THE DEATH OF AMATEURISM IN UNITED STATES COLLEGIATE ATHLETICS

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Collegiate athletics, especially men's football and basketball, are extremely popular in the United States. As part of the cultural fabric of the country, these spectator sports have generated billions of dollars annually, far surpassing revenue generated in other major American sports leagues and even Premier League football in England. All those connected with these sports, including athletic directors, coaches, the National Collegiate Athletic Association – which is the governing body – athletic apparel companies, media outlets, etc. have profited from these sports. Everyone that is except for the athletes themselves. Historically, the athletes were considered amateurs and if they received any compensation, they lost their ability to participate in collegiate sports. Recently, in response to a barrage of lawsuits, the federal courts, including the Supreme Court, have held those rules that violated the Sherman Antitrust Act. As a result of these rulings, and legislation passed in most states, college athletes are now able to profit from their names, likenesses and images without losing their amateur status. And as a result of settlements in the litigation college athletes are now also receiving other compensation. The article traces these developments from their inception to the present time.

Keywords:
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1 Introduction

College athletics in the United States started to gain popularity in the 1920's due to expanding media coverage in newspapers, radio broadcasts and later television, all of which brought contests, especially men's football and later men's basketball, to increasing numbers of people.[1] The growth of both football stadiums and public universities also fueled the public interest. Fascination with collegiate sports has continued to increase over the last century and constitutes an important component of the cultural fabric of American life. As of 2025, there are 777 colleges that have field football teams[2] and there are more than 1,400 college basketball teams at four-year colleges.[3]

This article traces the growth of collegiate sports in America, and how they have been regulated. Up until the last decade, the bodies that regulate college sports along with the colleges and universities, have steadfastly maintained that student-athletes must remain amateurs, meaning that they could not receive compensation for their services, aside from scholarships. Student-athletes that received such compensation lost their amateur status and consequently the opportunity to compete in collegiate sports. The argument in support of this model was that if student-athletes were paid they would be no different than professional athletes and the public's interest in collegiate sports would wane.

This model started coming under legal attack about fifteen years ago. Student-athletes retained attorneys who began lodging antitrust attacks against the schools and governing bodies. Plaintiffs argued that the longstanding model of the student-athlete-as-amateur constituted an illegal restraint on trade. This article will trace the progression of these legal actions, along with other legislation that was enacted in response to that model. As a result of the legal attacks, which resulted in numerous federal courts, including the United States Supreme Court, ruling that the amateur model violated the Sherman (antitrust) Act, coupled with legislation enacted at the state level, colleges began allowing student-athletes to profit from their so-called Name, Image and Likeness (NIL). The article will discuss the NIL landscape in detail, along with other changes that now will see colleges and universities receiving significant money annually to share among student-athletes at their respective

[1] Sports History Network, 2024.
[2] Football Foundation, 2025.
[3] NCSA College Recruiting, no date.

colleges and universities. The article also will explore the challenges that both colleges and student-athletes will face in the future in view of the demise of the old student-athlete-as-amateur model.

2 Brief History of Collegiate Athletics, Amateurism and Popularity of Athletics in American Culture

Collegiate athletics in the United States began in the mid-1800s. Perhaps surprisingly, the first intercollegiate athletic competition was not in football or basketball but rather was a boat race between Yale and Harvard students in 1852. After the boat race came the first intercollegiate baseball game in 1859 between Amherst College and Williams College followed by the first football game in 1869 between Princeton and Rutgers. In the early 1900s, repeated serious injuries and deaths to college football players led President Theodore Roosevelt to spearhead meetings to try find solutions to these problems, such as making changes to the way the game was played. These meetings led to the formation in 1906, of the Intercollegiate Athletic Association of the United States, which in 1910 took its present name the National Collegiate Athletic Association (NCAA).[4]

For roughly the first one hundred and seventy years of U.S. collegiate athletics, in order for student-athletes to retain their amateur status[5], they could not receive any form of compensation, as enforced by the NCAA. The model worked as follows. In all the various sports that colleges and universities[6] have to offer, the sports departments would recruit high school student athletes to come to their institution. I will take football as an example, only because it is by far the largest revenue generator in collegiate sports and is one of the most popular spectator sports in the United States. The top schools, such as Penn State, Texas, Michigan and others, generate tens of millions of dollars in yearly revenue from their football programs.[7] The major football programs draw millions of fans to their games yearly. The

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[4] The NCAA serves as the legislative and administrative authority for intercollegiate athletics in the US. Its functions include setting and enforcing rules for fair and safe play, establishing eligibility criteria, organizing national championship events across all of the sports, integrating athletics into higher education, among other things.

[5] Losing amateur status means the collegiate student athlete has to forfeit any further participation in college sports.

[6] Universities are institutions with larger student bodies, which offer more advanced degrees, which offer a broader range of academic subjects and more extensive research opportunities. Harvard and Stanford are examples of famous universities. Colleges are basically the opposite. They tend to be smaller, offer mainly bachelor's degrees, offer more limited academic programs and fewer research opportunities. Colleges tend to specialize in liberal arts programs. There are many equally great colleges in America. Williams College in Williamstown, Massachusetts and Amherst College in Amherst, Massachusetts are two examples.

[7] Dosh, 2012.

University of Michigan in Ann Arbor, Michigan, has an iconic football stadium holding over 107,000 seats and those seats are generally packed during the games it hosts.[8]

The NCAA is a $19 billion industry.[9] As the following chart from The Economist (2025) shows, for sporting seasons ending 2024, the NCAA generated income from all its various sports (though primarily men's football and basketball) that eclipsed revenue from Major League Baseball (MLB), the National Basketball Association (NBA) and even the wildly popular English Premier League.

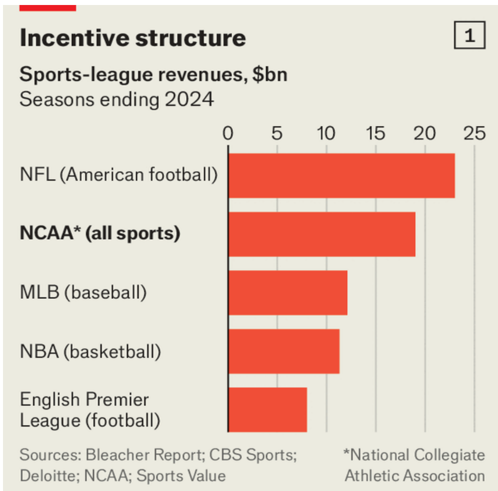

Table 1: Sports-league revenues (The Economist, 2025 / Bleacher Report)

Revenue generated by NCAA athletic departments comes from various sources, with substantial percentages of that revenue derived from ticket sales at their sporting events and media rights. The following chart shows all sources of revenue in 2019.

As of 2025, there were 136 schools competing in the highest level of college football, formally known as the NCAA Division 1 Football Bowl Subdivision. There is and always has been intense competition, especially among the top tier teams, to recruit

[8] I will return to the University of Michigan later in this paper to tell a striking story of how the recent changes to the traditional model of amateurism has been completely transformed and is working at present. First, we need to walk through both the legislative and legal history of how this metamorphosis occurred.
[9] The Economist, 2025.

what are believed to be the most talented prospects from the high school ranks, which essentially act as the training grounds for colleges.

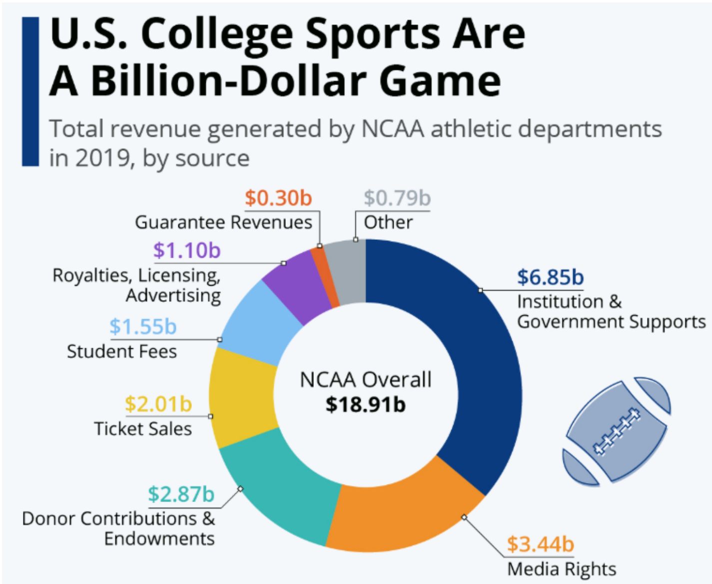

Table 2: U.S. College Sports are A Billion-Dolar Game
Source: National Collegiate Athletic Association.

What did the colleges have to offer these high school student athletes as enticements to attend their school? One primary enticement was scholarships. College education is expensive, now more than ever, and increasingly so, with the average in-state student attending a public 4-year institution and living on campus costing $27,146 for one academic year. The average private, nonprofit university student spends $58,628 per academic year living on campus; $38,421 of it on tuition and fees. Considering student loan interest and lost potential income, investing in a bachelor's degree can ultimately cost in excess of $500,000. [10]

So-called 'full-ride' scholarships included costs of tuition, fees, student housing, books, certain school supplies, tutoring, academic support services, etc. Receiving a full-ride scholarship is certainly no small inducement. Other inducements, of course, include the chance to compete at a high level with each program boasting of having

[10] Hanson, 2025.

track records of success, offering playing time, having fine coaches, playing in front of large fan bases, state-of-the-art athletic facilities, medical services, having a record of sending their players to the NFL or NBA, securing a degree, etc.

But recruiting has never been strictly a gentleman's pursuit. With so much money hanging in the balance, with top coaches being paid exorbitant amounts of money, [11] some programs over the years have bent the rules to attract high school talent to their programs. Some schools, or so-called boosters from those schools, have offered high school students cash payments or jobs where they could make money or other items having cash value such as cars, clothing and the like, to entice them to come to their program. The NCAA has had stringent rules prohibiting these activities and has often sanctioned such programs when they have had evidence to do so. Some schools were caught and were sanctioned; others went under the radar. Student-athletes caught violating the rules and forfeited their playing eligibility.

Football and basketball programs [12] have generated enormous amounts of money for everyone and every entity connected with the sport: the university; the conference the university was associated with; the coaches; the NCAA; the television and radio broadcasters; clothing stores that marketed and sold jerseys and other paraphernalia, often which contained the names and jersey numbers of the players etc. Everyone except for the athletes provided audiences with entertainment. Yes, under the old model players did receive something of value for their efforts. And a chosen few would end up going into the professional ranks where they could make substantial money. But, the reality is that what these players received paled in comparison to the revenue streams they generated for others. After all, who is responsible for the $130 million 10-year football contract that Kirby Smart of the University of Georgia inked? As Bronicel reports: *"The landscape of college football coaching is a dynamic one, where talent, strategy, and leadership are rewarded with monumental salaries. Whether it's securing national titles, developing top-tier talent, or enhancing the prestige of their programs, these coaches exemplify the high stakes and lucrative rewards that define the upper echelons of college football coaching."*[13] And significantly, as I will discuss next, in exchange for their scholarships, student-athletes were forced to acquiesce in others' use of their NIL for commercial and promotional purposes.

[12] And other sports to a lesser degree.
[13] Bronicel, 2025.

3 If it Keeps on Raining, the Levee's Going to Break:4 History of the Events That Have Led to the Demise of the Traditional Collegiate-Athlete-As-Amateur Model

Ed O'Bannon was a star basketball player at the University of California Los Angeles (UCLA) in the mid-1990s. He was named NCAA Tournament's Most Outstanding Player on UCLA's 1995 national champion team. Afterward he had a long career in the NBA. EA Sports is a division of Electronics Arts, that develops and publishes sports video games. In 2009, upon learning that a photo of him dribbling a basketball in his UCLA basketball jersey had been used in a video game EA Sport's title NCAA Basketball 09[14] without his permission and without receiving compensation, O'Bannon agreed to be the lead plaintiff in a class action lawsuit filed in the United States District Court for the Northern District of California against the NCAA[15] on behalf of the NCAA's Division 1 basketball and football players. The suit alleged that the NCAA's use of athletes' NIL for commercial purposes, without their agreement and compensation, constituted an illegal restraint of trade under federal antitrust laws, specifically Section 1 of the Sherman Antitrust Act.[16] More specifically, the plaintiffs alleged that the NCAA's rules and bylaws constituted an unreasonable restraint of trade because they precluded collegiate football and basketball players from receiving any compensation beyond the value of their scholarships for the use of their NIL in contexts such as video games, live game telecasts, re-broadcasts, and archival footage among others. As mentioned above, any student-athlete that received financial aid in excess of their scholarship had to forfeit their athletic eligibility. The NCAA also had other stringent rules prohibiting any student-athlete from receiving compensation from outside sources based on their athletic skills or ability. They were also barred from endorsing any commercial products or services while they were in school, regardless of whether or not they received compensation to do so. Plaintiffs argued that these rules all restrained competition among schools for high school recruits. The NCAA opposed the

[14] When the Levee Breaks. Song by Rock Band Led Zeplin (1971).
[15] *O'Bannon v. NCAA*, 7 F.Supp.3d 955 (N.D.Cal. 2014). The suit originally also named both Electronic Arts and Collegiate Licensing Company as defendants, but they eventually settled with plaintiffs for $40 million, which could lead to about 100,000 payments for current and former athletes who had appeared in video games among other things with plaintiffs receiving as much as $4,000 each in compensation. See, Farrey, 2014.
[16] Sherman Antitrust Act. Pub. L. 51-647, 26 Stat. 209, 15 U.S.C 1. Passed in 1890, this is the seminal federal antitrust law in the US prohibiting monopolistic conduct among businesses and other forms of anti-competitive business practices, such as price-fixing and bid-rigging, designed to promote free competition in commerce, lower consumer prices and higher quality goods. Named after then Senator John Sherman, the Act outlaws any contract, combination, or conspiracy in restraint of trade and is enforced by the US Department of Justice.

lawsuit, contending that paying its student athletes would violate the very concept of amateur athletics that had stood since US collegiate sports' inception.[17]

In August 2014, following trial, the District Court judge that heard the case, Claudia Wilken, agreed with the plaintiffs. Judge Wilken issued a 99-page ruling in which she held that the NCAA's longstanding rules barring payments to college athletes violated the Sherman Act.[18] In her detailed written findings,[19] she alluded to one of the NCAA's own expert witnesses that had referred to the NCAA in one of his own economic textbooks as a 'cartel' which he defined as *"a group of firms that impose restraints".'*[20] Some of her other findings are worth noting here. In support of her conclusion that the NCAA had indeed engaged in unlawful anticompetitive behavior she stated, *"in the complex exchange represented by a [high school] recruit's decision to attend and play for a particular school, the school provides tuition, room and board, fees, and book expenses, often at little or no cost to the school. The recruit provides his athletic performance and the use of his name, image, and likeness. However, the schools agree to value the latter at zero by agreeing not to compete with each other to credit any other value to the recruit in this exchange. This is an anticompetitive effect. Thus, the court finds that the NCAA has the power – and exercises that power – to fix prices and restrain competition in the college education market that Plaintiffs have identified.*"[21]

The NCAA offered numerous justifications for the restraints on trade Judge Wilkin had identified. In particular, it asserted that the challenged restrictions on student-athlete compensation are reasonable because they are necessary to preserve its tradition of amateurism, maintain competitive balance among the upper division football and basketball teams, promote the integration of academics and athletics, and increase the total output of its product.[22] Judge Wilkin rejected all of these

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[17] It is actually laughable, in my view at least, that for many decades the NCAA and many others had raked in billions of dollars on the backs of these hard-working student athletes, while maintaining the charade that these sports constituted amateurism.
[18] *O'Bannon v. NCAA*, 7 F.Supp.3d 955 (N.D. Cal. 2014). Case no. C-09-3329 CW.
[19] Judge Wilkin entered what are called Findings of Fact and Conclusions of Law (FFCL). These are mandated under Fed.R.Civ.P. 52 following the conclusion of a civil non-jury trial. These are usually very detailed, as they were in the *O'Bannon* case, and are akin to the form of judgment in a civil law country. They are designed to promote transparency. The FFCL are often prepared by the attorneys, reviewed by the Judge, and once the Judge agrees with the content of them, signs them. The reader interested in a more in-depth understanding of the trial testimony, which is fascinating, and the details surrounding Judge Wilkin's ruling, is encouraged to read her FFCL. Space limitations in this paper precludes any such detailed discussion.
[20] *O'Bannon v. NCAA,* Findings of Fact and Conclusions of Law, pp. 21–22.
[21] *Ibid*, pp. 22–23.
[22] *Ibid*, pp. 23–24.

arguments.[23] She held that the NCAA's rules prohibiting student-athletes from receiving compensation for the use of their NIL were an unlawful restraint of trade under Section 1 of the Sherman Act. Judge Wilken issued an injunction against the NCAA's rules prohibiting athletes from earning money from the use of the NIL in video games and television broadcasts, rejecting the NCAA's contention that *"its restrictions on student-athlete compensation are necessary to uphold its educational mission and to protect the popularity of collegiate sports"*.[24] She ordered that schools should be allowed to offer full cost-of-attendance scholarships to athletes, covering cost-of-living expenses that were not currently part of NCAA scholarships. Wilkin also ruled that colleges be permitted to place as much as $5,000 into a trust for each athlete per year of eligibility. She later awarded plaintiff's attorney fees of nearly $45 million dollars and costs of over $5 million dollars.[25]

The case was appealed to the Ninth Circuit Court of Appeals,[26] where the three-member panel held that the NCAA regulations are subject to antitrust scrutiny and must be analyzed under the rule of reason standard;[27] when those regulations truly serve procompetitive purposes, courts should not hesitate to uphold them; but the NCAA is not above antitrust laws, and courts cannot and must not shy away from requiring the NCAA to play by the Sherman Act's rules. In this case, the Court reasoned, the NCAA's rules have been more restrictive than necessary to maintain its tradition of amateurism in support of the college sports market. Therefore, the court concluded that the Rule of Reason analysis requires that the NCAA permit its

[23] *Ibid*, pp. 24–43.
[24] *Ibid*, pp. 1-2.
[25] In an unpublished opinion the Ninth Circuit Court of Appeals upheld these awards in a memorandum opinion issued June 29, 2018. *See*, *O'Bannon v. NCAA*, US. Court of Appeals for the Ninth Circuit, No. 16-15803. Under American law, and specifically the so-called 'American Rule' governing issues surrounding the recovery of attorney fees, in most cases each side to litigation must pay for their own attorney fees and most of their costs. However, there are important exceptions to this rule. Contractually, in most cases at least, parties can agree that in the event of litigation the 'prevailing party' can recover their attorney fees. Another principal exception is called fee-shifting by statute. That exception applied in this case because the Sherman Act allows for the recovery of attorney fees by a prevailing party through a related provision in the Clayton Act, 15 U.S.C. §28, which states that a successful plaintiff in a private antitrust action can recover their reasonable attorney fees and costs, and Section 16 which allows a court to award costs and fees to a successful plaintiff seeking injunctive relief. What constitutes a 'prevailing party' so as to trigger these sections is not always clear, although case law has established that to 'prevail' the plaintiff, as was the case here, does not have to prevail on all claims asserted or recover all the damages/relief sought in the case. For more on this topic *see*, Heller, 2018, pp. 45-66.
[26] *O'Bannon v. NCAA*, 802 F.3d 1049 (2015).
[27] *Ibid*, at p. 43. The rule of reason in antitrust law is a doctrine used to determine if a business practice constitutes an unlawful restraint of trade by balancing the anticompetitive harm against the procompetitive benefits it provides. Courts consider factors like market power, potential for innovation or efficiency, and overall consumer welfare, rather than outright prohibiting practices. The rule of reason standard is in contrast with the *per se* rule, where certain practices, like price fixing, are automatically illegal. This standard analyzes the actual economic effects of the conduct, acknowledging that not all agreements that restrict competition are necessarily harmful.

schools to provide up to the cost of attendance to their student athletes, but that it does not require more.[28] Accordingly, the court vacated the district court's judgment and permanent injunction insofar as they required the NCAA to allow it member schools to pay student-athletes up to $5,000 per year in deferred compensation, but the court otherwise affirmed the district court's rulings. Plaintiffs appealed to the US Supreme Court, but that court denied certiorari on October 3, 2016.[29]

The plaintiffs in O'Bannon were naturally disappointed with the limited financial relief they ultimately obtained. However, the levee that the NCAA, universities, and others had stood behind for over a century to prevent student-athletes from substantially benefiting from others' use of their NIL – amateurism – had indeed sustained a substantial rupture by the mere virtue of the fact the District Court and then the Ninth Circuit held that the NCAA's longstanding rules were in fact anticompetitive and therefore violative of the Sherman Act. Although the O'Bannon decision was a significant initial victory for college athletes, the ruling only applied to video game likeness. As we shall see next, in the ensuing years that levee would completely fracture leaving the NCAA with indeed nowhere to hide.

The next most significant event to strike a significant blow to amateurism in college sports was California's enactment of Senate Bill 206, which came to be known as the Fair Pay to Play Act.[30] Signed into law by Governor Gavin Newsom in 2019, this landmark legislation allows student-athletes in California colleges and universities to earn compensation from their NIL. Under this legislation, student-athletes can monetize their personal brand through endorsements, advertising, sports camps, and other commercial opportunities. They are also permitted to hire licensed sports agents to assist them in managing their commercial interests. The law protects them from losing athletic scholarships when receiving NIL compensation. As will be discussed later, California's pioneering legislation, initially opposed by the NCAA, led many other states to adopt similar NIL laws, and eventually influenced the NCAA to create its own NIL policies.

The levee was about ready to rupture, and student-athletes and their army of lawyers could see the collapse coming. They just had to keep the legal (and political) challenges coming; and that they did. Although the US Supreme Court had declined

[28] *Ibid*, p. 63.
[29] *Cert. denied*, 37 S. Ct. 277 (2016).
[30] California Fair Pay to Play Act (SB 206) September 30, 2019.

the invitation to take up the question of whether the NCAA's restrictive rules preventing student-athletes from receiving compensation violated antitrust rules in the *O'Bannon* case, it changed course and accepted the challenge in 2021 in *NCAA v. Alston.*[31] At issue in *Alston* was the legality under antitrust laws of the NCAA's restrictions on providing student-athletes with non-cash compensation for academic-related purposes, such as computers and internships, which of course the NCAA maintained were to prevent the appearance that the student-athletes were being paid to play or treated as professional athletes. As with the *O'Bannon* case, the *Alston* case also was filed in the Federal District Court for the Northern District of California and was heard again by Judge Wilkin.[32]

As in *O'Bannon*, in an exhaustive opinion Judge Wilkin again ruled against the NCAA, finding that its restrictions on so-called 'non-cash education-related benefits' violated antitrust law under the Sherman Act and required the NCAA to allow for certain types of academic benefits beyond the previously-established full scholarships she ordered in *O'Bannon*. These additional benefits included items such as *"computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies.'* Her ruling also barred the NCAA from preventing student-athletes from receiving *"post-eligibility scholarships to complete undergraduate degrees at any school; tutoring; expenses related to studying abroad that are not included in the cost of attendance calculation; and paid post-eligibility internships"*. The NCAA appealed the ruling to the Ninth Circuit Court of Appeals[33] which affirmed the ruling. The Supreme Court then took up the case.

In one of the most important rulings in American sports history, Justice Gorsuch, writing for a unanimous Court, affirmed the lower court rulings. As we have already discussed, the NCAA has long contended that any restraints in trade caused by its policies toward student-athletes are justified in the name of preserving amateurism in college sports, which, it steadfastly asserted, serves to differentiate the 'pure' collegiate sporting games from the professional. The NCAA has fretted that if college student-athletes are 'paid' then the legions of fans that have long followed its sports - primarily men's football and basketball - (the revenues from which fund the many other men's and women's college sports such as swimming, gymnastics,

[31] *National Collegiate Athletic Association v. Alston*, 594 U.S. 69 (2021).
[32] *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058 (N.D. Cal. 2019).
[33] *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239 (9th Cir. 2020).

hockey, tennis and the like), the public would lose interest in college athletics.[34] In a most interesting opinion, Justice Gorsuch first squarely took aim at those assertions, which he points out, are in many ways mythical. Gorsuch recounted many instances over the years of college athletes being paid, such that the lines of amateurism and professionalism often were blurred[35]? *From the start,*' Gorsuch asserted, *"American colleges and universities have had a complicated relationship with sports and money."*[36] He offered several examples, which in my view does highlight the hypocrisy of the NCAA's long-held stance. *"Colleges [historically] offered all manner of compensation to talented athletes. Yale reportedly lured a [football] tackle named James Hogan with free meals and tuition, a trip to Cuba, the exclusive right to sell scorecards from his games – and a job as a cigarette agent for the American Tobacco Company.*"[37] '*Reality,*' Gorsuch continued, *"did not always match aspiration".*[38] Citing a 1929 report on college athletics from the Carnegie Foundation, Gorsuch stated, *"[College athletics] is sodden with the commercial and the material and the vested interests that these forces have created.*"[39] Referencing the same report, Gorsuch continued, "Schools from across the country sought to leverage sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni. College football was 'not a student's game'; it was an 'organized commercial enterprise' featuring athletes with 'years of training', 'professional coaches,' and competitions that were 'highly profitable'.[40] As a consequence, in 1948, the NCAA adopted what it called a 'Sanity Code', which simultaneously for the first time allowed colleges to pay athlete's tuition and which also created a 'new enforcement mechanism' which allowed the NCAA to sanction offenders.[41] *"To some'*, reports Gorsuch, *"these changes sought to substitute a consistent, above-board compensation system for the varying under-the-table schemes that had long proliferated. To others, the code marked 'the beginning of the NCAA behaving as an effective cartel,' by enabling its member schools to set and enforce 'rules that limit the price they have to pay for their inputs (mainly the 'student athletes)."*[42]

[34] As an alum of the University of Michigan myself, I will offer a couple of comments here. The University of Michigan is the winningest college football program of all time. There is a saying there: Football is a religion at the University of Michigan and Saturday (when games are played) is a Holy day of obligation. NIL has now been fully implemented at Michigan and all other colleges. Fans continue to pack Michigan stadium and all other football and basketball stadiums across the country. Fan interest has not waned a single bit in this new era.
[35] *NCAA v. Alston*, 594 U.S. pp. 2–8.
[36] *Ibid.*, p. 2.
[37] *Ibid.*, p. 3.
[38] *Ibid.*
[39] *Ibid.*, at p. 4, Gorsuch *citing* Savage, 1929, p. 310.
[40] *Ibid.*, at p. 4, Gorsuch citing the Carnegie report at p. 87.
[41] *Ibid.*, at p. 5.
[42] *Ibid.*, at p. 5, Gorsuch citing Zimbalist, A. (1999), Unpaid Professionals, p. 10.

Gorsuch went on to track how the NCAA then evolved over the ensuing years, and traced how its rules regarding providing some educational benefits to student-athletes changed as well. Referring to the NCAA as a 'sprawling enterprise',[43] he continued, *"At the center of this thicket of associations and rules sits a massive business. The NCAA's current broadcast contract for the March Madness basketball tournament is worth $1.1 billion annually. Its television deal for the FBS conference's College Football Playoff is worth approximately $470 million per year."*[44] In concluding his introduction to the Court's opinion, and its legal analysis, Gorsuch highlighted the fact that those that have long-profited from so-called college amateur sports have stood in stark contrast to the student-athletes that generated those profits, with relatively little returning to them. He pointed out, as examples, that the President of the NCAA earns nearly $4 million per year; commissioners of the top sports conferences earn anywhere from $2 to $5 million; athletic directors at the various schools average more than $1 million annually; and, annual salaries at some of the major schools for head football coaches approach $11 million, with many assistant coaches earning more than $2.5 million.[45] The players, especially football players, but those in all sports as well, are exposed to a significant risk of injury (some career ending).[46] Further, practically all of these athletes will not go on to lucrative professional careers, meaning that under the old amateur model they will have generated huge sums of money for everyone except for themselves. In fact, only about 1.6 % of college football players will become a professional in the NFL while only 1.2% of collegiate players make the jump from college to the NBA.[47] There is a cruel reality at play here: the players compete and expose themselves to risk of bodily injury – traditionally for no compensation – while all those identified above (and others) have profited handsomely at no risk to themselves. Was this a fair system? Fair, someone once explained to me, is what the pigs do in September. Nevertheless, this calculus was about to change.

Justice Gorsuch wrote that the district court's injunction was consistent with established antitrust principles and that both the lower court and Ninth Circuit properly subjected the NCAA's compensation restrictions to antitrust scrutiny under the rule of reason analysis. Referring to its prior ruling in *National Collegiate Athletic Assn. v. Board of Regents of Univ. of Okla.*,[48] where the Court stated that under the

[43] *Ibid.*, at p. 7.
[44] *Ibid.*
[45] *Ibid.*, pp. 7–8.
[46] National Library of Medicine, 2021.
[47] Rucker, 2023.
[48] 468 U.S. 85 (1984).

Sherman Act, Congress tasked courts with enforcing a policy of competition on the belief that market forces 'yield the best allocation', Gorsuch stated the courts below properly carried out this mission and correctly concluded the NCAA's compensation restrictions failed antitrust scrutiny under the rule of reason test. The Court therefore affirmed the lower courts' rulings. However, the Court did not reach the larger issue of whether student-athletes should receive further pay, as that question was not specifically before the Court. And at the end of its opinion, Gorsuch even commented, "*Some will think the district court did not go far enough. By permitting colleges and universities to offer enhanced education-related benefits, its decision may encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools. Still, some will see this as a poor substitute for fuller relief.*" [49] Gorsuch referred to, and concurred with, a statement made by the Ninth Circuit panel that had reviewed Judge Wilkin's ruling, when it said, *"The national debate about amateurism in college sports is important. But our task as appellate judges are not to resolve it. Nor could we. Our task is simply to review the district court judgment through the appropriate lens of antitrust law.' 598 F. 3d. at 1265. That review persuades us the district court acted within the law's bounds.*" [50]

Perhaps when Gorsuch commented that some might have thought district judge Wilkin did not go far enough in terms of the breadth of relief granted he was referring to his colleague on the Supreme Court bench Justice Kavanaugh. [51] Kavanaugh wrote a short, but hard-hitting concurring opinion that left no room for doubt where he stood on the issue of the NCAA's long history of, as he phrased it at the start of his concurrence, *"restrict[ing] the compensation and benefits that student athletes*

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[49] 594 U.S. 35 (2021).

[50] *Ibid.,* at p. 35. A time-honored tradition of US appellate courts, and particularly the Supreme Court, is that it should act with what is known as 'judicial restraint', meaning at a minimum that (1) it generally should issue rulings on the narrowest grounds possible, so that broader rulings can await future cases where the facts and issues are different and so there can be distinct and perhaps more nuanced arguments raised and considered and (2) that they should respect prior precedent and *stare decisis*, the principle that the Court should follow its own prior rulings, except in exceptional circumstances. Judge David S. Tatel was a long-time Judge – and eventual Chief Judge - on the D.C. Circuit Court of Appeals, widely regarded as the second most influential court in America just behind the Supreme Court. Judge Tatel has a compelling story, as he devoted a substantial part of his pre-judge legal career helping to advance civil rights. His story is particularly interesting as he was also blind from an early age and therefore had to read briefs in braille or had them and other materials read to him. Recently retired as a judge, Tatel wrote an interesting book which I recommend entitled *Vision: A Memoir of Blindness and Justice* (2024). In Chapter 18, entitled The Future of Democracy, he bemoans the fact that the current Supreme Court has too often shown a lack of proper judicial restraint not only because it too often fails to decide cases narrowly, but instead makes broad and overly-sweeping pronouncements, but also because it too often ignores precedent and overrules earlier precedents without valid reasons. In this case, the Court did show restraint.

[51] Or perhaps Justice Kavanaugh wondered why plaintiffs' lawyers had not asked for more expansive relief in their complaints. As we will see from his concurrence, Kavanaugh certainly stood ready to grant such relief.

may receive. And with surprising success, the NCAA has long shielded its compensation rules from ordinary antitrust scrutiny. Today, however, the Court holds that the NCAA has violated the antitrust laws. The Court's decision marks an important and overdue course correction."[52] Kavanaugh pointed out that the case before it involved "only a narrow subset of the NCAA's compensation rules – namely, the rules restricting *education-related* benefits student athletes may receive, such as post-eligibility scholarships at graduate or vocational schools," but made it fairly clear that he (and probably the Court at large) would have gone further had plaintiffs asked for more robust relief in their complaints when he said, *"I add this concurring opinion to underscore that the NCAA's remaining compensation rules also raise serious questions under the antitrust laws."*[53] The Court held that, as with the more limited NCAA rules that were at issue in the instant case, and which the Court held were properly analyzed for Sherman Act antitrust purposes under the 'rule of reason' test, *"absent legislation or a negotiated agreement between the NCAA and the student athletes, the NCAA's remaining compensation rules should be subject to ordinary rule of reason scrutiny.'"*[54]

As if those comments were not enough of a roadmap to his thinking (and presumably most or all of the rest of his Supreme Court brethren, the NCAA, plaintiffs' lawyers and all those involved in the complex web of collegiate sports), Kavanaugh was even more blunt. *"[T]here are serious questions whether the NCAA's remaining compensation rules can pass muster under ordinary rule of reason scrutiny. Under the rule of reason, the NCAA must supply a legally valid* procompetitive justification for its *remaining compensation rules. As I see it, however, the NCAA may lack such a justification."*[55] He then explained why. The NCAA, he pointed out, made three key concessions that in Kavanaugh's view had already sealed its fate. First, it conceded it controls the market for college athletes; second, it conceded that its compensation rules set the price of student athlete labor at a below-market rate; and third, the NCAA acknowledges "*that student athletes have no meaningful ability to negotiate with the NCAA over the compensation rules.'"*[56] Kavanaugh was just getting started, *"The NCAA's business model would be flatly illegal in almost any other industry in American…Price-fixing labor is price-fixing labor. And price-fixing labor is ordinarily a textbook antitrust problem because it extinguishes the free market in which individuals can otherwise obtain fair compensation for their*

[52] *NCAA v. Alston*, 594 U.S.____ (2021) (Kavanaugh, J., concurring), p. 1.
[53] *Ibid.*, p. 2.
[54] *Ibid.*
[55] *Id.*, pp. 2–3.
[56] *Id.,* at 3.

work. See, e.g., Texaco Inc. v. Dagher, 546 U.S. 1, 5 (2006). Businesses like the NCAA cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of the product. Or to put it in more doctrinal terms, a monopsony[57] *cannot launder its price-fixing of labor by calling it product definition."*[58]

As if his message to the target audience was not yet clear, he went on the place an exclamation point on it. *"The bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenue for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes. College presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries. Colleges build lavish new facilities. But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing."*[59] Clearly unpersuaded by the NCAA's arguments he went on, *"[T]he NCAA's business model of using unpaid student athletes to generate billions of dollars in revenue for the colleges raises serious questions under the antitrust laws. In particular, it is highly questionable whether the NCAA and its member colleges can justify not paying student athletes a fair share of the revenues on the circular theory that the defining characteristic of college sports is that the colleges do not pay student athletes. And if that asserted justification is unavailing, it is not clear how the NCAA can legally defend its remaining compensation rules."*

I am spending the time to discuss Kavanaugh's concurrence at some length because his comments and reasoning (as he knew would be the case) were directed to everyone connected to the mega-tentacled collegiate sports industry, as well as to national and state legislators. Though courts are not supposed to give what amount to an advisory opinion, and the concurrence was not quite that, it certainly provided the target audiences with a detailed roadmap of the choices they each faced if they did not act to resolve the problem extrajudicially through negotiated settlements, NCAA rule changes, and legislative actions. Kavanaugh was saying: the levee has broken, there is nowhere to hide, now get to work on developing practical solutions to solve the many thorny problems that lie ahead. Kavanaugh identified some of those problems. *"If it turns out that some or all of the NCAA's remaining compensation rules violate the antitrust laws [and we can assume Kavanaugh thought they did], some difficult policy and practical questions would undoubtedly ensue. Among them: How would paying greater*

[57] A monopsony is defined as a market situation in which there is only one buyer.
[58] 594 U.S. (2021) (Kavanaugh, concurring), pp. 3–4.
[59] *Ibid.,* p. 4.

compensation to student athletes affect non-revenue-raising sports? Could student athletes in some sports but not others receive compensation? How would any compensation regime comply with Title IX?[60] *If paying student athletes requires something like a salary cap in some sports in order to preserve competitive balance, how would that cap be administered? And given that there are now about 180,000 Division I student athletes, what is a financially sustainable way of fairly compensating some or all of those student athletes?"*[61] Kavanaugh suggested that these admittedly difficult issues could be resolved outside the litigation system through legislation, collective bargaining, and/or negotiated settlements.[62]

As if wanting to leave no doubt that it was time for the NCAA and its members institutions to stop fighting antitrust battles it was bound to lose, and to instead be proactive to find solutions (hard as those may be) to pay student athletes compensation and to stop hiding being the sham of amateurism, Kavanagh drove the point home one last time with these memorable lines. *"Regardless of how those issues ultimately would be resolved, however, the NCAA's current compensation regime raises serious questions under the antitrust laws."* And while he recognized the old-age traditions of college football and other sports, "those traditions alone cannot justify the NCAA's decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated. Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. Moreover, under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law.[63]

The *Alston* decision was essentially the death knell of the NCAA's college-athlete-as- amateur model. After years of relentless antitrust litigation, the writing was on the wall. This brings us to our last case, also presided over by the very busy Judge

[60] Title IX is a 1972 federal law that prohibits discrimination based on sex in any educational program or activity receiving federal financial assistance. Title IX protects students from sex-based discrimination in areas like admissions, academics, athletics, and housing, ensuring equal opportunities for everyone. It has been crucial in expanding women's rights in sports and all other educational activities. Men's college basketball raises substantially more revenue than does women's college basketball (which, however, is still very popular). However, if colleges were to decide to allocate substantially more funds to the men playing basketball only because that sport generates more revenue, would such a decision run afoul of Title IX? As Justice Kavanaugh pointed out in his concurrence, this and many other practical and legal questions will persist.
[61] 594 U.S. (2021) (Kavanaugh, concurring), p. 5.
[62] *Ibid.*
[63] *Ibid.*

Wilken, *Grant House and Sedona Prince v. National Collegiate Athletic Association.*[64] *House* was a class action suit brought by Grant House, a university swimmer, and Sedona Prince, a university basketball player. Together they sued the NCAA and five major athletic conferences. They sought both NIL damages and an injunction to force the NCAA and the named conferences to lift restrictions on revenue sharing from broadcast rights. In November 2023, Judge Wilken granted class action certification, expanding the parties affected to any Division I athlete who played after 2016 with a four-year statute of limitations. Three classes of student-athletes for the period June 2016 through September 2024 were approved.[65]

On June 6, 2025, Judge Wilkin approved a $2.8 billion settlement of the case [hereinafter *House* settlement]. The following are the key components of the *House* settlement. The most significant component is revenue sharing. Over the next ten years, all college athletic departments that chose to opt into the settlement agreement will be able to share revenue directly with their student-athletes.[66] Effective the date of the agreement, each school that opted in will initially receive $20.5 million per school year. This amount will increase annually. There will be a salary cap placed on the amount each student-athlete can receive from this pot of money.

The second component of the *House* settlement is back pay. College athletic departments and the NCAA will pay $2.8 billion in back pay to student-athletes who competed in the NCAA from 2016 through the date of the settlement approval. This money will be spread out over ten years, with men's basketball players and football players (by far the largest revenue-producing sports) expected to receive the largest shares. Exactly how these monies will be divided up between the different sports (including both men and women) still remains to be worked out. In his concurring opinion in *Alston*, Justice Kavanaugh presaged that when a settlement was eventually reached there would be many complicated details to work through. He was correct. And indeed, there likely will be substantial future litigation to work these details out.

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[64] *Grant House and Sedona Prince v. National Collegiate Athletic Association, et al.*, Case No. 4:20-cv-03919 CW, 4:20-cv-04527 CW, United States District Court, N.D. California (2020).

[65] The classes were: the football and men's basketball class, where the student-athlete received a full scholarship and competed for a so-called Power Five school (i.e., the conferences named in the suit as defendants); the women's basketball class; and, the additional sports class, for all other sports, where the student-athlete was declared eligible to compete for any Division I athletic team.

[66] Colleges that were included within the so-called Power Five Conferences – they were all named defendants in the case and include the vast majority of the large schools that play the major sports – were automatically opted in. Others had the choice to opt in or out. Those that opted in agreed to follow the new roster limits and must participate in the revenue sharing scheme. Schools that opted out are not required to follow the new roster and scholarship restrictions but also are not permitted to pay their student-athletes under the new revenue sharing model.

The third component of the *House* settlement consists of new roster limits and related rules. Colleges no longer will be restricted by what was known as the 'head count' scholarship model. Now, colleges and universities that opted in to the *House* settlement are permitted to offer each student-athlete a full, partial, or no scholarship at all, depending on their program's strategy and funding. Further, each sport now will have a roster cap, which may increase or decrease depending on the sport. For example, football teams will be capped at 105 total roster spots, with scholarships distributed at varying levels. Before, schools could carry rosters of 130 including walk-on players but were limited to offering 85 full scholarships. Men's basketball rosters will expand from 13 to 15 players.

4 New Rules Governing Name, Image and Likeness

Student-athletes walking on to a college campus spent many long hours of practice to get to that point. College swimmers spent years in pools, both in primary and high schools. Football players spent years working out both in gyms and on the football field, along with film study. In addition, the same holds true for all other college athletes regardless of their sport. Moreover, of course, once admitted onto a college campus in their respective sport, the intensity of that work only continued to grow. The student athletes are specialists. However, as we have seen, aside from some receiving scholarships, they could not profit economically from all this hard work, dedication and sacrifice and despite, as I have shown, often (at least in some sports) generating substantial revenue for many others.

On July 1, 2021, after years of litigation the NCAA introduced new rules finally allowing student-athletes to profit from their NIL rights (NCSA College Recruiting, 2025). The *O'Bannon* and *Alston* rulings, among others, along with the 2019 Fair Pay to Play Act, were major reasons that forced the NCAA's hand, and persuaded it to abandon its long-held position. The NCAA's NIL rule has several principal components. The newly formed College Sports Commission will be in charge of enforcing the new rules. The CSC is charged with, among other things, ensuring colleges both follow the new revenue-sharing system and that NIL deals (discussed separately below) are legitimate. [67]

[67] For more on the role of the CSC and activities permitted and not permitted under NIL deals, along with reporting requirements, *see* NIL Newsstand, Rules Resulting from House Settlement Finalized and Enforced by College Sports Commission. Retrieved from: https://www.nilnewsstand.com./updates/college-sports-commission-rules (accessed: September 14, 2025). Among the more interesting rules set forth in the new NCAA Bylaws relating to

Athletes may engage in NIL activities so long as they comply with applicable state laws where their school[68] is located. The schools, in turn, have a duty to ensure these activities comply with state law. Athletes in states without NIL laws may still participate in NIL activities without going astray of NCAA rules. Athletes are allowed to seek professional service providers (e.g., agents) to assist with their NIL activities. Student-athletes have an obligation to report NIL activities consistent with state law or school and conference requirements for their school (NCSA College Recruiting, 2025). NIL deals consist of, among others, providing autographs and memorabilia (say jerseys or caps), attending or sponsoring camps and clinics, making personal appearances, sponsoring merchandise, blogging, podcasting, public speaking etc.[69]

According to NCSA College Recruiting, as of May 2025, 33 states had signed NIL legislation into law while seven others had proposed such legislation. Some of those that have legislation under review are following the NCAA's interim policy in the meanwhile.[70] Additionally, colleges and universities also are creating their own NIL rules. The schools with these rules have oversight over NIL deals and the right to object to a deal if it conflicts with existing agreements. National governing bodies have started to craft their own NIL guidelines for student-athletes to retain their amateur status.[71] The United States Golf Association was the first such national organization do to so.

NIL is not limited to college student-athletes and has extended to high school athletes as well in the vast majority of the states. There are stricter limits on high school NIL opportunities, with the specific rules varying depending on the specific high school governing authority in each state.[72] Accordingly, some high school student-athletes, at least some of the high-profile students, can start capitalizing on their 'personal brand' even before heading off to college.

NIL are that NIL deals worth more than $600 must be reported to the CSC and that NIL deals must serve a *"valid business purpose…with compensation at rates and terms commensurate with compensation paid to similarly situated individuals."* Further, *"Raising money to induce student-athletes to attend or participate in intercollegiate athletics at an institution does not satisfy the valid business purpose rule"*. That is to say, 'Pay-for-Play' NIL deals do not constitute a valid business purpose.

[68] By school I mean both the student's high school and college/university.

[69] NCSA College Recruiting, 2025.

[70] NCSA College Recruiting, 2025.

[71] NCSA College Recruiting, 2025.

[72] NCSA College Recruiting, 2025.

In this new era of NIL in collegiate sports, what are known as 'collectives' are being formed to basically pool money from various sources to compensate the student-athletes at a given educational institution. These independent organizations generate NIL deals for the athletes at a specific school while operating (supposedly at least) independently from the schools themselves. These collectives engage in fundraising activities to secure pools of money from donors, alumni, fans, businesses and the like. The collective then uses its network and resources to connect athletes with potential NIL activities including things such as promoting products or services for businesses, participating in community events and the like. In other words, the student-athletes act as marketers for various businesses either using their NIL and/or making actual physical appearances at events. The collectives often assist the student-athletes to negotiate contracts with the businesses they help promote and manage payments to the student-athletes. Collectives' main purpose, however, is to provide financial compensation to athletes for their NIL rights and to help ensure the athletes are fairly paid for their time and efforts.[73]

4.1 An Example of New Model at the University of Michigan

I discussed at the start of this paper revenues generated by the NCAA and briefly mentioned the University of Michigan (UM), promising in a footnote to return to this school later. Having traced the history of the NCAA and college athletics from its humble beginnings to the behemoth it now is, and how the legal system has transformed the long-standing amateur sports model into what is now more of a professional one, I will end this paper by again returning to UM to provide a case example of just how things work under the new model. I chose UM only because I attended UM in the mid-1970s for my undergraduate work and have closely followed the school and its athletic teams for over half a century. UM not only is a top ranked, world renown teaching and research institution, it also has historically excelled across a wide array of sports.

A recent article by Matt Baker in the Athletic[74] provided data on the top college football programs in America, including their three-year average football (only – did not include other sports) revenues and their overall values if these programs were 'sold' on the open market. UM ranked fifth, with average annual football revenues

[73] Icon Source, 2022.
[74] Baker, 2025.

generating $141M and its projected sales price coming in at a whopping $1.83 billion. The top program, just for comparison purposes, is Texas, with three-year average football revenues at $183 million and a projected valuation of $2.38 billion. UM boasts the largest college football stadium in American, with a capacity of 107,601.[75] Seven other major college football powers have stadiums with a seating capacity over 100,000.[76] After long-time coach Jim Harbaugh left the program following UM's national championship victory in 2023, capping his nine-year tenure at the helm of UM's football program, UM turned to one of Harbaugh's assistant coaches, Sherone Moore to replace Harbaugh. Moore had a $6 million salary in 2024. UM's assistant coaches collectively made $9.384 million in the 2024 season, ranking fifth in the nation.[77]

UM's governing body, the Board of Regents, was very reticent to embrace the modern NIL age. Instead, it wanted the athletic department to make the pitch to high school recruits (and transfers), their parents and coaches that being a student-athlete at UM in and of itself were transformational and not transactional.' In other words, come to UM both because of its combined academic and athletic tradition of excellence. Earn a valuable degree while playing collegiate sports at the highest level. This, they argued, would transform you into a 'Michigan Man or Woman'. This stance was all very aspirational, though one would argue, naïve. Constantly recruiting the top high school athletes and bringing them into the fold is the lifeblood of athletic programs. Professors, as they say, 'publish or perish'. College coaches, in a similar vein, 'recruit or perish'. As soon as the NCAA adopted rules and regulations adopting NIL, most if not all the top athletic programs UM competes with – Texas, Ohio State, Penn State, Notre Dame to name a few – went all in and almost immediately they had put in place systems to take advantage of the new rules. These schools immediately had large 'war chests' of money (in the millions and tens of millions) secured from wealthy donors to lavish on the prized recruits. If UM was going to continue to compete and keep up with their competitors, they had to adapt. Otherwise, its coaches would be recruiting with literally two hands tied behind their backs. Or, as author John U. Bacon, a longtime observer of Michigan athletics wrote, *'It's the new Wild West, man. You compete, or you lose*'.[78] And adapt and compete UM has.

[75] Chiusano, 2025.
[76] Chiusano, 2025.
[77] Ramsey, 2024.
[78] Maynard, 2024.

The biggest story in UM athletics in 2024, and one of the biggest certainly in college football, was that of a five-star[79] high school quarterback from Belleville High School in Detroit, Michigan, then 17-year-old Bryce Underwood. Underwood was the consensus number one ranked player in all of high school football, according to the analyst sites that track these things.[80] Underwood had initially made a verbal commitment to attend Louisiana State University.[81] This news did not set well with Michigan football faithful. A couple of large donors came to the rescue. Dave Portnoy, the founder of sports and pop-culture media site Barstool Sports, and billionaire Larry Ellison, the co-founder of technology giant Oracle, and whose fifth wife, Jolin, is a UM alum, cobbled together a reported $12 million deal to persuade Underwood to change his commitment to UM.[82] Money will often do that. He apparently will receive $3 million for each year he stays in Michigan.[83]

Earlier I wrote about collectives. At UM, the name of the official collective that works to provide funds for UM athletes is called the Champions Circle. Its official website[84] explains its mission as follows, *"The Name, Image, and Likeness (NIL) era has redefined collegiate sports, creating opportunities for athletes to monetize their personal brands. Champions Circle works hard to unite donors, businesses, and alumni to provide career-building opportunities and financial support for student-athletes, ensuring that each of their NIL ventures are meaningful. Champions Circle helps our athletes tap into diverse networks that will drive long-term success and provide stability amid the ever-changing NIL landscape.*" Underwood is hardly the only college football athlete now profiting under the new NIL landscape. On3, a service that analyzes and rates high school football players, also has a website that tracks players and the NIL funds they are receiving. Arch Manning, a quarterback at Texas, receives $5.5 million and Carson Beck, another quarterback that plays for the University of Miami, reportedly earns $5.5 million.[85]

[79] Various analytical sites rank high school football and basketball players using a star ranking system. Some are unranked, but those high school athletes deemed to have the most talent and potential are ranked 2-star through 5-star, with 5-star being the highest in rank. In football there usually are around 30 high school players that achieve 5-star ratings. These are the most highly recruited, though there are many 4-star and 3-star players that also are highly sought after.
[80] Among college sports fans – especially those following men's basketball and football – following recruiting is a huge deal and there are many articles, You Tube videos, pod casts etc. that follow recruiting year around.
[81] Maynard, 2024.
[82] Maynard, 2024.
[83] Maynard, 2024.
[84] See Champions Circle Webpage.
[85] On3, 2025.

The NCAA had long defended the amateur model on the grounds, among other things, that the public would lose interest in collegiate sports if its athletes were treated as professionals. Perhaps there was a time when this was true. But in this instance as in others, public opinions shift with the times. A recent study by Knoester & Ridpath concluded that while it is true that in the past public opinions largely opposed further compensation for U.S. college athletes, beyond the costs of going to school, now a majority of U.S. adults support, rather than oppose, allowing college athletes to be paid.[86] This is especially pronounced among Black Americans. Kraft, writing for Forbes[87] wrote, *"Nearly 70% of U.S. adults said college athletes should be able to receive direct compensation from their school when asked in a survey conducted this summer by Sportico and The Harris Poll"* thus squelching the fearmongers that had warned that when student-athletes in 2021 were finally provided the chance to earn money from their NIL that college sport as we have known it would come to a screeching halt. The poll surveyed over 2,000 people nationally and found that 67% agreed college athletes should receive direct compensation from their universities while 74% supported athletes' ability to profit from NIL opportunities.[88]

5 Conclusion

This decade has ushered in a tidal wave of changes to the traditional model of collegiate athletics. The longstanding model of the amateur student athlete has been upended and turned on its ear. No longer really an amateur, as once understood, many student-athletes leaving high school for college, and many college athletes once ensconced in college are in many ways already professionals dressed in amateur garb. There is no turning back.

There are over 1.2 million attorneys in America. As I discussed in the article, it was not until the *O'Bannon* case that plaintiff antitrust lawyers began to seriously challenge the old student-athlete-as-amateur model in the courts using the Sherman Act as the basis for the challenge. It is somewhat puzzling to me that the plaintiffs' bar (and there are many plaintiff class action lawyers in America) took up this fight only recently. In any event, the die has been cast. In the aftermath of the *House* settlement and other antitrust victories, student-athletes now will receive direct compensation from their schools and can also make their own deals through

[86] Knoester & Ridpath, 2020.
[87] Kraft, 2023.
[88] *Ibid.*

collectives and brands. While the *House* settlement allows schools to directly pay its athletes through an annual revenue-sharing pool currently capped at $20.5 million per school, this amount will surely rise over time.[89] Further, I can safely predict that schools' collectives will continue to amass every-increasing pools of money to use to entice prospects to attend their schools.

This new paradigm is in a constant state of flux which means there will still be more litigation in the courts and more regulations at both the federal and state levels. Open questions include how the pool-shared money available to schools under the *House* settlement will be divided among the athletes in the various sports. I can reasonably predict that the lion's share of the money will go to men's football and basketball teams, with much smaller amounts being divided among the other sports teams. What will the impact of the settlement be on the many non-revenue generating sports? How will Title IX impact revenue sharing? How will the new paradigm impact the competitive balance in college sports? Will there have to be salary caps imposed similar to those employed in professional sports, to create a more competitive playing field? The danger is that the strong, rich schools will have the ability to dominate the rest of the field. Will Congress eventually have to step in to legislate solutions to some of these issues. From the student-athletes' perspective, many are going to require professional expertise at any early age, often in their high school academic career, to steer them through the thicket of rules and regulations that impact their futures. In this respect, the new paradigm will create many new opportunities for attorneys and other sports agents. It will be interesting to see whether new laws and regulations will be enacted to help ensure those agents do not take advantage of the young student-athletes.

Legal Acts, Case-law

California Fair Pay to Play Act (SB 206) September 30, 2019.
Case no. *C-09-3329 CW*.
Clayton Act, 15 U.S.C. §2.
Grant House and Sedona Prince v. National Collegiate Athletic Association, et al., Case No. 4:20-cv-03919 CW, 4:20-cv-04527 CW, United States District Court, N.D. California (2020)

[89] The Detroit Free Press in a June 2025 article by writer Garcia (2025), referencing an anonymous source at the UM, stated that revenue-generating sports at the school will receive the vast majority of the funds. There are 29 varsity sports at the school. The current $20.5 million is estimated to be divided as follows, per the source of the article: around 70-75% to the football program; 15-20% to the men's basketball program; and the remaining 5-15% to be split amongst the rest of the sports with women's basketball and ice hockey next in the pecking order.

In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058 (N.D. Cal. 2019).
In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 958 F.3d 1239 (9th Cir. 2020).
National Collegiate Athletic Association v. Alston, 594 U.S. 69 (2021).
O'Bannon v. NCAA, 7 F.Supp.3d 955 (N.D.Cal. 2014).
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