

4-2024

An Evolving Landscape: Name, Image, and Likeness Rights in High

Adam Epstein -- Professor, Dept. of Finance and Law
Central Michigan University

Nathaniel Grow -- Associate Professor of Business Law & Ethics
Kelley School of Business, Indiana University

Kathryn Kisska-Schulze -- Assoc. Professor of Business Law
Wilbur O. and Ann Powers College of Business, Clemson University.

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Recommended Citation

Adam Epstein -- Professor, Dept. of Finance and Law; Nathaniel Grow -- Associate Professor of Business Law & Ethics; and Kathryn Kisska-Schulze -- Assoc. Professor of Business Law, *An Evolving Landscape: Name, Image, and Likeness Rights in High*, 77 *Vanderbilt Law Review* 845 (2024)
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An Evolving Landscape: Name, Image, and Likeness Rights in High School Athletics

*Adam Epstein**
*Nathaniel Grow***
*Kathryn Kisska-Schulze****

Amateur sports have entered a changing landscape. The onset of Name, Image, and Likeness (“NIL”) opportunities at the college level has prompted over half of state high school athletic associations to likewise permit high school student-athletes to pursue similar financial opportunities. The purpose of this Essay is not to argue for or against the emergence of NIL opportunities at the high school level but instead to explore this newly evolving landscape, identify accompanying financial dangers, and propose a statutory framework that builds upon California’s Coogan’s Law—a measure providing financial safeguards to children working in the entertainment industry—to better protect minor student-athletes entering into endorsement contracts.

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* Professor, Department of Finance and Law, Central Michigan University.

** Associate Professor of Business Law & Ethics, Kelley School of Business, Indiana University (Bloomington).

*** Associate Professor of Business Law, Wilbur O. and Ann Powers College of Business, Clemson University.

The authors would like to thank Dan Cahoy, Marc Edelman, Haskell Murray, Adriana Sanford, and other attendees of the 2023 conferences of the Academy of Legal Studies in Business and Southeastern Academy of Legal Studies in Business for helpful feedback on an earlier draft of this Essay. We thank Devansh Parekh for helpful research assistance.

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INTRODUCTION

Bronny James, son of basketball legend LeBron James and a highly rated basketball prospect in his own right, entered his senior year of high school with a massive social media presence totaling over seven million Instagram followers.¹ Given the nature of this current social media age, the younger James’s following translated into enormous earnings potential, with one analysis estimating that Bronny could generate over \$7 million per year by licensing his Name, Image, and Likeness (“NIL”) for product endorsements.² Indeed, prior to his high school graduation in 2023, the younger James had reportedly already signed an endorsement contract with Nike worth \$10 million over five years.³

Opportunities like this would have been unthinkable for a high school—or college—student-athlete just a few short years ago. However, following the historic decision of the National Collegiate Athletic Association (“NCAA”) to allow collegiate student-athletes to monetize their NIL rights in 2021, state high school athletic associations have begun to rethink their own approaches to the issue. As of 2023, over half of all state high school athletic associations have amended their bylaws, handbooks, or constitutions to permit high

1. Samir Mehdi, *Valued at over \$7 Million, Bronny James Charges \$46,000 per Instagram Post for 7 Million Followers*, SPORTS RUSH (Mar. 23, 2023, 8:30 PM), <https://thesportsrush.com/nba-news-valued-at-over-7-million-bronny-james-charges-46000-per-instagram-post-for-7-million-followers/> [https://perma.cc/AQ8S-LZ5R].

2. Joseph Zucker, *Bronny James NIL Value at \$7.2M; LeBron’s Son No. 1 from McDonald’s All-American Game*, BLEACHER REP. (Mar. 29, 2023), <https://bleacherreport.com/articles/10070477-bronny-james-nil-value-at-72m-lebrons-son-no-1-from-mcdonalds-all-american-game> [https://perma.cc/H5VF-M3D9].

3. Tonoy Sengupta, *Is \$10 Million Bronny James’ Nike Deal Greater than LaMelo Ball’s Puma Deal?*, SPORTS RUSH (Oct. 20, 2022, 9:30 PM), <https://thesportsrush.com/nba-news-is-10-million-bronny-james-nike-deal-greater-than-lamello-balls-puma-deal/> [https://perma.cc/VM9G-PBCX].

school athletes to sign endorsement deals.⁴ In the remaining states, high school athletes continue to be prohibited from earning income because of their athletic ability, creating an uneven set of regulations across the country.⁵

The newfound promise of NIL deals for high school athletes—as exemplified by Bronny James—does not come without potential peril, however. One need look no further than the case of former Olympic gymnast Dominique Moceanu to see how easily minor athletes’ newfound riches could be misspent through no fault of the child themselves. After winning a gold medal for Team USA as a teenager at the 1996 Summer Olympics, Moceanu leveraged her fame to generate approximately \$1 million in income from various endorsement contracts.⁶ By the time she turned seventeen in 1998, however, Moceanu discovered that her parents had squandered these earnings, leaving her with practically nothing.⁷

Unfortunately, states that have elected to permit high school athletes to pursue NIL opportunities have generally failed to implement safeguards to protect against Moceanu’s fate. Instead, these states have typically adopted NIL regulations for high school students consistent with the rules that have been put in place at the college level.⁸ Such an approach overlooks important differences between these two populations, including—most notably—the age at which student-athletes compete at each level.⁹

As most high school athletes fall below the legal age of majority, their endorsement contracts raise a host of legal and ethical considerations that similar contracts entered into by college athletes

4. See John E. Johnson, *Name, Image and Likeness for Interscholastic Athletes – What Does It Look Like?*, NFHS (Nov. 8, 2023), <https://www.nfhs.org/articles/name-image-and-likeness-for-interscholastic-athletes-what-does-it-look-like/> [https://perma.cc/38AP-7EBK] (listing thirty states, including the District of Columbia, that allowed interscholastic athletes to receive NIL payments as of October 4, 2023); Braly Keller, *High School NIL: State-by-State Regulations for Name, Image and Likeness Rights*, OPENDORSE (May 25, 2023), <https://biz.opendorse.com/blog/nil-high-school/> [https://perma.cc/GPE2-K4CP] (tracking state-by-state regulations); *Tracker: High School NIL*, BUS. OF COLL. SPORTS, <https://businessofcollegesports.com/high-school-nil/> (last updated Oct. 4, 2023) [https://perma.cc/GP39-NZUN]; *NIL High School Rules*, ON3NIL, <https://www.on3.com/nil/laws/high-school/> (last visited Apr. 5, 2024) [https://perma.cc/5Z95-HZ2C].

5. See *infra* Part I.

6. See Jere Longman, *GYMNASTICS: Moceanu Sues, Saying Parents Squandered Her Earnings*, N.Y. TIMES (Oct. 22, 1998), <https://www.nytimes.com/1998/10/22/sports/gymnastics-moceanu-sues-saying-parents-squandered-her-earnings.html> [https://perma.cc/RH29-KBHQ] (reporting that Moceanu had earned “approximately \$1 million . . . from a professional career that began at age 10”).

7. See *id.* (noting that Moceanu had filed a lawsuit seeking independence from her parents in order to discover what had happened to her money).

8. See *infra* Part I.

9. See *infra* Part II.

(who are almost always at or above the age of eighteen) do not.¹⁰ Moreover, the lack of protection for high school athletes entering into NIL contracts stands in stark contrast to other regulations that some states have adopted to address minors working in the television and film industries (like California's Coogan's Law), where statutory protections help prevent the financial exploitation of child actors by their parents or guardians.¹¹

Surprisingly, while NIL regulations at the college level have generated significant debate in legal scholarship,¹² relatively little attention has been paid to the parameters governing NIL opportunities at the high school level.¹³ This Essay attempts to help fill such literary void by providing a comprehensive analysis of the unique legal implications surrounding NIL regulation of high school student-athletes. In particular, this Essay explores the financial dangers that minor athletes may be susceptible to when entering into endorsement contracts and proposes a statutory framework through which state legislatures can provide some measure of financial protection for high school athletes engaging in NIL opportunities.

To meet these objectives, this Essay proceeds as follows: Part I evaluates the evolving landscape of NIL rights for both high school and college athletes. Part II examines relevant differences between college and high school athletic competition, focusing specifically on the

10. See *infra* Section II.A.

11. See *infra* Part III; see also, e.g., CAL. FAM. CODE § 6753 (West 2003) (referred to as Coogan's Law); N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 1998). We use the expression "Coogan's Law," but it must be noted that inconsistent variations of the expression are found in the literature to include the "Coogan Law," the "Coogan Bill," and the "Coogan Act." See, e.g., Kristin A. Hoffman, *Flipping and Spinning into Labor Regulations: Analyzing the Need and Mechanisms for Protecting Elite Child Gymnasts and Figure Skaters*, 25 MARQ. SPORTS L. REV. 565, 576–77 (2015) (referring to the statute as the "Coogan Act").

12. See, e.g., Jeffrey F. Brown, James Bo Pearl, Jeremy Salinger & Annie Alvarado, *A Proposal for Group Licensing of College Athlete NILs*, 12 HARV. J. SPORTS & ENT. L. 1 (2021); John T. Holden, Marc Edelman & Michael A. McCann, *A Short Treatise on College-Athlete Name, Image, and Likeness Rights: How America Regulates College Sports' New Economic Frontier*, 57 GA. L. REV. 1 (2022); Jayma Meyer & Andrew Zimbalist, *A Win Win: College Athletes Get Paid for Their Names, Images, and Likenesses and Colleges Maintain the Primacy of Academics*, 11 HARV. J. SPORTS & ENT. L. 247 (2020); Taylor P. Thompson, Note, *Maximizing NIL Rights for College Athletes*, 107 IOWA L. REV. 1347 (2022); Frank D. LoMonte & Rachel Jones, *Blowing the Whistle on NIL Secrecy: College Athlete Endorsement Agreements and State Freedom-of-Information Laws*, 95 TEMP. L. REV. 257 (2023); Anita M. Moorman & Adam R. Cocco, *College Athlete NIL Activities and Institutional Agreements at a Crossroads: An Analysis of the Regulatory Landscape and "Conflict Language" in State NIL Legislation*, 33 J. LEGAL ASPECTS SPORT 59 (2023); Michael H. LeRoy, *Do College Athletes Get NIL? Unreasonable Restraints on Player Access to Sports Branding Markets*, 2023 U. ILL. L. REV. 53; Kyle Aronson, *The Current State of Student-Athlete NIL Rights: How Congress Should Respond to the Rapidly Changing Landscape of Inter-collegiate Sports*, 43 J. NAT'L ASS'N ADMIN. L. JUDICIARY 249 (2022).

13. But see Francesca Casalino, Note, *Call to the Bullpen: Saving High School Student Athlete Name, Image, and Likeness Rights*, 29 JEFFREY S. MOORAD SPORTS L.J. 263, 273–74 (2022).

athletes that compete in each. Part III analyzes the legal protections afforded talented minors working in the entertainment industry, such as those established under California's Coogan's Law. Drawing upon the parallels between minor entertainers and athletes, Part IV then offers recommendations and other considerations for state legislatures to contemplate to better protect the rights of minor athletes entering into NIL contracts. A brief conclusion follows.

I. A BRIEF HISTORY OF NIL RIGHTS AT THE COLLEGIATE AND HIGH SCHOOL LEVELS

The origins of NIL compensation can be traced to the right of publicity, which prevents the use of an individual's name, likeness, or other aspect of their persona without authorization.¹⁴ While right of publicity laws have existed for decades and have been codified in a number of states,¹⁵ only recently have student-athletes been able to monetize these rights. Consequently, the great majority of the academic discourse surrounding right of publicity, NIL compensation, and pay-for-play has centered around college athletics.¹⁶ Recent interest,

14. See *Haelan Laby's, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953) (differentiating a professional athlete's right to privacy versus commercial rights); *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268, 1284 (9th Cir. 2013) (holding that a video game developer has no First Amendment defense against right of publicity claims of a former college student-athlete); *Hart v. Elec. Arts, Inc.*, 717 F.3d 141, 170 (3d Cir. 2013) (holding that the video games at issue "do not sufficiently transform [the former collegiate football player's] identity to escape the right of publicity claim"); *O'Bannon v. NCAA*, 802 F.3d 1049, 1067 (9th Cir. 2015) (declining to answer the "thornier questions of whether participants in live TV broadcasts of college sporting events have enforceable rights of publicity"); see also Kathryn Kisska-Schulze & Adam Epstein, *The Claim Game: Analyzing the Tax Implications of Student-Athlete Insurance Policy Payouts*, 25 JEFFREY S. MOORAD SPORTS L.J. 231, 259 (2018) (recognizing that historic legal efforts to compensate student-athletes for their NIL stem from right of publicity arguments); Lauren Skarupsky, *Fight Until the Final Whistle: A Push for Publicity Rights for Student Athletes in Louisiana*, 49 S.U. L. REV. 257, 271–72 (2022) (defining the right of publicity).

15. Hayley Duquette, *Digital Fame: Amending the Right of Publicity to Combat Advances in Face-Swapping Technology*, 20 J. HIGH TECH. L. 82, 92 & nn.40–41 (2020).

16. See Casey E. Faucon, *Assessing Amateurism in College Sports*, 79 WASH. & LEE L. REV. 3 (2022); Kathryn Kisska-Schulze & Adam Epstein, *Changing the Face of College Sports One Tax Return at a Time*, 73 OKLA. L. REV. 457 (2021); Kathryn Kisska-Schulze & John T. Holden, *Betting on Education*, 81 OHIO ST. L.J. 465 (2020); Andrea Cristiani Closa, *Corruption and College Sports: A Love Story*, 42 HASTINGS COMM'NS & ENT. L.J. 17 (2020); LeRoy, *supra* note 12; Holden, et al., *supra* note 12; Christopher J. Gerace, *Reestablishing Education as the Cornerstone in the NCAA's Name, Image, and Likeness Debate*, 10 MISS. SPORTS L. REV. 83 (2021); Kathryn Kisska-Schulze, *This Is Our House! – The Tax Man Comes to College Sports*, 29 MARQ. SPORTS L. REV. 347 (2019); Kathryn Kisska-Schulze, *Analyzing the Applicability of IRC § 162 on the Pay-For-Play Model*, 16 VA. SPORTS & ENT. L.J. 190 (2017); Kathryn Kisska-Schulze & Adam Epstein, *Northwestern, O'Bannon and the Future: Cultivating a New Era for Taxing Qualified Scholarships*, 49 AKRON L. REV. 771 (2016); Tanyon Boston, *Plot Diagram: Intellectual Property v. NCAA Amateurism, et al.* (pt. 1), 15 VA. SPORTS & ENT. L.J. 39 (2015); Kathryn Kisska-Schulze & Adam Epstein, *"Show Me the Money!" – Analyzing the Potential State Tax Implications of Paying Student-Athletes*, 14 VA. SPORTS & ENT. L.J. 13 (2014); Wayne M. Cox, *One Shining Moment to a Dark Unknown Future:*

however, has been directed at the interscholastic level,¹⁷ with high school athletes in over half of all states now having some ability to capitalize on their NIL.¹⁸ This emergent trend is perhaps unsurprising, given that the structure and operations of the NCAA often trickle down to the high school level.¹⁹ Still, as will be discussed in Part II below, NIL opportunities for high school student-athletes raise unique and important issues not generally applicable to the college level. Before exploring such variances, however, it is first beneficial to appreciate (a) the history of NIL rights at the collegiate level, and (b) the evolving NIL landscape emerging at the high school level.

A. NIL Rights at the Collegiate Level

The transition from amateurism toward professionalism in college sports has generated considerable debate in recent decades.²⁰ Critical discussions surrounding pay-for-play began surfacing in 1984, when the U.S. Supreme Court held in *NCAA v. Board of Regents of the University of Oklahoma* that the NCAA's then-monopolized television plan violated antitrust law.²¹ Although that case was not centered on student-athlete compensation, the Court noted that “to preserve the character and quality of the [NCAA's] ‘product,’ athletes must not be

How the Evolution of the Right of Publicity Hammers Home the Final Nail in the NCAA's Argument on Amateurism in Collegiate Athletics, 80 ALB. L. REV. 195 (2017); Thomas Wright, *Reformation of the Right of Publicity*, 9 BELMONT L. REV. 37, 45–47 (2021).

17. See Jon Solomon, *Ready or Not, High School NIL Is Here*, GLOB. SPORT MATTERS (Dec. 7, 2021), <https://globalsportmatters.com/youth/2021/12/07/high-school-sports-nil-mikey-williams/> [<https://perma.cc/CR3L-JUTP>]; *High School Athletes Are Getting Major Endorsement Deals Following State Law Changes*, CBS NEWS (Nov. 30, 2022, 5:16 PM), <https://www.cbsnews.com/news/high-school-athletes-nil-deals-name-image-likeness-six-figures/> [<https://perma.cc/8NUN-M7PY>]; Jeff Eisenberg, *The NIL Era of High School Sports Has Arrived*, YAHOO!SPORTS (Sept. 6, 2022, 11:35 AM), <https://sports.yahoo.com/the-nil-era-of-high-school-sports-has-arrived-153544726.html> [<https://perma.cc/QAA7-Z4Y3>]; Kristi Dosh, *NIL Momentum Increasing for High School Athletes*, FORBES (Dec. 31, 2021, 11:30 AM), <https://www.forbes.com/sites/kristidosh/2021/12/31/nil-momentum-increasing-for-high-school-athletes/> [<https://perma.cc/57A8-XSBW>]; Michelle Newblom, *North Carolina, Virginia Become Latest States to Allow High School Athletes to Profit Off NIL*, NIL DEAL (May 4, 2023), <https://www.nildealnow.com/north-carolina-virginia-latest-states-allow-high-school-athletes-profit-nil/> [<https://perma.cc/JPS6-KXVW>]; *New Virginia and North Carolina NIL Policies for High School Athletes*, JD SUPRA (May 11, 2023), <https://www.jdsupra.com/legalnews/new-virginia-and-north-carolina-nil-9124318/> [<https://perma.cc/355W-5T7E>].

18. See *supra* note 4.

19. See Kadence A. Otto & Kristal S. Stippich, *Revisiting Tarkanian: The Entwinnement and Interdependence of the NCAA and State Universities and Colleges 20 Years Later*, 18 J. LEGAL ASPECTS SPORT 243, 243–45 (2008) (noting that the NCAA's oversight in collegiate athletics increasingly involves high school athletic associations).

20. See Alicia Jessop, *2022 International Intercollegiate Athletes: A Legal Pathway to Benefit from Their Name, Image, and Likeness in the United States*, 52 CAL. W. INT'L L.J. 309, 328 (2022) (discussing the debate over college athletes' employment status).

21. *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 88, 112 (1984).

paid.”²² Such language later fueled the NCAA’s arguments (albeit unsuccessfully) that it was judicially permitted to freely restrict student-athlete compensation.²³

More than twenty years later, in 2009, two separate lawsuits filed by former student-athletes Ed O’Bannon and Sam Keller centered on whether student-athletes should be compensated for the commercialized use of their likenesses.²⁴ These cases ultimately merged, with the Plaintiffs arguing that use of student-athletes’ likenesses in video games violated their rights of publicity.²⁵ O’Bannon continued a separate legal quest against the NCAA, arguing that preventing student-athletes from receiving compensation for the use of their NIL violated antitrust laws.²⁶ Momentum intensified when *Time Magazine* showcased Johnny Manziel on its 2013 cover with the caption “It’s Time To Pay College Athletes,”²⁷ and academic scholars pressed to

22. *Id.* at 102.

23. *See* NCAA v. Alston, 141 S. Ct. 2141, 2157 (2021):

The NCAA directs our attention to *Board of Regents*, where this Court considered the league’s rules restricting the ability of its member schools to televise football games. On the NCAA’s reading, that decision expressly approved its limits on student-athlete compensation—and this approval forecloses any meaningful review of those limits today.

We see things differently.

(citation omitted).

24. *See* Keller v. Elec. Arts, Inc., No. C 09-1967, 2010 WL 530108, at *1–2 (N.D. Cal. Feb. 8, 2010); O’Bannon v. NCAA, Nos. C 09–1967, C 09–3329, C 09–4882, 2010 WL 445190, at *1–2 (N.D. Cal. Feb. 8, 2010).

25. Kisska-Schulze & Epstein, *supra* note 16, at 259; *see also In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F. 3d 1268, 1268–74 (9th Cir. 2013).

26. O’Bannon v. NCAA, 7 F. Supp. 3d 955, 962–63 (N.D. Cal. 2004), *aff’d in part, vacated in part*, 802 F.3d 1049 (9th Cir. 2015).

27. Sean Gregory, *It’s Time to Pay College Athletes*, TIME (Sept. 16, 2013), <http://content.time.com/time/magazine/article/0,9171,2151167,00.html> [<https://perma.cc/6UAX-A2UU>]; *see also* Adam Epstein & Kathryn Kisska-Schulze, *Northwestern University, The University of Missouri, and the “Student-Athlete”: Mobilization Efforts and the Future*, 26 J. LEGAL ASPECTS SPORT 71, 75 (2016) (noting the Time Magazine cover with Johnny Manziel).

change the NCAA's restrictive amateur status²⁸ amid an evolving multibillion-dollar college sports enterprise.²⁹

O'Bannon v. NCAA helped set the stage for meaningful economic changes within the college sports arena in 2015, when the U.S. Court of Appeals for the Ninth Circuit held that NCAA rules barring student-athletes from being compensated for the use of their NIL are subject to antitrust laws.³⁰ The appellate court also affirmed the lower court's ruling against grant-in-aid restrictions, thus permitting colleges and universities to offer student-athletes scholarships that cover the full cost of attendance and living expenses.³¹ However, the Ninth Circuit also ultimately determined in *O'Bannon* that the NCAA's amateurism model provided sufficient procompetitive benefits to warrant denying student-athletes financial compensation for NIL rights.³² The U.S. Supreme Court declined a request for certiorari in 2016,³³ thus leaving the specific question of whether student-athletes can be compensated for the use of their NIL in limbo.³⁴

28. See, e.g., Amy Christian McCormick & Robert A. McCormick, *The Emperor's New Clothes: Lifting the NCAA's Veil of Amateurism*, 45 SAN DIEGO L. REV. 495, 505–44 (2008) (urging that amateurism in college sports is a myth amid the industry's rampant commercialization); Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 WASH. L. REV. 71, 155–57 (2006) (arguing that the relationship between student-athletes and their universities is commercial, thus entitling student-athletes to some form of compensation); Christian Dennie, *Changing the Game: The Litigation That May Be the Catalyst for Change in Intercollegiate Athletics*, 62 SYRACUSE L. REV. 15, 18 (2012) (arguing that courts should adopt a new standard to review whether student-athletes have viable claims against the NCAA); Michael A. Corgan, *Permitting Student-Athletes to Accept Endorsement Deals: A Solution to the Financial Corruption of College Athletics Created by Unethical Sports Agents and the NCAA's Revenue-Generating Scheme*, 19 VILL. SPORTS & ENT. L.J. 371, 374 (2012) (offering that allowing student-athletes to accept endorsement deals would significantly diminish secretive compensation payments from sports agents).

29. John T. Holden & Kathryn Kisska-Schulze, *Taxing Sports*, 71 AM. U. L. REV. 845, 849 (2022).

30. 802 F.3d 1049, 1079 (9th Cir. 2015).

31. *Id.* at 1075–76.

32. *Id.* at 1076–79.

In our judgment, however, the district court clearly erred in finding it a viable alter[n]ative to allow students to receive NIL cash payments untethered to their education expenses. . . .

. . . Both we and the district court agree that the NCAA's amateurism rule has procompetitive benefits. But in finding that paying students cash compensation would promote amateurism as effectively as not paying them, the district court ignored that not paying student-athletes is precisely what makes them amateurs.

(emphasis omitted).

33. See *NCAA v. Bannon*, 580 U.S. 815 (2016) (mem).

34. Michael McCann, *In Denying O'Bannon Case, Supreme Court Leaves Future of Amateurism in Limbo*, SPORTS ILLUSTRATED (Oct. 3, 2016), <https://www.si.com/college/2016/10/03/ed-obannon-ncaa-lawsuit-supreme-court> [<https://perma.cc/PNB2-UTNX>].

This set the stage for *NCAA v. Alston*³⁵ to emerge as “The Case That Changed College Athletics Forever.”³⁶ In 2014, former West Virginia football player Shawne Alston and other Division I athletes filed suit against the NCAA, alleging multiple antitrust violations that limited their ability to be compensated for their services.³⁷ Specifically, the *Alston* Plaintiffs challenged NCAA rules preventing schools from providing student-athletes with cash compensation and thus “effectively sought to force the NCAA to implement ‘a free market for college football and . . . basketball players.’”³⁸

As the *Alston* litigation worked its way through appeals,³⁹ and still two years before the U.S. Supreme Court would ultimately issue its decision in the case, California Governor Gavin Newsom signed into law the Fair Pay to Play Act (“FPTPA”),⁴⁰ allowing student-athletes to capitalize on their NIL and permanently altering the trajectory of amateurism in college sports.⁴¹ Almost immediately after the FPTPA’s signing, the NCAA—a private, nonprofit organization that is not a state actor—contended that the FPTPA was unconstitutional.⁴² However, just one month later, on October 29, 2019, the NCAA Board of

35. 141 S. Ct. 2141 (2021).

36. Anthony M. Dalimonte, *NCAA vs. Alston: The Case That Changed College Athletics Forever*, FOSTERSWIFT (Apr. 7, 2023), <https://www.fosterswift.com/communications-NIL-NCAA-Alston-Case-College-Athletics.html> [<https://perma.cc/B2WS-4TPC>].

37. Cox, *supra* note 16, at 231; *see also In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1110 (N.D. Cal. 2019) (holding that limitations on education-related benefits for student-athletes constitute unlawful restraints on trade under Section 1 of the Sherman Act and leaving in place multiple limits on newly permissible benefits, including allowing conferences to restrict education-related benefits, even if the NCAA cannot); *id.* at 1087–88, 1090 (discussing the effectiveness of Plaintiffs’ proposed alternatives).

38. Nathaniel Grow, *The Future of College Sports After Alston: Reforming the NCAA via Conditional Antitrust Immunity*, 64 WM. & MARY L. REV. 385, 404 (2022) (alteration in original) (quoting Benjamin A. Tulis & Gregg E. Clifton, *Ninth Circuit Holds NCAA Subject to Antitrust Scrutiny, but Vacates Injunction Allowing up to \$5,000 per Year Deferred Compensation to College Athletes*, NAT’L L. REV. (Oct. 1, 2015), <http://www.natlawreview.com/article/ninth-circuit-holds-ncaa-subject-to-antitrust-scrutiny-vacates-injunction-allowing> [<https://perma.cc/FF8Z-X2ME>]).

39. *See In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1263 (9th Cir. 2020) (affirming the lower court’s decision that restrictions on payments unrelated to education serve to enhance the distinction between college and professional sports and concluding 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”).

40. Fair Pay to Play Act, CAL. EDUC. CODE § 67456 (West 2020); *see also 2022-2023 NCAA Division I Manual*, NCAA 39–74 (Aug. 1, 2022), <https://www.ncaapublications.com/productdownloads/D123.pdf> [<https://perma.cc/T7UP-RZEZ>] (explaining amateurism and athletics eligibility); Kisska-Schulze & Epstein, *supra* note 16, at 466 (noting that beginning in 2015, the NCAA authorized only Division I schools to provide cost-of-attendance scholarships that covered tuition, books, room, and board).

41. *See Holden & Kisska-Schulze*, *supra* note 29, at 881 (majority of states have introduced or passed laws similar to FPTPA).

42. Kisska-Schulze & Epstein, *supra* note 16, at 458.

Governors unanimously endorsed the idea of allowing student-athletes to capitalize on the use of their NIL⁴³ pending the formulation of future rules ensuring that any such activities would adhere to the organization's amateurism paradigm.⁴⁴ Such a rapid shift toward endorsing NIL opportunities was perhaps less indicative of the NCAA's support of financial equity amid an increasingly commercialized college sports industry and more so a reluctant concession to the plethora of legal battles and state pressures directed at the NCAA.⁴⁵

The NCAA reinforced this changed NIL policy in its April 2020 Board of Governors' Final Report, effective beginning with the 2021–2022 academic year.⁴⁶ Two months later, on June 12, 2020, Florida Governor Ron DeSantis signed S.B. 646 into law, allowing student-athletes to capitalize on their NIL effective July 1, 2021⁴⁷—a full eighteen months before any other state's NIL laws became effective.⁴⁸ Florida's legislation pressured then–NCAA President Mark Emmert to beseech federal lawmakers to effectuate uniform, nationwide NIL legislation.⁴⁹ Soon after, more states began passing similar NIL

43. *Id.*

44. Holden & Kisska-Schulze, *supra* note 29, at 887.

45. See Holden et al., *supra* note 12, at 6 (“Faced with growing pressure from state legislatures, the NCAA reluctantly surrendered its steadfast opposition to athletes monetizing their publicity rights . . .”); see also Faucon, *supra* note 16, at 94–95 (noting that the NCAA supported student-athletes’ NIL commercialization, yet “begrudgingly and only in response to concerted state action”); Univ. of Denver v. Nemeth, 257 P.2d 423, 425 (Colo. 1953) (holding that a collegiate athlete, employed by his university, qualified for workers’ compensation benefits); State Comp. Ins. Fund v. Indus. Comm’n, 314 P.2d 288, 290 (Colo. 1957) (denying workers’ compensation benefits to a widow following the death of her college football player spouse); Coleman v. W. Mich. Univ., 336 N.W.2d 224, 226–27 (Mich. Ct. App. 1983) (denying workers’ compensation to a student-athlete given the lack of evidence of an employment contract); Berger v. NCAA, 162 F. Supp. 3d 845, 857 (S.D. Ind.) (finding no evidence of employment between NCAA student-athletes and their institutions), *aff’d*, 843 F.3d 285 (7th Cir. 2016); Nw. Univ., No. 13-RC-121359, 2014 WL 1246914 (N.L.R.B. Mar. 26, 2014), *review denied*, 362 N.L.R.B. 1350 (2015) (declining to exercise discretionary jurisdiction over unionization claims made by Northwestern University football players); Waldrep v. Tex. Emp’rs Ins. Ass’n, 21 S.W.3d 692, 702 (Tex. App. 2000) (finding no employment relationship between a university and a student-athlete); Rensing v. Ind. St. Univ. Bd. of Trs., 444 N.E.2d 1170, 1173 (Ind. 1983) (likewise finding no employment relationship between a university and its student-athlete); O’Bannon v. NCAA, 802 F.3d 1049, 1075–76 (9th Cir. 2015) (determining that NCAA compensation rules are in violation of federal antitrust laws); NCAA v. Alston, 141 S. Ct. 2141, 2164 (2021) (disallowing education-related funding restrictions to student-athletes beyond their scholarship funds).

46. William B. Gould IV, *American Amateur Players Arise: You Have Nothing to Lose but Your Amateurism*, 61 SANTA CLARA L. REV. 159, 171 (2020); see also NCAA, REPORT OF THE NCAA BOARD OF GOVERNORS 1–2 (2020), https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/APR2020BOG_REPORT.pdf [<https://perma.cc/G8FY-2WWK>] (discussing new policy).

47. S. 646, 2020 Leg., 122d Reg. Sess. (Fla. 2020).

48. Tan Boston, *As California Goes, So Goes the Nation: A Title IX Analysis of the Fair Pay to Play Act*, 17 STAN. J. C.R. & C.L. 1, 12–13 (2021).

49. See Ross Dellenger, *Mark Emmert to Ask Senate to Grant NCAA Antitrust Protection in Name, Image, Likeness Hearing*, SPORTS ILLUSTRATED (July 22, 2020),

legislation.⁵⁰ Compounding this increasing tension between state legislators and the NCAA, on June 21, 2021, the U.S. Supreme Court unanimously held in *NCAA v. Alston* that the NCAA's rules restricting certain education-related benefits for student-athletes violated Section 1 of the Sherman Act.⁵¹

In response to the U.S. Supreme Court's decision—the first time in history that student-athlete eligibility rules were held to violate the Sherman Act—the NCAA adopted a uniform interim policy that suspended its NIL restrictions across all three member divisions.⁵² Doing so effectively permitted student-athletes to earn endorsement income—subject to any existing state laws⁵³—but certainly did not end the NCAA's litigation woes. On July 14, 2021, the U.S. District Court for the Northern District of California merged two separate lawsuits previously filed by former Arizona State swimmer Grant House and former University of Oregon basketball player Sedona Prince against the NCAA for lost NIL pay.⁵⁴ Modeled after *Alston's* antitrust premise, *In re College Athlete NIL Litigation* has evolved into a class action suit,

<https://www.si.com/college/2020/07/22/mark-emmert-senate-hearing-antitrust-protection-name-image-likeness> [<https://perma.cc/256G-6Z2N>] (“I urge Congress to enact legislation that will provide for a uniform name, image and likeness approach that will result in fair and uniform competition for all student-athletes and protect and ensure opportunities for future student-athletes” (internal quotation marks omitted)).

50. Kisska-Schulze & Epstein, *supra* note 16, at 473.

51. 141 S. Ct. 2141, 2158–60 (2021) (noting that while the “*Board of Regents* may suggest that courts should take care when assessing the NCAA’s restraints on student-athlete compensation,” “these remarks do not suggest that courts must reflexively reject all challenges to the NCAA’s compensation restrictions” in holding that the district court properly applied the rule of reason to the dispute (emphasis omitted)).

52. See Holden, et al., *supra* note 12, at 6–7; see also *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/7QZ8-FLTA>]:

The [NCAA] policy provides the following guidance to college athletes, recruits, their families and member schools:

- Individuals can engage in NIL activities that are consistent with the law of the state where their school is located. Colleges and universities may be a resource for state law questions.
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.

53. See Mitchell F. Crusto, *Right of Self*, 79 WASH. & LEE L. REV. 533, 592 (2022).

54. Joint Stipulation & [Proposed] Order Consolidating *House & Oliver* Actions, *In re College Athlete NIL Litigation*, 4:20-cv-03919 (N.D. Cal. July 14, 2021); see John Sigety, *Bringing Down the House: The Antitrust Lawsuit That Could End the NCAA*, CONDUCT DETRIMENTAL, <https://www.conductdetrimental.com/post/bringing-down-the-house-the-antitrust-lawsuit-that-could-end-the-ncaa> (last updated Oct. 18, 2022) [<https://perma.cc/FH9Z-Z6LS>].

with Plaintiffs seeking damages for past NIL benefits that they were unable to receive due to the NCAA's historic NIL restraints.⁵⁵

As this case works its way through the judicial process, more than twenty-five states have implemented collegiate-level NIL laws,⁵⁶ of which a number have already been amended.⁵⁷ Two states have either repealed or suspended previously enacted laws,⁵⁸ and at least twelve have introduced new legislation.⁵⁹ In addition, eight separate NIL laws have been introduced at the federal level,⁶⁰ culminating in a March 2023 congressional hearing where a subcommittee of the House Committee on Energy and Commerce addressed student-athlete compensation and potentially paving the way for uniform federal regulations that may one day preempt existing state laws.⁶¹

No matter the decades-long discord leading up to this juncture, NIL opportunities have proven lucrative for numerous collegiate student-athletes in the short time these opportunities have been allowed. The recent advent of NIL collectives—where independent groups pool funds from donors, alumni, boosters, fans, and third-party businesses to create endorsement opportunities for student-athletes—

55. Order Granting Motion for Certification of Damages Classes, *In re NIL Litigation*, 4:20-cv-03919 (N.D. Cal. Nov. 3, 2023); Michael McCann, *NCAA Warns of \$4B 'Death Knell' in NIL Class Action Appeal*, SPORTICO (Nov. 27, 2023, 5:55 AM), <https://www.sportico.com/law/analysis/2023/ncaa-nil-class-action-appeal-1234747910/> [<https://perma.cc/Y8VX-V8KC>]; see also Jennifer A. Shults, Note, *If at First You Don't Succeed, Try, Try Again: Why College Athletes Should Keep Fighting for "Employee" Status*, 56 COLUM. J.L. & SOC. PROBS. 451, 494–95 (2023).

56. States with NIL laws on the books include: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. *Tracker: Name, Image and Likeness Legislation by State*, BUS. OF COLL. SPORTS, <https://businessofcollegesports.com/tracker-name-image-and-likeness-legislation-by-state/> (last updated July 28, 2023) [<https://perma.cc/WJ2H-4HLW>].

57. States that have amended their NIL laws include Arkansas, Connecticut, Illinois, Mississippi, Missouri, New York, Tennessee, and Texas. *Id.*

58. Alabama repealed its law in February 2022, and South Carolina suspended its law for academic year 2022–2023. *Id.*

59. States and jurisdictions with proposed NIL laws include the District of Columbia, Hawaii, Iowa, Kansas, Massachusetts, Minnesota, New Hampshire, Rhode Island, Vermont, Washington, Wisconsin, and West Virginia. Braly Keller, *NIL Incoming: Comparing State Laws and Proposed Legislation*, OPENDORSE (May 25, 2023), <https://biz.opendorse.com/blog/comparing-state-nil-laws-proposed-legislation/> [<https://perma.cc/Q8BJ-DVC2>].

60. See H.R. 1804, 116th Cong. (2019–2020); S. 4004, 116th Cong. (2019–2020); S. 8382, 116th Cong. (2019–2020); S. 5003, 116th Cong. (2019–2020); H.R. 9033, 116th Cong. (2019–2020); S. 414, 117th Cong. (2021–2022); S. 238, 117th Cong. (2021–2022); see also Kathryn Kisska-Schulze, *NIL: The Title IV Financial Aid Enigma*, 76 OKLA. L. REV. 145, 156 (2023).

61. Ralph D. Russo, *Congressional Hearing Targets 'NIL Chaos' in College Sports*, AP NEWS (Mar. 29, 2023, 2:11 PM), <https://apnews.com/article/ncaa-nil-congress-hearing-c164187d3e590926e1c7cae18d4d2368> [<https://perma.cc/5FZY-9B8R>].

has furthered this trend.⁶² Some suggest that the top one hundred college athletes could soon collectively earn up to \$1 billion each year from NIL deals.⁶³ Even outside the elite-athlete spectrum, data suggest that NIL compensation per student-athlete now averages between \$1,000 and \$10,000.⁶⁴ It is, therefore, unsurprising that high school athletes wish to similarly explore revenue-earning opportunities for the use of their NIL. As the next Section details, NIL opportunities have not only gained traction in college athletics but become a rapidly emerging issue within high school sports.

B. NIL Rights at the High School Level

Until recently, high school athletic associations have generally followed the NCAA's historic mantra prohibiting any form of pay-for-play, including student-athletes being compensated for the use of their NIL.⁶⁵ The onset of NIL opportunities at the college level has prompted important discussions about whether high school student-athletes should likewise be allowed similar rights.⁶⁶ For some young athletes,

62. First emerging in 2021, NIL collectives are third-party businesses, wholly independent of any specific university, which work alongside colleges and universities to provide increased NIL opportunities for student-athletes. At present, there are hundreds of non- and for-profit NIL collectives, including Texas Tech's The Matador Club, Southern Methodist University's Boulevard Collective, and Clemson University's Tiger Impact. See Kisska-Schulze, *supra* note 60; see also Kathryn Kisska-Schulze, *Narrowing the Playing Field on NIL Collectives*, MARQ. SPORTS L. REV. (forthcoming 2023) (noting the NIL collectives generally fall into one of three categories: marketplace (which serve as representative agents of student-athletes), donor-driven (which pool outside funding to directly pay student-athletes in exchange for sponsorship or endorsement agreements), or dual collectives (serving as a hybrid of the former two)).

63. Kori Hale, *How NIL Diversity Is Driving the Market up to \$1.1 Billion*, FORBES (Mar. 10, 2023, 8:00 AM), <https://www.forbes.com/sites/korihale/2023/03/10/how-nil-diversity-is-driving-the-market-up-to-11-billion/?sh=4e7d362360b2> [<https://perma.cc/C4DM-FJW7>].

64. Paul Rudder, *Who Is the Highest Paid College Athlete? NIL Endorsement Deal Money in NCAA Sports*, AS, <https://en.as.com/ncaa/what-does-nil-stand-for-ncaa-athletes-with-the-biggest-endorsement-deals-n/> (last updated Dec., 2023, 3:14 PM) [<https://perma.cc/7DR6-C6H9>].

65. Solomon, *supra* note 17 ("State high school athletic associations have long followed the NCAA's lead in prohibiting financial compensation of almost any kind for athletes.").

66. See, e.g., Chris Hummer, *Can High School Recruits Make Money off Their NIL? It's Complicated*, 247SPORTS (July 2, 2021, 3:31 PM), <https://247sports.com/Article/High-school-recruits-name-image-and-likeness-NIL-rules-NCAA-allowed-state-guidelines-167322171/> [<https://perma.cc/HJK7-8EH2>]; Eric Sondheimer, *High School Athletes Already Being Approached for NIL Representation*, L.A. TIMES (Aug. 4, 2021, 8:58 AM), <https://www.latimes.com/sports/highschool/story/2021-08-04/high-school-athletes-already-being-approached-for-nil-representation> [<https://perma.cc/V4AM-G8U9>]; Leonard Armato, *High School Athletes Facing Discrimination and Lost Opportunity in Exercising Their NIL Rights*, FORBES (Dec. 12, 2022, 11:12 PM), <https://www.forbes.com/sites/leonardarmato/2022/12/12/high-school-athletes-facing-discrimination-and-lost-opportunity-in-exercising-their-nil-rights/?sh=7eb7fd92585e> [<https://perma.cc/K7P7-4VKT>]; Morgan Fogarty, *Should High School Athletes Be Allowed to Make Money off NIL Deals?*, WCCB CHARLOTTE (May 3, 2023), <https://www.wccbcharlotte.com/2023/05/03/should-high-school-athletes-be-allowed-to-make-money-off-nil-deals/> [<https://perma.cc/P258-EN5Y>].

high school athletic association rules have not evolved quickly enough, resulting in some choosing to either relocate to jurisdictions that permit them to capitalize on their NIL,⁶⁷ graduate early to take advantage of lucrative collegiate NIL opportunities,⁶⁸ or attend private institutions not bound by prohibitive public high school athletic association rules.⁶⁹

Like college sports, there is currently no national law or policy governing NIL at the high school level.⁷⁰ Instead, the permissibility of high school athletes capitalizing on their NIL in a given jurisdiction is subject to a patchwork of state legislation or state high school athletic association rules, or both.⁷¹ The National Federation of State High School Associations (“NFHS”) is the national leadership organization with authority over high school athletics.⁷² In collaboration with its fifty-one member state organizations (including the District of Columbia),⁷³ it promotes and protects education-based high school athletics.⁷⁴ Each NFHS member organization is then allowed to specifically govern high schools sports within its jurisdiction as it sees fit.⁷⁵ In addition, a few states have enacted laws, or otherwise introduced legislation, that address select issues surrounding high school athletics.⁷⁶

67. *High School Athletes Are Getting Major Endorsement Deals Following State Law Changes*, CBS NEWS (Nov. 30, 2022, 5:16 PM), <https://www.cbsnews.com/news/high-school-athletes-nil-deals-name-image-likeness-six-figures/> [<https://perma.cc/WUH6-J4XA>] (discussing high school basketball star Jada Williams, who moved with her mother to California in order to capitalize on NIL opportunities that were unavailable to high school athletes in Missouri).

68. Jeré Longman & Alanis Thames, *Forget Friday Night Lights: High School Stars Seek a Better Deal*, N.Y. TIMES (Aug. 13, 2021), <https://www.nytimes.com/2021/08/13/sports/ncaa-high-school-sports-endorsements.html> [<https://perma.cc/B7PX-TWSF>] (discussing high school quarterback Quinn Ewers’s decision to graduate early so he could capitalize on NIL financial opportunities in college, given Texas’s prohibition on high school athletes earning compensation for their NIL).

69. *See id.* (discussing high school athlete Mikey Williams’s decision to attend an independent school “not bound by rules governing high school sports in North Carolina,” which at the time disallowed high school students to capitalize on their NIL).

70. *See* Casalino, *supra* note 13, at 268.

71. *Id.*

72. *Id.* at 274; *see also* *NFHS Company Brochure*, NFHS 2, https://www.nfhs.org/media/885655/nfhs_company_brochure.pdf (last visited Apr. 5, 2024) [<https://perma.cc/YGJ3-SQ4B>].

73. Nate Perry, *State High School Associations Come in All Shapes and Sizes*, NFHS (Jan. 14, 2020), <https://www.nfhs.org/articles/state-high-school-associations-come-in-all-shapes-and-sizes/> [<https://perma.cc/3TG2-VECK>].

74. NFHS, *supra* note 72, at 5.

75. Perry, *supra* note 73.

76. *See, e.g.*, H.R. 391, 2021 Leg., Reg. Sess. (Ala. 2021) (banning transgender athletes from participating in K-12 sports outside of their biological gender); S. 1385, 87th Leg., Reg. Sess. (Tex. 2021) (restricting compensation and professional representation of student-athletes to those competing in institutions of higher education); H.R. 4059, 2021 Gen. Assemb., 124th Sess. (S.C. 2021) (a bill to amend the South Carolina laws to establish the Office of Interscholastic Athletics

Once the “wild west” of NIL opportunities took off for college athletes in 2021, the high school NIL movement emerged.⁷⁷ Sixteen days after the *Alston* decision, Dr. Karissa Niehoff, Executive Director of the NFHS, reiterated that member-state rules continue to prohibit high school athletes “from receiving money connected to wearing their school uniform.”⁷⁸ However, Dr. Niehoff likewise conceded that individual states are the ultimate governing bodies of high school athletics,⁷⁹ prompting the California Interscholastic Federation (“CIF”) to take the early lead in ensuring that California high school student-athletes are aware that they can profit from their NIL.⁸⁰ Such immediate support was unsurprising given California’s historic protection of child actors similarly capitalizing on their fame, and the fact that the state was the first to enact legislation granting college student-athletes the right to monetize their NIL.⁸¹

In August 2021, Quinn Ewers announced that he would forgo his senior year at a Texas high school to enroll at The Ohio State University, where he could capitalize on his NIL.⁸² As the number one ranked high school football recruit in the nation, Ewers’s decision was based on the stance of the University Interscholastic League (the governing body enforcing high school athletic rules in Texas) that student-athletes cannot profit from their NIL without losing high school

within the South Carolina Department of Education as the sole governing body of South Carolina public school athletics).

77. See Joe Moglia, *The NCAA Dropped the Ball on NIL*, FORBES (Aug. 18, 2021, 3:57 PM), <https://www.forbes.com/sites/joemoglia/2021/08/18/the-ncaa-dropped-the-ball-on-nil/?sh=130a084562a5> [<https://perma.cc/L3VR-6SNM>] (noting that beginning in July 2021, when student-athletes could monetize off their NIL, it became “the wild west virtually overnight”).

78. Gregg E. Clifton & Bernard G. Dennis III, *High School Student-Athletes Asserting Name, Image, and Likeness Rights Moves to Forefront*, NAT’L L. REV. (Nov. 18, 2021), <https://www.natlawreview.com/article/high-school-student-athletes-asserting-name-image-and-likeness-rights-moves-to> [<https://perma.cc/V5WZ-CPCH>] (quoting Karissa Niehoff, Executive Director, NFHS); see also Perry, *supra* note 73 (discussing NFHS membership).

79. *Id.*

80. Darren Heitner, *The Fight for NIL Rights Reaches a New Class: High Schoolers*, OUT KICK (July 25, 2021, 9:53 AM), <https://www.outkick.com/the-fight-for-nil-rights-reaches-a-new-class-high-schoolers/> [<https://perma.cc/R3WX-DA5Q>] (confirming such allowance is permitted so long as student-athletes do not use their high schools’ names or logos in their commercialized pursuits).

81. *Id.* In fact, the CIF clarified that its “approach has always been to allow high schoolers in the state to enjoy their NIL rights to the fullest extent possible.” *Id.*

82. Austin Quick, Note, *Breaking the Monopsony Mirror: Evaluating the Collateral Market Procompetitive Justification in the Context of NCAA v. Alston*, 64 ARIZ. L. REV. 887, 907 (2022); Greg Riddle, *Southlake Carroll QB Quinn Ewers Will Skip Senior Year to Profit off NIL; Will This Start New Trend?*, DALL. MORNING NEWS (Aug. 2, 2021, 11:23 AM), <https://www.dallasnews.com/high-school-sports/football/2021/08/02/southlake-carroll-5-star-qb-quinn-ewers-reportedly-skipping-senior-year-will-this-start-new-trend/> [<https://perma.cc/7GYZ-WSP7>].

eligibility.⁸³ The decision enabled Ewers to sign NIL deals totaling a reported \$1.4 million.⁸⁴

In October 2021, the New York State Public High School Athletic Association became the second organization to allow high school athletes to capitalize on their NIL.⁸⁵ It was soon followed by high school athletic associations in New Jersey,⁸⁶ Kansas,⁸⁷ Alaska,⁸⁸ and Nebraska.⁸⁹ In January 2022, high school baseball player Sal Stewart and others filed a class action lawsuit against the Florida High School Athletic Association (“FHSAA”).⁹⁰ The suit alleged that Florida student-athletes are exploited by the FHSAA because they do not have the ability to monetize their NIL, and that this restriction violates Florida antitrust law.⁹¹

Following the Louisiana High School Athletic Association’s declaration that high school students can capitalize on their NIL, the Association approved a statewide partnership with Eckler Sports to offer educational services and resources to help high school administrators and student-athletes better understand NIL contracts.⁹²

83. Ari Wasserman, *Wasserman: The Quinn Ewers Conundrum and How NIL Affects the Recruitment of Elite High School Athletes*, ATHLETIC (July 28, 2021), <https://theathletic.com/2737154/2021/07/28/wasserman-the-quinn-ewers-conundrum-and-how-nil-impacts-the-recruitment-of-elite-high-school-athletes/> [<https://perma.cc/KZR6-2UVJ>].

84. Tom VanHaaren, *Ohio State Buckeyes QB Quinn Ewers Has NIL Deal for \$1.4 Million, Source Says*, ESPN (Aug. 31, 2021, 2:22 PM), https://www.espn.com/college-football/story/_/id/32120440/ohio-state-buckeyes-qb-quinn-ewers-nil-deal-14-million-source-says [<https://perma.cc/59UW-WDAT>].

85. Lindsay Kramer, *New York Is Just the Second State to Allow High School Athletes to Make Money from NIL*, SYRACUSE.COM (Aug. 21, 2021, 1:11 PM), <https://www.syracuse.com/highschoolsports/2021/10/new-york-is-just-the-second-state-to-allow-high-school-athletes-to-make-money-from-nil.html> [<https://perma.cc/8TQG-37YQ>].

86. *New Jersey Just Approved NIL for High School Athletes. What It Means and How to Be Prepared.*, COLL. ATHLETE INSIGHT, <https://collegeathleteinsight.com/new-jersey-nil/> (last visited Apr. 5, 2024) [<https://perma.cc/PGT5-HEGZ>].

87. See Jacob Meseke, *KSHSAA Votes to Allow NIL, Transfer Portal for High School Athletes*, CHARGER, <https://whschargercom.wordpress.com/2023/04/01/kshsaa-votes-to-allow-nil-transfer-portal-for-high-school-athletes/> (last visited Apr. 5, 2024) [<https://perma.cc/K9BU-Y5GX>] (detailing how Kansas now allows athletes to profit from NIL deals).

88. See Jeff Tracy, *High School Athletes Cash in Big off NIL Deals*, AXIOS (May 26, 2022), <https://www.axios.com/2022/05/26/high-school-athletes-nil-deals> [<https://perma.cc/GK75-2PKH>] (identifying Alaska as one of the first nine states to allow high school athletes to capitalize on their NIL).

89. See Nancy Justis, *High School Athletes Facing NIL Future*, GAZETTE (June 27, 2022, 3:29 PM), <https://www.thegazette.com/iowa-prep-sports/high-school-athletes-facing-nil-future/> [<https://perma.cc/3CPL-5BBS>] (identifying Nebraska as one of the first nine states to permit NIL opportunities for high school athletes).

90. See Complaint, *Stewart v. Fla. High Sch. Athletic Ass’n*, No. 22-427 CA-01 (Fla. Cir. Ct. Jan. 10, 2022).

91. *Id.* at 1–5.

92. Holt Hackney, *LHSAA Allows Student-Athletes to Receive NIL Benefits; Partners with Eckler Sports to Provide Required NIL Educational Services Throughout the State*, SPORTS L.

Both the Tennessee Football Coaches Association and the Texas High School Coaches Association (which, intriguingly, continues to oppose NIL deals for Texas high school student-athletes) have also partnered with Eccker Sports to provide NIL education to high school athletes and administrators.⁹³

In 2023, Virginia, North Carolina, Kentucky, Missouri, and Vermont became some of the most recent states to allow high school athletes to enjoy the financial benefits afforded by NIL rights.⁹⁴ However, the same day that the North Carolina High School Athletic Association (“NCHSAA”) passed the policy, the North Carolina Senate amended S.B. 636 to restrict the NCHSAA’s power, thereby preventing high school athletes from attaining NIL eligibility unless or until the State Board of Education passes legislation to allow it.⁹⁵

Amid this evolving landscape, and as Table 1 below indicates, over half of the states currently allow high school athletes to pursue NIL opportunities, while the remaining states uphold prohibitions against high school athletes profiting from their NIL.⁹⁶

EXPERT (May 2, 2022), <https://sportslawexpert.com/2022/05/02/lhsaa-allows-student-athletes-to-receive-nil-benefits-partners-with-eccker-sports-to-provide-required-nil-educational-services-throughout-the-state/> [<https://perma.cc/98GB-JVQX>].

93. Victoria Larned, *Tennessee Football Coaches Association Partners with Eccker Sports to Make NIL Educational Services Available to All High Schools Throughout the State*, ECCKER SPORTS (Apr. 18, 2022), <https://ecckersports.com/industry-insights/tennessee-football-coaches-association-partners-with-eccker-sports-to-make-nil-educational-services-available-to-all-high-schools-throughout-the-state/> [<https://perma.cc/L64W-5B26>]; Joshua Koch, *THSCA Announces New Partnership with Eccker Sports to Help Coaches Navigate Name, Image, and Likeness*, CLICK2HOUSTON.COM (May 23, 2022, 1:29 PM), <https://www.click2houston.com/sports/local/2022/05/23/thscannouncesnewpartnershipwithecckersportstohelpcoachesnavigate-name-image-and-likeness/> [<https://perma.cc/4WBZ-QPQF>].

94. ON3NIL, *supra* note 4.

95. Bryant Baucom, *NCHSAA Commissioner Addresses Future of NIL*, YAHOO!NEWS (June 9, 2023, 11:59 PM), <https://news.yahoo.com/nchsaa-commissioner-addresses-future-nil-035900666.html> [<https://perma.cc/W6T4-CQSQ>]; *see also* S. 636, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (establishing oversight of NCHSAA); Andy Wittry, *North Carolina Legislators, Administrators Battle over NIL Rights*, ON3NIL (May 25, 2023), <https://www.on3.com/nil/news/north-carolina-high-school-athletic-association-nchsaa-nil-rules-name-image-likeness-policy-proposal/> [<https://perma.cc/ZHA7-K8PM>] (noting that in the great majority of states that permit NIL rights to high school students, the state high school athletic associations administered such approval, with the exception of Arkansas, which granted high school student-athletes the ability to entertain NIL opportunities via the state legislature, and North Carolina, which is the only state where tension has arisen as to which governing body—the state athletic association or the state legislature—should have the power to govern such decisionmaking); Darren Heitner, *Newsletter, Image, Likeness Vol. 48: The High School Landscape Is Quickly Catching Up*, LINKEDIN (Oct. 6, 2023), https://www.linkedin.com/pulse/newsletter-image-likeness-vol-48-high-school-quickly-catching-darren?utm_source=rss&utm_campaign=influencers_en&utm_medium=google_news [<https://perma.cc/E2F8-GVPN>] (noting that North Carolina remains one of just sixteen states that does not permit high school athletes to entertain NIL endorsement deals).

96. *See* Johnson, *supra* note 4; Keller, *supra* note 4.

TABLE 1: WHERE CAN HIGH SCHOOL ATHLETES CAPITALIZE ON THEIR NIL?

State	High School Athletics Governing Body	High School NIL Status
Alabama	Alabama High School Athletic Association	Prohibited ⁹⁷
Alaska	Alaska School Activities Association	Permitted ⁹⁸
Arizona	Arizona Interscholastic Association	Prohibited ⁹⁹
Arkansas	Arkansas Activities Association	Prohibited ¹⁰⁰
California	California Interscholastic Federation	Permitted ¹⁰¹
Colorado	Colorado High School Activities Association	Permitted ¹⁰²
Connecticut	Connecticut Interscholastic Athletic Conference	Permitted ¹⁰³
Delaware	Delaware Interscholastic Athletic Association	Prohibited ¹⁰⁴

97. *2020-2021 Handbook*, ALA. HIGH SCH. ATHLETIC ASS'N 29 (2020), <https://www.ahsaa.com/Portals/0/Publications/2020-21/Final%20Copy.pdf> [<https://perma.cc/4QQ6-VDBE>].

98. *2023-2024 Handbook*, ALASKA SCH. ACTIVITIES ASS'N 37–38 (2023), <https://asaa.org/wp-content/uploads/handbook/2024handbook/asaa/complete/2023-2024-ASAA-Handbook.pdf> [<https://perma.cc/3WCM-LMEZ>].

99. *2023-2024 Constitution, Bylaws, Policies & Procedures*, ARIZ. INTERSCHOLASTIC ASS'N 47 (2023), <https://aiaonline.org/files/14046/2021-2022-aia-constitution-bylaws-policies-and-procedures-book.pdf> [<https://perma.cc/P972-J79D>].

100. *2019-2020 AAA Handbook*, ARK. ACTIVITIES ASS'N 44 (2019), https://5starassets.blob.core.windows.net/multi-media/2502846/hub/2019-20_AAA_Handbook.pdf [<https://perma.cc/2KNB-9T2G>]. Although high school athletes are prohibited from monetizing their NIL in Arkansas under the AAA Handbook, Act 589 (previously House Bill 1649) allows high school athletes to entertain NIL agreements once they are accepted into an Arkansas college or university. Act of Apr. 11, 2023, 2023 Ark. Acts 589.

101. *2023-24 Constitution & Bylaws*, CAL. INTERSCHOLASTIC FED'N 48 (2023), https://www.cifstate.org/governance/constitution/Constitution_and_Bylaws.pdf [<https://perma.cc/68MM-TYYY>].

102. *CHSAA Bylaws 2023-2024*, COLO. HIGH SCH. ACTIVITIES BD. 83–84 (July 2023), <https://chsaanow.com/sports/2021/7/19/bylaws.aspx> [<https://perma.cc/G2KT-AG7D>]; *see also Legislative Council Meeting*, COLO. HIGH SCH. ACTIVITIES ASS'N 35 (Apr. 21, 2022), https://static.chsaanow.com/custompages/5-LC_Packet_April_2022_Final_April_Rev4-7-22.pdf [<https://perma.cc/TRKV-MN6S>] (amending Rule 2000.2 to permit high school student-athletes to monetize their NIL, with restrictions).

103. *2022-2023 Handbook*, CONN. INTERSCHOLASTIC ATHLETIC CONF. 87 (2022), https://www.casciac.org/pdfs/ciachandbook_2223.pdf [<https://perma.cc/8Z3D-NPG9>] [hereinafter *CIAC, 2022-2023 Handbook*].

104. 14 DEL. ADMIN CODE § 1009 (2022).

State	High School Athletics Governing Body	High School NIL Status
District of Columbia	District of Columbia State Athletic Association	Permitted ¹⁰⁵
Florida	Florida High School Athletic Association	Prohibited ¹⁰⁶
Georgia	Georgia High School Association	Permitted ¹⁰⁷
Hawai'i	Hawaii High School Athletic Association	Prohibited ¹⁰⁸
Idaho	Idaho High School Activities Association	Permitted ¹⁰⁹
Illinois	Illinois High School Association	Permitted ¹¹⁰
Indiana	Indiana High School Athletic Association	Prohibited ¹¹¹
Iowa	Iowa High School Athletic Association	Permitted ¹¹²
Kansas	Kansas State High School Activities Association	Permitted ¹¹³

105. *2022-2023 Member Handbook: Policies, Rules and Regulations Governing Athletics*, D.C. STATE ATHLETIC ASS'N 21–22 (2022), https://cdn1.sportngin.com/attachments/document/be73-1688853/DCSAA_Handbook_2022-23_8_.pdf [<https://perma.cc/U227-3Z2U>] [hereinafter *DCSAA 2022-2023 Member Handbook*].

106. *Bylaws of the Florida High School Athletic Association, Inc., 2021-22 Edition*, FLA. HIGH SCH. ATHLETIC ASS'N 32 (2021), https://s3.amazonaws.com/fhsaa.org/documents/2021/6/29/2122_handbook_web.pdf [<https://perma.cc/4PMX-35H8>].

107. *Constitution and By-Laws, 2023-2024*, GA. HIGH SCH. ASS'N 23 (2023), https://www.ghsa.net/sites/default/files/documents/Constitution/Constitution23-24Complete_cx19.pdf [<https://perma.cc/M5KR-83M4>].

108. *Administrative Regulations of the Hawaii High School Athletic Association*, HAW. HIGH SCH. ATHLETIC ASS'N 2, https://www.sportshigh.com/assets/content/resources/governing_documents/Administrative-Regulations-%28Rev-1-2019%29.pdf (last visited Apr. 5, 2024) [<https://perma.cc/PL2G-QQGF>].

109. *Rules and Regulations, 2023-2024*, IDAHO HIGH SCH. ACTIVITIES ASS'N 103 (2023), <https://idhsaa.org/asset/Rules%20&%20Regs/23-24%20Final%20Print.pdf> [<https://perma.cc/73TM-RPG2>].

110. *2023-2024 School Term, IHSA Handbook with Illustrations*, ILL. HIGH SCH. ASS'N 119 (2023), <https://www.ihsa.org/documents/flip/Handbook/2023-24/Handbook.pdf> [<https://perma.cc/H55H-WU4U>] [hereinafter *IHSA Handbook with Illustrations*].

111. *2021-2022 By-Laws & Articles of Incorporation*, IND. HIGH SCH. ATHLETIC ASS'N 29 (2021), <https://ihsaapublic.blob.core.windows.net/portals/0/ihsaa/documents/about%20ihsaa/2021-22%20By-Laws.pdf> [<https://perma.cc/87HU-XAG4>].

112. *2023-24 School Year, IHSAA Handbook: Articles, Bylaws & Policies*, IOWA HIGH SCH. ATHLETIC ASS'N 60 (2023), <https://www.iahsaa.org/wp-content/uploads/2023/08/2023-24-IHSAA-Handbook-FINAL.pdf> [<https://perma.cc/GF6R-GXPQ>].

113. *2023-24 Edition, KSHSAA Handbook*, KAN. STATE HIGH SCH. ACTIVITIES ASS'N 41–42 (2023), <https://www.kshsaa.org/Publications/Handbook.pdf> [<https://perma.cc/6Z6U-8SSH>].

State	High School Athletics Governing Body	High School NIL Status
Kentucky	Kentucky High School Athletic Association	Permitted ¹¹⁴
Louisiana	Louisiana High School Athletic Association	Permitted ¹¹⁵
Maine	Maine Principals' Association	Permitted ¹¹⁶
Maryland	Maryland Public Secondary Schools Athletic Association	Permitted ¹¹⁷
Massachusetts	Massachusetts Interscholastic Athletic Association	Permitted ¹¹⁸
Michigan	Michigan High School Athletic Association	Prohibited ¹¹⁹
Minnesota	Minnesota State High School League	Permitted ¹²⁰
Mississippi	Mississippi High School Activities Association	Prohibited ¹²¹
Missouri	Missouri State High School Activities Association	Permitted ¹²²
Montana	Montana High School Association	Prohibited ¹²³

114. *Bylaws of the Kentucky High School Athletic Association Governing High School Participation (Grades 9-12): Effective 2023-24 School Year*, KY. HIGH SCH. ATHLETIC ASS'N 11 (2023), https://khsaa.org/common_documents/handbook/bylaws.pdf [<https://perma.cc/QW7A-94MN>].

115. *2023-2024 Handbook*, LA. HIGH SCH. ATHLETIC ASS'N 196 (2023), <https://online.flippingbook.com/view/73641460/> [<https://perma.cc/68MM-637W>].

116. *2022-2023 Handbook*, ME. PRINCIPALS' ASS'N 48 (2022), <https://mpaprof.org/wp-content/uploads/2022/10/handbook.pdf> [<https://perma.cc/K6WQ-6GSM>].

117. MD. CODE ANN., EDUC. § 5-131 (West 2023).

118. *Rules and Regulations Governing Athletics*, MASS. INTERSCHOLASTIC ATHLETIC ASS'N 35-36 (July 2023), <https://miaa.net/wp-content/uploads/2023/07/MIAA-Handbook-23-25.pdf> [<https://perma.cc/9CMS-LEDF>].

119. *Coaches Guidebook, 2022-23*, MICH. HIGH SCH. ATHLETIC ASS'N 10 (2022), <https://my.mhsaa.com/portals/0/documents/coaches%20guide.pdf> [<https://perma.cc/T7WP-5TRH>].

120. *200.00 Student Eligibility Bylaws*, MINN. STATE HIGH SCH. LEAGUE 57-58 (2023), <https://www.mshsl.org/sites/default/files/2023-08/MSHSL%20Handbook%20200%20Series.pdf> [<https://perma.cc/DY8Y-L7TT>].

121. *2023-2024 MHSAA Official Handbook*, MISS. HIGH SCH. ACTIVITIES ASS'N 28-29 (2023), <https://www.misshsaa.com/wp-content/uploads/2021/10/2021-22-MHSAA-Handbook-102121-s.pdf> [<https://perma.cc/28V8-8HV2>].

122. *2023-2024 MSHSAA Official Handbook*, MO. STATE HIGH SCH. ACTIVITIES ASS'N 60 (Nov. 2023), <https://www.mhsaa.org/resources/pdf/Official%20Handbook.pdf> [<https://perma.cc/CH33-GZLZ>].

123. *Official Handbook 2023-2024 Edition*, MONT. HIGH SCH. ASS'N 14-15 (2023), https://cdn1.sportngin.com/attachments/document/ea7d-2006924/2023-2024_Handbook_Website_10_.pdf [<https://perma.cc/J9DX-FEF5>].

State	High School Athletics Governing Body	High School NIL Status
Nebraska	Nebraska School Activities Association	Permitted ¹²⁴
Nevada	Nevada Interscholastic Activities Association	Permitted ¹²⁵
New Hampshire	New Hampshire Interscholastic Athletic Association	Permitted ¹²⁶
New Jersey	New Jersey State Interscholastic Athletic Association	Permitted ¹²⁷
New Mexico	New Mexico Activities Association	Permitted ¹²⁸
New York	New York State Public High School Athletic Association	Permitted ¹²⁹
North Carolina	North Carolina High School Athletic Association	Permitted/Prohibited ¹³⁰
North Dakota	North Dakota High School Activities Association	Permitted ¹³¹

124. *2023-2024 Constitution & Bylaws*, NEB. SCH. ACTIVITIES ASS'N 54–55 (2023), <https://nsaa-static.s3.amazonaws.com/textfile/yb/c&b.pdf> [<https://perma.cc/5ZPF-2YLZ>].

125. NEV. ADMIN. CODE § 385B.374 (2022).

126. *2023-24 Handbook, By-Law Article II, Eligibility*, N.H. INTERSCHOLASTIC ATHLETIC ASS'N 45, <https://www.nhiao.org/ckfinder/userfiles/files/4HB%2023-24%20II%20Eligibility.pdf> (last visited Apr. 5, 2024) [<https://perma.cc/N7N9-BEK3>].

127. *NJSIAA General Information, Constitution, By-Laws, Rules and Regulations*, N.J. STATE INTERSCHOLASTIC ATHLETIC ASS'N 37–38, <https://www.njsiaa.org/sites/default/files/documents/2023-07/NJSIAA%20Constitution%20%2723-%2724.pdf> (last visited Apr. 5, 2024) [<https://perma.cc/GE3U-NAZZ>].

128. *Section VI Eligibility (Bylaws)*, N.M. ACTIVITIES ASS'N 27–28, https://www.nmact.org/file/Section_6.pdf (last visited Apr. 5, 2024) [<https://perma.cc/K5HZ-7Y4U>].

129. *NYSPHSAA Rules and Regulations*, N.Y. STATE PUB. HIGH SCH. ATHLETIC ASS'N 26–27 (2024), https://nysphsaa.org/documents/2023/8/21/NYSPHSAA_Handbook_082123.pdf [<https://perma.cc/UJ4F-4YCG>].

130. The NCHSAA proposed a plan that would allow student-athletes at public schools to monetize their NIL, *Name, Image, and Likeness Policy*, N.C. HIGH SCH. ATHLETIC ASS'N 1, https://www.cache.highschoolot.com/asset/content/2023/05/01/20837822/NCHSAA_NIL_Policy-DMID1-5yrg9kaek.pdf (last visited Apr. 5, 2024) [<https://perma.cc/RVY9-7ZZV>]. However, this proposal was shot down by North Carolina lawmakers. Angela Doughty, *Whistle Blown: Time Out on North Carolina Student Athlete NIL Deals*, JDSUPRA (July 13, 2023), <https://www.jdsupra.com/legalnews/whistle-blown-time-out-on-north-1117565/> [<https://perma.cc/54ZD-U56Q>]. The North Carolina Independent Schools Athletic Association recently adopted an NIL policy allowing students at private high schools to monetize their NIL. *NC Private School Leaders Approve Policy Allowing Athletes to Profit Off NIL*, WBTB (Feb. 2, 2024), <https://www.wbtv.com/2024/02/02/nc-private-school-leaders-approve-policy-allowing-athletes-profit-off-nil/> [<https://perma.cc/N3E3-Y6Y3>].

131. *Constitution & By-Laws and Handbook of Interpretations*, N.D. HIGH SCH. ACTIVITIES ASS'N 11–12 (July 2023), https://d2q0tptsfejku7.cloudfront.net/uploads/files/Const_ByLaws_2023-24_202309281230.pdf [<https://perma.cc/U7Q6-XWV8>].

State	High School Athletics Governing Body	High School NIL Status
Ohio	Ohio High School Athletic Association	Prohibited ¹³²
Oklahoma	Oklahoma Secondary School Activities Association	Permitted ¹³³
Oregon	Oregon School Activities Association	Permitted ¹³⁴
Pennsylvania	Pennsylvania Interscholastic Athletic Association	Permitted ¹³⁵
Rhode Island	Rhode Island Interscholastic League	Permitted ¹³⁶
South Carolina	South Carolina High School League	Prohibited ¹³⁷
South Dakota	South Dakota High School Activities Association	Prohibited ¹³⁸
Tennessee	Tennessee Secondary School Athletic Association	Permitted ¹³⁹
Texas	Texas University Interscholastic League	Prohibited ¹⁴⁰
Utah	Utah High School Activities Association	Permitted ¹⁴¹

132. *Bylaws*, OHIO HIGH SCH. ATHLETIC ASS'N 55–57, <https://ohsaaweb.blob.core.windows.net/files/About-the-OHSAA/Bylaws.pdf> (last updated May 2023) [<https://perma.cc/B9C5-7A6N>].

133. *Guidelines Regarding Name, Image and Likeness (NIL)*, OKLA. SECONDARY SCH. ACTIVITIES ASS'N 1 (2022–2023), http://www.ossaa.net/docs/2022-23/MiscForms/MF_2022-23_NILGuidelines.pdf [<https://perma.cc/6FF3-CKBB>].

134. *2023-2024 Oregon School Activities Association Handbook*, OR. SCH. ACTIVITIES ASS'N 38–39 (2023), <https://www.osaa.org/docs/handbooks/osaahandbook.pdf> [<https://perma.cc/2MDY-EB6G>] [hereinafter *OSAA 2023-2024 Handbook*].

135. *2023-2024 Constitution and Bylaws*, PA. INTERSCHOLASTIC ATHLETIC ASS'N 12–13 (2023), <https://www.piaa.org/assets/web/documents/Handbook%20-%20Section%20I%20-%20Constitution%20and%20By-laws.pdf> [<https://perma.cc/77BS-ZYVL>] [hereinafter *PIAA 2023-2024 Constitution and Bylaws*].

136. *Rules and Regulations*, R.I. INTERSCHOLASTIC LEAGUE, <https://www.ril.org/page/2997> (last visited Apr. 5, 2024) [<https://perma.cc/U6M4-6CK2>].

137. *By-Laws*, S.C. HIGH SCH. LEAGUE 15, <https://schsl.org/wp-content/uploads/2021/07/By-laws-21-22.pdf> (last visited Apr. 5, 2024) [<https://perma.cc/6DFN-6M9Z>].

138. *2023-24 Constitution and Bylaws*, S.D. HIGH SCH. ACTIVITIES ASS'N 28 (July 1, 2023), <https://www.sdhsaa.com/Handbook/ATH-ConstitutionByLaws.pdf> [<https://perma.cc/U2QT-DZUC>].

139. *2023-2024 TSSAA Handbook*, TENN. SECONDARY SCH. ATHLETIC ASS'N 20 (July 18, 2023), <https://cms-files.tssaa.org/documents/tssaa/2023-24/handbook/2023-24TSSAABylaws.pdf> [<https://perma.cc/7GL3-K9PU>].

140. S. 1385, 87th Leg., Reg. Sess. (Tex. 2021); see also *Constitution and Contest Rules*, UNIV. INTERSCHOLASTIC LEAGUE 59 (2021–2022), <https://www.uiltexas.org/files/policy/2021-2022-UIL-constitution.pdf> [<https://perma.cc/P6YX-YANQ>] (requiring amateur status to participate in § 441 without allowing for name, image, or likeness).

141. *Handbook 2023-24*, UTAH HIGH SCH. ACTIVITIES ASS'N 29 (2023), <https://uhsaa.org/Publications/Handbook/Handbook.pdf> [<https://perma.cc/T6NJ-ZEKD>]; *Board of*

State	High School Athletics Governing Body	High School NIL Status
Vermont	Vermont Principals' Association	Permitted ¹⁴²
Virginia	Virginia High School League	Permitted ¹⁴³
Washington	Washington Interscholastic Activities Association	Permitted ¹⁴⁴
West Virginia	West Virginia Secondary School Activities Commission	Prohibited ¹⁴⁵
Wisconsin	Wisconsin Interscholastic Athletic Association	Prohibited ¹⁴⁶
Wyoming	Wyoming High School Activities Association	Prohibited ¹⁴⁷

Notably, those states that have chosen to permit high school student-athletes to profit from their NIL have generally done so consistent with collegiate-level NIL restrictions. For instance, at the college level, state NIL laws largely protect institutions' intellectual property ("IP") rights.¹⁴⁸ Although some state statutes permit college athletes to use institutional IP (like logos, uniforms, or colors) in their

Trustees Meeting Summary, UTAH HIGH SCH. ACTIVITIES ASS'N 2 (Jan. 20, 2022), <https://www.uhsaa.org/bot/BOT%20Meeting%20Summary%2001-20-22.pdf> [<https://perma.cc/4KQB-RMA9>].

142. *Athletic Policies*, VT. PRINCIPALS' ASS'N 10–12, https://docs.google.com/document/d/1_DMIEHHX3zIzO2jgqzaXLv2Puklx-o4y7IriQtRjQ0I/edit (last visited Apr. 5, 2024) [<https://perma.cc/SP3P-HG2R>].

143. *Handbook and Policy Manual 2023-24*, VA. HIGH SCH. LEAGUE 87 (July 2023), <https://drive.google.com/file/d/1OxLAgeE0tBHCgcHBdYoMBDGepYL2fN7W/view> [<https://perma.cc/RS2S-PJWW>].

144. *2023-24 WIAA Handbook*, WASH. INTERSCHOLASTIC ACTIVITIES ASS'N 39 (Oct. 10, 2023), <https://assets-rst7.rschoolday.com/rst7files/uploads/sites/652/2023/12/19161725/2023-24-HANDBOOK-12-11-2023.pdf> [<https://perma.cc/TBF7-Y6PE>].

145. *The Rules and Regulations of the West Virginia Secondary School Activities Commission*, W. VA. SECONDARY SCH. ACTIVITIES COMM'N 38 (Aug. 2023), <https://acrobat.adobe.com/id/urn:aaid:sc:US:8c89ebd9-1e6c-4c19-9918-8deeb345f88e?viewer%21megaVerb=group-discover> [<https://perma.cc/QH2F-NAPN>].

146. *2023-24 WIAA High School Rules at a Glance*, WIS. INTERSCHOLASTIC ATHLETIC ASS'N 4 (2023), <https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAARules2023-24.pdf> [<https://perma.cc/LYA5-67NM>].

147. *2023-24 Handbook*, WYO. HIGH SCH. ACTIVITIES ASS'N 36 (2023), <https://www.whsaa.org/whsaa/handbook.pdf> [<https://perma.cc/XR33-3LRP>].

148. *See, e.g.*, S. 1296, 55th Leg., 1st Reg. Sess. (Ariz. 2021) (prohibiting collegiate student-athletes from entertaining NIL endorsement deals that violate "the intellectual property rights of any person, including the student athlete's postsecondary education institution"); S. 60, 2021 Leg., Reg. Sess. (La. 2021) ("An intercollegiate athlete shall not use a postsecondary education institution's facilities, uniforms, registered trademarks, products protected by copyright, or official logos, marks, colors, or other indicia in connection with the use of the athlete's name, image, or likeness without the express permission of the postsecondary education institution.").

endorsement engagements—so long as permission is granted¹⁴⁹—others prohibit athletes’ use of institutional IP when participating in NIL activities.¹⁵⁰ In a similar light, high school athletic associations that allow athletes to capitalize on their NIL generally prohibit them from doing so while wearing institutional IP.¹⁵¹ In addition, state NIL statutes generally prohibit college athletes from endorsing morally questionable products or activities, like alcohol, tobacco, marijuana, gambling activities, and adult entertainment.¹⁵² Likewise, high school

149. See Holden et al., *supra* note 12, at 53 n.307 (providing, as one example, that the University of Houston has “a detailed policy on use of university intellectual property in marketing”); see also Andy Wittry, *How Schools Try to Protect Their IP, Multimedia Rights in the NIL Era*, ON3NIL (May 5, 2023), <https://www.on3.com/nil/news/college-athletics-multimedia-rights-contracts-van-wagner-kent-state-western-michigan-marks-logos-ip/> [<https://perma.cc/3X7K-U6XE>] (offering that both Western Michigan University and Kent State University limit student-athletes’ use of their institutional marks and IP to only sponsorship agreements entered into with Van Wagner).

150. See Holden et al., *supra* note 12, at 53 (describing Texas’s NIL statute, which prohibits athletes from using IP owned by the university in an NIL contract); see also, e.g., S. 1385, 87th Leg., Reg. Sess. (Tex. 2021) (prohibiting student-athletes from being compensated for their NIL “in exchange for property owned by the institution or for providing an endorsement while using intellectual property or other property owned by the institution”); S. 439, 2021 Leg., 443d Sess. (Md. 2021) (“Nothing in this section may be construed to grant a student athlete a right to make commercial use of names, trademarks, logos, or other intellectual property owned or controlled by a public institution of higher education.”).

151. See, e.g., CAL. INTERSCHOLASTIC FED’N, *supra* note 101, at 48 (prohibiting student-athletes from “[w]earing a school team uniform or any identifying school insignia while appearing in any advertisement, promotional activity or endorsement for any commercial product or service”); COLO. HIGH SCH. ACTIVITIES BD., *supra* note 102, at 83 (July 2023) (“Student-athletes will be prohibited from monetizing their name, image, and likeness with the use of their school’s uniform, equipment, logo, name, proprietary patents, products and/or copyrights associated with a CHSAA member school either in public, print or social media platforms.”); DCSAA 2022-2023 *Member Handbook*, *supra* note 105, at 22 (“These [NIL eligibility] provisions are not intended to restrict the right of any student to participate in a commercial or marketing endorsements provided there is no school team, school or DCSAA affiliation name or logo visible.”).

152. See, e.g., S. 971, 2020 Leg., Reg. Sess. (N.J. 2020):

[A] student participating in intercollegiate athletics shall be prohibited from earning compensation as a result of the use of the student’s name, image, or likeness in connection with any person, company, or organization related to or associated with the development, production, distribution, wholesaling, or retailing of: adult entertainment products and services; alcohol products; casinos and gambling, including sports betting, the lottery, and betting in connection with video games, on-line games, and mobile devices; tobacco and electronic smoking products and devices; prescription pharmaceuticals; a controlled dangerous substance; and weapons, including firearms and ammunition;

Mike DeWine, *Exec. Order No. 2021-10D*, MIKE DEWINE: GOVERNOR OF OHIO (June 28, 2021), https://governor.ohio.gov/media/executive-orders/executive-order-2021-10D?utm_medium=email&utm_source=sharpspring&sslid=Mzc1MTc1MTA3NDU1BQA&sseid=MzIytjQzMjCwtAQA&jobid=ed5262f4-d053-41c8-98c8-04fab7888818 [<https://perma.cc/H5SA-GVDH>] (prohibiting student-athletes from endorsing controlled substances, marijuana, tobacco, adult entertainment, and gambling activities); S. 685, 2021 Gen. Assem., 124th Sess. (S.C. 2021) (“An intercollegiate athlete may not earn compensation for the use of his name, image, or likeness for the endorsement of tobacco, alcohol, illegal substances or activities, banned athletic substances, or gambling including, but not limited to, sports betting.”).

athletic associations that permit NIL endorsement opportunities typically are equivalently restrictive.¹⁵³ Several states have also restricted students from entering into NIL deals that would compensate the athlete commensurate with their performance in a particular sporting event (such as an NIL deal that provides financial incentives based on the number of points an athlete scores in a particular game).¹⁵⁴ Finally, high school athletic associations tend to require student-athletes to disclose NIL endorsement deals to their schools,¹⁵⁵ thus mimicking state statutes that require college athletes to do the same.¹⁵⁶

As high school athletics continues to move toward embracing NIL, it is important to consider such financial opportunities amid the broader spectrum of amateur athletics. While similarities between collegiate and high school athletics exist, there are also significant and critical differences between the two. The next Part considers these differences amid the newly evolving high school NIL landscape.

II. DIFFERENTIATING HIGH SCHOOL AND COLLEGE ATHLETICS

As indicated above, most of the recently enacted state laws regulating high school NIL rights have largely treated student-athletes at this level analogously to those competing under the purview of the NCAA.¹⁵⁷ That being said, this approach overlooks meaningful

153. See, e.g., *PIAA 2023-2024 Constitution and Bylaws*, *supra* note 135, at 13 (prohibiting high school athletes from engaging in NIL activities that endorse adult entertainment, alcohol, gambling, tobacco, opioids, and prescription pharmaceuticals, controlled substances, or weapons, firearms, and ammunition); *IHSA Handbook with Illustrations*, *supra* note 110, at 119 (prohibiting NIL activities that associate with “gaming/gambling, alcoholic beverages, tobacco, cannabis, banned or illegal substances, adult entertainment products or services, firearms, or other weapons; or any other product or service that the Board deems inappropriate or distracting”).

154. See, e.g., *OSAA 2023-2024 Handbook*, *supra* note 134, at 39 (“The compensation (or prospective compensation) is not contingent on specific athletic performance or achievement (e.g., financial incentives based on points scored).”).

155. See, e.g., *id.* (student-athletes must disclose “any proposed [NIL] agreement/contract to the member school at which the student is enrolled and/or participating”); *CIAC, 2022-2023 Handbook*, *supra* note 103, at 88 (“Student-athletes are required to provide their member school copies of any endorsement, employment and representation agreements.”).

156. See, e.g., S. 685, 2021 Gen. Assem., 124th Sess. (S.C. 2021):

At least five days prior to the execution of a name, image, or likeness contract authorized by this chapter, the third party proposing to enter into the name, image, or likeness contract with the intercollegiate athlete must disclose, in writing, to the intercollegiate athlete any prior or existing association, either formally or informally, with any institution of higher learning or any prior or existing financial involvement with respect to athletics;

Leg. 962, 106th Leg., 2d Sess. (Neb. 2020) (“Any student-athlete who enters into a contract that provides compensation for the use of such student-athlete’s name, image, or likeness rights or athletic reputation shall disclose such contract to an official of the postsecondary institution for which such student-athlete participates in an intercollegiate sport.”).

157. See *supra* notes 148–156 and accompanying text.

differences between high school and college athletic competition—and, importantly, the athletes competing at each level. Relevant differences that state policymakers should consider when drafting rules in this area include the (a) ages of the respective athletes being regulated and their purposes for seeking NIL opportunities, and (b) differences in the purpose and structure of high school versus college sports (and the educational mission of each level more broadly).

A. Relevant Distinctions Between High School and College Student-Athletes

When drafting NIL regulations at the high school level, it is important for policymakers to recognize several relevant differences between athletes competing in high school versus college. Perhaps the most important of these differences is the respective ages of the student-athletes: while most college athletes will typically have turned eighteen and thus reached the age of majority, many high school athletes are under the age of eighteen and thus legally considered minors. This difference has several important implications for crafting high school NIL policies.

Most notably, high school athletes under the age of eighteen generally lack the mental capacity to sign legally binding contracts.¹⁵⁸ Thus, any NIL contract signed by a high school athlete under the age of majority is susceptible to termination should the minor later choose to disaffirm the contract.¹⁵⁹ Indeed, this is the case in most jurisdictions even if the minor's parents cosign the contract on their behalf.¹⁶⁰ To counteract this traditional legal rule, some states have enacted legislation specifying that minors are unable to disaffirm certain contractual obligations—such as those related to educational loans—or otherwise have created a procedure for courts to approve minors' contracts, thereby making them legally binding.¹⁶¹ States reevaluating their approach to NIL rights at the high school level may wish to consider whether there is a need to address most high school athletes' contractual capacity in any new regulations they enact and, if so, how best to go about handling the issue.

158. See Debra D. Burke & Angela J. Grube, *The NCAA Letter of Intent: A Voidable Agreement for Minors?*, 81 MISS. L.J. 265, 266 (2011) (noting the traditional contract law principle permitting “minors [to] disaffirm agreements entered into during their minority”).

159. *Id.* at 274 (explaining the right of minors to disaffirm contracts entered into prior to the age of 18).

160. *Id.* (finding that “the approval of a minor’s contract by a parent or other guardian usually will not alter the voidable nature of the agreement”).

161. See *id.* at 272–73.

Similarly, given their relative youth, many high school athletes may be more susceptible to questionable lapses in judgment than their college counterparts. While the risk that a high school athlete may engage in problematic behavior could make companies more hesitant to associate themselves with players at this level,¹⁶² the potential lack of maturity is also an issue that policymakers should consider when drafting high school NIL rules. Specifically, as discussed below, several states have enacted rules requiring minors signing contracts in other sectors of the entertainment industry—like child actors—to set aside a portion of their earnings in a trust for use once the child has reached the age of legal maturity.¹⁶³ Not only does this protect the minor from spending all of their earnings before turning eighteen, but it also protects them from unscrupulous parents or guardians potentially doing the same. Thus, states formulating new regulations in this area should consider enacting similar protections for high school athletes entertaining NIL deals, thereby preventing future athletes from experiencing the fate of Olympic gymnast Dominique Moceanu.¹⁶⁴

Some have also expressed concern that high school students may be particularly susceptible to anxieties and stresses that can result from pressures to maximize their NIL earnings potentials.¹⁶⁵ As the value of NIL deals is often based on the athlete's social media following,¹⁶⁶ young athletes may struggle to balance maintaining a sufficient social media presence while also preserving a strong academic record and performing at a high level on the playing field.¹⁶⁷ Commentators have also cautioned that even for those high school athletes who do not feel undue stress or anxiety over potential endorsement income, NIL opportunities may further incentivize some to specialize in a single

162. See Solomon, *supra* note 17 (“[T]he potential risk of a high school athlete doing a deal is probably scary for a lot of brands.” (quoting Braly Keller, NIL Specialist, Opendorse)).

163. See *infra* Part III.

164. See *supra* notes 6–7 and accompanying text.

165. See Keith Groller, *Name, Image, Likeness Deals for High School Athletes: A Potential Powder Keg or Much Ado About Nothing?*, MORNING CALL (March 26, 2023, 4:00 AM), <https://www.mcall.com/2023/03/26/nil-high-school-sports/> [https://perma.cc/YHB6-QLWD] (interviewing John Hauth, a Senior Director at St. Luke's, who noted his team does not wish to “add one more additional stress point” for high school athletes, a demographic that is already under a lot of stress).

166. See Eisenberg, *supra* note 17 (noting that the high school athletes likely to sign the largest NIL deals have “huge social media followings,” something that requires “maintaining a consistent presence on social media” platforms).

167. See Jamal Murphy, *NIL Is Making U.S. Prep Basketball Even More of an ‘Individual Branding Space,’* GLOB. SPORT MATTERS (Jan. 23, 2023), <https://globalsportmatters.com/youth/2023/01/23/nil-prep-basketball-individual-branding-space/> [https://perma.cc/9F56-YC5X] (reporting that “the pressure to maximize one’s personal brand and earning potential can create an unbearable level of stress for a teenager” who is already under “pressure to perform at a high level on the court”).

sport at an earlier age—thus “increasing the risk of burnout and overuse injuries”¹⁶⁸—or chase superficial validation and individual accolades at the expense of team accomplishments (potentially resulting in increased locker-room strife).¹⁶⁹ While individual high school athletes are likely to internalize these pressures and incentives quite differently from one another, considering that the United States is already facing a teen mental health crisis,¹⁷⁰ the potential psychological effects that NIL opportunities may have on this vulnerable age group is another factor that state legislators should be mindful of.

Finally, one other age-related difference worth noting is that certain foreign jurisdictions extend additional privacy protections to minors beyond those that are typically provided in the United States.¹⁷¹ Such protections could extend to any U.S. high school student-athletes maintaining dual citizenship in such foreign jurisdictions and thus represent another unique concern potentially distinguishing NIL deals at the high school versus collegiate level.

Beyond age, there are also important differences in how and why high school students may engage with NIL opportunities as compared to their college counterparts. First, while the highest-profile high school athletes will be predominantly motivated to enter into endorsement contracts because of the potential financial remuneration that they provide, in many other cases high school students may seek these opportunities for quite different reasons. For example, a meaningful subset of high school athletes are pursuing NIL deals to help raise their individual profiles in the eyes of college coaches in the hopes of landing athletic scholarships, or to otherwise increase their particular sport’s popularity.¹⁷² Others may hope to secure free brand name

168. Solomon, *supra* note 17.

169. See Murphy, *supra* note 167 (discussing the potential for NIL opportunities to result in teenagers “seek[ing] superficial validation” or “individual accolades”); see also Nick Alvarez, *The Debate Around NIL and Alabama High School Athletics Is Here*, AL.COM (Feb. 2, 2023, 9:19 AM), <https://www.al.com/highschoolsports/2023/02/the-debate-around-nil-and-alabama-high-school-athletics-is-here.html> [<https://perma.cc/3B5S-2VJU>] (citing one high school football coach as worrying that NIL opportunities could cause players to fight in the locker room for additional opportunities on the playing field).

170. See Matt Richtel, *It’s Life or Death’: The Mental Health Crisis Among U.S. Teens*, N.Y. TIMES (April 23, 2022), <https://www.nytimes.com/2022/04/23/health/mental-health-crisis-teens.html> [<https://perma.cc/45VK-WS6E>] (finding that “depression, self-harm and suicide are rising among American adolescents”).

171. See Amber Edney, Note, *“I Don’t Work for Free”: The Unpaid Labor of Child Social Media Stars*, 32 U. FLA. J.L. & PUB. POL’Y 547, 566 (2022) (noting that in 2020, “France passed a law focused on protecting child social media stars”).

172. See Travis Lazarczyk, *For High School Athletes Turned Marketers, Getting Rich Isn’t the Goal*, PORTLAND PRESS HERALD (Jan. 22, 2023), <https://www.pressherald.com/2023/01/22/high-school-athletes-enter-the-nil-marketplace-but-few-are-getting-rich/> [<https://perma.cc/Y4BE->

merchandise¹⁷³ or offset the costs of athletic training.¹⁷⁴ Indeed, unlike at the college level—where the aforementioned rise of school-affiliated collectives has resulted in significant sums of money being directed at a broad array of student-athletes, with little expectation of any corresponding level of promotional work¹⁷⁵—at the high school level, most NIL deals are secured through third-party endorsement deals that have no relation to the student-athletes' affiliated schools.

Finally, given the demands placed on college athletes, those competing at the high school level are more likely to carry traditional part-time jobs during either the school year or summer break.¹⁷⁶ The realities of outside employment raise a host of difficult questions and line drawing exercises for policymakers seeking to limit high school students from receiving compensation from third-party companies based on their athletic abilities. For example, how does one determine whether a local high school student was hired for a part-time job at a restaurant due to her outstanding customer service skills, or if instead the job is merely disguising an NIL payment based on her local athletic notoriety? Factors like these may thus require state policymakers to consider adopting different NIL regulations than those implemented at the college level.

B. Variations in the Purpose and Structure of High School and College Athletics

In addition to the relevant differences between high school and college athletes outlined above, there are other important variances between the two levels of actual competition that policymakers should consider when formulating new rules regulating high school NIL rights. To begin, high schools and colleges have traditionally served different

BXSC] (reporting that for some high school athletes, “NIL deals aren’t about making a lot of money. They’re about increasing their visibility with college coaches,” and highlighting a student using NIL “to increase the popularity of field hockey” (internal quotation marks omitted)).

173. See *id.* (discussing examples of athletes signing NIL deals for clothing and free food).

174. See Armato, *supra* note 66 (interviewing a student-athlete’s father who stated they have turned down opportunities that would “help offset the expense [his] family must undertake to ensure that [his son] receives the best training” because they live in a jurisdiction that prohibits high school NIL (internal quotation marks omitted)).

175. See *supra* note 62 and accompanying text; see also Jon Blau, *Clemson NIL Collective’s Tax-Exempt Status in Doubt After IRS Memo*, POST & COURIER (June 18, 2023), https://www.postandcourier.com/sports/clemson/clemson-nil-collectives-tax-exempt-status-in-doubt-after-irs-memo/article_fe6ac208-0b9e-11ee-814a-c75d596f3194.html [https://perma.cc/TKL6-A58C] (contending that it is unclear whether these college collectives “can make a compelling argument that paying [student-]athletes to promote charities is ‘incidental’ when compared to the greater good”).

176. See, e.g., Groller, *supra* note 165 (noting the example of a high-profile high school athlete who was a paperboy for the local newspaper throughout high school).

societal missions and educational roles. Whereas a college education is generally viewed as an optional pursuit for those seeking to further develop themselves personally, professionally, and intellectually,¹⁷⁷ high schools provide more fundamental educational credentials.¹⁷⁸ Indeed, the goal of a high school education is to provide all children with a “sound basic education”; one that prepares them to functionally serve society as productive citizens.¹⁷⁹ As such, concerns that NIL-related activity could distract high school student-athletes, and hinder their ability to finish their baseline educational experience, are potentially more worrisome than in the case of intercollegiate athletics.¹⁸⁰

Similarly, others have argued that athletic competition at the high school and college levels serve different fundamental purposes.¹⁸¹ Specifically, while intercollegiate athletics is—at least at the highest and most visible levels—predominantly a highly competitive enterprise, some have argued that high school sports should ideally be viewed as a more educationally focused endeavor. As scholar Van Ann Bui notes:

Interscholastic athletics also play a pivotal role in the area of education. They help build self-confidence, encourage teamwork and healthy competition and help develop a myriad of other leadership skills. For students who are not academically inclined, interscholastic sports may provide a much needed boost of motivation to excel in academics—due to academic eligibility requirements—and they may help establish a social network for students who are academically-oriented.¹⁸²

Others have similarly noted that “[t]he primary reason that an overwhelming majority of high school students play sports is to have

177. See Michael Hacker, *Rethinking the Tax Treatment of Higher Education Expenditures: An Argument for Cost Recovery Through Amortization*, 59 S. TEX. L. REV. 1, 24 (2017) (reporting that “35% of adults surveyed said that the purpose of a college degree should be to help individuals grow personally and intellectually, while 50% said that college should teach job-related skills”).

178. See, e.g., Deborah N. Archer, *Failing Students or Failing Schools?: Holding States Accountable for the High School Dropout Crisis*, 12 LEWIS & CLARK L. REV. 1253, 1259 (2008) (observing that “a high school diploma [is] a key component of [a basic] educational experience”).

179. See Michael A. Rebell, *The Right to Comprehensive Educational Opportunity*, 47 HARV. C.R.-C.L. L. REV. 47, 55 (2012) (discussing the purpose of a K-12 education).

180. Cf. James Landry & Thomas A. Baker III, *Change or Be Changed: A Proposal for the NCAA to Combat Corruption and Unfairness by Proactively Reforming Its Regulation of Athlete Publicity Rights*, 9 N.Y.U. J. INTELL. PROP. & ENT. L. 1, 45 n.310 (2019) (noting the need to “ensure student-athletes are focused on their education during the semesters and not distracted by business opportunities”).

181. See Jon Perrelle, *An Opportunity for Reform: Tennessee Secondary School Athletic Association v. Brentwood Academy and NCAA Recruiting*, 74 BROOK. L. REV. 1213, 1229 (2009) (observing that “some believe high school athletics serves an entirely different purpose [than] college athletics”).

182. Van Ann Bui, *Varsity Blues: A Call to Reconfigure the Judicial Standard for High School Athletic Association Transfer Rules*, 34 COLUM. J.L. & ARTS 231, 256–57 (2011) (footnote omitted).

fun and spend significant and meaningful time with their peers.”¹⁸³ For this reason, some consider high school sports to be the “purest form of amateur[ism].”¹⁸⁴ As such, the potential educational and social effects of NIL opportunities—and their resulting profit incentives—arguably raise greater concerns at this level of competition than in college athletics.¹⁸⁵

Another factor that policymakers should contemplate is the potential administrative burden that any NIL regulations will place on cash-strapped high schools. Due to the extremely competitive nature of college sports, NCAA schools have traditionally been heavily regulated, requiring them to maintain significant compliance-related staffing.¹⁸⁶ In contrast, high school athletic programs tend to be more leanly staffed, meaning that any elaborate or detailed NIL regulations at the high school level could pose heightened burdens for the institutions and associated athletic associations that supervise them.¹⁸⁷

One final difference between high school and college sports that should be considered is the greater variety of *types* of competition that are available to athletes at the high school level. While most four-year institutions of higher education competing in intercollegiate athletics are NCAA members, and thus agree to be bound by the same set of rules,¹⁸⁸ the high school sports landscape is made up of a more diverse

183. Nate Perry, *High Schools, State Associations Facing Effects of NIL Ruling*, NFHS, (Sept. 8, 2021), <https://www.nfhs.org/articles/high-schools-state-associations-facing-effects-of-nil-ruling/> [<https://perma.cc/6WH6-7RDJ>] (internal quotation marks omitted) (quoting Karissa Niehoff, NFHS Executive Director).

184. Rick Fires, *Wary of the Changes with NIL Payments for High School Athletes*, ARK. DEMOCRAT GAZETTE (Apr. 8, 2023, 5:00 AM), <https://www.arkansasonline.com/news/2023/apr/08/opinion-rick-fires-wary-of-the-changes-with-nil/> [<https://perma.cc/5JNP-XAM6>].

185. To be sure, the NCAA itself continues to maintain that intercollegiate athletics should continue to abide by the principle of amateurism to maintain a “clear line of demarcation between college athletics and professional sports.” *Division I: 2023-24 Manual*, NCAA 34, <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited Apr. 5, 2024) [<https://perma.cc/7WZ6-5U2C>].

186. See Nathaniel Grow & Todd Haugh, *Assessing the NCAA as a Compliance Organization*, 2021 WIS. L. REV. 787, 803 (“Universities with major sports programs now employ as many as eleven full-time staff members to serve as NCAA compliance officers within their athletic departments.”).

187. Cf. Lan Kennedy-Davis, *Let’s Make a NIL Deal Part II: High School Student-Athletes Look to Get into the NIL Game*, JD SUPRA (Mar. 11, 2022), <https://www.jdsupra.com/legalnews/let-s-make-a-nil-deal-part-ii-high-7720859/> [<https://perma.cc/C38V-WHBE>] (noting that high schools should consider the need to engage lawyers and advisors for high school athletes signing NIL deals). One possible source of administrative support for high schools wrestling with added administrative burden would be to partner with outside vendors, similar to the existing partnerships between Louisiana, Texas, and Tennessee with Eccker Sports. See *supra* notes 92–93 and accompanying text.

188. See Marc Edelman, *The Future of Amateurism After Antitrust Scrutiny: Why a Win for the Plaintiffs in the NCAA Student-Athlete Name & Likeness Licensing Litigation Will Not Lead to the Demise of College Sports*, 92 OR. L. REV. 1019, 1022 (2014) (“Although some accredited

set of participants. In addition to the traditional public and private high schools belonging to their respective state's high school athletic association, recent years have also seen a rise in the number of independent academies fielding high school athletic teams.¹⁸⁹ These academies typically operate outside the scope of their state's high school athletic association, instead competing against other similar academies from across the country.¹⁹⁰ As a result, these academies are not subject to the same rules and regulations as their more traditional counterparts, meaning that players dissatisfied with their state's NIL rules could elect to transfer to an institution where their eligibility to compete would not be subject to the same constraints.¹⁹¹

Further, many high school players frequently participate on so-called travel or Amateur Athletic Union ("AAU") teams outside the traditional high school season for their sport, providing opportunities that greatly increase their visibility and marketability with both college coaches and potential NIL partners.¹⁹² These AAU teams are often financially supported by various corporate partners—most notably leading shoe and apparel companies, like Nike¹⁹³—thus raising a host of difficult questions about how to regulate these relations with high school athletes. As a result, the increased importance of AAU sports also raises unique challenges for policymakers enacting NIL rules at the high school level.

colleges are not NCAA members, '[f]or all practical purposes, the NCAA . . . directs and controls all major revenue-producing collegiate athletic events.' (alterations in original) (quoting Daniel A. Rascher & Andrew D. Schwarz, "Amateurism" in *Big-Time College Sports*, 14 ANTITRUST 51, 52 (2000))).

189. See, e.g., Kimberly Jade Norwood, *Adult Complicity in the Dis-education of the Black Male High School Athlete & Societal Failures to Remedy His Plight*, 34 T. MARSHALL L. REV. 21, 72 (2008) ("The IMG Academies, spread out over 300 acres in Florida, are the 'largest and most ambitious schools ever created for devoted youth athletes.' They have advanced, state of the art multi-sport training centers and facilities and top flight educational faculty." (footnote omitted)).

190. Notably, one of the highest-profile academies, IMG Academy in Bradenton, Florida, was recently acquired by a Hong Kong-based private equity group for \$1.25 billion. Manny Navarro, *Prep Sports Powerhouse IMG Academy to Be Sold for \$1.25 Billion: What Does It Mean Long Term?*, ATHLETIC (Apr. 25, 2023), <https://theathletic.com/4450196/2023/04/25/img-academy-sale-endeavor-bpea-eqt/> [<https://perma.cc/H7ZK-YCBS>].

191. See Solomon, *supra* note 17 (noting the example of a player attending "Vertical Academy in Charlotte . . . [whose] current endorsement deals would make him ineligible for competition" in the NCHSAA).

192. See Stephen F. Ross & Miles J. Gueno, *Solving the Problem of Social Cost Through Legislative Pressure: A Case Study of the Coase Theorem as Applied to the College Basketball Shoe Scandal*, 30 MARQ. SPORTS L. REV. 9, 16 (2019) ("The recruiting process begins by sponsorship of tournaments and teams in AAU competitions. The AAU summer leagues . . . provide a forum for AAU coaches, brand representatives and college coaches to influence the prospect and his family to remain loyal to the shoe company brand.").

193. See *id.* at 15–20 (discussing the role of shoe companies in AAU basketball).

Due to the number of competitive outlets available to high school athletes, policymakers should be cognizant of the fact that restrictive NIL regulations at the high school level could increase the odds that talented athletes choose to leave traditional public or private high schools for independent academies,¹⁹⁴ relocate across state lines,¹⁹⁵ or avoid playing high school sports altogether and instead play exclusively on AAU travel teams¹⁹⁶ in order to capitalize on their notoriety.¹⁹⁷ Such loss of talent threatens the traditional community pride engendered by high school athletics, in which local townsfolk support their community's most talented athletes playing for their hometown schools.¹⁹⁸

The above-noted concerns relating to the age and competitive environment of high school athletes, as compared to college athletes, are not meant to suggest that NIL opportunities should necessarily be withheld at the high school level. However, these concerns emphasize the need for policymakers and high school athletic associations to think more acutely when considering whether high school athletes should be permitted to capitalize on their NIL. At a minimum, protections should be implemented to help prevent the financial exploitation of high school athletes by their parents or guardians. As the next Part details, such safeguards could follow the example established by California's Coogan's Law.

194. See Solomon, *supra* note 17 (discussing the example of Mikey Williams, a highly rated college basketball recruit who elected to “play [] for Vertical Academy in Charlotte, a school that was founded by his father and is scheduled to play 25 games in 19 states against prep schools and similar academies,” in order to be able to monetize his NIL rights despite the NCHSAA rules prohibiting such deals).

195. See CBS NEWS, *supra* note 67 (documenting that high school basketball player Jada Williams moved to California with her mom in order to capitalize on NIL opportunities); Jeff Miller, *How Texas's NIL Law Drives Top High School Athletes out of State*, TEX. MONTHLY (Sept. 5, 2023), <https://www.texasmonthly.com/arts-entertainment/texas-high-school-athletes-leaving-for-nil/> [<https://perma.cc/2AEW-P4K9>] (citing additional examples of student-athletes leaving Texas for states where they can earn NIL income).

196. See Tabatha Wethal, *Do NIL Changes Affect High School Student-Athletes?*, ATHLETIC BUS. (Sept. 7, 2021), <https://www.athleticbusiness.com/operations/programming/article/15139817/do-nil-changes-affect-high-school-student-athletes> [<https://perma.cc/A3G3-2CE4>] (providing that if high school athletes who secure NIL deals through AAU play in states that do not permit high school athletes to pursue NIL opportunities, they are “likely not going to be able to also play for their high school team at the same time they are functioning as a professional athlete”).

197. See Groller, *supra* note 165, at 3 (noting that “NIL [raises] concerns at the high school level revol[ving] around the movement of athletes”).

198. See Tracy, *supra* note 88 (noting the importance of “being part of a community” for high school athletics).

III. CALIFORNIA'S COOGAN'S LAW: A POSSIBLE APPROACH TO INTERSCHOLASTIC NIL INCOME

Paying minors who play sports for their services is not a novel idea. Historically, such activity has typically involved sponsorship agreements with professional athletes who are nonemployee *independent contractors*, like golfers and tennis players. For example, tennis talent Jennifer Capriati made headlines in the 1990s by turning pro at age thirteen.¹⁹⁹ Independent contractor athletes often earn prize money and, in some instances like Capriati, are paid to endorse an entire brand or specific product using their NIL.²⁰⁰

In other sports, like professional soccer, minor athletes are paid as *employees* to provide services as professional athletes for the team or club.²⁰¹ For example, teenage soccer star Freddy Adu signed a six-year contract at age fourteen with the Major League Soccer team D.C. United in 2003.²⁰² More recently, fifteen-year-old soccer star Chloe Ricketts signed a contract with the Washington Spirit and, in 2023, became the youngest professional female soccer player in the United States to sign with Adidas.²⁰³

Still, concerns over youths playing sports in an adult world led to the establishment of minimum age regulations in some professional

199. See, e.g., Josh Fordham, *Jennifer Capriati Turned Pro at 13, Had Her Own Video Game Before Depression and Drug Issues but Eventually Won Three Grand Slam Titles—Including Two Australian Opens*, TALKSPORT (Jan. 22, 2023, 9:30), <https://talksport.com/sport/tennis/1307263/jennifer-capriati-australian-open-drug-issues-video-game/> [<https://perma.cc/5BFC-VNUC>] (summarizing Capriati's career and asserting that "her story serves as a cautionary tale of getting too much too young"). Fordham also notes that Capriati was inducted into the Tennis Hall of Fame in 2012 at the young age of thirty-six. *Id.*

200. *Id.* (referencing Capriati's million-dollar contract with Diadora and that she had a video game named after her for the Sega Genesis in 1992, called *Jennifer Capriati Tennis*); see also Michael McCann, *Coco Gauff and the Legality of the Teenage Professional Athlete*, SPORTS ILLUSTRATED (July 3, 2019), <https://www.si.com/tennis/2019/07/03/cooc-gauff-wimbledon-teenage-professional-athlete-legal> [<https://perma.cc/CD4D-RXMM>] (discussing the prize money and endorsement contracts that teenager professional athletes such as fifteen-year-old tennis player Coco Gauff has been able to achieve and how other sports leagues and associations have attempted to regulate age-based eligibility opportunities to compete).

201. *Id.* (comparing various age eligibility minimums in numerous professional sport leagues including Major League Soccer, which does not have an age minimum, and other leagues in which the age eligibility or age minimum is established as a direct result of collective bargaining).

202. See Jack Bell, *14-Year-Old Signs Contract with Major League Soccer*, N.Y. TIMES (Nov. 18, 2003), <https://www.nytimes.com/2003/11/18/sports/soccer/14yearold-signs-contract-with-major-league-soccer.html> [<https://perma.cc/JBD8-YYWZ>] (noting that the contract would start the following season and quoting Commissioner Don Garber, "[t]his is the biggest signing in the history of the league").

203. Cassidy Johncox, *Dexter Teen Becomes Youngest Professional Female Soccer Player to Sign with Adidas*, CLICK ON DETROIT (Mar. 29, 2023, 1:06 PM), <https://www.clickondetroit.com/sports/2023/03/29/dexter-teen-becomes-youngest-professional-female-soccer-player-to-sign-with-adidas/> [<https://perma.cc/MHC9-RDNU>].

associations and leagues. These restrictions have often, but not exclusively, come through the collective bargaining process.²⁰⁴ Unfortunately, managing the financial affairs of an elite minor athlete can lead to controversy, as in the case of Dominique Moceanu who—as noted above²⁰⁵—sued her parents at the age of seventeen for squandering her earnings.²⁰⁶

Given recent opportunities for some high school athletes to receive compensation for the use of their NIL, the gates have opened to a new frontier of minors earning income subject only to piecemeal regulation.²⁰⁷ However, this new world also exposes minor athletes to the possibility that their NIL and other earnings could be at risk of misuse, as happened with Moceanu.²⁰⁸ As a result, and for guidance,

204. See McCann, *supra* note 200 (noting the Women’s Tennis Association established age eligibility rule structure crafted in part in response to the burnout that child tennis star Jennifer Capriati endured in the early 1990s). McCann also notes that there is an age rule minimum in the ATP, the men’s governing body for tennis, but in other professional sports leagues such as the NFL, NBA, WNBA, MLB, and NHL, the minimum age eligibility rules are a direct result of collective bargaining. *Id.* But see Meredith Cash, *Olivia Moultrie Didn’t Mean to Start the NWSL’s Teenage Revolution, but She’s Proud of the Role She Played*, BUS. INSIDER (May 16, 2023, 2:13 PM), <https://www.insider.com/olivia-moultrie-nwsl-teenagers-lawsuit-impact-equality-2023-5> [<https://perma.cc/Y3YW-WQAL>] (discussing how the then-fifteen-year-old Moultrie successfully challenged in court via a temporary restraining order the National Women’s Soccer League (“NWSL”) rule that one had to be eighteen to play as a violation of antitrust law, leading to a settlement between Moultrie and the NWSL). Cash notes that, as a result of Moultrie’s successful court challenge, the first NWSL collective bargaining agreement, established less than a year later, omits a minimum age rule entirely. *Id.* Moultrie plays for the Portland Thorns, and two fifteen-year-olds, Chloe Ricketts (Washington Spirit) and Melanie Barcenas (San Diego Wave) also played in the 2023 league. *Id.*

205. See *supra* text accompanying notes 6–7.

206. See Longman, *supra* note 6:

Moceanu, who is a high school senior in Houston, has asked a Texas District Court to declare her an adult so that she can handle her own affairs and determine what has happened to the approximately \$1 million she has made from a professional career that began at age 10 and bloomed into gold-medal success as the American women won the gymnastics team competition at the 1996 Summer Olympics in Atlanta;

see also Amy Shipley, *Moceanu Is Declared a Legal Adult*, WASH. POST (Oct. 29, 1998), <https://www.washingtonpost.com/archive/sports/1998/10/29/moceanu-is-declared-a-legal-adult/262702a3-ee62-484d-ab38-8dac95f35bf/> [<https://perma.cc/P3VR-36P3>] (“Seventeen-year-old Olympic gymnastics champion Dominique Moceanu was declared a legal adult in Houston State District Court yesterday after her parents agreed to drop their resistance to the action.”).

207. See Scott Nover, *In California, Even High School Athletes Can Score Endorsement Deals*, QUARTZ (Aug. 2, 2021), <https://qz.com/2041395/high-schoolers-can-profit-off-their-nil-in-one-state> [<https://perma.cc/D5CX-PARU>] (describing how the intercollegiate landscape changed dramatically in 2021 when the NCAA changed its rules to permit college athletes to profit from their NIL). Nover also reports that at the time of the article, only the state of California permitted high school athletes to profit from their NIL because many student-athletes are also involved in the film and television industries to some degree. *Id.* Nover states, “California’s lenient NIL policy could give it a competitive advantage over the other[] [states].” *Id.*

208. See Erica Siegel, Note, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427, 439–40 (2000) (discussing the Moceanu story).

this Essay explores the need to protect a portion of a minor's income earned in the entertainment industry—both from access and possible embezzlement by unscrupulous parties, as well as from the minor's own potentially questionable financial decisionmaking.²⁰⁹

Notably, according to California's Coogan's Law,²¹⁰ fifteen percent of the gross earnings from the hired work of unemancipated minors—at least in specific types of contractual relationships found primarily in the entertainment industry—must be put into an established trust account referred to in the statute itself as a “Coogan Trust Account.”²¹¹ This fifteen percent must be placed in the trust account per the California Family Code until the minor turns eighteen years old,²¹² although a parent or guardian can petition a court

209. See, e.g., John H. Shannon & Richard J. Hunter, Jr., *Principles of Contract Law Applied to Entertainment and Sports Contracts: A Model for Balancing the Rights of the Industry with Protecting the Interests of Minors*, 48 LOY. L.A. L. REV. 1171, 1175 (2015) (asking whether principles applicable to the regulation of the entertainment industry should “be the guideposts in the area of contracts with athletes who are minors”). The authors also offer suggestions for the current Coogan's Law framework and note how actors Jackie Coogan, Shirley Temple Black, Gary Coleman, and others all had to deal with parents who misused or otherwise squandered their earnings. *Id.* at 1181–84; see also Susan McAleavey, Note, *Spendthrift Trust: An Alternative to the NBA Age Rule*, 84 ST. JOHN'S L. REV. 279, 298 (2010) (“Coogan's Law recognizes that the pressures of the entertainment industry force minors to grow up quickly and face the same obligations as adults.”).

210. Coogan's Law was established in 1939 as the California Child Actor's Bill. Brad B. Harris, *Thank Uncle Fester: The Origin of “Coogan Accounts,”* PERENNIAL FIN. SERVS. (Aug. 18, 2022), <https://www.perennialfinancialservices.com/blog/thank-uncle-fester-the-origin-of-coogan-accounts> [<https://perma.cc/6MGS-RCET>]; see also CAL. FAM. CODE §§ 6750-6753 (West 2000) (chapter governing “Contracts in Art, Entertainment, and Professional Sports”).

211. FAM. § 6753(a) (“The trustee or trustees shall establish a trust account, that shall be known as a Coogan Trust Account.”). The fifteen percent requirement is mentioned in two places: FAM. § 6752 (b)(1) (“[T]he court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer, except an employer of a minor for services as an extra, background performer, or in a similar capacity”); and FAM. § 6752 (b)(4) (“The minor's employer shall deposit or disburse the 15 percent of the minor's gross earnings pursuant to the contract [T]he minor's employer shall hold, for the benefit of the minor, the 15 percent of the minor's gross earnings pursuant to the contract.”). These trust accounts might go by different commercial names, including, “Coogan Account,” “Coogan Blocked Trust Account, Coogan Trust Account, or Coogan Bank Account.” E.g., Charles Wallace, *The “Coogan Account” and Setting Your Little Performer up for Financial Success*, CREEDON, <https://www.creedon.com/blog/2021/9/24/the-coogan-account-and-setting-your-little-performer-up-for-financial-success> (last visited Apr. 5, 2024) [<https://perma.cc/NNC8-5BLU>]; see also *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> (last visited Apr. 5, 2024) [<https://perma.cc/5E3L-GJXV>] (affirming that parents or guardians are required to open a Coogan Account with a California bank, credit union or brokerage firm under California Law, with similar requirements existing for New York, Illinois, Louisiana, and New Mexico); McCann, *supra* note 200 (“The Screen Actors Guild represents young performers and provides important legal information to them, including on legal issues pertinent to their parents and guardians.”).

212. FAM. § 6753(b) (“[P]rior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation. . . no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust. . . .”).

otherwise if they can show “good cause.”²¹³ Specifically, this section of the California Family Code applies to contracts pursuant to which a “minor is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company), or through a casting agency.”²¹⁴

The California law traces its origins to Jackie Coogan—a child actor who became famous for working with Charlie Chaplin, particularly in the 1921 silent film *The Kid*.²¹⁵ Jackie earned between \$2 million and \$4 million as a child actor.²¹⁶ At the time, California child actors’ earnings belonged solely to their parents.²¹⁷ When Jackie became an adult, he discovered that his money was gone, having been depleted by his parents and manager.²¹⁸ As a result, Jackie sued his parents and his former manager,²¹⁹ and in 1939 California established the eponymous Coogan’s Law to provide some measure of financial

213. FAM. § 6752(c)(5) (“Upon petition of the parent or legal guardian. . . the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust.”).

214. FAM. § 6750(a)(1) (“‘Artistic or creative services’ includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.”).

215. See Luke Cyphers & Daniel Libit, *The Case for an Athlete Coogan Law*, INTERCOLLEGIATE (Dec. 3, 2019), <https://theintercollegiate.substack.com/p/the-case-for-an-athlete-coogan-law> [<https://perma.cc/R35H-SASM>] (noting that Jackie Coogan went on to play the role of Uncle Fester on the television show *The Addams Family* as an adult); see also, Rick Burton, *Youth Sports NIL: A New Way to Milk an Old Cash Cow*, SPORTICO (Dec. 9, 2021, 5:55 AM), <https://www.sportico.com/leagues/college-sports/2021/high-school-nil-1234648024/> [<https://perma.cc/KPY4-VX3K>] (noting that “Coogan Laws” were established in California and New York to protect against parents who fleeced minors of their money and expressing concern that in the new NIL landscape that parents and guardians may view their minor children as “monetizable assets”).

216. Cyphers & Libit, *supra* note 215.

217. SAG-AFTRA, *supra* note 211.

218. *Id.*:

It wasn’t until his 21st birthday after the death of his father and the dwindling of his film career that Jackie realized he was left with none of the earnings he had worked so hard for as a child. Under California law at the time, the earnings of the minor belonged solely to the parent;

see also Shannon & Hunter, Jr., *supra* note 209, at 1181 (“[M]oney that a child earned at that time belonged to his parents as a matter of law.”).

219. See SAG-AFTRA, *supra* note 211. Jackie Coogan’s father passed away and much of the litigation ended up being between Jackie and his mother and stepfather. Coogan recovered only a small sum of his money as a result. *Id.*; see also *Coogan Accounts: Protecting Your Child Star’s Earnings*, MORGAN STANLEY (Oct. 18, 2023), <https://www.morganstanley.com/articles/trust-account-for-child-performer> [<https://perma.cc/E6Q6-RAE9>] (discussing how the high-profile lawsuit eventually led to California enacting the first legislation to protect child performers); Harris, *supra* note 210 (“By the time Coogan sued his parents and won, he received only \$126,000 (after legal fees were paid).”).

protection for young actors vis-à-vis their parents when employed in California's entertainment industry.²²⁰

The original iteration of Coogan's Law could have been drafted with fewer loopholes and has been modified several times since 1939, including in 1941, 1947, 1989, and 2000.²²¹ Starting on January 1, 2000, earnings by minors in the entertainment industry are presumed to be the property of the minor, not their parents or guardians.²²²

In California, Coogan Trust Accounts are highly protected, so much so that any withdrawal from a Coogan Trust Account must have court approval first, even if it is merely a bank's monthly service fee for operating the account.²²³ These blocked trust accounts appear in several states beyond California, including New York, Illinois, Louisiana, New Mexico, North Carolina, Pennsylvania, and Tennessee.²²⁴ In these states, one must demonstrate proof of these accounts before the state grants a work permit.²²⁵

It is interesting, though not often discussed in the literature, that the statutory framework also applies to minor athletes within California since it encompasses "[a] contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport."²²⁶ While this language would cover a child athlete's contract with

220. See Shannon & Hunter, Jr., *supra* note 209, at 1181–83 (discussing the history of and modifications to the original Coogan's Law). Of note is the authors' recognition that the Coogan's Law framework failed to address the changing entertainment industry landscape regarding young actors, who focused more on short-term contracts such as in television commercials or individual, single film projects. *Id.*; see Siegel, *supra* note 208, at 434 ("As [Coogan's Law] was written over sixty years ago, it fail[s] to incorporate many paramount changes in the industry that affected child actors."); see also SAG-AFTRA, *supra* note 211 ("[The parent] will have to supply proof of a trust account prior to receiving a work permit. 15% of the minor's gross wages are required to be withheld by the employer and deposited into the Coogan Account within 15 days of employment.").

221. See Shannon & Hunter, Jr., *supra* note 209, at 1184–87 (discussing California's numerous amendments to Coogan's Law).

222. *Id.* at 1187; SAG-AFTRA, *supra* note 211.

223. See Phillips v. Bank of Am., 186 Cal. Rptr. 3d 434, 442 (Cal. Ct. App. 2015) (holding that under the Coogan Trust Account framework, even a monthly service fee charge by the bank violates the Coogan Law statutory construct).

224. See SAG-AFTRA, *supra* note 211 (mentioning California, New York, Illinois, Louisiana, and New Mexico); see also Harris, *supra* note 210 (mentioning California, Illinois, Kansas, Louisiana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, and Tennessee); MORGAN STANLEY, *supra* note 219 (mentioning California, Illinois, Kansas, Louisiana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, and Tennessee).

225. See MORGAN STANLEY, *supra* note 219; *Employment/Age Certificate*, U.S. DEPT OF LAB. (Jan. 1, 2024), <https://www.dol.gov/whd/state/certification.htm> [<https://perma.cc/2VQD-25H3>] (providing information on state-by-state work permit laws for child labor); see also Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of "Kidfluencers,"* 169 U. PA. L. REV. 577, 599–601 (2021) (providing a history of child labor laws, child actor protections, and Coogan laws, but calling into question whether a work permit is practical or appropriate for "kidfluencers" because such a requirement is "difficult, if not impossible, to apply to the social media context").

226. CAL. FAM. CODE § 6750(a)(3) (West 2020).

a professional sports team—including the above-noted examples of Freddy Adu and Chloe Ricketts had they resided in California—this statutory provision does not appear to apply to most high school NIL contracts. Indeed, in a typical endorsement contract, a player is not “employed or agree[ing] to render services as a participant or player in a sport.”²²⁷ Rather, the athlete is instead agreeing to permit the use of their NIL in association with a particular product or service. Thus, these contracts would not be covered by California’s existing version of Coogan’s Law.

Given the extent to which a high school athlete’s NIL earning potential is tied to their social media presence,²²⁸ it is noteworthy that while actors, actresses, athletes, and others are covered under Coogan’s Law, social media influencers—sometimes called kid influencers or simply *kidfluencers*—are not. In 2018, California considered a bill that would have amended Coogan’s Law by adding “employment of a minor in social media advertising” to the definition of employment in child entertainment law, giving kidfluencers the same financial and legal protections as child actors generally.²²⁹ However, the version of the bill that ultimately passed and was eventually signed by California Governor Gavin Newsom looked nothing like the bill that had been originally proposed.²³⁰ In fact, the language proposed by California Assembly Member Kansen Chu—which attempted to include child social media influencers—was removed before the bill was enacted.²³¹

227. *Id.*

228. See *supra* notes 166–167 and accompanying text.

229. Julia Carrie Wong, *It’s Not Play if You’re Making Money: How Instagram and YouTube Disrupted Child Labor Laws*, GUARDIAN (Apr. 24, 2019, 1:00 PM), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> [https://perma.cc/KMN7-GKBP]; see also Ana Saragoza, Comment, *The Kids Are Alright? The Need for Kidfluencer Protections*, 28 AM. U. J. GENDER SOC. POL’Y & L. 575, 577–78 (2020) (acknowledging the failure of California to amend Coogan’s Law, noting the Federal Trade Commission plays a role in social media regulation, and arguing that regulating kidfluencing is especially important because “the lack of kidfluencer laws place children at serious risk of exploitation”). *But see* Masterson, *supra* note 225, at 607 (offering that “[f]ederal regulation may be . . . more fitting for social media production,” but acknowledging that until that happens, states must provide the protection in that space with tools including Coogan Trust requirements).

230. Wong, *supra* note 229; see also Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents*, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968/> [https://perma.cc/QMX8-JSTF]:

[A]dvocates for child workers’ rights argue that the law hasn’t kept pace with the digital age, and as a result, kidfluencers are falling through the cracks. In fact, no law outlines protections for minors earning income in social media. It’s a cause for concern since, without protections, they stand to lose millions to their own parents.

231. Wong, *supra* note 229; Shannon Kate McGrath, *Hollywood at Home: Applying Federal Child Labor Laws to Traditional and Modern Child Performers*, 29 WASH. & LEE J. C.R. & SOC.

Out of concerns over financial exploitation, there have been calls to adopt additional legislation to expand Coogan's Law to cover social media content.²³²

The momentum toward state legislation that requires parents to set aside a percentage of income earned by kidfluencers has been slow relative to changes in technology and social media generally, including video blogs (*vlogs*).²³³ Though not specific to NIL and minor athletes, on August 11, 2023, Illinois—amending its Child Labor Law—enacted the first state law to require that a blocked trust account be established for vlogging activity involving those under sixteen.²³⁴ It allows individuals who have reached eighteen years old to then seek remuneration for such vlogging, if necessary, from their family for the content created online while under the age of sixteen.²³⁵ However, a *vlogger*, as defined by the

JUST. 291, 321–22 (2023). For a summary and analysis of the bill that had been unsuccessfully proposed, see Dana Mitchell, *Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media* (Apr. 4, 2018), <https://aart.assembly.ca.gov/sites/aart.assembly.ca.gov/files/AB%202388%20%28Chu%29%20Analysis.pdf> [<https://perma.cc/UEX7-VEXV>] (attempting to clarify that the existing law, which requires permission of the Labor Commissioner for employment of minors under sixteen years of age, would apply to the employment of minors in social media).

232. See McGrath, *supra* note 231, at 321 (calling for and proposing federal legislation); see also Lambert, *supra* note 230 (noting that one California legislator aims to enact legislation specific to Coogan's Law and social media); Charlotte B. Winckler, *Kidfluencers: How the Law's Failure to Keep Up Leaves Children Across the Country at Risk of Labor Abuse and Financial Exploitation*, 16 CHARLESTON L. REV. 111, 112–13 (2022):

In this new age of social media stars, children with large followings, popularly known as “kidfluencers,” are making huge earnings through brand deals and advertising revenue on platforms like Instagram, YouTube, and TikTok. However, the Coogan Law, and similar laws in states other than California, do not consider social media advertising labor, thus, there is nothing stopping parents from forcing their children to sit in front of a camera to create content and then use the profits for their own enjoyment.

(footnotes omitted); Kylie Clouse, *Cash Kid: The Need for Increased Financial Protections of Internet Child Stars on YouTube*, 65 WM. & MARY L. REV. 195, 208–09 (2023) (pushing for California to update its Coogan Law to include child internet stars, particularly given that social media platforms such as Instagram, YouTube, and TikTok have headquarters within the state).

233. See Samantha Murphy Kelly, *Illinois Passes a Law That Requires Parents to Compensate Child Influencers*, CNN BUS. (Aug. 16, 2023, 11:51 AM), <https://www.cnn.com/2023/08/16/tech/kid-influencer-law/index.html> [<https://perma.cc/GEG2-RAHK>] (explaining that though long overdue, Illinois recently passed legislation to address the growing importance of social media careers, aiming to protect minors from financial exploitation).

234. *Id.*:

Starting July 1 2024, parents in Illinois will be required to put aside 50% of earnings for a piece of content into a blocked trust fund for the child, based on the percentage of time they're featured in the video. For example, if a child is in 50% of a video, they should receive 25% of the funds; if they're in 100%, they are required to get 50% of the earnings. However, this only applies in scenarios during which the child appears on the screen for more than 30% of the vlogs in a 12-month period.

235. Act of Aug. 11, 2023, Pub. Act 103-0556, 2023 Ill. Legis. Serv. P.A. 103-556 (West).

statute, “does not include any person under the age of 16 who produces his or her own vlogs.”²³⁶

As a result, in both California and elsewhere, it is prudent to consider whether a similar model to Coogan’s Law ought to be enacted specifically for NIL income earned by interscholastic and minor athletes.²³⁷ Indeed, in this new state-by-state NIL frontier, there does not yet appear to be any consideration for the safety and preservation of earnings from financial exploitation, misappropriation, or high school athletes’ own questionable judgment before reaching the age of majority—much of which the Coogan’s Law framework is designed to protect against.²³⁸ As such, the next Part offers recommendations for policymakers to consider when regulating NIL opportunities at the high school level.

IV. RECOMMENDATIONS AND OTHER CONSIDERATIONS FOR STATES DRAFTING HIGH SCHOOL NIL LAWS

As the above discussion highlights, NIL regulation at the high school level raises a host of legal and ethical issues not applicable at the college level.²³⁹ Yet, in those states where high school athletic associations have amended their rules to allow high school athletes to earn endorsement income from their athletic abilities, state policymakers have largely failed to take these unique considerations into account.²⁴⁰ Crafting and passing protective legislation for high school athletes earning NIL income is critical.

This Essay defers to state legislatures as to whether high school athletes may earn income from endorsement contracts. However, if a state does permit its high school athletes to earn NIL income, then it should likewise implement measures to ensure that this vulnerable

236. *Id.* sec. 5, § 0.5.

237. *See* CAL. FAM. CODE § 6750(c)(1) (West 2000):

For purposes of this chapter, the minor’s “gross earnings” means the total compensation payable to the minor under the contract or, if the minor’s services are being rendered through a third-party individual or personal services corporation (loan-out company), the total compensation payable to that third party for the services of the minor.

238. *See id.* § 6750(a)(3) (discussing the specific types of contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2000). Coogan’s Law includes “contract[s] pursuant to which a minor is employed or agrees to render services as a participant or player in a sport.” *Id.* Clearly this is related to an employer-employee relationship, but one might consider whether the expression, “or agrees to render services as a participant or player in a sport” could be interpreted to mean as an independent contractor or even as a nonemployee, intercollegiate athlete. *Id.* Subsection 6750(b)(1) attempts to clarify by stating, “[i]f a minor is employed or agrees to render services directly for a person or entity, that person or entity shall be considered the minor’s employer for purposes of this chapter.” *Id.* § 6750(b)(1).

239. *See supra* Part II.

240. *See supra* notes 148–156 and accompanying text.

population is protected from having an unscrupulous parent or guardian, or their own potential immaturity, squander these earnings before they turn eighteen. Specifically, if a particular state's high school athletic association chooses to grant high school athletes the right to pursue NIL opportunities, then state policymakers should follow the lead of those states discussed above that have implemented Coogan's Law protections for child actors and actresses. In such cases, state law should specifically require that a certain percentage of income from the use of a minor athlete's NIL be deposited into a blocked trust account.

For example, as noted above, California already requires that such a protection be afforded in any "contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport."²⁴¹ While this provision seemingly does not apply to income earned from NIL endorsements, as noted above,²⁴² one way to modify and update the current law would be to simply reword it to cover

[a] contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport, or pursuant to which the minor will receive any remuneration, including royalties, for a paid sponsorship or endorsement of a good or service.²⁴³

This would include NIL sponsorship earnings, regardless of whether the minor athlete is an employee, endorsee, or social media influencer, especially given that some kidfluencers are paid considerably well.²⁴⁴ States wishing to add a Coogan's Law-type framework to NIL protection for kidfluencers might amend either their family code or their education code, for example. Further, because the current savings rate is arguably low and arbitrary, another recommendation would be for California or other states to consider increasing the percentage of income that must be deposited into the blocked trust account.²⁴⁵ Also, this Essay recommends the adoption of a statutory presumption—as in California—that all income earned by the minor athlete is their sole property alone, as opposed to their parents' or guardians' property.²⁴⁶

241. FAM. § 6750(a)(3).

242. See *supra* text accompanying notes 226–227.

243. Specifically, regarding NIL endorsement income, this additional language might be general enough to also include social media influencers.

244. See, e.g., Winckler, *supra* note 232, at 120 ("Just as child movie stars find themselves making the same amount, if not more, than their adult counterparts, child influencers—often referred to as kidfluencers—are some of the highest paid social media stars in the industry.")

245. For example, one can debate whether fifteen percent is arbitrarily low and instead consider raising the amount automatically deposited into the blocked trust account to twenty-five percent.

246. See FAM. § 771(b) ("[T]he earnings and accumulations of an unemancipated minor child related to a contract of a type described in Section 6750 shall remain the sole legal property of the minor child.").

The above recommendations are not offered to suggest that parents or guardians of minor athletes will inevitably exploit their NIL earnings, nor does this Essay recommend some form of anti-parent legislation. As discussed above, however, there exist examples of both minor athletes and child entertainers who have been victims of their parents' or managers' misuse of funds.²⁴⁷ Indeed, these recommendations also protect minor athletes from squandering their own savings prior to reaching the age of majority. Given that history is also replete with examples of adult professional athletes facing bankruptcy after having been showered with cash from their athletic endeavors, protecting high school athletes from their own bad financial decisionmaking also serves an important policy objective.²⁴⁸

Ultimately, the heart of Coogan's Law beats in favor of providing some measure of protection and security of minors' income from being misappropriated or misused by parents or guardians. As states continue to move toward allowing high school athletes to capitalize on their fame, the issue becomes less about whether they can earn income from their NIL and more so about what can be done to best protect them—at least to some significant degree—from outside influences (and themselves).²⁴⁹

Further, in states that permit high school athletes to earn NIL income, additional statutory provisions could be considered that address some of the other issues highlighted above pertaining to high school NIL endorsement deals. For instance, one consideration is whether to specifically grant high school athletes the right to be represented by agents when negotiating NIL contracts.²⁵⁰ Similarly, states may want to consider whether to implement a mechanism that prevents minors from disaffirming endorsement contracts, perhaps conditioned on parental approval of the contract.²⁵¹

247. See *supra* notes 6–7, 218–220, and accompanying text.

248. See, e.g., Brad Hunter, *Agony of Financial Defeat: When Professional Athletes Go Bankrupt*, TORONTO SUN (Jan. 22, 2023), <https://torontosun.com/sports/hockey/nhl/agonies-of-financial-defeat-when-professional-athletes-go-bankrupt> [<https://perma.cc/V4Z4-BTA9>] (noting the staggering percentage of pro athletes who go broke within three years of retiring from their sport and providing specific examples); cf. Adam Epstein, *Bankruptcy and Sport Management*, 5 INT'L J. SPORT MGMT. 316, 316–34 (2004) (discussing bankruptcy as an issue for team franchises).

249. For additional proposals not specific to NIL, see Shannon & Hunter, Jr., *supra* note 209, at 1190–91 (recognizing that some league contracts fall under the jurisdiction of the collective bargaining process, but offering that changes to Coogan's Law could include approval of any contract entered into with a minor by a competent court, setting aside a significant portion of the earnings of a minor in a secure or blocked account, limiting a minor's right of disaffirmance, requiring that the minor be represented by an agent approved by a player's union, etc.).

250. See Casalino, *supra* note 13, at 297–98 (“Just as collegiate athletes are now being afforded the opportunity to hire an agent to assist with NIL sponsorship and endorsement contract drafting and interpretation, so should high school athletes.”).

251. See *supra* notes 158–161 and accompanying text.

Another potential issue that may require regulation is how (or whether) to prevent NIL income from being used as a recruiting inducement to persuade high school athletes to transfer to other institutions.²⁵² Likewise, states should also weigh whether to restrict high school athletes from endorsing any so-called vice products or services, such as alcohol, tobacco, or firearms, among others.²⁵³ Finally, states may also want to consider the tax implications of high school NIL contracts.²⁵⁴

Regardless of how each state chooses to regulate any of the issues identified above, in those states that permit high school athletes to engage in NIL opportunities, some form of protection should be implemented to ensure that a sufficient percentage of the NIL income received by a high school athlete is preserved for the child's future use after reaching the age of majority.

One final issue that merits a brief discussion is the optimal governmental or regulatory level at which these rules ought to be enacted. While at least one commentator has suggested that a federal law is needed to ensure nationwide consistency,²⁵⁵ this Essay instead asserts that the regulation of NIL opportunities at the high school level is best decided on a state-by-state basis. Indeed, unlike at the college level, where colleges routinely compete against schools from other states, most competition in high school sports occurs between teams residing in the same state. Thus, a state-by-state regulatory regime will adequately ensure that teams compete against one another on an equal playing field within each jurisdiction. Moreover, state-by-state regulation is also arguably most appropriate given that the underlying legal regime supporting high school athletes' NIL rights—that is, the right of publicity—is itself regulated on a state-by-state level, with sometimes meaningful differences in the extent to which various jurisdictions recognize such rights.²⁵⁶

Admittedly, a state-by-state approach does not address the issue of high-profile athletes leaving traditional high schools in states where NIL contracts are prohibited, either to move to another state that does

252. See Casalino, *supra* note 13, at 294 (“Some have expressed concerns over the potential that NIL will create an opportunity for ‘high school recruiting,’ where schools and donors offer incentives for student athletes to attend one school over another.”).

253. See *supra* notes 152–153 and accompanying text (discussing existing state regulations in this regard).

254. See Kisska-Schulze & Epstein, *supra* note 16, at 477–503 (discussing the tax implications of student-athletes earning NIL income).

255. See Casalino, *supra* note 13, at 296 (proposing a federal NIL statute for high school athletics).

256. See *supra* notes 14–16 and accompanying text (discussing the legal basis for the right of publicity).

allow high school athletes to pursue those opportunities or to an academy operating outside of its state's high school athletic association.²⁵⁷ However, given the relatively small number of student-athletes who may be affected by this, such lone consideration does not necessitate nationwide policymaking at the federal level. Instead, this Essay contends that states should continue to individually determine how to balance the promise and peril of NIL contracts at the high school level.

Nevertheless, this Essay does contend that any applicable rules governing high school NIL opportunities at the state level be codified via legislation, rather than simply enacted as a regulation by the state's high school athletic association, for several reasons. First, state high school athletic associations lack the authority to implement legally binding provisions that require a percentage of an athlete's earnings be set aside in a blocked trust account, or to modify the enforceability of such contracts for minors. Moreover, any rules issued by high school athletic associations that potentially restrict student-athletes' NIL rights could be challengeable as an unreasonable restraint of trade among potential economic competitors. As noted above, such a claim was recently litigated by a class of high school athletes against the Florida High School Athletic Association.²⁵⁸ By codifying any such regulations via legislation, a state could specify that such restrictions are not challengeable under state antitrust law.

CONCLUSION

The world of sports is changing. The transition away from amateurism, and toward some form of pay in college sports, is now here, yet continuously evolving.²⁵⁹ Given the exorbitant endorsement deals that some elite college athletes have entertained,²⁶⁰ it is not surprising that high school athletes want to similarly explore revenue-earning opportunities for the use of their NIL.²⁶¹ In fact, more than half of all states currently allow high school athletes to pursue NIL opportunities.²⁶² However, in those states where high school athletic associations have moved to permit high school athletes to reap the financial benefits of their fame, most states have failed to implement any form of financial safeguards to protect those athletes.

257. *See supra* notes 189–191 and accompanying text (discussing these phenomena).

258. *See supra* notes 90–91 and accompanying text (summarizing the pending litigation).

259. *See supra* Section I.A.

260. *See supra* text accompanying notes 62–64.

261. *See supra* Section I.B.

262. *See supra* text accompanying notes 97–147.

Such a void in legislative protection is concerning, given that high school athletics differs in important ways from college athletics. As compared to college athletes, most high school athletes are minors, thereby presenting contractual issues related to capacity that adults might not face.²⁶³ In addition, the purpose and structure of a high school education lie in stark contrast to the educational mission of colleges and universities, thus raising concerns about the educational distractions resulting from NIL-related activities.²⁶⁴

This Essay explores these points in detail, ultimately recommending that states institute legislative protections to help prevent the financial exploitation of minor athletes by their parents, guardians, or third-party promoters. Specifically, this Essay proposes that a model legislative safeguard comes in the form of California's Coogan's Law—and analogous provisions adopted by several other states—to provide a measure of financial protection for young actors employed in the entertainment industry.²⁶⁵ Given that child actors *and* child athletes can now financially capitalize on their fame, it seems imperative that both find protective shields under state statutory law. In addition to the proposed statutory framework, this Essay raises other important legislative considerations that should be considered in this new and evolving landscape of high school NIL opportunities, including agent representation rights, mechanisms that prevent minors from disaffirming contracts, anti-recruitment persuasions, and tax law considerations.²⁶⁶

With NIL here to stay, state legislators must look beyond the collegiate model when contemplating how to best regulate NIL at the high school level. The time is ripe for policymakers to turn their attention toward protecting the most vulnerable population in the U.S. sports arena: our youth.

263. *See supra* Section II.A.

264. *See supra* Section II.B.

265. *See supra* Part III.

266. *See supra* Part IV.