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The Making of Modern-Day NIL Laws: The Past, Present, and Future of Amateurism and Commercialization in College Sport

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The purpose of this study was to increase the understanding of state laws governing collegiate student-athletes’ name, image, and likeness (NIL) rights and place the laws within the framework of the NCAA’s historic and current views on amateurism and commercialization. To accomplish such, a content analysis of the 30 existing NIL laws/executive orders was performed to identify trends in the statutes and establish what commonalities and differences exist across states. The analysis found five themes/sections common across state laws (i.e., definitions, basic NIL rules, limitations, disclosures and review processes, agent and representation rules, and required workshops). Moreover, the evaluation revealed the basic NIL rights of student-athletes are uniform across all states. However, the limitations that are placed on them and the processes they must abide by vary from state to state. Current NCAA bylaws were found to coincide with the new state laws, while still maintaining the organization’s desire for amateurism and push to minimize commercialization.

Keywords: NIL, law, NCAA
The National Collegiate Athletic Association (NCAA) was established on December 28, 1905, to implement a standardized set of rules for football so that violence and subsequent injuries would be reduced, thus allowing football to “continue to attract large numbers of spectators and large gate receipts…” (Smith, 2011, p. 48). Additionally, colleges and universities felt a national governing body set to regulate and supervise intercollegiate athletics would allow college sports to be maintained “on an ethical plane in keeping with the dignity and high purpose of education” (Intercollegiate Athletic Ass’n of the United States, CONST. art. II as cited in Carter, 2005, p. 221). From the outset though the NCAA struggled with two main issues: (1) the role/definition of amateurism and (2) the commercialization of intercollegiate athletics.

The NCAA’s first set of bylaws in 1906 sought to address the first issue as they focused on the importance of amateurism. The bylaws themselves “reflected an ‘unequivocal, uncompromising’ position on amateurism” stating “no scholarships or financial aid based on athletic rather than academic ability (was) permissible” (Lazaroff, 2007, p. 331). In 1911, the NCAA further highlighted the importance of amateurism as they officially defined it as, “one who enters and takes part in athletic contests purely in obedience to the play impulses or for the satisfaction of purely play motives and for the exercise, training and social pleasures derived” from sport (Crowley, 2006, p. 58).

To help maintain amateur ideals the NCAA required those participating on athletic teams enter college for academic and not athletic purposes (Smith, 2011). However, concerns over providing athletes with scholarships for their athletic participation, having athletes paid to play in summer leagues, and having paid professional college coaches inevitably led to many debates amongst institutions, conferences, and NCAA leaders (Crowley, 2006). Five years after offering the initial definition of amateurism, the NCAA redefined the amateur athlete as "one who engages in sport solely for the physical, mental, or social benefits he derives therefrom, and to whom the sport is nothing more than an avocation" (Sack et al., 1998, pp. 34-35).

Another big change to the definition of amateurism occurred in 1948 when the NCAA passed the Sanity Codes to “alleviate the proliferation of exploitive practices in the recruitment of student-athletes” (Smith, 2011, p. 14). Though the codes were repealed a few years later, they marked an important time in college sport as the NCAA began implementing new bylaws and evolving their core values to allow athletes to receive a form of payment for their athletic ability. More specifically, the organization changed how it defined amateurism and began allowing student-athletes to receive money to cover the cost of tuition in exchange for their athletic participation (Smith, 2011). This change remained in place after the Sanity Codes were repealed in 1951, allowing amateur intercollegiate athletes to receive compensation in the form of a scholarship while maintaining their amateur status (Smith, 2011).

Concerns over amateurism coincide with issues of commercialization (Smith, 2011). As F.W. Marvel, the first athletic director of Brown University, noted in 1919, “We are told by the college officials that we must conduct our sports and play along amateur lines, but we must finance them along lines that are purely commercial and professional” (Smith, 2011, p. 61). The commercial and professional lines Marvel referred to were found to be present in a vast array of decisions, policies, and bylaws implemented at the university and national levels. For example, the growth and proliferation of football stadiums, the advent of national championships, and the selling of broadcast rights for various sporting events were all changes made by institutions and the NCAA that increased their ability to generate necessary revenue from college athletics (Smith, 2011; Washington, 2004).
The growth of commercialization and evolving views of amateurism, combined with new bylaws, policies, and practices to address both have not always been met with widespread acceptance. Rather, changes made by the NCAA have brought various levels of scrutiny, including numerous lawsuits from athletes against the governing organization challenging the legality of such bylaws (see, *Banks v. NCAA*, 1990, *Bloom v. NCAA*, 2004, *House v. NCAA*, 2016, *McCormack v. NCAA*, 1988, etc.). Though the courts have routinely found in favor of the NCAA and most of their regulations in such litigation, stakeholders have continued to pressure the NCAA to change their views on amateurism and allow student-athletes to capitalize off the commercial appeal of college sports (Southall & Nagel, 2021). More specifically, they asked the organization to implement new bylaws allowing athletes to generate revenue for themselves based on their name, image, and likeness (NIL). While the NCAA was slow to act, state legislatures took up the issue and began passing laws in 2019 establishing basic NIL rights for intercollegiate student-athletes. That is, they granted student-athletes the legal right to make money from their NIL without fear of retribution by the NCAA, athletic conferences, or the institution. Such actions forced the NCAA to re-examine its bylaws and make appropriate adjustments.

These changes have resulted in numerous stakeholders speaking on and deconstructing the topic of NIL rights in intercollegiate athletics. Scholars have been at the forefront of such conversations as they have begun studying NILs from a myriad of perspectives. More specifically, a group of scholars have examined portions of NIL legislation either from a specific state or across numerous states to describe general characteristics of the law(s) (Allen, 2022; LeRoy, 2023), and broken down “conflict language” across legislation (Moorman & Coco, 2023). Such approaches have generally been undertaken with the goal of increasing scholars’ and practitioners’ understanding of NILs statutes and how they might affect student-athletes, colleges, and/or the NCAA moving forward.

Other scholars have focused on the student-athletes themselves, examining such things as their value and potential earnings from NIL deals (Cocco & Moorman, 2022; Kunkel et al., 2021), perceptions of and feelings towards NIL policies and bylaws (Grambeau, 2021; Fullerton et al., 2023; Gulavani et al., 2023), their use of social media to build personal brands (Hawkins-Jedlicha et al., 2023), the role of student-athletes as influencers (Fridley et al., 2023), and the effects and impact NILs have on the athlete (Ehrlich & Ternes, 2021). Moreover, some academics have focused on structural comments surrounding NILs and the consequences that might result from them. Accordingly, researchers have explored the impact of student-athlete NIL deals on key stakeholder (Harris et al., 2021), have forecast what the future of college athletics may look like following the latest legal precedents (Besser, 2016; Jessop et al., 2023), examined the tax implications of NIL contracts (Bunner, 2020), and proposed changes the NCAA could make to combat current issues (Landry & Baker, 2019).

However, within this ever-expanding line of research, no scholar has yet examined and broken down all state NIL laws and placed each state’s regulations into context. That is, there is not a complete accounting for the similarities and differences across all state NIL legislation. Nor is there a full discussion of how this language ties into the NCAA’s current and/or historic treatment and view of student-athletes generating revenue for themselves.

Therefore, the purpose of this paper was to address the gap in literature and increase the understanding of current laws governing NIL rights in collegiate sports. Moreover, the research seeks to place the laws in the framework of the NCAA’s historic and current views of amateurism and commercialization, so as to better understand aspects of the legislation’s design and purpose. To accomplish these goals the study first explored the history and evolution of college athletics, focusing on the governing organization’s view of amateurism and
commercialization. The study then proceeded to deconstruct past and present-day NCAA bylaws as a means of defining the organization’s changing views of NIL rights. A content analysis was next performed of 30 state NIL laws/executive orders active between August 2022 and May 2023. As new state laws are consistently being passed and existing laws are being updated to reflect evolving views/treatment of NILs, a specific period for analysis was chosen to highlight early legislative attempts to allow student-athletes to capitalize off their NIL. Analysis of the state laws during this period highlighted the commonalities and differences between various states’ approaches to student-athlete rights with the goal of growing scholars’ and practitioners’ understanding of the topic. Finally, the work concluded by placing the findings of the NIL content analysis into perspective by discussing how the NIL laws tie into the NCAA’s treatment of amateurism and commercialization.

Review of Literature

The Beginning of College Sport

In the late 1700s and early 1800s college campuses were almost completely devoid of athletic activities. Life on campuses during that time was highly regulated, with faculty holding high academic standards that required students to devote themselves to their studies fully (Lewis, 1970a). Lewis (1970a) noted that colleges adopted this rigid environment out of the belief that higher education should be about “intellectual development and moral improvement” (p. 222). Almost all extracurricular activities were viewed as distractions from learning, resulting in games and sports being viewed as unwanted by faculty.

However, students would often grow restless and act out against faculty and the university, leading to vandalism across campus (Lewis, 1970a). To combat the campus disorder and provide students with healthy outlets for their energy, universities began to build gymnasiums and provide organized physical training to students. While this failed to attract the attention of many, it was not a complete failure as it laid a foundation for students to engage in other forms of physical activities on campus (Lewis, 1970a). More specifically, in the 1840s, students began participating in “ball games” (e.g., football, baseball, cricket, etc.; Lewis, 1970a). These games were initially played between students at the same university, who also took the time to organize and promote the activities. Such organization was done through the creation of individual institutional sport clubs, beginning with Yale’s boat club in 1843 (Lewis, 1970a).

The early clubs still did not engage in intercollegiate competitions but rather were founded and run by students to promote a sport and provide a social outlet for students within the university (Lewis, 1970a). This began to change in 1852, when the first intercollegiate athletic competition was held between Harvard and Yale in the sport of rowing (Smith, 2011). Following the success of this event, and the rematch that occurred three years later (Smith, 2011), intercollegiate athletic competitions became more prominent. In 1859, the first intercollegiate baseball contest was held, followed by the first intercollegiate football game in 1869 (Smith, 2011) and the first track and field competition in 1876 (Crowley, 2006).

Akin to the early intra-collegiate competitions, contests between universities were originally organized by students who took care to set the time, place, and rules of the competitions (Smith, 2011). As the popularity of these athletic events increased and expanded, students began to develop athletic associations (e.g., the Rowing Association of American Colleges in 1871, Lewis, 1970a; Intercollegiate Football Association in 1876, Washington, 2004; etc.) to help govern and standardize the contests. More specifically, the associations stipulated
who was eligible to compete and established basic sporting guidelines (Crowley, 2006; Smith, 2011).

Collegiate students’ control over athletics was not long-lived as university faculty came to worry about the effect athletics was having on the student population (Osborne et al., 2020). Many argued athletics was not becoming of a gentleman, reinforced unethical behavior, and was harmful to the ideals of higher education (Osborne et al., 2020; Smith, 2011). Additionally, faculty claimed sports were distracting students from their education. As a result, university faculty became involved and sought to take control of intercollegiate athletics through the formation of university athletic committees (Smith, 2011). These university committees, the first of which was established at Harvard in the 1880s, soon joined together and established multi-member organizations with the hopes of addressing issues faculty had come to notice (Crowley, 2006). As Professor Alexander Meiklejohn, the president of the Brown University Athletic Association noted, “What is needed in all college athletics is decisive action to so reshape their spirit and management as to preserve their value, while destroying their evil influences” (New-York Tribune, 1905, p. 7).

In addition to faculty involvement, university presidents started to seek control over athletics towards the end of the 1800s. As Smith (2011) described, “Presidents found that athletics lent them a vehicle for advertising their institutions with little cost” and could serve to attract positive attention to a university (p. 34). A prime example of such was seen in the 1874 remarks of Columbia’s President Barnard following a crew team’s victory. Barnard stated, “You have done more to make Columbia College known than all your predecessors have done since the foundation of the college by this great triumph” (Lewis, 1970b, p. 212). Alumni groups and governing boards also began to take notice and feel pride in the accomplishments of university athletic teams and thus pressured presidents to establish winning programs (Lewis, 1970b; Smith, 2011).

**Founding of the NCAA**

As students, faculty, and presidents all sought to have influence and control over college sport in the late 1800s and early 1900s, issues continued to arise forcing universities to take a serious look at intercollegiate athletics, specifically football (Crowley, 2006; Smith, 2011). William H.P. Faunce, the President of Brown University noted, “Football must be reformed (and)… new rules should be made punishing not only the individual, but the whole team for brutality… Less emphasis should be placed on avoirdupois, and more on intelligence, alertness and skill.” (New-York Tribune, 1905, p. 7, col. 3., para. 9). United States President Theodore Roosevelt became so concerned with the violence of football that he called Harvard, Yale, and Princeton to a meeting in 1905 to discuss the need for reform. Soon after, a handful of colleges from across the country convened a meeting, labeled the MacCracken Conference, to discuss what should be done with the game (Crowley, 2006; Smith, 2011). On December 28, 1905, 62 colleges/universities agreed to establish the Intercollegiate Athletic Association of the United States (IAAUS) to not only reform football but “intercollegiate athletics as a whole” (Carter, 2005, p. 218). More specifically, in May of 1906 Article VIII of the IAAUS’s first constitution and bylaws declared,

The Colleges and Universities enrolled in this Association severally agree to take control of student athletic sports, as far as may be necessary to maintain in them a high standard of personal honor, eligibility, and fair play, and to remedy whatever abuses may exist.
The constitution went on to address various issues plaguing intercollegiate athletics. Of note was the issue of amateurism and eligibility. Captain Palmer Pierce of West Point spoke to the need to address the issue in declaring in 1905 a desire to reform “our supposedly amateur college athletics” in which “college players (are) not really amateurs, and (receive) various covert forms of payment… for their athletic services” (Carter, 2005, p. 218). Pierce went so far as to speak to specific examples recounting,

one prominent player was said to have derived hundreds of dollars from the privilege of furnishing programs for games; another received the profit from a special brand of cigarettes named after him; a third was the ostensible head of an eating club, while still others were in the private employ of rich college graduates. (Carter, 2005, p. 218)

Thus, Article VI of the founding IAAUS constitution declared that member schools agreed to enact and enforce rules and regulations to prevent violations of amateurism (Carter, 2005). Included in this was a ban on stakeholders (e.g., athletic organizations, alumni, etc.) providing inducements to attend a college based on athletic ability or supporting an athlete financially while attending school. Moreover, a ban was issued on recruiting amateur athletes to attend a specific university to play a sport, and on playing athletes who were not a student in good standing at the university (Intercollegiate Athletic Ass’n of the United States, CONST. art. VI, in 1906 PROC., as cited in Carter, 2005).

Article VII of the Constitution went a step further and specifically defined amateurism and its role in college sports. Section 2 declared,

No student shall represent a College or University in any intercollegiate game or contest who has at any time received either directly or indirectly, money or other consideration, to play on any team, or for his athletic services as a college trainer, athletic or gymnasium instructor, or who has competed for a money prize or portion of gate money in any contest, or who has competed for any prize against a professional. (Intercollegiate Athletic Ass’n of the United States, CONST. art. VII, in 1906 PROC., as cited in Carter, 2005, p. 222)

The new constitution and bylaws, when combined with the rule changes to football that reduced violence and injuries, improved the public image of intercollegiate athletics. This allowed colleges and universities to maintain the popularity of college sports and continue to make revenue off spectators (e.g., gate receipts; Smith, 2011). In turn, the IAAUS was able to grow its membership and expand its influence over college sport in subsequent years leading to the organization changing its name in 1910 to the National Collegiate Athletic Association (NCAA) (Carter, 2005).

Historic NCAA NIL Bylaws

To abide by the core tenets underpinning the NCAA’s founding constitution, the organization has historically sought to prohibit student-athletes from earning money from their NILs. As they have argued in multiple court cases (e.g., Bloom v. NCAA, 2004; O’Bannon v. NCAA, 2015), this stems from a desire to maintain intercollegiate athletics’ academic focus.
More specifically, the NCAA has argued allowing student-athletes to make money off their image would shift their attention from their education to athletic success and revenue generation (O’Bannon v. NCAA, 2015). The revenue generation, they have contended, would also undermine the amateur nature of collegiate athletics which differentiates it in the marketplace from professional sports (NCAA v. Board of Regents, 1984; O’Bannon v. NCAA, 2015). According to the NCAA, this would then cause a reduction in viewership and harm institutions’ ability to financially support athletic programs (NCAA v. Alston, 2021; NCAA v. Board of Regents, 1984; O’Bannon v. NCAA, 2015).

As a result, the organization over the years has instituted bylaws regulating student-athletes’ access to money. Prior to 2021, Bylaw 12.5.2.1 stated if, in advance of becoming an NCAA student-athlete an individual, “(a) Accepts any remuneration for… the use of his or her name or picture to advertise… or (b) Receives remuneration for endorsing a commercial product or service…” (Bloom v. NCAA, 2004, p. 625) the individual would not be eligible to compete. Bylaw 12.3:1 added if a student-athlete formed any agreement with an agent to market their ability (e.g., ability to play sport to help receive a professional sport contract or to receive sponsorships or endorsements) the athlete would also be declared ineligible (Bloom v. NCAA, 2004, p. 626). Moreover, Bylaw 12.4.1.1 prohibited athletes from receiving “any remuneration for value or utility that the student-athlete may have for the employer because of the publicity, reputation, fame or personal following that he or she has obtained because of athletic ability” (Bloom v. NCAA, 2004, p. 626). That is, the bylaw declared if a student-athlete made money from their NIL they would be ineligible to compete. In incidents where student-athletes received money for their NIL prior to their enrollment in college, they could maintain their eligibility according to Bylaw 12.5.1.3 if the initial deal was formed for reasons separate from athletic ability and dropped once enrolled in school (Bloom v. NCAA, 2004).

**Current NCAA NIL Bylaws**

As the NCAA continued to grapple with the ever-evolving concept of amateurism in furtherance of their stated mission, ancillary societal and legal concerns loomed. On June 30, 2021, following the United States Supreme Court (USSC) ruling in NCAA v. Alston (2021) and a series of new state laws legalizing student-athletes’ ability to generate money from their NIL, the NCAA had no choice but to institute an interim NIL policy (NCAA, 2021). The interim bylaws were straightforward, consisting of four parts. First, the bylaws stated student-athletes could engage in NIL activities as long as they followed the laws of the state in which the university resided (NCAA, 2021). Second, if a student-athlete attended an institution in a state that did not have a specific NIL law, the student-athlete was allowed to engage in NIL activities without being in violation of NCAA rules. Next, student-athletes were permitted to obtain professional representation for NIL purposes. Finally, student-athletes were required to work within the state laws and requirements of their university/conference to report all NIL activities to appropriate stakeholders (e.g., athletic departments).

In November 2021, the NCAA issued a clarification to these bylaws noting schools could not use NIL transactions as a form of compensation for student-athletes (NCAA, 2022). Universities could also not provide financial benefits to a student-athlete through a NIL agreement for their athletic abilities/participation/achievements or as an inducement for them to attend a specific institution. Nor could schools enter into NIL deals directly with student-athletes (NCAA, 2022).

The NCAA added to the clarification in May 2022, stating representatives of a school (e.g., coaches, staff, employees, etc.) could not facilitate NIL deals for prospective student-
athletes (NCAA, 2022). This was extended to cover current student-athletes in October 2022 and was codified in a series of NCAA Division I Bylaws. Bylaw 11.1.3 detailed that athletic department employees could not represent student-athletes in NIL deals, Bylaw 12.1.2-(a) noted student-athletes could not receive payment for their athletic ability, and Bylaw 12.5.1.1-(f) added that schools could not pay student-athletes for their NIL. Additionally, Bylaw 16.3 amended previous Bylaw 16.02.3, in that it allowed “institutions to finance and assist student-athletes with personal development services” (NCAA, 2022, p. 4). More specifically, institutions could now provide NIL entities with student-athlete contact information and introduce the parties, inform student-athletes of NIL opportunities, arrange a space for parties to meet on campus, and offer student-athletes educational workshops on topics to help with NIL deals (e.g., financial literacy, taxes, social media, etc., NCAA, 2022).

However, outside of an introduction, sharing of contract information, and educational support, universities were barred from communicating athletes’ demands/requests with NIL entities (NCAA, 2022). The bylaws further stated universities and/or university actors could not help create, execute, or provide services to assist with any aspect of a NIL deal (e.g., create promotional items, graphic design work, tax assistance, etc.; NCAA, 2022). Additionally, universities were prohibited from providing specific equipment for student-athletes that was not generally available to all students (e.g., cameras, editing software, lighting, etc.). Finally, while bylaws stated student-athletes were allowed to engage in marketing and promotional activities in association with a NIL deal, they were not allowed to do so during official team activities (e.g., practice, pre-game, post-game, etc.).

Research Questions

Prior to the NCAA updating its NIL bylaws in the early 2020s, they had successfully argued in court that the regulation of student-athletes’ ability to earn money (e.g., athletic scholarships, sponsorship deals, being paid to play a sport, etc.) was needed to maintain the amateur ideals of college athletics, continue to link athletics to education, and allow collegiate athletics to be commercially competitive with professional sport (Banks vs. NCAA, 1992; Bloom v. NCAA, 1994; Gaines v. NCAA, 1990; Jones v. NCAA, 1975; McCormack v. NCAA, 1988).

Despite the NCAA’s legal victories, key stakeholders continued to push back against the organization and their bylaws. One such push came from the state legislature of California, which in 2019 passed the “Collegiate athletics: student athlete compensation and representation” law declaring intercollegiate student-athletes had a legal right to earn money from their NILs without losing their athletic scholarship or eligibility. This law laid the foundation for other states to follow suit and resulted in the new NCAA bylaws discussed above.

Following the passage of these new state NIL status and the updating of NCAA bylaws, scholars began analyzing various aspects of the legislation. More specifically, Allen (2022), LeRoy (2023), and Moorman and Coco (2023) explored different characteristics of the laws passed in various states. Allen (2022) found some commonalities between state laws pointing to language in Arkansas, Mississippi, and Connecticut statutes that restricts the usage of institutional logos by collegiate athletes as well as student-athletes ability to make money for their athletic performance. LeRoy (2023) took the work a step further, assessing all restrictive language in state NIL legislation (as of July 1, 2021). He found seven categories of restrictions amongst all statutes including, “(1) athlete compensation, (2) license and trademark, (3) time-related restrictions on pay, (4) morals and lifestyle, (5) third party NIL platform, (6) agents, and (7) school immunity from lawsuits.” (p. 67). Using these found categories, LeRoy compiled a list of all the restrictions per state, assigning an overall restriction score to each.
and Coco (2023) broke down “conflict language” across NIL legislation in 26 states. They found the laws held discrepancies in the “framework used to define contractual restraints; the definition and treatment of contract types subject to potential conflicts with NIL activities; and the requirements placed upon an institution when a contractual dispute arises” (p. 59).

While the findings of Allen (2022), LeRoy (2023), and Moorman and Coco (2023) offer various insights into the state laws governing collegiate student-athlete NIL activity, including providing a degree of comparison across states statutes, they fall short of assessing the totality of the laws. That is, they are generally focused on specific sections of the legislation and not the law as a whole. Moreover, while all mention and discuss the NCAA to some extent (reviewing such things as the historical treatment of student-athletes’ NIL rights, key lawsuits, etc.) they fall short of connecting their analysis of NIL legislation back to the NCAA’s current and historic treatment of NILs. Thus, while these studies do well to examine the topic, scholarship has yet to fully explore the laws governing student-athletes’ NIL rights. Moreover, literature has yet to examine the intersection of NIL laws with NCAA NIL policy. As a result, two gaps exist within the literature.

Given the existence of such a gap, the history of the NCAA and their treatment of NIL rights, as well as the mass increase in states passing NIL legislation the goal of the current study was to answer the following research questions (RQ):

RQ 1: What commonalities exist amongst early state laws (i.e., laws passed and active prior to May 2023) governing collegiate student-athletes’ NIL rights?

RQ 2: What differences exist amongst early state laws governing collegiate student-athletes’ NIL rights?

RQ 3: How do the early state laws governing collegiate student-athlete NIL rights fit the NCAA’s historic and current views of commercialization and amateurism?

Methods

To answer the ascribed research questions, a content analysis of state laws and executive orders that were active and/or passed between August 2022 and May 2023 and pertained to student-athlete NIL rights was performed. A content analysis is a “useful (methodological) tool for examining trends and patterns in documents” (Stemler, 2001, p. 1) that “enables the reduction of phenomena… into defined categories so as to better analyze and interpret them” (Harwood & Garry, 2003, p. 479). More specifically, the analysis allows researchers to work through large amounts of data in a process involving the categorization of the data into mutually exclusive groups of words and/or phrases with similar meanings (Stemler, 2001). The goal of such an approach is to identify themes across a variety of works based on the commonality of specific language, phrasing, and topics. As the purpose of the current study was to increase understanding of intercollegiate athletic NIL laws, content analysis was deemed an apt means to identify emerging themes from the legislation and establish what commonalities and differences existed.

In conducting the content analysis, all state laws/executive orders from August 2022 to May 2023 pertaining to collegiate student-athletes’ NIL rights were first gathered using state government websites (see Appendix A for a complete list of the laws/executive orders). As of May 1, 2023, a total of 28 states were found to have active laws in place addressing NILs, one state (i.e., North Carolina) had an executive order, and one state (i.e., South Carolina) had passed a law but suspended it in January 2023. One additional state (Alabama) passed a NIL law in
April 2021 (i.e., HB404) but went on to repeal it in February 2022 through enacting HB76 (Keller, 2023). As this bill was not active during the timeframe for the study (i.e., August 2022 – May 2023) it was not included in the analysis.

Grouping the states according to the United States Census Bureau’s definition of geographic region, it was discovered that five states were in the Northeast (i.e., Connecticut, Maine, New Jersey, New York, and Pennsylvania), five states were in the Midwest (i.e., Illinois, Michigan, Missouri, Nebraska, and Ohio), 13 were in the South (i.e., Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia), and seven were in the West (i.e., Arizona, California, Colorado, Montana, Nevada, New Mexico, and Oregon). More specifically, 55.6% (i.e., five of nine) of the states in the Northeast, 38.5% (i.e., five of 13) of the states in the Midwest, 81.3% (i.e., 13 of 16) of the states in the South and 58.3% (i.e., seven of 12) of the states in the West had laws and/or executive orders addressing collegiate student-athlete NIL rights.

Using emergent coding as prescribed by Haney et al. (1998) and Stemler (2001), once all NIL legislation was gathered, both researchers independently reviewed the material and created a list of categories/themes. The researchers then compared lists and came to a consensus as to which categories/themes were salient for the given purpose of the study. Once an agreement was reached, the researchers independently applied the categories/themes to each law/executive order and coded the legislation. The researchers’ coding and categorizations were then compared to check for inter-rater reliability. When there was disagreement in the coding, the researchers went back to the legislation, reread the section/area in question, and discussed the appropriate code to ascribe to the text until a consensus was reached.

**Results**

Following California, 29 other states (between August 1, 2022, and May 1, 2023), passed laws addressing collegiate student-athletes’ ability to generate revenue from their NIL, with the governor of an additional state (i.e., North Carolina) issuing an executive order to address the matter (see Table 1). A content analysis of the legislation revealed the laws/executive orders had similar wording, clauses, guidelines, and sections stipulating what actions were and were not allowed by key stakeholders. More specifically, five common themes were found (RQ1). These five themes were definitions, basic NIL rules, limitations, disclosures and review processes, agent and representation rules, and required workshops.

However, not all laws included each of these sections, resulting in a degree of disparity amongst the statutes (RQ2). The content analysis revealed the major variance between state laws was in the exclusion, by some states, of a basic definition section as well as policies covering disclosures and required workshops. Additionally, while all but three states placed limitations on stakeholders, the extent of the limitations for the remaining states had a high degree of variance.

**Definitions**

Most NIL laws (24 of 30) began by defining the key terms used throughout the document. In examining the 24 laws that included a definition section (see Table 1), a distinct pattern formed not only with the words included but also in how the words were defined. For example, many laws included the term “compensation” noting similarly that compensation does not include tuition/cost of attendance, Pell Grants, or financial aid. Rather the term only referred to money made from work in non-athletic jobs, such as money made from NIL deals. Other common terms included name, image, likeness, student-athlete, prospective student-athlete,
Table 1
**List of States with NIL Legislation and Breakdown of Inclusion/Exclusion of Content Themes**

<table>
<thead>
<tr>
<th>State</th>
<th>Definitions (Y/N)</th>
<th>Basic NIL Rules (Y/N)</th>
<th>Limitations (Y/N)</th>
<th>Representation Rules (Y/N)</th>
<th>Disclosures (Y/N)</th>
<th>Workshop (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Arkansas</td>
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intercollegiate athletics (or intercollegiate athletic association/collegiate athletic association), athlete agent (or professional representation/professional services, or licensed, registered, or certified professional), advisory contract (or agency contract/professional-sports-services contract), third party/third party licensee, and postsecondary educational institution.

Two of the more important terms consistently labeled in the definition sections were “team or institutional contract” and “official team activities.” The former was defined as “a contract between a college or university or its designated representative and an external party...
that includes a sponsorship agreement governing the use of the college or university’s trademarks in connection with athletics” (ME, 1893 § 12971-12975, 2022, p. 1). Whereas the latter was described as,

all games, practices, exhibitions, scrimmages, team appearances, team photography sessions, sports campus sponsored by the institution or college, and other team-organized activities, regardless of whether the activity takes place on or off campus, including individual photography sessions and news media interviews (OH, SB187 § 3313.5317, 2021-2022, pp. 7-8).

**Basic NIL Rules**

The one section that was standard across all 30 state laws/executive orders was a section describing the basic NIL rules for intercollegiate athletes, athletic departments, institutions of higher education, and governing bodies. These sections all began by declaring institutions of higher education within a state cannot make or enforce any rules, policies, and/or standards that limit, prevent, and/or restrict a student-athlete from earning compensation for use of their NIL or prevent them from having professional representation (e.g., agent, lawyer, financial advisor, etc.) for their NIL dealings. Similarly, the laws stated intercollegiate athletics associations and sport governing bodies (e.g., the NCAA, college athletic conference, etc.) cannot make and/or enforce any rules limiting NIL earnings or punish student-athletes (e.g., declare them ineligible for athletic participation or remove athletic scholarships) for making money from NIL deals or having professional representation. Furthermore, the laws declare postsecondary institutions and governing organizations cannot let a student-athlete’s NIL earnings or professional representation affect their scholarship/grant-in-aid or their eligibility to participate in intercollegiate athletics. Similarly, intercollegiate athletic associations cannot punish institutions of higher education (e.g., bar them from intercollegiate athletic competitions) for having student-athletes making money from NIL or having professional representation.

In addition to this language, 17 states specified postsecondary institutions and governing organizations cannot be directly involved with any NIL deals. Not only can they not provide student-athletes or prospective student-athletes with money for NILs (i.e., FL, GA, IL, LA, MD, MI, MS – families included in MS/MO law, MO, MT, NJ, NC, OH, OK, OR, TN), but they also cannot arrange, set up, and/or negotiate any deals on the student-athlete’s behalf (i.e., KY, NM). The state of Florida took this a step further by stating specifically NIL money must come from a third party unaffiliated with the university.

In reference to the amount of money student-athletes can generate from their NIL, nine states (i.e., FL, GA, IL, KY, LA, NC, OK, PA, TN) require all NIL deals to be commensurate with market value. While Connecticut did not address fair market value, they did note student-athletes cannot be required to give a portion of NIL money to post-secondary institutions or athletic governing bodies. Connecticut and New Jersey were also unique in that they were the only states that specifically acknowledged post-secondary institutions can still use student-athletes’ NIL for official team activities (e.g., marketing the team/games/competitions, etc.).

**Limitation Section**

Discussions of limitations were found in all state laws/executive orders except Arizona, Tennessee, and Maine. The remaining 27 states examined limitations in two distinct fashions: limitations placed on universities and limitations placed on student-athletes. In describing the
limitations placed on universities, seven states (i.e., KY, MS, NC, OK, PA, SC, TN) established that institutions and third parties cannot use the promise of NIL deals to recruit student-athletes to attend specific institutions. The states of Oklahoma and Pennsylvania added that colleges/athletic departments cannot provide student-athletes with representation.

The laws of 10 states (i.e., GA, ME, MD, MI, MO, MT, NE, OH, OK, TX) maintain universities and teams cannot prohibit NIL deals when a student-athlete is not engaged in official team activities. However, four states (i.e., IL, KY, LA, MS) broadly allow colleges/universities to impose reasonable limitations on student-athletes. For example, both Illinois and Mississippi state the following,

To protect the integrity of its educational mission and intercollegiate athletics program, a postsecondary educational institution may impose reasonable limitations on the dates and time that a student-athlete may participate in endorsement, promotional, social media, or other activities related to the license or use of the student-athlete’s name, image, or likeness. (IL, HB 1175 § 5-25, 2022, Sec. 15.c; MS, SB2313 § 1-8, 2021, Sec. 4.3)

Similarly, 19 states (i.e., AR, CA, CO, CT, IL, LA, MY, MS, MO, MT, NE, NV, NJ, NY, NC, OK, OR, PA, TX) have established that post-secondary institutions can either limit, prohibit, or outright deny student-athletes from performing any NIL activities that conflict with team/institutional contracts or rules, or that occur during official team or school activities. That is, NIL contracts cannot conflict with university sponsorships, branding, or service deals. Moreover, NIL activities cannot take place during a student-athlete’s academic time, practices, games, team meetings, and/or required university events. This includes limiting a student-athlete from promoting a sponsor during games and practices. The state of New York added that NIL deals cannot violate the university’s student handbook or code of conduct.

The biggest limitation routinely placed on student-athletes dealt with excluding various activities from NIL contracts. Twelve states (i.e., AR, CT, FL, GA, IL, MS, NC, OK, PA, SC, TN, TX) noted specifically that student-athletes cannot earn money for their athletic ability and/or that NIL deals cannot be based on or awarded for athletic performance, or in exchange for participating in intercollegiate athletics. For example, Connecticut stated a student-athlete cannot enter into a deal that requires them to coach or perform a sporting activity related to the sport in which they participate. Other states declare, “compensation may not be provided in exchange for athletic performance…” (FL, SB 646 § 1006.74, 2021 p. 2). Correspondingly, NIL agreements cannot be awarded to student-athletes for merely attending a specific institution in four states (i.e., FL, GA, IL, TX). To help accomplish this, Arkansas, Illinois, and Mississippi’s state laws add that NIL deals cannot begin prior to the student-athlete’s enrollment at a post-secondary institution. Four other states (i.e., FL, OK, SC, TX) also address the term of the NIL contract to a degree, declaring NIL deals cannot extend past a student-athlete’s enrollment in school.

Another common limitation focused on a student-athlete’s ability to use various forms of intellectual property (IP) in their NIL work. Many states specifically say student-athletes cannot use or display any IP (e.g., logos, colors, brand names, etc.) of sponsors during official team activities without prior approval from the university. Conversely, eleven states (i.e., AR, SC, IL, MR, MI, MS, NC, OH, OK, PA, VA) took steps to protect the IP of the university and athletic governing bodies by outlawing student-athletes from using uniforms, colors, logos, mascots, songs, service marks, trademarks, and facilities of the university, conference, or NCAA in NIL dealings without prior approval.

Finally, 12 states (i.e., AR, IL, KY, LA, MS, NJ, OH, OK, PA, SC, TX, VA) outlined specific categories of businesses student-athletes cannot represent. The most common category,
and one that all 12 states outlawed, are companies related to gambling, including casinos and sport betting organizations. Just as common were bans placed on working with companies producing banned or controlled substances. For example, 10 states (i.e., AR, IL, LA, MS, NJ, OH, PA, SC, TX, VA) outlawed working with tobacco and marijuana companies, nine states (i.e., AR, IL, LA, NJ, OH, PA, SC, TX, VA) prohibit deals with alcohol organizations, six states (i.e., AR, IL, KY, NJ, PA, VA) forbade working with pharmaceutical businesses or promoting performance-enhancing drugs, and two states (i.e., AR, VA) prohibited NIL deals that advertise paraphernalia. Eight states (i.e., AR, IL, KY, MS, OH, PA, TX, VA) also barred working with adult entertainment organizations or companies promoting sexually suggestive material. Not as common but still relevant, four states (i.e., AR, NJ, TX – specific to ones that cannot be legally owned, VA) outlawed NIL deals promoting weapons. This is either an outright ban on all weapons or firearms or a specific ban on just those weapons that cannot be legally owned. Three states (i.e., AR, KY, LA) also forbade promoting any items prohibited by the sport and the sport governing body. Finally, Mississippi, Illinois, South Carolina, and Oklahoma created a much broader categorization of companies that student-athletes cannot work within stating “any other product or service reasonably considered to be inconsistent with the values or missions” of the institution that and “negatively impacts or reflects adversely on a postsecondary educational institution (IL, HB 1175 § 5-25, 2022, Sec. 15.I) or exposed the school to public disrepute, embarrassment, scandal, or ridicule is prohibited.

Various states imposed other minor limitations on NIL. For example, in Illinois boosters are banned for being directly or indirectly involved in NIL deals, whereas in New York NIL deals cannot cause financial loss to the university.

Disclosures and Review Process

To help assure student-athletes are not violating these prohibitions, all but four states (i.e., AR, ME, NM, TN) require their athletes to disclose NIL deals to the university or athletic department. This disclosure allows the university/athletic department to review the terms and determine if any conflicts exist between team/institution contracts and the NIL agreement and assure that the terms do not violate state law. If a conflict is found, the law requires the university to disclose the conflict to the student-athlete and/or their representative.

As far as the process of review is concerned, almost all states allow the individual postsecondary institution to establish the protocol. In doing so, the universities must designate a person to receive and review the agreements and establish an official review and appeals process. A degree of variance between state disclosure policies arises in the timeframe student-athletes have to submit the contract for review. In Mississippi, Michigan, and Pennsylvania, student-athletes must disclose all contracts at least seven days before signing the deal. In Colorado and Oklahoma, student-athletes must disclose all deals within 72 hours of signing them or before the next athletic event, whichever is first. In South Carolina, contracts just have to be submitted to the university for review prior to signing.

In general, the state laws/executive orders simply require the NIL contract to be submitted, but both Arkansas and South Carolina added some specificity to their laws in noting the exact information that must be included in the contract and then be submitted. More specifically, Arkansas requires the terms, conditions, parties, and compensation to be submitted while South Carolina requires just the parties and a description of the deal. Arkansas, Connecticut, Illinois, Nebraska, and Oklahoma also require student-athletes to disclose their relationship with agents, financial advisors, and/or attorneys representing them, generally within 72 hours of signing with the individual.
The remaining discussions of disclosures in state laws were unique to individual states. For example, Nebraska’s law noted that universities cannot disclose any aspect of student-athletes’ NIL deals to the public, thus offering a degree of protection to the student-athlete. South Carolina law requires all prospective student-athletes to disclose their NIL deals prior to enrollment at the university. Finally, Kentucky’s law provided a set time (i.e., three business days) for the university to review and submit in writing any conflicts to the student-athlete.

**Agent and Representation Rules**

As all state NIL laws/executive orders allow student-athletes to have representatives for their NIL dealings, a majority of them (19 of 30) also incorporate specific rules and regulations to guide not only who can serve in this role but also how those individuals must act. Most commonly, 14 states (i.e., AR, CA, CO, FL, LA, MI, MS, MO, NJ, NY, OK, OR, PA, SC), note the person serving as the student-athlete’s representative (i.e., agent, financial advisor, attorney) must be licensed in the state in which the athlete and school reside. For attorneys that means passing the state bar and being in good standing, while sport agents must be registered with the state. In nine states (i.e., CA, GA, IL, LA, NJ, NY, NC, MS, SC) sport agents must also comply with the federal Sport Agent Responsibility and Trust Act or comply with the state laws/regulations placed on athlete agents. For example, in Mississippi agents must be registered and comply with the Uniform Athlete Agents Act, Mississippi Code of 1972 (Section 73-42-1), while in North Carolina they must comply with Article 9 of Chapter 78C of the General Statutes, and in Oklahoma, they must conform to the Revised Uniform Athlete Agents Act.

Outside of these general requirements, some state laws/executive orders were more specific as they outlined what had to be included in an agency contract. In Nebraska and Oklahoma, agency contracts must include a method for calculating consideration to be paid by the athletes, the length of the contract, specific language warning student-athletes they might lose their eligibility for signing the contract, and that they have 14 days to cancel after signing. These states and Oregon also require a list of expenses athletes must repay and a statement of services agents are to provide to the student-athletes. Oregon further requires all contracts to include a statement that the agent is registered and the date of execution.

Nebraska and Oregon further lay out guidelines for the student-athlete-agent relationship noting agents cannot refuse an inspection of records by athletes. Nebraska’s law added agents cannot postdate contracts and agency contracts must be signed and/or authenticated. Furthermore, athlete agents in Nebraska cannot give false information, give false/misleading promises, give student-athlete something of value before entering a contract, or give something of value to someone else other than the student-athlete.

Some conflict does exist between different state laws as New Mexico and Oregon declare no one who represents or has represented the university in the last 4 years is allowed to represent student-athletes. Pennsylvania and Oklahoma laws state people who work for/represent the institution cannot also represent a student-athlete. However, Montana law specifically says the university may serve as a student-athlete’s agent.

**Required Workshops**

To help prepare students for the various challenges that await them in setting up, maintaining, and managing all aspects of NIL deals, seven states (i.e., FL, GA, KY, LA, MO, NY, TX) require universities to offer workshops and/or classes for student-athletes, with two additional states (i.e., IL, NC) strongly encouraging them. The states requiring workshops do so...
in a fairly uniform manner. Workshops in five of the states (i.e., FL, GA, KY, LA, TX) must be a minimum of five hours and taken in the student-athlete’s first and third year of school. These states necessitate financial literacy and life skills be covered in the class. Florida, Georgia, Kentucky, and Texas specifically require student-athletes learn about time management and other skills necessary for success as an intercollegiate athlete. New York also requires leadership, mental health, and career development training. Along with financial literacy, five states (i.e., FL, GA, KY, LA, TX) require education on debt management, financial aid, budgeting, and saving. The states further mandate the workshop discuss available academic resources. Kentucky adds to the requirements by requiring social media and brand management training while New York additionally requires education about sex-based discrimination and harassment.

Kentucky, Georgia, Missouri, and Texas established a list of topics that cannot be covered in the workshops. In both Georgia and Kentucky, the workshops cannot be used to set student-athletes up with NIL deals. Texas bans using the workshop to cover financial products or services (e.g., market, advertise or refer to provider’s services, solicit a student-athlete to use provider’s services, etc.). Similarly, Missouri does not allow marketing, advertising, referrals, or solicitation of financial services to student-athletes in the workshops.

Other Information Included in NIL Laws

In addition to the common sections found throughout the state laws/executive orders, there were two other clauses that were routinely found in the legislation. First, 12 states (i.e., CT, FL, GA, LA, MI, NJ, NY, OK, SC, TN, TX, MO) declared scholarship and grant-in-aid money awarded to student-athletes was not considered compensation. Nine states (i.e., AR, CT, IL, KY, LA, ME, MS, TX, VA) also reiterated prior intercollegiate athletic doctrine declaring student-athletes are not considered employees of the university, with Kentucky and Illinois adding they are also not independent contractors. Kentucky, as well as Louisiana, further noted NIL contracts are not public records that can be requested as part of the public record act or public disclosures.

South Carolina, Mississippi, and Pennsylvania wanted to make sure the laws did not hinder universities from setting their own academic guidelines and thus inserted a clause stating universities can still make rules about academic standards, disciplinary actions, and codes of conduct for student-athletes. Pennsylvania also included a unique section in their law granting student-athletes royalty payments for sales of team merchandise.

Discussion

The purpose of this study was to increase the understanding of various laws governing NIL rights in collegiate sports and provide context to the laws. Accordingly, a content analysis of the 30 state laws/executive orders uncovered language and themes that can be traced to the NCAA’s historic and current view of amateurism and commercialization (RQ3). Distinct connections can be found between the language/categories included in the state statutes and the constitution, bylaws, and legal arguments the NCAA has made to limit the earnings of student-athletes. Of note, the NCAA’s discussion of the need to maintain amateur ideals and the relationship between those ideals and education is reflected in the state laws’ definitions, basic NIL rules, limitations, and required workshop sections.

The primary connection between the statutes and the NCAA’s historic and current views of amateurism and commercialization is centered on preserving amateurism and linking it to intercollegiate athletics, and education. An examination of the NCAA’s founding constitution
demonstrated the importance of amateurism as Article VII Section 2 stated student-athletes who received compensation for their athletic services (e.g., money to play for a team, prize money, gate receipts, etc.) would be considered professional athletes and thus ineligible to participate in college sports. While the Sanity Codes updated this definition to allow for student-athletes to receive scholarships for athletic participation, student-athletes were still banned from earning money for their athletic abilities (Smith, 2011; Washington, 2004). Moreover, past NCAA bylaws stipulated if student-athletes received any compensation for endorsing a product or use of their NIL they would be considered a professional athlete and thus ineligible to participate in intercollegiate sports (Bloom v. NCAA, 2004). The NCAA explained the reasoning behind these bylaws in the USSC case NCAA v. Board of Regents (1984) in which they argued, and the court agreed,

The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, … (as) the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics… (p.120A)

Subsequent explanations of the link between amateurism, athletics, and education can be found in other NCAA lawsuits. For example, in McCormak v. NCAA (1988) the court recognized, “[t]he goal of the NCAA is to integrate athletics with academics” (p. 1345). Furthermore, the court in Banks v. NCAA (1992) added, “[t]he NCAA Rules seek to promote fair competition, (and) encourage the educational pursuits of student-athletes and prevent commercialism” (p. 1089). Gaines v. NCAA (1990) discussed the issue further in prescribing the NCAA Eligibility Rules “maintain amateur intercollegiate athletics … ‘as an integral part of the educational program and the athlete as an integral part of the student body…”” (p. 744).

The NIL statutes in multiple states reflect these ideals and language. The Georgia state law (HB617 § 20-3-680, 2021) declares, “Intercollegiate athletic programs provide student athletes with significant educational opportunities” (p. 21). Mississippi (SB2313 § 1-8, 2021) and Illinois (HB 1175 § 5-25, 2022) made similar points when placing limitations on student-athletes’ rights to earn money from NIL deals, as they both stated, “to protect the integrity of its educational mission and intercollegiate athletics program, a postsecondary educational institution may impose reasonable limitations…” (MS, Section 4.3; IL, Section 15.c) on student-athletes and their NIL dealings.

Further promoting intercollegiate athletics link to education, multiple states have not just included language within their laws justifying, promoting, and/or protecting education but also directly connecting the two through requiring educational workshops to help student-athletes learn valuable skills. It is not just the inclusion of the workshops within the law that connects NILs to education but also the topics that are required to be covered. More specifically, in addition to learning about NILs and intercollegiate athletics, the workshops require student-athletes to be taught life skills, finances, marketing, and more. Such inclusion of academic material in the NIL process and athletic operations serves to further connect athletic and academic pursuits and strengthens the NCAA’s arguments about the link between the two. This follows what the judge wrote in Banks v. NCAA (1992),

We consider college… (athletes) as student-athletes simultaneously pursuing academic degrees that will prepare them to enter the employment market in non-athletic occupations, and hold that the regulations of the NCAA are designed to preserve the
honesty and integrity of intercollegiate athletics and foster fair competition among the participating amateur college students (p. 1090).

The NCAA has likewise argued since its inception that allowing student-athletes to capitalize on their participation in college athletics would serve as a means of commercializing and professionalizing the product (NCAA v. Alston, 2021; O’Bannon v. NCAA, 2015). This, in turn, would lead to significant issues within the marketplace and threaten the future of college sports as consumers would be unable to differentiate college from professional athletics. More specifically, the NCAA argued that the amateur nature of college sport and its tie to education served to distinguish it from professional sports and drove individuals to consume the product. As the legal precedent established, the NCAA exists to “provide an opportunity for competition among amateur students pursuing a collegiate education” (Banks v. NCAA, 1992, p. 1090) while also keeping “university athletics from becoming professionalized to the extent that profit making objectives would overshadow educational objectives” (Kupec v. ACC, 1975, p. 1380).

The case law also speaks to the importance of preserving amateurism to protect and foster competition amongst athletic programs. This notion again stems from the NCAA v. Board of Regents (1984) lawsuit in which the NCAA argued and the court agreed “that most of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore… enhance public interest in intercollegiate athletics” (p. 117). The court went on to say, “What the NCAA and its member institutions market… is competition itself — contests between competing institutions. Of course, this would be completely ineffective if there were no rules on which the competitors agreed…” (p. 102). The McCormak v. NCAA (1988) decision echoed such a viewpoint as the judge noted, “in some sporting enterprises a few rules are essential to survival” (p. 1344). Therefore, the NCAA sets eligibility rules that, “create the product and allow its survival in the face of commercializing pressures” (McCormak v. NCAA, 1988, p. 1345). New NCAA bylaws set to govern NIL have continued to reinforce this principle as universities are still banned from using NIL transactions as a form of compensation for student-athletes (Bylaw 12.5.1.1-(f); NCAA, 2022). The bylaws also dictate student-athletes cannot receive payment for their athletic ability (Bylaw 12.1.2-(a)), nor can they use the promise of NIL deals as an inducement to attend their university (NCAA, 2022).

Language found in many states’ laws/executive orders reflects and reaffirms the NCAA’s historic and current desire to preserve amateurism as a means of differentiating collegiate and professional sport and fostering competition. As the state law of Texas (SB1385 § 1-4,2021) declares, “intercollegiate athletics are an essential part of the fabric of this state… (and as such) the competitive integrity of intercollegiate athletics is of vital importance…” (p. 1). In accomplishing these goals most state laws have taken steps to differentiate the type of money student-athletes can earn. That is, they allow for money to be earned from a student-athlete’s NIL while outlawing money for athletic performance or achievements. As the state laws of Florida (SB 646 § 1006.74, 2021) declares, “To preserve the integrity, quality, character, and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports…” (p. 2) NIL money cannot be tied to athletic performance or tied to attending a specific college. Such a distinction between earning money “for NILs and athletic performance follows current NCAA bylaws, as well as many of the NCAA’s historic views on amateurism and commercialization, thus helping maintain much of the founding principles of the organization.
Conclusion

Though the passage of legislation providing intercollegiate student-athletes the right to profit from their NIL is relatively new, the topic of college sports and its link to amateurism, education, and commercialization is not. From its inception, the NCAA focused specifically on such issues seeking to outlaw various forms of payment to student-athletes through restrictive bylaws (Carter, 2005). The initial justification for the restrictions stemmed from the fear that allowing student-athletes to generate revenue from participation in intercollegiate athletics interfered with students’ education and opened the door to unethical behaviors that ran antithetical to the purpose of higher education (Carter, 2005; Smith, 2011). As intercollegiate athletics continued to grow, the bylaws evolved to allow student-athletes to first earn scholarships to cover tuition (see Sanity Codes; Smith, 2011) and eventually cover the full cost of attendance (see *NCAA v. Alston*, 2021). However, the NCAA continued to ban athletes from profiting off their NIL prior to 2021, classifying anyone who generated money based on their NIL as a professional and ineligible to compete (Bylaw 12.4.1.1; *Bloom v. NCAA*, 2004,).

A series of laws challenged the NCAA and their bylaws beginning in 2019 as states began passing legislation giving student-athletes the right to earn money based on their image. As of May 2023, 30 states in total have either passed laws or signed executive orders overriding the NCAA and forcing the organization to evolve its view of amateurism and commercialization once again. A review of the 30 state laws reveals numerous similarities. For example, all states allow student-athletes to earn compensation for the use of their NIL without risk of losing eligibility or scholarship and without fear that the institution or team will be punished. Student-athletes are also allowed to obtain professional representation (e.g., agents, lawyers, financial advisors, etc.) in all 30 states to assist with NIL deals.

An examination of the history of the NCAA, its founding constitution, and bylaws establishes a clear connection between these standardized elements of NIL law and the NCAA’s argument against the commercialization and professionalization of student-athletes. More specifically, the statutes’ language mirrors much of what the NCAA has argued and seeks to continue to link college sport to education (e.g., requiring educational workshops, making sure NIL activities do not conflict with classes, etc.) and maintain the amateur status of student-athletes (e.g., they cannot receive compensation for athletic performance/participation, attendance at an institution, etc.).

However, most state laws also empower individual institutions to set the procedures student-athletes must follow in obtaining, disclosing, and/or conducting NIL activities. While this does allow for the institutions to set policies that best serve their student-athletes, this practice may result in institutions treating student-athletes and other key intercollegiate athletic stakeholders differently. Not only does this defy the NCAA’s arguments for the need to establish and maintain competitive balance (see lawsuits like *Banks v. NCAA*, 1992; *Bloom v. NCAA*, 2004; *McCormack v. NCAA*, 1988; *NCAA v. Alston*, 2021; *NCAA v. Board of Regents*, 1984; etc.), but it also could erode efforts to limit commercialization and professionalism as each school becomes more incentivized to loosen restrictions to obtain better recruits. This issue can become further exacerbated given the state laws generally establish that governing bodies cannot regulate NILs.

The NCAA is not without recourse though, as they can continue to push for federal legislation to be passed and take precedence over the state statutes. Such a federal law might allow for greater control at the national governing body level, thus re-establishing the NCAA’s desire to maintain an equal playing field for intercollegiate athletics built around amateurism and
education. This would further allow for college sports to continue the practice of differentiating their product from professional sports.

Until such a federal law is passed though, more and more states will likely continue to pass and refine NIL legislation. While the basic structure of the legislation might be consistent (i.e., student-athletes will be given the right to be compensated for their NIL and have professional representation for their NIL dealings without fear of punishment) states could look to loosen certain restrictions to give their institutions a competitive advantage over institutions in other states, thus undercutting the goals and mission of the NCAA. This may further erode the NCAA’s justification for other bylaws (e.g., Bylaw 12.1.2-(a) – not allowing student-athletes to earn money for their athletic ability) and declarations (e.g., declaring student-athletes are not employees), potentially harming the organization’s arguments in future litigation. As such, the NCAA should continue to push for federal legislation if they want to preserve the core tenets of intercollegiate athletics. Such legislation may look to the results of this analysis in determining what language is common across states and should be adapted to federal law. In the meantime, states looking to pass or refine their own legislation can draw from the analysis of this work to determine what should and should not be included in their own laws moving forward.

Limitations and Future Research

As with any study, the current research does hold limitations. First and foremost, state NIL laws and NCAA bylaws have been consistently evolving and changing. For example, some states, such as Texas, Missouri, and Arkansas revised their state laws after the analysis of the current study took place (Keller, 2023). Moreover, since the conclusion of the analysis, some states have proposed legislation but not passed it (e.g., Hawaii, Iowa, Kansas, Massachusetts, Minnesota, New Hampshire, etc.) while others have passed legislation and then repealed or sunset their initial laws (e.g., Georgia, South Carolina, etc.). All that to say, the study and analysis of state NIL laws and NCAA bylaws is a complex undertaking that is time-sensitive. The analysis offered in the current study is thus only reflective of the 2022-2033 academic year and does not capture all the present-day intricacies of the subject which limits, to a degree, the application of the results. Scholars and practitioners should be aware of such limitations and act accordingly.

Regardless of these limitations though, the current does capture the early attempts by states to regulate student-athletes’ NIL, creating a snapshot of a unique time in NCAA history. Future scholars might look to such findings to track how NIL laws and bylaws are evolving as time passes. Additionally, they might look to use the analysis to help explain the actions of key stakeholders (e.g., student-athletes, universities, businesses, the NCAA, etc.) during the early days of NILs.

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Examining the social media value of student-athletes’ names, images, and likeness. *Sport


McCormack v. National Collegiate Athletic Ass'n, 845 F.2d 1338 (5th Cir. 1988).


O’Bannon v. National Collegiate Athletic Ass'n, 802 F.3d 1049 (9th Cir. 2015).


Appendix

Statute References (alphabetic by state)

https://legiscan.com/AZ/text/SB1296/2021

https://www.billtrack50.com/BillDetail/1340251


https://leg.colorado.gov/sites/default/files/2020a_123_signed.pdf


Intercollegiate athlete compensation and rights. FL SB 646 § 1006.74 (2021).
http://laws.flrules.org/2020/28


Amends the Student-Athlete Endorsement Rights Act. IL HB 1175 § 5-25 (2022).

AN ACT relating to athletics and declaring an emergency. KY SB 6 § 1-10 (2022).

Provides relative to the compensation of intercollegiate athletes for the use of their name, image, or likeness. LA SB 250 § 3703 (2022). https://legiscan.com/LA/text/SB250/2022

An Act Regarding the Use of a Student Athlete’s Name, Image, Likeness or Autograph. ME 1893 § 12971-12975 (2022).
http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0663&item=1&snum=130


AN ACT to prohibit postsecondary educational institutions in this state and certain athletic organizations from preventing a college athlete from receiving compensation for the use of his or her name, image, or likeness rights. MI HB 5217 § 1-11 (2021).

https://legiscan.com/MS/text/SB2313/2021

Students’ Rights to Know Act. MO HB 297 § 161.625 (2021).
https://house.mo.gov/billtracking/bills211/hrlbillspdf/0921S.07T.pdf

Student-athlete rights and protections. MT SB 248 § 1 (2022).
https://legiscan.com/MT/text/SB248/2021

Nebraska Fair Pay to Play Act. NE LB 962 § 1-13 (2020).
AN ACT relating to education; prohibiting certain entities from compensating a student athlete for the use of the name, image or likeness of the student athlete. NV A.B.254 § 1-8 (2021). https://www.leg.state.nv.us/Session/81st2021/Bills/AB/AB254.pdf
https://legiscan.com/NM/text/SB94/id/2247563
https://legislation.nysenate.gov/pdf/bills/2021/S5891F
https://legiscan.com/OK/text/SB48/id/2404631
Intercollegiate Athletes' Compensation for Name, Image, or Likeness. SC SB685 § 59(2021).
https://legiscan.com/SC/text/S0685/2021
Public Chapter No. 845. TN HB2249 § 1-6 (2022).
relating to the compensation and professional representation of student athletes participating in intercollegiate athletic programs at certain institutions of higher education. TX SB1385 § 1-4 (2021).