# SPORTS LITIGATION ALERT

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## Cases

### NFL Team Survives Legal Test of Adequate Stadium Security in Tragic Fan Violence Case

**By Gary Chester, Senior Writer**

Levi's Stadium in Santa Clara has been home to the NFL's San Francisco 49ers since 2014. Four years into the team's lease, the adequacy of security at the venue came into question when one fan assaulted another fan in the parking lot. David Gonzales punched Mark Stokes twice in the face, causing permanent brain damage that allegedly caused Stokes to suffer a fatal asthma attack in 2021.

Stokes's wife and children filed a civil complaint in California state court alleging that Forty Niners Stadium Management Co. and Landmark Event Staffing

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Services were negligent in failing to prevent the assault, and in failing to provide adequate security. The trial court found there was no breach of duty and granted summary judgment to the defendants. Stokes's appeal was decided in *Stokes v. Forty Niners Management Co*., 2024 Cal. App. Unpub. LEXIS 8058 (Ct. of Appeal of Cal., Sixth App. Dist., December 19, 2024).

### A Sudden, Violent Assault

On October 7, 2018, disappointed fans filed out of Levi's Stadium after the Arizona Cardinals defeated the 49ers, 28-18. The Cardinals pummeled Niners quarterback C.J. Beathard with four sacks, but none were as brutal as the assault that took place in the Red Lot 1 parking area after the game. Pretrial testimony and video evidence showed that Stokes and Gonzales had both consumed alcoholic beverages throughout the afternoon, and that the incident lasted but a few seconds: Stokes kicked an empty glass bottle on the ground that struck Gonzalez's vehicle, and Gonzales immediately punched Stokes in the face before driving away. (Gonzalez was later arrested, and he pleaded guilty to assault.)

The complaint alleged that Stadium Management and Landmark were liable for failing to provide adequate security, permitting known criminals to be present, promoting excessive consumption of alcohol while failing to eject from the premises persons exhibiting drunk or disorderly conduct, and other negligent conduct. In May 2022, the defendants filed motions for summary judgment.

Stadium Management argued that it did not breach any duty of care and that the plaintiffs could not prove causation due to the intervening, unforeseeable criminal assault. It argued that its security measures were adequate and far more robust than the security employed at a Major League Baseball stadium that the court found to have been sufficient in *Noble v. Los Angeles Dodgers, Inc*., 168 Cal.App.3d 912, (1985). There, the court held that the plaintiff could not prove that inadequate security directly caused a post-game melee in the parking lot at Dodger Stadium. The court referred to broad allegations of inadequate security as "abstract negligence," and stated that landowners are not insurers of one's safety on their property.

Landmark argued that it owed no duty to Stokes "to ensure his safety by preventing unforeseeable spontaneous attacks" and that the plaintiffs' claim for premises liability was not maintainable because it did not own, lease, occupy, or control Levi's Stadium.

The plaintiffs argued that Landmark had failed to show there was adequate security personnel in the parking lot, and that an issue of fact existed as to whether Landmark's failure to enforce the stadium's policies against loitering, tailgating, and drinking alcohol in the parking areas after kickoff was a direct cause of the incident.

The plaintiffs relied on deposition testimony from witnesses who had accompanied both Stokes and Gonzalez who said there was no security in Red Lot 1 at the stadium when the incident took place. One witness testified that after the assault, he ran toward the stadium looking for security or police for assistance, but he did not locate anyone.

The plaintiffs also relied on a well-known sports safety expert, Gil Fried, a professor at the University of West Florida, who opined that the failure of both defendants to enforce venue policies likely caused or contributed to the incident. In addition, a board-certified neurologist concluded that Stokes's traumatic brain injury was a cause of his death.

### Evidence of Causation, or Pure Conjecture?

The trial court granted summary judgment because Stadium Management had met its burden of showing an absence of causation, and because Fried's opinions on causation were based on "speculation and conjecture." The court similarly found that Landmark had met its burden of showing an absence of causation, and had also demonstrated that it did not have the "requisite control, ownership, leasing, or occupation of Levi's

Stadium such that it could be held liable for premises liability."

On the plaintiffs' appeal, the California Court of Appeals noted that even though a premises "owner is not an insurer of the safety of its patrons, [he or she] does owe them a duty to exercise reasonable care in keeping the premises reasonably safe." The court considered several precedents, including *Saelzer v. Advanced Group 400*, 25 Cal.4th 763 (2001), and *Leslie G. v. Perry & Associates*, 43 Cal.App.4th (1996).

In *Saelzer*, the trial court dismissed a claim by a Federal Express delivery driver who had been assaulted while delivering a package at an apartment complex, citing a lack of evidence proving causation. The appeals court reversed, finding that strong evidence of much criminal activity at the complex created an issue of fact as to whether the complex provided adequate security. The California Supreme Court reversed, based on California's rule that the plaintiff must establish an actual causal link between the plaintiff's injury and the defendant's failure to provide adequate security measures.

The plaintiff in *Leslie G*. was raped by an unknown assailant at 2 a.m. in the underground parking garage of her apartment building. The trial judge dismissed her claim against the apartment building for inadequate security because the absence of similar incidents at the complex in the previous two years made the incident unforeseeable as a matter of law. The appellate court affirmed, stating that evidence of causation, whether by direct or circumstantial evidence, must be substantial and not based on "a mere possibility."

The Court of Appeal in *Stokes* did not distinguish the facts from those in *Saelzer*, *Leslie G*., and other precedents, finding that Stadium Management and Landmark could not be found liable for "abstract negligence" without a causal connection between the alleged negligence and the injury. The opinion mirrored the holding in a similar case, *Romero v. Los Angeles Rams*, 91 Cal.App.5th (2023), which involved an assault on a football fan at the Los Angeles Memorial Coliseum following an NFL game. The court there stated that the "bare claim that more security personnel could have prevented a criminal attack shows only 'abstract negligence.'"

The court in *Romero* observed that there must be evidence that the assailant took advantage of a lapse or omission in security "in the course of committing his attack, and that the omission was a substantial factor in causing the injury."

The Court of Appeal also affirmed the trial judge's finding that Fried's expert opinions were speculative, and therefore inadmissible. The speculation was that if the defendants had provided "highly visible security," then it likely would have deterred Gonzalez from assaulting Stokes. The court indicated that the plaintiff's

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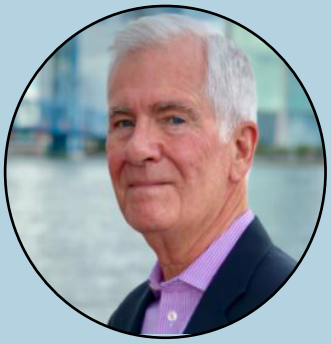

C. Peter Goplerud

***Expertise:*** *Coaches' contracts, NCAA matters, including Name, Image, & Likeness (NIL), athlete eligibility, compliance, independent investigations and Title IX.*

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case required more specific facts to support Fried's conclusions.

### Analysis

It is important to recognize that in any assault, the primary legal liability would seem to rest with the assailant. A plaintiff's attorney has a responsibility to the client to investigate a case against deep-pocket defendants, but the attorney needs to discover hard evidence to establish that a specific breach of the duty to provide security was a proximate cause of the attack.

Here, the appeals court recounted that there were at least 923 security personnel working the 49ers-Cardinals game that drew 53,582 fans. Security employees were posted to patrol the parking lots, some of whom maintained radio communication with the Stadium Command Center. It was incumbent on the plaintiffs to produce an expert opinion challenging the ratio of security personnel to the number of fans attending the game, or to establish that Levi's Stadium personnel served Gonzalez alcoholic beverages while he was visibly intoxicated and that his condition contributed to the incident. However, *Stokes* and precedent cases make it clear that California law requires the plaintiff to discover a specific, direct link between the assailant and a security failure. It is a difficult standard to meet.

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## Two New Hampshire High School Girls Challenge the Constitutionality of Trump's "Keeping Men Out of Women's Sports" Executive Order

**By Ellen J. Staurowsky, Ed.D., Senior Writer & Professor of Sports Media, Ithaca College, staurows@ithaca.edu**

On February 12, 2025, two transgender high school girls who attend public schools in New Hampshire challenged an executive order entitled "Keeping Men Out of Women's Sports" (National Sports Ban) issued by President Trump that prevents transgender girls and women from participating on teams that match their gender identity (*Tirrell & Turmelle v. Engleblut et al*., 2025). This represents an expansion of a lawsuit brought by the Plaintiffs in August of 2024 following the enactment by the NH legislature of HB 1204 which prohibited transgender girls from participating on girls' athletic teams in the state.

Prior to the passage of HB 1204, issues associated with athletic eligibility were left up to the New Hampshire Interscholastic Athletic Association (NHIAA) to regulate. In their oversight capacity, the NHIAA had developed and adopted a "Policy Statement and School Recommendation Regarding Transgender Participation" in 2015 through its Eligibility Committee. In keeping with NHIAA's educational mission, the Policy had provided for transgender athletes to participate on teams sponsored by NHIAA athletic programs. As per the Policy as it was presented in September of 2024, "It would be fundamentally unjust and contrary to applicable State and Federal law to preclude a student from participation on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes" (*Tirrell & Turmelle v. Engleblut et al.,* 2024, Appendix A - NHIAA Bylaws Article II, p. 54). The NHIAA left it up to school districts to determine a student's eligibility to play based on "the gender identification of that student in current school records and daily life activities in the school and community…" (*Tirrell & Turmelle v. Englebut et al.,* 2024, Appendix A - NHIAA Bylaws Article II, p. 54).

Initially, the Plaintiffs sought and obtained a temporary restraining order that allowed them to remain eligible while the case proceeded. The Plaintiffs also sought relief under the Equal Protection Clause of the 14th Amendment, arguing that HB 1204 singled them out and categorically barred them from participating on girls' teams because they were transgender. They further argue that HB 1204 does not meet the heightened scrutiny requirement for classifications based on sex and transgender status because their exclusion cannot be justified as being substantially related to any important state interest. Described as being similarly situated to other girls, both girls had lived their lives and pursued activities as girls throughout their schooling. Neither had undergone male puberty and the basis on which they were being excluded from participation was founded on sex stereotypes and misconceptions. Citing the language from Title IX of the Education Amendments Act of 1972, they further argue that prohibitions against the girls having an

opportunity to try out for a team and/or participate on a team consistent with their gender identity subjects the girls to sex discrimination and denies them the benefits to be realized from participation (*Tirrell & Turmell v. Edelblut et al., 2025*, Counts 1-IV).


The definitions relied upon in the National Sport Ban are embedded in another executive order issued by President Trump, that being the "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (the Gender Ideology Order). As a consequence, both of these orders are challenged. This case explores the limits of executive authority of the Federal Defendants (President Donald Trump, U.S. Attorney General Pamela Bondi, and U.S. Acting Secretary of Education Denise Carter).

- In Count V, the plaintiffs allege that the orders effectively compel two of the added defendants, U.S. Attorney General Pam Bondi and U.S. Acting Secretary of Education Denise Carter to discriminate on the basis of sex and to direct the federal agencies they oversee to investigate schools who allow transgender girls to participate on girls' athletic teams and to withdraw federal funding. As noted in the lawsuit, "The National Sports Ban and the Gender Ideology Order violate the equal protection rights of Plaintiffs and other transgender girls and women under the Fifth Amendment" (*Tirrelle & Turmell v. Edelblut et al.,* 2024, p. 29).
- In Count VI, the Plaintiffs seek an injunction to prevent the Federal Defendants from enforcing or implementing both the National Sport Ban and the Gender Ideology Order, which they argue violate Title IX and require recipients of federal funding to engage in sex discrimination prohibited by Title IX. Plaintiffs further seek a declaration that both orders are *ultra vires* "as they impermissibly direct agencies to take actions in violation of statutory laws that prohibit discrimination on the basis of sex" (*Tirrell & Turmell v. Edelblut et al.,* 2024, p. 30).
- In Count VII, the Plaintiffs argue that the provisions in the executive orders calling for the withholding or termination of federal funding appropriated by Congress constitute "actions that exceed the President's Article II powers, unconstitutionally infringe upon Congress's powers, and attempt to amend federal legislation while bypassing Article I's Bicameralism and Presentment Clauses" (*Tirrell & Turmell v. Edelblut et al.,* 2024, p. 32).

Since Tirrell and Turmell filed their amended complaint, two further developments have happened. First, the NHIAA Council, under pressure due to the threatened withholding of federal funding from New Hampshire schools, suspended its Policy Statement and School Recommendation Regarding Transgender Participation as of February 14, 2025 pending further review. Second, an organization known as Female Athletes Unlimited has moved to be recognized as an intervenor in this case.

## References

*Tirrell and Turmell v. Frank Edelblut et al.* (2025). United States District Court for the District of New Hampshire. Civil Action No. 1:24-cv-00251.

New Hampshire Interscholastic Athletic Association. (2025). Bylaw Article II-Eligibility. https://www.nhiaa.org/ckfinder/userfiles/files/4HB%2024-25%20%20II%20Eligibility%20-%20Updated%202_14_25(1).pdf

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# From Sexual Grooming to Accountability: Actual Notice and Title IX Liability in John Doe 2 v. North Carolina State University

Dr. Kyle Conkle

John Doe 2, a student athlete at North Carolina State University (NC State) from 2020 to 2021, alleged that while seeking treatment for hip and groin pain that he was sexually abused by the university's Director of Sports Medicine, Robert Murphy. Murphy's treatment involved unauthorized touching of Doe's genitals under the guise of medical care. Prior to Doe's allegations, Head Soccer Coach Kelly Findley reported to Senior Associate Athletic Director Sherard Clinkscales that he suspected Murphy was engaging in "sexual grooming" of male student-athletes. This report was critical because it formed the basis for the claim that the university had "actual notice" of potentially wrongful sexual conduct. Doe filed a Title IX suit alleging that NC State was deliberately indifferent to complaints about Murphy's misconduct. The district court dismissed the complaint under Rule 12(b)(6), holding that the allegations failed to establish that the university received actual notice of sexual harassment, particularly because the report described "suspected" rather than confirmed misconduct. Consequently, the issue observed warranted a determination on whether a report describing "sexual grooming" by a school employee is sufficient to constitute actual notice of sexual harassment under Title IX, which would subsequently obligate the university to take corrective action.

The Fourth Circuit then vacated the district court's dismissal holding that a report of "sexual grooming," when described in a manner suggesting wrongful, sexually motivated conduct can objectively be inferred as alleging sexual harassment. However, the appellate court remanded the case so the district court could determine whether the complaint adequately pleaded that the report was made to an official with the appropriate authority to address Title IX complaints.

Regarding the actual notice requirement under Title IX, an educational institution must have had actual notice of sexual harassment for liability to be imposed. Actual notice is met when an appropriate official receives a report that can objectively be understood as alleging sexual harassment, regardless of whether the official initially interprets it as such. And while "grooming" can be interpreted in various ways, when modified by "sexual," it conveys a pattern of predatory behavior designed to exploit trust and authority. The court found that Findley's report of Murphy engaging in "sexual grooming" of male student-athletes carried sufficient factual implications to be reasonably construed as alleging current sexual harassment.

The university argued that the report was merely a statement of suspected conduct lacking factual detail and that the report's timing (dating back to 2016) was insufficient to establish notice of conduct in 2021. The court rejected these points, emphasizing that the duty to investigate is triggered by the receipt of any report that a reasonable official would construe as alleging Title IX prohibited sexual harassment. Although the district court assumed without deciding that Clinkscales had the requisite authority, the appellate court declined to resolve that issue on remand. The court noted that it is not its role to second-guess the district court on such matters at this stage.

Given that the district court's dismissal was vacated, and the case was remanded for further proceedings, the court now must decide whether Doe adequately alleged that the report was made to an official with the authority to address sexual harassment complaints and whether Doe should be granted the ability to amend his complaint if necessary.

Implications from this case are many. First, the ruling clarifies that a report containing the term "sexual grooming" may suffice to trigger a university's duty to investigate under Title IX. The decision underscores that even allegations based on "suspected" conduct can be enough if a "reasonable official" would interpret them as alleging sexual harassment. Second, regarding potential responsibility, educational institutions must be cautious in dismissing complaints that use terms like "sexual grooming." The decision reinforces that institutions have an obligation to investigate such reports rather than waiting for more detailed factual allegations. Third, for plaintiffs, this decision may make it easier to survive initial dismissal under Rule 12(b)(6) in Title IX cases by showing that reports of sexual grooming can establish actual notice. This could influence how future cases are framed and argued, pushing for more inclusive interpretations of what constitutes "notice". Fourth,

universities might need to revisit their policies and training protocols regarding the handling of sexual misconduct complaints. The decision suggests that any report that can be reasonably interpreted as alleging sexual harassment must be taken seriously and promptly investigated. Lastly, in the Fourth Circuit, this case sets a precedent for interpreting "actual notice" broadly in Title IX cases. Future courts may rely on this decision to assess the sufficiency of allegations in similar contexts, potentially leading to heightened institutional accountability.

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## One Argument, Two Athletes, Two Opposite Rulings in NIL Case

**By Joseph M. Ricco IV**

Wisconsin football cornerback Nyzier Fourqurean has sued the NCAA after being denied an extra year of eligibility, arguing that his two seasons at Division II Grand Valley State should not count against his eligibility clock. The lawsuit claims the NCAA's decision unfairly limits his ability to compete and earn Name, Image, and Likeness (NIL) compensation. A federal judge granted him a preliminary injunction, allowing him to continue playing while the case unfolds. Given the timing of the ruling, this decision will likely allow him to remain eligible for the 2025 football season. Meanwhile, a similar challenge by former Stonehill College and University of Maryland baseball player Trey Ciulla-Hall was ruled in the NCAA's favor, uncovering a potential divide in how courts are handling eligibility disputes. This article explores Fourqurean's lawsuit, the legal arguments at play, and insight from sports law expert Dr. Jodie Balsam on what these rulings mean now and in the future for NCAA regulations.

### Fourqurean's Case

Nyzier Fourqurean's legal challenge centers on the NCAA's decision to count his two seasons at Grand Valley State against his five-year eligibility clock, leaving him without another year to compete. His lawsuit, led by attorneys Jason R. Oakes and Robert M. Barnes, argues that this ruling is unfair, particularly because his 2021 season was impacted by the death of his father, which limited his ability to train and prepare. His legal team contends that the NCAA's refusal to grant him an additional year restricts his ability to maximize NIL opportunities and develop his professional prospects. The case follows a broader trend of athletes challenging NCAA eligibility rules, particularly as they relate to transfer restrictions and economic opportunities.

After the NCAA denied his waiver request, Fourqurean sought relief in federal court, where he was granted a preliminary injunction allowing him to continue playing while the case is litigated. The court ruled that the NCAA's eligibility restrictions may violate federal antitrust laws by limiting an athlete's ability to profit from their athletic career. Additionally, the judge determined that Fourqurean would suffer irreparable harm if he was forced to sit out the 2025 season, making immediate relief necessary. With the injunction in place, he is expected to remain eligible next season, but the final outcome of the case could have lasting implications.

### Conflicting Rulings

Fourqurean's case is not the first legal challenge to the NCAA's five-year rule, but it stands in contrast to the ruling in Trey Ciulla-Hall's case. The former Stonehill College and University of Maryland baseball player made a similar argument, claiming his eligibility clock should not count a past season due to his mother's illness and the impact on his playing time. Like Fourqurean, he also cited lost NIL opportunities, but a federal judge in Massachusetts denied his request, ruling that his ineligibility did not create a broader antitrust issue. In contrast, the judge in Fourqurean's case found that the NCAA's decision could violate antitrust law and that missing a season would cause irreparable harm. The opposite outcomes demonstrate the inconsistency in how courts are handling eligibility disputes, leaving the NCAA's five-year rule open to further legal challenges.

### Expert Insight: Dr. Jodi Balsam

Dr. Jodi Balsam, a nationally recognized expert in sports law, is a professor at Brooklyn Law School and New York University School of Law. She co-authors *Weiler Sports and the Law*, one of the leading casebooks in the field, and has extensive experience analyzing the legal complexities surrounding the NCAA. In discussing Fourqurean's case, she emphasized that this ruling illustrates a larger issue within college athletics, where no NCAA bylaw is fully protected from legal challenges.

"This decision illustrates that there is no NCAA bylaw or rule insulated from antitrust challenge," Balsam said. "Even if a rule could survive a broad legal challenge, it is unlikely to withstand scrutiny when applied to a particular athlete in the NIL era, where eligibility restrictions have economic consequences." She noted that the antitrust framework courts currently apply to these cases focuses on whether NCAA rules unfairly restrain trade in the college athlete labor market. While the NCAA has historically defended its rules under the premise of maintaining amateurism, Balsam argued that "to the extent that the amateurism principle has been declared dead, this court has buried it."

The contrast between Fourqurean's case and Ciulla-Hall's ruling highlights the growing legal uncertainty surrounding NCAA eligibility disputes. "Two courts ruled in opposite directions on essentially the same issue," Balsam said. "If this continues, the NCAA's rulebook will become unworkable, forcing a complete restructuring of how college sports are regulated." She explained that while the NCAA has had some success defending its policies in court, the mounting legal challenges indicate that its current system may not survive much longer.

### Conclusion

The rulings in Nyzier Fourqurean's and Trey Ciulla-Hall's cases show just how uncertain the legal landscape around NCAA eligibility has become. One judge saw a clear antitrust issue, while another upheld the NCAA's authority, despite the similarities in their arguments. With Fourqurean now set to play in 2025 and more athletes challenging eligibility rules, the NCAA is facing increasing pressure to create a more consistent and legally sound system. Whether the organization makes changes on its own or is forced to adapt through the courts, it is clear that the fight over eligibility is far from over.

*Joseph Ricco is a junior at the University of Texas at Austin studying sport management and government. He has experience in recruiting operations with Texas Football, training camp operations with the Kansas City Chiefs, and football data analytics with Pro Football Focus. He has also published work on sports law topics, including salary cap, NIL, and CBAs. Joseph plans to attend law school and pursue a career in football operations, player personnel, or administration.*

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## Seminole Tribe Is a Winner in Dispute over 'Deceptive' Sports Betting Practice

A federal judge from the Middle District of Florida has granted the Seminole Tribe of Florida's (Tribe) motion to intervene in a putative class action brought by a plaintiff, who alleged that Seminole Hard Rock Digital, LLC (SHRD) violated the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

Specifically, the court found that SHRD is "an inadequate representative" of the Tribe's interests.

By way of background, plaintiff Brandon Montgomery focused on SHRD's "No Regret First Bet" promotion on the software application Hard Rock Bet, through which SHRD allegedly encouraged "users to make their first bets up to $100, with the promise of giving the money back if it doesn't win."

Montgomery alleged that "SHRD deliberately did not communicate that users availing themselves of the . . . promotion would only be credited with a Bonus Bet."

According to Montgomery, "a player betting $100 of their own money at even odds could win $191—the initial bet plus the winnings less the house's cut. Yet he says that a player winning with a credited $100 Bonus Bet will receive only the winnings, not the value of the bet itself." So "once the new user loses their initial bet, they are not in the same position as they were before placing their bet, in direct contrast to the advertising materials of SHRD."

Montgomery also maintained that SHRD's advertisement of the "No Regret First Bet" promotion is misleading and violates FDUTPA.

In response, SHRD moved to intervene for the purposes of filing a motion to dismiss the Amended Complaint.

In the court's analysis, the federal judge noted that the Tribe "makes a prima facie showing that its motion is timely and that it has an interest in the transaction at issue that may be impaired by the action's disposition."

Montgomery, meanwhile, challenged "only the Tribe's argument that SHRD does not adequately protect the Tribe's interests."

The court further noted that the Tribe "argues that SHRD's representation of the Tribe's interests is

inadequate for two main reasons. First, the Tribe contends that it is the proper defendant because SHRD has no legal interest in the Tribe's sports-betting business and 'the Tribe is legally responsible for the conduct at issue and otherwise has total authority and control over the website and apps offering the Tribe's sports betting games' under the Tribe's compact with the State of Florida. Second, the Tribe maintains that as a sovereign entity, the Tribe has interests not shared by entities like SHRD in defending its sovereign immunity and its right to conduct gaming operations.

"The Tribe is right. While SHRD and the Tribe have a shared interest in avoiding liability in this action, the Tribe has additional interests in defending its ongoing right to conduct gaming on its lands and the scope of its sovereign immunity waiver. Both of those issues are addressed in the Tribe's 2021 Compact with the State of Florida, which the Tribe must abide by to offer sports betting games on its lands. *See 2021 Gaming Compact Between the Seminole Tribe of Florida and the State of Florida § V.D.9 (Apr. 23, 2021)*

"SHRD is not a party to the compact with Florida. Montgomery has not shown that SHRD has a right to offer sports betting in Florida independent of the Tribe. Nor has he shown that SHRD has the same sovereign interest in abiding by the compact—and maintaining the right to offer sports betting—that the Tribe does. And SHRD, as a limited liability company, possesses no innate sovereign immunity and thus does not have the same interest as the Tribe in policing the scope of the Tribe's sovereign immunity waiver. As such, the Tribe has met the 'minimal' burden of showing that SHRD 'may be' an inadequate representative of its interests.'" *Trbovich v. United Mine Workers of America*. Brandon Montgomery v. Seminole Hard Rock Digital; M.D. Fla.; Case No: 8:24-cv-1062-KKM-TGW; 2/10/25

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# Articles

## NLRB Memo Declaring Student-Athletes as Employees Rescinded by Orders of the Trump/Musk Administration

**By Professor Robert J Romano, JD, LLM, Sr. Writer**

In March 2014, the National Labor Relations Board (NLRB) Regional Office in Chicago, after receiving a petition from Kain Colter, then a quarterback at Northwestern University, determined that members of the Northwestern football team who are receiving academic scholarships are "employees" within the meaning of the National Labor Relations Act (NLRA) and therefore, have the right to form a labor union to collectively bargain on their behalf.[1] The NLRB Chicago Office based its determination on the following facts:

a. The football program generated revenue that totaled approximately $235 million between 2003 and 2012, such that the players performed valuable services for the university.

b. The players were "compensated" via scholarships equal in value of up to $76,000 per year.

c. The players were engaged in football activities all year-round and devoted between 40-50 hours a week to football activities during many months, which is often more time than they devoted to academics.

d. The football coaching staff exerted incredible control over the players, not only requiring them to practice and attend meetings on a rigid schedule throughout the day but also requiring them to seek some type of approval before they could make living arrangements, apply for employment, purchase vehicles, travel off campus, post items on social media forums, and speak to the media.[2]

Consequently, Northwestern University appealed the Regional Office's decision to the full National Labor Relations Board in Washington, D.C. That office, in

1 https://www.archerlaw.com/nlrb-regional-director-rules-northwestern-football-players-are-employees-and-can-unionize/

2 https://www.sbnation.com/college-football/2014/3/27/5551014/college-football-players-union-northwestern-nlrb

August of 2015, did not rule on the merits of Colter's petition or the appeal, but instead declined to exert jurisdiction over the matter and by doing so, preserved one of the NCAA 's core principles: that college athletes are students and not employees. The D.C. Office never determined whether student-athletes are employees, finding instead that Colter's petition could potentially have a wide-ranging impact on college sports and therefore would not promote "stability in labor relations."[3] As per its decision, "The Board has never before been asked to assert jurisdiction in a case involving college football players, or college athletes of any kind. Even if scholarship players were regarded as analogous to players for professional sports teams who are considered employees for purposes of collective bargaining, such bargaining has never involved a bargaining unit consisting of a single team's players."[4]

By 2021, college sports were in a whole new post-O'Bannon, post-Alston, post-Trump 1.0 Administration, social media driven world. As a result, on September 29, 2021, NLRB General Counsel, Jennifer Abruzzo issued an 'updated' memorandum solidifying the NLRB's *current* position wherein 'certain' "Players at academic institutions (sometimes referred to as student athletes), are employees under the National Labor Relations Act, and, as such, are afforded all statutory protections."[5] Abruzzo's memo declared that "Players at academic institutions perform services for institutions in return for compensation and subject to their control. Thus, the broad language of Section 2(3) of the Act, the policies underlying the NLRA, Board law, and the common law fully support the conclusion that certain players at academic institutions are statutory employees, who have the right to act collectively to improve their terms and conditions of employment."6 Additionally, Abruzzo warned colleges and universities against classifying players as 'student-athletes', and if such classification continued the NLRB would "pursue independent violation" against those academic institution.[7]

But now it's 2025, Trump and Musk have established themselves on Pennsylvania Avenue and the fight for student-athlete rights has again taken a darker, more Dogeian turn. On February 14, 2025, Acting General Counsel of the NLRB, William Cowen, issued a memorandum rescinding numerous orders announced by former General Counsel, Jennifer Abruzzo, with one of them being GC Memo 21-08 "Statutory Rights of Players at Academic Institutions (Student-Athletes) Under the National Labor Relations Act".[8] Mr. Cowen's memo comes when efforts by the NCAA, the individual college conferences, and the colleges and universities themselves, have systematically lobbied Congress to pass federal legislation that would preclude student-athletes, both male, female and trans, from being classified as employees of their schools. In fact, in June of 2024, a bill codifying such was passed by a House Committee but failed to advance to the floor for a vote.[9]

Abruzzo's GC Memo 21-08 recognized the illogicality of not paying student-athletes whose skills are the catalyst that drive this billion-dollar industry known as college sports. An industry that allows for coaches to be paid millions, the athletic directors and administrators to be paid, and everyone else associated with the games and events to be paid, but not the student-athletes themselves.

But now the Trump/Musk administration, not known for being logical, has flipped this notion of paying people for their hard work on its head, while also doing the college sport industry a "solid", by thwarting the decades long efforts of student-athletes to gain protections afforded them under labor law and with that, a right to have a seat at the table when it comes to collective bargaining. Although the *House v. NCAA* settlement allows a limited form of revenue sharing, it does not allow student-athletes the right to negotiate any term related to wages, hours, or conditions of employment. Any compensation they would receive is capped at an arbitrary amount decided by the NCAA and its member institutions, with no direct input from the athletes themselves. Now that doesn't seem fair, does it?

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3 General Counsel Memo 21-08 08 "Statutory Rights of Players at Academic Institutions (Student-Athletes) Under the National Labor Relations Act.

4 Id.

5 https://www.nlrb.gov/news-outreach/news-story/nlrb-general-counsel-jennifer-abruzzo-issues-memo-on-employee-status

6 Id.

7 Id.

8 General Counsel Memo 25-05, Feb. 14, 2025.

9 H. Rept. 118-573.

# Recommendations for TCPA Compliance and Risk Management in Professional Sports

**By Kaitlyn Kozlowski**

This document outlines the allegations and settlement of a class action lawsuit against the Chicago Cubs for violating the Telephone Consumer Protection Act (TCPA) by sending unsolicited marketing text messages and recommends action to sports organizations for risk management to reduce legal and reputational problems.

## One, Two, Three Strikes, Your Turn to Pay!

The facts and timeline of Lateano v. Chicago Cubs is as followed. The class period for this case began on May 2, 2019. The lead plaintiff, Colin Lateano's specific timeline began on July 21, 2022, when he unsubscribed from the Chicago Cubs marketing text messages with a request ("STOP").10 From July of 2022 to February 2023, Lateano received multiple marketing text messages from the Chicago Cubs promoting ticket sales and upcoming events, despite requesting the Cubs to stop sending him promotional texts. The promotional text messages received during the class period led to Lateano filing a class-action lawsuit against the Chicago Cubs on May 2, 2023. The class-action lawsuit was filed in the United States District Court for the Northern District of Illinois. His allegations against the Chicago Cubs centered around the Cubs' violation of the Telephone Consumer Protection Act (TCPA) for sending him and others in the class unsolicited text messages after the "STOP" requests. Lateano, on behalf of the class, sought statutory damages of $500 for each violation, or up to $1,500 for each willful and knowing violation. On June 23, 2023, the Chicago Cubs responded to the class's complaint by denying all allegations and providing evidence in their defense. In this response, the Cubs admitted to sending certain messages to Lateano but denied violating the TCPA. The Cubs denied Lateano's claim they did not have do-not-call request procedures in place, claiming the procedures were "established and implemented, with due care".11 The Cubs also relied heavily on the class being subject to binding arbitration based on their agreement to MLB.com's Terms of Use which includes an explicit arbitration clause.12 After receiving the evidence and response, the court scheduled time for discovery around the alleged claims possibly being subject to binding arbitration through MLB.com. Between the dates of July 26 and October 12, 2023, the plaintiff class and defendant exchanged information and agreed to mediation for the class. The mediation was held on October 12, 2023, with retired judge Thomas Rakowski and members of each party. A settlement was reached, and the settlement amount was negotiated until January 10, 2024.

On January 24, 2024, head plaintiff Colin Lateano filed for preliminary approval of the class settlement. The judge, Joan B. Gottschall, initialed denied the motion for approval and requested more information to ensure a fair settlement. On March 6, 2024, the preliminary approval was granted by the court, defining the class who qualified for a portion of the settlement. A website was created for any class members to be notifying and given information.13 The site provided key information and dates of the trial and case, along with deadlines to opt-out or object the settlement. On June 17, 2024, the final approval hearing took place to ensure the settlement was fair for the class members. The total settlement for the class was $1,205,000. This settlement was broken into three separate parts. Colin Lateano was rewarded $10,000 for acting as the lead plaintiff for the class members. The legal team was rewarded $430,706.16 for representing the class and $8,481.43 for reimbursement for their fees throughout the case. The remaining amount was distributed between 2,486 class members, equating to approximately $300 per class member. The class members received their portion through checks or electronic transfers.14

## TCPA Cases in Sport and Beyond

This memo will further explore the key parts of the Telephone Consumer Protection Act (TCPA) and class action lawsuits in the context of sports leagues and teams to provide recommendations and practices for teams to avoid similar lawsuits. Since the increase of technology and social media use, TCPA lawsuits have become a growing concern for organizations and businesses who use text and digital strategies to connect with their consumers. In 1991, TCPA, Act 47 U.S.C., Sec. 227 placed restrictions on telemarketing practices and the use of telephones to protect consumers from receiving telemarketing communication without

10 *Colin Lateano v. Chicago Cubs Baseball Club, LLC*, No. 1:23-cv-02757 (N.D. Ill. May 2, 2023).

11 Defendant's Answer, *Lateano v. Chicago Cubs Baseball Club, LLC,* No. 1:23-cv-02757 (N.D. Ill. May 2, 2023).

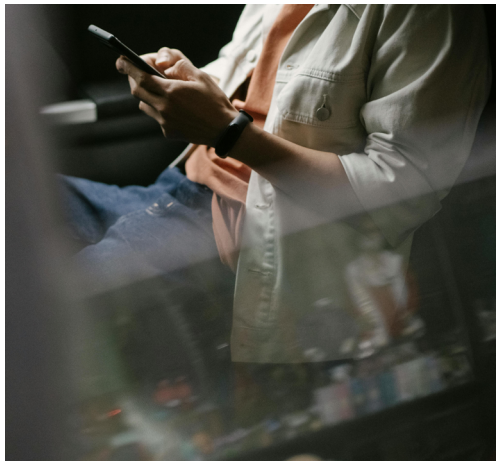
12 Id. at 10

13 Cubs TCPA Settlement. (n.d.). *Cubs TCPA Settlement*. https://www.cubstcpasettlement.com

14 Settlement, *Lateano v. Chicago Cubs Baseball Club, LLC,* No. 1:23-cv-02757 (N.D. Ill. May 2, 2023).

explicit consent.[15] To ensure compliance with TCPA, any individual, business, or entity using telemarketing must adhere to the following requirements – call time restrictions (8:00am-9:00pm), maintenance of a Do Not Call list, and procedure to gain explicit consent from consumers before sending any communication.[16] The TCPA has a strict liability statute with penalties as high as $500-per-violation and $1,500-per-violation for willful violation.[17] Due to the increase in number of class action lawsuits, TCPA lawsuits have ended in large settlements for entities in violation.

Most TCPA cases become class action lawsuits when a case is filed by one or a few people on behalf of the larger "class" who has been similarly harmed.[18] The cases, like in the case of *Lateano v. Chicago Cubs*, commonly revolve around the rights of consumers. The class representatives must file the case and request the certification of the class through showing evidence of commonality in the legal issues and a significant number of individuals affected and eligible for the class. Once confirmed, the class members are notified once there has been certification and have the option to join the case or opt-out.In most TCPA cases, the settlement is arranged and submitted to the court for approval. If a settlement cannot be reached, the case goes to trial and the court makes the final decision on damages for the class. Once the settlement is confirmed, the class is compensated in monetary or the relief form decided.



Many sport organizations have faced similar litigation with TCPA violations. The Tampa Bay Lightning settled a $2.25 million dollar class action lawsuit for sending unsolicited text messages in 2020. The class members claimed the Lightning sent messages to their mobile devices even though they had not consented to further communication.[19] This case is like many other TCPA cases brought against sport organizations due to unsolicited messages from marketing departments. Much like the *Lateano* case, there was a preliminary approval, notice for the class members, and final approval hearing to approve the settlement. The Buffalo Bills were similarly sued for sending promotional messages to consumers without explicit consent.[20] Much like the Cubs case, the outcome was a multi-million-dollar settlement. These cases are necessary for reference when understanding and creating procedures to ensure compliance of TCPA. Each case shows the need for organizations to obtain explicit consent from consumers for marketing messages, organize their consumer data accordingly and check the procedures and systems used to send marketing communications. The sport specific TCPA cases highlights the growing number of class action lawsuits for TCPA violations and the high financial risk of settling TCPA lawsuits.

Recent rulings in TCPA cases beyond the sport industry continue to raise the need for compliant marketing procedures to communicate with consumers. The court ruled in *Reimer v. Kohl's, Inc* (2023) that the Do Not Call (DNC) Provision does apply to text messages.[21] Reimer's arguments were like Lateano's as the plaintiff unsubscribed from Kohl's text messaging then continued to receive messages. The do-not-call provision is stated explicitly as "telephone solicitations" but the court decided, based on the FCC's Notice of Proposed Rulemaking that the provision extends to text messages.[22] The Federal Communications Commission (FCC) is the United States government agency that enforces and regulates communications to serve the public interest. The agency plays a crucial role in implementing rules and enforcing compliance of TCPA in the United States. The rules created by the FCC have been used in courts to interpret and apply TCPA in several cases. The FCC has recently been under fire to work on clear rules for reference and rulings.[23] With the increase in cases, there

15 Do Not Call Registry. (n.d.). *What is TCPA?* Do Not Call Registry. Retrieved December 2, 2024, from https://www.dnc.com/what-is-tcpa/

16 Telephone Consumer Protection Act, 47 U.S.C. § 227

17 TCPA, 47 U.S.C. § 227

18 Legal Information Institute. (n.d.). *Class action*. Cornell Law School. Retrieved December 2, 2024, from https://www.law.cornell.edu/wex/class_action

19 *Hanley v. Tampa Bay Sports & Entm't, LLC*, No. 8:19-cv-00550-CEH-CPT (M.D. Fla. Jan. 7, 2020).

20 *Wojcik v. Buffalo Bills, Inc.,* No. 1:20-cv-01257 (W.D.N.Y. Oct. 5, 2020)

21 *Reimer v. Kohl's, Inc.,* No. 23-CV-597-JPS, 2023 WL 6076424 (E.D. Wis. Sept. 21, 2023).

22 id.

23 Federal Communications Commission. (2014, March 25). *TCPA: It's time to provide clarity*. Federal Communications Commission. https://www.fcc.gov/

is major pressure on FCC and the courts to provide a clear outline for TCPA cases, especially as social media use continues to be a factor in many class action lawsuits. The ruling is a message and reinforcement to organizations that it is necessary to honor opt-out and do-not-call requests to avoid TCPA violation.

The precedent set by *Facebook, Inc. v. Duguid et al* is another case for reference when looking at the evolving landscape of TCPA. Many TCPA claims arise from the use of an automatic telephone dialing system (ATDS). The use of ATDS systems is primarily for alert systems but can also be used for telemarketing purposes.[24] After *Duguid's* ruling in 2021, the number of TCPA filings significantly dropped with the Supreme Court's ruling narrowing the scope of the split interpretation of TCPA.[25] When TCPA was passed in 1991, the technology for text messaging was not yet created and many courts have used protocols regarding "calls" to address cases involving text messages.[26] *Duguid* made its way to the Supreme Court where the court disagreed with the Ninth Court's ruling, favoring Facebook and their argument they were compliant with TCPA. The decision by the Supreme Court narrowed the definition of an automatic telephone dialing system and in effect limited claims that are based on automated calls or texts sent from systems that do not randomly dial numbers.[27] While this ruling may change the overall rules and procedures of TCPA, the ruling did not affect privacy claims such as Lateano's do-not-call request and the unsolicited messages that followed. After the *Duguid* ruling, many states created legislation to make sure consumers were protected. Eight states, including Florida, Maryland, and Washington passed laws to protect consumers against telemarketing.[28]

## What's Next for Marketing Practices

As technology and social media continue to be an integral part of society, there is increased communication about shared experiences between fans and consumers. There has already been an increase in class action lawsuits filed over the last several years and it is seemingly the tip of the iceberg. In *Juul Labs, Inc. Marketing, Sales Practices & Products Liability Litigation* (2019), the class action publication reached over 409 million impressions, generating over eight million claim forms.[29] With the popular strategy of using data to create text and digital promotions, there needs to be clear procedures and technology in use for organizations to avoid potential lawsuits with TCPA violations.

With the requirement of prior explicit consent before sending telemarking communications to consumers, organizations must have clear, documented procedures to obtain the consent of consumers. By having an explicit opt-in mechanism, the consumer must take action to give consent to telemarketing communications. Some examples of opt-in procedures are checkboxes, opt-in text messages, and confirmation of given consent. A checkbox is a clear action taken by a consumer to agree to marketing communications by text, email, or phone. This action should be stored in a specific list for reference if a TCPA violation claim arises. For mobile opt-in procedures, there should be a confirmation message and a follow-up to once again confirm the consumer's agreement to telemarketing communications. Common industry practices include having the consumer respond "YES" or "STOP" to the initial message. Each following telemarketing communication should include the right to opt-out for the consumer, commonly "Reply STOP to opt-out". By strengthening procedures for consent, the evidence can be used as defense against TCPA violations when the organization proves explicit consent through valid evidence.

With the increase of content and third-part company use, there is a need for explicit TCPA compliance in the contracts before data is shared. This technology needs to be used in accordance with TCPA to ensure the consumer data is being used in compliance. There should be quarterly meetings

news-events/blog/2014/03/25/tcpa-it-time-provide-clarity

24 Datko, S. (2020, October 23). What is a telemarketing auto-dialer? *Top Class Actions*. https://topclassactions.com/lawsuit-settlements/tcpa/what-is-a-telemarketing-auto-dialer/

25 *Facebook, Inc. v. Duguid,* 592 U.S. 395, 141 S. Ct. 1163 (2021).

26 Institute for Legal Reform. (2024, April). *Expanding litigation pathways: The rising threat of litigation in the U.S.* Institute for Legal Reform. https://instituteforlegalreform.com/wp-content/uploads/2024/04/ILR-Expanding-Litigation-Pathways-April-2024.pdf

27 *Facebook, Inc. v. Duguid,* 592 U.S. 395, 141 S. Ct. 1163 (2021).

28 Blank Rome LLP. (2023, July 21). *Keep telemarketing compliance top of mind: State law roundup*. Blank Rome LLP. Retrieved December 2, 2024, from https://www.blankrome.com/publications/keep-telemarketing-compliance-state-law-roundup

29 Order For Certification, *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litig.,* No. 19-md-02913-WHO, 2020 WL 1974131 (N.D. Cal. Apr. 24, 2020), https://www.juulclassaction.com/Content/Documents/Final%20Approval%20Order.pdf.

or check-ins with the third-party company to keep the organization in compliant with TCPA regulations. These check-ins should include any new campaigns that collect consumer data, in addition to checking the opt-in/out processes for compliance and effectiveness. In addition to explicit TCPA terms in the contract, the organization's data policy should be provided. This allows the organization to keep their third-party vendor in compliance and show the clear terms in court as needed. With the increase in class action lawsuits and TCPA violations, sport organizations need to be prepared and proactive for any potential claims. This includes having accessible data if needed to show legal compliance. The records, specifically the consent records, should be clearly organized and maintained for review. The organization must also ensure the TCPA, and marketing practices are accessible to employees and any third-party vendors who are working on marketing communications. To have explicit compliance and organized data, organizations should use software like customer relationship management systems. This creates a centralized database of consumer data and allows organizations to easily track when a consumer opts in to marketing communications, interacts with communications, and/or unsubscribes. The system should be included in the quarterly checks for compliance and efficiency. While these systems may be costly, the organization and accessibility of the database will allow organizations to decrease their risk of lawsuits if effectively managed.

### Important Takeaways

The impact of social media has increased the risk for TCPA allegations as consumers communicate across channels and share their experiences. The allegations and settlement of the *Lateano* case serves as a warning to sport organizations as they refine and build their marketing practices. By developing and implementing software and procedures to stay compliant with TCPA, organizations can reduce the risk of similar legal difficulties and build trust with their consumers. As sport organizations continue to grow and build their fanbases, it is important to understand TCPA and the best practices to organize consumer data. In the coming years, there must be close consideration for similar cases, rules, and precedents surrounding TCPA.

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## Bill Would Allow Texas High Schoolers to Transfer Without Penalty

**By Austin Spears**

A major change could soon be coming to Texas High School sports with the proposal of House Bill 619. This bill, proposed by Texas House State Representative Barbara Gervin-Hawkins from District 120 in San Antonio, would allow high schoolers to transfer for the purpose of athletics without penalty. The law stipulates that each athlete would only be able to do this once, and it would have to be to a different school district from their current high school. As long as the student's guardians sign off on the transfer, neither the previous nor future school district can block the transfer, giving the student autonomy. This law would be a monumental change in the scope of high school athletics in Texas. Historically, students have been eligible to transfer for academic reasons but never for athletics. This bill protects athletes from the usual penalties they would receive from the University Scholastic League (USI) if they were to transfer.

Gervin-Hawkins hopes the bill will allow students more opportunities to receive collegiate scholarships and be successful in their future athletic careers. In an interview, Gervin-Hawkins said, "For me, sports are important for our youngsters. It really truly can be a vehicle out of poverty... I'm concerned that we are holding kids back that could move forward." She intends for the bill to give athletes of all skills who may not be in the best position for their athletic growth an avenue to find a situation that suits them best.

The idea behind the bill is it can help a multitude of students in various positions. A student who is a very capable athlete but maybe not the best at his position on his team would receive less playing time than they would at a different school. A perfect example of this was on display in college football this season, North Texas walk-on Drew Mestemaker started his first game at quarterback since the 9th grade in their bowl game against Texas State. Mestemaker went to high school in Austin, Texas, and was forced to play safety and punter in high school because he happened to be behind an even better QB. Mestemaker likely would have benefited greatly from the new transfer rule, allowing a clearly competent quarterback to transfer to a

school he would start at. Another situation where this rule would be useful is for a star player on a bad team to transfer to a better team where they'll have a better chance of getting recruited to college.

This is Gervin-Hawkins' third attempt to file this bill after previously being stiffed by coaches and athletic directors in previous legislative sessions. The opposition has stated concerns over the rise in recruiting this bill would lead to, but Gervin-Hawkins has countered by saying that recruiting already happens even though it is technically banned. She commented on working with the coaches and athletic directors, saying, "If we're blessed with getting it passed, I would love to sit down with the coaches' association and work through what they believe would be a good model to follow."

This bill is the natural evolution of a process started by the NCAA in 2021. Until that year, college athletes were required to sit out at least one year after transferring for athletic purposes, but the governing body's rule change allowed athletes the ability to transfer one time without punishment. That rule has further evolved and now allows athletes to transfer an unlimited amount of times without punishment, as long as they're in good academic standing.

This time frame is a monumental one for amateur sports as a whole. Beyond just the new transfer rules in the NCAA, the collegiate landscape has been reshaped in the past five years due to the legalization of Name, Image, and Likeness (NIL) rights among nonprofessional athletes. This shift has given amateur athletes unprecedented power, allowing them complete autonomy over their money and playing career. Further legal decisions within the past year have ruled that playing in junior college does not count towards your NCAA eligibility, theoretically paving the way for college athletes to have nearly decade-long careers.

Player empowerment first swept through professional sports with the allowance of free agency, then to the NCAA with unlimited transfers, and now potentially to high school sports where athletes could have complete control over their athletic careers.

The bill requires a two-thirds majority vote from the House to pass; if it does, it could go into effect as early as Sept. 1, 2025. Gervin-Hawkins believes it's vital to give all Texas high schoolers a chance to be successful. We'll soon see if the rest of the House agrees.

*Austin Spears is a junior 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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## Latest NCAA Settlement Means Colleges Can Use NIL Funds for Recruiting

**By Rob Dickson and Joshua D. Nadreau, Fisher & Phillips**

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

### How Did We Get Here?

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

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

### Why is a Settlement Important?

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

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

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

### What Are Other Challenges the NCAA is Facing?

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

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

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## UMASS Athletics or Insurance Company; Who Is at Fault?

**By Prof. Gil Fried, University of West Florida**

The small number of fans at a University of Massachusetts Women's Basketball game went crazy when Noah Lee made a lay-up, free throw, three-point shot, and then a half-court shot all in

25 seconds. The celebration was short lived as then the negative feedback ensued. Who know whether it was the school or the promotional insurance company, but Mr. Lee was told that he would not receive the promised $10,000. The claim was that he had stepped over the half-court line. Video of the incident was available on YouTube and shows the minor infraction. https://www.youtube.com/watch?v=Kp3ujFu4VFY

Instead of being offered the $10,000 he was offered some perc such as using a suite, courtside tickets, gift cards and UMass swag. When news broke that he would not get the $10,000 the university stepped in to say one way or another he would get the $10,000. This reminds me of an incident where a fan made a ¾ court shot years ago to win a large sum ($1,000,000) and the insurance company and the NBA team were balking at paying him because the content was only open to those who had not played college or professional basketball, and he had played one semester of junior college basketball.

I am a firm believer of hosting such contests, similar to hole-in-one golf contests. They add excitement and fun to many events. The fine print is the key. The devil is always in the details. There should always be a process if there is a dispute as to coverage and what if there are minor technical issues and concerns. The contestant is a third-party beneficiary of the insurance contract, but they are the public face of these disputes and until the issue is resolved, the negative publicity could harm both the event organizer and the insurer. An average fan would see this as nitpicking and that the corporate elite are trying to stick it to the little guys. That is never a good place to be in. That is why the rules need to be pre-approved by all parties and clearly communicated to the contestant and reiterated before the activity. That is where a neutral third party can serve as an enforcer of the rule and serve like a referee to adjudicate any issues right there to avoid any possible public black-eyes.

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## Ingels Realizes a Dream as Vice President of Legal and Business Operations for the Bucks

Jill Ingels

Very few of us can manifest our dream job right out of college. Count Jill Ingels one of the lucky ones.

While attending Marquette University Law School (MULS), where she graduated cum laude (2017), Ingels knew what she wanted – working the general counsel's office of the Milwaukee Bucks of the NBA.

Eight years later, Ingels, who was a recipient of a Sports Law Certificate from MULS' National Sports Law Institute, is the Vice President of Legal and Business Operations at Milwaukee Bucks and Fiserv Forum.

It wasn't a direct path to that lofty perch. Rather, she began her legal career in collegiate athletics as an Assistant Director of Athletic Compliance for the University of Southern California. Shortly thereafter, she became Staff Counsel for the Miami Marlins, before finding her home with the Bucks in December 2019 as Associate Counsel. Her mercurial rise to a leadership position followed.

To learn more about Ingels, we conducted the following interview.

**Question:** What was your big break in becoming a sports lawyer?

**Answer:** I was fortunate enough to have a few internships within the sports industry in law school and had supervisors who were incredible teachers and mentors to me, but my big break in becoming a sports lawyer has to be when I was hired by the Miami Marlins as Staff Counsel. Stephanie Galvin and Ashwin Krishnan, now with the Dallas Cowboys and Major League Soccer, respectively, believed in me and showed me what it means to be a truly effective, efficient, and overall

successful in-house counsel. I cannot say enough good things about both of them – they have completely different personalities yet are both incredible lawyers and advisors. They were so well respected at the Marlins, and I am not sure they will ever truly appreciate how large of an impact they each had on me as a young lawyer.

**Q:** What is the most challenging aspect of your job?

**A:** The Bucks are such a visible and recognizable brand that there is little room for error. If we misstep, we may hear about it from our fans, our customers, and the media. We really have to be able to spot and analyze issues accurately, and also be able to recognize when we need to work with outside counsel to ensure we understand all legal implications of an issue before we advise our business staff.

**Q:** What is the most rewarding?

**A:** The most rewarding aspect of my job is seeing the finished product. The story is generally not about the process or time and effort involved in a deal or initiative but in the end result, which is okay! I have the utmost sense of pride when an agreement took weeks (or months) to negotiate or spent considerable time researching and working through legal issues relating to a new marketing initiative, and it's finally launched and available to the public. I can see my work in action every day – from signage in the arena, giveaways provided to fans, concerts held, to the smile on Make-A-Wish childrens' faces when they sign their one-day contracts. It is such an honor to be part of something that truly feels larger than me!

**Q:** How did working in collegiate athletics help you for your career in professional sports?

**A:** There are so many similarities between working in collegiate athletics and professional sports that I believe made working in collegiate athletics so beneficial for me prior to transitioning into professional sports. I had internships in law school both in the collegiate space at the NCAA in their Enforcement division and at Marquette University's Office of General Counsel, and then also in the professional sports industry with the Milwaukee Brewers, so when I started at the University of Southern California in athletic compliance fresh out of law school, I had already had experience in both industries. What I did not realize until I was going through the interview process with the Marlins is how transferable the skills of being in athletic compliance would be to an in-house counsel position for a professional sports team. In athletic compliance, I had to monitor the activities of the sports in which I was assigned to ensure compliance with USC, Pac-12, and NCAA rules, and also interpret such rules and provide counsel to the coaches, staff, and student-athletes with whom I worked. I am doing the same thing in my career in professional sports, except I am interpreting league rules, company policies, and state and federal law.

**Q:** Has there been a guiding principle or two that have helped you build a successful sports law career?

**A:** One of the hardest skills – yet one of the most important – is to be able to tell someone, "I do not know. Let me look into it and get back to you." It can be scary to be in that position because your natural tendency is to view the response as a sign of weakness, when in my mind it is a sign of strength. When you respond that you are not sure and need to look into it, 99% of the time people completely understand and respect that you are willing to research the question and get back to them. You do not have to pretend to have the answer to every question because that is an impossible standard to set for yourself, and I set extremely high standards for myself. Spending the extra time to research the question, evaluate the risks, and provide a well thought out and accurate response will always be worth it.

**Q:** What areas of law are you less inclined to rely on an outside law firm and why?

**A:** If I had to choose an area of law, it would likely be contract law whether that be in regards to our sponsorship agreements, event license agreements, or premium hospitality license agreements since those are so specific to our industry and also institutional preferences. However, setting an area of law aside, the other big area where we are less inclined to rely on an outside law firm is an interpretation question related to NBA rules as the only subject matter experts that can truly guide and counsel us in that respect are the attorneys and executives at the NBA.

**Q:** What takes up most of your time these days and why?

**A:** I have recently taken on more responsibility on the business side, specifically as it relates to our real estate development, the 30 acres of land surrounding Fiserv Forum generally known as Deer District. In the past

year alone, construction on a music venue broke ground and we have announced deals for a mixed-use development that will include our local technical college and its athletic teams as a tenant, as well as a Moxy-branded hotel on the site of our former arena, the Bradley Center. I have been actively assisting our SVP of Business Operations and Chief Real Estate Development Officer on those projects in addition to prospecting and planning for additional developments on vacant parcels of land in Deer District. These opportunities are really exciting and affording me the opportunity to expand my expertise and role within the organization.

**Q:** What advice would you give someone who wants to be a team GC?

**A:** Go for it and do not waver from your dreams. So many people will tell you there are so few opportunities available that it will be next to impossible to become a team GC, or tell you there is a preferred path to getting such role. While it is true there are a finite number of professional sports teams, and generally only one team GC per team, that does not mean that you cannot land one of those positions. Also look at the professional sports leagues in the United States alone – there is a tremendous amount of growth happening in various leagues from the WNBA to NWSL in terms of expansion but also in the popularity of certain sports where the creation of additional professional sports leagues are happening, including Unrivaled (women's basketball), LOVB (women's volleyball), and Major League Volleyball (women's volleyball). All of those opportunities will likely come with new in-house counsel positions, both at the league and team level. Further, if you look closely at the paths in-house counsel have taken to their current roles, there is no one "right path". I have colleagues who have gone straight from law school into a role with a team, who have started with a law firm before transitioning into the team environment, and those like me who started in collegiate athletics and made the leap into professional sports. Every path comes with its own advantages and you have to find which path works best for you.

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## Man Faces Federal Felony Charges For Illegally Operating A Drone During NFL Game, Expert Weighs In

A federal criminal complaint has been filed charging Alexis Perez Suarez, 43, of Baltimore, Maryland, on federal felony charges related to flying a drone over M&T Bank Stadium during a National Football League Wild Card Game in Baltimore on January 11, 2025.

The federal charges were announced by Erek L. Barron, U.S. Attorney for the District of Maryland; Special Agent in Charge William J. DelBagno of the Federal Bureau of Investigation (FBI), Baltimore Field Office; Special Agent in Charge Greg Thompson of the U.S. Department of Transportation Office of Inspector General (DOT OIG), Mid-Atlantic Regional Office; and Colonel Roland L. Butler, Jr., Superintendent of the Maryland State Police (MSP).

"We are very serious about temporary flight restrictions," said U.S. Attorney Barron. "You will be charged and held accountable for any incursion into restricted airspace, including around sports and entertainment venues such as the Super Bowl."

"Federal laws and regulations related to owning and operating drones are in place to protect the public and our nation's airspace," said Greg Thompson, Special Agent in Charge of DOT OIG's Mid-Atlantic Region. "We will continue to partner with law enforcement and prosecutors to pursue those whose actions jeopardize public safety."

According to the affidavit filed in support of the criminal complaint, on January 11, 2025, the Federal Aviation Administration had put in place a temporary flight restriction (TFR) for M&T Bank Stadium in Baltimore during the NFL Wild Card game, which precluded the flight of any UAS, including flying a UAS under the Exception for Recreational Flyers. A TFR temporarily restricts certain aircraft, including an UAS, from operating within a three nautical mile radius of the stadium. This is a standard practice for stadiums or sporting venues where a regular or postseason Major League Baseball, NFL, or NCAA Division I Game is occurring; or a NASCAR Cup, Indy Car, or Champ Series Race is occurring. The TFR goes into effect one

hour before the scheduled start time and lasts until one hour after the end of a qualifying event.

During the game, the incursion of an unidentified and unapproved drone was deemed a serious enough threat that NFL Security temporarily suspended the game. MSP Troopers and FBI Special Agents tracked the movement of the drone over the stadium and deployed it to the area where the drone landed in Baltimore, Maryland. Despite Suarez having left the scene, law enforcement was able to track down his whereabouts.

Suarez stated that he purchased a DJI UAS for recreation and also claimed he used it for work. The drone was not registered, nor did Suarez possess a Remote Pilot certificate to operate it. Suarez allegedly flew the drone approximately 400 feet or higher directly over the NFL stadium. According to the affidavit, while in flight, Suarez captured approximately seven photos of the Stadium while the game was going on and thousands of people were below his flight path.

There is a zero-tolerance policy regarding UAS/drone use anywhere within the No Drone Zone established by the FAA. Anyone who attempts to fly a UAS/drone in any prohibited manner may be subject to arrest, prosecution, fines, and/or imprisonment. Members of the public are encouraged to report all suspicious activity. Law enforcement will be actively monitoring the airways for illegal UAS/drones and is committed to identifying, investigating, disrupting, and prosecuting the careless or criminal use of drones in the area.

If convicted, Suarez faces a maximum sentence of three years in federal prison for knowingly operating an unregistered UAS and for knowingly serving as an airman without an airman's certificate. Suarez faces a maximum of one year in federal prison for willfully violating United States National Defense Airspace.

Professor Gil Fried, of the University of West Florida, welcomed the legal action.

"While the number of incursions seems to have decreased over the past year, these incidents are still happening, and venue operators need to be vigilant to identify these threats," he said. "The author was at a minor league baseball game last season and saw a drone flown from nearby townhouses. He immediately contacted the team's General Manager who alerted authorities. While most such incursions are unintentional and harmless, all it takes is one terrorist attack using this technology to kill and injure thousands. Whatever happens to Suarez should be publicly communicated so drone pilots know the possible sever penalties they can face.

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## FTC Settlement with Stadium Security Company Evolv Technologies: Allegations and Implications

**By Charles Keller**

The Federal Trade Commission (FTC) has settled with Evolv Technologies, a Massachusetts-based company that makes AI-powered security screening systems. The FTC claimed Evolv misled customers about how accurately its Evolv Express scanners could detect weapons while ignoring harmless items. As part of the settlement, Evolv cannot make unproven claims about its products, and certain K-12 school customers can cancel their long-standing contracts.

### Allegations Against Evolv Technologies

The FTC accused Evolv of making misleading claims about its scanners' ability to detect all weapons and ignore harmless objects such as laptops, binders, and water bottles. Evolv marketed its scanners as more accurate, efficient, and cost-effective than traditional metal detectors. However, reports and real-world incidents raised concerns about these claims.

For example, in October 2022, an Evolv Express scanner failed to detect a seven-inch knife in a school, which was later used in a stabbing. After the incident, the school increased the scanner's sensitivity, but this led to a 50% false alarm rate. A 2021 test at a Major League Soccer stadium in Columbus, Ohio, found that Evolv's scanners missed two small handguns and only detected knives 58% of the time.

Additionally, the FTC alleged that Evolv altered a report from the National Center for Spectator Sports Safety and Security (NCS4) to remove negative findings about its scanners. Instead of sharing the full 52-page report, Evolv published a shortened 25-page version that omitted concerns about its scanners' ability to detect weapons.

A separate NBC 5 investigation found that Evolv scanners were installed at major venues including

Wrigley Field and Soldier Field in Chicago, as well as in many schools. In some cases, the scanners flagged more than 85,000 false positives on laptops between August 2023 and April 2024. Despite detecting five knives, the scanners caused significant disruptions due to these false alarms.

### Settlement Terms

Under the settlement, Evolv is prohibited from making unverified claims about:

- How well its scanners detect weapons or ignore harmless objects
- The accuracy of its scanners compared to metal detectors
- The speed and cost savings of its system
- The role of AI in improving security screening

Additionally, Evolv must notify certain K-12 school customers that they can cancel contracts signed between April 1, 2022 and June 30, 2023. However, schools that participated in a 30-day trial before purchasing the scanners or those that bought 15 or more scanners were not eligible for the return exemption.

Evolv is also facing lawsuits and internal investigations. The company admitted to misreporting revenue due to improper sales practices, which led to the resignation or termination of several executives, including its CFO. Investors have sued Evolv, claiming they were misled about the company's financial standing and product capabilities.

### Evolv's Response

Despite the settlement, Evolv denies wrongdoing. Co-founder Michael Ellenbogan told the media, "While we admitted no wrongdoing, we're happy to resolve this matter and are pleased the FTC did not challenge the fundamental effectiveness of the technology and nor did the resolution include any monetary relief."

When NBC 5 asked for more details, an Evolv spokesperson told the media, "The FTC did not challenge the core efficacy of Evolv's products. We stand behind our technology and are pleased that our customers believe in the importance of our technology and have validated its performance at scale, balancing consistent detection with a positive security experience."

### Broader Implications

This case is part of the FTC's larger effort to ensure AI-related claims are backed by facts. In 2024, the FTC launched Operation AI Comply, which targets misleading marketing of AI-based products. The FTC's action against Evolv signals increased scrutiny of AI-powered security systems, particularly those used in schools and public venues.

Security experts warn about the risks of over-relying on AI security screening. Don Maye from the investigative firm IVPM said the FTC's findings highlight major gaps in Evolv's technology. He advised schools and other customers to carefully examine Evolv's claims and consider alternative security measures.

Evolv's credibility may have been further damaged by its decision to reportedly withhold key findings from the NCS4 report. Instead of sharing the full study, the company released a version that removed concerns about weapons detection failures, according to news reports. These actions raised doubts about Evolv's transparency and reliability. Additionally, Evolv admitted to financial misstatements, which led to an SEC inquiry.

### Expert Weighs In

According to Professor Gil Fried of the University of West Florida, and Editor-in-Chief of Sports Facilities in the Law, "the implications for our industry are significant. As we are having a harder time finding employees to work events, we are relying more and more on technology to address concerns. If the technology cannot be reliable, whether being ineffective or breaking down, it will hamper our ability to bring folks into a venue as quickly as possible. This leads to fans getting upset and venues possibly having to increase personnel to ensure rapid processing of individuals."

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## NBPA Taps David Kelly as Managing Director and General Counsel

The National Basketball Players Association (NBPA) has announced that David Kelly has been named Managing Director and General Counsel at the NBPA. In this role, Kelly bolsters the Union's veteran leadership team with more than a decade of experience

at the Golden State Warriors, where he served as Chief Legal Officer, Business and Basketball and Chief Business Officer of Golden State Entertainment.

"We are thrilled to have David Kelly step into this critical position on our Leadership Team," said Andre Iguodala, Executive Director of the NBPA. "His unique background will allow us to enhance services for our members in new and creative ways as we transform our enterprise. The immense value of our players continues to expand – both on and off the court – with the global growth of basketball. It is critical that we continue to diversify our expertise to meet their evolving needs."

As Managing Director and General Counsel, Kelly will lead all legal matters for the NBPA, uniting the Union, THINK450 and NBPA Foundation, while overseeing the strategic direction of the NBPA. Kelly's path through the industry uniquely positions him for this role.

At the Warriors, he oversaw many of the company's key initiatives from negotiating key sponsorship and licensing deals, to handling the property acquisition, entitlement and construction of Chase Center, to standing up Golden State Entertainment (GSE), a first-of-its-kind content arm developing film, music and culture for the Warriors and Valkyries. Prior to launching GSE, Kelly managed the team's salary cap, and all matters related to the CBA and oversaw the team's player development efforts.

"The energy and enthusiasm at the NBPA is palpable and the opportunities for our players are virtually endless," said Kelly. "I'm excited to roll up my sleeves and get to work advocating on behalf of the players, who drive culture globally and embody all that is great about the game."

Bolstering legal resources and capabilities is "a strategic priority for the Union." With the addition of Kelly's role, Ron Klempner will transition into a specialized role as Senior Counsel, Labor Relations. With more than three decades of experience at the NBPA driving negotiations with the League for the past six Collective Bargaining Agreements (CBA), Klempner's "deep expertise and influence will continue to serve the Union in his new capacity."

Prior to joining the Warriors, Kelly was a partner at Katten Muchin Rosenman LLP where he advised clients on acquisitions, securities law compliance, and corporate governance matters. He earned his Bachelor of Arts degree from Morehouse College and his Juris Doctor degree from the University of Illinois College of Law.

Kelly will officially start at the NBPA at the beginning of March.

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## High School Softball Coach Suspended Without Pay After Social Media Post

**By Matt Schuckman**

Quincy (Ill.) High School softball coach Darrell Henze was suspended last month without pay pending a termination to be decided by the Quincy School Board at its February meeting for violating the school's code of conduct for coaches.

Henze said he was informed of the decision by Lisa Otten, the director of personnel for the Quincy Public Schools, and was given a letter spelling out the reasons for the suspension.

The move came one day after Henze posted on the social media site X, formerly known as Twitter, a reaction to learning the lights on both the QHS baseball and softball fields were being taken down immediately and would be replaced in the coming months.

According to Henze, a plan was made last September to replace the lights if they were deemed unsafe by playing standards and health life safety bonds were being used to purchase and install new lights. Neither the baseball field nor the softball field is expected to have lights for the spring season.

QHS athletic director Kristina Klingele said the athletic department is working on a solution so all baseball and softball varsity and junior varsity teams will not have any games impacted by the lighting situation.

Henze wrote on X: "Due to lack of foresight, deception, and improper planning, QHS Softball and Baseball will be without lights this season with no real plan as to when lights will be reinstalled."

Henze was asked by school administrators to delete the post and he did not.

Reached by phone Thursday afternoon after his social media post went public, Henze said the lack of lights severely curtails moving the softball program

forward. Last year, the Blue Devils finished 18-16 and won their first regional game since 2012.

"We have to be able to play JV innings," Henze said. "It's going to be tough enough for us to get a varsity game in without lights."

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## The Health Optimisation Summit Makes Its Debut in the United States in April

Following high demand and the big success of its UK editions, The Health Optimisation Summit has announced its American debut in Austin, Texas, on April 12-13.

Hosted at the iconic Palmer Events Center, the event will unite leading experts, visionaries, and enthusiasts to explore the latest advancements, trends, and strategies in optimising human health and performance.

This two-day event acts as a gateway for professionals and enthusiasts alike to advance their knowledge in health optimisation all within a supportive community that feels like family. Through expert-led keynotes, workshops and networking opportunities, attendees can discover actionable strategies for lifelong healthy living.

The Austin Summit boasts an impressive line-up of world-renowned speakers and thought leaders, including Dr Josh Axe, Ben Greenfield, Gary Brecka, Mark Sisson, Alisa Vitti, Max Lugavere, as well as workshops and interactive sessions covering a wide range of topics including nutrition, fitness, mental health, biohacking, longevity, and more. Highlights include "*Make America Healthy Again*" panel talk with Calley Means, Dr Aseem Malhotra, Max Lugavere and JJ Virgin as well as a *"Menopause"* panel with Dr Stephanie Estima. Alisa Vitti, Dr Amy Killen and Dr Amie Hornaman.

In addition to thought-provoking presentations and discussions, the Summit will also showcase the latest innovations and technologies in health and wellness through an interactive expo featuring leading brands, products, and services. Attendees will be able to put the latest health tech and gadgets to the test with wearable sound therapy devices, natural appetite support solutions, PEMF therapy mats, red-light systems, compression suits, ozone therapy, anti-aging technology, and revolutionary footwear designed for optimal health."

Founder Tim Gray, the UK's leading biohacker, says: "Expanding the Health Optimisation Summit to the United States has been a dream for years, and Austin is the perfect place to make it a reality. The city's innovative spirit and commitment to wellness align perfectly with our mission to revolutionize how people approach their health.

We can't wait to connect with the vibrant health community in the U.S. and share groundbreaking insights, tools, and technologies that empower people to take their well-being to the next level."

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## Study: Football Helmet Covers, like Guardian Caps, Do Not Reduce Concussions for High School Players

A study of 2,610 Wisconsin high school football players found that wearing soft-shell helmet covers, marketed as Guardian Cap helmet devices, during practice had no effect on the rates of sports-related concussions.

Results cannot be generalized to college and pro players due to differences in helmet covers, according to researchers at the University of Wisconsin School of Medicine and Public Health.

This is one of very few studies to evaluate how the caps perform in real-world conditions.

"Unfortunately, we found that using these devices may provide false reassurance to players and their parents who are hoping to reduce their kids' risk of concussion," said Dr. Erin Hammer, the study's lead author and assistant professor of orthopedics and rehabilitation at the school.

The study was published last month in the *British Journal of Sports Medicine*.

A research team led by Hammer, who is also a sports medicine physician at UW Health, followed players from 41 Wisconsin high school teams during the 2023 football season. Individual teams decided who would wear the caps. Some of the players wore the Football

Guardian Cap XT during practice and some never wore them. The caps were not worn during games.

Upon comparing concussion rates between the 1,188 players who did not wear Guardian Caps during practice and the 1,451 players who did, researchers found no statistical difference between the groups. Of the 64 concussions sustained during practice, 33 happened to players wearing Guardian Caps, and 31 to those in the group without caps.

Head injuries were assessed by the teams' athletic trainers, who also kept track of helmet models, cap use and number of times a player practiced or played in a football game.

Data analysis showed that other factors had no bearing on concussion risk during the study, such as whether the players had experienced previous concussions, the brand of helmet they wore, years of tackle football experience, or whether the playing surface was artificial turf or grass.

Researchers observed nearly an eight-fold higher level of sports-related concussions during practices among female football players than male, 18.75% compared to 2.4%, but noted that the small number of female players in the study — three total — limited the generalizability of the finding.

Previous laboratory tests had suggested the extra padding in Guardian Caps could reduce forces to the head during impact.

Using a large sample size, Hammer's peer-reviewed study assessed real-world concussion rate differences between groups of players using the caps and not using the caps. She cautioned that the study cannot be generalized to collegiate and professional league levels of football, however, because those players wear a different, thicker model of the device.

The researchers advise that high school teams implement data-backed interventions to reduce sports-related head injury rates, such as employing athletic trainers and supporting rule changes to limit contact during practice. These interventions have been shown to reduce sports-related concussions by 64%. Additional risk reduction measures include training coaches in football safety, which halved concussion rates, and adding extra jaw padding to the helmets, which lowered rates by 31%.

"Given the size of our study, it seems that if Guardian Caps did protect against sports-related concussions in high school players, we would have seen that result," Hammer said.

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## Nash, Eisenstein and Oleson Join Littler, Expanding Firm's Sports Industry Capabilities

Littler has announced the addition of three shareholders to its Washington, D.C. office. Daniel Nash, Stacey Eisenstein, and Nathan Oleson join from Akin Gump, each with a focus on labor and employment issues impacting the professional and collegiate sports industry.

"Dan, Stacey, and Nate bring a diverse practice, and their emphasis on the sports sector presents an exciting opportunity for our firm as those organizations are confronted with intricate legal challenges, particularly related to labor and employment law," said Erin Webber, Littler's managing director and president. "Their collective experience will be of significant value as we continue to grow our capabilities and deliver solutions that address our clients' evolving business challenges."

"I have known Dan, Stacey, and Nate for over 20 years, having met them when I first started practicing in D.C, and am thrilled to be working with them again," said Josh Waxman, Littler's Washington, D.C. office managing shareholder. "With anticipated changes to labor and employment laws under the second Trump administration, the combined experience of Dan, Stacey, and Nate will be essential in guiding our clients through this period of uncertainty."

Nash, who previously served as co-chair of Akin Gump's labor and sports law practices and as a member of the firm's Management Committee, brings extensive experience representing clients in a variety of complex labor and employment matters. He has successfully handled some of the most high-profile cases involving professional and amateur athletes on behalf of sports leagues, individual teams, athletic conferences and other sports organizations at both the professional and collegiate levels. Throughout his career, Nash has been recognized as one of the preeminent lawyers in the country, described in leading publications as a "Sports Law Trailblazer," an employment law "MVP," and a "Power Player" among outside counsel in the sports

industry. He previously taught sports law as an adjunct at American University Washington College of Law.

"I am pleased to join one of the most accomplished international law firms dedicated exclusively to the practice of labor and employment law," said Nash. "Littler's vast footprint, ties to Washington, and its robust resources will allow me to collaborate with colleagues throughout the U.S. and around the globe to deliver successful outcomes for our clients, as well as contribute to the firm's continued growth by expanding its reach in the sports industry. I was particularly drawn to the firm's collegial and collaborative culture, which emphasizes the interests and success of the clients above all else."

Eisenstein also has extensive experience representing professional sports leagues, teams, and employers in the sports and entertainment industries. She has handled numerous high profile and precedent setting arbitrations and federal court disputes, including those involving player discipline, the enforcement of collective bargaining agreements, and benefits disputes under the Employee Retirement Income Security Act of 1974. Eisenstein has been recognized by the National Law Journal as a trailblazer in both sports and employment law and as a top employment defense lawyer by Washingtonian. She previously taught sports law and negotiation as an adjunct professor at Georgetown University.

"Employers within the sports and entertainment sectors encounter a distinct and complex set of challenges, and we've developed a deep understanding of these issues and how to craft effective solutions," said Eisenstein. "I'm excited to bring my experience and insights in the sports sector to my new colleagues while also learning from them to strengthen our collective impact and deliver meaningful results for our clients."

Oleson defends employers in complex employment litigation, particularly cases involving wage and hour claims, discrimination, and labor-management issues. He has successfully handled numerous class and collective action cases on behalf of companies and organizations throughout the country. He has also successfully advised sports associations, professional clubs, and universities in high-profile disputes with athletes and officials related to compensation, discipline, and health and safety issues. Oleson has served as counsel in precedent-setting wage-and-hour and sports law cases. In addition to his client work, Oleson has sat on the senior editorial board for the American Bar Association's Section of Labor and Employment Law's treatise on the Fair Labor Standards Act for more than two decades.

"I'm excited to join a firm renowned worldwide for its exceptional labor and employment expertise," said Oleson. "Employers face mounting uncertainties and evolving challenges in the area of labor and employment. I look forward to finding our clients practical and creative solutions to these issues using the knowledge, dedication, and resources they have come to expect from Littler."

Nash received his J.D., magna cum laude, from University of California College of the Law, San Francisco and his B.S., cum laude, from the State University of New York College at Cortland. Eisenstein received her J.D. from the University of Pennsylvania Law School and her B.A. from Emory University. Oleson received his J.D., magna cum laude, from the Georgetown University Law Center and his B.A., cum laude, from American University.

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## Law Firm gunnercooke Appoints ex-EFL and Millwall Chief to Head Up New Sport Team

International corporate law firm gunnercooke is launching a specialist sport division, headed up by former Chief Executive of Millwall Football Club and Director of the English Football League, Steve Kavanagh.

GunnercookeSport will provide a full-service offering to sports clubs and players across all levels and stages of their journey, including legal advice, operations expertise and sports management. The team's experience spans professional sporting organisations including FIFA, NFL, tennis, cricket, rugby, sailing, boxing and athletics.

The offering will cover a broad range of areas such as contract negotiations, sponsorship and image rights, regulatory compliance, employment issues, business review and interim support, personal finance and tax, transfer and loan deals, real estate and facility management, and mergers and acquisitions.

Kavanagh has 25 years' C-Suite experience in football, having served as CEO and Finance Director across all levels of professional league football in England, including the Premier League. His extensive experience includes roles as a member of the FA Council, The Professional

Game Board (PGB), The Professional Game Forum (PGF), and Vice Chairman of The FA Cup Committee. He has worked for clubs including Charlton Athletic, Millwall and Southend United.

Kavanagh has also served on the EFL Board, represented Championship clubs during the Fan-Led Review, and played a key role in the creation of football's first independent regulator. He has also managed high-profile disputes including property negotiations, player contracts and commercial litigation. He is now an expert member for Sport Resolutions.

Kavanagh will spearhead the firm's consolidate launch into the sports industry, compiling its existing expertise across practice areas including competition law, employment, corporate, new world technologies such as blockchain and crypto, and real estate. The team includes lawyers, consultants, accountants and business coaches who can offer support to professional clubs, athletes, and support businesses throughout the full lifecycle of their careers.

Kavanagh commented: "I'm excited to be joining gunnercooke for this unique opportunity. The team have experience working with some of the biggest sports clubs and organisations and I'm looking forward to bringing them together to create a specialist full-service offering that is completely unique to the market."

Darryl Cooke, Founder of gunnercooke, added: "With the regulatory environment evolving, there is more pressure on clubs, players and the sports community to do the right thing. They need advice and guidance from trusted advisors and we have developed gunnercookeSport to meet this need. Steve is the perfect candidate to lead the department, having a wide breadth of experience in sports business management, meaning he truly understands the industry's needs. I believe he will help bring a uniqueness to gunnercooke and our sports work and we're thrilled to welcome him to the team."

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## Dog Days at Ball Park Leads to Lawsuit

**By Prof. Gil Fried, University of West Florida**

Florida Marlins fan Luann Hahn claims she slipped on dog urine in an area of the stadium, which was not designated for dogs during a game on April 14, 2024. Hahn's lawsuit could fail as records of the Marlins' schedule do not show that a "Bark at the Park" event took place on the date she claims the incident took place. It could be that the liquid came from a service dog or maybe a police dog, but she will have a high hill to climb that the venue was on notice. Furthermore, there are numerous liquids that arise suddenly at a ballpark. Beer, water, and soda are spilled all the time. Likewise, condiments and other food items regularly end up on the floor and can be a tripping hazard. That is where the defense can examine the shoes she was wearing, if she had anything to drink, what was she doing while she was walking, etc.

If this was an actual event for dogs to come to the ballpark, then that could lead to other issues/considerations. These special events are happening more frequently, and it does not surprise me when people have sued for injuries from flying t-shirts, hot dogs, dizzy bat races, assaults from mascots, and numerous other challenges. That is why many teams and stadiums require individuals to execute a waiver.

Part of the Marlin's waiver for their Bark at the Park events states "you must execute this release and agree to its terms in order to enter LoanDepot Park and the surrounding area (The 'ballpark')."

It further proves: "I further assume any and all risks associated with my participation in the Event, including, but not limited to: Illness, traveling to and from the Event, falls, contact with spectators at the Event, injuries or damages including death sustained by and through other participant dogs."

While this suit has all the markings of a possible frivolous suit, that does not mean that we cannot learn from these claims. Whenever you open your venue to a small city for several hours you will get all sorts of issues, and it is impossible to make a venue 100% safe. A venue that is on notice of a possible risk needs a reasonable amount of time to address a new issue and fans need to cognizant of their surroundings and cannot expect protection from every incident that might arise. It is a fine line, but the more we educate fans to be proactive to their own safety the better.

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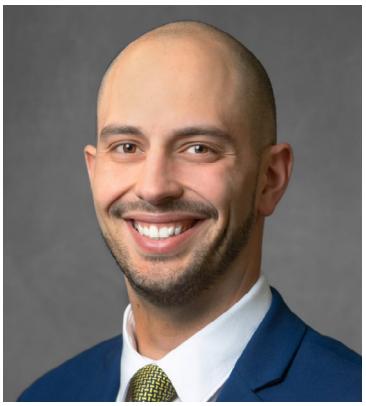
# News Briefs

## Nixon Peabody Sports Lawyer Promoted to Counsel

Kate Letcher, who works out of the Chicago office of Nixon Peabody, has been promoted to Counsel at the firm. Letcher is described as "a skilled litigator who advises clients from a wide range of industries, such as healthcare and medical device manufacturing, on a variety of litigation matters in both state and federal courts as well as arbitral forums."

She represents individuals and entities in a wide range of complex disputes, including lawsuits alleging breach of contract, business torts, trade secret litigation, and product liability. From a sports law perspective, Letcher will be involved with the firm's team in its work on Name, Image, and Likeness (NIL) for NCAA college athletes. Within the firm, Kate serves as associate chair of the Black Resource Group. She was selected for inclusion in *Best Lawyers: Ones to Watch* for 2025 in the field of Commercial Litigation.

## Sports Law Expert Podcast Features Michael Viverito, an Attorney at Power & Cronin



Hackney Publications (HP) has announced that Michael Viverito, a sports lawyer at Power & Cronin, has been interviewed on the Sports Law Expert Podcast. The segment can be heard here (on 2/25). Prior to joining the firm, Viverito gained experience in both NCAA athletic compliance and professional sports, having interned with Northern Illinois University and the Atlanta Braves. Besides sports law, Viverito focuses his practice in the areas of Workers' Compensation and Business Law. Prior to joining Power & Cronin, he practiced commercial litigation and transactional law. Viverito also has experience in handling both commercial and residential real estate matters, intellectual property matters, and trust and estate drafting for clients.

## Gaming Laboratories International Promotes Zachary Kastelic to Vice President of Legal

Gaming Laboratories International (GLI®) has promoted Zachary Kastelic to Vice President of Legal. Previously, Kastelic served as Associate General Counsel. In his role, he oversees GLI's legal department, including contracts, due diligence, litigation, and other general corporate matters. GLI President & CEO James Maida said, "Compliance is our primary responsibility to the global gaming industry, and our legal team, alongside with our compliance teams, are at the forefront of our compliance efforts. I am very pleased that Zachary will be leading our global legal team helping to ensure we maintain the very highest levels of compliance as we continue to lead the industry in new technologies." He earned his J.D. from the University of Missouri-Kansas City School of Law. He also holds a Sports Wagering and Integrity Certificate from UNH Franklin Pierce School of Law and a Bachelor's Degree from Ottawa University.