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# IT'S ABOUT TIME: AN ANALYSIS OF NAME, IMAGE, AND LIKENESS LEGISLATION IN THE UNITED STATES

## I. INTRODUCTION

On June 21, 2021, the Supreme Court in *National Collegiate Athletic Association v. Alston*<sup>1</sup> ruled on an antitrust lawsuit past and present student-athletes filed against the National Collegiate Athletic Association (“NCAA”).<sup>2</sup> The plaintiffs alleged that the NCAA’s restriction on student-athlete compensation violated the Sherman Antitrust Act.<sup>3</sup> Ultimately, the Court ruled that the NCAA violated the Sherman Act by having unnecessary restrictions, leaving student-athletes with “nowhere else to sell their labor.”<sup>4</sup> This case is one of the many name, image, and likeness lawsuits that student-athletes have filed against the NCAA.<sup>5</sup> After *Alston*, the NCAA finally caved to the significant pressure of the courts and student-athletes to make their policy more favorable for athletes.<sup>6</sup>

Student-athletes have fought for this right for a long time.<sup>7</sup> Name, image, and likeness (“NIL”) rules allow students to make money off their likeness.<sup>8</sup> This allows student-athletes to partner with brands and form deals similar to those that professional ath-

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

2. *See id.* at 2151 (holding NCAA violated Sherman Antitrust Act).

3. *See id.* at 2147 (“The plaintiffs before us brought this lawsuit alleging that the National Collegiate Athletic Association (NCAA) and certain of its member institutions violated this policy by agreeing to restrict the compensation colleges and universities may offer the student-athletes who play for their teams.”).

4. *See id.* at 2156 (holding NCAA had monopoly over student-athletes).

5. *See generally* O’Bannon v. NCAA, 802 F.3d 1049, 1055 (9th Cir. 2015) (providing example of former student-athlete suing NCAA for lack of payment).

6. *See* Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/N3FF-XXSG>] (discussing NCAA’s policy change in June following Supreme Court decision).

7. *See generally* Steve Eder, *N.C.A.A. to Quit Selling Memorabilia Online*, N.Y. TIMES (Aug. 8, 2013), <https://www.nytimes.com/2013/08/09/sports/ncaa-to-quit-selling-memorabilia-online.html?searchResultPosition=23> [<https://perma.cc/L2BL-TZTV>] (highlighting how NCAA stopped selling student-athlete memorabilia after public outcry over *O’Bannon v. NCAA*).

8. *See* James Parks, *What Is NIL In College Football? Here’s What You Need To Know*, FANNATION (Dec. 6, 2022), <https://www.si.com/fannation/college/cfb-hq/ncaa-football/college-football-nil-rule-changes-what-you-need-to-know> [<https://perma.cc/7KUM-5PQX>] (providing brief explanation of NIL and how it works in college football).

letes make with household brands such as Nike.<sup>9</sup> As a result of the Supreme Court's decision, some state legislatures enacted legislation surrounding NIL for student-athletes.<sup>10</sup> Other states chose not to address the topic, which gave colleges the flexibility to determine how they govern their student-athletes.<sup>11</sup> Some states that created legislation included provisions addressing financial literacy for student-athletes.<sup>12</sup> The policies provide academic institutions with minimum time requirements for workshops that address debt and financial planning for the future.<sup>13</sup> However, these policies need improvement to address the difficulties of entering extreme wealth.<sup>14</sup> These difficulties include poor money management and financial exploitation from family members.<sup>15</sup> These issues can ultimately affect student-athletes' mental health.<sup>16</sup> Additionally, the

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9. See Andrew Lisa, *24 Athletes Who Make Most of Their Money From Endorsements*, YAHOO (Sept. 24, 2021), <https://www.yahoo.com/video/24-athletes-most-money-endorsements-220001554.html> [<https://perma.cc/2PBX-5PZY>] (listing athletes who made millions of dollars from via endorsements such as Tiger Woods, LeBron James, Naomi Osaka, and Serena Williams).

10. See Josh Moody, *States Rethink Restrictive NIL Laws*, Inside Higher Ed (Feb. 11, 2022) <https://www.insidehighered.com/news/2022/02/11/states-rethink-restrictive-nil-laws> [<https://perma.cc/2Y42-MGLB>] (detailing how some states enacted NIL legislation early on).

11. See *id.* (explaining how states are rethinking NIL legislation due to uncertainty over NCAA guidelines and desire to have forward-thinking legislation).

12. See generally CAL. EDUC. CODE § 67452(b) (West 2013) (providing California's NIL statute); FLA. STAT. § 1006.74(k) (2021) (detailing Florida's NIL statute); GA. CODE ANN. § 20-3-681(e) (2021) (describing Georgia's NIL statute); KY. Exec. Order No. 2021-418 (June 24, 2021), [https://governor.ky.gov/attachments/20210624\\_Executive-Order\\_2021-418\\_Student-Athletes.pdf](https://governor.ky.gov/attachments/20210624_Executive-Order_2021-418_Student-Athletes.pdf) (stating Kentucky's NIL statute); LA. STAT. ANN. § 17-3703(M) (2022) (describing Louisiana's NIL statute); MO. ANN. STAT. § 173.280(6) (2021) (stating Missouri's NIL statute); NEV. REV. STAT. § 398.320 (2022) (providing Nevada's NIL statute); TENN. CODE ANN. § 49-7-2802(l) (2022) (detailing Tennessee's NIL statute); TEX. EDUC. CODE ANN. § 51.9246(i) (West 2021) (listing state statutes with detailed financial planning provisions).

13. See TEX. EDUC. CODE ANN. § 51.9246(i) (West 2021) (stating that financial literacy workshops "must be at least five hours").

14. For further discussion of difficulties that arise when entering extreme wealth, see *infra* notes 114–134 and accompanying text.

15. See Joe Moglia, *5 Financial Tips For Student Athletes Earning Money Through NIL*, FORBES (Sept. 1, 2021), <https://www.forbes.com/sites/joemoglia/2021/09/01/5-financial-tips-for-student-athletes-earning-money-through-nil/?sh=f3c9db52985e> [<https://perma.cc/CJ95-ETSM>] (providing tips for student-athletes and advising them through pitfalls of poor financial management).

16. See Carol Graham, *The High Costs of Being Poor in America: Stress, Pain, and Worry*, BROOKINGS INST. (Feb. 19, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/02/19/the-high-costs-of-being-poor-in-america-stress-pain-and-worry/> [<https://perma.cc/V7C3-X4MJ>] (analyzing why being poor leads to mental distress). For further discussion of issues that can affect student-athletes' mental health, see *infra* 112–114 and accompanying text.

legislation addresses specific industries that student-athletes may not partner with for sponsorships.<sup>17</sup>

This Comment analyzes and compares different states' NIL legislation.<sup>18</sup> Specifically, this Comment focuses on the financial literacy clauses of the NIL legislation and the industries prohibited from sponsoring athletes.<sup>19</sup> Section II provides background information on the history of the NCAA, prominent NIL cases, the NCAA policy, and state legislation.<sup>20</sup> Section III then provides a comparative analysis of NIL legislation.<sup>21</sup> Section IV concludes by discussing the future of NIL legislation.<sup>22</sup>

## II. BEHIND THE TIMES: BACKGROUND ON NIL, THE NCAA, AND THE IMPORTANCE OF FINANCIAL PLANNING

### A. In the Nick of Time: An Overview of NIL Policy

NIL policies create avenues for student-athletes to benefit financially from their NIL through deals and sponsorships.<sup>23</sup> Students can profit from “anything that is not a direct reward, compensation-wise, for [their] athletic performance.”<sup>24</sup> These

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17. See Amanda Christovich, *Alcohol, Betting NIL Deals Fair Game for Some Athletes*, FRONT OFFICE SPORTS (Oct. 11, 2021), <https://frontofficesports.com/alcohol-betting-nil-deals-fair-game-for-some-athletes/> [<https://perma.cc/V85X-7CNL>] (highlight how state statutes may prevent student-athletes from participating in NIL deals with alcohol or betting companies). For further discussion of prohibited industries, see *infra* notes 181–213 and accompanying text.

18. For further discussion of analysis, see *infra* notes 83–213 and accompanying text.

19. For further discussion of NIL legislation's financial literacy provisions, see *infra* notes 87–91 and accompanying text.

20. For further discussion of background information on the NCAA, case law, the NCAA NIL policy, and state legislation, see *infra* notes 23–84 and accompanying text.

21. For further comparative analysis on NIL legislation, see *infra* notes 85–213 and accompanying text.

22. For further discussion on the future of NIL legislation, see *infra* notes 215–222 and accompanying text.

23. See Josh Moody, *Name, Image, Likeness: What College Athletes Should Know About NCAA Rules*, U.S. News & World Report (Aug. 9, 2021), <https://www.usnews.com/education/best-colleges/articles/name-image-likeness-what-college-athletes-should-know-about-ncaa-rules> [<https://web.archive.org/web/20230202222030/https://www.usnews.com/education/best-colleges/articles/name-image-likeness-what-college-athletes-should-know-about-ncaa-rules>] (“Some of the early deals to come out of the new era of NIL are sponsorship agreements with gyms, pet care companies and restaurants at both the local and national level.”).

24. See *id.* (specifying what students are allowed to profit from); see also James Fielding and Phil Lu, *NCAA Rules to Be Aware of Before Reaching an NIL Deal*, LITTLER (Nov. 28, 2022) <https://www.littler.com/publication-press/publication/ncaa-rules-be-aware-reaching-nil-deal> [<https://perma.cc/SXG4-DBH9>] (explaining NCAA's update in NIL policy).

sponsorships allow athletes to develop their brand and create a career outside their athletic performance.<sup>25</sup> Many student-athletes have large followings, and these deals “[position] them as powerful ambassadors.”<sup>26</sup>

## B. Turn Back Time: The History of the NCAA and Their Love for Amateur Athletes

The NCAA aims “to regulate the rules of college sport and protect young athletes.”<sup>27</sup> A deadly football season in 1904 prompted the creation of what is now known as the NCAA.<sup>28</sup> Afterward, President Roosevelt asked the prominent football schools to work together to make the game less violent.<sup>29</sup> This resulted in the creation of the Intercollegiate Athletic Association of the United States.<sup>30</sup> In 1910, the Intercollegiate Athletic Association became the National Collegiate Athletic Association.<sup>31</sup>

The Principle of Amateurism is why the NCAA refused to pay student-athletes.<sup>32</sup> In the NCAA Division I Manual, the principle of amateurism is defined as “[s]tudent-athletes shall be amateurs in an

25. See Moody, *supra* note 23 (“While being a star player on the nation’s top football or men’s basketball team may provide a name recognition bonus, lesser-known student-athletes can use social media as a powerful tool to help level the playing field.”). Social media sites like Instagram and TikTok have provided student-athletes with a global platform. *Id.* (explaining social’s media power over athlete’s careers).

26. See Emily Giambalvo, *What to Know About Name, Image and Likeness and How it Will Affect the NCAA*, WASH. POST (June 29, 2021), <https://www.washingtonpost.com/sports/2021/06/15/nll-ncaa-paying-college-athletes/> [<https://perma.cc/4FX6-EGWG>] (explaining businesses pay athletes in exchange for their promotion).

27. See *History*, NCAA, <https://www.ncaa.org/sports/2021/5/4/history.aspx> [<https://perma.cc/WU3P-SNA8>] (last visited Jan. 24, 2022) (stating President Roosevelt asked to create NCAA due to increasing injuries from football).

28. See *id.* (demonstrating how public outcry over eighteen deaths and numerous injuries related to football in 1904 led to creation of NCAA).

29. See *id.* (claiming diehard football fan, President Roosevelt, urged prominent universities such as Harvard to make football less deadly).

30. See *id.* (“Soon after, on Dec. 28 in New York, 62 colleges and universities became charter members of the Intercollegiate Athletic Association of the United States, the precursor to the NCAA.”).

31. See *id.* (“The IAAUS officially was constituted as a rules-making body March 31, 1906, and in 1910 was renamed the National Collegiate Athletic Association.”).

32. See Timothy Winkler, *The End of an Error: Reforming the NCAA Through Legislation*, 90 UMKC L. REV. 219, 222 (2021) (“The NCAA’s justification for why athletes should not be paid revolves around its principle of amateurism.”); see also Joe Nocera, *The Difference Between an Unpaid and a Paid Student-Athlete? Not Much.*, N.Y. TIMES, (Oct. 23, 2021) <https://www.nytimes.com/2021/10/23/business/college-endorsement-deals.html> [<https://perma.cc/BR97-6FZL>] (explaining NCAA’s reasoning behind their unwillingness to pay student-athletes).

intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived.”<sup>33</sup> Moreover, the NCAA views amateurism as part of its purpose and provides “a clear line of demarcation between intercollegiate athletics and professional sports.”<sup>34</sup> The NCAA feared that paying student-athletes would affect the recruiting process because colleges could essentially bribe student-athletes with luxury items to attend.<sup>35</sup> Additionally, the NCAA claimed that it hesitated to pay student-athletes because it feared student-athletes would be exploited.<sup>36</sup> These ideas shaped the NCAA’s argument as it faced lawsuits from student-athletes who believed the organization exploited them.<sup>37</sup> By not allowing student-athletes to receive payment, the NCAA remained in a position of power where they retained financial control of student-athletes.<sup>38</sup>

### C. Killing Time: NIL Cases Before *Alston*

In *National Collegiate Athletic Association v. Alston*, the Supreme Court held that the NCAA could not cap student-athletes education-related benefits.<sup>39</sup> This was the first step in the fight for stu-

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33. See 2020-2021 NCAA DIVISION I MANUAL, art. 2.9 (2021), <http://www.ncaapublications.com/p-4605-2020-2021-ncaa-division-i-manual.aspx> [<https://perma.cc/Q38E-GMN5>] [hereinafter *NCAA MANUAL*] (“Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”).

34. See *id.* (detailing NCAA’s previous policy about amateurism); see also Winkler, *supra* note 32, at 222 (“Amateurism, the NCAA contends, has always been the foundation of college sports and if players were paid, they would be professionals, not amateurs.”).

35. See Shannon Bream & Bill Mears, *Supreme Court Tips Off a Legal Fight Over NCAA Amateurism Restrictions*, FOX NEWS (Mar. 31, 2021) <https://www.foxnews.com/politics/supreme-court-tips-off-a-legal-fight-over-ncaa-amateurism-restrictions> [<https://perma.cc/F3SC-GRPD>] (“It worries that loosening the rules too far could – for example – permit big schools to provide Corvette cars to highly-recruited student-athletes for their daily transportation needs.”).

36. See *NCAA MANUAL*, *supra* note 33, art. 12.01.2 (“The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.”).

37. See *generally* O’ Bannon v. NCAA, 802 F.3d 1049, 1055 (9th Cir. 2015) (showing former student-athletes frustration with NCAA).

38. See Patrick A. Bradford, Denver G. Edwards & Tillman J. Breckenridge *March Madness Exploits Black Athletes. The Supreme Court Should End This Injustice Now*, TIME (Mar. 30, 2021) <https://time.com/5951097/ncaa-v-alston-march-madness-exploitation/> [<https://perma.cc/86UW-237A>] (explaining that NCAA generates millions through student-athletes playing in games while limiting student-athletes compensation to only education-related benefits).

39. See *NCAA v. Alston*, 141 S. Ct. 2141, 2166 (2021) (holding NCAA could no longer limit student-athletes from making money based on their NIL).

dent-athletes NIL.<sup>40</sup> However, before *Alston*, the NCAA barred athletes from receiving any compensation or rights toward their NIL, which resulted in lawsuits against the organization.<sup>41</sup> In a 1981 case, *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*,<sup>42</sup> the University of Oklahoma and the University of Georgia sued the NCAA, claiming that the organization violated the Sherman Act by restricting the number of televised football games.<sup>43</sup> The district court and court of appeals found that the NCAA violated the Sherman Act and ruled in favor of the universities.<sup>44</sup> The Supreme Court granted certiorari and affirmed the decision.<sup>45</sup> The Supreme Court debunked the NCAA's claim that "its television plan is necessary to protect live attendance" and stated that the true purpose of the plan stems from "a fear that the product will not prove sufficiently attractive to draw live attendance when faced with competition from televised games."<sup>46</sup> The Supreme Court maintained the importance of the NCAA, stating that it keeps "a revered tradition of amateurism in college sports" alive "but that it needs ample latitude to play that role."<sup>47</sup> However, the organization must comply with the Sherman Act.<sup>48</sup>

In 2008, a former basketball player, Ed O'Bannon, realized that "he was depicted in a college basketball video game produced by Electronic Arts (EA), a software company."<sup>49</sup> A year later, in

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40. See *id.* (holding that limiting student-athlete educational benefits violated antitrust laws); see also Hosick, *infra* note 6 (showing how NCAA published NIL policy nine days after *Alston* decision).

41. See Alan Blinder, *College Athletes May Earn Money From Their Fame*, N.C.A.A. Rules, N.Y. TIMES (Sept. 29, 2021), <https://www.nytimes.com/2021/06/30/sports/ncaabasketball/ncaa-nil-rules.html> [<https://perma.cc/A4QJ-GF7L>] (explaining NCAA's longstanding policy "barred players from being paid 'to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind.'").

42. 468 U.S. 85, 95 (1984).

43. See *id.* at 95 (explaining that universities sued NCAA due to threats of disciplinary action for engaging in new television contract).

44. See *id.* at 95–98 (stating that NCAA's "classic cartel" behavior was inappropriate).

45. See *id.* at 120 (affirming district court's holding that NCAA's actions "constituted illegal per se price fixing").

46. See *id.* at 116–17 (explaining how television has changed since NCAA's conception, thus NCAA's fear of losing attendance for its games was not realistic).

47. See *id.* at 120 (confirming NCAA's "critical role" in maintaining "amateurism in college sports" while expressing NCAA's need to comply with antitrust laws).

48. See *id.* ("But consistent with the Sherman Act, the role of the NCAA must be to preserve a tradition that might otherwise die; rules that restrict output are hardly consistent with this role.").

49. See *O'Bannon v. NCAA*, 802 F.3d 1049, 1055 (9th Cir. 2015) (stating how Plaintiff, former athlete, was unlawfully depicted in video game created by Electronic Arts).

2009, O'Bannon sued the NCAA and the Collegiate Licensing Company for using his likeness.<sup>50</sup> Simultaneously, another football player sued the NCAA for “wrongfully turn[ing] a blind eye to the EA’s misappropriation of these NILs.”<sup>51</sup> The Ninth Circuit combined these two cases and reviewed the district court’s decision.<sup>52</sup> Furthermore, the Ninth Circuit announced that the NCAA is subject to the Sherman Act and antitrust laws.<sup>53</sup> Regarding the case, the Ninth Circuit held that “the plaintiffs have satisfied the requirement of injury in fact” and have met the “requirement of antitrust injury.”<sup>54</sup> However, the Ninth Circuit ruled that the district court erred when it “requir[ed] the NCAA to allow its member schools to pay this deferred compensation.”<sup>55</sup> The NCAA appealed the case to the United States Supreme Court, but the Supreme Court denied review.<sup>56</sup> The denial left the Ninth Circuit’s decision in place, slowly bringing down the NCAA’s stronghold on amateur athletics.<sup>57</sup>

In June of 2021, the Supreme Court in *Alston* ruled against the NCAA, instructing the sports organization to “encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools.”<sup>58</sup> The

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50. *See id.* (detailing Ed O'Bannon's lawsuit against NCAA and Collegiate Licensing Company); *see also* Katie Thomas, *College Stars Sue Over Likenesses in Video Games*, N.Y. TIMES (July 3, 2009), <https://www.nytimes.com/2009/07/04/sports/04ncaa.html?searchResultPosition=3> [<https://perma.cc/H5ND-XMKT>] (explaining video games did not include student athletes' names, but rather their likeness).

51. *See O'Bannon*, 802 F.3d at 1055 (highlighting lawsuit by Sam Keller, who sued NCAA, CLC, and EA for “us[ing] student-athletes’ NILs in its video games and that the NCAA and CLC had wrongfully turned a blind eye to EA’s misappropriation of these NILs.”).

52. *See id.* at 1056–61 (detailing district court’s decision and reasoning).

53. *See id.* at 1066 (“We therefore conclude that the NCAA’s compensation are rules are within the ambit of the Sherman Act.”).

54. *See id.* at 1069 (“Because the plaintiffs have shown that, absent the NCAA’s compensation rules, video game makers would likely pay them for the right to use their NILs in college sports video games, the plaintiffs have satisfied the requirement of injury in fact and, by extension, the requirement of antitrust injury.”).

55. *See id.* at 1079 (finding lower court erred for “allow[ing] its member schools to pay this deferred compensation.”).

56. *See* Michael McCann, *In Denying O'Bannon Case, Supreme Court Leaves Future of Amateurism in Limbo*, SPORTS ILLUSTRATED (Oct. 3, 2016), <https://www.si.com/college/2016/10/03/ed-obannon-ncaa-lawsuit-supreme-court> [<https://perma.cc/CCM7-ZHSN>] (detailing how *O'Bannon* Plaintiff’s wanted “a more substantial remedy” after Ninth Circuit’s decision).

57. *See id.* (explaining power of Supreme Court’s denial of reviewing *O'Bannon*).

58. *See* NCAA v. *Alston*, 141 S. Ct. 2141, 2166 (2021) (“By permitting colleges and universities to offer enhanced education-related benefits, its decision may encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools.”).



plaintiffs in the case were “current and former student-athletes in men’s Division I FBS football and men’s and women’s Division I basketball.”<sup>59</sup> The student-athletes sued because they believed the “NCAA rules . . . limit[ed] the compensation they may receive in exchange for their athletic services.”<sup>60</sup> The Supreme Court reviewed the NCAA’s restrictions and agreed with the district court “that student-athletes have nowhere else to sell their labor.”<sup>61</sup> After reviewing the district court’s three-step framework, the Supreme Court affirmed the judgment.<sup>62</sup> The *Alston* decision pushed the NCAA to relax their NIL policies for student-athletes.<sup>63</sup>

In response to the Supreme Court’s decision, the NCAA issued a statement that changed its NIL policy.<sup>64</sup> The President of the NCAA, Mark Emmert, stated, “[t]his is an important day for college athletes since they are all are now able to take advantage of name, image and likeness opportunities.”<sup>65</sup> The NCAA’s policy allows student-athletes to “engage in NIL activities that are consistent with the law of the state where the school is located.”<sup>66</sup> Additionally, “individuals can use a professional services provider for NIL activities.”<sup>67</sup> The policy also allows individual schools to draft their own policies.<sup>68</sup> On October 26, 2022, the NCAA provided additional

59. *See id.* at 2151 (stating which division and sports plaintiffs participated while filing suit).

60. *See id.* (noting student-athletes frustration with NCAA and reason for suing NCAA).

61. *See id.* at 2156 (“Unlike customers who would look elsewhere when a small van company raises its prices above market levels, the district court found (and the NCAA does not here contest) that student-athletes have nowhere else to sell their labor.”).

62. *See id.* at 2166 (holding Ninth Circuit properly ruled).

63. *See* Hosick, *supra* note 6 (announcing change in NCAA policy shortly after *Alston*’s decision).

64. *See id.* (announcing change in NCAA NIL policy and providing statement from NCAA president).

65. *See id.* (“With the variety of state laws adopted across the country, we will continue to work with Congress to develop a solution that will provide clarity on a national level.”).

66. *See id.* (“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.”).

67. *See id.* (stating student-athletes can have agents to represent them in sponsorships or deals).

68. *See id.* (“With the NIL interim policy, schools and conferences may choose to adopt their own additional policies.”).

guidance on their NIL policy.<sup>69</sup> The guidance provides examples of appropriate conduct for institutions.<sup>70</sup>

#### D. Like Sand Through an Hourglass: The Slow Creation of State NIL Legislation

Currently, twenty-nine states have passed some form of NIL legislation.<sup>71</sup> Almost all the Southern States have enacted NIL legislation as they are known to have some of the most robust Division I schools and conferences.<sup>72</sup> Moreover, the Southeastern Conference (“SEC”) and Sunbelt are the only conferences where all the states have passed legislation.<sup>73</sup> Some states created legislation before the Supreme Court’s decision, such as California, which implemented its statute in 2019.<sup>74</sup> However, most states passed legisla-

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69. See *Institutional Involvement in a Student-Athlete’s Name, Image and Likeness Activities*, NCAA (2022), at 4, [https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL\\_InstitutionalInvolvementNILActivities.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL_InstitutionalInvolvementNILActivities.pdf) [<https://perma.cc/WVT2-JCQ5>] (clarifying NCAA’s previous NIL policy).

70. See *id.* at 3 (listing type of support, education, NIL entity, and negotiation actions that institutions may engage in with student-athletes).

71. See Katlyn Andrews, *Navigating the NCAA’s Interim NIL Policy and State Regulations*, BAKERTILLY (Nov. 16, 2021), <https://www.bakertilly.com/insights/navigating-the-ncaas-interim-nil-policy-and-state-regulations> [<https://perma.cc/5ZVJ-LSQQ>] (listing states with NIL regulations as Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia).

72. See *id.* (highlighting map of United States showing which southern states have passed NIL legislation); see also Rick Bragg, *Down Here*, ESPN (Aug. 6, 2012), [https://www.espn.com/college-football/story/\\_/id/8240383/rick-bragg-explains-history-traditions-south-obsession-football-espn-magazine](https://www.espn.com/college-football/story/_/id/8240383/rick-bragg-explains-history-traditions-south-obsession-football-espn-magazine) [<https://perma.cc/7B8A-JP7T>] (explaining southern states’ connection to football and how interest in sports has historically brought people together).

73. See Andrews, *supra* note 71 (showing states that have passed NIL legislation); see also *About the Southeastern Conference, SEC*, <https://www.secsports.com/article/12628010> [<https://perma.cc/5BZZ-SGEC>] (last updated Oct. 24, 2022) (listing states in Southeastern Conference); see also *About the Sun Belt Conference, SBC*, [https://sunbeltsports.org/sports/2014/1/4/GENERAL\\_0103145239.aspx](https://sunbeltsports.org/sports/2014/1/4/GENERAL_0103145239.aspx) [<https://perma.cc/Y3SL-ZEVP>] (last visited Mar. 20, 2022) (listing states in Sun Belt Conference).

74. See J. Brady McCollough, *Lawmaker Expects California Athletes to Cash in on NIL by Sept. 1*, L.A. TIMES (June 22, 2021), <https://www.latimes.com/sports/story/2021-06-22/bill-would-allow-california-college-athletes-name-image-likeness> [<https://perma.cc/7V3M-X4MK>] (discussing Senator Nancy Skinner’s decision to introduce legislation which changed landscape of college sports).

tion between 2020 and 2022.<sup>75</sup> Most of the state legislation “looks to bar endorsement deals that conflict with those of the school.”<sup>76</sup>

### E. Save Time: The Importance of Financial Planning

Professional athletes and college athletes can make large amounts of money based on their NIL.<sup>77</sup> As they receive this additional income, student-athletes must learn essential tools to maintain and increase their wealth.<sup>78</sup> In 2019, a survey completed by the Financial Health Network claimed that “7 in 10 Americans struggle with at least one aspect of financial stability.”<sup>79</sup> The study also stated that “about 1 in 5 middle-class workers are spending more than they earn.”<sup>80</sup> Additionally, the uncertainty and stress of finances may result in financial disorders and anxiety in young adults, the primary demographic of college and professional athletes.<sup>81</sup> Financial planning may not address all these issues, but it

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75. See Andrews, *supra* note 71 (stating dates for when NIL statutes go into effect).

76. See Moody, *supra* note 23 (noting state statutes often contain morality clauses banning deals schools would likely find unfavorable).

77. See Hosick, *supra* note 6 (announcing change in NCAA policy that allows college athletes to benefit from their NIL); see also Lisa, *supra* note 9 (listing athletes who make millions off of sponsorships).

78. See Laura Shin, *10 Reasons Why Financial Plans Aren't Just For The 1%*, FORBES (Aug. 7, 2013), <https://www.forbes.com/sites/laurashin/2013/08/07/10-reasons-why-financial-plans-arent-just-for-the-1/?sh=2210faedd7a3> [<https://perma.cc/7UR3-PLAS>] (explaining financial plans help individuals achieve their goals).

79. See Aimee Picchi, *70% of Americans Say They are Struggling Financially*, CBS NEWS (Nov. 14, 2019), <https://www.cbsnews.com/news/70-americans-are-struggling-financially/> [<https://perma.cc/K9E8-WWT2>] (“The findings come from a survey of more than 5,400 Americans from the Financial Health Network, a non-profit financial services consultancy.”); see also Carmen Reinicke, *More Than a Year Into the Coronavirus Pandemic, Americans are Still Struggling to Save*, CNBC (Oct. 6, 2021), <https://www.cnbc.com/2021/10/06/americans-are-still-struggling-to-save-as-the-pandemic-continues.html> [<https://perma.cc/75XS-K4TK>] (providing data illustrating financial struggles that Americans face).

80. See *id.* (showing middle-class workers often spend more money than they receive in their paycheck).

81. See Kristy L. Archuleta, Anita Dale, & Scott M. Spann, *College Students and Financial Distress: Exploring Debt, Financial Satisfaction, and Financial Anxiety*, 24 J. OF FIN. COUNSELING & PLAN 50, 50 (2013) (citations omitted) (“[R]esearch has linked financial stress and anxiety with college student debt . . . .”); see also ESPN Stats & Info, *Average Age in Esports vs. Major Sports*, ESPN (Sept. 17, 2017), [https://www.espn.com/esports/story/\\_/id/20733853/the-average-age-esports-versus-nfl-nba-mlb-nhl](https://www.espn.com/esports/story/_/id/20733853/the-average-age-esports-versus-nfl-nba-mlb-nhl) [<https://perma.cc/75XS-K4TK>] (stating average ages for professional athletes in the NBA, NFL, NHL, and MLB are approximately twenty-five, twenty-six, twenty-seven, and twenty-nine, respectively); see also *Characteristics of Postsecondary Students*, NAT'L CTR. FOR EDUC. STAT. (May 2022), <https://nces.ed.gov/programs/coe/indicator/csb> [<https://perma.cc/8F86-ESKZ>] (illustrating that ninety percent of students at public institutions were under twenty-five).

can assist young adults with making smart decisions that will alleviate stress in the future.<sup>82</sup>

### III. TIME IS PRECIOUS: AN ANALYSIS OF WHY NIL LEGISLATION NEEDS AN IMMEDIATE CHANGE

After the Supreme Court's decision in *Alston*, the NCAA opened the door for state legislatures to develop NIL litigation.<sup>83</sup> This section provides insight into the current state of NIL legislation.<sup>84</sup> Then the section dives into how the legislation may be improved to help student-athletes adjust appropriately to the influx of income.<sup>85</sup> Finally, this section discusses how some states have industry restrictions, thus preventing student-athletes from partnering with companies.<sup>86</sup>

#### A. On the Dot: A Comprehensive Overview of State NIL Legislation

The recent change in the NIL policy allows athletes, who otherwise would have never gone professional, a once-in-a-lifetime opportunity to provide for themselves and their families.<sup>87</sup> Because the NCAA policy allows for states and schools to create their specific NIL laws, the policies vary.<sup>88</sup> The states that included detailed mandated financial planning provisions in their statutes are: Alabama, California, Florida, Georgia, Kentucky, Louisiana, Missouri, Ne-

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82. See Archuleta, *supra* note 81, at 60 ("Financial planners, counselors and educators working with college students, their spouses, or their parents should be aware of the potential factors impacting their financial mental health.").

83. See Derin Dickerson and Trenton Hafley, *State Experiments With NIL Rules Put Athletes on Defense*, BLOOMBERG LAW (Apr. 1, 2022), <https://news.bloomberglaw.com/ip-law/state-experiments-with-nil-rules-put-athletes-on-defense> [<https://perma.cc/BAZ4-GRE7>] (reporting state legislatures already prepared legislation shortly after Supreme Court's *Alston* holding).

84. For further discussion of current NIL legislation, see *infra* notes 87–91 and accompanying text.

85. For further discussion of ways to improve current NIL legislation, see *infra* notes 92–179 and accompanying text.

86. For further discussion of how states banned certain industries, see *infra* notes 181–213 and accompanying text.

87. See Maria Carrasco, *Some College Athletes Cash in While Others Lose Out*, INSIDE HIGHER ED (Oct. 12, 2021), <https://www.insidehighered.com/news/2021/10/12/while-some-ncaa-athletes-cash-nil-others-lose-out> [<https://perma.cc/E8CT-KBGY>] ("Some institutions are even seeing opportunities for entire teams or athletic departments. All female athletes at Brigham Young University now have the opportunity to earn up to \$6,000 during the academic year through a brand deal with SmartyStreets, a location data intelligence company.").

88. See *id.* (noting educational institutions must create policies in states without NIL legislation).

vada, Tennessee, and Texas.<sup>89</sup> The most detailed statutes listed a time requirement and specific areas the financial literacy and planning workshop must cover.<sup>90</sup> States that did not include legislation for financial literacy workshops include Arizona, Arkansas, Colorado, Connecticut, Maryland, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, and South Carolina.<sup>91</sup>

## B. In the Blink of an Eye: Ways to Improve NIL Legislation

In order to ensure that student-athletes successfully manage their “new” money, all NIL legislation should have mandated finan-

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89. See generally CAL. EDUC. CODE § 67452(b) (West 2013) (allowing student athletes in California to make money of their own NIL); FLA. STAT. § 1006.74(k) (2021) (detailing Florida’s NIL statute which includes financial literacy components); GA. CODE ANN. § 20-3-681(e) (2021) (describing Georgia’s NIL statute which includes financial literacy components); KY. Exec. Order. No. 2021418 (June 24, 2021), [https://governor.ky.gov/attachments/20210624\\_Executive-Order\\_2021-418\\_Student-Athletes.pdf](https://governor.ky.gov/attachments/20210624_Executive-Order_2021-418_Student-Athletes.pdf) [<https://perma.cc/7LRX-2U4C>] (discussing Kentucky’s NIL executive order); LA. STAT. ANN. § 3703(M) (2022) (noting Louisiana’s NIL statute which includes financial literacy components); MO. ANN. STAT. § 173.280(6) (2021) (stating Missouri’s NIL statute which includes financial literacy components); NEV. REV. STAT. § 398.320 (2022) (promoting Nevada’s NIL statute which includes financial literacy components); TENN. CODE ANN. § 49-7-2802(1) (2022) (describing Tennessee’s NIL statute which includes financial literacy components); TEX. EDUC. CODE ANN. § 51.9246(i) (West 2021) (listing state statutes with detailed financial planning provisions).

90. For an example of a state that has mandated time requirements, see *infra* note 157.

91. See generally ARIZ. REV. STAT. ANN. § 15-1892 (2021) (showing NIL statute without financial literacy provisions); ARK. CODE ANN. § 4-75-1307 (2022) (highlight NIL statute without financial literacy provisions); COLO. REV. STAT. § 23-16-301 (2021) (declaring NIL statute without financial literacy provisions); CONN. GEN. STAT. § 10(a)-56(2022) (detailing NIL statute without financial literacy provisions); MD. CODE ANN., EDUC. § 15-131 (LexisNexis 2023) (presenting NIL statute without financial literacy provisions); MICH. COMP. LAWS § 390.1731-40 (2022) (finding NIL statute without financial literacy provisions); MISS. CODE ANN. § 93-19-17 (2021) (highlighting NIL statute without financial literacy provision); MONT. CODE ANN. § 20-1-232 (2023) (acknowledging Montana’s NIL statute without financial literacy provision); NEB. REV. STAT. § 48-3605 (2022) (showing Nebraska’s NIL statute does not include financial literacy provision); N.J. STAT. ANN. § 18A:3B-87 (West 2020) (describing New Jersey’s NIL statute without financial literacy provision); N.M. STAT. ANN. § 21-31-3 (2021) (discussing NIL statute without financial literacy provisions); OHIO REV. CODE ANN. § 3376.01-.08 (West 2021) (highlighting Ohio’s NIL statute without financial literacy provisions); OKLA. STAT. ANN. TIT. 70, § 820.25 (2021) (showing Oklahoma’s NIL statute without financial literacy provisions); OR. REV. STAT. § 422.1 (2021) (highlighting Oregon’s NIL statute without financial literacy provisions); 5 PA. CONS. STAT. § 3703 (2022) (detailing Pennsylvania’s NIL statute which does not include financial literacy provisions); S.C. CODE ANN. § 59-158-40 (2021) (listing South Carolina’s NIL statute without any mention of financial literacy workshop for student-athletes).

cial literacy workshops or courses.<sup>92</sup> These classes may prevent student-athletes from experiencing financial disorders or anxiety.<sup>93</sup> Financial planning is “the long-term method of wisely managing your finances so you can achieve your goals and dreams.”<sup>94</sup> In order to organize one’s finances, it is necessary to develop a financial plan.<sup>95</sup> A financial plan is “a document that details a person’s current financial circumstances and their short- and long-term monetary goals. It includes strategies to achieve those goals.”<sup>96</sup> Financial plans consist of recommendations made by a financial planner regarding “current saving and spending patterns, investment portfolios, estate planning, tax planning, risk management and insurance needs, social security withdrawal strategies, etc.”<sup>97</sup> Financial planning is essential because it helps people “make the best use of [their] money and achieve long-term financial goals.”<sup>98</sup>

Some states have already attempted to address this problem.<sup>99</sup> For example, Georgia has a detailed provision that “at a minimum, include information concerning financial aid, debt management, and a recommended budget for student athletes based on the current academic year’s cost of attendance.”<sup>100</sup> In comparison, Mississippi has no text detailing financial education for student-

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92. See *Institutional Involvement in a Student-Athlete’s Name, Image and Likeness Activities*, *supra* note 69 (stating educational sessions regarding financial literacy taxes are permissible under NCAA policy).

93. See Archuleta, *supra* note 81, at 59 (suggesting financial education may ease some anxiety).

94. See *What is Financial Planning?*, FPA, <https://fpamn.org/consumers/what-is-financial-planning/> (last visited Jan. 25, 2022) (explaining how to plan financially); see also Kevin Voigt and Alana Benson, *What Is a Financial Plan, and How Can I Make One?*, NERDWALLET (Dec. 6, 2022), <https://www.nerdwallet.com/article/investing/what-is-a-financial-plan> [<https://perma.cc/7M3F-8AUJ>] (listing steps for financial plan include setting financial goals, tracking money, and planning for emergencies).

95. See Steele Campbell, *Ancillary Business and the MDP Debate: Financial Planning as an Extension of an Estate Planner’s Practice*, 9 EST. PLAN. AND PROP. L. J. 133, 136 (2016) (detailing importance of financial planning).

96. See Liz Manning, *Financial Plans: Meaning, Purpose, and Key Components*, INVESTOPEDIA (Jan. 20, 2023), [https://www.investopedia.com/terms/f/financial\\_plan.asp](https://www.investopedia.com/terms/f/financial_plan.asp) [<https://perma.cc/TM9Z-RT65>] (explaining financial plans are tailored based on each individual).

97. See Campbell, *supra* note 95 (listing numerous recommendations financial planners make for their clients).

98. See The Investopedia Team, *supra* note 96 (explaining financial plans may help individuals achieve goals such as home ownership and family planning).

99. For further discussion of states that have enacted legislation to address financial literacy, see *supra* note 89 and accompanying text.

100. See GA. CODE ANN. § 20-3-681(e) (2021) (dictating Georgia’s college-athlete compensation law, which requires schools to provide financial literacy and life skills workshops to educate on a variety of financial topics).

athletes.<sup>101</sup> In 2018, the NCAA conducted a study on two universities to research student-athletes spending habits and learn “their preferred modes of receiving financial education.”<sup>102</sup> The study showed a “7.26 was the average ranking when asked to identify their interest in financial literacy from a scale of 1 to 10 (1: not interested at all, 10: fully interested).”<sup>103</sup> Additionally, the study revealed that “60% [of student-athletes] did not receive financial education in high school.”<sup>104</sup> The study also illustrated how student-athletes wanted to learn about financial education, including “one on one sessions, utilizing on-campus resources along with spending logs and offering cooking classes to help decrease [the] amount of money spent eating out.”<sup>105</sup> This study demonstrates the need and desire for financial literacy programs.<sup>106</sup>

TD Ameritrade conducted a survey and found that “66% [of millennials], don’t feel on track when it comes to saving for retirement.”<sup>107</sup> This uncertainty may stem from increased prices for everything, the pandemic, and debt.<sup>108</sup> In 2020, Experian found that people aged twenty-four and younger had an average of “\$10,942

101. See MISS. CODE ANN. § 93-19-17 (2021) (illustrating Mississippi statute, which does not include financial literacy workshop requirement).

102. See *Enhancing Financial Literacy Among Student-Athletes*, NCAA, <https://www.ncaa.org/sports/2019/2/1/enhancing-financial-literacy-among-student-athletes.aspx?path=research> [<https://perma.cc/N5VJ-95W4>] (last visited Oct. 4, 2022) (stating purpose of study conducted by NCAA).

103. See Lisa M. Rubin, Sonya Britt-Lutter, Daron K. Roberts, Arin C. Dunn, Fanny Fang, Camila Haselwood, Taylor R. Brown, *Enhancing Financial Literacy Among Student-Athletes: 2018 NCAA Innovations in Research and Practice Grant Final Report*, NCAA, [https://ncaaorg.s3.amazonaws.com/research/grants/innovations/2018/2018RES\\_InnoGrant\\_FinancialLitKSU\\_FinalReport.pdf](https://ncaaorg.s3.amazonaws.com/research/grants/innovations/2018/2018RES_InnoGrant_FinancialLitKSU_FinalReport.pdf) [<https://perma.cc/2TES-XQZB>] (2018) (detailing findings of study conducted by NCAA); see also R.J. Curington, *The Importance of NCAA Student-Athletes’ Financial Literacy and Mental Health in Anticipation of the Historic Fair Pay to Play Act*, 16 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 74, 90 (2020) (presenting results of NCAA study).

104. See Curington, *supra* note 103, at 90 (providing statistics of lack of financial education).

105. See *id.* (highlighting specific examples of ways student-athletes prefer to learn about financial education).

106. See *id.* (demonstrating need for financial education programs for student-athletes).

107. See Kathleen Elkins, *The No. 1 Reason Millennials are Struggling to Save for Retirement – and it’s Not Debt*, CNBC (Sept. 25, 2019), <https://www.cnn.com/2019/09/25/the-no-1-reason-millennials-are-struggling-to-save-for-retirement.html> [<https://perma.cc/8GHQ-533S>] (showing lack of financial security amongst millennials and providing potential reasons for it).

108. See *id.* (stating cost of living has increased over time); see also Sara Li, *How Financial Stress is Impacting Young People’s Mental Health*, TEEN VOGUE (Nov. 17, 2021), <https://www.teenvogue.com/story/how-financial-stress-is-impacting-young-peoples-mental-health> [<https://perma.cc/VX2R-CLXJ>] (addressing how COVID-19 created anxiety in young adults due to fear of increased expenses).

worth of debt” whereas people aged twenty-five to forty had an average of “\$27,251 in non-mortgage debt.”<sup>109</sup> This debt does not address the housing crises that young adults have also experienced.<sup>110</sup> Many young adults struggle to live independently, and a study by the Pew Research Center found that “52% of young adults resided with one or both of their parents.”<sup>111</sup>

Financial disorders are “maladaptive patterns of financial beliefs and behaviors that lead to clinically significant distress, impairment in social or occupational functioning, undue financial strain, or an inability to enjoy one’s financial resources.”<sup>112</sup> Examples of financial disorders or money disorders include “financial enabling,” “compulsive buying disorder,” “compulsive hoarding,” “pathological gambling,” “workaholism,” “financial dependence,” “financial infidelity,” and “financial enmeshment.”<sup>113</sup> Moreover, young adults can experience financial anxiety that results in symptoms like “restlessness,” “being easily fatigued,” “difficulty concentrating,” “irritability,” “muscle tension,” and “sleep disturbances.”<sup>114</sup>

Professional athletes have a history of struggling with finances.<sup>115</sup> Typically, professional athletes make large salaries early

109. See Megan DeMatteo, *Here’s How Much Debt the Average 20-Something Has – See How You Compare*, CNBC (June 8, 2021), <https://www.cnbc.com/select/average-debt-for-20-year-olds/> [<https://perma.cc/G9Z9-EAC3>] (showing amount of debt people of all ages carry); see also Alicia Hahn, *2023 Student Loan Debt Statistics: Average Student Loan Debt*, FORBES (Sept. 19, 2022), <https://www.forbes.com/advisor/student-loans/average-student-loan-statistics/> [<https://perma.cc/FN3F-YHJJ>] (stating total of student loan debt across country is \$1.75 trillion).

110. See *id.* (explaining homeownership typically causes higher than average debt); see also Li, *supra* note 108 (“[T]he cost of buying a house today is much steeper than it was when our grandparents were buying homes, even when adjusted for inflation and rising salaries.”).

111. See Richard Fry, Jeffrey S. Passel & D’Vera Cohn, *A Majority of Young Adults in the U.S. Live with Their Parents for the First Time Since the Great Depression*, PEW RESEARCH CENTER (Sept. 4, 2020), <https://www.pewresearch.org/fact-tank/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/> [<https://perma.cc/J95R-Y6CA>] (announcing study indicating young adults live with their parents at higher rates now than in past).

112. See Bradley Klontz, Sonya L. Britt, Kristy L. Archuleta, & Ted Klontz *Disordered Money Behaviors: Development of the Klontz Money Behavior Inventory*, 3 J. FIN. THERAPY 17, 18 (2012) (defining financial disorders and listing several types).

113. See Archuleta, *supra* note 81 (providing examples of financial disorders).

114. See *id.* at 54 (describing symptoms caused by financial anxiety).

115. See Tim Parker, *Why Athletes Go Broke*, INVESTOPEDIA (June 19, 2022), <https://www.investopedia.com/financial-edge/0312/why-athletes-go-broke.aspx> [<https://perma.cc/7DEC-SGT2>] (claiming professional athletes lose their wealth after only few years).



in their careers.<sup>116</sup> However, athletes' careers are typically brief.<sup>117</sup> Athletes often mismanage their finances throughout their careers, resulting in them having no money at the end of their careers.<sup>118</sup> In 2009, *Sports Illustrated* published an article stating, "[w]ithin five years of retirement, an estimated 60% of former NBA players are broke."<sup>119</sup> One of the main reasons why athletes lose money is their lack of knowledge about financial planning.<sup>120</sup> Athletes face additional challenges, including excessive spending, selecting the wrong agent or business manager, and peer pressure to live a particular lifestyle.<sup>121</sup> Financial planning is a way to prevent athletes from bankrupting themselves to maintain an extravagant lifestyle.<sup>122</sup>

There are numerous examples of agent incompetency, neglect, or mistrust.<sup>123</sup> In October 2021, New York Knicks Center Nerlens Noel sued his agent Rich Paul.<sup>124</sup> He claimed that Rich Paul "caused him to lose out on approximately \$58 million in potential earnings."<sup>125</sup> Specifically, Noel claimed that he "lost out on a four-

116. See Richard C. Webb, *Financial Planning and Investments*, 22 S.C. JUR. SPORTS LAW § 8 (2021) ("Many athletes enjoy a relatively high-income level from the outset of their playing careers.").

117. See *id.* ("Considering these factors with the relatively brief career of the typical athlete, the potential for income mismanagement and later financial difficulty becomes apparent.").

118. See *id.* (citing inexperience with money as key factor for athletes going broke).

119. See Pablo S. Torre, *How (And Why) Athletes Go Broke*, VAULT (Mar. 23, 2009), <https://vault.si.com/vault/2009/03/23/how-and-why-athletes-go-broke> [<https://perma.cc/DN3G-YJCG>] (discussing financial difficulties many professional athletes face following retirement).

120. See Parker, *supra* note 115 (arguing lack of financial planning knowledge contributes to why athletes end up broke).

121. See Anne Gaviola, *Why It's So Easy for Pro Athletes to Blow Their Millions*, VICE (Sept. 17, 2019, 3:19 PM), <https://www.vice.com/en/article/wjwxmq/why-its-so-easy-for-pro-athletes-to-blow-their-millions> [<https://perma.cc/RLL2-K8DC>] ("It goes without saying that when you're a multi-millionaire, your friends will expect you to pick up the tab, every time.").

122. See *id.* (advising athletes to "[h]ave cash on hand, not to say that it should be cash underneath the mattress, but you need to have money in case this never happens again . . . . We all hope that it does continue to roll, but at the end of it, this whole journey in professional sports could be over with the twist of an ankle.").

123. For examples of sport agent incompetency, neglect, or mistrust, see *supra* notes 124–129 and accompanying text.

124. See The Athletic Staff, *Knicks' Nerlens Noel Sues Agent Rich Paul, Alleges \$58 Million in Lost Earnings*, THE ATHLETIC (Oct. 25, 2021), <https://theathletic.com/news/knicks-nerlens-noel-sues-agent-rich-paul-alleges-58-million-in-lost-earnings/5iMVNZvw03BY/> [<https://perma.cc/AB5R-QKMR>] (explaining why former NY Knicks basketball player sued his agent).

125. See *id.* ("The lawsuit, filed on Monday in Dallas County District Court, argues that Paul, as Noel's representative, 'did little to no work' to secure contracts, pitch teams and land endorsement deals on Noel's behalf.").

year, \$70 million contract offer from the Dallas Mavericks” and requested relief as “a declaratory judgment and monetary damages.”<sup>126</sup> A similar situation occurred in 2019 when former Jets player, Darrelle Revis, sued his former agents.<sup>127</sup> Revis claimed that his two agents “secretly elevated the commission fee on an energy drink endorsement deal.”<sup>128</sup> Another incident of agent fraud occurred in 2018 when Kevin Garnett claimed that his accountant and wealth manager worked together to steal \$77 million.<sup>129</sup>

With the change in NIL policy, student-athletes may experience similar financial journeys as professional athletes.<sup>130</sup> For example, a student-athlete may receive an influx in sponsorships, but if the student is irresponsible, they may excessively spend like professional athletes.<sup>131</sup> With the help of financial planning, student-athletes can also learn about the benefits of tackling student-loan debt, given that most student-athletes incur debt while attending college.<sup>132</sup> For instance, “[o]nly about 1% to 2% of undergraduate

126. *See id.* (“In the complaint, Noel’s attorneys say he lost out on a four-year, \$70 million contract offer from the Dallas Mavericks after the 2016-2017 season and ‘was instead forced to sign a series of qualifying offers and league minimum contracts which were well below the true value of Noel services in the NBA marketplace.’”).

127. *See* Darryl Slater, *Jets’ Darrelle Revis Sues Former Agents for Allegedly Stealing Endorsement Money*, NJ.COM (Nov. 21, 2016), [https://www.nj.com/jets/2016/11/jets\\_darrelle\\_revis\\_sues\\_former\\_agents\\_for\\_stealin.html](https://www.nj.com/jets/2016/11/jets_darrelle_revis_sues_former_agents_for_stealin.html) [<https://perma.cc/74MY-658Q>] (acknowledging former professional athlete who sued agent for stealing money).

128. *See id.* (claiming that his agents conspired without his knowledge of energy drink deal).

129. *See* Associated Press, *Kevin Garnett Sues Accountant Over \$77 Million Lost to Wealth Manager*, ESPN (Sept. 6, 2018), [https://www.espn.com/nba/story/\\_/id/24599178/kevin-garnett-sues-accountant-77m-lost-wealth-manager](https://www.espn.com/nba/story/_/id/24599178/kevin-garnett-sues-accountant-77m-lost-wealth-manager) [<https://perma.cc/Z792-ZGA8>] (“The lawsuit contends Wertheim ‘possessed actual knowledge that Banks was helping himself to millions of dollars of Garnett’s money and did nothing about it.’”).

130. *See* Paul Sullivan, *Student-Athletes Can Now Earn Money. Here are the Pitfalls*, N.Y. TIMES (Aug. 6, 2021), <https://www.nytimes.com/2021/08/06/your-money/student-athletes-endorsements.html> [<https://perma.cc/3CA9-NP4U>] (comparing student-athletes opportunity to make from NIL to that of former Olympian Michael Phelps).

131. *See* Dan Whateley & Colin Salao, *How College Athletes are Getting Paid from Brand Sponsorships as NIL Marketing Takes Off*, INSIDER (Dec. 19, 2022), <https://www.businessinsider.com/how-college-athletes-are-getting-paid-from-nil-endorsement-deals-2021-12> [<https://perma.cc/NJ9S-ZNCE>] (observing University of Arkansas student-athletes average \$4,102 of additional income from NIL sponsorship deals).

132. *See* Deborah Ziff Soriano & Emma Kerr, *5 Myths About Athletic Scholarships*, U.S. NEWS & WORLD REPORT (Mar. 24, 2021), <https://www.usnews.com/education/best-colleges/paying-for-college/articles/myths-about-athletic-scholarships> [<https://web.archive.org/web/20230114062235/https://www.usnews.com/education/best-colleges/paying-for-college/articles/myths-about-athletic-scholarships>]

students in bachelor's degree programs receive sports scholarships."<sup>133</sup> On average, a Division I student-athlete receives "\$18,000" in scholarship money, which usually does not cover the full cost of school.<sup>134</sup>

Moreover, first-generation student-athletes who benefit from the NIL legislation may also experience similar pressure from their families to provide financial support while in college or after graduating.<sup>135</sup> The expectation of becoming a professional athlete traditionally derives from the pressure to support one's family.<sup>136</sup> However, NIL sponsorships create a different career path where student-athletes can support themselves based on their brand.<sup>137</sup> Many students receiving the largest deals often have significant social media followings and personal brands.<sup>138</sup> Because these student-athletes eventually graduate, they may attempt to transition their brand from student-athlete to full-time influencer if they do not go professional.<sup>139</sup> This can lead to new pressure where these student-athletes may feel compelled to support their families as in-

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(describing student-athlete who took out loans to pay for college, contrary to common perception of athletes attending school on scholarship).

133. *See id.* (finding small percentage of student-athletes receive scholarships from universities).

134. *See id.* ("Per U.S. News data for 2020-2021, the average tuition and fees at ranked public schools for out-of-state students was \$21,184, and the average cost amounted to \$35,087 at ranked private schools.").

135. *See* Curington, *supra* note 103, at 74 ("Dreams of financial stability are thought to be student-athletes' only way to support their families and to escape the 'trenches' of tough neighborhoods.").

136. *See* Noel King, *Young, Famous and Newly Rich: A Family Dilemma for Pro Athletes*, MARKETPLACE (May 23, 2013), <https://www.marketplace.org/2013/05/23/young-famous-and-newly-rich-family-dilemma-pro-athletes/> [<https://perma.cc/ZM4Z-XQ8V>] (reporting pressure first-generation student-athletes face from their families).

137. *See* Sullivan, *supra* note 130 (detailing story of former athlete who now helps student-athletes develop personal brands).

138. *See* David M. Hale, *Social Media Stardom: How Changes to NIL Will Benefit Athlete-Influencers Across the NCAA*, ESPN (Mar. 8, 2021), [https://www.espn.com/womens-college-basketball/story/\\_/id/30945653/social-media-stardom-how-changes-nil-benefit-athlete-influencers-ncaa](https://www.espn.com/womens-college-basketball/story/_/id/30945653/social-media-stardom-how-changes-nil-benefit-athlete-influencers-ncaa) [<https://perma.cc/2UA6-5DN3>] ("[A]s the NCAA moves toward allowing athletes to profit from endorsement deals, it's follower counts, not stat lines, that could translate to serious money.").

139. *See* Kalhan Rosenblatt, *Collegiate Athletes Look to Become Influencers After NCAA Rule Change*, NBC News (July 11, 2021, 4:30 AM), <https://www.nbcnews.com/pop-culture/pop-culture-news/collegiate-athletes-look-become-influencers-after-ncaa-rule-change-n1273394> [<https://perma.cc/4PZW-PK6G>] ("While many students who play college sports will not pursue their athletic careers after graduation, influencing is something that could benefit them long after they leave the game behind.").

fluencers.<sup>140</sup> Financial planning tailored to their circumstances will assist athletes in responding to and adjusting their families' expectations.<sup>141</sup>

In 2017, the NCAA attempted to provide student-athletes with an online platform to teach them about financial literacy.<sup>142</sup> The online program consisted of "video-based interactive modules that will give them instruction for money and personal business management."<sup>143</sup> The NCAA recognized financial literacy as a priority and wanted to assist in the financial success of student-athletes.<sup>144</sup> In 2021, the NCAA created a game called How Not To Suck at Money, which became "the official financial education program of the NCAA."<sup>145</sup> The game focuses on "budgeting, banking, credit cards, student loans, investing, moving out and starting a new job."<sup>146</sup> In the game, students play as animated characters in a college town, where they learn "Money Secrets" by doing small tasks for players in

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140. See King, *supra* note 136 (highlighting that student-athletes may feel pressure to provide for families); Kit Ramgopal, Kenzi Abou-Sabe and Gabe Gutierrez, *There's No Rules. It's Crazy: New Money in NCAA Recruiting Leaves Elite Athletes Ripe for Exploitation*, NBC News (Nov. 27, 2022, 8:00 AM), <https://www.nbcnews.com/news/us-news/star-high-school-athletes-can-now-profit-nil-deals-rcna51075> [<https://perma.cc/RDR9-CNPD>] (quoting high school student who "hopes to get an NIL deal in college to improve housing for his family").

141. See *id.* (observing how professional athlete felt pressure from family members to cover certain costs).

142. See *Online Platform Offers Financial Tips for College Athletes*, NCAA (Sept. 7, 2017, 11:25 AM), <https://www.ncaa.org/news/2017/9/7/online-platform-offers-financial-tips-for-college-athletes.aspx> [<https://perma.cc/XY8C-SKUR>] (announcing new program to help student-athletes be "fiscally responsible").

143. See *id.* (describing details of financial awareness program for student-athletes).

144. See *id.* ("The online education is a direct tie to the Division I Student-Athlete Advisory Committee's priority to provide financial education resources, positioning college athletes for success in college and long after graduation.").

145. See Gail Dent, *Invesco and Invesco QQQ Bring Financial Education to NCAA Student-Athletes*, NCAA (Nov. 12, 2021, 2:30 PM), <https://www.ncaa.org/news/2021/11/12/general-invesco-and-invesco-qqq-bring-financial-education-to-ncaa-student-athletes.aspx> [<https://perma.cc/V9NE-3XH6>] (introducing new program for NCAA student-athletes).

146. See *id.* (pointing to specifics of financial education game sponsored by NCAA).

the game.<sup>147</sup> The NCAA has a longstanding initiative to provide student-athletes with financial education.<sup>148</sup>

States and universities can learn from professional sports leagues by creating similar financial literacy programs.<sup>149</sup> For example, the National Football League (“NFL”) has a Player Engagement department that focuses on supporting NFL players in all areas, including “financial well-being.”<sup>150</sup> The department also has a “Wealth Management Workshop” where “[p]rofessional financial experts show players, legends and significant others how to spend, invest, save and grow their NFL earnings wisely.”<sup>151</sup> As a part of the Rookie Career Development Program, the Major League Baseball Players Association sends new players to a four-day workshop to adjust to their new careers and learn how to handle their finances.<sup>152</sup> The National Basketball Association (“NBA”) has a similar program to the NFL and the MLB for rookie players.<sup>153</sup> During the NBA’s Rookie Transition Program, there is a financial literacy component where NBA players learn budgeting, “check writing and bill paying,” “recognizing and understanding fees,” and “how money relates to family and friends.”<sup>154</sup> These programs can give states and

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147. See *Invesco QQQ and NCAA, How Not to Suck at Money*, [https://hntsam.com/?utm\\_campaign=financial\\_edu&utm\\_source=National%20Press%20Release&utm\\_medium=article&utm\\_content=qqq%7Cpaid%7Cdisplay%7Civz%7Cimage%7C1121](https://hntsam.com/?utm_campaign=financial_edu&utm_source=National%20Press%20Release&utm_medium=article&utm_content=qqq%7Cpaid%7Cdisplay%7Civz%7Cimage%7C1121) [<https://perma.cc/TNG2-2WCL>] (last visited Aug. 10, 2022) (providing student-athletes with a virtual game to learn helpful money habits); see also Dent, *supra* note 145 (“How Not To Suck at Money tackles the real-life money questions college students face in a relevant and entertaining way so that they can be more confident about decisions around money.”).

148. See *Online Platform Offers Financial Tips for College Athletes*, *supra* note 142 (demonstrating NCAA’s commitment to financial literacy).

149. For further discussion of financial literacy programs created by professional sports leagues, see *infra* notes 150–154 and accompanying text.

150. See *NFL Player Engagement*, NFL FOOTBALL OPERATIONS <https://operations.nfl.com/inside-football-ops/players-legends/nfl-player-engagement/> [<https://perma.cc/4LT5-FTKP>] (last visited Feb. 15, 2022) (highlighting NFL’s programs to assist professional athletes).

151. See *Support For Players, On and Off the Field*, NFL FOOTBALL OPERATIONS, <https://operations.nfl.com/inside-football-ops/players-legends/nfl-player-engagement/support-for-players-on-and-off-the-field/> [<https://perma.cc/2SG3-DACF>] (last visited Feb. 15, 2022) (describing NFL’s wealth management workshop).

152. See *Rookie Career Development*, MAJOR LEAGUE BASEBALL PLAYERS, <https://www.mlbplayers.com/rookie-career-development> [<https://perma.cc/K2L6-NZ5B>] (last visited Feb. 15, 2022) (detailing MLB’s plan for rookie players).

153. See Adam Caparell, *For NBA Rookies, Financial Literacy is More Than Scared Straight Stories*, COMPLEX (Sept. 21, 2021), <https://www.complex.com/sports/for-nba-rookies-financial-literacy-is-more-than-scared-straight-stories/> [<https://perma.cc/5CY6-VGNJ>] (describing NBA program designed to help with incoming player’s adjustment).

154. See *id.* (listing components of financial education aspects of NBA program).

universities ideas on how to shape mandatory financial programs.<sup>155</sup>

The second step is to include time requirements for the length of the financial literacy workshops.<sup>156</sup> For example, Louisiana states, “[a] postsecondary education institution shall conduct a financial literacy and life skills workshop for a minimum of five hours at the beginning of an intercollegiate athlete’s first and third academic years.”<sup>157</sup> The statute has a length requirement and requires athletes to revisit the topic in their third year of school.<sup>158</sup> However, compared to Tennessee, a state with a subsection in its statute dedicated to financial literacy, its statute does not provide a minimum time requirement for universities.<sup>159</sup>

While five hours is the minimum amount of time in Louisiana, institutions and states can create longer courses to teach student-athletes how to manage their finances.<sup>160</sup> In 2016, Arizona State University Professor Glenn Wong created a semester-long class to teach student-athletes how to manage their finances.<sup>161</sup> The class instructed students about choosing representation, player unions, collective bargaining agreements, and players’ financial issues once they become professionals.<sup>162</sup> Having a semester-long course may instill better financial habits in student-athletes.<sup>163</sup> However, the goal is for them to receive at least some exposure to be empowered

155. For further discussion of professional sports league financial literacy programs, see *supra* notes 149–154.

156. See Dan Schawbel, *Josh Kaufman: It Takes 20 Hours Not 10,000 Hours to Learn a Skill*, FORBES (May 30, 2013), <https://www.forbes.com/sites/danschawbel/2013/05/30/josh-kaufman-it-takes-20-hours-not-10000-hours-to-learn-a-skill/?sh=79218916363d> [<https://perma.cc/3J26-54AV>] (showing it takes few hours to comprehend material).

157. See LA. STAT. ANN. § 17:3703(K)(1)(a)-(2)(a) (2022) (“The workshop shall also include information on time management skills necessary for success as an intercollegiate athlete and available academic resources.”); see also TEX. EDUC. CODE ANN. § 51.9246(i) (West 2021) (stating that financial literacy workshops “must be at least five hours”).

158. See LA. STAT. ANN. §§ 17:3703(K)(1) (mandating student-athletes to participate in program during their first and third year of school).

159. See TENN. CODE ANN. § 49-7-2802 (2022) (failing to state minimum time requirement for financial literacy program).

160. See LA. STAT. ANN. § 17:3703(K)(2)(a)(2022) (imposing minimum time requirement meaning universities can impose extended time requirements).

161. See Kaitlin Mulhere, *Meet the Professor Who’s Teaching Future Pro Athletes How to Hang Onto Their Millions*, MONEY (Apr. 22, 2016), <https://money.com/professor-teaching-future-pro-athletes-finances/> [<https://perma.cc/32GC-TDEW>] (“[Glen Wong have] been teaching for 35 years, and in dealings with high-level student athletes I’ve had in class, most are not prepared for the legal and business issues they might face if they have a professional sports career.”).

162. See *id.* (describing aspects of course created by Glenn Wong).

163. See *id.* (stating class taught by Glenn Wong runs for entire semester).

to make intelligent financial decisions.<sup>164</sup> Studies have shown that providing students with financial counseling and education “at an impressionable point in their lives . . . which will better prepare them to transition out of college while exhibiting positive financial behaviors.”<sup>165</sup>

The third step is to create federal legislation to make the legislation more uniform.<sup>166</sup> Currently, state legislation is not uniform.<sup>167</sup> The inconsistent legislation leads to problems for student-athletes as they will not receive the same type of training and education.<sup>168</sup> This could lead to student-athletes suffering from mental health problems or struggling with managing their finances.<sup>169</sup>

Overall, federal legislation will also help with a new issue developing from NIL legislation – increased competition in recruiting student-athletes.<sup>170</sup> Currently, universities may not use endorsement deals to recruit students, however, “as long as a school can

164. *See id.* (“[W]e’ll track the career from the perspective of the student athlete who then becomes a young professional athlete to hopefully one who will get their second contract.”).

165. *See* Lisa M. Rubin, Mindy Joseph, Sonya Lutter, Daron K. Roberts, and Julian J. Jones, *Enhancing Financial Literacy Among College Athletes*, 3 J. OF ATHLETE DEVELOPMENT AND EXPERIENCE 74, 76 (2021) (citation omitted) (observing teaching student-athletes about financial literacy at early ages may be more beneficial).

166. *See* Ross Dellenger, *As July 1 Nears, Congress Making Critical Progress on NIL and College Athletes’ Rights*, SPORTS ILLUSTRATED (May 18, 2021), <https://www.si.com/college/2021/05/18/ncaa-athletes-rights-profit-congress-nil-bill> [<https://perma.cc/JU4A-SPAQ>] (“A group of U.S. senators, led by Sen. Maria Cantwell (D-Wash.), are in deep negotiations on bipartisan legislation that could help college sports avoid a chaotic quandary: schools and their athletes operating under differing state laws related to NIL.”).

167. *See generally* ARIZ. REV. STAT. ANN. § 15-1892 (2021) (showing lack of detail in NIL statute); LA. STAT. ANN. § 17:3703(M) (2022) (highlighting differences in language and requirements for state NIL legislation).

168. *See* Liz Clarke, *State-By-State Rating System Gives College Recruits Road Map to Evaluate NIL Laws*, WASH. POST (Oct. 21, 2021) <https://www.washingtonpost.com/sports/2021/10/21/name-image-likeness-laws-state-rankings/> [<https://perma.cc/W82B-UCGP>] (mentioning that lack of federal legislation has led to “[a] patchwork of state laws”).

169. *See* Greg Johnson, *Mental Health Issues Remain on Minds of Student Athletes*, NCAA (May 24, 2022, 12:00 PM), <https://www.ncaa.org/news/2022/5/24/media-center-mental-health-issues-remain-on-minds-of-student-athletes.aspx> [<https://perma.cc/SA2A-8LMT>] (highlighting how some student-athletes suffer from depression or anxiety); *see also* Sullivan, *supra* note 130 (mentioning how student-athletes may not be prepared for fluctuation in income).

170. *See* Dan Murphy, *Schools Brokering Name, Image and Likeness Deals Adds Layer to College Conundrum*, ESPN (Feb. 7, 2022), [https://www.espn.com/college-football/story/\\_/id/33229931/schools-brokering-name-image-likeness-deals-adds-layer-college-conundrum](https://www.espn.com/college-football/story/_/id/33229931/schools-brokering-name-image-likeness-deals-adds-layer-college-conundrum) [<https://perma.cc/JEG4-D8NF>] (describing future difficulties universities may face when recruiting student-athletes); *see also* Ramgopal, *supra* note 140 (providing examples of NIL deals offered to prospective students to encourage student-athletes to attend certain schools).

credibly argue that its deals are crafted with its current athletes in mind rather than in hopes of luring the next class to campus, the NCAA can't stop them."<sup>171</sup> As stated in previous sections, some states have NIL legislation, while others leave the NIL policies up to local schools.<sup>172</sup> This means that universities without state legislation only need to follow the rules of the NCAA and have fewer restrictions.<sup>173</sup> For example, BYU in Utah negotiated a large deal with a protein bar company to cover tuition for "each of the team's walk-on players."<sup>174</sup> However, other states like Alabama have more stringent restrictions that prevent their schools from making these deals.<sup>175</sup> When high school students consider which universities to attend, they may consider schools that can provide them with more deals, like BYU.<sup>176</sup>

Federal legislation would solve this problem by leveling the playing field for all universities and states.<sup>177</sup> Federal laws may preempt state laws depending on the exact wording of the legislation.<sup>178</sup> However, having federal legislation could create a baseline for states to build.<sup>179</sup> Unfortunately, it takes Congress a long time to act, so state legislatures must pass legislation as they wait for Congress.<sup>180</sup>

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171. See Murphy, *supra* note 170 (highlighting loophole in NCAA regulations).

172. See Moody, *supra* note 10 (explaining how states created and redeveloped NIL legislation).

173. See Murphy, *supra* note 170 (showing disparities in state NIL legislation).

174. See *id.* (illustrating deal for student-athletes included "promoting the company at two in-person events and on social media" in exchange for money that covers tuition).

175. See *id.* ("[Universities'] change of heart has been driven by a fear of being left behind in recruiting battles.").

176. See *id.* (implying students will choose schools who offer deals, especially if students do not "have a ton of offers to see like, oh, BYU takes care of its walk-ons, I'd rather walk on there than, than somewhere else.").

177. See *id.* (identifying gray area in NIL legislation law).

178. See Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 225 (2000) ("As a result, nearly every federal statute addresses an area in which the states also have authority to legislate (or would have such authority if not for federal statutes.)").

179. See Dellenger, *supra* note 166 ("This months-long process is described to have made significant strides recently, with high-profile leaders from the two parties agreeing to concessions as a bevy of state laws threaten to create an uneven playing field across college athletics.").

180. See Drew DeSilver, *Congress is Off to a Slow Start in 2021, Much as it Has Been in Previous Years*, PEW RESEARCH CENTER (Aug. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/08/13/congress-is-off-to-a-slow-start-in-2021-much-as-it-has-been-in-previous-years/> [<https://perma.cc/Q9NP-YVYE>] (emphasizing Congress only passed thirty-six laws in the first eight months of 2021).



### C. Waste of Time? Legislation Prohibiting Student-Athletes from Endorsing Certain Industries

Fourteen states have detailed language about which industries should not be included.<sup>181</sup> These states primarily banned students from having endorsements with the following industries: adult entertainment, alcoholic beverages, gambling, tobacco, controlled substances, drug paraphernalia, and weapons.<sup>182</sup> Other states have language that broadly bans industries that are “inconsistent with the values or mission” of the institution.<sup>183</sup> The reasons for these bans vary depending on the sector.<sup>184</sup> For example, drug paraphernalia, tobacco, and controlled substance industries are banned to protect public health initiatives.<sup>185</sup>

A positive aspect of banning these industries is the public’s health.<sup>186</sup> Allowing young adults to receive sponsorships from to-

181. See Matt Brown, *It’s All in The Wording*, FRONT OFFICE SPORTS (July 14, 2021), <https://frontofficesports.com/newsletter/enforcing-nil-regulations/> [<https://perma.cc/KY5Y-PBGF>] (“Many of the other state laws share similar language, not just about prohibited industries like gambling, adult-entertainment, and controlled substances . . .”).

182. See *id.* (listing industries that may not sponsor student-athletes).

183. See 110 ILL. COMP. STAT. 190/20(i) (2021) (“No student-athlete shall enter into a publicity rights agreement or receive compensation from a third party licensee for the endorsement or promotion of gambling, sports betting, controlled substances, cannabis, a tobacco or alcohol company, brand, or products, alternative or electronic nicotine product or delivery system, performance-enhancing supplements, adult entertainment, or any other product or service that is reasonably considered to be inconsistent with the values or mission of a postsecondary educational institution or that negatively impacts or reflects adversely on a postsecondary educational institution or its athletic programs . . .”).

184. See Lauren Withrow, *Money Moves: NCAA NIL Laws Take Effect*, FANNATION (July 1, 2021, 12:59 PM), <https://www.si.com/college/northwestern/ncaa/money-moves-ncaa-nil-laws-take-effect> [<https://web.archive.org/web/20220831173743/https://www.si.com/college/northwestern/ncaa/money-moves-ncaa-nil-laws-take-effect>] (“Some states and schools prohibit athletes from signing endorsements of tobacco, alcohol, or gambling products.”). For further discussion of why certain states banned industries, see *infra* notes 185–208 and accompanying text.

185. See Israel T. Agaku, Satomi Odani, Stephanie Sturgis, Charles Harless, Rebecca Glover-Kudon, *Tobacco Advertising and Promotional Expenditures in Sports and Sporting Events – United States, 1992 – 2013*, 822, CENTER FOR DISEASE CONTROL AND PREVENTION (Aug. 19, 2016), <https://www.cdc.gov/mmwr/volumes/65/wr/mm6532a3.htm> [<https://perma.cc/SNU3-CT3C>] (“Restricting tobacco advertising and promotion in sports, coupled with other proven population-based measures (e.g., tobacco price increases, anti-tobacco mass media campaigns, tobacco-free policies inclusive of smokeless tobacco, and barrier-free cessation services), can help reduce tobacco use in the United States.”).

186. See *Tobacco Control Interventions*, CDC, (May 16, 2022), <https://www.cdc.gov/policy/opaph/hi5/tobaccointerventions/> [<https://perma.cc/6NQ8-UZ88>] (“In addition to adverse effects on individual- and population-level health, smoking imposes an immense financial burden on society, with over 480,000 premature deaths, over \$170 billion in lost productivity costs, and over \$225 billion in direct medical care expenditures in the United States each year.”).

bacco companies may encourage their fans of the same age or younger to start participating in these activities.<sup>187</sup> For example, the CDC conducted a study titled “Tobacco Advertising and Promotional Expenditures in Sports and Sporting Events.”<sup>188</sup> “The 2009 Family Smoking Prevention and Tobacco Control Act, prohibited tobacco brand sponsorship of regulated tobacco products in sports and entertainment events or other social or cultural events.”<sup>189</sup> The study revealed that “enhanced measures are warranted to restrict youth-oriented tobacco marketing and promotional activities that could lead to tobacco initiation and use among children and adolescents.”<sup>190</sup> Immediately after the Supreme Court ruled on the case and the NCAA implemented its new NIL rules, twin student-athletes Haley and Hanna Cavinder “signed a deal with Boost Mobile.”<sup>191</sup> According to the twins’ Instagram accounts, they have over 900,000 followers combined.<sup>192</sup> If the twins partnered with a tobacco or drug paraphernalia company, they would have the potential to influence a large number of young adults.<sup>193</sup>

However, this ban prevents student-athletes from making the most money possible based on their NIL, which goes against the

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187. See Donna Lu, ‘Urgent Need’ for Age Restrictions on TikTok Vaping Videos, *Australian Study Finds*, GUARDIAN (July 26, 2021), <https://www.theguardian.com/society/2021/jul/27/urgent-need-for-age-restrictions-on-tiktok-vaping-videos-australian-study-finds> [<https://perma.cc/8MAZ-VE36>] (“Sun said previous studies showed the increase in e-cigarette popularity among young people was partly attributable to endorsements by friends, celebrities and online influencers. Other research has found that, when shown to children, e-cigarette advertisements reduced the perceived harm of occasional smoking.”).

188. See Agaku, *supra* note 185 (detailing study conducted by CDC on smoking and sports games).

189. See *id.* (“The rule prohibits the use of brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or other identifying features used for any brand of cigarettes or smokeless tobacco for sponsorship activities in sports and entertainment events or other social or cultural events.”).

190. See *id.* (“Reducing tobacco industry promotion through sponsorship of public and private events is an evidence-based strategy for preventing youth initiation of tobacco use.”).

191. See Rosenblatt, *supra* note 139 (announcing Boost Mobile partnership with Cavinder twins).

192. See Haley Cavinder (@haleycavinder), INSTAGRAM, <http://instagram.com/haleycavinder> [<https://web.archive.org/web/20221120220436/https://www.instagram.com/haleycavinder/>] (last visited Jan. 24, 2023) (showing she has 468,000 followers); see also Hanna Cavinder (@hanna.cavinder), INSTAGRAM, <http://instagram.com/hanna.cavinder> [<https://web.archive.org/web/20221120163359/https://www.instagram.com/hanna.cavinder/>] (last visited Jan. 24, 2023) (showing she has 474,000 followers).

193. See Agaku, *supra* note 188 (providing study that shows endorsement of smoking increased popularity of smoking).

true purpose of the NIL ruling.<sup>194</sup> Certain industries, such as on-line sports betting, smokeless tobacco, and marijuana, are growing areas where athletes can potentially receive the largest sponsorships.<sup>195</sup> For example, a Gonzaga athlete partnered with a regional casino in Washington, a state that does not have NIL legislation.<sup>196</sup> Meanwhile, MaximBet is a sports betting agency seeking to partner with female student-athletes “over the age of 21, regardless of whether they play Division I, II, or III” in Colorado.<sup>197</sup> Another example is N’Kosi Perry, a quarterback for Florida Atlantic University, who “is believed to be the first ever NIL deal with a beer/liquor organization for a college athlete.”<sup>198</sup> Student-athletes have the potential to partner with companies that can provide student-athletes with additional funds.<sup>199</sup>

Similar restrictions prevent professional athletes from partnering with specific companies for sponsorships.<sup>200</sup> For example, the National Football League Players Association (“NFLPA”) has specific criteria such as “project alignment with NFLPA mission and

194. See *NCAA v. Alston*, 141 S. Ct. 2141, 2164 (2021) (suggesting purpose of ruling is to provide student-athletes with enhancement in education-related benefits).

195. See Jim Sergeant, *Six Charts Show Sports Betting’s Digital Explosion with NFL Season About to Kick Off*, USA TODAY (Sept. 9, 2021, 2:12 PM), <https://www.usatoday.com/in-depth/graphics/2021/09/09/online-sports-gambling-good-bet-industry-continue-winning-ways/5686836001/> [<https://perma.cc/ZF7S-QHUR>] (observing legal sports betting industry has grown tremendously after Supreme Court case).

196. See Bryce Derouin, *Washington Casino Signs NIL Deal With Top College Basketball Player*, GAMBLING.COM (Nov. 12, 2021), <https://www.gambling.com/us/online-casinos/washington> [<https://perma.cc/KH8B-C8FK>] (announcing student-athlete’s partnership with local Washington state casino).

197. See Kristi Dosh, *MaximBet Offers Statewide NIL Deal to Every NCAA Female Student Athlete in Colorado*, FORBES (Sept. 28, 2021, 8:00 AM), <https://www.forbes.com/sites/kristidosh/2021/09/28/maximbet-offers-statewide-nil-deal-to-every-ncaa-female-student-athlete-in-colorado/?sh=7f2387fd127d> [<https://perma.cc/7MZY-J2AC>] (“Colorado’s state law does not specifically prohibit working with brands in any specific categories, including the gambling industry.”).

198. See Joseph Salvador, *FAU Quarterback N’Kosi Perry Signs First NIL Deal with Alcohol Company*, SPORTS ILLUSTRATED (Sept. 8, 2021), <https://www.si.com/college/2021/09/08/nkosi-perry-first-college-athlete-sign-nil-deal-alcohol-company> [<https://web.archive.org/web/20220329084510/https://www.si.com/college/2021/09/08/nkosi-perry-first-college-athlete-sign-nil-deal-alcohol-company>] (“FAU quarterback N’Kosi Perry has signed what is believed to be the first ever NIL deal with a beer/liquor organization for a college athlete in an agreement with Islamorada Beer Company, the company announced Wednesday.”).

199. See Moody, *supra* note 23 (“Fast forward to 2021: Bryce Young, the presumptive starting quarterback at the University of Alabama, has signed endorsement deals worth nearly \$1 million.”).

200. For further discussion of professional athletes’ sponsorship restrictions, see *infra* notes 201–203 and accompanying text.

goals;” and “reasonable and competitive costs for participants.”<sup>201</sup> The organization also has restrictions that prohibit athletes from partnering with “police-regulated businesses, such as, but not limited to, adult business (activities restricted to adults); tobacco firms or marketers . . . businesses or entities promoting adult materials or services or with sexual associations.”<sup>202</sup> The Major League Baseball Player also has an association focusing on “licensing, corporate sponsorship, media, promotions, sweepstakes, contests, and events.”<sup>203</sup>

However, professional athlete associations and organizations have slowly changed their stance towards certain industries.<sup>204</sup> For example, in 2019, Major League Soccer changed its rules to allow sports betting and liquor companies to occupy space on jerseys and “stadium naming rights.”<sup>205</sup> Additionally, the PGA Tour recently allowed “gambling entities” to have sponsorships and the NFL allowed a liquor sponsor.<sup>206</sup> These modifications for professional athletes’ sponsorship agreements suggest that the money from these prohibited industries is too large to turn down.<sup>207</sup> If profes-

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201. See *Partnership & Endorsement Policy*, NFLPA, <https://nflpa.com/about/partnership-and-endorsement-policy#:~:text=Unless%20a%20specific%20and%20express,product%2C%20service%2C%20or%20activity> [https://perma.cc/5GZD-FRQR] (last visited Mar. 3, 2022) (detailing partnership & endorsement policy which limits types of endorsements for NFL players).

202. See *id.* (listing prohibited partnerships and endorsements for members of NFLPA).

203. See *About MLB Players Inc.*, MLB PLAYERS, <https://www.mlbplayers.com/mlbpi> [https://perma.cc/P5LA-89ZH] (last visited Mar. 3, 2022) (stating purpose of MLB Players, Inc.).

204. See Mike McAllister, *PGA TOUR Revises Sponsorship Regulations With Gambling Entities*, PGA TOUR (Feb. 26, 2019), <https://www.pgatour.com/company/2019/02/26/pgatour-revises-sponsorship-regulations-with-gambling-entities.html> [https://perma.cc/7L3J-TP8K] (stating PGA tour announced change allowing sports betting); see also Andy Wittry, *Pandora’s Keg: Will There be an Unrestricted Market for Alcohol-Related Name, Image and Likeness Endorsements for College Athletes?*, (Feb. 26, 2021) <https://andywittry.substack.com/p/pandoras-keg-will-there-be-an-unrestricted?s=r> [https://perma.cc/4T2P-4F3W] (discussing change in alcohol sponsorships due to NIL policy change).

205. See Rey Mashayekhi, *Major League Soccer Will Allow Gambling, Liquor Sponsors for Jerseys and Stadium Rights*, FORTUNE (June 26, 2019, 12:00 PM), <https://fortune.com/2019/06/26/major-league-soccer-gambling-liquor-sponsors-jerseys-stadium-rights/> [https://perma.cc/D9ZQ-YD99] (detailing change in Major League Soccer for gambling and liquor sponsorships).

206. See McAllister, *supra* note 204 (announcing change in PGA Tour); see also Amelia Lucas, *Diageo Becomes First Spirits Company to Sign Sponsorship Deal With NFL*, CNBC (June 16, 2021, 8:00 AM), <https://www.cnbc.com/2021/06/16/diageo-becomes-first-spirits-company-to-sign-sponsorship-deal-with-nfl.html> [https://perma.cc/SZ3G-J8QG] (announcing NFL partnership with spirits company Diageo).

207. See Jabari Young, *Tech, Gambling and Alcohol Helped the NFL Earn Almost \$2 Billion in Sponsorships This Season*, CNBC (Jan. 26, 2022, 5:00 AM), <https://>

sional athletes and organizations partner with these companies, student-athletes may partner with them.<sup>208</sup>

The best way to improve state legislation is to encourage all states to draft detailed NIL legislation.<sup>209</sup> This will help eliminate gray areas in the law and guide student-athletes and universities.<sup>210</sup> States that refuse to provide detailed legislation should not be able to decide what student-athletes cannot promote.<sup>211</sup> For example, Utah, without NIL legislation, banned student-athletes from partnering with coffee brands due to Mormon beliefs.<sup>212</sup> Most states without detailed legislation leave the NIL policy decisions to the local universities, which can potentially result in lawsuits.<sup>213</sup>

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[www.cnn.com/2022/01/26/tech-gambling-alcohol-helped-nfl-earn-almost-2-billion-in-sponsorships.html#:~:text=Sports,Tech%2C%20gambling%20and%20alcohol%20helped%20the%20NFL%20earn%20almost,billion%20in%20sponsorships%20this%20season&text=Agreements%20from%20technology%20companies%20and,year%20from%20the%202020%20season](https://www.cnn.com/2022/01/26/tech-gambling-alcohol-helped-nfl-earn-almost-2-billion-in-sponsorships.html#:~:text=Sports,Tech%2C%20gambling%20and%20alcohol%20helped%20the%20NFL%20earn%20almost,billion%20in%20sponsorships%20this%20season&text=Agreements%20from%20technology%20companies%20and,year%20from%20the%202020%20season) [<https://perma.cc/LBW3-AA39>] (“Agreements from betting firms and technology companies helped the NFL lure a record \$1.8 billion in sponsorship revenue, sports partnerships consultancy firm IEG told CNN.”).

208. See Salvador, *supra* 198 (stating that N’Kosi Perry signed first NIL deal with large liquor company).

209. See Maria Carrasco, *Congress Weighs in on College Athletes Leveraging Their Brand*, INSIDE HIGHER ED (Oct. 1, 2021), <https://www.insidehighered.com/news/2021/10/01/congress-holds-hearing-creating-federal-nil-law> [<https://perma.cc/592E-8V5G>] (illustrating Congress’ curiosity in creating federal legislation by holding hearing on NIL laws).

210. See *id.* (“Baylor University president Linda Livingstone testified that the current patchwork of state NIL laws is confusing. She said any potential federal NIL legislation should be based on three main principles: treating college athletes as students first, ensuring equity in the treatment of men and women as employees, and addressing resource discrepancies among different institutions.”).

211. See *id.* (pointing to confusion nature of NIL legislation and lack of uniformity).

212. See Emma Mayer, *Coffee Listed as One of Products BYU Student-Athletes Can’t Endorse for Compensation*, NEWSWEEK (July 1, 2021, 3:11 PM), <https://www.newsweek.com/coffee-listed-one-products-byu-student-athletes-cant-endorse-compensation-1606138> [<https://perma.cc/JX6U-WP58>] (“The BYU press release outlined that athletes can receive compensation for NIL activities within fair market value, but they cannot promote or be endorsed by any companies that promote anything outside of the ‘BYU Honor Code Standards,’ which includes alcohol, tobacco, gambling, adult entertainment and, yes, even coffee.”).

213. See *id.* (stating BYU has NIL policy yet, state of Utah does not).

## IV. CONCLUSION

Ultimately, *National Collegiate Athletic Association v. Alston*<sup>214</sup> opens new doors for future NIL legislation.<sup>215</sup> State legislatures and the federal government are uniquely positioned to draft legislation addressing the gray areas of this ruling.<sup>216</sup> Legislation can ensure that all student-athletes receive adequate financial guidance as they experience an influx in income.<sup>217</sup> Additionally, legislation can allow student-athletes to profit from all industries and end certain restrictions.<sup>218</sup> Recently, the NCAA appointed a new President with experience working in the government.<sup>219</sup> Hopefully, the new president's skills and connections will aid the NCAA in working with state and federal lawmakers.<sup>220</sup> In the meantime, states must implement new legislation to prevent lawsuits and increase compe-

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

215. See Christopher P. Conniff, Dennis M. Coleman, Erica L. Han, Evan Gourvitz, Chidi Oteh, Raymond L. Myer, and Tatiana Becker, *NCAA NIL Update: With a Semester of NIL Opportunities in The Books, Trends Emerge and Confusion Reigns*, ROPES & GREY (Mar. 1, 2022) <https://www.ropesgray.com/en/newsroom/alerts/2022/march/ncaa-nil-update-with-a-semester-of-nil-opportunities-in-the-books-trends-emerge-and-confusion-reigns> [<https://perma.cc/22L6-NL4B>] (stating federal legislation is welcomed, but Congress has failed to pass any legislation in 2022).

216. See Ross Dellenger, Republican Senator Reintroduces Bill That Takes Aim at NIL's Recruiting Influence, *SPORTS ILLUSTRATED* (Sept. 14, 2022), <https://www.si.com/college/2022/09/14/ncaa-nil-federal-bill-congress-roger-wicker> [<https://web.archive.org/web/20220915042918/https://www.si.com/college/2022/09/14/ncaa-nil-federal-bill-congress-roger-wicker>] (highlighting Senator who proposed legislation that would protect student athletes). For further discussion of the significant gaps in NIL legislation, see *supra* notes 181–210 and accompanying text.

217. See Whateley, *supra* note 131 (announcing student athletes at University of Arkansas “earned an average of \$4,102”).

218. For further discussion of industries allowed and prohibited, see *supra* notes 181–185 and accompanying text.

219. See Kris Rhim, *N.C.A.A.'s Next President Will be Gov. Charlie Baker of Massachusetts*, *N.Y. TIMES* (Dec. 15, 2022), <https://www.nytimes.com/2022/12/15/sports/ncaabasketball/charlie-baker-ncaa-president.html?searchResultPosition=1> [<https://perma.cc/P32U-59WA>] (announcing NCAA's new president, Gov. Charlie Baker, will begin in March).

220. See *id.* (explaining Mr. Baker has experience “in government and the health industry” which may assist NCAA as it navigates NIL).

tion between universities recruiting athletes.<sup>221</sup> By creating this legislation, amateur collegiate sports will continue to thrive.<sup>222</sup>

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221. See Ramgopal, *supra* note 140 (stating that some NIL deals have become loopholes to recruit student-athletes).

222. See Michael Smith, *NCAA, Conferences and College Leaders Trying to Come to Terms with NIL Turning into Pay-for-Play*, SPORTS BUSINESS J. (Jan. 31, 2022), <https://www.sportsbusinessjournal.com/en/Journal/Issues/2022/01/31/Upfront/Name-Image-Likeness> [<https://perma.cc/W6UD-XLGQ>] (stating uniform legislation is necessary).

\* J.D. Candidate, May 2023, Villanova University Charles Widger School of Law. I dedicate this Comment to the best group of people I've ever known, my family and friends. Mommy, thank you for your unconditional love and support. Daddy, thank you for reminding me to focus on the bigger picture. I would also like to thank all my friends who sat in the library with me until 2:00 am or answered my late-night phone calls as I wrote this Comment. Thank you so much to everyone who kept me sane, made me laugh, and reminded me why I went to law school.