

## PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

### Episode 17: Voting 2020: Sports and the Impact of Elections | Nov. 4, 2020

*The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.*

I'm sports attorney Luke Fedlam. And welcome to the Protecting Your Possibilities podcast. Each conversation, we focus on sharing information, and having conversations around how athletes can best educate and protect themselves, or their life outside of their sports.

Thank you for tuning in to Protecting Your Possibilities podcast. I'm your host, Luke Fedlam. And I'm excited that you have joined us today to listen to this topic, I wanted to go into a topic that was timely. Many of you may know that our podcast releases, we launch it every Wednesday morning. But obviously we record it before then, I'm actually recording this at the 11th hour, if you will, on Tuesday, November 3, which is election day here in the United States. And this will be released tomorrow morning. And I wanted to share this conversation.

It's election day. So I really wanted to talk about voting elections and the impact that it will have on sports. I know a lot of times people want to take politics out of sports. And I'm not going to comment on that one way or the other. But this topic is really going to dive into the impact that Congress and other state legislators can have on what the future of sports actually looks like.

So before we dig into the details, I just want to say thank you for listening, thank you for subscribing. If you haven't already subscribed, please do subscribe to our podcast, and continue to share with me your thoughts and ideas on various topics. We get different comments from listeners on various topics that we should address. And so we take that into consideration and try to include that in our schedule as we go forward. So please do continue to reach out you can find me on social media at Luke Fedlam. You can find me on porterwright.com and you can find out more about our sports practice and myself and our team directly.

So with that stuff out of the way, let's dig into what this topic is all about thinking about this election, and the impact that it can have on sports. The biggest thing to note is name image and likeness. Now as you know, if you've listened to my podcast before, I've had various other conversations on name, image and likeness, but this one, I want to talk about just where things stand and the impact that that could have. So last year, you know, the NCAA came to Congress and talked about the topic of name, image and likeness. And the NCAA has talked about the protections that they want to receive from Congress, in terms of potential Safe Harbor, and, you know, preemption from state law and things along those lines.

So there's that aspect, but really the broader thought is, and the broader conversation on how Congress and the federal government is going to impact name, image and likeness really stands as it relates to what rights will student athletes have, right. And what we've seen are various different bills that have been proposed. You know, the most recent one was a bipartisan bill that was brought up by Representative Anthony Gonzales, who's a republican from Ohio,

and Emanuel Cleaver, who's a democrat from Missouri, and it was called the Student Athlete Level Playing Field Act. And it really talks about how it would allow student athletes to capitalize on their name, image and likeness.

So interestingly, this isn't the only bipartisan bill or measure that's been proposed, but it is one that carried some attention, some weight in the conversation. And this idea is that it would allow for athletes, student athletes to capitalize on their name, image and likeness, to be able to engage in agent contracts, it would establish one federal standard that would again preempt any existing or even prospective state laws on name, image and likeness. And so that would create a level playing field among, you know, college athletics in the various states. It will provide congressional oversight to name, image and likeness. And it would also engage the Federal Trade Commission to enforce various provisions of this law. And obviously, now it's a bill.

And one of the things that was really important in this is that they wanted to ensure the student athletes wouldn't be seen or considered as employees, obviously, that brings with it a whole host of other challenges, challenges around taxes around unions, and so on and so forth in the treatment of employees, you know, versus students. So that is one of the more recent bills. But what's interesting about that is obviously it's a bill, you know, today's election day when you're going to be listening to this election will be complete - votes may still be counted at that at the time that you listen to this. So we may or may not know the outcome of the elections, but what we do know is that this is something Congress is going to have to address in the very near future. And so all of the representatives who are elected are going to step in and have to make decisions next year in the new Congress. And you know, starting in January as to what they want to do.

Now, interestingly enough, January is also the time that the NCAA Board of Governors is supposed to be voting on what NCAA rules are going to be, as it relates to name, image and likeness. So January is something if you're really into this name, image and likeness topic, January is a month that you want to circle on the calendar, because that's going to be very interesting to see what happens both with the NCAA, obviously, and at the congressional level. And the reason why there's this push is because when Florida came out with their name, image and likeness bill signed it into law, the effective date was July 1, 2021. So we know that that next academic year, name, image and likeness is going to be a reality.

And so Congress is going to have to weigh in, just so that there aren't various state differences. And the NCAA itself doesn't have the power to preempt state law. So that is going to be interesting to see how this plays out. Now, obviously, Congress has been busy with a lot of different things that they're dealing with, and no additional commentary there. But we know that name, image and likeness is going to be something that has to be addressed in the in the very near future here. And so that's why I encourage you to circle, you know, circle January, on the calendar, and when whatever potential federal law may go into effect, you know, that's something again, that would most likely have to take place and go into effect prior to July 1.

If there's no congressional law, that is, you know, voted on and approved and signed into law, then you could imagine that many states are going to push through their own name, image and likeness, so that they're not at a competitive disadvantage when it comes to recruiting athletes to their state. So if you're in a state that doesn't have a law in place, then you know, obviously, student athletes, if they can't, you know, commercialize their name, image and likeness, would most likely want to choose to go to a university college university in a state where they're able to do that. So, again, that's something that we really are going to look to see, you know, happening soon.

And I think *Sports Illustrated* did an article here recently, on the topic of NCAA reform, and name, image and likeness as it relates to Congress. And they talked about in this article three different thoughts, schools of thought when it comes to athlete compensation. And, you know, one that is a limited congressional bill to govern name, image and likeness. Others are more expansive bill, that would include things like health care protection, potentially conference, revenue sharing, and then also the school of thought that says that Congress shouldn't be involved in it at all right. So it'll be interesting to see again, especially as so many things don't necessarily happen on a bipartisan basis at the federal level. It'll be interesting to see what does come out as a relates to name image and likeness. Over the coming months, as we think through kind of voting in the impact on sports.

Also, just thinking about the Affordable Care Act, and this idea of preexisting conditions. And I read an article, and I want to say that it, I'm not exactly sure where it came from. So I'm going to have to try to find that information before I you know, provide the quote, but we know, and it's been discussed how so many football players, especially at the professional level, leave football with conditions, right. And so they would be considered having preexisting conditions, when it comes to finding health care, etc. And so again, you know, just the idea of the Affordable Care Act, we know that the Supreme Court, which has now been decided that they're you know, we have a ninth justice now, who's been sworn in, and the Supreme Court is going to be addressing a case on the Affordable Care Act later this month. And we'll see, we'll see what comes of that. And depending on what comes from that, we may then see Congress, you know, potentially doing something to address whatever, then comes whatever the decision from the Supreme Court is, and the Affordable Care Act needs to be rewritten in different ways or if parts are removed, and, you know, certain parts are potentially dismantled, then what would come in its place and what would Congress do to potentially address that?

We also know another issue that the NCAA is dealing with, is the idea of gambling, and potentially betting on college sports. And that's a whole other topic for a whole other podcast. But again, something that is going to be interesting to see how that plays out. And what potential safeguards maybe put in place from a rules perspective.

And then, you know, this doesn't have anything to do with voting, per se. But another change is coming to college sports that we've, you know, all been reading about and discussing here recently is the transfer portal within college athletics.

So again, you know, we know that there is a lot, a lot of change that's coming to the NCAA, over the coming, you know, months and really over the coming year, or couple of years. And we know that especially as it relates to name, image and likeness, we know that there is a significant role that the federal government may very well play, when it comes to determining the rules, the safeguards, and how best to engage and protect student athletes in the institutions as well, when it comes to name image and likeness. So, a lot to see and a lot to be seen there.

The last thing I'll note, you know, as it comes back to name, image and likeness, and there's been a lot of conversation around the student athlete Bill of Rights. And I bring that up, because we can see more and more how student athletes are becoming empowered in ways that they haven't in the past. And I think we could all look to this past summer with the we are united campaigns that the PAC 12, the Big 10 student athletes came out with as a related to social injustice as related to COVID. And, you know, playing football, this fall, that's something again, that that will be interesting to see how that continues to play out. The student athlete Bill of Rights has been proposed by a group of 10 senators, to really look at how student athletes can

maximize their opportunities as a student athlete, and to be able to commercialize their brand themselves, in order to, you know, to be able to participate in all of the money and revenue that comes into college sports.

So again, as we think about you know, even what you know, that's student athlete Bill of Rights. Senator Cory Booker, a Democrat from New Jersey, is the one that kind of has taken the lead in that he was a former student athlete at Stanford University played football there. And so this is something that he's talked quite a bit about, and has encouraged any legislation that has passed by Congress to include the student athlete Bill of Rights, and so that, that will be interesting to see how that plays out over the coming year as well. Because again, you know, I think athletes through social media, and other outlets have been able to, you know, be more empowered than they ever have before. And so it'll be interesting to see what steps Congress may or may not take, as it relates to providing additional rights and protections to student athletes.

So a lot to see, I'll probably do a follow up topic on the election, once we really know what the election results are, and the impact that that has more broadly, and what the makeup of Congress looks like. So that we can start to prognosticate a little bit about what impact they may that may have on sports. But for now, we know that change is coming. And it will be interesting to see what that change is.

The NCAA has a lot to deal with when it comes to new rules coming down the pike for student athletes. And so will be interesting to see how everything works itself out. So you can best believe that I will be on top of that and sharing my perspective. As these rules change. As you know, my focus is on protecting athletes. And a lot of times being able to protect athletes comes with being able to educate them and share information around what's happening, what's going on, and what impact that could have on athletes. And so I share these topics I share this podcast in the hopes that it just adds to the ability to athletes, for athletes to be able to educate themselves and be smarter about the business. It's happening all around them.

So with that being said, this is the protecting your possibilities podcast. Again, I'm your host Luke Fedlam. Thank you so much for tuning in. Thank you for your support and listening. Please do if you found value in it. Feel free to share this with a friend. Encourage them to subscribe and share various topics with us love having the conversations, looking forward to some of the topics that we have on tap to come in the weeks to come. So every Wednesday morning at drops, definitely check us out. Thank you so much for tuning in. We'll talk again real soon. Have a great day.

Disclaimer: Porter Wright Morris & Arthur LLP offers this content for informational purposes only, as a service for our clients and friends. The content of this publication is not intended as legal advice for any purpose, and you should not consider it as such. It does not necessarily reflect the views of the firm as to any particular matter, or those of its clients, please consult an attorney for specific advice regarding your particular situation.