



Latest NCAA Settlement Means Colleges Can Use NIL Funds for Recruiting

Insights

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Another day, another settlement impacting college athletics. The NCAA and the states of Tennessee and Virginia recently announced a settlement that essentially ends the NCAA's rules prohibiting name, image and likeness (NIL) deals in recruitment efforts across the country. What does your college, university, or business need to know about this January 31 development and other challenges the NCAA is facing?

How Did We Get Here?

In January 2024, the attorneys general of Tennessee and Virginia brought suit against the NCAA challenging its prohibition of the use of NIL deals while recruiting student-athletes in the transfer portal or from high school. The lawsuit came in response to the NCAA's investigation into the University of Tennessee for possible violations of the rule across multiple sports.

Early in the case, the court issued an injunction prohibiting the NCAA from enforcing its longstanding rule, and finding the challengers had shown a likelihood of success on their claims that the restrictions violated antitrust law. Shortly thereafter, the NCAA announced that it would halt enforcement of the rule and would not commence any new investigations related to whether an NCAA member institution used NIL compensation to induce athletes to join a given team. The announcement was significant because, in effect, it broadened the court's injunction beyond the court's original order to all institutions nationwide.

Why is a Settlement Important?

Pending final approval and a ruling on the request for a permanent injunction, set for March 17, this decision further erodes the "traditional notions of amateurism" undergirding most of the NCAA's eligibility rules. As a result, transfer portal and high school athletes will be able to maximize their NIL value when deciding on a school.

The March 17 hearing comes just a few weeks before the hearing for final approval of the *House v. NCAA* settlement which is set to distribute nearly \$2.8 billion in damages as well as permit schools to directly share revenue with their athletes beginning in the 2025-26 academic year. Part of the terms of the proposed *House* settlement includes a third-party clearinghouse that would review all NIL deals over \$600 to determine whether deals are in line with the market value for the athletes.

This clearinghouse is important to the NCAA as they attempt to maintain competitive balance and their status as a governing body in college athletics.

The proposed settlement and request for a permanent injunction in the TN/VA case may benefit athletes who are looking to maximize their NIL value without fear of infractions. That said, schools and business should still function in accordance with current NCAA standards which prohibits “pay for play” NIL deals. You should not enter into an agreement under the guise of NIL that include terms that are related to athletic performance or amount to merely a salary without the athletes having to perform a service, such as a marketing campaign.

What Are Other Challenges the NCAA is Facing?

While a settlement here seemingly brings an end to this challenge, the challenges to the NCAA and student-athlete amateurism are legion.

- Along with the *House* case, *Johnson v. NCAA* is an existential threat to student-athlete amateurism. In *Johnson* a group of former student-athletes brought suit alleging they were “employees” under federal and state wage and hour law and thus entitled to minimum wage and overtime for their time spent representing their institution in collegiate sports. On appeal following an unsuccessful motion to dismiss by the NCAA, the Third Circuit created a new test to analyze athletes’ status under the FLSA and rejected the NCAA’s longstanding defense of “history and tradition of amateurism in college athletics.” The case is on remand to the district court, with responses to an amended complaint due in late March.
- The NCAA sustained yet another blow in December 2024 when a federal judge in Tennessee granted an injunction that allowed a quarterback at Vanderbilt to pursue another year of eligibility after he sued the NCAA alleging its rules that count junior college seasons towards NCAA eligibility violated antitrust law. Following the injunction, the NCAA D-I board granted a waiver to all similarly situated players, permitting them to participate in the 2025-2026 season.
- Even more recently, a baseball student-athlete has sued seeking a temporary restraining order and a preliminary injunction to allow him to play D-I baseball this spring. As was the case with the quarterback, the baseball athlete alleges that current eligibility rules violate antitrust law because they prevent the extension of a college career and prevent athletes from engaging in potential NIL deals and revenue sharing opportunities. The athlete began his college career at a community college in the fall of 2019, but his spring season was shortened due to the COVID-19 pandemic. After playing one more year at the junior college level, he transferred to a NCAA member institution and then participated in three seasons. The district court recently denied the athlete a temporary restraining order, but a hearing on the request for a preliminary injunction is scheduled for this week.

Conclusion

If your institution or business has questions about NIL, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, another member of our [Sports Industry Group](#), or any member of the [Higher Ed Team](#). We'll continue to monitor the status of developing NIL legislation and will provide updates as warranted, so make sure you are signed up for [Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.

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Rob Dickson
Associate
908.516.1029
[Email](#)



Joshua D. Nadreau
Regional Managing Partner and Vice Chair, Labor Relations Group
617.722.0044
[Email](#)

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