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NOTES

DROPPING THE BALL: HOW THE GROWTH OF LEGALIZED SPORTS BETTING THREATENS THE NIL RIGHTS OF COLLEGIATE ATHLETES

PETER KLENSCH[†]

INTRODUCTION

One of the more storied runs in college basketball history happened in 2014 when the seven-seeded University of Connecticut Huskies (“UConn”) made the Final Four and defeated the University of Kentucky Wildcats to win the Division I Men’s College Basketball Tournament.¹ As the second-lowest seed ever to win the Tournament, the focus should have been on UConn’s celebration in Storrs, Connecticut.² Instead, the national media was drawn to comments made by UConn’s star point-guard, Shabazz Napier, who said that he sometimes went to bed “starving.”³

The remarks caught the immediate attention of state legislators in Connecticut.⁴ Representative Matthew Lesser said, “he’s going to bed hungry at a time when millions of dollars are being made off of him. . . . This isn’t a Connecticut problem. This

[†] Notes and Comments Editor, *St. John’s Law Review*, J.D. Candidate, 2023, St. John’s University School of Law; B.A., 2017, University of Connecticut. First, I’d like to thank my mom, dad, and sister for their eternal love, guidance, and support. Second, thank you to the St. John’s Law Review editors and staffers for their tireless work on getting this Note across the finish line. Finally, a special thanks goes to Professor Michael Dintenfass. A teacher, mentor, and friend that always reminds me to never compromise on my passions.

¹ Ted Keith, *UConn Huskies Win National Championship, Beating Kentucky Wildcats*, SPORTS ILLUSTRATED (Apr. 7, 2014), <https://www.si.com/college/2014/04/08/uconn-huskies-win-national-championship-beating-kentucky-wildcats> [https://perma.cc/RHS9-LLRJ].

² *Id.*

³ Sara Ganim, *UConn Guard on Unions: I Go to Bed ‘Starving’*, CNN (Apr. 8, 2014), <https://www.cnn.com/2014/04/07/us/ncaa-basketball-finals-shabazz-napier-hungry/index.html> [https://perma.cc/PU8W-UWC4].

⁴ *Id.*

is an NCAA problem”⁵ The National Collegiate Athletic Association (“NCAA”) is a money-making behemoth, generating \$1.15 billion in revenue in 2021 alone,⁶ and annually signing multi-billion-dollar television deals for its two major sports, Division I men’s basketball and football.⁷ While Shabazz’s remarks were not the first to be made about the disparity between college players and their institutional overlords, the comments brought the issue of paying college athletes back to the national forefront.⁸ Two other college athletes, Shawne Alston and Justine Hartman, were soon to make noise of their own by challenging the NCAA in a landmark antitrust lawsuit.⁹ The impact of *NCAA v. Alston*, which barred the NCAA from restricting education-related benefits for student-athletes, and the surrounding state name, image, and likeness (“NIL”) laws have created a brand new market for student-athletes to receive endorsements and benefits outside the confines of the university.¹⁰

At the same time, another groundbreaking legal decision flipped the sports world on its head.¹¹ In *Murphy v. NCAA*, the Supreme Court lifted the ban on state-legalized sports betting; states were now free to enact their own individual sports betting laws.¹² Since June 2018, more than \$186 billion has been wagered on sports, including \$8.5 billion on the 2019 Division I Men’s NCAA Tournament alone.¹³ As the sports betting industry

⁵ *Id.*

⁶ Steve Berkowitz, *NCAA Revenue Returned to \$1.15 Billion in 2021, but Prospect of Pandemic Impacts Looms*, USA TODAY (Feb. 2, 2022, 10:08 PM ET), <https://www.usatoday.com/story/sports/2022/02/02/ncaa-revenue-up-but-pandemic-impacts-loom-basketball-tournament/9313735002/> [https://perma.cc/2FG4-Z8WS].

⁷ Jo Craven McGinty, *March Madness Is a Moneymaker. Most Schools Still Operate in the Red.*, WALL ST. J. (Mar. 12, 2021), <https://www.wsj.com/articles/march-madness-is-a-moneymaker-most-schools-still-operate-in-red-11615545002> [https://perma.cc/8BRQ-QBAA].

⁸ Ganim, *supra* note 3.

⁹ Pete Williams, *Supreme Court Says NCAA Can't Limit Some Benefits to Student Athletes*, NBC NEWS (June 21, 2021), <https://www.nbcnews.com/politics/supreme-court/supreme-court-says-ncaa-can-t-limit-some-benefits-student-n1271592> [https://perma.cc/8BRQ-QBAA].

¹⁰ *Id.*

¹¹ Adam Liptak & Kevin Draper, *Supreme Court Ruling Favors Sports Betting*, N.Y. TIMES (May 14, 2018), <https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html> [https://perma.cc/C4WT-QVDW].

¹² *Id.*

¹³ McGinty, *supra* note 7; see *U.S. Sports Betting Revenue and Handle*, LEGAL SPORTS REP. (Oct. 1, 2021), <https://www.legalsportsreport.com/sports-betting/>

continues to grow and become more accessible to the everyday fan, so too does it widen its reach into college sports and to the athletes themselves. But, what happens when sports betting companies begin to endorse college athletes?

This Note will address the fallout of the Supreme Court's recent decision in *Alston*, state NIL laws, the legal gray area they have created, and their intersection with the growth of legalized sports betting in the United States. To protect student-athletes and avoid disrupting the competitive nature of the NCAA, this Note will argue for legislative and institutional action to limit players from entering into endorsement contracts, specifically with casinos, sports betting companies, or gambling-related entities. Part I of this Note will explore the history of amateurism and competition in college sports and the legal history of sports betting. Part II will examine antitrust lawsuits against the NCAA, the *Alston* ruling, the impact of NIL laws, and the specter of sports gambling that hangs over these legal decisions. Finally, Part III will highlight potential solutions, specifically congressional proposals and NCAA action.

I. BACKGROUND

A. *History of Amateurism and Competition in College Sports*

1. The Early Years: Creation of the NCAA

The establishment of the NCAA developed from a need for a central body to oversee and regulate college sports.¹⁴ Action became essential not only due to the lack of physical safety for the players, but also the potential for corruption, cheating, and the growing commercialization of athletic competitions.¹⁵ These problems can be traced back to the first intercollegiate commercial sporting event in the United States, the 1852 Harvard-Yale regatta, where Harvard hired a non-student to be a coxswain to gain a leg up on its rival.¹⁶

revenue/ [<https://perma.cc/TTG2-4N73>] (handles updated to figures reflected from a January 20, 2022 search).

¹⁴ See Ashley Jo Zaccagnini, *Time's Up: A Call to Eradicate NCAA Monopsony Through Federal Legislation*, 74 SMU L. REV. F. 55, 59 (2021).

¹⁵ *Id.*

¹⁶ Rodney K. Smith, Essay, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 10–11 (2000) [hereinafter Smith, *A Brief History*]. Using the intense rowing rivalry for his own economic gain, the host of the event, James Elkins, offered financial

Initially, college sports teams were organized and managed by the players themselves.¹⁷ However, concerns over the growing commercialization of intercollegiate sporting events, the fear of unfair practices to gain a competitive advantage, and the financial difficulties for players, forced universities to turn control over to faculty.¹⁸ This change in leadership and control did little to quell the fears of university administrators.¹⁹ Harvard President, Charles William Eliot, said in the late nineteenth century that “lofty gate receipts from college athletics had turned amateur contests into major commercial spectacles.”²⁰ Around the same time, Massachusetts Institute of Technology President, Francis Walker, also voiced his concern inferring that “[i]f the movement shall continue at the same rate, it will soon be fairly a question whether the letters B.A. stand more for Bachelor of Arts or Bachelor of Athletics.”²¹

By the turn of the century, universities had still failed to gain authority over intercollegiate sports and the need for tighter control over college athletics was compounded by a rise in player deaths.²² From 1900 to 1905, at least forty-five football players died from “unnecessary roughness” during in-game action.²³ The tipping point for action came in 1905, when a nineteen-year-old sophomore at Union College, Harold Moore, died from a brain hemorrhage caused by a kick to the head during a match.²⁴ With the national spotlight on the dangers of college sports, President Teddy Roosevelt, an avid football fan, helped facilitate the creation of the Intercollegiate Athletic Association (“IAA”) in

incentives to both crews, including a \$100 grand prize. Kenneth L. Shropshire, *Legislation for the Glory of the Sport: Amateurism and Compensation*, 1 SETON HALL J. SPORT L. 7, 14 (1991).

¹⁷ Rodney K. Smith, *The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others*, 62 IND. L.J. 985, 989 (1987) [hereinafter Smith, *NCAA Death Penalty*].

¹⁸ *Id.* at 989–90.

¹⁹ Smith, *A Brief History*, *supra* note 16, at 11.

²⁰ Rodney K. Smith, *Little Ado About Something: Playing Games with the Reform of Big-Time Athletics*, 20 CAP. U. L. REV. 567, 569–70 (1991) [hereinafter Smith, *Playing Games*].

²¹ *Id.* at 570 (alteration in original).

²² Katie Zezima, *How Teddy Roosevelt Helped Save Football*, WASH. POST (May 29, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/05/29/teddy-roosevelt-helped-save-football-with-a-white-house-meeting-in-1905/> [https://perma.cc/DH F6-B5B4].

²³ *Id.* In 1905 alone, at least eighteen players died and there were 159 major injuries. *Id.*

²⁴ *Id.*

1906.²⁵ The IAA was tasked with developing the rules and regulations for college sports and was later “renamed the NCAA in 1910.”²⁶

Compared to the commercial enterprise it is today, the NCAA played a very minor role in its early years, with its primary responsibility being the organization and sponsorship of major championship matches.²⁷ For the most part, the day-to-day governance of college sports remained with students and faculty until the 1920s, when the public demand for college athletics rose alongside the push for general access to higher education.²⁸ With more students going to college and athletics becoming an indispensable part of the college experience, the pressure of commercialization continued to compound.²⁹ As the public interest in sports increased, so too did the need for regulation, specifically involving amateurism.³⁰ A 1929 report from the Carnegie Foundation for the Advancement of Education found that: “Commercialism in college athletics must be diminished and college sport must . . . [be] esteemed primarily . . . for the opportunities it affords to mature youth.”³¹

The NCAA’s first definition of amateurism was established in 1916, characterizing an amateur as “one who participates in competitive physical sports only for the pleasure, and the physical, mental, moral and social benefits derived therefrom.”³² With vague standards and no real enforcement power, the NCAA was unable to drive home its “enshrined amateur ideals.”³³ In the same 1929 Carnegie report, more than seventy percent of the schools surveyed ignored recommendations to move away from the professionalization of intercollegiate athletics.³⁴ In a follow-

²⁵ See Zaccagnini, *supra* note 14, at 59. President Roosevelt’s son was a freshman football player at Harvard, who broke his nose in-game during the 1905 season. Zezima, *supra* note 22.

²⁶ Zaccagnini, *supra* note 14.

²⁷ Smith, *NCAA Death Penalty*, *supra* note 17, at 990–91.

²⁸ *Id.* at 991.

²⁹ *Id.*

³⁰ *Id.*

³¹ Smith, *A Brief History*, *supra* note 16, at 13.

³² GERALD GURNEY ET AL., UNWINDING MADNESS: WHAT WENT WRONG WITH COLLEGE SPORTS AND HOW TO FIX IT 11–12 (Brookings Institution Press, 2017). The A1922 revision to the definition added “and to whom the sport is nothing more than an avocation.” *Id.* at 11–12.

³³ Taylor Branch, *The Shame of College Sports*, ATLANTIC, <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> [<https://perma.cc/6ZJA-ZLS2>] (last visited Jan. 14, 2023).

³⁴ *Id.*

up study, not one school changed its practices.³⁵ From unenforced helmet mandates in football games to ineffectively handling player strikes, the NCAA had no teeth.³⁶

2. Growing Pains: Amateurism as a Vehicle for Greater Control

As a governing body, the NCAA struggled to keep pace with the rapid growth in the national popularity of college sports, and faced not only the threat of exploitive recruiting tactics, but also a series of scandals.³⁷ To subdue these mounting issues, the NCAA enacted the “Sanity Code” to “alleviate the proliferation of exploitive practices in the recruitment of student-athletes.”³⁸ The code dramatically limited benefits, decreeing that athletes could only earn a scholarship if they met the rigor of individual university’s academic standards and demonstrated a fiscal need.³⁹

From the start, the Sanity Code was a disaster.⁴⁰ The primary issue with the code was that the NCAA established no feasible enforcement mechanisms.⁴¹ For example, the organization created the Constitutional Compliance Committee (“CCC”) to oversee and investigate potential violations under the code.⁴² However, the only penalty for non-compliance with the Sanity Code by a school was expulsion from the NCAA, and even that required a two-thirds majority vote.⁴³ Along with the Sanity Code’s repeal in 1951, the CCC was replaced with the Committee on Infractions (“COI”) and given broader sanctioning authority when dealing with university violations.⁴⁴

³⁵ GURNEY ET AL., *supra* note 32, at 12.

³⁶ Kelly Charles Crabb, *The Amateurism Myth: A Case for a New Tradition*, 28 STAN. L. & POL’Y REV. 181, 189–91 (2017); Branch, *supra* note 33.

³⁷ Smith, *NCAA Death Penalty*, *supra* note 17, at 992. One of the first college athletics gambling scandals occurred in 1945, after two men bribed Brooklyn College basketball players with \$1,000 to throw a game against Akron University. Joe Goldstein, *Rumblings: The Brooklyn Five*, ESPN CLASSIC (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_rumblings.html [<https://perma.cc/SDJ4-PGUQ>]. While the game was never actually played, the two bribers were convicted of “conspiracy to cheat and defraud.” *Id.*

³⁸ Smith, *A Brief History*, *supra* note 16, at 14.

³⁹ Brian Ewart, *History: The Sinful Seven*, SB NATION VU HOOPS (Aug. 22, 2011, 3:16 AM), <https://www.vuhoops.com/2011/08/22/history-the-sinful-seven> [<https://perma.cc/BMF8-YPTK>].

⁴⁰ *See id.*

⁴¹ *Id.*

⁴² Smith, *A Brief History*, *supra* note 16, at 14–15.

⁴³ Ewart, *supra* note 39.

⁴⁴ Smith, *NCAA Death Penalty*, *supra* note 17, at 992–93.

Beyond the establishment of a true sanctioning committee in the COI, the NCAA's enforcement capacity drastically increased in the 1950s due to national commercial competition between the major NCAA conferences.⁴⁵ Mainly, the Big Ten Conference ("Big Ten"), the old guard in college sports, feared the rise of the newcomer Southeastern Conference ("SEC"), which was attracting talent from across the country.⁴⁶ To maintain its competitive balance, the Big Ten pushed for a dramatic shift in the operation of the conferences under a strong central power and spearheaded the prohibition of compensating college athletes.⁴⁷ The push from the conferences to strike a competitive balance led to the centralization of the NCAA's power under its first executive director, Walter Byers, in 1951.⁴⁸ Byers shifted the NCAA from a "debating society for amateurism" to the commercial enterprise it is today.⁴⁹ Under his regime, the NCAA negotiated its first million-dollar contract to televise college football,⁵⁰ opening the door to today's multi-billion dollar television deals for events like March Madness and the College Football Playoff.⁵¹ While business boomed, Byers also knew he had to strengthen his grip on administration and established the enforcement division, which worked alongside the COI in handling infractions.⁵²

As the NCAA grew as a moneymaking entity, so did its administrative power.⁵³ To safeguard this newfound watchdog role, Byers coined the term "student-athlete," and established the

⁴⁵ Crabb, *supra* note 36, at 190.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Smith, *A Brief History*, *supra* note 16, at 15.

⁴⁹ Karen Given, *Walter Byers: The Man Who Built The NCAA, Then Tried To Tear It Down*, WBUR (Oct. 13, 2017), <https://www.wbur.org/onlyagame/2017/10/13/walter-byers-ncaa> [<https://perma.cc/HAS6-S3FK>].

⁵⁰ David J. Halberstam, *Born 80 Years Ago, College Football on TV was Limited by the NCAA's Grip Until Stopped by the Supreme Court*, SPORTS BROAD. J. (Sept. 29, 2019), <https://www.sportsbroadcastjournal.com/born-80-years-ago-college-football-on-tv-was-limited-by-the-ncaas-grip-until-the-supreme-court-said-let-go/> [<https://perma.cc/6APE-5HFF>].

⁵¹ See Joe Reedy, *CBS, Turner Partnership on NCAA Tournament has Huge Benefits*, ABC NEWS (Mar. 17, 2021), <https://abcnews.go.com/Entertainment/wireStory/cbs-turner-partnership-ncaa-tournament-huge-benefits-76504960> [<https://perma.cc/6C6V-H7ZU>]; Ralph D. Russo, *CFP Expansion Could Increase Annual Revenue to \$2 Billion*, USA TODAY (June 11, 2021), <https://www.usatoday.com/story/sports/ncaaf/2021/06/11/cfp-expansion-could-increase-annual-revenue-to-2-billion/45662665/> [<https://perma.cc/JA7K-6524>].

⁵² Smith, *NCAA Death Penalty*, *supra* note 17, at 993.

⁵³ *Id.*

“Principle of Amateurism”; the player’s role as a student should now always come before being an athlete.⁵⁴ The 2021–2022 iteration of amateurism under the NCAA’s by-laws states: “Student-athletes shall be amateurs . . . and their participation should be motivated primarily by education and . . . protected from exploitation by professional and commercial enterprises.”⁵⁵ While much of the amateurism notion remains unchanged from its original definition in 1916, the NCAA did shift the standard to focus more on educational pursuits and protecting student-athletes from the dangers of the private sector.⁵⁶ In turn, throughout the mid-twentieth century, the NCAA used amateurism as an enforcement mechanism in almost every aspect of collegiate sports, including recruiting, academics, and financial restrictions.⁵⁷

B. History of Sports Betting in Collegiate Athletics

1. The Flop: College Sports Gambling Scandals in the United States Pre-PASPA

American sports betting evolved from a tradition of gambling into a billion-dollar industry plagued with centuries of rampant corruption.⁵⁸ While organized crime syndicates and influence from religious organizations led to a widespread ban on gambling by the late nineteenth century, the popularity of sports betting continued to grow as baseball’s popularity did.⁵⁹ With national interest increasing after each game, so too did the scandals, as fans took to the black market to place their wagers.⁶⁰ This was further exacerbated by the 1919 Black Sox scandal, where Chicago White Sox players were paid off by organized crime members to “throw” World Series games.⁶¹ With mobsters now

⁵⁴ Crabb, *supra* note 36, at 191–92 (emphasis omitted).

⁵⁵ NCAA, 2021-22 DIVISION I MANUAL § 2.9 (2021), <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [<https://perma.cc/2YKU-Z6KX>].

⁵⁶ *Id.*

⁵⁷ Crabb, *supra* note 36, at 191.

⁵⁸ Chil Woo, *All Bets are Off: Revisiting the Professional and Amateur Sports Protection Act*, 31 CARDOZO ARTS & ENT. L.J. 569, 571–72 (2013). The lottery helped fund the Revolutionary War and was later labeled as a “civic responsibility.” *Id.* at 572.

⁵⁹ Matt Farnum, *Moving the Line: Leveraging the Legalization of Sports Gambling to Protect Student-Athletes and Preserve Amateurism*, 29 CORNELL J.L. & PUB. POL’Y 491, 494 (2019).

⁶⁰ *Id.*

⁶¹ Woo, *supra* note 58, at 572–73.

tied to America's national pastime, the negative stigma associated with sports gambling grew alongside the desire to regulate sports betting.⁶²

Compared to professional league scandals, intercollegiate athletics had a much more difficult time regulating such issues.⁶³ Without an organized, central governing body to enforce the rules, college sports became a breeding ground for corruption and betting scandals.⁶⁴ Throughout the mid-twentieth century, college point-shaving scandals hurt the integrity of the game and led the NCAA to develop stronger enforcement measures.⁶⁵ To prevent such cheating scandals, Congress intervened and passed a slew of legislation to combat gambling and stop organized crime betting operations in college sports.⁶⁶ Unfortunately, Congress's efforts proved futile since the states each had their own individualized enforcement measures that failed to prevent illegal sports gambling and knocked out whatever teeth the federal laws may have had.⁶⁷ As mobsters continued to avoid regulation, the illegal sports betting industry soared in the 1970s and 80s.⁶⁸

As illegal gambling flourished, the American public's confidence in the integrity of sports plummeted.⁶⁹ In 1983, roughly \$8 billion was wagered illegally on sports in the United States.⁷⁰ Six years later, that figure rose to \$50 billion.⁷¹

⁶² *Id.* at 573. At the time, Nevada was the only state with legalized sports betting. *Id.*

⁶³ Farnum, *supra* note 59, at 495–96.

⁶⁴ *Id.*

⁶⁵ Haley M. Robb, *Hedge Your Bets: How the Legalization of Sports Betting Could be the Downfall of Intercollegiate Sports*, 122 W. VA. L. REV. 351, 372–73 (2019). In 1951, seven college basketball teams were involved in a complex point-shaving scheme involving thirty-two players and eighty-six games. *Id.* at 373.

⁶⁶ Farnum, *supra* note 59, at 499–500.

⁶⁷ *Id.*

⁶⁸ See Robb, *supra* note 65, at 374–75; see also David Purdum, *The Worst Fix Ever*, ESPN (Oct. 3, 2014), https://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal [https://perma.cc/9ETE-526P](highlighting Boston College basketball team's 1978–1979 point-shaving scheme); Frances Frank Marcus, *8 Indicted in Tulane Scandal; School to Give Up Basketball*, N.Y. TIMES (Apr. 5, 1985) <https://www.nytimes.com/1985/04/05/sports/8-indicted-in-tulane-scandal-school-to-give-up-basketball.html> [https://perma.cc/47NX-A77M] (detailing the 1985 scheme between Tulane University basketball players and students).

⁶⁹ Justin Fielkow et al., *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 29 (2016).

⁷⁰ *Id.*

⁷¹ *Id.*

According to one Sports Illustrated writer in 1986, “nothing has done more to despoil the games Americans play and watch than widespread gambling on them. . . . [D]ark clouds of cynicism and suspicion hang over games, and the possibility of fixes is always in the air.”⁷² The hopeless sentiment toward sports betting during the 1980s came to a crescendo with the Pete Rose scandal in 1989.⁷³ One of the game’s greatest hitters, Rose was permanently banned from baseball after accusations surfaced that as both player and manager, he gambled on games, racking up about \$500,000 in debt.⁷⁴ With revived and heightened public outcry, Congress felt it necessary to take measures to protect the integrity of sports.⁷⁵

2. The Turn: PASPA to *Murphy*

The Rose Scandal forced the federal government to combat the destructive effects of sports gambling.⁷⁶ In 1992, Congress found a “distinct [f]ederal interest in protecting sports from corruption” and enacted the Professional and Amateur Sports Protection Act (“PASPA”) to “maintain the integrity of [the] national pastime.”⁷⁷ PASPA prohibited states from legalizing sports wagering.⁷⁸ As seen from Congress’s efforts to quell illegal sports betting in the mid-twentieth century, the bill’s title seemed to carry more weight than its actual practicality and effectiveness.⁷⁹ As a result, PASPA barely made any headway in restoring the public’s confidence in the integrity of sports and its value and legality were constantly in question.⁸⁰

In 2012, New Jersey enacted the Sports Wagering Act through an amendment to the state constitution, providing the

⁷² John Underwood, *The Biggest Game in Town*, SPORTS ILLUSTRATED (Mar. 10, 1986) <https://vault.si.com/vault/1986/03/10/the-biggest-game-in-town> [<https://perma.cc/VM27-BC56>].

⁷³ See Farnum, *supra* note 59, at 499–500; see also Fielkow et al., *supra* note 69, at 29.

⁷⁴ Fielkow et al., *supra* note 69, at 30; Kendall Howell, *You Can Bet on It: The Legal Evolution of Sports Betting*, 11 HARV. J. SPORTS & ENT. L. 73, 76–77 (2020).

⁷⁵ Farnum, *supra* note 59, at 500.

⁷⁶ *Id.*

⁷⁷ 28 U.S.C. § 3702; Caitlin D. Buckstaff, *Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering*, 16 VAND. J. ENT. & TECH. L. 133, 140 (2013) (alterations in original).

⁷⁸ Farnum, *supra* note 59, at 501. The four states that already had legal sports betting were exempt under the “grandfather provision.” *Id.*

⁷⁹ *Id.* at 502.

⁸⁰ *Id.*

legislature with authority to legalize in-state sports betting at specific locations, like Atlantic City.⁸¹ Expectedly, the NCAA and professional sports leagues sued New Jersey for violating PASPA.⁸² In 2018, the Supreme Court invalidated PASPA under the Tenth Amendment anti-commandeering doctrine in *Murphy v. NCAA*, holding that PASPA violated New Jersey's ability to authorize its own sports gambling law.⁸³ As a result, "Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."⁸⁴

With Congress yet to act, states are free to sculpt their own sports betting laws under *Murphy*.⁸⁵ Turning to Nevada for inspiration, New Jersey passed its own sports betting law, that allowed college sports wagering, but only on teams outside of the state.⁸⁶ For example, a New Jersey bettor cannot submit a wager on a Seton Hall University basketball game, even if the team is playing outside of the state.⁸⁷ While concerns arose over the ban's impact on the growth of sports betting in the state, New Jersey has still been able to outpace every state in total wagers and revenue since 2018.⁸⁸ Even so, the betting surge has not changed voter opinions on upholding the integrity of college sports.⁸⁹ In November 2021, a majority of New Jersey voters shot down a referendum to lift the in-state ban.⁹⁰ With public opinion firmly on its side, the New Jersey law establishes a strong, yet pliable, example of efficient sports betting regulation that protects college athletes.⁹¹

⁸¹ Howell, *supra* note 74, at 101.

⁸² Dave Wilson, Note, *Massachusetts at the Forefront: How to Protect the Most Vulnerable Group in a Post-Legal Sports Betting World—NCAA Student-Athletes*, 15 U. MASS. L. REV. 124, 131–32 (2020); Buckstaff, *supra* note 77, at 144–45. The NCAA and the leagues won in both district court and the Third Circuit. *Murphy v. NCAA*, 138 S. Ct. 1461, 1473 (2018).

⁸³ *Murphy*, 138 S. Ct. at 1484–85.

⁸⁴ *Id.*

⁸⁵ Wilson, *supra* note 82, at 135.

⁸⁶ *Id.* at 138–39.

⁸⁷ *Id.* at 139.

⁸⁸ *U.S. Sports Betting Revenue and Handle*, *supra* note 13. Since 2018, New Jersey has collected \$29.6 billion in handle and \$2 billion in revenue. *Id.* During that same time period, Nevada collected \$26 billion in handle and \$1.5 billion in revenue. *Id.*

⁸⁹ See Zachary Zagger, *Surprise NJ Vote Shows NCAA Betting Concerns May Linger*, LAW360 (Nov. 3, 2021), <https://www.law360.com/articles/1437615/surprise-nj-vote-shows-ncaa-betting-concerns-may-linger> [<https://perma.cc/34ZG-95AH>].

⁹⁰ *Id.*

⁹¹ *Id.*

3. The River: The Sports Betting Boom

With a one-size-fits-all federal approach on the backburner, the *Murphy* decision fostered a slew of state legislatures legalizing some form of sports betting.⁹² Overall, thirty-one states and Washington, D.C. have legalized sports betting and swaths of others are moving toward legislation.⁹³ Since *Murphy*, states have generated more than \$14 billion in total revenue.⁹⁴

The end of PASPA has not only been a boon for casinos, but also for innovative companies like DraftKings and FanDuel, who have the largest mobile sports betting interfaces.⁹⁵ The rise of mobile betting platforms has made wagering even more accessible, as a person can place a bet with a tap of their phone.⁹⁶ As legalized sports betting continues to emerge, it is seeping into every aspect of the sports experience, including major media outlets like ESPN, professional sports leagues, commercials, stadium naming-deals, basketball tournaments,⁹⁷ college football bowl games,⁹⁸ in-arena sportsbooks, and betting-themed broadcasts.⁹⁹ Other companies outside of DraftKings and

⁹² Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Apr. 7, 2021), https://www.espn.com/chalk/story/_id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization [<https://perma.cc/K7R8-ARV5>].

⁹³ *Id.*

⁹⁴ *U.S. Sports Betting Revenue and Handle*, *supra* note 13.

⁹⁵ Alex Silverman, *For U.S. Sports Bettors, It's FanDuel and DraftKings — and Then Everyone Else*, MORNING CONSULT (Jan. 20, 2022, 12:01 AM), <https://morningconsult.com/2022/01/20/sports-betting-brands-usage-fanduel-draftkings/> [<https://perma.cc/CR4H-LZC2>].

⁹⁶ Kendall Baker, *The Sports Betting Tsunami*, AXIOS (Aug. 16, 2021), <https://www.axios.com/sports-betting-experience-nfl-mlb-961ef369-d391-4c24-a166-0846e5f585e4.html> [<https://perma.cc/H7DU-6BLC>].

⁹⁷ Amanda Christovich, *Barstool Will Host Its First Men's College Basketball Tournament*, FRONT OFF. SPORTS (Sept. 22, 2022), <https://frontofficesports.com/barstool-cbb-tournament/> [<https://perma.cc/5YTN-BFCV>]. The inaugural “Barstool Sports Invitational” took place on November 11, 2022, at the Wells Fargo Center in Philadelphia. *Id.* In contrast to a television broadcast, Barstool Sports will have full control of the event providing “everything from providing announcers and selling tickets to staging a halftime show.” *Id.*

⁹⁸ Doug Greenberg, *Barstool Sports Feels It 'Delivered' on Arizona Bowl*, FRONT OFF. SPORTS (Jan. 4, 2023) <https://frontofficesports.com/barstool-sports-delivered-arizona-bowl/> [<https://perma.cc/8JMJ-P8Y9>]. On December 30, 2022, Barstool Sports hosted the Arizona Bowl and collected an estimated one million viewers via their online streaming platform. *Id.* Consistently during the broadcast, the color commentators, Barstool founder Dave Portnoy and “Pardon My Take” podcast host Dan Katz, “pull[ed] for the teams they had picked to win or cover rather than analyzing each play.” *Id.*

⁹⁹ *Id.*

FanDuel are also getting involved and expanding the reach of sports betting.¹⁰⁰ On January 29, 2020, lifestyle and sports media company Barstool Sports signed an exclusive sports and iCasino partnership with Penn National Gaming.¹⁰¹ On August 16, 2021, merchandise giant Fanatics, Inc. partnered with entertainment company Roc Nation, LLC to create Fanatics Betting & Gaming.¹⁰²

The growth of the sports gambling industry has made betting easier and more accessible to fans across the country.¹⁰³ This accessibility threatens to open college athletes up to the same scandalous situations that have plagued the NCAA for more than a century.¹⁰⁴

II. THE IMPACT OF *ALSTON*, STATE NIL LAWS, AND THE SPECTER OF SPORTS BETTING

A. *Antitrust Challenges Against the NCAA*

1. *Board of Regents to O'Bannon: The Amateurism Principle as a Legal Shield*

As the NCAA continued to grow into a commercial behemoth, the organization's commitment to preserving amateurism became not only its teeth in enforcing rules, but also its key to evading numerous antitrust legal challenges.¹⁰⁵ The seminal case for the NCAA came in 1984 in *NCAA v. Board of Regents of the University of Oklahoma*.¹⁰⁶ Applying the "Rule of Reason" test, the Court held that the NCAA's proposed college football television deal imposed market constraints, thus violating the Sherman Antitrust Act.¹⁰⁷ However, the Court

¹⁰⁰ *Penn National Gaming and Barstool Sports Announce Exclusive Sports and iCasino Partnership*, PA. ENT. (Jan. 29, 2020), <https://pennnationalgaming.gcs-web.com/news-releases/news-release-details/penn-national-gaming-and-barstool-sports-announce-exclusive> [hereinafter *Penn*]; Kim Bhasin, *Jay-Z Joins New York Sports Gambling Bid Alongside Fanatics*, BLOOMBERG (Aug. 16, 2021), <https://www.bloomberg.com/news/articles/2021-08-16/jay-z-joins-new-york-sports-gambling-bid-alongside-fanatics> [https://perma.cc/NBY2-W6ZQ].

¹⁰¹ *Penn*, *supra* note 100.

¹⁰² Bhasin, *supra* note 100.

¹⁰³ See *U.S. Sports Betting Revenue and Handle*, *supra* note 13; Baker, *supra* note 96.

¹⁰⁴ Wilson, *supra* note 82, at 138–39.

¹⁰⁵ Zaccagnini, *supra* note 14, at 61–62.

¹⁰⁶ 468 U.S. 85 (1984).

¹⁰⁷ *Id.* at 88, 103.

generally found that most of the NCAA's regulatory power is justifiable in order to foster competition, enhance public interest, and maintain the "revered tradition of amateurism in college sports."¹⁰⁸ This language quickly became the cornerstone of the NCAA's argument that paying college athletes would violate its "revered tradition of amateurism."¹⁰⁹

Following *Board of Regents*, federal courts continued to advance the principle of amateurism in legal challenges to student-athlete compensation throughout the 1990s.¹¹⁰ Time and again, the courts expressed that protecting student-athletes from the dangers of "commercializing pressures" was a necessity in order to prevent a blurring of lines between professional and collegiate sports.¹¹¹ Student-athletes were students first, and the courts were concerned that allowing players to make money or earn endorsements would quickly "overshadow educational objectives."¹¹² Into the early 2000s, the amateurism principle remained an impenetrable suit of armor for the NCAA in antitrust challenges.¹¹³

The legal perspective surrounding the pro-competitive effects of amateurism changed in the 2015 landmark case, *O'Bannon v. NCAA*.¹¹⁴ In a class action lawsuit against the NCAA, former college players argued that amateurism rules, which prevented student-athletes from being compensated, violated the Sherman Act when Electronic Arts Sports used the athletes NIL in a college basketball video game.¹¹⁵

¹⁰⁸ *Id.* at 117, 120.

¹⁰⁹ See Crabb, *supra* note 36, at 194.

¹¹⁰ See Zaccagnini, *supra* note 14, at 61–62; see also McCormack v. NCAA, 845 F.2d 1338, 1345 (5th Cir. 1988) (finding that eligibility rules "create the product [of amateurism] and allow its survival in the face of commercializing pressures"); Banks v. NCAA, 746 F. Supp. 850, 851 (N.D. Ind. 1990); Gaines v. NCAA, 746 F. Supp. 738, 740, 747–48 (M.D. Tenn. 1990).

¹¹¹ *McCormack*, 845 F.2d at 1345; *Banks*, 746 F. Supp. at 861 (arguing that a "players' profit-making objectives soon would overshadow educational objectives, blur[ring] the line between college and professional football").

¹¹² *Banks*, 746 F. Supp. at 860–61.

¹¹³ See Bloom v. NCAA, 93 P.3d 621, 626 (Colo. App. 2004) (finding that the NCAA's by-laws "express[ed] a clear and unambiguous intent to prohibit student-athletes from engaging in endorsements").

¹¹⁴ Crabb, *supra* note 36, at 196; *O'Bannon v. NCAA*, 802 F.3d 1049, 1053 (9th Cir. 2015).

¹¹⁵ Crabb, *supra* note 36, at 195. The athletes' argument centered around the NCAA's Form 08-3a, which all players were required to sign and authorized the use of their NIL. *Id.*

The Ninth Circuit followed the lower court's ruling and dismissed the NCAA's amateurism and consumer demand arguments for preventing student-athletes from receiving compensation for NIL.¹¹⁶ However, the Ninth Circuit found that compensation to student-athletes "untethered to educational expenses" would be a "quantum leap" that would fundamentally change college sports to "minor league status."¹¹⁷ The court vacated cash payments as a less restrictive alternative to the NCAA's current rules and agreed with *Board of Regents* that the NCAA must be afforded "ample latitude" to oversee college sports.¹¹⁸ While the *O'Bannon* decision reaffirmed that the NCAA plays a critical role in preventing college sports from becoming professional leagues, for the first time, it was determined that the NCAA violated a student-athlete's ability to make money off their NIL. The NCAA's main defense would no longer receive deferential treatment in antitrust lawsuits.¹¹⁹

2. The Supreme Court Weighs In

As the Ninth Circuit delivered its opinion in *O'Bannon*, a hoard of additional lawsuits was filed against the NCAA for restrictions on "non-cash education-related benefits."¹²⁰ The many lawsuits filed by Division I athletes were combined into one, led by Shawne Alston and Justine Hartman.¹²¹ In 2020, the Ninth Circuit held again that the NCAA violated the Sherman Act and expanded academic benefits that a university can provide its athletes to tangible items related to academic studies, post-eligibility scholarships, vocational training and internships, tutoring, and study abroad expenses.¹²² Limits on cash compensation unrelated to education, however, were not anticompetitive.¹²³ While the court still found that the NCAA did

¹¹⁶ *O'Bannon*, 802 F.3d at 1053.

¹¹⁷ *Id.* at 1078–79.

¹¹⁸ *Id.* at 1062; see Zaccagnini, *supra* note 14, at 65–66; see also *NCAA v. Bd. of Regents*, 468 U.S. 85, 117 (1984).

¹¹⁹ See Zaccagnini, *supra* note 14, at 67.

¹²⁰ *Id.*

¹²¹ See Williams, *supra* note 9. Specifically, plaintiffs played Division I football and men's and women's basketball. *Id.*

¹²² *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1088 (N.D. Cal. 2019); see also *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1265–66 (9th Cir. 2020).

¹²³ *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*, 958 F.3d at 1264.

serve a role in protecting amateurism and competition, the organization was down to its final out.¹²⁴

On June 21, 2021, in a unanimous decision, the Supreme Court affirmed the lower courts' ruling, barring the NCAA from limiting specific education-related benefits that schools can give to student-athletes.¹²⁵ As the NCAA centered its argument around two central themes, amateurism and competition, the Court used the traditional "rule of reason" test to determine whether the challenged restraints actually affected competition and found that the NCAA violated federal antitrust laws.¹²⁶ Following a three-part burden shifting analysis, the Court found that the NCAA "could achieve the procompetitive benefits it had established with substantially less restrictive restraints on education-related benefits."¹²⁷ Delivering the opinion of the Court, Justice Neil Gorsuch outright rejected the *Board of Regents* "dicta" that argued the NCAA had a role in maintaining the tradition of amateurism and thus, was in line with the goals of the Sherman Act.¹²⁸ Justice Gorsuch made it clear that there has never been a consistent or coherent definition of amateurism maintained by the NCAA.¹²⁹ In a concurring opinion, Justice Brett Kavanaugh backed the rule of reason scrutiny and was unsure how, under such a standard, the NCAA could defend itself in future challenges.¹³⁰ Justice Kavanaugh also described the flurry of issues that would ensue if further lawsuits were filed against the remaining NCAA compensation rules, including equitable compensation, Title IX, salary caps, collective bargaining, and the effects on non-revenue-raising sports.¹³¹

Although the Court's ruling was a victory for student-athletes, the decision was significantly limited.¹³² Specifically, the injunction only caps education-related benefits made available by conferences or schools.¹³³ The decision in no way prevents the NCAA from prohibiting compensation from outlets and companies unrelated to education or enforcing a "no

¹²⁴ *Id.* at 1244, 1263.

¹²⁵ *NCAA v. Alston*, 141 S. Ct. 2141, 2166 (2021).

¹²⁶ *Id.* at 2155, 2157.

¹²⁷ *Id.* at 2160, 2162.

¹²⁸ *Id.* at 2167.

¹²⁹ *Id.* at 2152.

¹³⁰ *Id.* at 2167 (Kavanaugh, J., concurring).

¹³¹ *Id.* at 2168 (Kavanaugh, J., concurring).

¹³² *Id.* at 2166 (majority opinion).

¹³³ *Id.* at 2165.

Lamborghini” rule.¹³⁴ In fact, the Court stated that limiting compensation unrelated to education could play a significant role in preserving consumer demand and fostering competition.¹³⁵

While the decision dismantled the NCAA’s cornerstone argument of amateurism, that was only because the Court could not trace a consistent definition for the principle.¹³⁶ The Court did not undermine the importance of the amateurism debate; it simply preferred that Congress, state legislatures, and the NCAA act instead.¹³⁷ Even so, the Supreme Court’s decision in *Alston* made it clear that, from an antitrust perspective, student-athletes deserve more than they are getting when it comes to educational benefits, and the NCAA’s arguments hold little weight.¹³⁸

B. State NIL Laws

State legislatures had no interest in waiting on the NCAA, Congress, or Supreme Court to enact their own forms of NIL laws.¹³⁹ As of early 2022, some twenty-nine states have passed some form of legislation supporting student-athletes’ ability to make money off of their NIL.¹⁴⁰ A few other states, including Massachusetts, New York, and Rhode Island, are not far behind from enacting similar legislation.¹⁴¹ The first state to weigh-in was California, who enacted the Fair Pay to Play Act in 2019.¹⁴² This law prohibits California colleges from denying athletes the ability to seek compensation using their NIL rights and allows college athletes to hire their own agents for endorsement purposes.¹⁴³

¹³⁴ *Id.* at 2164–65.

¹³⁵ *Id.* at 2159.

¹³⁶ *Id.* at 2152.

¹³⁷ *See id.* at 2166.

¹³⁸ *See id.* at 2167 (Kavanaugh, J., concurring).

¹³⁹ *See* Dan Murphy, *Everything You Need to Know About the NCAA’s NIL Debate*, ESPN (July 14, 2021) [hereinafter Murphy, *NIL Debate*], https://www.espn.com/college-sports/story/_/id/31086019/everything-need-know-ncaa-nil-debate#Where [https://perma.cc/PRT3-GHS9].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² CAL. EDUC. CODE ANN. § 67456 (West 2021); Benjamin Tulis, *California Fair Pay to Play Act to Become Effective September 1, 2021*, JD SUPRA (Sept. 1, 2021), <https://www.jdsupra.com/legalnews/california-fair-pay-to-play-act-to-1720393/> [https://perma.cc/L9EF-45F7].

¹⁴³ Michael McCann, *What’s Next After California Signs Game Changer Fair Pay to Play Act into Law?*, SPORTS ILLUSTRATED (Sept. 30, 2019),

California's NIL law encouraged other states to introduce their own versions.¹⁴⁴ For example, New Jersey followed suit by introducing legislation in 2019 that would allow student-athletes to make money off their NIL and use professional representation for negotiations.¹⁴⁵ However, the New Jersey bill does not allow student-athletes to be compensated for endorsements in any way connected to "adult entertainment, alcohol, gambling, tobacco and electronic smoking, pharmaceuticals, controlled dangerous substances or firearms."¹⁴⁶ These sorts of limits on NIL endorsements are critical to protecting athletes and the institutions they play for.¹⁴⁷

C. *The NCAA's Temporary Rule Change*

Not soon after the Fair Pay to Play Act was introduced, the NCAA jumped right into action to try and get ahead of the impending NIL state law firestorm.¹⁴⁸ On October 29, 2019, the NCAA's board of governors unanimously agreed to propose new rules by 2021 that would allow athletes to make money off of their NIL "while maintaining 'the collegiate model.'"¹⁴⁹ Acting off of this decision, the NCAA installed a working group to come up with ways to modernize its NIL rules.¹⁵⁰ The working group's report, released on April 29, 2020, recommended that the NCAA's current NIL rules should be modernized, but left room for the NCAA to restrict and regulate future endorsement deals.¹⁵¹ While the working group's report was a step forward for relaxing the rules on student-athletes compensation, in practice it did little to change the status quo, as the NCAA turned to

<https://www.si.com/college/2019/09/30/fair-pay-to-play-act-law-ncaa-california-pac-12> [<https://perma.cc/JZ4M-WVAA>].

¹⁴⁴ Zaccagnini, *supra* note 14, at 68–69.

¹⁴⁵ Gregg Clifton, *New Jersey Joins the Growing Number of States Seeking to Create Name, Image and Likeness Rights for Student Athletes in Direct Defiance of Current NCAA Bylaws*, JD SUPRA (Oct. 28, 2019), <https://www.jdsupra.com/legalnews/new-jersey-joins-the-growing-number-of-34464/> [<https://perma.cc/Z9CC-PFJC>].

¹⁴⁶ *Id.* The New Jersey bill goes into effect in 2025. Murphy, *NIL Debate*, *supra* note 139.

¹⁴⁷ Murphy, *NIL Debate*, *supra* note 139.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Board of Governors Move Toward Allowing Student-Athlete Compensation for Endorsements and Promotions*, NCAA (Apr. 29, 2020), <https://www.ncaa.com/news/ncaa/article/2020-04-29/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and> [<https://perma.cc/LY9C-9RMC>].

¹⁵¹ *Id.*

Congress for answers.¹⁵² With nothing more than lip service and a few bill introductions from Capitol Hill, the NCAA sat idly by as state after state passed their own forms of NIL legislation.¹⁵³

That is, until the Supreme Court came down with its ruling in *Alston*.¹⁵⁴ Within ten days of the *Alston* decision, the NCAA's Board of Directors adopted a temporary rule change allowing for NIL activity and instructing schools to set their own guidelines.¹⁵⁵ Introducing the interim policy, NCAA President, Mark Emmert announced:

With the variety of state laws adopted across the country, we will continue work with Congress to develop a solution that will provide clarity at the national level. The current environment – both legal and legislative – prevents us from providing a more permanent solution and the level of detail student-athletes deserve.¹⁵⁶

After the rule change went into effect on July 1, 2021, the floodgates opened and student-athletes rushed through to gather up as many endorsements as they could find.¹⁵⁷ The first to scoop up hefty endorsements were Division I basketball and football stars.¹⁵⁸ Other companies have offered endorsement packages for entire teams.¹⁵⁹ Even with the shine on football and basketball, the athletes that are benefiting most from the NIL rule change are social media influencers.¹⁶⁰ It is estimated that the top

¹⁵² Dan Murphy, *NCAA Group Supports Player Endorsement Plan*, ESPN (Apr. 29, 2020), https://www.espn.com/college-sports/story/_/id/29112263/ncaa-group-oks-conditional-player-endorsements [<https://perma.cc/4M7Q-9X6S>].

¹⁵³ Murphy, *NIL Debate*, *supra* note 139.

¹⁵⁴ *Id.*

¹⁵⁵ Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image, and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-adopts-interim-name-image-and-likeness-policy> [<https://perma.cc/4XMP-BUAT>].

¹⁵⁶ *Id.*

¹⁵⁷ Khristopher J. Brooks, *Endorsement Deals Come Thick and Fast for College Athletes, as NCAA Floodgates Open*, CBS NEWS (July 29, 2021), <https://www.cbsnews.com/news/college-athletes-endorsements-sponsorship-ncaa-nil/> [<https://perma.cc/8GEX-FHWU>]. Many of state NIL laws also went into effect on July 1, 2021. Murphy, *NIL Debate*, *supra* note 139.

¹⁵⁸ Brooks, *supra* note 157. University of Alabama phenom quarterback, Bryce Young, is rumored to be in conversations with companies for endorsement deals close to one million dollars. *Id.* Hercy Miller, a Tennessee State University basketball player, signed a \$2 million deal with a tech company Web Apps America. *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *NCAA NIL Tracker: Which College Athletes Signed Endorsement Deals on Day 1?*, FOX SPORTS (July 1, 2021), <https://www.foxsports.com/stories/college->

student-athletes could earn more than \$6.5 million annually in endorsements.¹⁶¹ While many of the nation's star athletes and social media influencers did not have to go far to find opportunities, even those that may not be as popular brokered licensing partnerships with local small businesses without the need for representation.¹⁶² By estimates, eighty-one percent of NIL contracts signed so far are for less than \$100.¹⁶³

With no uniform federal NIL law and the Supreme Court only weighing in on education-related benefits, student-athletes are unrestrained in their search for endorsements.¹⁶⁴ Running parallel to this open, unregulated market is the growing influence of sports betting, now legal in a majority of states.¹⁶⁵ As bets can now be placed beyond the boundaries of a casino with only the tap of a phone, the limits on what outside endorsement sources college athletes may seek will no doubt be tested.¹⁶⁶ On July 1, 2021, the day the NCAA's temporary NIL rule change went into effect, Barstool Sports began endorsing college athletes to amplify their own brands.¹⁶⁷ Since then, Barstool has signed 150,000 students to Barstool Athletics, roughly "thirty percent of all college athletes," and launched its own "NIL marketplace" for its endorsees.¹⁶⁸ Moreover, half of the ownership group of

football/ncaa-name-image-likeness-nil-tracker-college-athletes-signed-endorsement-deals-day-1-antwan-owens-bo-nix-deriq-king [https://perma.cc/WDY2-5XRG]. Olivia Dunne, a Louisiana State University gymnast, has more than one million Instagram followers and is expected to earn the most compensation in college sports. *Id.*

¹⁶¹ Sara Germano, *Payday for US College Athletes Rattles \$14bn Industry*, FIN. TIMES (Oct. 3, 2021), <https://www.ft.com/content/447c3300-2fd2-4d70-829a-18b3715be498> [https://perma.cc/3AKR-HYEG]. One 2023 five-star football recruit has agreed to an NIL deal "that could pay him more than \$8 million by the end of his junior year of college." Stewart Mandel, *Five-Star Recruit in Class of 2023 Signs Agreement with Collective That Could Pay Him More than \$8 Million*, ATHLETIC (Mar. 11, 2022), <https://theathletic.com/3178558/2022/03/11/five-star-recruit-in-class-of-2023-signs-agreement-with-collective-that-could-pay-him-more-than-8-million/> [https://perma.cc/7BHH-B9E4].

¹⁶² Germano, *supra* note 161.

¹⁶³ *Id.*

¹⁶⁴ *See id.*; *see also* Brooks, *supra* note 157.

¹⁶⁵ Baker, *supra* note 96.

¹⁶⁶ *Id.*

¹⁶⁷ Brendan Menapace, *Barstool Sports Has Signed Thousands of College Athletes to NIL Partnerships, But No One (Not Even Barstool) Seems to Know the Plan*, PROMO MKTG. MAG. (Aug. 20, 2021), <https://magazine.promo-marketing.com/article/barstool-is-trading-branded-merchandise-for-nil-rights-is-it-worth-it-for-athletes/> [https://perma.cc/P5LP-88LJ].

¹⁶⁸ Amanda Christovich, *Barstool's NIL Marketplace Could be the Biggest in College Sports*, FRONT OFF. SPORTS (Sept. 15, 2022), <https://frontofficesports.com/barstools-nil-marketplace/> [https://perma.cc/N5YH-Q6 9C].

Fanatics Betting & Gaming is Roc Nation, which has its own subsidiary sports agency, Roc Nation Sports.¹⁶⁹ As other sports betting and entertainment companies get in the mix with college athletes, the lines between higher education, sports, and money only become blurrier.¹⁷⁰

D. The Effects of Legal Sports Betting and NIL Laws on Amateurism and Competition

While state NIL laws have received positive returns, detractors point to the detrimental effects the laws will have on competition and amateurism.¹⁷¹ In the wake of California's Fair Pay to Play Act, Pacific-12 Conference Commissioner, Larry Scott, argued that NIL state laws would "effectively create a free-for-all in which large payments to a relative handful of star athletes from boosters and others could be thinly disguised as payment for the use of their name, image and likeness."¹⁷² For instance, it would be very difficult for the NCAA to police "wealthy alumni from paying [a student] directly . . . [for] an autographed jersey" through "the guise of an 'endorsement.'"¹⁷³ This brings into question issues of access for high-profile student-athletes in major sports as compared to those who may not have such exposure.¹⁷⁴ These issues are harmful to both the integrity of college sports and fostering competition.¹⁷⁵ In fact, with no true rules or enforcement power to monitor transactions between outside companies, boosters, and players, individual universities are left to fend for themselves.¹⁷⁶

Furthermore, schools within states that have open NIL laws have a competitive advantage compared to those states with more restrictive laws or no laws at all.¹⁷⁷ This directly impacts the ability of teams to recruit high school players.¹⁷⁸ A recruit from Madison, Wisconsin may not be as interested to play for the

¹⁶⁹ Bhasin, *supra* note 100.

¹⁷⁰ Menapace, *supra* note 167.

¹⁷¹ Zaccagnini, *supra* note 14, at 70.

¹⁷² *Id.* at 83.

¹⁷³ *Id.* at 84.

¹⁷⁴ Germano, *supra* note 161.

¹⁷⁵ Zaccagnini, *supra* note 14, at 70.

¹⁷⁶ Farnum, *supra* note 59, at 513–14.

¹⁷⁷ Lee Green, *Impact of California's 'Fair Pay to Play Act' on High School Athletes*, NFHS (Nov. 13, 2019), <https://www.nfhs.org/articles/impact-of-california-s-fair-pay-to-play-act-on-high-school-athletes/> [https://perma.cc/7JK3-LECG].

¹⁷⁸ *Id.*

local University of Wisconsin, when the University of Michigan can offer a better opportunity to make money off of their NIL.¹⁷⁹ Moreover, star high school athletes will begin to be pursued at younger ages by representatives and others who offer to take care of them and their money.¹⁸⁰ These so-called “handlers” have wreaked havoc for decades in the college sports universe, leading to bribery and corruption prosecutions across the nation.¹⁸¹

The impact of unlimited NIL laws also greatly impacts the interests of players looking to transfer from other teams.¹⁸² In 2018, the NCAA installed the “Transfer Portal” to allow student-athletes to transfer between schools via an online database.¹⁸³ The portal not only creates a more efficient and transparent transfer process, but also gives more power to the college athletes themselves.¹⁸⁴ This includes new rules that allow players to transfer immediately without having to sit out a season.¹⁸⁵ With laxer “Transfer Portal” regulations and the rise of COVID-19, players transferring to other teams has grown significantly over the past few years.¹⁸⁶ In turn, certain conferences and schools in states with more relaxed NIL rules are now able to attract more valuable players to their teams, directly influencing consumer demand and competition.¹⁸⁷ Specifically, coaches have been vocal about the issues surrounding athlete transfers and NIL endorsement possibilities, describing how heavy tampering from wealthy alumni and boosters influence where players go.¹⁸⁸

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Ross Dellenger, *As Broad NCAA Change Awaits, College Football is Facing a Recruiting Reckoning*, SPORTS ILLUSTRATED (Feb. 2, 2021), <https://www.si.com/college/2021/02/02/college-football-recruiting-transfer-portal-covid> [<https://perma.cc/U8V7-HJQ2>].

¹⁸³ *NCAA Transfer Portal: Everything You Need to Know*, RECRUITING REELS (July 20, 2021), <https://recruitreels.com/ncaa-transfer-portal-everything-you-need-to-know/> [<https://perma.cc/REF7-QMMK>].

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Caroline Rice, *College Football Transfer Market Exploding After Opening of NCAA's Transfer Portal*, OZONE (May 31, 2020), <http://theozone.net/2020/05/college-football-transfer-market-exploding-opening-ncaas-transfer-portal/> [<https://perma.cc/D3MZ-SX35>]. In 2019, 1,105 Division I football players entered the Transfer Portal. *Id.* In just the first three months of 2020, 968 players are intent on transferring. *Id.*

¹⁸⁷ Germano, *supra* note 161.

¹⁸⁸ Scott Polacek, *Texas A&M HC Jimbo Fisher Says NIL Deals Happened in Past: 'They Just Weren't Legal'*, BLEACHER REP. (Dec. 15, 2021), <https://bleacherreport.com/articles/10020979-texas-am-hc-jimbo-fisher-says-nil-deals-happened-in-past-they-just-werent-legal> [<https://perma.cc/TS6T-P6UM>]; Erin

The new avenues to generate money also do little to quell the amateurism issues that student-athletes face on a day-to-day basis.¹⁸⁹ For those student-athletes that are fortunate to gain mega-endorsements, money-making temptation adds only another time-consuming and stressful aspect to their life.¹⁹⁰ Their schedules are already busy enough, and student-athletes can barely fit in time to study.¹⁹¹ Endorsement deals serve as another distraction and add to the pressure to perform at a young age.¹⁹² It could significantly weigh on a student-athlete's psyche if their on-field performance slumps or they suffer a serious injury.¹⁹³

High school recruits also run the risk of serious exploitation by companies, through enticing students with big money contracts in exchange for exclusive rights deals, unrestrained repayment options, commission expenses, and other adhesive provisions.¹⁹⁴ Such one-sided contract negotiating has already become commonplace for high school athletes who have minimal bargaining power and are unable to properly estimate their true value.¹⁹⁵ Of course, the athlete could hire professional financial advisors or attorneys to manage accounting and handle contract negotiations.¹⁹⁶ However, many premiere high school athletes and their families cannot afford such options, and even when they can, they fail to utilize them and accept offers regardless of the terms.¹⁹⁷ The pressure and influence of high school handlers leaves future student athletes further unguarded against

Walsh, *Clemson's Dabo Swinney Says He's Against 'Professionalization of College Athletics'*, BLEACHER REP. (Jan. 28, 2022), <https://bleacherreport.com/articles/10025251-clemsons-dabo-swinney-says-hes-against-professionalization-of-college-athletics> [<https://perma.cc/KR6J-VKFW>].

¹⁸⁹ Sheldon H. Jacobson, *New Endorsement Laws Could Create Pitfalls for College Athletes*, CHI. SUN TIMES (Aug. 2, 2021), <https://chicago.suntimes.com/2021/8/2/22605919/student-athletes-paid-name-image-likeness> [<https://perma.cc/66A8-H8AW>].

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Green, *supra* note 177.

¹⁹³ Jacobson, *supra* note 189.

¹⁹⁴ Mandel, *supra* note 161.

¹⁹⁵ *Id.*

¹⁹⁶ Jacobson, *supra* note 189; Green, *supra* note 177.

¹⁹⁷ Mandel, *supra* note 161. For example, a class of 2023 five-star football recruit is expected to sign a NIL deal that could be worth more than \$8 million. *Id.* Star high school athletes that receive multi-million dollar offers are unlikely to meticulously search through the contract terms, if the deal is even in writing. *Id.* Instead, the players focus on the sticker price and what that money can do for them and their families. *Id.*

exploitation by money managers and agents.¹⁹⁸ As of September 2022, sixteen states permit high school students to sign NIL deals, and minors are already signing multi-million dollar contracts.¹⁹⁹

Poor oversight and lack of clarity at the state-level regarding NIL deals has led to serious ramifications for high school athletes. One unfortunate example comes from a 17-year-old football player, named T.A. Cunningham.²⁰⁰ Originally from Atlanta, Georgia, Cunningham is a five-star prospect, the highest recruiting designation, and the number nineteen overall player in the 2027 class.²⁰¹ By way of his father, Cunningham signed a representation agreement with Levels Sports Group (“Levels”) to find a him lucrative NIL deals, with promises to get big boosters.²⁰² The intention was for Cunningham to play for Los Alamitos High in California, and during that time, Levels would provide housing, transportation, and meals to Cunningham and his brother while the group searched for NIL deals.²⁰³

Not long after moving in with Level’s co-founder Chris Flores, Flores was charged with multiple counts of sexual assault of a minor.²⁰⁴ Following his arrest, Cunningham’s agreement with Levels was rescinded and as a result, he and his brother were left homeless, without income, and on the opposite side of the country from their parents.²⁰⁵ Additionally, although Cunningham continues to attend classes and practice at Los Alamitos high, he is ineligible to play football because he needs “a full family change of residence” to comply with the California Interscholastic Federation’s (“CIF”) rules.²⁰⁶ The CIF denied Cunningham’s hardship waiver because he did not meet its definition of “homeless student” and instead, opened an “undue

¹⁹⁸ Green, *supra* note 177.

¹⁹⁹ Andy Staples, Bruce Feldman & Stewart Mandel, *How a Five-Star Prospect from Georgia Ended Up Homeless, Ineligible and 2,000 Miles Away*, ATHLETIC (Sept. 19, 2022), <https://theathletic.com/3605831/2022/09/19/t-a-cunningham-eligibility-recruiting-nil/> [<https://perma.cc/4CCT-3BLS>].

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Tim Daniels, *Top CA Football Prospect T.A. Cunningham Seeks Injunction to Overturn Ineligibility*, BLEACHER REP. (Sept. 15, 2022), <https://bleacherreport.com/articles/10049053-top-ca-football-prospect-ta-cunningham-seeks-injunction-to-overturn-ineligibility> [<https://perma.cc/6UJY-4SR8>]; Staples et al., *supra* note 199.

influence investigation related to his connection” with Levels.²⁰⁷ After Cunningham’s injunction for immediate eligibility was denied, the CIF reconsider his waiver, and ruled him eligible to begin playing football.²⁰⁸

While Cunningham can resume playing the game he loves, the damage is already done.²⁰⁹ Beyond the trauma of such an experience, Cunningham is left with no NIL deals, a stack of lawyer bills, and a completely unfair stain on his reputation.²¹⁰ In fact, Power 5 college coaches are already “re-examin[ing] their interest” of the five-star recruit.²¹¹ One coach, sympathized for Cunningham, but grimly warned that this is far from the end of high school athlete exploitation: “The sad part about this is you’re gonna keep hearing more and more of these kinds of stories.”²¹²

With the growing immediacy of sports gambling across the country, college athletics are seriously prone to the corruption and scandal that have haunted the college sports world since the beginnings of the NCAA.²¹³ Since 1994, seven out of the last nine major sports gambling scandals have involved college athletics.²¹⁴ Even before sports gambling was legal in a majority of states, a 2016 NCAA report found that fifty-five percent of male student-athletes reported gambling for money; twenty-four percent violated NCAA by-laws by betting sports.²¹⁵ Alarming, the study also showed that thirteen percent of male athletes wagered on in-game or “prop” bets, such as “whether the next football play will be a run or pass” or if a “basketball player will hit the next

²⁰⁷ Daniels, *supra* note 206.

²⁰⁸ Kyle Bonagura, *Top College Football Prospect T.A. Cunningham Ruled Eligible to Play for California High School After Weekslong Transfer Drama*, ESPN (Sept. 26, 2022), https://www.espn.com/college-football/story/_id/34671021/top-college-football-prospect-ta-cunningham-ruled-eligible-play-california-high-school-weeks-long-transfer-drama [https://perma.cc/TQ79-G3NR].

²⁰⁹ See Staples et al., *supra* note 199.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ Farnum, *supra* note 59, at 495–96.

²¹⁴ Mike Fish & David Purdum, *Sports Leagues Stand Pat as Legal Gambling Spreads*, ESPN (Sept. 26, 2018), <http://www.espn.com/espn/print?id=24783436> [https://perma.cc/3DLR-HMN5].

²¹⁵ THOMAS PASKUS, NCAA, TRENDS IN NCAA STUDENT-ATHLETE GAMBLING BEHAVIORS AND ATTITUDES 1 (2017), https://ncaaorg.s3.amazonaws.com/research/wagering/2017RES_wageringexecutivesummary.pdf [https://perma.cc/8UJ4-2X7L].

free throw.”²¹⁶ In response to the growth of sports gambling and its potential effect on college athletes, former Congressman and NBA player Tom McMillen said, “I’ll give you something that I’ll put 100 percent odds on If gambling on colleges is in 20 or 30 states there is probably a 100 percent chance of a point-shaving scandal at some school.”²¹⁷ Helping to exacerbate the situation is that the NCAA’s anti-gambling rules remain staunchly unequipped to handle the modern trends involving the “normalization of sports gambling.”²¹⁸ No longer are the days where organized crime bosses contrive complex point-shaving plans with players.²¹⁹ It does not even have to go as far as a player purposely throwing a game to cover the spread.²²⁰ The transaction can be as simple as giving a college roommate or an alumni on social media inside information on the injury report before the game.²²¹

Notably, student-athletes are more susceptible to sports betting compared to their peers.²²² Beyond cheating scandals, athlete betting brings many other negative consequences, including the generally addictive qualities of gambling.²²³ Moreover, temptations from the college community and social media adds significant pressure to already overworked athletes and detrimentally impacts their performance, well-being, and mental health.²²⁴ Beyond the athletes themselves, the

²¹⁶ *Id.*; David Porter & Regina Garcia-Cano, *Easier Gambling Has Sports Worried About Fighting the Fix*, AP NEWS (Sept. 17, 2018), <https://apnews.com/article/nv-state-wire-north-america-ap-top-news-college-football-basketball-42b09c7fd1764bf196b13d5c44b2a188> [<https://perma.cc/5M7P-KMVJ>].

²¹⁷ Steve Berkowitz & Erik Brady, *Legalized Sports Betting Will Wreak Havoc on College Athletics. Or Not.*, USA TODAY (May 31, 2018, 4:28 PM), <https://www.usatoday.com/story/sports/college/2018/05/31/sports-betting-college-athletics-world-concerned-supreme-court-ruling/645367002/> [<https://perma.cc/42CD-3LUQ>].

²¹⁸ Farnum, *supra* note 59, at 513–14.

²¹⁹ *Id.*

²²⁰ Farnum, *supra* note 59, at 514.

²²¹ *Id.*; Robb, *supra* note 65, at 352, 372. According to a 2012 study, “[n]early 1 in 20 Division I men’s basketball student-athletes” have been contacted by outside gamblers via social media seeking inside betting information. Jeffrey L. Derevensky & Tom Paskus, *Mind, Body and Sport: Gambling Among Student-Athletes*, NCAA, <https://www.ncaa.org/sport-science-institute/mind-body-and-sport-gambling-among-student-athletes> [<https://perma.cc/4WEX-HD8C>] (last visited Aug. 1, 2022).

²²² Derevensky & Paskus, *supra* note 221.

²²³ *Id.*

²²⁴ *A Whole New Ball Game*, LEAD1 ASS’N, <https://lead1association.com/a-whole-new-ballgame-implications-of-legalized-sports-betting-for-college-athletics/> [<https://perma.cc/E3PE-AW9A>] (last visited Aug. 1, 2022).

ramifications of non-compliance with a particular state's NIL and sports betting laws are already being felt by individual schools.²²⁵ Making sure that potential betting activities are properly monitored adds extra costs to already tight athletic department budgets.²²⁶ Furthermore, two Division I football teams are already being investigated for high-profile NIL deals that may qualify as prohibited "pay-for-play" schemes.²²⁷

Concerningly, not all the NIL state laws prevent players from seeking and accepting endorsements of sports gambling and entertainment companies.²²⁸ Although individual states, like New Jersey, have made it a point to include such language in their NIL laws, the lack of a central enforcement agency and unified rules for NIL deals makes policing even the smallest transaction quite difficult.²²⁹ Without concrete guidelines in place on what is and is not allowed from benefits unrelated to education, student-athletes, especially those not receiving lucrative endorsement deals, are highly susceptible to gambling scandals.²³⁰

III. POTENTIAL SOLUTIONS

A. Congress: *The Federal Fix*

As patch-work state legislation fails to adequately limit NIL endorsements, Congress must enact federal legislation to preserve college sports and protect student-athletes from the growing shadow of sports betting.²³¹ The NCAA has called on Congress to come up with its own uniform set of guardrails for non-education-related benefits.²³² Similarly, Justice Gorsuch was quick to push the ball back into Capitol Hill's court.²³³ The problem is, as it always tends to be in the nation's capital,

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Daniel Libit & Eben Novy-Williams, *NCAA Probes BYU, Miami NIL Deals for Potential Pay-for-Play Violation*, SPORTICO (Dec. 10, 2021), <https://www.sportico.com/leagues/college-sports/2021/ncaa-byu-miami-nil-probe-1234650215/> [<https://perma.cc/4DJB-QKWA>].

²²⁸ *NIL State Laws*, NIL NETWORK (Aug. 27, 2022), <https://www.nilnetwork.com/2021/06/nil-laws-by-state/> [<https://perma.cc/CH63-UCBS>].

²²⁹ *Id.*

²³⁰ Farnum, *supra* note 59, at 515–16.

²³¹ Wilson, *supra* note 82, at 159–60.

²³² Murphy, *NIL Debate*, *supra* note 139.

²³³ *NCAA v. Alston*, 141 S. Ct. 2141, 2166 (2021).

neither house is anywhere near a consensus.²³⁴ Some members have introduced legislation that would limit endorsement opportunities and create exemptions under the Sherman Act, protecting the NCAA from future lawsuits.²³⁵ Other members seek to overhaul NCAA rules and college sports governance itself.²³⁶ Another group wants to completely open the market for college athlete endorsement deals, unrestrained by any NCAA rules.²³⁷

Congress should follow New Jersey's sports gambling and NIL laws by including language that prevents bettors from wagering on in-state state university teams and prohibits covered athletes from entering into endorsements in any way connected to casinos or sports gambling.²³⁸ Using the New Jersey model would not only reflect public opinion by preserving the integrity of college sports, but also protect athletes from being put in compromising positions where they are more susceptible to corruption and scandal.²³⁹ Representative Anthony Gonzalez's bill, H.R. 2841, the Student Athlete Level Playing Field Act, includes similar explicit language, preventing players from entering into contracts with companies that sell or promote tobacco products, alcohol, marijuana, adult entertainment, and any gambling activities.²⁴⁰ Even if a company like Barstool Sports separated student-athletes from being directly endorsed by the gambling side of the company, the fact that their primary business model is centered around sports betting would likely force athletes to end their sponsorship with the brand.²⁴¹

Another measure federal legislation should include is establishing a select congressional oversight committee.²⁴² The

²³⁴ Murphy, *NIL Debate*, *supra* note 139.

²³⁵ Dan Murphy, *Federal Bill Pushes for Unrestricted NIL Endorsements for NCAA Athletes*, ESPN (Feb. 4, 2021), https://www.espn.com/college-sports/story/_id/30833820/federal-bill-pushes-unrestricted-nil-endorsements-ncaa-athletes [<https://perma.cc/L4Z4-WLZG>]; Fairness in Collegiate Athletics Act, S. 4004, 116th Cong. (2020).

²³⁶ College Athlete Economic Freedom Act, S. 238, 117th Cong. (2021).

²³⁷ College Athletes Bill of Rights, S. 5062, 116th Cong. (2020).

²³⁸ Wilson, *supra* note 82, at 138–39; Clifton, *supra* note 145.

²³⁹ Wilson, *supra* note 82, at 138–39; Clifton, *supra* note 145.

²⁴⁰ Student Athlete Level Playing Field Act, H.R. 2841, 117th Cong. (2021). Rep. Gonzalez, the bill's sponsor, played college football at Ohio State University before becoming a first-round draft pick for the Indianapolis Colts. Biography of *Anthony Gonzalez*, U.S. HOUSE OF REPRESENTATIVES, <https://anthonygonzalez.house.gov/about/> [<https://perma.cc/2A6N-8DWF>] (last visited Oct. 22, 2021).

²⁴¹ H.R. 2841.

²⁴² *Id.*

select committee would work with individual schools to implement the new federal NIL rules.²⁴³ The committee would also conduct an “independent dispute resolution process” mediating endorsement issues between athletes and universities.²⁴⁴ Furthermore, a permanent executive branch commission or task force should be introduced to give the law the teeth it needs.²⁴⁵ This is something that state NIL bills and the Fair Pay to Play Act have failed to do, causing Congress and the NCAA a slew of implementation troubles.²⁴⁶ H.R. 2841 proposes that enforcement power should go to the Federal Trade Commission (“FTC”), which could not only enforce endorsement policies, but also “adjudicate unfair competition disputes, and work in connection with law enforcement agencies to promote fair competition and the protection of consumers.”²⁴⁷ Providing an independent agency like the FTC with broad power to oversee such a dynamic landscape that is so susceptible to corruption would provide a desperately needed centralized enforcement mechanism.²⁴⁸

B. NCAA Action

As explained by Justice Gorsuch in *Alston*, there is nothing stopping the NCAA from enacting its own rules to revise and reform their compensation guidelines and enact limits on benefits unrelated to education.²⁴⁹

First, the NCAA must revise and modernize its by-laws, specifically those involving amateurism.²⁵⁰ The NCAA failed to produce a coherent definition of amateurism throughout its history.²⁵¹ Instead of rowing against the tide, the NCAA should loosen its definition of amateurism to reflect the Supreme Court’s decision in *Alston* and the changing opinion on student-athlete compensation.²⁵²

The NCAA could adopt a model similar to that used by the Olympics, which allows competitors to make money off of their

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*; Zaccagnini, *supra* note 14, at 85–87.

²⁴⁶ Zaccagnini, *supra* note 14, at 85.

²⁴⁷ *Id.* at 86.

²⁴⁸ *Id.* at 86–87.

²⁴⁹ *NCAA v. Alston*, 141 S. Ct. 2141, 2164 (2021).

²⁵⁰ Wilson, *supra* note 82, at 162–63.

²⁵¹ *Alston*, 141 S. Ct. at 2152.

²⁵² Wilson, *supra* note 82, at 162–63.

NIL rights, while maintaining their amateur status.²⁵³ The Olympics also monitors endorsements and player representation through various vetting processes.²⁵⁴ The NCAA should pair language from the Olympic model, allowing student-athletes to make money off of their NIL, with caps on non-education-related benefits and a “no Lamborghini” rule.²⁵⁵ To oversee the enforcement of the NCAA’s new standards, the COI should institute a subcommittee to monitor endorsement deals, handle disputes between players and schools, and distribute penalties when necessary.²⁵⁶

Furthermore, the NCAA should update its gambling guidelines and prohibit student-athletes from entering into any endorsements with casinos, sports betting companies, or entities associated with sports betting.²⁵⁷ This would follow similar language to the New Jersey NIL legislation.²⁵⁸ Creating zero tolerance for any sort of gambling-associated activities or sponsorships, enhancing penalties for violations, and increasing education about the harms of sports betting will send a clear message regarding where the NCAA stands.²⁵⁹ Additionally, the NCAA should consider a mandatory injury-reporting policy for its schools.²⁶⁰ Increased transparency will derail inside information from being leaked to gamblers, thus protecting student-athletes from facing penalties for reporting such information and “preserving the integrity of the game.”²⁶¹

Finally, the NCAA should consider other ways to help financially-ailing students to earn compensation and build financial literacy.²⁶² One idea is to build a trust that will be paid out to student-athletes upon graduation.²⁶³ However, this does little to address the issue of financial problems while students are in school.²⁶⁴ A more immediate solution would be to create a

²⁵³ Nicholas Piotrowicz, *Can the Olympic Model Fix the NCAA?*, BLADE (Mar. 31, 2018), <https://www.toledoblade.com/College/2018/03/31/Can-the-Olympic-model-fix-the-NCAA.html> [<https://perma.cc/4LWQ-B3T6>].

²⁵⁴ *Id.*

²⁵⁵ *Alston*, 141 S. Ct. at 2164.

²⁵⁶ Zaccagnini, *supra* note 14, at 84–86.

²⁵⁷ Clifton, *supra* note 145.

²⁵⁸ *Id.*

²⁵⁹ Farnum, *supra* note 59, at 518.

²⁶⁰ *Id.* at 521.

²⁶¹ *Id.*

²⁶² Zaccagnini, *supra* note 14, at 89.

²⁶³ Farnum, *supra* note 59, at 519.

²⁶⁴ *Id.*

stipend as a supplement to athletic scholarships.²⁶⁵ This would help to offset the need to work while trying to attend classes, practice, and games.²⁶⁶ The uncertainty here is where the money would come from.²⁶⁷

One idea would be to create a ticket and television revenue sharing system between the NCAA and the players.²⁶⁸ While this would work for major sports like football and basketball, other sports would not be as positively impacted, unless the shares were spread out equally across all sports.²⁶⁹ Taking ticket revenue away would also be a huge financial hit to universities who rely on that income.²⁷⁰ An alternative solution involves collecting integrity fees from states that have legalized sports betting.²⁷¹ The money collected from wagers could be used by the NCAA for gambling oversight enforcement, educational programming centered around financial literacy, or given directly back to the players.²⁷² To this point, the NCAA has shied away from such fees, labeling them as “disingenuous.”²⁷³ However, schools that are located in states with legal sports betting could individually pursue integrity fees.²⁷⁴ Regardless of the chosen path, the NCAA has viable regulatory options and needs to act in order to boost transparency, stabilize the NIL market, and provide players with reasonable financial security.²⁷⁵

CONCLUSION

With no uniform federal NIL law and the Supreme Court only commenting on education-related benefits, student-athletes are unrestrained in their search for endorsements.²⁷⁶ With the growing influence of sports betting, now legal in a majority of states and beyond the boundaries of a casino, the limits on what outside sources of endorsement and compensation college athletes may seek will no doubt be tested.²⁷⁷ As sports betting

²⁶⁵ *Id.*; Buckstaff, *supra* note 77, at 164–66.

²⁶⁶ Buckstaff, *supra* note 77, at 165–66.

²⁶⁷ *Id.* at 166.

²⁶⁸ Zaccagnini, *supra* note 14, at 89–90.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Farnum, *supra* note 59, at 519–20.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ Baker, *supra* note 96.

²⁷⁷ *Id.*

companies get in the mix with college athletes, the lines between higher education, sports, and money only become blurrier. Without a federal legislative fix or NCAA action on the horizon, the decision on college athletes' NIL remains up to the individual states and athletic conferences. Congress and the NCAA should act swiftly to establish guardrails and deny gambling companies from interfering with college sports in order to protect student athletes, preserve competition, and prevent intrusion on the integrity of the game.