

# House v. NCAA: Does House Rest on a Crumbling Foundation?

December 3, 2025

Is the NCAA's system of direct payments to college athletes a *House* of cards?

Following the approval of the *House* settlement, [previously discussed here](#), the new college athletics landscape has begun to take shape. Athletes have been reporting their NIL deals to a platform called NIL Go, which is intended to identify and prevent pay-for-play arrangements. Conferences are exploring private capital arrangements to increase their capacity to recruit and compensate top-tier athletes. The newly created College Sports Commission (the "CSC") issued guidance calling the viability of NIL collectives into question but swiftly revoked the guidance, leaving collectives in the picture for now.

For the most part, however, this new era has been marked by a surprising *lack* of noteworthy developments. The CSC has yet to publicly bring an enforcement action against any schools or athletes. Schools have apparently been sharing revenue with their athletes without complication.

But several fundamental threats to *House's* existence remain. Perhaps the most prominent of these threats, Title IX, has begun to take center stage. In this article, we discuss the substance of two pending Title IX Ninth Circuit appeals from the *House* settlement and the risks that Title IX compliance presents to *House's* fragile ecosystem.

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## A Brief Overview of Title IX

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."<sup>1</sup>

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<sup>1</sup> 20 U.S. Code § 1681.

Following Title IX's passage, the Department of Education released a Policy Interpretation aimed at providing guidance for Title IX compliance within intercollegiate athletic programs.<sup>2</sup> The Policy Interpretation established standards for (1) equal opportunities for participation in athletics, (2) equal treatment of male and female athletes (*e.g.*, equipment, coaching, and medical treatment) and (3) equality in "financial assistance" for male and female athletes.<sup>3</sup>

Title IX has had a striking and visible impact on women's college athletics. Women today make up around 44% of NCAA athletes, compared to around 15% prior to Title IX's passage.<sup>4</sup> In creating athletic opportunities for young women, Title IX is widely considered to have driven the United States' decades-long dominance in Olympic sports.<sup>5</sup>

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## Emerging Title IX Challenges to *House*

On October 29, 2025, Charlotte North—a former Boston College lacrosse player—and Kacie Breeding—a former Vanderbilt track and field athlete—each filed opening appellate briefs alleging that the terms of the *House* settlement violate Title IX.<sup>6</sup> The substance of the appeals is that an unequal distribution of revenue to male and female athletes resulting from the *House* settlement's revenue-sharing model violates Title IX. While the appeals focus on the settlement's back-payment component, their arguments carry significant implications for the legality of future revenue-sharing payments.

Judge Claudia Wilken's opinion granting final approval of the *House* settlement addressed Title IX in passing, holding only that "the Court cannot conclude that violations of Title IX will necessarily occur if and when schools choose to provide compensation and benefits to student-athletes ... schools will be free to allocate those benefits and compensation in a manner that complies with Title IX."<sup>7</sup> Judge Wilken further stated that "to the extent that schools violate Title IX when providing benefits

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<sup>2</sup> 44 Fed. Reg. 71,413, Dec. 11, 1979.

<sup>3</sup> *Id.*

<sup>4</sup> Bushnell, Henry and Titus, Payton, [What is Title IX? An impactful law that's often misunderstood](#). Yahoo Sports (June 20, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> Opening Brief for Objectors-Appellants, *North v. NCAA*, No. 25-3835 (9th Cir. Oct. 29, 2025), ECF No. 41.1; Opening Brief for Objectors-Appellants, *Breeding v. NCAA*, No. 25-3835 (9th Cir. Oct. 29, 2025), ECF No. 39.1 (Hereinafter "Breeding Brief").

<sup>7</sup> *In re College Athlete NIL Litigation*, 2025 WL 1675820, at \*38 (N.D. Cal., 2025).

and compensation to student-athletes ... class members will have the right to file lawsuits arising out of those violations.”<sup>8</sup>

Judge Wilken’s order acknowledges that schools may be liable for failing to comply with Title IX in their distribution of revenue, but she did not answer *how* Title IX would apply to this new world of college athletics.

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## Primary Title IX Direct Payment Battlegrounds

### Do Direct Payments to Athletes Constitute “Financial Assistance?”

Title IX administrative regulations require that schools do not distribute “financial assistance” to students in a manner that discriminates on the basis of sex but do not specifically define what constitutes “financial assistance.”<sup>9</sup>

It is unclear whether direct payments to college athletes would constitute financial assistance. While the forms of financial assistance contemplated by the Department of Education were previously limited to scholarships and financial aid, there has not yet been an occasion to consider the treatment of revenue-sharing payments under DOE regulations. The appellants in the Ninth Circuit appeals assert that “the payment of money either for playing a sport at a school or for the use of a student’s name, image, and likeness while playing a sport at the school is an unequivocal form of financial assistance or benefit.”<sup>10</sup> Ultimately, this issue may hinge on whether these direct payments can be sufficiently analogized to scholarships or financial aid.

In the alternative, forthcoming legislation or administrative guidance may fill in the gaps in the definition of “financial assistance.” Both the Biden and Trump administrations have engaged on this issue.

On January 16, 2025, days before President Trump’s inauguration, the Biden administration released a fact sheet stating that “when a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete’s NIL, such assistance also must be made proportionately available to male and female athletes.”<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> 34 C.F.R. § 106.37(a)(1), (b)(1).

<sup>10</sup> Breeding Brief at 18.

<sup>11</sup> Lavigne, Paula and Murphy, Dan, [Dept. of Education says Title IX applies to payments to athletes](#), ESPN (January 16, 2025).

On February 12, 2025, Trump's Department of Education rescinded that guidance, stating in a press release that "[t]he claim that Title IX forces schools and colleges to distribute student-athlete revenues proportionately based on gender equity considerations is sweeping and would require clear legal authority to support it. That does not exist."<sup>12</sup>

Nevertheless, on July 24, 2025, Trump signed an executive order aimed at "protecting and expanding" women's sports.<sup>13</sup> The executive order directed the Secretary of Education to develop a plan to protect women's collegiate athletics, including through Title IX enforcement. This plan could include clarity on whether direct payments constitute financial assistance, but there has not yet been any indication about how the Department of Education will implement this Order.

### **Are Athletic Conferences Subject to Title IX?**

The other battleground is whether athletic conferences are subject to Title IX or whether the burden of enforcement falls solely on individual schools. The NCAA does not receive federal financial assistance, so it is not directly subject to Title IX.<sup>14</sup> The Supreme Court, in *NCAA v. Smith*, 525 U.S. 459 (1999), previously held that merely receiving dues from federally funded member schools does not make the NCAA a Title IX recipient.<sup>15</sup>

However, there is an open question as to the applicability of Title IX to athletic conferences. Athletic conferences, such as the Big Ten and the SEC, do not directly receive federal funding, so *Smith* would suggest that they are not subject to Title IX's requirements. If conference entities distribute revenue to athletes, they may be operating outside Title IX scrutiny.

The appellants, aware of this possibility, assert that conferences are subject to Title IX's requirements. They argue that conferences should be liable for Title IX violations because "if we allowed funding recipients to cede control over their programs to indirect funding recipients but did not hold indirect funding recipients liable for Title IX violations, we would allow funding recipients to receive federal funds but avoid Title IX liability."<sup>16</sup> Because conferences are controlled by the presidents of member schools, the

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<sup>12</sup> U.S. Department of Education, [U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation](#), Press Release (February 12, 2025).

<sup>13</sup> Exec. Order No. 14,322, 90 Fed. Reg. 35821 (2025).

<sup>14</sup> *NCAA v. Smith*, 525 US 459 (1999).

<sup>15</sup> *Id.*

<sup>16</sup> Breeding Brief at 28 (quoting *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F. 3d 1282, 1294 (11th Cir. 2007)).

appellants further contend that conferences that make payments would be doing so “clearly only at the behest of member schools.”<sup>17</sup>

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## Implications

The scope of Title IX’s obligations for institutions and conferences—and particularly whether direct payments to athletes fall within that scope—will have massive implications for the future of college athletics. Depending on how these Title IX obligations are interpreted by courts, stakeholder responses may include:

- Rebalancing of athletic budgets to ensure proportional compensation between men’s and women’s programs.
- Reduction of payments to revenue-generating male athletes to preserve proportionality within existing budgets.
- Schools and/or conferences seeking alternative methods to pay revenue-generating male athletes more outside of the direct payment system and Title IX scrutiny (e.g., collectives or licensing entities), which could threaten the fragile *House* ecosystem that has already struggled with classifying these payments correctly.
- Courts finding that there is no practical way for schools to comply with Title IX under *House* and overturning the settlement.

If *House* is overturned, college athletics may return to the “wild west” of NIL payments. However, even if school-based direct payments are eliminated, other parts of the settlement may remain. For instance, given NIL Go’s smooth implementation, it is possible that the NCAA elects to continue reviewing NIL deals to identify and eliminate pay-for-play arrangements from third parties.

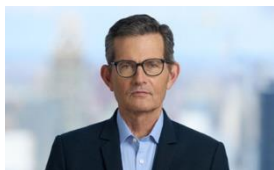
We will be tracking these appeals and the broader Title IX landscape, but in the meantime, schools and conferences should prepare for the possibility that the current system of direct payment may be overhauled by forthcoming judicial and administrative actions.

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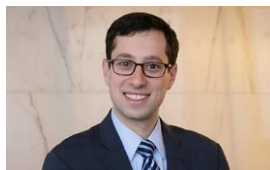
Please do not hesitate to contact us with any questions.

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<sup>17</sup> Breeding Brief at 28–29.



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