



UNC GREENSBORO

Board of Trustees

Athletics Committee

September 28, 2021

8:45 am

Live Stream

AGENDA

Discussion Item

ATH – 3 Update on NCAA Policy on
Name, Image, and Likeness

Blakemore, Bonatz, Smith

On June 30, 2021, the NCAA approved an interim policy permitting college athletes to benefit from their name, image and likeness effective July 1, 2021.

In keeping with that policy, UNCG student-athletes may benefit from the commercialization of their name, image, and likeness (NIL) by a non-institutional entity. Some examples of this include starting a business, and using the student-athlete's name to advertise it, posting ads on social media, providing athletic lessons, signing autographs, etc. The Department of Athletics has issued [interim guidelines](#) developed in conjunction with a working group, effective July 1, for student-athletes.

By NCAA Bylaw, student-athletes are still permitted to grant permission to UNC Greensboro to use their name, picture, or appearance to promote UNCG and the Department of Athletics. Spartan Athletics is assisting students through the new NIL process and is providing student-athletes education and support related to financial literacy and life skills.

General Counsel Jerry Blakemore and Deputy General Counsel Kristen Bonatz will provide an overview on the NCAA Policy and UNC Greensboro's implementation thereof and related guidelines.

Attachment: Presentation (see below)



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***U.S. Supreme Court Decision
NCAA v. Alston
and
Name, Image, and Likeness Developments***

Board of Trustees
Athletics Committee
September 28, 2021



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Agenda

- U.S. Supreme Court Decision re: Alston
 - NCAA v. Alston
 - Name, Image, and Likeness (NIL) Developments
- Implications for UNC Greensboro
- NIL Working Group
- Policy Considerations / Interim Guidelines Summary
- Next Steps



NCAA v. Alston

- On June 21, 2021, the U.S. Supreme Court ruled (9-0) that current National Collegiate Athletic Association (NCAA) restrictions on member institutions providing “education-related benefits” to student-athletes violated federal antitrust laws.
 - NCAA does not have “any deference” with respect to the application of the Sherman Act (antitrust law). Significant departure from juris prudence to date.
 - Supreme Court remands NCAA back to District Court to get interpretation of its NIL rules (Bylaw 12).
 - Student-athlete compensation now subject to market, with limited exceptions, such as no “pay for play.”
 - Courts are likely to extend antitrust application to all education-related benefits and any other legal basis for compensation.
- Institutions may now grant additional “education-related benefits” to their student-athletes.
 - NCAA complex rules with limited interpretation at this point leaves UNCG discretion.



NCAA v. Alston

- NCAA Bylaw 12 (excerpts)
 - 12.1.2 Amateur status. An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual:
 - (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
 - (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
 - (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received;
 - (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;
 - (e) Competes on any professional athletics team per Bylaw 12.02.4, even if no pay or remuneration for expenses was received; (Revised: 4/25/02 effective 8/1/02)
 - (f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or (Revised: 4/25/02 effective 8/1/02, 4/24/03 effective 8/1/03 for student-athletes entering a collegiate institution on or after 8/1/03)
 - (g) Enters into an agreement with an agent. (Adopted: 4/25/02 effective 8/1/02)
 - 12.1.2.1 Prohibited Forms of Pay. “Pay,” as used in Bylaw 12.1.2 above, includes, but is not limited to, the following:
 - 12.1.2.1.1 Salary, Gratuity or Compensation. Any direct or indirect salary, gratuity or comparable compensation.



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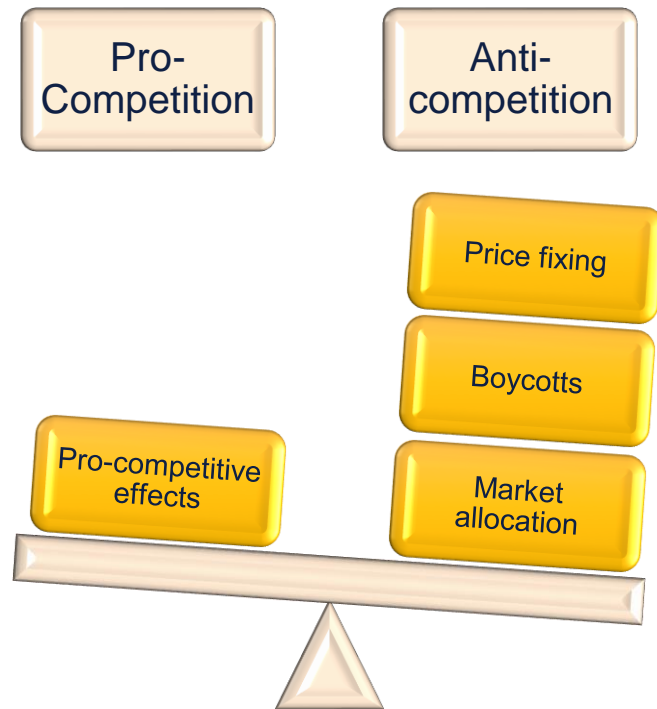
Antitrust Law Basics

The Sherman Act

- Section 1 of Sherman Act:
 - “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.”

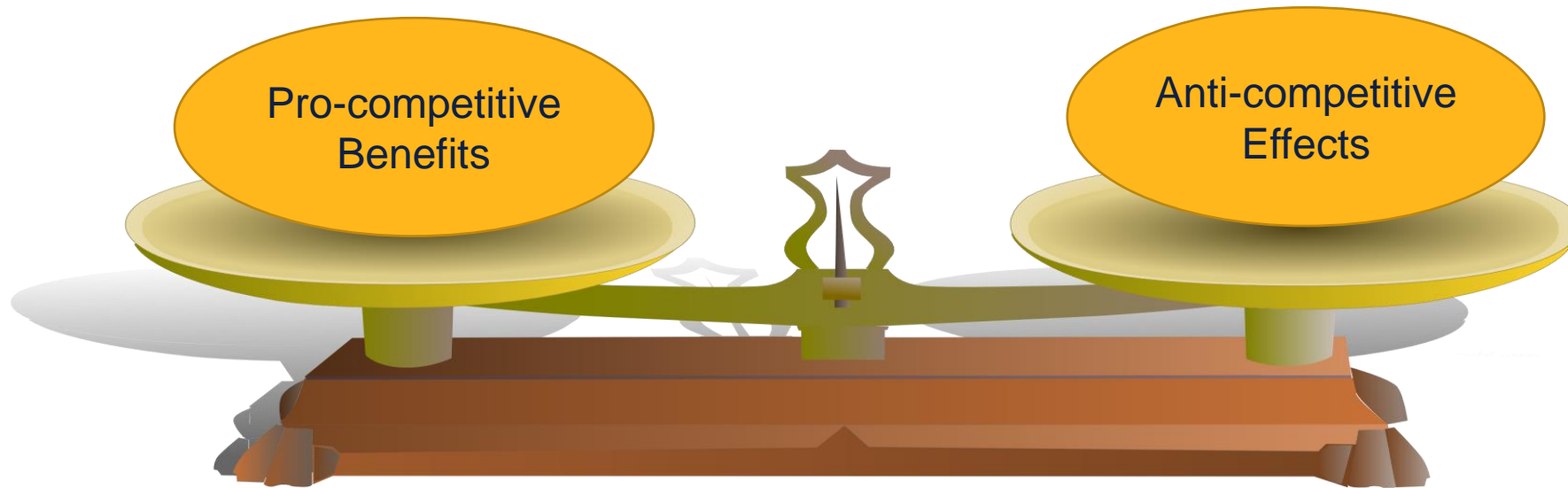
Antitrust Law Basics

Per se = certain conduct is presumed to result in unreasonable restraint of trade and is per se unlawful



Because conduct is deemed to unreasonably restrain trade, the plaintiff is not required to present evidence of effects.

Rule of Reason Applied to NCAA



NCAA prohibited compensation for competition
NCAA allowed collusion between its members
NCAA limited who could compete



**Why do
we need
antitrust
law?**



GREED IS GOOD.

Competition at work





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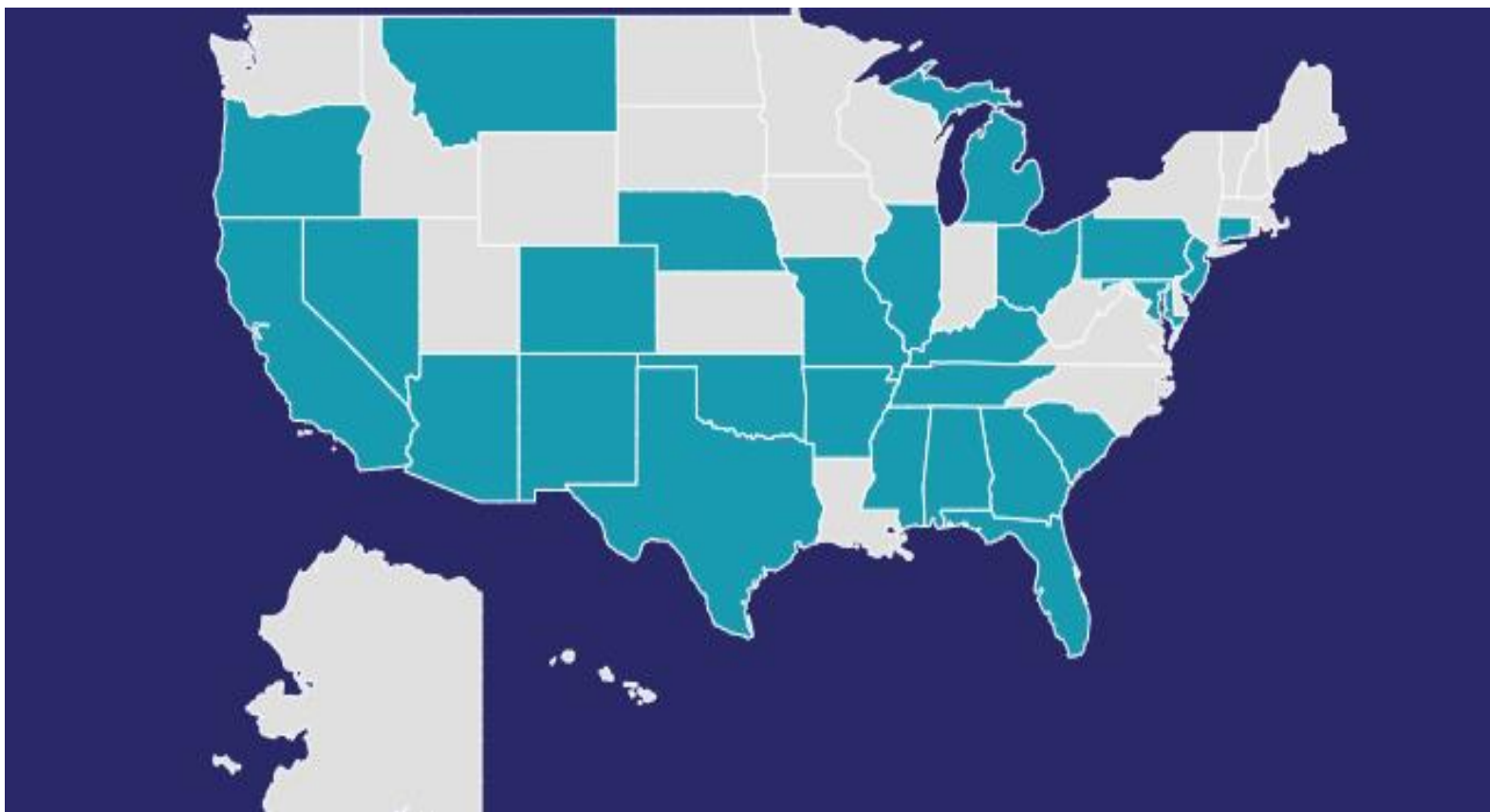
Name, Image, and Likeness (NIL)

It is now illegal for NCAA or its institutions to uniformly prohibit student-athletes from receiving compensation for the use of their name, image, or likeness (NIL).



NIL Laws by State (as of 9/2/2021)

NIL adoption by State Legislation/Executive Order has been rapid



- State legislation basics:
 - Compensation for name, image, and likeness from third party.
 - Student-athletes may use professional representation.
 - No “pay for play” or recruiting inducements.



Shared Principles in States Laws and Executive Orders

- Student-athletes have affirmative right to earn NIL compensation
- Student-athletes may obtain professional representation only for NIL rights (usually from agent or attorney licensed + in good standing in the applicable State)
- NIL opportunities may not conflict with institution contracts or team rules (and potential NIL contracts must be disclosed to the institution)
- Institutions have right to control their marks and identify “off limit” endorsement categories (e.g., alcohol, tobacco, drugs, adult entertainment, etc.)
- NIL compensation cannot be used for “pay for play” or recruiting of prospective student-athletes by an institution
- Institutions may provide financial and life skills training to student-athletes

Governor Cooper's Executive Order

Issued July 2, 2021



- Student-athletes cannot be compensated as a form of inducement to enroll or continue to be enrolled at an institution.
- A student-athlete's authorized representative must comply with the North Carolina Uniform Athlete Agents Act.
- Colleges and Universities may not pay student-athletes for the use of their NIL, but may impose regulations and limitations on student-athletes' ability to receive compensation.



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Governor Cooper's Executive Order

Issued July 2, 2021

- Prohibitions against:
 - NIL activities during competition
 - Violations of sports wagering laws
 - Violations of University's brand contract limitations (Coke vs. Pepsi)
 - Violations of University's intellectual property rights (trademarks, logos)
 - Other prohibited commercial activities, such as promoting:
 - Alcohol
 - Tobacco
 - Gaming
- Encourages Universities:
 - To enact reporting requirements for student-athletes' receipt of NIL compensation
 - To provide financial literacy and life skill programs to student-athletes, including time management and budgeting workshops.



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NCAA Interim NIL Policy

Effective July 1, 2021



- Student-athletes can engage in NIL activities that are consistent with the laws of the state where the school is located
 - Student-athletes who attend a school in a state without an NIL law can engage in NIL activity without violating NCAA rules related to NIL
 - Student-athletes can use a professional services provider (i.e. agent, tax advisor, etc.) for NIL activities
 - State law and schools/conferences may impose reporting requirements
-
- No pay for play/recruiting inducements
 - Must be quid pro quo
 - Cannot provide compensation based on athletic achievements

NOTE: NCAA Interim Policy authorized NIL activities and use of professional representation until either (a) new NCAA rules or (b) federal legislation is adopted.



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NCAA Interim NIL Policy

Effective July 1, 2021



Tax implications:

- Whether the offer of benefits is taxable income
- Whether funds allocated for cost of attendance is considered income
- Whether the distribution of laptops, musical instruments, stethoscopes, or any other tangible items provided for educational purposes constitute taxable income

Considerations for Financial Aid Offices:

- May require recalculation of cost of attendance if a student-athlete receives compensation, including NIL compensation, that satisfies a financial aid element.
- A student-athlete's compensation, including NIL compensation, may prevent eligibility for need-based financial aid.
- An international student-athlete's NIL compensation may violate the conditions for the issuance of a visa and thus institutions must establish a policy for what if any circumstances an international student-athlete may receive NIL compensation.



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UNCG Response to Supreme Court, NCAA, and Governor's Executive Order

- Established NIL Working Group
- Initiated Policy Review
- Reviewing Relevant Contracts
- Developed Communications Plan



Major Factors Under Consideration

- What policies and guidelines will need to be developed/revised to ensure compliance
- Whether the University should allow its student-athletes to use its intellectual property (logos, marks, etc.) and if so, under what circumstances
- First Amendment implications
- Title IX implications
- How the University will educate student-athletes on issues related to NIL compensation and the law



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Intellectual Property/ Use of Institutional Marks



- Using existing process to grant permission to students to use marks and other institution-owned IP, on commercial goods
- Enforcing with
 - educational conversations and
 - the Student Code of Conduct (not just for student-athletes)



NIL and Title IX

- Context
 - The *Alston* case technically addressed education-related benefits for football and men's and women's basketball only.
 - On average, approximately 130 male student-athletes participate in football and men's basketball.
 - On average, 13-15 female student-athletes participate in women's basketball.
- Title IX
 - NIL decisions must take into consideration Title IX implications.
 - Title IX is a separate legal obligation of the University and NCAA does not have enforcement authority for Title IX nor does compliance with any NCAA rule absolve the University from its Title IX obligations.
 - Office of Civil Rights likely to become more aggressive in enforcing Title IX obligations and likely to look beyond merely granting "opportunity" for participation but will look to actual experience including: comparison of scholarships granted, tutoring and related services provided, housing, computers and laptops provided.



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NIL and Title IX

Equity Concerns and Title IX Issues



- Are we equitably educating, assisting, promoting women's sports in comparison to men's sports, including with NIL?
- Budget implications: What are the funding implications for other sports?



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Actions Taken by UNCG Athletics Department

- Internal compliance review of relevant actions taken by NCAA, SoCon, Governor Cooper, and other institutions.
- Fielding inquiries from student-athletes, coaches, outside lawyers, and athletic leadership from other Division I institutions.
- Assisting Office of General Counsel in review and development of initial policies, procedures and guidelines.
- Developed and implemented Guidelines for student-athletes regarding NIL activities (reviewed and endorsed by Working Group and Chancellor's Council).



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NIL Working Group

- NIL Working Group has been established
 - Co-Chaired by Kristen Bonatz, Deputy General Counsel, and Jody Smith, Executive Associate Athletic Director and SWA.
 - Members of the Working Group have been appointed by Chancellor's Council members and represent several functional areas, including Academic Affairs, Communications, Finance and Administration, Enrollment Management, Student Affairs, and Strategy and Policy.



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Policy Considerations for NIL Working Group

Chancellor charged the NIL Working Group with:

- Reviewing the guidance provided by the Supreme Court, the Governor, the NCAA regarding NIL
- Developing interim NIL guidelines
- Identifying where University policy is required related to this issue
- Reviewing all relevant, current University contracts that may be affected by the Alston Supreme Court decision, including but not limited to Pepsi contract and UNCG licensing agreements, for prohibitions that may be relevant
- Assessing communications from national associations, other institutions to their student-athletes, coaches, and the public generally, and recommend, as appropriate, a communication plan for UNC Greensboro
- Recommending whether or not the University can/should offer additional “education-related benefits” to student-athletes
- Determining what, if any, NIL compensation is permissible for international student-athletes and recommend guidelines for same
- Recommending enhanced education for athletics staff and student-athletes to include relevant state and federal laws, financial literacy, and life-skills (including time management and budgeting)
- Identifying additional policies and procedures for review and revision, including but not limited to the Advertising Policy, intellectual property, licensing and the scope and responsibility for same



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Summary of UNC Greensboro's Interim NIL Guidelines

- UNCG student-athletes still participate in promotional activities for UNCG and UNCG Athletics (those rules have not changed).
- Guidelines require:
 - Fair market value compensation
 - Disclosure of NIL activities to UNCG Athletics
 - NIL-specific educational modules
- Enforcement mechanism:
 - Educational conversations rather than sanctioning
- UNCG employees are permitted to be general consumers of goods and services from UNCG student-athletes, pending additional research



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Key Restrictions in UNC Greensboro's Interim NIL Guidelines:

- No NIL activities that conflict with UNC Greensboro's activities or commitments
- No use of UNC Greensboro facilities for Name Image Likeness activities
- No promotion of
 - Gambling/casinos
 - Tobacco
 - Alcohol
 - Firearms and associated accessories
 - Illegal and NCAA banned substances
 - Adult entertainment

Note: This is consistent with [UNC Greensboro Advertising Policy](#)



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Key Restrictions (cont'd):

- No agreements with UNC Greensboro sponsors' competitors (i.e., Coke)
- No sale of UNC Greensboro issued apparel
 - This has always been prohibited, in Guidelines as a reminder
- Limited use of UNC Greensboro marks
 - Proposing to allow UNC Greensboro apparel during NIL promotion (using licensing process)



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NIL Working Group Accomplishments to Date

- Campus Communications
- Contract Review:
 - University exclusivity for "pouring rights" (Pepsi) and bookstore
 - Athletics apparel agreements (team specific)
- Policy Review
 - Updated advertising policy
 - Updated licensing procedures
 - Considering revisions to social media guidelines, intellectual property, and facilities use policies and procedures



NIL Working Group Next Steps:

- Report answers to questions in response to Chancellor's Charge to Chancellor's Council
- Assess whether an Interim Student-Athlete Name, Image, and Likeness Policy is needed
- Revise Guidelines in January 2022 if/as needed to address evolving policy guidance and Fall 2021 activity



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