REDEFINING AMATEURISM: THE NCAA'S EVOLVING STANCE ON NIL, LABOR LAWS, AND THE FUTURE OF COLLEGE SPORTS

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Executive Summary: The National Collegiate Athletic Association (NCAA) has governed collegiate athletics since its founding in 1906. For over a century, the NCAA upheld the principle of amateurism to restrict athletes from receiving compensation beyond scholarships to maintain the distinction between collegiate and professional sports. However, recent legal challenges have reshaped the college sports landscape, allowing athletes to profit from their name, image, and likeness (NIL). This shift, coupled with evolving state laws and NCAA policy changes, has led to a rapidly changing environment for student-athletes. The NCAA is now facing lawsuits from former athletes seeking NIL compensation, with the potential for a $2.7 billion settlement that also allows schools to pay their athletes, marking a pivotal moment in the history of college sports.

I. BACKGROUND

a. THE HISTORY OF THE NCAA

The National Collegiate Athletic Association (NCAA) is a non-profit organization comprised of 1,100 member schools that spans all 50 states of the United States, the District of Columbia, Puerto Rico, and Canada.[1] Founded in 1906, the NCAA was established to regulate and support college student-athletes, awarding approximately $3.5 billion in athletic scholarships annually and helping student-athletes graduate at a higher rate than general students.[2]

Violence marked the origins of American football in the early 1900s.[3] After scores of football-related deaths, President Theodore Roosevelt convened a meeting in 1905 with the top collegiate football programs at the time to reform the sport's rules.[4] In 1906, the Intercollegiate Athletic Association of the United States (IAAUS) was established, initially comprised of 62 colleges and universities.[5] Its purpose was to serve as a governing body for football and,

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[1] *Finances*, NCAA, https://www.ncaa.org/sports/2021/5/4/finances.aspx (last visited Jan. 17, 2025) (receiving most of its annual revenue from television and marketing rights and ticket sales for all sports championship games); *Overview*, NCAA, https://www.ncaa.org/sports/2021/2/16/overview.aspx (last visited Jan. 17, 2025).
[2] *See Overview*, *supra* note 1; *History*, NCAA, https://www.ncaa.org/sports/2021/5/4/history.aspx (last visited Jan. 17, 2025).
[3] See *History*, *supra* note 2 (noting the 1904 football season accounted for "18 deaths and 159 serious injuries on the field," which led to some colleges and universities to pause football on their campuses).
[4] *Id.*
[5] *Id.*

eventually, for a wide range of other sports.[6] Four years later, the Association was renamed the National Collegiate Athletic Association.[7] The NCAA split member schools into three divisions based on investment into athletic programs, among other factors, to maintain fair competition.[8]

Today, the NCAA dominates the college sports landscape, and remains committed to modernizing its rules with an emphasis on its "three guiding principles: academic success, student-athlete well-being and fairness."[9] In 2013, the organization created the NCAA Sport Science Institute in an effort to protect the health and safety of student-athletes.[10] The following year, it partnered with the Department of Defense to research and study the history of concussions in furtherance of its mission to prevent mild traumatic brain injuries.[11] Additionally, its Board of Governors expanded protections against discrimination based on sexual orientation or gender identity by requiring championship host cities to comply with applicable anti-discrimination rules.[12]

The NCAA's most recent changes concern student-athletes' use of their name, image, and likeness (NIL).[13] Traditionally, the NCAA has prohibited such players from receiving any compensation beyond their athletic scholarships to preserve the players' "amateurism" status.[14] With the Supreme Court's ruling in *NCAA v. Alston*,[15] the organization's regulations on members' athletic programs have significantly altered. For the first time since its inception, college athletes are now permitted to profit from their NIL.[16]

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[6] *See id.* (explaining that over a decade after its establishment, the IAAUS "expanded its focus to host its first national championship: the National Collegiate Track and Field Championships").
[7] *Id.*
[8] *See id.* ("In 1973, the Association's membership was divided into Divisions I, II and III, with each division having legislative powers and separate championships.").
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *See History*, *supra* note 2; *Finances*, *supra* note 1 (explaining that the Board of Governors is the NCAA's highest governing body with "representatives from all three divisions and public members").
[13] *See History*, *supra* note 2 (detailing that all three NCAA divisions adopted a uniform policy suspending "name, image and likeness rules for all incoming and current student-athletes in all sports" beginning June 2021).
[14] Taylor P. Thompson, Note, *Maximizing NIL Rights for College Athletes*, 107 IOWA L. REV. 347, 347 (2022) (stating the NCAA banned compensation to student-athletes based on preserving principles of "amateurism" and "competitive equity" among the member schools).
[15] 141 S. Ct. 2141 (2021).
[16] *See* Thompson, *supra* note 14, at 1348; *Alston*, 141 S. Ct. at 2166 (affirming the district court's decision to enjoin the NCAA from limiting compensation student-athletes could receive for their athletic services as a violation of federal antitrust law).

b. THE EVOLUTION OF "AMATEURISM" AND ITS MEANING

Since its formation, the NCAA rested its rules and philosophy on the preservation of "amateurism" of its student-athletes.[17] "Amateurism" marks the crucial distinction between collegiate and professional sports.[18] Under the NCAA, only an amateur student-athlete is "eligible for intercollegiate athletics participation in a particular sport."[19] Furthermore, scholarship athletes are "amateurs" only for the sport in which they were recruited.[20] While this concept is an integral aspect of the organization, its definition is constantly evolving to keep pace with the contemporaneous evolution of college sports.[21]

According to current NCAA bylaws, all student-athletes must qualify as an "amateur" to compete in collegiate athletics.[22] An individual will lose amateur status and be ineligible to participate in a particular sport if the individual (a) uses athletic skill for pay in any form, (b) accepts a promise of pay even if pay will not be received until after completion of participation in the sport, (c) signs a contract to play professional athletics, (d) receives from a professional sports organization any form of financial remuneration for athletic skill or participation, (e) competes on any professional athletics team, (f) enters into a professional draft, or (g) enters into an agreement with an agent.[23]

Originally, the NCAA identified amateurism through the prohibition of monetary compensation to student-athletes and the preclusion of athletes with professional experience.[24] To ensure that student-athletes are "amateurs," the NCAA placed caps on the amount of scholarships and third-party payments they are allowed to receive.[25] For the first 50 years, the

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[17] Claire Haws, Note, *The Death of Amateurism in the NCAA: How the NCAA Can Survive the New Economic Reality of College Sports*, 11 MICH. BUS. & ENTREPRENEURIAL L. REV. 343, 344 (2022) (stating the NCAA, for decades, has justified its rules against antitrust challenges as being pro-competition and preserving amateurism).
[18] See *Alston*, 141 S. Ct. at 2152.
[19] NAT'L COLLEGIATE ATHLETIC ASS'N, DIVISION I 2024–25 MANUAL § 12.01.1 (2024), https://www.ncaapublications.com/productdownloads/D125.pdf.
[20] Robert Litan, *The NCAA's "Amateurism" Rules: What's in a Name?*, MILKEN INST. REV. (Oct. 28, 2019), https://www.milkenreview.org/articles/the-ncaas-amateurism-rules (noting "a college football player can still be an 'amateur' while being compensated for playing another sport as a pro," like former Clemson quarterback Kyle Parker who signed a professional baseball contract while playing college football).
[21] *Alston*, 141 S. Ct. at 2152 (observing that "the NCAA's conception of amateurism has changed steadily over the years," and the district court "struggled to ascertain for itself 'any coherent definition' of the term").
[22] NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 19, § 12.1.2.
[23] *Id.*
[24] Kelly Charles Crabb, *The Amateurism Myth: A Case for a New Tradition*, 28 STAN. L. & POL'Y REV. 181, 190 (2017).
[25] Litan, *supra* note 20.

organization banned these athletes from receiving any compensation, including scholarships; however, this ban was never enforced.[26] Athletes regularly received money, with freshman football players at the University of Pittsburgh even going on strike to receive the same pay as upperclassmen.[27] In an effort to more strictly enforce its compensation bans, the NCAA adopted the "Sanity Code" in 1948, prohibiting schools from giving athletes financial aid based on athletic ability that was not available to other students.[28] However, the punishment for violating the Sanity Code was expulsion from the NCAA, and after seven member schools risked expulsion, the schools forced the NCAA to repeal its code just three years after its inception.[29]

During this time, sports, particularly football, became much more profitable and popular, attracting larger crowds, higher salaries for head coaches, and higher-paying television deals.[30] As the public's interest in sports grew, conferences "began to compete with each other for national dominance."[31] When Southeastern Conference (SEC) schools began openly offering to pay their athletes, the Big Ten did not counter with similar offers.[32] Instead, they lobbied the NCAA to strictly enforce bans on athlete compensation.[33] Facing the risk of states classifying college athletes as employees subject to state labor laws, the NCAA revitalized "The Principle of Amateurism" and promoted the term "student-athlete" as a means to circumvent labor regulations and justify its stance against compensating athletes.[34] While the NCAA expressly permitted schools to offer "grants-in-aid" to student-athletes starting in 1956, these grants were limited to educational expenses, with only a small portion for incidental expenses.[35] Twenty years later, the NCAA further restricted the grants and prohibited all incidental expenses.[36]

Though the definition of "amateurism" has received scrutiny throughout the NCAA's existence, *O'Bannon v. NCAA*[37] marks the first major case to challenge the NCAA's "amateurism" rules.[38] The court rejected the NCAA's argument that student-athlete compensation restrictions are "necessary to preserve the amateur tradition and identity of college sports," but it found that the "NCAA's current [amateurism] rules serve a procompetitive

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[26] *Id.*
[27] Crabb, *supra* note 24, at 190.
[28] *See* O'Bannon v. NCAA, 802 F.3d 1049, 1054 (9th Cir. 2015).
[29] John T. Holden, Marc Edelman & Michael A. McCann, *A Short Treatise on College-Athlete Name, Image, and Likeness Rights: How America Regulates College Sports' New Economic Frontier*, 57 GA. L. REV. 1, 26–27 (2022).
[30] Crabb, *supra* note 24, at 191–92.
[31] *Id.* at 190.
[32] *Id.*
[33] *Id.*
[34] *Id.* at 190–91.
[35] *Id.*
[36] *Id.*
[37] 802 F.3d 1049 (9th Cir. 2015).
[38] Litan, *supra* note 20.

benefit . . . ."[39] Ultimately, the court ruled that the NCAA's prohibition on compensation for athletes for their NILs violated federal law, but it left both the definition of amateurism and the future of student-athlete compensation uncertain.[40] As one of the NCAA's core principles of "amateurism" is the prohibition of compensation for student-athletes, the NCAA must redefine this status in light of the growth of NIL and the evolving landscape of collegiate sports.[41]

II. Application of Fair Labor Standards Act to Student-Athletes

In response to the Great Depression in the 1930s, President Franklin D. Roosevelt propelled several programs under the New Deal era to facilitate the United States' economic recovery following World War I.[42] The Fair Labor Standards Act of 1938 (FLSA) was one of several statutes enacted to advance the New Deal programs.[43] The statute seeks to protect workers and stimulate the economy by providing for a federal minimum wage, overtime pay, and child labor protections.[44] The FLSA protects most employees and enterprises involved in interstate commerce, but independent contractors are not covered by the Act.[45]

Whether student-athletes legally qualify as university "employees" has been a pertinent issue since the 1950s.[46] The National Labor Relations Board ruled on several cases brought by former college athletes seeking relief against the NCAA under the FLSA.[47] In 2017, the NLRB General Counsel issued a memorandum to the board's regional directors, concluding that Football Bowl Subdivision players are employees for a multitude of reasons, including their commitment to an average of forty-two hours per week on football-related activities when in season and the

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[39] *O'Bannon*, 802 F.3d at 1058–59 (finding that student-athletes' status as "amateurs" that do not get compensated helps preserve consumer demand for college sports because it levels the playing field among schools in recruiting).
[40] *Id.* at 1079.
[41] *See generally* NCAA v. Alston, 141 S. Ct. 2141 (2021) (landmark case following *O'Bannon* allowing student-athletes to profit from their NIL through endorsements, scholarships, and more).
[42] Sarah A. Donovan, Cong. Rsch. Serv., R42713, The Fair Labor Standards Act (FLSA): An Overview 1 (2023).
[43] *Id.*
[44] *Id.*
[45] *Id.* at 2; *see* U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet 13: Employee or Independent Contractor Classification Under the Fair Labor Standards Act (FLSA) (2024), https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship (explaining that whether a worker is an employee under the FLSA depends on consideration of several factors, including "opportunity for profit or loss depending on managerial skill," "permanence of the work relationship," and more).
[46] Crabb, *supra* note 24, at 199.
[47] *See id.* at 199–200 (describing a former University of Southern California football player who sought unpaid wages, including unpaid overtime, under the FLSA and argued that Football Bowl Subdivision (FBS) players should be considered "employees" due to the significant degree of control the NCAA exercises over the players).

coaches' authority to "fire" players, resulting in the loss of scholarships.[48] The NCAA successfully countered this assertion in the federal courts, with the Seventh Circuit holding that "student-athletic 'play' is not 'work,' at least as the term is used in the FLSA."[49]

While the issue of whether student-athletes should be uniformly considered employees across states is still largely unanswered, the Third Circuit recently addressed the matter in *Johnson v. NCAA*.[50] On July 11, 2024, the court held college athletes may be "employees under the FLSA when (a) they perform services for another party, (b) necessarily and primarily for the [other party's] benefit, (c) under that party's control or right of control, and (d) in return for 'express' or 'implied' compensation or 'in-kind benefits.'"[51] The *Johnson* decision is the latest development in the NIL era of collegiate athletics concerning labor laws.[52] If student-athletes are considered employees under the FLSA, future courts will have to grapple with questions regarding minimum wage, overtime pay, back-pay liability, and other legal implications.[53]

III. Antitrust Issues in the NCAA

While the NCAA retains almost full control over the college sports landscape, for decades, courts have found that various NCAA provisions that have been legally challenged do not violate the Sherman Antitrust Act.[54] Courts instead pointed to the NCAA's amateurism model when

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[48] *See id.* at 201–02 (explaining that these factors liken to an employer-employee relationship between FBS players and the NCAA and their respective college); *see also Full List of Division 1 Football Teams: Find the Right Fit for Your Goals*, NEXT COLL. STUDENT ATHLETE COLL. RECRUITING, https://www.ncsasports.org/football/division-1-colleges#:~:text=FBS%2C%20Football%20Bowl%20Subdivision%2C%20is,found%20in%20the%20FBS%20subdivision (last visited Jan. 17, 2025).

[49] Crabb, *supra* note 24, at 202; Berger v. NCAA, 843 F.3d 285, 294 (7th Cir. 2016) (affirming the district court's decision that the plaintiffs, two University of Pennsylvania track and field athletes, were not entitled to minimum wages under the FLSA because they were not school employees).

[50] 108 F.4th 163 (3d Cir. 2024) (originating in 2019 when the plaintiffs, several NCAA Division I student-athletes, complained of FLSA and state wage laws violations in which they are entitled to federal minimum wage compensation for their time competing for their schools).

[51] See *Johnson*, 108 F.4th at 180 (citations omitted); *Third Circuit Holds That NCAA Athletes Can Be Considered Employees Under FLSA*, REED SMITH LLP (July 12, 2024), https://www.reedsmith.com/en/perspectives/2024/07/third-circuit-holds-that-ncaa-athletes-employees-under-flsa [hereinafter REED SMITH] (referring to the test as the "economic realities test").

[52] See REED SMITH, *supra* note 51.

[53] Matthew J. Mitten, *Applying Antitrust Law to NCAA Regulation of "Big Time" College Athletics: The Need to Shift from Nostalgic 19th and 20th Century Ideals of Amateurism to the Economic Realities of the 21st Century*, 11 MARQ. SPORTS L. REV. 1, 2 (2000).

[54] *Id.* at 2–3.

ruling for the NCAA in various cases involving both schools and student-athletes suing the organization for anti-competitive practices.[55]

In *NCAA v. Board of Regents of the University of Oklahoma*,[56] Justice Byron White, a former college athlete and professional football player himself, famously wrote that the NCAA promotes the "revered tradition of amateurism in college sports."[57] Here, multiple universities sued the NCAA because its television plan restricted schools' abilities to contract with television providers to broadcast football games.[58] Separate from the NCAA's own plan with television providers, the College Football Association attempted to obtain its own contract with the National Broadcasting Company (NBC).[59] However, the NCAA responded by announcing it would sanction any schools that signed the contract.[60] As a result, multiple universities filed a lawsuit to enjoin the NCAA from taking any disciplinary action against schools that signed the NBC contract.[61] While the court concluded that the NCAA's television plan violated antitrust laws, it included its frequently quoted dicta that the NCAA "plays a critical role in the maintenance of a revered tradition of amateurism in college sports."[62] Since this decision, various courts have used this quote to justify anti-competitive NCAA practices, even though the decision itself found that the NCAA violated the Sherman Antitrust Act.[63]

For example, in *McCormack v. NCAA*,[64] the Fifth Circuit found that compensating college athletes undermines amateurism.[65] In *McCormack*, several student-athletes and alumni of Southern Methodist University sued the NCAA after the NCAA suspended and sanctioned the program for paying its athletes.[66] The plaintiffs asserted several claims, including that the NCAA's eligibility rules that restricted student-athlete pay violated antitrust law.[67] However, citing *Board of Regents*, the Fifth Circuit affirmed the lower court's dismissal, explaining that the NCAA's rules are reasonable and support and protect amateurism.[68]

The Fifth Circuit was not alone in citing to *Board of Regents*' discussion of amateurism while dismissing antitrust cases. For decades, other circuits including the Seventh Circuit

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[55] *Id.* ("NCAA rules designed to promote amateurism and protect academic integrity were deemed to constitute regulation of noncommercial activity that does not trigger antitrust scrutiny.").
[56] 468 U.S. 85 (1984).
[57] *Id.* at 120.
[58] *Id.* at 88.
[59] *Id.* 94–95.
[60] *Id.* at 95.
[61] *Id.*
[62] *Id.* at 120.
[63] Mitten, *supra* note 53, at 5.
[64] 845 F.2d 1338 (5th Cir. 1998).
[65] *Id.* at 1341.
[66] *Id.*
[67] *Id.* at 1342–33.
[68] *See id.* at 1343–45 ("The eligibility rules create the [amateur] product and allow its survival in the face of commercializing pressures.").

dismissed antitrust lawsuits brought against the NCAA.[69] However, the Ninth Circuit changed course in *O'Bannon*. In *O'Bannon*, current and former college athletes sued the NCAA because its rules prevented athletes from receiving compensation for the use of their NIL.[70] The lawsuit arose after the NCAA and Electronic Arts created a video game but did not compensate the athletes who appeared in the game.[71] Like earlier decisions, the Ninth Circuit agreed that "many of the NCAA's amateurism rules are likely to be procompetitive."[72] However, the Circuit departed from the earlier decisions, explaining that *Board of Regents* did not make all NCAA amateurism rules "valid as a matter of law."[73] Instead, the Ninth Circuit explained that the NCAA's rules receive antitrust scrutiny, using the Rule of Reason.[74] And, under this scrutiny, the NCAA's rules were "more restrictive than necessary."[75] Still, while colleges could provide up to the cost of attendance, the Ninth Circuit found that universities were not required to pay athletes more in deferred compensation.[76]

The Ninth Circuit's ruling had many positive effects on the college sports landscape. Importantly, the ruling allowed universities to pay athletes with trust funds that were accessible after graduation.[77] Additionally, as a result of the decision, some colleges began offering more four-year scholarships.[78] And, most importantly, the litigation brought renewed publicity to the NCAA's amateurism rules, eventually leading to the changes of the last few years.[79]

The biggest case after *O'Bannon* was *Alston*. *Alston*, like the previous cases, was yet another antitrust case.[80] Again, the plaintiffs argued that the NCAA violated antitrust law by restricting student-athlete compensation.[81] Chipping away at the NCAA's definition and use of amateurism, the Supreme Court held that the NCAA could not prohibit colleges from providing "enhanced

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[69] *See, e.g.*, Banks v. NCAA, 977 F.2d 1081, 1082–84 (7th Cir. 1992) (dismissing a college football player's claim that the NCAA's prohibition of student-athletes using agents and removal of amateur status when athletes declare for a draft did not violate antitrust law); Agnew v. NCAA, 683 F.3d 328, 332 (7th Cir. 2012) (dismissing claims that the NCAA's capped number of student-athlete scholarships per team violated antitrust law).
[70] O'Bannon v. NCAA, 802 F.3d 1049, 1052–53 (9th Cir. 2015).
[71] *Id.* at 1055.
[72] *Id.* at 1053.
[73] *Id.* at 1061.
[74] *Id.* at 1053. The Rule of Reason finds "that a trade practice violates the Sherman Act only if the practice is an unreasonable restraint of trade, based on the totality of economic circumstances." *Rule of Reason*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[75] *O'Bannon*, 802 F.3d at 1079.
[76] *Id.*
[77] Billy Witz & Mark Shimabukuro, *Big Money. College Athletes and the N.C.A.A.: A Timeline*, N.Y. TIMES (May 29, 2024), https://www.nytimes.com/2024/05/29/us/ncaa-college-athletes-pay-history.html.
[78] Joe Nocera, O'Bannon *Ruling Stands, but N.C.A.A.'s Status Quo May Yet Collapse*, N.Y. TIMES (Oct. 3, 2016), https://www.nytimes.com/2016/10/04/sports/ncaa-obannon-case-ruling-supreme-court.html.
[79] Witz & Shimabukuro, *supra* note 77.
[80] NCAA v. Alston, 141 S. Ct. 2141, 2147 (2021).
[81] *Id.*

education-related benefits" such as tutoring.[82] Still, the NCAA was not helpless. It was allowed to cap these benefits, "which it does at $5,980 per academic year."[83] While some schools with less funding argued that they were at a disadvantage because they could not afford *Alston* payments, the decision led to a massive change in the college sports landscape with state legislatures writing new NIL legislation just weeks later.[84]

IV. The Rapidly Changing NIL Landscape and the Future of College Sports

Shortly after the Supreme Court's decision in *Alston*, on July 1, 2021, the NCAA updated its NIL policy, allowing student-athletes to commercialize their NIL.[85] However, the NCAA still barred schools from directly offering compensation or "extra benefits" to students for their play.[86] In its October 2022 clarification, the NCAA stated that colleges still could not negotiate NIL deals for athletes.[87] But less than two years later, in the NCAA's April 2024 guidance, the NCAA changed course and allowed schools to work with athletes, assisting in NIL deals with third parties.[88] These rapid changes have facilitated the growth of NIL, while student-athletes have also received additional compensation above the cost of attendance, such as health care payments and travel expenses for family members.[89]

While the NCAA guidance has quickly evolved to allow student-athletes to profit from their NIL, schools and students must also follow state law.[90] While California was the first state to pass NIL legislation in 2019, it accelerated its Fair Pay to Play Act's effective date to 2021, and many other states quickly followed suit.[91] In fact, "[a]s of June 1, 2024, thirty-four states (and the District of Columbia) either had passed NIL laws or had executive orders on NIL."[92] These laws generally allow students to obtain agents and use trademarks so long as they follow university licensing requirements and disclose NIL contracts.[93] But some states, such as Alabama and South Carolina, have repealed their NIL laws.[94] While the Alabama NIL law allowed student-

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[82] *Id.* at 2164, 2166.
[83] Witz & Shimabukuro, *supra* note 77.
[84] *Id.* (explaining that some schools could not afford *Alston* payments); Nicole Auerbach & Justin Williams, *How the* House v. NCAA *Settlement Could Reshape College Sports: What You Need to Know*, The Athletic (May 20, 2024), https://www.nytimes.com/athletic/5506457/2024/05/20/ncaa-settlement-house-lawsuit-college-sports/ (explaining that states adopted new policies within weeks).
[85] Bryan Dearinger, *UnconstitutioNIL: Name, Image, and Likeness State Laws in the Post-Amateurism World of College Sports*, 74 Am. U. L. Rev. (forthcoming May 2025).
[86] *Id.* (explaining that extra benefits include "goods and services, discounts, or preferential treatment not available to the general student population").
[87] *Id.*
[88] *Id.*
[89] Morgan Small, Comment, *The Last Line of a Weak Defense: The Waning Force of the NCAA's Procompetitive Defense of Amateurism in § 1 Compensation Challenges*, 74 Am. U. L. Rev. (forthcoming Jan. 2025).
[90] Holden et al., *supra* note 29, at 63.
[91] Dearinger, *supra* note 85.
[92] *Id.*
[93] *Id.*
[94] *Id.*

athletes to profit from their NIL, the state repealed the law to ensure athletes in the state were not disadvantaged by any possible restrictions the law imposed.[95]

Still, this is a rapidly evolving space, with athletes subject to constantly changing state laws, NCAA rules, and university policies.[96] Moreover, some scholars believe that future Supreme Court challenges regarding the NCAA's current NIL policies could again be successful.[97] And these changes do not only impact current athletes. Former student-athletes are now suing schools and the NCAA for payment of NIL money that they should have received while in college.[98]

The most important of these challenges is *House v. NCAA*, a class action lawsuit by former athletes seeking NIL compensation that they were barred from receiving while in college.[99] After the NCAA changed its NIL rules in 2021, student-athletes filed the *House* lawsuit, along with two other class action lawsuits.[100] With the risk of losing up to $20 billion in damages if the case went to trial, the NCAA engaged in settlement negotiations with the athletes.[101] Currently, the NCAA plans on settling for "more than $2.7 billion in NIL back-pay damages."[102] The NCAA's proposed settlement will settle all three lawsuits with the damages set to be paid out over the course of ten years.[103] And while the NCAA will use reserves to cover a large portion of the settlement, the athletic conferences will also be on the hook for some of the settlement payments.[104]

Additionally, in their settlement negotiations, the NCAA and Power Five conferences have agreed to a revenue-sharing plan that allows colleges to share up to $20 million per year with athletes.[105] If the settlement goes through, this will be the first time the NCAA has openly allowed schools to pay their student-athletes.[106] Still, a Judge must approve of the settlement, and there is a ninety-day waiting period after approval for review and objections.[107] Moreover, the settlement itself brings forth a slew of new unknowns, including how Title IX applies to revenue-sharing distributions, potential unionization and collective bargaining of student-athletes, and

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[95] *A Guide to All Things NIL: Alabama*, ROMANO LAW (Aug. 27, 2024), https://www.romanolaw.com/a-guide-to-all-things-nil-alabama/#:~:text=In%20response%2C%20Alabama%20repealed%20the,to%20schools%20in%20other%20states.

[96] Holden et al., *supra* note 29, at 63–65. For example, BYU does not allow its college athletes to endorse coffee companies. *Id.* at 64.

[97] *Id.* at 41 ("In the context of the NCAA's NIL rules—even as recently modified—a Rule of Reason analysis likely would prove unfavorable to the NCAA.").

[98] *Id.* at 44–45.

[99] Auerbach & Williams, *supra* note 84.

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] Dan Murphy & Pete Thamel, *NCAA, Power 5 Agree to Deal That Will Let Schools Pay Players*, ESPN (May 23, 2024), https://www.espn.com/college-sports/story/_/id/40206364/ncaa-power-conferences-agree-allow-schools-pay-players.

[104] Auerbach & Williams, *supra* note 84.

[105] Murphy & Thamel, *supra* note 103.

[106] *Id.*

[107] Auerbach & Williams, *supra* note 84.

whether schools will cut sports that earn less money than football and basketball.[108] While college athletes will certainly receive much-deserved compensation moving forward, the exact dynamics between the NCAA, universities, and athletes remain uncertain.[109]

[108] *Id.*
[109] *Id.*