

PAID IN FULL: FROM AMATEURISM TO NIL AND THE NEW MARKETPLACE FOR COLLEGE ATHLETES



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Definition of Terms

AAC-American Athletic Conference
ACC-Atlantic Coast Conference
AQ-Automatic Qualifier
B10-Big Ten Conference
B12-Big Twelve Conference
CFP-College Football Playoff
CFPA-College Football Players Association
COA-Cost of Attendance
CUSA-Conference USA
DOJ-Department of Justice
FBS-NCAA Football Bowl Subdivision
FCS-NCAA Football Championship Subdivision
G5-Group of Five Conference
IAAUS-Intercollegiate Athletic Association
IOC-International Olympic Committee

MAC-Mid American Conference
NIL- Name, Image and Likeness
NAIA-National Association of Intercollegiate Athletics
NCAA-National Collegiate Athletic Association
NCPA-National College Players Association
NJCAA-National Junior College Athletic Association
NLRB-National Labor Relations Board
P5-Power Five Conference
PAC 12-Pacific 12 Conference
SBC-Sun Belt Conference
SEC-Southeastern Conference
TPPF-Texas Public Policy Foundation
ULC-Uniform Law Commission
USOC-United States Olympic Committee
USOPC-United States Olympic Paralympic Committee

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B. David Ridpath, Ed.D., and Julie Sommer, J.D.

Executive Summary

Few issues in sports have captivated Americans as much as intercollegiate athletics, and the state of Texas is no exception. The passion, the pomp and circumstance, the rivalries, and the unique American flavor of college sports all make it a significant part of the social fabric of America (Ridpath, 2018). When discussing the complex relationship between American intercollegiate athletics and higher education, including issues up to the present day, it is important to focus on the core issue of ‘why’ monetary compensation in any form provided to the college athlete, directly or indirectly, has been viewed as problematic to the economic health and fairness of the enterprise. In simple terms, the United States of America is the only country in the world that has a significant portion of elite athlete development and commercialized sports grounded nationwide in its primary, secondary, and, most notably, higher education institutions while simultaneously trying to preserve the concept of amateurism and restricting athlete compensation (Ridpath, 2018).

Compensation of college athletes, beyond the value of an athletic scholarship, has been the subject of significant concern and empirical inquiry for decades (Nocera & Strauss, 2016; [Mondello et al., 2013](#); [Knoester & Ridpath, 2020](#); Sack & Staurowsky, 1998). Some college sports programs generate massive amounts of revenue, specifically in the highest competitive division (i.e., Division I) of the National Collegiate Athletic Association (NCAA). The sports of football and men’s basketball hold special distinction as the primary revenue generators and produce billions of dollars of annual revenue—much more than other college sports teams or athletic programs combined ([Branch, 2011](#); Nocera & Strauss, 2016; [Sanderson & Siegfried, 2015](#)). According to *USA Today*, in 2021–22, the University of Texas has the largest yearly NCAA Division I athletic department budget at over \$200 million in revenue and expenses ([Davis, 2022](#)).

In this paper we address and provide a historical review and detailed background on the governance structure of the National Collegiate Athletic Association with a specific focus on issues the past 25 years that have led to the current drastic changes in the collegiate sport model in the U.S., specific to college athlete compensation and the burgeoning athlete’s rights movement. The overview includes recent trends in college sports revenue gains and distribution, historical and current athletic spending practices at colleges, and a detailed review of the ongoing issue and details of allowing Name, Image, and Likeness rights (NIL) for college athletes since July 1, 2021.

Key Points

- We provide a brief review of the history of intercollegiate athletics in America and look at changes in college athletics, especially college athlete rights to their name, likeness, and image (NIL) and their ability to profit from their personal brand as any other college student can.
- Unlike their counterparts in Europe, American colleges and universities desired to keep student run sports under the academic umbrella to better manage the students and games, but to also gain perceived tangible benefits of having a successful program.
- The desire to maintain amateurism has long been a driving force in restricting college athlete compensation. As professional sports had not really developed at this time, it was widely believed that sports should be an avocation and not a profession at virtually all levels.
- The industry has grown exponentially in commercial popularity to include massive television contracts, highly compensated coaches and administrators, and many others profiting from the industry except the athlete whose compensation has often been capped to the value of an athletic scholarship. It was only a matter of time before college athletes challenged the concept of amateurism and worked to gain a larger share of the revenue they primarily generate.

Finally, we examine federal and state NIL laws, as well as potential future legal and legislative developments that will not only affect institutions in the state of Texas but have implications nationwide. Never have there been so many forces happening at once that could change the course of intercollegiate athletics now and in the future. It is important from a public policy perspective to understand all of these issues.

Introduction

In the U.S., sports development and sports delivery are rather fragmented, in that there is no centralized national sports policy or a governmental sports ministry to provide a governance framework, as is the case in many other countries (Tom Farrey, personal communication, 2014; Ridpath, 2018). This lack of a national plan or overarching sports governance organization for the United States has led to many challenges in overall sports governance, specifically toward the oversight and management of so-called amateur, or primarily educationally based sports, where a key tenet is that the athletes receive little to no compensation for their sporting efforts, but the industry overall is inherently profitable. This is no more evident than in the massive industry we call American intercollegiate athletics. Managing this phenomenon has been difficult given that our educationally based sports development system provides much of the athletic representation for U.S. Olympic and national teams along with prospects for several professional sports leagues in America and worldwide. According to the United States Olympic and Paralympic Committee (USOPC), educationally based athletics encompass more than 80% of all sports delivery and sports development options in the United States (Ridpath, 2018). No other country has a similar structure, nor are institutions of primary, secondary, and higher learning in other countries used as primary incubators of elite athlete development to fill rosters of national teams and professional franchises.

Approximately 65% of the U.S. Olympic team at the 2012 London Summer Olympic Games participated in university-based sports programs (Forde, 2015). This does not include the numerous athletes from foreign countries who come to the U.S. not only for an education, but to also hone their athletic skills within America's higher education system, arguably taking away elite athletic development opportunities from American citizens and thus hurting our international competitiveness as our primary elite development pipeline, intercollegiate athletics, is developing athletes from other countries rather than using these

opportunities for its own citizens (Ridpath, 2018). In the 2016 Summer Olympic Games in Brazil, 1,018 athletes from several different countries were either current, incoming, or former American intercollegiate athletes, including 430 American college athletes in the U.S. delegation (Martinez, 2016; Ridpath, 2018). At the 2020 Summer Olympics, or more accurately the 2021 Tokyo Summer Olympics,¹ there were more than 1,000 NCAA college athletes representing several countries including over 75% of the U.S. team that were NCAA athletes representing 80 gold medalists for the United States ("[NCAA Student-Athletes](#)," 2021; "[Olympic Medal Tracker](#)," 2021). The importance of intercollegiate athletics to the development of our national teams and for international competition cannot be overstated, but it is critical to understand that the current upheaval in the structure and governance of college sports and the burgeoning college athlete's rights movement will have a profound impact on the future of American sports development.

Over the years and like for American college athletes, monetary compensation for our national and Olympic team members was also highly restricted in an effort to maintain amateur status so as not to become ineligible for competition at the intercollegiate as well as the national team level (Abbey-Pinegar, 2010). Avery Brundage, the former president of the International Olympic Committee and a staunch supporter of the tenet of amateurism, strongly stated, "*Sport must be amateur or else it is not sport. Sports played professionally are entertainment*" (Avery Brundage Quotes, n.d., Sack & Zimbalist, 2015). Throughout its history, the NCAA has promulgated numerous rules in an effort to retain amateurism in intercollegiate athletics and frame it as an educational and extra-curricular endeavor. If any of these rules were violated and if the athletes received any money or benefits prior to enrollment, it affected the eligibility of enrolled and/or college-bound athletes (Abbey-Pinegar, 2010).

While much of the rest of the world was compensating their elite "amateur" athletes in some way, the U.S. and some other western countries enforced the ideal of a clear line of separation between amateur and professional sport. This included the U.S. using college athletes in elite international competition who in turn played against seasoned professionals from other countries who were amateur athletes in name only (Abbey-Pinegar, 2010; Ridpath, 2018; Wheeler, 2004). Despite this, maintaining amateurism at all costs seemed to be a point of pride for the American

¹ The 2020 Summer Olympics were delayed one year due to the global COVID-19 pandemic.

Olympic program and its intercollegiate athletic industry where even the smallest monetary or other exchange of value, such as a complimentary meal, would be essentially criminalized for the U.S. amateur athlete and have potential eligibility penalties.

After years of battles with the athletes who desired greater access to compensation opportunities and even relaxing some amateur standards by allowing international sports federations more flexibility with compensation rules and training times as early as 1971, the International Olympic Committee (IOC) finally did away with the ancient principles of amateurism in 1986. It allowed its athletes to continue to earn income from endorsements and other NIL activities while maintaining eligibility to compete and the full participation by professional athletes in all sports. The U.S. had been allowing its athletes the ability to earn income from endorsements and other activities since 1978 and eventually expanded that to allowing fully professional athletes to compete after the 1988 Summer Olympics ([Andrews, 2018](#)).² Post 1990, it became commonplace to see superstar professional athletes in their respective sports compete for their countries in the Olympic Games such as the men's basketball Dream Team in the 1992 Barcelona Olympic Games and multi-millionaire tennis players and track stars also competing for their respective countries. Despite the claims of Brundage and some in the media, making the Olympics accessible to professional athletes and removing amateurism restrictions has not damaged the product. In fact, removing the amateurism principle and allowing all Olympic athletes to earn money from their NIL rights has arguably made the games more popular. The Olympics have still maintained a massive amount of commercial popularity without any vestiges of amateurism existing any longer in the Olympic movement ([Hruby, 2012a](#)). Still, until recently, even college athletes who were Olympians were not allowed to be compensated in any way, even if they won a medal. Once that restriction was lifted, some in the college athletic community worried that any compensation for any athlete, even if earned for sporting success in the Olympic Games or international competition, would destroy the uniqueness of what makes college sports in America so popular ([Berkowitz, 2016](#); [Hruby, 2012a](#); [Meyer & Zimbalist, 2020](#)).³

This somewhat mirrors the issue at bar in this paper given that there are now a myriad of individual state laws governing college athlete NIL rights and confusion over what is permitted or should be permitted after over a century of policing college athlete compensation and/or benefits at a minutiae level in the past. For over 150 years, intercollegiate athletics in America have been viewed as a revered part of Americana and ostensibly with the popularity and interest largely being derived from the overarching amateur model of “one who engaged in athletics for the education, physical, mental, and social benefits he derives therefrom, and to whom athletics is an avocation” and “one who participates in competitive physical sports only for the pleasure, and the physical, mental, moral and social benefits derived therefrom” (IAAUS, 1916, p. 118; Nixon II, 2014; [Solomon, 2018, para. 18](#)). In other words, American college athletes are supposed to be *amateur athletes and enrolled college students playing a sport as an avocation and not as a vocation*. This issue, whether real or perceived, is what separates the college athlete from the professional athlete thus providing what many identify as the special relationship and popularity of college sports in America.

However, this confusion does present issues for public policy at the state level as any higher-level federal solution is unlikely to happen in the near future. The NCAA is now fearful of enacting its own policies because of potential antitrust litigation, and individual states will continue to be pressured by their schools to modify existing NIL laws in order that they not lose a perceived competitive advantage to a rival school in another state. The purpose of this paper is to provide an educational tool as NIL rights in college athletics evolve over the next few years.

According to Ridpath (2018), America's primary way of delivering sports, while concurrently developing athletes of all skills, is under immense pressure as to how it fits within the public educational system and—whether from a commercial sense—should even be a part of higher education. Educationally based sports at all levels (primary, secondary, and higher education) in America remain incredibly popular overall despite this tenuous relationship, and that is clearly evident in Texas at both the intercollegiate and scholastic levels. School-based competitive sports have long been touted, in many ways justifiably, as a source of community pride, an effective strategy for school branding, and

2 The IOC essentially eliminated the necessity of amateurism in 1971, allowing athletes to receive compensation via sponsorship from national organizations, sports organizations, and private businesses for the first time if they were not declared professional athletes. In 1986, declared professional athletes were given permission by the international federation to compete in each sport of the Olympic Games.

3 The NCAA currently permits athletes who win Olympic medals to receive cash prizes from the United States Olympic & Paralympic Committee under a program called Operation Gold. The amount of these incentives has increased over the years. As of 2021, Olympic gold medalists received \$37,500, silver medalists \$22,500, and bronze medalists \$15,000, while team members that medal as a team split the same prize money equally.

a way to develop skilled athletes and citizens, while presenting many other intrinsic and tangible values, including access to an affordable education or even a degree at no cost to the athlete (Dosh, 2013; Ridpath, 2018). Whether these are consistent, actual outcomes is a matter of continued debate.

Virtually everyone associated with college sports, from coaches or administrators to media properties, has seen significant monetary increases throughout the history of college sports, except, for the most part, college athletes. A lucrative black market of athlete compensation existed throughout the history of college sports, although any form of compensation to college athletes based on athletic utility was considered impermissible, if not illegal (Sack, 2011). In the late 19th century, as college sport began to grow as a form of mass commercial entertainment rather than as an intended extra-curricular activity, the demand for skilled players began to undermine the British model of amateurism as college athletes became ever more financial and commercial assets to universities rather than college students participating in sports as an avocation (Sack & Zimbalist, 2015). It is difficult—even more today—to claim American college sports are an amateur enterprise when college sports television contracts are in the billion-dollar range, many coaches are paid in excess of or close to \$10 million per year, and athletic department budgets exceed \$200 million while athletes have been restricted for close to 70 years to the value of an athletic scholarship. Even though the value of the scholarship has increased in many ways, it is still artificially capped at the full value of tuition, room and board, books and fees, and cost of attendance stipend (Ridpath, 2018).⁴ Until NIL rights were allowed for college athletes in 2021, this cap remained for all NCAA member institutions. While the amounts of a full scholarship vary between in- and out-of-state students and by institution, the amount of a full athletic scholarship essentially was a pseudo non-bargained salary cap for the college athlete.

Prior to July 1, 2021, NCAA Bylaw 12 defined amateurism and standards that violated that principle as when an individual athlete:

1. Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;

2. Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
3. Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
4. Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;
5. Competes on any professional athletics team per Bylaw 12.02.12, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;
6. After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or
7. Enters into an agreement with an agent. (NCAA, 2020, p. 63; 2021, p. 63)

The seminal change concerning college athlete compensation and alteration to the definition of amateurism in NCAA Bylaw 12 happened after many states introduced and passed NIL laws throughout 2019 to 2021, led by the state of California's Fair Pay to Play Act,⁵ which approved the inherent right of a college athlete to capitalize on their own NIL rights as any other college student. Despite protestations and even the outgoing NCAA president, Dr. Mark Emmert, calling allowance of NIL rights an "existential threat" to the college sports industry (Dodd, 2019), the NCAA did not attempt to stop, negotiate, or establish its own rules that could match existing state NIL laws to have some type of national framework or rules to manage this new reality. The NCAA only reluctantly issued a last-minute interim policy on June 30, 2021, to provide some minimal guidance to member institutions concerning NILs (Marino, 2021). The NCAA's interim NIL policy, discussed more fully later in the paper, is essentially a waiver that excuses

⁴ The standard full scholarship at any NCAA Division I institution consists of the amount for tuition (in-state or out-of-state), standard room and board (on-campus residence hall or equivalent cash payment per month to cover rent and living expenses off-campus), books and course-related fees. In addition, since 2015, college athletes at the Division I level have been allowed the cost of attendance (COA) stipend, which varies by institution.

⁵ California Senate Bill 206, which was signed into law by Gov. Gavin Newsom in the fall of 2019, made it illegal for the NCAA universities to prohibit third parties from paying college athletes enrolled at state higher education institutions for use of their NILs in endorsements, sponsorships, and other appearances. It was initially set to be in effect January 1, 2023, but several other states passed similar bills with more immediate effective dates. More information can be found at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2019202005B206.

compliance with the aforementioned Article 12 of the NCAA Bylaws *until federal legislation or new NCAA rules are adopted*. This is something that has not happened yet. Unless otherwise contradicted by state law, the interim NCAA policy prohibits any NIL agreements that include *quid pro quo* or inducement compensation contingent on enrollment at a particular school or in exchange for athletic participation during the recruiting process or achievement after enrollment. In addition, the interim policy also bars institutions from providing compensation in exchange for the use of college athlete NIL ([Marino, 2021](#)). Since 2013, the Division I NCAA manual dropped the long-standing definition of amateurism in place since 1922. Currently the definition simply states that “it does not allow pay except as permitted by the governing legislation of the association” and access to NILs are ostensibly permissible and still meet the ever-changing definition of amateurism regarding NCAA college athletes ([Sack & Zimbalist, 2015](#); [NCAA, 2021](#)).

In a perfect world, the NCAA interim stance might be good policy, but institutions are by and large not following this policy as state have begun and continue to modify their NIL laws—discussed more fully later—to allow inducements to gain a competitive advantage in recruiting and retaining college athletes and fear of falling behind in the proverbial competitive and real college sports arms race. This was fueled by a history of many schools already doing so, causing others to fear a loss of competitive equity if they did not also allow inducements. Essentially, college sports in 2022 have the same uber-competitive recruiting environment of college athletics as pre-NIL, but we are now seeing college compensation in the open marketplace, out of the shadows and the underground economy, as in the past ([Hruby, 2012b](#)). NCAA sports now have an environment of several different and ever-changing state NIL laws and confusion within the entire college sports industry regarding what exactly is allowed, while others are pushing the envelope to gain an edge on the competition. This is not necessarily a negative thing in that it is important that college athletes have the ability to profit from their own NIL—something others, specifically other non-athlete college students, have enjoyed as a matter of course ([Ridpath & Winter, 2022](#)).

History of Amateurism and the NCAA

To fully understand the current state of college athletics and compensation of college athletes, it is important to review the historical context of intercollegiate sport in America. In the early days of sports development in the United States, the difference between a professional athlete and a non-professional athlete was not completely obvious. However,

Virtually everyone associated with college sports, from coaches or administrators to media properties, has seen significant monetary increases throughout the history of college sports, except, for the most part, college athletes.

It was later determined that the issue of compensation and other benefits would be an important distinction for those participating in school-based sports and later helped define the separation of education and professionalism. In the early stages of American college sports, it was common to see nonstudents participating. The use of “ringers” to gain a competitive advantage was frowned upon by university leadership, and they felt a different definition was needed to ensure that games were played only between enrolled students and not athletes from outside the school (Crowley, 2006; Falla, 1981; Gaul, 2015; Ridpath, 2002, 2018). Since the inception of the concept, the role of a school-based athlete has been to be a student first and an athlete second. The concept was based on college athletes not receiving any compensation or anything resembling a tangible benefit for their efforts. The concern was that an undue focus on athletic endeavors could cause the college athlete to become less focused on their studies and basically be the same as the ringers and nonstudents that institutions were attempting to eliminate. One could play professionally and earn money for one’s sports skills, but school-based sports and most international competitions clung desperately to the notion of amateurism and playing for the love of the game to keep that clear line of demarcation from professional sports (Ridpath, 2018).

The concept of educationally based sports participation being grounded in amateurism—generally meaning playing the sport as an avocation rather than a professional vocation—dates to the turn of the 20th century and development of the National Collegiate Athletic Association (NCAA) itself (Ridpath, 2002, 2018; Sack, 2011). The amateur ideal, while most associated with the British aristocracy, was primarily embraced by the leisure classes in most pre-industrial civilizations. At the very center of this ideal was the belief that leisure activities were superior to those associated with making

a living or whose motive was material gain. This concept also resonated with the modern Olympic Games movement that started in 1896, where it was decreed only amateur athletes would be permitted to participate in the Olympics. The aristocratic class had time to appreciate activities like literature, science, and sports merely for the love of it as opposed to the working class, who often gravitated to sports like baseball where players were compensated to play on some level (Ridpath, 2002, 2018).

From the mid-19th century, intercollegiate competition was primarily organized and managed by students in Western Europe and the United States. Sports like baseball, rowing, American football, and other sports, grew in popularity in the new world and most of these sports had British roots. The first ever intercollegiate athletics competition was a rowing competition fought between Harvard and Yale, sponsored by Boston, Concord & Montreal Railroad Company in 1852 (Bass et al., 2015; Hums & MacLean, 2014). The first intercollegiate football game was played in 1869 between Princeton and Rutgers. Both early events were popular with fans and even had the trappings of commercial success as university presidents and administrators saw the potential of positive university branding with having successful athletic teams. This approach differed from European institutions that took great pains to separate commercialized sport and elite athlete development from the educational space and have other elite and participatory sport development models outside of the academy (Ridpath, 2018).

With amateurism at its forefront amongst the booming popularity of college sports, there was a clear need for national governance and consistency. Several attempts at organizing an intercollegiate athletic governing body were made before the eventual formation of the NCAA as the primary and best-known governing body over college sports (Ridpath, 2018). The first steps to the eventual formation of the NCAA happened on January 11, 1895, at an historic meeting of the Intercollegiate Conference of Faculty Representatives, which later became known as the Big Ten Conference (Byers & Hammer, 1995). This was the first intercollegiate athletic conference on record that made regulations regarding college athletes' eligibility and participation to have some consistency between member institutions (Chu et al., 1985; Wilson & Brondfield, 1967). Spurred by the actions of the new Big Ten Conference,

academic eligibility and participation rules began to spread across the country at other campuses. Still, many abuses of academic and amateurism requirements existed, and more needed to be done to keep the growing beast of athletics under the academic enterprise and amateurism. Many institutions attempted reasonable compliance with these new rules, but manipulations of academic standards and what is referred to today by the NCAA and its member institutions as competitive equity standards needed to be addressed collectively by all higher-education institutions at a national level. Regulation and effective governance needed to start with what was the most popular sport then as it is now, the behemoth known as college football, before the enterprise became too big to control (Falla, 1981; Ridpath, 2018).

In 1905, a nationwide call for college football reform led to the first steps toward creating a governing body for intercollegiate athletics. Collaboration among institutions to accomplish national level governance was initiated not to address academic, booster,⁶ or even recruiting abuses, but to regulate college football on the playing field and reduce the numerous injuries and lack of consistent game rules in the sport (Grimes & Chressanthis, 1994). The call for reform in the rules of the game actually came from the White House and President Theodore Roosevelt. For many, college football, with its mass-momentum formations, few rules, and anything-goes philosophy, had reached an unacceptable level of violent play that resulted in several deaths. President Roosevelt used the prestige and power of his office to try to calm the fears of a majority of the public about the growing sense of lawlessness surrounding the new popular pastime of college football, including the pervasive abuse of institutional academic requirements. Many colleges and universities, fearing overemphasis on sports and seeing the dangers of the game, eventually suspended football, including Columbia and Northwestern. Harvard President Charles Eliot threatened to totally abolish the game on his campus (Bass et al., 2015; Grimes & Chressanthis, 1994; Falla, 1981; Zimbalist, 1999).

According to Falla (1981), there was a sense that something needed to be done at the highest levels to regulate intercollegiate athletics, as society clamored for the college game to adopt stricter rules for safety and consistency. The response to this public outcry brought about the initial

⁶ The term "booster" is a slang term of art for a fan, or mainly a monetary donor, of a specific university's athletic team. A booster, more formally known as a representative of athletics interest, can be a vital source of revenue and support for college athletic programs. Conversely, many boosters throughout the history of college sports have provided impermissible benefits to college athletes in violation of NCAA rules literally since its inception. The NCAA officially defines a booster as an individual, independent agency, or corporate entity who is known by a member of the institution's athletics administration to have participated in, or to be a member of, an agency or organization promoting the school's intercollegiate athletics program" (Nakos, 2022, para 16).

meeting in 1906 that eventually led in subsequent meetings to the formation of the *Intercollegiate Athletic Association of the United States* (IAAUS), the forerunner of the NCAA ([Watt & Moore, 2001](#); Zimbalist, 1999). Although most of the concerns about college athletics focused on excessive violence, questions regarding the relationship of academics and athletics received almost as much attention from the first meeting onward (Funk, 1991; Sack & Staurowsky, 1998). In 1910, the IAAUS adopted a new name: the *National Collegiate Athletic Association*. In the words of one of the founding fathers, later the first president of the NCAA, Captain Palmer Pierce of the United States Military Academy at West Point, the association commonly known as the NCAA would be forever known as “*the voice of college sports*” (Falla, 1981).

Although amateur rules created in Britain and further developed in America were difficult to enforce in a society increasingly dominated by the values of American capitalism, efforts were made to preserve them in the growing world of American college sports. According to Article VI of the initial NCAA constitution, it was up to each member institution to enforce and prevent violations of amateur principles. Included among these violations was “the offering of inducements to players to enter colleges or universities because of their athletic abilities or maintaining players while students on account of their athletic abilities, either by athletic organizations, individual alumni, or otherwise directly or indirectly” (IAAUS, 1906, p. 33; [Sack & Zimbalist, 2015](#)). At this time, scholarships based on athletic efficacy or ability violated amateur rules while need-based financial aid unrelated to sports participation, as available to any other student, was permissible.

According to Sack and Zimbalist ([2015](#)), the NCAA’s first definition of amateurism was codified in 1916. According to Article VI(b) of the bylaws, an amateur is “one who participates in competitive physical sports only for the pleasure, and the physical, mental, moral and social benefits derived therefrom” (IAAUS, 1916, p. 118). An updated version appeared in 1922: “An amateur sportsman is one who engages in sport solely for the physical, mental, or social benefits he derives therefrom, and to whom the sport is nothing more than an avocation” (IAAUS, 1922, p. 118). Since the NCAA had no national enforcement power at this point in history, its amateur rules were violated with impunity, so much so that many determined the industry

to be out of control and well past the point of redemption or saving, yet the games remained increasingly popular and the athletes remained valuable commodities.

In 1929, the Carnegie Foundation, a private and notable organization that made recommendations with regard to higher education policies, issued a scathing report after a three-year review entitled *American College Athletics* on the expanding and popular intercollegiate athletics industry (Savage, 1929). Serious issues raised in the report still linger, including violations of amateurism by three-quarters of the 112 colleges investigated that violated the NCAA’s amateurism code and principles ([Meyer & Zimbalist, 2020](#)). The report also highlighted recruiting athletes based on athletic skill (something the rules of amateurism then prohibited), giving athletes cushy or no-show jobs as a cover for payment, or simply outright paying them. The Carnegie Foundation report was clear as it concluded, *college athletics in its current form posed a threat to education because it was “profoundly deleterious” to high school students, and “its influence upon the nature and quality of American higher education has been no less noxious”* (Savage, 1929, p. 240). Many universities, such as the University of Michigan, challenged the conclusions of the report using much of the same rhetoric that universities use today in defending the expensive and lavish intercollegiate sport model. Most university presidents, coaches, boosters and even the press, argue that the growth of financial profits and spending in college athletics are an opportunity to improve the university through publicity, marketing, fundraising and increased enrollment, rather than a threat to the principles of education. Even though they have largely been disproven even in the NCAA’s own studies, these claims are continually used to justify the current system and restrict the earning power of college athletes ([Frank, 2004](#); [Litan et al., 2003](#); Ridpath, 2018).⁷

Proponents of college sports, and to a lesser extent, high school sports, consistently point to other potential benefits that sound promising but may be actual outcomes and residual effects of having athletics on campus (Ridpath, 2018). It is commonly accepted that sports programs provide fans with entertainment and possess the ability to bring communities together. Other potential benefits include such positive attributes as increasing a school’s visibility on a national level, which can lead to enhanced fundraising, marketing opportunities, and applications for

⁷ Several studies including the NCAA’s own commissioned report authored in part by brothers and renowned government economists Jonathan and Peter Orszag entitled *The Empirical Effects of Intercollegiate Athletics* found little to no positive significance of winning athletic teams on enrollment, fundraising and marketability of institution. In cases where a relationship was found it was mostly anecdotal and short lived. In those cases, any appreciable gains were later negated by increased spending on the athletic program.

enrollment. In addition, sports participation is touted as a vehicle to provide educational opportunities for athletes to develop leadership, teamwork, and other beneficial social skills (Dosh, 2013; [Litan et al., 2003](#); Miracle & Rees, 1994). Having a highly competitive sporting team on campus can in some instances enhance the recruiting success for future students and act as a great marketing tool for the school itself even though those outcomes may be fleeting ([Bass et al., 2015](#); [Litan et al., 2003](#)). For the athlete, athletics participation can ostensibly enhance gaining valuable life experience and potential access to a college education, with a financial package to help pay for it. Typically, the best players are recruited by NCAA Division I schools, which makes it the most competitive division across all governing bodies. Likewise, most professional players are drafted from this division (Baumler et al., 2022; [Berkman, 2021](#)). For example, almost 90% of every current NFL roster is made up of players drafted from the NCAA Division I Football Subdivision (FBS). In comparison, only nine players came from a NCAA Division III school and four players from a National Association of Intercollegiate Athletics (NAIA) school ([Kacsmar, 2013](#)).

A post-Carnegie Foundation report done by the NCAA in 1934 also concluded that abuses in areas of recruitment and athlete subsidization “have grown to such a universal extent that they constitute the major problem in American athletics today” (Falla, 1981, p. 130; [Sack & Zimbalist, 2015](#); Sheepskin or Pigskin, 1935). In the first half of the 20th century, when the college sport industry experienced explosive growth, it simply was poor business sense to trust its finances and future to athletes who were not recruited and subsidized. Simply put, an institution needed the best athletes to be successful on the field or court in order to enhance winning and perceived benefit to the university. The institutions had massive incentive to have the best players compete and that reason was primarily the monetary and popular value to the institution, which also typically translated into more wins than losses. The reward of competitive excellence far outweighed any risk of being found in violation of amateurism, which was something the NCAA was unable and unwilling to enforce in its first half century of existence.

In 1948, the NCAA eventually bowed to the pressure to offer some sort of athletically related financial aid to de-emphasize incentives to violate existing principles of amateurism when it passed what is referred to as the *Sanity Code*, more formally known as the *Principles for Conduct of Intercollegiate Athletics* (Falla, 1981; Ridpath, 2002; [Sack & Zimbalist, 2015](#)). This legislation allowed schools to award

athletically related financial aid if it was limited to tuition and incidental expenses. However, the athlete must be qualified for need-based aid as applicable to other students and any financial aid could not solely be based on athletic utility or value as it is in present times. The Sanity Code also stipulated that aid could not be withdrawn if a student ceased playing but this provision went away as the Sanity Code itself was eventually abandoned in 1950 when the NCAA membership voted not to expel schools that violated NCAA rules. Banishment from the association was the only available punishment for violators and the membership simply did not have the desire to follow through on these threats and the Sanity Code died (Falla, 1981; [Sack & Zimbalist, 2015](#)).

Six years after the end of the Sanity Code (1956), the NCAA adopted what are still known today as ‘athletic scholarships’ to cover commonly accepted aforementioned educational expenses such as tuition, room and board, and books. In 1957, the NCAA officially defined expenses as room, board, tuition, books, fees, and \$15 pocket money for laundry and other essentials (NCAA, 1957, pp. 4–5). Few who attended the NCAA’s first convention in 1906 could have conceived that, by 1957, NCAA rules would allow a university to use a scholarship as a financial inducement to recruit talented high school athletes. Walter Byers, the longtime and powerful executive director of the NCAA from 1951 to 1987, categorized the awarding of athletic scholarships as the beginning of a nationwide money laundering scheme that enabled boosters and fans, who formerly gave money directly to athletes, albeit illegally, to funnel those monies to athletes through a legitimate university financial aid and scholarship granting process (Byers & Hammer, 1995; Falla, 1981; [Sack & Zimbalist, 2015](#)).

Today, the maximum athletic scholarship an athlete can receive is still mostly limited to a full “grant-in-aid” as it was in 1956 ([Steele, 2015](#)). In 2014–15, the NCAA, under pressure from the courts and state and federal lawmakers, revised its rules, and allowed schools to cover a student’s full cost of attendance and provide additional meals and snacks above and beyond the long-time accepted value cap of an athletic scholarship. Currently in NCAA Division I, a “full grant in aid athletic scholarship” is a “financial aid that consists of tuition and fees, room and board, required, course-related books and a cost of attendance (COA) stipend determined by university financial aid office as applicable to all students” ([NCAA, 2021, p. 209](#)). The actual dollar amount of a current cost of attendance varies widely between institutions. Considering the hundreds of NCAA

institutions—public and private—it is impossible to determine an average cost of an athletic scholarship. The COA amount is dependent on the school's annual estimation of costs for all necessities above a full grant in aid that would be applicable to all students and usually results in an estimated extra \$2,000-\$6,000 yearly stipend, depending upon the institutional criteria ([Bass et al., 2015](#)).⁸ Still, the gap between an athlete's worth and a full scholarship's capped amount (even with an allowable COA) juxtaposed with increases in revenue and salaries of coaches and administrators is furthering controversies and lawsuits against the NCAA's enforcement of amateurism and limiting athlete compensation to the present day ([Berkowitz & Schnaars, 2022](#); [Mogin, 2021](#)).

Since the inception of the athletic scholarship in 1956, the public perception and belief was that of acceptance that an athletic scholarship of any amount, including for the few sports offering full-ride scholarships,⁹ was sufficient compensation for the college athlete ([Knoester & Ridpath, 2020](#)). In theory, it sounds like a reasonable relationship if not beneficial to all parties. College education in America is expensive. Families save for years to help their children attend college and it seems benevolent and generous that one can play a sport and have a significant amount of their college education covered for being a contributing member of an athletic team representing their school. However, this perception is not reality, especially given the explosion of commercial popularity and revenue generation in the college sports industry since the mid-1980s. By a strict definition of amateurism, even receiving educationally based aid and a small stipend violates the spirit and principle of amateurism in college athletics.

However, with the implementation of athletic scholarships, the NCAA began a long process of redefining amateur, educationally based athletics through its desired prism. In essence, amateurism became essentially *anything the NCAA said it was* ([Sack & Zimbalist, 2015](#)) and the definition has been malleable ever since with only direct salary and benefits for intercollegiate athletic participation being the bright line the NCAA still will not cross to preserve

the enterprise. The unavoidable conclusion is that the NCAA maintains its own continually changing, arbitrary, and often specious definition of amateurism, including NIL rights, to keep the industry thriving on a concept that the athletes are still not being paid and the popularity of intercollegiate athletics ostensibly rests on those principles. In other words, the NCAA tweaks its definition regularly to meet its own needs and, in the case of NILs, is simply doing nothing and hoping for a federal bailout that may not ever happen ([Ridpath & Winter, 2022](#); [Sack & Zimbalist, 2015](#)).

Current NCAA Governance Structure and Financial Distribution

Recent Trends in Sports Revenue and Spending at Colleges

Athletic governance organizations are simply aggregations of higher education institutions that agree among themselves as members of an association to adopt and abide by the same rules ([Sack & Zimbalist, 2015](#)). The NCAA, as an organization, is not a behemoth office that dictates the rules of intercollegiate sport for all. The NCAA national office, currently in Indianapolis, runs the day-to-day business of the association but does not have the ability to make rules itself; it only enforces the rules of the association. The NCAA membership votes and adopts rules that the national office enforces and ensures are followed. The NCAA has been in existence, at least in concept, since 1906 and, with approximately 1,100 institutions as members today, is the largest national governance entity for intercollegiate sports. NCAA Division I sports are further aggregated into several mostly regional, although some have expanded well beyond regional, athletic conferences with long and storied histories of athletic program conference alignment. The NCAA and these conferences are nothing more than higher education institutions themselves acting in concert to accomplish governance and sporting goals such as scheduling, championships and financial distribution, and to a lesser extent some semblance of academic integrity and primacy as the athletes are ostensibly students first but often commercial and competitiveness take priority ([Ridpath, 2018](#)).

⁸ COA or cost of attendance refers to expenses beyond the standard full scholarship amount of tuition, room/board, books and course-related fees needed to attend school. These expenses are categorized as things like gas, groceries, travel, social needs, clothing etc. and this amount is determined by the schools' financial aid office. The COA amount varies based on cost-of-living estimates of local communities but is typically in a range of an extra \$2,000 to \$6,000 per year for the college athlete receiving a full scholarship.

⁹ Despite the widespread belief that an athletic scholarship is a full ride and cost-free for all college athletes, there are only five sports in NCAA Division I athletics that offer a full ride while other sports only offer partial scholarships. The sports that offer full ride scholarships are football, men's and women's basketball, women's volleyball and women's tennis. A full ride consists of tuition, course-related fees, books, room and board, and since 2015 a cost of attendance stipend determined by a federal formula at each school's financial aid office. This amount is a cash payment directly to the athlete—usually in the amount of \$3,000-\$6,000 for the academic year. All other sports scholarships are partial, meaning a sport such as wrestling gets a certain number of scholarships that can be spread out over an entire team. In the case of wrestling, there are 9.9 scholarships total versus football, which has 85 total. In football, like the other full ride sports, one full scholarship must be given to one person and cannot be split amongst its team members like for wrestling and other sports.

Today, there are three major intercollegiate organizations in the United States: the NCAA, the NAIA, and the National Junior Athletics Association (NJCAA, also known as JUCO; [Rudloff, 2021](#)). The NCAA is the most powerful and largest intercollegiate athletic governance organizations overseeing three divisions that compete across 24 sports and 90 championships and is the primary focus of this paper ([NCAA, 2021](#)). On its website, the National Collegiate Athletic Association refers to itself as a member-led organization dedicated to the well-being and life-long success of college athletes ([NCAA, 2021](#)). The phrase “member-led” derives from the NCAA’s governing body. While being hierarchically structured, the decision-making power lies with all members. Each member institution oversees its own athletic program and must self-report any known instances of non-compliance with NCAA or affiliated conference rules. Failure to do so may result in several levels of punishment, such as probation and potential exclusion from championships ([NCAA, 2021](#)). According to its website, “the NCAA governance structure consists of legislative bodies made up of volunteers from member schools. These legislative bodies, as well as a group of committees, govern each division and set association-wide policy. Committees manage topics affecting sports rules, championships, health and safety, matters impacting women in athletics and opportunities for minorities” ([NCAA, n.d., para. 1](#)).

Each NCAA division has its specific legislation detailed in a separate operating manual and governed by a dedicated division council with ultimate decision-making authority resting in the hands of university presidents who sit on a board of directors ([NCAA, 2020](#); [Zimbalist, 2021a](#)). The higher the division, the stricter the eligibility rules and regulations ([Soriano & Kerr, 2021](#)). Another important difference between the three divisions lies in the overall athletic operating budgets of member schools. In essence, Division I is the only one that significantly profits from commercialization and associated generated revenue ([Zimbalist, 2021b](#)). Due to their profitability and the allocation of revenue within the NCAA, the athletic departments of Division I schools have the biggest budget out of all divisions. For this reason, they also provide the most athletic scholarships, hire the top coaches, and build the most impressive sporting facilities ([Berkman, 2021](#)).

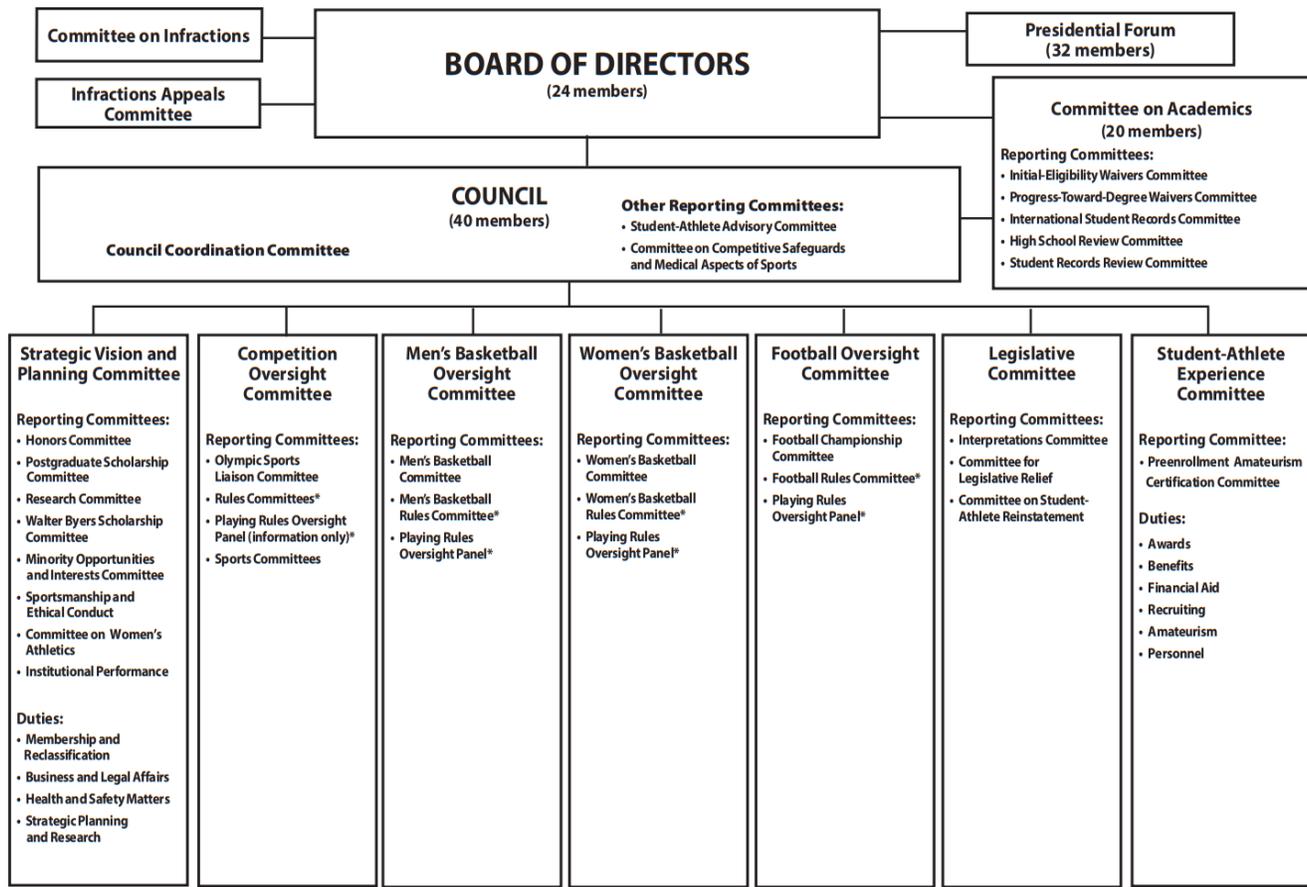
The specific governance structure of intercollegiate athletics and the NCAA three divisions are highly bureaucratic and very Division I centric. Overall and specifically with decision and policymaking for all three divisions, the NCAA Board of Governors carries the deciding vote regarding policy issues that affect the entire association. The board provides strategic planning for the association as a whole, such as adopting and implementing policies to resolve related core issues and other association-wide matters. The board also initiates and settles litigation and provides final approval and oversight of the NCAA’s budget. The NCAA Board of Governors consists of 16 voting members and 4 non-voting members. Of the 16 voting members, 8 are chancellors or presidents from FBS institutions. The remainder of the executive committee consists of smaller Division I football programs, as well as Division II and Division III chancellors or presidents ([Sack & Zimbalist, 2015, p. 7](#); see [Figure 2](#)).

Although the NCAA is made of three separate and distinct divisions, the bulk of the policy making and revenue generation is at the Division I level. Consequently, the overall governance power primarily rests at that level to include how the revenue is distributed to all member institutions and athletes regardless of division. Ultimately the main decision makers or the ones that approve policies and procedures for each division are university presidents. The Division I Board of Directors sets Division I policy and it is similar for Divisions II and III (see [Figure 1](#)). The Division I Board consists of 11 FBS presidents and 7 non-FBS presidents (who rotate among the 20 non-FBS conferences).¹⁰ FBS consists of 124 schools, which gives it 61% of the voting power on the Division I board, even though it represents only 36% of the total number of schools in Division I. Of the 11 FBS representatives, 6 representatives and the chair of the board come from the 6 elite (or Automatic Qualifier-AQ) conferences within FBS ([Sack & Zimbalist, 2015, p. 7–8](#)).

The Division I Leadership Council, formerly called the Management Council, is responsible for advising the Division I Board of Directors and oversees the appointment and substructure of various cabinets and committees, along with taking final action on matters delegated to it by the board of directors. The current Division I Leadership Council has 31 members, one from each D1 conference. However, as with the board of directors, the amount of

¹⁰ The NCAA was separated into three separate divisions (I, II, III) in 1973. Football was further subdivided in 1979 into Divisions 1-A and 1-AA. This was done as a way to separate high-resource schools from lower-resource schools even more. The main separation is 1-AA only offers 63 equivalency scholarships versus 85 head count scholarships for 1-A. Currently 1-A is known as the FBS, Football Bowl Subdivision, and 1-AA is known as the Football Championship Subdivision and has its playoff completely run by the NCAA. FBS football is the only NCAA sport that does not have its playoff governed by the NCAA.

Figure 1
NCAA Division I Governance Structure



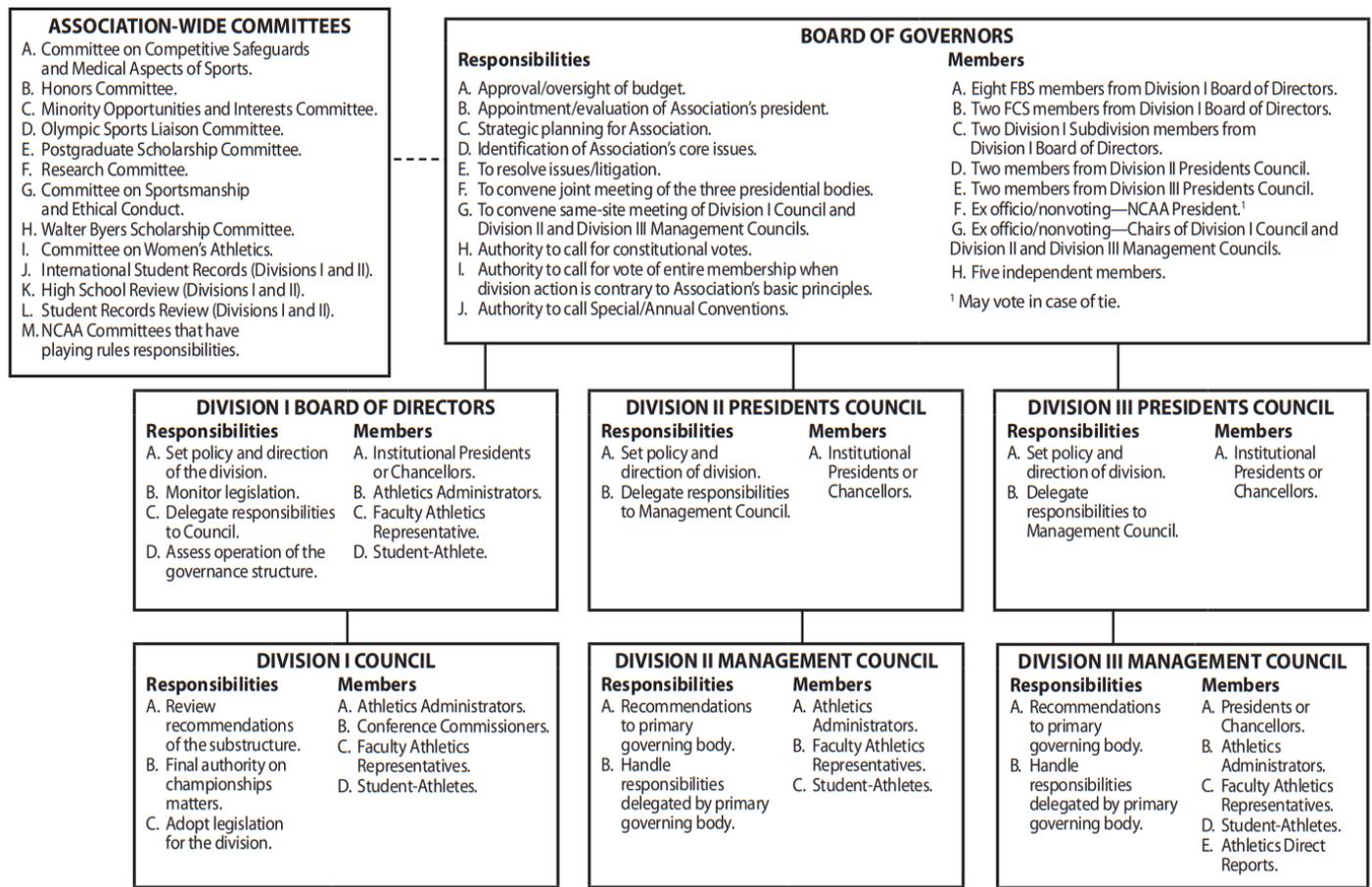
*For information purposes.

Note. Reproduced from 2021-22 NCAA Division I Manual, National Collegiate Athletic Association, 2021, p. 25 (https://auburntigers.com/documents/2021/8/2/2021_22_NCAA_Division_I_Manual.pdf).

voting power differs by conference. Representatives from the 6 elite/P5 conferences and Conference USA each receive 3 votes. The other 4 remaining FBS conference representatives each receive 1.5 votes. The 20 non-FBS conference representatives each receive 1.2 votes. Thus, the FBS conferences have a combined 27 votes while the non-FBS conferences have 24. The Division I Legislative Council has the same structure as the Leadership Council. The FBS conferences have the majority of the votes. The Legislative Council is the primary legislative authority. They oversee

developing educational material regarding pending legislation. While the objective is competitive equity for all schools and to have balanced representation, the structure of the governing NCAA committees reveals a strong bias toward prominent football institutions from the elite conferences, thus those conferences and schools possess the most legislative power (NCAA, 2021; Sack & Zimbalist, 2015, p. 7-8).

Figure 2
Overall NCAA Governance Structure of NCAA's Three Divisions



Note. Reproduced from 2021-22 NCAA Division I Manual, National Collegiate Athletic Association, 2021, p. 26 (https://auburntigers.com/documents/2021/8/2/2021_22_NCAA_Division_I_Manual.pdf).

NCAA Financial Distribution

The NCAA has also allowed the Power 5 (AQ) conferences¹¹ to organize their own postseason football playoff (CFP) and retain all the revenue generated. All other 88 NCAA sponsored sports, including FCS football, have a national postseason championship playoff that is sponsored and run by the NCAA. Since its inception and first iteration in 1998 up through 2014, it has allowed for preferential postseason football bowl game access and massively differential revenues to flow to the six original

BCS conferences and now for the Power 5 conferences. During 2007–2011, total payouts from the BCS football post season bowl amounted to \$722 million. A large portion of that amount, \$618.4 million (or 85.6%), went to the AQ conferences, the balance went to the G5 conferences within the FBS (Zimbalist, 2021b). In under 10 years, those payments, combined with the new four team playoff revenues, have grown exponentially. According to the Knight Commission on Intercollegiate Athletics, in 2019, the P5 conferences and Notre Dame received almost \$400 million

11 There are 10 NCAA Division I football conferences made up of two subsections called the Power Five (Power 5/G5) and Group of Five (G5), along with several independents, most notably the University of Notre Dame. Power 5 conferences or P5 consist of five NCAA Division I conferences. The conferences are the Southeastern Conference (SEC); Atlantic Coast Conference (ACC); Big 12 Conference (B12); Big Ten Conference (B10); and the Pacific 12 Conference (P12). These conferences, along with Notre Dame, possess the most governance and financial power along with having the primary access to the current lucrative four team College Football Playoff (CFP). The Group of Five (G5) consists of the following conferences: The Mid-American Conference (MAC); American Athletic Conference (AAC); Conference USA (CUSA); The Sun Belt Conference (SBC); and the Mountain West Conference (MWC). The Big East Conference, now just a basketball conference, was an original BCS football conference until 2014. The term AQ refers to what were Automatic Qualifiers for the NCAA postseason football bowl games and for initial iterations of the College Football Playoff.

in revenue for one year alone. In that same year the G5 conferences only received \$92 million with just under four million going to other FBS independent schools and to FCS football ([Knight Commission on Intercollegiate Athletics, 2021](#)).

Although classified as a nonprofit organization, the NCAA generates over 95% of its revenue, approximately \$800 million, from television and sponsorship rights associated with the Division I Men's Basketball Championship (March Madness) and championship ticket sales ([Zimbalist, 2021b](#)). Typically, 60% of this revenue goes directly to Division I member institutions and conferences and another \$150 million are used to fund all of the division-specific championships. Division II schools receive 4.73% and Division III schools 3.18% of the NCAA's total revenue from the basketball tournament each year ([NCAA, 2021](#)). Besides running championships, the main task of the NCAA is to implement and enforce rules agreed on by the membership. The main goal of these regulations is to ensure the well-being of college athletes, scholarship benefits, gender equity, and a competitive balance among its membership institutions, although many question its effectiveness (Ridpath, 2018; [Soriano & Kerr, 2021](#)).

By comparison, in 2011–12, the NCAA redistributed \$467 million to Division I schools. Overall, the association distributed over 61% of its revenues to only 32% of its schools in Division I, heavily favoring the higher-resourced FBS football conferences. In addition, the six elite FBS conferences at the time received approximately 48% of the total revenue disbursement. These six conferences represented only 73 institutions, accounting for just 21.5% of Division I schools and only 6.9% of all NCAA members in all three divisions yet received almost half of the total revenue. The other lower-resourced FBS and FCS conferences and the entirety of Divisions II and III received the other 52%. The only FBS conferences (now essentially the G5) and FCS football playing conferences represented 267 total institutions, or 78.5% of all Division I schools. Division II had 26.5% of the NCAA's schools and only received 4.37% of NCAA revenues, or 6.4% of all distributions. Division III—the largest division within the NCAA structure—making up 42% of the schools a decade ago only received 3.18% of the revenue, or 4.6% of the total distribution ([Sack & Zimbalist, 2015](#)).

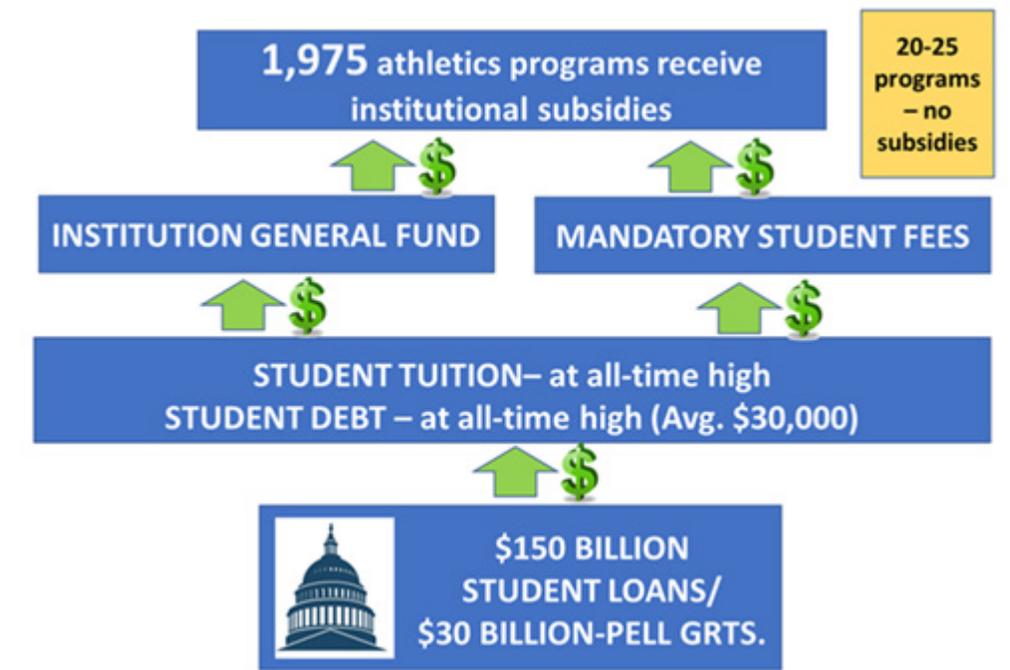
In contrast and less than 10 years later, in 2018–19,¹² the NCAA's overall revenue distribution is markedly increased and still heavily skewed toward Division I and the larger conferences, specifically what became the Power 5. It is important to note this revenue is in addition to the separate CFP revenue distribution that already is heavily skewed toward the Power 5 football conferences. As a nonprofit entity, the NCAA returns in some form the bulk of its revenue to members, mostly through the conferences or allocated in other ways such as funding championships for each division. According to the *Business of College Sports*, the NCAA total revenue distribution for 2018–19 through 2020–21 was over \$700 million for the entire association. Division I received over \$400 million while Divisions II and III received \$54 million and \$35 million, respectively ([NCAA Revenue Distribution Plan and Payouts, 2022](#)). Over \$100 million is used to fund areas applicable to all divisions such as committees, academic enhancement, and other governance. Typically, out of a total average of a yearly one-billion-dollar budget, most of that revenue is used for operations of the entire association but does not fund the day-to-day operations of each athletic department. Institutions still need to generate their own additional revenue via gate receipts, sponsorships, sales, licensing, multi-media contracts, and institutional subsidies. Most athletic departments are mainly funded by institutional subsidies and student fees, thus raising costs for the mainstream students in the form of tuition and university-related fees (see **Figure 3**) and do not generate a surplus as many believe. Currently, only 20–25 NCAA schools generate more revenues from their sports programs than they spend on them ([Zimbalist, 2021b](#)). Many in the college sports space worry that NILs and other compensation rights for college athletes will further increase these subsidies and increase athletic department and institutional debt service.

NCAA and CFP distributions do add to the bottom line of each school and conference, but do not wholly support any specific school or division. It is a vicious financial circle in that the schools that can self-generate the most revenue, like a University of Texas or Texas A&M University, also receive the most in financial distributions from the CFP and the NCAA. It can be reasonably argued that Division I schools generate almost all of the NCAA's revenue thus they are entitled to this disproportionate share of the revenue, which is only becoming more stark

12 This was the last full year of NCAA revenue distribution prior to the 2020–21 COVID-19 pandemic

Figure 3

How Athletic Departments Are Primarily Funded via Student Fees and Institutional Subsidies



Note. Reproduced from *The Economics of College Sports* [Video], A. Zimbalist, The Drake Group, 2021 (<https://www.thedrakegroup.org/2021/12/10/the-economics-of-college-sport/>).

with the recent rash of conference realignment and jockeying for larger multi-media rights which are sure to continue.¹³ Still, if the NCAA is trying to promote competitive balance on the playing fields, amateurism, and the primacy of education, as it claims, a more equal distribution of revenues would certainly be better to achieve these goals. The skewed revenue distribution is reflected by the NCAA's power structure, which as mentioned previously leans heavily toward representation from Division I, and within Division I, heavily toward the Football Bowl Subdivision and the Power 5 conferences ([Sack & Zimbalist, 2015](#)).

On average a Division I athletic department has an overall budget of \$125 million supporting at least the NCAA minimum of 16 sports that must be balanced between men and women within the context of Title IX gender equity guidelines.¹⁴ In both of the aforementioned examples, the smallest portion of the money went toward athletic scholarships, and/or other academic support initiatives while

the largest part went to fund NCAA championships and other initiatives. Typically, athletic scholarship expenses are around \$10–15 million per Division I school but it varies widely by school size and differential cost amounts between institutions. Conversely, almost four times as much, or to be precise more than \$50 million, was spent on average per institution just on coaches and staff members. The amount of the scholarship, or more accurately, the value of the full athletic scholarship, has remained fairly static, but coach and staff salaries and benefits have grown exponentially (Zimbalist, 2021a, [2021b](#)). Given this reality, is it any wonder college athletes want to maximize their value when it might be at its highest, which, for many, is as a college athlete? Being a college athlete at Texas or Texas A&M has extreme market value and all athletes want and deserve the ability to capitalize on that marketability. Case in point, in 2011–12, the former and very successful University of Texas football coach, Mack Brown, made \$5.2 million per year and was the highest paid coach in college football history at the time. Brown had won a national championship

¹³ As of this writing, Division I athletic conferences are in a state of flux and more movement is expected. In early July 2022, UCLA and USC, two California schools and longtime members of the PAC-12 Conference, bolted for the largely midwestern based Big Ten Conference. This followed the news of the University of Texas and Oklahoma announcing intention to join the SEC in the summer of 2021.

¹⁴ Title IX of the Education Amendments of 1972 protects people from sex discrimination at institutions receiving federal government funding. From an athletics perspective, based on Office of Civil Rights updates, it is intended to provide equality and access in treatment, finances and proportionality of athletic aid, and participation opportunities.

at UT and was a long-time successful coach at several Division I institutions. The current coach at UT, Steve Sarkisian, whose overall record is checkered at best, is still the 16th highest paid football coach in Division I at \$5.5 million. The highest paid coach in America is Georgia's Kirby Smart at \$11.45 million per year ([Elbaba, 2022](#)). Mack Brown would barely crack the top 20 earners today at \$5 million a year, but athlete compensation remains largely unchanged and has not increased exponentially as everything else financially in college sports.

It is not just spending on coach and administrator salaries that is increasing. Twice as much money has been spent on building or maintaining sporting facilities compared to scholarships in 2013 and that number continues to grow in 2020 and beyond (Ridpath, 2018; Nixon II, 2014; [Sack & Zimbalist, 2015](#); [Zimbalist, 2021b](#)). Just as important, the gap between achieved revenue and scholarship expenses continues to expand. The revenue generated by athletic departments is growing at a faster pace than the money spent on athletic scholarships. For instance, athletic revenue generated by the University of Texas increased by 8.6% from 2011 to 2012 to an almost unheard-of \$164 million and now is the largest budget in college athletics at over \$200 million dollars ([Berkowitz & Upton, 2013](#); [Crawford, 2020](#); [Davis, 2022](#)). Yet, scholarship costs only increased by 4.4% overall, causing the athletes to get essentially a lesser piece of the total revenue pie every year while having no access to that larger revenue slice. This is a typical ratio at most institutions. The overall total budget numbers might be smaller in comparison to a school like the University of Texas, but the athlete is receiving less and less while others continue to receive more.

NCAA Procompetitive Justification for Retaining Amateurism in Intercollegiate Athletics

Even with these skewed revenue numbers, huge financial benefits for some and a clear disadvantage for the college athlete financially, the NCAA has fought against any extra compensation for the college athlete virtually since its inception in the early 20th century and spent millions of dollars doing it, but why? Why make such an effort to prevent something that is allowed for almost every other person and group in this country as a matter of course? This fight has become harder for the NCAA to justify when

it runs a billion-dollar business. More and more money will continue to flow into athletic departments from lucrative television and sponsor contracts while schools routinely spend lavishly on facilities, stadium upgrades, and increasing salaries for coaches—seemingly for everyone but the athletes on the field ([Higgins, 2022](#)).

As outlined in Article 12 in the Operating Bylaws of the NCAA's current Division I manual, keeping an amateur status and college athletes unpaid is a standard for the NCAA and is also touted as a reason why the industry is so successful. In other words, the NCAA has long claimed fans want to see unpaid college students compete and will walk away as fans and consumers if the athletes are compensated in any way, thus rendering the industry uncompetitive in the marketplace. In simple terms, if fans walk away as the NCAA has long claimed, there is no college sports industry. If what keeps the fans interested is the unpaid, amateur status of the college athlete, then the industry would have a procompetitive legal justification to continue the practice, but several legal decisions, specifically in the past five years, have not supported the NCAA's procompetitive justification claims and certainly with one year of NIL rights already passed, the interest and excitement in the games continues virtually unabated.¹⁵ In 2021, the Supreme Court found in the *NCAA v. Alston* case, that the NCAA had failed to show any economic analysis as to how or why the consumer market for college sports would suffer irrevocable damage if college athletes received unrestrained educational benefits (*NCAA v. Alston, 2021*).¹⁶ The Court noted that the *Alston* plaintiffs were able to show the exact opposite. In fact, the popularity of college sports had actually *increased* in the years following increased allowances in educational benefits allocation even before allowing NIL rights ([Marino, 2021, para. 3](#); [Meyer & Zimbalist, 2020](#)).

The NCAA's procompetitive assertions are not without precedent and are reflected in numerous legal and legislative fights over the past half century. The NCAA once controlled football television broadcasts and only allowed one or two games per week to be shown nationally or regionally up until the early 1980s. It is hard to fathom in today's world of almost daily college football telecasts, and other college sports programming for that matter, that if *Texas vs. Oklahoma* was not selected as the national telecast, it

15 In March 2019, U.S. District Judge Claudia Wilken ruled that the NCAA had violated antitrust law and could not "limit compensation or benefits related to education" for athletes playing Division I men's or women's basketball or Bowl Subdivision football. At this point a value of \$5,900 in educational benefits was deemed allowable by the court. In the recent 9-0 Supreme Court decision in favor of *Alston v. NCAA*, Justice Brett Kavanaugh stated in a concurring opinion that "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate."

16 *National Collegiate Athletic Association v. Alston et al.*, Certiorari to the United States Court of Appeals for the Ninth Circuit. No. 20–512. Argued March 31, 2021—Decided June 21, 2021.

would be unavailable to the masses. The NCAA controlled this exposure and how the television money was distributed to schools to control competitive balance and preserve the live gate receipts. It was believed by many in the NCAA, mostly Walter Byers, that the live gate would suffer if multiple games were shown on television. As the country moved into the 1980s and the television industry continued to evolve, the University of Oklahoma and University of Georgia sued the NCAA to change that power structure because schools were leaving money on the table by not being able to broadcast their sports as they saw fit outside NCAA control ([Solomon, 2018](#)).

In 1984, in [NCAA v. Board of Regents of University of Oklahoma](#),¹⁷ the U.S. Supreme Court upheld a lower court's decision that the NCAA's control over football TV contracts was an illegal restraint of trade. The Court found that live college football competition had been restrained by the NCAA fixing the price for certain game telecasts via exclusive network contracts that placed an artificial limit on televised games by preventing schools or conferences the ability to negotiate their own contracts. The Supreme Court handed down a 7–2 decision against the NCAA and agreed with the lower courts that the Sherman Anti-Trust Act had been violated, holding that the NCAA's television plan constituted an illegal anticompetitive limitation. Price and output were not offset by any sufficient or legal procompetitive justifications, such as preserving amateurism even though it seemed the Justices at least tacitly agreed that college athletes must be students and not be paid despite opening up this lucrative marketplace ([NCAA v. Board of Regents, 1984](#); [Meyer & Zimbalist, 2020](#)).¹⁸

After this momentous decision, college athletics began to change in a way that made greater athlete rights, including access to NILs, inevitable as the industry began to quickly resemble what we see today, not to mention the rapid changes in how sporting content could be distributed via cable, satellite, and later the world wide web. NCAA member schools began merging into larger conferences and

ended the once-common practice of independent status, except for a notable few, such as Notre Dame football.¹⁹ Athletic conferences, such as the expanding Southeastern Conference (SEC) soon held the economic power in football as college football's popularity grew in America via the massive amount of new television coverage at the local, regional, and national levels. College football essentially became the financial engine for most Division I athletic departments along with being the driver for all policy making and decisions. Conferences began to negotiate lucrative and unheard-of massive media rights deals, stage championship games, and secure their own post-season bowl games, and later produced Division I college football's first national championship format, initially called the Bowl Championship Series and currently labeled as the CFP ([Solomon, 2018](#)). All of this was done without any interference from the NCAA and other Division college football I teams. NCAA FBS Football²⁰ essentially began to run as its own entity and stray even further from the ancient and outdated educational and amateur sports model, which only made the restraint on the earning capacity of the college athlete even more glaring.

Today, the College Football Playoff (CFP) is worth about \$470 million annually and growing. Many of the conferences now have their own television network, such as the Big Ten and SEC. “During fiscal year 2017, the SEC distributed on average \$41 million to each of its 14 universities, according to USA Today. [Just] ten years before in 2007, the SEC average payout per school was \$11 million” ([Solomon, 2018, para 33](#)). In 2021, the CFP distributed a base of \$57 million to the Power 5 conferences. The amount is greater for those that participate in the four-team playoff ([College football payouts, 2022](#)).

Currently in college sports, there are head college sports coaches being the highest paid public employees in most states (see [Figure 4](#); [Stebbins, 2020](#)). In addition, there are opulent multi-million-dollar athletic-only facilities, highly paid administrators, and television contracts, such as the

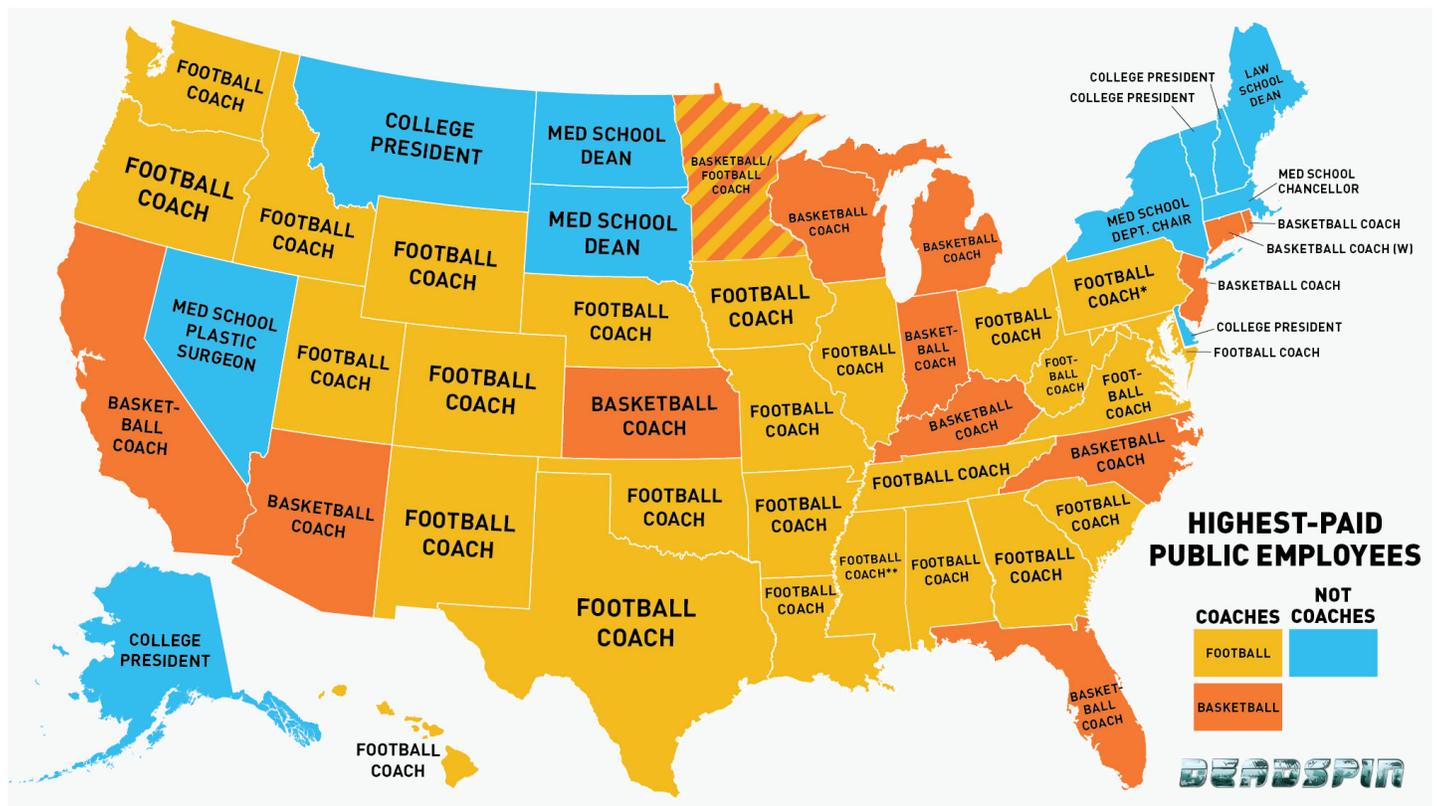
17 *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*. 468 U.S. 85 (1984), No. 83-271. Argued March 20, 1984. Decided June 2, 1984.

18 The NCAA often referred to non-binding dicta in this case as justification for amateurism and limiting compensation for college athletes. The dicta portion stated the NCAA seeks to market a particular brand of football—college football. The identification of this “product” with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball. In order to preserve the character and quality of the “product,” athletes must not be paid, must be required to attend class, and the like. The Alston case rejected this dictum as precedent since it was non-binding.

19 Notre Dame has long prided itself on being a national brand and university. It is the only major college football program with its own television contract that makes it financially feasible to not be in a conference for football. The university's current contract with NBC Sports lasts until the 2025 season and is currently worth \$22 million per year for the school. Currently, Notre Dame is seeking to renew this contract for \$75 million per year.

20 NCAA Division I football is currently broken down into two distinct subdivisions. Football Bowl Subdivision (FBS) football includes 10 Division I conferences, including the Power 5 conferences. These ten conferences representing over 100 schools are eligible to compete in the CFP and other bowl games run by the CFP and not the NCAA. These schools also offer 85 full ride scholarships. Football Championship Series (FCS) are schools that play in an NCAA-sanctioned playoff and offer 63 scholarships that can be spread out over a number of players in contrast to FBS where one full scholarship must go to one athlete. FCS schools are typically smaller institutions with smaller overall athletic budget.

Figure 4
College Coach Pay as State Employees



Note. Map reproduced from *Infographic: Is Your State's Highest-Paid Employee a Coach? (Probably)*, by R. Fischer-Baum, Deadspin, 2013, May 9 (<https://deadspin.com/infographic-is-your-states-highest-paid-employee-a-co-489635228>).

annual March Madness men's NCAA Division I basketball tournament now worth more than \$1 billion. The industry has grown in many ways, and many are cashing in on the popularity of college sports, except for the main revenue generator—the individual athlete. One constant has remained since 1956—the college athlete is still being compensated virtually the same with an athletic scholarship that caps their ability to make more money for themselves and until July 1, 2022, their ability to market their own name, image, and likeness (NIL).

The College Athlete as an Employee

While there have been some advances in athlete compensation and individual rights in the past decade to include greater transfer freedom and the allowance of a cost of attendance stipend on top of an athletic scholarship, there has been great resistance by the NCAA up to the present day to recognize college athletes as employees and allow collective bargaining, including lasting resistance and acceptance of allowing NIL rights. The NCAA's continued

approach of saying college athletes are students but treating them as employees while not providing the rights afforded to all college students, nor the compensation that employees should get, finally reached a tipping point after years of debate, lawsuits, and government intervention.

As college sport became increasingly commercialized in the latter half of the 20th century, the amateur umbrella had been essentially expanded due to the scholarship and allowable laundry money of \$15 per month (\$140 per month in today's dollars) to include athletes, who, at the NCAA's founding convention, would have been branded as professionals ([Meyer & Zimbalist, 2020](#)). The 1957 legislation contained provisions to counter the argument that athletic scholarships constituted “pay for play” which might expose its members to worker's compensation claims. Financial aid could not be reduced or canceled on the basis of an athlete's contribution to team success, injury, or decision not to participate ([Sack & Zimbalist, 2015](#)). The NCAA, led by new director Walter Byers mandated the use

of the term “*student-athlete*” in all communications to assist in defending against worker’s compensations claims (Byers & Hammer, 1995, pp. 69, 75; [Sack & Zimbalist, 2015, p. 3](#)). In 1967, the NCAA moved even further from its original conception of amateurism when members began to complain that athletes were accepting four-year scholarships and deciding not to participate. One athletic director sent a letter to Byers on July 6, 1964, and stated that this lack of participation while receiving an athletic scholarship was “morally wrong.” He then added that “regardless of what anyone says, this is a contract, and it is a two-way street” ([Meyer & Zimbalist, 2020](#); [Sack & Zimbalist, 2015, p. 3](#); Smith, 1964). To address this problem the NCAA passed rules that allow the immediate cancellation of a scholarship of an athlete who voluntarily withdraws from sports, only makes token appearances at practices, becomes academically ineligible, or does not follow a coach’s directives, currently referred to as the fraudulent misrepresentation rule.²¹

Based on complaints that many athletes were not fulfilling their athletic obligations while receiving an athletic scholarship, the NCAA made a total separation from the traditional model of amateurism in 1973 by requiring that athletic scholarships be renewable only on a year-to-year basis rather than be guaranteed for four years ([Sack, 2011](#); [Sack & Zimbalist, 2015](#)) This rule, which still exists today, allows a coach to cancel athletes’ scholarships at the end of one year for just about any reason, including injury, level of contribution or lack thereof to team success, making room for a more talented recruit, or failure to fit into the coaches’ style of play ([Sack & Zimbalist, 2015](#)). The contractual nature of this relationship and the control it gives to the coaches over the player’s behavior has many of the trappings of an employment contract and is core to many of the compensation issues discussed in the present times, including NIL rights ([McCormick & McCormick, 2006](#)). In marked contrast to the claimed model of amateurism, the 1973 change to a year-by-year scholarship transformed athletes into highly specialized entertainers and even further away from the so-called student-athlete ideal the NCAA continually claimed. In the revenue sports of football and men’s basketball, but certainly not exclusive to those sports, athletes’ lives are controlled by highly paid coaches and strict time-consuming schedules, with little time left for other interests or extracurricular activities, including

focusing on academics—the alleged main purpose of inter-collegiate sport.

In the past year, there have been significant movements by athletes, athlete advocates, and the federal government toward recognizing college athletes as employees with collective bargaining rights. On September 29, 2021, new National Labor Relations Board (NLRB)²² General Counsel Jennifer Abruzzo issued a memorandum deeming “certain” college athletes as employees under the National Labor Relations Act (NLRA). While there had been similar NLRB rulings and efforts in the past, this memorandum was an open invitation to athletes and athlete advocates to bring forth petitions to unionize ([Dellenger, 2021b](#)) in a college athlete compensation movement which had gained significant momentum by both state NIL laws and a significant U.S. Supreme Court case excoriating the NCAA and its antitrust practices. Significantly, the NLRB only applies to public institutions, which can be problematic considering some NCAA institutions are private ([National Labor Relations Board Office of Public Affairs, 2021](#)).

On February 1, 2022, the National College Players Association (NCPA) filed unfair labor practice charges with the NLRB against the NCAA, the Pac-12 Conference and California schools USC and UCLA as single and joint employers of FBS football players and Division I men’s and women’s basketball players. The goal is to affirm employee status for D-I basketball players and FBS football players. In addition, Michael Hsu, an athlete advocate and former University of Minnesota trustee who also helped create another college players association, the College Football Players Association representing both college football and basketball players, along with former Minnesota faculty member Jason Stahl, submitted a charge of unfair labor practices against the NCAA in November 2021. No decision is expected for at least 18 months (mid to late 2023) on either complaint ([Dellenger, 2022](#)). Even current Big 10 Commissioner Kevin Warren has alluded he is willing to consider discussing the topic of athlete unionization after it was revealed members of the Penn State football team met with Stahl and the CFPA in July 2022 ([Higgins, 2022](#)).

As noted later in this paper, the federal government also has several bills pending that could codify college athletes as employees. Proposed legislation includes the College Athlete Right to Organize Act, sponsored by Rep. Jamaal

21 Fraudulent misrepresentation definition is found in NCAA Bylaw 15.3.5.1.2 and states, “If a student-athlete is awarded institutional financial aid on the basis of declaring intention to participate in a particular sport by signing a letter of intent, application or tender, action on the part of the grantee not to participate (either by not reporting for practice or after making only token appearances as determined by the institution) would constitute fraudulent misrepresentation of information on the grantee’s application, letter of intent or financial aid agreement.”

22 The NLRB is an independent agency that enforces U.S. labor law as it relates to collective bargaining.

Bowman a Democrat from New York's 16th district. ([Office of Rep. Jamaal Bowman, 2021](#)) The bill proposes collective bargaining rights for college athletes and defines college athletes on scholarship as employees. It also specifies that the NLRB must consider athletes within an athletic conference consisting of public or private institutions as a bargaining unit with NLRB jurisdiction. The bill goes on to state that college athletes face exploitative and unfair labor practices by the National Collegiate Athletic Association and its member institutions, primarily through the denial of the basic economic and labor rights of such athletes, which the NCAA and its member institutions have justified by defining college athletes as amateurs.

The movement and external pressure to allow college athletes to collectively bargain their working conditions as either statutory employees or as a non-employee bargaining unit has gained momentum. While past legal challenges to the Fair Labor Standards Act have failed with regard to college athlete compensation, a current Third Circuit federal case entitled *Johnson v. NCAA* has survived a motion to dismiss and will likely go to trial soon.²³ Many experts believe some form of collective bargaining with the college athlete is inevitable and necessary as a way to better control issues in college sports such as transfer freedom and perceived NIL inequities. In other words, there can be restrictions on things like NILs, but they must be negotiated and agreed to with athletes at the bargaining table or any restrictions on any college athlete right allowed for a mainstream college student, but restricted for a college athlete, will likely be in violation of federal antitrust laws ([Ridpath & Winter, 2022](#)). The days of the NCAA or an athletic conference dictating what an athlete can do educationally or monetarily may well be over and schools need to be proactive in this area rather than reactive.

Current Allowable Institutional Compensation Beyond the Athletic Scholarship

In response to claims of athlete exploitation and an increasing amount of litigation and threatened government intervention brought under antitrust and labor laws, the NCAA has continually adjusted its amateurism definition

in the past 15 years to provide college athletes with more protection and expanded benefits. In 2012, the NCAA approved a new rule giving Division I schools the option to award multiyear scholarships. In 2014, the association started allowing expanded food service for athletes, beyond that available to non-athlete students and what is typically needed for elite athlete nutrition. More significantly, in 2015, Division I began allowing four-year scholarships and a cost of attendance stipend ([Meyer & Zimbalist, 2020](#); Ridpath 2018).

The NCAA manual is several hundred pages long and the list of detailed and often illogical regulations that purport to uphold the concept of amateurism and a supposed level playing field is extensive. Over the ensuing four decades since the 1973 change, the NCAA has also allowed explicit gifts beyond the athletic scholarship to be given to student-athletes without violating the shifting definition of amateurism. In contrast, these gifts also have not lessened the demand or popularity of intercollegiate athletic programs. According to Broughton ([2012](#)), in an article in the *Sports Business Journal*, the NCAA allows players in football bowl games and the March Madness basketball tournament to receive more than a \$1,000 in gifts. Specific NCAA changes in March 2012 provided some details including information on new upgrades on award limits: "For example, a senior on a team that runs the table and wins championships for the regular season, postseason conference tournament and NCAA tournament could secure gifts valued at up to \$3,780. Last year's comparable total was \$3,380. Up to 25 gift packages can be provided to a team by its school and by its conference for participating in this month's conference tournaments, according to NCAA bylaws" ([Sack & Zimbalist, 2015, p. 4](#)).²⁴ Similar access to these gifts and perks still exist today.

The NCAA has also liberalized its rules regarding federal Pell Grants that were once prohibited. At the 1982 convention, it was decided that students with extreme financial need as determined by the institution would be allowed to supplement an athletic scholarship with 50% of the maximum Pell Grant (which was \$1,800 at the time). This proportion was raised to 74% in 1990 and to

²³ *Johnson v. NCAA*, 556 F. Supp. 3rd 491, 495 (E.D. Pa. 2021)

²⁴ According to Broughton ([2012](#)) in 2012, the NCAA allowed each bowl to award up to \$550 worth of gifts to 125 participants per school. In addition, participants were allowed to receive awards worth up to \$400 from the school and up to \$400 from the conference for postseason play, covering both conference title games and any bowl games. Today a Division I football player can get gifts valued up to \$550 from a bowl and up to \$400 by his school. There are even bowl gift suites and Visa gift cards for players. In all sports, the NCAA allows schools to give awards to underclassmen (maximum value \$225 each) and seniors (\$425) for annual participation. There are awards for winning a national championship (\$415 maximum per player) or winning a conference regular season/postseason championship (\$325). If you win a national award such as the Heisman Trophy, that award is worth up to \$325. If you're the MVP of a bowl game or all-star contest, you can get up to \$350 in an award. And if you make special contributions to your team's season. Examples cited by the NCAA rulebook are best scholar-athlete, most improved player, most minutes played and most valuable player. In these cases, the maximum award value is \$175 per athlete ([Solomon, 2016, p. 8](#)).

100% in 1996. The United States Golf Association's Rules of Amateur Golf allows amateur members to compete in professional tournaments if they do not receive prize money. Amateur golf members are also allowed to hire an agent and to receive compensation that is unrelated to winning a tournament ([Sack & Zimbalist, 2015, p. 4–5](#)). In select cases, the NCAA has different rules for European college athletes than for U.S. college athletes. For example, professional tennis players from Europe are allowed to play NCAA tennis while U.S. college athletes who have earned income playing tennis are not allowed to compete in college if they earned more than \$10,000 in prize money. Not as restrictive as other sports, but still something that is not allowed in other sports to this day. The NCAA also currently restricts college athletes from contacting a lawyer or player agent to help them (a) arrange and prepare for appearances at combines, (b) receive information about what the economic implications are regarding their options with respect to the amateur draft, or (c) enter into preliminary negotiations around signing a professional contract. Any of these activities would predate the athlete signing a contract, being paid, or becoming a professional ([Sack & Zimbalist, 2015, p. 5](#)). In the NIL, more liberal access to trained and competent representation is needed for college athletes to effectively navigate this new space and some state laws are reflecting that reality.

The NCAA has continued to adjust some benefits and its definition of amateurism or the new “collegiate model” for athletes in an effort to prevent flat out salaries and benefits. For several years the NCAA allowed all athletes to access the Student Special Assistance Fund (SAF) and Academic Enhancement Fund (AEF) to help college athletes cover costs related to personal emergencies (e.g., bereavement-related travel), clothing, and other necessities. Recently, universities have been able to use these funds even more discretionarily for the athletes' benefit, such as paying premiums for loss of value insurance for elite athletes who might be risking injury by playing intercollegiate athletics ([Meyer & Zimbalist, 2020](#)). Even with these enhancements, the overall amount provided to the athlete financially is small in comparison to the increased revenue and benefits for others in college sports.

The Cost of Attendance Stipend

Even more controversial is the fact that a full grant-in-aid used to be not sufficient to cover all living expenses until 2014. A full scholarship was typically \$952 to \$6,127 per year lower than the full cost of attendance ([Huma & Staurowsky, 2013](#)). This financial gap imposed a huge problem for athletes coming from low-income families.

For instance, in 2010, the percentage of FBS schools, whose “full” scholarships still left their student-athletes at or below the federal poverty line was 85%. In comparison, if football and basketball college athletes had access to a fair market as a professional athlete, their worth in 2010 without accounting for NIL deals would have been approximately around \$121,048 and \$265,027 ([Huma & Staurowsky, 2013](#)). The COA stipends intent was to provide extra monies to cover items like cost of transportation to and from school, recommended books, social activities, and other items that vary from school to school. As mentioned, these amounts are set by each school's financial aid office and apply for all students. In addition, like mainstream students, the athletes can use the cash payments however they please ([Meyer & Zimbalist, 2020](#)).

Name, Image, and Likeness Resistance to NIL Rights

With the emergence and exponential growth of media broadcasting in college sport, another highly debated rule of amateurism came into play. This rule implies that the right to use images, names, and likeness of players for commercial purposes was reserved for the NCAA and its member universities, whereas the athletes were not allowed to commercially use their own NIL for profit ([Suggs, 2009](#)). Past NCAA restrictions on college athletes' unpaid participation in the lucrative market for their image, name, and likeness as any other college student are certainly not necessary to uphold the principles of amateurism, which are constantly changing to meet industry needs ([Sack & Zimbalist, 2015](#)). Many thought that bringing in professional athletes to the Olympics would stain their purity and even that they would eventually cease to exist, yet it is virtually non-debatable that the Olympic Games are now as popular as ever, even while using overtly and well-compensated professional athletes. The feared demise of the games did not happen, and television rights and sponsorship fees are at record highs ([Branch, 2011](#); Ridpath, 2018; Zimbalist, 1999). Name, image, and likeness is essentially a person's brand. The strategic use of NILs allows individuals to profit off their human brand ([Sorensen, 2021](#)). In U.S. law, NIL rights are categorized under the “right of publicity” and give individuals the exclusive right to either use their identity for commercial purposes or award others the right to do so. Consequently, it prevents an unauthorized use of a person's name, image, likeness or other attributes for commercialization. The NCAA lists the following as examples for NIL-related activities: autographs; personal appearances, such as speeches; the promotion of a business; the sale of

merchandise linked to the athlete; social media influencing and the representation in video games ([NCAA, 2021](#)).

The NCAA and its membership universities for over 100 years prevented college athletes from making any kind of profit related to their athlete status under the rule of amateurism. Likewise, and in contradiction to the right of publicity, athletes were banned from taking advantage of their NIL rights apart from usage for unpaid services, such as for the promotion of charities or nonprofits ([NCAA, 2020](#)). NCAA rules also prevented college athletes from hosting athletic camps, private training lessons, or profiting from their social media potential ([Sorensen, 2021](#)). Conversely, the NCAA and member universities have strategically used their players' NILs to increase ticket and merchandise sales or to monetize their popularity on social media. The ability for an institution, conference, or the NCAA to monetize the NIL of the athlete is even codified in NCAA Bylaw 12.5.1.1, which allows The NCAA and its member institutions to use athletes to endorse their products and activities in a wide variety of circumstances ([Meyer & Zimbalist, 2020](#); [Palmieri, 2021](#)). While Division I athletes were not allowed to use their name, image, or likeness to promote any commercial service or product paid or unpaid, Division II and Division III students had less strict rules. In fact, they were allowed to participate in and get paid for NIL activities if they were unrelated to the individual's involvement in athletics ([NCAA, 2020](#)).

The NCAA has claimed that its past restrictions on income from the use of athletes' images, likenesses and names along with any direct compensation or benefits were necessary in order to promote balance in competitive outcomes and financial solvency for athletic programs. In other words, it was believed that the popularity of intercollegiate athletics rested in the fact that the athletes were not paid and were mainstream college students. Given that the popularity of college sports did not wane during 2021–22, the first year of few if any significant regulations of NIL compensation, it is hard to continue to claim that the procompetitive survival of the industry rests on the athletes not being compensated in some way. In fact, the NCAA's policies as mentioned in the previous section do not promote competitive balance and sharing licensing income with its current (via trust funds) and former athletes and/or NILs would be completely compatible with maintaining the current financial standing of intercollegiate athletic programs, provided the NCAA took appropriate measures to reduce consistent waste and inefficiency such as unneeded facilities and ever increasing coaching and administrative salaries ([Zimbalist, 2021b](#)). The continual and rapid drift away

from earlier amateur practices has not at all detracted from college sport's popularity as commercial entertainment, and the NCAA's ability to arbitrarily define what constitutes amateurism and college athlete compensation ensures that increasing subsidies to athletes will absolutely not pose a threat to the NCAA's brand of "amateur sport" (Baumler et al., 2022; Ridpath, 2018; [Sack & Zimbalist, 2015](#)).

NCAA Legal Challenges to NIL Restrictions

Limiting the freedom of athletes to take advantage of their own identity led to even more lawsuits and legislation against the NCAA, while underscoring the need for a systematic change. There has been much pressure exerted on the NCAA to get us to the present day. The first athlete-driven lawsuits against the NCAA's strict amateurism rules and handling of NIL rights were filed in 2002 and 2009. In 2002, Jeremy Bloom, an Olympic skier and college football player at the University of Colorado, sued the NCAA after being declared ineligible because he had engaged in endorsement deals as a skier. His case was unique as his suit against the NCAA was to keep his collegiate career alive while being able to ski in the Olympics. After losing his case in 2004, the NCAA declared him permanently ineligible, cutting short his college football career by two years ([Sommer & Zimbalist, 2021](#)).

One of the most influential and seminal publicity and college athlete likeness cases concerned former UCLA basketball player Ed O'Bannon. O'Bannon filed suit against the athletic organization in 2009 on the grounds that profit was being made from his and other players' likeness without consent in an EA Sport released video basketball game ([Sommer & Zimbalist, 2021](#)). The game "NCAA March Madness" included the option to choose from college basketball players, which were graphically designed to look like and wear the same jersey and number as the real-world athletes ([Matzkin, 2001](#)). Because of the similarity, the UCLA basketball player demanded a share of the profit made from selling the game and sued against a violation of his rights of publication. In 2014, the U.S. District Court of Northern California ruled in favor of Ed O'Bannon, declaring the NCAA guilty of wrongfully using the players' NIL rights and violating U.S. antitrust law. As a result, the NCAA was ordered to pay a total of \$42.2 million in compensation to the plaintiffs ([Landry & Baker, 2019](#)).

Current State NIL Laws and Potential Federal Legislation

The NCAA continues to defend its system against numerous legal cases and spent at least \$750,000 lobbying lawmakers and millions in legal fees in 2019 alone to restrain

college athletes from obtaining the right to profit from their NILs ([Sommer & Zimbalist, 2021](#)). It is estimated the NCAA has spent upward to \$250 million in legal fees defending these types of cases since 2002 (“[NCAA’s Big Spending,” 2022](#)). During the fiscal year ending in 2021 alone, the NCAA paid almost \$52.5 million in legal fees, while it reported spending \$68 million in 2019–20.

In September 2019, the state of California directly challenged NCAA bylaws by enacting the Fair Pay to Play Act, to go into effect in 2023. California’s legislation soon inspired other states to follow suit and pass their own bills into law, permitting student-athletes to monetize their brand ([Palmieri, 2021](#); [Sommer & Zimbalist, 2021](#)). Consequently, similar bills were introduced in different states, some more restrictive regarding athlete compensation than others. On average, only 1.6% of NCAA football players and 1.2% of basketball players go professional. Conversely, many athletes experience a peak of their popularity during college with a drop in brand equity after graduation and/or end of competitive intercollegiate eligibility ([NCAA, 2020](#); [Palmieri, 2021](#)). In essence, for most athletes, the ability to profit from their individual brand typically peaks during a time when they are prevented from benefiting from it ([Palmieri, 2021](#)).

The immediate concern of many coaches and athletic administrators is that schools with less restrictive NIL laws provide a significant recruiting advantage due to their ability to offer prospects the right to be compensated for their NIL in addition to their athletic scholarships ([Palmieri, 2021](#)). The worry about competitive balance issues from coaches, administration, and others within the NCAA depended on finding a universal solution before the first state bills went into effect on July 1, 2021 ([Sommer & Zimbalist, 2021](#)). However, the NCAA postponed voting on such standardized association legislation in a NIL convention called for this purpose in January 2021 and instead kept lobbying for Congress to grant an antitrust exemption and a legislated government solution. By June, it became clear that a national NIL rule would not be passed before July 1, 2021 ([Allender, 2021](#)). Following this, Mark Emmert, the current president of the NCAA, suggested that interim NIL-related NCAA policies should be adopted by member universities until a federal legislation is developed together with Congress.

On June 30, 2021, the NCAA Board of Governors voted to adopt several interim policies, granting student-athletes the right to profit from their NILs ([Allender, 2021](#)). The board adopted the interim guidance last summer with an

understanding that they would consider further guidance and updates as the name, image, and likeness environment developed during the initial year. The board of governors updated the interim guidelines less than a year later, in May 2022, to emphasize that using NILs as a recruiting inducement was still against the association’s recruiting bylaws. Board members instructed schools to investigate, detect, and self-report any recruiting violations as always but also including anytime NILs are being used as recruiting inducements ([Hosick, 2022](#)). The athletic organization clearly emphasized that the interim policy and any updates do not represent a pay for play bill, nor does it create a student-employee status ([Palmieri, 2021](#)). More specifically, the interim policy as posted on NCAA’s website provides the following guidance:

- Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a resource for state law questions.
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness.
- Individuals can use a professional services provider for NIL activities.

Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school. ([Hosick, 2021](#))

As outlined above, NCAA’s interim policy and updates leaves room for interpretation and urges schools to create their own NIL policy consistent with the specific state law and publicly post it ([Allender, 2021](#)). Since July 2021, college athletes across America have been capitalizing on the new NIL policy ([Palmieri, 2021](#)). Correspondingly, many intercollegiate athletes are becoming the face of brand campaigns, offering a highly engaged audience in return for endorsement deals ([Christovich, 2022](#)). With an impressive amount of potential athlete influencers entering the marketplace, it is expected that about \$579 million will be spent on NIL deals within the first 12 months of the rule change ([Palmieri, 2021](#)). To help college athletes navigate the change and maximize their branding potential, universities are working out directories and guidelines. Additionally, an increasing number of third-party companies, such as Opendorse or Dreamfield, are entering the marketplace, offering platforms that link players with potential

endorsement partners. In fact, the new collegiate NIL industry generated \$917 million for college athletes in NIL revenue in just the first year ([Schafer, 2022](#)). After decades of court battles, including the *Bloom* and *O'Bannon* cases, the court of public opinion began to evolve in favor of affording college athletes' additional rights considering the exponential increase of revenue such as lucrative broadcast deals favoring the NCAA, conferences, and member institutions.

In February 2019, Duke men's basketball sensation Zion Williamson demonstrated the influence just one college athlete can have on the entire sports industry when his Nike shoe fell apart and he suffered a knee sprain during the Duke vs. UNC game. The online ticket resale market fetched game ticket prices ranging from \$2,990 to \$10,652. ([McCarthy, 2019](#)). The following morning, the Nike brand's stock went down about 1%, equating to roughly \$1.12 billion in losses for the company ([Richards, 2019](#)). Prompted by this incident, Connecticut Sen. Chris Murphy released a first report entitled *Madness Inc., How Everyone Is Getting Rich off College Sports – Except the Players* in March 2019. Sen. Murphy stated that

Williamson's shoe is a symbol of what college sports has become, and what March Madness embodies. Big-time college sports is a business. Everything the student-athletes do affects the bottom lines for institutions and corporations alike. Everything they wear brings profit to companies that have paid to turn student-athletes into human billboards. For the brief time they are on college campuses, they are a valuable resource for the adults around them. ... they see a fraction of the revenue they generate, while continuing to face severe penalties for failing to abide by a labyrinth of rules that restrict any meaningful participation in that industry. ([Murphy, 2019, p. 2](#))

The second report highlighted the reality of the “world-class education” that college athletes are supposed to receive in return for their athletic services. As noted in a *New York Times* article, this event led to many questions around college sports:

Should amateurism be curbed in college sports, allowing athletes a cut of the money they help produce? Should a prodigious talent like Williamson, who is good enough to play professionally right now, have to risk his future competing for free because of an N.B.A.

rule prohibiting him from leaping to the league from high school? Do the sneaker companies, which were at the heart of a federal fraud trial near the start of the season, do more harm than good in college sports? ([Tracy & Draper, 2019, para. 6](#))

Individual States, NIL Laws, and Proposed Bills

After a crescendo of decades of fighting in courts and the Williamson incident, California made the first move challenging existing NCAA amateurism rules. California Gov. Gavin Newsom signed state Sen. Nancy Skinner's Fair Pay to Play Act²⁵ into law (introduced just two weeks prior to the Williamson incident) on September 30, 2019. This made California the first state to grant college athletes a right everyone else has which is the right to earn money from your name, image, and likeness. This bill would allow an NCAA athlete to earn compensation based on their athletic utility gained while competing for an NCAA member institution. California was prudent in enacting its law making the effective date January 2023—which likely would prompt other states to initiate their own legislation given NILs ([Lauletta, 2019](#)). The initial 2023 start date, later accelerated by Newsom to September 1, 2021 ([Office of Governor Gavin Newsom, 2021](#)) tacitly provided time for the NCAA to react and pass its own membership-driven and organizational-based NCAA rules to support state based NIL legislation and modernize college sports and the outdated amateurism model. As previously mentioned, this did not happen at the NCAA level initially up to the present day where there are simply national office guidelines for institutions to follow existing state laws rather than membership-driven legislation.

Soon after the California law passed, in October 2019, the NCAA Board of Governors directed its divisions to address NIL reform. The NCAA Board of Governors had already created the Federal and State Legislation Working Group in the summer of 2019 (after the proposed California bill was introduced) for the purpose of investigating possible responses to proposed legislation. Throughout 2020, the Federal and State Legislative Working Group presented proposed rule changes to the association. By November 2020, each division drafted NIL legislative proposals. Throughout 2020 and 2021, with the desire to keep up with the advancing rights of California collegiate athletes (and stay ahead in the recruiting race), other states across the country followed suit.

25 See Footnote #7

As it was considering its own NIL policy, in January 2021, the NCAA received a letter from the antitrust division of the Department of Justice (DOJ) cautioning NCAA and its proposed model about any type of restrictions on athletes' ability to profit off their NIL—which led to suspension of internal NCAA NIL reform and codified rules as opposed to only guidance. The DOJ stated that “antitrust laws demand that college athletes, like everyone else in our free market economy, benefit appropriately from competition” that the marketplace provides ([Berkowitz & Brennan, 2021, para. 4](#)). With its proverbial back against the wall, the NCAA issued its last-minute interim policy and its later 2022 updates. As the states forged ahead, Florida became the first to pass a law with an effective date of July 1, 2021 ([CS/CS/SB 646: Intercollegiate Athlete Compensation and Rights, 2020](#)) well ahead of California's original effective date of January 1, 2023. Several other states (mostly states with SEC institutions) also chose the earlier effective date of July 1, 2021. In response and to remain competitive, California amended its effective date to September 1, 2021.

With the very significant U.S. Supreme Court case of *NCAA v. Alston* decided June 21, 2021, the NCAA was in an even weaker position to create policy with any type of limitation or control on college athlete NIL rights. The Supreme Court upheld a district court ruling that the NCAA rules limiting education-related compensation violated section 1 of the Sherman Act.²⁶ While *Alston* was not an NIL case, the Supreme Court was very clear in its unanimous ruling that the NCAA is subject to scrutiny when it comes to antitrust limitations and this case helped push the NIL movement to a quicker start date than anticipated when California passed its bill. On June 30, 2021, the NCAA adopted the interim NIL policy ([Hosick, 2021](#)) after the Division I Council agreed to support it, and it is to remain in place until federal legislation or new NCAA rules are enacted. Twenty-one (21) different state NIL laws were effective by October 1, 2021. The state laws vary widely, and several states have unique clauses and nuances that limit NIL activity—more than what is in the basic NCAA interim policy. A total of 29 states have enacted bills into law (with many more introduced since 2019).

State legislatures saw a lot of NIL activity with NIL bills introduced and passing during the 2019 to 2021 state legislative sessions leading up to the NCAA amending their bylaws. **Figure 5** shows the progression of state legislatures as states sought to keep up with the NIL race in order to maintain a competitive athletic advantage or at least equity

with those states that had already passed NIL laws, as many lawmakers openly admitted ([Dellenger, 2021a](#)).

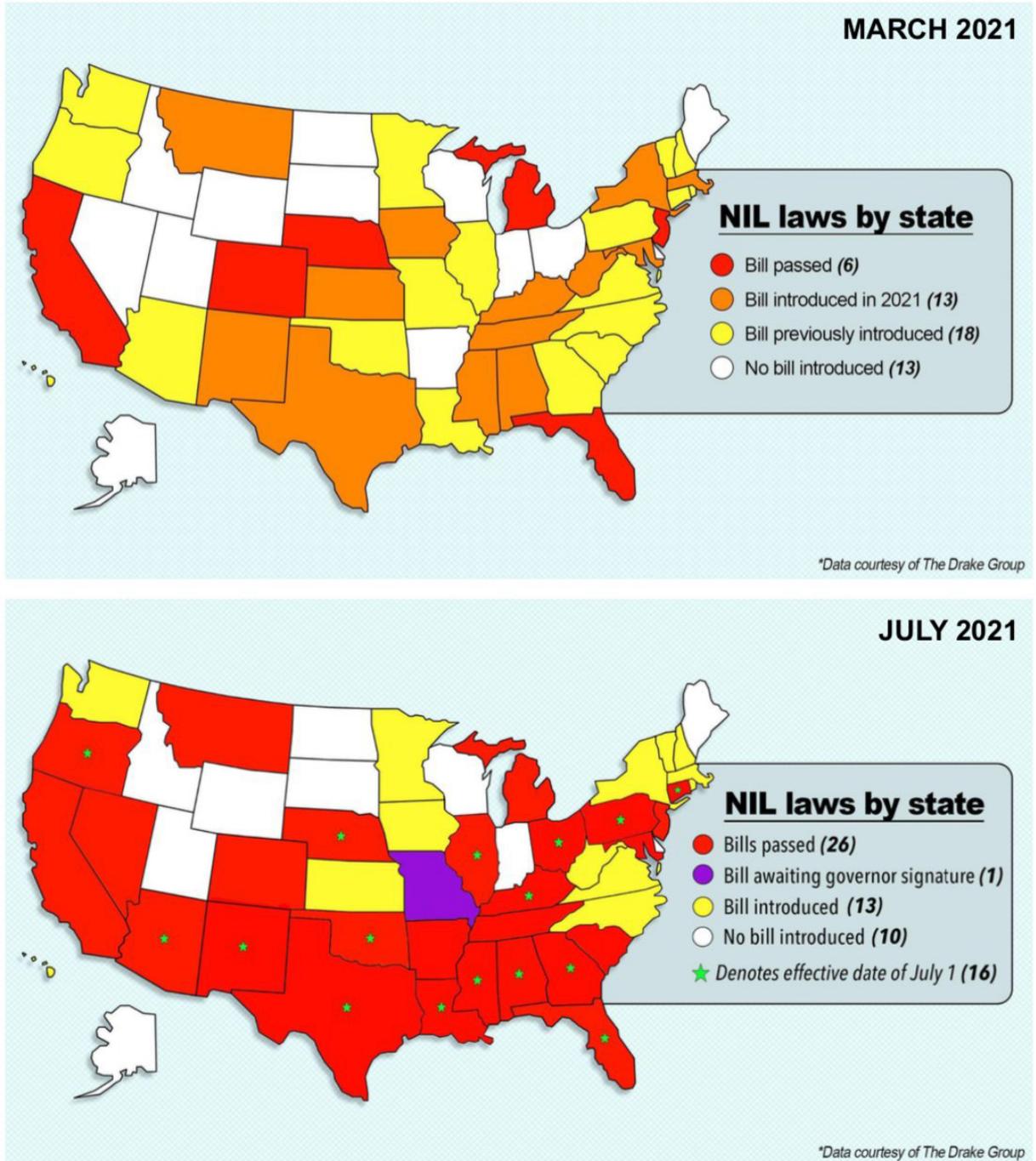
The year 2022 saw a new wave of activity at the state level as some states continued to pass NIL laws. There were 29 states that had passed NIL laws as of January 1, 2022. However, while many states rushed to pass NIL laws with early effective dates in order to maintain a competitive recruiting advantage, the NCAA, in its interim guidelines, granted institutions in states without NIL laws the ability to create their own NIL policy—if it complied with NCAA rules. Therefore, with the NCAA's new policy and deference to state laws first, schools in states without a state law found themselves with the freedom to create their own policy, unrestrained by any state law.

This move created a new wave of activity in late 2021 and early 2022—a wave of repealing and amending state laws for those states at the behest of their institutions out of worry of not being able to maintain a competitive advantage. The question became, why restrain ourselves if the NCAA will not? As a result, several states acted. Alabama completely repealed its NIL law passed just months earlier. Florida amended its recently passed NIL law specifically to allow facilitation of NIL deals by institutions, striking language prohibiting schools from causing compensation to be directed to athletes. Tennessee passed and then broadened its NIL law to allow interactions between collectives, coaches and athletes. Louisiana amended its NIL law in summer 2022 to allow coaches and school personnel in Louisiana to facilitate deals for its athletes. Missouri later passed and added more amendments to its NIL law to expand what NCAA rules allowed (“[United States Congress-College athletics and Olympic sports bills,](#)” 2022). These amendments made by several southeast states empower collectives to have a significant impact on recruiting. Illinois also amended its law to allow booster involvement. States and institutions have been further emboldened because, while the NCAA enacted cursory NIL guidelines, there is also no real effort by the NCAA at reigning in or enforcing its rules as we have entered this new hypercompetitive NIL space ([Dickerson & Hafley, 2022](#)).

Moreover, there is a basic issue with state laws contradicting the NCAA interim NIL rules. The NCAA interim NIL rules first state: “Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a

²⁶ *National Collegiate Athletic Association v. Alston et al.*, 141 S. Ct. 2141 (2021).

Figure 5
NIL Laws by State in March and July 2021



Note. Maps reproduced from With Recruiting in Mind, States Jockey to One-Up Each Other in Chaotic Race for NIL Laws, by R. Dellenger, *Sports Illustrated*, March 4, 2021 (<https://www.si.com/college/2021/03/04/name-image-likeness-state-laws-congress-ncaa>) and “Latest update to the @SINow state-by-state map (bottom pic) as Day 1 of the NIL Era comes to a close,” Ross Dellenger, Twitter, July 1, 2021 (<https://twitter.com/rossdellenger/status/1410718652052148224>).

resource for state law questions.” Therefore, the NCAA is stating the state law should be followed if a state law exists, and college athletes who attend a school in a state without an NIL law can engage in this type of activity without

violating NCAA rules related to name, image, and likeness and have no law with which to comply. As a result, if the state law specifically allows facilitation of NIL deals by institutions, allows interactions between collectives,

coaches, and athletes, and allows booster involvement, then the college athlete and institution are complying with their state law, but violating the NCAA NIL guidelines regarding facilitation and booster involvement.

Current Issues with NILs Being Allowed in College Sports Since July 2021

It is important to acknowledge that the past year has not been without issues regarding NIL rights. In May 2022, the NCAA announced a new effort to crack down on inducements, pay for play, activity of collectives (subject to the same rules as boosters), and boosters. Without meaningful NCAA enforcement and state laws generally superseding the minimal NCAA NIL guidelines, NIL policy is still being driven by the states with many states pushing for unregulated, unrestrained booster and collective involvement as well as inducing high school athletes. The patchwork state and institutional policies and new amendments demonstrate states and schools will compete to offer the best deals to prospective athletes, even when those specific practices run afoul of existing NCAA rules. This new patchwork is not to say there was not a level of chaos prior to the change in NIL rules. “There were a lot of NIL deals going on before all this was going on,” said Texas A&M University’s head coach Jimbo Fisher during ESPN radio broadcast, the Paul Finebaum’s show. “They just weren’t legal. Nobody told nobody” ([Clark, 2022, para. 20](#)).

While many who coach and work in college sports bemoan the new hypercompetitive NIL space and school-specific collectives as a “race to the bottom” and not sustainable in terms of schools jockeying to offer the most in financial benefits to prospective athletes, a widely reported public feud between two high profile college football coaches regarding NIL and recruiting prospective athletes occurred in May 2022. Famed Alabama head football coach Nick Saban publicly stated: “We were second in recruiting last year. A&M was first. A&M bought every player on their team. Made a deal for name, image and likeness. We didn’t buy one player. I don’t know if we’re going to be able to sustain that in the future because more and more people are doing it” ([Walsh, 2022, para. 7](#)).

While shooting back at Saban, Fisher denied the fact any A&M recruit had an NIL deal in place prior to arriving in College Station—which would be illegal in Texas and still impermissible under existing NCAA recruiting rules that still exist in NCAA Bylaw 13.²⁷ Moreover, Fisher

championed for “uniformity” across all 50 states for NIL rules ([Zwerneman, 2022](#)). The calls for uniformity have been forthcoming from all corners of college athletics, including the most high-profile college football coaches. However, this has not stopped coaches and programs from exploiting the new NIL rights to their advantage. Ohio State college football coach Ryan Day declared at a local business gathering in June 2022, that it would take \$13 million from outside NIL deals for his players to maintain his roster and be competitive ([Lesmerises, 2022](#)).

New NIL Collectives & Varying Provisions

A significant development not contemplated in the state laws or any previously introduced federal legislation is the rise of the NIL collective, and in particular, the school-specific NIL collective. In essence, these organizations are set up to pool money from boosters to provide NIL deals for college athletes. The first such collective, the Gator Collective, was created at the University of Florida. After this collective formed, many other similar collectives formed across the country at FBS schools ([Nakos, 2022](#)). The collective phenomena are growing and evolving quickly. Over 125 collectives now exist with some institutions having multiple collectives. While some are for-profits, many are being formed as 501(c)(3) non-profits under IRS law as boosters are more likely to give with an additional tax benefit and the collective can enjoy tax-exempt status. For the tax-exempt collectives, college athletes provide their services to a charity in exchange for NIL payment from the collective. Thus, the school-specific collectives facilitate NIL deals for college athletes and work only on behalf of a particular institution and their college athletes. Some collectives are arranging team-wide NIL payments that many see as pay for play scenarios, possibly violating the NCAA 85 football scholarship rule, and raising gender equity concerns. Moreover, many in the industry and fanbases view the school-specific collectives’ actions as facilitation of NILs (arranging an NIL deal) and inducements (the guarantee to a prospective college athlete that they will receive an amount of money if they choose X school; [Nakos, 2022](#)).

Texas Tech University recently announced its collective, the Matador Club, is signing all 85 scholarship football players plus 20 walk-ons to one-year, \$25,000 NIL contracts. In exchange, players will perform community service as ambassadors for local charities and appear at Matador Club events ([Olson, 2022](#)). The University of Texas announced,

²⁷ Current Texas NIL restrictions include a provision that NILs cannot be used as a recruiting inducement or the institution facilitating a NIL deal prior to enrollment. This is similar to other state bills which also prohibit NILs being used in recruiting.

“Horns with Heart,” an NIL initiative and 501c3 nonprofit organization to sponsor every scholarship offensive lineman with \$50,000 in annual financing for using their NIL charitable causes in their local communities. Called “The Pancake Factory,” the initiative was the first of its kind, according to a press release from the organization, “to support a football position group to participate in charitable endeavors that impact both the University of Texas as well as the community at large.” ([Straka, 2021, para. 2](#))

The primary issue with these new collectives is not that athletes benefit, it is that it encroaches into recruiting inducements.

The NCAA defines a booster as an individual, independent agency, or corporate entity who is known by a member of the institution’s athletics administration to have participated in, or to be a member of, an agency or organization promoting the school’s intercollegiate athletics program.²⁸ ([Nakos, 2022, para. 16; NCAA 2021](#))

What we have seen thus far with the patchwork state and institutional policies demonstrate states and schools will compete to offer the best deals to prospective athletes, even when those specific practices run afoul of existing NCAA rules. If the state law allows coaches and an athletic department to facilitate deals, institutions will, and they will outright proffer specific, guaranteed amounts for prospective football players—something the NCAA was trying to control with the new NIL rules.

The patchwork state NIL system has revealed other variations and key provisions in certain laws. For example, many states have a “prohibited category” provision, meaning the state prohibits college athletes from promoting certain objectionable products, including any controlled substance, marijuana product, alcoholic product, tobacco product, or any product related to adult entertainment. However, not all state laws contain such a provision. For example, Colorado does not include a gambling or adult entertainment prohibition. As a result, the entertainment and gambling website *MaximBet* offers University of Colorado female athletes four-month engagements and cash payments of \$500 each, invitations to parties, merchandise and more to become part of the *MaximBet* NIL team ([Dorson, 2021](#)). There are also variations among state laws providing support for athlete injury funds, health insurance and coverage for necessary medical treatment and mechanisms

to provide health and safety guidelines. Some mandate financial literacy and life skills programming. Others have disclosure requirements of NIL deals. While many refer to this as the race to the bottom especially as it relates to repealing and amending state laws, booster involvement, and quest for recruits, it is quickly evolving to focus on the additional inducements that can be leveraged to recruit athletes. This outcome was predictable in the absence of any type of enforcement of existing rules prohibiting these very activities. This is where federal engagement and a path to uniformity become even more imperative—in addition to the unsustainability of having 50 different governing structures for college athletics so it is imperative to have some balance and consistency.

The Effect of NIL Policy on Olympic Sports and Gender Equity

The implementation of the patchwork, state-driven NIL laws further complicate an already inequitable college sports landscape from a gender equity standpoint. The impact over the past 50 years of Title IX, the landmark equality law, has been clear with great progress being made for girls and women in sport. However, Title IX in college athletics is at a crossroads right now, just like college athletics generally with NIL rights. Most institutions are still not where the law requires them to be in terms of both scholarship opportunities and promotional support among other areas. An in-depth *USA Today* study found that 87% of colleges and universities are not offering athletic opportunities to women proportionate to their enrollment ([Axon, 2002](#)). This amounts to approximately a \$90 billion shortfall in scholarship monies per year for female college athletes—50 years after the passage of the law.

While women’s athletics have historically suffered under school budget constraints, the recent changes to college athletics, including antitrust lawsuits and NCAA rule changes, present potential new financial challenges for athletic departments, such as possible exacerbation of compliance failures under Title IX and a renewed assault on women’s athletics programs.

While Title IX has survived many efforts to limit and repeal its application to sports, the law continues to be under attack by institutions. These recent attacks include both increased noncompliance and new legal challenges. Since just March 2020 (and in response to the COVID-19 pandemic), Division I schools cut at least 40 women’s sports resulting in both threats of and actual lawsuits under

²⁸ See footnote #8

Title IX based on the lack of substantial proportionality of opportunities.²⁹

Several schools entered into settlements reinstating the teams after a threat was made to sue or an actual complaint was filed.³⁰ Title IX litigation is pending against a handful of other schools that dropped women's sports.

Significantly, as a result of being sued for cutting women's sports programs, Michigan State University filed a Petition for a Writ of Certiorari to the U.S. Supreme Court challenging the definition and application of Title IX's equal participation opportunities requirement that women's athletic opportunities must be substantially proportionate to women's enrollment in the school.³¹

Inherent in NIL activities and institutional involvement are the marketing and promotional support of college athletes. While we see team-wide NIL arrangements such as the Texas Tech and University of Texas deals mentioned above, this type of promotional and monetary support is not as forthcoming for female athletes in the NIL landscape. Moreover, the school-specific collectives are not subject to the same laws as Title IX and reporting requirements as the institutions. NIL marketing and promotional support can help women athletes attain overdue equity. On the other hand, this new normal could drive greater inequities in college sports. For example, existing athletic department imbalances already present with things like inequitable spending and participating opportunities may be exacerbated without proper budget management and oversight. Worries of an unregulated NIL marketplace driven by over-reaching booster involvement could potentially divert existing funds that currently sustain non-revenue and Olympic sports to support NIL opportunities, likely for the more popular and commercially driven sports and their athletes ([Brown, 2022](#)).

In 2021, prompted by the social media revelations of tournament facility inequities by female basketball player Sedona Prince, the NCAA retained the law firm Kaplan Hecker & Fink LLP (KHF) to conduct a comprehensive external review of all gender equity issues in connection

with the NCAA, focusing on NCAA championships ([“NCAA Gender Equity Review,” 2021](#)). Known as the “Kaplan Report,” this two-phase report revealed much greater gender inequities within the NCAA beyond tournament facilities. The report revealed the inequitable ways in which the NCAA packages and sells championship media rights and corporate sponsorships, the fact that ESPN pays an average annual rights fee of \$34 million to broadcast the women's basketball tournament and all other Division I championships, or that the women's championship alone will be worth far more—between \$81 million to \$112 million annually beginning in 2025. Indeed, it was not until 2022 that the women's tournament was given permission to also use the trademark name “March Madness,” as the men's tournament has long been dubbed. A level playing field in the form of uniform NIL policy that reflects the importance and values of Title IX is critical for the progression of women's athletics. NIL rights present an opportunity to reach new levels for women in collegiate athletics—but only if the policy allows it.

An Effort at Uniformity: Uniform Law Commission Act

A proposed NIL Uniform Act, the Uniform College Athlete Name, Image, or Likeness Act, was drafted by the Uniform Law Commission (ULC) in 2021. This is a sample bill for states to choose to adopt covering only NIL policy, no healthcare or other provisions. The benefits of the ULC effort provide 1) Uniformity—it would allow college athletes to earn compensation for their NIL while also providing reasonable protections to educational institutions, athletic associations, and conferences and that schools in each state play under the same general rules; 2) Rules and Regulations—it provides reasonable guardrails by allowing institutions to adopt limited rules of conduct relating to NIL activities that apply when a college athlete is engaged in an official team activity; and 3) Remedies—it provides a right of action for college athletes if their NIL rights are violated.

Following the request of the ULC, the District of Columbia and the Washington state Legislature have each introduced the ULC's NIL Act, which covers many of the standard

29 See *Tracker: College Sports Programs Cut during COVID-19 Pandemic*, *Business of College Sports*, (tracking 77 Division I program cuts across 35 institutions), available at <https://businessofcollegesports.com/tracker-college-sports-programs-cut-during-covid-19-pandemic/> (last updated June 22, 2021).

30 Brown University, College of William & Mary, University of North Carolina at Pembroke, East Carolina University, Dartmouth College, University of St. Thomas, La Salle University, Dickinson College, Clemson University, and University of Iowa. Bailey Glasser Partner Arthur Bryant Named Sports Law Trailblazer, Bailey Glasser LLP (Nov. 15, 2021), https://www.espn.com/olympics/story/_/id/30116720/the-heartbreaking-reality-staggering-numbers-ncaa-teams-cut-pandemic/ and COVID-19 Era Dropped & Suspended Sports, MAT TALK ONLINE, April 7, 2020 at <http://almanac.mattalkonline.com/covid-19-era-dropped-sports/> (last visited Aug. 15, 2022).

31 *Mich. State Univ. v. Balow*, No. 22-93 (July 29, 2022).

provisions consistent with other NIL bills. Neither have moved the proposed act beyond the introduction stage. The obstacle to the ULC act is that each state's buy-in is needed to adopt the act in order to achieve uniformity.

Federal Legislation Concerning NILs and Other Related Issues

Many proposed bills have been filed in Congress related to college athletics as the state NIL laws have taken hold. Two congressional hearings regarding NCAA rules and myriad issues concerning NCAA administration were held before the Senate Commerce Committee during the summer of 2021 prior to the July 1st NIL state laws going into effect. While these hearings did not produce a bill, they continued the momentum and education of the issues related to NCAA rules and governance that call for intervention and action. As noted above, calls for uniformity in NIL rules and regulations come from all corners—from highly compensated football coaches, athletic directors, conference commissioners, and others. Simply put, the marketplace will never create equilibrium the way it can be achieved from federal legislation. For example, market actors in the sports business can make corrections with regard to television contracts and broadcasting intercollegiate athletic events. At present, there is not a competitive bidding process to broadcast the NCAA Division I women's basketball tournament as a similar product of value. As a result, the NCAA—as well as the women players—greatly lost out on additional revenue by essentially throwing in the women's tournament as a plus one to the men's tournament and not as a separate stand alone, and highly valuable entity within itself.

Similarly, to that end, over a dozen bills have been introduced between the 116th and 117th congressional sessions related to NIL, college athletes' rights and NCAA governance. The following listing of bills filed during the 116th (2019–20) and 117th (2021–2022) sessions of Congress represent the most likely bills to be considered during the 117th Congress. We anticipate that the 117th Congress bills listed are those most likely to be refiled in 2023 during the next session as 2022 is a major mid-term election year and some legislation is getting tabled for the next session. Those bills without bill numbers have been recently filed and have not yet been assigned a number. Further details on these bills can be found at <https://www.congress.gov/>. Olympic sports bills are included because these will affect college athletes who participate in Olympic development programs or are being considered for U.S. national teams. Many bills categorized as NIL or athletes' rights legislation include gender equity elements (see **Table 1**).

Over a dozen bills have been introduced between the 116th and 117th congressional sessions related to NIL, college athletes' rights and NCAA governance.

The Future of NILs and Intercollegiate Athletics

College sports and public policy are forever intertwined as evidenced by the legal and legislative action currently happening regarding the industry, specifically with college athlete compensation. Simply put, NIL rights and expanded compensation opportunities for American college athletes are here to stay. Noted historian Taylor Branch said in the 2013 television documentary *Schooled: The Price of College Sports* that any change must start with the rights of the athlete in mind by declaring, “you first deal with the rights of the athlete, everything else is an adjustment” ([Finkel et al., 2012](#)).

There are fears that a focus on compensation, freedom to transfer, and NIL rights—rights that all college students have—may lead to a lesser focus on academics, cause issues on the team, in the locker room, etc. We profoundly disagree. There is no doubt the sea changes affecting college sports will change the industry. Ultimately, as the last year has proven, the fans, TV networks, alumni and student body still want to watch the games most of all. Giving the athletes access to more compensation has not changed that passion and we do not believe that will change based on the evidence of the first year of NIL rights.

There can be tradeoffs to allowing college athletes access to this new compensation arena. Critics have worried about fractured locker rooms and team chemistry if certain athletes are making more than others, but that has yet to manifest itself in the first year of NIL rights ([Barnhart, 2021](#); [Schultz, 2022](#)). Other concerns have revolved around more time being taken away from school to focus on NIL activities along with recruiting imbalances and lack of controls during the recruiting process ([Hock, 2021](#); [Uggetti, 2002](#)). Legitimately there are issues in recruiting because of the differences in state laws, however recruiting has never been balanced as some schools have unlimited recruiting budgets, such as the University of Texas, to an

Table 1

Current Proposed Federal Legislation Regarding Intercollegiate Athletics Issues

NAME, IMAGE, AND LIKENESS (NIL)/ATHLETES RIGHTS/HEALTH-SAFETY

H.R.3379 — 117th Congress (2021-2022) Modernizing the Collegiate Student Athlete Experience Act **Sponsor:** Rep. Chabot, Steve [R-OH-1] (Introduced 05/20/2021) **Cosponsors:** (0) **Committees:** House - Energy and Commerce
To establish a government corporation to oversee student athlete agents and third-party licensees of student athlete publicity rights, and for other purposes.

S.414 — 117th Congress (2021-2022) Amateur Athletes Protection and Compensation Act of 2021 **Sponsor:** Sen. Moran, Jerry [R-KS] (Introduced 02/24/2021) **Cosponsors:** (0) **Committees:** Senate - Commerce, Science, and Transportation
To provide standards relating to compensation for the use of the names, images, and likenesses of amateur intercollegiate athletes and to provide protections for amateur intercollegiate athletes, and for other purposes.

S.4004 — 116th Congress (2019-2020) Fairness in Collegiate Athletics Act **Sponsor:** Sen. Rubio, Marco [R-FL] (Introduced 06/18/2020) **Cosponsors:** (0) **Committees:** Senate - Commerce, Science, and Transportation
To ensure that college athletes, and not institutions of higher education, are able to profit from their name, image, and likeness, and for other purposes.

H.R.2841 — 117th Congress (2021-2022) Student Athlete Level Playing Field Act **Sponsor:** Rep. Gonzalez, Anthony [R-OH-16] (Introduced 04/26/2021) **Cosponsors:** (9) **Committees:** House - Energy and Commerce; Education and Labor
To prohibit a covered athletic association and institution of higher education from prohibiting a student athlete from participating in intercollegiate athletics because such student athlete enters into an endorsement contract, and for other purposes.

Companion Bills – NIL

S.238 – 117th Congress (2021-2022) College Athlete Economic Freedom Act **Sponsor:** Sen. Murphy, Christopher [D-CT] (Introduced 02/04/2021) **Cosponsors:** (0) **Committees:** Senate - Commerce, Science, and Transportation

H.R.850 — 117th Congress (2021-2022) College Athlete Economic Freedom Act **Sponsor:** Rep. Trahan, Lori [D-MA-3] (Introduced 02/04/2021) **Cosponsors:** (0) **Committees:** House - Energy and Commerce; Judiciary
To establish name, image, likeness, and athletic reputation rights for college athletes, and for other purposes.

Companion Bills – NIL/Athlete Rights

S.5062 — 116th Congress (2019-2020) College Athletes Bill of Rights **Sponsor:** Sen. Booker, Cory A. [D-NJ] (Introduced 12/17/2020) **Cosponsors:** (3) **Committees:** Senate – Judiciary

H.R.9033 — 116th Congress (2019-2020) College Athletes Bill of Rights **Sponsor:** Rep. Schakowsky, Janice D. [D-IL-9] (Introduced 12/18/2020) **Cosponsors:** (1) **Committees:** House - Education and Labor; Energy and Commerce
Addresses issues of rights to compensation, health and safety standards, and educational opportunities for college athletes including prohibitions of restricting the use of athlete NILs, establishing a Commission on College Athletics to protect athlete interests, health, and wellness and an athlete medical trust

Companion Bills – College Athlete Right to Organize

S.1929 — 117th Congress (2021-2022) College Athlete Right To Organize Act **Sponsor:** Sen. Murphy, Christopher [D-CT] (Introduced 05/27/2021) **Cosponsors:** (1) **Committees:** Senate - Health, Education, Labor, and Pensions

H.R.3895 — 117th Congress (2021-2022) College Athlete Right to Organize Act **Sponsor:** Rep. Bowman, Jamaal [D-NY-16] (Introduced 06/15/2021) **Cosponsors:** (2) **Committees:** House - Education and Labor
Establishes collective bargaining rights for college athletes, defines college athlete on scholarship as employee, specifies that NLRB must consider athletes within an athletic conference consisting of public or private institutions as a bargaining unit with NLRB jurisdiction.

H.R.4855 — 117th Congress (2021-2022) Braeden’s Commission: Protect our Athletes from Exertional Heat Stroke **Sponsor:** Rep. Smith, Christopher H. [R-NJ-4] (Introduced 07/29/2021) **Cosponsors:** (3) **Committees:** House - Education and Labor; Energy and Commerce
To establish a commission to prevent exertional heat stroke deaths among high school and collegiate athletes, and for other purposes.

S.5003 — 116th Congress (2019-2020) **Sponsor:** Sen. Wicker, Roger F. [R-MS] (Introduced 12/10/2020) **Cosponsors:** (0) **Committees:** Senate - Commerce, Science, and Transportation
Protects the rights of student athletes, to provide for transparency and accountability with respect to student athlete name, image, and likeness agreements, and to establish an independent entity for intercollegiate athletics, and for other purposes.

NCAA ENFORCEMENT/FINANCES

Companion Bills – NCAA Enforcement

S.3943 — 117th Congress (2021-2022) NCAA Accountability Act of 2022 **Sponsor:** Sen. Blackburn, Marsha [R-TN] (Introduced 03/29/2022) **Cosponsors:** (1) **Committees:** Senate - Commerce, Science, and Transportation

H.R.5817 — 117th Congress (2021-2022) NCAA Accountability Act of 2021 **Sponsor:** Rep. Kustoff, David [R-TN-8] (Introduced 11/02/2021) **Cosponsors:** (2) **Committees:** House - Education and Labor
To establish due process requirements for the investigation of intercollegiate athletics, and for other purposes.

Companion Bills – NCAA Institution Financial Reporting

S.1225 — 117th Congress (2021-2022) SCORE Act **Sponsor:** Sen. Murphy, Christopher [D-CT] (Introduced 04/20/2021) **Cosponsors:** (0) **Committees:** Senate - Health, Education, Labor, and Pensions

H.R.2610 — 117th Congress (2021-2022) SCORE Act **Sponsor:** Rep. Price, David E. [D-NC-4] (Introduced 04/16/2021) **Cosponsors:** (0) **Committees:** House - Education and Labor
To amend the Higher Education Act of 1965 to require institutions of higher education to report revenue generated by each sports team, and for other purposes.

GENDER EQUITY

H.R.7336 — 117th Congress (2021-2022) Gender Equity in College Sports Commission Act **Sponsor:** Rep. Maloney, Carolyn B. [D-NY-12] (Introduced 03/31/2022) **Cosponsors:** (3) **Committees:** House - Education and Labor

To examine current NCAA operated practices and programs such as championship tournaments and student programs and make recommendations on improvement of gender equity.

Companion Bills – Title IX Separate Sex Sport

S.251 — 117th Congress (2021-2022) Protection of Women and Girls in Sports Act of 2021 **Sponsor:** Sen. Lee, Mike [R-UT] (Introduced 02/04/2021) **Cosponsors:** (18) **Committees:** Senate - Health, Education, Labor, and Pensions

H.R.426 — 117th Congress (2021-2022) Protection of Women and Girls in Sports Act of 2021 **Sponsor:** Rep. Steube, W. Gregory [R-FL-17] (Introduced 01/21/2021) **Cosponsors:** (37) **Committees:** House - Education and Labor

To amend Title IX of the Education Amendments of 1972 in athletics to permit separate sex athletic programs and define sex as based on a person's reproductive biology and genetics at birth.

RESOLUTIONS

H.Con.Res.39 — 117th Congress (2021-2022) **Sponsor:** Rep. Speier, Jackie [D-CA-14] (Introduced 06/29/2021) **Cosponsors:** (16) **Committees:** House - Education and Labor

Expresses the sense of Congress that Title IX of the Education Amendments of 1972 applies to the National Collegiate Athletics Association (NCAA), and the National Collegiate Athletics Association (NCAA) should work to prevent discrimination on the basis of sex in its programs and activities.

OLYMPIC/K-12/NON-SCHOOL SPORTS

H.R.5216 — 117th Congress (2021-2022) Protecting Student Athletes From Concussions Act **Sponsor:** Rep. DeSaulnier, Mark [D-CA-11] (Introduced 09/10/2021) **Cosponsors:** (5) **Committees:** House - Education and Labor

To promote State requirements for local educational agencies and public elementary and secondary schools relating to the prevention and treatment of concussions suffered by students.

S.2288 — 117th Congress (2021-2022) Even Playing Field Act **Sponsor:** Sen. Feinstein, Dianne [D-CA] (Introduced 06/24/2021) **Cosponsors:** (8) **Committees:** Senate - Commerce, Science, and Transportation

To amend the Ted Stevens Olympic and Amateur Sports Act to provide pay equity for amateur athletes and other personnel, and for other purposes.

Companion Bills -NGB Equal Pay

S.1978 — 117th Congress (2021-2022) GOALS Act **Sponsor:** Sen. Manchin, Joe, III [D-WV] (Introduced 06/08/2021) **Cosponsors:** (13) **Committees:** Senate - Commerce, Science, and Transportation

H.R.1644 — 117th Congress (2021-2022) GOALS Act **Sponsor:** Rep. Matsui, Doris O. [D-CA-6] (Introduced 03/08/2021) **Cosponsors:** (46) **Committees:** House - Foreign Affairs
To prohibit the use of funds for the 2026 World Cup unless the United States Soccer Federation provides equitable pay to the members of the United States Women’s National Team and the United States Men’s National Team.

H.R.3804 — 116th Congress (2019-2020) Athletics Fair Pay Act of 2019 **Sponsor:** Rep. Frankel, Lois [D-FL-21] (Introduced 07/17/2019) **Cosponsors:** (32) **Committees:** House – Judiciary
To amend chapter 2205 of title 36, United States Code, to ensure pay equity for amateur athletes, and for other purposes.

Note. Reproduced from *United States Congress – College Athletics and Olympic Sports Bills*, The Drake Group, 2021 (<https://www.thedrakegroup.org/2022/01/30/united-states-congress-college-athletics-and-olympic-sports-bills-updated-as-of-february-1-2022>).

Ohio University whose entire athletic department budget of \$30 million is less than the budget for the Texas football team which checks in at almost \$42 million for just a single team (Fisher, 2021). Recruiting inequities have always existed in college sports and likely always will. Based on the budget disparities between Division I programs it is unlikely that NIL rights will have a major effect on those existing imbalances. There can be some potential balance if there are more consistencies in state laws, a uniform federal law or negotiated agreements with the athletes but whether these things happen remains to be seen. Conversely, asserting that access to greater compensation via NIL rights will damage and take focus away from academics can be a specious claim considering the research and existing time demands for the college athlete increasing well beyond the 20 hours per week maximum allowed by the NCAA. It is easy to worry about potential impacts of NIL rights, including potential time away from classes and studying. However, current NCAA policy allows significant time away from academic pursuits and often pushes college athletes into academic majors of least resistance rather than pursuing a viable and desired college education pathway so they can meet their athletic demands (Gurney et al., 2016). It is more than clear that the inability of institutions to recognize the conflict of interest that exists between protecting revenue production, winning games while attempting to balance the most important issue, which is the health and academic well-being of college athletes, has typically fallen in favor of more athletic demands rather than a focus on academics as discussed throughout this paper. In other words, as experts and researchers, we conclude that if the industry is worried about NIL rights further inhibiting the

time a college athlete can focus on academics as a reason to challenge college athlete’s access to the marketplace, it only needs to look at the many hours of athletic activity that can be reduced for the athlete, more fully laid out below, before denying a civil right in a free market economy.

In its position paper on college athlete time demands, *Excessive Athletics Time Demands Undermine College Athletes’ Health and Education and Require Immediate Reform*, The Drake Group lists several ways that academic access and primacy can be enhanced for the college athlete by changing current NCAA policy with regard to hours spent in practice, conditioning, film study, and non-traditional seasons to truly expand academic and other opportunities, including time to effectively manage NILs. The Drake Group, after careful study, issued eight achievable and measurable recommendations to adequately confront the time demands. Some of the recommendations include scheduling reform, a hard 25-hour work week for athletic activity, reform and reduction of non-traditional season and school vacation athletic requirements, and reducing missed class time (Gurney et al., 2016). Before the NCAA can make any inference to NILs affecting academic performance without any effective data to support such a claim, these existing and fixable time demand issues must be addressed.

Another important point is that earning money and accessing NIL rights is actually a real-world applied educational endeavor where our fine academic institutions can assist in helping college athletes and all college students in managing and learning finance and accounting through

this relatively new economy. These are important skills all citizens should master and why not use what is happening with NILs as a learning laboratory? What better way to learn about financial management, retirement, individual accountability, investing, and spending? While the choice on how to use the money is the athlete's alone, a university can help use this new learning lab as an educational opportunity and look at it as a complement to learning, financial literacy and growth, rather than a hindrance to educational progress.

Our conclusions after years of studying the subject is that there should not be a cap or any restrictions on the earnings that the free market bears on outside earnings for a college athlete, just as it is for most American citizens. Having restrictions that are not agreed upon by the athletes can violate existing antitrust laws as well as continue an underground black market for college athletes. We believe that sunshine is the best disinfectant. Having an open and transparent NIL marketplace is much easier to regulate and monitor as opposed to an underground economy. NIL payments are not direct pay from an institution, they are outside monies and should be fully governed by a free market as virtually every other occupation based on earning power. While nothing is perfect, the schools can have a prominent role in assisting their athletes in managing this newfound monetary access. Just as Supreme Court Justice Brett Kavanaugh stated in his concurring opinion in the *Alston* case:

Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law. ([NCAA v. Alston, 2021](#))

One year into the allowance of NIL rights several things are notable. The games are going on, media rights are increasing, athletic conferences are expanding, and the

industry is a popular and as powerful as ever. Allowing college athletes, the same access to the NIL marketplace as any other college student has only increased fairness for the individual athlete and has not taken away anything from the games. However, there are issues that need to be addressed with recruiting, potential national standards, and even discussion of officially declaring college athletes' employees. While this is an obvious public policy issue that may warrant federal intervention, it might be better and more effective to handle this at the state level, at least in the interim.

Conclusion

As stated, NIL rights for college athletes are likely here to stay and will expand and grow as market and economic forces dictate. Any implication that college athletics will return to its roots of so-called amateurism and colleges students playing for the love of the game is a non-starter. How it is managed from this point forward is the key. There are currently dozens of competing state laws. College sports are based on recruiting the best and brightest athletes to come to their schools to compete at the highest level and it is a wildly public and intense affair. This process has never been balanced or fair even with strict recruiting rules and limits on college athlete compensation. The higher resourced schools have always had an advantage in recruiting, and the best players have always gone to the best athletic schools. The reward also far outweighed any risk regarding existing NCAA rules on recruiting, thus these rules were and are routinely violated with impunity. NIL rights have not changed this dynamic in any way. As Texas A&M coach Jimbo Fisher said in early 2022, NILs have always existed, in a sense they just weren't legal in the past ([Clark, 2022](#)). In other words, what is legal now was once criminalized for the college athlete and it really never should have been. If nothing is done to have comprehensive oversight and management of NIL rights, not much will change, and the games will go on. Fans will watch, TVs will be tuned in, and the money will increase for everyone, and it should increase for the athletes. ★

References

- National Collegiate Athletic Association. (2020). *2020-21 NCAA Division I manual*. <https://www.ncaapublications.com/p-4605-2020-2021-ncaa-division-i-manual.aspx>
- National Collegiate Athletic Association. (2021). *2021-22 NCAA Division I manual*. Retrieved August 21, 2022, from https://auburntigers.com/documents/2021/8/2/2021_22_NCAA_Division_I_Manual.pdf
- Abbey-Pinegar, E. (2010). The need for a global amateurism standard: International student-athlete issues and controversies. *Indiana Journal of Global Legal Studies*, 17(2), 341–365. <https://doi.org/10.2979/GLS.2010.17.2.341>
- Allender, J. (2021, July 1). The NIL era has arrived: What the coming of July 1 means for the NCAA. *Harvard Journal of Sports and Entertainment Law*. <https://harvardjssel.com/2021/07/the-nil-era-has-arrived-what-the-coming-of-july-1-means-for-the-ncaa/>
- Andrews, R. (2018, October 15). *Push to allow professional athletes took hold in 1968 Olympic Games*. Global Sports Matters. <https://globalsportmatters.com/1968-mexico-city-olympics/2018/10/15/professional-athletes-1968-olympic-games/>
- Avery Brundage Quotes (n.d.). *Thinkexist.com*. http://thinkexist.com/quotes/avery_brundage.
- Axon, R. (2022, May 26). Title IX failures: 50 years in, top colleges still lack representation. *USA Today*. <https://www.usatoday.com/in-depth/news/investigations/2022/06/03/title-ix-failures-50-years-colleges-women-lack-representation/9664260002/>
- Barnhart, T. (2021, May 26). Mr. CFB: True or false? NIL could be a disaster for morale in college locker rooms. *Sports Illustrated*. <https://www.si.com/college/tmg/tony-barnhart/locker-room-morale>
- Bass, J., Schaeperkoetter, C., & Bunds, K. (2015). The “front porch”: Examining the increasing interconnection of university and athletic department funding. *ASHE Higher Education Report*, 41(5), 1–103. <https://doi.org/10.1002/aehe.20023>
- Baumler, L., Ridpath, B., & Stroebel, T. (2022). An exploratory analysis of the NIL at an NCAA mid-major institution. *Submitted manuscript to the Journal of Issues in Intercollegiate Athletics*.
- Berkman, J. (2021). *What are the NCAA Divisions? Division 1 vs. 2 vs. 3*. PrepScholar. <https://blog.prepscholar.com/what-are-ncaa-divisions-1-vs-2-vs-3>
- Berkowitz, S., & Schnaars, C. (2022, January 20). Colleges are spending more on athletes because they can. *USA Today*. <https://eu.usatoday.com/story/sports/college/2017/07/06/colleges-spending-more-their-athletes-because-they-can/449433001/>
- Berkowitz, S., & Brennan, C. (2021, January 8). Justice Department warns NCAA over transfer and name, image, likeness rules. *USA Today*. <https://www.usatoday.com/story/sports/ncaaf/2021/01/08/justice-department-warns-ncaa-over-transfer-and-money-making-rules/6599747002/>
- Berkowitz, S. (2016, August 13). Olympic swimmer Joseph Schooling scores big in butterfly with \$740,000 in win over Phelps. *USA Today*. www.usatoday.com/story/sports/olympics/rio-2016/2016/08/12/singapore-olympic-swimming-texas-ncaa-cash-bonuses-butterfly/88647594/
- Berkowitz, S., & Upton, J. (2013, February 9). Texas had \$163.3 million in athletic revenue in 2011-12. *USA Today*. <https://www.usatoday.com/story/sports/ncaaf/2013/02/09/university-of-texas-athletic-finances-revenues-expenses/1903915/>
- Bloom v. NCAA*. Colorado Court of Appeals, Div. V. No. 02CA2302 (2004).
- Branch, T. (2011). The shame of college sports, *The Atlantic*. <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/8643>

- Broughton, D. (2012, March 5). Higher limits bring gift package upgrades. *Sports Business Journal*. <https://www.sportsbusinessjournal.com/Journal/Issues/2012/03/05/Marketing-and-Sponsorship/~~/link.aspx?id=5836746F56EC40EE9A1F8F8E1FC66B51&z=z>
- Brown, M. (2022, February 7). No, NIL isn't going to ruin the Olympics. C'mon. *Extra Points*. <https://www.extrapointsmb.com/nil-college-sports-olympics-sport-cuts/>
- Byers, W., & Hammer, C. (1995). *Unsportsmanlike conduct: Exploiting college athletes*. University of Michigan Press.
- Christovich, A. (2022, July 1). *One year of NIL: Becoming a billion-dollar industry*. Front Office Sports. <https://frontofficesports.com/nil-billion-dollar-industry/>
- Chu, D., Segrave, J., & Becker, B. eds. (1985). *Sport and higher education*. Human Kinetics.
- Clark, K. (2022, April 26). *Welcome to college football's free market*. The Ringer. <https://www.theringer.com/2022/4/26/23042800/college-football-nil-free-market>
- College Football Playoff Payouts 2021-22*. (2002, January 4). Business of College Sports. <https://businessofcollegesports.com/college-football-playoff-payouts/>
- Knight Commission on Intercollegiate Athletics. (2021, September 15). *Connecting athletics revenues with the educational model of college sports*. <https://www.knightcommission.org/wp-content/uploads/2021/09/CAREModel.pdf>
- Crawford, B. (2020, July 17). *Ranking college sports' highest revenue producers*. 247sports.com. https://247sports.com/LongFormArticle/College-football-revenue-producers-USA-Today-Texas-Longhorns-Ohio-State-Buckeyes-Alabama-Crimson-Tide-149248012/#149248012_1
- Crowley, J. (2006). *In the Arena: The NCAA's first century*. National Collegiate Athletic Association.
- CS/CS/SB 646: Intercollegiate athlete compensation and rights. 2020 Session. FL. 2021. <https://www.flsenate.gov/Session/Bill/2020/646>
- Davis, B. (2022, January 25). Texas revenue dropped \$48.1 million during pandemic-impacted 2020-21 athletic year. *USA Today* <https://www.usatoday.com/story/sports/college/2022/01/25/texas-athletics-2020-21-finances-audit-covid-19-pandemic-impact/9219023002/>
- Dellenger, R. (2022, February 8). NCPA takes next step toward college athletes being classified as Employees. *Sports Illustrated*. <https://www.si.com/college/2022/02/08/ncaa-student-athletes-vs-employees-debate-big-step>
- Dellenger, R. (2021a, March 4). With recruiting in mind, states jockey to one-up each other in chaotic race for NIL laws: States nationwide are rushing to pass name, image and likeness bills to give their schools an advantage over their rivals. Will it all wind up in court? *Sports Illustrated*. <https://www.si.com/college/2021/03/04/name-image-likeness-state-laws-congress-ncaa>
- Dellenger, R. (2021b, September 29). The next frontier in college sports: The unionization of college athletes. *Sports Illustrated*. <https://www.si.com/college/2021/09/30/nlrb-advisory-opens-next-frontier-college-sports-unionization>
- Dellenger, R. [@RossDellenger]. (2021c, July 1) *Latest update to the @SINow state-by-state map (bottom pic) as Day 1 of the NIL Era comes to a close*. [Image attached] [Tweet]. Twitter. <https://twitter.com/rossdellenger/status/1410718652052148224>
- Dickerson, D., & Hafley, T. (2022, June 27). *The NIL paradox for NCAA athletes—Enforce or recruit?* Bloomberg Law. <https://news.bloomberglaw.com/us-law-week/the-nil-paradox-for-ncaa-athletes-enforce-or-recruit>

- Dodd, D. (2019, September 25). *NCAA prez calls name, image and likeness rights an 'existential threat' to college sports: California is adopting a law that has the NCAA scared about the future of the collegiate model*. CBSsports.com. <https://www.cbssports.com/college-football/news/ncaa-prez-calls-name-image-and-likeness-rights-an-existential-threat-to-college-sports/>
- Dorson, J. (2021, September 28). *Calling all female college athletes: MaximBet has an NIL deal for you!* Cobets.com. <https://www.cobets.com/maximbet-nil-women-athletes/>
- Dosh, K. (2013). *Saturday millionaires: How winning football builds winning colleges*. Wiley
- Elbaba, J. (2022, July 22). *Looking at the top college football head coach salaries in 2022*. Sports Chicago. <https://www.nbcsports.com/chicago/college-football-head-coach-salaries-kirby-smart-2022-new-contract>
- Falla, J. (1981). *NCAA: The voice of college sports*. National Collegiate Athletic Association.
- Finkel, R., Martin, T., & Paley, J. (Directors). (2012). *Schooled: The price of college sports* [Film]. Makuhrai Media.
- Fisher, M. (2021, January 31). Texas revenue: \$200 million - Burnt orange in the black: The Longhorns' streak of generating at least \$200 million in annual revenue is now at three years and counting. *Sports Illustrated*. <https://www.si.com/college/texas/news/texas-longhorns-annual-revenue-200-million-burnt-orange-in-the-black>
- Fischer-Baum, R. (2013, May 9). Infographic: Is your state's highest-paid employee a coach? (Probably). *Deadspin*. <https://deadspin.com/infographic-is-your-states-highest-paid-employee-a-co-489635228>
- Forde, P. (2015, April 1). *U.S. Olympic Committee 'candidly concerned' non-revenue college sports will be cut*. Yahoo Sports. <http://sports.yahoo.com/news/u-s--olympic-committee--candidly-concerned--non-revenue-college-sports-will-be-cut-212917571-ncaab.html>
- Frank, R. (2004). *Challenging the myth: A review of the links among college athletic success, student quality, and donations*. Knight Commission on Intercollegiate Athletics. <https://www.knightcommission.org/2004/05/challenging-the-myth-a-review-of-the-links-among-college-athletic-success-student-quality-and-donations/>
- Funk, G. (1991). *Major violation: The unbalanced priorities in athletics and academics*. Leisure Press.
- Gaul, G. (2015). *Billion-dollar ball: A journey through the big-money culture of college football*. Viking.
- Grimes, P., & Chressanthis, G. (1994). Alumni contributions to academics: The role of intercollegiate sports and NCAA sanctions. *American Journal of Economics and Sociology*, 53(1), 27–40. <https://doi.org/10.1111/j.1536-7150.1994.tb02669.x>
- Gurney, G., Sack, A., Lopiano, D., Meyer, J., Porto, B., Ridpath, B., Willingham, M., & Zimbalist, A. (2016). *Position statement: Excessive athletics time demands undermine college athletes' health and education and required immediate reform*. The Drake Group. <https://www.thedrakegroup.org/wp-content/uploads/2019/06/position-statement-time-demands-8-1.pdf>
- Higgins, L. (2022, August 8). The Big 10 toys with athlete unionization-again. *Wall Street Journal*. <https://www.wsj.com/articles/big-ten-athlete-unionization-11659969748>
- Higgins, L. (2022, July 24). Should college athletes be paid? A once-radical idea gains momentum. *Wall Street Journal*. <https://www.wsj.com/articles/college-athlete-pay-ncaa-employees-11658502884>
- Hock, N. (2021, December 2). *Navigating the uncertain terrain of NIL deals for student athletes*. Brooks Pierce. <https://www.brookspierce.com/publication-navigating-the-uncertain-terrain-of-nil-deals-for-student-athletes>

- Hosick, M. B. (2022, May 9). DI board of directors issues name, image and likeness guidance to schools. National Collegiate Athletic Association. <https://www.ncaa.org/news/2022/5/9/media-center-di-board-of-directors-issues-name-image-and-likeness-guidance-to-schools.aspx>
- Hosick, M. B. (2021, June 30). NCAA adopts interim name, image and likeness policy. National Collegiate Athletic Association. <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>
- Hruby, P. (2012a, July 25). The Olympics show why college sports should give up on amateurism. *The Atlantic*. <https://www.theatlantic.com/entertainment/archive/2012/07/the-olympics-show-why-college-sports-should-give-up-on-amateurism/260275/>
- Hruby, P. (2012b, March 29). An agent's plan for fixing college sports: An interview with Josh Luchs about his new book, which outlines a plan for reforming the NCAA. *The Atlantic*. <https://www.theatlantic.com/entertainment/archive/2012/03/an-agents-plan-for-fixing-college-sports/255168/>
- Huma, R., & Staurowsky, E. J. (2013). *The price of poverty in big time college sport*. NCPA Players Association. <http://assets.usw.org/ncpa/The-Price-of-Poverty-in-Big-Time-College-Sport.pdf>
- Hums, M. & MacLean, J. (2014). *Governance and Policy in Sport Organizations, 3rd. Ed.* Routledge.
- IAAUS: Intercollegiate Athletic Association of the United States. (1906, December 29). *Proceedings of the first annual convention*.
- IAAUS: Intercollegiate Athletic Association of the United States. (1916, December 28). *Proceedings of the eleventh annual convention*.
- IAAUS: Intercollegiate Athletic Association of the United States. (1922, December 29). *Proceedings of the seventeenth annual convention*.
- Johnson v. NCAA*, 556 F. Supp. 3rd 491, 495 (E.D. Pa. 2021).
- Kacsmar, S. (2013, May 16). *Where does NFL talent come from?* Bleacher Report. <https://bleacherreport.com/articles/1641528-where-does-nfl-talent-come-from>
- Knoester, C., & Ridpath, B. D. (2020). Should college athletes be allowed to be paid? A public opinion analysis. *Sociology of Sport Journal*, 38(4), 399–411. <http://dx.doi.org/10.1123/ssj.2020-0015>
- Landry, J., & Baker III, 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. *NYU Journal of Intellectual Property & Entertainment Law*, 9(1). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3527537
- Lauletta, T. (2019, September 30). *LeBron James hosted California Gov. Gavin Newsom as he signed into law a bill allowing college athletes to be paid*. Business Insider. <https://www.businessinsider.com/video-lebron-james-gavin-newsom-sb-206-college-athletes-paid-2019-9>
- Lesmerises, D. (2022, June 2). *Ohio State believes it needs \$13 million in NIL money to keep its football roster together*. Cleveland.com. <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>
- Litan, R. E., Orszag, J. m., & Orszag, P. r. (2003). *The empirical effects of intercollegiate athletics: An interim report*. National Collegiate Athletic Association. https://ncaaorg.s3.amazonaws.com/research/Finances/RES_EmpiricalEffectsOfCollegiateAthleticsInterimReport.pdf
- Martinez, C. (2016, August 25). *2016 Rio Olympics: Current NCAA student-athletes competing by school*. National Collegiate Athletic Association. <http://www.ncaa.com/news/ncaa/article/2016-07-28/2016-rio-olympics-ncaa-olympic-student-athletes-school>.

- Marino, G. (2021, August 20). *The NCAA declares independence from NIL restrictions*. Foley & Lardner LLP. <https://www.foley.com/en/insights/publications/2021/08/ncaa-declares-independence-nil-restrictions>
- Matzkin, M. (2001). Gettin' played: How the video game industry violates college athletes' rights of publicity by not paying for their likenesses. *Loyola of Los Angeles Entertainment Law Review*, 21(2). <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1417&context=elr>
- McCarthy, M. (2019, Feb. 20). The Zion effect: Duke's Zion Williamson ignites ticket sales. *The Sporting News*. <https://www.sportingnews.com/us/ncaa-basketball/news/the-zion-effect-dukes-zion-williamson-ignites-ticket-sales/1b5ouskbtvzr1nj29hjkjrlfz>
- McCormick, R., & McCormick, A. (2006). The myth of the student athlete: The college athlete as employee. *Washington Law Review*, 81, 71–157. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=893059
- Meyer, J., & Zimbalist, A. (2020). A win win: College athletes get paid for their names, images, and likenesses and colleges maintain the primacy of academics. *Harvard Journal of Sports & Entertainment Law*, 11(2), 247–303. https://scholarworks.smith.edu/eco_facpubs/53
- Miracle, A., & Rees, C. (1994). *Lessons of the locker room: The myth of school sports*. Prometheus.
- Mogin, R. (2021). NCAA may not sidestep antitrust law, Scotus holds. *The National Law Review*, 12(26). <https://www.natlawreview.com/article/ncaa-may-not-sidestep-antitrust-law-scotus-holds>
- Mondello, M., Piquero, A., Leeper Piquero, N., Gertz, M., & Bratton, J. (2013) Public perceptions on paying student athletes. *Sport in Society*, 16(1), 106–119. <https://doi.org/10.1080/17430437.2012.690408>
- Murphy, C. (2019). *Madness inc. How everyone is getting rich of college sports: Except the players*. https://www.murphy.senate.gov/imo/media/doc/NCAA%20Report_FINAL.pdf
- Nakos, P. (2022, June 2). *What are NIL collectives and how do they operate?* On3.com. <https://www.on3.com/nl/news/what-are-nil-collectives-and-how-do-they-operate/>
- National Collegiate Athletic Association. (n.d.) *Governance*. <https://www.ncaa.org/sports/2021/2/9/governance.aspx>
- National Collegiate Athletic Association. (1957) *NCAA yearbook 1956-57*.
- National Collegiate Athletic Association v. Alston et al.* Certiorari to the United States Court of Appeals for the Ninth Circuit. No. 20–512 Argued March 31, 2021—Decided June 21, 2021.
- National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*. 468 U.S. 85 (1984), No. 83-271. Argued March 20, 1984. Decided June 2, 1984
- National Labor Relations Board Office of Public Affairs. (2021, September 29). *NLRB general counsel Jennifer Abruzzo issues memo on employee status of players at academic institutions* [Press release]. <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-employee-status-of>
- NCAA revenue distribution plan and payouts*. (2022, March 16). *Business of College Sports*. <https://businessofcollegesports.com/ncaa-revenue-distribution-plan-and-payouts/>
- NCAA's big spending reveal. Tax returns reveal Mark Emmert, Coach K paydays and legal fees*. (2022, May 17). *Front Office Sports PM*. <https://frontofficesports.com/newsletter/fos-pm-ncaas-big-spending-reveal/>
- NCAA gender equity review report*. (2021, August). A Report by Kaplan, Hecker & Fink LLP. <https://ncaagenderequityreview.com/>

- NCAA student-athletes at the 2020 Summer Olympics. (2021, July 22). National Collegiate Athletic Association. <https://www.ncaa.com/news/ncaa/article/2021-07-21/ncaa-student-athletes-2020-summer-olympics>
- Nixon II, H. (2014). *The athletic trap: How college sports corrupted the academy*. Johns Hopkins Press.
- Nocera, J., & Strauss, B. (2016). *Indentured: The inside story of the rebellion against the NCAA*. Portfolio.
- Novy-William, E. (2022, July 26). *Oliver Luck's NIL nonprofit to build national database with ASU*. Sportico. <https://sports.yahoo.com/oliver-luck-nil-nonprofit-build-120000171.html>
- O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).
- Office of Governor Gavin Newsom. (2021, August 31). *Governor Newsom signs legislation bolstering landmark college athletes bill* [Press Release]. <https://www.gov.ca.gov/2021/08/31/governor-newsom-signs-legislation-bolstering-landmark-college-athletes-bill/>
- Office of Representative Jamaal Bowman (2021, May 27). *Rep. Bowman, Sen. Murphy, and Sen. Sanders introduce legislation to give college athletes collective bargaining rights*. [Press Release]. <https://bowman.house.gov/2021/5/rep-bowman-sen-murphy-and-sen-sanders-introduce-legislation-to-give-college-athletes-collective-bargaining-rights>
- Olson, M. (2022, July 19). *Texas Tech collective to offer \$25,000 NIL deals to 100-plus football players*. The Athletic. <https://theathletic.com/news/texas-tech-boosters-nil-deal-players/ncfXRrM0sTXr/>
- Olympic medal tracker for NCAA student-athletes in Tokyo*. (2021, August 11). National Collegiate Athletic Association. <https://www.ncaa.com/news/ncaa/article/2021-08-09/olympic-medal-tracker-ncaa-student-athletes-tokyo>
- 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), 1–37. <https://paperity.org/p/277100487/the-billion-dollar-industry-that-has-never-paid-its-money-makers-the-ncaas-attempt-at>
- Richards, K. (2019, February 21). Nike stock takes a hit after Duke star player Zion Williamson's shoe splits on the court. *Adweek.com*. <https://www.adweek.com/brand-marketing/nike-stock-takes-a-hit-after-duke-star-player-zion-williamsons-shoe-splits-on-the-court/>
- Ridpath, B., & Winter, M. (2022, July 6). *Direct bargaining with athletes is best way forward for college sports*. Sportico. <https://www.sportico.com/leagues/college-sports/2022/direct-bargaining-with-college-athletes-1234680498/>
- Ridpath, B. (2018). *Alternative models of sport development in America: Solutions to a crisis in education and public health*. Ohio University Press.
- Ridpath, B. (2002). *NCAA student athlete characteristics as indicators of academic achievement and graduation from college*. Ann Arbor, MI: UMI Dissertation Services, Pro Quest.
- Rudloff, A. (2021). *NCAA, NAIA and NJCAA: Know your association*. GMTM. <https://gmtm.com/articles/what-are-ncaa-naia-and-njcaa>
- S. 2727 – Amateur Sports Act. 95th Congress (1977-1978). <https://www.congress.gov/bill/95th-congress/senate-bill/2727>
- Sack, A. (2011). *Counterfeit amateurs: An athlete's journey through the sixties to the age of academic capitalism*. Penn State Press.
- Sack, A. & Zimbalist, A. (2015). *The Drake Group response to declaration of James E. Delany in support of the NCAA's class certification opposition brief* March 21, 2013. The Drake Group. https://www.thedrakegroup.org/wp-content/uploads/2019/06/obannon_position_statement.pdf
- Sack, A. & Staurowsky E. (1998). *College athletes for hire: The evolution and legacy of the NCAA's amateur myth*. Praeger.

- Sanderson, A. & Siegfried, J. (2015). The case for paying college athletes. *Journal of Economic Perspectives*, 29(1), 115–138. <https://doi.org/10.1257/jep.29.1.115>
- Savage, H. (1929). *American college athletics*. New York: The Carnegie Foundation for the Advancement of Teaching, 1929, Bulletin No. 23.
- Schafer, J. (2022, July 1). *NIL: Here's how much athletes earned in the first year of new NCAA rules*. YahooFinance. <https://finance.yahoo.com/news/nil-heres-how-much-ncaa-athletes-earned-185901941.html>
- Schultz, N. (2022, May 18). *Grant Frerking on NIL impact at Tennessee: 'It's not tearing apart the locker room'*. On3.com. <https://www.on3.com/nil/news/grant-frerking-nil-impact-tennessee-volunteers-not-tearing-apart-the-locker-room-paul-finebaum-show/>
- Sheepskin or pig skin? (1935, December 18). *Washington Post*. President Newcomb papers, II, Box 4, Folder "Athletics," University of Virginia archives.
- Smith, C. (1964, July 6). Letter to Walter Byers. *Walter Byers Papers, Long Range Planning Folder*, Kansas: Overland Park.
- Solomon, J. (2018). *The history behind the debate over paying NCAA athletes*. Aspen Institute. <https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes/>
- Solomon, J. (2016, June 21). 10 ways college athletes can get paid and remain eligible for their sport: From modeling to competing in other sports, athletes have options to bring in money while in school. *CBSsports.com*. <https://www.cbssports.com/college-football/news/10-ways-college-athletes-can-get-paid-and-remain-eligible-for-their-sport>
- Sommer, J., & Zimbalist, A. (2021, March 22). The NCAA is playing the ball in the wrong court. *Forbes*. <https://www.forbes.com/sites/andrewzimbalist/2021/03/22/the-ncaa-is-playing-the-ball-in-the-wrong-court-by-julie-sommer-and-andrew-zimbalist/?sh=4562ad3c1676>
- Sorensen, E. (2021). *What you need to know about name, image and likeness*. Hail Varsity. <https://hailvarsity.com/volleyball/what-you-need-to-know-about-name-image-and-likeness/>
- Soriano, D. Z., & Kerr, E. (2021, March 24). 5 myths about athletic scholarships. *U.S. News & World Report*. <https://www.usnews.com/education/best-colleges/paying-for-college/articles/myths-about-athletic-scholarships>
- Stebbins, S. (2020, Sept. 23). College coaches dominate list of highest-paid public employees with seven-digit salaries. *USA Today*. <https://www.usatoday.com/story/money/2020/09/23/these-are-the-highest-paid-public-employees-in-every-state/114091534/>
- Steele, M. (2015). O'Bannon v. NCAA: The beginning of the end of the amateurism justification for the NCAA in antitrust litigation. *Marquette Law Review*, 99(2), 511–540. <https://core.ac.uk/download/pdf/148696631.pdf>
- Straka, D. (2021, December 8). *The pancake factory: Inside the NIL initiative that will let Texas offensive linemen bring in \$50,000 annually*. 247Sports.com. <https://247sports.com/Article/The-Pancake-Factory-Inside-the-NIL-initiative-that-will-let-Texas-offensive-linemen-bring-in-50000-annually-177666783/>
- Suggs, W. (2009). Making money or not on college sports. *New Directions for Institutional Research*, 2009(144), 19–31. <https://doi.org/10.1002/ir.310>
- Tracy, M. & Draper, K. (2019, Feb. 21). A star's shoe breaks, putting college basketball under a microscope. *New York Times*. <https://www.nytimes.com/2019/02/21/sports/zion-nike-shoe-ncaa.html>
- Uggetti, P. (2022, February 18). *NCAA to review NIL policies, including impact on student-athletes and potential recruiting violations*. ESPN. https://www.espn.com/college-sports/story/_/id/33323409/ncaa-review-nil-policies-including-impact-student-athletes-potential-recruiting-violations

- United States Congress-College athletics and Olympic sports bills. (2022, February 1). The Drake Group. <https://www.thedrakegroup.org/2022/01/30/united-states-congress-college-athletics-and-olympic-sports-bills-updated-as-of-february-1-2022/>
- Walsh, E. (2021, July 21). *Jimbo Fisher has 'no ill will' toward Alabama's Nick Saban after offseason spat*. Bleacher Report. <https://bleacherreport.com/articles/10042857-jimbo-fisher-has-no-ill-will-toward-alabamas-nick-saban-after-offseason-spat>
- Watt, S., & Moore III, J. (2001). Who are student-athletes? In "Student Services for Athletes," edited by Mary F. Howard-Hamilton and Sherry K. Watt, special issue, *New Directions for Student Services*, 2001 (93), 7–18. <https://doi.org/10.1002/ss.1>
- Wheeler, S. (2004). Rethinking Amateurism and the NCAA. *Stanford Law & Policy Review*, 15, 213.
- Wilson, K., & Brondfield, J. (1967). *The Big Ten*. Prentice-Hall.
- Zimbalist, A. (2021a). *Whither college sports: Amateurism, athlete safety, and academic integrity*. Rutgers University Press.
- Zimbalist, A. (2021b). [Video]. *The economics of college sport*. The Drake Group. <https://www.thedrakegroup.org/2021/12/10/the-economics-of-college-sport/>
- Zimbalist, A. (1999). *Unpaid professionals: Commercialism and conflict in big-time college sports*. Princeton University Press.
- Zwerneman, B. (2022, May 19). Texas A&M's Jimbo Fisher responds to 'narcissist' Nick Saban: 'We're done'. *Houston Chronicle*. <https://www.houstonchronicle.com/texas-sports-nation/college/article/Texas-A-M-Jimbo-Fisher-Nick-Saban-done-narcissist-17184217.php>

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