

## **The Impact of Name, Image, Likeness On Collegiate Athletics**

The landscape of collegiate sports in the United States has witnessed a revolutionary change with the introduction of the Name, Image, and Likeness (NIL) legislation. For decades, the National Collegiate Athletic Association (NCAA) operated under the principle of amateurism, with collegiate athletes unable to profit from any direct compensation or from monetizing their own personal brands. With the advent of the digital age, social media, and increased commercialization, the pressures and calls for change in collegiate athletics grew too significant to ignore. This essay explores the historical context, implications, challenges, and broader effects of NIL in collegiate athletics and whether it has promoted beneficial change in NCAA governed sports.

The NCAA, originally founded in 1906, positioned itself as the guardian of amateurism in college sports. The association required that:

Student athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.

Division I Manual 2.9 (2018-19)

This, however, faced intense scrutiny as university sports, especially marquee events like March Madness and the College Football Playoff, began generating billions of dollars, leading to an obvious juxtaposition: wealthy institutions and what seemed essentially an unpaid labor force.

Recognizing an unfair systematic income stream for universities, student athletes did push for change such as an attempt in 2014 when students at Northwestern University sought to unionize and be recognized as employees. The students, football players, leveraged their argument with the substantial time and effort they dedicated to their sport, also stating that they did not receive the same treatment as the rest of the general student body. To this, the players argued that Northwestern exerted control over them to the extent that they had to consult with the school when seeking external employment opportunities. The athletes stated that they were essentially working under a contract with Northwestern by participating in athletics in the form of payment in scholarship funds.

Still, in 2015, the National Labor Relations Board (NLRB) ruled that Northwestern football players could not be considered employees and, therefore, could not unionize.

This situation, along with similar matters, began to garner public attention as the narrative of institutions taking advantage of their athletes became well-known and prominent in sports media. Additionally, increased transparency and the ubiquity of social media platforms led to a heightened public awareness in our digital age of informative connectivity. With access to social media, athletes themselves shared their own personal stories, emphasizing the discrepancies between institutional profits and the restrictions that they faced.

In part, this publicized struggle led to the introduction of legislation from states like California that introduced the *Fair Pay to Play Act* allowing student-athletes in the state to profit from their Name, Image, and Likeness. This type of legislation was the first of its kind and posed direct challenges to the status quo as enforced by the NCAA. Publicized lawsuits like *O'Bannon v. NCAA* also formed a discussion surrounding the rights and compensations for collegiate athletes as Ed O'Bannon, a former basketball player at UCLA, sued the NCAA for profiting from his image in video games without offering just compensation. Faced with legislative, legal,

and public pressures, the NCAA had to reconsider its longstanding rules or risk NIL policy inconsistencies stretching across states.

The NCAA approved their NIL policy on June 30, 2021 fundamentally changing what it means to be a student athlete. No longer are student athletes confined to university deals. Athletes can ink personal endorsement contracts, allowing them to monetize their skills and fame on their own terms with their own brand, image, and business interests in mind. An example of such was provided by Joe Ferrari, a Santa Clara Law alum who is associate general counsel at Athletes First. Mr. Ferrari represented then Texas football running back Bijan Robinson in the formation of Bijan Mustardson, a mustard brand that was partly inspired by Robinson's tasteful interests in mustard and pursued as a formidable business enterprise. Today, like Robinson, athletes are permitted to embrace their entrepreneurial spirit and achieve brand developing ambitions such as hosting personal training sessions, selling merchandise, and developing other unique forms of revenue. Social media monetization also provides well known athletes with the ability to get paid using platforms like Instagram, Twitter, and TikTok where they may have substantial followings and participate in paid promotions, shoutouts, or affiliate marketing.

While NIL may seem like a complete progressive win for previously financially suppressed athletes, it does not come without its complexities. To start, NIL can affect and potentially skew college recruitment as famed institutions with influential alumni are already sought after for talented athletes, yet schools that promote better NIL opportunities now pose another consideration for athletes to ponder when selecting a university commitment. Perhaps more importantly, with significant financial opportunities now available, it is reasonable to consider that some athletes may sideline their academic, and to an extent athletic potential, in favor of spending time to participate in lucrative deals.

NIL will have broad implications on collegiate athletics in the future. In the past, collegiate athletes lacked significant bargaining power. Now, with an actual tangible asset in their personal brand, they wield an increased influence, not just in financial terms, but with

financial empowerment they can further their perspective as advocates for social issues as they see fit. The sports industry will also adjust to NIL as agencies specializing in athlete branding will be connecting with student athletes and pitching them on new endorsement opportunities. This could open up young students to potentially negative business and social liability from those who are looking to capitalize without the athlete's genuine interest in mind.

In light of the complexities arising from NIL rights for collegiate athletes, there is a pressing need for holistic solutions that cater to all stakeholders involved. Addressing recruitment imbalances is paramount. The NCAA should make proper adjustments in their policy to enforce regulations on how NIL is presented during recruitment. Universities can highlight their media markets and locations, but explicit promises of NIL deals should be barred. Or for clarity and fairness, schools should also be required to disclose NIL opportunities transparently, ensuring recruits are fully informed.

Another issue is ensuring athletes maintain their academic and athletic priorities. To assist with this, universities should introduce mandatory financial literacy and management courses or workshops for their athletes. This would empower players to make well-informed decisions regarding their NIL rights. It would also be beneficial for universities to set limits on the time athletes can dedicate to NIL activities during academic terms, thereby ensuring education and athletic performance remain of utmost importance.

The newfound influence of these athletes also means they can be potent advocates for social issues. To maximize this potential, training sessions on effective advocacy could be offered, ensuring that when they use their platform, they do so informed and prepared.

With regard for athlete branding and potential endorsements, there is a need for clear ethical guidelines. Student-athletes should be encouraged to only engage with reputable brands that align with their personal values. Universities could help protect their players by vetting agencies, ensuring that those that approach their students truly have the athletes' best interests at heart.

NIL's introduction in the NCAA is undeniably transformative. It acknowledges the evolving realities of the digital age, the commercial potential of sports, and most importantly, the value that athletes bring to the table. While challenges lie ahead, with balanced regulation, the spirit of college sports can coexist with the rights of athletes, crafting a promising new chapter in collegiate athletics.

## Citations

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