

Forks Up, Wallets Open-- The New Playbook in Collegiate Sports in the Era of NIL

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Description: This panel will discuss the history of amateur athletics, the impact of anti-trust litigation against the NCAA, the evolution of current Name, Image & Likeness (NIL) policy, the House settlement, and the future of collegiate athletics.

I. Introduction

- A. Background: The ideal of amateurism as the foundation of collegiate sports.
- B. Thesis: Traditional amateurism in college athletics—once defined by the prohibition on athlete compensation—has collapsed due to legal, economic, and social pressures, giving rise to a new quasi-professional model in which athletes receive direct and indirect compensation.
- C. Overview of key developments and possible new system designs.

II. Origins and Evolution of the NCAA

- A. Founding of the NCAA in the early 20th century
 - 1. Formation in response to safety concerns in football
 - 2. Early governance structure and purpose
- B. Development of the amateurism model
 - 1. Codification of eligibility rules
 - 2. Resistance to athlete compensation to preserve “competitive balance” and purity of sport.
- C. Expansion of NCAA authority
 - 1. Growth of television revenues and commercial interests
 - 2. Shift from safety organization to regulatory and economic power

III. The "Student-Athlete": A Construct to Avoid Employment Classification

- A. Origin of the term “student-athlete”
 - 1. Walter Byers’ creation of the term
 - 2. Historical dispute involving workers’ compensation claims (e.g., Fort Lewis case)
- B. Purpose and legal implications of the designation
 - 1. Shielding NCAA and universities from employer liability
 - 2. Reinforcing the amateur ideal
- C. Long-term influence of the term on policy, litigation, and public perception

IV. The Turning Point: NCAA v. Board of Regents (1984)

- A. Case overview
 - 1. Oklahoma and Georgia challenges to NCAA control of TV rights

2. Justice Paul Stevens emphasis on the sanctity of amateurism in collegiate sports.

B. Impact on NCAA authority

1. Loss of control over football broadcast rights
2. Rise of conferences as the primary economic drivers

C. Consequences for amateurism

1. Explosion of revenue in football and men's basketball
2. Growing tension between commercialism and unpaid labor

V. Shifting Legal Landscape: O'Bannon v. NCAA

A. Background of the case

1. Use of player likenesses in video games
2. Claims under antitrust law

B. District court and Ninth Circuit rulings

1. Recognition that NCAA amateurism rules impose anticompetitive restraints
2. Modest relief (cost-of-attendance increases)

C. Symbolic significance

1. Public awareness of athlete commercial value
2. Beginning of cracks in the amateurism framework

VI. NCAA v. Alston and the Demise of Absolute Amateurism

A. Case overview

1. Challenge to education-related compensation limits
- B. Supreme Court's unanimous decision**
 1. Emphasis on antitrust principles
 2. Justice Kavanaugh's concurrence questioning NCAA business model

C. Effects on the compensation model

1. Validation of athlete compensation
2. Legal foundation for subsequent NIL policies and challenges

VII. The House Settlement and the Emergence of Direct Pay

A. Background of House v. NCAA

B. Key settlement provisions

1. Revenue-sharing model allowing schools to pay athletes directly
2. Retroactive damages for NIL restrictions

C. Significance for the future

1. Transition toward an employment-like relationship
2. Potential litigation and collective bargaining implications
3. How settlement marks the end of the amateurism era

VIII. Recruiting and Retention in the New Compensation Landscape

A. Shift from traditional scholarship model to competitive compensation packages

B. Impact of direct pay, NIL opportunities, and third-party incentives

- C. Increased roster movement
 - 1. Transfer portal as a free agency analogue
 - 2. Retention challenges for programs with fewer resources
- D. Competitive imbalance and its effect on parity across conferences

IX. Impact on Title IX Compliance in the New Compensation Environment

- A. Overview of Title IX's equal treatment and equal financial opportunity requirements
- B. Challenges posed by direct pay and revenue sharing
 - 1. Whether direct payments constitute "athletic financial assistance" under Title IX
 - 2. Distinction between school-controlled payments and third-party NIL income
- C. Potential gender disparities
 - 1. Concentration of compensation in revenue sports (primarily men's football and men's basketball)
 - 2. Disparities in access to NIL infrastructure and visibility
- D. Legal and regulatory uncertainty
 - 1. Department of Education guidance gaps
 - 2. Absence of a uniform approach to counting NIL or direct pay in Title IX compliance metrics
- E. Potential litigation or federal action
 - 1. Risk of lawsuits from female athletes demanding proportional compensation or resources
 - 2. Possible congressional intervention to clarify the meaning of Title IX in the NIL/post-House landscape
- F. Institutional responses
 - 1. Rebalancing budgets and reallocating resources
 - 2. Investment in women's sports marketing, NIL support, and facilities
- G. Broader implications
 - 1. Whether Title IX accelerates or mitigates inequality under the new compensation model
 - 2. How Title IX might shape the evolution of athlete employment discussions

X. The Role and Structure of NIL Collectives

- A. Definition and origin of NIL collectives
- B. Organizational and financial structures
 - 1. Booster-funded organizations
 - 2. Nonprofit vs. for-profit models
- C. Function in athlete compensation
 - 1. Facilitating NIL deals
 - 2. Pay-for-play concerns and quasi-salary structures
- D. Regulatory challenges
 - 1. State law disparities
 - 2. NCAA enforcement limitations
 - 3. Potential federal intervention

XI. The Impact on College Football Recruiting

- A. NIL and direct pay as primary drivers in athlete decision-making

- B. Escalation of bidding wars among elite programs
- C. Fragmentation of competitive balance
 - 1. Power Five vs. Group of Five dynamics
 - 2. Concentration of talent among resource-rich programs
- D. Ethical and practical concerns
 - 1. Exploitation, promises vs. delivery
 - 2. Increased importance of financial literacy for athletes
- E. Potential long-term outcomes
 - 1. Semi-professionalization of college football
 - 2. Erosion of the relationship between academic institutions and athletes
 - 3. Possible unionization or employment-classification litigation

XI. Conclusion

- A. Restatement: Traditional amateurism has collapsed under modern economic and legal realities
- B. Synthesis: Litigation, revenue growth, and NIL have collectively transformed the athlete–institution relationship
- C. Future outlook
 - 1. Possibility of employment classification
 - 2. Potential federal legislation
 - 3. Evolving role of universities in the new compensation ecosystem