

State of Sports

*An analyzation of NCAA regulation leading
to the formation of interim N.I.L policy*



Max Braht

Spears School of Business

Oklahoma State University

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Abstract

The National Collegiate Athletic Association, often referred to as the NCAA, has gone to great lengths to ensure student-athletes remain within the organization's classification of "amateurism". This is done for, what the NCAA proclaims is "to ensure that the athletes are students first, thus protecting education as the primary reason for attending a college or university" (Afshar 2015); however, the magnitude of the business behind collegiate athletics has nothing amateur about it. In 2019 the NCAA reported to have generated a total revenue, among all NCAA sanctioned athletic departments, of roughly \$18.9 Billion– which is more than that of the NHL, MLB, or even the NFL, in the same year. In order to remain within the NCAA's classification of amateurism, student-athletes were not allowed to receive direct financial compensation as a result of their name, image, or likeness– until recently.

On June 30th, 2021, the NCAA Division Board of Directors approved the first Name, Image, and Likeness policy, which went into effect July 1st, 2021. While this was a monumental first step in the just treatment of student-athletes by the NCAA, there are still many uncertainties regarding the long-term effects this policy may have on the future of the organization. The purpose of this thesis is to dissect existing NCAA regulations that are negatively impacting student-athletes, to discuss how these regulations have led to the formation of an NCAA interim N.I.L. policy, and to predict how this policy will likely serve as a catalyst for future change within the NCAA.

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Part I: Introduction

The design of this thesis is very much so encouraged by my experience as student-athlete, my personal interests as a business student, and a desire to pursue a career within sports administration. As a member of the Oklahoma State University Men's Track & Field team, I have been directly impacted by the strict regulations of the NCAA and their counterproductive actions to keep education as the priority to profit. The mission statement of the NCAA is as follows: "to govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount" (NCAA 2021). The term paramount implies a hierarchy of values within the NCAA, with education being atop that list; however, the regulations of the NCAA, required to meet amateur status and maintain athletic eligibility within the organization, eradicate the ability of student-athletes to benefit from academic related success in a manner that is equal to the opportunities of their peers.

Although the introduction of a new N.I.L. policy is a promising start to the long overdue process of establishing a fair platform for student-athletes to represent themselves publicly, there are still many other NCAA regulatory issues prohibiting collegiate level student-athletes from truly thriving as scholars. In Part II of my research, I discuss the nature of the NCAA as both a regulating authority as well as a multi-billion dollar business; I provide this background to shed light upon the magnitude in which the NCAA operates as a business function and display how the NCAA's desire to maintain a distinction between collegiate and professional sports, which is ultimately the purpose of retaining amateur status, has not prevented the organization from financially capitalizing in a manner that notably exceeds that of their professional counterparts.

In Part III, I focus on the distribution of scholarships for student-athletes; the purpose of this section is to highlight the underwhelming reality of financial aid for the majority of student-athletes and display the ways in which strict NCAA regulations can prohibit student-athletes from taking full advantage of their hard-earned academic benefits. Part IV of my research will discuss the introduction of N.I.L. and examine the legal battles associated with the formation of the policy. The purpose of this section is to acknowledge the shifting environment of collegiate athletics, and to use N.I.L. as an example of how future change may come. Lastly, Part V of my research will serve as a conclusion; in this section I will readdress the major issues of collegiate athletics and provide insight as to how the NCAA may continuously change in the near future, with the interim N.I.L. policy serving as a catalyst for this change.

Part II: The NCAA as a Regulating Authority and as Business

A) Formation of NCAA

The NCAA was founded in 1906 to regulate college sports and specifically protect young student-athletes from the violent nature of early American football. As a result of over 150 serious injuries and 18 deaths in the 1904 season alone, the public urged for football to either be reformed or abolished altogether. At the request of both President Theodore Roosevelt and Henry M. MacCracken, New York University Chancellor at the time, a meeting was held between thirteen of the nation's top schools, including Harvard, Princeton, and Yale. The purpose of the meeting was to reform the rules of football to provide a safer game, however the group discussed other topics as well and the conference led them to believe they would better be able to monitor collegiate sports through the formation of an association— which they then created. Quickly after, 62 schools from across the country joined their organization as charter

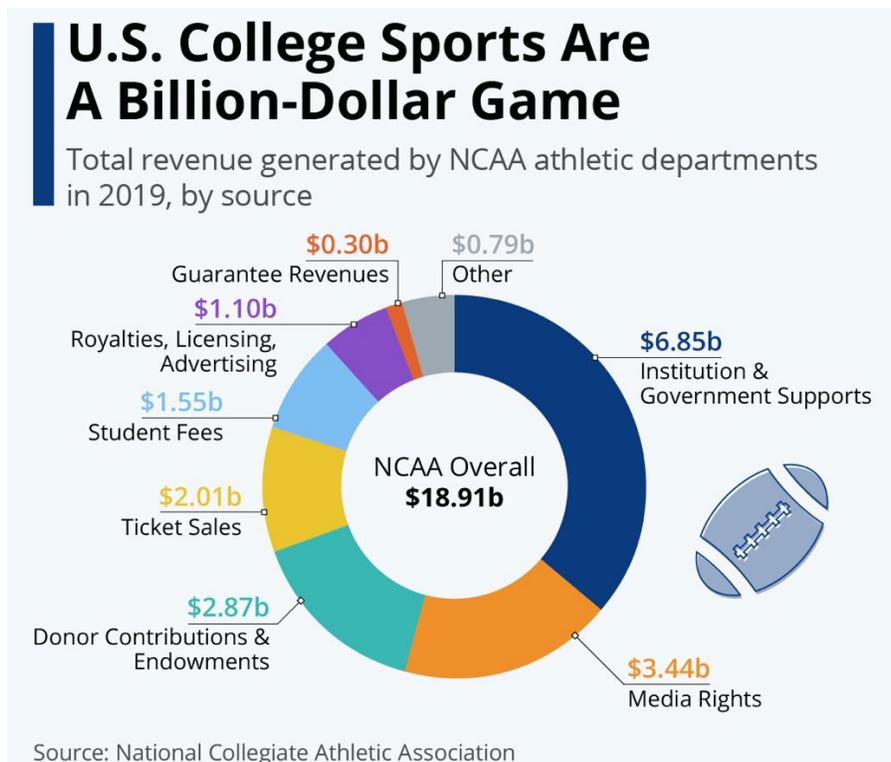
members of the Intercollegiate Athletic Association of the United States, which would eventually be re-named in 1910 to what we know today as the National Collegiate Athletic Association. However, as the intensity of competition rose, many rosters soon began to include hired players not enrolled in the college or university, which posed a large problem for the NCAA and represented the start of the still on-going battle to ensure amateurism within the organization. Legal actions were taken to ensure the amateur status of participating athletes and these regulations can now be found within the current NCAA Division 1 Manual, which clearly states that “only an amateur student-athlete is eligible for intercollegiate athletic participation”, as well as that “athletics programs are designed to be an integral part of the educational program. The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports” (NCAA 2021).

B) Magnitude of the NCAA as a Business

The NCAA hides itself behind labels such as “non-profit” and “amateur” in an attempt to de-emphasize the sheer magnitude of its operation and financial gains as an organization. Dr. Ronald Deiter, emeritus professor of Economics at Iowa State University, has studied the position of the NCAA within the sports and entertainment industry and compares the NCAA to a professional sports league claiming that “The NCAA is an [economic] cartel and so is a professional sports league... An [economic] cartel is a combination of independent enterprises who work together to coordinate activities and to jointly agree on rules for competing against each other” (Deiter 2021). Dr. Deiter also expands on the belief that the NCAA can be additionally “regarded as a monopolist in selling [items like media broadcast rights and ticket sales]” as well as mentioning how “on the buying side, members of the NCAA act as a collusive

monopsony where they set policies for members to follow mostly on matters related to the operation of collegiate sports”; Dr. Deiter summarizes by claiming, “This monopsony power has likely reduced the bargaining power of collegiate student-athletes” (Deiter 2021).

In 2019, total revenue generated by NCAA athletic departments added up to a near inconceivable \$18.9 billion. Senior data journalist, Felix Richter, broke down the various sources of this revenue, which can be seen atop the next page.



(Figure 1: Total Revenue Generated by NCAA Athletic Departments, 2019) (Richter 2021)

By looking at the distribution of data above, it can be noted that \$3.44 billion worth of revenue came solely from the NCAA’s large-scale contracts with different television networks and radio broadcast channels. In fact, the NCAA has come to rely on media and marketing rights as a primary source of income. The NCAA itself collects approximately \$1 billion annually

without the inclusion of institutional athletic departments, of that \$1 billion, roughly 85% comes as a result of broadcast deals for the annual March Madness men's basketball tournament. With such a large percentage of revenue being dependent on the media exposure of participating male college basketball stars, the NCAA does everything it can to market the March Madness tournament on as large of a scale as they can. As a result, the personal brands of those player's skyrocket; these student-athletes gain massive numbers of social media followers, become recognized in public settings, and even spark the sales of replica jerseys— an impressive feat considering the lack of name present on the jersey. However, what about this practice is meant to keep the educational experience of the student-athlete as the priority? It appears that somewhere amongst the hundreds of millions worth of revenue, the NCAA has lost interest in keeping distinction between the professional and amateur status of its student-athletes, and the ability to profit off marketing these athletes as if they were professionals has outweighed the educational experience that the NCAA claims to be “paramount”.

Part III: Financial Aid - Scholarship

A) Athletic Scholarship

Athletic scholarships are one of the most misunderstood characteristics associated with participating in collegiate athletics, and a leading conversation point in the argument against allowing student-athletes to profit off their name, image, and likeness. A common misconception is that participation in any NCAA sanctioned sport guarantees the student-athlete access to a full financial athletic scholarship, however, this is not true. Ultimately, the allocation of athletic scholarship is determined by the coaching staff of the specific team that the student-athlete is a

member of; however, the regulation of scholarships is very closely monitored, and hard scholarship limits are determined solely by the NCAA.

Athletic scholarships are primarily funded by the university themselves and throughout the country nearly \$3.1 billion worth of athletic scholarship is awarded annually from the 1,350 institutions comprising the NCAA DI, DII, NAIA, and NJCAA levels. The distribution of athletic scholarships by different division level can be seen below.

Athletic Association	Number of Schools	Number of Athletes	Maximum Number of Scholarships
NCAA Division I	348	139,063	74,243
NCAA Division II	292	85,385	36,343
NCAA Division III	418	144,062	0
NAIA	260	56,354	25,778
NJCAA	464	53,248	41,195
Other	276	39,737	N/A
Total	2,058	517,849	177,559

(Figure 2: Distribution of Athletic Scholarship Throughout NCAA) (NCSA 2021)

However, even with \$3.1 billion worth of athletic scholarship being granted through athletic scholarships annually, it is important to note the rarity of student-athletes that receive athletic scholarship. Only 6% of high school athletes compete within the NCAA to begin with, and fewer than that, only 2% of all high school athletes, are ever offered athletic scholarship from their university. One of the primary causes of disparity between the large amount of athletic

scholarship existing and the minuscule likelihood of a student-athlete ever receiving an athletic scholarship is the NCAA's regulation of scholarship distribution based on classification of sport. The NCAA classifies each sport as either being a "head-count" or an "equivalency" sport, with the primary difference being head-count sports always provide full athletic scholarships. Head-count sports are those considered revenue generating sports, which include only D1 basketball and football for men and D1 basketball, tennis, gymnastics, and volleyball for women. Equivalency sports, composed of the 30 other NCAA male and female sports, often receive partial athletic scholarship to be divided amongst the entirety of the team. The total number of athletic scholarships received by equivalency sports often vary greatly from head-count sports as well. For instance, D1 men's baseball teams have an average 36 of student-athletes on their team with 11.7 scholarships to be divided amongst them, while D1 men's football teams have an average of 105 student-athletes with 85 full scholarships to be given out. The reality of athletic scholarship within the NCAA is that most student-athletes do not receive any athletic scholarship, and those fortunate enough to receive athletic scholarship likely receive enough to cover only a percentage of their overall costs.

B) Academic Scholarship

The NCAA does not govern strictly over only athletic scholarships, but over the entirety of all financial aid offered to students. Throughout my time at Oklahoma State, I have personally had to forfeit institutionally offered academic scholarship for the purpose of maintaining athletic eligibility and remain within the NCAA's definition of an amateur. The NCAA categorizes all financial aid offered to students as being either countable aid or non-countable aid; financial aid offers that fall into the category of countable aid are included in individual and team budget limits, meaning that the amount of academic aid being offered academically will also be

subtracted from the total allowed athletic scholarship limit of that team. Examples of countable aid include government grants where the recipient or amount of the scholarship is determined by the university, as well as institutional positions offering financial benefits, such as a graduate student working for the institution as a graduate teaching assistant. And because countable aid is, as the name suggests, directly counted against the team's scholarship limit— it is very rare that the team will have the required funds available to cover that academic scholarship. Therefore, academic scholarships offered to student athletes, that fall into what the NCAA categorizes as countable aid, are very rarely able to be accepted by the student-athlete without forfeiting athletic eligibility as a result.

Another example of an academic scholarship which is included in the countable aid category, is any scholarship, funded institutionally or by an outside program, in which “athletics participation may or may not be a major criterion” (Indiana State University, 2021). While the intent of this specific classification is to ensure validity in the allocation of academic aid, the lack of clarity in defining what constitutes what “may or may not be a major criterion” for scholarship committees has again done more harm than good for student-athletes. To display just how subjective this classification can be, as well as to show how common it is for student-athletes to lose academic scholarship because of countable aid classification, I will share my personal experience. In 2020 I was awarded an academic scholarship from Oklahoma State's Spears School of Business, the scholarship was awarded through a general undergraduate application, which required the attachment of a resume. In an attempt to comply with NCAA regulations, I removed the direct mention of my involvement with the university's Track & Field team from my resume; however, I did not remove my involvement from the Fellowship of Christian Athletes, a separate university sponsored organization— as involvement with FCA does not

require participation within a NCAA sanctioned sport. The inclusion of my involvement with FCA on my resume was considered to violate NCAA regulation as it was believed to have potentially been a “major criterion” in the decision making of the scholarship committee— and therefore subjected my scholarship to be classified as countable aid, regardless of the removal of all other direct indications of my involvement with the Track & Field team. I, alongside teammates, peers, and likely millions of other student-athletes nationwide, have suffered the loss of our academically earned financial aid as a direct result of the flaws within the categorization countable aid.

Another harmful result of the NCAA’s involvement with regulating the distribution of academic scholarship to its student-athletes is seen through the required criteria for incoming freshman student-athletes to be eligible to receive academic scholarship. For an incoming Division 1 student-athlete to accept an academic scholarship as a freshman, the student-athlete must meet at least one of the following criteria determined by the NCAA: Be within the top 10% of their high school graduating class, possess at least a 3.5 cumulative GPA out of 4.0, or receive either a 1200 SAT score or a 105 ACT sum score. Not only do these additional criteria significantly decrease the likelihood of incoming student-athletes receiving academic scholarship from their universities, but the requirements themselves are significantly more demanding than what is required for incoming freshman to be eligible for an athletic scholarship. In contrast, for a Division 1 student-athlete to practice, compete, and be eligible for athletically related financial aid during their first year, the NCAA simply requires them to have completed sufficient high school classes for graduation, and possess at least 2.3 GPA in their core classes. To understand the severity of how the NCAA’s required criteria for accessing academic scholarship can affect student-athletes, consider the following— Many colleges offer guaranteed academic scholarships

to incoming freshman based on their high school GPA’s and their test scores on both SAT and ACT exams. For example, Oklahoma State University offers a university assured four-year partial out-of-state tuition waiver for all incoming out-of-state college freshman, which can be seen below...

University Assured

Award	Description	Eligibility	3.75-4.0 GPA (unweighted)	3.5-3.74 GPA (unweighted)	3.25-3.49 GPA (unweighted)
Out-of-State Achievement Scholarship - GPA ONLY	A four-year partial out-of-state tuition waiver	No test score required	\$8,000 (\$32,000 four-year total)	\$7,000 (\$28,000 four-year total)	\$6,000 (\$24,000 four-year total)

Award	Description	Eligibility	Value
Out-of-State Achievement Scholarship	A four-year partial out-of-state tuition waiver	30-36 ACT or 1360-1600 SAT AND 3.0 unweighted HS GPA	\$13,000 (\$52,000 four-year total)
Out-of-State Achievement Scholarship	A four-year partial out-of-state tuition waiver	27-29 ACT or 1260-1350 SAT AND 3.0 unweighted HS GPA	\$12,000 (\$48,000 four-year total)
Out-of-State Achievement Scholarship	A four-year partial out-of-state tuition waiver	25-26 ACT or 1200-1250 SAT AND 3.0 unweighted HS GPA	\$11,000 (\$44,000 four-year total)
Out-of-State Achievement Scholarship	A four-year partial out-of-state tuition waiver	24 ACT or 1160-1190 SAT AND 3.0 unweighted HS GPA	\$10,000 (\$40,000 four-year total)
Alumni Legacy Scholarship	A four-year partial out-of-state tuition waiver.	\$5,000 per year (\$20,000 four-year total)	Available to students whose parents or grandparents graduated from OSU. Alumni Legacy Certification Form (PDF)

(Figure 3: OSU out-of-state Scholarship Standards) (Oklahoma State University, 2021)

As observed on the figure above, high school students, with SAT scores between 1160-1190, are automatically offered an assured academic scholarship of \$5,000 per semester. However, if that student were to also be a student-athlete, even with the exact same test score as their peers, they would no longer eligible to receive that scholarship, which totals to \$40,000 throughout the duration of four years. While the NCAA claims that the higher academic requirements are “imposed in order to prevent schools from using academic scholarship as a loophole to get athletes to compete at their school” (USA Today, 2021), the NCAA is yet again

sacrificing the educational experience of student-athletes for the purpose of keeping them within the faulty definition of an amateur.

Part IV: Name, Image, and Likeness

A) Background & Formation

On June 30th, 2021, the NCAA Division 1 Board of Directors approved an interim name, image, and likeness policy, which went into effect throughout the NCAA on July 1st, 2021. Although this date represents the transition of N.I.L. from proposal to reality, the groundwork for the bill had been developing for years prior. The discussion of whether collegiate athletes should be able to receive financial compensation for their name, image, and likeness had been at the forefront of NCAA politics for seemingly decades, and on September 27th, 2019, California Governor, Gavin Newsom, signed Senate Bill 206 into law. Senate Bill 206 made California “the first state in the nation to enact a law to restore to college athletes a right everyone else has: the right to earn compensation from their name, image, and likeness (NIL), or athletic reputation” (Spry Compliance, 2019). Following the signing of Senate Bill 206 into law, which quickly became known as the Fair Pay to Play Act, many other U.S. states followed path by initiating plans to introduce similar laws of their own for college athletes. Among the 17 states who quickly enacted their own versions of the Fair Pay to Play Act were Texas, New Mexico, Florida, Alabama, Mississippi, and Georgia— as well Kentucky and Ohio, who passed Executive Orders; all of whom quickly declared July 1st, 2021, as the date in which their laws would take effect. As more states continued to introduce and enact laws of their own, primarily with the same effective date of July 1st,2021, the realization of N.I.L. became inevitable. Although implementation of N.I.L. seemed to come with countless opportunities, it also came with a few

concerns. One of the most pressing concerns revolved around the logistical differences that may come with a lack of unity for N.I.L. policies within the NCAA— would states implementing N.I.L. policies of their own see recruiting advantages for universities that may now be able to offer financial opportunity for its athletes, beyond just that of scholarship?

The most direct solution for ensuring equal opportunity to universities nationwide was to establish a national framework for the developing N.I.L. policy. And although this seemed like the most obvious solution, it would require direct action from the NCAA, which had historically opposed the creation of N.I.L. policy and continued to remain distanced from any decision making regarding the topic. With pressure rising for the NCAA to act, the organization declared an N.I.L. agenda for their 2021 January Convention; however, the votes were withdrawn from all three NCAA divisions due to “judicial, political and governmental enforcement events, including communication from the U.S. Department of Justice Antitrust Division” (NCAA 2021). Board chair member, John J. DeGioia, announced the postponement by claiming— “While any postponement certainly is disappointing, we support conducting the appropriate due diligence to ensure we are effectively modernizing rules to ensure the best possible experience for our students engaged in intercollegiate athletics” (NCAA 2021). Public opinion did not take favorably to this claim, as it was seen as just another hallow attempt of the NCAA to avoid granting student-athletes access to their own name, image, and likeness.

Attention now shifted to the quickly approaching U.S. Supreme Court case of *Alston v. National Collegiate Athletic Association*, which focused on the restrictions student-athletes faced on certain academic benefits. The case was initially argued on March 31st, 2021, with a decision not being declared until June 2021. After months of anticipation, as the results of this case would undoubtedly impact the forward advancement of a proposed N.I.L. policy, the Supreme Court

declared that “Colleges and universities across the country have leveraged sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni. That profitable enterprise relies on— amateur— student-athletes who compete under horizontal restraints that restrict how the schools may compensate them for their play. The National Collegiate Athletic Association issues and enforces these rules, which restrict compensation for student-athletes in various ways. These rules depress compensation for at least some student-athletes below what a competitive market would yield...” and ultimately “the NCAA’s limitation on education-related benefits provided to student-athletes violate antitrust laws” (Supreme Court 2021). Although this case was focused solely on the narrower topic of educational related benefits, it also marked only the second rebuke of NCAA practice by the Supreme Court since 1980. Supreme Court Justice Brett Kavanaugh closed his remarks by expressing disapproval for the NCAA by powerfully claiming that “The NCAA is not above the law” (Supreme Court 2021).

Following the decision of *Alston v. NCAA*, on June 23rd, 2021, NCAA president Mark Emmert released a statement claiming permanent federal N.I.L. changes were unlikely to be seen by July 1st, but suggested interim N.I.L. policies be adopted nation-wide, as a placeholder for future NCAA legislation. Emmert suggested the immediate introduction of an interim policy, with the purpose of a national structure being created before specific states had policies of their own go into effect. And, on June 28th, 2021, the NCAA Division 1 Council voted that a recommendation be made to the Board of Directors that the NCAA “suspend amateurism rules related to N.I.L. and adopt interim N.I.L. policy” (Allender 2021). After the recommendation was made, the NCAA Board of Governors voted themselves to adopt the interim N.I.L. policy and allow college student-athletes nationwide to reap financial freedom for their own name, image, and likeness— starting July 1st, 2021.

B) What Are the Effects?

So, with federal N.I.L. policy now officially existing within the NCAA, what effects will this have on student-athletes? It is important to note that the federal policy currently in place is still an interim mandate, and not yet finalized; because of this, much of the regulations associated with the N.I.L. policy are determined by the individual institutions student-athletes attend. The NCAA has provided the following five guidelines for both student-athletes and institutions to follow: “1.) Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. 2.) Colleges and universities may be a resource for state law questions. 3.) College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness. 4.) Individuals can use a professional services provider for NIL activities. 5.) Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school” (NCAA 2021). The NCAA has put these federal guidelines in place to ensure that although student-athletes can now monetize from their name, image, and likeness, the NCAA will also be able to follow it’s “commitment to avoid pay-for-play and improper inducements tied to choosing to attend a particular school” (NCAA 2021)– which is essentially the true core of the NCAA’s battle to protect amateurism.

When interim N.I.L. policy went into effect on July 1st, 2021, it was a historic milestone in the fair treatment of student-athletes by the NCAA. The passing of this bill allows for NCAA student-athletes, who are still classified as amateurs, to finally receive fair compensation for the tremendous amount of exposure and revenue they bring into their universities. However, not all athletes will be making significant amounts of money through their name, image, and likeness; in fact, few will. Only the top 1% of NCAA students athletes– strictly from revenue generating

sports— are likely to reach N.I.L. agreements of significant value. Where the true value of N.I.L. succeeds is that it has forced the NCAA to reevaluate the extent to which legal restrictions ensure amateur status; N.I.L. policy will be just the beginning of redefining what classifies amateurism within the NCAA. This interim policy paves the way for student-athletes to be allowed to not only profit off their name, image, and likeness, but to benefit from the same academic benefits and scholarship offers as regular students.

V. Conclusion

Collegiate sports have grown to such a magnitude that there is no longer any doubt to be claimed by the NCAA regarding the unfair treatment of student athletes; through both continuous financial gain and criticism from the public, the strict regulations of the NCAA have recently fallen under extreme scrutiny. A root cause for such scrutiny is the lack of clarity regarding how the NCAA approaches the classification of amateurism for student-athletes within their organization, specifically regarding the financial compensation of these student-athletes. In order to classify the student-athletes as amateurs, the NCAA has heavily restricted the financial freedom of their student-athletes. Not only were student-athletes prohibited from compensating off their name, image, or likeness prior to the passing of the interim N.I.L. policy, but they were also heavily limited with their abilities to accept academically earned financial aid or other academic related benefits— and many of these restrictions still exist.

When the interim N.I.L. policy went into effect on July 1st, 2021, it served as a major milestone in eliminating some of the unfair regulations forced on student-athletes. The new policy finally allowed student-athletes to compensate from their name, image, and likeness, and even came paired with other small amendments to reduce the large number of restrictions student-athletes

face in accepting academically earned financial aid. However, this new policy is quite far from a permanent solution within the NCAA; many strict regulations still prohibit student-athletes from receiving equal treatment as other college students, such as NCAA academic criteria for freshman to accept academic aid. *Alston v. NCAA*, which surged the creation of N.I.L. policy, marks only the second time since 1980 that the Supreme Court has ruled against the NCAA in any decision; it is likely that with student-athletes recognizing their value and beginning to vocally express their dissatisfaction with the NCAA, that more change is coming. In fact, for the NCAA change is inevitable, and N.I.L. will serve as a catalyst for this change. With the NCAA truly being at the forefront of sports and entertainment, they will constantly have to update their regulations to ensure student-athletes are ultimately being treated adequately within a society bound for change itself; the ever-changing values of society will continuously spark the debate for what warrants fair treatment and sufficient definition of “amateurism” within the NCAA.

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