

TAMING THE “WILD WEST” OF NIL: STOPPING THE ABUSE OF COLLECTIVES AND RESTORING SANITY TO THE WORLD OF COLLEGE ATHLETICS

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I. INTRODUCTION

We are at an inflection point in college athletics.¹ True, major intercollegiate sports have never been more popular, or more lucrative for those involved.² Athletes have a chance to showcase their skills for possible professional opportunities at the next level for whatever sport they are playing.³ Coaches' salaries for the major sports have skyrocketed, athletic departments bring in millions of dollars in television deals, and now, college athletes are allowed to earn money based on who they are and what they can do on the field or court through profitable marketing agreements.⁴

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¹ See *Intercollegiate Athletics Forum shakes things up in Las Vegas*, SPORTS BUS. J. (Dec. 10, 2023), <https://www.sportsbusinessjournal.com/SB-Blogs/Behind-the-Scenes/2023/12/10.aspx>.

² See *NCAA Finances: Revenue and Expenses by School*, USA TODAY, <https://sports.usatoday.com/ncaa/finances> (Jun. 13, 2023, 8:51 PM).

³ See, e.g., *Top College Prospects Highlight 2023 adidas MLS College Showcase*, MAJOR LEAGUE SOCCER (Nov. 30, 2023, 11:00 AM), <https://www.mlssoccer.com/news/top-college-prospects-highlight-2023-adidas-mls-college-showcase>.

⁴ James Parks, *What is NIL in college football? Here's what you need to know*, SPORTS ILLUSTRATED, (March 23, 2023) <https://www.si.com/fannation/college/cfb-hq/ncaa-football/college-football-nil-rule-changes-what-you-need-to-know> [<https://perma.cc/V36H-XFZ8>].

For the uninitiated, these profitable marketing agreements are allowed pursuant to an interim National Collegiate Athletic Association (NCAA) rule and various state laws that now allow for student-athletes to be compensated for the use of their name, image, and likeness (NIL).⁵ For example, a quarterback may make appearances at a local car dealership, sign autographs and take pictures with fans in exchange for cash or the use of a sports car; additionally, a shooting guard on the basketball team at the local university may post branded endorsements on social media for a popular local energy drink company in exchange for cash and free access to the product.⁶

Schools may facilitate these deals themselves by hiring staff to assist their athletes in finding and securing NIL opportunities with local businesses.⁷ However, these contracts are facilitated by entities loosely affiliated with the school, colloquially known as NIL collectives.⁸

These collectives represent a dark cloud hanging over the sports we love to watch, threatening to destroy everything we have held dear: the Saturday touchdowns, the March slam dunks, the June home runs. Current NIL laws do not adequately address the problems these organizations cause, casting a wide shadow over the NCAA and its member schools.⁹ Without action, this “wild west” environment could further devolve into a free for all, where college sports mirror professional leagues, where top athletes go to those institutions whose collectives have the deepest pockets.¹⁰ It will become everything that college sports was never meant to be.

⁵ *Id.*

⁶ Joey Kaufman, *Ohio State launches corporate ambassador program for NIL opportunities*, THE COLUMBUS DISPATCH, (June 2, 2022), <https://www.dispatch.com/story/sports/college/football/2022/06/03/ohio-states-new-nil-program-provide-opportunities-athletes/7490464001/> [https://perma.cc/8FYJ-SK7R].

⁷ *Id.*

⁸ NCAA NAME, IMAGE, LIKENESS RULE, NEXT COLL. STUDENT ATHLETE, <https://www.ncsasports.org/name-image-likeness>.

⁹ See generally Josh Moody, *The Current State of NIL*, INSIDE HIGHER ED (June 7, 2023), <https://www.insidehighered.com/news/students/athletics/2023/06/07/two-years-nil-fueling-chaos-college-athletics>.

¹⁰ The author recognizes the irony of this statement, given the seemingly large disparity between larger institutions, such as Ohio State and Alabama, and the smaller schools with which they “compete,” where athletic department budgets of the larger schools dwarf that
(continued)

While NIL is and can be a very positive thing for athletes, especially those who will not compete at the professional level, NIL has caused chaos with how it's been unleashed into the world of “amateur” sports in a haphazard and uncontrolled way. Reforms are needed before the NCAA reaches a point of no return.

The problems lie with the NIL collectives, and the lack of regulation by both the NCAA and the states of these organizations. Many of these collectives openly defy state NIL laws and NCAA rules regarding recruiting, thus transforming these opportunities for athletes into recruiting advantages for the schools.¹¹ The problem is aggravated by the NCAA's initial inability and reluctance to enforce its own rules, and the state laws which miss the mark—only targeting the educational institutions rather than these independent organizations.¹²

These collectives need to be regulated. The only uniform and consistent way to do this is for Congress—using its Commerce Clause power under the U.S. Constitution—to step in and pass comprehensive NIL legislation that provides for significant penalties for violation of recruiting rules. In the absence of federal guidelines, these collectives will continue to flaunt the rules, aggravating the rift not only between the haves and have-nots, but also creating chasms between the haves, based on who has the largest bankroll. Competitive balance will be destroyed. There is an inherent “innocence” in college sports, where the athletes give their all for the university on the front of the jersey, not the name on the back. Without reform, that landscape is threatened, and college sports as we know them will cease to exist.

It is important to take a step back, explore the history of the NCAA and the regulation of amateur sports, what led to NIL leaping to the forefront, and how we got to where we are now.

of the smaller schools, even at the Division I level. However, NIL collectives will only exacerbate this disparity, even among the larger institutions.

¹¹ Jeremy Crabtree, *How are recruiters working with NIL collectives in states where it's allowed?*, ON3 (June 20, 2022), <https://www.on3.com/nl/news/how-are-recruiters-working-with-nil-collectives-in-states-where-its-allowed/> [https://perma.cc/7MLQ-3FZY].

¹² See Derin B. Dickerson & Trenton Hafley, *The NIL Paradox for NCAA Athletes-Enforce or Recruit?*, BLOOMBERG L. (June 27, 2022, 4:00 AM), <https://news.bloomberglaw.com/us-law-week/the-nil-paradox-for-ncaa-athletes-enforce-or-recruit>.

II. NCAA HISTORY/ENFORCEMENT

The NCAA has, for over a century, been the central governing body of intercollegiate athletics.¹³ Here, the roots of the NCAA will be explored, and how the enforcement arm developed, becoming the dominant power wielded by the organization and how, in recent years, that enforcement power has effectively been neutralized with antitrust litigation and adverse court opinions, which leaves opportunities for shady players to enter the arena.

A. Birth and Expansion

College athletics have been a part of American fabric for over a century and a half.¹⁴ The first college football game was played in 1869.¹⁵ When precisely the first interscholastic basketball game was played is up for debate, however it appears to have been around 1892 or 1893.¹⁶ As the century turned, it became apparent that there needed to be some type of central governing body to regulate college athletics, at least in part, due to the brutal nature of the game of football.¹⁷ For example, in the 1904 season, there were 18 deaths and 159 serious injuries recorded while playing.¹⁸

Other problems were apparent as well; such as, hired players who were never enrolled in school littered rosters across the country—a twist of irony given the state of the game today.¹⁹ Some universities discontinued

¹³ *History*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://www.ncaa.org/sports/2021/5/4/history.aspx> [https://perma.cc/XD3E-TPTJ].

¹⁴ Spencer Parlier, *College football history: Notable firsts and milestones*, NAT'L COLLEGIATE ATHLETIC ASS'N (June 30, 2022), <https://www.ncaa.com/news/ncaa/article/2020-01-31/college-football-history-notable-firsts-and-milestones> [https://perma.cc/V9QF-T8EQ].

¹⁵ *Id.*

¹⁶ Daniel Wilco, *What we know about the first college basketball game ever played*, NAT'L COLLEGIATE ATHLETIC ASS'N (Jan. 11, 2019), <https://www.ncaa.com/news/basketball-men/article/2018-10-05/what-we-know-about-first-college-basketball-game-ever-played> [https://perma.cc/DV3V-6LFL].

¹⁷ NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 13.

¹⁸ *Id.*

¹⁹ *Id.*

their football programs as public outcry grew for the sport to be reformed or abolished all together.²⁰

President Theodore Roosevelt called athletic leaders from the top programs at the time—Ivy League schools Harvard, Princeton, and Yale—to the White House to discuss cleaning up the sport.²¹ The brutality of the sport continued in 1905, and NYU Chancellor Henry McCracken convened a December meeting of 13 schools to propose new rules for the game.²² On December 28, of the same year, 62 colleges and universities became charter members of the Intercollegiate Athletic Association of the United States, which would become a rules-making body in 1906, and renamed the NCAA in 1910.²³

As the years progressed, the NCAA added new sports and championships under its control, including the National Collegiate Track and Field Championships in 1921, and the first basketball championship in 1939.²⁴ Later decades saw the expansion of women’s programs following the passage of Title IX, the dividing of the NCAA’s membership into three divisions, and the strengthening of focus on academics by including institution presidents in the agenda setting for the Association.²⁵

In 1948, the NCAA adopted the “Sanity Code,”²⁶ principles covering financial aid, recruitment, and academic standards²⁷ which only permitted institutions to provide need-based aid and allowed them to hold jobs.²⁸ The NCAA intended the code to ensure amateurism in college sports, however, schools wanted to be able to provide aid based on athletic ability rather

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Steven A. Riess, *National Collegiate Athletic Association*, <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/national-collegiate-athletic-association> [<https://perma.cc/4HAW-A64W>]. Prior to this time, the NCAA had no formal disciplinary authority. College sports was rife with players being paid, illegal gambling, and recruiting issues. Many critics labeled it “insanity.” The “sanity code,” also known by some as the “purity code,” was the first attempt to address these issues.

²⁷ Victoria Larned, *The Ultimate College and High School NIL Timeline*, ECCCKER SPORTS (Mar. 29, 2022), <https://eccckersports.com/industry-insights/the-ultimate-college-and-high-school-nil-timeline/> [<https://perma.cc/8DH4-TQE4>].

²⁸ *Id.*

than need only.²⁹ After only 3 years, the Sanity Code was repealed in 1951.³⁰ Athletes were allowed to receive athletic scholarships beginning in 1956.³¹ With athletes able to earn “compensation,” via having their education paid for, the NCAA needed to be able to differentiate its programs from the professional ranks.

B. Focus on Academics and “Amateurism”

Throughout its existence, the NCAA has maintained that the most important aspect of an inter-scholastic athletic program is the amateur status of the athletes.³² The underlying belief is that sports are an extracurricular activity designed to enhance the academic experience of the student-athlete, not to be a professional undertaking.³³

As the NCAA grew, along with the popularity of the sports it governs, retaining the integrity of the academic experience and the “student-athlete” became its primary purpose.³⁴ This is evident in its Constitution, where it states that “it is the responsibility of each member institution to establish and maintain an environment in which a student-athlete’s activities are conducted with the appropriate primary emphasis on the student-athlete’s academic experience.”³⁵ Student-athletes may not be compensated by a member institution for participating in a sport but may receive educational and other benefits in accordance with guidelines established by their NCAA division.”³⁶

The NCAA has specific rules that protect a student-athlete’s “amateur” status.³⁷ Even with the rise of NIL, the rules against offering incentives to entice a high school athlete to attend a particular school still apply.³⁸

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² NAT’L COLLEGIATE ATHLETIC ASS’N, 2022-2023 NCAA DIVISION I MANUAL, 39 (2022), <https://www.ncaapublications.com/productdownloads/D123.pdf> [<https://perma.cc/HMJ8-AN9W>].

³³ *Id.* at 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 42

³⁸ Jeremy Crabtree, *NIL Collectives Want Enforcement, Not More Guidelines From NCAA*, ON3 (Oct. 20, 2022), <https://www.on3.com/nil/news/nil-collectives-want-enforcement-not-more-guidelines-from-ncaa/> [<https://perma.cc/7BMD-6586>].

But what, exactly, is “amateurism?” Webster defines it as “the practice, habit, or work of an amateur,” and further defines “amateur” as “a person attached to a particular pursuit, study, or science as to music or painting; esp. one who cultivates any study or art, from taste or attachment, without pursuing it professionally.”³⁹ Bylaw 12 of the NCAA prohibits an athlete from using “athletic skill (directly or indirectly) for pay in any form in that sport,” accepting a “promise to pay even if such pay is to be received following completion of intercollegiate athletics participation.”⁴⁰ On its face, the rule book is clear. In reality, though, it is much less so, even before July 1, 2021, when NIL came into existence.

Critics have complained that “amateurism” is whatever the NCAA says it is at any given time.⁴¹ They argue that the original meaning of being an “amateur,” is receiving no compensation for participating in intercollegiate athletics, has long gone the way of the dodo.⁴² They point to the fact that the NCAA has itself eroded the definition by allowing such incentives as gifts worth hundreds of dollars for playing in a bowl game or allowing basketball players to hire agents to test their draft possibilities even if they ultimately decide to return to school.⁴³

In its zealous quest to protect the amateur status of athletes and maintain the extracurricular purpose of athletics, the NCAA has powerful tools at its disposal to ensure compliance on the part of institutions, athletes, and coaching staffs.⁴⁴

³⁹ *Amateurism*, DICTIONARY.NET, <https://www.dictionary.webster.us/amateurism> [<https://perma.cc/K6S3-HP5U>]; *Amateur*, DICTIONARY.NET, <https://www.dictionary.webster.us/amateur> [<https://perma.cc/YA8E-RMPW>].

⁴⁰ 2022-2023 NCAA Division I Manual, *supra* note 32 at 42.

⁴¹ Dan Wolken, *Opinion: More College Athlete Reform? That's Tough When 'Amateurism' Means Whatever the NCAA Proclaims it Does*, USA TODAY, (May 15, 2019), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2019/05/15/ncaa-reform-amateurism-means-whatever-ncaa-proclaims-does/3676682002/> [<https://perma.cc/DH5W-VQ8T>].

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See generally *Infractions Process*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://www.ncaa.org/sports/2021/5/11/division-i-enforcement.aspx> [<https://perma.cc/C4R9-2PG6>].

C. Enforcement

In recent decades the NCAA's most feared and controversial power is its enforcement mechanism. According to the NCAA, "the mission of the enforcement department is to uphold integrity and fair play among member schools; ensure that compliant schools and student athletes are not disadvantaged by their compliance and provide fair procedures and timely resolution of cases."⁴⁵ The process usually involves enforcement staff being made aware of possible violations by member schools, which may conduct an investigation if the information is deemed to be reliable.⁴⁶

These investigations can lead to penalties for the schools and athletes involved depending on the severity of the infraction.⁴⁷ Violations are divided into three levels, I, II, and III.⁴⁸ Level I are the most severe, including lack of institutional control, failure to monitor, unethical conduct and head coach responsibility.⁴⁹ Pay-for-play arrangements, which the current NIL environment is in danger of devolving into, are still prohibited by NCAA rules.⁵⁰

Arguably, the most famous NCAA enforcement case in history involved the Southern Methodist University football team in the 1980s.⁵¹ An investigation revealed that players had been paid by both the university and a group of boosters since the mid-1970s.⁵² Among the players paid was future NFL Hall of Fame running back Eric Dickerson, and former

⁴⁵ *Id.*

⁴⁶ NCAA, ENFORCEMENT: DIVISION I INTERNAL OPERATING PROCEDURES https://ncaaorg.s3.amazonaws.com/enforcement/D1Enf_EnforceIOP.pdf [https://perma.cc/C6EL-BR9K].

⁴⁷ NCAA, NCAA DIVISION I INFRACTIONS 2020-21 ANNUAL REPORT, 13, https://ncaaorg.s3.amazonaws.com/infractions/d1/2021D1Inf_AnnualReport.pdf [https://perma.cc/9MMD-FE26].

⁴⁸ *Id.* at 9.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 9.

⁵¹ Karl Rasmussen, *35 Years Ago, SMU's Death Penalty Changed College Football Forever*, FANBUZZ, (December 16, 2022), <https://fanbuzz.com/college-football/smu-death-penalty/> [https://perma.cc/2FDR-YB2U].

⁵² Eric Dodds, *The 'Death Penalty' and How the College Sports Conversation Has Changed*, TIME, (Feb. 25, 2015), <https://time.com/3720498/ncaa-smu-death-penalty/> [https://perma.cc/3LEQ-GWB2].

commentator Craig James.⁵³ Even after NCAA sanctions in the mid-1980s, including probation and bowl bans, SMU continued to pay players to play football.⁵⁴ Payments in 1985 and 1986 amounted to \$61,000—a paltry amount in the age of six and seven figure NIL deals.⁵⁵

The scandal involved high-level officials at the university, including the chairman of the board of governors, Bill Clements, who would become Governor of Texas prior to the punishment being handed down.⁵⁶ Once the NCAA received information that the payments to players had continued, on February 25, 1987, it leveled the harshest penalty it has in its arsenal, the “repeat violator rule,” also known as the “death penalty.”⁵⁷

Due to this unprecedented penalty, SMU’s 1987 season was cancelled entirely—all four of its home games in 1988 were removed, the previous bowl ban was extended until 1989, the program was stripped of 55 scholarships, and limited to hiring only 5 assistant coaches (instead of the standard nine).⁵⁸ It was, and remains to this day, the most severe penalty ever leveled against an athletic program.⁵⁹ It has had lasting effects, as SMU has never achieved the status as a program it held prior to getting in trouble.⁶⁰

SMU is the only Division I athletic program to receive the so-called “death penalty” for repeated major violations.⁶¹ Two other lower-division programs have also been dealt the most severe sanctions, the 2004-2005 Morehouse College soccer team, and the 2005-2007 MacMurray College Tennis team.⁶² Other programs, of course, have faced major penalties for recruiting and other violations.⁶³ Some of these include the 2010 “Tattoo-gate” Ohio State football team, which cost head coach Jim Tressel his job, the 2002 Baylor basketball team, a troubling case of murder and head

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Rasmussen, *supra* note 51.

⁵⁹ Dodds, *supra* note 52.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² TheMatadorSports, *The 10 Most Crooked College Programs in NCAA History*, BUS. INSIDER (June 28, 2011), <https://www.businessinsider.com/10-most-crooked-college-programs-in-ncaa-history-2011-6> [<https://perma.cc/XNA8-YHCK>].

⁶³ *Id.*

coach Dave Bliss' coverup, and the 2004 USC football team who was stripped of its national title after running back Reggie Bush was found to have received impermissible benefits from a sports marketer.⁶⁴

While the days of SMU are far gone, today NCAA enforcement remains an important part of what the organization purports to accomplish with regard to amateurism and fairness of play. However, over the last several years, it has had less and less of an impact as NIL has surged to the forefront, and the current state has those in charge of programs calling for the NCAA to get off the sidelines when it comes to enforcement of NIL violations.⁶⁵

III. THE RISE OF NIL

As university athletic department revenues and budgets have exploded over the past decade-plus, while athletes have been limited in what they are allowed to receive, calls have been renewed for athletes to be compensated for the skills they bring to the athletic field.⁶⁶

One of the biggest arguments for allowing athletes to be compensated is the stratospheric increases in coaching salaries, especially in football and basketball.⁶⁷ The average head college football coach at the Division I level earned \$2.7 million in 2020-2021, with the top coaches earning well over \$10 million annually.⁶⁸ College basketball coaches' average salaries are less, mostly because there are far more of them, but the top coaches earn \$8-10 million per year.⁶⁹

⁶⁴ *Id.*; See also Ted Miller, *USC Stripped of '04 Championship*, ESPN (June 6, 2011, 4:22 PM), <https://www.espn.com/los-angeles/ncf/news/story?id=6632190> [<https://perma.cc/HTU9-XPCE>].

⁶⁵ Crabtree, *supra* note 38.

⁶⁶ See generally *The NCAA And Its Treatment of Student Athletes*, NPR (Sept. 14, 2011), <https://www.npr.org/2011/09/14/140477593/the-ncaa-and-its-treatment-of-student-athletes>.

⁶⁷ Steve Berkowitz & Tom Schad, *5 Surprising Findings from College Football Coaches Salaries Report*, USA TODAY (Oct. 13, 2021), <https://www.usatoday.com/story/sports/ncaaf/2020/10/14/college-football-coaches-salaries-five-surprising-findings-data/5900066002/> [<https://perma.cc/9FBC-G4YH>].

⁶⁸ *Id.*

⁶⁹ Ryan Hannable, *Highest-Paid College Basketball Coaches: Top Salaries for 2022-23 Season*, BET MGM (March 11, 2023), <https://sports.betmgm.com/en/blog/ncaab/top-college-basketball-head-coach-salaries-bm10/> [<https://perma.cc/LN3Q-7LRE>].

In addition to the rise in coaching salaries, the school and conference revenue from TV contracts has grown exponentially as well.⁷⁰ The Big Ten Conference in 2022 finalized a contract with Fox, NBC, and CBS for \$7 billion over 7 years to broadcast their athletic contests.⁷¹ Each member school is set to receive approximately \$80-100 million annually under the contract, which goes into effect July 1, 2023.⁷² The Southeastern Conference also inked a deal with ESPN beginning in 2024 worth \$3 billion, five times larger than their previous contract with CBS.⁷³ College athletics has become big business, and the old arguments for athletics being extra-curricular activities solely existing to support the academic experience no longer hold water. The athletes on the field driving these enormous revenues while universities fund their entire athletic departments from those efforts.⁷⁴ College athletics (prior to NIL) is the only industry in the country where the “workers” are not entitled to any portion of the money they earn.⁷⁵ Those who share the same campuses with these athletes are permitted to share in revenues, from a graduate assistant (often serving on a coaching staff) to the cashier in the bookstore.⁷⁶ Run of the mill college students are not prohibited from earning money in their free time for the skills they have; in fact, it's encouraged to show potential future employers what they can offer.⁷⁷ So, why should an athlete not be able to capitalize on a skill they possess, while also pursuing an education? Why do the two have to be mutually exclusive in the eyes of the NCAA? At the end of the day, athletes want to be treated the same as their fellow students when it comes to income-earning opportunities.

The challenge has been how to compensate, given the aggressive stance the NCAA has historically taken against treating athletes as

⁷⁰ Adam Rittenberg, *Big Ten Completes 7-year, \$7 Billion Media Rights Agreement With Fox, CBS, NBC, ESPN* (Aug. 18, 2022), https://www.espn.com/college-football/story/_/id/34417911/big-ten-completes-7-year-7-billion-media-rights-agreement-fox-cbs-nbc [https://perma.cc/3S8F-RYPL].

⁷¹ *Id.*

⁷² *Id.*

⁷³ Jon Lewis, *ESPN-SEC Deal Finally Official, Will go Into Effect in 2024*, SPORTS MEDIA WATCH, <https://www.sportsmediawatch.com/2020/12/sec-espn-deal-official-abc-replacing-cbs/> [https://perma.cc/K3GL-8A36].

⁷⁴ *The NCAA And Its Treatment of Student Athletes*, *supra* note 66.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

employees.⁷⁸ Schools have also been reluctant to revenue-share, given the NCAA rules regarding direct payments to athletes.⁷⁹

The first true effort to challenge the decades-long NCAA monopoly on the compensation of student-athletes was brought by former UCLA basketball player Ed O'Bannon.⁸⁰ O'Bannon was a star player on the 1995 national championship team. He sued the NCAA in 2009 over a video game containing his likeness without compensation, alleging violations of the Sherman Antitrust Act.⁸¹ The trial court agreed.⁸² District Court Judge Claudia Wilken ruled that "the association's rules prohibiting student-athletes from receiving any compensation for the use of their names, images, and likenesses restrains price competition among FBS football and Division I basketball schools as suppliers of the unique combination of educational and athletic opportunities that elite football and basketball recruits seek."⁸³ Alternatively, the rules restrain trade in the market where these schools compete to acquire recruits' athletic services and licensing rights."⁸⁴ Judge Wilken found, under a Rule of Reason analysis, that there were less restrictive methods to achieve the NCAA's procompetitive goals than an outright ban on compensation, and therefore enjoined the NCAA from "enforcing any rules or bylaws that would prohibit its member schools and conferences from offering their FBS or Division I basketball

⁷⁸ This has been a long battle with its own history and is outside the scope of this article. However, the author recognizes that this fight continues even in the age of NIL. It ramped up with the Northwestern football team's ultimately failed attempt to unionize in 2014-2015 to the possible circuit split which could redefine a student-athlete's "amateur" status. See *Johnson v. NCAA*, 556 F. Supp. 3d 491 (E.D. Pa. (2021)); *Berger v. NCAA*, 843 F.3d 285 (7th Cir. 2016); *Dawson v. NCAA*, 250 F. Supp. 3d 401 (N.D. Cal. 2017). However, regardless of how these cases are ultimately decided, the NIL collective problems will remain. See Joe Nocera and Ben Strauss, *Fate of the Union: How Northwestern Football Union Nearly came to be*, SPORTS ILLUSTRATED (Feb. 24, 2016), <https://www.si.com/college/2016/02/24/northwestern-union-case-book-indentured>.

⁷⁹ Jon Solomon, *The History Behind the Debate Over Paying NCAA Athletes*, ASPEN INST. (Apr. 23, 2018), <https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes/>.

⁸⁰ Larned, *supra* note 27.

⁸¹ *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 7 F. Supp. 3d 955, 963 (N.D. Cal. 2014).

⁸² *Id.*

⁸³ *Id.* at 1007.

⁸⁴ *Id.*

recruits a limited share of the revenues generated from the use of their names, images, and likenesses in addition to a full grant-in-aid.”⁸⁵ Judge Wilken also allowed the NCAA to cap the amount of compensation at the cost of attendance, as well as provide up to \$5,000 per year in deferred compensation.⁸⁶

The NCAA appealed.⁸⁷ The Ninth Circuit upheld the lower court decision with respect to the antitrust findings but vacated the deferred compensation based on its violations of amateurism and not also being the least restrictive method than current rules against cash compensation.⁸⁸ The Supreme Court denied cert, ending the case.⁸⁹

Although O’Bannon won the case, the NCAA also won. Because of the ruling allowing schools to cap compensation at the cost of attendance, Judge Wilken did not ban the NCAA from creating rules banning individual athletes from selling their NIL rights individually.⁹⁰ The decision, however, increased the calls for NIL rules to change significantly and opened the door for new challenges in the courts.

In 2021, the Supreme Court issued its landmark decision in the *NCAA v. Alston* case.⁹¹ The Court, in a 9-0 decision, ruled that the NCAA’s limits on certain education-related benefits, such as graduate school scholarships, tutoring, and paid internships post-athletics, violate the Sherman Antitrust Act.⁹² The key takeaway being Justice Brett Kavanaugh’s concurring decision, in which he excoriated the NCAA’s business model and leaves open the possibility that all of the NCAA’s compensation rules could be challenged under the same analysis.⁹³

While stressing that the Court’s decision addressed only the “narrow subset of the NCAA’s compensation rules,” Justice Kavanaugh makes it clear that all the NCAA’s rules should “receive ordinary ‘rule of reason’ scrutiny under the antitrust laws.”⁹⁴ He also states that “there are serious questions whether the NCAA’s remaining compensation rules can pass

⁸⁵ *Id.* at 1007–08.

⁸⁶ *Id.*

⁸⁷ *O’Bannon v. NCAA*, 802 F.3d 1049, 1053 (9th Cir. 2015).

⁸⁸ *Id.* at 1078–79.

⁸⁹ Larned, *supra* note 27.

⁹⁰ *Id.*

⁹¹ 141 S. Ct. 2141, 2166 (2021).

⁹² *Id.* at 2164–66.

⁹³ *Id.* at 2168 (Kavanaugh, J., concurring)

⁹⁴ *Id.* at 2167.

muster under ordinary rule of reason scrutiny.⁹⁵ Under the Rule of Reason, the NCAA must supply a legally valid procompetitive justification for its remaining compensation rules.⁹⁶ The NCAA lacks such justification.”⁹⁷

Justice Kavanaugh held that the NCAA’s arguments that their compensation rules are procompetitive because “those rules help define the product of college sports.”⁹⁸ Specifically, the NCAA says that colleges may decline to pay student athletes because the defining feature of college sports, according to the NCAA, is that the student athletes are not paid.”⁹⁹

Justice Kavanaugh then delivered what legal experts and the media have considered to be the coup de grâce to the NCAA:¹⁰⁰

The labels cannot disguise the reality: The NCAA’s business model would be flatly illegal in almost every other industry in America. All of the restaurants in a region cannot come together to cut cooks’ wages on the theory that “customers prefer” to eat food from low-paid cooks. Law firms cannot conspire to cabin lawyers’ salaries in the name of providing legal services out of a “love of the law.” Hospitals cannot agree to cap nurses’ income in order to create a “purer” form of helping the sick. News organizations cannot join forces to curtail pay to reporters to preserve a “tradition” of public-minded journalism. Movie studios cannot collude to slash benefits to camera crews to kindle a “spirit of amateurism in Hollywood. Price-fixing labor is price-fixing labor.”¹⁰¹

While not directly giving student-athletes the right to profit off their name, image, and likeness, the decision, as well as Justice Kavanaugh’s concurrence, indicated those changes were coming, and the NCAA was essentially powerless to stop it.¹⁰² It also left the NCAA vulnerable to

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Larned, *supra* note 27.

further antitrust litigation.¹⁰³ Its long-held monopoly over the compensation of student-athletes had effectively come to an end.¹⁰⁴

Meanwhile, beginning in 2019, states began passing their own NIL laws. California was at the forefront, passing the first NIL legislation in the country in September of that year.¹⁰⁵ This legislation prohibited institutions from punishing athletes who earned NIL compensation.¹⁰⁶ After California, the proverbial floodgates opened, and to date, 42 states have passed NIL laws, mostly modeled after California’s.¹⁰⁷

IV. THE WILD WEST REDUX

Nine days after the *Alston* decision, the NCAA, likely realizing they could no longer stem the NIL tide, adopted an interim policy allowing all current and incoming student-athletes to receive compensation for their name, image, and likeness.¹⁰⁸ This interim policy took effect July 1, 2021, and the “Wild West” became a reality again.¹⁰⁹ Like nearly everything in life, there is some good, some bad, and some ugly.

A. *The Good – Show Me the Money*

Student-athletes all over the country immediately began signing NIL deals with businesses and boosters.¹¹⁰ Antwan Owens, a defensive end at Jackson State University, is credited with being the first college athlete to sign an NIL deal, signing on the dotted line with Three Kings Grooming, a hair products retailer, at a midnight ceremony July 1, 2021.¹¹¹ University of

¹⁰³ Ralph D. Russo, *Analysis: Court Ruling Leaves NCAA More Vulnerable Than Ever*, ASSOC’D. PRESS (June 21, 2021), <https://apnews.com/article/in-state-wire-college-sports-us-supreme-court-business-courts-34dbb5bac5cdd8a35116a04b3e6e4116> [https://perma.cc/F5MH-RMEM].

¹⁰⁴ *Id.*

¹⁰⁵ Larned, *supra* note 27.

¹⁰⁶ *Id.*

¹⁰⁷ *Your Guide to Federal and State Laws on Name, Image and Likeness Rules for NCAA Athletes*, SAUL EWING LLP, <https://www.saul.com/nil-legislation-tracker> [https://perma.cc/CRF9-FH9K].

¹⁰⁸ Larned, *supra* note 27.

¹⁰⁹ *Id.*

¹¹⁰ Elizabeth Karpen, *Players Getting Paid: Here’s Who Signed NIL Deals on Policy’s First Day*, N.Y. POST, (July 1, 2021), <https://nypost.com/2021/07/01/here-are-players-who-signed-nil-deals-on-policys-first-day/> [https://perma.cc/7M2L-JAWG].

¹¹¹ *Id.*

Miami quarterback D'Eriq King also signed a deal shortly after midnight on the first day, inking an endorsement deal to promote Tampa-based businesses College Hunks Hauling Junk and Murphy Auto Group.¹¹²

Hanna and Haley Cavinder, twin sisters known as much if not more for their TikTok videos in addition to being basketball stars at Fresno State (since transferred to Miami), have become the most well-known female collegiate athletes to sign such deals, promoting Boost Mobile.¹¹³ They have since signed with WWE, Champs Sports, as well as given an ownership interest in Baseline Team, a streetwear company.¹¹⁴ The twins' endorsement deals eclipsed the \$2 million mark in the first year, and are among the most popular athletes in the country, owed mostly to their extensive social media reach.¹¹⁵

Opendorse, a firm that provides technology to the athlete endorsement industry and helps to facilitate NIL deals, estimated that college athletes earned \$917 million in the first year of NIL.¹¹⁶ They estimate that over the next 12 months, that number will jump to \$1.14 billion.¹¹⁷ National advertisers are quadrupling their spend on athletes in the second year, even as the nation's economy heads toward an inflation-fueled recession.¹¹⁸ Seventy-five percent of NCAA athletes have participated in some level of NIL activity in the first 12 months, and the average Division I athlete earned \$3,711.¹¹⁹

While not rivaling the amount of money that the top athletes will pull when playing at the highest professional level, some of these deals are mind-boggling. LifeWallet signed Kansas State basketball player Nigel

¹¹² *Id.*

¹¹³ Brett Knight, *Cavinder Twins, Stars on TikTok and Basketball Court, Are Nearing \$2 Million in NIL Deals, with More Ahead*, FORBES, (July 1, 2022), <https://www.forbes.com/sites/brettknight/2022/07/01/haley-hanna-cavinder-twins-ncaa-nil/?sh=1f5d61c85a41> [<https://perma.cc/E8UJ-AYKV>].

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Josh Schafer, *NIL: Here's how Much Athletes Earned in the First Year of New NCAA Rules*, YAHOO! FIN. (July 1, 2022), <https://finance.yahoo.com/news/nil-heres-how-much-ncaa-athletes-earned-185901941.html> [<https://perma.cc/85V2-F6WY>].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Pack to a 2-year, \$800,000 deal upon his transfer to Miami.¹²⁰ Alabama quarterback and 2021 Heisman Trophy winner Bryce Young reportedly hauled in over \$800,000 in deals, before taking even one snap as the Crimson Tide’s starting quarterback.¹²¹

Quarterback Quinn Ewers made headlines in 2021 when he elected to forgo his senior year of high school to enroll early at Ohio State to take advantage of the new rules.¹²² Texas law prohibits high school athletes from profiting from NIL deals.¹²³ Upon enrolling at Ohio State, Ewers signed a \$1.4 million deal with sports autograph company GTSM.¹²⁴ He was 19 years old at the time and had never worn an Ohio State jersey. Ewers has since transferred to Texas, and as of October 2022, has reportedly signed NIL deals approaching \$4 million.¹²⁵

These deals are not all about cash either. Ewers has been given exclusive use of an Aston Martin, and his teammate Bijan Robinson sports a Lamborghini.¹²⁶ Ohio State quarterback C.J. Stroud drove around Columbus in a Mercedes G Wagon, while his defensive teammate Jack

¹²⁰ John Schafer, *CEO Defends \$800,000 NIL Deal with College Athlete: ‘We’re going to be on Everybody’s Minds,’* YAHOO! FIN. (May 12, 2022), <https://finance.yahoo.com/news/ceo-defends-nil-deal-college-athlete-185444826.html> [<https://perma.cc/8QWS-2EFX>].

¹²¹ SDS Staff, *Details of Bryce Young’s Lucrative NIL Deals Released*, SATURDAY DOWN SOUTH, <https://www.saturdaydownsouth.com/alabama-football/bryce-young-nil-deal-s-alabama-crimson-tide-800000-million/> [<https://perma.cc/9QXG-6M3Y>].

¹²² Blake Schuster, *Ohio State’s Quinn Ewers Reportedly Signs 3-Year NIL Contract Worth \$1.4 M*, BLEACHER REPORT (Aug. 31, 2021), <https://bleacherreport.com/articles/10011433-ohio-states-quinn-ewers-reportedly-signs-multiyear-nil-contract-worth-14m> [<https://perma.cc/74H7-P3F3>].

¹²³ *NIL Information*, U. INTERSCHOL. LEAGUE, <https://www.uil-texas.org/policy/2021-22-policy-info/nil-information>, (last visited Jan. 17, 2024).

¹²⁴ Schuster, *supra* note 122.

¹²⁵ Josh Schafer, *College Quarterback’s NIL Compensation Nears \$4 Million Amid New NFT Partnership*, YAHOO! FIN. (Oct. 7, 2022), <https://news.yahoo.com/college-quarterbacks-nil-compensation-nft-partnership-200004496.html> [<https://perma.cc/V4PB-2MTH>].

¹²⁶ Adam Glick, *Texas QB Quinn Ewers Shows Off New Aston Martin from NIL Deal*, LONGHORNS COUNTRY (June 9, 2022), <https://www.si.com/college/texas/football/longhorns-nil-quinn-ewers-aston-martin> [<https://perma.cc/WTM5-B4UR>].

Sawyer was awarded a custom Chevy Silverado from Mark Wahlberg Chevrolet in Columbus.¹²⁷

While Division I athletes occupy the headlines for the astronomical value of their deals, the lower-level athletes are not left out in the cold.¹²⁸ The NCAA's NIL rules apply equally to Division II and III athletes.¹²⁹ Jack Betts, a wide receiver for Division III Amherst College in Massachusetts, has been dubbed the "King of DIII NIL" having signed over 35 deals totaling approximately \$7,500 in cash and free merchandise.¹³⁰

Most Division III NIL deals consist of free products, such as sports drinks or clothing.¹³¹ Although the money is often less, the contacts the athletes cultivate with the companies involved can lead to future post-graduate employment.¹³² This benefit can far outweigh a contract worth less than a thousand dollars for an athlete at this level, who will likely never play professionally.

For all the good NIL promises, allowing college athletes to take advantage of their skills and popularity, the downsides are numerous, with

¹²⁷ Doug Greenberg, *OSU's C.J. Stroud Swaps His NIL Bentley for a Mercedes*, FRONT OFF. SPORTS (June 9, 2022), <https://frontofficesports.com/osus-c-j-stroud-swaps-his-nil-bentley-for-a-mercedes/> [https://perma.cc/SF3R-5R6S]; Phil Harrison, *Jack Sawyer Receives Amazing Set of Wheels from Mark Wahlberg Chevrolet*, BUCKEYES WIRE (Aug. 10, 2021), <https://buckeyeswire.usatoday.com/2021/08/10/ohio-state-football-jack-sawyer-receives-amazing-set-of-wheels-from-mark-wahlberg-chevrolet-buckeyes-nil/>.

¹²⁸ *NCAA President Warns Lack of NIL Law Could Kill Division II and III Athletics*, WASH. EXAM'R (Oct. 17, 2023), <https://www.washingtonexaminer.com/news/2439251/ncaa-president-warns-lack-of-nil-law-could-kill-division-ii-and-iii-athletics/>.

¹²⁹ Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

¹³⁰ Alex Noga, *Jack Betts '24E: The King of Division III NIL*, THE AMHERST STUDENT (Sept. 14, 2022), <https://amherststudent.com/article/jack-betts-24e-the-king-of-division-iii-nil/> [https://perma.cc/QJ28-UYTV].

¹³¹ Dan Whateley and Margaret Fleming, *How NIL Deals and Brand Sponsorships are Helping College Athletes Make Money*, BUS. INSIDER (Sept. 19, 2023), <https://www.businessinsider.com/how-college-athletes-are-getting-paid-from-nil-endorsement-deals>.

¹³² *The In's and Out's of NIL Deals and How It is Shaping Collegiate Athletics*, NEXT LEVEL U (Mar. 14, 2023), <https://nlusports.com/the-ins-and-outs-of-nil-deals-and-how-it-is-shaping-collegiate-athletics/>.

wide-ranging implications for student-athletes, school administrators, coaching staff, and even fans.

B. The Bad – Transfer Portal and College Free Agency

The transfer portal was instituted in 2018 by the NCAA to allow athletes to switch schools and use their remaining eligibility elsewhere without penalty.¹³³ Prior to the portal being implemented, athletes who transferred were required to sit out a full season before being allowed to play, absent a waiver.¹³⁴

To use the portal, a player must declare their intention to transfer during one of two windows.¹³⁵ The first window opens when the teams who make the College Football Playoff are announced, typically the first weekend in December, and remains open for 45 days.¹³⁶ The second opens on May 1 and lasts 15 days.¹³⁷

When it was implemented, on its face, the portal was a great idea and far overdue. Circumstances can change when a player arrives on campus. Maybe they have not had the opportunities to play as expected when they were recruited. Maybe another player has exceeded expectations, and that player gets most of the playing time. Often, the coach who recruits a certain player moves on to another job or is terminated. The old rules forced these athletes to stay in an unfavorable situation or pay a price by sitting out a year if they wanted to leave.¹³⁸

While not directly related to the NIL rules, it has exacerbated the “Wild West” environment by creating a de facto free agency market for college athletes. Before NIL, an athlete might want to leave due to lack of playing time, or the loss of a coach. Now, the transfer portal is packed with players who are not happy with their current NIL deals and are looking for

¹³³ Adam Hulse, *College Football Transfer Portal Explained: Rules, Pros and Cons, and All Else You Need to Know*, SPORTSKEEDA (Dec. 7, 2022), <https://www.sportskeeda.com/college-football/college-football-transfer-portal-explained-rules-pros-cons-else-need-know> [<https://perma.cc/LPU4-T3SM>].

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* Additionally, graduate players can enter and transfer at any time, and an additional window opens for 30 days when a football program fires its head coach.

¹³⁸ *Id.*

more money.¹³⁹ Athletes are recruited to transfer to another school not for a better chance to play, not for a better academic situation, but much like a professional free agent, for more money.¹⁴⁰ With such an influx of players in the portal, the environment is ripe for tampering, and NIL collectives are more than happy to interfere in the legitimate recruiting efforts of rival schools.¹⁴¹

There is collateral damage to this free agency aspect, aside from the questionable recruiting of players. As of December 8, 2022, 1,328 players had entered the transfer portal.¹⁴² In 2021, 1,427 players entered the portal, and 42% of those did not find a new home.¹⁴³ “With new players coming from high school, the top schools get the pick of the litter. Players who might have gotten a chance before are now left out in the cold with their options of staying on the bench or winding up at a lower level school..¹⁴⁴ Schools also find themselves at a disadvantage, as they often lose several players at once to transfer and have unused scholarships.¹⁴⁵ The University of Kansas, as an example, lost 15 football players to the transfer portal in a single year, mostly due to their resources being allocated more to the basketball program. This is a killer for competitive balance, as schools like Kansas get what are essentially the lowest level of available talent.

Despite its non-NIL shortcomings, the portal remains a net positive for college sports. No longer are players punished for leaving an adverse situation and can find a new home where their skills can be utilized.¹⁴⁶ There are much larger problems that need to be addressed through legislation: the NIL collectives themselves.

¹³⁹ Tim Mackey, *NIL Leads to Transfer Portal Chaos*, NEXTNAME (Jan. 27, 2023), https://nextname.io/nil-leads-to-transfer-portal-chaos/?gclid=CjwKCAjw_YShBhAiEiwAMomsEA2n_5HHvVRXWF30O3dx_oRA2mcKArSQ-fVx5V5LkifWH8eb-LE3nRoCWXsQAvD_BwE [https://perma.cc/6UA7-8WCM].

¹⁴⁰ Hulse, *supra* note 133.

¹⁴¹ *Transfer Portal - Nearly Half The Players Don't Find A New Home*, COLL. FOOTBALL POLL (Aug. 23, 2022), <https://www.collegefootballpoll.com/news/transfer-portal--nearly-half-the-players-dont-find-a-new-home/> [https://perma.cc/G3LK-UARX].

¹⁴² *College Football Transfer Portal Tracker for 2023: Updates*, ESPN (Dec. 8 2022), https://www.espn.com/college-football/story/_/id/35010801/college-football-transfer-portal-tracker-2023-latest-updates-news-rumors-commits [https://perma.cc/J74X-6TUI].

¹⁴³ COLLEGE FOOTBALL POLL, *supra* note 141.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Hulse, *supra* note 133.

C. The Ugly – NIL Collectives

We have arrived at the root of the problem, the antagonist in this real-life drama film: the NIL collective. A collective is an organization, independent of the educational institution, that pools money for NIL contracting purposes.¹⁴⁷ These organizations are school specific, and are typically started by prominent alumni, supporters, and business leaders in the geographic area of the school in question.¹⁴⁸ For example, the largest Ohio State collective, known as The Foundation, was started by prominent Columbus real estate developer Brian Schottenstein and former Ohio State quarterback Cardale Jones, with former head coach Urban Meyer sitting on its board.¹⁴⁹

NIL collectives were born simultaneously with the passage of the interim NCAA rule that opened the NIL floodgates.¹⁵⁰ The first, the Gator Collective, is the brainchild of Eddie Rojas (a former baseball player at the University of Florida).¹⁵¹ As of July 1, 2022, there were more than 120 collectives in operation.¹⁵² Of the 65 “Power Five” conference schools (the five largest and most influential athletic conferences – Big Ten, SEC, ACC, Pac 12, and Big 12), 92% have at least one collective or were in the process of creating one as of July 1, 2022.¹⁵³

Collectives operate by either soliciting one-time donations from boosters or selling subscriptions.¹⁵⁴ Collectives are typically set up as either 501(c)(3) non-profit organizations or limited liability companies.¹⁵⁵ Collectives that are set up as non-profit organizations typically require the athletes to choose a charity to whom they will provide services in exchange for payment from the collective.¹⁵⁶

¹⁴⁷ Pete Nakos, *What are NIL Collectives and how do They Operate?*, ON3 (July 6, 2022), <https://www.on3.com/nl/news/what-are-nil-collectives-and-how-do-they-operate/> [https://perma.cc/Q7E3-CYLP].

¹⁴⁸ *Id.*

¹⁴⁹ *About the Foundation*, THE FOUND., <https://www.thefoundationohio.com/about/> [https://perma.cc/6UGB-CYG8].

¹⁵⁰ Nakos, *supra* note 147.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

While each collective strives to achieve its own unique set of goals, such as streamlining NIL opportunities for athletes or “crowdsource” booster funds, there have been three general categories of collectives that have emerged: (1) marketplace collectives, which aim to facilitate meetings between business and athletes to help create opportunities; (2) donor-driven collectives, the most common, which pool booster and supporter funds to give to athletes, purportedly in an NCAA compliant and legal manner; and (3) dual collectives, the combination of the two.¹⁵⁷

The donor-driven collective is the setup that should garner attention from the NCAA and governmental authorities. Given the lack of presenting “opportunities for athletes,” and solely pooling money from boosters and supporters to “give” to athletes, the model is ripe for abuse.¹⁵⁸

V. THE DANGERS

The current landscape is simply not sustainable without stricter regulation. There are many problems with the current environment in which these collectives operate, especially the donor-driven variety.

A. *Pay-for-Play: The Root of All Problems*

The abuse and blatant violations of both NCAA rules and current state law comes in the form of “pay-for-play.” Pay-for-play is precisely what it sounds like—financial inducement to attend a certain institution and participate in the school’s athletic program.¹⁵⁹

After the *Alston* decision came down, the NCAA realized that its enforcement division was effectively powerless to do anything against the collectives and even the schools to a certain extent.¹⁶⁰ The NCAA has no NIL-specific bylaws, so enforcement is near impossible.¹⁶¹ NCAA’s Vice President of Enforcement John Duncan told the Associated Press in January of 2022, “We are not enforcing NIL deals, and we’re not enforcing the interim policy, which is largely permissive.”¹⁶² This actually makes sense. After all, NIL deals are being facilitated by the collectives so the

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Ralph D. Russo, *Lack of Detailed NIL Rules Challenges NCAA Enforcement*, ASSOC’D PRESS (Jan. 29, 2022, 1:46 P.M.), <https://apnews.com/article/college-football-sports-business-15e776b5d115dac0a37a1563d5bfce00> [https://perma.cc/38FD-NYD6].

¹⁶² *Id.*

NCAA has no control over them and cannot enforce violations.¹⁶³ However, every collective is closely tied to a university, whether the schools like it or not.¹⁶⁴ Some collectives interact closely with coaching staff at the schools and the lines can be blurred.¹⁶⁵ The NCAA’s challenge is to determine if a violation is committed by a school or by a collective. Without clear bylaws governing, the NCAA is hamstrung.

NIL deals are ostensibly based on an analysis of the value an athlete brings to a relationship, not as an incentive to enroll at a school or join a team.¹⁶⁶ However, we are seeing NIL more and more becoming the de-facto recruiting tool, despite the blatant illegality.¹⁶⁷

One of the most egregious examples of an NIL collective incentivizing a recruit is the case of Jaden Rashada, a four-star quarterback from California who originally committed to the University of Miami in June of 2022.¹⁶⁸ He flipped this commitment to the University of Florida the following November.¹⁶⁹ He signed a NIL deal with the Gator Collective the same day he announced he was committing to Florida.¹⁷⁰ The total price of the contract was \$13.8 million: an upfront payment of \$500,000, followed by monthly payments of \$250,000 during his freshman year, \$291,666.66 as a sophomore, \$375,000 a month as junior, and \$195,833.33 as a senior.¹⁷¹ To receive these payments, all Rashada was required to do was live in Gainesville, FL, post on social media a minimum number of times monthly, participate in “up to 8” fan engagements per season, and autograph 15 pieces of merchandise per year.¹⁷²

In early December of 2022, the Gator Collective canceled the contract pursuant to a blanket termination clause allowing the collective to

¹⁶³ *Id.*

¹⁶⁴ Nakos, *supra* note 147.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Stewart Mandel & Andy Staples, *Jaden Rashada’s Unprecedented Recruitment: How a 4-Star QB Went from \$13.85 Million to No NIL Deal*, THE ATHLETIC (Feb. 6, 2023), <https://theathletic.com/4149181/2023/02/06/jaden-rashada-nil/> [<https://perma.cc/XT53-KEPF>].

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

terminate at its sole discretion.¹⁷³ This termination clause is likely the only saving grace the collective has to avoid a massive breach of contract claim.¹⁷⁴ Allegedly, the collective had no funding in place to begin to make the payments, and had not arranged any commitments from boosters or business leaders to back up the contract.¹⁷⁵ It appears that it was used solely to pluck Rashada away from Miami. The collective preyed on the inexperience of his representation to include the blanket termination clause. Since Rashada had already signed his national letter of intent, it seemed he was in limbo, committed to Florida with no promised NIL money. He initially remained committed to Florida, but in January of 2023, he requested and received a release from his letter of intent, and eventually committed to Arizona State University.¹⁷⁶ The Gator Collective, for its part, has not commented publicly about the situation, and the University of Florida has tried to distance itself from it.¹⁷⁷ But it is definitely a black eye for the collective, and a public relations nightmare for the university.

Despite the blatant violation of NCAA rules and Florida state law, the Gator Collective has escaped any punishment and is free to prey on another young athlete.¹⁷⁸ Proponents of the collectives will argue that this is a one-off situation, and that collectives overall help the athletes navigate this new world.¹⁷⁹ However, these are not one-off incidents, and they are growing exponentially.

Texas A&M's recruiting class in 2022 featured eight five-star players and 18 of the top 100 ranked players in the country, based on NIL deals.¹⁸⁰

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Dan Rorabaugh, *With Alex Atkins and Jaden Rashadacases, FSU and Florida Football Face NIL violations. Here's What to Know*, TALLAHASSEE DEMOCRAT (Jan. 20, 2024), <https://www.tallahassee.com/story/sports/2024/01/20/florida-fsu-football-recruiting-violations-what-know-nil-investigations/72294310007/>.

¹⁷⁹ *Id.*

¹⁸⁰ Sam Kahn Jr. and Andy Staples, *Texas A&M had national title hopes, a \$94.9 million coach and a No. 1 recruiting class. What went wrong?* (Dec. 8, 2022), <https://theathletic.com/3980381/2022/12/08/texas-am-jimbo-fisher-offensive-coordinator/> <https://perma.cc/RG8L-8ZL3>].

These deals were facilitated by The Fund, a secretive donor-driven collective aligned closely with the Texas A&M football program.¹⁸¹

Ohio State is reportedly “missing out” on major football recruits because its collectives cannot come up with enough funds.¹⁸² Local reports in Columbus noted that Ohio State missed out on one unnamed player because other schools were able to pay more than double the amount of money.¹⁸³ Specifically, The University of Georgia’s collectives were allegedly able to secure \$1.8 million for this player simply to sign, plus an additional \$800,000 per year, while Ohio State’s collectives were only able to secure \$500,000 per year.¹⁸⁴ Ohio State football coach Ryan Day has made public statements in the past that the program will need at least \$13 million over the next couple of seasons to keep his current roster together and be compete for a College Football Playoff championship.¹⁸⁵

Ohio State houses one of the largest and most successful athletic programs in the country.¹⁸⁶ If they cannot keep up in this new environment, what hope do other schools have? Is this what the public wants college athletics to be? Coaches now must worry about paying high school kids or players from other schools in the transfer portal enough money to lure them to their campus while still doing their normal job of scouting opponents, formulating game plans, etc. So far, in the public eye, NIL has been a good thing, but will that last?

¹⁸¹ ON3, *The Fund – Texas A&M Aggies Collective*, <https://www.on3.com/nil/collectives/the-fund-18/> [<https://perma.cc/T8J5-4W34>] (last accessed Mar. 27, 2023).

¹⁸² David Hookstead, *Ohio State Reportedly Getting Outbid for Recruits by a Huge Margin*, OUTKICK (Dec. 15, 2022), <https://www.outkick.com/ohio-state-buckeyes-nil-outbid-top-recruits-football/>.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Doug Lesmerises, *Ohio State Believes it Needs \$13 Million in NIL Money to Keep its Football Roster Together: Doug Lesmerises*, CLEVELAND.COM, (June 2, 2022), <https://www.cleveland.com/osu/2022/06/ohio-state-believes-it-needs-13-million-in-nil-money-to-keep-its-football-roster-together-doug-lesmerises.html> [<https://perma.cc/2XF6-NSJX>].

¹⁸⁶ *Id.*

B. Public Perception

Thus far, the public has a positive opinion of NIL in college athletics.¹⁸⁷ According to a poll taken by the Washington Post and the University of Maryland, sixty percent of Americans say it “hasn’t made a difference” in their enjoyment of sports.¹⁸⁸ Of the forty percent who feel it has made a difference, 28% say it has made a positive impact.¹⁸⁹

The positive outlook is likely due to the long-held public belief that athletes should be compensated for their services.¹⁹⁰ However, that is likely to change if the collectives continue to be able to operate with impunity.

As outlined above, some donor-driven collectives set themselves up as non-profit organizations, often as charities.¹⁹¹ These collectives pool donations from boosters and supporters to pay athletes for providing services to a charity.¹⁹² There is no doubt these donors are taking a tax deduction to pay these athletes, surely not out of a sense of charity, but out of their desire to see their favorite collegiate teams perform well. Regulatory issues with the IRS aside, there is a substantial risk that the public will have a less than favorable view of this.¹⁹³

In addition, the continued blurring of the lines between the collectives and the institutions they support can lead to public perception issues. Some schools are openly requesting that fans and supporters donate to these collectives.¹⁹⁴ Ohio State Athletic Director Gene Smith issued a statement

¹⁸⁷ Emily Giambalvo, Scott Clement, and Emily Guskin, *NIL Hasn’t Made a Difference for Most in Enjoyment of College Sports, Poll Finds*, THE WASH. POST (June 30, 2022), <https://www.washingtonpost.com/sports/2022/06/30/nil-college-sports-fans-poll/> [https://perma.cc/M5VZ-3UWC].

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Daniel Libit & Lev Akabas, *67% of Americans Favor Paying College Athletes: Sportico/Harris Poll*, SPORTICO.COM, (Aug. 17, 2023, 12:01AM) <https://www.sportico.com/leagues/college-sports/2023/americans-favor-college-athletes-pay-harris-poll-1234734402/>.

¹⁹¹ James Moore & Co., *The Risks of Nonprofit NIL Collectives*, <https://www.jmco.com/articles/collegiate-athletics/risk-nonprofit-nil-collectives/> [https://perma.cc/N74K-8M43].

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Updates on Ohio State NIL Collective Organizations* (Dec. 8, 2022), <https://ohiostatebuckeyes.com/nil-collectives/> [https://perma.cc/2CTE-YZ6R].

in December of 2022 that was widely seen as a call for help, a call to the “Average Joe” to give money for the school to stay competitive.¹⁹⁵ It is not a good look for an executive official at a major public university to ask for donations from the public, not to pursue an academic purpose, not for research to cure disease or fund testing of new agricultural methods, but to pay an eighteen-year-old to throw a football or make a jump shot.¹⁹⁶

Prior to the 2022 football season, Texas A&M head coach Jimbo Fisher and Alabama head coach Nick Saban had a very public spat about NIL.¹⁹⁷ Nick Saban has been an outspoken critic of the current NIL environment and how the collectives operate.¹⁹⁸ While speaking at a fundraiser in May, Saban made the statement that Fisher had “bought every player” of Texas A&M’s record-setting recruiting class, alluding to the seemingly cozy relationship between Fisher and the A&M collective, “The Fund.”¹⁹⁹ Fisher, in response, unloaded on Saban, calling him a “narcissist” and encouraging reporters to dig into Saban’s recruiting past, implying that Saban had previously broken rules.²⁰⁰ While they eventually buried the hatchet, and the public enjoyed the headlines for a short time, the incident gave a glimpse into how this new world is impacting coaches and how they feel about it, and each other.²⁰¹ If the current climate is allowed to continue, we may see more of this, especially as some schools fall behind in recruiting, and coaches, whose livelihoods are on the line, lash out publicly. The public may tire of the antics quickly.

The risk these collectives pose to recruiting and the public perception of NIL is too great to allow the current system to continue. Given the

¹⁹⁵ *Id.*

¹⁹⁶ Doug Lederman, *Report Documents Rise of 'Donor Collectives' in College Sports*, INSIDE HIGHER ED (Oct. 23, 2023), <https://www.insidehighered.com/news/students/athletics/2023/10/23/report-documents-rise-donor-collectives-college-sports>.

¹⁹⁷ Bill Bender, *Nick Saban vs. Jimbo Fisher feud: Revisiting the Offseason Tensions Between Alabama, Texas A&M Coaches*, THE SPORTING NEWS, (Oct. 8, 2022), <https://www.sportingnews.com/us/ncaa-football/news/nick-saban-jimbo-fisher-feud-revisited-will-alabama-texas-am/wl39bszoixvcowxrfk16yxhv> [<https://perma.cc/H5FV-46QZ>].

¹⁹⁸ Ross Dellenger, *Alabama Coach Nick Saban Weighs in on NIL, Player Safety and NCAA Rules Changes*, SPORTS ILLUSTRATED (Mar. 7, 2023), <https://www.si.com/college/2023/03/07/nick-saban-exclusive-interview-nil-rule-changes> [<https://perma.cc/3UHQ-D6NR>].

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Bender, *supra* note 197.

myriad of state laws which require schools (and collectives) to operate by different rules, grouped with the lack of an enforcement mechanism by both states and the NCAA, it is past time for the Federal Government to put an end to the madness. The Federal Government needs to step in, preempt state laws, and regulate the area in full.

VI. THE FEDERAL ANSWER

Federal intervention to protect students and student-athletes is not unprecedented.²⁰² Arguably the most famous federal legislation passed by Congress that affected college athletics has been Title IX of the Education Amendments of 1972.²⁰³ Title IX prohibits discrimination based on sex in participation in any education program or activity receiving federal financial assistance.²⁰⁴ Title IX increased participation in women's sports dramatically, with female athletes increasing sevenfold from before its passage through 2021.²⁰⁵

To this point, the Federal Government has been hesitant to pick up where the NCAA and the states thus far have failed. Congress's attitude is to let the market (or the NCAA itself) fix it.²⁰⁶ At least eight pieces of legislation have been introduced as of 2024, most of which have gained little, if any traction.²⁰⁷ Most of these bills are aimed at protecting the NIL rights of athletes at the federal level, as opposed to the current 42 state laws in effect and proposing one overall set of guidelines for institutions to abide by while negotiating NIL deals.²⁰⁸ Noble goals, however, they will not solve the problems brought on by the emergence of the collectives and pay-for-play inducements.

²⁰² See, e.g. Genevieve Carlton, PhD., *How Title IX Impacts Women's Equality in College Athletics*, BEST COLLEGES (November 19, 2021), <https://www.bestcolleges.com/news/2021/08/24/how-title-ix-impacts-womens-equality-in-college-athletics/> [https://perma.cc/B2B4-MZ6K].

²⁰³ 20 U.S.C. §1681.

²⁰⁴ *Id.*

²⁰⁵ See Carlton, *supra* note 202.

²⁰⁶ Ross Dellenger, *Tommy Tuberville Is Leading the Latest Congressional Push for NIL Regulation*, SPORTS ILLUSTRATED (Aug. 3, 2022), <https://www.si.com/college/2022/08/03/tommy-tuberville-leading-congressional-push-nil-regulation> [https://perma.cc/29LR-VBK4].

²⁰⁷ *Id.*

²⁰⁸ SAUL EWING LLP, *supra* note 107.

The blockade—in the way of a bipartisan agreement—appears to be the scope of the legislation and whether it should be permissive vs. restrictive.²⁰⁹ Republicans want a narrow focus on only NIL, with restrictions on the athletes and antitrust protections for the NCAA, while Democrats want to address a wider range of issues in addition to NIL, like athlete health care, lifetime scholarships, collective bargaining, and a more permissive NIL environment.²¹⁰

One bill, introduced by Republican Senator Jerry Moran in 2021, the “Amateur Athletes Protection and Compensation Act of 2021”, attempts to address these organizations.²¹¹ Section 3 of the bill, spanning one-half page of the thirty-six page bill, covers “compensation provided by unaffiliated third parties.”²¹² This section ensures that only compensation paid to student-athletes comes from unaffiliated third-parties, such as boosters, businesses, or collectives, rather than the schools themselves, and that any such compensation “shall not be promised, paid, or permitted to induce – (A) the recruitment of an amateur intercollegiate athlete to any institution of higher education or a group of institutions of higher education; or (B) an amateur intercollegiate athlete to continue attending a particular institution of higher education.”²¹³

This is a start; however, this is missing the enforcement mechanism against the third parties. The bill does call for the creation of an “Amateur Intercollegiate Athletics Corporation” to:

[S]erve as a clearinghouse for best practices with respect to the rights and protections of amateur athletes who enter into agency contracts and endorsement contracts, to establish rules to enforce this Act and impose fines, penalties, and sanctions on *amateur athlete representatives, institutions of higher education, conferences, and national amateur athletic associations that violate such rules.*²¹⁴

²⁰⁹ Dellenger, *supra* note 206.

²¹⁰ *Id.*

²¹¹ Amateur Athletes Protection and Compensation Act of 2021, S.414, 117th Cong. §1 (2021).

²¹² *Id.* at §3.

²¹³ *Id.* at §3(2)(A), (B).

²¹⁴ *Id.* at §8(a), (b)(1), (2) (emphasis added).

There is no mention of fines, penalties, sanctions on unaffiliated third parties such as collectives; only agents, schools, conferences, and athletic associations are mentioned.²¹⁵

This is a clear omission. While these parties can certainly violate the rules and should be included, NIL collectives were gaining media attention in 2021 when this bill was introduced.²¹⁶ If any legislation is to have any impact at all, these organizations must be covered in the scope of the law's reach.

The most radical bill addressing NIL was introduced in April 2025 by Republican Representative Michael Baumgartner of Washington.²¹⁷ The "Restore College Sports Act" would completely eliminate the NCAA, replacing it with the "American College Sports Association," or ASCA, which would be led by a commissioner appointed by the President of the United States.²¹⁸ The ASCA would oversee sharing of NIL funds among student athletes, equal distribution of broadcast revenue, and the ability to transfer from one school to another.²¹⁹ The bill, however, places a severe limit on the salaries of college coaches, to a maximum of ten times the full cost of attendance at any covered institution.²²⁰ With this provision, it is highly unlikely this bill will see the light of day.

A model bill would solve the problems NIL has caused would preempt all state laws regarding NIL. The model legislation should be broad enough to encompass all issues currently addressed by the myriad of state laws but narrow enough to only deal with NIL. Other issues, such as healthcare, collective bargaining, etc. are issues for another day.

Donor-driven NIL collectives should be eliminated in any federal legislation. These organizations have shown themselves to be the most loose with the rules, and threaten to take over, if they haven't already, the

²¹⁵ *Id.*

²¹⁶ Alex Kirshner, 'Everything's on Fire': NIL Collectives Are the Latest Patchwork Solution for College Athlete Pay, GLOB. SPORT MATTERS (Jan. 17, 2023), <https://globalsportmatters.com/business/2023/01/17/nil-collectives-latest-patchwork-solution-college-athlete-pay/>.

²¹⁷ Mike Florio, *New Bill in Congress Would Revolutionize College Athletics – and End the NCAA*, PRO FOOTBALL TALK (April 8, 2025), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/new-bill-in-congress-would-revolutionize-college-athletics-and-end-the-ncaa>.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

recruiting processes at most schools.²²¹ These collectives have corrupted the spirit of NIL, turning compensation for an athlete’s name, image, and likeness into a grand pay-for-play scheme far more insidious than even the SMU death-penalty case.²²² NIL can be more efficiently and honestly undertaken without these collectives in existence.

Marketplace collectives can offer great value to student-athletes, connecting them with real opportunities *after* the athlete has chosen to attend and enroll in the school. This federal legislation should make clear that the only acceptable operating model is a marketplace driven model.

Even still, the legislation needs to make clear that there will be severe penalties for violating pay-for-play rules. This is an area where there will need to be compromise, but a good rule would be a one-year suspension for a collective upon a first violation, and any subsequent violation could result in a forced disbanding of the collective. With harsher penalties, the chances of further violations will be reduced.

Additionally, the entire contracting process for any student-athlete needs to be completely transparent. The federal legislation should require any collective doing business with a student-athlete to disclose the contract terms and obligations of all parties to the school. All communications between the athlete and the collective should be subject to review by the school. If the school is a public entity, all documents should be available for public review under state public records laws. Holding collectives accountable to the schools in this way will help to keep them honest.

A new executive branch agency, such as the Amateur Intercollegiate Athletics Corporation can be created as the enforcement mechanism, or it can be assigned to an existing agency such as the Federal Trade Commission. Wherever Congress decides to house the enforcement operation, Congress will need to ensure it can withstand a possible power struggle with the NCAA, who, despite suffering very embarrassing public defeats, is attempting to regain its power.

Recently, the NCAA has attempted to regain its enforcement authority around NIL that it abdicated following the *Alston* decision.²²³ Effective January 1, 2023, NCAA Bylaw 19.7.3, titled Violations Presumed in Select

²²¹ Abigail Oliphant, *NIL Collectives and Title IX: A Proactive Consideration of Title IX’s Application to Donor-Driven NIL Collectives*, 57 IND. L. REV. 531, 532 (2023).

²²² *Id.*

²²³ Derin B. Dickerson & Trenton Hafley, *The NIL Paradox for NCAA Athletes – Enforce or Recruit*, BLOOMBERG L. (June 27, 2022), <https://news.bloomberglaw.com/us-law-week/the-nil-paradox-for-ncaa-athletes-enforce-or-recruit>.

Cases, went into effect.²²⁴ This rule, known as the “NIL Presumption,” presumes a violation occurred based only on circumstantial evidence and shifts the burden of proof from the NCAA staff to the institution or athlete.²²⁵ It requires the institution or athlete prove that all activities and communications in question were in compliance with NCAA regulations.²²⁶ This “guilty until proven innocent” approach gives the appearance of the NCAA cracking down on NIL violations. Indeed, John Duncan, NCAA VP of Enforcement, confirmed that there are a number of investigations underway, although he would not confirm how many, or the schools involved.²²⁷

However, this bylaw will ultimately miss the mark. While shifting the evidentiary standard is a powerful tool and will force formerly unwilling parties to comply, the NCAA can only exert control over its member schools. Punishing schools for NIL violations they do not facilitate or exercise any control over (at least currently) is misguided. It could also open the NCAA to more antitrust litigation.²²⁸ If investigations ramp up, potential NIL partners will avoid the market altogether, possibly injuring the NIL market, thus violating the Sherman Act.²²⁹ This is a broad and misguided attempt to make it appear the NCAA is taking NIL violations seriously. In the short term it may target the collectives, but in the long run it will hurt the athletes it intends to protect.

²²⁴ NAT’L COLLEGIATE ATHLETIC ASS’N, *Infractions Program, Bylaw 19.7.3*, <https://web3.ncaa.org/lstdbi/search/bylawView?id=11781> [<https://perma.cc/D2ZQ-A2WW>].

²²⁵ Monica Matias, *NIL Enforcement Actions are Here: How Can Institutions Prepare for Possible NIL Enforcement Actions?* MONDAQ (Mar. 24, 2023), <https://www.mondaq.com/unitedstates/compliance/1297562/nil-enforcement-actions-are-here-how-can-institutions-prepare-for-possible-nil-enforcement-actions> [<https://perma.cc/R2DN-XLCZ>].

²²⁶ *Id.*

²²⁷ Jeremy Crabtree, *NCAA continues to focus on NIL rule violation enforcement*, ON3 (Jan. 28, 2023), <https://www.on3.com/nil/news/ncaa-takes-another-shot-at-nil-rule-violation-enforcement/> [<https://perma.cc/BHD9-BBR2>].

²²⁸ Michael McCann, *NCAA’s Guilty-Until-Proven-Innocent NIL Policy Sure to Draw Lawsuits*, SPORTICO (Feb. 6, 2023), <https://www.sportico.com/law/analysis/2023/new-ncaa-nil-policy-1234708651/> [<https://perma.cc/3KLL-SQNL>].

²²⁹ *Id.*

VII. CONCLUSION

America loves its college sports. Attendance, TV ratings, and revenues have never been higher.²³⁰ This year’s NCAA “March Madness” basketball tournaments have captivated the country.²³¹ The athletes that compete every day in front of a star-struck nation are finally able to grab a piece of the pie. NIL regulations have helped athletes of all sports at all levels to finally be compensated for the skills they possess, just like anyone else in any career or profession.

But, the sloppy way in which the system has been installed has left gaps in regulation and enforcement. These gaps have allowed new organizations to engage in activities under the guise of NIL that amount to no more than illegal pay-for-play schemes that have been forbidden for decades.

An overarching public policy is needed to stop these collective abuses before they get out of hand and ruin that which we hold sacrosanct: the competition. State law and the NCAA thus far have failed, and the chaos rages on. The time is now for Congress to step in, assert its power under the Commerce Clause, and establish a national set of guidelines and enforcement for all participants to operate under. Only then, with a clear, even playing field, will the 21st century version of the “Wild West” be wrangled once and for all.

²³⁰ Andrew Zimbalist, *Analysis: Who Is Winning in the High-Revenue World of College Sports?*, PBS NEWS HOUR (Mar. 18, 2023), <https://www.pbs.org/newshour/economy/analysis-who-is-winning-in-the-high-revenue-world-of-college-sports>.

²³¹ *Id.*

