

# The Need for Agent Oversight in the Wild West of NIL

Leonard Genova and Thomas Baker

This article examines the changing legal landscape surrounding amateur athleticism that has evolved with the passage of the Fair Pay to Play Act that has made it legal for college athletes to be compensated for their name, image, and likeness [NIL]. Tracing the legal foundations that have created this new definition of amateurism, the article probes the problems that have now arisen based on the lack of specific policies and regulation, specifically the absence of any meaningful oversight of sports agents. There exists a history of athlete exploitation at the hands of agents in college sports. The redefinition of amateurism in the NIL era has upended traditional boundaries in college sports, exposing major issues in agent regulation. The shift has collided with a fragmented legal framework that includes a patchwork of state NIL laws and seldom enforced and possibly outdated existing statutes, leaving college athletes vulnerable and regulatory enforcement inconsistent. This article explores problems and concerns involving athlete representation in college sports and concludes with the exploration of the most practical solutions to protect college athletes from unscrupulous agents until a more comprehensive and permanent solution can be created.

Keywords: amateurism; name, image and likeness (NIL); agent; eligibility; NCAA

## Introduction

While updating existing athlete-agent statutes to address name, image, and likeness [NIL] is beneficial in the short term, the most effective long-term protection for college athletes lies in recognizing them as employees with the right to unionize and collectively bargain. This status would allow for representation by a player's association capable of establishing and enforcing agent regulations comparable to those in professional sports. At its inception, the National Collegiate Athletic Association [NCAA] legitimized college football resulting in the commercialization

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of the sport, along with a prohibition against athlete compensation, thus defining its product as amateur. This version of amateurism lasted until 2019 when California passed the Fair Pay to Play Act, becoming the first state to pass a law prohibiting the NCAA and other governing bodies from restricting college athletes from monetizing their NIL (California, 2021). California's initiative triggered a cavalcade of 20 states considering similar legislation (Smith, 2019). Despite their central role in a billion-dollar industry, college athletes were long left living beneath the poverty line and with no opportunity to profit from the goodwill associated with their identities.

While the NIL shift was necessary and long overdue, the NCAA's governance model was unprepared for the professionalization of college athletes, leading to regulatory gaps and new legal and ethical challenges. Such inherent conflicts brought with them myriad challenges warranting individual study. One such area is the involvement of sport agents, who are now permitted to represent college athletes with their NIL activity (California, 2021). Historically, college athletes have been targets of unscrupulous agent practices, now magnified in the NIL context. The inconsistent and fragmented nature of state NIL laws results in a lack of uniform protections for college athletes, while existing state and federal statutes—such as the Uniform Athlete Agents Act [UAAA] and Sports Agent Responsibility and Trust Act [SPARTA]—fail to provide athletes with a private cause of action when harmed by agent misconduct. History is replete with unscrupulous agents exploiting college athletes, and that dynamic has been magnified in the NIL era. The absence of a universal agent regulation, combined with potential conflict of interest issues and the governing body's reluctance to provide clear guidelines, puts college athletes at greater risk of exploitation. Since most college athletes will not play professionally, safeguarding their eligibility and earning opportunities during their college years is critical. Accordingly, a standardized agent regulatory system and sport-specific compliance protocols must be implemented to better protect the rights and futures of these athletes.

The article begins with the historical foundation of amateurism and the path toward the NIL era with the passage of California's Fair To Play Act, and how that redefined the collegiate space. The next section details the need for agent regulation and provides historical context on bad actors and how deleterious their actions are in the NIL era. The subsequent section discusses the legal issues related to the NIL athlete-agent relationship and includes three subcategories: laws governing agents prior to 2021, state NIL laws and agent regulation, and the pending legal cases potentially impacting the agent space. The NCAA's inadequate attempt to address the agent-athlete relationship is then reviewed and, finally, possible solutions are put forth that address the current problems identified throughout the article.



## Game-Changing Legislation that Redefined Amateurism

The NCAA's amateurism roots go back more than a hundred years to a time when college football players were routinely dying and the sport itself had a reputation for its brutality (History, n.d.). In 1905 alone, 19 men died playing tackle football and another 137 were seriously injured (Novak, 2013). To make matters worse, universities were using 'ringers,' meaning they were utilizing nonstudent and older players who were far more physically developed than the Ivy League students so as to give their schools a competitive edge and capitalize off the tremendous consumer interest in college football (Landry & Baker, 2019). To create fan interest and fill newly constructed stadiums, schools also began to pay the best athletes to play for their teams. The situation got so bad that President Theodore Roosevelt threatened government intervention if the schools did not adequately address the situation (Landry & Baker, 2019).

That threat was the genesis for the NCAA to create the amateur model wherein athletes competed for the pure pleasure and the moral, physical, and mental benefits associated with participation. Initially, direct compensation of athletes was banned but in 1956 the NCAA modified its rules to allow member institutions the ability to give college athletes scholarships based on their athletic ability. Scholarships, however, were restricted to the total cost of tuition and fees, room and board, and required course-related books (Bayard, 2020). The valuation of athletic scholarships expanded to include the full cost of attendance in 2015, allowing institutions to cover not only tuition and fees but also expenses such as books, housing, and incidental costs (O'Bannon v. NCAA, 2015).

The restrictions imposed under the scholarship or grant-in-aid era of amateurism remained until the dawn of the NIL era of college athletics that began on July 1, 2021, when the NCAA lifted its restrictions ahead of Florida's NIL bill going live. Interestingly, California acted first back in 2019, but its NIL bill was not to take effect until January 1, 2023. In the interim, Florida adopted a bill with an effective date of July 1, 2021, triggering a flurry of states to act or get left behind, potentially putting those states at a recruiting deficit by not allowing college athletes to monetize their NIL (Dosh, 2021). Although, an argument could be made that the origins of the NIL era can trace its roots back a bit further, all the way to the filing of a class-action lawsuit by former UCLA basketball star Ed O'Bannon (Holloway & DeCook, 2021). O'Bannon became the lead plaintiff in an antitrust suit filed in July 2009 and alleged that the NCAA's rules and bylaws operate as an unreasonable restraint of trade as they precluded Division I football and basketball players from receiving any compensation for the use of their NIL in video games and live game telecasts (O'Bannon



v. NCAA, 2015). The judge eventually ordered the NCAA to pay \$44.4 million in attorneys' fees and another \$1.5 million in costs to lawyers for the plaintiffs (Axson, 2015). The case, however, reflects a key inflection point historically as it was the first time a court applied the Rule of Reason analysis to find that the NCAA's amateurism rules violated antitrust laws. The Rule of Reason test is critical in antitrust analysis in collegiate athletics because it allows courts to evaluate whether an NCAA rule or practice, while potentially restricting competition, produces overall procompetitive benefits that justify the restraint. Rather than deeming all restraints illegal per se, the Rule of Reason enables a case-by-case balancing of the anticompetitive harms against justifications like maintaining amateurism or ensuring competitive balance (NCAA v. Alston, 2021). Further, it opened the door for further scrutiny of the NCAA's practices under antitrust law.

One such case that eroded the NCAA's amateurism restraints and arguably was the tipping point in athlete compensation, was *Alston v. NCAA*. In *Alston*, current and former Division I football, and basketball players filed challenges to the rules imposed by the NCAA and several of its conferences limiting the compensation athletes may receive for their services (*NCAA v. Alston*, 2021). The United States Court for the Northern District of California held that limitations on education-related college athlete benefits constituted an unlawful restraint on trade violative of the Sherman Act (*NCAA v. Alston*, 2021). So, while *Alston* and NIL are two separate issues, the decision in *Alston* is very relevant to NIL. The majority opinion in *Alston* left intact much of the NCAA's authority to control college athlete compensation. Justice Kavanaugh, in his concurring opinion, cautioned the NCAA that its authority may not be guaranteed in the long term (Jessop et al., 2023). Kavanaugh opined that the NCAA's compensation rules raise serious questions under antitrust law and their remaining rules should receive ordinary rule of reason scrutiny (*NCAA v. Alston*, 2021). Kavanaugh does not think the NCAA's compensation rules will withstand scrutiny since the NCAA's argument that its amateurism rules define the product and are essential is "circular and unpersuasive" (*NCAA v. Alston*, 2021, p. 2167). Kavanaugh's concurrence is not binding, but it presents a rationale suggesting that the NCAA's commonly cited procompetitive justification for maintaining amateurism in college sports could be found invalid under a Rule of Reason analysis (Jessop et al., 2023). *Alston* and the NCAA's pending litigation docket has had a chilling effect on its willingness to take any enforcement or interpretative action. While understandable from a business perspective, the lack of action imperils the well-being of the college athlete.

## Why Agent Regulation Is Needed

Corrupt agent practices have been documented throughout the years and evidence the need for agent regulation (Baker et al., 2012). For example, in 1989, agents Norby



Walters and Lloyd Bloom were accused of illegally signing college athletes before their college eligibility had expired (Cox, 1992). The two agents were found guilty of conspiracy and fraud charges related to their activities as sports agents, and were sentenced to prison terms (Cox, 1992). The conviction was ultimately overturned in 1992 as the appeals court ruled the government improperly used evidence obtained through wiretaps. Some other notable cases included former agent Josh Luchs admitting in a *Sports Illustrated* exposé that from 1990 to 1996 he improperly paid more than 30 players as an inducement to sign with him prior to the expiration of their eligibility in violation of NCAA rules, including Ryan Leaf of Washington State University, the second pick in the 1998 National Football League [NFL] draft (Staff, 2010). Another prominent scandal occurred in 2010 and surrounded allegations of improper benefits, including cash, travel accommodations, and other gifts received by college athletes at the University of North Carolina [UNC] from agents as well as improper academic assistance provided by the university (Eisenband, 2010). Agents also utilize runners—middlemen who develop relationships with high-profile athletes—with the goal of delivering them to agencies once they turn pro (Naqi, 2008). A prominent case utilizing runners involved Rodney Guillory, a Los Angeles event promoter who acted as the liaison between former University of Southern California [USC] basketball star O.J. Mayo and Bill Duffy Associates Sports Management. The self-proclaimed mentor lavished more than \$200,000 worth of gifts, including a \$50,000 sports car, clothes, airline tickets, flat screen televisions, hotel rooms, meals, and outright cash, to the hoops star, which began as far back as Mayo's high school days (Naqi, 2008). Many of these actors are repeat offenders, as was the case with Guillory. He illegally induced another USC basketball player leading to his suspension in 2000 while working for another sports agency. The advent of NIL has further complicated the regulatory landscape. In jurisdictions without NIL statutes, individuals lacking formal training—such as parents or friends—are permitted to act as agents on behalf of college athletes, frequently without oversight or established safeguards. A recent example is quarterback Nico Iamaleava, formerly a standout at the University of Tennessee [UT], entering the transfer portal after a dispute about NIL compensation (Hawkins, Spencer & Bole, LLP, 2025). It was reported that Iamaleava was represented primarily by his father and a family friend, neither of whom are attorneys nor certified agents (Hawkins, Spencer & Bole, LLP, 2025).

While the current crop of NIL agents is technically limited to representing athletes strictly for NIL purposes, they have a dual purpose in mind. Specifically, these agents desire to create a relationship that can be leveraged for future professional representation (A Sports Agent's Role in the World of NIL: Part II, n.d.). Agents negotiating NIL deals can earn an uncapped commission (A Sports Agent's Role in the World of NIL: Part II, n.d.), as well as give out six figure cash advances to be credited against an athlete's future NIL earnings (Florio, 2021). As a practical matter, agents



are now starting to actively recruit athletes once they step foot on a college campus (Kahler, 2021). College athletes can be taken advantage of through a variety of bad deals including incentive-based schemes for statistical performance, pay-to-play arrangements, as well as quid-pro-quo arrangements between a prospective recruit and a school based on that player's commitment to attend contingent on financial remuneration (Question and answer, n.d.-b). Since the onset of NIL, there have been a significant number of questionable business deals, disreputable agents and scams specifically targeting college athletes (Sadek & Greene, 2023).

One example of a questionable business deal can be found in the plight of the University of Florida [UF] gymnast Savannah Schoenherr. After her team captured second place at the NCAA gymnastics championship in 2023, Schoenherr was offered a unique business opportunity; a New York clothing brand offered her \$1,500 for her to model their apparel (Sadek & Greene, 2023). She and the company communicated extensively over a period of time, concluding with a photo shoot being scheduled for a defunct train station near the UF (Sadek & Greene, 2023). The check she received from the apparel company was for \$3,000, half of which was meant to pay for the venue. That check bounced, but fortunately for Schoenherr she had not paid the venue, otherwise she would have been responsible to make restitution. Had Schoenherr had competent representation they could have arranged for certified funds to be paid to both the athlete and the venue, ensuring a smooth transaction. This example highlights the current questionable climate of business deals, unscrupulous agents, and targeted scams against college athletes.

While college athletes reputedly earned nearly \$1 billion dollars in the first year of NIL, with the media coverage often highlighting high-profile stars such as University of Iowa women's basketball standout Caitlin Clark and University of Colorado quarterback Sheduer Sanders, with his \$4.7 million valuation, the reality is that most NIL deals average only a few thousand dollars and are heavily concentrated in football and men's basketball (Butler, 2022). These small individual deals are typically effectuated without competent representation (Sadek & Greene, 2023). Extensive interviews with more than two dozen stakeholders (e.g., athletes, coaches, attorneys) confirmed that companies have been regularly asking athletes to sign away their intellectual property rights (Sadek & Greene, 2023). College athletes are regularly getting bombarded with proposals, many of which require fees in advance. Two contracts obtained by Bloomberg Law, for example, show one company charging a 40% commission and the other owning the athlete's intellectual property rights in perpetuity (Sadek & Greene, 2023).

Other problematic aspects of these NIL contracts include the use of overly broad language, unclear performance requirements, and/or missing termination clauses (Sadek & Greene, 2023). Further, bad deals tend to go unreported due to built-in confidentiality/arbitration clauses, a lack of athlete sophistication, and a reluctance



to get mired in litigation (Sadek & Greene, 2023). The rise of collectives has also highlighted the lack of agent regulations. A collective is a group of boosters, alumni, or donors who pool resources to support college athletes by facilitating NIL deals. They operate independently and NCAA rules prohibit using the deals as a recruiting inducement (Staff, n.d.). Highly touted five-star quarterback recruit Jaden Rashada originally committed to the University of Miami [UM], allegedly securing a \$9.5 million NIL deal from a UM booster (Staff, n.d.). UF continued its recruitment of the talented player, getting him to flip a few days later by allegedly offering him a \$13 million NIL deal (ESPN, 2023). The deal fell through shortly thereafter, and Rashada requested and was granted his release (ESPN, 2023). Rashada switched agents after the UM dalliance to Jackson Zager and Tommy Thomsen, founders of JTM Sports. Zager was a sophomore at Southern Methodist at the time and Thomsen was a commercial real estate agent, hardly “seasoned” representation by any measure (Staff, n.d.). The inexperienced agents allowed the Gator Collective the right, in its sole and absolute discretion, to terminate the contract without penalty, leaving Rashada without legal remedy or liquidated damages (Staff, n.d.). Even more recently, highly touted University of Nevada Las Vegas [UNLV] star quarterback Matt Sluka unceremoniously left the university when alleged NIL commitments fell through. Sluka enrolled at UNLV in August 2024, after a storied career at Holy Cross College, and alleged that the university renege on its \$100,000 NIL agreement, instead offering him \$12,000 over four months in return (Mandel & Feldman, 2024). The timing couldn’t have been worse, as UNLV had been off to its best start in 40 years after upsetting Houston and Kansas. Sluka was represented by Marcus Cromartie of Equity Sports. Interestingly, in all of Cromartie’s communications with the university, the first of which happened after Sluka started classes, he made no mention of any monies owed, nor ever raised the issue (Mandel & Feldman, 2024). Why did the agent take the word of a staff member as a binding commitment and not insist on a signed contract with the Friends of UNLV collective prior to the start of the season? While not unusual, it is not acceptable for an agent to abdicate his most central role, that of protector, merely because it is commonplace. Sluka could not have done worse without an agent. He left UNLV before playing in the fourth game of the season, thus preserving his final year of eligibility (Yahoo!, n.d.). Universities are limited as to the representation assistance they can provide given current NCAA rules, which will be discussed at greater length in a subsequent section. Some schools have tried to support the gap through education and financial literacy courses. Some states have even tried to protect college athletes from disreputable agents by prohibiting them from signing deals that extend past their college careers (Sadek & Greene, 2023).

Athletes at the lower levels [Division II and III] are also earning significant revenue and not immune to the same exploitation. Division III football player Jack Betts of Amherst College has been named the King of NIL and accumulated more than 35



NIL deals with companies such as Allbirds, Bodyarmour, and PBfit (Nevin, n.d.). Connor Printz, a senior basketball player at Claremont McKenna College, has almost 1 million total social media followers and accumulated more than 80 NIL deals with companies like Reebok, Powerade, and CVS. Athletes at the lower levels, however, do not have access to the same support resources as their counterparts at the major Division I level. It often does not make economic sense for an athlete to consult a lawyer on a smaller deal. According to former Pennsylvania State University athletic integrity officer Bob Boland, “the modest size of the deals has kept athletes from lawyers who might help them better understand the space” (Sadek & Greene, 2023, para. 67). In the early stages of NIL, most universities required athletes to disclose their endorsement deals directly to the school (Sadek & Greene, 2023). Following the *House v. NCAA* settlement, however, regulation and enforcement of athlete compensation shifted to the newly created College Sports Commission (CSC; Backus, 2025). To streamline oversight, the CSC launched the NIL Go portal, which reviews third-party NIL agreements for both fair market value and valid business purpose (Backus, 2025). This system provides athletes with a clear way to report their NIL activities, ensuring compliance and protecting their eligibility (Backus, 2025).

## **Legal Issues Related to NIL Athlete-Agent Relationship**

Until NIL, the rules governing the agent–college athlete relationship were straightforward: agents could not represent an athlete in furtherance of their professional career until eligibility was exhausted or the athlete chose to forego the remainder of their collegiate career (Regnery, 2022). Enter the NIL era. NIL opportunities opened the door for both traditional sports agents and new third-party service providers to enter the marketplace (Berman, 2025). The rapid growth of NIL representation, however, has exposed athletes to significant risks because the existing regulatory frameworks were not designed for this new market, leaving many athletes without the protections that govern professional sports agents (Berman, 2025). Following *Alston*, the NCAA permitted athletes to receive NIL compensation and to utilize agents, which accelerated this expansion of representation services (Epstein & Niland, 2009).

This new space has attracted not only traditional sports agents but also NIL-specific agents, companies, and lawyers (Dellenger, 2021). Unlike professional sports, where agents operate under well-established regulatory frameworks, NIL service providers face little oversight (Dougherty, 2023). As a result, the involvement of unregulated third parties has raised concerns about the protection of college athletes, especially in states lacking clear NIL statutes (Sahl, 2021).

Regulatory efforts to address these challenges have been uneven. The NCAA’s long-standing “No Agent Rule” technically remains in effect, rendering athletes



ineligible if they agree—verbally or in writing—to professional representation for a future contract (Berman, 2025). At the same time, many states have enacted NIL legislation allowing athletes to retain professional representation for NIL purposes, often creating contradictions between state law and NCAA policy (Mayne & Forer, 2022). These inconsistencies underscore the need for a stronger and more uniform regulatory framework (Berman, 2025).

The next section discusses the state of athlete representation prior to NIL, the impact NIL had on that relationship, and how current court cases might play a role in protecting college athletes prospectively.

## Regulation and Laws Governing Agents Prior to NIL

### *The UAAA and RUAAA Approaches*

Prior to the NIL era, competition among agents and past unscrupulous practices challenged the industry and was the impetus for the National Conference of Commissioners of Uniform State Laws [NCCUSL] to draft and complete the Uniform Athlete Agents Act [UAAA] in 2000. Since that time, 40 states have adopted the act, either in whole or in part, as well as the District of Columbia and the U.S. Virgin Islands (Berman, 2025). The UAAA was created to eliminate inconsistencies among existing state statutes and has seven essential provisions: registration, reciprocity of registration, notice to the educational institution, voidable agency contracts, notice required in agency contracts, regulations on athlete agent's conduct, and penalties and remedies. In addition to the aforementioned registration requirements, many individual schools require agents to register prior to communicating with athletes at their institutions (Sharp et al., 2014). The Revised Uniform Athlete Agents Act [RUAAA] adds to the registration requirement as laid out in the UAAA by proposing alternative registration systems. Under Alternative A, a state must register an agent already registered in another state if it determines that the other state's registration laws are substantially similar or more stringent (Uniform Law Commission, 2019). In contrast, Alternative B envisions the creation of a centralized registration system through which participating states form an interstate compact to manage agent registration collectively (Uniform Law Commission, 2019). Section 14 of both the UAAA and RUAAA establish prohibited agent conduct, which includes prohibiting giving false or misleading information with the intent to induce a college athlete to enter into an agent agreement (Uniform Law Commission, 2015, §14). Agents who violate both acts can face criminal, civil, and administrative penalties that are identical (Uniform Law Commission, 2000, §§15-17).

### *SPARTA*

Since the UAAA has not been adopted by all the states, Congress passed the Sports Agent Responsibility and Trust Act [SPARTA] to address the gap in state regulations. SPARTA has similar protections to those found in the UAAA, but not



as comprehensive (Sharp et al., 2014). SPARTA seeks to protect college athletes by prohibiting sports agents from signing athletes to an agency contract by providing false or misleading information, providing anything of value, failing to disclose in writing to the college athletes that he or she may lose NCAA eligibility after signing an agency contract, or predating or postdating contracts (Sports Agent Responsibility and Trust Act, 2004). The act also designates certain agent conduct as unfair and deceptive trade practices subject to the regulatory authority of the Federal Trade Commission [FTC]. It further creates an affirmative duty of truthfulness, disclosure, and restraint from buying an athlete. Violations of the act are subject to civil fines and referral to an individual states' Attorney General, for the imposition of additional fines (Sports Agent Responsibility and Trust Act, 2004).

*UAAA and SPARTA Do Not Protect College Athletes*

The regulatory scheme created by both laws, however, has proven ineffective in protecting student-athletes from unscrupulous agents (Nelson, 2012). The laws are rarely enforced against agents engaging in illegal acts (Nelson, 2012). More than half the states that have implemented the UAAA have neither revoked nor suspended a single license (Associated Press, 2010). The lack of enforcement at both the state and federal levels is understandable when considering prosecutorial priorities, as agent misconduct is often deprioritized in comparison to more serious offenses such as robbery, murder, and sexual assault (Associated Press, 2010). Further, the threat of revocation under UAAA and RUAAA has not acted as a deterrent since an agent who loses a license in one state can simply establish an agency business in another state and engage in the same deleterious activity (Associated Press, 2010). Also, the financial penalties issued by states tend to be nominal when compared with potential commissions (Willenbacher, 2004). A SPARTA violation consists of an unfair or deceptive act or practice of trade regulated by the FTC but identifying a violation of this nature requires the FTC to issue a cease-and-desist order to the violator (15 U.S.C. §§ 45 (a)(2), (g), 2006). Should the violation continue, the FTC may pursue a maximum penalty of \$43,792 for each violation (15 U.S.C. §§ 45 (a)(2), (g), 2006). A lingering question of effectiveness remains, as the FTC has yet to exercise the authority granted under SPARTA to issue even a single penalty (15 U.S.C. §7803(b), 2004). A regulatory framework that is seldom enforced and imposes insufficient penalties relative to the potential gains fails to effectively deter agents from engaging in misconduct (Nelson, 2012). In addition, both UAAA and SPARTA fail to grant student-athletes a private cause of action when harmed by an agent's misconduct (Berman, 2025). The RUAAA, however, does grant college athletes a cause of action against an agent (Uniform Law Commission, 2019, § 16(a)). The action can be brought for both a violation or agent omission, provided the college athlete either suffers financial loss or has their eligibility negatively impacted (Uniform Law Commission, 2019, § 16(a)). While



positive, this remedy only exists in the 14 states that have enacted the RUAAA and California (Uniform Law Commission, 2019, § 16(a)).

## State NIL Laws and Agent Regulation

To date, there are 32 states that have passed NIL laws, most of which are modeled after California's Fair Pay to Play Act, the first state NIL law. By failing to provide consistent agency rules relative to NIL representation, the NCAA and the states with NIL laws have created even more chaos and uncertainty for sports agents, leaving the college athletes they serve in a vulnerable position. Most of the statutes and the NCAA NIL policy itself allow college athletes to hire agents to represent them on NIL issues, regulating the athletes, but not the agents themselves (LaRose & Sawchak, 2021). Rather than provide enhanced regulations to protect college athletes from unscrupulous agents and third-party service providers, the state NIL statutes focus instead on ensuring that college athletes' rights are adequately protected from the NCAA and provide institutions with more latitude and control over the NIL process (Va. Code §23.1-408.1, 2024). This was recently evidenced when Virginia governor Glenn Youngkin signed a bill into law allowing state institutions to provide direct compensation to college athletes, while making it illegal for the NCAA to punish schools for doing so (McDaniel, 2024). However, like many other NIL bills and proposals at both the state and federal levels, the new law does not strengthen regulations to shield college athletes from unethical agents and third-party service providers. Rather, it prioritizes protecting athletes' rights from NCAA interference and grants institutions greater flexibility and authority in managing the NIL process (Va. Code §23.1-408.1, 2024).

Many differences exist between the new flood of state NIL laws since certain states have not enacted the UAAA, which can lead to discrepancies between states (Va. Code §23.1-408.1, 2024). For example, under the New Jersey Fair Play Act agents do not have a state mandated license requirement and must only comply with SPARTA, but attorneys functioning in the space must be licensed by the state and maintain specific compliance requirements to remain in good standing (Deni, 2021). Since SPARTA permits virtually anyone to act as a sports agent, regardless of their credentials or experience, it creates a regulatory gap that tolerates a much higher level of incompetence and potential misconduct among agents than would be acceptable for attorneys representing college athletes.

Three prominent areas of difference emerge after reviewing the language within the state statutory scheme (Berman, 2025). First, state NIL laws often impose strict limits directly on college athletes, while giving colleges broad discretion to regulate those same NIL activities (Moorman & Cocco, 2024). This creates a power imbalance that favors institutions over athletes (Moorman & Cocco, 2024).



Second, the way contract types are defined, described, and addressed in relation to potential conflicts with NIL activities varies across different laws (Berman, 2025). While most NIL statutes use the term conflict to describe restrictions on college athletes' NIL activities, they do not provide a clear definition of what constitutes a conflict (Moorman & Cocco, 2024). Similarly, the term "official team activities" is interpreted differently across states, with its scope ranging from narrowly defined events to broad, loosely defined obligations, depending on the specific legislative language (Moorman & Cocco, 2024). Third, the obligations placed on institutions when a contractual dispute arises, and the procedures for resolving such disputes, differ by state (Moorman & Cocco, 2024). Some states do not require institutions to disclose the conflict, while others mandate both notification and disclosure, and some even provide options to revise or appeal the conflict (Moorman & Cocco, 2024). These discrepancies can leave the athlete confused as to what NIL activities they can engage in (N. Henderson, 2023a). Although schools are beginning to recognize the importance of educating their athletes, shifting legislation and policies often leave students to navigate the rules on their own or depend on third parties for guidance (Moody, 2023). Agents must therefore be focused and professionally committed to remaining up to date on the ever-changing landscape (Berman, 2025).

## **Pending Legal Cases Potentially Impacting Agent Space**

Changes to the business side of college sports have typically moved incrementally slow, but that has changed recently since the *Alston* decision. There are currently multiple cases moving through the courts that have the potential to disrupt the NCAA's longstanding business model. Some of these cases focus on whether college athletes should be classified as employees. While such a classification could lead to unintended consequences, it would also permit athletes to unionize and engage in collective bargaining, similar to professional athletes. This could, in turn, lead to the formation of a players' union and establish the framework for agent registration, certification, and meaningful oversight.

The *Johnson v. NCAA* case, filed in November 2019 by former Villanova football player Ralph "Trey" Johnson, often gets misinterpreted as being part of a unionization solution. Johnson sued the NCAA and a slew of universities in the United States Eastern District Court of Pennsylvania, claiming that college athletes should be recognized as employees of their respective schools under the Fair Labor Standards Act, and further alleged that the NCAA is a joint employer (Auerbach, 2022). Though within the employment realm, the plaintiffs, even if successful, could not unionize, nor would it mean they would be paid any rate, but rather the case centers around hourly wages in the minimum wage vicinity, like other student jobs on campus (Auerbach, 2022).



There are, however, two cases involving athletes' right to unionize that were ripe for adjudication and had the potential to strengthen athlete rights but have since been withdrawn. The likely explanation is the outcome of the 2024 presidential election and the subsequent shift in administration priorities, which reflect a less favorable disposition toward recognizing college athletes as employees (Libit, 2025). One involved the NCAA, Pac-12 Conference, the University of California, Los Angeles [UCLA] and USC, and the other the men's basketball team at Dartmouth College [DC]. As a precursor to both situations, then general counsel of the National Labor Relations Board [NLRB], Jennifer Abruzzo, put forth a statement in 2021 stating that athletes at private institutions should be considered employees under the National Labor Relations Act [NLRA] (Burns, 2021). In GC Memo 2108, Jennifer Abruzzo asserts that student-athletes qualify as employees under the NLRA and that the NCAA, athletic conferences, and member schools may be considered joint employers because they collectively control the athletes' working conditions, such as eligibility, compensation limits, and participation rules (National Labor Relations Board, Office of the General Counsel, 2021). The NLRB is an independent agency that enforces U.S. labor law and safeguards the rights of employees to collectively bargain. The issue arose previously in 2014 when the Northwestern University football team attempted to organize, but in a unanimous decision the NLRB rejected the players' petition to form a union by declining to assert jurisdiction in the case (National Labor Relations Board, 2015). The five-member board did not determine whether the players are statutory employees under the NLRA (National Labor Relations Board, 2015). They held that asserting jurisdiction "would not promote labor stability due to the nature and structure of NCAA Division I Football Bowl Subdivision" (National Labor Relations Board, 2015, para. 3). Abruzzo argued that much has changed since then, including the growing calls to protect and compensate athletes for the millions of dollars they generate on behalf of their respective schools and conferences (Burns, 2021). While not law, such memos carry considerable weight, and in the instance of Abruzzo's, could have opened the door for college athletes to pursue collective bargaining (Burns, 2021).

Although General Counsel Jennifer Abruzzo's memo was rescinded by the Trump administration, it nonetheless served as the impetus for the National College Players' Association [NCPA] to file an unfair labor practice charge with the NLRB against the NCAA, the Pac-12 Conference, and California institutions USC and UCLA (Dellenger, 2022). The complaint sought to affirm employee status for Division I football and basketball players (Dellenger, 2022). This filing marked the second such action before the NLRB. In November 2021, Michael Hsu—a player advocate based in Minnesota—launched a college players' association and filed a similar charge against the NCAA (Dellenger, 2022). The NLRB issued a ruling in



that matter on December 15, 2022, representing the most significant development in athlete labor rights since the 2014 Northwestern unionization effort (Libit, 2022). Abruzzo stated that the regional findings were based on the conclusion that USC, the Pac-12, and the NCAA had collectively “maintained unlawful rules and unlawfully misclassified scholarship basketball and football players as mere ‘student-athletes’ rather than employees entitled to protections under our law” (Libit, 2022). Hearings in the case officially concluded on July 31, 2024. As of the time of withdrawal, the parties were awaiting a decision from Administrative Law Judge Eleanor Laws, expected sometime in 2025 (Christovich, 2024).

The other matter involved the Dartmouth men’s basketball team, which filed a petition in September 2023 with the NLRB to unionize. According to the petition, the Dartmouth players sought to join the Local 560 chapter of the Service Employees International Union (Hill, 2023). School lawyers argued that the players were merely students participating in a college activity, claiming that they did not receive a paycheck or a year-end W-2, and that their financial aid was unrelated to athletics (Hayward, 2023). The school also suggested that a successful petition would encourage other students (i.e., actors, club sport members, etc.) to seek similar protections. The union’s lawyer countered that college athletes are on a strict schedule where every minute is accounted for, indicating an employer/employee relationship. Ironically, had the case continued, the basketball team might have been the second group of students to unionize at Dartmouth. In 2022, the Student Workers Collective at Dartmouth signed a contract providing for a base pay of \$21 per hour (Hayward, 2023).

Further, the players contended that employment status was not contingent on profitability and disputed the school’s revenue calculations (McCann, 2023). The NLRB regional office in Boston held a hearing in October 2023, and on February 5, 2024, the regional director issued a historic decision ordering a union election for the men’s basketball team (McCann, 2024a). The players were found to be employees under the NLRA because they performed work in exchange for compensation (McCann, 2024a). The school then sought a review of the order and, in the interim, refused to bargain with the players. Dartmouth argued that the regional director erred in interpreting employment by inappropriately treating non-monetary benefits as compensation, counting need-based financial aid as athletics-related, and failing to recognize that all students—not just athletes—must follow institutional rules (McCann, 2024b). The school asserted that these findings reflected a conclusion without proper statutory grounding and an impermissible expansion of statutory authority (McCann, 2024b). Ultimately, however, the Dartmouth men’s basketball team rescinded its petition, halting the unionization effort and leaving broader questions about athlete employee status unresolved.

On the precipice of a potential labor rights milestone for college athletes, the petitioners in both matters withdrew their respective claims within 10 days of each



other. The NCPA stated that it intended to give the college sports industry adequate time to transition to the revenue-sharing model outlined in the *House* settlement, discussed below (Libit, 2025). The union representing the Dartmouth men's basketball team took a more strategic approach, reflecting an understanding of the procedural limitations associated with appealing an adverse agency decision to federal court (McCann, 2024d). Their concerns were twofold. First, there was apprehension that a change in leadership at the NLRB would result in a general counsel less committed to advancing athlete rights (McCann, 2024d). That concern proved well founded: President Trump dismissed General Counsel Abruzzo on January 28, 2025 (Betts, Agraz, & Zagger, 2025), and shortly thereafter, the newly appointed Acting General Counsel rescinded GC Memo 21-08—Abruzzo's 2021 directive asserting that certain college athletes should be classified as employees under the National Labor Relations Act (National Labor Relations Board, Office of the General Counsel, 2021). The rescission of this memo poses a substantial risk to future unionization efforts by college athletes (McCann, 2024d). Second, the union recognized that changes to the composition of the NLRB's board could result in less favorable outcomes for athletes (McCann, 2024d). President Trump also removed NLRB member Gwynne Wilcox, leaving the board without a quorum to adjudicate cases (Betts, Agraz, & Zagger, 2025). Although a Republican-controlled board does not guarantee an adverse ruling for athletes, it significantly increases the likelihood of one, thereby discouraging future employment status petitions. Compounding that risk is the uncertain legal path to appeal an unfavorable agency decision (McCann, 2024d).

Finally, the case that may have the most profound impact on college athletics and the rights of college athletes to profit from their NIL is the landmark settlement in *House v. NCAA*. The crux of the case is the allegation that the NCAA and the Power Five conferences violated antitrust laws by imposing restrictions on NIL-related activities and refusing to share broadcast revenue with college athletes (Wohlwend & Denniston, n.d.). In the spring of 2024, the NCAA and the Power Five conferences agreed to settle the matter for \$2.8 billion in damages. The settlement met some consternation from the presiding justice, only to have her approve it on a preliminary basis on October 7, 2024 (McCann, 2024c). The settlement was later finalized when U.S. District Judge Claudia Wilken granted final approval on June 6, 2025, thereby establishing a new precedent in the governance of intercollegiate athletics and solidifying a groundbreaking agreement that resolved three antitrust lawsuits and marked a transformative moment in college sports (Russo, Mandel, & Williams, 2025). There are two components to the settlement. The \$2.8 billion in damages will be paid by the NCAA and the conferences to approximately 14,500 Division I athletes who played between June 15, 2016, until November 3, 2023, when the class was established (Dosh, 2024). The second component authorizes, but does not require, schools and conferences to directly compensate college athletes (Jindal,



2024). Athletic departments are permitted to utilize up to 22% of their revenue to pay college athletes, which is expected to be \$22 million for the 2025-26 season (Jindal, 2024). The allocation consists of media rights, ticket sales, and sponsorships (Jindal, 2024). Current college athletes would be compensated through traditional scholarship avenues (e.g., tuition, room and board, nutritional resources), revenue sharing, and NIL payments, which—if paid by third-party entities or booster collectives—would not count toward the 22% revenue pool (Jindal, 2024). This settlement only settles three cases: *House v. NCAA*, *Hubbard v. NCAA*, and *Carter v. NCAA*.

While monumental, the settlement has both practical and legal consequences. The forward-facing elements of the settlement establish de facto antitrust exemptions, while the revenue-sharing framework itself may blatantly violate the Sherman Act, since college athletics currently operates in a non-union environment (N. Henderson, 2024). The lawsuits could have been collectively resolved in several ways (Edelman & Carrier, 2025). First, the universities could have paid the plaintiffs to resolve past violations and proceeded over the restraint's legality prospectively (Edelman & Carrier, 2025). Second, the NCAA could have allowed free-market principles to reign, doing away with its compensation restraints (Holden, Edelman, & McCann, 2024). Third, compensation restrictions could have moved from the national level to individual conferences, enabling those conferences to compete with one another for athletes by offering different compensation packages (*NCAA v. Alston*, 2021). Or, fourth, the NCAA could have created new rules through collective bargaining, avoiding antitrust scrutiny (Holden et al., 2024). To compensate for the absence of a collective bargaining relationship, the proposed settlement attempted to contractually shield itself from future antitrust challenges (Edelman & Carrier, 2025). Specifically, clauses in the settlement made it difficult for plaintiffs to bring antitrust lawsuits against the NCAA (Berman, 2024). For example, athletes now permitted to accept payment directly from their institutions are agreeing not to file future lawsuits based on the restraints challenged in the case (Berman, 2024). It also requires the plaintiff's lawyers to cooperate and work with the NCAA to dismiss future lawsuits and includes language that parties agree that the settlement is not deemed an admission (Berman, 2024). This approach is not likely to withstand antitrust scrutiny since "parties to a settlement cannot engineer their own exemption from antitrust law" (Edelman & Carrier, 2024, p. 1608). The settlement also has implementation problems, specifically deciding the allocation of revenue within each athletic department, along with the potential Title IX implications. Further, it does not eliminate the issue as there are other unresolved antitrust cases pending that are not a part of the settlement (N. Henderson, 2024). It does, however, establish a professional environment, and one that seems destined for collective bargaining, with the real possibility of a players' union and the establishment of safeguards for college athletes including meaningful agent oversight and certification.



## NCAA NIL Agent Clarifications

The NCAA Division I Board of Governors (Board) voted unanimously on October 26, 2022, to clarify how schools can be involved with the NIL of college athletes and issued a press release and accompanying guidelines (NCAA.org., 2022). Member schools were encouraged to provide educational training on financial literacy, taxes, social media practices, and entrepreneurship, and this extends to collectives, boosters, and prospects (NCAA.org., 2022). A revised proposal was issued on January 10, 2024, and ultimately codified into Bylaw, Article 22. Unlike the original guidelines, Bylaw, Article 22 now allows for a university to provide assistance and services to a college athlete pursuing NIL activities, provided the athlete does not receive compensation from the institution for use of the athlete's NIL, the athlete maintains independent authoring over the NIL agreement, and the athlete is not required to accept institutional assistance or services (NCAA, 2024). The newly adopted bylaw, however, makes no mention of the prohibition expressly provided for in the original guidelines regarding the negotiation of an NIL deal. That section specifically states that it is impermissible under the interim policy/NCAA rules for any athletics department staff member or individual or entity acting on behalf of the athletics department from representing enrolled college athletes for NIL deals, including securing and negotiating deals on behalf of an athlete. Reading the original guideline in conjunction with Bylaw, Article 22, it is reasonable to conclude that while a school can clearly help facilitate and identify specific NIL deals between college athletes and third parties, they are still not permitted to assist in the formal representation of an athlete. Schools executing contracts with third party agencies and consultants that offer athlete branding, marketing and NIL services is common at the Power Five level (Wittry, 2021). One of the most important services these firms can offer college athletes is the ability to formally represent them, which, based on the current guidelines and bylaws, is not permissible.

The University of South Carolina reached a two-year, \$2.2 million dollar deal with well-respected media company Everett Sports Marketing [ESM], creating an in-house agency called Park Ave. to service their college athletes for all things related to NIL. On its face, Park Ave. seems to violate the original guideline as it is clearly a third party and has represented college athletes for NIL deals, including securing and negotiating on their behalf. South Carolina's own press release, in announcing its partnership with ESM, specifically said it would provide negotiation assistance (Wittry, 2022).

Schools providing assistant services is warranted, whether that be directly or through third-party contractors, but if part of that assistance does not include actually representing the college athlete, history and the current environment have shown that they are ill equipped to deal with the marketplace and may fall prey to the



corruptive forces in college athletics. In 2017, the Department of Justice launched an investigation into the corruption in college basketball that culminated with the arrest of four assistant basketball coaches at the Division I level who were charged with accepting bribes in exchange for offering to steer players to preferred financial advisors, business managers, and agents (Hobson, 2017). In commenting on the results of the investigation, acting U.S. Attorney for the Southern District Joon H. Kim stated,

the picture of college basketball painted by the charges is not a pretty one—coaches at some of the nation’s top programs taking cash bribes, managers and advisors circling blue-chip prospects like coyotes, and employees of a global sportswear company funneling cash to the families of high school recruits.” (Hobson, 2017, para. 4)

The NCAA’s new bylaw is inadequate; its lack of clarity has become synonymous with its short-sighted corporate philosophy while also highlighting the absence of a meaningful regulatory process to oversee those representing college athletes in NIL deals (Baker, 2022). Professional athletes are afforded protection from unscrupulous agents through their respective players’ associations, unlike college athletes in the NIL era. There is no agent certification process, nor regulations limiting the amount an agent can charge. To mitigate the conflict of interest inherent in schools negotiating directly with athletes post-*House* settlement, institutions could be permitted to provide representation where athletes knowingly waive the conflict with full disclosure. Alternatively, independent mechanisms—such as a third-party agent pool or a representation trust funded by schools but administered neutrally—could ensure athletes receive qualified counsel without compromising institutional neutrality. This all highlights the need for major reform and is the subject of the next section.

## Possible Solutions

### Federal Intervention

Both the current NCAA president, Charlie Baker, and his predecessor, Mark Emmert, have called on Congress to alleviate the NIL chaos and provide protection from legal liability created by state NIL laws and athletes utilizing judicial intervention to secure compensation victories. Several of the proposed bills deal with the athlete/agent relationship and propose some effective solutions. The College Athletes Protection and Compensation Act of 2023 sponsored by Senators Cory Booker [NJ-D], Richard Blumenthal [CT-D], and Jerry Moran [KS-R] provides for the establishment of minimum standards, along with a certification and revocation process for agents (The College Athletes Protection and Compensation Act of 2023, 2023). The Protecting Athletes, Schools and Sport Act of 2023 sponsored by Senators Joe Manchin [WV-D] and Tommy Tuberville [AR-R] requires agents to register with the FTC and provide



full disclosure of all relevant details among the parties (The Protecting Athletes, Schools and Sport Act of 2023, 2023). A similar requirement has been included in an untitled NIL draft bill yet to be introduced by Senator Ted Cruz [TX-R].

Recently, the Student Compensation and Opportunity Through Rights and Endorsements [SCORE] Act was introduced in July 2025 and is distinguishable in that it is the first bill to move through committees in either chamber (Russo & Vannini, 2025). The proposed legislation prevents athletes from obtaining employment status and reflects many of the terms from the *House v. NCAA* settlement (Russo & Vannini, 2025). Critics contend that the bill grants excessive deference to the NCAA and the power conferences, which have been at the forefront of lobbying for federal legislation (Russo & Vannini, 2025). The bill specifically excludes family members from the definition of an agent, unless they receive payment for their services (U.S. House of Representatives, 2025). Further, it amends SPARTA, eliminating the loss of eligibility if a college athlete agrees orally or in writing to be represented by an agent (U.S. House of Representatives, 2025). It also precludes any institution, conference, or intercollegiate athletic association from restricting the ability of a college athlete to obtain an agent and limits agent compensation under an NIL agreement to not more than 5% (U.S. House of Representatives, 2025).

The bill that provides the most depth in terms of agent oversight is the Fairness, Accountability, and Integrity in Representation of College Sports Act [FAIR Act], which is being co-sponsored by Representative Gus Bilirakis [FL-12]. In this bill, the United States Intercollegiate Athletics Committee [USIAC], an independent non-profit corporation, is established to fulfill specific duties, which include: (a) registering and providing affidavits of compliance, certification, and a copy of the contract with the athlete; and (b) requiring agents to disclose whether they have declared bankruptcy, been sanctioned or convicted of fraud, or caused an athlete or institution to be declared ineligible (Fair College Sports Act, n.d.). To facilitate athlete access to information about unscrupulous agents, the USIAC must maintain a public database of all agents who have been revoked, disbarred, or otherwise prohibited from registering due to misconduct (Fair College Sports Act, n.d.). Lastly, no agent may directly or indirectly provide compensation as an inducement to transfer, enroll, or remain at a particular school (Fair College Sports Act, n.d.).

The FAIR Act takes a more stringent approach to agent regulation as it creates a dedicated, independent enforcement commission, rather than leaving regulation to the NCAA. It also establishes clear accountability and transparency requirements. Lastly, it provides stronger oversight tools than SCORE, which focuses more on creating a baseline NIL framework.

Unfortunately, there has been a bevy of congressional hearings on NIL and the current state of college athletics, and none made any significant progress toward a solution. Republicans typically support the NCAA's antitrust exemption efforts and



Democrats support the athletes' right to collectively bargain (Murphy, 2025). With Republicans taking control on Capitol Hill, the NCAA may be closer to securing its long-sought federal intervention to impose guardrails on the evolving NIL landscape; however, given that Republicans lack the votes to overcome a Senate filibuster, the partisan divide that has long stalled progress remains a significant obstacle (Murphy, 2025). Senator Richard Blumenthal [CT-D], along with Senators Ted Cruz [TX-R], Corey Cooker [NJ-D], and Jerry Moran [KS-R], are close to finalizing a revised discussion draft of a new bill (Murphy, 2025). The college sports community worries that a small group of schools that generate most of the revenue will ultimately break away from the balance of the Division I schools in an unregulated market (Murphy, 2025). This looming threat has prompted senators from both parties to finally agree that some action, even though not perfect, is better than doing nothing (Murphy, 2025). While a bipartisan federal bill is now in the forefront of possible solutions, it remains unlikely that one will navigate the Washington political labyrinth and be signed into law.

## **Collective Bargaining – The Labor Law Solution**

Collective bargaining has emerged as the vehicle for college athletes to advocate for improved conditions and establish themselves as a stakeholder to necessitate a real role in new policy making (Vansant, 2024). The National College Players Association and the College Football Players Association [CFBPA] have been working with labor unions to assist organizing teams (Vansant, 2024). Although colleges are now paying athletes directly under the House settlement, these policies still fail to address players' ongoing health and safety concerns (Vansant, 2024). The CFBPA created the goal of organizing chapters throughout the country at different schools to advocate for collective bargaining (Vansant, 2024). Further, some congressional representatives have introduced legislation to allow for collective bargaining (College Athlete Right to Organize Act, 2021). Even athletics directors have supported bargaining for college athletes (Swarbrick, 2023). On the verge of providing the framework for meaningful negotiations, these efforts were stymied when the two unfair labor practice cases referenced above involving USC and DC were withdrawn.

To collectively bargain, the first step is the recognition of college athletes' employee status, which could result from the NCAA voluntarily recognizing the athletes as employees, a court decision, or from an NLRB decision (Jessop et al., 2023). Nothing indicates the NCAA will voluntarily agree to employee status (Jessop et al., 2023). As employees, the individual schools could set parameters of athlete compensation like they do with other employees, although they would have to adhere to state minimum wage laws (Jessop et al., 2023). Further, they would have to comply with Title IX and non-sport-specific laws barring employment discrimination (Jessop et



al., 2023). Based on past precedent involving the disparity between coaching salaries for men's and women's sports, athlete pay does not have to be equal to comply with the law (*Stanley v. University of Southern California*, 1999). These added costs and legal considerations have likely driven the NCAA's long-standing opposition to recognizing college athletes as employees (Jessop et al., 2023). Although these challenges are significant, they are not impossible to overcome (Jessop et al., 2023).

Once employee status is conferred, it opens the door to collective bargaining. The mandatory requirement for employers is to collectively bargain wages, hours, and conditions of employment (National Labor Relations Act, 1935; *NLRB v. American National Insurance Co.*, 1952). In reference to wages, the athletes in revenue-generating sports would likely negotiate for a percentage of revenue, like the language put forth in the *House* settlement. The NCAA, conferences, and individual schools would likely counter and want ceilings to compensation and a hard salary cap like that in professional sports (Jessop et al., 2023). A collectively bargained cap on compensation will avoid antitrust scrutiny under the nonstatutory labor exemption (*Brown v. Pro Football*, 1996; *Cornell Construction Co. Inc. v. Plumbers & Steamfitters Local No. 100*, 1975; Jessop, 2023). Collective bargaining allows the NCAA to agree to compensation amounts, while ending antitrust challenges to their restrictions (Jessop et al., 2023). As for hours and conditions of employment, it also allows the athletes to negotiate practice and game conditions, transfer rules, and extended off-season conditions (Jessop et al., 2023).

A byproduct of employee status is the unionization of the workforce, and the protections a players' association would confer on the athletes, like that in professional sports. The players' associations of the four major sports leagues represent all athletes with respect to employment conditions pursuant to the NLRA (National Labor Relations Act, 2012, § 159(a)). Each players' association has established that it is in the best interests of the athlete to have a representation system that utilizes third-party agents (Kestenbaum, 2014). The system requires athletes to compensate their agents, but also grants them the ability to hire and fire them as they see fit (Karcher, 2007). The respective associations removed themselves from the bargaining process by granting the parties such rights (Kestenbaum, 2014). Players' associations are private entities and not subject to due process requirements, so to combat agent misconduct the associations enact agent regulations that they enforce (Kestenbaum, 2014). These regulations all allow arbitration as the exclusive method for resolving alleged agent misconduct disputes. The four major professional sports leagues all contain dispute resolution sections which can be adopted for any collegiate union or amendment to the UAAA and SPARTA to address agent misconduct. All contain an agent certification process, an investigatory process, and most importantly an arbitration section for disputes (Kestenbaum, 2014). Arbitration provides a cost efficient



and quick resolution to such disputes (Kestenbaum, 2014). Using professional sports as the model, collective bargaining is a preferred alternative to effectively regulate agents, since it creates the infrastructure to finalize the professionalization of collegiate sports.

## **Updating Existing States' Sports Agent Codes to Include NIL Agent Provision**

A practical alternative that utilizes the existing framework of laws is realistic to implement, and one that is a competent stop gap. Such an alternative includes updating the states' UAAA, since it already has been widely adopted for agents (N. Henderson, 2023b). Although states vary significantly in their procedures, they all share the common goal of protecting athletes and uphold that any contract formed by an agent in violation of UAAA requirements is considered void and unenforceable (Locke Lord Bissell & Liddell LLP, 2010, p.3). Although enforcement mechanisms and procedures differ by state, both the UAAA and RUAAA provide for civil and criminal penalties to support enforcement, and, unlike SPARTA, states have utilized those provision (Uniform Law Commission, 2019, p. 2). Updating the UAAA or RUAAA to include regulations specific to NIL agents would align with the model act's core purpose: protecting college athletes from unethical practices by sports agents (T.N. Henderson, 2023). This would be a meaningful step toward shielding athletes from exploitation in the evolving NIL landscape (T.N. Henderson, 2023). Including NIL agents under the UAAA would help states establish a more uniform set of rules governing NIL agents and the service providers they collaborate with (T.N. Henderson, 2023). Simply creating this mechanism is not enough; while enforcement action has taken place at the state level, more needs to be done to engage the stakeholders to utilize the new aspect of the existing regulatory system.

Fostering a more proactive culture around filing complaints against unethical behavior requires a combination of education, institutional support, policy incentives, and visibility. One key component is education, not only for athletes but also for their broader support networks. This could include sport-specific guides on how to identify unethical agent behavior, integrating agent conduct training into existing programming, and partnering with athlete advocacy groups to disseminate information through social media. However, Jessop's (2019) review of NCAA Division I FBS member institutions found that only 4.4% of policies required athlete education and just 1.1% required coach education, highlighting a major gap that must be addressed. Institutions should be encouraged to act as proactive gatekeepers by maintaining and promoting complaint portals or direct links to the FTC, while also making it easier to report misconduct through anonymous, mobile-friendly reporting tools and encouraging state attorneys general to create NIL agent hotlines or liaison roles.



Another strategy involves policy incentives to encourage compliance. Jessop (2019) identified that more than 15% of existing policies included incentives for agents who upheld institutional guidelines, such as athletics department publicity, participation in department-hosted interviews, inclusion in non-agent workshops, or access to Agency Day events. Expanding these types of incentives could create positive reinforcement for agents while simultaneously enhancing accountability. Finally, visibility remains critical; publicizing the outcomes of agent misconduct cases may serve as a deterrent by demonstrating that the system is effective.

Congressional intervention, while off life support, might still be wishful thinking given the array of political issues since the inauguration. The NCAA could also put aside its fear of potential litigation and create an independent registration/certification process, akin to professional unions, along with accompanying guidelines, which would at least allow student-athletes and their guardians the ability to determine if a potential NIL agent is certified, vetted, and has some minimum level of competence. NCAA Bylaw 22.3.2 (Professional Service Provider Registry) states that the NCAA national office “shall make available a centralized registry of professional service providers who provide or are seeking to provide services to student athletes” (NCAA, 2024). The proposal that was the genesis for this new provision, however, makes participation in the registry voluntary (NCAA.org, 2024). Given the proposal’s voluntary nature, bad actors would likely opt not to register. In some cases, the most practical solutions involve building on existing regulatory frameworks combined with renewed outreach and education—tools that can be implemented and controlled at the state or institutional level—rather than relying on federal legislation, which remains unlikely amid ongoing partisan gridlock in Washington, D.C.

## Conclusion

The current ambiguity and uncertainty regarding the inherent problems that arise due to the conflict between amateurism and the extreme revenue-producing ability of collegiate sports date back to Theodore Roosevelt, as cited at the beginning of this article. As Jonathan Swift said, “What is old is new again,” but today’s questions involve far more evolved and complicated legal and financial exigencies. The complicated nature of today’s world has created a “wild west” scenario for both athletes and colleges. This lack of clarity threatens both parties and demands some form of consistency. This is readily apparent when trying to rectify something as basic as the rules regarding athlete representation. The NCAA is conflicted. On the one hand, it is paralyzed to act out of fear of antitrust reprisals stemming from the *Alston* decision and subsequent cases. At the same time, it has put forward watered-down voluntary guidelines for agent registration. Complicating matters further, the NCAA



has also adopted a new evidentiary standard for evaluating alleged NIL violations, one that allows investigators to presume a violation occurred if circumstantial evidence suggests impermissible conduct (Foley & Lardner LLP, 2023). This seems wildly inconsistent and is the best evidence that the answers are not likely to come from the NCAA. Further, while a federal bill to solve all the ills of the NIL era is more likely given the one-party rule in Washington D.C., it is still a long way away and the midterm election in 2026 can once again turn that possibility on its head. The best solution for the parties is to collectively bargain, treat the athletes as partners, and finally give them a much-deserved seat at the table. While unionization was stalled, given the withdrawal of the USC and DC cases, it still provides athletes the best protections against bad actors in the agent space. The central question then becomes what regulations should exist to adequately address curbing unscrupulous activity. Alternative dispute resolution methods, such as arbitration, are cost effective and the preferred method of resolving sport-related disputes (Kestenbaum, 2014). All four professional sport leagues have similar provisions guiding the agent/athlete grievance process and those can be used as a model in the collegiate space (Kestenbaum, 2014). The problem with college sports agents in the NIL era is there are no enforceable guidelines monitoring bad actors. Neither the UAAA nor SPAR-TA has a dispute resolution method for curtailing an agent from exploiting an athlete (Kestenbaum, 2014). Such a dispute resolution provision should be added to create a uniform set of standards all agents must follow (Kestenbaum, 2014). Arbitrators will be able to prospectively check the section and educate themselves on agent conduct to make an informed decision (Kestenbaum, 2014). All arbitrator decisions will be final and binding. Consequently, both the states and Congress will be able to monitor agent activity and deter future bad acts (Kestenbaum, 2014). Such a system provides a mechanism for athletes to air their grievances, create agent accountability, and act as a deterrent for future bad acts. Collective bargaining would also have ancillary benefits that include establishing a clear compensation system, improving athlete rights and working conditions, ensuring due process and fair treatment, clarifying employment status, reducing litigation, and strengthening academic protections. A win-win for all stakeholders.

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