

**Scope of Act Report for the Uniform Law Commission Study Committee on College Athlete Name, Image, and Likeness Issues; Prepared by Professor Gabe Feldman  
September 18, 2020<sup>1</sup>**

**Background**

This memo sets forth a list of potential issues to be considered by the Uniform Law Commission (ULC) Committee on College Athlete Name, Image, and Likeness (NIL) Issues in drafting a uniform NIL Act. For further background on the NIL issues, please see the ULC Study Committee Report. This memo provides a brief overview of the relevant perspectives for each issue, listing arguments in favor and against where appropriate. Before delving into the specific issues, it is helpful to provide the broader context and themes that underly each potential aspect of the Act.

The legislation proposed (or enacted) at the federal, state, and NCAA<sup>2</sup> levels generally seeks to provide college athletes with the right to receive compensation for the commercial use of their NIL. The impetus for this legislation stems from a variety of reasons, including the basic notion that college athletes should be treated similarly to non-athlete students, and that college athletes—like non-athlete students and virtually everyone else in this country—have a property right to their NIL, more broadly known as the “right of publicity.” The legislation tends to reflect the idea that college athletes should be given more economic rights, including the ability to monetize the value they have created in their NIL.

The NCAA and its member institutions have expressed support for providing college athletes with greater NIL rights but have also raised a number of potential concerns. Several “guardrails” and restrictions have been suggested to allay these fears. The following is a broad overview of the issues and goals the NCAA has emphasized in relation to expanding NIL rights. Each of these issues will be discussed in more detail below.

- Prevent NIL payments from being used as a means of or disguise for paying athletes based on their athletic ability (i.e., “pay for play”) or to otherwise circumvent the NCAA’s amateurism restrictions.
- Prevent NIL payments from eroding the distinctive character and product of amateur collegiate sports and blurring the line of demarcation between intercollegiate athletics and professional sports.
- Minimize the potential abuse of NIL payments as a recruiting tool and the use of NIL as a disguise for improper payments to induce a student-athlete to choose a particular school; help ensure that NIL payments to college athletes do not interfere with fundamental notion that “participation should be motivated primarily by education and

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<sup>2</sup> This memo refers specifically to the NCAA, but the Act itself will refer more generally to intercollegiate athletic associations, which will encompass the NAIA and other governing bodies.

by the physical, mental and social benefits to be derived,” and that college athletics should be an “avocation, not a vocation.”<sup>3</sup>

- Protect the educational mission of college athletics and help integrate the athletic and academic components of college athletes’ academic experiences; prevent NIL activities from interfering with class time, exams, and other academic commitments.
- Prevent “over-commercialization, which transposes the collegiate model into a system that more closely resembles the professional sports approach...where athletes are used by their teams and team sponsors to brand and promote products...and threatens the integrity of college sports.”<sup>4</sup>
- Prevent the exacerbation of competitive balance in college athletics.
- Provide an enforceable and transparent system that will not unduly burden institutional resources regarding compliance and oversight.
- Prevent displacement of corporate sponsorship money and other revenue used to support broad-based academic and athletic opportunities.
- Avoid disruption of team dynamics and interference with player/coach relationships.
- Minimize the impact of “crowdfund” recruiting.
- Enhance broad-based athletic opportunities as part of the educational model.
- Prevent college athletes from being characterized as employees rather than students.
- Promote diversity, inclusion, and gender equity.

### **Potential Scope of a Uniform Act**

A uniform act would likely need to address or consider the following areas, as well as additional areas to be discussed by the Committee:

#### **Issue 1:** What level of institutional involvement is appropriate for college NIL deals?

*Sub-issue (1):* Whether institutions can compensate college athletes or prospective college athletes directly or indirectly for the use of their NIL.

*Perspectives against direct or indirect compensation from universities to college athletes:* One of the primary goals of the NCAA and its member institutions is to ensure that compensation received by college athletes for NIL represents genuine payment for use of their NIL independent of, rather than payment for, athletics participation or performance. The NCAA and a number of independent thought leaders and organizations are thus strongly against permitting institutions to provide NIL compensation directly or indirectly to college athletes or to arrange for or facilitate NIL compensation to college athletes. The primary concern is that these payments would quickly threaten to become “pay for play” or would be virtually impossible to distinguish from pay for play. The NCAA has also long argued (and most courts have long

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<sup>3</sup> NCAA Bylaw 2.9

<sup>4</sup> Knight Commission on Intercollegiate Athletics Report (2010).

accepted) that one of the foundational elements that distinguishes professional sports from college sports is that institutions are prohibited from paying their college athletes for their athletics participation.

There is also a concern that NIL payments directly or indirectly from schools will be used as direct or indirect inducements during the recruiting process and will exacerbate recruiting advantages already held by some schools. And, in fact, multiple schools have already started promoting their NIL programs (before new rules and laws have even been enacted). The NCAA has emphasized that, unlike professional athletes—who are constrained by entry drafts, salary caps, and other restrictions—college athletes have unfettered freedom to choose their school/team. A fear is that if NIL deals are made contingent on a prospective college athlete's enrollment at a particular school, athlete will overemphasize NIL compensation at the expense of academics or athletics.

Similarly, the NCAA has argued that permitting schools to compensate college athletes directly or indirectly for their NIL will exacerbate competitive imbalance in college sports by allowing the schools with larger athletic budgets to spend more money to attract and retain college athletes.

*Perspectives in favor of permitting direct or indirect compensation from universities to college athletes:* The primary argument in favor of direct or indirect NIL payments from institutions to college athletes is that college athletes should be afforded the same NIL rights as non-athlete students, and there are minimal restrictions on NIL compensation from institutions directly or indirectly to non-athlete students. If a university is willing and able to pay a college musician, college actor, or other non-athlete student for their NIL, the university should be able to pay a college athlete for their NIL.

Those in favor of permitting schools to provide compensation directly to college athletes also note that institutions already spend millions on recruiting college athletes through facilities, coaches, and other amenities, many college athletes already choose their schools based on factors other than education (including the facilities, coaches, and other amenities) and that college sports is already competitively imbalanced.

*Sub-Issue (2):* Whether institutional involvement will be permitted for arranging or facilitating NIL deals for college athletes.

*Perspectives Against:* Similar to the direct/indirect payments discussed in *Issue 1*, the primary concerns regarding institutional involvement in facilitating or arranging NIL deals for college athletes is that institutional involvement will turn into a pay for play arrangement and be used as an improper recruiting or retention tactic. For example, rather than paying the college athlete directly for their NIL to remain at a particular school, the school would facilitate an NIL deal with a third party to entice the college athlete to remain at a particular school. As with the direct payments from the school discussed in *sub-issue 1*, the concern is that permitting institutions to set up, for example, licensing opportunities for their athletes, would blur the line

between college and professional sports, emphasize NIL compensation during recruiting and retention decisions, devalue the role of academic and athletic opportunities, and exacerbate competitive imbalance. A requirement that the athlete obtain the NIL deal independently (or with their agent), and without institutional involvement, is viewed as an important protection against potential abuse.

The NCAA has suggested that the following types of institutional involvement would be permitted:

- Providing educational programming for students on name, image and likeness and associated regulations.
- Assisting a student in evaluating opportunities, including compliance elements (e.g., booster engagement).
- Assisting with disclosure expectations.
- Assisting with evaluation of professional services.
- Assisting with a business activity that is developed as part of the college athlete's coursework.

*Perspectives in Favor:* The arguments in favor of permitting institutional involvement for arranging or facilitating NIL deals are similar to the arguments in favor of permitting the direct/indirect payments discussed in *sub-issue 1*—college athletes should be afforded the same NIL rights as non-athlete students, and there are minimal restrictions on the involvement of institutions in arranging or facilitating NIL deals for non-athlete students.

Additionally, many have noted that the concerns regarding recruiting and competitive imbalance are overblown given that the current system allows schools to spend heavily to recruit college athletes (on facilities, coaches, etc.) and has led to extreme competitive imbalance, where the “top” athletic programs consistently get the most highly-rated recruits.

*Sub-issue (3): Whether independent contractors of institutions can be involved in NIL deals:*

*Perspectives Against:* The same concerns expressed in *sub-issues 1* and *2* above are present here. The fear is that permitting an employee or contractor of the institution to be involved in an NIL deal for its college athletes will be difficult if not impossible to separate from more direct institutional involvement and would raise the same pay-for-play, recruiting, and competition issues discussed above. Examples of the types of independent contractors that might raise these issues include multimedia rights holders that sell or arrange institutional or conference sponsorships, or companies paid by the institution to manage and arrange its social media content.

*Perspectives in Favor:* The arguments in favor of permitting independent contractors to be involved in NIL deals are the same arguments discussed above in *sub-issues 1* and *2*.

*Sub-issue (4):* Whether college athletes can use institutional marks (e.g., wearing apparel with the school logo on it in a commercial, wearing a team jersey in a social media appearance) in NIL deals.

*Perspectives Against:* As with other forms of institutional involvement, the concern is that use of institutional marks by college athletes will permit schools to use NIL deals as a vehicle for pay for play, unduly influence athlete decisions in recruiting, and impact competitive imbalance. Part of the fear is that athletes who attend the top athletic programs with more valuable marks and logos will be able to earn more compensation in their NIL deals simply because their school's marks and logos are more valuable than the marks and logos of other schools. In other words, if an athlete knows they can receive a better NIL deal by attending (and using the marks of) School A than School B because School A's trademarks are more valuable, they might be inclined to choose School A because of the higher potential for NIL compensation. This could blur the line between pay-for-play and third-party payment for athlete NIL, be used by schools to recruit based on NIL payments, devalue academics, and exacerbate competitive imbalance.

Some have argued, however, that there should be a "fair use" exception that would permit the college athlete to reference the school and team they play for in NIL deals.

*Perspectives in Favor:* As with the other issues described above, the primary argument in favor of permitting the use of marks and logos is that college athletes should have the same rights as all other students on campus, and non-athlete students are generally permitted to use the marks and logos of their institutions (with consent and a license, if necessary). Additionally, proponents of use of marks and logos by college athletes argue that joint licensing deals (ie, where a third party pays for the right to use the athlete's NIL and the teams/organization's marks and logos) are more attractive to third parties and will provide more opportunities for revenue for both the schools and the athletes.

*Sub-issue (5):* Whether college athletes can enter into NIL deals with conflicting or existing institutional corporate partners. For example, if the institution has a sponsorship deal with a soft-drink company, can a college athlete enter into an NIL deal with a conflicting soft-drink company? Alternatively, can the college athlete enter into an NIL deal with the institution's soft-drink partner (ie, an existing institutional sponsor)?

*Perspectives Against:* A primary concern regarding permitting college athletes to enter into NIL deals with conflicting or existing institutional partners is the potential that corporate sponsors will reduce or eliminate broader financial sponsorship agreements with athletic departments (that benefit a broad array of college athletes and sports at that institution) in favor of lucrative individual NIL deals that benefit a relatively small number of athletes. Part of the fear is that this reallocation of funds will hinder an athletic department's ability to support Olympic sports and might lead to the elimination of a number of non-football and basketball programs across the country.

With respect to conflicting institutional sponsors, an additional concern is that some institutions have entered into exclusive agreements with third parties (e.g., equipment and apparel partners) that are important for helping to subsidize the broad-based athletic

opportunities at the institution and an individual athlete can “ambush” and devalue the institutional sponsor’s exclusive deal and thus diminish the funding available for all sports and athletes at the school. For example, if the institution has an exclusive sponsorship deal with Soft-Drink Company A, permitting a college athlete to enter into an NIL deal with Soft-Drink Company B will devalue the exclusivity (and overall value) of the institution’s deal with Soft-Drink Company A and shift sponsorship dollars from the institution to the individual athlete.

With respect to existing institutional sponsors, an additional concern is that the institution can use its existing sponsors to provide additional compensation to its college athletes and make NIL deals for the athlete contingent on the athlete attending that school, which would (as discussed above) blur the line between NIL compensation and pay for play, be used as a recruiting advantage by schools with larger institutional sponsor deals, devalue the role of academics in school choice, and exacerbate competitive imbalance. For example, if the institution has a sponsorship deal with Soft-Drink Company A, a college athlete may choose to attend that institution if they know they can obtain an NIL deal from Soft-Drink Company A by choosing to attend that school.

*Perspectives in Favor:* As discussed above, the primary argument in favor of permitting college athletes to enter into deals with existing and conflicting institutional sponsors is that they should be treated the same as all other students on campus, who are likely free to enter into NIL deals without significant restrictions. Additional arguments for permitting these deals are that the economic interests of the institutions should not take precedence over the rights of athletes to earn compensation for their NIL and that prohibiting deals with conflicting or existing sponsors will hinder and restrict the athletes’ ability to obtain NIL deals. And, in fact, a goal of expanding NIL rights is to redirect some of the revenue from the institution to the college athletes.

*A Potential Compromise Perspective:* A potential compromise solution is to restrict college athletes from promoting or endorse a conflicting commercial product during their competitive season, while permitting them to engage in deals with conflicting sponsors during all other times.

**Issue 2:** Whether any restrictions related to character and integrity will be placed on third parties who might enter into NIL deals with college athletes (e.g., will alcohol-related companies be permitted to do deals?).

*Perspectives in Favor:* There is an argument that certain categories of promotional activities (e.g., alcohol, marijuana, tobacco and sports gambling) should be precluded because they are inconsistent with the values of the NCAA and/or are illegal in certain jurisdictions. There is also an argument that certain categories of businesses should be precluded because of their history of encouraging or facilitating recruiting and other rules infractions.

*Perspectives Against:* The primary arguments against prohibiting broad categories of third party involvement are that college athletes should have the freedom—as non-athlete students do for the most part—to partner with any third party and/or that individual institutions should have the freedom to determine what (if any) categories of third party partners are prohibited.

**Issue 3:** Whether college athletes can utilize agents or other third party professionals to assist them in identifying and negotiating NIL deals.

*Perspectives on Limited Involvement of Third Party Professionals:* Although there is a general consensus that college athletes should be entitled to some type of representation in negotiating and executing their NIL deals, some argue that the involvement of these third party professionals should be limited to protect college athletes from unscrupulous actors. There is concern that the economic incentives of agents (given that agents typically receive a percentage of their client's earnings) will lead to agents advising athletes to sacrifice their academic and team responsibilities to earn additional NIL revenue. There is a fear that agents will push athletes to prioritize doing NIL deals that will benefit the athlete (and thus the agent) in the short term without sufficient regard for the impact on the athlete's education, team dynamics, etc. Similarly, there is a concern that increased agent involvement might allow the agents to influence the decision of the student to attend (or transfer to) a school based on financial opportunities for the student (and thus the agent, based on commission) and might lead the agent to attempt to influence roster and playing time decisions and obtain greater control over college sports. Another potential issue that has been raised is that permitting athletes to have agent representation for NIL deals will open the door for those agents to attempt to represent athletes in prohibited areas (e.g., representing the athlete in professional athletics opportunities, such as the NFL player draft). An additional issue is defining and limiting who can serve as the third party professional, with a particular emphasis on preventing university employees, contractors, or boosters from representing college athletes at their institutions. There is also a related issue of the appropriate limits of institutional involvement in vetting third party professionals/agents versus allowing institutions to select the third party professionals/agents for the athletes.

The level (if any) of disclosure requirements is also an issue, with some recommending full disclosure of fee arrangements with third party professionals to help ensure, among other things, that the fees are legitimate and are not used to mask pay-for-play arrangements. The possible models for regulation and oversight of agents is covered in *Issue 4*.

*Perspectives in Favor of Broad Agent Involvement for NIL:* There are three primary arguments in favor of permitting broad agent involvement regarding NIL activities, representing the athletes in NIL contract negotiations, and marketing of the athlete's NIL activities. First, non-athlete students have no restrictions on their ability to use professional representation in their NIL deals. Second, college athletes (like non-athlete college students) may need legal advice or guidance to navigate complex NIL negotiations and/or to evaluate NIL opportunities. College athletes who do not have adequate representation may be taken advantage of and harm themselves financially, legally, or reputationally. Third, the NCAA has loosened its restrictions on the use of agents in other areas and currently permits some men's basketball players to retain agents to help with decisions regarding professional basketball opportunities.

**Issue 4:** What type of mechanism is appropriate for certifying or regulating agents and other third party professionals?

There are several options with respect to potential regulation and oversight of agents and other third party professionals. A non-exhaustive list of non-mutually exclusive options includes:

- Expansion and active enforcement of the UAAA at the state level.
- Expansion and active enforcement of SPARTA at the federal level.
- Certification by a governing body (e.g., the NCAA, a third party entity, etc).
- Creation or expansion of professional advisory panels/agent advisory committees at the university level to cover NIL representation.

**Issue 5:** Whether minimum academic standards should be required for college athletes to participate in NIL deals.

*Perspectives in Favor:* The primary argument in support of requiring academic standards as a condition for receiving compensation for NIL is to maintain the appropriate focus on education and to mirror the academic requirements that already exist for eligibility to participate in athletics and to receive financial aid.

*Perspectives Against:* The primary argument against academic standards as a prerequisite for NIL deals is that no other students on campus are required to maintain minimum academic standards to have the ability to receive compensation for their NIL.

**Issue 6:** Whether group licensing in conjunction with institutional marks should be permitted.

*Perspectives Against:* The primary argument against permitting group licensing of athlete NIL rights in conjunction with university marks is that these joint group licensing deals (e.g., a trading card deal that features all of a university’s football players wearing their official team jerseys) would be used by universities as a form of pay for play and as a recruiting tool. There is also a concern that a joint licensing deal between the athletes and the university would open the door to other revenue sharing possibilities will blur the line between “student” and “employee.” The NCAA has also argued that there are “legal hurdles,” including identifying an entity to bargain on behalf of the athletes, that serve as a hindrance to group licensing.

*Perspectives in Favor:* The primary argument in favor of group licensing of athlete NIL rights in conjunction with university marks is that these joint group licensing deals can be lucrative sources of revenue (as they are in professional team sports such as the NBA, NFL, and MLB) for both the athletes and the institutions, given that the value of the athlete NIL is higher if university marks can be used, and the value of the university marks is higher if athlete NIL can be used. Revenue from group licensing might be the only opportunity to receive NIL compensation for the vast majority of athletes who are unable to do individual NIL deals. And, any potential abuse of group licensing or use as a recruiting tool can be policed or achieved through oversight and regulation of the deals.

There are many different possible models for sharing revenue among the players in a group licensing deal. Revenue could be shared equally among all athletes in a division, all athletes at a particular school, all athletes who play a particular sport, all athletes in a conference, etc.

**Issue 7:** Whether institutions should be required to provide NIL-related education to college athletes.

*Perspectives in Favor:* Opening the NIL market for college athletes will raise complex legal and compliance issues for college athletes, including potential intellectual property, tax, and other areas. The NCAA and institutions should bear the responsibility for educating athletes about these risks and prepare them to deal with agents, third parties, etc. Although institutions are not required to provide NIL education for non-athlete students, an argument for nonetheless requiring them to provide this education for athletes is that only athletes—and not other students—have been deprived of these rights and any incentive to understand them on their own.

*Perspectives Against:* The argument against requiring education for college athletes on NIL is that this further separates college athletes from non-athletes and potentially opens the door for recruiting abuses/pay for play disguised as educational offerings.

**Issue 8:** What guardrails or parameters are necessary to ensure the legitimacy of the NIL deals?

The following guardrails/parameters have been suggested as necessary to ensure the legitimacy of NIL deals, protect the integrity of college athletics, avoid pay for play, minimize recruiting abuses, and prevent a deepening of competitive imbalance. This list is non-exhaustive and these parameters are not mutually exclusive:

- Prohibition on universities, conferences, and their employees or independent contractors from providing or arranging for compensation to college athletes and prospective college athletes for the use of their NIL.
- NIL arrangements must be broadly consistent with fair market value.
- Institutions and conferences must not allow the commercial use of their trademarks and logos by or in association with their college athletes.
- The athlete, institution, and third party must certify that there are no side agreements or understandings of any kind.
- NIL deals must only be for work actually performed.
- Disclosure requirements for all NIL deals.
- Athletes may not sell items provided by the institution.
- Monetary limits on individual or total NIL deals.
- Limits on how much time athletes can spend on NIL deals.
- Deferred payment to athletes or placement of NIL money in a trust to be disbursed at a future time.
- Prohibition on group licensing deals in conjunction with institutional or conference marks.

**Issue 9:** Whether college athletes should be able to receive compensation for the use of their NIL in game broadcasts.

*Perspectives Against:* Multiple arguments have been raised to justify prohibiting college athletes from receiving money for the use of their NIL in game broadcasts, highlights, and related uses. One argument made by the NCAA in recent litigation is that college athletes have no cognizable NIL rights in game broadcasts (because of copyright preemption and because courts may consider live broadcasts to be outside the scope of state right of publicity laws). Although there is limited case law on this specific issue, some courts have agreed that “institutions do not need to receive permission from athletes to use their NILs in live, in-game broadcasts.”<sup>5</sup> Another argument is that compensation for NIL in game broadcasts—as compared to compensation for NIL in endorsement deals and other “non-game” uses—is difficult to distinguish from pay for performance. Paying athletes for the use of their NIL in game broadcasts thus might appear to be (or actually be) pay for play and blur the line between collegiate and professional athletics. Under this theory, institutions would be able to use athlete NIL in game broadcasts, highlight and historical videos, and promotional materials for the games without compensating the athletes.

*Perspectives Against:* Even if there is no clear legal right to receive compensation for their NIL in game broadcasts, broadcast revenue can still be shared with college athletes, as is done in professional team sports in the United States. Television revenue is a significant source of revenue for many FBS schools, and the argument is that some of the value of that revenue is attributable to the efforts of the athletes.

**Issue 10:** What institutions are covered by the legislation (e.g., does the legislation cover all colleges or only those that generate a certain minimum amount of revenue?)?

The general issue here is whether the Act should cover all colleges and universities, only 4-year institutions, or only institutions that generate a certain minimum amount of revenue (some states have considered exempting institutions that earn below a certain amount of revenue from their NIL legislation).

**Issue 11:** Whether and what type of regulatory body should oversee the NIL process and deals (e.g., an independent third party, the NCAA, etc.).

*Perspectives in favor of a separate regulatory body:* There are three primary argument in favor of creating a separate regulatory body to manage and oversee the NIL process. First, a separate entity can eliminate the potential conflicts of interest that would exist if the NCAA maintained control of the process as part of their normal governance structure. This can help ensure that college athletes are treated fairly and provide oversight by individuals who are not accountable to the NCAA. Second, the separate entity can be created as an independent body that

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<sup>5</sup> Keller v. Elec. Arts, 724 F.3d. 1268, 1271 (9th Cir. 2013).

incorporates views from a variety of perspectives—including college athletics, college athletes, marketing experts, economists, etc.—and can craft rules and policy that are in the best interests of college athletes and college athletics as a whole. Third, the regulatory body could relieve some of the compliance and monitoring burdens from the institutions, conferences, and NCAA. Some have recommended that Congress create an entity akin to the US Olympic Committee (through the Amateur Sports Act), while others have recommended that oversight rest with an existing federal agency (e.g., the FTC).

This entity could fill a number of roles, including the following:

- Create and update NIL rules and policy.
- Provide final approval or disapproval of NIL deals.
- Adjudicate disputes or challenges regarding NIL rules and policy.
- Serve as a registration clearinghouse for agents, third party professionals, and third parties who engage in NIL deals with athletes.
- Determine and enforce appropriate restrictions on NIL deals. This can include the determination of fair market value for particular deals, based on the US Copyright Board, FRAND, rate court, or other model.
- Serve as a clearinghouse for reporting and disclosure requirements for NIL deals.
- Operate as a compliance, monitoring and enforcement arm.
- Provide NIL-related education to all stakeholders (e.g., college athletes, administrators, coaches, third parties, agents, boosters, etc.)
- Provide a platform for college athletes to connect with third parties.
- Serve as a possible group licensing entity for college athletes.
- Collect and distribute NIL-related revenue.
- Investigate wrongdoing.

**Issue 12:** Whether there should be transparency, disclosure and reporting requirements for NIL deals. Such requirements could include disclosure of information to the institution, NCAA or other relevant entity regarding the terms of an NIL deal, the parties involved, the responsibilities and obligations of the parties, etc.

*Perspectives in favor:* The primary argument for including reporting requirements for NIL deals is that transparency and full disclosure can help provide support to college athletes, monitor third party, agent, and booster involvement, ensure integrity of the recruiting process, avoid and deter pay for play arrangements, and identify activities that may not align with the values of the NCAA or individual institutions. The transparency and reporting could also help identify a fair market value range for future deals.

*Perspectives against:* The primary arguments against disclosure requirements is that it places an additional burden on college athletes that is not placed on non-athlete students and adds a layer of cost and complexity to an NIL regime.

**Issue 13:** Whether any restrictions should be placed on the ability of boosters to enter into NIL deals with college athletes.

*Perspectives in favor:* The primary argument in support of restricting the ability of boosters to enter into NIL deals with college athletes is that the NCAA rules often treat boosters as identical to schools for rules purposes. Thus, the same reasons for prohibiting the institutions to enter into NIL deals with college athletes would apply to boosters. In other words, because boosters are often closely affiliated with universities, their involvement in NIL deals may be used as a vehicle for directing money to college athletes as a recruiting inducement and/or a way to pay college athletes for their athletics participation or performance.

*Perspectives against:* There are three primary arguments against restricting the ability of boosters to enter into NIL deals with college athletes. First, boosters (and their business interests) may be the entities most likely to have a genuine interest in paying for the rights to use college athlete NILs, so excluding boosters would exclude the largest potential source of NIL revenue for many college athletes. Second, any concerns about improper payments can be addressed by identified by the reporting and disclosure requirements and the guardrails in place to ensure that NIL payments do not serve as forms of pay for play or unfair recruiting inducements. Third, opening up a well-regulated market for NIL payments from boosters could help close the black market that has sprouted up to work around the current restrictions.

**Issue 14:** Whether the Act should create a right of action against the NCAA or institutions for interfering with the college athlete's right to receive compensation and be represented by an agent and/or create additional causes of action.

*General Perspective:* A cause of action could help increase compliance with the Act and act as a deterrent.

*Perspective Against:* A cause of action might lead to a flood of litigation, increased exposure to liability, and a decrease in the overall welfare of college athletes and college sports.

**Issue 15:** Whether and how the act should address NIL issues at the high school, youth, and recreational sports level.

*General Perspective:* There are concerns that changes to NIL rules could negatively impact high school and youth sports. Part of the concern is that NIL deals, if permitted at the high school and youth sports level, could corrupt or negatively influence the entire amateur sports ecosystem. There are also concerns regarding the potential impact of inconsistent rules at the college and high school/youth levels.