

DISARMING THE NIL ARMS RACE: A DRAFT FOR FAIR PLAY

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ABSTRACT

The advent of Name, Image, and Likeness (NIL) agreements in college sports has significantly reshaped the recruitment landscape, intensifying financial disparities and creating an environment where wealthier programs hold a distinct competitive advantage. This transformation has also raised antitrust concerns related to the uneven application of NIL agreements across states, exposing the National Collegiate Athletic Association (NCAA) to potential litigation risks. This paper presents a comprehensive draft proposal designed to standardize NIL agreements, reduce financial disparities, and restore competitive balance while preserving the educational mission of collegiate athletics. By integrating uniform NIL standards and compliance measures, the proposed system seeks to preempt potential antitrust challenges while ensuring NIL compensation aligns with academic merit.

The proposed system introduces a dual-pool draft structure that prioritizes athletes based on both academic performance and athletic merit, ensuring lower-performing programs have priority access to top talent irrespective of financial resources. This structure aims to decouple recruitment outcomes from financial disparities, thereby addressing concerns under Section 1 of the Sherman Act related to restraints of trade.

Additionally, the draft model incorporates a revenue pooling mechanism inspired by revenue-sharing practices in professional

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sports leagues such as the NFL, which have successfully balanced financial resources across teams to maintain competitive equity. This mechanism seeks to redistribute a percentage of revenues from high-revenue programs to resource-limited ones, promoting financial equity across conferences.

The draft system also includes compliance measures that require full disclosure of NIL funding sources, uniform guidelines for booster-funded collectives, and auditing mechanisms to ensure adherence to NIL caps. These measures are intended to prevent collectives from circumventing NIL caps through indirect compensation schemes, thereby addressing compliance risks that could expose the NCAA to federal antitrust litigation.

By mandating uniform NIL standards, the draft proposal also addresses the potential for federal preemption of state NIL laws, arguing a standardized national approach is necessary to prevent a patchwork of regulations that disproportionately benefit wealthier programs. This approach seeks to ensure NIL agreements comply with both federal regulations and the NCAA's mission of maintaining educational integrity.

Furthermore, the draft system's conference realignment protocols are designed to prevent programs from exploiting affiliation changes to bypass NIL regulations, ensuring all conferences adhere to uniform standards. This measure is critical for maintaining a level playing field and preventing strategic realignments that could undermine compliance efforts.

In conclusion, this paper argues the proposed draft system presents a sustainable and legally sound pathway for managing the NIL era, ensuring collegiate athletics remain accessible, fair, and aligned with the NCAA's mission of promoting educational integrity and competitive equity. By addressing both the financial and legal challenges associated with NIL agreements, the draft proposal seeks to restore competitive balance, enhance compliance, and preempt potential antitrust challenges.

“The landscape of college athletics has changed dramatically since student-athletes were allowed to profit from their name, image and likeness (NIL). This reform has empowered young athletes, granting them some control over their financial futures. As with any significant change, unintended consequences have surfaced.”²

INTRODUCTION

The introduction of Name, Image, and Likeness (NIL) agreements in collegiate athletics has fundamentally altered the landscape of recruitment and competition, exacerbating financial disparities between institutions and challenging the NCAA’s core mission of maintaining educational integrity and competitive equity. The transformative impact of NIL agreements has also raised significant antitrust concerns under the Sherman Act, particularly regarding the potential for collective action to constitute unlawful restraints of trade.³

Initially intended to provide fair compensation to student-athletes, NIL agreements have disproportionately benefited wealthier programs capable of offering lucrative endorsement deals. This financial imbalance has intensified the divide between Power Four (P4) and Group of Five (G5) programs, raising questions about the sustainability of the current NIL model and its compliance with federal antitrust laws.⁴

The financial disparities between P4 and G5 programs are evident not only in recruitment but also in the escalating arms race for facilities, coaching salaries, and media rights. Wealthier programs have been able to leverage booster-funded collectives to

² Nolan Kohorst, *College Sports Are at a Crossroads; Congress Must Act*, DC JOURNAL (Jan. 15, 2025), <https://dcjournal.com/college-sports-are-at-a-crossroads-congress-must-act/>.

³ NCAA, *Name, Image and Likeness (NIL) Policy*, <https://www.ncaa.org/sports/2023/6/20/nil-policy.aspx> (last visited Nov. 16, 2024) (explaining the implications of the NCAA’s NIL policy on athlete recruitment and the growing influence of financial incentives within college sports).

⁴ Michael H. LeRoy, *Do College Athletes Get NIL? Unreasonable Restraints on Player Access and Antitrust Scrutiny of the NCAA’s Compensation Limits*, 2023 U. ILL. L. REV. 53, 60 (2023) (analyzing the effect of state-specific NIL laws on recruitment fairness and the resulting legal challenges); *see also* NCAA v. Alston, 594 U.S. 69, 77 (2021) (highlighting the Supreme Court’s critical stance on NCAA compensation restrictions and its impact on NIL policy reform).

offer substantial NIL deals outside of institutional control, effectively transforming NIL agreements into a de facto salary cap that skews competitive balance.⁵

The lack of uniform NIL standards across states has further exacerbated these disparities, creating a fragmented regulatory landscape that exposes universities to conflicting legal requirements and increased litigation risks.⁶ States such as California and Texas have adopted permissive NIL policies prohibiting NCAA interference with athlete compensation, while other states have imposed restrictive policies limiting NIL earnings, complicating compliance efforts for universities operating in multiple jurisdictions.⁷

The absence of federal preemption has allowed states to pursue NIL regulations that align with their respective economic interests, often at the expense of competitive equity.⁸ This patchwork of state laws has empowered wealthier programs to leverage favorable local regulations to secure top recruits, raising significant concerns about antitrust litigation and the potential for a Commerce Clause challenge to state-specific NIL laws.⁹

The proposed draft system seeks to address these challenges by introducing a standardized NIL framework that would supersede state regulations, ensuring uniform standards for NIL agreements across conferences.¹⁰ By mandating uniform NIL packages, caps on supplementary agreements, and compliance

⁵ See Lauren MacKeigan, An Equity Analysis on the Collegiate Name, Image, and Likeness (NIL) Market (August 28, 2023), <https://ssrn.com/abstract=4554235> (assessing the effects of NIL regulations on economic and social equity among student-athletes across various universities, highlighting institutional disparities and suggesting reforms for equal NIL access); see also William W. Berry III, *Amending Amateurism: Saving Intercollegiate Athletics through Conference-Athlete Revenue Sharing*, 68 ALA L. REV. 551, 556 (2016-2017) (proposing conference-based revenue-sharing as a mechanism to balance competitive opportunities and uphold educational priorities within college sports).

⁶ See LeRoy, *supra* note 3, at 60.

⁷ See California Fair Pay to Play Act, CAL. EDUC. CODE §§ 67456–67457 (2021) (offering unrestricted NIL earning rights, creating recruitment advantages for schools in California over those in NIL-restrictive states).

⁸ See NCAA, *supra* note 2.

⁹ See Marc Edelman, *A Short Treatise on Amateurism and Antitrust: Why the NCAA No-Pay Rules Violate Section 1 of the Sherman Act*, 64 CASE W. RES. L. REV. 61, 66 (2013) (analyzing how state-specific NIL rules create an anticompetitive landscape and their implications under antitrust law).

¹⁰ Berry, *supra* note 1, at 556.

measures, the draft model aims to restore competitive equity by decoupling financial resources from recruitment outcomes.¹¹

Additionally, the draft system's integration of a revenue pooling mechanism is designed to mitigate financial disparities by redistributing a percentage of revenues from high-revenue programs to resource-limited ones. This mechanism, inspired by revenue-sharing practices in professional sports leagues such as the NFL, seeks to balance financial resources across conferences while addressing antitrust concerns related to the unequal distribution of NIL benefits.¹²

The draft proposal also anticipates resistance from wealthier conferences and schools that benefit most from the current NIL model. To mitigate this resistance, the draft system includes revenue-sharing incentives and graduated compliance deadlines that allow schools to adopt NIL caps incrementally. This phased approach seeks to provide a transitional period for wealthier programs to adjust their budgets and financial strategies without immediate financial disruption.¹³

By aligning NIL agreements with academic performance metrics and conference regulations, the draft system seeks to balance competitive equity with fair compensation for athletes.¹⁴ This integration of academic standards is essential for preserving the NCAA's educational mission while ensuring that recruitment practices reflect both athletic and academic merit.¹⁵

The proposal also includes compliance measures such as auditing mechanisms to monitor adherence to NIL caps and prevent programs from circumventing regulations through indirect compensation schemes. These measures are crucial for maintaining transparency in NIL agreements and preempting potential antitrust challenges related to unlawful restraints of trade.¹⁶

¹¹ See Michael A. Carrier & Marc Edelman, *An Antitrust Analysis of the NCAA Transfer Policy*, 11 TEX. A&M L. REV. 999, 1005 (Summer 2024) (analyzing the recruitment dynamics within the NIL landscape and the benefits of consistent NIL standards for competitive equity).

¹² See David P. Weber & Daniel L. Real, *Will the Professionalization of Student-Athletes Kill the NCAA?*, 103 B.U. L. REV. 1591, 1604 (October 2023).

¹³ Berry III, *supra* note 1, at 562.

¹⁴ *Id.* at 561.

¹⁵ NCAA, *supra* note 2.

¹⁶ LeRoy, *supra* note 3, at 60.

Furthermore, the draft model's emphasis on federal preemption is intended to prevent a patchwork of state-specific regulations that disproportionately benefit wealthier programs. A federal standard would provide legal certainty for universities, ensure compliance with antitrust principles, and align NIL agreements with the NCAA's mission of maintaining educational integrity.¹⁷

In conclusion, this paper advocates for a comprehensive NIL reform that balances the financial interests of athletes, universities, and conferences while ensuring compliance with federal regulations and antitrust principles. By presenting a sustainable and legally sound framework, the proposed draft system aims to restore competitive balance, enhance compliance, and preserve the educational mission of collegiate athletics.¹⁸

I. CLARIFYING THE CONFERENCE-BASED SYSTEM

The draft system proposed in this Paper introduces a conference-based model that allows student-athletes to declare for a specific conference's draft based on academic and athletic preferences, ensuring that recruitment is guided by merit and compliance with academic standards rather than financial incentives.¹⁹

A. Conference-Based Draft Entry & Selection

The draft model grants student-athletes the choice of which conference draft they enter based on geographic preference, academic alignment, and competitive opportunities. Selection occurs in a structured manner where conferences prioritize players based on athletic merit while also considering academic standing to ensure fair distribution of talent. Unlike the professional draft model, which predominantly emphasizes financial incentives, this system aims to balance both athletic excellence and educational opportunities, reinforcing the NCAA's stated mission.²⁰ This structure limits financial influence by ensuring that NIL

¹⁷ Edelman, *supra* note 8, at 66.

¹⁸ Berry III, *supra* note 1, at 567.

¹⁹ Carrier & Edelman, *supra* note 10 (analyzing the recruitment dynamics within the NIL landscape and the benefits of consistent NIL standards for competitive equity).

²⁰ NCAA, Name, Image and Likeness (NIL) Policy, *supra* note 7.

compensation remains uniform across conferences, preventing wealthier programs from using outsized NIL deals to attract top talent. By requiring schools to offer NIL agreements within pre-approved compensation tiers, the draft removes recruitment disparities stemming from booster-funded collectives. This model addresses significant antitrust concerns related to the potential for NIL agreements to function as unlawful restraints of trade by standardizing recruitment practices across conferences.²¹

B. Dual-Pool Draft Structure: Academic & Athletic Merit

The draft model incorporates a dual-pool draft structure: one pool prioritizes athletes based on academic performance, while the other focuses on athletic merit. Athletes select which conference's draft they enter, but individual schools retain discretion in making final selections. Once a player enters a conference draft, schools within that conference draft in an order determined by competitive balance metrics, similar to professional leagues but with academic standing factoring into priority. Schools cannot bypass the draft by offering direct NIL deals, as all offers must be standardized within conference guidelines. This structure seeks to decouple recruitment decisions from financial disparities, ensuring that lower-performing programs have priority access to top talent irrespective of financial resources.²² This approach is designed to address the competitive imbalance created by booster-funded collectives, which have leveraged financial resources to secure recruits outside of institutional control.²³

C. NIL Standardization & Booster-Collective Compliance

²¹ Edelman, *supra* note 8, at 66 (analyzing how the NCAA's restrictive no-pay rules infringe upon antitrust law by limiting athletes' earning potential).

²² MacKeigan, *supra* note 4 (assessing the effects of NIL regulations on economic and social equity among student-athletes across various universities, highlighting institutional disparities and suggesting reforms for equal NIL access).

²³ MacKeigan, *supra* note 4 (examining compliance issues and equity in NIL policy application, focusing on financial disparities and regulatory implications within college sports).

Schools would select athletes through a merit-based process that prioritizes recent performance metrics, alignment with educational goals, and compliance with uniform NIL standards. By mandating a standardized selection process, the draft system seeks to mitigate compliance challenges and ensure that NIL agreements align with the NCAA's educational mission.²⁴

Additionally, the draft model's integration of standardized NIL packages is designed to prevent programs from circumventing NIL caps through indirect compensation schemes. By capping supplementary agreements and requiring full disclosure of NIL funding sources, the draft system addresses potential antitrust challenges under Section 1 of the Sherman Act related to unlawful restraints of trade.²⁵

The draft system's compliance measures include auditing mechanisms to monitor adherence to NIL caps, ensuring that NIL agreements do not function as indirect salary caps that disproportionately benefit wealthier programs. By requiring transparency in all NIL-related transactions, these measures seek to preempt potential litigation risks under federal antitrust laws.²⁶

D. Revenue Pooling & Redistribution

The proposed revenue pooling mechanism is intended to mitigate financial disparities by redistributing a percentage of revenues from high-revenue programs to resource-limited ones. This mechanism is inspired by revenue-sharing practices in professional sports leagues such as the NFL and the NBA, which have successfully balanced financial resources across teams to maintain competitive equity. By implementing a similar approach, the draft system aims to ensure that financial resources do not disproportionately influence recruitment outcomes.²⁷

²⁴ Weber & Real, *supra* note 11 (analyzing the potential legal and structural impacts of NIL-driven professionalization on the NCAA).

²⁵ See MacKeigan, *supra* note 4, at 10 (*assessing the impact of booster-funded NIL collectives on recruitment disparities and their regulatory consequences under state and federal law*).

²⁶ LeRoy, *supra* note 3, at 60 (analyzing the effect of state-specific NIL laws on recruitment fairness and the resulting legal challenges).

E. Realignment Protocols & Federal Preemption

The draft system includes conference realignment protocols to prevent programs from exploiting affiliation changes to bypass NIL regulations. By mandating uniform NIL standards across all conferences, the draft system seeks to prevent strategic realignments that could undermine compliance efforts and exacerbate financial disparities.²⁸

The proposal also addresses potential constitutional challenges related to the Commerce Clause, arguing that a standardized NIL framework is necessary to prevent a patchwork of state-specific regulations that disproportionately benefit wealthier programs. A federal standard would provide legal certainty for universities, ensure compliance with antitrust principles, and align NIL agreements with the NCAA's mission of maintaining educational integrity.²⁹

In addition to addressing antitrust concerns, the draft model's emphasis on federal preemption seeks to prevent states from adopting NIL regulations that conflict with uniform national standards. By preempting state-specific NIL laws, the draft system aims to restore competitive equity by ensuring that NIL compensation reflects both academic and athletic merit rather than state-specific advantages.³⁰

The proposed draft system also includes uniform guidelines for booster-funded collectives to prevent them from disproportionately influencing recruitment practices. By requiring full disclosure of funding sources and capping NIL agreements facilitated by collectives, the draft system seeks to mitigate the influence of financial disparities on recruitment outcomes while ensuring

²⁷ Berry, *supra* note 1, at 556 (proposing conference-based revenue-sharing as a mechanism to balance competitive opportunities and uphold educational priorities within college sports).

²⁸ Carrier & Edelman, *supra* note 10 (analyzing NCAA transfer policies under antitrust law, addressing the constraints placed on student-athlete mobility, and proposing policy changes to enhance competitive balance and athlete autonomy).

²⁹ ALSTON, at 2149. (highlighting the Supreme Court's critical stance on NCAA compensation restrictions and its impact on NIL policy reform).

³⁰ See California's Fair Pay to Play Act, Cal. Educ. Code §§ 67456–67457 (2021) (offering unrestricted NIL earning rights, creating recruitment advantages for schools in California over those in NIL-restrictive states).

compliance with federal antitrust regulations.³¹

By presenting a comprehensive NIL reform that integrates uniform standards, revenue-sharing practices, and compliance measures, the proposed draft system offers a legally sound and sustainable path forward for collegiate sports. This approach seeks to balance the financial interests of athletes, universities, and conferences while ensuring compliance with federal antitrust laws and the NCAA's mission of maintaining educational integrity.³²

The draft model's emphasis on standardized NIL agreements, revenue-sharing, and compliance measures seeks to restore competitive equity, preserve the educational mission of collegiate athletics, and preempt potential antitrust challenges under the Sherman Act. By ensuring that NIL compensation aligns with both academic and athletic merit, the draft system offers a comprehensive solution to the financial and structural disparities that threaten the sustainability of collegiate sports.³³

II. JUSTIFICATION FOR SYSTEMIC CHANGE

A. Financial Disparities & Sherman Act

The current NIL model has significantly intensified the financial divide between Power Four (P4) and Group of Five (G5) programs, leading to an imbalance in recruitment and competition that raises substantial antitrust concerns under the Sherman Act. By enabling wealthier programs to leverage booster-funded collectives to offer substantial NIL deals, the current model has transformed NIL agreements into a de facto salary cap that disproportionately benefits programs with greater financial resources.³⁴

While NIL deals have influenced recruitment, traditional factors such as coaching relationships, academic programs, and

³¹ MacKeigan, *supra* note 4 (assessing the effects of NIL regulations on economic and social equity among student-athletes across various universities, highlighting institutional disparities and suggesting reforms for equal NIL access).

³² NCAA, *Name, Image and Likeness (NIL) Policy*, *supra* note 7.

³³ Weber & Real, *supra* note 11 (analyzing the potential legal and structural impacts of NIL-driven professionalization on the NCAA).

³⁴ Edelman, *supra* note 8, at 66 (analyzing how the NCAA's restrictive no-pay rules infringe upon antitrust law by limiting athletes' earning potential).

personal preferences continue to shape athlete decisions. However, NIL disparities have shifted competitive dynamics by making financial backing a decisive factor in recruitment at a level previously unseen. The draft system aims to mitigate this issue by maintaining a structure that allows for personal choice while ensuring that financial resources do not disproportionately dictate athletic commitments.³⁵

B. State NIL Law Fragmentation & Dormant

Commerce Clause Risks

The absence of uniform NIL standards has further exacerbated these disparities by allowing programs in states with more permissive NIL policies to gain substantial recruitment advantages. The resulting patchwork of state-specific NIL laws has not only complicated compliance for universities but has also exposed the NCAA to potential Commerce Clause challenges related to the regulation of interstate commerce in collegiate athletics.³⁶

For instance, states like California and Texas have enacted NIL laws that explicitly prohibit NCAA interference with athlete compensation, while states such as Georgia have adopted more restrictive policies. This divergence in state laws has created a fragmented regulatory landscape that undermines the NCAA's ability to enforce uniform compliance standards and raises significant concerns about the legality of state-specific NIL regulations under the Dormant Commerce Clause.³⁷

The proposed draft system seeks to address these challenges by introducing standardized NIL packages across conferences, caps on supplementary agreements, and compliance measures designed to curb the influence of booster-funded collectives. By mandating uniform NIL standards, the draft model seeks to preempt potential

³⁵ Carrier & Edelman, *supra* note 10 (analyzing the recruitment dynamics within the NIL landscape and the benefits of consistent NIL standards for competitive equity).

³⁶ LeRoy, *supra* note 3, at 60 (analyzing the effect of state-specific NIL laws on recruitment fairness and the resulting legal challenges).

³⁷ California's Fair Pay to Play Act, CAL. EDUC. CODE §§ 67456–67457 (2021) (offering unrestricted NIL earning rights, creating recruitment advantages for schools in California over those in NIL-restrictive states).

antitrust litigation related to allegations of unlawful restraints of trade under the Sherman Act.³⁸

C. Academic Integration & Institutional Equity

Additionally, the draft system's integration of a revenue pooling mechanism is designed to mitigate financial disparities by redistributing a percentage of revenues from high-revenue programs to resource-limited ones. This mechanism, inspired by revenue-sharing practices in professional sports leagues such as the NFL, aims to balance financial resources across conferences while addressing antitrust concerns related to the unequal distribution of NIL benefits.³⁹

The draft proposal also includes compliance measures such as auditing mechanisms to monitor adherence to NIL caps and prevent programs from circumventing regulations through indirect compensation schemes. These measures are intended to prevent booster-funded collectives from using NIL agreements to effectively bypass NIL caps, thereby ensuring that NIL compensation reflects both academic and athletic merit.⁴⁰

By aligning NIL agreements with academic performance metrics and conference regulations, the draft system seeks to balance competitive equity with fair compensation for athletes. This integration of academic standards is crucial for preserving the NCAA's educational mission while ensuring that recruitment practices reflect both athletic and academic merit.⁴¹

D. Phased Compliance & Resistance Mitigation

The proposal also addresses potential constitutional challenges related to federal preemption of state NIL laws. By

³⁸ ALSTON, at 2149.(highlighting the Supreme Court's critical stance on NCAA compensation restrictions and its impact on NIL policy reform).

³⁹ Berry, *supra* note 1, at 556 (proposing conference-based revenue-sharing as a mechanism to balance competitive opportunities and uphold educational priorities within college sports).

⁴⁰ MacKeigan, *supra* note 4 (examining compliance issues and equity in NIL policy application, focusing on financial disparities and regulatory implications within college sports).

⁴¹ NCAA, *Name, Image and Likeness (NIL) Policy*, *supra* note 7.

arguing for a standardized national approach, the draft system seeks to preempt state-specific NIL regulations that disproportionately benefit wealthier programs and create significant compliance challenges for universities.⁴²

The draft model's emphasis on federal preemption is also intended to prevent a patchwork of state-specific regulations that disproportionately benefit wealthier programs. A federal standard would provide legal certainty for universities, ensure compliance with antitrust principles, and align NIL agreements with the NCAA's mission of maintaining educational integrity.⁴³

Additionally, the draft proposal anticipates resistance from wealthier conferences and schools that benefit most from the current NIL model. To mitigate this resistance, the draft system includes revenue-sharing incentives and graduated compliance deadlines that allow schools to adopt NIL caps incrementally without immediate financial disruption. This phased approach seeks to balance the financial interests of wealthier programs with the broader goal of promoting competitive equity.⁴⁴

The draft system also addresses potential antitrust challenges by arguing that uniform NIL standards and compliance measures are necessary to prevent NIL agreements from functioning as unlawful restraints of trade under the Sherman Act. By requiring transparency in all NIL-related transactions and mandating compliance with NIL caps, the draft model seeks to preempt potential antitrust litigation and restore competitive equity across conferences.⁴⁵

⁴² See David P. Weber & Daniel L. Real, *Will the Professionalization of Student-Athletes Kill the NCAA?*, 103 B.U. L. REV. 1591, 1604 (2023), SSRN: <https://ssrn.com/abstract=4369796> (analyzing the potential legal and structural impacts of NIL-driven professionalization on the NCAA).

⁴³ See Berry, *Amending Amateurism*, supra note 5, at 561 (advocating for a conference-based NIL revenue distribution model as a mechanism to address economic imbalances between well-funded and financially limited conferences).

⁴⁴ See Weber, *The Death of the NCAA as We Know It*, SSRN (2023), <https://ssrn.com/abstract=4382159> (discussing the structural challenges facing the NCAA in light of NIL, court rulings, and shifting public opinion, predicting transformative changes for collegiate sports governance).

⁴⁵ See Edelman, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University, and Potential Next Steps in the College Athletes Rights Movement*, 38 CARDOZO L. REV. 1627, 1632 (2017) (examining the potential for labor law frameworks to standardize NIL agreements, promoting recruitment equity).

The proposed draft system offers a comprehensive and legally sound solution to the financial and structural disparities exacerbated by the current NIL model. By integrating uniform NIL standards, revenue-sharing practices, and compliance measures, the draft system seeks to restore competitive equity, preserve the educational mission of collegiate athletics, and ensure that NIL compensation aligns with uniform standards across conferences. This approach not only addresses the legal and regulatory challenges posed by disparate state NIL laws but also ensures that NIL compensation reflects the NCAA's core mission of promoting educational integrity.

III. CRITIQUE OF THE CURRENT NIL MODEL

The assumption that NIL agreements inherently decrease competitive parity requires a deeper analysis to fully understand their impact on the collegiate sports landscape. While NIL agreements were intended to provide fair compensation for student-athletes, they have disproportionately benefited wealthier programs, enabling them to leverage financial resources to secure top talent. This practice has raised significant antitrust concerns under the Sherman Act, particularly regarding the potential for NIL agreements to function as unlawful restraints of trade.

A. Structural Inequities & Competitive Imbalance

NIL agreements have created structural inequities that disproportionately benefit well-funded programs. The increasing role of booster-funded collectives has blurred the line between compensation and recruitment, leading to concerns that NIL has evolved into a pay-for-play model rather than a means of athlete empowerment. Without regulatory safeguards, these disparities are likely to deepen, reinforcing financial hierarchies in athletics and hindering fair competition.

B. Role & Regulation of Booster-Funded

Collectives

The influence of booster-funded collectives has produced financial disparities, enabling wealthier programs to offer

substantial NIL deals that are effectively untethered from institutional oversight. Athletic foundations and booster-funded collectives serve distinct purposes within collegiate athletics. While athletic foundations are directly affiliated with universities and primarily fund scholarships, facilities, and academic support for student-athletes, collectives operate independently and are primarily focused on generating NIL compensation. Unlike foundations, which are bound by institutional financial policies and compliance regulations, collectives function with minimal oversight, allowing them to facilitate NIL deals that often blur the lines between permissible sponsorships and pay-for-play inducements. This distinction is critical in assessing compliance risks and regulatory challenges within the current NIL landscape. These collectives, often funded by influential alumni and donors, have emerged as powerful tools for recruitment, undermining the NCAA's core mission of maintaining competitive equity. The lack of regulation has raised concerns about potential antitrust litigation under the Sherman Act if these agreements are deemed to unreasonably restrain trade.⁴⁶

For instance, booster-funded collectives have increasingly operated as de facto recruitment arms by offering lucrative NIL deals to prospective athletes, often indirectly tied to recruitment outcomes despite formal prohibitions. This practice not only undermines compliance efforts but also exposes institutions to significant litigation risks under state antitrust laws and federal regulations.⁴⁷

C. Compliance Gaps & Interstate Legal Risks

Additionally, the lack of uniformity in NIL standards across the states has created significant compliance challenges, exposing universities to conflicting legal requirements and increased litigation risks. Programs in states with more permissive NIL policies have been able to leverage these advantages to secure top recruits, further exacerbating financial disparities. This

⁴⁶ See Alabama Crimson Tide Foundation, <https://crimsontidefoundation.org> (last visited Nov. 1, 2024) (describing how booster-supported NIL funds create recruitment inequities by providing substantial financial backing to select programs).

⁴⁷ See Edelman, *supra* note 44.

fragmented regulatory landscape also raises concerns about potential Commerce Clause challenges to state-specific NIL laws.⁴⁸

The regulatory divergence between states has complicated compliance efforts for universities operating in multiple jurisdictions, increasing administrative costs and exposing institutions to significant legal risks. The administrative burden of navigating these divergent state laws has also escalated compliance costs, diverting financial resources from scholarships and academic programs to efforts of legal and regulatory compliance.⁴⁹

This Paper argues that the absence of a standardized NIL framework has transformed NIL agreements into a competitive weapon for wealthier programs rather than a tool for fair compensation. The lack of standardization has allowed programs with greater financial resources to use NIL agreements as a de facto salary cap, offering lucrative deals that are separated from academic performance or merit-based criteria. This practice raises significant antitrust concerns related to unfair competition and the potential for NIL agreements to constitute an unlawful restraint of trade.⁵⁰

Furthermore, the absence of comprehensive compliance measures has enabled wealthier programs to exploit booster-funded collectives and indirect compensation schemes to circumvent NIL caps. Without uniform compliance mechanisms, the current NIL landscape allows financial resources to dictate recruitment outcomes, undermining the NCAA's mission of maintaining educational integrity and raising concerns about Section 1 of the Sherman Act.⁵¹

The proposed draft system addresses these challenges by introducing standardized NIL packages, caps on supplementary agreements, and compliance mechanisms to prevent booster-funded collectives from disproportionately influencing recruitment outcomes. By standardizing NIL agreements, the draft system aims

⁴⁸ See Carrier & Edelman, *supra* note 10, at 1005.

⁴⁹ See NCAA, *Name, Image, and Likeness (NIL) Policy*, <https://www.ncaa.org/sports/2021/7/9/name-image-likeness.aspx>. (last visited Apr. 16, 2025) (detailing the NCAA's guidelines for NIL practices, establishing a framework for student-athletes to receive compensation while maintaining amateur status).

⁵⁰ See NCAA, 141 S. Ct. at 2149.

⁵¹ See Berry, *supra* note 1, at 561.

to decouple financial resources from recruitment advantages, thereby restoring competitive equity across conferences.⁵²

The draft model's integration of a revenue pooling mechanism aims to mitigate financial disparities by redistributing a percentage of revenues from high-revenue programs to programs limited by their current resources. This mechanism, inspired by similar practices in professional sports leagues, seeks to ensure financial equity across the conferences, thereby addressing antitrust concerns related to the unequal distribution of NIL benefits.⁵³

The draft proposal also includes conference realignment protocols to prevent programs from exploiting affiliation changes to bypass NIL regulations. By mandating that all conferences adopt uniform NIL standards, the draft system seeks to prevent programs from strategically realigning to access more favorable NIL environments, thereby preserving competitive balance.⁵⁴

The proposal also addresses the potential for federal preemption of state NIL laws, arguing that a standardized national approach is necessary to prevent a patchwork of regulations that disproportionately benefit wealthier programs. A federal standard would provide legal certainty for universities, ensure compliance with antitrust principles, and align NIL agreements with the NCAA's mission of maintaining educational integrity.

The draft system's emphasis on federal preemption is intended to prevent a fragmented regulatory landscape that exposes universities to conflicting legal requirements and increased litigation risks. By preempting state-specific NIL laws, the draft model seeks to restore competitive equity by ensuring that NIL compensation reflects both academic and athletic merit rather than state-specific advantages.

The proposed draft system offers a comprehensive and legally sound solution to the financial and structural disparities exacerbated by the current NIL model. By integrating uniform NIL standards, revenue-sharing practices, and compliance measures, the draft system seeks to restore competitive equity, preserve the educational mission of collegiate athletics, and ensure that NIL compensation aligns with uniform standards across conferences.

⁵² See Berry, *supra* note 1, at 562.

⁵³ See Weber & Real, *supra* note 23, at 1606.

⁵⁴ See Carrier & Edelman, *supra* note 10, at 216.

This approach not only addresses the legal and regulatory challenges posed by disparate state NIL laws but also ensures that NIL compensation reflects the NCAA's core mission of promoting educational integrity.

IV. ADDRESSING RESISTANCE FROM CONFERENCES AND SCHOOLS

The proposed draft system acknowledges that some conferences and schools, particularly those thriving under the current NIL model, may resist a standardized draft structure. This resistance is not just based on financial means; it also stems from concerns over autonomy, branding, and competitive flexibility.

A. Autonomy, Media Rights, & Competitive Interests

Elite programs benefit from their ability to independently structure NIL deals, leveraging booster-funded collectives to maintain a competitive edge. The implementation of a draft and revenue-sharing system challenges this autonomy, forcing historically dominant schools to operate under the same financial constraints as less-resourced programs. Schools in conferences like the SEC and Big Ten, which have secured billion-dollar media contracts, may view these changes as unnecessary restrictions on their economic power. Additionally, concerns about legal liability, compliance burdens, and donor dissatisfaction contribute to institutional reluctance.⁵⁵

This resistance is driven by concerns that revenue-sharing mechanisms and NIL caps could erode the financial advantages currently enjoyed by wealthier programs, thereby undermining their ability to attract top recruits and maintain competitive dominance. Such resistance also raises potential antitrust challenges under the Sherman Act if wealthier programs argue that these measures constitute an unlawful restraint of trade.⁵⁶

The lack of uniform NIL standards has allowed wealthier programs to leverage state-specific advantages to secure lucrative endorsement deals for recruits, creating a powerful incentive to resist any standardization that would limit these benefits. Conferences such as the SEC and Big Ten, which generate

⁵⁵ See Michael H. LeRoy, *supra* note 3, at 60.

⁵⁶ See NCAA, 141 S. Ct. at 2149.

substantial revenue from media rights deals, have been particularly vocal in opposing NIL caps and revenue-sharing mandates that could diminish their financial leverage.⁵⁷

Additionally, the absence of federal preemption has enabled states to adopt NIL regulations that align with their respective economic interests, often at the expense of competitive equity. Wealthier conferences have argued that a standardized approach would not only undermine states' rights to regulate NIL agreements but also impose financial burdens that could disrupt existing revenue models. If state-specific NIL laws are perceived as unduly burdening interstate commerce in collegiate athletics, challenges under the Commerce Clause may be raised.⁵⁸

B. Tax Incentives & Revenue-Sharing Compliance Plans

To mitigate resistance, the draft system includes revenue-sharing incentives designed to align the financial interests of wealthier programs with the broader goal of competitive equity. Under this model, high-revenue programs would benefit from tax incentives and increased media rights revenues distributed proportionally based on compliance with NIL regulations. This approach seeks to provide a financial cushion for programs that adopt NIL caps and revenue-sharing practices, thereby reducing the incentive for resistance.⁵⁹

C. Gradual Implementation & Antitrust Preemption

Furthermore, the draft proposal introduces graduated compliance deadlines that allow schools to adopt NIL caps and revenue-sharing practices incrementally to avoid immediate financial disruption. This phased approach is designed to provide a transitional period for wealthier programs to adjust their budgets and financial strategies. By integrating a phased compliance timeline, the draft system also seeks to preempt potential antitrust challenges related to the immediate financial impact of NIL caps.⁶⁰

⁵⁷ See NCAA, *supra* note 2.

⁵⁸ See Carrier & Edelman, *supra* note 4, at 214.

⁵⁹ See Berry, *supra* note 1, at 556.

⁶⁰ See Weber & Real, *supra* note 23, at 1606.

The draft system also includes conference realignment protocols to prevent programs from exploiting affiliation changes to bypass NIL regulations. By mandating that all conferences adopt uniform NIL standards, the draft system seeks to prevent programs from strategically realigning to access more favorable NIL environments, thereby preserving competitive balance and preempting potential Commerce Clause challenges.⁶¹

In addition to financial incentives, the draft proposal addresses legal concerns related to antitrust challenges and the potential for litigation. By integrating compliance measures that align with federal antitrust principles, the draft system seeks to preempt potential legal challenges from wealthier conferences that might argue that NIL caps and revenue-sharing practices constitute an unlawful restraint of trade under the Sherman Act.⁶²

The draft model's emphasis on revenue pooling mechanisms is also intended to address financial disparities by redistributing a percentage of revenues from high-revenue programs to resource-limited ones. This mechanism, inspired by revenue-sharing practices in professional sports leagues, seeks to promote financial equity among collegiate programs while ensuring compliance with antitrust principles.⁶³

Additionally, the proposal seeks to address concerns about federal preemption by arguing that a standardized NIL framework would provide legal certainty for universities and ensure that NIL agreements comply with both federal regulations and the NCAA's mission of maintaining educational integrity. A federal standard would preempt state-specific NIL regulations, preventing wealthier programs from leveraging favorable state laws to secure recruitment advantages.⁶⁴

The draft proposal also includes a preemptive response to potential constitutional challenges by arguing that uniform NIL standards are necessary to prevent a Dormant Commerce Clause violation. By ensuring that NIL regulations do not disproportionately burden interstate commerce, the draft system

⁶¹ See Carrier & Edelman, *supra* note 10, at 216.

⁶² See NCAA, 141 S. Ct. at 2149.

⁶³ See Berry, *supra* note 1, at 562.

⁶⁴ See Weber & Real, *supra* note 23, at 1605.

seeks to preempt potential legal challenges related to state-specific NIL laws.⁶⁵

By presenting a comprehensive NIL reform that balances the financial interests of athletes, universities, and conferences, the proposed draft system offers a pragmatic solution for aligning the interests of all stakeholders in collegiate athletics. The integration of uniform NIL standards, revenue-sharing practices, and compliance measures seeks to restore competitive equity while preserving the financial sustainability of collegiate sports.⁶⁶

The proposed draft system's emphasis on financial incentives, phased compliance deadlines, and conference realignment protocols seeks to reduce resistance from wealthier conferences and schools. By aligning NIL agreements with uniform standards across conferences, the draft system offers a sustainable path forward that balances the financial interests of all stakeholders while preserving the educational mission of collegiate athletics. This approach not only addresses the legal and regulatory challenges posed by disparate state NIL laws but also ensures that NIL compensation reflects the NCAA's core mission of promoting educational integrity.

IV. ADDRESSING STATE NIL LAW DISPARITIES

The varying NIL regulations across states have significantly exacerbated financial disparities between collegiate programs, undermining the NCAA's efforts to promote and foster fair competition. The lack of federal preemption grants states the authority to implement legislation surrounding NIL in a manner best fit for each state's individual interests. Inherently, some states benefit from an abundance of resources while others are not so fortunate.

A. Legal Conflicts & Commerce Clause Implications

This fragmented regulatory landscape raises substantial Commerce Clause concerns, particularly regarding the potential for state-specific NIL laws to unduly burden interstate commerce in collegiate athletics.⁶⁷

⁶⁵ See Carrier & Edelman, *supra* note 10, at 215.

⁶⁶ See Berry, *supra* note 1, at 564.

For instance, California's NIL law grants student-athletes broad rights to secure endorsements without institutional interference, while Georgia's law permits, but does not require, universities to share NIL revenue. While California schools have not dominated recruiting, the broader issue is that NIL laws vary significantly across states, creating an uneven playing field. The draft system would standardize these regulations, preventing state-by-state discrepancies from dictating competitive outcomes. Rather than allowing NIL laws to function as competitive loopholes, this system ensures that all programs operate under uniform financial and recruitment constraints.⁶⁸ This divergence has created a complex compliance environment that exposes universities to conflicting legal requirements and increased risks of potential litigation. The lack of uniformity has also empowered wealthier programs to leverage favorable state laws to secure top recruits, raising concerns about unfair competition and restraints of trade under the Sherman Act.⁶⁹

The absence of federal preemption has enabled wealthier programs to exploit state-specific advantages, creating an uneven playing field where institutions in states with restrictive NIL policies face significant recruiting disadvantages. This competitive imbalance is particularly evident in recruiting battles, where schools in states with restrictive NIL laws struggle to retain top talent. Athletes are increasingly choosing programs that offer the most favorable NIL conditions, rather than prioritizing academics, coaching stability, or institutional fit. The resulting disparity in talent distribution has created an NIL-driven conference realignment, where programs in states with favorable NIL laws are strengthening, while those in more restrictive jurisdictions are falling behind. This dynamic has prompted some state legislators to introduce amendments or repeal limitations to remain competitive, further contributing to the regulatory inconsistency plaguing collegiate athletics. This dynamic raises potential

⁶⁷ See LeRoy, *supra* note 3, at 60 (analyzing the effect of state-specific NIL laws on recruitment fairness and the resulting legal challenges).

⁶⁸ See *California's Fair Pay to Play Act*, Cal. Educ. Code §§ 67456–67457 (2021) (offering unrestricted NIL earning rights, creating recruitment advantages for schools in California over those in NIL-restrictive states).

⁶⁹ See Edelman, *supra* note 8, at 66 (analyzing how the NCAA's restrictive no-pay rules infringe upon antitrust law by limiting athletes' earning potential).

antitrust challenges under the Sherman Act if these state-specific NIL advantages are deemed to constitute an unlawful restraint of trade.⁷⁰

B. Compliance Burdens for Multi-Jurisdictional Programs

Additionally, the divergence in state NIL laws has significantly increased compliance costs for universities, particularly those operating in multiple states. The administrative burden of navigating these conflicting regulations has diverted financial resources away from scholarships and academic programs, undermining the NCAA's educational mission.⁷¹

The proposed draft system addresses these disparities by introducing a standardized NIL framework that would preempt state-specific NIL laws, ensuring that all athletes and programs operate under uniform standards. This framework includes standardized NIL packages, caps on supplementary agreements, and compliance measures designed to curb the influence of booster-funded collectives. By mandating uniform NIL standards, the draft model seeks to preempt potential Commerce Clause challenges and ensure that NIL agreements comply with both federal regulations and antitrust principles.⁷²

By establishing uniform NIL standards, the draft model seeks to prevent wealthier programs from leveraging favorable state laws to secure recruitment advantages, thereby promoting fair competition across conferences. This approach is designed to restore competitive balance by ensuring that NIL compensation reflects both academic and athletic merit rather than financial resources.⁷³

The draft proposal also includes conference realignment protocols to prevent programs from exploiting affiliation changes to

⁷⁰ See Carrier & Edelman, *supra* note 10, at 214 (discussing the antitrust ramifications of NCAA-imposed transfer restrictions on student-athlete mobility and the call for policy reforms).

⁷¹ See Weber & Real, *supra* note 11, at 1613 (considering NIL's influence on athlete mobility and the evolving competitive dynamics within collegiate sports).

⁷² See Berry, *supra* note 1, at 563 (proposing that a conference-led revenue-sharing structure could enhance NIL compliance while maintaining amateurism within collegiate sports).

⁷³ See NCAA, *supra* note 2 (outlining the NCAA's NIL policy and its objectives, which aim to balance compensation opportunities with collegiate sports regulations).

bypass NIL regulations. By mandating that all conferences adopt uniform NIL standards, the draft system ensures that programs cannot strategically change conference affiliations to access more favorable NIL environments, thus ensuring consistent standards across the NCAA.⁷⁴

Furthermore, the draft system's integration of a revenue pooling mechanism aims to mitigate financial disparities exacerbated by state law advantages. Under this system, high-revenue programs would contribute a percentage of their income to a central fund, which is redistributed to resource-limited programs to cover NIL costs and logistical challenges in recruiting. This mechanism, inspired by revenue-sharing practices in professional leagues such as the NFL, seeks to promote financial equity among collegiate programs.⁷⁵

The proposed framework also includes compliance measures to ensure adherence to NIL caps and prevent programs from bypassing regulations through indirect compensation schemes. These measures are essential for ensuring transparency in NIL agreements and maintaining a level playing field across conferences.⁷⁶

C. Federal Preemption & Uniform NIL Framework

The draft system's emphasis on federal preemption is also intended to prevent a patchwork of state-specific regulations that disproportionately benefit wealthier programs. A federal standard would provide legal certainty for universities and ensure that NIL agreements comply with both antitrust statutes and the NCAA's mission of maintaining educational integrity. By preempting state-specific NIL laws, the draft model seeks to restore competitive equity by ensuring that NIL compensation reflects both academic and athletic merit rather than state-specific advantages.⁷⁷

⁷⁴ See Edelman, *supra* note 44, at 1635 (examining the potential for unionization to address athlete rights in college sports, particularly in the wake of the Northwestern University case).

⁷⁵ See Weber, *supra* note 43 (forecasting the collapse of traditional NCAA structures in light of professionalization and NIL, with an emphasis on the legal and financial challenges ahead).

⁷⁶ See Carrier & Edelman, *supra* note 10, at 230 (offering proposed legal reforms to the NCAA's policies on athlete transfers and NIL, aimed at promoting fairness and competition).

The draft model's emphasis on transparency and compliance is particularly significant considering potential antitrust litigation that could arise if NIL agreements facilitated by collectives are perceived as circumventing competitive balance. By mandating uniform compliance standards, the draft system seeks to mitigate these risks and ensure that NIL compensation aligns with academic performance and the NCAA's core mission of preserving educational integrity.⁷⁸

The proposed draft system's integration of uniform NIL standards, revenue-sharing practices, and compliance measures seeks to address the financial and regulatory disparities created by divergent state NIL laws. By aligning NIL agreements with federal standards, the draft system offers a pragmatic solution to restore competitive balance, reduce compliance burdens, and ensure that NIL compensation aligns with both academic and athletic merit. This approach not only addresses the legal and regulatory challenges posed by state-specific NIL laws but also ensures that NIL compensation reflects the NCAA's core mission of promoting educational integrity.⁷⁹

CONCLUSION

The implementation of a standardized draft system presents a legally sound and pragmatic solution to the financial and structural disparities exacerbated by the current NIL model.⁸⁰ By integrating uniform NIL standards, revenue-sharing practices, and compliance measures, the proposed draft system seeks to restore competitive balance, preserve the educational mission of collegiate athletics, and preempt potential antitrust challenges under the Sherman Act. This comprehensive approach not only addresses the financial imbalances created by booster-funded collectives but also ensures that NIL agreements align with both academic and athletic merit.

⁷⁷ See Berry, *supra* note 1, at 570 (advocating for a revenue-sharing approach at the conference level to ensure fair distribution of NIL compensation while preserving the integrity of college athletics).

⁷⁸ See MacKeigan, *supra* note 4, at 35 (highlighting the disparities in NIL compensation across institutions and states, with a focus on how this affects recruitment and athletic equity).

⁷⁹ *Id.*

⁸⁰ See Carrier & Edelman, *supra* note 10, at 215 (discussing NIL-driven disparities in recruitment and proposing reforms to enhance competitive equity).

The draft model's emphasis on federal preemption is particularly significant in light of the fragmented regulatory landscape created by state-specific NIL laws.⁸¹ By preempting these varying state regulations, the proposed system seeks to prevent a patchwork of compliance requirements that disproportionately benefit wealthier programs and create significant Commerce Clause issues.⁸² A federal standard would provide legal certainty for universities, ensuring that NIL agreements comply with both federal regulations and the NCAA's mission of maintaining educational integrity.

Additionally, the draft system's integration of a revenue pooling mechanism aims to mitigate financial disparities by redistributing a percentage of revenues from high-revenue programs to resource-limited ones.⁸³ This mechanism, inspired by revenue-sharing practices in professional sports leagues, seeks to promote financial equity among collegiate programs while addressing antitrust concerns related to the unequal distribution of NIL benefits.⁸⁴

The draft proposal also includes compliance measures such as auditing mechanisms and uniform guidelines for booster-funded collectives to prevent these entities from disproportionately influencing outcomes in recruiting. By requiring full disclosure of funding sources and mandating adherence to NIL caps, the draft system seeks to preempt potential antitrust litigation related to allegations of unlawful restraints of trade under the Sherman Act.⁸⁵

The proposed draft system's emphasis on conference realignment protocols is also designed to prevent programs from exploiting affiliation changes to bypass NIL regulations.⁸⁶ By mandating that all conferences adopt uniform NIL standards, the

⁸¹ See Weber & Real, *supra* note 11, at 1605 (discussing the impact of state-based NIL policies on the NCAA's regulatory authority).

⁸² See Carrier & Edelman, *supra* note 10, at 214 (analyzing the impact of inconsistent NCAA transfer policies on competitive equity).

⁸³ See Berry, *supra* note 1, at 562 (advocating for a revenue-sharing model to address economic imbalances between conferences).

⁸⁴ See MacKeigan, *supra* note 4, at 25 (examining how revenue-sharing mechanisms could improve NIL equity and compliance).

⁸⁵ See Edelman, *supra* note 8, at 66 (analyzing how NCAA-imposed compensation restrictions may constitute an unlawful restraint of trade under the Sherman Act).

⁸⁶ See Carrier & Edelman, *supra* note 10, at 218 (examining how competitive imbalances arise from NIL-driven conference realignments).

draft system seeks to prevent strategic realignments that could undermine compliance efforts and exacerbate financial disparities.

⁸⁷ This measure is crucial for maintaining competitive balance and preventing regulatory arbitrage in collegiate athletics.

In addition to addressing antitrust concerns, the draft model's emphasis on federal preemption seeks to prevent a patchwork of state-specific regulations that disproportionately benefit wealthier programs.⁸⁸ By aligning NIL agreements with federal standards, the draft system offers a sustainable path forward that balances the financial interests of athletes, universities, and conferences while ensuring compliance with federal regulations and antitrust law.⁸⁹

The draft proposal also anticipates resistance from wealthier conferences and schools that benefit most from the current NIL model.⁹⁰ To mitigate this resistance, the draft system includes revenue-sharing incentives and graduated compliance deadlines that allow schools to adopt NIL caps incrementally without immediate financial disruption.⁹¹ This phased approach is intended to provide a transitional period for wealthier programs to adjust their budgets and financial strategies, thereby reducing the likelihood of immediate resistance.

By presenting comprehensive NIL reform that balances the financial interests of institutions and athletes, the proposed draft system seeks to preserve the educational mission of collegiate athletics while addressing the financial and structural disparities that threaten the sustainability of the current NIL model.⁹² This approach not only addresses the legal and regulatory challenges posed by state-specific NIL laws but also ensures that NIL

⁸⁷ See MacKeigan, *supra* note 4, at 30 (analyzing NIL's role in reshaping conference structures and recruitment).

⁸⁸ See Berry, *supra* note 1, at 570 (supporting a federalized NIL governance model to ensure competitive equity).

⁸⁹ See Weber, *supra* note 43 (forecasting how NCAA's failure to implement federal NIL standards may contribute to legal and financial instability).

⁹⁰ See Carrier & Edelman, *supra* note 10, at 222 (examining institutional pushback against NIL standardization due to competitive advantages).

⁹¹ See Berry, *supra* note 1, at 567 (proposing transitional NIL frameworks to balance institutional and athlete interests).

⁹² See MacKeigan, *supra* note 4, at 35 (examining NIL's impact on collegiate athletic sustainability).

compensation reflects the NCAA's core mission of promoting educational integrity.⁹³

The proposal's emphasis on antitrust compliance is particularly significant given the increasing likelihood of litigation challenges to the current NIL model under the Sherman Act.⁹⁴ By mandating uniform NIL standards, compliance measures, and transparency requirements, the draft system seeks to preempt potential antitrust challenges related to unfair competition and restraints of trade.

Furthermore, the draft system's integration of academic performance metrics is essential for preserving the NCAA's mission of promoting educational integrity. By aligning NIL agreements with both academic and athletic merit, the draft system seeks to ensure that recruiting practices reflect a balanced assessment of student-athletes' contributions both on and off the field. This approach not only addresses the financial imbalances created by booster-funded collectives but also reinforces the NCAA's educational mission.

In conclusion, the proposed draft system represents a comprehensive and legally sound pathway for navigating the new era of NIL.⁹⁵ By integrating uniform NIL standards, revenue-sharing practices, and compliance measures, the draft system seeks to restore competitive equity, enhance compliance, and preserve the educational mission of collegiate athletics.⁹⁶ This approach offers a sustainable path forward that balances the financial interests of those involved while addressing the legal and regulatory challenges posed by state-specific NIL laws and potential antitrust litigation.

By presenting a pragmatic solution that balances financial interests with compliance and educational integrity, the proposed draft system seeks to restore the legitimacy of the NCAA's regulatory framework and prevent the erosion of competitive balance in collegiate sports. This approach not only ensures that

⁹³ See NCAA, *supra* note 2 (highlighting the NCAA's stated objectives in regulating NIL activities).

⁹⁴ See Edelman, *supra* note 8, at 75 (analyzing the NCAA's vulnerability to antitrust lawsuits under its current NIL restrictions).

⁹⁵ See Weber, note 43 (forecasting the legal and financial pressures reshaping the NCAA's structure).

⁹⁶ See NCAA, *supra* note 2 (summarizing NCAA's regulatory stance on NIL standardization).

NIL compensation aligns with federal regulations and antitrust law, but also provides a sustainable model for the future of collegiate athletics.

APPENDIX

Proposed Collective Bargaining Agreement (CBA) Draft with Unionization Provisions

Preamble:

This Collective Bargaining Agreement (CBA) is established between NCAA Conference [Name], hereinafter referred to as “the Conference,” and the representative union of NCAA athletes, [Union Name], hereinafter referred to as “the Union.” This agreement aims to protect the welfare, educational development, and equitable treatment of athletes under the Conference’s jurisdiction by addressing compensation, benefits, and employment standards related to Name, Image, and Likeness (NIL), and other aspects of athlete welfare.

The draft’s CBA proposal acknowledges the complexities introduced by right-to-work laws, which prohibit mandatory union membership as a condition of employment in certain states. To accommodate these variations, the CBA framework proposes alternative representation structures for athletes in right-to-work states. In such states, conference-appointed advisory committees will act in lieu of formal union representation to negotiate on behalf of athletes, ensuring that NIL terms, healthcare benefits, and academic support remain standardized across the Conference. This hybrid approach preserves the equity principles fundamental to the draft model, aligning with legal requirements in all states.

Section 1: Scope and Purpose

This Collective Bargaining Agreement (CBA) outlines the terms and protections granted to student-athletes participating

in NCAA sports under the proposed conference-based draft system. The CBA is designed to ensure fair recruitment practices, equitable compensation, consistent eligibility standards, and comprehensive support services. The CBA is binding upon all member institutions within the conference and is intended to uphold uniform standards across all states, including those with right-to-work laws.

Section 2: NIL Compensation and Caps

Standardized NIL Package: Each athlete will receive a conference-standard NIL package, capped at a specified amount, with optional supplementary NIL deals negotiated within the defined cap limits.

Right-to-Work State Provisions: In right-to-work states where union membership cannot be mandated, NIL terms will be negotiated and enforced by a conference-appointed athlete advisory committee, ensuring that NIL caps and compensation terms remain consistent with those in unionized states. This guarantees that all athletes, regardless of their institution's location, benefit equally from the agreed-upon NIL provisions.

Section 3: Health and Wellness Benefits

Healthcare Coverage: Conferences will provide healthcare benefits covering sports-related injuries and other essential health needs.

Mental Health Services: Each athlete will have access to conference-funded mental health support, acknowledging the unique mental health challenges associated with collegiate sports.

Right-to-Work State Provisions: In right-to-work states, healthcare and wellness benefits will be overseen by athlete

advisory committees, ensuring equal access to services as those negotiated through formal union representation.

Section 4: Academic and Professional Development

Educational Support: Athletes will have access to tutoring, academic advising, and graduation planning resources to support their academic success and ensure compliance with conference eligibility standards.

Right-to-Work State Provisions: Academic and professional development resources will be managed by advisory committees in right-to-work states, with committees acting as representatives to ensure equitable access and consistent application of academic support terms.

Section 5: Dispute Resolution and Compliance

Grievance Mechanism: A defined grievance procedure allows athletes to address any perceived breaches in NIL agreements, health benefits, or academic support. This procedure includes access to arbitration or mediation, as appropriate.

Right-to-Work State Adaptations: In right-to-work states, the advisory committee will facilitate grievance submissions, acting as representatives for athletes in compliance matters.

This adaptation ensures that grievance procedures remain accessible and enforceable, even without union representation.

ARTICLE VI: NIL EDUCATION, SOCIAL MEDIA, AND TECHNOLOGY
GUIDELINES

NIL Education Programs:

- a. The Conference will implement annual training programs on NIL regulations, social media guidelines, and endorsement best practices. This training will ensure that athletes fully understand NIL compliance and marketing principles while

enhancing their ability to manage digital endorsements responsibly.

Social Media Use and Endorsement Restrictions:

- a. Athletes may promote approved brands and endorsements via personal social media, subject to guidelines set by the Conference to prevent conflicts of interest and maintain brand consistency across member institutions.
 - b. Social media monitoring shall be conducted solely for compliance purposes, with athletes' privacy maintained except where NIL rules are breached.
-

ARTICLE VII: CONFERENCE-SPECIFIC NIL AND COMPLIANCE
FLEXIBILITY

Conference-Based NIL and Compliance Adaptations:

- a. Recognizing the unique resources and challenges of each conference, this CBA provides flexibility in implementing NIL guidelines. However, all deviations must align with the CBA's overarching fairness principles and be approved by both the Union and the NCAA.
 - b. Conferences may establish additional NIL resources or caps to reflect their specific needs, provided they comply with the national standards established by this CBA.
-

ARTICLE VIII: TRANSPARENCY, REPORTING, AND PERIODIC
REVIEW

Annual NIL and Revenue Reports:

- a. The Conference shall release annual reports detailing revenue distribution, NIL expenditures, and compliance audit results. These reports shall be publicly accessible, promoting transparency and ensuring athlete and public trust in the Conference's NIL management.
- b. Union representatives shall have access to all compliance

documentation and may request additional audits if discrepancies are identified.

Review and Renewal of CBA Terms:

- a. The Union and Conference agree to review the CBA terms every two years, with opportunities for amendment based on changing NIL regulations, athlete feedback, and legislative developments.
 - b. This CBA shall remain in effect until [End Date], with automatic renewal provisions contingent on biannual reviews.
-

ARTICLE IX: TERMINATION AND SUSPENSION OF AGREEMENT

Conditions for Termination:

- a. This CBA may be terminated by mutual agreement of the Union and Conference, or in response to significant legislative changes affecting NIL or athlete unionization. Termination terms shall include a transition period to mitigate any immediate impacts on athletes.

Dissolution Provisions:

- a. Should the Conference dissolve or merge with another entity, this CBA will remain in effect until new agreements are ratified or modified by successor institutions, ensuring continuity for current athletes.
 - b. The Union reserves the right to negotiate new terms with any successor entities, ensuring that athletes maintain comparable rights and benefits.
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CONCLUSION

This Collective Bargaining Agreement establishes a comprehensive framework to support athlete welfare, compensation equity, and compliance with NIL regulations. By enshrining union representation, standardized NIL compensation, and robust procedural safeguards, the CBA

positions the Conference as a leader in fair and progressive college sports management, aligning with both the legal and ethical standards required to protect and promote the interests of student-athletes.