

The new NIL collective model: 'It's illegal. But it's the future.'

[Eric Prisbell](#)



The brainstorming began last fall in Lubbock, Texas. There was **Cody Campbell**, co-founder of a [Texas Tech](#)-focused NIL collective, athletic director **Kirby Hocutt** and other stakeholders discussing how they could reimagine a collective's relationship with the school's fundraising arm while eluding legal landmines.

Blurring the line between [collectives](#) and fundraising arms risked conflicting with NCAA rules. But the benefits were clear: Diminish donor [confusion](#); infuse the collective with institutional credibility, establish more continuity for NIL strategy and streamline a two-pronged fundraising effort.

Little did Tech's leadership brass know that similar conversations were

occurring in another corner of the vast state, College Station. There, [Texas A&M unveiled](#) a new business model in February, viewed as equal parts brazen and innovative. [The 12th Man+ Fund](#) is a quasi-collective that operates under the umbrella of the **12th Man Foundation**, the school's fundraising arm.

When he heard of A&M's plan, Campbell thought, "It makes a lot of sense. Based on the rules and the laws we have now, it is a logical path." And so this month, Tech announced a similar new relationship between Campbell's collective, [The Matador Club](#), and the school's fundraising arm, the **Red Raider Club**, which will promote and assist in the fundraising efforts for the collective.

A critical element: the new [Texas state NIL law](#), which had been percolating for months and will take effect July 1. It creates a cocoon of protection over the NIL collective activity in the Lone Star State. It enables schools to award collective donors priority points – in apparent [violation](#) of NCAA rules – while also providing cover against potential infraction issues related to NIL. For NCAA investigators, there may as well be a "Do Not Enter" sign at the Texas state border.

The aggressive new models have piqued the interest of the entire college athletics space. Similar state laws in [Oklahoma](#), Arkansas (the [Razorbacks](#) already have a similar model), [Missouri](#) and [New York](#) signal that one can expect a copycat effect throughout the landscape. Even lawmakers in Michigan have proposed relaxed NIL legislation.

On3 is looking back at the newsmakers that shaped the second year of the NIL Era along with focusing on the storylines that'll impact its third year. And what is striking is that a model that may be at odds with current NCAA rules is drawing widespread acclaim in the NIL space.

[Most Impactful Person in Year 2 of NIL: LSU star Angel Reese](#)
[What donor fatigue means as NIL enters its third year of impacting college sports](#)

Peter Schoenthal, CEO of **Athliance**: “My reaction is it’s illegal – I don’t care what their state bill says. But having said that, I think it’s the future. From a revenue-sharing standpoint and group licensing, that means collectives either go away or get brought in-house. They should all be run through the university anyway.”

Christy Hedgpeth, president of **Playfly Sports Properties**: “My personal take is it’s a trend that is going to continue. I think it’s probably a healthier direction potentially ... I think that the cohesion and support being within the university makes sense for the student-athlete.”

Bubba Cunningham, [North Carolina](#) athletic director: “I do think that’s becoming more commonplace for people to think that way. It certainly would eliminate one of the challenges, which is donor fatigue, because of the number of calls from the different sources of people looking for support.”

Dan Lust, a sports attorney and law professor at New York Law School and Fordham University School of Law: “I do think it’s a good law. It makes sense that the school should be able to help. I think the NCAA has to step in and change their rules accordingly ... My concern is that the NCAA is putting all their eggs in the [federal \[legislation\]](#) basket where they should be paying attention to the smaller state trends.”

The system is ‘broken in a lot of ways’

The fact that so many prominent individuals in the collegiate space

applaud the benefits of the model – if not calling it a complete win-win altogether – reflects what an extraordinary time this is for college athletics. The models are emerging only in states where new laws provide cover from NCAA enforcement.

What does it say about the collegiate enterprise when prominent college sports leaders are endorsing a model that may be at odds with NCAA rules – especially after the organization [released](#) new guidance Tuesday that takes aim at state NIL laws and institutional incentives?

“Well, it’s clearly broken in a lot of ways,” said **James Clawson**, co-founder of the [Tennessee](#)-focused [Spyre Sports Group](#), one of the nation’s most ambitious collectives. “It needs help. It needs clarity. Ultimately, we are working toward getting that. I don’t have hope or faith in Congress.”

Guidelines surrounding these models are opaque. Cue the 1980s **Genesis** song, “Land of Confusion.” And there’s a catch-me-if-you-can element, where some don’t believe the NCAA, fearful of legal challenges, has the will or the ability to enforce such NIL activity. So some schools are comfortable creeping up to the line. Some are comfortable, perhaps, overstepping the line.

What it boils down to, sources say, is institutional risk tolerance. Schools are hesitant to get out too far ahead of their skis. At the same time, they are mindful not to fall behind their competition. This is all part of the calculus: Who’s comfortable living in a gray area?

“There’s a lot of legal and compliance interpretation at work in this entire space,” said Hedgpeth, a former national title-winning women’s basketball player at **Stanford**. “That’s why you see, whether it’s risk

tolerance or philosophy or state laws, you see a lot of different models out there ... The prevailing thought [among schools] is: Are we doing enough? Are we at a disadvantage?"

'It's an arms race'

Last October, the **NCAA Division I Board** issued clarifications for how schools can interact with collectives under existing rules.

Generally speaking, according to an NCAA spokesperson, member schools can encourage donors to contribute to collectives. However, they cannot donate cash to an NIL entity or collective directly, regardless of whether the funds are earmarked for a specific sport or student-athlete. Schools also cannot donate assets – tickets, suites, etc. – to a collective unless access to those assets is available to other sponsors, with the same terms. That was reinforced again with Tuesday's memo from the NCAA.

There are important differences between the Texas A&M and Texas Tech models.

Donations to the 12th Man+ Fund provide boosters with priority points. As part of the quid pro quo in the NIL deal, student-athletes will promote the 12th Man Foundation, which is considered a separate entity from the athletic department. Texas House Bill 2804 allows for collectives to provide donors with priority status and other perks. But the Tech model will steer clear of priority points.

Campbell said: "We don't think that's permissible. But, again, who knows?"

What's the advantage of awarding boosters with priority points?

Clawson, of the Tennessee-focused collective, said: "It's certainly going to be an advantage for them if they [A&M], in fact, can do it. The jury still may be out on that. If you can offer donor points, it's going to create a huge advantage. One of the challenges that collectives have had is what do we give our donors in exchange for their donations."

In Lubbock, The Matador Club, whose some 4,000 donors helped raise \$8 million during the 2022-23 academic year, becomes a corporate sponsor and the official NIL Tech-focused collective. An important distinction: The fundraising arm and Matador Club remain "two separate entities."

"I'm not saying that [other schools] are wrong – nobody knows," Campbell said. "The NCAA said that they [fundraising arms] can't be involved with doing the deals. We wanted to make sure that the distinction was clear."

Meantime, in Fayetteville, Arkansas, the [OneArkansas NIL](#) collective is led by **Marvin Caston**, a former Razorback football player and senior director of development at the Razorback Foundation. There are other connections between OneArkansas NIL and the nonprofit Razorback Foundation Inc., the private fundraising arm that raises millions of dollars in support of the University of Arkansas athletics department.

According to the Arkansas Secretary of State's office, Razorback Foundation executive director and general counsel **Scott Varady** is the collective's manager and registered agent. Caston did not return an email seeking more clarity on the model.

Stakeholders on campuses nationwide are monitoring these models closely. They likely will be templates for other schools to adopt, as state

laws allow.

"It's an arms race – it's real out there," said **Walker Jones**, executive director of [Ole Miss](#)-focused [Grove Collective](#). "It's a natural evolution to have a tighter bond between the fundraising arms and these collectives. They're essentially talking to the same people. They're all trying to raise money. The less stress on the donor, the more it cuts out confusion with the donor, and the more impactful it is – seamless and convenient."

NIL collective landscape is 'survival of the fittest'

As one prominent college athletics leader said, "It's a FOMO game," referring to the fear of missing out element proliferating the landscape. If schools are establishing innovative collective relationships in one state, schools in other states look on with the envy of a teenager scrolling through classmates' **Instagram** reels.

Steve Hank is the executive vice president of collegiate athletics at **Affinaquest**, the leading data management company in college sports that works with nearly 50 Power 5 schools. Texas Tech and Texas A&M are both clients. The most common question he hears from schools these days is: "Can we do it?"

When asked if we'll see more schools move in this direction where state law allows, Hank said, "If the institution is smart we will."

Hank referenced the motto of the British Army's famed special forces unit, **Special Air Service**: Who dares wins. In this era of upheaval and transformation in college sports, he said, fortune favors those who

push the envelope rather than stand pat.

"This," Hank said, "is survival of the fittest."

Jones, from the Grove Collective, said he recently met with the school's athletic director, **Keith Carter**, to discuss the new models seen in Texas. Jones said the meeting's outcome took a more wait-and-see approach, adding that there was a "hesitation on the university side to just blindly go against the NCAA guidance."

Frustrating among some may be mounting, as some schools blaze their own path.

"I know it's driving these conference commissioners crazy," Jones added, "because they're going, 'Look, you're putting us in a terrible spot because you guys are volunteer members of this organization [NCAA], but yet you're underneath the state statute that's going to go counter to the guidance of that.'"

In an ideal world, he said, a donor would be able to make, say, a \$100 donation to the university and earmark a percentage to go to the school and a percentage to the NIL collective.

Another prominent Texas school, [Baylor](#), is a client of multimedia rights partner Playfly. Hedgpeth said Playfly has not yet engaged in an in-depth conversation with Baylor about this potential new model but believes it's "just a matter of time. I'm sure we will."

And Cunningham said North Carolina state representatives and the Governor's office have asked him several times whether the state should enact an NIL law. He believes these laws are "creating the dialogue for what we want nationally." But he said he has not pushed

for any state law because it's unclear where the NCAA's aggressive federal efforts in pursuit of a uniform national NIL bill will end up.

"It's a bit premature to say, 'Let's move in this direction,'" Cunningham said, "because I don't know if that's going to be a positive for our student-athletes."

Mit Winter, a college sports attorney at Kansas City-based **Kennyhertz Perry**, said he does expect to see more athletics fundraising foundations start raising NIL funds, new foundations created by the school doing the same, or a partnership consummated between a collective and the school's fundraising foundation – especially in states where laws currently allow such setups.

He said any of these scenarios allows donors to get loyalty points for their NIL donations, which is likely going to increase those donations. It also alleviates the issue of foundations and collectives competing against each other for the same donor dollars. They can work together to tailor their message to donors about why donations for the so-called "old" must-haves, such as facility upgrades, are still important, while also explaining why NIL donations are now also essential.

Albeit incrementally, school-specific collective activity is beginning to move in-house. Asked specially about the Texas A&M model, **Tom McMillen**, CEO of **LEAD1 Association**, recently told On3 that the industry is in a "temporary situation where eventually schools will be more involved, not less involved. Not having accountability with the collectives is not a good thing for college sports. It exacerbates the situation."

Title IX: 'They're scared to death of it'

As collectives inch under the umbrella of schools' fundraising arms, the one law that will come into sharp relief is Title IX, the federal law that bars discrimination on the basis of sex for any educational program or activity receiving federal financial assistance. The 50-plus-year-old law promises to figure into decisions and oversight.

"The Title IX thing is one of those deals where it's hanging out there," Jones said, "and nobody really knows what to do with it, and they're scared to death of it."

During the recent LEAD1 spring meetings, **Sarah Wake**, who advises universities on athletic compliance issues in her role as an attorney at **McGuireWoods**, said she's "very concerned" about universities becoming too entangled with collectives. The more entrenched a school gets with a collective, she said, the more problematic it is.

Her advice to colleges: "Stay out of it. Don't touch it with a 10-foot pole."

Jon Israel, partner and co-chair of the sports and entertainment group at **Foley & Lardner, LLP**, echoed that concern, adding that Title IX issues could become more acute the more integrated a school becomes with the collective.

"Are they getting special benefits to the athletic department?" Israel said. "Are you doing sweetheart sponsorship deals and putting up tents for the collective? The question then becomes whether is that going to be enough to suggest that you are so affiliated or involved with this collective that it is part of the institution. And, therefore, they're only supporting and delivering dollars to male student-athletes or the football team or the 10 offensive linemen or whoever they are

sponsoring. Have you crossed the line?"

'The NCAA is coming'

There are no signs the NCAA will change its rules regarding collectives anytime soon. There are also no signs that states will stop enacting laws that grease the skids for these new relationships between collectives and school fundraising arms.

So, how is that conflict reconciled?

"I do worry about state laws that specifically prohibit a national governing body from enforcing its rules," Cunningham said. "I don't think that's healthy for anybody. If you want to have national competition, you have to have national rules. It can't be so state-specific that one state's going to want to get an advantage over another. That just doesn't make sense."

One conference commissioner said the NCAA "can't worry about individual specific state laws because they just continue to ebb and flow to try to find ways to supersede NCAA rules. But the NCAA has rules and is a voluntary membership organization. It does have opportunities to prevent rule breakers from participating in NCAA championships."

Dale Hutcherson, a Memphis-area attorney who specializes in sports and trademark law, said a key will be if states – particularly those that share conference members – can have solidarity in pushing forward-thinking legislation that "prevents the NCAA from overstepping ... without necessitating federal intervention." As a result, states could keep their NIL laws in place without concern about federal legislation

preempting the respective bills.

The issue for Schoenthal, of Athliance, isn't what schools in Texas or Arkansas are doing. He believes it represents the future and how the relationship between the collective and fundraising arms should be. His gripe is that they are working through state legislatures to create an unfair competitive advantage because they know other states can't currently create similar models.

"I believe that the rules should actually favor what those schools are doing," he said. "But until we get there, let's play by the rules ... you can have whatever state bill you want. If you're in conflict with NCAA rules, I think eventually – and I think the line of demarcation is the federal bill – I think whether we get it or not, the NCAA is coming."

Until then, schools will keep suffering from FOMO, eyeing with a dash of jealousy what schools are doing in states with more friendly NIL laws, all the while wondering how they can do the same.

"This is the number one thing on every athletic director's mind," Hedgpeth said. "What's our NIL strategy?"