

CLIENT ALERT

NCAA Vote Opens Door to Potential Endorsements in College Athletics

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Growing tensions in the world of college sports have recently come to a head. For years, the institutions in college sports have profited from the fame and notoriety of college athletes while the athletes themselves have been prohibited from direct economic benefit due to NCAA rules. Those days appear to be numbered. On October 29, 2019, the NCAA Board of Governors passed a unanimous resolution allowing student athletes to benefit from the use of their name, image, and likeness. However, no real change is expected before April 2020 because the NCAA working group is still gathering feedback to help formulate a new rule. In addition, individual college athletic conferences have been asked to consider their own potential rules to navigate athlete endorsements. A rule allowing college athletes to benefit from their name, likeness, and image would be valuable for advertisers and brands that have long sought endorsement and sponsorship deals with college athletes. Media companies and broadcasters would benefit from deals with college athletes as well.

The recent NCAA vote was unquestionably in response to pressure mounted by recently enacted legislation in California (The Fair Pay to Play Act) making it illegal for schools to prevent students from benefiting from the use of their name, image, and likeness. This legislation stands to go into effect in 2023. Multiple other states (FL, PA, NY, MD, NC, SC, IL, MN, CO, NV, and WA) have proposed similar legislation. These laws seek to provide college athletes with the opportunity to obtain a share of the wealth that their fame and notoriety brings to the multibillion dollar collegiate sports industry.

While this development is welcome to many, patience will be necessary. It seems unlikely there will be real changes implemented before the Fall 2020 college football season as the NCAA working group will be gathering feedback until April 2020. Additionally, with little guidance provided on what the rule might look like, it is unclear how broad or limited the athletes' opportunities will be. The NCAA specified in a press release that any new rule must ensure that student athletes are treated the same as non-athlete students and must maintain the priorities of education and a collegiate experience. The NCAA did not say if it would enact some sort of monetary cap or limit the types of agreements into which student athletes could enter.

The eventual interplay between varying state laws and the NCAA rules is also unclear. Although California's legislation is not slated to go into effect until 2023, other states may enact legislation before the NCAA lifts the restriction on commercial endorsements. We may see the NCAA challenge the legislation if a student athlete enforces their new legislative right given that the NCAA has vocalized its opposition to the state legislation. At this early stage, it is difficult to predict what effect such notional legal challenges would have on the ultimate NCAA athlete endorsement rule.

The varying state laws may also lead to some fragmentation and potential abuses. If laws are more favorable to college athletes in certain states over others, athletes may flock to institutions in the more favorable states and there may be a disparity between how much athletes of similar popularity are able to make. Moreover, query whether certain highly-invested boosters will attempt to use the state laws and/or NCAA rules to lure athletes to their institutions by promising and paying "endorsement" windfalls.

One way to combat fragmentation and promote uniformity across states is federal legislation. This approach was recommended by Ohio Congressman Anthony Gonzalez. Federal legislation could help to even the playing field and prevent the inconsistencies that come with state by state legislation. With the uncertainty that comes with such legislative developments, it will be interesting to see if and how the rules that apply to college athlete endorsements change over the next year. Stay tuned.

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