



NCAA president Mark Emmert, is now urging Congress to pass a federal law on Name, Image and Likeness (NIL)

## Could College Athletes be about to use their name, image, and likeness to promote sports betting?

A supreme court ruling has paved the way for college athletes to make money from their sports, a move which could see them endorsing gaming. Sara Dalsheim

The Supreme Court's ruling in *NCAA v. Alston, et al.* was the catalyst in the transformation of the NCAA's student athlete regulation concerning the benefits/compensation provided to college athletes. The Court, in a decision written by Justice Neil Gorsuch, upheld the lower courts' ruling that the NCAA violates antitrust laws by placing limits on the education-related benefits schools can offer to their athletes.<sup>1</sup> The decision did not address and left open the issue of other types of student athlete compensation, such as whether the athletes may receive compensation as "influencers" or product endorsers of commercial products and services. Justice Kavanaugh, in his concurrence, welcomed and encouraged college athletes to bring more cases in front of the Court, stating that, "[t]he NCAA is not above the law ... [and] the NCAA's business

model would be flatly illegal in almost any other industry in America." The decision, therefore, cleared a path for the Court to expand the benefits and rights of college athletes; stating that, "the NCAA's remaining compensation rules also raise serious questions under antitrust laws."

Whilst college sports prizes its amateur status, the reality is that, as an industry with an estimated value of US\$14 billion, it shares almost all of the commercial characteristics of professional sports. College sports command US\$ billions in TV rights fees and endorsements from major brands are commonplace. Games draw large ticket-buying crowds and merchandise sales also make a significant financial contribution. Coaches in college sports are among the highest paid in sport and the NCAA's administrators also draw seven-figure salaries. By contrast, the athletes on which

1. [www.supremecourt.gov/opinions/20pdf/20-512\\_gfbh.pdf](http://www.supremecourt.gov/opinions/20pdf/20-512_gfbh.pdf)



their 'product' relies, whilst they receive many benefits in kind, for example Scholarships and other material benefits connected with their education, are not allowed to be paid under NCAA rules. The widespread myth that college athletes go on to have lucrative professional careers is also just that, a myth. According to the NCAA's own findings, for 98 percent of college athletes, their student days are the high point of their careers.

Whilst they will still be playing for free, the new ruling allows college stars to appear in adverts, sign an agent or make money from public appearances, and claims in other areas are sure to follow. The most likely challenge would be over whether athletes may use their name, image, and likeness to act as influencers and/or promoters of products and services. Whilst their sports may not promise big future earnings, some already have enormous influence on social channels. Those with the largest followings on social media are female and in sports like volleyball and gymnastics. LSU

gymnast Olivia Dunne, for example, has 3.9 million followers on TikTok.

In the hope of avoiding subsequent litigation on this topic, the NCAA Division I set forth a policy, allowing schools in states that have passed laws related to name, image, and likeness to be responsible for determining whether athletes' name, image, and likeness (NIL) activities "are consistent with state law."<sup>2</sup> The NCAA divisions voted to approve the policy on June 30, 2021. The new policy permits athletes to engage in NIL activities without violating the NCAA's amateurism rules.

Twenty-two states have passed laws or issued executive orders allowing athletes to make money off their name, image, and likeness; and a handful of other states are set to implement similar rules to take effect in 2022. The athletes within those states must adhere to the specific state rules. For states without NIL laws, athletes will also be able to engage in name, image, and likeness activities without violating NCAA

2. <https://www.ncaa.org/about/resources/media-center/news/ncaa-adopts-interim-name-image-and-likeness-policy>



rules. Although, for these athletes, the colleges and universities will decide whether certain activities are permissible. Of the laws currently in effect, seven proscribe that these athletes may not endorse gambling, sports betting, casino facilities, etc.

The current landscape for students engaging in name, image, and likeness activities delivers a mixture of state laws and individual school policies creating an inconsistent array of restrictions depending on where an athlete attends school. As indicated above, in some states, the laws say athletes cannot endorse alcohol, tobacco, or gambling products/services. Efforts are currently being made on Capitol Hill to permit athletes to engage in NIL activities while providing a uniform set of rules and policies related to those activities. The NCAA has not released its own set of name, image, and likeness restrictions due to fears of antitrust violations; but the NCAA strongly disfavors any ties to sports betting. Therefore, the NCAA would strongly suggest that any law to be declared by Congress prohibit their athletes from using their name, image, and likeness to promote any sort of sportsbook. This restriction could face legal challenges.

Those that are opposed to college athletes promoting entities with ties to sports betting say that it has the potential to ruin the integrity and the construct behind amateur sports. There is also concern that these athletes will be and can be easily manipulated, putting them and those around them in danger. The fear is not only that the athletes will be tempted to fix games, but that having ties to sports betting could provide an incentive for them to give their classmates and neighbors confidential data about injuries and/or academic standing to give them an edge when betting. However, NCAA rules already strictly prohibit participation in providing information to individuals involved in or associated with any type of sports wagering.

Since 2018, the legal sports betting market in the U.S. has skyrocketed, but that growth has yet to translate into widespread incidents of immoral and/or illegal activity by professional athletes or coaches. Professional athletes are permitted to use their name, image, and likeness to promote sports betting, so why not give that same opportunity to college athletes? Many argue that allowing college athletes to use their name, image, and likeness to promote sports betting is fair and necessary given the environment of legal sports betting. The arguments goes that if betting on college athletics is legal, then it is better to have it benefit the athletes in this positive way rather than in potential negative ones wherein college athletes, who do not receive paychecks, will be asked to fix games and get a piece of the prize money. Instead, they could receive that money from the operators and promote fair and legal sports betting. Furthermore, amateur athletes are less likely to fix scores/games than professional athletes because they are still trying to prove that they are worthy of professional status. Match fixing is more common among late-career athletes whereas amateurs have a greater incentive to win and do well on the field, in their highly competitive industry.

## Conclusions

Despite these arguments, if college athletes are permitted to endorse sports betting, then the NCAA is likely to justify a restriction by asserting integrity concerns and the health and safety of the athletes (one of the NCAA's missions). For now, whether college athletes may promote sports betting activities is left to the state they play in or the school they attend. However, the possibility still looms large for a potential challenge by athletes to be able to use their name, image, and likeness to promote legal sports betting activities; and, with the Supreme Court's ruling their chances of succeeding are higher than ever before.



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