

***Highway to NIL* — NIL Enforcement in a Post-House World – What Institutions Can Expect****Speakers: Mike Lowe, Lu Reyes, Philip Nickerson****Recorded: May 30, 2025****Aired: June 5, 2025****Mike Lowe:**

Hello, and welcome back to *Highway to NIL*, the podcast series that discusses legal developments in the name, image, and likeness or NIL space. NIL, of course, affects colleges and universities all over the country, particularly those in Division I athletics. And in this podcast series, we delve deep into the current NIL rules impacting colleges and universities and their compliance departments.

My name is Mike Lowe, I'm a partner at the law firm of Troutman Pepper Locke. I'm a former federal prosecutor of 25 years, and my practice right now includes not only advising colleges and universities in the NIL space, I'm also a member of our white-collar criminal defense team. My NIL practice includes being one of the co-editors of our current blog, [NIL Revolution](#), and I advise multiple colleges and universities in connection with various matters relating to college athletics. I'm joined today by two of my Troutman Pepper Locke colleagues, Lu Reyes and Philip Nickerson. Lu, why don't you tell our audience a little bit about yourself?

**Lu Reyes:**

Sure thing. Thank you, Mike. My name is Lu Reyes, I am a partner here with Troutman Pepper Locke as well. I spent many years at the Department of Justice, just like Mike, and now in private practice. My practice includes helping organizations comply with and handle investigations from governmental bodies or regulatory bodies. I'm part of the Regulatory Investigations Strategy and Enforcement Group at Troutman Pepper. I'm happy to be here, thanks for having me.

**Mike Lowe:**

Glad you were able to join us. And Philip, why don't you tell our audience about yourself?

**Philip Nickerson:**

Thanks, Mike. My name is Philip Nickerson. I'm a trial lawyer here in Troutman in the Regulatory Investigation Strategies and Enforcement Group. My practice involves advising clients primarily in state attorneys general investigations and enforcement actions, but I also advise institutions and clients within the NIL space and contribute to the *NIL Revolution* blog as well.

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**Mike Lowe:**

And Philip, we're glad to have you, and those of us who were involved in the blog are very familiar with your work. So, thanks for joining us on this particular podcast.

Today, we're going to be talking about where we're at, in terms of the House settlement and as we all wait for it to get approved. Now for those of our audience who've been following this closely, there was a hearing on April 7th in front of Judge Wilken in the Northern District of California, and our team was following that hearing very, very closely. And for those who did follow it closely, you may recall that Judge Wilken seemed particularly concerned about the issue of current athletes who may lose their roster spots, were she to approve the house settlement. So, she had proposed some sort of a compromise on roster limits that would allow current athletes who were affected by that part of the settlements to be what we could say, grandfathered in with their roster spots, ultimately phased out as they completed their eligibility with NCAA. In response to those comments by Judge Wilken, the parties went back and they filed a revised proposed settlement agreement, but they didn't really address the roster limit issue, and they did not accept Judge Wilken's proposed compromise. They cited the disruption and increased costs in doing business.

So, in late April, judge Wilken issued an order saying that the proposed settlement is, "Not fair and reasonable to the significant number of class members whose roster spots will be or have been taken away because of the immediate implementation of the settlement agreement." And as a result, the court was not able to approve it in its current form. So, she gave the parties a couple of weeks to go back and modify it and propose something else. And the party's current proposal does address the issues but does so by agreeing to a voluntary grandfathered roster limit at each school's discretion. And currently, everyone is waiting to see if Judge Wilken approves it.

We're recording this podcast today on May 30th, 2025, and it's certainly possible by the time this gets placed on our website that we may actually have an approval, but let's talk where we're at today. Even though we don't have a settlement approved yet, the NCAA has been busy preparing for the post-House world. Specifically, they've been putting plans in place for a new NIL enforcement arm to police NIL. And so, that's what we're going to talk about today. What we know so far about the NCAA's NIL enforcement entity is going to be addressed, as well as how institutions should prepare for enforcement actions in the future.

Philip, can you give us some background on the NIL enforcement arm? What is it, and where is the NCAA in the process of getting it up and running?

**Philip Nickerson:**

The NIL enforcement arm, we now know is expected to have the name the College Sports Commission, CSC. It is an independent entity that is being propped up and funded by the power conferences. It will have a CEO who will be in charge of essentially running the systems that are in place, policing the NIL space for institutions and athletic departments and student athletes if the House settlement gets approval. It's going to be a market kind of industry shift for athletic departments, because the NCAA will no longer be involved with traditional enforcement or investigation actions.

**Mike Lowe:**

Well, Philip, that's pretty interesting, and one of the criticisms I've read many commentators make of the way NCAA has enforced their NIL rules to date is that there wasn't really sufficient enforcement. Do we think that the CSC, if it actually does get up and running, is going to have more teeth than the NCAA had in dealing with NIL enforcement?

**Philip Nickerson:**

That's I think the question that a lot of people have right now. We don't have a ton of information about the CSC and the teeth that it will have in enforcing NIL rules, short of some journalistic reporting and proposed amendments to the NCAA bylaws and regulations that was announced in April in anticipation of the House settlement.

**Mike Lowe:**

I know you mentioned this CSC, is that something that's entirely separate from the Deloitte Clearinghouse that's been called NIL Go?

**Philip Nickerson:**

It is. The CSC and particularly the CEO of the CSC will be in charge of running the systems that are put in place by NIL Go, by Deloitte, as well as LBI software, which is the tech firm that's been charged with handling and creating the salary cap management software for institutions to use in reporting NIL agreements from the student athletes.

**Mike Lowe:**

Lu, I want to ask you where we think the CSC is going to focus their NIL enforcement efforts, particularly in connection with revenue sharing rules and roster limits. Can you give us a little insight into that?

**Lu Reyes:**

Yeah, sure. It looks like the focus, as you mentioned, will be NIL revenue sharing rules, roster limits, specifically looking at NIL deals worth more than \$600. Those would be reported to the clearinghouse, that will be a source of information for the CSC. They'll also be looking at transactions with school affiliates, deals involved in recruiting student athletes, and payments from large donors who over their lifetime contributed more than 50,000 to a specific athletic department.

**Philip Nickerson:**

And I might add here, to the broad umbrella that I think the CSC is going to be looking at is really trying to maintain the semblance of amateurism in this new world of NIL, with the goal of making sure there aren't a lot of pay-for-play circumstances and agreements being put in place by either schools or by donors to schools, and affiliates to schools. So, I think that's going to be

one of the overarching themes of some of at least the initial enforcement focus by the CSC. They'll be looking at those four detailed areas that Lu just mentioned to really kind of police that at the outset.

**Mike Lowe:**

Yeah, I completely agree with you both, and this is something that we here at Troutman Pepper Locke and our NIL team have been following. We've been speaking about it in our podcasts, we've been writing about it on our blog. And what we do know is that as part of this settlement, there will be revenue sharing for those schools that opt in. There will be the roster limits, whether there's a grandfathered clause that gets approved or not. And there will be this NIL clearinghouse called NIL Go that you were talking about, Philip, that's going to be run by Deloitte. But we haven't known much about how NCAA is going to enforce any of the new rules. It looks like the CSC is really going to be the entity that has the final say in determining violations of those rules, at least for those institutions and conferences that are part of opting into the settlement, and that the CSC is going to be the entity that determines the appropriate punishment. Am I reading the tea leaves right here?

**Philip Nickerson:**

You are, Mike. What's been reported is that there have been drafts of so-called association agreements that all schools are expected to sign to formalize the CSC. And in the terms of those association agreements and those drafts, the schools are agreeing that the CEO will make final factual findings and determinations of violations of the rules, and that the CEO of the CSC will also impose fines, penalties, and other sanctions as appropriate. And so, the schools have to agree within these association agreements to the CSC's rulings as final, with the lone exception being for a school or a student athlete being able to challenge the penalty through the arbitration process.

**Mike Lowe:**

I think that's really a big point, and I think that's what gives a lot of uncertainty to how this all shapes out in the future. Because if we expect that multiple students will challenge the CSC determinations or the NIL Go clearinghouse's assessment of the valuation of an NIL deal, I think until we start seeing those arbitrations happen, we won't really know what an accurate baseline is. I mean, we have an idea right now based on what NIL Go was saying, but until we start seeing results from arbitration, we won't really know how solid a baseline we have for determining whether or not a particular NIL deal is fair market value or not. Would you agree with that?

**Philip Nickerson:**

Absolutely. I think the fair market value question is something that is going to be hashed out and determined pretty early on. What is the standard for assessing fair market value? How do we determine the value of a gymnast in Louisiana and her NIL rights versus a college football player in California at USC? What is the line? What is the test for that? How is the CSC, how is Deloitte assessing that through the clearinghouse? It's going to be very to see how that pans out and I think that it creates a need for schools to really take a hard and long look at the rulings

and initial findings from the CSC to make sure that they're supporting their student athletes in a way that really does value them as they should be valued.

**Mike Lowe:**

Let's talk about the current NCAA infraction process and how that is expected to differ from the infraction process going forward if the CSC really becomes a viable entity. Philip, can you give us some of the differences that you see?

**Philip Nickerson:**

Yeah, there are a couple. The first, taking a step back, what does the current NCAA infraction process look like? Well, the staff usually starts an investigation in collaboration with the institution that's subject to the investigation. That's kind of going out the window, there won't be as much need for that. First of all, NCAA staff is not going to be handling the initial investigation. That's going to be the CSC, and again, it is a distinct entity from the NCAA, whose sole focus is enforcement. The CSC is also not going to be required to rely on the institution's direct collaboration. Why is that? Well, we have NIL Go, or we will have NIL Go and Deloitte and the information that will be submitted to and through the clearinghouse that the CSC will be able to rely on to at least start assessing or auditing some of the NIL agreements and arrangements that are being put in place. So, that's the first kind of major difference that we'll see.

I think second, the CEO is going to have this authority to make determinations about whether or not NIL rules have been violated. Currently, that sort of violation would go to the infraction committee at the NCAA on a report and recommendation of the NCAA staff. So again, the investigation is going to be conducted by this independent entity, and then the independent entity, CSC, is going to make its own determination without referring it to another body or set of individuals to make that. So I think it really, and I'd be curious to hear what Lu here thinks about this, I think it really creates a circumstance where there's a lot of importance on providing information that is helpful to the student athlete or to the institution that's being investigated upfront, because that can really influence the ultimate factual findings and penalties that are going to be made by the investigator.

**Mike Lowe:**

Lu, what do you think?

**Lu Reyes:**

I couldn't agree more. There's a new sheriff in town. Part of the process here, of course, is understanding exactly the metrics by which they're going to operate, what exactly the charter is, what the scope of the reach is. But then taking a foot forward and lean into the compliance piece of this, because at the end of the day, this new body has been given a wide amount of discretion. You even have to consider and should consider who the new CEO will be, who this enforcement officer will be. From what I'm hearing, may not even be from the traditional college athletics world. So, there's a part of this that is forward-facing, forward-leaning, where

institutions will want to be intentional about being compliant and showing that they are willing to do what's needed to make sure that they are not in violation.

**Mike Lowe:**

Thanks, Lu. One of the things that strikes me, and I think it's really important for us to note, that we're all assuming that the House settlement is going to be approved. I think that's the consensus out in the legal community, it certainly seems to be the consensus among the institutions and conferences. So everything we're saying here is sort of taking that as a given, but Judge Wilkins could surprise us. Judge Wilkins could say, "This just doesn't do it, and the objections that have been raised really are persuading me a little bit more that this settlement shouldn't be approved." So, take what we're saying and keep it in context there.

But let's talk a little bit about this CSC. Assuming the settlement's approved and the CSC is active, it's supposed to get up and running within, I think, a matter of weeks after the final approval of the House settlement. And realistically, that's not a lot of time to really get fully up to speed on a bunch of unreleased rules and procedures from the CSC. These institutions who are going to be essentially bound by the CSC, they're going to be in a, I hate to say a pickle, but CSC is going to hit the scene and we still don't know a lot about what's going to happen and how it's going to work, yet these institutions are going to be obligated to comply. Lu, in light of what I just talked about, what can institutions do to get prepared for that eventuality?

**Lu Reyes:**

It's a great question. I think maybe some high-level observations and then maybe some more specifics. First and foremost, again, as you said, assuming this does happen, organizations have to be thinking about what steps they can be in compliance. And to your point, what does compliance actually look like, what are the rules?

At a high level though, let's just focus for a second on the need for compliance. Here at Troutman Pepper Locke, we help complex organizations deal with complex issues. And a lot of times in the regulatory enforcement space, it's not actually clear, especially when there are new rules, exactly how they will be enforced. But you have to assume that there will be rules, and they will be enforced. So, before I get to establishing the actual dialogue with the enforcer, I do want to say a few things about what institutions should be thinking about in terms of compliance.

Establishing a compliance program is helpful not only to help avoid infractions and nip things in the bud, but if there is an issue or is a violation or alleged violation, having the systems in place when the regulators come and look under the hood, can make all the difference in terms of what a penalty could be. So having the compliance program is helpful at the front end and at the backend. But also, you want to show the regulators that whatever it is that you're putting together is sustainable. And really at the end of the day, not only does the CSC probably want to enforce violations, but they want to make sure institutions aren't repeat offenders. So those are high level things to think about as a company puts together a compliance program.

In terms of what is going to be enforced. To your point, Mike, right now there are a lot of variables. And one of the best things to do as soon as the is approved if it is approved, I would recommend looking at ways to establish dialogues with the enforcers. It's important, especially



in this time of some unknowns, to make sure that you're doing everything you can to understand what the enforcement priorities will be. Ignorance won't be a defense. So, to the extent possible, research opening up communications, those are tried and true practices to make sure you're setting your compliance program in the right direction and you're checking the right boxes.

Specifically, as it relates to colleges and universities and entities that will be under the enforcement scrutiny, you want to set up the right structure of course, and have the systems. And what that means in this context is really making sure you understand what's under your own hood first. So, an internal risk assessment, some people call it a compliance review, especially at this first phase, I think is a critical step. You need to understand and make sure that you have the right personnel in place and trained to monitor different aspects of the NIL landscape. Creating internal procedures that monitor and audit payments to student athletes, both payments made by the institution or by the affiliates as it were.

Remember as well, that this is an interesting situation to the extent that a lot of information is already being shared to the clearinghouse, the CSC will have a lot of information already when they start enforcement. Organizations need to understand, of course, what it is that they have provided to the clearinghouse, make sure they have the records straight. Institutions also want to coordinate with coaches and their staffs about phased in approaches to roster limits and communicating that plan to student athletes very clearly.

There is a piece of this that will be cultural and it may be a cultural shift, and that is building a culture of compliance and making sure that all individuals are involved. Coaches, athletes, and maybe giving them affirmative responsibilities. But to that point, even though everyone's job is to be in compliance, the organization should also designate some leadership, in terms of individuals in charge of compliance, and those individuals should report to the leadership of the athletic departments. That will show the regulators, the athletic department and the universities are taking these compliance responsibilities seriously, and it will show that they have mechanisms in place, of course, to root out things before they happen.

**Mike Lowe:**

I think that's a fantastic point, and obviously, compliance is such an important issue, particularly as you pointed out, when you're dealing with a really unknown situation of how the compliance is going to be enforced by the monitoring agency, which here is going to be this completely brand new entity, the CSC, that nobody really knows how it's going to work, what it's going to do. We just know it's going to be separate, it's got more enforcement powers than the NCAA. And your point about the importance of navigating these changes and these uncertainties is really well taken.

I'm going to note that some schools are adopting very unique approaches such as University of Kentucky. They restructured their entire athletics department into an LLC. Philip, why do you think they did that?

**Philip Nickerson:**

I think there are a couple of reasons. They would say that it helps them navigate the new NIL space by bringing in and creating an independent LLC that is staffed and governed and run by a

board of directors that have business and sports business knowledge and expertise, that can really help identify not only opportunities for the athletic department to grow and expand, not for its fan base, but for its student athletes, but also, risks that are out there that the athletic department should be prepared to address and start preparing to address.

I think that one of the things that's really important, and I think maybe University of Kentucky was thinking about this in creating an LLC, is that these NIL rules are really deputizing the schools to police agreements that they're not party to, between their student athletes and other entities. And that is materially different than the type of compliance efforts that schools have been historically required to do. It's a new area, it's a new way of looking at it and thinking about compliance, and the impacts are really real. They can really be felt, especially in this world of the Transfer Portal.

We talk about penalties and potential penalties against schools and student athletes, if the CSC levies a penalty against an institution that limits the amount of revenue sharing they're able to offer in future years, student athletes not only at that university but prospective student athletes are going to see that and say, "Okay, there's less money in the pot there for me. Where can I go next year?" The opportunities abound in the portal and the Transfer Portal, so you could see how an institution and a program at that institution, the subject to penalties, could really have a market shift in the direction of their program for years to come from one penalty. And so, the impact can be very large and powerful.

**Mike Lowe:**

Philip, that's an excellent point, and Lu, that brings to mind something you were talking about earlier, which I think is the importance of having a contingency plan to deal with these types of potential problems, because as Philip points out, they could really be catastrophic to an athletics program and result in student athletes deciding, "Hey, time to bail on this one. Let me get in the portal," or prospective students saying, "No thank you, I'm going somewhere else." So what do you recommend, in terms of a contingency plan approach?

**Lu Reyes:**

It is an existential potential situation. These violations can really set a program way, way back. And really, in terms of contingency, organizations should have the benefit of counsel to make sure and plan for situations that arise, whether or not it's because of their structural compliance program or because of rogue actors. It's very hard to predict one day to the next what might happen, you don't want to be caught flat-footed without advice of good counsel in those situations. And having [inaudible 00:25:19] counsel, so to speak, at your side to help you understand and navigate the actual enforcement mechanisms, the priorities, communicate with the enforcement arms with the CSC, and come to resolutions that are fair and not catastrophic, I think is an essential, essential piece of any university's tool belt in these situations.

**Mike Lowe:**

I know there's this entire potential for arbitration, or actually I guess it would be mandatory arbitration if you wanted to challenge the CSC's findings. Lu, what challenges would universities



face in that arena, as opposed to traditional NCAA investigations in the past, or actual litigation in front of a court or a jury?

**Lu Reyes:**

Yeah, arbitration is definitely a different animal than what institutions under the purview are used to, and it's something that needs to be understood. This is not a situation like before where individuals within the NCAA will be making decisions on the fate of an organization. This will be an independent arbitrator or a panel who will be making these decisions, and they're not necessarily steeped in what the environment is like and all the nuances.

The best advice for an organization is to make sure that they have counsel that do understand the NIL well, that do understand the evolution of how we got to where we are and do understand the enforcement priorities of the CSC. That council not only can work well and represent an organization in arbitration setting, but also hopefully before it gets to arbitration, can help organizations find fair and reasonable resolutions to allegations.

**Mike Lowe:**

So, when we're talking about the CSC and the fact that they've got this clause that's going to require challenges to be arbitrated, one thing that's going to be very different for institutions is arbitration does and I think the CSC will permit, subpoenas. So effectively, discovery being conducted, and it's a two-way street. The way I look at it, I think you have advantaged CSC in that context, because the institution's already going to know its evidence and it's going to know what the clearinghouse evidence is, because that stuff's going to be public. By agreeing to arbitration with subpoena power, my take on this is the institutions are effectively giving the CSC power to subpoena them and get some internal documents that they otherwise might not have shared, absent their desire to be fully cooperative. And sometimes council's advice might not be to be fully cooperative. It will certainly be a new world if this does develop, I just want to bring that up.

One of the things, Philip, I want to ask you about as we begin wrapping up here, is the fact that this whole new process with the CSC, really seems to be designed in conjunction with the other terms of the proposed House settlement and the NIL Go clearinghouse. It really seems to be designed to clamp down on collectives and their ability to throw really large sums of money at student athletes. And for those entities that either opt in voluntarily or have to opt in to this process, they may find themselves in a bind, because states are starting to really push back on this whole concept of collectives being effectively shut out of the NIL process. Can you talk about that a little bit, Philip?

**Philip Nickerson:**

Yeah, the collectives, some of them will be subject to the amount that they give to student athletes will fall within the umbrella of the estimated 20.5 million in revenue sharing.

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**Mike Lowe:**

Now, why do you think that is?

**Philip Nickerson:**

Well, under the terms of the House settlement, the revenue sharing includes funds that are provided by the schools, as well as school affiliates. And the definition of affiliate would include and could include certain collectives that are supporting the athletic department. So, I think state lawmakers have been working since the proposed House settlement that has been out there for review to prepare for the implementation of the House settlement. But there have been some state lawmakers that have been quietly putting forth legislation and enacting legislation in their respective states that would make the implementation of the House settlement terms unlawful, or certain aspects of it at least.

We have a couple of examples of those in West Virginia who recently passed its own legislation, Tennessee as well, and Oregon has legislation that it is considering and I believe as of this recording has passed, don't quote me on that one. But all of those different state lawmakers will make it difficult for the CSC to enforce NIL rules. It really kind of came as a surprise to me, maybe it shouldn't have, because I think if we've learned anything since the Supreme Court's decision in Austin back in 2021, there are state lawmakers that are out there that are intent on creating a competitive advantage for their institutions.

**Mike Lowe:**

I agree with you, and look, the point here is a lot remains to be seen. The people who think that the House settlement is the end of the battles between student athletes and institutions and athletic conferences and NCAA, I think they're mistaken. There's going to be challenges galore to this new framework. The whole concept of the CSC, many people criticize it and say, "You're really just replacing one potential antitrust violating entity with another, and you want us now to follow these new rules and give up all these rights and restrict what we can do." And states are pushing back on it. The universities that are within conferences that are part of this CSC are going to be in a bind because now they're effectively going to be asked to violate state law to comply with the CSC's obligations, and they're certain to be litigation over that. So I think this is certainly not the last chapter in the battle over NIL and college athletics. We're going to have more and more battles. I think we here at Troutman Pepper predict, and we'll see where it goes.

But with that, I want to thank both Lu and Philip for your excellent participation in today's recording. I also want to thank everyone who's listening to this podcast. If you ever have any thoughts or comments about our series or about this particular episode, please contact us directly. You can also subscribe and listen to other Troutman Pepper Locke podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening, and in the words of Cal Stein, stay safe.

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