

THE NCAA'S FINAL INNING:

How Governance Failure Endangers College Athletics

WRITTEN BY **Derek M. Cohen, Ph.D.**

MAY 2025

KEY POINTS

- Legal defeats in *O'Bannon and Alston* dismantled the NCAA's amateurism defense, leaving the association without credible regulatory power.
- The NCAA's failure to create a national NIL framework triggered a state-by-state scramble, eroding institutional parity and centralized governance.
- NIL compensation disparities and escalating donor involvement have entrenched a system favoring elite programs, marginalizing mid-tier and smaller institutions.
- Financial instability, inequitable NIL access, and the absence of clear safety policies have endangered the future of non-revenue sports and female athletes.
- The NCAA's abdication of leadership has rendered it incapable of safeguarding collegiate athletics, necessitating the development of a new national governance structure.

INTRODUCTION

College athletics have historically held a special position in American civic life. Fans are afforded an opportunity to cheer for their alma mater or a local institution, while athletes are given opportunities for achievement on the field and in the classroom. However, in the current era of "name, image, and likeness" (NIL) [an athlete's right to compensation for their own personal brand], this model is unraveling. Worse, the governing body trusted to steward the vitality of college athletics, the National Collegiate Athletic Association (NCAA), has proven sclerotic in the face of modern challenges.

Since 1906, the NCAA has labored to uphold fairness, amateurism, and integrity in collegiate sports. Yet as legal mandates, cultural shifts, and market forces have redefined the landscape, the NCAA has become a hollow institution that resists reform, evades responsibility, and cedes authority to state legislatures and market actors. The result is a decentralized, unsustainable system that threatens competitive balance, student welfare, and the long-term future of college athletics for all.

THE EROSION OF NCAA AUTHORITY AND LEGITIMACY

The NCAA once stood as the sole locus of governance for American college sports. While the NCAA's power was derived from voluntary membership rather than statutory authority, with a membership that boasts nearly all large and medium-sized universities it became the *de facto* controlling body of

continued

Following *Alston*, the NCAA faced an inflection point. Rather than promulgate a unified national policy on NIL, it instead issued a brief “interim policy” on June 30, 2021. This policy, which relinquished enforcement authority and deferred to state law, created a governance vacuum.

college athletics. From eligibility determinations to compensation rules, the Association comprehensively controlled collegiate athletics. However, in time, legal rulings and the body’s own inaction have left it a titular figurehead with no real control beyond legacy perception.

The first case to undermine the status quo was *O’Bannon v. NCAA* (2015). Ed O’Bannon, a power forward for the UCLA Bruins, brought the class-action antitrust lawsuit against the Association on behalf of all NCAA Division I athletes. At the time, it was not uncommon for college sports video games to use athletes’ likenesses (e.g., physical attributes, jersey number, and performance ratings) under a pseudonym or no name, as compensation beyond the athlete’s scholarship was prohibited. One such game—Electronic Arts’ “NCAA Basketball ‘09”—contained the 1995 national championship-winning Bruins, featuring O’Bannon’s likeness as the starting power forward (Ridpath & Sommer, 2022).

O’Bannon, no longer a collegiate or professional athlete at the time, sued the NCAA, as well as Electronic Arts and the Collegiate Licensing Company (the licensing company for most major universities), alleging that the video game allowed for profit to be made off his no-longer-exempted likeness. The United States District Court for the Northern District of California found that the NCAA’s rules were indeed an unreasonable restraint of trade—a finding later upheld (albeit in a watered-down final judgement) by

the 9th Circuit Court of Appeals. While not a death-blow to collegiate amateurism *per se*, *O’Bannon* was the first major crack to appear in the façade.

The more significant blow came in 2021 with *NCAA v. Alston* (2021), where the Supreme Court unanimously held that the NCAA could not limit education-related benefits to student-athletes without violating the Sherman Act. Shawne Alston, a running back for the University of West Virginia from 2009 to 2012, brought suit against the Association, challenging its restrictions on non-cash education-related benefits (such as graduate scholarships, laptops, and tutoring allowances) under the Sherman Antitrust Act of 1890. The suit alleged that NCAA universities, which “colluded” to suppress the competitive advantages on school may have over another, was *per se* an illegal restraint of trade. The case proceeded to the United States Supreme Court, which ruled in Alston’s favor, holding that the restriction was an antitrust violation under the Sherman Act. With yet another blow being dealt to the firewall between amateur and professional sports in the form of schools being able to provide as many academic benefits as they could sustain, direct athlete compensation was the major prohibition left standing (Ridpath & Sommer, 2022).

While the ruling did not explicitly address broader athlete compensation or NIL issues, it left no legal shelter to which the NCAA could retreat. As a result, the organization has since struggled to articulate a coherent and legally defensible role in the NIL era.

Following *Alston*, the NCAA faced an inflection point. Rather than promulgate a unified national policy on NIL, it instead issued a brief “interim policy” on June 30, 2021. This policy, which relinquished enforcement authority and deferred to state law, created a governance vacuum. Individual states began crafting divergent statutory regimes, resulting in a regulatory patchwork wherein institutions and athletes operate under materially different legal constraints depending on geography, rather than membership in a common athletic association. This retreat from

regulation has resulted in widespread confusion. Athletic departments are left to interpret state laws and institutional policies, often with the advice of legal counsel rather than direction from a central body.

Today, the NCAA occupies a largely symbolic role in the governance of collegiate athletics. It does not oversee the College Football Playoff. It cannot enforce uniform NIL standards. It remains embroiled in litigation over athlete employment status. Further, large conferences (such as the “Power Five”) act largely independently. Even in areas where the NCAA purports to maintain authority (such as rule enforcement and recruiting), its influence has markedly declined. Institutions are now more likely to weigh legal exposure than NCAA censure when determining their course of action.

CONFERENCE REALIGNMENT EXACERBATES COMPETITIVE IMBALANCE

Perhaps the most visible consequence of the NCAA’s atrophied authority is the ongoing wave of conference realignment. Once grounded in regional affiliations and historical rivalries, conference membership is now dictated almost exclusively by media rights valuations and projected NIL leverage. Institutions are migrating to conferences that offer greater television exposure at the expense of geographic coherence and traditional matchups.

This trend has been most evident in the consolidation of power by the Southeastern Conference (SEC) and the Big Ten, both of whose media contracts and institutional prestige make them the most attractive destinations in the reconstituted marketplace. These realignments have left legacy conferences gutted and historically significant programs stranded in diminished competitive ecosystems. This has introduced new burdens for athletes, including increased travel, academic disruption, and a departure from the student-centered model the NCAA once purported to defend.

Moreover, realignment has rendered the concept of national parity obsolete. The future of collegiate athletics appears bifurcated: on one side, a cohort of financially dominant programs increasingly indistinguishable from professional franchises; on the other, a relegated tier of institutions whose relevance in the national sports conversation is rapidly eroding.

HARM TO WOMEN’S AND OLYMPIC SPORTS

Women’s sports, specifically, are imperiled under this new regime. With institutional resources increasingly diverted toward high-profile men’s sports and commercialized athletic departments, the protections historically afforded to non-revenue and women’s programs have eroded. The NCAA’s retreat from central governance, coupled with its failure to provide coherent policy direction, threatens not only the financial stability of these programs, but also the physical safety and competitive equity of female athletes.

Prior to the emergence of NIL markets, the economic model of intercollegiate athletics depended upon the surpluses generated by men’s football and basketball to subsidize a wide array of other sports. Title IX compliance further guaranteed the proportional participation of women in varsity athletics. However, in the current deregulated environment, institutional incentives have shifted. Schools now increasingly prioritize revenue maximization in a competitive NIL landscape, often at the expense of sports that do not contribute materially to the athletic department’s bottom line ([Ridpath & Sommer, 2022](#)).

Moreover, athletic departments facing the specter of increased operational costs are beginning to reevaluate the viability of non-revenue sports. Program cuts, once rare and controversial, may become more common, particularly among institutions with modest endowments or without membership in financially dominant conferences ([Bopp, 2025](#); [Fang & Thorud, 2025](#); [Sutherland, 2025](#)).

Title IX was designed not only to ensure opportunity but to guarantee fairness and safety. The NCAA’s reluctance to impose clear standards effectively abdicated this responsibility, leaving athletes, institutions, and coaches without guidance or protection.

The NCAA’s failure to establish consistent standards governing transgender participation in women’s sports further jeopardizes female athletes’ welfare. For years, the Association deferred to the policies of individual sports’ national governing bodies, resulting in an inconsistent patchwork of eligibility rules. Only in February 2025 did the NCAA announce an updated policy restricting competition in women’s sports to female athletes, though it continues to permit transgender women to practice with women’s teams.

This prolonged policy vacuum had tangible consequences. Incidents such as the severe injury sustained by North Carolina high school volleyball player Payton McNabb, who suffered a concussion and lasting neurological damage after a direct collision with a transgender opponent, brought the issue of physical safety into public focus. While isolated, such cases underscore the material risks posed by competitive mismatches in sports where physical contact or projectile force is involved (Lee, 2025).

Title IX was designed not only to ensure opportunity but to guarantee fairness and safety. The NCAA’s reluctance to impose clear standards effectively abdicated this responsibility, leaving athletes, institutions, and coaches without guidance or protection. The political sensitivity of the issue cannot excuse regulatory inaction when the stakes involve both equitable competition and the physical integrity of student-athletes.

Beyond the immediate impacts on women’s sports, the broader consequences of athletic program instability extend to the levels of the Olympics. Many Olympic sports—such as wrestling, swimming, gymnastics, and track and field—rely heavily on collegiate athletic programs as development pipelines for elite international competition (Ridpath & Sommer, 2022). A contraction in non-revenue sports would therefore not only narrow opportunities for American youth but diminish the United States’ global athletic competitiveness.

The NCAA’s original mission emphasized the cultivation of athletic and academic excellence across a broad range of disciplines. Its failure to sustain that mission in the current environment reflects a profound organizational drift away from education-centered sport and toward market-driven entertainment.

CONCLUSION

The National Collegiate Athletic Association, once the principal steward of intercollegiate athletics, no longer functions as a legitimate governing entity. Through its refusal to adapt meaningfully to shifting legal, economic, and cultural conditions, the NCAA has forfeited its capacity to ensure fair competition, protect student-athlete welfare, and sustain the institutional diversity that once defined college sports.

In this deregulated environment, competitive parity has given way to an arms race. Institutions with greater access to capital, market exposure, and political leverage now dominate, while others, regardless of athletic tradition or educational mission, have fallen by the wayside. Conference realignments, driven by media valuations and NIL capacity, have only hastened this consolidation, dissolving longstanding rivalries and further displacing student-athletes in service of broadcast revenue.

Perhaps most troubling, the structural upheaval has exacted its greatest toll on the most vulnerable. Women's and Olympic-sport athletes, already under-resourced, now face both fiscal neglect and physical risk, as the NCAA has repeatedly failed to provide consistent and enforceable policies. The erosion of Title IX compliance, the inequitable distribution of NIL benefits, and the absence of clear transgender eligibility standards all reflect a governing body incapable of reconciling competing obligations.

What emerges from this indictment is not a call for reform within the NCAA, but a recognition that the Association, as presently constituted, lacks the authority and legitimacy to play a meaningful role in the future of collegiate athletics. If equity, competition, and educational integrity are to be preserved, governance must shift to a new structure: one capable of reconciling legal constraints with principled oversight, and of harmonizing institutional autonomy with a coherent national standard.

The NCAA is no longer failing. It has failed. ■

REFERENCES

- Bopp, C. (2025, March 28). *Athletes file civil rights complaint against UMSL after university cut several NCAA teams*. First Alert 4. <https://www.firstalert4.com/2025/03/28/athletes-file-civil-rights-complaint-against-umsl-after-announcing-cuts-ncaa-teams/>
- Fang, T., & Thorud, K. (2025, March 6). *San Francisco State University cutting 3 sports teams amid budget woes*. CBS News. <https://www.cbsnews.com/sanfrancisco/news/sfsu-athletics-cuts-budget-woes-baseball-mens-soccer-womens-indoor-track/>
- Lee, H. (2025, March 5). *Former NC high school athlete Payton McNabb to be special guest at Trump speech*. WCNC. <https://www.wcnc.com/article/news/politics/payton-mcnabb-special-guest-president-donald-trump-joint-congress-address/275-b485a5ef-2f3a-439b-a920-6a19bb21132b>
- National Collegiate Athletic Association v. Alston*, 594 U.S. ___ (2021). <https://supreme.justia.com/cases/federal/us/594/20-512/>
- O'Bannon v. NCAA*, No. 14-16601 (9th Cir. 2015). <https://law.justia.com/cases/federal/appellate-courts/ca9/14-16601/14-16601-2015-09-30.html>
- Ridpath, B., & Sommer, J. (2022). *Paid in full: From amateurism to NIL and the new marketplace for college athletes*. Texas Public Policy Foundation. <https://www.texaspolicy.com/wp-content/uploads/2022/09/New-Paid-in-Full.pdf>
- Sutherland, J. (2025, March 7). *Cal Poly cutting men's and women's swimming and diving programs effective immediately*. SwimSwam. <https://swimswam.com/cal-poly-cutting-mens-womens-swimming-diving-programs-effective-immediately/>

ABOUT THE AUTHOR



Derek M. Cohen, Ph.D. is the Foundation's Chief Research Officer and Right on Crime Senior Fellow. Previously the Vice President of Policy and Director of Right on Crime, the Foundation's criminal justice reform initiative, Cohen was instrumental in the passage of the First Step Act, federal legislation that borrowed from successful changes to prisons and sentencing that he had helped pass in conservative states. In addition to leading the Foundation's work on criminal justice, he is also the lead researcher of firearms policy.

Cohen currently serves as a commissioner on the State Commission on Judicial Conduct and as a member of the Judicial Advisory Council, both terms expiring in late 2029.

Prior to joining the Foundation, Cohen worked as a researcher with the University of Cincinnati's Institute of Crime Science and completed three advanced statistical trainings at the Inter-university Consortium for Political and Social Research (ICPSR) at the University of Michigan. He also taught classes in statistics, research methods, criminal procedure, courts, and corrections.

Cohen's academic work can be found in *Criminology and Public Policy*, *Victims and Offenders*, the *Oxford Handbook on Police and Policing*, and many other academic outlets. He has presented several papers to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the American Evaluation Association.

Cohen graduated with a BS in criminal justice from Bowling Green State University and earned his M.S. and Ph.D. in criminal justice from the University of Cincinnati.

Texas  *Public*
POLICY FOUNDATION

901 Congress Avenue | Austin, Texas 78701 | (512) 472-2700 | www.TexasPolicy.com