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Cases

The Split Between A Coach and a Team's Boosters Can Be a Messy Divorce

By Gary Chester, Senior Writer

Fans of college sports recognize that the relationship between a head coach and a school's boosters can resemble a rocky marriage. When the team succeeds, the relationship seems blissful. When the team fails and the boosters want a new coach, it can resemble a bitter divorce.

A New Jersey case involving a frustrated high school baseball coach and a difficult booster club illustrates just how messy the split between coaches and high school boosters can be. In *Illiano v. Wayne Hills Board of Education*, 2024 U.S. Dist. LEXIS 28389 (D. N.J. February 20, 2024), the marriage between the coach and the boosters was on the rocks after just two months.

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The Facts

The Wayne Hills High School (WHHS) baseball team was a program in flux, having employed five different managers from 2011 to 2017. Coming off an 11-16 season, WHHS hired an experienced New Jersey baseball coach, Scott Illiano, in November 2017. Illiano took the job even though he had learned that the team faced several issues, such as a miniscule budget of about $3,500 and a lack of assistant coaches—the team had two paid assistants while five "were required for proper supervision" of the student-athletes.

To address these concerns, Richard Portfido, the athletic director, and Superintendent Mark Toback told Illiano that he could fundraise. Portfido suggested that the coach coordinate with the booster club to raise funds for additional assistants and the purchase of essential equipment. Two months after Illiano was hired, he met with the booster club to pitch a 12-month plan to rejuvenate the baseball program.

Almost immediately after the meeting, Illiano experienced problems with the equipment-purchasing process and the booster club's failure to follow its own bylaws and state law. The boosters allegedly undermined Illiano's authority. The second amended complaint alleges that the booster club violated Wayne Board of Education (BOE) policies, executive orders issued by Governor Phil Murphy, and regulations promulgated by the New Jersey State Interscholastic Athletic Association. Alleged violations include: serving alcohol at a team banquet; delaying the purchase of equipment; rigging booster club elections; giving $100 gift cards to WHHS players; ignoring requests to pay assistant coaches; and holding mass gatherings during the COVID-19 pandemic.

The booster club was suspended in 2019 and again in 2020 after Illiano complained to Portfido. Each suspension was short-lived however, because the BOE lifted them. Thereafter, the boosters and members of the BOE allegedly retaliated against the coach by: (1) claiming he took monetary kickbacks, (2) accusing him of trying to improperly influence booster club elections, and (3) misrepresenting the contents of a book he wrote in 2011.

On January 19, 2021, WHHS terminated Illiano's employment. Eleven months later, he filed a complaint in state court asserting these eight counts: (1) violation of 42 U.S.C. §1983; (2) violation of the New Jersey Conscientious Employee Protection Act (CEPA); (3) wrongful termination; (4) First Amendment Retaliation; (5) civil conspiracy; (6) tortious interference with economic advantage; (7) portraying the plaintiff in a false light; and (8) defamation. The named defendants were the BOE, the Wayne Hills Booster Club, BOE member Michael Bubba, three booster club officers, and three school officials or employees.

The Motion to Dismiss

On January 10, 2022, the defendants removed the action to U.S. District Court in Newark, where motions to dismiss the complaint were heard by Judge Susan Wigenton. The court dismissed the claims brought against one individual defendant and then considered the CEPA claim against the BOE and others. The defendants argued that because Illiano failed to report the alleged misconduct to his employer, he did not allege a prima facie CEPA claim.

To state a claim under the CEPA, a plaintiff must allege that: (1) he reasonably believed defendants were violating a law, rule, or public policy; (2) he performed a whistleblowing activity as defined by N.J. Stat. Ann. § 34:19-3; (3) an adverse employment action was taken against him; and (4) a causal relationship exists between the whistleblowing activity and the adverse employment action. The statute defines "employer" as: "[A]ny individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent…"

The court denied the motion because Illiano adequately pleaded that the Club and some of its members acted as agents for the BOE and retaliated against him.

The BOE's motion to dismiss the third count (wrongful termination) was denied because the BOE allegedly failed to comply with its own policies governing boosters and "its own decision to terminate Plaintiff for blowing the whistle on that alleged dereliction of duty, is undoubtedly a violation of a clear mandate of public policy."

The court denied the motion filed by the school's principal and assistant principal on the fourth count (First Amendment retaliation). The plaintiff sufficiently alleged that they terminated him in part due to his complaints of misconduct and a book he wrote in 2011—both of which are protected speech.

To state a claim for tortious interference with prospective economic advantage against a member of the BOE and two other individuals in count six, Illiano needed to allege that: (1) he had reasonable economic expectations; (2) there was intentional interference by the defendants; (3) he probably would have realized the economic advantages absent the interference; and (4) the interference caused the damage. Though acts committed within the scope of employment with the BOE are protected, the court denied the motion because the alleged facts suggest that the acts were outside the scope of employment.

The court dismissed the seventh count (false light) as to the named board member because the one-year statute of limitations had expired. Dismissal was granted to three booster club defendants as to their comments regarding the plaintiff's book because they were not made public; however, the defendants' motion was denied as to their alleged intentional and offensive statements that Illiano had received kickbacks and interfered in the Club's election. Judge Wigenton denied the defendants' motions to dismiss the defamation claim on similar grounds.

Finally, the court ruled that the fifth count (civil conspiracy) could proceed against four individual boosters. To state a claim for conspiracy under New Jersey law, a plaintiff must plead these elements: (1) a combination of two or more persons; (2) a real agreement or confederation with a common design; (3) the existence of an unlawful purpose, and (4) proof of special damages. The plaintiff has adequately alleged that defendant Michael Bubba, while acting outside his employment with the BOE, conspired with three other defendants to tortiously interfere with Illiano's employment.

The Epilogue

Illiano turned his team's fortunes around, leading Wayne Hills to winning seasons in 2018, 2019, and 2020. He was replaced by Rob Carcich, who reportedly

moved on after three seasons. Ironically, Illiano is reportedly working with a business that organizes fundraisers for interscholastic sports teams. Needless to say, the Wayne Hills High School baseball team is not listed on the business' website as a client.

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Judge Rules Illinois Basketball Star Be Immediately Reinstated Amid Rape Charges

By T J O'Connor, Troy University & Michael S. Carroll, PhD

Background

On September 8, 2023, Terrence Shannon Jr., a prominent member of the University of Illinois basketball team, and his roommates, teammate Justin Harmon, and graduate assistant Dyshon Hobson traveled to Lawrence, Kansas to attend a football game between the University of Illinois and Kansas University. Graduate assistant Hobson drove the group to Lawrence at the direction of other basketball assistant coaches. After attending the game, Shannon and his two roommates went out to the Jayhawk Cafe in Lawrence to socialize with friends and some of the University of Kansas basketball players. Shannon and his roommates remained at the bar throughout the evening until returning to Champaign, Illinois at about 4:30 in the morning. While at the Jayhawk Cafe, Shannon is alleged to have assaulted a female by grabbing her buttocks and digitally penetrating her vagina without her consent. The alleged incident occurred in a crowded space with witnesses as well as video surveillance in place. Shannon claims there are no witnesses to the alleged incident, no video showing him and the complainant together, nor any physical evidence tying him to the alleged incident. No interviews by police were conducted until criminal charges were filed. The Lawrence Police Department (LPD) stated that the victim's phone was used to conduct searches of the Kansas football and basketball teams as well as the Illinois football and basketball teams before identifying Shannon. The case in question is not a criminal case to find whether Shannon is guilty or innocent of the allegations levied against him, but rather findings of whether the University of Illinois can continue to suspend him from basketball team activities, including practices and games, while he faces such charges.

In 2017-18, the University of Illinois introduced the Department of Intercollegiate Athletics (DIA). The purpose of the DIA is to interpret and enforce the Student Athlete handbook, which includes the student athlete code of conduct as well as the disciplinary process. In creating this department, the athletic department and university sought to remove the decision-making process, investigation process, and disciplinary responsibilities from coaches and other athletic department personnel. The DIA has procedures in place to respond to any violations of the student code of conduct presented to them. It is then up to the DIA to decide in cases of accusations or information involving student misconduct whether the accused student athlete should be allowed to participate in athletic activities while waiting for resolution of charges or allegations. In late September of 2023, the Illinois DIA received information from the LPD that Shannon was involved in an incident while visiting Lawrence, Kansas. The preliminary information received was very vague and did not specifically communicate that Shannon was the subject of an investigation.

Illinois Athletics Director Josh Whitmen, who oversees the DIA, learned later of a formal investigation conducted by the LPD. After learning of this incident, Whitmen consulted with other university officials at Illinois, including the Chancellor, the Title IX office, and the Office of University Counsel throughout the fall of 2023. Eventually, they unanimously agreed that the information available at that time did not warrant removing Shannon from athletic activities. However, on December 27, 2023, the DIA received an arrest warrant from LPD for Shannon. At this point, Whitmen made the decision to suspend Shannon from all Illinois basketball activities, including practices and games. Shannon was still able to receive access to training, meals, academic assistance, and medical treatment, among other things. Then, on December 28, 2023, Executive Senior Associate Athletics Director/Chief Integrity Officer Ryan Squire gave written notice to Shannon that he would be suspended from all organized team activities. The DIA panel met on the afternoon of January 3, 2024 and upheld their decision that Shannon should be withheld from organized team activities until resolution of the legal charges against him. After this meeting, Squire

again provided Shannon with written notice of the DIA decision.

Case

Shortly thereafter, on January 8, 2024, Shannon filed a state court complaint for injunctive relief and a motion for emergency injunctive relief. Shannon filed his verified motion for a temporary restraining order, preliminary injunction, and/or expedited discovery. The case contains seven counts against the University of Illinois and its board of trustees.

- Count I: seeks injunctive and declaratory relief against the University of Illinois on the basis that Title IX is applicable.
- Count II: seeks declaratory and injunctive relief against Illinois under Plaintiff's scholarship contract.
- Count III: is pled alternatively and seeks injunctive relief based on an implied contract with Illinois under the DIA Policy and breach due to the failure to apply the presumption of innocence and other due process safeguards.
- Count IV: is pled alternatively against Illinois and seeks declaratory and injunctive relief based on the unconscionability of the DIA Policy.
- Count V: is pled alternatively against Illinois and is a declaratory and injunctive relief claim seeking a determination of which standards actually govern the suspension process, given the inconsistent and vague application of different standards.
- Count VI: pled alternatively, is a claim under 42 U.S.C. § 1983 against Illinois President Timothy Killeen for deprivation of Plaintiff's protected property interests without procedural due process.
- Count VII: is a declaratory and injunctive relief claim against Illinois alleging it waived its rights to apply the DIA or OSCR Policies by not acting for three months.

To obtain preliminary injunctive relief, a plaintiff must show that (a) his underlying case has some likelihood of success on the merits, (b) no adequate remedy at law exists, and (c) he will suffer irreparable harm without the injunction. If those three factors are shown, the court then must balance the harm to each party and to the public interest from granting or denying the injunction. The court in this case examined Count I with respect to Title IX and Count VI's 42 U.S.C. § 1983 claim against Illinois President Timothy Killeen for deprivation of Plaintiff's protected property interests without procedural due process.

Likelihood of Success

Title IX

Defendant University of Illinois receives federal financial assistance, thus it is required to comply with Title IX policy. In a general sense, Title IX ensures that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. A Title IX sex discrimination claim must show (a) proof that the educational institution receives federal funding, (b) the plaintiff was excluded from participation in or denied the benefits of an education program, and (c) the educational institution in question discriminated against the plaintiff based on sex. Shannon argued that this has some likelihood of success based on the fact that he can show the alleged incident took place during an educational program or activity, which holds Illinois responsible. The plaintiff argues that Illinois should have applied Title IX in this case because the trip was an activity that was school sponsored since he traveled with an assistant coach from the school, other assistant coaches requested that the assistant coach travel with Shannon, and the coaches frequently checked in on his whereabouts. However, the courts viewed the trip differently in that it was initiated by Shannon, he was accompanied by his roommates, and the incident occurred in Lawrence, Kansas at the Jayhawk cafe, none of which are under any sort of University of Illinois jurisdiction or control. Furthermore, the fact that coaches requested someone travel with Shannon is not enough to show that this was a university-sponsored, educational trip. As such, the opinion of the court was that Plaintiff has not established the requisite likelihood of success of his claim on the merits of Title IX.

Protected Property Interest

The case in question is unique in that Shannon was a projected NBA lottery pick in the 2024 NBA draft, which would position him to make millions of dollars upon being selected. The Supreme Court in *Board of*

Regents v. Roth (1972) explained that college education is not property in the sense of the word, and in so doing determined neither is sport. However, as stated above, in this case Plaintiff's ability to continue to participate in this basketball season is vital to the development of his career and future earning potential as a professional athlete. The school preventing him from doing so could cost him millions of dollars. Courts have found a property interest when there is a matter of contract between the student and the university. In this case Shannon can argue that the contract he has with the University of Illinois entitles him to his right to play, which was taken away from him. It is the opinion of the court that there is a likelihood of success on this issue.

Liberty Interest

As stated by the Supreme Court, the meaning of liberty in this context means the liberty to follow a trade profession or other calling. To prove the University of Illinois is depriving him of his liberty interests, Shannon must show that the University is inflicting reputational damage by altering a legal status that deprives Plaintiff of a right he previously held. By suspending him from the basketball team, the University is altering Shannon's legal status. Therefore, Shannon's occupational liberty interest has been impacted. By remaining suspended he will not be able to finish the season with his team or play in the Big Ten and NCAA basketball tournaments against top competition, which hurts his ability to benefit from NIL compensation as well as future earnings from the prospect of a professional career in the sport. As a result, the court determined Plaintiff has a likelihood of success on the merits based on the deprivation of his liberty interest.

Procedural Fairness

If the University of Illinois is going to withhold a student athlete from participation, the Department of Intercollegiate Athletics (DIA) specifically requires that it do so in compliance with and in consideration of all applicable university, state, and federal regulations. One of those university applicable policies is the Office of Student Conflict Resolution (OSCR) policy, which states that any student accused of sexual misconduct has a right to notice of the proceedings, participation in the administrative hearings, an investigative process, and an ability to review and respond to the evidence. While Shannon was given written notice by the University of Illinois of his suspension, he was not given the benefits of the OSCR policy with the DIA before his interim suspension. He was given written notice, but he was not made aware of many aspects of the accusation, nor was he provided with an opportunity to review the evidence against him. There was no reviewing of evidence by the OSCR panel, and Shannon was not allowed to give his verbal defense, in violation of the policy. The OSCR panel failed to provide Shannon the fair opportunities of defense as written in the policy. In determining this, the court again found there is a likelihood that Plaintiff could win the injunction on the merits.

Inadequate Legal Remedies

In this case, time was of the essence. By suspending Shannon in the interim, the University of Illinois was preventing him from playing while the remainder of the season continued. So, while the suspension was interim, it would have likely lasted for the remainder of the year since the legal proceedings generally takes significant time to move through the courts. Shannon has plans to declare for the 2024 NBA draft, so his season and career at Illinois would effectively be over should his suspension continue. The current suspension has already done irreparable damage to the plaintiff in both reputation and projected future earnings, hurting Shannon's NBA draft stock. The court recognized that furthering his suspension would prevent Shannon from having a remedy at law if the charges were to be dismissed or he is acquitted of the charges once the college basketball season and or NBA draft is completed. By recognizing this, the court determined Defendant had shown inadequate legal remedies exist and irreparable harm has occurred to provide reason for an injunction.

Irreparable Harm

When determining irreparable harm, the court will look at both sides. In this case, the court must balance whether the irreparable harm that exists for Plaintiff is greater than that of the University or defendant. The court felt strongly that there was plenty of irreparable harm in place for Plaintiff in the form of lost NIL money, possible loss of an NBA career, ability to support his family and future earnings, as well as reputation and that this harm is hard to quantify. It is also hard to put a quantitative number on what losing the rest of one's college

career does. Were the University to allow Shannon to play, they also run the risk of suffering harm. There is a chance that Shannon, if reinstated could hurt someone else, be ultimately tried and found guilty, and have the University be criticized for not doing more. All of this, while having to be scrutinized in the court of public opinion, if they allow him to play while awaiting the outcome of his criminal case. The court felt that since the University was still allowing Shannon to be on campus, attend classes, and receive treatment as well as many other school and athletic privileges, it appears the University did not see him as a threat to other students or to the community at large. Therefore, the court felt that the irreparable harm to Plaintiff based on the interim suspension would be greater than the harm to the University if Plaintiff were allowed to continue to participate.

Conclusion

The court was able to show the failure to meet the three factors for a preliminary injunction through the Title IX claims, stating that Plaintiff's claims failed to live up to the standards of a Title IX complaint. However, using Count VI of Plaintiff's argument, the court was able to show that all three factors were met in order to obtain a preliminary injunction on behalf of Shannon. As such, the court granted temporary injunction in favor of Shannon with respect to the University of Illinois's suspension of him, allowing him to be immediately eligible to return to basketball competition and all other basketball and educational related activities.

During his suspension, Shannon missed six games, with the Illinois basketball team going 4-2 in his absence. A preliminary hearing for the criminal rape case against Shannon has been set for May 10, 2024.

References

Shannon v. The Board of Trustees of the University of Illinois, 24-cv-2010 (C.D. Ill. Jan. 19, 2024). Retrieved from https://archive.org/details/gov.uscourts.ilcd.91597

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CAS Decision Raises Questions About MLS' Ability to Enforce Player Options

By Christopher Deubert, Senior Writer

[Disclosure: As referenced below, I represented Scott Pearson, Kaku's representative, in a lawsuit brought by MLS arising out of the dispute described in this article; I also represented Kaku in a separate matter in which he was a co-defendant with MLS and the New York Red Bulls.]

FIFA's Dispute Resolutions Chamber (DRC) has frequently held that unilateral options in favor of a club are unenforceable on the grounds that they unfairly restrain a player's freedom of contract and employment. For this reason, the MLS Standard Player Contract contains a lengthy provision in which MLS and the players agree that FIFA's regulations are not applicable. Although a decision handed down on April 5, 2024 might have provided players with a backdoor.

Kaku and the Red Bulls

The case at hand concerns Alejandro Sebastian Romero Gamarra, better known as "Kaku," an Argentinian globetrotting soccer star.

On February 9, 2018, Kaku and MLS agreed to a three-year contract whereby Kaku would play for the New York Red Bulls. The contract also included two unilateral options through which MLS could extend Kaku's contract through 2021, and then also 2022. To exercise the options, MLS needed to provide Kaku with written notice on or before December 1, 2020 for the 2021 season, and December 1, 2021 for the 2022 season.

In 72 games between 2018 and 2020, Kaku, a midfielder, registered 13 goals and 25 assists for the Red Bulls.

MLS claims that on March 3, 2020, then-Red Bulls Sporting Director Denis Hamlett hand delivered a letter to Kaku exercising its option for the 2021 season. MLS also claims to have sent the letter to Kaku's representative, Scott Pearson.

Kaku denies ever having received the letter from the Red Bulls or that Pearson was authorized to receive any such letter on his behalf. Consequently, in December 2020, Kaku took the position that he was a free agent permitted to sign with any club anywhere

in the world. In a January 18, 2021 letter to MLS, the MLS Players Association (MLSPA) supported Kaku's position.

MLS Fights Back

In January 2021, amid reports that Kaku was prepared to sign with Saudi club Al-Taawoun, MLS sent multiple letters to Kaku and Al-Taawoun asserting that it continued to control Kaku's rights.

Nevertheless, in February 2021, the Saudi Arabian Football Federation requested a "provisional registration" permitting Kaku to play for Al-Taawoun. FIFA granted the request over the objections of MLS and U.S. Soccer. The registration was likely granted because of the DRC's historical aversion to unilateral options.

In light of Kaku's pending agreement with Al-Taawoun, and with its letters unanswered, MLS commenced an expedited arbitration proceeding against the MLSPA on behalf of Kaku pursuant to the terms of the standard player agreement agreed upon by MLS and the MLSPA as part of the parties' collective bargaining agreement.

Shyam Das, a reputable sports arbitrator, held hearings in March 2021 to adjudicate whether MLS had properly exercised its option on Kaku's contract. In an April 2, 2021 decision, Das held that MLS had done so properly, crediting Hamlett's version of events over Kaku's. Das therefore found that Kaku had breached his contract and ordered him "to not play, attempt to play or threaten to play soccer for any team other than a Team in Major League Soccer[.]"

On May 12, 2021, MLS filed a petition in New York federal court to confirm the arbitration award. The MLSPA did not oppose the petition, which was granted on August 31, 2021.

[On July 21, 2021, MLS also sued Pearson in New Jersey federal court for alleged tortious interference. I represented Pearson in that action, which was voluntarily dismissed by MLS without any consideration from Pearson on September 15, 2021.]

While the legal process unfolded, Kaku moved on with his career, playing 11 games for Al-Taawoun in the 2020-21 season and netting seven goals. He now plays for Al Ain FC, an Emirati club.

FIFA Rejects the Red Bulls

On November 12, 2021, the Red Bulls (but not MLS) filed a complaint against Kaku and Al-Taawoun with FIFA seeking to prevent Kaku from playing for six months and asserting damages of $6.8 million.

On December 1, 2021, FIFA denied the Red Bulls' claim on res judicata grounds, the legal principle that a matter which has been fairly heard and decided in one forum cannot later be brought in another forum. FIFA reasoned that the Red Bulls had already had their claim against Kaku fully heard in the prior arbitration and thus could not bring a new claim under FIFA's rules.

After additional correspondence on the matter, in a March 28, 2022 decision, the DRC affirmed that it could not hear the Red Bulls' case.

CAS Substantially Affirms

The Red Bulls appealed the DRC's decision to a three-arbitrator CAS panel. Although a hearing was held in December 2022 on the case, no decision was issued until last week.

The CAS panel held that res judicata did apply as to three issues: (1) whether MLS validly exercised its option; (2) whether Kaku breached his contract; and (3) the consequences of that breach. On this last item, it is crucial to point out that the language of the Standard Player Contract only permitted Das to issue the injunctive relief he did – he had no authority to award damages nor did MLS seek any in that proceeding.

Consequently, the CAS panel held that the Red Bulls' claim against Kaku was not barred by res judicata. Instead, it was barred by the lengthy provision in the contract declaring that FIFA's regulations were not applicable.

The CAS panel did, however, remand the Red Bulls' claims against Al-Taawoun back to the DRC for a full hearing.

The Potential Fallout

This was not the result MLS intended. The Standard Player Contract contains a provision which says that an arbitration decision – like that issued by Das – "may be immediately taken by either party to the relevant FIFA body or tribunal to be entered and enforced." But, CAS ruled, MLS and the player had already renounced the applicability of FIFA's regulations.

MLS had seemingly and mistakenly intended for a decision from a tribunal of first instance to then be able to be entered in another tribunal of first instance. Both FIFA and CAS rejected this process as impermissible forum shopping.

Without recourse to FIFA, it seems that MLS would have been stuck with the option of trying to have the order it received in federal court confirming the arbitration award enforced in Saudi Arabia. Good luck.

MLS' ability to enforce unilateral options moving forward is questionable. If a player were to ignore the option in favor of signing a contract in any league but MLS, then MLS' only recourse is to obtain injunctive relief in an MLS-MLSPA arbitration proceeding, relief that is of dubious and difficult enforceability outside the United States.

MLS will likely be seeking to address this issue with the MLSPA as soon as possible. Indeed, the CAS panel noted "that the wording of the CBA and/or the standard contract should be amended accordingly in order to create a sufficient legal basis" for MLS or a club to receive financial compensation from a player that has breached his contract. Without that potential liability, there does not seem to be much preventing players from walking away from exercised options.

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Appeals Court: Lower Court May Exercise Personal Jurisdiction Over the NCAA in Concussion Case

A Maryland state appeals court has reversed and remanded part of a lower court's ruling involving a concussion claim brought by a former student athlete against the NCAA.

Specifically, the appeals court's ruling finds that the NCAA in subject to jurisdiction in Maryland.

"The claims raised in this action relate to the NCAA's activities—issuing rules, standards, and other guidelines for college football—that are purposefully directed at Maryland," wrote the appeals court. "Due process will not be violated if the NCAA is required to answer the claims that an athlete was injured allegedly as a result of its rulemaking activities, in the courts of a state targeted by those rules. … the plaintiff established an adequate link between his claims and those forum-directed activities."

By way of background, Brandon Haw, a Maryland resident, brought suit against the NCAA, alleging that he suffers from neurodegenerative brain disease caused by repeated head trauma that he sustained while playing college football.

The plaintiff attended Fairmont Heights High School in Capitol Heights, graduating in 1999. During high school, he distinguished himself as a talented football player, playing several positions, including defensive back and kick return specialist.

Beginning in the spring of 1998, when he was 17 years old, several NCAA Division I colleges attempted to recruit Haw to play college football. Over the next year, these colleges directed hundreds of communications by phone, letter, or email to Haw and to his father. Recruiters from at least two of these colleges personally attended his high school sporting events in Maryland. At one such event, he and his father spoke with the chief recruiter for Rutgers University. Haw and his father lived in Maryland throughout this recruitment process.

In December 1998, the head football coach of Rutgers University mailed a letter to Haw's home address, offering him "a full NCAA Grant-In-Aid scholarship" upon his completion of "academic criteria set by the NCAA and Rutgers." At the same time, a Rutgers recruiting coordinator sent a letter to his parents, explaining certain terms of the scholarship offer. Haw formally accepted this scholarship offer at his high school on national signing day in February 1999.

From 1999 through 2003, Haw played football at Rutgers University as a cornerback and kick return specialist. Throughout his last three seasons, he played as a starter for the Rutgers defense. During one year in which he could not play in games because of an injury, he continued to practice with the team.

While attending college at Rutgers, Haw lived in New Jersey, but maintained his permanent residence in Maryland. After college, he played professional football for a few years before returning to Maryland. He has resided in Baltimore City since 2007.

In the years after his football career ended, Haw began to exhibit symptoms of chronic traumatic

encephalopathy (CTE), a neurodegenerative disease caused by repeated head trauma.

The complaint alleges that Haw "suffers from neurodegenerative brain disease caused by repeated head trauma that he sustained while playing college football. The plaintiff alleges that, despite possessing extensive knowledge of the dangers of brain disease caused by playing football, the NCAA failed to inform players of the dangers known to the NCAA, failed to establish rules of the game to make it reasonably safe, and failed to establish a protocol for the diagnosis and treatment of concussive injuries."

After service of the complaint, the NCAA filed a motion to dismiss for lack of personal jurisdiction, which ultimately led to the instant opinion. On May 11, 2022, the circuit court conducted a hearing to consider arguments on the NCAA's motion to dismiss. At the conclusion of the hearing, the court announced that it would grant the NCAA's motion and would dismiss the complaint.

Haw appealed.

And while the appeals court sided with the NCAA on two jurisdictional arguments, it held for the plaintiff on the matter of personal jurisdiction.

"We conclude that due process principles do not prohibit a Maryland trial court from exercising personal jurisdiction over the NCAA with respect to the claims raised in Haw's complaint," it wrote. "The NCAA has purposefully directed its rulemaking activities at Maryland (as well as other states). The claims raised by Haw, a Maryland resident who claims that he sustained at least part of his injuries in Maryland, are sufficiently related to those forum-directed activities. Finally, the NCAA has failed to show that the exercise of personal jurisdiction in these circumstances would be constitutionally unreasonable.

"The circuit court correctly concluded that Haw had failed to establish a basis for imputing the contacts of Rutgers University or other NCAA members to the NCAA itself.

"We differ with the circuit court in our evaluation of the third ground relied upon by Haw, his contention that the NCAA is subject to specific jurisdiction based on its own contacts with Maryland. The claims raised in this action relate to the NCAA's activities—issuing rules, standards, and other guidelines for college football—that are purposefully directed at Maryland. Due process will not be violated if the NCAA is required to answer the claims that an athlete was injured allegedly as a result of its rulemaking activities, in the courts of a state targeted by those rules."

Haw v. NCAA; App. Ct. Md.; No. 866, September Term, 2022; 2/1/24

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Court Dismisses Most of the Claim Challenging Renovation of Northwestern' Ryan Field

An Illinois state judge has dismissed major portions of a lawsuit filed by residents of Evanston, Illinois, who sought to block the planned renovation of Northwestern University's Ryan Field.

Specifically, the court dismissed three of four counts brought by the plaintiffs, who live near the stadium. The 13 plaintiffs had sought to invalidate the city council's 5-4 vote to change the city's zoning law. The change would make it possible for the facility to host as many as six concerts per year.

The constitutional claim is still pending.

The aforementioned vote came last fall in the aftermath of an agreement between Northwestern and the City of Evanston. That agreement called for the university to provide $157 million over a 15-year period in tax revenue and other financial incentives to Evanston.

In their lawsuit, the plaintiffs claimed that the city failed to follow the proper procedures in approving the renovation project. Specifically, they alleged that the city violated laws requiring a supermajority vote on a zoning change when a certain percentage of nearby residents are opposed to that change.

Furthermore, Mayor Daniel Biss and some council members "cut a backroom deal in which they agreed to disregard the applicable laws and evidence in exchange for monetary contributions from Northwestern," according to the complaint, allegedly violating the plaintiffs' due process rights.

In response to the lawsuit, city attorneys wrote; "Even if the City had failed to follow its own rules or state statutes in the ways the plaintiffs allege (which it did not), the law is clear that such a failure alone cannot provide the plaintiffs with a cause of action based on the City's home rule authority."

Furthermore, they argued that since it was a text amendment, a supermajority was not required.

"If the City had intended to require more than 5 votes to approve a text amendment, the City would have listed that requirement in Council Rule 25 along with all the other extraordinary vote requirements," they wrote. "The City Council Rules are clear: 5 votes are all that was required to pass the Text Amendment Ordinance."

The court agreed, writing "this is not a map amendment. The amendment altered the permitted uses shown in the text of the zoning ordinance. It didn't change the zoning classification. They didn't have to make any changes to the zoning map to reflect those changes."

The constitutional due process claim continues.

David DeCarlo, president of the Most Livable City Association, which is affiliated with the plaintiffs, released the following statement: "While we disagree with today's ruling on our procedural due process claims, we will keep advocating for the full constitutional guarantee of due process that protects all residents from arbitrary government decisions."

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Articles

The NCAA and Georgia Tech Accused of Violating Title IX for Implementing Transgender Athlete Policy

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In a lawsuit filed against the National Collegiate Athletic Association (NCAA), the University System of Georgia, and numerous administrators, sixteen current and former women athletes seek to remove any evidence that transgender women athletes deemed eligible to compete on a college team under NCAA rules and/or participated in an NCAA championship ever existed. They seek to accomplish this through a determination that the NCAA Transgender Athlete Policy in place from 2011 and revised in 2022 constituted unlawful sex discrimination under Title IX and the right to bodily privacy under the Equal Protection Clause of the 14th Amendment, warranting injunctive relief from the policy. They further ask that any points earned through the performances of transgender women athletes that accrued to their respective teams and any awards be redistributed to other teams and competitors and any evidence of their achievements removed from record books. The Plaintiffs further seek compensation for damages (actual, nominal, punitive, compensatory) they suffered due to alleged mental and emotional distress as a result of participating alongside of and against those transgender women athletes or even being confronted with the possibility of such circumstance.

The lawsuit was filed nearly two years to the day after Lia Thomas, a University of Pennsylvania swimmer, became the first transgender athlete in NCAA Division I history to win a national title after she claimed victory in the 500-yard freestyle at the Division I Women's Swimming and Diving Championships held at Georgia Tech. One of the swimmers who competed against Thomas in several events at that championship is lead plaintiff, Riley Gaines, a former All-American from the University of Kentucky who shared the podium with Thomas following their mutual fifth place finishes in the 200-yard freestyle event. Within weeks of the championship, Gaines emerged on the national scene as a vocal supporter of legislative efforts proposed around the country to bar transgender girls and women from competing on women's teams.

As a threshold matter, the Plaintiffs will first need to establish that the NCAA is bound by Title IX given the NCAA's position that it is not a recipient of federal funding and therefore not subject to Title IX's reach. The NCAA's stance on this is grounded in a unanimous decision from the U.S. Supreme Court issued in 1999 in *Smith v. NCAA*, when Justice Ruth Bader Ginsburg clarified that even if the NCAA benefitted indirectly from the federal financial assistance that flowed through their dues paying member institutions,

it was insufficient to trigger a Title IX obligation. In addressing this issue, the Plaintiffs argue that the ruling in *Smith* narrowly focused on the dues member institutions paid and not the relationship that exists between the NCAA and its members, where the two are effectively indistinguishable (the NCAA is its membership). Drawing upon amicus curiae briefs submitted from Smith and the United States, the Plaintiffs note that when "a recipient cedes controlling authority over a federally funded program to another entity, the controlling entity is covered by Title IX regardless whether it is itself a recipient" (*NCAA v. Smith*, 525 U.S. at 469-470 as quoted in the complaint on pages 10-11).

A second threshold issue raised in this case is the definition of a woman athlete. The Plaintiffs ignore the concept of gender identity and assert that "sex" as "it was meant in Title IX…" refers "…solely to binary, biological sex" (*Gaines et al. v. NCAA* et al., 2024, p. 5). Characterizing transgender women athletes as male, Plaintiffs argue that the presence of transgender athletes deprived them of equal opportunities to participate and to benefit from equal treatment. They further argue that the only way that equal opportunity and treatment for women athletes can be achieved is through a sex category for women determined on the basis of biology, relying on what they refer to as scientific evidence that men are stronger, faster, and bigger, as a consequence they pose threats to both access to athletic opportunity and safety while participating.

There are nuances to this case that make for interesting reflection. The arguments as developed in the case assume that the sex or gender binary categories the Plaintiffs claim are required under Title IX existed in the 1970s when the interpretation and regulations were issued and exist now. While it is beyond dispute that a binary arrangement has shaped college athletic departments at the time of Title IX's passage and well before that with separate men's and women's physical education programs and athletic programs (housed in what were once all-men's and all-women's institutions as well as co-educational institutions), the boundaries around these binary spaces have been permeable over the span of many years. If, for the sake of argument alone, a "male" presence is threatening to women athletes and deprives them of opportunities and safe places to play and is accepted as such, why have so many coaches of women's teams in the sports of basketball, volleyball, soccer, and others advocated to have men practice regularly with their teams? In the sport of swimming, there are different models of programs at the NCAA Division I level with some programs run as combined men's and women's co-ed teams and others run as single-sex teams. In co-ed programs, men and women train together in environments similar to what they may have trained in long before they got to college when they were competing in club and high school programs (Johnson, 2022). If the gender gap the Plaintiffs argue is so great and the threat to safety so high as to require an impermeable boundary around women's sport, what does that argument do to the co-ed spaces that exist within athletic departments? Are the Plaintiffs advocating that those no longer be permitted as well?

There are also issues associated with some of the damage claims put forward by the plaintiffs. While the plaintiffs are trying to establish that the presence of a transgender woman on a women's team harms all women in college sport, and therefore the Plaintiffs should be recognized as representing a class of Plaintiffs similarly situated, much of the argument might be viewed as speculative given the extremely low number of transgender women athletes who compete on NCAA teams. An oft-cited number of transgender athletes competing on varsity teams at the college level (including junior college, NCAA, and NAIA schools) is 39 between 2010 and 2022 (Zeigler, 2022). Noting that privacy laws make it difficult to know the exact number of transgender athletes, medical researcher Joanna Harper estimated that the number would not be more than 100 nationwide in public schools (Skinner, 2023). The NCAA has a membership of more than 1100 colleges and universities, offers 90 championships, and issues rules that affect more than 520,000 athletes. The complaint itself identified three transgender women athletes – Lia Thomas, the Penn swimmer (graduated-no longer competing); Cece Telfer who won an NCAA Division II track and field title in the 400-meter hurdles in 2019 (graduated – no longer competing); and an unidentified transgender woman who sought permission to compete on the Roanoke women's swim team in the fall of 2023 but dropped the request before the start of the season (never participated on the women's team). Interestingly, a rally to "Protect Women's Sports" at Roanoke was streamed by the Independent Women's

Forum on October 5, 2023, two days after the transgender woman had withdrawn their request to participate on the team.

While the lawsuit appears on the surface to aspire to establish definitionally that the interests of women athletes can be protected by barring transgender women from participating on the basis of biological sex, such a determination opens the door for womanhood itself to be questioned with the necessity of producing verification. Such examination has had a long history of being played out in sport through the practice of sex testing, a potential reality that stands to violate the very essence of the law by subjecting all women athletes to a level of scrutiny not required of their brethren. Further, Title IX's prohibition of sex discrimination has been interpreted to include discrimination on the basis of sex-based characteristics and stereotypes. Thus, "Excluding transgender students from school sports amounts to discrimination 'on the basis of sex' in violation of the plain text of Title IX. As the Supreme Court explained in Bostock, 'it is impossible to discriminate against a person for being… transgender without discriminating against that individual based on sex'" (Transgender Legal Defense and Education Fund et al., 2023, p. 17).

This lawsuit comes at a time when the Biden Administration was scheduled to release finalized updates to Title IX regulations that would have, in proposed form, made it illegal under Title IX to rely on a blanket policy to bar trans women athletes from women's teams. Given the delays, it is possible that the finalization of those regulations may be delayed further or perhaps this case will prompt their release.

This case awaits a response from the NCAA and other defendants. It is likely that they will move to dismiss. There is much more to come on this in the future.

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Sports Wagering, Prop Bets, and Student-Athlete Mental Health

By Kasey Havekost and Joel Nielsen, Bricker Graydon LLP

Only a few days into legalized sporting gambling in Ohio last January, Anthony Grant, the head men's basketball coach at the University of Dayton, expressed frustration in a postgame press conference that his players received hateful messages after losing a game. Unfortunately, this is now a common thread among prolific college sporting events due to the legalization of sports gambling at the state level – and the exploding popularity of prop bets.

Proposition betting, better known as "prop bets," are growing in the sports gambling industry. To know why prop betting is problematic is to understand what they are. Prop bets are oftentimes wagers put on a certain individual athlete to accomplish a certain performance and are typically not tied to the final score. For example, Lebron James scoring over 35 points in a certain game or when Patrick Mahomes completes his first touchdown pass in a game.

Because these bets rely on certain players, it makes sense that these types of bets may increase the harassment and targeting of individual athletes, including athletes at the collegiate level. In an era of prioritizing student-athlete mental health, the next question is how can we collectively protect student-athletes from this

relativity new added stressor of backlash from sports gamblers?

The NCAA's Lobbying Efforts

One way to protect athletes is through the NCAA's unified and multifaceted approach. This past year, the NCAA has taken steps to better understand sports wagering and how it is impacting student-athletes on campus. In May 2023, the NCAA released findings of a survey of student-athletes on the topic and in September 2023, the NCAA released findings of a survey of campus compliance directors experience. Notably, of the autonomy five compliance administrators, around 25% were aware of student-athletes on their campus who were harassed (online or in person) by someone with gambling interests.

To try and combat this growing issue, the NCAA announced it would "begin advocating in state legislatures for updated sports betting laws that protect student-athletes from harassment and protect the integrity of college games." Part of this plan includes lobbying states to prohibit prop bets in collegiate events. Before the NCAA's push, nine of the 38 states that have legalized sports gambling already banned prop bets in collegiate sports.1 To date, the NCAA's recent efforts have been somewhat successful. For example, Ohio Governor Mike DeWine announced his support for banning prop bets after receiving a letter from NCAA President Charlie Baker, and the Ohio Casino Control Commission subsequently banned prop bets effective February 28, 2024. Three other states took similar steps in banning player-specific prop bets this spring.2

In addition to working with state lawmakers, **the NCAA is implementing an anti-social media harassment pilot program and collaborating with partners to provide educational resources and monitor the integrity of competitions**, all in hope of curbing the negative impacts of legalized sports gambling.3

On Campus Support for Student-Athlete Mental Health

Another way to protect student-athletes is to prioritize mental health on your campus in an attempt to counteract these unsolicited attacks.

The past decade has seen a noticeable increase in supporting student-athlete mental health initiatives and many schools have made investments in personnel and programs to support student-athletes. For example, in 2022, the NCAA codified in its Constitution and bylaws that every school has the obligation to inform, educate, and engage with student-athletes, coaches, administrators, and staff on mental health topics.4 And, earlier this year, the NCAA updated its Mental Health Best Practices document, which all Division I, II, and III members are required to follow and Division I members also have to attest in November 2025 that they are following this document.

However, a 2022 Mantra Health and National Association for Intercollegiate Athletics study reported that 90% of athletics directors did not feel that their institutions offer enough training or psychiatric support services for coaches and student-athletes. Also, over 90% indicated that their athletic departments do not have psychiatric support services available for their student-athletes but would like to provide them.

So, what can be done?

First, athletics directors need to look for creative solutions (and possibly experts!) on campus. Identify partnerships with other administrative areas like the Office of Student Affairs, to collaborate on personnel, programs and resources that can assist students and student-athletes alike. The same approach can be used with academic units on campus, especially those that are interested in providing internships or practicum experiences for their graduate programs (Clinical Mental Health Counseling).

Second, seek out online resources, including those offered by the NCAA, that can provide valuable information and resources for student-athletes, coaches, and staff.

Thirdly, consider onboarding members of your athletic department staff to help recognize students who

1 These states include Arizona, Colorado, Massachusetts, Oregon, New York, Pennsylvania, Tennessee, Virginia, and West Virginia.

2 These states include Maryland, Vermont, and Louisiana.

3 **https://www.ncaa.org/sports/2016/4/29/sports-wagering.aspx#:~:text=What's%20the%20NCAA%20rule%20about,amateur%20or%20professional%20athletics%20competition**

4 See NCAA Constitution, Article 1, Section D; Article 2, Section A and D; NCAA Division I Bylaw 16.4.2; NCAA Division II and Division III Bylaw 16.4.1.

may be showing signs of mental health issues and provide those staff members with resources on how to assist.

The proliferation of sports wagering, including prob bets and the harassment that can follow, has most certainly added increased stress levels of student-athletes, impacting their mental health. It's critical that administrators are aware of this issue and proactively address the need for more resources. The NCAA and campuses have made significant progress in modernizing their approach to sports wagering – but the work is not done yet.

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What Does Revenue Really Mean in Collegiate Athletics?

By Katie V. Davis, CPA, James Moore and Kelleigh Fagan, Partner, Church Church Hittle + Antrim

Revenue sharing, employees, broadcast rights, NIL – these are all frequently referenced in conversations, debates, and policies around collegiate athletics right now. References to student-athletes sharing in athletics revenue is a hot topic and ripe for debate – could revenue sharing negatively impact Olympic sports, will colleges and universities begin cutting all sports without significant revenues wholesale? There is real fear around the concept of revenue-sharing. That fear, though, has not stopped state legislators, institutions and conferences, and think-tank groups from considering it as a core part of the future of college athletics. Setting aside the policy debate of "should we or shouldn't we", we wanted to unpack what "revenue" really means when it comes to potential revenue sharing models. CCHA teamed up with its financial guru friends at James Moore to analyze this question—What consists of revenue?

The natural, usually first, and perhaps most common answer is that revenue is all income generated. But it may not be that simple, and there would need to be some mechanism to verify the revenue reported.

California's proposed College Athlete Protection (CAP) Act (currently not in effect) proposed using annual reports institutions must make under the Equity in Athletics Disclosure Act (EADA) for both identifying a revenue number and ensuring transparency. The EADA requires institutions to submit an annual report to the federal government about varsity intercollegiate athletics programs and the financial resources and personnel dedicated to those teams. This reporting requirement arose out of concerns that there was insufficient transparency and inequitable spending in college sports well after Title IX was passed.

The January 2023 version of the CAP Act defined revenue as the "annual intercollegiate athletics revenue as calculated and reported pursuant to the federal Equity in Athletics Disclosure Act (EADA)." An updated March 2023 version of the bill clarified, and expanded, that "Revenue" includes

> *"intercollegiate athletics revenue paid directly by an intercollegiate athletic conference, an athletic association, or a source designated by an institution of higher education, an intercollegiate athletic conference, or an athletic association to cover any athletic program expense or to compensate a college athlete for participating in intercollegiate athletics at the institution."*

CAP intended to require certain California schools to place at least a portion of the athletics department revenue into a fund to pay athletes upon degree completion.

These EADA reports are publicly available, and there is a view that taking revenue from these figures is not representative of true revenue for purposes of revenue-sharing. The nuances woven into athletics department financial balance sheets may not be fully captured or delineated from EADA reports. These subtleties may include revenue generated from mandatory fees paid by all undergraduate students, prospective expenses that are negated through vendor-trade agreements, and financial assistance provided to student-athletes or their family members that might not be considered athletically related financial aid per EADA's definition such as a booster-provided team meal or emergency transportation provided to a student-athlete's parent that are still an expense to the university.

Another potential definition of "revenue" could be derived from reports and information that NCAA schools are required to submit to the NCAA. The NCAA's Membership Financial Reporting (MFRS) requirements include submission of financial data annually to the NCAA. Under NCAA rules, Division I

institutions must have an independent public accountant review revenue and expenses annually based on NCAA Agreed-Upon Procedures Guidelines. Division II institutions must conduct this review every three years. An FAQ from the NCAA describes the difference between EADA numbers and NCAA reporting numbers as "The EADA report is a governmental report that is geared towards Title IX analysis, whereas the NCAA Membership Financial Report is geared toward institutional performance."

With this financial reporting data, the NCAA publishes an annual report called "Trends in Division I Athletics," which categorizes revenue sources as either generated or allocated. These two types of revenues have an important distinction. Typically, if an institution's athletic expenses exceed its revenues, it suggests that the institution is subsidizing its athletics programs. These subsidies, recognized as allocated revenues, often come from student fees or institutional support. Generated revenue arises from revenue-producing activities such as ticket sales, fundraising and media rights—those more directly produced by athletic activities involving student-athletes. Allocated revenue does not include the student-athlete involvement.

Apart from whether revenue should be shared or not, if that becomes reality, policymakers should ensure there is deliberate consideration and understanding of what revenue really means to avoid unintended consequences of a too broad, too narrow, or unworkable definition. A "patchwork" of state laws has become a ubiquitous phrase to describe NIL state laws. Should a similar framework emerge with distinctive state laws on revenue sharing, with different definitions of revenue, what new expenses may be on the horizon should student-athletes be deemed "employees", and which student-athletes qualify for revenue sharing, geography could significantly determine the financial health, and viability, of the athletics department.

The reliance on prior-year(s) athletics department revenue and expense data from an EADA report or limiting revenue sharing to only pre-determined revenue sources such as contractually defined media rights distributions from a conference media rights agreement does not factor in a student-athlete or team's financial impact, in real-time, on ticket sales, parking and concessions revenue, university fundraising and capital campaigns. It also does not capture other revenue pipelines positively influenced by student-athlete performance not otherwise captured in a licensing or other NIL-related agreement that financially rewards the student-athlete. Reliance on prior year revenues to determine present-year revenue sharing also presents a timing issue that may overpay or underpay a student-athlete based on prior year numbers.

Without consistency and reasonable predictability, revenue sharing could take on what we see in federal tax reporting today – an attempt to decrease revenues as low as possible to pay fewer taxes. Revenue share, at its core, is intended to share at least some of the monies generated by athletics with those that play a primary role in generating it – the student-athletes. Creating a situation open to manipulation complicates an already highly complex and new potential aspect of college athletics.

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UNC Tennis Star Files Class Action Lawsuit over Prize Money Compensation Restrictions

By Vincent M. Jones Jr.

In a recent 58-page complaint dated March 18, 2024, plaintiff Reese Brantmeier (Tennis player at the University of North Carolina at Chapel Hill) filed a class action complaint in the United States District Court of North Carolina on behalf of herself and all of those similarly situated against the National Collegiate Athletic Association (NCAA) over alleged violations of anti-trust law under Section 1 of the Sherman Act with claims of price fixing and group boycott (15 U.S.C. § 1). The conferences under the umbrella of the NCAA include PAC-12, Big-Ten, Big-12, S.E.C., and the A.C.C., where Plaintiff currently attends U.N.C., the member school in question. These conferences are known as the "Power Five."

The Plaintiff and her legal counsel are seeking legal restitution and resolution through a permanent injunction against the unyielding rules that aim to prohibit individual sports athletes from receiving prize money for their athletic services. This lawsuit is carried on the shoulders of the previous legal action over the last three years opposing acting governing bylaws in what

the NCAA calls "pay-for-play" restrictions. As another collegiate student-athlete looks for a solution to mend the disconnect between the NCAA and other individual sports athletes, the NCAA finds itself in another legal battle that may lead to transformative changes in athletes' lives now and in the future.

According to the details of the complaint, the Plaintiff, Reese Brantmeier, a sophomore student-athlete currently attending the University of North Carolina at Chapel Hill (U.N.C. or Tar Heels) as a member of their Division 1 tennis team, is a standout player and academic scholar. Before she arrived at U.N.C., Brantmeier was a highly touted recruit from her hometown of Whitewater, Jefferson County, Wisconsin. Brantmeier went on to become the number 1 high school tennis player in the United States, Great Lakes Region, and the state of Wisconsin in the graduating Class of 2022 and received a ranking as high as 411 in the Women's Tennis Association (WTA) singles rankings. Brantmeier received more than 200 full scholarships from multiple colleges and universities nationwide but decided to enroll at U.N.C.

In her brief time as a Tar Heel, Brantmeier was a part of the 2023 NCAA Division 1 Women's Tennis Team National Championship, a runner-up finish in the 2023 NCAA Division 1 Women's Tennis Doubles National Championship. Brantmeier is ranked number 2 in the number 1 in doubles by the Intercollegiate Tennis Association (I.T.A.). Brantmeier also boasts First-Team All-ACC honors and four A.C.C. Freshman of the Week awards. Additionally, Brantmeier is an exceptional student in the classroom, receiving 2023 All-ACC Academic Team honors while holding a 3.958 GPA, double majoring in exercise and sports science and studio art with a minor in global cinema.

The Plaintiff files this class action lawsuit citing that the NCAA has exercised monopsony-like power in labor markets such as Division I, Division II, and Division III sports, more specifically, individual sport athletes from earning the maximum amount of prize money that could be received. The Plaintiff also includes contributing violations on the account of co-conspirators, including but not limited to firms, corporations, organizations, and firms that, similar to the NCAA and its member conferences and schools, profit from the restraint of trade by their agreement to abide by the NCAA's restrictions (Page 10 and 11). As cited in the complaint, according to the NCAA, two categories of student-athlete compensation are presently prohibited under the basis of the NCAA's amateurism rules. The first was the compensation of a student-athlete with the use of name, image, and likeness rights (NIL), which was prohibited until the U.S. Supreme Court's unanimous ruling in NCAA v. Alston that now prevents the NCAA from enforcing its NIL rules in specific states (See NCAA v. Alston 141 S. Ct. 2141, Page 14). The second category of compensation is the aforementioned "pay-for-play" restrictions.

The NCAA does allow for individual sports athletes to compete in non-NCAA competitions but prohibits them from receiving prize money of any kind offered by third parties about athletic performance that results in more than their actual and necessary expenses (NCAA Bylaws 12.1.2.4.1 and 12.1.2.4.2.2). Under these circumstances, an individual loses amateur status if he or she uses athletic skill directly or indirectly for pay in any form or accepts a promise of pay even following intercollegiate participation (NCAA et al. 12.1.2). The complaint continues citing the NCAA's exception for funds administered in the form of grants through the U.S. Olympics operations Gold program (NCAA Bylaws 12.1.2.1.4.1.2 and 12.1.2.1.5.1). The legal counsel of the Plaintiff states that the NCAA's prohibitions of education-related, NIL, and specific pay-for-play compensation have not been extended to those who compete in individual sports who wish to accept prize money from third parties in connection with non-NCAA competitions (Pages 24 and 25).

While still in high school, the Plaintiff was entitled to receive $48,913.00 in total prize money from the United States Tennis Association for her performance in the Billie Jean King Girls 18's National Championship in singles, which led to her advancement to the third round of singles competition in the 2021 U.S. Open Qualifying Tournament (Page 25). The complaint cites the Plaintiff requesting guidance from the NCAA on prize money to preserve her collegiate eligibility. However, due to NCAA Bylaws, Brantmeier was only eligible to receive up to $10,000.00 in prize money, resulting in a loss of $35,040.66 in potential earnings (Page 26). Additionally, the NCAA would not certify Brantmeier as an "amateur" athlete in her first season on the U.N.C. Women's Tennis team, challenging the Plaintiff that some of the expenses during her

2021 U.S. Open participation were "actual and necessary." Brantmeier was ultimately deemed ineligible by the NCAA and was reinstated when a payment of $5,100.00 was made to charity. (See footnote 30 on Page 28). The legal counsel to Plaintiff argues that if the eligible prize money awarded to Plaintiff were labeled as a grant, the issues that arose would have been put to a cease. In February of 2024, Brantmeier suffered a torn meniscus while practicing with U.N.C., forcing her to miss the entirety of the spring 2024 season (Page 30).

In addition to the financial gain that the NCAA and its member conferences and schools receive from television rights and NIL exposure, Plaintiff cites that the NCAA is aware that the benefits and payments made to student-athletes have not diminished consumer demand (Page 30). The NCAA Constitution states that schools or conferences are allowed to provide specified monetary awards for "winning an individual or team conference national championship (NCAA Bylaw 16.1.4.2) as well as funds awarded through the U.S. Olympic "Operation Gold Program." The Plaintiff alleges that the NCAA "does not have any coherent economic explanation for why certain categories of compensation are consistent with its concept of "amateurism while others are not" (Page 35.) Moreover, Plaintiff states that the NCAA is an acting monopsony buyer within relevant Division I, II, and III sports markets and can exclude schools and conferences that violate their rules (Page 37). The legal counsel of the Plaintiff goes on to mention that if athletes have the opportunity to compete at the intercollegiate level without these restrictions, they would choose to do so, hence outlining the market power of the NCAA and relevant labor markets for student-athletes (Page 38.)

The complaint alleges that the NCAA and its co-conspirators conspired to agree to artificially fix, depress, maintain, and stabilize prize money received by the Plaintiff and class members, agree to promote and engage in group boycotts and implement and monitor conspiracy among cartel members. The Plaintiff's request for relief is multi-layered, under violation of Section 1 of the Sherman Act-15 U.S.C. § 1 Price Fixing Conspiracy and Group Boycott:

1. The Plaintiff and the Class seek a permanent injunction against the challenged restraints on compensation to Division I college athletes.
2. A declaration that the NCAA's Bylaws restricting the acceptance of Prize Money by Student Athletes competing in Individual Sports in non-NCAA competitions are illegal and unenforceable. The Plaintiff and the Class also seek a permanent injunction against the challenged group boycott restraints on compensation to Division I college athletes before or during their collegiate careers to accept prize money in connection with non-NCAA competitions.

The plaintiff seeks an award of attorney's fees, costs, and expenses. For a trial jury on all claims and issues so triable and for such other and further relief as the court may deem and proper.

Vincent M. Jones Jr. is a recent graduate of Florida State University's Sports Management Program seeking a Juris Doctor degree.

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States React to Controversy over Prop Betting

By Austin Spears

Plenty of controversy has followed the legalization of sports betting in America. Apparently, the controversy is just beginning, especially in college athletics, where the prospect of college athletes making prop bets has become a flash point.

"A prop (or proposition) bet is a type of side wager on parts of a game or event that may have nothing to do with the final outcome," according to a recent article in Forbes. Essentially, it is betting on how a specific player performs and not on the outcome or total team performance in a game. Prop bets make up a substantial part of the sports betting industry, with Jay Croucher, Head of Training at PointsBet, stating in August 2022 that prop bets could soon make up 50% of all bets placed on the company's platform (SBC Americas). NCAA president Charlie Baker recently called for a ban on all prop bets in college athletics stating, "Sports betting issues are on the rise across the country with prop bets continuing to threaten the integrity and competition and leading to student athletes and professional athletes getting harassed." (ESPN)

The main reason prop betting on college athletes is controversial is their public availability and lower safety precautions compared to professional athletes. San Diego State Athletic Director JD Wicker spoke on this recently, stating, "Our student athletes are going to class, they're more available in the community… So there's a lot more opportunity for one of them to be pressured, for them to have something negative happen because maybe they miss the free throw or they miss the over the under, all those types of things." (The Reveille) An NCAA survey completed at the end of 2023's March Madness found that 58% of 18-22 year olds are gambling, showing the heightened risk as these athletes' classmates and counterparts are actively wagering money on them (The Reveille). Another main reason prop betting is controversial is its relative ease of fixing lines compared to team outcomes. For example, it is a lot easier for an individual player to intentionally score under their projected point total than it is for them to make their whole team lose. A specific example of a player betting on their own prop bets recently occurred in Louisiana. Investigators found that former Louisiana State wide receiver Kayshon Boutte placed over 9000 bets before turning 21, including multiple on his team and his own individual receiving yards and receiving touchdowns prop bets (WBRZ). Banning prop bets will greatly improve the safety of college athletes in Louisiana and help prevent them from making illegal bets, like the ones Boutte placed, on themselves.

Louisiana Heeds the Call from Charlie Baker

Louisiana heard the calls from Baker and quickly acted, with the Louisiana Gaming Control Board passing a **Motion** to suspend all proposition bets on college athletes within the state. The order is set to go into effect at 8 am on August 1st, 2024. Ronnie Johns, Chairman of the Louisiana Gaming Control Board, said shortly after the ruling, "Our staff began to work on this weeks ago, well ahead of the NCAA's call for action on college proposition bets… It is the intention of the Louisiana Gaming Control Board to protect the integrity of sports betting as well as the safety and integrity of college athletes. We feel that this order accomplishes that goal." (WGNO)

The Louisiana ruling puts them in agreement with Vermont, Ohio, and Maryland, which have recently banned prop bets on college athletics. Colorado, Arizona, Massachusetts, New York, Pennsylvania, and Oregon had already banned these bets before the recent push by the NCAA. Illinois, Connecticut, and Iowa also don't allow college prop bets for in-state teams. This stretch of states banning college prop bets has begun to inspire even more states to consider similar bans, as New Jersey, Kansas, and Wyoming will all consider the ban at a meeting scheduled for May 9th (The Reveille).

These rulings come at a time when sports betting has become increasingly talked about across sports. Over the past few years, multiple shockwaves surrounding betting have hit sports. NBA insider Shams Charania signed a deal with FanDuel in 2022 (The Washington Post), blurring the lines between unbiased reporting and potentially aiding sportsbooks. In 2023, ESPN unveiled the recently rebranded PENN entertainment as ESPN BET (Fortune), marking the sports mega company's full-time move into the gambling space. In the past few months alone, the NBA has been tied to substantial sports betting controversy. First, the company integrated multiple different forms of betting lines into their League Pass app (SportsPro), making it easier than ever to bet live on NBA games. Then, just a few days ago, the NBA banned Toronto Raptors forward Jontay Porter for life from the NBA after investigations showed he intentionally disclosed confidential health information to a known NBA bettor and also placed 13 bets himself on NBA games using an associate's online betting account (NBC News).

Overall, the modern sports betting landscape is ever-evolving. More and more states are legalizing sports betting as a whole, yet restrictions are also being added as drawbacks like college prop bets are discovered.

Austin Spears is a sophomore Sport Management major at UT Austin. He is currently an analytics intern with the Texas Longhorns baseball team and plans to pursue a career in sports law.

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Profiling Sports Lawyer Carla Varriale-Barker of Segal McCambridge

Carla Varriale-Barker, Chair of Segal McCambridge's Sports, Recreation & Entertainment practice group, is an accomplished litigator who is at home in a courtroom, board room or classroom.

Varriale-Barker is one of, if not the only, female chair of a major sports law practice in the country.

She has represented a portfolio of clients in the sports, recreation, amusement, and hospitality industries with a client-centered practice focusing on tort, discrimination, contract, insurance, and spectator injury matters, including the defense of claims arising from alcohol service, security lapses, discrimination in places of public accommodation, sexual abuse, and molestation.

Varriale-Barker also counsels clients involved with the U.S. Center for SafeSport, an organization established by Congress to address sexual abuse, bullying and other misconduct, and the U.S. Olympic and Paralympic Movements.

She is an adjunct instructor at Columbia University's School of Professional Studies where she has taught in the Sports Management Program since 2008.

Prior to joining Segal McCambridge, Varriale-Barker was a founding partner of a women-owned law firm in New York. She has also written for the American Bar Association about diversity and inclusion and the importance of mentorship and sponsorship.

To learn more, we recently interviewed her about her career.

Question: How did you get into Sports Law?

Answer: Accidentally. Many years ago, I was an associate at a firm handling professional liability and some premises liability work for its clients. I was asked by a colleague to handle a case for a team arising out of a claim of malpractice at the first aid station located at the team's stadium. It was a wrongful death action involving a spectator and the general counsel for the team was very involved. And we worked well together! I learned a lot from him and how to view case through the eyes of a team and its business professionals. We won the case, he was a pleasure to work with, and I got a referral from there for more work. And it never stopped.

Q: How would you describe your practice?

A: Never the same day twice.! And even though I work long hours, even at this stage of my career, the day feels as though it was only three hours long. I am the Chairperson of the firm's Sports, Recreation, and Entertainment Practice Group and my team has a healthy blend of work across the sports, recreation, and hospitality industries. We have a vigorous ADR and litigation practice and a number of talented, lawyers and paralegals. We just launched a podcast, "TortsCenter", and we have started to feature some of my colleagues from the sports, recreation and entertainment industries.

Q: Who are your typical clients?

A: I have done work for numerous teams and leagues in the amateur, professional, and recreational context. I also have a U.S. Center for SafeSport practice that

is both interesting and challenging because the matters often involve claims of sexual abuse and misconduct in sports.

Q: How does your work in academics support your work as a sports lawyer?

A: have taught Sports Law and Ethics at Columbia University's Sports Management program for 15 years. It keeps me in a place where I am constantly learning and growing. I tell my students that I grow along with them every semester. My students are generally not lawyers, so that influences how I break down what can be complex legal concepts. We also weave in current events during each class and that keeps me reading new filings, reading periodicals like yours, following certain journalists on Twitter for the latest updates. My students are very interested in NIL rights and the rights of athletes in general-as am I. Recent cases involving those issues are at the forefront of their awareness and our classroom discussions.

Q: What trends are you watching in 2024 and why?

A: There are a few. The student athlete's rights to monetize their name, image, and likeness because it is evolving rapidly and represents a paradigm shift in amateur sports.

Also, the meteor that is women's sports right now-it is such an exciting and overdue development. I am excited to see what that means for opening markets and opportunities and for fostering equality and equity in sports. I am hoping this is something we can discuss and capitalize on as part of the SLA's Women's Affinity Group, which I am a part of.

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A Report on Harvard Law School's 2024 Sports Law Symposium

By Alec Winshel and Hugh Reynolds

Harvard Law School's Committee on Sports & Entertainment Law (CSEL) hosted its 2024 Harvard Sports Law Symposium over the last two weeks. Read our coverage of the symposium's notable events and speakers from JSEL's Hugh Reynolds and Alec Winshel.

On Tuesday, April 9th, the 2024 Harvard Sports Law Symposium began with the presentation of the 2024 Paul C. Weiler Awards.

Students, practitioners, and professors gathered on Harvard's campus to present this year's distinguished award to Brandon Etheridge, Senior Vice President and General Counsel of the Baltimore Ravens.

Mr. Etheridge oversees all legal, compliance, and risk matters for the Baltimore Ravens Limited Partnership, the M&T Bank Stadium, and the Baltimore Ravens Foundation. His academic career began at Yale University, where he also played on the school's football team. He then matriculated to Harvard Law School and earned his J.D. He has since been honored on Forbes' "30 Under 30" list as one of the sports world's "brightest young stars." Professor Peter Carfagna, head of Harvard Law's Sports Program, presented Mr. Etheridge with this year's award at an in-person ceremony on the Harvard Law School campus. Other stars of the sports world–Jeff Pash (GC of the NFL), Jihad Beauchman (GC of the San Francisco 49ers), Mike Zarren (VP of Basketball Operations for the Boston Celtics), Megha Parekh (EVP of the Jacksonville Jaguars), and Ashwin Krishnan (Head of Legal & Business Affairs at Betr)–joined to share stories of Mr. Etheridge's excellence as a colleague.

The presentation also included awards for outstanding students. Kellen Duggan '24 and Peyton Bush '24 received the Paul C. Weiler Scholar Award. Sam Spurrell '24 was honored with the Paul C. Weiler Writing Prize.

On Wednesday, April 10th, the symposium hosted a panel on the globalization of investments in sports. The panel featured Russell Benjamin Hedman, a partner at Hogan Lovells; Chuck Baker, a partner at Sidley Austin and Co-Chair of the firm's Sports & Media Industry Group, and Theresa Smith, an associate at Proskauer Rose. The panel was moderated by Chris Deubert, Senior Counsel at Constangy, Brooks, Smith & Prophete, and former General Counsel of D.C. United.

The panelists discussed the value of sports teams as investments. Baker described that teams have traditionally been trophy assets: tremendously prestigious with a limited supply and prone to appreciation in value despite interest rates, recessions, and even global pandemics. Smith shared insights about the process of purchasing a sports team for both majority and

minority owners. Baker explained that the teams are very unleveraged, as leagues have strict rules around borrowing and buyers may not use the team itself as security for borrowing. This makes teams an attractive asset class for private equity firms.

Deubert asked the panel about international investments in domestic sports leagues. Hedman noted the amount of inbound US investment in sports is sometimes overstated in the media. Hedman noted that there are challenges if foreign owners, including that if teams are losing money, leagues want assurance that the assets needed to support the team are in the U.S. Smith agreed with Hedman, though she mentioned that foreign interest has been growing.

With respect to private equity, Baker described how U.S. teams are taking lessons from Europe, where private equity and institutional capital has been permitted in team investments. In 2018, most leagues began loosening their rules in order to facilitate private equity investments and, eventually, institutional investments. The leagues did this carefully, placing restrictions around the fund structures permitted in these investments. For example, they limited the percentage of each team a private equity firm could control, and the number of teams that private equity could own a piece of. Hedman noted that the incentives for private equity firms largely align with owners' interest: PE firms, like owners, want a thriving, competitive, successful league, and a return on their investment.

Deubert raised the question of why the NFL has yet to allow private equity investments. The panelists posited that the NFL does not need it—but perhaps it's on the horizon. As prices continue to rise for teams, there may be a point where individuals can no longer afford them. All leagues require a controlling owner to own a threshold percentage of the team. Prices continue to go up, and at a certain point, any league may consider permitting institutional capital into the league to add liquidity to the system.

On Wednesday, April 16th, the symposium hosted another panel about the future of the NCAA. Scott Sherman and Jeffrey L. Kessler of Winston & Strawn LLP sat in conversation with Professor Carfagna to discuss their careers and the looming legal uncertainties for the NCAA in the wake of the Supreme Court's recent pronouncements about its education-related restrictions for students.

Sherman, a litigation associate with the firm, opened the panel by describing his time at Harvard Law School and how his involvement in its sport law program led him to his current position at Winston & Strawn LLP. Kessler, the firm's Co-Executive Chairman, shared details about his own legal journey: his early work as an antitrust attorney became increasingly intertwined with the legal matters of major sports leagues. Later, as the financial interests related to collegiate sports ballooned, Kessler's work began to focus specifically on college athletics and the role of the NCAA. He successfully represented Division I athletes before the Supreme Court in Alston v. NCAA, the recent paradigm-shifting decision that has created long-term questions about the NCAA's control over students that participate in their school's athletics program. The panelists offered a rare glimpse into their preparation for the oral arguments. They described how they chose to focus narrowly on the issues presented to the court—restrictions on education-related benefits—rather than attempting to use the case as a vehicle to leverage antitrust doctrine more assertively against the NCAA's dominance in college athletics.

Winston & Strawn LLP has now turned its attention to a new set of cases in the wake of NCAA v. Alston that will pose even sharper challenges for the NCAA's restrictions on students. The "explosion in the NIL marketplace," as described by the panelists, has created new litigation opportunities for the firm. They have filed claims for damages because of the missed NIL opportunities for athletes that were unable to license their likeness prior to the NCAA's revised policy. They have also filed lawsuits against schools for providing finances to students in violation of the very same NIL policy. One of the firm's pending cases, Carter v. NCAA, presents a frontal challenge to the NCAA's longtime conception of amateurism that has the potential to reconfigure the very framework of college sports. Sherman describes a growing recognition among stakeholders that "change is needed" for students involved in NCAA athletics. The future for the NCAA is uncertain, but it is clear that the panelists will have a hand in shaping its next decade.

The 2024 Harvard Sports Law Symposium drew more than one hundred students from across the campus to its events and exposed them to some of the most pressing legal issues in the field. The Journal of Sports

& Entertainment Law extends its thanks to the Committee of Sports & Entertainment Law and its Officers, faculty advisor Professor Peter Carfagna, the panelists who joined us, and the many others who helped make this symposium happen.

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NIL Round-Up: New Permissible Uses of NIL and Other Forms of Student-Athlete Compensation

By Ropes & Gray litigation & enforcement partner Christopher P. Conniff and senior counsel Dennis M. Coleman, intellectual property partner Erica L. Han, and associates Chidi Oteh, Daniel Freshman, Tatum Wheeler, Estaban M. De La Torre, and Pary Godalia.

Like the seasons, the NIL landscape continues to change. In the past few months, the world of college athletics has seen additional changes to the NCAA's capacity to regulate the ability of student-athletes to profit from their name, image, and likeness ("NIL"). Perhaps most notably, these changes include a federal court in Tennessee granting a preliminary injunction to prevent the NCAA from enforcing several of its keystone NIL regulations, such as the prohibition of using NIL compensation as a recruiting inducement, which prompted responses from the NCAA and state governments. In addition, there have been new proposed methods for NIL compensation, including a new tournament guaranteeing payments to participating teams and the NCAA entering into its first NIL deal as a licensor. We are also tracking the first unionization of a collegiate sports team and a new lawsuit seeking to block NCAA rules limiting the amount of prize money student-athletes can keep from non-NCAA competitions. More on each of these changes below.

Preliminary Injunction Granted in Tennessee and Virginia v. NCAA

The State of Tennessee and Commonwealth of Virginia filed suit against the NCAA on January 31, 2024, alleging that the NCAA violated federal antitrust laws under the Sherman Act by controlling compensation for use of prospective student-athletes' NIL as a recruiting inducement.[1] The plaintiffs are seeking a permanent injunction barring the NCAA "from enforcing its NIL-recruiting ban or taking any other action to prevent prospective college athletes and transfer candidates from engaging in meaningful NIL discussions prior to enrollment, including under the NCAA's Rule of Restitution."[2]

On February 23, 2024, United States District Judge Clifton L. Corker granted a preliminary injunction, thereby temporarily preventing the NCAA from enforcing any rule that prohibits student-athletes from negotiating compensation for NIL with any third-party entity, including but not limited to boosters or a collective of boosters.[3] Furthermore, Judge Corker ordered that the NCAA may not enforce the Rule of Restitution with respect to NIL activities until the final court decision.[4] The Rule of Restitution, under NCAA Bylaw 12.11.4.2, allows the NCAA to retroactively take retaliatory action against student-athletes and schools that compete in an NCAA competition, based on court action related to such student-athletes' eligibility at the time, and is later overturned (meaning the student-athletes are ultimately considered ineligible).[5] Such retaliatory actions include vacating any records, overturning awards and championships, requiring remission of television receipts, and financial penalties.[6]

In practice, Judge Corker's granting of the preliminary injunction prevents the NCAA from enforcing NIL rules that prohibit student-athletes from negotiating compensation for NIL deals, *including* negotiating such deals before committing to a school, while the action is pending. During this time, the NCAA can no longer prevent the offering of NIL compensation as a recruiting inducement for a student-athlete to attend a particular school. Furthermore, the NCAA cannot retroactively pursue retaliatory actions against student-athletes, schools, or third parties that use NIL as a recruiting inducement in the meantime, so student-athletes, schools, and third parties will be able to avoid any retroactive NCAA penalties while the preliminary injunction is in effect.

The NCAA's Response to the Preliminary Injunction

On March 1, 2024, NCAA President Charlie Baker circulated a letter notifying member schools that the Division I Board of Directors "directed NCAA enforcement staff to pause and not begin investigations

involving third-party participation in NIL-related activities," with "no penalty" for applicable conduct while the preliminary injunction is in effect.[7] However, the letter specifies that the NCAA will continue to enforce other policies, including the prohibition on NIL compensation for specific athletics performance (i.e., "pay-for-play"), prohibition on direct institutional payment for NIL, and the quid pro quo requirement.[8]

State Government Responses to the Preliminary Injunction

The granting of the preliminary injunction in *Tennessee and Virginia v. NCAA* prompted state governments to take action in connection with their respective NIL rules. Most notably, North Carolina Governor Roy Cooper rescinded an earlier executive order that created NIL-related rules and guidelines for North Carolina colleges and universities.[9]

As a result, student-athletes in North Carolina will now have greater flexibility to enter NIL arrangements. However, these student-athletes should be aware of the NCAA's ability to continue to enforce certain restrictions on NIL as noted above. For example, even though direct institutional NIL compensation is no longer prohibited under North Carolina law due to the rescission of the order, the NCAA's rule prohibiting direct institutional compensation remains unchallenged and may be enforced against student-athletes in North Carolina.

In addition, the Oregon legislature recently passed House Bill 4119, which requires that student-athletes disclose their NIL deals and outlines certain parameters for NIL deals (e.g., pay-for-play is prohibited).10 Furthermore, Oregon joined other states, including Missouri, New York, Oklahoma, and Texas, in prohibiting the NCAA from preventing a student-athlete's or school's participation in college athletics due to a real or alleged violation.11

Other NIL-Related Developments

As prohibitions on NIL-related compensation continue to be challenged in the courts, other organizations continue to develop new NIL compensation arrangements for student-athletes. For instance, there is discussion of a new men's college basketball tournament launching in the fall of 2024 which will offer NIL deals to participating teams.12 The tournament will be called "Players Era," and the tournament operator, EverWonder Studio, is guaranteeing that each participating school will be offered $1 million in NIL money through collectives, boosters, or other NIL entities and the coaches and teams will be able to distribute the money to current players.13 Notably, the winning team will be eligible to earn another $1 million, which can also be distributed to current players.14 It is unclear what kind of interest will be generated in this new tournament or whether the NCAA will challenge the payments as prohibited pay-for-play.

At the same time, the NCAA continues to take actions that suggest a growing receptiveness to the reality of student-athlete compensation. The NCAA recently entered into its first-ever NIL licensing deal, with trading card manufacturer Topps.15 Under the deal, the NCAA licenses the use of the March Madness logo for Topps to use on trading cards featuring men's and women's college basketball players.16 Topps already has deals in place with all of the featured student-athletes, and NCAA Director of Licensing David Clendenin said "there might be [a] larger program in the future,"17 including in sports like "volleyball, FCS football, baseball, or the Women's College World Series."18 Brands seeking to engage with the NCAA should continue to monitor the NCAA's involvement in NIL licensing deals as they become more prevalent.

Other Avenues of Student-Athlete Compensation

While this article focuses mainly on NIL-related developments, there have also been several notable developments that could lead to other avenues for student-athlete compensation. On March 5, 2024, the Dartmouth College men's basketball team voted 13-2 to unionize and join Services Employees International Union Local 560.19 This decision comes after a National Labor Relations Board (NLRB) regional official ruled that the team members could be considered employees under the National Labor Relations Act which, among other rights, granted them the right to unionize.20 Dartmouth has appealed the ruling to the full NLRB where it could be overturned. If the ruling is affirmed, it could give the team members the ability to collectively bargain with the school for compensation such as a salary, healthcare, and other employment-related benefits.21 Such compensation would be in addition to any

NIL-related compensation and represents a potential additional income stream for student-athletes.

Another avenue of student-athlete compensation could become available in the form of prize money for student-athletes playing individual sports. A class action lawsuit filed by University of North Carolina tennis player Reese Brantmeier seeks to prevent the enforcement of NCAA rules that limit the amount of prize money from non-NCAA competitions that student-athletes can keep to their "actual and necessary expenses."22 Brantmeier is seeking to represent a class of student-athletes playing "Individual Sports"23 which typically do not generate the same NIL opportunities for student-athletes as team sports like football and basketball. The lawsuit alleges that much of the NIL payments made to student-athletes in revenue-generating sports have "little to no relation to the actual market value for the supposed NIL services" and are in reality pay-for-play; therefore, the amount of prize money student-athletes playing individual sports are able to keep while maintaining NCAA eligibility should not be limited.24 Schools, conferences, and collectives should keep an eye on this lawsuit, as it could lead to the unenforceability of additional NCAA rules and open up more revenue streams for student-athletes, especially for those competing in individual sports.

Key Takeaways: What's Ahead

The collection of NIL and other compensation-related updates from the last few months underscores the expanding forms of student-athlete compensation that are available. Universities, student-athletes, brands and other stakeholders should keep an eye out for further developments in these spaces and monitor updates to each of the relevant lawsuits challenging NCAA rules. The NIL landscape is changing quickly, and nimble parties can identify and benefit from unique opportunities in the growing uncertainty around the NCAA's enforcement powers.

1. Complaint, *State of Tennessee and Commonwealth of Virginia v. NCAA*, no. 3:24-cv-00033 (E.D. Tenn. Jan. 23, 2024).

2. Complaint, *State of Tennessee and Commonwealth of Virginia v. NCAA*, no. 3:24-cv-00033 (E.D. Tenn. Jan. 23, 2024).

3. Order Granting Motion for Preliminary Injunction, *State of Tennessee and Commonwealth of Virginia v. NCAA*, no. 3:24-cv-00033 (E.D. Tenn. Feb. 23, 2024).

4. Order Granting Motion for Preliminary Injunction, *State of Tennessee and Commonwealth of Virginia v. NCAA*, no. 3:24-cv-00033 (E.D. Tenn. Feb. 23, 2024).

5. NCAA Bylaw 12.11.4.2, **https://web3.ncaa.org/lsdbi/reports/getReport/90008**.

6. NCAA Bylaw 12.11.4.2, **https://web3.ncaa.org/lsdbi/reports/getReport/90008**.

7. Letter from Charlie Baker, NCAA President, to Member Schools (March 1, 2024).

8. Letter from Charlie Baker, NCAA President, to Member Schools (March 1, 2024).

9. Press Release, Roy Cooper, Governor, North Carolina, As Name, Image, Likeness Compensation Evolves in Collegiate Athletics, Governor Cooper Rescinds Initial State Order Guiding NIL for NC Universities (Mar. 8, 2024), **https://governor.nc.gov/news/press-releases/2024/03/08/name-image-likeness-compensation-evolves-collegiate-athletics-governor-cooper-rescinds-initial-state; E.O. 306, Roy Cooper, 2024, https://governor.nc.gov/executive-order-no-306/open**.

10. H.B. 4119, 82nd Oregon Legislative Assembly (2024) (enrolled), **https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/HB4119/Enrolled**.

11. Pete Nakos, *Oregon Gov. Tina Kotek signs impactful NIL bill into law*, On3 (Mar. 23, 2024), **https://www.on3.com/nil/news/gov-tina-kotek-signs-impactful-nil-bill-into-state-law-oregon-ducks-ncaa/**.

12. Amanda Christovich, *New In-Season Men's College Basketball Tournament to Offer $2M in NIL Deals*, Front Office Sports (Mar. 13, 2024), **https://frontofficesports.com/new-mens-college-basketball-tournament-nil/**.

13. Amanda Christovich, *New In-Season Men's College Basketball Tournament to Offer $2M in NIL Deals*, Front Office Sports (Mar. 13, 2024), **https://frontofficesports.com/new-mens-college-basketball-tournament-nil/**.

14. Amanda Christovich, *New In-Season Men's College Basketball Tournament to Offer $2M in NIL Deals*, Front Office Sports (Mar. 13, 2024), **https://frontofficesports.com/new-mens-college-basketball-tournament-nil/**.

15. Doug Feinberg, *NCAA enters into first NIL licensing deal allowing use of March Madness logo on Topps cards*, Associated Press (Mar. 19, 2024), **https://apnews.com/article/march-madness-topps-nil-caitlin-clark-befffdaf74fb6905469485d17b6a9166**.

16. Doug Feinberg, *NCAA enters into first NIL licensing deal allowing use of March Madness logo on Topps cards*, Associated Press (Mar. 19, 2024), **https://apnews.com/article/march-madness-topps-nil-caitlin-clark-befffdaf74fb6905469485d17b6a9166**.

17. Doug Feinberg, *NCAA enters into first NIL licensing deal allowing use of March Madness logo on Topps cards*, Associated Press (Mar. 19, 2024), **https://apnews.com/article/march-madness-topps-nil-caitlin-clark-befffdaf74fb6905469485d17b6a9166**.

18. Ben Portnoy, NCAA, *Topps team up for trading cards around top men's, women's hoopsters*, Sports Bus. J. (Mar. 19, 2024), **https://www.sportsbusinessjournal.com/Articles/2024/03/19/ncaa-trading-cards**.

19. Jimmy Golen, *Dartmouth men's basketball team votes to unionize, though steps remain before forming labor union*, Associated Press (Mar. 5, 2024), **https://apnews.com/article/dartmouth-union-ncaa-basketball-players-2fd912fade62ffd81218a6dc91461962**.

20. *Trustees of Dartmouth College*, 01-RC-325633 (Feb. 5, 2024), available at **https://apps.nlrb.gov/link/document.aspx/09031d4583c5ebe4**.

21. Jimmy Golen, *Labor victory for Dartmouth basketball players only start of path to a union deal*, Associated Press (Mar. 5, 2024), **https://**

apnews.com/article/dartmouth-union-nlrb-4de7c20f6698e-4148ae03810862414cb.

22. *Brantmeier v. NCAA*, no. 1:24-cv-00238 (M.D.N.C. Mar. 18, 2024).

23. 'Individual Sports' means tennis, golf, swimming, track and field, wrestling, gymnastics, skiing, fencing, women's bowling, indoor and outdoor cross country, women's triathlon, women's equestrian, rifle, skiing, and all related team aspects." *Brantmeier v. NCAA*, no. 1:24-cv-00238 (M.D.N.C. Mar. 18, 2024).

24. *Brantmeier v. NCAA*, no. 1:24-cv-00238 (M.D.N.C. Mar. 18, 2024).

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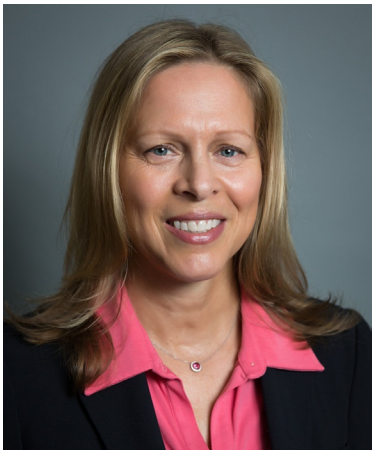
Sports Lawyers Association to Present its Award of Excellence to Big East Commissioner Val Akerman

The Sports Lawyers Association (SLA) has announced that Big East Commissioner Val Ackerman will receive its Michael Weiner Award of Excellence, the highest honor bestowed by the association, on May 10 during its 49th Annual Conference in Baltimore.



Val Ackerman

For details on the conference and attending the event, visit https://www.sportslaw.org/conferences/2024conf/.

"It is in keeping with the SLA's long history of cultivating and recognizing trailblazing leaders in the sports industry that we recognize the lasting impact of Val's magnificent career in the sports industry," said Layth Gafoor, SLA President. "As a long-time member of this association, I can speak, personally and at length, about the tremendous foundation and standard of excellence that our female leaders have set in the proud history of this association."

Ackerman was named the fifth Commissioner of the Big East Conference on June 26, 2013. She was the founding President of the Women's National Basketball Association (WNBA) and is a past President of USA Basketball, which oversees the U.S. men's and women's Olympic basketball program. She has had a long and accomplished career in the sports industry and is one of the few executives in sports who has held leadership positions in both men's and women's sports at the collegiate, professional, national team and international levels.

She is an inductee of the Naismith Memorial Basketball of Fame (2021), the Women's Basketball Hall of Fame (2011) and the New Jersey Hall of Fame (2021). In 2016, Val received the Women's Sports Foundation's Billie Jean King Contribution Award for significant contributions to the development and advancement of women's sports.

The significance of the latest recognition was not lost on Akerman.

"I'm very honored to receive this recognition and commend the Sports Lawyers Association for the services it provides to the many current and former lawyers who populate the sports industry," said Akerman. "I had the privilege of working for three ubertalented lawyers in my early years at the NBA – David Stern, Russ Granik and Gary Bettman – and to this day I'm profoundly grateful for the know-how and problem-solving approach that they, my legal education at UCLA and my two years of practice at Simpson Thacher & Bartlett instilled in me. As the law touches so many parts of the sports industry, I know that lawyers and the SLA will continue to play an active and important role in shaping the future of our space."

After earning a law degree from UCLA in 1985, Akerman's legal career began as a corporate and banking associate at the aforementioned Simpson Thacher & Bartlett, Shortly thereafter, she joined the National Basketball Association as a staff attorney in 1988. Akerman was as an executive at the NBA for eight years, serving as Special Assistant to NBA Commissioner David Stern and Director (and later) Vice President of Business Affairs before being named the WNBA's first President in 1996. She guided the league to a much-heralded launch in 1997 and headed its day-to-day operations for its first eight seasons.

For more on her storied career, visit https://www.bigeast.com/staff.aspx?staff=1

SLA is a non-profit, international, professional organization whose common goal is the understanding, advancement and ethical practice of sports law.

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Field of Change: Chicago Bears Usher in a New Era of Leadership and Innovation

By Joseph M. Ricco IV

The Chicago Bears are fortifying their leadership, signaling a new strategic direction with the recent hires of Krista Whitaker as Chief Legal Officer and Andrea Zopp as Senior Advisor. While the team is also making headlines for its plans to build a new domed lakefront stadium and the anticipated selection of a new franchise quarterback in the 2024 National Football League (NFL) Draft, the strategic acumen of Whitaker and Zopp stands poised to profoundly reshape the Bears' operational and governance structures. With these pivotal additions, the franchise is not just preparing for a new season, but also transitioning towards a future where robust leadership drives innovation and success more than ever before.

Positioning for a New Era

The Chicago Bears have been actively reshaping their roster and infrastructure to align with their ambitious vision for the future. Following a period of internal research, the franchise traded quarterback Justin Fields to the Pittsburgh Steelers, a move designed to clear the way for drafting whom many anticipate will be University of Southern California quarterback Caleb Williams with their No. 1 overall pick in the 2024 NFL Draft. Simultaneously, the organization has unveiled plans for a major architectural venture—a new publicly-owned domed stadium along Chicago's lakefront, intended to host not just football games but also major events like the Super Bowl and National Collegiate Athletics Association (NCAA) Final Four. These pivotal changes underscore a period of deep transformation aimed at revitalizing the franchise. Amidst these significant developments, the Bears have bolstered their leadership by hiring Krista Whitaker as Chief Legal Officer and Andrea Zopp as Senior Advisor, entrusting them with the task of steering the organization through these transformative times.

Expert Leadership at the Helm

In the midst of this pivotal time of transformation, Andrea Zopp joins the Chicago Bears as Senior Advisor, a role integral to the franchise's forward-looking agenda. Zopp, a Harvard Law School graduate, brings a wealth of experience from high-caliber roles in both public service and the private sector. Her career includes significant positions at Exelon and Sears Holdings, as well as a candidacy for the United States Senate, showcasing her adeptness in navigating complex legal and business landscapes. In her new role, Zopp's strategic expertise will be key in optimizing the Bears' operations and aligning them with broader organizational goals. Zopp will also be tasked with applying her extensive knowledge to enhance strategic alignment across the organization's legal and business initiatives. Her leadership is expected to be instrumental in guiding the franchise through its current evolution and towards a prosperous future.

Chicago's Newest Legal Officer: Krista Whitaker

With the strategic expertise of Andrea Zopp ensuring alignment in governance and business development, the Chicago Bears equally fortified their legal front by bringing Krista Whitaker on board as Chief Legal Officer. Whitaker's journey to the Bears is a story of dedication, strategic networking, and deep legal expertise in the sports industry. After graduating from Stanford Law School, she quickly made her mark at Proskauer Rose, a leading firm known for its extensive sports law portfolio. Here, Whitaker was involved in significant legal dealings, including league expansions, media agreements, and high-stake acquisitions, which honed her skills for the complex landscape of sports law.

Whitaker's transition from private practice to in-house counsel began with the Miami Heat, where she served first as senior associate counsel before rising to vice president and associate general counsel. During her tenure, Whitaker handled a wide range of legal challenges, from naming rights deals to day-to-day operations, significantly broadening her understanding of the sports business. This role not only expanded her legal acumen but also deepened her leadership capabilities, preparing her for a larger stage.

Now with the Bears, Whitaker's responsibilities are both vast and critical. She will oversee all aspects of the organization's legal and business affairs, ensuring compliance, managing risk, and supporting strategic initiatives like the development of the new stadium. Her ability to navigate complex legal landscapes and her proactive approach to legal issues are vital as the

Bears embark on this transformative era. With the new challenges of a publicly-owned stadium on the horizon, Whitaker's expertise will be crucial in spearheading negotiations, securing partnerships, and laying the groundwork for a successful future for the franchise.

A Vision for the Future

As the Chicago Bears chart their course toward a transformative future, the strategic appointments of Krista Whitaker as Chief Legal Officer and Andrea Zopp as Senior Advisor are pivotal. These seasoned professionals bring a wealth of experience and a sharp strategic focus that will be instrumental in navigating the challenges and opportunities that lie ahead. With plans for a new state-of-the-art stadium and a fresh talent strategy marked by the anticipated drafting of a franchise quarterback, the Bears are setting the stage for a period of sustained growth and success.

Under the guidance of Whitaker and Zopp, the Bears are poised to enhance their operational efficacy and legal governance, ensuring that the franchise remains competitive both on and off the field. The commitment to building a robust leadership framework and innovating at every level of the organization demonstrates a clear vision for long-term success that resonates with fans and stakeholders alike. As the Bears continue to evolve, the impact of these strategic decisions will undoubtedly shape the future of one of the NFL's most storied franchises, promising an exciting new era for all involved.

Joseph M. Ricco IV is a second-year Sport Management and Government double major at the University of Texas at Austin. Currently a Texas Longhorns Football Recruiting Operations & Events Intern, Joseph brings hands-on experience in football operations and event management. As the founder of the Model National Football League (MNFL), Joseph strives to blend sports management with legal insights to innovate within sports law.

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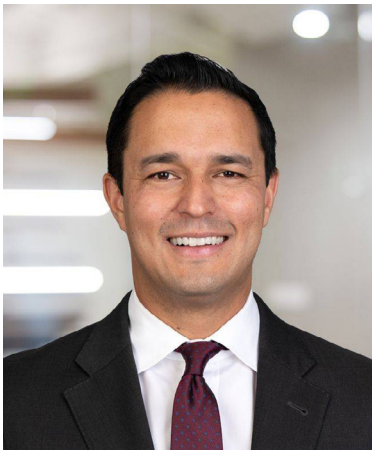
Fisher Phillips Sports Law Practice Recognized as One of the Best; Attorney Adam Sloustcher Featured on Sports Law Expert Podcast

Hackney Publications (HP) has announced the inclusion of Fisher Phillips to its "100 Law Firms with Sports Law Practices You Need to Know About." The firm's practice group was recognized based on feedback from HP' readers.



Adam Sloustcher

In addition, the company announced that Adam Sloustcher, co-chair of the firm's sports law practice, has also been featured on Sports Law Podcast. The segment can be heard here.

Going forward, those interested in being notified when a segment of the podcast goes live can subscribe by visiting here.

"Sloustcher is part of a diverse group of former collegiate and professional athletes at the firm, who are dedicated to advising sports employers regarding compliance with applicable laws and regulations as well as managing controversies," said Holt Hackney, the CEO of Hackney Publications. "The practice group is one to watch in 2024."

Sloustcher, in particular, represents local, regional and national employers in a broad range of employment disputes. He specializes in defending employers in wage-and-hour class action lawsuits, as well as those brought under California's Private Attorneys General Act (PAGA). Sloustcher also has extensive experience litigating equal pay class actions and single-plaintiff discrimination, harassment, retaliation, and wrongful termination lawsuits.

In addition to zealously advocating for his clients in the courtroom, he prides himself on being an accessible, responsive resource to help his clients avoid litigation altogether. Sloustcher acts as a partner to in-house counsel, business owners, and management by providing them with day-to-day preventative advice regarding wage-and-hour compliance, investigations of alleged misconduct in the workplace, hiring, discipline and termination practices, leaves of absences, and the interactive process and reasonable accommodations. He also prepares complex compensation plans, arbitration agreements with class action waivers, employee handbooks, and personnel policies for his clients.

Sloustcher's devotion to his clients is well recognized, as he was named a San Diego Super Lawyers -- Rising Star for 2020 and 2021 for his work in labor and employment law. He is also a frequent speaker on numerous employment-focused panels, and is a regular speaker at the annual International Health, Racquet & Sportsclub Association (IHRSA) International Convention & Trade Show. Sloustcher also teaches classes about FMLA/CFRA and wage-and-hour issues for in-house counsel, human resources professionals, and other management personnel and is a guest lecturer for an employment law course at San Diego State University.

Growing up, he was a member of the Under-17 and Under-18 U.S. Youth National Soccer teams and named a McDonald's and Parade All-American. Sloustcher went on to accept a full athletic scholarship to the University of North Carolina-Chapel Hill, and would later transfer to Loyola Marymount University – where he became team captain of the university's NCAA Division I Men's Soccer Team. Sloustcher then played professional soccer with the San Jose Earthquakes of Major League Soccer.

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News Briefs

Law Firm Announces Miami Marlins Sponsorship

Werner, Hoffman, Greig & Garcia has announced a sponsorship of the Miami Marlins. The law firm sees the partnership as "a significant step in its mission to support local initiatives and foster community spirit." The decision to sponsor the Miami Marlins reflects WHG's recognition of "the power of sports in uniting communities and inspiring the next generation. The Marlins' commitment to excellence on the field and their extensive community outreach programs resonate with WHG's values and mission." The partnership between WHG and the Marlins "is built on a shared mission to positively impact the Miami community. Through this sponsorship, both organizations aim to further their engagement with the community and provide support and inspiration to Miami residents. The exposure that Werner, Hoffman, Greig & Garcia will get through their partnership with the Marlins will allow them to bring reliable and credible legal services to the people of Miami, no matter who they are. And the Marlins will gain a partner they can feel good about recommending to their loyal fans."

Baum Promoted to Deputy Athletic Director for Legal and Regulatory Affairs at Virginia

The University of Virginia has promoted Jason Baum to the position of deputy athletic director for legal and regulatory affairs. Baum has been a member of the Virginia athletics department since 2014. Most recently, he has overseen the compliance department as the associate athletics director for governance & regulatory affairs. He replaces Jim Booz on the department's senior staff. In his new role, Baum will be responsible for oversight of the senior associate athletic director for legal & regulatory affairs and all aspects of compliance, legal and regulatory related issues. He will serve as the primary liaison between the athletic department and the office of general counsel, office of risk management, office of youth protection and office for equal opportunity and civil rights. He will be responsible for working with federal and state government relations liaisons on various issues related to intercollegiate athletics. Baum joined the Virginia athletics compliance staff in 2014 as an assistant director. In 2022 he was promoted to associate AD for governance & regulatory affairs. He previously served as the department's director of compliance. He was instrumental in the development of UVA's Name, Image and Likeness policies, providing guidance regarding sports wagering and other regulatory matters. Baum earned his Juris Doctor from American University Washington College of Law and his undergraduate degree from the University of California, Santa Barbara.

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