

Before We Get Started

Remember to register your attendance and complete session evaluations.

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Attendance



Online Handouts



Session Evaluations



Introduction to the UIL Fall Topic 2022

**Resolved: Amateur status ought to be valued above
commodification of Name Image Likeness.**

Evaluating the Topic

**Resolved: Amateur status ought to be valued above
commodification of Name Image Likeness.**

**Resolved: Amateur status ought to be valued above
commodification of Name Image Likeness.**

What is “amateur status?”

Amanda Jones, (JD Candidate), NORTHWESTERN UNIVERSITY LAW REVIEW,
2021-2022, p. 1330.

Amateurism in sports is a concept referring to any practice of that sport on an unpaid basis for pleasure, rather than a professional basis for profit. The concept of amateurism is central to any discussion of student-athlete compensation. Because compensation distinguishes amateur sports--including college sports--from professional sports, student athletes are considered amateur athletes since they are not paid.

Resolved: Amateur status ought to be valued above commodification of Name Image Likeness.

What is meant by “ought to be valued above?”

This resolution does not specify a value, leaving that issue up to debaters to determine. The possibilities?

Likely Affirmative Positions:

Justice as Fairness (competitive balance)

Aristotelian concept of “Virtue Ethics” . . . The development of character

Communitarianism: The importance of youth sports to community

Likely Negative Positions:

Kant’s Categorical Imperative: Never treat people merely as a means to an end

Right to Self (a subset of individualism and right to property)

Freedom of Speech (includes freedom of commercial speech)

Resolved: Amateur status ought to be valued above commodification of Name Image Likeness.

What is “Name Image Likeness?”

Stacy Mickles, (Sports Journalist, Sportscasting), WHY THE NIL IS GOING TO BE A DISASTER FOR THE NCAA, July 2, 2021. Retrieved Aug. 28, 2022 from <https://www.sportscasting.com/nil-going-disaster-ncaa-idea/>

The NIL stands for name, image, and likeness. It basically means any business can approach a student-athlete and ask them if they can use their name, image, or likeness to endorse their products.



**GAME CHANGER?
CALIFORNIA'S FAIR PAY TO PLAY ACT
AND THE FUTURE OF COLLEGE SPORTS**

Signed by Governor Newsom on Aug. 31, 2021



GAME OVER?
ALSTON AND THE FUTURE OF
PAY-FOR-PLAY IN COLLEGE SPORTS

Decision Written by Justice Neil Gorsuch, Nov. 10, 2021

“The NCAA couches its arguments for not paying student athletes in innocuous labels. But the labels cannot disguise the reality:

The NCAA’s business model would be flatly illegal in almost any other industry in America.”



NCAA Interim NIL Rule (June 30, 2021):

Allows all NCAA D1, D2 and D3 student-athletes to be compensated for their NIL as of July 1, 2021, regardless of whether their state has a NIL law in place or not.

NAME, IMAGE & LIKENESS

ONE YEAR OF
NIL



So, NIL is now a thing, but is it a good thing?

“While the general public assumes university athletics programs are rolling in the dough, the NCAA reports that only twenty-four athletic departments in the country turned a profit in 2015, and that the median loss among 129 schools in the Football Bowl Subdivision--the sport's highest college level with the highest revenue streams--was \$ 18 million that year.” SMU LAW REVIEW, Apr. 2021, p. 83

“The funds generated from the revenue generating sports of men’s basketball and FBS football are partially used to subsidize all other sports. And, because the non-revenue generating sports are reliant on football and basketball revenues, it is typically those non-revenue generating sports that get cut when football and basketball are not as lucrative. Increased costs, such as those resulting from student-athlete compensation, will inevitably lead to more of these cuts.” MARQUETTE SPORTS LAW REVIEW, Fall 2018, p. 281

AFF Issue No. 1: College athletic programs are already losing money; NIL takes away money that would otherwise support sports, including non-revenue sports.

Mark Ziegler, (Sports Journalist, San Diego Union-Tribune), NIL WAS SUPPOSED TO FIX COLLEGE SPORTS; INSTEAD, IT'S BECOME A PAY-FOR-PLAY FREE-FOR-ALL, Apr. 22, 2022. Retrieved Aug. 28, 2022 from <https://www.sandiegouniontribune.com/sports/aztecs/story/2022-04-22/zeigler-college-sports-nil-name-image-likeness-recruiting-collectives-payouts>

There are other dangers, most notably the loss of locker room camaraderie among players with unequal NIL deals and a widening resentment on campuses between regular students riding bikes and entitled student-athletes driving Porsches. And who's responsibly managing all that money for them, or advising them on filing taxes? And what about the pressures now heaped on 18-year-olds? If they don't meet expectations, it's no longer, hey, they're just college students trying to balance academics and athletics. It's: We spent \$8 million on this guy?

AFF Issue No. 2: Paying athletes via NIL will destroy the teamwork and loyalty to school that makes intercollegiate sports special.

Ray Yasser, (Prof., Law, U. of Tulsa College of Law),
HARVARD JOURNAL OF SPORTS AND ENTERTAINMENT
LAW, Winter 2021, p. 196.

Under a "pay-to-play" scheme, there would be nothing stopping wealthy philanthropists or donors like George Kaiser or Michael Case from paying the best quarterback prospect available to attend the University of Tulsa or well-connected alumni like Jerry Jones from paying the best point guard to attend the University of Arkansas. Wealthy donors could have an outsized influence on competitive balance of major college sports.



AFF Issue No. 3: Paying athletes via NIL is unfair because it will undermine competitive balance; even professional sports have a salary cap. No limits for NIL.

Brian Bunner, (JD, U. of Pittsburgh School of Law), PITTSBURGH TAX REVIEW, Spring 2021, “NIL Bills: An Examination of the Implications of Compensating College Athletes Under Name, Image and Likeness Legislation,” p. 365.

If university athletics programs were to lose their tax-exempt status under NIL bills as unrelated business income, then athletic scholarships might be considered compensation for student-athletes' performance in the sport as well. Student-athletes would then no longer be entitled to exclude scholarship funds from their federal gross income, subjecting them to federal income tax upon receipt of the scholarship.

Rick Burton, (Prof., Sports Management, Syracuse University), YOUTH SPORTS NIL, Dec. 9, 2021. Retrieved Aug. 25, 2022 from <https://www.sportico.com/leagues/college-sports/2021/high-school-nil-1234648024/>

All over the U.S., parents and legal guardians are seeing the benefits of little Tara or Taamir earning some cash for the family. And many want in. Regardless of whether they have any real chance of playing in the pros. Why? Because the rules restricting amateurism are largely gone, and money is flooding toward those offering NIL relationships. The professor in the office next to mine is currently raising a future hockey star who just signed his first social media NIL endorsement at the age of 12.

McKenna Walsh, (JD), CREIGHTON LAW REVIEW, 2021, "Commodification of College Athletes' Name, Image, and Likeness," p. 96.

The commodification of college athletes "Name, Image, and Likeness" ("NIL") introduces a series of harmful consequences. Coercion relies on the notions of autonomy, consent, and inequality. Every school, and state, will be coerced into allowing athletes to profit off their NIL. Corruption is the idea "that an exchange 'corrupts,' 'taints,' or 'denigrates' the things being exchanged." Corruption happens when exchanges cause harm to our judgment. Both academics and the student body of institutions will be corrupted by allowing players to profit off their NIL.

AFF Issue No. 6: College athletes should be students first; NIL destroys this dynamic, undermining character development.

James Heckman et al., (Nobel Prize Winning Professor of Economics at the U. of Chicago), ENDING AMATEURISM WOULD BE DISASTROUS FOR STUDENT-ATHLETES, Mar. 10, 2019. Retrieved Aug. 20, 2022 from <https://thehill.com/opinion/education/542471-ending-amateurism-would-be-disastrous-for-student-athletes/>

In addition to debt-free college, which is worth hundreds of thousands of dollars, student-athletes receive coaching and counseling that pays off throughout life. The economics literature recognizes that even a year of college has measurable benefits. Student-athletes learn the valuable life skills of discipline and teamwork. They learn to cooperate with people of diverse backgrounds. These activities shape character, with lifetime consequences. In addition, college athletics is a platform connecting students, academics, alums and fans more generally. This network has far-reaching benefits. Together, these are lifetime 'game changers.'

AFF Issue No. 7: College athletes receive adequate compensation from scholarships and cost-of-attendance stipends.

Johnny McGonigal, (Sports Reporter, Pittsburgh Post-Gazette), NAME-IMAGE-LIKENESS DEALS CREATE ARMS RACE FOR ELITE TALENT, May 8, 2022. Retrieved Aug. 25, 2022 from Nexis Uni.

A prime example of that is John Ruiz, a billionaire lawyer in Miami who has signed more than 100 Hurricanes athletes to NIL deals. Mr. Ruiz announced on his Twitter account that University of Miami basketball had received a commitment from Kansas State University guard Nijel Pack and that he signed the star to a two-year, \$800,000 deal.



AFF Issue No. 8: NIL collectives have ushered in a supposedly banned system of “pay for play” – it is open season for boosters with billions.

Charles Hallman, (Sports Journalist, Minnesota Spokesman-Reporter),
CONTROVERSY GROWS OVER WHO BENEFITS FROM NIL DEALS, Jan. 25, 2022.
Retrieved Aug. 28, 2022 from <https://spokesman-recorder.com/2022/01/25/controversy-grows-over-who-benefits-from-nil-deals/>

Dr. Louis Moore, a history professor at Grand Valley State (Mich.) University, wrote for GSM in December that “who gets attention and strikes deals [by race] is not new,” adding that “ultra-talented Black women” won’t get the big NIL deals as their White counterparts. “When women athletes first started to sign major NIL deals in basketball, it was the White ballers who hit big,” he stressed. “The majority of Black women athletes won’t get their rightful share of endorsements because American companies don’t value their presence and don’t see them as marketable.”



Issue No. 10: Maybe there is too much money in college athletics. Justifying NIL by looking at the money now made by athletic programs and coaches, commits the logical fallacy of pointing to a second wrong. It may be true that there is already too much money in intercollegiate sports . . . NIL just makes it worse.

To fix the NCAA, Restore Amateurism to College Sports



The rise in salaries, obsession, and media sympathy for celebrity athletes is tearing at the fabric of a society whose long-term success depends more on promoting robust and equitable interest among young people in STEM fields and other disciplines than it does on growing interest among young people in playing professional sports. A small but vital chorus laments the overwhelming passion among many youth who aspire to careers in sports or music while interest in other fields of more academically rigorous contribution wanes. The media bears a lot of blame in creating this dysfunction.

A key component of reversing this trend is restoring amateurism to amateur sports.

Ashley Jo Zaccagnini, (JD Candidate), SMU LAW REVIEW, Apr. 2021, “Time's Up: A Call To Eradicate NCAA Monopsony Through Federal Legislation,” Apr. 2021, p. 90.

No longer does amateurism suffice to justify the NCAA's immunity from scrutiny in society at large or within the court system. No longer should student-athletes be forced to sacrifice their bodies, academic potential, and futures for the sake of generating revenue for a corporation that brings in \$ 1 billion a year, which it is too greedy to share.



NEG Issue No. 1: Amateur status takes unfair advantage of college athletes – they are the source of the billions now being made in intercollegiate athletics.

Taylor Thompson, (JD Candidate), IOWA LAW REVIEW, Mar. 2022, “Maximizing NIL Rights for College Athletes,” p. 1361.

While most athletic departments currently operate at a deficit, claims that schools cannot afford to pay college athletes is hard to reconcile with how that money is actually spent. One contributor to the deficit spending common among athletic departments has been the increasing cost of coaching salaries. In fact, in 2020 the reported salaries of 84 out of the 130 FBS schools exceeded \$ 1 million last year.



NEG Issue No. 2: The claim that college sports programs lose money is bogus.

Courtney Seams, (JD Candidate, George Washington U. Law School), BUSINESS AND FINANCIAL LAW REVIEW, Apr. 2022, “How Name, Image, and Likeness Reforms are Eroding Amateurism in the NCAA and How that Will Affect the NCAA's Tax-Exempt Status,” p. 51.

With the new constitution, the NCAA has seemingly given up on the principle of amateurism by not including it in the constitution. In fact, the new constitution allows for NIL monetization and only mentions that athletes cannot be paid to participate in the sport.



Taylor Thompson, (JD Candidate), IOWA LAW REVIEW, Mar. 2022, "Maximizing NIL Rights for College Athletes," p. 1362.

In 2014 alone, the public schools of the Power Five conferences directed over \$ 772 million to improving, paying down loans, or maintaining athletic facilities. The increased spending on athletic facilities "is one of the biggest reasons otherwise profitable or self-sufficient athletic departments run deficits."



NEG Issue No. 4: Even the NCAA has backed away from its defense of amateur status.

Ashley Jo Zaccagnini, (JD Candidate), SMU LAW REVIEW, Apr. 2021, “Time's Up: A Call To Eradicate NCAA Monopsony Through Federal Legislation,” Apr. 2021, p. 76.

The argument that athletes deserve to be paid as a matter of basic fairness is even more compelling given the statistics on student-athlete poverty. According to a study conducted by the National College Players Association, 85% of student-athletes, including those receiving scholarship money, live below the poverty line.

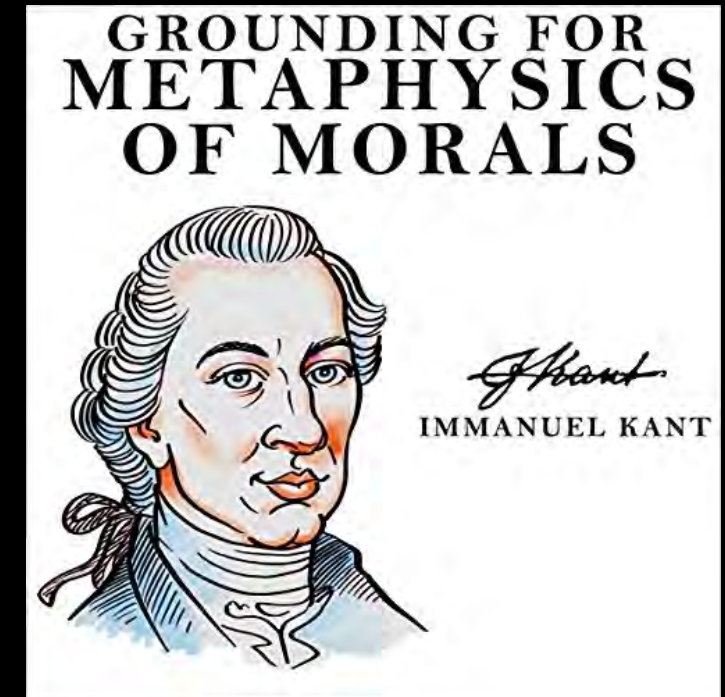


NEG Issue No. 5: Before NIL, most athletes lived below the poverty line.

Tyler Andrews, (Master's Thesis, U. of North Florida),
FAIR PLAY: AN ETHICAL EVALUATION OF THE NCAA'S
TREATMENT OF STUDENT ATHLETES, 2013.

<https://digitalcommons.unf.edu/cgi/viewcontent.cgi?article=1379&context=etd>

[Philosophy professor] Peter French criticizes the current system, stating that college athletes are “being treated as mere means to an end from which they only marginally benefit, if at all.” French is invoking the Kantian principle of respect for persons here, arguing that the current system fails to respect the rational nature of the players.



Mitchell Crusto, (Prof., Law, Loyola U. at New Orleans College of Law), WASHINGTON & LEE LAW REVIEW, Spring, 2022, "Right of Self," p. 535.

This Article argues that Right of Self is an inherent, fundamental, and constitutionally based right of every person in America. It shows how the failure to embrace and protect that right has resulted in a particular form of inequity, which I call "intergenerational wealth displacement." This inequity is rooted in race, gender, status, age, and class differences. To redress it, this Article proposes a model code that policymakers should adopt to recognize Right of Self as a fundamental right and to broadly apply it to protect people from the exploitation of their name, image, and likeness.



NEG Issue No. 7: The right to commodification of NIL is inherent in the Right of Self.

Leeann Lower-Hoppe, (Prof., Sports Management, Ohio State U.), U. OF DENVER SPORTS & ENTERTAINMENT LAW, Fall 2020, “The Right Way to Pay Intercollegiate Student-Athletes: A Legal Risk Analysis,” p. 66.

The First Amendment to the U.S. Constitution is designed to protect individual rights from government action. The right protected under the First Amendment that is most relevant to the issue of allowing student-athletes to profit from their NIL is the freedom of speech. According to the First Amendment, state actors--such as public institutions--cannot abridge an individual's freedom of speech, which includes both verbal and silent expression. Within the athletics domain, if student-athletes were to engage in advertisement or endorsement initiatives, their expression -- including the use of sponsored products -- is protected.

NEG Issue No. 8: The right to commodification of NIL is inherent in Freedom of Speech.

Timothy Winkler, (Editor), UMKC LAW REVIEW, Fall 2021, “The End of an Error: Reforming the NCAA Through Legislation,” p. 237.

Out of the top 100 football recruits, ninety-nine percent attend schools in the NCAA's Power Five conferences, the five richest conferences in college athletics.



Paul Myerberg, (Staff, USA Today), FAILURES, SUCCESSES, UNKNOWNNS ONE YEAR INTO NIL, July 1, 2022. Retrieved Aug. 25, 2022 from Nexis Uni.

But the biggest impact of NIL is seen in the large deals signed by female athletes in non-revenue-generating sports; more so than any legislation this side of Title IX, NIL has created enormous gender equality where none previously existed.

