JCUL SPECIAL ISSUE ON COLLEGIATE ATHLETICS

INTRODUCTION

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The college athletics landscape has changed radically in the last five years, with more change on the horizon. The role of the law and lawyers in this transformation cannot be overstated. Change has come from every legal direction: state and federal court decisions, state statutes, emerging regulatory and enforcement schemes, executive orders, and actions or threatened actions by the United States Department of Justice and state elected officials.

In the summer of 2025, several of these forces converged in the final resolution of a group of three related antitrust cases. This resolution is commonly known as the *House* settlement. Proponents of the *House* settlement hoped the settlement would lead to a new, durable business model for college athletics while ensuring fairness and competitive equity. Colleges and conferences hoped the settlement in *House* would slow, if not stop, the pace of change and create a level playing field.

The *House* settlement allows, for the first time, colleges to pay student-athletes over and above the cost of attendance without running afoul of the NCAA's amateurism rules ("*House* payments"). As a part of the settlement, however, the court also approved an annual cap on institutional payments.

The settlement allows student-athletes to receive payments from third parties for the legitimate, fair market use of their name, image, and likeness ("NIL"). While payments from universities are capped, NIL payments from third parties are not, so long as they are for a legitimate business purpose and based on the fair market value of the NIL rights conveyed.

The *House* settlement empowers athletics conferences and the NCAA to enforce the cap and police the settlement through a new enforcement body and new rules. To that end, in 2025 the Autonomy 4 conferences formed the Collegiate Sports Commission ("CSC").

The *House* settlement and its implementation have raised a host of legal questions. What sorts of legal agreements may institutions enter with student-athletes to reflect their agreement to share revenues? How much difference will there be in agreements from institution to institution or within the same institution? Will these new economic relationships lead to conflicts between institutions or with student-athletes?

Even more fundamentally, will this new economic reality affect the legal analysis under some statutory definitions of "employee," thereby changing the legal relationship between the athlete and institution? Will the new agreements to share revenue create new legal duties owed by athlete or institution? How will the Fair Pay Act or Title IX apply to *House* payments?

With respect to the newly formed CSC, how will it determine whether a proposed third-party NIL transaction is for a "legitimate business purpose?" How will the CSC evaluate the fair market value of the use of an athlete's name or image?

Because of this thicket of legal questions and risks, lawyers are now playing an outsized role in college athletics. The six articles in this special issue begin to identify and tackle some of those questions, to untangle the legal thicket.

In the first article, Michael LeRoy looks at the emerging agreements between universities and student-athletes and compares them to the evolution of early professional baseball contracts in his contribution, *The Reverse Logic of College NIL Contracts: A Legal Guide for the Perplexed.*

LeRoy's piece is followed by a pair of articles considering how the emerging CSC will evaluate the fair market value of third-party NIL agreements. In *Enforcing and Arbitrating Name, Image, and Likeness Compensation Limits*, Josh Lens provides an overview of this aspect of the *House* settlement and examines the new CSC process. Sam C. Ehrlich, Katherine Van Dyck, and Tyler Phillips then consider whether the CSC evaluation and approval process may raise new antitrust issues in their article: *Potential Antitrust Issues with NIL GO's Algorithmic Determinations of NIL "Fair Market Value."*

An article by James Nussbaum tackles the conceptual basis for university payments to athletes under the *House* settlement. In *NIL and Void: A Legal Analysis of College Athletes' Broadcast Rights of Publicity Created by the House Settlement*, Nussbaum writes about the interaction between the *House* settlement, an athlete's publicity rights, and the right to broadcast.

One of the legal issues looming on the athletics horizon is whether the new economic relationships between schools and athletes will lead to athletes being considered "employees" under one law or another. Scott Schneider and Rachel Rolf consider the implications of this potential change in their contribution, *The College Athlete-Employee: FLSA and the End of Amateurism.*

The final contribution in this special issue looks at how Title IX applies to *House* payments. In Darren Gibson's article, *If Sharing Revenue Is the Goal, Title IX Should Not Apply to House NIL Agreements*, Gibson argues that Title IX does not require schools to apply the regulations governing athletics scholarships to *House* payments. Gibson contends doing so would defeat the remedial purpose that underpins the *House* settlement.

As editor for this special issue, I want to express my deep gratitude to the authors for contributing their time and expertise to this project, especially the practitioners who do not write academic articles as a part of their day jobs. I also want to thank *JCUL* editor Barbara Lee for her leadership and patience with this

practitioner, as I struggled to keep this project moving alongside my law practice. Barbara and her work are gifts to all of us practicing higher education law.

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