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Dropping the Ball: How Colleges and Universities are Failing to Provide Their Athletes with NIL Education and How They Can Fix It

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I. Introduction

We are in a new era of collegiate sports, one where college athletes¹ can capitalize on their name, image, and likeness, after decades of the National Collegiate Athletic Association (NCAA) restricting college athlete's rights to profit off their personal brand.² With a change in policy as big as the one that ushered in the new age of the NCAA allowing college athletes to monetize their name, image and likeness³ comes the need for education on all things related to taking advantage of these rights. In an effort to capitalize on their name, image and likeness (NIL)⁴ rights, collegiate athletes are signing endorsement deals, partnering with local businesses, signing with agents, being paid to post on social media, and joining collectives.⁵

While this is all a huge step in the right direction, college athletes may not be receiving proper education on all things NIL.⁶ Allowing athletes to monetize their NILs allows them freedom and autonomy to make decisions that are beneficial to them while providing an avenue for compensation. However, with this freedom comes the possibility for exploitation and mistakes, but comprehensive NIL education for college athletes can help quell this. Being

¹ This paper uses the term "college athletes" or "athletes" instead of the term "student athlete" because student athlete reflects a history of college athletes not being compensated. See, Liz Clarke, *The NCAA coined the term 'student-athlete' in the 1950s. Its time might be up*, THE WASHINGTON POST, (Oct. 28, 2021, 9:00 AM), <https://www.washingtonpost.com/sports/2021/10/27/ncaa-student-athlete-1950s/>.

² Jonna Vanderslice, *Guest Column: Ruling gives student athletes NIL opportunities, but questions remain*, THE OKLAHOMAN: OP (Jan. 23, 2023, 9:00 AM), <https://www.oklahoman.com/story/opinion/2023/01/23/guest-after-alston-ruling-student-athletes-now-have-nil-opportunities/69617557007/>.

³ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

⁴ NIL is used in reference to all that the state laws allow as a concept, whereas name, image and likeness is used to discuss the general area of name, image and likeness rights which are not always specific to college athletics.

⁵ The Athletic College Football Staff, *What is NIL? Everything you need to know about the NCAA and name, image and likeness*, THE ATHLETIC (May 10, 2022), <https://theathletic.com/3301694/2022/05/10/nil-ncaa-definition/>.

⁶ Amanda Christovich, *One Year of NIL: Bridging the Remaining Gaps in Education*, FRONT OFFICE SPORTS (Jun. 29, 2022, 11:50 AM) <https://frontofficesports.com/nil-education-gaps/>.

educated and informed is the first line of defense for these athletes which will allow them to take full advantage of their newly granted rights while protecting themselves and their interests.

There are many different definitions on what exactly NIL education encompasses,⁷ but this article proposes a comprehensive definition of what NIL education includes. Based on the expansive reach of NIL and its many implications,⁸ this article defines NIL education as educating athletes on personal income tax law⁹ and its implications for college athletes,¹⁰ financial literacy, personal branding, social media, and legal aspects encompassed by NIL including contract law,¹¹ business basics,¹² and compliance with institutional and NCAA amateurism rules.¹³

This article will also touch on the lack of uniform federal law regarding NIL¹⁴ in collegiate athletics resulting in the NIL education offered to college athletes differing from state to state depending on differing state laws and institutional policies.¹⁵ A handful of states' NIL laws require colleges and universities to provide athletes with NIL education,¹⁶ others recommend but

⁷ Todd Hairston, *NIL Education: The Cost of Teaching Business*, SPRY <https://spry.so/insights/nil-education-the-cost-of-teaching-business/> (last visited Apr. 9, 2023).

⁸ Icon Source, *Time Out. What's NIL?*, ICON SOURCE <https://iconsource.com/what-is-nil/> (last visited Apr. 9, 2023)

⁹ Lisa Barringer and Ronald Nahass, *Tax and Other Issues to Consider Due to NIL*, LEAD1, 23, (Aug. 25, 2021), http://lead1association.com/wp-content/uploads/2021/08/LEAD1_NIL_Institutional_Report_Issue_2.pdf.

¹⁰ Courtney Altemus, *It's 1099 Season, are Your Student-Athletes Ready?*, LEAD1, 6, (Jan. 24, 2022), http://lead1association.com/wp-content/uploads/2022/01/LEAD1_NIL_Publication_Issue_4-4.pdf (stating important considerations when SA's receive 1099 forms).

¹¹ Courtney Altemus, *Show Me The Money*, LEAD1, 4, (May 31, 2022), <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:38826192-af8b-49f2-b2d4-70e314315e1d?viewer%21megaVerb=group-discover>.

¹² Todd Hairston, *NIL Education: The Cost of Teaching Business*, SPRY <https://spry.so/insights/nil-education-the-cost-of-teaching-business/> (last visited Apr. 9, 2023).

¹³ Kyle Ritchie and Kyle Skillman, *NIL: Recommended Athletics Compliance Education*, LEAD1, 17, (Jan. 11, 2023), <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:bd4fcdb7-3768-4784-b584-3323fa02962f?viewer%21megaVerb=group-discover> (emphasizing the need for education on compliance with institutional NIL policy).

¹⁴ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>

¹⁵ Todd Hairston, *NIL Education: The Cost of Teaching Business*, SPRY <https://spry.so/insights/nil-education-the-cost-of-teaching-business/> (last visited Apr. 9, 2023).

¹⁶ H.B. 7-B, Reg. Sess. 2023 (Fl. 2023).

do not mandate schools provided NIL education,¹⁷ whereas still others do not require schools provide any sort of NIL education to athletes.¹⁸ This article maintains that the absence of more uniform NIL education law or policy prohibits college athletes from taking full advantage of their right to monetize their personal brand. Empowering college athletes - at all levels of collegiate sports - through NIL education will better enable athletes to exercise their newly recognized rights effectively and remain within the bounds of the law and NCAA policy.

This article advocates that in the absence of a uniform federal NIL law, more specifically one dealing with NIL education for college athletes, each college or university should take educating their SA's into their own hands and appoint an NIL officer to handle student NIL education.

II. Background

A. NCAA and Amateurism

The NCAA was founded to address increasing injuries in college football in 1905.¹⁹ From the very beginning, the NCAA has operated on a principle of amateurism, originally barring college athletes from being compensated in any form.²⁰ The idea of amateurism dates back to the 1800s when sports were a pastime for the upper and middle classes and excluded from play lower, working class individuals.²¹ Amateurism was founded on the elitist idea that people who were not independently wealthy were excluded from being amateurs.²²

¹⁷ E.O. 223, 2021 (Nc. 2021).

¹⁸ L.B. 962, 106th Leg., Reg. Sess. 2020 (Ne. 2020).

¹⁹ *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1053 (9th Cir. 2015) (originally named the Intercollegiate Athletic Association, the IAA changed its name in 1910 to the National Collegiate Athletic Association).

²⁰ *Id.* at 1054.

²¹ Robert Romano, *The Concept of Amateurism: How the Term Became Part of the College Sport Vernacular*, 1 UNH SPORTS L. REV. 29 29-51 (2022), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1004&context=unhslr> (stating that the prevalence of classism was used to prevent lower- and working-class individuals from "mixing with the elite," with the common belief being that lower class individuals did not know how to play fair or show sportsmanship).

²² *Id.* at 32.

The NCAA referred to amateurs as college athletes playing the sport “purely for enjoyment and as a way to develop his or her mental, physical, moral, and social skills,” and made a point that “no student shall represent a college or university in any intercollegiate game or contest who is paid or receives, directly, or indirectly, any money or financial assistance.”²³

The NCCA originally banned compensating athletes due to the extreme competition that resulted between institutions to bring the best athletes to their schools.²⁴ The NCAA lacked the ability to enforce this new rule resulting in institutions getting creative in finding ways to pay their athletes until the NCAA began finding ways to strengthen its enforcement mechanisms.²⁵

Over time, the NCAA has changed its rule first by allowing athletes to receive athletic scholarships,²⁶ then allowing athletes to receive scholarships up to the full cost of attendance.²⁷ The principle of amateurism also bars athletes from participating in a professional sports league while being an NCAA athlete.²⁸ Until recently, athletes were not allowed to receive pay in any form based on their athletic ability or else they would lose their status as amateurs.²⁹

For many years, the NCAA’s principle of amateurism stated, “[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental, and social benefits to be derived. Student participation in

²³ *Id.* at 35-36.

²⁴ *O'Bannon*, 802 F.3d at 1054.

²⁵ *Id.* (the NCAA adopted the “Sanity Code” which was “a set of rules that prohibited schools from giving athletes financial aid that was based on athletes’ ability and not available to ordinary students”).

²⁶ *Id.* (departing from longstanding prohibition on scholarships and changing rules to allow schools to give college athletes scholarships based on athletic ability).

²⁷ *Id.* 1054-55.

²⁸ *Id.* 1055.

²⁹ *Id.* (stating athletes are prohibited from receiving any pay based on athletic ability with very few exceptions, from boosters, companies seeking endorsements, or licensors of the athlete’s NIL).

intercollegiate athletics is in avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”³⁰

The recently amended NCAA Division I Manual now states its commitments to amateurism as, “[m]ember institutions shall conduct their athletics programs for students who choose to participate in intercollegiate athletics as a part of their educational experience and in accordance with NCAA bylaws, thus maintaining a line of demarcation between student-athletes who participate in the Collegiate Model and athletes competing in the professional model.”³¹ It is this change in the NCAA’s commitment to amateurism that has allowed athletes to profit off their NIL.

B. What is NIL?

NIL encompasses an athlete’s name, image, and likeness and allows athletes to profit off these.³² In the broad sense, NIL is encompassed by the right of publicity as recognized by state and common law.³³ The state law right of publicity recognizes that the individual is the one with the right to exploit the value of their name and likeness and unauthorized use of this harms the individual by “diluting the value of the name and depriving that individual of compensation.”³⁴

The right of publicity is meant to protect the individual’s property interest in his identity he obtains through his own effort and labor while encouraging the individual to develop it further.³⁵ Athletes and other public figures work hard and use their talent to perfect their image

³⁰ John Niemeyer, *The End of an Era: The Mounting Challenges to the NCAA's Model of Amateurism*, 42 PEPP. L. REV. 883, 887 (2015).

³¹ NCAA, *2022-23 NCAA Division I Manual*, NCAA, xiii, <https://web3.ncaa.org/lstdbi/reports/getReport/90008>, (last visited Apr. 10, 2023).

³² Icon Source, *Everything You Need to Know About NIL*, ICON SOURCE, <https://iconsource.com/everything-about-nil/> (last visited Apr. 9, 2023).

³³ Talor Bearman, *Intercepting Licensing Rights: Why College Athletes Need A Federal Right of Publicity*, 15 VAND. J. ENT. & TECH. L. 85, 88 (2012) (right of publicity is a state law right not recognized in every state).

³⁴ *Hart v. Elec. Arts, Inc.*, 717 F.3d 141, 151 (3d Cir. 2013).

³⁵ *Id.*

and the right of publicity recognizes the value in this by allowing individuals to monetize their name, image, and likeness and prevent others from capitalizing on this hard work without the individual's permission.³⁶

The right of publicity and ability to monetize one's name, image and likeness is valuable to athletes, artists, musicians, and other celebrities alike.³⁷ The value comes from the fact that these individuals work to create a marketable personality, one that brands and companies are willing to pay for.³⁸ In the classical sense, name, image and likeness involves using the reputations, faces, and personas of public figures in advertisements.³⁹

When the NCAA first pulled back its amateurism rules prohibiting athlete compensation, it opened the door for athletes to receive compensation for their name, image and likeness',⁴⁰ albeit less in the classical sense and more in the services arena.

Brands now pay the athlete for the ability to leverage a college athlete's NIL through marketing and promotion.⁴¹ NIL deals range from social media ad posts to endorsement deals from major brands to partnerships with local businesses.⁴² Athletes are also able to profit off their autograph and appearances at various places.⁴³

³⁶ *McFarland v. Miller*, 14 F.3d 912, 919 (3d Cir. 1994).

³⁷ Sheldon W. Halpern, *The Right of Publicity: Commercial Exploitation of the Associative Value of Personality*, 39 VAND. L. REV. 1199, 1239 (1986).

³⁸ *Id.*

³⁹ *Id.*, n. 241.

⁴⁰ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

⁴¹ Icon Source, *Time Out. What's NIL?*, ICON SOURCE <https://iconsource.com/what-is-nil/> (last visited Apr. 9, 2023).

⁴² The Athletic College Football Staff, *What is NIL? Everything you need to know about the NCAA and name, image and likeness*, THE ATHLETIC (May 10, 2022), <https://theathletic.com/3301694/2022/05/10/nil-ncaa-definition/>.

⁴³ *NCAA Name, Image, Likeness Rule*, NCSA RECRUITING, <https://www.ncsasports.org/name-image-likeness> (last visited Apr. 9, 2023).

More recently, NIL collectives have become increasingly popular among college athletes.⁴⁴ Collectives are independent of the institution but provide funding for NIL opportunities for athletes that are part of the collective.⁴⁵ Typically founded by supporters of the school and alumni, collectives generate and pool revenue and use these funds to help athletes get NIL opportunities.⁴⁶

Collectives have taken three major forms including marketplace, donor-driven, and dual collectives.⁴⁷ Marketplace collectives typically use donations to support logistics in creating meeting places for athletes and businesses to come together and create opportunities.⁴⁸ Donor-driven collectives create opportunities for athletes by giving them money that the collective pooled from booster and supporter funds.⁴⁹ Finally, dual collectives combine a marketplace and offer donors the ability to donate money that goes to the athletes.⁵⁰

C. How We Got Here a Look at the Cases

The Ninth Circuit's decision in *O'Bannon v. Nat'l Collegiate Athletic Ass'n.*, marks the beginning of the evolution of NIL in the college athletics space.⁵¹ Prior to *O'Bannon* the NCAA was involved in other litigation which affected the NCAA's amateurism rules and the *O'Bannon* ruling itself.⁵² Previous challenges to the NCAA compensation rules set the stage for the

⁴⁴ *Id.* (collectives are companies that collect financial resources and then distribute them to the athletes in exchange for the rights to use their NIL. These operate independently from the schools. Collectives help facilitate NIL deals for their athletes and they are considered boosters).

⁴⁵ Taxpayer Advocate Service, *Name, Image, and Likeness (NIL) Collectives*, INTERNAL REVENUE SERVICE, (Mar. 7, 2023), [https://www.taxpayeradvocate.irs.gov/get-help/general/nil/nil-collectives/#:~:text=Name%20Image%20Likeness%20\(NIL\)%20collectives.and%20supporters%20of%20the%20school](https://www.taxpayeradvocate.irs.gov/get-help/general/nil/nil-collectives/#:~:text=Name%20Image%20Likeness%20(NIL)%20collectives.and%20supporters%20of%20the%20school).

⁴⁶ *Id.* (stating contributions are raised from fans, businesses, boosters, and other sources).

⁴⁷ Pete Nakos, *What are NIL Collectives and how do they operate*, ON3, (Jul. 6, 2022), <https://www.on3.com/nl/news/what-are-nil-collectives-and-how-do-they-operate/>.

⁴⁸ *Id.* (stating marketplace collectives also have the ability to serve as the agent representative for the athlete).

⁴⁹ *Id.* (describing how this is the most common collective setup).

⁵⁰ *Id.*

⁵¹ *O'Bannon*, 802 F.3d at 1049.

⁵² *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 104 S. Ct. 2948, 82 L. Ed. 2d 70 (1984) (ruling on the NCAA's television rules and holding that the NCAA's rules should be analyzed under the

O'Bannon decision after years of challenges to the NCAA rules and prohibitions on compensating athletes for the NILs,⁵³ but *O'Bannon* itself is the college athletics NIL chestnut.

O'Bannon sued the NCAA and Electronic Arts ("EA") after seeing himself in an NCAA videogame made by EA for which he was not compensated for and did not give consent to.⁵⁴ The Ninth Circuit held that the NCAA's compensation rules are subject to the Sherman Act⁵⁵ and that O'Bannon was injured as a result of the "NCAA's rules having foreclosed the market for NILs in video games"⁵⁶ in violation of antitrust laws.

In analyzing the NCAA's appeal, the court first concluded that the NCAA's compensation rules regulate commercial activity.⁵⁷ The court discussed the modern legal understanding of commerce and how it is understood in broad terms, including almost any activity where the actor anticipates economic gain.⁵⁸ The Ninth Circuit concluded that this definition includes transactions where athletes exchange their labor and NIL rights for scholarships.⁵⁹

The court next determined that the plaintiffs made a sufficient showing that the NCAA's compensation rules caused them injury in fact.⁶⁰ First, the court said that if it were not for the NCAA's compensation rules, the video game makers would negotiate directly with the college

Rule of Reason); *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328 (7th Cir. 2012) (challenging NCAA scholarship caps and holding that the plaintiffs did not make the required showing under the Sherman Act); *In re NCAA I-A Walk-On Football Players Litig.*, 398 F. Supp. 2d 1144 (W.D. Wash. 2005) (alleging the restrictions on the number of scholarships allowed to be given to athletes violates the Sherman Act).

⁵³ *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 37 F. Supp. 3d 1126, 1133 (N.D. Cal. 2014) (alleging the NCAA misappropriated the athletes name, image, and likenesses in violation of their rights of publicity).

⁵⁴ *O'Bannon*, 802 F.3d at 1054.

⁵⁵ *Id.* at 1066.

⁵⁶ *Id.* at 1067.

⁵⁷ *Id.* at 1064.

⁵⁸ *Id.* at 1065.

⁵⁹ *Id.* (discussing that the eligibility rules regulate the terms of commercial transactions between recruits and the schools they choose).

⁶⁰ *Id.* 1066.

athletes for the right to use their NILs.⁶¹ The court determined that because video game makers would most likely pay the athletes to use their NILs in the games, the plaintiffs showed injury in fact which satisfied the required showing of antitrust injury.⁶²

The court then went on to analyze O'Bannon's claim under the Rule of Reason analysis.⁶³ The Ninth Circuit agreed with the District Court in concluding that under the first step of the Rule of Reason analysis, the plaintiffs made the required showing that there is a college education market where institutions compete for the services of athletic recruits by way of scholarships, if the NCAA did not have its compensation rules, schools would offer to compensate recruits for their NILs, and the compensation rules thus have a significant anticompetitive effect on the college education market.⁶⁴

Under the second step, the court then rejected the claim by the NCAA that denying college athletes compensation outside of scholarships increases the choices available to them by the NCAA.⁶⁵ The court additionally concluded that the NCAA's compensation rules promote the procompetitive purposes of integrating athletics and academics, and "preserving the popularity of the NCAA's product by promoting its current understanding of amateurism."⁶⁶

Finally, the court held that the district court was correct in finding that a substantially less restrictive alternative would be to raise the grant-in-aid cap, but it was error to find that allowing college athletes to be compensated for their NILs is as effective as the amateurism rules the

⁶¹ *Id.* at 1067.

⁶² *Id.* 1069.

⁶³ *Id.* at 1070 (the Rule of Reason analysis employs a three-step framework: (1) the plaintiff bears the initial burden of showing that the restraint produces significant anticompetitive effects within a relevant market, (2) if the plaintiff meets this burden, the defendant must come forward with evidence of the restraint's procompetitive effects, and (3) the plaintiff must then show that any legitimate objectives can be achieved in a substantially less restrictive manner).

⁶⁴ *Id.* at 1070.

⁶⁵ *Id.* at 1073.

⁶⁶ *Id.*

NCAA had in place at the time.⁶⁷ The court held that the NCAA’s rules were more restrictive than necessary to maintain its amateurism tradition and the Rule of Reason requires the NCAA to allow college athletes to receive up to the cost of attendance.⁶⁸

With the stage set by *O’Bannon*, the Supreme Court decided *NCAA v. Alston* in 2021 with a concurrence by Justice Kavanaugh giving the NCAA a push to dismantle their amateurism policies preventing college athletes from capitalizing on their NILs. While the majority opinion did not touch on NIL, Justice Kavanaugh’s concurrence highlighted that the NCAA’s compensation rules not analyzed and thus not held to be in violation of antitrust laws, “raise serious questions under antitrust laws.⁶⁹”

The plaintiffs alleged that the NCAA violated the Sherman Act by agreeing with its member institutions to restrict the compensation institutions were allowed to offer college athletes.⁷⁰ The court determined that the NCAA itself is subject to the Sherman Act⁷¹ and agreed with the district court that the NCAA was in violation of the Act in imposing stricter than necessary restraints to achieve procompetitive benefits.⁷²

In the 1977 case *Zacchini v. Scripps-Howard Broad. Co.*, the Supreme Court of the United States looked at Zacchini’s right of publicity⁷³ in his human cannonball act that Scripps-Howard Broadcasting played on their news station without Zacchini’s consent.⁷⁴ The court stated

⁶⁷ *Id.* at 1074 (determining a raise in the grant-in-aid cap to the cost of attendance would have no impact on amateurism but that a rule allowing schools to pay students in cash and a rule forbidding the from paying NIL compensation are not equally effective in promoting amateurism).

⁶⁸ *Id.* at 1078.

⁶⁹ *NCAA v. Alston*, 141 S. Ct. 2141, 2166-67 (2021).

⁷⁰ *Id.* at 2147.

⁷¹ *Id.* at 2160.

⁷² *Id.* at 2163.

⁷³ *Hart*, 740 F. Supp. 2d at 664 (stating the right of publicity is a state law right. New Jersey defines the right of publicity as “the right of an individual . . . to control the commercial value and exploitation of his name and picture or likeness and to prevent others from unfairly appropriating this value for commercial benefit.”).

⁷⁴ *Zacchini v. Scripps-Howard Broad. Co.*, 97 S. Ct. 2849, 2851-52 (1977).

that broadcasting Zacchini’s entire act posed a “substantial threat to the economic value of that performance.”⁷⁵ The court further stated that the rationale behind protecting the right of publicity is to prevent unjust enrichment “by the theft of goodwill.”⁷⁶ Additionally, the court recognized that it does not serve a social purpose to allow Scripps to gain for free something of Zacchini’s that has market value and which people normally pay for.⁷⁷ It is this right of publicity that concerns an athlete’s name, image and likeness.

D. NCAA Interim Policy

Just nine days after the *Alston* decision, and with Florida’s Act permitting college athlete compensation⁷⁸ set to go into effect on July 1, 2021, the NCAA adopted an interim NIL policy.⁷⁹ After feeling the pressure from several state laws set to take effect⁸⁰ and the recent hit they took in *Alston*, the NCAA was pushed into broadly accepting NIL. This policy suspended all previous

⁷⁵ *Id.* at 2857.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Christina Monroe, *Florida To Become First State To Allow Student Athlete Compensation*, LEGAL SPORTS BETTING (Jun. 15, 2020), <https://www.legalsportsbetting.com/news/florida-to-become-first-state-to-allow-student-athlete-compensation/>.

⁷⁹ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

⁸⁰ Icon Source, *State of Alabama NIL Laws: What College Athletes and Sponsors Need to Know*, ICON SOURCE, <https://iconsource.com/alabama-nil-laws/#:~:text=Everything%20You%20Need%20to%20Know,to%20receive%20compensation%20for%20NIL> (last visited May 1, 2023) (describing how Alabama’s law allowing athletes to receive compensation for their NILs was to take effect on July 1, 2021); Michael McCann, *What’s Next After California Signs Game Changer Fair Pay to Play Act Into Law?*, SPORTS ILLUSTRATED (Sep. 30, 2019), <https://www.si.com/college/2019/09/30/fair-pay-to-play-act-law-ncaa-california-pac-12> (in addition to Florida, California signed its Fair Pay to Play Act making it illegal to deny college athletes the chance to be compensated for their NILs); Icon Source, *State of Georgia NIL Laws: What College Athletes and Sponsors Need to Know*, Icon Source [https://iconsource.com/georgia-nil-laws/#:~:text=Introduction%20to%20The%20State%20of%20Georgia%20NIL%20Law,-Gov.&text=When%20Governor%20Brian%20Kemp%20signed,%2C%20and%20Likeness%20\(NIL\)](https://iconsource.com/georgia-nil-laws/#:~:text=Introduction%20to%20The%20State%20of%20Georgia%20NIL%20Law,-Gov.&text=When%20Governor%20Brian%20Kemp%20signed,%2C%20and%20Likeness%20(NIL)) (last visited May 1, 2023) (describing how Georgia’s law allowing college athletes to receive compensation for their NILs was set to take effect July 1, 2021).

rules regarding NIL and allowed college athletes across all three divisions⁸¹ to benefit from their NIL.⁸²

This policy allowed college athletes to engage in NIL activity as long as they complied with the state law where their school is located.⁸³ If the state had no NIL law, college athletes were free to engage in NIL activity without violating NCAA rules.⁸⁴ The interim policy also allowed for college athletes to use professional services for NIL activities⁸⁵ and required college athletes to report NIL activities to their school in compliance with state law, or school or conference requirements.⁸⁶ The policy still prohibited pay-for-play and improperly inducing a recruit to attend a certain school.⁸⁷ The policy was meant to be in place temporarily until the adoption of federal legislation or a new NCAA rule.⁸⁸ The interim policy allows for schools and conferences to adopt their own policies surrounding NIL.⁸⁹

In November 2021, the NCAA released its “Name, Image and Likeness Policy Question and Answer” document which included several notable restrictions.⁹⁰ This set of guidance clarified that NIL agreements need to be true quid pro quo’s, exchanging compensation for work actually performed by the athlete, compensation contingent upon enrollment at a particular school is expressly prohibited, institutions are prohibited from compensating athletes for their NILs, and prohibiting compensation for athletic participation or achievement.⁹¹

⁸¹ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> (NCAA splits collegiate sports into Divisions I, II, and III).

⁸² *Id.* (suspending prohibitions on allowing college athletes from receiving payment of any kind based on their NIL).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ NCAA, *Name, Image, and Likeness Question and Answer*, NCAA https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QandA.pdf (last visited May 2, 2023).

⁹¹ *Id.* p. 2

Additionally, this guidance stated that athletes can enter into agreements with boosters if compensation is not conditioned on the athlete enrolling at a certain institution.⁹² Finally, the guidance clarified that pay-for-play is still expressly prohibited as is improper recruiting inducements.⁹³

The NCAA issued guidance again on May 9, 2022, to schools which defined boosters as, “any third-party entity that promotes an athletics program, assists with recruiting or assists with providing benefits to recruits, enrolled student-athletes or their family members.”⁹⁴ This could include collectives that are set up to “funnel name, image and likeness deals to prospective student-athletes or enrolled students who might be considering transferring.”⁹⁵

In October 2022 the NCAA updated its NIL policy to prohibit athletics department staff from representing a current or prospective college athlete in marketing their NIL, prohibit college athletes from using their athletics skill for pay, prohibit institutions from compensating a college athlete for the use of their NIL, and prohibit members of the school or boosters from providing a college athlete with any special arrangements or benefits.⁹⁶

Further, the updated interim policy laid out several permissible institutional education and monitoring areas including, educational sessions for athletes to include financial literacy, taxes, entrepreneurship, social media, etc.⁹⁷ The policy also deemed educational sessions for

⁹² *Id.*

⁹³ *Id.* p. 3.

⁹⁴ Michelle Brutlag Hosick, *DI Board of Directors issues name, image and likeness guidance to schools*, NCAA (May 9, 2022, 5:21 PM), <https://www.ncaa.org/news/2022/5/9/media-center-di-board-of-directors-issues-name-image-and-likeness-guidance-to-schools.aspx>.

⁹⁵ *Id.*

⁹⁶ *NCAA Division I Institutional Involvement in a Student-Athletes Name, Image and Likeness Activities*, NCAA (Oct. 26, 2022), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL_InstitutionalInvolvementNILActivities.pdf.

⁹⁷ *Id.* p. 3.

boosters, prospective student athletes, and NIL entities such as collectives permissible as well as required reporting of NIL activity by the athletes.⁹⁸

The rise of NIL collectives before this guidance was released resulted in the updated guidance including a section on permissible and impermissible institutional support for NIL entities and collectives.⁹⁹ The guidance clarifies that this list of permissible and impermissible institutional involvement is non-exhaustive.¹⁰⁰ The NCAA has not made any further changes to its interim policy since October 2022.¹⁰¹

The NCAA has lobbied Congress¹⁰² to adopt federal NIL law and even states in its November 2021 Q&A that the interim policy will remain in effect until either federal legislation is passed or the NCAA adopts new rules.¹⁰³ The NCAA has displayed a desire to not be the responsible entity for regulatory NIL oversight which could explain why it has only adopted interim NIL policy and not new rules or bylaws to date.¹⁰⁴

E. What is NIL Education (And What is it Not?)

What constitutes NIL education is defined differently depending on where one looks or who one asks. This article defines NIL education as educating college athletes on personal income tax

⁹⁸ *Id.*

⁹⁹ *Id.* p. 4. (permissible activities include staff members helping the collective raise money for the collective, providing assets to the collective under sponsorship agreements as long as the assets are available to and on the same terms as other sponsors, request donors to provide funds to the collective as long as they do not direct the funds to be used for a specific sport or athlete, and provide donor information or facilitate meetings between donors and the collectives. The policy lists three impermissible activities which include prohibitions on the institution subscribing to the collective and donating money, prohibiting the institution from providing assets to a donor to incentivize them to fund the collective, and prohibiting athletic department staff from being employed by the collective).

¹⁰⁰ *Id.*

¹⁰¹ *Name, Image and Likeness Interim Policy*, NCAA, <https://www.ncaa.org/sports/2021/2/8/about-taking-action.aspx>, (last visited Apr. 8, 2023).

¹⁰² Burr Forman, *The NCAA's New NIL Guidance: How the NCAA Has Loosened Restrictions on Collectives*, BURR FORMAN (Nov. 17, 2022), <https://www.burr.com/newsroom/articles/the-ncaas-new-nil-guidance-how-the-ncaaa-has>

¹⁰³ NCAA, *Name, Image, and Likeness Question and Answer*, NCAA (last visited May 2, 2023), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QandA.pdf.

¹⁰⁴ *Id.*

law¹⁰⁵ and its implications for college athletes¹⁰⁶, financial literacy, personal branding, social media, and legal aspects encompassed by NIL including contract law,¹⁰⁷ business basics,¹⁰⁸ and compliance with the everchanging NIL policies of the NCAA and the athlete’s respective schools¹⁰⁹ as well as the NCAA’s amateurism rules.

More important, this article leaves out aspects included in other definitions of NIL education: time management and the decision on whether to participate in NIL activity. Various state laws require or recommend colleges and universities provide their athletes with NIL education on time management.¹¹⁰ However, college athletes have spent years, if not the entirety of their lives managing their time as students, athletes, employees, brothers/sisters, sons/daughters, etc. College athletes do not need to spend time learning how to manage their time in the face of NIL, in fact, this is already covered by separate NCAA policy.¹¹¹

¹⁰⁵ Lisa Barringer and Ronald Nahass, *Tax and Other Issues to Consider Due to NIL*, LEAD1, 23 (Aug. 25, 2021), http://lead1association.com/wp-content/uploads/2021/08/LEAD1_NIL_Institutional_Report_Issue_2.pdf.

¹⁰⁶ Courtney Altemus, *It’s 1099 Season, are Your Student-Athletes Ready?*, LEAD1, 6 (Jan. 24, 2022), http://lead1association.com/wp-content/uploads/2022/01/LEAD1_NIL_Publication_Issue_4-4.pdf. (Courtney Altemus, CEO and founder of TeamAltemus hits the nail on the head in recognizing the tax implications on NIL activity and more specifically for college athletes. She mentions points such as athletes forgetting about their 1099 forms if they use their home address on their W-9, needing to pay self-employment taxes at the federal level, and the differences in tax rates).

¹⁰⁷ Courtney Altemus, *Show Me The Money*, LEAD1, 4 (May 31, 2022), <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:38826192-af8b-49f2-b2d4-70e314315e1d?viewer%21megaVerb=group-discover>.

¹⁰⁸ Todd Hairston, *NIL Education: The Cost of Teaching Business*, SPRY <https://spry.so/insights/nil-education-the-cost-of-teaching-business/> (last visited Apr. 9, 2023).

¹⁰⁹ Kyle Ritchie and Kyle Skillman, *NIL: Recommended Athletics Compliance Education*, LEAD1, 17 (Jan. 11, 2023), <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:bd4fdb7-3768-4784-b584-3323fa02962f?viewer%21megaVerb=group-discover>.

¹¹⁰ Spry, *Georgia NIL Law for NCAA*, SPRY <https://spry.so/nil-state-guide/georgia-nil-law-for-ncaa/> (last visited Apr. 9, 2023) (stating, “the workshop shall also include information on time management skills necessary for success as a student athlete and available academic resources.”).

¹¹¹ Spry, *What does CARA stand for?* SPRY <https://spry.so/term/cara/>, (last visited May 10, 2023) (“CARA” or Countable Athletically Related Activities includes any mandated activity that serves an athletics purpose involving college athletes directed by the school’s coaching staff and these activities must be counted and remain within the weekly and daily limitations set forth by the NCAA); Andy Campbell, *Required Activities (RARA)*, ARMS <http://help.armssoftware.com/en/articles/2497152-required-activities-rara> (last visited May 10, 2023) (describing the separate category of “RARA,” or Required Athletically Related Activities) (between the CARA and RARA categories and restrictions put in place by the NCAA on these activities, the NCAA is effectively managing the athlete’s time for them by restricting the number of hours they can spend on sport related activity).

Instead, NIL education should focus on deeper aspects of what NIL encompasses instead of superficial areas. Athletes playing at the college level, no matter the division, in most instances already know how to sufficiently manage their time so including time management in NIL education is actually a waste of the athlete's time.

Additionally, athletes do not need to be educated on whether or not they should take part in NIL activity. This is a personal and individualized decision that depends on various factors such as the school they are at, the division they play in, opportunities available to them, their earning potential, their financial situation, etc. These are all considerations each athlete needs to account for themselves and there is no ready formula to help an athlete figure out whether they should take part in NIL activity or not. This is a decision that should be made on the individual level with thought and care and with the advice and guidance of their families, not with generic education provided to them from an outside source.

III. Claim

A. Third-Party Firms and Providers

The NIL and NIL education landscape is being met with a rise in third-party firms and providers offering NIL education services to college athletes through contracts with the schools they attend¹¹² or to the athletes directly, usually for a fee.¹¹³ Other firms provide NIL education

¹¹² SETON HALL UNIVERSITY ATHLETICS, *Seton Hall Selects COMPASS for NIL Education & Management*, (Aug. 16, 2021, 1:00 PM), <https://shupirates.com/news/2021/8/16/general-seton-hall-selects-compass-for-nil-education-management.aspx> (Seton Hall using Compass); ST. FRANCIS COLLEGE ATHLETICS, *NEC & FanWord partner on NIL education & compliance platform* (Sep. 22, 2021, 11:45 AM) <https://sfcathletics.com/news/2021/9/22/general-nec-fanword-partner-on-nil-education-compliance-platform.aspx> (St. Francis using FanWord); OLE MISS UNIVERSITY ATHLETICS, *Ole Miss Launches Next Level NIL Program* (May 13, 2021), <https://olemisssports.com/news/2021/5/13/ole-miss-athletics-launches-next-level-nil-program.aspx> (Ole Miss using INFLCR).

¹¹³ THE PLAYERS NIL, *NIL Game Plan for Student-Athletes*, <https://theplayersnil.com>, (last visited Apr. 8, 2023).

workshops and speakers,¹¹⁴ newsletters and articles,¹¹⁵ or certifications.¹¹⁶ Still other firms provide brief one-off articles for athletes to read¹¹⁷ on various aspects related to NIL, some of which barely scratch the surface on what a college athlete needs to know to fully exercise their newly recognized rights.¹¹⁸ Other providers such as Bill Carter’s Student Athlete Insights offer more in depth programs on NIL education.¹¹⁹

While these opportunities can be helpful, they do not go far enough in educating college athletes on NIL and college athletes want more.¹²⁰ This is tip of the iceberg of the appropriate level of NIL education to adequately educate college athletes on their rights and obligations.¹²¹

These third-party firms do not go far enough with NIL education and in many instances are not focused on the deep issues encompassed by NIL such as tax and contract law, business aspects, and financial literacy. Instead, they focus mostly on personal brand building and marketing. While personal branding and marketing is an aspect of NIL and can be important for, properly educating college athletes on NIL needs to dive into the deep issues, the ones the

¹¹⁴ NIL-EDUCATION, *Name, Image and Likeness (NIL)*, <https://www.nil-education.com/nil-services> (last visited Apr. 8, 2023).

¹¹⁵ TEAM ALTEMUS, *NIL Thought Leaders*, <https://www.team-altemus.com/nil-expertise> (last visited Apr. 10, 2023) (also provides training and services to schools).

¹¹⁶ FRONT OFFICE SPORTS LEARNING, *Athlete Marketing Essentials: NIL Certification* (last visited Apr. 10, 2023) <https://www.fos-learning.com/courses/athlete-marketing-essentials-nil-certification>.

¹¹⁷ Angela Tague, *NIL: Contract Basics-What student-athletes should look for*, LEGAL ZOOM (Jan. 25, 2023), <https://www.legalzoom.com/articles/nil-contract-basics-what-student-athletes-should-look-for>; Amelia Pennington and Dana S. Gross, *Think Before You Ink: Key Consideration in Contracting with Student Athletes for NIL Rights*, MORGAN LEWIS (Aug. 17, 2021) <https://www.morganlewis.com/pubs/2021/08/think-before-you-ink-key-considerations-in-contracting-with-student-athletes-for-nil-rights>.

¹¹⁸ Casey Muir, *NIL Rules: Welcome to the Name, Image, and Likeness era*, FANSIDED <https://fansided.com/2021/07/08/nil-rules-deals-definition-explained/> (last visited Apr. 10, 2023).

¹¹⁹ Bill Carter, *NIL Consulting and Education to Help You Learn, Adapt, or Capitalize on Name, Image Likeness*, STUDENT-ATHLETE INSIGHTS, <https://studentathleteinsights.com/#billcarter> (last visited May 6, 2023) (offering “NIL/mba program” which is an intensive education program built from Bill Carter’s University of Vermont NIL course, his NIL workshops, and Student-Athlete Insights’ research).

¹²⁰ Amanda Christovich, *One Year of NIL: Bridging the Remaining Gaps in Education*, FRONT OFFICE SPORTS (Jun. 29, 2022, 11:50 AM) <https://frontofficesports.com/nil-education-gaps/>.

¹²¹ Bill Carter, *Student Athlete Education May Finally be Getting its Due*, NAME, IMAGE, LIKENESS INSIDE VOLUME 17: NEW NCAA GUIDANCE, FINANCIAL LITERACY, SOCIAL MEDIA, AND ENTREPRENEURISM, (Nov. 1, 2022), <https://www.linkedin.com/pulse/name-image-likeness-insider-volume-17-new-ncaa-guidance-bill-carter/> (Bill Carter discussing how college athletes are not educated enough on taxes and social media best practices).

athletes often have less knowledge about.¹²² Less knowledge means less freedom to make informed choices, and this can end up hurting athletes in the long run. NIL is constantly changing, and the education provided to college athletes needs to change with the NCAA's guidance, state laws, and school and conference policies, not remain static and concerned with surface level issues.

B. State Laws Dealing with NIL

32 out of 50 states have passed NIL laws,¹²³ some with education requirements,¹²⁴ some with education suggestions¹²⁵ and some that are silent on NIL education altogether.¹²⁶ There are seven big areas of commonality between the varying states' NIL laws that each address. These areas include, vice categories, conflict categories, university values, access to advisors, other rights including intellectual property, and finally, education.¹²⁷ Many states tackle the education category in the same way or even with the same language. It is these state laws that govern the current NIL landscape.

The absence of federal NIL legislation or even an NCAA policy requiring institutions to provide their athletes with NIL education, schools are left to make their own choices as long as they comply with state law. But with a majority of the states making no mention of NIL

¹²² Amanda Christovich, *One Year of NIL: Bridging the Remaining Gaps in Education*, FRONT OFFICE SPORTS (Jun. 29, 2022, 11:50 AM) <https://frontofficesports.com/nil-education-gaps/> (more than half the athletes responding to a survey stated they wanted more help with taxes).

¹²³ Amy Piccola, Tricia Duffy, Levi R. Schy, *Your guide to Federal and State Laws on Name, Image and Likeness Rules for NCAA Athletes*, SAUL EWING, <https://www.saul.com/nil-legislation-tracker>, (last visited Apr. 10, 2023).

¹²⁴ 2020 Florida S.B. 646, 2020 Leg., 122nd Reg. Sess. 2020 (Fl. 2020); H.B. 7-B, Reg. Sess. 2023 (Fl. 2023); H.B. 617, Reg. Sess. 2021-22 (Ga. 2021); S.B. 6, Reg. Sess. 2022 (Ky. 2022); S.B. 250, 2022 Reg. Sess. (La. 2022); H.B. 297, 101st Gen. Assemb., Reg. Sess. (Mo. 2021); S.B. 5891-F, Reg. Sess. 2021-22 (Ny. 2021); and S.B. 1385, Reg. Sess. 2021 (Tx. 2021).

¹²⁵ H.B. 1175, Reg. Sess. 2021 (Il. 2021); E.O. 223, 2021 (Nc. 2021).

¹²⁶ Arizona, Arkansas, California, Colorado, Connecticut, Delaware (proposed), Maine, Massachusetts (proposed legislation), Maryland (had a provision requiring institutions to conduct financial aid and life skills workshops 1st and 3rd year but took it out), Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Washington (proposed).

¹²⁷ NIL Network, *NIL State Laws*, (last visited May 11, 2023), <https://www.nilnetwork.com/nil-laws-by-state/>

education in their respective legislation, athletes are at a disadvantage and without the education they need to most effectively exercise their rights. This paper will analyze the NIL legislation of the states where the schools analyzed below are located.

There are several states that make no mention of NIL education in their NIL legislation.¹²⁸ In contrast, there are a few states that suggest, but do not require institutions to provide their athletes with NIL education.¹²⁹ One of these states is Illinois which provides in relevant part, “postsecondary educational institutions are encouraged to provide financial literacy, brand management, and life skills programming designed for student athletes. The programming may include information on time management skills necessary for success as a student athlete and available academic resources.”¹³⁰

Similarly, the other state suggesting schools provide athletes with NIL education is North Carolina. Its legislation provides, in relevant part, “postsecondary education institutions are encouraged to provide financial literacy and life skill programs to their student-athletes, including educational workshops on time management and budgeting.”¹³¹

The Illinois legislation is slightly more comprehensive as it includes education on brand management and makes mention of academic resources that are available to athletes.¹³² Both states suggest providing education on financial literacy, life skills, and time management¹³³. However, neither state suggests that schools provide education on compliance, income tax or contract law and their implications, social media, or business basics. These are all key elements

¹²⁸ S.B. 206, Reg. Sess. 2020, (Ca. 2020); S.B. 2454, 191st Leg., Reg. Sess. 2020, (Ma. 2020); L.B. 962, 106th Leg., Reg. Sess. 2020 (Ne. 2020); S.B. 971, Reg. Sess. 2021 (Nj. 2021); S.B. 187, 134th Gen. Assemb., Reg. Sess. 2021 (Oh. 2021); S.B. 381, Reg. Sess., 2022 (Pa. 2022); H.B. 5082, Reg. Sess. 2021, (Ri. 2021).

¹²⁹ H.B. 1175, Reg. Sess. 2021 (Il. 2021); E.O. 223, 2021 (Nc. 2021).

¹³⁰ H.B. 1175, Reg. Sess. 2021 (Il. 2021).

¹³¹ E.O. 223, 2021 (Nc. 2021).

¹³² H.B. 1175, Reg. Sess. 2021 (Il. 2021).

¹³³ Id.; E.O. 223, 2021 (Nc. 2021).

of NIL education that are notably absent from the Illinois and North Carolina legislation. These states would be better off including some of these missing aspects and placing less emphasis on time management.

While suggesting schools provide NIL education is better than legislation making no mention of NIL education, and including some key aspects of what NIL education should encompass is a step in the right direction, leaving so much up to the schools in choosing what education to provide their athletes leaves them at a disadvantage. Even though something is better than nothing, these states are not going far enough in ensuring the athletes are given the tools they need to succeed.

The remaining states, the states of Florida,¹³⁴ Georgia,¹³⁵ Kentucky,¹³⁶ Louisiana,¹³⁷ Missouri,¹³⁸ New York,¹³⁹ and Texas¹⁴⁰ all require schools to provide some form of NIL related education for athletes. Florida originally required NIL related education in the form of a

¹³⁴ 2023 Fl. H.B. 7-B, Reg. Sess. 2023 (Fl. 2023).

¹³⁵ 2021 Ga. H.B. 617, Reg. Sess. 2021-22 (Ga. 2021) (requiring state institutions to conduct a financial literacy and life skills workshop for a minimum of five hours at the start of the athlete's first and third academic years. The workshops must include information on financial aid, debt management, a recommended budget, time management, and available academic resources but can include more).

¹³⁶ S.B. 6, Reg. Sess. 2022 (Ky. 2022) (requiring state institutions provide a financial literacy and life skills workshop for a minimum of five hours at the beginning of the athlete's first and third academic years. This is to at least include information on financial aid, debt management, budgeting, time management, academic resources, the skills necessary for a student athlete, social media, and brand management education).

¹³⁷ S.B. 250, Reg. Sess. 2022, (La. 2022) (requiring state institutions to conduct a financial literacy and life skills workshop for a minimum of five hours at the beginning of an athlete's first and third academic years. The workshops must at a minimum include education on financial aid, debt management, budgeting, time management, and available academic resources).

¹³⁸ H.B. 297, 101st Gen. Assemb., 1st Reg. Sess. 2021 (Mo. 2021) (requiring state institutions to provide a financial development program once per year).

¹³⁹ S.B. 5891-F, Reg. Sess. 2021-22 (Ny. 2021).

¹⁴⁰ S.B. 1385, 87th Leg., Reg. Sess. 2021-22, (Tx. 2021) (requiring state institutions to conduct a financial literacy and life skills workshop at the beginning of the athlete's first and third academic years for a minimum of five hours. The workshop must include information on financial aid, debt management, time management, budgeting, and academic resources available).

workshop on financial literacy and life skills at the start of each athlete's first and third academic years.¹⁴¹

Florida subsequently amended its legislation to require institutions to conduct at least two financial literacy, life skills, and entrepreneurship workshops, each for a minimum of 5 hours, before the athlete graduates.¹⁴² The workshops cannot be conducted in the same semester, nor can they be identical, and the second must include more rigorous instruction.¹⁴³ The workshops need to include at a minimum, education on entrepreneurship, financial aid, debt management, budgeting, time management, and academic resources.¹⁴⁴

This change added more to the existing education requirements, adding an additional workshop for a total of two instead of one workshop at a minimum of five hours and requires the workshops to be different from each other with the second being more rigorous than the first. Substance wise however, there was no change in the content required in the workshops.

Despite this change, the Florida legislation still falls short of the NIL education mark. This legislation is one of the most comprehensive regarding NIL education, but it still does not cover all the necessary aspects to fully educate college athletes on all things NIL. Absent from the bill is education on personal income tax law and its implications, contract law, personal branding, social media, business basics, and compliance with NCAA and institutional policies. These are all important areas where athletes need to receive education if they are to effectively participate in the NIL market.

¹⁴¹ 2020 Fl. S.B. 646, 2020 Leg., 122nd Reg. Sess. 2020 (Fl. 2020) (each workshop was to include, at a minimum, information on financial aid, debt management, recommended budgets for athletes based on the cost of attendance, time management skills, and available academic resources).

¹⁴² 2023 Fl. H.B. 7-B, Reg. Sess. 2023 (Fl. 2023).

¹⁴³ *Id.*

¹⁴⁴ 2023 Fl. H.B. 7-B, Reg. Sess. 2023 (Fl. 2023).

Finally, the law requires education on time management which is something that college athletes do not need further education on. Being both a student and an athlete requires excellent time management skills if athletes want to remain eligible for play and this is a skill they have been practicing their entire lives as athletes. Instead of focusing on educating college athletes on time management, the Florida legislation should include the other missing aspects to better equip its college athletes.

Finally, the New York State law requires institutions to offer assistance programs which can include financial literacy training, leadership training a career development program.¹⁴⁵ Leadership training and career development programs are important resources for college athletes but if they are not specifically tailored to NIL (which it seems these are not), then requiring schools to provide them detracts from valuable time and resources that could be used to provide NIL related education.

The New York law does require schools to provide financial literacy training specifically tailored to college athletes which will be beneficial to them in exercising their NIL rights. However, this is the only component of a comprehensive NIL education required by the law. The law makes no mention of compliance, personal income tax law and its implications, contract law, business basics, personal branding, or social media, all of which are vital to a proper NIL education. Like so many other state laws, the New York law falls short of the NIL education mark.

In short, even the states that mandate institutions provide athletes with NIL education are missing the mark and doing a disservice to their athletes. To meet the comprehensive definition of NIL education, all states should amend their NIL laws to ensure they include education on

¹⁴⁵ S.B. 5891-F, Reg. Sess. 2021-22 (Ny. 2021).

personal income tax law and its implications, financial literacy, contract law, personal branding, social media, business basics, and compliance with NCAA and institutional policies.

C. The Education Drop

When the NCAA issued its first interim policy¹⁴⁶ some schools jumped at the chance to be pioneers and provide their athletes with the educational resources needed to navigate their newly recognized NIL rights,¹⁴⁷ whereas others took more time to come around to providing education to their athletes, and yet even more schools have still to provide their athletes with any sort of NIL education. While many schools are offering NIL education to their athletes, many are not offering education of substance and like the third-party firms and providers, do not dive deep enough. There is a steep drop off in the quality and type of education offered across NCAA Division I, II and III schools and still yet another drop off in education quality between Power Five Universities¹⁴⁸ and sub–Power Five Division I universities.¹⁴⁹

a. Power Five Universities¹⁵⁰

The University of Nebraska launched a three-prong plan to educate its athletes titled #NILbraska¹⁵¹ which is composed of “Accelerate,” “Ready Now,” and “Husker Advantage.”¹⁵²

¹⁴⁶ Michelle Brutlag Hosick, *NCAA adopts interim name, image and likeness policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

¹⁴⁷ Lila Bromberg, *In the NIL Arms Race, Some Schools Are Going the Extra Mile to Help Their Athletes*, SPORTS ILLUSTRATED (Jul. 1, 2021), <https://www.si.com/college/2021/07/01/name-image-likeness-programs-schools-ncaa>.

¹⁴⁸ *Power 5 Conferences*, FOOTBALL COLLEGES (Dec. 27, 2022) <https://www.footballcolleges.com/power-5-conferences/>.

¹⁴⁹ Opendorse, *NIL Insights*, OPENDORSE <https://opendorse.com/nil-insights/> (last visited May 10, 2023) (this may be due to the fact that the Power Five conferences hold spots one through five according to Opendorse on the list of top conferences for NIL compensation).

¹⁵⁰ The institutions analyzed in this paper were chosen to include three Power Five universities, three sub-Power Five universities, two D-II, and 2 D-III universities. Beyond that, the institutions were chosen based on the available information on the institution’s athletics website for ease of access in the analysis. The selection attempted to choose institutions from several parts of the country while still maintain the ease of access to the relevant information.

¹⁵¹ Lila Bromberg, *In the NIL Arms Race, Some Schools Are Going the Extra Mile to Help Their Athletes*, SPORTS ILLUSTRATED (Jul. 1, 2021) <https://www.si.com/college/2021/07/01/name-image-likeness-programs-schools-ncaa>.

¹⁵² Nebraska Communications, *Name, Image and Likeness at Nebraska*, UNIVERSITY OF NEBRASKA, <https://huskers.com/sports/2021/11/18/nilbraska.aspx> (last visited Apr. 10, 2023).

The Ready Now part of the program seeks to educate Nebraska athletes on personal branding¹⁵³ and assesses the athlete’s social media accounts to identify areas where they can improve.¹⁵⁴ The Accelerate aspect helps athletes identify talents and strengths, provides mentorship opportunities, pop-up classes,¹⁵⁵ workshops and speakers, NIL advisors,¹⁵⁶ startup services, a startup accelerator, and the Husker Venture Fund.¹⁵⁷

Athletes also have the ability under the Accelerate prong to participate in entrepreneurial programs that partner with the business, journalism and law schools on campus.¹⁵⁸ Finally, the Husker Advantage prong is a life skills program that teaches athletes how to leverage their strengths, assess market value, represent themselves on social media, provide aid with marketing and promoting oneself to potential employers, and provides education on financial literacy and compliance.¹⁵⁹

The University of Nebraska is one of the few schools offering a close to comprehensive NIL education for its athletes. #NILbraska offers more than most other schools offer and the partnerships with the business, law and journalism schools enables athletes to get valuable assistance for no cost to them. Further, appointing Terry Prentice to a position specifically focused on NIL has help Nebraska’s athletes see success in monetizing their NIL’s.¹⁶⁰

¹⁵³ *Id.* (the “Ready Now” component includes a partnership with Opendorse to aid SA’s in building their personal brands).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* (offering one-credit classes)

¹⁵⁶ *Id.* (partnering with the colleges of Law, Business and Journalism to aid students in setting up LLC’s and teaching them about other relevant business aspects).

¹⁵⁷ *Id.* (allowing athletes to pitch idea for their own business to the Fund and if the business is approved, they get funding that can be used during or after the athletic eligibility).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Paul Gatling, *Prentice helps Razorback athletes excel in first year of NIL*, TALK BUSINESS & POLITICS (Aug. 30, 2022, 7:56 AM), <https://talkbusiness.net/2022/08/prentice-helps-razorback-athletes-excel-in-first-year-of-nil/> (“in the first 12 months of the NIL era, approximately 225 Razorback athletes – nearly half – across all 19 sports signed agreements to monetize their NIL. Combined, they totaled more than \$2 million”).

Despite being the first school in the nation to partner with Opendorse¹⁶¹ and being the first school to create a position for Terry Prentice to focus solely on NIL,¹⁶² Nebraska's efforts to educate their athletes do not go far enough. As discussed in section A, third party providers do not go far enough in educating athletes on the right things, so while the partnership with Opendorse may help in some respects, it is shallow and does not address the deep issues.

Additionally, #NILbraska has a large focus on personal brand building, personal strengths, and social media.¹⁶³ These are all important aspects of educating athletes on NIL but notably absent from #NILbraska is formalized education on income tax or contract law and their implications as well as business basics outside of the informal NIL Advisors available through the program. Even as an NIL education pioneer, the University of Nebraska is falling short of the NIL education goal. The University of Nebraska could take their program to the next level and provide their athletes with a comprehensive NIL education by providing programs and resources on income tax law and its implications, contract law, business basics, and compliance.

Another Power Five school working to educate their athletes on NIL is Ohio State University.¹⁶⁴ Ohio State's "Corporate Ambassador Program" helps to educate athletes on career

¹⁶¹ *Id.*

¹⁶² Lila Bromberg, *In the NIL Arms Race, Some Schools Are Going the Extra Mile to Help Their Athletes*, SPORTS ILLUSTRATED (Jul. 1, 2021), <https://www.si.com/college/2021/07/01/name-image-likeness-programs-schools-ncaa>; University of Arkansas Athletics, *Terry Prentice*, <https://arkansasrazorbacks.com/support-staff/terry-prentice-2/>, (last visited Apr. 10, 2023).

¹⁶³ *Nebraska Communications, Name, Image and Likeness at Nebraska*, UNIVERSITY OF NEBRASKA, https://express.adobe.com/page/gyGbx1q1h8bwh/?ref=https%3A%2F%2Fhuskers.com%2Fsports%2F2021%2F11%2F18%2Fnilbraska.aspx&embed_type=overlay&context=lightbox-expand, (last visited Apr. 10, 2023).

¹⁶⁴ Andrew King and Ezzat Nsouli, *How Schools and Private Entities Have Engaged in NIL Activity*, SQUIRE PATTON BOGGS, (Jul. 19, 2022), <https://www.sports.legal/2022/07/how-schools-and-private-entities-have-engaged-in-nil-activity/>.

building skills.¹⁶⁵ Additionally, the athletic department created the NIL Edge Team to provide NIL opportunities for the athletes.¹⁶⁶

Ohio State’s athletics website includes an NIL page with numerous NIL related resources for athletes.¹⁶⁷ Furthermore, the OSU Athletic Department has partnered with the Entrepreneurial Business Law Clinic at the Moritz College of Law.¹⁶⁸ The clinic provides free services to athletes to help them “better understand the legal aspects of NIL, specifically contracts.”¹⁶⁹ Ohio State recognized a need for counsel for their athletes who otherwise cannot afford representation or an

¹⁶⁵ *Id.* (resume assistance, lessons on navigating corporate relationships, marketing, and advertisement, overall, it is a professional development vehicle)

¹⁶⁶ OHIO STATE ATHLETICS DEPARTMENT, *Dept. of Athletics Creates NIL Edge Team, Updates Guidelines*, (Jan. 24, 2022) <https://ohiostatebuckeyes.com/ohio-state-creates-nil-edge-team-updates-guidelines/> (“the edge team is an internal advisory group whose members can assist student athletes with access and resources to successfully pursue NIL opportunities.”).

¹⁶⁷ OHIO STATE ATHLETICS DEPARTMENT, *OSU NIL* <https://ohiostatebuckeyes.com/nil/> (last visited Apr. 10, 2023) (resources include, “NIL Guidelines,” “NIL Ohio State Law,” “Branding Guidelines,” “Darlow Rules,” “Disclosure Required by Ohio Law,” “INFLCR,” “NIL Collective Education,” “NIL Company Database,” “NIL Contract Review,” “NIL Definitions,” “NIL Federal Student Aid Information,” “NIL International Student Athlete FAQ’s,” “NIL Restricted Categories,” “Student-Athlete Group Rights Licensing Program,” “Social Media Influencer Tip Sheet,” and “Trademark and Licensing.”); OHIO STATE ATHLETICS, *Student-Athlete Name, Image, Likeness Guidelines*, (Dec. 21, 2022) https://ohiostatebuckeyes.com/wp-content/uploads/2023/02/Student-Athlete-NIL-Guidelines_12.21.22.pdf (last visited Apr. 9, 2023) (the four-page guidelines cover a statement of purpose, contract disclosure and performance, facility use, timing on NIL activities, trademark and licensing, NCAA NIL guidelines/compliance, Ohio State specific guidelines, additional considerations, staff involvement in athlete NIL activities, the obligations of the athletes to disclose NIL activities, and sanctions); *The Darlow Rules: How to Build an Athlete Brand and a Future Beyond Sports*, DARLOW <https://the-darlow-rules.teachable.com/p/the-darlow-rules> (last visited Apr. 10, 2023) (course for college athletes on brand building); OHIO STATE ATHLETICS, *Ohio State Athletics Best Practices for NIL Collectives*, https://ohiostatebuckeyes.com/wp-content/uploads/2023/02/NIL_CollectivesEducation_2-7.pdf, (last visited Apr. 10, 2023) (information sheet on Ohio State University NIL collectives); OHIO STATE ATHLETICS, *Ohio State Athletics Name, Image, and Likeness*, https://ohiostatebuckeyes.com/wp-content/uploads/2023/03/NIL_CollectivesDocument-UPDATED.pdf, (last visited Apr. 10, 2023) (information sheet on NIL best practices and possible NCAA violations); and OHIO STATE ATHLETICS DEPARTMENT, *Ohio State University NIL* <https://ohiostatebuckeyes.com/nil/> (last visited Apr. 10, 2023) (referencing definitions of “NIL activity,” “official team activity,” and “team travel.”).

¹⁶⁸ James Grega, Jr., *Entrepreneurial Business Law Clinic partners with Ohio State Athletics to form NIL initiative*, MORITZ LAW (Feb. 23, 2023), <https://moritzlaw.osu.edu/entrepreneurial-business-law-clinic-partners-ohio-state-athletics-form-nil-initiative>.

¹⁶⁹ *Id.* (aimed at helping athletes understand what they are signing up for, the help with contracts does not appear to be in violation of the NCAA’s October 26, 2022, guidance. The guidance states institutions can provide education services to athletes. Additionally, the clinic offers help to regular students as well which keeps them in compliance with the NCAA guidance stating that it is impermissible for an institution to, “provide services (other than education) to support NIL activity unless the same benefit is generally available to the institution’s students.”).

agent and partnered with the clinic to help the athletes understand what they are signing up for with NIL deals and help review their contracts.¹⁷⁰

Ohio State is making a clear effort to provide their athletes with NIL related resources and education by providing them with access to an advisory team, many online resources, and help with contracts they enter. Ohio State comes close to providing their athletes with all aspects of what this article proposes should be included in NIL education.

One notable aspect lacking is the financial literacy aspect including personal income tax law education. While it is a step in the right direction to educate and aid athletes with their contracts and their required terms, the legal aspects of the tax laws athletes are subject to, and their implications are missing. This aspect of NIL education is especially important now since athletes are earning an income from their NIL's, which they will need to pay taxes on.

Similar to the issue Ohio State identified with athletes not being able to hire representation or an agent, it is just as likely they are unable to hire an accountant to help with their taxes or hire representation to advise them as to the tax implications they are subject to. Another aspect missing is the business basics facet which is extremely important because athletes are their own business and these skills can benefit them post-graduation, shaping them into more well-rounded and experienced individuals.

The final Power Five University analyzed here is the University of Florida which offers its athletes NIL related courses and programs, online resources, and access to the Hawkins

¹⁷⁰ *Id.* (this is an extremely valuable partnership as it gives the athletes advice and guidance in an area where they may otherwise not have any experience. Social media is a tool that most people use or are at the very least familiar with. By contrast, contract law, even on a basic level is not something many people or college athletes have had experience with. By partnering with the business law clinic at Moritz College of Law, Ohio State is providing their athletes with an aspect of education they may otherwise not have exposure to and that will benefit them greatly in the contracts they enter).

Center.¹⁷¹ UF offers NIL related courses under the “UF Entrepreneurship minor” which allows students to “master the core entrepreneurial competencies required to create or work on new ventures.¹⁷²” The Hawkins Center “provides educational initiatives throughout athletes entire careers as Gators and beyond their time in college in the areas of Career Development, Personal Enhancement, Community Outreach, Leadership Development, and Prepared Professionalism.”¹⁷³ Gator athletes also have access to NIL resources through their school Canvas accounts which contains information and videos on UAA forms, FAQs, INFLCR, branding and social media, legal issues, entrepreneurship, financial literacy, and tax implications.¹⁷⁴

Like Arkansas and Ohio State, the University of Florida is attempting to offer its athletes a comprehensive education on NIL but still falls short. UF does have educational materials for its athletes regarding “legal issues” and “tax implication” but without access to these materials there is no way to know if they go far enough or deep enough into the relevant issues. UF does seemingly place less emphasis on social media and brand building, and little to no emphasis on time management which is a step in the right direction in properly educating athletes.

¹⁷¹ UNIVERSITY OF FLORIDA ATHLETICS, *Gators NIL*, <https://floridagators.com/sports/2022/1/14/name-image-likeness.aspx> (last visited Apr. 9, 2023).

¹⁷² UNIVERSITY OF FLORIDA ATHLETICS, *Gators NIL, NIL Courses*, <https://floridagators.com/sports/2021/12/16/courses-name-image-likeness.aspx> (last visited Apr. 9, 2023) (the classes required for the minor are: “Intro to Personal and Family Financial Planning,” “Effect Career Management in Business,” “Personal Branding for Communications,” “Media Entrepreneurship,” “Career and Life Span Planning,” and “Name, Image, and Likeness.”).

¹⁷³ UNIVERSITY OF FLORIDA ATHLETICS, *Gators NIL, Gators Experience Name, Image and Likeness*, <https://floridagators.com/sports/2021/12/16/gators-experience-name-image-likeness.aspx> (last visited Apr. 10, 2023) (the Hawkins Center has identified areas within personal enhancement, community outreach, leadership development, and prepared professionalism that are specific to aiding college athletes in navigating NIL. The relevant areas include, time management, financial literacy and individual planning, branding, social media, first year Gators workshops, and Swamp Talks).

¹⁷⁴ UNIVERSITY OF FLORIDA ATHLETICS, *Gators NIL, NIL Resources*, <https://floridagators.com/sports/2022/7/13/resources-name-image-likeness.aspx> (last visited Apr. 10, 2023). (a UF Canvas login is required to access these resources therefore there is no way to access them to determine the breadth and depth of each offering).

However, UF does not offer education on business basics outside of the entrepreneurship minor. While offering this minor to students can help them to earn credit for the NIL related education they are receiving, there is only one class that is specific to NIL. Additionally, not every athlete will have the desire or the bandwidth to complete the entire minor, so the lack of specific NIL related courses makes it hard for them to pick and choose electives relating to NIL. While certainly better than some other schools, UF is still not meeting the multi-faceted definition of NIL education that will help athletes build full toolboxes to aid in both their NIL deals and life beyond college athletics.

b. Sub-Power Five Universities

Colleges and Universities outside of the Power Five are also attempting to educate their athletes on NIL but like their Power Five counterparts, they are not doing enough. In fact, many sub-Power Five Division I schools provide less NIL education. In comparing sub-Power Five school's NIL education offerings to what the Power Five schools are doing to educate their athletes, there is a clear drop off in the nature, quality, and type of education being offered.

Harvard University has a page for its current athletes¹⁷⁵ containing the “Harvard athletics NIL policy,” and a “temporary NIL guidance document for Ivy League athletes.¹⁷⁶” The Harvard NIL policy is a short five-page document barely referencing NIL education.¹⁷⁷ The policy does make mention of athletes obligations to disclose their NIL activities to the compliance office which is an important aspect of NIL compliance education.¹⁷⁸ Additionally, the policy briefly

¹⁷⁵ HARVARD ATHLETICS, *Current Student-Athletes*, <https://gocrimson.com/sports/2020/5/5/information-compliance-current-sa.aspx> (last visited Apr. 8, 2023).

¹⁷⁶ *Id.*

¹⁷⁷ HARVARD ATHLETICS, *Harvard Athletics Student-Athlete Name, Image, Likeness (NIL) Policy*, 1 https://gocrimson.com/documents/2021/9/2//Harvard_Athletics_NIL_Policy.pdf?id=6914 (last visited Apr. 8, 2023) (the first item in the policy is titled “philosophy and education resources” stating that “Harvard Athletics will provide appropriate NIL education opportunities to its student body to prepare them for NIL opportunities while also protecting their NCAA and Ivy League eligibility”).

¹⁷⁸ *Id.* at 3.

mentions federal and state tax implications¹⁷⁹ but does not provide education on those implications or tax laws athletes must comply with if they are receiving money. The Ivy League’s temporary guidance for athletes is even less exhaustive, providing only six tips for athletes to consider before engaging in NIL activity¹⁸⁰ which act more as disclaimers¹⁸¹ or alerts to athletes that they bear most of the responsibility¹⁸² for all things NIL.

Aside from the two aforementioned documents on the Harvard Athletics website, the school is not offering any meaningful NIL education to its athletes. Unlike the Power-Five schools previously analyzed, Harvard does not have an administrator handling NIL education, course offerings specific to NIL, seminars, programs, or conferences where athletes can be educated on different aspects encompassed by NIL and does not have any other NIL educational resources listed. This lack of NIL education makes it harder for Harvard athletes to monetize their NIL effectively and remain in compliance with the ever-changing NCAA policies and guidance. This ends up hurting athletes the most and leaves them steps behind other college athletes receiving better NIL education at different institutions.

¹⁷⁹ *Id.* (stating “Harvard student-athletes are responsible for all tax, withholding, reporting, licenses, permissions, permits, expenses, fees and any other obligations, liabilities or costs associated with NIL activity”).

¹⁸⁰ IVY LEAGUE, *Temporary NIL Guidance Document for Ivy League Student-Athletes*, https://gocrimson.com/documents/2021/7/1//NIL_Student_Resource_Ivy_League_July_2021.pdf?id=6894 (last visited Apr. 10, 2023).

¹⁸¹ *Id.* (tip number 4 states that students choosing to engage in NIL activity need to be aware of the need to consider tax, legal, contractual, and employment laws that may be applicable to their NIL activity. Tip 4 goes no further in providing any form of education on any of these areas of law nor does it specify specific laws or issues that may arise resulting from NIL activity).

¹⁸² *Id.* (tip numbers 1 and 2 start by saying, “it is the student’s responsibility . . . “ and go on to inform athletes of their responsibility to know and understand the rules and their application (this is not to argue that the responsibility should not be on the college athlete to know the policy of their school and the NCAA and any applicable state or federal laws but is meant to argue that in the absence of any meaningful NIL education for athletes including a handful of tips placing the responsibility on the athletes does little to help educate athletes on their rights and obligations concerning NIL).

In contrast to Harvard, fellow Ivy League school Brown University has an entire webpage dedicated to NIL education.¹⁸³ The NIL legal considerations page explains briefly what a contract is and a few basic terms¹⁸⁴ in addition to legal tips that are not expansive but instead paint a broad brush over areas of contract law.¹⁸⁵ The NIL personal finance page likewise contains barebones statements and considerations for athletes in the personal finance sphere.¹⁸⁶ Compared to Harvard, this webpage covers more aspects of NIL education but at the surface level. Even though Brown offers more suggestions and points on NIL education than Harvard does, Brown is still falling short of the NIL education mark by excluding in depth education on the legal, tax, and contract implications of NIL, personal branding, social media, financial literacy, business basics, and compliance.

Wrapping up the sub-Power Five Division I schools is St. John’s University which offers its athletes the “UNLIMITED program,” intended to provide athletes with educational, networking, and leadership opportunities to enhance their personal brand.¹⁸⁷ The program

¹⁸³ BROWN UNIVERSITY ATHLETICS, *NIL Education*, <https://brownbears.com/sports/2021/10/14/nil-education.aspx?id=4075> (last visited Apr. 10, 2023) (containing links to “NIL policy basics,” “NIL legal considerations,” “common NIL activities,” “NIL professional service providers,” and “NIL personal finance.”).

¹⁸⁴ BROWN UNIVERSITY ATHLETICS, *NIL: Legal Considerations*, p. 2 https://brownbears.com/documents/2021/10/14/NIL_Legal_Considerations.pdf?id=12542 (last visited Apr. 10, 2023) (stating “a contract is an agreement between two or more parties.” It specifies that it can be oral or written, does not need to involve money, and must include clear terms. It lists “the basics” as term and termination, compensation, and indemnification and insurance without explaining what any of those terms mean).

¹⁸⁵ *Id.* at 3 (including the legal tips of “read the fine print,” “never give anyone power of attorney,” and “seek credible advice.”)

¹⁸⁶ BROWN UNIVERSITY ATHLETICS, *NIL: Personal Finance*, p. 2-3, https://brownbears.com/documents/2021/10/14/NIL_Personal_Finance.pdf?id=12538 (listing types of compensation (payroll, cash, and tangible items and services), taxes (annual obligation – state and federal, IRS 1099 form, and strategies for success), and that NIL income may impact Brown financial aid).

¹⁸⁷ ST. JOHN’S ATHLETICS DEPARTMENT, *St. John’s Athletics Unveils UNLIMITED Program* (Nov. 17, 2020, 2:30 PM), <https://redstormsports.com/news/2020/11/17/general-st-johns-athletics-unveils-unlimited-program.aspx>.

partners with the Tobin College of Business and the College of Professional Studies, offers a minor in sports leadership and branding,¹⁸⁸ a partnership with INFLCR, and guest speakers.¹⁸⁹

St. John's also provides its athletes with access to information on the school's NIL policy, its disclosure requirements and New York State NIL legislation.¹⁹⁰ Finally, St. John's is providing its athletes with continuing education with an NIL symposium slated for the Fall 2023 semester geared toward athletes, especially those that are not taking any of the classes offered in the sports leadership and branding minor.¹⁹¹

St. John's UNLIMITED program is a step in the right direction and offers its athletes with a more comprehensive NIL education than the other sub-Power Five schools analyzed in this paper. St. John's has the ability to take their NIL education to the next level by providing education on financial literacy, personal income tax law and its implications, compliance, business basics, and social media outside of the sports leadership and branding minor.

However, St. John's and the other institutions that have chosen to partner with the university's professional schools such as the law, business, or journalism schools seem to have the best and most expansive NIL education programs while the schools that have chosen to

¹⁸⁸ Id. (offering courses in financial literacy, strategic leadership in a global environment, digital marketing, sports marketing and media, social media in sport, managing sports careers, and entrepreneurship).

¹⁸⁹ Jamie Goerke, *St. John's Athletics Hosts First #StormChat Speaker Series of the Year: NIL and the Legal Landscape*, ST. JOHN'S ATHLETICS DEPARTMENT, (Sep. 20, 2022, 3:46PM), <https://redstormsports.com/news/2022/9/20/general-st-johns-athletics-hosts-first-stormchat-speaker-series-of-the-year-nil-and-the-legal-landscape> (holding a panel in partnership with St. John's School of Law where current law students and former student athletes and attorney Robert Romano spoke to current athletes on NIL basics with a focus on the legal aspects).

¹⁹⁰ ST. JOHN'S ATHLETICS DEPARTMENT, *NIL Opportunities for St. John's Student-Athletes* <https://redstormsports.com/sports/2021/6/30/st-johns-unlimited.aspx> (last visited Apr. 10, 2023).

¹⁹¹ On April 26, 2023, I had a call with Robert J. Romano, Assistant Professor at The Lesley H. and William L. Collins College of Professional Studies at St. John's University. Professor Romano took part in the StormChat Speaker Series panel, *NIL and the Legal Landscape* which presented information to athletes on NIL, current rules and legislation, and education on exclusivity clauses and intellectual property. Professor Romano discussed with me the upcoming symposium scheduled for Fall 2023 aimed at further educating St. John's athletes on NIL.

tackle NIL education without the help of these partnerships are seriously lacking when it comes to the value of education they offer their athletes.

c. Division II Universities

While Division I athletes tend to receive the most NIL compensation, Division II athletes are also profiting from NIL.¹⁹² Division II athletes have plenty of opportunity to monetize their NIL, with some brands preferring the fact that a college athlete has a smaller social media following because their followers tend to be more engaged.¹⁹³ This means that it is just as important for Division II schools to educate their athletes on NIL so that they too can most effectively remain in compliance with applicable policies and rules and be compensated.

However, the drop off in NIL education continues with schools at the Division II level providing their athletes with even less NIL education than Division I schools. With less money involved comes less education for college athletes. Educating college athletes below the Division I level is equally as important as educating their Division I counterparts because athletes at the Division II level have less resources available to them but are still entering NIL deals. This means that they are in a position to be taken advantage of if they lack proper NIL education and the resources provided to Division I athletes. Less money available per NIL deal at the Division II level should mean more NIL education for athletes, not less.

Next, the University of Tampa has a partnership with Game Plan as part of its athlete development curriculum.¹⁹⁴ The Game Plan platform includes education on personal and professional development, social media, financial literacy, brand building, compliance, NCAA

¹⁹² OPENDORSE, *NIL Insights*, <https://opendorse.com/nil-insights/>, (last visited May 10, 2023) (breaking down the average compensation by division through April 2023, NCAA Division I athletes average \$6,785 in NIL compensation, NCAA Division II athletes average \$375, and NCAA Division III athletes average \$420).

¹⁹³ Amanda Christovich, *The NIL Marketability of D-II and D-III Athletes*, FRONT OFFICE SPORTS (Sep. 27, 2021, 12:20 PM) <https://frontofficesports.com/nil-marketability-dii-diii-athletes/>.

¹⁹⁴ UNIVERSITY OF TAMPA ATHLETICS, *University of Tampa Announces Partnership with Game Plan* (Aug. 3, 2021), <https://www.tampaspartans.com/general/2021-22/releases/20210803kx91ar>.

legislation, time management, and NIL.¹⁹⁵ Beyond this, the University of Tampa is not offering its athletes any NIL education. While some of the topics touched on through the Game Plan app are necessary for a full NIL education, if they are not NIL based at least in some respect, they are not as effective as they can be. The University of Tampa can take their NIL education a few steps farther by offering education on contract and income tax laws and their implications and business basics and go more in depth on the other areas they currently are educating their athletes in to give them a comprehensive education on NIL.

Another Division II school partnering with a third-party provider to deliver NIL education to its athletes is San Francisco State and its partnership with Opendorse.¹⁹⁶ Opendorse provides athletes with education on financial literacy and teaches athletes how to maximize NIL opportunities.¹⁹⁷ Beyond this, San Francisco State is not providing its athletes with any NIL education. As discussed in section III, A, *supra*, third-party providers like Opendorse do not provide education on the meaningful and impactful aspects necessary to set up college athletes for NIL success. While partnering with Opendorse for NIL education is better than nothing, the San Francisco State athletes are missing out on education on contract and personal income tax law and their implications, personal branding, social media, business basics, and compliance with NCAA and institutional policies.

d. Division III Universities

The education drop is even more pronounced in the Division III realm, with even fewer schools offering their athletes any NIL education and the ones that do fall short of the mark. Like

¹⁹⁵ GAME PLAN, *The only all-in-1 solution for total athlete development*, <https://wearegameplan.com/athletic-organizations/> (last visited Apr. 8, 2023).

¹⁹⁶ Kendrick Mooney, *SF State Athletics Partners With Opendorse for NIL Platform*, SAN FRANCISCO STATE ATHLETICS, (Jan. 4, 2023, 11:15AM), <https://sfstategators.com/news/2023/1/4/general-sf-state-athletics-partners-with-opendorse-for-nil-platform.aspx>.

¹⁹⁷ *Id.*

Division I and II athletes, Division III athletes also can and do monetize their NIL,¹⁹⁸ with Opendorse estimating the average compensation for a NCAA Division III athlete being \$420.¹⁹⁹ Even if NIL deals are less common or less lucrative for Division III athletes compared to their Division I counterparts, these athletes still deserve to receive the same quality and range of education as Division I athletes. They too need to be receiving proper NIL education to ensure they are not being taken advantage of, making a legal error, or signing a bad deal.

Division III William Paterson University offers its athletes virtually no NIL education. The University offers a single page NIL guide containing 15 yes or no questions with no further explanation.²⁰⁰ Outside of this, the school does not offer its athletes any form of NIL education. William Paterson athletes could greatly benefit from education on compliance, business basics, personal branding, social media, financial literacy, contract law, and income tax law and its implications. Instead, the school is failing its athletes by not providing them with meaningful NIL education.

Finally, Misericordia University offers by way of NIL education for its athletes a single webpage with the university policies and critical points of Pennsylvania state law regarding NIL.²⁰¹ A separate webpage contains several links to different NIL related resources but none that touch on education for athletes.²⁰² With these two pages being the only two available from

¹⁹⁸ Examples of Division III athletes signing NIL deals include: Alex Noga, *Jack Betts '24E: The King of Division III NIL*, THE AMHERST STUDENT, (Sep. 14, 2022), <https://amherststudent.com/article/jack-betts-24e-the-king-of-division-iii-nil/> (Amherst wide receiver accumulates more than 35 NIL deals); Scotty Jenkins, *Whittier College Becomes First Division-III Program To Sign NIL Deal*, GMTM, <https://gmtm.com/articles/whittier-college-becomes-first-division-iii-program-to-sign-nil-deal> (last visited May 10, 2023).

¹⁹⁹ OPENDORSE, *NIL Insights*, <https://opendorse.com/nil-insights/>, (last visited May 10, 2023).

²⁰⁰ WILLIAM PATERSON UNIVERSITY ATHLETICS, *Pioneers Name, Image and Likeness (NIL) Guide*, https://www.wpupioneers.com/documents/2022/8/9/NIL_Guide.pdf (last visited Apr. 9, 2023) (questions range from “can I profit off my NIL?”, to “could my NIL activities affect my taxes and financial aid eligibility?”).

²⁰¹ MISERICORDIA ATHLETICS, *Misericordia University Name Image and Likeness (NIL) Policy*, <https://athletics.misericordia.edu/sports/2021/8/13/nil.aspx> (last visited Apr. 9, 2023).

²⁰² MISERICORDIA ATHLETICS, *Name, Image, and Likeness*, <https://athletics.misericordia.edu/sports/2021/8/13/nil-resources.aspx> (last visited Apr. 9, 2023) (this webpage contains links to the NCAA interim policy, the NCAA taking action page with all of the NCAA’s NIL resources, an NIL related YouTube video, a Division III intro to

the university on NIL, it is clear that they are not offering their athletes any NIL education.

Misericordia is one of many schools not offering their athletes any sort of NIL education, leaving them at a severe disadvantage.

College athletes lacking proper NIL education not only means that they cannot effectively exercise their NIL rights, but it also means that they are in a vulnerable position to be taken advantage of by predatory brands and predatory contracts, they may find themselves in tax situations they do not know how to navigate, or they might find themselves in a position of noncompliance with school policy, NCAA policy, state law, or all three.

Having a comprehensive education program available to support athletes in multiple dimensions will enable athletes to develop and build skills that will aid them in their NIL pursuits and life beyond college athletics. Partnering with professional business, law, and journalism schools is a best practice in educating athletes. This partnership makes resources readily available to the athletes, from parties outside the athletic department who are knowledgeable in the areas they are assisting in. Another best practice is offering classes for credit for athletes that directly or indirectly touch on NIL and the aspects of NIL education needed for athletes to make informed decisions.

D. Why is This Important / Policy

Providing college athletes with a comprehensive education on NIL will help athletes effectively exercise their NIL rights and in a way that is beneficial to them, helps to prevent athletes from being taken advantage of or finding themselves in a vulnerable position, creates well-rounded, better prepared individuals which will eventually enter the workforce with skills and knowledge they may not be receiving elsewhere, in turn creating better leaders for the

NIL, a video on the state and federal landscape of NIL, a link to the NCAA Office of legal affairs, an NCAA YouTube video on NIL resources and the Mid Atlantic Conference's 2021 NIL summary).

future.²⁰³ Providing college athletes with education on NIL compliance, applicable income tax law and its implications for college athletes, contract law, personal branding, social media, financial literacy and business basics makes for good policy from several perspectives.

First, it is good policy from the perspective of the institutions the athletes call home. Having fully informed athletes exercising their NIL rights and putting their names out there creates good publicity for the university as well, which in turn will likely cause a rise in admissions. While institutions are not permitted to use NIL to recruit future athletes, athletes that are successful at the institution with NIL will create publicity for the university by having their name out there. Good publicity can in turn increase admissions, not just of athletes but of regular students as well.

Colleges and universities, especially large ones, spend so much time and money on funding athletic departments and making sure athletes have all the tools they need to succeed both on and off the field. This however does not extend to providing athletes with NIL education. Athletic Directors and school administrators at all schools should be asking themselves why they are not providing their athletes with everything they can in terms of NIL education to set their athletes up for success.

This is also good policy for the states for a similar reason. States that are home to schools that have more students and college athletes wanting to attend will see economic benefits as well. Finally, this is good policy from the perspective of the athletes because it will encourage them to exercise their NIL rights if they feel they are fully informed and equipped to make educated decisions.

²⁰³ Rick Burton, *Knowledge is Good, But What Topics Should NIL-Era Athletes Study?*, SPORTICO (Sep. 22, 2022, 5:55 AM), <https://www.sportico.com/leagues/college-sports/2022/nil-era-athlete-education-1234688827/> (arguing providing education in relevant areas such as entrepreneurship, marketing, management, etc., will benefit the university later).

Providing college athletes with a comprehensive NIL education will make better leaders, workers, managers, and people for the future. NIL education can be looked at as an investment, and one that schools and states would be wise to make.

E. Solving the Education Problem

The lack of federal NIL legislation or NCAA policy requiring comprehensive NIL education leaves each state on the macro level and each institution on the micro level to decide what to require by way of NIL education. This has caused a clear discrepancy in the type and level of education NCAA athletes are receiving across the country.

Because federal NIL legislation in general seems unlikely at this time,²⁰⁴ and with the NCAA not having changed its NIL policy since October 26, 2022,²⁰⁵ it would be in each school's best interest to create a position for an "NIL officer" who can work to provide athletes with the different aspects of a comprehensive NIL education as proposed by this article. Taking this initiative or making changes to what is required of those in these positions in the few schools that have created them will help keep the schools and athletes ahead of the curve and better informed.

The NIL officer should act as a resource for athletes in navigating the murky waters that is NIL. The officer should work to set up NIL specific workshops, classes, presentations, seminars, and the like that touch on the different aspects of a comprehensive NIL education. The NIL officer can aid athletes in getting started with monetizing their NIL by providing them with the necessary information and resources.

²⁰⁴ Amy Piccola, Tricia Duffy, Levi R. Schy, *Your guide to Federal and State Laws on Name, Image and Likeness Rules for NCAA Athletes*, SAUL EWING, <https://www.saul.com/nil-legislation-tracker>, (stating federal NIL bills have not gained much traction) (last visited Apr. 10, 2023).

²⁰⁵ *NCAA Division I Institutional Involvement in a Student-Athletes Name, Image and Likeness Activities*, NCAA (Oct. 26, 2022), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL_InstitutionalInvolvementNILActivities.pdf.

This person should be available should athletes have questions, and they should be able to point athletes in the right direction or provide them with the right resources. Finally, the NIL officer should help bridge the gap between third party-providers and the athletes to make the resources available through the third-party providers more easily accessible for the athletes.

While there is a risk in having the NIL officer be someone employed by the university and a third-party NIL officer would be able to mitigate some of this risk and potentially lower the cost of employing someone full time, the current third-party providers are not offering this service. Until third party firms develop the ability to enter contracts with universities to employ outside NIL officers, the onus should be on the institutions to take educating their athletes into their own hands.

College athletes want more resources when it comes to NIL education²⁰⁶ and have already identified specific areas where they would like to see change.²⁰⁷ Additionally, college athletes are in favor of having an NIL officer at their schools.²⁰⁸ One NCAA found that more than a third of college athletes want more resources to help them navigate NIL.²⁰⁹ Providing college athletes with an NIL officer at every school will help to ensure they get the resources they need to allow them to take full advantage of this opportunity.

²⁰⁶ Amanda Christovich, *One Year of NIL: Bridging the Remaining Gaps in Education*, FRONT OFFICE SPORTS (Jun. 29, 2022, 11:50 AM) <https://frontofficesports.com/nil-education-gaps/>.

²⁰⁷ *Id.* (describing how college athletes want quality lawyers and CPA's who can help them with contracts and taxes); Courtney Altemus, *Show Me the Money*, LEAD1, 4 (May 31, 2022), <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:38826192-af8b-49f2-b2d4-70e314315e1d?viewer%21megaVerb=group-discover> (stating athletes are asking for education on money, contracts, and how to get started).

²⁰⁸ Amanda Christovich, *One Year of NIL: Bridging the Remaining Gaps in Education*, FRONT OFFICE SPORTS (Jun. 29, 2022, 11:50 AM) <https://frontofficesports.com/nil-education-gaps/> (stating, “from a structural standpoint, athletes are in favor of an in-house “NIL-officer.” They want someone who can help them with personalized advice and finding outside counsel or resources.”).

²⁰⁹ Amanda Christovich, *NCAA Athletes Feel They Need More NIL Resources*, FRONT OFFICE SPORTS (May 24, 2022, 2:21 PM), <https://frontofficesports.com/ncaa-athletes-feel-they-need-more-nil-resources/> (a November and December 2021 NCAA survey found that 39% of women's sports athletes and 42% of men's sports athletes are looking for more resources on “navigating NIL opportunities.”).

IV. Conclusion

From prohibiting collegiate athlete compensation altogether to allowing college athletes to monetize their NIL's the NCAA's model of amateurism is ever evolving. A change as big as this one cannot accompany the expectation that institutions will provide perfect, comprehensive education to their athletes overnight. Many people in the collegiate sports arena are working to determine what meaningful education really is and what college athletes want more of.²¹⁰

The NIL landscape is also constantly changing, but the one thing that remains constant is the need to provide athletes with a comprehensive education on the many aspects covered by NIL.

Defining NIL education as educating college athletes on personal income tax law and its implications for college athletes, financial literacy, personal branding, social media, and basic legal aspects encompassed by NIL including contract law, business basics, and compliance creates a comprehensive educational foundation that will allow college athletes to maximize their NIL potential. Given the lack of federal NIL legislation, the lack of NCAA policy regarding NIL education and the variance among state laws puts the responsibility on the schools to educate their athletes. Each school should create a permanent "NIL officer" position to work on NIL education at their respective schools to help give college athletes all the tools they need to successfully monetize their NILs.

²¹⁰ Bill Carter, *Student Athlete Education May Finally be Getting its Due*, NAME, IMAGE, LIKENESS INSIDE VOLUME 17: NEW NCAA GUIDANCE, FINANCIAL LITERACY, SOCIAL MEDIA, AND ENTREPRENEURISM, (Nov. 1, 2022), <https://www.linkedin.com/pulse/name-image-likeness-insider-volume-17-new-ncaa-guidance-bill-carter/> (detailing survey results showing that approximately two thirds of college athletes cannot explain the difference between an employee and independent contractor for tax purposes and how only 36% of college athletes feel highly confident about their financial knowledge and want to learn more).