



THE DRAKE GROUP EDUCATION FUND

Realizing The Promise
Of College Athletics

FOLLOW-UP NOTES

WEBINAR #9

“College Athletes’ Freedom of Speech and Expression – or the Lack Thereof”

**The Drake Group Education Fund Webinar Series – Critical Issues in College
Athletics
Hosted by 2aDays**

Thanks for registering for our April 21, 2022 webinar. A regular feature of our webinar series is “Follow-Up Notes” which provides a link to the recorded webinar, answers to questions from the audience which panelists did not have the time to address or those emailed to us from telephone participants (prepared by Drake Group experts), and information on our next webinar.

1. WEBINAR #10 RECORDING

In case you missed any part of *College Athletes’ Freedom of Speech and Expression: or the Lack Thereof* webinar:

[ACCESS THE RECORDED APRIL 21 WEBINAR HERE](#)

2. UNADDRESSED QUESTIONS FROM THE AUDIENCE

First, here is a reprint of the recommended readings that were posted in the chat room at the beginning of the webinar:

- Sanford G. Thatcher, Donna Lopiano, et al., “[College Athlete Codes of Conduct and Issues Relating to Free Speech and Expression](#)” (2018, updated 2022)
- Josephine (Jo) R. Potuto, “[College Coaches, College Athletes, and the First Amendment](#)” (*Mississippi Sports Law Review*, 2018)

- Frank D. LoMonte, "[Fouling the First Amendment: Why Colleges Can't, and Shouldn't, Control Student Athletes' Speech on Social Media](#)" (*Journal of Business & Technology Law*, 2014)
- Sam Ehrlich and Neal Ternes, "[Putting the First Amendment in Play: Name, Image, and Likeness Policies and Athlete Freedom of Speech](#)"

Following are answers offered to questions from the audience we did not have time to address.

UNANSWERED Q&As

Q: What is the website address for "TwoaDays" that was mentioned?

A: <https://www.2adays.com/> 2aDays is the leading company in college coach ratings. Our full database of coach ratings and reviews provide first-hand experiences from current and former student-athletes. Founded in 2014, 2aDays stays ahead of the game by helping athletes and their families with Understanding College Athletics™ by offering virtual workshops, coach ratings, recruiting, and wellness information from head coaches, Olympians, pro athletes, and current and former athletes. By using our online tools, you will be empowered through education to start your recruiting process.

For those of you unfamiliar with The Drake Group or the extensive resources available on its website, the website [can be accessed here](#). The Drake Group is a 501 (c) (4) 22-year-old non-profit organization laser focused on getting Congress to pressure the NCAA and other national intercollegiate athletic governance organizations to force major reforms in intercollegiate athletics or adopt legislation to mandate the implementation of such reforms. We believe that it is possible to keep all of the good about intercollegiate athletics without doing harm to college athletes. Members are former and current faculty members and athletics administrators with extensive experience and deep knowledge about the NCAA and intercollegiate athletics. The Drake Group believes the NCAA has developed into a trade association for college coaches and athletic directors (many of whom are being more than generously compensated) and member higher education institutions that are more interested in using athletics to increase athletics and institutional revenues and undergraduate enrollment than ensuring the education, physical and mental health and wellbeing of college athletes. The Drake Group focus is on creating external media and legislative pressures necessary to changing large athletics governance systems. Our mechanisms center on the sharing of fact-based data and compelling stories about the impact of exploitive practices on college athletes and persistent advocacy for legislative solutions.

Q: What about sport specificity, the idea that sport is a special area of social activity requiring different rules, which I have not heard discussed.

A: The Drake position paper on "[College Athlete Codes of Conduct and Issues Related to Free Speech and Expression](#)" devotes a section beginning on page 3 to this matter, opening as follows: "Sports are inherently rule-governed activities. Generally, there are five types of rules that apply to the behavior of college athletes in athletic programs: (1) rules of the game, (2) sportsmanship rules, (3) institutional student conduct codes applicable to all students, (4) athletic department

codes of conduct or behavioral policies applicable to all athletes in all sports, and (5) team rules set by head coaches of sports teams applicable to athletes participating on these teams. "

Q: What are some NIL laws that you think will be added in the future, and what are some of the NIL policies schools are currently working on?

A: I think a lot of the focus in NIL regulation moving forward is going to be on recruiting rather than on regulating types of content. There's a lot of noise right now about collectives and other sponsors flouting NCAA guidelines (as limited in enforceability as they are) and state laws (in some areas) in using NIL deals as an inducement mechanism to convince an athlete to join a certain school. The NCAA -- or more likely conferences once the new NCAA constitution giving more power to the conferences to regulate -- are likely going to try to clamp down on this. For now, however, you're actually seeing movement in the opposite direction; Tennessee just revised its NIL statute to allow collectives to work directly with schools and to allow schools to directly help athletes find NIL deals in order to give their schools a leg up in recruiting. Competition will continue to push NIL regulation in that more laissez-faire direction for that reason.

Q: How do international student-athletes fall into NIL future, potential employee status, etc.?

A: Those are two separate questions for very good reasons, but they're well asked together because they play into each other quite considerably. International students are currently prohibited from entering into most NIL deals; as F-1 (international student) visa holders, they are prohibited from performing work outside of school (with some very narrow exceptions). There have been calls to revise the governing statute and USCIS regulations to allow for college athlete NILs as an exception, but there's been no real movement to that regard as of this point. As far as employment status goes, international athletes would be treated the same as American nationals, that is, if college athletes are found to be statutory employees, international college athletes will as well. This will actually change things considerably from the immigration side, as my understanding is that international athletes would then have to be admitted into the US on a work visa like P-1 visas (which are specifically for professional athletes) instead of F-1 student visas. P-1 visa holders are allowed to work for multiple employers so that would solve the NIL issue, but by statute college athletes are not currently eligible for P-1 visas so there would have to be some movement regardless. Either way, there's much to flesh out!

3. OUR NEXT ISSUES: WEBINAR #11-14 - “The Allen Sack National Symposium – Advancing Integrity in College Sport” – National Press Club – Washington, D.C. - 4 successive webinars on one day focusing on collegiate athletics bills being considered by the U.S. Congress

SAVE THE DATE! Thursday, May 19, 2022

Webinar #11 9:15-10:45am ET “Giving College Athletes the Right to Unionize”

Is it possible for Congress to give college athletes the right to unionize under the National Labor Relations Act in order to create a better balance of power between athletes and their institutions? How important is it to retain the athlete’s “student” relationship to the university? If athletes were

allowed to “unionize,” should athletes aggregate by conference or nationally? Would such athlete-organizing power allow athletes to bargain for guaranteed five-year scholarships, long term disability protection, reduction of hours spent on athletics obligations, and addressing abusive practices of coaches? S. 1929, the *College Athlete Right to Organize Act*, sponsored by Senator Christopher Murphy (CT) will be the focus of the discussion.

Webinar #12 11:00am-12:30pm “College Athlete Bill of Rights”

How can Congress address the economic and educational exploitation of college athletes: lack of adequate long- and short-term insurance and medical expense coverage for athletics injuries, low graduation rates for minority basketball and football players, lack of professional codes of conduct that protect athletes from mental and physical abuse? S. 5062 (116th), the *College Athletes Bill of Rights*, sponsored by Senators Booker (NJ) and Blumenthal (CT), will be the focus of the discussion.

Webinar #13 1:10-1:45pm. “National Awards and Vision for the Future”

Drake Co-Founder Allen Sack presents the keynote “*The Vision and Promise of College Athletics.*” The Drake Group National Public Service Award honors an elected public official(s) responsible for legislation that significantly improves the conduct of intercollegiate athletic programs, the rights of college athletes, or otherwise protects the education, health, and safety of college athletes. The Drake Group Presidential Award honors an extraordinary contribution by an individual who, or organization that, has helped advance the integrity of intercollegiate athletics through an articulate and well-reasoned response to a current event or important issue. The individual, through his or her voice, writings, or other public action or, the organization through a specific action, has demonstrated informed thought leadership in intercollegiate athletics toward the end of advancing the integrity of athletics, emphasizing the primacy of educational objectives, and/or insisting on the responsible fiscal and ethical conduct of intercollegiate athletics as an extracurricular enterprise. The Student Journalism Prize for Investigative Reporting recognizes the print, video or multimedia work of a graduate of undergraduate college student journalist for exceptional substantive investigative report on intercollegiate athletics.

Webinar #14 2:00-3:30pm “College Athlete Compensation – NIL Rights”

Given the current recruiting chaos created by differing state laws, lack of NCAA enforcement of inducement and extra benefit controls, and the need for common guardrails, what does Congress propose as its role? What is the current status of athletes being able to monetize their names, images and likenesses (NILs) apart from their participation in college athletic programs? Have athletic directors’ fears materialized? Does the Supreme Court *Alston* decision portend opening the door to pay for play? What Title IX and recruiting inducement considerations are related to NIL developments? H.R. 850, the *College Athlete Freedom Act* and H.R. 2841 sponsored by Representative Lori Trahan (MA) and H.R. 2841, the *Student Athlete Level Playing Field Act* sponsored by Representative Anthony Gonzalez (OH) will be the focus of the discussion.

4. LINKS TO RECORDINGS OF PREVIOUS WEBINARS

[CLICK HERE](#) to enter **The Drake Group Education Fund Video Library** for recordings of all previous webinars.

WEBINAR #1 -- "Wild West or Brave New World – National Experts Share Their Thoughts on College Athlete Compensation"

WEBINAR #2 -- "Millionaires or Minimum Wage? Current and Former College Athletes Speak on Athletes' Compensation"

WEBINAR #3 -- "Experts Speak Out on College Athletes' Mental Health"

WEBINAR #4 - "The Transgender Athlete in Girls' and Women's Sports: The Collision of Science, Law, and Social Justice Explained"

WEBINAR #5 -- "Title IX and the NIL Marketplace: Subterfuge or Opportunity to Remedy Historical Inequities?"

WEBINAR #6 -- "Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure"

WEBINAR #7 -- "A Continuing Disgrace: Addressing Intercollegiate Athletics Race Issues"

WEBINAR #8 -- "The Disintegration of the NCAA: The Price of Rejecting National Governance"

WEBINAR #9 -- "Lack of Accountability for Athlete Abuse in College Athletics"

5. WAYS YOU CAN HELP

If you believe **The Drake Group Education Fund** is doing good work, please also consider making a tax-deductible donation to support our webinars and educational research and programs work. You can donate and learn what we do [HERE](#).

Interested in becoming a change agent by working with **The Drake Group**, a sister organization of The Drake Group Education Fund? We need volunteers to contact their senators and representatives to advance collegiate athletics reform legislation. Learn about legislation and [VOLUNTEER/JOIN HERE](#).

6. THANKS TO OUR APRIL 21 PANELISTS!



MODERATOR, SANDY THATCHER, former Director of the Penn State University Press, a member of The Drake Group board of directors since 2017 and currently chair of its Awards Committee. Now retired, he worked for fifty years in the academic publishing business, primarily at two university presses (Princeton and Penn State) and has expertise in copyright, libel, academic freedom, and contract law.



SAM C. EHRLICH, J.D., Ph.D. is an assistant professor of legal studies with the Department of Management at Boise State University. Sam’s research focuses on the legal governance of sports by examining athlete employment rights, sport-specific antitrust exemptions, and tort and constitutional liability for overseeing athletic organizations.



FRANK LoMONTE, J.D., Director of the Brechner Center for Freedom of Information, College of Journalism and Communications, University of Florida; formerly executive director of the Student Press Law Center (SPLC) in Washington, D.C., where during his tenure, launched the “New Voices” initiative that resulted in enactment of fortified legal protections for student journalists in 13 states, and the “Active Voice” fellowship program for college undergraduates to design “press freedom service projects” amplifying the voices of young women, who experience the brunt of school censorship.



KAIYA McCULLOUGH is an activist and former professional soccer player. While she was member of UCLA’s elite women’s soccer program, she was one of the first collegiate athletes to kneel in protest of the National Anthem, inspired by Colin Kaepernick. She currently is the chairwoman for Anti-Racist Soccer Club, a coalition fighting against racism in the American soccer landscape, and a project manager at Common Goal for their Anti-Racist Project. She is passionate about community building, racial justice, and social equity, and is fiercely passionate about many social justice causes, especially at the intersections with racial justice, and will be attending Harvard Law School this fall.



JOSEPHINE R. POTUTO, J.D., Richard H. Larson Professor of Constitutional Law, University of Nebraska College of Law and the NCAA Faculty Athletics Representative (FAR) for the University of Nebraska-Lincoln. She is the immediate past president of the 1A Faculty Athletics Representatives, currently serves on the 1A FAR executive committee, and is a member of the governance groups of the Big Ten Conference. Professor Potuto is the sole FAR serving on the NCAA Interpretations Committee and has served three terms on the NCAA Division I Committee on Infractions (chair 2006 to 2008).