

Latest NCAA Settlement Directly Targets NIL-Recruiting Ban

WRITTEN BY

Michael S. Lowe | Timothy J. "Tim" Bado | Brett E. Broczkowski

On January 31, the attorney general (AG) for the state of [Tennessee](#) and the attorney general for the [Commonwealth of Virginia](#) announced that they had reached an agreement in principle with the National Collegiate Athletics Association (NCAA) to settle a year-long lawsuit over the NCAA's policy that prohibits name, image, and likeness (NIL) discussions with prospective and transfer student-athletes. Following a series of posts by the NCAA on X in January 2024, the policy, colloquially known as the NIL-recruiting ban, saw almost immediate enforcement action, with both Florida State University and the University of Florida receiving notices from the NCAA. Both enforcement actions involved allegations of violations of the NIL-recruiting ban.

Following reports that the University of Tennessee might be the next target for enforcement action, the AG of Tennessee, along with the AG of Virginia, filed the instant suit. The case, *State of Tennessee et al. v. National Collegiate Athletic Association*, 3:23-cv-33, alleges that the NIL-recruiting ban represents an unlawful restraint on trade in violation of Section 1 of the Sherman Antitrust Act. In particular, it alleges that the ban requires both prospective and transfer students to enroll at an institution before they can even explore NIL opportunities (or lack thereof) that may be available to them at that institution. To highlight the strain the ban places on the marketplace, the plaintiffs likened the ban to prohibiting a coach in search of a job at new institution from discussing or negotiating salary until they have already chosen the institution at which they will coach.

Along with the filing of the complaint, plaintiffs also moved for a preliminary injunction, seeking to enjoin the NCAA from enforcing the NIL-recruiting ban during the pendency of the litigation. The court ultimately granted the requested injunction, holding that plaintiffs were likely to succeed on the merits of their antitrust claims and that they would suffer irreparable harm in the event an injunction was not granted.

The opinion granting the injunction represents a significant perspective on NIL in collegiate sports. U.S. District Judge Clifton L. Corker stated that the NIL-recruiting ban would likely harm competition because it inhibits a prospective or transfer athlete's ability to adequately assess their value. Moreover, because the window of recruitment opportunity is small, the prospective athletes are irreparably harmed by this inability to fully and candidly assess their value in the marketplace. Following the grant of the preliminary injunction, the NCAA agreed to pause enforcement of the NIL-recruiting ban.

In a status report to the court on January 31, the parties announced that they had reached a settlement in principle and that a term sheet had been signed. The status report also previewed that the settlement will include a request for a permanent injunction, and the parties will finalize and submit the settlement to the court by March 17.

Significantly, this case represents yet another NCAA settlement where its rules have been challenged as anticompetitive. Notably, the well-publicized *House* settlement is set to take effect later this year should it be approved by the District Court in the Northern District of California. It appears that in seeking to settle both cases, the NCAA is willing to voluntarily strip itself of certain powers or shed the challenged policies.

The Tennessee settlement, however, is not without some risk. As an initial matter, the landscape of nationwide injunctions is ripe for challenge. This risk is complicated by the fact that some states maintain NIL laws that mirror the NIL-recruiting ban that — should the settlement be finalized — the NCAA would be enjoined from enforcing. Kentucky, for example, prohibits activities intended to induce a student to enroll or transfer by promising NIL opportunities. Should the NIL-recruiting ban be enjoined by the instant settlement, efforts by institutions to discuss NIL opportunities with prospects and transfers may still run afoul of similar state laws.

While the true impact of the settlement remains to be seen, it nonetheless represents another significant example of a successful challenge of NCAA policies under the Sherman Antitrust Act.

RELATED INDUSTRIES + PRACTICES

- [Business Litigation](#)
- [Educational Institutions](#)