

From *Alston* to *House* and Beyond: The Current State of Name, Image, and Likeness

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- 02 Current Legislation
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- 04 House v. NCAA: Settlement and Preliminary Approval
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- 06 Enforcement and Compliance Considerations

#01

Summary of NCAA Guidance (before *House*)

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The NCAA has issued six guidance documents that address NIL (before *House*):

1

NCAA Interim NIL Policy (July 2021)

2

NCAA NIL Policy Guidance Regarding Third-Party Involvement (May 2022)

3

NCAA Clarifying NIL Guidance (October 2022)

4

Standard of Review for Violations Related to Name, Image, and Likeness Activities (effective January 2023)

5

NCAA Division I Proposal 2024-3 (effective April 2024)

6

NCAA Division I Proposal 2024-4 (effective August 2024)

Summary of NCAA Guidance (before *House*)

New NCAA NIL Policy (effective August 1, 2024)

BYLAW, ARTICLE 22

Name, Image and Likeness Activities

22.01 General Principles. *(Adopted: 1/10/24 effective 8/1/24)*

22.01.1 Name, Image and Likeness Compensation. An individual may receive compensation for the use of the individual's name, image and likeness, which may be secured or compensated based, in whole or in part, on athletics skill or reputation. Name, image and likeness activities may not be used to compensate a student-athlete for athletics participation or achievement. *(Adopted: 1/10/24 effective 8/1/24)*

22.01.2 Offers and Inducements. Name, image and likeness activities may not be used as an inducement for an individual to enroll or remain enrolled at a specific institution. *(Adopted: 1/10/24 effective 8/1/24)*

22.02 Definitions and Applications. *(Adopted: 1/10/24 effective 8/1/24)*

22.02.1 Name, Image and Likeness Activity. Name, image and likeness activity is any activity that involves the commercial use of an individual's name, image or likeness to advertise or endorse the sale or use of a product or service. Name, image and likeness compensation must: *(Adopted: 1/10/24 effective 8/1/24)*

- (a) Include quid pro quo (e.g., compensation for work performed);
- (b) Not be contingent upon initial or continued enrollment at a particular institution (see Bylaw 22.01.2); and
- (c) Not be in return for athletics participation or achievement.

22.1 Role of Institutions in Student-Athlete Name, Image and Likeness Activities.

22.1.1 Institutional Involvement in Student-Athlete Name, Image and Likeness Opportunities. An institution may provide assistance and services (e.g., identify specific name, image and likeness opportunities, facilitate deals between student-athletes and third parties) to a student-athlete pursuing name, image and likeness opportunities, provided: *(Adopted: 4/18/24)*

- (a) The student-athlete does not receive compensation from the institution for use of the student-athlete's name, image or likeness (e.g., indirect or direct payment from the institution for use of name, image or likeness);
- (b) The student-athlete maintains independent authority over the name, image and likeness agreement (e.g., student-athlete determines specific terms, has final decision in accepting or rejecting name, image and likeness agreements); and
- (c) The student-athlete is not required to accept institutional assistance or services (e.g., assistance and services are optional, outside representation may be used).

22.1.1.1 Third-Party Service Providers. An institution may contract with third-party service providers (e.g., multimedia rights holder, attorney, tax service, name, image and likeness marketplace) to provide a student-athlete the same support an institution is permitted to provide to a student-athlete. *(Adopted: 4/18/24)*

22.2 Disclosure. *(Adopted: 1/10/24, Revised: 4/18/24 effective 8/1/24)*

22.2.1 Disclosure of Name, Image and Likeness Activities. An institution must provide a student-athlete an opportunity to disclose name, image and likeness activities to the institution consistent with the provisions of Bylaw 22.2. *(Adopted: 4/18/24 effective 8/1/24)*

22.2.1.1 Receipt of Institutional Assistance and Services. An institution may provide assistance and services to a student-athlete who elects to disclose name, image and likeness activities consistent with institutional policies and procedures. A student-athlete who elects not to disclose name, image and likeness activities shall not receive such institutional assistance and services. *(Adopted: 4/18/24 effective 8/1/24)*

22.2.1.2 Name, Image and Likeness Attestation. A student-athlete who elects to disclose name, image and likeness activities must attest that: *(Adopted: 1/10/24, Revised: 4/18/24 effective 8/1/24)*

- (a) All disclosed information is and will be complete and accurate;
- (b) The disclosed activities are and will be consistent with institutional and conference policy, NCAA rules and any applicable state or federal law;
- (c) Pay or promise of pay related to the disclosed activities are not and will not be a substitute for payment for athletics participation or achievement or an inducement to enroll or remain enrolled at a specific institution; and

(d) Acknowledgement that failure to disclose or fraudulent disclosure may constitute impermissible unethical conduct (see Bylaw 10.1).

22.2.2 Institutional Policies. An institution shall establish policies for student-athlete disclosure of name, image and likeness activities consistent with Bylaw 22.2 and its subsections. *(Adopted: 1/10/24 effective 8/1/24)*

22.2.3 Name, Image and Likeness Disclosure. A student-athlete who elects to disclose name, image and likeness activities must provide such disclosures not later than 30 days after entering into or signing an agreement. Upon initial enrollment at the certifying institution, a student-athlete who elects to disclose name, image and likeness activities must provide the institution all current and expired name, image and likeness activities not later than 30 days after enrollment. *(Adopted: 1/10/24, Revised: 4/18/24 effective 8/1/24)*

22.2.3.1 Required Elements of Name, Image and Likeness Disclosure. Disclosure of a student-athlete's name, image and likeness activities shall include the following: *(Adopted: 1/10/24, Revised: 4/18/24 effective 8/1/24)*

- (a) Names and contact information of individuals involved in the activity, including a description of the nature of the relationship between such individuals;
- (b) Terms of the arrangement, including a description of services rendered, rights granted, term duration, compensation and payment structure (e.g., cash, barter, deferred);
- (c) Names and contact information of professional service providers involved in the arranging, negotiating, or securing the disclosed activity, including a description of the nature of the relationship between the service provider and individuals involved in the activity; and
- (d) Terms of compensation between the professional service provider and the student-athlete (e.g., agent contingency fee).

22.2.3.2 Reasonable Time to Cure Failure to Disclose. If an institution discovers that a student-athlete who elected to disclose name, image and likeness activities failed to meet the requirements of Bylaw 22.2.3 and its subsections, the institution may provide the student-athlete a reasonable amount of time to disclose the name, image and likeness activity. *(Adopted: 4/18/24 effective 8/1/24)*

22.2.3.3 Limited Disclosure. Unless otherwise noted, a student-athlete shall not be required to disclose name, image and likeness activities valued at less than \$600. A student-athlete must disclose name, image and likeness activities involving the same (or substantially the same) parties if the aggregate value of the activities is equal to or greater than \$600. *(Adopted: 1/10/24, Revised: 4/18/24 effective 8/1/24)*

22.2.3.4 Effect of Violation. As it relates to compliance with institutional policies consistent with Bylaw 22.2 or its subsections, an institution shall only be held accountable through the NCAA infractions process for actions that clearly demonstrate a disregard for its stated policies. *(Adopted: 1/10/24 effective 8/1/24)*

22.2.3.5 Reporting of Disclosed Information. Aggregated information related to name, image and likeness activities disclosed to an institution shall be reported to the NCAA national office on a biannual basis. An institution shall make disclosed information available for examination on request by an NCAA staff member or an authorized representative of the NCAA. *(Adopted: 1/10/24 effective 8/1/24)*

22.2.3.5.1 Publication of Aggregate Name, Image and Likeness Data. The NCAA national office shall make available an aggregated database of disclosed name, image and likeness information. *(Adopted: 1/10/24 effective 8/1/24)*

22.3 Professional Service Providers. *(Adopted: 1/10/24 effective 8/1/24)*

22.3.1 Representation for Purposes of Name, Image and Likeness Activities. An individual may use professional services, including agent representation, for the purpose of name, image and likeness activities. Business arrangements related to representation for purposes of name, image and likeness activities (e.g., travel expenses associated with meeting) shall be consistent with arrangements between the professional service provider and other prospective or current clients and align with industry standards. *(Adopted: 1/10/24 effective 8/1/24)*

22.3.2 Professional Service Provider Registry. The NCAA national office shall make available a centralized registry of professional service providers who provide or are seeking to provide services to student-athletes in a manner approved by the Board of Directors, or an entity designated by the Board. *(Adopted: 1/10/24 effective 8/1/24)*

22.4 Education. *(Adopted: 1/10/24 effective 8/1/24)*

22.4.1 Name, Image and Likeness Education. The NCAA national office shall make available comprehensive education regarding name, image and likeness activities in a manner approved by the Board of Directors, or an entity designated by the Board. Such education shall include the provision of standardized contract terms for use in name, image and likeness agreements. *(Adopted: 1/10/24 effective 8/1/24)*

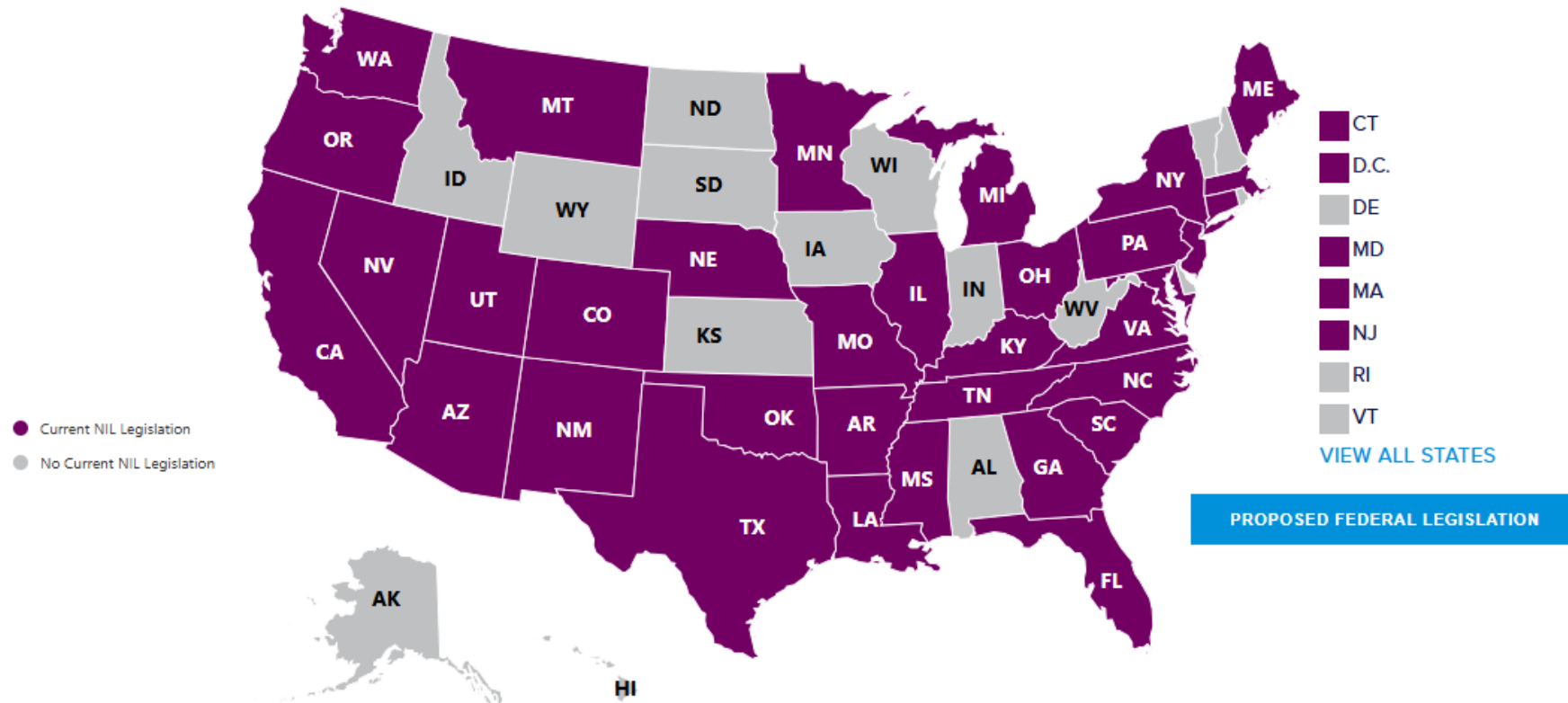
A map of the United States with state boundaries outlined. The map is overlaid with a grid of colored dots. The dots are colored in shades of blue, green, and yellow. The dots are concentrated in the Northeast, Midwest, and South, with a few scattered in the West. The dots represent legislative activity or current legislation.

#02

Current Legislation

Current Legislation

Troutman Pepper Locke 50-state NIL Tracker



Last updated on 05/05/2025.
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Current Legislation

Virginia NIL Law

What institutions can do now:

- Institutions may directly compensate student-athletes for use of their NIL, and institutions may support student-athletes in identifying, creating or otherwise assisting with NIL opportunities.
- “An institution may provide assets, resources, or benefits as an incentive to individuals, companies, or other entities to provide money, benefits, opportunities, or services to an outside entity that supports name, image, or likeness opportunities for the institution’s student-athletes.”
 - In other words, institutions can indirectly support their collectives.

What the NCAA cannot do now:

- Conferences/leagues (like NCAA) cannot prevent an institution from directly compensating student-athletes for their NIL and cannot investigate an institution for doing so or take any other adverse action related to this.
- Athletic conferences cannot penalize (1) an institution or (2) a student athlete because “an individual or entity whose purpose includes supporting or benefiting the institution or student-athletes violates its rules or regulations concerning name, image, and likeness.”

Current Legislation

Other State Legislation

- Other states have amended their NIL laws and hedged their bets that either the NCAA or a court will allow institutions to directly compensate student-athletes for use of their NIL.
 - For example:
 - **Mississippi:** institution can compensate student-athletes for use of their NIL “to the extent consistent with legally enforceable rules” of an athletic association.
 - **Nebraska:** institution cannot compensate student-athletes for use of their NIL unless permitted by an athletic association or league, court order or settlement agreement.
 - **Oklahoma:** institution can compensate current or prospective student-athletes if permitted by an athletic association and institutional policy.
 - **Tennessee:** institution may compensate student-athletes in exchange for use of their NIL if expressly permitted by federal law, a court order, or the institution's athletic association.
 - **Ohio:** via executive order, institution can compensate or offer compensation to student-athletes for their NIL directly (but cannot come from funds provided by the state of Ohio).

Current Legislation

Federal NIL Legislation?

Legislation not likely . . . this year.

To collaborate with Congress, NCAA established Board of Governors Subcommittee on Congressional Engagement and Action.

NCAA's congressional needs:

- 1) NIL protections for student-athletes (mitigate risk of bad actors; ensure contracts and commitments are honored),
- 2) special status of student-athletes (not employees),
- 3) safe harbor from select liability complaints, and
- 4) preemption of state law.

Potential Executive Order? What will that do?

#03

Key Court Cases & Litigation

Key Court Cases & Litigation

Tennessee v. NCAA

- The State of Tennessee and the Commonwealth of Virginia, as *parens patriae* on behalf of their student-athletes, challenged the NCAA's "NIL recruiting ban"
- **NCAA immediately addressed the *Tennessee* decision and attempted to downplay its impact.**
 - March 1, 2024: NCAA President Charlie Baker sent letter to all NCAA member institutions acknowledging decision and announcing NCAA's pause on all investigations "involving third-party participation in NIL-related activities."

***Schroeder v. University of Oregon*, 6:23-cv-01806 (D.Or.)**

- Female student-athletes sued Oregon, arguing the school does not provide (among other things) the same NIL opportunities to female athletes as it does to male athletes (particularly the football team).

***Pavia v. NCAA*, 3:24-cv-01336 (M.D. Tenn. 2024)**

- Challenged the rule (and won) limiting the number of years played (after transferring from JUCO) arguing that the NCAA's restriction limited his economic opportunities and ability to participate in the NIL marketplace, unreasonably retraining trade.

***Fourquarean v. NCAA*, 25-cv-68 (W.D. Wis. 2025)**

- Same challenge as *Pavia*.

Key Court Cases & Litigation

***Goldstein v. NCAA*, 3:25-cv-00027 (M.D. Ga. 2025)**

- Also challenged the NCAA's eligibility rule and lost.

On March 13, 2025, the NCAA issued guidance defining the scope of the eligibility waiver.

Several other cases have recently been filed . . .

#04

House v. NCAA: Settlement and Preliminary Approval

The House Case: Overview

The original House lawsuit was filed in 2020 (before *Alston* and before NIL).

Focused on TV revenue and student athlete likeness in video games.

Plaintiffs amended the complaint after the *Alston* decision to add claims concerning NIL and TV broadcast revenue sharing.

- **Key Allegations:**
 - NCAA and Power conferences worked together to exploit student athlete labor without legal representation and limit student athlete compensation.
 - NCAA's NIL rules and its control of television markets prevented student athletes from profiting on their true market value (i.e., more than scholarships and education funding).
- **The key damages Plaintiffs sought are:**
 - Back pay for the value of their NIL before *Alston* (which was prohibited).
 - Revenue relating to the use of student athletes' likenesses in TV/video games.

The House Case: Classes

September 2023:

Judge Claudia Wilken certified the Injunctive Relief Class of 184,000 student-athletes, finding that the Plaintiffs met their burden of proving Rule 23(a)'s four requirements:

1. Numerosity
2. Commonality
3. Typicality
4. Adequacy of Representation

The Court also found that the Plaintiffs met the requirements of Rule 23(b)(2) because it is undisputed that the challenged NIL rules apply, and have applied in the past, in a uniform manner to all members of the Injunctive Relief Class.

The House Case: Settlement

Key Elements of Settlement Framework:

- **Damages:** Approximately \$2.8 billion in damages, to be paid over ten years on approximately 14,000 claims dating back to 2016.
 - Exact amount that each student-athlete will be paid is yet to be determined
 - NCAA to pay approx. 41% of the total settlement
 - Largest D1 (Power 5) conferences to pay 24%
 - Other football conferences to pay 10%
 - Lower D1 football and non-football D1 conferences to pay the rest
- **Revenue Sharing “Pool” with SAs**
 - Settlement allows schools to pay up to approx. \$21M per year (or 22% of the average “Shared Revenue”) directly to SAs
 - Ten-year escalator on the revenue sharing cap
 - 4% annual increase of the \$21M cap in years 1-3 following implementation

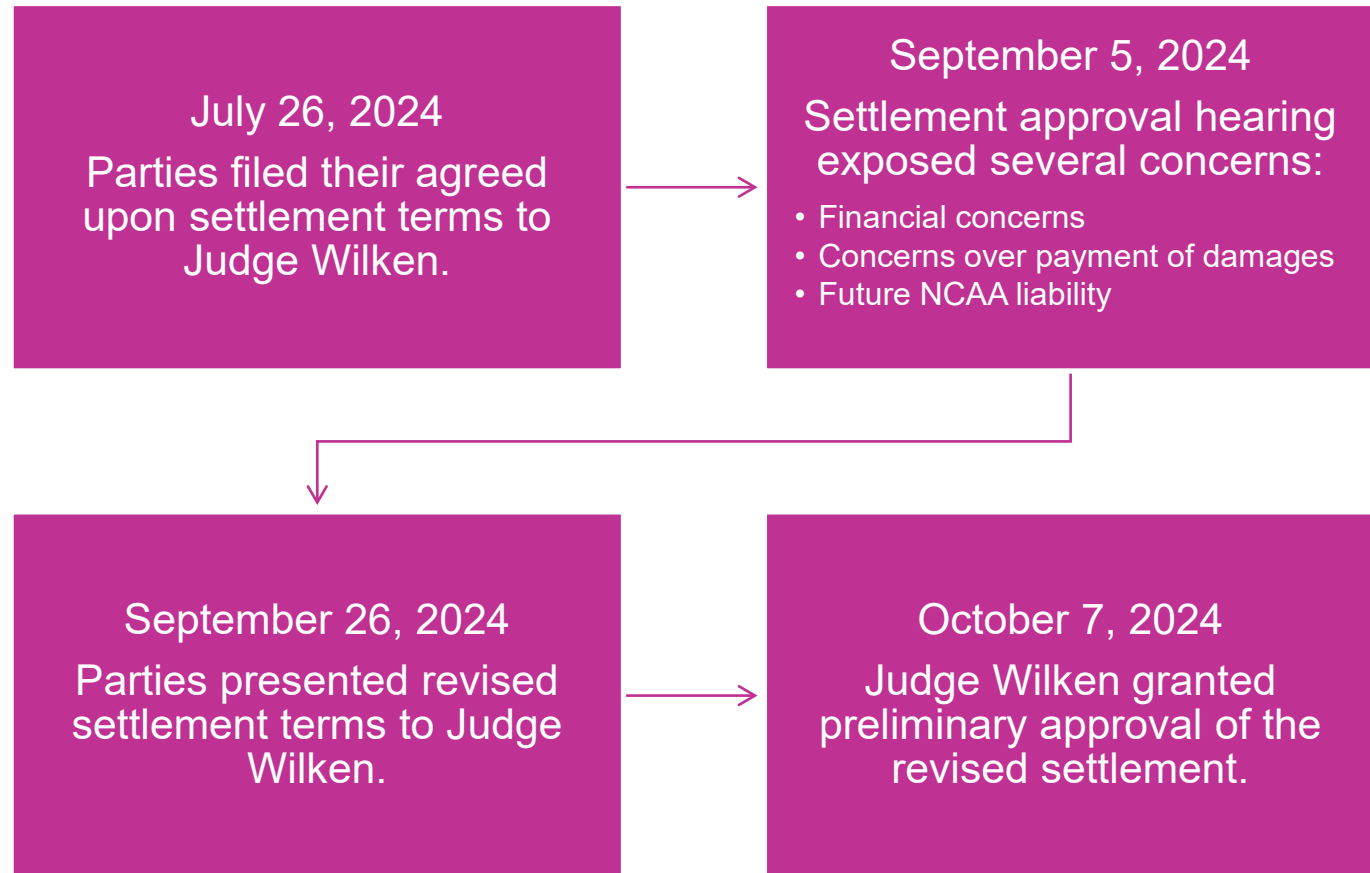
The House Case: Settlement

Key Elements of Settlement Framework:

- **Roster Limits Instead of Scholarship Limits**
 - Increases in scholarships above current level count toward Pool amount (up to first \$2.5M only)
 - Permissive not mandatory for Member Institutions
 - But can't "opt in" for just one sport
- **Direct NIL Payments by Member Institutions**
 - Count toward Pool cap
 - Mandatory reporting of NIL deal value \$600 or more
 - Member Institutions can serve as "marketing agent" for NIL deals
 - 3rd-party NIL payments still permitted and do not count towards Pool
- **Alston Awards Count Towards Pool Cap**
 - Alston awards, which are considered education-related benefits, count against the pool up to a certain limit (e.g., \$2.5 million per year, per institution)

The House Case: Settlement Timeline

Settlement Timeline:



The House Case: Initial Revisions to the Settlement

September 26, 2024 Revised Settlement Terms:

- NCAA's enforcement authority over NIL deals. The revised settlement:
 - Clarified that NCAA enforcement authority over third-party NIL deals will not extend to **all** third-parties.
 - Eliminated the word “booster” from the settlement.
 - Focused, instead, on a narrower group of individuals who are closely affiliated with schools.
 - Clarified the availability of neutral arbitration to challenge the NCAA's enforcement of rules.
 - Revised settlement also addressed Judge Wilken's concern about the distribution plan (for damages).

The House Case: Settlement Timeline (cont'd)

Settlement Timeline (continued):

July 26, 2024 – Parties filed their agreed upon settlement terms to Judge Wilken.

September 5, 2024 – Judge Wilken held a settlement approval hearing at which she **declined** to grant preliminary approval.

September 26, 2024 – Parties presented revised settlement terms to Judge Wilken.

October 7, 2024 – Judge Wilken granted preliminary approval of the revised settlement.

January 31, 2025 – Deadline for all individuals and entities wishing to object to the settlement to submit their objections.

April 7, 2025 – Final settlement approval hearing before Judge Wilken.

April 14, 2025 – Following the final settlement approval hearing, Judge Wilken ordered the Parties to clean up the settlement.

April 15, 2025 – Allowing the objectors a 1-page response

The House Case: Objections



Current and former
student-athletes
object:

Roster Limits
Gender Equity
New Antitrust Issues



Department of Justice Statement of
Interest (under the Biden
Administration)

The House Case: Department of Education

Department of Education (under Biden)

- In the final days of the Biden administration, the DOE issued guidance that NIL payments would be subject to Title IX and needed to comply with federal regulations.
 - NIL agreements between schools and their student-athletes as a form of athletic financial assistance
 - Payments by schools for use of student-athlete's NIL is subject to Title IX.
 - NIL agreements between student-athletes and third parties
 - Private donations does not relieve a school of its responsibility to comply with Title IX requirements.

Department of Education (under Trump)

- On February 12, the new DOE immediately rescinded former DOE guidance on Title IX and NIL payments.
 - NIL payments under *House* are not subject to Title IX regulations.

The House Case: Impact of Settlement

Even before the final settlement approval hearing, the *House* case has had a big impact on college sports . . .

- NIL collectives, associated and unaffiliated collectives alike, are closing or the schools are sunseting operations, bringing NIL in-house.
- Current student-athletes are being cut to prepare for roster limits imposed in *House* (impacting ability to transfer).
- High dollar amount deals before *House* is finalized and NIL deals with affiliated entities are subject to fair market value analysis.
- Several challenges/lawsuits against the NCAA.
- Reclassification of Saint Francis University (PA) from Division I to Division III.
- Ivy League opting-out of the *House* settlement.

The House Case: December 2024 Q&A Guidance

- **NCAA issued Q&A guidance on December 9 and 23, 2024.**
 - December 9 Q&A document address opt-in/out process, compliance with roster limits and change in scholarship amounts, the initial revenue “Pool,” third-party NIL deals subject to fair-market-value assessment, etc.
 - December 23 Q&A document addresses direct payments from schools, disclosure of NIL agreements, clarification of school payments and third-party collectives, etc.

Question No. 31: How and when will a student-athletes’ third-party NIL deals be subject to the fair-market-value assessment contemplated by the settlement?

Answer: All Division I student-athletes will be required to report third-party NIL deals worth \$600 or more, whether or not their institution opts in to the settlement. All agreements with associated entities and associated individuals with payments occurring after July 1, 2025, will be subject to the fair-market-value assessment contemplated by the settlement. Also, all new agreements with associated entities and associated individuals executed after settlement approval (which could occur any time after April 7, 2025) will be subject to a fair-market-value review.

In addition, if there is a challenge to determinations related to fair-market-value, third-party arbitrators approved by the plaintiffs, the defendant conferences and the NCAA will render a decision.

Question No. 8: Who determines whether the money provided by an associated entity or individual is at a fair market rate?

Answer: If the settlement is approved, student-athletes will be provided instructions on where to submit all third-party NIL contracts over \$600. If any NIL agreements involving associated entities and individuals are deemed impermissible by the designated enforcement entity, student-athletes will have the opportunity to challenge that decision through a new neutral arbitration system. If the decision is upheld by the neutral arbitrator, the student-athlete and the associated entity or individual will be given an opportunity to renegotiate their agreement.

#05

House v. NCAA: Final Approval Hearing

Final Approval Hearing

Notice issued to class members

- About 390,000 members in the class
- 343 opt outs
- 73 objectors
- 73,000 people who put in claims to recover; 118,879 total athletes either submitted a claim or said they want a claim by updating their information (according to Plaintiffs' counsel)

Judge Wilken quotes:

- “I think the attorneys have been doing a great job and the class representatives have been doing a great job.”
- “Basically, I think this is a good settlement and I think it is worth pursuing. Don't quote me on that. But I think some of these issues can be fixed if people would take the time to fix them.”

Judge Wilken did not rule from the bench.

Preliminary Issues Addressed by Objectors

- Class Certification and Representation.
- Procompetitive Justification for Third-Party NIL deals.
- Roster Limits Replacing Scholarship Limits.
- Settlement Replaces Existing Spending Cap with a New Spending Cap.
- Class Plaintiffs Agreeing to Support Antitrust Immunity and Approval of All NCAA Regulations.
- Title IX, Collective Bargaining, Minimum Wage Claim, and Fair Labor Standards.
- Joint Representation by Class Counsel on Damages and Injunction Claims.
- Settlement Violates State Laws and Issues of Preemption.
- College Football Playoff as a Recipient of Funds from the Settlement.
- Claim Submission and Communication Issues.

Plaintiffs' Position in Favor of Settlement

- **Plaintiffs represented by Berman & Kessler.**
- **Arguments:**
 - Balance the risk of continued litigation versus the benefit of a settlement.
 - If Judge Wilken does not approve the settlement, the parties would go back to lengthy and costly litigation (*House*, *Hubbard*, and *Carter* cases) and the settlement wiped out.
 - NCAA and Defendants are pushing Congress for antitrust exemption (and federal NIL bill).



Hearing Arguments: Roster Limits

- **Roster Limits:**
 - Judge Wilken focused on this issue.
 - Settlement would eliminate scholarship caps, replacing them with roster limits.
 - Example: football rosters shrinking to 105 players, resulting in 20 or more players being cut.
 - Argument is that the roster limits are arbitrary.
 - “In a free market, a team should be able to have as many players as they want.”
 - Judge Wilken understood the issue but tried focusing the arguments on whether there were antitrust issues.
- **Interregnum Period Suggestion**
 - Judge Wilken suggested there some workaround during the time between the settlement’s ultimate approval and its implementation

Hearing Arguments: Class Certification & the “Asphalt Allstar”

- **Class Certification:**
 - Does Rule 23 require notice and opportunity to object to the future student athletes?
 - “Asphalt Allstar” is the 10-year-old kid who would be releasing all injunctive relief claims.
 - Due Process Issues:
 - Can you have a class of future people who aren't known yet?
 - Can they be understood to release claims for things that haven't happened yet?
 - They can't get notice, they can't have. They can't object before it's approved.



Hearing Arguments: Class Certification & the “Asphalt Allstar”

- **Objectors’ Arguments:**
 - Notice and opportunity to object before approval.
 - Fatal flaw in the settlement.
 - Only remedy:
 - Future athletes to have counsel representing their interests.
- **Cases referenced:**
 - *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)
 - *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)

Hearing Arguments: Class Certification & the “Asphalt Allstar”

- **Parties' Position:**
 - Rule 23 requires notice and opportunity to object only before being affected.
 - Proposed Settlement Addresses Issues
 - **“Asphalt Allstar”** won't be affected until they become a NCAA student-athlete.
 - Can object or opt-out at that time.
 - Court can rule on objections as they arise.
 - **Argument:** “If you can only have a class with people get notice now, you can never have a future class injunctive settlement. That can't be the law.”
 - **White v. NFL; Robinson v. NBA; and Alexander v. NFL**

Hearing Arguments: Class Certification & the “Asphalt Allstar”

- **Judge Wilken:**
 - What about *Stanton v. Boeing Co.*, 327 F.3d 938 (9th Cir. 2003)?
 - Even if Settlement process makes sense, “we have to follow the law.”
 - Asked partes to address this issue in their April 14, 2025 Letter.



Hearing Arguments: Title IX, Third-Party Payments, Employment Wage, Collective Bargaining, and Fair Labor Standards Arguments

- Title IX Issues and Payments
- Third-Party NIL Payments
- Employment, Collective Bargaining, and Fair Labor Standards

Hearing Recap

- **What the Court focused on:**

- Future student-athletes and impact on settlement's injunctive class.
 - Student-athletes not in college are automatically part of the 10-year settlement's injunctive class.
- Loss of roster spots
 - Old scholarship limits replaced with formal roster limitations.
 - Judge Wilken concerned with current student-athletes losing roster spots; proposed grandfathering in the student-athletes currently on rosters.

- **What the Court did not focus on:**

- Title IX, Wage & Hour Claims, and Collective Bargaining.
- Again, refocused the objectors to the antitrust issues.
 - Effectively said these issues were not sued upon in the original cases and did not create under antitrust issues here.

Hearing Recap

- **But what about the revenue-sharing “pool”?**
 - Not a per se antitrust violation.
 - Big “win” for the NCAA.
 - Outgoing Department of Justice filed a statement of interest arguing that the revenue-sharing “pool” should be treated as a per se antitrust violation.
 - Judge Wilken viewing this as a monopoly situation and not a price-fixing issue.

Post-Hearing Updates

**Proposed Third
Amended Settlement
Agreement Filed
April 14**

**• Judge Wilken
Temporarily
Rejected Proposed
Third Amended
Settlement on April
23**

**• Fourth Amended
Settlement
Agreement
Proposed May 7**

**• Final Approval
Process**

Current (Fourth) Amended Settlement Agreement

- **What Changed?**
 - Clarified Future Class Members' claims will not be released until after notice and opportunity to object.
 - Clarified Class Notice Process for Future Student Athletes
 - "College Football Playoff" defined
- **The Parties attempted to Address ROSTER LIMITS**
 - Two groups of students-athletes are exempt from roster limits.
 - Those "who have or had a roster spot" on a Division I team during the 2024-2025 academic year (including those who transferred), and
 - Those recruited athletes who will enroll in college for the 2025-2026 academic year and have been promised a Division I team roster spot for the coming academic year.
 - Schools retain authority and discretion to control rosters.
 - Article 4 of the revised proposed settlement agreement permits Designated Student-Athletes to find a roster spot at another school and transfer there if the school where they are currently enrolled chooses not to exceed the roster limits to provide them a roster spot.
- **The Parties await a decision from Judge Wilken . . .**

#06

Enforcement and Compliance Considerations

Enforcement (before *House*)

- **Standard of Review for Violations Related to Name, Image, and Likeness Activities**
 - October 2022 clarifying guidance included a new “charging standard” (in effect since January 1, 2023)
 - NCAA enforcement staff and the Committee on Infractions may **presume** that an NIL violation occurred if “available information supports” such a finding.

Presumption of a Violation Related to NIL Activities.

When available information supports that the behaviors leading up to, surrounding and/or related to an NIL agreement or activity were contrary to NCAA Division I legislation and/or the interim NIL policy, the enforcement staff and NCAA Division I Committee on Infractions shall presume a violation occurred. To rebut the presumption of a violation, the institution must clearly demonstrate that all behaviors complied with NCAA legislation and interim NIL policy.

- Two paths for investigations:
 - Limited expedited investigation; or
 - Letter of Inquiry (LOI).
 - The NCAA maintains discretion over which path it chooses.
- **Institution agrees that a violation occurred:** the institution and NCAA enforcement staff may submit a summary disposition or negotiated resolution that must be approved by the Committee on Infractions.
- **Institution disagrees that a violation occurred:** the case will proceed to a contested hearing.

Enforcement (after *House*)

- **The NCAA is giving up power and will no longer enforce NIL-related regulations**
- **Comments from Charlie Baker confirm this shift in responsibility.**
 - “The point behind that was to have an entity that would see the cap management system and the third party NIL system. Have rules associated with both. Create enforcement parameters for violating those rules under the rubric that would be the theoretical injunction.”
- **Questions raised by new enforcement arm:**
 - What enforcement authority will it have?
 - Will the power conferences collaborate?
 - How will athletes be protected?

Compliance Considerations

Post-Tennessee

- **Rule #1: Prohibiting agreements without any quid pro quo**
 - Agreement to pay NIL compensation to a SA must be in exchange for something from the SA.
 - NIL agreements should include expected NIL deliverables by SA in exchange for agreed upon compensation.
 - Potential Investigations:
 - Potential NCAA investigations into (a) whether agreement included quid pro quo, (b) whether the quid pro quo was bona fide, and (c) was it enforced?
- **Rule #2: Prohibiting athletic performance as consideration (pay-for-play)**
 - Institutions or collectives/boosters cannot pay SA for their athletic performance.
 - Potential Investigations:
 - An attempt at enforcement of this rule requires an in-depth investigation of the institution to confirm no money is being given to the SA by the institution (directly or indirectly) for their athletic performance.
 - “[E]vent operators, event sponsors and institutional opponents may not pay an NIL entity (e.g., collective) for a competition in which student-athletes participate” language from NCAA addresses indirect compensation issue.

Compliance Considerations

Post-Tennessee

- **Rule #3: Prohibiting compensation directly from member institutions**
 - Compensation for NIL or revenue-sharing.
 - In VA, institutions can directly compensate SA for use of their NIL.
- Potential Investigations:
 - We would not expect the NCAA to attempt to enforce this part of the rule while the *House* case is being litigated.
 - Given loss in *Tennessee* and new laws passed by Virginia and other states, NCAA will likely not focus on this in its investigations.
- **Rule #4: Institutions still prohibited from using NIL as a recruiting inducement.**
 - Tennessee court said boosters/collectives can induce, institutions cannot.
 - But see Virginia et al. laws permitting institution to directly compensate
- Potential Investigations:
 - NCAA could target institutions to the extent that they are not sufficiently separate and distinct from their booster/collective.
 - NCAA cannot do this in states like Virginia where this activity is permitted
 - Language from prior NCAA guidance = “Any entity that is so closely aligned with an institution that it is viewed as an extension of the university is subject to the same NIL scrutiny as the institution.”

Compliance Considerations

- **Reported Enforcement Plans in *House Settlement***
 - **Settlement proposal includes a separate enforcement arm and a new reporting system for NIL deals**
 - All disciplinary action regarding revenue sharing and NIL will come from a neutral and independent arbiter
 - Enforcement committees comprised of school officials will focus on other association rules not related to revenue sharing
 - All third-party NIL deals will need to be reported to the NCAA
 - All deals must be a genuine agreement for the player's likeness
 - NIL deals must provide any booster with a “valid business purpose” and pay athletes fair market value

Compliance Considerations

- **Compliance Strategies**
 - Create an NIL Compliance Plan
 - Monitoring NIL Activity
 - Monitoring Athletics Staff
 - Educate Student-Athletes and Staff
 - Dealing With Collectives
 - Encourage Reporting and Transparency
 - Document, Document, Document



Highway to NIL, a Troutman Pepper Locke Podcast

The Highway to NIL podcast analyzes the legal landscape concerning college athletics and the regulation of name, image, and likeness (NIL) rights of student athletes. The podcast provides key insights into the current state of affairs, focusing on the NIL guidance and policies coming directly from the NCAA; the various passed and amended state NIL laws; and NIL enforcement, including how the NCAA, state attorneys generals, and other regulators may investigate and punish schools for NIL violations.

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