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## JULY 1, 2021 NEWSLETTER MID-SUMMER NCAA & NIL CHAOS...

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### SCOTUS Upsets the NCAA Apple Cart - No One Can Predict the Future of College Sports



The U.S. Supreme Court's unanimous [decision in \*National College Athletic Assn. v. Alston\*](#) on June 21, 2021, advanced the interests of college athletes by holding that the NCAA must permit schools to provide benefits to their athletes as long as they are legitimate and related to education, that the NCAA is not entitled to any special deference under the antitrust laws, and that the NCAA can no longer hide behind its mantra taken from stray comments in the Supreme Court's 1984 *Board of Regents* decision that the NCAA must be given ample latitude to set rules and that college athletes should not be paid. The Supreme Court sent a clear message to the NCAA: enactment by the NCAA of any governance rule that has an economic impact will likely precipitate antitrust scrutiny. In this environment, the NCAA will have difficulty governing without an antitrust exemption. Only Congress can grant the exemption, but Congress is loath to do so because for decades, the NCAA has exploited college athletes for institutional gain, allowed coaches, athletic directors, conference commissioners and NCAA leaders to pocket princely (now seven-figure) salaries, enabled institutions to build lavish athlete-only facilities (especially for football), and spent hundreds of millions of dollars to defend itself against lawsuits by athletes.

The decision came days before Alabama, Florida, Georgia, Mississippi, New Mexico and Texas laws giving college athletes the rights to monetize their own names, images, and likenesses in the open marketplace, became effective on July 1. Three more state NIL bills were also sitting on governors' desks for signature (Connecticut, Illinois and Oregon). The Governor of Kentucky promptly signed an executive order giving NIL rights to athletes attending Kentucky universities, so Kentucky schools wouldn't lose the recruiting wars. The Ohio legislature returned to session to consider an NIL bill, but when it did not pass, the Ohio Governor responded with his own executive order permitting athletes attending Ohio schools the ability to monetize their NILs. And, other states, like California and Nebraska are also closing in by moving up their effective dates so not to be left behind. The chaos began. (See [Drake state NIL quick executive summary and database](#) which is updated every two weeks.)

Faced with an untenable situation in which some of its member institutions would be giving athletes NIL rights under new state laws and some would be constrained by existing NCAA amateur status rules made impotent by the SCOTUS decision, the NCAA, which withdrew its January NIL proposed legislation to wait for a SCOTUS decision vindicating its amateur status governing authority, installed weak temporary rules in the NIL space. The Board of Governors' new rule is that as long as athlete NIL contracts did not violate the NCAA's prohibitions on "pay for play" (athletic participation or performance a consideration for NIL compensation), NIL agreements without quid pro quo (compensation for work not performed), extra benefits or arrangements not available to general student body, or booster inducements to attend or remain at an institution, it would not find athlete NIL compensation in violation of NCAA rules. Further, the NCAA tried to even the recruiting playing field by telling the schools that have not adopted college athlete NIL rights, that they could set their own permissive NIL rules -- rules that can even now be less restrictive than those in states that have already adopted NIL laws. The potential recruiting advantage has now flipped to institutions in states *without* NIL laws! Stay tuned...

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## **Drake Calls on Congress to Take Action -- Offers Blueprint to Restructure the NCAA and Mandate College Athlete Education and Health Protections**



In light of SCOTUS eviscerating the NCAA's "amateur status" rules, The Drake Group proposed that Congress establish a Commission on Intercollegiate Athletics that would mandate the restructure of the NCAA, restore the academic integrity of athletic programs, and install strong college athlete health, safety, education, and economic protections in return for granting the newly restructured association a limited and conditional antitrust exemption. The Drake Group offered a [blueprint](#) that should be considered by such a Congressional Commission.

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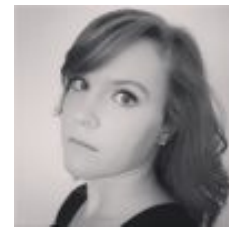
**Drake Honors Allen L. Sack with Permanent Board of Directors Position**

L to R: Allen Sack, Director Emeritus, Donna Lopiano, Drake President, Gina Sack (Allen's "better half"!) and John Rosen, Drake Treasurer



For 21 consecutive years (since the inception of the organization), Allen Sack has served in a leadership capacity with The Drake Group. In addition to being Drake's co-founder with [Jon Ericson](#), Allen has served as Drake President, Chair of the Legislative Affairs Committee, a member of the Drake Working Group (develops all position papers) and in numerous other capacities. It was only right that Allen receive the [Emeritus Director honorific and a permanent voting position on the Board](#).

The Drake Group also conducted its annual elections in June. All Board members standing for reelection to July 2021-June 2023 terms were successful: [John Rosen](#) (Treasurer), [Wendy Pierpont](#) (Secretary), [Andre Vasquez](#) (Student Representative), and members-at-large [David Hughes](#), [Tammi Gaw](#), [Emmett Gill](#), [Karl Idsvoog](#) and [Sandy Thatcher](#). New to the Board as a member-at-large and recently named Drake's first Chief Communications Officer, is [Katie Lever](#).



*Katie Lever, new Board member*

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## "The NCAA Emperor Wears No Clothes"

*"What may long be remembered about March Madness in 2021 is not what teams won the men's and women's tournaments, or even that they were played in COVID-induced bubbles, but that the NCAA experienced its own version of the Emperor wearing no clothes. Playing the role of the child in Hans Christian Andersen's tale of the hypocrisy of the powerful exposed, Oregon forward Sedona Prince with her post to Tik Tok made the hollowness of the NCAA's claim to represent women equally in sports plain for all to see." [Read more](#).*



*Sandy Thatcher, a member of the Drake Board of Directors, artfully penned his opinion on NCAA leadership*

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## SPECIAL REPORT: A Continuing Disgrace -- Intercollegiate Athletics Race Issues

The Drake Group believes that the commercialization of intercollegiate athletic programs has not only challenged the academic integrity of higher education but

resulted in a predominantly White community of higher education administrators, athletic department administrators, coaches and staff turning a blind eye to the racism underlying the economic, education and other forms of exploitation harming college athletes. This in-depth review of current athletic program practices and national and conference governance association rules and policies reveals the manner in which racism is experienced by all stakeholders within this culture, how it is purposely hidden, and how it harms athletes and employees of color. The Drake Group proposes detailed recommendations which, if implemented, would begin to remedy this “continuing disgrace.” [Read Report.](#)

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## **Help End Abuse in College Sports!**



**Donate To Help End College Athlete Abuse!**

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For the most current information on The Drake Group, follow us on [Twitter](#) and [Facebook](#) or visit us at [www.thedrakegroup.org](http://www.thedrakegroup.org). *For high school and college athletes and their parents only: Follow @AskDocEmmett on Twitter and @AthleteRights101 on Instagram for trustworthy info and where athletes can safely ask questions.*

Media queries on collegiate athletics reform may be directed to Drake President, Donna Lopiano ([Donna.Lopiano@gmail.com](mailto:Donna.Lopiano@gmail.com))

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*The Drake Group is a national organization of faculty and others whose mission is to defend educational integrity in higher education from the corrosive aspects of commercialized college sports.*

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