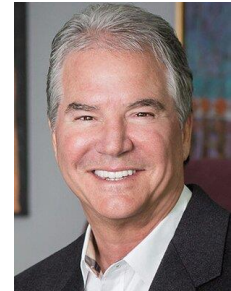


# Game-Changing Decisions Call For New Rules At The NCAA

By **Frank Darras** (May 6, 2024)

For years, there have been plenty of reasons why fans, athletes and stakeholders have had special disdain for the National Collegiate Athletics Association and its draconian policies. Books have been written on how the NCAA has unfairly limited college players' rights for nearly a century.

However, since the U.S. Supreme Court's unanimous 2021 ruling in *National Collegiate Athletics Association v. Alston* — against the NCAA — a new legal precedent was established to allow players to earn long-overdue compensation from their name, image and likeness, or NIL.



Frank Darras

This development shook the foundations of the NCAA to its core, and now those who were at odds with the NCAA simply ponder its purpose.

A smattering of recent events — from a newly formed college players union to coaches transferring at the drop of a hat — provide more reasons why the association should prepare for a dismal, final period. Let's explore why.

## **The Elephant From New Hampshire Has Trampled Into the Room**

The National Labor Relations Board made history in early February when one of its regional managers ruled that the Dartmouth College men's basketball team, the Big Green, could vote to form a union.

This decision is a milestone in college sports and marks the first labor union comprised of NCAA athletes, who will very likely seek to negotiate working conditions and commensurate pay grades.

The move could surely pave the way for more athletes to be designated as employees. It's a shock to the system — but not entirely unexpected.

Following *Alston*, National Labor Relations Board general counsel Jennifer Abruzzo issued a memorandum that provided updated guidance regarding her position that certain "Players at Academic Institutions" — which she noted are "sometimes referred to as student-athletes" — are employees under the National Labor Relations Act, and are thereby afforded all statutory protections.

Several advocacy groups, which include past and present college athletes, have also made the argument they are employees and even documented that status in their proposals for legislation when meeting with members of Congress.

It has since been reported that Dartmouth will appeal the ruling. This might turn into a yearslong legal proceeding that could ultimately reach the Supreme Court, which in turn would undoubtedly look to its *Alston* ruling for guidance.

The NCAA has always maintained that its college athletes are not employees. In 2024, the NLRB's decisions make the NCAA seem toothless — with no practical or legal means of

enforcement.

### **Coaches Contribute to the NCAA's Woes**

Another elephant in the room for the NCAA is the inequity between the rights of the coaching staff and those of the players. Players have myriad rules by which they must abide just to use the transfer portal — from the time of year, to the frequency, to the repercussions and potential losses just for entering.

Coaches, however, have carte blanche to do what suits them best, which is absurd since many are not household names. The vast majority of fans are not attending or tuning in to games for the coaches, but to say they saw the next Patrick Mahomes.

Some marquee football coaches like Jim Harbaugh have moved on to the National Football League. A sprinkling of inspiring leaders remain, but numbers don't lie and University of Colorado coach Deion Sanders' Buffaloes will always have a 4-8 record in the 2023 season.

This brings us to the recent move made by coach Chip Kelly, who in February 2024 vacated his head coach position at UCLA to become Ohio State's offensive coordinator. Despite the fact that this looks like a demotion, he was allowed to take a new job shortly after a bowl game, and right after the players who joined UCLA to play for him had made their decisions and enrolled.

Kelly's move was ill-timed, and maybe that is the problem. There was no repercussion for his decision, another problem left open by the NCAA, which seems unable or unwilling to fix in the near future.

### **A Coach With Potentially Winning Plans**

Many college coaches are currently part of the solution to correct the inequities. St. John's head coach Rick Pitino weighed in on X, formerly Twitter, one day after the Dartmouth ruling and offered his perspective on how college athletics, and particularly a basketball team, can lean into the inevitable change.

Pitino posted a proposal that major college basketball conferences should unite in instituting a salary cap of up to \$2 million. NIL was not directly referenced.

"For basketball, have the Power 5 [and] Big East conference commissioners get together and create a salary cap between [\$1.5 and \$2 million]," Pitino posted. "All contracts delivered to the league and school offices."

Pitino acknowledged the cap should vary for different leagues.

"All other conferences establish their own salary cap," he posted. "I would never exclude anyone from the NCAA tournament. Obviously, football is a different sport entirely and some of their talent makes more than NFL players. More solutions to follow in the coming days."

With several schools taking the NCAA to court on various matters, Pitino previously went on the record calling the association's enforcement arm "a joke."

Another solution Pitino offered was for the NCAA to be "taken out of the equation" in a revamped collegiate landscape.

"Do away with letters of intent, make athletes sign a [two-year] binding contract, no different than professional athletes -- which they are," Pitino posted. "With that, the [NIL] collective puts together their NIL contract based on the cap. Obviously, a lot has to go into this. I believe the NCAA should be taken out of the equation and the commissioners put into it as the NCAA loses more cases than the defense lawyers on 'Law & Order.'"

### **How a Federal Framework Can Right Many Current Wrongs**

Many whose earnings or profession depend on college sports have been vocal about the need for a federal framework.

Last summer, Southeastern Conference Commissioner Greg Sankey publicly stated that "only Congress can truly set a national standard for name, image and likeness compensation in college athletics."

Before and several times since then, advocacy groups have met with lawmakers on Capitol Hill to discuss their visions and ideas for how their rights should be guaranteed via a federal framework. This would override the patchwork of individual state and school policies, making it easier for players to make informed decisions about where they should play and which team will treat them best.

This issue has been repeatedly raised in Congress, not just because senators and representatives are fans, but because billions of dollars in revenues that fuel the national economy are at stake. Moreover, billions more stand to be generated once centralized legal guidance is passed. Several bipartisan bills have been introduced, and a select few have policies that fall into a middle that lean into NIL's influence in a practical way.

One of the most popular and pragmatic bills also stood out because of its show of no confidence in the NCAA. In 2023, Sens. Cory Booker, D-N.J., Richard Blumenthal, D-Conn., and Jerry Moran, R-Kan. announced a draft of legislation, titled the College Athletes Protection and Compensation Act.

Booker played tight end for the Stanford Cardinal and understands the magnitude of the issue, making him an ideal advocate for college players.

Perhaps most importantly, the College Athletes Protection and Compensation Act would establish national NIL standards and protect opportunities through a central oversight entity — the College Athletics Corporation — to set, administer, and enforce rules and standards.

This would also help limit the backlog in the transfer portal, and prevent smaller schools from essentially becoming a minor league within college athletics. The proposed bill is closed for comment, and will hopefully be reintroduced in 2024 with feedback incorporated to regain its momentum.

Just as there are rules and consequences for frequenting and misusing the transfer portal that will likely remain in some form, a federal framework could level the playing field by addressing when and how coaches take new positions, and what options the committed player then has.

### **As the NCAA Approaches Its Fourth Quarter**

The concept of unionizing and college players' compensation would have been instantly shot

down in days past. Clearly, the NCAA's days are numbered since it is no longer perceived as the be-all and end-all of rulemaking for college sports.

Further, since the need for a federal framework is actually inspiring bipartisanship in Congress, the association may need some sort of exit strategy to save face — particularly if another central oversight entity is created to enforce the NIL rules and standards.

The transitional state of college sports in early 2024 could lead athletes who are confused about the policies of their school, state or league to unwittingly break interim rules, and jeopardize their playing eligibility and financial futures.

Lawyers who are updated and champion these laws and governance can be a solid resource for players and guide them in launching a unique career in sports.

---

*Frank Darras is the founding partner of DarrasLaw.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*