
The First Step: Student-Athletes Finally Get the Right to be Compensated for their Names, Images, and Likenesses

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The First Step: Student-Athletes Finally Get the Right to be Compensated for their Names, Images, and Likenesses

Cover Page Footnote

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The First Step: Student-Athletes Finally Get the Right to be Compensated for their Names, Images, and Likenesses

I. INTRODUCTION

The National Collegiate Athletic Association (“NCAA”) has suppressed student-athlete compensation by, as Justice Kavanaugh described it, “innocuous labels”¹. These student-athletes generate billions of dollars in revenue, and the NCAA has had a low ceiling on how much of that revenue ends up in the student-athlete's hands. The *Alston* decision significantly raises this ceiling, even if there is still more money to be made. The NCAA has grown into a giant, revenue-generating organization over the years, but the money generated ends up in the pockets of everyone involved, except the student-athletes who bring in that money. Generally, an individual has the right to control the commercial use of their name, image, and likeness (“NIL”). These essentially correspond to the right of publicity, which does not attach only to professional athletes and other celebrities². People generally have the right to profit off the commercial use of their name, image, and likeness³. However, NCAA rules had barred student-athletes from engaging in NIL activities based on their participation in college sports. While student-athletes were denied from making a single cent off of their NIL, the coaches of these very athletes have been signing lucrative contracts. Alabama Football coach Nick Saban is on the doorstep of being the NCAA’s first \$10 million coach⁴. This article will discuss the origin of NIL rights, how student-athletes were deprived of these rights, Antitrust law generally, *Alston*’s opinion and what it means going forward, and things to look out for on the road ahead.

¹ *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2167 (2021)

² *Laws for Name, Image, and Likeness Rights of College Athletes*, Justia (Aug. 2022), <https://www.justia.com/sports-law/name-image-and-likeness-rights-for-college-athletes/>

³ *Id.*

⁴ Steve Berkowitz et al., *NCAA Salaries*, USA TODAY, <https://sports.usatoday.com/ncaa/salaries/> (last visited Mar. 24, 2022).

II. THE RIGHT OF PUBLICITY

The right of publicity prevents the unauthorized commercial use of an individual's name, likeness, or other recognizable aspects of one's persona⁵. The right of publicity gives an individual the right to use his/her identity for commercial purposes, or license his/her name, image, and likeness for commercial promotion⁶. Section 46 of the Restatement (Third) of Unfair Competition states, "One who appropriates the commercial value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability"⁷ Section 47 of the Restatement (Third) of Unfair Competition states, however, that "[the] use 'for purposes of trade' does not ordinarily include the use of a person's identity in news reporting, commentary, entertainment, works of fiction or nonfiction, or in advertising that is incidental to such uses⁸. The rationale for (protecting the right of publicity) is the straightforward one of preventing unjust enrichment by the theft of goodwill⁹. It is contrary to public policy to allow one to profit off an aspect of another without paying fair market value for it. Most people have a right to control and potentially profit from the commercial use of their name, image, or likeness. This right can be assigned, which is the case in how the NCAA has done business for years.

In most states, an individual has a right to control the commercial use of their name, likeness, or other aspects of identity. This is known as the right of publicity, which is based on traditional notions of privacy. While this right belongs to anyone, the right of publicity typically

⁵ *Publicity*, Cornell Law School, <https://www.law.cornell.edu/wex/publicity> (last visited Mar. 24, 2022).

⁶ *Id.*

⁷ Restatement (Third) of Unfair Competition § 46 (1995)

⁸ *Id.* at § 47.

⁹ *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 576 (1977)

arises when a business uses the name or likeness of a famous person, such as a movie star, a singer, or an athlete. If a business uses a person's name or likeness without their consent, that person can bring a misappropriation claim against the business. A business also cannot indicate without authorization that a certain celebrity has endorsed their product or service.

The NCAA predates the first World War. From its inception in 1905 till present-day, the NCAA has wide-ranging power of the compensation of its cash cows, the student-athletes of NCAA member schools. This power has remained mostly untouched over those 100+ years, but it seems that this unbridled power is in danger of being shaken up. While the Court in *NCAA v. Alston* left the NCAA's rules limiting undergraduate scholarships and other performance-related compensation, the Court struck down NCAA rules that limited education-related benefits like graduated/vocational school scholarships. *NCAA v. Alston* is the biggest win for student-athletes in decades, but the game is not over yet. With analysts and scholars hypothesizing the door to pay-for-play creaking open, it seems that student-athletes are one yard away from hitting payday. Student-athletes wrestled free the ability to receive compensation for their name, image, and likeness from the clutches of the NCAA. Student-athletes can finally make some money and the level of competitiveness within college sports can improve. However, it is not wise to become reckless now. While a massive net-win for student-athletes, not all NIL deals are created equally, and there are some downsides to this as well. These downsides are that the student-athlete Special Assistance Fund will receive less funding, there is still a state law hurdle (if applicable) to jump over, and predatory agents will be foaming at the mouth for an opportunity to get involved in the NIL market.

A. The Origins of the NCAA

Football is a violent sport. In the 1904 season alone, there were 18 deaths and 159 serious injuries sustained on the football field¹⁰. In 1905, President Theodore Roosevelt arranged a meeting between the college football superpowers – Harvard, Princeton, and Yale – in an attempt to clean up the ugly side of football¹¹. However, not even a meeting with the titans of the sport was able to curb the injuries. As a result, the Intercollegiate Athletic Association of the United States (IAAUS) was founded in 1906 in response to serious injuries and deaths¹². The IAAUS moniker was short-lived, and the IAAUS was renamed the NCAA in 1910. Even with the name change, the bylaw restricting student-athlete compensation has lived on for centuries, “[n]o 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 concession.”¹³ This by-law began the NCAA’s commitment to “amateurism” in college sports.

In 1939, the NCAA codified amateurism into its constitution but still did not have the financial backing necessary to enforce the code. An amateur is “someone who does not have a written or verbal agreement with an agent, has not profited above his/her actual and necessary expenses, or gained a competitive advantage in his/her sport.”¹⁴ Against the NCAA’s wishes, student-athletes were getting paid under the table, so much so that some players were taking pay cuts when making it to their sport’s professional league¹⁵. Finally, in 1948, the NCAA enacted the Sanity Code, thereby gaining the power to enforce the amateurism requirement¹⁶. The Sanity Code

¹⁰ *History*, NCAA, <https://www.ncaa.org/sports/2021/5/4/history.aspx> (last visited Mar. 28, 2022).

¹¹ *Id.*

¹² *Id.*

¹³ Intercollegiate Athletic Association of the United States Constitution By-Laws, Art. VII, §3 (1906).

¹⁴ *What is Amateurism? And Why Does the NCAA Care About It?*, Breakout Sports (January 29, 2019), <https://breakoutsports.net/2019/01/29/what-is-amateurism-and-why-does-the-ncaa-care-about-it/>

¹⁵ A. Zimbalist, Unpaid Professionals 22–23.

¹⁶ [NCAA supra note 10.](#)

reinforced the NCAA's distaste for pay in any form but allowed universities to pay for athletes' tuition¹⁷. However, over time, through force or its own decisions, the NCAA has loosened its grip on compensation. In 1956, the NCAA departed from the Sanity Code's approach to financial aid by changing its rules to permit its members, for the first time, to give student-athletes scholarships based on athletic ability. These scholarships were capped at the amount of a full "grant in aid," defined as the total cost of "tuition and fees, room and board, and required course-related books"¹⁸. In August 2014, the NCAA announced it would allow conferences to authorize their member schools to increase scholarships up to the full cost of attendance¹⁹. The member schools voted and approved the scholarship increase to the full cost of attendance²⁰. Until the *Alston* decision, the NCAA was able to maintain that *any* "pay" based on athletic ability, was prohibited²¹.

B. NCAA Finances

The NCAA has used the student-athlete statement to build a \$4.6 billion collegiate merchandise market, while concurrently preventing student-athletes from receiving compensation for their NILs. The largest share of where revenue goes is coach compensation at 19%²². Thus, the purpose and application of the student-athlete statement are ambiguous and should be construed against the NCAA. The NCAA could sell the student-athlete's NILs for monetary gain, with no benefit to the student-athletes.

¹⁷ *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2149 (2021)

¹⁸ *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1054 (9th Cir. 2015)

¹⁹ *Id.* at 1054-55.

²⁰ *Id.*

²¹ *Id.*

²² *15-Year Trends in Division I Athletes Finances*, NCAA Research, https://ncaaorg.s3.amazonaws.com/research/Finances/2020RES_D1-RevExp_Report.pdf (last visited Mar. 28, 2022).

C. NCAA Restrictions On Player Compensation Prior To *Alston*

Almost foreshadowing post-*Alston* NIL enforcement, the NCAA originally left eligibility enforcement to the universities. Eligibility was predicated on amateurism, as the NCAA's first bylaws established: "There should be no participation if [the athlete is] not taking a full schedule of classes, had ever received money for playing, had already participated for four years, and had transferred and not remained athletically inactive until [they] attended for one year. There was a specific rule that prohibited "any football player" from participating again if he left school without attending two-thirds of the previous year."²³ From the NCAA's inception to the present-day, a student-athlete must be considered an amateur by NCAA rules to be eligible for competition. Until the *Alston* decision, student-athletes were not allowed to receive any compensation *at all* outside of academic scholarships. 38 of the 400 pages of the NCAA Division I manual were devoted to keeping money from student-athletes. However, since the *Alston* decision, the NCAA has cut that number drastically.

Electronic Arts' (EA) NCAA Football video game was held to violate NIL rules by creating players with virtually the same height, weight, jersey number, and playing style as their real-life counterparts. The 9th Circuit Court held that the game "literally recreates [Plaintiffs] in the very setting in which [they] ha[ve] achieved renown".²⁴ Thus, immediately after this ruling, EA ceased production of new versions of the series. However, after the *Alston* decision, EA announced the reinstatement of the series, set to release in 2023.²⁵ The NCAA even punished a football player for making ad revenue from a YouTube channel. In 2017, former University of Central Florida kicker

²³ Ronald A. Smith *Pay for Play: A History Of Big-Time College Athletic Reform* 54 (Benjamin G. Rader & Randy Roberts Eds., 2011).

²⁴ *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268, 1271 (9th Cir. 2013)

²⁵ Dani Mohr, *EA Sports Announces Projected Release Date for Rebooted NCAA Football Video Game*, The Sporting News (Dec. 9, 2021), <https://www.sportingnews.com/us/ncaa-football/news/ncaa-football-video-game-release-date-ea-sports/ey42a5w6fpbh11uvijcnuj0bq>

Donald De La Haye was forced to decide to continue his sports-content YouTube channel or play college football.

III. ANTITRUST LAW

In 1890, Congress enacted the Sherman Act to combat market manipulation that unreasonably restrained trade and competition. Section 1 of the Sherman Act states, "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce ... is declared to be illegal."²⁶ Taken literally, all trade would be illegal; thus, courts have interpreted the Sherman Act to prohibit only agreements that unreasonably restrain trade.²⁷ A restraint is unreasonable when the harm to competition outweighs the restraint's pro-competitive benefits.²⁸ The Sherman Act encourages free competition to allocate resources at the highest quality and lowest possible price. The Sherman Act functions as a policing tool against market manipulation that unreasonably restrains trade and competition. Given that the Sherman Act is analyzed as a common law statute, what constitutes a "restraint on trade" evolves with the dynamics of present-day economic conditions.²⁹ Therefore, courts must determine on a case-by-case basis whether a restraint on trade is "unreasonable" to the point of illegality.³⁰

A. The Road to *Alston* – Relevant Case Law

The first time the NCAA was taken to the Supreme Court was in *Board of Regents v. National Collegiate Athletic Assn* 468 U.S. 85 (1984) and the NCAA left the courtroom defeated, even if the Court let the NCAA off easy. In *Board of Regents*,³¹ member schools of the college athletic association brought an antitrust challenge to the association's plan for televising college

²⁶ Sherman Act, 15 U.S.C. § 1 (2012).

²⁷ See *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 98 (1984)

²⁸ 117 Am. Jur. Proof of Facts 3d 391, § 11 (2010).

²⁹ *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007)

³⁰ *Id.* at 899.

³¹ *Board of Regents v. National Collegiate Athletic Assn* 468 U.S. 85, 104 (1984)

football games of member institutions for the 1981–1985 seasons. The plan was a mandatory limit on the amount of televised college football games to combat the negative effect on game attendance. The court stated that a restraint of that kind would often be held unreasonable as a matter of law³². The television plan was an artificial ceiling on the number of football games that member institutions were allowed to televise. It limited the total number of televised intercollegiate football games and the number of games that any college may televise and stated that no member of the NCAA is permitted to make any sale of television rights except by the plan. The court stated that “[h]orizontal price fixing and output limitation are ordinarily condemned as a matter of law under an “illegal per se” approach because the probability that these practices are anticompetitive is so high”.³³ Typically, restraints of this sort are illegal per se, because the practice decreases competition and output³⁴. However, the Supreme Court subjected the NCAA’s restrictions to a more deferential kind of Antitrust Scrutiny. Instead of declaring the television plan illegal per se, deferred to the NCAA’s judgment in defining its brand of football. The brand of college football “with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable”³⁵ and that these restrictions must not be deemed illegal per se to preserve the character and quality of the “product”³⁶. The Court agreed that the NCAA’s “interest in maintaining a competitive balance among amateur athletic teams is legitimate and important”³⁷, but that the NCAA’s interest did not justify the challenged television plan. This television plan restricted the market without sufficient procompetitive justification. However, the Court stated that “[i]t is reasonable to assume that most of the

³² *Id.* at 99

³³ *Id.* at 100

³⁴ *Id.*

³⁵ *Id.* at 101-02

³⁶ *Id.*

³⁷ *Id.* at 117.

regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore procompetitive because they enhance public interest in intercollegiate athletics”³⁸.

With language as broad as this, it is easy to see how the NCAA was left mostly unscathed for over thirty years after this case. This decision, while a loss for the NCAA, showed the Supreme Court’s willingness to defer to the NCAA’s amateurism scheme, as the Court itself even admitted that horizontal price fixing is usually deemed illegal per se. The Court in *Board of Regents* let the NCAA off easy, while the scheme at hand was struck down, the Court afforded the NCAA great latitude in its rulemaking schemes, stating that most of their restrictions are necessary. However, this latitude did not last forever.

The second important decision that led us to the *Alston* case is *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049 (9th Cir. 2015). *O’Bannon* was a culture shock. In 2008, Ed O’Bannon, a former UCLA basketball player sued the NCAA and the Collegiate Licensing Company (CLC), the company that licenses the trademarks of the NCAA for commercial use, on the basis that the NCAA’s amateurism rules were an illegal restraint of trade under the Sherman Act³⁹. The court consolidated O’Bannon’s case with Sam Keller, the former quarterback of Arizona State and Nebraska Football teams who alleged misappropriation of NILs by the NCAA, CLC, and Electronic Arts (EA)⁴⁰. The plaintiffs took the NCAA to court and settled their claims against the other two parties. The district court applied Rule of Reason antitrust scrutiny to the challenged rules and found that the NCAA’s rules have an anticompetitive effect in the college education market and that the pro-competitive purposes of the rules could have been served by

³⁸ *Id.*

³⁹ *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049, 1055 (9th Cir. 2015)

⁴⁰ *Id.*

less restrictive means, thus the current rules were therefore unlawful⁴¹. When applying Rule of Reason antitrust scrutiny “[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 pro-competitive effects. [3] The plaintiff must then show that any legitimate objectives can be achieved in a substantially less restrictive manner”⁴². The court found that the challenged rules have an anticompetitive effect on the college education market, because but for these restrictions, schools could compete for recruits’ compensation, thus lowering the price the recruits would have to pay to attend their desired school⁴³. For the second step of the Rule of Reason analysis, the NCAA argued four procompetitive purposes for rules prohibiting compensation for use of NILs: (1) preserving “amateurism” in college sports; (2) promoting competitive balance in FBS football and Division I basketball; (3) integrating academics and athletics; and (4) increasing output in the college education market⁴⁴. Purposes (1) & (3) were accepted in part, and the others were rejected. The court acknowledged that amateurism has pro-competitive benefits, but that the primary reasons fans support their teams are for personal reasons, not for amateurism⁴⁵. (1) The court held that the NCAA’s definition of amateurism has been “malleable” over time and inconsistent, in that most players cannot receive compensation other than scholarships, but that tennis players can accept up to \$10,000 before enrolling in college⁴⁶. (2) The district court also acknowledged that promoting competitive balance could be a valid procompetitive purpose under the antitrust laws, but the challenged NCAA rules did not promote competitive balance⁴⁷. In fact, “nearly all” of the

⁴¹ *Id.* at 1057.

⁴² *Id.* at 1070

⁴³ *Id.* at 1057.

⁴⁴ *Id.* at 1058.

⁴⁵ *Id.* at 1059.

⁴⁶ *Id.* at 1058-59.

⁴⁷ *Id.* at 1059.

economists that have studied the NCAA conclude that these compensation rules do not promote competitive balance⁴⁸. (3) The district court allowed that improving the quality of educational services and academic integration are viable procompetitive justifications, but that these benefits do not flow from NCAA rules restricting compensation⁴⁹. Academic integration benefits are served by requiring student-athletes to attend class and by placing a limit on weekly practice hours⁵⁰. (4) The court rejected the NCAA's efficiency argument because Division I schools do not share revenue, so any NCAA claims that a "philosophical commitment to amateurism" enables schools to compete in Division I that otherwise would not be able to is misguided⁵¹. Not only were the NCAA's procompetitive arguments mostly dismissed, but the court also identified two less restrictive alternatives than the current rules at issue that achieve the NCAA's claimed interests: (1) allowing schools to award stipends to student-athletes up to the full cost of attendance, thereby making up for any "shortfall" in their grants-in-aid, and (2) permitting schools to hold a portion of their licensing revenues in trust, to be distributed to student-athletes in equal shares after they leave college⁵². The NCAA could even place a prohibition on funding the trusts with non-NIL money⁵³. The NCAA attempted to utilize the broad language from the *Board of Regents* case in its defense but to no avail. The court stated that "[t]o say that the NCAA's amateurism rules are pro-competitive, as *Board of Regents* did, is not to say that they are automatically lawful; a restraint that serves a pro-competitive purpose can still be invalid under the Rule of Reason if a substantially less restrictive rule would further the same objectives equally well"⁵⁴. The other defenses the NCAA raised do not carry much weight either. The NCAA's claim

⁴⁸ *Id.*

⁴⁹ *Id.* at 1059-60.

⁵⁰ *Id.* at 1060.

⁵¹ *Id.*

⁵² *Id.* at 1061.

⁵³ *Id.*

⁵⁴ *Id.* at 1063-64.

that the rules at issue were mere “eligibility rules” that did not regulate “commercial activity” was dismissed, as they substantively regulate terms of commercial transactions between recruits and schools⁵⁵. The 9th Circuit affirmed the District Court’s holding except for the requirement that the NCAA pay student-athletes up to \$5,000 per year in deferred compensation⁵⁶.

What made *O’Bannon* such a culture shock for the NCAA is that it opened the door for student-athletes to sue the NCAA for the rules and weak justifications it has hidden behind for so long. It paved the way for more attacks on the NCAA’s compensation structure, such as the attack in *Alston* itself⁵⁷.

IV. NCAA V. ALSTON ANALYSIS

Current & former student-athletes from Division 1 (D1) football & men’s & women’s D1 College basketball sued the NCAA challenging rules that limit non-cash educational benefits (for example, computers, science equipment, etc., the costs of which are not included in the calculation of the cost of attendance)⁵⁸. The student-athletes state that these limitations violate antitrust law, stating that the NCAA rules limit compensation and that they receive greater compensation if not for the NCAA rules in question⁵⁹. Specifically, the student-athletes argued that these limitations on compensation restrain interstate commerce, thus violating the Sherman Act⁶⁰. The NCAA countered that the compensation limits are pro-competitive, and thus would not violate the Sherman Act, because these rules create demand for the sport and the rules promote academic integration for student-athletes⁶¹. The court enjoined only restraints on education-related

⁵⁵ *Id.* at 1065.

⁵⁶ *Id.* at 1079.

⁵⁷ Audrey C. Sheetz, *Student-Athletes vs. NCAA Preserving Amateurism in College Sports Amidst the Fight for Player Compensation*, 81 Brook. L. Rev. 865, 886 (2016)

⁵⁸ *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1060 (N.D. Cal. 2019)

⁵⁹ *Id.*

⁶⁰ 15 U.S.C.A. § 1 (West)

⁶¹ *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.* at 1063.

benefits—such as those limiting scholarships for graduate school, payments for tutoring, and the like.⁶²

A. District Court Decision & 9th Circuit Affirmation

The district court held compensation limits “produce significant anticompetitive effects in the relevant market.”⁶³ NCAA member schools compete in recruiting student-athletes, but the NCAA “exercise[s] monopsony power”⁶⁴ in capping the compensation offered, and thus produces anticompetitive effects in the market. The district court refused to disturb the NCAA’s rules limiting undergraduate athletic scholarships and other compensation related to athletic performance. It enjoined certain NCAA rules that limited the education-related benefits schools may make available to student-athletes. The “most talented athletes are concentrated” in the “markets for Division I basketball and FBS football.”⁶⁵ There are no “viable substitutes,” as the “NCAA’s Division I essentially *is* the relevant market for elite college football and basketball.”⁶⁶ In short, the NCAA and its member schools have the “power to restrain student-athlete compensation in any way and at any time they wish, without any meaningful risk of diminishing their market dominance.”⁶⁷ The Ninth Circuit affirmed in full, holding that the district court “struck the right balance in crafting a remedy that both prevents anticompetitive harm to Student-Athletes while serving the procompetitive purpose of preserving the popularity of college sports.”⁶⁸

⁶² *Id.* at 2164 (2021)

⁶³ *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1067 (N.D. Cal. 2019).

⁶⁴ *Id.* at 1097.

⁶⁵ *Id.*, at 1067.

⁶⁶ *Id.*, at 1067, 1070.

⁶⁷ *Id.*, at 1070.

⁶⁸ *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1263 (9th Cir. 2020)

B. Justice Gorsuch's Majority Opinion

The Supreme Court focused on the NCAA's objections against the District Court's decision. The NCAA raised three arguments regarding the District Court's use of Rule of Reason antitrust scrutiny, and three general objections to the District Court's decision. The Court found that all six objections were either outweighed by or lacked merit against the desired compensation restrictions.

Starting with the NCAA's Rule of Reason disputes, the NCAA argued: (1) the restrictions should receive deferential review due to its nature as a joint venture, (2) that *Board of Regents* expressly authorized NCAA limits on student-athlete compensation, and (3) that Rule of Reason analysis was inappropriate due to member schools being institutions that exist to provide undergraduate education, not a "commercial enterprise".

C. The NCAA & Rule Of Reason Scrutiny

The NCAA is subject to Rule of Reason Scrutiny (1): Rule of Reason scrutiny treats the NCAA like any other organization facing Antitrust claims. It requires a full-blown analysis of (i) the definition of the relevant product and geographic market, (ii) the market power of the defendant(s) in the relevant market, (iii) and the existence of anticompetitive effects. The court will then shift the burden to the defendant(s) to show an objective procompetitive justification.⁶⁹

This analysis distinguishes between restraints with an anti-competitive effect (or resulting in

⁶⁹ *Antitrust Standards of Review: The Per Se Rule of Reason, and Quick Look Tests*, Bona Law, <https://www.bonalaw.com/insights/legal-resources/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quick-look-tests#:~:text=The%20E2%80%9CRule%20of%20Reason%E2%80%9D%20approach&text=This%20test%20focus%20on%20the,a%20well%2Ddefined%20relevant%20agreement.&text=Most%20antitrust%20claims%20are%20analyzed,an%20unreasonable%20restraint%20on%20competition>. (last visited Apr. 10, 2022).

conduct likely to cause such injury) that are harmful to the consumer, and restraints stimulating competition that are in the consumer's best interest.⁷⁰

The NCAA argues that compensation restrictions should at most receive an “abbreviated deferential review,”⁷¹ or a “quick look,”⁷² before approving them due to their nature as a joint venture. The NCAA argued that the compensation restrictions should not be subject to the rule of reason analysis, claiming that it is a joint venture that needs to collaborate with its members to provide intercollegiate athletic competition. While acknowledging the potential procompetitive benefits of a joint venture, most joint venture restrictions are subject to the rule of reason scrutiny. Just because *some* restraints are necessary to create or maintain a league sport does not mean *all* “aspects of elaborate interleague cooperation are.”⁷³ Professional sports leagues do not have free reign to restrain competition based on some valid restraints.

NCAA's Board of Regents Express Authorization Argument (2): While a quick look will often be enough to approve the restraints “necessary to produce a game,” a fuller review may be appropriate for others. The NCAA attempted to hang its hat on the following quote from *Board of Regents* as Court deference to NCAA's rulemaking:⁷⁴

The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act.

⁷⁰ *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 (1977); *State Oil v. Kahn*, 522 U.S. 3, 10 (1997)).

⁷¹ Brief for Petitioner in No. 20–512, p. 14

⁷² Brief for Petitioners in No. 20–520, p. 18,

⁷³ *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2156 (2021).

⁷⁴ *Board of Regents.*, at 120, 104 S.Ct. 2948.

Whether an antitrust violation exists necessarily depends on a careful analysis of market realities.⁷⁵ The collegiate sports market has changed significantly since 1984. In 1985, Division I football, and basketball raised approximately \$922 million and \$41 million respectively. By 2016, NCAA Division I schools raised more than \$13.5 billion. From 1982 to 1984, CBS paid \$16 million per year to televise the March Madness Division I men's basketball tournament. The ceiling on scholarships has risen, and the range of permissible benefits “incidental to athletics participation” has grown wider

NCAA’s Non-Commercial Enterprises Argument (3): NCAA argues that its member schools are not “commercial enterprises” and instead oversee intercollegiate athletics “as an integral part of the undergraduate experience.”⁷⁶ “This Court has regularly refused materially identical requests from litigants seeking special dispensation from the Sherman Act on the ground that their restraints of trade serve uniquely important social objectives beyond enhancing competition.” The NCAA attempts to invoke the reasoning that decided *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), in which the court held that baseball did not implicate the Sherman Act because baseball was not viewed as a commercial enterprise. This Court has refused to extend *Federal Baseball’s* reasoning to other sports leagues—and has even acknowledged criticisms of the decision as “unrealistic” and “inconsistent” and “aberration[al]”⁷⁷. The NCAA is free to argue that, “because of the special characteristics of [its] particular industry,” it should be exempt from the usual operation of the antitrust laws—but that appeal is “properly addressed to Congress.”⁷⁸ But until Congress says

⁷⁵ *Ohio v. American Express Co.*, 138 S.Ct. 2274, 2285 (2018); *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2158 (2021).

⁷⁶ *Alston*, 141 S. Ct. at 2158.

⁷⁷ *Id.* at 2159.

⁷⁸ *Id.* at 2160.

otherwise, the only law it has asked us to enforce is the Sherman Act, and that law is predicated on one assumption alone—“competition is the best method of allocating resources” in the Nation's economy.

D. The General Objections

The Burden-Shifting Framework. As its first step, the district court required student-athletes to show that “the challenged restraints produce significant anticompetitive effects in the relevant market.”⁷⁹ It stated that “the district court held that the student-athletes had shown the NCAA enjoys the power to set wages in the market for student-athlete’s labor—and that the NCAA has exercised that power in ways that have produced significant anticompetitive effects.”⁸⁰ The NCAA did not dispute this contention.

The second step is asking whether the NCAA could muster a pro-competitive rationale for its restraints.⁸¹ The court found the NCAA failed “to establish that the challenged compensation rules ... have any direct connection to consumer demand.”⁸² Rather, it was only after finding the NCAA's restraints “patently and inexplicably stricter than is necessary” to achieve the procompetitive benefits the league had demonstrated that the district court proceeded to declare a violation of the Sherman Act.⁸³

NCAA contends the district court “impermissibly redefined” its “product” by rejecting its views about what amateurism requires and replacing them with its preferred conception.⁸⁴ Firms deserve deference for their agreements that may serve legitimate business interests, but that does not allow a firm to escape from the Sherman Act. Firms deserve substantial latitude to fashion

⁷⁹ *Id.*

⁸⁰ *See* D. Ct. Op., at 1067.

⁸¹ *Id.* at 2161.

⁸² *Id.*, at 1070.

⁸³ D. Ct. Op., at 1104. *Alston*, 141 S. Ct. at 2162.

⁸⁴ *Alston*, 141 S. Ct. at 2162.

agreements that serve legitimate business interests—agreements that may include efforts aimed at introducing a new product into the marketplace.⁸⁵

The NCAA continuously attempted to escape antitrust regulations by using “amateurism” as a shield that deflects all antitrust scrutiny. The NCAA claimed that the District Court attempted to “micromanage” its business⁸⁶. The Court determined that an expansion of NIL rights for student-athletes would not blur the distinction between college and professional sports and thus impair demand—and only after finding that this course represented a significantly (not marginally) less restrictive means of achieving the same procompetitive benefits as the NCAA's current rules.⁸⁷ The NCAA could develop its own definition of benefits that relate to education and seek a modification of the court's injunction to reflect that definition.⁸⁸ The district court enjoined only restrictions on education-related compensation or benefits “that may be made available *from conferences or schools*.”⁸⁹ Accordingly, as student-athletes concede, the injunction “does not stop the NCAA from continuing to prohibit compensation from “sneaker companies, auto dealerships, boosters, “or anyone else.”⁹⁰ But the NCAA fears schools might exploit this authority to give student-athletes “ ‘luxury cars’ ” “to get to class” and “other unnecessary or inordinately valuable items” only “nominally” related to education.⁹¹ The NCAA makes this argument, but nothing under this decision says that they cannot forbid these kinds of benefits. The district court invited the NCAA to specify and later enforce rules delineating which benefits it considers legitimately related to education.⁹²

⁸⁵ *Id.* at 2163.

⁸⁶ Brief for Petitioner in No. 20–512, at 50.

⁸⁷ D. Ct. Op., at 1104–1105.

⁸⁸ App. to Pet. for Cert. in No. 20–512, at 168a, ¶4.

⁸⁹ App. to Pet. for Cert. in No. 20–512, at 167a, ¶1 (emphasis added).

⁹⁰ *Alston*, 141 S. Ct. at 2164.

⁹¹ *Id.* at 2165.

⁹² *Id.*

The case ended in a unanimous win for the players. The Court held that the NCAA violated antitrust laws by placing limits on education-related benefits that schools can provide to athletes, and allowed for unlimited compensation connected to education. This decision restricted the NCAA's scope to restrict education-related benefits but leaves the NCAA's business model intact. Justice Gorsuch concludes his opinion by stating that the discussion of amateurism in college sports is not for the court to decide. He and the seven other Justices that signed onto his opinion did not want to touch any issues further than the issues of this case. However, Justice Kavanaugh took the next step in his concurrence.

E. Justice Kavanaugh's Concurrence

While not binding law, Justice Kavanaugh paints a bleak picture of the NCAA and its "amateurism" label. His attack on the NCAA will likely be used as a sword by student-athletes against the NCAA. In this concurrence, Justice Kavanaugh suggests that *any* NCAA rules restricting compensation may not hold up in the future⁹³. He makes note of three points that warrant emphasis: (1) the Court did not address the legality of the NCAA's remaining compensation rules, (2) if NCAA rules will be analyzed under "rule of reason" scrutiny under antitrust laws going forward, and (3) whether the rules can pass under this scrutiny⁹⁴. Regarding the last point of emphasis, Justice Kavanaugh does not believe that the remaining rules can pass scrutiny. He states, "[u]nder the rule of reason, the NCAA must supply a legally valid procompetitive justification for its remaining compensation rules. He concludes his concurrence with what can be read as a warning, "[t]he NCAA is not above the law."⁹⁵

⁹³ *Id.* at 2166

⁹⁴ *Id.* at 2167

⁹⁵ *Id.*

F. Subject Opinion

Board of Regents, *O'Bannon*, and *Alston* show the progression of the Supreme Court giving the NCAA less leeway to restrict trade. The Supreme Court went from not subjecting a blatantly illegal horizontal price-fixing agreement that affects the external market to per se scrutiny, to opening the door for the NCAA's internal rules to Antitrust Scrutiny, to applying Antitrust Scrutiny to one of the NCAA's oldest rules and striking it down. The *NCAA v. Alston* decision is a groundbreaking victory for student-athletes everywhere.

This case was decided in a 9-0 victory for student-athletes. As if a unanimous Supreme Court decision was not harrowing enough, Justice Kavanaugh concurs “[a]s I see it, however, the NCAA may lack such a justification.”⁹⁶ He deemed the college sports and amateurism language that the NCAA has relied on for its entire existence only dicta. He continued his full-frontal attack on the NCAA by stating the NCAA relies on “innocuous labels”⁹⁷ to refrain from paying student-athletes stating that “[t]he NCAA’s business model would be flatly illegal in almost any other industry in America.”⁹⁸ The student-athletes generate billions of dollars in annual revenue, but the NCAA has continuously suppressed the compensation that Justice Kavanaugh believes they deserve.

G. The NCAA’S Response

The NCAA released a statement regarding the decision on June 21, 2021. The statement acknowledges its defeat in the Supreme Court but clings to its: (1) authority to adopt reasonable rules, (2) ability to determine what are truly educational benefits, and (3) its commitment to

⁹⁶ *Alston*, 141 S. Ct. at 2167.

⁹⁷ *Id.*

⁹⁸ *Id.*

working with Congress to chart a path forward.⁹⁹ Along with this, the NCAA released its Interim NIL Policy while it worked with Congress to adopt federal NIL legislation. For states without NIL legislation, it appears to be a free-for-all, stating “if an individual elects to engage in a NIL activity, the individual’s eligibility for intercollegiate athletics will not be impacted by the application of Bylaw 12 (Amateurism and Athletics Eligibility).” For states with NIL laws in effect, NIL deals must be consistent with state law. If these deals are consistent with state law, Bylaw 12 will not be applicable as well. The NCAA also states that it will not monitor compliance with state law.

V. WHAT NOW?

The NCAA will not monitor compliance with state law and will focus on working with Congress to provide consistent federal NIL legislation. Regulation of NIL has been placed in the hands of state legislatures and individual universities, but what are states’ current NIL policies?

Justia surveyed the policies of each state and found some commonalities:¹⁰⁰

- Schools are prohibited from withholding scholarships or eligibility to participate in athletics from athletes who exercise NIL rights
- Schools are prohibited from providing NIL compensation to current or prospective student-athletes or using NIL agreements as recruiting inducements
- Allowing athletes to hire agents, attorneys, or other representatives to assist them with NIL contracts, and providing requirements for these representatives
- Requiring athletes to disclose NIL agreements to schools, and prohibiting agreements that conflict with school or team contracts
- Prohibiting athletes from endorsing alcohol, tobacco, marijuana, gambling, adult entertainment, or other morally questionable activities
- Protecting the intellectual property rights of schools
- Requiring schools to provide financial literacy training for athletes
- Allowing schools to prohibit athletes from engaging in NIL activities during official team activities

⁹⁹ *NCAA Statement on Supreme Court Decision*, NCAA (Jun. 21, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-statement-us-supreme-court-decision>.

¹⁰⁰ Justia supra note 2.

This is not a comprehensive list, as some states may have only some of these provisions, and others may not have any laws regarding NIL on the books at all. Not only this, but these laws are ever-changing, and the survey was conducted in August of 2021.

It is difficult to overstate the impact of this decision. The NIL landscape has been described as “The Wild-Wild West” where “*any* company can reach out to *any* athlete with *any* offer”.¹⁰¹ Since this decision, there was a massive rush of notable NIL deals since. The Cavinder twins from the Fresno State Women’s Basketball Team inked a deal with Boost Mobile.¹⁰² Built Bar is taking care of the tuition for every BYU Football walk-on, and allows every player a brand-ambassador position, allowing the entire team to earn up to \$1,000.¹⁰³ Even Will “Lucky Bill” Ulmer of Marshall Football will be able to earn money off his live music.¹⁰⁴ The biggest deal and the deal that aged the worst so far is the Spencer Rattler deal. The former Oklahoma Sooner quarterback received two cars from Fowler Automotive Group, one of the largest car dealers in Oklahoma¹⁰⁵. However, his grantors are left up in arms. Spencer Rattler performed poorly, got benched, and eventually transferred to the University of South Carolina.¹⁰⁶ Spencer Rattler’s story may become a cautionary tale for companies looking to get their foot in the door on NIL deals. Even law firms are getting in on the action. Morgan & Morgan and other law firms have also advertised with student-athletes. Earlier this month, LSU football player Kayshon Boutte signed an NIL deal with

¹⁰¹ Caitlin Parise, *How the NCAA Dropped the Ball on NIL*, Conduct Detrimental (Sep. 15, 2021), <https://www.conductdetrimental.com/post/how-the-ncaa-dropped-the-ball-on-nil>.

¹⁰² Russell Steinberg, *Most Fascinating NCAA NIL Deals*, Boardroom (Aug. 23, 2021), <https://boardroom.tv/most-fascinating-ncaa-nil-deals/>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Dennis Dodd, *Spencer Rattler Becomes Case Study for NIL Return on Investment*, CBS Sports (Oct. 13, 2021), <https://www.cbssports.com/college-football/news/spencer-rattler-becomes-case-study-for-nil-return-on-investment-with-oklahoma-starting-job-in-flux/>.

¹⁰⁶ *Id.*

Gordon McKernan Injury Lawyers in Baton Rouge, Louisiana, while Ole Miss football player, Deantre Prince, signed a NIL deal with Greer Law Firm in Tupelo, Mississippi.¹⁰⁷

A. Adidas

Adidas announced the most expansive NIL program to date, giving college athletes at its sponsored universities the opportunity to become paid “affiliate brand ambassadors”¹⁰⁸. This program will be available to over 50,000 athletes across 23 sports¹⁰⁹. This program spans wider than other NIL deals to date in that Adidas is capitalizing on pre-existing partnerships with universities to offer *all* athletes an opportunity to profit off their NIL¹¹⁰. This program has the opportunity to send ripple effects throughout the entire NIL landscape in that Adidas’ competitors may follow in its footsteps.

However, there are detractors to the idea of such widespread NIL collectives. The original fear from these detractors was that NIL Trusts or Collectives would be formed by alumni to support current athletes in pursuing NIL deals. West Virginia, Florida, and Arkansas are just a few where trusts have been formed. The concern is that these trusts will be used to induce athletes to stay at their school or come directly from high school or via the transfer portal. The fact that mega-corporations are beginning to get involved in such a widespread program threatens to infect collegiate sporting decisions with corporate greed.

¹⁰⁷ Jacob Polacheck, *Morgan & Morgan Expects More Athlete NIL Deals*, Miami BUS. REV., Feb. 2, 2022 at A4.

¹⁰⁸ Zachary Zagger, *Adidas Tests Waters With Novel Name, Image Deal Program*, Law360, Mar. 23, 2022.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

VI. WHAT COULD GO WRONG?

While this is a massive win for student-athletes, if one does not take care in signing a NIL deal, a student-athlete can walk into a pitfall that leads directly to NCAA suspension. This begs the question, what are these potential pitfalls?

The first and most obvious answer is running into state law issues. Since there are no federal NIL laws as of now, a student-athlete's NIL rights are governed by state law and university rules. State laws can vary greatly, so it would do student-athletes well to pay close attention to what is and is not permitted. It could also be helpful to retain an attorney or agent to help with the creation of NIL deals while complying with applicable laws and rules. While it was for a violation of rules before *Alston* took effect, University of Illinois Men's Basketball star Kofi Cockburn was suspended for the first three games of this season due to non-compliance.¹¹¹ This shows the NCAA's intent to cling on to the power it had over student-athletes, and the NCAA will likely seek to continue enforcement as much as possible.

Another valid concern is what exactly are the athletes earning, and what are they giving up? Licensing agreements can vary widely in the compensation being offered and the rights being given up.¹¹² Some examples of what an athlete can license are: a picture, an autograph, teaching a training camp, or starting a side-business unrelated to their sport. Agreements can be long-term or short-term, exclusive or non-exclusive. So long as the deals signed are not pay-for-play deals, are not contingent on enrollment at a specific university, and comply with state law, a NIL deal will

¹¹¹Amanda Christovich, *First NIL-Related Suspension*, Front Office Sports (Nov. 5, 2021), <https://frontofficesports.com/first-nil-related-suspension/#:~:text=The%20NCAA%20suspended%20Illinois%20star,star%20of%20a%20ranked%20team.>

¹¹²Noah Hock, *Navigating the Uncertain Terrain of NIL Deals For Student Athletes*, Brooks Pierce (Dec. 2, 2021), <https://www.brookspierce.com/publication-navigating-the-uncertain-terrain-of-nil-deals-for-student-athletes.>

likely be fair game. To ensure compliance with NCAA, state, and school rules, it would be prudent for student-athletes to have prudent representation in their corner.

Along with this, rules and regulations can, and likely will, be subject to changes. Experienced legal representation and advice are essential to help navigate the complicated issues surrounding any opportunities¹¹³.

The ability of an athlete to make money on their name, image, and likeness could have some negative effects on the Student-Athlete Special Assistance Fund (hereinafter SAF). SAF allocations factor in three things: (1) the institutions' total Pell grant recipients, (2) athletic scholarships, and (3) sport sponsorships. This money was spent in ways that had little relation to education and exceeded athletes' cost-of-attendance payments. Sportico stated, "In essence, the SAF was acting as a mechanism of pay-to-play, albeit restricted to the limited funds available."¹¹⁴ If athletes start earning enough income to lose their eligibility for Pell Grants, schools could see less SAF funding (which was approximately \$418 per Pell Grant in 2018, according to NCAA data).

A. The Potential to Lure Top Talent Away From Competing Leagues

In basketball specifically, best-of-the-best talent has recently decided to play in competing leagues where they can make money off their skill and the viewers they bring in. There are two key examples of this: (1) LaMelo Ball foregoing a year of college ball to play in the Australian league (the NBL), and (2) Jalen Green foregoing a year of college ball to play in the NBA's developmental league (the NBA G-League). The level of competition is better in the alternative leagues they chose, and the millions that they were paid outweigh \$0 + a one-year scholarship.

¹¹³ *Id.*

¹¹⁴ Daniel Libit, *Alston Case Turns Spotlight onto NCAA's Student Assistance Fund*, Sportico (July 20, 2021), <https://www.sportico.com/leagues/college-sports/2021/ncaa-student-assistance-fund-1234634735/>.

While both players were drafted in the first three picks of their respective drafts, there has been some debate as to whether they would have been drafted with the first overall pick if they played their required year in college. While the difference between the first overall pick and the second or third pick may sound negligible, the difference is worth over \$1 million over the three years of an NBA rookie contract, notwithstanding the fourth-year team option on the contract¹¹⁵. The reasoning behind the potential draft stock discrepancy between players who chose college and players who choose competing leagues is that while the competition is better in the NBL and G-League, the reality is that scouts do not follow those leagues as closely as they follow college basketball. The *Alston* decision gives a top prospect the ability to do both: make money off his while in school *and* boost his draft stock. While an NIL deal may not be equal to the contracts received in the NBL or G-League, an NIL deal helps close the gap while the athlete potentially plays his way into a higher draft spot. Even if the level of competition is better in other leagues, the number of eyes on college basketball outclasses the eyes on the other leagues.

B. Competitiveness in College Sports

The jury is still out on how the competitiveness of college sports will be affected. There are two sides to the competitiveness story. On one hand, the NIL decision will incentivize those with lesser professional prospects to stay in college. Pre-*Alston*, student-athletes would have to enter the draft prematurely just to make some money. Now Day 3 NFL prospects can avoid rushing to the pros for the money and continue to refine their skills at the collegiate level. These prospects will have the ability to make money *before* the pros and boost their draft stock for the next year. College sports will see the benefit of retaining talent. This also opens the door to higher-level high-school athletes attending a wider range of colleges, dispersing talent for parity purposes. Five-star

¹¹⁵2020-2021 NBA Rookie Scale, Real GM, [https://basketball.realgm.com/nba/info/rookie_scale/2021\(last](https://basketball.realgm.com/nba/info/rookie_scale/2021(last) visited July 22, 2022).

recruits could go to a mid-major, start from day one of hitting the campus, and even the playing field of the college sport. After all, it gets tiring to watch an Alabama team full of NFL-level talent beating up on lesser schools.¹¹⁶

On the other hand, in an Associated Press survey of Division I athletic directors, nearly 73% said allowing athletes to be compensated for NIL use will decrease the number of schools that have a chance to be competitive in college sports. Nearly 28% of those athletic directors believe that many *fewer* schools would be competitive.¹¹⁷ Tulane’s Athletic Director Troy Dannen stated “[t]he kids that are going to Alabama are still going to go to Alabama. The kids that are going to Southern Cal are still going to go to Southern Cal. The kids that are going to Tulane are still going to go to Tulane.”¹¹⁸ Clemson’s Athletic Director Dan Radakovich doesn't believe NIL compensation will damage competitive balance. But he was sympathetic to schools with smaller budgets that have those concerns.¹¹⁹ USC Football Coach Lincoln Riley, while restating his support for athletes profiting off their NIL, has stated that recruiting has been completely changed, specifically due to the lack of uniform rules¹²⁰. Recruiting seems to have become “a race to exploit that lack of rules on the recruiting trail”¹²¹. While he supports the ability for student-athletes to profit off their NIL, it seems he is concerned with the integrity of the recruiting process being tainted by greed.

¹¹⁶Matt Fitzgerald, *NIL Decision Huge Win for Athletes, and College Football’s Competitive Balance*, SportsNaut (July 1, 2021), <https://sportsnaut.com/nil-decision-huge-win-athletes-college-football/>.

¹¹⁷AP Survey: Ads Concerned NIL Will Skew Competitive Balance, USA Today (Apr. 4, 2021), <https://www.usatoday.com/story/sports/ncaab/2021/04/04/ap-survey-ads-concerned-nil-will-skew-competitive-balance/115668328/>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Ryan Karjte, *Lincoln Riley: Lack of NIL Rules has ‘Completely Changed’ Football Recruiting*, Los Angeles Times (Apr. 9, 2022), <https://www.latimes.com/sports/usc/story/2022-04-09/lincoln-riley-nil-college-football-recruiting-changes>.

¹²¹ *Id.*

VII. CONCLUSION

In sum, it has been a long and windy road to where we are today, but *NCAA v. Alston* is a massive win for student-athletes across the country. Student-athletes can finally earn the money that they deserve. That said, it is important to exercise care going forward. State laws and university rules, potential federal legislation, predatory practice, and the ability for the laws to fluctuate are potential speed bumps going forward that student-athletes must be prudent and aware of when navigating this new terrain. While there are potential costs, the benefits outweigh the costs, as the Court held in its decision. Competitively, financially, and from a public policy standpoint, the world of college sports is a better place to be in than it was pre-*Alston*.