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**Athletics on an Axis: An  
Overview of Recent and  
Anticipated Regulatory  
Changes in the World of  
College Athletics**

*Part of the Issues in Higher Education Webinar Series*

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## Agenda

- Legal Challenges to NCAA Rules
- Name, Image and Likeness
- College Athletes as Employees
- Title IX Lens
- Ongoing Legal Matters



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## Antitrust Litigation



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## Ohio et al v. NCAA (Transfer Rule)

Plaintiffs challenge (1) the restriction on multiple undergrad transfers as an unjustifiable restraint on student-athletes, and (2) the Rule of Restitution.

- Court says there are less restrictive means to achieve the goals and procompetitive benefits of the transfer rules.
  - There are no NCAA bylaws that link transfer rules with amateurism
  - Academic eligibility rules effectively achieve academic goals
- Dept. of Justice joined the suit on Jan. 19, 2024

*Trial scheduled for 2025*

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## Tennessee & Virginia v. NCAA

Preliminary Injunction: NCAA and member institutions shall not enforce the NCAA Interim NIL Policy, NCAA Bylaws or “any other authority” that prohibits student-athletes from *negotiating NIL compensation with any third-party entity*, until a final decision is made.



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## Tennessee & Virginia v. NCAA

- “NIL-recruiting ban” limits student-athletes’ negotiating leverage and knowledge of value.
- Maintaining competitive balance and protecting student-athletes from exploitation are “legitimate concerns.”
- “Social justifications’ for restraint of trade do not make it any less unlawful.”



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## House et al v. NCAA (“NIL Backpay” Case)

Same trial court as O’Bannon and Alston, plaintiffs alleging the NCAA and named conferences violated antitrust law by prohibiting athletes from earning NIL compensation and that football and basketball players should have the ability to share in telecast group licensing revenue.

- Seeking backpay for lost NIL broadcast revenue, lost NIL video game revenue, and lost NIL revenue since June 15, 2016, but for NCAA’s prior NIL rules.
- Sept. 2023: judge certified injunctive relief class

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# Name, Image and Likeness

**Florida is under NCAA investigation a year after a failed NIL deal with QB signee Jaden Rashada**

**Tennessee Sues NCAA Challenging Its NIL-Recruiting Ban**

**New Lawsuit Could Decide Whether NIL Is Subject To Title IX**

**4 New Federal NIL Bills Have Been Introduced In Congress**

**Adam Silver: NBA to reassess G League Ignite in wake of NIL**

**Caitlin's Crunch Time**

**Swinney Explains 'Bad Actors' are Reasons for New NIL Rules**

**Five-star recruit in Class of 2023 signs agreement with collective that could pay him more than \$8 million**

**AG Skremetti argues NCAA's NIL-recruiting ban violates federal antitrust law, thwarts the free market, harms student-athletes.**

**College Athletics**

**BY AMANDA CHRISTOVICH**  
UPDATED DECEMBER 04, 2023 | 09:46 AM

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## Florida State University Negotiated Resolution (January 2024)

- Impermissible recruiting activities
  - Assistant football coach transported PSA and parents to meeting with booster on behalf of the collective but did not attend meeting
  - Booster communicated offer by collective of \$15K per month to enroll during meeting
- Unethical conduct by assistant coach
- Level II-Standard for FSU; Level II-Aggravated for assistant coach

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### COLLEGE FOOTBALL Florida State football hit with NCAA sanctions over NIL violations

By Matt Bonstedt  
Updated January 12, 2024 at 5:59 p.m. EST | Published January 12, 2024 at 9:57 a.m. EST



A Florida State assistant football coach committed several major violations, according to the NCAA. (Rich Stang/Getty Images)

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## New NCAA NIL Rules

### Effective Aug. 1, 2024

- No NIL compensation for athletics participation or achievement.
- *No recruiting inducements*
- Required disclosures for NIL activities of \$600 or more:
  - *After 30 days, student-athlete is ineligible until activity is disclosed*
- NCAA database of disclosed NIL information.

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### Proposed for April 2024 Vote:

- “Officially affiliated entities” (e.g., Collectives) must follow “institutional standards” (i.e., NCAA rules).
- Permit institutional involvement but prohibit compensation to student-athletes.
- No NIL agreements until individual triggers “student-athlete” status.

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## Institutional Involvement in NIL

Feb. 1, 2024: The Legislative Committee directed NCAA staff to update the existing guidance ...Specifically, the guidance will be updated to specify that an institution (or staff member) may not:

- schedule or lead a meeting with student-athletes to discuss terms of a proposed NIL agreement,
- provide proposed agreements to student-athletes or return signed agreements to an NIL entity.



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## Willingness to Challenge NCAA Rules



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## Property Interest & Irreparable Harm Claims

- Terrence Shannon (Univ. of Illinois MBB)
  - Challenged Illinois' enforcement of a competition suspension resulting from sexual misconduct charges.
  - TRO Granted (Jan. 19, 2024)
- Jeremiah Williams (Rutgers MBB)
  - Challenged NCAA's sports wagering withholding and multi-undergraduate transfer rule.
  - TRO Granted (Feb. 2, 2024)



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# Student-Athletes as Employees

SPORTS

**Billions in TV revenue, athletes as employees on the line as college sports faces more legal threats**



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## Johnson v. NCAA (Aug. 2021)

Plaintiffs claim student-athletes should be classified as employees and thus are entitled to minimum wage under the Fair Labor Standards Act (FLSA).

- District Court ruled that student-athletes are employees under “the Glatt Test” focusing on control of the employer and relationship between athletics and students’ educational program.

Awaiting Appellate Court decision after Feb 2023 oral arguments.

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## Current NLRB Cases

**Dartmouth** – Regional Director found that men’s basketball student-athletes are employees:

- (1) Players perform work which benefits Dartmouth
- (2) Dartmouth has the right to control the work performed by the men’s varsity basketball team, and
- (3) Players perform that work in exchange for compensation.

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**University of Southern California**  
General Counsel alleges USC football, men’s and women’s basketball student-athletes are joint employees of USC, the Pac-12, and NCAA

- Focuses on Student-Athlete Handbook “rules”

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## Title IX – Gender Equity in Athletics



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## Title IX & Gender Equity in Athletics

“No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.”

34 C.F.R. § 106.41



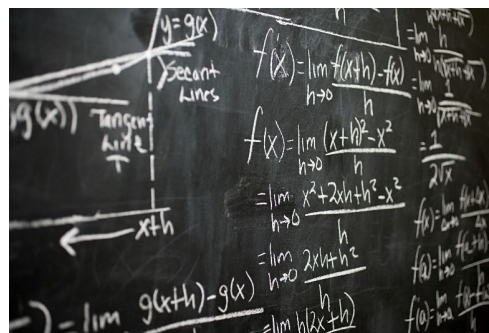
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## Title IX Compliance – 3-Part Test

- I. Equitable Participation;
  - Substantially proportionality, or
  - History program expansion, or
  - “Full and effective” accommodation of interests.
- II. Equitable Financial Support; AND
- III. Equitable Treatment (i.e., “laundry list”)



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# Gender Equity & the Current Athletics Environment

## Sport Sponsorship

- Elimination of teams & roster management
- *Biediger v. Quinnipiac University*, 691 F.3d 85 (2<sup>nd</sup> Cir. 2012): The court held Title IX permits the University to set roster caps for the overrepresented. The elimination of programs for the underrepresented sex means an institution cannot meeting prong 2 or 3.

## Financial aid, Fundraising, and Budget Dollars

- The total amount of **assistance awarded** to men and women must be “substantially proportionate” to participation rates in athletic programs
- **Dollars spent** on male and female athletes must be within 1% of participation percentage).

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# Loyola Marymount

The screenshot shows a petition on change.org with the following details:

- change.org** logo and navigation tabs for 'Petition details' and 'Comments'.
- A collage of three images: a swimmer in a pool, a group of athletes on a track, and a basketball player on a court.
- Help Reinstiate Cut Athletic Programs at LMU**
- Started: January 24, 2024
- Progress bar: 6,451 Signatures out of a 7,500 Next Goal.
- HUSCHBLACKWELL logo at the bottom.

Loyola Marymount to cut 6 sports. These are the teams affected



Loyola Marymount's Estanis Ruiz competes in the 3,000-meter steeplechase at the NCAA track and field championships in June 2022. The LMU men's and women's track and field teams are among six athletic programs being cut. (Steph Chambers / Getty Images)

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## Gender Equity & the Current Athletics Environment

### Marketing & Promotion:

- Availability and quality of sports information personnel
- Access to other publicity resources for men and women's programming
- Quality and quantity of publications and other promotional devices

### Name, Image, Likeness (NIL):

- Education and Access
- Collectives

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## Other Key Issues

- Conference Realignment
- NCAA "Project D1"
  - Educational trust fund
  - Potential new Division I Subdivision



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