

House v. NCAA: Confidentiality Implications for Student Athlete NIL Deals

June 9, 2025

Judge Claudia Wilken approved the *House* settlement on June 6, 2025, which brought a measure of much-needed clarity to the world of direct payments to college athletes. *House* purports to bring an end to three separate suits regarding player Name, Image, and Likeness (“NIL”) and schools directly paying players. Under the *House* framework, student athletes are entitled to receive direct payments for their athletic participation from their institutions. The various contours of *House* have been comprehensively analyzed across the sports law ecosystem, so in this article we analyze the risks facing brands that sign NIL deals with student athletes post-*House*.

Although much remains to be sorted out, one fallout from *House* is a new dilemma for the very athletes it seeks to empower: conflicts between their legal obligations to brands and their compliance with NCAA rules and regulations.

A major term of the settlement requires athletes to report certain NIL deals to their university, which, while well intentioned, may expose sensitive business information in those agreements, which could imperil brands’ abilities to keep that information confidential.

Background. *House* is the next step in a series of decisions incrementally expanding the rights and obligations afforded to student athletes participating in NCAA-sanctioned sports. In 2015, former UCLA basketball player Ed O’Bannon sued the NCAA, arguing that its restrictions on student-athlete compensation violated the Sherman Antitrust Act. There, plaintiffs argued that they should have received compensation for the use of their names, images and likenesses in video games, live game telecasts, re-broadcasts and archival game footage. The Ninth Circuit agreed and emphasized that the NCAA was not exempt from antitrust laws simply because it was a sports organization.

Six years later, athletes won the ability to commercialize their NIL in *NCAA v. Alston*, where the Supreme Court held that the NCAA’s restrictions on “non-cash education-related benefits” for student athletes violated antitrust laws. Although *Alston* did not specifically address the NCAA’s prohibition on student athletes’ ability to sign endorsement deals with brands, Justice Kavanaugh issued a concurring opinion casting

doubt on the legality of many of the NCAA's remaining restrictions on athlete compensation.

Two weeks after *Alston*, the NCAA passed an interim policy allowing student athletes to benefit from their NIL "consistent with the law of the state" where an athlete's school was located. Many student athletes wanted a coherent national framework with consistent enforcement and clear guidance, and as a result, former collegiate athletes filed a flurry of lawsuits against the NCAA alleging that the NCAA's longstanding rules on amateurism violated antitrust law. On October 7, 2024, the NCAA and plaintiffs in *House v. NCAA*, *Hubbard v. NCAA* and *Carter v. NCAA* received preliminary approval for a settlement agreement to resolve these lawsuits.

A Momentous Moment in College Athletics, but Much Remains the Same for Brands. The *House* settlement: (1) establishes a groundbreaking revenue-sharing framework between member schools and athletes, allowing athletes to receive benefits from schools that were previously prohibited, including direct compensation for NIL; (2) requires that NIL deals between players and collectives, boosters or other affiliated entities to universities be subject to a fair-market-value analysis to ensure that the deal is not a disguised "pay-for-play" arrangement; and (3) requires athletes to report non-institutional NIL compensation in excess of \$600.

Revenue-sharing from universities to athletes is the headline of *House*, but third-party brands have been able to sign NIL deals with student athletes since *Alston*. Accordingly, the most consequential wrinkle for brands post-*House* is the third change regarding reporting. The reporting obligations could have implications on brands' abilities to keep certain aspects of their business confidential.

Confidentiality Considerations for Brands Post-*House*. Prior to *House*, NCAA Bylaw 22 governed disclosure of NIL agreements. Bylaw 22 did not require athletes to disclose their NIL agreements but instead made disclosure of these agreements voluntary. Athletes could receive school support for their NIL activities as an incentive for disclosure.

In anticipation of *House*'s approval, the NCAA proposed a series of bylaw changes. Among these proposed changes was Proposal No. 2025-12, which codifies the requirement for athletes to disclose NIL agreements in excess of \$600, in a departure from the previously optional disclosure provision of Bylaw 22. To facilitate this disclosure, NCAA member schools will use an online platform called "NIL Go" to collect and review these agreements.

While consistent with *House*'s terms, requiring athletes to report the details of their NIL contracts may directly conflict with non-disclosure or other confidentiality

provisions in those contracts. Moreover, terms contained in NIL deals may be considered trade secrets insofar as they reveal non-public information related to a brand's negotiation strategy, marketing or competitors. Athletes may face conflicting obligations between compliance with contractual terms and tort law on one hand and compliance with NCAA rules and regulations on the other.

LSU gymnast and social media influencer Olivia Dunne addressed this tension in her objection to the *House* settlement, emphasizing that some brands may be put in difficult situations as a result of this new requirement for athletes: "Third-party companies that partner with athletes are not parties to this suit. Forcing athletes to disclose deal information would violate non-disclosure, confidentiality, and trade secret covenants."

Without statutory protections in place to protect the confidentiality of these deals, brands can expect deals they sign with student athletes to be disclosed to the athlete's school and potentially beyond. In this post-*House* environment, brands that include non-disclosure agreements in NIL contracts should also include a "No Waiver" clause. That way, if a brand elects the route of non-enforcement following an athlete's NCAA-mandated disclosure, the brand can ensure that non-enforcement does not waive the brand's rights with regard to other disclosures.

Public University Student Athletes Elevate Confidentiality Concerns. Brands should be particularly aware of confidentiality risks when dealing with student athletes at public universities. If these athletes are required to report their NIL contracts to their school, those contracts are subject to public records requests. States are also aware of this risk. Louisiana, Kentucky and Connecticut are among states who have passed legislation that specifically exempts from public disclosure NIL contracts reported to a student athlete's university, but for states who have not addressed this issue, there is a risk that contracts reported to public universities could be released publicly, weakening confidentiality protections and potentially exposing proprietary information to the public or competitors.

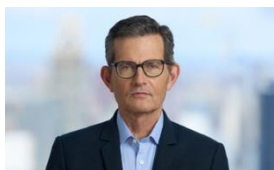
Brands who are concerned about the risk that a specific contract will be publicly disclosed should consult the state law of the state where the student athlete is located. In states without explicit exemptions to public disclosure of the terms of these agreements, brands should exercise caution about the kinds of terms that are included in agreements.

Looking Forward. Over the next few months, as the *House* landscape begins to take shape, we are interested in seeing (1) the parties that are involved in this reporting process as the NCAA releases more information, (2) whether Congress passes legislation harmonizing this reporting issue across the United States and (3) whether

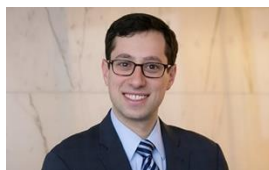
courts address confidentiality concerns implicated by this reporting obligation or whether courts opine on whether these NIL contracts are considered public records.

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