



THE DRAKE GROUP

Advancing Positive Legislative
Change In College Athletics



Supporter,

At the start of each academic year, we review our work as an academic think tank educating members of the U.S. Congress, state legislators, and higher education policymakers about critical issues in intercollegiate athletics. This past year has been one of **chaos in college sports, with more to come in 2025-26**.

This first report updates our members and newsletter and webinar subscribers—many of whom are returning from their summer breaks—on **the current state of affairs following the approval of the *House v. NCAA* settlement** and on how Drake is collaborating with members of Congress to find solutions for collegiate athletics that we believe only federal laws can address. Over the next several weeks we will report on the following developments:

- whether a congressional antitrust exemption and college athletes declared non-employees in return for athlete benefits and protections—is an acceptable bipartisan bill possible?
- the absence of a college athlete health agenda
- concerted efforts to undermine Title IX
- future academic support promises to athletes who do not graduate
- why athletics leaders are denying that new financial benefits to college athletes do not constitute pay for play
- what effective college athlete participation in NCAA governance requires
- new institution/college athlete participation (employment?) contracts

Report #1

A Chaotic Start Following Approval of the *House v. NCAA* Settlement

Settlement Overview. On June 6, 2025, Judge Claudia Wilken approved the settlement of the *House v. NCAA* (including the Power 5 conferences) antitrust lawsuit. The proposed settlement has two main parts: past damages and future injunctive relief. The NCAA will pay \$2.8 billion in past damages to certain athletes. Specifically, more than 90 percent of this amount (excluding the \$484 million requested by the plaintiffs' attorneys) will go to football and male basketball players at Power 5 institutions. The future injunctive relief permits—though essentially requires—most Power 5 institutions and allows other Division I members to give their college athletes up to \$20.5 million in the first year in cash benefits, in

addition to existing scholarships and other educationally tethered benefits. The cap is reduced by up to \$5 million in mandatory credits for Alston academic awards provided and new scholarships exceeding the 2024-25 NCAA maximum allowable sport limits, starting July 1, 2025. The cap is determined by a formula based on 22% of the average athletics-generated revenue of the Power 5 schools. It will fluctuate over the next 10 years, with projections reaching as high as \$33 million per school by year ten.

Settlement Implementation. The settlement does not specify how schools can distribute these injunctive relief funds among or within sports. School payments to individual athletes have no maximum limit other than the \$20.5 million cap and no limitation as to purpose. Thus, reports of multi-million dollar payments to star prospects are coming as no surprise. Other key provisions of the settlement agreement relate to NIL payments to athletes by third parties, which must be reported to *NIL Go* (a new designated reporting entity) if they total more than \$600 annually from one source. There is no limit on payments from external third parties not affiliated with the school. They are not included in the cap that only applies to payments that are made directly to athletes by the schools. However, third-party agreements from entities connected to a specific institution must be approved by a new enforcement body, the *College Sports Commission* (CSC), which is responsible for ensuring these NIL contracts serve a “valid business purpose” and fall within a reasonable range of compensation. It is unclear whether the CSC, which has set up the separate *NIL Go* entity to review contracts, is an NCAA, Power 5, or independent entity or who is funding these operations. It is too early to determine whether they will be effective in enforcing the terms of the settlement.

Appeal of the Settlement Decision. The settlement decision is being appealed to the Ninth Circuit Court of Appeals, with initial briefing by the objectors due on September 29, amicus briefs supporting the appeal due by October 6, the parties’ answering briefs due by October 27, and the objectors may file reply briefs by November 29, 2025. The Ninth Circuit will then set a date for oral argument to a panel of three judges. Once the panel issues a decision, the losing party may request an additional review at the Ninth Circuit before all its Judges (an en banc review) or file a petition to the Supreme Court for review. In short, we are not close to a decision on whether appeals will be successful.

Settlement Provisions on Hold and Those Being Implemented. While the decision is under appeal, the damages portion of the settlement will not take effect due to an automatic “stay” provision in the settlement agreement that provides the money will go into escrow until the matter is resolved by the courts (which could be further delayed if the case goes up to the Supreme Court). However, there was no automatic stay specified in the settlement with respect to challenges to the injunctive relief provisions, so on July 1, the injunctive relief part of the settlement became effective and schools started paying athletes for their NIL and other permitted benefits. Many Power 5 institutions said, and in fact are, applying the past damages distribution formula (75% to football; 15% to men’s basketball; 5% to women’s basketball; and 5% to other men’s and women’s sports) to the payments permitted pursuant to the injunctive relief. We believe it is highly unlikely that the total financial aid to athletes at these institutions will meet the Title IX gender equity standard—proportional to male and female athletic participation. And, it is highly likely that even if the payments are not classified as financial aid, they clearly are benefits falling under the plain words of Title IX and are subject to Title IX’s prohibition of sex discrimination.

Title IX Concerns. There are serious concerns that Power 5 schools are neglecting their Title IX obligations to ensure fair compensation and benefits for female athletes, which could lead to lawsuits or complaints to the U.S. Office of Civil Rights (OCR). So far, OCR has been ineffective in enforcing this law (see the recent **Government Accountability Office report** on this failure). No female athlete has yet filed a Title IX lawsuit over the gender-inequitable distribution of payments allowed under the settlement agreement from the benefits pool because data on the aid distribution isn’t reported to the Department of Education until fall of the following academic year and isn’t published by OCR until the middle of the next

school year. However, the harm is happening now, and it's possible a court might grant a temporary or preliminary injunction to stop the unfair distribution if a new lawsuit is filed. Unfortunately, it's time-consuming and costly for athletes to pursue such a case, and there's always a risk of retaliation from their school.

What The Drake Group Has Done and Is Doing in Relation to the *House v. NCAA Settlement*. The Drake Group has been diligent in its analysis and evaluation of the settlement, identifying major flaws and concluding that 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 benefiting 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 of 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.

On March 24, 2025, The Drake Group released a **major report that analyzed athletes' and others' objections to the settlement, identified flaws in the settlement, and presented these conclusions.**

Following the June 6, 2025, approval of the settlement, The Drake Group acted quickly to identify the need for the NCAA to provide better policies to its member institutions to implement the settlement.

On July 1, 2025, The Drake Group produced a compilation of **Settlement Policy Implementation Needs to help schools avoid Title IX litigation, ensure compliance with ongoing NCAA policies prohibiting pay for play, protect athletes' health and safety, and preserve the unique contribution of college**

Because the settlement uses different terms to describe various types of athlete payments included in the settlement, The Drake Group received many inquiries from Congressional staff members concerning the computation of Title IX compliance if the new categories of settlement money were disproportionately distributed to male athletes.

On July 25, 2025, The Drake Group produced a **Congressional briefing paper demonstrating how schools could achieve both disproportionate payments to male athlete in the new settlement categories and still comply with Title IX overall.**

Seven separate groups of athletes have made appeals to the Ninth Circuit Court of Appeals to overturn the approval of the settlement agreement. While their briefs in support of their appeals are not due until September 29, it is anticipated that the appeals will most likely argue that Judge Wilken abused her discretion in approving a settlement agreement because of the following flaws:

A. Title IX. The approval was based on a legally impermissible and inaccurate past damages model and the gross disparity between male and female distribution payments, whether relating to payments for past damages or the injunctive relief, violate Title IX.

- The past damages were grossly miscalculated because the plaintiffs' expert was explicitly told to disregard the application of Title IX in constructing the formula, thereby delivering approximately 90% of \$2.8 billion in past damages to predominantly male football and basketball players. . Moreover, the Broadcast NIL (BNIL) damages were

miscalculated because the expert assumed that conferences would pay them, not the schools.

- It is a Title IX violation to provide over 90% of past damages to male athletes.
- It is a Title IX violation for the injunctive relief payments to male athletes to be grossly inequitable compared to distributions to women athletes. Unsurprisingly, now schools are violating Title IX by completely favoring payments from the pool to male athletes and relying on this application due to the court's failure to disallow the grossly inequitable payments for the past damages.

B. Antitrust Laws. The settlement violates the antitrust laws. It is illegal price fixing to set a cap for total payments to be made as part of the injunctive relief and also to require that certain payments be at fair market value.

C. Representation and Notice. There was inadequate representation of many class members. For example, it was a conflict of interest not to provide separate counsel for women athletes and for future injunctive class members. Plus, there was a failure to notify all class members of their rights.

D. Individual Objections. Individual athlete payments were not calculated on the same basis as the athletes within the class for "additional payments".

The Drake Group is currently collaborating with other organizations and attorneys to ensure that these appeals receive support in the form of amicus briefs—submissions by "friends of the court," typically expert groups that support the appeal and explain their reasoning. The Drake Group will also submit such a brief and/or sign on to other amicus briefs.

Postscript. Central to the work of The Drake Group is a belief in the democratic process. We recognize that good laws and policies often take time to find the right solution. When a bill fails, it doesn't always die; legislators continue working together to develop better alternatives to address flaws. This happens regardless of how divided Congress is. Since California passed the first state law on name, image, and likeness (NIL) for college athletes in 2019, Congress has struggled to get the issue of college athlete compensation right, with many bills proposed for discussion but none adopted. Meanwhile, states have followed California's lead and created their own solutions, many of which conflict with NCAA rules and each other and are designed to enhance their own state schools' competitive prowess. While a federal law could override these inconsistent state laws, Congress has not yet achieved a bipartisan agreement because of the persistent divisions in both chambers. We continue to work toward achieving such a congressional solution.

If you believe this work is important and that Drake is doing important work, to ask you to become a member, renew your membership, or make a contribution so we can continue making a difference. We are a 100 percent volunteer academic think tank operating with minimal annual expenses to assist Congressional representatives and their staffs in crafting solutions that will keep athlete education, health, and well-being a priority. Any contribution is appreciated.

Gratefully,

Kassandra

**Kassandra Ramsey, Esq.
President**

**Become a Member/Supporter
Here**



Thank you for your support. Together, we can make a difference.

The Drake Group is a 501(c)(4) non-profit organization working to better educate the U.S. Congress and higher education policy-makers about critical issues in intercollegiate athletics for the purpose of ensuring that the promise of college athletics is realized for all stakeholders. Visit [The Drake Group web site](#) to volunteer or support our Congressional advocacy work.

The Drake Group | 1720 Post Road East Suite 121 | Westport, CT 06880 US

[Unsubscribe](#) | [Constant Contact Data Notice](#)



Try email marketing for free today!