THE DRAKE GROUP
Advancing Positive Legislative Change In College Athletics

The Drake Group Report: An Analysis of Objections to the Proposed Settlement of *College Athlete NIL Litigation* (aka *House/Carter v. NCAA* and *Power Five conferences)*[1] March, 2025

EXECUTIVE SUMMARY

The Drake Group (TDG) undertook an examination of the documents submitted as objections and comments to the proposed settlement *College Athlete NIL Litigation* (aka *House/Carter v. NCAA* and *Power Five conferences).* At issue in this litigation is whether athletes at these institutions, if not for NCAA rules, would have been compensated for their names, images, and likenesses (NILs), the revenue they generated (House), and provided with salaries for their playing services (Carter). The proposed Settlement has two major parts: past damages and future injunctive relief. First, if approved, the settlement provides, among other things, that the NCAA will pay $2.8 billion in past damages to certain athletes. More specifically, over ninety percent of the amount (less the $484 million amount requested by the plaintiffs' attorneys) will go to football and male basketball players at Power Five institutions. Second, the settlement would allow more than $20 billion in so-called "revenue-share" payments from the schools to athletes over the next ten years. Many of the schools and their conferences now have stated that they will distribute these payments based on the past damages NIL algorithms (75% men's football, 15% men's basketball, 5% women's basketball and 5% additional sports). While we have outlined many of the objections to this settlement in this report, we particularly would like to highlight two of the most damning.

The decision of the Settlement Court to approve the class-action settlement must be based on a determination that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2) Objections[2] addressed whether (1) Class Counsel adequately represented the classes, (2) Class Representatives competently represented interests of the class, (3) the notification to class

[1] Preferred Citation: Lopiano, Donna, Ramsey, Kassandra, Statham-Taylor, Amelia and Zimbalist, Andrew. (2025) "The Drake Group Report: An Analysis of Objections to the Proposed Settlement of House v. NCAA, Hubbard v. NCAA and Carter v. NCAA", March 24, 2025. Retrieve from: https://www.thedrakegroup.org/

[2] A database created for this report with links to all objection documents examined may be accessed at https://www.thedrakegroup.org/

members was adequate, (4) restrictions on the class to use the courts to challenge the settlement in the future were fair and reasonable, (5) fair opportunities existed for athletes to voice objections, (6) past damages were properly calculated, (7) calculation of athlete settlement amounts were fairly calculated, (8) the relief provided to the classes was adequate, and (9) the settlement complied with antitrust or other laws. Objections also addressed the overall question of whether the settlement would fundamentally change the nature of the college athletic industry in a manner that could be considered fair and reasonable given tax exemption laws or other practices that govern the operation of higher education programs and activities.

Readers are reminded that the antitrust cases have not been decided on their merits and a settlement does not indicate that the defendants are or would be found guilty. The only court decision made on the case to date has been to approve a class certification motion that assessed whether the classes of plaintiffs were appropriate to the scope of the complaint. If the Settlement is not approved, the cases would proceed to court to be tried on their merits.

We point to four elements of the settlement that appear to be so flawed, that any one could be justification for rejecting the settlement. First, the past damages were not properly calculated. The damages model posited could not exist, indicating a misunderstanding of what constitutes an antitrust damage. Zimbalist,[3] a nationally recognized sports economist, explains that antitrust damage occurs when an illegal restraint of trade precludes a benefit accruing to a plaintiff that otherwise would have accrued absent the illegal restraint. The alleged, market-determined damages accorded in the Settlement would not have occurred absent the NCAA rules on pay for play. Specifically, the unequal treatment and benefits between the sexes valued at $600 million for past damages would have been a violation of federal Title IX law that would not have existed. Similarly, the settlement's valuation of NIL rights ($1.815 billion) would not have existed even among the most successful professional football and basketball leagues used as comparators where they were and are diminutive. In short, the Settlement constructs a false past damages pool.

Second, the future injunctive relief portion of the settlement also appears to contain a second significant flaw due to its price fixing elements in violation of Sherman Antitrust Act, absent Congress granting an antitrust exemption and legislative preemption of state laws. The Settlement limits annual athlete compensation to $20.5 million per institution per year with a gradual escalation provision. The settlement also limits the number of athletes who may receive compensation to the size of their limited rosters which appears to be a plain horizontal agreement by the schools not to compete for talent with defendants offering questionable pro-competitive arguments to justify those constraints.

[3] Declaration of Andrew Zimbalist Regarding the Settlement in House et. al. v. NCAA et. al., January 30, 2025, contained in Exhibit A to Docket #618, submitted by Hutchinson Black & Cook.

Third, the settlement prohibits athletes who participate in the settlement from pursuing Title IX litigation challenging the past damages portion of the settlement on Title IX grounds. After plaintiffs' counsel represented to the Court that the antitrust case does not involve Title IX, any Title IX concerns will be decided in the future by the courts, and the Settlement would not prohibit such litigation, inexplicably, the settlement denies such litigation opportunity to any athlete who participates in the settlement. This provision is gravely concerning given the fact that a 2024 U.S. General Accounting Office audit of Department of Education Office for Civil Rights enforcement activities revealed that 93 percent of all college athletics programs were not in meeting the participation equity provisions of Title IX. Female members of the class are the most probable prospective litigants.

Last, the significance of the settlement cannot be understated; it is a "bridge too far." Approval of the settlement would fundamentally change the underlying nature of college athletics by creating a never before market-based industry with cash incentives primarily benefitting 11,000 Power 5 conference male athletes based on their performance and NIL value in the revenue-producing sports of football and basketball and a small number male football and basketball players from among the 28,000 other students participating in those Division I sports. The proposed revenue-sharing and NIL cash supporting these male football and basketball players will be taken from the NCAA's united fund revenue coffers supporting all sports, thereby undermining the financial support of the 159,000 Division I male and female athletes participating in sports other than men's football and basketball. This new cash transactional industry expects to operate in violation of Title IX and utilize tax and other benefits from being housed within a non-profit higher education institution, including institutional subsidies derived from non-athletics activities.

The proposed Settlement is a bridge too far built upon unstable foundations—a false past damages pool and a 10-year injunctive relief plan in violation of antitrust and state laws. It would prohibit predominantly female athletes from pursuing litigation to achieve equitable benefits under Title IX and would convert the existing education-based intercollegiate sport industry into a pay-for-play system favoring male athletes participating in revenue sports. We encourage the Settlement Court to carefully consider these and other concerns raised by objectors in making its decision about whether the settlement should be approved.