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MORE CHAOS OR A REASONABLE FIX? CONGRESSIONAL ACTION TO REMEDY ISSUES RELATING TO THE CONTROVERSY OVER NAME, IMAGE, AND LIKENESS (NIL) FOR COLLEGE ATHLETES IN THE ERA OF BOOSTER COLLECTIVES

By

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ABSTRACT

Part I of this comprehensive study is a discussion of legal and marketing issues relating to potential Congressional action designed to deal with the use of names, images, and likeness (NILs) by college athletes in light of antitrust provisions and conflicting views over the meaning of "amateurship." The article considers the commonality of the various legislative proposals introduced in Congress in areas of federal preemption, booster collectives, and Title IX, among others, as well as analyzing one of the proposals in depth. Part II deals with issues relating to the role and responsibilities of agents in representing college athletes in the era of NILs and collectives. As the world of college athletics waits to see if Congressional action will resolve these difficult issues, it is also possible that the situation relating to college athletics will continue to spiral down into controversy and confusion without major reform and may result in the introduction of collective bargaining into the equation, further destabilizing an already fragile situation.

Key Words: NILs; collectives; antitrust; Title IX; preemption; boosters; amateurism

PART I – FROM EXPLOITATION TO NILS AND COLLECTIVES

1. Introduction

The involvement of the United States Congress in the college athletics "name, image, and likeness" (NIL) controversy may be traced to the decisions of several courts which struck down the National Collegiate Athletic Association's (NCAA)variety of monetary restrictions on college athletes, which had been championed by the NCAA under the rubric of preserving "amateurism "in college athletics (Berkowitz, 2023)
Palmieri (2021) writes:

"The NCAA, conferences, and schools (…) promote themselves and their athletic programs via social media such as Instagram and Twitter, and have their athletes participate in social media blitzes for the commercial benefit of the NCAA and its members. Coaches and others associated with college athletic programs also reap the financial rewards of payments from social media companies and other lucrative aspects of the online economy.

Yet, the NCAA's draconian NIL restrictions prevent student-athletes from commercially benefitting from their postings on social media, despite the fact that other college students are able to commercially benefit from social media opportunities and many do" (see also *House v. NCAA*, 2021; Wohlwend & Denniston, 2023).

The Drake Group (2023), a 501(c)(4) non-profit organization "working to better educate the U.S. Congress and higher education policymakers about critical issues in intercollegiate athletics," frames the issue as follows: "After years of acting as a trade association advancing the commercial interests of its members and allowing institutions to economically exploit academically underprepared, predominantly athletes of color in football and men's and women's basketball while failing to deliver on the promise of graduation, Congress appears to have good reason to deeply distrust the NCAA."

"The NCAA is not above the law," is perhaps most cited line in the concurring opinion written by Justice Brett Kavanaugh in*NCAA v. Alston* (2021). The decision, with a majority opinion written by Justice Neil Gorsuch, was technically limited to the question whether the NCAA can restrict certain types of education-related benefits for college athletes and did not address issues relating to NILs. In *Alston*, the Supreme Court ruled that the NCAA cannot restrict these benefitsand opened-wide the door to considering at some future date a host of related issues (see Hunter &Delle Donne, 2021; Taylor, 2022).

2. *O'Bannon* and its Progeny

The decision in *NCAA v. Alston* followed from a previous case, *O'Bannon v. NCAA*(2015). Edward Charles O'Bannon Jr., born August 14, 1972, is a former American professional basketball player in the National Basketball Association (NBA). He was a power forward for the UCLA Bruins on their 1995 NCAA championship team. O'Bannon was selected by the New Jersey Nets as the ninth overall pick of the 1995 NBA draft. After two seasons in the NBA, he continued his professional career for another eight years, mainly playing in Europe.

O'Bannon was the lead plaintiff in *O'Bannon v. NCAA*, a suit filed against the National Collegiate Athletic Association (NCAA) on behalf of its Division I football and men's basketball players over the NCAA's commercial use of the images of former student athletes without paying the athletes any compensation. The class-action lawsuit was filed in the United States District Court for the Northern District of California. The plaintiffs argued that upon graduation, a former student athlete is entitled to financial compensation for future commercial uses of his image by the NCAA (see Edelman, 2014).

The NCAA maintained that restrictions on payments to college athletes were necessary to prevent the *appearance* that student athletes were being "paid to play"(see Goldman, 1990) or were being treated as professional athletes. The NCAA defended its rules as "reasonable" in order to "preserve its tradition of amateurism, maintain competitive balance, promote the integration of academics and athletics, and increase total output for its product (measured in terms of increased numbers of FBS football and Division I schools, student-athletes, and games)."

Plaintiffs alleged that these restrictions were in violation of the Sherman Antitrust Act, which outlawed "contracts, combinations, and conspiracies in restraint of trade" (Dick, 1996; Gordon, 2023).Specifically, Glazier and Avery ((2014) noted: "O'Bannon claimed that he was unfairly deprived of compensation for the use of his image and likeness by the NCAA and its partners, which he alleged included: the sale of individual game videos and videos commemorating UCLA's National Championship; photographs and stock footage; the rebroadcast of games on the ESPN Classic network; and the use of his likeness by EA in a popular video game." Plaintiffs also argued that they would be able to sell "group licenses" for the use of their names, images, and likenesses in the absence of the NCAA's rules and identified three submarkets: (1) live football and basketball game telecasts; (2) video games; and (3) re-broadcasts, advertisements, and other archival footage.

The plaintiffs proposed three less restrictive alternatives to the NCAA's rules, which they argued would allow the NCAA to achieve its purposes of "preserving the popularity of its product, promoting amateurism, and improving the quality of educational opportunities for student-athletes":

(i) raise the grant-in-aid limit to allow schools to award stipends—derived from specified sources of licensing revenue—to student-athletes;
(ii) allow schools to deposit a share of licensing revenue into a trust fund for student-athletes which could be paid after the student-athletes graduate or leave school for other reasons; or
(iii) permit student-athletes to receive limited compensation for third-party endorsements approved by their schools.

On August 8, 2014, District Court Judge Claudia Ann Wilken, who had been assigned the case, found for the plaintiffs. The Court recognized that certain limited restrictions might be appropriate, but nevertheless, largely dismissed each of these proffered justifications offered by the NCAA. The Court found, among other things, that:

"(i) despite the NCAA's representations relating to its commitment to amateurism, NCAA rules have changed many times over the years and were not consistent in providing a uniform definition of amateurism; (ii) the NCAA's rules are not the "driving force" behind consumer interest and demand for FBS [Football Bowl Subdivision] football and Division I basketball, as interest and demand stem from other factors, including school loyalty and geography; (iii) the NCAA's rules are not needed to achieve, and do not promote, competitive balance, according to academic studies, statements made by the NCAA, and numerous other NCAA rules demonstrating that the NCAA is generally unconcerned with achieving competitive balance; (iv) certain limited restrictions on student-athlete compensation may help to integrate student-athletes into the academic community at their schools and may, in turn, improve their performance and the quality of educational services provided to student-athletes, but the rules that prohibit compensation for the use of student-athletes' names, images, and likenesses do not generally lead to enhanced academic outcomes; and (v) because the ability to compensate student-athletes for a limited amount beyond current limits would not lead institutions to exit FBS football or Division I basketball, the NCAA's rules do not increase the number of opportunities for student-athletes to participate in these sports and, as such, do not increase the number of games played" (*O'Bannon*, adapted from Glazier & Avery, 2014)

Having found that the NCAA's rules "unreasonably restrained trade," the Court issued an injunction prohibiting the NCAA from enforcing the unreasonable elements of its rules. Specifically, the Court enjoined the NCAA from enforcing any of its rules that prohibit schools from offering FBS football and Division I basketball recruits a limited share of revenues generated from the use of their names, images, and likenesses. Judge Wilken ordered the NCAA to permit its membersto offer "full cost of attendance" scholarships beyond the standard approved scholarship. Judge Wilken also ruled that colleges should be permitted to put as much as $5,000 into a trust fund for each athlete's year of eligibility to compete in college athletics. [Electronic Arts and the Collegiate Licensing Company, who were both original co-defendants with the NCAA, left the case and agreed to a $40 million settlement that potentially could result in as much as a $4,000 payment to as many as 100,000 current and former athletes who had appeared in EA Sports' *NCAA Basketball* and *NCAA Football* series of video games from 2003.]

The Judge Wilken's decision by was upheld in part by the Ninth Circuit Court of Appeals [the creation of the $5,000 trust fund was not upheld] who agreed that the NCAA was improperly profiting from the "namesake and likenesses" of college athletes without remunerating the athletes for such use beyond the value of their athletic scholarship (see Ehrlich, 2022).The NCAA subsequently appealed the ruling to United States Supreme Court, which denied their appeal.

In reaction to the Ninth Circuit's decision, the NCAA agreed to allow student athletes to receive scholarships covering the "full cost of attendance' which included the addition of certain education-related expenses. The NCAA also announced that it would begin a review of its policies related to how to compensate players for their names and likenesses, spurred on, no doubt, by the enactment of California's *Fair Pay to Play Act* (Weiss, 2020; Tulis, 2021), which was designed to allow students to take control of their names and likenesses for sponsorships and endorsements beyond the NCAA's or institutional control of their college or university. Palmieri (2021, p. 1606) writes: "California's statute allows athletes to be compensated for their popularity and has inspired Congress and other states to contemplate and propose similar legislation. The NCAA can no longer ignore the fact that the multibillion-dollar industry it created, and continues to regulate, needs to compensate its money-makers, the athletes."The combination of the court's decision in *O'Bannon*and the passage of the *Fair Pay to Play Act* in California were clearly a "shot across the bow" of the NCAA.

2.1. *NCAA v. Alston*

Subsequent to the Ninth Circuit's decision in *O'Bannon*, a number of other lawsuits were filed which challenged the NCAA's restrictions on educational benefits for athletes. For example, in March of 2014, *Jenkins v. NCAA*(2014) was filed in the United States District Court for the District of New Jersey by a group of football and basketball student-athletes against the NCAA and certain athletic conferences. The plaintiffs alleged that "Defendants have entered into what amounts to cartel agreements with the avowed purpose and effect of placing a ceiling on the compensation that may be paid to these athletes for their services. Those restrictions are pernicious, a blatant violation of the antitrust laws, have no legitimate pro-competitive justification, and should now be struck down and enjoined." Another suit was filed by former West Virginia running back Shawne Alston and former University of California center Justine Hartman contending that the NCAA and the defendant conferences conspired in fixing the value of a full athletic grant-in-aid. The plaintiffs sought monetary damages as well as an injunction preventing the NCAA from enforcing its rules that cap a full grant-in-aid as price fixing.

The cases were consolidated into *NCAA v. Alston* in the Northern District Court of California. Judge Wilken, who was also overseeing this case, issued her decision in March of 2019. Judge Wilken once again found against the NCAA, deciding that NCAA restrictions on "non-cash education-related benefits" were an "unreasonable restraint on trade" under the Sherman Antitrust Act.

Judge Wilken ordered the NCAA to permit schools to provide benefits beyond those incorporated into the previously established ruling, such as for "computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies." The ruling also barred the NCAA from preventing athletes from receiving "post-eligibility scholarships to complete undergraduate or graduate degrees at any school; scholarships to attend vocational school; tutoring; expenses related to studying abroad that are not included in the cost of attendance calculation; and paid post-eligibility internships."

Judge Wilken's ruling also established that conferences within the NCAA may provide other benefits to student-athletes. The NCAA, however, may still limit cash or cash-equivalent awards for these purposes under the ruling. Judge Wilken drew a sharp contrast between the compensation that the NCAA as an organization receives from the student athletes' performance to what the students themselves receive. For example, Janvrin (2023) notes that "In 2022, the NCAA earned $1.14 billion in revenue, and March Madness accounted for about $1 billion of that." College athletics generated $19 billion in revenues in 2019 (Orr, 2022; see also USA Today, 2023). Parker (2023) adds that "And the games aren't just a big business within the collegiate ecosystem. In 2022, 45 million Americans wagered an estimated $3.1 billion on the tournament, according to the American Gaming Association" (see also AmericanGaming.org, 2022). Athletes received no share of these revenues.

The NCAA appealed Judge Wilken's ruling in *Alston*to the Ninth Circuit Court of Appeals. The three-judge Ninth Circuit panel in May 2020 upheld the District Court's decision. The appellate panel agreed that the NCAA had an interest in "preserving amateurism and thus improving consumer choice by maintaining a distinction between college and professional sports," but their practices were nonetheless found to be in violation of antitrust law (see Hunter, Delle Donne,& Shannon, 2021). In an apt summary, Judge Milan Smith wrote "The treatment of Student-Athletes is not the result of free market competition. To the contrary, it is the result of a cartel of buyers acting in concert to artificially depress the price that sellers could otherwise receive for their services. Our antitrust laws were originally meant to prohibit exactly this sort of distortion."

The NCAA sought an emergency injunction, seeking a stay of Judge Wilkin's order, prior to August 2020 when the ruling was to go into effect. The NCAA and the American Athletic Conference, comprised of fourteen full member universities and eight affiliate member universities competing in the National Collegiate Athletic Association's (NCAA) Division I, with its football teams competing in the FBS, filed petitions for a *writ of certiorari*to the United States Supreme Court in October 2020. Both appellants argued that the decision would create a new definition of benefits "related to education" which could be abused by colleges and "sponsors" in order to create "pay for play" programs in all but name. The appellants cited a hypothetical $500,000-a-semester "internship" with Nike that the NCAA described as "the antithesis of amateurism." The Supreme Court granted *certiorari* to both petitions in December 2020, consolidating the two petitions into *NCAA v. Alston*.

Oral arguments were heard before the United States Supreme Court on March 31, 2021. Higgins (2021), reported that "the Justices appeared skeptical of the NCAA's claim that payments to students for things such as musical instruments and internships will sour fans who are drawn to the amateur quality of its competitions." However, the Justices also expressed concern about the potential effects of weakening the NCAA's objective of maintaining the appearance of amateur play in college athletics. Landry and Baker (2019, pp. 24-25) write: "There is no questioning that the NCAA is committed to preserving an appearance of amateurism in its products, but the frequency of rule violations and scandals involving breaches of the amateurism model by member institutions, their business partners, and the athletes unquestionably undermines the value of amateurism in intercollegiate athletics."

The Supreme Court handed down its decision on June 21, 2021. The decision was unanimous, affirming the Ninth Circuit, with Associate Justice Neil Gorsuch writing the opinion for the Court. Justice Gorsuch wrote that the lower court's decision was consistent with established antitrust principles. The Court's opinion brought into sharp focus the fact that the NCAA relies on "amateur" college athletes who compete under a variety of vertical restraints, issued and enforced by the NCAA, which restrict how schools compensate athletes for their performances and that those rules depress compensation for at least some athletes *below* what a truly competitive market would allow. The District Court, however, had limited its discussion to education-related benefits. The plaintiffs had not raised an "across-the-board challenge" to other restrictions on compensation and the Supreme Court did not venture into the question whether student-athletes should receive any further compensation.

Justice Gorsuch acknowledged as much and stated that "some will see this as a poor substitute for fuller relief" in addressing the apparent discrepancy of compensation between student athletes, their coaches and athletic administrators. But that day would certainly come!

It is interesting to note that it was Justice Brett Kavanaugh, in writing a concurring opinion, who stated that antitrust laws "should not be a cover for exploitation of the student athletes." Justice Kavanaugh's opinion referenced other NCAA regulations that he believed "also raise serious questions under the antitrust laws" and which might be struck down if challenged under the same legal principles relied upon by the lower courts in *Alston.* Justice Kavanaugh also suggested that college athletes might, in the future, seek to collectively bargain for additional rights beyond those contemplated in the majority opinion (see Hunter & Shannon, 2016).Justice Kavanaugh opined that if the NCAA's remaining compensation rules – other than the education-related benefits examined by the Supreme Court in *Alston*—might likewise be found to be in violation of antitrust laws, questions relating to payment of compensation to college athletes would certainly arise.

Setting the stage for the current debate on NILs and the creation of NIL collectives, Justice Kavanaugh wrote: "Of course, those difficult questions could be resolved in ways other than litigation. Legislation would be one option." Justice Kavanaugh added: "Or colleges and student athletes could potentially engage in collective bargaining (or seek some other negotiated agreement) to provide student athletes a fairer share of the revenues that they generate for their colleges, akin to how professional football and basketball players have negotiated for a share of league revenues."

Importantly, the Supreme Court also clarified its earlier decision in *National Collegiate Athletic Assn. v. Board of Regents of Univ. of Okla.(1984),*which the NCAA had long maintained supported its position relative to amateurism, often citing a comment in *Board of Regents* about the NCAA's critical role in maintaining amateurism being "entirely consistent with the goals of the Sherman Act." However, Ehrlich (2022, p. 11) stated: "… the Court found that 'by curtailing output and blunting the ability of member institutions to respond to consumer preference, the NCAA has restricted rather than enhanced the place of intercollegiate athletics in the Nation's life.'" The *Alston* court clearly held that the view expressed in *Board of Regents* was neither binding nor dispositive in reaching its decision. As Faucon (2022, p. 68) noted: "… the *Board of Regents* decision did not hold that the NCAA's compensation restrictions were precompetitive and survived antitrust scrutiny."

3. How Would the NCAA React?

Having clearly lost the initiative to shape the discussion, and in an effort to once again take control of the NIL issue, the NCAA announced certain overarching policy perspectives relative to NILS. These included the following statements of which businesses entering NIL endorsement deals with student athletes should be cognizant:

"… The NCAA remains committed to the elimination of pay-for-play arrangements. Businesses must be cautious about entering into NIL agreements that may appear intended to entice athletes to attend or remain at a particular institution.
… Even otherwise compliant agreements may violate the NCAA's rules if the compensation provided does not match the value of an athlete's endorsement. Unjustifiably high compensation can make an agreement look like it was actually provided in exchange for an agreement to come to a certain school.
… Businesses should be able to justify each NIL agreement using objective factors, such as the frequency of endorsements an athlete will provide, or the range of consumers the endorsement might reach given the athlete's social media presence.
… Because there is no federal law governing NIL deals, and because the NCAA's Interim NIL Policy permits athletes to engage in NIL activity that complies with applicable state law, each NIL deal should be reviewed to ensure compliance with any applicable state law."

Confronted by a direct threat to its autonomy and its continued insistence on amateurism as the bedrock of its policies, the NCAA engaged in what can best be called a "catch up" process by issuing a series of guidance documents regarding name, image, and likeness endorsement deals with college athletes. The NCAA's guidance aimed to provide clarity on NIL rules for parties entering NIL deals with collegiate athletes, as well as colleges and universities subject to NCAA rules (Fielding and Lu, 2022).

The initial policy recognized that some states were enacting their own laws permitting college athletes to enter NIL deals and permitted NIL activities that complied with those state laws. For student athletes in states without NIL laws, the policy indicated athletes would not automatically lose their eligibility to compete as amateurs for entering NIL deals.

The NCAA provided further guidance in November 2021, when it released a NIL *Question and Answer* document. The Q&A clarified that NIL deals are permissible only if based upon a "true quid pro quo arrangement." The NCAA would continue to prohibit NIL deals that were contingent upon an athlete's enrollment at a certain school or upon athletic performance.

In May 2022, the NCAA released further interim guidance regarding "third-party" involvement in NIL deals. This guidance introduced a requirement that the legitimacy of each NIL deal would be judged on a case-by-case analysis of the value a given athlete's endorsement would bring.

New guidance was then issued on October 26, 2022, providing a non-exhaustive list of permissible and impermissible activities divided into four categories (adapted from Fielding & Lu, 2022). These included:

- ***Institutional Education and Monitoring***

  The guidance clarifies that it is permissible for schools to require student athletes to report NIL deals to their institution. It also indicates that schools are allowed to provide student athletes, boosters, and other entities with NIL-related informational education sessions.

- ***Institutional Support for NIL Activity***

  The guidance clarifies the types of support schools can provide student athletes who enter NIL deals. Schools are allowed to inform student athletes about available NIL deals and are allowed to create a "marketplace" that can be used to match student athletes with NIL opportunities. Schools can promote a student athlete's NIL activity when there is no cost (for example, sharing a post from a school's official social media account). Schools can even promote a student athlete's NIL activities on the school's own paid platforms – as long as it requires the student athlete to pay the "going rate" charged to others who advertise on those platforms.

The guidance prohibits schools from providing access to services, such as contract review and tax preparation, and equipment (like cameras and computers) needed to support NIL activity, unless such access is available to all students. The guidance also prohibits student athletes from promoting their endorsements at practices, postgame activities, and at press conferences.

- ***Institutional Support for NIL Entities and Collectives***

The guidance clarifies the involvement schools are permitted to have with NIL entities, such as "collectives" that have been established to help provide student athletes access to NIL opportunities. The guidance allows schools to solicit donors to make contributions to NIL entities and facilitate meetings between NIL entities and potential donors.

- ***Negotiating and Revenue Sharing for NIL Deals***

The guidance addresses rules for NIL negotiations, clarifying that members of a school's athletics department cannot act as agents for enrolled student athletes. The guidance specifies that schools are not allowed to enter contracts with student athletes to purchase products that student athletes endorse in their NIL agreements.

However, despite these pronouncements, various guidance documents, and clarifications of policies, an open question remained: Would these be enough to stave off congressional action or the chaos evident by different state-based approaches to resolve issues relating to NILs? The answer was apparently and resoundingly "no."

4. State Actions: Resolution or Chaos?

In the absence of any uniform national policy relating to NILs, several states stepped into the void and adoptedstatutes and regulatory schemes which gave college athletes broad rights to monetize their names, images, and likenesses. Not entirely unsurprisingly, boosters also stepped into this void, realizing "they could influence prospective athlete and transfer portal athlete recruiting decisions and encourage current athletes to remain at their institutions by creating financially attractive NIL employment opportunities" (Drake Group, 2024).These efforts were immensely successful. Boyle (2023) reported that in 2022, "athletes made nearly $1.2 billion in deals, according to a study by NIL marketplace tracker Opendorse, an increase of about 11% from the year before."

4.1. The Rise of the Collectives

Booster groups,who could not directly provide college athletes with financial remuneration in the form of cash, created "NIL collectives" for the purpose of providing their universities with significant recruiting and retention advantages.Blake (2022, p. 11) states: "A booster, as defined in the Guidelines and NCAA Bylaws, is, in part, ...an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member of the institution's executive or athletics administration to have participated in or to be a member of an agency or organization promoting the institution's intercollegiate athletics program or to assist or to have assisted in providing benefits to enrolled student athletes or their family members" (citing NCAA (Guidance), 2022).

Ironically, booster groups found themselves in competition with the collectives of other institutions in order to enable coaches at their respective institutions to "dangle the recruiting or retention carrot of significant outside employment income as a strong incentive to attend, remain, or transfer" (Drake Group, 2023). [For a complete list of NIL collectives, see On3.com (NIL Collectives)].The On3.com website notes:

"Donor-led collectives are sweeping the nation, dramatically reshaping the NIL landscape.The proliferation of donor-driven collectives continues to dominate the Name, Image and Likeness conversation. Often founded by prominent alumni and influential supporters, school-specific collectives pool funds from a wide swath of donors to help create NIL opportunities for student-athletes through an array of activities."

"Collectives, which are independent of a university, can serve a variety of purposes. Most often, they pool funds from boosters and businesses, help facilitate NIL deals for athletes and also create their own ways for athletes to monetize their brands. Industry sources expect every Power 5 school to be affiliated with at least one NIL-related collective by the end of the year, and industry sources say several dozen yet-to-be-announced collectives are currently in the information-gathering stages.

Those programs that fail to be affiliated with a robust collective risk being left in the dust in the ultra-competitive world of football and basketball recruiting."

Ramsey (2023, pp. 801-802) noted that "The first known NIL Collective created was the Gator Collective. The Gator Collective launched on September 2, 2021, just two months after college athletes gained the right to profit from their NIL." TheGator Collective was created by former University of Florida baseball player Eddie Rojas "with the aim of leveling the NIL playing field and increasing NIL opportunities for both current and future University of Florida athletes."

Ramsey (2023, p. 802) continued: "Since the launch of the Gator Collective, approximately 200 NIL Collectives have been created across several colleges and universities. Ninety-two percent of Power 5 schools have at least one NIL Collective or are in the process of forming one. All fourteen schools in the SEC have at least one NIL Collective."

As an example, we have provided information regarding the collectives at the University of Notre Dame and at the University of Oklahoma:

Friends of the University of Notre Dame – FUND (see Sampson, 2022; fundfoundation.org, 2023).

Founders: Brady Quinn, Tom Mendoza, Pat Eilers, Jason Sapp **The buzz:** Friends of the University of Notre Dame, also known as FUND, is a 501(c)(3) non-profit collective that uses the Name, Image and Likeness of University of Notre Dame student-athletes to help promote charitable organizations that they are passionate about. The collective is being spearheaded by former Notre Dame quarterback Brady Quinn to help push the Fighting Irish forward in the ever-evolving NIL landscape. "The goal is to provide these student-athletes with the opportunity to be able to take a portion of their time and receive compensation for it, but really falling under the guidelines of God, Country, Notre Dame causes that are bigger than yourself," Quinn told The Athletic. "And that's what this is all about." Irish student-athletes are interviewed, selected and approved by FUND's board of directors, which includes Notre Dame's business school namesake Tom Mendoza and former Irish football players Pat Eilers and Jason Sapp. Those student-athletes are matched with select charities. They're compensated for attending fundraising events, participating in social media campaigns and volunteering at charity sites. The charities themselves receive financial donations from FUND.

Irish Players Club

Founders: Bailey O'Sullivan, Mick Assaf **The buzz**: The Irish Players Club is a player-led collective. The Irish Players Club joins groups like Michigan State's East Lansing NIL Club, Auburn's Plains NIL Club, Arkansas' Fayetteville NIL Club and Kansas State's Manhattan NIL Club and many more which are setting off a new era of collectives in college sports. However, unlike other YOKE-supported clubs, Irish Players Club allows fans to donate directly to financially support 75-plus Notre Dame football players and "join the ultimate fan experience" through online communities and digital events with players. Participating players will split the proceeds equally. The players partner with YOKE, a platform that offers business tools to athletes to allow them to launch a paywalled community. This provides fans a way to engage with Notre Dame athletes throughout the season via an online membership. NIL experts are not surprised by players making a move to have a seat at the table. The move also gives student-athletes the opportunity to have the cash funnel directly to them.

A second example is taken from the University of Oklahoma (see Coppola, 2023; Oklahoma.com).

Norman NIL Club

Founders: Bailey O'Sullivan, Mick Assaf **The buzz:** The Norman NIL Club is a player-led collective. The Norman NIL Club joins groups like Michigan State's East Lansing NIL Club, Auburn's Plains NIL Club, Arkansas' Fayetteville NIL Club and Kansas State's Manhattan NIL Club which are setting off a new era of collectives in college sports. However, unlike other YOKE-supported clubs, The Norman NIL Club allows fans to donate directly to financially support 70-plus Oklahoma football players and "join the ultimate fan experience" through online communities and digital events with players.

Participating players will split the proceeds equally. The players partner with YOKE, a platform that offers business tools to athletes to allow them to launch a paywalled community.

This provides fans a way to engage with Oklahoma's athletes throughout the season via an online membership. NIL experts are not surprised by players making a move to have a seat at the table. The move also gives student-athletes the opportunity to have the cash funnel directly to them.

The Drake Group reported examples of boosters who pooled funds to provide payments of $25,000 per year to *every* football player on scholarship at one university. The Matador Club, a collective operated by five Texas Tech graduates, intends to sign one hundred players to one-year contracts that can be renewed for the next football season (Parks, 2022). Hernandez (2023) reported that boosters at the University of Utah [Crimson Collective] provided six-month leases, with all all-insurance-paid Dodge RAM 1500 Big Horn trucks (valued at $61,000) to *each* of the eighty-five football players on scholarship. The total value of the deal amounts to more than $6 million.

Some of these NIL employment opportunities bore no relationship to the *fair market value* of the athletes' services (see Faucon, 2022). Rather NIL payments were based on the *roster value* of the athlete to the institution, raising questions of legitimate employment versus monetary payments or other benefits offered as inducements to attend or remain at the institution. In the midst of these developments, the NCAA simply stopped enforcing its rules prohibiting boosters from providing financial inducements, extra benefits, or employing college athletes at rates not commensurate with local rates, perhaps because they feared being sued.

In one development, as noted by Hewlett, Strand, and Visser (2023), "On May 23, 2023, the IRS issued a statement asserting that NIL collectives operating for a substantial nonexempt purpose (e.g., serving the private interests of student-athletes), which is more than incidental to any exempt purpose furthered by the activity, do not qualify for tax-exempt status, reshaping previous assumptions that these collectives operate as tax-exempt entities, like nonprofit organizations." Might this negatively impact the attractiveness and future growth of the collectives who could no longer claim that contributions to a collective would receive favorable tax treatment as a charitable contribution?

4.2 Collectives and Title IX

As a result of inconsistencies and a lack of clear guidance from the NCAA and from various state statutory schemes, many NIL booster collectives began funneling dollars primarily to football and men's basketball players, with college coaches and athletic administrators providing enthusiastic overt or what the Drake Group (2023) described as "wink, wink" encouragement (see Baker, 2023; Wolken, 2023). In addition, some colleges and universities began to designate these groups as "official university collectives," providing direct assistance such as sharing athletic department donor or ticket purchase lists and promoting gifts and recognition to collectives at athletic events. "In the media and at community and athletics events, coaches and administrators directly appealed to their athletic department donors to either redirect or give additional funds to help collectives win this new outside 'employment' recruiting arms race" (Drake Group, 2023). While doing so, institutions also claimed that they exercised "no control" over these new organizations, thereby attempting to evade Title IX obligations to provide female athletes with equal financial aid, recruiting, promotions, and publicity benefits (llorens & Wright, 2023; Ramsey, 2023).

Llorens and Wright (2023) argue:

"While collectives are typically independent of any educational institution and operated and controlled by boosters, the more closely aligned the collective is with the institution, the greater the potential for risk under Title IX. For example, a collective that makes decisions that have been influenced by a university employee (i.e., coach, athletic director, etc.) and does not provide equal opportunities for male and female student athletes may be exposing the university to Title IX liability. Therefore, interactions between collectives and university employees should be delicately treated."

One of the main reasons for this lack of clarity was that the Office of Civil Rights had not issued definitive guidance to institutions that collectives cannot be used to avoid their gender equity obligations under Title IX.

PART II- HOW BEST TO PROTECT THE COLLEGE ATHLETE

5. Moving Forward

Faced with chaos and uncertainty, much of its own making, the NCAA and many of its more prominent member institutions engaged Congress, hoping lawmakers would provide statutory protection from legal liability created by state NIL laws (Henderson, 2023a) or from athletes using the courts to obtain payments for years during which the NCAA did not allow individual athletes to monetize their NILs. In addition, the NCAA and its member institutions raised concerns about prospective state actions mandating revenue sharing or treating athletes as employees (e.g., Lederman, 2021; Associated Press, 2023), as indicated by the position announced in an important NLRB memorandum on September 29, 2021 (Hill, 2021; Henriques& Ingersoll, 2021; Merinar & Bombatch, 2022), which eschewed even the use of the term "student-athlete" (see NLRB, 2021), because of the danger of "leading them [the athletes] to believe that they are not entitled to the Act's protection [and which] has a chilling effect on Section 7 activity and is an independent violation of Section 8(a)(1) of the Act." Might unions be on the horizon for college athletes?

This is the context—and imperative—within which Congress is weighing-in trying to quiet the chaos by proposing a variety of "fixes" (see Charron, 2023). One of the "fixes" would create a new federally chartered independent organization and/or empowering an existing government agency such as the Federal Trade Commission that would be charged with overseeing the implementation of new federal laws to protect college athletes' employment rights. In addition, there are proposals for "… taking a deeper dive into numerous other athletics governance areas (e.g., lavish expenditures, coach abuse, academic fraud, inadequate medical coverage, embarrassing graduation rates of revenue sport athletes, etc.) that need careful study to produce major reforms" (Drake Group, 2023).

As of October of 2023, five bills were announced as "discussion drafts" or which had been filed in the U.S. Senate (one with a House sponsor) and two were announced in the U.S. House of Representatives relating to the protection of athletes who were now monetizing their names, images, and likenesses (Dorner, 2023).These bills or proposals include:

- Senators Cory Booker (NJ-D), Richard Blumenthal (CT-D), Jerry Moran (KS-R):*College Athletes Protection and Compensation Act of 2023* (Hill and Wohlwend, 2023);
- Senator Chris Murphy (CT-D) and Representative Lori Trahan (MA-D): *The College Athlete Economic Freedom Act* (Duster, 2021);
- Senators. Joe Manchin (WV-D) and Tommy Tuberville (AL-R):*Protecting Athletes, Schools, and Sports Act of 2023*(Murphy, 2023);
- Reps. Gus Bilirakis (FL-12-R):*Fairness, Accountability, and Integrity in Representation of College Sports Act*(Rosenborough & Kelly, 2023)*;*
- Sen. Ted Cruz (TX-R):*Untitled NIL Bill* (McCann, 2023);
- Representative Mike Carey (OH-15-R) and Representative Greg Landsman (OH-D):*H.R. 3630 Student Athlete Level Playing Field Act*Anderson, 2020); and
- Sen. Lindsay Graham (NC-R):*NIL Clearinghouse Act of 2023* (Sprung, 2023).

While the approaches are diverse, all of the bills would either directly *preempt state NIL laws*, or in the absence of preemption,would define a *process* that would be used if conflicts between federal and state law occur. Jacobs (2022, pp. 334-335) argued:

"The need for a uniform federal law governing NIL is apparent. In order to maintain a consistent and predictable set of rules for all states and thereby protect the integrity of collegiate athletics, Congress should act efficiently to tackle the most threatening risks. Student-athletes should be required to disclose the critical pieces of their endorsement contracts with their institutions, which should then be subject to inspection and review by an independent, third-party entity that closely resembles the AIAC proposed by the AACPA. It is also imperative that an unmistakable line be drawn between institutions and collectives, whereby institutions are prohibited from facilitating NIL deals with collectives on behalf of their student-athletes. Finally, a federal law should leave open the option for states to institute their own restrictions on vice industry endorsements. In that way, a

federal law would act as a legislative floor rather than a ceiling, leveling the playing field for all institutions in all states."

All of the bills prohibit institutions, conferences, and/or national associations [such as the NCAA] from punishing a college athlete who enters into allowable NIL agreements (see Bradley Arant Boult Cummings LLP, 2023). Most of the proposed legislative initiatives include *transparency provisions* mandating individual institutional or national database disclosure of information on NIL employment with "anonymized athlete identities" and information on the type, number, and value of agreements disaggregated by sport, sex, or other categories (see, e.g., Clarke, 2021).

Most bills either *create a new entity or designate an existing federal agency* to assist or replace existing processes for adjudicating disputes between parties. Most bills contain mechanisms to *protect athletes from unscrupulous agents* (see Kirwan, 1996; Crowley & Gault, 1993; Thomas, 2022). Henderson (2023)notes: "Student-athletes are young, have rapidly appreciating valuations, and often lack the experience and education necessary to handle legally dense contractual discussions. This is a perfect opportunity for predatory behavior from both brands and agents. Without competent and loyal representation, student-athletes face a high risk of exploitation."

All but one bill expressly prohibits the use of NIL employment as an *inducement* to attend, remain at, or transfer to an institution, while none explains what conditions constitute "inducement." All of the bills provide that any NIL compensation paid for services rendered (i.e., autograph signings, personal appearances, or endorsement/promotional work) must be commensurate with the local or national market rate for such services in an uninterested party (i.e., a non-booster) arms-length transaction. Any compensation paid to an athlete in excess of such market rates would reflect "roster value" and not individual to the team and therefore would presumedly constitute "an improper inducement" (see Wallace, 2022; Holden, Edelman, & McCann, 2022).

Further, a NIL arrangement that identically values *all* athletes playing a particular sport, all those playing similar or identical positions in a particular sport, or that specifies athletic scholarship recipients only (as not including "walk-on" players), would reflect roster value to the team and presumedly would constitute an improper inducement.

Interestingly, four of the bills specifically address the issue of annon-profit educational institution sharing its commercial NIL marks with athletes, raising the issue whether a non-profit institution, conference, or national governance association may property "gift" its marks to *any* individual or entity for private gain. The four bills requite institutional permission for the use of marks and any standard royalties that are paid to an institution for the use of its intellectual property should be required of athletes and other entities such as collectives who commercially exploit institutional assets such as its registered trademarks.

5.1. "Open Questions"

An open question addresses whether an institution should be sharing assets such as donor or ticket buyer lists without parties or offering coaches or athletic department personnel to speak at collective fundraising or promotional events unless they are paid by the collective for such services. In addition, granting the NCAA a limited antitrust exemption must be considered and whether such a prospective exemption should be tied to assurances or proof that the athletic program will meet reasonable educational expectations regarding its athletes are making progress towards attaining a degree and protecting athletes from physical and mental harm. Grow (2022, p. 442) argues: "By granting the NCAA and its members a limited and conditional antitrust exemption, Congress can ensure that the existing model of intercollegiate athletics is modified in a manner that will best advance the public interest while still preserving one of the country's most deeply ingrained and revered cultural traditions."

As noted above, since many collectives are being directly and indirectly supported by athletic departments, issues relating to equality of treatment under Title IX concerning recruiting, financial aid, promotions, accommodations, practice facilities, equipment, training, and travel (Anderson, 2023; Friestedt, 2023))must be addressed under current Title IX Guidelines that require institutions to "demonstrate equal opportunities (National Women's Law Center, 2023; Ramsey, 2023) for both male and female students. The equal opportunity standard may be met in one of three ways:

(1) that the percentages of male and female athletes are about the same as the percentages of male and female students enrolled at the school; or
(2) that the school has a history and a continuing practice of expanding athletic opportunities for female students, since they usually have been the ones given fewer chances to play; or
(3) that even though it is not offering its female students substantially proportionate opportunities to play sports, the school is nonetheless fully meeting female athletes' interests and abilities."
Banks (2022, p. 569) points out that "The regulation includes a list of ten nonexclusive factors that indicate whether equal benefits and opportunities are met:
(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
(2) The provision of equipment and supplies;
(3) Scheduling of games and practice time;
(4) Travel and per diem allowance;
(5) Opportunity to receive coaching and academic tutoring;
(6) Assignment and compensation of coaches and tutors;
(7) Provision of locker rooms, practice and competitive facilities;
(8) Provision of medical and training facilities and services;
(9) Provision of housing and dining facilities and services;
(10) Publicity. "

However, in the absence of direct guidance from the Office of Civil Rights, the relationship between collectives and Title IX remains unresolved, at best.

One thing *is* certain. Llorens and Wright (2023) state: "Now in the world of NIL, that also applies to publicity, media, social media, and all things marketing."

6. An Analysis of the *College Athletes Protection and Compensation Act of 2023*

The authors have chosen the *College Athletes Protection and Compensation Act of 2023* (CAPC), co-sponsored by Senators Cory Booker (NJ-D), Richard Blumenthal (CT-D), and Jerry Moran (KS-R) for a more in-depth analysis.
Important provisions of the CAPC include:

- CAPC creates the *College Athletics Corporation* (CAC), a federally chartered non-governmental organization, which would be established to protect college athletes' NIL and other rights established by the Act. The CAC would establish and enforce standards for review of NIL contracts and would serve as a "national clearing house" for "best NIL practices." The CAC would establish standards for certification of NIL agents and procedures for "swift resolution" of disputes between athletes and agents and athletes and NIL employers, including the provision for the appointment of a neutral arbitrator in the case of any disputes.
- The CAC would create and oversee a medical trust for college athletes who are injured while participating in their sport (Faldu & Tawa, 2021; Jenkins, 2023).
- The CAC would maintain a "public searchable database" containing each institution's revenues and expenditures for each sport, including any third-party donations, the receipt of federal or state funds, and compensation for athletic program personnel.
- Each institution would be required to report individually and in the aggregate by individual sport, the average number of hours an athlete spends on college athletic, including team events, sports-related activities, practices, team meetings, and competitions, disaggregated by sport.
- The CAC requires athletic departments to report on academic outcomes, graduation rates. and academic majors for its athletes, disaggregated by sport, race/ethnicity, and gender.
- The CAC requires athletic departments to report on the number, average and total value of endorsement contracts, disaggregated by sport, race/ethnicity, and gender.
- The CAPC provides strong *protection of an athlete's NIL rights*. The athlete who no longer participates in college athletic competitions may rescind an endorsement contract with a remaining term of more than 1 year without

being held liable for breach and with no obligation to return any earned payments that were received before giving notice of the rescission.

- The CAPC provides strong NIL disclosure, transparency, and athlete privacy provisions. For an NIL agreement valued at less than $1,000 annually in the aggregate, the athlete will provide a copy of any agreement to their academic institution within seven days of execution. A "recruited athlete," *before* signing a letter of intent, must provide any current and expired agreements to the institution recruiting them.
- Institutions must produce an annual website report on the number, average, and total value of endorsement contracts, disaggregated by sport, race/ethnicity, and gender. Neither the institution nor CAC may publicly disclose any agreement without the consent of the athlete or the athlete's representative or agent. Federal or state open records laws would not be applicable to these NIL contracts (see Justia, 2023; National Conference of State Legislatures, 2023).
- The CAPC provides strong *athletes' rights provisions in addition to protecting athletes' NIL rights*. The CAPC provides full disclosure, prior to enrollment, of significant institutionally provided costs to the athlete. Such disclosure must include the duration of the athletic scholarship; the value of the athletic scholarship as a percent of the cost of education; the amount and duration of financial aid available after eligibility to participate in collegiate athletics has been exhausted; the percent of comprehensive medical coverage paid by the institution during eligibility; the percent of out-of-pocket medical costs paid for by the institution, by the student, and the difference between in-network and out-of-network costs; and whether disability insurance for any "future loss of earning" will be provided by the institution.
- *Academic protections.* The institution cannot discourage the athlete's choice of courses or academic majors, orretaliate against an athlete based on the athlete's choice of courses or major. Institutions will be required to continue financial aid until graduation, including for athletes who have been on scholarship and left to pursue "professional sport opportunities" and then return to an institution in order to complete their degrees.
- The Act *prohibits discrimination* with regard to the provision of medical care, rest, hotel stays, food, athletic facilities, transportation, and sporting event promotions at post season championships based on the sex of an athlete relating to compliance with Title IX.
- *Right to Transfer*. The Act establishes a *one-time transfer* right without penalty subject to 7-day notification to the institution that does not occur during the season or 60 days prior to start of season, and an unlimited right to transfer if the athlete is subject to an "abusive" or "negligent" environment (as yet to be defined).
- *Third-party provided benefits*. The athlete cannot be penalized for accepting "reasonable" food, rent, medical expenses, or insurance, tuition, fees, or books, reasonable transportation for the college athlete, or the friends or family members of the college athlete during any period *in which the college athlete is experiencing a physical or mental health concern or where the athlete is participating in a college athletic event or college athletic competition.*
- The Act prohibits NIL or other compensation to be used as an "inducement" to attend or remain at an institution. The institution, conference, and/or national association may declare an athlete ineligible who receives any extra benefits prohibited by CAC.
- The CAC will have the power to subpoena documents and require depositions or appearances of persons in relation to its deliberations or in connection with any arbitration process.
- The Act provides for special treatment of issues relating to NIL collectives. The CAC defines a third party, and thus most NIL collectives, as being "unaffiliated" with the institution because they "do not share interrelated operations, common management, centralized control of labor relations or common ownership or financial control."
- The Act allows athletes to use institutional marks without charge to the athlete or to NIL employers with permission of institution, conditioned on the institution, conference, or national association not determining the amount of any third party NIL compensation.

6.1. Some Questions Relating to the CAPC

We have identified several specific issues remain unresolved with regard to the proposed legislation (see the Drake Group, 2023):

- The term "reasonable" is undefined and may undermine a uniform interpretation by a national association such as the NCAA or an athletic conference.

- Provisions do not fully address the "entwinement" of the institutions with collectives with regard to institutional non-financial support, such as provision of donor lists, promotion, designation of "official collective," and any donor encouragement by the institution.
- The relationship between the NCAA's scholarship limits with regard to food, rent, tuition, fees, or books, if not related to the existence of an emergency circumstance, may lead to a finding of an impermissible inducement and must be considered. The provision of transportation to athletic events for friends or family members using institutional funds raises questions of possible improper use of an institution's non-profit organization's assets and might result in an increase in the cost of recruiting. If these expenses were provided by a third party, such as a collective, any expense that is deemed "not reasonable" might result in the payment being considered an impermissible inducement or benefit.
- What are the standards required to prove "abusive conduct," "a physical or mental health crisis," or a "negligent atmosphere," and to whom do these provisions apply?
- Will the NCAA be granted a limited antitrust exemption (Sutherland and Chakrabarti, 2023) to undertake policies suggested by the CAPC?
- While the subpoena power given to the CAC be a "potent investigative and enforcement mechanism" (Drake Group, 2023), there is no penalty prescribed for a violation by any third party.
- What is the time period in which an individual athlete must report an NIL opportunity in excess of the $1,000 amount?

As these proposals make their way through in the legislative process, it would be important to apply a similar analysis to each of the proposals under consideration in Congress.

7. Overarching Considerations in Any Federal Legislation: Tackling Representation Questions

Ross (2021) writes: "With the passing of recent legislation [in California] and increased support of collegiate athletes winning the rights to profit from their name, image, and likeness (NIL), there are many controversial issues warranting careful attention." We argue that the focus of any "reform" efforts should be based on protecting the college athlete, often described as "unsophisticated" and "vulnerable," from the exploitive practices of the NCAA, their own institutions, and third parties(see, e.g., St. Clair, 2021; Aron, 2023) who have for decades reaped tremendous financial rewards and prestige in the era of massive media attention and increasing TV revenues, and equally from the conduct of either unknowledgeable or unscrupulous agents (see Forberg, 2021).

7.1. NILs and Principles of Agency (adapted from Hunter, 2022)

Sports agents serve a valuable role in terms of securing and negotiating contracts for the professional athlete. The same may certainly be true of agents who assist the college athlete in the pursuit of NIL contracts, as *recent developments regarding NIL contracts permit college athletes to employ agents for the purpose of securing these benefits*(Murphy, 2021). Lawyers who represent athletes in negotiating professional contracts have generally been trained in the fundamentals of contracts and should be familiar with the current market value of their client relative to other athletes within the same sport (see, e.g. Jobs in Sports, 2018). However, it should be noted that hiring a lawyer is not required (nor is an agent for that matter) to secure NIL deals for the athlete. Some college athletes may not wish to hire an agent for a variety of reasons, including having to pay commissions or other fees associated with the representation.

In the negotiation of professional contracts, an agent's commission varies, based on the sport in which he or she representsan athlete and may also be subject to the provisions of any *Standard Player-Agent Contract* applicable to an individual professional sport. Generally, a sports agent earns between 4 and 10 percent of a professional athlete's negotiated salary, although some professional leagues place limits on what percentage an agent can charge in commission (Gentile, 2018). For example, the National Football League states that an agent cannot receive more than 3 percent of player salaries. The National Basketball Association places the limit at 3 percent. Major League Baseball and the National Hockey League do not have any limits on agent commissions; however, the average agent fee is 3 percent. Lawyers and other parties who represent the college athlete in negotiating an NIL deal are not bound by these same rules. A lawyer might charge a percentage (typically 10-20%), of any amount received by the athlete for the performance of their services outside of the Standard Player-Agent Contract. Should there be a limit on the amount an agent might charge based upon the professional model?

Who should set the limit? Might such an attempt to limit an agent's compensation itself be challenged on the basis of antitrust violation, alleging "price fixing" in violation of Section 1 of the Sherman Act?

7.2. Registration and Regulation of NIL Agents

A second issue relates to the registration of agents in order to protect the often unsophisticated college athlete. Should agents who assist the college athlete in securing NIL contracts be registered?

In designing a regulatory program for agents, several key questions must be considered:

- *Coverage*: Who may be considered as an agent for purposes of such regulation? Should agents include only those individuals who negotiate NIL contracts or also individuals or who manage players' money? Should regulations apply to agents who are also lawyers licensed to practice in a given jurisdiction?
- *Eligibility*: What qualifications should be required of someone seeking certification as an approved agent? Should a law degree or an advanced degree in Sport Management or an MBA be required? Participation in a training program? A passing score on a test of the relevant material in the area of practice? Should agents be subjected to a probationary term until successful negotiation of a certain number of NIL contracts? If a parent or a friend represents an athlete in NIL negotiations, should the parent or friend be subject to a regulatory regime?
- *Financial Responsibility*: Should agents be required to demonstrate financial responsibility to represent athletes in NIL negotiations? Should an agent be required to post a surety bondin order to protect the interests of the student-athlete?
- *Solicitation of Business*: Should active solicitation of a college athlete by agents be permitted? Should an agent be permitted to provide "something of value" to a college athlete or his or her family as an inducement to enter into an agency contract? Should an agent be permitted to pay third parties for referrals of players?
- *Fees*: As discussed above, should there be any ceilings placed on an agent's compensation? Should the fee be a flat rate, an hourly rate, or a percentage rate?
- To apply for certification as an agent in the arena of professional sports, an individual must generally complete the *Application for Certification* and pay a nonrefundable application fee. To be eligible for certification, the applicant must have received a degree from an accredited four year college or university, provided that the professional players' association, in its unreviewable discretion, may accept relevant negotiating experience to substitute for any year(s) of formal education. Only individuals are eligible to be certified and any application filed in the name of any corporation, company, partnership or other business entity will not be considered. The players' association will review the application and perform a background investigation of an applicant for certification to assure its accuracy. The applicant must also pass a written exam administered by the player's association. The players' association will provide a preparation course for applicants. Should similar procedures for certification be required for agents who represent athletes in NIL negotiations?

7.3. The *Revised Uniform Athlete Agent Act of 2015*as a Possible Template?

Several provisions of the *Revised Uniform Athlete Agent Act of 2015*(Revised Act) (Lens, 2019) might prove to be instructive and might serve as a good starting point for an organization such as the CAC, embodied in the Booker-Blumental-Moran legislation, as well as any legislation ultimately approved by Congress (see Moore, 2011; Henderson, 2023b).

The Revised Act:

- Defines an athlete agent as an individual who directly or indirectly induces or attempts to induce a student athlete to enter intoan agency contract. This provision could be modified to specifically include NIL contracts.
- Defines a student athlete as an individual who "engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport."
- Except under limited and temporary circumstances, prohibits an individual from acting as an athlete agent without registering in the state of adoption of the Revised Act.
- Requires applicants to disclose training, experience, and education; any felony or crime of moral turpitude of which the applicant or an associate has been convicted; any administrative or judicial determination that the applicant has made a false or deceptive representation; and whether the applicant's agent's license has been denied, suspended, or revoked in any state or has been the subject or cause of any sanction, suspension, or declaration of ineligibility.

- Requires agents to maintain executed contracts and other specified records for a period of five years, including information about represented individuals and recruitment of any athlete.
- Allows an agent who has been issued a valid certificate of registration or licensure in one state to cross-file that application (or an application for renewal) in other states that have adopted the Revised Act.
- Provides student athletes with a statutory right to cancel an agency contract within 14 days after the contract is entered into.
- Requires agency contracts to disclose the amount and method of calculating the agent's compensation, the name of any unregistered person receiving compensation because the athlete signed the representation agreement, and the reimbursable expenses and services to be provided. The Revised Act requires that a representation contract must contain warnings of any cancellation and notice requirements imposed under the Revised Act.
- Requires both the agent and the student athlete to give notice of the contract to the athletic director of the affected educational institution within 72 hours of signing the agreement, or before the athlete's next scheduled athletic event, whichever occurs first.
- Provides educational institutions with a statutory right of action against an athlete agent or former student athlete for damages, including any losses and expenses incurred as a result of the educational institution being penalized, disqualified, or suspended from participation by an athletic association or conference, or as a result of reasonable self-imposed disciplinary actions taken to mitigate sanctions, as well as costs and reasonable attorney's fees incurred as a result of a violation of the Revised Act.
- Prohibits agents from providing materially false or misleading information, promise or representation, with the intent of inducing a student athlete to enter into an agency contract; furnishing "anything of value" to a student athlete or another person before that athlete enters into an agency contract;to intentionally initiate contact with a student athlete unless the agent is registered under the Act; refusing or willfully failing to retain or permit inspection of required records; failing to register where required; providing materially false or misleading information in an application for registration or renewal thereof; predating or postdating an agency contract; or failing to notify a student athlete that signing an agency contract may make the student athlete ineligible to participate as a student athlete in that sport and imposed criminal penalties for violations of these prohibitions. [This provision could be made applicable to any NIL contract or opportunity which is found to be in violation of an NCAA rules that may have been adopted and approved by the CAC.]
  Which of these provisions should be applicable to NILs?

Other questions may or certainly will be raised in the course of the legislative process in considering the applicability of the Revised Act and its relationship to proposed Congressional action.

- Can a university charge an athlete for the use of its registered trademarks or service marks?
- Can a university veto a student's NIL contract on the basis that it is in conflict or in competition with a university's existing sponsorships, trademarks, or marketing contracts?
- Can a university veto a student's NIL contract on the basis that it violates a university's "core beliefs" or is in conflict with its educational philosophyrelating to the types of product the athlete is endorsing or representing—for example, alcohol or tobacco products?
- What would be the proper standard for such an action by the university? Would it be the "reasonable" standard established in *Board of Regents* or some other standard of review?
- Who would determine answers to these questions? Should the ability to file a suit in court be preempted (see *Virginia Uranium v. Warren,* 2018; Congressional Research Service, 2019); or should disputes be subject to a form of an NIL arbitration process? Should this arbitration be "ad hoc" or should there be some form of standardized procedures such as those established under the International Court of Arbitration for Sports(Mangan, 2009; Hunter & Shannon, 2017; Aceris Law, 2021)or conducted by an organization such as the CAC?

And there is one looming question:

- Will college athletes be permitted to unionize? Although discussed prominently in the news, will the NLRB *actually* revisit the issue any time soon, so that college athletes will be permitted to pursue unionization in order to resolve these and other issues through the collective bargaining process?

- In fact, in September of 2023, the "Men's basketball players at Dartmouth College have filed a representation election petition with the National Labor Relations Board, asking to form a union as the board's general counsel argues that college athletes are employees under federal labor law," in a case that could cause the NLRB to revisit this question in the near future (Banks, 2023).

8. Conclusions and Observations

From a former position of unchallenged power, grounded in a philosophy—some might argue a pretext – of "amateurism," the NCAA has simply lost its monopolistic power to control much of college athletics. Cases such *Board of Regents, Alston,* and *House* have eroded the NCAA's ability to dictate rules and procedures governing wide areas involving TV broadcasts, academic benefits, NILs, and collectives to the point where the NCAA has gone to Congress to seek some order from the resulting chaos.

In this atmosphere of indecision and uncertainty, it might be a wiser course of conduct to concentrate on protecting the interests of the college athlete than in trying to incrementally challenge or recapture NCAA power and prerogatives. Thus, we suggest that the point of emphasis should switch to assuring that college athletes are receiving sound, objective, and factual information from individuals who will assist them in pursuing their own goals and financial security. The creation of a regulatory regime of *licensure* and *registration* of parties who assist the college athlete as agents would be the best course of conduct to pursue. The NCAA can play an important role in shaping policies, perhaps in consort with Congress, but such a course of conduct emphasizing the relationship between the athlete and agent would go a long way to achieve the "optimum solution" in a business that it awash in cash and a perception of unfairness. If this course is not followed, there is a good chance that college athletes may indeed be classified as employees—which would usher in a whole new era of confrontation in college sports.

References

Aceris Law (2021). Sports arbitration: Certain unique features and the Court of Arbitration for Sport (The "CAS"). Aceris Law LLC (December 23, 2021), https://www.acerislaw.com/sports-arbitration-certain-unique-features-and-the-court-of-arbitration-for-sport-the-cas/

American Gaming Association (2023). Sports betting. AGA code of conduct. Responsible gaming. Americangaming.org, https://www.americangaming.org/resources/march-madness-2022 (last accessed November 26, 2023).

Anderson, F. (2023). One step forward, two steps back: Why Title IX does apply, and should apply, to student-athlete NIL deals. Penn State Law Review 128: 315-346.

Anderson, G. (2020). Federal lawmakers propose new player-pay bill. Inside Higher Ed (September 24, 2020), https://www.naicu.edu/news-events/headline-news/2020/09/federal-lawmakers-propose-new-player-pay-bill

Aron, C.M. (2023). Mind, body and sport: The haunting legacy of abuse. NCAA.org, https://www.ncaa.org/sports/2014/11/5/mind-body-and-sport-the-haunting-legacy-of-abuse-aspx

Associated Press (2023). US Appeals Court to weigh NCAA case over pay for athletes. Associated Press (U.S. News) (January 17, 2023),
https://www.usnews.com/news/sports/articles/2023-01-17/us-appeals-court-to-hear-ncaa-case-over-pay-for-athletes

Baker, M. (2023). How NIL has changed college football's facilities arms race: "You can build whatever stadium you want. If there's no players in it, it doesn't matter." Daily Journal Online (June 2, 2023), https://dailyjournalonline.com/2023/06/03/how-nil-has-changed-college-footballs-facilities-arms-race/

Banks, A. (2022). The Supreme Court gets the ball rolling: NCAA v. Alston and Title IX. Northwestern University Law Review 117: 549-576.

Banks, B. (2023). Dartmouth men's basketball players seek unionization. Law 360 Legal News (September 14, 2023), https://www.law360.com/ articles/1721715

Berkowitz, S. (2023). Congressional hearing highlights challenges of NCAA's strategy in pursuing federal NIL legislation. Sports Business Journal (March 29, 2023), https://www.sportsbusinessjournal.com/Articles/2023/10/18/college-nil-senate-judiciary-hearing.aspx

Blake, J. (2022). NIL collectives: How the biggest thing in NIL has exposed the NCAA's rulemaking. Houston Lawyer 60: 10-11.

Boyle, B. (2023). Money talks: The NCAA's NIL era is already evolving. MSN.com (The Motley Fool), https://www.msn.com/en-us/money/markets/money-talks-the-ncaa-s-nil-era-is-already-evolving/ar-AA1/xCOp

Bradley Arant Boult Cummings LLP (2023). Another federal NIL bill on the horizon: Analyzing the Draft College Athlete Protection and Compensation Act. Newstex Blogs National Law Review (July 26, 2023), https://www.jdsupra.com/legalnews/another-federal-nil-bill-on-the-horizon-8626082/

California Fair Pay for Play Act (2019). S.B. 206, 2019 Leg., Reg. Sess. (Cal. 2019).

Charron, C. (2023). The state-by-state NIL legislation guide. Student Press Law Center (February 22, 2023), https://spic.org/2023/02/the-state-by-state-nil-legislation-guide

Clarke, L. (2021). State-by-state rating system gives college recruits road map to evaluate NIL laws. Washington Post (October 21, 2021), https://www.washingtonpost.com/sports/2021/10/21/name-image-likeness-laws-state-rankings

College Athletes Protection and Compensation Act of 2023 (2023), www.blumenthal.senate.gov/ info/media (last accessed November 26, 2023).

Congressional Research Service (2019). Federal preemption: A legal primer. Congressional Research Service (July 23, 2019),https://www.crsreports.congress.gov/federal-preemption-a-legal-primer/pdf

Coppola, N. (2023). 'Set the standard': How OU collectives are navigating current NIL landscape. OUDaily.com (October 17, 2023), https://www.oudaily.com/sports/set-the-standard-how-ou-collectives-are-navigating-current-nil-landscape/article/

Crowley, J.C. & Gault, C.C. (1993). Unscrupulous agents and the amateur athlete. Loyola of Los Angeles Entertainment Law Review 14(1): 43-71.

Dick, A.R. (1996). Identifying contracts, combinations and conspiracies in restraint of trade. Managerial and Decision Economics 17(2): 203-216.

Dorner, D.T. (2023). Flurry of new NIL activity in Congress. Duane Morris Sports Law (August 6, 2023), https://blogs.duanemorris.com/sportslaw/2023/08/06/flurry-of-new-nil-activity-in-congress/

Drake Group (2023). The Drake Group examines 2023 congressional efforts to alleviate college athlete NIL chaos. The Drake Group, https://www.thedrakegroup.org/ (last accessed November 25, 2023).

Duster, C. (2021). Democrats make new push for college athlete compensation. CNN Politics (February 4, 2021), https://www.cnn.com/2021/02/04/politics/college-athlete-economic-freedom-act/index.html

Edelman, M. (2014). The District Court decision in O'Bannon v. National Collegiate Athletic Association: A small step forward for college-athlete rights, and a gateway for far grander change. Washington & Lee Law Review 71: 2319-2364.

Ehrlich, S.C. (2022). A three-tiered circuit split: Why the Supreme Court was right to hear NCAA v. Alston. Legal Aspects of Sport 32: 1-61.

Fair Pay to Play Act (2021), https://www.natlawreview.com/article/california-fair-pay-to-play-act-to-become-effective-september-1-2021

Faldu, S.F. & Tawa, O.C. (2021). Legal implications of the proposed 'College Athletes Bill of Rights.' Insurance Coverage Law Center) (March 25, 2021), https://www.gllawgroup.com/news/insurance-coverage-law-center-publishes-article-on-the-legal-implications-of-the-proposed-college-athletes-bill-of-rights-by-gl-attorneys-shrina-faldu-and-olivia-tawa/

Faucon, C.E. (2022). Assessing amateurism in college sports. Washington & Lee Law Review 79: 3-99.

Fielding, J. & Lu, P. (2022). NCAA rules to be aware of before reaching an NIL deal. Littler.com (November 28, 2022), https://www.jdsupra.com/legalnews/ncaa-rules-to-be-aware-of-before-1731419/

Forberg, S. (2021). 24 NBA players who lost it all. Money Wise (December 30, 2021), https://www.moneywise.ca/aden/nba-players-lost-it-all

Friestedt, L.E. (2023). Title IX vs. NCAA: A gameplan for championship equity. Vanderbilt Journal of Entertainment & Technology Law 25: 307-372.

Fund Foundation (2023). Fund foundation (University of Notre Dame), https://www.fundfoundation.org (last accessed November 28, 2023).

Gentile, M. (2018). The average sports agent's commission. CHRON.com (June 28, 2018), https://www.work.chron.com/average-sports-agents-commissions-21083.html

Glazier, M. & Avery, P. (2014). O'Bannon v. NCAA: The District Court Decision. National Association of College and University Attorneys NACUA Notes 13(1), www.smu.edu/media

Goldman, L. (1990). Sports and antitrust: Should college students be paid to play? Notre Dame Law Review 65: 206-261.

Gordon, J. (2023). Contract combination conspiracy in restraint of trade – explained. The Business Professor(April 6, 2023), https://thebusinessprofessor.com/en_US/business-transactions/contract-combination-conspiracy-in-restraint-of-trade

Grow, N. (2022). The future of college sports after Alston: Reforming the NCAA via conditional antitrust immunity. William & Mary Law Review 64: 385-442.

Heitner, D. (2021). The NCAA is not above the law. Above the Law (June 21, 2021), https://abovethelaw.com/2021/06/the-ncaa-is-not-above-the-law/

Henderson, N. (2023a). Division-I conferences unite to advocate for federal NIL legislation. Sports Illustrated (November 2, 2023), https://www.si.com/fannation/name-image-likeness/news/division-1-conferences-unite-advocate-federal-nil-legislation-noah9

Henderson, N. (2023b). Student-athlete need an updated Uniform Athlete Agents Act. Sports Illustrated (November 19, 2023), https://www.si.com/fannation/name-image-likeness/news/student-athletes-need-a-nil-updated-unifor,-athlete-agents-act-noah9

Henriques, M.P. & Ingersol, M. (2021). NLRB, labor laws and the impact on NCAA athletes. National Law Review (October 27, 2021) XIII(301), https://www.nationallawreview.com/article/nlrb-labor-laws-and-impact-ncaa-athletes

Hernandez, V. (2023). Utah Utes football team gets new Dodge trucks in NIL deal. USA Today (October 5, 2023), https://www.usatoday.com/story/sports/ncaa/2023/10/05/utah-utes-football-players-dodge-trucks-nil-deal/71072563007/

Hewlett, R.T., Strand, S.A., & Visser, J.E. (2023). IRS declares NIL collectives not tax-exempt: Implications for athletic boosters. National Law Review (November 20, 2023) XIII(324), https://www.nationallawreview.com/article/irs-declares-nil-collectives-not-tax-exempt-implications-athletic-boosters#

Higgins, T. (2021). Supreme Court appears willing to side with college athletes against NCAA in compensation case. CNBC.com (March 31, 2021), https://www.democraticunderground.com/100215288140

Hill, G.A. (2021). College athletes can now earn money and other benefits. Are unions next? Washington Post (September 30, 2021), https://www.washingtonpost.com/sports/2021/09/30/nlrb-memo-ncaa-college-athletes-employees/

Hill, R. & Wohlwend, J.D. (2023). Another Federal NIL bill on the horizon: Analyzing the Draft College Athlete Protection and Compensation Act. National Law Review (November 30, 2023) XIII(334), https://www.natlawreview.com/article/another-federal-nil-bill-horizon-analyzing-draft-college-athlete-protection-and-compensation-act

Holden, J.T., Edelman, M. & McCann, M.A. (2022). A short treatise on college-athlete name, image, and likeness rights: How America regulates college sports' new economic frontier. Georgia Law Review 57: 1-77.

House v. NCAA. (2021). 545 F. Supp. 3d 804 (U.S. District Court, Northern District of California).

Hunter, R.J. (2021). Sports law: Cases and materials. XanEdu (Custom Publishing): South Orange, N.J.: Seton Hall University

Hunter, R.J. & Shannon, J.H. (2016). Is the Northwestern case a real "game changer" for intercollegiate athletics: A non-decision decision. Western State Law Review 43: 155-198.

Hunter, R.J. & Shannon, J.H. (2017). Athletes banned, athletes cleared, athletes reinstated: The Court of Arbitration for Sports: Does the United States need a similar court for resolving issues in sport? Journal of Education and Social Policy 4(1): 8-21, https://jespnet.com/journals/Vol_4__March_2017/2.pdf

Hunter, R.J. & Dele Donne, M.(2021). An essay on the NCAA, amateurism, and the student athlete: Protecting their greatest asset. Journal of Business and Social Science Review 2(5): 1-15.

Hunter, R.J., Delle Donne, M., & Shannon, J.H. (2021). "The NCAA is not above the law": The changing landscape of college athletics changes once again. Journal of Business and Social Science Review 2(7): 1-25.

Jacobs, S. (2022). Cash, chaos and collectives: How the NCAA's punt on student-athlete name, image, and likeness governance created a wild west and how federal legislation can bring order. Gonzaga Law Review 58: 297-335.

Janvrin, R. (2023). March madness revenue: How much NCAA tournament is worth. Fan Buzz (March 22, 2023),https://fanbuzz.com/college-basketball/march-madness-total-revenue/

Jenkins v. NCAA (2014). Case 3:33-av-00001, Document 7686. Filed 03/17/14 (U.S. District Court, District of New Jersey); Jenkins v. NCAA (In re NCAA Ath. Grant-in-Aid Cap Antitrust Litig.), 2016 U.S. Dist. LEXIS 103703 (U.S. District Court for the Northern District of California).

Jenkins, K. (2023). Senators propose oversight of NIL, athlete health care. Daily Journal Online (July 21, 2023), https://www.ibj.com/articles/senators-propose-federal-oversight-of-nil-compensation-athlete-health-care

Jobs in Sports (2018). Top 5 qualities of a great sports agent. Jobs in Sports (November 26, 2018),https://www.jobsinsports.com/blog/2018/11/26/5-best-qualities-of-great-sports-agent/

Justia (2023). Open records and open meetings laws. Justia.com, https://www.justia.com/administrative-law/open-record-meeting-laws/ (last accessed November 26, 2023).

Kirwan, W.E. (1996). Protecting college athletes from unscrupulous agents. The Chronicle of Higher Education (September 20, 1996),
https://www.chronicle.com/article/protecting-college-athletes-from-unscrupulous-agents/

Landry, J. & Baker, T.A. (2019). Change or be changed: A proposal for the NCAA to combat corruption and unfairness by proactively reforming its regulation of athlete publicity rights. New York University Journal of Intellectual Property & Entertainment Law 9: 1-61.

Lederman, D. (2021). NLRB asserts that 'certain' college athletes are employees. Insidehighered.com (September 28, 2021), https://www.insidehighered.com/quicktakes/2021/09/29/nlrb-asserts-'certain'-college-athletes-are-employees

Lens, J. (2019). Application of the UAAA, RUAAA, and state athlete-agent laws to corruption in men's college basketball and revisions necessitated by NCAA rule changes. Marquette Sports Law Review 30: 47-84.

Llorens, A.L. & Wright, S.J. (2023). Navigating the intersection of NIL and Title IX. Sports Litigation Alert (March 24, 2023), https://sportslitigationalert.com/navigating-the-intersection-of-nil-and-title-ix/

Mangan, M. (2014). The Court of Arbitration for Sport: Current practice, emerging trends and future hurdles. Arbitration International 25(4): 591-602.

McCann, M. (2023). Sen. Cruz pitches broad college sports overhaul bill. Sportico.com (August 2, 2023), https://www.sportico.com/law/analysis/2023/ted-cruz-college-sports-bill-nil-1234732957/

Merinar, J.R. & Bombatch, Z.D. (2022). The NLRB's mandated culture change: Treat athletes as employees. National Law Review (November 21, 2022) XIII (325),
https://www.nationallawreview.com/article/nlrb-s-mandated-culture-change-treat-athletes-enployees

Moore, D. (2011). Proposals for reform to agent regulations. Drake Law Review 59: 517-556.

Murphy, D. (2021). NCAA name, image and likeness FAQ: What the rule changes mean for the athletes, schools and more. ESPN (June 30, 2021), https://www.espn.com/college-sports/story/_/id/31740112/rule-changes-mean-athletes-schools-more

Murphy, D. (2023). Pass Act aims to protect athletes, 'integrity' of college sports. ESPN (July 25, 2023), https://www.espn.com/college-sports/story/_/id/38070433/pass-act-aims-protect-athletes-integrity-college-sports

National Collegiate Athletic Association (NCAA) (2022). Interim name, image and likeness policy guidelines regarding third party involvement, National Collegiate Athletic Association (May 6, 2022), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/May2022NIL-Guidance.pdf

National Conference of State Legislatures (NCSL) (2023). Public records law and state legislatures. NCSL.org (May 30, 2023), https://www.ncsl.org/cis/public-records-law-and-state-legislatures

National Women's Law Center (2023). How to comply with Title IX athletics requirements: A primer for schools. National Women's Law Center, https://nwlc.org/respect-students/ (last accessed November 23, 2023).

NCAA v. Alston. (2021). 141 S. Ct. 2141 (United States Supreme Court).

NCAA v. Board of Regents of the University of Oklahoma. (1984). 468 U.S. 85 (United States Supreme Court).

NLRB (2021). NLRB general counsel Jennifer Abruzzo issues memo on employee status of players at academic institutions. NLRB.gov (September 29, 2021),https://www.nlrb.gov/news-outreach/news-story/nlrb-general-counsel-jennifer-abruzzo-issues-memo-on-employee-status-of-players-at-academic-institutions

Oklahoma Collective (2023). Oklahoma Nil collective (University of Oklahoma), https://1oklahoma.com (last accessed November 28, 2023).

on3.com (2022). The on3 guide to NIL collectives around the letter. on3.com (August 25, 2022), https://www.on3.com/nil/news/on3-guide-to-nil-collectives-around-the-nation/

on3.com (2023). NIL collectives. on3.com, https://www.on3.com/nil/collectives/ (last accessed November 21, 2023).

Orr, C. (2022). NIL hurts college athletics. Here's how we fix it. Our Daily Bears (May 23, 2022), https://bvmsports.com/2022/05/23/nil-hurts-college-athletics-heres-how-we-fix-it/

Palmieri, C. (2021). The billion dollar industry that has never paid its money-makers: The NCAA's attempt at compensation through names, images, and likeness. Touro Law Review 37(3): 1605-1641.

Parker, T. (2023). How much does the NCAA make off March madness? Investopedia (June 8, 2023), https://www.investopedia.com/articles/investing/0315-16/how-much-does-ncaa-make-march-madness.asp

Parker, T. & Brown, J.R. (2022). Sports betting. AGA code of conduct. Responsible Gaming. American Gaming Association, https://www.americangaming.org/resources/march-madness-2022/

Parks, J. (2022). College football news: Entire Texas Tech team getting $25,000 NIL contracts. Sports Illustrated (July 21, 2022), https://www.si.com/fannation/college/cfn-hq/ncaa-football/college-football-nil-contracts-texas-tech

Ramsey, K. (2023). NIL collectives - Title IX's latest challenge. Cardozo Arts & Entertainment Law Journal 41: 799-821.

Revised Uniform Athlete Agent Act of 2015 (2015). National Conference of Commissioners on Uniform State Laws, https://www.uniformlaws.org/acts/catalog/current/ (last accessed November 30, 2023).

Roseborough, V. & Kelly, C. (2023). Congress looks to rein in college sports: What to know about the legislation. The Hill (August 5, 2023), https://www.aol.com/congress-looks-rein-college-sports-104931929.html

Ross, M.A. (2021). Agents and NIL: Navigating the uncertainty of the professionalization of collegiate athletics. Hackney Publications (Sportslitigationalert.com) (August 27, 2021), https://www.sportslitigationalert.com/agents-and-nil-navigating-the-uncertainty-of-the-professionalization-of-collegiate-athletics/

Sprung, S. (2023). Is the government about to step in and overhaul NIL in college sports? . Boardroom (July 1, 2023), https://www.boardroom.tv/nil-clearinghouse-ncaa-lindsay-graham/

St. Clair, I. (2021). Sex, drugs and … gambling? It's time to have the talk about problem gaming with young bettors. Playcolorado.com (April 12, 2021), https://www.playcoloprado.com/student-athlete-problem-gambling-protections/

Sutherland, P. & Chakrabarti, M. (2023). The NCAA, antitrust and the future of college sports. On Point (October 31, 2023), https://www.wbur.org/onpoint/2023/10/31/the-ncaa-antitrust-and-the-future-of-college-sports

Taylor, A. (2022). NCAA v. Alston: The future of college sports in the name, image, and likeness era. Rutgers University Law Review 75: 363-392.

Thomas, M.S. (2022). This play is under review: How state name, image, and likeness statutes fail to protect student-athletes from unscrupulous agents. Business Entrepreneurship and Tax Law Review 6(1), https://scholarship.law.missouri.edu.betr//vol6/iss1/13

Tulis, B.A. (2021). California Fair Pay to Play Act effective Sept. 1, 2021. JacksonLewis (September 1, 2021), https://www.californiaworkplacelawblog.com/2021/09/articles/california/california-fair-pay-to-play-act-to-become-effective-september-1-2021/

USA Today (2023). NCAA Finances: Revenue and expenses by school. USA Today (June 13, 2023), https://www.sports.usatoday.com/ncaa/finances

Virginia Uranium v. Warren (2019). 5876 U.S. _ (case pending). (United States Supreme Court.)

Wallace, A. (2022). NCAA "NIL," student-athletes "won": The recommended approach for Indiana's name, image, and likeness legislation following NCAA v. Alston. Indiana Law Review 56: 119-141.

Weiss, A. (2020). The California Fair Pay to Play Act: A survey of regulatory and business impacts of a state-based approach to compensating college athletes and the challenges ahead. Rutgers Business Law Review 16: 259-307.

Wohlwend, J.D. & Denniston, M.S. (2023). Bringing down the House: *House v. NCAA* could potentially mean big changes for collegiate NIL rules. Bradley.com (October 4, 2023), https://www.jdsupra.com/legalnews/bringing-down-the-house-house-v-ncaa-2466293/

Wolken, D. (2023). What's shocking about Texas A&M paying Jimbo Fisher $77M to go away? How normal it seems. USA Today Online (November 12, 2023), https://www.msn.com/en-us/sports/other/whats-shocking-about-texas-a-m-paying-jimbo-fisher-77m-to-go-away-how-normal-it-seems/ar-AA1jNV9D