Title IX applies to all institutions that receive Federal Student Aid funds as well as all their programs and activities.

It is important to note that while the courts decide issues of antitrust and employment status, which could result in billions of dollars in damages or a never-before-seen compensation model, it will be up to individual institutions to determine how to comply with Title IX. Justice Kavanaugh, in his concurring opinion in *Alston*, acknowledged the complexities of difficult policy questions such as how “any compensation regime would

comply with Title IX.” However, the Courts will not be the ones to answer such questions. They will, however, be called upon later to further address cases of non-compliance.

The current and future budgetary strain has campuses all over the country attempting to determine how they will not only survive but also be competitive long-term and ensure that Olympic sports remain viable. One commonly discussed solution is, unfortunately, cutting sports. It should be noted that according to the Office for Civil Rights, “[N]othing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX, and the elimination of teams is a disfavored practice. Because the elimination of teams diminishes the opportunities for students who are interested in participating in athletics instead of enhancing opportunities from discrimination, it is contrary to the spirit of Title IX” (Dear Colleague Letter from the Assistant Secretary

EQUITABLE PARTICIPATION

- Participation opportunities that are “substantially proportionate” to their respective full-time undergraduate enrollments; or
- “History and continuing practice of program expansion” for the underrepresented gender; or
- “Full and effective” accommodation of the underrepresented gender’s interests and abilities.

EQUITABLE FINANCIAL SUPPORT

Financial support should be substantially proportionate to the participation rate of each gender (i.e., within one percentage point). For example, if female athletes make up 46% of an institution’s athletic participants, then the Office for Civil Rights expects that the female athletic scholarship budget would be within 45%-47% of the total budget for athletic scholarships for all athletes.

EQUITABLE TREATMENT

Men’s and women’s teams receive equitable treatment and benefits – e.g., travel in a similar manner; training and living facilities are similar; etc.

entitled “Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance.”). However, if schools may one day be required to share revenue or pay student-athletes minimum wage, it is hard to imagine a world where they can all maintain the 16-sport Division I sponsorship minimum.

One Division I school, in response to the new NIL rules and in anticipation of unfavorable decisions related to student-athlete employment, announced they will cut six total teams (three men’s and three women’s) at the end of the 2023-24 year.

In addition, we are now seeing the first Title IX claims brought as a result of perceived institutional involvement in NIL and uneven spending on marketing and team promotions. This trend may continue or be amplified should a new employment model be adopted on an ad hoc basis. While some institutions are advocating to bring their NIL collective(s) in-house, the implications of doing so have not been fully evaluated, nor is it clear how institutions could comply with Title IX based on the current reported rate of spending on NIL in men’s basketball and football as compared to other sports.

In addition to their day-to-day management of entire institutions and athletics departments, some college and university leaders are contemplating how to manage fundraising and development if NIL collectives are permitted to be brought under the institutional umbrella, where to find the dollars if student-athletes become entitled to a share of media revenue, and how to stay competitive in the various recruiting arms’ races. These concerns are understandable but should not diminish the need to analyze these decisions through the gender equity lens. Failure to do so could result in significant risk to colleges and universities, even beyond the athletics department.

NCAA: Don't Bet On It

As if the current legal and regulatory landscape of college sports was not already challenging enough, legalized and online sports gambling has created yet another risk area for institutions, athletes and the integrity of sporting events. Sports gambling is legal in more than 30 states and contributes hundreds of millions of dollars in tax revenue for those states. Positive impacts on state revenues result in positive impacts on state budgets and therefore state school budgets, regardless of whether the state sports gambling law includes an institutional distribution specifically from gambling-related tax revenue. Thus, even those who have no interest in placing wagers on March Madness are motivated to promote sports gambling.

Scandals and harm to students are the quickest ways to get legislative flexibility taken away. The NCAA, the member schools, state legislatures, and the public all seem to agree that protecting the integrity of the game and the health and safety of student-athletes are priorities. How that protection is managed is the sticking point.

NCAA Enforcement of Sports Gambling Issues

The NCAA rules prohibit student-athletes, coaches, and staff—at any level—from betting on professional, collegiate, or amateur sports in which the NCAA conducts a championship. This means bets cannot be placed on MLB, NBA, NFL, or NHL games, as well as fencing, beach volleyball, and field hockey, among others.

In November 2023, the NCAA adjusted the guidelines for student-athlete reinstatement cases in which student-athletes wager on other teams at their own schools.

In situations where a student-athlete engages in any sports wagering activity involving their own institution, other than their own team, the committee directed the student-athlete reinstatement staff to require the student-athlete participate in sports wagering rules and prevention

education and begin its withholding analysis at sit-one-season of competition and be charged with the use of one season of competition.

In situations where a student-athlete engages in activities designed to influence the outcome or integrity of an intercollegiate contest or in an effort to affect win-loss margins (“point shaving”), who participates in any sports wagering activity involving the student-athlete’s own team at their institution, or who knowingly provides information to individuals involved in or associated with any type of sports wagering activities, the committee directed the reinstatement staff to begin its withholding analysis at permanent loss of eligibility in all sports.

From an NCAA enforcement standpoint, while NIL investigations may have been paused, sports gambling infractions are still being processed.

In July 2023, the Associated Press reported that the NCAA found 175 infractions of its sports betting-policy since 2018, and that at the time, there were 17 active investigations. The following recent public infractions cases included Level I violations of coaches engaging in sports wagering activities:

- Feb. 1, 2024, University of Alabama Negotiated Resolution: University of Alabama baseball head coach violated sports wagering and ethical conduct legislation when he provided insider information to an individual he knew to be betting on an Alabama baseball game. The head coach was fired and issued a 15-year show-cause order.
- Sept. 28, 2023, U.S. Air Force Academy Negotiated Resolution: U.S. Air Force Academy men’s golf head coach violated sports wagering and ethical conduct legislation when he placed bets on Air Force’s football game. The head coach was fired and issued a five-year show-cause order.

The confluence of access and opportunity, coupled with a renewed focus on impermissible gambling and monitoring by schools of the same may result in additional NCAA infractions related to gambling. However, it remains unclear to what extent the NCAA will hold institutions culpable for the actions of coaches or individual student-athletes related to gambling. Certainly, education and some level of monitoring remain a requirement in order for colleges and universities to demonstrate control over its programs, and that remains true as it pertains to gambling.

Mental Health and Safety Concerns

In March 2023, an [FBI agent told ESPN](#) that it considers threats to athletes on social media to be a growing issue, and that “In the five years since legalized sports betting began spreading across the country, student-athletes have reported regularly receiving abusive messages from gamblers on social media, including death wishes and threats of violence.”

From a regulatory perspective, college and university leaders need to decide and communicate where they want to be with respect to sports wagering, if it is permitted by state law. Increased protection for student-athletes likely means more restrictions for individuals outside of athletics who have frequent interactions with student-athletes (e.g., professors, tutors, other non-athlete students). Increasing restrictions for a wider target population also decreases the ability to effectively enforce those restrictions. That said, it is important to align athletics policies related to sports gambling with any institutional student code of conduct policies, applicable state law(s) and NCAA rules. This includes having clear and consistent enforcement and penalty structures.

Conclusion: Where does the NCAA go from here?

The NCAA and its member schools appear to be on the losing side of all recent cases challenging the ability for the NCAA or its member schools to regulate student-athlete's eligibility to compete. Within the last few months, a District Judge in New Jersey granted a TRO allowing a student-athlete to count a withholding penalty from a sports wagering case served concurrent to a transfer penalty (*Williams v. NCAA*); and another District Judge in New York granted a TRO overturning the NCAA's denial of a hardship waiver and permitting a student-athlete to participate for an eighth season (*Clayton v. NCAA*). The theme has been if you do not like the rule, then sue. This is as much a reflection of institutional and conference priorities as it is the NCAA.

NCAA President Charlie Baker has taken steps to force some of the difficult conversations with its NCAA member schools. He proposed a number of concepts for discussion and consideration, such as creating a new subdivision for schools that would have to give a minimum of \$30,000 per year to at least half the scholarship athletes. Similar to the creation of the Autonomy Conferences (commonly known as the Power 5, now just four conferences after the dissolution of the traditional Pac-12), institutions in this proposed new subdivision would have their own set of rules that differ from other rules in place at the Division I level. These rules could offer "different policies surrounding areas like scholarships, roster limits, recruiting, transfers and NIL."

Any concepts arising from Division I governance should be taken in the context of the aforementioned litigation. With billions of dollars on the line, there may also be a need to re-examine the criteria for Division I membership and a sustainable financial distribution model for all three divisions.

While few may agree that President Baker's concepts are ideal, it is clear that if those at the decision-making table (i.e., university and college chancellors, presidents and athletic directors) do not engage in change that would have seemed radical in the past, courts, regulatory bodies and legislation may force upon them even less favorable mandates, without the lead time to generate ideas on how to apply them.

There is no one solution to the issues facing the collegiate sports. Certainly, the NCAA, its member schools and all constituents in college sports need to address: (1) antitrust litigation and ongoing issues related to college athletes; (2) college athlete employment; (3) name, image and likeness (NIL) and (4) governance of college sports, including Division I transfers. Failure to address these issues in a comprehensive manner that includes some reallocation of economic value to athletes, will likely result in continued ad hoc legal and regulatory determinations that effectively eliminate the uniquely American collegiate sports model, which marries higher education and varsity athletics. What could be left is a professional model that is more like those seen internationally. Ironically, this systemic change is occurring at a time when college athletics is at the height of popularity, women's sports are on the rise, and the United States' collegiate model is the envy of the world for its equitable opportunities for women and consistent Olympic medal count.