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College Athlete NIL Activities and Institutional Agreements at a Crossroads: An Analysis of the Regulatory Landscape and "Conflict Language" in State NIL Legislation

Anita M. Moorman and Adam R. Cocco

State legislation paved the way for college athletes to begin monetizing their name, image, and likeness (NIL) through commercial activities as of July 2021. However, the statutory language utilized in state NIL legislation provides an inconsistent regulatory framework for college athletes as they seek to navigate the NIL landscape. Therefore, the purpose of this study was to conduct a comparative legal analysis of state NIL legislation to determine how these statutes restrain college athlete NIL activities that conflict with institutional agreements, limit NIL activities during official team activities, and establish enforcement or dispute resolution processes for asserted conflicts. We analyzed 26 state NIL statutes containing specific conflict language and found three areas of significant variation between states: the regulatory framework used to define contractual restraints; the definition and treatment of contract types subject to potential conflicts with NIL activities; and the requirements placed upon an institution when a contractual dispute arises. We discuss these areas of discrepancy between state NIL legislations and offer recommendations for legislatures focused on creating an NIL environment for college athletes with minimal restraints.

Keywords: name, image, and likeness; college athlete; statutory interpretation; state NIL legislation

Anita M. Moorman, JD, is a professor in the Department of Health and Sport Sciences at the University of Louisville. Her research interests include contractual relations in sport, participant rights in sport, and the interplay between sport law and marketing. Email: amm@louisville.edu
Adam R. Cocco, PhD, is an assistant professor in the Department of Health and Sport Sciences at the University of Louisville. His research interests include NIL in college athletics, publicly funded sport facilities, and statistical analysis of sport industry topics. Email: adam.cocco@louisville.edu

Introduction

The collegiate athletics industry entered a new era on July 1, 2021, when most college athletes[1] gained the right to monetize their name, image, and likeness (NIL) through commercial activities. The regulations governing permissible NIL activities for college athletes include a mixture of state legislation, athletic association rules, and institutional policies, but the impetus for the onset of the NIL era in college athletics stems from the enactment of legislation at the state level. California became the first state to enact NIL legislation when Governor Gavin Newsom signed Senate Bill (SB) 206 into law on September 30, 2019 (Dwyer, 2019). The passing of NIL legislation in Florida (SB 646) in March 2020 established an effective date of July 1, 2021 (Keller, 2022), indicating a need for college athletic associations to amend their amateurism bylaws before that date. Since California and Florida signed their NIL bills into law, 30 additional states[2] have passed NIL legislation and 10 other states have proposed, but not yet enacted, NIL legislation.

The primary purpose of state NIL legislation is to permit college athletes the right to profit from their NIL through commercial activities without risking the loss of scholarship or athletic eligibility at the collegiate level. Therefore, all state NIL statutes contain some degree of similar language guaranteeing these rights for college athletes. For example, Florida's SB 646 states, "An intercollegiate athlete at a postsecondary educational institution may earn compensation for the use of her or his name, image, or likeness" (Fla. Stat. §1006.74(2)(a), 2022) and Arizona's NIL legislation states, "A student athlete may not be denied a scholarship, have a scholarship revoked, be deemed ineligible for a scholarship or be deemed ineligible for participating in intercollegiate athletics based on earning compensation for the use of that student athlete's name, image, or likeness" (Ariz. Rev. Stat. §15-1892(B), 2022).

However, state NIL laws contain more differences than similarities, both in their content and language used to regulate college athlete NIL activities. These differences have led collegiate athletic industry stakeholders to use terms such as "uneven playing field" (Nivison, 2022) or the "wild, wild west" (Fischer, 2022) when discussing NIL in college athletics. It has also led to confusion among college athletes

[1] Although the National Collegiate Athletic Association (NCAA) and other intercollegiate athletic governing bodies still maintain use of the term *student-athlete* when referring to athletes competing at the college level, there is growing support against the use of the term given its original intention to deprive college athletes of workplace protections afforded to individuals classified as employees (e.g., Harry, 2020). Hence, we have chosen to use the term *college athlete* throughout this article.

[2] Alabama has since repealed its NIL legislation and South Carolina has suspended its NIL legislation for 2022-2023. Since the completion of this study, two additional states enacted NIL legislation (New York and Delaware). Therefore, 30 states currently maintain active enacted NIL legislation.

regarding their understanding of NIL regulations in their state. A recent survey of more than 1,000 college athletes indicated only 19% have a "good understanding" of the NIL law in their state (Wittry, 2022).

One area of considerable discrepancy among state NIL legislation, and a possible source of athlete misunderstanding of NIL law in their state, relates to the statutory language used to define and resolve *conflicts* between an endorsement deal for a college athlete and an existing sponsorship contract for the institution, athletic department, and/or team of the athlete. As of August 2022, there has not been a confirmed instance of a party involved in NIL activities (i.e., athletes, institutions, third-party companies, university licensing partners, or NIL collectives) violating an NIL state law (Wittry, 2022). However, it seems inevitable that, at some point, a party will encounter a disputed interpretation or application of their state NIL legislation. Recent examples highlight instances where a college athlete has signed an endorsement agreement with a third-party company that conflicts with an existing sponsorship agreement of the institution or athletic department. Stanford University's Rose Zhang, the 2022 women's golf national champion, recently announced an endorsement deal with Adidas (Christovich, 2022). Stanford's athletic department has an existing deal with Nike to provide athletic apparel to participants on all its athletic teams. Flau'Jae Johnson, an incoming freshman for Louisiana State University's women's basketball team, announced a shoe endorsement deal with Puma (Nagy, 2022) despite the institution's existing agreement with Nike to outfit all sport teams and athletes.

These examples raise the question whether college athlete endorsement deals conflicting with an existing institutional sponsorship contract are valid enforceable agreements and whether such agreements would violate state NIL laws. In Zhang's case, the language used in California's NIL legislation is subject to interpretation as to whether this agreement "conflicts" with her institution's existing athletic apparel sponsorship agreement and whether such "conflict" is prohibited by statute; or whether the statute authorizes an educational institution to prohibit such conflicts (Cal. Educ. Code § 67456, 2022). In Johnson's case, Louisiana's NIL legislation permits, but does not require, an institution in the state to prohibit an athlete from entering into an NIL agreement if it conflicts with an existing institutional sponsorship agreement or contract (La. Rev. Stat. § 17:3703, 2022).

As more examples of potential contractual conflicts arise during the expansion of NIL activities in college athletics, precise interpretation of state law will become increasingly important for athletes, athletic departments, sponsorship partners, and professional service providers assisting athletes with their NIL activities. Therefore, the purpose of this study was to conduct a comparative legal analysis of state NIL legislation specifically focused on language (a) restraining or limiting college athlete NIL activities that conflict with other contractual relationships; (b) restraining or limiting college athlete NIL activities that occur during "official team activities"; and

(c) establishing specific enforcement or dispute resolution processes in situations in which a conflict is asserted.

The following section provides a brief history of the development of NIL legislation following the enactment of California's SB 206 and an overview of the rules of statutory construction to guide the interpretative process of statutes. Next, we outline the method utilized to collect, review, and categorize state NIL statutes based on their identification of potential conflicts, definition of the type of "team contract" used to identify conflicts, and conflict resolution remedies established. Following this, we present the results of our analysis, along with examples of NIL legislative language used and a discussion of statutory interpretation. Finally, this article concludes with a discussion on practical implications from this analysis and recommendations on best practices for state NIL legislation conflict language.

History of Development of NIL Legislation

The popular phrasing—*name, image, and likeness* (NIL)—refers to what are legally defined as "publicity rights." Publicity rights are the property rights associated with the personality and identity of an individual. These rights enable an individual to control the commercial use of his or her identity (Anson, 2015). In some states, this right applies only to commercial advertising, and in others it can apply to any commercial exploitation of a person's identity (Anson, 2015). For example, the State of California protects publicity rights both through statute and common law. California Civil Code § 3344 protects a person's name, image, signature, photograph, and likeness. California courts tend to use a "readily identifiable" test to determine if some characteristic or indicia of identity would fall into one of these five categories. Thus, if an individual is readily identifiable by the user's representation of identity, it would be subject to the provisions of §3344.

National Collegiate Athletic Association (NCAA) bylaws relating to an athlete's NIL activities first came under legal scrutiny as early as 2002 in *Bloom v. NCAA* when Jeremy Bloom challenged NCAA bylaws restricting endorsement and media appearances. Bloom was recruited to play football at the University of Colorado. However, before enrolling, he competed in Olympic and professional World Cup skiing events, becoming a World Cup champion in freestyle moguls. Following the Olympics, Bloom was offered various paid entertainment and endorsement opportunities, including a show on Nickelodeon, ski equipment endorsement deals, and a modeling contract for Tommy Hilfiger clothing. The University of Colorado requested a waiver of NCAA rules to preserve his eligibility to play collegiate football. The NCAA denied the waiver. The trial court decision to uphold the waiver was affirmed on appeal. The Colorado court of appeals held that the bylaws have "a rational basis in economic necessity" and "voluntary athletic associations should be allowed to paddle their own canoe without unwarranted interference from the courts" (*Bloom v. NCAA,* 2004, p. 627).

It is against the backdrop of Bloom's initial legal challenge in the early 2000s that reflects the rapid evolution of attitudes toward college athlete NIL rights and potential legal remedies for unfair restrictions on those rights. Beginning in 2009, a trilogy of lawsuits were filed against the NCAA that would pose new legal challenges to NCAA bylaws based on both state-based right of publicity laws and federal anti-trust laws. In two of these cases, *Hart v. Elec. Arts, Inc*. (2013) and *Keller v. Elec Arts, Inc*. (2013), both would ultimately hold that the NCAA and its licensees—Collegiate Licensing Company (CLC) and Electronic Arts (EA) Sports—could be liable for publicity rights violations due to the use of an athlete's NIL featured as avatars in EA Sports' *NCAA Football* video games. The parties settled that case for $60 million. In the third case, *O'Bannon v. NCAA* (2015), the 9th Circuit Court of Appeals held that NCAA restraints preventing member institutions from compensating college athletes for the use of their NIL were a violation of federal anti-trust laws. One of the more significant outcomes of the trilogy of cases, especially the *O'Bannon* (2015) case, was the court's refusal to extend deference to the NCAA's rule making related to the sole notion of preserving amateurism.

The history of these legal challenges to NCAA amateurism bylaws influenced the NCAA to start exploring modifications to its existing laws restraining NIL activities. Beginning in the summer of 2019, the NCAA began efforts to authorize changes to policies and bylaws that would permit college athletes to receive compensation related to their NIL. The NCAA formed a Federal and State Legislative Working Group (FSLWG) for Name, Image, and Likeness on May 14, 2019. The FSLWG produced its Final Report and Recommendations on April 17, 2020, in which it recommended that each NCAA division be encouraged to continue consideration of appropriate revisions to their bylaws to permit college athlete NIL activities (NCAA, 2020). By December 2020, each of the three NCAA divisions had developed NIL regulatory proposals planned for membership adoption at their annual conventions scheduled for Jan. 12-15, 2021. However, a vote on the legislative proposals was tabled on Jan. 11, 2021, by the NCAA Division I Council. The NCAA issued a statement attributing the delay to several external factors, including recent correspondence with the U.S. Department of Justice. NCAA President Mark Emmert also indicated that judicial, political, and enforcement issues all contributed to the decision to delay a vote on the proposals (NCAA, 2021). Divisions II and III similarly withdrew their pending NIL legislative proposals on Jan. 12, 2021 (NCAA, 2021a, 2021b).

Ultimately, the NCAA announced the adoption of an interim policy on June 30, 2021, in which Emmert said, "the current environment – both legal and legislative – prevents us from providing a more permanent solution and the level of detail student-athletes deserve" (NCAA, 2021). Hence, the legal and legislative environment surrounding college athlete NIL activities continues to develop.

Rules of Statutory Construction

As of August 2022, 30 states had either enacted legislation or issued executive orders regulating college athlete NIL activities. No two statutes are identical. To understand the legislative requirements, we must analyze the language of the statutes and executive orders to ascertain its meaning. The language may appear straightforward. However, it is quite likely that once the legislative language is applied to a real dispute, the language becomes less clear and possibly even ambiguous. Thus, several techniques of statutory construction exist to examine the terms of a statute and whether the statute addresses a particular legal issue. These techniques, known as rules or canons of construction, guide the courts when they are tasked with interpreting new legislative enactments (Eskridge, Frickey, & Garrett, 2001; Llewellyn, 1950; Scalia & Garnser, 2012).

Generally, the rules of statutory construction begin with the literal text of the statute, including any definitions included in the legislation. Only four of the 28 active state NIL statutes provide specific definitions for key terms. Thus, for the remaining 24 states, only the statutory text is left to guide interpretation. Another interpretive technique is to rely on a prior court's interpretation of the statutory language. This is not helpful in the current context since none of the state NIL statutes have yet to be interpreted by a court (Wittry, 2022). A third technique is to interpret the language used in the state NIL statutes in context to other related legislation. For example, an NIL statute might be incorporated into, or at least relate to, existing similar statutes, such as athlete agent legislation. Therefore, if terms used in an existing athlete agent statute are also used in an NIL statute within a given state, the court would likely assume the legislature intended the same meaning in both laws. However, while several of the NIL statutes reference or are incorporated into a state's athlete agent statute, the specific language relating to "conflicts," "team contracts," and "official team activities" are not terms used in athlete agent legislation.

A final technique is to use the legislative intent or purpose of the statute to aid in understanding the statute's meaning. Many state NIL statutes do contain preambles or introductory purpose clauses, but those typically provide only general guidance on the context of the legislation. For example, Colorado's NIL statute states that it is "concerning the rights of college athletes, and in connection therewith, establishing their right to receive compensation for the use of their names, images, and likenesses and their right to obtain professional and legal representation" (Colo. Rev. Stat. § 23-16-301, 2022). The preamble language typically does not provide specific guidance on how terms such as "conflicts," "team contracts," and "official team activities" are intended to be interpreted in the statute. Figure 1 presents a summary overview of the rules of statutory construction process.

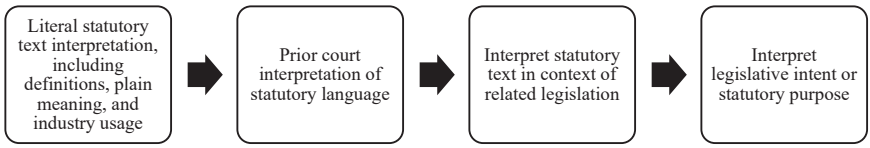

Figure 1. Rules of statutory construction process.

Thus, as disputes arise, the courts will need to rely primarily on the literal text of the statute and any accompanying definitions or context contained within the legislation. Courts will generally assume words mean what an ordinary or reasonable person would understand them to mean using ordinary language and grammar when interpreting statutory text for the first time (Eskridge et al., 2001; Llewellyn, 1950; Scalia & Garner, 2012). If that meaning is clear and unambiguous, the court's inquiry would end there and the ordinary and reasonable meaning, also known as "the plain meaning," would be used for interpretation (Eskridge et al., 2001; Llewellyn, 1950; Scalia & Garner, 2012). Courts may also rely on traditional or online dictionaries to gain a broader consensus on the ordinary meaning of a term. Several terms and phrases used in the context of NIL legislation certainly have a dictionary or ordinary meaning, but it is likely that some terms may also have a specialized meaning in the context of college athletics. For example, the phrases "athletes' team contract" or "team contract" are commonly used in NIL statutes. If a word has a specialized or technical meaning, the court will attempt to use the same meaning in the statute as the word's use within the specialized industry. Thus, if "team contract" refers to a commonly understood agreement in college athletics, a court could rely on that industry use to interpret the NIL statute. For the present study, we explored how the following key terms were used in state NIL statutes: "conflict," "team contract," and "official team activities," and whether such terms were expressly defined in the legislation.

Method

Thirty states have enacted NIL legislation. We eliminated Alabama and South Carolina from the study since their legislation has either been repealed or suspended. We further eliminated New Mexico and Mississippi since their legislation does not include any statutory language related to potential conflicts between athlete NIL activities or agreements and institutional agreements. The remaining 26 state NIL statutes all contain specific language related to some type of conflict or inconsistency that may exist between an athlete's NIL activity or agreements, and an agreement of the institution (hereinafter referred to as "conflict language"). Thus, we limited

our analysis to the 26 state NIL statutes enacted as of August 2022 that contained "conflict language."

We conducted a content analysis of the language contained in the enacted state NIL statutes. Content analysis is the desired method to systematically read and analyze textual materials. This method is effective in analyzing a variety of textual materials in legal scholarship, including trial court records, statutes, regulations, and judicial opinions (Hall & Wright, 2008). Our analysis began by collecting copies of enacted legislation from each state that contained provisions related to college athlete NIL activity. We utilized the online legislative database LegiScan to provide a consistent source of the final enrolled version of each state NIL statute. Next, our examination included reading each statute in its entirety, identifying and recording exact statutory language related to "conflicts," "official team activities," and enforcement or dispute resolution provisions. We then conducted an inferential analysis to identify similarities and overall patterns in the statutory language.

Our analysis focused on express statutory language referring to conflict language. For example, we examined whether the statutory language used the generic term "contract" or a more specialized term, such as "sponsorship agreement," "licensing agreement," "team contract," or some other varied definition or description. Next, we evaluated whether the conflict language was modified or narrowed by the inclusion of language such as "official team activities" to limit the applicable scope of any statutory restraints on conflicting or inconsistent agreements. We also noted whether the state NIL legislation included a definition for "official team activities" if that term was used. Next, we reviewed the statutory language for any requirements or procedures specifically related to the identification, notification, disclosure, and remediation of conflicts between athlete NIL activities or agreements, and other agreements. Finally, we examined whether the state NIL statutes included specific remedies or enforcement provisions related to conflict situations.

We examined the language in each state NIL statute separately and then collaborated to resolve any discrepancies on the relevant language to examine from each legislative document for the aforementioned outlined topics. After obtaining full agreement on the legislative text for analysis, we collectively organized NIL statutes into categories based on their similarities and differences based on the statutory language used. Our analysis was guided by the following research question: What variation exists among state NIL statutes related to how the states address and regulate potential conflicts between the NIL agreements or activities of college athletes, and existing institutional agreements?

Results and Analysis

Our analysis revealed three areas with significant variation in state NIL legislation. First, the states' regulatory framework was divided between direct statutorily imposed restraints on college athletes' NIL activities and statutorily permissive institutional restraints in which post-secondary educational institutions are authorized to impose restraints on college athlete NIL activities. Next, the state NIL legislation varied significantly in the definition and treatment of contract types subject to the conflict language and the timing of restrictions on potential conflicting NIL agreements or activities. Lastly, variation was present related to how conflicts were identified and disclosed, and dispute resolution processes arising from the application of the conflict language.

Section One: Variation in the Regulatory Framework Adopted by the States

This analysis revealed similarities, inconsistencies, and trends in how state legislatures defined the regulatory environment around athlete NIL. Specifically, we determined whether the conflict language in the legislation contained direct statutory restrictions on athletes' NIL agreements or activities (statutory restrictions) or whether the conflict language in the legislation authorized or required institutions to impose restrictions on athletes' NIL agreements or activities (institutional restrictions). We also determined what, if any, express enforcement provisions were provided for statutory violations.

Statutory vs. Institutional Restrictions

States are essentially divided between two distinct frameworks. The first framework imposes direct legislative restrictions upon college athletes, or athletes and third parties, from entering into certain NIL agreements or activities in conflict with other agreements ($N = 18$) (*Statutory Restrictions*). The second framework mandates or permits institutions to impose restrictions on college athlete NIL agreements or activities in conflict with other agreements ($N = 9$) (*Institutional Restrictions*). See Table 1 for a complete listing of state regulatory frameworks.

The first framework, *Statutory Restrictions*, includes any state whose legislation expressly restricts college athletes or third parties from entering into certain types of NIL agreements or activities that may conflict with other agreements, such as:

> Arkansas: *A third-party licensee or student-athlete shall not enter into a contract ...* if the contract conflicts with a term or condition of a contract, policy,

> rule, regulation, or standard of the ... institution (emphasis added). (Ark. Code Ann. § 4-75-1304, 2022)
>
> Ohio: A *student-athlete shall not enter* in a contract ... if that requirement is in conflict with a provision of a contract to which a state institution of higher education … is a party (emphasis added). (Ohio Rev. Code § 3376.06, 2022)
>
> Tennessee: *No intercollegiate athlete or the athlete's representative may enter into an agreement* for compensation for the use of the athlete's name, image, or likeness if the agreement *conflicts or unreasonably competes* with the terms of an existing agreement … (*emphasis added*). (Tenn. Code Ann. § 49-7-2801(i)(1), 2022)

The second framework, *Institutional Restrictions*, includes (a) any state whose legislation mandates that institutions create and enforce policies that restrict college athletes or third parties from entering into certain types of NIL agreements or activities (Connecticut was the only state that requires educational institutions to impose specific restrictions on conflicts) and (b) any state whose legislation authorizes, *but does not require,* institutions to create and enforce policies restricting college athletes or third parties from entering into certain types of NIL agreements or activities that may be in conflict with other agreements, such as:

> North Carolina: Post-secondary educational institutions may, *but are not required to,* impose the following regulations and limitations on student-athletes' ability to receive compensation for their name, image, and likeness. … An institution may prohibit student-athletes from receiving compensation or entering into agreements or contracts for use of their name, image, and likeness if such arrangements conflict with a contract of the institution (*emphasis added*). (N.C. Executive Order No. 223, Sect. 1(B)(i), 2022)
>
> Tennessee: An institution *may prohibit* an intercollegiate athlete's involvement in name, image, and likeness activities that are reasonably considered to be in conflict with the values of the institution (*emphasis added*). (Tenn. Code Ann. § 49-7-2801(f), 2022)
>
> Connecticut: Each institution of higher ed *shall adopt* one or more policies regarding student athlete endorsement contracts ... Such policy or policies *shall include provisions* … prohibiting a student athlete from entering into an agreement that conflicts ... (*emphasis added*). (Conn. Gen. Stat. § 10a-56(c)(2) & (4), 2022)

Table 1. Regulatory Framework of State NIL Legislation

Type of Restraint	Applicable States	Sample Statutory Language
Mandatory Statutory Restraint	Arizona, Arkansas#, California, Colorado#, Florida, Georgia, Illinois, Maryland, Michigan, Missouri#, Montana, Nebraska#, New Jersey, Ohio, Oklahoma, Oregon, Tennessee*, Texas	Arkansas: A *third-party licensee or student-athlete shall not enter* into a contract . . . Ohio: A *student-athlete shall not enter* in a contract . . .
Mandatory Institutional Restraint	Connecticut	Connecticut: Each institution of higher education *shall adopt* one or more policies regarding student athlete endorsement contracts . . . Such policy or policies *shall include provisions* . . . prohibiting a student athlete from entering into an agreement that conflicts . . .
Permissive Institutional Restraint	Kentucky, Louisiana, Maine, Nevada, North Carolina, Pennsylvania#, Tennessee*, Virginia	North Carolina: Post-secondary educational institutions *may, but are not required to,* impose the following regulations and limitations on student-athletes . . . Virginia: An institution *may prohibit* a student-athlete from using his or her name, image or likeness to earn compensation if the proposed use conflicts with an existing agreement between the institution and a third party

Only five states (Arkansas, Colorado, Missouri, Nebraska, and Pennsylvania) include enforcement provisions with specify remedies for violations of the statute.
* Tennessee's NIL legislation (HB 1351) includes conflict language that both expressly mandates statutory restrictions on college athletes and also authorizes institutional restrictions on an athlete's NIL agreements and activities.

Section Two: Variation in the Breadth and Scope of the Conflict Language

All 26 state NIL statutes included in this analysis contain conflict language. Twenty-five states specifically use the term "conflict" in the context of limiting or prohibiting athlete NIL activities, while one state (Maine) uses the term "inconsistent." Even though each of these NIL statutes contain some sort of conflict language, none define the term "conflict." Our analysis revealed that the conflict language in the statutes varies in several significant ways. First, it varies regarding how the general concept of conflicts is introduced into the legislative framework. Second, it varies in the use of the phrase "official team activities" as a central regulatory feature of the legislation. Lastly, it varies in the type of contracts identified in the legislation that are subject to the conflict language.

Concept of Conflicts in Legislative Framework

Several critical variations were revealed relative to how states incorporated regulations on contractual conflicts into their legislative framework. The following comparison between the NIL legislation in Montana and Virginia provides a relevant example of this variation. Montana's NIL law states that:

> A student-athlete may not enter into a contract that provides compensation to the student-athlete for the use of the student-athlete's name, image, or likeness if terms of the contract conflict with the student-athlete's team rules or with terms of a contract entered into between the student-athlete's postsecondary institution and a third party, except the team rules or a contract entered into between the postsecondary institution and a third party may not prevent a student-athlete from earning compensation for the use of the student-athlete's name, image, or likeness when not engaged in official team activities. (Mont. Code Ann. § 20-1-232(3), 2022)

This portion of Montana's NIL regulatory framework appears to indicate a mandatory statutory restraint on an athlete's NIL agreement *if it conflicts with team rules or an institutional contract, except team rules or contracts may not prevent the athlete from NIL activities when not engaged in official team activities.* Thus, one could interpret that neither an institution nor state law can impose restrictions of an athlete's NIL activities when the athlete is not engaged in official team activities regardless of whether that agreement or activity conflicts with team rules or an institutional contract. Based on this interpretation, the conflict language only applies in the context of when the athlete is engaged in official team activities. In this scenario, the phrase "official team activities" is limiting the scope or breadth of the statutory restraint. However, compare that regulatory environment to the one created by Virginia's NIL law, which states that:

> An institution may prohibit a student-athlete from earning compensation for the use of his or her name, image or likeness while the individual is engaged in academic, official team, or department activities, including competition, practice, travel, academic services, community service, and promotional activities. An institution may prohibit a student-athlete from using his or her name, image or likeness to earn compensation if the proposed use conflicts with an existing agreement between the institution and a third party. (Code of Va. § 23.1-408.1(E), 2022)

The Virginia NIL regulatory framework is a permissive institutional restraint that authorizes an institution to prohibit an athlete's NIL activities in two distinct circumstances. First, Virginia permits restraints while the athlete is engaged in academic, official team, or department activities. Second, Virginia also permits an institution to prohibit NIL activities if the activities conflict with an existing agreement between the institution and a third party. The second permissive restraint does not require the athlete's NIL activities to be occurring during official team activities. Instead, the ability to restrain NIL activities during official team activities and to prohibit activities that conflict with existing institutional agreements appear to be independent pathways to impose restraints. Thus, the Virginia NIL statute, although creating permissive rather than mandatory restraints, has also created the potential for a more restrictive regulatory environment on college athletes in that state compared to the regulatory environment in Montana.

Official Team Activities as a Central Regulatory Feature

Our analysis revealed that the use of official team activities (hereinafter "OTA") as a moderating condition on an athlete's NIL activities is a central but inconsistent regulatory feature in NIL legislation. The term "official team activity" ("OTA") or a closely related phrase ("official activity," "team activity," "sanctioned activity," or "mandatory official team activities") was found in 22 of the 26 state NIL statutes included in this analysis. However, only three states (Connecticut, Kentucky, and Ohio) provide a formal definition for OTA. For example, Kentucky's state NIL statute provides:

> "Official team activities" means activities a postsecondary educational institution requires a student athlete to participate in as part of a written team contract that includes but is not limited to games, practices, exhibitions, scrimmages, trainings, meetings, team appearances, team photograph and video sessions, individual photograph and video sessions, media interviews and appearances, *marketing activities, team travel,* and institutional camps and clinics (*emphasis added*). (Ky. Rev. Stat. § 164.6941(12), 2022)

The OTA definitions used by these three states are quite broad. Kentucky's inclusion of *team travel* and *marketing activities* casts an exceptionally wide net for potential restrictions during times when athletes are off-campus or in transit to a game, but not actively engaged in competition. Ohio's definition includes team-organized activities "regardless of whether the activity takes place on or off campus, including ... news media interviews" (Ohio Rev. Code § 3376.06(1), 2022). Connecticut's definition is also broad but does not include team travel or marketing activities specifically. It does include "team-organized activities" and "other related activities." Connecticut also uses the catchall phrase "including, but not limited to" (Conn. Gen. Stat. § 10a-56, 2022), which could potentially further expand the scope of activities covered in the definition of OTA.

Fifteen states simply use the OTA phrase or something similar without any additional descriptive lists or examples of covered activities provided. One state (Maine) does not define or describe what activities are included in OTA but does provide that the institution will determine what "behavior constitutes official team activities" (Maine Rev. Stat. § 20A:12972, 2022). Two states (Virginia and Arkansas) include other activities in addition to OTA, such as academic or department activities, including community service and travel (Code of Va. § 23.1-408.1(E), 2022), and the catchall "other activity" (Ark. Code Ann. § 4-75-1304(a)(1), 2022).

Lastly, two states mandate that institutions are only permitted to impose restrictions that are "reasonable" limitations or restrictions on the dates and time (Illinois) or the time, place, or manner (Tennessee) of the athlete's NIL activities. For example, Tennessee institutions may impose reasonable time, place, and manner restrictions to prevent NIL from interfering with team activities, an institution's operations, or use of an institution's facilities (Tenn. Code Ann. 2022).

Overall, the OTA lens is used primarily as a restriction on athletes that requires athletes to avoid NIL deals that would require activation during OTA. The OTA lens is also used to limit or prohibit institutions from imposing any restraints on athlete's NIL agreements or activities that occur outside of OTA. However, OTA tends to be undefined, or defined exceptionally broadly, thus the actual restrictive impact of this limitation is questionable.

Type of Contract as a Central Regulatory Feature

Our analysis revealed a wide variety of contracts subject to conflict language in the state NIL statutes, including NIL agreements that conflict with a team contract; institutional contract; sponsorship or licensing agreements; policy documents; rules and regulations of the institution, athletic department, or team; values and mission of the institution; and broad, unspecified contracts or agreements.

Conflicts with "Team Contracts." From the 26 state NIL statutes included in this analysis, 13 contain some version of language that prevents an athlete from entering into an NIL contract if it conflicts with a "team contract" for which the

athlete competes. However, of these 13 state statutes, only six specifically define the term "team contract." Table 2 provides a summary of the definitions used for team contract across state NIL statutes within the context of conflict language.

For the 13 states prohibiting conflicts between NIL activities and an athlete's team contract, the use of the term "team contract" is used and defined inconsistently. Seven states provide no definition, and even in the states that have provided specific definitions, the term has inconsistent and even opposite meanings from one state statute to the next. For example, Georgia, Maine, and Texas define "team contract" as a

Table 2. Statutory Definitions for "Team Contract" in State NIL Legislation

Georgia	"Team contract" means any written **agreement between a student athlete and a postsecondary educational institution,** or a division, department, program, or team thereof, which includes goals and objectives, standards, prohibitions, rules, or expectations applicable to the student athlete.
Maine	"Team contract" means a contract between a **student athlete and a college or university** and includes any rules or expectations of the college or university's athletic department or head coach that require a student athlete's compliance as a condition under the contract of participation as a member of the intercollegiate athletic program.
Texas	"Team contract" means a contract between a **student athlete and an institution** to which this section applies and includes any rules or expectations of the institution's athletic department or head coach that require a student athlete's compliance as a condition under the contract of participation as a member of the intercollegiate athletic program.
Colorado	"Team Contract" means a **contract between an institution and another entity** or between and intercollegiate athletic team of an institution and another entity, which contracts relates to the activities of an athletic team of the institution.
Nebraska	"Team contract" means a contract between a postsecondary institution or a postsecondary institution's athletic department and a **sponsor.**
Oklahoma	"Team contract" means a contract between a postsecondary institution or a postsecondary institution's athletic department and a sponsor or a third party authorized to enter into a **sponsorship agreement** or agreements on behalf of a postsecondary institution.
Arizona, California, Florida, Louisiana, Maryland, Michigan, New Jersey	Term "team contract" is ***used but not defined.*** For example, Arizona: The section does not authorize a student athlete to enter into a contract providing compensation for use of the student athlete NIL if do so . . . conflicts with the student athlete's Team Contract. New Jersey: A student-athlete shall not enter into a contract providing compensation to the student-athlete for use of his name, image, or likeness if a provision of the contract conflicts with a provision of the student-athlete's team contract

written agreement between the *athlete and their institution*. Nebraska and Oklahoma define "team contract" as a contract between the *institution and a sponsor.* Colorado defines the term as a contract between an *institution, athletic team, and another entity.*

Conflicts with Other Types of Agreements, Rules, and Policies. Most state NIL statutes include an even wider variety of contracts or agreements, outside of team contracts, which could produce a conflict with an athlete's NIL agreement or activities. These include a broad array of institutional agreements, existing sponsorship agreements, and current licensing agreements. There are 11 state NIL laws that use a more general term for "contract" in their conflict language, including "existing agreement" or "any agreement." Seven states specifically identify a current sponsorship or licensing agreement as the potential source of conflict in their conflict language.

Some states further broaden conflict language by including potential conflicts related to rules, policies, and institutional mission or values. Six states (Arkansas, Kentucky, Montana, Oklahoma, Oregon, and Texas) include statutory language that refers to the potential for conflict between NIL activities and rules, team rules, policies, or standards of the team or institution. Furthermore, in six states (Kentucky, Louisiana, Oklahoma, Pennsylvania, Tennessee, and Texas) conflict language also includes potential conflicts with the institutional mission, values, or honor codes. Figure 2 provides an overview of state NIL laws grouped by the types of contractual conflicts mentioned in the statutory language.

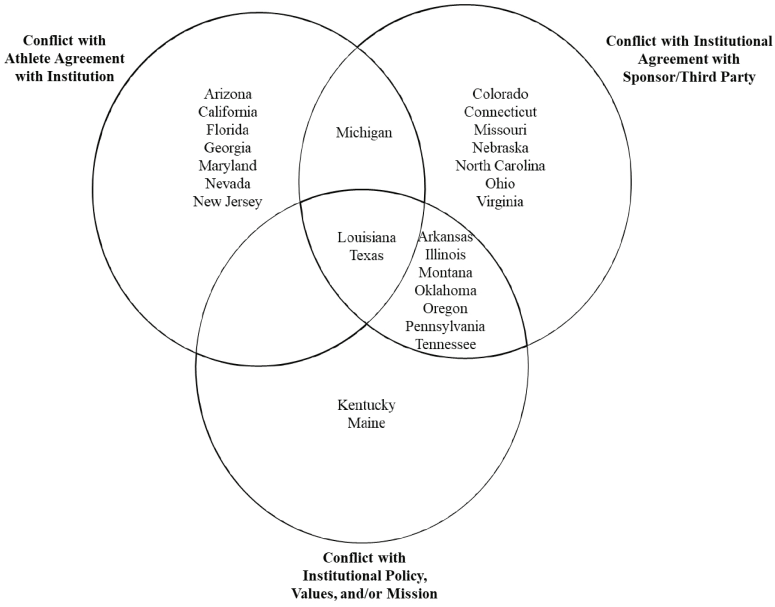

Figure 2. Contract conflict provision by state.

Section Three: Variation in Procedures to Resolve Disputes Related to Conflicts.

The final variation among state NIL legislation related to conflict language centers on procedures for the identification, disclosure, and resolution of disputes surrounding the implementation of the conflict language. There are 18 state NIL statutes that require some form of institutional notice or disclosure to the athlete regarding the identified conflict. Table 3 compares the notification and disclosure requirements for the 18 states. However, eight states do not provide any process or requirements for institutional identification of conflicts or conflict resolution despite containing statutory language that regulates such conflicts. For college athletes in these states, this ambiguity in the legislative language may disadvantage them when attempting to avoid a conflict since institutions in their state are not required to disclose any details about the identified conflict, nor provide the athlete with an avenue for conflict dispute resolution.

Notably, only four state NIL statutes require some type of revision process to provide an athlete with the opportunity to revise and resubmit an NIL agreement should the institution assert a contractual conflict. Michigan and Texas include statutory language related to the need to notify and disclose asserted conflicts to an athlete, but do not specify a particular conflict notification method or institutional disclosure requirements. Only one state (Kentucky) requires an institution to establish an appeal process should a conflict dispute remain after the athlete revises and resubmits an NIL agreement for institutional review.

Table 3. Comparison of Conflict Disclosure Provisions in State NIL Laws

No Conflict Disclosure Requirements	Notification and Disclosure Required	Notification, Disclosure, and Opportunity to Revise Required	Notification, Disclosure, Opportunity to Revise, and Appeal Process Required
Arizona Arkansas Illinois Maine Missouri North Carolina Oklahoma Pennsylvania	California Colorado Connecticut Florida Georgia Louisiana Maryland Montana New Jersey Oregon Tennessee Virginia Nebraska* Nevada^	Michigan Ohio Texas	Kentucky

* University must disclose the entire contract
^ University is only required to inform athlete of the conflict

Implications and Discussion

Our analysis confirmed three areas in which the variance among state NIL legislation has significant implications for athletes, athlete representatives (agents, attorneys, marketing representatives, or any other party representing a college athlete in their NIL activities), and universities navigating the NIL landscape. These areas include variation in the regulatory framework, breadth and scope of conflict language, and procedures to resolve conflict disputes. The following sections discuss how this variation may affect these stakeholders and provides recommendations for managing these differences.

Impact of the Variation in the Regulatory Framework

Most of the state NIL statutes contained introductory language or preambles articulating the importance of permitting college athletes to earn compensation from the use of their name, image, and likeness. Most states also expressly recognize publicity rights either by statute or common law, and it is presumed other states would recognize such rights if their courts were presented with a legal challenge (Anson, 2015; Rothman, 2018). Therefore, college athletes, as any other individual residing within these states, already possessed the legal right to earn compensation from the use of their NIL. Athletes' inability to exercise those rights stemmed from prior rules and regulations of the NCAA and other amateur athletic associations (for example, the National Association of Intercollegiate Athletics [NAIA], National Junior College Athletic Association [NJCAA], and California Community College Athletic Association [CCCAA]) requiring athletes to forgo such compensation as a condition of their eligibility to participate in intercollegiate athletics (Koller, 2020). Thus, despite the stated purpose of the state NIL statutes to prohibit restraints or conditions imposed by amateur athletic associations, thereby enabling athletes to freely exercise their pre-existing rights of publicity, all 26 state NIL statutes either mandate or permit restrictions on college athletes' NIL activities. Additionally, three states (Connecticut, Arkansas, and Tennessee) restrict the activities of third parties, agents, or athlete representatives.

In those 16 states with mandatory statutory restrictions, the state legislature made it significantly more burdensome for athletes to exercise their publicity rights because in those 16 states, presumably entering into a prohibited agreement would be a violation of the state statute. This legislative framework appears to place the onus solely on the college athlete or their representatives to avoid conflicts with institutional agreements. It is unclear what, if any, responsibility the institutions have to identify the existence of a conflict between an athlete's NIL agreement and an institutional agreement, or what process an athlete should follow to confirm whether a conflict exists prior to entering into a potentially prohibited NIL agreement.

For the 10 states adopting a framework with permitted institutional restraints on an athlete's NIL agreements, an impermissible contract entered into by a college athlete would presumably be a university policy violation but not a violation of state law. However, even for athletes in these states, restraints could vary from institution to institution within the state. Ehrlich and Ternes (2021) referred to this patchwork of regulation as allowing each institution to develop its own "hyperlocal rules" regarding what athletes can and cannot do while pursuing NIL opportunities.

This patchwork of regulation is further complicated by the absence of consistent enforcement provisions in the state NIL legislation. Only five states (Arkansas, Colorado, Missouri, Nebraska, and Pennsylvania) specify remedies for violations of this statutory language. Of those states, only Arkansas expressly states that a contract in violation of the statute is null and void. Even for these five states, the remedies provided are inconsistent, ranging from injunctive relief only (Colorado) to a private right of action for universities and athletes including injunctive and declaratory relief, damages, attorney's fees, and costs.

Interestingly, of the four states that permit a private cause of action and attorney's fees, the prevailing party attorney's fees are only applicable to a prevailing plaintiff (Arkansas, Missouri, Nebraska, and Pennsylvania). Thus, presumably, if a plaintiff were to pursue a civil cause of action, and not prevail, the defendant would not be entitled to recover attorney's fees for defending the action. However, of the 18 states with direct statutory restraints on contractual conflicts, 14 are silent on any remedies available for statutory violations. Additionally, only one of these 14 states provides language indicating responsibility for oversight and enforcement of the legislation. Florida's NIL legislation, although it does not contain remedies or enforcement provisions, does mandate that the Board of Governors and the State Board of Education shall adopt rules and regulations to implement the statute.

However, after more than a year of NIL activity, there have been no reported administrative regulations or investigations into potential statutory violations in any state. There appears to be a continued reliance on the NCAA or conference officials to enforce NIL regulations even in states with mandatory statutory regulatory frameworks (Wittry, 2022). The lack of enforceability of state NIL legislation has been credited with the expansion of NIL collectives and some questionable six- and seven-figure NIL deals with college athletes. Wittry (2022) reported that while NCAA enforcement staff have tried to respond to and make inquiries around NIL collective activities, no entity has received punishment or been officially investigated for violating the NCAA's interim NIL policy as of August 2022. The NCAA even asked its members to help identify violations (Crabtree, 2022a). Wittry (2022) further reported that few state authorities, such as the state Attorney General, Office of the Secretary of State, and Department of Consumer Affairs, had any information about how to enforce their respective state NIL statutes.

The relationship between athletes and universities has historically and continues to disadvantage the athlete, with the university wielding disproportionate power (Eckert, 2006; Kalman-Lamb, Silva & Mellis, 2021; The Drake Group, 2022). State legislatures had an opportunity to fully remove burdensome restraints imposed on college athlete NIL activities by institutions and athletic associations. Instead, legislatures have reinforced this power dynamic in favor of the university and created a regulatory environment with little to no enforcement mechanisms.

Impact of Inconsistent Standards and Expectations Relating to Conflict Language

Several legal commentators and media outlets suggested the types of conflicts state legislatures were addressing in NIL legislation involved potential conflicts with existing school or team sponsorship agreements, licensing agreements, or with the use of university protected intellectual property, such as logos, slogan, mascots, venues, and even team colors (Bank, 2020; Byers, 1995; Matias & Kastner, 2021; Suchecki, n.d.). However, our analysis revealed that the language of the statutes lacks a clear or uniform interpretation related to what agreements or activities would trigger conflict limitations, and when and under what circumstances those restraints would be triggered.

Only seven states expressly identify "sponsorship and licensing agreements" in their conflict language. Instead, the majority of states prohibit conflicts between a college athlete's NIL activities and the athlete's "team contract." However, the term "team contract" is used and defined inconsistently. Only six states defined the term "team contract" and those definitions have differing meanings. Given that seven other state NIL statutes using the term "team contract" have not defined the term at all, it is unclear how a court would interpret its meaning. For example, Georgia, Maine, and Texas define "team contract" as a written agreement between the *athlete and their institution*. Nebraska and Oklahoma define "team contract" as a contract between the *institution and a sponsor.* Colorado defines the term as a contract between an *institution, athletic team, and another entity.* The definition used by Nebraska, Oklahoma, and Colorado would seem to confirm the popular opinion that legislatures were addressing potential conflicts with existing school or team sponsorship agreements and licensing agreements. However, the definition provided from Georgia, Maine, and Texas does not address an agreement between the institution and a sponsor or licensee, instead focusing solely on an agreement between the institution and athlete.

For the remaining states, the conflict language primarily incorporates generic descriptors of a "contract" or "agreement." Thus, our analysis of contract types specified within conflict language confirms a disparate regulatory landscape for college athletes, institutions, athletic department sponsors, and potential NIL partners. As

courts are required to interpret the statutory legislation in the future, the term "contract" or "agreement could result in a range of outcomes. Most state NIL statutes do not contain any guiding definitions for the term "team contract" or the specific "contracts" or "agreements" that are subject to the conflict language. Thus, ultimately, as disputes arise, it will be left to the courts in most states to fashion a statutory interpretation for "team contract" and to define the range of "contracts" and "agreements" covered by the state NIL legislation, which will likely lead to inconsistent and disparate interpretation from one state to the other.

We also observed that official team activities (OTA) are a central but inconsistent regulatory feature in state NIL legislation. While the origin of the OTA language in the state NIL statutes is not clear, the use of a similar term is commonly included in apparel agreements between universities and their official apparel sponsors. For example, a sample Adidas apparel agreement uses the term "team activities" and provides that the "University ... shall require that each Team use exclusively such adidas products whenever participating in team activities." The agreement further describes these activities to include "practices, games, clinics, and other University functions for which the University ordinarily and usually supplies products to the Team" (Texas A&M University, 2014, p. 7). This definition is one example of a specialized meaning that courts may rely upon to interpret the phrase in the state NIL statutes and offers insight into how athlete NIL activities may impact the institution's contractual obligations contained in their apparel sponsorship agreements.

Additionally, Ehrlich and Ternes (2021) examined whether state NIL restrictions might be overly broad restraints on free speech, thereby calling into question the constitutionality of the restrictions under the First Amendment of the United States Constitution. They opined prior restraints and content-based restrictions would require a higher level of scrutiny than restrictions focused on the time, place, and manner of speech. They specifically focused on speech that occurred away from campus and when athletes are not directly engaged in team activities. Our analysis confirms that few states use the OTA moderator to limit the authority of institutions to restrict NIL activity in such a way that a viable argument could be made that the restraints were reasonable time, place, and manner restrictions as envisioned by Ehrlich and Ternes (2021). Only two states (Tennessee and Virginia) expressly permit only reasonable time, place, and manner restrictions on athlete NIL activities.

Consistent statutory language defining OTA, narrowing the range of activities that fall under the definition of OTA, and providing a review process for athletes to appeal any restraints on their NIL activities would strengthen the university's position that these restraints are reasonable time, place, and manner restrictions rather than content based or prior restraints. However, while focusing on OTA may help to alleviate some First Amendment concerns raised by Ehrlich and Ternes (2021), the reality is that the conflict provisions, even if narrowly tailored around OTA, are still

preventing athletes from maximizing their NIL potential during the times and in the places when their endorsement value is at its highest—during television broadcasts, media appearances, and marketing activities (Bank, 2020).

Uncertainty Surrounding Dispute Resolution

In addition to the lack of legislative enforcement guidelines, the state NIL statutes lack any clear guidelines or procedures for identifying, reviewing, and resolving asserted conflicts between the athlete's NIL agreements or activities, and existing institutional agreements. The state NIL statutes also inconsistently provide for notification and disclosure of an asserted conflict. Thus, to apply these provisions in context, let's assume an athlete in State A secures an NIL opportunity with a sponsor. The institution's NIL policy will require that athlete to disclose the NIL agreement or activity to a designated institutional representative, who will then decide whether there is a conflict between the athlete's NIL agreement and an existing agreement of the institution. Some state NIL statutes expressly provide that this conflict determination is at the sole discretion of the institution. In this scenario, eight states do not even require the institution to disclose the nature of the conflict to the athlete, but instead allow the institution to simply prohibit the NIL activity. In 14 states, the institution would be required to notify the athlete and disclose some portion of the institutional contract provisions in conflict with the athlete's NIL agreement. However, those states do not provide any mechanism by which the athlete can cure the conflict or challenge the institution's assertion of a conflict. Only three state NIL statutes provide an opportunity for the athlete to revise their NIL agreement to cure the conflict. Remarkably, only a single state (Kentucky) requires an institution to provide an appeal process if it asserts a conflict exists between the athlete's NIL agreement or activity, and an institutional agreement.

Recommendations and Conclusion

This study confirms the varied and inconsistent regulatory environment created by many state legislatures around college athlete NIL agreements and activities. It is conceivable that state legislatures were well intentioned in this process and sought to remove burdensome restraints imposed on college athletes by the NCAA and other amateur athletic associations. However, many of these statutes were drafted hastily and with little to no legislative history or clear definitions to guide the interpretation of the legislative language. State NIL legislation continues to impose broad restraints on college athletes and, in several instances, place a disproportionate responsibility on the college athlete to avoid NIL activities or agreements that may conflict with an institutional agreement or official team activities. Our primary recommendation for state legislatures is to re-examine enacted and proposed NIL legislation and remember the main purpose of this legislation: to prevent amateur

athletic associations from interfering with college athletes' publicity rights and the economic opportunities associated with their name, image, and likeness. We offer three specific recommendations for state legislators stemming from this general recommendation.

First, state NIL legislation should not contain mandatory statutory restraints on contractual conflicts with an athlete's NIL agreements or activities. Instead, the institutional restraints approach should be preferred. There are several advantages of employing permissive institutional restraint language compared to mandatory statutory restraint language in state NIL legislation. To begin, the institutional restraints approach avoids creating a scenario in which an errant college athlete NIL deal rises to the level of a violation of state law. It seems unnecessary to regulate this activity at the state level when institutional NIL policies can regulate contractual conflicts. Additionally, an institutional restraint framework would remove state legislatures from the process of creating, managing, or controlling the evolving marketplace for college athlete NIL activities. Instead, it would allow individual institutions to adopt reasonable policies narrowly tailored to define their expectations for athlete NIL agreements or activities; protect their existing sponsorship and licensing agreements; and maintain protection for their intellectual property. Universities have vast experience with adopting internal policies to maintain rules and regulations related to student conduct codes, licensing agreements, and usage of intellectual property. They are certainly capable of adopting additional policies surrounding potential conflicts between institutional agreements and athlete NIL agreements or activities without mandate from state legislatures.

Second, we believe that state NIL legislation should not incorporate restrictions based on an athlete's participation in official team activities. It is not necessary for state legislatures to specify NIL restraints during official team activities, especially given the lack of definition around this term in most state NIL legislation. Institutions imposing reasonable time, place, and manner restrictions should impose the least possible restraints on an athlete's NIL activity. If "official team activities" is to be used as a framework for defining the time, place, and manner of restrictions, it should be narrowly defined to relate primarily to protecting the institutions' legitimate business interests in avoiding interference with or a breach of an existing sponsorship and licensing agreement. Prohibiting NIL activities during team travel, especially, places a burdensome restraint on college athletes. It is unnecessary, for example, to restrict an athlete from creating and posting a sponsored social media endorsement while travelling on a bus with their team to an away game. This type of restraint does not facilitate an institution's ability to protect their existing sponsorship or licensing agreements and prevents a college athlete from utilizing valuable time to engage in NIL activities should they desire.

Finally, state NIL legislation should require institutions to adopt dispute resolution processes that balance the interests of institutions and college athletes. It is reasonable to allow an institution to assert a conflict with an athlete's disclosed NIL agreement or activities if the institution feels the agreement or activity may compromise an existing institutional sponsorship or licensing agreement. However, we believe that it is not reasonable for the institution to have ultimate authority in this process, as is the case with eight states that do not specify conflict disclosure requirements within their legislation. In these states, an institution essentially has the authority to assert a conflict without specifying exact institutional agreement language where that conflict may exist, and they are not required to provide a review or appeals process to the athlete in such situations. Instead, disputes arising from the statutory conflict language should be subject to a dispute resolution process whereby the institution must provide timely notification of the asserted contractual conflict to the athlete, disclose all relevant contract provisions to the athlete or their representative, and provide an opportunity for the athlete to appeal the assertion to an independent body outside the purview of the athletics department if the conflict determination is disputed.

The landscape created by differences among state NIL legislation presents current and prospective college athletes with a complex environment to navigate should they seek to secure endorsement deals and engage in NIL activities. Recent evidence suggests prospective college athletes are already mindful of the importance of NIL opportunities when making their college decision. A survey of college football recruits indicated about 30% would be open to attending an institution based on the potential for NIL deals even if the program was not a "perfect fit" from a football or academic standpoint, and 57% of respondents rated NIL as an "important" or "very important" factor in their college decision-making process (Crabtree, 2022b). As current and prospective college athletes receive more education on NIL, including differences among state NIL legislation, it is important to consider how this disparate NIL legislative landscape will continue to affect recruitment and transfer decisions as these athletes attempt to maximize their NIL opportunities and earnings during their college athletics career.

The original purpose of state NIL legislation, as envisioned when California first passed SB 206, has been fulfilled, for the most part, through the suspension of NIL compensation bylaws by the NCAA and other amateur athletic associations. However, state NIL legislation in place today, although intended to protect athletes' economic and right of publicity freedoms, has instead resulted in an unwieldly and ambiguous landscape for athletes, parents, colleges and universities, and potential marketing partners to navigate. It is in the best interest of all stakeholders for state legislatures to review existing and pending NIL legislation, and ensure no undue burdens are placed upon college athletes as they continue to operate within the NIL space in college athletics.

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