



OPENING KICKOFF



Chris Conniff
Partner

2020 HAS BEEN A YEAR filled with challenges and heartache, but also hope and inspiration. We saw the pandemic bring a halt to professional and amateur sports, including March Madness and the Tokyo Olympics, and then watched as sports returned to largely empty stadiums/arenas, including the first-ever NBA playoff “bubble” and a November Masters! Ropes & Gray is proud to have

worked alongside its clients in navigating these challenging issues.

Even in these difficult times, there have been some bright spots. I’m particularly proud of the work my colleagues Dennis Coleman and Chidi Oteh have done assisting the NFL in improving its minority hiring practices. I hope you enjoy the summary of their work included in this newsletter.

2020 also saw the continued growth of sports betting in the United States and the NCAA’s effort to address the movement toward compensating student athletes for their name, image and likeness. Along with my colleagues Erica Han and Evan Gourvitz, we recently hosted a Zoom panel on name, image and likeness issues, and we will be closely following developments in 2021.

We hope you will find this edition informative and useful. Please contact me or one of my colleagues if you have any questions or if we can be of service to you. Hoping everyone has a peaceful holiday and a brighter 2021!

Sincerely,
Chris

THIS EDITION’S CONTRIBUTORS

Partner Chris Conniff, senior counsel Dennis Coleman, and counsel Evan Gourvitz and Erica Han, along with associates Nick Macri, Chidi Oteh, Merissa Pico and Chris Walsh.

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What Have Our Sports Lawyers Been Up To?

- **ON OCTOBER 20, 2020**, the Sports Lawyers Association and Ropes & Gray co-hosted a webinar on “The Future of Sports Betting – The Expansion of Sports Wagering, and Federal and State Efforts to Regulate the Industry.” (Page 2)
- **ON NOVEMBER 11, 2020** and **DECEMBER 2, 2020**, Ropes & Gray hosted the “Name/Image/Likeness Primer for Colleges and Universities: A Two-Part Series.” (Page 2)

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Sports Betting Update

by Chris Walsh

SINCE THE U.S. SUPREME COURT handed down its landmark May 2018 decision in *Murphy v. NCAA*, a number of states have quickly moved to legalize sports betting. Heading into the November 2020 elections, 22 states and the District of Columbia had already approved measures to legalize sports betting in some form. And on Election Day 2020, Louisiana, Maryland and South Dakota entered the picture, with voters in those states approving ballot measures to legalize some form of sports betting.

The Louisiana ballot measure was a local option referendum such that voters in each of the state's parishes would determine whether to authorize sports betting within the parish. The results were overwhelming, as voters in 56 out of 64 parishes approved the measure to permit "sports wagering activities and operations." The Louisiana legislature will now have to work through many details to implement sports betting when it convenes in 2021, including complex issues such as how betting will be taxed and revenue used, where betting will be allowed, and oversight protections. Maryland voters overwhelmingly supported an initiative to expand commercial gaming "to authorize sports and events betting for the primary purpose of raising revenue for education." South Dakota voters approved the expansion of gambling in the city of Deadwood to include sports betting.

While these three states have now joined the movement to legalize sports betting via ballot measures, some recent initiatives in other states have failed. For example, the Massachusetts senate rejected an amendment to the fiscal 2021 budget proposal that would have legalized sports betting. Supporters of the legislation will certainly reintroduce legislation in next year's budget.



Ropes & Gray Weighs In on the Shifting Landscape of Name, Image and Likeness in Collegiate Sports

by Chidi Oteh

OVER THE PAST YEAR, there has been a shift in the landscape of name, image and likeness ("NIL," sometimes known as the "right of publicity") in collegiate sports. In a recent two-part primer for colleges and universities held on November 9, 2020 and December 2, 2020, Ropes & Gray attorneys analyzed this shifting landscape to help provide a smooth transition once the NCAA approves the NIL legislation.

Each of the NIL primers was hosted by Chris Conniff and included insights from Erica Han and Evan Gourvitz. Over the two sessions, the panelists provided a comprehensive history of the right of publicity as it relates to athletes and entertainers and their association with sports franchises and brand names.

During the second session, the panel addressed some of the unique compliance issues that will be raised for colleges and universities once student-athletes can begin profiting from their NIL, including the challenges of ensuring that student athletes are not provided improper benefits to play for a school.



Ropes & Gray Hosts Panel on Future of Sports Betting

by Nick Macri

ON OCTOBER 20, 2020, the Sports Lawyers Association and Ropes & Gray co-hosted a webinar titled "The Future of Sports Betting – The Expansion of Sports Wagering, and Federal and State Efforts to Regulate the Industry." The event was moderated by Chris Conniff and included panelists Alex Roth, Associate Counsel for League Governance & Policy at the National Basketball Association; Jennifer Solar, Legal and Business Affairs Counsel for FanDuel; and Sunjay Mathews, Senior Vice President and Head of Legal – North America for DAZN.

The panelists touched on a variety of legal issues facing the industry, including game and wage integrity concerns, compliance programs for sports leagues and betting operators, and the balance that leagues and

media rights holders must strike between promoting sports betting and not alienating casual fans or targeting children. But the issue the panelists kept returning to was the inconsistency of rules and regulations across the 22 states that have legalized sports betting.

The panel explained that this inconsistency is reflected in the various ways that states approve new types of wagers, the individualized agreements betting operators and media rights holders must enter into to comply with each state's rules, and even the nature of the state regulatory bodies that govern sports betting (in some states, it is the casino gaming authority, while in others it is the state lottery).

“...sports betting in the U.S. is a brand new heavily regulated industry that is being set up from zero..”

Roth explained that much of this confusing regulatory landscape is due to the fact that, unlike in the United Kingdom, which has had legal sports betting for years, **“sports betting in the U.S. is a brand new heavily regulated industry that is being set up from zero,”** having only been created in 2018 after the U.S. Supreme Court struck down the prohibition of state-sponsored sports betting in *Murphy v. NCAA*.

All three panelists said that regulatory consistency across states would greatly help the industry and could be a catalyst for future growth. While federal legislation is not currently in the offing, the panel was hopeful that as more states legalize sports betting and regulators become more familiar with the industry, it is possible that states will adopt more consistent approaches to new sports betting issues.



NFL Updates Diversity Hiring Policies

By Chris Conniff, Dennis Coleman, Chidi Oteh and Merissa Pico

WHILE 2020 HAS GENERATED MORE than its share of bad news, there have been some positive developments in the area of diversity hiring in the NFL. In May, NFL owners adopted a series of resolutions that (i) enhanced the existing “Rooney Rule,” (ii) improved the promotion and mobility of minority coaches, and (iii) created developmental and networking opportunities for these coaches.¹ The NFL owners punctuated these changes to the Rooney Rule in October 2020 by adopting 2020 Resolution JC-2A (the “Resolution”), which rewards teams for developing minority talent.²

A DISAPPOINTING PAST

Many industries in the United States have struggled with establishing and maintaining equality in their hiring practices, particularly among senior management. The inequity is particularly striking in professional sports where persons of color have made up the majority of the player population and yet management positions have remained largely white. The NFL is not immune to this problem and has struggled for decades with the issue of inequality in its coaching and executive ranks. According to The Institute for Diversity and Ethics in Sport's 2019 Racial and Gender Report Card on the NFL, as of 2019, approximately 70% of the players are persons of color. Yet, entering this year's season, there were only four minority head coaches.

THE ROONEY RULE

The NFL has been trying to address the absence of minority head coaches for more than two decades. In 2002, after the firing of two of the three NFL minority head coaches at the time, Pittsburgh Steelers Owner Dan Rooney and the Fritz Pollard Alliance, a civil rights advocacy group focused on bringing racial equality to the NFL, led the effort to generate

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the hiring of more minority head coaches. This undertaking resulted in what is commonly referred to as the “Rooney Rule.” When the Rooney Rule was first adopted in 2003, it required that organizations with an open head coach position interview at least one diverse candidate. It was subsequently amended to include team front-office positions and female candidates for certain positions.

While the Rooney Rule has not generated the growth in minority head coaches and executives that its architects had hoped for, it has led to some increased hiring. From the time that Fritz Pollard was hired as the first Black coach of the Akron Pros in the 1920s to the implementation of the Rooney Rule, there were only seven minority head coaches in the NFL. Since the enactment of the Rooney Rule, there have been close to 20 persons of color to serve in head coaching positions and the league has had eight head coaches of color (25% representation across the NFL) in three of the past 10 seasons. However, there is much that still needs to be done. There were eight open head coach positions following the 2018 season, and only one person of color was hired. Similarly, the following year saw five open

head coach vacancies with one minority candidate hired. A similar trend exists at the general manager level and executive level, as this year Jason Wright became the first Black president of an NFL organization.

THE NFL'S RECENT STEPS TOWARD RACIAL EQUALITY

In 2020, the NFL took significant additional steps to improve minority hiring in its top ranks. Pursuant to the diversity initiatives developed last May, the Rooney Rule now requires that organizations interview (i) at least two external minority candidates for head coach vacancies, (ii) at least one minority candidate for any of the three coordinator vacancies and (iii) at least one external minority candidate for the senior football operations or general manager position. The NFL also introduced modifications to its Anti-Tampering Policy to prohibit organizations from denying candidates (minority or otherwise) from interviewing for bona fide coaching or high-level personnel positions, thereby removing certain contractual barriers and increasing the mobility opportunities for minority candidates.





The Resolution, which complements the Rooney Rule, proposes the following benefits to an organization that develops and then loses minority talent:

- An organization that develops and loses a minority assistant coach or executive to a head coach or general manager position at a different organization will receive a third-round compensatory draft pick for two consecutive years.
- An organization that develops and loses two minority assistant coaches or executives to head coach and general manager positions at other organizations will receive third-round compensatory draft picks for three consecutive years.

In order for the former organization to be eligible for compensation, the departing candidate must have been developed by the former organization, in that such candidate must have remained in the employ of the former organization, without interruption, for at least two years and there must be no break in employment between the two organizations.

Before it goes into effect, the Resolution is subject to ratification by the NFL Players Association.

CONCLUSION

While the NFL's existing measures and the Rooney Rule have its critics, it is hard to deny that these methods have had a positive effect on hiring. The benefits of the Rooney Rule cannot be overstated; however, it is clear from the past two hiring cycles that, without purposeful and concerted efforts by the NFL and its partners, namely the FPA, the culturally systemic hiring issues that plague corporate culture can find their way into NFL hiring results.³

1. *NFL Owners Put Aside Draft-Position Proposal As League Bolsters Other Diversity Measures*, Washington Post (Nov. 20, 2020, 11:11 AM), [washingtonpost.com/sports/2020/05/19/nfl-owners-table-proposal-improve-draft-position-hiring-minority-coach-gm/](https://www.washingtonpost.com/sports/2020/05/19/nfl-owners-table-proposal-improve-draft-position-hiring-minority-coach-gm/).
2. *NFL Owners Pass Resolution Rewarding Teams for Developing Minority Coaches, Execs*, NFL (Nov. 10, 2020, 4:16 PM), [nfl.com/news/nfl-owners-pass-resolution-rewarding-teams-for-developing-minority-coaches-execs](https://www.nfl.com/news/nfl-owners-pass-resolution-rewarding-teams-for-developing-minority-coaches-execs).
3. Ropes and Gray has been proud to support and contribute to the NFL and the FPA's efforts in implementing changes for a more equitable and diverse environment.



NCAA Slates "NIL" Proposal for Vote

By *Chris Conniff, Evan Gourvitz, Chidi Oteb and Merissa Pico*

AS PART OF ITS CONTINUING EFFORT to address student-athlete compensation issues, the NCAA Division I Council recently approved and introduced into its 2020-21 legislative cycle a proposal (the "Proposal") that would allow student-athletes, under certain circumstances, to profit off of the exploitation of their names, images and likenesses ("NIL" and sometimes known as the "right of publicity").¹ The Proposal is subject to review and comment by the Division I Council until January 2021, when it will be voted on at the NCAA Convention. If approved, the Proposal will go into effect on August 1, 2021, the start of the next academic year.²

THE PROPOSAL³

The Proposal is a significant but not unexpected step in the NCAA's plan to modernize its rules concerning compensation of student-athletes. In [April](#) of this year, the NCAA Board of Governors announced its support for a similar proposal and called for each NCAA division to provide their input by the end of August 2020, with final legislation to be ready by this month.

In its October 14 announcement, the NCAA suggested the following types of activities would be permitted for student-athletes:

- Use of NIL to promote their own or third-party products and services.
- Use of NIL to promote and operate their own camps, clinics and private lessons.
- Accepting compensation for autographs and personal appearances.
- Through crowdfunding, soliciting funds for non-profits, charities, catastrophic events, family hardships or educational experiences not covered by tuition.

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The Proposal, however, is not without limitations. First, student-athletes would not be allowed to use any school marks or branding for promotions, advertisements or endorsements. Second, student-athletes would be prohibited from participating in activities that conflict with other NCAA legislation, such as sports wagering or the promotion of banned substances. In addition, schools would have the right to prohibit any activities that conflict with the school's values or any of its sponsorship arrangements, provided that the school discloses such activities at the time the student is admitted or enters into a financial aid agreement.

Under the Proposal, schools also would be prohibited from taking certain actions, including participating in any development, operation or promotion of a student-athlete's business activities, unless those activities were part of the student-athlete's coursework or academic program. Additionally, schools would not be permitted to arrange or secure any endorsement opportunities for their student-athletes. Finally, the Proposal would require certain disclosure obligations: both prospective and current student-athletes would be required to disclose any NIL activities, the compensation arrangements involved and the details of any relevant relationships developed through the process.

To assist with these disclosures, the NCAA has proposed the use of a "third-party administrator" to act as a clearinghouse, to monitor and report any NIL activities, and to help inform interested stakeholders, including student-athletes, boosters or professional service providers, about the guidelines. Such an administrator also could help with compliance concerns, particularly for mid-major programs without the internal compliance teams of larger programs.

CONSIDERATIONS

While the Proposal is a historic move for the NCAA, given its prior staunch position on amateurism, it was an expected response to the national push to "level the playing field" in the lucrative business of college sports. Five states, including California and Florida, already have passed legislation allowing student-athletes to financially

benefit from their rights of publicity, while more than 20 other states are in the process of considering comparable acts. Congress is also considering federal legislation; the most recent proposal, the Student Athlete Level Playing Field Act, was introduced last month by Congressman and former NFL and Ohio State University wide receiver Anthony Gonzalez (R-OH) and Congressman and former Clemson football walk-on Emanuel Cleaver (D-MO). In the U.S. Senate, a bill dubbed the "college athlete's bill of rights" is expected to be introduced by Cory Booker (D-NJ) and Richard Blumenthal (D-CT) in the coming months. This bill will seek to address not only NIL and student-athlete compensation matters, but also related topics such as safety and wellness standards, long-term health care, and eligibility requirements. If Congress takes such action, the NCAA will find itself in the unenviable position of following rules crafted and imposed by politicians rather than their own members and stakeholders.

Despite the continued activity on NIL issues, we expect the NCAA to hold fast to its position on amateurism for most other issues. The day after it announced the Proposal, for example, the NCAA petitioned the U.S. Supreme Court to review the Ninth Circuit's decision in *Alston v. NCAA*, in which the circuit court decided against the NCAA, holding that it may limit grant-in-aid scholarships to the cost of attendance, but may not limit non-cash compensation and benefits that are related to education, such as computers, science equipment and musical instruments.^{4, 5}

1. *DI Council Introduces Name, Image and Likeness Concepts into Legislative Cycle*, NCAA (Oct. 14, 2020, 3:05 p.m.), <http://www.ncaa.org/about/resources/media-center/news/di-council-introduces-name-image-and-likeness-concepts-legislative-cycle>.
2. Rick Maese, *NCAA Proposal Opens Door for Athletes to Make Money, With Plenty of Caveats*, The Washington Post (Oct. 14, 2020), <https://www.washingtonpost.com/sports/2020/10/14/ncaa-proposal-athletes-endorsement-deals/>.
3. *DI Council Introduces Name, Image and Likeness Concepts into Legislative Cycle*, NCAA (Oct. 14, 2020, 3:05 p.m.), <http://www.ncaa.org/about/resources/media-center/news/di-council-introduces-name-image-and-likeness-concepts-legislative-cycle>.
4. *NCAA Statement Regarding Supreme Court Petition for Alston Case* (Oct. 15, 2020, 10:32 a.m.), <http://www.ncaa.org/about/resources/media-center/news/ncaa-statement-regarding-supreme-court-petition-alston-case>.
5. *Alston v. National Collegiate Athletic Association*, No. 19-15566 (9th Cir. 2020).



University of Colorado Becomes First Major College Athletic Program to Allow Sportsbook Sponsorship

By Chris Conniff and Nick Macri

ON SEPTEMBER 8, 2020, the University of Colorado announced that its athletic program has entered into a corporate sponsorship agreement with PointsBet, an online sportsbook. This unprecedented arrangement may be a harbinger of things to come and likely will present some significant challenges for the NCAA as it continues to address the rapid growth of sports betting in the United States.

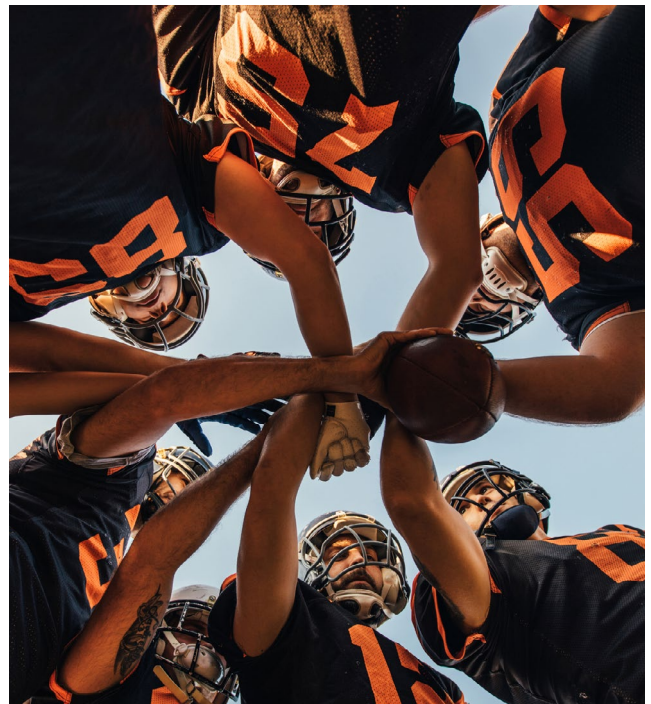
Under Colorado's five-year agreement with PointsBet, the sportsbook will display advertisements at the university's football stadium and basketball arena, make media buys during broadcasts of Colorado sporting events, and provide financial support for an athletic department program designed to prepare student-athletes for post-playing careers. The financial terms of the deal were not disclosed, but the university said it will provide "a financial boost for [Colorado] Athletics during a time when athletic department budgets nationwide are stressed by the COVID-19 pandemic."

In partnering with PointsBet, Colorado is following the lead of a growing number of professional sports teams that recently entered into sponsorship agreements with sports betting entities. In the past few months, PointsBet has signed partnership deals with MLB's Detroit Tigers, the NBA's Denver Nuggets and the NHL's Colorado Avalanche. The Denver Broncos have recently announced partnerships with three sportsbooks, including BetMGM, which will launch the first in-stadium betting lounge in the NFL. The Chicago Cubs have announced plans to launch a sportsbook with DraftKings just outside Wrigley Field. The sportsbook William Hill has opened a betting lounge inside the box office of Capital One Arena in Washington, D.C., home of the NBA's Wizards and the NHL's Capitals. The rapid expansion of sports betting—which is currently legal in 18 states—and sportsbook partnerships with professional

sports teams follows the United States Supreme Court's 2018 decision in *Murphy v. NCAA*, which struck down the federal prohibition on state-sponsored sports betting.

What makes Colorado's partnership with PointsBet unique is that it represents the first time a major college athletic program has collaborated with a sportsbook. (William Hill has advertised during UNLV and University of Nevada sporting events since 2017.) In fact, Colorado's arrangement could represent a potential turning point in the relationship between college athletics and legalized sports betting. To date, the NCAA has been steadfast in its opposition to the expansion of legalized sports betting. However, there are signs it may be softening its position. For instance, in announcing the PointsBet deal, Colorado Athletic Director Rick George said that the school consulted with the NCAA and the Pac-12 Conference before signing the agreement, and presumably neither stood in the way of the plan.

Sponsorship agreements with sportsbooks, while potentially lucrative, will present significant new challenges for college



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athletic programs. Specifically, these programs will need to adopt additional protocols to ensure student-athlete and staff compliance with NCAA sports betting rules.

Under NCAA rules, student-athletes and athletic department employees are prohibited from wagering on any sports (college or professional) or sharing information with individuals involved in or associated with sports wagering. Student-athletes and athletic department employees will need to be frequently reminded of these prohibitions. This is especially true in Colorado's case, since PointsBet plans to launch a sports betting app for use in the state. With easy access to the sports betting app and PointsBet's presence in the university's athletic department, it is not hard to imagine student-athletes or athletic department employees being tempted to use the sportsbook's app or thinking it is acceptable to wager on professional or college sports. Not only is such betting prohibited under NCAA rules, it can also run afoul of state betting regulations that ban sports "insiders"—such as players, coaches and athletic trainers—from wagering on sports in which they are involved (such as college football). The University of Colorado—and all other colleges in states where app-based betting is authorized—should, at a minimum, prohibit student-athletes and athletic department employees from downloading or utilizing such sports betting apps.

Another concern presented by Colorado's agreement with PointsBet is the risk that PointsBet could gain access to insider information regarding Colorado's teams or student-athletes. Through its close relationship with the athletic department, it is possible that PointsBet could obtain

insider information—e.g., information regarding athlete performance, injuries, or possible suspensions or eligibility issues—that it would then use to set lines and odds on Colorado sporting events, including football and basketball games. If the sportsbook had access to such insider information, the integrity of wagers on Colorado sporting events placed through PointsBet could be compromised. Colorado's athletic department should enact policies to minimize this risk by prohibiting athletic department employees from sharing such insider information with PointsBet and limiting PointsBet's access to internal athletic department information systems.

In sum, the University of Colorado's partnership with PointsBet has the potential to usher in a new relationship between major college sports and sports betting. But this relationship is not without risk. In order to be successful, college athletic departments in Colorado's position must establish clear protocols to ensure compliance with NCAA rules that prohibit student-athletes and athletic department employees from using the sportsbook's app or providing insider information to others who may use it to place bets. Athletic departments must also enact policies to prevent their sportsbook partners from obtaining athletic department information that could be used when establishing betting lines on university athletic events.

1. <https://cubuffs.com/news/2020/9/8/general-cu-pointsbet-announce-corporate-partnership.aspx>.

2. <http://www.ncaa.org/enforcement/sports-wagering>.

3. Colo. Div. of Gaming Sports Betting Regs., 1 CCR 207-2, R. 6.11(1).