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## The NIL Game Plan: How The Florida Legislature Can Become Student-Athletes' "Ambassador of Quan"

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# THE NIL GAME PLAN: HOW THE FLORIDA LEGISLATURE CAN BECOME STUDENT-ATHLETES’ “AMBASSADOR OF QUAN”

*Alexa Rae Martinez\**

## I. INTRODUCTION

The movie *Jerry Maguire* follows a successful sports agent who questions the morals of his work, which leads to him being stripped of his contribution at his firm and being left with one client.<sup>1</sup> Throughout the movie, Maguire struggles to build his clientele while pursuing the best interests of his only client, Rod Tidwell.<sup>2</sup> Somewhere along the way, Tidwell uses the word “Quan” and leaves Maguire perplexed; “Quan? That’s your word?”<sup>3</sup> Tidwell replies: “Yeah, that’s my word. You know some dudes might have the coin. But they’ll never have

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<sup>1</sup> See *Jerry Maguire*, IMDB, <https://www.imdb.com/title/tt0116695/> (last visited Dec. 31, 2021) (describing the plot of the movie *Jerry Maguire*); see also JERRY MAGUIRE (TriStar Pictures 1996) (following a sports agent that sacrifices success for morals).

<sup>2</sup> See IMDB, in PLOT SUMMARY, *supra* note 1 (“Feeling inspired, Jerry writes . . . down [what he thinks it means to represent someone] as a mission statement” and distributes it “to everyone in attendance, including ideas such as ‘fewer clients, less money.’”); see also JERRY MAGUIRE, *supra* note 1 (discussing how the movie follows the character of Jerry Maguire, a newly unemployed sports agent, who works to secure a contract for his last remaining client).

<sup>3</sup> See thegoalsguy, *Jerry Maguire - The Word “Quan”*, YOUTUBE (Feb. 20, 2009), <https://www.youtube.com/watch?v=X0fizqifumk&t=64s> (“I smoke all these fools. Yet, they are making the big, sweet dollars. They are making the ‘quan’ and you’re talking.”); see also JERRY MAGUIRE, *supra* note 1 (occurring during a scene where Rod argues with Jerry about his teammates receiving bigger contract prices than him).

the Quan.”<sup>4</sup> “Wha...what is that?” Maguire asks, still clearly confused.<sup>5</sup> Tidwell spells it out for him: “It means love, respect, community, and the dollars, too. The entire package. The. Quan.”<sup>6</sup>

On June 12, 2020, Florida Governor Ron DeSantis signed into law the “Intercollegiate Athlete Compensation and Rights” Bill.<sup>7</sup> The law took effect on July 1, 2021, joining multiple states throughout the country with the same enactment date.<sup>8</sup> According to the preamble, Section 1006.74 of the Florida Statutes was adopted for the following purpose: “[t]he Legislature finds that intercollegiate athletics provide intercollegiate athletes with significant educational opportunities. However, participation in intercollegiate athletics should not infringe upon an intercollegiate athlete’s ability to earn compensation for his or her name, image or likeness.”<sup>9</sup>

The law continues by stating that the compensation earned by college athletes “must be commensurate with the market value of the authorized use of” his or her name, image or likeness (“NIL”).<sup>10</sup> Commentators have speculated

<sup>4</sup> See thegoalsguy, *supra* note 3 (highlighting the scene where Rod Tidwell explains the meaning of “quan” to his agent); see also JERRY MAGUIRE, *supra* note 1 (“I’ll tell you why you don’t have your \$10 million yet. Right now, you are a paycheck player. You play with your head, not your heart.”).

<sup>5</sup> See thegoalsguy, *supra* note 3 (highlighting scenes from *Jerry Maguire* where the word “quan” is used by Rod Tidwell and Jerry Maguire); see also JERRY MAGUIRE, *supra* note 1 (“Just shut up. Play the game and play it from your heart. And you know what? I will show you the quan. And that’s the truth, man.”).

<sup>6</sup> See thegoalsguy, *supra* note 3 (introducing the word “quan” from Rod Tidwell to Jerry Maguire); see also JERRY MAGUIRE, *supra* note 1 (“Jerry Maguire—my agent, you are my ambassador of quan, man.”).

<sup>7</sup> See Florida Says “Show Me the Money” – Intercollegiate Athlete Name, Image and Likeness (NIL) Bill is Now Law, FOLEY & LARDNER LLP (June 29, 2020), <https://www.foley.com/en/insights/publications/2020/06/florida-intercollegiate-athlete-nil-law> [hereinafter *NIL Bill*] (noting that Florida is the third state to pass a NIL law, behind California and Colorado); see also Associated Press, *Gov. DeSantis Signs Bill Allowing College Athletes to Be Compensated for Name, Image and Likeness*, WSVN (June 12, 2020), <https://wsvn.com/sports/gov-desantis-signs-bill-allowing-college-athletes-to-be-compensated-for-name-image-and-likeness/> (commenting that the NIL law “increases the urgency for the NCAA to act” on addressing the issue of compensation).

<sup>8</sup> See Bob Wallace, Jr. & Matthew Misichko, *A Look at Recent Student Athlete Name, Image and Likeness Legislation*, THOMPSON COBURN LLP (July 7, 2020), <https://www.thompsoncoburn.com/insights/publications/item/2020-07-07/a-look-at-recent-student-athlete-name-image-and-likeness-legislation> (observing that the law’s objectives include “equality for all college athletes to earn compensation for use of his or her NIL, maintaining control as to how such NIL is used and protecting such athletes from ‘unauthorized appropriation’ and ‘commercial exploitation.’”); see also Associated Press, *supra* note 7 (“Florida is the third state, joining California and Colorado, to pass an NIL law targeting current NCAA rules that restrict college athlete compensation.”); see also *NIL Legislation Tracker*, SAUL EWING ARNSTEIN & LEHR LLP, <https://www.saul.com/nil-legislation-tracker#2> (listing the state of Florida as one of more than 10 states that have adopted similar NIL laws) (last visited Dec. 31, 2021).

<sup>9</sup> FLA. STAT. § 1006.74 (2021) (granting student-athletes the opportunity to earn compensation for their name, image, and likeness while retaining their athletic eligibility); see also *NIL Bill*, *supra* note 7 (providing a breakdown of the law’s provisions).

<sup>10</sup> § 1006.74 (specifying that “such compensation may not be provided in exchange for athletic performance or attendance at a particular institution and may only be provided by a third party unaffiliated with the intercollegiate athlete’s postsecondary educational institution.”); see also Wallace, Jr. & Misichko, *supra* note 8 (noting the law’s objectives).

what exactly “market value” may mean and who enforces and calculates the value once the law becomes enacted.<sup>11</sup> One legal analyst has commented that if the determination of “fair market value” were left to the National Collegiate Athletic Association (“NCAA”) or its members, it “would be vulnerable to claims of illegal price fixing under federal antitrust law.”<sup>12</sup> Additionally, the college sports world has had its fair share of scandals in recent years, namely those involving accusations and ultimate findings of price fixing.<sup>13</sup> With the recent controversy facing the NCAA, critics have disapproved state NIL bills as either codifying the goals of the organization (namely maintaining the “amateurism” model) or being too weak in its structure to be enforced effectively.<sup>14</sup>

Since this topic has become a contentious nationwide issue, the Department of Justice’s Antitrust Division has recently become involved in applying pressure to the NCAA to allow NIL compensation and making sure that any new policies are not anticompetitive, such as amounting to illegal price-fixing.<sup>15</sup>

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<sup>11</sup> See Wallace, Jr. & Misichko, *supra* note 8 (“It is likely that the market value of using a college athlete’s NIL will be very dependent on the facts and circumstances of each case.”); see also Matt Brown, *After Florida, What’s Next for Name, Image and Likeness Legislation?*, EXTRA POINTS WITH MATT BROWN (June 16, 2020), <https://extrapoints.substack.com/p/after-florida-whats-next-for-name> (quoting Darren Heitner, a lawyer involved in the bill drafting process who states that Florida will create specific regulations for calculating compensation at a later date).

<sup>12</sup> Michael McCann, *Legal Challenges Await After NCAA Shifts on Athletes’ Name, Image, and Likeness Rights*, SPORTS ILLUSTRATED (Apr. 29, 2020), <https://www.si.com/college/2020/04/29/ncaa-name-image-likeness-changes-legal-analysis> (quoting a working group, hired by the NCAA, who state that development of a “regulatory system in which payments from third parties to student-athletes’ are compared to a ‘fair market value standard[.]’” may be difficult to maintain); see also Steve Berkowitz, *New Name, Images, Likeness Lawsuit Against NCAA Could Put Hundreds of Millions of Dollars at Stake*, USA TODAY (June 15, 2020, 8:56 PM), <https://www.usatoday.com/story/sports/college/2020/06/15/ncaa-lawsuit-over-athletes-images-likeness-puts-big-money-stake/3189283001/> (stating that the NCAA is pursuing “an exemption from federal and state antitrust law that would allow it to continue its anticompetitive practices without legal repercussion.”).

<sup>13</sup> See Robert B. Barnett, Jr., J.D., *NCAA Found to be Guilty of a Sherman Act Price-Fixing Scheme but the Remedy Leaves the Rules Mostly in Place*, VITALLAW (Mar. 11, 2019), <https://www.vital-law.com/news/top-story-n-d-cal-ncaa-found-to-be-guilty-of-a-sherman-act-price-fixing-scheme-but-the-remedy-leaves-the-rules-mostly-in-place/ald01953bc1f07d401000b34b90b11c18cbab02> (describing the trial findings of the case); see also *Alston v. NCAA (In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.)*, 958 F.3d 1239 (9th Cir. 2020) (affirming the trial court’s finding that the NCAA and affiliated schools illegally price fixed “grant-in-aid” for student-athletes).

<sup>14</sup> See Derek Helling, *Florida’s NIL Law Makes the State Another Predator for College Athletes’ Economic Interests*, ADVOC. FOR FAIRNESS IN SPORTS (June 15, 2020), <https://advocacyforfairnessinsports.org/feature-stories/legislation/floridas-nil-law-makes-the-state-another-predator-for-college-athletes-economic-interests/> (arguing that the Florida NIL bill protects the NCAA’s “amateurism” model); see also Ray Glier, *California NIL Law Is Weak, Leaving NCAA Athletes On Their Own, Professor Says*, FORBES (Nov. 19, 2019, 9:47 AM), <https://www.forbes.com/sites/ray-glier/2019/11/19/california-law-weak-so-athletes-on-their-own-with-nil/> (arguing that the California NIL bill lacks enforcement clauses, such as who will enforce the law and what constitutes a violation of the law).

<sup>15</sup> See Lauren Hirsch, *DOJ Antitrust Chief Met With NCAA As it Faces Pressure to Let College Athletes Make Money*, CNBC (Jan. 14, 2020, 5:41 PM), <https://www.cnbc.com/2020/01/14/doj-antitrust-chief-met-with-ncaa-over-rules-for-paying-college-athletes.html> (recounting a meeting where NCAA representatives convened with the chief of the antitrust division in the Department of

There have been federal bills proposed in the House of Representatives addressing the NIL compensation issue.<sup>16</sup> However, the passing of a federal NIL law that will preempt state laws is something that may not come in the near future, according to some commentators.<sup>17</sup> Florida is taking advantage of the situation both with the federal government and with other states; because Florida is one of the first states in the nation with an active NIL law, “colleges in Florida may already be enjoying an advantage in the highly competitive college recruiting market.”<sup>18</sup>

This Comment analyzes how the Florida Legislature should create an independent commission in partnership with the Florida Board of Governors and the State Board of Education to help determine what the fair market value of a student-athlete’s NIL is, ensure compliance with the NIL law, and mitigate the potential occurrence of illegal price-fixing among the NCAA and affiliate schools.<sup>19</sup> Part II will analyze recent court cases, such as the ruling of *In re National Collegiate Athletic Association Athletes Grant-in-Aid Cap Antitrust Litigation*, 958 F.3d 1239 (9th Cir. 2020), which found the NCAA and eleven of its thirty-two conferences liable of horizontal price-fixing, as well as recent scandals of conflicts of interest in Florida college sports.<sup>20</sup> Part III analyzes the

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Justice); see also Brent Kendall & Louise Radnofsky, *U.S. Antitrust Chief Signals Skepticism of NCAA in Athlete Pay Fight*, WALL ST. J. (Jan. 15, 2020, 6:29 PM), <https://www.wsj.com/articles/u-s-antitrust-chief-signals-skepticism-of-ncaa-in-athlete-pay-fight-11579117132> (reporting that the Department of Justice is watching the NIL situation closely).

<sup>16</sup> See Dennis Dodd, *Bipartisan Name, Image, Likeness Bill Introduced to U.S. House Would Supersede State Laws for College Athletes*, CBS SPORTS (Sept. 25, 2020, 10:33 AM), <https://www.cbssports.com/college-football/news/bipartisan-name-image-likeness-bill-introduced-to-u-s-house-would-supersede-state-laws-for-college-athletes/> (discussing multiple bills submitted by Congress members); see also Dan Murphy, *Bipartisan Federal NIL Bill Introduced for College Sports*, ESPN (Sept. 24, 2020), [https://www.espn.com/college-sports/story/\\_/id/29961059/bipartisan-federal-nil-bill-introduced-college-sports](https://www.espn.com/college-sports/story/_/id/29961059/bipartisan-federal-nil-bill-introduced-college-sports) (noting that if a federal law is to preempt the current state laws, “Congress will have to agree on a solution during the first six months of 2021.”).

<sup>17</sup> See Brown, *supra* note 11 (“But you have Congress, which is notoriously slow to move on anything, and in an election year, and in the middle of a global pandemic, and even earlier in the year, when you had Congress so focused on impeachment...that’s going to be a challenge.”); see also Len Simon, *Florida is Ground Zero in the Debate Over Pay for College Athletes | Opinion*, SUN SENTINEL (June 17, 2020, 3:44 PM), <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-college-athletes-images-20200617-pkeooig7r5athbqlc4ot7roafy-story.html> (“But Congress is exceptionally distracted by COVID, racial tensions, and members’ own reelections, so it will be hard to get Congress to pass NIL legislation any time soon.”).

<sup>18</sup> Rudy Hill & Jonathan D. Wohlwend, *Florida Law Will Allow College Athletes to Profit from Name, Image, and Likeness Starting Summer 2021*, BRADLEY (June 25, 2020), <https://www.bradley.com/insights/publications/2020/06/florida-law-will-allow-college-athletes-to-profit-from-name-image-and-likeness-starting-summer-2021> (suggesting that “[o]ther states are likely feeling pressure from the new Florida law[.]”); see also Demetrius Harvey, *Signed Into Law, Florida to Allow College Athletes to Make Money for NIL*, SPORTS ILLUSTRATED (June 12, 2020), <https://www.si.com/college/florida/football/florida-governor-signs-law-allow-college-athletes-compensation-nil> (quoting Governor Ron DeSantis after signing the bill into law: “I just want to say Florida is leading on this and if you’re a blue-chip high school recruit out there trying to figure out where to go I think any of our Florida schools is a great landing spot[.]”).

<sup>19</sup> See *infra* Part IV.

<sup>20</sup> See *infra* Part II.

benefits of transparency in regulation and the potential conflicts of interest that can arise with related parties to an NIL contract.<sup>21</sup> Part IV will propose a solution to prevent conflicts of interest from entering the realm of NIL compensation and potentially limit price-fixing.<sup>22</sup> Part V will conclude with an overview of the proposed solution and how this will protect student-athletes in the realm of NIL compensation.<sup>23</sup>

## II. BACKGROUND

### A. NCAA AND ITS AFFILIATES FOUND LIABLE OF PRICE-FIXING

In the case of *In re National Collegiate Athletic Association Athletes Grant-in-Aid Cap Antitrust Litigation*, it was held that the NCAA and affiliate schools were liable for conspiring in a price-fixing scheme, which ignited the flame on student-athlete compensation.<sup>24</sup> First appearing in the District Court for the Northern District of California, the court held that the NCAA's "limits on the education-related [benefits] schools can offer [sic] violate federal antitrust law."<sup>25</sup> To reach this holding, the court used the Rule of Reason, a three-step test applied to the analysis of "anti-competitive rules set by sports leagues" under § 1 of the Sherman Act.<sup>26</sup>

For instance, under the first step of the three-step test, a court must determine the relevant market; both parties agreed that it was one "for a college education combined with athletics, or, alternatively, the market for the student-athletes' athletic services."<sup>27</sup> Using an analysis under the theory of monopsony,

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<sup>21</sup> See *infra* Part III.

<sup>22</sup> See *infra* Part IV.

<sup>23</sup> See *infra* Part V.

<sup>24</sup> See *Alston*, 958 F.3d at 1239 (affirming the trial court's finding that the NCAA and affiliated schools illegally price fixed "grant-in-aid" for student-athletes); see also Marc Edelman, *Ninth Circuit Upholds That NCAA Violates Antitrust Law; Judge Describes College Sports As A 'Cartel'*, FORBES (May 19, 2020, 12:30 AM), <https://www.forbes.com/sites/marcedelman/2020/05/19/ninth-circuit-upholds-finding-ncaa-violates-antitrust-law-concurring-judge-correctly-describes-college-sports-as-a-cartel> (noting that the decision "seems to open the door for broader legal challenges to the NCAA's limits on athlete compensation both by NCAA member colleges and third-party endorsers").

<sup>25</sup> Zachary Zagger, *NCAA Wants Clarity On Capping Academic Awards At \$5.6K*, LAW360 (Sept. 23, 2020), <https://www.law360.com/articles/1313004/ncaa-wants-clarity-on-capping-academic-awards-at-5-6k> (restating the findings of the trial court); see also Barnett, Jr., *supra* note 13 (describing the trial findings of the case).

<sup>26</sup> See Audrey Anderson, *Ninth Circuit Upholds District Court's Ruling in "Pay for Play" Case Against NCAA*, JD SUPRA (May 21, 2020), <https://www.jdsupra.com/legalnews/ninth-circuit-upholds-district-court-s-68346/>. (highlighting the rationale of the Ninth Circuit Court of Appeal's ruling, including the holding that affirmed the district court's analysis with the Rule of Reason); see also *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d 1058, 1066 (N.D. Cal. 2019), *aff'd*, 958 F.3d 1239 (9th Cir. 2020) ("Horizontal price fixing among competitors is usually a per se violation of antitrust law. However, because "a certain degree of cooperation is necessary to market athletics competition, the Court applies the Rule of Reason.").

<sup>27</sup> *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1066–67 (N.D. Cal. 2019)

the court noted that the schools were the buyers and the student-athletes were the sellers “in a market for recruits’ athletic services and licensing rights.”<sup>28</sup> Additionally, the court held that student-athletes do not have an alternative market to receive “a college education, high-level television exposure, and opportunities to enter professional sports other than from” the NCAA and its affiliate schools.<sup>29</sup>

The court went on to hold that the NCAA and its affiliates failed to provide reasonable justifications for the challenged rules when the burden shifted to them.<sup>30</sup> As noted in the opinion, the NCAA could not provide a clear definition for the word “amateur” to go along with its justification that the rules were “pro-competitive because ‘amateurism is a key part of demand for college sports[.]’”<sup>31</sup> Also, the NCAA’s constitution used the word “‘amateurs’ to describe the amateurism principle, [but was] thus [using a] circular [definition].”<sup>32</sup> In addition to the court ruling, this definition of “amateur” has been met with criticism by analysts as not giving a definitive explanation of the term.<sup>33</sup> In

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(applying the same market definition from *O’ Bannon v. Nat’l Collegiate Athletic Ass’n*, 7 F. Supp. 3d 955, 986 (N.D. Cal 2014)); see also Anderson, *supra* note 26 (noting that the NCAA amateurism rules applied to “the market for student athletes’ ‘labor’”).

<sup>28</sup> *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1067 (explaining that a monopsony is “sometimes referred to as a buyers’ cartel[.]”). See Barnett, Jr., *supra* note 13 (“The court concluded, therefore, that the NCAA had monopsony power (buyers’ power) to restrain student-athlete compensation in any way and at any time they wish, without any meaningful risk of diminishing their market dominance.”); see also *Monopsony*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining monopsony as “[a] market situation in which one buyer controls the market.”).

<sup>29</sup> *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1067 (using an economic expert’s testimony that concluded that “the most talented athletes [including the Plaintiffs] are concentrated in the respective markets for Division I basketball and FBS football” and that “possible alternatives, such as the National Association of Intercollegiate Athletics (NAIA) or the National Christian College Athletic Association (NCCAA), have not proved to be viable substitutes[.]”). See Barnett, Jr., *supra* note 13 (“The elite athletes have no other market in which to sell their services other than the Division I schools (professional leagues cannot hire them and the lower NCAA divisions do not provide equal opportunities).”).

<sup>30</sup> See *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1070 (stating that the Defendants “did not offer evidence to establish that the challenged compensation rules, in and of themselves, have any direct connection to consumer demand.”); see also Barnett, Jr., *supra* note 13 (“The NCAA offered two: consumer demand for amateurism and integration, neither of which the court was buying.”).

<sup>31</sup> *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1070 (“Defendants rely on the notion that it is the ‘principle’ of amateurism that drives consumer demand, and that the challenged restraints are procompetitive because they ‘implement’ or ‘effectuate’ that principle.”); see also Barnett, Jr., *supra* note 13 (“As for the consumer demand for amateurism, the NCAA was never even able to establish a working definition of amateurism beyond ‘not for pay.’”).

<sup>32</sup> *In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1070–71 (quoting a former commissioner of the SEC that admitted that the term amateurism is “just a concept that I don’t even know what it means. I really don’t.”). See Anderson, *supra* note 26 (“While the NCAA may appropriately justify rules that differentiate college sports as ‘amateur,’ it failed to support its contention that amateurism depends upon student-athletes being paid ‘not a penny more’ than COA [Cost of Attendance].”).

<sup>33</sup> See Dan Wolken, *More College Athlete Reform? That’s Tough When ‘Amateurism’ Means Whatever the NCAA Proclaims it Does*, USA TODAY (May 15, 2019, 8:19 AM), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2019/05/15/ncaa-reform-amateurism-means->

response to the NCAA's argument that amateurism was a driver in consumer demand, the court refused it, observing that there was no evidence of consumer demand decreasing if compensation increased.<sup>34</sup> The court ultimately entered judgment in favor of the student-athletes, finding the NCAA and its affiliates liable for anticompetitive practices.<sup>35</sup>

#### B. SUPREME COURT RULES FOR STUDENT-ATHLETES

On June 21, 2021, the United States Supreme Court issued a unanimous decision finding that the NCAA had “illegally restricted education-based benefits that could be used as compensation to student athletes.”<sup>36</sup> The Court clarified a decades-old debate on what standard the NCAA's actions would be subject to and concluded that the organization's “compensation rules should receive ordinary ‘rule of reason’ scrutiny under the antitrust laws.”<sup>37</sup> Associate Justice Brett Kavanaugh noted in his concurring opinion that the NCAA and its

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whatever-ncaa-proclaims-does/3676682002/ (stating that “[n]o matter what the NCAA does, it will proclaim that it has maintained its status as an amateur organization. When you own a concept that has no real value in any other context, you can make the words mean whatever you want.”); *see also* Virginia A. Fitt, *The NCAA's Lost Cause and the Legal Ease of Redefining Amateurism*, 59 DUKE L.J. 556, 558 (2009) (arguing that the NCAA's definition of “amateurism” provides the organization “insulation . . . from areas of the law [like ‘labor law, antitrust violations and tax liability’] that would otherwise apply[.]”).

<sup>34</sup> *See In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1074–80 (describing Plaintiff's expert witness's survey that showed support for the conclusion “that the current limits on student-athlete compensation, to the extent they relate to the scenarios that he tested, are not necessary to preserve consumer demand.”);

As the court pointed out, as the permissible benefit levels have arisen in recent years in response to *Bannon*, the popularity of college football and basketball has only grown. If that is true, the court asked, how can anyone really claim that the reduced amateurism (they were, after all, being paid more) was adversely affecting consumer demand?

Barnett, Jr., *supra* note 13.

<sup>35</sup> *See In re NCAA Ath. Grant-In-Aid Antitrust Litig.*, 375 F. Supp. 3d at 1110 (“Allowing each conference and its member schools to provide additional education-related benefits without NCAA caps and prohibitions, as well as academic awards, will help ameliorate their anticompetitive effects and may provide some of the compensation student-athletes would have received absent Defendants' agreement to restrain trade.”); *see also* Barnett, Jr., *supra* note 13 (summarizing the court's reasoning in reaching its holding).

<sup>36</sup> Ron Blitzer, *Supreme Court Sides with Student Athletes, Rules NCAA Improperly Capped Education-Related Benefits*, FOX NEWS (June 21, 2021), <https://www.foxnews.com/sports/supreme-court-ncaa-student-athlete-decision> (noting that the case was brought to the Court “by current and former student athletes who played college football, as well as men's and women's college basketball.”). *See also* National Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141 (2021), *aff'd*, 958 F.3d 1239 (9th Cir. 2020).

<sup>37</sup> National Collegiate Athletic Ass'n v. Alston, 141 S. Ct. at 2167 (Kavanaugh, J., concurring) (emphasizing that the Court's ruling does not address the NCAA's remaining compensation rules that are not education-related).



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affiliates generate billions of dollars a year, with the flow of money going to everyone involved except the student-athletes themselves.<sup>38</sup>

### C. CONFLICTS OF INTEREST SCANDALS AMONG AGENTS, COACHES, AND RELATED PARTIES IN COLLEGE SPORTS

The college sports world and the NCAA have always had their fair share of scandals over the years.<sup>39</sup> One commentator described the situation succinctly:

For all of the outrage, the real scandal is not that students are getting illegally paid or recruited, it's that two of the noble principles on which the NCAA justifies its existence – “amateurism” and the “student-athlete” – are cynical hoaxes, legalistic confections propagated by the universities so they can exploit the skills and fame of young athletes.<sup>40</sup>

One recent example is the 2017 Division I basketball recruiting scandal, which involved over 20 schools, sports agents, head coaches, and corporate executives.<sup>41</sup> The Federal Bureau of Investigation (“FBI”) conducted a probe that included phone call wiretaps and undercover work that discovered “cash advances, as well as entertainment and travel expenses for high school and college prospects and their families.”<sup>42</sup> Charges ranged from bribery with Christian

<sup>38</sup> Justice Kavanaugh described the nature of the money found in college athletes by noting that coaches and athletic directors take home between “six- and seven-figure salaries” while student athletes, many of them “African American and from lower-income backgrounds, end up with little or nothing.” *Id.* at 2168.

<sup>39</sup> See Taylor Branch, *The Shame of College Sports*, THE ATLANTIC (October 2011), <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> (providing a history of college sports scandals, including scandals involving Reggie Bush and Cam Newton); see also Alan Rubenstein, *The 25 Biggest Scandals in NCAA History*, BLEACHER REP. (Sept. 20, 2010), <https://bleacherreport.com/articles/468221-the-25-biggest-scandals-in-ncaa-history> (providing summaries of NCAA scandals).

<sup>40</sup> Branch, *supra* note 39 (noting that during the 2009–2010 recession, “the football-crazed Southeastern Conference (SEC), became the first to crack the billion-dollar barrier in athletic receipts.”). See Adam Prescott, *What's the Cost of Not Playing? Financial Impact of College Football Revenue at Big Ten Schools*, SPORTS ILLUSTRATED (Aug. 16, 2020), <https://www.si.com/college/ohio-state/news/football-revenue-big-ten-schools> (reporting that the Big Ten made \$781.5 million in revenue in fiscal year 2019, making it the most profitable conference).

<sup>41</sup> See Mitch Sherman, *Everything You Need to Know About the College Basketball Scandal*, ESPN (Feb. 23, 2018), [https://www.espn.com/mens-college-basketball/story/\\_id/22555512/explaining-ncaa-college-basketball-scandal-players-coaches-agents](https://www.espn.com/mens-college-basketball/story/_id/22555512/explaining-ncaa-college-basketball-scandal-players-coaches-agents) (providing background information regarding the basketball scandal); see also Billy Witz, *Who's on Trial in the College Basketball Scandal? Not the Big Names*, N.Y. TIMES (Apr. 23, 2019), <https://www.nytimes.com/2019/04/23/sports/college-basketball-trial-arizona-lsu.html> (reporting on the bribery trials of Christian Dawkins, a sports agent, and Merl Code Jr., a shoe company consultant).

<sup>42</sup> Pat Forde & Pete Thamel, *Exclusive: Federal Documents Detail Sweeping Potential NCAA Violations Involving High-Profile Players, Schools*, YAHOO! SPORTS (Feb. 23, 2018), <https://sports.yahoo.com/exclusive-federal-documents-detail-sweeping-potential-ncaa-violations-involving-high->

Dawkins, an up-and-coming sports agent, to fraud with James Gatto, an Adidas executive.<sup>43</sup>

Florida has also had its own scandals in college sports, some involving the University of Miami (“UM”) and Florida State University (“FSU”) athletics programs.<sup>44</sup> The most recent scandal was in 2011, when Nevin Shapiro (“Shapiro”), a former booster for UM, “alleged that he showered dozens of Miami players with improper gifts, from prostitutes to jewelry, over a period of eight years.”<sup>45</sup> This activity occurred between 2002 and 2010 and was corroborated by many former UM players in a Yahoo! Sports investigation on the scandal.<sup>46</sup> It also included cooperation with coaches and a sports agency; Shapiro described top-tier high school recruits, like Ray-Ray Armstrong and Dryon Dye, being delivered to his “home or luxury suite so the booster could make recruiting pitches to them,” as well as Shapiro securing ownership in Access Sports, who signed with “two first-round picks from Miami’s program.”<sup>47</sup>

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profile-players-schools-103338484.html (detailing released documents for the FBI investigation, including balance sheets from an involved sports agency that “listed several [players] who were in high school or college as receiving four-figure and five-figure payments[.]”). See Sherman, *supra* note 41 (“The federal officials alleged that the coaches took cash bribes from business managers and financial advisers in exchange for the coaches’ influence to direct selected players and their families to retain the services of the advisers who provided the bribes once the players entered the NBA.”).

<sup>43</sup> See Witz, *supra* note 41 (noting that assistant coaches at involved schools have been fired and have faced imprisonment “[b]ut no top Adidas executives and only one head coach...have lost their jobs.”); see also Sherman, *supra* note 41 (describing Christian Dawkin’s involvement in the scheme, including “arrang[ing] payments to” assistant coaches).

<sup>44</sup> See *U. of Miami’s ‘Booster Bombshell’: ‘The Craziest Scandal in NCAA History’*, THE WEEK (Jan. 8, 2015), <https://theweek.com/articles/482403/u-miamis-booster-bombshell-craziest-scandal-ncaa-history> [hereinafter *U. of Miami’s ‘Booster Bombshell’*] (providing background information of the scandal, including interviews from a former UM booster); see also *SPORTS PEOPLE: FOOTBALL; Cash Bounties Reported at Miami*, N.Y. TIMES (May 21, 1994), <https://www.nytimes.com/1994/05/21/sports/sports-people-football-cash-bounties-reported-at-miami.html> (summarizing “pay-for-play” scheme involving Luther Campbell of 2 Live Crew, National Football League (“NFL”) players, and UM football players).

<sup>45</sup> *U. of Miami’s ‘Booster Bombshell’*, *supra* note 44 (providing background information of the scandal, including interviews from a former UM booster). See Charles Robinson, *Renegade Miami Football Booster Spells Out Illicit Benefits to Players*, YAHOO! SPORTS (Aug. 16, 2011), <https://sports.yahoo.com/news/renegade-miami-football-booster-spells-213700753--spt.html> (reporting that Shapiro is also serving a prison sentence “for his role in a \$930 million Ponzi scheme” and admitted to “provid[ing] thousands of impermissible benefits to at least 72 athletes from 2002 through 2010.”).

<sup>46</sup> See Robinson, *supra* note 45 (stating that “eight former Miami players or recruits confirmed receiving illicit benefits from Shapiro[.]” ranging from parties in Miami Beach hotels and on his \$1.6 million yacht to group outings to high-end restaurants and clubs); see also *U. of Miami’s ‘Booster Bombshell’*, *supra* note 44 (noting that the Yahoo! Sports investigation involved “nearly 100 interviews with individuals in six states...and [the audit of] tens of thousands of financial, business, and cell phone records.”).

<sup>47</sup> Robinson, *supra* note 45 (describing one instance corroborated by head coach Frank Haith where Shapiro “paid \$10,000 to help secure the commitment of recruit of DeQuan Jones” for the Miami basketball team). See Andrew Kulha, *Nevin Shapiro: 5 Most Shocking Allegations Linked to Miami Booster*, BLEACHER REP. (Aug. 17, 2011), <https://bleacherreport.com/articles/809464-nevin-shapiro-5-most-shocking-allegations-linked-to-miami-booster> (describing a \$50,000 payment

It was reported that Shapiro's activity with UM would violate multiple NCAA bylaws, including the following: Bylaw 11, which "involv[es] impermissible compensation to coaches"; Bylaw 12, which "involv[es] amateurism of athletes"; and Bylaw 16, which "involv[es] extra benefits to athletes."<sup>48</sup> After investigations concluded, UM faced several sanctions from the NCAA, including the loss of 9 scholarships over 3 seasons for football and 3 scholarships over 3 seasons for basketball, and was placed on 3 years' probation after being found guilty of "lack of institutional control[.]"<sup>49</sup>

The NCAA also investigated FSU after an academic cheating scandal in 2009.<sup>50</sup> The organization reported that FSU used a learning specialist to help student-athletes with school work, such as typing "portions of papers for at least three athletes and also provid[ing] answers to an online psychology course quiz by instructing another athlete to complete the quiz on behalf of the athletes enrolled in the course."<sup>51</sup> It was reported that the cheating was facilitated by "unethical conduct by three former staff members and a failure to monitor by the university."<sup>52</sup> In the end, the FSU Athletic Department stated that it would "vacate 12 wins in football, 22 wins in men's basketball, a NCAA post season

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Shapiro made to one player as well as the purchase of two Cadillac Escalades for the player and his fiancé).

<sup>48</sup> Robinson, *supra* note 45 (describing NCAA investigation into the scandal and listing possible NCAA bylaw violations by Shapiro). See *U. of Miami's 'Booster Bombshell'*, *supra* note 44 (quoting then-UM president Donna Shalala, who stated "I have insisted upon complete, honest, and transparent cooperation with the NCAA from our staff and students.").

<sup>49</sup> Barry Jackson & Manny Navarro, *UM's Judgment Day: The Nevin Shapiro Scandal*, MIAMI HERALD, <http://media.miamiherald.com/static/media/projects/nevin-shapiro-scandal-timeline/> (last visited Dec. 31, 2021) (detailing sanctions UM faced by the NCAA). See Rachel Axon, *NCAA on Shapiro case: Miami Losing Football, Hoops Scholarships*, USA TODAY (Oct. 22, 2013), <https://www.usatoday.com/story/sports/ncaaf/acc/2013/10/22/ncaa-announces-sanctions-miami-hurricanes-infractions-case-nevin-shapiro-loss-of-scholarships/3146343/> ("Former assistant football coaches Clint Hurtt and Aubrey Hill and former assistant basketball coach Jorge Fernandez were given two-year 'show cause' orders, effectively keeping them from working at the collegiate level.").

<sup>50</sup> See *FSU Gets Four Years Probation in Scandal*, JACKSONVILLE.COM (Mar. 6, 2009), <https://amp.jacksonville.com/amp/15993797007> (detailing the academic cheating scandal in FSU); see also Heather Dinich, *NCAA Penalties Extend to 10 FSU Sports*, ESPN (Mar. 6, 2009), <https://www.espn.com/college-football/news/story?id=3958292> ("The NCAA determined that a former learning specialist, academic adviser and tutor gave 'improper assistance' to Florida State athletes who were taking online courses.").

<sup>51</sup> Dinich, *supra* note 50 (reporting that academic fraud "is considered by the [NCAA Committee on Infractions] to be among the most egregious of NCAA rules violations."); see also *FSU Gets Four Years Probation in Scandal*, *supra* note 50 (stating that the cheating occurred mostly in the fall of 2006 to summer 2007).

<sup>52</sup> *FSU Gets Four Years Probation in Scandal*, *supra* note 50 ("The report says 61 Florida State athletes from all sports cheated on an online test from the fall of 2006 through summer 2007 or received improper help from staffers who provided them with answers to the exam and typed papers for them."); see also *Florida State Cheating Allegations Examined*, NPR (Oct. 15, 2009, 4:00 PM), <https://www.npr.org/templates/story/story.php?storyId=113840355> (examining the release of a NCAA hearing regarding FSU and finding that the music course in question was one "where you could do the tests blind at your computer terminal, opening up the possibilities of fraud or inappropriate help[.]").

baseball victory, one national championship in men's track and field, a NCAA tournament victory in women's basketball, as well as other wins in these and several other men's and women's sports."<sup>53</sup>

### III. DISCUSSION: WHAT FLORIDA MUST CONSIDER WITH ITS NIL LAW

With the aforementioned background of scandals plaguing the college sports world both nationally and in Florida, it is not surprising that some commentators have questioned the role of the NCAA and its affiliates in administering regulations on student-athletes.<sup>54</sup> Some coaches in college sports have been concerned about the role of agents when athletes can eventually exercise their NIL right to compensation.<sup>55</sup> Other insiders are concerned about how state NIL laws and rights will be regulated and if they will be regulated effectively.<sup>56</sup> Despite the work to be done on the finer details, there is a strong consensus that

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<sup>53</sup> FrankDNole, *FSU's Academic Fraud Scandal Finally Comes To An End*, TOMAHAWK NATION (Feb. 7, 2010, 3:10 PM), <https://www.tomahawknation.com/2010/2/7/1299742/fsus-academic-fraud-scandal> (reporting that "[t]he NCAA Committee on Infractions accepted all of FSU's self-imposed penalties of probation and scholarship reductions in the 10 sports in which 61 student-athletes were implicated in the wide spread fraud involving an online Music Appreciation course."). See Branch, *supra* note 39 (noting that NCAA penalties that would force FSU to vacate football wins "would doom coach Bobby Bowden's chance of overtaking Joe Paterno of Penn State for the most football wins in Division I history.").

<sup>54</sup> See Branch, *supra* note 39 (quoting Rick Johnson, a lawyer, who studied NCAA archives and commented "'What kind of nonprofit organization leases private jets?'" after finding tax forms showing the NCAA spent \$1 million on private jets in 2006); see also Gentry Estes, *College Basketball's Trap: How Agents and Shoe Companies Team Up to Exploit Athletes* (Feb. 25, 2018, 6:15 PM), <https://www.usatoday.com/story/news/2018/02/25/college-basketball-recruiting-scandal-system-traps-players/370215002/> ("The trap is operated by sports agents, coaches and financial advisers who lock promising young players into their networks, controlling their careers through college and the NBA, all to maximize their value to apparel companies intent on driving sales in the multi-billion-dollar sneaker market.").

<sup>55</sup> See Dan Bernstein, *NCAA NIL Roundtable: How People Inside College Sports Would Change Name, Image and Likeness Rules*, SPORTING NEWS (Aug. 3, 2020), <https://www.sportingnews.com/us/ncaa-football/news/ncaa-nil-college-sports-name-image-likeness/n4xzndlnun61hxx8w2ygiyh3> (quoting Stanford football coach, David Shaw: "I'm particularly concerned about agents . . . My concern for young people is that they can be easily taken advantage [of], them and their inner families. They are not professionals yet. They don't have a lot of contacts or context for the world that they're getting into."); see also Dennis Dodd, *What's Ahead in the Name, Image and Likeness Rights Debate As Recommendations Set to Be Submitted*, CBS SPORTS (Apr. 22, 2020, 3:51 PM), <https://www.cbssports.com/college-football/news/whats-ahead-in-the-name-image-and-likeness-rights-debate-as-recommendations-set-to-be-submitted/> ("All of it is going to require intense scrutiny. Several states already have agent registration laws. But those laws only work if they have teeth and the attorneys general of those states prosecute wrongdoers. With all these potential new clients on the market, those potential wrongdoers could be everywhere.").

<sup>56</sup> See Bernstein, *supra* note 55 (quoting Russ Turner, IC Irvine basketball coach: "It's going to be especially difficult to enforce those rules and figure out how players (and schools) who get outside those rules are going to be punished."); see also Florida Student Athletes Will Now Get More Than Nil for NIL (Name, Image, Likeness), THE LOMNITZER LAW FIRM P.A. (June 13, 2020), <https://www.lomnitzerlaw.com/florida-student-athletes-nil-law/> (quoting Governor Ron DeSantis that compensation will be structured and will not become "the wild west").

the Florida NIL law is a move in the right direction for college athletes to earn compensation.<sup>57</sup>

Here in Florida, Miami Hurricanes athletic director, Blake James, has expressed concern over how the NIL law will impact recruitment of athletes to Florida schools by stating, “[w]e don’t want to turn this into one where there’s lucrative financial deals to incentivize young people to go to school A over school B.”<sup>58</sup> The Florida NIL law, however, seems to minimize this issue by prohibiting recruiters to entice athletes with compensation prior to enrollment.<sup>59</sup> The issue comes down to how Florida will enforce this and other provisions in the NIL law when it becomes effective.<sup>60</sup>

For starters, Darren Heitner, a sports attorney who worked on drafting the Florida NIL law, stated that “those specific regulations would be defined, per the bill, by the Board of Governors and State Board of Education[.]”<sup>61</sup> As mentioned earlier, another area of regulation that is in the balance is defining the phrase “fair market value.”<sup>62</sup> Many commentators have been skeptical about

<sup>57</sup> See Dan Murphy, *Florida Name, Image, Likeness Bill Now a Law, Meaning State Athletes Can Profit from Endorsements*, ABC NEWS (June 12, 2020, 12:39 PM), <https://abcnews.go.com/Sports/florida-image-likeness-bill-now-law-meaning-state/story?id=71220519> (quoting Florida Representative Chip LaMarca: “For far too long, the collegiate athletic system professionalized everyone associated with athletics except for the young women and men who put in all the hard work . . . Today, we changed that.”); see also Harvey, *supra* note 18 (“While there is plenty more discussion to be had before any college athlete can officially put pen to paper, today marks a historic day in collegiate-sport history.”).

<sup>58</sup> Tom D’Angelo, *NCAA’s Decision on NIL Issue Brought on by States Like Florida Moving Ahead with Own Bills*, THE PALM BEACH POST (May 6, 2020, 2:11 PM), <https://www.palm-beachpost.com/sports/20200506/ncaas-quos-decision-on-nil-issue-brought-on-by-states-like-florida-moving-ahead-with-own-bills> (“Boosters will be involved, and when boosters get involved rules are bent . . . [i]f those boosters go unchecked, there’s no telling how much money they would toss around for endorsements to lure players to their school.”). See Brown, *supra* note 11 (stating that the NCAA was “very worried about the idea of a third party trying to influence an athlete’s recruitment with promises of money.”).

<sup>59</sup> See Brown, *supra* note 11 (quoting Darren Heitner: “We want to try to diminish the likelihood that NIL is going to be used to recruit players to specific universities by underhanded methods, such as promising payment prior to enrollment.”). But see Helling, *supra* note 14 (“[Florida] does not require its citizens who are not college athletes to disclose outside business dealings to their employers or only partner with those companies whose business interests are not in conflict with that of their employers. Only college athletes will face these state-imposed restrictions when this law takes effect.”).

<sup>60</sup> See Helling, *supra* note 14 (“The law does not delegate oversight for enforcement to any state agency nor does it require institutions to report their activities on this front to the state in any form, shape or way.”); see also Brown, *supra* note 11 (“But who gets to determine what fair market value is? And how do you define ‘unaffiliated’? What kind of booster does that mean?”).

<sup>61</sup> Helling, *supra* note 14 (noting that other states with NIL legislation, such as Colorado and California, do not have specific regulations and details on who is to regulate NIL compensation). See FLA. STAT. § 1006.74(3) (2021) (“The Board of Governors and the State Board of Education shall adopt regulations and rules, respectively, to implement this section.”).

<sup>62</sup> See Brown, *supra* note 11 (reporting that “fair market value” is not defined in Colorado and California NIL laws); see also McCann, *supra* note 12 (describing a NCAA working group that is working on NIL related regulations as having “discussion regarding a ‘regulatory system in which payments from third parties to student-athletes’ are compared to a ‘fair market value standard.’”).

the possible antitrust problems that can arise if the NCAA and its affiliate schools were given the power to define the term, such as opening the door to possible illegal price fixing claims.<sup>63</sup> This is where the Florida government, through the Board of Governors and the State Board of Education, can step in and prevent further corruption and protect the NIL rights of college athletes.<sup>64</sup>

#### A. TRANSPARENCY IN REGULATION TO DETER PRICE-FIXING

One way to prevent illegal price fixing within the new NIL market in Florida is to promote competition through an open NIL market.<sup>65</sup> According to the Federal Trade Commission (“FTC”), free and open markets are possible through competition, which benefits consumers by “allow[ing] businesses to compete on the merits, power[ing] economic growth, and eliminat[ing] impediments to economic opportunity.”<sup>66</sup> This is an important area to protect,

<sup>63</sup> See McCann, *supra* note 12 (“Any attempt by the NCAA or a group of its members to determine ‘fair market value’ would be vulnerable to claims of illegal price fixing under federal antitrust law.”); see also Jake New, *An Amateurism Challenge Evaporates, but Others Loom for NCAA*, INSIDE HIGHER ED (Oct. 4, 2016), <https://www.insidehighered.com/news/2016/10/04/supreme-court-declines-hear-obannon-case-focus-turns-other-antitrust-lawsuits> (quoting law professor Marc Edelman who states that after *O’Bannon v. NCAA* “[f]uture plaintiffs now have a road map to bring antitrust cases against the NCAA...[f]uture cases will be decided on the facts of the case and on whether the payment of athletes would or would not harm consumer demand. The legal burden has already been met.”).

<sup>64</sup> See Simon, *supra* note 17 (stating that Florida, in passing the NIL law, has become the NCAA’s “nemesis” by becoming the third state to legalize student-athlete compensation); see also Bianca Serbin, *With NIL Rule Changes on the Horizon, Some Penn Athletes May be in Line for a Payday*, THE DAILY PENNSYLVANIAN (July 3, 2020, 12:02 AM), <https://www.thedp.com/article/2020/07/name-image-likeness-nil-ncaa-penn-legislation-profit>. Marc Edelman, a law professor, made the following observation:

To the extent that state legislators want to get involved, they are not only helping to preserve fairness for college athletes, but at the same time, they are removing an impediment that disproportionately harms low-income and racial minority students, who help bring in great sums of money to certain universities through football and men’s basketball[.]”

*Id.*

<sup>65</sup> See Abbott B. Lipsky, Jr., *Protecting Consumers by Promoting Competition*, FED. TRADE COMM’N (Mar. 6, 2017, 5:22 PM), <https://www.ftc.gov/news-events/blogs/competition-matters/2017/03/protecting-consumers-promoting-competition> (“When businesses break [antitrust] rules—such as by agreeing to fix prices—they effectively steal from consumers and harm the economy.”); see also *Lesson 3: Open Markets*, FOUND. FOR TEACHING ECON., <https://www.fte.org/teachers/teacher-resources/lesson-plans/efllessons/lesson-3-open-markets/> (last visited Dec. 31, 2021) (“Open markets encourage economic growth.”).

<sup>66</sup> Lipsky, Jr., *supra* note 65 (free market competition also benefits consumers by promoting “lower prices, higher quality products and services, and greater innovation.”). See Kimberly Amadeo, *Price Fixing, Types, Examples, and Why It Is Illegal*, THE BALANCE, <https://www.thebalance.com/price-fixing-types-examples-why-it-s-illegal-3305955> (last modified July 26, 2020) (“Price fixing disrupts the normal laws of demand and supply. It gives monopolies an edge over competitors. It’s not in the best interest of consumers. They impose higher prices on customers, reduce incentives to innovate, and raise barriers to entry.”).

especially given the fact that student-athlete NIL compensation is an emerging market.<sup>67</sup>

Transparency in antitrust regulation is a growing phenomenon that can benefit NIL agreements.<sup>68</sup> According to Deborah Garza, co-chair of Covington & Burling's Global Antitrust and Competition Law Practice Group, transparency in regulation is "necessary for the free flow of capital and investment because you need certainty and you need predictability."<sup>69</sup> In contrast, countries like China are not as transparent and do not describe enforcement rules or tell companies what the "future of their transaction [is] or their ability to keep doing business[.]"<sup>70</sup> For example, Chinese companies "make inefficient choices because they are confused about which of multiple overlapping regulatory bodies will be responsible for deciding their fate, and they cannot predict how policies might change in the future."<sup>71</sup>

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<sup>67</sup> See John McGonigal & Craig Meyer, *How Market Size Could Affect Athlete Compensation in 'Uncharted Territory'*, PITTSBURGH POST-GAZETTE (Aug. 9, 2020, 7:00 AM), <https://www.post-gazette.com/sports/Pitt/2020/08/09/NCAA-NIL-pitt-penn-state-west-virginia-market-size-athlete-compensation/stories/202007300031> (noting that the NCAA consists of "357 members at the Division I level across 49 states" so "what types of athletes and what profiles of schools stand to benefit the most from what will be an unrecognizable landscape?"); see also Michael Smith, *New NIL Rules Should Benefit Athletes at All Levels, Experts Say*, SPORTS BUS. J. (June 22, 2020), <https://www.sportsbusinessdaily.com/Journal/Issues/2020/06/22/Colleges/NIL.aspx> (quoting Courtney Altemus, CEO and founder of TeamAltemus: "The opportunities are going to be wide, and they're going to go across all levels[.]").

<sup>68</sup> See Federalist Society Panel, *A New Approach to Antitrust Law: Transparency*, 45 U. DAYTON L. REV. 35, 37 (2020) ("It has been a major objective of the U.S. government and the antitrust community to promote transparency for many years."); see also Warren S. Grimes, *Transparency in Federal Antitrust Enforcement*, 51 BUFF. L. REV. 937, 943 (explaining that one of the goals of transparency in antitrust regulation is to foster public confidence, through pre-decisional transparency, which "can be a form of due process, allowing affected parties an opportunity to offer submissions that can avoid unfair or unjust results.").

<sup>69</sup> *A New Approach to Antitrust Law: Transparency*, *supra* note 68 (arguing that transparency helps with due process in enforcement of antitrust regulations); see also *Price Fixing*, FED. TRADE COMM'N, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing> (last visited Dec. 31, 2021) ("Price-fixing schemes are often worked out in secret and can be hard to uncover, but an agreement can be discovered from 'circumstantial' evidence.").

<sup>70</sup> *A New Approach to Antitrust Law: Transparency*, *supra* note 68 ("Markets function most efficiently when people are aware of what the rules of the road are and when they can be assured that the rule of law will be applied to them."); see Maureen K. Olhausen, *Illuminating the Story of China's Anti-Monopoly Law*, FED. TRADE COMM'N, [https://www.ftc.gov/sites/default/files/documents/public\\_statements/illuminating-story-chinas-anti-monopoly-law/1310amlstory.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/illuminating-story-chinas-anti-monopoly-law/1310amlstory.pdf) (last visited Dec. 31, 2021) ("I encouraged the Chinese competition authorities to show consistent movement away from considering non-competition factors in their decisions, which will help promote predictability, fairness, and transparency in their decision making.").

<sup>71</sup> Susan L. Shirk, *What China's Lack of Transparency Means for U.S. Policy*, CHINA FILE (May 28, 2015), <https://www.chinafile.com/reporting-opinion/two-way-street/what-chinas-lack-transparency-means-us-policy> (noting that foreign companies "are calling for regulatory due process because they feel discriminated against in domains like China's anti-monopoly enforcement that have unclear standards[.]"); see also Olhausen, *supra* note 70 ("Some commentators have complained that too often the Chinese anti-monopoly authorities themselves operate behind a screen, providing parties and other observers little insight into their thinking or deliberations.").

## B. ELIMINATING CONFLICTS OF INTEREST WITH THE NCAA, AFFILIATE SCHOOLS, AND AGENTS

In furthering the goal of effective NIL legislation, Florida must also consider the problems that could potentially arise with the NCAA, affiliate schools, and sports agents representing student-athletes.<sup>72</sup> One problem is the NCAA's overreach<sup>73</sup> into the NIL realm.<sup>74</sup> While it has stated that student-athletes will be "permitted to benefit from the use of their NILs in a manner consistent with the collegiate model[.]" one commentator said this can severely limit opportunities to just endorsing "the NCAA, its member institutions and branding partners in licensing agreements with NCAA institutions (e.g. Nike)."<sup>75</sup> Additionally, affiliate schools benefit from the success of their partnership with the NCAA, which can grow into potential for conflict of interest in regulating NIL

<sup>72</sup> See *Criticism of April 29 NCAA Board of Governors' Guidelines for Future NCAA and Federal NIL Legislation*, DRAKE GRP. (May 11, 2020), <https://www.thedrakegroup.org/wp-content/uploads/2020/05/May-8-NCAA-NIL-Position.pdf> ("Drake maintains that neither the higher education institution nor the NCAA should play the role of business manager or business partner for athletes engaged in outside employment."); see also Michael McCann, *Sports Agents and College Athletes: Is the FTC the Answer?*, SPORTICO (July 29, 2020, 9:08 AM), <https://www.sportico.com/law/analysis/2020/sports-agents-college-athletes-feds-1234610203/> (quoting a D.C. attorney: "There needs to be [a watchman] over agents who peddle false promises to naïve 18- and 19-year olds[.]").

<sup>73</sup> See Branch, *supra* note 39 (describing the NCAA as a "spectacularly profitable cartel" after securing a \$3.1 million per football season television deal); see also Ronald Deiter, *NCAA a Monopoly?*, IOWA STATE UNIV., <https://www.econ.iastate.edu/ask-an-economist/ncaa-monopoly> (last visited Dec. 31, 2021) (stating that most of the NCAA's \$1 billion yearly revenue "comes from their 'monopoly' power to sell broadcast rights to the NCAA post-season basketball tournament.").

<sup>74</sup> See *Should the NCAA Be Abolished?*, WALL ST. J. (Oct. 27, 2020, 12:00 PM), <https://www.wsj.com/articles/should-the-ncaa-be-abolished-11603814400> (quoting sports business professor B. David Ridpath: "In reality, the organization has become an unwieldy bureaucracy with a one-size-fits-all approach to governance that doesn't fit all schools, conferences or sports, and gives priority to moneymaking over education."); see also Fulton Caster, *Paying College Athletes Isn't the Problem, the NCAA Is*, UNIV. DAILY KANSAN (Oct. 19, 2018), [https://www.kansan.com/sports/paying-college-athletes-isnt-the-problem-the-ncaa-is/article\\_91e977c2-d3be-11e8-9531-e70b37694b70.html](https://www.kansan.com/sports/paying-college-athletes-isnt-the-problem-the-ncaa-is/article_91e977c2-d3be-11e8-9531-e70b37694b70.html) ("The thing is, the NCAA couldn't be further from the beacon of moral superiority it tries to pass itself off as.").

<sup>75</sup> Thomas Baker, *5 Issues To Keep An Eye On With the NCAA's New NIL Policy*, FORBES (Nov. 1, 2019, 11:40 AM), <https://www.forbes.com/sites/thomasbaker/2019/11/01/examining-the-ncaas-evolving-nil-policy-keep-an-eye-on-the-following-issues/>.

But there is some question as to whether the NCAA's new NIL policy will extend to permit athletes from seeking out their own sponsors. If so, will athletes be permitted to sponsor sports brands? And if that is permitted, will athletes be allowed to endorse sport brands that compete directly with the brands that have already partnered with the athlete's member institution?

*Id.*; see also *DI Council Introduces Name, Image and Likeness Concepts into Legislative Cycle*, NCAA (Oct. 14, 2020), <http://www.ncaa.org/about/resources/media-center/news/di-council-introduces-name-image-and-likeness-concepts-legislative-cycle> (describing several proposals by the NCAA for NIL changes to bylaws, including a measure that would allow "schools . . . to prohibit activities that conflict with school values or existing sponsorship arrangements.").



rights.<sup>76</sup> According to the Wall Street Journal, “the nonprofit NCAA in recent years has generated more than \$1 billion in annual revenue” while affiliated schools “reported annual athletics revenue of almost \$19 billion in total.”<sup>77</sup> Lastly, sports agents stand to make gains with the new NIL market: since student-athletes typically do not understand contract or intellectual property law, an agent can exploit his or her client.<sup>78</sup>

With both the NCAA and affiliate schools, conflicts of interest in regulating NIL rights can “produce motivated inferences that violate moral duties.”<sup>79</sup> Typically when conflicts of interest arise in different realms like business or the law, it is often recommended (and, in some cases, required by law) that the party who cannot make an unbiased decision remove themselves from the situation.<sup>80</sup>

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<sup>76</sup> See *Ending the College Sports Scandals*, FORBES (Oct. 4, 2017, 9:00AM), <https://www.forbes.com/sites/ccap/2017/10/04/ending-the-college-sports-scandals/> (“[P]eople love college football and basketball, and the entertainment value provides buckets of money for schools and media outlets. They are going to fight reform that endangers those revenues.”). But see Jim Delany & Andrea Williams, *No, Colleges Don’t Exploit Their Athletes*, CHICAGO TRIB. (Sept. 11, 2017, 5:55 PM), (arguing that student-athletes are not exploited by colleges and instead “are supported at the highest level with strong academic and counseling resources, outstanding facilities, high-quality medical care, unlimited meals and basic benefits the critics take for granted, including scholarships covering tuition, room and board to stipends for living expenses.”).

<sup>77</sup> *Should the NCAA Be Abolished?*, *supra* note 74 (observing that “[t]he NCAA says it remains focused on education, well-being and fairness, but critics question whether the organization’s policies on amateurism, compensation and educational opportunity are really in the best interests of college athletes.”); see also Steve Cameron, *The NCAA Brings in \$1 Billion a Year – Here’s Why It Refuses to Pay Its College Athletes*, BUS. INSIDER (Mar. 26, 2019, 10:14 AM), <https://www.businessinsider.com/ncaa-college-athletes-march-madness-basketball-football-sports-not-paid-2019-3> (“There is nothing inherently wrong with a sporting tournament making huge amounts of money, but there is something slightly troubling about a billion-dollar sports enterprise where the athletes are not paid a penny.”).

<sup>78</sup> See Bernstein, *supra* note 55 (quoting David Shaw, who says that due to the lack of contract experience student-athletes have, there should be “an educational process for them all coming into college guide to restrictions for agents representing young people to some kind of a tiered punishment for those that violate the trust of young people.”); see also Claudine McCarthy, *Expert Offers Insight into NIL Opportunities Coming Up the Pike for Your Student-Athletes*, 17 COLL. ATHLETICS & L. 6, 1, 5 (Sept. 2020) (“Student-athletes need to understand if they’re agreeing to the use of their name, image, and likeness (which might be referred to in a contract as intellectual property and/or photos) before, during, or even after a particular event or when an agreement expires.”).

<sup>79</sup> Paul Thagard, *What’s Wrong With Conflicts of Interest?*, PSYCH. TODAY (Jan. 30, 2017), <https://www.psychologytoday.com/us/blog/hot-thought/201701/what-s-wrong-conflicts-interest> (“Conflicts of interest occur when people make decisions that are biased by their personal goals, in neglect of obligations to others.”); see also Troy Segal, *Conflict of Interest*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/conflict-of-interest.asp> (last modified Nov. 30, 2020) (“In business, a conflict of interest arises when a person chooses personal gain over duties to their employer, or to an organization in which they are a stakeholder, or exploits their position for personal gain in some way.”).

<sup>80</sup> See Segal, *supra* note 79 (describing situations where a party with a conflict of interest will remove themselves from a situation, such as “judges who have a relationship with one of the parties involved in a case or lawsuit will recuse themselves from presiding over the case.”); see also Thagard, *supra* note 79 (“So, what can be done about conflicts of interest? The best strategy by far is simply to avoid them, by having professionals completely steer clear of situations where they have to juggle their legal responsibilities against their personal goals.”).

#### IV. SOLUTION: HOW FLORIDA CAN BECOME THE “AMBASSADOR OF QUAN” FOR STUDENT-ATHLETES

In promoting an open market through healthy competition<sup>81</sup>, the Florida legislature should adopt a model proposed (that would be used at the national level, should federal legislation pass) by The Drake Group, an organization founded in 1999 that formed with the goal of “end[ing] academic corruption in college sport[s].”<sup>82</sup> The Drake Group has also expressed the same concerns as commentators: while student-athletes should be receiving NIL compensation, the NCAA and its affiliates are ill-equipped to regulate the process.<sup>83</sup> In its position statement, “Compensation of College Athletes Including Revenue Earned from Commercial Use of Their Names, Images, and Likenesses and Outside Employment,” the Drake Group recommends the formation of a “NIL Commission” (“Commission”) that would “be responsible for setting standards” and overseeing NIL compensation contracts.<sup>84</sup> The Commission would create and

<sup>81</sup> See Chris Seabury, *The Cost of Free Markets*, INVESTOPEDIA, <https://www.investopedia.com/articles/economics/08/free-market-regulation.asp> (last modified June 23, 2021) (listing benefits of free markets, including “economic growth and transparency[,]” “competitive markets[,]” and contributions “to political and civil freedom . . . since everyone has the right to choose what to produce” and consume). *But see* Prateek Agarwal, *Free Market*, INTELLIGENT ECONOMIST (Apr. 16, 2020), <https://www.intelligenteconomist.com/free-market/> (noting that a downfall to free markets is “[e]xcessive power of firms” that can “dominate certain markets”).

<sup>82</sup> *History*, DRAKE GRP., <https://www.thedrakegroup.org/about/history/> (last visited Dec. 31, 2021) (describing the founding of The Drake Group); *see also Congress Granting a Conditional Limited Antitrust Exemption to the NCAA and Its Member Institutions*, DRAKE GRP., <https://www.thedrakegroup.org/2013/06/04/congress-granting-a-conditional-limited-antitrust-exemption-to-the-ncaa-and-its-member-institutions/> (last visited Dec. 31, 2021) (“[A]thletes must be allowed to continue to bring antitrust actions to protect their education benefits, outside employment and NIL compensation freedoms apart from their limited permission to grant NIL use for participation in collegiate athletic events.”).

<sup>83</sup> See Andrew Zimbalist, et al., *Position Statement: Compensation of College Athletes Including Revenues Earned from Commercial Use of Their Names, Images and Likenesses and Outside Employment*, DRAKE GRP., 5, <https://www.thedrakegroup.org/wp-content/uploads/2020/08/8-3-20-FINAL-Drake-NIL-Position-Paper.pdf> (last modified Aug. 8, 2020) [hereinafter *Position Statement: Compensation of College Athletes*] (“The Drake Group believes that national-sport-governing-organizations and their member institutions lack policies that protect college athletes from educational fraud, ensure the integrity of the educational degrees they are awarded, and insulate athletes from the professional misconduct of coaches and other personnel.”). *But see* Ekow N. Yankah, *Why N.C.A.A. Athletes Shouldn’t Be Paid*, N. YORKER (Oct. 14, 2015), <https://www.newyorker.com/sports/sporting-scene/why-ncaa-athletes-shouldnt-be-paid> (expressing disagreement with the notion of student-athletes being paid, namely because it fails “to recognize the value of sports as a part of education.”).

<sup>84</sup> Zimbalist, et al., *supra* note 83, at 2, 4 (explaining that “the institution or its representatives of athletics interests cannot directly or indirectly initiate such arrangements, as currently specified by NCAA rules.”). *See* Donna Lopiano et al., *Position Statement: Critical Analysis of Proposed Models of College Athlete Compensation*, DRAKE GRP., <https://www.thedrakegroup.org/wp-content/uploads/2019/10/COMPENSATION-POSITION-PAPER-March-2.pdf> (last modified Mar. 2, 2019) (criticizing the NCAA’s “College-Athlete-As-Bona-Fide-Student” Model and offering recommendations to “better realize the potential of intercollegiate athletics as a unique and powerful developmental opportunity.”).

maintain “a publicly accessible and searchable database” of NIL agreements to make sure that “compensation be for services actually rendered at the going rate and other standards”<sup>85</sup> as well as “reveal [any] improper or suspicious employment practices of individual alumni or boosters.”<sup>86</sup> Schools and student-athletes will also submit forms attesting that both parties do not know how “employment has been arranged, directly or indirectly, by the institution’s employees, donors, athletic program sponsors or advertisers or other representatives of its athletics interests.”<sup>87</sup>

The Commission should also “receive, monitor, and adjudicate complaints concerning agents, attorneys, and third-party employers[,]” “establish standards for registration and approval of sports agents[,]” and establish standards for agent compensation.<sup>88</sup> These regulations will complement a prohibition on involvement by the NCAA and college institutions in the negotiation and enforcement process of NIL contracts to prevent bias, as discussed above, and encourage free trade.<sup>89</sup> Additionally, the NIL contracts themselves should fall outside the scope of the student-athlete’s school because student-athletes are not designated as “employees,” as prescribed by the Florida NIL statute, and to further prevent bias from the institutions themselves.<sup>90</sup>

<sup>85</sup> Zimbalist, et al., *supra* note 83, at 4 (stating that current prohibitions on student-athlete NIL compensation “precipitate under-the-table transactions”); *see also* Branch, *supra* note 39 (observing that after the NCAA released a 1991 report entitled “Keeping Faith With the Student Athlete,” reformers in 2001 “admit[ed] that problems of corruption and commercialism had ‘grown rather than diminished’ since the [1991] report.”).

<sup>86</sup> Zimbalist, et al., *supra* note 83, at 2, 4 (“[W]e believe that reporting requirements would reveal the improper practices of individual alumni or boosters.”); *see also* Branch, *supra* note 39 (“When you combine so much money with such high, almost tribal, stakes—football boosters are famously rabid in their zeal to have their alma mater win—corruption is likely to follow.”).

<sup>87</sup> Zimbalist et al., *supra* note 83, at 16 (recommending that Commission review and approve the proposed agreements); *see also* § 1006.74(2)(h) (“A postsecondary educational institution asserting a conflict . . . must disclose each relevant contract term that conflicts with the team contract to the intercollegiate athlete or her or his representative.”).

<sup>88</sup> Zimbalist et al., *supra* note 83 at 14–16 (recognizing that since “college athletes are not employees, no labor union exists to represent their interests[.]”); *see also* § 1006.74 (emphasizing that “[t]o preserve the integrity, quality, character, and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports, such compensation may not be provided in exchange for athletic performance or attendance at a particular institution[.]”).

<sup>89</sup> *See* Zimbalist et al., *supra* note 83, at 14 (“[S]uch national athletics governing organizations consists of higher education institution members that have a conflict of interest with regard to resolution of competing institution/athlete interests[.]”). *But see* Branch, *supra* note 39 (characterizing a statement by Myles Brand, former head of the NCAA, as “defend[ing] the economics of college sports by claiming that they were simply the result of a smoothly functioning free market[.]”).

<sup>90</sup> *See Criticism of April 29 NCAA Board of Governors’ Guidelines for Future NCAA and Federal NIL Legislation*, DRAKE GRP. (May 11, 2020), <https://www.thedrakegroup.org/wp-content/uploads/2020/05/May-8-NCAA-NIL-Position.pdf> (“[T]he only restrictive compensation rules that should be promulgated by the NCAA are those that prohibit professional athlete employment . . . and prohibit cash or other benefits provided by boosters or others for work not actually performed or at rates beyond fair market value.”); *see also* § 1006.74 (“[T]o maintain a clear separation between amateur intercollegiate athletics and professional sports, such compensation may not be provided in exchange for athletic performance or attendance at a particular institution[.]”).

The independent composition of the Commission itself will also aid in limiting conflicts of interest.<sup>91</sup> Some members of the Commission are recommended to be “economists with experience and expertise in settling prices based on marketplace benchmarks[.]”<sup>92</sup> Although outside the scope of this Comment, some commentators have suggested that student-athletes’ social media followings may help in calculating “yearly endorsement revenue potential” for NIL contracts.<sup>93</sup> Other members are recommended to “have experience and expertise in employment and sports law[.]”<sup>94</sup> Finally, some members should have experience in “higher education administration[.]”<sup>95</sup> Members’ tenure should be “at least two years removed from employment” in the NCAA or affiliate schools or related entities.<sup>96</sup>

Lastly, the Commission will help mandate education programs for financial literacy.<sup>97</sup> Since a student-athlete will be entering into deals for compensation, financial literacy is crucial to helping him or her understand his or her NIL contract.<sup>98</sup> As mandated by Section 1006.74(2)(k), “[t]he workshop shall also

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<sup>91</sup> Zimbalist et al., *supra* note 83, at 14 (“The Drake Group proposes the establishment of an independent NIL Commission to oversee the operation of a NIL Eligibility Center[.]”); *see also Independent*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/independent> (last visited Dec. 31, 2021) (defining “independent” as “not dependent: such as...not affiliated with a larger controlling unit”).

<sup>92</sup> Zimbalist et al., *supra* note 83, at 16–17 (further recommending that economists should be “appointed by the American Economic Association.”); *see also* Andrew Zimbalist, *Rescuing College Sports From Its Economic And Moral Abyss*, FORBES (Aug. 10, 2020, 10:27 AM), <https://www.forbes.com/sites/andrewzimbalist/2020/08/10/rescuing-college-sports-from-its-economic-and-moral-abyss/?sh=770e530f7c62> (noting that colleges experience a deficit every year by spending money on “famous coaches” and “top-notch training facilities” to satisfy stakeholders (like alumni, boosters, state legislators, and students) who pressure “for victories.”).

<sup>93</sup> AJ Maestras & Jason Belzer, *How Much Is NIL Worth To Student Athletes?*, ATHLETICDIRECTORU, <https://athleticdirectoru.com/articles/how-much-is-nil-really-worth-to-student-athletes/> (last visited Dec. 31, 2021) (estimating that “the annual NIL value per student-athlete could range from \$1,000 - \$10,000[.]”); *see also* Jacob Hancock, *How Much Money Joe Burrow, Cole Anthony and Other Top College Athletes Could Have Made with NIL Rights*, SPORTING NEWS (Apr. 7, 2020), <https://www.sportingnews.com/ca/ncaa-basketball/news/how-much-money-joe-burrow-cole-anthony-sabrina-ionescu-college-athletes-nil-rights/10qchbo3itue31jybwl4uqlpc> (stating that Joe Burrow, former quarterback for LSU and Heisman Trophy winner, was projected to earn \$700,000 if NIL rights were available).

<sup>94</sup> Zimbalist et al., *supra* note 83, at 17 (also recommending that they are appointed by the national Sports Lawyers Association and that two members “also have been college athletes[.]”); *see also* McCann, *supra* note 12 (listing other legal issues that involve NIL, including state right of publicity and antitrust).

<sup>95</sup> Zimbalist et al., *supra* note 83, at 17 (recommending that the American Council on Education should appoint the members and at least two should have been college athletes); *see also* McCann, *supra* note 12 (observing that “[t]he world of compliance officers in athletic departments is about to become much harder[.]”).

<sup>96</sup> Zimbalist et al., *supra* note 83, at 17 (defining what an “independent” member shall be).

<sup>97</sup> *See* Zimbalist et al., *supra* note 83, at 16 (“The Commission shall develop educational and instructional materials[.]”); *see also* FLA. STAT. § 1006.74(2)(k) (2021) (“A postsecondary institution shall conduct a financial literacy and life skills workshop for a minimum of 5 hours at the beginning of the intercollegiate athlete’s first and third academic years.”).

<sup>98</sup> *See* Brianna McGurran, *What Is Financial Literacy and Why Is it Important?*, EXPERIAN (June 8, 2021), <https://www.experian.com/blogs/ask-experian/what-is-financial-literacy-and-why-is-it->

include information on time management skills necessary for success as an intercollegiate athlete and available academic resources.”<sup>99</sup>

## V. CONCLUSION

Florida is one of the first states in the United States to have an active law guaranteeing NIL rights to student-athletes.<sup>100</sup> To prevent price-fixing between the NCAA and affiliate schools,<sup>101</sup> further antitrust violations by the NCAA,<sup>102</sup> and conflicts of interest with agents and other related parties,<sup>103</sup> Florida should adopt an independent commission that oversees NIL compensation contracts.<sup>104</sup> This will ensure a transparent NIL market that is free from the potential of price-fixing while also limiting the occurrence of conflicts of interest.<sup>105</sup> In following the aforementioned, Florida will become the “Ambassador of Quan” while student-athletes shout with glee, “show me the money!”<sup>106</sup>

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important/ (“Financially literate consumers can manage money with confidence”, which means effectively allocating their earnings to their goals and limiting or attacking their debt); *see also* § 1006.74(2)(k) (“The workshop shall, at a minimum, include information concerning financial aid, debt management, and a recommended budget for full and partial grant-in-aid intercollegiate athletes based on the current academic year’s cost of attendance.”).

<sup>99</sup> § 1006.74(2)(k) (stating that the workshop will not cover anything related to marketing and advertising); *see also* *Financial Education for College Students: 3 Reasons Why It’s Important*, VECTOR SOLUTIONS (Sept. 28, 2021), <https://www.vectorsolutions.com/resources/blogs/financial-education-for-college-students-3-reasons-why-its-important/> (reporting that financial literacy for “college students encourages family conversations, hands-on learning opportunities, and financial independence.”).

<sup>100</sup> *See* Wallace, Jr. & Misichko, *supra* note 8 (noting that Florida NIL law “will be the first NIL law implemented in the United States.”); *see also* Associated Press, *supra* note 7 (“Florida Gov. Ron DeSantis on [June 12, 2020] signed into law a bill that will allow college athletes in the state to earn money from endorsement deals.”).

<sup>101</sup> *See supra* Section II.A (describing price-fixing conspiracy of NCAA and affiliate schools); *see also* *Alston v. NCAA (In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.)*, 958 F.3d 1239 (9th Cir. 2020) (affirming the trial court’s finding that the NCAA and affiliated schools illegally price fixed “grant-in-aid” for student-athletes).

<sup>102</sup> *See supra* Section II.B (describing the United States Supreme Court ruling that found the NCAA in violation of antitrust law); *see also* *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141 (2021), *aff’d*, 958 F. 3d 1239 (9th Cir., 2020) (affirming the lower courts holding that “NCAA failed to establish that the challenged compensation rules have any direct consumer demand,” NCAA enjoyed the power to set wages, and the NCAA could have used less restrictive alternatives of delivering the same precompetitive benefits).

<sup>103</sup> *See supra* Section II.C (describing scandals of conflicts of interest in college sports).

<sup>104</sup> *See supra* Part IV (proposing an independent commission to oversee NIL contracts in Florida); *see also* Zimbalist et al., *supra* note 83, at 2 (“[W]e propose that an independent NIL Commission be responsible for setting standards” for NIL licensing).

<sup>105</sup> *See supra* Part III (describing the benefits of transparency in regulation and conflicts of interest Florida must consider); *see also* Grimes, *supra* note 68 at 943 (explaining that one of the goals of transparency in antitrust regulation is to foster public confidence, through pre-decisional transparency, which “can be a form of due process, allowing affected parties an opportunity to offer submissions that can avoid unfair or unjust results.”).

<sup>106</sup> This movie demonstrates how excited student-athletes will be once they can earn profits from their NILs - just as excited as Rod Tidwell when he said, “I wanna make sure you’re ready, brother. Here it is: Show me the money. Oh-ho-ho! SHOW! ME! THE! MONEY! A-ha-ha! Jerry, doesn’t it make you feel good just to say that!” JERRY MAGUIRE, *supra* note 1.